SIR RICHARD BLACKBURN LECTURE

by

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to

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This lecture honours the life and now the memory of Sir Richard Blackburn and I am honoured by the invitation of the Law Society of the Australian Capital Territory to deliver it on this occasion. My predecessors have been eminent lawyers and I am pleased to join the company. Above all, I am pleased to have this opportunity to recall a friendship over many years with Dick Blackburn. In the very early post war years we were almost exact contemporaries in Oxford as Rhodes Scholars, and as students learning and relearning the law after the gap of the war years, and we shared the experience of working with some outstanding teachers and scholars.

We both returned to Australia to serve as Professors and Deans of our home law schools, he in Adelaide and I in Melbourne. They were exciting days in which we both participated in the building of rapidly growing professional schools. I recall a visit to Adelaide at his invitation in 1954 soon after I had returned from the United States where I had been a visiting Professor in the Harvard Law School. I spoke of the stimulating experience of that year in America and of the extraordinary political events which had carried Senator McCarthy to great heights of influence and which then brought him low.

Our paths later diverged; Dick Blackburn went to law practice and then to the Bench; I went to general University administration, to the Governor-Generalship
and then back to Oxford. I followed his work on the Bench and admired and respected it. We last met in Canberra in 1986 when I received an honorary degree of the Australian National University at his hands as Chancellor of that University. That was our last meeting; he was ill, but we remember a very happy visit and the kindness with which he and Lady Blackburn received us.

It is fitting that the Law Society of the A.C.T. should honour its first Chief Justice of the Supreme Court of the Territory in this way. The lecture was established in his lifetime, and he was able to deliver the first of them. Now we remember him for his many distinguished qualities; for his professional and intellectual distinction, and above all for his integrity and his courage; he was a very gallant gentleman.

I have chosen to speak of *Crown and Representative in the Commonwealth* and I do so at a time when there is renewed debate about these institutions in Australia. At the recent Centenary Constitutional conference held in Sydney early in this year, which commemorated the hundredth anniversary of the National Australasian Convention of 1891, the issue of a republican Australia was raised once again as part of the agenda for Constitutional reform in this decade. The Chairman of the Conference, Sir Ninian
Stephen, expressed the hope that the Conference would be the "beginning of a process of renewal of our national polity over the last decade of the twentieth century" which would aim to see "in place the sort of Australian polity that will best meet the nation's needs". Among those who took part in the discussion of republican themes, Mr Justice Pincus of the Federal court said that

Australians are sometimes asked whether they favour our becoming a republic. Our answer to that question is not an informed one unless the person answering understands what is left of our legal links with the monarchy and with the U.K. generally; they have lessened substantially since 1900 and the rate of change quickened in the 1980's.

This topic needs attention. As we near 2001, an obvious time to institute a full republic (if we are to have one) stock should be taken of our progress towards republican status. It has made no impact on the public consciousness".

More recently, at the centenary national Labour party conference in Hobart late in June, a resolution for the establishment of a republic by 2001 (the centenary of federation in Australia) was strongly supported.
The year 2001, which marks the centenary of federation in Australia, becomes a target date for the achievement of constitutional change, much as 1988, the year of the bicentenary had been targetted at the beginning of the eighties. The Constitutional Commission which was established in 1986 accepted the advice of its Constitutional Committee on the Executive that the time was not then ripe for the submission of a proposal for a republic (of any sort) to the processes of constitutional change. I was Chairman of that Committee which explored the issue in some detail and depth, and was divided in its views of the desirability of conversion to a republic. It was unanimous, however, in the view that any such proposal was premature, that it would not carry, and that submission to referendum on this issue might prejudice the prospects for constitutional change more generally.

I believe that that judgment is still sound, though one cannot confidently predict what may develop in this coming decade. What I propose to do is to respond to Mr Justice Pincus's admonition, and to make some contribution to the debate by exploring "what is left of our legal links with the monarchy". His observation about the acceleration in the rate of change in the 1980's refers, no doubt, to the Australia Acts which put at end the power of the United Kingdom parliament to
legislate for Australia (an action which could have consequence for the monarchy), and which brought about very substantial change in relation to State governorships, stripping the United Kingdom government of any role in relation to them.

