

‘Build your House of Parliament upon the River’: The New South Wales Parliament under siege

Gareth Griffith and Mark Swinson *

You must build your House of Parliament upon the river . . . the populace cannot exact their demands by sitting down round you.

— The Duke of Wellington

This piece of advice is attributed to the Duke of Wellington, a man who knew about such things as pickets and blockades, but also about Parliament and its ways. On Tuesday 19 June 2001, a part of the populace associated with the trade union movement, determined to have its demands satisfied, massed round the New South Wales Parliament House. For those who do not know it, the New South Wales Parliament is not built on a river, or a harbour for that matter, but on the crest of a modest rise, fronted by Macquarie Street to the west and, at the rear, by Hospital Road and beyond that by a spacious open area called the Domain. To the north side is the State Library building; to the other, Sydney Hospital. At its height, in the early afternoon of 19 June, the Parliament was surrounded by a demonstration estimated to be 1,000 strong. The Premier called it a ‘blockade’.¹ Unionists called it a ‘picket’.² Some press reports referred to it as a ‘riot’.³

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¹ L. McIlveen, ‘House is shut down by union blockade’, *The Sydney Morning Herald*, 20 June 2001; G. Jacobsen & J. Kerr, ‘Blows exchanged in ugly combination of Left and Right’, *The Sydney Morning Herald*, 20 June 2001.

² Editorial, ‘Shame of mob rule’, *The Sydney Morning Herald*, 21 June 2001; D. MacDonald, ‘Labor stoush over the picket line’, *The Newcastle Herald*, 26 June 2001.

³ J. Huxley, ‘On a fine day in the city, anarchy came’, *The Sydney Morning Herald*, 20 June 2001; ‘Compo revolt rocks Parliament’, *The Illawarra Mercury*, 20 June 2001; ‘Workers’ revolt’, *The Newcastle Herald*, 20 June 2001.

However characterised, the events of that day rank among the most tension charged in New South Wales parliamentary history. It was the first time, certainly in New South Wales, that elected representatives were deliberately threatened and, for a time, prevented, from entering the Parliament building to meet on a scheduled sitting day. One Liberal member of Parliament was quoted as saying, 'It is unprecedented in Australia to see a mob determine which members of Parliament will go into Parliament based on how they are going to vote.'⁴ The Premier echoed these thoughts by saying later: 'It was an attack on the way Parliament functions in a free society. Whatever the shortcomings of Parliament, it is on the floor of this chamber that we, as a free society, resolve our differences in a peaceful way'.⁵

This commentary poses and answers a number of questions arising from the dramatic events of 19 June 2001. It begins with an account of the incident and moves then to more analytical issues of a procedural and constitutional kind.

What was the dispute about?⁶

The events at Parliament House that day were part of a long running dispute between the political and industrial wings of Labor in New South Wales over the management of the workers' compensation scheme. On 29 March the Industrial Relations Minister, John Della Bosca, introduced legislation into Parliament for major changes to the scheme designed primarily to make it less legalistic in nature. These included restricting access to the common law right to sue and greatly reducing the role of the Compensation Court. Moreover, appeals were to be replaced by the binding decisions of medical assessors and, controversially, in determining the degree of an injured worker's permanent impairment, guidelines based on those used by the American Medical Association were to be substituted for the existing dispute resolution system.⁷

In support of these reforms, Della Bosca pointed out that the projected deficit of the New South Wales WorkCover scheme had grown to \$2.18 billion as at 31 December 2000. Legal costs alone were said to have amounted to \$422 million in 1999–2000, a figure the Minister compared to the \$438 million paid under the scheme as weekly benefits to injured workers.⁸ In addition to ending the costly

⁴ S. Long & L. Allen, 'Carr threatens levy in workers' compensation revolt', *The Australian Financial Review*, 20 June 2001.

⁵ R. Wainwright, B. Norington & L. Doherty, 'The siege of Macquarie Street', *The Sydney Morning Herald*, 20 June 2001.

⁶ This account is based generally on D Clune, 'New South Wales Political Chronicle, January-June 2001', forthcoming *Australian Journal of Politics and History*.

⁷ For a detailed account of these contentious reforms see — R. Callinan, *The Future of the New South Wales Workers' Compensation Scheme*, NSW Parliamentary Library Research Service, Briefing Paper No 8/2001, 34–62.

⁸ *NSWPD*, 29 March 2001, 12879; for a detailed discussion of this issue and for an overview of the WorkCover scheme see, R. Callinan, n 7, 16–25.

‘culture of litigation’,⁹ the Minister argued that the new administrative procedures would result in faster access to compensation, better management of injuries and increased benefits. Della Bosca later warned that ‘unless the scheme is reformed, the Government will have no choice but to reduce benefits or impose job-destroying premium rises’.¹⁰

In the event, the Government’s proposals met with a hostile reception in legal, medical and trade union circles alike. For its part, the Labor Council threatened industrial action, but also pressured individual Australian Labor Party Members of Parliament so that, by mid April, 34 had agreed to support calls for changes to the Government’s legislation. As a result of this hostility, the Government had delayed the legislation for a month to allow for consultation and, on 21 May, an agreement was announced. Various concessions were made at this stage to union concerns, including reinstatement of the right to appeal against medical decisions and the dropping of any reference to the American Medical Association guidelines. Also, the common law issue was referred to an inquiry to be conducted by former Labor Minister, Justice Terry Sheahan. It seemed the parties had agreed to a modified Bill, but before this could be introduced in Parliament conflict emerged again with the unions accusing Della Bosca of renegeing on the deal.

Complicating negotiations between the Labor Council and the Government was the fact that the secretary of the Labor Council, Michael Costa, had been ‘preselected’ for a vacancy to be created in the Legislative Council in August. The result was that Costa left the day to day running of the matter to his deputy, secretary-elect John Robertson. This was Robertson’s first leadership test and it followed close on the heels of the internal fight which had been waged for the secretary position.¹¹ Ironically, in the 1980s Robertson had been an electrician and had installed the main power board at Parliament House. Both Labor Council leaders could be said therefore to have a connection to the Parliament.

What happened on 19 June 2001?

‘Public transport will be free and police will stop issuing fines from today’, reported *The Sydney Morning Herald* on Tuesday 19 June 2001. This was the day matters came to a head.¹² In tandem with these tactics, the Labor Council embarked on a

⁹ S. Long & L. Allen, ‘Carr’s curse’, *The Australian Financial Review*, 21 June 2001.

