

**CONFIDENTIAL**

**GOVERNOR-GENERAL'S OFFICE**

*Subject* **THE GOVERNOR - GENERAL'S  
PERIODIC CONFIDENTIAL REPORTS  
TO THE QUEEN. PART 3.**

### RELATED PAPERS

DESCRIPTION	FILE No.	DESCRIPTION	FILE No.

### INDEX CLASSIFICATION

SUBJECT	INITIALS
NAME	

Government House,  
Canberra. 2600.

27 May 1976

*My dear Martin,*

I shall make some observations for the information of Her Majesty on the following subjects:

- (a) The Australian mini-budget;
- (b) The New South Wales elections.

The Australian Mini-Budget

Before we left for the West, the Prime Minister told me that he hoped to be able to announce tax indexation, substantial cuts in Government expenditure and a levy for medi-bank in an early statement. In fact he and the Treasurer have made statements going somewhat further than expected.

We are to have full tax indexation in one bite. About \$2,600 million is to be cut from Government expenditure and a levy of 2½% on after-tax income is to pay for medi-bank. There is to be an increase in child endowment but tax rebates for children are to be removed. This is more than was commonly expected.

The saving of \$2,600 million in Government expenditure from revenue is to some extent affected by relatively small items such as transfer of some items from revenue to loan funds and the saving on medi-bank is offset against the cost of tax indexation. I understand the total decrease in the deficit could reduce it to under \$3,000 million but this is subject to further checking.

The measures have been expedited for three main reasons. First, tax indexation is intended to influence the imminent decision of the Commonwealth Conciliation and Arbitration decision on wage indexation. Secondly, it is intended to lay the ground for the June Premiers' Conference and meeting of the Loan Council and thus provide the basis for letting the States know what their share of taxation is to be under the new Federalism and what loan funds are to be available.

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Thirdly, the Government is anxious to have a dialogue with the unions about wages policy - a "social contract" - and tax indexation was a necessary preliminary step. In addition cooperation was threatened over the proposal for compulsory secret union elections conducted by the Electoral Officer. The Government has retreated on this saying that the elections can be conducted by the unions themselves and has thus obtained an opportunity for talks, which may or may not produce some kind of understanding. Militant unions are thought to be likely to prevent it.

It seems that the mini-budget will help the poor whose child endowment will increase and who pay little tax and hence lose little by the removal of tax rebates for children. It is thought that few but the poor will get much more or much less in their pay packets but that real wages will probably decline over time. Those worst affected are said to be middle income earners.

Medi-bank is, of course, to be paid for - and by a method which will make it expensive for the well-off and reasonably well-off, thus forcing them out of medi-bank and into private insurance funds. This should produce a saving.

The measures are anti-inflationary but probably will not, and may not be intended to, reduce unemployment at this stage. They have been described as "audacious" but there is no common reaction to them and they have not yet been digested. They are not really clearly understood even by the well informed.

It is obvious, however, that Government income must fall because of tax indexation and the removal of the annual in-built tax increases involved in the non-indexed tax system. This will force considerable reduction in government spending and the States cannot expect increase growth from their share in tax revenue under the new policies to anywhere near the extent that would have come from the non-indexed or from a partially indexed system.

I enclose a clipping which is from an academic, Professor Don Aitkin (National Times 24 May 1976) which gives one impression of the measures.

Having just returned from the West to Sydney, I have not spoken to the Prime Minister since all this happened and I am relying upon earlier talks and the press. If what I have said needs

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correction, I shall give the accurate story later. As you can imagine there is a great debate about it all. Please do not think that Professor Aitkin gives a typical response. His article enables one to see the interconnection between the measures. As to the ultimate results - query.

The New South Wales Election

The result was, I think, unexpected. Few expected a defeat for the Coalition parties after the Federal and Victorian landslides. The reasons are probably, first, confusion over the so-called "double-taxation" issue, dissatisfaction with the Coalition leadership, resentment of the Federal Government's attempt, as part of its economy measures, to take funeral benefits from the aged (defeated by the revolt of six Government Senators in the Upper House) and general dissatisfaction with public transport. Mr Wran succeeded in keeping Mr Whitlam out of the election even though it was fought to some extent on federal issues, e.g. the new Federalism.

Mr Wran will have his difficulties because he has some expensive promises to keep, including one that he will not impose a State income tax despite the fact that the mini-budget will produce a bite so hard that each State will be forced to consider imposing its own income tax, though they cannot do this till July 1977. Mr Wran has already said that his plans will be held up by what has been done federally and that he may be forced to increase indirect taxes.

Mr Wran is an able Queen's Counsel who has had a rapid rise in the New South Wales Labor Movement. He had a good practice as a silk, largely in labour cases. He is not as well educated, generally, and not as brilliant as Mr Whitlam but he is shrewd, tough and much better balanced. He is not a brinksman. I have known him for many years and he was once a friend. He has been in the last 10-15 years a close friend of Senator McClelland. His election to Government may not help me as it may add to the Labor Party boycott with another Labor Party in power. He is gentlemanly and smooth but, unlike Mr Whitlam, perhaps a little intellectually superficial. It will be interesting to see how he shapes up to the Prime Minister in the June Premiers' Conference.

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I am sending a separate letter on some additional matters in the same bag with this letter and in that I reaffirm my loyalty and humble duty to Her Majesty The Queen, as I do in this.

*Yours sincerely,*

JOHN R. KERR

Lieutenant-Colonel the Right Honourable  
Sir Martin Charteris, G.C.V.O., K.C.B., O.B.E.,  
Private Secretary to The Queen,  
Buckingham Palace,  
LONDON ENGLAND

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It has been Malcolm Fraser's week, and for the observer of Australian politics there has been a spectacle indeed. For Mr Fraser and his Government have behaved with textbook exactness in demonstrating what the Liberal Party is about, and underlined some of the ruling values of the Australian party system. Politics is worth teaching about, after all.

First, some thoughts about the art of government. Any government is faced with the problem of a small pot of honey and many bears clamouring for it. Honey pots cannot be infinitely extended in size, and watered down honey is unsatisfying stuff. Most of the time, a government has to persuade the bears that they have had enough, or that there is no more honey anyway.

Mr Fraser has polished up an old trick: introduce a new small dispensation of honey for the bears' morning tea, and then abolish their lunch.

In terms closer to home, it works something like this. The Government is facing a deficit of \$5,000 million which it regards as unacceptable. Therefore it has to cut down expenditure, and it wants to do so particularly in the areas of social innovation developed by the Labor Government.

But just to take away from people things that they have begun to enjoy and to look upon as natural rights is to cause much trouble. There has to appear to be an exchange: a new benefit which must be paid for by the loss of something else. And that, dear friends, is why we have before us this quite unexpected goodie in the form of enhanced child endow-

# Fraser behaves like a flexible Liberal: his aim is to govern

By DON AITKIN\*

And what a difficult thing for the Labor Party to criticise! Not only is it something that the ALP could have done when in government but didn't do, but endowment is for the first time made a form of income redistribution — the underprivileged families will benefit handsomely, well-off families not at all. And finally, by placing the endowment money in the keep of the mother while depriving the father of the income tax rebate he would normally gain for his children, the Government has effected an income transfer from husbands to wives. The whole thing is probably self-supporting, too: the cost of the endowment is accounted for by the taxation retained.

Now jump to Medibank. It has to be paid for (and of course Labor had never intended to finance it from consolidated revenue, but from a levy — which the Liberal and Country Parties blocked in the Senate) and that means increased taxation of a special kind. And guess what — this is to be progressive too. At the moment the well-off pay less out

of Medibank, but under the new system they will have to pay so much for Medibank cover that they might as well go back to one of the private funds — which in any case can offer additional benefits.

Mr Whitlam has complained that this strikes at the heart of Medibank, since it was intended to ensure that all Australians were covered. But the extent of the cover has not changed — only the number of umbrellas about. Of course, the Labor Government had no love for the private funds, or for doctors, for that matter. But the ordinary citizen does not much care where his refunds come from, so long as they come and they are a decent size.

And as for the doctors, note Mr Hunt's warning that the Government will be treading once again around that holy of holies, doctors' incomes. If you think that is just talk, think back to the late 1960s: the Gorton Government had its worst and most public rows with the medical profession, and on what issue? Doctors' incomes. It is likely to happen again.

moan about with respect to Medibank will be the affluent middle class, and Mr Fraser has got them anyway; they have nowhere else to go.

Now the final jump, to tax indexation. In some ways this is the most startling move of all, since it will make Mr Fraser's other tasks harder. The inflationary push of the past 30 years and relatively fixed income-tax schedules have provided postwar Australian governments with a very handy cushion against things going wrong, and some useful pocket money to use for new schemes without having to go to the electorate for new taxation. Mr Fraser is going to deprive himself of it.

For the "middle" middle class, those most affected by marginal taxation, tax indexation will be a great blessing. And you might like to think of it as Mr Fraser's giftie to his principal electoral supporters. But that is not the principal reason for it. Tax indexation is his major bargaining counter to use with Mr Hawke and the unions. If wages are indexed,

and taxes are likewise indexed, then the "need" for very large wage increases will be reduced, and the inflationary spiral will be held down. If all that happens, then the economy will pick up, businesses will begin to invest again, and unemployment will decline.

And if all that happens, Mr Fraser's stocks as Prime Minister will be at their highest, and the Government's electoral position quite invulnerable. The stakes are very high, and they justify the use of an offer as impressive as this one. And just to emphasise his bona fides to the union movement, Mr Fraser has let it be known that the Government will not now proceed with legislation to compel unions to use the services of the Electoral Office in holding secret ballots. It is of course entirely possible that the secret ballots flag was only waved around briskly in order that it could be pulled down when the occasion demanded.

Three big moves in one week is a lot to cope with, especially when they come from a government whose principal characteristic so far has seemed to be inactivity. Do these moves mean that the Liberal Party is entirely barren of principle, that it will do anything to stay in office?

For an answer, let us enlist the aid of Professor Hugh Emy, whose *The Politics of Australian Democracy* is one of the best books in recent years to tackle the nature of Australian politics. The Liberal Party, says Emy, does have its principles, but these have to do with the way a country should be governed, not about how it should be restructured. The Liberals do

not need to create goals for themselves, because they find them readily to hand in the existing social order.

Now income redistribution is part of the existing social order; it is not an innovation of the Whitlam Government. (It is a Labor innovation, though: graduated income tax was instituted by Billy Hughes in 1915.) Child endowment is part of the existing social order, and so is health insurance. Tax and wage indexation are new things, but their origins are as much in accounting practice as they are in social democratic principle.

In short, Mr Fraser is behaving like a traditionally flexible Liberal, whose aim always is to govern. Out of office he condemns institutions which in office he safeguards and adapts to his own purposes. He is not above using the rhetoric or the logic of his opponents if this seems sensible.

What he is offering to his middle class supporters, who are going to have to dig into their pockets to pay for the past week's announcements, is Liberal management of Labor measures. It is the kind of strategy which kept Bruce and Lyons and Menzies in power for long periods, and it does so by helping to defuse potentially explosive political issues.

Many Liberals and Liberal supporters won't like it at all. All this is not, they will say, what we elected Fraser and his crowd into office for. Mr Fraser can afford to ignore them; they have, to make the point again, nowhere else to go.

\*Don Aitkin is Professor of Politics at Macquarie University, Sydney.

Government House,  
Canberra. 2600.

27 May 1976

*My dear Martin*

In this letter I shall make some observations about two matters:

- (a) Our trip to the West;
- (b) The audience sought by Mr Whitlam.

The second matter is one which I shall approach with some diffidence and such delicacy as is within my command.

The Western Australia Trip

I should first say that throughout Western Australia the loyalty and devotion of the population to Her Majesty was universal, amongst the ordinary masses of the people and the representatives of all sections. This would include the Labor Party and the top union people, despite my own problems. Everyone looks forward to her visit.

Our visit went very well and was very enjoyable. There were demonstrations in Perth, the biggest of which had two or three hundred people but generally there were far fewer. The demonstrators were militant students and workers with a Communist Party element openly present especially at the biggest demonstration. The mass of the Perth people and all elements of Perth society outside the official Labor and union organisations were enthusiastic. The Governor and the Premier were strongly supportive.

The Premier used his influence to prevent large numbers of pro-Governor-General elements from organising themselves, and this on the ground that it could cause trouble between factions which would blow up the demonstrations and make them bigger and perhaps violent occasions. His view was that it was better to tolerate what all Western Australians could see and recognise as militant demonstrations in small numbers with the same demonstrators following me around in Perth. There was no trouble outside Perth or in the Cocos and Christmas Islands.

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Sir Charles Court believes that there is a militant attack upon the whole parliamentary and economic system, that it should be resisted, without retreat, on all fronts including the Governor-Generalship, and that it is confined to very militant types. I enclose an article from the Journal of the right-wing National Civic Council. This is run by Santamaria to whom I referred in an earlier letter. It adopts an attitude relevant to Sir Charles Court's views.

He and the Governor are strongly opposed to any resignation by me. He says he has considered and balanced out the pros and cons of my position, including the question whether it would help to heal wounds for me to go, but believes the attack is on the system of which I am seen only to be a "symbol". My departure would not help but make things worse - no that I am thinking of going as things stand at present.

I enclose some correspondence from Sir Charles to the Prime Minister and to me.

As to the position generally, I appear to have fallen out of the news almost completely though demonstrations in Perth got some television and press coverage. The Labor boycott continues though some Labor district secretaries and other significant local leaders attended civic receptions in the North-West. There are signs, however, that there may be a decline in interest in the Governor-General.

My tactic is to appear regularly, carry out my programme, put up with the demonstrations which so far have been rather small and scruffy, as can be seen on television, and to wait. The next six months will tell. The programme involves much activity in the West, in Queensland, in rural areas and less in Melbourne and Sydney. The last two places are certainly not being avoided but a balance is being produced till we see how things turn out.

The trip to the West was a real "plus" in the view of those whose opinion I value.

The Audience Sought by Mr Whitlam

As I said, I approach this subject with some diffidence because it hardly seems proper for me to say anything about it at all. Perhaps I may be permitted to explain that whilst I was in the West

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the Prime Minister informed me that Mr Whitlam had asked him to "facilitate" the arranging of an audience and before doing so asked me if I had any objection. I said that I had no objection to anything The Queen might be minded to do about such an audience.

I should have been disposed to leave the matter in that position but feel that, having regard to the letter written by Mr Whitlam for Her Majesty in January last, your reply and other relevant correspondence at that time, to which you made me privy whilst I was in London, I may be permitted a word or two by way of background.

I have not spoken to Mr Whitlam since 11 November. He has conducted quite a nasty campaign against me, both publicly and privately. This may be understandable from his point of view but I have been unable to reply. The campaign, though I have not mentioned this to you, includes a serious smearing by gossip and innuendo and much of this gossip, which could only have come from him and those around him, is reflected, indeed stated as fact, in the "quickie" books so far written by Labor-oriented journalists. If you read such things, either in reviews in the United Kingdom or Australian press, or in the books themselves, I think it likely that you may be disposed to disregard them as the malicious inventions they are. Of course, if you think any of them important enough, I shall be happy to give my point of view. I shall not attempt to give examples or discuss these matters. I find it particularly distasteful. The extent of false gossip reported as fact is quite considerable.

I must apologise for the intrusion of such material into this correspondence.

This exercise is merely to make the point that Mr Whitlam is obsessively dominated by his dismissal and by malice towards me. I should imagine he would not venture upon such matters with The Queen but he may wish with you.

His position in his party seems to be weaker and I enclose clippings on this subject.

The best book so far written by a pro-Labor journalist is Paul Kelly's book, which whilst being unfavourable to me, at least makes some attempt to see things from my point of view. He has gossip, like the others, but he is fairer. I enclose a review published in the Canberra Times of 20 May by Professor Sawyer.

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Chapter 25 of the Kelly book may interest Her Majesty if she proposes to grant Mr Whitlam an audience - purely as background, of course. It is an interesting assessment of Mr Whitlam by someone who has been a firm supporter of him and the Labor Party.

One reason for Mr Whitlam's animus, and there are many others more important, is, I believe, that he hates comments such as have been made by Kelly on page 11 - "John Robert Kerr, the man who never went into politics, played his politics tougher and smarter than Gough Whitlam who made politics his life". Now this is not true - I was not playing politics in the party sense and shall, of course, some day prove this but Mr Whitlam believes I was and such comments from his supporters must be galling to him.

Please excuse these observations. I have no idea what Mr Whitlam will say to Her Majesty, if she grants him an audience, except probably to repeat again that I have damaged the Monarchy.

May I thank you for your letter of 17 May and for the generous statements in it. I hope I have not transgressed your kind invitation to "keep at it".

These comments are accompanied by my expression of complete loyalty and the desire to perform my humble duty to Her Majesty as may best serve her interest and purposes.

*Yours sincerely,*  
JOHN R. KERR

Lieutenant-Colonel the Right Honourable  
Sir Martin Charteris, G.C.V.O., K.C.B., O.B.E.,  
Private Secretary to The Queen,  
Buckingham Palace,  
LONDON ENGLAND

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# The vendetta against Sir John Kerr



A spate of small, rowdy, violent demonstrations have been organised against the Governor-General, Sir John Kerr, in Canberra, Adelaide and, last week, in Perth.

These demonstrations have not been organised by the ALP — although many Labor supporters were embittered by the removal of Mr. Whitlam, who refused to resign after failing to obtain passage of supply.

ALP officials have snubbed the Governor-General or tried to embarrass him.

They have not, however, participated in violent demonstrations which have been organised by the revolutionary Left.

The Maoists, CPA, pro-Soviet SPA and various Trotskyite groups want to exploit Mr. Whitlam's removal for their own purposes.

## Objectives

The Communists' objectives were set out with some clarity in the latest issue of the Communist Party's theoretical journal *Australian Left Review*, in a leading article by Brian Aarons.

There is, he writes, a common interest between Marxists and Whitlam, who "now represents a threat to Establishment interests because of his intention to keep pushing the issue of the Kerr *coup* . . ."

"Doubtless he has his own reasons for doing this, but objectively he is raising issues which call into question the working of the system . . ."

In Marxist theory, the ruling classes (representing capitalist interests) really run the show under a facade of democracy.

They felt their interests threatened by a Labor government, and thought it necessary

to get the Governor-General to sack Whitlam.

## Marxist analysis

According to the *Australian Left Review*, the developments of November 11 last year were merely a symptom of the "deepening economic and social crisis" which "forced the system to drop its mask and show some of its true features".

As an object lesson demonstrating the validity of Marxist analysis, no doubt the events of November 11 and their real meaning will be required reading at all Communist Party training schools from now on.

But, to the Communists, it is more than just a theoretical exercise.

They see the continued campaign as a way of doing four things:

- \* Attacking the legitimacy of the election which took place on December 13.
- \* Attacking the validity of the democratic system.
- \* Opening up avenues for demanding changes in the system — in particular, workers' control in the media, which at present are instruments of the capitalist conspiracy.
- \* Asserting the power of "participatory democracy" (i.e. street demonstrations) over the authority of the elected Government.

In spite of the fact that the Australian people gave the Fraser government the greatest majority in history, the CPA understands that, by consis-

tently working away at the legitimacy of what took place, it can sow the seeds of doubt.

It hopes to create an atmosphere where, later on, industrial muscle can be used against an "undemocratic government" foisted on the Australian people by the "*coup*" of November 11.

The second objective is to create doubt about the validity of the system itself.

The article goes on: "The task of exposing the emptiness of the system's claims to democracy should be vigorously pursued at every opportunity."

## Cannon fodder

Sowing doubts about the validity of the democratic system may bring a few more recruits into Communist Party ranks.

More importantly, through Left progressive teachers in schools and universities, it will create a large mass of people who, while they don't necessarily go along with the Marxist interpretation of society, will nevertheless be affected by the propaganda.

Many will feel that the present system has no validity for them — so why defend it?

Others will be further alienated — and become opponents of democracy.

As the Vietnam moratorium showed, these people provide ideal cannon fodder for mass demonstrations — given the right mood, and the right issue.

## Control of media

In the *Australian Left Review* article, the "powerful media barons" are described as being part and parcel of the system, and that an important issue is workers' control of the media.

The article calls for "control over the private media monopoly, mainly by the journalists, printers and other workers within it".

The objective, of course, is to pressure media managements by a combination of public agitation and industrial action on the job, to bring about a situation where the media outlet effectively presents only one viewpoint.

An early shot in the campaign took place in November last year in Sydney, when bundles of the *Daily Mirror* were snatched from several trucks and set on fire in a street demonstration.

Six hundred demonstrators were told by Bob Pringle, for-

merly an official of the NSW Builders Laborers Federation, that unless the policy of the Murdoch Press altered, distribution of Murdoch-owned papers would be stopped.

## Pressure play

Underlying all of this is the concept of "participatory democracy", through agitation, street demonstrations, and other activities designed to gain the attention of the media and to bring great pressure upon elected governments.

This form of extra-parliamentary activity was highly successful — during the Vietnam war, both in Australia and overseas.

Mass action in the streets caused governments to change their policies and even brought governments down.

The article issues a further call for extra-parliamentary action . . . "increasingly working class and progressive movements now realise the loaded and biased nature of the system and the need to go beyond it".

## More muscle?

So far the Communist parties have made economical use of their forces.

The main participants in demonstrations so far have been students.

Whether or not more muscle is to be brought in will depend on the way the campaign develops.

Continued demonstrations against the Governor-General, and the threat of much more nastiness during the Queen's visit next year, are clearly designed to force Sir John Kerr to resign.

And, if he stands firm, it is hoped that sufficient members of the Government will be frightened by the prospect of the Queen's visit being marred, that they might offer the Governor-General an honorable retirement.

## Point of principle

The resignation or retirement of the Governor-General would give some satisfaction to Whitlam and his supporters.

But its significance would be far greater than that.

If successful, the organised Communist forces, in combination with witting or unwitting allies in the media and the universities, would have demonstrated once again that mass action in the streets can prevail over the electorate's decision.



OFFICE OF THE  
24 MAY 1976  
GOVERNOR-GENERAL

PREMIER'S DEPARTMENT,  
PERTH, W.A. 6000

20th May, 1976

Your Excellency,

Thank you for the time that you and Lady Kerr made available to Western Australia to meet people in the metropolitan area, Kimberley, Pilbara and Gascoyne.

Be assured this has been a great source of pleasure to all concerned as many of these people in the remoter areas often feel they are left out of things and it does their morale good when they find people in your position are prepared to give of your time and accept the rather tiring commitment to make such a comprehensive visit.

I hope you, in turn, felt something of the warmth of kindly welcome and support that is present in all of these areas - including the metropolitan area.

I have written to the Prime Minister, as per the attached copy of my letter.

I felt this was desirable, although I had written to him in a very personal way explaining my view of the visit and the reaction experienced on all occasions.

Needless to say, in my personal letter to Mr. Fraser I was able to express myself in slightly different terms, but the import of the message I was conveying to him was basically the same as that in the official notice.

My wife and my Ministerial colleagues join me in wishing you both well for the future and to thank you for what you have done, and are doing.

Come back and see us again.

Be assured you will be most welcome.

Yours sincerely,

PREMIER

HIS EXCELLENCY THE HON. SIR JOHN KERR,  
A.C., G.C.M.G., K.ST.J., Q.C.,  
GOVERNOR-GENERAL OF AUSTRALIA,  
GOVERNMENT HOUSE,  
CANBERRA. A.C.T. 2600



PREMIER'S DEPARTMENT,  
PERTH, W.A. 6000

19th May, 1976

Dear Prime Minister,

In a personal letter I have sent to you I have already referred to the great reception given to Their Excellencies the Governor General Sir John Kerr and Lady Kerr during their visit to Western Australia.

However, I felt I should write you on an official basis to let you know now that I have returned from Exmouth where I farewelled Their Excellencies as they left for Cocos and Christmas Islands, how spontaneous and heart-warming was the response of the people everywhere they went.

It is true we had one or two minor incidents in Perth of a highly organised nature.

This was predictable - as was the background of the people who led and participated in the demonstrations.

However, it is fair to say that the demonstrations were of a type which would have impressed nobody and, in fact, would have isolated still further the attitude of the A.L.P. and communist influences behind these demonstrations.

It is very difficult to describe some of the very moving personal experiences during the visit, but suffice to say those who sought on a very personal and intimate basis to convey their strong feelings of support for Sir John Kerr himself and for the system within which he operates, conveyed in more meaningful way the true sentiments of what I believe to be the great majority of people.

No politician can convey this type of sentiment as well as can an individual citizen with great sincerity.

Quite apart from the fact that there are a number of local A.L.P. branch office bearers who participated openly and willingly in ceremonies of welcome, I think I should mention another highlight, and that was at Carnarvon.

Here, an elderly person, who has no affiliation with any political party or local organisations, saw fit to prepare a very nicely worded letter of welcome and encouragement to Their Excellencies.

On his own initiative he took this round the town and collected 310 signatures.

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For a town the size of Carnarvon this was a tremendous thing.

I think it typifies the spontaneous and sincere nature of the reception given to the Governor General and his wife, whether it be in the metropolitan area, Kimberley, Pilbara, or Gascoyne.

I felt it was important that you should get this first-hand report from me.

I am sending a copy to your colleague, Senator Withers, Minister for Administrative Services, Vice-President of the Executive Council and Leader of the Government in the Senate, as he likewise will be interested, although he had personal experience of the situation at at least one of the major functions in Perth.

Kind regards -

Yours sincerely,

PREMIER

THE RT. HON. J.M. FRASER, M.P.,  
PRIME MINISTER,  
DEPARTMENT OF THE PRIME MINISTER AND CABINET,  
PARLIAMENT HOUSE,  
CANBERRA.            A.C.T.            2600



20th May, 1976

Your Excellency,

I omitted to enclose with my other letter, copy of the letter I wrote to the Editor of "The West Australian". This is now attached.

I shall let you know what appears in "The West".

I have told the Editor that I have no strong feelings as to whether he uses the material in the form of a press release, or publishes it as a letter.

He knows that I am rather disturbed at the fact that they refused to let me make some comment regarding the prominent report they gave to a statement by the Leader of the Opposition calling on the Police and demonstrators to show restraint.

I thought this was rather quaint - especially as the bulk of the demonstrators had been incited by the Leader of the Opposition and the A.L.P. and T.L.C. hierarchy in this State.

Kindest regards -

Yours sincerely,

PREMIER

HIS EXCELLENCY THE HON. SIR JOHN KERR,  
A.C., G.C.M.G., K.ST.J., Q.C.,  
GOVERNOR GENERAL OF AUSTRALIA,  
GOVERNMENT HOUSE,  
CANBERRA. A.C.T. 2600





PREMIER'S DEPARTMENT,  
PERTH, W.A. 6000

19th May, 1976

Dear Sir,

May I take this opportunity of thanking the "silent majority" for their restraint during the visit of Sir John and Lady Kerr to Western Australia, now that the Governor General's visit has been officially concluded.

It has been a very successful visit and a complete answer to those who set out to harrass and disrupt.

I appreciate the number of spontaneous offers and suggestions made to me for groups of people to demonstrate in support of the Governor General and the decision he made last year.

Some of these people no doubt felt a little disappointed when I advised against organised demonstrations. However, they were quick to appreciate the fact that their presence in large numbers - especially if they gave the impression of being organised - could have been exactly what the A.L.P. and Communist-inspired demonstrators wanted. It would have given them an excuse for serious confrontation and I felt it was better the agitators be identified for what and who they are.

The results of such confrontation are predictable when emotions are running high. The Police have enough to cope with as it is without the added problem of well-wishers becoming embroiled unintentionally in disturbances with those who seek, as part of an organised Australia-wide plan, to harrass and embarrass the Governor General.

The Governor General will be returning to Western Australia to visit a number of places he has not yet been able to see since taking office.

There will be suitable additional opportunities for those who want to express their support, without giving those in opposition to the Governor General an excuse to try and give the false impression that there is a lot of widespread public feeling against his decision. What these agitators seek to ignore is the fact that the electors of Australia expressed themselves in no uncertain terms on the 13th December.

Even though it might be galling not to be able to express one's self in public, in opposition to the agitators on issues such as this, I still believe the message has been received and understood by the great mass of people throughout our State.

I am also sure that the Governor General has understood the warmth of the expressions conveyed to him personally in so many places, and from such a wide cross-section of the community. Some of them have been very moving and must give him great strength in his work for now and the future.

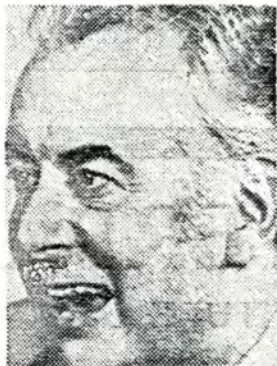
Yours sincerely,



PREMIER

THE EDITOR,  
"WEST AUSTRALIAN",  
NEWSPAPER HOUSE,  
135 ST. GEORGE'S TERRACE,  
PERTH, W.A. 6000

# JAUNT MAY BE GOUGH'S SWANSONG



MR WHITLAM



MR HAWKE

Some of Mr Gough Whitlam's toughest Caucus critics are quietly wishing him bon voyage as he prepares for his six-week jaunt around Europe, America and Asia.

But their concern is not for his welfare, nor do they give a hoot for the battery-charging boost he is known to derive from foreign travels.

They believe his determination to leave Australia for most of the Parliamentary winter recess will prove to the party faithful once and for all that he is no longer the man to lead them.

His decision to visit a host of countries at taxpayers' expense during a crucial period in the party's reconstruction has shocked the Labor Caucus almost to a man.

Even his supporters — and they are now fewer than at any time in Gough's stormy political career — believe he has made a major blue.

One of Mr Whitlam's favorite jibes at the Liberal and Country Parties during their three years in opposition was that they were like the Bourbons — they had learned nothing and forgotten nothing.

Now the barb has been turned against him — by his own party.

Mr Whitlam was given a convincing majority in the leadership poll that followed the Labor Government's election defeat.

But it was widely known even then that several Caucus members were voting on the strict instructions of their State branches and not according to their personal inclinations.

## Evaporate

The A.L.P.'s grass roots were convinced that Gough Whitlam was still the best thing going for the party — despite the Iraqi breakfast debacle. They were helped to reach this opinion by a nationwide series of phone calls from Gough himself.

His opponents now believe this support may evaporate in the face of Mr Whitlam's decision to travel, coupled with his uninspiring performance as Opposition Leader in Parliament and his questionable judgment over the Paltridge affair, the Timor affair and the eternal loans affair.

He will be seen to be absent during a time when the party is in dire need of revitalising reconstruction.

Before today's Caucus meeting there were



suggestions that the leadership issue should be raised again within the confines of the party room.

Now his critics have decided to remain silent and let Mr Whitlam do the job for them.

They believe he has lost interest in the position as leader but won't give up his authority and the status that goes with it until it suits him.

## Rumors

His job carries with it a salary of almost \$40,000 a year, one of the few decent offices in a cramped and outdated parliament building and a sizeable staff of advisers and assistants.

There are rumors in Canberra that the Europe trip may be Mr Whitlam's swansong before voluntarily getting out of politics for good.

This is the reasoning behind reports that Mr Bob Hawke, the party's Federal president, is urgently seeking a safe seat in Victoria.

Mr Hawke may be the party's favorite son, but his succession is far from certain.

He would be strongly challenged by Mr Lionel Bowen, who scored well this year in his only challenge for the leader's job.

Mr Bowen is a sober-style politician with none of the dash and elitism of Mr Whitlam.

And that is just what many of his colleagues feel the party needs.

As one senior member told me today: "We want to be able to mount a real challenge to Fraser within three years — not six or nine."

"And we haven't a hope of doing that under the present leader."

# LABOR'S WHITLAM

THE word is out in the ALP that Mr Bob Hawke is now keen to enter Federal Parliament.

So strong is the gossip that even Mr Malcolm Fraser is letting it be known privately that he has heard Dr Cairns is prepared to step aside from his Melbourne seat of Lalor to allow Mr Hawke to gain ALP preselection for a safe electorate.

Whether this is true remains to be seen, but Mr Hawke is said to be looking for a by-election as a quick entry to the parliamentary Labor Party and a stepping stone to party leadership.

Mr Hawke has blown hot and cold about entering Federal Parliament, saying on some occasions that his main task was still in the trade union movement, and on others (most recently the post-December 13 depression of the ALP) that his leadership could revive the party.

But his timing on this occasion is impeccable, as the parliamentary Labor Party is in a savage mood about the doldrums of its leadership.

Almost every conversation with a Labor parliamentarian invariably swings around to the party's leadership malaise. Even some of Mr Gough Whitlam's strongest supporters of the past openly cast about for alternatives such as Hawke, Hayden and even down the ranks to comparative youngsters such as Paul Keating.

Nobody speaks of the current Whitlam-Uren leadership as a lasting event, or of Mr Uren gaining the leadership.

The reason for this lies with Mr Whitlam's performance as Opposition Leader.

It is plain to any parliamentary observer that he lacks



Mr HAYDEN . . . favoured for the leadership succession, but continues to equivocate.

the drive that took the ALP from the shambles of the late 1960s to Government in 1972, and the adrenalin which kept his Government in power for three tempestuous years.

He seems more intent on justifying the actions of his Government, of ensuring the proper historical place for the Whitlam years, than in concentrating his fire on the Fraser ministry.

Thus some of the recent disasters of the Opposition.

Mr Whitlam's unsubstantiated charges against the late Sir Shane Paltridge seemed aimed at proving that the real corruption in Australian

Government occurred in the previous coalition Governments and not with any loan-raising affair of the Whitlam Government as alleged by Mr Bjelke-Petersen.

And last week's censure motion against the Government based on some flimsy reports of American merchant bankers about the role of some ministers during the caretaker period last November only provided the Government with another opportunity to revive the loans affair.

The Government just laughed it off. A censure motion involving allegations by a man who claims that he can't under-

stand why Mr Fraser is so unkind to him when his brother is not simply can't stand up. Mr Fraser doesn't have a brother.

To say that Labor backbenchers were disillusioned with both incidents is to put it mildly.

The problem is that the Labor Party has a Whitlam dilemma on its hands.

Everybody acknowledges the leadership malaise, but nobody is prepared to do anything about it; to bell the cat.

The party has a sneaking admiration for the man despite the intra-party fights over the years.

Whitlam was the man who put the party in power, and nobody in the party begrudges him his hell-bent revenge for the events of last November.

But admiration is not a lasting quality in politics.

Mr Whitlam is finding himself increasingly under fire not just over his leadership in Parliament but on the policy stance of the party.

"Big Government" in the Whitlam mould is on the retreat, but the party has not yet tried to find a middle ground between Malcolm Fraser's Government austerity and the big spending policies of the Whitlam years.

Enter Mr Hawke.

One of the common assumptions of political commentators is that the ALP Caucus does not take kindly to parvenus of the Hawke mould, and that if the ACTU leader was to win a seat he would have to serve his apprenticeship on the backbench like everybody else.

But in Mr Hawke's case that could be a very short apprenticeship.

The logistics of the current leadership are that Mr Whitlam was elected leader for 18 months only, and that the position is up for grabs by mid next year.

Thus if Mr Hawke were to enter Parliament quickly he could serve a backbench apprenticeship with the goal of

# DILEMMA

the leadership in sight within a year. relinquish the party's leadership.

For Mr Hawke a spell on the backbench would be more a campaign for the leadership than an apprenticeship for the frontbench.

Apart from Mr Whitlam, he is the most articulate spokesman the party has, and his constant radio and television appearances would not be diminished simply because he had doffed his ACTU hat.

If Mr Hawke has any party leadership ambitions, and he has expressed them in the past, certainly the time to jump into the parliamentary party is now.

Mr Bill Hayden, Labor's former Treasurer and the man many (including Mr Whitlam) favour for the eventual succession, continues to equivocate.

Many Hayden supporters believe their man "must" run in the leadership stakes next year,

Indeed, he has always said that he would stay active in politics until 65, which on the basis of three-year parliaments gives him two more election campaigns.

And while all sorts of stories are floated about UN jobs, Whitlam stays doggedly on, comparing his government and prose to that of Curtin and Chifley, ensuring the historical record, and prodding Sir John Kerr and Malcolm Fraser about the events of last November.

The tasks are formidable. Mr Whitlam must shake himself of the Wran phrase that, electorally, he is weight in the saddlebags.

He must rejuvenate the parliamentary opposition and throw some thought behind new party politics in the way he did in the late 60s.

It is plain that Mr Whitlam lacks the drive that took the ALP from the shambles of the late 1960s to Federal Government in 1972.

particularly if Mr Hawke throws his hat in.

But if Mr Hayden is of like mind he is not saying so, or acting so.

He has issued a few statements on the economy, but has done virtually nothing to emerge as a critic of the Government's defence policies, his shadow portfolio.

Mr Hayden continued uncertainty about whether he should be a part-time student and a political dilettante or a full-time politician with all that involves cannot enhance his popularity amongst his peer group.

In the current party manoeuvring Mr Whitlam cannot be written off.

While he and his staff recognise current party feeling, Mr Whitlam in the past has proved himself a person who thrives on adversity.

He is 59 years old, and shows no sign that he is prepared to

But Whitlam is the author of the "crash or crash through" political mentality, and anyone holding such beliefs cannot long remain in Mr Whitlam's present predicament.

The current "Whitlam dilemma" of the ALP cannot be divorced from the Government's own politicking over its social compact with the trade unions on wage restraint following last week's package of tax indexation and family allowances.

Mr Fraser and his senior ministers plainly believe it is more difficult for them to deal with a Hawke-led trade-union movement because of Mr Hawke's party position and political aspirations.

That is a moot point. It could be more beneficial for the Government to do nothing to rock the ALP boat. A Hawke-led Labor Party in 1978 could be a different thing altogether.

*Financial Review*; 25 May 1976

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# A pair of political thrillers on the fall of the Whitlam Government

Book reviews by GEOFFREY SAWER

**CRASH THROUGH OR CRASH.** Laurie Oakes. Drummond. Pp295. \$6.95.

**THE UNMAKING OF GOUGH.** Paul Kelly. Angus & Robertson. Pp361. \$4.95.

THE latest two political thrillers by Canberra parliamentary roundsmen establish, together with the earlier Lloyd-Clark work, a fair degree of consensus about the Whitlam Government and its demise.

First, they agree that Whitlam and his colleagues made serious errors, especially in the economic field, and especially in 1973-4.

Second, that the Loans Affair was a monumental piece of folly and the main single cause of Whitlam's downfall.

Third, that from July, 1975, on, the Whitlam Government was beginning to earn a right to survive, particularly by reason of changes in its economic policy.

Fourth, that the threat to refuse or defer Supply in 1974 (which all three books mistakenly persist in treating as if the threat had actually been carried out), and the actual deferral in October-November, 1975, were unwise uses of legal power (assuming there was

such power) and likely to produce lasting instability in Federal politics.

Fifth, that the Senate casual-vacancy appointments from NSW and Queensland in 1975 which made the deferral possible were breaches of a necessary convention and should have been prevented, not exploited, by Snedden-Fraser.

Sixth, and perhaps the most interesting point of agreement, that while Sir John Kerr probably had legal power to do what he did on November 11, 1975, the manner and timing of his action were deplorable, and such as to raise serious questions about the viability of his office.

## Conversations

The three books also explain why Mr Whitlam was so sure, immediately after his defeat, that books to be published later would sustain his vehement attacks on the Governor-General; it was in the most literal sense a self-fulfilling prophecy.

The detailed accounts of conversations, face-to-face and by telephone, between Whitlam and his senior colleagues and Sir John Kerr could have come only from the Labor leaders, directly or indirectly, and after reading all three books I am left with the impression that they came directly. Why do not the authors plainly say so?

Would it not have been more satisfactory if Mr Whitlam and his colleagues had published under their own name their complaints against Sir John?

Indeed, the close similarity of the accounts of episodes in Whitlam's relations with Kerr makes one wonder whether there is not in existence a document setting out the Whitlam-McClelland-Enderby narrative.

## Origin

The only difference I can detect between the three accounts concerns the allegation that Kerr described the prophetic Ellicott opinion concerning the Governor's powers as "all bullshit"; Lloyd-Clark and Oakes give what purports to be a verbatim quote, whereas Kelly's account is con-

sistent with the view that the words in question were Whitlam's own summary of what the Governor-General said on the telephone.

However, whatever the origin of the evidence that Kerr gave Whitlam no warning of what might happen, and even led him to believe that it would not happen, the net result is to leave a fairly strong prima-facie case to that effect.

Obviously the difficulty is that there is no way in which the case for the Governor-General can be presented. He himself is prevented by tradition and protocol from presenting it; the Fraser Government shows no interest in presenting it; Senator Cormack's suggestion of a Royal Commission on these happenings is impracticable.

## Conspiracy

Of the three books, the one which to my mind puts the fairest construction on the course of events is Kelly's. While severely critical of the Governor-General's action (and advancing some grounds of criticism which seem to me trivial), he presents the whole story as the unfolding of a situation in which people's attitudes changed, and their reactions developed partly from character and background and partly by improvisation as the problems were seen in a fresh light.

It does not require the elaborate build-up of conspiracy theories, or long-planned coups, to establish the gravamen of the charge against the Governor-General — that he failed to give Whitlam anything like due process of law. His own documents make no claim that he did, and it is inconceivable that he should have failed to mention it in his written explanations if there had been anything like an ultimatum.

## Disastrous

Leaving aside the central theme of the Kerr-Whitlam confrontation, the versions of what happened and still more the assessment of the happenings from 1972-75 vary a good deal and all three books need to be read.

For example, Oakes attributes the politically disastrous departure of Barnard from the Whitlam Government to Gough's foolishly kind-hearted appreciation of Barnard's services to himself and the party, but Kelly thinks on the contrary that Whitlam was dissatisfied with Barnard's ministerial performance and pig-headedly promoted his departure despite warnings.

The prose style of all is reasonably crisp, somewhat cliché-laden, with a scatter of misprints and in Oakes a couple of breadkdowns in syntax — perhaps due to the printer.

All three tend to go a certain distance with legal and constitutional problems, but not far enough, with misleading results. For example, only Kelly gets to the point of mentioning the powerful position which Whitlam's Government had at any Loan Council meeting, with its two votes and the votes of South Australia and Tasmania — but he omits to mention that in addition the Commonwealth had a casting vote, surely a simple enough point.

Oakes gives in commendable detail the Eggleston arguments against a Senate power to refuse or defer Supply, but having gone so far he should have given also the arguments against Eggleston, which are equally simple and a good deal stronger.

## Lady Macbeth

However, the main defect in all these books, considered as contributions to historical scholarship, is the usual absence of sources and of any reasoned evaluation of the kind of gossip on which so many statements must depend.

For example, in Oakes, the attempt to portray Lady Kerr in a sort of Lady Macbeth role, and in Kelly, the stuff supposed to emanate from conversations between Kerr and Professor James McAuley. What kind of intermediaries, what opportunities for malicious embroidery

and invention, must exist in situations of that sort, but the resulting "information" is handed on as if apodictic truth.

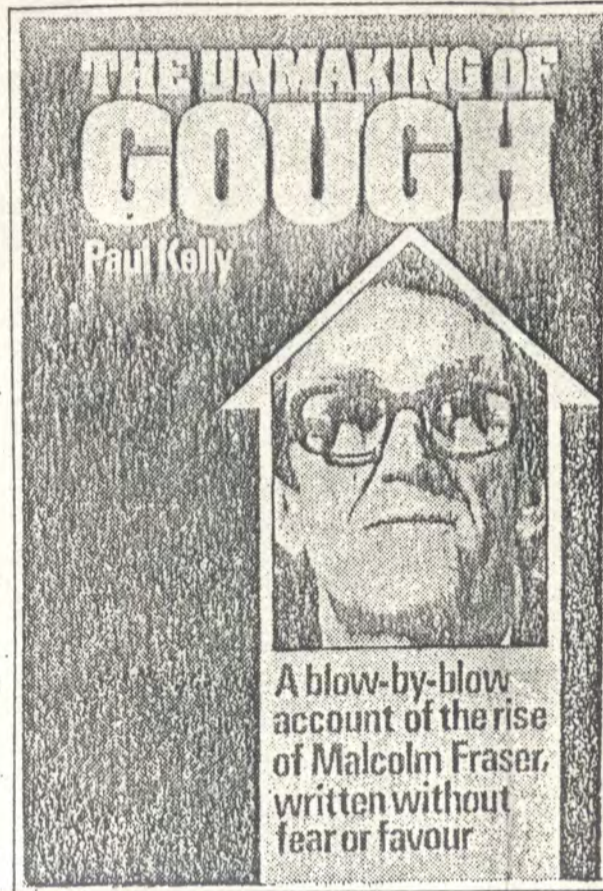
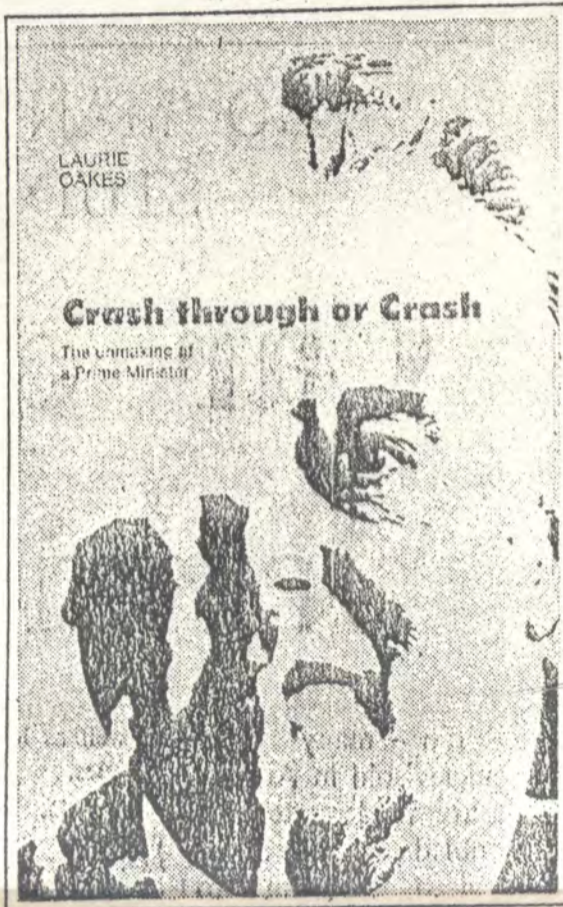
One understands the business about protecting confidential sources, but do not these authors erect the necessary evil of this journalist's rule into a fetish?

## Reciprocated

There is a striking illustration of this whimsical attitude to sources in chapter 11 of Kelly on the rise of Malcolm Fraser; incidentally, Mr Kelly gives a reasonably favourable estimate of Chairman Mal, differing markedly from the hatchet job which Mr Oakes performs on the same gentleman.

Mr Kelly tells us that Fraser dislikes Oakes, and the sentiment is obviously reciprocated.

In his more favourable account of Fraser, Kelly punctiliously gives footnote references for a number of quotes, but at the conclusion of the chapter he blandly reports the sensational information that Fraser "in talks in August, 1975, with the vice-president of the Chemical Bank from New York — talked about jailing communist trade unionist Laurie Carmichael", with not the faintest hint of a source. I suppose Mr Kelly was concealed behind the wicker what-not.



The Oakes and Kelly books indulge in a fair amount of kicking the CIA-ASIO can around, Oakes confusingly and with no apparent purpose except to assist conspiracy-theorists.

Kelly, after 12 pages of dissertation based on documents which, if genuine, may have been disclosed by someone in breach of a duty to keep them secret, concludes that his story of CIA concern over the "blowing" of its Australian agents has nothing to do with the constitutional crisis. The natural question is — why then tell it in this book?

Nevertheless, the tale does suggest that Justice Hope might as well recommend the abolition of all Australian security and spy agencies, since their activities seem so readily penetrable by the Press.

## Vacancy

One of the odd omissions from all these books is any attempt to explain the peculiar failure of the Whitlam Government to dig out and publish the full story of the Petrov affair, having regard to its position in Labor demonology.

Another is the uncritical acceptance of the Labor Party's refusal to get a true Labor supporter into the Senate, to fill the Queensland casual vacancy of

1975, when Bjelke-Petersen offered to let them have one by nominating three candidates; if the continuance of the Whitlam Government and its policies was so vital to the welfare of the country, should they not have chosen to ensure that continuance rather than insist on maintaining their pride and dignity?

Nevertheless, these books are a very welcome addition to the meagre stock of Australian studies of politics in action. The political scientists are for the most part too buried in neo-behaviourism or pseudo-Marxism to undertake such tasks, and in any event lack the intimate contact with the sources, reliable or unreliable.

## Guesswork

Since the Gorton Ministry, a succession of Australian journalists have laboured to raise the standard of political reporting, and have demonstrated that the product is salable. It's to be hoped that the lack of drama in Fraser politics will not cause them to cease their efforts.

They should, however, be a bit less coy about their sources, and admit more frankly that much of what they say is guesswork, and not be content with the sort of grounds Mr Oakes advances for thinking that Clarrie O'Shea's fine was paid not by a generous-hearted citizen who had won the lottery, but by agents of ASIO.



BUCKINGHAM PALACE

PERSONAL AND  
CONFIDENTIAL

17th May, 1976.

*My dear John*

I fear I have got rather behind with my correspondence with you and, indeed, I have three letters not answered on my desk. These are those of 27th April, 4th May and 7th May. I need hardly say they have all been read by The Queen with the greatest interest.

I must say it does not seem really a year since you were married but flying is something which time has a habit of doing! I am glad that you have this happy anniversary and also the marriage of your son to give you some relief from the difficulties of your life which I recognize are not inconsiderable. Your fortitude and resilience are admired and I believe the success of Anzac Day may be of more real significance than the other less satisfactory events, such as the demonstration at the Australian National University.

In a previous letter I said that my impression was that legal opinion in this country was very much on your side and this impression was much fortified the other night when I attended Grand Night at Gray's Inn and also when I had luncheon with the Judges at the Old Bailey. At both places I found a very robust attitude.

In your letter of 4th May you refer to our correspondence with particular reference to the book written by Paul Kelly in which he says that you kept The Queen informed in great detail of what was happening, "even voluminously" and I detect a feeling on your part

that you may have written too much to me for The Queen's information. I can give you an absolute assurance that this is not so. Indeed, the letters you have written have made it possible for The Queen to be, as she should be, fully and adequately informed of what is going on in Australia. You have absolutely no need to be sensitive about the personal quality which has, to some extent, appeared in this correspondence; in the circumstances it could not and should not be otherwise. In other words "keep at it."

As I write you are on tour and I hope your journeys are agreeable and successful. I had a short conversation on the telephone with David Smith in Perth and told him how pleased The Queen was with your successful démarche to the Prime Minister about the Order of Australia. I was, of course, delighted to hear that Sir Garfield Barwick agrees that the proper place for the A.K. is immediately after the O.M.

Finally may I say how interested I am in the "counter strategy" which is being planned. I hope this goes well and I much look forward to hearing more about it.

The Queen sends her very best wishes to you and to Lady Kerr, as do I.

*Yours ever*

*Martha Chantem*

His Excellency the Governor-General  
of Australia.



BUCKINGHAM PALACE

Personal and  
Confidential

6th May, 1976.

*My dear John*

Thank you very much for your letter of 23rd April.

The Queen is most grateful to you both for your personal message of good wishes on her birthday, which was celebrated at Windsor by a memorable dance on 20th April with the appropriate playing of "happy birthday" as midnight struck.

The editorial from the Sydney Morning Herald, of which you sent a copy, has given Her Majesty a great deal of pleasure: it is, to my eyes, a most moving tribute. The Press comments in the United Kingdom were also extremely good and all the better for being entirely spontaneous. No one here made the slightest effort to whip up enthusiasm; indeed, if anything, we took the view that The Queen being 50 was so improbable that it had better not be mentioned!

I gather from the news that the New South Wales election was extremely close and indeed that the final result remains in doubt. It will be most interesting for The Queen to hear what conclusions you draw from this electoral exercise.

The account you give of your own situation is of great interest, and, if I may say so with respect, I am sure you were wise to speak as you did to the Prime Minister. I am glad he takes a robust line about your staying in office and that he is going to give you support in the shape of the excellent Geoff. Yeend who, of course, is well known to us here, and also that you are to have proper security protection. Quite apart from the actual protection police officers provide, our experience here is that they are also frightfully useful in other ways!

You do not ask for any observations from me on your situation and at 12,000 miles distance it would be not only unwise but impertinent for me to give any. I believe, however, that it would not be irresponsible for me to say that you would be justified in taking some solid comfort from the recent poll, of which you quote the figures. Things could look even brighter in two or three months' time, and I very much hope they will.

I had twenty minutes with Jack Bunting last week and found him surprisingly well considering what he has been through. His vocal chords have suffered some damage and as a result his voice is weak: but this is expected to improve. He is following the news with interest and takes an encouraging view of your position.

His Excellency the Governor-General  
of Australia.

*Yours ever  
Martin Charteris*



Government House,  
Canberra. 2600.

7 May 1976

My dear Martin,

My wife and I, together with David Smith and staff, leave Canberra on Monday for a trip to Western Australia, including the mining areas in the north-west and the Kimberleys. We also propose to visit the Cocos (Keeling) Islands and Christmas Island.

We shall be away from Canberra until Wednesday, 26 May and I am therefore writing a short final note before departure.

It now seems clear that the Labor Party has won the New South Wales Election. The exact majority is not known but the numbers will probably be 49-49 with a pro-Labor Independent.

As to the Order of Australia, I asked David Smith to speak to you because I shall be seeing the Prime Minister later in the day - I hope before today's despatch bag closes because I will not be here next week. It seemed important for me to know what Her Majesty had in mind about precedence, so that I could do my best with the Prime Minister today to achieve the proper result. I have no doubt myself that the Knighthood in the Order should be placed next after the Order of Merit. I shall try to get the Prime Minister to agree. Sir Garfield Barwick has told me today that he agrees.

I have always thought that the various grades are a bit too high in the order of precedence. At the beginning I had some difficulty about where the Companion should rank. The former Prime Minister wanted it to come next after the Thistle but I persuaded him to leave it below the Knights Grand Cross. This time, the Prime Minister did not discuss his views with me at all and having regard to the many other problems I have to handle with him, I did not press any views upon him. Now that the matter has arisen, I feel able to do so, and hope that success will be achieved.

I should like to add a little further information about the handling of things here between now and The Queen's visit.

.../2

A couple of days ago, I sent for the Attorney-General and talked to him in his capacity as Principal Law Officer of the Crown. My view is that the Attorney-General holds a quasi-judicial office and he himself has the same opinion. I put it to him that it was his duty and responsibility to give serious thought to the way in which our system of Government should be defended, protected and explained. I said that I thought that the campaign which has been mounted has in effect been allowed to go unanswered. Little is being done in a positive way to explain the position of the Governor-General within the monarchical system or to support the present incumbent. I have been unable to defend myself or to make speeches about the system or the office and nobody else is doing very much. There is, however, a big reserve of goodwill amongst the people generally and of course a much bigger reserve of goodwill for The Queen.

He said that he was convinced that there ought to be a positive counter-attack and that there ought to be a small unofficial sub-committee of Cabinet, properly supported and serviced, to give constructive thought to and to plan ways and means of dealing with the developing situation. However, he pressed me to say that I would not consider resigning. He is strongly of the view that we ought to have a counter-strategy and proper machinery to mount it, but that it is essential if this is to be done, for the Government to know that I will still be here. I have said that I shall be subject to proper political support and proper planning of a counter-strategy. We shall see how things work out and I shall keep you informed.

May I ask you to convey to Her Majesty the sentiments of loyalty and duty of my wife and myself.

*Yours sincerely,*

JOHN R. KERR

Lieutenant Colonel the Right Honourable  
Sir Martin Charteris, G.C.V.O., K.C.B., O.B.E.,  
Private Secretary to The Queen,  
Buckingham Palace,  
LONDON ENGLAND

P.S. (1) We have had a meeting of the Council the bodies  
of Australia today & the Council is  
recommending a Knighthood in the  
Order for Sir Robert Menzies. It will be  
given to the Shire of Lind in a report of  
Agoston. We hope he will like it.

(2) Martin,

The Governor-General is still in conference  
with the Prime Minister, and has asked me to add this  
note on his behalf so as to get this letter into  
tonight's bag. The Prime Minister has agreed to  
recommend that the Knighthood in the Order of  
Australia be placed after the Order of Merit.  
Formal advice will follow.

David

Government House,  
Canberra. 2600.

4 May 1976

My dear Martin,

There are a few points which could perhaps be made.

1. The Commonwealth Recommendations for Honours

In today's bag these will come forward. Examination of them may indicate to you a perhaps unexpected feature of the list.

There are three persons for whom honours are recommended, who have very close associations with, in fact membership of, the Labor Party. This may not still apply to one of them.

The first is the Honourable Lance Barnard, the Australian Ambassador to Sweden. He was, until he took that appointment, Minister for Defence and had been Deputy Prime Minister. There is some suggestion that he was not happy at the time of losing the Deputy Prime Ministership but he did a solid job as Minister for Defence.

His desire to leave politics and go to diplomacy produced a vacancy in his electorate of Bass, the filling of which turned out to be rather disastrous for Mr Whitlam when the results of the by-election became known. I suppose the Ambassador has left the Labor Party but I do not know whether this is so. It could be that he would feel impelled at this stage to regret his inability to accept the honour recommended. The present is certainly very soon after he, as an active Labor politician, would have been bound by the firm Labor policy against all British honours.

I mention this as background, not with the intention of making any adverse comment about the recommendation, on the contrary, but simply to remind you, in case the details may not spring readily to mind, of the Ambassador's political history which may make his decision difficult.

.../2

2.

The second nominee to whom I should like to refer is Mr John Egerton, who is at the present time the President of the Queensland Trades and Labor Council, an active Trade Union leader and a member of the Federal Executive of the Labor Party. I find it difficult to see how he could possibly accept the honour recommended and remain in the Labor Party.

The third is Mr John Ducker, who is Secretary of the New South Wales Trades and Labor Council, who is also a member of the Federal Executive of the Labor Party. A similar observation would appear to apply to him.

The Prime Minister has not discussed these three recommendations with me, and accordingly, I have no idea why or upon what basis he feels that the present is the time for the recommendations to be made.

As in the case of Mr Barnard, I make no adverse comment about the recommendations. All three persons involved are leading Australian citizens who, if their position were not complicated by the Australian Labor Party's policy about honours, would not only be entitled to receive the honours recommended but as persons may wish to accept them. Of course, the usual sounding procedures will be undertaken at this end should Her Majesty graciously accept the recommendations which the Prime Minister has asked to be passed on.

2. The New South Wales Election has resulted in a deadlock, as things stand at the moment. Over the week-end it looked as though the Labor Party might attain power with the help of a pro-Labor Independent who could become Speaker but who could vote with the Labor Party when necessary. He was elected as an Independent candidate over the opposition of the Liberal candidate and with the support of Labor voters, there being no Labor candidate. His name is Hatton and he has generally supported the Labor Party in Parliament.

This morning's press, however, indicates that yesterday's counting shows a slight swing in a couple of vital seats to the coalition parties and press opinion seems to give them a chance, though it must be a very slight one, of retaining power with a majority of one. In the whole of New South Wales the final result will probably depend on the votes of about 1,000 voters. The Labor Party received on a State-wide basis, more votes than the coalition parties but as you would imagine a great number of Labor votes are locked into blue ribbon Labor seats.

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They help to make up a big total but they do not help Labor to win seats outside the strong working class and Labor supporting areas.

One of the interesting features of the election was that the coalition parties made no advance, unless they manage to win a seat held by Labor in Casino, which seems doubtful. They were expected to win two or three seats in the country but failed to do so. There was an overall swing to the Labor Party of 7 per cent. I think it is commonly believed that the main issue which produced this result was fear in the electorate, played upon understandably by Mr Wran, of what was called double taxation.

As part of the new federalism the States are to be given the right to tax, together with the responsibilities which this implies. They are not obliged to add a surcharge to the Federal tax but they may do so if they wish. This could, for example, arise if they wish to cut down or minimise their indirect taxes in favour of a substituted income tax.

The passage in your letter of 21 April in which you say, "I hope Scotland does get some sort of power to raise taxes as this with all its pains, penalties and possibilities is the reality of government," is quite at the heart of the new federalism policy.

States both want the power to tax and fear it. As things have been since the early 40's, the States had to come to the Commonwealth for a share of tax revenue but were always able to blame the Commonwealth for their inability, through lack of money, to do various things the people wanted.

Part of the new federalism doctrine involves the very point which I have quoted from you letter, namely a desire on the part of the new Federal Government and the coalition parties to bring a sense of responsibility, based on revenue raising, back to the States.

The New South Wales Election, however, indicates that fear of so-called double taxation could cause a backlash in the electorate extending beyond New South Wales. It remains to be seen whether this aspect of the new federalism policy will be altered by the Federal Government in the light of the New South Wales result.

There were, of course, other issues including local issues, especially transport, and it is difficult, as always, to sort out the parochial from the national. Certainly the anti Whitlam landslide in December last was not reflected at all in New South Wales.

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3. I have not seen the Prime Minister since Easter and do not know what he proposes about a mini budget but the press this morning carries a story that decisions will be made in the next few weeks about the possibility of a mini budget in which, presumably as a result of a first instalment of tax indexation, there will be some not insignificant reduction in taxation. I shall doubtless be seeing the Prime Minister soon and shall get from him a broad picture of his economic intentions.

4. The Melbourne luncheon mentioned in my last letter was cancelled after I took the stand that the invitation which had been issued to me had been issued, as I understood it, on behalf of the whole Council, a position which apparently had changed, the Council not being really able as a Council, except by a kind of majority vote, to proceed with the proposal.

In addition, I took the view that I had been invited to a luncheon at which the normal courtesies to a guest of honour would be extended, whereas it seemed that I would be confronted with an occasion of political argument and protest over the luncheon table. In these circumstances, I took the view that the invitation must be taken to have been withdrawn and that I regretted, therefore, that I would not be able to be present.

We had information to the effect that in Melbourne the Waterside Workers' Federation and Metal Trade Federation were intending to have a stop-work meeting on the day of the luncheon in order to participate in a demonstration, which doubtless would have included students from nearby universities, and would have been big and difficult.

The security people advised both the Prime Minister and myself that there would be no problems about our physical safety, but, of course, a large demonstration in the heart of the city in the middle of the lunch hour, disrupting the traffic, would have been a rather embarrassing situation.

The Prime Minister decided that, leaving security questions aside, such a demonstration would be embarrassing to him and came to the conclusion that he ought not to go if the luncheon went ahead but as he was made aware that I was of the view that it should not go ahead, in the circumstances, it was upon the latter basis that the whole incident was handled, including the position of the Prime Minister.

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This question of organised militant-led trade union protests resulting from stop-work meetings is something that will have to be carefully considered and I have asked for it to be considered in relation to my visit to Perth and the north-west of Australia, Cocos (Keeling) Islands and Christmas Island which is about to begin. I am told that there is no risk of this happening in the West.

The best information we can get from the West is that over there a different approach will be adopted. There may be a staying away on the part of some Labor members but no stop-work meetings or organised union activities; there could, of course, be some demonstrations.

I should say that the demonstration that I thought might happen at the Lawasia dinner mentioned in my letter of 27 April 1976 did not occur. There was no protest of any kind although Sir Garfield was also present.

5. Two more books have been published - one called, Crash Through or Crash: The Unmaking of a Prime Minister by Laurie Oakes, a political journalist, the other called, The Unmaking of Gough by Paul Kelly, also a political journalist. (Incidentally, if you would like to have this small library of books by political correspondents referred to by me in these letters, simply to complete the colour and atmosphere of our current debate, I can readily arrange for David Smith to send them to you. I have not bothered to read them in any detailed way myself.)

There is one point that I should mention. In Paul Kelly's book, he claims that The Queen was advised before 11 November that I might dismiss Mr Whitlam. This was in fact said to be merely a foreshadowing of possibilities and that I deliberately refrained from telling her in advance of my decision once I had made it so as to keep her out of politics and so as to avoid the risk of her having a request to dismiss me.

Kelly claims that I kept her informed in great detail of what was happening "even voluminously". I attach a clipping which records this point together with a review, from yesterday's Age, of these two books. Needless to say, there would be no way in which it could be disclosed from this house what were the nature and extent of my correspondence with Her Majesty through you. It is true, if I remember rightly, that someone in the Palace said that The Queen was fully informed about the developing crisis - I think something to the effect that she was perhaps better informed than most people, or words along those lines.

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There would be persons connected with the despatch of the bag who could not help but notice that in the heat of the crisis, I was writing regularly to the Palace and that the envelopes were rather bulky due, generally speaking, to the press clippings and enclosures, though no one would know the contents.

I do not need to say anything about my sensitivity about the frequency and detail of my writings, but I have never been discouraged and feel that it is perhaps best if we round this whole affair up and by continuing in much the same way in the future as in the past. But, of course, as I rather indicated in my last letter, the whole thing is becoming somewhat boring. I am not I hope in a state of obsession but for the time being politics on the Federal level is rather quiet. The Opposition is not particularly active and the Government's policies and legislation matters have not yet emerged.

There is not a great deal to say about the emerging federalism issues, though when they do emerge they will probably make Mr Fraser less popular. In this situation I have tended to concentrate rather more, especially as it effects The Queen's visit, on the unfolding story of my own problems.

If this appears at the Palace to be becoming somewhat repetitious and boring, as it is to me, then for this I am sorry, but as Eugene Forsey said to me in a kind letter he wrote recently, he was sorry that I have had sent to me so much that he had written, but doubtless I had a vast wastepaper basket. I know, of course, that this will not happen to my letters but I remain slightly sensitive about the heavy personal quality which at the moment inevitably characterises them.

There is one final comment. It seems from what is coming confidentially to me that Mr Menadue is actively propagating the theory among some senior public servants that things are going to be very difficult and, perhaps, that I should go later in the year. I attach a clipping from the Bulletin, which is by a quite well informed writer, in which he refers to Menadue's disagreement with what I did last year. You may find it interesting to read about the top Whitlam bureaucrats.

As to the future, Mr Menadue, whilst in his present office, would certainly be entitled to make his assessments but I would not regard it as proper, if it is happening, for him to be criticising in talks, even with other public servants, last year's events, whatever his private views, having regard to this

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position, vis-a-vis the Prime Minister, who precipitated them, and towards myself.

Please assure Her Majesty that my sentiments of loyalty and humble duty, and those of my wife, remain constant.

*Yours sincerely,*

JOHN BURNHAM

Lieutenant Colonel the Right Honourable  
Sir Martin Charteris, G.C.V.O., K.C.B., O.B.E.,  
Private Secretary to The Queen,  
Buckingham Palace,  
LONDON ENGLAND

The Australian

Saturday May 1 1976

## Kerr 'told Queen he might axe PM'

THE Governor-General, Sir John Kerr, warned the Queen in advance that he might dismiss the Prime Minister to resolve Australia's constitutional crisis, according to a book released yesterday.

The book says Sir John told the Queen he did not believe she should have to make highly political decisions concerning Australia and decided to dismiss Mr Whitlam himself.

But it says Sir John did not tell the Queen after he decided to act. He would merely have canvassed the possibility of dismissal as a reluctant last resort.

Called *The Unmaking of Gough*, the book was written by Paul Kelly, a political correspondent for *The Australian*.

"Kerr realised that the Queen would be inevitably involved if Whitlam attempted to sack him on the basis of his intended actions. If Whit-

lam made such an approach to the Queen, she would be placed in the nearly impossible position of having either to ignore her Prime Minister's advice about the Governor-General or to ignore it and remove him when he was on the verge of intervention himself."

Mr Kelly says Sir John was always confident about his position with Buckingham Palace



MICHELLE GRATTAN views two new books\* by political journalists, adding to the growing list of accounts and analyses of the Australian constitutional crisis

The Age  
Monday May 3 1976

# Whitlam: another look at his fall

**CRASH THROUGH OR CRASH: THE UNMAKING OF A PRIME MINISTER, by LAURIE OAKES (Drummond; recommended price \$6.95).**  
**THE UNMAKING OF GOUGH, by PAUL KELLY. (Angus and Robertson; recommended price \$4.95).**



CANBERRA. — Late on the night of November 11, Gough Whitlam's speechwriter, Graham Freudenberg, was among the politicians, staff and journalists at a popular Canberra restaurant where a wake was underway for the sacked Labor Government.

Freudenberg produced a piece of paper on which Mr. Whitlam, shaken and angry after his dismissal by the Governor-General, Sir John Kerr, had roughed out the motion to be used in Labor's counter-attack.

The motion of no confidence in the caretaker Fraser Government had been moved that afternoon in a futile effort to turn the tables on Fraser.

Freudenberg put the paper back into his pocket. At that moment, it symbolised shattered hopes, and Whitlam's fighting spirit. But it was already an historical document, and Freudenberg was one of those planning a book on the Whitlam years.

The Whitlam Government, by its drama, its commitment to reform, the enormity of its ambitions and its mistakes, and not least by the spectacular and controversial nature of its passing, has provided great material for political history.

In fact, as one weekend paper remarked, the Whitlam-Kerr industry is booming.

First onto the bookseller's shelves was Donald Horne's *The Death of the Lucky Country*, which has already sold 55,000 and is still selling 2000 a week. Patrick Tennison's *The Lucky Country Reborn* is in the top 10 selling lists.

*Kerr's King Hit*, by Clem Lloyd and Andrew Clark has sold more than 20,000. Freudenberg's book — which should be particularly valuable because he was Whitlam's close adviser in Opposition and Government — is still to come.

So is the book by veteran Canberra journalist Alan Reid.

The latest in the political book bandwagon are two by men who were political correspondents in the Canberra Press Gallery during the Whitlam Government and its fall . . . the books are *Crash Through or Crash: The Unmaking of a Prime Minister*, by the Melbourne Sun's political correspondent, Laurie Oakes, and *The Unmaking of Gough*, by Paul Kelly, formerly political correspondent for the Australian.

Oakes and Kelly cover roughly the same ground: the decline of the Labor Government, the rise of Malcolm Fraser and his topping of Snedden, the loans affair, the constitutional crises and the role of Sir John Kerr, and the election campaign.

