



# AUSTRALASIAN STUDY OF PARLIAMENT GROUP

## Northern Territory Chapter

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Checks & Balances*
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*Parliamentary Government Under Threat?*  
Contemporary Challenges to Liberal Democracies

# **Australian Study of Parliament Group**

**Address**

**By**

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**Parliamentary Democracy - Checks & Balances**

**DARWIN**

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## **Parliamentary Democracy - Checks & Balances**

I congratulate the organisers of this Conference on their wisdom and perspicacity on inviting me to speak to you. You see, I am a political expert. I'm sorry you lot don't fit into this category. There are approximately 10 million self appointed political experts in Australia and we all agree that politicians know nothing about politics. This is particularly sad because we political experts have very generous natures and are constantly trying to tell you what to do. We enjoy having the power to give advice without the responsibility of having to carry it out. "Power without responsibility; the prerogative of the harlot throughout the ages". Who made that nasty remark? Stanley Baldwin. Oh but he was a politician, so he would wouldn't he? But even I, "standing aloof in giant ignorance", as Keats puts it, can, at least dimly, understand the checks and balances the brakes and safeguards, which preserve our Parliamentary democracy from tyranny (on the one hand) and anarchy (on the other).

The great political philosopher Montesquieu started from the firm principle that the concentration of governmental power in one body or person was a threat to liberty. He had before him the supreme example of that threat in the French government of his day which was an autocracy based on the simple dictum of Louis XIV "l'etat c'est moi" and we all know what that led to.

The ancient Romans, after the expulsion of the Tarquins, became stout republicans. But they accepted the situation that, in times of danger, the State might be run temporarily by one person who could mobilise resources quickly and efficiently. They would elect a "dictator" which is the first use of the term, and at that time meant no more than "leader", with special powers which he was expected to relinquish when the danger had passed. And he did. The famous Fabius Maximus Cunctator, having finally defeated the Carthaginians under Hannibal, handed his power back to the Republic and retired to his Sabine farm. Later Romans were not so lucky and they ended up getting loveable characters like Nero and Caligula.

The point about dictators was summed up by Lord Acton in his famous phrase that "all power corrupts and absolute power corrupts absolutely". We can put that into modern terms by saying that practically all dictators suffer from paranoia with ghastly results for their people.

Now I hasten to say that I am in no way suggesting that in times of peril Australia should seek a dictator even of the Fabius Cunctator sort. We have a thriving, viable democracy, and such criticisms as are levelled at it are no more than tinkering at the edges; and anyone suggesting some form of autocracy should be placed into the loony bin, or to speak more delicately, put in charge of a competent psychiatrist.

In cases of emergency when some form of tighter organisation of democracy is required we have the defence power in the constitution, which is accepted as a flexible power expanding if necessary in times of peril to enable greater government control over resources of manpower, and contracting when that peril is over.

Let me go to the other extreme

If we are safe from autocracy what about our democracy? The expression comes from two Greek words, demos - the people and krato - to govern. Some complain that we are not democratic enough. We exercise a vote every few years or so, and that sends into various parliaments a group of people who regard it as a mandate to put into law a whole set of policies, many of which we may disagree with, even if we voted for the party in favour. But infrequency of voting does not necessarily threaten democracy, and certainly does not threaten it in Australia, because a great deal of the essence of democracy, i.e. informed debate, takes place in the party room, - and I will expand on that later.

Let us, however, suppose that, with modern technology, it is quite possible to connect everyone to a vast computer connected to parliament, so that every piece of proposed legislation is published and citizens then invited to press the "yes" or "no" button on every occasion; and the law comes into effect if a majority press the "yes" button. That, no doubt, would be true democracy but it would also, create total chaos, because people would be voting often on matters they had no concept of and with little or no information, and no time to consider properly. If, true to our Australian traditions, we made the voting compulsory, I would expect very soon a vast army of citizens saying to our parliamentary representatives.

*"Look, we voted you into government. For Heavens sake get out and govern and don't bother us".*

I must admit I was, for a time, attracted to a fascinating science fiction story in which, in a small planet called Tranai, the President of the Republic was invested with a belt containing explosives which he had to wear on his person night and day. Whenever a citizen of Tranai felt annoyed at something the President had done he or she pressed a button which was automatically recorded on the President's belt. When a sufficient number of buttons had been pressed the belt exploded. In effect one might regard this as an extreme form of democracy in action. At least the people's will prevailed.

To get back to Montesquieu he considered that the safeguards of the English constitutional system were contained in a system of checks and balances which he called "the separation of powers".

The Australian system works broadly on this basis although it does not separate the legislative and executive powers as fundamentally as, say, the American constitution, where the President is removed from the legislature. Here, as in England, the Prime Minister or Premier sits in parliament, and with Cabinet, combines legislative and executive power.

One writer has described our Commonwealth as,

*"a hybrid form of government. It contains parliamentary government derived from British parliamentary institutions with a federal system modelled largely on the United States"<sup>1</sup>.*

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<sup>1</sup> "Parliament and responsible government in Australia" by John Summers. From the book "Government Politics and Power in Australia". Edited by Woodward Parkin and Summers. p.7.

Nevertheless the system works in the way that Montesquieu anticipated. Each power balances out the other.

