

THE PUBLIC SERVICE : HOW PUBLIC ?

Address by

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to the

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Some months ago I spoke to the National Press Club in Canberra about the problems that we have had in inheriting from another country and another century many of the conventions of our system of government - often still called the Westminster system. These conventions in Britain, where they originated, have evolved and developed in response to changing conditions and the increasing complexity of government. In other countries where the system was adopted, more flexible constitutions than our own have allowed their adaptation to local conditions and local political cultures. In Australia, however, many of these conventions have never been placed under public scrutiny and thus have remained fossilised in the state in which they were first imported.

I might mention in passing that not only have we preserved these conventions in their pristine purity in Australia, but we have also tried very hard to transplant them as part of our colonial heritage in Papua New Guinea. There they have also caused a number of difficulties but fortunately the statesmen of Papua New Guinea have begun to modify these conventions to the needs of modern administration in a developing country.

You will all understand that when I spoke of the inappropriateness of many of the Westminster conventions I was not questioning in any way the central concept of parliamentary democracy. I regard parliamentary democracy as the foundation of our constitutional system. My concern is that in our form of parliamentary democracy the people should have a real say, and that we should utilise our best talents. Some of the conventions that we have inherited, however, operate to preclude the achievement of this position.

In my National Press Club speech I discussed a number of aspects of this question. Today, I should like to say something further about one particular convention - namely, the anonymity and secrecy that surrounds our Public Service. This is a convention that we have carried to extremes in Australia. I was reminded of this when reading an observation by the 1969 Canadian Government Task Force on Information which led to reforms in Canada - and I quote:

"Totalitarian capitals apart, only official Canberra comes close to matching that special aura of furtive reticence which marks the Ottawa mandarins off from other men."

I have had an opportunity in discussions with Ministers over the past few years also to meet in private discussion many of the public servants advising them, and to have the advantage of absorbing their expertise and listening to their opinions. There is no question but that anyone with access of this sort is able to form far more knowledgeable views on a wide range of issues than would otherwise have been possible. He or she is also far better able to judge the performance of Ministers and of Government.

The question that I should like to ask you today is, why should this information, this expertise, this advice that public servants are in a unique position to provide, not be available to the public at large? Would not public debate be far more informed, be far more intelligent, be far more useful, if we had available to us the information that is locked in the Public Service? Would not the average citizen be able to cast a more rational vote for the Party of his choice if he had access to a wide range of information, rather than only to that information which the politicians in power were prepared to release?

This convention of anonymity and secrecy arose in a 19th Century Britain where the activities of Government were relatively simple, the Party system was not yet developed, and Ministries stood or fell on the basis of the support they could muster among Members of Parliament. The term "responsible government" then had a very straightforward meaning. It was clear what Ministers were responsible for and it was clear to whom those Ministers were responsible. With small departments carrying out a few tasks they were responsible for all of the acts of their officials, of which everyone was aware. With Parliaments not yet voting on Party lines, they were responsible to the elected representatives of that portion of the population which had a vote. Now the system has been radically altered. Departments are huge organisations with a wide range of functions, and no Minister is expected to be aware of, let alone responsible for, every act of his officials. Furthermore, Parliament is now dominated by the political Parties, so that when a Minister's actions are raised in Parliament they will be judged not on their merits but by a vote on Party lines.

Leaving aside as a, hopefully, unique aberration the gubernatorial piracy of last year, what responsible government now means is that Governments are responsible for their three-year record and to the people at election time. But whereas Parliaments could once judge their Ministers, what is the basis on which the people can judge their Governments? Governments must now be judged on how wisely they have chosen among alternative courses of action. They must be judged on the wisdom they have shown in meeting the problems of society. They must be judged on how well they have carried out the programmes they have chosen. But how can this choice be exercised intelligently when Government has a virtual monopoly on the access to information?

The people have a need to know how problems were defined, what options were available, and how and by what means programmes were carried out, before they can reach an intelligent decision. But nearly all the information on these matters is locked up in the Public Service. Consequently, neither the Ministry nor the bureaucracy is able to be held to account in any real sense of that term.

Now there are really two separate aspects to this problem. The first is the very simple question of how much information the Government chooses to give out and whether this is adequate. The second is a more fundamental question as to whether the citizen should have a right to information which the Government does not want to give out.