**T**HE Oakes book is rather more top-chapter headings include "The Green Sunglasses Men" (the intermediaries the Government sought loans through), "Dr. Yes" (Jim Cairns) and "Here Come de Judge" (Kerr's intervention).

It is also a more partisan and impassioned book that Kelly's—Oakes does not attempt to conceal his strong feelings about the impropriety of Kerr's action and his contempt for Fraser's habit of preaching one thing and practising the opposite. Kelly's book is the more comprehensive; it stretches back further and provides a much fuller picture of the Liberals. He is also more even-handed.

Because the events they described are so close, and because the authors are journalists by trade, the two books are very much mammoth reporting efforts.

As such, they bring to light further information about the events of the Labor Government and the constitutional crisis.

For example, Oakes reveals that Whitlam was persuaded at one stage to bow to pressure for a Royal Commission into the loans affair but later changed his mind.

Kelly discloses that Kerr wrote long letters to the Queen about the constitutional crisis — and argues that one of Kerr's motives in concealing his intentions from Whitlam was to prevent the Queen being embroiled in Australian politics through any Whitlam attempt to sack Kerr.

Both Oakes and Kelly bring to light the role of Lady Kerr in advising her husband against forewarning his Prime Minister.

Oakes describes the increasingly ludicrous and desperate attempts by Minerals and Energy Minister Connor to pull off the \$4000 million petro-dollar loan through Pakistani intermediary Khemlani:

"Every few weeks Khemlani would convince Connor that the loan was about to come through. Karidis (an Adelaide businessman who put the Government in touch with loan intermediaries) would fly over from Adelaide, be driven to Parliament House in a Commonwealth car, and make himself at home in Connor's office.

"The blinds would be drawn to prevent the Press noticing what was going on. Then the nighttime vigil would begin. Joan Taggart, the woman whose house Connor shared when he was in Canberra, would turn up, with bags of fruit and cake to feed the troops and a salad for Connor. Larkin (a public servant) would appear. A girl would be on standby to operate the Telex.

"Then, with Karidis munching his way through a bag of sweets, they would all settle down to wait for the Telex to begin clack-clacking out the news that the money had come through. Often it would be 2 or 3 am before they gave up and went home. Sometimes Connor would stay all night.

"Sorby (Connor's Press secretary) would have bets with Karidis that the loan would not turn up. 'I'll bet you \$10 it doesn't come through tonight, Jerry', he would say before leaving the little group to carry on the vigil. 'No,

Bob, it's going to come through. It's all fixed up', Karidis would say."

The motivation and propriety of Sir John Kerr's dismissal of Whitlam will be debated for years. Without Sir John's own account we are very much hampered in any attempt at a full assessment.

**K**ELLY'S book makes a considerable attempt to put Sir John's side as well as the Government's. He says Sir John's motives "were a mixture of self-interest combined with a determination to preserve the aloofness of the British monarch from Australian politics, thereby securing the maintenance of Australia's form of government.

"At the core of Kerr's action was an assessment of the Prime Minister. He believed that Whitlam would try to sack him, or at least approach the Queen in an effort to remove him, if the Prime Minister knew of his decision."

This feeling was reinforced by a remark of Whitlam's — made in a jovial fashion — at a Government House dinner for the late Malaysian Prime Minister, Tun Razak, on October 16. Whitlam said of the political situation "It depends whether I can get in and sack him before he sacks me."

Kelly argues there is a "high to very high probability" that Whitlam would have moved against Kerr if he had had the opportunity. Kerr deliberately fostered the Government's confidence that he would not act against it so that Whitlam "built a political house on quicksand and was engulfed in the trap he unconsciously set for himself."

Kerr would have transformed the whole situation, Kelly argues, if he had indicated just once, firmly and frankly to Whitlam that another approach to the one the Government was adopting

was needed to resolve the political deadlock.

"If Whitlam had known his tactics were unsuitable in Kerr's view the entire Government strategy would have been reassessed."

But Kerr had been "locked in" by his acquiescence at the start of the crisis in the Government's tough-it-out tactics. The longer the crisis went on the more difficult it was for him to tell Whitlam he needed to change his approach.

**F**INALLY, when Kerr moved, he faced charges of forcing the Government out of office prematurely before Supply had run out.

The picture of Kerr that emerges from Kelly is of a man who saw himself as more than just a cipher for the Government, but who vacillated until late in the piece and feared at all costs direct confrontation with his Prime Minister.

Oakes stresses the move from humble origins, and radical politics, that has marked Kerr's career. In this context his decision last November continued that pattern — and gained him further "Establishment" approval.

Kerr's action hastened what, looking back, seems almost inevitably the end of the Whitlam Government. Its chances of winning another election — even with the supremacy in 1975, at long last, of the economic rationalists — must be rated as slim at most.

Kelly effectively sums up the Government's problems:—

"Three major problems bedevilled the Whitlam Government. The first is that it was elected to office on a reformist programme to expand the public sector in an economic situation that required precisely the opposite treatment. Labor never came to terms with this problem.

"The second major problem was the failure of Labor's senior Ministers to handle the task facing them. Despite their achievements, Crean, Cairns, Cameron and Connor were overwhelmed by the course of events and their own Ministerial inexperience.

"Unlike Ministers in today's Liberal Government they were not managers, were not used to dealing with and utilising a public service. They made abundant errors concerning personal staff appointments, excessive secrecy, failure to explain what they were doing . . .

"In addition to this they had a Prime Minister prone to make excessive misjudgments of a fatal nature.

"The third problem facing the Labor Government was the political sabotage to which it was subjected. History was cruel to Whitlam in that he won two House of Representatives elections, in 1972 and 1974, but never controlled the Senate, the chamber which twice struck him down, the second time fatally . . . the truth was that Labor spent three years in office without having real power, in the sense of controlling the Parliament.

Kelly and Oakes agree that Whitlam did not ride his Ministers closely enough.

Oakes says: "Whitlam was frequently portrayed as autocratic, a one-man band, a Prime Minister who ran roughshod over his Ministers. The real problem is that he was not autocratic enough with them. He came to office with the view that the proper approach was to trust his Ministers and to let them run their own operations with as little interference as possible."

It is a mistake Fraser is determined to avoid. Whitlam gave Ministers a free rein, and then clamped down in draconian style when they failed. Fraser shows every sign of ruling his Ministry with an iron rod from the start.

registered, stopping the advance of arbitrated wages dead.

The enormous obstacle to such an anti-Hayden budget is the need to contain the size of the budget deficit and the difficulty of cutting government outlays. It would cost more than a billion dollars in lost tax revenue to manipulate the Consumer Price Index to stability long enough to stop the indexation inflation spiral.

If the government let the budget deficit grow by another billion dollars or so, this would pour enormous extra liquidity into the economy, producing the need for a major monetary mop-up operation of credit squeeze proportions. Already government officials are leaking news of a \$5 billion deficit next financial year, on present projections of spending and taxes.

The other way to save enough money to finance an inflation-stopping manipulation of the Consumer Price Index would be to assault government spending in a very serious way.

This could be done by cutting Medibank down into a welfare operation for those of limited means only. As a universal health insurance scheme Medibank employs almost 5000 bureaucrats and costs about \$1.6 billion. As a welfare scheme for the lowest 20 percent of the population by income distribution, Medibank should be capable of being run for a quarter of its present cost. Then with a move the next financial year into some kind of guaranteed minimum income system (of the kind being worked upon in the Prime Minister's Department under Dr Michael Keating), a whole variety of welfare bureaucracies and programs could be phased right out of existence.

Such an approach is quite feasible in economic and administrative terms, but it would require a political boldness which Malcolm Fraser and his ministers have not yet demonstrated.

However the government does have some counterbalancing incentives to act radically. Other Western countries have done much better than Australia. The latest OECD figures show inflation in the 12 months to February this year as: Switzerland 3.0, Germany 5.5, United States 6.3, Canada 9.1, Japan 9.4, France 9.6, Sweden 10.7, Italy 11.7.

Time is steadily running out for the first Fraser Government. Its ultra-cautious, gradualist approach is steadily failing. The logic of the problem may produce some economic moves this winter more in line with the hard characterisation of Fraser as "ruthless" (the critics' word) or "decisive" (the supporters' word). So far people of various political prejudices can agree Fraser has been "cautious" or "dithering."

## THE PUBLIC SERVICE

# Labor left-overs' mixed luck

By PETER SAMUEL

AFTER THE drama of last November and December, many people predicted a major purge of top bureaucrats. After all the coalition parties in Opposition had made much of the Whitlam Government's policy of jobs for the boys. But far from being purged some of the boys are more powerful than ever.

Two Whitlam appointees, John Menadue, head of the Department of the Prime Minister and Cabinet, and Alan Renouf, secretary of the Foreign Affairs Department, are more influential than ever. "Ask John," Fraser often says when there is a query about a cabinet decision. Some say the former private secretary to Whitlam has become Fraser's closest confidant.

In some ways he is more at home in a conservative government. Of strong Methodist origins, Menadue has a fierce detestation of idleness or extravagance in government and is among the fiercest opponents of such Labor creations as DURD, the Environment Department, Aboriginal Affairs, the Tourism and Recreation, and the old Connor empire.

Menadue remains a strong and vocal critic of the Governor-General's action in dismissing Whitlam and precipitating the election. That did not stop him getting to Fraser within a quarter of an hour of his being sworn in as the Prime Minister on that dramatic November 11 afternoon. He is reported to have spent more time with Fraser than anyone else in the following 72 hours. Their shared baptism of fire is said to have led to Fraser having a profound trust in

Menadue, who is now without a rival as the Prime Minister's principal functionary and adviser. None of his personal staff are in the same league.

When the fiery Graham Freudenberg, Whitlam's longest-serving staffer and inventor of his best jokes and his pithiest speeches, left Parliament House for the last time as a Whitlam employee in January he stood at the top of the steps and shouted "a curse on you Menadue" in a rather wonderful display of dramatics. None of Fraser's party colleagues would be at all voluble about their feelings but one or two do privately express disquiet about the influence of "the Whitlam man."

But one of Menadue's greatest strengths is what his colleagues describe as his "great professionalism" as an administrator and his apparent complete loyalty to the new government. His lack of links with coalition politicians other than Fraser arising from his Labor background makes him more trusted by the Prime Minister since intra-governmental intrigues will be more of a worry to him than anything the Opposition may do over the next two years.

Menadue is in two minds about his future. He can stay on as the country's most powerful public servant under Fraser or he can indulge his great private preoccupation with Japan and take the ambassadorship to Tokyo, which comes up for grabs later in the year.

Renouf is another Whitlam man well entrenched in the new government. That



John Menadue: he is reportedly Fraser's closest confidant



Alan Renouf: he appears to have a cordial relationship with Fraser and Peacock

is partly because despite ardent and vocal support for Whitlam from 1972, he was progressively falling out with the Labor Government in its last year in office. He quarrelled heavily with Connor over resources policy and had a harsh fallout with Whitlam himself over relations with North Korea and Australian voting in the United Nations. Renouf would expect to be made ambassador at some major embassy sometime next year. His position as head of the Foreign Affairs Department is regarded as one which is rotated among the senior ambassador-level staff of the diplomatic service. There are no moves to shift Renouf, however, and he appears to have a cordial relationship with Peacock and Fraser.

The two Whitlam men left in the lurch are Peter Wilenski and Jim Spigelman. Spigelman lost his job as departmental head when the Department of the Media was abolished. He resides in an office in the old department in North Sydney.

Spigelman was not a public servant until after he had been on Whitlam's personal staff, and his appointment as a departmental head caused enormous consternation in the professional service, and opened up the charge of patronage.

Peter Wilenski, who was head of Labor and Immigration, has also been on the unattached list since Labor went, having lost his job with the abolition of the Department of Labor and Immigration. He was, however, an established high flier as a public servant. Under the L-CP coalition he served for six years in various departments before identifying himself personally with Whitlam and so he has a more serious claim to being offered a decent bureaucratic post.

He has been offered the ambassadorship to Hanoi but does not want to be a diplomat and does not fancy the idea of life in austere communist Vietnam. He has been doing some writing of his ideas on government administration while drawing his \$32,000 salary and also taking accumulated leave. He recently spent three weeks touring China during which he had hoped to get to Hanoi to have a look at the place before finally turning down the job. But a bureaucratic mess-up in handling his visa application stopped him getting there.

Three former departmental heads, Maurice Timbs, Alan O'Brien and Frank Pryor, are also without jobs. Their predicament arises, not because of any identification with the former government, but because of departmental consolidation.

One Whitlam appointee, Marie Coleman, head of the Social Welfare Commission, has been facing job loss for almost a year. The commission seemed a



Jim Spigelman: he resides in a North Sydney office without a job



Peter Wilenski: he's been offered the ambassadorship to Hanoi

mess from the beginning, partly because too many other commissions and departments were giving overlapping and competitive work and partly because it never produced much in its task of reviewing welfare policies. Hayden announced it was to be abolished in the middle of last year, but it was then given an indefinite reprieve which expired when Labor went. Ms Coleman is going to the Australian National University to a research fellowship.

Former economic consultant to Whitlam, Fred Gruen, has just returned to an ANU post he held before 1972. Monash economist Dr Brian Brogan, who was adviser to Cairns and Whitlam and for much of 1974 was the dominant shaper of the country's economic

policies, has just resigned and leaves his job in the Prime Minister's Department next week.

He had annually renewable contracts as a consultant and ironically signed his last contract on the morning of November 11. He could have stayed his full year's term but wants a change from government work. Evidently he was not forced out, although he was not given much work to do beyond promotion of the Jackson Report. Brogan has no job lined up but may look for university work or go into some kind of business consulting.

Former *Sydney Morning Herald* journalist Brian Johns, first employed on temporary consultant basis in an attempt to improve the government's Press image, has been installed as a permanent public servant in the Prime Minister's Department. There he is a \$25,000-a-year first assistant secretary and his main task is relations with the States. Another nice irony there — a Whitlam-Menadue appointee in charge of implementing Fraser's "new federalism."

Another journalist, Greg Clark, was appointed as a consultant to Whitlam's department but he was getting out anyway at the time of the 1975 elections. He had been deeply critical of Rex Connor and Dr Coombs and became quite disillusioned with Whitlam. He is about to return to Japan where he wrote for *The Australian* for several years. He has delayed his departure to consult lawyers about taking defamation action against some government officials for what they have said against him.

Of course there is one controversial Whitlam appointee who seems under no pressure from the Fraser camp to depart — Governor-General Sir John Kerr.



BUCKINGHAM PALACE

Personal and  
Confidential

28th April, 1976.

*My dear John*

Thank you very much for your letter of 13th April which The Queen has read with the close interest she gives to all your letters.

It will be most interesting to see what happens in the New South Wales election on 1st May. Mr. Wran's expressed view that he does not want Mr. Whitlam or the Federal leaders around during the campaign must have been most unwelcome to Mr. Whitlam and cannot, I imagine, have done much to improve his chances of retaining the leadership.

If Mr. Whitlam has really decided to direct his energies to genuine opposition as opposed to vituperation against you, it is probable that your position will be strengthened, and the fires of anger in the Labour Party will die down through lack of stoking. I think you should give this process a real chance to work before you come to any conclusions about your own position in relation to The Queen's visit next year. Sensible books like Tennison's and Alan Reid's are bound to help though I suppose they will not be read by the multitude. Nonetheless, every little helps !

I agree with the view that academic opinion among constitutional lawyers in England is that what you did last year was correctly done. It must be said, however, that political opinion is not quite so unanimous; here the question is asked "could it not have been done differently ?" I think this sort of

questioning is inevitable amongst those whose business is politics and who are not fully acquainted with all the facts.

I will write separately and, I hope, very shortly about the Order of Australia.

The Queen sends you both her best wishes as do I.

*Yours ever*  
*Marion Chanters*

His Excellency the Governor-General  
of Australia.





WINDSOR CASTLE

21st April, 1976

*My dear John*

This letter is in answer to yours of 6th April, and a rather belated answer too, but before coming to that may I say how delighted I am that The Queen has awarded you the GCMG. I know it is an award which will give a great deal of pleasure to your many friends in Australia and in Britain. Many Governors-General get this award before they have had a chance to earn it in that office: no one can say that about you! My colleagues in the Royal Household join me in sending you our warm congratulations.

The Queen has read and enjoyed your letter of 6th April. The economic problems which are engaging the attention of your Government are not dissimilar to those which Mr. Healey is striving to overcome here. In both our countries organised labour has come to look on an ever-increasing standard of living not as something which has to be achieved by increased production but as something which is its natural right and for which the strike weapon is there at hand to be used for its achievement. It will be a long time before this attitude changes, though I am a sufficiently bouyant optimist to believe that in this country the Trades Union leaders, however reluctantly, are beginning to accept the responsibility that ought to go with the power at their command. I hope Mr. Healey will get away with it but if he does, like Waterloo, it will have been a "close run thing".

Governments here have always stood out against wage and tax indexation of any sort but we seem to get nearer to it all the time.

The question of the States being given the power to raise additional taxes is also paralleled here, though to a much lesser degree, by the problem of what power Scotland will be given to raise taxes after devolution. I hope Scotland does get some sort of power to raise taxes as this with all its pains, penalties and possibilities is the reality of government!

The annexes to your letter were of great interest. Whether or not one agrees with all Professor Parker's conclusions, I think he did an excellent job to produce his paper so quickly.

In regard to the Government's attitude to yourself, I can only say with the greatest respect that I agree on both points.

I write this on The Queen's fiftieth birthday.

She carries her years magnificently and it has been good to read many tributes to her in today's press. She sends you both her best wishes.

Yours ever  
Martin Chantem

His Excellency the Governor-General of Australia.

Government House,  
Canberra. 2600.

27 April 1976

*My dear Martin,*

This is a short note to bring you up to date with the now somewhat boring story of my doings.

1. Anzac Day went off very well - cuttings attached. Despite its news story the "Age" managed to write an inconsistent editorial. There has been almost no adverse comment on the G.C.M.G., for the grant of which I am most grateful to Her Majesty.
2. There was a small demonstration at the Australian National University on Friday night when Sir Garfield Barwick and I were both present at the Australian Capital Territory Bench and Bar Dinner. There were about 120 militant students and it petered out - all gone in about half an hour and none came back.
3. I may have a demonstration tomorrow night at a Lawasia Dinner. The guests will all be lawyers, including judges, together with five Asian Ambassadors or High Commissioners.
4. There is a problem in relation to a luncheon on 10 May to be given by the Lord Mayor and Council of the City of Melbourne. Five Labor members of the Council are threatening, not to boycott the lunch, but to come and disrupt it. The Prime Minister, the Premier of Victoria and distinguished Victorians are to be present and the Lord Mayor is now trying to work out a solution. There will probably be a demonstration outside. The Prime Minister wants the lunch to go on.

And so the messy story continues. It is bearable because of the excellent mail I am receiving, because of the wonderful spontaneous experience of ANZAC Day and because of special encouragement from special people.

Parliament reassembles this week and the Easter break is over. By next weekend we shall know the result in New South Wales.

.../2

PERSONAL AND CONFIDENTIAL

2.

Tomorrow is our first wedding anniversary and on Saturday my son is to be married. Family affairs occupy a real part of my mind and my emotions and, on the whole, life is good, though it could be better.

Please assure Her Majesty of our humble and loyal duty and our determination to watch her interests in this country carefully and objectively.

*Yours sincerely,*

JOHN KERR

Lieutenant Colonel the Right Honourable  
Sir Martin Charteris, G.C.V.O., K.C.B., O.B.E.,  
Private Secretary to The Queen,  
Buckingham Palace,  
LONDON ENGLAND

PERSONAL AND CONFIDENTIAL

# 'Too much emphasis' on Kerr

" THE AGE " (Melbourne)

Monday 26 1976

Federal Labor frontbencher Senator John Button yesterday criticised the importance placed on Sir John Kerr's role in the dismissal of the Labor Government.

He said the over-emphasis on the Governor-General's role was obscuring the more important role played by the Senate.

Speaking on 3KZ Labor Hour, Senator Button called on his party to place constitutional reform and electoral reform "at the forefront" of its priorities.

"In the discussions on what took place on November 11, there is too much emphasis on the role of the Governor-General — who really seems to me to be a rather decadent symbol of what happened," he said.

"Really, the vice in the three years of the Labor Government was the Senate. It's the Senate we've got to think about."

Senator Button said the Senate was a "useless institution" and "a lost chamber in search of a role" now that it had forced Labor from power.

"We've got a bad political system and a pretty crook electoral system," he said.

"These issues — electoral reform and parliamentary reform — must be to the forefront of Labor's campaign over the next two years."

He also strongly attacked

the Fraser Government's "new federalism" policy, which was based on "18th century notions" of division of powers.

"I don't believe that State Governments are necessarily closer to the people, more democratic or more participatory than a national government which is directing resources into local areas with local participation," he said.

"State Governments, in the mind of the average citizen, are just as remote as the national Government in Canberra.

"Is the state of civil liberties in Queensland, for example, better under the State Government than it would be under any Federal Government?"

In CANBERRA yesterday three people in a crowd of more than 10,000 booed the Governor - General, Sir John Kerr, as he arrived at the Australian War Memorial for the Anzac Day ceremony.

Sir John's arrival and departure were greeted with sustained cheering.

The Prime Minister, Mr. Fraser, was applauded.

© Editorial — 9.

## Trying time for Sir John

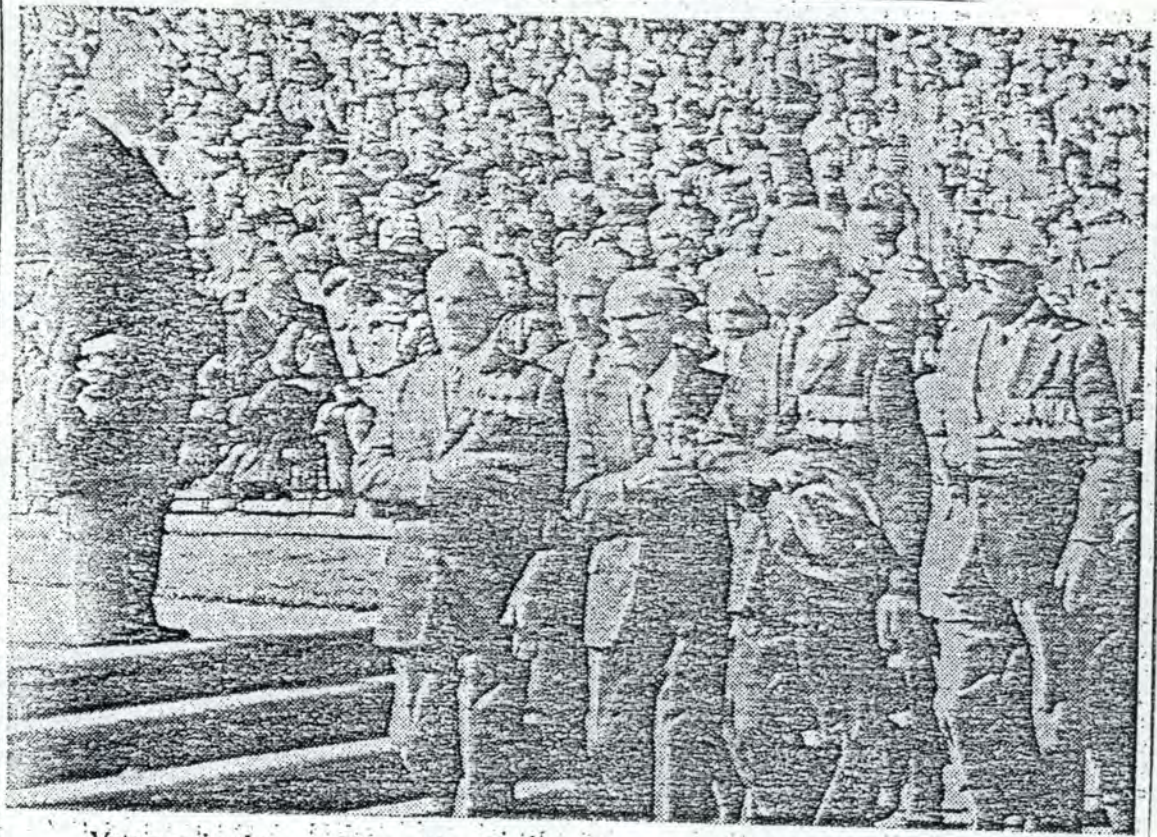
TWICE in the past few days the Governor-General, Sir John Kerr, has found himself publicly booed and hissed at. Yesterday's demonstration at an Anzac Day wreath-laying ceremony in Canberra was small and relatively unimportant. The same could not be said for the demonstration at the Australian National University on Friday night, when some 200 demonstrators clashed with more than 120 police over Sir John's visit to the university. Small and unimportant are not adjectives either that could fairly describe the incident two weekends previously when Sir John and Lady Kerr found themselves booed by sections of a 1500-member concert audience at the Canberra Theatre.

The incidents were not the first of their

### EDITORIAL OPINION

kind, and it seems unlikely that they will be the last. Last month, for example, Sir John and Lady Kerr were jostled by 600 people, mostly students, when they attended a dinner at the ANU. A similar incident occurred when Sir John went to Adelaide a few days after. What the incidents show is that there is still a section of the Australian population — small perhaps but vocal and demonstrative — who feel a sustained hostility towards Sir John for his dismissal of the Whitlam Government on November 11 last year. Elevating Sir John to a higher order of knighthood, as the Prime Minister has newly done, will do nothing to quell this group or reduce their hostility. It was an ill-timed and provocative gesture, which can only have the effect of making it still more difficult for Sir John to go about his Vice-Regal duties.

As it is, Sir John can perform these public duties only with the backing of a large police guard. This is a unique and disturbing situation. But it is also one which Sir John brought upon his own head by actions which "The Age" at the time, among others, strongly criticised. Wittingly or unwittingly, he has made himself a controversial figure and a focus for recrimination. To say this is not to condone the demonstrations which have taken place; it is simply to acknowledge the quite real hostilities which those demonstrations express. They are an embarrassment to the Government. If they do not ease up, they could also prove an embarrassment to the Queen when she visits Australia next year.



Veterans in the march pass the Governor-General, Sir John Kerr, in yesterday's parade.

## Three boo Sir John Kerr

Three people in a crowd of more than 10,000 booed the Governor-General, Sir John Kerr, as he arrived at the Australian War Memorial for the main Anzac service later yesterday morning.

Sir John's arrival and departure were greeted with sustained applause in what the ABC news service was able to describe as "a mixture of cheers and boos".

The arrival and departure of the Prime Minister, Mr Fraser, also were greeted with sustained applause. A symptom of new conditions in Australia was the attachment for the first time at an Anzac service of a special security car to the Prime Minister's entourage.

There was no senior representation from the Opposition among the official guests, Senator Ryan (ACT) being the Labor Party's representative.

# 5,000 applaud Sir John Kerr

A crowd of about 5,000 people applauded the Governor-General, Sir John Kerr, and Lady Kerr when they attended the Anzac Day ceremonies at the National War Memorial in Canberra yesterday.

The applause was in marked contrast to the jeers that have greeted Sir John when he has appeared in public in Canberra recently.

There were only faint boos today from isolated hecklers.

The Prime Minister, Mr Fraser, and Mrs Fraser were also applauded when they arrived.

The Leader of the Opposition, Mr Whitlam, attended Anzac Day ceremonies in Sydney.

The crowd, standing in bright sunlight, watched a march-past by detachments of the Army, Navy and Air Force and ex-servicemen and women.

The marchers gathered on the red stone ceremonial plaza in front of the War Memorial while Mr Fraser, Sir John Kerr, the New Zealand High Commissioner, Mr E. P. Chapman, the British High Commissioner, Sir Morrice James, the National president of the RSL, Sir William Hall, and others laid wreaths on the Stone of Remembrance.

In Wollongong, hundreds of ex-servicemen marched to the beat of five brass bands through Crown Street.

About 1,000 parents and children lined the street, waving flags and cheering.

A police motor-cycle squad led the ex-Diggers followed by disabled vet-

erans, the flag party and march leader, Wing Commander W. R. Holland, RAAF, to the Showground.

The senior vice-president, Illawarra Sub-District Council, Mr T. Bridal, officiated at the service.

The Wollongong Salvation Army band played *Lest We Forget*.

In PAPUA NEW GUINEA hundreds of war veterans celebrated Anzac Day.

In Port Moresby, the leader of an Australian group on a sentimental visit to World War II battlefields led the parade down the city's main street to the Shrine of Remembrance.

Mr Ken Campbell, of Brisbane, has been in Papua New Guinea for the past week with 21 fellow members of the former 61st Infantry Battalion.

They have visited such areas as Milne Bay, Popondetta and Kokoda.

The 200 marchers yesterday included 45 Papua New Guineans who fought with the Australians against the Japanese.

About 2,000 spectators watched the parade and the wreath-laying ceremony at the shrine.

In NEW ZEALAND, thousands of ex-Servicemen attended memorial services.

The nuclear issue was a topic for speakers in both Auckland and Wellington.

In Auckland, the former Chief of Naval Staff, Rear Admiral Lawrence Carr, said: "It is naive to believe that in 1976 there has been any change in the objective of Soviet strategy."

"The objective is simply, by military or economic means, to control the peoples of the world."

Government House,  
Canberra. 2600.

23 April 1976

*My dear Mark,*

I have already sent to Her Majesty a congratulatory telegram on her 50th birthday but my wife and I would like to add our deep and warm personal and loyal good wishes on this auspicious occasion. Her Majesty may like to know that the press was universally enthusiastic and I enclose a typical editorial from The Sydney Morning Herald of 22 April.

Things are relatively quiet on the political front because of the Easter break. The New South Wales election is a somewhat apathetic business but Mr Wran is doing his best. Next week will be the last week and the question will be whether the New South Wales people are ready to elect a State Labor Government so soon after the Federal debacle.

I feel that I should go into some detail on developments here about what now must be recognised, as an organised campaign against me in Australia, stimulated by the Leader of the Opposition.

It appears to be based on students and members of left-wing organisations. But in the universities, at least, it is of wider significance because many students, being ignorant of constitutional law, tend to identify themselves with the more militant ones in the belief that a democratic government was, last year, wrongly dismissed. All of this, of course, is not news but details of the reaction to it on the part of the Government, senior public servants, and indeed myself, will be of interest, as will the arrangements which have been made to cope with it.

In recent letters I have mentioned the complete support of the Prime Minister and the Government but I have not given you the details of the conversations which resulted in these statements being made to me.

I have, of course, appreciated the possibility, perhaps the probability, of a stepping-up of the campaign as The Queen's visit approaches.

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PERSONAL AND CONFIDENTIAL

2.

It recently came to my knowledge that in all probability, Mr Menadue, the Permanent Head of the Prime Minister's Department, had been turning his attention to the question whether, having regard to the developing situation, it might become necessary for me to consider going from this position before the visit takes place.

This information came to me very confidentially and I gave some thought to what I should do about it because it was obvious that his views, if he held them, must have been put before the Prime Minister.

In the circumstances I got the Prime Minister to come to see me and I said to him, quite frankly, that if by any chance his views were that, as the year developed, the question of my departure from this Office might have to be considered, I should like him to tell me now because I would find it necessary to consider my situation from a position of relative strength rather than one of possible later weakness. I did not, of course, mention my belief that he was receiving, or might be receiving, advice along the lines set out above. He gave his long-standing answer to the effect that he and his Government and the members of the coalition parties were unanimously of the view that I must remain here and carry on. He indicated, indeed, that politically speaking, it would be a serious disadvantage for him and his Government if I were to go. This was said altogether apart from the question of the justice of the situation and what ought to be done on general grounds.

I then indicated to him that top level attention needed to be given to the campaign and how it should be handled. I said that our resources in Government House were not sufficient to enable us to work out a proper strategy, both in relation to my programme and places to which I should go, and the situation generally, especially in the light of The Queen's visit.

I may say that apart from the demonstrations, as far as I can see from the press, no one but Mr Whitlam maintains the bitter relentless attack. Other members of the Labor Party seem to be silent, at least so far as the press is concerned. Nevertheless, the campaign continues.

The Prime Minister agreed that he should take responsibility for the overall strategy during the coming months and nominated the Deputy Secretary of his Department, Mr Yeend, a person who is well known to me and who handles Government House questions,

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PERSONAL AND CONFIDENTIAL

to be the public servant directly responsible on a continuous basis for thinking about these matters.

The next thing that happened was that the Department of Administrative Services, of which the Minister is Senator Withers and the Permanent Head is Mr Lawler, informed us in Government House that there was within their Department, a security section which looked after the security of Ministers. Its activities had not, in the past, extended to the Governor-General, whose security before 11 November last was not a matter involving any problems.

Arrangements have recently been made between the Prime Minister's Department, which previously had nominal responsibility for the Governor-General's security, and the Department of Administrative Services for its security division to extend its responsibilities to cover the Governor-General's security as well as Ministers.

In addition, the Department of Administrative Services is responsible for the Commonwealth Police and I have had allotted to me a Detective Inspector Brown, who by a queer twist of irony was Mr Whitlam's security guard during his Prime Ministership. Everyone says that he is the best security man in Australia and I have been advised that he is a real professional, who would not be in the least embarrassed about coming now to me. Indeed, he has told me that he regards it as an honour and I believe him. He applies his mind to on-going problems and will do so in collaboration with the security section of the Department of Administrative Services.

In addition to this, the Permanent Head of the last mentioned Department is to collaborate with Mr Yeend on my programme and the general strategy for coping with the developing campaign. Mr Lawler will be responsible more for the detailed activities in which I engage, whilst Mr Yeend will, with Mr Lawler, be thinking about the best steps to be taken over the months to come. I have spoken to both these gentlemen about the matters set out above, and also to Mr Menadue.

It became apparent in my conversation with Mr Menadue that he did indeed take a pessimistic view of the way things may well develop, without committing himself to any firm predictions. He believes that there has been a considerable radicalization of the left-wing and some considerable degree of opposition in the community. He admits, that this was due to a crisis in which Supply was

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denied by one side in politics, whilst the other side determined to govern without it. But as far as I can gather, he is of the view that the details of all of this tend to be forgotten, whilst I as a symbol become the centre of bitter complaint by those on the left and by the Labor Party about the deprivation of office which they believe wrongly occurred. However, Mr Menadue said that he had been told by the Prime Minister, and I confirmed it, that it was the desire of the Government that I should continue in office and I said that whilst I was receiving that advice I would accept it and stay; that I would not make an independent and separate decision, under pressure from some sections of the community. He said that he accepted that this was the policy and said that the Public Service would, of course, carry it out.

Mr Menadue, as you will doubtless know, was appointed Permanent Head by Mr Whitlam when Sir John Bunting was sent to London as High Commissioner. He had been previously Chief Executive Officer of the Murdoch media chain in Australia, though at an earlier point of time he had been on Mr Whitlam's private staff when he was Leader of the Opposition.

The Prime Minister has found Mr Menadue efficient and earnest in his administration of the Department and as there were another couple of permanent heads whom he was unwilling to keep, he decided to retain Mr Menadue in his position. He had regard to what appeared to be his loyalty and his efficiency at the time of the changeover and during the period of the caretaker government. Since then the Prime Minister appears to be quite satisfied with his administration. The Prime Minister told me the other day that he knew about Mr Menadue's opinions about the way things perhaps should develop as to myself.

In the situation which I have described in this letter, Mr Lawler has applied his mind to what he considers to be the overall problem and produced a short paper setting out what has to be faced and some of the possible techniques for doing so. Things having crystallised to this extent, I think I should say that I regard Mr Lawler as a strong minded and supportive person who would be very much in favour of a strong response being made and a firm decision being maintained about my carrying on here.

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Towards the end of his paper, a copy of which I enclose, you will see that he has raised the question of what should happen if a majority or a substantial minority of the people develop attitudes making the position here very difficult. This paragraph does not, as I understand the position, mean that he is of the view that this will happen, but naturally, the possibility has to be listed among the things to be considered. I shall keep Her Majesty informed as to what comes out of the strategy discussions and the Lawler paper.

One problem that I have is that it could be of political advantage to the coalition parties and to the Government to support me in the period ahead of them. I have canvassed in an earlier letter the possibility of the opposite position developing. One of the problems, accordingly, is that for the next 12 months or so, pro and anti Governor-General opinion could have a distinctly political flavour.

I have set all of this out for the consideration of Her Majesty. I realise that the decisions on the various elements in the situation will have to be made at this end. I appreciate very much the encouragement that I have had from Her Majesty. I do not see that I can really ask you for any observations on the situation apart from what you have already felt able to say, but I reiterate that whatever is done at this end will not be done for political reasons. As far as I am concerned, at least, it will be based upon a judgement of where the interest of the country and the Crown lie. Having said this, of course, the position remains that I shall bear the brunt of the campaign for the indefinite future, unless a different judgement is forced upon me by events.

I should add that in the papers on 22 April the details of an opinion poll taken on 3 and 4 April showed that Mr Fraser's popularity has been maintained at 40% whilst Mr Whitlam's has faded by 4% to 32%. I enclose a cutting from The Melbourne Age of 22 April.

We were told yesterday that a recent Gallup poll included a question as to whether the Governor-General should resign. The results are being temporarily held back from early publication but show that 53% say "no", 34% say "yes" and 13% have no opinion. If the "no opinions" are divided up proportionately to the other figures this would give about 61% "no" and 39% "yes". However, this way of dealing with, say, voting intentions is regarded as perhaps not appropriate on the present question, some arguing

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that if you have no opinion that there should be a resignation, then the position is correctly to be interpreted that 34% say "yes" and 66% do not positively believe that there should be a resignation. This result, however interpreted, is regarded in Government quarters, in the current situation, as very satisfactory. It does not reflect the Australian Labor Party voting in the December elections which amounted to just under 43%. A hard core Labor opinion is to be expected, having regard to the boycott and the Leader's campaign.

One other point worth mentioning is that in his latest attack on me, made in Perth, Mr Whitlam changed his line somewhat saying that I would try to hang on until The Queen's visit, but that my appearances would be limited and that I would be reviled wherever I went. This is a new approach involving a concession that I may still be here at the time of The Queen's visit, something it must be very difficult for him to concede publicly. It makes me wonder whether he has had a "leak" about the developments discussed in this letter.

I ask you to pass on to Her Majesty the humble duty and loyalty of my wife and myself and our thanks for her understanding and sympathy as expressed in your letters.

*Yours sincerely*

JOHN KERR

*P.S. Attached is another gallery  
full of today's date.*

*J.A.K.*

Lieutenant Colonel the Right Honourable  
Sir Martin Charteris, G.C.V.O., K.C.B., O.B.E.,  
Private Secretary to The Queen,  
Buckingham Palace,  
LONDON ENGLAND

# The Sydney Morning Herald

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THURSDAY, APRIL 22, 1976

## Queen Elizabeth

ELIZABETH II — "by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth" — was 50 yesterday, in the 25th year of her reign. She has reigned through years of radical change everywhere, of change for the worse for Britain, of universal turbulence, doubt and apprehension. It has been a bad time for inherited values and traditional institutions. Yet in her 51st year, setting to work with her seventh Prime Minister amid the gravest of national difficulties, she is entitled to take heart, as Monarch and as woman. At no time has the British Crown been more widely honoured or deeply loved by her peoples, or more respected by other peoples.

She may take heart as Monarch because in their latter-day devotion to the Crown the British people — who have lost much and suffered greatly, and who might understandably have been goaded by ill fortune to make radical changes in their inherited order — have exhibited their characteristic steadfast commonsense in cherishing from the past whatever "works". They have cleaved to the one institution which is both the symbol and continuing agent of national stability and unity. Even so, an unwise or

unpopular Monarch could conceivably have tested that commonsense, perhaps to breaking-point. Elizabeth II is entitled, therefore, to take heart as a woman, because her own qualities are inseparable from the success of the Crown in her years.

What are these qualities? First, in her public life, her patent, luminous devotion to tested, relevant traditional moral values — service, duty, discipline, industry, kindness in public life; and, in private life, devotion to inherited religious precepts and to the traditional values of family and hearth. Second, for all her strength and dignity as a figure of tradition, the flexibility with which she has modernised the Crown. Under her it has become an institution accessible to and intimately commingled with the daily life of her people.

Each quality has made impact here no less than in Britain. Australia, too, has changed during her reign, finding a more positive and complex national identity, no longer looking to Britain as "home". Yet when Elizabeth II comes here next year, she will be received with an affection and feeling of kinship hardly able to be accorded to predecessors remote from us. A symbol she is; but she is also our noble friend. Long may she reign.

# PM still popular

THE MELBOURNE AGE, 22.4.76

## POPULARITY OF LEADERS — 1

(Rated by sex of respondent)

	FRASER			WHITLAM			ANTHONY		
	Total (2000) %	Male (996) %	Female (1004) %	Total (2000) %	Male (996) %	Female (1004) %	Total (2000) %	Male (996) %	Female (1004) %
POPULAR	40	39	40	32	33	31	21	19	23
INDIFFERENT	21	23	20	21	21	20	27	26	29
UNPOPULAR	38	38	38	47	46	47	50	54	45
DON'T KNOW	1	*	2	*	*	1	2	1	3

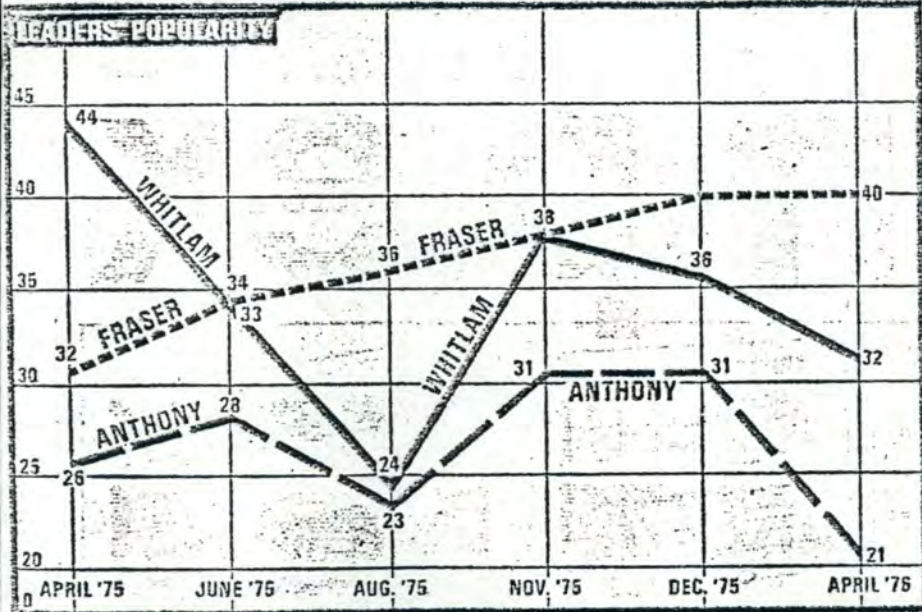
Note: percentages rounded to nearest whole number.  
\* indicates less than 1 per cent.

## POPULARITY OF LEADERS — 2

(Rated by young intention)

	FRASER			WHITLAM			ANTHONY		
	Will vote L19 (871) %	Will vote ALP (833) %	Will vote NCP (102) %	Will vote L19 (871) %	Will vote ALP (833) %	Will vote NCP (102) %	Will vote L19 (871) %	Will vote ALP (833) %	Will vote NCP (102) %
POPULAR	73	6	58	5	67	3	33	5	57
INDIFFERENT	20	20	28	19	20	19	39	15	27
UNPOPULAR	7	74	14	76	12	77	26	78	13
DON'T KNOW	*	*	1	*	*	1	2	2	3

Note: percentages rounded to nearest whole number.  
\* indicates less than 1 per cent.



## Whitlam drops to 30 pc

Report: LEONARD RADIC

The Prime Minister, Mr. Fraser, has maintained his popularity with voters since the December elections, the latest AGE POLL shows.

But Mr. Whitlam's popularity has fallen 4 per cent. in the same time.

Mr. Fraser is now popular with 40 per cent. of voters — the same level he achieved in the week before the elections.

Mr. Whitlam, by comparison, is popular with 32 per cent. of voters, as against 36 per cent. in December and a popularity high of 51 per cent. in mid-1974.

The popularity of the National Country Party leader, Mr. Anthony, has declined markedly since the week before the elections: from 31 per cent. to 21 per cent.

AGE POLL interviewed 2000 people in all States and the ACT. The sample covered every Federal electorate except the Northern Territory. Polling was carried out on the weekend of April 3-4.

People were asked the standard question about each of the three main party leaders: "If you personally had to give him a mark out of 10 for his popularity with you, what mark would you give?"

As with previous AGE POLLS, the results were then graded into three categories: popular (between seven and 10), indifferent (five to six) and unpopular (one to four).

While Mr. Fraser was popular with 40 per cent. he was unpopular with 38 per cent. Mr. Whitlam, by comparison, was unpopular with 47 per cent. and Mr. Anthony with 50 per cent.

Among Liberal voters Mr. Fraser's popularity has risen from 70 per cent. to 73 per cent. since December. Among NCP voters, though, it fell from 63 per cent. to 58 per cent.

Mr. Whitlam, by comparison, was popular with only 67 per cent. of Labor voters — a fall of 13 per cent. since the elections.

Among NCP voters, Mr. Anthony was popular with 57 per cent. and unpopular with 13 per cent.

Mr. Fraser was popular with women (40 per cent.) slightly more than men (39 per cent.); and with white collar workers (49 per cent.) much more than blue collar workers (32 per cent.).

Mr. Fraser was most popular in the smaller-



population States — Tasmania (49 per cent.), WA (47 per cent.) and SA (46 per cent.).

The figures for the other three States were: Victoria (40 per cent.), Queensland (39 per cent.) and NSW (36 per cent.).

Against this, Mr. Fraser was rated unpopular by 41 per cent. in NSW, and by 38 per cent. in both Victoria and Queensland.

Mr. Fraser was most popular with the middle and older age groups, especially those aged 60 and over (43 per cent.), and least popular with those aged 18-20 (32 per cent.) or 21-24 (30 per cent.).

Mr. Whitlam was, as usual, more popular with men (33 per cent.) than women (31 per cent.), and with blue-collar workers (39 per cent.) more than white-collar workers (25 per cent.).

Mr. Whitlam was most popular in his home State of NSW (34 per cent.). Then followed in turn Victoria (33 per cent.), Queensland and WA (29 per cent.), SA (28 per cent.) and Tasmania (25 per cent.).

Mr. Whitlam was most popular with those aged 18-20 (39 per cent.), and least popular with those in the 25-34 and 35-44 age brackets (28 per cent.).

Among the university-educated, Mr. Whitlam was popular with 32 per cent., and Mr. Fraser with 41 per cent.

(AGE POLL is conducted for "The Age" by Irving Saulwick and Associates in conjunction with Beacon Research Company Pty. Ltd. and the Department of Political Science in the University of Melbourne.

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1. There is some evidence of what may be an organised campaign, the dimensions of which are not yet defined, nor its nature, directed against the Head of State to secure his departure from office.
2. Any Government and any community must give serious consideration to such a development and its consequences into the future for the incumbent, the office and the Constitution, etc. - and any response to be made.
3. The first thing is to know with as much precision as possible, the nature and ramifications of the challenge. This involves monitoring and assessment, leading on to a definition of the strategy or strategies being employed or likely to be employed by those mounting the challenge.
4. In the light of this, thought needs to be given by the Government to the strategy which it will adopt in response. That strategy will involve inter alia, the nature of appearance which the Head of State agrees to accept or must accept, in the discharge of the duties of his office. The strategy might involve confrontation at some time or it might involve avoiding confrontation; it might involve certain Parliamentary action e.g., statements, legislation or ~~debates~~ debates, ~~etc~~ etc; it might involve discussions from time to time with the Head of State and perhaps with the Palace - and so on. If a concerted strategy of challenge is demonstrated and a counter strategy is to be mounted, there will need to be an appropriate 'high command' to manage the counter strategy.

Perhaps even, the constitutional issue might be put to the test in referendum if an appropriate term of reference could be devised.
5. There is a question of media response to be considered - the public image. The media might for example, react badly if it took the view that the Head of State was engaging in 'coat trailing'; it might react if the Government were to adopt any draconian response at too early a stage - and so on.
6. There is in all this, the consideration that a small minority or even a minority, seeking to overthrow a Head of State should not itself be immune from challenge, and indeed, vigorous challenge. However, if the level of opposition and harassment of a Head of State were to develop to a point where a majority or even a large minority of citizens drawn from various sections of the community were involved, the role of the office could become compromised and the consideration then arises whether in the interests of national unity and the appropriate functioning of the office, the incumbent should go.

Weighed against that is the further consideration whether a minority - if that were to be the effect of conceding its objective - should be allowed to deny the Constitution.



FRIDAY, 23 APRIL 1976

# PM, Whitlam

## more popular



THE Prime Minister, Mr Fraser, and the Opposition Leader, Mr Whitlam, have improved their popularity ratings by two per cent since the December election.

A recent Gallup Poll had found that Mr Fraser still leads in popularity.

His public approval rating was 56 per cent — compared with 54 per cent the week before the election, when he was caretaker PM.

Mr Whitlam's approval rating was 42 per cent — also up two per cent.

Mr Fraser's approval rating is greater than the Gallup Poll scores achieved by Mr Whitlam between May 1974 and December, 1975, elections.

But Mr Whitlam's popularity was as high as 62 per cent just after the December 1972, election.

Mr Fraser, as Opposition Leader, reached a peak of 64 per cent soon after his election to that position in March, 1975.

The latest poll was conducted among 2004 people 16 and over in urban and rural areas in the first two weeks in April.

Those interviewed were asked whether they approved or disapproved the way both men were handling their roles.

Those who approved of Mr Fraser often said: "So far so good — but he hasn't been in long enough to prove himself".

Those who disapproved often commented: "He has broken his promises — he hasn't kept his election promises".

"He is too secretive with the public — we don't know what he is doing".

Typical comments from those who approved Mr Whitlam's performance were:

"He is a good leader and should be back as PM".

"He is an excellent leader but he made a few mistakes".

Those who disapproved often said:

"He spends too much time griping and slating others instead of getting on with his job. He's not being constructive".

"He's lost the backing of his party — he has little party support".



WINDSOR CASTLE

PRIVATE AND  
CONFIDENTIAL

12th April, 1976.

*My dear John*

This letter is in reply to your two letters of 29th and 30th March, which arrived on the same day and which have both been read by The Queen.

I thought it proper to show Her Majesty your personal note as the question of your wife's divorce seems likely to be paraded by Mr. Whitlam in his efforts to discredit you and it seemed to me only right that Her Majesty should have the opportunity to read your balanced and full account of what actually did and did not happen. I need not say how sorry I am that you and your wife should be attacked in this way.

The demonstration in Canberra which you describe in your letter of 30th March must have been extremely unpleasant and we must hope that there are no repetitions.

Mr. Whitlam is, of course, determined to throw more fuel on the fire whenever he can so as to keep the pot boiling. I cannot believe that this is doing him any good politically as, apart from anything else, if he goes on labouring this point he will become an unacceptable bore!

I suppose the C.I.A. had to be dragged into it at some stage in the proceedings! What an absurd story !

The Queen sends you both her best wishes as do I.

His Excellency  
the Governor-General of Australia.

*Yours ever*  
*Martin Lancaster*

Government House,  
Canberra. 2600.

13 April 1976

*My dear Martin,*

There are a few things that it may be useful to mention.

First, as you would doubtless know, there is to be a New South Wales election on 1 May. The Liberal National Party having had such a resounding victory in Victoria and the economic problems associated with the coming Federal budget being what they are, the new Premier of New South Wales, Sir Eric Willis, has decided that he should go to the people in advance of the due date and of the economic difficulties expected during the next few months. He would have had to go late in the year, in any event, and going about six months early has been justified in part because he has only recently taken over from Mr Lewis as Premier and would like the endorsement of the people.

His difficulty is that the position in New South Wales is different from that in Victoria and there has been a swing in New South Wales to the Labor Party. This swing is said at the moment to be not quite good enough to bring victory in New South Wales to that Party. However, Mr Wran is ahead of Sir Eric in personal popularity. Mr Wran has stated that he does not want Mr Whitlam or the Federal leaders of the Party to enter the New South Wales campaign. He has said that they, and he has specifically referred to Mr Whitlam, have been too much lead in the saddle-bag of the New South Wales Party. Nevertheless, one of the Labor candidates has invited Mr Whitlam to join in the campaign. It is not yet clear whether he will do so in that candidate's electorate or not.

Mr Whitlam appears to have started to concentrate on the problems of opposition and yesterday made a speech attacking the Federal Government in a strong fashion and more in the manner of true opposition than has been the case so far. To illustrate the change I enclose a copy of yesterday's editorial in the Melbourne Age.

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PERSONAL AND CONFIDENTIAL

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It could be that there will be a few weeks of quietness on issues affecting the Governor-Generalship because, although Mr Wran doubtless associates himself with Mr Whitlam's attitude, he probably would wish the federal issues connected with last year's events not to be given any prominence in New South Wales, which is my home State, and where I think I am well-known and reasonably well thought of.

A new book has appeared by a journalist called Tennison, which is written from a point of view favourable to myself and supportive of what happened last year. I enclose a copy of an excerpt from the book published in today's Age.

I am, of course, continuing to give careful thought to the way in which the events of the coming months unfold, in so far as their impact on the Royal visit is concerned. If it were not for that visit, I think what has been the strategy, so far, should be continued and recent conversations with both the Prime Minister and the Attorney-General, in which they continue to urge a silence and holding on, support that view. This would make it necessary to get through the next 6 to 12 months of probable increased unpopularity on the part of the Government due to economic and industrial problems, which could rub off on me. But the expected up-turn next year and the Government's natural desire to get its unpopular policies over and done with in the next budget and the next few months thereafter have to be taken into account.

One matter of great importance is that, during or towards the end of this period of relative Governmental unpopularity, Her Majesty's visit is to occur and we all have to think carefully about all of the elements in the Australian situation in relation to that visit, especially in so far as they affect me.

There will be further publications of some interest. A book by a leading Australian journalist, Alan Reid, will appear in the next couple of months and it, I understand, will be very supportive and probably more influential than Tennison's book. In addition, some learned articles will, I believe, gradually appear. Two in particular, are being worked on at the moment by Professor Richardson, a Professor of Law at the Australian National University. The first article will demonstrate conclusively the existence of the Senate's power to reject supply and the absence of any convention to the effect that that power should never be exercised. In a second article, if he carries out his present intention, he would examine with equal thoroughness the existence of the reserve powers of the Crown, of the Governor-General's powers under the Constitution and of the correctness of last year's decision.

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PERSONAL AND CONFIDENTIAL

I had Professor D. O'Connell in to lunch on Friday last, together with a number of lawyers and other luncheon guests. Professor Geoffrey Sawyer and his wife and Professor Richardson were there. Professor O'Connell told me that the academic opinion among constitutional lawyers in England is solidly in favour of the view that what was done last year was correctly done. I do not know whether this is your own experience or not.

There is one other matter which comes at the end of this letter because it has reached fruition in its final form only when the rest of the letter had been typed. It has to do with the Order of Australia.

The Prime Minister wants to retain the Order but to introduce a level of knighthood which would be an extremely rare award and would recognise extraordinary and pre-eminent achievement and merit. No more than two would be made in any one year. When I discussed this with Sir Garfield Barwick he said such "super-knights" would be very hard to find. This award of knighthood would rank, so far as the Order of precedence in Australia is concerned, if Her Majesty agrees, and this would be the Prime Minister's advice, immediately after the Knights of the Thistle and ahead of all Knights Grand Cross and the Order of Merit. As Sir Garfield says it will be hard for the Council of the Order to find persons worthy of this honour and, knowing him and his Council, the prospect of there being two for each year would, I think, be very slim.

The Prime Minister also proposes a medal of the Order of Australia to recognise service. It would not involve appointment to the Order, but would be associated with it. There would be no restriction as to numbers to be awarded in any one year. The medal would be placed between the Royal Red Cross (2nd class) and the Distinguished Conduct Medal. It would be available in both Divisions of the Order.

Another change to the proposed is that the name of Civil Division be changed to "General Division". The reason for this is that the new proposed knighthood should be available only in the General Division but members of the Defence Force are not to be excluded from awards, if they qualify, in the General Division thus remedying what is said to be an anomaly in that under the present Constitution members of the Defence Force cannot receive an award in the Civil Division where the type of service deemed worthy of recognition is unrelated to their military duties.

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PERSONAL AND CONFIDENTIAL

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The Prime Minister is keen on these changes and has asked me to discuss them with Sir Garfield and to let him have my views. Sir Garfield believes that what is proposed should be done and I have agreed.

I discussed with The Queen the possibility of advice going to her along these lines when I had an audience at her invitation in January.

The formal documents to be put before Her Majesty are now being prepared in Australia. This letter is to ensure that Her Majesty knows well in advance what is being proposed. I gather that the Prime Minister hopes that, if The Queen approves, the new system could operate for the Birthday Honours list.

Please assure Her Majesty of the continued loyalty and humble duty of my wife and myself and of our desire to do whatever is necessary to prepare for and ensure a very successful visit next year.

*Yours sincerely,*

JOHN KERR

Lieutenant Colonel the Right Honourable  
Sir Martin Charteris, G.C.V.O., K.C.B., O.B.E.,  
Private Secretary to The Queen,  
Buckingham Palace,  
LONDON      ENGLAND

PERSONAL AND CONFIDENTIAL

# THE AGE

Monday, April 12, 1976

## Whitlam back in opposition

THE speech in Melbourne yesterday by the Federal Opposition Leader, Mr. Whitlam, was remarkable on three counts. Firstly, apart from a single phrase, "constitutional outrage", it made no mention of the Governor-General, Sir John Kerr, or of the Remembrance Day events which led to Labor losing office and Mr. Whitlam losing the Prime Ministership. Apparently he has decided — not before time — to take the advice of Mr. Hawke and others in the ALP and drop the subject. Secondly, it was a speech devoted almost entirely to the economy — not a subject which has even been dear to Mr. Whitlam's heart. Finally, it was a strong, critical and opposing speech — one that suggests that Mr. Whitlam and his party have finally reconciled themselves to their role in Opposition, and have begun to come to grips with it.

The change of heart is welcome. Good government demands a strong and vigilant Opposition. But for the past four months Labor has been in no mood to provide it. The elections, which cut through Labor's parliamentary ranks, were shattering enough. But then came the

Iraki funds fiasco and the leadership crisis that it spawned. The effect was to give Mr. Fraser and his numerically far superior Government an easy run. Beset by troubles of its own, Labor had no time for the wider troubles afflicting Australia.

In yesterday's speech Mr. Whitlam, predictably enough, blamed the Fraser Government for most of the troubles. He claimed that while Australia had its "economic difficulties" in 1975, the Hayden Budget strategy was working well and Australia was on the way to economic recovery. Inflation had been cut from 18 to 12 per cent., while unemployment was falling. The recovery process stopped when the Fraser Government took over. Its policies had unnerved consumers and produced "needless panic", Mr. Whitlam said.

Mr. Whitlam makes it all sound easy. The fact is that Australia did not take sick suddenly on December 13. Its economic ills go back much further; they have much to do with the Labor Government's economic maladministration. Labor's three years in office produced record inflation and record unemployment. It is no good Mr. Whitlam blaming the recession in the Western world for this. Australia was insulated from many of the pressures which made life suddenly difficult in countries like Japan, Britain and the USA. And yet it found itself in difficulties too.

The difficulties are still with us. Mr. Whitlam is right there. Inflation is still high; consumer confidence, according to the Melbourne Institute of Applied Economic and Social Research, is at its lowest point for two years; while the latest unemployment figures suggest that unemployment is a much more difficult and intractable problem than the Government has admitted. All of which makes Mr. Lynch's Budget of critical importance. It will be the real test of the Liberals' claim to offer better economic management. Meanwhile, it is reassuring to find Mr. Whitlam debating issues, discussing the economy and picking holes in the Government's performance: doing, in short, all that an Opposition Leader should be doing, and doing it with his old rhetorical flair.

The second of three extracts from "The Lucky Country Reborn", by Melbourne journalist PATRICK TENNISON. His book is a reply to Donald Horne's "Death of The Lucky Country". Today, a look at the role of Sir John Kerr in the fall of Labor.

# The Lucky Country Reborn

by Patrick Tennison

## Disagreement with Kerr pulled out of his hat

ONE impression that emerges strongly from Donald Horne's book (*Death of the Lucky Country*) is that he has a bitter aversion to Sir John Kerr's top hat. And to the gentleman beneath it.

At times it becomes difficult to discover which he dislikes more.

He accuses Whitlam of failing to think seriously enough before nominating Kerr for the Governor-Generalship: "Whitlam and his staff didn't take the office seriously: they saw it as that of a ribbon-cutter and manager of the Government guest house".

He offers no evidence for this. But a strongly supportable opposing view is that Whitlam and his staff did, indeed, think seriously before proposing Kerr for the job. Being assiduous students of political history, they would all recall the 1947 nomination by Chifley of former New South Wales Labor Premier, William McKell, for the Governor-General's post. They would also recall that in 1951, when Menzies had a majority in the Lower House and Labor still held a majority in the Senate, McKell's former Labor colleagues were confident McKell would refuse Menzies' request for a double dissolution and general election.

But to the Labor Party's dismay, which turned to bitter hostility towards McKell, the double dissolution was granted. And Menzies, in the election that followed, gained control of both Houses. Since that historic event, Labor has never achieved a majority of members in the Senate.

It seems more reasonable to deduce that Kerr was nominated because Whitlam and his staff believed Kerr would not "do a McKell". If a fine constitutional decision had to be made, they were confident Kerr would be more charitable towards the party he had belonged to and which had sponsored him for the job than McKell had been.

Indeed right through the so-called "constitutional crisis" of October and November, 1975, Whitlam kept insisting that Kerr would take his advice from him. In more than one TV interview Whitlam said very firmly, "The Governor-General will take advice

More than once, seeing and hearing this, I used to wonder whether Kerr was also watching the interview. And what his

reaction was to this sort of statement. Its implication, to me anyway, was "I'm the boss. Kerr is my man. He'll do exactly what I tell him to do." Whether Whitlam intended it or not, an impression was given that Kerr was in his — Whitlam's — pocket.

Horne's aversion to Kerr's top hat seems to have become an almost irrational focus for Horne's displeasure. "A democratic Labor Government," he writes, "should have told its appointee not to wear top hat and morning dress."

But how "democratic" an act would that have been? Perhaps it could have reinforced the impression that Kerr was in Whitlam's pocket if Whitlam were able to dictate how his appointee should or should not dress.

Horne's distaste for the headgear seems implacable: "It was a symbolic assault on Labor's democracy that the Governor-General should dress in the style of the members' stand and the society wedding."

It seems an intolerantly illogical obsession to protest so strongly at Kerr's topper. Maybe Kerr believes it makes him more Vice-Regal. Maybe he's fulfilling a secret childhood whim. Maybe he has a transistor hidden in the crown of it and secretly listens to 2JJ. Maybe it's his protection against people, who don't like him, pouring beer on his head.

Horne's whole blast at Kerr and Kerr's actions are equally awry in most if not all the points they try to make. I don't propose to enter here into all the lengthy argumentation it goes into. I hope that by tackling a few strategic wanderings from actuality and reason, a sufficient counter case can be put.

In the first place, a type of precedent did exist for what happened in both Houses of Parliament in 1975. In fact some quite interesting parallels exist between what happened when Labor controlled the 1951 Senate and what happened when the situation was reversed in 1975.

Much argument centres on the action of the 1975 Senate in avoiding debate and the passage or rejection of the Government's two money supply bills. What the coalition-controlled Senate did was to defer debate on the bills.

This, in fact, was similar to the tactic Labor used in 1951 with legislation Menzies sent to the Senate from the Lower House: the Labor-controlled Senate referred the legislation to a Senate committee. In recommending to Governor-General McKell the dissolution of both Houses and an election, Menzies claimed Labor had "failed to pass" his legislation. But Labor counter-claimed

that referring the legislation to a committee did not constitute a failure to pass. McKell granted Menzies the double dissolution and election anyway.

Horne quotes L. F. Crisp, in his book *Australian National Government*, explaining that the essential nature of Australia's working system of executive Government comes not from the words of the Constitution but from a "whole set of the constitutional conventions of responsible government". Those words in quotes are important in this context. Because what became known as the "constitutional crisis" arose because the Labor Government tried to break



*through one of the standard constitutional conventions of responsible government. It tried to continue in office when denied financial supply.*

It is a convention of responsible government that when that occurs the leader of the Government tenders his resignation to the Governor-General and seeks a fresh election. It then, in our democratic society, becomes the prerogative of the voters to decide which party they want to spend their money.

Horne also suggests that Kerr should have waited another fortnight, when the Government's money was due to run out, before dismissing the Government. He goes on to say that if the Opposition parties had been "politically mad enough" to cut off Supply over the whole summer holiday period they would have been smashed in the subsequent election.

Certainly if Kerr had delayed a fortnight it would have been impossible to hold an election before late January or early February, with the Government meanwhile completely out of funds. While Whitlam and Fraser might have been content enough to see that happen, Kerr—from a completely non-political standpoint — obviously was not. Inconceivable chaos, if not violent revolt, could have followed a situation like that.

While it can be conceded that the coalition's action was unorthodox in deferring the Senate debate on Supply, it is equally clear that Whitlam's action in not then calling for a double dissolution breached what I've referred to earlier as to the standard constitutional conventions of responsible government.

To put it more simply: Fraser had all the cards in his hand. He only had to keep playing to win. That was predictable as early as a month before Kerr sacked Whitlam.

Horne says in his book his earlier view that Australia was a "banana republic" has now changed; and that a more accurate term is that Australia is a "Governor-Generalate." A Governor-General, he writes, can be bolder with an elected Govern-

ment than an monarch can be. Then a way-out statement:

"Queen Elizabeth would risk her whole dynasty if she sacked a Prime Minister who then won an election."

This is one of those statements that almost beggars comments. First of all, it's never happened. Second: in the present context, Whitlam was sacked and lost. And third — well it's like saying if Snow White had to deal with 14 dwarfs, instead of seven she would have had to sing louder. It's a statement that means no more than that.

To put in the bluntest terms, which I suppose I've been avoiding, the attacks by Horne, Whitlam and their various allies on Kerr are cowardly. Sniping at monarchs and Vice-Regal figures who can't properly respond to those sorts of attacks is one of the more disagreeable aspects of modern mass media.

Kerr was in a most complex, sympathy-drawing situation. While the politicians were up to their various tactics, the electorate they were allegedly serving had to stand by, unable to participate directly. Kerr was the only one who could act as umpire. And that he did. With the summer holiday period looming, he had to act super-quickly. He did that, too.

Horne's book is astray in some of the terminology it uses. For instance, he refers to what happened as a "constitutional coup d'etat". And that must be a non-existent species. A coup d'etat simply cannot be constitutional.

Finding itself painted into a corner, the Government was presumably then going to try to climb the walls in a bid to survive. It was altogether a gamble as desperate as it was dangerous to the nation.

When aspects like this are realised, Kerr took the wise as well as the brave step of moving in. He has been criticised for withdrawing power from the people's representatives.

But it was obvious that with the tactic taken by the coalition, continued stable Government by the people's representatives had become impossible. Therefore, the only remaining avenue available was his decision, as Kerr has said, to hand the problem to the people themselves.

Depending on individual political viewpoints, it was either a tragedy or a triumph. But either way it was a brave act. It would have been less brave to have done nothing.

Government House,  
Canberra. 2600.

6 April 1976

*My dear Martin,*

A great deal of attention is being given at the moment to the very difficult economic problems which the Government and the country are facing.

As you know from previous letters, we have started off in this country on the road to wage indexation. I shall not set out the various guidelines which have emerged from decisions of the Commonwealth Conciliation and Arbitration Commission but it is proving difficult to settle industrial disputes within the frame work of those guidelines, some unions being unwilling to seek no more than what the cost of living increases would give to them.

The Government, on the other hand, appears to be increasingly unwilling to contemplate automatic periodical adjustment of wages to maintain their value in real terms, as the cost of living rises. There is to be an important case in the very near future which will bring the whole wage indexation policy under review. The Government, which has the right to appear in such a case, is trying to sort out the submissions which it will make.

As you know, we have an arbitration system in this country which is based upon the arbitral settlement of industrial disputes. The Commonwealth Government itself and the Parliament have no power to settle wage policy. This is a big defect in the Government's economic armoury. The wage policy of the country is determined by arbitration authorities. The main such authority is the Commonwealth Conciliation and Arbitration Commission, whose task is to settle disputes, rather than to make a contribution to the country's general economic policy. If the arbitration authorities give more attention to economic considerations than to dispute settling, making a contribution to economic restraint, the unions regard themselves as being free to bargain directly with the employers for over-award payments aided, of course, by resort to the strike weapon.

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There is a strong school of thought in favour of wage indexation, both as a means of minimising strike action and as a means of mitigating inflation by confining wage increases to the rate of increase in cost of living. This is a very delicate subject for the Government and for the Arbitration Commission and for economic policy as a whole. Wrapped up with it is the question of tax indexation, which is a proposed scheme for ensuring that increases in wages, due to having them indexed to take account of living cost increases, will not force an employee into a higher tax bracket, as has been happening up to date. Here again the Government is in a delicate position, having gone a long way to promise tax indexation in its election policy.

These two major issues are involved in general policy, which is beginning to become relevant and important. The Prime Minister has begun to make references to the next budget which comes down in August. The Prime Minister rather implied that it will not be a tough budget, so far as the people as individuals are concerned, but that it will be a budget "tough" on the Government itself. By this I take him to mean that substantial Government activities will be constrained or abandoned. Whether this can be done on a sufficient scale to cut down significantly an otherwise very big deficit may be doubtful.

Another issue being faced by the country is what is called the "new federalism". Since the Second World War the Commonwealth has been the only income-taxing authority and has handed back to the States, under a formula, revenue in substitution for the old tax income which they used to get directly themselves. The States have never been satisfied with this system because it does not produce for them as much money as they believe they need. On the other hand, it removes from them the responsibility of imposing tax - a not very popular exercise.

The Government has proposed a new scheme under which they will get what amounts to a fixed share of Federal income tax on some kind of percentage basis, the amount growing in proportion to the annual growth in Commonwealth tax revenues. This annual growth has been substantial because wage increases due to inflation produce more and more tax and produce it partly by reason of the circumstance that employees have been forced into higher tax brackets as inflation produces its inevitable results.

