

Insurance Council of Australia

Canberra Conference

10 August 2006

**MONARCHICAL AND PARLIAMENTARY
GOVERNMENT IN AUSTRALIA**

Paper by

Harry Evans
Clerk of the Senate

MONARCHICAL AND PARLIAMENTARY GOVERNMENT IN AUSTRALIA

By a staged process, but certainly not a planned or consistently followed process, monarchical government was replaced by parliamentary government in the United Kingdom and its colonies. This development was completed in the first half of the 19th century. The personal government of the monarch was replaced by a system of collective decision-making after formal consultation with public opinion, particularly through inquiries by parliamentary committees.¹

Parliamentary government was seen to have significant advantages for the orderly conduct of public affairs, particularly in a worldwide empire. There was less dependence on the abilities and personal predilections of the monarch. By bringing the collective wisdom of a larger group of people, in formal consultation with public opinion, to bear on public affairs, mistakes and abuses were less likely. Parliamentary inquiry and debate allowed mistakes and abuses to be more readily exposed and corrected. Parliamentary government also had certain disadvantages. It was more complex and difficult for people to follow (indeed, one of its early exponents thought that it had to be hidden behind the mask of constitutional monarchy because the populace were incapable of understanding it²). The processes of inquiry, debate and formal consultation result in slower and more uncertain decision-making. There was also an element of instability in the system, as decisions and personnel could be changed by parliamentary action, in particular, a ministry could be overthrown by the parliament at any time.

Parliamentary government was not entrenched anywhere in the British possessions, including in Australia in spite of its written constitution, and was therefore subject to alteration by changes in practice. (In contrast, the authors of the American constitution, who set up a variant system, and who were well aware of the tendency of republics to degenerate into dictatorships and de facto monarchies, provided safeguards to ensure that parliamentary, collective decision-making would be preserved.)

In all jurisdictions of the former British Empire, there has been a tendency to revert to the more primitive form of one-person government, for power and decision-making to be concentrated in the hands of prime ministers and their hand-picked advisors, and for parliament and cabinet to be downgraded. Prime ministers have tended to become the new monarchs.³ The reasons for this are complex, and will not be analysed here. They range

from the profound (the delegation of more power to executives in times of war and crisis) to the mundane (the shortening of the public attention-span by television and the temptation for leaders to simplify their messages into slogans). The sages of the past would tell us that it is simply because power-hungry office-holders will always grasp for more power unless they are constitutionally restrained.⁴

This tendency to power concentration and one-person government has proceeded further in Australia than in its sister countries in the so-called Westminster world. Again, the reasons are complex, but the symptoms are not difficult to discern. There is the concentration of political discussion on leadership and leaders; the question of who occupies the throne has achieved supreme if not exclusive importance.⁵ Parliament and cabinet are seldom mentioned as part of the decision-making process; all major decisions are seen as the personal decisions of prime ministers. This perception is basically accurate: parliament and cabinet have minimal roles. The enormous growth in the size of the prime minister's office has occurred precisely because that office now virtually *is* the government.⁶ Last year attention was drawn to the lack of respect given by government to parliamentary committee inquiries and reports;⁷ that is merely another symptom of the minimal role of parliament in decision-making. Australia has the weakest parliament of all comparable countries. Perhaps the starkest demonstration of this is the way in which the country is committed to warlike operations and military interventions overseas with minimal, and only retrospective, parliamentary consideration, and with the decisions seen as prime ministerial and not even cabinet decisions.⁸ By contrast, the United States president requires endorsement of both houses of the legislature for significant military action abroad, and in the UK discontent with participation in the Iraq war has led both the Home Secretary and the Leader of the Opposition to promise prior parliamentary approval in future cases, although their parliament played a bigger role than Australia's in any event.⁹

Another dimension of the concentration of power in Australia is the virtual destruction of federalism, the division of power between the constitutionally-entrenched levels of government, but that is another subject.¹⁰

Does the tendency to monarchical government in Australia matter? It is difficult to persuade many people that it does. There is a single-minded concentration in Australia on democracy, and a lack of appreciation of checks and balances. There is a general view that, so long as the government (which basically means the leader) is democratically elected, there is no need for any other safeguards.

