

SYDNEY ROTARY CLUB

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TUESDAY, 19 APRIL 1983

TO THE THIRTY THIRD PARLIAMENT :
OR SUMMITS, BELLS, WHIPS AND OTHER THINGS

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The Hon Mr Justice M D Kirby CMG
Chairman of the Australian Law Reform Commission *

NO NOBLER SIGHT

In two days, on Thursday 21 April 1983, the Thirty Third Parliament of the Australian Federal Commonwealth will assemble in Canberra. The assembled Members of the new House of Representatives and Senate will gather in the Senate Chamber to hear the Governor-General's Speech — replicating the ancient forms and procedures that have been followed at Westminster for centuries. It will be a glittering occasion, made still more dramatic by the sudden change in political fortunes that has brought a new Government to the helm at a time of great national uncertainty and economic pain. In the building in which, but two weeks earlier, gathered the first National Economic Summit, fresh faces with high ideals and some hard-bitten 'old timers' will come together in the palladium of democracy.

It was Jefferson, I think, who said that there was no nobler sight than a free people, changing their Government, peacefully and without bloodshed. Change by ballots, not bullets, is the pride of our democratic system. We can all of us take a moment to reflect with a certain amount of self-satisfaction on the strengths of our parliamentary system. For all of its weaknesses, it has strengths. It brings together a varying assembly of some 200 men and women — increasing numbers of women — to debate the great issues before the country. It has a inbuilt procedure for orderly change. It has institutional pressures for that degree of co-operation which is the hallmark of Western democracies. It provides a means for the uninhibited public discussion of difficult, controversial and even embarrassing topics. And at the end of a period, there is machinery for evaluation,

change and renewal. The ultimate rule of the people's voice is accepted by all the players : even the high and the powerful. What a contrast this system offers to the uneven way in which petty tyrants and one-party States resolve their leadership succession.

Yet it would clearly be wrong to pretend that our parliamentary democracy in Australia is without problems. A casual glance at the titles in any serious bookshop will provide a hint of the concerns. What do they mean, the authors, who write books on The Collapse of Democracy, The Failure of the State, The Crisis of Democracy, Legitimation Crisis : Must Canada Fail?, The Death of British Democracy, Change the Rules? It is apt that, on the eve of a new national parliament, we should pause and reflect for a moment on the challenge to Parliament and what Parliament should do to respond.

I shall seek to identify some of the causes of the perceived loss of power and relevance in our Federal Parliamentary assembly. I will then offer a few words of advice, humbly as I must do as a citizen. This advice will urge Parliament to look to its procedures and to look to its role in order to ensure its relevance as we approach the third century of Australia's modern history.

THE LOSS OF POWER

The loss of power by the Houses of Parliament has now become a legitimate matter of public comment. This is not just an Australian phenomenon. It is true in other democracies which follow the Westminster tradition. Scholars trace the process by which power in the Chambers has been lost to the Executive Government (the Cabinet), the Prime Minister, the bureaucracy and even the judiciary.¹ Professor Gordon Reid wrote in these terms in 1980:

[T]he elected Parliament is a weak and weakening institution; the Executive Government is the principal beneficiary of the Parliament's decline; and the judiciary is tending to compete with the Executive Government in exploiting the Parliament's weakness, but is having its own independence undermined through the initiatives of the Executive Government.²

The reasons for this decline have been with us for some years. The growth of disciplined political parties, the increased expectations of the bureaucracy, the growing role of powerful groups outside the arms of Government (the media, the trade unions and multinational business corporations) and the advance of complex international technologies, all tend to reduce the importance of what takes place in the parliamentary chambers. To these considerations, in Australia, Professor Reid adds a few more:

