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The Australian Head of State: Putting Republicanism into the Republic*

Harry Evans

A reasonably detached observer could be forgiven for thinking that the Australian republican movement is floundering. The arguments against sharing a nominal head of state with another country, which is now a member of a foreign quasi-federation, seemed so irresistible. Why does the movement fall so far short of the degree of popular support required to carry the change? A large part of the explanation is provided by a lack of coherence in the official republican movement, which is illustrated by the head of state issue.¹ Having proclaimed that the monarchy must go, and that we must have an Australian president, the movement immediately founders on the question of how the replacement is to be chosen. The response of a large majority of Australians, according to the polls, is that they want to elect a president.² The official republicans recoil in horror from such a suggestion, resort to irrational arguments against it, and speak of the need to re-educate the public.³ It has to be explained to the people that we are making the change in such a way as to avoid changing the system of government: an odd argument for any kind of reformers attempting to persuade people to change anything. Never

* This article was first published in *Agenda*, vol. 3, no. 2, 1996. Harry Evans is the Clerk of the Senate.

¹ The conclusions of the official movement are contained in a statement by the Prime Minister, the Hon. Paul Keating, *An Australian Republic, The Way Forward*, 7 June 1995, which is based on the report of the Republic Advisory Committee, *An Australian Republic*, 1993, which in turn is largely based on a book by Professor George Winterton (a member of the committee), *Monarchy to Republic: Australian Republican Government*, 1st ed., Oxford University Press, Melbourne, 1986, reprinted with additions, 1994.

² 'Thumbs down for Keating's republic', *The Bulletin* (Sydney) 1 August 1995, p. 28.

³ 'Presidential poll will lead to chaos', Sir Maurice Byers, *Australian*, 5 July 1995, p. 13; 'A president must not be politicised', *Australian*, 6 July 1995, p. 10. It is ironic that two of the greatest defenders of the official republic are knights of the realm: Sir Maurice Byers and Sir Zelman Cowen. The Primate of the Anglican Church also rallied to the Prime Minister: 'Church leader backs Keating republic model', *Sydney Morning Herald*, 4 July 1995, p. 7.

has there been a republican movement which wanted to replace a monarchy with something designed to look as much as possible like a monarchy. It is indeed a strange kind of republicanism we have.

Republican culture

The problem is that official republicanism is only a nationalist and anti-hereditary movement to remove the British monarchy from Australia. It does not seek to foster or to build upon a republican culture. Historically there have been two essential ingredients of republican theory and practice: institutions so structured as to provide a balanced system of government capable of avoiding the growth of monarchical power, and a reliance on the people as a whole as the only repository of sovereignty. A republican culture is one which recognises these central tenets of republicanism, and seeks to build upon them. Australian official republicanism, however, is characterised by a neglect of questions of institutional structure and constitutional balance, and by a positive aversion to involving the people in government to a greater extent than they are now involved. It is in relation to the head of state issue that these characteristics are most clearly exposed.

The absence from official republicanism of a republican culture is maintained by an avoidance of serious historical or theoretical analysis. A little such analysis reveals the necessary elements of such a culture.

The idea that the absence of monarchy may be a necessary, but is not a sufficient, condition to constitute a republic is far from new. The reader has to get well into Cicero's treatise *De Re Publica* before finding the statement that the holding of an office of state for life is incompatible with *res publica*, which by definition is a partnership belonging to the whole community.⁴ The essence of *res publica* is not in the absence of a king, but in institutional arrangements which maintain the partnership and avoid anybody using the state to dominate everybody else.

The founders of the first modern republic, the United States, might be thought to have had a ready-made republican culture on which to build. The colonies before the break with Britain were de facto self-governing republics only nominally under the Crown; effective power was held by assemblies elected on wide franchises, and two colonies even elected their own governors. The founders drew up their new constitution, however, against a background of demonstrated failures of the republican state governments. These failures, manifest in one case in armed rebellion and war, were attributed to the weaknesses identified by Cicero: domination of government by factions and absence of balanced institutional structures. Not just any union, but a well-constructed union, was required to provide republican remedies against the diseases common to republics.⁵

The Australian founders were more republican than their current would-be successors. Although they constructed their union under the British Crown, they embraced the salient features of republican government, even adopting the name 'Commonwealth', the English equivalent of *res publica* and of the latinate 'republic'. They had a keen appreciation of the importance of well-designed institutions. Thus they readily accepted the foreign model of federalism as the

⁴ 2-xxiii, trans. S. W. Keys, Loeb, 1977.

⁵ *The Federalist*, No. 10 (James Madison), Everyman ed., pp. 41–8; also No. 51 (James Madison), pp. 263–7.

institutional basis of the Australian union.⁶ Federalism for them encompassed such institutional devices as specified central powers, equal representation of the states in the Senate and coordinate powers in the two Houses of Parliament, all un-British innovations.⁷ They devoted much of their debates to the shape and relationships of institutions. They were also good republicans in relying on the ultimate power of the people: both Houses of the Parliament were to be directly elected, and the new constitution would be approved by, and amendable only by, referendum.

Australia's only deficiency in republican culture may be seen not in accepting the British Crown but, on one view, in having self-government handed down from above before federation, instead of building it from below, as had largely occurred with the American colonies. Federation itself, however, was an indigenous growth with strong popular participation.

The head of state issue is greatly illuminated by bringing to bear upon it the essential republican principles of sound institutional design and ultimate popular control.

The head of state and institutional design

Some have suggested that we do not need a head of state.⁸ Parliament after each election could elect the ministry, which would remain in office until the next Parliament is elected, and if necessary could elect a new ministry in the course of a Parliament. This would mean, however, that the prime minister or premier would become the de facto head of state. There would also be the question of whether lower houses should be dissolvable within their term, and if so who is to exercise the dissolution power and how is there to be any restraint on its misuse by a prime minister or premier. Most people would agree that, if we are to retain the responsible government, or cabinet, system, whereby the executive government is carried on by a ministry having the support of the lower House, there will be a need for a constitutional umpire, holding the powers currently held by the governor-general or some modification of them, to act as a final arbiter in situations in which the lower House is not able to constitute or support a ministry or the ministry seeks to subvert or bypass the processes of responsible government.

The official republican movement, represented by the government's 'preferred option', embraces the 'minimalist' position of changing the head of state with the aim of little or no change to the system of government, and this is thought to rule out an elected president. The contradiction in calling this position 'republican' has already been noted: it is intended to provide a sort of indigenous, non-hereditary constitutional monarch. It is thought that the ghost of the monarch should remain behind, rather like the Cheshire cat's smile, and that without this remnant our system of government must fail. The great republicans of the past, such as Tom

⁶ Sir Richard Baker, the leading federalist among the founders, reminded his colleagues of the foreign nature of the federal system, and also referred to responsible government as a 'British sham': Australasian Federal Convention, *Debates*, Sydney, 1897, pp. 785–7.

⁷ Remarks by Sir Samuel Griffith (quoted by Sir Richard Baker), Dr John Cockburn, Mr John Gordon and Sir Richard Baker, Australasian Federal Convention, *Debates*, Adelaide, 1897, pp. 28, 326, 340; Sydney, 1897, pp. 784, 789. Although the powers of the House of Lords were not statutorily reduced until 1911, they were regarded in the late nineteenth century as limited by parliamentary practice.

⁸ This suggestion is canvassed in the report of the Republic Advisory Committee, *op. cit.*, pp. 47–51.

Paine, would have found this determination to maintain the shadow of monarchy as even more ludicrous than real monarchy.⁹

The foundation of this position is that an appointed president will most closely resemble the appointed governor-general. The latter is de facto appointed by the prime minister alone; the favoured 'minimalist' method is for appointment by both Houses of the Parliament by a special majority. It is interesting to note that appointment of a president by the prime minister alone, although originally proposed by Mr Keating,¹⁰ is not contemplated and is regarded as obviously unacceptable. Presumably this is because it is thought that a president should not be merely the creature of the prime minister, and that the role of president requires greater independence. This appears to be the sole concession of the 'minimalists' to republicanism properly so called, a small concession to the idea of balanced government.

It is also notable that appointment by a simple majority of both Houses is not favoured because it is thought that this would not be different from appointment by the prime minister. This is an admission of the real major problem with our system of government: excessive concentration of power in the hands of the prime minister and prime ministerial control of the lower House.

The different method of appointment which is contemplated, however, is likely to lead to a different result and to change the system of government, contrary to the stated intention. The favoured system of nomination by the prime minister and approval by a two-thirds majority of both Houses means that the prime minister, who now alone appoints the governor-general, would have to gain the approval of at least the other major political party in Parliament for the prime ministerial nomination. This means that the prime minister will have to put forward a nominee acceptable to the other major party, which means that consultations will take place before the nomination is made. Consultations among politicians lead to deals. The deal may be for a candidate acceptable to both parties and not likely to offend any major strand of opinion in either party. A lowest common denominator effect could well set in. Recent appointees as governor-general may not have passed muster in such a party agreement. In politics a deal can also take the form of a trade-off. An opposition may well accept the government's nominee on the basis of some returned favour. The deal may be: 'We do not really like your presidential nominee, but we will support the nomination if you will do something in return for us.' Political negotiations also notoriously tend to leak. The way in which the presidential nominee has been selected inevitably will become known to the public. The deals will be explained in the press. The selection process will then be looked upon unfavourably by outsiders, and there will be a demand for direct election to replace this unsavoury process.

Regardless of whether this prediction is likely to prove accurate in all respects, the point is that the different method of selection favoured by the 'minimalist' option will not leave the system of government as it is.

Contrary to the minimalist position, a strong case can be made out that a directly elected president would constitute the least change from the current system of government. It is a question of constitutional design. The current system of constitutional monarchy and responsible cabinet government centres on a head of state, the monarch, who is independent of the Parliament. Apart from occasions of revolution, the Parliament does not choose the monarch. The Crown as an institution is separately constituted. The theory of constitutional monarchy

⁹ See his famous pamphlet, *Common Sense*, 1776, Penguin ed., pp. 80–1.

¹⁰ *Lateline*, 15 September 1993 (transcript from tape recording).

envisages that the monarch will enjoy wide public support, which will shore up the independence of the Crown. Governors-general and governors, as representatives of the Crown, were also originally supposed to be independent of Parliament. The change to de facto appointment by the prime minister or premier may have undermined that independence, but the appointees may still be supported by the aura of the Crown.

Having a president appointed by the Parliament, even with a special majority, would remove that independence of the head of state. The prime minister's freedom of choice would be removed, but so would any remaining aura of the Crown. The head of state would be, and would be seen to be, dependent on the Parliament, or, in reality, on the two major parties. The proposal to have the president removable by the Parliament without stated cause would greatly reinforce that dependence.¹¹

A directly elected president, however, would provide a republican replacement for the Crown, with independent public support and no dependence on parliamentary support for appointment or continuance in office.

Whenever the possibility of election is mentioned, the official republicans raise the question of the powers of the office.¹² It is pointed out that the governor-general possesses great powers under the Constitution, principally the power to appoint and dismiss ministries. It is claimed that these powers could not safely be entrusted to an elected president. This is also a curious argument for persons claiming the title of republican. The powers are regarded as safe when vested in an appointee of the prime minister or a nominee of the prime minister approved by a deal with the other major political party, but may not be safely vested in a person independent of the ministry and the Parliament and endorsed by the electorate.

It is more rational to argue that the extensive powers of the office require the independence and popular support of election. This contention is supported by the history of constitutional government. Extensive powers require election; appointed bodies can have only limited powers. Thus the United States Senate, with its great constitutional powers, was changed from an appointed to an elected body, while the hereditary and appointed House of Lords had its powers taken away.

Even if a president is to perform only the role of the governor-general, holding great powers but exercising them according to conventions, this role would seem to require the independence and public support of direct election rather than dependence on the politicians. The governor-general's role may be regarded as that of an umpire, largely observing the political game and intervening only at times of difficulty to ensure compliance with the rules. The role of a governor-general becomes crucial when responsible government ceases to work: when a lower house is incapable of supporting any ministry, when a prime minister refuses to resign or advise an election upon loss of the support of the lower house, and in similar situations. Many such cases have occurred, including recent cases in Australia.¹³ If vice-regal representatives have

¹¹ As proposed by the Prime Minister's statement of 7 June 1995, op. cit.

¹² Report of the Republic Advisory Committee, op. cit., pp. 72–3.

¹³ Following the Tasmanian general election of 1989, the Governor rejected a request from the Premier for a new election and required the Leader of the Opposition to provide firm evidence of his ability to form a stable coalition government. Many other cases are set out in *Evatt and Forsey on the Reserve Powers*, a reprint (Legal Books, Sydney, 1990) with a lengthy introduction by Dr Eugene Forsey, of his *The Royal Power of Dissolution of Parliament in the British Commonwealth* and Dr H.V. Evatt's *The King and His Dominion Governors*, Legal Books, Sydney, 1990.

been successful in resolving these situations, it is because it is understood that they perform the role of the Crown. An effective republican umpire to resolve such situations requires independence and public support in substitution for the residual prestige of the Crown.

The powers of the governor-general are exercised in accordance with the practices, precedents and conventions associated with responsible government. Scrupulous observance of these in a republic is more likely by an independent president than by one beholden to the politicians.

In short, considerations of institutional design, including the contention that we must follow the scheme of the existing system as far as possible, indicate that a president dependent on the major parties is the most unsound option, and that direct election achieves both of the aims of institutional balance and as little change as practicable to the existing system.

The head of state and popular sovereignty

The official, 'minimalist' position, by rejecting so emphatically the option of an elected president, creates at the heart of the republican movement an enormous democratic deficit, which places it under a severe handicap, particularly in persuading the electors.

It is said that we must have an indigenous head of state to be a symbol of the nation, to represent Australia and its people, and to represent the people to themselves. It is not clear how such an exalted role can be performed by any officeholder unless the office has a strong and close link with the people, or how such a link can be attained except through popular election. It is highly unlikely that such a role could be performed by a person appointed by the politicians. Governors-general, without the handicap of being appointed by subterranean political deals, have not been able fully to perform such a task; one has the feeling that in recent years they have been less conspicuous to the people than in the past.

It is also said that popular election will lead to a party contest and the election of a party politician, and that a person selected by this process will be incapable of properly performing the role of national symbol or that of constitutional umpire.

It is somewhat contradictory so to imply that an elected president would follow the partisan interests or instructions of the party which nominated and campaigned for him or her, while it is supposed that a president appointed as a result of a deal between the major parties would not suffer from a similar, and more debilitating, dependence.

It is a *non sequitur* that a president elected after a party contest would be incapable of performing the required role. To a certain extent the function of representing the nation as a whole is performed by the prime minister of the day, who is invited to make inspiring speeches and to launch great events, perhaps more often than the governor-general. A party politician elected to the presidency, and without the responsibility of actually exercising executive power, would be more capable in that regard than a prime minister. Such a president would be likely very quickly to become a **former** party politician transformed by the high office. This occurred, after all, with Mr Hayden and his politician-predecessors to a large degree.

In any case, it does not follow that the electors would vote for party politicians. The unstated premise here is that the electorate would be incapable of distinguishing between an election to

choose a government to carry out favoured policies and an election to choose a head of state. It is more likely that the voters, if presented with the choice of non-party candidates, would forsake the established political parties and return persons without partisan attachments. It would be important to ensure that the ability to nominate candidates is not confined to political parties in or out of Parliament. The political parties would then be likely to follow the signals of the voters and nominate or support attractive non-party candidates. In order to facilitate this effect, it may be desirable to restrict campaign spending by political parties in presidential elections.

It also does not follow that, as has been repeatedly stated by exalted personages in recent times, that an elected presidency would preclude the choice of distinguished persons.¹⁴ If candidates really are distinguished, there is every likelihood that opinion-leading groups would support them and that the electorate would vote for them.

Other republics

These contentions are supported somewhat by an examination of the established republics of the world.

The number of stable republics with constitutions that have functioned for reasonable periods without major unconstitutional episodes is relatively small, but so is the number of stable, democratic constitutional monarchies. Thirteen republics have been stable for the past twenty-five years or more under their current constitutions: Austria, Botswana, Finland, France, Germany, Iceland, India, Ireland, Israel, Italy, Singapore, Switzerland and the United States of America.

Four of these countries have executive presidencies: the United States with a pure executive presidency, and Botswana, Finland and France with hybrid systems in which the government is carried on by ministers in the legislature but in which the president also exercises executive power. Switzerland has a separately constituted, but not directly elected, collegiate executive quite different from a parliamentary cabinet.

Of the remaining eight countries with parliamentary cabinet systems of government, four have directly elected presidents who perform a role similar to that of our governor-general. In two of those countries, Singapore and Ireland, party nominees have been elected as president, although Singapore has had only one presidential election since changing to direct election, and at the last Irish election a non-party person was returned, which may well inspire a change of practice in that country.¹⁵ In the other two countries, Iceland and Austria, it has been the practice to elect distinguished persons who may or may not be supported by political parties. In the case of Iceland, the current president is regarded as so distinguished that she has been reelected on several occasions unopposed.¹⁶ The latter country also provides a refutation of the claim that the combination of an elected president and a cabinet system of government requires codification of the powers of the head of state: the Icelandic constitution contains as little specification of those powers as our own.

¹⁴ Principally the other knight of the realm, Sir Zelman Cowen: see his remarks reported in 'State a republic too, says ex-G-G', *Mercury* (Hobart), 12 July 1995, p. 9.

¹⁵ Although formerly a member of the Labour Party, President Mary Robinson did not stand as the candidate of that party.

¹⁶ President Vigdis Finnbogadóttir, a former theatre director.

The remaining four countries have cabinet systems of government with appointed presidents. All of these countries drew up their constitutions in the aftermath of the Second World War, and had historical reasons for avoidance of election of the head of state. The constitution of the German Federal Republic was drafted amid the ruins of the war, and presidential elections were associated with Hindenburg and the appointment of Hitler, so it is not surprising that the precedent of the Weimar Republic was not followed. India, establishing its constitution immediately after a period of terrible communal violence, likewise eschewed presidential elections, which could have set one community against another. Israel in the same period was surrounded by enemies and in a constant state of warfare, which made government by a single chamber possessing all powers appear to be the only option. Italy in the post-war period was haunted by the memory of Mussolini, and therefore opted for collective (and weak) leadership. None of these countries offers useful parallels for Australia.

Making allowance for the necessarily small number of examples, it can be said that a cabinet system of government with a head of state who performs essentially similar functions to our governor-general is compatible with popular election of that head of state. Such a combination does not necessarily involve the election of party politicians, but may also lead to the election of distinguished non-party persons.

The problem of the states

The issue of the head of state arises at the state level, but with an additional difficulty. One of the greatest problems with state parliaments is that they are too small to support a proper system of cabinet government. With a house of less than one hundred members, when a ministry is appointed from the majority and a shadow ministry from the minority, there are few backbenchers left to undertake the parliamentary roles of monitoring executive activities and scrutinising legislation, particularly through a parliamentary committee system. It is politically very difficult to expand the state houses; indeed, there are pressures to reduce their size as a way of lessening the burden on the taxpayer.¹⁷

It has been suggested that the federal head of state could also act as the head of state of each of the states, just as the governor-general is in effect head of state of the Australian Capital Territory, and that states could share governors.¹⁸ Having to look after more than one jurisdiction, however, would place too great a workload on the officeholders, if they perform their duties diligently, and would violate the federal principle of the independent constitution of the states.

The suggestion that each of the states should have an elected governor, which is here submitted to be the appropriate constitutional arrangement if we are to retain parliamentary cabinet government, is likely to meet with the very strong objection that such an elected office would simply add to the burden on the taxpayer, especially if gubernatorial elections are to be held separately from parliamentary elections.

In response to this objection a solution is offered which would solve both the head of state issue at state level and the problem of the state parliaments being too small. This is a scheme which

¹⁷ See the *Report of the Board of Inquiry into the Size and Constitution of the Tasmanian Parliament*, published by the Board, which was appointed by the Tasmanian government, in 1994.

¹⁸ Professor George Winterton, *Monarchy to Republic: Australian Republican Government*, op. cit., p. 107.

could be undertaken as an experiment by one of the less populous states, such as South Australia or Tasmania. One advantage of federalism is that such experiments can be undertaken without affecting the whole country.¹⁹

The houses of the Parliament of the state which tries this change would continue with their current composition, or with their membership marginally reduced if it is desired to make the change cost-neutral. At the same time as the lower House is elected, a governor would be directly and separately elected by the electorate. The governor would be the head of state as well as the head of government. This officer would conduct the executive government, and would appoint a small cabinet of ministers from outside the Parliament. The Parliament would perform the legislative functions of passing laws and scrutinising the operations of government. The simultaneous election of the governor and the houses, or the lower House if the upper House has different terms, would reduce the likelihood of serious deadlocks between the houses and the executive government. As each would be elected for a fixed term, there would be no power of dissolution and no early elections. Upper houses would continue to perform their scrutiny and review functions. It is suggested that the houses have the ability to scrutinise, but not to veto, executive appointments. An executive veto of legislation could be overridden by a special majority of the houses.²⁰

This would **not** be the American system. There would be no mid-term elections to increase the likelihood of legislative/executive disagreements, and it would not involve adopting the American party or electoral systems. If the current Australian party system remained in all its cohesion and discipline, this scheme would still be an improvement because the legislature would be freer to perform the legislative functions and the choice of ministers would not be limited to the parliamentary members of the majority party.

This scheme would amount to the adoption at the state level of the basics of the system which has been used with success in local government in some states for many years, whereby the mayor and council are separately but simultaneously elected.

This practical proposal is offered for discussion in the continuing debate, in which the questions relating to state constitutions and state governments, so far virtually ignored, will have to assume greater prominence. (On one view, an amendment of the *Australia Act 1986* may be necessary to allow a state to adopt this system.)

The undertaking of this experiment by one of the small states would allow us to assess whether we should be so fearful of changing the system of government as the official republicans suggest. It would allow a laboratory change of system, as it were. It is suggested that, if adopted, this scheme would prove so effective that other states would follow suit, and it may even be adopted at the federal level. The system of government would then undoubtedly have been changed. There would be no doubt, however, that it would be thoroughly republican. We would also have followed in the footsteps of the founders by not being afraid to try a system new and

¹⁹ See the statement by Justice Brandeis, quoted in Winterton, *op. cit.*, p. 107; Professor Wolfgang Kasper, 'Competitive federalism: may the best state win' in *Restoring the True Republic*, Centre for Independent Studies, St Leonards, NSW, 1993.

²⁰ A similar scheme was suggested by Martyn Webb: Professors Patrick O'Brien and Martyn Webb, eds, *The Executive State: WA Inc and the Constitution*, Constitutional Press, Perth, WA, 1991, at pp. 327–8.

foreign to our traditions, as was federalism, in order to provide the country with an efficient as well as a truly republican constitution.²¹

A head of state for Australia

We are constantly reminded by the official republicans that the issue is all about an Australian head of state. We must have a head of state to suit Australia.

This premise does not lead to the conclusion that the head of state must resemble as closely as possible the British constitutional monarch. On the contrary, the institution of an Australian head of state should build upon the nascent republican culture of Australia, as exemplified by the founders of the federation, with their emphasis on institutional design and on popular participation. Building on that foundation entails an elected head of state.

²¹ For others who have questioned the official orthodoxy about electing a president, see ‘Westminster democracy and the separation of powers: can they co-exist?’, Dr Suri Ratnapala, *Papers on Parliament*, No. 26, August 1995; ‘Republic plan fails voters’, Professor Patrick O’Brien, *West Australian*, 30 June 1995, p. 10; P.P. McGuinness, ‘President needs proper powers’, *Australian*, 14 May 1993, p. 13; ‘Putting the republic to the vote’, *Australian*, 21 July 1993, p. 9; ‘Polity demands a political president’, *Australian*, 7 October 1993, p. 9; ‘Practically, we have a republic’, *Weekend Australian*, 9 July 1994, p. 2; ‘Dr Keating’s lucky dip’, *Sydney Morning Herald*, 3 June 1995, p. 14; ‘And for his next trick ...’, *Sydney Morning Herald*, 9 June 1995, p. 14; ‘People must have a choice’, *Sydney Morning Herald*, 13 June 1995, p. 14; Dr Helen Irving, ‘Why shouldn’t we choose our head of state?’, *Australian*, 14 March 1995, p. 15.

The Election of an Australian President*

Professor George Winterton and Professor David Flint

Mr Harry Evans (Chairman) — Good afternoon everyone. This place for a Senate lecture is occupied today not by a lecture but by a debate, and the debate is going to be about a question which I think may be significant in the future, that is, if Australia is to have a republican head of state, whether that office-holder should be popularly elected or appointed in some way. And to debate this question we have two distinguished academics, Professor George Winterton and Professor David Flint. The publicity we put out about the lecture has given you some details of these two distinguished gentlemen, and they require little introduction.

I will just say a word about the format of the debate. I'm going to invite each of the speakers to speak for twenty minutes. Professor Winterton is going to speak first and he is going to speak against the concept of a directly elected head of state; then Professor Flint will speak for the same time and he will speak in favour of an elected head of state. I will then invite questions, and I am hoping to devote about ten minutes to people asking questions. Questions can be directed to either or both speakers, but I would like to get a spread of questions so that they can each respond. Questions must be questions and must be brief and concise. Each of the speakers will respond, in the same order in which they spoke, for approximately ten minutes, and in the course of their responses they will, I hope, deal with the questions that they have been asked and also respond to points raised during debate. And if my arithmetic is correct that should bring us to about 1.30 and I will then do a very brief summing up. I will call first on Professor George Winterton.

* The following is a transcript of a debate held in the Department of the Senate Occasional Lecture Series on 19 July 1996. Professor Flint is Dean of Law, University of Technology, Sydney; Professor Winterton is Professor of Law, University of New South Wales.

Professor Winterton — Thank you very much. This debate seemed more relevant at the time it was organised. At the moment I think it looks like a debate organised by the Visigoths to discuss whether or not the Senate of Rome should be elected. But in case you think that was a biased comment I didn't say the Vandals; I only said the Goths. Well, the method of choosing the head of state obviously cannot be considered in isolation from related questions such as the powers of the head of state and the method of removal. For example, if one were concerned about the popular mandate direct election would confer, that would obviously vary with the powers given and the method of removal. So, for instance, a popularly elected president removable at the whim of the prime minister would obviously have far less power than a president elected and removable in converse way, that is to say chosen by the prime minister but removable only by popular referendum.

Nevertheless, we are focussing today solely on the issue of how the head of state should be chosen, so I should perhaps begin by mentioning a few of the assumptions that I will be making. I think we should assume that the head of state will have essentially the same powers as the governor-general, and that the head of state will be removable only either for cause, as federal judges are now, or perhaps without cause by a parliamentary super-majority, say two thirds.

Now the logical place to begin this topic is to see what is the nature of the office, and just very briefly (this is well known to everyone), I think one can say that the Governor-General, the de facto head of state, has two main functions. First, ceremonial and personal; to act as a focus of national unity, to embody the Australian nation and the Australian people, to represent the Australian people to themselves, as Sir Ninian Stephen put it very well. And then there is the other less used but important function, the constitutional role as ultimate constitutional guardian, exercised principally through the Federal Executive Council to ensure regularity in government, but also of course the ultimate power, fortunately rarely exercised, but there is always the threat of exercise of the reserve powers to remove the prime minister and to refuse to dissolve Parliament.

It is clear that with these functions the head of state has to be perceived as a politically impartial person, respected, with broad public support and some basis of legitimacy. This does suggest bipartisanship; that a method of appointment which involves a bipartisan process of choosing the head of state is the most suitable. At present, the head of state enjoys legitimacy by representing the Crown, and the Crown, whatever else one says, does have an established basis of legitimacy. Whatever replaces this has to derive authority from the ultimate source of authority in a republic, namely the people. But it does not follow that the person has to be directly elected by the people as I will note again later. The person must derive authority from the people, but that can be achieved by indirect selection by being elected, for example, by the representatives of the people, especially a two-thirds majority of Parliament, which after all comprises the representatives of the people. I do not think it could be said that a head of state chosen by a super majority of the people's representatives is chosen in a manner incompatible with the republican principle, although this is a point that, for example, Harry Evans, our Chairman, has argued.¹ It must especially be borne in mind that the government itself is not directly elected; it is true that the Members of Parliament are, but the government itself is not directly elected; it merely enjoys the support, the confidence,

¹ H. Evans, 'The Australian Head of State: putting republicanism into the republic', *Agenda*, Vol. 3, no. 2, 1996, pp. 143, 146, and reprinted in this issue.

of the lower house. So, a directly elected president would have a basis of legitimacy different from the government.

Popular election seems in short to have two basic defects. The first is the electoral process itself, and the sort of person likely to be elected, and secondly, the more important reason, the authority inherently flowing to a person who is directly elected. Popular election is favoured, as you know, by a very wide margin in public opinion polls. A recent public opinion poll in the *Australian* on the 22nd of June last year showed popular election favoured by 74 per cent whereas two-thirds election by Parliament received only 16 per cent.² The *Sunday Telegraph* a week or so earlier had published similar figures, 75 per cent to 23 per cent.³ In fact, this was a considerable fall in the percentage favouring popular election. Two *Bulletin* polls in 1994 had registered 91 per cent and 90 per cent.⁴ So public opinion overwhelmingly favours popular election. The reason appears to be to exclude politicians from the position of head of state, and to keep the choice of the head of state out of the hands of politicians. It's interesting to speculate why the public should feel this so strongly. I think there are probably two reasons. One, that the public want a say in the person who will be representing them as head of state, and also, I think, they're suspicious of deals between political parties; somewhat naively believing that a popularly elected president would not result from such a deal. But the reality is of course that popular election will almost inevitably lead to the election of a politician and the choice of candidates will very largely be in the hands of political parties. As Gough Whitlam has aptly remarked, '[T]here is no surer way of absolutely guaranteeing that the president of Australia will always be a party politician than by making the presidency directly elective.'⁵

Ironically the election of a politician will probably be avoided only by leaving the choice to Parliament, especially if bipartisanship is required by, for example, requiring a super majority, such as two-thirds. The *Canberra Times* stated the true position succinctly last year: 'In short, if the politicians elect the president, the result will be a non politician; if the people [elect] the president the result will be a politician.'⁶ That surely is absolutely accurate, absolutely right; but it does seem difficult to persuade the public generally that that's so.

Now it's true that measures could be adopted to try to ameliorate the effect of popular election, for example, by opening up the nomination process. In Portugal and Iceland, for instance, a certain number of electors can propose candidates, so that even though the political parties may be nominating candidates for the presidency, citizens, by getting together 2000 or 10,000 signatures, could also nominate a candidate. Another thing which might be introduced is public funding of election campaigns, with perhaps some limit on public spending. But I think the reality is that even with these measures, an individual, even one quite well off, would be unlikely to have the resources, or the national recognition, to achieve election in a nation-wide poll. It would seem, that political parties with the resources they have at their disposal and the fact that 40 per cent of the electorate almost automatically vote

² *Australian*, 22 June 1995, p. 2.

³ *Sunday Telegraph* (Sydney), 11 June 1995, p. 1.

⁴ *Bulletin*, 15 February 1994, p. 18; *Bulletin*, 8 November 1994, p. 32.

⁵ G. Whitlam, 'The seed from which a republic sprang', *Canberra Times*, 12 November 1994, p. 12.

⁶ 'The power of our first president' (Editorial), *Canberra Times*, 18 May 1995, p. 12.

for whomever they nominate, are the only groups really capable of securing a candidate's election. Another consideration is that many of the people one might consider most suitable for election as head of state would not submit themselves for popular election. Sir Zelman Cowen has commented on that, saying that someone like himself or Sir Ninian Stephen, and I would think Sir William Deane, would be unlikely to allow themselves to be nominated for national election because they would find the divisiveness of the process unseemly. One must also bear in mind that even if the person elected were not connected with a political party, elections are by their very nature inherently divisive. Obviously there is likely to be more than one candidate. People who did not vote for the successful candidate might very well dislike the person elected, and the election process itself inevitably creates division and dissension.