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The fixed percentage from Federal tax revenues which the States would get under the new scheme would, of course, be adversely affected after Commonwealth tax revenues cease to grow so rapidly due to tax indexation if such a scheme were adopted. The States are however, to be given under the new policy a power to impose additional tax themselves if they are so minded. The "new federalism" also includes the general policy of letting the States have more authority over how they will spend their money than is the case under the present system of Commonwealth grants.

All of these questions are interlocked, but wage indexation and tax indexation are of great importance to the trade unions which are also confronted by a policy, which the Government says it intends to carry out, of imposing secret ballots conducted by the Commonwealth Electoral Office as the system for the election of union officials. This operates up to a point on a voluntary basis at the moment. The policy is to make the system applicable to all unions and to all employer organisations. The combination of all of these problems could cause growing industrial unrest which the Government may have to face later in the year.

It is still very early to make an assessment of how the Government will handle its economic problems generally and what kind of budget will emerge. The Gallup polls do not show any real decline in the Government's popularity up to the present but the next six months will be a testing time.

As to politics generally, things remain substantially the same. It is difficult to assess what is happening inside the Labor Party. Its opposition in Parliament does not appear to be as effective as it was when the Labor Party was out of Government previously. This may be due to leadership problems and internal disagreement or to the problem of readjustment to its new task of opposition.

So far as my own position is concerned, it remains substantially the same. I think it is going to be difficult for me to continue to appear on the campus of universities because of the fact that student demonstrations require the attendance of police and the attendance of police on campus appears to be inflammatory. There has been some growth in demonstrations of various kinds by students in recent times.

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Sir Robert Menzies sent me a document which seems to be a part of his notes for his memoirs. I enclose a copy of this for your background information. It has not been published to the Press, or at all. Mr Anthony, the Deputy Prime Minister, has made a speech, a copy of which I also attach, in which he deals with the campaign which has been mounted on the issue of the Governor-Generalship. You may also be interested in a paper which Professor Parker of the Australian National University gave in December last year and which has been recently published in the newsletter of the Australian Capital Territory Branch of the Royal Institute of Public Administration.

Security arrangements for myself, and also to some extent for my wife, have been stepped up. I am in the process of examining my programme with a view to considering its implications from a security point of view. We intend to prepare the programme on as non-provocative a basis as possible. There will be an overall strategy which will take into account The Queen's visit early next year. I am hoping that things will have died down, at least to some extent, by then but, of course, it could be that some attempt will be made to show Her Majesty while she is present in this country that something should be done about me.

In relation to myself the Government is firm on two things. One, that I should not leave this Office, and two, that I should continue to remain silent, despite the demand for explanations which we have previously discussed. Another example of such a demand for explanation is to be found in an editorial from the Canberra Times of 2 April which I enclose.

I had made a speech at the Annual Conference of the Institute of Directors in which I did not refer directly to the crisis but said in effect that a Governor-General could not take part in a running debate about decisions he had made, that history will have to attend to such matters and that we were all entitled to appeal to history. This produced the attached editorial.

Please assure Her Majesty of the continued humble duty and loyalty of my wife and myself.

*Yours sincerely*  
**JOHN KERR**

Lieutenant Colonel the Right Honourable  
Sir Martin Charteris, G.C.V.O., K.C.B., O.B.E.,  
Private Secretary to The Queen,  
Buckingham Palace,  
LONDON ENGLAND

REFLECTIONS ON AN ELECTION

I will now speak about the last Election, and engage in some reflections about it.

Before the Elections, the Government seemed to be in great difficulties. It had made a complete fool of itself over borrowing in the Middle East, and, apart from some singularly inept performance on the part of the Senate, it appeared to be on the way out. And then, something happened and I would like to say something about it.

Whitlam, having a rather superficial knowledge of the Constitution, felt that he had been wrongly dismissed and that he had a great Constitutional crisis on which he could appeal to the people. Now, not without experience, I realised that the average Australian, for very good reasons, does not, except in a very general way, know much about the Constitution and, therefore, he may be temporarily misled. But what were the facts? And, here, I just want to set out quite plainly what my views were about the alleged constitutional crisis, which I believe to have been, from beginning to end, completely bogus.

I am, of course, (if I may say so) not without experience or knowledge of the Constitution, both in its interpretation in my activities as a lawyer and in its practical problems in my activity as Prime Minister, and I want to say, and I say this without, I hope, being impertinent, that the Governor-General's conduct in this matter was, in my opinion, beyond reproach.

He was right as a matter of Constitutional Law. He exercised a power which he undoubtedly had and he exercised it at a time when any failure to act to resolve the political crisis would have inflicted great injury on many thousands of people who look to the Commonwealth for their payments.

It is quite clear, of course, that the last thing that Whitlam wanted was a Double Dissolution. He had, indeed, fought against it most consistently. The last thing he wanted was an Election that would clear the air. The Governor-General had a complete right and, I think, duty to do what he did. No competent Constitutional Lawyer has offered a view to the contrary. I emphasise that. The future constitutional historian will unquestionably say that he did what was in his power and duty to do.

My second comment on this bogus issue is that the Governor-General displayed remarkable moral courage in doing what I believe to have been his duty. Indeed, when competent people - I mean competent people - have assessed these events in a study of our constitutional history, they will say not only that he was right, but that he did something which has established his term of office as one of the most remarkable of our constitutional history. I fear very much that some people, and I don't exclude Whitlam from this, when they nominate some distinguished man to be Governor-General of Australia, imagine that he is their humble, obedient servant. And that he must do as they say. Indeed, this is the point of view that Whitlam himself expressed more than once. This is, of course, pathetic nonsense. It is not only an insult to the holder of the Office but it converts the Governor-Generalship into a merely automatic post in which the Governor-General must, under all circumstances, do what his advisers tell him to do. If this is what a Governor-General is for, we might just as well not have one. We might just as well have an automatic machine, a sort of robot, and if that is what we are to have, then plainly we don't want a Governor-General at all but merely a recording machine.

I hope that the Governor-General is not unduly worried by the unconscionable abuse to what he has been submitted. No man ever need to be terribly worried about his decision when he has done the right thing.

Well, the Election began. When it was announced from the steps of Parliament House, Whitlam proved himself a bad loser. He made a vile attack upon the Governor-General and Malcolm Fraser, whom he denounced as "Kerr's Cur". The Governor-General was the subject of the most inveterate abuse. Whitlam thought fit to attack Malcolm Fraser in the terms of the most unbridled abuse. Well, I was worried, sitting in my chair at home, because I knew that if people in Australia thought there was some hanky-panky, they would resent it, and I knew that for the next few days they would be told that there was a genuine constitutional issue which, I have explained already, there never was. A completely bogus affair. And I gave it about 10 days when the waters, having been muddied by this bogus issue, people would be confused and the Whitlam Government might score points. But, as I expected, the thing settled down. After a few days, the people began to realise that the Election was not about the Governor-General, but about the Government of Australia and what it had done; the inflation it had created, the terrible economic disasters that it had brought about. And so, before long, the water began to clear. And then, as I expected, Whitlam found himself on the defensive.

Malcolm Fraser did not ever commit the error of talking about the alleged constitutional issue. He got on to the genuine economic issues that confronted Australia and I believe, as events showed quite rightly, that before Whitlam was much older he would have to go on to the defensive. He would have to justify his own economic record.

Well, there it was, and then Whitlam delivered his Policy Speech. Now this was one of the many, the several determining factors in this Election. He spoke at the old Stadium, which is now called the Festival Hall, in Melbourne, and it was the most remarkable performance. I looked at it on the Television. Dear me! It was like a Nuremberg Rally and many, many people in the next few days identified it in that sense. It had nothing about policy. It just had "We want Gough" - "We want Gough" - "We want Gough". Goering couldn't have done better.

But, of course, Whitlam's trouble is that he thinks himself to be a kind of Hitler, a kind of boss, a kind of man who gets the crowd to cheer ~~for~~ for him, and that performance that night at the Melbourne Festival Hall I think was one of the determining points in this Election. It made people understand that they were not voting, if they voted for Whitlam, for a democratic leader, but for a sort of "mob master", and from that night I think his stocks began to fall steadily.

In the meantime, Whitlam had made another cardinal error. He had decided that Malcolm Fraser was the villain of the piece and had set out to denigrate Malcolm and to represent him as the lowest of all forms of life. Now this was a cardinal blunder

I know that I am a bit biased in Malcolm Fraser's favour, but nobody who looked at him on television, being interviewed by these hired men of the A.B.C. and others, could doubt for one moment that he was a man of honour, of intelligence, of character, and all this time he was being represented as some sort of dubious self-seeking crook.

Now this was a cardinal error. I think that Fraser is a great leader. I think he has firmness and character and that, confronted as he will be by the most difficult of all tasks, he will perform with great determination and, in the long run, great success. And so you see that was another mistake that Whitlam made. He attacked a man, as a man of no character, who was day by day, and week by week, demonstrating himself to be a man of quiet competent intelligent character. So, in the result, Whitlam lost this Election. That is worth thinking about. He would have laid odds on himself when he, first of all, talked about what he called the "Constitutional Issue". He would have laid odds on himself, but I wonder if he continued to be in that frame of mind. I wonder. Because I am quite certain that if ever a man, by his own deficiencies of character, lost an election, it was Whitlam, and if ever a man, because of his own attributes of character, won an election, it was Malcolm Fraser. Well, that is how I see the whole event.

Sitting in my chair at home, dependant as I was on the newspapers and the television, I went through many phases, but for the last week of this campaign, I had no doubt that character would succeed, that the ~~Opposition would win~~ Fraser Liberal Government would win. I must say I did not expect them to win by so many. Indeed, I think that Malcolm now has an almost embarrassing majority, but at the same time, if his people realise from what ill-fate they have delivered us, they will stand behind him and fight with him and take all the unpopular measures that need to be taken so that in the long run we may look at the Fraser Government as one that saved Australia from disaster.

ROBERT MENZIES.

MELBOURNE

14th January, 1976



NATIONAL PARTY OF AUSTRALIA - VICTORIA

Annual Conference - Bendigo - 1st April, 1976

Extract from a speech by the Deputy Prime Minister, Minister for National Resources and Overseas Trade and Leader of the National Country Party, Rt. Hon. J.D. Anthony

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There is one other matter to which I want to devote some time today.

And that is the continuing attack by the Labor Party on the Governor-General, Sir John Kerr.

I have to say that this attack is the most disgusting and vile thing I have ever seen in the political life of this country.

Why is Mr. Whitlam, backed up by others in his party, continuing to do everything he can to try to discredit and insult the Governor-General? Why is he inciting others to do the same?

The reason is that Mr. Whitlam, in October and November last year, failed in a bid for absolute power.

What was happening at that time? What was the basic issue that brought on the whole political crisis, and led to its resolution by the Australian people on December 13?

The fundamental issue was Mr. Whitlam's attempt to keep on governing after the Parliament had cut off the supply of money to his Government. This defiance by Mr. Whitlam of the whole foundation of our Parliamentary system threatened to produce a devastating political and economic crisis from which this country may not have recovered for a very long time. Mr. Whitlam, a desperate man, was prepared to cling to office at any price.

What the Parliament did was quite legal, constitutional and justified. It used a safeguard provided by the Constitution.

What Mr. Whitlam did, and tried to do, was utterly wrong -- not just in my judgement, and the judgement of other people, but in the judgement of Mr. Whitlam himself.

In earlier years he had repeatedly argued that a government defeated on a money bill must resign and face the people.

But when he found himself in that situation, he refused to follow the course he had repeatedly and consistently advocated as being the only proper course.

Mr. Whitlam, by his intransigence, his stubbornness, his pig-headedness, forced the Governor-General to act to resolve the crisis in the only way he could -- by dismissing the Government and placing the decision in the hands of the people.

That is the central fact of last year's events - the fact which today seems to be too often forgotten.

All that is heard is a stream of abuse and villification pouring from Mr. Whitlam's bitter lips.

There is never a word about his own part in the crisis - his central, fundamental part. There's never a word about the decision made by the people - not by the Governor-General - on December 13.

It's almost inconceivable to me that a man who has led his party to the most devastating defeat in our political history should continue to pursue his savage vendetta against the person who gave the people the opportunity to express their judgement.

Mr. Whitlam today heads the pathetic remnants of the party he almost destroyed. The Government he led, he did destroy.

I can't help recalling those occasions last year when the Labor Party was warned, by myself and others, that Mr. Whitlam was leading them to disaster.

The Labor Party was told that if it did not do something to put a brake on its leader, he would not stop until he had destroyed himself, and his party with him.

That is exactly what happened on December 13.

But what Mr. Whitlam needs to understand is that it was not the Governor-General who put him out of office, but the Australian people.

It was not the Governor-General who destroyed the Whitlam Government, but Mr. Whitlam himself.

The sooner Mr. Whitlam understands these things the better. The sooner he takes Mr. Hawke's advice to stop dwelling on the issue and get on with the job of constructive opposition, the better.

The sooner he stops his disgraceful and shameful attacks on Sir John Kerr, the sooner his shattered party will be able to begin the process of rebuilding.

Sir John Kerr behaved properly throughout this whole affair.

And despite the most disgusting provocation and abuse, he continues, to his great credit, to behave properly and with dignity.

Australians should be forever grateful for the responsible and courageous action of the Governor-General-- not because we won the election, but because he created a precedent in dismissing a Government which was prepared to defy the Constitution and our Parliamentary system - an action by the Governor-General that preserved our democratic system by averting a major crisis and allowing the people to exercise their judgement and their will.

It's true that the events of last year were unprecedented in our history.

It's equally true that the campaign which Mr. Whitlam and his supporters continue to wage is of a kind we have never seen before.

I am certain the vast majority of the Australian people want this spiteful campaign of revenge to end -- and end now.

THOUGHTS ON THE CONSTITUTIONAL CRISIS

R.S. Parker \*

These remarks were prepared to open a hastily-called seminar on 14 November 1975. They leave many constitutional assertions unargued - and many crucial facts in the present crisis are not yet known.

I am not outraged. I do not think the future of parliamentary government in this country is at stake. I do not believe the Governor-General has 'defamed the very basis of the Constitution'. I do not think that either the Labor party or the Liberal and Country Parties have been trying to subvert democracy with dastardly plots. I find it particularly hard to see that calling a general election for both houses of parliament is an attack on democracy. I do not think that after a general election a government ipso facto has a claim to govern unchallenged for three years. In fact it is one of the basic features that distinguishes our system of parliamentary government from other systems like the American Presidential one, that the three-year term is a maximum one and the parliament, under proper circumstances, can be dissolved at any time short of three years. I do not think that 'a people's government' has been thrown out by a sinister oligarchy of wealth and power. We should remember that both political sides still have the support of nearly half the voters, and though the composition of that support has a distinct class twist, the support of each side penetrates deeply into the main classes that support the other. Catch-cries about breaking of constitutional conventions are fair enough party tactics, but there is no case for moral indignation about it: both sides in Australia have a history of breaking or ignoring parliamentary conventions - about the speakership, as just one example - and on balance Labor has done more of it than the other side.

One of the most viable conventions of parliamentary government is that a government without supply should resign, and it is viable - that is, more enforceable than most - because under our system a government cannot govern without supply and stay within the law; it cannot govern without supply if it is to protect the community from economic chaos - and that is one of the first duties of any government. This is equally true whether the first chamber or the second chamber withholds supply - under constitutions where it is legally necessary that both houses must take part in granting supply. On this point the Governor-General's logic is plain and impeccable. The Australian constitution has this requirement

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\* Professor Parker is the Head of the Political Science Department, the Institute of Advanced Studies, A.N.U.

This paper was presented at a seminar at the A.N.U. on 15 November 1975.

- and it was included quite deliberately because it is a federal constitution: here was one set of teeth that might make the Senate a plausible protector of the smaller states. And the Senate is a popularly-elected house - not nominated, not hereditary, not based on a restricted franchise of property or privilege. It is elected by the same voters as the House of Representatives; the only differences are that their votes are even more unevenly weighted for Senate elections than for those of the House, and that the term is longer. If the Senate were elected on a fully equal franchise, it would be even more of a menace than it is now: all second chambers are a menace to orderly and rational government - and the more so, the more nearly their membership is based on direct popular election. The fact remains that the Australian Senate is more democratically elected than most second chambers, and it has an indubitable legal right to withhold supply. A government that has run out of supply cannot govern, and should resign.

I state these propositions as a counterblast to the main bits of obfuscation and cant - as they seem to me - that are being bandied about in these weeks. That kind of cant merely fans excessive anger and hatred - the common coin (and curse) of political emotions - and anger, even when justified, is not much of a guide to action. Seneca of Rome thought it was always useless:

By being over-hasty and frantic, like almost all desires, it hinders itself in the attainment of its object, and it has never been useful either in peace or war. No man becomes braver through anger except one who without anger would never have been brave at all.

I owe that quotation to my colleague Alan Davies; he uses it in his recent book on Political Passions, where he adds some things that are apposite now: 'Political movements intensify, hoard, refine and bind anger and hatred. They set up circumstances in which conversions are catching - and mutually reinforcing, in which the group's very growth validates its special perception of an "enemy-mined" environment; and in which particularly aggressive, doctrinaire and self-righteous behaviour and thought is honoured.'

I am putting the view that in the present crisis both sides in turn have presented this ugly picture - and I'm putting the view that they have over-reacted. The constitutional text-books are studded with similar cases of governments and oppositions jockeying for power by manipulating parliamentary procedures and conventions - or ignoring them - and of Governors and Governors-General using their reserve powers in ways that were bitterly criticised by one or other of the contesting parties and superciliously questioned later by scholars and pundits. But seen in perspective these crises have left scarcely a ripple on the stream of our history and scarcely a mark on the main institutions of our government. Is the present crisis any different? I am not sure. At least I am submitting that it cannot be characterised in the ways I have alluded to so far. Let me summarise how it looks to me.

I think it was wrong - understandable but wrong - for the founding fathers to give the Senate the power to refuse supply. That is the real villain in this whole piece - and I would have thought primary attention should be devoted, especially by the Labor party, to exposing this section 53 as the villain and to creating the atmosphere in which the necessary popular support might be gained to amend it out of the constitution. While it remains it may always be used, or abused, for party advantage. It is there, like Everest, and people will not always be able to resist the temptation to make use of it. Nevertheless, even though the power is there, I believe it was wrong for the Opposition to use it. Not wicked, or unconstitutional, but politically wrong. They might have helped to establish an actually viable convention that would have put responsible government - that is government responsible to one house, obviously the more representative one - in front of federalism in the confrontation of the two principles which Winthrop Hackett feared in 1891. Why put responsible government in front of federalism? Because in this form - federalism embodied in the Senate - that principle has long been unreal (however real in other aspects of politics). Responsible government - that is, answerability to the House of Representatives - though also fictional in some ways, remains more important.

I think it was wrong for the Opposition to refuse supply in the Senate for a variety of more practical reasons. The country was not on the brink of ruin, anarchy, or dictatorship. The Government had shown a lot of stupidity, but very little wickedness. The circumstances did not justify the probable cost in bitterness and strife of using a power legally so clear, but politically so dubious. It was not even a politic step from the Opposition's viewpoint - it immediately lost them public support, whereas given more rope the Government seemed fairly set to hang itself. The Opposition seems to me to be to blame for initiating the train of events which has led to an unhealthily explosive atmosphere in the community and meantime caused and threatened a great deal of distress. It was not unfair, it was not unconstitutional, it was not forbidden by any 'right to rule for three years' - but let us choose the right grounds of criticism. Citizens during the election campaign will hear a host of false grounds.

Given that supply was refused, but did not run out immediately, I cannot blame the government for trying to survive as long as possible. But I think they should have concentrated on the wrongness of the constitutional provisions, not pretended that they were not there. 'Yes, we have legally been denied supply. We therefore may have to go eventually. But we shall stick it out as long as possible, protesting all the while that we have a Representatives majority, that s.53 is wrong, that if we have to go we will ask the electorate simultaneously to amend s.53. And when we have to go we will do so as the Government; we will call the double dissolution on our terms. Meanwhile some Opposition Senator may change his mind. But we will not simply sit and try to bluff it out for so long that actual chaos descends. That is irresponsible, and also electorally dangerous for us.' Instead of taking this line, the Whitlam Government ranted about the unconstitutionality of the Opposition's action, and gave every sign of sitting tight and 'toughing out' - really bluffing out - without regard to the social and economic consequences. The Government

more than the Opposition, is responsible for maintaining a viable community.

I think the Governor-General was probably mistaken - not Machiavellian, or suborned by corporate gold or social glitter, or conspiring with the Leader of the Opposition, or wishing to crush the workers' representatives - but in error, - and that largely as to timing. Had things gone on as they were going, until the end of November, and the Government remained obdurate in refusing to hold an election (and the Opposition obdurate in refusing to grant supply), then its inability to govern effectively would have become patent, and dismissal would have been unarguable - provided the Government were first given the option of advising a dissolution or resigning. The Governor-General's first duty is to ensure that the government is carried on. If he sees it on the point of collapse he has to do something. But of course he has to make sure first that every possibility of the desired result being achieved without his intervention has been exhausted. He should exercise his own discretion (e.g. by refusing advice of a government with a lower house majority) only in the last resort, and then only in a way which is seen to be neutral as between the political parties.

The point of these principles is to preserve the vice-regal position from partisan attack and hence possible destruction. And the point of preserving it from destruction is that the parliamentary system would be substantially more difficult to work without it. For example, how would the recent deadlock between Government and Opposition have been resolved if there had been no Governor-General? Perhaps by a clear-cut law that a government upon being refused supply must resign or dissolve? Would not rules enforce such rules? Would court action be quick enough? Would not rules be useless for some other contingencies where the Governor-General can now act - e.g. in trying to get a government formed when there is an evenly-balanced or obscure party situation in the relevant house? Some have said the present crisis might hasten republicanism in Australia. I am not sure what that has to do with it. The Queen took no part in the present crisis. Abolish her, and there is still exactly the same need for a Governor-General's role as a facilitator and fire-brigade - even if you call him a President. And the same problems in keeping the role neutral.

What are the essentials of the role, and of its neutrality? Its duty is to keep responsible government going with a minimum of fuss and expense, and to ensure that the electors can exercise the right to replace the government at least once every three years, and at such other times as the government breaks the law (in the opinion of the courts duly sought), runs out of money or proves otherwise incompetent to keep administration ticking over, or presently threatens to remove the electors' right to remove it. A majority in the popular house is prima facie evidence that the Governor-General should not interfere, but it is not conclusive as Mr Whitlam has been asserting. A majority in the popular house is not conclusive against the Governor-General's interference when the government has run out of supply, is setting up a dictatorship or is breaking the law.

On the other hand, neutrality means that the expected or actual popular election verdict after a vice-regal intervention should not be read as a vindication or a condemnation of that intervention. It is not for the Governor-General to set his judgment of the state of electoral opinion against that of his responsible advisers. If he appears to 'bet' on the electorate's preference among the conflicting sides in a crisis, he sacrifices his neutrality at once. The electoral verdict may in practice, unfortunately, determine the fate of the particular incumbent - as already threatened by Whitlam. For that very reason the Governor-General's whole effort should be devoted to minimising the risk that it can be held to have proved him 'right' or 'wrong', since that notion should be strictly irrelevant to his prior calculations. His duty is not to secure the electors' support for his own views on the party situation, but simply to ensure, when no other recourse is available, that there can be an electoral verdict at all. That is what Sir John Kerr has done in the present crisis. He has followed the constitutional prescription in s.57 for solving inter-house deadlocks, by submitting this one to the electors on the advice of a minority government after trying more conventional procedures in vain.

Did he try hard enough at the alternative procedures? I cannot possibly answer this confidently on the evidence available, but can discuss what his options appear to have been. The most plausible suggestion is the one already mentioned - that he might have delayed longer before dismissal, in the hope either that some Senators would yet change their minds, or that the Government's inability to carry on would become quite grossly patent, or that the Government on realising this would itself advise a dissolution or face the threat of having to govern by illegal means. Perhaps further delay might have helped; but should the Governor-General condone plunging many sections of the community into actual hardship before acting, simply to avoid accusations of partiality? Should the Governor-General have discussed with Whitlam his proposal for a half-Senate election? At least he considered and explicitly rejected this solution. But his stated reasons for doing so remain cryptic, leaving room for suggestions that they might have consisted significantly of the kind of political calculation - about some states boycotting the election and about likely election results - which I have suggested are dangerous to the Governor-General's neutrality.

Should Sir John Kerr have faced Mr Whitlam squarely with the alternatives of dismissal, resignation or holding an election? A common criticism is that until the final moment of dismissal the Prime Minister was left under the impression that the Governor-General would act only on his advice; though others say that the latter gave plenty of indirect warning to the contrary - for example by receiving Mr Fraser as regularly as he saw Mr Whitlam on the situation. But were the alternatives explicitly posed to Whitlam? If not, discrimination could be charged, especially if the Opposition leader was aware of them beforehand. These points can be linked with the most disturbing questions of all. Was it necessary to dismiss Whitlam in order to resolve the deadlock, and, later in the day, should the Governor-General have received the Speaker and heeded the House's vote of no-confidence in Prime Minister Fraser?



The Governor-General's prime concern was to secure supply quickly. He could get it only by courtesy of the Opposition and the Opposition would give it only on condition of a House of Representatives dissolution and election. But the Prime Minister, with a majority in the Representatives, was publicly refusing to advise such an election. Since both sides had for a month been staking everything on maintaining these stands, the only option left to the Governor-General was an ultimatum to either or both. An ultimatum to the Opposition to grant supply would be meaningless since he had no sanctions with which to enforce it. But since, arguably in the special circumstances, he was constitutionally in a position to dissolve the parliament without the Prime Minister's advice, or to dismiss the ministry, it would seem he could exert considerable pressure on the Prime Minister to advise a dissolution or face the consequences. However, on 11 November when the Prime Minister stated his intention to advise a half-Senate election (but before he could do so) the Governor-General apparently dismissed him without putting any such ultimatum.

This action was questionable because it put the House of Representatives majority in the paradoxical and prejudicial position of waging an election campaign in Opposition instead of in Government, without offering its leader the alternative option. But was the action avoidable? The only contrary indication I can conceive is one suggested to my mind by Whitlam himself in two separate (and perhaps impulsive) statements after his dismissal: one on the steps of Parliament House - 'God save the Queen because nothing will save the Governor-General'; and one at his Press Conference - 'The Governor-General prevented me getting in touch with the Queen by just withdrawing the commission immediately. I was unable to communicate with the Queen, as I would have been entitled to if I had any warning of the course that the Governor-General was to take'. Could the Governor-General have foreseen the possibility that if he directly threatened a dismissal or dissolution without advice, Whitlam might promptly advise the Queen to 'recall' him - thus depriving the Governor-General's position of all meaning and leaving the deadlock indefinitely unresolved? This possibility, if plausible, would leave the Governor-General no alternative at all. But was Whitlam likely, in practice, to risk the obloquy of trying to save his Government by seeking the recall of the Governor-General? Or is it more likely that, faced with an ultimatum, Whitlam would agree to advise a dissolution - or resign - or simply refuse to co-operate and court dismissal?

The forcing of a dissolution, without either resignation or dismissal, might have provided the best result all round (assuming that Whitlam would not or could not secure Kerr's immediate recall). If the Governor-General was going to force a general election anyway, Whitlam could plead that he was abandoning his previous stand only 'under duress'; Labor would be able to fight the election as the Government; the Opposition would have achieved all it was asking for - a general election - and would be bound to grant supply; and the Governor-General would be dissolving on the advice of a Government with a Representatives majority. Why Sir John Kerr by-passed this course must remain a matter for serious speculation.

The course he actually chose meant commissioning a minority Government in the House of Representatives - unfortunate but not, I repeat, unconstitutional in such peculiar circumstances. At least he had secured supply, was immediately referring all the issues to the electors' judgment, and had found an elected politician to carry the constitutional responsibility for his actions. But after that, what of his delay in receiving the Speaker with his message that the House had voted no confidence in the new Prime Minister and called for the reinstatement of Whitlam? The time-table of events suggests that when Mr Scholes arrived the Governor-General was dealing with the documents necessary for the dissolution of parliament - which he could only finalise after being notified of the Senate's passing of the Appropriation Bills at about 2.30 p.m. Once the dissolution was approved the Speaker's message became irrelevant. To keep him waiting might reasonably be regarded as an affront to the House. But it is doubtful whether Labor's last-minute ploy could have made any difference if the Speaker had been able to see the Governor-General earlier. Had the latter accepted the proposition, the Labor Government would have been re-installed, with a year's supply secured only by the Governor-General's undertaking to Fraser that he would dissolve. Where would the Governor-General's impartiality be then? It would be Liberal-Country's turn to accuse him of a truly Machiavellian deal with Labor, carried out by deliberately breaking his pledged word. This would really be too much to expect.

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# The Canberra Times

Friday, April 2, 1976

## A RUNNING DEBATE

THE Governor-General, Sir John Kerr, has again touched on the controversy that has flowed from his intervention in the parliamentary crisis in November last year. This time he has suggested that no decision by a Governor-General can be made a subject of running debate between him and others. In noting the similarities between the position of the Governor-General and that of judges he told the sixth national conference of the Institute of Directors in Australia that judges gave reasons for their decisions but did not engage in running debates about them. He said such decisions would receive attention by textbook writers, commentators, courts of appeal and teachers of law. Sir John was content to rely on "the vicissitudes of time" to bring out the truth in relation to all important decisions.

Sir John's experience as a judge places him in a position to see better than most the similarities in responsibility that pertain to his former and his present offices. But to many the similarities will be neither apparent nor particularly relevant. A judge holds himself aloof from debate on his decisions not only for the reasons put forward by Sir John but because his role in society is that of arbiter. Parties appeal to judges to make decisions they cannot or are unwilling to make themselves. Also a judge's involvement in the political life of the country is minimal, but where it is involved it is a secondary consideration to the law he is administering. In these circumstances it is quite proper that judges should not debate their decisions after they have been delivered.

The Governor-General, however, is not the final arbiter in constitutional matters: that role is filled by the High Court of Australia. If the Governor-General is final arbiter at all — and some would dispute that he is — then it is in the settlement of the parliamentary impasse. Sir John himself spelt it out in his address to the Indian Law Institute in February last year when, discussing the Governor-General's role in relation to the dissolution of Parliament in mid-term, he said, "The basic constitutional issue in such cases is whether or not Parliament has become unworkable. Sometimes this may occur because of the conflict between the two chambers, the Senate and the House of Representatives . . . . The essential question is whether the Governor-General can be satisfied that Parliament has in fact become unworkable".

### Definitive statement

As we have seen, in such matters the Governor-General's judgment must not only be explained but must also be justified to the people. The Governor-General alone can contribute to the greater understanding of the many factors in his decision. If his statement to the Institute of Directors that "ultimately of course we all have our right to have our say" means that Sir John will eventually tell all, it would be better for him to make his definitive statement now, once and for all, so that the legitimate debate about his actions is based on all the facts.

The truth is of course that Sir John has been contributing to the debate and discussing his decision by referring to it, however marginally, on such occasions as his Australia Day address and by making public documents that have a bearing on the events of November, such as the legal opinion of the Chief Justice of the High Court, Sir Garfield Barwick, and the letter from the Chief Justice of NSW, Sir Laurence Street, denying allegations in a book on the subject. Sir John was right to do so.

But as The Canberra Times said on January 30, while it is not desirable that the Governor-General should submit himself to cross-examination, the fact that he has raised the subject of his action on November 11 raises hopes that he will see the need to answer the questions that still remain. These involve the access to the Queen of the then Prime Minister, Mr Whitlam, Sir John's attitude to Mr Fraser's defeat on the floor of the House as newly appointed Prime Minister, and the reasons for the delay in receiving the then Speaker, Mr Scholes, with a message from the House of Representatives.

Since November 11 Sir John has suffered many indignities at the hands of people who should know better how to behave. But in the absence of answers which only Sir John can give we will see a continuation of the affected rage of Labor politicians and orchestrated violent protest, and in the process a rational debate on a matter that touches the corner-stone of our democratic institutions will become obscured and trivialised.



WINDSOR CASTLE

PERSONAL AND  
CONFIDENTIAL

31st March, 1976.

*My dear John*

The Queen has only just finished with your letter of 23rd March so there has been some delay in replying to it. Her Majesty was much interested by it and sends you her thanks for keeping her so well informed of the Australian political scene.

Your analysis of the reasons for Mr. Whitlam's survival as Leader of the Labour Party are convincing, and the one that carries most weight to my mind is "the absence of an obvious, willing and able successor." Had there been an heir apparent, ambitious for power, the matter might, I suspect, have turned out very differently.

Your visit to Adelaide was a mixed experience, but clearly there was more good than bad in it and that is something we all have to be content with in this world when we encounter it.

I have no doubt you will be subjected to a good deal of pressure, similar to that in the Financial Review, to tell your side of the story. Newspapers always urge people to speak out as, of course, if they do, the raw material of journalism is provided. I am sure you are wise to remain silent. It would seem to me quite wrong for a Governor-General in office to produce an apologia for his actions. It must, none the less, be galling to have to remain "mum" under tendentious and unjustifiable attack.

You ask if there is anything more you can do to keep us objectively informed and I have no hesitation in saying that, in my opinion, you are already doing this extremely well. I know you will continue to do so.

I read Mr. Whitlam's speech at the launching of "Kerr's King Hit" with a good deal of aggravation and some amazement. The thesis that the Senate having passed supply he should have been re-commissioned as Prime Minister is, to put it mildly "a bit over the odds"!

As you know we are having our own "political events" in London: I would not describe it as a crisis. It has more the character of a sweepstake, or perhaps, musical chairs. As I draft this letter we have just heard that there is to be a third ballot on Monday, 5th April to decide the leadership of the Parliamentary Labour Party and, of course, the chosen man will become the Prime Minister as sure as night follows day. There are some who regret this business and say that it marks a further erosion of The Sovereign's prerogative. I do not believe that this is so. I think

what is happening simply formalises the reality of the position. The prerogative is not being used in a positive way because there is no need to use it. And, after all, as no one knows better than you, "reserve powers" are essentially powers in reserve, and not powers to be flaunted or used for the hell of it.

From a constitutional point of view I believe we are on firm ground as the office of Leader of the Parliamentary Labour Party and the Office of Prime Minister have been kept separate. The first is no business of The Queen's but the second is.

The Queen sends her best wishes to you both as do I.

*Yours ever*  
*Markin Cartens*

His Excellency the Governor-General  
of Australia.



WINDSOR CASTLE

31st March, 1976.

*My dear John*

Thank you very much for your letter of 26th March which I was able to show to The Queen this morning.

As you say, it would not be proper to justify constitutional decisions on the basis of Gallup Polls, but it is, nonetheless, encouraging that these Polls indicate that the majority consider that you did the right thing.

*Yours ever*

*Martin Charteris*

His Excellency the Governor-General  
of Australia.

Government House,  
Canberra. 2600.

30 March 1976.

My dear Martin,

We have had another demonstration. It happened on the Australian National University campus on Friday night last. I was attending a private dinner party of the Australia/Britain Society being held in honour of Sir Morrice James who is leaving Australia.

This particular demonstration had its ugly aspects. I enclose a cutting from the Canberra Times which describes what happened. Many of those present were supporters of mine or were in the background merely watching, but there was a sizeable hard core of nasty demonstrators who made things uncomfortable for a lot of the time, and especially on arrival and departure. I may say that Sir Morrice and Lady James were marvellous in support. We had conversations with them on the Friday night and at lunch the next day when they came to meet the Marquess and Marchioness of Linlithgow.

There will be a couple of further functions at which I shall see Sir Morrice. I am to be the host at one of them myself at Admiralty House, Sydney, when the Members of the Order of Saint Michael and Saint George and their wives will attend a reception in his honour.

I hope that you will find it possible to have a talk with Sir Morrice after he returns. He will be able to give you an objective account of how things are going here.

The only two papers yesterday morning to run editorials on Friday night's incident were the Melbourne "Age" and the "Australian". I enclose the editorials. There are items in the press to the effect that security arrangements for myself and my wife have been stepped up, as indeed they have been. The Sydney Telegraph yesterday ran a story about the way in which The Queen is informed about what is going on. I enclose a copy.

Mr Whitlam finds it impossible these days, as far as I can judge, to make a speech in which he does not refer to me. Another cutting from yesterday morning's paper - The Age - reports that he claims that

.../2

I by "killing" his Government have "killed" his policies, including that for the establishment of a Children's Commission. It still seems to me, though life is a little uncomfortable, that the Labor Party is making a bad mistake in letting the student protests and perhaps, later, worker protests go uncriticised. However, time will tell.

I have now had an opportunity to read the latest speedily produced journalistic exercise - "Kerr's King Hit". It is full of errors and falsities which in the course of time can be corrected. One theme which is being used both by the militant left and by some others, including the writers of this book, is that I have been associated with intelligence activities for years including war-time years, that I have C.I.A. connections - as I have mentioned before - and the chanted slogans of the students reiterate the proposition that I am a U.S. agent. All of this is, of course, very childish and, it goes without saying, false.

Today we had the Vice-President of the United States, Mr Nelson Rockefeller and his wife to lunch. The police were expecting and were prepared for some demonstrating. However, no one turned up at the gates of Government House and our part in his programme went smoothly.

Please assure Her Majesty of the continued loyalty and humble duty of my wife and myself.

*Yours sincerely*

~~JOHN R. KERR~~

Lieutenant Colonel the Right Honourable Sir Martin  
Charteris, G.C.V.O., K.C.B., O.B.E.,  
Private Secretary to The Queen,  
Buckingham Palace,  
LONDON ENGLAND



## FORECASTS

CANBERRA: Fine. Maximum 23 degrees.

LAKE: Moderate south-east to easterly winds.

S. TABLELANDS: Showery after fog. Mild.

S. COAST: Some rain after fog. Slight seas.

Details — Page 35.

# The Canberra Times

To serve the National City and through it the Nation

Vol. 50. No. 14,337

SATURDAY, MARCH 27, 1976

40 Pages. Price  
Sydney & Melb



Sir John Kerr and Lady Kerr, flanked by policemen and surrounded by demonstrators, is escorted from Bruce Hall at the ANU last night after a private diplomatic function.

## Sir John jostled at ANU function

The Governor-General, Sir John Kerr, and Lady Kerr were jostled by a noisy crowd, estimated by police at about 450 students, at the Australian National University last night.

It took police some minutes before they could clear a path through the pressing crowd to the vice-regal couple in the middle.

The crowd chanted continuously, "Kerr out, Kerr out".

Sir John was attending a private function at Bruce Hall, a residential college, for the retiring British High Commissioner to Australia, Sir Morrice James.

Earlier Sir Morrice had been subjected to jeers and calls of "British troops in Northern Ireland out now".

The function was arranged

by the Australia-British Society for Sir Morrice, who retires from the diplomatic service at the end of April, and will then return to Britain.

However, the most vigorous catcalls were reserved for Sir John and Lady Kerr.

The crowd pressed around his car immediately it arrived. Early estimates were that there were about 30 policemen present.

The students jostled around and tried to block Sir John's path to the college entrance by sitting down.

However, police cleared a way and Sir John entered through a side door.

There was no apparent reaction from Sir John who yelled back at demonstrators in Adelaide last Friday that he was not going to be deterred by the "illiterate stupidity" of the demonstrators.

A window was broken when a stick was banged against it, and police took the name of

one demonstrator but there were no arrests.

It had been announced that Sir John would leave the function at 9.20pm but it was 11.40 pm when he finally emerged.

About 150 people had remained on the balcony in front of the building and at the windows of the dining room, alternating between periods of quietness and rowdy yelling, chanting and window-thumping.

Police formed a cordon about halfway to Sir John's car through which he passed easily and freely, but then the crowd pushed in and police had to force a path.

Several people fell in the crush but none appeared seriously hurt.

About 20 supporters of the Governor-General had also remained and cheered and clapped loudly as he reached his car.

Some heated words were exchanged between them and some of the protesters but there were no fights.

MELBOURNE AGE

29 MARCH 1976

## Sir John Kerr and the mob

**F**AIR-MINDED and law-abiding Australians must find it profoundly disturbing that the Governor-General of this country can no longer appear in public without the protection of a large police guard and without attracting the taunts and insults of a hostile mob. The behavior of some 600 people, mostly students, who jostled and jeered Sir John and Lady Kerr when they attended a private dinner at the National University in Canberra on Friday night would have been deplorable no matter what the cause

or the target of their protest. This is a country in which private citizens and public figures alike should be able to go about their business without becoming the objects of public harassment and hooliganism. It is particularly alarming that the Queen's representative should become the victim of such political and personal animosity.

The incident at the ANU was not the first of its kind; a mob almost as large and menacing hounded Sir John Kerr on a recent visit to Adelaide. There is no denying that Sir John has made himself a controversial figure, a focus of political conflict and recrimination. Although only a small minority would demonstrate their feelings with vulgar abuse, many Australians believe sincerely that the Governor-General acted wrongly in dismissing the Whitlam Government on November 11.

Some blame for the pattern of demonstrations against the Governor-General must attach to Mr. Whitlam and the Labor Party. They have never ceased, to the point of tedium, to denounce Sir John Kerr in the most extravagant terms, accusing him of having perpetrated a constitutional coup as if the Australian people had been given no opportunity to pass judgment at the polls. The Opposition should realise that this relentless indignation and agitation, while it might continue to inflame the unruly few, will not persuade the majority of electors that their verdict of December 12 was wrong. Most

would wish and are entitled to expect that Sir John Kerr should be able to perform his duties and appear in public without systematic harassment by a rowdy mob.

# AUSTRALIAN

29 MARCH 1976

## When to stop

IF ONE OF the tests of sanity is to know when to stop banging one's head against a brick wall, neither the student protesters from the ANU nor indeed Mr Whitlam would be likely to pass it. Protests against Sir John Kerr are clearly going to achieve nothing. The argument which Mr Whitlam attempts to keep going with barbed cracks at every opportunity is over and settled. The people heard Mr Whitlam's protests, and gave their decision on December 13 last year.

In trying to keep the protest going, Mr Whitlam is succeeding only in devaluing its currency. What began as a political issue which had at least the force to divide conscientious people has degenerated to something with all the charm and intellectual appeal of a football crowd's slogan chants when ANU students smash windows at Bruce Hall and scuffle with police.

This is what happens when politicians give way to petulance. Other issues are eclipsed and arguments that should be heard are drowned in the roar of the crowd, because the role of politician has been abrogated to that of cheerleader. Mr Whitlam seems to be so taken with the response he can achieve from his more im-

pressionable and less-mature supporters on the issue of the Governor-General that little else he has to say gets through. His arguments at the weekend about the effect of government cuts on the Children's Commission would have been that much more effective without the gibe at Sir John Kerr we have come to expect in all his public speeches.

There may, or may not, be a case to make about Australian links with America, but it was not being made at Bruce Hall. Breaking panes of glass and pushing policemen is a counter-productive exercise which appeals only to the converted and urges the non-committed to the other side of the argument. Indeed, if demonstrations continue against the Governor-General long enough they will succeed in evoking a groundswell of sympathy for him among people who have felt quite neutral until now.

Certainly the gibes and demonstrations will not affect Sir John Kerr. The offensive exhibitions by demonstrators, and Mr Whitlam's tired harping, are equally futile. The argument is long over. Mr Whitlam should give up, and his supporters grow up.

29 MARCH 1976

# QUEEN TOLD OF 'ANTI-KERR' DEMONSTRATIONS

**CANBERRA —** The Queen is being kept informed of demonstrations and public feeling in Australia against the Governor-General Sir John Kerr.

Regular reports are sent to the Queen and the British Government.

The British High Commission in Canberra reports to the Foreign Office and Commonwealth Office in London.

And Sir John reports direct to Buckingham Palace on matters affecting the Crown.

Reports of the demonstrations against him for sacking the Whitlam Government last November have appeared in one of Britain's top newspapers, The Times.

But a spokesman for the High Commission

said yesterday the British Government had not asked for further details.

It was understood yesterday that Sir John uses his own "discretion and integrity" in deciding what to tell the Queen about the situation in Australia.

## Heckled

Sir John is the Queen's personal demonstrations against him reflect directly on her.

Officials said yesterday the Prime Minister, Mr

Fraser, and the Federal Government would not let demonstrations change their support for Sir John.

Sir John's official spokesman said he would continue his duties despite the demonstrations.

Sir John has been booed, heckled, jostled and insulted since last November.

The latest incident was at the Australian National University in Canberra on Friday night when he was jostled by 500 angry students.

29 MARCH 1976

# Kerr killed child aid — Whitlam

CANBERRA. — The Opposition Leader, Mr. Whitlam, said at the weekend that when the Governor-General, Sir John Kerr, "killed" the Labor Government in November, he had also killed the Children's Commission.

"Australian children were just as much victims of the coup as I was, as all of us where," he said.

Mr. Whitlam said the future of the Children's Commission programme was now in doubt.

He said it had been passed by the former Parliament and had received the Governor-General's assent, but the Fraser Government had yet to proclaim substantial sections of its act.

The Government has kept the commission's programme in limbo and had given no sign of proceeding with it.

It had not been mentioned in the Liberal-National Country Party policy speech and it was not mentioned in the Governor-General's speech to open Parliament last month.

Mr. Whitlam, speaking at a NSW Labor women's conference, said the Children's Commission was among the many Labor policies threatened by the Fraser Government.

He said he mentioned the Children's Commission because it was the core and basis of Labor's programme to improve the lives of women.

"The greatest help we can give women is in the case of

babies and young children," he said.

Mr. Whitlam said the other Labor policies threatened were designed to improve cities, protect the environment, raise education standards, modernise public transport and provide better opportunities for sport, culture and recreation.

He said every one of the policies was also a policy for women.

"And every one of those policies is threatened by the Fraser Government."

Mr. Whitlam said Labor's child care programme had not been designed for the ambitious, middle-class mother who wanted to unload her children.

It was for working wives who needed help to support their families, and whose children would suffer for the rest of their lives if adequate pre-schools and child care centers were not available.

Heavy security again surrounded, Sir John Kerr and his wife in Canberra on Saturday night.

He had a reinforced police guard at the Canberra Legacy Club's annual dinner but no protesters turned up.

Editorial — 9

Government House,  
Canberra. 2600.

29 March 1976.

*My dear Martin,*

This is a personal note so that your files may be complete on a personal matter involving my wife and myself, and to which I have already referred in earlier letters. Of course it goes without saying that if you think it appropriate to bring it before The Queen I would be most happy for this to be done, but I do not press forward details of this kind.

As a part of the campaign which is at the moment developing the circumstances surrounding my wife's divorce from her first husband have received some attention, the general suggestion being that she received preferential treatment, presumably because she intended, after her divorce, to marry me. In these circumstances I feel that I should let you know, for the record, what happened.

The marriage between my wife and her first husband broke down long before the final divorce proceedings but they waited until their children had grown up and left home before bringing the marriage to an end. The grounds upon which my wife, who was the petitioner, was entitled to a divorce are, I think, personal to her former husband and herself and I do not mention them. When, however, the time came for the final break to be effectuated she, being a highly skilled international interpreter and organiser of international conference services, changed her domicile to Paris, arranged for an apartment in Paris and booked a whole series of international conferences ranging over the period from May till the end of the year. She intended to leave for Manila in early May and to go on to Paris. Her new domicile was already registered in the printed booklet of the international society or association of interpreters, the name of which I have forgotten.

Her husband was intending to take his sabbatical leave in Europe beginning in May. There had been a question of waiting for the new Family Law legislation of the Labor Government which enabled divorce to be obtained on the basis of one year's irretrievable break-down of marriage but the legislation was long delayed because it was to be dealt with not on Party lines but as a matter of individual conscience.

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In the result, therefore, my wife decided that she would found her case upon desertion. There were no other problems connected with custody or maintenance or property and there was no opposition on the part of her husband.

Once it became clear that the ground of irretrievable break-down of marriage for one year was not going to be available she began proceedings. She had an impeccable case for expedition as she was about to leave the country as indeed was her husband and her view was that it was better to have their affairs wound up before they set off to Europe, each upon their own way.

I had known her years ago as the wife of a friend of mine and some time after the death of my first wife and just before the proceedings began I met her again and after some dinners and other occasions when we got together I decided that I would ask her to marry me if and when she obtained a divorce. I was not able to tell either Her Majesty or the Prime Minister of this view of mine until I was in a position to propose marriage to a person already divorced. As you know, as soon as my wife was divorced I wrote to The Queen and I mentioned the matter as well to the then Prime Minister.

What happened was that the original basis for expedition of the proceedings which was available to her was complicated by the fact that as an alternative to going to Paris she had to contemplate the possibility of marriage with me. It would not have been fair to tell the judge that there was one ground for expedition of the proceedings when in fact if she were to have the divorce expedited what would have happened would have been marriage to me rather than resort to professional work in France.

Her counsel therefore took it upon himself to see a judge and explain to him both the grounds for expedition as originally contemplated and the new development. As you perhaps know with a divorce, the first question is whether it will be heard speedily. If it is, this will result in an early decree nisi. Under the law as it then stood this would have meant a three month wait before decree absolute. Had there been an expedited hearing my wife would have gone to Europe and worked for three months while waiting for the decree absolute after which she would have returned and married me. However, the judge, exercising his

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discretion and administering his court in the way in which it was done in those days, volunteered to hear the case immediately, dispensed with the need for an affidavit to found the expediting of the matter and granted both the decree nisi and the decree absolute instanter. The judge in question was, of course, a friend of mine as all judges of the Supreme Court inevitably were.

What had happened was what, in those days happens in any case of "Smith against Smith" where the circumstances were the same except that I have no doubt the judge took into account that the Governor-General needed a wife and a hostess to enable him to carry on and, as there was a woman that he wished to marry, it was sensible to facilitate this outcome.

There never would have been any real trouble about it in any long term sense except for the development of the controversy about myself on the political side. My wife accordingly has to suffer the rehashing of her divorce. This does not disturb her nor does it disturb me. It is part of the overall campaign. Nevertheless, I feel that it is important for you to know the situation as I have outlined it.

We have been married for nearly a year and my wife, as you have good reason to know, has been an enormous source of strength to me. Indeed without such a wife at my side I do not think I could have managed to get through the problems of the last six or eight months.

The incident about the divorce has been interpreted as being an extension to privileged people of special facilities. This was not so, at the time, as I have said. The same facilities would have been extended to anyone with a real case for an expedited hearing and shortening of the time for the making of a decree absolute. Furthermore, the idea of hearing cases without them being listed was a facility which the divorce judges extended to all those practicing in the jurisdiction and to their clients, so that time would not be wasted and cases could be brought on to fill in judicial time when it accidentally became available as a result of settlement of other cases.

Nevertheless, because of the problems arising from the suggestion of privileged treatment, the Supreme Court of New South Wales over which I once presided, has, under my successor, made certain changes in the system,

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including the prescription that all cases must be listed. It would not have mattered in the least so far as my wife was concerned if her case "Robson against Robson" had been listed. It was dealt with under the system which then operated. Had it been listed no one would have noticed it. It would have gone through in two minutes as all other such simple divorces do. As I say, this material I give to you, boring though it must be for you, merely because your files should be complete on a matter which is being used here to complicate the lives of my wife and myself.

Please, as I have said before, do not bother Her Majesty with it unless you think she would like to know, what the divorce complication in our situation really adds up to. It will die down in due course and be forgotten.

*Yours sincerely,*

~~JOHN R. KERR~~

Lieutenant Colonel the Right Honourable Sir Martin  
Charteris, G.C.V.O., K.C.B., O.B.E.,  
Private Secretary to The Queen,  
Buckingham Palace,  
LONDON ENGLAND

DIS:CD

Government House,  
Canberra. 2600.

26 March 1976

*My dear Martin,*

In the light of the continuing bitterness by Mr Whitlam and his supporters about events of last November, I thought you might be interested in the findings of the latest gallup poll, and I attach several newspaper cuttings.

Naturally enough, one doesn't seek to justify constitutional decisions on the basis of gallup polls. Nevertheless, the figures in support, particularly when set against those holding the opposite view, are encouraging, the more so when one considers that my own version of events is as yet unknown to the public.

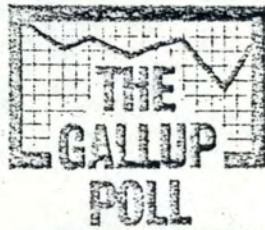
Yours sincerely,

JOHN R. KERR

Lieutenant Colonel the Right Honourable  
Sir Martin Charteris, G.C.V.O., K.C.B., O.B.E.,  
Private Secretary to Her Majesty The Queen,  
Buckingham Palace,  
LONDON ENGLAND

# Most support Kerr

FIFTY-THREE per cent of Australians believe the Governor-General's powers to dismiss an elected government should be retained, the Gallup Poll has found.



Forty-two per cent say the power should be removed and 5 per cent have no opinion.

Fifty-two per cent said the Governor-General, Sir John Kerr, was right in bringing about the December general election.

The latest survey was published in The Sun today.

A third aspect of the survey shows that 76 per cent of those interviewed believe the Opposition Leader, Mr Whitlam, did himself harm by his re-

cent criticisms of Sir John Kerr.

The Gallup Poll taken in early March covered 2041 Australians 16 and over.

During the poll Mr Whitlam continued to criticise Sir John inside and outside Parliament, for his actions in dismissing the Labor Government last November.

In NSW and Victoria 50 per cent of those polled said Sir John was

right in bringing about the December election. Forty-five per cent said he was wrong.

In the latest poll women (55 per cent) were generally more in favor of the Governor-General's action than men (50 per cent), and were

also more critical of Mr Whitlam.

Among ALP voters, a big majority (57 per cent) against 35 per cent thought Mr Whitlam had done himself more harm than good by his criticisms of the Governor-General.

	All people p.c.	Men p.c.	Women p.c.	ALP voters p.c.	NCP voters p.c.
G-G's action in bringing about election:					
Right . . . . .	52	50	55	14	87
Wrong . . . . .	42	45	40	83	9
Don't know . . . . .	6	5	5	3	4
Effect on Whitlam of his criticisms of G-G's actions in crisis:					
Harm . . . . .	76	73	79	57	93
Good . . . . .	17	19	14	35	3
Don't know . . . . .	6	6	6	6	3
Should power to dismiss government be eliminated?					
Yes . . . . .	42	43	42	70	20
No . . . . .	53	53	53	26	76
Don't know . . . . .	5	4	5	4	4

Differences of opinion by age groups on all the above questions were relatively minor.  
Copyright: Australian Public Opinion Polls (the Gallup Method).



• Sir John Kerr

# Most support Kerr's powers

**FIFTY-THREE** per cent of Australians believe the Governor-General's powers to dismiss an elected government should be retained, the Gallup Poll has found.

Forty-two per cent say the power should be removed and 5 per cent have no opinion.

Fifty-two per cent said the Governor-General, Sir John Kerr, was right in bringing about the December general election.

A third aspect of the latest survey shows that 76 per cent of those interviewed believe the Op-

position Leader, Mr Whitlam, did himself harm by his recent criticisms of Sir John Kerr.

The Gallup poll taken in early March covered 2041 Australians 16 and over.

During the poll Mr Whitlam continued to criticise Sir John, inside and outside Parliament, for his actions in dismissing the Labor Government last November.

In NSW and Victoria 50 per cent of those polled said Sir John was right in bringing about the December election. Forty-five per cent said he was wrong.

In the latest poll women (55 per cent) were generally more in favor of the Governor-General's action than men (50 per cent), and were also more critical of Mr Whitlam.

Large majorities of ALP voters disapproved Sir John Kerr's action.

Among ALP voters, a big majority (57 per cent) against 35 per cent) thought Mr Whitlam had done himself more harm than good by his criticisms of the Governor-General.

Seventy per cent of ALP voters and 20 per



cent of NCP voters thought the Governor-General should no longer have the power to dismiss an elected government.

The questions asked in the poll were:

• Do you think the Governor-General, Sir John Kerr, was right or wrong in bringing about a general election when he did?

• Do you think Mr Whitlam did himself harm or good by his very strong recent criticisms of the Governor-General's actions in the crisis before the elections?

• Should the Governor-General's power to dismiss an elected government be eliminated?

Replies on all three issues for all people, men, women, Labor voters and Lib-NCP voters are shown in the following table:

	All people		ALP		L-NCP	
	%	%	%	%	%	%
G-G's action in bringing about election:						
Right .. .. .	52	50	55	14	37	
Wrong .. .. .	42	45	40	83	9	
Don't know .. .	6	5	5	3	4	
Effect on Whitlam of his criticisms of G-G's actions in crisis:						
Harm .. .. .	76	73	70	57	93	
Good .. .. .	17	19	14	35	3	
Don't know .. .	6	6	6	6	3	
Should power to dismiss government be eliminated?						
Yes .. .. .	42	43	42	70	20	
No .. .. .	53	53	53	26	76	
Don't know .. .	5	4	5	4	4	

Differences of opinion by age groups on all the above questions were relatively minor.

Copyright: Australian Public Opinion Polls (the Gallup Method).

# KERR WAS RIGHT SAYS POLL

A MAJORITY of Australians — 53 per cent — believe the Governor-General's powers to dismiss an elected Government should be retained, the Gallup poll finds.

Forty-two per cent say the power should be removed and five per cent have no opinion.

The Gallup Poll finds also that 52 per cent of Australians say the Governor-General, Sir John Kerr, was right in bringing about the December general election.

A third aspect of the latest poll show that 76 per cent of those interviewed believe Mr Whitlam did himself harm by his very strong criticisms of Sir John Kerr's actions in the crisis before the election.

These results come from a Gallup Poll conducted on an Australia-wide basis at the beginning of March, covering 2,041 persons 16 years of age and over.

Women (55 per cent) were generally more in favour of the Governor-General's action than men (50 per cent), and were also more critical of Mr Whitlam.

Large majorities of ALP voters disapproved Sir John Kerr's action and his use of his office to dismiss an elected Government.

Even among ALP voters however, a big majority (57 per cent against 35 per cent) thought Mr Whitlam had done himself more harm than good by his continued strong recent criticisms of the Governor-General's actions.

Seventy per cent of ALP voters and 20 per cent of Lib-NCP voters thought the Governor-General should no long-



Sir John Kerr

er have the power to dismiss an elected Government.

The questions asked in the poll were:

• Do you think the Governor-General was right or wrong in bringing about a general election when he did?

• Do you think Mr Whitlam did himself harm or good by his very strong recent criticisms of the Governor-General's actions?

• Should the Governor-General's power to dismiss an elected Government be eliminated?

Copyright: Australian Public Opinion Polls (the Gallup method).

Government House,  
Canberra. 2600.

23 March 1976.

My dear Martin,

I am finding it increasingly difficult to provide you with a rational appreciation of what is going on out here, on the Labor side of politics. You know by now that Mr Whitlam has survived for the time being - for how long no one can guess, perhaps till the next election but this is not the common view.

Prior to the meeting of Caucus last Wednesday Mr Beazley, a senior member of the Shadow Cabinet, resigned in protest about the Iraqi money. Others are rumoured to be considering doing so, though prudence may dictate letting some time pass and staying in office to see what happens. However, according to this morning's press Senator Wheeldon, the Shadow Minister for Repatriation, Compensation, Media and Film, has also resigned. Mr Hayden, the former Treasurer, who has been unwilling to serve in the Shadow Cabinet, has allowed himself to be elected in the place of Mr Beazley. Mr Hayden could probably get majority support, if he were willing to stand, as Mr Whitlam's successor if a vacancy occurs. Mr Whitlam recently said on television that Mr Hayden would make a better successor than Mr Hawke.

The factors said to have led, after a somewhat torrid meeting full details of which have not yet leaked out, to Mr Whitlam's survival include -

- (a) his own determination not to be driven out;
- (b) the Caucus desire not to appear to be retreating before the onslaught of their opponents - the Fraser-Press "conspiracy";
- (c) a desire to close ranks and put on a show of unity;
- (d) the mobilised support of unions and Party branches - somewhat incongruously called "grass roots" pressure;
- (e) a feeling that Mr Whitlam should have further time to decide to go himself rather than to be dismissed;
- (f) a reluctance to take the fatal step against such a leader whatever his revealed flaws;
- (g) the absence of an obvious, willing and able successor;

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- (h) substantial disunity and high feelings in Caucus which make any consensus or compromise difficult and hence the status quo at least temporarily preferable.

There are, I have no doubt, other factors in the extraordinarily complex situation. It could be that ultimately Mr Hayden will be willing to take on the leadership, but dismissal of a Labor leader is extremely difficult and if Mr Whitlam has a determination to fight the next election he could be left to do so. Prediction is a useless exercise in this atmosphere. The press seem to regard Mr Whitlam as a "flawed leader" and a "crippled giant" but who knows how long he will be there and whether he will recover?

On Saturday last the Victorian State election was held. It came at a bad time for the Labor Party. The Liberals had something of a triumph increasing their previous percentage of votes by 5%. Labor also increased its vote by 2%. Both gained at the expense of the National (formerly Country) Party and other smaller parties especially the Democratic Labor Party which had been for over twenty years strong as a minor party in Victoria. The new state of the parties at this stage in the count is -

Liberal Party	-	48
Labor Party	-	22
National Party	-	6
Doubtful	-	5

The Labor leader, Mr Holding, said that federal matters, including the Iraqi Affair adversely affected Labor. You can see from the figures what an enormous majority the Liberals and National Party together have. The latter would normally support the former but in Victoria is not part of a coalition.

It is true that the spotlight has to some extent, though not greatly, shifted from me. Nevertheless I should like to give you an analysis - tentative - of the present situation. I get excellent support from considerable numbers of ordinary people who wave and clap much more today than before the crisis. In rural areas the support seems to be almost one hundred percent in small towns and very substantial elsewhere in country districts.

We have been in Adelaide at the Festival and stayed with the Governor who was charming and very supportive. The South Australian Labor Government however,

.../3

to use their word, "boycotted" my visit. This visit was, notwithstanding, very pleasant and successful. Apart from theatrical pleasures we were given a civic welcome by the City Council and the Governor held a most warm reception with a large group of guests from all walks of life except the Ministers of the Crown and the union leader of the South Australian Trades and Labor Council. The latter at first accepted but did not come. I was guest on Friday night at an enthusiastic dinner at the Adelaide Club where the applicants for attendance far outnumbered the available seats. The Supreme Court judges went out of their way to be friendly and the Chief Justice made a formal call as well as coming to lunch at Government House. There were three happy lunches with guests at Government House during our stay.

An interesting occurrence was at the dramatic performance of Tennessee William's play "Kingdom of Earth". When the Governor of South Australia and I, with our wives and staff, arrived there were some soft sibilant hisses which could be heard in the auditorium whereupon ninety percent or more of the audience gave me a prolonged ovation.

The real blemish was when I opened the Torrens College of Advanced Education at an open-air ceremony which was marred by a demonstration by imported students and workers of the Student-Worker Alliance and a few local students who tried to break up or prevent the meeting, to which most of the Adelaide intellectual establishment had been invited and had come.

There was a great deal of noise, assisted by loud hailers. Many police were present. The students were kept under control but it was difficult to be heard or to deliver my prepared speech. I accordingly improvised, to some extent, speaking necessarily as loudly as I could but I was not angry or disturbed or "shaken" as one paper said. The television and press coverage was good and most people to whom I have spoken have expressed the view that this kind of Student-Worker Alliance activity is counter-productive with most Australians. I enclose a cutting from the Adelaide Advertiser.

What seems to be emerging is a nationwide boycott, of functions I attend, by the Labor Party parliamentarians and officials and by union leaders. Mr Whitlam would I believe be seeking to prove the thesis of his letter to Her Majesty. So far, however, there has been no organised and co-ordinated attack on the office itself, although occasional republican noises

.../4



are heard. The boycott, up to date, is a personal protest against me and, in my view, is more motivated by vindictiveness and a desire for revenge than by any hope of changing the constitutional system which, in itself, is very strong.

I should incidentally mention that the first "leak" of Mr Whitlam's letter to The Queen has taken place. I attach a copy of a paragraph from the back page of the Sydney Sunday Telegraph. That page takes the form of a column by "Benelong". I shall watch this development carefully.

Mr Whitlam is revealing more and more of his version (fictitious or made up of half truths) of what happened between himself and me in my study and elsewhere.

He has done this to the authors of a book published yesterday by two Labor minded journalists and launched by Mr Whitlam. The book is based almost entirely, so I gather, on Labor sources as one of its authors admitted on television and, of course, I cannot reply. I have not read it but judging by pre-publication publicity and television interviews it has some elements of fairness. It rejects the conspiracy theory. Its publication however increases the tendency to put pressure on me to tell my story. See attached editorial in yesterday's Financial Review. I remain convinced that silence is the proper approach.

Incidentally the authors, with incredible imprudence and recklessness, say that I approached the Chief Justice of New South Wales, Sir Laurence Street, before 11 November for his advice about exercising the reserve power and that he advised against it with vigour - press cutting attached. The Chief Justice rang me in Adelaide on Saturday to tell me that this allegation had been published in the Sydney Press that day and that he had written me a letter which he thought could and should be published. The letter arrived and I directed that it be published. His letter is enclosed. It was widely published yesterday. Needless to say the inventive authors had not checked their "story" either with the Chief Justice or Government House.

I am still determined not to give any hope to those who think that, by the means adopted, I can be driven to resign. Indeed the whole exercise is, in the view of many whose judgments I trust, likely to misfire. This would be especially so if the organised attack were shifted in emphasis from a personal one to an institutional one. But even as it stands I believe many are rather sickened by what they call the childishness of the reactions of the top Labor people, who probably are not united about what is happening and many of whom probably believe that if it continues it will do the Labor Party harm.

.../5

5.

I give you this tentative analysis because I conceive it to be my duty, especially with The Queen's visit coming closer, to let you have as far as I can, the raw material for a judgment about the thesis of Mr Whitlam's letter to The Queen. I shall continue to try to be objective. Is there anything I can do by way of regular provision of background from the Australian publications during the period between now and March 1977? Is there anything else I can do to offset any unconscious lack of objectivity which may colour my reporting?

I enclose a copy of "Current Affairs" which contains the Butler article and one by Emeritus Professor Geoffrey Sawer - for your constitutional collection.

Please offer my humble thanks to Her Majesty for what you have passed on to me of her reactions to my letters and assure Her of the continued loyalty and duty of my wife and myself.

*Yours sincerely,*

JOHN R. KERR

Lieutenant Colonel the Right Honourable Sir Martin  
Charteris, G.C.V.O., K.C.B., O.B.E.,  
Private Secretary to The Queen,  
Buckingham Palace,  
LONDON ENGLAND

P.S.

After the typing of the above two extra developments occurred -

- (1) I called upon Sir Robert Menzies in Melbourne today (22/3). He was marvellously well and bright and also helpful. He urged me to stand firm. He made some complimentary remarks which I shall not repeat, discussed the defamatory things being said about me, mainly by Mr Whitlam, and generally urged me to lose no sleep as the Australian people are with me. I leave you to assess this.
- (2) Mr Whitlam yesterday launched the book to which I referred earlier in this letter and made a prepared attack upon me, a copy of which I attach. I said I had no comment to make about what he said. It contains many falsities but the Prime Minister and the Attorney-General advised continued silence. His speech received publicity in this morning's press.

SPEECH BY THE LEADER OF THE OPPOSITION,  
THE HON E. G. WHITLAM QC, MP  
22 MARCH 1976

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THIS IS ONE OF SEVERAL BOOKS DEALING WITH THE EVENTS OF 11 NOVEMBER. AS ONE WOULD EXPECT FROM ITS DISTINGUISHED AND ELIGIBLE AUTHORS - BOTH EXPERIENCED JOURNALISTS - THE BOOK IS READABLE AND ENLIGHTENING. IT SAYS MUCH FOR THE CALIBRE OF AUSTRALIA'S JOURNALISTS AND PUBLISHERS THAT THEY CAN PRODUCE WORK OF THIS QUALITY IN SO SHORT A TIME. IT SAYS SOMETHING ABOUT THE STANDARDS OF OUR NEWSPAPERS THAT SO MANY OF THEIR EMPLOYEES PREFER TO COMMIT THEIR CONSIDERED JUDGMENTS AND MOST TRENCHANT OBSERVATIONS TO BOOKS RATHER THAN NEWSPAPERS. INCREASINGLY WE FIND THAT IF WE WANT THE WHOLE TRUTH ABOUT CURRENT POLITICAL EVENTS - OR EVEN SOME OF THE TRUTH - IT IS TO THE BOOKS, NOT THE PAPERS, THAT READERS MUST TURN.

I WELCOME THIS BOOK FOR MANY REASONS. I HAVE LONG BEEN CONFIDENT THAT ANY SERIOUS AND FAIR-MINDED STUDY OF THE EVENTS OF LAST NOVEMBER WOULD PUT THOSE EVENTS IN HISTORICAL PERSPECTIVE AND REVEAL FACTS NOT PREVIOUSLY KNOWN TO THE PUBLIC. THE MORE THE FACTS COME OUT - THE MORE THEY ARE ANALYSED AND DISCUSSED - THE MORE QUICKLY PEOPLE WILL COME TO SEE THE ENORMITY OF THE CONSTITUTIONAL OUTRAGE PERPETRATED LAST NOVEMBER.

IT IS GOOD TO HAVE THESE FACTS BROUGHT OUT BY IMPARTIAL WRITERS. I HOLD STRONG VIEWS ON THESE MATTERS;

I KNOW A GOOD DEAL ABOUT THEM FROM PERSONAL EXPERIENCE. BUT MY OWN OPINIONS TEND TO BE DISCOUNTED AS THOSE OF A PARTISAN. I HAVE EVEN HEARD IT SAID THAT I AM A LITTLE OBSESSED WITH THESE MATTERS. IF THAT IS SO THEN I AM IN THE BEST OF COMPANY. ANY SUBJECT THAT INSPIRES FOUR OR FIVE BOOKS IN AS MANY MONTHS BY SOME OF AUSTRALIA'S MOST CAPABLE JOURNALISTS CAN HARDLY BE OF TRIFLING IMPORTANCE. THE EVENTS THEY DESCRIBE CULMINATED IN THE SINGLE MOST DRAMATIC OCCURRENCE IN OUR POLITICAL EXPERIENCE. THEY WERE UNFORGETTABLE AS NEWS: THEY WERE PROFOUNDLY IMPORTANT AS HISTORY: THEY WILL HAVE LASTING AND FAR-REACHING IMPLICATIONS FOR THE FUTURE OF OUR DEMOCRACY. IF I AM OBSESSED WITH SUCH THINGS THEN IT IS A MAGNIFICENT OBSESSION, AND I AM GLAD THAT OTHERS SHARE IT.

