

Parliamentary history and tradition

Introduction

- 1.1 A first step when discovering why a modern parliament does things in a certain way is to consider its evolution. The Parliament of the Commonwealth of Australia, much as a living being, is an adaptation of an earlier form surviving in a new environment. Much of its current behaviour can be traced to mechanisms developed to cope with earlier threats and opportunities. These mechanisms are retained: most because they continue to be useful and efficient, others in spite of the diminution or disappearance of the old challenges they were meant to counter.
- 1.2 The evolution of parliament can be seen as a series of skirmishes through which the power to control the individual and his possessions, or a community and its common wealth, was wrested from one person, a monarch, and entrusted among many, the elected representatives of the community. It is a struggle that has lasted centuries and, so long as there is contention within the community, cannot be finally resolved. But a true appreciation of parliament rests in acknowledging what has been won and the significant victories along the way.
- 1.3 Modern social organisation requires a complex web of institutions and an elaborate set of rules by which they should operate. However even in simpler times the acceptance of government by the governed could not be won on reasoned argument alone. Force may have been enough to start a regime but enduring systems were built and maintained by consent of the people on an appeal to the emotions. The organs of government were represented symbolically so that neither ignorance of their finely wrought structure nor disagreement over their details would detract from their

general acceptance. The social cohesion of a community was cemented by its symbols.

- 1.4 The most obvious symbols in a modern nation state like Australia are its flags, anthem and coat of arms. However while these serve principally to promote unity they are also the focus for the proponents of change and thus sometimes take on a contradictory role. Less explicit symbols, like the major public ceremonies of Anzac Day and Remembrance Day, serve better to foster a feeling of national identity. The opening of a new Parliament, if the institution and its history were more fully understood by Australians, might also play a modest part.
- 1.5 With the centenary of federation, issues of symbolism and history have been much in people's minds. The committee felt that the Parliament of the Commonwealth, having celebrated its hundredth anniversary and with a new Parliament in sight, should look at one of its contributions to public ceremony and symbolism.
- 1.6 It is against this background that the committee undertook to review the procedures for the opening of Parliament.

The evolution of Parliament

- 1.7 Visitors to the public display area of Parliament House in Canberra may inspect one of the surviving copies of the 1297 *inspeximus* issue of Magna Carta. Magna Carta was an agreement made in 1215 between the monarch, King John, and rebellious English barons. Its immediate effect was to assert certain feudal laws and customs which in themselves were not particularly radical for the times. However its symbolic significance rests in the implicit principle that a monarch's powers were not absolute but were subject to law. Moreover the 1297 issue of the charter—in effect its confirmation by Edward I, a successor of King John—can be seen as signifying that the law should not subsequently be repudiated by the Crown.
- 1.8 Magna Carta does not mark the birth of the institution we know as parliament. Indeed it has little direct part to play at all, its significance being mainly symbolic. What came to be called parliament began at some indeterminably earlier time as a kind of council with a law-making role like the Anglo-Saxon Witan which consisted of 'an assembly of the wise men of the realm'.¹ The term 'parliament', derived from the language of

1 Wilding & Laundy, 521

the Norman conquerors, had been used to describe conversations between monks in their cloisters—as well as certain high level conferences—and was first applied in relation to a national assembly in the thirteenth century.

- 1.9 The evolution of parliament has been represented as spanning four stages: medieval; the age of the Tudors and Stuarts; the period between the Revolution of 1688 and the Reform Act of 1832; and finally the period thereafter, which may be termed the modern era.²
- 1.10 The Normans brought feudalism to England and the form of government which emerged after the Conquest contained elements of the earlier Anglo-Saxon system as well as the feudal system. Initially the judicial, legislative, executive and financial functions of government were combined in the Curia Regis which ‘consisted of the greatest men of the realm and included the great officers of state’.³ By the thirteenth century land tenure, the basis of feudalism, was no longer the main criterion for participation in government. The more obvious features of a modern parliament which date from the Middle Ages are the principle of representation and the related ability to control supply of funds to the Crown.
- 1.11 By the late fifteenth century—the end of the Middle Ages—the English Parliament had in essence assumed its modern form: the sovereign, the House of Lords and the House of Commons. The advent of the Tudors saw an increase of what in modern terms would be called executive dominance. The power of the Crown over Parliament reached its peak during the reign of Henry VIII. It was the insistence of the Stuarts upon the divine right of kings which precipitated a backlash from the Parliament leading to the Civil War, Cromwell’s Protectorate and after the failure of the Stuart Restoration, the Glorious Revolution of 1688. Parliamentary privilege had won over royal prerogative.
- 1.12 The enactment of the Bill of Rights in December 1689 marked the beginning of the third stage of the evolution of the Parliament. The reign of William III saw the beginning of the cabinet system and the strengthening of party influences which grew and developed through the eighteenth century. The former entailed the exercise of executive power in the hands of leading members of the two houses of Parliament. The latter formalised the concept of responsibility, of the executive arm of government being responsible to the Parliament and dependent upon the continuing confidence of a majority in the lower house. The gradualism in

2 Sir Courtney Ilbert in Redlich I, ix

3 Wilding & Laundy, 522

the development of cabinet and parties was reflected in a lack of innovation in parliamentary procedure.