¹⁰ ‘Mob rule does unions a disservice’, *The Australian*, 21 June 2001.

¹¹ The background is discussed in D. Penberthy, ‘Ironic — if it wasn’t so ugly’, *The Daily Telegraph*, 22 June 2001. It was reported that Robertson was ‘under strong pressure to demonstrate he was pressing the union case as hard as possible and not going soft’, B. Norington, ‘Unions do their worst — what now?’, *The Illararra Mercury*, 20 June 2001.

¹² B. Norington, ‘Angry unions to blockade Parliament’, *The Sydney Morning Herald*, 19 June 2001. This action cost the Government an estimated \$2 million a day in lost revenue (an estimated \$10 million in total), R. Wainwright, B. Norington & L. Doherty, ‘The siege of Macquarie Street’, *The Sydney Morning Herald*, 20 June 2001.

more novel course of action. From the early hours of that day and with no formal warning, it picketed Parliament House to prevent the WorkCover legislation from being debated. When asked if the intention was to prevent Parliament from sitting, John Robertson is reported to have replied, 'That is our aim'.¹³ The picket was to be in place at least until the Government made some concessions on the timing of the introduction of the legislation and agreed to further negotiations.

Members of the State's most powerful unions, each affiliated with the Labor Council, including the CFMEU, the Australian Maritime Workers Union, the Teachers Federation, the Police Association, and the Electrical Trades Union joined the picket. The Public Service Association, to which most parliamentary staff belong, is also affiliated and staff were requested not to breach the picket. However, several Legislative Assembly staff, including the Clerk and Deputy Clerk, managed to talk their way inside. Most Coalition and crossbench Members were allowed into Parliament, but only after giving an undertaking that they would oppose the Bill. The media with offices in the building were also permitted entry.

Throughout the morning the demonstration gathered in momentum and intensity. The dilemma the Government faced was that the Legislative Assembly was due to meet at 2.15 pm and, in the circumstances, this could not be postponed. The ramifications of these issues are discussed later in this article. It is enough to say at this point that the Clerk had already briefed the Premier and the Opposition on the procedural consequences of the House not meeting as ordered at 2.15 pm.

As at 1.30 pm or so the situation appears to have been as follows. The Premier, Bob Carr, and Treasurer, Michael Egan, were already in Parliament House, having entered via a 'secret entrance' from the adjoining State Library at around 11 am. So, too, was John Della Bosca who had slept overnight at Parliament. Other Labor Members had attended an emergency Caucus meeting that morning in Government offices near Macquarie Street. According to Clune: 'Those present were told the fate of the Government was at stake and most, including some left Ministers, agreed to cross the picket line'.¹⁴ For some Members it was tantamount to crossing the Labor Rubicon. The reluctance of others may have been founded on the more pragmatic consideration that, as their support base was tied to the union movement, their futures as Members may have been jeopardised by crossing the picket line. In the confusion of the moment, the exact number of those who agreed to cross the union picket is unclear. Most reliable as a guide is Clune who goes on to explain that 'three left faction Ministers (Andrew Refshauge, Bob Debus and Carmel Tebbutt) and a number of backbenchers, mostly from the left' refused to cross the picket line.¹⁵ In any event, it can be safely assumed that by 1.30 pm those Members who had agreed to cross would have been preparing themselves for the ordeal ahead.

¹³ B. Norington, n 12.

¹⁴ D. Clune, n 6.

¹⁵ *Ibid.* For a contrasting account see, D. Penberthy and K. Bissnett, 'The battle of Macquarie Street', *The Daily Telegraph*, 20 June 2001.

This was the state of play when, at 1.45 pm, the Premier stood on the front verandah of the Parliament and gesticulated to the now angry crowd with a victory sign. Minutes later the Speaker, John Murray, was the first MP to brave the picket. After spending nearly 10 minutes jammed in a violent crush between a police escort and the protesters, he finally gained entry through a small after-hours secondary entrance fronting Macquarie Street, called the 'Wicket Gate'. He was followed by other Government Members walking shoulder to shoulder up Macquarie Street. Their passage was cleared by police in what became an all out brawl. Media reports indicated that at least two women Members were reduced to tears by the ordeal, especially by the cries of 'scabs' which greeted them.¹⁶ There were no serious injuries in the melee and police laid no charges, although one police officer was injured and 30 protesters were detained by police.

At 2.15 pm the bells were duly rung. The Opposition and cross benches were occupied, but there were no Government Members in the Chamber and the Speaker was not in the Chair. What appeared to happen was that the Premier and the Leader of the House were unsure of the exact number of Government Members who had managed to enter the Parliament and the Premier did not want to lead what may have been a depleted parliamentary team into the Chamber at the commencement of the sitting.¹⁷ Possibly the Opposition and five independent members would have had the majority on the floor of the House, with the Government being out-numbered 38 to 37. Added to this, there was also still some confusion among Government Members as to whether they were meant to be in the Chamber or not. As discussed below, in the interim the Opposition sought unsuccessfully to take control of the business of the House by conducting a ballot for the election of an Acting Speaker.

At around 2.22 pm the Speaker took the Chair and immediately declared that he would leave the Chair until the ringing of one long bell because — 'I have advice from the Leader of the House that some members are having difficulty attending the Parliament'. He left the Chair at 2.23 pm.

By adopting this approach, the Government gained the time to convene another Caucus meeting. An agreement was also reached with union leaders to allow those MPs who had previously refused to cross the picket line to now enter the building. At the Caucus meeting which followed a motion to defer the workers' compensation legislation was defeated, 46 votes to 22. By 48 votes to 20, approval was then given for the Bill to proceed.

The Speaker resumed the Chair at 5.16 pm and the House proceeded to the routine of business, including Questions without Notice. A suspension of Standing Orders

¹⁶ R. Wainwright, B. Norington & L. Doherty, n 5.

¹⁷ According to most reports, 17 Labor MPs had refused to cross the picket line, D. Penberthy & K. Bissett, 'The battle of Macquarie Street', *The Daily Telegraph*, 20 June 2001; S. Long & L. Allen, n 4; L. McIlveen, 'House is shut down by union blockade', *The Australia*, 20 June 2001.

was then agreed to for the introduction and passage up to and including the Minister's Second Reading speech of the Workers Compensation Legislation Amendment Bill (No. 2). Paul Whelan, the Leader of the House and Minister for Police, then introduced the Bill and gave the Second Reading speech. At the conclusion of this, the Shadow Leader of the House, Chris Hartcher, unsuccessfully sought leave to suspend standing orders to allow a motion to be moved for an amendment to the motion for the Second Reading, to postpone resumption of the debate until 26 June 2001. Hartcher then moved that the debate be adjourned until 26 June 2001. The Speaker ruled that this motion was contrary to Standing Order 92 and out of order. The debate was adjourned and the resumption of the debate set down for a future day.