Sir Robert Menzies remarked that 'the notion of a non-political president periodically elected by popular vote, after an election campaign, is a contradiction in terms'.⁷ This is particularly so in the light of the role of the head of state, that is to say a unifying force, somebody representing the entire nation, not just one side of politics. Even a non-politician who had faced an election campaign, which would inherently be divisive, could find transcending that division and acting as a focus of national unity a difficult task.

Now it has to be admitted, in all fairness, that some countries with popularly-elected largely ceremonial presidents, especially Ireland and Austria and probably Iceland, although I'm not that familiar with the latter, do seem to have achieved reasonable success, although I think it is also true that most Irish and Austrian commentators believe that the Irish and the Austrian presidencies have not generally been resoundingly successful. It is true that the present President of Ireland, Mary Robinson, is a great success, but this is generally conceded to be rather exceptional.

The second objection to popular election, and the more important one I think, is the authority that inherently flows to someone elected through popular election. A popularly-elected president would be the only nationally elected public officer in the entire Commonwealth, who could therefore justifiably claim a greater popular mandate of some sort than the government, which after all may not even command a majority in the lower house. True, the government has to retain the confidence of the lower house but this can be negative confidence in the sense that the House does not vote against them. I think one can say that a popularly-elected head of state is likely to have two consequences on the present balance of power between the head of state and the government: greater willingness to exercise the reserve powers, and greater participation in public affairs such as speech-making. The risk of the latter is demonstrated by the presidential career of President Mary Robinson of Ireland. It's true that she is widely respected throughout the world, but her relations with the Irish Government have not been easy. She has done things that they have objected to. They do see her as a somewhat unruly figure making policy-making more difficult, but she gave fair warning of this in a very telling remark during her election campaign, which highlights the power flowing from public election. She said:

As president, directly elected by the people of Ireland, I will have the most democratic job in the country. I'll be able to look [the Prime Minister] in the eye and tell him to

⁷ Sir Robert Menzies, *Afternoon Light*, Cassell, Melbourne, 1967, p. 236.

back off if necessary because I have been directly elected by the people as a whole and he hasn't.⁸

Now some people, and Harry Evans again is one of these, argue that there is benefit in having a popularly-elected president with this sort of authority, to check and balance the government.⁹ David Flint, also, in an interesting letter to the *Economist* in March, has said that a popularly-elected president would act as a check and balance on the government.¹⁰ But there are two main difficulties with this notion of checking and balancing. The first, and perhaps minor one, is that it causes dissension and confusion in the government, especially in the minds of the public who will see the government speaking with two voices, as has happened in Ireland and in other countries, such as Italy, even without popularly-elected presidents, the government saying one thing, the president another. Now people might respond, well what harm is there in having someone put an alternative point of view; what harm is there in mere speechmaking? But I think one has to bear in mind that this is public conduct; we're not talking here about private comments, for example within the Cabinet or the party; as to which in general the more views heard within government, the better. Public speech-making, as in Ireland, can create confusion, and Malcolm Fraser has rightly said this can be destabilising.¹¹ The principal concern, however, regarding checking and balancing is that advocates treat checks and balances as inherently desirable, and overlook the critical question, which is, who is checking whom and to what end? Now desirable checks and balances, such as judicial review of administration and legislation, responsible government, that is to say governmental accountability to Parliament, and bi-cameralism, are desirable because they ensure governmental lawfulness and promote democratic accountability. But if, for example, the president of a political party were given a veto over legislation or governmental action, or this veto power were given to the heads of certain corporations, no-one would regard this as a particularly desirable check and balance; so there is no inherent virtue in checks and balances. It depends on who is checking whom and why.

The president, it must be borne in mind, would be a single individual, popularly elected it's true, but not accountable to anyone. In fact if the president only has one term of office, he or she is not even going to be accountable to the people at the next election. The president would have limited resources of information, and such a person would be checking a government which is already subject to numerous checks and balances. I know we all think governments need more checks and balances, but governments are already subject to quite a few checks and balances. There is of course Parliament, especially the Senate, there are the political parties, the courts, the public service, the media and, of course, ultimately, the electors. Now Harry Evans has argued that popular election is necessary to place a republican head of state in the same position as the governor-general.¹² The president, he argues, must have, 'a

⁸ Quoted in M. Mee, 'The changing nature of the presidency' (Part 1) [1996], *Irish Law Times* 2, 3.

⁹ H. Evans, 'Electing a president: the elite versus the public', in *Republicanism, Responsible Government and Human Rights* (Papers on Parliament No. 26, August 1995) pp. 37–38; H. Evans, *Essays on Republicanism: small r republicanism* (Papers on Parliament No. 24, September 1994), p. 16.

¹⁰ D. Flint, Letter, *Economist* (London), 16 March 1996, p. 6.

¹¹ M. Fraser, 'We must bounce Keating's republic blank cheque', *Australian*, 20 July 1994, p. 11.

¹² H. Evans, 'The Australian Head of State', op. cit., pp. 146–148; H. Evans, 'Electing a President', op. cit., p. 36.

separate line of political credit'.¹³ But a head of state chosen by political parties, he argues, will be beholden to them and will lack independence:

If the current powers of the governor-general are to be retained, this would strongly suggest that a president must be elected. ... [A]n elected president, with an independent mandate, would most closely approximate the existing constitutional arrangement.¹⁴

However, with all respect, this overlooks the fact that a popularly-elected president may well be beholden to the political parties if he or she needs their support for re-election, while a president elected by, say, a two-thirds majority of Parliament, would need bipartisan support for re-election, and therefore would not be beholden to any one party. You might say, well, somebody beholden to two parties is worse than somebody beholden to one, but I would question that. The reality is that popular election would confer an authority which no governor-general as presently appointed, (that is to say by the Queen on the advice of the prime minister) could possibly match. A popularly-elected presidency would inevitably change the president-prime minister relationship. With all respect to Harry, to suggest that this would be the way to retain the current balance of power is simply incorrect.

The present Prime Minister, John Howard, has noted that a popularly-elected president 'would alter for all time the nature of our system of government'. He said that it 'would entrench rival centres of political power. ... [A]n Australian president, having a popular mandate, would feel infinitely more powerful in dealing with an incumbent prime minister than would any governor-general, irrespective of the formal powers that might be given to that president'.¹⁵ This is certainly borne out by the French experience in 1962 when the president became popularly elected, and without one extra power being given to the president, overnight the presidency was transformed.

Harry Evans has argued that the great problem with our current system of government is excessive prime ministerial power and he may well be right. The excessive concentration of power in the hands of the prime minister and the prime minister's control of the lower house are indeed serious problems. But it surely does not follow that excessive prime ministerial power is to be matched by excessive presidential power. Two wrongs in this respect surely don't make a right. Both David Flint and Harry Evans have suggested that popular election is the only truly republican method of choosing a head of state. This would suggest that countries like Germany, India, Israel and Italy, which do not have popularly-elected presidents, are not really republics. But, as I noted earlier, there is nothing unrepublican in having a head of state chosen **indirectly** by the people by being elected by the people's representatives in Parliament, by a super-majority as would most likely be the case, especially if this requires bi-partisanship, because surely such an officer would really embody the characteristics of the office that I mentioned at the outset: political impartiality and an ability truly to represent the entire nation. Thank you.

¹³ H. Evans, 'Electing a president', op. cit., p. 36.

¹⁴ *ibid.*

¹⁵ J. Howard, 'Mr Keating's mirage on the hill: how the republic, like the Cheshire Cat, came and went', in *Upholding the Australian Constitution, Vol. 3: Proceedings of the Third Conference of the Samuel Griffith Society* (Melbourne, 1994), pp. 130–131.

Chairman — I will now call upon Professor David Flint to put the contrary case.

Professor Flint — Thank you Mr Chairman. The advent of an Australian republic would offer Australia two stark choices. On the one hand we could keep our existing checks and balances bequeathed to us by our founders and enshrined in the constitution. We could do this by allowing the people to choose their own president. On the other hand, we could emasculate one of our central checks and balances by attempting to make the head of state the creature of the legislature.

It's becoming clearer every day, Mr Chairman, in this republican debate, that the real debate is not between republicans and monarchists, it is between those, whether they be monarchists or republican, who wish to preserve the existing checks and balances, and those who would hand over more power to, as Professor Patrick O'Brien says, a privileged élite.

The official minimalist republican proposal is for a pseudo-election; one which needs prior agreement between government and opposition. Now Bernard Levin, writing in the *Times*, once warned, that any political proposal which commends itself to both front benches is at best useless and at worst against the public interest. One which appeals to both parties is likely to be a constitutional outrage, and certainly to be seriously damaging to the people's liberty and prosperity.

It was one of the great founding fathers of the American constitution, Alexander Hamilton, who insisted that Congress play no part, no part at all, in the election of the president. Politicians, he argued, would inevitably use their power with a sinister bias. By that he meant that their purposes, their intentions, would be other than the selection of an independent head of state. The election would be clouded by their inevitable need to make deals and to enter into trade-offs. As Shane Stone recently observed about the proposed conscience vote on the Euthanasia Bill in this Federal Parliament, what you will see is the linking up of groups in factions. Deals will be done and there will be trade-offs with people in the Senate in exchange for other bills; 'I know how the system works', he said. These deals of course, Mr Chairman, will be kept from the people. Shades, I suppose, of the Kirribilli House agreement.¹⁶ I remind you, if we need reminding, that that was an agreement to hand over the prime ministership of this Commonwealth in anticipation of an election. It was shrouded in mystery; it was kept from the people and we only learnt about it when the principles fell out, when it was leaked. The founders of the American Republic, wise men that they were, understood politics, and they understood politicians. They knew about deals and trade-offs. They knew how unsavoury such a process would be; they understood the more sinister implication that the politicians would inevitably wish to make the president indebted to them, and accountable to them, and therefore not to the people. Hamilton demonstrates this most clearly when the president comes up for re-election. The only way a president can be fearless during his or her term in dealing with Congress or Parliament is by knowing that the people, and not the politicians, will decide whether to re-elect him.

Mr Chairman, may I make three preliminary observations. First, I assume that the Westminster system will continue. Now there are obvious weaknesses with combining the head of state with the head of government as in the United States. There is no way, for

¹⁶ At a meeting at Kirribilli House, Sydney, in November 1988 an agreement was reached between the then Prime Minister, Bob Hawke, and his Treasurer, Paul Keating, that Keating would support Hawke's leadership until the 1990 election, after which Hawke would relinquish the leadership to Keating.

example, of resolving a supply crisis. As an American woman in Canberra last year during the American supply crisis was reported to have said when she couldn't get services from the Consul-General's office here in Canberra, 'What we need is a governor-general'. And the president is extremely difficult to remove. Nixon is the notorious example. Another incident just after the Bay of Pigs fiasco with Kennedy is not so well known. The president explained to Richard Bissell, the CIA's Deputy Director of Plans: 'If this were the British government, I would resign and you, being a senior civil servant, would remain. But it isn't. In our government, you and Allen [Dulles, the Director] have to go, and I have to remain.'¹⁷

My second observation is that the process proposed by the minimalists cannot hope to emulate the process of appointing the governor-general. Now if there is one person who ought to know something about the way in which Parliament operates, it's Bill Hayden, and he pours cold water onto the suggestion that the parliamentary appointment of a president is going to be the gentlemanly or ladylike process beloved of the minimalists. They, he says, 'need to be reminded of the adversarial structure of our political system. The hectoring style of so many Senate committee hearings is illustrative of the sort of grinding and very personal inquisition to which a nominee could be subjected. The processes here ... would make the Supreme Court confirmation hearings of the USA Senate ... look like a suburban manse morning tea party. The prospect of such an experience ... would discourage all but the most stout-hearted.'¹⁸

And this brings me to my third point, and that is that a president will be intrinsically different from a Governor-General even if restricted to the reserve powers. A Governor-General has no tenure; he doesn't follow convention, he risks removal. A president has tenure. As Mr Hayden predicts there will be more frequent clashes with the executive. And he says that a non-executive president, whether elected by Parliament or by the people, could become a first-class nuisance.

Now the French know more about these matters than most people. In our two centuries of tranquil development, France has had four monarchies, five republics, two empires, the Vichy Regime and four revolutionary regimes within the First Republic. Under the Third Republic, the parliamentary-elected president was to follow the British model. He or she was to reign but not to rule. The first three all attempted to rule—Thiers, Mac-Mahon and Grévy. Mac-Mahon, in fact, dismissed a government. Félix Faure (to demonstrate that I'm not choosing just some presidents from the Third Republic) towards the end of the 19th Century regarded foreign affairs as his and played a significant role in cementing the Franco-Russian alliance. He refused, on his own initiative, to reopen the Dreyfus case. And if presidents can unify a country, as is so often suggested in the republican debate, Félix Faure certainly unified his country, but more in his passing than anything he did in his life. This occurred in the course of what the French described as 'rendezvous gallant' with Madame Stenhile, whose cries caused staff to burst in to release her hair from the deceased president's hands. He's celebrated everywhere in France by countless avenues and rues. When the National Assembly elected Paul Deschanel in 1920, Clemenceau, who stood against him, said that they had elected a madman. Unfortunately, he was right and Parliament was wrong. When the president gave a speech, which was well received in Nice by cries of encore, he gave it again in full. On his way to Montbrison he fell out of the presidential train. He was found

¹⁷ Quoted in P. Wyden, *Bay of Pigs: the Untold Story*, Jonathan Cape, London, 1979, p. 311.

¹⁸ Bill Hayden, *Hayden: an Autobiography*, Angus & Robertson, Sydney, 1996, p. 554.

wandering along the track in his pyjamas. The music halls resounded with a new song 'Le Pyjama présidentiel'. He was succeeded in 1920 by Millerand, who shocked even the French by his blatant intervention in government. He forced the foreign minister, Aristide Briand, to resign. Mr Chairman I can't imagine why a president would want to make a foreign minister resign. The last president, to his great credit, refused to resign in 1940, to allow Pétain to be appointed dictator, which obviously was to be another deal and another trade-off. Pétain was appointed anyway and Lebrun resigned, but nobody noticed. The new Vichy regime was more eager than even the Nazis expected in deporting Jews. Charles de Gaulle was condemned to death *in absentia*, and who put this appalling leader in power? Not the French people. It was the French Parliament who chose Pétain.

What does all this mean? It means that the minimalist republic will unleash the constraints which our founding fathers put on the office of governor-general. And it will be no use at all trying to predict in advance what a president will do. When President Eisenhower was asked, 'Mr President, what was the greatest mistake of your presidency?', he thought for a moment and replied, 'They're both sitting on the Supreme Court'. All the resources of the US presidency couldn't predict how judges would behave once appointed. Why? Because judges are appointed with tenure. Our president won't have life tenure, but he or she will have five years and considerably more power than a Supreme Court judge in the United States. It's reassuring, Mr Chairman, that all opinion polls indicate that the people recognise all this; they recognise that a president is inherently and fundamentally different from a governor-general. They recognise that the powers of the office will be enhanced because of the tenure granted, and the absence of the conventions which surround the Crown. They are suspicious, and they are suspicious because they do not wish to place this high office as a gift between politicians. That is why, when surveyed, every age group, from every State, the supporters of all the parties, overwhelmingly say that if Australia were to become a republic, they, the people, and not the politicians, should choose the head of state.

Mr Chairman, it will of course be said that what has happened in France is of no concern to us. That warnings by the American founding fathers are not relevant. That the Kirribilli House agreement was an aberration. That politicians will not make deals and trade-offs; that the parliamentary election will be without any sinister bias. Let me remind you, if you need to be reminded, that we have just experienced an attempt to emasculate the head of state. I refer of course to the failed attempt in New South Wales to remove the ceremonial role of the Governor and to expel him from Government House. However unpleasant this may be some might place this failed attempt only on a par with a more recent attempt to transport the Sisters of Charity from St Vincent's to St George. But it's more important than that because of the role of the governor. The governor is a check and balance on a state government. To do this properly, the government must be housed independently, and not in a grace and favour office lent by the Premier. The governor needs staff: the governor needs space. The governor needs to maintain his or her links with the people, that is why the ceremonial role, far from being divorced from the constitutional role is symbolic of, and sustains the link between, the office and real source of its authority, the people. This sad story demonstrates that we must ensure that the president is neither in the pocket nor under the thumb of the Prime Minister nor of the politicians.

It is of course worth recalling that a former government of New South Wales expelled the then Governor-General from Government House in 1912 and turned the stables into a conservatorium. There was a sinister aspect to the affair in 1912. This was the other plan of

the government of New South Wales, that is to actually abolish the office of governor. Then with a nominated Legislative Council, which the government also planned to abolish, and a Legislative Assembly under its control, and no separation of powers in New South Wales, the government would have enjoyed unlimited powers. Unlimited powers, subject to the federal constitution, was the model of Cromwell's Protectorate. In any event the project proved too daunting a task. There was one other example of a governor being moved against by a premier. This was in Canada. In the 30s a radio-evangelist Bible Bill Ableheart became Premier of Alberta. He hated the press. His social credit legislation included *An Act to Ensure the Publication of Accurate News and Information*. Well you know what that meant! It meant that the press was to report government press releases and comments. It meant they couldn't report deals and trade-offs or leaked material. Fortunately, he failed in this attempt. The Lieutenant-Governor refused to sign the bill and reserved it for the Governor-General. But if Mr Ableheart couldn't control the press and couldn't control the Viceroy, he could at least have his revenge. He refused parking rights to the Governor, and then he stopped all funding of Government House. In the cold Alberta winter the Governor had to eventually move to the warmth of a hotel. Mr Ableheart might well have said in his sweet moment of revenge: 'This one's for the press.' Just as we heard recently in New South Wales: 'This one's for Jack Lang.'

These cases demonstrate, Mr Chairman, the dangers of leaving the selection of the president to an unworthy back-door deal between politicians. Mr Chairman, if there is going to be a deal, let it be a deal with the Australian people. If there is going to be a trade-off, let it be a trade-off with the Australian people. And if there is going to be an election, let it not be a pseudo-election determined in a deal behind closed doors. Let it be an election without any sinister bias; an election by the people. Thank you.

Chairman — I will now call on questions and I would ask questioners to go to the microphones to ask their questions.

Questioner — I would like to ask Professor Flint a question. How would he propose to filter suitable candidates for election as president of Australia. I have in mind that every vested interest will have a go at it, everything from Right to Life to the National Rifle Association, who can rustle up numbers and money. We could have a Melbourne Cup field. Is that what you envisage or will it be some other mechanism?

Questioner — I would like to ask, firstly Professor Winterton: if we decided that the referendum was going to be between the current system and a directly-elected by the people president, which one he would support; and similarly I would like Professor Flint to comment whether, if it was a choice between the current system and a parliament two-thirds elected system, which one he would support?

Questioner — In the debate which took place in the Parliament in the latter part of last year, there was strong bipartisan support for an election of president by the Parliament and a sentiment directed largely to that candidate being non-political. I wonder if both speakers would like to comment on the possibilities of the major parties in the Parliament, in the event of a general election for president, still nominating a non-political candidate.

Questioner — In the election that has happened a few weeks or a month or so ago, the Prime Minister, as far as I understand, was directly elected. Any lessons in that for us?

Questioner — A question to Professor Flint. You talked about how gruelling the scrutiny by the Parliament might be. How would that be any more gruelling than a popular election?

Questioner — I would like to address this question to Professor Winterton. What's intrinsically objectionable about a politician being part of a third constituency of the Parliament, also fully elected?

Chairman —I will now invite our speakers to respond to each other and to the questions they have been asked. I will call on Professor Winterton first.

Professor Winterton — Thank you very much. Perhaps I can just very briefly respond to a few points that David Flint mentioned. First of all his discussion of France and so on. This is, with respect, quite typical of the monarchists. Sir Harry Gibbs is a past master of this ploy. I am surprised that David Flint restrained himself and spoke only of France. Was he forgetting Rwanda, Cambodia? Perhaps the Cambodian president wasn't elected by Parliament, but I am sure the Rwandan one was. All this is, with respect, irrelevant. And I think, David, the questions do demonstrate the fact that although you spent time demolishing, as you would have perhaps thought, the position of the so-called minimalists, you didn't really argue in favour of a popular-elected presidency. But really the position of the French presidency is absolutely irrelevant. One has to compare the proposed presidency with the comparable situation which is the present governor-generalship. Now if we look at the present Governor-General, that officer is essentially appointed by the prime minister. It's true that the appointment is formally made by the Queen. The choice of candidate, however, is in the hands of the prime minister; the Queen undoubtedly can query a suggestion but she couldn't actually, in effect, choose the nominee. The nomination is in the hands of the prime minister. And all commentators, I think, have rightly said that on the whole the candidates chosen have been very successful. It's true there have occasionally been a few hiccups and Sir John Kerr might be more of a belch than a hiccup, but on the whole they have been quite good. But prime ministers are conscious of a sense of history in choosing the candidates. They know they are going to be judged by history; they know they are going to be judged by the electorate. And if this is the position when the person is chosen by one person, the leader of the government, why should one imagine that when the Commonwealth Parliament, by say two-thirds majorities in both Houses, are choosing the person, they wouldn't be conscious of the electoral judgement and the voice of history judging them. I just cannot see why one has such faith in the choice by an individual leader of a government, with all the arrogance usually attending to that position, and has such lack of faith in politicians. I say politicians because people tend to think of politicians—one would think from some of the discussion about their roles that they were criminals. A lady asked do I have any objection to a politician being president. Certainly not. I don't see why one should. I think, and I said it at the time, that Prime Minister Keating's proposal to ban politicians from the presidency for five years was unwise. Politicians are simply our representatives, no better, no worse, in fact sometimes probably better, than many of us. So I find this great fear of politicians, as if they were some sort of criminal class, very strange. After all, they are elected by the people, we choose them and I think on the whole they are not too bad.

Now there is also great fear of deals, that there might be a deal between the prime minister and the opposition leader, for example, in choosing the president. Well, why not? I don't really see any problem. Let's assume that each person has somebody good in mind as a nominee and the prime minister were to say 'well we'll support your person this time if you

support our person next time'. If they are both good candidates, where is the objection? I think to suggest that there should be some sort of pristine arrangement without any deals is naive. And who would say that Bill Hayden didn't become governor-general as a result of a deal? It was a deal. Even if the leader of the Labor Party in 1983 had not been such a worthy person as Bill Hayden, we would probably still have had that person as the governor-general pursuant to the deal made when Bob Hawke became Opposition Leader.

Referring to some of the other questions, a question was asked: 'Is there any lesson in the recent popularly-elected prime minister?' Well of course John Howard wasn't popularly elected as Prime Minister, but the government was chosen indirectly by the people at the recent election. I think there are some lessons in that. One has only to remember that we had three Opposition leaders leading the Liberal Party in the last Parliament. We chose none of them. The Liberal Party and National Party chose them. That's likely to be the case with nominees of political parties if they fight elections. We will have no say. To say the people are directly choosing the president is misleading because the people will, as happens now with general elections, be choosing among candidates proposed by parties. And, as suggested by the other speaker, undoubtedly also interest groups. To think that one is not choosing a politician or not choosing somebody chosen by a politician, that one's choosing somebody one chooses oneself, is a very misleading concept.

Finally, I was asked whether I would prefer the present system or a popularly-elected presidency. Well, of course, assuming the assumptions that I have made, and that is to say that we retain the present system of government, and essentially provide similar powers for the head of state, provide for the continuation of conventions that presently govern the governor-general, perhaps clarify which powers are reserve powers and the others not, I certainly would prefer a popularly-elected president. Thank you.

Chairman — I will now call on Professor David Flint to make his response.

Professor Flint — Thank you Mr Chairman. I have been asked a number of questions. Before replying to those, I think I have to emphasise again that a president and a governor-general are very different institutions. They will necessarily be different. The fact that the prime minister recommends the governor-general doesn't mean that the governor-general is actually appointed by the prime minister. The fact that the appointment is by the Crown creates a completely different atmosphere for the governor-general, who then is bound by the conventions which surround the Crown, and is removable on the recommendation of the prime minister if he or she steps out of line. It is so different from having a person there who has the reserve powers plus the other nuisance powers that Bill Hayden sets out, and who will be there for four or five years or whatever the term is. And what I am saying is that if we become a republic, and we want to have this independent head of state, we can't replicate the present system, but the next closest thing is to have a popularly-elected president.

I have been asked about the selection, how would you cut down the excessive number of candidates? Well, there are ways of doing this, for example, by having a list of required nominators, certain names on a petition or something of that nature. It would be possible to screen out the number of candidates to a reasonable number, and you could have a preferential system of election or you could have what the French and Russians have, that is a second round. I have been asked my preference between the existing system and a popularly-elected president. Now if there were to be a plebiscite, not a referendum, but a plebiscite, on a republic, I would hope that it wouldn't give you the stark choice between a

republic or the existing system because that would be meaningless. It ought to give you a range of preferences and you ought to be allowed to exercise a right of preferential voting. And I would vote 1 for the present system, 2 for a popularly elected president, 3 for the pseudo-election and 4 for a prime minister-nominated president.

I have been asked about the Israeli system. I think the Israeli system seems to mix the presidential system with the Westminster system, and I think that has to do with particular features of the way in which the Knesset is elected and the need to have a coalition and the difficulty of forming a coalition so that it gives one prime ministerial candidate an impetus, at least in the beginning, over the other parliamentary leaders.

I have been asked, wouldn't a popular election be as gruelling, or perhaps even more gruelling, than a parliamentary election with all those Senate hearings that Bill Hayden says would make the American system seem like a suburban manse tea party. Well, obviously a popular election would be gruelling, but that's not what the minimalists are telling us. They are telling us that the parliamentary election, the two-thirds requirement, will ensure that the process is identical to the present system. Bill Hayden warns, and I think he's pretty right on this, that it will be very different and only stout-hearted candidates need apply. So those High Court judges who don't want to be interrogated, those leading academics who don't want to be interrogated about their past, about irrelevant matters in their youth as you find in the United States would have to reply, 'I did have a marijuana cigarette but I didn't inhale'. The position will be a powerful position and there will be factions, and there will be minor parties who won't want a particular candidate and of course they are going to look into reasons why one ought not elect that particular candidate.

Mr Chairman, I am at a loss to understand why the minimalists are so afraid of having a popular election. Is it that the Australians will do the wrong thing in such a popular election? It reminds me of some of the arguments which were put in the House of Commons in the British Parliament against the Reform Bill and then against universal suffrage. One Lord Warncliffe argued, 'It's useful to have elections by persons who, from their station in society, are acquainted with the characters of the men of talents today'. I am wondering whether that's the attitude of the minimalists.

Well Mr Chairman, we are told that certain things will happen in the minimalist election. And the predictions are not necessarily going to happen. We have Bill Hayden telling us that it's going to go down a completely different path. Beware of experts telling you what will happen if a certain course is adopted. In 1935 the nation was confronted with a problem. Our sugar cane crop was being destroyed by the grayback beetle. It was a real problem and they sought expert advice. The advice of the experts was to import a sack load of *bufo marinus* from Hawaii who would eat the grayback beetle. The government followed the advice of the experts. The experts however forgot one thing. The beetles fly and *bufo marinus* cannot. *Bufo* however loved the Queensland climate, bred rapidly, spread everywhere and ate everything, everything that is except the grayback beetle. And that was the beginning of the Queensland cane toad disaster. Perhaps the minimalists are prescribing for us something like the Queensland cane toad disaster.

The minimalists have not identified, and they cannot identify, a real problem. There is no problem. If we want change let us not get the change wrong, and everything is wrong with the minimalist solution, everything. It is wrong in the mode of election, it is wrong in the sort of person who will be appointed, the stout-hearted person that Bill Hayden says will only apply,

and it's wrong in arguing that the governor-generalship will effectively continue. It cannot. But the minimalists wish to keep the people out of the election. The president will be the result of backroom deals and there will be trade-offs. There will be an election, as Hamilton warned, with a sinister bias. If there is going to be a deal, let it be a deal in which we are the parties, let the election be one by the Australian people. Thank you.

Chairman — Well, by the brevity of our speakers and the shrinking-violet nature of our questioners, I have been left an enormous amount of time to sum up and the temptations are dreadful. I think you may have detected in the debate a slight blurring of lines here, in that we did not have two vigorous partisans for the two different views. But I suggest to you that it is a question on which vigorous partisanship is not really appropriate, and I think it is entirely appropriate that we had two very thoughtful people giving us a very comprehensive coverage of the issues which are involved in this question. I think we may have imported a closet monarchist without knowing it. That too might be regarded as giving us a fair coverage of all the issues, because if we are to have a range of options put, which is the policy of the current government, presumably that will be one of the options put.

So I have been very grateful to have two thoughtful people to cover the issues in such a good fashion, and I hope that you will join me in expressing your appreciation of a very interesting session.

And Let's Always Call It the Commonwealth: One Poet's View of the Republic*

Les A. Murray, AO

I gave this paper the title 'And let's always call it the Commonwealth: one poet's view of the republic.' It is actually one and a bit poet's review because the last poem I will read today is by another poet, a colleague of mine. Honourable Senators, ladies and gentlemen:

After the war, and just after marriage and fatherhood ended in divorce, our neighbour won the special lottery, an amount then equal to fifteen years of a manager's salary at the bank, or fifty years' earnings by a marginal farmer fermenting his clothes in the black marinade of sweat, up in his mill-logging paddocks.

The district, used to one mailbag, now received two every mailday. The fat one was for our neighbour. After a dip or two, he let these bags accumulate around the plank walls of the kitchen, over the chairs, till on a rainy day, he fed the tail-switching calves, let the bullocks out of the yard, and, pausing at the door to wash his hands, came inside to read the letters. Shaken out in a vast mound on the kitchen table they slid down, slithered to his fingers. *I have 7 children I am under the doctor if you could see your way clear equal Pardners in the Venture God would bless you lovey*

* This paper was presented by Les Murray as a lecture in the Department of the Senate Occasional Lecture Series at Parliament House on 7 June 1996.

*assured of our best service for a mere fifteen pounds down
remember you're only lucky I knew you from the paper straightaway*

Baksheesh, hissed the pages as he flattened them, baksheesh!
*mate if your interested in a fellow diggers problems
old mate a friend in need—the Great Golden Letter
having come, now he was being punished for it.
You sound like a lovely big boy we could have such times
her's my photoe Doll Im wearing my birthday swimsuit
with the right man I would share this infallible system.*

When he lifted the stove's iron lid and started feeding in
the pages he'd read, they clutched and streamed up the corrugated
black chimney shaft. And yet he went on reading,
holding each page by its points, feeling an obligation
to read each crude rehearsed lie, each come-on, flat truth, extremity:
We might visit you the wise investor a loan a bush man like you

*remember we met on Roma Street for your delight and mine
a lick of the sultana—the white moraine kept slipping
its messages to him you will be accursed he husked them like cobs
Mr Nouveau Jack, old man my legs are all paralysed up.
Black smuts swirled weightless in the room some good kind person
like the nausea of a novice free-falling in a deep mine's cage
now I have lost his pension and formed a sticky nimbus round him*

but he read on, fascinated by a further human range
not even war had taught him, nor literature glossed for him
since he never read literature. Merely the great reject pile
which high style is there to snub and filter, for readers.
That his one day's reading had a strong taste of what he and war
had made of his marriage is likely; he was not without sympathy,
but his leap had hit a wire through which the human is policed.
His head throbbed as if busting with a soundless shout
of immemorial sobbed invective *God-forsaken, God-forsakin*
as he stopped reading, and sat blackened in his riches.

Letters to the Winner

That poem comes out of the great feral novel of gossip, a prime source of my work. If you see it as depicting the immense public treasure you were elected to manage, amid the imploring cries of the needy and the shady, I won't argue with your interpretation.

When I worked for Sir Humphrey decades ago in the Prime Minister's department downhill from this place, our way of feeding most letters into the stove was to tell their writers, truthfully, that what they had written to the Prime Minister about was really a matter for their state governments. This enormous continuing cop-out was mandated by the constitution, which did not grant the Prime Minister the powers of a supreme referee, and I have no doubt that this will be very slow to change under any likely republic. Many a fine ideal is bound to be sidetracked into that older, meaner dimension of post-colonial governing.