II

The draft constitution which was adopted by the National Australasian Convention of 1891 owed very much to the intellectual powers and to the drafting and legal skills of Sir Samuel Griffith, then Premier of Queensland. It gave the title 'Commonwealth' to the new federal entity, and that was a contribution of Sir Henry Parkes, President of the Convention. It was agreed at the earliest point in Constitution making that there should be a "federal union under the Crown" with the Queen as Head of State and with a Governor-General as her representative in the Commonwealth. This was followed by the Second Convention of 1897-8, which adopted a constitutional instrument, which, with no material modifications in this respect, became the Constitution which came into operation in 1901.

Canada had preceded Australia in coming into being as a self governing colony with the forms of a constitutional monarchy in 1867. Sir John Macdonald then spoke of "the
noble object of forwarding a great British monarchy in connection with the British Empire and under the British Queen" though it was recognised that, apart from the "graceful compliment of a visit", royal authority would be exercised by the Queen's representative. For Canada as for Australia, the Queen was seen as the symbol of imperial unity.

There is a contemporary exposition of the character of that monarchy in Bagehots brilliant book The English Constitution which was published in 1867, the year of the British North America Act. Bagehot's chapter on the monarchy was long and remarkable; his principal concern was with the role and office of the monarchy at home; there was little said about imperial considerations. He spoke of a monarchy which, divorced from arbitrary personal power, had become increasingly the symbol of the unity of national life; he saw it as the most intelligible part of the political system for ordinary people. He spoke of the 'dignified' role of the monarch, and provided brilliant and some very modern insights into this aspect of the royal role. Of the 'effective' sources of influence and authority of the modern constitutional monarch, he wrote in well known words that "the sovereign has under a constitutional monarchy such as ours, three rights - the right to be consulted, the right to encourage, the right to warn", and he observed
that the monarch's use and exercise of these rights depended upon interest, experience and knowledge.

Sixty years after the first publication of this book in 1927 - Bagehot's distinguished editor, Arthur Balfour, wrote an extended and notable introduction in which he spoke of "developments unforeseen by Bagehot". Of the King, he said

"He is not the leader of a party, nor the representative of a class; he is the chief of a nation - the chief indeed of many nations. He is everybody's King; by which I do not so much mean that he is the ruler of the Empire as that he is the common possession of every part of it. He is the predestined link uniting all of the various communities whatever be their status, of which the Empire is composed. The autonomous democracies, including among them, Great Britain, the mother of them all, each regard him as their constitutional head."

This was a new emphasis on the place of the Crown in Commonwealth and Empire, and Balfour judged that Bagehot would have been much affected by this development, and would have seen the importance of a constitutional monarchy above party, acting in Dominion affairs on the
advice of ministers dependent on local majorities, as the great binder of Commonwealth and Empire. This essay by Balfour followed closely upon the deliberations of the Imperial Conference of 1926, in which Balfour had played an important role as Chairman of the Committee which considered and defined the relationship of the dominions (including, of course, Australia) which had emerged out of the larger Empire, as distinctive self governing and autonomous units. The Imperial Conference worked to give substance to this, and the work was carried forward by later Imperial conferences and committees and by the enactment of the Statute of Westminster of 1931. The Balfour report of 1926 spoke of the United Kingdom and the self governing dominions as equal in status, in no way subordinate to one another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations. Consistently with this, important decisions were taken by agreement in 1926 and 1930 with respect to the office of Governor-General and I shall speak of these later.

At this time, and for a period extending into the early post war years, the requirement of common allegiance to the Crown was seen as essential and central to the Commonwealth relationship; that notion of common allegiance was expressed in terms of a common Crown
shared by the United Kingdom, the self governing dominions and the overseas Empire. So it was said that "there are not several Kings within the Empire. there is only one King" with only one title. Yet the declaration of war by Britain in 1939 produced a diversity of response on the part of individual Commonwealth countries. Mr Menzies in Australia saw it as the consequence of allegiance to the common monarchy that if the King and Britain were at war, Australia was at war. Other Commonwealth countries - Canada and South Africa - came into the war by separate and later decisions - and in the case of South Africa after sharply divided debate; Ireland, still technically part of the Commonwealth, stayed neutral throughout. Mr Menzies, in a characteristic phrase found the proposition that the same King could at the one time be at war and at peace to be a "metaphysical notion that quite eludes me". Arnold Smith, who was the first Secretary General of the Commonwealth (1965-73) found no such difficulty; he wrote that "sharing a monarch (involved) not the slightest limitation on sovereignty". Of course there was no great conceptual difficulty if the monarchy was seen as in character separate and shared, as a monarchy in which the same person was Sovereign in separate countries by separate titles; that is to say a personal union of several crowns. Yet it was noteworthy that a Commonwealth statesman and thinker like Leopold Amery
vigorously repudiated as late as 1947 the notion of the Crown as such a personal union. Yet his conception was not really compatible with the great changes and developments which were about to take place in the post-war Commonwealth, with the movement to independence of a multitude of formerly colonial territories, led by India, Pakistan and Sri Lanka. The past history of the new members, notably India and Pakistan, might have suggested that on independence they would choose to depart from the Commonwealth. In fact it was not so: India posed for the Commonwealth Prime Ministers in 1949 the question whether continued membership of the Commonwealth which she desired was acceptable on terms that she became a sovereign independent republic. On the face of the constitutional law we knew, common allegiance to the Crown was the obligatory element in the relationship, and so an elder Commonwealth statesman like Smuts, who was a sharp critic of the 1949 agreement, continued to believe, but the Commonwealth Prime Ministers accepted Indian membership on these terms. So Lester Pearson who was a senior member of the Commonwealth Prime Ministers' conference, wrote in his autobiography of what came out of the 1949 Conference.

