

The Value of Parliament

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Parliaments of the Commonwealth of Nations vary greatly in size and many other aspects. Their essential functions include legislation, scrutiny of government, representation and legitimation. Parliaments need to reform and to adapt in order to continue to perform these key roles effectively.

I begin with an anecdote. In January 1841 a ship bound from London to Boston and carrying among its passengers the author Charles Dickens was driven by an Atlantic storm into the port of Halifax, Nova Scotia. As the ship moved into Halifax Harbour through the eastern passage the weather cleared, the ship docked, and Dickens was taken by Joseph Howe, Speaker of the Nova Scotia House of Assembly, to Province House, where a new session of the Legislature was about to begin.

In *American Notes*, Dickens describes the scene as follows:

It happened to be the opening of the Legislative Council and General Assembly, at which ceremonial the forms observed at the commencement of a new Session of Parliament in England were so closely copied, and so gravely presented on a small scale, that it was like looking at Westminster through the wrong end of a telescope. The governor, as Her Majesty's representative, delivered what may be called the Speech from the Throne. He said what he had to say manfully and well. The military band outside the building struck up 'God Save The Queen' with great vigour before His Excellency had quite finished; the people shouted; the in's rubbed their hands; the out's shook their heads; the Government party said there never was such a good speech; the Opposition declared there never was such a bad one; the Speaker and Members of the House of Assembly withdrew from the bar to say a great deal among themselves and do a little; and, in short, everything went on, and promised to go on just as it does at home upon the like occasions.

This description, with a few variations, would still not be far off the mark in describing the opening day's proceedings in most of the parliaments and legislatures

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which are members of the Commonwealth Parliamentary Association. I tell the story now, not because I intend to try to look at our member parliaments through the correct end of the telescope, but because it illustrates the point that while most of today's Commonwealth parliaments trace their roots back to Westminster, no two parliaments function in precisely the same way, nor do they operate as they did ten or even five years ago. The Commonwealth's parliaments reflect the pluralistic nature of the Commonwealth itself, each having evolved in its own way and reflecting the society whose citizens choose its members.

My task is to speak about 'The Value of Parliament'. Some of my more cynical friends might say that I will have to make a brief speech — their view being that Parliament is not really a valuable institution at all — or perhaps that its value has declined in recent years. Fortunately, many people take a different viewpoint and I am confident that those present today would not be here unless they believe there is some usefulness and importance to the institution.

The achievement of good governance has become a goal for most of the nations of the world because it aims to produce the best outcomes for members of a society. Professor Ken Coghill has demonstrated in a paper he presented recently in London that producing those outcomes requires governance that facilitates the interaction between the state, the market, and civil society in a system which must be 'transparent, accountable, just, fair, democratic, participatory and responsive to people's needs'. You will hear these words frequently throughout my remarks.

To set the stage properly I must begin by reference to one of the concepts contained in that description — the idea of democracy. Defining democracy is difficult because it is at the same time both a state of affairs and a continuing process which is constantly changing. It is both an ideal to be pursued and a mode of government. There is no single model. It is always in a state of perfection yet is also always in a perfectible state in which progress will depend on political, social, economic and cultural factors. One very brief definition of democracy describes it as 'responsive rule' or, as one learned political scientist put it more fully, 'the necessary correspondence between acts of governance and the equally-weighted felt interests of citizens with respect to those acts'. Despite these short definitions it took representatives from 128 national parliaments, meeting in Cairo in September 1997, 27 lengthy paragraphs to produce a *Universal Declaration on Democracy*. I stress the word 'universal' because these principles are sometimes said to be pertinent only to what is sometimes disparagingly but incorrectly referred to as 'Western Democracy'.

I refer to three of the principles set out in the Declaration and these are as follows:

Democracy is founded on the right of everyone to take part in the management of public affairs; it therefore requires the existence of representative institutions at all levels, and, in particular, a Parliament in which all components of society are represented and which has the requisite powers and means to express the will of the people by legislating and overseeing government action.

It is an essential function of the State to ensure the enjoyment of civic, cultural, economic, political and social rights to its citizens. Democracy thus goes hand in hand with an effective, honest and transparent government, freely chosen and accountable for its management of public affairs.

Public accountability, which is essential to democracy, applies to all those who hold public authority, whether elected or non-elected, and to all bodies of public authority without exception. Accountability entails a public right of access to information about the activities of government, the right to petition government, and to seek redress through impartial administrative and judicial mechanisms.