But perhaps my being a New South Walian, and thus a person imbued with the idea of government as a quasi-criminal enterprise, is a bias I should confess to at the outset; it may trim the wings of my political imagination so much that I am disqualified from dreaming the truly innocent high dreams of reform. We're where the chains came ashore, and they still sometimes clink in our laughter:

like: I went to Sydney races. There along the rails,
all snap brims and cold eyes, flanked by senior police

and other, stony men with their eyes in a single crease
stood the entire Government of New South Wales
watching Darby ply the whip, all for show, over this fast colt.
It was young and naive. It was heading for the post in a bolt
while the filly carrying his and all the inside money

strained to come level. Too quick for the stewards to note him
Darby slipped the colt a low lash to the scrotum.
It checked, shocked, stumbled—and the filly flashed by.
As he came from weighing in, I caught Darby's eye
and he said *Get out of it, mug*, quite conversationally.—

from *Midwinter Haircut*

That is from a seasonal poem titled *Midwinter Haircut*, but some other things I have written about the interface of law and human skin are darker.

In the mid-1970s, when the term 'dole bludger' began to be used a lot, I wrote a sequence of police poems, not specially derogatory, despite my being a low-class Australian boy. One of them had to do with the regular police task of punishing unemployment, and was titled *Rostered Duty*:

This is the hour the Crucified Bludger is fed
a tin dish held to his mouth and his night's stain hosed down
before he is driven slow-slow through the fibro-tile streets
and the message gets through to moaners, to oversleepers,
to migrants who dream dark police, to blokes thinking Sickie.

This is hour the hurrying frowners at railway stations
don't look but all read his placard: WORK-SHY.
Soon, outside factory and depot, flies supping his wounds,
he will be ignored by staff, by management, by unions,
all too mature to look. Very few people focus,

not the realists, not the long planners, not the fellows
with trades in demand, nor the ones proud they can shovel
as much as God's truck can dump; self-provers and winners
never seem him at all, and talk about him constantly.
But everyone knows the form: on a quiet day

passing Hey Folks PLANETWIDE Pow! Discounts/Trade Ins!
I've been known to say to the salesfolk there not looking
Gooday, how's the carrot? Yes, I've had my turn,
served my tour with the Bludger. Every policeman does one.
I've picked airgun slugs out of him, tuned his trannie on race days,

heard him howl in the truck bay, echoing the oil drums.
I've supervised him and his wife on a visiting day—
No madam we can't let him down—and had her scream
into my face *ME! crucify ME, God damm you!*
At least it's intense. Jail is drearier employment.

When he'd get randy we'd turn him face to the van.
I think of him often, spread-Andrewed on four bolts
parked facing the sea for a treat of a summer evening
(when he bit my hand to the bone he saw more sunsets).
I remember him watching the big ships loading bales

and unloading bales, as the radio quacked Production.
This is a shop, boys, not a nation, a man said,
making a gesture. A poet growled *Misemployment*
but poets are kids. A thousand fellows in ties
picking flyspecks from pepper with fine Government needles

or that's what it looked like said *No time to be choosy*
Unless he's got a job, smiled the chief clerk, *he can't have one.*
It was interesting duty, travelling with the Bludger,
more to the point than backing up wives and collectors
and once you've done it, you're never, like they say, off duty.

Rostered Duty

I suppose I joined the Australian republican tradition in 1954, at the time of the royal visit that year. My father and I, regretfully admitting that his beloved 1928 Dodge tourer had become an unreliable heap, had been making efforts to find some other transport to Newcastle so as to watch the Queen pass by. In the midst of our enquiries, though, I suddenly felt we were humiliating ourselves. We were all fired up to go and stand craning uncomfortably in a crowd in order to glimpse an Englishwoman to whom we, individually, meant nothing. She would be surrounded by hard-eyed guards and impeccably dressed hangers-on to whom we would be scruffy nonentities fit only to swell her progress and their vanity. How was it that no Australian could ever occupy this woman's place in our own country?

I was fifteen and I knew about unearned inheritance, but only at the modest level of farm proprietorships and the like. I had never resented any of that, but suddenly I was looking at an enormously bigger example of it and finding I could not stomach it as a basis for sovereignty over me or my sort of people. Mere chance inheritance did not seem good enough as a qualification for supreme prestige and privilege. Years later I would apply the same objection to inverted inheritance too, as in membership of something called the working class, which actual workers mostly seemed keen to escape from. That relegated people, too, and its

self-appointed bullies were no kinder than those of the exquisitely dressed caste, while being even more obtuse about poetry. But that came later.

All I knew at fifteen was what I still vividly know: that the milieu I was born into, of small farmers and forest workers up the coast, had few friends indeed in Australia's towns and cities. Within my own culture of the farms and bush villages I never knew anything but kindness and acceptance, perhaps because of networks of family and acquaintance in which we lived then—the mutual dependence of communities. How an outsider might have fared I frankly do not know, but many have come to live in our region since—as they had not back then—and their preferences for much or little contact with us seem to be respected.

I learned rejection in my first town high school just a bit later on. That place taught me that Australia's class system, which used to be played down by commentators in those days, might ridicule social climbers a bit but took truly deep offence at being ignored and treated as not worth climbing. Within our own milieu, though, we bushies thought climbing both disgraceful and impossible—women and the police can always pick you. The groups we would have to climb into had traditionally always scorned us. Some of that scorn did seep through and damage self-esteem in the bush, causing a measure of rancour and distrust of official virtues such as equality. Would equality with us be much of a compliment? But also, would equality with soft-handed suit wearers be a compliment to any of us? All this was a still unconscious background to my feelings at having been worked up by publicity to the brink of running after the darling of our scorners, the shining bearer and pinnacle, back then, of their pretensions. The very rabbit skins on the wall of the barn curled with shame at me.

Out of the Fifties, a time of picking your nose
while standing at attention in civilian clothes,
we travelled luxury class in our drift to the city
not having a war, we went to university.
We learned to drink wine, to watch Swedish movies, and pass
as members, or members-in-law, of the middle class
but not in those first days when, stodge-fed, repressed,
curfewed and resented, we were the landladies' harvest.
I had meant to write a stiff poem about that, to be
entitled NOTES FROM THE HOUSE OF MRS HARVEY
it might have been unkind, in part—but then, to be honest
one did evict me for eating my desert first
and even from the kindest, we were
estranged, as from parents, in a green Verona,

... ..

a nail-biting fiefdom of suede boots, concupiscence, tea,
a garden pruned by the *Herald* angels yearly.
In that supermarket of styles, with many a setback
we tried everything on, from Law School Augustan to rat pack
and though in Chinese my progress was smooth up to *K'ung*
and in German I mastered the words that follow *Achtung!*
in my slow-cycling mind an eloquence not yet articulate
was trying to say Youth. This. I will take it straight.

And you were losing your bush millenarian faith—I
remember your dread of the Wrath on first tasting coffee.
We were reading Fisher Library, addressing gargoyles on the stair,
drafting self after self on Spir-O-Bind notepaper
as the tidal freshers poured in, with hard things to learn
in increasing droves they were getting off at Redfern.

... ..

Literate Australia was British, or babu at least,
before Vietnam and the American conquest
career had overwhelmed learning most deeply back then:
a major in English made one a minor Englishman
and woe betide those who stepped off the duckboards of that.
Slacking and depth were a single morass. But a spirit
of unresolved life caught more and more in its powerful
field. It slowed their life to bulk wine and pool.
Signals had to be found. The day you gave up fornication
we took your WetChex and, by insufflation,
made fat balloons of them, to glisten aloft in the sun
above the Quad, the Great Hall, the Carillon—
and that was Day One in the decade of chickens-come-home
that day kids began smoking the armpit hairs of wisdom.

from *Sidere Mens Eadem Mutato*

Those three sonnets come from a sequence of nine, titled *Sidere Mens Eadem Mutato*, which I dedicated to Bob Ellis in the 1970s in memory of the time at the end of the 1950s when we had roomed together as unspeakably scruffy Arts students in Abe Saffron's old Raffles Private Hotel at North Bondi. I still feel very safe in Sydney.

At the university, which I was the first of my ancestry to attend in Australia, I studied a few things formally and a lot of things informally, as poets often do. One thing I looked into was aristocracy—the romance and decentralised culture of that mafiose system which had ruled Western civilisation for so long. I did not know why I was drawn to that, but then I never know in advance why I am drawn to the subjects which will feed my work. Follow the attraction because it leads to something you need. Perhaps it was important for me to disentangle nobility and ease from snobbery and force. It was a lovely apolitical time at Sydney then, theatrical in a more overt way, and commentators point to the number of figures who would later win international renown who were at the university in those years.

Australia also had its own bohemia, called the Push, which pretended to be libertarian and, to a fair degree, was, but it also exerted heavy pressure in favour of a rigorous inversion of social mores. In that last period before pass-or-perish in universities, I could get away with my solitary self-education more easily than I might have done a little later, after 1962, when the first fraternal telegrams from Cuba heralded the return of politics.

Another subject I went into deeply at university was religion. When I got there, my one unshakeable belief surviving from childhood Calvinism, and already buttressed by experience, was a form of Murphy's Law which held that every human arrangement, and

maybe every natural one too, will sooner or later betray you; there is a dark side to literally everything.

Through poetry and conversion to Catholicism, I was to discover a principle as strong as this: that immortality is real and can be experienced in our mortal life as a quality we can evoke and embody in objects, where it will then persist as long as those objects do. Later, I would also see that a strong idea yet to be adequately embodied is a deeply dangerous thing.

The greatest thing I did at university was to teach myself to write poetry. That apprenticeship, persisted in, would mean that, despite our poverty, I would never become a bitter bush hoon, and that I would never have to rise socially either.

I thought sporadically about the republic during the early years of my writing and occasionally issued rather overheated polemics about it. Most of these were in prose, and one or two dealt with flag design, for which I seem to be no more gifted than other Australians.

I will say one thing about emblems, though—this is not written in my lecture notes, but I might as well tell you. The other day I heard that Sydney was looking for a new coat of arms. Interestingly, the new supporters are to be the Aboriginal rainbow serpent, the Eora one, and a ship's rope. They are both imaginative and very appropriate. They are great. But the main shield is still a dog's breakfast. The obvious symbol for Sydney is five gleaming brass bells on a harbour-blue field—*Five Bells*, Slessor's great poem. If you put the Opera House on the top of it for a crest, the whole world knows what city you are talking about. I sent that suggestion to the *Herald*. I hope it gets in. If I do not design the flag, I hope I may have contributed to Sydney's coat of arms.

When I had been publishing poetry long enough to venture a selected poems book, I titled it *The Vernacular Republic*, in honour of the place most of the poems, especially those of human life, had come from. It was a space many held to be a cultural desert, but I drew a lot of poetry from it. I described it in print as:

that "folk" Australia, part imaginary and part historical, which is the real matrix of any distinctiveness we possess as a nation, and which stands over against all our establishments and elites.

The book came out first in 1976. I only shudder at parts of that description 20 years later, mainly that word 'establishment', which even then had become totalitarian language. It always obscurely horrifies me to see or hear totalitarian behaviour from Australians. I feel a vertigo of identity that is not assuaged by remembering the close affinity of convicts and warders. I had written a better account of the sources of much of my work a few years earlier in a poem of the Western Australian desert. I wrote:

We are a colloquial nation,
most colonial when serious.

Much later, in the early nineties, I would define my practice from another angle again, in a poem that touched on a farmer in our district who knew all the poetry of Alexander Pope by heart and recited it to his cattle for forty years. The relevant section of this poem reads:

The proper study of mankind
is weakness. If good were not
the weaker side, how would
we know to choose it?

I should add that the book title *The Vernacular Republic* originally appeared above a quite short poem, a sonnet, and seemed too mighty there; it demanded to preside over a whole book, and in fact stayed on the title pages of reissues of my selected and collected poems well into the 1980s, while the sonnet that originally bore it got renamed *The Mitchells*. That one goes:

I am seeing this: two men are sitting on a pole
they have dug a hole for and will, after dinner, raise
I think for wires. Water boils in a prune tin.
Bees hum their shift in unthinning mists of white

bursaria blossom, under the noon of wattles.
The men eat big meat sandwiches out of a styrofoam
box with a handle. One is overheard saying:
drought that year. Yes. Like trying to farm the road.
The first man, if asked, would say *I'm one of the Mitchells*.
The other would gaze for a while, dried leaves in his palm,
and looking up, with pain and subtle amusement,

say *I'm one of the Mitchells*. Of the pair, one has been rich
but never stopped wearing his oil-stained felt hat. Nearly everything
they say is ritual. Sometimes the scene is an avenue.

The Mitchells

Around that time, I was occasionally interested in inventing epithets for ways in which Australia had contributed, usually in a very unnoticed fashion, to world culture. If America had been the bourgeois revolution, showing the way to a final swamping of the older aristocratic order by shopkeepers and entrepreneurs, I thought that we were perhaps the proletarian evolution. Some snide immigrants had described the country in my hearing as the true dictatorship of the proletariat. I had not bridled long at this, because it was possibly truer and kinder than they meant it to be.

Our one great contribution to world politics, aside from the eight-hour day, was the secret ballot, which freed the franchise for working people and provided, by making labour parties possible, a route to social welfare in several countries that did not involve mass slaughters by political police. I walked warily of terms like 'bourgeois' and 'proletarian' though, even as I gingerly and sparingly used them. Like all totalitarian terms, they were underlain by immense mass graves. Also, 'proletariat' seemed to divide the urban from the rural poor, or, say, the Wharf Labourers Federation from the equally humbly born World War II soldiers who had wanted to shoot them for sabotage.

I preferred 'vernacular' as a term not in political use and thus capable of fresh angles and insights. Proletarian folk are not allowed to rise, for example, except perhaps *en masse*, while vernacular is a socially portable style. Also, a term connoting righteous oppression would

make it difficult to think a lateral thought such as how the coming of decent pay for builders killed the higher range of European-derived architecture stone dead—perhaps in Australia first of all—and may have led to the plainness of modernism and of the vernacular styles associated above all with the name of Glen Murcutt. In my terms, I was into up-market chook sheds before he was. But there was an instinctive balancing effort in it, too. A poem that is relevant here is titled *The Dream of Wearing Shorts Forever*, which reads:

To go home and wear shorts forever
in the enormous paddocks, in that warm climate,
adding a sweater when winter soaks the grass,

to camp out along the river bends
for good, wearing shorts, with a pocketknife,
a fishing line and matches,

or there where the hills are all down, below the plain,
to sit around in shorts at evening
on the plank verandah—

If the cardinal points of costume
are Robes, Tat, Rig and Scunge,
where are shorts in this compass?

They are never Robes
as other bareleg outfits have been:
the toga, the kilt, the lava-lava
the Mahatma's cotton dhoti;

archbishops and field marshals
at their ceremonies never wear shorts.
The very word
means underpants in North America.

Shorts can be Tat,
Land-Rovering bush-environmental tat,
socio-political ripped-and-metal-stapled tat,
solidarity-with-the-Third World tat tvam asi,

likewise track-and-field shorts worn to parties
and the further humid, modelling negligee
of the Kingdom of Flaunt,
that unchallenged aristocracy.
More plainly climatic, shorts
are farmers' rig leathery with salt and bonemeal,
are sailors' and branch bankers' rig,
the crisp golfing style
of our youngest male National Costume.

Mostly loosley, they are Scunge,

ancient Bengal bloomers or moth-eaten hot pants
worn with a former shirt,
feet, beach sand, hair
and a paucity of signals.

Scunge, which is real negligee
housework in a swimsuit, pyjamas worn all day,
is holiday, is freedom from ambition.
Scunge makes you invisible
to the world and yourself.
The entropy of costume,
scunge can get you conquered by more vigorous cultures
and help you to notice it less.

Satisfied ambition, defeat, true unconcern,
the wish and the knack for self-forgetfulness
all fall within the scunge ambit
wearing board shorts or similar;
it is a kind of weightlessness.

Unlike public nakedness, which in Westerners
is deeply circumstantial, relaxed as exam time,
artless and equal as the corsetry of a hussar regiment,
shorts and their plain like
are an angelic nudity,
spirituality with pockets!
A double updraft as you drop from branch to pool!

Ideal for getting served last
in shops of the temperate zone
they are also ideal for going home, into space,
into time, to farm the mind's Sabine acres
for product or subsistence.

Now that everyone who yearned to wear long pants
has essentially achieved them,
long pants, which have themselves been underwear
repeatedly, and underground more than once,
it is time perhaps to cherish the culture of shorts,
to moderate grim vigour
with the knobble of bare knees,
to cool bareknuckle feet in inland water,
slapping flies with a book on solar wind
or a patient bare hand, beneath the cadjiput trees,

to be walking meditatively
among green timber, through the grassy forest
towards a calm sea
and looking across to more of that great island

and the further topics.

The Dream of Wearing Shorts Forever

If I have concentrated on the worlds of working rig and eccentric scunge, it is partly because in my lifetime our culture has moved sharply away from those, relegating them, often harshly, in favour of a new emphasis on the cultured, the prosperous and the fashionable. Someone in the arts, I thought, should provide a counterbalance to this relegation, as to any other.

I still used the republican idea as a bit of a mantra against the persistence of colonial attitudes, especially in their new guises. As my work began to be accepted overseas though, I began to leave the cringe and its resentments behind. I came to see it as very often our great excuse for individual failure, a self-righteous rehearsal for the damage it will cause.

As many do, I continued to use the republic as a daydream space for social inventions. This is a reason why it is always imminent and never comes. We love it better as a field of rosy potentials, uncorrupted by the compromises its attainment might bring. To be fair, its tiptoe advance does spare the feelings of older people whose fealty and ideals remain bound up with the absentee monarchy. That is perhaps a rare survival of political grace in what has been a harsh and hostile era.

All along, I was uneasy at certain company the republic was keeping. We were being invaded, at the cultural level especially, by language and attitudes previously foreign to us. As America slowly lost her war in Vietnam, she conquered us instead, more deeply than ever before. Our streets and dinner parties alike were taken over by the atmosphere of the baying schoolyard. A poem I wrote about three years ago memorialises, glancingly, the way things were here in Canberra in the mid-1960s. It is titled *Memories of the Height-to-Weight Ratio*. It reads:

I was a translator in the Institute back
when being accredited as a poet
meant signing things against Vietnam.
For scorn of the bargain I wouldn't do it.

And the Institute was after me
to lose seven teeth and five stone in weight
and pass their medical. Three years I dodged
then offered the teeth under sacking threat.
From five to nine, in warm Lane Cove,
and five to nine again at night,
an irascible Carpatho-Ruthenian strove
with ethnic teeth. He claimed the bite

of a human determined their intelligence.
More gnash-power sent the brain more blood.
In Hungarian, Yiddish or Serbo-Croat
he lectured emotional fur-trimmers good,

clacking a jointed skull in his hand
and sent them to work face-numbed and bright.

This was my wife's family dentist. He
looked into my mouth, blanched at the sight,

eclipsed me with his theory of occlusion
and wrested and tugged. Pausing to blow
out cigarette smoke, he'd bite his only
accent-free mother tongue and return below

to raise my black fleet of sugar-barques
so anchored that they gave him tennis elbow.
Seven teeth I gave that our babies might eat
when students were chanting Make Love! Hey Ho!

But there was a line called Height-to-Weight
and a parallel line on Vietnam. When a tutor
in politics failed all who crossed that, and wasn't
dismissed, scholarship was back to holy writ.

Fourteen pounds were a stone, and of great yore so,
but the doctor I saw next had no schoolyard in him:
You're a natural weight-lifter! Come join my gym!
Sonnets of flesh could still model my torso.

Modernism's not modern: it's police and despair.
I wear it as fat, and it gnawed off my hair
as my typewriter clicked over gulfs and birch spaces
where the passive voice muffled enormity and faces.

But when the Institute started afresh
to circle my job, we decamped to Europe
and spent our last sixpence on a pig's head.
Any job is a comedown, where I was bred.

Memories of the Height-to-Weight Ratio

The Marxist takeover of our republic of letters was perhaps never complete, but it was powerfully intimidating. More complete was the capture of the quality media and the whole surrounding world of higher education, publishing and culture. The milieu which my work obliged me to deal with became a horrible place. We suffered fearful losses—conversation, trust, manners, moral courage, religious tolerance, balance, resistance to bullying—and licence was given to the most awful pretension. All of Bradman Australia, we may say, was made to vanish for a long time.

The mass rallies of the 1960s solidified into a parallel government of boards and statutory bodies seemingly beyond the reach of ministers or Parliament and, despite the note of hope that is sounded at the end of this poem, nothing has changed as yet. The title of the poem is *A Stage in Gentrification*, and it was written in response to an invitation the *Sydney Morning Herald* issued to a number of writers in 1993 to contribute their view of the previous decade:

Most Culture has been an East German plastic bag

pulled over our heads, stifling and wet,
we see a hotly distorted world
through crackling folds and try not to gag.

Sex, media careers, the Australian republic
and recruited depression are in that bag
with scorn of God, with self-abasement studies
and funding's addictive smelling-rag.

Eighty million were murdered by police
in the selfsame terms and spirit which nag
and bully and set the atmosphere
inside the East German plastic bag.

It wants to become our country's flag
and rule by demo and kangaroo court
but it's wearing thin. It'll spill, and twist
and fly off still rustling Fascist! Fascist!

and catch on the same fence as Hitler, and sag.

A Stage in Gentrification

If the late-Marxist museum which presently holds our culture in thrall has gone a bit quiet lately, I in turn had gone pretty quiet on the republic by the mid-1980s. In those years I probably spent more time considering emigration. What held me back were family reasons, plus the satisfaction my departure would give to so many. Also, I had started to succeed in a personal challenge I had set myself of attaining an international reputation from here without the obeisance of going to live abroad, and there were institutions and people I could go on defending if I stayed. The energies of the great Gramscian takeover flagged a little in the early 1980s, too, only regaining momentum from the money poured out in funding for Bicentennial projects. The elite left-leaning republic that began to constellate around Donald Horne, Tom Kenneally and Malcolm Turnbull in the late 1980s never sought my support and might have had scant room for me if I had approached it.

In the early 1990s, though, much to my great surprise, the federal government in the person of Senator Michael Tate called me back from oblivion to draft its new oath of allegiance for naturalisations. I agreed to try, and thought the thing should not be an oath. Jesus had forbidden Christians to swear those and oaths sworn by atheists or agnostics would have no force. That left only our small minorities of Jews, Muslims and some others in a position to bind themselves in any absolute way, which I consider is always risky if the contract is not to be strictly reciprocal.

I then went off to bed and slept on the project. The next morning I got up and wrote out a simple text that was utterly Vernacularly Republic in spirit, as well as being easy for new speakers of English to get their tongues around. It went:

Under God,—

which I left as optional, so that if people did not believe in God they could leave it out:

from this time forward
I am part of the Australian people;
I share their democracy and their freedom,
I obey their laws,
I will never despise their customs or their faith
and I expect Australia to be loyal to me.

The minister accepted my changing the oath to a pledge and the reasoning behind it. As I had anticipated, the last two lines of my draft did not survive scrutiny by his officers.

By the 'faith' of the Australian people, I had meant either their religious faith or the good faith which governed their lives. By the last line, I intended a surreptitious social revolution, which I think we must have some day. By speaking of 'the Australian people' I had hoped to torpedo divisive multiculturalism under which the country is inhabited by innocent racially unmixed Indigenous, vicious invading Anglos, who are responsible for all the sufferings of humankind, and guiltless non-Anglo immigrants, who alone possess culture and the right to be here.

If anything in the near future shatters Australia and its potential republic beyond repair, it is this strange system of racism directed against ourselves. A ghost of the Australian people idea survives in the formulation used in the rewritten pledge that was adopted: Australia and its people. At least they did not say 'peoples'.

I do not complain here. When you accept a writing commission in advertising, drama or film, the contracting party has the right to recast your words. I regret that the rewrite of the pledge made necessary by dropping its last two lines destroyed the rhythm and simplicity it had had.

My most republican action since then but before today was to launch a neo-monarchist book by Tony Abbott MHR. Many were surprised at this, but I did it to underline the right, much assailed over the last three decades, of Australians to differ in their opinions. Apart from its absentee nature and its possibly by now unintended fostering of a residual low self-esteem vis-a-vis other nations, my main objection to the monarchical system is that under it we are finally still subjects, not citizens. Of course, we are citizens in law and in the rhetoric, but we all know the government is over us holding the whip hand of force. It can conscript us, but we cannot conscript it. We can change the party which rules it, but how real is that nowadays? How much of government is governed by its elected component? Less and less, surely.

Another can of worms concerns representation. What does it mean and is it in any sense real? Do Honourable Members represent us or their parties? I do not feel represented by anybody. I am sorry if that gives offence because my mother brought me up not to give offence unnecessarily. But really, I am only represented by my poems. We were talking last night about the fact that when you go pretending to represent other people, if you are not **of** those people, you will get their life and their concerns wrong. My fear about any likely Australian republic is that it is quite likely to be what most modern republics are: merely a presidential monarchy in which the people go on being subjects with a franchise. The mild last line of my pledge points to a shift in the direction of democracy, under which people might begin to be citizens, not the in the large aggregations of elections, rallies and marches, but as individuals, set on a level footing with government by the fact that they can make truly reciprocal

agreements with it. I accept you as my government if you are loyal to me. You can expect things of me, but so can I expect things of you.

Beyond this, perhaps in the smoke of pipe dreams, lies a polity in which citizens might be above government, permitting it to administer routine matters but always subject to correction if need be. In such a world, there would be no licences: how dare government presume to grant freedoms to its masters, the people! The people would not sign petitions either. These smack of humble pleas laid before an all-powerful throne. Rather, they would agree amongst themselves what was to be done and instruct the government to get on with it.

Crime would no longer be seen as rebellion against the Crown, but for what it is: an offence against its victims and no-one else. If my car is stolen, I do not need the thief to be confined for years in a cement room, raped and given AIDS. I simply want my car back or another one of the same quality in the same condition. This is known as restitutive justice and is being pioneered in New Zealand. Perhaps 140 years after the secret ballot was made law in Victoria, it is time we got back into some real political innovations.

I say all of this, of course, in the certain knowledge that not even an Australian republic will be able to repeal Murphy's Law. Perhaps changes gently undertaken with humour and humility rather than hectoring assertiveness, might kick back at us only manageably hard when they do inevitably recoil on us, and only let us down in ways that are incrementally repairable—or, as we would say in the bush, repairable.

What the vernacular republic might think of the prospective political one can perhaps be deduced from most of the poems and spirit of this lecture—at least before we went all mushy and hopeful just now. It might just sympathise with my long held wish to see the use of fashion against people classed as a form of assault. The tradition of government wanting to be a lion and many of the voters wanting it to be a bounteous cow will not soon change. Some might remark that anyone who actually pays taxes is not smart enough to invent new systems of government anyway.

I have only one other pipedream, and it belongs more to society and culture than directly to politics. I would like us to move on from a philosophical moment in which we delegate all of splendour to nature and seem almost to consider building a form of pollution—as I asked elsewhere recently—Would we, and our pressure groups, now permit the Sydney Opera House to be commenced?—to a readiness to essay human-made splendour in our cities and landscapes; really glorious buildings, surprising but unquestionably superb arrangements of landscape, wonderful monuments. This would take a tremendous step up in self-confidence from believing that splendour is at best only attainable by individuals, who then hide it away decently in galleries or poetry books and a self-deprecating demeanour. That, probably, is the very best thing I would hope from a republic—a republic which, of course, I may not live to see, and perhaps rightly. Like the composition of a poem, it should not be rushed or the ending forced just to be available for the Olympics of 2000 or the centenary of Federation in 2001.

I will end with a poem by a colleague of mine, Bruce Dawe, who is a better poet of the vernacular republic than I am. The poem is titled *The Flag of the Future*, and it reads:

The Flag of the Future

is already flapping in the minds of the people
it will cover 3,000,000 square miles
and be as small as a postage-stamp
it will be as vast as a West Australian sunset
and invade the psyche
it will hang outside every CES
like the long-term unemployed
and be run up the mast at Mojo seeking a salute

it will draw to itself like a magnet
the iron filings of monomania
the rusty needles of opportunism

like all flags it will oversee an unimaginable journey
at times blood will fuse its folds together like an adhesion
at other times it just won't be able to help being beautiful
it will be betrayed by its own idealism
and its heroes will be forgotten like earlier heroes
shining in their shrouds
only to rise again from new-ploughed furrows
like dragon's teeth

because it is in the world and of it
it will suffer all the indignities of creatures
it will be burned and adored
and many of its truest followers
will not be found in the halls of parliaments
and government annexes
but in out-of-the-way places
and failing country towns
where they're not always sure what its colours are
even though they know it's the only one for them

Thank you. I was told there would be a question time now, so please feel free to ask questions.

Questioner—You said that republics, like poems, should not be forced. Yet, occasions like this produce such a fine performance, it seems to me that it would be a pity not to push the idea of a republic.

Les Murray—I suppose I am both pushing and warning. I am just making a few statements, none of which are binding on anybody. I am just stating how I have handled the idea of the republic and matured it in my mind as I have gone along. Everybody else who has thought about it has a similar story to tell, I am sure.

If it is time for the republic, I think it should come. If it is too early, you will botch it. There will be a moment for it, perhaps. I doubt that it will correspond exactly with the Olympics or

2001; that is my opinion, standing here with those four or five years away, but other people might disagree.

I think that, like a work of art, it has to be unquestionable—not divisive. An essential of any republic I'd want is that it would never relegate anyone. I thought that, when Gough Whitlam said that to bring it on now would be to offend a great many people who were not yet convinced of it, was one of the times he was statesmanlike. It is a thing I want, but that does not mean that it should necessarily come while I am around to enjoy it.

Questioner—It is just that I guess we could have said the same about the formation of Federation.

Les Murray—We probably could have said the same thing about the invention of fire. I might be being too cautious altogether; I do not know. There seems to have been a ground swell which carried Federation, and there does not seem to have been much opposition to it—or not much opposition we now remember. I am not a big enough expert on history to know the voices that were raised against it. Everybody seemed to settle into it pretty quickly when it came.

Mind you, Federation did come fairly gently. People did not notice for a while that there was a Federation. It was 1913 before the Commonwealth issued a stamp. They were not obtrusive, for a start. The only thing that happened, I suppose, that was really big news was the Sunshine Harvester case. Before about 1910, nobody else thought much about the Commonwealth. It was there, but it had not bitten in yet. If our republic came gently like that, it might not be a bad thing—it might not be a bad model to remember. I would not like to see tremendous fanfare, the forcing of opinion and the silencing of dissent. That is presidential monarchy.

Questioner—In true bushie fashion, if it can't be fixed by No. 8 fencing wire, don't worry about it. If it ain't broke, why fix it?

Les Murray—It is broke. I think the present arrangement is still subtly bad for self-esteem. The thing I should have put in this essay was probably the smartest thing that I have ever said about the republic—that is, the best reason to have a republic is so that we could forget about it, and stop aching, picking at ourselves and worrying about our national identity. We do too much of that. Perhaps when the republic comes, it will be a way of forgetting about it and getting on with just being natural about it. Because when we do pick at it, we cause infective sores which give pain to a lot of the population. That seems to be open-ended. You can do more and more of it. As a mantra against doing that sort of thing, the republic is useful.

The republic will not now go away. It has to be treated. Probably, if we had wanted it enough, we could have had it almost any time since the 1950s. Perhaps there was also a moment in the late 19th century when we could have had it. That is why I identified this other thing, of how we like to play with it, toy with it, make projects out of it and conjure rosy potentials so that we will never have to see the ordinary political compromises that will happen when it comes. But I think it is broke. It needs the fencing wire. There is something to be fixed.

Questioner—It is unlikely that multiculturalism will go away. Do you think it will die down quietly?

Les Murray—It is only a policy; it may not represent a fact at all. Most migrants I talk to have no liking for it; they think it is a racket used to cause employment, and I think myself it tells a lot of lies about a lot of people. In particular, it ascribes all the guilt to my kind of Australians. It is likely to be divisive, and I think it is intended to be divisive. It is a thoroughly pernicious thing and I would stamp it out and take back the \$2 billion it costs per year and put it in the consolidated revenue or, indeed, return it to the taxpayer. I have no sympathy for it at all. I think it is a foul thing, grown out of cringe, fed on cringe to breed more cringe.

