

# THE NEW TIMES

*"Ye shall know the truth and the truth shall make you free"*

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## BEHIND THE AUSTRALIAN REFERENDUM ON SEPTEMBER 3

*by Eric D. Butler.*

**History provides few examples of governments voluntarily relinquishing power. The nature of all government is restrictive. And, as Lord Bryce pointed out in his classic work, "Modern Democracies", it is the natural tendency of all governments to increase their own power. Every increase in the power of governments is inherited by successive governments who readily find excuses for retaining the power. All the worthwhile reforms have initially been advanced by a relatively few people and resisted by government until the pressure for reform or change becomes irresistible. Having reluctantly introduced changes formerly opposed, governments then suggest that they should be admired for their far-sighted statesmanship! Such are the realities concerning governments and power.**

Australian electors will be helping to secure a future of freedom and stability for their children and grandchildren if they bear these realities firmly in mind as they are asked to vote on four referendums on September 3. The manner in which these referendums are being presented must be rated as one of the biggest attempted confidence tricks in Australian history. When Australia's Second World War Attorney-General, Dr. H.V. Evatt, made his bid for far-reaching powers he at least did not attempt to disguise that a YES vote at the 1944 Referendum would vastly increase the powers of the Commonwealth. But the justification for the powers was that they would be required to provide ex-servicemen with a "fair go" in a difficult period of post-war reconstruction. And they would only be "temporary".

The Hawke Fabian Socialist government is seeking powers as far-reaching as those sought by Dr. Evatt, but Attorney-General Bowen tells Australians with a straight face that the four proposals are not designed to increase the power of the Commonwealth. The fate of the four referendum proposals may well be decided by how many electors are gullible enough to believe that a Federal government is spending tens of millions on referendums, which, if accepted, would not increase the powers of the Federal government. The very suggestion flies in the face of reality and the clearly stated philosophy of the Hawke government.

### POLITICAL TRICKERY

Well-known Australian public opinion pollster Gary Morgan has strongly criticised the manner in which the referendum questions have been worded, pointing out that if his organisation sought to test public opinion in this manner it would be charged with dishonesty. The referendum questions remind one of the old loaded questions: "Have you stopped beating your wife?" The political tricksters have reached a new low when they seriously ask Australian electors to vote on whether they want freedom of religion included in the Federal Constitution. From the beginning of British colonisation in Australia, the people have always had freedom of religion. Section 116 of the Federal Constitution prevents the Commonwealth from making any laws concerning religion, either to impose any religious service or prevent people from practising their chosen religion.

With Section 116 of the Federal Constitution already providing for freedom of religion, obviously there must be a "catch" in the government's referendum proposal. Under the guise of "extending" freedom of religion, the Hawke government is asking for a subtle but far-reaching change of wording so that neither

the Commonwealth nor the States can make any laws discriminating between religions, the way being cleared for the establishment of a constitutional situation similar to that in the United States, where the Supreme Court has ruled that the funding of non-government schools of any kind is unconstitutional, and that not even the Lord's Prayer can be used in government schools.

The proposed constitutional amendment concerning religion would prepare the way for the Hawke government to introduce the United Nations Declaration on the Freedom of Religion when it is presented as a Convention. It would then be possible for the government funding of Christian schools to be challenged in the High Court. Under the United Nations proposal

### OUR POLICY

To promote loyalty to the Christian concept of God, and to a society in which every individual enjoys inalienable rights, derived from God, not from the State,

To defend the Free Society and its institutions - private property, consumer control of production through genuine competitive enterprise, and limited decentralised government.

To promote financial policies, which will reduce taxation, eliminate debt, and make possible material security for all with greater leisure time for cultural activities.

To oppose all forms of monopoly, whether described as public or private.

To encourage electors always to record a responsible vote in all elections.

To support all policies genuinely concerned with conserving and protecting natural resources, including the soil, and an environment reflecting Natural (God's) Laws, against policies of rape and waste.

To oppose all policies eroding national sovereignty, and to promote a closer relationship between the peoples of the Crown Commonwealth and those of the United States of America, who share a common heritage.

the teaching of Christianity to non-Christians could be challenged as a form of discrimination.

Those who think that such a development could never take place in Australia should remember that in 1967 they strongly supported what sounded like an innocent constitutional change concerning Australians of Aboriginal background. Years later they were told by Prime Minister Hawke that they had at the 1967 referendum voted in favour of Aboriginal land rights! Not surprisingly, the Australian people were astonished to learn that their 1967 vote had prepared the ground for the Commonwealth to start overriding the States concerning Aboriginal affairs.

### DEFEATING FABIAN STRATEGY

The Fabian doctrine of "the inevitability of gradualness" is the major threat, not only to Australians, but to free peoples

everywhere. The Fabian strategy is dependent on an acceptance of financial orthodoxy as natural and beyond question. Progressive centralisation of power in all spheres appears to be inevitable as a result of expanding debt, higher taxation and never-ending inflation.

A NO vote by the Australian people on September 3 will not directly challenge financial orthodoxy. But it will hold up the Fabian strategy and leave the Australian people with the option to insist on changes which will give them a much greater say in their own affairs. The Australian Federal Constitution provides the Australian people with a greater protection of their rights and freedoms than any other nation in the English-speaking world. What happens on September 3 will be watched with the closest attention by all those internationalists working so vigorously to establish the New World Order. A NO voted on September 3 will have far-reaching implications.

## THE CHRISTIAN ROOTS OF REPRESENTATIVE GOVERNMENT

by the Rev. Canon A.G. Fellows

The following paper was given by Canon A.G. Fellows at the 1988 Queensland State Seminar of the Australian League of Rights.