Had we been unable to solve the problem of India's admission as a republic, we would not have the Commonwealth we have today with all the new members
from Asia and Africa. Because of the solution we found, however, which seemed very sensible at the time, we did break our institutional bond within the Commonwealth, the monarchy. This meant that only self interest would hold the new Commonwealth together. In making this change which was inevitable and worthwhile at the time, the critics would say that we sowed the seeds of the Commonwealth's eventual disintegration. There was no alternative. Had we not made the change, disintegration would have taken place much sooner.

A formula which was specific to India, was logically available to Pakistan and to other Commonwealth countries, unless, as in the case of South Africa in 1961, there were other reasons for refusing membership. India furthermore, accepted a formula by which the King, George VI, was recognized as Head of the Commonwealth. Though originally specific to this King, George VI, Queen Elizabeth has been recognised throughout the whole Commonwealth as Head, by Commonwealth republics, by other Commonwealth separate monarchies, and of course by those States of which she is Head of State.

At the 1949 meeting of Commonwealth Heads, the question of individual and distinct royal styles and titles was raised, but left for later resolution. Then, in advance
of the coronation of Queen Elizabeth, it was agreed that "locally variable titles" might be adopted; in the case of Australia, legislation enacted in 1953 and amended in 1973, gave her the title of Queen of Australia. What was done gave expression to the notion that there is now a shared monarchy within the wider Commonwealth (which now contains a majority of republics) which may be described as a personal union of several Crowns. A modern constitutional text states the position as being that in Commonwealth affairs it is an accepted fact that while there is one Queen for several realms, she acts in a different capacity in respect of each realm. The Queen's position resembles that of the King of Scotland and England between 1603 and 1707 when two entirely independent nations with independent legal systems shared a King. It is, however, a distinctive personal union in the sense that, whereas in some other cases, as for example in the case of Hanover and England there were separate countries with separate laws of succession, in the Commonwealth there are separate countries with a common law of succession and this fact binds these countries in constitutional links by virtue of the shared monarchy.

This is not without its problems and possible misunderstandings, and the case of Grenada in 1983 is in point. That case attracted wide attention because of the
international implications and particularly because of the United States military intervention, at the request of the Governor-General. Sir Paul Scoon, which was made without the prior knowledge of the United Kingdom government. Sir Paul's answers to questions put to him by journalists reveal a sure grasp of the position.

Q. Was there some problem about the fact that you did not contact Her Majesty's government (in the United Kingdom). Being the Queen's representative in Grenada, do you regard your action in going to the Organisation of Eastern Caribbean States and the possibilities that arose from that to be in any way in conflict with your appointment?

A. They don't conflict at all. Her Majesty has many governments. You see, lots of people don't understand the constitutional position of Grenada. The Queen is the Head of Grenada and the British government can't dictate to the government of Grenada what to do, nor can the British government give any orders to the Governor-General of Grenada as distinct from the Queen of Canada or Australia, as the case may be. I think that people miss that point all the time. I don't understand all this
about the British government. I had not thought at all of contacting the British government.