There are two other recognised checks and balances contained within the parliamentary system. The first applies only to bi-cameral legislatures, so it does not concern Queensland or the two self-governing Territories which are unicameral. In a bi-cameral system, and within certain limits, the upper House can reject bills passed by the lower House. Those in favour of a bi-cameral system argue that this is an important brake upon over-hasty legislation passed without due consideration. Those against, maintain that this is an unnecessary clog, since the government is elected from the lower House which, presently, and until the next election, must be presumed to represent the will of the people. I propose to sit firmly on the fence on that one.

The second recognised check on parliament is the power of the Governor, Governor General or Administrator (and I will use the compendious term "Governor") to dissolve parliament. This is an important safety valve in deadlocked situations, but can only be exercised with the greatest care and on extreme occasions. The two most conspicuous occasions have been the dismissal of the Lang government by the NSW Governor in 1931 and the dismissal of the Whitlam government by the Governor-General in 1975. Both were extremely controversial and far greater minds than mine have written extensively on the subject, although they seem to be in clashing disagreement in both cases.

These checks and balances, that is, the separation of powers, the bi-cameral system and gubernatorial intervention are well known.

I would like to put forward three other checks and balances on arbitrary government, which I suggest are important, though not always clearly recognised. They are, climate of opinion, the party room and the Australian character. I believe that these factors may also apply to NZ, (substituting in the last case of course, "the NZ character"), but I am not impertinent enough to arrogate to myself the right to speak for our cousins across the Tasman.

What I have called "climate of opinion" can be expressed in many ways but perhaps I can sum it up, somewhat dramatically by stating,

*"courts do not have armies".*

By itself a court can do nothing to enforce its decisions. It must depend on the powers allocated to it by the executive arm, that is, ultimately by parliament. Furthermore courts, and most importantly the High Court, will frequently make orders against a State or the Commonwealth and, in constitutional questions, will often declare that a particular law is unconstitutional, and hence invalid and unenforceable. In practical terms State or Commonwealth parliaments could blithely ignore these findings and continue in the path they had legislated for and the court would be powerless to stop them. But merely to enunciate such a proposition is to demonstrate how unthinkable such an action would be in the Australian context. Yet such things are frequently done in other countries either by direct disobedience of

court orders, or, more subtly, by removing honest judges and replacing by time servers. I believe we can confidently say that in Australia the climate of opinion is such that no such action would be tolerated.

The second concept lies in the party room; and here I wish to say something in defence of politicians. I'm not trying to ingratiate myself with you, I've said it before, but I do think you deserve to have it said from time to time. I have met many politicians on all sides of the political fence and I have found them immensely hard working, dedicated and far more aware of the realities than most of their constituents. They must keep themselves constantly informed of a whole raft of often very technical subjects, and be prepared to answer competently questions posed to them by lifelong experts in these subjects. They frequently experience the sort of frustration mentioned by Kipling,

*"if you can bear to hear  
the truth you've spoken  
Twisted by knaves to make  
a trap for fools"*

or a more subtle form of attack described by Pope,

*"Damn with faint praise,  
assent with civil leer,  
And without sneering teach  
the rest to sneer"*

and they still have to look cheerful and confident.

We ordinary citizens have the luxury of making broad sweeping statements about what ought to be done, but politics is the art of the possible and the politician must deal with the simple fact that, if so many millions are to be spent in one direction, then so much less is available in another. May I echo the words of Dyson Heydon in an article he wrote before he became a High Court judge,

*'Australian politicians collectively have an immense experience of life and of the almost infinitely various points of view within the population. Their whole career rests on understanding the desires and needs of individual citizens<sup>2</sup>.*

This is why I say that parliamentary democracy rests on what is hammered out in the party room. It is here that those desires and needs of the individual citizen are subjected to the searching tests of practicability, acceptability and affordability, and fashioned to deal with objections, extensions and compromises. Ultimately this is our protection from the starry-eyed idealist, or worse, the fanatic totalitarian who would reject all practical considerations in favour of some rigidly enforced dogma. The party room is democracy in action.

I also remind this audience of the words of the wise Aristotle, who coined the phrase that man is a political animal and added,

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<sup>2</sup> Article in "Quadrant" Jun - Feb 2003 "Judicial Activism's Threat to the Rule of Law" p. 18.

*"political and military activities are the greatest and noblest of moral activities"*<sup>3</sup>

Finally I suggest that one of the greatest checks and balances of parliamentary democracy lies in the Australian citizen. Our great protection against tyranny lies in the fact that we are a nation of sardonic realists. We are pretty scathing about the big noter and of anyone propounding impractical ideas. This may upset idealists, but it does make the career of an aspiring autocrat pretty difficult. It would be a most healthy experience for any of the nauseatingly egotistical tyrants who strut the stage of various countries of the world to appear before an Australian audience. Sooner or later, and probably sooner rather than later, as he started his ravings about how bloody marvellous he was, and how everyone should follow him to utopia, would be heard a raucous Australian voice,

*"Are you fair dinkum sport?"*

Therein lies our strength.

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<sup>3</sup> Aristotle - Politics.  
Quoted in "The Pageant of Greece".  
Edited by R. U. Livingstone. Oxford - Clarendon Press p. 325.