

Parliamentary Reform:
New Directions and Possibilities for Reform
of Parliamentary Processes

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Parliament and the Problem of Government

In considering the reform of parliament we are examining the alteration of the basic institutions of government, and it is therefore wise to refer to first principles, and to ponder how the task relates to the elementary problem of government. The great difficulty of government is the creation of authorities with sufficient power to achieve the desired aims of government, peace and order, while preventing the unintended misuse of that power. As James Madison expressed it, the problem is to allow the government to control the governed while obliging it to control itself.¹ In recent times the key to obliging government to control itself has been seen as making government responsible to society at large through democratic election. The problem cannot be solved, however, simply by ensuring that governments are democratically elected, even if that concept is extended to all matters conceptually relevant to free and fair elections. Although many people nowadays act and speak as if democracy in that sense is the solution to all problems, it is readily apparent with any reflection and experience that democracy alone is an inadequate solution. All problems connected with the administration of the law, for example, cannot be solved by electing judges and other officeholders in the legal system. As Madison also said, a dependence on the people is no doubt the primary control on government, but experience teaches us the necessity of "auxiliary precautions".²

The classical answer to the problem of government abusing its powers, as developed and expounded at the foundation of modern states, is the principle of the division or separation of powers.³ The rationale is that by dividing powers, the same or different categories of power, between different authorities, independently constituted and selected, the abuse of power can be prevented by reducing the quantum of power which can be brought to bear by any one authority, and by allowing the different authorities to restrain each other. The principle of the separation of powers was manifest in the British constitution as it emerged from the revolutions of the 17th century, and, even more explicitly, in the constitution of the United States. It is also reflected in the Australian constitutional apparatus, with the delineation of executive, legislative and judicial powers in the federal constitution. The greatest monument to the principle in modern times is the independence of the judiciary, which is regarded as an essential foundation of our polity. As has been suggested, we do not elect our judges because the principle of separation of powers in the administration of the law is more powerful than the dogmas of democracy.

¹ *The Federalist* No. 51, Everyman, 1970, p.264.

² *Ibid.*

³ Diamond, M., 'The separation of powers and the mixed regime', *Publius*, Summer 1978, pp.33-43, argues that separation of powers as formulated by the American founders was radically different from previous formulations of the division of power going back to classical times.

Notwithstanding the nostrums of the 17th and 18th century constitutionalists, the system of government in Britain evolved into one in which the executive and legislative powers were combined. It was explained as a system in which the executive power was exercised by a body, the cabinet, appointed by and responsible to the effective legislature, the lower house of parliament. This was the constitution described by Walter Bagehot. Since he described it, it has evolved into something quite different again.⁴ It is a commonplace of the literature on the system of responsible or cabinet government which Australia inherited from Britain that the executive government has come to control the legislature. It is more accurate to say that the legislative and executive powers have been combined in the same body of persons, the majority party in the lower house of parliament, while the remainder of the legislature, the opposition, hopes not to overthrow that combination of powers but to inherit it. It is also a commonplace that the modern phenomenon of highly organised and tightly disciplined political parties brought about this situation. This development has gone further in Australia than in Britain or elsewhere, because Australian political parties are much more disciplined than their counterparts in other parliamentary countries.⁵

We have thus embraced the very situation which our founding philosophers warned us against as the very epitome of tyranny: the concentration of legislative and executive powers in the same hands. Indeed, we have come to permanent submission to what they saw as the disease of elected government: rule by faction.⁶ Ours is a system of total monopolisation of both categories of power by the group which controls fifty percent of the party which wins forty-odd percent of the popular vote. Such a situation cannot be entirely accepted unless one abandons the institution of parliament altogether: if there is to be no legislature to some extent distinct from the executive government, why have an elected representative assembly at all? Once all notion of parliament as a body in some sense controlling and checking the executive is abandoned, parliament itself may as well be jettisoned also. The control of parliament by caucused party majorities therefore cannot be seen as other than a fundamental breakdown of the system of government.

