Chapter Four

The Three Monkeys Syndrome and Possible Remedies

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An inventory of Royal Commissions and Boards of Inquiry into alleged political corruption will reveal that some 44 scandals have been investigated in Australia since 1960, most of them involving State instrumentalities, and the most spectacular of these having occurred in the past five years.

It has become a tired cliche to refer to Western Australia's "loss of innocence" in the mid 1980s, and I will not rehearse the reasons for this State's fall from grace, but before attempting an assessment of the Royal Commission into the Commercial Activities of Government and other Matters, I would like to offer a few tentative thoughts on the reasons why official corruption has been more prevalent at State level than in the Commonwealth arena.

Firstly, the Commonwealth is more concerned with broad policy issues which don't lend themselves to bribes, kick–backs or decisions affected by conflict of interest than the States, and the key decision makers are physically more remote from many of the day-to-day decisions where corruption can occur. Secondly, the Commonwealth has been much more conscientious in developing a system of parliamentary scrutiny than any of the States, and has set in place administrative review processes which tend to insulate the political actors. Perhaps it is also significant that corruption is more likely to surface in States or regions where rapid development and industrialization are occurring than in States experiencing stable economic conditions.

I see my principal task in this paper as being a review of the adequacy of the Royal Commission Report, and its recommendations for reform, as safeguards against corruption and serious impropriety in our political system. But something needs to be said also of the opportunities available to the community to identify corruption and signal the alarm. (Otherwise, the reference to `the three monkeys syndrome' in my title might seem largely irrelevant).

The Western Australian community contained many wise monkeys in high places, who covered eyes, ears and mouth during the mid 1980s, but by way of partial defence of them (and many of us), it must be acknowledged that hard facts are difficult to obtain in the world of secret and complex business transactions, that the media were themselves not engaged in serious investigative reporting, that harsh libel laws do not favour civic minded courage in this treacherous field, and that because there was no tradition of corruption in government in W.A. there was perhaps a low level of public expectation of serious wrongdoing.

That there were a few fearless sceptics and crusaders like Bevan Lawrence and Peter Kyle was most fortunate, and had their names not been associated in public reporting with a political party then in Opposition, their appeals for a commission of inquiry might have been heeded earlier.

Because I witnessed the degradation of processes of responsible government in Queensland prior to the establishment of the Fitzgerald Commission by Premier Mike Ahern, I am tempted to compare the conditions and circumstances under which alarm bells were sounded in Queensland during the late '70s and in W.A. during the late '80s.

In Queensland the danger signals were far more evident to a discerning citizen than in W.A., because abuses of the political process itself were so numerous and so publicly and defiantly exhibited. Abandonment of the standard procedures of Parliament, politicization of the

bureaucracy, and systematic withholding of information from Parliament were just a few examples of such abuses. I referred to these in a series of newspaper articles and radio/television commentaries in the late 1970s as a corruption of the processes of responsible government. Premier Joh inferred from my statements that I had branded him as personally corrupt. I had not taken that bold step, but I was stressing that continued debasement of the ground rules of responsible government provided safe territory for conventional forms of personal corruption. Unfortunately, it was not until allegations of specific personal corruption began to surface in 1986–87, and then due largely to the persistence of two investigative journalists, that a mounting chorus of public indignation prompted a commission of inquiry. And had not massage parlours, poker machines and policemen been tangled up in serious bribery allegations, the clamour might not have been so loud. In Western Australia, as Bevan Lawrence has indicated, the outward and visible signs were very different.

An `impossible' assignment

In being expected to produce a thorough but realistic blueprint for political and administrative reform, the Royal Commission into Commercial Activities of Government and other Matters was set an impossible task by a hounded and increasingly nervous government, a government understandably eager to be seen to be placing no fetters or limits on the Commissioners' investigations. The task was impossible because of (i) the terms of reference presented to them; (ii) the limitation of time for serious consideration of necessary reforms; and (iii) the difficulty presented to legal practitioners in handling certain matters of political process which do not easily lend themselves to legal discourse.