In the meantime the union picket, or blockade as the Premier called it, had been lifted at 6.00 pm. The dramatic events of 19 June 2001, involving scenes which according to one report had not been 'witnessed since the Rum Rebellion of 1806', were at an end.¹⁸ The field was now clear for commentary and analysis.

Did the House have to meet on 19 June 2001?

Under the Standing Orders a meeting of the House can be brought forward,¹⁹ but no arrangement is made for postponement. Once a meeting time is set, the House has to meet. For the Government to stop the House from meeting it had to ensure that the Speaker found a way into Parliament to take the Chair, thereby taking control of the business of the House. As an extreme scenario, the Government could possibly have tried to prorogue the session and have the Governor issue a proclamation for the next meeting of the House. This may not have amounted to a constitutional crisis as such, but at the very least it would have entailed delay and political discomfort for the Government.²⁰

Could the Opposition have pursued the prorogation option by other means?

One strategy the Opposition might have explored was that of not constituting a quorum when the Speaker took the Chair, thereby placing the onus on the Government to do so after the ringing of the bells. Under this scenario the Government would have been forced at an early stage in the proceedings to rally its Members to attend the House. If they had not attended in sufficient numbers to constitute a quorum, the Standing Orders provide that the House is automatically adjourned to the next sitting day.²¹ The difficulty facing the Government in these circumstances would have been of its own making. This is because, in order to

¹⁸ 'Workers' revolt, *The Newcastle Herald*, 20 June 2001.

¹⁹ Parliament of NSW, Legislative Assembly, Standing Rules and Orders Nos 53 and 54.

²⁰ It is generally accepted that all parliamentary business is brought to an end by prorogation: NSW Legislative Assembly, *Practice and Procedure: Work in Progress*, March 2000, 28.

²¹ NSW Legislative Assembly, Standing Order No 44.

retain maximum flexibility, it has opted for moving a special adjournment each day to set the next sitting day. This is in preference to the more usual arrangement whereby the House agrees, in advance, to a sitting pattern by resolution. As there was not a designated next sitting day, the possibility of prorogation would then have come into play.

This strategy was not explored by the Opposition. A decision to this effect might have been made for good political reasons, to avoid criticisms of perpetrating an expensive and time consuming ‘stunt’.

What strategy did the Opposition adopt?

As subsequently revealed, its plan instead was to install the former Speaker, Kevin Rozzoli, in the Chair and then take control of the House agenda to enable a motion of no confidence to be moved in the Government.²² The first step in this strategy was taken at 2.15 pm. The Shadow Leader of the House attempted at this point to prevail upon the Deputy Clerk to announce the absence of the Clerk and then the absence of the Speaker, Deputy Speaker, and Chairman of Committees and afterwards conduct a ballot for the election of an Acting Speaker. This was refused.

The absence of the Speaker is contemplated under Standing Order 16, as is the absence of the Clerk under Standing Order 25. Standing Order 16 provides:

In the absence of the Speaker on a day when the House is sitting the Clerk shall inform the House and the Chairman [of Committees] shall perform the duties of the Speaker.

In the absence of both the Speaker and the Chairman of Committees when the House is sitting, Standing Order 21 provides

the Clerk shall inform the House which shall, before any further business is conducted, proceed to the election of an Acting Speaker and:

- (1) The Clerk shall preside for the election of an Acting Speaker.
- (2) The Members present, if a quorum, may elect an Acting Speaker who shall perform the Speaker’s duties.
- (3) If the House does not proceed to an election it shall stand adjourned until the next sitting day when the election of an Acting Speaker, if still necessary, shall take precedence of all other business.

The Deputy Clerk took the view that neither the Speaker nor the Clerk were ‘absent’ from the House on that ‘day’. Both were present in rooms adjacent to the Chamber and the Clerk was understood to be on his way to the Chamber. A further consideration was that the sitting was not commenced until the Speaker had taken the Chair.

²² L. Doherty & G. Jacobsen, ‘Sitting thwarted by absent Labor MPs’, *The Sydney Morning Herald*, 20 June 2001; N. Vass, ‘A minute away from becoming Premier’, *The Sunday Telegraph*, 24 June 2001; L. McIlveen, n 17.

When does a sitting of the Legislative Assembly commence?

On 8 June 2001 the House adjourned until Tuesday 19 June 2001 at 2.15 pm. Should the sitting have commenced at that time, irrespective of whether the Speaker was in the Chamber? Practice between the Australian Houses of Parliament is divided on this point. For the House of Representatives and Senate, for example, the starting time is when the Presiding Officer takes the Chair. On the other hand, for the Queensland Legislative Assembly and the two Houses of the South Australian Parliament the starting time is that set down in the adjournment or Standing Orders. If the Presiding Officers are a few minutes late in taking the Chair, as a matter of practice the starting time shown in Hansard is always that set down in the adjournment.

This last approach is followed for the New South Wales Legislative Assembly.²³ An argument could be put that on 19 June the sitting ought to have started at 2.15 pm, the time set down in the adjournment. On the other hand, Standing Order 39 provides that 'The Speaker shall take the Chair at the time appointed on every day fixed for meeting'. By convention, this is the point at which a sitting commences. Significant, too, is the consideration that a sitting may not, in fact, always start exactly at the appointed time, in combination with the contention that neither the Speaker nor the Clerk were 'absent' and that any move to replace them would therefore have been premature.

Would the passing of a no confidence motion in the Government have invoked the 'baton change' provision in the Constitution Act 1902?

The larger question at stake on 19 June concerned the possibility of a constitutional crisis, that is, if the Opposition strategy had succeeded and an urgent no confidence motion in Government had been passed. One senior Liberal is quoted as saying:

If we had succeeded, Parliament would have been adjourned and Kerry [Chikarovski] would have gone to the Governor and offered to be sworn in as caretaker Premier until an election could be held.²⁴

Reports vary as to exactly how seriously the Government took this constitutional threat. Some reports suggested that the Premier 'believed his Government was on the brink of a constitutional crisis'.²⁵ A Labor MP is reported as saying that Paul

²³ Note that the starting time for the Legislative Assembly is not recorded in the *Votes and Proceedings*.