It is tempting to believe that the problem with modern parliamentary government is simply a wrong view of democracy, and that a change of attitude is all that is required. Particularly in Australia, there is a tendency to define democracy as the right of the majority party to ride roughshod over minorities. There is little conception of the duty of the majority to conciliate the minority, as John Stuart Mill put it, "to concede something to opponents, and to shape good measures so as to be as little offensive as possible to persons of opposite views".⁷ This "salutary habit" is central to the role of parliament as a representative institution. Appropriate institutional arrangements, however, are required to foster its growth. Mill contended for bicameralism as a "perpetual school" of this process of conciliation. The institutional arrangements must first be right to avoid "the evil effect produced upon the mind of

⁴ This is argued in Evans, H., *Constitutionalism and Party Government in Australia*, ASPG, Occasional Paper No. 1, 1988, pp. 5-16.

⁵ Some 56 Labor Party members voted against their party on the main motion on the Gulf War in the British House of Commons, and 36 voted against a motion expressing support for the British forces, apparently with impunity; the few Australian Labor Party members who contemplated abstaining on a vote on a similar motion were apparently saved from a penalty heavier than censure by the circumstance that no division occurred in the House of Representatives.

⁶ In coining the expression "elective dictatorship" to describe the British system of government, Lord Hailsham was echoing the rejection of "elective despotism" by the American founders: *Elective Dictatorship*, BBC [address], 1976; *The Federalist* No. 48, quoting Jefferson's *Notes on the State of Virginia*, Everyman, 1970, p.254. Madison's famous discussion of the "disease" of republican government, rule by faction, in *The Federalist* No. 10, can be read as an analysis of modern party government.

⁷ *Representative Government*, 1861, Everyman, 1962, p.325.

any holder of power, whether an individual or an assembly, by the consciousness of having only themselves to consult."⁸

Executive government control, or majority party control, of the legislature is the underlying theme of the vast literature of parliamentary reform which has been generated since the modern party system began to emerge (in Britain before Australia) at the end of the last century.⁹ This literature is largely consistent not only in identifying the problem but in prescribing the remedies. While many remedies have been suggested, they all boil down to the restoration of the separation of powers in one guise or another. All reforms of parliament suggested over that period go more or less directly to detaching the legislature from the executive power and reconstituting something of an independent legislative body.

In this connection it is necessary to discount statements by some parliamentary reformers, for example, that doughty old author of reform, Professor Bernard Crick, to the effect that they desired merely to give parliament more effective means of scrutinising and publicising the activities of government, without giving it power to control or check those activities.¹⁰ This is a false distinction, because scrutiny is a form of power. One cannot scrutinise unless the ability to scrutinise is built into the exercise of the power which is scrutinised. Thus scrutiny of proposed legislation is possible only because governments go through the form of having their legislative proposals passed through parliament. Much of the executive government manipulation of parliament to protect the position of the executive takes the form of the prevention of scrutiny as an unacceptable exercise of power. By preventing the establishment of parliamentary committees of inquiry and by limiting debate on legislation through the use of gags and guillotines, executive governments seek to avoid scrutiny at the same time as they avoid any parliamentary control by the use of party majorities to endorse all government proposals. Enhancing scrutiny is just another way of attempting to restore a separation of powers.

This leads to a consideration of the remedies for the breakdown of parliament as an institution.

Auxiliary Precautions

One remedy for the extinction of parliament as an independent legislature is the construction or reconstruction of those "auxiliary precautions" which are required to supplement free elections. There has lately grown up in most western countries a renewed interest in constitutional checks and balances. This trend in thought is only beginning to reach Australia, which in this, as in most intellectual developments, is running behind the rest of the world. There has been a reaction against the 20th