From these statements, with which few people disagree, several conclusions emerge, among them that accountability applies not only to governments but to parliaments themselves, and the subject of improving the accountability of parliaments to make them more relevant, responsive and responsible to the public has been a matter for substantial discussion, and considerable action, within the Commonwealth Parliamentary Association over the last several years. Several conclusions have emerged, particularly about the strengthening of parliamentary committees and committee systems as being among the best ways to enhance the public image of parliament as an institution.

Parliaments are unusual institutions. They differ greatly from one another, both constitutionally and in their practical political operations. As we all know, they vary in size and shape, in tenure, in powers and functions, in autonomy and in procedures and traditions. Some sit as infrequently as 10 days per year, others as often as 225 days per year. Within the Commonwealth, national parliaments vary in size from Tuvalu's (12 members), to the United Kingdom's (now about 1200) and India's (802 members). A number of sub-national parliaments are even smaller than Tuvalu's — the Nevis Island Assembly and the Falkland Islands Legislative Council have eight members each and Norfolk Island's Legislative Assembly has nine.

Most observers consider that modern parliaments have three main functions and identify these as:

- The legislative function (including participation in the making of public policy through law-making, parliamentary inquiries, etc);
- The oversight function (carried out mainly, but not exclusively, by the 'loyal Opposition');
- The representative function (which allows members to address the problems of their constituents and promote their interests).

Individual parliamentarians in performing their jobs personalise these functions and are expected to be: ombudsmen dealing with complaints about government matters; law-makers; spokespersons for local interests; examiners of the work of government and how it spends money raised from taxes; and contributors to debates on national issues. Members require a wide range of abilities and talents, which naturally not all possess to the same degree. Similarly, not all are provided with the same research

facilities, staff, and technical assistance throughout the Commonwealth and many of our members from parliaments in developing countries marvel at the facilities their counterparts in more highly developed parliaments have available to assist them.

To the list of parliamentary functions one might add that of legitimation. The manner in which members become members has a huge impact on the representativeness of a parliament. And the representative character of a parliamentary body gives rise to its legitimacy, or the public recognition and acceptance of the right of parliament, and the government generally, to act in some manner, and the corresponding obligation of citizens to abide by that action.

Although they are a prerequisite, fair elections, of themselves, do not ensure that legitimacy will be conferred upon the parliamentary system. For it to gain legitimacy, activities within the Parliament must be seen as fair and appropriate. Although some members may be more equal than others in terms of influence, it is important that there be equality among the membership when one considers that parliamentary activities themselves must be perceived as fair. The legislative process must be, and must be seen to be, grounded in fair procedures. The legitimacy of parliaments hinges on the perception that the rules are unbiased and that the majority has a reasonable capacity to work its will.

On 11 February 1780 Edmund Burke, one of the ablest practical statesmen and political philosophers ever to grace the stage of the British House of Commons, delivered a long speech to the House on a motion 'for the better security of the independence of Parliament and the to economical Reformation of the Civil and other Establishments'. The speech was a brilliant attack on the corruption of Parliament and the sources of that corruption. He spoke, he said:

. . . with a very clear conscience, that nothing in the world has led me to such an undertaking but my zeal for the honour of this House, and the settled, habitual, systematic affection I bear to the cause and to the principles of government.

I think it is not presumptuous of me to ascribe these same lofty motives to all of us here today though I make no claim to be able to bring Burke's analytical and oratorical skills to bear on a subject which is obviously not new — and was not new, even in Burke's time.

In the same speech to which I have just made reference, Burke went on to say:

. . . I do most seriously put it to administration, to consider the wisdom of a timely reform. Early reformations are amicable arrangements with a friend in power; late reformations are terms imposed upon a conquered enemy: early reformations are made in cool blood; late reformations are made under a state of inflammation. In that state of things the people behold in government nothing that is respectable. They see the abuse, and they will see nothing else — they fall into the temper of a furious populace provoked at the disorder of a house of ill-fame; they never attempt to correct or regulate; they go to work by the shortest way — they abate the nuisance, they pull down the house.