²⁴ N. Vass, n 22.

²⁵ B. Norington, L Doherty & R Wainwright, 'WorkCover row a threat to Beazley', *The Sydney Morning Herald*, 21 June 2001. Another report said that the Premier 'did not seek constitutional advice', but that he 'requested "procedural" advice on what would happen if no Labor MPs were present at Question Time', N. Vass, n 22.

Whelan, in urging Members to cross the picket line, had advised that if the Opposition strategy succeeded the Leader of the Opposition ‘could have gone to the Governor and asked to form a government. She would not have had the numbers and we would have had to go to the polls’.²⁶ Deputy Premier, Andrew Refshauge, is said to have admitted that he and fellow front-bencher, Bob Debus, had only ‘crossed the picket line for fear the Government could fall’.²⁷ It was even rumoured that the Governor, Professor Marie Bashir, had been smuggled into Parliament House by Premier Carr ‘to have her on hand if his Government was defeated on the floor of Parliament’.²⁸

In NSW the question of the possible effect of a no confidence resolution must be understood, initially, in the context of the constitutional provision for 4 year fixed term parliaments. This fixed term regime is qualified by section 24B of the *Constitution Act 1902* which sets out those circumstances in which the Legislative Assembly may be dissolved by the Governor by proclamation during a 4 year term. Under this provision — section 24B (2)²⁹ — the Governor may dissolve the Lower House if a motion of no confidence in the Government is passed and within eight days thereafter a motion of confidence in the Government is not passed.³⁰ Alternatively, the ‘baton change’ provision — section 24B (6) — would permit the Governor to commission an alternative government under a different Premier, most probably the Leader of the Opposition.

There are at least two reasons why section 24B would not have assisted the Opposition on 19 June 2001. First, the original motion of no confidence cannot be moved without at least 3 clear days’ notice. Secondly, under section 24B (6) the Governor must consider that a ‘viable alternative Government’ can be formed without dissolution. With a maximum of 38 supporters (including the votes of the 5 independent Members) out of a House of 93, the Governor would never have come to this conclusion.

²⁶ L. Doherty, ‘Macquarie Street mayhem’, *The Sydney Morning Herald*, 21 June 2001.

²⁷ D. Penberthy & K. Bissett, ‘The battle of Macquarie Street’, *The Daily Telegraph*, 20 June 2001.

²⁸ L. Doherty, n 26. The Governor was in fact at a Rotary lunch.

²⁹ Section 24B (2) of the *Constitution Act 1902* (NSW) provides:

The Legislative Assembly may be dissolved if:

a motion of no confidence in the Government is passed by the Legislative Assembly (being a motion of which not less than 3 clear days’ notice has been given in the Legislative Assembly), and

during the period commencing on the passage of the motion of no confidence and ending 8 clear days thereafter, the Legislative Assembly has not passed a motion of confidence in the then Government.

After the motion of no confidence is passed, the Legislative Assembly may not be prorogued before the end of that 8-day period and may not be adjourned for a period extending beyond that 8-day period, unless the motion of confidence has been passed

³⁰ Further grounds for early dissolution are set out in sections 24B (3) and (4).

In more detail, under the 'baton change' provision the Governor is directed as follows:

When deciding whether the Legislative Assembly should be dissolved in accordance with this section, the Governor is to consider whether a viable alternative Government can be formed without a dissolution and, in doing so, is to have regard to any motion passed by the Legislative Assembly expressing confidence in an alternative Government in which a named person would be Premier.

While section 24B (6) directs or guides, it does not remove, the Governor's discretion in deciding whether to dissolve the Legislative Assembly. It leaves it open to the Governor to make a judgment about the parliamentary situation and does so by posing the question 'whether a *viable* alternative Government can be formed without a dissolution'. If so, the Governor need not accept a Premier's advice to dissolve. As part of this process, regard must be had to the passing of any 'constructive' no confidence resolution, that is, where the House resolves that it has no confidence in the Premier but names a person in whom it would have confidence. The point of comparison is with the more customary 'simple' no confidence resolution which states that the House has no confidence in the Premier, but does not state that it has confidence in somebody else.

Under section 24B (2) only the passing of this 'simple' kind of no confidence motion is required for the steps leading to the early dissolution of the Assembly to be set in motion; it is the 'baton change' provision, section 24B (6), which contemplates, but does not require, the additional passing of a 'constructive' no confidence motion.³¹ The problem for the Opposition on 19 June 2001 was that the timing requirements of section 24B (2) would have precluded setting the early dissolution procedure into motion. Moreover, irrespective of whether a 'constructive' no confidence motion had been passed, at no stage could the Leader of the Opposition have satisfied the threshold 'baton change' requirement of forming a stable or viable alternative government. Even if the Opposition could have satisfied this last requirement, the issue of timing would remain an effective stumbling block to a section 24B dissolution.

Could the Governor have dismissed the Premier in accordance with established constitutional conventions?

The only other way that a constitutional crisis may have eventuated was by virtue of subsection (5) of section 24B which allows the Governor to dissolve the Legislative Assembly in accordance with constitutional conventions. It is in effect an override provision which, as Professor George Winterton informed the Joint Select Committee on Fixed Term Parliaments, 'could provide a means of bypassing the

³¹ G. Winterton, 'The constitutional position of Australian State Governors', in *Australian Constitutional Perspectives*, H.P. Lee & G. Winterton, eds, The Law Book Co Ltd 1992, 324.

whole fixed term Parliament' regime.³² As such, subsection (5) raises the complex and sometimes controversial question of the exercise of the reserve powers. In full, subsection (5) states that section 24B

does not prevent the Governor from dissolving the Legislative Assembly in circumstances other than those specified in subsections (2)–(4), despite any advice of the Premier or Executive Council, if the Governor could do so in accordance with established constitutional conventions.

That subsection (5) would have assisted the Opposition in the circumstances of 19 June 2001 is more or less inconceivable, largely for the same reasons as those set out in respect to the 'baton change' provision.³³ By the same token, section 24B (5) does contemplate circumstances in which a different outcome might have been reached by the Governor's application of the reserve powers.

In New South Wales the conventions governing the reserve powers are expressly preserved by section 35A of the *Constitution Act*.³⁴ Section 24B (5) is, in addition, a rare legislative acknowledgment that the Governor may act contrary to, or 'despite any advice', of the Premier or Executive Council. There are only four powers which are generally accepted as 'reserve powers': to appoint a Premier; to dismiss a Premier; to refuse to dissolve Parliament; and, in very limited circumstances, to force a dissolution of Parliament.