⁸ *Ibid.*

⁹ The emergence of modern party government may be dated from Gladstone's campaign in the British general election of 1880. Early critique of majority party control of the House of Commons is in Maine, Sir H., *Popular Government*, 1885. In a speech in 1882 the Marquis of Salisbury said: "But bear in mind that the House of Commons which we admire, ... was a House of Commons freely elected, freely debating, freely checked by a Second Assembly ... A House enslaved by the caucus ... and muzzled by the *clôture* will be a very different body from that which has hitherto been the glory of English history ... Bear in mind that that is the danger to which we are all tending now; everything points to the increase of power in the hands of one individual, dictating Minister. The competition of parties is so keen, the power of applying pressure to individual members is so complete, that every year you will see our representatives, assumed to be independent, more and more exposed to the danger of being forced to fit their convictions into a single mould, provided by the man who happens to be at the head of the dominant party at the time. ... This is the justification for a second chamber ...". (But bear in mind that he was the leader of the Conservatives.) Beattie, A., ed., *English Party Politics*, vol.1 1660-1906, Weidenfeld and Nicolson, 1970, pp.157-8. An attack upon the cabinet system of government was made by Sir Richard Baker at the Sydney session of the 1897 Australasian Federal Convention: "... a struggle between the ins and the outs ... ten men trying to carry on the government, with another ten men trying to prevent them ... [presided over by] that modern autocrat, the Premier". *Debates*, pp.786-7.

¹⁰ *The Reform of Parliament*, 1964, 2nd ed. 1968, pp.238, 251-2, 260. He refers to control "realistically conceived".

century obsession with democracy as a cure for all political problems. In Britain, for example, there is a growing discussion of devices such as a written constitution, federalism, bills of rights and judicial review of legislation, revitalised bicameralism in parliament, and other constitutional devices hitherto alien to the British tradition of parliamentary sovereignty. This movement has gained significant converts, and it is represented by the Charter 88 organisation.¹¹

Although the philosophy of constitutional auxiliary precautions has been virtually dead in Australia for many years, this country has preserved in practice a constitutional structure founded on separation of powers and checks and balances. For example, the Australian parliamentary model encompasses strong bicameralism, now represented at the federal level and in all states except Queensland by powerful upper houses with more or less permanent non-government party majorities.¹² Australia has not followed the British path of taking power away from second chambers.

Australia has also been somewhat in the vanguard in the development of sub-constitutional auxiliary precautions: ombudsmen, administrative appeals tribunals, enlarged scope for judicial review of administrative decisions, independent prosecutors, and so forth. We have been able to recognise the desirability of such institutions without necessarily embracing the philosophy of separation of powers which underlies them.

Many of the suggestions made in recent times for the reform of government in Australia belong in this area of constitutional and structural changes, the area of auxiliary precautions. They need to be distinguished from measures to reform parliament, which go to refurbishing the legislature as the principal manifestation of the separation of powers.

Reform of Parliament: Conventional Measures

As has been observed, there has been a widespread belief over many years in the desirability and possibility of overcoming the debilitation of parliament by procedural and institutional reform of the legislative body. In the extensive literature embodying this belief, there has been one constantly recurring remedy: the establishment and maintenance of a system of parliamentary committees. This was the centrepiece of Bernard Crick's seminal work, *The Reform of Parliament*.¹³ Virtually every house of parliament has gone down the path of establishing a committee system to assist the legislature to examine and monitor the activities and proposals of the government, and to participate in policy formation. In Britain, where the system was adopted in 1979, it has enjoyed apparent success. If causing trouble for government is a measure of success, the system has been successful enough in the home of parliamentary government.¹⁴ This has not been enough for its proponents, including Bernard Crick, who has recanted in spectacular fashion.¹⁵ In Australia, committees and committee

¹¹ The manifesto of Charter 88 is *1688-1988: Time for a New Constitution*, ed. R. Holme and M. Elliott, Macmillan, 1988. The converts include Bernard Crick, who has "come to renounce and give up the demon drink of sovereignty and to sign the Charter": 'Beyond Parliamentary Reform', *Political Quarterly*, Oct.-Dec. 1989, p.398. Even Labor Party members have become converts to checks and balances: Allen, G., 'Restoring pride to Parliament', *The House Magazine* (UK), 11/2/91, pp.18-19; Mitchell, A., 'House cleaning', *ibid.*, pp.16-17.

¹² For the indigenous character of the Australian model see Sharman, C., 'Australia as a Compound Republic', *Politics*, May 1990, pp.1-5.

¹³ 2nd ed., 1968, pp.242-4.

¹⁴ Drewry, G., ed., *The New Select Committees: a study of the 1979 reforms*, 2nd ed., Oxford, 1989; also 'Select Committees: Progress Report 1989-90', *Contemporary Record*, April 1991, pp.29-30.