... the Parliament's lack of supporters (particularly in Canberra) and the lack of people or groups in Australia who will work towards its rehabilitation. The problems of Parliament also arise from its inherent division; not only is it divided by the Federal Constitution into two nominally powerful, and often conflicting, Houses: each constituent House accommodates competing factions - each of which is usually divided between leaders and led ... and, following the Westminster style of Government, both Houses grant important priorities in debate and decision-making to Executive Ministers of State. The outcome has been that the more numerous of the two Houses -- the House of Representatives, has become the captive of the Executive Government of the day and is now a sadly repressed and debilitated Parliamentary chamber.³

Repressed and debilitated? These are strong words. But stronger still were the words offered by Paul Kelly, political correspondent of the Sydney Morning Herald after the National Economic Summit. Listen to what he wrote in the Herald on 13 April:

The National Economic Summit is like a shot in the arm for a political reporter who has sat in the gallery of the past decade watching the decline of Parliament. The truth is that in two days the Summit meeting has produced not only a fruitful debate about the economy, but offers the prospect of bringing Parties closer together. This is something that has not happened in the Parliament for many years. It is a measure of the decay of our parliamentary system and is also a condemnation of the quality of our parliamentarians.⁴

Public and expert disillusionment with the Parliament is a serious disease which we should seek to check. The other branches of Government : the Cabinet, the Prime Minister, the Public Service and the Judiciary are the elite elements in our form of Government. Whatever Party is in office, the Ministers, bureaucrats and judges tend to be the educated elite experts. Only the Parliament, with its diversity of Members, grafts on to our system the variety of talent and views which partly reflect the mass of the people. Unless we are to give up the notion of democratic Government as nothing more than a triennial veto for the people, we should all be concerned to arrest the declining fortunes of the institution which reflects our diverse democracy. Gordon Reid again :

If as a nation we are concerned about the declining reputation of our politicians and the political processes, we should ask ourselves whether the state of our Parliament has any influence on this condition. I believe it has. It is not that our parliamentarians are undignified, it is that the Parliament-Executive relationship is such. By stripping our rank and file politicians of continuing responsibility in Parliament, particularly in the House of Representatives, the proceedings have degenerated into a continuous and elementary election campaign.⁵

The seriousness and general high level of the contributions to the Economic Summit must make us question why it is that parliamentary debates, in the self-same venue, are not generally at the same level of concern for issues and solutions. I do not wish by a single word to contribute to the declining reputation of Parliament. But the contrast between the Summit and most days in Parliament is too stark and fresh in everyone's mind to be ignored. Is it because this was an invited and not an elected assembly? If so, should one infer that we would do better with a House of Notables or an appointed Senate, such as they have in Canada? I hesitate to reach this conclusion for it is a denial of democracy. I should prefer to ask why political life is not attracting people of the highest talent? What are the inhibitions? What are the Party and institutional impediments that require us to assemble such a Summit by invitation and not by election?

The deep-seated malaise about the adequacy of Parliament to respond to the complex problems of today can be seen in many ways. The Economic Summit was but one. Another is the suggestion that the Australian Constitutional Convention should have non-parliamentary Members, in order to supplement the expertise and interests represented in our Parliaments. Still another is the failure of Parliaments to fill the institutional vacuum left by the retreat of the creative judiciary : unwilling in the age of elected Parliaments to indulge in radical law reform — preferring this to be left to the legislators. In the Federal Parliament, I could list a number of cases where law reform Bills, though introduced, simply failed to secure the requisite attention. This was often for want of Executive Government impetus. And the Parliament itself had neither the will nor the means to stimulate the Cabinet and the bureaucracy into action.

WHAT CAN BE DONE

Consensus v sharpened differences. What can be done to respond to these ills? Are there any lessons in the Summit which we should seek to learn and to graft on to our Parliaments. Would such an endeavour be compatible with our Party system and Cabinet system, as they have developed?

The search for consensus on everything is not necessarily a good thing. True it is, in a specialised area such as the economy, where things are so serious and where the 'scenarios' available to Governments are so few, the value of consensus seeking is heightened. It educates participants and those who are watching. It eliminates at least some degree of ignorance. It promotes concentration on shared ideas. It gets some of the best minds thinking on the problem. All of these features of the Summit have relevance to the improved organisation of Parliament. But it would neither be appropriate nor desirable to turn Parliament into a venue which only sought consensus. Any such endeavour would blunt the legitimate role of different political, economic and other philosophies, which find reflection in Parliament.

