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Australia's Constitutional Convention 1998

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THE Convention to be held in Canberra during 2-13 February 1998 to debate the republican issue will be the sixth official Australian Constitutional Convention, or the seventh if the unofficial People's Federal Convention held at Bathurst in November 1896 is included. The term 'convention' — literally, a 'coming together' — has generally been employed in Australian politics to denote a meeting convened for the purpose of drawing up or amending a constitution, other governmental meetings being denominated 'conferences'. This usage has a long pedigree.

Antecedents

The English assemblies which restored Charles II to the throne in 1660 and declared the abdication of James II in 1689 were called 'Convention Parliaments' rather than true Parliaments, since they had not been summoned by the monarch. But the true laboratory of the Constitutional Convention is the United States. Indeed, R. R. Palmer (1959:214) considered the framing of a written constitution by a Convention '[t]he most distinctive work' of the American Revolution.

The first 'Convention' to frame a constitution was the 'Hartford Convention' of 1639 which produced the 'Fundamental Orders of Connecticut', considered 'the first written constitution to establish a popular government' (Edel, 1981:2). The English Convention Parliament of 1689 was paralleled by two revolutionary Conventions, comprising delegates from each town, held in Massachusetts that year consequent upon the overthrow of Governor Sir Edmund Andros (Jamieson, 1887:8-9). These revolutionary gatherings of 1660 and 1689 provided the model for constitution-making by several elected State Conventions called in the wake of the 1776 Declaration of Independence (Edel, 1981:3). In this way, 'the wild scion from the woods [the revolutionary Convention] was domesticated in the garden of the Constitution and made to subserve the purposes of regulated life' (Jamieson, 1887:11-12).

In several States the Convention acted also as the legislature, but that was not the case in New Hampshire (1778, 1781-83) and Massachusetts (1780) in which popularly elected Conventions were called for the specific task of framing a consti-

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tution, clearly setting the pattern for later Conventions. Moreover, these States were distinctive also in submitting the constitution framed by the Convention to the electors for approval, with Massachusetts widening its franchise on that occasion to include all adult males (Hoar, 1917:4-7; Warren, 1937:347; Beer, 1993:309-10).

Undoubtedly the most important Constitutional Convention was the federal Convention, which met from May to September 1787 in Philadelphia, supposedly to revise the Articles of Confederation, but which ended up drafting a completely new constitution. The 55 delegates from twelve States (Rhode Island was not represented) were selected by their State legislatures, and their handiwork, the United States Constitution, was submitted for approval not to the electors themselves but to popularly elected State Conventions, a procedure which 'sought to reconcile wide popular approval with rational deliberation' (Beer, 1993:312).

The methods of amendment specified by the United States Constitution comprise a complex series of alternative procedures reflecting in various degrees the foundational principles of federalism, representative government and popular sovereignty, although direct popular approval is not included. Amendments must be proposed either by a two-thirds majority of both Houses of Congress or by a Convention called by Congress at the instance of two-thirds of the State legislatures. The former has been the sole method employed; although frequently advocated, no federal Convention has been held since 1787 (see Weber & Perry, 1989). Proposed amendments must be ratified by either the legislature or Conventions in three-quarters of the States, the appropriate mode being stipulated by Congress (US Constitution art V). To date, only one amendment has been ratified by State Conventions: the 21st (1933), which repealed the 18th.

One advantage of a national Constitutional Convention is that it would enable amendment proposals to be sent to the States for ratification without passing through the sieve of Congress. President Lincoln, for example, advocated this route in his first inaugural address (1861) because

> it allows amendments to originate with the people themselves, instead of only permitting them to take, or reject, propositions, originated by others, not especially chosen for the purpose, and which might not be precisely such, as they would wish to either accept or refuse.

However, these pleas have so far fallen on deaf ears. But while the Constitutional Convention has been little employed at the federal level, the opposite is true of the American States where, as the Australian constitutional framers well knew, constitution-revision Conventions have been a frequent phenomenon since 1776 (see for example Deakin, in Australasian Federation Conference, 1890:248).

The first Australian federal 'Convention' was a meeting of representatives of the seven Australasian colonies and Fiji held in Sydney in November-December 1883. It led to the establishment of the Federal Council of Australasia, which New South Wales and New Zealand never joined. At the instance of Victorian Premier James Service, the gathering 'grandiloquently called itself a convention' (Garran, 1958:44),

instead of a 'conference', the description favoured by New South Wales and Queensland and pressed unsuccessfully by New South Wales Attorney-General W. B. Dalley (Hirst, 1997:25).