Questioner—What are your views on the longevity of the female monarch and the subsequent soap operas of the minor royals, which then leads to the question of whether Australia should wait around for a republic, considering that William recently said, ‘I don’t want to be king’?

Les Murray—I don’t blame him. I don’t think it matters much; it is fairly irrelevant. It is irrelevant in the minds of most people, isn’t it? Most of the day you don’t think much about the Queen between breakfast and bedtime. She is a decent lady and I would say long live she as the head of state of a rather more friendly foreign power now than it used to be. I find Britain a friendlier place now than I used to find it. I have not thought of her position vis-a-vis Australia as being real for so many years that I am out of the habit.

As for that bad crowd with which the poor woman is unfortunately saddled, we don’t want them, really, do we? Mind you, we are only reading about them in the papers. We have not heard their say much. I wouldn’t absolutely trust the soap opera that has been describing them to me. I really don’t know them. I have not met them socially; whether I would want to is another matter.

Questioner—What happens to the writer inside a writer when he becomes involved in politics or political issues?

Les Murray—He worries! This one worries and thinks he shouldn’t do much of it. I was at one time greatly exercised by our cringe and by our lack of self-esteem and the way we hobble ourselves. That became less real to me as time went on but at one time it was important, and I think it is important to a lot of writers.

You sup with the devil of politics with a long spoon. You use poetry to check the truth of what you are saying. If it’ll stand up in a poem, it’s probably got some truth in it. If the poem tells you that it’s nonsense, it probably is. So I use the poetry to check the truth of everything. Occasionally, republican notions were one part of my work, but never the whole of my work. A lot of my work has to do with creatures who’ll never notice whether they are in a republic or an empire. The eagle has never heard of America. The kangaroo has no idea of the Commonwealth of Australia—none!

Questioner—The lines which define our present states were mostly ruled by imperial mapping pens in London. Do you see in the future republic perhaps a more regional approach? Do you feel that the six states, as they are, adequately allow people to feel connected to a bit of ‘country’?

Les Murray—I like the idea of country; I always did. I think of my country as that lying between Walcha, the Myall Lakes and about John’s River. But, no, because the states won’t

go away. It will be awfully hard to move them. I can't see us moving away from that system by which you have to have a referendum on changes to the constitution. You won't get the people to give up states. You won't get states to give up states either. I can see no big change for a long time in that one. It would have to be a cataclysm, and the last thing you wish a country is a cataclysm. So I reckon that states, for better or worse, will stay there. They tell me that in local government in the states there is a movement towards more regionalism, but it is still only arbitrary marks on a map. One of the things that tells you that their marks are wrong is often that they draw the lines along water courses instead of along watersheds—as I suppose I just did now. But, no, I can't see any shift in that; I wish I could.

Questioner—Les, do you think artists, poets, should go into politics? Should we have a poet in the Senate?

Les Murray—It has been known to happen. Yeats was in the Irish Senate. He was on the committee that devised the Irish coinage, which is not bad coinage; it is not quite as good as ours, but I think we have the best designs of coinage on earth. He also is one of the cases where you can say that a poet was almost an acknowledged legislator, too. There was one poem of Yeats'—we were talking about it on the way in—which was tremendously influential in his country. The poem was *Easter, 1916*, which has the line, 'A terrible beauty is born'. Yeats worried deeply about that later on because it became the absolute mantra of the Irish nationalist movement. Many fertiliser bombs and other things have been exploded with that echoing in the background.

It has been a politically effective work of art. Politically effective works of art are probably nearly always dangerous, I suspect. But what is more dangerous of course is the unformed poem—a poem that is not made by a poet but made by a sensibility or by somebody like Marx, or Jesus, or Mohammed, someone like that. A poem which is looking for embodiment, a powerful idea which lacks an adequate embodiment, is tremendously dangerous. A work of art at least has closure. It has been given a body by someone, therefore it does not come looking for your body to flesh it out.

Putting poets in Parliament is probably no more dangerous than drawing parliamentarians from any other trade and probably not much more effective. I am certainly not volunteering for the job.

Questioner—What are your views on how best to decide the process of going towards a republic, if that is a process Australia wants?

Les Murray—I think it is going that way, slowly, but tiptoeing and holding back for the pleasures of contemplation—the pre-orgasmic part, the endless foreplay of the republic—which will probably mean that I will never see the thing before it arrives. I am not sure how. I do not understand enough about government. I used to live in Canberra and be in the know, but I do not anymore.

Parliamentary Speech*

Professor Ken Inglis

'Men and women of Australia'. The words are Gough Whitlam's, beginning, at Bankstown in 1972, the policy speech in his victorious campaign for election. They are also John Curtin's, campaigning in 1943 for re-election. Before that, on 8 December 1941, John Curtin said:

Men and women of Australia. We are at war with Japan.

It is less well known that they are also the words of R.G. Menzies speaking earlier in the war as Prime Minister.

Men and women of Australia saw and heard Whitlam's words on television and they heard Curtin's and Menzies's words on the radio. Indeed, only by television and radio could a political leader address the whole nation at once, though in the days before radio he might use such a form of address to them as readers of his words. When Alfred Deakin delivered his policy speech for the election of 1903, he did not actually use the phrase 'men and women of Australia', but he did address in that speech both 'the men of Australia' and 'the women of Australia'. That was the first time a party leader would think of speaking to the women, for women had been given the vote for the Federal Parliament in the previous year.

The Prime Minister or the Leader of the Opposition can never use that form of address in Parliament. In this building, he is supposed to address only the Chair, which is Mr Speaker in the House of Representatives and Mr President in the Senate and, from 1986 to 1989, was Madam Speaker.¹ Members are not here delivering addresses, as on the hustings; they are

* This paper was presented by Professor Inglis as a lecture in the Department of the Senate Occasional Lecture Series at Parliament House on 23 February 1996. Professor Inglis is Emeritus Professor, Research School of Social Sciences, Australian National University.

¹ In August 1996 Senator the Hon. Margaret Reid became the first woman President of the Senate.

engaged in debates. Today I am interpreting my brief narrowly, saying little about the words politicians speak outside Parliament when they address the men and women of Australia, or the electors of Woop Woop, or red-eyed listeners at a \$100 per plate breakfast. Though no clock is actually signalling how much time I have, as in the House and the Senate, I have been given a limit.

For a historian, it is a thrill to be speaking on today's subject in the very home of parliamentary speech. It is the third home of the Commonwealth Parliament, or the fourth, if we count the Exhibition Building in Melbourne, where its first speeches were made.

Just about every word spoken in the Commonwealth Parliament over almost one hundred years is recorded in print. What a gift that is for historians! The volumes of parliamentary debates are by far our largest repository of reported speech. The reports are said to be 'verbatim', but they have never been quite that. The founder of the Victorian state *Hansard*, or the colonial *Hansard* as it was known, once explained to a new Member that its purpose was 'to preserve the idiom of Parliament, but not the idiots'.

Some remarks are deleted from the records by direction of the President and Speaker. Clumsy diction is made neater, and interjections are recorded only when the Member on his feet replies to them. Sledging across the floor between seated Members is not recorded. Members have the right to see and revise proofs of their own remarks. They are exhorted not to add to or alter what they said. Gavin Souter, historian of the Commonwealth Parliament, judges that '*Hansard*'s accuracy as a full transcript of words actually uttered was always open to some doubts.'

Alterations of form are judged to be more legitimate than alterations of substance. William Morris Hughes observed in 1909 that *Hansard* should 'present a readable report of what he [a Member] would have said had he been addressing an audience having the manners to listen to him ...' But the changes went beyond that. Once, when a *Hansard* reporter protested about a Member writing into his proof an attack on another Member which he had not actually made, the Speaker ruled that the passage had to be incorporated in *Hansard* because the word of a Member must be accepted.

In 1947, not long after the ABC had begun to broadcast parliamentary debates, the Labor Member Rowley James for the Hunter district was speaking on the Chifley government's, as it turned out, fatal bill to nationalise banking. He paused to send this message to his dentist in Sydney:

Milton, get my teeth ready this weekend, if you're listening. It's a cheap way of sending a telegram.

Whether or not Milton was listening, reporters in the press gallery were, and it was news the next morning. But it is not in *Hansard*. Either James or *Hansard* decided not to report this rare case of a Member misusing the broadcasting of Parliament as some people had feared they would. On the other hand, *Hansard* does report Rowley James in that same speech quoting a letter from a constituent saying, 'The Bank Bill should of been passed bloody years ago.' 'Order!' says the Speaker, 'The Honourable Member is not entitled to use such language.' I am not sure whether he meant 'should of', 'bloody' or both. I will return to that theme in a moment.

Hansard is all the more valuable as a record of parliamentary speech in our time because newspapers report so much less of it than they did one hundred, fifty or even twenty years ago. Apart from exchanges at question time, even the wordiest of our papers now report little of what is said in Parliament. This is true not only in Australia but in the city where parliamentary reporting began—London.

Speeches in the British Parliament, as in ours, are now televised, but viewers in both countries are more likely to see members speaking than to hear them—in news bulletins when the voice heard most is the reporter's, paraphrasing, analysing or even deriding what the Member is saying. Except for a short sound-bite permitted to the speaker, we just see his or her mouth moving in a manner the victims have labelled 'goldfishing'.

Hansard is a record of free speech. Within Parliament, speech can in a precise sense be freer than anywhere else, for Australian legislatures have inherited the British tradition, permitting Members to say with impunity things which outside Parliament would provoke prosecution or litigation and permitting newspapers to publish what is said in Parliament with similar impunity. Even if Members should want to divest themselves of the privilege of free speech, they cannot. So, at any rate, ruled Archie Cameron as Speaker when W.C. Wentworth tried to waive privilege as an act of contrition for wrongly naming the author Kylie Tennant a Communist.

No Member has been expelled for anything said in the Federal Parliament, though one has been expelled by vote of the House for a statement made elsewhere. That was Hugh Mahon, who was expelled in 1920 for saying at a public meeting of protest against British policy in Ireland, 'this bloody and accursed empire,' (or possibly, 'this bloody and accursed despotism.' The reports differed.) Mahon was more harshly treated than another Irish-born Irish nationalist, Mick Considine from Broken Hill, who became in 1918 the only Member of Parliament ever to be suspended three times in one session, and who at the time of his third suspension was just out of gaol, where he had been sent for three weeks for saying, not in Parliament, 'Bugger the King, he is a bloody German bastard.'

Speech about Parliament is not free, as we were reminded or discovered when, prior to the 1996 election, a judge sent Albert Langer to Pentridge for refusing to stop publishing and distributing leaflets advising people how to vote in a manner which will not favour either of the major parties, whom he calls Tweedledum and Tweedledee. It would be reassuring to have the provision of the Commonwealth Electoral Act authorising this conviction removed by the Parliament.

There are two limits to the freedom of parliamentary speech. First, Members cannot go on speaking forever. In the early years of the Commonwealth Parliament they could, but step by step governments moved to limit Members' time by the device of the closure, or gag, or guillotine and by setting time limits. The Senate adopted a limit of one hour in 1919, after Albert Gardiner, Leader of the Opposition, had spoken for 12 hours and 40 minutes, from 10.03 p.m. on 13 November 1918 until 10.43 a.m. the next day. He probably would have spoken longer had he been allowed to sit down—he weighed 18 stone, and that was a difficult weight to carry for all those hours. But the President ruled that he must remain standing—a kind of standing order, you might say. Senator Gardiner actually had a good tactical reason for making that speech, but his colleagues decided that enough was enough.

All standing orders controlling the length of speeches and other matters were temporary until 1950, when a permanent set of orders was adopted. The Parliament assembling that year was larger than the one that had sat since 1901: 60 Senators instead of 36, 121 Representatives instead of 74. Unless the houses were to sit for more days each year, time for parliamentary speech had to be rationed more severely. Henceforth, from 1950, the minister introducing a bill could have 45 minutes instead of an hour, speeches on a second reading would last only 30 minutes instead of 45, speeches on the adjournment would be 10 minutes instead of 15, and no confidence motion and address-in-reply speeches would be 25 minutes instead of 35. The guillotine could make speeches shorter at any time the party with a majority in a House wanted, and parties in opposition have consistently complained that governments use that device to curtail unwanted speech.

Not every Member has needed the time limit or the guillotine. J.K. McDougall, the Labor Member for Wannon from 1906 to 1913, was named for good reason the silent Member. When W.M. Jack, the popular Liberal Member for North Sydney, rose on 29 August 1962 to make his first speech in seven years, he began a tedious defence of the budget with the words, 'I can remain silent no longer.' More recently, Labor Member Russ Gorman said nothing at all, so Alan Ramsay tells us, between his maiden speech in 1983 and his valedictory speech in 1995—and splendid speeches they both were. No standing order had impeded these Members' right to free speech; they simply had chosen not to exercise it.

The second impediment to free speech is the power of presiding officers to decide what language is fit for Parliament. The convention of privilege has encouraged expressions of insult, invective, accusation and ridicule, some of which could not safely be used outside Parliament; but the Speaker and the President, and their equivalents in state houses, do draw limits. What the limits are, nobody quite knows. There is no lexicon of prohibited words.

Speakers and Presidents are accused by oppositions of being more lenient to Members of their own parties. That charge is more plausibly laid in Australia, where the Presiding Officer remains a Member of his or her party, than at Westminster, where the Speaker forswears party allegiance once elected to the Chair.

Contexts matter. Terms of abuse become more or less shocking over time, according to what Frank Devine has nicely called a recalibration of the vernacular. To Frank Devine, and through him to Senator Amanda Vanstone, I owe the statistic that the record for reproofs from the Chair in the Senate from 1976 to 1988 is held by Peter Walsh, who carried his bat into voluntary retirement after scoring forty-eight. The list of Walshisms runs alphabetically from 'blackmailer', 'bought off', 'bullshit' and 'bully' to 'vexatious geriatric', 'wretched creature' and 'yobbo'. Next, a long way behind Senator Walsh, came Gareth Evans and Fred Chaney with fifteen each.

The language of that Senator from Western Australia prompts me to be cautious on two conclusions about parliamentary invective. The first is that Senate speech is more genteel than House speech, and the second is that New South Wales produces proportionately more champions of insult than other states. Nevertheless, I think both judgments have a good deal of validity. Peter Walsh's speech may have been unusual for a Senator; after all, he did score more than three times as many reproofs as his nearest rivals.

Pam Peters, a linguist at Macquarie University, has done a computer analysis of 650,000 words, spoken over four days in the two Houses during March 1986. Her paper entitled 'Debate in the Upper and Lower House' is a fine demonstration of the yield to be won by bringing new technology to bear on the riches lying in those vast volumes of *Hansard*.² Mrs Peters detects a difference in styles of abuse, which she suggests is connected with Senators having more time to speak than Members of the House. 'The terms of abuse in the Lower House,' she writes, 'are direct, definitely *ad hominem*, and designed to knock someone out ... Abuse in the Senate,' by contrast, 'seems to take a more leisurely and contrived form—through clusters of words applied in such a way as to flay the opponent piece by piece.' Senatorial abuse, she writes, 'is aimed more at the opponent's style of argument, and legislative insights, than at the person himself or herself.' Mrs Peters sees this difference in the idioms of abuse as part of a more general difference between 'the plain, down-to-earth, concrete nouns of the Lower House; and the more academic, detached, abstract words of the Upper House'.

The view that New South Wales grows the ripest insults is not, I think, refuted by one fruity example from the west. No less an authority than Ben Chifley encourages us to see something in it. 'If the Honourable Member wishes to indulge in that kind of language,' Chifley once said, 'I would just remind him that I learned my politics in the New South Wales Labor Party.' Paul Keating, who also learned his politics there, has a larger reputation for abusive parliamentary speech than his predecessors Bob Hawke and Malcolm Fraser, who both came from Victoria. Has any other political leader provoked the publication of a pamphlet by opponents assaulting his vocabulary? A Liberal publication of 1992 shows a stream of obscenities coming out of Paul Keating's mouth. 'Jobs, work and kids, they're four letter words to Mr Keating,' says the text. Two of his nouns attracting most attention have nine letters and seven letters: 'sleazebag' and 'scumbag'. 'Scumbag' originally meant condom; 'sleazebag' has more elusive origins. Both were put into currency, if the *Macquarie Dictionary of New Words* is right, in *Hill Street Blues*, which appeared on television in 1981. So these are items in the Americanisation of our popular culture. Mike Secombe in the *Sydney Morning Herald* says Mr Keating has used the word 'scumbag' only once, in 1984, but it has stuck to him. Readers of London tabloids could easily think that it is his normal working word for the Opposition.

Gough Whitlam was as severe as anybody in his abuse of opponents. He too came from New South Wales, but my guess is that only during the war, serving in the Air Force, did he enjoy prolonged exposure to the vernacular tradition that nurtured Ben Chifley and Paul Keating. Whitlam's idiom of abuse was his own. As Prime Minister, he taunts an opponent for being a heavy drinker:

Mr Whitlam: Look at his bleary face.

Mr Snedden: You are being gutless.

Mr Whitlam: It is what he put in his guts that rooted him.

Mr Snedden takes a point of order. The Speaker instructs the Prime Minister to withdraw the remark. The Prime Minister does so, but only after making sure that Members have heard it. As Deputy Leader of the Opposition in 1960, Gough Whitlam calls Sir Garfield Barwick a liar, and refuses to withdraw, saying 'This truculent runt thinks he can get away with anything.' Pressed to withdraw, he withdraws. Sir Garfield Barwick leaves the Chamber weeping.

² Pam Peters, 'Debate in the Upper and Lower House' in Pam Peters (ed.), *The National Language: Proceedings of Style Council 94*, Dictionary Research Centre, Macquarie University, NSW, 1994, pp. 51–58.

Have Labor Members, whatever their state of origin, been more inclined than their opponents to use abusive language? When Joseph Lyons and some of his comrades left the Labor Party to form the United Australia Party in 1931, their new ally John Latham reported:

Lyons told me it was a revelation to ‘his mates’ to be treated like gentlemen. They were accustomed in the Labor Party room to vile abuse—to violent language—and to threats of physical violence. He gave me the impression that his people were saying, ‘Farver, is this ‘eaven?’

Maybe, and up to a point, they were saying that. Perhaps Labor men’s abuse, in and out of Parliament, was customarily more colloquial, earthier, closer to the idiom of the mine and the factory and the shearing shed. Rowley James, says Gavin Souter, ‘had learnt his oratory at pit top meetings’. But Paul Hasluck, who had learned his oratory at meetings of the Salvation Army, said of Gough Whitlam, or rather, breaching protocol, said to Gough Whitlam, ‘You are one of the filthiest objects ever to come into this chamber.’ Mr Whitlam, who was just about to drink from a glass of water, responded by throwing its contents at Mr Hasluck’s face—not the glass, just the water. So free have our Parliaments been from violence, give or take the odd scuffle in colonial and state legislatures, that the incident has become famous. You can hear it and imagine seeing it re-enacted in the sound and light display at Old Parliament House.

Perhaps on the whole anti-Labor abuse has been less vulgar than Labor abuse, but not, I think, less nasty or cruel. Sir Earle Page, resigning from R.G. Menzies’ cabinet in 1939, made what Gavin Souter describes as ‘one of the most vicious and ill-judged attacks ever made in the House’. Its climax was a condemnation of Menzies for not having served in the Great War. *Hansard* records an interjection not from Menzies’ and Page’s side of the House but from across the Chamber, from Rowley James: ‘That is dirt!’

Probably the most wounding insults ever exchanged in Parliament—though we now may find this hard to appreciate—were on the subject of who went and who did not go to the war of 1914–1918; on whose hands was the blood of the dead soldiers.

I hope someone using Pam Peters’ method will do a thorough classification of themes in abusive parliamentary speech, including an analysis of what presiding officers tolerate and what they do not. I wonder how the following impressions would stand up to such systematic research. Here are four themes which I notice recurring in parliamentary abuse.

The first theme is that Members are compared to animals. As the constitutional crisis of 1975 moved towards its climax, Souter reports, ‘The Senate rang with epithets like “dingo”, “swine”, “mongrel” and “cur”’, the historian himself swept up in this animal imagery; while in the House, ‘Whitlam and Fraser locked horns like two bull mooses.’ In 1970 the Speaker made a Member withdraw both ‘dingo’ and its proposed substitute, ‘tame dog’.

During Malcolm Fraser’s prime ministership, Paul Keating was ordered to withdraw after quoting an old farmer in Queensland who watched Fraser on television and said, ‘Son, if I had a dog with eyes as close together as that, I would shoot it.’ Mr Keating withdrew, and settled for calling Mr Fraser ‘the most untrustworthy Prime Minister in the history of this Federation’, which was allowed. Mr Keating has a taste for dogs. He once said his opponents were like ‘dogs returning to their vomit’. Dr Hewson was ‘a dog with a belly full of piss’.

‘Cur’ and ‘Kerr’ became a pun popular among Labor people after Gough Whitlam invented it for Sir John on 11 November 1975. ‘Cur’ had long been a favourite term of abuse. ‘A cur and a skunk,’ Senator Justin O’Byrne called the Leader of the Opposition, Reg Withers, in 1973, and added for good measure that Senator Gair was a toad. Ordered to moderate his language, Senator O’Byrne changed ‘toad’ to ‘bullfrog’, saying, ‘Ninety per cent frog—and 10 per cent bull.’ ‘Skunk’ has also enjoyed long popularity, combining, as it does, animality and stench. ‘You dirty skunks’, said a Member in 1910. ‘Rat’, another popular word, also connects animality with dirt and, in Labor parlance, with treachery as well—all in three letters!

Dirt is a second continuing theme. ‘That is dirt,’ said Rowley James. ‘You are one of the filthiest objects ever to come into this chamber’, said Sir Paul Hasluck. The dirtiest of dirt is invoked from its source to its destination—turd, bullshit. In debate on Menzies’ bill to ban the Communist Party in 1950, Rowley James called the ‘onus of proof’ clause the **anus** of proof. When Gough Whitlam described a statement of his government’s achievements using Cardinal Newman’s title *Apologia Pro Vita Sua*, Billy Snedden chose to make a pun on the word ‘sua’.

The most civilised of parliamentarians, Alfred Deakin, ordered in 1904 to withdraw an imputation of falsehood against William Morris Hughes, blamed the likes of Hughes for making the likes of Deakin use dirty language:

It happens sometimes to all of us, that as we pass along the streets of the city, we meet men engaged filling drays with dirt and garbage, and unless one is discreet some of that dust and refuse may drift upon him.

A third theme is moral deficiency. Opponents tell lies. They are cowards: ‘Never has a Prime Minister evinced such cowardly disgraceful behaviour,’ said Reg Withers of Gough Whitlam on 15 October 1975 as the Opposition moves in for the kill. One aspect of ‘cur’ is that it combines animality and cowardice. Opponents are traitors, betrayers. ‘Let that Judas tell us how many pieces of silver he will get’, said Paul Keating, accusing Malcolm Fraser of selling his own sheep’s wool to the Soviet Union while expecting Australian athletes to boycott the Moscow Olympics.

That was by no means Judas’s first appearance in our parliamentary rhetoric. When Alfred Deakin’s party brought down Andrew Fisher’s Labor ministry in 1909, Sir William Lyne told a reporter over a whisky that he would point at Deakin in the House and say, ‘Judas! Judas! Judas!’ And so he did. He was ordered to withdraw, but next day Labor Members pursued the comparison. William Morris Hughes dissociated himself from it as not fair to Judas, for whom, he said, ‘there is this to be said, that he did not gag the man whom he betrayed, nor did he fail to hang himself afterwards.’ As Hughes would have known, that thrust had been made in the House of Commons in the 1850s.

A fourth theme is stupidity—often immorality and stupidity together. Deakin’s accuser, Sir William Lyne, called another Member that same year, 1909, ‘a liar and an arrant empty-headed humbug’. Bill Hayden described the Fraser ministry in 1978 as ‘a government of lies, of little lies and big lies and, most often, stupid lies.’ Frank Devine, inspecting the list of senatorial insults collected by Amanda Vanstone, counts four ‘idiots’, two ‘dopeys’, four ‘sillies’, two ‘morons’ and a ‘dolt’, and concludes that Senators seem to regard lack of intelligence as the

most contemptible flaw. Whether that would be so of Members of the House remains to be investigated.

Presiding officers are routinely accused of giving Members of their own party more licence in the use of offensive language, and the introduction of a neutral Speaker is suggested from time to time as a means of even-handedly reducing abuse. The federal coalition committed itself to such a reform in 1992, but I do not think it has been mentioned lately.

It is easy to exaggerate the incidence of abuse. Any colour stands out in the greyness of *Hansard*, and a salty insult can grab headlines more easily than a temperate argument. Most of it is heard, and now seen, at question time. Question time is an institution peculiar to parliamentary democracy. The President in a congressional system does not expose himself to interrogation in a House of which he is not a Member. The questions are supposed to do no more than elicit information from a minister, but governments and oppositions in Westminster and the dominions have long used the time for more than that.

In the Commonwealth Parliament the practice was informal until written into those standing orders of 1950. Since then ministers have often adopted the habit of reading their answers—especially to Dorothy Dixers, asked dutifully by their own backbenchers, but also to questions from the other side—speaking either from briefs written by public servants who have spent the morning preparing draft answers for PPQs (possible parliamentary questions) or from scripts that they are determined to use whether or not their content is relevant to the question.

The *Sydney Morning Herald* lamented in 1993 that both sides ‘regard the floor of the House during question time as a bearpit.’ Peter Cole-Adams from the *Canberra Times* says it is ‘a test of strength and nerve, a sort of virility ritual’. Barry Jones more genially describes it as theatre. Reporters write up the contest as if they are drama critics, and encourage Members in their possibly mistaken belief that wins and losses in question time are of great moment in the electorate.

Who have been our best parliamentary speakers? The question is unanswerable but irresistible. How do we judge them? By performance in the bearpit of question time, or in the usually more tranquil passages of debate on motions? Unless we have seen and heard them ourselves, how do we know what they were like? How do we animate in our minds the printed words of *Hansard*? How do we imagine their voices and their bodies? In judging past speakers, we have to pretty much rely on what contemporaries thought of them. In judging present speakers, we have to deal with the complication of not being sure whose words they are speaking.

Reluctantly, I ignore, for this occasion, speakers in colonial and state Parliaments. In early Commonwealth Parliaments the most admired creator of parliamentary speech was Alfred Deakin. An English connoisseur, Leo Amery, said of Deakin:

... for sheer fervid, sustained emotional and intellectual flow of eloquence I have not heard his equal ... the greatest orator of my day—in English.

Deakin’s biographer, John La Nauze, scores Deakin high on all tests, except possibly a sense of theatre.

We have R.G. Menzies' judgements in 1945, written candidly to a son, of his principal opponents in Parliament. He says:

Evatt is a debater who loses his temper and is almost a genius for the disorderly presentation of a case. Calwell is under the impression that vulgar personal abuse couched in the coarsest and most extravagant language is a sign of mental virility.

Menzies was a bit more respectful towards wartime Prime Minister John Curtin, though critical of his passion for Latin abstract nouns, remarking that Curtin would never say 'war' or 'battlefield' if he could get away with 'theatre of disputation'. Menzies judged Curtin not a good debater 'in the true sense', the true sense for Menzies being forensic. Curtin had been brought up not to speak in law courts, as Menzies was, but at public meetings where your voice had to hit the back of the hall. You can see and hear that in newsreels.

But, at necessary moments during the war, Curtin could speak with a simple and inspiring eloquence. Listen to the tribute of a reporter who was in the press gallery when Curtin spoke to the House in May 1942 just after the battle of the Coral Sea. The journalist is moved by what he calls:

... that indefinable projection of personal sincerity which, on subjects that stir him greatly, gives Mr Curtin a grip over actual audiences that can never quite be conveyed to those who hear only his broadcasts or read reports of what he has said. No one who participated in the few minutes in which Mr Curtin was addressing the House failed to come out of them a better Australian.

I doubt whether anybody said that about a speech by Sir Robert Menzies.

William Morris Hughes, a parliamentarian for half a century and himself praised by a shrewd judge for his 'unrivalled command of the spoken word', said of Menzies:

He does not have the power to move or inspire great crowds, or bodies of troops. But when it comes to Parliament I truly consider that Menzies is not only the best debater I have heard, but in my judgment the greatest who ever lived. And I have read Burke, Cicero, Randolph Churchill, Pitt and Fox.

The judicious assessment of Menzies' colleague, Sir Paul Hasluck, was that he gave a higher place to the arts and skills of advocacy than to oratory—that he was too forensic—and that when he did attempt heightened utterance he might miss the target, as in his gushing address to the Queen in Parliament House, when he said:

I did but see her passing by.
And yet I love her till I die.

When I asked Sir Paul Hasluck near the end of his life which speeches he remembered he recalled only one from Parliament, and that was on a ceremonial occasion rather than in debate. It was John Howard at the opening of this building by the Queen in 1988. He did not mention Gough Whitlam.

Gough Whitlam must rank high among our masters of parliamentary speech. John La Nauze called Alfred Deakin's excellence as an orator 'surpassingly rare'. 'His countrymen,' Professor La Nauze wrote, 'still remain among the most slovenly public speakers in the world'. If that is true, what a pleasing paradox that the party of labour should have chosen as federal leader—and voters allowed to become Prime Minister—a man so lucid, meticulous, pedantic, at home with classical modes, and altogether unslovenly in his speech! Will this building ever hear another man, or woman, who would compare an antagonist with Ovid, and in the Roman poet's own language? Speaking of Malcolm Fraser in those October days of 1975, Whitlam tells the House:

As another self-indulgent wool grower said in putting personal interests ahead of the nation's interest, *video meliora proboque; deteriora sequor*.

He did not translate, so I won't.

Arrogance is a quality ascribed to Mr Whitlam, to Mr Menzies and to Mr Keating. Has Whitlam an edge on Menzies for capacity in articulating emotion? To go outside Parliament House for a moment, the meeting at Blacktown in 1972 that began 'Men and women of Australia . . .' is described by Graham Freudenberg as 'not so much a public meeting as an act of communion and a celebration of hope and love'. Graham Freudenberg was not a disinterested listener to that speech—he wrote it—but he was not the only one to feel that about the meeting.

In retirement, Menzies said, 'I never employed a speech-writer myself . . . I had an obstinate objection to having other people's words put into my mouth'. He is not saying he never had speeches written for him by public servants and others. Many speeches spoken in Parliament over the decades have been written by other people. I myself have written one or two. Menzies is saying that he never employed a speech writer. That is a novelty which came to Australia from the USA in the 1960s.

Graham Freudenberg first wrote for Calwell, then for Whitlam. Don Watson writes for Paul Keating, and observed recently that Menzies had a great deal more time to write his speeches than contemporary prime ministers. 'These days,' Watson remarked, 'he could no more do it all alone than they could take a boat to a London conference'. Sometimes Paul Keating's words are entirely Don Watson's, sometimes not. Watson describes speech-writers as 'value-adders'—they take the raw material and cook it; they make a meal of it, but they are rarely alone in the kitchen.

Reporters commonly praise Watson's text and deplore Keating's leaden delivery of it. Where gravity is what is required, the match is perfect. The speech Watson wrote and Mr Keating read for the funeral of the unknown Australian soldier was most movingly fit for that event. On other occasions, Mr Keating's reading can sound funereal when it is not the required tone. He can mumble through a fine script, and then, answering questions off the cuff, shine and sparkle. When he read a speech in Parliament, the listener—the spectator—always sensed the possibility that Mr Keating would raise his eyes from the script and let fly.

We do not hear of any partnership on the other side of Parliament quite like Freudenberg's with Whitlam or Watson's with Keating. I mentioned John Howard as the one parliamentarian who made a speech that Sir Paul Hasluck remembered. Mr Howard rarely **reads** a whole speech. When he resumed the Leader's chair in the House in 1995, Geoff Kitney thought his speech on

a motion of censure ‘confirmed his reputation as the Opposition’s best parliamentary debater in a generation’.

In the recent contest of policy speeches, John Howard off-the-cuff was less funereal than Paul Keating doggedly reading a script. At the moment (February 1996) Mr Howard appears so determined to come across as an unexceptionably decent, ordinary Australian that it is hard to imagine his demeanour if he wins. ‘Before a friendly assembly,’ Gideon Haigh recalls of a speech some years ago, ‘Howard showed a grace and sardonic wit of which I’d never suspected him.’ Will those qualities return to his speech if and when he has a friendly majority behind him in Parliament?