THIS BOOK, AND OTHERS TO FOLLOW IT, WILL SET PEOPLE THINKING. IT WILL MAKE FRANK AND OPEN DISCUSSION OF THE EVENTS OF NOVEMBER INEVITABLE AND NECESSARY. IT WILL NO LONGER BE POSSIBLE TO IGNORE THEM. IT WILL NO LONGER BE RESPECTABLE TO HUSH THEM UP. IT HAS SUITED MY POLITICAL OPPONENTS TO CAST A VEIL OF DECENT OBSCURITY OVER THE ACTIONS OF THE GOVERNOR-GENERAL. ONE CAN UNDERSTAND WHY THEY WOULDN'T WANT THOSE ACTIONS DEBATED OR STUDIED TOO CLOSELY. THE ATTORNEY-GENERAL HAS STATED THAT MY OWN COMMENTS ON THE GOVERNOR-GENERAL AMOUNT TO SEDITIOUS LIBEL. THIS WAS NOT JUST AN ATTEMPT TO SILENCE ME, BUT AN ATTEMPT TO SILENCE EVERYONE WRITING ON THE SUBJECT.

IT WAS A THREAT TO EVERY AUTHOR AND EVERY PUBLISHER CONCERNED WITH THE TRUTH OF THESE EVENTS. SO I WELCOME THIS BOOK FOR ANOTHER REASON - AS AN ASSERTION OF THE RIGHTS OF AUTHORS AND PUBLISHERS TO DISCUSS THESE ISSUES FREELY, WITHOUT

FEAR OF POLITICAL INTIMIDATION OF ANY KIND, FROM ANY QUARTER.

THE PARTICULAR VALUE OF CLEM LLOYD AND ANDREW CLARK'S BOOK IS IN THE LIGHT IT SHEDS ON THE MAN AT THE CENTRE OF THESE EVENTS - THE GOVERNOR-GENERAL HIMSELF. I TOO SHALL CONCENTRATE THIS AFTERNOON ON THE CHARACTER OF THE MAN RATHER THAN THE CHARACTER OF THE JOB. I HAVE SAID THAT THE GOVERNOR-GENERAL DECEIVED ME. WHATEVER MAY BE SAID ABOUT THE EXISTENCE OR THE USE OF THE RESERVE POWERS OF THE CROWN, THE CHARGE OF DECEPTION REMAINS. A COMPARISON HAS BEEN MADE WITH GAME, BUT THE ESSENTIAL DIFFERENCE IS THIS: GAME DID NOT DECEIVE LANG AS KERR DECEIVED ME. GAME DID NOT DECEIVE LANG'S MINISTERS AS KERR DECEIVED JAMES MCCLELLAND, ENDERBY, HAYDEN AND RIORDAN. NONE OF THIS WOULD HAVE HAPPENED, OR COULD HAVE HAPPENED, IF KERR HAD NOT SET OUT ON THIS DELIBERATE COURSE OF DECEPTION. THE POINT OF THIS DECEPTION IS NOT JUST THAT I WAS DECEIVED, BUT THAT ANYONE IN MY POSITION MAY BE DECEIVED IN FUTURE. IN THIS CASE MR FRASER WAS THE BENEFICIARY OF THE GOVERNOR-GENERAL'S DECEPTION BUT HE WOULD BE NO MORE ABLE TO TRUST KERR IN FUTURE THAN I WOULD. AND SO LONG AS THIS DECEPTION IS CONDONED, SO LONG AS IT IS POSSIBLE FOR A PRIME MINISTER TO BE DECEIVED, THERE CAN BE NO TRUST OR CONFIDENCE BETWEEN THE GOVERNOR-GENERAL AND HIS CHIEF ADVISER AND NO CERTAINTY THAT AN ELECTED GOVERNMENT IS SAFE FROM ARBITRARY DISMISSAL.

THERE HAS BEEN A GREAT DEAL OF ARGUMENT ON WHETHER THE RESERVE POWER TO DISMISS A GOVERNMENT ACTUALLY EXISTS. THE SENIOR LAW OFFICERS OF THE CROWN WERE FIRMLY OF THE OPINION LAST YEAR THAT IT DID NOT EXIST, AND THAT EVEN IF IT DID IT SHOULD NOT HAVE BEEN USED IN THE CIRCUMSTANCES PREVAILING

AT THE TIME. THE CHIEF JUSTICE, AS WE KNOW, GAVE CONTRARY ADVICE. HE WAS NOT ENTITLED TO GIVE THAT ADVICE. HE GAVE IT COVERTLY AND UNILATERALLY; AND HE GAVE IT IN THE KNOWLEDGE THAT IT WOULD BE DIFFERENT ADVICE FROM MY OWN. BUT WHATEVER MAY BE THOUGHT OF THAT ADVICE AND THE RESERVE POWERS THEMSELVES, THERE CAN BE NO QUESTION THAT THE USE OF THE POWER WAS UNJUSTIFIED AT THE TIME. THIS IS NOT A MATTER OF LEGAL OPINION. IT IS A MATTER OF FACT, IT IS BASED ON THE ACTUAL SEQUENCE OF EVENTS ON 11 NOVEMBER. THERE CAN BE NO QUESTION THAT FOR TWO HOURS AFTER THE SENATE HAD PASSED SUPPLY, THE CONDITIONS EXISTED WHICH ENTITLED ME TO BE COMMISSIONED AS PRIME MINISTER AND MY GOVERNMENT TO REMAIN IN OFFICE.

THE FACTS ARE THESE: THE SENATE HAD PASSED THE BUDGET. THE HOUSE OF REPRESENTATIVES HAD EXPRESSED NO CONFIDENCE IN FRASER AND CONFIDENCE IN ME. IN OTHER WORDS, THE MONEY EXISTED FOR THE ORDINARY SERVICES OF THE GOVERNMENT AND THE GOVERNMENT ELECTED BY THE PEOPLE POSSESSED THE CONFIDENCE OF THE PEOPLE'S HOUSE. THE TWO BASIC CONDITIONS - INDEED, THE ONLY TWO CONDITIONS - FOR THE CONTINUANCE OF A GOVERNMENT IN OFFICE HAD BOTH BEEN MET.

THEY HAD BEEN MET BY THE PARLIAMENT, YET THE GOVERNOR-GENERAL IGNORED THEM. HE REFUSED TO RECEIVE THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, WHO HAD BEEN CHARGED BY THE PARLIAMENT WITH INFORMING THE GOVERNOR-GENERAL OF WHAT HAD HAPPENED. BY THE TIME THE SPEAKER WAS RECEIVED AT GOVERNMENT HOUSE - TWO AND A HALF HOURS AFTER THE PASSING OF SUPPLY - THE DISSOLUTION OF PARLIAMENT HAD BEEN PROCLAIMED.

THE GOVERNOR-GENERAL BY HIS ACTIONS HAS ESTABLISHED HIMSELF AS CERTAINLY A MORE POWERFUL FIGURE THAN ANY PRIME MINISTER, BUT ALSO MORE POWERFUL THAN ANY MONARCH FOR CENTURIES. IT IS ONE THING FOR A GOVERNOR-GENERAL TO PLAY POLITICS HIMSELF: IT IS QUITE ANOTHER THING TO POLITICISE HIS OFFICE. HE HAS DONE SO IN A WAY THAT, IF WE ALLOW IT TO PASS, WILL HAVE THE MOST SERIOUS CONSEQUENCES FOR THE MONARCHY ITSELF. WHAT AUSTRALIANS MUST ACCEPT IS THAT NO MONARCH COULD HAVE DONE WHAT THE GOVERNOR-GENERAL DID AND GOT AWAY WITH IT. IN SAFEGUARDING HIS OWN FUTURE AS AN INDIVIDUAL, HE HAS COMPROMISED THE FUTURE OF THE MONARCHY AS AN INSTITUTION.

AUSTRALIAN JUDGES, I REGRET TO SAY, HAVE A MARKED TENDENCY TO BELIEVE THAT THEIR DECISIONS OR PRONOUNCEMENTS ON ANY SUBJECT COMMAND AN AUTOMATIC PUBLIC ACCEPTANCE. IT IS POSSIBLE IN THIS CASE THAT SIR JOHN KERR WAS SEDUCED BY THE DOCTRINE OF JUDICIAL INFALLIBILITY.

THE QUESTION WE MUST FACE IS WHETHER VICE-REGAL OR JUDICIAL PRETENSIONS ARE MORE IMPORTANT TO OUR NATIONAL LIFE THAN THE PROPER ROLE OF THE CROWN AND ITS REPRESENTATIVE IN THE WORKINGS OF PARLIAMENT AND THE CONSTITUTION IN DISMISSING THE GOVERNMENT. SIR JOHN KERR ACTED ON PERSONAL DISCRETION. THE VIEWS HE EXPRESSED TO THE INDIAN LAW INSTITUTE ON HIS POWERS AS AN INDIVIDUAL RATHER THAN IN COUNCIL TO DISSOLVE BOTH HOUSES WERE WITHHELD FROM THE AUSTRALIAN HIGH COMMISSIONER IN DELHI AND FROM DEPARTMENTS AND MINISTERS IN CANBERRA. THE IRONY IS THAT HE IGNORED THE ONE MATTER ON WHICH, IN THE CIRCUMSTANCES OF 11 NOVEMBER, IT WOULD HAVE BEEN PROPER FOR HIM TO ACT ON HIS PERSONAL DISCRETION - THAT IS, IN

SUBMITTING TO THE PEOPLE THE BILL ON WHICH THE TWO HOUSES HAD TWICE DISAGREED FOR A REFERENDUM FOR SIMULTANEOUS ELECTIONS OF BOTH HOUSES.

WHATEVER MAY BE SAID ABOUT THE GOVERNOR-GENERAL'S DECEPTION OF ME AND HIS DISCOURTESY TO THE SPEAKER, HIS ACTIONS CAN NEVER BE ACCEPTED AS A PRECEDENT. IT CAN NEVER BE ALLOWED TO HAPPEN AGAIN. EVEN IF THE GOVERNOR-GENERAL HAS NOT DECEIVED ME, HIS ACTIONS, IF CONDONED, WOULD ESTABLISH A WHOLE NEW SET OF RULES - UTTERLY INTOLERABLE AND UTTERLY UNWORKABLE - FOR THE FUNCTIONING OF OUR PARLIAMENTARY SYSTEM.

WHAT THE GOVERNOR-GENERAL IN EFFECT HAS DECREED IS THAT A GOVERNMENT MUST HAVE A MAJORITY IN BOTH HOUSES TO BE ABLE TO GOVERN. WITHOUT A MAJORITY IN BOTH HOUSES A GOVERNMENT COULD BE FORCED TO AN ELECTION ON ANY OF THE TWO OCCASIONS EACH YEAR WHEN SUPPLY BILLS COME BEFORE THE SENATE. THIS SITUATION WOULD PLACE UNACCEPTABLE RESTRAINTS ON ANY GOVERNMENT, BUT ESPECIALLY ON A GOVERNMENT OF SOCIAL REFORM. THE GOVERNOR-GENERAL'S ACTIONS, WHETHER INTENTIONALLY OR OTHERWISE, NOT ONLY GAVE A POLITICAL ADVANTAGE TO LABOR'S OPPONENTS IN THE PARTICULAR CIRCUMSTANCES OF LAST NOVEMBER, BUT IMPOSE A WHOLE NEW SET OF LIMITATIONS ON THE FREEDOM AND EFFECTIVENESS OF ANY FUTURE LABOR GOVERNMENT.

IT IS THE GREAT VALUE OF THIS BOOK THAT IT WILL MAKE FOR A MUCH BETTER PUBLIC UNDERSTANDING OF THESE ISSUES. THEY ARE ISSUES THAT MUST SOONER OR LATER BE FACED IF TRUE PARLIAMENTARY DEMOCRACY IN AUSTRALIA IS TO SURVIVE AND FLOURISH. THEY GO TO THE HEART OF OUR POLITICAL FREEDOMS, THE QUALITY OF



OUR POLITICAL LIVES. I COMMEND THIS BOOK FOR ITS CONTRIBUTION TO THAT DISCUSSION, FOR ITS CLARITY AND SCHOLARSHIP, ITS WISE JUDGMENT, ITS MOST PERCEPTIVE OBSERVATIONS.



Placard-waving students in the upper levels of the amphitheatre demonstrate as Sir John Kerr arrives for yesterday's ceremony.

# 200 harass Sir John: 2 arrests

## PROTESTERS SCUFFLE WITH POLICE

Police and 200 demonstrators scuffled during a protest against the Governor-General (Sir John Kerr) at Underdale yesterday.

Two men were arrested during the demonstration at the opening of the Torrens College of Advanced Education.

Scuffles between police and the demonstrators broke out twice during Sir John's 11-hour visit to the college.

One man hurled himself at Sir John's car, kicked a door and then sprawled on the road.

Those arrested are students.

One of the men, 30, was charged with disorderly behaviour and wilful damage.

The other, 23, was charged with resisting arrest, disorderly behaviour and wilful damage.

About 60 uniformed police and 20 detectives backed by the dog squad were involved in yesterday's operation.

Sir John officially opened the college at a ceremony held in an open amphitheatre at 3 p.m.

At times his speech could be heard only in the front rows as demonstrators hurled abuse.

Sir John admitted his speech had been "modified for the occasion."

The 200 demonstrators, mainly students, occupied the upper levels of the amphitheatre after about 300 official guests had taken their seats.

Students said they were demonstrating against the lack of college participation in the opening. Sir John's dismissal of the Labor Government in November and lack of facilities at the still unfinished college.

Last night the SA regional organiser of the Australian Union of Students (Miss Ann Dugdale) said that "probably about half" of the demonstrating students were from the Torrens CAE.

She said others had come from the Salisbury CAE, Murray Park CAE, Sturt CAE and Flinders

University, with many from the University of Adelaide.

When Sir John arrived students chanted "Sack Kerr," "Traitor Kerr — US agent" and "Kerr and cops off campus."

The first official speaker was drowned out by shouting and heckling from about 100 students in the top level of the amphitheatre.

Early in his speech Sir John said he would not be deterred by "the illiterate stupidity" of the demonstrators.

"It would have been very, very easy indeed for me to have said two months ago that I would not come because of the possibility of what might happen," Sir John said.

"But as Governor-General of Australia I don't intend to retreat ever.

"And I want you to understand that on any occasion when I am invited as the representative of Her Majesty the Queen of Australia, I shall come."

The first scuffles had broken out before Sir John took the dais.

Several demonstrators were carried about 30 metres from the official area where a line of police blocked further re-entry.

### Hysterical

Sir John could be heard by the official guests after the protesters were moved from the amphitheatre. He appeared shaken.

Several people sitting among the official guests and chanting slogans were escorted by police back to the demonstrator ranks.

One, a woman, screamed hysterically as police carried her from the area.

After the official party had moved indoors to inspect the college, the demonstrators were moved from their balcony position because it overlooked the Governor-General's car and departure point.

The protesters then moved to his exit point on a road leading to Holbrooks road.

Sir John and Lady Kerr emerged from the college at 4.45 p.m. as students shouted abuse and slogans.

The vice-regal couple waved and smiled at the protesters, who

were being held back by a human chain of about 50 police.

As the official car drew away with a police escort, the protesters broke clear of police and ran along the road next to the car. The window on Sir John's side was open.

One man hurled himself at the car and kicked the rear left passenger door.

The man was forced to the ground by police and manhandled struggling, to a waiting riot van.

One policeman ran alongside the official car holding a door handle to ward off protesters entering the car's path.

A photographer of "The Advertiser" had his camera shoved into his face while photographing one arrest and a police cap was then placed over the camera lens.

He said he was from "The Advertiser" and was asked to show some identification.

VING Nameplates, CAR RADIOS, A plaques and letters, from \$39.95. gn Shoppe." Knox Car Radio, 98 Fl 1g. 87 4732. (Advt.) 263 Gilbert st.

"The Sunday Telegraph."

Sunday March 21, 1976.

### Hitting back

Gough Whitlam wrote a detailed letter to the Queen about his dismissal by Sir John Kerr, according to a book to be launched tomorrow.

The book, Kerr's King Hit, by Clem Lloyd and Andrew Clark, says Whitlam's letter pointed out five occasions on which Sir John had made political decisions in favor of the coalition.

It says Whitlam wanted the Queen to see the letter before the Governor-General reported to her after the election.

Lloyd and Clark also say that the NSW Chief Justice, Sir Laurence Street, advised Sir John strongly against dismissing Whitlam.

# FINANCIAL REVIEW

MONDAY, MARCH 22, 1976

## AN EXPLANATION IS STILL NEEDED

The Governor-General Sir John Kerr told demonstrators in Adelaide on Friday he was not going to be deterred "by their illiterate stupidity".

He went on to say at what was apparently a pretty spirited display of hostility against him — the second time this has happened since Sir John has moved into the public market place since the events of November 11; "As Governor-General of Australia I do not intend to retreat ever.

"I want you to understand that on any occasion when I am invited as the representative of Her Majesty the Queen of Australia I shall come."

The stage would appear to be set for a continuing series of public incidents whenever and wherever Sir John appears publicly.

In the process it is predictable that the mass of the Australian community will find the outbursts of outrage by the demonstrators as being totally repugnant to the standards held to be normal in this society.

Already there is a great deal of moral pressure being brought to bear on any public statement which questions the validity of Sir John's past actions.

Just about every newspaper in the country has counselled Labor leader E. G. Whitlam to forget about his obsession with Sir John's action in sacking him on November 11 and to concentrate on being a good leader of the opposition — whatever that may mean.

However, just as Henry Kissinger once remarked about Richard Nixon that even paranoids do have real enemies, the demonstrators and the Whitlams of the world do have a point when they insist of Sir John Kerr a fuller, considered, and, to echo his own expression, literate explanation of the reasoning behind his November 11 decision.

Today a book is published in Australia with the rather unprepossessing title "Kerr's King Hit" by two Canberra journalists Clem Lloyd and Andrew Clark.

Despite the fact that Lloyd's career record identifies him very closely with one side of the political fence (he was adviser to Lance Barnard in opposition and press secretary to Tom Uren in government) it is a cool, dispassionate account of the constitutional crisis of November and the events leading up to it.

Probably the most important contribution the book has to make is an examination of the evolving role of the Governor General in our political system through the years of Slim, Casey, Hasluck and Kerr — all thrusting, ambitious men who refused to see the office of Governor-General in the terms of Alfred Deakin as "a glittering and gaudy toy".

Sir John Kerr has said little publicly about his perception of his role.

What he did say and what has been represented in the Lloyd-Clark book bears considerable study because Sir John advanced the idea of an Australian Governor-General well past the level of being the token representative of the Queen.

One quotation, chilling in its implications in a democracy such as Australia's — and maybe not a fair one as it is presented as a parallel and not a direct reference to the Whitlam dismissal — was a judgment handed down by Sir John in an industrial case in 1968 which said in part: "A person holding office at pleasure can be removed simply to put a better man in his place."

Did Sir John consider that, under the constitution, Whitlam held office at his pleasure?

Relying on quotes from Sir John's few public statements about his view of the Governor-General's role, the authors say yes and consider that Sir John sees his role as analagous to, say, an Italian president.

Whatever the truth or merits of that might be, it is clear that Australia has not considered that this is the role of a Governor-General.

In the light of what Sir John did do the electorate is entitled to a full explanation from Sir John Kerr himself to the questions as to his perception of role and the procedures he followed on November 11.



New South Wales

20th March, 1976

His Excellency,  
The Honourable Sir John Kerr, A.C., K.C.M.G., K.St.J., Q.C.,  
Governor-General of Australia,  
Government House,  
CANBERRA

Dear Sir John,

In this morning's Press there is reference to a passage in a book entitled "Kerr's King Hit" by Mr. Clem Lloyd and Mr. Andrew Clark. It is stated in this passage that you approached me for advice on the resolution of the constitutional crisis last year. It is stated "If Kerr was looking for support or a favourable legal opinion from Street, he was badly disappointed. Street rejected the proposal to use the reserve powers out of hand". It is further stated that I advised you in the strongest terms against such a course of action.

As is, of course, well known to both of us, there is not a shadow of justification for these statements. I write, however, to place this on permanent record.

So far from your seeking, or my proffering you, any advice on any aspect of the situation at any time prior to the events of 11th November 1975, there was no discussion or communication whatever, direct or indirect, between us in any way touching on this matter.

In response to requests I have received from the Press, I have followed the convention binding holders of judicial office by refraining from commenting on this matter of public controversy. At the same time I am agreeable without reservation to your exercising a free discretion to make known the entirety or any part of this letter or to make reference to it at any time as you may wish.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'L.W. Street'.

L.W. STREET

The Sydney Morning Herald  
Saturday, March 20, 1976

# Book sheds new light on Whitlam dismissal

From PETER BOWERS,  
Political Correspondent

CANBERRA, Friday.  
— The Chief Justice of  
NSW, Sir Laurence Street,  
advised the Governor-  
General, Sir John Kerr, not  
to dismiss the Whitlam  
Government, according to  
a book to be published on  
Monday.

Sir Laurence's advice was  
contrary to that of the Chief  
Justice of the High Court,  
Sir Garfield Barwick, on  
which Sir John acted,  
according to the authors of  
the book, Kerr's King Hit.

The authors are Clem  
Lloyd, a former press secre-  
tary to two Labor ministers,  
and Andrew Clark, Canberra  
correspondent of The  
National Times.

The Leader of the Federal  
Opposition, Mr Whitlam, will  
launch Kerr's King Hit in  
Sydney on Monday.

Exploring the theory wide-  
ly held by Labor MPs that  
Sir John had engaged in a  
plot to get rid of the Whit-

## NSW judge's opinion ignored, say authors

lam Government, the authors  
found no evidence that the  
then Federal Opposition  
Leader, Mr Fraser, had any  
early knowledge of Sir John's  
intentions, at least before No-  
vember 11, the day the  
Labor Government was dis-  
missed.

"While Fraser might have  
held out hopes that Kerr  
would intervene in the way  
that he did, his actions are  
not consistent with over-con-  
fidence or awareness of a  
predetermined course," the  
book says.

"There are other puzzling  
aspects of Kerr's behaviour,  
however, which tend to rein-  
force the conspiracy theory.  
Barwick was not the only  
distinguished jurist Kerr  
sought out for advice which  
would fortify his inclination  
to dismiss the Whitlam  
Government.

"He approached the Chief  
Justice of NSW, Mr Justice  
Street, who had succeeded

Kerr at the head of the NSW  
Bench.

"If Kerr was looking for  
support or a favourable legal  
opinion from Street, he was  
badly disappointed. Street re-  
jected the proposal to use the  
reserve powers out of hand."

According to the book, Sir  
Laurence advised Sir John in  
the strongest terms against  
such a course of action.

The book says: "Street had  
been distressed about the  
circumstances surrounding  
Lady Kerr's divorce and had  
stated bluntly that it was an  
embarrassment to his juris-  
diction."

Another possibility was  
that Kerr abruptly changed  
his mind, moving from initial  
acquiescence in the Govern-  
ment's approach to a sudden  
revulsion.

The authors claim that Sir  
John had gradually expanded  
the powers and functions of  
Governor-General.

"The emergence of a

much more independent role,  
at least in Sir John's mind, is  
shown in a curious incident  
near the end of the Whitlam  
Government's term of of-  
fice," the book says.

"Kerr had conducted in-  
itial negotiations with the  
Japanese Royal family with  
the intention of making a  
State visit to Japan. This had  
been done without the know-  
ledge or approval of the  
Prime Minister.

"Kerr's intervention on  
November 11 could be seen  
as the logical culmination of  
a process of enhancement of  
the Governor-Generalship  
and greater independence in  
the way the job was done."

In Sydney yesterday Mr  
Clark described the book as  
delving into the past of the  
Governor-General, Sir John  
Kerr, and taking a close look  
at the political events during  
the weeks before Mr Whit-  
lam's dismissal.

He thought "a lot of  
questions about the whole in-  
cident will be raised" by the  
book, which is published by  
Cassell Australia.

# CURRENT AFFAIRS BULLETIN

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## Dick Lee. You could say he spring cleans all year round.

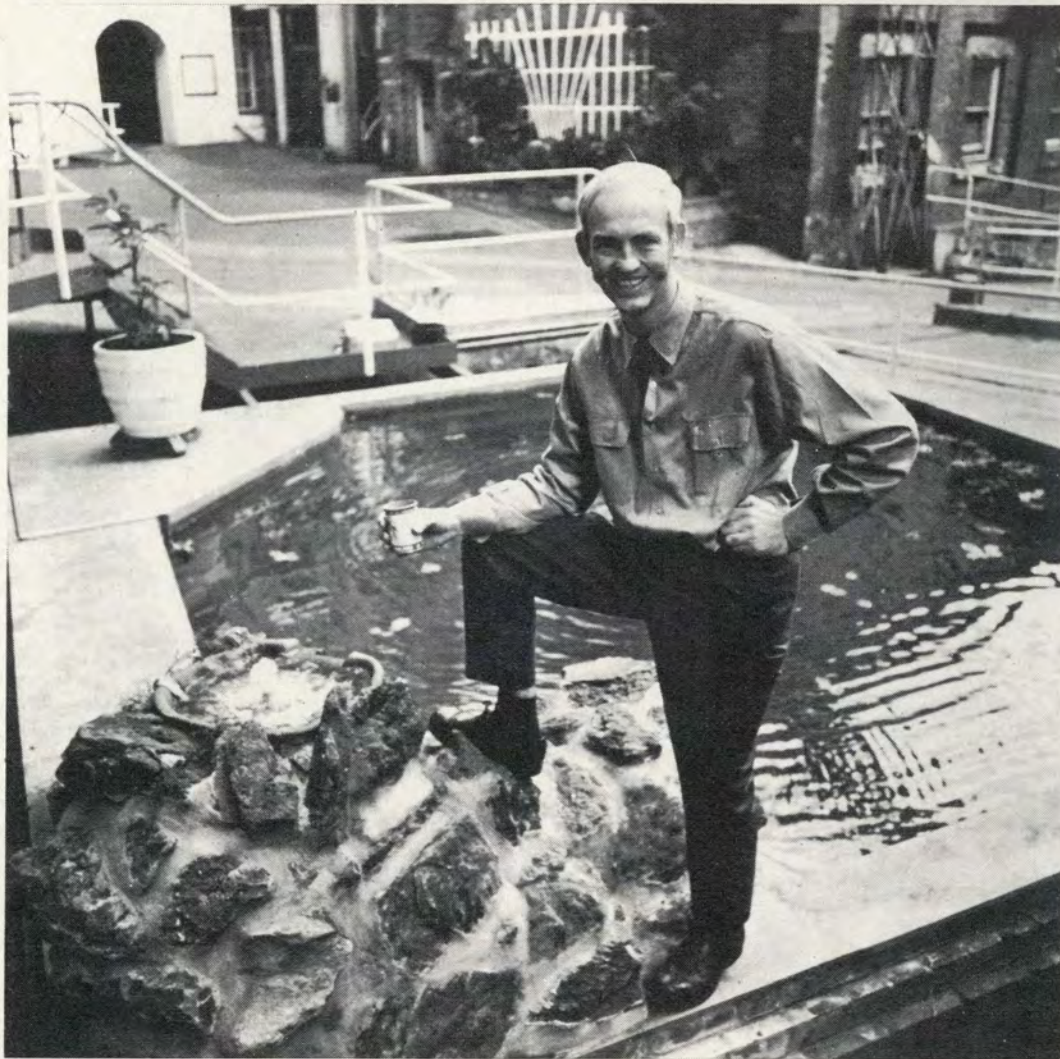
You see, Dick is a construction engineer at CSR's Pyrmont sugar refinery in Sydney. And his aim is to make factories pleasant places to be in. So he innovates, renovates and investigates changes in plant processes and the working environment.

Sometimes it is something as simple as quarry tiles in the changing rooms. Or it can be complex long term improvements in machinery. Or even as delightful as a goldfish pond in the midst of the refinery. But whichever way it

happens, Dick with his budget, makes sure that the working community gets the benefit of it.

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CURRENT AFFAIRS BULLETIN  
THE UNIVERSITY OF SYDNEY, 2006

## NSW DEPARTMENT OF EDUCATION

### *Education of the Highly Talented Child*

The Minister for Education has established a Committee to report on the education of highly talented children in Government secondary schools.

The Committee has been asked to examine, to report and to make recommendations on —

1. The identification and education of highly talented children in years 7 to 12, and
2. The organisation of the education appropriate to these children.

Organisations or individuals wishing to present opinions for evidence are invited to submit these in writing. Those who also wish to give oral evidence should indicate this when forwarding their written submissions.

Submissions should reach the Committee as soon as possible but no later than 31 March 1976, and should be forwarded to:

Mr B. Henry,  
Executive Officer,  
Committee on the Education of  
the Talented Child,  
Box 33,  
G.P.O.,  
SYDNEY, N.S.W. 2001



# Politics and the Constitution

## 20 questions left by

A constitution is a set of rules designed to provide for orderly government in all foreseeable circumstances. Its strength and viability can be tested only in crisis – and in most established democracies crises affecting the continuity of government are mercifully rare. The political scientist must therefore seize on those that occur and analyse them exhaustively for the light they throw on the generalisations about the system formulated *a priori* in more tranquil times. The modern history of the countries governed on the Westminster model offers no parallel to the episode in Canberra that reached its climax on 11 November 1975. As a case study in constitutional interpretation and in political tactics, those events provide a story of remarkable fascination and complexity. They raise a host of problems for the historian, the lawyer and the observer of politics. As long as Australia is governed under its present constitution, they will be a source of anecdote and of argument. The Senate's success in forcing an election will be remembered in every future disagreement between the two houses and the ghosts of Sir John Kerr and Mr.

Whitlam will haunt every future meeting between Governor-General and Prime Minister.

I returned to Australia in late November to look at the general election. But since that proved to be the flattest of the four Australian campaigns that I had watched (as it drifted to the landslide that the opinion polls predicted) I spent my time trying to sort out for myself the rights and wrongs of what happened on November 11. To a few of the most obvious and central questions there will never be a definitive answer and to many more the answer proved too elusive for me, an outsider with all too little time for the task. But friends have encouraged me to set out my questions together with such answers as I could formulate. My readers should certainly disagree with or refine upon those answers and formulate additional questions of their own. During two weeks of listening to the arguments of competent authorities, I was struck by how often new angles and complications emerged which despite a month of hothouse discussion had not occurred to these shrewd and inside observers. This article should be treated as no more than a preliminary report, offering a summary of the problem, perhaps, but only a cursory suggestion of the solutions.

This is not the place to chronicle the detailed events that took place between October 10 and November 11, let alone to write the history of the Labor government. The list on page 7 will remind readers of the key events, and they should turn to the press during and after the crisis for fuller accounts. What follows is an exploration of 20 of the constitutional or political questions raised by the whole affair.

by David Butler

*Dr Butler has been a Fellow of Nuffield College, Oxford, since 1951. He is the author of many works on British elections and of 'The Canberra Model' (Sydney 1973)*

## Remembrance Day

1. Can the Senate refuse supply?
2. Must a government have supply or resign?
3. How long could government have carried on if the Senate had stayed obdurate?
4. Can a Governor-General dismiss a Prime Minister?
5. Did the Governor-General deal properly with Mr. Whitlam?
6. Did the Governor-General deal properly with Mr. Fraser?
7. Who was the Governor-General entitled to consult?
8. Could Mr. Whitlam have called a half-Senate election earlier?
9. What would a half-Senate election have decided?
10. What were the electoral deadlines?
11. Was Mr. Whitlam's decision to call a half-Senate election crucial?
12. Can a Prime Minister secure the dismissal of a Governor-General?
13. Was there anything Labor could have done after Mr. Whitlam's dismissal?
14. Should the Governor-General have listened to the Speaker?
15. Should the House vote of no confidence in Mr. Fraser have made a difference?
16. Could there have been a referendum to settle the supply issue?
17. Could the Governor-General have asked for the issue to be brought to a vote in the Senate?
18. Would the Senate have given way if the Governor-General had taken no action on November 11?
19. Could a Governor-General dissolve Parliament without the advice of the Prime Minister?
20. What general lessons can be drawn?

### 1. CAN THE SENATE REFUSE SUPPLY?

The Governor-General, the Chief Justice and many other authorities agreed that the Constitution gives the undoubted right to the Senate to refuse supply. Section 53 reads

*'Proposed laws appropriating revenues or moneys, or imposing taxation, shall not originate in the Senate . . . The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of*

*the government. The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people. The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modifications. Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws.'*

The final sentence might be thought definitive. But there are three plausible objections to accepting the Senate's unfettered power — one textual, one historical, and one constitutional in a wider sense. The textual objection is that rejection is a form of amendment and that the Section properly read denies the Senate all control over money bills. Sir Richard Eggleston, a much-respected constitutional authority, argued this in a letter to the *Age* (27/10/75). Professor Sawyer, while disagreeing with him (*Canberra Times* 5/12/75), suggested that if Mr. Whitlam had presented the supply legislation to the Governor-General for signature without the Senate's approval but with the supporting opinion of Sir Richard Eggleston and others, Sir John Kerr would have had to accede, even if the legality of such a procedure then went to the High Court and was disallowed. It seems that this was in fact considered and rejected by Mr Whitlam and his colleagues. The final outcome — a double dissolution — might still have been the same but the scenario in early November would have been very different. Moreover, the High Court might have agreed (though it does not seem at all likely) with Sir Richard Eggleston.

The historical objection which Sir Richard Eggleston developed in subsequent correspondence in the *Age* (5/12/75 and 11/12/75) is that, whatever the letter of the Constitution, the Founders plainly did not intend that the Senate should refuse supply. This view depends partly on the deliberate omission from the final 1898 draft of the Constitution of a Clause spelling out such a Senate power and partly on the remarks in Quick and Garran's authoritative commentary on the Constitution published in 1901.<sup>1</sup>

But the broadest objection to the Senate's refusal of supply lies not in the letter of the Constitution but in the practice. The Constitution, after all, represented an attempt to set down formally the customs of British and Colonial governments at the end of the 19th century. The battle over the powers of the Upper House in Britain was not fought out until 10 years later, when in 1909-1911 the Commons ascendancy over the Lords was established. The Australian Senate has a different, democratic basis but from 1901 until 1974 it never tried to assert its right to bring a government down.<sup>2</sup> Whatever interpretation is made of the text of 1901, the practise of 70

years might be thought to establish unicameral responsibility.

It is worth stressing that the Senate was not objecting to the substance of the Budget (the Opposition had not even voted against it in the lower house). Their obstruction was designed solely to force an election — it was a manoeuvre somewhat analogous to the 'tacking-on' procedure of financial amendment to other legislation so explicitly banned in Section 53. The Senate's action was an unequivocal assertion that the Australian government is answerable to both houses. That assertion was endorsed by the highest authorities in the land on November 11 and then by the people on December 13. But we have surely not heard the end of the matter. At some point in the future the two houses will be at loggerheads again and the whole issue will be reopened. For nothing that happened on November 11 settled it definitively.

## 2. MUST A GOVERNMENT HAVE SUPPLY OR RESIGN?

A.V. Dicey in 1886 developed the doctrine that one of the essential powers of parliament over the administration was the right to refuse supply.<sup>3</sup> 'Grievances precede supply' was one of the great principles on which the Civil War was fought and Charles I lost his head. But essentially in modern times supply is only one among many issues of confidence: it is accepted in all the Westminster model democracies that a Cabinet which cannot carry the lower house with it on a major issue of legislation, whether or not supply is involved, must resign or dissolve. Supply is, of course, important because it means that a government cannot rule indefinitely, keeping parliament adjourned. But there are other annual measures which would deny legality to a Cabinet that refused to summon parliament. Supply is more clearly important in a bicameral situation: a government may ignore votes of no confidence or the defeat of legislation in the upper house

1. J. Quick and R.R. Garran *Annotated Constitution of the Australian Commonwealth*, Melbourne 1901, pp. 663-672.  
2. The Canadian Senate had similar powers vested in it in 1867 but has never used them.  
3. A.V. Dicey, *The Law of the Constitution* (7th ed. London 1908) p. 450.

## SOME KEY EVENTS

1972 Dec 2	Labor Party wins election, 69-58 in House.	Oct 26	Mr. Whitlam gets Queen to revoke dormant commission of Governor of Queensland.
1974 May 18	Lab Government re-elected, 66-61. Senate divided 29 Lib/CP, 29 Lab, 2 other.	Oct 30	Mr. Whitlam and Mr. Fraser confer separately with Governor-General.
1975 Mar 22	Mr. Fraser ousts Mr. Snedden as Leader of Liberals.	Nov 3	Mr. Fraser offers supply in return for election by June and is rebuffed by Mr. Whitlam.
Mar 24	Mr. Fraser says government with majority in House has right to govern except in 'very extreme' circumstances.	Nov 4	Mr. Whitlam seeks help from the banks for credit after supply runs out.
Jul 2	Dr Cairns dismissed for misleading House (following six weeks of intensive publicity over the loans affair).	Nov 6	Mr. Whitlam and Mr. Fraser confer separately with Governor-General.
Aug 19	Mr. Hayden introduces Budget.	Nov 11	9.15 Mr. Whitlam and Mr. Fraser meet and fail to reach agreement. 9.30 Mr. Whitlam tells Labor caucus he is asking for half-Senate election. 1.10 Mr. Whitlam seeks half-Senate election and is dismissed by Governor-General. 1.30 Governor-General appoints Mr. Fraser as Caretaker Prime Minister.
Aug 22	Mr. Fraser says Liberals will not vote against Budget.		2.15 Senate votes supply. 3.15 House votes no confidence in Mr. Fraser. 4.45 Double dissolution proclaimed.
Sep 3	Queensland government nominates Mr. Field (Ind) to succeed Senator Milliner (Lab).		
Oct 9	High Court decides 4-3 that government can call elections for new ACT and NT Senate seats.	Dec 13	Election gives Lib/CP 91-36 majority in House, 35-27 majority in Senate (with 2 Independents).
Oct 14	Mr. Connor dismissed for misleading House.		
Oct 15	Mr. Fraser says supply will be refused.		
Oct 16	Senate defers consideration of supply. Mr. Whitlam says he will 'tough it out'.		
Oct 21	Mr. Whitlam and Mr. Fraser confer separately with Governor-General.		

but it cannot carry on if the upper house has and exercises the right to refuse money.

But supply is also important if it is thought to be important. One factor that received too little attention in reports of the November crisis was the attitude of senior public servants as they contemplated the subterfuges and potential illegalities in which they would personally be involved if duly authorised monies ran out. Their obligations under the Audit Act and their capacity to place orders and enter into contracts on behalf of the government were in doubt. None of the suggested expedients for carrying on after supply was exhausted about the end of November seemed acceptable. There is little doubt that the honest anxieties of top officials echoed through to Government House and perhaps coloured the final decision. Even the

Governor-General has to sign warrants for the expenditure of money, *duly authorised*, and his own conscience may have been exercised on this specific point.

## 3. HOW LONG COULD GOVERNMENT HAVE BEEN CARRIED ON IF THE SENATE HAD STAYED OBDURATE?

It is clear that the available funds would cover expenditure up to the November 27 pay day but that there was grave doubt about meeting public service salaries due on December 11. It is clear too that soundings had been made with Commonwealth and private banks about extending credit to cover routine salaries and other payments but that the legal position about such credit was obscure. There are people

close to the Labor Cabinet who believe that everything was satisfactorily in train for government to continue up till February: there are people at the top of the public service who believe that the alternatives were proving impossible and this would have become apparent by the middle of November. Australia has a notably tight statutory control over the expenditure of public money. State governments were ready to move writs of prohibition against the Auditor General if he sanctioned the expenditure of money not authorised by parliament. Moreover, depositors and shareholders were ready to take legal steps if their banks made loans secured only by assurances from a government that lacked constitutional supply; some of the banks had by November 11 received legal advice, warning them against giving the government any unsecured credit. It was a complicated situation; there seem to have been no authoritative reports in the press. It is a by-way of the affair that would merit further research. But my impression is that government would have been brought to a standstill by a whole host of court-enforced injunctions, unless, by early December, the Senate had voted supply.

#### 4. CAN A GOVERNOR-GENERAL DISMISS A PRIME MINISTER?

There are two relevant sections in the Constitution.

Section 2 states that a

*'Governor-General... shall have and may exercise in the Commonwealth during the Queen's pleasure, but subject to this Constitution, such powers and functions of the Queen as her Majesty may be pleased to assign to him.'*

Section 64 says

*'The Governor-General may appoint officers to administer such Departments of State of the Commonwealth as the Governor-General in Council may establish. Such officers shall hold office during the pleasure of the Governor-General...'*

Thus there can be no doubt that the letter of the Constitution provided Sir John Kerr with the authority for his action — or indeed for

4. Section 58 provides that he can withhold assent to a Bill, something which the Sovereign in Britain has in fact never ventured to do since 1707.

much more arbitrary actions<sup>4</sup>. The issue raised by Mr. Whitlam's dismissal was one of propriety not legality. There are several principles not mentioned in the written document which, it is generally agreed, should guide the Governor-General in his constitutional role. The most central of these is, surely, that the Head of State should do his utmost to preserve his non-partisan status. Before a Governor-General intervenes on a matter which is a political issue between the parties, it should be plain first that it cannot be solved without his intervention and second that his intervention shall appear to be as even-handed as possible. Sir John Kerr was in an extraordinarily difficult situation but few people could argue that these conditions were met. A very large number of people saw his action as highly partisan (it could in fact hardly have turned out more unfavourably for the Labor party) and there were, as we shall see, unexplored alternatives.

#### 5. DID THE GOVERNOR-GENERAL DEAL PROPERLY WITH MR WHITLAM?

We do not know what went on in the four or five encounters between the Governor-General and Mr Whitlam during the crisis, and since presumably they were not tape-recorded, we may always be sceptical about any accounts that ultimately appear. Sir John Kerr wrote in the letter of dismissal which he gave to Mr Whitlam on November 11

*'You have previously told me that you would never resign or advise an election of the House of Representatives or a double dissolution and that the only way in which such an election could be obtained would be by my dismissal of you and your ministerial colleagues. As it appeared likely that you would today persist in this attitude, I decided that if you did, I would determine your commission and state my reasons for doing so. You have persisted in your attitude and I have accordingly acted as indicated.'*

But it appears that Sir John did not offer Mr Whitlam any alternatives when he came to Government House or earlier. Mr Whitlam made the point at his press conference that evening:

*'Q: Did you get a chance to offer advice to the Governor-General before getting your dismissal notice?*

*Mr Whitlam: I had spoken to him on the*

*phone and he knew what my advice was going to be. I had the advice in writing. He didn't accept it...*

*Q: Are you sure that at no stage of the talks you had with the Governor-General did he give you the impression that he thought a general election was the proper course?*

*Mr Whitlam: On the contrary he gave me the other impression. He knew I had and was likely to continue to have the majority in the House of Representatives.'*

However he must have known that the Governor-General was contemplating this possibility. On November 6 Mr Enderby the Attorney-General had informally communicated to the Governor-General an opinion on his right to dismiss a government that had been prepared by Mr Byers, the Solicitor-General. (The opinion had not been signed; Mr Enderby did not agree with Mr Byers' view on reserved powers.) Mr Byers rebutted a press statement released by his precursor, Mr Ellicott (now a Liberal MHR), who argued that a Prime Minister who did not advise a dissolution on the refusal of supply would be dismissed. Dismissal was in the air yet Mr Whitlam was plainly utterly surprised when it turned into reality. It seems that the Governor-General had never confronted Mr Whitlam explicitly with the stark choice 'Dissolve or be dismissed' and certainly that he was not confronted with this choice on November 11.

The Governor-General dismissed Mr Whitlam summarily it seems, because he thought that any other course would lead to his own dismissal and a continuance of the crisis. There is no doubt that Mr Whitlam had given some grounds for such a belief. His whole approach to the Governor-General had been truculent and uncompromising. He had spoken in jest perhaps, of the Governor-General as 'My Viceroy'; on October 17 he said 'Unquestionably the Governor-General takes advice from his Prime Minister and no one else.'<sup>5</sup> He had moved swiftly to get the Queen to revoke the dormant Governor-General's commission from Sir Colin Hannah on October 23 after the Governor of Queensland had publicly sided with the Senate.<sup>6</sup> And in his press conference on November 11 he was to say, when asked if he would contact London,

*'The Governor-General prevented me getting in touch with the Queen by just withdrawing*

*the commission immediately. I was unable to communicate with the Queen, as I would have been entitled to if I had any warning of the course the Governor-General was to take.'*

We shall return later to the possibilities and consequences of an appeal to the Queen. But let us for the moment assume that Sir John's fears on this score were justified and that he acted in an abrupt and arbitrary manner because he felt it necessary to do so if he was to prevent the crisis from spiralling out of control with the possibility of a December election being pre-empted by the delays of exchanges between London and Canberra. Had he no further options? Once he had given Mr Whitlam the letter of dismissal (thus precluding his own firing) could he not then have offered him the choice either of being recommissioned — with the promise that he would call an election and that he would not interfere with the position of the Governor-General — or of letting Mr Fraser take office and give the advice for a dissolution? It might even have been possible to arrange things so that Mr Whitlam could have taken up Mr Fraser's offer of supply in exchange for a May election.

The Governor-General was dealing with a tough Prime Minister and he may have felt that an equal firmness was necessary. But it is not clear that Sir John Kerr had to force on Mr Whitlam both an unwanted general election and the loss of office. Just as Sir John made Mr Fraser's acceptance of office conditional so also he could have made Mr Whitlam's continuance in office conditional.

#### 6. DID THE GOVERNOR-GENERAL DEAL PROPERLY WITH MR FRASER?

In the heated days after November 11 there were accusations of collusion between Government House and the Opposition. But no solid evidence was produced. Obviously there may have been inadvertent or even deliberate leaks from one or other of the very few people who could have caught some inkling of how Sir

5. There were well-publicised stories of his speaking jokingly to visitors about how in a crunch it would be a race to the telephone between the Governor-General and himself to see which could dismiss the other first.

6. A special aspect of all three assertions of power by an Australian Prime Minister is that they were seen by state premiers and many others far from Canberra as a threat to established State Rights.

John Kerr's mind was moving. Mr Fraser may have made his own deductions from his official conversations with Sir John. But, until evidence to the contrary is produced, my inclination is to disbelieve conspiracy stories and to accept the word of those who swear that on the morning of November 11 Mr Fraser did not know what was going to happen.

But behind this question a larger one is implied. Was there a coup? In the high-pitched period after November 11, people likened the situation to the Greek Colonels' revolution, or the putsch in Chile and there were shrill suggestions of the possibility of some sort of military takeover.<sup>7</sup> But even on the worst construction of events, the insistence that the public should vote on who should govern Australia could hardly be called undemocratic. In fact, although it is impossible to show that there was no connivance or impropriety, it is perhaps more reasonable to take events at face value. The Governor-General, deciding that it was necessary to secure legally authorised supply for the continuance of orderly government in Australia, followed what he saw as the only proper route to achieve it. One can

7. Wild talk was not confined to one side. I heard a Minister in the NSW government solemnly telling a campaign rally that if Gough Whitlam won there would 'never be another free election in Australia'.

fault his judgment, one can even suspect some of his inner motives, but before going further one should invoke William of Occam's razor: as that 13th century sage laid down, 'Reasons should not be multiplied beyond necessity.' If it is easy to see why a reasonable, conscientious man in the Governor-General's position might (even though misguidedly) have acted as he did, why introduce further explanations?

#### 7. WHO WAS THE GOVERNOR-GENERAL ENTITLED TO CONSULT?

For his official actions the Governor-General has normally, like the Queen, to act solely on the advice of his ministers. Section 63 reads:

*'The provisions of this Constitution referring to the Governor-General in Council shall be construed as referring to the Governor-General acting with the advice of the Federal Executive Council.'*

Most of the substantive provisions about the Executive Government refer to the Governor-General in Council. But there are powers reserved to the Governor-General in his own person and on the exercise of these he plainly has the right to go beyond his ministers for counsel. Unfortunately he is in a very isolated position; he can read the newspapers and receive unsolicited letters from all sorts of



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people but he cannot easily argue out a hypothetical case in circumstances of total discretion. And he lacks a personal staff of the weight or seniority available to the Queen (his admirable Official Secretary, David Smith, was a Second Division, only level 1, public servant of 42, and he had been three years in the job). It was difficult for the positive collection of opinions and the assessment of options and personalities to be conducted authoritatively on the Governor-General's behalf. But of course Sir John Kerr was not without guidance. He said in his explanatory statement of November 11:

*'I had the benefit of discussions with the Prime Minister and, with his approval, with the Leader of the Opposition, and with the Treasurer and the Attorney-General.'*

He also said:

*'Once I had made up my mind, for my part, what I must do if Mr Whitlam persisted in his stated intentions, I consulted the Chief Justice of Australia, Sir Garfield Barwick. I have his permission to say that I consulted him in this way.'*

But he was probably ill-advised to turn for support to the Chief Justice. The Advisory Opinions decision of 1921 bars the High Court from ruling on hypothetical questions and the Chief Justice, who might have to preside over litigation arising from a constitutional dispute, should be chary of any personal involvement. Sir Garfield Barwick, moreover, was a former Liberal Cabinet Minister, as suspicious Labor critics were quick to point out. If Sir John Kerr was intent on avoiding any imputation of partiality, he was surely imprudent to seek guidance in that direction.

#### 8. COULD MR WHITLAM HAVE CALLED A HALF-SENATE ELECTION EARLIER?

On October 9 the High Court, by a vote of 4 to 3<sup>8</sup>, authorised the Federal Government to go ahead with elections for the newly created Senate seats in the ACT and Northern Territory. If Mr. Whitlam had gone at once to the Governor-General to ask for a half-Senate election he could hardly have been refused. The same would have been true even if the request had been made a week or 10 days later, after the dismissal of Mr. Connor on October 14 or the refusal to consider supply on October 16. If a half-Senate election had been in

progress, the story must have run very differently. Technically it would have been possible for it to be overtaken and cancelled by a double dissolution. It might also have been rendered ineffective by the governors of the non-Labor states refusing to issue writs for Senate contests. But if an election was under way it would have been seen as to some extent a referendum on the issue of whether supply should be passed and it would probably have pre-empted other action.

#### 9. WHAT WOULD A HALF-SENATE ELECTION HAVE DECIDED?

If Sir John Kerr had acceded to Mr. Whitlam's request on November 11, the half-Senate election had only a limited chance of solving the crisis. Thirty of the 36 Senators chosen would not have taken their seats until 1 July 1976 and the supply crisis had to be settled long before that. The Northern Territory would have returned one Labor Senator and one Independent sympathetic to Labor, although doubt must be cast on that by the performance of Mr. Gorton in the actual contest of December 13 (admittedly in very different circumstances). In both Queensland and New South Wales casual vacancies meant that six seats were at stake and that the candidate who came in sixth would serve the short term till July 1. In normal circumstances it is, paradoxically, the weaker party that gets the sixth seat. Perhaps Labor was most likely to get the sixth seat in Queensland and the Liberals in New South Wales. But it would be conceivable for either side by clever (though potentially double-edged) variation of preferences in different areas to arrange that, although stronger in votes, the sixth seat fell to them.

It is arguable that if the supply crisis had run on, the anti-Liberal trend shown by the polls<sup>9</sup> would have produced a Senate landslide to Labor. But except in the ACT that would

8. The casting vote came from Justice Murphy, who, as Attorney-General, had helped to prepare the disputed legislation. There are precedents for newly appointed Judges taking part in cases where they have had some prior involvement, though this was a fairly extreme example. However, none of the State Attorneys-General who were contesting the case objected to Justice Murphy's presence on the Bench. If he had disqualified himself, a 3-3 vote would apparently have made it impossible to hold the elections for ACT and NT Senators and the politics of the next month would have run differently.

presumably have returned one Country Party and one Labor Senator. The ACT might

probably not have helped them at all in the short term. On November 11 the Senate contained 30 Coalition Members, 27 Labor Members and three Independents, (two, Steele Hall of SA and Bunton of NSW voted with Labor on supply and one, Field of Queensland, was absent, *sub judice*). On the most optimistic of Labor assumptions the Senate that would have existed from the declaration of the results (which would not be till late January) until June 30 would not have been better than 31 Labor, 31 Coalition and two Independent (Gorton and Steele Hall). But since Labor would be unlikely to win the sixth seat in both Queensland and NSW, a more probable outcome would be 32 Coalition, 30 Labor and two Independent. And if Mr. Gorton failed it would be 33 Coalition, 30 Labor and one Independent. The half-Senate election was not very likely to give Labor a complaisant Senate.

But of course the half-Senate election would have served as a plebiscite. If the votes on December 13 had gone decisively Labor's way, it is overwhelmingly probable that the continuing Senate would not have kept its stomach for the fight.

#### 10. WHAT WERE THE ELECTORAL DEADLINES?

Sir John Kerr, Mr. Whitlam and Mr. Fraser had been made aware by the Electoral Office of the legal and technical constraints that would limit the calling of an election. It seems to have been universally accepted that the Australian Christmas set a deadline. If there were not an election before then there could hardly be one before well into February (July and August in Britain are just as barren electorally). The election had to be on a Saturday. December 20 was almost impossible — it was too near Christmas and it would be hard to muster the school teachers who normally man the booths. December 13 seemed the natural terminus.

In theory with House elections only seven days have to elapse between the issue of writs and the close of nominations and only seven days between nominations and polling day. But the need to wait till nominations close to print ballot papers and to circulate them to absent

9. An Age poll showed that 70 per cent of voters disapproved of the Senate's action and the Morgan Gallup poll recorded a 5½ per cent swing to Labor between October 18 and November 8.

voters makes the Electoral Office demand more time. The 22 days of 1931 and the 25 days of 1940 are the shortest gaps yet between dissolution and polling day.<sup>10</sup>

In crisis that period could surely have been abbreviated by a day or two. For a House of Representatives election on December 13 (and in a real crisis December 20 would not have been impossible) a dissolution could presumably have waited till, say, November 20, even if the rush led to one or two administrative slip-ups on polling day. But it was the Senate that complicated the issue. It is up to State Governors to issue writs and, by Section 9 of the Constitution, states are allowed, subject to Federal Law, to make laws prescribing the method of choosing Senators. It seems that the timetable under the South Australian *Election of Senators Act, 1903* require nine days to elapse between the dissolution and the issue of writs; effectively that was considered to mean that not less than 29 days would have to elapse between dissolution and a poll for the Senate in South Australia.<sup>11</sup> It would not of course be necessary for all Senate elections to take place simultaneously but the force of custom and convenience is very strong. If therefore there was to be either a half-Senate election or a full Senate election (following a Double Dissolution) on December 13, the choice had to be made by November 13 or 14 at the latest. All concerned knew that the week was critical. If the supply issue was to be settled by an election in 1975, the decision could not be delayed.

#### 11. WAS MR WHITLAM'S DECISION TO CALL A HALF-SENATE ELECTION CRUCIAL?

It seems plain that Sir John Kerr had decided to intervene, irrespective of whether Mr. Whitlam chose to advise a half-Senate election or not. He had consulted Sir Garfield Barwick and prepared his explanatory statement before Mr. Whitlam phoned at 10

10. See 'The Timing of Australian Elections' in David Butler *The Canberra Model* (Sydney 1973) pp. 99-104.

11. It was considered by the competent authorities that for a Senate election to take place in South Australia on December 13 the South Australian Executive Council had to act before midnight on November 11 and due contacts had been made between Canberra and Adelaide to ensure the necessary arrangements.

a.m. on November 11 to ask for an appointment to recommend a half-Senate election on December 13.

Mr. Whitlam's request was seen as rendering it unavoidable for the Governor-General to make a decision one way or the other; but Sir John showed no wish to avoid it. It is, however, interesting to speculate on whether, had there been no half-Senate request, the Governor-General could have waited till supply was finally exhausted at the end of the month. It is true that by then it would have been too late for an election to be held until well into the New Year. But the Senate's nerve might have cracked in the course of November or Mr. Whitlam might have been persuaded that he had to consent to an election. And if neither of those eventualities occurred, it would still be possible to call on Mr. Fraser who had committed himself to ensuring supply as soon as an election was announced. If the choice that was put to him on November 11 had been put to him at the end of November, he would undoubtedly have consented and got the Senate to put an immediate end to the supply crisis while waiting for a February election.

From Sir John Kerr's point of view, presumably, the objections to such a pause would have been, first, the inconveniences that were already occurring through the running down of supply; second, the damage to Australia's prosperity and reputation that was being inflicted by the continuing crisis; third, the fact that a final resolution might be delayed from December until February; and fourth, the fear that the ingenious Mr. Whitlam might find some new way to complicate or extend the constitutional crisis. One cannot presume to judge which factors were uppermost in Sir John Kerr's mind. But he seems to have made it up.

For, in theory at least, he could have granted the half-Senate election on November 11 and still have been free to impose a double dissolution later in the month.<sup>12</sup> Some cost and inconvenience would have been incurred by the half-Senate candidates already launched on their campaigns. But that would have mattered little if it had produced a more patently just outcome to the crisis. There would have been a chance that the issue would have settled itself by then; if not, it would have been apparent that the Governor-General had waited to intervene till almost every expedient had been exhausted.

#### 12. CAN A PRIME MINISTER SECURE THE DISMISSAL OF A GOVERNOR-GENERAL?

There has been only one recorded instance of this happening: in 1932 Eamon de Valera, the newly elected Prime Minister of Ireland, asked the Crown to change the Governor-General of Ireland who had been appointed on the advice of the previous government and who had protested publicly about being treated with discourtesy. But the opinion is strongly held that the Queen ought to accede promptly to almost any request from a Commonwealth Prime Minister for the dismissal of a Governor-General. It is open to question whether 'promptly' means that if Mr. Whitlam had been able to get to the phone at 1 p.m. on November 11, he could have insisted that the Queen (at 2 a.m. English time) should have agreed on the spot to his request and taken immediate action. If she had asked for time, the Governor-General could of course have dismissed Mr. Whitlam in the interim (though she might have asked for a truce while she considered the matter).

She would have been in a great difficulty in seeking advice. Her British Ministers and the British High Commissioner in Canberra would be scrupulously anxious to keep out of an Australian domestic concern. The Australian

12. It is ironic that the Governor-General was in fact able to call a double dissolution. Of course a House election, with or without a half-Senate election, would not have offered a solution since only six of the new Senators would have taken office before July 1 and, whichever side won the house, the chances of a continued conflict with the Senate would have been considerable. However, double dissolutions were devised to enable governments to appeal to the people against the obstruction of the Senate. It was odd for a double dissolution to be invoked by those who were doing the obstructing. Moreover the issue at stake, the refusal of supply, had not taken place in a way that justified a double dissolution. (Section 57 provides that a measure has to be rejected twice with a three months interval before a double dissolution can be called). In November 1975 it was only because 21 Labor bills (which Mr. Fraser had no intention of passing) had satisfied the necessary conditions that Mr. Fraser would recommend a double dissolution. The scenario in November 1975 would have been very different if, almost coincidentally, the possibility of a double dissolution had not been lying around. Yet it could be argued that the Governor-General was acting in favour of Labor by insisting that the 21 Labor Bills rejected by the Senate should be mentioned explicitly in the proclamation of a double dissolution. If Labor had won the House but lost the Senate it could then instantly have enacted these 21 measures in a joint sitting.

High Commissioner in London could only speak as the mouthpiece of the Canberra government. Her own Palace advisers, skilled though they may be about British politics, would hardly be able to help on the Australian scene. The natural contact, the Governor-General, though he might have a right to give his side of the story, could hardly guide her on the proper action. She would be under great pressure to give a speedy answer — and it is hard to see how she could prudently refuse such a request.

But if that is so, it raises a spectre to hover over any future Australian crisis. Will every Governor-General carry a letter of dismissal in his hand when he confronts a Prime Minister? Will every Prime Minister carry a radio telephone with an open line to Buckingham Palace?

It makes nonsense of any picture of the Governor-General as an umpire, if he can be first dismissed by any batsman whom he thinks of declaring out. But there is, of course, a qualification to this picture. Even if the Prime Minister technically has the power to get rid of an unco-operative Governor-General, from a political point of view it would usually be very rash to invoke such a power. Certainly if Mr. Whitlam, after dismissing Dr. Cairns and Mr. Connor, were to have dismissed the Governor-General, his own appointee, the howls of indignation, the innuendos of dictatorship, would have been overwhelming. Despite his remarks on November 11 about contacting the Queen (quoted on page 9) Mr. Whitlam himself later indicated that in the last resort he would have chosen an election.

But it is worth pursuing the question of what might have followed if Mr. Whitlam had secured the dismissal of Sir John Kerr. To provide for the absence of a Governor-General, it has been customary for some of the state governors to be entrusted with a dormant commission to act as Governor-General. Until 10 years ago the task seems always to have been allotted to the senior of the governors of NSW and Victoria largely because of geographical convenience and only these two governors held a dormant commission. Although practice has changed somewhat it seems that in 1975 the task would naturally have fallen to Sir Roden Cutler, Governor of New South Wales since 1966. But it could have been transferred to, say, Sir Mark Oliphant of South Australia, a Labor-appointed Governor.<sup>13</sup> Yet there can be

no certainty that he or any other governor would have proved more co-operative with Mr. Whitlam than Sir John Kerr — if each in turn was obdurate, are we to envisage the successive dismissal of one acting Head of State after another? Even to outline this fantasy underlines the hazardousness, perhaps even the unlikelihood, of an actual dismissal of the Governor-General.

### 13. WAS THERE ANYTHING LABOR COULD HAVE DONE AFTER MR WHITLAM'S DISMISSAL?

It seems that at 1.30 p.m. on November 11 Mr. Whitlam drove from Government House to the Prime Minister's Lodge where he discussed the situation with a few colleagues. He did not get in touch with members of his party in Parliament House, who were having their lunchtime recess.

Consequently when the Senate reassembled at 2 p.m. most Senators, including the Labor leaders, Senator Wriedt and Senator Doug McClelland, were unaware of what had happened. After 10 minutes or so of routine business, the supply measures came up for discussion. To the general surprise Senator Withers, the Liberal leader, made no objection to their passage and within minutes they were enacted. Some Labor Senators thought they had actually won but almost immediately news of Mr. Whitlam's dismissal spread through the Chamber.

If the Labor Senators had realised what was up, they could easily have delayed the passage of supply for hours — or perhaps days. The procedural facilities for filibustering are very considerable. The questions without notice which were still under way at 2 p.m. could have been continued for a long time. The formal motions which followed could have been made subject for debate. Unless closure is moved Senators can speak for an hour. The Liberal/Country Party Senators did not command the absolute majority — 31 — needed to enforce closure and it is unlikely in the circumstances of the day that the

13. It can readily be argued that the process of appointing a new Governor-General would involve no more delay than the routines of swearing in an acting Governor-General and that Mr. Whitlam could in a matter of hours have got into office some immediately available outsider. But that is by no means certain.

Independents, Steele Hall and Bunton, would have given them the necessary majority. Parliament could not be dissolved until supply was voted. And much could have happened while Parliament still sat. There were indeed public servants who genuinely feared violence — even the sacking (in the mediaeval sense) of Government House.

Equally the Labor members of the lower house may have missed a propaganda opportunity by adjourning at 3.15 p.m. If they had continued in session, passing declaratory motions, the affront of the dissolution at 4.45 would have been much greater. Not since Cromwell in 1655 has a British or Australian parliamentary session been forcibly ended by intrusion from the Head of State.

Probably nothing that might have been done in either Chamber on the afternoon of November 11 would in fact have altered the final outcome. It is likely that the eventualities discussed here would only have heightened the drama of a wildly overdramatic day. But it is possible, if the drama had been thus extended, people would have said and done things which would have changed the way in which the whole situation came to be regarded.

### 14. SHOULD THE GOVERNOR-GENERAL HAVE LISTENED TO THE SPEAKER?

At 3.15 p.m. on November 11 the House of Representatives by 64 to 54 passed a vote of no confidence in Mr. Fraser as Prime Minister. The Speaker sought an interview with the Governor-General to convey this information. He was told that the Governor-General was busy and was unable to see him before 4.45 — by which time the House had been dissolved. In the Labor indictments of Sir John Kerr, his refusal to see Mr. Scholes, or to take cognisance of the fact that Mr. Fraser lacked the confidence of the House, loomed large.

In the Westminster tradition the Speaker is a key figure of high precedence. He speaks to the Crown on behalf of the Lower House and he has the highest claim on the attention of the Head of State. The Australian Speaker is a more partisan figure but it was still a needless discourtesy for the Governor-General to keep him waiting for an hour and a half. But that is not to say that he should have acted on the Speaker's demand for the reinstatement of Mr. Whitlam.

### 15. SHOULD THE HOUSE VOTE OF NO CONFIDENCE IN MR FRASER HAVE MADE A DIFFERENCE?

If the Governor-General had changed course because of the House vote at 3.15 (on the ground that the supply problem had been solved by the Senate vote at 2.15 and that there was evidence that Mr. Whitlam still could call on a working majority in the lower house), he would surely have brought down even more obloquy on his head than he actually received — though from the other side. To ask Mr. Fraser to get supply in exchange for a dissolution and then to double cross Mr. Fraser as soon as he had carried out his part of the bargain would have appeared as an utterly devious intervention on behalf of the Labor party.

It can be argued that Mr. Fraser was only carrying out the established constitutional principle — a prime minister defeated in the lower house must resign or seek a dissolution and he was seeking a dissolution.<sup>14</sup> But that is not an altogether satisfactory argument. Mr. Fraser, after all, had never had the confidence of the lower house. The Westminster system certainly does not enshrine the view that any minority leader who is asked to try to form a government that can command a majority, and who fails when it comes to a vote, can then ask for and expect a dissolution. Acceptance of that principle would greatly add to the difficulties of forming a government in any multi-party situation.

Despite that reservation, in the circumstances that he had got himself into by mid-afternoon of November 11, it is hard to see that the Governor-General could have abandoned the dissolution because of any vote in the House of Representatives.

### 16. COULD THERE HAVE BEEN A REFERENDUM TO SETTLE THE SUPPLY ISSUE?

A proposal for a referendum, if approved by only one House, cannot be put to the people until it has been approved again three months later (Section 128). Therefore this conflict

14. In fact Mr. Fraser had advised a double dissolution and announced the fact to the House an hour before the vote of no confidence.

between Senate and House could only have been settled by referendum, either by mutual consent, or if the House had had the forethought to pass a referendum proposal back in August (when the refusal of supply was not a live issue). And the referendum would have had to be on a formal proposal to change the Constitution.

#### 17. COULD THE GOVERNOR-GENERAL HAVE ASKED FOR THE ISSUE TO BE BROUGHT TO A VOTE IN THE SENATE?

It was crucial to the whole situation that the Senate never voted to refuse supply but only to defer consideration of the matter. If the Senate had once voted down the supply measures, the initiative would have passed back to the lower house for the Senate could no longer have cleared the way for an election by ending the supply crisis on its own. It was also much easier in party terms to vote for deferral. Several Liberal Senators had expressed unhappiness about voting against supply and had publicly or privately implied that in the last resort they would not do so, although they were quite willing to go along with their party on procedural matters, like deferral.

After seeing the Governor-General on October 21, Mr. Fraser said:

*'If he gives a decision we would respect and accept it absolutely. If he gives advice we would give the greatest possible weight to it because of the respect we have for the office and the man.'*

It was widely suggested that the Governor-General should have asked Mr. Fraser or Senator Withers to let the substantive issue come to a vote. But on October 23 Mr. Fraser said explicitly that he did not think the Governor-General could request the Senate to pass supply: 'that is not part of the Constitutional powers of the Governor-General'.

It is hard to find fault with Mr. Fraser on that proposition. Obviously the Governor-General ought to know what is going on in the parliament but it is doubtful whether he should take public cognisance of parliamentary tactics or procedure to the point of interfering in so specific a matter. He could well be portrayed as intervening directly on behalf of the Labor party. Moreover his intervention might not be effective since he would have no power to force Senators to pay

heed to his suggestion. If he was snubbed he would plainly have diminished the authority of his office.

#### 18. WOULD THE SENATE HAVE GIVEN WAY IF THE GOVERNOR-GENERAL HAD TAKEN NO ACTION ON NOVEMBER 11?

Some commentators stressed the unhappiness of at least four Liberal Senators and suggested that the business interests which had done so much to encourage Mr. Fraser to a show-down were losing their nerve as the opinion polls showed how unpopular the confrontation was proving to be. Others insist that pressures had been brought to bear on the weaker brethren and that the Liberal Senators would have stood firm, despite the heat which would certainly have increased as supply ran out. This hypothetical but vital question will probably remain a riddle for all time. People who were likeliest to know gave categorical but totally contradictory answers to it. It is to be hoped that those concerned have tape-recorded frank accounts of their own attitudes and intentions for the benefit of posterity.

#### 19. COULD A GOVERNOR-GENERAL DISSOLVE PARLIAMENT WITHOUT THE ADVICE OF THE PRIME MINISTER?

Dissolution is the prerogative of the Governor-General (Section 5) but writs for a new election can be issued only by the Governor-General in Council (Section 32). It has been the invariable rule for those summoned to constitute an Executive Council to be current ministers: but that seems to be a matter of custom not law.<sup>15</sup> It would in theory be possible for the Governor-General to seek advice from an Executive Council composed of elder statesmen, retired ministers or Governors-General and to put an election irrevocably in motion. Such action might set awkward precedents but it might also enable a

15. Quick and Garran in their *Annotated Commentary on the Australian Constitution* take it for granted (p.707) that Sections 61-63 are designed to establish Cabinet Government and that the members of the Executive Council shall be ministers, but the point is nowhere specified, except perhaps in the official Australian Order of political precedence, which puts "Executive Councillors under Summons" well ahead of "Executive Councillors not under Summons".