No one has disputed the denomination of the next Convention, the National Australasian Convention held in Sydney from 2 March to 9 April 1891. It was attended by seven representatives from each Australian colony and three from New Zealand, all elected by their respective parliaments. American precedents — both federal and State — had been cited by Alfred Deakin in successfully moving for such a Convention a year earlier at the Australasian Federation Conference in Melbourne (Australasian Federation Conference, 1890:246-8). The Convention produced a draft national Constitution which is a close ancestor of the present Australian Constitution. But John La Nauze (1972:78) employed dramatic overstatement in asserting that '[t]he draft of 1891 is the Constitution of 1900, not its father or grandfather'.

When the States, especially New South Wales, failed to advance consideration of the 1891 draft Constitution, the federal movement hit the 'doldrums' (Garran, 1958:99) from which it was rescued by the Premiers' decision to convene a second, popularly elected, Convention and submit its handiwork to the electors for approval before transmission to Westminster for enactment. In Stuart Macintyre's (1993) apt continuation of the aeolian metaphor, with the decision to convene a popularly elected assembly 'the wind of public participation began to fill [the federal] sails'. As John Hirst (1996:42) has noted, the Corowa (1893) formula, which was endorsed at the January 1895 Premiers' Conference in Hobart — a popularly elected Convention to frame a Constitution to be approved by the electors before enactment at Westminster — was 'an amazing process ... Quite un-British'. But to what extent the post-Corowa federation movement can be considered 'popular', and whether federation was 'brought to life by the people', as Sir Robert Garran (1958:101) claimed, may be debated (de Garis, 1993; Macintyre, 1994; Macintyre, 1997:25-7).

Another Popular Convention?

The 1897-98 Australasian Federal Convention, which essentially produced the present Commonwealth Constitution, was the only Australian Convention to be popularly elected and the only one whose efforts were crowned with success in the sense of seeing its proposals implemented. The two 20th-century Conventions, those of 1942 and 1973-85, comprised politicians: Commonwealth and State representatives in the former, and Commonwealth, State, Territory and local government representatives in the latter. But none of the former's proposals, and few of the latter's, have been adopted at referendum.[1] Indeed, as is well known, only eight of the 42 proposals put to referendum have been carried.

[1] However, very few of the 1973-85 Convention's resolutions were submitted to referendum (in 1977 and 1984). The 1942 Convention was not primarily concerned with constitutional amendment, but

This rather dismal record has led to suggestions for reform both in the requirements for adopting a constitutional amendment and in the process whereby proposed amendments are formulated. The former include proposals to allow the States (and possibly also citizens), as well as the Commonwealth parliament, to initiate proposed amendments, and to liberalise the requirements for passage by requiring approval by a majority of electors in three, rather than four, States in addition to approval by a national majority of electors (see House of Representatives Standing Committee on Legal and Constitutional Affairs, 1997:57). However, since none of these proposals (which raise broad and important issues) has been implemented, they need not be considered further here.

Of greater interest here are proposals to alter the process whereby constitutional reform is considered. Apart from the two non-popularly elected Conventions (1942, 1973-85), extensive constitutional review has been undertaken by a Royal Commission (1927-29), a Joint Commonwealth Parliamentary Committee (1956-59) and a Commission assisted by five committees (1985-88). Yet, despite the high quality of the resulting reports, they have virtually nothing to show in the way of actual constitutional amendment. Hence it is understandable that some have wondered whether the successful formula of 1897-98 might not be revived, although a major difference, of course, is that proposed amendments must be approved not only by the electors, but must first secure the support of the Commonwealth parliament, or at least the House of Representatives and, therefore, the government.[2] Moreover, it is difficult to assess how important popular election was to the success of the 1897-98 Convention, for its membership of leading colonial politicians was not significantly different from that of the 1891 Convention whose delegates were elected by the colonial parliaments. Nevertheless, a popularly elected Convention has been advocated by highly informed commentators such as Sir Robert Garran, Sir Robert Menzies and, more recently, R. D. Lumb (Garran, 1958:209-11; McMillan et al., 1983:357; Lumb, 1992, 1993-94). The concept was supported in earlier years by W. M. Hughes and Earle Page; the Hughes Government introduced a Bill for a partly elected Constitutional Convention in December 1921, but it was not proceeded with (Lumb, 1992:59-60).

