THE EVOLUTION OF PARLIAMENT
AND THE CONSTITUTION
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(Summary of a paper read at a meeting of the Society on 28 February 1975)

Today when we hear so much controversy about Parliament and the Constitution I feel that a brief look at how these things evolved would be profitable and instructive.

Some people regard voting as an unpleasant duty instead of a privilege to be exercised with thought and caution. Others say they do not understand either the system or their rights under it. I hope to set forth these matters, paying particular attention to the still important role of the Crown.

The first positive step towards government by the people as we now know it came in early Saxon times. The Saxons were a wild warlike race but when they landed in England they brought with them the beginnings of most of the institutions under which our country is governed today.

The Saxons thought a great deal of freedom. The power of a king or chief was very much limited. They governed themselves by an assembly. It was an assembly of all the free men—the “folk moot”—that chose the king or leader. It was in the “folk moot” that all grave matters were discussed and decided. “No man dictated; he might persuade but he could not command.” As well as the “folk moots”, when the first small kingdoms were changed into shires, “shire moots” were established and later hundred moots and township moots for the smaller subdivisions. These assemblies not only decided local questions, but formed courts of justice.

As the kingdoms grew too large for all the free men to assemble, the place of the “folk moot” was taken by the Assembly of the Wise Men, or the Witan. In it sat the aldermen, the rulers of the shires and the “Thegns” or chiefs of the king’s bodyguard, who were the nobles and great land-
owners of the time; and in later days when the church was established, the archbishop and bishops sat there too. This body corresponded to the House of Lords.

It differed from Parliament, for there were no Commons to represent the people. It wielded many of the powers which Parliament wields now. It made laws; it was consulted about affairs of state, on questions of peace and war, of treaties, of religion; it could elect a king or depose a king. When in later days we find Parliament refusing to allow Charles the First to make laws and govern at his will, or interfering in questions of religion as it did in Henry VIII's days, or offering the Crown of England to William III, or deposing a king as it deposed Richard II, we may remember that it was only using powers which had belonged to its ancestor, the Saxon Witan.

After William the Conqueror became king of England in 1066, his first stroke was to declare that all who had fought against him at the Battle of Hastings were rebels and that their estates were forfeited to him. Thus he became master of almost all the land in the south of England. When in later years the English rebelled against him, he punished them by taking their lands in the north and west. These vast estates he used to reward his Norman followers. Even when an Englishman's estates were not taken from him, he was obliged to pay a large fine and to admit that the land was really the king's and not his own, that he was the king's tenant and vassal and therefore bound to serve him. Thus was set up in England the "Feudal System".

In the reign of King John (1199-1216) cruelty and injustice were the order of the day. Stephen Langton, the Archbishop of Canterbury and all the great nobles met at Runnymede in 1215, and John was forced to sign Magna Carta. Its important terms were that—(1) No tax was to be taken without the consent of the Great Council; (2) No one was to be imprisoned without a fair trial by his equals. Down through the years these rights have been jealously guarded. This document has been confirmed by Act of Parliament thirty-two times.

**APPEARANCE OF COMMONS**

Simon de Montfort, Earl of Leicester, called together a Parliament in 1265. It is this Parliament which gives Simon a title to be remembered as one of the makers of the British Constitution and which, of course, influenced our own Australian Constitution which is modelled after the British one. Hitherto the assembly which had helped the king to govern were barons and churchmen. Now Simon summoned two
knights from each shire and two citizens from each city. Here for the first time we have the appearance in Parliament of the men who compose the House of Commons.

When Edward I came to power he followed this pattern, and by doing so settled for ever the question of who should sit in Parliament. From now on no one would think that a Parliament was properly formed unless it included these representatives of the people.

This Parliament differed from the Parliament we know today. It was one house, not two, for both Lords and Commons sat together until Edward III's reign. Now the lower house is the more powerful, then the lords held the chief power. Now the monarch follows the wishes of Parliament in the choice of his ministers, then he did not consult its wishes. Now Parliament meets every year, then less often. In nature Parliament of today is at it was then. It refuses to allow the king to take taxes or to make laws without its consent, and on occasions it puts out very great power indeed.