This view is closely allied with the “mandate” theory of government, that in electing a government (basically a person) the electorate delegates decision-making to that person and approves in advance everything promised or subsequently done.

The fallacies of mandate theory have been much exposed: electors choose the government they prefer, rather than endorse every item in its policy platform, indeed, they often choose between evils; many electors vote to turn a government out, rather than to put a government in; governments usually win elections with a plurality, and not a majority, of primary votes, in Australia, usually 40-odd percent, even in the recent landslide, so that usually most electors have preferred someone else; if the theory were correct, governments would never be able to abandon or modify their election promises, because this would repudiate democracy as much as any obstruction of those promises; similarly, governments would never be able to compromise with those of other views: winners must win and losers must lose.¹¹

It is not clear who is supposed to possess the mandate, the majority party, its leaders, or the prime minister. Always some members of a government party have doubts about some of the party’s policies, if not hopes of changing them after an election. Some want to change leadership and direction. Presumably, the mandate theory requires that they must never seek to change their colleagues’ minds. But then what are parties for? The theory reinforces autocratic prime ministers, who in practice are regarded as possessing the mandate.

Similarly, if the government has a mandate, what is a parliament for? The old theory of responsible government, that is, executive responsibility to the lower house, entailed that the lower house could overthrow a government in which it lost confidence, but such a step would now presumably be a violation of mandate/democracy. Upper houses were supposed to check the power of lower house majorities; mandate/democracy leaves no room for upper houses either. Indeed, any kind of constitutional limitations lose their legitimacy under mandate theory. If the electors have endorsed a government, how can a written constitution, a constitutional court, a head of state, much less two houses of parliament, get in the way?

Taken to its logical conclusion, the mandate theory repudiates the whole history of western constitutional development, which has laboured to devise safeguards on the power of the state, because no one, including winners of elections, should be trusted with unlimited power.¹²

The mandate theory also ignores the fact that a government ensconced in power, with access to the treasury and control of the electoral law, is in a strong position to prevent its future removal from office. Some analysts now think that the advantages of incumbency are so great that it takes a major disaster to unseat a government.¹³

It will be noted that the perceived advantages of parliamentary government had little to do with the democratic election of the government institutions. The advantages of exposure and avoidance of mistakes and abuses through parliamentary, collective decision-making have a validity which stands independent of democratic election, and which historically predated democracy. But part of the advantage of parliamentary government does arise from the representative character of the institutions, and a complex society with a complex economy cannot be adequately represented by one person. The sacrifice by members of parliament of their representative role to the function of simply supporting a leader is a very significant forfeiture of the virtue of parliamentary government. Again, this degeneration has gone further in Australia than in comparable countries.¹⁴ Once it is taken for granted that parliamentarians will almost never vote in parliament against their party, their representational capacity is crippled.

Business groups have been particularly enamoured of strong government and impatient of checks and balances and institutions whereby government is controlled or restrained. This is particularly demonstrated by the pronouncements of the Business Council of Australia on constitutional questions. They want efficiency in government, which they tend to equate with a concentration of power and centralised decision-making.¹⁵ This is somewhat paradoxical for bodies which otherwise support the decentralised and deregulated market economy.

There appear to be two reasons for this paradox. There is a strongly-held view that sound economic policies require strong government. It is also apparently easier to lobby government and to influence government decision-making when there is only one target of the lobbying and influence-seeking, the all-powerful government headed by the virtually all-powerful prime minister.

Both of these beliefs are delusional. In relation to economic policy, a comparison of different systems of government and their economic performance (rates of inflation, economic growth, etc) suggests that countries with collective, consensual processes of decision-making are no less successful economically than those with power-concentrating systems.¹⁶ The principle that sounder decisions are likely to be made, and mistakes avoided, with collective decision-making, subject to parliamentary inquiry and debate and formalised public consultation, extends to economics as well as other areas of human activity.