Few of the women in Parliament are yet senior enough to be employing speech writers. Some of those who do so engage men, and that makes it harder to know whether the parliamentary speech of women has any distinct characteristics. The first women entered the federal Parliament in 1943, one in the House and one in the Senate—an event about which our consciousness was raised right here in the jubilee year, 1993, by the enlightening exhibition ‘Trust the Women’ and the accompanying book of that title by the exhibition’s curator, Ann Millar.

John Curtin, having addressed the electors as Men and Women of Australia, said in the House in 1943, ‘We do not any longer sit here as men.’ But he added that Enid Lyons did not sit in the House as a woman. Dorothy Tangney also said that in the Senate that year. Enid Lyons, however, a widow and mother of eleven, told the men that they would ‘have to become accustomed to the application of the homely metaphors of the kitchen rather than those of the operating theatre, the work shop or farm’. (What nicely chosen occupations.) To begin with, she compared herself to a new broom.

I wonder whether the parliamentary speech of women has been larded by metaphors from female life as their numbers in the federal Parliament have increased by fits and starts from two to the present thirty-two. ‘I don’t have any sex when I am in this position,’ Senator Ruth Coleman memorably remarked when chairing the Senate in committee. Do women Members of Parliament differ in verbal style from men? Has the presence of women affected male speakers’ language? The questions cry out for answers from Pam Peters and her computer, and she does give us a tantalising glimpse in her paper on speech in the two Houses.

The greater representation of women in the Senate—20 per cent compared with five per cent in the House in 1986—is reflected in more frequent references to women, and more use of feminine pronouns and other gender-specific words. Pam Peters finds:

There is a touch of affirmative action in the greater use of *chairperson* in the Senate, as opposed to *chairman* in data from the House of Representatives. Similarly, the Senate provided examples of *spokesperson*, alongside *spokesman*, where the House of Representatives had only *spokesman*.

That was in 1986; things may or may not have changed.

Are the women less prone to use unparliamentary language? Again we lack quantitative data. The most recent Speaker, Stephen Martin, thinks women are no more genteel than men in his

Chamber. In the Senate, Bronwyn Bishop has reminded us that ferocity is not gender-specific. The Democrat Senator Vicki Bourne, however, does report a difference. During one debate, she recalled, 'They started yelling at me.' Unable to get a word in, she eventually began shouting back. 'They shut up. I started off with the conciliatory approach and was treated with utter contempt. When I reverted to the aggressive male style, I was treated with respect.'

The Speaker's welcome to Enid Lyons in 1943 was patronising. He said, 'I... will give her any assistance that such a rough diamond of the male sex as myself may be able to give her'. And that was to the widow and political partner of a Prime Minister! Times have changed. Senator Amanda Vanstone said in 1986, 'The "Mrs Rinso" image is out and the "I mean business" image is in.' But Kathy Martin Sullivan testified in 1993, after twelve years in the Senate and the House, that when a woman speaks in Parliament, most of the men 'close their ears believing that they are about to hear fringe-feminist rhetoric which is to be automatically rejected'. But maybe most Members of either gender close their ears most of the time.

The almost totally unreported speeches of backbenchers are, for the most part, boring even to the speakers themselves. Barry Jones, once, but no longer, a minister, said:

The use of prepared speeches has largely destroyed the long tradition of debate. Typically, there are Whips' lists of speakers prepared for the presiding officer, so that a Member knows that he will be 'on' at 3.20 or 3.40 or 4.00. The Member generally stays in his office until a few minutes before the due time, comes into a deserted House, opens his manila folder and starts to read, without any reference to what has been said before him and what may well be said after.

This is not cheering testimony. Is parliamentary speech an institution in decline? As always, we should beware of inventing a mythical golden age. The decline of Parliament has been proclaimed in both motherland and dominions for a long time. It is more than half a century since R.G. Menzies lamented 'a sad falling-off in manners' and a scarcity of true debaters. I wonder what he would say of 1996. He revelled in question time. Of Paul Keating, Alan Ramsay has said that he rearranged question time because he thinks Parliament is largely a waste of time. Mr Keating has described question time as 'a courtesy extended to the House by the executive branch of government'. He has famously referred to the Senate as 'unrepresentative swill'. How far all this is personal to Mr Keating, how far representing a trend, may be easier to judge at a later date.

What is beyond dispute is the increasing presence of the executive in relation to the legislature. It is evident in architecture as well as in speech. The Palace of Westminster is a Parliament, occupied by the Commons and the Lords, with ministers having their offices elsewhere. This palace is one-third public gallery, one-third legislature and one-third executive block, so designed as to prevent the public from being aware of the executive presence.

For most of the time Parliament met in Melbourne, the executive had only one room in which the Prime Minister and his colleagues would sometimes cook chops. In Canberra, the provisional Parliament House down the hill had accommodation for Prime Minister and Leader of Government in the Senate, seven single rooms for ministers and a Cabinet room for emergency meetings. Cabinet met for the first two years in West Block, but then moved into

Parliament House, and ministers got into the habit of spending more time in parliamentary offices than in their departments. That is the main reason why the building became too small.

This magnificent building has been described as a White House built inside the Capitol, a 10 Downing Street in the Palace of Westminster. Am I wandering from the subject of parliamentary speech? I trust not. The building itself, one of its few public critics has said, encourages a presidential style. We are being asked to believe that this election is about leadership. The relative value Paul Keating attributes to speech inside and outside Parliament may be gauged by looking at the recent collection entitled *Advancing Australia: The Speeches of Paul Keating, Prime Minister*, which includes four speeches made in Parliament and fifty speeches made elsewhere.

It is time for me to stop before I am gagged or guillotined. But I have one last word about speeches in this building. I wonder whether Parliament House will be host in a few weeks to the sports psychologist who was invited in after the last election to speak to 90-odd former Members and Senators about the trauma of losing.

Questioner — Other people's hesitation has tempted me to remind us of Socrates. Right back then we were being encouraged to know enough to ask intelligent questions. I think there are many people in the community today, which I consider a sick society, who do want some good repair work and better samples up here in this beautiful building. I want to remind people of something that a rabbi in Melbourne mentioned, which I remember all the time: to call for a leader is to give the victory to Hitler.

Questioner — Professor Inglis, you have mentioned quite a number of debates and speeches in your address. You have passed some comment upon how good you thought some of them were and have quoted other people's thoughts on how good they were. Do you have any favourite speeches?

Professor Inglis — I cannot think of a particular speech by Alfred Deakin, but there are some speeches of his that are a joy to read as examples of the arts of rhetoric. The first generation of federal parliamentarians were familiar with what Cicero and Demosthenes had written about oratory. They were engaging in oratory. I do find a kind of pleasure one could not hope to find now. Some of the best of those were in the early days.

One in recent times—perhaps it was in the top of my mind because I looked at it again for today's lecture—is that speech of John Curtin's at the time of the Coral Sea battle. I would just say amen to the reporter's every word. It was Alan Reid who made that description of it. I thought that was as fine a speech as Alan Reid did. I would have to think further on that to get a full answer, but thank you for the question.

Questioner — Professor Inglis, I have a question about New South Wales in the vernacular. You isolated those from New South Wales as being different. Did you come to a conclusion as to why you thought they were so different?

Professor Inglis — The traditional view which, on the whole, I was endorsing was that there has always been a peculiar roughness and tumbling about the politics of New South Wales. There appear to have been more ruffians in New South Wales Parliament than in the Parliament

of your home state of South Australia or the Parliament of my home state of Victoria as far as I know. How far this perception is mere genteel southern prejudice, I do not know.

Questioner — I wonder whether you think there has been any change in recent years due to the fact that people now largely ignore, in both Houses, the convention of addressing the Chair you spoke of?

Professor Inglis — I should think so. There must be people here who know more than I do about it. There was a letter in the *Canberra Times* recently from Robert Langdon, a scholar who had spent a long time as a parliamentary reporter. He said that he thought abuse would lose a lot of its power if people were not able to say, ‘You are the filthiest thing that ever came in,’ but instead had to say, ‘Mr Speaker, he is the filthiest thing that ever came in. He is a yahoo.’ I imagine that being required to address the Chair has a certain moderating influence, a reminder that what is being engaged in is debate.

Questioner — I wonder whether you have any comment on the old Member for East Sydney, Eddie Ward, because he comes up quite often in the histories?

Professor Inglis — Yes, indeed. He is one of the people who comes to mind in associating New South Wales with a really salty parliamentary idiom. He and Jack Lang—to pluck another name out of the air—probably had richer lexicons of abuse than anybody else in the House. I do not know that I brought out how cleverly abuse can be used and how witty it can be. Eddie Ward was a clever wit and used his profanity and vulgarity with great care and skill—not always for abuse.

There is a kind of clever comedy to Eddie Ward. His outgoing remark, not in the House but I think it was in the last Caucus meeting, was, ‘All I want to be remembered as is someone that everybody loved.’

Questioner — My question is somewhat similar to the previous one. What have been the most memorable interjections?

Professor Inglis — I do not know. I have mentioned a few. Off the cuff I cannot think. There is the problem that unless the Member on his or her feet responds to the interjection it does not get into *Hansard*. You, having worked in the old House, may well know remarks that were made at interjections that I have never heard of.

If I could go back to a previous question, people used to say that the convict heritage had something to do with New South Wales’s salty language. The first speech in the House of Representatives in 1901 was made by someone who had come to Australia as a convict. Isn’t that a nice piece of history? Mr Groom, the Member for Darling Downs, had arrived as a convict in the 1840s, was the oldest Member of the House when it opened in 1901 and made the first speech with, of course, no reference to how he had come to Australia, and died a few weeks later.

Questioner — I just have a comment on that New South Wales question, first of all. It is interesting that the New South Wales Parliament is often called the bearpit, just going back to that quality of tone emanating from New South Wales. Your comments on the differing styles of Paul Keating and John Howard are interesting. I was wondering whether you had any

comment on the relative qualities and differences of the speeches the two men delivered on the subject of the Australian Republic in this Parliament—those two great set speech occasions when Keating delivered the government's statement and, I think the night after, John Howard presented the reply. I think they demonstrate some interesting differences.

Professor Inglis — I have to say—and this is part of the problem, isn't it, of knowing about parliamentary speeches—that I did not hear either of them. I have looked at the text of Mr Keating's speeches in that collection of speeches, but I have not seen—but I will look at—the text of Mr Howard's. The sheer volume of speeches and the paucity of reporting can make it very hard. What did you think? Did you hear them both or have you read them both?

Questioner — I heard them both and John Howard's was, in fact, delivered apparently without notes. I thought on the occasion Keating, because he deeply believed in the subject, probably presented the finer speech. But that is an observation.

Professor Inglis — Was he reading?

Questioner — Both reading and off the cuff.

Questioner — The cold printed record of the speech or interview can sometimes be misleading. I wondered whether, in your research, you make much use of the audiovisual record which is kept of speech making in the Parliament, perhaps capturing some of the flavour and the personality. I am thinking, for instance, that Bob Hawke often spoke in the style in which he used to harangue an ACTU congress or Tim Fischer still seems often to be addressing the troops.

Professor Ken Inglis — Nice point. I do want to make use of audiovisual records. In the book I am working towards about speeches in Australian history, I hope that there will be an accompanying CD. The technology being as it is, who knows, there may be visual bits too. There is some interest from the ABC in collaborating with me on that. The ABC sound archives have superbly indexed tape records—a computer index—so you can find your way within speeches to all sorts of things.

I wonder whether Bob Hawke would have been wiser to employ a speech writer more than he did and stick closer than he did, when he did have a speech writer, to the text that he had been given. I think he was still being affected by the style of advocacy which he had developed before industrial tribunals, which were prepared to listen all day to what anyone said. It is no accident, I think, that the one Prime Minister about whose speech a word has been coined is Bob Hawke—Hawkespeak.

Questioner — I have two points. The first is that you have not said anything about speed of delivery, and that is obviously something that was difficult in the past. But I certainly remember, as many will here, the speed at which Les Haylen, Eddie Ward or, of course, Fred Daly spoke. I do not know whether that shows up in the sanitised *Hansard* reports anymore. The second question—a bit more serious—is: how important do you think it is or was then and now that a leader be able to speak well and to have a commanding presence in the House? I am remembering the fact that in the 1960s Harold Holt was not able to give two speeches on the one day. He was wiped out by his speech on the VIP aircraft issue and could not speak on

Vietnam. There was a tremendous sense that he really dropped the ball and it mattered. I do not know whether it would matter so much now.

Professor Inglis — I wonder. I think it still matters. The first question is the best possible example of how reading *Hansard* gives you no idea about delivery. How would you know? You might be able to work it out. Yes, the time of starting is given and the time the next speaker starts is given, so you could work out how many words a minute were spoken. The other thing would be for the poor *Hansard* reporters to testify.

I think the ability to speak compellingly in the House is important. I have just thought of one example in reply to a previous question. Probably the most fatal interjection ever made in recent times was when Mr Snedden, trying to imitate that slightly airy, fluffy diction of Mr Whitlam said, ‘Woof, woof.’ The disappearance of Mr Snedden can be dated from that moment, I think.

Note: The research material used in this speech was gathered by Professor Inglis as part of his work in progress for a forthcoming book on speeches in Australian history.

Independents in a Multi-Party System: the Experience of the Australian Senate*

Dr Gwynneth Singleton

Since political parties have taken control over the proceedings of legislatures, party government has become the norm in most parliamentary systems. This principally has taken two forms—the two-party or multi-party system. In a two-party system, two parties compete for office in an adversarial contest. Control of government is delivered to the party which secures an overall majority in the Parliament. A multi-party system exists when no one party can govern alone and co-operation between the parties is required to form or maintain effective government.¹

It has been suggested in some political science texts that Australia has a two-party system because only two parties in the House of Representatives, the Australian Labor Party and the Liberal Party, are likely to form government. For convenience sake the long-standing coalition between the Liberal and National parties in government, and more often than not in opposition, has been fused into a single unit to sustain the analysis, or explained away as a two-and-a-half party system.²

The situation is more complex. This two-party explanation does not take account of the constitutional provision of the Senate as the second Chamber in Australia's Parliament with

* A short version of this paper was presented by Dr Singleton as a lecture in the Department of the Senate Occasional Lecture Series at Parliament House on 22 March 1996. A Senior Lecturer in Politics at the University of Canberra, Dr Singleton was the inaugural Honorary Fellow of the Australian Senate in 1995.

¹ J. Blondel, 'Consensual politics and multi-party systems', *Australian Journal of Political Science*, vol. 30, 1995, special issue, pp. 7–26.

² A. Lijphart, *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries*, Yale University Press, New Haven, 1984.

equal powers with the House of Representatives, except for restrictions on the initiation and amendment of money bills. Governments have not always had majorities in the Senate because of the staggered system of half-Senate elections and, more significantly, the introduction of proportional voting for the Senate in 1948, which provided the capacity for the Senate to break away from the two-sided model of politics. This became apparent when the split within the Australian Labor Party of 1955 saw two members of the Democratic Labor Party elected to the Senate. The trend was reaffirmed with the success of the Australian Democrats in 1977 with two Senate seats and the election of a number of Independents.

No government has held a majority in the Senate since 1981. Minor parties and Independents have held the balance of power in the sense that they have had the decisive vote in any contested division between the opposition parties and the government. The fact that the government has to negotiate with these groups to secure passage of its legislation suggests the Australian parliamentary system more accurately should be described as multi-party in practice.³

The balance of representation in the Senate after the 1993 election strengthened the multi-party analysis:

Australian Labor Party	30
Liberal-National parties	36
Australian Democrats	7
The Greens (WA)	2
Independent (Harradine)	1

The Keating Labor government after 1993 needed nine votes from a mix of the minor parties and Harradine to pass its legislation through the senate (Senator John Devereux, a former Labor Senator, who sat in the Senate as an Independent from 1995 until he resigned to contest the February 1996 Tasmanian state election, continued to support the government).

The impact of this non-government majority can be seen from the following record of bills passed through the Senate for 1994:

Total number of bills considered by Senate	217
Number of bills in which amendments were moved	95
Number of bills to which amendments were agreed	60

(Source: *Business of the Senate* 1 January 1994–31 December 1994, Department of the Senate, Canberra).

³ D. Jaensch, *Parties, Parliament and People*, Longman, Melbourne, 1991.

An examination of the source of amendments moved at committee stage indicates in raw figures the impact of the government's minority on its legislation:

Democrat amendments	
Agreed to	48
Negatived	145
The Greens (WA) amendments	
Agreed to	34
Negatived	95
Independent amendments	
Negatived	3
Opposition amendments	
Agreed to	83
Negatived	40
Government amendments	
Agreed to	540
Negatived	2

(Source: *Business of the Senate*, 1 January 1994–31 December 1994, Department of the Senate, Canberra).

The large number of government initiated amendments suggests the degree of compromise needed to secure passage of legislation. The figures do not reveal those amendments to government policy negotiated and agreed prior to a bill being drafted and presented to Parliament. Overall, the figures confirm a government having to conciliate and work with the Opposition, minor parties and Harradine to secure passage of legislation.

John Uhr has argued the multi-party hypothesis most forcefully in pointing to the impact of the minor parties in forcing amendments to the government's 1993 budget in order to secure its passage through the Senate; obtaining greater access by non-government Senators to government information and justifications for ministerial decisions; imposing time limits on questions and answers in Senate question time and changing Senate procedures to allow some committee Chairs to be held by non-government Senators.⁴ Previous practice had been for Senate committees to have government majorities and be chaired by a government Senator.

The 1994 changes to the Senate committee system, which came about as a result of pressure from the Opposition parties and the Australian Democrats, allocated the membership and Chair of references and other committees (except legislation committees where the Chair remains a government Senator) on the basis of representation of parties and Independents.⁵

⁴ J. Uhr, 'Proportional representation in the Australian Senate: recovering the rationale' *Australian Journal of Political Science*, vol. 30, 1995, special issue, pp.127–141.

⁵ For a comprehensive explanation of these changes, see H. Evans, 'Restructuring the Senate's Committee System', *Canberra Bulletin of Public Administration*, no. 78, August 1995.

The Opposition and minor parties have used their majority in the Senate and the new committee procedures to establish select committees with non-government majorities and non-government Chairs to inquire into areas of government policy and ministerial performance. The government may consider it has no formal responsibility to act upon the recommendations of these committees because the government is formed by the majority party in the House of Representatives, but media coverage of the proceedings forces the issues onto the political agenda so the government has to defend its policies and its performance. Failure to do so may result in substantial electoral damage.

The multi-party analysis is rendered complex in the Australian experience by the inclusion of an Independent in the potential coalition of votes required by the government to secure the passage of its legislation. The question is, how do Independents fit into the concept of a **multi-party** system? To approach this issue, this paper will compare the characteristics of a multi-party system with the way Independents operate, using the experiences of Independent Senator Brian Harradine, who has sat in the Australian Senate since 1975, as an example.

The multi-party system

Multi-party government disperses formal powers of political initiative because the policy-making process is opened to scrutiny and influence by those minor parties whose votes are needed, and to those interest groups with whom they have links or a sympathy of understanding.⁶ Coalition building and consensus formation is necessary to produce a governing majority in those legislatures where no one party has the numbers to control the proceedings.⁷ This can take the form of:

- a formal, stable coalition of parties in government, such as between the Liberal and National parties in the Australian House of Representatives;
- issue-based consensus where a minority government has to secure the agreement of minor parties or Independents for each piece of legislation. The minority Fahey government in New South Wales, for example, needed to get the agreement of Independents to secure passage of its bills through the Legislative Assembly.

Australian governments operating within a bicameral parliamentary system have to secure passage of their legislation through a second Chamber. The New South Wales Fahey government, for example, not only had a minority in the Legislative Assembly, it lacked the numbers also in the Legislative Council, where it had to gain the support of minor parties to pass its legislation through the Parliament. The Commonwealth government, as we have seen, in recent years has had control of the House of Representatives, but not the Senate.

The maintenance of stable and effective government in a multi-party system requires that ‘all the forces involved in public decision making, directly or indirectly, either work in harmony or strive towards harmony’.⁸ A two-party system based around electoral competition and

⁶ I. Marsh, *Policymaking in a Three Party System*, Methuen, London, 1986.

⁷ *ibid*; Lijphart, *op.cit.*, Chapter 2.

⁸ J. Blondel, *op. cit.*

parliamentary opposition discourages 'public bipartisanship on any aspect of any issue'.⁹ This is more pronounced in a multi-party system with a number of parties contesting for electoral support, each with its own political agenda and policy preference, but it is not impossible. It depends on the motivation and objectives of the parties. If the goal is political power for its own sake with the discomfort and dislodgment of the government as the key objective, then there is less likely to be an interest in conciliation and consensus that would help keep it in power. Under these conditions, only an unfavourable electoral climate would encourage parties to enter into a negotiated compromise.¹⁰ Parties that are ideologically opposed to the government would be less likely to reach agreement on areas of significant difference.

If the aim of the parties is to affect public policy, then coalition building would take place on an issue-by-issue basis and minority governments would survive, provided they satisfied the policy aspirations of a majority of their Opposition.¹¹ Even when the parties are in broad agreement over policy goals, they can disagree on the means of achieving them.¹²

Different characteristics of minor parties identified by Duverger will affect the conditions under which successful coalition building and consensus can be achieved. 'Personality' minor parties with no real organisation or social substructure, 'fairly fluid and shifting, not based on any precise doctrine ... founded under the banner of opportunism or of shades of opinion' are more likely to be open to persuasion, whereas 'permanent minority parties' with characteristics of a 'spiritual family', including a marked ideology or set of principles will coalesce only on their own terms.¹³

The greater the number of parties involved, the more difficult it will be to find common ground.¹⁴ A multi-party system which reflects the deep cleavages in society on religious, language or ideological grounds clearly will make it even more difficult.¹⁵ Multipartyism in itself is not the problem. The key to consensus in a multi-party system is the degree of heterogeneity between the parties.¹⁶

The Australian experience reveals that to be the case. The Democratic Labor Party (DLP), split away from the Australian Labor Party (ALP) in the 1950s under conditions of such hostility that it used its balance of power in the Senate between 1972 and 1974 to block legislation because it was put forward by an ALP government. The Greens (WA) are firmly

⁹ I. Marsh, op. cit.

¹⁰ M. Laver and N. Schofield, *Multiparty Government: the Politics of Coalition in Europe*, Oxford University Press, Oxford, 1990.

¹¹ M. Laver and B Hunt, *Policy and Party Competition*, Routledge, New York, 1992.

¹² M Sjolín, *Coalition Politics and Parliamentary Power*, Lund University Press, Lund, Sweden, 1993.

¹³ M. Duverger, *Political Parties: Their Organization and Activity in the Modern State*, Methuen, London, 1959.

¹⁴ J. Blondel, op. cit.

¹⁵ A. Lijphart, op. cit.

¹⁶ J. Lane and S. Ersson, 'Multipartyism' in M. Holler (ed.) *The Logic of Multi-party Systems*, Martinus Hijhoff, Dordrecht, the Netherlands, 1987.

wedded to a set of principles on environmental issues, equity and human rights, on which, like the Nuclear Disarmament Party before them, they will not compromise. The Australian Democrats' broad sympathy of understanding with the Keating government on some issues relating to social justice, did not prevent disagreements over the means of achieving them. They were not prepared to compromise their principles on issues involving equity and the environment.

The methods used to achieve an accommodation with the minor parties in the Senate have included:

- compromise by both sides;
- concession by the government to minor party demands in return for support for a particular piece of legislation.

Blondel, in his study of multi-party systems in Europe, found four out of five instances of patronage to secure consensus.¹⁷ The Australian experience involves 'a spoils system' or a positive-sum outcome, where the benefits have been shared between the negotiating parties, for example, the Keating government's concessions to secure the support of minor parties and Harradine for its Native Title Act, and the exchange of preferences from time to time between a major and a minor party in return for support for particular policies (a critical factor in both the proportional and preferential voting systems used for the Australian Senate and House of Representatives elections).

But governments might not be willing to compromise or make concessions. This leaves it two alternatives: to abandon the legislation; or take the issue to the people. The latter is risky unless the government is confident it has sufficient electoral support to win and the particular issue at stake is likely to become submerged within the broader context of the party political contest. For that reason a government is more likely to compromise on the detail to achieve its broad policy objective.

The Australian multi-party system is semi-consensual in that it is 'pivotal' where the minor parties and Independents move in and out of coalition. This is similar to experiences in the Netherlands, Belgium and Italy.¹⁸ But it is different also, because the minor parties have not entered into a formal coalition with the government and their voting record has been flexible and fluid, as this history of the voting in divisions of The Greens (WA) reveals:

¹⁷ J. Blondel, *op. cit.*

¹⁸ *ibid.*

	With Government against Opposition	With Opposition against Government
Senator Vallentine (1.7.90–31.1.92)	39	11
Senator Chamarette (24.3.92–30.6.93)	71	10
Senators Chamarette and Margetts (17.8.93–4.2.94)	105	25

(Source: Senate Table Office)

Historical experience and the desire to avoid a repetition of that experience is another factor that encourages consensus.¹⁹ This is true to some extent in the Australian Senate. The deadlock between the Senate and the Whitlam Labor government in 1975 over the passage of the Supply Bill which led to the sacking of the Whitlam government by the Governor-General, has left its legacy. The government, wary of the potential power, is more likely to negotiate, while the pledge by the Australian Democrats not to block Supply provided an incentive to reach an accommodation with the Keating government over its 1993 Budget bills. Nevertheless, neither The Greens (WA) nor Senator Harradine were prepared to give the same commitment.

The conditions of multipartism in the Australian Senate have been such that government can reach an accommodation with minor parties only on those issues where it has a commonality of interest or where it has been prepared to make concessions for the sake of securing its broader objectives or staying in government.

The literature on coalition and consensus-building derives principally from the experiences of political parties, yet the Australian Senate has seen situations where an Independent has held the pivotal position between the government and opposition parties. Do Independents in this situation behave differently from political parties?

Independents in a multi-party environment

Consensus cannot be achieved unless there is harmony and a sympathy of understanding between the negotiating parties. Party members are restricted by the conditions of their party membership to cast their votes in the Parliament within the framework of party policy. Because these strictures do not apply to the Independent, it might be assumed that the exercise of independent judgment in a fluid, open and flexible manner would be the prime directive of their votes in the Parliament. This is not the case.

Independents are influenced in their voting in much the same way as representatives of political parties, by constituency and ideology. An Independent may be elected for a variety of reasons—a protest vote against the party system, a disaffected former member of a major party who has strong personal support in the electorate, a local personality with strong links to

¹⁹ *ibid.*

the community, or a proponent for particular interests or issues. Independents have their own particular ideology in terms of what they ‘stand for’, a view of the good society and how to achieve it, which is not likely to change over time. They also will have some form of organisation to assist at election time ‘with an independent existence and continuity’.²⁰

Independents must have some form of constituency-based group, even if only to assist in the organisation and funding of their election campaign. This may not be as formal as the organisational structure of a political party, but will perform many of the same types of functions such as doorknocking or handing out ‘how to vote’ cards at the polling booth on election day on behalf of the candidate. Independent Member of the ACT Legislative Assembly, Michael Moore, for example, has an informal group of volunteers who come together at election time for this purpose. He also has a continuing small core group of supporters whom he finds keep him in touch with the primary beliefs and views that led him into politics. Unlike political parties, however, his supporters’ group does not have any formal say in his election platform.

Clover Moore, Independent Member in the New South Wales Legislative Assembly, works in a similar fashion, relying on volunteers to provide research assistance in the electoral office, fundraising, doorknocking, letterboxing of leaflets and distribution of a regular newsletter. Clover Moore also receives assistance from volunteers who are specialists in areas such as town planning or gay and lesbian matters which are important issues in her constituency.

Some Independents have taken on the form of political parties by registering a formal slate of candidates for electoral purposes. Michael Moore, for example, stood at the 1995 ACT Legislative Assembly election with a group registered as the Moore Independents to gain advantage of the ACT electoral system, which provides for grouped candidates to have their own column on the ballot paper, allowing easier voter identification, whereas ungrouped candidates are placed together in the same column. Conventional wisdom has it that ungrouped candidates rarely get elected.²¹

Constituency ties for the Independent are particularly strong as they rely for their continued place in the Parliament on satisfying that constituency. The options for an Independent in deciding how to vote in the Parliament have been identified as:

- to seek to do what it is perceived the constituency want;
- to act according to what is believed is best for the welfare of the constituents;
- to act on his or her own judgement, unless bound by campaign promises.²²

The fact that ‘a constituency is not a single unit with a ready-made will or opinion on every topic’²³ presumably allows the Independent scope to exercise personal judgement on what is believed to be best for the welfare of the constituents, but how do you identify what is in the best interests of a constituency made up of multiple contending and conflicting interests?

²⁰ D. Aitkin, B. Jinks and J. Warhurst, *Australian Political Institutions*, Longman Cheshire, Melbourne, 1989.

²¹ Interview with P. Green, ACT Electoral Commission.

²² H.F. Pitkin, *The Concept of Representation*, University of California Press, Berkeley, Calif., 1967.

²³ *ibid.*

The answer lies in the close connection between the ideology of the Independent and the constituency interests that supported the candidate for that reason. The first priority of Independents wishing to secure re-election, must be to look after the interests of those who provided the electoral support that got them into Parliament, the ‘campaign promise’ factor. We can find here a strong empathy between Independents and Duverger’s typology of **personality-based** and **minority-based** minor parties discussed above.

Ted Mack, former Independent Member of the Australian House of Representatives, was very much a ‘personality’ type Independent, who viewed party government as an ‘elected dictatorship’. He was elected because of his commitment to and record of service in meeting local community needs as independent local major and Member of the New South Wales Legislative Assembly. Mack’s strong belief in direct democracy and consultation with the electorate caused him to vote according to his constituency needs, and only where this was unclear did he make a private choice.²⁴

Jo Vallentine, who began her parliamentary career as a member of the Nuclear Disarmament Party (NDP) but then sat in the Australian Senate as an Independent Senator for Nuclear Disarmament, was very much in the mould of the ‘spiritual family’ of **minority-based** minority parties. She considered her mandate was purely to the NDP constituency and did not take part in votes on other issues. Her selectivity, which continued after she changed her affiliation in 1990 to The Greens (WA), is evident from her voting record:

Year	No. of Divisions	No. times voted
1990	107	40
1991	150	48
1992 (retired January 1992)	221	0

(Source: Senate Table Office)

Between 1 July 1990 and 31 January 1992, thirty of Vallentine’s votes cast in divisions were in favour of the government and eleven in favour of the Opposition.

Other Senators who parted company with their party for a range of reasons, have remained in the Senate as Independents, but this does not mean that their votes then became more open and fluid, because the principles that attached them to their original party affiliation remain the principal determinant of their voting activity in the Parliament. Examples are Senators Janet Powell and John Siddons, who resigned from the Australian Democrats, and Senator John Devereux, of the Australian Labor Party.

²⁴ Interview with Ted Mack, former Independent Member for North Sydney, House of Representatives.

Brian Harradine

Senator Brian Harradine provides a pertinent study of the role of Independents in the Senate, because unlike many others who were elected to represent a particular party and then resigned their party affiliation to sit on as Independents, he was elected to the Senate in 1975 as an Independent, where he is seen to be ‘a solitary figure’ and a ‘political loner’. Harradine has stated that he is the ‘only Tasmanian senator who will not be told what to do by a political party’, with the advantage of being able ‘to set one’s own agenda, determine one’s own priorities’.²⁵ This is certainly true in terms of his ability to vote in the Parliament without direction from any party organisation. Nevertheless, Harradine’s strong commitment to his own set of principles and to his constituency underpin his longevity in the Parliament and provide direction to the way he votes in the Parliament. He could not have achieved that success without some form of supporting organisation.

Organisation

Harradine has a group of dedicated voluntary workers who assist him during election campaigns and between elections with ‘captains of areas’ to coordinate these activities. He was assisted in his 1983 campaign for re-election, for example, by 500 voluntary workers throughout Tasmania who assisted in doorknocking and distribution of pamphlets.²⁶ Harradine regularly keeps his workers informed about what he is doing and they, in turn, provide constant feedback to him on the concerns of the electorate.

