

Chapter Eight: The Whitlam Years: A Retrospect

Peter Ryan, MM

When John Stone asked me to undertake this task this evening, he told me that The Samuel Griffith Society's decision to hold its twelfth Conference this weekend was taken without it then occurring to the Board that today, 11 November, 2000 is the 25th anniversary of the decision by the then Governor-General, the late Sir John Kerr, to "do his duty" – a duty forced upon him by the then Prime Minister, Gough Whitlam. The significance of this date having subsequently been brought to its attention, the Conference Convenor then looked around for someone with sufficient temerity to undertake this retrospective and, for reasons best known to himself, picked on me.

The interests of this Society are of course chiefly to do with our Australian Constitution, and there is no doubting the relevance of Mr Whitlam's career to constitutional issues in this country, great and small. I shall have a little more to say on that aspect later in my remarks, but since my chief exposure to "the Whitlam venture" (as the late Alan Reid entitled his rattling good book on that topic in 1976) lay in other than constitutional fields, I have thought it best to speak about matters which I know, or think I know, something about, rather than – as seems to be more and more the fashion these days – to purport to pontificate at large.

In his latest book, Donald Horne can't resist a catty quip about the prime ministership of his old mate, Gough Whitlam: "to put it gently, he was distracted by office". Not quite up to Barry Humphries, perhaps, but a shrewd thrust, at which Gough might well murmur, in echo of George Canning: "save, oh save me, from the candid friend".

Prodigious reader and of remarkable memory, Whitlam would certainly recall that Canning was briefly prime minister of England early in the 19th Century. Has Gough, I wonder, ever compared himself to Canning: wide-ranging, learned, witty, ferociously articulate, prone to odd and injudicious outbursts of temperament. Canning, with a want of judgment astonishing in a man so experienced, took to pistols in a duel with Castlereagh. More absurdly, Whitlam lost control and hurled a glass of water into Paul Hasluck's face, across the parliamentary table.

Not indeed the history, but the *flavour* of the Whitlam government, its Proustian essence, so to speak, lingers in two trifling yet enduring recollections I have of Gordon Bryant, old Labor stalwart and member of Gough's Cabinet. Strolling between old Parliament House and East Block one sunny day in 1987, Bryant said to me, more or less out of the blue: "It was a tragedy, the way we took fright over the economy. Gough had explained to us that modern society had solved all problems of wealth creation".

At that time, I served on a small committee of which Gordon Bryant (though no longer in Parliament) was vice-chairman. It met in Parliament House, and our work was usually over by 11 a.m. Then Gordon's genial voice would be heard: "Let me take you all to scones-and-jam-and-cream in the parliamentary dining room", and the seven or eight of us would follow him gratefully downstairs for refreshment. Gordon always signed the chit.

"It's generous of Gordon, to shout us as he does", I said one day to a member of the committee. This man had lived long in Canberra, and looked at me hard. "Next time", he said, "you watch more carefully. Gordon slips the bill straight across to the Parliamentary Librarian, who has to pay it out of the Library budget".

There you have, like specimens on a microscope slide, two diagnostic samples of the Whitlam government. The first: "Money grows on trees – oh well, somewhere then. Don't be pedantic". The second: "I get a lovely feeling when I do people a favour; it doesn't really matter

who pays”.

I am not embarrassed to say that I voted enthusiastically for Whitlam at his successful election in 1972. Anyone who remembers Doctor Evatt and Arthur Calwell must concede Whitlam’s achievement in refashioning the ALP from an unelectable squalid rabble. And across the floor compared to Gorton and McMahon, Gough looked good.

I liked him. In conversation, he had a ready grip of many subjects then of great interest to me: as a publisher, certain vexing problems of copyright law; as a writer, public lending right, in justice to authors who lost remuneration when their books were borrowed from libraries; as an ex-serviceman myself, it counted that Gough had actually flown as an RAAF navigator against the Japanese. (Though I often marvelled how he managed to telescope that tall frame down sufficiently to fit it into the aircraft.)

A vast reader, he was perhaps not exactly a scholar, but (like Menzies) he knew what scholarship was. I can imagine no other Australian political leader who would sponsor – as Whitlam did – the scholarly publication in four grand volumes of the full Minutes of his party Caucus, and of the ALP Federal Executive, back virtually to the start of Federation. (In preparing tonight’s paper, I took those volumes down from the shelf, and felt an ancient pleasure re-reading Gough’s warm personal inscription on the title page of my own copy.)

How did a man of such qualities – restorer of the Labor Party, embodiment of the hopes of so many ordinary Australians of broad sympathies and general good will – come to preside over a government whose short span of office was yet long enough to debauch the standards of Australian public life, to degrade the tone of high office, and to chip the foundations of our Constitution?