¹⁵ "... the parliamentary reform movement of the 1960's, ... now seems to have been (if I may recant) largely a waste of time and effort": *Political Quarterly*, Oct-Dec 1989, p.396.

inquiries can be readily vitiated by the complete party discipline: government party members on committees may simply continue to support the government in all things as they do in the whole house. For this reason, committee systems have expanded most readily and have performed most noticeably in upper houses where there is a lack of government party control, because of lack of a party majority, or because of dissidence in the government party, which has been largely confined to upper houses. This is well illustrated in the Senate, where every stage in the establishment of the committee system has been achieved because of lack of government party control (in some cases because of dissidence in the government party): the establishment of the Regulations and Ordinances Committee to scrutinise delegated legislation in 1932 (a delayed reaction to a dispute between the Senate and a government lacking a majority in that house); the establishment of the comprehensive standing committee system in 1970; the establishment of the Scrutiny of Bills Committee in 1981; and the procedure for the systematic referral of bills to committees, which, although established with government acquiescence, has run into government party resistance.¹⁶ In other words, this parliamentary reform has depended in Australia upon the constitutional division of power as manifest in bicameralism, rather than a capacity on the part of parliament to reform itself.

Other conventional parliamentary reforms, for example, the allocation of more time for non-government business, and the strengthening of procedural rights of non-government members, have also progressed furthest in upper houses in this country. The Senate, for example, has entrenched in its standing orders special precedence for consideration of disallowance motions, references to standing committees, backbench business, reports of committees and government documents, in addition to the usual opportunities for question and debate.

Reform of Parliament: New Directions

When considering new directions in parliamentary reform, therefore, one must be ever conscious of the restraint imposed by majority party control, which may defeat all reforms. There is no magic formula, and no measures which may be suggested, which can entirely circumvent that fundamental fact of political life. All parliamentary reform, except in second chambers, is at the mercy of majority party control.

There are, nonetheless, changes which, if they could be made in the first place, could greatly weaken the executive/majority party stranglehold over parliament and make some further progress in restructuring an independent legislature capable of preventing major abuses of executive power.

These changes may be divided into procedural and institutional reforms, and the procedural reforms will be discussed first because, although procedure is often seen as less important, they may be easier to achieve and may have greater effect.

Procedural changes

Australian houses have performed fairly badly largely because of poor time management. This problem is most apparent in the phenomenon of the end-of-sittings rush. The first three proposals listed here are therefore directed to this problem.

¹⁶ *Senate Debates*, 11/9/90, pp.2233-2236; 11/10/90, p.2967.

(1) Sitting times. The relatively short sitting times of Australian parliaments are clearly a significant barrier to their effectiveness in scrutinising government activities. Australian houses pass more legislation but sit on fewer days than their overseas counterparts, which suggests that legislating in Australia is an over-hasty process. This problem was referred to by the Senate select committee which recommended the procedures for referring bills to committees.¹⁷ Australian parliaments tend to sit only for the minimum time necessary to deal with government legislation. At the federal level, the sittings have been extended in recent years only by virtue of the more extensive scrutiny of legislation by the Senate. The practice has now arisen of the government rushing legislation through the House in order to get it to the Senate in time for Senate consideration, in accordance with a deadline which has been set by the Senate, and then adjourning the House relatively early in the sittings and bringing it back to deal, usually in the most expeditious manner possible, with amendments made by the Senate. What is clearly needed is more sitting days but with more sensible hours. To this end houses could set their own sittings in advance by means of a yearly calendar of sittings, entrenched in the standing orders, which may then not be departed from except by deliberate decision.¹⁸ The available time in a period of sittings could then be divided between legislating and other activities, including general debates on matters of public interest and the examination of government activities. This division could be based on a calculation of the time required to legislate without undue haste. The calendar could also include times for committees to meet.

(2) Determination of legislative program. Governments could be required to reveal in advance and in some detail at the beginning of each period of sittings the government legislative program. The nature and complexity of the proposed legislation could be indicated. The time allocated for legislation could then be divided by formal decision between items on the program in accordance with their nature and complexity. Some spare time could be left for urgent and unforeseen items, which could be exempted from the requirements of the program only by deliberate decision. This would be a self-imposed rational alternative to the guillotine, and would avoid the old parliamentary trap of a great deal of legislation accumulating at the end of the period of sittings with no time to consider it properly. Some time could be allocated to non-government legislative proposals.