Prime Minister who had injudiciously said 'Never to climb down gracefully.'

#### 20. WHAT GENERAL LESSONS CAN BE DRAWN?

'Happy the country that has no politics'. Today such a sentiment is 18th century dreaming. Yet none can deny that Australia suffered a surfeit of politics in 1975. Issues of constitutionality that bore only incidentally on the November crisis had stolen headlines all the year. The right to issue writs for the new Senate seats, the right to depart from tradition in the nomination of Senators, the legality of the Electoral Act — all these and other issues had been debated at length; for example, the loans affair turned in part on the interpretation which the Governor-General in Council had put on the phrase 'short-term'. Constitutional wrangling was the order of the day.

But that was only a fragment of the hyperpolitical scene. During 1975 four leading figures had left the Cabinet with more or less *eclat*, while others had been forcibly demoted, all with the traditional background of Labor party infighting, extensively reported in the media. The Liberals also experienced some savagery in the process of acquiring their fourth leader in four years. Meanwhile the country was suffering record inflation and record unemployment and looking vainly to its politicians for a remedy.

Australians, according to surveys, were evenly divided on the rights and wrongs of what Sir John Kerr did on November 11. But few seem to have let the constitutional issue influence their votes on December 13. It has been suggested that one reason why the election produced so big a swing, so decisive a majority, was that Australians wanted to escape from Canberra's freneticisms of 1975 to a quiet life and that a Coalition vote looked the best way to achieve it.

But if the public turned away from the events of November 11, many politicians and political analysts stayed locked up in them, seeking to assess rights and wrongs both in terms of legal proprieties and political tactics. For them Australian politics will never be the same again.

As the election result became inevitable one encountered honest but embittered Labor enthusiasts who saw in the crisis of November

11 proof that the whole system was stacked against them. They had won two elections and each time they had been forced to go to the country before half their term was up. A 19th century elitist constitution had been twisted by the lawyers to do down the people's government. Obsolete monarchical powers had been invoked on behalf of conservatism. The business establishment and the farmers<sup>16</sup> had combined with a totally one-sided press cartel to destroy and discredit the Labor party. There was no justice in the system, no balance by which the same restraints and opportunities were applied to left and right equally. It seemed that a party seeking fundamental social change in a democratic way, abiding by the rules, would inevitably be frustrated by the forces of privilege.

It was hard not to sympathise with elements in this grievance. Some parts of the establishment had played rough and despite the effort of a predominantly Labor sympathising press gallery, the columns of the newspapers were more blatantly partisan than in any recent contest.

Perhaps there never can be balance between governments of right and left. Those who seek change inevitably make more obvious mistakes than those who preserve the status quo — and governments are judged by their mistakes. The Labor government, totally lacking in ministerial experience, came to power at a time of world slump and world inflation, whose unpleasant consequences no government could have neutralised. At the same time it intervened vigorously in a large number of social fields, often where intervention was long overdue and its activities, sometimes its bungles, worried a lot of ordinary people almost as much as the 'big interests' that were so patently threatened.

16. The Country Party at no point secured the limelight. Yet it was at the centre of the affair. Country people felt peculiarly alienated and threatened by the trendy and urban-dominated Labor government. Country Party members had little to fear from an election (for they mostly held safe seats) but much to fear from the absence of an election or from a half-Senate contest that gave Labor a temporary majority in the Upper House. The electoral and redistribution bills which the Senate was holding up threatened to cut Country Party representation by a third. Mr. Anthony and his colleagues were among those pressing hardest for a confrontation over supply. It was a nice irony that they were in the end all too successful. The Coalition won a majority so large that in the House the Liberals had a majority on their own, denying the Country Party the leverage which they had traditionally used to extract attention to their special interests from Liberal Prime Ministers.

Labor's loss of support was not surprising — and to some extent it was self-invited: it was not a capitalist conspiracy that made people aware of and dismayed by the conduct of Dr. Cairns or Mr. Connor. Even a good socialist could be disturbed by some of the stances taken up by Mr. Whitlam.

Yet, given another 18 months, the economy might have turned around, the Hayden budget might have worked, the fresh and more acceptable team at the top of the cabinet might have earned new respect, and public opinion polls might have shown a swing back. Labor was denied those 18 months because of the acceptance by the Governor-General (and others) of the Senate's right to force an election by refusing supply, by an assertion (never before acted upon) that Australia has a system of bi-cameral responsibility. Anyone who had been caught up in the hopes of 1972 could not escape the feeling that Labor had been cheated of its just chance to prove itself.

The Australian Constitution showed its limitations — or did it? A Liberal could say that its provisions were properly invoked; the Senate enabled the voters to pass judgment on a government that, as it proved, had lost public confidence. But even those who sided with Sir John Kerr could not deny the constitutional ambiguities which the debates over the events of October and November had highlighted: the precedents of 1975 may prove to be dragon's teeth that will rise and slay future governments of any complexion.

Certainly the controversy highlighted the basic dilemmas of a constitution that depends half on law and half on custom. The lawyers who prefer to rely on the text as laid down in

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1901 prevailed over those who argued that conventions had changed and that even the drafters of the constitution would not have expected the Head of State to take advantage of their attempt to set down the unrepealed powers still left to a 19th century sovereign. An unwritten constitution or even a semi-written constitution can work well only if those who operate it show great self-restraint and respect for convention.

The affair specifically highlighted the issue of the Governor-General's reserve powers and the tradition that the Head of State should, if possible, avoid intervention in politics that could be seen as partisan. But intervention of a significant sort is almost necessarily partisan; it can hardly avoid helping one side more than the other. The Head of State can try to be an honest broker (and in the early stages Sir John Kerr made some attempt at this). But when he takes action that is not strictly along conventional lines he inevitably becomes the subject of controversy.

But the moral of the affair is political as much as constitutional. It highlighted the importance of good intelligence in political strategy-making. Throughout the early stages Mr. Fraser seemed substantially to have miscalculated public opinion. At the end Mr. Whitlam seemed absolutely to have misjudged Sir John Kerr's likely course of action.

It also highlighted the danger of over-playing politics. It would seem that all the parties to the dispute operated a bit more toughly than the Westminster system allows. Ultimately parliamentary government demands a degree of mutual forbearance and respect between the contending parties, a willingness to compromise. On this occasion forbearance and compromise were lacking. Entrenched behind their dead-end positions of 'no supply' and 'no election', Mr. Fraser and Mr. Whitlam each strained the established conventions of Australian government.

In the outcome Mr. Fraser came out resoundingly on top but it was a near-run thing. Politics is the art of the possible and Mr. Whitlam must deeply regret that, going for total victory, he did not take advantage of Mr. Fraser's November 3 offer of supply in exchange for an election by June 1976. Using that as a basis for negotiation he might have got some of the 21 bills that the Liberal Senators were blocking — as well as six more months in office and an election in what might have proved more favourable circumstances.

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## The Governor-General of the Commonwealth of Australia by Geoffrey Sawer

When Sir John Kerr, the Governor-General of the Commonwealth, withdrew the commission as Prime Minister of Mr Whitlam on 11 November 1975, appointed Mr Fraser in his stead and dissolved parliament, he brought his office into the arena of political dispute to a greater extent than has ever previously happened since the office and the Commonwealth were proclaimed on 1 January 1901. Sir John's action was bound to cause

political excitement, controversy and learned discussion whatever course he had taken. Never in previous Australian Commonwealth history, and seldom in the history of any Australian state or other British-derived system of responsible parliamentary government, had a Chief Minister and his Cabinet attempted to carry on government in circumstances where they had been refused normal authority to spend public money — "supply" — in this case by periodical Appropriation Act.

# Kerr - Whitlam - Fraser

1 MARCH 1976

This article is not concerned with the deferral of supply by the Senate until the Whitlam government should resign, which was the cause of the crisis. However, it is relevant to mention that disputes between upper and lower houses of parliament had been the main cause of failure to obtain supply in Westminster-style systems in a number of earlier cases, and that in three of them, all in Victoria (1865-66, 1867-68 and 1877-78), the government of the day "toughed it out", with support from the Governor, for periods of many months, during which legal devices were successfully used to pay some debts, and many civil servants, including some County Court judges, were retrenched to save money. In each case the result was a compromise settlement.

The peculiarity of the Kerr-Whitlam case was that it was the first in any Westminster-style system in which a Chief Minister with a clear majority in the "popular" house had been dismissed from office, solely on account of his failure to obtain supply in the upper house, with no suggestion that he had acted or intended to act or authorise action in breach of the law, and against the wish of that minister.

In all the other cases having some similarity to this one, any election which has occurred in the course of inter-house disputes has been held on the advice of the Chief Minister with a lower house majority; sometimes he has won the election in question, and the result has often been some diminution in the legal powers of the upper house; sometimes he has lost and forthwith resigned.

In other, less similar, cases an unstable party situation has led to inability of a Chief Minister to obtain supply in the upper house (and sometimes also, or alternatively, in the lower house), and he has tried to *obtain* a dissolution and been *refused* it by a Governor on the ground that an alternative leader in the existing lower house might have better luck, but in none of those cases has the Governor tried to *enforce* a dissolution; indeed, in all such cases, if the alternative leader has in turn failed to get supply, he has advised a dissolution, and the only problem remaining was whether the Governor should not first replace him by his precursor and grant the dissolution to the latter. There is ground for thinking that the Governor ought to follow the last-mentioned course.

Putting it another way, there is a reasonably well-established doctrine that a



The author of this article, Geoffrey Sawer, is Emeritus Professor and a Visiting Fellow in the Faculty of Law, School of General Studies, at the Australian National University. He is an eminent academic lawyer who has specialised in constitutional questions.

Governor-General or State Governor is entitled to *compel* a dissolution of parliament and general election — if necessary dismissing a Chief Minister who refuses so to advise and replacing him by the leader of the Opposition solely in order to carry through such an election — provided he has substantial grounds for thinking that the Chief Minister or his Cabinet have been guilty of, and are intending to persist in, an illegal course of conduct directly or through their public service. Difficulties however arise as to the nature of illegality required and how the Governor-General satisfies himself of its existence. But in no case has it been suggested that the Governor-General, or a Governor, must or may *compel* the holding of a general election solely because of inability of a Chief Minister with a lower house majority to obtain supply from an upper house.

Now that the general election has been duly held and resulted in a decisive defeat of the Whitlam (ALP) government in both houses, it must be accepted that the Governor-General's action has been in a sense, or to a certain degree, ratified by the people. Dr H.V. Evatt<sup>1</sup> and others have objected to the theory that electoral approval should be treated in this way, but Evatt wrote as a partisan concerned to rebut the suggestion that an electoral result like that against Lang in 1932 should be used to justify a Governor Game. In the recent case, it may well have been true that the electors paid little attention to the rights and wrongs of the Governor-General's action, and were more concerned with judging the performance of the

Whitlam government and the promises of Mr Fraser. However, it is certain that Sir John's action will in future be treated as a precedent, ratified by the electoral result, and placing the Governor-General in a more active and responsible position in relation to the functioning of the commonwealth parliament than has in recent decades been thought possible.

### Origins

It fell within the Royal Prerogative to provide for the government of British colonies "beyond the seas", and from early times this was exercised so as to vest very wide (though not unlimited) powers in an officer called a Governor — powers intended to be exercised and in fact exercised on his own initiative. The governor represented the Crown, but not in the sense of being a "Viceroy"; the only Viceroy in this story was the Viceroy of India, a statutory creation designed to provide not only a representative of the Crown but a substantial reproduction of it. Governors, and Governors-General, have by contrast limited powers and are personally answerable, legally and politically, for their acts. Governors have been successfully sued for exceeding their powers, and have been removed by the Crown for political errors.<sup>2</sup>

Governors were usually also appointed to the active command of military forces in their colony. However, the suffix "General" which began to appear in the 18th century was not related to military matters. It was an indication that the governor had some supervisory powers over subordinate governors (often called "Lieutenant-Governors") in adjoining regions. Thus two of the early governors of New South Wales were called "Governors-General" because they supervised Lieutenant-Governors in Hobart and Melbourne; this was done by the prerogative instruments appointing them. In 1867, the British North America Act, the first British-designed instrument of federal government, picked up the usage from previous Canadian example when creating a Dominion "Governor-General", and justifiably so since he was given extensive authority in relation to the provinces and their "Lieutenant-Governors".

When the Australian Founders and the UK parliament used the title "Governor-General" for the Australian Commonwealth case in

1891-1900, they likewise contemplated some hierarchical power-relation between the state governors, and in 1901 the Chamberlain government at Westminster attempted by executive act to give the first Governor-General, Lord Hopetoun, such a supervisory role. The attempt had no basis in the Constitution as enacted in 1900 and was vigorously and successfully resisted by the states in a dispute which continued on various issues for six years<sup>3</sup>. The outcome was to establish that there is no such hierarchical power relation. The state governors answer to the Crown and to the state governments, not at all to the Commonwealth or its G.G., and the title "Governor-General" matters only for purposes of ceremonial and social precedence on the rare occasions when Governor-General and Governor are jointly present.

In the course of time, governors in their colonial sphere tended to decline from virtual dictators into "constitutional monarchs" by a process in many respects duplicating what happened to the monarchy in the United Kingdom. At common law, the creation by prerogative act of representative institutions in a colony could not be retracted, and increasingly the parliament at Westminster regulated colonial government by statutes which overrode prerogative powers.

Both processes had gone far in Australia in 1900, and the statesmen who negotiated the federal compact in 1891-1899 were fully cognisant of the disputes about the boundaries of gubernatorial power which had occurred in all the federating colonies, and might have been expected to deal with the position of the Governor-General more clearly and positively than in fact happened. However, in their defence it can be said that neither the position of the Queen in the UK nor that of the Australian colonial governors was in all respects clear. Remnants of old prerogatives might unexpectedly become important. Further, it could not then be assumed that a colonial or (in the then new expression) Dominion Governor would necessarily occupy in all respects the same position as that of the monarch.

First and foremost, such governors were still in a material and important sense the agents of the UK government, exercising with caution and decreasing frequency but still exercising the role of advisers to Whitehall on local affairs and endeavouring to influence local political action when too grossly at variance with Whitehall

views on empire policy. Second, the political traditions and manners of the colonies were different from, and in many respects more turbulent and ill-mannered than, those of Westminster, and consequently there was both a need and a local demand for some moderating or even arbitrating influence, which in the UK by 1900 was no longer regarded as appropriate for the Queen. Third, to the extent that the colonial and dominion situation was governed by statutory constitutions, the governor's position could be argued by reference to his baldly stated and on their face extensive statutory powers.

### Legal Powers

It is commonly written that the Governor-General derives his powers from two sources: first, the royal documents (Letters Patent, Instructions under the Royal Sign Manual, Assignments of Power, and Commissions)<sup>4</sup> by which the office is created, some of the powers of the holder set out, instructions concerning the exercise of powers given, and particular Governors-General appointed, and secondly the Constitution<sup>5</sup>. It is more consonant with the present status of Australia to treat the Constitution as the sole source of power, and the position of the monarch as derived from its provisions — not even partly from the prerogative — and the Constitution can be so read. It is certain that in so far as the royal documents mentioned conflict with provisions of the Constitution, they are invalid. In practice the question whether any residual prerogative remains is likely to be unimportant, since it is so unlikely that the monarch would attempt to exercise it save as advised by Australian ministers.

However, the question could retain some importance if it was desired to repeal, by amendment of the Constitution under s.128, the provision in s.2 of the Constitution that the Governor-General is appointed by the Queen and has such "powers and functions" as the Queen assigns to him; if this merely recognises a prerogative power to appoint and instruct rather than creating a statutory power, then the amendment power in s.128 may not extend to it.

The *Letters Patent* of 1900 creating the office assume that the powers assigned by them and other royal documents are additional to

those directly conferred by the Constitution, and they purport to confer powers in a manner certainly in breach of the Constitution. Clause 111 authorises the appointment of judges, ministers and other officials, but by ss.72 and 64 of the Constitution such appointments are to be made by the Governor-General, not the Queen; in the case of judges, the Governor-General is required by the Constitution, but not the Letters Patent, to obtain the advice of the Federal Executive Council. Any attempt of the monarch to give powers or instructions on those matters is therefore inoperative. Clause IV authorises the dismissal of officers, but again as to ministers, the power is directly vested in the Governor-General by s.64 of the Constitution, and by s.72 dismissal of judges requires approval of parliament. Clause V assumes that there is a need to empower the Governor-General to summon, prorogue and dissolve parliament, and that there are powers of doing so outside the Constitution, in both cases wrongly; power to summon and prorogue parliament, and powers as to dissolution which vary with the houses, and as to the Senate are very restricted, are conferred in clear terms by ss.5, 6, 28 and 57 of the Constitution, and they are conferred on the Governor-General, not on the monarch. S.126 of the Constitution is the only section directly and clearly requiring a royal authority to the Governor-General; it deals with the appointment of persons to act as his deputy, and in pursuance of this clause VI of the Letters Patent authorises such appointments. The "Vice-President of the Executive Council", usually regarded as a ministerial appointment, is an appointment under this provision.

The Instructions of 1900 have been amended several times but not significantly for present purposes; they deal mainly with machinery questions, and include a prohibition against a Governor-General leaving the Commonwealth, save to Papua New Guinea, without royal permission. However, clause VIII is more interesting, since it confers on the Governor-General the power to pardon offences and respite punishments, and requires him to obtain ministerial advice (though not necessarily to follow it), and also to take into consideration imperial and foreign interests when doing so, and not to make banishment a condition of pardon "except where the offence has been of a political nature". This is an

example of a provision which might be regarded as depending directly on the prerogative, though it can also be regarded as included in the general grant of executive power in s.61 of the Constitution. Commonwealth laws to a considerable extent supplant clause VIII and could completely replace it. The Commissions contain no relevant provisions.

Turning to the Constitution, it goes further than preceding British statutory constitutions in the direction of exhaustively stating important powers and vesting them in local instrumentalities rather than in the Queen, but does not go the whole distance in this direction. For example, the British North America Act 1867 s.15 vests the command-in-chief of the forces in the Queen, whereas s.68 of the Australian document vests it in "the Governor-General as the Queen's representative". S.38 of the Canadian document empowers the Canadian G.G. to "summon and call together" the House of Commons "in the Queen's name", but makes no provision about prorogation, nor about calling Senate meetings, this being left to implication from the prerogative of the Queen, who is by s.17 part of the Legislature.

The Queen is also by s.1 of the Australian Constitution a member of the federal parliament, but the power to call meetings of both houses, to fix sessional times, prorogue and to dissolve the Representatives at any time within its three-year term and both houses under the deadlock provisions is vested in the Governor-General without any reference to the Queen (ss.5, 28, 57).

The Canadian provisions about executive power are meagre and, like the legal provisions of the UK constitution, give no hint of the existence of "responsible government", nor do they mention Ministers of State. The executive power is vested without qualification in the Queen. The Australian s.61 vests executive power in the Queen and goes on to say that it is "exercisable by the Governor-General as the Queen's representative", but s.64 vests in the Governor-General, without reference to the Queen, the power to appoint and dismiss at pleasure persons as Ministers of State, administering the Departments of State; those persons automatically become members of the Federal Executive Council, and they are required to be or become within three months members of parliament — adumbrating responsible government. The Canadian

document follows UK precedent by formally vesting legislative power in the Queen, with the "advice and consent" of Parliament; Australian s.51 (and other sections) vests it in Parliament. Hence the general Australian pattern is to follow old ways by acknowledging the Queen in general phrases, but to vest more specific powers in the Governor-General without reference to the Queen. The petitions to the Queen asking her to give directions to Sir John Kerr as to his exercise of the power to dismiss ministers on 11 November 1975 were therefore futile as well as demeaning to Australia; on that matter the Queen had no power to give any such directions.

**R**ecapitulating, the Governor-General is given by direct constitutional provision and without reference to any other person or authority the power to summon meetings of the parliament, to prorogue (i.e., end a session of) parliament and summon a further session, to dissolve the House of Representatives, and to dissolve both houses in the circumstances indicated by s.57 and call a joint session under that section. He is also by s.58 specifically given power to refuse assent to proposed legislation or refer it to the Queen, and to recommend amendments to the houses, and s.128 gives him the power, in the event of a dispute between the houses, to submit a constitutional referendum to the electors on the voice of one house only (provided that the proposal has twice been rebuffed by the other house). In relation to executive power he is a general repository of executive authority under s.61 (the power relied on by the Whitlam government when appointing a minister on 14 December 1974 to raise a petro-dollar loan), and in particular he has power to appoint and dismiss at pleasure Ministers of State, who in law derive their importance from administering departments and being members of the Federal Executive Council which *advises* the Governor-General (s.62).

A few of these powers are required to be exercised with the advice of the Executive Council — ss.32 (writs for election of House of Representatives), 64 (establishing departments), 67 (appointment and removal of non-statutory civil servants), 72 (appointment of judges) and 103 (appointments to Interstate Commission).

The Governor-General is given by innumerable Acts of Parliament the power to make or approve regulations, orders and other legal instruments and in these cases too he is required by the *Acts Interpretation Act*<sup>6</sup> to obtain the advice of the Executive Council. But he is not legally obliged to follow the council's advice, and in the case of the more fundamental constitutional powers relating to parliament and ministers, previously mentioned, he is not even obliged to get it.

Of the powers mentioned above, those relating to parliament in ss.5, 28, 57, 58 and 128 cannot be changed save by amendment of the Constitution by referendum under s.128. The general executive power vested in the G.G. by s.61 depends to a large extent on Acts of the Parliament, since these are the "laws of the Commonwealth" to be executed; to a considerable extent it is open to parliament to mould the organisation of executive government and its effective control, partly under s.67 and partly under the "incidental" attachment to its legislative powers in s.51(xxxix). However, the provisions of s.64 as to appointment and dismissal of ministers cannot be changed without amendment of the Constitution under s.128. Neither can the general power to attend to the "maintenance" of the Constitution of the Commonwealth laws under s.61, which can be regarded as empowering the G.G. to take such steps as he thinks are required to prevent breaches either of the Constitution or of the laws as they are at a particular time. Hence it can be said that as to these basic legal powers, the Governor-General is as a matter of law not subject to parliamentary control any more than he is subject to the control of the Queen.

#### *Conventions and practices*

The legal powers of British monarchs are even greater than those of the Governor-General, but a long course of practice, growing into convention, has produced a situation of which Bagehot wrote thus in 1867<sup>7</sup>: "To state the matter shortly, the sovereign has, under a constitutional monarchy such as ours, three rights — the right to be consulted, the right to encourage, the right to warn." He goes on to portray this sovereign as saying to her ministers: "Whatever

you think best must be done. Whatever you think best shall have my full and effectual support".

Writing immediately after the adoption of the Australian Constitution in 1900 and with a full knowledge of the intentions of its Founders, Quick and Garran similarly wrote<sup>8</sup>: "All those powers which involve the performance of executive acts, whether parts of the prerogative or the creatures of statute, will, in accordance with constitutional practice, as developed by the system known as responsible government, be performed by the Governor-General, by and with the advice of the Federal Executive Council". It is clear from the context that when saying this, the authors were dismissing the idea that any importance attached to the circumstance that some of the legal powers of the G.G. are expressed as excisable with Executive Council, i.e., ministerial advice, and some are not; they consider that both classes of powers must constitutionally be exercised in accordance with ministerial advice. Elsewhere<sup>9</sup> they explain "responsible government" as involving the inability of the Queen and of her representatives to accept "responsibility" in a parliamentary sense and hence the necessity for a minister, in practice a Chief Minister, to "take responsibility for", that is to advise or be treated as having advised, *all* the Royal acts related to the functioning of government. They contend that in consequence "the power nominally placed in the hands of the Governor-General is really granted to the people through their representatives in Parliament."<sup>10</sup> It is also clear from the context that in this passage Quick and Garran regarded the House of Representatives, not the Senate, as the appropriate mediator of the popular will.

However, it is possible that Bagehot underestimated the potential power of the British Crown. Berriedale Keith, the chief expositor of the view that there is a marked difference between the constitutional conventions governing the independent powers of the Crown in Britain and of its representatives overseas — the former having in his view less possibility of rejecting advice — concedes that the Crown might have to refuse a dissolution or compel a dissolution in "critical emergencies".<sup>11</sup> British writers tend to dodge the issue by positing a sort of sub-convention that British politicians will not create the circumstances in which the sovereign would

## Politics at State level- Australia

A publication of the Department  
of Adult Education of the University  
of Sydney

Edited by J.D. Rorke

This book of about 100 pages looks in a lively and personal way at the exercise of political power in the Australian states. It does not examine the formal political apparatus, but concentrates on the ways, including the informal ways, in which power is exercised. It looks at the sort of issues which are raised at state level and the different patterns of political and social behaviour which are characteristic of the different states. Each chapter, which deals with one state, concentrates on what is peculiar to that state and special in the exercise of power there. Each deals with what has been significant in recent political history and in the fortunes of the political parties. Electoral maps and distribution of party strengths are given with each chapter and the contributors are Anthony Staley – Victoria; Bob Reid – South Australia; Colin Hughes – Queensland; Peter Boyce – Tasmania; Gordon Reid – Western Australia; and H.B. Turner, M.P. – New South Wales. The book was edited by the late John Rorke, who provides a brief introduction.

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have to imperil her office by resorting to such steps.

In the case of the Australian Governor-General, Quick and Garran do not maintain a consistent view.

First, and as it seems today absurdly, they contend that since the Governor-General represents the Queen in her capacity as a member of the parliament, his power to refuse assent to Bills, or reserve them, or return them to the houses, is a *legislative* power to be exercised on his own discretion. Today these are powers which pre-eminently must be exercised as advised by the Prime Minister. Possibly Quick and Garran were thinking of the then position of the Governor-General as representing the British government and protecting Imperial general policies. If so their view has ceased to be valid. In 1917, an Imperial conference declared the Dominion Governors-General to be no longer in any sense representatives of the British government; in 1926 the "Balfour Memorandum", produced by another Imperial conference, declared that they occupy in relation to their governments the same position "in all essential respects" as the sovereign occupies in relation to the British government; in 1947 a British Commonwealth conference approved changes in the structure of what had been the empire (reflected in UK and Australian legislation on the Royal titles) pursuant to which the Queen herself is now Queen of Australia, acting in relation to Australia solely as advised by her Australian ministers. Sir Paul Hasluck in his Queale lecture,<sup>12</sup> given while he was Governor-General, mentions a state case in which a Governor detected an error in a Bill and had it returned to the legislature for correction, but this was after discussing it with ministers and formally on their advice.

Second, Quick and Garran<sup>13</sup> assert a power in the Governor-General to *reject* advice to dissolve the House of Representatives, and they quote with apparent approval Todd's criteria for exercising this power. In fact, Commonwealth Governors-General rejected advice to dissolve and found alternative prime ministers able to carry on in 1904, 1905 and 1908, and Dr Evatt considered all three cases in accordance with Australian practice, though the third one was doubted by Berriedale Keith.<sup>14</sup>

In 1931, Governor-General Sir Isaac Isaacs, when granting a dissolution to Mr Scullin, suggested that since the 1926 declaration on

the position of a Governor-General, he might no longer have power to refuse a dissolution, having regard to the grant of a dissolution by the King to Ramsay MacDonald in 1924. However, Isaacs also considered the state of the parliament and the time since an election.<sup>15</sup> It is unlikely that today the possibility of an alternative government and the shortness of the time since the previous election would be the main criteria; a contemporary Governor-General would hesitate to form personal opinions on such questions as the importance of the issues to be taken to the people, or the likely outcome of an election (opinion polls and the events of November-December 1975 notwithstanding), which used to be thought relevant for gubernatorial consideration in the 19th century.

**D**ouble dissolutions under s.57 raise special considerations. When advising the Governor-General on the 1914 double dissolution, Chief Justice Sir Samuel Griffith wrote that the Governor-General had to satisfy himself that the conditions of s.57 had been met and that there was substantial political cause for the dissolution.<sup>16</sup> In the 1951 and 1974 cases, the Governors-General when granting the dissolution reserved the question whether they were bound to accept the Prime Minister's advice, and in each case they were provided with substantial opinions that the statutory conditions had been fulfilled and as to the political justification.<sup>17</sup> So far as we at present know, the case for a *double* dissolution in 1975 was adjudicated by Sir John Kerr wholly on his own initiative, though Mr Fraser may be regarded as having, *ex post facto*, taken responsibility for that action. The High Court in *Cormack v Cope*<sup>18</sup>, the *Petroleum and Minerals Authority Case*<sup>19</sup>, and other cases arising out of the 1974 double dissolution decided that the Court would take jurisdiction to determine whether the legal requirements of s.57 had been complied with in a particular case, so it is now unlikely that a Governor-General will ever reject ministerial advice on that score; he can leave the legal issues to be fought out in the Courts. The precedents still stand under which he is entitled to consider personally whether the importance of the issue or the extent of the deadlock and

failure of attempts at ending it are such as to justify a double dissolution.

Quick and Garran also qualified in a later passage<sup>20</sup> their confident earlier statement that the application of responsible government to the Commonwealth Parliament and Government implied responsibility to the House of Representatives, not the Senate or the parliament as a whole. They record the dispute which had raged in and out of the federal Conventions on the position of the Senate, some leading figures of a state-right tendency asserting that *federal* governments must be fully responsible *both* to the House of the People and to the House of the States, and others denying this or asserting its practical impossibility. According to Quick and Garran, the Conventions and the Constitution left this dispute unresolved. Until the events of 1974-75, the Senate seemed by its own unvarying practice to have settled the question in favour of the view that only the House of Representatives could make and unmake governments.

Quick and Garran do not mention the question of illegal conduct or advice, and there is no Commonwealth case in which it has arisen. Indeed, the only clear case anywhere in this century was the dismissal of Premier Lang of New South Wales by Sir Philip Game in 1932, and it now appears that Sir Philip had second thoughts, much too late, as to whether he had acted properly.<sup>21</sup> Evatt attributes the doctrine that a Governor can dismiss a Prime Minister for illegal advice or activities to Todd, and demonstrates with ease that Todd can no longer be regarded as a satisfactory source. He reflected 19th century conditions and ideas, when Governors necessarily retained substantial power, and the politics of responsible government were still in course of evolution even in Australia. He was not accustomed to situations such as that now existing in Australia, where the combined effect of a complex federal system and a much more highly developed body of administrative law is to make questions of illegality or lack of legal power usually capable of being decided in the Courts of Law. That is where they are best decided, as Isaacs observed in his letter to the Senate in 1931 when declining to reject ministerial advice to make regulations under a statute.<sup>22</sup>

Sir John Kerr would probably have given a

similar answer if asked to refuse assent to the Order in Council of 14 December 1974 which set the Great Loans Affair on its disastrous course; the legal validity of such matters is a question for the Courts, not the Governor-General. However, the newspapers which sought to make the Governor-General responsible for that executive gaffe had some excuse. They had been misled by the rather tortuous observations of Sir Paul Hasluck in his Queale lecture, in the section on the Executive Council. He twice asserts that the Governor-General is entitled to ensure that advice given in Council is in accordance with the law, and only on the second occasion does he explain that this involves at most requiring the Attorney-General to give a considered opinion.

Forsey<sup>23</sup> advances the vague doctrine that forced dissolutions will take place "only if the Crown considers them necessary to protect the Constitution or to ensure that major changes in the economic structure of society shall take place only by the deliberate will of the people". The only specific kind of illegality he contemplates is electoral illegality involving force or fraud which produces a majority supporting the government engaging in such conduct. Evatt was writing a polemical book to

support a specific proposal; he wanted the powers of Governors defined in legislation and disputes as to their exercise submitted to the decision of special constitutional tribunals; he was willing to settle for the tribunal without the legislation if the tribunal could make a new case law by combining usage and convention as a legal source with existing statutory provisions. He did not point out that this would in effect transform convention progressively into law. Having this programme in mind, he wished to maximise the vagueness and obscurity of the existing situation, and so although inclined to be critical of Game's decision in 1932, he did not go so far as to exclude the possibility of dismissal of ministers on the ground of illegalities. However, he and others have pointed out the attendant difficulty – if it is true that the Governor must have advice on which to act, from whence can he get it if illegality is in question? His normal source of legal advice is the Attorney-General, who in Australia is often a second-rate lawyer, a member of Cabinet and a partisan. The Commonwealth Solicitor-General is a more acceptable source of independent and objective advice on legal matters, but he is a permanent public servant, not a minister, and his advice does not satisfy the requirements of responsible government.

Resort to the Chief Justice for advice was barely tolerable in 1914, when done with the cordial agreement of the Prime Minister, and having regard to the unique historical position of Sir Samuel Griffith. Resort to Chief Justice Barwick in 1975 was thoroughly objectionable, even if (as seems unlikely) it was done with Prime Ministerial approval, since today it is impossible to be sure that a particular constitutional question will not come before the High Court; there were additional reasons arising from the Chief Justice's political past and the presence in the list of undecided cases before him of one to restrain the holding of a general election on existing electoral boundaries.

Ministerial conduct may be flagrantly and clearly illegal, so that even a non-legal Governor-General could confidently recognise it as such, but this is in practice very unlikely. It is much more likely that the specific point at issue is legally disputable. This was so in the Game-Lang case. It was much more so in the Kerr-Whitlam case, and in any event Sir John Kerr did not raise the faintest suggestion of

illegality in the reasons he gave for dismissing Whitlam. A further difficulty not mentioned by either Isaacs or Evatt is that even to establish that an apparent illegality is capable of being dealt with by the Courts often requires first-class independent legal advice.

**A**s indicated in the first section of this article, failure to obtain supply had never been given as a ground for forcing a dissolution until the Kerr-Whitlam case. That supply should be obtained has always been an important consideration for the sovereign in England and governors of colonies, dominions and realms, but it has been treated as an important incidental matter, not as the crux of the situation. Even Dicey, who in 1885<sup>24</sup> first clearly stated that refusal of supply is one of the major sanctions to ensure observance of the basic conventions of responsible government, did not assert that failure to obtain supply was in itself a ground for dismissing ministers. The situation with which he was concerned was refusal of supply by the *Commons*, not by the House of Lords. The *convention* in question was not that refusal of supply as such required resignation; it was that failure to retain majority support in the Commons required resignation. Hence it is not surprising to find in the complex case histories related by Berriedale Keith, Evatt and Forsey many examples of governors putting up with the tensions and perils of being without supply for considerable periods, and in extreme cases signing warrants for expenditure without previous supply, in reliance on an ultimate Indemnity Act or retrospective supply, rather than rushing in to support vacillating corner groups in a lower house or obstructive majorities in an upper house against a government which had possessed and not clearly lost the support of the lower house.

The difficulty in the case of the Commonwealth Parliament is that the Senate has in a sense a popular mandate. However, as the election result at the 1974 double-dissolution election dramatically illustrated, the Senate is systematically intended to produce a political result geared not to what Quick and Garran call the "national" majority, but to state representation, and it does so. Hence Sir John Kerr begged the question when in his message

to Parliament justifying the dismissal of Mr Whitlam he said that whatever convention applied to the Senate, it had to give way to the Senate's legal power to refuse supply. The Senate did not wish to refuse and did not in fact refuse supply. What it did was to employ the *deferral* of supply as a weapon to compel resignation of a government with a majority in the House of Representatives – an operation having no significance in the law of the Constitution, and having significance only in the realm of the conventions of the Constitution relating to the institution of responsible government. In that sphere of discourse, failure to obtain supply due to obstruction of an upper house has never of itself been previously treated as justifying dismissal of a government. In principle, one might expect that if failure to obtain supply leads to illegal activities designed to ensure payment of public creditors, then the doctrine of dismissal for illegal acts or advice might come into play. Even then, however, matters can well go and even in the 19th century were allowed to go a considerable distance, so that illegality was demonstrated by Court decisions, before governors started to threaten dismissal or forced election, and in every previous case either compromise was reached or the ministry under siege itself advised dissolution.

### *The Future*

Constitutional crises such as the Game-Lang case of 1932 and the Kerr-Whitlam case of 1975 have always aroused passionate denunciations and defences, and the denouncers have usually announced that the end of constitutional government is now at hand. The record shows that while such instances have indeed often had important constitutional consequences – often in the direction of curbing the legal powers of upper houses, or ensuring their abolition – the more extreme convulsions or revolutions have not

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occurred, and the Kerr-Whitlam case may well turn out but a stone in the pond of history.

The electoral verdict was such as to suggest, unless the Fraser government turns out exceptionally incompetent or unlucky, that a period of at least six years will elapse before the Australian Labor Party again assumes power. In that time Sir John Kerr is likely to have vacated office, and memories of his action will be dim.

Constitutional crises can often lead not to convulsions but on the contrary to long periods of political stability. However, since politics depend so much on economic performance, in turn depending on world circumstances beyond the influence of Mr Fraser and his colleagues and on abilities they may not have, there is at least an equal possibility that politics will change in time for memories of recent events to remain fresh and to generate a demand for change. This may well involve a further Senate-Representatives confrontation, since the Liberal-NCP coalition is pretty sure to retain a Senate majority until 1980.

Presumably the Fraser government is unlikely to attempt much in the way of change, being eminently pleased about the performance of Sir John Kerr. However, even they might consider that if the Governor-General is to play a more frequent and positive part in the working of the system, and if the political future (in particular continued growth of Senate authority) could produce more frequent occasions for his doing so, then some attention must be paid to the conditions under which he works. In his Queale lecture, Sir Paul Hasluck was at pains to dispel the notion that there was such a thing as a "Government House party" consisting of him and his officials. He was but repeating warnings of Evatt, Quick and Garran and earlier writers against "camarillas" of special advisers. Those observations all dated from earlier days when the first four Georges had their Court parties, and Queen Victoria had her Albert and Baron Stockmar, and colonial governors had their favourites and enemies in the local community.

There is no longer the faintest possibility of any such situation occurring with contemporary Governors-General of the Commonwealth. Their difficulty is the opposite one, when faced with problems such as Sir John Kerr had to cope with — the difficulty of

extreme loneliness, a complete absence of anyone with whom to discuss problems save the ministers and the shadow ministers who by definition are incapable of objective assessment. It would not create the dreaded camarilla if the Governor-General had a senior personal assistant with the experience and training needed to enable him to study principles and precedents relevant to problems as they arise, and to talk to the Governor-General about them on a footing of equality in as near to a non-party political fashion as the subject allows. The present device of using state governors as stand-ins for the Governor-General has many disadvantages for both the states and the Commonwealth, and one way of providing the Governor-General with appropriate companionship and at the same time ensuring the satisfactory discharge of the "dormant commission" would be to use the unused provision in clause VII of the 1900 Letters Patent which authorises the appointment of a "Lieutenant-Governor" Governor-General and Lieutenant-Governor should also have a senior legal adviser, seconded from the Attorney-General's office.

The other matter to which the Fraser government might give some attention, but which raises much more difficult constitutional problems, is that of the security of tenure of the Governor-General. One of the theories floated to explain the rather rushed way in which Sir John Kerr handled events on 11 November 1975 is that he feared the possibility that Mr Whitlam would seek his summary dismissal. Such fears were reasonably entertained by various governors in times past, and if it is indeed the case that the Queen of Australia is even more bound by ministerial advice from Canberra than is the Governor-General, then his tenure is exceptionally precarious. If, however, it is thought that we must have a person to exercise emergency or arbitral functions in the responsible government system, then he should at least have some guarantee of security of tenure; otherwise he will always be acting under pressure and fear. The security need not be at all long-lasting. Two months notice would be ample. Perhaps a convention that the Queen would always require that the Governor-General be given a right to make representations against his dismissal would be sufficient, but recent experience does not encourage reliance on conventions.

If, however, political changes were to put the Australian Labor Party in a position to carry out reforms at a time when it was still thought important to prevent another November 11, it would have several options. The simplest, rightly deplored in Sir Paul Hasluck's Queale lecture, would be to appoint a nonentity to the office and expect him to be a cypher. The introduction of a presidency would only increase the probability that the holder of the office would expect to be a king. Dr Evatt's solution of a legal code of conduct for the Governor-General and a special tribunal would require the sort of amendments to the Constitution which the electors are unlikely to endorse, because of their complexity and legal jargon. I do not agree with the view of Sir Paul Hasluck, expressed in his Queale lecture, that a Head of State is *necessary* to a modern government. Such a head is convenient and usual, but the job can be put into commission; the Papua-New Guinea Constitutional Committee attempted to do this, to give effect to PNG notions of group decision, but the ambitions of Sir John Guise and Mr Somare frustrated their efforts at being first to avoid kings and their substitutes. Hence, oddly enough, the best solution for Labor may also be that suggested for Mr Fraser — to retain a Governor-General, who is far less potentially dangerous than a president, and to strengthen rather than weaken his position, by giving him adequate assistance and job-security. He might then behave with even greater circumspection. It would also be easy enough to ensure that the

Senate cannot effectively deny or defer supply for the ordinary annual services of government.

#### FOOTNOTES

1. Evatt, *The King and his Dominion Governors*, 2nd ed. p. 165, and see also Forsey, *The Royal Power of Dissolution of Parliament* pp. 257-9. These are the two principal collections of cases dealing with the powers of Governors in relation to parliaments and Ministers, and are referred to in this article as Evatt and Forsey respectively.
2. Todd, *Parliamentary Government in the British Colonies* chap. 11. This is the classic work on the 19th century position, herein cited Todd. See also Roberts-Wray, *Commonwealth and Colonial Law*, pp. 305-316.
3. Wright, *Shadow of Dispute*, chap. 1.
4. Reprinted in Vol. V of *Commonwealth Statutory Rules 1901-1956*, pp. 5301 ff.
5. I.e. the *Commonwealth of Australia Constitution Act 1900*, the Constitution proper being Clause 9.
6. S. 16A.
7. W. Bagehot, *The English Constitution* (R.H.S. Crossman ed. 1964), p. 111.
8. *The Annotated Constitution of the Australian Commonwealth*, p. 406.
9. *Ib.* pp. 703-711.
10. *Ib.* p. 406.
11. *Responsible Government in the Dominions*, vol. 1, chaps. II and IV, and see especially p. 156. See also Ivor Jennings on Bagehot, *Cabinet Government* p. 328.
12. Mss. dated October 24, 1972, reported in various forms in the contemporary press. In the mss., p. 7.
13. pp. 407-09.
14. See Forsey, pp. 35-37.
15. C.P.D. vol. 132, p. 1926, discussed by Evatt pp. 235-37.
16. Forsey pp. 37-39.
17. On 1951, see *Parliamentary Papers 1957* p. 915; as to 1974, personal knowledge.
18. (1974) 3 A.L.R. 419.
19. (1975) 7 A.L.R. 1.
20. *Ib.* p. 706.
21. B. Fott, *Dismissal of a Premier*, p. 218. For the whole episode, that book and Evatt chap. XIX.
22. Evatt, pp. 185-89.
23. P. 270.
24. *Law of the Constitution*, chap. XV.

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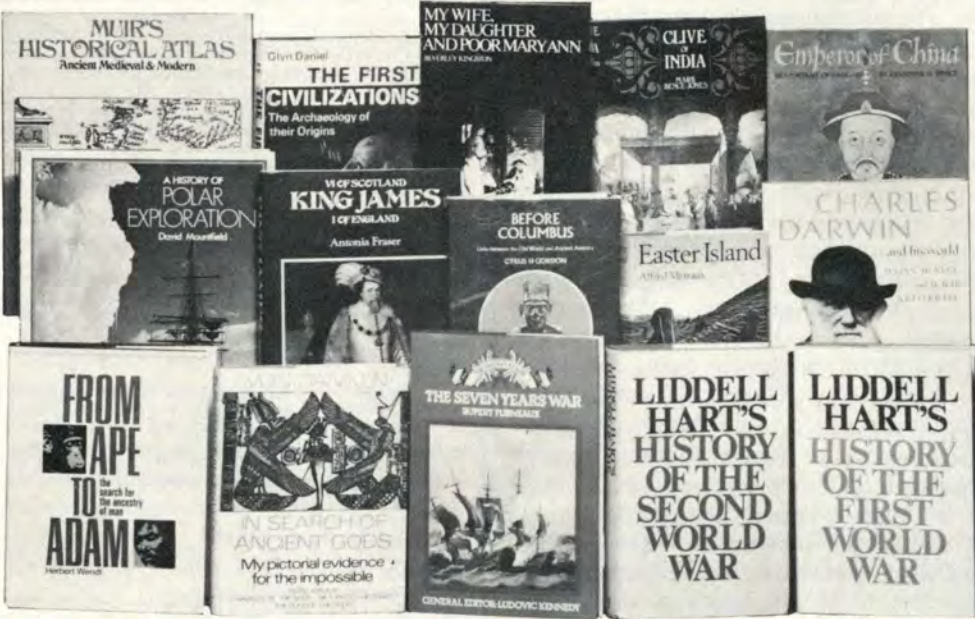
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BUCKINGHAM PALACE

15th March, 1976

My dear John

Many thanks for your two letters of 4th and 9th March both of which The Queen has read with much interest.

The drama, as you say, continues!

The story of the Executive Meeting of the ALP is fascinating and I must say that I find it difficult to believe that Mr. Whitlam can long survive. He is in the same boat, though for different reasons, as the unfortunate Mr. Jeremy Thorpe, who I cannot think will survive long as Leader of the Liberal Party.

We must hope that the "big conspiracy" myth does not gain currency. It is, as you say, very nasty nonsense, but unfortunately this is no guarantee that it will wither on the branch.

You refer to the recent pieces of Bennery which hit the headlines last week. The attached cutting from the Economist, under the headline "Monkeying About", describes the situation. What I believe actually happened was that a paper was prepared in the catacombs of Transport House dealing with the Prerogatives of the Crown, the question of the taxation of the Sovereign, the Civil Service (the suggestion being made that Labour Ministers should bring their own Civil Service with them). There was also the promise of another paper to come on "the City".

This paper which at the moment has absolutely no authority was deliberately leaked to the Press, and of course the Press made a meal of the bits about The Queen.

It is difficult to say how serious a development this is. The danger is that it might, through the machinations of the extreme left wing, become part of the Labour Party programme. It would of course first have to be adopted by the National Executive Council of the Labour Party, and then by the Labour Party Conference. I suppose much depends on how long the extreme left wing maintain their hold on the NEC.

You referred also to Mr. Trudeau's remarks. These were made in Quebec and referred specifically to the British North America Act.

This could be abolished overnight if the Canadian Federal Government and the ten provinces could agree about it. Quebec, however, will only agree on unacceptable conditions. Mr. Trudeau's remarks should certainly not be looked on as an attack against The Queen personally or in her capacity as Queen of Canada.



Mr. Trudeau is being very firm about The Queen and the Games and I do not believe that he will retreat from the position that they are to be opened by Her Majesty.

I do not consider, therefore, that this need be a negative factor in your mind when you consider Mr. Leger's suggestion that you should make a visit to Canada. I hope you are able to do so.

The Queen sends her best wishes  
and her best wishes also  
from me

Yours ever

Martin Lantieri

His Excellency the Governor-General of Australia.

swing in a group of by-elections as it entered its third year of office. Provided Carshalton and Warral (which polled on Thursday) do not upset this record, the Tory front-bench ought to be rather worried about their party's electoral impact and certainly have no incentive to precipitate an early election. Even after Coventry, however, Mr Wilson has no good reason to want one either.

The high turnout (73%) and lishish third-party vote in Coventry suggest that the result should be a reliable indicator. However, most observers agreed that Labour did have a particularly plausible runner while his Tory opponent, Mr Jonathan Guinness, did not look or behave like a vote-winner. If, therefore, Labour does rather less well in the second round of this clutch of by-elections, it may be that some voters in Coventry North-West were voting on personal rather than party grounds.

A mediocre Liberal performance, and a deposit lost that was saved last time, sounded like further bad news for the beleaguered Mr Thorpe. However, the loss of Liberal votes (a drop of 4.3% since the general election) was markedly better than the West Woolwich result (a drop of 9.0%) so there is no evidence that recent publicity about their leader harmed the Liberals. Rather the Coventry result confirms to many Liberals what they consider a political failure of leadership which long predates recent revelations and allegations.

One other party has a right to a small cheer: the National Front vote, and the derisory failure of the splinter candidature of the former NF leader, showed there is a small but steady support of 2-3% for the Front in this sort of urban constituency. It has not been affected by the split in the party.

## Ulster

### The coalition cracks up

Tuesday was a thoroughly dismal day for Ulster's Loyalist politicians. At a stroke, they had found themselves denied all the trappings of being elected Stormont politicians (like office accommodation, free telephone calls, free stationery and postage); then the Northern Ireland secretary Mr Merlyn Rees, launched into a bitter attack on one of their coalition leaders, Mr Ernest Baird; and in the afternoon barely a dozen out of the possible 40 members of the coalition turned up for a "re-convening" of the now defunct con-

vention.

Midway through last week Mr Rees had let it be known that he would unilaterally close the convention by the end of the week. That infuriated the Loyalists and, just as the convention was about to make its undignified exit into the history books, their chief whip, Captain Austin Ardill, proposed that the convention should reconvene the following Tuesday. It was a purely tactical measure designed to embarrass Mr Rees—but the derisory response from most of the coalition last Tuesday demonstrated how acrimoniously split the unionists now are.

Forty-seven loyalists, two of them independents, were returned at the convention election last May under the "no power-sharing" coalition manifesto. One highly individualistic member, Mr Kennedy Lindsay, soon left to form his own one-man party. Then came the defection to emergency power-sharing policies of Mr William Craig, and he took with him three other Vanguard party members—Mr David Trimble, a law lecturer, Mr George Green, retired leader of the paramilitary Ulster Special Constabulary Association (the old B Specials), and Mr Glenn Barr, who also combines politics with a close interest in the affairs of the paramilitary Ulster Defence Association. That depleted the Loyalist ranks by four. According to Mr Craig, several others promised privately to follow but never did.

Even with the defection of Mr Craig's camp, however, the coalition was still assured of a comfortable majority. It was not until the closing two days of the convention that the splits in the rest of the coalition became apparent. One of the independents, Mr Hugh Smith—who has admitted membership of the illegal Ulster Volunteer Force—spent the last part of his speech haranguing other loyalists about their lack of support of the militants: and in turn some of the politicians hurled insults back.

But it was when the dominating figure of Mr Ian Paisley rose to speak that hitherto private wrangles became public. Mr Paisley viciously attacked Mr Trimble, and immediately five Official Unionists signed a piece of paper condemning Mr Paisley. Together with the Social Democratic and Labour party, the five let it be known that they would refuse to let Mr Paisley continue beyond the 30-minute period allotted to all speakers—but which could usually be extended automatically. Furiously Mr Paisley's supporters tried to organise a counter-motion, but could muster only about 20 names.



Paisley upsets his fellow loyalists

As a result Mr Paisley's 30-minute performance was rambling and unimpressive, and did little to enhance his reputation within the unionist coalition. Next day one of the five Official Unionists, Mr John Taylor, publicly accused Mr Paisley of "corner-boy" politics and said he would not be attending the coalition's Tuesday meeting. Privately, other loyalists make it clear that they are also opposed to Mr Baird's overt hints that the politicians would turn to paramilitary action as their next course.

The loyalist rows have delighted the British government, which sees such a process of fragmentation as the only political solution to Ulster's apparently insoluble problems. But in the midst of the loyalist vituperations, and the divergence of interest between the ten Westminster MPs and their Belfast-bound colleagues, it is easy to overlook the basic political facts. Even Mr Craig and his three renegades voted with the loyalist coalition in their main recommendations for devolved government: only over detail did they differ.

## Royal prerogative

### Monkeying about?

The royal prerogative is not the coccyx on the constitutional skeleton; it is still a functioning part of Britain's anatomy of government. So the four-member group, set up this week to study the prerogative (and the house of lords) by Mr Tony Benn's home policy committee of Labour's national executive, has more than a few evenings' light work ahead of it.

The royal prerogative is part of the  
*continued on page 27*



Benn's beady eye on the Queen

common law, which set its limits. So, of course, did parliament, most notably by the 1688 Bill of Rights and the 1701 Act of Settlement. But a great deal of the business of government is still done under the prerogative: treaties, pardons, orders in council embodying executive rules and regulations—and appointments. Mr Willie Hamilton, MP, who has been busy plaguing government ministers with parliamentary questions on the number of appointments in their gift, has just received a stuffily correct reply from the prime minister, listing appointments "on which it is my duty to advise the Queen". This assorted payroll includes Oxford's regius professor of Greek, the chairman of the BBC, the Provost of Eton, the ombudsman and the chairman of the Forestry Commission.

But the exercise of the real muscle of the prerogative, connecting crown and parliament, is governed by Britain's constitutional peculiarity, the "conventions of the constitution". These, dictated by constitutional theorists (but determined by political realities), lay down, for example, that parliament must be called once a year; that the Queen must assent to any bill passed by parliament; and, most importantly, that she must act on the advice of her ministers. They still leave some interesting gaps or doubts, which Labour activists (not exactly uninfluenced by Australian goings-on last year) want tackled. Australians' enthusiastic endorsement, in the subsequent general election, of their governor-general's sacking of Mr Gough Whitlam made complaints about interference with democracy look a little thin. It was still an exercise of (delegated) mon-

archical power, which is a chancy business in the late twentieth century. But the same kind of crisis could not happen in Britain as long as its parliament has a weak second chamber, since it was the clash between the two in Australia that provoked, or justified, the governor-general's action.

The Queen's most obvious residual power, over the selection of a prime minister, has been steadily reduced by the Labour party's system of leadership elections and the slow emergence of such a system on the Tory side. Only the complete break-up of two-party voting, which would mean coalition governments, would expand her power of choice again.

But another grey area, much discussed last summer before it became clear that the Tories were going to see the government through the creation of an incomes policy, is the circumstances in which the Queen might be justified in refusing a dissolution to her prime minister. The received wisdom on this boundary of the royal prerogative is contained in an anonymous letter written to *The Times* by George VI's private secretary in 1950 (the Lascelles conditions). But it has never been put to the test. Mr Benn's subcommittee, which consists of two parliamentarians (Mrs Shirley Williams and Mr Eric Heffer) and two trade unionists, may well conclude that she should never be allowed to do such a thing, just as Sir John Kerr should never have been allowed to do such an autocratic, dangerous and wildly successful thing as force an unnecessary dissolution on a prime minister who didn't want one. Another curtailment of power might save the crown from some future temptation to stand up to the politicians and preserve it still longer as a more popular part of the constitution than parliament, Labour's NEC—or even Mr Benn.

### Police bill

## Backbenchers in revolt

The government is in danger of being humiliated by an ad hoc coalition of Labour and Tory backbenchers. The standing committee on the Police bill, designed to introduce an independent element into the investigation of complaints against the police, had to be adjourned last week when a majority of Labour and opposition members claimed they could produce a better bill. (The committee's Liberal has supported the government loyally.)

Members have until next Tuesday to stamp out the common ground between them and carry out a round of consultations with police and civil liberties organisations.

The central element in the bill is a police complaints board which would review all complaints in which no disciplinary charges were made by the original investigating officer. On 1975 figures, about 2,000 complaints would have gone from the Metropolitan police alone to the board (another 2,000 were passed to the Director of Public Prosecutions, and the police themselves took disciplinary action in 55 cases). On review, the board can, as a last resort, direct that disciplinary charges be preferred against individual policemen.

The government lays stress on three main principles governing the relationship between the police and the proposed complaints system: the preliminary investigation remains with the police; the chief officer retains responsibility for the discipline of his force; and policemen are not liable to double jeopardy—that is to be charged twice with the same offence.

What Labour members, in particular Mr Bruce Douglas-Mann, want is a system in which the board will receive fewer complaints but be able to deal with them in a tougher manner. The Tories, led by Mr Michael Alison, lay much stress on keeping bureaucrats out of the hair of the police, and saving all the paperwork involved in reporting cases. The kind of package both sides would agree on is one where independent intervention would be restricted to cases where the complainant was dissatisfied with the outcome of a local inquiry (under the present bill he cannot activate a board review, or do anything else if he is unhappy). Labour members would be content with a board, under the home secretary's guidance, that had power, like the parliamentary commissioner, to call for papers. The Tories lean toward a truly independent ombudsman figure. Labour want the review body to be able to consider cases even when disciplinary action has been taken by the police. The Tories do not think such cases will arise. They emphasise the duty of the review body to consider whether all the relevant evidence has been properly looked into and evaluated. The home office would have no objections to the mutineers' new scheme. First, that it smacks of an *ex post facto* solution specifically ruled out by the home secretary, Mr Roy Jenkins. The board is involved only after decisions have been made and, it could be argued, has no possibility of influencing



BUCKINGHAM PALACE

8th March, 1976

*My dear John*

Thank you so much for your letter of 2nd March. The Australian adventure, as you say, continues and The Queen has been most interested to read the latest instalment given by you with such clarity.

A good deal of the story of the Iraqi gold has indeed appeared in the British Press but it was most useful to Her Majesty to be able to read the full account of it, and the background information, in your letter.

Judged from here, it is difficult to believe that Mr. Whitlam can long survive as leader of the Labour Party, even if no real evidence is ever produced that he was personally involved in the affair. It seems as if his political future must be as precarious as the unfortunate Mr. Jeremy Thorpe's.

I am glad at least that this business has taken the spot light off you: I expect you will not be altogether sorry for a little obscurity for the time being.

I am glad also that my friend, Eugene Forsey, sent you a copy of his book, "Freedom and Order". The inscription he wrote in it is exactly what I would have expected from this stalwart upholder of the prerogative of the Crown.

The Queen sends you both her best wishes, as do I.

*Yours sincerely*

*Marina Chantain*

His Excellency the Governor-General of Australia.



BUCKINGHAM PALACE

2nd March, 1976

*My dear John*

Many thanks for your letter of 19th February which The Queen has read with a great deal of interest.

Judging from the cuttings which you sent with your letter, the Labour Party have not done themselves any good by their boycott nor by the "rent-a-crowd" demonstration outside Parliament House. It must nonetheless have been extremely unpleasant for you and Lady Kerr.

The Queen commends your determination to carry on with your programme of visits across Australia. I am sure these will do nothing but good, and I am sure also that as time goes on you will find increasing support.

The "McClelland saga" is a disagreeable one, particularly I am sure from your point of view, as Senator McClelland was an old friend. These re-hashings of the past are a great nuisance but, as you say, inevitable.

As the old English nannies used to say "What can't be cured must be endured"!

Finally, warm congratulations on being dubbed a C.I.A. agent! Nowadays this is really an accolade of fame.

The Queen sends you both her warm good wishes.

*Yours ever*  
*Martin*

His Excellency the Governor-General of Australia.

Government House,  
Canberra. 2600.

9 March 1976.

*My dear Martin,*

On 4 March I wrote a short letter to you which I did not dispatch because it seemed better to await the outcome of the Executive Meeting of the A.L.P. Nevertheless, I include with this letter the one I had ready for dispatch because it gives an impression of how things appeared on 4 March.

On 4 March, after my letter was ready for dispatch, some rather extreme statements were made on both sides in Parliament. There had been a growing frenzy and tempers became frayed. I attach a clipping from the Sydney Morning Herald of 5 March which gives an indication of the sort of things said in the House of Representatives. You will note from this that one of the statements made by Mr Whitlam in the House was that Mr Ellicott and his cousin had devised the plan that led to the dismissal of the Whitlam Government by me. This, I imagine, is the beginning of the development of the "big conspiracy" myth. "The cousin" of Mr Ellicott is in fact, Sir Garfield Barwick and what Mr Whitlam was really saying was that Sir Garfield and Mr Ellicott devised the plan which, after denial of supply, I was apparently alleged to have been willing or induced to carry out.

The conspiracy theory is, of course, nonsense of a most nasty kind, but as you know exactly what happened I do not need to provide any further information by way of refutation.

The real news however is what happened at the Executive Meeting of the A.L.P. which began on Friday, 5 March and to the surprise of everyone continued morning, afternoon and night on Friday 5, Saturday 6, and concluded at about mid-day on Sunday. The total number of hours of discussion was said to have been over 24.

As the weekend wore on it became fairly clear that the Executive was taking the task very seriously and the result announced by Mr Hawke was extremely unfavourable to Mr Whitlam, Mr Combe and Mr Hartley. It is better to let you have the full text of the Executive statement which I attach from which you will see that the Executive condemned these three in the strongest possible terms. It became apparent in the

.../2

discussion that Mr Whitlam was involved from November 16 and actually suggested an intermediary through whom the Arabs might be approached. He had three meetings with Mr Fischer including the famous breakfast meeting.

To give you the impression of the drama which followed the Executive meeting and its decision I include the text of the press conference which Mr Hawke held. Editorial comment has been universally unfavourable to Mr Whitlam, as one would expect - so much so, that you will be able to imagine it without being burdened with clippings. Nevertheless, Mr Whitlam shows no disposition to resign. He has to face the Caucus tomorrow week. There are varying theories in the newspapers as to whether his leadership will be challenged at that meeting or not. One suggestion is that he will be allowed to stay but will go later in the year. The Labor Party has difficulty in finding a leader. The most natural person, and the one that would be favoured by most - Mr Hayden the former Treasurer - appears to be unwilling to stand, certainly unless drafted.

One of the complications in the handling of the whole affair has been that the Labor Party was able, within limits, to close ranks and is still closing ranks because of what has been called "the over-kill" of the Murdoch press, Murdoch being hated by the Labor Party both for his part in breaking the Iraqi story and more particularly for his extreme opposition to the Whitlam Government and to the Labor Party prior to and during the last election campaign.

The Murdoch press has certainly constantly pushed the Iraqi question forward with all kinds of details not all of which have yet been proved. Apparently Mr Fischer and Mr Murdoch were in contact with one another before Mr Fischer disappeared and Mr Murdoch provided him with a bodyguard for his journey back to Australia.

The second element in the "over-kill" was the action of the Government, especially Mr Fraser and Mr Ellicott, in ordering investigations which were said to have a political flavour. These included the impounding of the diaries of Mr Whitlam's bodyguards - those in attendance upon him during the election campaign and on 10 December last - and inquiries into the Labor Parties Public Relations firm, which was interviewed by the police.

The justification for these inquiries has been stated to be the need to check to see whether illegal money was allowed to come into Australia or succeeded in getting here and secondly to account for the strange presence of the two Iraqi's under assumed names and with

.../3

varying accounts of why they were in Australia. The press has tended to support Mr Whitlam and the Labor Party in criticising the undertaking of these investigations and members of the Labor Party, especially at the grass roots where Mr Whitlam enjoys considerable support, find it difficult to take the Iraqi money issue to the extreme conclusion of accepting the political demise of Mr Whitlam because it is feared by Caucus members, so some claim, that Labor supporters in their electorate will accuse them of deserting their leader and giving in to Fraser/Murdoch extreme pressures. I believe myself that the Government was ill-advised in doing what it did but we do not yet know the outcome of the investigation.

As you will see, the drama continues. There will be intense lobbying between now and next Wednesday, the current opinion being that Mr Whitlam will survive for the time being. As an example of current opinion I enclose two articles, one from the Sydney Morning Herald of today's date by Peter Bowers and one from the Melbourne Sun of yesterday's date by Laurie Oakes.

I am becoming more and more selfconscious about sending press clippings but the intense feelings and the drama of the situation requires something of the type and proportions of a novel or at least an ever-growing book of current history to keep you in the picture. This I cannot produce, at least, without resorting to a few clippings to give you impressions which my pen would find it difficult to convey even in correspondence.

There will be no way of guessing what will happen during the next week. Mr Whitlam certainly is unlikely to resign and unless the numbers crystallise quite clearly before Caucus meets and unless they are, in effect, made public, we must simply wait as usual for the next chapter in the serial.

Incidentally, we read in the press here something about Tony Benn being in the process of trying to have included in the Labor Party programme some proposals for stripping The Queen of Her remaining prerogatives. Is this a serious development? One paper here said that our recent history was referred to in connection with Benn's proposals.

We are also a little confused here by news items about something Mr Trudeau has said which has, I have no doubt been reported to you, about "patriating" their Constitution. We have contacts with the Canadian High Commissioner's Office here and are seeking to find out exactly what is happening.

.../4



The Governor-General has made informal inquiries from me as to whether I could make a visit to Canada to carry out the official visit which has twice been cancelled. One element in the decision about this informal approach would, of course, be the likely position in Canada during and after the Olympic Games and on the point of policy, whatever it was, which Mr Trudeau was making in his speech in opening the Convention of the Quebec Wing of the Federal Liberal Party.

Please read no more of the clippings than attract your attention. They at least help to keep your file reasonably complete.

Assure Her Majesty, as I have said, in my attached letter of 4 March, of my continued loyalty and humble duty.

*Yours sincerely,*

JOHN R. KERR

Lieutenant Colonel the Right Honourable Sir Martin  
Charteris, G.C.V.O., K.C.B., O.B.E.,  
Private Secretary to The Queen,  
Buckingham Palace,  
LONDON ENGLAND

A.L.P. EXECUTIVE MEETING

RESOLUTION Money source 'unaware'  
CONDEMNNS of proposal  
THREE

Following is the text of the major resolutions of the national executive of the Australian Labor Party during its discussion of allegations of Arab money dealings against the parliamentary leader, Mr Whitlam, the national secretary, Mr Combe, and Mr W. Hartley, a member of the Victorian executive of the party:

The Australian Labor Party in opposition and in government has been the only party in this country to espouse disclosure of sources and the public funding of election campaigns.

This practice, adopted in several overseas countries, is necessary on two grounds.

First, these measures guarantee substantial equity between parties in terms of their broad electoral support to present their policies to the people.

Secondly, they serve to eliminate the possibility of influence or attempted influence by those making contributions secretly to party campaign funds.

Labor in government twice introduced legislation for these purposes.

Defeated twice

Contrary to the public interest, the legislation was twice defeated in the Senate by the vote of the Liberal and National Country Parties, which have been historically beholden to wealthy private and privileged interests from whom they receive massive financial support.

In this context particularly, the national executive, having heard reports from the other officers and the national secretary, [Mr Combe], the Federal Parliamentary leader [Mr Whitlam] and Mr Hartley, can only condemn in the strongest terms the actions of the three latter persons in the matter of a proposed gift of funds from Arab sources for the 1975 election campaign.

At no time did the Australian Labor Party officially engage in any negotiations, nor will it, to receive funds from any such source. This applies to past elections as well as future elections.

The principles, policies and programs of this party are not up for sale or auction and yet the initiation and endorsement of such a proposal put the party at risk of this charge.

There is no suggestion that they would involve themselves in such compromise.

Proposed letter

The grave errors of judgment were first, the suggestion being made by Mr Hartley on November 16, 1975, and entertained by Mr Whitlam and Mr Combe; secondly, the non-communication of the proposal to the officers and the executive; thirdly, the action of Mr Whitlam and Mr Combe in signing a proposed letter on February 11, 1976, to the Commonwealth Trading Bank on the basis of this proposed transaction.

Four points should be made clear from the evidence now available to the national executive:

One, no money in fact was received.

Two, none of the three persons involved stood in a position to profit personally from the proposed transaction.

Three, none of the three persons directly talked on this matter with the two Iraqis who visited Australia on December 8-10, 1975.

Responsibility, pressure

Four, no breach of the law was committed or intended.

We would point out that this error of judgment now condemned by the national executive could be attributed in considerable measure not only to the extraordinary circumstances of the recent election but to the excessive pressure and responsibility which have been allowed by the party to repose on the Federal parliamentary leader and

the national secretary for the raising of election campaign funds.

We believe that this should be an item of separate consideration by the national executive and ask the officers to prepare proposals in this area for our next meeting.

Other resolutions by the executive were:

The national executive commends Mr Hawke and his fellow officers for the immediate action initiated by them as soon as they became aware of negotiations for a donation of money from Arab sources.

That the executive refers to the officers the question of funding as quickly as possible the deficit and gives them the right to make any arrangements necessary to meet outstanding debts.

Further, the officers should co-opt as they deem necessary, that the national executive of our party launches a financial appeal to members of the party constituent sections, branches and affiliated unions, and to supporters of the Labor Party to meet the outstanding debt brought about by the heavy cost of advertising in the recent election, unparalleled in Australian political history.

Served well

The national executive has a direct responsibility for the appointment and tenure of the national secretary.

Whilst all concerned have equal culpability in this matter, the national secretary has in all other respects served the party well in his office.

We are confident he will continue to do so.

We urge all members of the party, constituent sections, branches and affiliated unions, now to close ranks and to concentrate upon the task of attacking and defeating the Fraser Government, which has already demonstrated its contempt for the welfare of the mass of the Australian people.

Just as our principles, policies and programs are the exclusive property of the appropriate organs of the party so are the decisions as to the leadership and direction of the party.

The national executive deplores and condemns the concentrated attempts by the media generally, and the Murdoch Press in particular, to interfere in, and manipulate, our affairs.

The totally unprincipled campaign by the Murdoch group against Mr Whitlam has appropriately been made a matter for legal action.

Deplore and condemn

Similarly, we deplore and condemn the blatant attempts by the Fraser Government to interfere in and misrepresent, this issue for its own party political advantage.

The Government has fed fake information to the Press and the Attorney-General [Mr Ellicott] has abused his office by involving the Commonwealth Police in a personal political vendetta.

We call upon all sections of the Labor movement to support the drive for financial support which must now be initiated by the officers to enable us to discharge our obligations.

We accept that he was not aware.

Q: Have you any indication when caucus may meet next, will it be earlier than scheduled?

A: Well no, I understand that under the laws of caucus that seven days' notice is required.

Q: Does this mean the end of the leader's fund which has been used over

Following is an edited text of a press briefing given by the president of the ALP, Mr Hawke, after the national executive meeting yesterday:

QUESTION: Mr Hawke, in precisely what form did Mr Whitlam entertain the idea and where was the money coming from?

Mr Hawke: Let me be quite precise in regard to the latter part of your question. It was believed that the particular area would be Iraq but let me make it quite clear in respect and in fairness to that country that there is no reason at this stage in terms of the knowledge that we now have that the source suggested in that country was ever, in fact, made aware of the proposal. When it was put in the first place on the 16th of November the suggestion by Mr Hartley wasn't necessarily confined to that quarter, but more generally in the Arab world and that's the point from which this proceeded.

