

The Traditional, the Quaint and the Useful: Pitfalls of Reforming Parliamentary Procedures*

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Some parliamentary procedures and practices are valued because they are traditional and quaint. The question which must be asked is: Is their traditional and quaint character an added value, that is, added to their substantial value in facilitating the work of a legislature, or is it their only value? Very often the latter is the case. Some procedures and practices are valued simply because they are traditional and quaint, and have no other substantial legislative value. Some are not only empty of value, but obscure or damage substantial values. Their value may be symbolic, but the symbolism may be inappropriate to the point of subversion of legislative values. Their symbolic content may be misinterpreted or corrupted.

Examples lie scattered over the parliamentary landscape. It is said to be a parliamentary custom that the head of state or equivalent (only in monarchies?) does not enter the lower house. The basis of this custom is that the lower house must be free to deliberate in the absence of the Crown. It is often mistakenly claimed that this custom commenced with King Charles I's infamous armed raid on the House of Commons in 1642, but the whole point of that incident was that Charles violated an already well-established 'privilege', the freedom of the House to debate matters without the monarch listening in or over-awing the members by the royal presence. The custom is clearly no longer apposite. The Crown and its representatives are not a threat to freedom of debate. It also conceals the real problem for lower houses as

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legislatures, the stranglehold which prime ministers exercise over those houses through ministerial and caucus discipline. The harmless monarch is excluded, while the real tyrant is already in the cuckoo's nest. This supposedly ancient and revered custom also reveals another corruption, the tendency to substitute the building for the institution, which is a feature of many a traditional belief. It is frequently claimed that the custom is that the monarch or equivalent may not enter the lower house *chamber*. Thus there arise absurd claims, for example, that the Queen should not have inspected the House of Representatives chamber before opening the new Parliament House in Canberra in 1988 and that conferences which are to be attended by the Governor-General cannot be held in the House chamber.

This brings to mind the whole ceremony of the opening of parliament, which is often said to be based on the prohibition of the monarch appearing in the lower house. This ceremony is not only empty of any real legislative value but its symbolism is all wrong. It is based on the monarch being the head of government and summoning the parliament to humbly advise on the monarch's requirements. This does not represent the constitutional reality of the United Kingdom for the past 220 years at least. It is more inappropriate in Australia, even with the Australian modifications, for example, the members of the lower house being allowed to be seated during the 'speech from the throne', rather than standing at the bar of the upper chamber. The whole performance is totally contrary to the Australian Constitution. In a submission by the Senate Department to the House of Representatives Procedure Committee in one of its regular inquiries into the opening ceremony, the following constitutional anomalies were pointed out:

- (1) The appointment of justices of the High Court as deputies of the Governor-General is contrary to the separation of legislative, executive and judicial functions entrenched in the Constitution, and a violation of the principle that judicial officers exercise only judicial functions.
- (2) The Governor-General's opening speech, which sets out the government's program, involves the Governor-General, who is otherwise supposed to be a politically neutral head of state, in speaking as if he or she were the actual head of government and in making contentious and partisan political statements.
- (3) The Governor-General purports to direct the two houses as to where they are to meet, which is not authorised by the Constitution.
- (4) The Governor-General attends in the Senate chamber and summons the House of Representatives to attend there, as if the Governor-General had some particular relationship with the Senate as distinct from the House of Representatives, analogous to the relationship between the monarch and the House of Lords. There is no such relationship under the Australian Constitution, which provides for two elected houses as co-equal participants in the legislative process.

The concern of members of the House with the indignity of being summoned to the Senate chamber is therefore the least of the problems of the process. The

recommendation in the submission that the whole rigmarole be abolished, however, did not meet with approval. (In this connection it is noted in passing that, whatever else in the opening ceremony might survive any change to a republic, the office of Black Rod, being peculiarly associated with the monarchy, would at least have to be restyled and decrowned.)

Arising from the opening of parliament is an example of a traditional and quaint custom the symbolism of which is not only empty but has been completely distorted. Before the 'speech from the throne' is considered in the lower house, a proforma bill, which is never proceeded with, is introduced. This is supposed to symbolise the right of the house to attend to business of its own choosing before it considers the requirements of the Crown. The symbolism of the occasion, however, is reversed by the introduction of the bill by the prime minister or other minister. The real wielder of the royal sceptre has appropriated the parliamentary custom, thereby demonstrating the subservience of the house to the real monarch.

The supposed ban on the Crown's representative in the lower house is also cited as the source of a most peculiar custom: the swearing in of the Governor-General in the Senate chamber. It has never been explained why the ceremony should occur *anywhere* on the parliamentary premises. Whatever the origin of this practice (and it may be quite mundane—the lack of distinguished meeting places) the rationalisation of it seems to be a case of what might be called tradition transfer, the migration of a tradition-based belief from one event to an unrelated event. The swearing-in has had attached to it the alleged tradition of the opening.