It is this last 'forced dissolution' option which is contemplated under section 24B (5), although in practice the corollary power to dismiss the Premier would also be involved.³⁵ This might occur in one of three circumstances, all of which are open to debate. First, where the government is acting illegally, as (arguably) in the 1932 dismissal of Premier Lang by the New South Wales Governor, Sir Philip Game.³⁶

³² Parliament of NSW, The Joint Select Committee on Fixed Term Parliaments, *Interim Report on the Constitution (Fixed Term Parliaments) Amendment Bill 1991*, March 1992, 51. Winterton suggested, unsuccessfully, that in the interests of clarity the subsection should substitute 'contrary to the advice' for 'despite the advice'.

³³ That conclusion flows from the observation that section 24B (6) was drafted to reflect current constitutional practice — Parliament of NSW, The Joint Select Committee on Fixed Term Parliaments, *Report on the Constitution (Fixed Term Parliaments) Special Provisions Bill 1991*, December 1991, 66–7.

³⁴ Section 35A provides: 'The enactment of the Constitution (Amendment) Act 1987 does not affect any law or established constitutional convention relating to the exercise or performance of the functions of the Governor otherwise than on the advice of the Executive Council'.

³⁵ For an overview of the relevant issues and precedents see E.A. Forsey's 'Introduction' to *Evatt and Forsey on the Reserve Powers*, Legal Books 1990, xxxix–lvii. For New South Wales instances, before and after Federation, of requests for 'extraordinary' dissolutions see L.J. Rose, *The Framework of Government in New South Wales*, VCN Blight 1972, 46.

³⁶ It has been argued, by Evatt, Winterton and others, that Governor Game's decision was improper because the question of illegality could have been dealt with by the courts — *Evatt and Forsey on the Reserve Powers*, n 35, 173–4; G. Winterton, *Monarchy to Republic*, Oxford University Press 1986, 46; P. Hanks, *Constitutional Law in Australia*, 2nd edn, Butterworths 1996, 199. For an account of the explosive situation facing Game and the political 'reality', including the 'grave threat to public order', behind the dismissal of Lang see B. Nairn, *The 'Big Fella'*, Melbourne University Press 1986, Ch. 11.

Secondly, where a government is unable to obtain supply, as occurred federally in 1975. Thirdly, where a government had lost the confidence of the lower House and refused to advise a dissolution or resign.³⁷

This third circumstance is most pertinent to the events of 19 June 2001. What can be envisaged is a situation in which the Opposition had gained control of the business of the House, thereby permitting it to suspend Standing Orders³⁸ and bring on, as a matter of urgency, a successful motion of no confidence in the Government. This would be an 'ordinary' no confidence motion, by which is meant one moved other than in accordance with section 24B (2). The established constitutional convention is that where the lower House passes a simple motion of no confidence in the Premier, in that capacity he or she must resign, thereby terminating the appointments of all other Ministers, or advise the Governor to dissolve Parliament.

However, constitutional conventions are not strict rules of law and the application of the reserve powers in any particular situation must, to some extent, be a matter of judgment for the Governor. As the 'guardian of the constitution' he or she is called upon on these occasions to act as a 'reserve of independent judgment standing apart from the party system'.³⁹ The clearest instance is where Governors and Governors General have in the past refused advice to dissolve Parliament, as occurred in Victoria in 1952 after the Country Party Government of John MacDonalld had failed to obtain supply.⁴⁰ The most recent New South Wales example occurred in 1921 when the Dooley Labor Ministry was defeated in the House and the Premier's advised dissolution was refused by the Governor, Sir Walter Davidson, on the basis that a coalition of Nationalists and Progressives looked possible.⁴¹

In whatever way one evaluates such examples of the use of gubernatorial discretion, they confirm the view that the Governor should have regard to the wider 'parliamentary situation'. The key question in this respect must be whether a viable alternative government exists, thus making the existing Parliament 'vital and capable of doing its job'.⁴² This can be read alongside Winterton's argument that a

³⁷ The Report of the Republic Advisory Committee, *An Australian Republic, The Options: Volume 2 — The Appendices*, Commonwealth Government Printer 1993, Appendix. 6, 264.

³⁸ Legislative Assembly Standing Order 122 requires three clear days notice for a motion of a no confidence in the Government.

³⁹ G. Marshall, *Constitutional Conventions*, Clarendon Press 1993, 44.

⁴⁰ R.E. McGarvie, *Democracy: Choosing Australia's Republic*, Melbourne University Press 1999, 154–60.

⁴¹ Sir George Fuller was duly commissioned to form a government and a new ministry was sworn in on 20 December 1921, lasting a mere seven hours: M. Hogan, 'The 1922 Election' in *The People's Choice: Electoral Politics in 20th Century New South Wales, Vol 1*, M. Hogan & D. Clune, eds, Parliament of NSW and the University of Sydney 2001, 242.

⁴² G. Marshall, n 39, 39. Marshall discusses the advice given by Sir Alan Lascelles to the King in 1950 when it was thought that Attlee might seek an early dissolution.

Governor should only be permitted the personal discretion that is *absolutely necessary* to ensure the effective operation of parliamentary democracy.⁴³

The point to make in respect to 19 June 2001 is that, taking a broader view of the political situation, discretion would have been exercised to ensure that the will of the electorate, expressed in a majority of seats for the incumbent Labor Government in the Legislative Assembly, should not be set aside by the passing of an aberrant no confidence motion. In all probability, therefore, such a vote would not have resulted in the Governor accepting, as a matter of course, Opposition calls to dissolve the Parliament. The principle articulated here suggests that if the Premier had tendered his resignation, it ought to have been rejected, as should any claim made by the Leader of the Opposition to replace the incumbent Premier. For her part, the Governor might have relied on the argument suggested by Winterton, namely, that if a motion of no confidence is carried because some Members of the governing party or parties are absent, the Government ought to be able to stay in office for a reasonable period to attempt to reverse the vote.⁴⁴ Lack of direct precedent notwithstanding,⁴⁵ in such circumstances it is probable that the incumbent Premier is

entitled to a reasonable period to attempt to reverse the vote, particularly if the motion has been passed only because members of the incumbent's party or coalition were absent.⁴⁶

The novelty of the events of 19 June preclude certainty, but surely on any reading of the parliamentary situation the Governor would have treated any advice to dissolve Parliament as capable of rejection within the discretionary terms of the doctrine of the reserve powers. The very strong likelihood is that the Governor would have left the matter to be resolved on the floor of the House on the sound principle that 'matters which are capable of political resolution ought to be left in the hands of politicians'.⁴⁷ The same would apply if a 'constructive' no confidence resolution had been passed, for again there would be clear grounds for the Governor to interpret this as an aberrant vote, the result of which could not be sustained politically and would be overturned at the first opportunity when the House next sat.