Q: And the first part of the question — in precisely what way did Mr Whitlam entertain the idea?

A: The sequence of events was this: that Mr Hartley, knowing the financial situation that was going to be confronting the party, spoke to Mr Combe — and this November 16 you will recall was the day of the national campaign committee meeting in Sydney. He spoke to Mr Combe and said he believed he could get substantial support. Mr Combe said that he should speak to Mr Whitlam. It was put to Mr Whitlam and Mr Whitlam did no more than say that he would have Mr Combe introduced into this area and that Mr Combe should then be the person who should proceed with it. Now Mr Whitlam having full knowledge of the idea, which he freely accepts, and concept in terms of what transpired from the 16th, was in no way involved in the details.

Q: Mr Hawke, I may have misunderstood, but are you indicating the source of the money never actually indicated it would hand over?

Originated the offer

A: No. What I'm saying is this — that those who originated the offer (Mr Hartley was the originator of the offer), and when there was a response from Mr Combe and Mr Whitlam, as that developed in terms of negotiations it was put and it was their understanding that the source would specifically be Iraq and that Iraq knew of it. What I am saying is, and this must be said in fairness to Iraq, that there is no evidence available to us that intermediaries involved in fact put the nodder to the Iraqi authorities involved.

Q: So are you saying you were sold a pup?

A: You are able, I am sure, very well to do the interpretive work.

Q: Was Mr Fischer the intermediary?

A: Yes.

Q: On another thing, what will go to caucus: Will it be just a statement . . . ?

A: . . . The situation that we were confronted with as an executive was this: the executive was called together on the initiative of the officers; the caucus in between the time when the officers convened the meeting itself met and made a decision that the matter should be referred to the executive and a report given

made by Mr Whitlam not in regard to the amounts or the proposals but in terms of intermediary. Mr Whitlam was aware of the Scarf Foundation and it was Mr Fischer's association with the Scarf Foundation which brought him into it. But let me insist, in respect of Mr Whitlam, that his was a response once the suggestion had been made

to it. The decision of the executive on this matter was that the decision of the executive would be communicated to — it will be in writing — to the caucus and how the caucus then considers that report is a matter for the caucus itself, and in respect to that matter the executive did not presume to tell it how to run its affairs.

In reply to another question: How the caucus considers the report, whether they want to have it elaborated upon, in addition to written transmission of the decision, is a matter for the caucus itself.

Q: But what will go to caucus initially will be just what we've heard, is that correct?

Sums of money

A: Yes, that's what I've said. That will be communicated to the caucus for their decision.

Q: You mentioned that the proposal was put to Mr Whitlam. It wasn't clear whether Mr Hartley put it to him or Mr Combe?

A: Mr Hartley first spoke to Mr Combe on the Sunday, saying that he thought there may be considerable sums of money available. Mr Combe said he ought to talk to Mr Whitlam. Then in a very short space of time — on that day — the three of them were together when Mr Hartley again put the matter.

Q: You say it's unlikely there will be disciplinary action against the secretary or the . . . ?

A: No, let me correct that. That's not a correct statement of the position. It's not a matter of saying it's unlikely there will be disciplinary action against the secretary. The decision is quite clear: there will be no disciplinary action, other than the strong con-

demnation of his action in this matter. Q: What is the position in regard to Mr Hartley? A: The executive has taken no action in regard to Mr Hartley, other than strong condemnation. Q: When Mr Combe decided to go beyond the original budget to the tune of \$A350,000, when did he tell you about this and did you ask him where the money was coming from? A: In regard to this whole question, not just as to where he moved and how he used what he expected what would be additionally available. Mr Combe has been utterly frank with the executive. He said he was wrong in the first place to be part of entertaining the offer and from that point was wrong in non-disclosure. He said that he acted by himself on the basis of the decisions that would be taken in regard to that money. Let's be quite clear on this point. That the first time on which anyone other than the three concerned became aware of this — that's in terms of officers in the executive — was on the day of Thursday, February 12. That was the day on which I and Mr Egerton were informed about it and as soon as I was informed I then initiated the action of which I think you are aware.

Complete admission

Q: Mr Hawke, did Mr Whitlam concede at the meeting he had made a mistake?

A: Yes, I said the three, and that includes Mr Whitlam, that there was a full disclosure on their part of what had happened and a completely full admission of the error that they had made. That included Mr Whitlam.

Continued on Page 7

money may be available then there's got to be a way of talking, of contact. And all that was involved then was that it was within the knowledge of Mr Hartley that Mr Fischer had this experience, was within his knowledge that the Scarf in Mr Whitlam's knowledge once the suggestion had been made about the idea, it was within Mr Whitlam's knowledge that the Scarf Foundation also had extensive interest in the area . . .

Q: Mr Hawke, can I just clarify one thing. In the search for an intermediary, that was made on November 16, I take it you are suggesting there was a discussion and various possible intermediaries were suggested and Mr Whitlam suggested Scarf Foundation.

A: Out of the discussions Mr Whitlam observed that he was aware and, of course, he had been aware and had other communication on other matters as Prime Minister because they were very much aware in trade in the area, that he knew that they knew the area. It's nothing more complicated or sinister or any other adjective you want to use than that.

Reason to suppose

Q: Did he have any reason to suppose that they supported the Labor Party?

A: I don't know that he had any reason to suppose that they supported the Labor Party exclusively or singularly or any other way . . . it was not a matter of discussion.

Q: When did the figure of \$500,000 come into discussions, . . . you said Mr Hartley raised the general possibility . . . ?

A: No, all right, let's be clear about that . . . Mr Hartley without naming any amount on November 16 indicated that he thought considerable sums but he didn't put any figure on it. It was only as you went into the end of November, December that this figure was mentioned and it was not until December 10 that Mr Whitlam and Mr Combe knew that that was the figure involved.

Q: Who told them that?

A: It came out of the communications with the intermediary.

Q: If they knew that late how did they manage to spend almost exactly . . . ?

A: What I'm saying is that's when Mr Whitlam and Mr Combe . . . Mr Combe had had an indication . . . see, he conveyed it to Mr Whitlam on the 10th . . . Mr Whitlam didn't know before the 10th about that amount . . . Mr Combe had known some days, I'm not quite sure, though, just how many days earlier, but a relatively short period earlier on the basis then that he was convinced in his mind that that amount would be forthcoming, he then went ahead with contingency plans that he had in his mind about how more money could be used . . .

Q: And that was Mr Fischer who specifically set it up?

A: Mr Fischer was the intermediary, yes.

Q: Was this information conveyed to Mr Whitlam before or after the breakfast on the 10th?

A: After the breakfast. You'll remember the 10th was the night of the vigil here in Canberra and it was that night.

Q: Who told you about the money deal?

A: The assistant Federal secretary, Mr Bennett. He, Mr Bennett, had spoken earlier in the day to the senior vice-president but had not gone into the details and Mr Bennett was informed that I was going to be in Canberra that Thursday night that I had to tape a 'Face The Nation' television program so I met Mr Bennett at approximately 10.30 that evening and I was then informed.

Coming from

Q: Mr Hawke, when the figure of \$US500,000 was mentioned was there any specific reference as to where that money was coming from?

A: The area was mentioned . . . yes.

Q: What was that source?

A: It was from Iraq. But let me be quite clear. I hope you've got the previous answers I've given. That was where the intermediary

was a very restricted area of knowledge in regard to that matter . . .

Q: In that case there was no communication with either of the officers of the party, was there?

A: No, the officer generally were not aware of it.

Q: On what date did Mr Whitlam know the money was coming from the Baath Socialist Party?

Precise source

A: I don't think you can put the date on Mr Whitlam's knowledge of that and in fact it's arguable in terms of evidence whether in fact Mr Whitlam was really aware of the precise source within Iraq because again let me make it clear: Mr Whitlam's role in this was strictly limited from the beginning to saying 'yes to the idea of money from that area. He played no part at all — after all he was rather heavily involved in the campaign . . . He had no day-to-day involvement in saying precisely what's the source and how the negotiations were going.

Q: Didn't he more than simply ratify the position? He went that night with Mr Combe to Mr Fischer's house for the purpose of indicating to Mr Fischer . . .

A: For the purpose of introducing Mr Combe, right.

Q: At any stage during the executive meeting or even before that did Mr Whitlam or Mr Hartley offer to resign?

A: Ah . . . no, no. I mean it would have been quite premature for them to do so, wouldn't it. I mean the executive was being called to consider the matter, why should they make that offer?

Q: . . . did the executive consider the extent to which Mr Whitlam's position as parliamentary leader might be weakened or even endangered by the resolutions passed?

Appropriate degree

A: No, that wasn't a matter, at least it wasn't a matter of explicit reference by any members. I suppose, but some members may have had it in their minds. But the executive to its credit dealt with this matter on its merits, what the issues were, and expressed what they believed was the appropriate degree of condemnation.

Q: . . . On Friday night, Mr Cameron indicated that he knew rather more about this and he might or might not drop it. And this was reported in the papers on Saturday morning. Was there any reference to that during the national executive meeting on the weekend, any questioning of Mr Whitlam as to what might have been involved?

A: No. There were no motions of congratulations passed for Mr Cameron.

Q: (inaudible) . . . source of money. Did Hartley expect the money to come from?

A: Their expectation went through, well clearly it went through until February 11 because in good faith they signed a letter which was proposed to be sent to the Commonwealth Trading Bank. So quite clearly they believed to that point. I think when the reaction of the officers became known, we expressed not only our reaction to the concept totally but also expressed our considerable doubt about whether anything would be ever seen of it. I think the doubts of Mr Combe rapidly accumulated from that point.

Q: Did the letter to the bank result in a loss of \$250,000?

A: No, not a loss of \$250,000 as a result of that letter. Because immediately I became aware of the matter I saw that that letter did not go and a letter went which made it clear that the basis of the payment to the Commonwealth Trading Bank of the loan which was desperately needed that the repayment of that loan would come from sources within the Labor movement in this country.

Q: Is that letter still on the files?

A: Yeah . . .

Q: Did that letter indicate the money was coming from overseas?

A: No, it didn't nominate the sources . . .

# Short breakfast talks with Iraqis

Continued from Page 6.

Q: Can you tell us why Mr Whitlam went to have breakfast with the two Iraqis? Was his personal attendance there intended to provide some sort of indication that the loan funding was confirmed?

A: Let me make it clear in answering that question. I've said from the beginning that at no stage did Mr Whitlam talk to the Iraqis about money. They had, he'd been told, expressed a desire to meet Mr Whitlam — a completely understandable desire. Mr Whitlam therefore met them for a very brief period on the morning of the 10th for 30 minutes and did not speak to them about money.

Q: Was Mr Whitlam's attendance at that meeting intended to endorse the deal. I don't mean it to have been discussed but...?

A: Mr Whitlam makes it quite clear, and this is part of his statement to the executive, that he did endorse the proposal and endorsed that Mr Combe should proceed with Mr Hartley on the matter, and as their arrangement proceeded then he understood that it was proceeding and within that context when the Iraqis came here they said they wanted to see him. He insists and it is accepted by the executive, that his presence there, whatever interpretation they may have wanted to put on it, did not involve on his part a talking about a financial transaction.

Q: But it was within the context of the loan...?

A: It appeared within the time period. What the attitude of the Iraqis if they knew of the proposed transaction, if they knew, then what their attitude would be and why they wanted him there was a matter they would have to be asked. But all we can answer in respect of Mr Whitlam is that there was no talking on his part about loans.

Q: Does the executive know for sure what the Iraqis were here for?

A: No.  
Q: Have you any evidence or any suspicion that the people who approached Mr Hartley were far from representing Iraqi interests and may have been representing some interests in Australia who were trying to sell the Labor Party a pup?

A: I think it's been if not expressed, implicit in the answer I've already given in that it may very well be the case that the Iraqi sources were unaware of what was suggested as being on their behalf. It would necessarily follow from that if that was true then one has to find another explanation for the action of these other people.

Q: Can I just clarify this then? Mr Combe did not talk at any time to the Iraqis about the money?

## Point of view

A: That's perfectly correct.

Q: Are you suggesting that Mr Fischer led the three people into a compromising situation?

A: It is certainly possible that he was involved in this for purposes other than a legitimate obtaining of money from Iraq. When I say legitimate I mean legitimate from his point of view. Obviously it is possible that there is some other explanation.

Q: Is it known how often Mr Fischer met with Mr Whitlam prior to the Iraqi breakfast to discuss this matter?

A: Yes, on the evening of the 16th, on the day of the 19th and on the morning of December 10.

Q: Is it known if Mr Fischer discussed the subject directly with Mr Whitlam of money from Iraqi at those meetings?

A: There was no discussion by Mr Whitlam



Mr Hawke at the press briefing at John Curtin House yesterday.

with Mr Fischer as there had not been with the Iraqis on the question of money.

Q: What was the purpose of the meetings between Mr Whitlam and Mr Fischer? Mr Hawke.

A: In regard to Mr Fischer there are areas of possible explanation as to what he may have been about. Clearly the presence of Mr Whitlam in the first place on the 16th was for the purpose of the introduction of Mr Combe. On the second occasion, on the 19th, it was about matters entirely unconnected with this issue and was concerning in fact the complaint which Mr Fischer was making about allegations of maltreatment of an Iraqi at an Australian airport and that was the issue on the 19th, and on the 10th it was to meet the Iraqis.

Q: You are now putting it to us that Mr Whitlam said that the Scarf Foundation may be a way of getting this money into the country?

A: No necessarily of getting it into the country. It was the question of saying well look, the suggestion had been made then once the idea of money from those sources was entertained as a reasonable proposition, by the people concerned, then there was the mechanical question of negotiation.

Q: Who interested the Scarf Foundation... not necessarily Mr Fischer?

## Acting with authority

A: Mr Hartley was authorised on the 16th to establish a meeting with Mr Scarf

whereby Mr Whitlam could introduce Mr Combe, who had not met Mr Scarf, so that they could then know that Mr Combe was acting with authority.

Q: And why didn't they meet Mr Scarf?

A: We understand it was arranged that Mr Fischer in his capacity as a director of the Scarf Foundation, was the person who was in an active sense involved in the area.

Q: Did Mr Whitlam say whether he had been aware of Mr Fischer's extreme right-wing background?

A: Mr Whitlam said and we accept that he was not aware.

Q: Have you any indication when caucus may meet next, will it be earlier than scheduled?

A: Well no. I understand that under the laws of caucus that seven day's notice is required.

Q: Does this mean the end of the leader's fund which has been used over

many years to supplement or finance...?

A: It doesn't necessarily mean the end of the leader's fund but what the executive is asking us to do is to look at this whole question and see whether, in fact, there may be some better way of, if not eliminating, which you never could do, but of diminishing the very considerable onus which under the present arrangements preside upon the Leader and the secretary. And let me emphasise that in saying that there was no element of suggestion on the part of any member of the executive that either of these persons would act with impropriety, but that it may possibly be the case if they hadn't had such enormous loads upon them and in the special circumstances of mid-November that the error of judgment may not have been made.

## Another

Q: Did Mr Hartley introduce Mr Fischer into the negotiations or was it through another type of...?

A: No, it's not right to say that Mr Hartley introduced Mr Fischer... he was part of that introduction but it's not accurate to say that he introduced... he was part of that introduction.

Q: How did he become involved... How was he introduced into the matter?

A: Once the offer was made the question of intermediaries arose and Mr Fischer in fact, as we are informed, is a person who has had for a considerable period very extensive contacts in the Arab world.

Q: Was Mr Fischer approached or did he approach someone... to make the original move?

A: It's not correct to say that Mr Fischer made the original approach.

Q: Who did make the approach to Mr Fischer?

A: Well there was a combination of an approach made by Mr Hartley and by Mr Whitlam... not in terms of Mr Whitlam initiating the issue but once the offer... or not the offer, but the suggestion of the availability of resources from the Arab area had been raised by Mr Hartley, then the suggestion was made by Mr Whitlam not in regard to the amounts or the proposals but in terms of intermediary. Mr Whitlam was aware of the Scarf Foundation and it was Mr Fischer's association with the Scarf Foundation which brought him into it. But let me insist, in respect of Mr Whitlam, that his was a response once the suggestion had been made

as a possible person of a...?

Q: Did Mr Whitlam suggest to Mr Hartley that Mr Fischer was a possible intermediary?

A: Oh, this was part of the suggestion, yes.

Q: And Mr Hartley then made the opening approach?

A: Oh, let's not get unnecessarily complicated about this... Mr Hartley in good faith believed from his experience that money could be available. Now, it's a big area and when you say the money may be available then there's got to be a way of talking, of contact. And all that was involved then was that it was within the knowledge of Mr Hartley that Mr Fischer had this experience, was within his knowledge that the Scarf in Mr Whitlam's knowledge once the suggestion had been made about the idea, it was within Mr Whitlam's knowledge that the Scarf Foundation also had extensive interest in the area...?

Q: Mr Hawke, can I just clarify one thing. In the search for an intermediary, that was made on November 16, I take it you are suggesting there was a discussion and various possible intermediaries were suggested and Mr Whitlam suggested Scarf Foundation.

A: Out of the discussions Mr Whitlam observed that he was aware and, of course, he had been aware and had other communication on other matters as Prime Minister because they were very much aware in the area, that he knew that they knew the area. It's nothing more complicated or sinister or any other adjective you want to use than that.

## Reason to suppose

Q: Did he have any reason to suppose that they supported the Labor Party?

A: I don't know that he had any reason to suppose that they supported the Labor Party exclusively or singularly or any other way... it was not a matter of discussion.

Q: When did the figure of \$500,000 come into discussions... you said Mr Hartley raised the general possibility...?

A: No, all right, let's be clear about that... Mr Hartley without naming any amount on November 16 indicated that he thought considerable sums but he didn't put any figure on it. It was only as you went into the end of November, December that this figure was mentioned and it was not until December 10 that Mr Whitlam and Mr Combe knew that that was the figure involved.

Q: Who told them that?

A: It came out of the communications with the intermediary.

Q: If they knew that late how did they manage to spend almost exactly...?

A: What I'm saying is that's when Mr Whitlam and Mr Combe... Mr Combe had had an indication... see, he conveyed it to Mr Whitlam on the 10th... Mr Whitlam didn't know before the 10th about that amount... Mr Combe had known some days, I'm not quite sure, though, just how many days earlier, but a relatively short period earlier on the basis then that he was convinced in his mind that that amount would be forthcoming, he then went ahead with contingency plans that he had in his mind about how more money could be used...?

Q: And that was Mr Fischer who specifically set it up?

A: Mr Fischer was the intermediary, yes.

Q: Was this information conveyed to Mr Whitlam before or after the breakfast on the 10th?

A: After the breakfast. You'll remember the 10th was the night of the vigil here in Canberra and it was that night.

Q: Who told you about the money deal?

A: The assistant Federal secretary, Mr Bennett. He, Mr Bennett, had spoken earlier in the day to the senior vice-president but had not gone into the details and Mr Bennett was informed that I was going to be in Canberra that Thursday night that I had to tape a 'Face The Nation' television program so I met Mr Bennett at approximately 10.30 that evening and I was then informed.

## Coming from

Q: Mr Hawke, when the figure of \$US500,000 was mentioned was there any specific reference as to where that money was coming from?

A: The area was mentioned... yes.

Q: What was that source? A: It was from Iraq. But let me be quite clear. I hope you've got the previous answers I've given. That was where the intermediary

said it was coming from. We have no reason to assert that the Iraqi authorities did in fact know.

Q: Did Mr Fischer mention the Iraqi Government or Iraqi private funds?

A: Not the Iraqi Government. What was mentioned was the Iraqi Baath Socialist Party.

Q: Did Mr Combe offer to resign?

A: When the officers met at my home on the Sunday night the 15th [of February] at that stage he indicated to the officers that he felt in the circumstances he would have to consider resignation. We made it clear as officers that he didn't have to jump to any conclusions like that at all. And in the light of that clear indication from the officers that that would be a precipitous decision to make the matter was then not proceeded with. I imagine — and let me say this of David — he went through very very considerable turmoil, mental turmoil and anguish for quite a period before this, not just after February 10 but for a long time before that, and I suppose even after our meeting on the 15th that thought may have been in his mind.

Q: As national president of the ALP, do you believe Mr Whitlam should remain leader of the parliamentary party having been censured by the national executive?

A: Yes.

Q: The mention has been made of grave errors of judgment about entertaining suggestions of where money might come from. The question is where the Labor Party can expect to get funds from. Do you believe it was a grave error of judgment in accepting over \$70,000 from Mr Murdoch... in the previous campaign?

A: Again let me say there was a very restricted area of knowledge in regard to that matter...?

Q: In that case there was no communication with either of the officers of the party, was there?

A: No, the officer generally were not aware of it.

Q: On what date did Mr Whitlam know the money was coming from the Baath Socialist Party?

## Precise source

A: I don't think you can put the date on Mr Whitlam's knowledge of that and in fact it's arguable in terms of evidence whether in fact Mr Whitlam was really aware of the precise source within Iraq because again let me make it clear: Mr Whitlam's role in this was strictly limited from the beginning to saying 'yes to the idea of money from that area. He played no part at all — after all he was rather heavily involved in the campaign... He had no day-to-day involvement in saying precisely what's the source and how the negotiations were going.

Q: Didn't he more than simply ratify the position? He went that night with Mr Combe to Mr Fischer's house for the purpose of indicating to Mr Fischer...?

A: For the purpose of introducing Mr Combe, right.

Q: At any stage during the executive meeting or even before that did Mr Whitlam or Mr Hartley offer to resign?

A: Ah... no, no. I mean it would have been quite premature for them to do so, wouldn't it. I mean the executive was being called to consider the matter, why should they make that offer?

Q: ... did the executive consider the extent to which Mr Whitlam's position as parliamentary leader might be weakened or even endangered by the resolutions passed?

## Appropriate degree

A: No, that wasn't a matter, at least it wasn't a matter of explicit reference by any members. I suppose, but some members may have had it in their minds. But the executive to its credit dealt with this matter on its merits, what the issues were, and expressed what they believed was the appropriate degree of condemnation.

Q: ... On Friday night, Mr Cameron indicated that he knew rather more about this and he might or might not drop it. And this was reported in the papers on Saturday morning. Was there any reference to that during the national executive meeting on the weekend, any questioning of Mr Whitlam as to what might have been involved?

A: No. There were no motions of congratulations passed for Mr Cameron.

Q: (inaudible)... source of money. Did Hartley expect the money to come from?

A: Their expectation went through, well clearly it went through until February 11 because in good faith they signed a letter which was proposed to be sent to the Commonwealth Trading Bank. So quite clearly they believed to that point. I think when the reaction of the officers became known, we expressed not only our reaction to the concept totally but also expressed our considerable doubt about whether anything would be ever seen of it. I think the doubts of Mr Combe rapidly accumulated from that point.

Q: Did the letter to the bank result in a loan of \$250,000?

A: No, not a loan of \$250,000 as a result of that letter. Because immediately I became aware of the matter I saw that that letter did not go and a letter went which made it clear that the basis of the payment to the Commonwealth Trading Bank of the loan which was desperately needed that the repayment of that loan would come from sources within the Labor movement in this country.

Q: Is that letter still on the files?

A: Yeah...?

Q: Did that letter indicate the money was coming from overseas?

A: No, it didn't nominate the sources...?

# Condemned he may be

from PETER BOWERS,  
our political  
correspondent  
in Canberra

"CONDEMN . . . censure,  
blame: give judgement  
against: being about conviction  
of: doom . . ."

The ALP National Executive chose the word "condemn" deliberately and only after several delegates had consulted the dictionary.

Care was taken in framing the resolution to give "condemn" its harshest connotation . . . "Can only condemn in the strongest terms" was the damning conviction of Messrs Whitlam, Combe and Hartley for their part in considering the proposed gift of funds from Arab sources for the 1975 election campaign.

Surely then Mr Whitlam is finished? A leader so condemned by his party's supreme authority (between national conferences) cannot remain as leader without condemning the party to public ridicule and contempt.

The Concise Oxford Dictionary notwithstanding, Mr Whitlam is far from doomed. He may not even be challenged when the parliamentary Labor Party meets tomorrow week to consider the national executive's judgment.

There are two reasons why Mr Whitlam probably will continue to confound his critics — and logic.

To their astonishment, Labor MPs are finding that Mr Whitlam's grassroots support in Labor Party branches is stronger than ever. This presents a dilemma to those Labor MPs who, left to themselves, would no longer support Mr Whitlam in a leadership struggle; and there are now more than enough disenchanting Whitlamites to vote him down if it came to a ballot in the party room.

As one Whitlam waverer said yesterday: "Morally, I

... BUT DOOMED HE IS NOT



Mr Whitlam . . . the rank-and-file are demanding he be forgiven.

find Mr Whitlam's position indefensible. It is now established that Mr Whitlam was up to his neck in it. But, without exception, every rank-and-file member in my electorate sees Whitlam as an underdog under attack by the Fraser-Murdoch axis.

"To them, it would be an act of gross disloyalty not to support Whitlam against Labor's enemies. I feel bound to heed the rank-and-file, even though they go against my better judgment."

For this reason, a lot of Labor men hope the issue will not be put to the vote in the party room.

If Mr Whitlam had been as frank with his parliamentary party as he was with the National Executive at the weekend, he would have been defeated forthwith.

Mr Whitlam sensed this and parried questions from parliamentary colleagues with the excuse that he could not answer because the fate of the National Secretary of the party, Mr Combe, was also involved.

Several MPs, who for years had stuck unwaveringly to Mr Whitlam, left that meeting vowing that he must go if he knew about the Iraqi negotiations.

Paradoxically, Mr Whitlam's confession at the weekend, far from undermining his position, has strengthened his prospects of surviving as leader.

The rank-and-file are now demanding that he be forgiven, and such is the respect for the position of Labor leader that the party, at all levels, cringes from delivering the coup de grace now that Mr Whitlam had been brought to his knees.

Having condemned Mr Whitlam, the National Executive went on to call on the party to close ranks — an escape clause promptly seized on by the party's NSW branch, which endorsed the National Executive's judgment and then gave Mr Whitlam a rousing ovation.

Even before Mr Whitlam's latest crisis, his leadership was not as secure as his seemingly easy re-election last January implied. Mr Whitlam secured an absolute majority on the first ballot, receiving 36 votes to Mr Bowen's 14 and Mr Crean's 13. Taken together, Mr Whitlam's two rivals polled 27 votes, only eight short of Mr Whitlam's total. He would need to lose only five votes to lose the leadership in a two-way contest.

The second factor working for Mr Whitlam's survival is that no obvious successor is available to exploit disenchantment with Mr Whitlam within the Parliamentary party. Mr Hayden, the heir unapparent, is showing no more enthusiasm now than when he flatly rejected Mr Whitlam's offer to stand aside for him the morning after the December 13 election disaster. Mr Uren, the Deputy Leader, has serious reservations about his own ability to assume the leadership and lacks support outside the left-wing. This leaves the field to Mr Beazley, who would be regarded as a caretaker, and

Mr Bowen, whose leadership qualities are untested.

Mr Whitlam is said to have confided to his closest colleagues that, despite public assurances to the contrary, he would not be leading Labor into the next election, due in 1978.

The same colleagues would not be surprised now if he stepped down later this year, and are using this as an argument for leaving him as leader for the present. They say that despite Mr Whitlam's flaws, which make his political judgment suspect and make him and the party disaster-prone, he is an outstanding leader who should not be hounded from office at the behest of Labor's enemies.

The Labor Party, despite its self-destruct mechanism and disposition to commit fratricide, cannot match the Liberal Party's ruthlessness for getting rid of leaders who have become a liability. Mr Snedden was given the opportunity to lose only one election, albeit narrowly, and Mr Lewis was not given the opportunity to lose anything.

As for Mr Hawke, his leadership prospects remain obscure. His decisive intervention, once he became aware of the Iraqi negotiations, has enhanced his reputation as a shrewd, smooth, machine man. But it has also confirmed the suspicions of Labor politicians that Mr Hawke is in deadly earnest about getting into Parliament and taking over the leadership. Still, there is nothing to support the extremist view that Mr Hawke is out to get Mr Whitlam.

Because Mr Hawke has everything to lose from such an outcome, it serves his purpose for Mr Whitlam to retain the leadership until he (Mr Hawke) can get into Parliament and stake his claim. A new leader, once established, would ruin Mr Hawke's prospects.

After the  
kick...

# GOUGH CLINGS ON

From LAURIE OAKES

**CANBERRA.** — The Federal Opposition Leader, Mr Whitlam, will face a new caucus battle after a dramatic censure yesterday by the ALP federal executive.

The executive strongly condemned Mr Whitlam's role in the Iraqi election cash affair and convicted him of a grave error of judgment.

It censured the party's federal secretary, Mr D. Combe, and the Victorian Left-wing executive delegate, Mr W. Hartley, in the same terms.

The executive said the three men were "equally culpable".

They had risked allowing the Labor Party to be charged with putting its principles, policies and programs up for sale.

Mr Whitlam admitted to the executive that he knew from the start of the plan to get election cash from Arab sources and endorsed it.

He told the executive he realised this was a major error.

The scathing condemnation makes it inevitable that Mr Whitlam's leadership will come under threat when the Labor caucus next meets on Wednesday week.

Some Labor people close to Mr Whitlam said last night they believed he should resign.

But it is believed Mr Whitlam has no such intention and is confident he will ride out any caucus crisis.

## Standing ovation

Late yesterday, he told 400 delegates at the NSW ALP council in Sydney that there had been "errors of judgment by myself and one or two others."

But he appealed to ALP members to maintain their enthusiasm.

Mr Whitlam, speaking behind closed doors to the council, got a standing ovation.

Yesterday's executive decision will be automatically referred to caucus, and Mr Whitlam's critics are expected to have a field day.

The censure came after a three-day meeting of the executive — 23 hours of discussion of the proposed U.S. \$500,000 campaign gift from the Iraqi Ba'ath Socialist Party. The meeting frequently became heated and there were angry clashes between the officers and other executive delegates.

But the ALP federal president, Mr Hawke, told a press conference when the meeting ended yesterday that he believed Mr Whitlam should stay leader.

The motion of censure was passed unanimously, with even Mr Whitlam and Mr Hartley voting for it. The full text is on Page 14.

Referring to Mr Whitlam, Mr Combe and Mr Hartley, it said the executive "can only condemn



• MR HAWKE at his press conference after the executive meeting.



• DAVID COMBE after the meeting.

in the strongest terms the actions of the three latter persons in the matter of a proposed gift of funds from Arab sources for the 1975 election campaign."

It said: "The principles, policies and programs of this party are not up for sale or auction."

"Yet the initiation and endorsement of such a proposal put the party at risk on this charge."

The resolution listed these "grave errors of judgment":

• Mr Hartley making the suggestion that Arab money should be sought, and Mr Whitlam and Mr Combe entertaining it.

• Failure of the three men to tell other party officers and the executive of the proposal.

• The action of Mr Whitlam and Mr Combe on February 11 this year in signing a proposed letter to the Commonwealth Trading Bank on the basis of the expected arrival of the Iraqi money.

But the executive said the "extraordinary circumstances" which led to

the December 13 election had contributed considerably to the error of judgment made by the three men.

It also blamed "the excessive pressure and responsibility" which the party allowed its leader and its federal secretary to carry in raising election campaign money.

The party officers were directed to prepare recommendations on the way Labor's election fund raising could be improved.

• Continued, P. 2

## Gough clings to power

• Cont. from Page 1.

Mr Hawke said none of the three men discussed the proposed election gift with two Iraqi officials who visited Australia between December 8 and December 10.

The aim of the meeting was to show "that Mr Combe was acting with authority," Mr Hawke said.

Mr Hawke said the Labor Party had no evidence that the Iraqi Ba'ath Socialist Party ever knew it had been proposed as the source of the election gift.

Mr Whitlam told the executive all money from business sources to political parties could be corruptive.

"Some things go on for which you could be had up for defrauding the revenue," he said, referring to devices used to encourage campaign gifts from business firms.

• The Iraqi gift affair.

— Page 8, "Grave errors"

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Government House,  
Canberra. 2600.

4 March 1976.

*My dear Martin,*

Our situation here continues to be somewhat complicated. The opinion appears to be growing that Mr Whitlam will survive at least for the time being.

The Mr Fischer that I referred to in my previous letter appears to have disappeared whilst in Singapore. His solicitors have now issued a statement thus clearing up speculation as to whether he was alive and well. In the statement he says that he did not on any occasion discuss getting campaign funds from Iraq with Mr Whitlam though his statement does not preclude the possibility that other Labor Party members discussed the matter with Mr Fischer or that Mr Whitlam knew about this.

In his statement, Mr Fischer said that he saw Mr Whitlam and Mr Combe, the Secretary of the Party, on two occasions. His statement is a short one and I think it is probably worthwhile attaching it, and I do so.

I leave for Sydney this afternoon after the departure of Their Majesties the King and Queen of Jordan, who have been staying here at Government House, and may not have an opportunity to bring you fully up to date before the bag leaves for London tomorrow. We should, however, have some news about the Executive Meeting of the A.L.P. and if we do I shall arrange for a postscript to be added to this letter.

Please assure Her Majesty of my continued loyalty and humble duty.

*Yours sincerely,*

**JOHN R. KERR**

Lieutenant Colonel the Right Honourable Sir Martin  
Charteris, G.C.V.O., K.C.B., O.B.E.,  
Private Secretary to The Queen,  
Buckingham Palace,  
LONDON ENGLAND

# SYDNEY MORNING HERALD

THURSDAY 4.3.76

## What Fischer said

The text of Mr Fischer's statement was:

Mr Fischer has known the Honourable Mr E. G. Whitlam for some years and he conferred with him on two occasions in November and on December 10, 1975.

The first meeting took place at Mr Fischer's flat at McMahons Point in the evening. The persons present were Mr Whitlam, Mr Combe, Mr and Mrs Fischer. The meeting was purely a social one and Mr Whitlam and Mr Combe attended at Mr Fischer's invitation.

The second meeting took place in Mr Whitlam's office in Martin Place, Sydney. The persons present were Mr Whitlam, Mr Combe and Mr Fischer. The meeting was arranged at Mr Fischer's request to complain about an incident at Sydney Airport.

The meeting on December 10 took place at Mr Fischer's flat at 8 am. The persons present were Mr Whitlam, Mr Combe, Messrs Farouk Yeyah and Gahffil Takriti and Mr and Mrs Fischer. The meeting lasted about thirty minutes and was arranged at Mr Fischer's request to enable Mr Takriti to convey an invitation to Mr Whitlam from the President of Iraq to visit Iraq.

At none of the meetings was there any suggestion of a payment being made from any overseas source to the Australian Labor Party to meet the cost of the forthcoming election or otherwise.

Mr Fischer is in good health. He is not in Singapore but he is not prepared to disclose his present whereabouts.

Government House,  
Canberra. 2600.

2 March 1976.

Dear Martin,

The Australian adventure continues. I do not know how much you have had in your press about the story of Iraqi gold. A great crisis for the Labor Party is unfolding. I shall give you a short summary of a highly complicated situation in which the future of the A.L.P. and of Mr Whitlam are both involved.

The details will not be known until after next Friday when the A.L.P. Executive is to meet. The bare outline is that Mr Whitlam admits that on 10 December he found time to go for breakfast to a private apartment to meet two Iraqis. The breakfast was hosted by a Mr Fischer, a man of thirty-eight years of age who had been, according to what seems to be good authority, an extreme right wing member of the Liberal Party in the late sixties. When I say "right wing" I mean pro-apartheid, pro-Rhodesia and U.D.I., extreme anti-semitism - indeed everything that you can imagine just short of fascism. This man had in recent years, apparently driven on by his implacable anti-semitism, gradually become associated with the left-wing Arab regimes including Iraq. He had spent, up till December 1975, a couple of years working for, actually managing, a "Foundation" financed by a certain Reuben Scarf, a Lebanese by origin, who was a leader of the pro-Arab faction in Australia.

By way of prefatory statement I should say that the Labor Party, on Middle East politics, has two factions, one is strong and strongly pro-Israel, the other is weaker and left-wing in orientation, pro-Russian and pro-Arab. A leading figure in this latter faction is a Mr Hartley, very militant and left-wing in his general policies and a member of the Federal Executive of the A.L.P. He stood as an A.L.P. candidate for the Senate in the December election and was defeated.

The leader of the pro-Israel faction is Mr Hawke, the President of the A.L.P. and the A.C.T.U. He is quite emotionally pro-Israel though he is not a Jew.

The previous Government adopted an even handed policy on the Middle East, as does the present Government, but some thought that in Labor days there was a shift in emphasis towards the Arabs and some think that now there is a shift back. The realities of oil and markets are dominant considerations and an even handed policy seems to be necessary.

.../2



Mr Fischer having developed, more and more, his connections with Iraq, apparently embraced, genuinely or not according to differing opinions, the Arab ideology of the left and forgot or suppressed his previous extreme right wing, Birch Society, type of philosophy. This brought him into contact with the very left-wing pro-Arab Mr Hartley.

The A.L.P. was short of funds to fight the election and ended up at least \$400,000 in the red. Mr Whitlam is alleged to have wanted substantial funds to fight the election and to have acquiesced in approaches said to have been made to Iraq authorities through Mr Hartley and Mr Fischer for a gift to the A.L.P. funds for the election or at least not to have forbidden such approaches. There is a widespread belief that if there were discussions he must have known about them.

A sum of \$500,000, according to one story, was promised but ultimately not paid.

Mr Whitlam has admitted going to the breakfast with two Iraqis on 10 December and, as a result the press believes that his credibility has probably been destroyed and that he will probably cease to be the A.L.P. leader. Mr Hawke has flown back from abroad for a Federal Executive special meeting and Mr David Combe, the A.L.P. Secretary has come back from a holiday cruise. Mr Whitlam says that Mr Combe was present at the "social breakfast" with the two Iraqis and Mr and Mrs Fischer.

Mr Rupert Murdoch has played a big part in breaking the story in his Australian press chain. You may have heard the details of this Arabian Nights story in London through his papers over there. His papers here accuse Mr Whitlam of having had four meetings with Mr Fischer.

The two Iraqis came into Australia on 8 December, allegedly to negotiate for the establishment of an Iraqi Consulate General's office in Australia but did nothing about this. On their immigration papers, on entry, they said they were coming to visit relatives.

It seems to be clear that Mr Hawke first heard about the possibility of getting money from Iraq about two weeks ago and he and other officers of the Party vetoed the proposal. This is said to have led to the Party getting bridging finance from the Commonwealth Trading Bank to the extent of \$250,000 to pay its bills. I do not know whether this is so or not.

The Party is in turmoil. The leadership is again in question. The strangeness of dealing with Mr Fischer and the Iraqis is widely recognised and seems to confirm that Mr Whitlam, if he were involved as alleged, must on a charitable view have been somewhat disturbed. We must await the investigation by the A.L.P. Federal Executive before coming to any conclusions.

.../3

Mr Whitlam claims that he found time on 10 December, three days before election day to have breakfast, with Mr Fischer and the two Iraqis, for merely social purposes. He has said that he went because they were members of the Ba'ath Socialist Party who wanted to meet him but he has not yet explained why they did not come to him nor has he answered other difficult questions.

It is quite impossible to go into the further extraordinary details of accusation, assessment and prediction involved in this highly peculiar exercise. It is better to await events and to describe them as they unfold.

The Commonwealth Police have impounded the diaries of the police body-guards who were with Mr Whitlam during the election and have interviewed the A.L.P's advertising agency apparently in an investigation on whether the Iraqis deceived anyone about their entry or illegally brought in money. Two editorials, one from the Canberra Times and one from the Age of today are attached.

One result has been to remove me, for the time being, from the front and the inside pages of the press.

I send you a couple of reviews of the Horne book "Death of the Lucky Country". Other books are to appear in the next couple of months mostly by scribblers of the journalist variety who know nothing about their subject. One is expected to be first class and to be published before long.

I am persuing the policy of saying nothing and denying nothing.

Some extracts from the Bulletin - a weekly - are attached.

I have just received from Canada some copies of Press comments, editorials and letters published. These include some supportive letters from Eugene Forsey who has sent me a copy of his book "Freedom and Order". I feel in the special circumstances I may be forgiven for quoting his inscription on the fly-leaf - "H.E. Sir John Kerr with respect and admiration from Eugene Forsey February 19, 1976". I value this very much and know you will not be too critical about me letting you know how he sums up his attitude.

We thoroughly enjoyed having lunch at Admiralty House with Lord Mountbatten of Burma.

.../4

As to the current crisis we all await the events of the next week. In the meantime I thank you for your gracious letters of 16 and 24 February and ask you to assure Her Majesty of our continued loyalty and humble duty.

*Yours sincerely,*

JOHN R. KERR

Lieutenant Colonel the Right Honourable Sir Martin  
Charteris, G.C.V.O., K.C.B., O.B.E.,  
Private Secretary to The Queen,  
Buckingham Palace,  
LONDON ENGLAND

## THE PLAYERS ASSEMBLE

ALL those members and officials of the Australian Labor Party who had and have knowledge of the offer of a massive gift to campaign funds from Arab sources are now on hand. The president of the ALP, Mr Hawke, has cut short his overseas trip and has given every indication so far that he is as anxious as anyone to have the facts, the non-facts and the implications aired. The national secretary of the ALP, Mr David Combe, has also returned from holiday though without comment. Mr Hartley, a member of the Victorian executive of the ALP and a proud champion of the Palestinian cause in Australia, has been voluble but enigmatic about his role in the affair, his latest concern being how certain details came to be published and that the fact that they were indicates a CIA plot. There seems to be a strange order of priorities in his display of concern but the public awaits his explanation, supported by facts, with keen interest.

And what of the Leader of the Opposition, Mr Whitlam? His beleaguered position is almost the classic one of "heads-I-lose-tails-you-win". For whatever possibly innocent reasons, Mr Whitlam is involved in a messy situation which, unless proved conclusively to be a total frame-up, has damaged him irreparably both inside and outside the party. However unfair it may be, there will be too many who will not be convinced — and do not want to be — even if Mr Whitlam's disclaimers prove his ignorance of the affair. And the product of that attitude is a growing lack of credibility in Mr Whitlam's leadership and his usefulness to the ALP and the nation. Mr Whitlam may well feel he is the victim of machinations both within and outside the party, but the public want an explicit explanation of just how much he may have contributed to his own precarious position.

The Labor Party itself must clean house. If, as has already been stated by party officials, the Iraqi offer had been flatly rejected any subsequent discussions on that subject were entirely out of order. A party and its individual members cannot stop foreign interests or even undesirable domestic interests offering funds for election campaigns. But the party machine cannot be so naive as not to realise the enormous damage the offer itself let alone acceptance could do to its image. There are many in the ALP who regret that the party did not, as suggested by an opponent last week, shame other parties by publishing its sources of funds in accordance with its policy and along the lines of the legislation it had seen defeated in the Parliament when in office. Perhaps now the party will see some merit in the proposition that it publish also offers of funds that it did not accept.

### Dubious police inquiry

Politics is big business. The actual campaign funds, large as they are for this country, are chicken feed beside the national expenditure that will be controlled by the winning side. In these circumstances, distasteful as it may be to consider it, the political arena attracts to its periphery and the shadows beyond the parliamentary spotlight a host of wheeler and dealers. Much of their activity is quite legitimate, the principal instrument being the gentle art of persuasion. But there are those who would not hesitate to buy influence if there were any chance that politicians or public servants or both could be bought.

The measure of concern within the Labor Party over the present allegations must indicate to the wider electorate that the possible pressure such a gift implies will not be tolerated. The tragedy at the moment is that much damage has already been done in the absence of facts and satisfactory explanations. The Federal executive of the ALP, when it meets on Friday, should undertake without equivocation to place the evidence, the record of its own investigations and its findings before the public.

At the behest of the Prime Minister, Mr Fraser, an investigation is being conducted into the visit of two members of the Baath Socialist Party to Australia during which they met Mr Whitlam. But that investigation must have definite limits. The Government has every right to find out whether the men came to Australia for the purpose they and their Government says they did: to arrange the establishment of an Iraqi Consulate-General in Sydney. If that was their intention it is more than strange that the men did not discuss the matter with the Department of Foreign Affairs. It is strange too that they allegedly also referred to their visit in contradictory terms by saying it was a family visit. But the Government's investigation on that specific point does not entitle it to make use of police diaries to check on the movements of the Leader of the Opposition. The purpose of the diaries is, among other things, to enable reconstruction of a politician's movements and list his visitors in the event of death or injury. It is not acceptable that they should be used in what is, despite its national ramifications, a party matter. The Government's interest in this affair should be to dust off the Labor legislation it so imprudently rejected so that the public has at least a glimmer of an idea of who backs whom in the high stakes of Government.

*The Melbourne "Age" 20/12/74*

## Why, why, why?

THE mystery surrounding the alleged offer of Iraki cash to Labor's campaign funds last December grows rather than diminishes. The affair is not just a domestic political issue for Australia—although heaven knows, on that basis alone it is worrying enough. There are also the very real questions of exactly who were the two Iraki emissaries who met the Opposition Leader, Mr. Whitlam, on December 10, and exactly what were they doing in Australia? These questions do not disappear with the denials by Mr. Whitlam and Iraki officials abroad that an Iraki "gift" of \$500,000 to Labor was ever discussed. In this context, they positively increase. For if these two men were not discussing cash aid for Labor in the December 13 poll, what were they doing?

Did they fly halfway across the world merely to breakfast with the Opposition Leader — and briefly at that — in a flat at McMahon's

Point, Sydney? This would have been an unbelievably costly exercise, even for two officials from an oil-rich State. The "official" explanation, of course, is that the two emissaries were here to set up a consulate in Sydney. This is what they told the Australian Embassy in Tokyo on their way here. Yet this issue does not appear to have been officially discussed at any point during their two days in Australia. Incredibly, the man through whom they allegedly were going to deal, Aqhtan Lutfi Ali, the Iraki Ambassador to Japan and Australia, was back in Japan before they arrived. And in Mr. Ali's own words, their mission depended on their meeting him in Sydney. This is an odd piece of diplomatic non-co-ordination for a start. But in any event, on their arrival in Australia, the two men gave their reason as "visiting relatives".

In the light of this it is understandable that the Prime Minister, Mr. Fraser, should talk of

"inconsistencies", and even more understandable that the visit and the identity of the two men should now be the subject of detailed Australian security checks. This does not relieve Mr. Fraser of the onus of justifying the impounding of diaries kept by Commonwealth police guarding Mr. Whitlam at that time — obviously, the Prime Minister has some explaining to do — but the basic cause for concern cannot be escaped. Precious little is known of the two Iraklis. It is not even known for sure whether the names they gave are correct.

They identified themselves as Farooq Abdulla Yehya, a member of the Iraki Foreign Ministry (travelling on a diplomatic passport) and Ghafil Jassim, a Government official (travelling on a private passport). Were these aliases, and, if so, why? Fortunately, there is no evidence at present to hold up the claim that one of these men in

fact was Farouk al Jezirah-Yeeyah, head of the Iraki secret police. Even in the odd circumstances surrounding this case, that still sounds unbelievable. It is to be hoped that it stays so. But the fact remains that, for one reason or another, these two Iraklis entered Australia in doubtful circumstances, told conflicting stories, and left two days later immediately after seeing Mr. Whitlam. The nation is entitled to ask why, whether funds were discussed, or funds were NOT discussed.

If brotherly Socialist help does finally transpire to have been the object of the mission, then one is forced back to the original questions: did money change hands, or was any pledge made and accepted? And if \$500,000 was given or offered, what comfort did Iraq expect in return? Half a million dollars is no small sum — especially if it were being offered to a party

which by the most favorable assessment could have had only a fifty-fifty chance of winning the election. While the Labor Party must resolve its side of the affair, the nation must also hear from the Government. Much — in fact, almost everything — remains to be explained about this Bagdad pair. The Government should report as promptly as possible. And if it finds nothing detrimental to Mr. Whitlam it should say so with grace.

Meanwhile, all those ugly questions remain. They go far beyond domestic politics and the personal demise of Mr. Whitlam. They perhaps touch on national security; they certainly touch on foreign relations, the nature and purposes of the Arab lobby in this country, and the effectiveness of our entry and exit procedures. It is a case of why, why, why? And sooner or later we must have the answers.

apparently acknowledges is largely attributable to the slackness of the labor market.

The government's economic advisers are therefore reading the commission decision as saying that as long as there are strong "expectations" of indexation, it has to maintain it. But if the government and business were to start to argue strongly against the viability of indexation, and consequently to challenge it, then the expectations would evaporate and the commission would move too. The government's advisers have been reading the "reasons for decision" as a statement that the

commission may trim its sails to the government's anti-indexation wind, if the government for its part is prepared to sustain the wind.

So the next few weeks may see the government launching out on two new courses. It may come clean with its advisers' prediction that unemployment will rise and indeed may have to rise over the year in order to achieve price stability and the sound basis for jobs in 1977. And it may consolidate its case against wage indexation, now looming as a major obstacle to the really big political objective of economic stabilisation.

*of great sense and sagacity would want no others. He would find that his having no others would enable him to use these with singular effect. He would say to his minister: 'The responsibility of these measures is upon you. Whatever you think best must be done. Whatever you think best shall have my full and effectual support. But you will observe that for this reason and that reason what you propose to do is bad, for this reason and that reason what you do not propose is better. I do not oppose, it is my duty not to oppose, but observe that I warn.' Supposing the king to be right, and to have what kings often have, the gift of effectual expression, he could not help moving his minister. He might not always turn his course, but he would always trouble his mind."*

(Walter Bagehot, *The English Constitution*. RHS Crossman edition, London, 1964, p111.)

Where does that quotation leave Sir John Kerr?

The big trouble was that his Prime Minister seemed never to give any sign that he saw any role for Sir John at all.

From what Senator McClelland says it seems that Sir John wanted a course which would let Fraser "off the hook," and which would give Whitlam a basic victory without bringing total humiliation to Fraser. Whitlam would have none of that. He did not wish merely to win. He wanted to destroy Fraser.

The commonsense course proposed by Kerr was that Whitlam should guarantee that no half-Senate election would give Whitlam a short-term fortuitous advantage. While Whitlam indicated a small measure of assent to this he never contemplated that such a concession be made in a way that would save Fraser's face.

It seems that Kerr decided on dismissal about November 7. Why had he changed his mind? The reason, surely, was the attitude shown by Whitlam. Here was a man determined on total victory, prepared to govern without funds approved by parliament. Whitlam preferred to run a rebel government rather than concede an inch to the constitutional rights of the Senate or the Governor-General.

Having changed his mind fairly late in the piece Kerr did deceive Whitlam from that point on. He did so because he decided he could no longer trust Whitlam. If he had warned Whitlam, then Whitlam could have had him sacked by the Queen.

Senator James McClelland has made various comments about how Kerr likes the company of the establishment. An alternative explanation is that Kerr found Fraser's company more congenial because Fraser treated him with respect while Whitlam treated him as a puppet.

If Whitlam had been prepared to be a bit more flexible he may still be Prime

## THE CONSTITUTION

# Reading Sir John Kerr's mind

By MALCOLM MACKERRAS

THE MEMOIRS of Sir John Kerr, when they are written, will make fascinating reading. It will be interesting to know his version of events to counter those of his opponents which we hear so much.

It may seem impertinent for me to speculate about what he will say, since I have neither met nor spoken to him. Nevertheless a tally of the various things I said and wrote during the Constitutional Crisis suggests that I was better able to read his mind than many others so here are my speculations.

I do not doubt in any way the truth of anything said by Senator James McClelland, I merely say that there are alternative explanations for those facts given by him.

It is certainly true that the Whitlam Government was lulled into a sense of false security but there can be several explanations for this. I do not believe

that Kerr wanted events to turn out as they did.

When the Opposition moved to block supply last October 16 I do not doubt that Sir John Kerr was genuinely quite hostile to them. At the same time, as a lawyer, he knew that the Senate had the power to do so, no matter how undesirable it was for the power to be exercised. No doubt Sir John was also aware that it might become necessary for him to dismiss Whitlam but that it would occur only as a last resort.

The great English writer Walter Bagehot in his book *The English Constitution* has this to say about the British Crown:

*"To state the matter shortly, the sovereign has, under a constitutional monarchy such as ours, three rights: the right to be consulted, the right to encourage, the right to warn. And a king*

## Big bumper issue — and why

WE APOLOGISE to our readers that they were unable to obtain copies of last week's issue. It was withdrawn from sale and destroyed for legal reasons.

To attempt to compensate you we have published a 120-page issue this week which is — as far as we are able to ascertain — the biggest and brightest number ever published in *The Bulletin's* 96-year history. This issue contains between 80,000-90,000 words (more than the average novel) and dozens of cartoons and other illustrations.

It incorporates all the best of last week's controversial issue plus many fascinating up-to-date reports on situations in politics, business and the arts which you will not find anywhere else.

Subscriptions will automatically be extended by one week.

Next week's issue will also be larger than usual. To ensure you get your copy, place a firm order with your newsagent now.

Our price is still only 50 cents.

Minister today. But he would have no compromise. He wanted a total victory, one that would have humiliated and destroyed Fraser.

Instead of the compromise victory he might have had, Whitlam has suffered a total defeat.

The would-be humiliator has been humiliated.

**PUBLIC OPINION**

**Govt holding on to lead**

RELATIVE SUPPORT of the L-NCP and ALP is still at about the level of the December 13 election, the Morgan Gallup Poll finds.

In its second post-election Australia-wide survey the Morgan Gallup Poll asked 1817 electors which party would receive their first preference "if an election were held today." Answers show that the usual post-election "swing to the victors," found on January 17, has evaporated. It also shows that L-NCP and ALP are now both down about 2 percent compared with the December election, because 8 percent are now favoring minor parties and independents.

On these figures, the L-NCP would now win an election with about its present majority of seats.

	HOUSE OF REPRESENTATIVES ELECTIONS				
	L-NCP %	DLP %	ALP %	AP %	OTHERS %
1966 Holt	50	7	40	—	3
1969 Gorton	43	6	47	1	3
1972 Whitlam	41	5	50	2	2
1974 Whitlam	46	2	49	2	1
1975 Fraser	53	1.3	42.8	0.4	2.5
MORGAN GALLUP POLL					
January 17	54	2	38	1	5
Jan 31/Feb 7	51	2	41	1	5

Malcolm Fraser's approval rating is now at 49 percent, which is about the same as mid-January, and up 11 percent since his election on December 13. His disapproval is now 28 percent (up 11 percent since mid-January) with 23 percent undecided.

	OPINION OF FRASER		
	APPROVE %	DIS-APPROVE %	UN-DECIDED %
Election day December 13	38	43	19
January 17	50	17	33
January 31/February 7	49	28	23

Gough Whitlam's approval rating is now at 42 percent (up 6 percent since mid-January), 30 percent disapprove and 28 percent are undecided.

	OPINION OF WHITLAM		
	APPROVE %	DIS-APPROVE %	UN-DECIDED %
Election day December 13	36	54	10
January 17	36	31	33
January 31/February 7	42	30	28

The Morgan Gallup Poll, conducted by the only Australian member of Gallup International Research Institutes Inc, is copyright. It may not be reproduced in part or in whole without the express permission of The Bulletin.

**THE 30th PARLIAMENT**

**Day of drama and bathos**

By DAVID McNICOLL

POLITICIANS can stage boycotts. But their wives, in the main, see little merit in staging girlcotts.

Which is why, after all the infantile antics by Mr Whitlam and his followers in the House and the Senate, resistance crumbled and Labor members and their wives drifted into the tea party in the Senate gardens despite the presence of their unfavorable man, the Governor-General.

It was rather like flotillas taking part in manoeuvres. The Whitlam flotilla led by battleship Gough, had a protecting convoy of male and female Whitlams who kept a wary eye for the enemy and moved the patriarchal vessel when necessary.

The Kerr flotilla was surrounded by a gaily clad escort of ADC minesweepers and destroyers who buzzed about, received signals on the radar about possible groundings, and steering the Governor-General unerringly through the serried ranks of politicians, public servants, diplomats and assorted guests.

It was an interesting end to an interesting day. And the near misses of Gough and the Governor-General at the party gave it a touch of drama. For, since Whitlam's recent TV barrage against Sir John Kerr, the question of a confrontation takes a new dimension. Before that telecast, Whitlam was declaiming ad nauseum that he would never again speak to Kerr. Sir John has now made it quite certain that, unless Whitlam apologises, the Governor-General will never again shake his hand.

If the "demo" outside Parliament House on Tuesday the 17th represents the "rage" which the Labor Party wishes the community to keep up against Sir John, then it was a sad disappointment. There were perhaps 1000 people along the railings, many imported from Wollongong, but many holding posters about unemployment in Canberra, day nurseries, superannuation and other matters which seemed to have little bearing on rage against Kerr.

The mood of the crowd was, despite what you may have read in the papers, not ugly or vicious. To a large extent it was good-humored. There was even a character dressed in a Duke of Plazatoro get-up with tricorne and sword, parading up and down followed by a "valet" in tails and a bowler hat. Even the boos for the Governor-General lacked the frenzy

which had been anticipated. It was very low-profile rage.

The morning involved darting from Senate to House of Reps, noting who was and wasn't present, who spoke to who, who was displaying most anger. Despite the absence of Labor legislators in the Senate, it seemed jammed to the gills, the spare floor space covered with wives, daughters and aunts of members, the galleries groaning with diplomats.

Formality was right back "in." The Prime Minister favored a short black morning coat and striped trousers, and his lead was followed by Ian Sinclair, Tony Street and William McMahon, and Senator Withers. The latter added a red rose boutonniere and took sartorial honors (the wooden spoon went to Ted Innes, whose garb was so bizarre that it defies description).

Swearing-in is a tedious and long-winded business even though it is done in batches of 10. But it afforded an opportunity to put a name against a face: the extraordinary number of very young new Liberal members and, sadly, the preponderance of older men among the Labor survivors. The mayhem of December 13 took the flower of the ALP's up-and-comers, and the party will be the poorer for it in the next few years.

Some picked up Bibles and swore allegiance. Some — Labor and non-Labor — merely made affirmations. Barry Cohen, the member for



Sonia, Malcolm and Tammy: a great day for the Liberals



The Usher of the Black Rod and Sir John and Lady Kerr on the lawn of Parliament House: formality was right back "in"

Robertson, a practising Jew, covered his head with a face tissue as he made his pledge. Whitlam senior swore; Whitlam junior affirmed.

Looking at the Labor side it was impossible not to be drawn back continually to Clyde Cameron. He sat alone on his bench, immaculately turned out — and glowering at everyone in the Chamber. If I were asked to pinpoint the man who is most bitter in the House — bitter about the "coup," bitter about his own treatment — I would have to nominate Clyde Cameron.

Don Chipp, a disappointed Liberal, proposed Snedden as Speaker — and did it in a speech of wit and grace. He started by saying that Snedden was one of his best friends. "But I hasten to say that I am not suggesting for a moment that friendship with me is the way to high office." It brought the House down.

Gough Whitlam nominated Gordon Scholes, Speaker in the 29th parliament — and considered by many to be the best Speaker seen in Canberra. But everyone knew that the weight flag had been raised even before they went through the charade of voting. But it gave people the opportunity to speak — Whitlam to prise open a few sores and stir the pus. Kim Beazley to engage in emotionalism. Bill Hayden to put the needle in to Prime Minister Fraser.

Snedden got the numbers and was dragged in mock reluctance to his Chair. Within a minute or two his flat monotone drifted to the galleries as he thanked members for the honor extended him.

The view from the galleries is most

interesting. Lots of features become apparent from above. The onset of baldness for instance. Sad to relate, if Doug Anthony did not skilfully manoeuvre his side hair up and across his cranium he would be shining like an egg. And Gough Whitlam, as soon as he loses the two thin tussocks of hair above his forehead, will have a resplendent half-bald pate.

The morning proceedings ended. Chief Justice Barwick and octagenarian High Court Judge McTiernan concluded



Tammy and Margaret Whitlam: a boycott maybe, but certainly no girlcott

their duties and withdrew. Everyone broke for lunch.

If anyone had entertained doubts about the nerves of Sir John and Lady Kerr they would have had them set to rest in the afternoon. They entered Parliament House with calm and dignity and the cat-calling in the background could have been an aircraft passing over, so little did it disturb them. They moved through King's Hall to the library for the introductions "to honorable members who may so wish" as the official program of the day's events put it.

The meat of the day's proceedings was to be found in the Senate at 3 pm. Every spectator seat taken, hats back into their own among the ladies, Courreges models alongside dresses from country general stores. The justices of the High Court entering with solemn gait, bewigged, silk-stockinged, full of wisdom — and bringing up the rear, in a dark suit and no wig, Mr Justice Murphy, managing to retain a remarkable amount of dignity considering the incongruity of his gear.

A gale of laughter. Senator Brian Harradine, the boyish-faced maverick from Tasmania, walked from his chair alongside Senator Steele Hall, and plonked himself in the chair of the Senate opposition leader. The government leader, Senator Withers, recovered quickly from his shock and nodded approval. In the diplomats' gallery there was obvious puzzlement at the goings-on, and I noticed Sir Morrice James, the UK High Commissioner, explaining to those near him.

The Governor-General entered the Senate Chamber, took up his position and then instructed the Usher of the Black Rod (a natural for J. C. Williamson's or the Old Tote) to summon the members of the Reps. In they poured, led by a beaming Malcolm Fraser, who looked as though he had recently swallowed a large carton of cream.

The speech started. Sir John Kerr has not got a strong voice and the strain of a 35-minute speech under oppressive arc lights in a stifling chamber must have been an ordeal. But there was no faltering — and for the very good reason that no Labor politicians were in the Chamber, the reception given to the speech was unanimously favorable.

Out to the gardens. Eclairs, iced coffee, the Duntroon band. More talk about Sonia's dress than about the Labor boycott. In fact, Sonia's dressmaker dealt a very nasty blow to the Labor Party at the opening of parliament. Nobody was discussing the boycott. It was a juvenile irrelevance — and once again Bob Hawke had been right.



# Through republican eyes

DONALD HORNE cannot write a dull book. He has an ornery, inquiring mind and a fine turn of phrase. He makes his own judgments and he sets them forth with an engaging admixture of personal reminiscence.

This pamphlet — it is no more — is a splendid retch of fury at Sir John Kerr's dismissal of Mr Whitlam. All Donald Horne's republican instincts were revolted by the arbitrary ending of Labor rule and he vents his spleen eloquently. But his novelist's sense is always there and he uses delicate symbolism in juxtaposing his own eye operation last November with Australia's political traumas and even with Australia's blindness.

He starts on November 26 at the black moment when the opinion polls revealed the landslide that was to come and showed that what happened on November 11 had not affected the Australian electorate in the way that he — among many — thought it should and would. The pages that follow are a cry of dismay at his fellow countrymen's failure to grasp a constitutional issue.

There are many who share his bitter indignation at the seeming injustice of Remembrance Day: he has captured in these pages the mood that seized the crowd outside Parliament House as the official secretary read out the dissolution proclamation and he, at least, has obeyed Gough Whitlam's injunction, "maintain your rage."

But there are many whom Donald Horne will fail to carry with him. Half of this book attacks the propriety of what Sir John Kerr did. Yet what is offered is a mood piece not a constitutional analysis: the story is very selectively told.

**DEATH OF THE LUCKY COUNTRY** by Donald Horne  
(Penguin Books \$1.50)

Reviewed by DAVID BUTLER\*

lemma? (The only difference would be that a President, unlike a Governor-General, would not be subject to instant dismissal at the Government's whim.)

As it happens, this reviewer is not persuaded that the Senate's power to block Supply is beyond question: or that it is a desirable feature of the Constitution. It seems clear that the Governor-General did not exhaust every possibility of solving the crisis in a more neutral-seeming way.

But many people of probity and detachment would still hold that the Governor-General was right not to remain passive last November. Sir John Kerr could have gambled on the crisis going away, trusting either that the Liberal senators would cave in or that Labor's financial expedients would win three months' grace. But if neither gamble had come off, Australian public credit and civil order could have been in chaos by Christmas.

There is certainly no reason to go along with Donald Horne in seeing Sir John Kerr's action as a precedent for repeated intervention by governors-general. If the vote had been different on December 13, Sir John would have had to give up his office. Should he or his successors be emboldened by the events of 1975 to try their hands at dismissing governments or vetoing bills, they will speedily get their come-uppance at the hands both of politicians and the people.

But if in this somewhat muddled pamphlet Donald Horne adds little of substance to the constitutional and political ar-

Few would agree with all of Donald Horne's analysis or endorse all of his remedies, but none would fail to profit from working out why they disagree with this mercurial, vehement, patriotic polemicist.

Yet it is significant that in the most brilliant paragraph in the book Donald Horne should be so oddly ambiguous about his hero: the republican Horne likens Prime Minister Whitlam to a king.

He was a king in the great battles of politics (the parliamentary showing-off, the election campaigns). He was bold like a king, he had favourites like a king, sacked ministers like a king: like a king he got a sinecure for his son. He blamed others like a king, was boastful like a king, sulked like a king. He had the visions of a king, seeking a monopoly on new ambitions, new plans like a king, he was ready to protect the poor from the avarice of the merchants and to shock the bur-

ghers with the frivolities of art: Blue Poles was a princely purchase. Like a king he was ready to indulge his pleasures blatantly. He was no more tricky, bullying or conniving than his critics . . . but like a king he showed off even those qualities. He had no secret faults. He revealed everything about himself, good, bad, amusing, boring. Like a king he seemed to be in a permanent state of public audience.

Gough Whitlam, warts and all, has indeed been bigger than any other Australian politician of the last decade and he deserves prime credit for many refreshing changes that followed the 1972 turnover of Government. But it is still easy to understand how sensible, forward-looking Australians could vote against such a man on December 13. There must moreover be many who voted with the minority who still see no reason to despair of Australians or Australia's future because the decision went the way it did. From 10,000 miles away, Australia still appears to be the lucky country.

\* Dr Butler is a Fellow of Nuffield College, Oxford, and a leading British political analyst. He has come to Australia to observe every Federal election since 1967.

# The edification of old Donald

**WHO** would have thought the little man had so much fire in him!

One knew that Donald Horne was turning more and more into himself, progressing from vulgar journalism, through candid autobiography and dry little revelations (like sitting through God Save the Queen) and self-conscious Australian essays in an American news weekly, to the shelter of a university campus.

One knew and admired his conscientious irony in thinking and writing about his country, his facility in presenting the paradox of plenty in an environment of emptiness — the articulate irritation of a semi-intellectual in a materialistic society. And one felt rather sorry for him in his feelings of national guilt.

But how was one to know that here in this rational observer were all the passion of a frustrated partisan and all the exaltation of an evangelist!

He and Manning Clark. The outraged academics. The prophets of hysteria. Authors of extravaganzas of conspiracy and defeat. Professors of shame. Is that what they are taught in the universities, or is that what they teach? Where, oh where is that sense of proportion our betters should surely display!

For Donald Horne's is the most excited and muddled book that has hit our dun streets in a very long time. It is both a cry of anguish and a call for retribution. Whitlam, "a Prime Minister born to be king," has been usurped, "assassinated," done in by powerful enemies including "the black hat" at Government House, and Australia will never be the same again.

This book is all about that — the most hysterical quickie this side of Michael Foot's Guilty Men, it was begun in hospital, where Mr Horne was having an eye operation and mutely suffering the debacle that followed that notorious Armistice Day when the unbelievable happened and his hero was fired.

## Hot, bitter tears

Mr Horne makes much of his blindness at that time. It is in a way the key to the intensely personal drama that permeates his book; and, sensible man as he at bottom really is, he must expect the obvious but nevertheless valid crack that his whole tirade has that one-eyedness that afflicted his judgment then.

"While I was in hospital I decided that if the frauds did work, if there

By DOUGLAS BRASS

**DEATH OF THE LUCKY COUNTRY, by Donald Horne; Penguin, \$1.50.**

was to be success for the most sustained and corrupting campaign to destroy a government in our national history, with outrages committed against the decencies of our political life, a huge campaign of political misrepresentation and a vendetta journalism so virulent that it makes me ashamed to have been a journalist, then I should write a book giving meaning to these events and suggesting some of the puzzles that have been cast into the future."

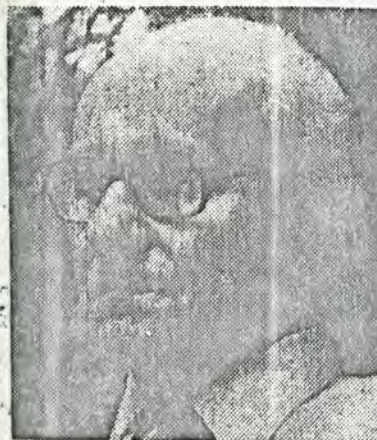
The rage that Whitlam pleaded should be kept alive is here preserved with great eloquence. The spilt milk is cried over with hot and bitter tears. "The sense of atrocity suffered by so many Australians" is articulated with a frankness that must come very close to the borderline. This is Governor-General-bashing as we have never witnessed before.

Lots of people will of course go along with Mr Horne in this. I myself — and I had grown to hold the Whitlam government in contempt — can never be entirely happy about November 11 and indeed heard the news that day, like Horne, with incredulity. But Mr Horne makes the mistake of confusing the deed with the man, inferring that anyone who wears a top hat and cutaway coat must be deceitful and undemocratic, and that Labor was inviting treachery when it appointed a knight and not a plain mister to Yarralumla.

This class-consciousness, this touch of angry Australianism, is typical of all Horne's work, just as his irrepressible ego (the natural complement) tends to saturate and spoil even the healthiest of his arguments. He cannot bear, for example, to leave out the memory that it was he, Donald Horne, who had once urged John Kerr to go into public life.

He tells us, too, that on November 11 he sent telegrams to Whitlam, Hawke and Jim McClelland supporting theirs as the legitimate government, and another to Kerr: "Congratulations on beginning the destruction of the Australian monarchy. That will give you something to think about during your shameful retirement from Australian history." If I were Horne I should have kept that very quiet.

Donald Horne has been a republican for some time, and a



Donald Horne

from such petulant personalities nobody could deny that in Australian conditions now he has an arguable case. He favors the West German system, under which the head of State, mainly a ceremonial figure, is elected by majority vote in a Federal convention.