Bishop William Stubbs, in his foreword to his 3-volume *"The Constituting History of England"*, said the following in 1873: -

"The history of institutions presents in every branch a regularly developed series of causes and consequences, and abounds in examples of that continuity of life the realisation of which is necessary to give the reader a personal hold on the past and a right judgment of the present. The roots of the present lie deep in the past, and nothing in the past is dead to the man who would learn how the present comes to be what it is".

Sir Ivor Jennings Q.C., in his book *The Queen's Government*, (Pelican 1954), says: —

"We must not forget our history, for history has consequences. The Queen and her predecessors have sat in Parliament for 700 years.... The British Constitution adapts itself to new conditions in every generation but its history has been continuous. At the centre of its structure has been Parliament, a different Parliament from generation to generation, and yet the same Parliament."

The word Parliament comes from the French, and was used as early as 1175 in England. The Latin word used for sessions of the King's Council was 'colloquium'. Interestingly, in the 28th year of Henry III the assembly where Magna Carta was granted in 1215 was referred to as 'Parliamentum Runimedai'.

We must not imagine that universal franchise goes back into the dim past. The Reform Bill of 1832 was the precursor of further reforms, so that as late as 1867 city householders were enfranchised, and in 1884 rural householders.<sup>2</sup> After them came the lodger and all adult males. Not till 1918 were women over 30 given the vote, and in 1928 women under 30.<sup>3</sup>

In this paper I am restricting myself to the English situation, but then that is natural, for that country has been well described as the Mother of Parliaments.

### THE CHURCH AND ARCHBISHOP THEODORE

The Gospel came to Britain in the first century, but there is no one person to whom one can point and say 'He was the Apostle to Britain'. The Church became organised and we know that there were three British bishops at the Council of Arles in France in 314 A.D. The invasion of the Angles and Saxons forced British Christianity to the west, to the fastnesses of Cornwall, Wales and Cumbria. The British Church, having suffered at the hands of the Heathen, did little to convert these conquerors. It was left to the Italian mission under S. Augustine, whose observance in the Calendar was last Thursday, and to the Celtic missionaries based on Iona, to begin the conversion of the

English, and this was mainly accomplished in a century.

The Church in England owes a great debt to Pope Vitalian for his appointment of the Greek monk Theodore to be Archbishop of Canterbury 73 years after Augustine came to England. He had been chosen because the man who had been picked by the English Church died at Rome before Consecration. Theodore came to England in 670, and found his first work to be the rebuilding after the plague of 664. Then he set his organising genius to work in the calling of the Synod at Hertford in 673. The Venerable Bede, in *his Ecclesiastical History* (Everyman) puts it thus (4): -

"Theodore assembled a synod of bishops, and many other teachers of the Church, who loved and were acquainted with the canonical statutes of the Fathers. When they were met together, he began, as a prelate, to enjoin the observance of such things as were agreeable to the unity and peace of the Church."

Theodore produced ten Canons, based on previous decisions of the Church in many parts of the Mediterranean, and some of them should be noted: — 5

"II. That no bishop intrude into the diocese of another, but be satisfied with the government of the people committed to him.

V. That no clergyman, forsaking his own bishop, shall wander about, or be anywhere entertained without letters of recommendation from his own prelate...

VI. That bishops and clergymen, when travelling, shall be content with the hospitality that is afforded them; and that it be not lawful for them to exercise any priestly function without leave of the bishop in whose diocese they are.

IX. It was generally set forth, that more bishops should be made, as the number of believers increased.

This last one was absolutely necessary, for Wilfrid in York ruled over a diocese that reached from the Humber to the Forth. Bede says that this was passed over for the time being. The English Church had held synods before this, notably the Synod of Whitby in 664, when agreement was reached between the English and Celtic representatives about the date of Easter. The British Church had kept up its synods when driven west. But this synod of Hertford was a landmark in history. It wasn't long before Theodore divided bishoprics, even acknowledged the primacy of Canterbury. I give here the testimony of two authors to this Primate. William Bright D.D. says in his *Chapters on Early English-Church History*, referring to the Synod of Hertford: "A memorable assembly in the annals of the English

Church — hardly less so in those of the English people. For while it gave expression and consolidation to the idea of ecclesiastical unity, it was also the first of all national gatherings for such legislation as should affect the whole land of the English, the precursor of the Witenagemots, and the parliaments of the one indivisible, imperial realm. Theodore may thus far take no mean place among the men who helped to make England."

Alfred Plummer, M.A., D.D., in his Vol. 2 of *The Churches of Britain Before A.D. 1,000*, says the following: "He created a unified Church, which became in quite a marvellous degree a national Church. And this had consequences of which Theodore himself can scarcely have dreamed. The unity of the Church became the foundation, the model, and the chief cause of the unity of the nation. It was a long time before civil rulers were able to do with the disconnected and sometimes hostile kingdoms what Theodore did with the disconnected dioceses, and unite them in one organised whole; but while this problem was being painfully worked out, it was the English Church which was the substitute for a united nation, and which led to an English nation being at last formed."