(3) Allocation of non-legislative time. The time available for activities other than legislating could then be divided between specific proposals partly on the nomination of particular officeholders, for example, the leaders of non-government parties, and partly by ballot. This would avoid government and majority party monopolisation of the agenda and of the allocation of parliamentary time. The allocation of time to non-government legislative proposals could be done in the same way.

The remaining proposals go to the management of the legislative process, and the shaping of legislation by parliament, which is its principal rationale.

(4) Consideration of legislation by committees. Just as the establishment of comprehensive committee systems historically has been seen as potentially the most productive parliamentary reform, the consideration of legislation in committees, rather than in the whole house, has been seen as potentially the most productive improvement of the legislative process. Australian parliaments have been very backward in this regard. The first Australian house to adopt procedures for the systematic referral of bills to committees was the Senate in 1989, and that system is

¹⁷ Select Committee on Legislation Procedures, *Report*, 1 Dec. 1988, Parl Paper 398/1988, pp. 5, 39-40.

¹⁸ Something like this was recommended by the Procedure Committee of the British House of Commons, but only for the purpose of regularising the sittings, not for allocating time: *First Report*, 1986-87, HC 157.

still in a state of development, although it has so far proved very effective in relation to particular bills.¹⁹ As part of a system for the systematic consideration of bills by committees, committees should perhaps be given the power to make amendments to bills which would be reversible in the whole house only by special procedures, perhaps initiated by a specified number of members. Australian houses shrink from the idea of empowering committees actually to amend bills, but it appears that amendments are more likely to be constructively considered in committees.

(5) Publication of legislation in draft. There is a strong case for insisting that all legislation be published in draft form for review and comment before it is enacted, to detect problems with legislative proposals and to allow changes to be suggested before the formal legislative process begins. The procedures of a house could provide that no bill is to proceed unless it has lain on the table in draft form for a specified period, or the Governor-General or the Governor has certified (thereby making it a very deliberate government decision) that the legislation cannot be tabled in draft because of circumstances of urgency.²⁰ Provision could be made for debate and consideration in committees of draft legislative proposals. Any such debate and committee consideration should concentrate on likely problems and difficulties in application of the proposals.

(6) Coordination of technical scrutiny. There would appear to be a need for a stronger link between legislatures and the technical scrutiny of legislative proposals, and better channels for the technical contribution to legislation generally. The phenomenon of reports of law review commissions which contain excellent treatments of technical aspects of laws, but which gather dust on shelves, ignored by legislators, is all too familiar in many jurisdictions. In the Senate the Scrutiny of Bills Committee carries out a very thorough review of the technical and civil liberties aspects of legislation, but its reports are not always heeded when bills sprint through the houses. Perhaps there ought to be a committee, or a meeting of several committees, which could gather together all technical, law review and civil liberties aspects of the scrutiny of legislation, with formal links with technical and advisory bodies such as law review commissions, and with experts seconded to the committee. It could be given power to make appropriate amendments to bills, amendments which would stand unless explicitly reversed or altered in the house concerned. The two legislative scrutiny committees of the Senate provide models for the operations of such a committee, and indicate how productively members can be engaged in the technical scrutiny of legislation.

(7) Constructive use of delegated legislation. There would appear to be considerable scope for better use of delegated legislation. Better use should be distinguished from *more* use. The pressure is for more use of delegated legislation to relieve the burden on legislatures, and in all jurisdictions there are complaints of the proliferation of delegated legislation generally and in particular of quasi-legislation, such as guidelines and manuals of practice. Different types of delegated legislation and quasi-legislation have multiplied like rabbits even at the federal level in Australia, where there is an extremely rigorous system for control of all delegated legislation through the two legislative scrutiny committees and the power of disallowance. Of

¹⁹ The procedures were adopted on 5 December 1989, substantially as recommended by the select committee. *The Senate: Standing and other orders of the Senate*, February 1990, pp. 135-143. Even ministers have been constrained to concede occasionally that committee scrutiny has improved legislation: Senator Tate, Minister for Justice, *Senate Debates*, 8/12/88, p.3792; 20/12/88, p.4652; 17/10/89, pp.2018-30. For colourful but significant testimony by the British Attorney-General, Sir Patrick Mayhew, of the value of committee scrutiny of legislation, and a tilt at party control, see 'Can legislation ever be simple, clear and certain?', *Statute Law Review*, Summer 1990, pp.1-10.