Let me deal with each of these questions in turn. On the first question, we saw, I believe, a revolution during the 1972-75 Whitlam Labor Government. For the first time a wide range of social, economic, environmental and technological issues was examined not behind the closed doors of government departments, but by public enquiries composed both of public servants and expert outsiders. Furthermore, these reports were not buried as in previous Conservative administrations. They were made public virtually as soon as they were received. The reports were made public, the recommendations were made public. Public debate on them was encouraged. The Government could be judged by the wisdom of their decisions on the basis of the reports.

I might say in passing that this process of open decision-making probably did the Labor Government no good. Not because the decisions that were taken on the basis of

these reports were wrong - indeed, in fields such as education, health, social welfare, the reports were comprehensive and the decisions taken far-sighted. But years of furtiveness and lack of public participation in decision-making made the Labor system of open government at first sight seem chaotic by comparison, especially to an unsophisticated Press. In time, I believe, this more open system would have been seen as more healthy for the body politic than that of decision by a small group of men on the basis of privileged information. For the time being it appeared that even the Press valued more highly the traditions of secrecy than the demands of democracy.

The Fraser Government has clearly reversed these democratic trends and has imposed a cocoon of secrecy punctured only by selective leaks. (One cannot mention selective leaks without referring to the recent despicable and deleterious action of this Government in deliberately leaking a confidential Department of Foreign Affairs cable covering discussions between Australian and Canadian officials on the subject of Indonesia and East Timor. This was done with the sole purpose of attempting to retrieve points in an Australian domestic political debate. The action broke every relevant diplomatic convention and will, for the life of this Government, impair the capacity of Australia to engage in full diplomatic dialogue within the international community. The professed guardians of law, order and convention - who were already looking decidedly tatty around the edges in this area - are now entirely without credibility. If it is an obstacle to their perceived political advantage, any convention is dispensable.)

The report and recommendations of the Administrative Review Committee chaired by Sir Henry Bland have not been

published. The report and recommendations of the Royal Commission on Security and Intelligence chaired by Mr. Justice Hope have not been published. The report and recommendations of the Green Committee on the future of broadcasting in Australia have not been published. Even important Government decisions, such as the staff ceilings on each Government department, have not been made public. All of those areas of vital public concern have remained a closed preserve of public servants and a few Ministers.

The style of this Government was nowhere more clearly shown than in the re-establishment earlier this month of a Ministerial Review Committee, which acted in previous coalition governments, to decide whether purchasing orders, in particular instances, should be given to Australian manufacturers rather than to the lowest international tenderer. This secret system was described by the Financial Review in the following terms:

This opens the door for all sorts of back door dealing by Ministers and businessmen anxious to land fat Government contracts for a particular industry or area ... anyone searching the public record for details of how the Coalition's previous 'Buy Australian' plan worked to evaluate how to approach the new system will find very lean pickings. It would be most interesting to see a list of government purchasing orders handed out by the system which operated in a very secretive fashion."

How is the public to judge the performance of a Ministry which hides its every action - even its commercial transactions - from public scrutiny?

I said that there were two aspects of access to the expertise of public servants. One was the question of what the Government was prepared to release; the second was the right of access by Parliamentarians and

the public to information regardless of whether the Government wished to release it or not.

These two questions are linked, in that there is only one way of ensuring that openness in government is not reversed at the whim of government, and there is only one way of ensuring the citizens' right of access, and that is by the passage of a clear and forthright Freedom of Information legislation. Such legislation should oblige departments to maintain and publish lists, indexes and guides to material held and should oblige them to provide information on request, subject to specified exemptions. Any decisions to refuse access should be subject to review by an independent tribunal. Governments operate for and on behalf of citizens, and they function better when the minimum restrictions are placed on access to information they hold.

There is already in existence a draft Bill, which forms part of the dissenting minority report (by Commissioner Munro) published by the Royal Commission on Australian Government Administration (the Coombs Inquiry). This Bill draws heavily on overseas experience and pays attention to the lessons - especially the practical administrative lessons - which the Americans have learned over the decade of the operation of their Act.

There is support for this draft Bill from both sides of Parliament. If we are to reinforce the institutions of democratic government in this country, this Bill should not be buried again as it was buried before in an Interdepartmental Committee within the bureaucracy. On the last occasion, under the Labor Government, when this Committee dealt with this question, it saw itself, in the words of one of its members, "charged with bringing down a

scheme consistent with the traditional view of the legal and conventional relationships involved in the Westminster system of Government". Only public debate, and public support, will ensure that modern needs rather than "traditional views" will this time dominate Government consideration. The failure of the Press - in marked contrast to its U.S. counterpart - to follow this debate and lend support to the legislation is truly remarkable. It places a greater responsibility on leaders from all sections of the community to support what is, or should be, non-partisan legislation which will simply let our democracy function better.