Hard questions. Before grappling with them, we should note in passing one necessary pre-condition for such sad consequences: Whitlam gained power just as members of the post-World War II generation attained what might (in charity) be called their maturity.

They were raised in a peacetime which their parents had secured with blood and privation; they took eternal prosperity as much for granted as their right to breathe. Whitlam flattered them with the gift of the vote at age eighteen. Between this laid-back “me, now” generation and Gough there was a neat fit. He made sure of that.

Misgivings stirred from the moment Whitlam grasped the Canberra reins. With the electoral count still incomplete in some seats, Gough and his deputy Lance Barnard hurled themselves into a short-lived two-man Labor government, sharing every ministerial portfolio between the pair of them. This was not illegal, but it foreshadowed a style. That style was frenzy, an atmosphere in which the “mandate for change” had to be seen as being pushed relentlessly ahead. Shades of Mao Tse Tung! In its first full year of office, the Whitlam government introduced into Parliament an unprecedented number of over 250 Bills.

The “mandate” was not to be allowed to have its progress impeded by any delicacies of traditional procedure or administrative propriety. High officials of long service to their country would be summoned like footmen to the presence of an imperious Prime Minister, and be given orders. The late Sir Frederick Wheeler, holder of the statutory office of Secretary to the Treasury, was once, he told me, so summoned and instructed to take an action which he declined, as being improper. Whitlam insisted that he proceed; Wheeler said that he would invoke the constitutional standing of his office, and demand an inquiry.

Under such acrimony, smoothly functioning government cannot long continue, nor did it. Ministerial “advisers” (aka toadies) proliferated at the expense of career public servants, who by long tradition had been dedicated to the provision of informed and impartial advice to governments of whatever stripe. Far from faultless though it was, that level of discreet “official government” kept the wheels oiled and the nuts and bolts tight for constitutional decency as well as democracy. During a change of government – during a crisis – that “official government” offered competence, calm and continuity – qualities of especial virtue in a federation. Under

Whitlam, it began to disappear – a legacy he left us which federal Australia did not need. Sir Paul Hasluck regarded Whitlam's demotion of the public service to a mere ministerial adjunct as one of the most baleful developments to threaten a hitherto successful three-quarter century of federation.

Australia's Constitution rests on the foundation of a federation of sovereign states. Whitlam's 1972 campaign manifesto disclosed no intention to overturn it, and he would not have been elected if it had. But the unstated, underlying cast of his mind soon emerged.

Petty, perhaps, but revealing, the envelopes of official mail from Canberra ceased to bear the name of the States in the address – merely the postcode.

Departments, entities and appointments which for decades had borne the title "Commonwealth ..." were re-named "Australian ..", with the none-too-subtle inference that anything else was *non*-Australian (and very likely *un*-Australian into the bargain).

Payment of Commonwealth financial grants directly to local government – straight from Canberra to cities and to shires – was an attempt at subversion of State powers. It would have undermined the ability of the States to carry out functions which were their constitutional responsibility, and might have reduced much of our everyday life to chaos. Municipal government is notoriously prone to corruption and inefficiency, yet even a pretence at proper Commonwealth accountability and audit would have added a whole new province to Canberra's empire of bureaucracy.

To these particular instances one might add, by way of example, four other instances where the Whitlam government consciously, and one would have to say deliberately, set out to subvert the "federal compact" between the Commonwealth and the States.

First, there was legislation providing two Senators for each of the Australian Capital Territory and the Northern Territory, despite the fact that, clearly, neither of those entities was a State. In 1975 this legislation was upheld by the High Court 4-3, on what might be seen as the deciding vote of Mr Justice Murphy, as that unworthy man had by then become (on which, see below).

In the same vein there was legislation providing for Members of the House of Representatives for the A.C.T. and the Northern Territory to be allocated on the same basis, and having the same voting powers, as Members representing State constituencies.

Then there were the various "regional centres", designed to provide alternative centres of authority to the States, set up by Tom Uren and his Department of Urban and Regional Development of blessed memory – Albury-Wodonga, Bathurst-Orange, and most ludicrous of all, Monarto. All of them – and particularly Monarto – sank without trace, but their failure does not affect the judgment as to their constitutionally mischievous intent.

On a much larger scale, there was the 1974 referendum seeking power for the Commonwealth to make laws governing prices and wages. As usual the people, once given a say in the matter, firmly rejected any thought of providing additional powers on either count to Canberra.