Arguments in favour of a popular Convention include, first, that the election focuses public attention on the relevant issues and the proceedings of the Convention. In other words, it is a significant educative process. As an editorial in the *Age* noted on Australia Day 1993, a popularly elected Convention 'would engage public imagination, broaden public involvement and raise public consciousness. It would

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rather with a temporary reference of powers by the States to the Commonwealth pursuant to section 51(xxxvii) of the Constitution during the war and for post-war reconstruction.

[2] Strictly speaking, approval twice with a three-month interval by either House suffices as a precondition for submission of proposed constitutional alterations to the electors by the Governor-General. But since there is no reason to consider the Governor-General's power as a reserve power, the approval of the government and, therefore, effectively of the House of Representatives, is necessary for a proposed alteration to be submitted to referendum: see Winterton (1983:212 n.152).

enjoy the sort of legitimacy that is lacking in government-appointed or self-appointed bodies examining constitutional change'. Even the non-compulsory postal ballot to elect half the delegates to the February 1998 Convention has raised public awareness of the republican debate, although it is too early to assess the educative value of that experience.

Second, the general public probably lacks confidence in its understanding of the issues, but is concerned to see them receive proper consideration, which the deliberations of a Convention especially elected for the purpose may satisfy. The ten days set aside for the 1998 Convention to debate the republic should alleviate public anxiety in this respect.

Third, a popularly elected Convention should reflect the diverse views of the electorate and their relative preponderance. Since proposed constitutional amendments must be approved at referendum, there is obvious value in exposing them to consideration by such a representative body. For similar reasons, it has occasionally been suggested that the members of a Constitutional Convention be chosen by random selection, like a jury (Mueller, 1996:315-16). Such an assembly might be 'the most likely to take into account the long-term interests of all future citizens and agree to a compromise' (Mueller, 1996:316). But, unlike the far larger samples selected for reliable public opinion polling, the membership of a Convention would seem to be too small for accurate reflection of the various shades of public opinion. The 1998 Convention will derive little benefit from this representative aspect of a popularly elected Convention because only half its membership will be elected and even those members were not elected by the compulsory voting which will presumably apply to the ultimate section 128 referendum.

Moreover, there are negative aspects to a popularly elected Convention, apart from the cost of the election (around $50m). First is a concern that, as an American commentator noted, 'particularly in this age of television and mass-media dominance' the Convention will be 'filled with pop singers and athletes who, among other deficiencies, lack expertise on constitutional matters' (Mueller, 1996:315). Such concern has been voiced regarding the candidates for election to the 1998 Convention, with Greg Craven reported as complaining that their quality was 'a matter of deep national embarrassment', especially when compared with the Conventions of the 1890s:

> Where is Barton, where is Deakin, where is Griffith, where is Playford, where is Andrew Inglis Clark, where is George Reid, where is Henry Parkes, where is Henry Higgins, where is Isaac Isaacs and where is Josiah Symon, where is Sir John Forrest? It goes on and on and on and on. (Rintoul et al., 1997)

However, this anxiety appears unwarranted. While the constitutional expertise of leading candidates for the Convention may well be inferior to that of 1897-98 delegates such as Barton, Deakin, Isaacs and Higgins (Griffith and Inglis Clark did not attend that Convention), no one would propose popular election to assemble a

body of experts in constitutional law, or any other subject for that matter. But the overall quality of leading candidates is no cause for disquiet. Constitutional expertise can be provided by the Commonwealth government, and indeed there is considerable political, legal and historical expertise among the appointed delegates and parliamentary representatives at the 1998 Convention.

A more significant concern is that the division of opinion in the community will be reflected among the Convention delegates, leading to deadlock in its proceedings. The 'boycott' of the American federal Convention of 1787 by leading 'anti-federalists' such as Patrick Henry undoubtedly facilitated consensus at that (non-popularly elected) Convention (Mueller, 1996:323). Thus, a distinguished Canadian constitutional scholar, Edward McWhinney (1981:33), has remarked:

> For its most effective operation, a constituent assembly would seem to require to be elected against a background of an already existing, and continuing, societal consensus as to the nature and desired direction of fundamental political, social and economic — and hence constitutional — change.