Bede, in describing that pontificate of 22 years, says: — "For to say all in few words, the English Churches received more advantage during the time of his pontificate than ever they had done before". 6

Theodore not only called national synods, but also provided for an annual synod at Clovesho for their permanent co-operation. When he came he found dioceses identical with kingdoms, no settled clergy, and no definite territorial subdivisions. When he broke up the dioceses he followed the lines of the still existing territorial or tribal arrangements, which had preceded the creation of the seven kingdoms. Bede tells us that country churches were also multiplied, and local provision of some, sort was made for the village clergy. But what measures Theodore took in this direction are not all that clear. Stubbs says that it is not necessary to suppose that Theodore founded the parish system, for it needed no foundation. "As the kingdom and shire were the natural sphere of the Bishop, so was the township of the single priest; and the parish was but the township or cluster of townships to which that priest ministered". 7

### THE WITANS

The word 'parliament' came to be used for those occasions when the king took counsel with a larger number of advisers than usual; they held 'parleys' or talks. But taking counsel goes right back to ancient times, and in Anglo-Saxon days the king had his Witan or Witenagemot, which means 'the assembly of the wise'. These gatherings included the king's more important relations, the local bishops and abbots, the great ealdormen, and lesser notables. Bede relates in his history of the conversion by Bishop Paulinus of York of King Edwin of Northumbria. "Delay no longer", he said. Edwin replied, "I will first confer with my chief friends and counsellors so that, if they are willing they may become Christians also". He assembled his Witan in 626 and asked his wise men what they thought. Amongst them was a pagan priest.

It must be understood that these Witans were in the early days, and with some exceptions in later days, purely advisory bodies. They normally confirmed, rather than initiated. So says John Bowie, in his book *The English Experience*. 1<sup>2</sup> R.J. Adam in "A Conquest of England" says that we must not read into taking counsel any notions of government by consent. Even the Norman kings took counsel, and the Anglo-Saxon word 'Witan' was continued, but it was on their own terms, Their counsellors were not so much an embodiment of collective wisdom, but an inner circle of faithful followers, men bound to them by precise ties.<sup>13</sup> The king would do well to carry the Witan with him, especially in big decisions, but this does not imply any notion of a limited monarchy, or of procedure by vote.<sup>14</sup>

Sir George Clark, in his book *English History: A Survey*, says that the names of the Witan appeared in the more important documents which the king approved.<sup>15</sup> This was simply a public expression of the fact that decisions made could not be known or

effective without the participation of those who could answer for the general population, those who could foresee how the decisions would work and who would have to put them into effect. There was no rigid definition of the matters, which the Witan might discuss. But it could deal with judicial business, with grants of land, and, as we shall see, with Church affairs.

William the Conqueror took counsel with his Witan, "the Witan of the Realm", at Christmas, Easter and Whitsun, and one notes that it was the major Christian festivals, which were the focus for these gatherings. His Witan comprised Archbishops, bishops, abbots, earls, thegns and knights, the first being at Winchester in 1070. In 1072 the great Easter council dealt with the respective rights of the two metropolitan sees of Canterbury and York. This was at Winchester in the royal castle, and included laymen of high rank. The final decision on that matter was made later that year by a synod of the Church at Windsor.<sup>16</sup>

Below the Witans were the shire moots. By the tenth century we notice that these were presided over by the shire reeve — i.e. the sheriff — deputizing for the ealdorman. The word shire or scire means a share, a share of the larger whole. The shire court met twice a year, and in it sat the local bishop.

Below the shires and parallel with them were the hundreds, whose origins go back into the mists, but briefly they were groupings of farmlands whose acreage covered a certain area. They are known by other names, such as the ridings in Yorkshire, and as wapentakes after the Danish origin. By the time of King Edgar they became part of local government. In the courts of the hundred sat the local parish priest, and these were courts for the ordinary rural population.

### FURTHER CHURCH ORGANISATION

Let us move ahead in looking at the organisation of the Church's structure. Archbishop Theodore has already been mentioned. It was not until the 8th century that the organisation of the parochial system really got under way. In the definition of parishes there was some skilful work. There were no maps, of course, but permanent natural features were the lines and turning points. The whole country was divided into territorial areas, varying in size, for each of which a definite person was responsible in all spiritual matters. That still applies to me in my parish! To him, the 'persona ecclesiae', the parson, the charge of all the souls in that area was definitely committed by the bishop in institution, and his responsibilities rigidly enforced and his rights carefully maintained. There exists a letter of Bede to the Archbishop of York, complaining that priests were needed in a couple of areas in the neighbourhood of his monastery. It was very moving, indeed, for me to stand at his tomb in the lovely cathedral of Durham.

Theodore had got agreement that there should be an annual synod, at least of bishops, to be held at Clovesho. Presumably Clovesho was close to the borders of a few kingdoms, so that delegates could easily retire to their own kingdoms if need arose. At the synod in 747, Canon 9 said: —

"Priests are to preach diligently, to baptize, teach and visit, in those places and districts which have been suggested or assigned to them by the bishop".

John Godfrey in *The Church in Anglo-Saxon England*, records that John of Beverley, Archbishop of York from 705—718, consecrated village churches for two thegns at Bishop Burton and Cherry Burton. By the year 900 private ownership of churches was becoming the norm, as places of worship were built by the generosity of benefactors, who then had a right of presentation of a priest to that parish, and this custom still lingers in many parts of England.

The synods could not be held annually, but they were more numerous than what could be expected in the unsettled state of the kingdoms. What is of note is the security of the Church in the face of troubled times. Stubbs says that Archbishop Egbert sat at York undisturbed in his primacy during the reigns of five princes bound in close relationship with himself, all of whom owed their elevation and deposition to revolt. In Kent the archbishops ruled from 740 to 789 during a period of so much subdivision and anarchy in the kingdom that not even

the names of rival kings or the dates of their reigns have been preserved. Stubbs says that the bishops were not local potentates in the way that the French and German prelates were. They did not become counts or dukes of their dioceses, or entangle themselves with the secular intricacies of the divided and bewildered nation, whose spiritual guides they were.