Lord Hailsham, in his first Menzies Oration, drew attention to the fact that differences of view, freely expounded and vigorously argued for, are the essence of our form of government.⁶ There is, and should continue to be, a legitimate role for difference, diversity, multiplicity of views and alternative policies; just as there is room also for the common ground. The search for consensus should not take us to Orwell's world of 'double speak', where difference of opinion is hidden in obfuscating language and where bland talk replaces the competition for ideas and for the mind of the people. Hailsham, the politician not the judge, put it in this way:

Politics is, or at least ought to be, an honorable calling and politics is about significant choices, that is about the things concerning which people are divided. A free society must have argument in order to progress. It is based on decisions and significant decisions are always controversial and political parties are the preferred method of conducting controversy and promoting decisions.⁷

Finding the proper balance between difference and consensus will never be easy. But if Parliament is to be resuscitated, it must search for new and improved institutions which will secure agreement where that is appropriate and refine and identify differences, where choices must be made.

Parliamentary procedures. Senator John Button, now Leader of the Government in the Senate, wrote a most telling piece soon after his entry into Parliament, comparing its antique rules to those of an English boarding school: bells ring and whips are cracked and the people's representatives scurry to obey. Until the institutional machinery of Parliament catches up with the reality of Australian Federal Government, there will remain the danger that the ceremonial and symbolic role of Parliament punctures the efficient operation of the Ministry, without significantly enhancing the reputation and role of the legislature.

Even in my own area of operations, in law reform, we see the problems. Reports tend to become lost in the bureaucracy, insufficiently stimulated to action by questioning parliamentarians. For three years the Law Reform Commission has been reporting to Parliament suggestions made to it by citizens, judges, scholars and others for the improvement of Federal laws. So far, no machinery whatever has been established to consider, evaluate and act upon these suggestions. They simply go into the Chamber with our Annual Report and disappear, usually without trace. A Parliament that was concerned about law reform would have at least a few Members addressing the institutional means by which law reform reports and law reform suggestions could be systematically and efficiently processed in a routine way. I was glad to see that, in the Government's law and justice policy, Senator Evans promises attention to the means by which law reform reports will be processed through Parliament.

There are many other reforms that should be considered. They should not await the move to the new building. Enhancing the reputation of Parliament should have the most urgent priority.

- * The procedures of Parliament are basically those inherited at its creation in 1901. There is 'gross congestion of the parliamentary timetable', with consequent diminution in the effectiveness of Members of Parliament and hence in their public esteem.⁸ An example of the unedifying end of session scurry of legislation was seen in the recent Sitting of the New South Wales Parliament. I do not know whose fault this is. But it does nothing for the good name of Parliament or our system.

- * The number of sitting days of the Federal Parliament are about half those of the Parliaments in Westminster, Washington and Ottawa. The recent report by another Reid, the Reid Committee⁹ drew attention to this problem and the shocking inconvenience of several short sessions scattered throughout the year. It is to be hoped that rationalisation of parliamentary sitting periods will be achieved to promote a more even consideration of legislative proposals and more efficient interaction between Parliament and the Executive.

- * The procedures of voting are positively antique. When the periods of bells and divisions are added up, they absorb the equivalent of three full sitting days each year. The possibility of introducing computerised or in any case electronic voting systems as exist in other legislatures is surely overdue. The present scramble to the relentless tune of bells is demeaning -- as anyone who has seen it will attest. But perhaps in Rotary, I should not say anything more about bells!