This is my opinion with regard to the true interest of government. But as it is the interest of government that reformation should be early, it is the interest of the people that it should be temperate. It is their interest, because a temperate reform is permanent; and because it has a principle of growth, whenever we improve, it is right to leave room for a further improvement. It is right to consider, to look about us, to examine the effect of what we have done. Then we can proceed with confidence, because we can proceed with intelligence.

Despite the fact that parliamentary reform is not a new subject, it has taken on a new cogency in recent years as members recognise that they must change the way their institution functions if they are not to be left behind by far-reaching changes to the constitution and in government and society. In the United Kingdom, for example, The Report of the Commission to Strengthen Parliament, published in July 2000, identified numerous developments that had weakened the British Parliament in calling government to account. Many of these developments, including: the growth of party; the growth of government business, both in the volume of legislation and the complexity of legislation; and the growth of organised interests; are familiar features in many other countries.

Also in the UK, the Report of the Hansard Society Commission on Parliamentary Scrutiny, released earlier this year (2001), notes gaps and weaknesses in the working of accountability and sets out its vision of how a reformed parliament might work. Its stated central theme is that parliament should be at the apex of a system of accountability — drawing more effectively on the investigations of outside regulators and commissions, enhancing the status of select committees and clarifying the role of parliament and its politicians. Crucially, the Report says, Parliament must reflect and articulate issues of public concern. Making government accountable is a task undertaken by parliament on behalf of the electorate with the aim of improving the quality of government. Parliament must respond to, and highlight, the most pressing political issues in a manner that the public understands.

In a presentation on strengthening the Role of Parliament made at the CPA/Wilton Park Conference on Democracy, Parliament and Electoral Systems in June 2001, Lord Norton of Louth, Professor of Government at the University of Hull, referred to the variations which exist in the way legislatures carry out a range of tasks beyond their core-defining function of giving assent to legislation. These tasks, and the way they are carried out, make it possible for Lord Norton to identify three basic types of legislature:

Policy-making legislatures which have the capacity to reject or amend measures brought forward by the executive and also to formulate and substitute policies of their own. The only major national legislature in this category for any great and continuous length of time is the U.S. Congress.

Policy-influencing legislatures have the capacity to reject or amend measures brought forward by the executive but lack the capacity to formulate and substitute policies of their own. This category is occupied by most West European and Commonwealth countries.

Legislatures with little or no policy effect lack the capacity to reject or amend measures brought forward by the executive and lack the capacity to formulate and substitute policies of their own. This category comprises essentially legislatures in one-party states and communist regimes and is one which has shrunk considerably in recent years.

Lord Norton points out that it has been a feature of much of the literature on legislatures to claim that legislatures have ‘declined’ during the past century. It is questionable, he says, whether there ever was a ‘golden age’ of parliaments. Indeed, the quote from Edmund Burke which I referred to earlier serves to support this contention. Nevertheless, there are no grounds for complacency as parliaments are under pressure as a consequence of various changes. Unless parliaments adapt to meet those changes they are likely to become even weaker actors than now in affecting the outcomes of public policy.

He goes on to identify four variables internal to a legislature which strengthen its capacity to influence outcomes and groups them under the heads of:

Specialisation — carried out by committees which are permanent, small in size, parallel existing bureaucratic agencies, have exclusive jurisdiction over a particular sector and informed memberships with extensive powers of evidence-taking, amendment and agenda-setting.

The timing of committee referral is important and parliaments in which bills are referred to committee immediately after introduction have stronger committees than those where a Bill is referred after plenary session debate and agreement in principle. I might add that New Zealand follows the practice of early referral and Canada and Jamaica have experimented with it.

Agenda control — a parliament which has the capacity to determine its own agenda for legislative deliberation is likely to enjoy a greater ability to affect outcomes.

Resources — these are necessary, but not sufficient of themselves, for ensuring that a parliament has the capacity to affect outcomes. Resources must be available to parliament and individual members and include such things as offices and IT equipment, and also a research capacity in the form of researchers, libraries and increasingly, access to the Internet. The subject of how to make members of parliament more knowledge-based was the topic of one of the sessions at our recently-concluded Commonwealth Parliamentary Conference in Canberra.

Lord Norton also notes that for parliament to be strengthened its members must possess the political will to decide, at least occasionally, to give priority to the institution of which they are members over their loyalty to their party. Since his presentation there was an encouraging sign that this can happen even in the strongly party-bound House of Commons at Westminster when MPs rebelled against the Government’s attempt to remove two experienced MPs from the chairmanships of two influential House Committees.