At the synod of Clovesho in 803 we have evidence of the bishops' appearing at the head of a body of diocesan clergy, many of them abbots. In addition to priests being placed in parishes there was a system whereby ministers were central churches and priests would move out from them to outlying churches. By the 12th century the parochial system was an accomplished fact. The Domesday Book mentions many of the parish churches and their property, and that was late in the 11th century. By the year 1200 the Church had accumulated much experience of assemblies, whether of diocesan clergy, or of international religious orders, or of the whole western communion.

The Rev. M.W. Patterson in his book *A History of the Church of England* says that the clerical assemblies or convocations had led the way in the development of the representative principle. Originally these assemblies had consisted of prelates only. In 1225 Archbishop Stephen Langton of Canterbury, one of the heroes of Magna Carta, had summoned, in addition, proctor; for the cathedral and monastic chapters. In 1258 Archdeacons were summoned with letters of proxy from their clergy. Finally in 1283 the Convocation of Canterbury reached the form it retained until earlier this century. To it were summoned the bishops, abbots, deans, archdeacons, together with two representatives from the clergy of each diocese and one representative from each chapter. This was only twelve years before Edward I summoned what is known as the Model Parliament, and we shall look at that shortly.

The formation of a system of Canon Law, already mentioned in speaking of Theodore, paved the way for the system of secular law, and we must note the influence of the former, for it bound the bishops as much as the clergy and laity, and so bit by bit the ground was laid for a national system of law which would bind the king as much as his subjects. The strength, solidity and unity which Canon Law gave to the Church was an example to society of the need for a similar code of law which might prove a powerful check on the despotic rule of a king.

There is no more powerful check upon the will of a king than the customs traditions and precedents, which gather insensibly, round an organised legal system. Kings may come and go, dynasties rise and fall, but the law like the Church goes on forever, and is stronger than the king. But of course it is a work of time, and when Henry II, in his keenness to codify law, tended to grind down the English people, the Church could oppose to him its own law, codified earlier in the 12th century under Ivo of Chartres and Gratian. It claimed a higher sanction and professed a nobler aim.

### INTERACTION

We ought to have a look at what I term the interaction between synods and councils. Wakeman, in his *History of the Church of England*, draws attention to this. Laws were made either by synods (mainly of bishops) and accepted and enforced by the king; or made by king and Witan, and accepted by the bishops. They were interpreted by courts under the joint presidency of the bishop and ealdorman.<sup>16</sup> The number of those in the Witan was not very large, but varied, and it increased in proportion to the size of the realm as the centuries passed.

At Clovesho in 742 King Ethelbald 'presided'. In 747 the ealdorman and 'duces' were present. At Brentford in 781 a synod met to deal with a dispute with King Offa, and he and some ealdormen were present. At Chelsea in 816 the clergy of the Province of Canterbury met in the presence of the King of Mercia and his chief nobles. It was common for King Offa to preside over synods. Since they were attended by churchmen from every English kingdom, but by nobles only from Mercia, and since they dealt with secular as well as with Church business, they could not help foreshadowing a time when there would be only one king in England who would preside over councillors from every part of the land.

At Luton in 931 there were two Archbishops, 2 Welsh

princes, 17 bishops, 15 ealdormen, 5 abbots and 59 ministri. At Winchester in 934 there were two Archbishops, 4 Welsh kings, 17 bishops, 4 abbots, 12 earls and 52 ministri. In 966 the king's mother was present, two archbishops, 7 bishops, 5 ealdormen and 15 ministri. These ministri are the king's staff, corresponding in our day to Cabinet ministers and public servants. It is recorded that the laws of Ine are enacted "with the counsel and teaching of the bishops, with all the ealdormen, and the most distinguished Witan of the nation and with a large gathering of God's servants."<sup>17</sup> Chapter and verse could be given of other gatherings. Stubbs agrees with Wakema. The ecclesiastical legislation of kings Alfred, Ethelred, and Canute is transacted with the counsel of the Witan. The more distinctly ecclesiastical assemblies like Clovesho and Chelsea, issued canons and admitted counsellors of the kingdom to their sittings, and allowed their acts to be confirmed by lay subscription. The distinction between spiritual and temporal was lightly drawn, and this was the case with the shire moots and hundred moots. In 991 tribute was given to the Danes by the decree of the Witan, amongst whom Archbishop Sigeric is specially mentioned.

Professor Margaret Deanesley, in her book *The Pre-Conquest Church in England*, shows how Codes V and VI of King Ethelred mix up Church and secular law. In Code V, 25 of the 35 laws deal with Church matters, and the last 10 with secular matters and the defence of the realm. In Code VI 30 of the 52 laws are ecclesiastical, the last 22 secular. She goes on: —

"If Aelfheah and Wulfstan drew up a set of Church laws, they were regarded as equally valid whether published to the bishops in synod or the bishops and lay nobles in the Witan.... Dunstan and Aetheolwold and Wulfstan were strict reformers, zealous for the rights of the Church; there is no suggestion anywhere that they desired the bishops to meet separately in ecclesiastical synod and issue canons." 18

The election of kings in form and substance belonged to the Witan, although the choice of someone who was not in the first line of hereditary descent was made only on occasions of revolution or conspiracy. In this election the bishops were there, for they were to anoint and crown the sovereign.

