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YOUNG LIBERAL MOVEMENT OF AUSTRALIA

NEW SOUTH WALES ANNUAL CONVENTION

MUSWELLBROOK, NSW, 9 JUNE 1984

REFORM THE PARLIAMENT

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REFORM THE PARLIAMENT

The Hon Justice MD Kirby CMG

Chairman of the Australian Law Reform Commission

THE ROLE OF THE CONSERVATIVES AND LIBERALS

I welcome the opportunity to address this Convention. I am catholic in my political tastes and spread my speaking favours with perfect evenness between the political parties.

Speaking to Young Liberals, I realise that there are those of you who adhere to Alfred Deakin's vision of liberalism. There are others who are more conservative. Politicians, incipient politicians and citizens defy neat stereotyping. I am sure that Young Liberals reject convenient pigeon-holeing. However I would hope that you would see an important role for your Movement in identifying those features of our society and its institutions that deserve to be conserved. If politics is to be about ideas -- and something more than the threads and patches of pragmatic decision-making responding to opinion polls -- members of all political movements should be seeking to define their goals more clearly. They should be seeking to win the good opinion of the community for those goals. My vision of politics, at least, is the clash of ideas and ideals before the forum of a free people.

Nowadays, no institution of our society is above examination. Rashly, I submitted the judiciary to examination in my Boyer Lectures. The industrial relations system, so historic and fundamental in Australia, is presently under scrutiny by the Hancock Inquiry. Even the monarchy is no longer sacrosanct. Especially since November 1975, there are many Australians who question its relevance to our country as it approaches its third century of modern development. We may conclude that the Arbitration Commission should be preserved. We may reach the opinion that the independent judiciary is the rock upon which the Rule of Law stands and is fundamental to our society.

We may decide that the monarchy is still the best symbol of national unity, above party politics. But no institution, however important and venerable, is beyond reforming consideration in 1984 Australia.

I want to talk about perhaps the most fundamental institution of all. It is the one that is central to the work of law reform. Indeed it is central to our political life. My propositions are simple. The parliamentary institution in Australia needs changes if it is to survive as relevant to the pace and complexity of problems in the 21st century. Parliamentary backbenchers are not presently utilised to maximum effect. Conservatives should seek to define things worth conserving. But citizens of all political persuasions should support the restoration of the 'central role' of Parliament in the democratic life of Australia. This will require major reforms from within the institution. It will require a major effort of national will.

It is important that young Australians of every political complexion take a more active interest in politics. Politics is the engine by which Australian society strikes a special balance between change and stability. I therefore applaud your involvement and hope you will pay attention to my suggestions. They touch nothing less than the future of our democracy.

#### PARLIAMENTARY REFORM

In the week of the anniversary of D-Day, a lot has been said about saving the world for democracy. However, the 40 years since D-Day have seen the continuing erosion of the role of Parliament in Australia. Urgent steps will be needed to provide a democratic corrective. These steps will ensure that the intelligent and educated backbencher of the future is put to a higher public service than:

- . channelling constituent complaints to Ministers or bureaucrats;
- . opening fetes and attending dinners with the Party faithful;
- . making rare, occasional impact on a Minister's thinking or bureaucratic scheme;
- . rushing into the near-empty chamber to cast a vote in response to the insistent wailing of the parliamentary division bells.

Such limited functions might be tolerated by Australian parliamentarians today, because inherited from earlier times. However, as the levels of education of future politicians rise, it is unlikely that people of top quality will accept such a banal existence against the off-chance that, after many years of servitude, they were rewarded with a Ministerial portfolio.

In my opinion, amongst the urgent reforms that should be considered in Parliaments throughout Australia are:

- . a major review of parliamentary committees, especially to provide more detailed scrutiny of the quantity and quality of legislation;
- . establishment of more parliamentary committees to investigate and report on neglected areas of economic, social and legal concerns;
- . an increase in the number of sitting days of Australia's Parliaments, which by world standards are very low;
- . revision the end-of-session scurry which result in legislation made at sittings into the early morning hours;
- . simplification of parliamentary divisions;
- . overhaul of many parliamentary procedures which owe more to tradition than modern rational conduct;
- . introduction of televising of parliamentary proceedings;
- . preparation by Parliament itself of regular news and analysis for presentation to the community through the modern media;
- . reform by Parliament of privilege and improvement of procedures for dealing with citizen complaints of abuse of parliamentary privilege by members;
- . provision of better research facilities and more staff to parliamentarians;
- . higher pay for fewer politicians -- raised in quality and standing but reduced in number by a rationalisation of the levels of government and the size and number of our legislative bodies. By world standards we have more serving politicians per head than any other country.