Under James I (1603-1625) Parliament displays a new vigour. Under the Lancastrian kings it had been too weak to keep the nobles in order. Under the Tudors it was too anxious for a strong king to care to oppose him. In the time of the Stuarts we see Parliament engage in struggles with the king and come out the victor. This was the beginning of the modern system in which the Crown no longer rules, but Parliament.

Charles I quarrelled repeatedly with his Parliaments and for eleven years, from 1629-1640, the eleven years tyranny, no Parliament met. In November 1641 the Grand Remonstrance of 204 clauses, which specified, one after another, all the abuses of Charles's personal government, was drawn up and printed by order of the Commons. Surely these measures would guarantee Charles's good behaviour and peace with his Parliament. However, they precipitated unwise and rash action on his part. War broke out between king and Parliament. The war between Cavaliers and Roundheads was won by the Roundheads, the king was beheaded, Cromwell's rule of England had begun and England was a Commonwealth.

Cromwell disbanded the House of Commons. The House of Lords had already gone. Cromwell tried several different versions of composing a Parliament but could get on with none of them. He then governed with a Council of State to help him, with his real power resting on the army. The result was that Cromwell, having taken up arms for a Parliament against a despotic king, became himself in the end more despotic than
ever Charles I had been. Cromwell died and in 1660, Charles II was recalled, summoned back to his throne by the Convention Parliament.

When James II (1685-1689) became king he was wilful and headstrong. In 1689 the Bill of Rights was passed which made it illegal for the king to dispense with or set aside the laws, to levy money, or to keep a standing army in time of peace, without leave of Parliament. Parliament was to be freely elected, with liberty to debate about anything. Power was thus in the hands of the Parliament. In a short time it was recognised that those ministers should have the power whose followers were in a majority in the Commons. This was the beginning of our modern system of party government, but it was a long time before the system was perfected.

REFORMS BECOME NECESSARY

By about 1831 it was obvious that some sort of reform of the Parliament was necessary. The industrial revolution had changed the face of England and altered the distribution of the population. Consequently some members of Parliament represented what were called “rotten boroughs” with a mere handful of people, while those in other areas had no representation at all. The industrial revolution, by causing much shifting of the population, had made villages into large towns and towns into villages. Thus the representative system was out of date. The House of Commons consisted of two members from every county and two from every borough or town which had ever obtained a charter from the Crown. Many of these boroughs were now decayed, returning members to Parliament according to the will of the owner of the land.

Three Reform Bills were passed, the first in 1832 being the most important. Members were taken from the “rotten boroughs” and given to large towns and counties and a uniform franchise was set up. Between this time and 1884 all classes of people, males, had been given the vote without fear or favour. Female suffrage was achieved after a great and unpleasant struggle. Mrs. Pankhurst and her faithful followers went on hunger strikes, chained themselves in public places, went to prison, but it was only in 1918 that a limited suffrage for women became law under Prime Minister Lloyd George. In 1927 all women were granted suffrage on the same terms as men under Prime Minister Baldwin. This meant that women's property rights, which were practically non-existent before, also were changed and women could own and hold property of various kinds in their own right.

South Australia led the world in the grant of male suffrage in
1856 and led the British Commonwealth in votes for women in 1894. All states and the Commonwealth have since adopted both these principles.

With the passing of the Reform Bills, the influence of the Crown and the House of Lords was broken down and the House of Commons was the predominant force. Ever since Queen Victoria came to the throne in 1837, the monarch has ruled as a constitutional sovereign; that is to say, has followed the advice of ministers, and ministers have been the leaders of the winning side in the Commons. So Parliament is supreme, not the Crown.

AUSTRALIAN MODEL DEVELOPS

Until now I have been dealing with this subject by looking at the British Parliamentary experience. Now I will try to relate this to the Australian scene. Necessarily I had to trace the English model first because we follow the same Westminster system and share the same sovereign.