### MAGNA CARTA

It is impossible in this subject to ignore Magna Carta of 1215 and the struggle with King John, who at one stage had humiliated himself and the whole realm by surrendering his crown to the Pope and receiving it back from him as a fief. The seeds of the Great Charter were sown in the Charter of Henry I, which he issued at the beginning of his reign. He said to the Archbishop of Canterbury — "myself and the people of the whole realm of England I commit to your counsel and that of those who ought with you to counsel me"<sup>19</sup>. As King John's misrule continued, the Archbishop of Canterbury called the barons and clergy together in August 1213. Stubbs says that this council included a body of representatives from townships on the royal demesne, each of which sent its reeve and four legal men.<sup>20</sup> The Archbishop set before them the Charter of Henry I and he referred to its laws as the standard of the good customs which were to be restored<sup>21</sup>. The barons declared themselves willing to die for these liberties. So, to cut the story short, two years later King John had to set his seal to the articles, which we know as Magna Carta on 15th June, 1215, at Runnymede.

Stubbs says, "The whole of the constitutional history of England is little more than a commentary on Magna Carta".<sup>22</sup> For our purpose Articles 12—15 are worth noting. I quote from Stubbs:

**"They admit the right of the nation to ordain taxation, and they define the way in which the consent of the nation is to be given. No scutage or aid, other than the three regular feudal aids, is henceforth to be imposed but by the common counsel of the nation, and the common counsel of the nation is to be taken in an assembly duly summoned; the archbishops, bishops, abbots, earls and greater barons are to be called up by royal writ directed to each severally; and all who hold of the king in chief, below the rank of the greater barons, are to be summoned by a general writ**

**addressed to the sheriff of their shire; the summons is to express the cause for which the assembly is to be called together; forty days' notice is to be given; and when the day has arrived the action of those members who obey the summons is to be taken to represent the action of the whole"**<sup>23</sup>

Archbishop Stephen Langton himself was a dominant figure in this whole process. He had motivated the barons, and it was probably by him, the majority of the bishops and the legal members of the confederacy, that the rights of the freeholder were so carefully fenced around. Although none of the common people was represented at "the meadow, which is called Runnymede, between Windsor and Staines" (Magna Carta), the barons and the bishops secured their position for the future. I give you Stubb's translation of the Latin in the document: —

**"All the aforesaid customs and liberties that we have granted to be held in our kingdom, so far as pertains to us with reference to our vassals, all men of our kingdom, as well clerk as lay, shall observe, as far as pertains to them, with reference to their men".** <sup>24</sup>

Article 61 speaks of how the Charter is to be enforced. The barons are to elect 25 of their number as executors. They are empowered to levy war against the king himself, if he refuse to do justice on any claim laid before him by four of their number; and in conjunction with the 'communa' — i.e. the community of the whole realm — to distrain him.<sup>25</sup>

The Charter is, in form, only the act of the king, who did not mean to keep it; but in substance and in historical position it is the first effort of a corporate life that has reached full consciousness.<sup>26</sup>

Before the close of the Middle Ages, the confirmation of Magna Carta had been demanded, and granted, 38 times.

**Sir George Clark says of Magna Carta: — ". . . its history and some of its phrases made it a rallying point for those who suspected kings of placing themselves above the law . . . . When the Stuart kings fell out with their subjects it was brought forward as a sacred text and revered, as it still is today by those who have never read it" 27.**

## PARLIAMENT

The 13th century was a time of tremendous development for the nation. There was no great involvement on the Continent of Europe. The century opens with Magna Carta, and we look now at the institution of Parliament.

King Henry III was ruling badly, and in 1258 a Parliament met at Oxford to combat his misrule. A provisional government was formed with a standing council to act as advisers to the king and as a check on all his acts. The Archbishop of Canterbury and the bishops of London and Worcester were in one of the two committees of twenty-four to redress grievances. Canterbury and Worcester were on the council of fifteen, and London was one of the twelve commissioners elected by the barons to meet the council of fifteen three times a year. The King swore to observe these Provisions of Oxford, as they came to be known, but in 1260 the Pope released him from his oath, and in 1263 King Louis of France, to whom the questions at issue had been referred, gave his decision in favour of Henry. So Henry was free to enjoy the same power as before.

The matter was decided on the field of battle, and on 14th May 1264 Henry was defeated at Lewes. Earl Simon de Montfort was the leader of the patriotic party, and he summoned a Parliament in 1265. This Parliament is notable in that for the first time representatives of the citizens and burgesses were there to assist the knights of the shires and nobles and prelates. Clark, however, says that only five earls and eighteen barons sat in that Parliament.<sup>28</sup> In summoning this experimental assembly Earl Simon was guided by what he had seen successfully done in the annual Church synods, which had continued from the times of Archbishop Theodore, and held their sessions in the council chambers, the chapter houses, of the various cathedrals. These chambers had been placed at the disposal of the Witan. So Earl Simon's Parliament met in the chapter house of Westminster Abbey, where succeeding Parliaments continued to meet in

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London, until a suitable building could be erected for the sole use of members.

Most important of all was the influence on Simon of the great Bishop of Lincoln, Robert, called Grossetete, which means 'Greathead' because of his great learning. This saintly man was on terms of affectionate friendship with Simon, as proved by their correspondence. The Earl's sons were placed under the bishop's charge, and it was for Simon's instruction that the bishop wrote the treatise entitled "The Principles of Kingship and Tyranny". This work, according to Stephens, has not been preserved, but from the tenor of his other writings, and of his whole career, it can be believed that it marked out very clearly the differences between the methods of a constitutional monarchy and an arbitrary despotism. The principles for which Simon de Montfort and the patriotic party fought and died at Lewes, and at Evesham a year later, must have come in great measure from this wise and high-minded Bishop of Lincoln.