For this reason, a Constitutional Convention on the republic would have had a greater prospect of achieving consensus if it had been preceded by an indicative (not legally binding) plebiscite on the question whether Australia should sever its constitutional links with the Crown, and perhaps also on the appropriate method of selecting a republican head of state.[3] Assuming a pro-republic vote in the plebiscite, the Convention would then have confined its attention to the details of republican government within the constraints imposed by the results of the plebiscite, and there would have been little point in monarchist candidates standing for election. Such a course of action was widely advocated.[4] The Australian Labor Party (ALP) and the *Sydney Morning Herald* urged an indicative plebiscite followed by the framing of a proposed constitutional amendment by a Commonwealth parliamentary committee; indeed the ALP and the Australian Democrats introduced a Bill for a plebiscite in the Senate, the Plebiscite for an Australian Republic Bill 1997. New Zealand provides a model in this respect, MMP having been adopted following an indicative plebiscite (called an 'indicative referendum') among several electoral systems which led to the enactment of legislation which came into effect upon approval by the electors at a referendum.

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[3] The term 'plebiscite' (rather than 'referendum') is employed in this context to indicate its legally non-binding nature. Whether a majority of electors in four States as well as a national majority would be required for an affirmative result should be specified in advance in the legislation providing for the plebiscite and prescribing its consequences.

[4] By commentators including Sir Zelman Cowen, Sir Anthony Mason, Cheryl Saunders, Charles Sampford, Malcolm Turnbull, Peter Howell, Christopher Pearson, Helen Irving, Frank Brennan and Crispin Hull, and by the *Australian*, the *Age* and the *Canberra Times*.

However, the contrary view — that the public education provided by a Convention is a necessary prelude to any plebiscite — also carries considerable weight, and was probably best argued by Bob Ellicott (1996):

> Doubt, suspicion, an absence of the important detail, in the hands of skilful campaigners, could easily lead people to vote no in an early plebiscite when their ultimate informed view might well be quite different... The holding of some form of convention is probably the best way of informing people of the issues involved and the merits of the solutions available.

In any event, the Howard Government ignored calls for an indicative plebiscite from the ALP, the Australian Democrats, the Australian Republican Movement and others, and instead honoured its 1996 election promise by establishing a Convention, half popularly elected, to consider not only the form and timing of an Australian republic, but also the preliminary question of *whether* links with the Crown should be severed.

The 1998 Convention

The 1998 Convention will comprise 152 delegates of whom half were popularly elected in a non-compulsory national postal ballot held from early November to 9 December 1997. About 47 per cent of eligible voters participated. The ballot was conducted on State/Territory-wide electorates with State representation roughly proportional to population.[5] The election was heavily contested, notwithstanding a $500 non-refundable fee payable by each candidate.[6] In New South Wales 174 candidates contested 20 seats; Victoria 158 for 16 seats; Queensland 129 for 13 seats; Western Australia 59 for nine seats; South Australia 38 for eight seats; Tasmania 23 for six seats; Australian Capital Territory 16 for two seats; and Northern Territory 12 for two seats (*Sydney Morning Herald*, 10 October 1997). Many candidates stood as part of a monarchist or republican 'ticket', but many others stood as independents. The ballot paper allowed voters to choose either a group or a number of candidates equal to that State or Territory's representation at the Convention. Members of the Commonwealth, State and Territory parliaments and appointed delegates were ineligible for nomination as elected delegates and conse-

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[5] The States' seats are essentially proportional to the size of their Commonwealth parliamentary representation (combined House and Senate membership).

[6] It is difficult to see why the deposit was non-refundable. If the purpose of the deposit was to discourage candidates with little prospect of election from standing, there is no reason why usual electoral practice could not have been followed, providing for return of deposit to successful candidates and those receiving a specified proportion of first preference votes – 4 per cent in Commonwealth elections: Commonwealth Electoral Act 1918 (Cth) section 173. If the Commonwealth simply wanted to recoup some of the cost of conducting the ballot, this would seem a relatively trivial benefit (relative to governmental finances), even considering the large number of candidates, for the cost in discouraging citizen participation in government.

quently ineligible for election (Constitutional Convention (Election) Act 1997 (Cth) section 25).