Mrs Thatcher made clear in answer to a parliamentary question that no request from Sir Paul Scoon for military assistance had been passed through United Kingdom channels, and that no such request was reported to the United Kingdom. This is in accord with modern notions of Commonwealth; while it is a recent and small member of the association, Grenada stands in the same independent relationship to the United Kingdom as do all Commonwealth countries. Further, Sir Paul Scoon stated, and Buckingham Palace confirmed, that there was no prior communication with the Queen on the request for military support and intervention. Indeed had the Governor-General communicated with her in advance on this matter, it might have placed her in a difficult, perhaps intolerable position. As Queen of Grenada she would know what was happening; as Queen of the United Kingdom she would know what she could not communicate to her United Kingdom ministers. This is not the only problem which can arise from the fact of the Queen's single person and the multitude of her separate titles, but it is a significant one and it required her representative to act appropriately, as in this case and this context Sir Paul Scoon undoubtedly did. Problems may arise in other
contexts: when and if the Queen speaks on matters of government policy, as she, for example, did some years ago in the course of a State visit to Jordan, there may be and indeed were questions about which Commonwealth government's policy she is expressing and which, it may be, her statement offends.

The fact is that the monarch is the 'British' Queen in the sense that her British title and her British realm is the primary one. It is that law which prescribes the succession, it is in Britain that she performs Head of State functions and duties in person, and the necessary and inevitable consequence of this primary obligation is that, for the appropriate discharge of her constitutional and ceremonial duties in Commonwealth countries other than the United Kingdom, she must have a representative permanently in place to discharge those duties. So far as her own personal involvement outside the United Kingdom is concerned, it must depend, as Sir John MacDonald of Canada said in 1867, upon the "graceful compliment of a visit". How that appears in the late twentieth century when countries like Canada and Australia are significant and well established independent states within the international community is a real question; as Mr Justice Pincus said in his address to the Centenary Constitutional Conference "most advanced countries have a Head of State continuously carrying out
his or her functions in that country with a defined method of appointment and removal and so forth". A substantial question may fairly arise: is it not anomalous that we have a Governor General who, because of the physical facts, performs virtually all Head of state functions but is yet not Head of State? Is it satisfactory that the Head of State should be an absentee?

As I have said, a move to republican status on the part of Australia would not necessarily mean a severance from the Commonwealth. The majority of member States in the contemporary Commonwealth are either republics or have 'monarchical' Heads of state other than the Queen; while the settlement of 1949 was, at the time, specific to India in the republican context and specific to the King George VI in respect of recognition as Head of the Commonwealth, it has been regarded as of more general application. Were Australia, as a republic, to desire the maintenance of the Commonwealth association, as would be expected, then subject to acceptance by the existing membership of the association, her membership would be assured.

The title of the Queen as "Head of the Commonwealth" is symbolic; it is an expression of identification with the Commonwealth on the part of a large body of states of
diverse character. As Patrick Gordon Walker said, pains were taken at the 1949 meeting of Commonwealth Prime Ministers to give currency to the idea that in its capacity as the symbol of the free association of its members, the Crown has no sovereignty and is the source of no legal authority. In speaking of the King as Head of the Commonwealth, Pandit Nehru said soon after the 1949 meeting that "The King has no function at all. He has a certain status. The Commonwealth has no organisation through which to function and the King also can have no function". This is not to say that the title of Head of the Commonwealth is without significance; the Queen sets high store by the Commonwealth and her role, as Head of the Commonwealth, is warmly acknowledged by all Heads, as is evidenced by the ceremonies and audiences at meetings of Commonwealth Heads.

All of this would seem clear; yet there are suggestions that the title of Head of the Commonwealth invests the Queen with a specific and distinct capacity. In his memoirs, Arnold Smith, the first Secretary-General of the Commonwealth, refers to events preceding the Lusaka meeting of Commonwealth Heads in 1979, and to the British Prime Minister's expressed doubts about the Queen's attendance at that meeting because of fears for her safety. Mrs Thatcher was then reported to be considering her "final advice" to the Queen on this matter. As to
this, Arnold Smith says

"It was after all not the job of the British Prime Minister to advise the Head of the Commonwealth on this matter; it was the responsibility of (the) ... Secretary-General or of all the Heads of Government collectively for the Queen was planning to visit Lusaka as Head of the Commonwealth."

My view is that he is plainly wrong. In the first place, the British Prime Minister has a very real concern with the safety of the Queen of the United Kingdom which she never ceases to be; of course it is a matter for careful judgment as to what advice a Prime Minister tenders, but that is a different matter. Secondly there is no warrant in the history and intentions of the 1949 settlement for any claim that the monarch was given a distinct status as Head of the Commonwealth with a distinct body of advisers, other than those entitled to give her advice as Prime Ministers of the States of which she is Queen. I do not believe that she can act or speak independently of her status as Queen of one or other of her realms, but as Head of the Commonwealth. It is, nevertheless, a notion which has been voiced not only by Arnold Smith, and I state my clear belief that it is without substance.
III

I turn now to the 'representative', and I speak specifically of the office of Governor-General in the Commonwealth. I served in that office from 1977 to 1982.