Henry agreed to continue the representation of what we call the Commons in the national Council, although that term is not properly used until the 15th century. The cause for which the patriotic party had fought was not lost. This is seen in the Compact or "Dictum" of Kenilworth in 1266, in the Parliament of Marlborough, 1267, and in the Council of London in 1268, held by the Papal Legate. King Edward, who had defeated Simon at Evesham, learned to respect the principles for which Earl Simon fought and died, and to rule in conformity with them. He learned the lesson which his father, Henry III, was never able to learn — that the king's throne must be established in righteousness, by doing strict justice to all men, by giving to every class some voice in the great council of the nation, above all by scrupulous fidelity to promises, in accordance with the motto inscribed on his tomb in Westminster Abbey — "Pactum Serva" — "Keep troth".

In this opposition to the King the Church had taken a leading part from first to last. The great principle established by the victory at Lewes, and never forgotten in England, was the same for which the Bishop of Lincoln had contended against king and Pope, that law is above the ruler, and that the sovereign who does not rule in accordance with the law and truth must be restrained. There is a long Latin poem, written by a nameless author soon after the battle of Lewes: —

**"Let him who reads know that he cannot reign who does not keep the law. If the prince loves his people he ought to be loved in return; if he rules righteously he ought to be honoured; if he goes astray he ought to be called back by those whom he oppressed; if he will be corrected by them he ought to be uplifted and supported.... Law rules the dignity of the king; for we believe that the law is light without which the ruler will wander from the right path".**

The important part played by the Church in this struggle for constitutional rights cannot be better expressed than in the words of Sir Francis Palgrave<sup>29</sup>: —

**"However powerful the nobles may have been, it is doubtful whether they would have been able to maintain themselves against the monarchy, if they had been deprived of the support of the abbots and bishops who were placed in the first rank as peers of the realm. The mitre has resisted many blows, which would have broken the helmet. . . . It is to these prelates that we chiefly owe the maintenance of the form and spirit of free government secured to us not by force but by law; and the altar has thus been cornerstone of our ancient constitution."**

King Edward's early parliaments were chaotic and haphazard affairs<sup>30</sup>. One year he would assemble the knights of the shires, the next the barons and bishops. The composition of a parliament seemed to depend upon the nature of the business to be laid before it. However, towards the end of his reign the national council or parliament was not considered complete unless it contained representatives of the three estates — lords temporal, lords spiritual and the commons. From the first parliament of Edward's reign, which met in April 1275, there emerged the first Statute of Westminster, which dealt with administrative abuses revealed by a commission. The statute was said to be

made by the King, "by his Council and by the assent of Archbishops, Bishops, Abbots, Earls, Priors, Barons, and the Community of the Realm being thither summoned". This may be compared with his father's introduction to acts which restricted the king's counsellors to bishops, barons, and "the leading men of England"<sup>31</sup>.

The most comprehensive assembly ever to have been summoned in England was in 1295. The earls and barons came as a matter of course. With them came two knights chosen by the popular court of each shire, and two citizens or burgesses from every city or borough town. The clergy came in full force - archbishops, bishops, abbots, deans, archdeacons, and for the first time representatives of the parochial clergy of each diocese. The result was a parliament genuinely representing the three estates, and so it has been termed the Model Parliament. It is interesting to note that the lower clergy soon opted out of being represented in parliament. They wanted to maintain their independence and felt that their interests were preserved by the attendance of the bishops. It is also interesting to see that there was no major change in the composition of the parliament from 1295 to 1832, the year of the great Reform Bill. Until that date two representatives from each of the communities were elected. The term 'commons' derives from the Latin "communitates" or the French "communes".

Why were the parliaments summoned in those days? Briefly, they were called because the king needed money and because they were useful. The Model Parliament of 1295 was summoned because Edward needed money for the war against Philip the Fair.<sup>32</sup> Clark says that the only credentials, which the representatives had to bring to their sessions, consisted of a power of attorney authorizing them to agree to taxation on behalf of those who would be bound to pay<sup>33</sup>. In early days it was not uncommon for members to come reluctantly!

The parliaments were useful in more than one way. Edward I wanted to rule the State, but at the same time he wanted to take his subjects into partnership with him, provided they recognised his royal rights. In this spirit he accepted the rights and privileges of different classes. Edward felt he could meet his difficulties only if he had the support of the nation as a whole, and it was only by national grants of money that he could get the better of his enemies in Scotland and France. So he enunciated the maxim that what touches all should be approved by all, and in this way broadened the basis of support for the government of the country. It suited Henry VIII to call parliament together so that he could put through legislation about the Church after the fall of Wolsley.

Parliaments were not summoned in deference to any principle. There was no question of the monarchy being limited by parliament, any more than by the barons in council.<sup>34</sup> The realistic view is that, in those earlier days, parliaments were associated and auxiliaries of the Crown<sup>35</sup>. The knights and burgesses naturally had no vision of what we call a constitutional monarchy. In brief, parliament was summoned when the sovereign wanted it; he set the business before it, and he dismissed it. Under Henry VII there were seven parliaments, six of them in his first twelve years. Under Edward VI's six years there were two; under Queen Mary's five years there were five, and in Elizabeth's forty-five years there were only ten. Henry VIII had six in six years, but in the fourteenth year of Wolsley's dominance only one.

The Parliament of 1305 contained 250 clergy, prelates and lesser ecclesiastics; nine earls, ninety-four barons, seventy-four knights of the shires and about two hundred burgesses. It was advantageous to the king to know what was going on, and the representatives could air their grievances. As well as official advice the king could get unofficial advice through finding out what men were saying in remote parts of England. Major decisions were made after the knights and burgesses had gone home, but those representatives were developing in the course of business into an accepted form of government, if only intermittent and auxiliary<sup>36</sup>. Their representative capacity was not then the most important part of the parliament. But we note gradual change. Under Edward I the knights and burgesses were summoned "ad audiendum et faciendum" — i.e. to hear and do — but under

Edward II they were summoned "ad audiendum et consensu—tiendum" — i.e. to hear and consent.

