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COMMONWEALTH PARLIAMENTARY ASSOCIATION

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PARLIAMENTARY REFORM IN AUSTRALIA :
OF SUMMITS, WHIPS, BELLS AND OTHER THINGS

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The Hon Mr Justice M D Kirby CMG *

It is curious to think that Australia has some of the oldest Parliaments in the world. The culture seems too young. In five years the country will celebrate only its 200th anniversary of British settlement and modern history. Yet in March 1983 the Australian people elected their 33rd Federal Parliament. In the manner of democracy, there was an electoral revolution : peaceful but profound. A Government was changed and a new Parliament assembled.

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 the parliamentary system of government. Without reflecting on the politics of the situation — simply on the institutional framework for change — many in Australia and beyond took satisfaction from the strength of the parliamentary system exhibited in this change. In Australia, at the Federal Parliament, it is a system that brings together an assembly of 200 men and women — increasing numbers of women — to debate the great issues before the country. The parliamentary institution is an inbuilt procedure for orderly social change. It offers institutional and personal pressure for that degree of co-operation which is the hallmark of the fortunate countries that share parliamentary government. 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 undemocratic countries resolve their leadership succession.

The new Australian Parliament elected new presiding officers. In the House of Representatives, Sir Billy Sneddon, a former Leader of the Opposition, who had done so much to stimulate discussion of parliamentary reform proposals, retired from the Speaker's Chair and, shortly, from Parliament itself. The tributes to his efforts to reform Parliament were many and sincere.¹ In accordance with Australian parliamentary traditions, he was replaced by a member of the Government Party, Dr Harry Jenkins. In his remarks following his election as Speaker, Dr Jenkins questioned whether the process of modernising the institution should not more appropriately be referred to as parliamentary 'evolution' rather than parliamentary 'reform'.²

In the minds of all Members of the new Parliament assembling in Canberra was the recent recollection of the first National Economic Summit Conference held in Australia. That conference had been convened in the Chamber of the House of Representatives two weeks before the ceremonial opening of the new Parliament by the Governor-General. At the National Economic Summit, leaders of Australian political, professional, commercial and trade union life gathered to analyse the serious economic problems confronting the country and the new Government. At the Summit, there was a distinct air of co-operation and a search for economic consensus and even reconciliation. Many comments were made on the mood of the Summit. Comparisons were constantly drawn in the media with the disruptive, free-wheeling, combative atmosphere of parliamentary proceedings. Members of Parliament, of both sides, leapt to the defence of the institution. Senator F M Chaney, Leader of the Opposition in the Senate, pointed to the continuing value of Parliament as a check on the Executive Government. After four and a half years as a Minister, he said, he had no doubt as to the effectiveness of Parliament as a 'check on Ministers and Departments':

Perhaps 70 days a year a Minister must walk into Parliament and face questioning on any aspect of his responsibilities. That questioning is often hostile. How many Chief Executives would be prepared to face such a public check — or could stand the pressure? The constant threat of exposure of any error is there and no Minister or public servant can ignore it. It does keep our administrators aware of their masters — the public.³

The new Government came into office with firm commitments to reform the parliamentary committee system, and to enlarge the capacity of parliamentary committees to test and scrutinise the action of Ministers and their officials. However, the immediate implementation of these promised reforms has not yet occurred.

Whether it is because the Government was distracted by the economic problems confronting it⁴ or because, once in office, its Members felt 'comfortable in the existing structures'⁵ or, as some have unkindly suggested, because attitudes change on the achievement of government, the fact is that the reforms promised have not yet been introduced. It is not my purpose to denigrate the parliamentary institution. On the contrary, the work of the Australian Law Reform Commission in which I have been engaged over the past decade is dedicated to improving the capacity of Parliament to tackle problems of a controversial, sensitive, technical or daunting character. Furthermore, I am by no means convinced, with the editorialists, that countries would do better in a system of bland consensus and permanent reconciliation. The parliamentary chambers, by providing a forum for the important points of difference, permit a country to articulate creatively the vital philosophical, social, economic and other differences that exist in every free society.