In relation to lobbying and seeking to influence government decision-making, having one target is an advantage only when success is achieved. If interest groups are not successful in gaining the ear of the monarch or his chosen advisors, they then have only two avenues: further humble petitions to the throne, or subversive attempts to undermine its authority. It is far better to have a legitimate, rational and formalised process for changing decisions through

a parliament, particularly by inquiries and reports by parliamentary committees. The lack of influence of these committees over government deprives everyone of a means of changing unsound decisions and influencing future decisions. Those who seek to inform government decision-making should have been alarmed by the exposé of the futility of parliamentary inquiries and reports.

Perhaps business now cannot envisage a situation in which it does not have the ear of government, but the day may well come when it will regret the neglect of the regular, institutional, deliberative processes for policy formulation and change which parliamentary government properly so called should provide.

It need not be said that the situation of a government party majority in the Senate (which, symptomatically, is usually referred to as “government control of the Senate”, and sometimes “the prime minister’s control of the Senate”) can only reinforce the concentration of power and decision-making and weaken the means of exposure and correction of mistakes and abuses.

The soundest advice to business groups, therefore, is to get off the strong government bandwagon, to support constitutional safeguards and checks and balances, and to cultivate and employ the neglected parliamentary avenues for influencing public policy. That course is in the long-term and best interests of business as well as everybody else.

Harry Evans

NOTES

¹ The legislative committees of that period make their later counterparts look exceedingly tame; famously, they even conducted inquiries into wars which were still in progress (the Crimean War in the UK and the Civil War in the US). This pattern of intensive legislative inquiry was replicated in the Australian colonies: see D. Clune & G. Griffith, *Decision and Deliberation: the Parliament of New South Wales 1856-2003*, 2006, pp 42-5.

² Walter Bagehot, *The English Constitution*, 1867, various editions, chapter 2.

³ Cf. D. Marquand, *Decline of the Public: the Hollowing-out of Citizenship*, 2004, pp 86-7.

⁴ *The Federalist*, No. 51.

⁵ P. Strangio, ‘A recipe for bad leaders’, *The Age*, 27 May 2006, p. 9.

⁶ A summary of the literature on ministerial personal staff and the concentration of power is in J. Walter, ‘Ministerial staff and the “lattice of leadership”’, *Democratic Audit of Australia*, Discussion Paper 15/06, April 2006.

-
- ⁷ 'Democracy denied', *Sydney Morning Herald*, 20 June 2005, pp 1, 9.
- ⁸ The decision to participate in the Iraq war led to renewed calls for the war-making power to be subject to parliamentary approval, but the Prime Minister has repeatedly described the decision as his personally, eg: "I am prepared to defend what I did ...". ABC Radio News, 7.45 am, 21 March 2006.
- ⁹ 'Cameron would renounce PM's power to go to war', *The Independent*, 7 February 2006; 'Straw to call for end to Prime Minister's Royal Prerogative on war', *The Independent*, 28 June 2006; S. Jenkins, 'The evil fruits of power are democracy's biggest danger', *The Guardian*, 8 February 2006.
- ¹⁰ G. Craven, 'The New Centralism and the Collapse of the Conservative Constitution', *Papers on Parliament*, No. 44, pp 133-45.
- ¹¹ A comprehensive refutation of the "mandate theory" is in S. Bach, *Platypus and Parliament: the Australian Senate in Theory and Practice*, 2003, pp 276-97.
- ¹² S. Gordon, *Controlling the State: Constitutionalism from Ancient Athens to Today*, 1999.
- ¹³ P. Strangio, op. cit.
- ¹⁴ The relative frequency with which government backbenchers in the UK vote against their government and join in committee reports highly critical of government policies and administration, most notably in recent months, makes a stark contrast with the situation in Australia.
- ¹⁵ "The BCA considers that current arrangements are not producing stability and certainty nor delivering the reforms necessary, and for which the BCA believes the Government has a mandate, to enable business to remain competitive. The BCA considers that there is a need for reform of the Constitution." *Submission to the Department of Prime Minister and Cabinet on Constitutional Changes*, 23 December 2003.
- ¹⁶ A. Lijphart, 'Australian Democracy: Modifying majoritarianism?', in M. Sawyer & S. Miskin, *Representation and Institutional Change: 50 Years of Proportional Representation in the Senate*, *Papers on Parliament*, No. 34, 1999.