In response to the introduction of optional bloc voting for the Senate, Harradine took advantage of provisions of the Commonwealth Electoral Act (Section 125) which provides for the registration of a parliamentary party, at least one member of which is a parliamentarian, to establish the Brian Harradine Group and stood at the 1987 election with a colleague, Kath Venn. In 1992 he applied to change the ‘group’ name to Tasmanian Independent Senator Brian Harradine Group. Harradine took advantage of amendments to the legislation in 1992 that enabled a registered political group to field only one candidate and not to run a slate of candidates at the 1993 election.²⁷

The Harradine ‘group’ of supporting candidates and helpers provide an organisational support base characteristic of political parties.

Ideology

The set of principles which have underpinned Harradine’s parliamentary career have a mixed and related parentage in Catholicism and the labour movement, the former imparting the spiritual and ideological foundations for his exposition of equity and social justice for the family, society and at the workplace. Harradine’s ‘philosophical wellsprings’ derive from his

²⁵ *Bulletin*, 6 November 1984; *Canberra Times*, 13 November 1994; *Age*, 5 March 1993; *Ring the Bells*, 4 August 1989, transcript.

²⁶ B. Harradine, *Senator Brian Harradine (Ind. Tas.): 1983 Re-election Campaign—Background Information for Interstate Media*, 1983.

²⁷ Interview with Brian Harradine, Independent Senator for Tasmania.

‘Christian morality’,²⁸ reinforced by four years at a Catholic seminary, where he studied religion, philosophy and sociology. There is a view of Harradine as ‘a living Catholic whose Catholicism shapes his every attitude’, including his political values which are ‘firmly, unshakeably in place’.²⁹ His strength of purpose is reflected also in his long-term commitment to the labour movement and the protection of workers’ rights and conditions. Harradine was a prominent figure within the right wing of the Australian Labor Party and the trade union movement. Between 1964 and 1976 he was General Secretary of the Tasmanian Trades and Labour Council. He was expelled from the Australian Labor Party in 1975 for statements about communist influence within the party.

Harradine’s commitment to principle is evident in the consistency in which he has rigorously pursued a range of issues during his lengthy parliamentary career. These include:

- **Family policy** In 1987 Harradine argued that the family was under economic and moral attack, that government was usurping its functions when it should be supporting it as the fundamental unit of society. Economically, families with children were being subjected to discrimination through the devaluation of the family allowance and indirect taxation.³⁰ In 1994 he called for fiscal measures to ensure ‘a true economic freedom of choice for the mother who wishes to care for her own young children in her own home’.³¹ In his view, ‘families under pressure and disintegrating make for a very sad and long social decline’.³²
- **Anti-abortion** He opposed the introduction of the abortion drug RU486 into Australia.
- **Coercive population programmes** Opposed overseas aid money being spent on international population control bureaucracies and on target driven population related activities which are inherently coercive.³³
- **Human genetic manipulation** He argued this will pose grave problems for the whole of mankind.³⁴
- **Anti-pornography** He pursued, in recent times, through his membership of the Senate Select Committee into Community Standards, the examination of the issue of R-rated programmes for pay TV.

²⁸ *Bulletin*, 6 November 1984.

²⁹ *Sydney Morning Herald*, 5 September 1981.

³⁰ *Age*, 3 July 1987.

³¹ *Commonwealth Parliamentary Debates*, Senate, 31 August 1994.

³² B. Harradine, “*First ... Do No Harm*”: *Families and Government Economic Policy*. Address to Centacare National Conference, Hobart, 12 August 1994.

³³ Innumerable *Hansard* references, the latest being Senate Foreign Affairs Defence and Trade Legislation Committee of 13 November, p. 234 & ff.

³⁴ *Ring the Bells*, 4 August 1989.

- **Equity** This has been a driving philosophy ‘to assist in the creation of an economic and social order in which persons can live with freedom and dignity and pursue both their spiritual development and material wellbeing in conditions of economic security and equal opportunity’, including a deep commitment to the rights and wellbeing of Australia’s indigenous people.³⁵ Harradine has consistently opposed ‘unjust and unnecessary sales taxes’ arguing in 1981 that ‘introducing sales tax on necessities, such as clothing, footwear and house building materials was disregarding the welfare of Australia’s lowest income earners.’³⁶ In 1995 he maintained that position when he combined with the Australian Democrats to defeat a Keating government proposal to increase the sales tax on building materials: ‘I strongly feel’, he said, ‘that necessities of life should not be taxed. I believe that shelter happens to be one of those necessities of life and building materials fall into that particular category.’³⁷
- **Industrial relations** In parliamentary debate on the industrial relations system in 1984, Harradine set out a framework of principles which he considered important to orderly industrial progress, including encouragement of effective, responsible trade unions working in the best interests of their members, the encouragement of members to participate fully in union affairs, the coordinated and disciplined action of trade union members, and self-disciplinary rules for individual unions.³⁸ In 1988 he spoke against union amalgamation: ‘I stand here on behalf of 100,000 trade union members in Australia who will be forced out of their unions into others, to express the feelings they may experience as a result of this legislation’. In 1992 he supported the arbitration system, stating ‘I have always upheld the right of final recourse to an arbiter as a means of ensuring a fair go’.³⁹ In 1993, he voted with The Greens (WA) to seek changes to the 1993 Budget, which he believed unfairly attacked workers.⁴⁰

The constituency

Harradine never loses sight of the fact that he is a ‘Tasmanian Senator, elected by Tasmanian citizens, and that my state needs to fight every inch of the way for recognition within the federal system’.⁴¹ He has expressed concern, for example, about the cost of travel between Tasmania and the mainland,⁴² and opposed the price increase on leaded petrol in the 1993

³⁵ *Age*, 5 March 1993; *Commonwealth Parliamentary Debates*, Senate, 16 November 1994, p. 3199.

³⁶ *Courier-Mail*, 15 September 1981.

³⁷ *Commonwealth Parliamentary Debates*, Senate, 28 June 1995, p. 2026.

³⁸ *Commonwealth Parliamentary Debates*, Senate, 24 October 1984, p. 2357.

³⁹ *Commonwealth Parliamentary Debates*, Senate, 10 December 1992, p. 4744.

⁴⁰ *Age*, 22 August 1993.

⁴¹ *Canberra Times*, 9 July 1978.

⁴² *Ring the Bells*, 4 August 1989.

Budget because of its ‘discriminatory treatment of poor people, particularly poor people in regional Australia and outlying states like Tasmania’.⁴³

The constituency that has supported Harradine whenever he has come up for re-election, presumably is in broad agreement with his values and principles, otherwise they would not have voted for him. On his election to the Senate in 1975 he said: ‘Don’t call it a personal success—it’s not. It is a success for the principles I stood for and the people who voted for those principles.’⁴⁴ Media reports described those people as traditional Labor voters, with his success in obtaining nearly two full Senate quotas due to ‘tremendous spontaneous support, both financial and manual’, from the public and ‘a strong following among the right-wing unions and Catholics’.⁴⁵ In 1981, a constituent wrote that Harradine was ‘popular purely because people like myself can identify with his principles’.⁴⁶ In an interview for *Ring the Bells* of 4 August 1989, Harradine made the point that he had ‘an extensive range of contacts in the community’ in the areas of his priorities. The strong link between his principles and this constituency support is reflected in Harradine’s statement that he would use his position in the Senate for two main purposes:

I will fight to get a better deal for Tasmania. I don’t think we have been getting a fair go. And I will be a force which understands the problems of power. I will work to preserve the integrity of groups such as trade unions and our educational system.⁴⁷

It is this nexus between ideology and constituency that has sustained Harradine’s place in the Senate for over twenty years.

Harradine and the Senate

The firm values and ideas and commitment to constituency, described above, are consistent and immutable in Harradine’s statements and votes in the Senate. He has stated that his pursuit of issues in the Senate is based ‘upon an assessment of the priorities of persons of goodwill and in particular those who elect me and form part of my group’.⁴⁸ The range of Questions Without Notice he asked during 1994 included topics related to the import of the drug RU4865, coercive population programmes in Indonesia, funding of the National Health and Medical Research Council, freight equalisation, and population growth and development.

⁴³ 7.30 Report, 18 August 1993, transcript.

⁴⁴ *Canberra Times*, 15 December 1975.

⁴⁵ *Australian*, 25 December 1975.

⁴⁶ *Examiner* (Launceston), 19 June 1981.

⁴⁷ *Courier-Mail*, 15 December 1975.

⁴⁸ Communication with author, 14 March 1996.

There have been occasions when he has been persuaded by argument to change his mind on a particular issue, such as amendments to the Native Title Bill,⁴⁹ but his decisions have been firmly grounded in his principles. In deciding whether or not to support an Opposition proposal for an inquiry into sports funding, for example, he said: ‘I want to hear the arguments for and against an inquiry. I particularly want to hear the arguments as to whether the accountability of the executive government to the people through the Parliament has been satisfied through the resignation of one minister.’⁵⁰ He voted with the government and the Australian Democrats against the Opposition motion, only after he had extracted a commitment from the government for improvements in accountability.

This does not mean his vote will always be courted. It will occur only when his vote is critical for a majority in favour of the government. Between 1976 and 1980, for example, ‘he sat unwanted and unloved by the major parties, watching the Fraser government taking advantage of its Senate control’.⁵¹ He was unable also to introduce a Private Member’s bill for the want of a seconder.⁵²

In the period between 1981 and 1983 when Harradine’s role was pivotal, it was different. Without his vote, the Labor Opposition and the Democrats were restricted to a negative role of rejecting or blocking government legislation in the Senate, and the government could not head off initiatives taken jointly by them. Harradine used this position, for example, to warn the government he would oppose any attempts to manoeuvre business through the Senate by incorporating it in Appropriation bills.⁵³ Harradine explained, ‘it depends on the arrangement of numbers. There was a time, of course, when my vote was the vote which either decided or didn’t decide issues. There was a period of about three years of that. There is a noticeable decline in the attention that one receives when one is not in that position.’⁵⁴

Between 1993 and 1996 Harradine shared the pivotal position with the Australian Democrats and The Greens (WA). If both minor parties voted with the government or the Opposition, then Harradine’s vote was not critical to the outcome and coalition building on his terms proved difficult. In 1994, for example, he could not gain sufficient support to carry any of three amendments he proposed. The only time his vote was pivotal was on those occasions when the Australian Democrats voted with the government and The Greens (WA) voted with the Opposition:

⁴⁹ *Commonwealth Parliamentary Debates*, Senate, 16 November 1994, p. 3199.

⁵⁰ *Australian Financial Review*, 3 March 1994.

⁵¹ *Age*, 21 August 1993.

⁵² *Canberra Times*, 3 January 1982.

⁵³ *Canberra Times*, 14 November 1981.

⁵⁴ *Ring the Bells*, 4 August 1989.

Government	30	Opposition	36
Australian Democrats	<u>7</u>	The Greens (WA)	<u>2</u>
Total	37	Total	38

Harradine's vote under these circumstances was decisive for the government to block amendments to its legislation, because on a tied vote the question is resolved in the negative. The results were not favourable for the Keating government, as this analysis of Harradine's voting record in divisions between 1993 and 1995 shows:

Voted against the Government

Committee divisions	130
Senate divisions	131

Voted with Government

Committee divisions	44
Senate divisions	57

Harradine has had avenues of influence, other than his parliamentary vote. Having come out of 'the fire of ALP factionalism',⁵⁵ Harradine has been a master at using the forms and procedures of the Senate to his own advantage. For example, he pioneered the procedural strategy of splitting off from a bill sections to which he is opposed.⁵⁶ He has referred to occasions when he has had amendments prepared and circulated yet never formally moved, because negotiations have seen their intent subsumed into the legislation, and of success at 'log-rolling', gaining agreement of the major and minor parties from time to time to support initiatives in which he has an interest.⁵⁷ More significant, however, has been his work on parliamentary committees, including a substantial commitment to the work of the Joint Committee on Foreign Affairs, Defence and Trade and its Human Rights Sub-committee.⁵⁸ His opposition to industrial relations legislation proposed by the Fraser government led to the establishment of a Senate Select Committee on Industrial Relations, of which Harradine became Chair. Because of that committee's work, he argues, the legislation was defeated.⁵⁹ Harradine has used his position on the floor of the Parliament and in committees to make government confront issues which they 'might otherwise allow to slide past'; for example, his opposition to retrospective tax legislation and treating homosexual partners and unmarried partners as spouses for purposes of posting and overseas travel.⁶⁰

⁵⁵ *Sunday Review*, 2 May 1971.

⁵⁶ *Canberra Times*, 4 November 1981.

⁵⁷ Interview with Brian Harradine, 1996.

⁵⁸ For an example of his effectiveness in extracting information and a response from government on issues in which he has an interest see Senate Estimates Committee *Hansard*, 8 November 1993, pp. 332–336.

⁵⁹ Interview with Brian Harradine, 1996.

⁶⁰ *Bulletin*, 6 November, 1984.

Harradine's record suggests that if a government is going to deal with him, it must do so on his terms. Consensus will be achieved only if the interests of the government and Harradine are compatible, or if the government is prepared to make concessions to gain his support.

The paradox of independence

There is a perception that Independents, unlike political parties, have the luxury of being 'populist' in their approach to policy, free to oppose the government's hard decisions with no responsibility for the results of their voting decisions,⁶¹ yet the paradox of independence is that Independents are not free. They are bound by their principles and their constituencies.

Some, like Harradine, have entered Parliament with strong individual views and principles from which they will not divert.⁶² Those who have split from their parent parties for reasons of principle are similarly identifiable. Others who have done so for personal reasons, such as disappointed ambition, have gone on to find structural and collegial support within another party or departed the political scene at the next election.

Independents exhibit similar characteristics to those ascribed to political parties. They enter Parliament with the intention of exercising some control over the state,⁶³ they have a supportive organisation and colleagues and respond to a variety of forces, including the structure and interests of the electorate, 'the moves and countermoves' of the parties and the institutional and legal setting in which they compete.⁶⁴ Australian Independents have acted like parties in the following ways:

- (a) mediating information from the voters;
- (b) focusing attention on and channelling voter opinion and evaluation on policy issues;
- (c) shaping voter preference in terms of their platform;
- (d) recruiting political personnel and presenting candidates to the electorate under their banner;
- (e) having an organisation that has taken an active part in elections, including assistance in election funding, campaigning and supporting the candidate by active propaganda.⁶⁵

If Independents exercise their power in the Senate against the interests of the constituency for which they were elected, they will find, like political parties, their 'popularity' and their seats in jeopardy.

⁶¹ *Australian Financial Review*, 8 March 1994.

⁶² For example, Cleary and Mack in the House of Representatives, the former a 'true believer' in Labor principles, the latter, an opponent of party government with a commitment to direct democracy.

⁶³ A. Ware, *Citizens, Parties and the State*, Polity Press, Cambridge, Eng., 1987.

⁶⁴ J Schlesinger, cited in S.B. Wolinetz (ed.), *Parties and Party Systems in Liberal Democracies*, Routledge, London, 1988, p. 5.

⁶⁵ M Duverger, cited in M.J. Holler (ed.), *The Logic of Multiparty Systems*, Nijhoff, Dordrecht, the Netherlands, 1987, p. 25.

The effectiveness of Independents relies on how critical their votes are in the Parliament. This is no different to minor parties in the same situation. The rules of the game for a minority government are the same, regardless of whether they are dealing with the Opposition, minor parties or an Independent, it requires coalition building through negotiation to reach consensus. The strength of purpose of Independents may make that more difficult. Independents do not have to sacrifice principles to maximise their vote.⁶⁶ Indeed, adhering to the principles upon which they stood for election will reinforce the support of their constituency.

Graham Maddox has pointed out that ‘minor parties and independents are indispensable for infusing new issues into the political arena and, at least sometimes, for keeping the big parties on their toes’.⁶⁷ He argues, however, that ‘the conceptual importance of the two-party system remains; for “party” is the facilitator of opposition, a necessary condition of modern democracy’. Independents, he states, should be viewed with some scepticism—‘the price of the benefits they bring might be an acceptable measure of instability, but we may also be sure that persistent instability is a threat to democracy’. This may be so in terms of the *ancien regime* that considered Australian federal government to be modelled on the two-party system. It does not accurately reflect the conditions of minority government imposed by the multiparty Senate in 1996 where coalition building and consensus, by necessity, will be the name of the game.

The reality of the situation facing the Howard government is best expressed in the words of Christine Wallace of the *Australian Financial Review*:

Confident leadership is necessary but not sufficient for good government. Politics is, after all, the business of persuasion. For the foreseeable future in Australia, government will have to persuade the Senate (in particular the Australian Democrats, the Greens in their various hues, and Brian Harradine) to embrace and guarantee passage of good policy, and be prepared for its patience to be severely tested in the process.⁶⁸

Questioner — Do you see the introduction of the Hare-Clarke system or some other proportional representation system being introduced into the House of Representatives at some time in the near future? If not, what do you think is preventing this from happening?

Dr Singleton — I do not think it is likely in the near future, but I suppose I do not have a crystal ball. I do not think it is likely that the Hare-Clarke system will be introduced in the House of Representatives in the near future because the major parties are quite happy with the preferential system that helps them maintain their majorities. The fact that the House of Representatives now has Independents and pseudo-Independents—that is, those who have just temporarily lost their party endorsement—shows that the electorate is not necessarily always voting on the party ticket but is looking at the record of people who have served the community.

⁶⁶ R.S. Katz, *A Theory of Parties and Electoral Systems*, John Hopkins University Press, Baltimore, Md, 1980.

⁶⁷ G. Maddox ‘Political stability, Independents and the two party system’, *Current Affairs Bulletin*, June 1992.

⁶⁸ *Australian Financial Review*, 10 May 1994.

Again, if we look at Ted Mack and Phil Cleary, they were basically appealing to traditional party constituencies in what were relatively safe seats. So I think you would have to perhaps take it on a case by case basis. I do not see any government willingly giving up a strong majority and one house for multi-party representation in the House of Representatives. I think it would have to come from the people to have such a momentum for change or a push for change.

Questioner — I am very interested in some of the things you said at the beginning of your speech about the potential that minor parties provide for negotiated outcomes. I happened to hear on the radio this morning that the proposition has been raised by the minor parties to introduce a bill into the Senate which would block the mining and export of uranium. That sets up a very interesting proposition, because so far we have been talking about trading around the edges, around amendments, but with bills substantially getting through—those bills having been initiated by the government. I wonder whether what we are about to see is trading on a much grander scale.

The journalist who was talking about this matter this morning was immediately dismissive of it by saying that they might get it up in the Senate but then it has got to go through the House of Representatives, and of course the Liberals have an overwhelming majority there. I think his dismissal was based on a couple of assumptions which may not hold up. One of those assumptions is that there will not be any trading, that in fact there will not be some behind the scenes work where the minor parties say, ‘If you pass this bill in the lower house, we might be a bit more amenable to something like the sale of Telstra or perhaps changes to the Industrial Relations Act.’ If that is the case, we will know about it.

Another assumption he was making was that if they introduced a bill to ban the mining and export of uranium in the Senate, the minor parties would combine with Labor to get it up. However, if they introduced it in the context of a deal on some legislation that the Liberals were putting forward, we will know it because we will see the Liberals voting for it in the Senate. Do you see the potential for that kind of trading on a grand scale?

Dr Singleton — I would have thought the 1993 Budget was trading on a grand scale. I think that already takes place. Any government that has to rely on minor parties to get its Budget through is trading not only when the bills come before the Parliament, it is trading before it even puts those bills together. That becomes continuous consultation, as it did between the Keating government and the Democrats.

The uranium issue is one that is still to be tested. I am not sure whether parties have firmed up their positions on that, so I would not like to comment on it in a particular sense. While you have multi-partyism, you are going to have trading off and deals done in order to have stable government, otherwise you are going to have the deadlock provisions being invoked again and again, or government is going to have to give up its legislation. No government wants to do that.

Howard will perhaps have to test some of his legislation in the Senate, and it will be interesting to see, if any is defeated, how strongly he will want to push it—whether he will want to push it to a double dissolution. That comes back to a point I made: often it depends on the popularity of the issue. If it is something you feel you have popular support for and it is just a minor group holding it up, you might be more confident about seeking a mandate or a

majority in the Upper House as well. Or, if it is something that is going to be fairly divisive in the community, then you might compromise. But that is for the future.

Regardless, if there are differences between the government and the majority of combined votes in the Senate on all these major issues then there has to be some sort of trading between them. The question is to what extent those people will compromise their principles, will be pragmatic and will negotiate. I am afraid that I do not have a definitive answer, but it is a scenario which makes Australian politics at the moment highly exciting and interesting to watch.

Questioner — I was fortunate—or unfortunate, depending on your point of view here—to have been secretary to Brian Harradine for sixteen years, and prior to that, secretary to Vince Gair and Frank McManus, the leader for the Australian Democratic Labor Party. A lot of what you have talked about I actually saw and lived through. A lot of the people I dealt with are now dead—I am one of the last survivors. I can remember things like the negotiation about the formation of estimates committees, and so on.

However, let me congratulate you on what you have attempted to do. It is a formidable task. I think you have travelled this part of the journey but there is an enormous vista out there that has yet to be travelled. The very fact that Senator Harradine has been in the Parliament for sixteen years gives rise to a cumulation of material that is quite incredibly formidable. I will make a few points and observations more so for the record. I am not so sure there are many questions.

Many times when I was working with both DLP Senators and Senator Harradine we would receive angry phone calls from disgruntled commentators and others: ‘How come with X percentage of the vote you are holding Australia to ransom?’ I rather liked your emphasis there of the fact that you really need two to tango, and a balance of power only becomes effective when it is married with another thirty or thirty-five in the Senate. The impact of Independents and minor party Senators is manifested not just in amendments to bills. I think you were correct to draw attention to those government initiated amendments because on many occasions I have seen those actually being drafted in an Independent Senator’s room or somewhere else. The draftsman is given instructions to go and see Brian Harradine to see how he wants it put into actual words.

However, there is one area that I think needs a lot of tilling, furrowing and further exploration and that is estimates committees. Senators have done a tremendous amount of advocacy work rather quietly in estimates committees. There is a whole raft of material there that could be fruitfully explored.

You mentioned Dr John Uhr and his emphasis on greater accountability—how these representatives have brought greater accountability into the equation. Yes, they have brought accountability to Parliament—not just to government—but amongst bureaucrats. I think that has been a valuable contribution. I left Brian in 1992 for some rest and recuperation to go back into the Australian public sector. I moved into the Department of Administrative Services. Little did I know that it was at the cutting edge of commercialisation. But one goes back and then realises that when people talk about accountability from the public sector they are talking about accountability to the government. I think the activities of these minor party

and Independent Senators by extent of cross-examination in estimates and Senate select committees and so on bring back emphasis on to the broader picture, as it should be.

You made a blanket statement about how in 1972–74 the DLP Senators blocked ALP legislation simply because of its origins. That is possibly a gross paraphrasing of what you said, but I think that was the drift—not that my memory does not tally with that. Those with long memories would realise that Jim Cairns was diametrically at opposite poles to the DLP Senators. He sent his departmental officials to the DLP Senators’ offices to negotiate on, for example, the Australian Industry Development Corporation legislation. Frank McManus had great negotiations with Simon Crean’s father, Frank Crean, about amendments to the ALP government’s education legislation so that he could achieve justice for non-government schools.

You made a comment about how Senator Harradine has made no pledge on a double dissolution. That is true, and he has absolutely nothing to lose which makes him a potentially powerful and politically dangerous person in the equation. He has never made that pledge right throughout his career, certainly not during the time I worked with him.

You said the first priority of these people is to look after the interests of those who got them into Parliament and then later on you made that distinction. That is not quite the case with Senator Harradine. You made that comparison with Ted Mack and Brian Harradine but I cannot recollect any occasion where Senator Harradine might have changed his vote because of a bit of market research done amongst his supporters saying, ‘Okay, 51 per cent disagree with what I intended to do therefore I am going to vote that way now, even though it is contrary—’

Dr Singleton — I want to pick you up on that because that was something I did not say—in fact, it was the other way around. I was pointing to the fact that Brian Harradine would not compromise and if he made a decision it would be on his own priorities and his own principles but it would reflect his supporters and his constituency. I do not see too much difference in that sense. I think the point I was making was that he said he did make up his mind on the merits of an argument but when he finally voted it would be with those principles and his constituency’s interests would be taken into account. I think you misunderstood what I said there.

I wish to make a comment about the committees. There are a couple of people here who are doing some very valuable work that I hope will bring out some of the richness of committee work. I refer in particular to Grant Jones, who has just started a PhD looking at the culture of parliamentary committees, and Robin Miller, who is doing some work on parliamentary committees with two of our colleagues at the University of Canberra.

Within a small paper like this, it is impossible to embrace the full richness of what had gone on. What I was trying to show was the fact that the actual floor of the Parliament itself is not the only picture; you have to look behind it to see just how effectively someone can work. I am looking forward to seeing the work of Robin Miller and his colleagues and that of Grant Jones which will show the diversity and richness and the contribution that not only the Independents and Brian Harradine but also the Democrats have made to the effectiveness of committees in terms of accountability. Thank you very much for your comments.

Questioner — It looks as though Bob Brown is going to be elected as a Senator. He has made no qualms about the fact that he would block Supply in order to uphold his principles. Given your study of the voting patterns of the other Independents in the Senate, do you think he is likely to change his view or do you think the other Independent Senators are likely to support him in blocking Supply?

Dr Singleton — It is a case of the crystal ball syndrome. It often depends on the political engineering or the political management that is going on at the time. It is too difficult to look into the future and predict what people are or are not going to do because you cannot see the circumstances under which it would arise. So I will take about three years on that one and come back and have a look at the record.

Questioner — I was also interested to know whether in your talks with the Independents the subject arose about whether their ideological commitment was strong.

Dr Singleton — Not in the case of the two Independents I talked to in New South Wales and not in Ted Mack's case. I did not raise that question because I was more interested in the multi-party facets within the Senate itself. Certainly, both the Greens in the past Parliament and Brian Harradine said that they had given no guarantee that they would not block Supply. That is perhaps slightly different from saying that they will block Supply. Again, it depends on the question and the context in which these things arise. With historical experience, everyone is going to be a bit more careful and a bit more wary about treading into those waters in a great rush.

Questioner — To what extent do you think these developments are undermining the two-party system, in that we are getting more minority parties in the Senate consistently? I guess with five Independents now in the House of Representatives there is a possibility that we will have a minority government in the House of Representatives some time in the future. What do you think this is actually doing to the two-party system and its stability over the last few years?

Dr Singleton — I think I have argued that we really have not had a two-party system, if you look at both Houses. But I agree with you. If you look at the voting patterns for the Senate, as distinct from the House of Representatives, you will see that people are making that distinction in the way they vote. In the ACT we had a referendum and people voted for a proportional system. So I think the constituency rather likes it. I am sure the major parties do not like it because they would like to see some sort of certainty about power. The other argument is the instability factor and how well these parties work together. Again, that goes back to the question raised earlier about the particular mix of groups and individuals that you get at any one time and how stable or unstable that system will be.

There was a question that someone else raised about minorities holding governments to ransom, or whether it is more democratic for the executive to be checked. There are two views on that, both deriving from some issues about liberal democracy. If you are a strong proponent of separation of powers you would be very comfortable with the Senate as it is; if you are a strong contender in a political party and wanting to get into government, I think you would have another view. So perhaps where you sit depends on where you stand on these issues. Thank you for the question.

The Minister and His Private Office*

Jack Waterford

I should like especially to welcome here today all of my Labor friends; the more welcome, perhaps, for their presence after their brush with that ultimate form of ministerial accountability two months ago. I say this not to disclose any secret sympathies but because it is my experience that the keenest interest in questions about accountability and openness in government is usually displayed by those in opposition, while sometimes those on record, when in opposition, as supporting stringent tests, show rather less interest in the field, once translated to the other side of the Chamber.

About thirteen years ago, I recall that Gareth Evans, who with the late Senator Alan Missen was one of the great fathers of freedom of information legislation, found himself in just such a translation and announced that he proposed immediately to legislate into the Freedom of Information Act those amendments that he had tried unsuccessfully to get into the Act while in opposition. He commented cynically at the time that he knew he would have to move fast before the bureaucrats got at his colleagues. Alas, as he was the first to admit, he was not fast enough.

In the nature of things, indeed, new and inexperienced governments often make mistakes quickly. The difficulty is of the other side quoting one's own words about what the standards are. The media, as a more permanent opposition, usually is embarrassed less and worries less about its own self-contradiction over time, and can look forward with delight, say, to insisting what the real standard is as Senator Alston put it in the Pay Television affair or as Peter Costello did in the Whiteboard affair. In due course, no doubt, we will be thinking that what Senator Bob Collins said, not in his own defence over the Pay Television affair but what he said in attack over some fault of the Howard government, has got the ingredients about right.

* A short version of this paper was presented by Jack Waterford as a lecture in the Department of the Senate Occasional Lecture Series at Parliament House on 3 May, 1996. Jack Waterford is the editor of the *Canberra Times*.

Ministerial responsibility is a wide subject, of continuing interest, not only because of visibly changing standards but also because no limit has yet been found to the categories of ministerial foolishness or ineptitude.

I do not want today to talk about the whole field of it, but about an area of executive administration in which the rules are not yet settled. That area is, of course, the ministerial office, a relatively recent creature of politics. The still most vexed areas of ministerial responsibility involve the minister's vicarious responsibility for what is done in his or her administration. Many of the ground rules were evolved when a minister's private office consisted of not much more than a secretary and some departmental liaison officers, and the questions were about what public servants did and how much the minister could be called to account for failures in administration.

The answers devised to those questions are not necessarily the same when mistakes are made, or contributed to, by an overtly political staff working intimately with the minister and hireable or fireable more or less at the ministerial whim.

Before I go much further, I should perhaps explain a few bits of the terminology I will use. I will try to use properly here two words which are often wrongly used interchangeably in debates about ministerial performance and so avoid at least some of the confusions that Sir Geoffrey Yeend pointed out in a celebrated letter to the *Canberra Times* at the height of the Pay Television affair.¹ The words are 'accountability' and 'responsibility'.

Ministerial **accountability** is the obligation of a minister to give Parliament a truthful account of matters that fall within his or her executive responsibilities. The principle of it has existed for centuries, although we are forever inventing fresh forms and opportunities for ministers, or those who work for them, to be called to give such account. Ministerial **responsibility** is something somewhat different: it is about the extent to which ministers must accept the blame for mistakes which occur in that administration. Strictly, I suppose, it is also about how much credit they can take for successes, but there has never been much problem with that. The ultimate form of that responsibility is, of course, resignation, but there are many sanctions for bad performance which fall short of that.

Strictly, the accountability obligation is to Parliament and the responsibility obligation is to the Prime Minister, at least since Parliament stopped impeaching and beheading those ministers whose performance displeased them. But parliaments are political, and their exercise of their rights to call ministers to account will inevitably be in part focused at finding fault and raising questions about whether performance has been such as to invite sanctions by a Prime Minister against, perhaps, some ultimate threat that a Prime Minister who will not shed bad performers can lose the confidence of one or both Chambers and find it impossible to govern.

I suppose I should also briefly explain my shorthand term 'vicarious liability' since a study I have made of would-be cadet journalists, who might be presumed to be literate, shows that only about one-third of them know the word 'vicarious' at all and about a third of them cannot distinguish between it and 'vivacious'. 'Vicarious' means through another, and a 'vicarious liability' is a responsibility which one must accept for something that has been

¹ *Canberra Times*, 2 June 1993, p. 12.

done by someone else: say, a company for the bad driving of one of its employees. Sometimes, of course, liability is partly direct and partly vicarious. As ministers have increasingly denied vicarious responsibility, the focus has been on attempting to show a direct responsibility: say, some direct involvement in a decision, some failure to act when aware that things were awry, or some culpable ignorance of facts which were staring one in the face.