Above all, of course, was Whitlam's final effort to govern without parliamentary authority to spend, including his serious proposal, seriously pursued, to raise money from the banks by having the Executive government issue promissory notes. This latter proposal, so strangely reminiscent of the issuance of *assignats* by the French Revolutionaries on whom, at this stage, Whitlam appeared to be modelling himself, was all the stranger since, even had the banks agreed to provide funds in that manner, the Government would still have possessed *no authority to spend* the funds so provided. A man so steeped in Parliament, yet apparently unaware that that is what an Appropriations Bill is – an *authority to spend*; and that, so long as the Parliament refuses that authority, access to any amount of mere money makes no legal difference whatsoever. By that time, it almost seems, mere legality no longer mattered.

The fact is that constitutional and administrative sin under Whitlam spreads before us a

pasture so broad that we might graze there all night. Wiser, perhaps, if we concentrate on a single corner of the paddock, and see whether illumination comes from Whitlam's style of making appointments to the public service and to other official posts. When vacancies were to be filled, a quite new emphasis had by 1975 settled on party loyalty and ideological soundness as necessary criteria for appointment. To head the newly-created Department of the Media, Jim Spigelman stepped straight out of Gough Whitlam's own office; Peter Wilenski, who had never even served as a Second Division officer, was made Secretary of the Department of Labor and Immigration. But what of the character of Whitlam's appointments to the very highest offices? Of Senator Vince Gair as Ambassador to Ireland; of Senator Lionel Murphy to the High Court; of New South Wales Chief Justice Sir John Kerr to be Governor-General?

All became disastrous public embarrassments, each in his own distinctive way, yet all sharing one unhappy characteristic: none had been appointments straightforwardly made in the first place. The only defensible approach to filling a vacancy in high public office is to seek the person whose worth and qualities fit them best to do the job well: as simple as that. In the cases we are considering, the selection was skewed by ulterior motives, and deeply tainted by the low ends of politics; all were made by an administration characteristically prepared to abandon the decencies of means in its partisan pursuit of ends.

Vince Gair was a coarse and corrupt political bruiser. He was given an assisted passage out of the Queensland Labor Party, and then came to exercise his talent for exploitation on the Democratic Labor Party, many of whose more senior and serious members fervently wished him somewhere else. This was the Senator who, emerging piously from a parliamentary committee on pornography, produced from his pocket with a chuckle a sheaf of especially steamy postcards, and passed them around in the corridor for general delectation.

Whitlam made this man Australia's Ambassador to Ireland, and the Irish government was not amused. It had, after all, paid Australia the compliment of sending us such diplomatic scholars of distinction as Dr Eoin MacWhite; a grub like Gair was hardly a fair exchange. It was faintly like making Christopher Skase our Ambassador to Spain.

In his consideration of the appointment of Gair, we may reasonably doubt whether the proper dignity of foreign relations so much as crossed Whitlam's mind. All he wanted was Gair out of the way, and his replacement by a more acceptable Senator from Queensland. And even in that manoeuvre he was frustrated by a wilier operator, Queensland Premier Bjelke-Petersen. But Australia, in the world's eyes, appeared ridiculous and cheap. For the Whitlam government, our international reputation was a small thing beside the low requirements of domestic politics.

The Gair embarrassment was short-lived, but with the consequences of Lionel Murphy we still live; the final chapter will not be written until some time after the year 2016, when the Murphy Commission papers emerge from the seal of their extraordinary 30-year embargo by special Act of Parliament. (Prime Minister Hawke wanted them sealed in perpetuity, but the Senate frustrated his design.)

Murphy, a fellow member with Whitlam of the New South Wales bar, was a "reforming" Labor lawyer, and a larrikin. His associations with the dubious side of Sydney life were well known, nor did he abandon them when he went to Canberra. For example, when he held the Customs portfolio, he exercised his ministerial discretion in favour of the notorious Abe Saffron. And when Senator Murphy appeared on the loose in the Parliamentary Library after the dinner adjournment, male staff members kept an unobtrusive eye on the comfort of their female colleagues.

Murphy must receive credit for raising the relevance and performance of the Senate, but his term as Attorney-General is not something Australians should recall with pleasure. There was his extraordinary "raid" on the headquarters of ASIO, a body for which he himself held ministerial responsibility. That (like Gair) was an incident. But we still endure the consequences (and the costs) of his Family Court. This unwise constitutional innovation "stole" a jurisdiction from the States, endorsed new principles not merely of law but of morals, and created pools of irremediable

misery around the continent. And today, to mop up the messes, we are creating yet another judicial tier with the establishment of the Commonwealth Magistracy.