Similarly, he holds that Senate reform is now made more urgent by the events of 1974 and 1975 and, irrespective of party politics, I would agree with this. In fact I suggested in these pages last year that it would be a splendid irony if the use of Senate powers on money bills not only led to the dismissal of a bad government but the curbing of the Senate by its beneficiaries.

Mr Horne says we don't need a Senate at all but that if we continue to have one it should be either a genuine house of review, with a membership of eminent rather than political persons, or a true States' house as it was originally intended to be. Better, I suggest, to go all out for the abolition not only of the Senate but the remaining upper houses in the States themselves. Let him, for goodness sake, be consistent in his rage.

## Divine right

Mr Horne's chapters on the divine right of the Liberals and the crashthrough reforming zeal of the Labor government are much as we would expect from one who so obviously felt that it was bliss to be alive in the early Whitlam days, but to be middle-aged was very heaven. Special pleading, both ways — though, to be fair, tailored for its relevance to the purpose of this tract.

Like so many of Whitlam's disciples Mr Horne cannot see how poorly Australia's material and moral condition was shaping under Labor's demoralised administration. He does admit a few blunders and a little clowning, but he is blind to the key factor in the whole national crisis — that the incompetence of ministers and the style of the leader were not only alienating but frightening the electorate. For all the genuine unease about the chain of events, this was a unique situation.

Is Mr Horne's adulation of Whitlam the basic cause of his distress? His assessment of King Gough as our national hero is possibly familiar enough by now but has to be quoted in essence:

## 'Bold like a king'

"He was a king in the great battle of politics . . . He was bold like a king, he had favorites like a king, sacked ministers like a king; like a king he got a sinecure for his son . . . He had the visions of a king, seeking a monopoly on new ambitions, new plans. Like a king he was ready to protect the poor from the avarice of the merchants and to shock the burghers with the frivolities of art." And so on.

Really, Mr Horne, what bloody nonsense. Especially in a republican.

I have been pre-empted by Max Harris, the embargo-breaker, in discussing Mr Horne's angry passages on the behavior of the press during the campaign, "the vendetta journalism" as he calls it. As I didn't take part, for once, I can only sympathise with him in being this time on the wrong side of the blanket.

What about 1972? Ask Billy McMahon. What about the Melbourne Age, whose army of columnists were so whitlamised that readers could hardly believe their eyes? What about that other part of the so-called media, radio and television, which Mr Horne conveniently skips over, The Labor bias of the ABC last December is something to be deplored — and remembered — and all of it at the public expense. What about the Whitlam corps of press propagandists, also paid by you and me?

Why in the hell, anyway, should newspapers not be biased, just like the rest of us. Please let us be realistic. It is impossible to achieve pure impartiality, and it would be very dull if we did. If anyone should agree with this it must surely be Donald Horne.

PERSONAL AND  
CONFIDENTIAL



BUCKINGHAM PALACE

24th February, 1976

*Dear John*

By the time you get this letter I expect I shall have heard from you with an account of the events of 17th February as they unfolded, and also no doubt the reaction of the Press to them.

This letter is in reply to yours of 16th February, which of course The Queen has seen and for which she commands me to thank you.

I am afraid you must have had a disagreeable time at the opening of Parliament but I cannot believe that the Labour Party will earn many plaudits for their boycott. It sounds as if Mr. Hawke, no doubt with an eye to the future, apart from anything else, is showing a good deal more statesmanship than the leader of the party.

I have no doubt that the advice which you were given "to see the whole exercise through and not to worry" was absolutely right. Perhaps the hardest piece of this advice is the "not to worry" bit! It is so easy to say and so difficult to do. But I suppose if a man does what he knows to be right and rests on that, the "worry quotient" loses its sting.

The Press cuttings you enclosed are very favourable and we must hope this tone continues.

The Queen sends you both her best wishes, as do your many friends in the Household.

*Yours ever*

*Marina Chanteni*

His Excellency the Governor-General of Australia.



BUCKINGHAM PALACE

Personal and  
Confidential

16th February, 1976.

*My dear John*

Thank you very much indeed for your letter of 6th February which I have shown to The Queen and for which Her Majesty commands me to thank you.

She is sorry that so soon after your return to Australia you should have been faced with the business of Mr. Garland's resignation and the consequences which may flow from it.

If we had to choose an aphorism here to apply to you and your affairs, I suspect it would more likely be "that to know all is to forgive all"!

All of us here who know you and your problems will be thinking of you when you open Parliament; we shall hope that all goes well but we shall know that if there is trouble you will deal with it with dignity and assurance.

You will by now have received a letter from me about The Queen's visit in 1977 and I hope that we shall soon be involved in constructive planning for it.

May I take the opportunity of this letter to thank you very much indeed for that most enjoyable party which you gave at the Connaught on the eve of your departure.

I think your visit to London was very valuable because the Establishment here now has a much clearer idea of what happened in your constitutional crisis. Immediately after you had dismissed Mr. Whitlam I could not find anyone in London who had thought you had done the right thing. Now, I believe, most people think that what you did was right.

It was the greatest fun having you and Lady Kerr in London and the echoes of your visit and your actions go on.

David Butler has, I understand, amended his paper and I and my colleagues are going to Oxford a little later on to talk to him about it.

The Queen sends her very best wishes to you and to Lady Kerr.

*John*

*Martin Charteris*

His Excellency the Governor-General  
of Australia.

Government House,  
Canberra. 2600.

23 February 1976.

*My dear Private Secretary,*

This is a letter, different in kind, from the rest of our correspondence and is designed to complete your Palace files on some aspects of the constitutional crisis by providing you with some fairly detailed background documents. I do not dare to hope that The Queen will have the time or the inclination to look at them, or all of them but on reflection, I have come to feel, after my visit to London, that history and precedent being as important as they are the attached material should be available in the Palace in the years to come.

- (1) In 1967 I delivered a paper on constitutional matters related to New Guinea. I was then a federal judge and a member of the Board of the Council on New Guinea Affairs. I had forgotten all about it but it has been recently referred to in the press in a review of the first ten years of the journal "New Guinea", the publication of the Council on New Guinea Affairs. In it I discussed the problem of the relationship, in what then seemed to be the rather distant future, between the Governor-General/President and the Prime Minister in Papua New Guinea. I attach a copy of this paper with the relevant passage marked. It was, of course, then unknown that I would become Chief Justice of New South Wales, let alone Governor-General. (It is somewhat ironic that in 1975 in May-June the relationship which in fact emerged in Papua New Guinea between the Governor-General and the Prime Minister was written down in their Constitution and accepted by Her Majesty in terms quite different from what was in the Australian Constitution and in the appropriate conventions applicable in Australia.) As I have said, during the whole period of the 1975 crisis I had forgotten that I wrote this paper.
- (2) During my trip to Asia in February 1975 I delivered a paper on the Governor-Generalship in Australia to the Indian Law Institute. It was a prepared paper following, with acknowledgment, the pure Hasluckian line as expounded in his Queale Memorial Lecture, with a few up to date references to overseas travel by Australian Governors-General. This was printed, in due course, in the Journal of the Indian Law Institute and

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has also recently been noticed here. Of course in February I had no idea that a crisis would develop later in the year in the way it did, but what I said was the same as what Sir Paul had said publicly during his Governor-Generalship. Our Ambassador was present and knew what I was to say, heard me say it, and raised no objection to it in his despatch home. The Ambassador, Mr Bruce Grant, was not a career diplomat but is a very able man, a journalist, who had strongly supported Mr Whitlam in the 1972 campaign and who, though an Ambassador, flew home in a most unorthodox way, to help him in the 1975 campaign. This resulted in his inevitable resignation after the election and he is now no longer Ambassador. The point is that when my paper was delivered in Delhi, despite his most close connection with Mr Whitlam, he did not criticise it - on the contrary. I attach a copy of my Indian paper.

- (3) On 25 August I opened the Annual Conference of the Australasian Law Schools Association at the University of New South Wales and discussed some aspects of the Governor-Generalship related to legal questions. The legal questions were those arising in matters coming before me as Governor-General but the discussion was confined to such questions when they are justiciable in character, i.e., such as could come before and be decided by the Courts. There was no direct reference to such a clearly non-justiciable matter as arose in the November 1975 crisis though perhaps non-justiciable questions could have been regarded as indirectly involved in what I said. I expressed no concluded views about any of these matters. This paper is known in Australia as it was a public one. Here again I went no further than Sir Paul Hasluck and did not say, on the points in question, even that I agreed with him. I attach a copy of this address.

These three papers may well be mulled over in the weeks to come in some attempt to show that I had views about my powers long before the crisis - views which indicated what I might well do if such a crisis arose. As to this I say simply that my papers show that I did not. I have found it interesting to re-read the things I said in these papers and feel that your files should be complete by having them included. Sometime you may come to read them or to draw the attention of Her Majesty to some small point in them. They are really

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lawyer's stuff. Whilst they prove that as a lawyer I was interested in the legal side of the Governor-General's work they do not show any anticipation of the actual crisis which developed or the existence of any views of mine, in advance, as to how such a crisis should be handled.

Please do not feel impelled to read all this closely at the present time or to comment upon it.

Please also assure Her Majesty of my continued humble loyalty and duty.

*Yours sincerely,*  
JOHN R. KERR

Lieutenant Colonel the Right Honourable Sir Martin  
Charteris, G.C.V.O., K.C.B., O.B.E.,  
Private Secretary to The Queen,  
Buckingham Palace,  
LONDON ENGLAND

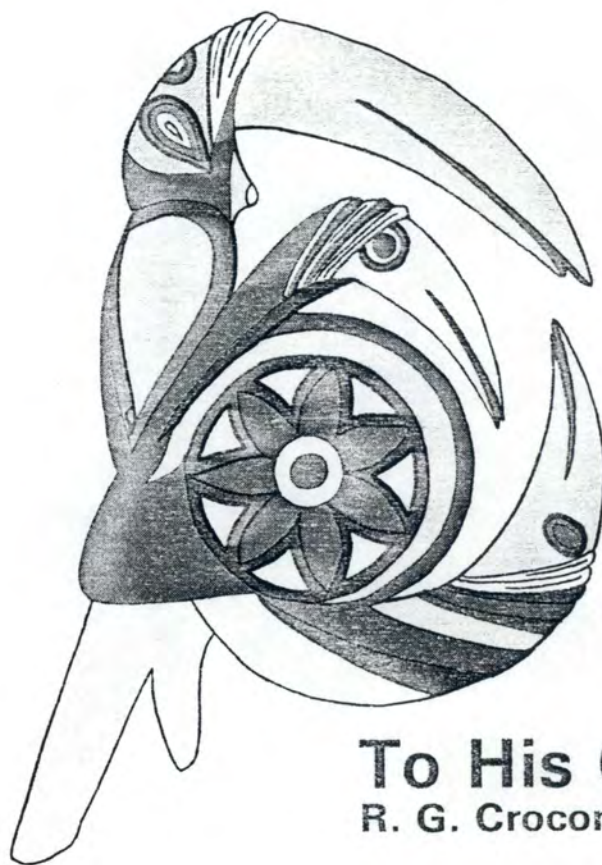


# NEW GUINEA/3

AND AUSTRALIA, THE PACIFIC AND SOUTH-EAST ASIA

## The Australians

Don Hogg



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R. G. Crocombe

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## Wanted a Constitution

*Before it is too late . . .*

FOR many reasons, which will soon emerge, it is a profitless exercise to endeavour, at this stage, to draw the outlines of a suitable constitution for Papua and New Guinea but it is critically urgent for people in Australia to make the effort to understand how difficult the constitutional problems are for even educated New Guineans to understand and how important it is for us to mobilise our intellectual resources to help them.

The central point I hope to make is that it is essential for continuous discussion to go on in Australia, amongst interested and qualified people, on constitutional issues and for this to take place also in New Guinea. There should be cross discussions between New Guinea leaders and qualified Australians. An intensive educational process is necessary—and I use the word “educational” in its widest sense—to help New Guinea leaders to comprehend the abstract notions involved in constitution making.

It is very easy for us to assume that, as a national leadership emerges, the movement to self-government will be

more or less automatic and that in some way New Guinea leaders will come to understand the constitutional issues which have to be decided in advance of self-government. This is not going to happen without special effort and it would be unfortunate if those leaders are left to struggle through their difficulties of comprehension and choice with no more than the New Guinea Administration and the Department of External Territories with whom to debate issues. There will, of course, be the growing influence of the University of Papua and New Guinea and of its graduates, but an intellectual ferment in Australia is also necessary so that there will be a growing debate in both countries and between interested persons outside government.

The present position in New Guinea is that the Territory is administered by an Administrator who holds office during the pleasure of the Governor-General and exercises all powers and functions that belong to his office in accordance with the tenor of his Commission and in accordance with such instructions as are given to him by the Governor-General. Detailed decisions are made in Canberra, both at the departmental and ministerial level, and there is close supervision of the New Guinea administration

*Text of a paper read to the Australian Institute of International Affairs, Brisbane, June, 1969, by Mr. Justice J. R. Kerr.*

from Canberra. The heads of the various administrative departments in New Guinea are expatriates. If an indigenous executive is to emerge this will involve not only a transfer of power from expatriates to indigenous leaders but also a shift in the political and administrative centre of gravity from Canberra to Port Moresby. There is a legislature, established in the classic British form and designed gradually to evolve into a Westminster type Parliament. Expatriate heads of departments belong to this House of Assembly and provision is made for Ministerial Members, who are indigenous members of the House, to be attached to some departments but not as true Ministers in control of their departments. The real power still lies in the Australian hands of the Administrator and his departmental heads and the Department of External Territories in Canberra. There is an Administrator's Council with indigenous members on it, but it has no final power.

As New Guinea moves towards and beyond self-government it will be necessary to hand over power to New Guineans in the legislature, in the administration and in the judiciary. This will doubtless be done in stages and it is this staged approach to and beyond self-government which poses the first and most urgent of the constitutional questions. The gradual transfer of power will be from a bureaucratic and judicial white elite to a political, bureaucratic and judicial native elite and the leadership to receive this power has to have real experience and education in constitutional matters if it is to have any prospect of comprehending the issues which have to be decided in advance of self-government and any hope of establishing and administering a state with democratic features.

The present House of Assembly has set up a Select Committee of the House to consider further constitutional development. Apart altogether from discussing

the need for further change, such a Select Committee could engage in most useful educational activity involving education of its own members, education of the House and of the leaders outside the House in the range of matters which will have to be faced up to and dealt with in due course as the stages on the way to self-government are reached.

The most ambitious attempt to consider New Guinea constitutional questions, outside the ranks of the local House of Assembly, the Administration and the Government, took place in Port Moresby in September, 1965, under the auspices of the New Guinea Branch of the International Commission of Jurists. About 180 persons attended this Conference. They included judges and lawyers in private and government practice from Papua and New Guinea and from Australia and other countries, teachers of law from Australia and the United Kingdom, members of the House of Assembly of Papua and New Guinea, public servants and members of the general public. Several of those attending as holders of judicial and official positions, whilst participating fully in the discussion, did not directly associate themselves with the Proposals which emerged from the Conference. The Conference commended certain suggestions on constitutional matters as relevant and worthy of consideration by all persons and authorities concerned with the formulation of a Constitution for and the working of the legal and political institutions of Papua and New Guinea. The Proposals on constitutional questions were set out in Schedule 1 to the Port Moresby Proposals. I do not apologise for stating them in detail because this is essential in order that we may appreciate the intellectual task of New Guinea constitution making.

**Schedule 1 to the Port Moresby Proposals  
A. The Problem of a Constitution**

The probable shape of the future Constitution for Papua and New Guinea will

no doubt become clearer with the passage of time as self-government or independence, as may be desired, approaches more closely. The following represents the trend of opinion in the light of present conditions and the tenor of discussions at this Conference.

1. The future Papua and New Guinea might perhaps form a Seventh State of Australia, but if so this would necessitate, to be acceptable, complete equality with the other States and complete equality of treatment and of status as between the inhabitants of this country and the inhabitants of the rest of Australia, especially in relation to such matters as freedom of movement and residence, and in economic and working conditions. The Conference does not on the whole consider this a likely solution, but believes that in any event it would have to be preceded by referenda in Australia and in Papua and New Guinea, after self-government. On the other hand, there is complete agreement that there should be some form of "close, friendly and interdependent relationship" with Australia.

2. The internal constitutional structure of the Territory should, it is generally but not unanimously considered—

- (a) be unitary, although with provision for decentralised or regionalised government; and
- (b) include a single-chamber legislature, although views were expressed that there would be value in a consultative Second House and that the position might be reviewed later.

3. The Constitution which will be appropriate for the future Papua and New Guinea should possess, it is believed, the following characteristics:—

- (a) It should be in writing, and should follow the general pattern of the "Westminster model", with appropriate modifications to suit the conditions and circumstances of the country from time to time.
- (b) There should be representative government under the Rule of Law.
- (c) The judiciary should be independent of the legislature and the executive, free to interpret and enforce, without external pressure, the provisions of the Constitution and the laws.
- (d) There should be an affirmation of the fundamental rights and freedoms set forth in the Universal Declaration of Human Rights, and a constitutional guarantee of such of them as are capable of judicial enforcement.
- (e) It should provide for the insulation of certain organs of government to ensure freedom from political control or interference for the judiciary, and possibly for the Public Service, a Director of Public Prosecutions and an Electoral Commission. The possibility of a

Judicial Services Commission was canvassed and deserves further study.

- (f) It should provide machinery for its amendment; at least in respect of certain provisions this must be adequate to ensure full consideration and to prevent over-hasty action in matters of fundamental importance.
- (g) Adequate provision, with appropriate judicial safeguards, should be made for emergency powers not necessarily limited to an actual state of war.

4. It should not be assumed that the steps suggested above are relevant only at or after the achievement of complete self-government or independence; the implementation of some should be considered before that time, so that people may become accustomed to new institutions before being asked to decide finally on them. In particular, the idea of a "constitutional ombudsman" to assist in the development of governmental, parliamentary and other practices not inconsistent with the anticipated Constitution, by reporting and advising thereon but without executive authority, should be explored further.

5. The form of government appropriate for Papua and New Guinea is a matter for decision by its people. The Conference affirms its confidence that the institutions as developed will express the values of a democratic society imbued with respect for the Rule of Law, and draws attention to the papers and discussion at this Conference as indicating some of the problems and further detail as to available methods for dealing with them. In this last statement the conference is unanimous.

In Schedule II of the Port Moresby Proposals there was a recommendation from the Conference to the Australian Section of the International Commission of Jurists to the effect that it should indicate to an earlier Select Committee of the House of Assembly on Constitutional and Political Development, which had at that time (in 1965) been established, the willingness of the Australian Section to assist in the formation of a committee representative of the Australian and local profession to advise that Select Committee on constitutional matters.

The Proposals on constitutional matters set out above resulted from the consideration of a paper prepared by Professor Sawyer on the subject "The Problem of a Constitution" which

covered the many difficult questions the constitution makers would inevitably face.

I shall return later to the recommendations of the Port Moresby Conference on constitutional matters. It should, however, be stated immediately that the Select Committee of the House of Assembly which is referred to in Schedule II of the Port Moresby Proposals concluded its deliberations in 1967, without, so far as I know, having had the help of any committee representative of the Australian and local legal professions to advise it on constitutional matters. Its final report was quite conservative. Its recommendations were adopted and the present enlarged House of Assembly elected in the 1968 elections resulted from them. It found that a large minority of people wanted no constitutional changes before 1972, a small minority wanted limited self-government by 1968, but that the majority wanted a further step forward at that time so that members could participate more in government. The present system of Ministerial Members attached to some government departments resulted from the Select Committee's Report. This last development has not produced any real transfer of executive power to the Ministerial Members and it could be that acceptance of such positions with the consequential pressure, upon those appointed, to defend the Administration in the House has politically weakened those accepting office rather than strengthened their prospects of ultimately becoming true Ministers when the first stages of self-government are reached. Of course, they are not yet called "Ministers", but even when in due course parliamentary leaders are given the appellation "Ministers" the prestige is, as S. A. de Smith says, "apt soon to wear thin unless it is accompanied by the reality of power". It is doubtful whether the Ministerial Members gain any real experience sitting alongside heads of depart-

ments who, under final control from Canberra, still run the Administration.

The proposal in the Schedule II of the Port Moresby Proposals is still relevant and applicable and a committee should certainly be established, though not confined to the Australian and local legal professions, to pursue the task of help and advice in constitutional matters. An outside committee could be very useful to the new Select Committee set up by the House. A broadly Constitutional Committee, including not only lawyers but also political scientists, persons experienced in politics and experts in other relevant social sciences and activities should start work immediately, particularly in the field of stimulating debate and in education. This will be referred to again later.

Although in this discussion I shall be dealing largely with matters of constitutional law as affected by broad political considerations, it must be emphasised that one should not think of constitutional progress only in legal terms. Action to promote literacy, to break down petty tribalism, to promote national consciousness and economic growth all affect the constitutional possibilities. On the other hand, our tendency to assume that it is possible to promote an overall national consciousness must be constantly tested against the very real urge towards separate political independence for some regions, especially those of real or growing economic strength. In other words, the very actions taken to promote economic growth, being inevitably uneven in their results over the whole Territory of Papua and New Guinea, may strengthen divisive and separatist movements rather than the growth of a national consciousness. Some believe that there should be enshrinement in the constitution of the basic principle that the resources of the Territory should be equitably shared by all communities irrespective of their regional origin so that the central government would be

forced to follow certain equitable rules in the disbursement of funds. However, the very attempt to state such rules and to discuss them may exacerbate the divisive movements based upon the urge to monopolise, within a region, the revenues produced from that region. These economic factors will prove to be basic in matters of constitutional policy.

I should like now to come back to the constitutional proposals which emerged from the Port Moresby Conference. In essence what was recommended was that there should, in due course, be a written constitution of some rigidity, not too easily amendable, unitary in character though providing for decentralised or regionalised government and with a single chamber legislature. It should broadly follow the Westminster model, should provide for representative government under the rule of law with an independent judiciary, constitutional guarantees of fundamental rights and freedoms, and constitutional insulation or entrenchment of certain organs of government such as the judiciary, and possibly the Public Service, a Director of Public Prosecutions and an Electoral Commission. These are abstract conceptions, most of them outside the experience, so far as constitution making is concerned, of many educated Australians as well as educated native people.

I shall now select a group of problems from those mentioned above to illustrate the difficulty of constitution making in New Guinea.

A broadly based nationalist movement has not developed in New Guinea, a party system is in a most embryonic form, indeed as a system it cannot really be said yet to exist, and indigenous institutions of a political or quasi-political character such as trade unions and associations representing organised economic interests also do not exist as significant aspirants for power or as effective pressure groups. Developments in these fields will take time to evolve

and it could be that self-government, or early stages of it, may be reached at a time when such institutions are still fairly rudimentary. There are few members of the emerging elite with education at the tertiary level and in the next ten years or so there will not be many persons who combine such education with real political experience. For example, the indigenous legal profession, so important for evolving and administering a constitution in its legislative, executive and judicial aspects, has still to come into being and attain experience and judgment.

There is a tendency for regional groupings to emerge and to constitute amorphous blocks of an embryonic political kind. These are of significance when secessionist tendencies are considered.

It is against this background that the Port Moresby Conference rejected federalism in favour of a unitary system, rejected a Presidential system in favour of the Westminster model, and assumed the need for constitutional guarantees of fundamental rights and of an entrenched position for certain governmental organisations.

The tendency towards regional pressure blocs and even towards regional separatism makes it natural to contemplate some kind of federal structure for Papua and New Guinea to give expression to regional aspirations whilst avoiding attempts at secession, but the arguments against federalism in terms of expense, both financially and from the point of view of the limited availability of leaders, will probably prevent much support for a federal constitution from developing. It has been assumed that the need in New Guinea is to strengthen movements to national unity, not those which could culminate in separation, especially whilst regional sentiments are at present relatively weak. It could be dangerous to strengthen them. It is said, however, that there must be

provision under a unitary system for decentralised or regionalised government and this is doubtless true. There should be much stress upon local self-government. On the other hand, more thought needs to be given to the question whether the future of our New Guinea Territories should inevitably be as one State or whether it should be allowed to split up, if the pressures are strong enough, as part of the process of attaining independence.

We have to consider the risk that growth of regional sentiment may lead to violence and bloodshed if attempts are made to prevent, by force, a breakaway from the present Territory and we should avoid the automatic assumption that we can produce or insist upon or force the present Territory into a single self-governing or independent state irrespective of the strength of contrary forces at work. This whole subject needs careful attention because if it were the fact, and this is a very difficult matter to establish, that pressures of a separatist kind in a particular area or areas are bound to lead to violence, it may be better for this to be accepted and dealt with by constitutional decisions before general independence for New Guinea rather than to leave an independent New Guinea to cope with and try to control and contain the trouble after independence.

In the central legislature of the unitary state, suggested in the Port Moresby Proposals, representatives from the various regions will meet. In the absence of a strong nationalist movement and a single dominant nationalist party, in the absence also of much prospect of a workable two party system, the New Guinea House of Assembly could easily develop over the next short period of years as an unstable legislative base for the classic or a modified Westminster system of responsible and representative government.

This will be important because the principles outlined in the Port Moresby

Proposals were said, in those proposals, to be relevant to the period before full self-government or independence. This period, if developments take place according to the typical British methods for staging the advance to self-government, and as was recognised at the Port Moresby Conference, will see —

- (a) true Ministers under a Prime Minister being substituted for, at first some, and later all of the present heads of department;
- (b) such Ministers, under a Prime Minister, will be members of the House of Assembly and will require its confidence;
- (c) the Administrator's position will, in due course, be changed to that of a typical Governor, at first with emergency or reserve powers to enable an Australian veto to be exercised;
- (d) abolition of the remaining Australian veto powers and limits on the power of the local House of Assembly;
- (e) probably the final substitution of a President for the Governor.

If there were, during this staged process, a strong single nationalist party or the prospects of a workable two party system, or even of a reasonably stable multi-party system based upon the polarisation of coalitions to provide governments and alternative governments, the Westminster model might have a chance of working but if there is an unstable legislative base, with shifting majorities emerging on different issues from month to month, then governments, even the early ones of limited power and responsibility, could regularly be defeated in the House.

The classic Westminster system, either by conventions or by rules written into the constitution, provides for a Prime Minister under some circumstances to be entitled to a dissolution of the legislature, and under others for him to be bound to resign to enable another government,

with the confidence of the legislature, to be commissioned. Whether the rules governing these matters can or should be fully set out in the Constitution even in its early stages of evolution is a difficult problem. Attempts have been made to do this in many constitutions of newly independent Commonwealth countries but it is not possible here to discuss the complexity and difficulties of the policy and drafting problems involved.

The principles of collective ministerial responsibility and collective resignation, if the legislature's confidence is withdrawn, are an important part of the Westminster system, but it is difficult to think that these principles will work properly in the absence of a strong single party or a sound party system. In an unstable legislature, jockeying for position among Ministers and the formation and re-formation of uneasy coalitions can destroy the "collective" idea or prevent it from emerging.

If both the Governor (or President) and the Prime Minister are indigenous persons and if both are elected by some direct or indirect means, difficult questions of power relations between them are inevitable even under the Westminster system which normally envisages a strong Prime Minister and a relatively weak Governor or President.

All of these matters require the most careful thought, especially if the expected political base in the House of Assembly is likely to be undisciplined by a single party or a strong and workable party system.

If the political base in the legislature is unstable and governments are likely to be often defeated in the House, the Westminster system is very hard to work. This could easily be the case, in the absence of a developed party situation, especially when regional interests express themselves in the legislature on different political and economic issues.

The question inevitably arises whether

the Westminster system or some modification of it is the best one for New Guinea. If it is to be persisted with in the evolution of a New Guinea constitution then one of the difficult problems requiring careful and continuous discussion will be the expression in the Constitution of the rules for selecting the Governor-President and the statement of his powers in respect of the dissolution of the House, the obtaining of alternative governments in some circumstances on the defeat in Parliament of a government in office, and the dismissing of a Prime Minister either because of loss of confidence in the legislature or because the machinery of parliamentary government is threatened with disruption by the Prime Minister's improper conduct. One problem which is dealt with in some new Commonwealth constitutions is the power of the Governor-President where the Prime Minister is defeated in the House and refuses either to resign or advise a dissolution.

But should the Westminster experiment in New Guinea be persisted with? Professor Sawyer, who wrote the basic paper for the Port Moresby Conference, came down in favour of the Westminster system. He thought that the Washington model with its checks and balances was "too destructive of both legislative authority and executive drive to be tolerable in a new country where government must play a dominant and active role in all aspects of national life". Professor Sawyer went on to say—

We have a natural tendency to prefer the Westminster model, which was exported successfully from England to the older dominions, and which with modifications has worked reasonably well in India, the West Indies, and in the early stages of African development. One of the lessons of African development is that the sort of authoritarian one-party presidential system which has tended to develop in British West and East Africa can grow fairly naturally out of the Westminster system, without disruptive episodes such as those which have marred the development of Pakistan. Moreover, if this happens there is some tendency



for certain advantages of the Westminster model to be retained in what we think the less desirable authoritarian state; even in Ghana, a respect for constitutionalism has not disappeared, and in Tanzania it is fairly pronounced.

These are strong arguments and as the Australian Government has set the constitutional path for Papua and New Guinea along Westminster lines and because the Australians and New Guineans likely to be concerned with constitutional issues, as Professor Sawyer points out, will be familiar with the Westminster type, it may be already almost too late to consider any alternative based on some adjusted Presidential system appropriate to an emerging country. S. A. de Smith refers to the popularity of the Westminster system in the new Commonwealth countries. He says—

In short, the Westminster model of responsible government has been adopted primarily because it has been persistently and insistently demanded. It has been demanded partly because it is familiar to colonial politicians, partly because they genuinely admire the way it works in Britain, partly because they have sometimes been told that they lack the political maturity to operate it effectively, partly because it makes for very strong government if a single party is dominant.

If the only risk were what might be done to the classic Westminster model by a strong authoritarian single party headed perhaps by a leader who managed to combine both the offices of Governor-President and Prime Minister in his own person, it might be as well to follow Professor Sawyer's advice and leave the Westminster developments to take place despite the possibility of ending up with an authoritarian state, though one slightly less authoritarian than might otherwise have been the case.

Where, however, the risk is of basic political instability in the legislature due to the lack of a strong party base, with frequently changing governments and frequent elections, alternative systems need investigation. Now is the latest time

for doing this because, if the movement along the Westminster path goes much further it may become irreversible, with a real consequential risk of serious political trouble of the kind which invites army intervention and military government such as we have seen in some newly independent governments.

One reason for preferring a unitary to a federal system is the lack of experienced indigenous leaders to man the more complicated federal structure. Even in a unitary system New Guinea will face a very real shortage of educated and experienced persons to administer at the top level the various departments of government. The electoral process will not necessarily throw up for some time educated or reasonably experienced indigenous people, in significant numbers, as representatives in the House of Assembly. Although in an emerging country like New Guinea many young educated persons may aspire to politics over the next five to 10 years it does not follow that many will succeed in getting elected in a predominantly rural country of atomised social groups such as New Guinea. A future cabinet, in the early stages of evolution to self-government and even later, if it is to be found amongst the members of the House of Assembly, may not be able to be put together from literate persons of sufficient political and administrative capacity. In these circumstances and on the basis that the House of Assembly may be politically ill-disciplined, is it necessary for cabinet members to be members of the House, or can a modified presidential system be evolved which would enable a President-Prime Minister to select his cabinet from the available talent outside the House? The Westminster and the United States Presidential systems are not the only possibilities. The precedents are many and varied including various modifications of both of these systems.

A modified Presidential system would probably involve having an Executive

not responsible to the House and hence not at risk of dismissal or removal in an election at the whim of the House but in office for a fixed term under a President-Prime Minister who is himself in office for a fixed term. If this were to be considered the President-Prime Minister would have to be selected by some process and this could either be a process of direct or indirect election separate from the election of the legislature or it could be election by the House immediately after the general election of the members of the House. Once elected the President-Prime Minister (and his cabinet selected by him from outside the House or partly in that way and partly from members of the House) would remain in office for a full term of, say, four years and the members of the House would remain in office for the same period without risk of dissolution of the House being decided upon if a government ceases to have the confidence of the House on some particular issue.

These are important and difficult questions. If a modified Presidential system were adopted there would be no need to codify in the constitution the difficult conventional rules about the power of a Westminster style Governor-President to dismiss a Prime Minister who has lost the confidence of the legislature and to commission a new Prime Minister or to grant or to order a dissolution of the legislature. Nor would it be necessary to decide and to record in the constitution the rules for balancing the power of the Governor-President and the Prime Minister but there would be need to specify the rules for balancing the power of the President and the legislature in the case of conflict on policy.

If, on the other hand, the Westminster system is to be persisted with, then before even the early stages of self-government under that system are reached the difficult task of setting out in written constitutional form the unwritten British

conventions for regulating relations between the Governor-President and the Prime Minister must be undertaken. In the constitutions of the older Dominions it was not necessary to do this, certainly not in detail, because the conventions were inherited and understood as, for example, in the case of the Australian constitutions, both federal and state. But in the new Commonwealth countries codification of most if not all of these conventions has been necessary and the solutions adopted have varied. Where there is a strong nationalist movement and a single dominant nationalist party there could be resistance to the entrenching in the constitution of rules settling the power relationship of Governor-President and Prime Minister, on the ground that it is insulting to imply that the classic conventions cannot be understood or will not be honestly worked in such conditions. However, generally speaking, the attempt has been made mainly because the conventions, necessary for the proper working of the Westminster system, are not native to the country concerned and need to be written down to be properly appreciated and understood.

The Westminster system, in order to work properly, needs to be based upon a single party or a working and reasonably stable party system and an understanding and honest observation of a number of important constitutional conventions. It has been said that even if there is a weak and unstable legislature at the centre the Westminster system could be made to work by the development of administrative institutions which would ensure that the practical running of the day to day affairs of the country could be carried on at the local level in such a way as to be not too drastically disturbed by weakness at the centre. There are many difficulties about this. First, there is the problem of preserving law and order with the need to move police and troops from the centre, or

upon decision made at the centre, to serious trouble spots which have already been shown to be likely to develop. The control movement and activities of the police and army, and of internal security organs, presumably must be in the hands of the central government. Then there is the problem of finance. The local authorities will be dependent for a long time on funds provided from the centre and unless it is sufficiently stable and able to disburse funds in a fair way the consequences could be divisive. Further, such unity as the Territory now has is based upon unified and detailed policy control from the centre. If this administrative system breaks down, or is broken down, into a system where real power is exercised locally, divisive tendencies could grow very rapidly. Nevertheless the whole question of whether and how to give real and extensive administrative authority to local authorities must be carefully thought about in constitution making.

A somewhat similar problem arises in relation to federalism. As experience in other countries shows, it may be only a unitary state and government that can hold the country together.

In relation to all questions of a constitutional character in Papua and New Guinea, Australia has said that the New Guineans are entitled to make up their own minds but we have set them off along the Westminster path at a time when they could not understand or choose their path for themselves and we seem likely to press them forward along this path, perhaps to political instability and even, in due course, to the risk of army rule without any real constitutional debate either in New Guinea or Australia, without mobilising intellectual resources in Australia, outside government, to assist in tackling the constitutional problems themselves and the necessary preparatory educational activities and also without widespread knowledge and

discussion of the experience in Africa and Asia on these constitutional issues.

I am not myself advocating a modified presidential system. I am arguing for real and urgent consideration of the various possibilities before it is too late. It is not sufficient to say that the Territory of Papua and New Guinea is not and will not for many years be ready for full self-government or independence and that all these questions can wait for a long time for answers to be found. It is precisely because the evolutionary steps to self-government themselves throw up all the important matters that they must be considered now. For this reason I hope that the new Select Committee on constitutional problems will look very carefully at the tendency of present developments, will precipitate educational activity and detailed debate both in New Guinea and Australia, and will stimulate all bodies interested in these matters outside government to come together to help New Guinea parliamentary and other leaders to understand the issues about which they have to make a choice. S. A. de Smith says that the real alternative to the Westminster system would have been a presidential government free from check or balance and this would have been received with disfavour in London. He goes on to say—

One is nevertheless moved to wonder whether constitution-makers in London have not perhaps been excessively influenced at times by local pressure and their own experience, and whether it was indeed impossible to evolve unorthodox schemes for the structure of the executive branch and its relationship with the legislature which would have had reasonable prospects both of acceptance and durability. But there remain territories where influence can still be exerted, and the resources of constitutional ingenuity are not necessarily exhausted.

Perhaps Papua and New Guinea may be one such territory.

It needs to be stated that should separatist and secessionist movements develop, for example in the Islands or in

Bougainville, with strength and with a plausible case for independence for a given region so that such a region gains the right to move towards independence earlier than the rest of the Territory, all the same constitutional questions would have to be considered and settled for such a separate region, as have so far been discussed on the basis that it is the whole Territory of Papua and New Guinea which is moving in a united way to self-government and independence.

I turn now to another group of constitutional problems in relation to which there is a great deal of experience in newly independent countries, especially Commonwealth countries.

This is the group of problems connected with the writing into the constitution of guarantees of fundamental rights and freedoms capable of judicial enforcement and the entrenchment in the constitution of special protective provisions for the judiciary and possibly other governmental organisations.

A strong nationalist movement could resist the entrenchment in the constitution of the conventions for regulating relations between Governor-President and Prime Minister. Such a movement and its dominant nationalist party could also resent the curbs and limits on its power constituted by entrenching provisions to guarantee fundamental rights and freedoms or to protect the judiciary and possibly the Public Service, a Director of Prosecutions and an Electoral Commission from manipulation and control of the Government. However, the prospects are that in New Guinea there will not be such a strong nationalist movement and party to resist these curbs and such entrenching provisions may be able to be included without opposition and indeed with strong local support. Here again the problems arise before full self-government or independence comes. Entrenching provisions may well be necessary at the early stages of evolution so that the entrenched institutions

may themselves be evolved under constitutional protection whilst the basic political issues in the constitution are being solved. This would also accustom the emerging executive to the idea that certain instruments of government need constitutional protection and that this is so whether the main risk is to come from a strong executive or an unstable legislature.

On the other hand, the point of view of Mr. E. Wolfers, a research student in Government, has to be considered. Writing in *New Guinea* (December, 1965-January, 1966, pp. 67-68) and referring to Professor Sawyer's paper, he said:—

It is one thing to do as Professor Sawyer did and set up a model constitution with a politically neutral judiciary as one of its main features, but it is quite another thing to decide whether this particular model is either necessary for the preservation of democracy or desirable for the Territory. . . It may well be that the concept of a neutral judiciary is not only incomprehensible to the New Guineans but they may even oppose its very concept once they do begin to understand it. New Guineans may well not only fail to understand the 'white man's law', but they may find its divorce from politics quite incomprehensible."

The point may well extend to constitutional protection, not only for the judiciary but also for special instruments of government. New Guineans may wish to embrace the notion that politics should be dominant and that all instruments of government should be subordinate to the march of political events. This could happen if a strong nationalist movement existed or if a strong leader with widespread mass support emerged, or if political instability produced army control and government, but short of this and particularly in the next phase of political development it should be possible to discuss and perhaps to enact appropriate entrenching provisions. The question is a big one and requires much attention. If the main risk in New Guinea is political instability in the

legislature and if, because of this, some preference develops for a reasonably strong presidential type executive with a legislature serving out its full term without the risk of dissolution, there may be a real case for constitutional guarantees and for entrenching provisions but even if we are to persist with the Westminster model the case for such constitutional guarantees in New Guinea could be persuasive. There will, of course, be the usual plea for a simple constitution readily comprehensible by simple people. Such an approach may result in pressure for the elimination or severe restriction of constitutional provisions, usual under the Westminster system to regulate relations between the government and the legislature and to provide constitutional guarantees, but experience seems to show that however much a simple constitution is wanted the very lack of political experience in a country like New Guinea produces a strong pressure for fairly detailed provisions.

If, before full self-government or independence comes, there must be a period of debate and discussion of constitutional problems and many critical decisions made, then the type of Committee suggested in the Port Moresby Proposals is urgently necessary. All institutions interested in New Guinea should press for such a committee to be established. The Council on New Guinea Affairs, the International Commission of Jurists, the New Guinea Legal Research Council, the New Guinea Committee of the Law Council of Australia, the various New Guinea Societies, the Law Schools and the Schools of Politics and Government in universities all have an interest to see that New Guinea constitutional issues are faced and debated. Funds are necessary to enable this to be done and the necessary educational activity to be undertaken. Perhaps interested groups could get together to establish a New Guinea Constitutional Committee of

Australians and New Guineans. Such a Committee could conduct discussions, make investigations, receive written submissions and issue reports on various constitutional problems. It could help to create a climate of opinion both in New Guinea and Australia and could really assist governments and other bodies to make the decisions which must be made and which are vital to New Guinea's prospects as a nation and state.





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The Governor-Generalship in Australia

*by*

Sri John Kerr

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### THE GOVERNOR-GENERALSHIP IN AUSTRALIA\*

*SIR JOHN KERR\*\**

**MY PRESENT** visit to India is part of a wider visit which began with my attendance at the Coronation of the King of Nepal and includes visits to Pakistan, Afghanistan and Iran. These are all state visits to the countries concerned and I am travelling in and being accorded the status of a Head of State. The Queen of Australia is the Head of State in Australia but I act as the Head of State on her behalf in accordance with the provisions of the Constitution under which the executive power of the Commonwealth of Australia is vested in the Queen and is exercisable by the Governor-General as the Queen's Representative. The executive power of the Commonwealth extends to the execution and maintenance of the Constitution and of the laws of the Commonwealth.

Abroad I am accorded the Head of State status on all occasions when I am present but Her Majesty, the Queen, is not. In a sense my present visit has a historical connotation because it is the first visit by an Australian Governor-General to foreign countries by way of expressing friendship and goodwill as a Head of State.

It is true that there have been previous occasions where the Governor-General has been overseas at great international gatherings such as the Iranian celebration a few years ago but this is the first major visit by a Governor-General not to an international gathering, but as a Head of State from Australia making a state visit to other countries including India on behalf of Australia and its people.

Other countries realise that today Australia has grown to independence and international recognition in a way which was not known when our Federation was established in 1901. The Queen is now known as Queen of Australia and acts solely on the advice of her Australian ministers in Australian matters.

Australia has its own independent position and identity as a state and nation on the world scene. It appoints and receives ambassadors; it makes

\* Speech delivered at the Indian Law Institute, New Delhi, Feb. 28, 1975

\*\* K. C. M. G., K. St J., Q. C., Governor-General of Australia,

treaties. If we were ever to go to war it would be by our own decision. We conduct our relations with other states in accordance with a foreign policy of our own and are in no way dependent upon any decision made or policies adopted by other members of the Commonwealth of Nations.

The Governor-General nowadays, in acting on behalf of the Australian Head of State, the Queen, has a very different task from that of an Australian Governor-General years ago. Until recently, the Governor-General did not as such travel abroad with the Head of State status.

Governors-General are now Australians. All Governors of the States of Australia are today also Australians. It would seem that the days of British Governors-General and Governors are over.

Governors-General no longer wear the imperial uniform of a Governor-General as used to be the case in old days. My two predecessors did not do so and I do not do so. It was with some consternation that I read in a newspaper from Australia which reached me in Kathmandu, that at the Coronation of the King in that country, I was "in plumed hat and brocade". This produced an anxious query from Australia by telegram as to whether it was the case or not. I was able to assure them that I had worn, as had been expected, ordinary morning dress.

I am still accorded a Vice-Regal salute which consists of six bars of the Royal Anthem, "God Save the Queen". This was used at the aerodrome on my arrival here but it should not be thought that because of this Australia is in any sense dependent upon the United Kingdom or that the Vice-Regal salute has anything to do with the Queen's position and status in her other realms. My salute relates solely to my position as her representative in her capacity as the Queen of Australia. My sole reason for mentioning this ceremonial matter is because I wish to underline that the Governor-Generalship in Australia is an Australian institution and nothing else.

I do not, in India, need to discuss the parliamentary system of government and such notions as parliamentary democracy, constitutional monarchy and federalism. You are aware that when the former colonies of Australia formed themselves into a federation in 1901, we rejected the American presidential system in favour of the parliamentary system with the basic ideas of responsible government and a ministry belonging to the legislature. This was the system already operating in all of the federating colonies and, although the American Constitution was used for some purposes when our Constitution was drafted, there was never any real question but that the parliamentary system which is now known as the Westminster system, would be adopted. You have done likewise.

I do not want to say anything about federalism in Australia or elsewhere, as it is hardly germane to my general topic. It is, however, necessary to remember that Australia is a constitutional monarchy, a parliamentary democracy and a federation.

I cannot in an informal address such as this deliver a learned paper about the modern Governor-Generalship in Australia but I should like to touch upon a couple of points. People are always interested in the question whether the Governor-General is a mere figurehead or whether he has any significant role to play. I should like to say something about this.

Under our Constitution and the conventions which apply, the Governor-General helps to ensure that those who exercise political and administrative control and responsibility in national affairs carry out their functions in accordance with the Constitution and the laws of the Commonwealth and with due regard to the public interest.

My distinguished predecessor, Sir Paul Hasluck, in a memorial lecture delivered publicly in 1972, examined the office of the Governor-General in some detail.

He said that so long as the Crown has the power which our Constitution now gives to it, and so long as the Governor-General exercises that power, the executive will remain responsible to Parliament, the courts will be independent, the public service will serve the nation within the limits of the law and the armed services will be subject to civil authority. It is much the same, as I understand it, with your Presidency.

Under the Australian Constitution there is a Federal Executive Council to advise the Governor-General in the government of the Commonwealth. You do not have this. The members of the council are chosen and summoned by the Governor-General and sworn in as executive councillors. They hold office during his pleasure. But they are the same persons as constitute the Cabinet. The Cabinet system operates as the political instrument for decision-making and policy formulation but the final legal expression of such decisions as the government wishes to make is performed by the Federal Executive Council.

The ministers as members of that council have to take responsibility for the advice they give and for the decisions made by the executive council sitting under the presidency of the Governor-General. It is the duty of the executive council to ensure that what is done is in conformity with the Constitution, the laws of the Commonwealth and the established and recognised practices of the Australian government. The Governor-General, as President of the council, has real and important duties in this connection and can obtain legal advice especially from the law officers of the Crown if he feels that he needs it.

Apart, however, from legal considerations, he has a duty to see that decisions of the executive council are consistent with the government policy with which he is acquainted in some detail because he sees the Cabinet papers including Cabinet decisions. He has to be satisfied, either from senior ministers present at the council meeting or in other ways, that a particular decision about to be made by the executive council is consistent with the views of the Cabinet as a whole.



Many matters which come forward for executive council's approval and decision come from departments and through ministers without having actually passed through the Cabinet itself. This is due to the enormous amount of government business which has to be conducted.

The Governor-General has to be on the lookout for matters which may need to be known to and have the approval of the Prime Minister or the Cabinet before being made finally the subject of legal expression through a decision of the executive council. Accordingly, the Governor General may enquire about a particular matter as to whether it has been to the Cabinet or whether it is known to the Prime Minister and can explore with the minister present the political significance of the point involved so that, by adjournment, if necessary, he can be satisfied and the executive council can be satisfied before a final decision is made that it is based upon united political support.

As Sir Paul Hasluck said, in presiding in the executive council in this way, the Governor-General is both a watch dog over the council for the nation as a whole and a watch dog for the government considered as a whole (whatever government it may be in power). He seeks to ensure that advice is well founded, carefully considered and consistent with stable government and the established standards of the nation.

The position is that constitutionally, the executive council is the last place and its decision the last chance for the policy and political aspects of a decision to be faced up to, and the Governor-General does this in a special way. If the Cabinet has considered and decided the matter then the advice to the Governor-General is clear and firmly based. However, the ministers present and the Governor-General have the responsibility of detecting those matters which may need further political consideration because they may involve or raise policy considerations which might require the attention of the Prime Minister or the Cabinet.

No debate or argument of a political kind between ministers should or does take place before or with the Governor-General. What is needed is only a final guarantee that the ultimate advice the Governor-General gets and the ultimate decision made by the executive council is appropriately founded on and backed by proper political consideration and decision-making.

There is ample opportunity both during and after meetings of the executive council and in other ways for the Governor-General to be fully informed about national affairs and policies. There is full and frank discussion with the Prime Minister. The Governor-General can ask questions, discuss broad or detailed matters, make suggestions, provide counsel—he can advise and warn. He can have similar discussion with other ministers and, if the ministers approve, as they often do, with their permanent public service heads, the Governor-General acts on advice but he can question it, seek further information and assess what he is being

advised to do. He can obtain the reasons for what he is being asked to do and make suggestions about it but he must not get into political controversy, be partisan or try to act politically himself. He must not try to manipulate the political process.

On a visit abroad, lawyers and others in countries visited might be expected to be interested in how this all works out in relation to foreign and defence policy. I am very interested in foreign policy and defence policy and both as a new Governor-General and Commander-in-Chief, I have been seeking to come to grips with our policy in these fields. I talk to our ambassadors when they are at home. I talk to the Foreign Minister and his officials. I talk from time to time to ambassadors to my country. As my experience grows I shall have the same rights and opportunities to counsel and listen, to question and learn the reasons for foreign and defence policy as in all other fields. But always the constitutional process requires me finally to act upon advice.

On a visit overseas like the present one it is not my duty or my right to represent Australia diplomatically, to defend policies, to conduct negotiations, to be partisan on matters which at home are controversial, or to pursue views, opinions or policies of my own. But I can and do express the goodwill of my country and its people towards the host country.

Abroad as at home I can listen and inform myself in such a way as to enable me to discuss foreign and defence policy at home with more knowledge, judgment and understanding. The experience I gain on such visits can stand me in good stead, can help me when it comes to discussions with the Prime Minister, the Foreign Minister and other ministers at home. It is better for me to understand how other countries see things if I am to be able to make a useful contribution, within proper constitutional limits, at home. I cannot, abroad, venture into the controversial domestic policy areas which I should eschew at home. I am hoping, nevertheless, that the limits imposed upon me as a person acting as Head of State will leave me ample room for fruitful and educative discussions with the important leaders I meet. In a sense, my present visit here and to the other countries to which I am going is an experimental, goodwill visit which is new in our constitutional practice.

There is one other aspect of the Governor-General's role which is important. This has to do with the power to dissolve Parliament. You will all be familiar with the way in which this works under the Westminster system.

One particular point I should like to mention is the Governor-General's role in relation to the dissolution of Parliament in mid-term. Sometimes the situation arises in which a Prime Minister may seek to have Parliament dissolved before its constitutional term has expired. It is of course not sufficient for him to obtain from the Governor-General a dissolution of Parliament simply because he would like to have an election. The basic

constitutional issue in such cases is whether or not Parliament has become unworkable. Sometimes this may occur because of the conflict between the two chambers, the Senate and the House of Representatives. This is a special case and raises special issues in Australia which I shall mention later.

Parliament may become unworkable because of the defeat of the government on an important issue in the House or it may be that the Prime Minister is in difficulty with his own supporters. The essential question is whether the Governor-General can be satisfied that Parliament has in fact become unworkable.

He has to consider whether an alternative government can be brought into existence without an election, whether the government parties can find a leader with a majority. Parliament should not be dissolved simply to help a party leader, or a party solve their own difficulties. The country should not be forced to an election merely to help leaders solve internal party questions but only to deal with a situation which Parliament itself cannot solve. The decision to dissolve Parliament in mid-term is one of the matters which the Constitution leaves to the Governor-General to decide on his own. It is not a power exercised by the Governor-General in council.

There is one special problem arising under the Australian Constitution dealing with the resolution of a conflict between the two Houses. This is a rather complicated matter and is the subject of special consideration at the moment in Australia both politically and judicially. Under section 57 of the Constitution, if the House of Representatives passes any proposed law and the Senate rejects or fails to pass it, or passes it with amendment to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives in the same or the next session again passes the proposed law with or without any amendments which have been made, suggested or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously.

This has happened only a few times in Australian history since federation and the last occasion was in 1974 during the time of my predecessor. It was a unique occasion because it was for the first time that a double dissolution was granted in relation to more than one law. There were in fact six proposed laws which, it was said, satisfied the constitutional test and the Governor-General dissolved both Houses because of what he decided had happened in the case of all six laws. After the election, for the first time in our history, the provisions of the Constitution for resolving a conflict between the two Houses by the holding of a joint sitting of both Houses was resorted to. The Constitution provides that if after what we call a double dissolution, the House of Representatives again passes the proposed law with or without any amendments which have been made, suggested or

agreed to by the Senate and the Senate again rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may convene a joint sitting of the members of the Senate and of the House of Representatives.

My predecessor, by proclamation, produced a double dissolution of both chambers. An election was held and, as a result of that election, the government retained control of the House of Representatives but did not obtain control of the Senate. All six laws were again passed by the House of Representatives and rejected by the Senate. I, therefore, for the first time in our history, convened a joint sitting of the members of the House of Representatives and of the Senate. Legal steps were taken in the High Court of Australia to try to prevent that sitting from taking place. The High Court refused to intervene. The joint sitting took place and all six laws were passed at the joint sitting. However, there are basic and fundamental constitutional attacks being made on these six laws. The provision of the Constitution in relation to double dissolutions and joint sittings, and the powers of the Governor-General and Parliament in that connection will soon come under detailed constitutional examination in the High Court of Australia.

It is, of course, not appropriate for me to discuss the profoundly interesting legal questions which arise in relation to the powers of the Governor-General and the parliamentary process in such a situation. Constitutional lawyers in Australia are awaiting with great interest the outcome of the considerations by the High Court of the issues arising under section 57 of the Constitution, which deals with double dissolution and joint sittings.

When I return to Australia, I shall have the opportunity of following the legal argument and considering the important legal decisions which, in this constitutional field, are about to come from our highest constitutional court.

The Governor-Generalship is a developing institution in Australia and it is coming more and more to symbolise Australia's independent identity abroad and the nation's unity and legitimate political system at home. This is done more and more on the basis of knowledge and understanding by the Governor-General, of policies and principles.

ADDRESS BY HIS EXCELLENCY

THE HONOURABLE SIR JOHN KERR, A.C., K.C.M.G., K.St.J., Q.C.,

GOVERNOR-GENERAL OF AUSTRALIA

AT THE OPENING OF THE ANNUAL CONFERENCE OF THE

AUSTRALASIAN LAW SCHOOLS ASSOCIATION

AT THE UNIVERSITY OF NEW SOUTH WALES

MONDAY, 25 AUGUST 1975

It is a very great pleasure for me to be here this morning and to open the Annual Conference of the Australasian Law Schools Association.

I am always happy in the company of lawyers and find that my programme seems to bring me into that company frequently. Sometimes I am meeting groups of judges, sometimes members of the profession as a whole and sometimes, as for example this morning, law teachers.

I have been Governor-General now for just over a year and have had some opportunity to reflect, though not in any final sense, about various aspects of the role of the Governor-General under our Constitution. I appreciate, of course, that you are an Australasian association and that New Zealanders will not be so directly interested in the position which exists under our Federal Constitution but some of the observations which I should like to make may be of interest to New Zealanders.

It has been a year in which there has been some discussion in the High Court, in the press and by academic lawyers of the role of the Governor-General.

One of the interesting points which has arisen had to do with events which began in the days of my predecessor, Sir Paul Hasluck. On the advice of the Government of the day, he, acting under section 57 of the Constitution, dissolved both Houses of Parliament. Six proposed laws, so he had been advised, had been passed by the House of Representatives, the Senate had rejected or failed to pass those laws and, after their passing again more than three months later by the House of Representatives the Senate had again rejected or failed to pass them. In due course there was an election after the double dissolution and it fell to my lot to issue a Proclamation under section 57 upon the basis of advice given to me that the House of Representatives had again passed the proposed laws and the Senate had again rejected or failed to pass them. I convened the joint sitting of the members of the Senate and of the House of Representatives and at that joint sitting the six proposed laws were passed and in due course they were assented to by me. Constitutional questions arose about at least some of these laws and one of them has been declared by the High Court to have been invalidly passed by Parliament at the joint sitting on the ground that what had happened in relation to that proposed law, had not provided an occasion in the first instance for a double dissolution.

I do not, of course, wish to discuss the legal arguments but merely to make the point that advice given to my predecessor, Sir Paul Hasluck, with regard to the proposed law as a basis for a double dissolution was held to be legally wrong. I, too, had accepted advice to the effect that the proposed law could be dealt with at a joint sitting, but the resulting legislation as passed by the joint sitting was held to be invalid. Sir Paul Hasluck has in his Queale Oration of October 1972, outlined his approach to the general question of advice contrary to some provision of the Constitution in the following passage:

"Although it may be highly unlikely to arise in practice, it is theoretically possible that if the Governor-General were presented with a Bill, agreed to by a majority in both Houses, that was clearly contrary to some provision of the Constitution, he could return it to Parliament pointing out the conflict. To give a wholly imaginary and very extreme illustration, let us suppose that in a general election one party received a huge majority in both Houses and immediately, (in spite of all objections that might have been raised by their draftsmen or their political opponents and in contempt of a possible appeal to the High Court) put through Parliament a Bill saying that no more elections should be held until the Minister for the Interior decided to hold them. A Governor-General could properly withhold assent to such a Bill on the ground that this was an action that could only be done by Parliament in accordance with the provision of the Constitution for the amendment of the Constitution. Undoubtedly a crisis would be precipitated.

Such an extreme illustration underlines an important point. In normal times when customary practices and procedures are being followed and the Constitution and laws of the Commonwealth are being scrupulously observed, the role of the Governor-General in Parliament would seem to be a matter of unbroken routine. In abnormal times or in case of any attempt to disregard the Constitution or the laws of the Commonwealth, or even

the customary usages of Australian government, it would be the Governor-General who could present the crisis to Parliament and, if necessary, to the nation for determination. It is not that the Governor-General (or the Crown) can over-rule the elected representatives of the people but in the ultimate he can check the elected representatives in any extreme attempt by them to disregard the rule of law or the customary usages of Australian government and he could do so by forcing a crisis."

In relation to another aspect of the Governor-General's duties, namely his duty as President of the Executive Council, he has also touched upon questions of law which can arise, saying:

"The Ministers have to take responsibility for the advice they give; the Governor-General-in-Council tries to ensure that the advice has been framed with a full regard for all relevant factors and that the action recommended is in conformity with the Constitution, the laws of the Commonwealth and the established and recognised practices of Australian government.

"One of the main responsibilities of the Governor-General as President of the Executive Council is to make sure that all actions of the Government are constitutionally correct and lawful. This is not a matter of relying on his own opinion but, in case of any doubt (and, as most minutes have been drawn up by senior officers of the Government, doubt seldom arises) of referring the matter to the Attorney-General for considered advice."

Recently there has been discussion in the press of the role of the Governor-General in relation to legal questions involved in any advice given to him, and it has been stated that he is the ultimate guardian of the Constitution and of the rule of law. Two academic lawyers discussed this aspect in the press and referred to the statement once made

by Sir Isaac Isaacs, who when Governor-General was petitioned by the Senate to refuse the advice of his Ministers to make regulations that were in substance the same as regulations that had in the same session been disallowed by the Senate. On that occasion His Excellency Sir Isaac Isaacs said that he had examined the question to see whether there was "plain illegality". Having come to the conclusion that there was no plain illegality, he said, "It is obviously my duty to take the only course which would enable the appropriate tribunal for that purpose, the judiciary, to determine the question should it arise."

The same point has been put another way by saying that unless a legal point is clearly unarguable it should be left to the courts.

The two academic lawyers who took the matter up in the press discussed the difficulties of Governors-General who are not lawyers and raised the question whether it makes any difference or not whether the Governor-General is a lawyer. They discussed the problems that arise if a Governor-General, whether a lawyer or not, goes beyond the Attorney-General or the Solicitor-General for legal advice and his difficulty in resolving an issue, if he takes such a course, and gets different legal advice from that given to him by the law officers of the Crown.

They make the point that the branch of government whose prime duty is to authoritatively determine the law is the judiciary and that even in the case of "plain illegality" the availability of judicial remedies would be a very relevant consideration. All of these questions are very interesting and could on occasion be quite fundamental. As Sir Paul Hasluck has said, "In extreme circumstances the Governor-General may check the elected representatives in any extreme attempt by them to disregard the rule of law or the customary usages of Australian Government." But he makes the point that this could really be done only in circumstances which would amount to forcing a crisis.

I do not wish to discuss at this stage in my Governor-Generalship whether the point of view expressed by Sir Paul Hasluck is one with which I agree (and by this I do not mean to imply that I disagree) but perhaps on that point, the opinion of the academic lawyers to whom I have referred may be mentioned. They said it is a highly dangerous doctrine which suggests that the Governor-General should himself determine the legality of a Government's actions and argued that the whole notion of responsible government depends on the Governor-General acting on the advice of his Ministers. Everyone appears to agree that the Governor-General has a right and at times a duty to demand further information and assurances and to warn, but in the end the responsible ministry has to account to Parliament and to accept that the High Court is the ultimate guardian of the Constitution



and the rule of law. Nevertheless the question remains whether there are any circumstances in which either on a legal or other issue the Governor-General may or should precipitate a crisis for Parliament or the electorate.

I mention all of these matters not with intention of discussing them or of implying that I have any legal view one way or the other on any question of law which has recently arisen, or any other views on basic constitutional matters, but simply to make the point that it has been an interesting first year for a Governor-General who is a lawyer. Indeed it would have been for a non-lawyer as well. I have been serving an interesting apprenticeship.

Turning to another aspect of my work, not involving legal questions, but having to do with the position of the Governor-General overseas, an interesting development in the office has been taking place in recent years. Originally, and not so long ago, when a Governor-General left the shores of Australia with the approval of the monarch, he travelled abroad as a private citizen. In the case of Canada, the Governor-General has however, for a longer period of time, travelled abroad carrying with him the status and dignity, as representing The Queen, of a head of state. In the time of my predecessor, Sir Paul Hasluck, this Canadian precedent was followed and he travelled abroad to the celebrations in Persepolis of the 2,500th anniversary of the Iranian monarchy,

with head of state status. He did the same a little later in Paris at the funeral of President Pompidou. I had a similar experience at the coronation of the King of Nepal and on that trip abroad I also made state visits, with The Queen's approval, to India, Pakistan, Afghanistan and Iran. Later I paid similar visits to Fiji and New Zealand.

Her Majesty as head of state of her several separate and independent realms cannot as a matter of simple practicability undertake head of state visits as the separate head of a specific state or country. When she travels outside her realms she does so in reality as The Queen of the United Kingdom and she is accompanied by her own officials from the United Kingdom. Consequently, she has indicated that if head of state visits are required for the purposes of her other realms, it is appropriate for them to be undertaken by the Governor-General.

So far as I know, I am the first Australian Governor-General to do this, other than for the purpose of some international gathering of heads of state, although the Canadian Governor-General has previously done so.

If it is appropriate for the Governor-General to travel with the status of a head of state to funerals, coronations, weddings and anniversaries, then clearly enough, it must be appropriate for him to do the same thing when it seems to be of some use from his country's point of view for

other general purposes such as those which justify head of state visits in the case of other countries, whether they be monarchies or republics. It is interesting to note that The Queen is the head of state of three countries in the South Pacific, with another, Papua New Guinea, about to be added. When I visited Fiji and New Zealand, each of which has, of course, its own Governor-General, I was treated in those countries, as in the case of countries of which The Queen is not the head of state, with the appropriate dignity and status which she herself wishes to be accorded to her Governors-General when they travel abroad. All of this follows from the fact that the Crown is not one and undivided as it once was for the whole Empire. There are separate independent monarchies.

The position of the Governor-General in Australia is a busy one. It involves a lot of travel around Australia, to Australian territories, to nearby countries, and occasionally to London for discussion with The Queen herself.

The early part of this address shows it can be interesting and stimulating constitutionally, though I have not attempted to deal with the intricacies of the official side of the office in Australia itself.

Sir Paul Hasluck has given a most interesting account of the work of the Governor-General in his Queale Oration.

These summary remarks are meant only as a few comments to a group of lawyers of what it is like to become a Governor-General as a lawyer, after having been a Chief Justice. They are meant to make the point that I have not found life to be merely ceremonial. On the contrary, it has been a stimulating and interesting period. Abroad, international leaders have talked to me frankly and added to my education in a way quite useful for the performance of my duties at home. Inside Australia itself I have found much to attract my official interest, apart from the pleasure and fun of going to the opera, the ballet, the football, the cricket, the races and to other functions and activities where I meet a wide variety of Australians, not all of them lawyers.

What I have said is not meant to be even a short summary of what the Governor-General does but only a few impressionist remarks.

I have much pleasure in declaring this Conference open so that you may get down to real lawyers' work.

Government House,  
Canberra. 2600.

19 February 1976.

*My dear Private Secretary,*

You will have seen reports in the Press about the opening of Parliament but it is perhaps necessary to put things into perspective.

It is true that, in the end, on the morning of the day of the opening the Labor Party finally decided that they would not attend any of the functions associated with the opening of the Parliament. The result was that at the Library Ceremony I met only members of the Coalition Parties and only they attended the actual Opening Ceremony. The only exceptions were two Senate independents - Senator Steele Hall, who is the Liberal Movement leader - that body is an off-shoot of the South Australian Liberal Party - and Senator Harradine, who is an expelled Labor Party man, the former head of the Tasmanian Labour Council, a union body like the T.U.C. Harradine caused some amusement by occupying the seat at the table of the Leader of the Opposition in the Senate.

Outside, both on arrival and on departure there was a motley crowd which was of the order of about 300 or 400 people but probably less although the Press estimated numbers present as being between 200, according to one paper and up to a highest estimate of about 1,100. It was obviously what can be called a "rent-a-crowd group", except for those out to enjoy themselves and to support me. In my opinion there were approximately the same number of people who had come out simply as sightseers or as supporters to watch the ceremony.

It was not, of course, a happy occasion for me to have to tolerate absurd abuse and to listen to the cry reiterated in unison "We want Gough". In my opinion the view formed by almost everyone to whom I have spoken is that the demonstration outside, which was really trivial by comparison with what David Smith had had to tolerate earlier when he proclaimed the dissolution, was counter-productive.

As to the boycott there can be different points of view about this but, supported by conversations I had with many people, I can say only that the Labor Party made itself look rather ridiculous by its refusal to participate in ordinary parliamentary procedures. Editorials in most of the papers said so and I attach

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some illustrations. Nevertheless, the whole situation is a rather awkward one for me though there is, I believe, no choice about what should be done, nor is there any need to discuss this subject with you. The Prime Minister takes the view that there is no real problem.

I propose to carry on with my programme and to visit different parts of Australia and different cities and towns during the next six months; included will be a visit to Western Australia and to Queensland.

In one of my earlier letters to you I mentioned an old friend of mine called Senator James McClelland. He has become very bitter indeed about what happened last year and has publicly said that he will have nothing whatsoever to do with me in the future, a development which is not uncongenial in all the circumstances.

In the Senate last night he said that I had rung him up during the crisis and had suggested to him that the Whitlam Government should indicate to me that I could offer to Mr Fraser a proposal that we would have a Half Senate election but we would not call the Senate back until July 1st this year. He also said that I had said to him that there was no constitutional crisis and that there was no crisis requiring my intervention until the money ran out. In the debate, and perhaps I should quote directly from Hansard, he referred to the fact that I had invited him to lunch with the Prime Minister at Yarralumla during the crisis and had freely discussed the constitutional crisis.

What had happened, and I don't think I have told you this in any detail before, was that there was to be an Executive Council meeting after lunch at which the Prime Minister and Senator James McClelland were to be present, and I asked the Prime Minister if he would come to lunch with me before the meeting so that I could discuss the crisis with him. He asked me if he could bring Senator McClelland as Senator McClelland would be attending the meeting. I found it difficult to say no to this suggestion and found myself in the position where the Prime Minister was discussing the crisis with me in the presence of Senator McClelland who in the last days of his government had become an apparently strong Whitlam supporter.

Various things were said, the details of which I suppose do not now matter. They had to do with the possibility of Mr Fraser being prepared to accept a solution which enabled him to grant supply upon the condition that there would be a late Senate Election.

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I think that I have told you all about this. I am alleged to have said at that meeting that I did not think that there would be any crisis requiring my intervention "until the money runs out". I do not believe I said this but if I did I was not talking about the actual situation in which people could not be paid, but a situation in which the country was on the brink of such a crisis.

Attached is an extract from Senator McClelland's speech to which I should like to refer.

About this statement I simply have to say for the record that I did not say that Mr Fraser had painted himself into a corner, but I did, of course, refer to the problems in which his Coalition Parties found themselves as a result of their tactic of denying supply.

My reason for ringing the Senator was that at the luncheon Mr Whitlam had made it apparent that Senator McClelland was totally in his confidence and as Senator McClelland was a friend of mine I took the step of asking him whether he really thought it was worthwhile for me to try to explore with Mr Fraser the tactic of a late Senate Election and no meeting of the Senate till after July 1.

I asked this because Senator McClelland at lunch was supporting the idea of a late Senate election, but Mr Whitlam was not enthusiastic and it seemed to me not to be very profitable for me to be putting something to Mr Fraser which really did not have the support of Mr Whitlam. Senator McClelland said that a lot of people were of the view that this idea should be explored and as the Prime Minister had agreed to it being explored, it was probably worth doing. He himself said that he was strongly in favour of the idea; in fact though he has not said so in Hansard, he later rang me to say that there had been a rather heated discussion amongst a number of Ministers on the point and that the Prime Minister had accused him of being too strongly devoted to the Kerr point of view and that apparently the Governor-General had been lobbying him.

This of course was not so. Senator McClelland said that he had felt that he should confess to the Prime Minister that there had been a conversation between us but that it was merely exploratory of what had been substantially discussed between all three of us.

After this last-mentioned conversation with Senator McClelland the Prime Minister said to me that he had gathered the impression from discussions with Senator McClelland that I had been pressing upon one of his Ministers, a solution with which he had not yet fully identified himself.

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I said, as you would expect, that I had, during a conversation with Senator McClelland done no more than reiterate just what had happened between all three of us and that the Senator had thought that it would be a good idea to explore with Mr Fraser the proposal which was discussed with the addition of no meeting of the Senate till after July 1.