⁴³ G. Winterton, n 36, 44.

⁴⁴ G. Winterton, n 36, 43.

⁴⁵ Though not a direct precedent and only partially analogous at best, some parallels can be drawn with events in New South Wales in 1911 following the resignation of two Government Members. The two resignations meant that the Government lost its majority and, to avoid defeat on the floor of the House, Acting Premier Holman, asked the Lieutenant-Governor for a prorogation of Parliament. This would have allowed the Government to remain in office while the by-elections were held. The request was at first rejected but then agreed to by the Lieutenant-Governor. Thus, gubernatorial discretion was used to keep a Government in office, even when it would have lost a threatened no confidence motion, where two Government Members were not temporarily absent or indisposed (as Winterton suggests) but had actually resigned from Parliament — J. Rydon, R.N. Spann & H. Nelson, *New South Wales Politics, 1901–1917*, NSW Parliamentary Library and the Department of Government, University of Sydney 1996, 72–3.

⁴⁶ The Report of the Republic Advisory Committee, n 37, Appendix 6 at 257.

⁴⁷ D.P. O'Brien quoted in G. Winterton, n 36, 50.

More challenging from a constitutional standpoint would have been a scenario in which it looked like a viable alternative government was available, possibly with support from independents or minor parties. If the Governor was persuaded that support for this alternative administration existed and, *a fortiori*, if Parliament's intention was expressed in the form of a 'constructive' no confidence motion naming the Leader of the Opposition as the alternative Premier, then the Governor's constitutional duty would have been to commission a new government. In these circumstances neither the early dissolution powers under section 24B (2)-(4), nor the reserve power of 'forced dissolution' would have been called upon. Section 24B (5) would only have come into play if, in such circumstances, the defeated Premier had not resigned, or advised the Governor to dissolve Parliament. Even then every effort would have to be made to induce the Premier to do his duty. Only when it was clear that he refused to adhere to that convention could the Governor have resorted to the reserve power of forced dissolution.⁴⁸

Section 24B (5) would in fact require dismissal of the incumbent Premier and the appointment of one who would advise the Governor to dissolve Parliament. On this point, when the 'forced dissolution' provision was proposed Professor Winterton wondered if it

is really possible to dissolve against the wishes of the Premier, because you need the Premier to countersign the proclamation dissolving Parliament. So the way you force a dissolution if you are the Governor is that you change your Premier, as Sir John Kerr did. . . . To say you force a dissolution . . . (despite the advice of the Premier) is really . . . a nonsense because you always need some Premier to countersign the proclamation.⁴⁹

In an echo of the events of 1975 federally, section 24B (5) would first involve a baton change to a new Premier, but on the understanding that a dissolution of Parliament would be imminent and, with it, a testing of the popular will. In this way, by using the reserve powers to ensure a general election, the forced dissolution provision could be said in appropriate circumstances to comply with A.V. Dicey's thesis that the 'ultimate object' of the constitutional conventions is 'to secure that Parliament or the Cabinet . . . shall in the long run give effect to the will of . . . the nation'.⁵⁰ Clearly, those circumstances could not have applied on 19 June 2001.

⁴⁸ The Republic Advisory Committee, n 37, Appendix 6 at 257.

⁴⁹ Parliament of NSW, n 32, 50. Whether this consideration would prevent a determined Governor from dissolving Parliament without ministerial advice is a moot point. Note the extraordinary and unconstitutional decision in 1924 of the Tasmanian Administrator, Sir Herbert Nicholls, to assent to the Appropriation Bill which had not been passed by the Legislative Council, in relation to which Berriedale Keith wrote that the 'absolute illegality of the course followed was patent', G. Griffith & S. Srinivasan, *State Upper Houses in Australia*, NSW Parliamentary Library Background Paper No 1/2001, 40-1.

⁵⁰ Dicey quoted in *Evatt and Forsey on the Reserve Powers*, n 35, 108-9.

Is there a distinction between a censure motion and a no confidence motion?

Usually they are treated as either synonymous,⁵¹ or coterminous.⁵² As to the latter, it was explained in *House of Representatives Practice* that a motion expressing censure of the Government ‘although slightly different from one expressing a want of confidence, is still of vital importance. A censure motion, as the words imply, expresses more a disapproval or reprimand at particular actions or policies of the Government . . .’. Citing a 19th century British authority, it was further explained that a successful censure motion would ‘ordinarily’ lead to the Government’s ‘retirement from office, or dissolution...unless the act complained of be disavowed, when the retirement of the minister who was especially responsible for it will propitiate the House, and satisfy its sense of justice’.⁵³ In brief, the passing of a censure motion against the Premier (in that capacity) or Government would ordinarily have the same effect as a no confidence resolution.

In the NSW Legislative Assembly, on the other hand, a distinctive answer has been provided to this question. Despite the example of the successful censure and subsequent resignation of Premier Stevens in 1939,⁵⁴ the Independent MP, John Hatton, speaking on 28 April 1992 in the support of the censure motion against the then Premier, Nick Greiner, asserted that a ‘clear distinction’ between censure and no confidence had been recognised ‘in this House over a long time and is established by parliamentary practice’.⁵⁵ According to Hatton, ‘a censure motion is serious but it is not a no confidence motion’. In the case of Greiner, the passing of the censure motion against him did not require his resignation, or that of his

⁵¹ Sir D. Limon and WR McKay editors, *Erskine May’s Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 22nd edn, Butterworths 1997, 280.

⁵² L.M. Barlin ed., *House of Representatives Practice*, 3rd edn, AGPS 1997, 321.

⁵³ A. Todd, *Parliamentary Government in England*, 1892, volume II, 121 quoted in L.M. Barlin ed., n 52, 321. According to Barlin, as at 1997 no censure motion or amendment had been successful in the House of Representatives.