In a golden age, some think, a minister of the Crown took absolute responsibility for everything which occurred under his administration, and, if some mistake or malfeasance occurred, then the minister bravely took responsibility for the error, no matter how remote his own personal responsibility was, and submitted his resignation to the Prime Minister. But in that golden age, it is said, the reach of the state into the lives of the community, and the size and level of complexity of executive government, was much smaller than now. One hundred years ago, say, a United Kingdom could maintain the largest navy afloat with a War Office of perhaps forty people, probably gathered in a single building. It was not, it might be said, unreasonable that the person who had been put in overall charge of a department of state should be able to be personally held to account for everything which that department did.

Since this golden age, if ever it existed, much has changed. Government has moved into the social welfare field. It intervenes far more actively in the economy, has acquired a much more centralised role in law and order, and regulates almost every area of human life. Vast armies of bureaucrats are now necessary.

It would be beyond the wit of any mortal to be across the details of each individual piece of administration in which, probably, several million decisions a day are made touching the rights or the property of citizens. Any such decision might be made routinely in an office several thousand kilometres from where the minister works, by a clerk whom the minister would never, in the course of ordinary business, be expected to see.

In law that clerk, in making such a decision, might be acting as some remote delegate of the minister, but it became increasingly difficult to be able to say that the minister ought to resign if the clerk got it wrong. Of course it could be sometimes seen that the clerk got it wrong, not because of some personal misfeasance or incompetence, but because he or she was faithfully carrying out policy which had been handed down by the minister—in which case responsibility might be able to be pushed up the hierarchical ladder, but it was unreasonable to hold that a minister must go for any mistake in routine administration. We develop, thus, a notion of some separation between administration and policy, some allowance for the level of remoteness of the incident in question from the minister, perhaps with some saving caveat that the level of a minister's accountability might increase if there seemed to be some sort of systematic problem in administration of a sort of which the minister was aware or ought, if he or she was halfway competent, to have known about.

On top of the ever expanding and ever more complicated nature of policy and administration has been the development of other regimes of accountability and responsibility which have had some capacity to muddy the waters. In the golden age, whenever it was, the power and duties of the public servant came from delegation from the minister. The public servant was anonymous, and a hierarchy of organisational control was clear.

In part because of the complexity of administration, and difficulties, for the citizen, in securing redress for grievances through political channels, new systems have been devised for calling administrative decision-makers to account and, if necessary, reversing their decisions.

Some government is performed by bodies having various degrees of statutory independence of the minister. Some matters of departmental organisation or discipline are the legal responsibility of secretaries, not ministers. Many public servants exercise powers that are given to them by virtue of their position, by statute, in situations whereby it is clear that they are personally accountable, and not biddable, for the exercise of any discretions they are given. Administrative law, codes that are written into various statutes, and various organisational systems influence decision-making, hold individuals to account for what they have done and provide various forms of check and balance against maladministration.

The idea that there has been a diminution of public control over the executive because of a narrowing ministerial responsibility—some vacuum which has been created in which **no-one** can be held responsible—is not necessarily true.

In any event, vicarious liability in ministerial responsibility has tended to decline, though accountability has not, while other fields of ministerial responsibility have tended to remain much the same. We still think a minister must resign for failure to account, particularly for wilfully telling a lie. We still think a minister who engages in personal misconduct of a sort raising questions of fitness or suitability for office should go. A minister who is closely and personally involved in a policy or program which turns out to be disastrous, or who allows such a situation to continue when it is obvious, will be invited, at least by the Opposition, to resign.

Some evidence of the changing standards can be seen over a period. Fifteen years ago, an Attorney-General maintained the confidence of his Prime Minister when there had been poor departmental performance in which the minister was not implicated, but any number of management reports of which the minister was aware drew attention to systematic management problems upon which he had not acted. A decade earlier, I think he might have gone.

Three years ago, a minister signed a statutory instrument which he had not really read and which he did not really understand. An outside report—which did not purport to rule in ministerial responsibility issues—thought that the real failure was on the part of the bureaucratic advisers who failed to draw to his attention the significance of a detail; a busy minister, Professor Dennis Pearce thought, could not have been expected to notice a technical detail such as the one involved.² Two decades earlier, a minister who had signed correspondence without reading it had been compelled to resign by his Prime Minister.

Be that as it may, I think that there are very good arguments in favour of more relaxed standards, when the issue is vicarious liability for public service action. There probably ought, at the least, to have to be some contributory negligence by the minister. The question is whether one ought to have a similar principle in operation when it comes to ministerial staff and consultants. And my argument is that one should not, or, should there be any attempt to establish such a system, it must be accompanied by protections and a transparency of operation of the minister's office far greater than we now currently have, or, I would suspect, that ministers are yet prepared to allow.

² 'Independent Inquiry into the Circumstances Surrounding the Non-requirement of a Deposit for Satellite Pay-TV Licences, and Related Matters' (Pearce Report), tabled in the Senate, 20 May 1993.

The modern nature of the ministerial office is a development which is somewhat less than two decades old. This is not to say that ministers have not for longer had external sources of political advice, even as a filter of bureaucratic advice, or that ministers did not previously have their own staffs.

From about the time of the advent of the Whitlam government, the size of such staffs has tended to multiply. Their functions have become much more specifically political rather than focused on liaison. They are increasingly evident as an extra political layer of executive decision-making standing above the public administration. They vet departmental submissions and they give their own advice about them to the minister. Indeed, in some cases, all of the advice from the department filters through the political staff, which can put its own gloss upon it.

In some cases and in some offices, they appear to make some decisions themselves, without direct reference to the minister. If they have an implicit authority to do so, it is not always clear, and certainly the basis or limits of their authority are not always known and sometimes not necessarily understood even as between the minister and the staffer. When they have purported to speak on behalf of their minister, there have sometimes been confusions and misunderstandings about whether or not consultation has meant that their minister has been or will be informed.

One might remember, for example, an incident of the Marshall Islands affair where the Department of Foreign Affairs had passed on a cable to its Minister, Senator Gareth Evans, but the private secretary, in his wisdom, decided that it was not important enough to draw to his minister's attention. Later, in the Senate, the minister denied having seen the document—one which his department believed he had seen.

One chapter of the Westlands affair in Great Britain turned upon a discussion—about how a document which might damage Michael Heseltine might most conveniently be leaked to the press—between departmental officials and Margaret Thatcher's ministerial staff. Margaret Thatcher claimed her officials had thought they were being consulted only about the best way of leaking the memorandum, not about whether it should be leaked at all. They had not thought they had been approached to give her authority to the decision to leak, and they did not think they had given it. The departmental officials, on the other hand, told the relevant inquiry that they regarded the purpose of their visit as being to seek agreement to the leak as well as to the method.³ They had believed they got authority. Mrs Thatcher said later that 'although clearly neither side realised it at the time, there was a genuine difference in understanding as to exactly what was being sought and what was being given'. No doubt we can be thankful that no such misunderstanding could ever arise in Australia.

The increased role of the ministerial office means that there has emerged over time a process by which a great deal of what once might have been called the Cabinet coordination role—of cross-checking Cabinet submissions for wider impacts in different areas of government—has been carried out by cross-consultation between different ministerial offices rather than at departmental level. In some cases, the formal administration is actually excluded from the

³ 'Report of the Inquiry into the Export of Defence Equipment and Dual-Use Goods to Iraq and Related Prosecutions', House of Commons, February 1996.

Cabinet process, departmental submissions forming merely the base metal which ministerial officers turn into gold.

One reason why some modern prime ministers have had large departments with divisions and branches covering almost every field of government activity has been as a check, or at least as a second-guesser, on the idiocies of departments, ministerial staffs and ministers. In some cases as well, ministerial office consultation short-circuits formal Cabinet processes, with decisions emerging from such discussions being promulgated, though not necessarily recorded or communicated in the conventional ways. Indeed, in some cases, the decision is not recorded at all or what has been decided is not clear, at best being decipherable from notes for file in different departments written by public servants to whom the decision, or parts of it, have been informally imparted. Sometimes the presence of departmental liaison officers, who are not really ministerial staff, can keep things in order, but sometimes it does not.

Some offices have chains of command; in some others, everybody seems to be responsible directly to the minister, who himself or herself seems to do the coordination.

In the Howard Government there is now to be a formal political Cabinet office which, whether fully staffed with political appointees or supported by professional public servants, is now probably to be regarded as more a super-ministerial office than a department of state. Such an office can, of course, give stronger political and strategic direction to a government with an agenda, and it can serve some purpose in helping to insulate the civil service from politicisation. Some fancy such offices can serve as political think-tanks. I think that they are structurally incapable of that because that interferes with and inevitably compromises their central role, of managing the information flow at the highest levels of government.

Be that as it may, the fact is that this extra layer, particularly if it works in closely with the ministerial office rather than a bureaucracy, may not be so far subjected to the sorts of checks and balances which are inherent in the public administrative framework. It works in secrecy and it may fail to meet standards of record keeping which the public service would regard as essential. Yet it has certain institutional protections, not least (so far as Cabinet government is concerned) some immunity from the Freedom of Information Act and other administrative and judicial review accountability mechanisms.

In a more traditional public service framework, one might have certain comforts arising from an ultimate confidence in professionalism, but the modern focus on responsiveness, and the nature of the contract society in which they now operate, greatly diminishes confidence in this. We are moving, in short, towards an American system of an overtly political executive administration, but without necessarily having its checks and balances.

I am not to be taken as bemoaning some loss of public service pride of place as the sole or the primary source of policy advice to ministers and the Cabinet. I am confident enough that public service advice can compete in a free market place. Instead, what I am emphasising is the potential for such a system to create an atmosphere in which the public administration is seen primarily as doing the doing, but is left out of the thinking, and is not necessarily intimately familiar with the thinking processes involved in formulating the policies which they must put into practice. When that occurs, many of the modern accountability regimes fail.

The minister may retort that the ministerial staffer is a person dismissible at will and equipped only with the powers that the minister has given. The reason, the minister might say, why such an officer should be incapable of being summonsed to give evidence before a parliamentary committee, or why the Ombudsman or the administrative or judicial review mechanisms should be largely precluded from examining their role, is that they speak only for the ministerial mind, and that the minister himself or herself remains accountable and responsible in all of the old ways for what happens. In this sort of formulation, the staffer is argued to be not much more than an executive assistant or liaison officer, with no independent role. It is to the organ-grinder rather than the monkey that one should look.

This might be true if the routine of government administration was determined by the minister and his advisers—broad policies that were then carried out by the public administration, but modern government is much more complex than that. Government is not merely, for example, about implementing a social security scheme or some code of priority in immigration entry. Many government decisions are completed by executive fiat. Ministers, and their officers, make choices not only about policy options but about the disposition of money, the economy, and foreign relations and defence, about the letting of contracts and the awards of rights, and about relative rights. They exercise discretions and they ration scarce resources.

Many decisions do not need to be promulgated or implemented downwards and are not being accessibly recorded, if at all. It is not always obvious what they have done and, if one does not know, it is much more difficult to ask why.

The decision-taking in a minister's office is not only on the highest matters of state, where the need for some shroud over the process might be arguable, but on hundreds of often mundane matters, affecting individual rights but not the survival of the government or the state, and in many cases, not easily accountable by the forums at which a minister can be called to explain. There is thus the possibility of a major vacuum in accountability and, in its train, in ministerial responsibility.

One may believe that such accountability is essential not only for the ethical administration of a public trust but also for ultimate effectiveness and efficiency. It does not necessarily follow that one must institute mechanisms which hold the political adviser to account or which threaten to directly interfere with his or her confidential and candid relationship with the minister.

It may be possible to find solutions which maintain the fiction that everything done in a minister's office is done by the minister personally, but which nonetheless increase the extent to which the minister can be held to account; to be required rather more routinely to say what and when and how and where and even why. But almost necessarily this involves the minister doing rather more than being at risk of the odd parliamentary question. It may even involve a wholesale extension of administrative and judicial review into the minister's office. It may involve full vicarious ministerial responsibility for what occurs in that office, even if the minister did not know what occurred and possibly even if the minister could not reasonably have been expected to know.

One might note that the modern nature of a minister's office is rather like the civil service of that fabled golden age: it is small. Indeed, even prime ministerial private offices, which have in recent times been much admired for size, are still smaller than the average British department of state of, say, the 1850s. They may still have a paper flow beyond the physical capacity of the minister to be personally across, but the minister, if competent in the selection of staff, ought to be well able to so organise the office as to be well briefed on the things that matter and confident that there are processes that bring details to notice when they are significant.

The staffs are, of course, personal staff engaged on the minister's whim so that, if there is poor performance or if embarrassing mistakes are made, the minister can choose to take instant action. The officers are subject to no discipline or external review mechanism able to be invoked by a member of the public, apart from direct appeal to the minister. If vicarious responsibility was once the reasonable rule about the whole of a minister's administration, but has collapsed as administration has become impossibly bigger, it might nonetheless be appropriate in the minister's own office.

Yet there is not only an emerging, if still mixed, record of ministers attempting to evade responsibility for what has happened in their offices, but every reason to expect that future ministers, even under new regimes, will ever quote any excuse that has been given before, indeed that they will do so with extra relish if it has been invoked by a minister on the other side.

There are a gallery of cases, some of which ultimately led to resignation, but usually not without a fight. In some of the cases, there were calls for resignation or actual resignations. During the days of the Whitlam government, there were allegations made that a number of ministerial staff had used their positions to further their own private interests. In one case, involving the stepson and electoral secretary of the Treasurer, Jim Cairns, the issue was never quite resolved, since the Minister was sacked on other grounds, though not before the Prime Minister made a statement saying that it was improper for ministerial staff to put themselves, or to allow themselves to be put in a position where they could make a private profit from their position on a minister's staff.

The actual Cairns sacking was over his misleading Parliament over his signing of a letter giving a person authority to negotiate a loan on behalf of the Commonwealth. Cairns said he could not recall signing the letter—indeed he claimed to have a clear recollection of having rejected it. The chaos and the controversy of his personal office may have been a factor in what was, if not an advertent misleading, a colossal incompetence.

This case, incidentally, presents an interesting example of where something done in the minister's office was not known to his department, though it was of major significance and intimately affected its operations. At the time, Gough Whitlam strongly attacked the Treasury, and called it unethical, for seeking legal advice about the import of the letter once it became aware of it.

When Robert Ellicott resigned as Attorney-General in 1977, one of the items in his bill of indictment of the Prime Minister was that the Prime Minister's press officer had briefed a journalist, as it happens me, about a difference of view between Ellicott and the Cabinet. There were calls for the press officer to be sacked, and also for him to be put before a

parliamentary committee for cross-examination about the contents of the briefing, but the Prime Minister, Malcolm Fraser, rejected this and accepted full responsibility for the press officer's actions.

Michael MacKellar and John Moore were forced to resign after an incident involving the bringing into Australia of a television set by MacKellar without the payment of customs duty. The precipitating incident was the submission of an incorrect custom declaration form by a ministerial staffer, probably without reference to him. Moore was forced to resign after he and his staff were argued to have been attempting to cover up the incident after it had been brought to attention by a disgruntled Customs officer. In this case at least, MacKellar accepted full responsibility for what had been done, in his name, by one of his staff, and so, implicitly, did Mr Moore over his own and his own staff's conduct. The record is not so good after that.

Ros Kelly deserves several mentions. Acting on staff advice, she signed a foreword to a piece of departmental propaganda she had not read, and even personally promoted it until it emerged that the publication contained politically embarrassing statements. Whereupon she disclaimed it, blaming the Department, though her personal staff had been involved in the production and the exploitation of it.

The Sports Rorts affair focused on allegations about the dispersal of funds given for developing sporting grounds. After some minimal processing of applications by the Department, the allocations were decided in the Minister's office with very strong evidence that it had been focused on marginal Labor electorates. The system of documenting decisions and the decision-making criteria were stringently criticised by the Auditor-General, who said words that still ring:

Accurate and relevant information explaining the reasons for decisions is the key to effective accountability because it enables the public, and those acting on behalf of the public, to make decisions about the performance of officials.⁴

I might say that I know of no authority for the proposition that ministerial officers, paid for by the taxpayer, are under a lower standard of duty than public servants to record and document decisions, including generally with reference to the facts of the case and the reasons for them. The argument for just such documentation is the greater, not the lesser, for the veil under which they are allowed to operate.

Ms Kelly was ultimately embarrassed into resignation, and her own degree of involvement was such that the question of taking responsibility for staffers did not arise, but there are any number of useful lessons about ministerial offices, their powers and pretensions, and, of course, the documentation issue, coming out of the affair.

It is however, far from clear that the government, which had supported her to the end, accepted the lessons about the need for an accountability process with ministerial decisions of this ilk. And, indeed, pure grace and favour patronage with appointments and grants

⁴ Auditor-General. *Audit Report No. 9, 1993–94. Efficiency Audit, Community Cultural, Recreational and Sporting Facilities Program*, AGPS, Canberra, p. 14.

distinguished a number of ministerial offices up to the end of the Labor government, often without the faintest pretence of accountability.

One might add that over the same period it was commonly remarked and occasionally reported of several ministers with powers over the ACT before self-government that virtually all decisions were made by staffers, in many cases without reference to the ministers. No occasion arose in which this led to political embarrassment of the minister involved but one obstacle to this happening was the very limited accountability or responsibility focus federal Parliament then had on ACT matters. Decisions which may have been open to question were probably too small beer for Parliament.

In another area, the style of administration of the last Prime Minister's office was freely criticised, particularly over bottlenecking of decisions within it. Mr Keating preferred the oral briefing to the submission and governed more personally or through informal committee than through Cabinet. The liaison role of ministerial officers became more significant, with bureaucrats often entirely frozen out of the information flow. The system was not without complaints, even by staffers in other ministerial offices, that it was not enough to square something through anyone in the Keating office. A deal would stick only with the assent of the principal adviser of the day.

The Pay Television affair has many interesting aspects. The Minister for Transport and Communications, Senator Bob Collins, signed a document he later admitted he had not really read or understood, even though the letter was a significant statutory instrument involving an exercise of a discretion requiring his personally being satisfied of various antecedent facts. He claimed that he and other ministers commonly signed correspondence they had not read. No doubt many do, but why they should be relieved of responsibility for their imprudence is not so clear.

To be fair to him, the fault with the letter, which had been drafted by his Department, was not obvious, and an independent inquiry held, reasonably, that the Department was at fault in not drawing to attention the significance of an omission in it.⁵ Yet Bob Collins had political staffers to advise him on policy in the area who had at least some grounding in the base factual issues and who indeed claimed expertise. And just these advisers had been involved in the policy formulation processes.

It had not been a matter of deficient submission finally surfacing in the Minister's office, with an omission that no one could have been expected to notice. Ministerial staff had sat in Departmental committees while facts were being established, while various forms of legal advice were being taken, and had been involved in the process of drawing up the Department's submission to the minister. And they had vetted the submission and recommended to their Minister that he sign it. The matter in question may have been somewhat technical, but it was at the very heart of a very significant and highly controversial area of policy.

The role of ministerial staff was never really analysed in the course of the inquiry conducted by Professor Pearce, and the Minister successfully resisted any attempt to have them questioned. The majority report of the committee which looked at broad issues of ministerial

⁵ Pearce Report, op.cit.

responsibility as a result of the inquiry made some anodyne comments about the role of staffers, which I will quote in full:

The issue of ministerial responsibility includes the matter of a minister's responsibility for staff in his or her private office. The staff in such an office play a vital role, among other things, in advising the minister in his or her conduct of affairs and in representing his or her interests at appropriate forums. Their role is largely a political one and they do not usurp the functions of the relevant department.

Whilst a minister is directly responsible for the employment of personal staff, his or her responsibility for their activities could usefully be compared to that which he or she has for departmental officers. If an action was at the specific direction of the minister or undertaken with the minister's knowledge, the level of culpability would be greater than that applying to an action undertaken without the minister's knowledge. In any event in all cases the minister can be called on by parliament to give an account of his or her conduct.⁶

Senator Collins was assisted in his defence of his conduct by a fairly pragmatic report from a leading administrative lawyer, Professor Dennis Pearce, who put most of the blame on the department. But that report made a number of relevant eyebrow-raising statements. One was that:

The minister signs a large number of documents of different kinds. He cannot be expected to peruse each of these carefully.⁷

That might be a standard which would be fair as applied to, say, the correspondence on my desk, but it seems generous for a person in a high position of public trust.

Another was a reflection that in a perfect world the advisers would have noted the important omission and brought it to the minister's attention. But Professor Pearce acknowledged that the world was not perfect. There were reasons why the mind was not on the ball, but they were not great excuses. Pearce would clearly allow some scope for something falling short of perfection, but it is not yet clear where he would draw the line.

We can be thankful, I suppose, that the current incumbent of this important portfolio, Senator Alston, who wrote a strident dissenting report, would set much more searching standards.⁸ He wanted the staff gutted and filleted and then laid to rest on the carcass of the Minister. I look forward to his standards in operation in his administration.

Getting back to Senator Collins, he did not in the event resign, but the embarrassments and humiliations he endured might well be regarded, as Sir Geoffrey Yeend commented in his letter to the *Canberra Times*, as an instance of ministerial responsibility in practice.

⁶ Senate Select Committee on Matters Arising from Pay Television Tendering Processes. *First Report*, p. 16–17. Tabled in the Senate, September 1993.

⁷ Pearce Report, op.cit.

⁸ Senate Select Committee on Matters Arising from Pay Television Tendering Processes, op.cit.

It might be noted, however, the public servants were actually held accountable and responsible for their part in the debacle; there was no evidence that the ministerial office suffered, except in esteem.

During the Marshall Islands affair, the Minister for Foreign Affairs, Gareth Evans, denied that a Departmental communication to his office amounted to his being informed of something he denied knowing about. He would not take responsibility for what his staff had done. Possibly, the staff was seeking to protect the Minister from knowledge which might have embarrassed him—a worthy aim, perhaps, but one which might underline the fact that such embarrassment as he was spared was no doubt minor compared with the embarrassment he suffered, and deserved, for having to correct a *Hansard* answer and for the abdication of responsibility that the process involved. No-one could have suggested that the staff failure was a hanging offence for the staffer or for Senator Evans, or that Senator Evans, had he accepted responsibility for the mistake, ought to have resigned, which might have produced a more sensible approach but did not.

The Sandwich Shop affair, the extensive report into which, by Mike Codd, was too little noticed by the commentators since it arrived after Alan Griffiths' demise, and because much of the media was happy to read a not disinterested summary of it prepared by the Prime Minister's office rather than the report itself. It is a catalogue of problems of the ministerial office, including of actual impropriety as well as misjudgment.⁹

A staffer forged the Minister's signature on a return to the electoral office. The Minister said that he did not know and could not have been expected to know although, at law, the obligation was upon the Minister personally to file the return. The same staffer put Mr Griffiths' Sandwich Shop partner on the Minister's electoral office payroll by way of squaring her off over a collapsing business. He also paid her \$5,000 from a highly irregular campaign account, the mere existence of which invites a whole lot of questions which have never been asked, let alone answered.

Mr Codd's findings were sufficiently embarrassing to have taken Alan Griffiths out on vicarious liability grounds had he not already chosen to go. It was one of the modern triumphs of public relations that the Prime Minister could get away with a bland claim that the report had essentially cleared Mr Griffiths. Even so, there were tantalising questions of whether a personal liability might not have arisen as well. Mr Codd, one might note, had no cooperation whatever from the staffer. The staffer who had by then already resigned, had, in criminal proceedings, nobly taken every skerrick of the blame upon himself, and had put various statements of his on the record which were very helpful to his former employer.

Mr Griffiths, of course, answered questions and was amply assisted from public funds to put his case. On the vital points, the inquiry was prepared to accept that he was unaware of what his staffer had done. That did not, of course, exonerate him from a fairly proximate vicarious liability on several grounds, not least that Mr Griffiths had delegated his own personal responsibilities to his staffer.

⁹ Mike Codd, *Report of Inquiry into the Conduct of a Minister*, Department of Prime Minister and Cabinet, Canberra, July 1995.

The situation might have been far more interesting had there been any contest of facts between the two. What particularly distinguishes the case is that each and every action taken by the staffer was done in the Minister's interests and not the staffer's. Accepting that the Minister did not know and would not have approved what had been done—the Minister might well have correctly perceived that the staffer had fatally confused the Minister's short and long term interests—the staffer's improper and illegal acts had been focused at getting the Minister out of an immediate spot. Greater love has no man than that he will break the law to keep you out of trouble.

One need not scoff at the idea that a staffer might do something so irregular in a minister's interests but not burden the minister about the details or even the fact of such an intervention. A culture can be at work. There is always the odd ministerial office in which staffers regard themselves as hard men—they are nearly always men—who are not too squeamish to get in and sort out a problem; are able to keep their mouths shut and are very much focused on keeping the minister out of trouble. I recall one such staffer once lamenting to me: 'I know my job is to put out the minister's bushfires. But why does he have to stand on the back of an open truck flinging out lighted matches?'

Some of the cultures of political toughness involve people being willing to do things in politics—with petty blackmail, traded favours, outright lying, or by the exercise of their powers of reward and punishment—that they would not dream of doing in their personal affairs or relationships. No doubt the work of a minister's office is sufficiently busy that there are things about which a minister could not know or could not reasonably be expected to know. But perhaps the first question ought not to be about ignorance but about interest. A person might misuse a position in a ministerial office for his or her own private benefit in a way that a minister could not possibly be expected to know about. Assuming that the minister discovered it—or had it brought to attention—and responded appropriately, say with a dismissal, one might not be too critical of the minister or necessarily accuse the minister of a cover-up if the affair was sought to be handled with discretion. Or, if one were critical, one might be drawing a longer bow at the minister's controls, selection processes and so on.

But what if the misconduct was intended to benefit the minister? Suppose that even the minister genuinely did not know and genuinely did not approve. The minister who discovers this is not in the position of some ordinary employer considering what to do about somebody responsible for misfeasance. The minister is necessarily implicated and is unlikely to be a good judge in his or her own cause unless the threat of disclosure looms.

This is to say, not that the minister must resign when a staffer abuses that position, but that how one judges the minister will depend on the minister's own response to events, and what has been done to redress any injury which has been done, either to individuals or to the public interest, as a consequence of the misfeasance. That might not have to involve the minister issuing a press release detailing every unfortunate thing which had occurred. But it might reasonably have to involve the disclosure of the irregularity of the Prime Minister and any other minister capable of being drawn into the web of compromise, and some clean breast to parties, including possibly public agencies, whose conduct was affected by the irregularity. All too often, alas, the instinct is to retreat, to cover up, and hope like hell that nothing comes out.

In such a situation, the fact that a minister had disciplined a staffer would probably never be enough. In the long run, the minister who treats the matter as an accountable one will have less difficulty in getting out of the responsibility mess. Indeed, a clever government might think it well to have some formal and accountable mechanism—a wise but worldly retired judge or senior public servant for instance—as some sort of father-confessor figure on whose discreet mercies a minister might throw himself or herself confident that, if he or she followed advice and did the penance that was meted out, he or she would not be too criticised should things subsequently come out into the open. One might retort that prime ministers are supposed to fill that role; the problem is that the outsider will sometimes worry about how disinterested advice from such a source will be.

At the other end of the spectrum is the case of the staffer's purely advisory role. Let us say that a submission comes up to the Minister from the Department that canvasses various options and makes some recommendations. The staffer reads the submission, perhaps does some research or listens to some lobbies of his or her own initiative, and makes recommendations to the Minister about the appropriate option to adopt. These recommendations, as we know, may well have, for the Minister, the advantage of having political considerations brought into the argument, so that the Minister, in deciding what is best to do, has a more frank assessment of the political advantages and disadvantages of going this way or that.

Let us suppose for the moment that the advice the staffer gives is in writing. There is no issue of impropriety, but, in due course, the decision ultimately taken by the Minister becomes controversial and Senate committees begin asking questions about the decision-making process. Should the advice be surrendered or the adviser be allowed to be called before the committee?

The Minister will say 'no' and his or her argument will be that it was the Minister who ultimately made the decision, who takes responsibility for it and who will answer the questions about the considerations that were operating in his or her own mind at the time. It is not the advice that was relevant, but the arguments that were ultimately adopted by the minister, it will be said. And it will be said that, if any system should develop of exposing the close-in advisory process, it will produce worse, not better, government, because the candour and frankness necessary for such discussions will disappear. A minister will be afraid to canvass the advantages or disadvantages of options since subsequent disclosure of alternatives canvassed might be embarrassing.

The problem is probably accentuated by an Australian system of closed debate in which ministers like to pretend that the logic is wholly in one direction and that any other decision would be madness, and by a media-imposed discipline which tends to punish any signs of ministerial deviance from the official line, even a sign of an open mind.

There is ample scope for commenting that the courts these days are massively unconvinced by candour arguments and that a well-recognised system of putting a veil over what is actually said in Cabinet debate does not yet extend to what is said in the ministerial office. But I am not here so concerned about the accountability question. Here, at least, the Minister is accepting responsibility and what has happened in the example I mentioned is that the Minister has made the decision. Most of the materials that he or she used will have been

accessible and there are ways of getting those materials, or some of them, on the public record.

That sketch of the office role is now rarely so simple. The modern staffer is often far more activist. He or she does not sit passively in the office waiting for submissions to come into the in-tray. Rather, the staffer is in and out of the Department; is an active participant in the discussion processes in the Department which produces the decision and the recommendations; and may, in fact, help shape the submission so that it presented choices which the Minister found palatable. Some of that may have involved the actual giving of directions and the taking of an executive role in decisions along the way.

Modern ministers are not at all embarrassed in proclaiming that they run governments and that they are not secretly run by the public service. Thus the picture of a minister as a sort of a judge, choosing in a detached way, with the help of a few trusted advisers, which of various recommendations should be followed, is no longer real.

If we are to retain an accountability process, let alone a responsibility one, it is going to be much harder to avoid recording the various levels of intervention, whether by the minister or by people purporting to act on his or her behalf. This is the primary field where the rules of responsibility are urgently needed. They depend on rules of accountability which have not been sufficiently modified for current practice.

There is another field that one almost shudders to mention. It goes without saying that the staffer's role is political. No-one has or should have any problem with that, or at least they should not when the political activity is focused on departmental administration or, perhaps, at the higher reaches of government, in opening and maintaining lines of communication between the government and the world.

But what about when the political activity is purely political? It is not unknown for some members of some minister's staff listed as being advisers, private secretaries or press secretaries, or whatever, who have nothing whatever to do with the minister's constitutional responsibilities, but who are engaged full time in organisational party politics. Some are secreted on a minister's staff but only so that it is the public rather than the party which is subsidising the work involved, often not even pretending to work from a minister's office. Others are not so much engaged in the broader party's interests as at work on their minister's or their faction's behalf—stacking branches, running political intelligence services, monitoring trade union elections and so on.

The rot is not confined to one party, so there is some natural tendency to silence within the club. The criticism of journalists about the appropriateness of such appointments is often muted too, in their case because it is often just such people who are their most useful contacts. Of course, the activities of such people may be of somewhat lesser interest because they are not unaccountable cogs in the business of public administration. But their existence does raise legitimate, if fairly conventional, ministerial responsibility questions because of the fraud upon public moneys, sanctioned by their ministers, which their employment involves.

What ought to be the general principles? It would be nice to say that they could be distilled from the cases, but they cannot. It does seem to me that one ought to be able to insist that we need both higher standards of accountability and defined standards of responsibility for what occurs in a minister's office.

My first principle is that a minister should accept full vicarious liability for everything that is said or done in the minister's name, either to his department or to members of the public, by a member of his or her personal staff, regardless of whether the minister was aware of what was occurring or not. A minister pro-actively seeking to mitigate that responsibility before it has been otherwise disclosed should either publicly draw the problem to attention or should refer the conduct in question to some person of independent judgment and follow the advice received, particularly advice about redressing any damage. A minister caught by surprise by the unauthorised or unintended act of the staffer may escape liability if the record demonstrates that the problem has been dealt with by the undoing of the situation, with frank disclosure to interested parties, and by system changes that will prevent the problem recurring.

Second, even where a minister cannot reasonably be held responsible for an improper or incompetent act by a staffer, the minister should be accountable and capable of being held responsible for the judgment which led to the employment.