The Commissioners' terms of reference required them not merely to inquire whether corruption, illegal conduct or improper conduct had occurred, and whether any matter should be referred to an appropriate authority with a view to the institution of criminal proceedings, but also whether "changes in the law of the State, or in administrative or decision making procedures," were "necessary or desirable in the public interest."

It would be difficult to imagine more open ended terms of reference than this. Although it might be possible to identify defective procedures of accountability in a political system, the scope for remedial practice is almost unlimited. Certainly there was no unanimity within the group of Commission consultants as to how far into the political system one needed to probe to do full justice to the government's brief, and we faced a strong temptation, not always resisted, to canvass any reform that held promise for the betterment of the machinery or processes of government in W.A.

The second major difficulty facing the Commissioners was the extraordinarily tight time frame within which they had to undertake their examination of the political system between late completion of the First Report and the deadline for submission of the Second Report. Because the investigations of more than a dozen episodes of government business dealings required more time than had been originally allocated, the Commissioners sought two extensions of deadline. By the date of presentation of the First Report (August 1992), barely two months remained for the Commissioners' focussed consideration of the issues of political and administrative reform. Admittedly, a first draft of the Second Report had been in preparation for several months, being principally the handiwork of resident legal counsel, Michael Barker, and a legal consultant from the Australian National University, Professor Paul Finn, but involvement of the Commissioners themselves at that stage was of necessity perfunctory and spasmodic.

The Commissioners faced an awkward dilemma, because they were well aware of the mounting costs of the Commission and the increasing impatience of government which was heading towards a critical election. They knew that to recommend a transfer of responsibility for further investigations to a yet–to–be– established Commission on Government would generate public

cynicism and a corresponding decline of community interest in reforms of any kind. They therefore decided to review the draft placed before them and proceeded to work through it at breakneck speed. They made considerable refinements to the document, but it was by now too late to re–arrange its structure and basic thrust.

The Commissioners' difficulties were compounded by the fact that two very different sorts of expertise were required for the two Reports. The first inquiry belonged exclusively to legal counsel and members of the judiciary; the second required an admixture of constitutional legal expertise and an understanding of political processes.

As indicated elsewhere in this paper, neither the legal consultants nor the Commissioners seemed entirely comfortable in confronting issues of political process, especially those relating to ambiguous or contested conventions of ministerial responsibility. The sphere of statutes, regulations, codes and tribunals, where authority is specific and enforceable, seemed more to their liking.

Official and public reactions to the Second Report

The Commission's First Report, published in six volumes, found that the system of government in W.A. had been placed at serious risk by a series of improprieties committed or sanctioned by members of the Burke and Dowding Governments, and in their Second Report Commissioners opened their discussion with the opinion that, taken together, the catalogue of wrongdoing discloses "fundamental weaknesses in the present capacity of our institutions of government, including the Parliament, to exact the degree of openness, accountability and integrity necessary to ensure that the Executive fulfils its basic responsibility to serve the public interest." This is obviously considered by many parliamentarians on both sides of the political fence as too harsh a judgment.

The Commission's Second Report was bound to alienate the then Opposition and to disappoint a large number of informed observers by its priorities and omissions. Ironically, the political parties which pressed hard for the Royal Commission while in Opposition viewed many of the published recommendations with scepticism and have proceeded so far to implement only two of them, whereas the government which was tarred with the brush of WA Inc. scandal accepted almost all the recommendations within days of the Second Report's presentation. Had the Labor Government been returned at the February '93 election, perhaps its enthusiasm for reform may have been dimmed somewhat.

The coalition parties extracted considerable mileage from the First Report in the summer election campaign, but they apparently regarded certain of the recommendations of the Second Report, notably those relating to electoral reform and restructuring of the Legislative Council as a house of review, as either naive or irrelevant to the prevention of corruption.

I regret very much that electoral reform received such emphasis in the Second Report, partly because electoral malapportionment was not an obvious or direct cause of the improprieties identified in the First Report, and partly because it could have been predicted that the coalition parties, especially the Nationals, would reject any recommendation for abandonment of weighted rural voting. My fear was that any emphasis on electoral reform would arouse distrust of the entire Report among the coalition parties, a fear that seems to have been fully justified.