As Australia was colonised by Britain, it followed that the form of her government reflected the same method as obtained at Westminster. However, it took time and much heart burning by the various States before the system we know today evolved.

For the first forty years of New South Wales, from 1788-1823, the colony was under military rule. The chief function of the Governor during this period was control of the convict population. The Governor held himself responsible for the entire maintenance of the colony, in which the free settlers continued for some years to be a subordinate element.

Great strides were made in the time of Governor Macquarie with new areas of land being opened up in New South Wales itself and what are now known as Tasmania, Queensland and Victoria. Macquarie’s term of office finished in 1821, and in the twenty years following, with the remarkable journeys of discovery of the eastern half of the continent, there came also the beginnings of self-government and the cessation of the convict system.

Governor Macquarie in 1823 was instructed to associate with himself a consultative council. At first this was composed of officials appointed by the Secretary of State in London. Private members—leading colonists—were invited to sit upon the council, so that although there was no elective element in the administration, colonial opinion was represented. New South Wales was up to 1842 a Crown colony, and the same type of administration was adopted in Tasmania, Western Australia and South Australia, which were separate colonies.
By 1842 the colonists of Port Phillip were agitating for separation from New South Wales. Also in 1842 the elective element was first introduced into New South Wales by the creation of an enlarged Legislative Council, two-thirds of which was to be directly elected by the colonists. It was a very modest instalment. It gave the politicians of the colony a schooling in a modified form of representative government without the full responsibilities of a Cabinet system. For the present, customs revenue and the proceeds of the sale of lands were reserved from local control.

Responsible government was granted to New South Wales, Victoria, South Australia and Tasmania in 1854. The Constitutions prepared varied somewhat in detail, but were alike in creating an Upper and Lower Chamber, in establishing a broad franchise and in adopting a method of executive government intended to be identical with that of the English cabinet. Entire control of customs duties, land revenue and mining rights, was vested in the Legislature.

Queensland achieved responsible rule in 1859 and Western Australia in 1890. The Upper Chamber, that is the Legislative Council, was abolished in Queensland in 1921. Other States still have a Legislative Council in addition to their Lower House, the Legislative Assembly.

In 1900 an Act of Parliament accorded to the colonies of Australia a Federal Constitution drafted upon lines previously accepted by the colonies themselves. The reasons for Federation were partly based upon internal advantages, partly upon the international position of the continent. It was desired to set up common action in inter-colonial trade, railway affairs, land, native and labour policy; to establish a High Court of Justice and to cheapen the raising of loans. Moreover, it was seen that future problems in the Pacific rendered desirable mutual counsel and joint pressure on the Home Government. Also Australia had now grown up, strong, self-conscious and ambitious with the optimism and self confidence of an energetic and youthful nation.

DIVISION OF POWERS

The new Constitution came into force on 1 January 1901. The Act allotted specific powers to the Federal Government, the States keeping all other powers as functions of the executive of the individual previous colonies. (Since then some of the States' powers have been eroded—probably the most notable being taxing of incomes). The Act provided for a cabinet on the British model, responsible to the Federal Parliament, a Governor-General representing the Crown, two houses of
legislature, the House of Representatives and the Senate, both houses being directly elected by the citizens, and the veto of the Crown over legislation was recognised. (This veto is very seldom used but can be in cases of emergency and at the Queen's pleasure). The judicial power of the Commonwealth was vested in a Federal Supreme Court called the High Court of Australia. (Draft of a new Bill now before Federal Parliament called the Superior Court of Australia Bill states that this Court would take over jurisdiction in the areas of major Federal law from the State Courts.)

The House of Representatives was to be elected by naturalised or native-born Australians of eligible voting age (now eighteen years) and the electorate was to be distributed so that more members of Parliament would be returned from the more populous States—overall double the number of Senate seats, or as near as practicable.