Third, a minister can and should be held to account for the way in which his or her office is organised and for the effectiveness and efficiency of the office and should be responsible for failures which occur as a result of the failure of any system. The minister, for example, defines what must go by him or her and what can be dealt with routinely. If staffers choose not to bother to brief him or her, they must bear the consequences if this leads to disaster.

Fourth, the minister's office faces obligations in no way different from the obligation of the ordinary public servant to record significant acts and decisions, including, in cases where adherence to process is significant, records of compliance with requirements and processes. Such record keeping should generally disclose reasons for decisions.

Finally, there should be unfettered access to such records for people such as the Auditor-General, and the activities and effectiveness of ministerial offices should be subject to audit, including audit focused on performance and value for money. Just what public access there ought to be to such records, and whether and to what extent decisions made in a minister's office should be subject to administrative or judicial review, may be a matter for argument. But, certainly, there is no justification for lowering the present standards and ample room for arguing that changes in the style of public administration since the administrative reform regime was implemented justify further extension focused on increasing transparency.

In any event, I think the interplay between accountability and responsibility is the crucial thing. The more the actions of the minister's staff are open to the public gaze and scrutiny, the more justification the minister has for disavowing responsibility for every misfeasance or maladministration. And the converse is true. The present state of play is such that a very high, and possibly on occasions unfair, standard of responsibility should be set, because accountability is low.

Questioner—You spoke of the growth of ministerial private offices and the practice of comments being made by ministerial spokesmen of which the minister may not be aware and may not approve. Thirty-eight years ago, I was a minister's private secretary. In those days, we ran a minister's office where the minister had responsibility for two departments, with a staff of four. The Prime Minister of the day had a staff of seven, which later increased to nine.

Mr Waterford—They would have been bureaucrats as well.

Questioner—Yes. These days I think the previous Prime Minister had thirty-two staff and the present Prime Minister has twenty-eight staff. We frequently see the press reporting statements made by spokespersons for a minister. Would the *Canberra Times* be prepared to strike a blow for ministerial responsibility by declaring that in future it will not report a statement by a spokesperson for a minister unless it has an assurance that the minister knows of the statement being made and approves of it?

Mr Waterford—If one wanted to be Machiavellian about it, it might be better actually to record them as statements which one assumes to be those made by the minister. That way one at least lumbers the minister with the responsibility for what occurs. The major problem in this field, however, is not the cited spokesman, it is ‘government sources said’, and so forth, where a large quantity of the information which comes out has been leaked on undertakings that it not be sourced to particular areas or has been leaked by people who are playing some interdepartmental game so as to undermine some minister or promote some other. In this Byzantine sort of world, the role of a ministerial staffer is quite critical, but it is quite often not commented upon by the media because of understandings they have about confidentiality.

Questioner—If we could go back in history a little, in 1910 and 1911 my father was secretary to ministers in the Senate when ministers—and there were three of them—had a total staff of one. What is your opinion of the effect on the archives of this country of the use of the shredder—post a defeated government?

Mr Waterford—I think it is quite alarming. Before I get to that point, the quality of record-keeping, including that formal record-keeping which is actually essential for the legal purposes of government in ministerial offices, is often very poor. There also tends to be a habit of ministers believing that all of the papers in their offices are their own personally to dispose of. Increasingly, ministers make decisions within their offices which are not passed down for implementation but which have effect immediately the decisions are made—appointments and so forth—and the quality of the record-keeping is often amazingly poor.

The use of the shredder and the habit of ministers of removing and abstracting the official records of the government is much to be deplored. There has not been, in practice, even post Freedom of Information Act—which poses some interesting questions in relation to old ministerial conventions about access to the records of the previous government—a problem with that.

I personally think that we ought to have a much more activist role in looking to and securing those sorts of records. I think that people such as the Auditor-General and some of the people vested with statutory responsibilities under the Archives Act ought to be taking a more activist role in relation to it.

Questioner—Do you foresee any developments in the control, legislative or otherwise, of the appointment and role of advisers and other ministerial staff?

Mr Waterford—It was only in the past decade that we had any legislation in the field at all, and most of that was employment focused. I think there will be an increasing demand for

such controls, but I cannot see it immediately upon the horizon. I think the controls are likely to emerge out of the normal processes which occur with encounters with ministerial responsibility, particularly in the Senate where governments lack majorities and in Senate committees, which can be insistent about access to records and so on.

The Senate, in recent times, has fired a few salvos over bows about its right of access to records, standing at the end of the day on its dignity and not insisting on its rights or on a test of them. But I would predict that within the next few years we are going to have some crisis of a senior officer of the government, possibly from the public administration, being required to answer questions that the government does not want that person to answer, and possibly the High Court or some other body being called to adjudicate on it. My own sympathies, in most of the debates we have had so far, are with the Senate's powers.

Questioner—You don't appear to make any distinction between the minister's role as the minister and that away from his electorate office. In one of the instances you illustrated in your paper, no distinction was made about matters that happen in the electorate office. What is your opinion in relation to a number of people who have come here from their electorate offices in Queensland, for example, who cannot be in their electorates to keep an eye on what is going on in their electorate offices?

Mr Waterford—It is true that in the so-called Sandwich Shop affair the person involved was an electorate officer rather than a ministerial staffer—although I think if anybody practically examined their role they would find that this person played quite a major advisory role to the minister concerned. I suppose, as a general principle, the rules that ought to apply to a minister and his ministerial staff should not be greatly different from those responsibilities that an ordinary Member of Parliament has in relation to the acts of his or her electorate staff.

But normally the sorts of misfeasances which occur in electorate offices are not of a level of public seriousness comparable with the damage or mischief that can be done by the abuse of power in the ministerial office. Of course, rules of accountability are much stronger in relation to the minister, so I do not think there is a great deal of difference between electorate/ministerial offices when it comes to a minister. I think the same general principles ought to apply.

Questioner—What is your level of confidence in the security of computer systems here? It is quite easy to shred paper, but access to altering records in computer systems is a worry to me. What is your level of confidence in systems security?

Mr Waterford—I am awfully worried about it. We are now developing systems so fast that, even when people are doing the job that they are supposed to do, the records they have created are not necessarily accessible by a later generation. I can describe this happening in my own newspaper. We have had three major processing systems for copy and for turning it into typed print on the page. Every advance that we have made has been a significant one and much welcomed by the people called upon to manipulate it.

Even though we still retain all the magnetic tapes of newspapers published by Federal Capital Press since about 1978, we no longer have the means to access any paper that was printed more than about five years ago. We would have to completely redo it because the computers that we used to do it with no longer exist. That is a major problem in government

departments. It appears that there are some question marks about whether some of the record keeping systems that we were once assured were permanent are in fact permanent: whether the CD—compact disc—for example, will survive more than about five or six years.

We have to take much more pro-active steps to make sure that we are securing these records and that they are accessible. I can say, however, that, while you cannot be confident that the problem is being solved, you can be reasonably sure that archives administrators have been looking very carefully at this question for quite some time and have been expressing their alarm to government about it.

Questioner—I am interested in your views on the differences between the American system and the system we have in Australia, and whether Australia is moving more towards the American system but without the checks and balances that the Americans have. I refer here in particular to the role of Oliver North as a personal adviser and the Iran Contra affair.

Mr Waterford—There are a couple of differences with the American situation. One might note first that the American system operates within a framework in which it is possible for ministerial officers of the government to have open differences of view with the President or with each other. There can be an active public discussion of policy options or choices without newspapers running headlines such as ‘Cabinet split looms’. I think it would be much healthier if Australian ministers could speak their minds occasionally and canvass options without being necessarily and immediately seen as being disloyal to their colleagues.

At the end of the day, obviously our system of ministerial responsibility and the collective will of Cabinet might require that they fit in with an agreed policy. But it does not seem to me that it requires them to deny that there were other attractive options that were rejected or that perhaps the time might now be right to review the policy and so forth.

The second thing about the American system is that there is a much more active level of interchange between the executive and the legislature. Executive appointments at the political level are reviewable by the American parliamentary system and executive officials are regularly called before Congress, including the Senate, to explain their activities, to account for what they have done. These activities can be sheeted home with a much more personal level of responsibility. Given the size of the American government, it might perhaps be much more reasonable to say that you cannot fix the President with some decision that was made in the Post Office. But in the American system, you can fix the official in the Post Office who made that decision. We still lack some of the mechanisms that can properly hold to account the person who made the wrong decision.

Questioner—You will be aware that some years ago, the Cain government had a media unit which handled all press relations for all the ministers. It was known as the ‘Ministry of Truth’. One brave soul working in the gallery in Victoria said that he was not going to accept any information through government media people, that he would go and seek his own information in his own way. He disappeared without trace. I have never heard of him again. On this question of anonymity of government sources and getting to the actual source of information—information that all media seek so eagerly—have you any thoughts on how you would set about avoiding that and establishing more direct, open and named sources of information?

Mr Waterford—I do not think very much of public relations apparatuses as more effective communicators of the news, the facts, or that which we must know. They are often, from the point of view of the journalist, a great nuisance if they are a necessary barrier before you can get any form of access to a public official. In practice, public officials in Australia are reasonably accessible and will answer questions within their responsibilities and do so quite helpfully. It is no longer suggested that they are committing some sort of a breach of the Crimes Act if they do so. One can understand either some sort of instinct on the part of ministers to want to centralise the release of information about what is going on, or the demands of some people for a degree of insulation; that is, an ‘I do not want to be rung up by every Tom, Dick and Harry about it; can you handle it and get it out?’ style of thing.

There is a lot of American journalism of which I do not have a particularly high opinion, but one thing that you notice if you read, say, the *New York Times* or the *Washington Post*, which I think Australian newspapers could do well to emulate, is a far higher degree of attribution to sources. Certainly, 99 per cent of the time, when you say ‘a spokesman’, there is no particular reason for failing to disclose the name of that particular spokesman or spokesperson. As far as government sources are concerned, or various things like that, one must frankly admit there are times that you suspect, when you are reading the contributions made by others—not oneself of course—that the source was a cleaner in the corridor, or something like that, rather than the consequence of some undertaking made that highly confidential information would be disclosed only on condition that the source not be revealed.

I think that editors probably ought to have a rather more searching attitude to protecting confidentiality only when it is necessary. But that said, nonetheless, there will always be times when people will want to say things but not want to have them sheeted too close to home; when politicians will want to float trial balloons or tell you very interesting and scurrilous stories about their colleagues, and sometimes occasionally about their political adversities. There is always going to be a degree of it, but I think that we could be a little less sloppy than we are at the moment.

Questioner—I was just wondering about your views on Jeff Kennett refusing to deal with media outlets who write ‘not nice things’ about him? Secondly, what is your view on the *Australian* doctoring the photo of the alleged killer in Tasmania and do you think any of these things might happen in Canberra?

Mr Waterford—I will deal with the second bit first. I think what happened with the *Australian* was absolutely appalling. I think that even the editor of the *Australian* would ultimately agree about that. I accept their explanation that the photograph in question was doctored not as a result of a conscious editorial decision, but further down the line. But that invites questions about who is ultimately responsible for what appears and I think that, in ministerial responsibility terms, an editor must accept that sort of responsibility.

Would this happen in Canberra? Well it could, but it is not a problem which was invented on Wednesday with the publication of that photograph. The *Canberra Times*, for example, has something like four pages of written instructions and guidelines about the treatment of photographs, particularly in the modern environment, where it is possible to seamlessly alter things so that you would never know. Back in the olden days of hot metal, if somebody got the white-out out, it was usually fairly obvious to the eye. It no longer is. As it happens, we will be publishing some of those guidelines in the paper tomorrow.

Questioner—I just want to point out that if the Hobart *Mercury* had not run the original photo of the alleged killer, we never would have known what the *Australian* had done.

Mr Waterford—Yes. I believe, although I do not really know, that there is a secondary question involved about how the photograph came into the possession of the newspaper. I have no particular facts about that, but I understand it may raise ethical issues just as profound.

On the other topic, to what extent can premiers, ministers and whatnot just flatly refuse to deal with those they do not want to deal with? I suppose, much as the fourth estate would have it otherwise, the obligation of a minister to account is to Parliament and you cannot actually hold them down and force them to answer questions. The performances of politicians who refuse to submit themselves to questioning are freely commented upon. They suffer in various ways for it, including in the direct accountability framework of Parliament. One likes to persuade them or bludgeon them otherwise, but at the end of the day you cannot actually make them answer questions from the press. You can insist that they answer questions before the Parliament.

Rupert Loof: Clerk of the Senate and Man of Many Parts*

Derek Drinkwater

Rupert Harry Colin Loof, Clerk of the Senate between 1955 and 1965 and a Senate officer for almost forty years, was born at Katamatite, Victoria on 15 August 1900, the son of 'Chas' Loof, a farmer, and his wife, Mary Ann, née Robins. He was educated at primary schools in Katamatite and Melbourne, Melbourne High School, and a Melbourne business academy where he learnt shorthand and typing. Loof was one of the few parliamentary officers of his generation to hold a tertiary qualification, in his case a Bachelor of Commerce degree from the University of Melbourne. He entered the Commonwealth Public Service in Melbourne on 1 February 1919 as a clerk in the Defence Administration Branch of the Department of Defence. Other positions followed, including nine months as Personal Clerk and Confidential Secretary to the First Naval Member, Commonwealth Naval Board, until his transfer to the Senate as Clerk and Shorthand Writer on 21 October 1926.

At the time of Loof's appointment the Commonwealth Parliament was still meeting in Melbourne, but in early May 1927 he found himself among forty parliamentary officers working, sleeping and having most of their meals in the new Parliament House in Canberra pending its official opening by H.R.H. the Duke of York (later King George VI) on 9 May 1927:

The 27-year-old Rupert Loof, who had been a pianist and church organist in Melbourne, was one of the house's temporary tenants and was fired with an ambition to try the grand piano standing ready for the opening ceremony in King's Hall. In the middle of the night, he crept from his bed and began to play in the darkness and only discovered when interrupted by the unfeeling

* The following article, which examines R.H.C. Loof's career as an officer of the Senate Department between 1926 and 1965, was written for inclusion in the forthcoming *Biographical Dictionary of the Australian Senate*. It first appeared in *Legislative Studies*, vol. 11, no. 1, Spring 1996, pp. 15–22. Derek Drinkwater is a Senior Research Officer in the Senate Committee Office.

official in charge of the building that the darkness also hid an appreciative audience of colleagues.¹

The opening of the first session of the tenth Parliament by the Duke, which took place in the Senate Chamber on the same day, marked the formal recognition of Canberra as Australia's seat of government; it was to remain Loof's most vivid memory as an officer of the Parliament.²

Loof served as Clerk and Shorthand Writer (1926–c.1929), Correspondence and Reading Clerk (c.1929–c.1932) and Clerk of the Records and Papers, c.1932 until his appointment as Usher of the Black Rod and Clerk of Committees on 1 January 1939.³ He held this position until 30 November 1942. The ceremonial and administrative position of Usher of the Black Rod, which dates from the sixteenth century,⁴ carried with it in Loof's time the secretaryship of two Senate Standing Committees: the Printing Committee,⁵ which produced eight reports during Loof's tenure;⁶ and the Regulations and Ordinances Committee,⁷ which tabled one report while Loof was Secretary. The report, produced in wartime, was a significant one. It concluded, *inter alia*, that the great volume of regulations and orders being issued under the National Security Act to cope with the exigencies of war, made it no longer useful or practical for the Committee to continue reviewing the plethora of subordinate legislation being made under the Act. In June 1944, a non-parliamentary Regulations Advisory Committee (with an MHR as Chairman) was appointed by the Attorney-General to perform this task for the duration of the war.⁸ The Usher, as Clerk of Committees, was also responsible for serving as secretary to any select committees appointed by the Senate. Loof was required to perform this role once as Usher and Clerk of Committees, when he acted as secretary to a select committee which investigated the discharge of Captain T.P. Conway from the Australian Army.⁹

¹ J. Gibbney, *Canberra 1913–1953*, AGPS, Canberra, 1988, p. 125.

² *Canberra Times*, 13 August 1965, p. 3.

³ Loof's Commonwealth Public Service personal file, which contains material dating from 1918 until his retirement in 1965, is incomplete. Reasonably detailed records of his career are available only from 1935. Consequently, dates for positions held by Loof earlier than this time can only be approximate.

⁴ A history of the position and a description of the Usher's duties can be found in J.R. Odgers, *Australian Senate Practice*, 1st ed., Government Printer, Canberra, 1953, pp. 41–42 and 6th ed., Royal Australian Institute of Public Administration (ACT Division), Canberra, 1991, pp. 196–197.

⁵ First appointed in 1901 to make recommendations concerning which papers and petitions presented to, or laid before, the Senate should be published.

⁶ See *Journals of the Senate*, 9 June 1939, p. 189; 22 September 1939, p. 235; 8 December 1939, p. 287; 30 May 1940, p. 45; 13 December 1940, p. 38; 3 April 1941, p. 62; 3 July 1941, pp. 89–90; 27 November 1941, p. 151.

⁷ First appointed in 1932 to consider and, if necessary, report on all regulations and ordinances before the Senate.

⁸ See Senate Standing Committee on Regulations and Ordinances, *Fifth Report*, in *Journals of the Senate; Sessional Papers and Reports* (Vol I, 1940–1943), pp. 365–368; *Journals of the Senate*, 17 September 1942, p. 241; and J.R. Odgers, *Australian Senate Practice*, 1st ed., Government Printer, Canberra, 1953, pp. 165–166.

⁹ See *Senate Select Committee on the Discharge of Captain T.P. Conway from the Australian Military Forces*, in *Journals of the Senate; Sessional Papers and Reports* (Vol I, 1937–1940), pp. 309–340; *Journals of the Senate*, 7 September 1939, p. 215.

From 1 December 1942 until 20 July 1955 Loof served as Clerk-Assistant (or Deputy Clerk) of the Senate. The tasks performed by the Clerk-Assistant during this period encompassed Chamber duties and responsibilities such as the preparation and issue of the Notice Paper.¹⁰ Between 2 August 1945 and 9 December 1954 Loof also held the post of Secretary of the Joint House Department, a position which involved numerous administrative duties relating to the operation of the Parliament. Among his most rewarding tasks as secretary was responsibility for organising all formal functions in Parliament House in connection with the Royal visit of Queen Elizabeth II and the Duke of Edinburgh in 1954. During this, the first visit to Australia of a reigning British monarch, the Queen opened the third session of the twentieth Parliament on 15 February 1954.

On the recommendation of the President of the Senate, Loof was appointed Clerk of the Senate by the Governor-General in Council on 21 July 1955. As permanent head of the Department of the Senate he was responsible for the overall administration of the Department; for keeping a record of all chamber proceedings; for preparing the *Journals of the Senate*; and for maintaining custody of all documents laid before the Senate.¹¹ As Clerk, Loof was also *ipso facto* Secretary of the Standing Orders Committee. Although the Committee produced no reports during Loof's time as secretary, important reforms of the Standing Orders followed from the report tabled by the Committee on 25 November 1965, with which Loof had been closely involved before his retirement three months earlier. The report was adopted on 2 December 1965 and the revised Standing Orders came into effect on 1 January 1966.¹² Loof ceased duties as Clerk and retired from the Commonwealth Public Service on 14 August 1965, upon reaching the mandatory retirement age of sixty-five years. His career as a parliamentary officer had spanned sixteen Parliaments. Shortly before Loof's retirement, Sir Alister McMullin, who was Senate President during Loof's time as Clerk, paid handsome tribute to his abilities:

[Loof's] inbuilt understanding of the parliamentary machine and its workings has ever been present and the functioning of our parliamentary institution has been paramount in his mind at all times.¹³

Loof's stewardship of the position of Clerk of the Senate was a distinguished one. His term of office produced enduring benefits for the Commonwealth Parliament as an institution and for the parliamentary process in Australia. Loof's involvement was central to three major parliamentary reforms whose effect is felt even today: the formation of an Australian National Group of the Inter-Parliamentary Union (IPU) in 1956 as a precursor to Australia successfully

¹⁰ A more detailed outline of the Clerk-Assistant's role at this time can be found in J.R. Odgers, *Australian Senate Practice*, 1st ed., Government Printer, Canberra, 1953, pp. 40–41.

¹¹ See J.R. Odgers, *Australian Senate Practice*, 2nd ed., Government Printer, Canberra, 1959, pp. 41–43 and 3rd ed. 1967, pp. 76–78.

¹² The Committee was first appointed in 1901 to examine and report upon the Standing Orders. See *Report from the Standing Orders Committee*, in *Journals of the Senate; Sessional Papers and Reports* (Vol I, 1964–1966), pp. 669–681; *Journals of the Senate*, 4 March 1964, p. 21, 25 November 1965, p. 414, 2 December 1965, p. 427.

¹³ *Commonwealth Parliamentary Debates*, Senate, 26 May 1965, p. 1293, during tributes on Loof's retirement; see also tribute in *Canberra Times*, 13 August 1965, p. 3.

applying for membership of the IPU; a significant change to budget and estimates procedures in 1961; and the administrative reorganisation of the Department of the Senate in 1964.

Inter-Parliamentary Union Membership: 1956

Although Australia had been a member of the Commonwealth Parliamentary Association¹⁴ since its inception, like most members of the Commonwealth of Nations, she had never joined the IPU.¹⁵ Only four Commonwealth countries were active IPU members in mid-1956¹⁶ when Loof set in train moves which would see Australia's increasing trade, diplomatic and political involvement abroad matched by greater cooperation and consultation between its national parliament and those of other Commonwealth and non-Commonwealth nations through the forum of the IPU. Loof's proposals were taken up by the President of the Senate and the Speaker of the House of Representatives who gave them strong support. On 11 September 1956 a Committee was appointed, with Loof as Secretary, to consider the questions of forming a National Group of the IPU within the Commonwealth Parliament and applying for membership of the IPU.¹⁷

At a meeting on 17 October 1956 the Committee presented its report, unanimously recommending that an IPU Australian National Group be formed and an application be made for IPU membership.¹⁸ On the nomination of the President of the Senate, the Speaker of the House of Representatives was elected Chairman of the Group. Following the President and the Speaker's election as Group Joint Presidents, Loof was appointed the Group's Honorary Secretary-Treasurer, a position he held until 1964. Loof acted as Secretary to the Australian delegation to six IPU conferences: 45th (Bangkok, 15–22 November 1956); 46th (London, 12–19 September 1957); 48th (Warsaw, 27 August–4 September 1959); 49th (Tokyo, 29 September–7 October 1960); 51st (Brasilia, 24 October–1 November 1962); and 53rd (Copenhagen, 20–28 August 1964). On these occasions Loof also represented Australia at the Plenary Sessions of the Association of Secretaries-General of Parliaments. He was elected to the Association's Executive Committee at The Hague in 1962, and served until 1964.

Among Loof's most treasured experiences as a parliamentary officer was a brief visit to Israel in 1959 where he represented the Australian delegation of the Inter-Parliamentary Union, en

¹⁴ An association of sitting British Commonwealth of Nations parliamentarians, formed in 1911 (as the Empire Parliamentary Association) to make possible regular consultation between them on parliamentary issues and to promote the study of Commonwealth parliamentary institutions.

¹⁵ The world organisation of Parliaments of sovereign states. British and French MPs convened a conference attended by the parliamentary representatives of nine nations in 1889 which resulted in the establishment of the IPU. By 1996 133 national Parliaments and three international parliamentary assemblies were represented in the IPU.

¹⁶ Great Britain, India, Pakistan and Ceylon.

¹⁷ The Committee consisted of the following members:

Senate—J.J. Arnold, K.A. Laught, A.M. (later Sir Alister) McMullin, President of the Senate, 1953–1971, D.M. (later Dame Dorothy) Tangney, R.C. (later Sir Reginald) Wright

House of Representatives—G.W.A. Duthie, L. W. Hamilton, W.C. Haworth, R.W. Holt, J. (later Sir John) McLeay, Speaker of the House of Representatives, 1956–1966, H.G. Pearce, E.G. Whitlam.

¹⁸ Copies of the report and minutes of the meeting can be found in the IPU files, held by the House of Representatives, Parliament House, Canberra.

route to the 48th IPU conference in Warsaw. As he has testified, the visit had a profound effect on both Loof and his wife, who accompanied him: ‘Our earliest religious memories were stories of Israel, so the holy places we visited during the tour were the most memorable and moving religious experiences of our lifetime.’¹⁹ Loof’s central role in Australia becoming an IPU member was acknowledged by the Senate political leadership involved in the formation of an Australian National Group, Sir Alister McMullin praising his ‘industrious work in the formative stages of the Australian Branch of the Inter-Parliamentary Union.’²⁰ Australia hosted spring meetings of the IPU (a kind of half-conference) in 1966 and 1977 and an IPU conference (the 90th) for the first time in 1993.

Financial Procedure Reform: 1961

Calls had been made in the late 1950s for new procedures to enable Senators and Members of the House of Representatives to review financial policy more effectively. However, movement in this direction was slow. After advocating such reform, G.S. Reid, for example, referred in 1959 to:

... an ultra-conservatism about matters of parliamentary procedure which has to be penetrated before reforming action can commence. This is particularly the case with financial procedure.²¹

In 1961 Loof played a major role in framing a significant reform, proposed by Senator Spooner, the Senate Government Leader,²² which was aimed at improving Senate consideration of the estimates.²³ Since 1909 the estimates, which came to the Senate principally in the form of the Appropriation Bill and the Appropriation (Works and Services) Bill, had been tabled in the Senate with the Budget Papers when the Treasurer delivered his Budget speech in the House of Representatives. The motion ‘That the papers be printed’ then originated a **general** debate of the Budget in the Senate. At the conclusion of that debate, the Senate awaited the passing of the Appropriation Bills by the House of Representatives and their transmittal to the upper chamber.²⁴ The Leader of the Government in the Senate, in outlining the proposed reform, explained that the increasing amount of legislation arising for consideration in the Budget session was hampering the Senate’s ability to examine the estimates.²⁵ To circumvent this difficulty, he argued that henceforth the Senate should resolve itself into a Committee of the Whole and give **detailed** consideration

¹⁹ Note provided to the author at an interview with R.H.C. Loof, 10 December 1995. See *Inter-Parliamentary Union Conferences: Reports of Australian Delegation* (Nos 45-54), Government Printer, Canberra, n.d., (incomplete).

²⁰ *Commonwealth Parliamentary Debates*, Senate, 26 May 1965, p. 1293.

²¹ G.S. Reid, ‘Financial procedure in the Commonwealth Parliament’, *Public Administration*, (18), 3, September 1959, pp. 217–238.

²² W.H. (later Sir William) Spooner, Leader of the Government in the Senate, 1959–1964.

²³ *Canberra Times*, 13 August 1965, p. 3.

²⁴ *Commonwealth Parliamentary Debates*, Senate, 27 September 1961, p. 654.

²⁵ *ibid.*

to the estimates (which formed part of the Budget Papers already tabled in the Senate) **before** they were passed by and transmitted from the House of Representatives. The proposal was adopted by the Senate and its financial procedures altered accordingly. Loof has referred to the important practical benefits that the reform had for the process of government:

It had been the practice in the Senate that when the Estimates and Budget Papers were being discussed in a *general* way, officers located in Melbourne [where several government departments were still based] would have to travel to Canberra not knowing whether the items with which they dealt would be discussed and would often have to return again to Canberra, if necessary. As the discussion of the Estimates and Budget Papers in *detail* would be conducted in an orderly way the officers concerned would know exactly when their advice would be required.²⁶

As Loof told the ACT Group Seminar on the Process of Legislation on 7 August 1963, the main benefit of the reform was that it permitted:

... a detailed discussion [of the Estimates] in addition to the general one. The preliminary examination of the Expenditure proposals for the financial year enables the Appropriation Bills when eventually received from the House of Representatives to be passed with the minimum discussion and consequently with the minimum delay.²⁷

But the implications of the change, first outlined in detail in a report by Loof to Spooner, were much wider. It represented, in G.S. Reid's opinion, another important step in the Senate's assertion of its role as a house of review:

The Senate is a powerful upper chamber ... It has demanded financial equality and it has been given it; it has won representation on the Public Accounts Committee; it receives the Budget Speech and the Estimates simultaneously with the House of Representatives, and it begins its scrutiny of them without waiting for them to be 'transmitted' from the House.²⁸

Loof and Spooner worked closely together to achieve this reform, the latter appreciating Loof's trenchant knowledge and understanding of parliamentary practice as well as the unusual amalgam of personal qualities necessary in a successful Clerk. On 5 July 1965, on the eve of his retirement from Parliament, Spooner wrote privately to Loof to thank him for 'the help and assistance you gave me over the years during which I was a Minister ... I have ... a

²⁶ Memorandum on the 1961 procedural changes provided to the author at an interview with R.H.C. Loof, 1 October 1995. See *Commonwealth Parliamentary Debates*, Senate, 26 September 1961, pp. 641–653; 27 September 1961, pp. 654–655; pp. 681–683.

²⁷ R.H.C. Loof, 'The legislative process in the Senate', *Public Administration*, (23), 2, June 1964, pp. 146–159.

²⁸ G.S. Reid, 'Australia's Commonwealth Parliament and the "Westminster Model"', *Journal of Commonwealth Political Studies*, (2), 2, May 1964, pp. 89–102.

great respect not only [for] your knowledge of Senate procedure but also [for] the sagacity and wisdom in the advice which you tendered.’²⁹

Senate Department Reorganisation: 1964

The structure and organisation of the five parliamentary departments remained virtually unaltered between 1901 and the mid-1960s, with Senate staff increasing in number only from ten to nineteen. By 1964 pressure on staff in the Senate (and the House of Representatives) was growing in the face of numerous new demands being made by the Parliament. In response Loof initiated an inquiry into the operations of the Senate Department, which was undertaken by the Clerk-Assistant, J.R. Odgers, who conducted a review of Senate administrative and staffing arrangements in early 1964. The House of Representatives was the subject of a similar review at this time and the reasons given by the lower house for such an inquiry were essentially the same in respect of the Senate:

... changes in the power and scope of the federal government, the increase in the number of parliamentarians (bringing greater demands for information, legislation, regulations and procedural advice, and more parliamentary questions), the gradual transfer of departments to Canberra, the increased activities of the Commonwealth Parliamentary Association and the Inter-Parliamentary Union and the expansion in committee activity, had left the department ill-equipped to deal with the further changes that were likely to occur.³⁰

The Senate Department reform proposals, which were approved by the Executive Council on 5 March 1964, resulted in a major reclassification of positions within the Department, a greater emphasis on meeting the demands of committees and the separation of the accounts staff from the promotional hierarchy of the Department (in which two junior positions were created). The position of Clerk-Assistant was also redesignated to that of ‘Deputy Clerk’. These reforms were significant ones:

The changes made in 1964 to the two house departments represent an important landmark in the history of parliamentary administration in so far as they ushered in a period of sustained staff growth and organisational change which was in marked contrast to the experiences of the previous sixty years.³¹

The ambitious initiatives with which Loof was associated during his decade as Clerk had important benefits for the Senate. IPU membership increased the opportunities for Australian participation in international parliamentary affairs; the financial procedure changes made possible a more thorough and expeditious consideration of the estimates; and the Senate Department reorganisation greatly improved the capacity of parliamentary officers to service the Senate’s chamber, procedural and committee needs.

²⁹ Letter provided to the author at an interview with R.H.C. Loof, 1 October 1995.

³⁰ G.S. Reid and M. Forrest, *Australia’s Commonwealth Parliament, 1901–1988: Ten Perspectives*, Melbourne University Press, Carlton, Vic., 1989, p. 417.

³¹ *ibid.*, pp. 417–418.

Like many of his colleagues, Loof had not been enthusiastic about leaving Melbourne for Canberra in 1927.³² However, he came to love the city, choosing to retire there. On 28 December 1929 Loof married Margaret Beatrice, daughter of James White of Melbourne. There were three children of the marriage, a son and two daughters. Mrs Loof died on 23 November 1995 at the age of 92. Loof is a man of wide interests, which include music (the piano and the pipe organ), painting (mainly oils), A grade golf (he designed and produced a golf driving practice device which was 'Invention of the Week' on ABC TV's 'The Inventors' program in November 1978), pottery (using a kiln and a wheel he made himself), and in youth and middle age, A grade tennis. Loof was appointed CBE in June 1962.

³² *Canberra Times*, 13 August 1965, p. 3.