The Second Report contained forty recommendations. Of these, three have been or are in the process of being implemented. The two major recommendations on which the Court Government has taken legislative action are bills for the establishment of a Commissioner for Public Sector Standards, coupled with abolition of the office of Public Service Commissioner, and for establishment of a Commission on Government. Both are still awaiting their final reading in Parliament.

The intended responsibilities of the Commissioner for Public Sector Standards follow broadly those recommended by the Royal Commission, but the Commission on Government will be more narrowly focussed on issues relevant to the prevention of corrupt, illegal or improper conduct in the public sector than the Second Report had proposed. Another departure is the deletion of a requirement that the Commission chair be a person well versed in constitutional and administrative law, a change which I fully endorse.

The original bill listed fifteen matters for the Commission's attention. The revised bill listed twenty–four, the additions being: Cabinet secrecy, the Financial Administration and Audit Act, an administrative appeals tribunal, the functions of the Auditor General, scrutiny of state–owned enterprises, public servants serving on boards, the Official Corruption Commission, guidelines for caretaker governments, and the adequacy of the processes by which the constitutional laws of the State may be changed. It seems to me to make sense to confine the list of specified matters to those which relate to the causes or prevention of corrupt, illegal or improper conduct by public officials.

Strengthening Parliament

At the forefront of the Report's proposals for reform was an enhancement of Parliament's role. This concern about a general tendency across Westminster–derived political systems to allow political executives to dominate Parliament was shared by all consultants and the Commissioners themselves. There was no dissent from the view that a stronger Parliament, demanding direct accountability from the Burke and Dowding Governments, could have averted the worst consequences of WA Inc. transactions.

Because the trend towards Executive dominance seems so inexorable, it might have seemed a little naive for the Commissioners to argue for specific reforms of the political process with any expectation that they would or could stem the tide, but they were surely right to lay considerable emphasis on the problem. I think, too, that most of their specific recommendations relating to Parliament were reasonable enough in themselves.

What the Report could not have been expected to acknowledge was the general unwillingness of major political parties to bring about a strengthening of Parliament if it has to be at the Executive's expense. Since Oppositions live in hope of becoming the next government, their leaders do not exhibit much enthusiasm for a fettering of the Executive.

But the problem of reviving or strengthening Parliament at the State level in Australia involves more than the challenge of converting the thinking of Opposition leaders. Consider, for example, the efficacy of the committee system. The Commission Report lays considerable emphasis on the need for a well developed committee system, even in a relatively small legislature, but a strong committee system requires a strong measure of bipartisanship and independently minded chairpersons to ensure their credibility.

These desiderata are greatly assisted by the convention of electing Opposition members as chairs of key parliamentary committees, a recommendation so far resisted by the Western Australian Parliament and not supported by government. Committee chairs drawn from the ruling party will not be taken seriously by the Opposition or the general community unless they have demonstrated a capacity to defy or embarrass government, but the courage to behave this way does not come easily to a committee chair who is earning his or her spurs for filling the next Cabinet vacancy. Only in larger Parliaments, and then usually in powerful upper houses, will independent committee chairs emerge. This unusual breed of political actors will have decided to rest their career hopes on the high profile and prestige of their committee office – rather than any confident expectation of ministerial office. There is little evidence of such career choices having been made in the Western Australian Parliament.

Issues by–passed by the Commission

The Second Report contains many sensible recommendations pertaining to the structure of government and its nexus with Parliament, but the political process itself was not canvassed thoroughly. In particular, the Commission was reluctant to examine the status of ministerial responsibility. The Commission also remained unpersuaded that any re-examination of the Western Australian Constitution was warranted. Although I understand and respect the Commissioners' hesitation to traverse this difficult territory, I am still of the view that a government or community committed to minimize the incidence of corruption in public life would have been assisted by more extensive discussion of the key conventions of cabinet government and some consideration of the adequacy of the State Constitution. On the other hand, certain issues which occupy considerable space in the Report, for example freedom of information, the need for a State administrative appeals tribunal and other matters pertaining to individual rights, did not seem to me to relate directly to the causes of W.A. Inc. scandals.