The non-elected members comprise 36 delegates appointed by the Commonwealth government and 40 members of Australian parliaments. The former include a youth delegate from each State and Territory (five women and three men) and 28 others (16 men and 12 women), both republicans and monarchists or at least anti-republicans, including three former viceregal representatives, the present and former chairs of ATSIC, local government representatives, and two bishops. Their appointment was announced on 31 August 1997. The parliamentary representatives include 20 from the Commonwealth parliament and 20 from the other Australian parliaments. The Commonwealth parliamentary representation is roughly proportional to party strength in the parliament: twelve government members, six Opposition, one Australian Democrat and one independent. Each State has three parliamentary representatives: the Premier, the Leader of the Opposition, and another member nominated by the Premier (a Minister in all States except South Australia and Tasmania, where the leaders of the Australian Democrats and the Greens, respectively, were nominated). The two self-governing Territories are represented by their Chief Ministers.

The Convention's composition — essentially half popularly elected, one-quarter parliamentary and one-quarter reasonably broadly based appointed delegates — would seem to auger quite well, for several reasons. First, it has long been considered appropriate that the forum for debating constitutional reform should reflect the constituencies which must ultimately be persuaded to approve proposed amendments : the Commonwealth parliament and the electors, both nationally and in four States. This suggests that a Constitutional Convention should include Commonwealth and State parliamentarians together with delegates representing a wide range of community interests and viewpoints, whether or not popularly elected. Thus, in 1921 the Hughes Government introduced a Bill (ultimately not proceeded with) to establish a Constitutional Convention comprising 75 popularly elected delegates and 36 delegates, half of whom would be nominated by the Commonwealth and half by the States, although Prime Minister Hughes expressed willingness to dispense with the nominated portion as advocated by Country Party leader Earle Page (Lumb, 1992:59-60). A similar proposal by three commentators, including Gareth Evans, in 1983 envisaged a Constitutional Convention comprising 32 popularly elected delegates and 80 parliamentarians, including 16 from the Commonwealth, eight from each State, two from each self-governing Territory and two local government representatives from each State (McMillan et al., 1983:366-7).

Second, each of the three groups participating in the Convention should contribute a different dimension to its proceedings. The popularly elected delegates will primarily bring passion and commitment to the various shades of public opinion on the republican issue; the parliamentary representatives embody political experience and, one hopes, a facility for compromise, with the Commonwealth government presumably determined to prevent the Convention it proposed and established from descending into acrimonious deadlock and shambles; and the ap-

pointed delegates may offer a less passionate range of community views together with some legal and governmental experience. They may exert a moderating influence on the passionate commitment of the elected delegates; but this may represent an unduly optimistic perspective.[7]

The Convention will debate whether or not Australia should become a republic; which republican model should be put to the electorate to consider against the status quo; and in what time frame and under what circumstances any change might be considered (Howard, 1997:3061). The Howard Government has undertaken to put to referendum under section 128 of the Constitution any proposal endorsed by a 'consensus' at the Convention and, if no consensus eventuates, to hold an indicative plebiscite on the republican issue. In either case, a vote on the republic issue is promised 'by the end of the year 2000' (Department of the Prime Minister and Cabinet, 1997:1).

The government has not defined what it considers a 'consensus', although the responsible Minister, Senator Nick Minchin, has suggested that it means 'not simply a bare majority, but a clear majority', declining to be more specific (Taylor, 1996). In view of the presence at the Convention of substantial numbers of both proponents and opponents of the republic, a consensus either for or against severance of constitutional links with the Crown appears unlikely. However, there is a greater prospect of broad agreement on the issues of the 'how and when' of an Australian republic. Indeed both Prime Minister Howard and Convention chair Ian Sinclair have undertaken to work to that end (Gordon & Hawes, 1997; Millett, 1997).

The Convention's outcome will, to some extent, depend upon the agenda and procedures adopted at the Convention, on which the delegates should have the opportunity to vote. No more than three of the Convention's ten days should be allocated to consideration of the initial question 'whether or not Australia should become a republic' and, on the other issues, broad principles should be debated rather than detailed proposed constitutional amendments. It would be calamitous for the Convention to become bogged down in debating the detailed language of proposed constitutional provisions governing the method of appointment or removal of the Head of State or in attempting to codify the powers of the office. That task should be assigned to expert drafters at the conclusion of the Convention.[8]

The Future

The performance of the tripartite February 1998 Convention will be closely analysed for years, since it is likely greatly to influence the future direction of Australian constitutional reform. If it breaks down in deadlock, the combination of popularly elected delegates, parliamentarians and appointed citizens is unlikely to be repeated.

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[7] In August 1996 the Western Australian Commission on Government recommended the establishment of a Convention to review the State Constitution, half the delegates to be popularly elected and half appointed by Parliament, to enable 'an appropriate balance [to] be struck between expertise and community support': Commission on Government (1996:108).