- * The House of Representatives has failed to introduce the committee system which at least ensures that the Senate can examine the expanding volume of legislation and delegated legislation. Only the Senate has sent Bills to small committees for detailed scrutiny and report, some with notable results. Only the Senate is attempting to subject Annual Reports of statutory authorities to systematic committee examination. As in business, so in Government. There is no substitute for hard work and for dedicated attention by law makers to the detail of the laws they pass. All too frequently, one suspects, the laws pass through the democratic filter without adequate parliamentary attention, particularly by the House of Representatives.

I hope that in the spirit of reconciliation, and with the Prime Minister's welcome promise that Members of the Opposition will be offered a constructive role in the new Parliament, early attention will be given to the parliamentary procedures which inhibits the adaptation of this ancient institution to the challenges and needs of contemporary Australia.

Television in Parliament. One matter which deserves the earlier attention is the proposal for televising the sittings of Federal Parliament, or parts of them. Australia was in the vanguard of countries permitting the radio broadcast of parliamentary proceedings. They commenced on 10th July 1946.¹⁰ Television was introduced in Australia in 1956. But it was not until 1973 that the possibility of televising parts of the proceedings of Parliament was even referred to a parliamentary committee. With commendable promptness, the committee, in April 1974, reported in favour. Nine years later, we are still waiting. In August 1974 part of the Joint Sitting of the two Houses was televised. It has also become a regular practice to televise the Opening of new Parliaments. The Summit Conference showed how valuable is the educative process of televising proceedings in the Chamber.

There are costs and other implications of introducing cameras into the present Chambers.¹¹ As well, the numerous questions identified in the 1974 report need to be addressed. These include:

- * provision of an official weekly summary program to be televised by the ABC;
- * provision of access to all television networks, news, current affairs and documentary programs;
- * provision of editing both by Parliament and by TV stations themselves;
- * provision for legal protection and privilege;
- * decision on whether committees or only proceedings of the whole House or Senate should be televised.

Doubtless all of these questions deserve attention. But television has now been introduced in at least 20 Parliaments overseas. All open meetings of the United Nations Security Council and General Assembly are televised. In a country of such great distances as Australia, with relatively small scattered populations, the value of television and the discipline it will provide to the Members of Parliament can scarcely be overstated. More importantly, there is the issue of the relationship of Parliament and the people. Madame Speaker Lepointe of the Canadian Senate put it this way :

The time has come to take Parliament to the people. For too long its debates and crises have been filtered through the mouths and eyes of others. Not all those others were impartial, detached or objective observers. Program editors, for example, decided which interviewers, commentators, academics or politicians would monopolise the screens to portray their version of events. Program editors are not responsible to any electorate. Television news bulletins make do with hastily arranged re-enactments of the question period, staged outside the [Parliament]. ... Politicians resented being at the mercy of reporters and commentators who interpreted their words, motives and actions to the nation. This, they said, conferred dangerous power on the press gallery.¹²

The televising of proceedings in the Canadian House of Commons began in October 1977. It has proved 'enormously popular'.¹³ A weekly television 'wrap-up' of parliamentary highlights gathers more than a million viewers. So impressive has been the Canadian experiment that public televising of the proceedings of the United States House of Representatives commenced on 19 March 1979 with arrangements virtually identical to those operating in Ottawa.¹⁴ It is notable that televising and the radio broadcast of South Australia's Lower House is to begin this very day for a two-week trial.

I am sure that there are many in this room who will consider that the reputation of the parliamentary system of Government was greatly enhanced during the Falklands War by the eloquence, determination and intellectual strength which both Mrs Thatcher and Mr Michael Foot brought to the debates which were then sent around the world. I was in the United States for part of the time and the press was rightly full of admiration, both for the performers and for the Parliament. What a contrast it offered to the closed system of Argentina. I believe that under due arrangements, our Parliament would also emerge enhanced and not damaged by following the technology that has now been with us for nearly three decades and by presenting the legislators directly to the people. If it can be done for the Summit, it should be done for the permanent elected institution. And if it shows politicians who are unworthy of their place, then this should not be the special knowledge of the Press Gallery or the cognoscenti. It should be something we can all see.