Finally, Lord Norton refers to the inherent conflict between transparency and effectiveness and points out that a parliament must be as transparent as possible in what it does by voting openly rather than secretly and allowing its plenary and committee proceedings to be open to the press and public. He recognises that committees are often the site of negotiations between parties and conducting business openly may freeze party attitudes, making compromise difficult. The choice must sometimes be made between the imperatives of a representative assembly and a body engaged in deciding legislative outcomes.

In traditional parliamentary systems the critical function of oversight is so powerful that it includes both the selection and the removal of the Executive Government. In parliamentary systems with a limited number of strong parties, parliamentary voting is instrumental — merely a way to select the chief executive. My own country — Canada — at the federal level is a good example of this. But in many multi-party systems there is less certainty, often no party receives a majority and there may be a number of viable candidates for prime minister. The question becomes one of who can put together a coalition of parties and members so as to gain majority support. This was the case in New Zealand after its election in October 1996 and we have also the example of India where coalition governments have emerged following that country's last two elections.

Finally, there is the option of a minority government, one which has arisen on numerous occasions. I wish to get even closer to home and refer to the minority situation which prevailed in my home province of Nova Scotia after an election in March 1998 resulted in one party governing with only 19 of 52 seats in the Legislature. As is often the case in a minority situation the Government was prepared to make significant changes which strengthened the role of the Legislature in order to obtain the support of one of the minority parties to sustain it in office.

An important aspect of the oversight function is the role of the Opposition in situations where the governing party does command majority support in the Parliament. At a conference on the Role of the Opposition sponsored jointly by the CPA and the Commonwealth Secretariat held at Marlborough House in London in 1999 delegates made the point that mechanisms to promote accountability and exposure can only be effective if there is a general 'culture of accountability' and commitment, by Government as well as Opposition, to the overall effectiveness of the parliamentary system. They agreed that all aspects of administration must be subject to scrutiny and considered the mechanisms available to the Opposition to hold the Executive Government to account, including parliamentary questions, committees, the allocation to the Opposition of its own time for debate, the role of the Speaker, and the relationship between the Opposition and independent officials (such as the Ombudsman) whose function was also to act as a check on government.

Despite its place as the fundamental national institution underpinning nearly every Commonwealth country, parliament is the only institution composed of members who enter with no specific educational requirements, who often receive little or no

formal on-the-job training and who must immediately make complex policy decisions in the face of rival demands from all sectors of domestic society and the wider world. Parliamentary support staff, while expert in other disciplines, often take on legislative posts with little specialised training — sometimes without even the support of experienced colleagues.

Parliaments are governed by a series of seemingly arcane orders and rulings, which are often daunting for a newly-elected Member of Parliament (and for some who have been in parliament for a long time). Some Commonwealth parliaments are able to offer basic training for newly-elected Members of Parliament, either by mentoring or by arranging special introductory seminars. Others, notably the Parliament of India, produce handbooks explaining various parliamentary practices and procedures in an easily-digested format. But many Commonwealth parliaments lack sufficient staff and resources, and are unable to provide such orientation. Endeavouring to fill this gap is one of the main objectives of the CPA.

An article written by the Hon. George Cash, MLC, Deputy President of the Legislative Council of Western Australia in the current issue of *The Parliamentarian* lends further support to the idea that change in parliamentary practice and procedure is more likely to occur when voting patterns lessen the grip of major parties over Parliament. Diminishing influence of the major parties in Western Australia has resulted in the Standing Orders of the Legislative Assembly being completely re-written in accordance with the following general principles, which I suggest might well serve numerous other parliamentary chambers:

- streamlining of procedure; retention of the rights of all members to contribute to the House, and protection of the minority;
- rationalising the priority of business;
- incorporation of current practices into standing orders;
- elimination of obsolete standing orders;
- use of plain English; and
- use of gender neutral language.

The committee system was altered and the principles applied in this restructuring are also worth noting and were defined as follows:

- to provide a co-ordinated approach to oversight of government departments and implementation of policy;
- to enhance accountability;
- to increase parliament's role, and particularly that of backbenchers in the legislative process; and
- to provide an avenue for public input into the legislative process.

Mr Cash notes that it is still too early to assess the effectiveness of the new system but that considerable expectations continue. My hope is that he and others will

continue to monitor the changes as I believe that, in theory at least, they can provide a model which other parliaments might well follow.

