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**THE AUSTRALIAN PARLIAMENT: TIME FOR REFORMATION**

The Australian Parliament, it appears, is perennially seen as an institution in need of reform. Reform proposals are again being proclaimed. A reform is a change for the better. Are the changes usually proposed really reforms?

Before a major institution can be reformed, as distinct from simply changed, the following questions must be answered: What is the institution for, what functions is it meant to perform? Is it performing those functions well, and, if not, why not? Are there any changes which could make it perform its functions better?

So-called reform proposals are mostly put forward without answering, usually without even posing, these questions. The usual proposals, however, conform to an orthodoxy based on unstated answers to these questions. This orthodoxy always seems to appeal to governments in their second or third terms.

These orthodox proposals for changing parliament are based on what might be kindly called the electoral college theory of parliament. According to this view, the electors elect a party (or a party leader) to govern. The government governs with total power to change the law and virtually to do what it likes between elections. The purpose of parliament is to register the voters' choice of a government, that is, to act as an electoral college. Parliament must not interfere with the government governing, as that would be a violation of the system. In particular, for an upper house with a different electoral basis and party composition to interfere with the government is a violation of democracy. In other words, to use a less kindly term, parliament should be a rubber stamp.

There are two major difficulties with this theory. First, if the electors are to choose a government and give it virtually absolute power, the electoral system should surely be designed to reflect accurately the electors' choice. Unfortunately, the electoral system we have for lower houses results in parties winning government usually with only forty-odd percent of the vote and sometimes less. The electors get the government which most of them have not chosen. Preferential voting does not cure this defect. Frequently parties win government with fewer votes than their major rival even after the distribution of preferences. This has occurred in five federal elections in the last 50 years. We cannot make fun of the 2000 American presidential election when two of our last five federal elections produced a

similar result. One would think that people who follow the electoral college theory of parliament would be demanding reform of the electoral system as their first priority.

The other difficulty is that if we choose a government and give it absolute power, what is the purpose of having a parliament at all? It is a very expensive institution to keep, if it is only an electoral college. We could save a lot of money by dismissing all its members after the election, as with the American electoral college. Why keep a solid gold, Rolls Royce rubber stamp?

If pressed, the followers of this theory usually fall back on responsible government. Do we not have a system of responsible government, whereby the government is responsible to parliament? Responsible government was a system which existed from the mid 19<sup>th</sup> century to the early 20<sup>th</sup> century, after which it disappeared. It involved a lower house of parliament with the ability to dismiss a government and appoint another between elections. This system has been replaced by one whereby the government of the day controls the lower house by a built-in, totally reliable and “rusted on” majority. Not only is the government not responsible to, that is, removable by, the lower house, but it is also not accountable to it. The government’s control of the parliamentary processes means that it is never effectively called to account in the lower house.

The system of a government with total power between elections exists only in a few jurisdictions, such as the state of Queensland. In Australia generally it is modified by upper houses which, because of different, and usually more representative, electoral systems, are not under the control of the government of the day. They are able to amend or reject the government’s legislative proposals, and inquire into government activities. The effect is that laws are not made unless there is broader public support than is reflected in the government’s forty-odd percent of votes, and that governments have to submit to more scrutiny than they permit in the house they control.

If we ever moved to the pure electoral college system, most people would find the consequences very surprising. For example, in recent days a procession of witnesses of divergent views has come before a Senate committee to express great apprehension about the government’s anti-terrorist legislation. They have called it the most dangerous and draconian legislation ever proposed. According to the electoral college theory of parliament, this legislation should already be in effect. There should be no parliamentary meddling with it, because the government must govern, and certainly no delaying committee inquiries.

But, says the moderate wing of the governments-must-govern faction, why cannot upper houses review and scrutinise without having the power to reject legislation? Upper houses have only one hold over governments, their ability to withhold assent from government legislation. This is the only reason for governments complying with accountability measures of upper houses: as a last resort, an upper house with legislative powers could decline to pass

government legislation until an accountability obligation is discharged. An upper house without legislative powers could simply be ignored by a government assured of the passage of its legislation. A reviewing house without power over legislation would be ineffective.

It is sometimes said that the traditional parliamentary activities of considering legislation and conducting inquiries do not constitute accountability of government to parliament, but simply exercises in partisan politics. The government's opponents use the parliamentary processes to delay and question its measures. To say that parliamentary accountability works through partisan politics, however, is not to deny the validity of the process. In free countries, accountability mechanisms ultimately depend on partisan politics and on giving a government's opponents the institutions and the powers to call it to account. Governments which are not checked by politics operating through parliamentary processes are governments which are not accountable.

Leaving aside the question of the functions of parliament, and proceeding to the second question: What is wrong with parliament that it needs reform? The implicit answer of the orthodox reformers is that it puts too many difficulties in the way of governments governing, too many limitations on the power of governments to do what they like between elections. This naturally leads to a further question: Why should governments have absolute power between elections? What advantage would we gain by removing parliamentary limitations on government power? Usually the orthodox reformers have no answer. If pressed, they say it is because the country must have certain legislation. Currently it appears that we must have certain media ownership legislation, which is self-evidently good for us. How we are to know that it is good for us without thorough examination through parliamentary processes is not explained. The claim is also made that we must be economically efficient, and we will regress economically if the government does not have unfettered power to do what is economically good for us. The same people, however, tell us that at present, under the current parliamentary system, the economy is doing wonderfully well. Perhaps we could have an even more efficient economy if the government were all-powerful. If asked for an example of an efficient economy, these people usually cite the United States, the country which has the most rigorous institutional and political constraints on the power of the government.