Abuse of privilege. Apart from attention to self-protective rules (such as not showing Members of Parliament asleep, reading newspapers, picking pimples or other unseemly behaviour¹⁵) I would hope that early attention would also be given to the problems of the abuse of parliamentary privilege. This is a matter that was drawn to the attention of the Law Reform Commission in its inquiry into reform of defamation laws. No subject so agitated so many good citizens who troubled to contact us. The feeling of unjust exposure without adequate means of redress was a legitimate complaint. We drew it to the attention of all Australian Parliaments in our report.¹⁶ We pointed to the need for Parliaments themselves to look to their procedures to ensure the minimisation of unjust abuse of parliamentary privilege affecting the reputation of citizens and corporations. But we also suggested a number of reforms. In the light of recent cases, there may be reason for giving early attention to these reforms, still unimplemented. They include continuance of the defence for fair reports of parliamentary proceedings, but on condition that the publisher, on request, will publish an adequate reply on the part of anyone defamed in Parliament. In this way, the Commission sought to maintain the benefits of a vigorous and courageous Parliament, whilst at the same time providing redress and equal rights to those defamed by media reports of privileged parliamentary allegations.

CONCLUSIONS

There are many other considerations that could be offered to the new Parliament as it opens its deliberations and a new political era. The question of fixed term Parliaments is before the Constitutional Convention. The questions of extending the parliamentary term to four years, to permit a longer perspective, is also under scrutiny. The question of the adequacy and completeness of our electoral roll was raised by the High Court decision shortly before the election. The complexity of the Senate voting paper must surely be simplified. And numerous commentators have reflected on the comparative speed of the TAB computer and the antique procedures we use in Australia to count our election returns : the count only recently finished.

In fact, that procedure of counting simply reflects what we all know. Parliament is an ancient and venerable institution. So much about it has not been revised and reformed and it stands in danger of becoming an anachronism or the 'weakening' institution of which Gordon Reid spoke. There are some who do not care : the Party numbers men, the all-knowing Press Gallery, the hard-bitten bureaucrat who has seen Ministers come and go, many citizens whose only concern is the footy and the Lotto results.

But Rotary, which collects a cross-section of responsible citizens, should care. We should work to restore Parliament to a position of respect, value, modernity and authority. This will not come about by wishful thinking. It will require attention by Parliament itself to the causes of decay. The Law Reform Commission is one means of helping Parliament to face the difficult, perplexing problems of our time. But much more is needed. And the impetus for reform must come from within the Parliament itself.

FOOTNOTES

- * Views expressed are personal views only.
1. G S Reid, The Changing Political Framework, Quadrant, Jan-Feb 1980, 5.
 2. Reid, 5.
 3. *ibid*, 6.
 4. P Kelly, 'The Hawke House of Lords Makes the Others Look Common', Sydney Morning Herald, 13 April 1983, 9.
 5. Reid, 7.
 6. Lord Hailsham, How Free Should We Be?, the Robert Menzies Oration 1978.
 7. *ibid*, 16.
 8. Reid, 6.
 9. Australia, The Review of Commonwealth Administration, 1983 (Chairman, Mr J B Reid).
 10. J A Pettifer, 'Televising the Proceedings of the House of Representatives' in The Parliamentarian, January 1980, Vol 61, 24.
 11. Australian Parliament, Senate Standing Orders Committee, Fourth Report for the Sixteenth Session, November 1982 (PP.274/1982) 2.
 12. Quote in Pettifer, 25. See also 'Introduction of Television' in the Parliamentarian, Vol 59, 1978, 42, 122. Note that radio broadcasting began in the United Kingdom on 3 April 1978; *ibid*, 194.

13. Pettifer, 25.
14. *ibid*, 26.
15. Sydney Morning Herald, 15 April 1983, 3. Note that the Prime Minister has indicated his personal support for television of Federal Parliament. See the Australian, 18 April 1983, 2.
16. Australian Law Reform Commission, Unfair Publication (ALRC 11), 93ff.