Before leaving the opening of parliament, it may be asked why some of the framers of the Australian Constitution, who subsequently became members of the first Parliament, who were very insistent at the constitutional conventions that Australia's system of government was to be different from that of the United Kingdom, and who were mostly closet if not overt republicans, tolerated all this monarchical frippery. Was it imposed upon them as the anglophiles' revenge for their departure from the 'Westminster model', or did they accept it as a harmless indulgence of anglophilia and Empire loyalty? Some research ought to be done on this subject.

This also brings to mind that the main reason for the intense hostility of radicals on the left to these traditions is that the allegedly ancient customs are not ours, but bear the taint of colonialism. If only they could know some of the proposals which have been put forward in the past. At various times it was suggested, for example, that attendants in befeater regalia should search the basement of Old Parliament House before an opening of Parliament, and that the President of the Senate should sit on a woolsack. These suggestions had to be defeated by purely practical considerations: the printers who occupied the old Senate basement would not appreciate the interruption and might throw pots of ink at the befeaters; and a woolsack, we have it on the very highest authority, is extremely uncomfortable. The nationalists would really have been aroused if such schemes had been adopted. This would have had the unintended consequence of drawing attention to the paradox that many supposedly ancient customs are actually recent inventions, like the bogus ancient customs of the monarchy exposed as neo-gothic fabrications. (At one stage the Speaker of the House of Representatives decided to hold a Speaker's procession. Within a short time it was

being described as a long-cherished tradition of the *Australian* Parliament.) If traditions are to be invented, they might as well be local.

It must be said that some of the traditional and quaint practices have a surprising hold over the minds of members. When the Senate standing orders were rewritten in 1988–89, the requirement for senators to speak ‘covered’ to a point of order during a division was abolished. Senators taking such points of order, even senators who arrived after that time, frequently wave pieces of paper above their heads, or are urged to do so by others. How they get to know about this practice is a mystery.

Equally mysterious is the notion that a member filling a vacancy should be dragged in mock unwillingness into the chamber by the sponsors. This appears to be another case of tradition transfer, from the unwillingness of a Speaker to accept an office involving the hazard of offending the monarch. (It is observed in passing that there are traditions based on the Speaker being the spy of the Crown, and traditions based on the Speaker giving offence to the Crown, but seemingly no traditions based on proper Speaker behaviour.)

The inappropriate character of some customs is not the end of the problem. The seemingly most harmless customs may be detrimental to substantial legislative values. It may be dangerous to enter upon the subject of wigs and gowns, but they provide an example. No one has ever seriously suggested that they have any substantial value. The argument that they ‘depersonalise the office’ and put a barrier between the officiators and the disputants, sometimes used in relation to courts, would not seem to have any application to parliaments, as the participants in the parliamentary process necessarily function in a free-flowing proximity. They are, however, far from harmless. They convey a strong impression of parliament as an antiquated and decorative institution with no substantial function. Combined with the executive domination already referred to, they reinforce a perception that the real power and vital activity of government reside elsewhere. The courts may escape this consequence because it is obvious that courts exercise real power, and they suffer only the impressions that the law they apply is antiquated and the people who administer it are out of another century. The consequences for parliaments are more damaging.

A recent instance of the damage done by quaintness occurred after the flour-bombing incident in the British House of Commons on 19 May 2004. The government announced that it would take control of security arrangements for the House of Commons. The officer in charge of security would no longer be responsible to the Speaker, but would be appointed by the government and would be answerable to the Home Secretary, the relevant minister. This executive government takeover of a parliamentary responsibility was accompanied by a great deal of derisory comment about the traditional mode of dress of the Serjeant at Arms and his subordinates. Men attired in black silk tights and carrying swords, it was said, are obviously unfit to run a modern security function. The quaint tradition of the parliamentary office was turned against it and used to support a usurpation of its functions. Whether the takeover succeeds remains to be seen at the time of writing, but it is clear that the legislature has not been assisted by its continued adherence to the quaint and the traditional, regardless of how diligently it has pursued the useful and the efficient. Nothing could

better illustrate the danger for legislatures in the cultivation of the traditional for its own sake.