In any event, the argument that powerful government equals economic efficiency has been blown out of the water. The American academic Arend Lijphart conducted a detailed study of stable modern democracies, rating them according to whether they have more majoritarian systems (in which one party wins power with few limitations) or proportional or consensual systems (in which parties are compelled to share power and compromise). He found that, on a range of economic and social indicators, including economic growth, inflation and employment, the proportional/consensual systems clearly outperformed the majoritarian systems. This finding has been supported by a recent comparison of Australia's economic performance with that of the Netherlands, Lijphart's most proportional/consensual country.

In spite of their only argument having been decisively refuted, the proponents of orthodox “reform” press on. Every so-called reform of parliament turns into a proposal to reduce it to a rubber stamp. We have been provided with a perfect example in recent days. A proposal to change the parliamentary term to four years was floated, probably initially to fill in time between afternoon tea and the cocktails at a party conference. This change is said to be self-evidently necessary for economic efficiency. We were not given time to consider whether, if politicians now are short-term thinkers, incorrigible pursuers of quick political advantage and pork-barrellers, adding a possible extra year to their term would turn them into statespersons and great forward planners. The proposal immediately developed into schemes to nobble the Senate entirely, to allow the government, under various guises, such as joint sittings, to pass any legislation it liked and, as a necessary by-product, to avoid any parliamentary accountability. If these schemes appeared too drastic, perhaps we would buy the old chestnut of “stopping the Senate blocking supply”. As this usually involves allowing the government to call anything “supply”, the effect would be the same.

Unfortunately for our would-be reformers, the electors have not realised that paradise awaits them if only they would give governments longer terms and absolute powers. The electors appear to have an instinctive appreciation of the value of safeguards between elections. Some of them go so far as to vote for minor parties and to vote differently in the two Houses in order not to give governments total power. When asked to approve the reformers’ schemes in referendums, they have a stubborn scepticism. They also do not appreciate being told that they will be made to go on voting until they vote correctly. One of the current proposals is simply a rerun of the so-called “simultaneous elections” proposal, whereby the government would be able to go to an early election at any time of its choosing and take out half or all of the Senate without the restraint of the fixed Senate term. This scheme has been put to referendum and rejected on four occasions. This lack of enlightenment on the part of the electors naturally turns the minds of governments to nobbling the Senate without a referendum by ordinary legislation, for example, by abolishing or sabotaging the system of proportional representation so that the government could control both houses.

If the rubber stamp theory of parliament were ever put into effect, with or without the approval of the electors, those who were most eager for it would probably be the first to regret it. Media ownership legislation and anti-terrorist legislation may be passed today, but it may be repealed tomorrow and quite different legislation passed with the same lack of consideration and restraint.

Assuming that the electors remain unwilling to swallow all-powerful government, and they are not forced to accept it by other means, are there any reforms which would really improve parliament as the institution for representing all of the voters, filtering legislation and making governments accountable?

One such reform is fixed term parliaments, whereby both houses would serve for a fixed term, whether of three or four years, and the House of Representatives could be dissolved early only if the government lost its majority and another government could not be formed. This genuine reform would have many advantages:

- prime ministers would no longer have the power to call early elections at times of their choosing
- every government would serve out its term, thereby achieving the stability so longed for by orthodox reformers
- with no possibility of an early election, members of the House of Representatives might be inclined to be more effective in requiring accountability
- the situation of the Senate refusing supply to force an early election would not recur, because there could be no early elections.

Fixed terms could be accompanied by other real reforms. In case of a real deadlock between the Houses over appropriation bills, the government could be allowed to draw on an amount equal to last year's appropriations until the disagreement is settled. For other deadlocks, a government not willing to risk the double dissolution mechanism could have the option of putting the disputed legislation to a referendum at the next election.

A bill for a referendum for fixed term parliaments was passed by the Senate in 1982 on the initiative of the Labor Party, with the support of the Australian Democrats and a considerable number of coalition senators who voted against their own government to support the proposal. Public opinion polls showed that it had an excellent chance of success at a referendum. It awaited only a change of government in the 1983 election to be put to the popular vote. The incoming Labor government, however, decided that it was not a priority, and dropped it. That action tells us a great deal about the motives of governments in proposing changes to the Constitution.

What is needed is not "reform" of parliament but reformation. The latter term connotes a reform which is designed to return an institution to its original purpose, from which it has fallen away. We do not have parliaments so that they can be rubber stamps. We have parliaments to represent the voters properly, so equipped that the holders of the executive power cannot legislate by decree like absolute monarchs and can be made to account for their actions between elections. Any changes to the institution of parliament should be designed to assist those ends.

Harry Evans