⁵⁴ D. Clune, ‘The 1941 Election’ in *The People’s Choice: Electoral Politics in 20th Century New South Wales*, Vol. 2, M. Hogan & D. Clune, eds, Parliament of NSW and the University of Sydney 2001, 169. A motion of urgency on State finances was declared by Premier Stevens to be ‘a motion of direct censure on the Government’, *NSWPD*, 1 August 1939, 5635. Stevens resigned, but the Coalition UAP–Country Party Government remained in office with Alexander Mair as Premier. The Governor, Lord Wakehurst, does not appear to have consulted Jack Lang, Leader of the Opposition Labor Party, about the possibility of forming an alternative government.

Of note, too, is the resignation of the Dooley Labor Government on 13 December 1921. This was the direct consequence of defeat on a procedural motion. But that motion was itself the consequence of an earlier motion of censure moved by Sir George Fuller who described it as ‘A motion involving the fate of the Government . . . a motion which if submitted to this House undoubtedly means the death of the Government . . .’: *NSWPD*, 14 December 1921, 2601–602; M. Hogan, n 41, 242.

⁵⁵ *NSWPD*, 28 April 1992, 2861.

Government. Confirming this practice, in 1994 a successful censure motion was moved against Premier Fahey, again without resulting in resignation.⁵⁶

In other words, if the Opposition had decided on 19 June 2001 to move a censure motion against the Premier, if successful it would not have amounted to a call for his, or the Government's, resignation.

Should the law relating to the right to protest in the vicinity of the NSW Parliament be changed?

Brief note can be made of other issues arising from the events of 19 June 2001, in particular those relating to the right to protest and the maintenance of public order. In NSW, as in other Australian jurisdictions, peaceful protests occur on a regular basis in the vicinity of Parliament. Such assemblies are part of the normal business of parliamentary democracy — 'people participating in the processes of government by expressing their opinions to their elected representatives and the community at large'.⁵⁷ In Queensland the 'right' to engage in such a peaceful assembly takes the form of a 'positive' statutory right,⁵⁸ whereas elsewhere in Australia it is has traditionally been looked upon as a 'residual freedom', as an activity a person is free to engage in to the extent that it is not restricted.⁵⁹

Until recently, in Victoria a specific statutory prohibition under the *Unlawful Assemblies and Processions Act 1958* (Vic) made it an offence for more than 50 persons to assemble, in the vicinity of Parliament House while it is sitting,

. . . for any unlawful purpose or for the purpose of or on the pretext of making known their grievances or of discussing public affairs or of considering or preparing any petition memorial complaint remonstrance declaration or other address to . . . the Parliament of Victoria or to any officer of Government for the repeal or enactment of any law or for the alteration of matters in state . . .⁶⁰

⁵⁶ NSWPD, 22 September 1994, 3588 and 3627. In the Legislative Assembly a censure motion against the Premier is on a par with the censure of a Member, the procedures for which are separately set out under Standing Order 124.

⁵⁷ The Parliament of the Commonwealth of Australia, Joint Standing Committee on the National Capital and External Territories, *A Right to Protest*, May 1997, 11.

⁵⁸ *Peaceful Assemblies Act 1992* (Qld).

⁵⁹ Parliament of Victoria, Scrutiny of Acts and Regulations Committee, *Review of the Unlawful Assemblies and Processions Act 1958*, May 1999, 4.

⁶⁰ Section 3, *Unlawful Assemblies and Processions Act 1958* (Vic). Section 4 of the same Act provided a penalty of up to 6 months imprisonment for attending such meetings. Both sections 3 and 4 of the Act, which otherwise remains in force, were repealed by the *Parliamentary Precincts Act 2001* (Vic). Section 3, which was based on UK legislation dating from 1817 to 1857 Geo III c 19 — was the result of violent riots which occurred in August 1860 over land settlement legislation, in which windows were smashed in the Legislative Assembly as the crowd attempted to occupy the House, R. Wright, *A People's Counsel: A History of the Parliament of Victoria, 1856–1990*, Oxford University Press 1992, 45–6; Scrutiny of Acts and Regulations Committee, n 59, 10–12.

Similar legislation, although not limited to assemblies taking place on sitting days, was also recently in force in the ACT. This defined ‘unlawful assembly’ as a meeting or assembly of 20 or more persons within 90 metres of Parliament House.⁶¹ Neither in Victoria nor the ACT had these provisions been applied in recent times, the latter since 1971.⁶² They had certainly not prevented protests from occurring in the vicinity of either the Commonwealth or Victorian Parliaments.⁶³ Both the ACT Ordinance and the relevant provision of the Victorian legislation have now been repealed on the basis that they were outdated and contrary to the democratic principle of freedom of expression.⁶⁴ In recommending repeal of the Ordinance, the Commonwealth Joint Standing Committee on the National Capital and External Territories was guided by expert opinion indicating that the ACT Ordinance may have breached the implied constitutional freedom of communication on governmental and political matters.⁶⁵

For the Commonwealth Joint Standing Committee, the right to protest is to be understood in relation to the countervailing rights of non-protesters ‘to go about their daily business . . . without unnecessary hindrances’. The report continued:

It is particularly important that the conduct of one democratic process, namely protesting, does not impede the proper functioning of other democratic processes, such as the operation of the Parliament or the High Court.⁶⁶

Clearly, the blockade of the New South Wales Parliament overstepped this mark. As the Premier commented: ‘We’re not talking about workers’ compensation reform . . . we’re talking about an attempt that turned away democratically elected Members of Parliament from a place where people’s liberties are protected’.⁶⁷

⁶¹ Section 3, *Unlawful Assemblies Ordinance* 1937 (ACT). This was repealed by the *Unlawful Assemblies Repeal Ordinance* 2001.

⁶² Joint Standing Committee on the National Capital and External Territories, n 57, 38. Section 3 of the Victorian legislation had not been enforced ‘for many years’ — Scrutiny of Acts and Regulations Committee, n 59, 70.

⁶³ *VPD* (Legislative Assembly), 3 April 2001, 540.

⁶⁴ In the relevant Second Reading speech the Minister, Mr Brumby, described sections 3 and 4 of the Victorian legislation as ‘completely inconsistent with a democratic society’ — *VPD* (Legislative Assembly), 3 April 2001, 540.

⁶⁵ Joint Standing Committee on the National Capital and External Territories, n 57, 50–1. That freedom has been held to protect ‘political discussion in relation to all levels of government including State government’, *Levy v Victoria* (1997) 189 CLR 579 at 596; *Coleman v Sellars* (2001) 181 ALR 120 at 121. The Ordinance was also said to be in breach of Articles 19 and 21 of the International Covenant on Civil and Political Rights, S. Bronitt & G. Williams, ‘Political freedom as an outlaw: republican theory and political protest’ (1996) 18 *Adelaide Law Review* 289 at 311. For an analysis of the likely unconstitutionality of the Victorian provision see — Scrutiny of Acts and Regulations Committee, n 59, 62–3.