- 1.13 The Reform Act of 1832 ushered in what may be called the modern era. The Act was the first in a series of statutory steps to extend the right to vote. With broader enfranchisement came greater demands on government and increasing complexity in public administration. A balance had to be struck between the right of representatives to be heard and the need for decisions to be made. Obstruction of the routine operation of Parliament, particularly on the part of special interest groups like the Irish Nationalists, led to procedural reforms through the late nineteenth century.
- 1.14 In some senses the changes to the British Constitution from 1066 onwards were more than evolutionary: they were revolutionary. However there is a discernible genealogy—albeit tangled in parts—linking the Anglo-Saxon Witan with the Parliament of today. Nevertheless, it can be said that Parliament has indeed evolved, if not in a strictly Darwinian sense. The Australian adaptation branched from the British line at the beginning of the twentieth century and in the last hundred years each has continued to evolve in its own way.

Commemoration in parliamentary procedure and practice

- 1.15 Some elements of parliamentary procedure are so ritualised that the original necessity that gave birth to them has been almost forgotten.
- 1.16 One example is the three readings of a bill. When a bill is presented it is read a first time. When it has been agreed to in principle it is read a second time. Finally, when it has been agreed to in the form in which it will leave the House, it is read a third time. Today each reading consists in the Clerk at the Table standing and reading the title of the bill to the House, an act of seconds. But in the days before printing or general literacy the entire contents of a bill were read aloud at each stage so that Members knew what they were agreeing to. Readings are retained not out of sentiment but because they represent in brief symbolic form the transition of a bill from one stage of its life to the next.
- 1.17 Another example is the ‘naming’ of a Member who has disregarded the authority of the Chair. It is an ancient practice that Members are referred to on the floor of the House by their electoral division rather than by their personal name. In the House of Representatives the practice is codified in standing order 80 which requires that ‘no Member may refer to any other

Member by name, but only by the name of the electoral division he or she represents'. This requirement, not always met it must be said, is intended to reduce the temptation to make personal aspersions. In any event, the occupant of the Chair conforms to ancient practice and 'names' a Member by declaring 'I name the honourable Member for ...'. The precedent was set by Speaker Lenthall in 1641 when he found that he needed to go beyond an impersonal call for 'Order'.

- 1.18 The procedures for the opening of a new Parliament contain many symbolic elements which commemorate the evolution of Parliament. They deserve to be acknowledged in any review which seeks to modernise procedures or make them more meaningful or efficient.

The current inquiry

- 1.19 The committee examined procedures for the opening of Parliament in 1991⁴ and 1995.⁵ The report of the second inquiry endorsed, with refinements, the committee's recommendations to simplify procedures in its first report. The Government responded in June 1997 that it did not propose to change the traditional procedures.⁶
- 1.20 In its second report, the committee:
- noted that the procedures for the opening of Parliament had remained relatively unchanged since the opening of the first federal Parliament in 1901;
 - observed that the ceremony and traditional practices derived from those of the United Kingdom Parliament;
 - acknowledged that a certain amount of ceremony and tradition was important for the institution and for individual Members; and
 - argued that the existing procedures are complex and can be confusing for both observers and participants.
- 1.21 The committee believes that it is appropriate in this, the year of the centenary of federation, to revisit its earlier inquiries. In those inquiries, the committee focussed on making the process more efficient while meeting constitutional requirements but without sacrificing an appropriate sense of occasion for observers and participants. In this

4 *Opening of Parliament* (1991)

5 *Opening of Parliament* (1995)

6 House of Representatives Debates, 24 June 1997, 6130

inquiry, the committee decided to pay greater attention to the symbolic aspects of the opening procedures.

- 1.22 Details on the conduct of the inquiry are set out in Appendix A. Chapter 2 of this report describes the existing procedures and notes some of the historical principles on which they are based. Chapter 3 identifies anomalies and deficiencies in the existing procedures. Chapter 4 proposes remedies with detailed recommendations set out in chapter 5. Appendix B contains diagrammatic representations of the current and proposed ceremonies.