The Prime Minister then said that actually he might agree to this but he attached certain conditions to seeking a compromise upon this basis, namely that there should be a late Senate election and no meeting of the Senate before 1 July. His conditions were that all Governors of the States should issue writs and a certain rejected electoral law about optional preferences in the Senate should be passed.

Senator McClelland, when he spoke to me on the last occasion, was obviously anxious that he should not appear to have been in any sort of discussion with me, contrary to the approaches of the then Prime Minister. As it was the case that all that was discussed with the Senator had been talked about previously in the presence of the Prime Minister and between the Prime Minister and myself, it was easy enough for me to accede to the view which Senator McClelland wished to have established, that in putting his views to other Ministers, including the Prime Minister, he was not acting as an agent of mine. He most decidedly was not doing so.

All of this is a rather boring rehashing of the past but a certain amount of this will take place and I have to put up with it.

There will, I think, be other troubles, perhaps smears and whispering campaigns, but the best view that I can get is that the whole thing is counter-productive and is doing the Labor Party no good. We shall see how it all develops.

20 February 1976

This morning's papers contain references in Parliament to an article in "Village Voice", a publication in Greenwich Village, New York, U.S.A. in which it is alleged that I was a C.I.A. agent in dismissing the Whitlam Government and have had C.I.A. associations. Nonsense of course.

Would you please assure Her Majesty of my continued loyalty and humble duty.

*Yours sincerely,*  
**JOHN R. KERR**

Lieutenant Colonel the Right Honourable Sir Martin  
Charteris, G.C.V.O., K.C.B., O.B.E.,  
Private Secretary to The Queen,  
Buckingham Palace,  
LONDON ENGLAND



# The Sydney Morning Herald

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WEDNESDAY, FEBRUARY 18, 1976

## The boycott

THE DECISION of the Parliamentary Labor Party to absent itself from the opening of Parliament by the Governor-General yesterday cannot be dismissed as merely a childish exhibition of bad temper. Nor should the boycott be excused as an act of protest permissible in a democratic society because it issues from sincerely held principle, however controversial. In snubbing Sir John Kerr in the performance of his constitutional duty, Labor deliberately chose to confuse the man with his office, that of the Queen's representative as the Head of State of Australia. In so doing it cast contempt on the forms and processes of Parliament. Further, it denigrated them by creating the positive suggestion that an Opposition can — and in this case will — operate outside them. Such an attack on parliamentary practice and decorum must tend to weaken respect for the institution and its authority.

What was done yesterday does not have the support of the whole Labor Party by any means. Its president, Mr Hawke, spoke out firmly against the boycott proposal. His good sense is surely shared by many in the party who, whatever their feelings about November 11, are bound to find yesterday's studied insult distasteful, as a reflection on Labor's respect for our institutions of government, and undignified as an expression of Labor's response to defeat.

Mr Hawke argued that a distinction must be made between expressing lack of confidence in Sir John Kerr and boycotting an essential part of the parliamentary process. Quite so. Yet we have no assurance that yesterday's action is the end of the matter. It is one thing for Mr Whitlam to question in the course of parliamentary debate the reserve

powers of the Crown and to press for their better definition and limitation. That is his duty, as he sees it, and it is certainly his right. It is a very different thing if the Opposition continues to ignore or insult, not just Sir John, the particular, personal target, but his office and its duties and all they stand for in our public life. Such action, if prolonged, can only provoke or exacerbate national divisions.

It is certainly no way for Labor to try to recover lost political ground, that is to say the "middle ground." This was Mr Hawke's main political reason for opposing the boycott. It is one of simple political realism: to concentrate attention on something in the past when the majority of the public is concentrating on the problems of the present and on the policies the new Government is formulating to deal with them, in some cases highly controversial policies ("gross inadequacies" was how Mr Hawke put it), is politically inept.

The chief serious interest of most Australians in yesterday's program in Canberra, surely, was not in the personality and performance of the Queen's representative, but in the Government's intentions, which he outlined. Their chief expectation, as regards the Opposition, is — given Labor's different philosophy, its recent experience in Government and its changing views on immediate needs, as instanced in the Hayden Budget — for the kind of fighting approach which can sharpen debate, define issues and stimulate or check the Government. Yesterday's surrender to spite at the best suggests a demoralisation which needs to be quickly cured by forceful, positive leadership: at the worst, a perverse backward-looking which shows no appreciation of either Labor's needs or Australia's.

## DEFINING THE RULES

THE case made yesterday by the Leader of the Opposition, Mr Whitlam, for a definition of the powers of the Governor-General — whether this should result in a "curtailment", as Mr Whitlam said, is one of the matters for decision — is valid. The clarification is necessary for the sake of good and predictable government and for the protection of the office of Governor-General as well. Should the present uncertainty, and the demagoguery it fosters, continue, one can easily visualise in the future the appointment to that office of intellectual nonentities who could be expected to always do what they were told.

The personal venom with which Mr Whitlam is pursuing his vendetta against Sir John Kerr, however, betrays more than an alleged concern that parliamentary democracy in this country "flourish in full measure". There are other and greater threats to democracy in Australia to which Mr Whitlam could with profit to all devote his considerable talents.

A surprising omission from the Governor-General's speech was the lack of any reference to reform of the Constitution, at least as a longer-term objective. This leaves in doubt the continued existence of the constitutional convention and poses a potential threat to the existing impetus for the adaptation of Australia's Constitution to changed circumstances.

# On indexation, the economy — and empty seats

WHATEVER else people who voted Labor in the last election were voting for, it was not for a empty seat in Parliament House. But Labor MPs went ahead with their childish boycott yesterday, and left 43 per cent of the Australian people unrepresented at the opening of Parliament. They would have been wiser to accept Mr R. J. Hawke's advice, grit their teeth on personal resentments, and get on with the job they were elected to do. The issue that rankles with them was settled by the rest of Australia on December 13 and swept away soon afterward for more urgent and genuine considerations. Far from reviving the dead issue, all that the pathetic churlishness of their empty seats demonstrated to the world was the extent and the bitterness of Labor's personal grudges.

The Governor-General's speech was of much more interest. In it, the Government gave a forthright commitment to all the major thrusts of its election platform: a reduction of Commonwealth intervention in the economy, control of government spending, efficiency in the bureaucracy, maintenance of effort in the welfare and defence sectors, and the drive toward the new federalism and the restoration of high levels of activity in the resources sector. But one point was especially significant. It was reassuring to hear the Governor-General reaffirm the Government's intention to introduce the first stage of tax indexation in its first Budget. More ominously, the Governor-General's speech added that the extent of this first step would depend on the degree to which the Government's economic policy is accepted in the meantime.

There is some potential danger here. The speech, like the coalition's election platform, quite accurately recognised that the prime problem of the economy is soaring inflation and that the principal factor in it is the increasing transfer of resources from the private to the public sector.

Government spending tends to have a triple inflationary effect; once through the taxes which go to support it, which at high levels of taxation create inflationary

pressure; secondly by boosting the money supply when the Government spends in advance of taxation or by deficit budgeting; and lastly by bidding-up prices when the Government competes for materials and labor against the private sector which continues to try to operate at its former level.

But there is a risk in concentrating too explicitly on the deficit aspect of that complex problem; and this is what it appears, from the Government's recent statements and the Governor-General's speech, that the Government may be in danger of doing.

Neither the size of the current Budget deficit nor the 6.4 per cent wage rise can logically be seen as restrictions on the options for tax indexation — though they seem to appear as twofold objections in Treasury eyes. Budget deficits, which anyway cannot be reduced overnight without catastrophic results on economic activity, only have inflationary effects on the money supply if they cannot be financed by genuine borrowing — as Milton Friedman, the American monetarist whose ideas have heavily influenced the Government, himself pointed out. The success of government savings bonds proves that at the moment the Government has plenty of access to borrowings.

The idea that the size of the wage indexation rise is somehow a bar to tax indexation depends on belief in the spectre of demand inflation resulting from an increase in disposable incomes. But with nearly 5 per cent unemployed and the economy stagnating, this country is a million miles from demand inflation at the moment.

What we have is what the Governor-General's speech correctly identified as "government-induced inflation." And the Government's best weapon against that would be a speedy and effective start on tax indexation, which would begin to reverse the flow of resources from the private to the public sector, stimulate sagging economic activity in business, and by boosting workers' take-home pay, ease the very wage pressure which the Government is so worried about.

# The Herald

Melbourne, February 18, 1976

## A way back— to a dead end

LABOR MPs and a hooting crowd which found an easy answer to frustrations in repellent abuse contributed only an ugly, rancorous tone to Australian parliamentary government in Canberra yesterday. The best judgment on this self-defeating substitute for a policy had already been delivered by Labor's own president, Mr Hawke: "politically inept". He predicted rightly that it would divert the electorate's attention back to something which, essentially, was not relevant to regaining power now.

The further degrading of Parliament by deliberate actions inside and outside the building had of course no distracting effect upon the formalities and the presentation of its policies which the Fraser government had planned for the day. What Labor should have done to its own and Australia's advantage was to show that it accepted the task of Opposition assigned to it so decisively by the nation's voters, and that it was prepared by advocacy and example to demonstrate a new fitness to govern again.

Harking back to dead political battles meant repetition of a mistaken election campaign strategy which designated doubtful application of the Constitution's provisions as the one all-engrossing problem threatening the welfare of Australians. But it was Labor's still-dispiriting order-of-the-day yesterday.

The cause of the renewed campaign of hostility — rather than Opposition — inaugurated by Labor yesterday is admittedly a factor which should be removed for Australia's political health.

The Sun. 18 Feb. 1976

The Sun SAYS

LABOR'S parliamentary rage — once real and natural — has become a contrived display of spite.

It is an intended insult to the Governor-General, Sir John Kerr.

But it is a lot more than that.

It is an insult to Parliament itself.

And it is an insult to all those Labor supporters who want a

## STICKS AND STONES...

serious debate on the Governor-General's powers.

And who want Labor to get on with the job of Opposition.

After yesterday's tantrum it is difficult to know what Labor's men in Canberra want.

Is it to humiliate Sir John Kerr as a man?

Or to bring about changes to his job?

The apparent answer is — both.

But the first objective, apart from being despicable, runs at cross purposes to the second.

All the spite, all the hatred that Labor spokesmen put into the name "Kerr" and all their downright silliness harm their own standing as parliamentarians.

And they scuttle any chance of serious debate.

A boycott on Sir John Kerr is a boycott on commonsense.

One Labor senator even announced he had withheld a donation to a charity because its sponsor was Sir John.

There is no future for a debate which opens on that low note.

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# THE AGE

Thursday, February 19, 1976

## Leave boycotts to the Irish

THE omens are not good. This week both the Federal Labor Opposition and the trade union movement have chosen to mount protest gestures which have been futile, indeed counter-productive. Both had grounds for feeling resentful and angry, and we will return to that in a moment. What is surprising, and saddening, is that both have expressed their anger by retreating into petulance — Labor by boycotting the State opening of Parliament and the ACTU by deciding to boycott tripartite talks with employers and Government in the National Labor Advisory Committee. In each case, the gesture was entirely negative. Nobody wins a fight by staying away from the ring.

Labor's bitterness at Mr. Fraser's decision to precipitate last year's constitutional crisis, and at Sir John Kerr's method of resolving that crisis, is understandable. We strongly criticised both Mr. Fraser and Sir John at the time. The election was, however, an unequivocal statement of the electorate's wish to replace the Labor administration with a coalition one. At least for the next three years Labor's role is to be an

opposition. If it is to regain power, it will have to play that role constructively, looking forward rather than backwards. Hopefully, Tuesday's silliness marked the end of Labor's period of self-destructive retrospection. An Opposition which chooses not to listen to the legislative programme outlined in the Queen's speech is in no position to criticise it.

Equally, Mr. Bob Hawke and the ACTU should think again about their threatened boycott of the NLAC. No one can blame the unions for resenting Mr. Fraser's stand in the recent national wage case — a stand which appeared to fly in the face of Mr. Fraser's pre-election support for the wage indexation principle. Nor do we quarrel with Mr. Hawke over his demand that the union movement be properly consulted before any new industrial legislation is introduced. But that is precisely the point: the whole purpose of the NLAC is to provide a forum in which the two sides of industry and the Government can discuss industrial and economic issues.

True, Mr. Hawke has said the ACTU is willing to talk to the Government on a bilateral basis. He has also left the way open for a "review" of the boycott decision. That is mildly comforting, but the need for tripartite consultations is urgent. The Government has hard decisions to make and it is in the trade

union movement's interests — quite as much as it is in the Government's — that the views of organised labor should be given full weight. Mr. Hawke has every right to disagree, publicly and noisily, with Mr. Fraser on specific points, but there is surely no quarrel between them over the over-riding need to conquer inflation. The proposed NLAC consultations provide an ideal opportunity for both of them, as well as the representatives of business, to sort out their differences over methods. The boycott is an Irish invention, still much favored in Ulster. It has no lasting place in our political system.

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Senator JAMES McCLELLAND—You will get your opportunity, senator. You know differently. Senator Carrick knows differently. I will come to Senator Carrick in due course. I am glad that he is paying meticulous attention.

I have never divulged, and I did not think I should divulge until today, something which I am about to, which I feel it incumbent upon me to divulge in the interests of historical accuracy. That is that a little more than a week before 11 November, the Governor-General phoned me at my home. We know what has been said about what he did, about the option which he ultimately exercised being the only option available to him. But that was not what was on the Governor-General's mind that day. The Governor-General spoke to me about Mr Fraser having painted himself into a corner and how we could get him off the hook, how he and I and the Labor Government could collaborate to solve the problem by finding a solution for Mr Fraser which would not involve a total loss of face. What the Governor-General suggested was that the Whitlam Government should undertake to him that he should convey to Mr Fraser a proposition that we have a half Senate election but that it would not call the Senate together until 1 July of this year and therefore would not attempt to gain any adventitious advantage about all of the things that were speculated upon at that time when it was said that we might have an accidental majority until 1 July.

The Governor-General said to me: 'I believe that what is primarily on their mind is a worry that if you get a majority for a short period you will introduce electoral reform that will put the Country Party out of business'. He said: 'I believe that the best contribution that I could make in this crisis would be to call up Mr Fraser and suggest to him that he could save face by agreeing to a suggestion such as that'. That may not strike honourable senators as such a dishonourable or extraordinary suggestion. I am not criticising the Governor-General for having that idea. As a matter of fact, I think it was a perspicacious idea and quite a shrewd way out of the crisis. But the questions that do really arise are these: Certainly I was an old friend, but why should he go out of his way to ring me? I was also a partisan. I had an interest in the outcome as a member of a government which was likely to be dismissed if he took a certain course of action. One wonders how many others he talked to. We know that he talked to Sir Garfield Barwick. One wonders whether he had private chats with Mr Ellicott or with his old, good friend Mr Atwill, the President of the Liberal Party of Australia. Why did he talk to me? Why did he single me

Government House,  
Canberra. 2600.

16 February 1976.

*My Dear Private Secretary*

As the next bag leaves tomorrow and as I will not be able to send a letter on that day because of my inevitable involvement in affairs in Parliament House, I should perhaps send you something in the meantime to bring you up to date.

The Labor Party has been considering what it should do at the opening of Parliament. There is a school of thought that the opening should be boycotted by the whole of the Party. The procedure is as follows:

1. I take a salute on the steps of Parliament House.
2. I proceed to the rooms of the President of the Senate.
3. I proceed to the Library where all Senators and Members of the House are presented to me.
4. I proceed to the Senate Chamber where the speech opening Parliament is made.
5. On this occasion there is to be afternoon tea in Parliament House. Normally it would have been a reception in the evening but as an economy measure this has been abandoned and an afternoon tea party substituted.
6. On departure from Parliament House there is a salute and I inspect the guard.

As to this programme, it is expected that there will be a demonstration outside Parliament House on my arrival with several thousands perhaps involved and a bigger one on my departure because by that time workers will be finished work.

It is not, so far as I can gather, expected that there will be any violence but this is not as yet clear. In any event, the numbers involved will probably not be great. They will, of course, be organised.

As to the ceremony in the Library, it is possible that all of the members of the Labor Party will boycott this., Many certainly will. It is also possible that many Members will not attend the reading of the speech in the Senate Chamber, some perhaps may walk out whilst it is being read.

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Mr Whitlam appears to be of the view that there will be a total boycott, and this could happen. However, Mr Hawke, who is the President of the Labor Party as well as being President of the Australian Council of Trade Unions has repeatedly said during the last several days that Labor Parliamentarians should not participate in any boycott of the official opening of Parliament. He has said that any boycott of the Governor-General would be politically inept and would draw fire away from the Fraser Government and its problems. Nevertheless, the outcome could well be that there will be a substantial if not total boycott. It will be a question whether this will be followed later by other activities or will be one of the last attempts at protest about last years events. Certainly there will be bitter debates in Parliament at least for a time.

It is understandable that at the present time some in the Labor Party feel the need to do something to make a vocal protest about what happened last year and the opening day of Parliament is undoubtedly the occasion upon which to begin this if anything is to be done at all. The advice that I have been given here is that we should do exactly what is always done. There should be no change merely because it is thought that some protest may take place. The argument is that this can only damage those who engage in it and not the Crown or myself or our established institutions.

The former Prime Minister is in a bitter mood as far as I can gather from his public statements. First of all there was a strong resolution passed by his Caucus a week or two ago. A press extract is enclosed. This undoubtedly would have been inspired by Mr Whitlam though it was drafted allegedly by someone else. In a television interview on the A.B.C. on 9 February, Mr Whitlam asserted that I am a dishonourable and deceitful man and that books that would be coming out in the next few weeks or next few months would establish this. His interviewer said that these were very strong words and he replied, "Of course they are". He said he doubted if the A.B.C. would show them but they were accurate words. He repeated "Sir John deceived me".

I am told that as a result of the broadcast of this pre-recorded interview great numbers of people rang immediately in protest. Editorials were published in a number of papers dealing with the matter and I enclose those from the Sydney Morning Herald, The Australian, The Daily Telegraph, Sydney, and The Mirror, Sydney, as well as the Canberra Times. I have not readily available any from other parts of Australia.

Mr Hawke's approach to all of this was to say that the Labor Party should leave me alone and get on with the job of fighting Mr Fraser.

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The first book has been published, a book called "The Death of the Lucky Country" by Donald Horne who was the author of an earlier best seller called "The Lucky Country". It has been characterised immediately as a partisan book putting a propagandist point of view only. A review of it by a leading constitutional lawyer, Professor Geoffrey Sawyer in today's Canberra Times criticized it. I attach this review which may be of some interest.

This afternoon's Sydney "Sun" contains an article in which a "leak" appears about Mr Whitlam's letter to The Queen. I attach a copy.

This is not an easy time of course. Most of my advisers seem to think that things will gradually quieten down. Certainly my experiences in Hobart recently were very reassuring. The people on public occasions were entirely supportive and happy. There were no demonstrations. The Deputy Premier, who is, of course, a Labor man, sat next to me at lunch, talked in a friendly fashion about politics and other matters, followed me in the speech-making, and said that it was an honour for the Hobart Regatta to have me present. Of course Tasmania is a conservative State and it by no means follows that experiences will be similar in the big capital cities.

I am still strongly advised here to see the whole exercise through and not to worry. In these circumstances my wife and I are proceeding with our programmes and time will tell what kind of reaction there will be. I shall deal with tomorrow's Parliamentary events in an early letter.

In my letter of 6 February I dealt with the resignation of Mr Garland from the Ministry pending investigation. The investigation has resulted in a decision to prosecute Mr Garland, in effect for a form of bribery, and the Prime Minister has now decided to fill the vacant place in Cabinet. Today I swore in Mr Staley as Minister for the Capital Territory leaving the Honourable Mr Robinson in charge of Post and Telecommunications. The Prime Minister was anxious to get all of this completed before the opening of Parliament.

Would you please assure Her Majesty of the continued loyalty and humble duty of my wife and myself. I shall make sure that she is well informed about happenings here.

*Yours sincerely,*  
**JOHN KERR**

Lieutenant Colonel the Right Honourable Sir Martin  
Charteris, G.C.V.O., K.C.B., O.B.E.,  
Private Secretary to The Queen,  
Buckingham Palace,  
LONDON ENGLAND

## Caucus accuses Sir John Kerr of intrigue

CANBERRA, Tuesday. — The Federal Labor Caucus unanimously condemned the dismissal of the Whitlam Government by the Governor-General, Sir John Kerr, as "squalid Establishment intrigue."

The former Education Minister, Mr Beazley bitterly criticised Sir John's Australia Day address describing it as an "apologia" for his action on November 11, last year.

He moved a resolution, adopted by acclamation, saying Caucus "affirms that it does not regard him (Sir John) as a neutral figure representing the prestige of the Crown but as a man who has grossly abused the Crown prerogatives."

The resolution called on Sir John to resign from the Governor-Generalship, as "the only service he can now render the Crown."

In other moves today it was learnt that the coalition Government probably would not carry out a review of Section 57 of the Constitution — the double dissolution clause — despite Sir John's thinly veiled suggestion last night that such a review might be appropriate.

Government sources said a Constitutional Convention was not being considered.

In his pre-recorded Australia Day address last night, Sir John appeared to claim that the Constitution made his dismissal of the Whitlam Government in November virtually inevitable — he had had no choice.

"On this Australia Day, we have an opportunity to look again at our constitution. Is it appropriate and adequate for our modern needs? Should it or can it be altered?" he asked.

TUESDAY, 10 FEBRUARY 1976

## MIRRORVIEW

### Now it's time to shut up

It's time the Opposition Leader, Gough Whitlam, stopped spitting a petty and childish venom on the Governor-General, Sir John Kerr.

His embittered torrent of accusations and insults against Sir John are not only highly offensive, but slanderous and degrading to the high office of Governor-General.

They demean the once dignified Mr Whitlam himself.

In any sport when the umpire says "out!" it means just that — OUT!

What Mr Whitlam so conveniently allows himself to forget is that when Sir John umpired his decision and the people went to the polls they still had a choice.

And they chose to bowl the ineffective Whitlam team right off the ground with the biggest Liberal landslide victory in history.

The sooner Mr Whitlam recognises this and shuts up the better. We've heard quite enough from him already.

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Last night there were 11 losers and one Daily Mirror Sportsman of the Year. And unlike Gough Whitlam the losers didn't squeal their heads off in anguish.

Instead they enthusiastically cheered 15-year-old Jenny Turrall. And so do we. Congratulations, Jenny! A well-deserved win!

# Whitlam looks backwards

PERHAPS it is inevitable that Sir John Kerr should top Mr Whitlam's hate list. The Governor-General not only told Mr Whitlam he was wrong: events confirmed him. But while Mr Whitlam is entitled to whatever private resentments he cares to nourish, Monday's public outburst against the office of the Governor-General was a display of petulance. Accusing the Governor-General and the Chief Justice of unseating his Government by a deceitful coup d'etat and, by implication, conspiracy is like a beaten child footballer blaming it all on the referee after the match. And it augurs ill for the Labor Party's prospects in Opposition, and indeed in the next election, that its leader should still be behaving so.

After all, Mr Whitlam insisted strenuously that the election of December 13 was to be seen as the people's verdict on the constitutional issue: this was the election which would decide whether he or the Governor-General was right on the question of his sacking, whether he or his opponents were right about the Senate's power to block Budget legislation, and whether he had been wrongfully usurped or rightfully removed from office. The people decided overwhelmingly against Mr Whitlam on all counts.

The issue ought to be regarded as closed at least as far as the propriety of events leading up to December 13 is concerned. The best view of the situation as it is now is surely that put forward by the Governor-General in his Australia Day message: that in Sir John Kerr's view there was no option under the Constitution other than to dismiss a Government which could not get its money bills through Parliament, that this responsibility was fairly exercised, but that the desirability of that constitutional position remains in question and consideration can fairly be given to altering it.

There is no reason why we should not reduce the powers of the Senate and alter the Constitution: even to the extent of instituting a presidential style of government under a republic, as some of Mr Whitlam's supporters on this issue are

now arguing. We might end up with a very workable style of republic. But we can only make these changes if it is what the people want: and on December 13 they indicated very coherently that they want the Constitution, the powers of the Senate, and the role of the Governor-General as they now are. If Mr Whitlam wants to make a convincing argument for change, he must start out by accepting this fact — not from petty vaporings about his defeat.

By making a spectacle of his resentments on television the other night Mr Whitlam must have given encouragement to those members of the Parliamentary Labor Party who are reported to be planning a boycott of the opening of Parliament and other demonstrations of their animosity to Sir John Kerr.

It is only within the ranks of the Labor Party itself that Mr Whitlam's new extravagances will be ringing genuine alarm bells. Mr Whitlam is displaying once again precisely those qualities of arrogance and cherished resentment which persuaded some of his opponents in the parliamentary party to attempt to dispose of him at the last Caucus election. To rub it in, he proclaims now that it is "as certain as anything can be in politics" that he will lead the party at the next election, and cannot even imagine that anyone is likely to nominate against his leadership at the Caucus elections in 18 months' time.

Perhaps, as Mr Hawke explains, Mr Whitlam is now feeling better and has thrown off his initial post-election depression. But that is hardly reassuring news for those Labor men who saw clearly the disasters that the old, buoyant Whitlam led them into. They may well reflect that if instead of looking to the future Mr Whitlam goes laboring on about his conspiracy theories and lashing out at the Governor-General over events in the past, the party may go into the 1978 elections with about as much chance as it had in 1975. Mr Whitlam may well be helping Mr Hawke's cause, by making his opponents even more determined to find a new leader before then.

# The Sydney Morning Herald

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WEDNESDAY, FEBRUARY 11, 1976

## Stab in the back?

MR WHITLAM'S outburst on television on Monday will do nothing to restore his reputation. On the contrary, it will confirm the views of all who voted against Labor in December; it should dismay political realists in his own party. His exhibition showed that he has learned nothing from disaster. He showed us, shamelessly, a man wholly absorbed in the past and his personal injuries, a man incapable of forward-looking, constructive thought, a man bent not on leading his party to recovery but on personal revenge.

What we saw was a frenzy of myth-making. The name of the myth — an old and often infamous enemy of truth and reason — is the "stab in the back," the resort of the demagogue down the ages. Labor, vulnerable to emotionalism because of the very fervour of its reforming ideals, has in this century itself too often embraced this myth, and sad each time was the waste of energy. Mr Whitlam wants to waste it again. To Labor's old demonology — Hughes, Lyons, Petrov and the DLP — he now seeks to add Sir John Kerr, the Queen's representative whom he continues to vilify as "deceitful" and "dishonorable" because he did his duty as he saw it and not as Mr Whitlam saw it. Vindication through vilification — that is to be the Whitlam strategy for regaining power. It will fail.

Of course it will fail. Cannot Mr Whitlam see that for the majority of the Australian people he is beating, as a political issue, a subject which is dead, which died when the electorate passed its sentence on the Whitlam Government in December? Lawyers and historians will long continue, quite properly, to argue about what was done on November 11; but if Mr Whitlam insists on trying to keep the argument alive at popular levels, he will, especially if he conducts it in

terms of gross abuse, succeed only in angering and ultimately boring those who can still be bothered to listen to him. He is pitching his appeal to the paranoid in his own party, to nobody else. In this country of commonsense the paranoid are few. Mr Whitlam will offend that commonsense (which, incidentally, includes a powerful sense of fair play) only at his own, and his party's, political peril.

Sir John Kerr is not the only villain in this stab-in-the-back myth in the making. Behind him, in the background, are foreign devils — the international economic forces which, we are to believe, are solely responsible for plunging Australia into inflation and unemployment. This theory of recent history insults the intelligence and judgment of all who rejected the Whitlam Government. They know that world conditions made some inflation, and probably some unemployment, inevitable under any Government. But they did not reject the Whitlam Government as a scapegoat for that misfortune.

They rejected it because the misfortune could have been, and should have been, manageable. That it was not was due, demonstrably, to the incompetent, purblind and wholly indigenous policies of the Whitlam Government — policies pursued in the teeth of realism and practical commonsense (and, increasingly, at the cost of antagonising farmers, businessmen, the middle class, the States and, ultimately, employees generally), policies shaped and directed by a doctrinaire socialist philosophy alien to the history and thrust of this country and its independent, individualistic people. Until Labor accepts these facts, and finds a leader who accepts them and adjusts his political theory accordingly, it will stay where it is — in a wilderness of Mr Whitlam's making.

WEDNESDAY, 11 FEBRUARY 1976

## Stop it Gough Queeg

MR GOUGH Whitlam is rapidly assuming the role of a Captain Queeg of Australian politics.

His latest outburst against the Governor-General, Sir John Kerr, who sacked him as Prime Minister, is reminiscent of the fictional Queeg's harping upon a theme.

Queeg, captain of the USS Caine, had a persecution complex which finally boiled over when he decided somebody was getting at the wardroom strawberries.

Mr Whitlam used to be skipper of the good ship Commonwealth of Australia.

He was relieved of his command by Sir John Kerr, then barred from the bridge by a massive no-confidence vote of the Australian people.

Mr Whitlam chose to fight the December 13 election on the rights and wrongs of his dismissal from office.

Politically, this turned out to be a disastrous choice for a battleground.

Despite pleas from his lieutenants half way through the campaign to get on to more down-to-earth matters — such as doing something about righting our listing economy — he pressed on to disaster.

## Paranoia

Mr Whitlam is not actually running around clicking ballbearings in his hand like Queeg when he was under stress.

But his public utterances about pursuing Sir John until he is obliged to resign, plus the avowed intention of the survivors of his Government to boycott the traditional opening of Parliament next week, smack of collective political paranoia.

Mr Whitlam is a man of considerable standing.

But his fixation about Sir John Kerr and his supposed "dishonorable and deceitful" action in sacking him as PM is rapidly undermining this standing.

He would stand much higher in public esteem if he swallowed the bitter pill of defeat and accepted the realities of his position with a semblance of grace.

Because the Prime Minister, Mr Fraser, has such a big majority, the role of Opposition in Canberra is more important than ever.

Most Australians would be obliged if Mr Whitlam would get on with the job of being the Leader of Her Majesty's Opposition, instead of continuing his petty campaign against her chief representative in Australia, and tell his mutinous parliamentary crew to observe the traditional proprieties of beginning a term of service on behalf of the people who sent them to Canberra.

THURSDAY, 12 FEBRUARY 1976

## BRING ON THE CLOWNS

THE arena from which the Parliamentary Labor Party must launch its drive, if it is to return to power, is the Opposition benches, as it did in the years immediately preceding its victory in 1972. But the recent outburst by the Leader of the Opposition, Mr Whitlam, against the Governor-General, Sir John Kerr, and the proposed boycott of the opening of Parliament by Labor members suggest that Labor sees more merit in protest than in eloquence, wit and logic.

That Mr Whitlam is still very angry with Sir John Kerr is understandable. That he can maintain his rage for public show is to be expected of a man who is well versed in the art of public speaking and in the business of haranguing the multitudes. What is curious though is his apparent change of tack since November 11 over Sir John's actions. On that date, at a press conference after his dismissal, he was quite emphatic when asked if he was suggesting that the Governor-General had misled him. "No", he said, "I'm not saying that". Now, in his latest pre-recorded outburst, he accuses the Governor-General of deceit. Presumably Mr Whitlam believes he has more chance of success in his campaign against the Governor-General if he lards it with allegations of deceit than if he sticks to his original complaint that the Governor-General was wrong — an opinion that this newspaper shares to a limited degree.

The plain fact is that the ALP does not have a majority of the voters on its side in respect of the Governor-General's actions in November, whatever the rights or wrongs of those actions were. Clowning around on the opening day of Parliament or attempting to whip up hatred and contempt for the Governor-General is counter-productive. A strategist worth his Labor salt would surely advise the rump of the former Government to concentrate its efforts from the very beginning on the deficiencies of the coalition which, in the field of electoral promises, have already become apparent.

If Labor members persist with their charade of turning Parliament into a circus, even for only one day, they will have no one but themselves to blame if people regard them as clowns and refuse to take seriously their performances on any subject.



# A partisan look at the fall of the House of Whitlam

**DEATH OF THE LUCKY COUNTRY.** By Donald Horne. Penguin. 115pp. \$1.50.

**HORNE** has had a varied and distinguished career in publishing, and becoming a teacher of politics at the University of New South Wales hasn't had any observable effect on the matter or manner of his writing about national affairs.

*A book review by* **GEOFFREY SAWER**

It is pungent, with many lapidary phrases and occasional witticisms, but also often slapdash, expecting us to accept narrative without source in the newspaper fashion, and indulging in vast generalisations which are hardly capable of authentication.

First in the field of the promised or threatened, books about the slaughter of the Whitlam Government, this one is written in a spirit of savage indignation by one who strongly supported that Government and has little

respect for its predecessors or successor. The indignation is given a somewhat Gothic element of horror because the author experienced the critical phases of the political debacle while suffering a detached retina and consequent operation, and experienced a good deal of it through messengers bringing bad news, and radio.

I sympathise, having been through the same experience at the same hospital — I hope his op has been equally successful — but one wonders whether this was the best atmosphere in which to make considered judgments.

The book is, in fact a propaganda piece, gathering together all the principal grounds for attacking what the Senate, the Governor-General, the Lib-Country Party and the electors did to Gough, including most of the cliches devised by the protagonists at the time, with the Labor cliches reiterated and the Fraser cliches mercilessly exposed.

I wonder that the mordant mind which produced 'The Lucky Country' in 1964 didn't see through some of the Labor cliches as well.

For example, there's a whole chapter explaining once again that the Libs regard themselves as having a divine right to rule in the Federal sphere. Obviously, there's something in it and equally obviously this is far from being the whole or even the main reason for their claim to govern.

## Collectivist

It would be the whole truth only if Labor and Libs had in reality, if not in words, the same basic policy and social ideals. In fact, however, they don't. There are many basic differences between them, and Donald Horne is one of those who elsewhere advocates long life to the differences.

or absurd in the contention that if you want a Government to encourage the private sector in the economy, the Libs are likely to do better than Labor. If Labor policy has a point at all, it is to prefer the collectivist course.

Horne tries to get around the flank of this contention by pointing to the way in which the private-enterprise enthusiasts scramble for hand-outs from the public though, as indeed they do; however, he should study more carefully the way in which, while doing this, they retain the policy control over their "private" business which a Cairns or a Connor would limit or remove. This fight wasn't over the vanities or pretensions of politicians.

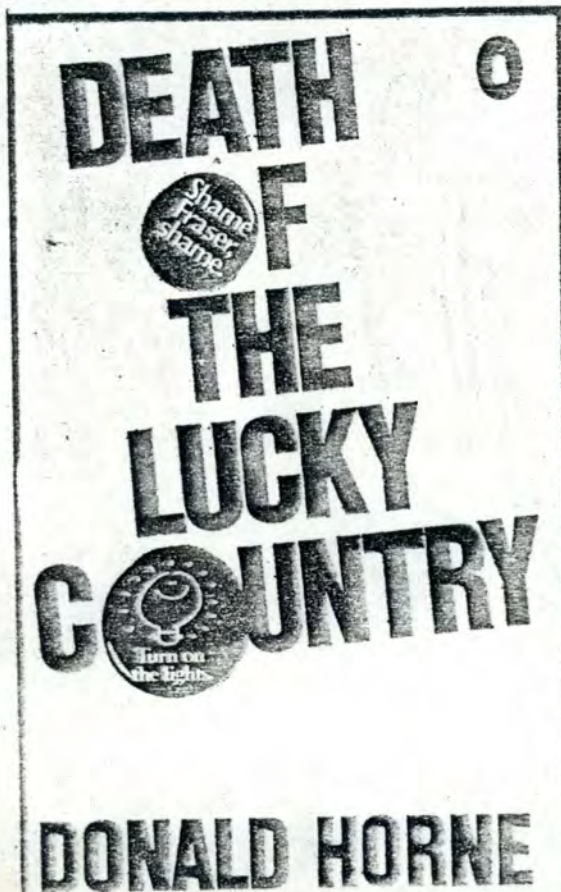
## Decisive

X Horne details some interesting brushes with Big Business types who rubbish his support for Whitlam; my own contacts with the like convince me not only of the strength of their feelings, which Horne doesn't deny, but also that from their own specific points of view they were justified.

He has similar difficulties in meeting the obvious argument against all who contend that the process was "undemocratic" — namely that the people repudiated Gough with what for Australia was a decisive majority, and that so far as public-opinion polls since can be trusted on such points, only a tiny minority feels any indignation about the way in which the people came to be consulted.

Horne's arguments designed to suggest that the people should be protected from being consulted are quite inconsistent with his concluding observations which urge the adoption of a republican system so as to get the people really involved as the source of "legitimacy".

Horne is particularly savage about Kerr, and with Whitlam for having appointed him. However, Horne has long been an





Sir John Kerr

advocate of republicanism, and this affair gives him a golden opportunity for attacking the British connection and the perils of "government by Governor-Generalate", and he exaggerates greatly the potential perils of the latter.

George Third sacked a Prime Minister. George Third did other horrible things, therefore Kerr will do likewise; so runs the argument.

I agree with many of the criticisms of the way in which Kerr handled the crisis, but do not think any monarchical pretensions are involved. The core problem was and was only the power of the Senate to reject or defer Supply beyond serious question in my view, and Horne should have examined it for himself instead of merely mentioning Sir Eggleston's doubts.

So long as the Constitution (unlike many State constitutions) ties up the spending procedure so thoroughly, and gives the Senate power over money Bills, this sort of crisis is unavoidable and the issue has to be taken to the people.

Gough has claimed that the spate of books about recent history will, inter alia, provide justification for the attacks he

and colleagues have made or endorsed against Kerr's actions. If he means by this chapter and verse of statements by Kerr which misled or might have misled himself, Senator James McClelland and others, then this book does no such thing. ✕

### Inferences

The nearest approach to it is mention of a Government House lunch when things might have been said, but Horne doesn't even tell us whether there were others present or not, nor whether it was an official consultation about the crisis or not, much less what was actually said. It is still largely based on inferences from the silences of the parties and on the meagre official documents.

However, I warmly recommend the book to the few citizens who retain an interest in politics. It is a pleasure to read, both when it elicits internal cheers and when it inspires furious marginal scribbles, and records for ever the surrender to a generous emotion which an age of prudence can never retract.

# KERR STILL IN FIRING LINE

SIR JOHN KERR will be the centre of all political attention at the opening of the new Parliament in Canberra tomorrow.

The reason: The Governor General is now a political figure. And politics will not let him return to the safe ceremonial and traditional role from which

From JOHN SHAW Sun National Correspondent

he departed three months ago by dismissing Gough Whitlam.

The national controversy Sir John triggered then, persists and is the central political reality in Australia today.

Labor's strategy for

return to power will substantially involve attempts to discredit Sir John and thus Malcolm Fraser, the man he appointed Prime Minister last November 11.

Tactically, Labor's aim at first will be to question the integrity and legitimacy of Mr

Fraser's leadership and split the Liberal Party by hammering away at the "Kerr connection."

It is revealing of Labor's current political policy that in Mr Whitlam's first and only interview since his election defeat, he returned again to his main election campaign theme — the actions of the Governor-General.

On ABC television last Monday, Mr Whitlam declared: "Sir John is a dishonourable and deceitful man."

He also accused the Chief Justice of the High Court, Sir Garfield Barwick, alleging he "connived" in "the Governor-General's coup d'etat."

They are serious charges which the Labor leadership will persist with in the belief they can be proven — and be damaging to the Fraser Government.

Mr Whitlam's allegation that Sir John acted "dishonourably" stems from his belief, backed by political analysis, that the Governor-General acted in a partisan way, deliberately favouring the conservative parties.

ALP analysts still believe there were four, or possibly five, alternative solutions to the November constitutional crisis other than dismissing Mr Whitlam.

The Labor belief still is that by deciding on the most extreme solution, the Governor-General moved beyond his constitutional duties into party politics.

Part of Mr Whitlam's charge of "deceit" rests on an understanding he says the Governor-General gave him that he would not consult the Chief Justice on the constitutional issue posed by the deferral of Supply by the Senate.

Sir John asked Mr Whitlam what he thought of such an approach and Mr Whitlam, speaking in his



Sir John Kerr

legal role as the Governor-General's chief adviser, advised against it.

In revealing this today, Canberra sources said that a go-between and courier for the Barwick-Kerr contacts — apart from their announced meeting at Government House — had been recently identified by Labor investigations.

The sources also confirmed that soon after his dismissal, Mr Whitlam wrote a private letter to the Queen, criticising Sir John.

Details of the Whitlam letter have not been revealed — although the former Speaker, Mr Gordon Scholes, Labor member for Corio, published his protest to the Queen.

However, it is known that Mr Whitlam told the Queen that in his opinion, Sir John's actions had brought the office of the Governor-General into disrepute in Australia.

Labor's belief in the eventual potency of its case against Sir John Kerr is bolstered by the knowledge that some present and former members of the High Court believe that the Governor-General acted, if not entirely unconstitutionally, at least improperly.

He appears a political liability to the Fraser Government.

The Governor-General is a political time-bomb, ticking away under the seemingly impregnable coalition majority in Parliament.

Government House,  
Canberra. 2600.

6 February 1976.

*My dear Private Secretary,*

May I begin by asking you again on my behalf to extend my humble and grateful thanks to Her Majesty for all that she did for me during my recent trip to London. I should like also to thank you again for your considerate help to me during my visit.

The main purpose of this letter is however to explain the background of an entirely unexpected development of which you will have heard. I hope that you do not have the reaction in the Palace that the more things change, the more they remain the same. I trust that this aphorism will not apply to our affairs here as things unfold in the future.

The position is as you will doubtless have gathered from other material available to you, that almost the first thing I had to do on my return was to accept the resignation of a Minister so recently appointed and swear in another.

The circumstances are by no means clear, but it appears that the allegations which have been made have been thought by the Attorney-General and the Solicitor-General to require investigation. This does not mean, of course, that prosecution will follow but because investigations of the activities of a Minister, in relation to a suggestion of criminal conduct, are to be undertaken, he has had to resign during the period of the investigation and any possible later prosecution.

In a nutshell the charge against the Minister, Mr Garland, the Minister for Post and Telecommunications is that he, and certain other members of the Liberal Party, entered into a bargain during the Election Campaign, in respect of the Senate Election in the Australian Capital Territory, to pay an independent candidate to direct his preferences to the Liberal Senate candidate. That Senate candidate was in due course elected. The issue is, as far as I can gather at the moment, whether on the one hand the Independent Senate candidate had already offered his preferences to the Liberal Party candidate and had been later giving some financial assistance to help him to mobilize support or, whether he had obtained the sum of \$500.00 by way of bargaining in advance to direct his preferences to the Liberal Party candidate. An element

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in the charges is that Mr Garland, the later Minister for Post and Telecommunications, himself, on the occasion when the money was said to have been passed over in Parliament House, contributed \$100.00 from his own pocket. Whether this be so or not it was said that he was actually present when the deal, as alleged, was concluded.

The Prime Minister has accepted the resignation of the Minister concerned and I have sworn in a new Minister (one of the other members of the Ministry Mr Robinson) until the matter is sorted out. The law officers of the Crown believe that the allegations having been made they should be investigated. They have not expressed any opinion as yet as to whether anyone should be charged. If the outcome is that there is no case to answer or alternatively, if a charge is made but not proved, it could well be that the Minister in question could come back to his portfolio. All this however lies in the future.

I shall make no comment on the pros and cons of the affair upon which I am not as yet well informed although I have seen the opinions of the law officers and the correspondence which has passed between the Prime Minister and Mr Garland. Obviously we must await the outcome of the investigations. Nor shall I make any comment on the unexpected nature of the incident which, by the time you receive this will, I suppose, have had a certain amount of press treatment.

May I say in conclusion that I have discussed with the Prime Minister the various matters which arose during my visit and have heard from him an account of how things are going with the economy and his policies. He has set out upon the task of achieving economies in expenditure. They do not amount to a large part of the deficit but he has sought so far to cut down public expenditures by somewhere between \$350 and \$400 million. He has been in recent days, with the support of his Government, adopting a fairly stern economic policy. He has set out to introduce an element of federalism into our affairs, not previously fostered by either side in politics, by giving a new area in taxation revenue to the States and to Local Government bodies. The whole "new federalism" as it is called is very much in its infancy and is not yet able to be assessed.

The Prime Minister has gone up in national popularity on a personal basis from 38% to 50% and his Party has increased in its opinion poll support by another 1%. Mr Whitlam's position remains much the same. Mr Whitlam seems, in his own Party, to be rather hemmed in by his left wing and by the decision to limit his uncontested leadership to 18 months. If he is imprisoned by his left wing he may find it necessary to consolidate support in the Party by at least temporary concurrence with left wing approach to national affairs.

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It remains to be seen whether this will complicate my life but I think the truth is that the more he succumbs to left wing approaches the less likely he will be able to recapture the middle ground in politics, but this is, of course, a very tentative opinion. Mr Whitlam is a man of enormous rehabilitative powers when it comes to tough political fighting and we shall need to await events.

I feel reasonably relaxed on my return, although I have to face the opening of Parliament where there could be some demonstrations and boycotts, but on the whole I look forward to a gradual year of re-building and healing in my own position in anticipation of Her Majesty's visit a year hence. I, and as I understand it, the Government, will be giving a great deal of attention to the preparation of things for the visit.

Would you please assure Her Majesty not only of my gratitude and humble thanks for everything she did for me, but of my continued duty and loyalty.

Yours sincerely,

JOHN R. KERR

Lieutenant Colonel the Right Honourable Sir Martin  
Charteris, K.C.B., G.C.V.O., O.B.E.,  
Private Secretary to The Queen,  
Buckingham Palace,  
LONDON ENGLAND



BUCKINGHAM PALACE

29th January, 1976

*Dear Prime Minister*

Thank you very much for your letter, the text of which was communicated to me by Sir John Bunting on 25th January.

This has been laid before The Queen and Her Majesty has read it with close interest. She is grateful to you for having placed on record, for her information, the views of her Australian Government in respect of the circumstances surrounding the termination of Mr. Whitlam's commission as Prime Minister and your own appointment to that office.

Her Majesty is of course particularly glad to learn of your Government's view that the relationship between the Crown and the Australian people, and the position of the Crown under the Constitution, has in no way been diminished by what happened. It would obviously be a matter of deep regret to Her Majesty if the Crown became a divisive element in Australian politics.

Finally, The Queen commands me to say how much she is looking forward to her visit to Australia in 1977.

Should there be any chance of your paying a visit to this country before 1977, Her Majesty would of course be delighted at the prospect of an earlier meeting with you.

*Yours sincerely*

*Martin Chantrens*

The Prime Minister of Australia.

TOP SECRET

Dear Sir Martin,

Thank you for your letter of 13 January enclosing copies of a letter dated 26 December last from the Leader of the Opposition to yourself and your reply to him dated 12 January.

I note that in your letter to Mr. Whitlam you have indicated that his letter had been placed before Her Majesty and that she had taken note of his views. I also note your very apt and proper comment that the constitutional role of the Governor-General and his reserve powers stem not from his position as the Queen's personal representative but rather from what is written in the Constitution Act as applicable constitutionally.

I do not wish to trouble Her Majesty unduly with regard to the events which have taken place in Australia in recent months; however, having read Mr. Whitlam's letter to you and being in basic disagreement with many of the assertions contained in it, I consider it my duty to place on record the views of the Australian Government.

Before going further, may I in the strongest terms state my Government's view that the relationship between the Crown and the Australian people, and the position of the Crown under our Constitution, has in no way been diminished by recent events. Indeed, it is our firm conviction that as a result of recent events the great majority of the Australian people, of all political persuasions, have acquired a much deeper appreciation of the role which the Crown can and ought properly to play in our constitutional affairs.

Therefore my Government completely rejects the view that the recent actions of His Excellency the Governor-General have called in question on the part of many millions of Australians, particularly the younger majority, not merely the limits of the powers of the Crown but its whole future role in Australia. Nor can it accept for one moment that the manner in which the Governor-General chose to invoke and exercise the reserve powers of the Crown has put in jeopardy the future of the Crown in Australia, or has already gravely undermined the respect or regard attaching to the office of the representatives of the Crown and therefore the Crown itself.

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TOP SECRET



The vast majority of Australians have accepted Sir John Kerr's actions as being the only democratic and timely means of resolving a constitutional deadlock which, given the clear intransigence of the then Prime Minister, threatened to throw the country into constitutional and economic chaos.

The response of the electorate, both at the poll and in opinion polls, is testimony to this.

The existence of a reserve power in the Crown to dismiss Ministers under our constitution was never in dispute. The Law Officers of Mr. Whitlam's Government, although asked to express an opinion, did not advise that the Governor-General had no reserve power. Once the existence of the power was conceded the occasion of its exercise was clearly a matter for His Excellency. Needless to say, political parties and political commentators will inevitably disagree about the exercise of such a power, but once exercised the stability of constitutional government demands that those directly affected by it and the people generally accept it. My Government has no doubt that the Australian people have done so.

There are a number of other statements in the letter upon which I would like to comment.

He states that at no time did the Governor-General inform him as Prime Minister of the resolution he had formed to dismiss Mr. Whitlam's Government; however, it is apparent from the letter of dismissal that on a number of occasions His Excellency discussed with the former Prime Minister the calling of a general election and the possibility of his resignation. Mr. Whitlam informed the Governor-General that the only way in which such an election could be obtained would be by the dismissal of himself and his colleagues. It should have been no surprise to Mr. Whitlam therefore that the Governor-General should have in mind the possibility of dismissing him. There was clearly no impropriety whatsoever in His Excellency not informing the then Prime Minister in advance of his decision.

The letter further states that His Excellency refused not merely to accept but even to receive Mr. Whitlam's advice recommending steps to bring about an election for half the Australian Senate. You will appreciate that the question of holding a half Senate election and the likelihood of it providing a prompt and clear resolution of the deadlock was the subject of wide public debate prior to 11 November. Furthermore, the statement issued by the Governor-General on 11 November and published at the time of his dismissal made it clear that His Excellency did consider the matter but rejected it as a means of resolving the deadlock. There therefore could have been little point in His Excellency receiving advice on the matter when he was clearly minded to reject it. Nor could there have been any impropriety in not receiving it.

The Leader of the Opposition further states that the Governor-General rejected the opinion of the Crown Law Officers and accepted the contrary opinion of a private Member of Parliament, albeit a former Solicitor-General.

May I say that at no stage did the Law Officers tender an opinion to the Governor-General. His Excellency, I understand, requested the Law Officers' opinion on the question raised by the former Solicitor-General as to the existence of the reserve power of the Crown to dismiss a Prime Minister. A draft opinion was prepared by the Solicitor-General and a copy of the draft was left with His Excellency by the Attorney-General. However the signature of the Solicitor-General shown on the photocopy was struck out and at no stage did the Attorney-General give the authority of his office to that draft. Furthermore, what was written by the Solicitor-General did not reject but accepted the basic proposition that the Crown had a reserve power to dismiss its Ministers.

Another assertion was that the Governor-General against Mr. Whitlam's express advice and contrary to all proper practice consulted the Chief Justice on a matter that could well have become a matter for judgment by the full High Court itself. My Government does not agree that the question of the Governor-General's power to dismiss Ministers could have become a matter for judgment by the full High Court. Furthermore, the assertion that the consultation took place contrary to all proper practice is clearly a matter of opinion. There have been instances in the past where Governors-General have had to seek advice, and Sir Paul Hasluck in a public address has asserted the right of the Governor-General to do so.

Having in mind the basic constitutional question involved, there was no-one more appropriate for the Governor-General to consult than the Chief Justice.

One further matter on which I should like to comment is his statement that His Excellency refused to receive the Speaker of the House of Representatives acting on the express instructions of the House until Parliament had been dissolved. The facts are that the Speaker had received a resolution from the House of Representatives to be conveyed to His Excellency at a time when the process of double dissolution of the Parliament was well under way. The purpose of the resolution was to have Mr. Whitlam reinstated as Prime Minister. In no way could that result alter the fact that Mr. Whitlam could not command a majority in the Senate for Supply. Knowing that I then had no majority in the House of Representatives, on the passage of Supply I had immediately recommended a double dissolution. Clearly enough His Excellency, in dismissing Mr. Whitlam, already had in mind that he commanded a majority in the Lower House. There was, therefore, no offence either to the House of Representatives, its Speaker or to proper principles of Government in the Governor-General not seeing the Speaker until the dissolution procedures in which His Excellency was then involved were completed.

TOP SECRET

I regret that I have found it necessary to write at length on these matters, but as I have already stated I feel it my duty in the circumstances to do so, both in order to assure Her Majesty of the continuing affection between her and her Australian subjects, and to assure her in the strongest terms of the proper performance by Sir John Kerr of his office as Governor-General. There can be no doubt that at all times Sir John was actuated by the highest motives and with a deep sense of public duty. My Government believes that in doing so he has earned the deep respect of the vast majority of Australians.

Public opinion at the time was looking to him to resolve the crisis. He did so firmly, democratically and with proper regard to the pending constitutional and economic chaos which the country was facing. For this all Australians are grateful.

Yours sincerely,

Malcolm Fraser

Lt-Col. the Rt. Hon. Sir Martin Charteris,  
G.C.V.O., K.C.B., O.B.E.

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TOP SECRET



GOVERNMENT HOUSE  
CANBERRA

- As at Florence  
22nd January 1976

My Dear Private Secretary,

On my last day here, before returning to London, it has seemed desirable to make a few comments on Mrs Whitlam's letter of 26 December. Please excuse me for doing so without benefit of typewriter.

I do not think that a detailed letter is needed because The Queen has had the whole story in a series of letters as events unfolded. But a small number of points can be made in a summary way.

As to specific points -

(1) It is true that I did not tell Mrs Whitlam that I intended to discuss her government until the point of time came when I was about to do it. You know the reason. I believed he would seek to have me dismissed on the instant if I gave him any foreknowledge. At the point of time when I did tell him, but he did not know that the document of dismissal lay signed in front of me, his immediate reaction, whatever he believed that the deed was not yet done, was to get to the Palace immediately. I shall not enlarge in my previous exposition of the psychology of this situation or the state of mind of Mrs Whitlam and myself as previously expounded.

(2) It is not true that I refused to see or receive Mrs Whitlam's advice in favour of a hay fever decision. I knew from him by telephone that this was his advice.



GOVERNMENT HOUSE

CANBERRA

I did refuse to receive the written letter he brought with him because I had already decided upon my course of action and I did not wish to receive further detailed written advice from him whilst he was still Prime Minister, at a time when I was about to hand him the letter terminating his commission. I had decided to act in the way I did, and at the time I did, because I knew that we had reached the last practical time for an election of any kind before, say, the following February. His oral advice, amongst other things, crystallised the moment for action because I had no alternative except to receive his written proposal and accept his advice, or to dismiss him. Had I done the former I should have done the latter. I shall not repeat the reasons why a by-election decision was no answer to the constitutional question posed.

(3) I did not reject the opinion of the Law Officers of the Crown. I had no such opinion. I had only a draft opinion of the Solicitor General, with which the Attorney General had said he did not necessarily agree, and the latter wanted further time to consider Byers' views and discuss the matter with him. Accordingly I was specifically told by the Attorney General to treat Byers' document as a draft & as nothing else. It is false to say that I rejected an opinion of the Law Officers, though of course, I



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had news about the draft. Further, upon such a constitutional ground as had arisen, I should have felt free to refuse to rest upon their advice, if by any chance, it denied the existence of the necessary power and the power contained within it, to force a dissolution in exceptional though doubtless some circumstances. I did not act on Sir Ebbetts' opinion. Indeed I believed that some of its implications were wrong & it was for this reason that I asked for an opinion from the Law Officers. You will, incidentally recall that Sir Wheldon was of the view that I was not entitled to ask for & receive such an opinion as he was, on all matters, my sole constitutional adviser. He did however say he would ask for such an opinion himself and if he judged it appropriate would send it on to me. He could never in fact have received such an opinion and I do not believe he ever read the draft in advance of my decision. The Attorney had only glanced at, but not considered or made his mind up about, the draft.

(15) There is nothing that I need to add about consulting Sir Geoffrey Borswick except to say that long before the crisis on two or three occasions when Sir Paul's Question Lecture was discussed between Sir Wheldon & myself he said he disagreed



GOVERNMENT HOUSE

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with Sir Paul about <sup>(12)</sup> consulting the Chief Justice. His  
point of view, whilst specifically covering the Chief  
Justice, extended to everyone & all circumstances  
whenever the position he or she alone could advise me  
and I must, whatever the circumstances, take his  
advice. I kept my mind open on this point until  
that to decide about crucial action or then, but  
not to do this, I asked Sir Geoffrey if he were willing  
to advise on the constitutional issue existing. It is  
I believe wrong to say that the issue could have  
come before the High Court. No one, including Sir  
Whitlam, tried to get it there between 11th November  
and 17th December. The issue was now justiciable.

(5) I gave the Speaker an appointment to see me at a  
time when I knew the House would be dissolved  
but I did know from Sir Whitlam by telephone, as soon  
as it happened, what the resolution passed by the  
House had been. It was at all times obvious to me  
that Sir Whitlam had the confidence of the House but  
he did not have supply. I expected that the  
resolution would be passed but as I had got  
supply after lunch on 15th November by dismissing  
Sir Whitlam & commissioning Sir Fraser, & by  
that means understood as Sir Fraser, on his  
appointment & as a condition of it recommended



## GOVERNMENT HOUSE

CANBERRA

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a dissolution of both Houses, advice which  
not only, though in the circumstances I  
accepted I had no choice and, of course, no  
alterative, also except to dissolve both Houses  
immediately pursuant to the oral advice &  
the oral decision already made. Mr Scholes  
was never in a position, nor was the House, to  
avoid this outcome as he & Mr Whitlam never  
knew how long. By the time Mr Scholes was laying  
down the law and a new Prime Minister was in control,  
my advice to me, of the subject of dissolution - a  
subject on which, in itself, no-one feared  
exist.

In conclusion I should say again that at no  
stage did I act in a party political sense. I  
insisted upon a double dissolution in the Labor  
Party's interests, for reasons already given, and  
wished Mr Whitlam back saying I believed he  
might win the election. It is simply false to say  
that I did so but I did not vote by a desire to  
help Mr Whitlam's opponents. That there would be  
political consequences I realised. I do not myself  
believe that damage has been done to the future of  
the Crown. Many of the incidental decisions





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&

Steps to make were specifically made in order to protect the Crown & the Monarchy in the future. It is my earnest and loyal hope, as always my humble duty to do what my office & my personal responsibility required without adversely affecting the position of the Crown. I hope, during the coming week-end, to be able to repeat my expressions of loyalty and duty personally to Her Majesty.

Yours sincerely  
John Kerr

PERSONAL - IN  
CONFIDENCE

12th January, 1976

Thank you for your letter of 26th December which did not reach me until 8th January.

Any one who has served The Queen as her Prime Minister has, I have no doubt, a perfect right to make his views known to her on any subject, and certainly on one which he holds to be of national importance. I have of course therefore, as you requested, placed your letter before Her Majesty.

The Queen, who knows your letter was written out of concern at any damage which you consider may have been done to the future standing of the Crown in Australia, has told me to thank you for having written. She has taken note of your views.

I am sure you will neither wish nor expect me to enter into argument about the constitutional propriety of Sir John Kerr's actions. I hope, however, you will allow me to make one comment on what you say.

It is this. The constitutional role of the Governor-General and his reserve powers stem not from his position as The Queen's personal representative, to which he is appointed on the advice of the Prime Minister,

but rather from what is written in the Constitution Act as applicable constitutionally. This point has, I think, particular relevance to the position of The Queen as Queen of Australia.

Before ending this letter I should like to say how much I have appreciated your kindness and consideration to me personally whilst you have been Prime Minister of Australia.

M. CHARTERIS

The Hon. Gough Whitlam, Q.C., M.P.

CONFIDENTIAL



BUCKINGHAM PALACE

9th January, 1976

*Dear John*

Forgive me for troubling you during your well-earned rest in Paris which I hope you and Lady Kerr are enjoying to the full.

I enclose a copy of a letter which I received yesterday from Mr. Whitlam. It was somewhat delayed in transit and I think I should not delay too long before answering it.

I telephoned to David Smith and told him I had received the letter and asked him if there had been any mention of it in the Press as there had been in the case of Mr. Scholes' letter to me. He said there had been none. I am sure, nonetheless, that we must calculate that Mr. Whitlam's letter to me and any reply I make to it may be made public.

I attach a draft reply and shall be grateful for any comments you may have on it. I am anxious not to be drawn into controversy but, equally, to give nothing away.

If you are content with my proposed reply, I think I should send it off as soon as possible. Before doing so, however, I suggest that I should ask Jack Bunting to appraise Mr. Fraser of the terms of Mr. Whitlam's letter and of my reply to it. I would not ask Mr. Fraser for his approval but allow him time to object if he wishes to do so. Do you approve of this procedure?

We are much looking forward to seeing you both for lunch on 23rd January and have secured the Carringtons and Lord and Lady Blake (he is the Provost of Queen's College Oxford, and a distinguished constitutional historian!) to meet you. We hope also to have my cousin, Charles Rutland, and Frances Rutland but I am not yet certain if they can come.

I am writing separately to Jack about the arrangements for your visit to Sandringham.

*Yours ever  
Martin*

His Excellency the Governor-General of Australia.

Leader of the Opposition

26 December 1975

Dear Mr Martin,

Since Her Majesty the Queen will soon be receiving His Excellency the Governor-General, I feel it is my duty to request you to place before Her Majesty certain matters relating to the recent constitutional crisis which in my opinion have serious implications for the future of the Crown in Australia.

The very clear result of the elections convincingly settles Australia's immediate political future. In no way, however, do the elections resolve the legal and constitutional questions raised by the conduct of the Crown's representative on and before 11 November. Nor could the election result of itself legitimise that conduct.

It is not my present purpose to canvass the legality, or even the propriety, of the Governor-General's actions. These are and will certainly continue to be the subject of great juridical and academic argument. My immediate concern and contention is that the manner in which the Governor-General chose to invoke and exercise the reserve powers of the Crown has put in jeopardy the future of the Crown in Australia and has already gravely undermined the respect and regard attaching to the office of the representative of the Crown and therefore to the Crown itself.

I assert that the Crown can have no enduring future in Australia except by the continuing consensus and assured assent of the overwhelming majority of the people. I further assert that that majority must transcend traditional political allegiances and temporary political attitudes. I finally assert that these conditions can apply only if the Crown continues to avoid any intervention, or appearance of intervention, on behalf of any of the contending political parties. I fear that these conditions no longer apply in Australia.

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Parliament House, Canberra, A.C.T. 2600

The Governor-General used the reserve powers of the Crown to make at least five political decisions. All these decisions favoured one political combination against the other, which happened to be the party with an assured majority in the Lower House. At no time did he inform me as Prime Minister of the resolution he had formed to dismiss my government. He refused not merely to accept but even receive my advice recommending steps to bring about an election for half the Australian Senate. He rejected the opinion of the Crown Law officers and accepted the contrary opinion of a private member of Parliament, albeit a former Solicitor-General. Against my express advice, and contrary to all proper practice, he consulted the Chief Justice on a matter that could well have become a matter for judgement by the full High Court itself. He refused to receive the Speaker of the House of Representatives, acting on the express instructions of the House, until Parliament had been dissolved.

The events leading up to 11 November were essentially a political crisis, a political deadlock between the two Houses which was capable of political solution. The Governor-General chose to make a political judgement to the effect that his constitutional advisers had exhausted all political means to solve this political crisis by procedures legally and constitutionally open to them. He refused to receive the advice which would have shown that such a conclusion was unwarranted.

My concern at the damage done to the future standing of the Crown is in no way lessened by any argument that the Governor-General's action may have been within the letter of the Constitution. It is a very clear case of a power being tolerated only on condition that it is not exercised. For I believe it would be thoroughly unacceptable to a majority of the Australian people if in fact the reserve powers of the Crown were so potent that the representative of the Crown could legally intervene so decisively against any duly elected government retaining its majority in the House of Representatives.

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Far from resolving the constitutional issues, the recent political crisis in Australia has only obscured them. They must await future clarification. I regret to say, but am in duty bound to say, that the actions of Sir John Kerr, as representative of the Crown in Australia, have been such as to call into question on the part of many millions of Australians, particularly the younger majority, not merely the limits of the powers of the Crown, but its whole future role in Australia.

With all good wishes,  
Yours sincerely  
Whitlam

Lt. Col. the Rt. Hon. Sir Martin Charteris, K.C.B.,  
K.C.V.O., O.B.E.,  
Private Secretary to H.M. the Queen,  
Buckingham Palace, S.W.1,  
LONDON, ENGLAND

DRAFT LETTER TO MR. GOUGH WHITLAM

Thank you for your letter of 26th December which did not reach me until 8th January.

Any one who has served The Queen as her Prime Minister has, I have no doubt, a perfect right to make his views known to her on any subject, and certainly on one which he holds to be of national importance: indeed, on such a one perhaps has an obligation to do so. I have of course therefore, as you requested, placed your letter before Her Majesty.

The Queen, who knows your letter was written out of concern at any damage which may have been done to the future standing of the Crown in Australia, has told me to thank you for having written. She has taken note of your views.

I am sure you will neither wish nor expect me to enter into argument about the constitutional propriety of Sir John Kerr's actions. I hope, however, you will allow me to make one comment on what you say.

It is this. The constitutional role of the Governor-General and his reserve powers stem not from his position as The Queen's personal representative, to which he is appointed on the advice of the Prime Minister, but rather from what is written in the Constitution Act. This point has, I think, particular relevance to the position of The Queen as Queen of Australia.

*Before ending this letter I should like to say*

[I cannot end this letter without saying] how much I have appreciated your kindness and consideration to me personally whilst you have been Prime Minister of Australia.

*as applicable constitutionally*



Government House,  
Canberra. 2600.

16 December 1975.

*My dear Private Secretary,*

There is, I realise, no need for me to go into details of what happened in the election. The constitutional issue virtually died after the first week and a half and economic matters dominated the debate thereafter. However, especially in the light of the attitudes of Mr Whitlam and perhaps some other former Ministers and presumably those persons on the far left, there is some remaining bitterness. However the sweeping nature of the result, which seems to have been unexpected by everyone, is of some relevance on this point of bitterness.

In the last week most observers accepted the broad predictions of the opinion polls and expected a victory for the coalition parties, but the opinion polls were discounted, as they often are, on the ground that the type of landslide they were predicting seemed so great as to be unlikely to occur. Nevertheless, the polls turned out to be quite accurate and it looks as though there will be a majority of about 58 or 59. The question is, why did this extraordinary swing occur?

It goes without saying that dominantly it was a vote against Mr Whitlam and the Labor Government on economic grounds, with inflation and unemployment the big issues. However, this does not seem to be a sufficient explanation. The truth, of course, is that governments are, generally speaking, defeated rather than oppositions elected. The former government was undoubtedly defeated because the voters did not want what it was offering.

I have talked with the Prime Minister about this phenomenon and we are in agreement that the swing was so great that it must carry implications of a deeper significance than would be the case if it represented a mere vote against the former government. My own view is that the electors were really voting positively for a way of life which they want. This way of life has many elements in it.

The Australian people are, I think, basically conservative in what they want out of life. They want things to go on more or less as they have always done. When the Whitlam Government was elected in 1972 it was my impression that it was elected, not to conduct a social revolution but rather to administer the country, more or less as it had always been administered, but

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with some new progressive elements on the social welfare side. The enormous frenzy of change, I believe, proved to be far too much for ordinary people to comprehend and, when it was accompanied by heavy inflation and unemployment, much of the change itself proved unattractive.

As I say, my impression is that people turned with some relief to ways of life which they understand. Included, of course, is the Monarchy and the traditional symbols. I believe that as things turned out, the vote represented an endorsement of Vice-Regal authority and as the Times editorial said (as quoted in our press this morning) sweeps aside all argument about constitutionality or legitimacy and can be interpreted only as an endorsement of my dismissal of Mr Whitlam when he refused to put Australia's condition to the people. I cannot help but draw the conclusion that the people positively voted as sweepingly as they did by way of approval of what the Senate had done and what I had done.

On the east coast the importance of the Senate is not as well understood as it is in the smaller states and in the rural areas. Whether I am right or wrong about this, the exercise of the reserve power which has to be very rare and which I much disliked resorting to has not, I believe, resulted in a weakening of the basis upon which it rests.

There is no chance of our Constitution being amended either to cut down the powers of the Senate or of the Governor-General. I hope, certainly so far as the Governor-General is concerned, that there will be no need to resort to the reserve power for many a year if it ever becomes necessary again to do so at all. I always realised that if it were used, and its use not endorsed with sufficient strength by the people, my own position would be inevitably involved. One of the reasons why the reserve power can occasionally be used, outside the United Kingdom, is because Governors-General can be replaced. I cannot envisage it ever having to be used in the United Kingdom itself but the fact that it exists is important in the United Kingdom and its nature can occasionally be illustrated in other parts of The Queen's realms.

I am swearing in the new Ministry next Monday and leaving on Tuesday for London. You know the details of the planning from David Smith. I shall, in London and with The Queen, be attending to some matters connected with the Order of Australia and shall visit Paris, but of course the highlight of my visit will be our call upon Her Majesty if she remains minded to receive us.

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The Prime Minister, with whom I have discussed the visit, is most anxious for it to take place, both for the purpose of the Order of Australia which he supports, and because it seems appropriate to him that I should avail myself of any opportunity afforded to me by Her Majesty to discuss recent happenings. David Smith will let you have an indication of the type of matters that I should like to mention to The Queen and also if she permits it to you, perhaps in more detail.

The visit will be a semi-official one and not merely an occasion for rest and leave though, not having had any kind of holiday for over two years, I am looking forward to some rest both in London and in Paris. I have had a couple of hectic years with a considerable amount of personal stress but both my wife and I feel well and are now determined to relax. We realise that there could be more stresses and strains next year but I hope not too many.

We look forward to being received at Sandringham if this is still possible.

Please assure Her Majesty of my continued loyalty and humble duty.

Yours sincerely,

JOHN R. KERR

Lieutenant Colonel the Right Honourable Sir Martin  
Charteris, K.C.B., K.C.V.O., O.B.E.,  
Private Secretary to The Queen,  
Buckingham Palace,  
LONDON ENGLAND

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