²⁰ It has been suggested in Britain that major bills should take 2 years to prepare: Renton, Lord, 'Modern Acts of Parliament', *The House Magazine* (UK), 11/2/91, p.14.

course such a rigorous, and perhaps even more rigorous, system for the scrutiny and control of delegated legislation must be kept in place to ensure that parliament really is the legislature. It may be possible, however, to make more creative use of delegated legislation, particularly legislation which is subject to approval and amendment by the houses without the necessarily more complex and extensive legislative process which applies to bills. Some houses already make considerable use of delegated legislation subject to approval and/or amendment. The Senate has been edging into greater use of these devices on an ad hoc basis. Recently an act was amended so that it would not come into operation until the regulations made under it were approved by both Houses, and certain quasi-legislation was made subject to an amendment and approval process.²¹ There would appear to be great scope for more use of this sort of legislation. Delegated legislation, of course, is particularly susceptible to publication in draft form.

(8) Legislative standardisation. There would also appear to be considerable scope for greater use of standard and model provisions subject to parliamentary scrutiny and approval before adoption. Many provisions in bills are very similar and exhibit only minor variations, which sometimes are the product of nothing more than different drafters. Legislatures spend a good deal of time considering and passing provisions which are much the same as many other provision previously considered and passed. There may be value in a house approving, with or without amendment, and with standard variations, a standard or model set of provisions relating to such things as compulsory access to premises and documents by regulatory agencies, and those provisions could then be adopted in future legislation without further scrutiny or consideration. They could be adopted by reference, a technique which has been used by the Australian federal houses, for example, in relation to disallowance provisions.²² This suggestion could save legislative time and effort while extending the parliamentary examination of legislation.

Institutional changes

Parliaments are only as good as their members. Procedural changes can achieve the aim of restoring the legislative function to the legislature only if the members are not prevented from acting as legislators. Many of the features of our current system seem to be designed to prevent members performing the functions they are supposed to perform. Institutional changes may therefore best be directed to allowing members to operate as members of a legislature. Thus the following suggestions.

(1) The standing of members of parliament. There is a severe problem in Australia of the standing of members of parliament. As part of a general cynicism about political processes, Australians regard politicians with great distrust, with the exception of some individuals who for some inexplicable reasons attract public admiration and thereby become a menace to good government by encouraging a sort of caesarism. This is not a situation which can be readily remedied by legislation, but there are some measures which can be taken to assist a general education program on political processes. Although it is a proposition much disputed, a substantial increase in the salaries of members would appear to be necessary to attract to politics able people who are otherwise discouraged. Other measures relating to remuneration could be taken, such as providing substantial remuneration for chairmen and deputy-

²¹ The *Therapeutic Goods Act 1989* did not come into effect until the regulations under the Act were approved: Senate approval was granted on 20 December 1990. Charters of the rights of residents of nursing homes and aged persons' hostels and forms of agreements between residents and the proprietors of such establishments under two statutes were extensively amended and approved by the Senate on 17 December 1990.

²² The use of the words "x is a disallowable instrument" now attracts all the tabling and disallowance provisions of the Acts Interpretation Act: section 46A of that Act.

chairmen of committees, so that their salaries approach those of junior ministers. Members need to be provided with more highly paid and highly qualified staff (as distinct from more staff) to assist members to control the information flood and to focus attention on the vital issues and decisions.