Yet it would clearly be wrong to pretend that parliamentary democracy in Australia is without problems. A casual glance at titles in any serious bookshop will provide a hint of concern about the parliamentary institution, indeed that extends beyond Australia. What do the authors mean when they 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?

The purpose of this paper is to identify some of the perceived causes of the loss of power and relevance of the Federal parliamentary assembly in Australia. I will then offer a few words of advice, humbly as I must do as a citizen. This advice will urge parliamentarians to look to their procedures and to their role to ensure the continued relevance of the parliamentary institution.

THE LOSS OF POWER

In 1980 Professor Gordon Reid wrote:

[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.⁶

Professor Reid is a long-time observer of the Australian parliamentary scene. A Professor of Political Science, he was at one time Sergeant-at-Arms of the Australian Parliament and is presently writing a history of the Parliament. He watches Parliament as an interested stranger. His sympathy for the institution cannot be doubted. The reasons for the decline identified by him 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.⁷

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. On 13 April 1983 he wrote:

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.⁸

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 government, 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 perennial veto for the people, we should all be concerned to arrest the declining fortunes of the institution which reflects our diverse democracy. Professor 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.⁹

The seriousness and general high level of the contributions to the Economic Summit in Australia 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 the Australian Parliament was too stark to be ignored. When the Parliament assembled, it was fresh in everyone's mind -- not simply in the mind of political journalists. It caused some to ask whether the point of difference was that Parliament was elected not invited. Some asked whether, despite all the logical arguments to the contrary, a House of Notables or an appointed Senate as in Canada, was to be preferred? For my own part I would hesitate long before reaching such a conclusion; for it is the denial of democracy. Instead, I should prefer to ask why political life is not attracting enough people of the highest talent. The Economic Summit in Australia is but one indication of the search for non-parliamentary leadership. Another is the suggestion that the Australian Constitutional Convention which is reviewing the 1901 Australian Constitution, 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 who are unwilling in the age of elected Parliaments, to indulge in radical law reform --

preferring this to be left to the legislators. In the Australian 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 generally had neither the will nor the means to stimulate the Cabinet and the bureaucracy into action.

WHAT CAN BE DONE

Consensus v sharpened differences. Are there any lessons in the Australian Economic Summit from which we should seek to learn and to graft reforms on to our Parliaments?⁹ 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 in Sydney, drew attention to the fact that differences of view, freely expounded and vigorously argued for, are the essence of our form of government.¹⁰ 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.¹¹

Finding the proper balance between difference and consensus will never be easy. But if Parliament is to be rescuscitated, 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 Australian 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 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 the Law Reform Commission's 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. The new Federal Attorney-General in Australia, Senator Evans, has promised attention to the means by which law reform reports are processed through Parliament.

There are many other reforms that should be considered promptly. Enhancing the reputation of Parliament should have the most urgent priority.

* End of session scramble. The procedures of Australian 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.¹² An example of the unedifying end of session scurry of legislation was seen in the recent Sitting of the New South Wales Parliament. But the Federal Parliament is not exempt from blame. In June 1983 the Deputy Leader of the Opposition in the Senate, Senator Durack, complained of 'legislation by exhaustion' in the dying moments of the parliamentary session. He pointed out that one Bill went through the Senate in less than two minutes, others were passed without any speeches at all.¹³ I do not know whose fault this is. But it does nothing for the good name of Parliament or our system.

* Sitting days. The number of sitting days of the Australian Federal Parliament are about half those of the Parliaments in Westminster, Washington and Ottawa. The recent report by another Reid, the Reid Committee¹⁴ 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.

* Divisions and voting. 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. I realise that some defenders of the division system point out that it provides a form of 'cooling off' when feelings are running high. It also amounts to an important tactic by which the Opposition can register effective objection to the way in which the business of the Parliament is being handled. To adopt electronic voting without compensatory changes could, on this view, weaken this aspect of the parliamentary process. But it should not be beyond the wit of man to devise a system that uses modern technology but retains the opposition's advantages by other, less unedifying, procedures.