Ministerial responsibility

The draftsmen of the Commission Report were obviously more comfortable in discussing the need for `watchdog' agencies, new structures for parliamentary committees and new regulations to govern the public service than in discussing sensitive and slippery questions concerning the political process itself, particularly those concerning ministerial responsibility.

It took some effort to persuade the lawyers preparing a first draft of the Report that anything more than a perfunctory reference to ministerial responsibility should be included in the text. In the event the Commissioners allowed three pages of discussion on `Cabinet and cabinet procedures', but I would have welcomed a much lengthier discussion, since abuse of long established conventions on ministerial responsibility lies at the heart of any explanation of `WA Inc.'

Admittedly, the concept of collective responsibility did not lend itself to easy treatment in the Report. Although there is widespread agreement that the collective responsibility of Cabinet requires Cabinet unity, there is no infallible rubric on which issues Ministers must bring to Cabinet, or what penalty a government should suffer if a Minister commits government to a dangerous course of action without formal Cabinet approval. Although the Commission demonstrated that Premiers Burke and Dowding held unacceptable views of the role of Cabinet, it did not wish to pronounce judgment on whether serving Ministers in the Lawrence Government who had survived from the Burke and Dowding Cabinets should be expected to resign in the wake of Commission findings. Speculation in the print media focussed particularly on whether the Attorney General, Joe Berinson, should have escaped the Commissioners' condemnation.

The Constitution

The Royal Commission's Second Report makes no reference to the State Constitution. Several members of the public who offered written submissions to the Commission called for significant amendments to it, and two academic critics, Patrick O'Brien and Martyn Webb, proposed the drafting of a new Constitution via a popular convention, a Constitution which would abandon the structure and process of responsible government in favour of a political system modelled on those of the American States, favouring a separation of powers and intricate checks and balances. While not favouring such a drastic step myself, especially if it is not pursued by all States collectively, I do think the Commission Report should have addressed the adequacy or otherwise of this State's Constitution. I say that not so much because I wished to see a drastic change of direction, but rather because I wished to see a much more complete, tidy and informative document than we must currently contend with.

I appreciate that The Samuel Griffith Society is very wary of proposals to re–write our national Constitution, and perhaps by implication it would be sceptical of proposals to re–write the State Constitutions. But your Society is also eager to promote an understanding of the Constitution among the citizenry and to celebrate it. I warmly identify with those objectives, but think we should focus also on the need to understand the State Constitution.

I realize, too, that there are dangers in allowing one's Constitution to say too much, but a first reading of the Western Australian Constitution by even a highly intelligent layman would not shed much light on the structure or principles of government in this State. I submit that one helpful deterrent to a repeat performance of WA Inc., or another serious drift into political corruption, would be an intelligible and informative Constitution.

Values and education

No set of institutional reforms can guarantee that improprieties or official misconduct will not recur within the political system. In the last resort, the health and integrity of a body politick depends on the moral character of its political actors and the vigilance of their constituencies. In other words — personal values and political education. The Commission Report offers brief acknowledgment of these requirements, but could, and probably should, have had considerably more to say on both matters.

There is ample scope for debate as to how civic ethics can be revived, and one can certainly respect the Commissioners' wariness about offering any prescription. In an earlier age, one was permitted to cite a general framework of Judaic–Christian personal and social ethics as the source of discipline, but that is no longer universally acceptable.

The Commissioners would have been on safer and surer ground in pressing for a stronger diet of political education in the general community, as a vehicle for sensitizing the electorate to their rights and opportunities to call governments to account and, above all, to inform them of the vulnerability of their particular version of a liberal democratic political system.

A system which depends as much as ours on observance of conventions, on a Constitution which tells one practically nothing about the political process, and on a subtle but sophisticated set of relationships between Cabinet and Parliament, needs to be understood by the electorate if public accountability is to be taken seriously.