In the meantime, there are other things that can be learnt from the U.S. system about obtaining information and using Public Service expertise. In particular, there is the impact of the testimony given by public servants - many of them non-political career public servants and not political appointees - to Congressional Committees. On virtually every aspect of public policy, debate is more informed, more focussed on policy options, in the United States than it is in this country. And this is due, in part at least, to the information and assessments provided by the testimony of public servants before Congressional Committees.

By contrast our own Parliamentary Committees are understaffed, uninquisitive, and far too easily turned aside by bland evasion from experienced public servants. We should develop a system where Parliamentarians are eager to probe matters of public policy through Parliamentary Committees. We should develop a system where public servants welcome the opportunity to appear before committees so as to clarify public policy issues and the options available, instead of defending, evading and obfuscating

those issues. We should develop a system in which the media gives prominence to committee hearings as a way of disseminating information on the issues, rather than focussing on personalities.

The traditional view is that Ministers rely upon their public servants for confidential advice and that it would be harmful to the relationship between Ministers and officials to breach secrecy and anonymity in this area. The traditional view ignores the fact that in contemporary Canberra the views of senior public servants are well known to their colleagues, to journalists, and to the Opposition as well as the Government. Departmental "lines" are well established. It would do only good for our system of government if these views were exposed to public scrutiny and the level of public debate over government policy thus raised.

I give a concrete and fundamentally important example of the huge price the community can pay for the absence of this form of open scrutiny which I advocate. Earlier this year the Government had a number of its economic and health administration experts within the Public Service examining and advising on the question of possible changes to Medibank. Together with some of my ACTU colleagues I had the opportunity of access to these officials. As far as the public was concerned, however, the officials' only conduit was the Minister. There was no written report and no opportunity for public examination of these men within the parliamentary system. I assert that had this been possible, then, without question, Australians would not now be saddled with the mess of a system which is coming generally to be recognised as confusing, chaotic, inflationary, and most importantly because of the destruction of universality, non-protective

in terms of an inability to provide profiles of treatment and practices by the medical profession. We should simply stop calling ourselves a concerned community if we will not utilise processes which would serve to avoid blunders of this magnitude. (If any of you should happen to disagree with my analysis of the Medibank changes you should still agree with my proposals for public scrutiny for you should welcome a forum in which to have the opportunity of confirming the accuracy of your prejudices.)

Even the Coombs Inquiry, which was remarkably conservative insofar as freedom of information was concerned, conceded that some of the conventions, on the appearance of officials before Parliamentary Committees, were outmoded. In general it held to the traditional view that advice to Ministers should not be divulged to Parliamentary Committees, but it went on to say that this rule

"would not ordinarily extend to factual data or analyses prepared for the purpose of informing deliberative and policy-making processes the Commission believes that in many instances there would be little justification for not disclosing the nature and content of advice proper, particularly when a decision on the matter to which the advice relates has already been taken. While it recognises the need to sustain and respect the confidential relationship between a Minister and his departmental advisers, the majority of the Commission considers that there is a need to reassess the proper ambit of that relationship, having regard not simply to the importance of promoting candour in communications between Ministers and officials, but also to the essential conditions for effective public accountability."

That is the crux of the matter. If public

accountability, which is central to the concept of Parliamentary democracy, is to really mean anything, if we are to have a healthy and lively democracy, we have to re-examine the Westminster conventions that place unnecessary obstacles to public and Parliamentary enquiries.

Lest this sound like a conversion to inapplicable American experience, let me say that it is not. Canada has a system of government much more similar than ours, but its Parliamentary Committees are much more powerful. By pursuing a strategy similar to that I have outlined, it has drawn upon the storehouse of information in the Public Service to make influential and useful reports. Those from the Standing Committee on External Affairs and National Defence, the Senate Committee on Foreign Affairs, the Senate Committee on National Finance, and the Special Joint Committee on Immigration Policy have been notable during the past year.

Let me add only one comment to what I have said. I believe it is essential that we expose more fully the expertise and assessments of the Public Service to the public view. But we live in an unequal society: some groups, especially those already in privileged or advantaged positions, will be better able to use such expertise to their own benefit, to maintain their own position, than will the poor and the disadvantaged. The reform of these Public Service conventions cannot, therefore, be an isolated reform but part of an overall programme which includes providing disadvantaged groups in our society with the resources to use the information that becomes available. Only then will we have reestablished some of the basic conditions for government by the people.

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