As first law officer of the Crown, Murphy gave his Cabinet colleagues very dubious guidance. With Whitlam resolved to continue in government even without parliamentary supply, his obliging Attorney-General gave a clean bill of health to extraneous finance, including the preposterous “Khemlani loans”; they were quite constitutional, said Murphy, because they were for “temporary purposes”. This outrageous advice regarding what were purportedly 20 year borrowings (subsequently called by one of his Cabinet colleagues “a kerbside opinion”) was given on Friday, 13 December, 1974. Murphy’s reward was not long delayed: fifty-nine days later he was elevated to the High Court.

Here some of Murphy’s judgments treat the Court, not as the disinterested guardian of the Australian Constitution, but as an alternative instrument for achieving Labor policy. Then he faced two criminal charges of having, some years earlier, attempted to pervert the course of justice. Acquitted by juries, he was within months engulfed by a parliamentary commission of inquiry into further allegations of a most scandalous kind.

Whitlam must have known that Murphy was not a fit and proper person for high judicial office; known, in fact, that he was a bad man. Did the appointment show that, in Whitlam’s heart, he held the Australian Constitution in contempt, a mere inconvenience to be subverted the moment it impeded his imperial will?

Or was Donald Horne right, that Whitlam was “distracted by office”; too whirled about by the daily cyclones of national politics to take calm thought and counsel about an appointment to our highest Court? Alas, it may be so. When someone remonstrated that Murphy’s elevation had lowered the tone of the Court, a jesting Whitlam is said to have replied: “True, comrade, true; but look how I have raised the tone of Cabinet”.

Very funny, no doubt, as Whitlam could often be. But a comedian’s hands are not always the best ones to meddle with the delicate organs of our federal Constitution.

First, an appalling Ambassador; second, a disastrous judge; a catastrophic Governor-General may seem to make three of a kind. But in fact Sir John Kerr is something quite different. Here was a man of true intellectual parts, experienced and able in the conduct of great affairs. When barely out of his twenties, he was an army Colonel, and accompanied the commander-in-chief, General Blamey, on an important mission to the War Office in London. He had the capacity and experience to handle the Australian Governor-Generalship, when Whitlam appointed him to it in July, 1974. The problem was his personality or, more precisely, the personalities of Kerr and Whitlam, brought into explosive apposition.

For the last two years of World War II, I served with Kerr in the Australian Army’s Directorate of Research and Civil Affairs, and remained sporadically in touch with him until his death. While never doubting his capacities, and his power to charm when he wanted to, I judged him to be envious, devious and compulsively ambitious; he could also be an embarrassingly ugly drunk.

Many who knew him well recoiled from the news of his vice-regal appointment. On the very day it was announced I bumped – literally bumped – into my old friend Tom Fitzgerald of *Nation* fortnightly and *The Sydney Morning Herald*. At the instant of collision, without even an exchange of greetings, we both blurted out the identical words, almost as if we had rehearsed: “Gough’s gone mad! Kerr will destroy him!”

Whitlam’s judgment had been sound when he offered re-appointment to the incumbent Governor-General, Sir Paul Hasluck, and it was Australia’s misfortune that Sir Paul, for personal reasons, could not accept. The explosion of November, 1975 was not inscribed prospectively in our history, as if in some Greek tragedy. There are cogent reasons to believe that a Governor-General steering a different course might have averted it. Hasluck himself thought so.

Perhaps Kerr drove a hard bargain; perhaps Whitlam was desperately keen to see his second

choice in residence in Yarralumla; perhaps both propositions are true. In any case, the salary, pension and perks of the Governor-General rose sharply on Kerr's appointment. Perhaps Whitlam believed that his new Head of State had been installed in an office so congenial to him (and to his wife), and on terms so attractive, that he would be for ever complaisant towards his benefactor. Hah! How very ill he understood his man!

Kerr and Whitlam both wrote books about 1975; so did Sir Garfield Barwick, Chief Justice of the day; so did others, including at least one learned member of The Samuel Griffith Society. To that great mixed body of scholarship and advocacy I can add two tiny points of what may perhaps be light.

The first one: as storm clouds presaging 11 November began to loom, and Whitlam grasped that the man in Yarralumla retained a powerful mind of his own, Gough began to refer to him as "my creature". "Kerr can do no other than as I advise him", he said. "He is my creature". As always happens, some "damned good-natured friend" was at hand to report the slight to Kerr.

The second one: years later, in reminiscent chat, Kerr returned to the fateful day. I report his exact words: "I was sitting that morning for Clifton Pugh, who was painting my portrait. The door opened a little and Dave [Sir David Smith, Official Secretary] motioned to me to come back to my study. The execution warrant was ready for me to sign for that feller Whitlam".

A chief reason for having a Constitution, and for insisting that it be maintained, is to protect us all from monstrous egos which have got off their chains.