Members and staff alike must develop the necessary professional skills while operating in an adversarial environment defined by precise practices to which they must both adapt and modify in order to find better ways to discharge their responsibilities. Helping the parliaments and legislatures of the Commonwealth to meet these challenges, the Commonwealth Parliamentary Association unites parliaments, their members and officials in a continuing quest to enhance the evolution of institutions through which societies govern themselves, fortifying the fundamental Commonwealth principle that every nation should be governed by free and democratic political processes.

One other important relationship remains to be mentioned — that between Parliament and the judiciary. Constitutions provide different roles for these arms of government but there seems to be an increasing tendency to question parliamentary proceedings through resort to judicial proceedings. The proper basis on which this should be done involves following the first principle set out in what has become known as the Latimer House Guidelines for the Commonwealth which were developed at a conference on The Relationship Between Parliament and the Judiciary originated by the CPA and held in conjunction with three Commonwealth legal and judicial non-government organisations in 1998.

The legislative function, states the first guideline, is the primary responsibility of parliament as the elected body representing the people. Judges may be constructive and purposive in the interpretation of legislation, but must not usurp parliament's legislative function. Courts should have the power to declare legislation to be unconstitutional and of no legal effect. However, there may be circumstances where the appropriate remedy would be for the court to declare the incompatibility of a statute with the Constitution, leaving it to the legislature to take remedial legislative measures.

A decision of the Supreme Court of Canada in 1993 in a case in which I was closely involved confirms that legislatures in that country must be able to carry out their constitutional functions while protected from judicial interference in respect of their internal proceedings and from interference with historical privileges of freedom of speech; exclusive control over their own proceedings; ejection of strangers from the legislature and its precincts; and control of publication of their debates and proceedings. The decision makes it clear that the privileges enjoyed by Canadian legislatures are as much a part of the constitution of the country as is the freedom of the press provision of the Canadian Charter of Rights and Freedoms.

The issues which parliaments and parliamentarians are likely to face in the 21st century and responses required to deal with anticipated changes were considered by a CPA Expert Group which met in Glasgow in December 1998. The Group

concluded that parliaments and parliamentarians will be required to adapt in a multiplicity of ways.

Institutionally, the Group's report says, parliaments must improve mechanisms to ensure accountability of direct and delegated responsibilities, encourage increased input from citizens and focus on re-establishing a trust and respect for parliament among citizens. Parliament must ensure the development of internal and external expertise in developing and evaluating policy proposals and legislation and provide members with the technology required to remain in touch with the world around them. Incentives for individuals seeking office must be sufficient to ensure that a broad cross-section of the populace is motivated to seek elected office. Parliaments may also have to consider the possibility of more differentiated roles for individuals rather than expecting them to play all the roles they have traditionally played.

From the perspective of the individual parliamentarian, there must be a broader focus on the part of political parties and parliaments in ensuring that representatives develop increased skills and knowledge with respect to accessing and evaluating information through use of information technology. Individuals must also develop a deeper knowledge and understanding of the principles of parliamentary democracy and the strengths and limitations of various forms of the democratic model. The increasing complexity of the legal environment will require representatives to have a greater knowledge of legislative development and interpretation. In a more complex world, individuals will have to develop more specialised knowledge in particular policy areas and may campaign and be elected on the basis of an expertise in one of the roles of policy initiator, representative, ombudsman or law-maker.

In short, to deal with the information revolution, parliaments and parliamentarians must become part of the information revolution.

I conclude by suggesting that if the CPA Expert Group has made an accurate analysis, and I believe they have, parliaments throughout the Commonwealth of Nations must recognise the trends which have been identified and ensure that their members have the tools to keep pace — otherwise the delicate balance between parliament and the executive government which is a hallmark of democratic parliamentary systems will go awry.

The dictionary tells us that value is the quality of anything that renders it desirable or useful. What renders parliament desirable and useful is that it is an essential element in the exercise of democratic government. Implicit in this idea is the concept that the main parliamentary functions of legislating, overseeing executive government and representing the people must be enhanced if parliaments are to provide legitimacy to the political process and increase public recognition and acceptance of the right of Parliament, and government generally, to act in some manner, and further the corresponding obligation of citizens to abide by that action.

In short, the value of parliament is that it is the linchpin of democracy. ▲