There comes a stage when the traditional and the quaint may not only conceal or repudiate substantial legislative values, but simply overwhelm them and bury them in such a pile of tradition and quaintness that they can scarcely be exhumed. This must surely be the case with the Mace. There has been what can only be described as an unhealthy obsession with the Mace. Citizens hungry for information about the legislature have constantly been told about the Mace. Luxurious publications have been devoted to it. It is almost as if parliament had no other purpose but to house this sacred object. Maces have been scattered around the world like the statues of the saints. If only vibrant legislatures could arise wherever maces were planted, parliamentary institutions could be everywhere secure. Alas, a mace does not a parliament make. Nor does it make a history of a parliament. It was recently announced that the custodians of Old Parliament House in Canberra had constructed a replica of the Mace at a cost of \$235 000. A spokesperson for the museum said, echoing phrases oft repeated: 'The mace is a symbol of the authority of the Speaker in the Westminster parliamentary tradition and also symbolises the supremacy of parliament in our democracy'. The assumptions about the system of government built into that statement have polluted civic education for decades. To take only the statement which is indisputably wrong, parliament is not supreme in *our* democracy, but is subject to the Constitution, unlike its 'Westminster' original. It would not take \$235 000 to educate the public on that point. There would be plenty left over for high-tech interactive educational materials to provide some real information about the operations of the legislature in the past and present.

Is the excessive attention given to things like maces the consequence of executive domination, leading to an embarrassing lack of real legislative activity? Has the degeneration of legislatures as legislatures reached the stage where we retreat to myths and decorations as the last shelter of the parliamentary shell? The alternative explanation, put forward by some popular educationalists, that legislating is difficult to understand and uninteresting, while maces are engaging, is potentially more disturbing. It involves capitulating to a Bagehotian philosophy that it is not given to children or the masses to understand the real workings of government, and they must be dazzled with ceremonies. There is an even darker theory: that the exponents and practitioners of executive absolutism uphold mummery as the mask of power.

Apart from the suppression of substantial legislative values, the greatest danger in the cultivation of the traditional and the quaint lies in the hostility which is aroused on the part of the radicals and nationalists, who wish to sweep it all away. It is not difficult to understand this reaction. When we get to the level of maces having to be covered (with what kind of cloth, and who wove it?) in the actual presence of royalty, we enter a realm of magic which even the most determined obscurantist finds hard to defend. Then the radical arrives to denounce it all as mumbo jumbo, and to set about jettisoning everything bearing the cursed mark of real or supposed antiquity. We are then in danger of losing procedures which may be traditional and quaint but which are also useful.

Take the venerable procedure of committee of the whole. Everyone has heard of its alleged origins in the subservience of the Speaker to the Crown. Traditional and

quaint it may be in a certain measure, but it is also extremely useful. Its usefulness ranges from the strictly practical to the purely procedural. It is very convenient to have the chair sitting at the table where it is easy to consult with members and the clerks when dealing with complex bills involving a large number of amendments and a large number of documents which have to be assimilated. The legislative process greatly benefits from having the additional procedural stages involved with committee of the whole, whereby more opportunities are given to members to consider and reconsider the contents of bills and to discuss where and how they should be changed. In a truly legislative chamber, committee of the whole is a very useful tool.

Some years ago an ardent reformer presented for clerical examination a scheme to 'streamline' the procedures involved in the passage of legislation and to abolish what were regarded as the associated arcane rituals ('readings', committee of the whole, etc). Perusal of the plan revealed that it would remove several substantive stages in the consideration of legislation and deprive members of several opportunities for deliberation. There was also an unarticulated assumption that the purpose of the legislative process is to allow the passage of legislation as expeditiously as possible, rather than ensure adequate deliberation and opportunity for scrutiny and amendment. When this was pointed out, it was agreed that deliberation should not be restricted. It was then suggested that perhaps it was only some of the names which were objectionable ('readings', committee of the whole, etc), and the 'reform' could achieve its purposes by renaming those aspects of the process. At that stage the whole project was dropped. If an objection to the traditional and the quaint had been allowed to overwhelm a sober assessment of usefulness, a process would have been put in place which eventually would have left members wondering why it was so easy for them to be steamrollered into passing dodgy bills.

It has also to be recognised that the usefulness of procedures may be purely symbolic, and their symbolism may be of substantial legislative value in itself. An example is provided by the practice of members standing when the chair is taken and acknowledging the chair. This is a salutary reminder of the importance of the office and the value of orderly deliberation. Even some of the most hardened of radicals and nationalists have recognised this, noting that the chair may be occupied by one of their own, and ideally protects all equally. This is a case where symbolism and real values are in happy concurrence.

The present danger for parliaments, however, is that they will be seen as merely a bizarre combination of impotent yelling and funny costume mimes. Take away the pantomime, and only the bad behaviour remains, to receive its proper censure. Complete obsolescence is then not far away. If they are to be respected as legislatures, they have to demonstrate that their processes perform useful work.

What is required is a careful and rigorous consideration of procedures and practices which are traditional and quaint, to see whether they have substantial legislative value and whether we may contentedly accept their traditional and quaint character while taking pride in that value.