

The 1911 Myth Embellished, by Gough*

Harry Evans

In an item in *The House Magazine* of 6 September 2000 ('The Australian Constitution and the 1911 myth'), a prevailing myth about the Australian Constitution was refuted. This oft-repeated story is to the effect that, if only the Australian Constitution had been drawn up after the British Parliament Act of 1911 was passed, the Australian founders would have seen the wisdom of making the upper house largely powerless, at least in relation to financial legislation, and would have amended their work accordingly. The article pointed out that this tale ignores two facts: when the Australian Constitution was drawn up the House of Lords was already believed to be a powerless body; and the founders made it perfectly clear that they deliberately chose not to follow that model of a mere delaying second chamber. They consciously departed from the British pattern in that and several other respects. It was noted in passing that the 1911 myth is propounded by Gough Whitlam on every plausible occasion.

No sooner had those words appeared than proof of their accuracy was provided by another address by Mr Whitlam, restating a version of the 1911 story. This latest retelling contains some interesting embellishments¹.

According to this version, not only did the founders not foresee the *Parliament Act 1911*, not only did they foolishly copy the powers of the House of Lords pre-1911, but when it came to disagreements between the two houses, they did not discuss the

* This article was first published in *The House Magazine*, 3–5 December 2000.

¹ 'Whitlam tells how founding fathers "squibbed"', *Canberra Times*, 13 October 2000, p. 5.

matter at all! According to Mr Whitlam, ‘our founders squibbed the issue of what happens when there is a different political composition of the upper House’.

Those of us who have read the debates of the Australian constitutional conventions, and recall seeing days and days, pages and pages, of debate about the powers of the two houses and the possibility of conflict between them, must have been imagining things. The long speeches about the deliberate departures from the British model must also be figments of our imagination. Clearly we only saw what we thought was there. We must also look again at our copies of the Constitution; we must have imagined that there was a section 57, in which the founders provided a mechanism for resolving disagreements between the houses, simultaneous dissolutions followed by joint sittings in the event of continuing disagreement. We must have imagined the founders’ speeches in which they said that possible disagreements over financial legislation were the main reason for having those provisions. How could we have thought that we read all that when it is not there? We must have dreamt that Gough Whitlam himself participated in the employment of this mechanism in 1974. We must also have dreamt that in 1970 Mr Whitlam announced that his party in the Senate would vote against the budget legislation of the then government, for clearly he would not have attempted to bring about a situation of deadlock between the houses for which, he now tells us, the founders neglected to provide.

Apart from having these delusions about the Australian Constitution, we must also have been mistaken about the constitution of the United States and the entire legislative history of that country, for Mr Whitlam now informs us:

In the United States, the problem had *never* [emphasis added] arisen because of dispute settlement rules between the President and the legislature.

The history books must have misinformed us about all those supposed occasions of disagreements between the two houses of Congress and between the Congress and the President. The newspapers must similarly have been making it up when they told us, as recently as 1995, about the executive government starting to shut down because of a disagreement between the President and the houses over annual appropriations. We must look at the US constitution again and find those ‘dispute settlement rules’ which we have obviously missed in previous readings. President Clinton would have been glad to know of them.

‘It is only in Australia, in the Federal Parliament and in some of the states, that you can have the upper House rejecting or deferring supply’, Mr Whitlam goes on. Clearly whole generations of American senators have been deluded as to their powers, not to mention those across the border in Canada, where there are moves afoot to *increase* the role of the second chamber.

If the celebrations of the centenary of federation achieve anything, it is to be hoped that they encourage some people to check whether some hoary old tales about the Australian Constitution actually have any foundation in either its text or the explanations of those who wrote it. Perhaps it will facilitate this process if we are presented with those old tales in their most outlandish form.