As the cost of conflicts and wars rose, the authority of the knights and burgesses rose too. By 1327 these representatives were being summoned to every parliament and were taking initiative in presenting petitions. By 1336 they were claiming that the export tax on wool had been imposed without their consent and by the sixties they were fixing the amount. So by the late 14th century these 'commons' were not just a means of finding out opinion and a sounding board for government policy. They were necessary for raising revenue and for dealing with a whole range of business<sup>37</sup>. It was in the middle of the 14th century that the parliamentary assemblies divided into an upper and lower House; but when it did the lower and larger House represented both town and country and within it were members who came from the various strata of wealth and influence, except the very highest. Of all assemblies of estates in Europe this became the strongest and proved to be the most enduring.<sup>38</sup>

## NATIONAL UNITY

Sir Ivor Jennings says briefly: —<sup>39</sup>

"The idea of representative democracy, which is now so firmly accepted that we find it difficult to justify any other, has several sources. In the first place, it derives from Christianity".

Wakeman makes several points: —

"By her use of the principle of representation in her councils she was lighting the path of England to parliamentary liberty as she had in former times guided it to national unity."<sup>40</sup>

"In nothing does the history of the English people differ more from that of other nations than in the early acquisition by Englishmen of the blessings of national unity and national liberty. England was united when France, Germany, Italy and Spain were each but an assemblage of ill-assorted units. England was free before most of the nations of Europe had begun to ask what freedom was. Neither of these blessings would have been hers had it not been for the Church. The tree of liberty, it is said, grows indigenous on English soil. It would never have grown at all had not the Church been there to plant the seed, protect the tender shoot, and train its matured and vigorous life"<sup>41</sup>.

Stubbs has a lot to say: —

"The conversion of the seven Saxon kingdoms in the 7th century not only revealed to Europe and Christendom a new nation, but may be said to have rendered the new nation conscious of its unity in a way which, under the influence of heathenism, community of language and custom failed to do so."<sup>42</sup>

"It is scarcely necessary to point out the special importance of this portion of history in its bearing on our constitutional growth. The Church of England is not only the agency by which Christianity is brought to a heathen people, a herald of spiritual blessings and glorious hopes in another life; it is not merely the tamer of cruel natures, the civilisers of the rude, the cultivator of the waste places, the educator, the guide and the protector, whose guardianship is the only safeguard of the woman, the child and the slave against the tyranny of their lord and master. The Church is this in many other countries besides Britain, but here it is much more. The unity of the Church in England was the pattern of the unity of the State; the cohesion of the Church was for ages the substitute for the cohesion, which the divided nation was unable otherwise to realise. Strong in its own conformation, it was more than a match for the despotic rule of such kings as Offa, and was the guardian of liberties as well as the defence of the oppressed. It was to an extraordinary degree a national Church"<sup>43</sup>

"Englishmen in their lay aspect were Mercians or West Saxons; only in their ecclesiastical relations could they feel themselves fellow-countrymen and fellow-subjects.... If the stimulating force of foreign intercourse was wanting,

the intensity with which the Church threw itself into the interest of the nation more than made up for what was lacking. The ecclesiastical and the national spirit thus growing into one another supplied something at least of that strong passive power which the Norman despotism was unable to break. The Churches were schools and nurseries of patriots; depositories of old traditional glories and the refuge of the persecuted. The English clergy supplied the baste of the strength of Anselm when the Norman bishops sided with the king. They trained the English people for the time when the kings should court their support and purchase their adherence by the restoration of liberties that would otherwise have been forgotten. The unity of the Church was in the early period the only working unity; and its liberty, in the evil days that followed, the only form in which the traditions of the ancient freedom lingered. It was again to be the tie between the conquered and the conquerors; to give to the oppressed a hold on the conscience of the despot; to win new liberties and revive the old; to unite Norman and Englishman in resistance to tyrants, and educate the growing nation for its distant destiny as the teacher and herald of freedom to all the world".44

### SOME QUESTIONS

1. **In the Australian Commonwealth parliament, members of the lower House are Members of the House of Representatives. Whom do they represent? The people who elect them? The Party or faction to which they give allegiance? Do they really represent an electorate if they do not reside there?**
2. **Whom do Senators represent? The interests of the States, as was intended? Or their Parties first?**
3. **Is the gradual weakening of the powers of an Upper House conducive to maintaining the liberties won by our fore fathers?**
4. **Is the wheel turning right round, so that representatives are once again merely associates and advisors, not of the King, but of an inner circle called the Cabinet and Government?**

**If so, how is this advice tendered? Only in the caucus or Party room? To what extent is this limited by the commitment to the Party policy before the election?**

5. **Is the system of checks and balances between Crown, Upper and Lower House functioning properly?**
6. **Is universal franchise producing good fruit?**
7. **Is compulsory voting working in the best interests of the nation?**
8. **Is one man, one vote, one value the new Shibboleth?**
9. **Is the Queensland system of representation — i.e. Metropolitan, Provincial Cities, Country — really wrong in principle?**

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## BRITISH EXPERIENCE NEEDED FOR GENUINE DEMOCRACY

From the April/May issue of "Home", 26 Meadow Lane, Sudbury, Suffolk, England C010 6TD.

We are now, 'They' tell us, in the run-up to 1992, when our country will be finally and irrevocably locked into the E.E.C. A major tool for this is the deadly and insidious working of 'harmonisation'. The name is a cosmetic misnomer, if ever there was one. We are all required now to sing in unison, not in harmony.