⁶⁶ Joint Standing Committee on the National Capital and External Territories, n 57, 34.

⁶⁷ ‘Quote Unquote’, *The Newcastle Herald*, 20 June 2001.

The blockade was at odds with the Commonwealth Joint Standing Committee's view that the right to protest in the vicinity of Parliament must be 'exercised with due regard to public safety and public order'.⁶⁸ The 19 June blockade of the New South Wales Parliament is but one example in recent times of where such protests have stepped beyond the confines of peaceful assembly to involve scenes of violent disorder.⁶⁹

As the Commonwealth Joint Standing Committee was informed, a plethora of laws exist, at all levels of government, for the maintenance of public order in such circumstances. In New South Wales, a notification model exists under Part 4 of the *Summary Offences Act 1988* providing for 'authorised' public assemblies. This model also provides limited immunities from prosecution for those participating in such assemblies.⁷⁰ The blockade of 19 June 2001 was not an authorised assembly of this kind. It can be suggested, therefore, that several provisions of the *Crimes Act 1900* might have been invoked at certain times on that day, including those against knowingly joining or continuing in an unlawful assembly,⁷¹ assault of police officers,⁷² and intimidation⁷³. The common law offence of unlawful and riotous assembly might also have applied.

This would indicate that, in combination with the *Parliamentary Precincts Act 1997* which makes special provision for the security of the 'parliamentary zone', ample powers are available for the control of public assemblies in this State. What is not available in New South Wales is a specific statutory offence similar to what in Queensland,⁷⁴ Tasmania⁷⁵ and Western Australia⁷⁶ is called 'Interference with the Legislature'.⁷⁷ This offence in the Code States refers, *inter alia*, to the use of force to interfere with the 'free exercise' of the duties or authority of any Member of

⁶⁸ Joint Standing Committee on the National Capital and External Territories, n 57, 33.

⁶⁹ For example, protests against the Howard Government's industrial relations reform outside the Australian Parliament in August 1996 turned violent. In Western Australia in May 1997, during protests against the Court Government's 'third-wave' industrial relations legislation, MPs were prevented from entering Parliament House and 50 unionists occupied the Upper House chamber.

⁷⁰ Section 24, *Summary Offences Act 1988*.

⁷¹ Section 545C, *Crimes Act 1900*. Subsection (3) provides that 'Any assembly of five or more persons whose common object is by means of intimidation or injury to compel any person to do what the person is not legally bound to do or to abstain from doing what the person is legally entitled to do, shall be deemed to be an unlawful assembly'.

⁷² Section 60, *Crimes Act 1900*.

⁷³ Section 545B (1)(a), *Crimes Act 1900*. The subsection makes it an offence 'to compel any other person to abstain from doing or to do any act which such person has a legal right to do or abstain from doing'.

⁷⁴ Section 55, *Criminal Code Act 1899* (Qld).

⁷⁵ Section 70, *Criminal Code 1924* (Tas).

⁷⁶ Section 55, *The Criminal Code* (WA).

⁷⁷ As noted, a more general offence of intimidation does exist in New South Wales; see n 71.

Parliament.⁷⁸ Whether the isolated events of 19 June 2001 are a sufficient basis for statutory reform along these lines is another matter, bearing in mind that the relevant provisions in the Code States are rarely used.⁷⁹ If such reform were contemplated, it might be proposed as part of a package including a properly regulated statutory right of peaceful assembly, as exists in Queensland.⁸⁰ What is clear is that no case can be made for introduction of obviously anachronistic legislation similar to the now repealed ACT Ordinance and section 3 of the Victorian *Unlawful Assemblies and Processions Act 1958*.

Conclusion

If nothing else the blockade of the New South Wales Parliament on 19 June 2001 throws into sharp relief the perennial tensions between the right to protest, on one side, and actions which transgress the boundaries of legitimate protest, on the other. The line between lawful and unlawful protest may often be a fine one. For the partisans of different causes there will always be a debate about ‘ends and means’.

Lawyers, for their part, will consider how the right to protest must be subject to ‘reasonable restrictions’, in the context of which they will weigh in the balance the competing rights at stake — of protesters to protest and of others to go about their lawful business. Viewed from a broader perspective, conflict over ideas, strategies and policies is a defining feature of a liberal democratic polity, understood, not as a unity, but as a diverse aggregate of many members, as a realm of compromise based on tolerance for the canvassing of rival truths and interests.⁸¹ Protests in the vicinity of the New South Wales (or any other Australian) Parliament are but one expression of legitimate political action in such a polity. There will be times, however, when this freedom of political action is expressed in an inappropriate form. Arguably, the siege of Macquarie Street was such an instance. ▲

⁷⁸ Section 12 of the *Crimes Act 1900* (NSW), ‘Compassing etc deposition of the Sovereign — overawing Parliament etc’ is not an equivalent provision. The section has remained in force, subject to minor amendment, since 1868: *31 Vic No 25, s 2* (NSW). It is based on legislation ‘for the better security of the Crown and Government of the United Kingdom’ dating back to 1848, a year of Chartist revival in Britain and revolutionary upheaval in continental Europe: *11 Vic c 12, s 3* (Imp). Among other things, the section makes it an offence to ‘intimidate or overawe . . . the Parliament of New South Wales’, but only where this constitutes a manifestation of treasonable intention. A more modern formulation of the provision is found in section 59 of the Tasmanian *Criminal Code 1924*.

⁷⁹ After 86 years in force, it is thought that charges under section 55 of *The Criminal Code* (WA) were first brought following the picketing of the West Australian Parliament on 15 May 1997: C Pryor, ‘Law backfires on veteran speaker’, *The Australian* 21 April 1999; *R v Jones & Others* (unreported [1999] WASCA 194).

⁸⁰ This would be consistent with the May 1999 recommendation of the Victorian Scrutiny of Acts and Regulations Committee. The Committee explained: ‘While enacting such legislation may make little difference to the practice of the right of peaceful assembly, it would be of symbolic importance. Further, it would bring the State into line with the position at international law’, Scrutiny of Acts and Regulations Committee, n 59, 55.

⁸¹ B. Crick, *In Defence of Politics*, 5th edn, Continuum 2000, Ch. 1.