I have said that for Australia, as for Canada before her, it was early agreed in the process of constitution making in the 1890's that there should be a union under the Crown with the Queen as Head of State, and with a Governor-General as her representative. At that time, as representative, he was charged with the performance of a range of functions as required by her. The Constitution, however, vested substantial powers and functions directly in the Governor-General without reference to the Queen; these included power to appoint and dismiss Ministers, to summon, prorogue and dissolve parliament and to appoint judges. The command-in-chief of the armed forces was vested in the Governor-General as the Queen's representative. Some uncertainty arose out of the conferring of powers on the Governor-General by reference to varying formulae; some were conferred on the Governor-General in Council, others on him directly. By 1901 when the Constitution came into operation, Westminster principles established that the Governor-General normally acted on ministerial advice and that this did not necessarily depend on whether a particular function was
assigned, in terms, to the Governor-General in Council. At the same time, it was clear that there were powers which in law might be exercised by the Governor-General in his own independent discretion. In the course of the first decade of the Commonwealth, Governor-Generals on three occasions rejected Prime Ministerial advice to dissolve the House of Representatives. The conspicuous case of the exercise of an independent power was the dismissal by Sir John Kerr of Ministers in November 1975.

There is an interesting historical development in the office of Governor-General. A Canadian incumbent in the nineteenth century spoke of the holder as being 'like a man riding two horses in a circus'. In one capacity the Governor-General discharged the role prescribed by the law and custom of the Constitution; in the other he served, and saw himself as serving, as principal representative of the British government in Australia, as a protector and interpreter of British and imperial interests. So there was some conflict in the early years of the Commonwealth between the Governor-General and Australian ministers over immigration and tariff matters, defence and foreign affairs, which were seen as having special implications affecting Britain's wider imperial concerns. The Governor-General, moreover, reported to the British government, and communications between the Australian and United Kingdom governments were passed
through the Governor-General's office. This gave rise to tensions, and Australian prime ministers and governments increasingly asserted an entitlement to more independent authority in both internal and external affairs. There was also an increasing demand for Australian involvement in the choice of a Governor-General. To this the United Kingdom government gave some response, though, until 1930, when agreement was reached on this point, the United Kingdom government was the formal source of advice for the appointment of a governor-general.

As I have told, the Imperial conferences of 1926 and 1930 dealt comprehensively with the reformulation of the relationships between what were then styled the self-governing dominions and the United Kingdom, the object being, as Leopold Amery who was Dominions Secretary at the time put it, to 'get rid of every last vestige, not only of substance, but also of mere historical form which might be thought to limit the complete independence and equality of the dominion governments'. The position of the Governor-Generalship was given special prominence in 1926, partly because of current dispute in Canada over issues of dissolution.

In 1926, the role of the Governor-General was reformulated in terms of a convention agreed to by the Imperial Conference that he should occupy the same
position in relation to his dominion government, as did the King in relation to the United Kingdom government. That role was not more precisely defined, but it followed that the Governor-General no longer served as representative and custodian of United Kingdom interests; these became the concern of High Commissioners. While the 1926 Conference affirmed the principle that it was the "right of each Dominion to advise the Crown in all matters relating to its affairs", it became apparent from the debate which arose out of the decision of the Australian government to recommend an Australian resident, Sir Isaac Isaacs, as Governor-General in 1930, that there was doubt whether this applied to advice on the appointment of a Governor-General. There was also controversy in Australia over the propriety of such an appointment, and some challenge to the standing of an Australian government or Prime Minister to advise the King who was himself opposed on various grounds to the appointment of Isaacs, and wished to appoint a soldier, Lord Birdwood. More generally the King was resistant to the appointment of a 'local' man; he also believed that Isaacs, in his mid seventies, was too old to assume the Office. The uncertainty over the source of advice and recommendation to the King was resolved by a reference to the Imperial Conference of 1930 which affirmed that the Governor-General should be appointed by the monarch on the advice of the Commonwealth Prime Minister concerned
after informal consultations with the King. One of the objections in the Isaacs case was said to be the want of such consultation, but, in the event, the King assented and made the appointment of Isaacs, albeit by an unusual formula.