A 1987 survey revealed that just over half of the Australian population were aware of the existence of our national Constitution, let alone its contents. The percentage aware of a State Constitution would be even smaller, I suspect. But no less distressing than an ignorance of the Constitution is the widespread ignorance of the axioms or guiding principles of responsible government.

The Commission Report recommends induction courses for newly elected members of Parliament, but the electors themselves need a basic level of political education too. And, contrary to apparently widespread assumptions, advanced secondary courses in government and politics do not have to be essays in dogmatics and ideological indoctrination. A politics syllabus, preferably allied to legal studies, can be rigorous, informative and stimulating. Above all, both electors and the elected need to be reminded again and again that our chosen form of liberal democracy, the `Westminster model' if you like, is highly vulnerable to abuse and distortion — because of its very heavy reliance on conventions, on unwritten rules, which means the good faith and integrity of political practitioners.

The possession of a formal education by our parliamentary representatives offers no guarantee of a willingness to abide by the rules of the game. After all, the Burke ministry was probably the best educated ever to hold office in Western Australia! But a better educated electorate, at least in political terms, will ensure more efficient vigilance.

Conclusion

The ongoing impact or influence of the Western Australian Royal Commission Reports should not be measured solely by the number of prosecutions which issue from findings in the First Report or the number of recommendations for institutional reform adopted by the Court government. (I am reasonably confident that a fair number of recommendations will eventually be accepted, especially those relating to the involvement of government in commercial activities and the powers of the Auditor General.)

The judicial inquiry was in itself a major purgative exercise for the State, and although the community's collective moral outrage has abated, the Reports will stand as major reference points for political parties and opinion leaders, especially the media, in public debate about the adequacy of our political institutions or the propriety of particular behaviours.

Fortunately, there is a clear commitment by the ruling coalition parties to establish a Commission on Government, and from it may flow not merely sound proposals for refinements to our mechanisms of government accountability, but also useful public discussion papers outlining the options for change. The latter could be valuable educative tools for Western Australians, just as EARC discussion papers have been useful to Queenslanders in the post–Fitzgerald Commission years.

I must nevertheless close on a cautionary note. It is unlikely that many Western Australian parliamentarians, regardless of party affiliation, will welcome significant changes to the current political system. Labor parliamentarians, to be sure, will gladly accept an electoral formula of one vote: one value for both Houses of Parliament, but few if any will join a crusade to extend or strengthen parliamentary restraints on the Executive arm of government.

Secondly, although it can be demonstrated that the circumstances which gave rise to the Royal Commission were highly unusual, it would be unwise to argue, as some senior Liberals have, that because the improprieties and costly errors of judgment committed by senior members of the Burke and Dowding Governments were confined to a single `barrel of bad apples', whose behaviour was unique and unlikely to be repeated, there should therefore be no tampering with the political machinery. While political actors will continue to be of mixed quality and character, our elected representatives tend to exhibit disturbingly uniform bad behaviour traits.

These two observations simply highlight the need for eternal public vigilance, and the fact that Parliament itself should not be the only or even principal arena for public discussion of the health and welfare of our body politick.

Again and again we are reassured by political leaders from across the political spectrum that the `Westminster system' is the model framework of liberal democratic government, and that they themselves subscribe fully to its conventions and rules, but we seldom hear any outline from them of what they understand to be the basic principles and ground rules of that system. And for many non–parliamentary critics, "the phrase is a cover for normative views of the way in which they believe the system ought to work, normative views which far extend any sensible interpretation of the term".

I therefore agree with the strong view expressed by the Royal Australian Institute of Public Administration in its written submission: "In short, the Westminster model is not the solution to the problems of government in W.A., it is actually part of the problem."

That is not to suggest, however, that we need a wholesale re–design of the Constitution. That "would waste the accumulated experience which enables existing institutions to work reasonably well". But there does need to be a concentrated rethink about such matters as the role of the Upper House, and there certainly needs to be a clear understanding and exposition of the place of ministerial responsibility in our system of government.

This would help develop within the State a strong culture of accountability, of which integrity and openness are the key components. Within such a culture the so-called `three monkeys syndrome' will find no home.