#### LOSS OF POWER

Parliament remains the great centrepiece of our democracy. But its power has rapidly declined and I see no sign that the tide is turning. Unless these and other reforms are introduced, it is likely that the power and influence of parliaments in Australia will continue to erode. The features of the decline are well documented. Power has been lost to the Executive Government. Increasingly in the past ten years even the Executive Government has lost power to the Prime Minister or Premier. Parliamentary power has also been lost to the bureaucracy. The complexity of modern government has resulted in conferring more and wider discretions on an ever-increasing army of administrators. Lately, there has been the loss of power to the judiciary. Judges continue to play an expanding role in our country: Royal Commissioners, Commissioners of Special Inquiry, Human Rights Commissioners, Chairmen of the Grants Commission, Legal Aid Council, Administrative Appeals Tribunals.

This week the National Crime Authority was added to the list. In a country where there is so much to do and so many other people doing it, it is a sadness that parliamentary backbenchers who have devoted so much energy to political life, are not better utilised. There is a Catch-22 in this. If trivia, loyalty and responding to division bells become the chief virtues of the backbench paragon, people of originality and ideas will look upon the parliamentary life with distaste. That attitude will only be reinforced by the daily reports of personal denigration, the loss of personal and family privacy and the other thankless burdens and calumny we tend to heap on our political representatives.

The National Economic Summit Conference held after the change of Federal Government in March 1983 was further evidence of disillusionment with the parliamentary forum as a place for sharpening the debates on important matters of national policy. The way in which Australia's constitution requires critically important issues of national economic policy to be resolved by an independent semi-judicial tribunal in the Arbitration Commission, is still a further instance of Australia's tendency to divert difficult questions to the elite branches of government rather than committing them to the democratic and elected institutions, such as Parliament.

#### POLITICIANS ARE NOT BLAMELESS

There are many practical reasons which I recognise for the diversion of power from the elected assembly to the Cabinet, the bureaucracy and the judiciary:

- . Parliament tends to be slow-moving whereas the other organs of government can often react with relative speed;
- . some modern issues are specially complex or technical and more suitable for expert resolution;
- . Parties in government, especially after years in Opposition, are all too often determined to play the game as it had been played against them;
- . sometimes, when given opportunities, Parliament fails to deliver the goods.

The Law Reform Commission has observed a significant instance of the failure of Parliament to respond to opportunities in the area of law reform. For four years, the Australian Law Reform Commission has been reporting to Parliament on important suggestions for law reform made by judges, official reports, academics, media and citizens. These suggestions have been collected as an appendix to the Annual Reports of the Law Reform Commission.

No parliamentary mechanism has been established in Federal Parliament to consider them — rejecting those undeserving of support; but stimulating the bureaucracy to action on those considered worthy of attention. Instead, the suggestions, like so many copies of Annual Reports, are discarded. Their fate is the parliamentary garbage collection. We should surely do better than this. I cannot believe that not a single suggestion conveyed by the Law Reform Commission to Parliament was worthy of parliamentary attention. Surely all those judges, commentators and citizens cannot be wrong. With so many lawyers in Parliament, I would have expected that somebody would have taken the initiative to pursue at least some of the suggestions. If the Parliament were still a vibrant and active institution, relevant to a responsive democracy, I would have expected an institutional solution. Why ought there not to be permanent parliamentary committees on law reform? Why should the removal of injustice and the reform of the law be shrugged off or left to the bureaucracy? In short, why should Parliament accept such a passive role. Receiving, scrutinising, investigating and deciding upon proposals for legislative reform would be a worthy function for the modern politician. Instead, many backbenchers are content to be a postbox for constituent complaints. And even here they are being replaced by the Ombudsman and new administrative tribunals. The backbencher in the Australian Parliament is losing his traditional role but has not yet found his modern relative function. That this should be so when Parliament and our laws are challenged by issues as complex and sensitive as in vitro fertilisation, computer privacy, laws on moral questions and so on is as sad as it is remarkable. We should be using our politicians to better advantage in tasks worthy of them. I hope that those Young Liberals who enter politics will make it their business to ensure that the Parliament is reformed and modernised. True democrats must work to restore the Parliament. That means defining modern, relevant and worthy functions for the parliamentarian of the future. Never forget that the politicians we elect in 1984 may still be serving us in the 21st century. Times are changing. Let us hope for the sake of our democracy that our representative institutions change quickly enough.