So the modern Governor-Generalship was put in place by this case, though the Isaacs appointment did not itself establish a settled practice of appointing a 'local' person. It was not, indeed, until the mid sixties, with the appointment of Lord Casey on the advice of Sir Robert Menzies, that the practice of appointing a line of Australians was settled. Sir Paul Hasluck, who was Lord Casey's successor, judges that the pattern has been clearly laid down for appointing an Australian as Governor-General, and I believe that this now commands general acceptance.

So, too, it appears to be settled practice that the source of recommendation and advice to the monarch is the Prime Minister who may consult where and as he wishes; it is his decision, and not a Cabinet matter as Sir James Killen makes clear in his memoirs, in commenting on procedures relating to my appointment. In the public debate which followed Sir John Kerr's exercise of power in 1975, much was made of the point that he was a non-elected Governor-General, and Mr Justice Pincus in his
address to the Centenary Constitutional Conference observed that "it is inconceivable that if the point were properly put to the Australian people, they would leave the appointment of a Head of State to the discretion of the Prime Minister". The Constitution of Papua-New Guinea provides that the Crown shall appoint as Governor-General a person elected by secret ballot of the parliament.

Notwithstanding the fact that the Governor-General is seen as the personal representative of the Queen who is Head of State, he does not seek instruction from her, but acts on his own authority, informing her when appropriate of what he has done. As I have said, there are cases where the authority which the Governor-General exercises is vested in him as Governor-General by the Constitution, and such was the power exercised by Sir John Kerr. In his book, Matters for Judgment, he made clear that his actions and decisions were his own, and that he did not consult with the Queen before taking action, though he advised her immediately of what he had done. "My view" he wrote, "was that to inform Her Majesty in advance of what I intended to do and when, would be to risk involving her in an Australian political and constitutional crisis in relation to which she had no legal powers, and I must not take such a risk". The substance of what Sir John wrote was supported by a
statement from the Queen's office. On November 12 the day after the dismissal, the Speaker of the dissolved House of Representatives made an approach to the Queen asking her to restore the Whitlam government. The answer was that this was constitutionally inappropriate, and that the relevant powers were reposed in the Governor-General.

There are other contemporary examples of the exercise of significant discretionary powers by Governor-Generals where it is clear that there has been no prior consultation with the monarch. There is the notable case of the appointment of a Prime Minister, followed by the grant of dissolution to him in Fiji in 1977. There is the action of Sir Paul Scoon in Grenada in 1983, and I have given some account of that earlier in this lecture.

More generally, there are far-reaching statements which draw attention to the availability of power to the monarch or his representative to act in time of crisis or urgent threat to institutions. In his well known Queale lecture first given in 1972 and republished in 1979, Sir Paul Hasluck wrote that

in abnormal times in the case of any attempt to disregard the Constitution or the laws of the Commonwealth or even the customary usages of
Australian government, it would be the Governor-General who could present the crisis to Parliament and if necessary, to the nation for determination. It is not that the Governor-General (or the Crown) can overrule the elected representatives of the people, but in the ultimate he can check the elected representative in any extreme attempt by them to disregard the rule of law or the customary usages of Australian government and he could do so by forcing a crisis.

I do not have time to explore the issues raised by this statement which, as I say, was preserved in a post 1975 publication of Sir Paul's paper.

In writings since I retired from the Office of Governor-General, I have endeavoured to explore the scope and character of the contemporary office: its 'effective' and its 'dignified' aspects, to use the language of Bagehot. What emerges is that in Australia virtually all Head of State functions are performed not by the Head of State, but by her surrogate, the Governor-General. Her discharge of such functions is largely confined to those which cannot be performed by him: his appointment and recall. In the context of the debate on an Australian republic, I would suppose that the central question is whether, having regard to the evolution of the monarchy
and the governor-generalship, it is appropriate to preserve constitutional forms which leave in place an absentee Head of State who of necessity cannot be anything other than that. I do not intend to debate that issue here; nor to explore the form and character of a possible republican headship of state which must be a matter of central importance in any discussion of constitutional change.

A decision to proceed to constitutional change and to constitute a republic itself raises questions as to the form and character of that republic, and that issue was canvassed by the Constitutional Committee of which I was chairman and which reported in 1988 to the Constitutional Commission. All of those reports are to be found with others on Canberra bookshelves. My more limited concern has been to give some answer to Mr Justice Pincus's statement about what is left of our links with the monarchy and with the United Kingdom generally. I hope that what I have said gives a reasonably clear and hopefully accurate picture of the contemporary situation of Monarch and Governor-General in the Commonwealth.

I thank you for the invitation to pay tribute to the life and work of Sir Richard Blackburn.