* Television in Parliament. A further matter which deserves the earlier attention is the proposal for televising the sittings of Parliament, or parts of them. Australia was in the vanguard of countries permitting the radio broadcast of parliamentary proceedings. They commenced on 10th July 1946.¹⁵ 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 Economic 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.¹⁶ 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 national broadcasting service;
- provision of access to all television networks, news, current affairs and documentary programs;
- provision of editing both by Parliament and by television 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 twenty Parliaments around the world. 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 well in this Journal :

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.¹⁷

The televising of proceedings in the Canadian House of Commons began in October 1977. It has proved 'enormously popular'.¹⁸ 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.¹⁹ Televising of South Australia's Lower House has begun. The Australian Constitutional Convention meeting in Parliament House, Adelaide, was televised. More recently silent film clips of Question Time in the House of Representatives have appeared -- on evening news bulletins -- as background visuals to news reports. But one must tune to the radio to get the voices.

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 Commons 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 and orchestrated news system of Argentina. I believe that under due arrangements, our Parliaments 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 an Economic Summit or Constitutional Convention, it should be done for the permanent elected institution. If it shows politicians who are unworthy of their place, 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 behaviour²⁰), 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 Australian Law Reform Commission in its inquiry into reform of Australia's 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.²¹ 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 Australian Law Reform 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.

RESTORING PARLIAMENT

There are many other considerations that could be offered to Members of Parliaments in Australia and, doubtless, beyond. The question of fixed term Parliaments is before the Australian Constitutional Convention. The Australian Government has recently opted for extending the parliamentary term to four instead of three years, to permit a longer perspective. The question of the adequacy and completeness of the Australian electoral rolls was raised by a High Court decision shortly before the election. The complexity of the Senate voting paper must surely be simplified. In New South Wales there were 72 candidates and it was obligatory to rank them all in preferential order to cast a valid vote. Numerous commentators have reflected on the comparative speed of the horse race betting computer and the antique procedures we use in Australia to count our national election returns. The count took weeks to finish in March 1983.

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 concerned 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. In Australia, 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 — from the palladium of the people.

FOOTNOTES

- * Views expressed are personal views only.
- 1. See Australian Parliament, Commonwealth Parliamentary Debates (House of Representatives) 21 April 1983, 5-7.
- 2. ibid, 10.

3. F M Chaney, 'Ministers and Masters', the West Australian, 19 May 1983, 10.
4. M J Young, then Special Minister for State, Australian Financial Review, 6 April 1983, 9.
5. G J Evans, Attorney-General, Australian Parliament, Commonwealth Parliamentary Debates (Senate), 10 May 1983, 309-310. However, the Government's program retained a 'deep commitment' to the need for 'legal and parliamentary reform'. Commonwealth Parliamentary Debates (House of Representatives), 21 April 1983, 13.
6. G S Reid, The Changing Political Framework, Quadrant, Jan-Feb 1980, 5.
7. ibid, 5.
8. P Kelly, 'The Hawke House of Lords Makes the Others Look Common', Sydney Morning Herald, 13 April 1983, 9.
9. Reid, 7.
10. Lord Hailsham, How Free Should We Be?, the Robert Menzies Oration 1978, mimeo.
11. ibid, 16.
12. Reid, 6.
13. P D Durack, Shadow Attorney-General, Canberra Times, 4 June 1983, 11.
14. Australia, The Review of Commonwealth Administration, 1983 (Chairman, Mr. J. B Reid).
15. J A Pettifer, 'Televising the Proceedings of the House of Representatives' in The Parliamentarian, January 1980, Vol 61, 24.
16. Australian Parliament, Senate Standing Orders Committee, Fourth Report for the Sixteenth Session, November 1982 (PP.274/1982) 2.
17. Quoted 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.

18. Pettifer, 25.

19. *ibid*, 26.

20. Sydney Morning Herald, 15 April 1983, 3. The Prime Minister (Mr R J Hawke) has indicated his personal support for television of Federal Parliament. See the Australian, 18 April 1983, 2.

21. Australian Law Reform Commission, Unfair Publication (ALRC 11), 1979, 93ff.