The practical differences that 'harmonisation' is designed to iron out are the signs and evidence of 1500 years of separate independent growth of our habits, customs and constitution, and the connection between them. The pint, for instance, is a splendidly quaffable volume — not so the litre. The pound is a practical usable weight, whereas the kilogram is too large for everyday use, the gram too small. The inch, the foot and the yard are all handy, practical measurements based on the body itself: the kilometre, and its miniscule relative the millimetre are abstract inventions laid down by dictator Napoleon's men as being a ratio of the earth's circumference: except that, of course, they turned out to be much astray in their measurements.

Thus in this country our standard weights and measures are still derived from, and consonant with, a basis everyone experiences — their own bodies. In the same way our institutions grew out of the local habits and customs that our ancestors experienced in the course of living together in groups, in villages, in towns. As Christianity arrived and spread, those habits and

customs became, largely, its active social application, and the basis of our early law. Even following the Norman Conquest, the slow pressure of the underdogs gradually wore down the more dictatorial habits of the continentals, leaned and pushed until their own customs were recognised and restored; and in that acceptance the conquerors were absorbed into the nation itself. Their own customs were to be respected. An appropriate system of law developed to ensure this, requiring constant reference back to previous practice and custom on issues raised. An organic link between people and government was re-established, tending to decentralise the use of power.

It was this resilient continuum of *experience* reaching from farm to castle to court, extending from practical working arrangements to relatively sophisticated organisations, which made possible the growth of a democratic form of constitution to some extent responsive to what people wanted. The Napoleonic Code — essentially a system of law laid down by a relatively few men at the top, however beneficent, can have no such grasp of continuously integrated policy arising from the need to bind back present decisions to previous practice in each field. The same habit of mind, checking present intellectual propositions and their outcome with past results and with natural law, gave rise to the discipline of science.

#### INTO HANDS OF AN AUTOCRATIC ORGANISATION

Yet in 1972 our own parliament *by a majority of only 8*

*votes* on the second reading decided, against the wishes of the people, to discard the fruits of nearly 2,000 years of independent fertile growth. It undertook to transfer, gradually, sovereignty out of our domain, out of our control and into the hands of an autocratic organisation pledged to secure the economic integration and finally political unity of Europe. Unless we do something about it, this process will conclude in 1992.

In this organisation we contribute a small minority vote on important issues — as do eleven other nations involved. The resultant policy is satisfactory to no one, but is on the one hand imposed under a leaden lid of orders and regulations from Brussels on the other by the incentive of subsidies. In no way is this democratic. There is a European 'Parliament', which hitherto has had no power in the set-up but is now acquiring some: neither is this democracy. How can it be, with so many different languages involved? How can an ordinary man from say Yorkshire discuss or argue about policy with ordinary men from all eleven of the other states concerned? Are the same things important to them? Where people can't talk easily together it is disingenuous nonsense to speak of democracy. This is basic, and it is also true that the constituencies of the European 'Parliament' are so enormous as to make representation a mockery.

All this is done in the cause of a strong and united Europe. Now Europe has populated a large part of the world with its people, its ideas, its ingenuity, its culture. But it did this not out of centralisation, but out of decentralisation: out of the rich diversity of its energies, ideas, talents, the vigorous individuality of its diverging cultures, and the ardent spirit bred from companionship with those of a like policy. The unifying E.E.C. is now busy suppressing this luxuriant diversity of address to problems and situations as they arise, confining enterprise to a single pulse, that of money.

In the process British culture is being suppressed (so no doubt are eleven other cultures, but we are concerned with *here*). The genius of this country is not for the mass conceptions such as those remorselessly advanced by the E.E.C., but for smaller scale individualistic work, and this has always been preserved by the ability to contract out — to go somewhere else and start on your own.

By these means we seeded the world with colonies of our people, and collected an Empire in far parts. In the process we endowed them all with the basic tools and potentialities of western civilization. In due course each has contracted out — and how many other Empires have allowed the peaceful disengagement of its members? — and taken with it a constitution giving people a say in their own affairs.

In short, the importance of contracting-out is the distinctive of British culture.

#### **CONTRACTING OUT NECESSARY FOR GENUINE DEMOCRACY**

For the individual it is fair to say that genuine democracy very largely consists in the ability to contract out of policies with which he disagrees, without penalty other than concerns the policy. Parliament was originally a means to this end. Now Parliament itself *imposes* decisions, which closely involve peoples' lives, and does it by majority vote. Majority votes are on the face of it divisive, always controversial and very seldom sound. Any pretensions of democracy that the E.E.C. Commission may have had through the absolute veto of its constituent members, disappeared when the majority vote was introduced. Such a vote necessarily forces one set of (often manipulated) decisions on the rest. For a genuine democracy, there must be a way for those who disagree with decisions to contract out, and to do so not by a bureaucratic system of votes, but by making a simple practical choice.

At the present time many are forcibly contracted-out, by unemployment, from policies they may or may not want to join: rectification of the money system, or even a change in the rules to allow the unemployed to earn a reasonable addition to their dole, would ensure that those outside the system are there by choice.

Only to the extent that genuine democracy is achieved —

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or perhaps 'creeps in' would be a better phrase — will a true western civilisation continue to live and grow. To counter repressive bureaucracy we ordinary people have to rediscover the importance of relating the results of an action, or policy, to intentions — with sanctions: and use them. In this matter of *binding back* we have to insist on the binding back to the last case at issue; to natural law; and the binding back of the system of relationships that constitute society to the truth which made this nation — the Truth that is Christianity. For this, distinctively British experience and insight are needed as never before.

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