[8] See, likewise, Irving (1997:124).

On the other hand, if broad agreement is reached on a suitable model for republican government, such a Convention will probably be employed for wider constitutional debate.

The Howard Government initially envisaged that the Convention would consider several issues in addition to the republic, including four-year Commonwealth parliamentary terms; the federal balance of power, including the external affairs power; admission of new States, especially the Northern Territory; and constitutional recognition of local government. Further issues mentioned were the qualifications for membership of the Commonwealth parliament, appointment of High Court justices, and State-initiated constitutional referenda (Minchin, 1996:3-4). However, while there is no difficulty in assigning any number of issues for consideration by an appointed Convention including parliamentarians, the position is more complex when the Convention is popularly elected or includes a popularly elected component. Candidates will presumably stand for and against each major issue to be debated at the Convention, but will have no particular expertise or representative point of view on other issues. Hence, the representative function of a popularly elected Convention will be most effective if the Convention is assigned a relatively small number of subjects.

However, some commentators have suggested that a Convention be elected periodically to consider appropriate constitutional reform. Twenty years ago, R. D. Lumb (1977:101) urged that such a gathering be convened 'at regular intervals'; and Cheryl Saunders (1994:119) has more recently suggested that 'regular constitutional reviews, elected or otherwise' be conducted every ten years.[9] But frequent constitutional review could undermine the sense of stability and permanence necessary for effective constitutional government.[10] Hence others have suggested constitutional review at less frequent intervals, such as every 25 to 30 years (see Edel, 1981:9; Mueller, 1996:325); indeed, the Polish Constitution of 1791 expressly required the convening of an 'extraordinary constitutional diet'[11] every 25 years (art VI, in Blaustein & Sigler, 1988:75). Periodic constitutional review is undoubtedly necessary for, as Thomas Jefferson — 'certainly [no] ... advocate for frequent and untried changes in laws and constitutions' — eloquently noted,

> [L]aws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened ... and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times. We might as well require

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[9] *Cf.* the proposal by Representative Ebenezer Herrick of Maine in 1824 that 'amendments [to the US Constitution] be considered every tenth year but be prohibited in the intervals between decades' (Edel, 1981:9).

[10] One lesson Brian Galligan (1995:132) draws from Australia's dismal constitutional reform record is that 'progressive elites and federal governments should stop pestering the Australian people with referendum proposals that are unnecessary or that attempt to centralise power in Canberra'.

[11] Some might say this will be the fare at the February 1998 Convention!

> a man to wear still the coat which fitted him when a boy, as civilised society to remain under the regimen of their barbarous ancestors. (Letter to Samuel Kercheval, 12 July 1816).

However, constitutional review is probably best undertaken, not at some fixed interval, but when a considerable weight of public opinion acknowledges that the issue requires attention. Moreover, the method of review should be carefully adapted to the subject under consideration: for example, an issue of particular interest to the States, such as federal financial relations or the potential republicanisation of State governments, requires greater State parliamentary participation than one in which the States have little direct involvement, such as four-year Commonwealth parliamentary terms or the qualifications for membership of the Commonwealth parliament.

The tripartite constitution of the February 1998 Convention is a novel experiment; as has been well said, it is a 'most unconventional convention'.[12] Its performance will be closely studied both in Australia and abroad for, if the combination of popularly elected representatives, parliamentarians and government-appointed citizens proves an effective one, it may well provide a model for similar bodies in other countries contemplating constitutional change, such as Canada, New Zealand and even the United Kingdom. Australia has tried government-appointed commissions, parliamentary committees and parliamentary Conventions, all to no avail in the sense of actual constitutional alteration. The tripartite February 1998 Convention may well represent, to borrow President Lincoln's aphorism in his Annual Message to Congress of 1 December 1862, the 'last best hope' for Australian constitutional reform.

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[12] In an unpublished paper by Mr James B. Kelly of Mt Tambourine, Queensland, from which the author has derived considerable benefit.

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Editorial note: In the popular election of delegates to the 1998 Constitutional Convention, republican candidates won a majority (56.4 per cent) of the total votes cast and a majority in four States. Of the 76 elected delegates, 27 were monarchists, 27 were affiliated to the Australian Republican Movement, 19 were republicans with other affiliations, and two were of unknown affiliation. The 76 appointed delegates comprised 17 constitutional monarchists, 30 republicans, and 29 undeclared.