The Senate was to be elected by naturalised or native born Australians of eligible voting age (now eighteen years of age) but each State would have an equal number of Senators. The Senate is known as a States House, and because there is equal representation from each State the smaller States can put their point of view without being swamped by the larger ones. As the Bills from the House of Representatives must be passed by the Senate, the equal representation ensures that all the people are heard on these Bills. So the Senate is an important component of Parliament and can wield its power, if necessary, to protect the rights of the States, particularly the small States. (A Bill just drafted by the Commonwealth Government seeks to give the Capital and Northern Territories two senators each, in addition to those elected by the States.)

The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of the Constitution and of the laws of the Commonwealth.

A Federal Executive Council advises the Governor-General in the government of the Commonwealth. The members of the Council are chosen and summoned by the Governor-General and sworn as Executive Councillors and hold office during his pleasure.

The command-in-chief of the armed forces of the Commonwealth is vested in the Governor-General as the Queen's representative.

The Justices of the High Court and of other courts created by the Parliament are appointed by the Governor-General in Council. Thus the law and the armed forces are removed from
political patronage. On the whole the Governor-General acts on the advice of his Ministers of State, but not always. The roles of the State Governors are similar in many respects to the role of the Governor-General. The constitution also has made provision for appeals to the Privy Council in England. (The present Federal Government has made application for this right to be abolished.)

Local government for cities, towns and shires is covered by adult franchise with a Lord Mayor, Mayor or Chairman at their head. They act in many instances under State Governments or in co-operation with State Governments.

The Federation of Australian Colonies had first been suggested in 1846. Decades of campaigning and debate resulted in meeting of Colonial representatives in Melbourne on 9 February 1890. It organised an Australian National Convention which met on 2 March 1891 and by the end of the month produced a draft of a Bill to constitute the Commonwealth of Australia for submission to the Imperial Parliament. Several years passed before the Colonial Parliaments agreed on the Bill, which was introduced to the House of Commons by the English Secretary of State, Joseph Chamberlain, on 4 May 1900, passed on 5 July, and received Royal Assent four days later.

The first Federal Parliament was opened by the Duke of York (later King George V) in the Exhibition Building, Melbourne, on 9 May 1901.

ROLE OF THE MONARCHY

It can be seen that neither in Britain nor Australia was government by universal franchise achieved easily. Some people criticise our system of Federal and State Governments under the Crown as too cumbersome. Our founding fathers had the good sense and foresight to divide the power. Too much power in one set of hands without the brake of State Governments and the Crown can mean a situation which occurs all too often in some other countries where governments change overnight and bloody coups take the place of order and the rule of law.

The Queen occupies a unique position in the Constitutional system which Australia has inherited from Great Britain. Because of this position the Queen cannot be tempted with bribes of power or money. So long as the Crown remains, there is always an area of power and influence which the politicians can never invade. Cabinet ministers are constantly reminded of their correct role by their titles; ministers of the Crown. The very existence of the Crown limits the power aspirations of the
politician. The monarchy is not an infallible barrier against dictatorship, but so long as the Monarch or her representatives function, the aspiring dictator can never gain total power.

The hereditary monarchy fosters national unity and social stability. Upon the death of the Monarch the eldest member of the family, trained and educated for a task of destiny, ascends the throne. There is no power struggle, no friction, but a sense of continuity. Parliament should represent the popular will, but the continuing Crown represents nationhood, unity and ancestry.

The Queen is not only the embodiment of culture and tradition. She is the symbol of the nation's sovereignty and independence. As such she is Supreme Commander of the Armed Forces, which are the ultimate sanctions. The oath of loyalty to the Queen is more than an oath to another human being. It is an oath to uphold all that the Queen represents. The Crown is a living symbol of the values upon which Australia was developed. The Queen reigns in association with her elected ministers. Where once the Sovereign reigned and ruled as an absolute monarch over the people, today she is a partner with her Australian Parliaments and a well loved and respected one.

Let us hope that our system of government and the role of the Crown will go on in the years to come. It may have some imperfections, but so long as it guards our precious liberties we should hold fast to it for the sake of the generations to come.

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