(2) Code of conduct. As part of the process of improving the standing of members of parliament and boosting public confidence in the political process, Australian houses could adopt a comprehensive and fairly objective code of conduct for their members, and detailed procedures for its enforcement. The code should not be a "rubbery" one, capable of variable interpretation, such as recently caused difficulties in the United States Senate,²³ but could contain specific rules which can be added to and supplemented from time to time. The code could cover conflicts of interest and actions giving the appearance of exercising legislative duties in return for reward, and other matters which are not amenable to enforcement by the criminal law. Sanctions could range from admonition to expulsion by the house.

(3) Reservation of parliamentary offices. It could greatly assist the functioning of houses of parliament and avoid partisan monopolisation and abuse of power if some parliamentary offices were explicitly reserved for non-government members. For example, if the presiding officer is a member of the government party the deputy-presiding officer could be a non-government member. Chairmanships of specified committees could be reserved for non-government members, as is done in the United Kingdom Parliament and some other legislatures. Chairmen and deputy chairmen could be of different parties.

(4) Legislative regulation of parties. Australian parliaments, following the British tradition, have been very reluctant formally to recognise and regulate political parties in legislation. That taboo has now been broken with provisions for the registration of parties, the placing of party names on ballot papers, and public funding of election campaigns. Australian parliaments may have to consider legislative intervention in the processes by which political parties operate. It has been noted that extreme party discipline has been universally recognised as the core of the problem of executive domination of parliament. The fear of members of being summarily deprived of their preselection is the core of extreme party discipline. It is commonly said that the preselection of particular members is controlled by particular persons or small numbers of persons. Perhaps the time has come to consider legislating for fair candidate-selection processes. In the United States the latter part of the 19th century was the era of the domination of government by party machines and political bosses. A reform movement grew up to break machine power and boss rule. This was done largely by state legislation requiring the selection of candidates by primary elections. Such primary elections have been suggested as a reform for countries with parliamentary systems.²⁴ Perhaps something of the sort should now be considered. Part of the aim of any such legislation would be achieved if the existing law and practice relating to the protection of members from improper pressures were to be taken seriously and adhered to.

²³ An admittedly jaundiced view of this aspect of the "Keating Five" affair is in an editorial, 'The Keating Dive', *Washington Post*, 1/3/91, p.A14.

²⁴ Paterson, P., 'Primaries: Reforming the Candidate Selection Process', *People and Parliament*, ed. J.P. Mackintosh, HSPG, 1978; Rogaly, J., *Parliament for the People: a handbook of electoral reform*, Temple Smith, 1976. There have been some changes in candidate selection in Britain, in the direction of establishing known and fair procedures, and involving ordinary party members: 'Candidate selection: Reform in Britain', *Contemporary Record*, April 1991, pp.19-22. See also Gallagher, M., & Marsh, M., eds., *Candidate Selection in Comparative Perspective: The Secret Garden of Politics*, Sage, 1988.

(5) Self-reform of the press. Members of parliament will not function as legislators until the Australian press reforms itself. There are now in Australia no serious *parliamentary* reporters, and no serious *parliamentary* reporting ; the legislative work of parliaments, even when it greatly influences the lives of the people, goes largely unreported. So long as the press persists in reporting, in a trivial and sensational manner, only the incidents which lend themselves to that treatment, there is a strong disincentive for members to perform legislative duties at all, much less diligently. This is not a matter that parliaments can do anything about, but those with an interest in making parliaments work can constantly draw attention to it.

Reform and Revolution

It is assumed for the purposes of this discussion that the aim is to modify the parliamentary or cabinet system of government to improve its operation, rather than to engage in radical constitutional restructuring, such as a complete or partial separation of the executive from the legislature. Australia does not appear to be ready for any such radical constitutional restructuring.

The purpose of reforming institutions, indeed, is to make them work better before their unworkability becomes a ground for revolution. The longer reform is neglected the more radical become the necessary reforms and the greater the likelihood of revolutionary change. Proposals for reform should be moderate and achievable, but in order to be moderate and achievable must be timely. Whether the suggestions made here are moderate, or excessively moderate, achievable or timely is a matter of judgment. Other proposals, more moderate or more radical, and perhaps more achievable, have been and will be suggested. Before adoption all reform proposals should be subjected to intensive discussion and examination, but the time eventually comes when something must be tried. The system of party government we have had since the rise of modern parties is beginning to give the appearance of requiring a major overhaul.