Chapter Seven

The 1975 Dismissal: Setting the Record Straight

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Australians are constantly being told that our Constitution is a "horse and buggy" document badly in need of reform. The chief purpose of The Samuel Griffith Society is to ensure that, if any alterations are to be made, they do not occur without the closest study. As we know only too well, amendment in accordance with s.128 is not the only way to alter our Constitution, and this Society has done a sterling job in drawing attention to the way in which this nation's founding document has been subverted by political and administrative action, and by imaginative judicial interpretation. There is also another way of subverting our Constitution, and that is by misrepresenting the meaning and the significance of action taken in accordance with its provisions. It is about this method that I wish to speak tonight.

The accurate recording of history requires objective detachment. As I said at the time of Sir John Kerr's death in March 1991, history should be written by those "who were not personally affected by the events or their consequences, and who can do as historians down the ages have done, and look objectively and dispassionately at the events and the circumstances – the behaviour, the conditions, the attitudes of all of the participants in that event."

Mind you, not everyone who writes long after an event, and who has available accurate contemporary accounts, will necessarily produce a fair and accurate account, for, in addition to careless or inadequate research, we may be dealing with poetic licence or simple error on the one hand, or bias, prejudice or even malice on the other. But if one did want to write a fair and accurate account of this country's greatest constitutional crisis, what primary and secondary sources would be available to such an historian?

The most obvious sources are participants or eye-witnesses. Sir John Kerr, Gough Whitlam and Sir Garfield Barwick have recorded their accounts. But what of their contemporaries? How accurate their knowledge? How accurate their understanding? How accurate their memories? And most importantly, how accurately did they place on record their knowledge, their understanding and their recollections?

Let me try to answer my own questions by giving just three examples which I recorded shortly after Sir John's death. Each example involved an experienced parliamentarian who had held office as a Minister in the Whitlam Labor Government. I shall not mention names, for my purpose is merely to make my point, and not to point the finger.

My first example concerns the former Minister who greeted the formation of the Australian Republican Movement in 1991 with the comment that, come the Republic, there would be no more Supply crises. He had obviously forgotten that, just a year earlier, in 1990, the United States Congress had at first refused to pass President George Bush's Appropriation Bill and federal government had ground to a halt; and in the same year President Ghulam Ishaq Khan of Pakistan had dismissed Prime Minister Benazir Bhutto and had ordered an early election. So much for accurate knowledge.

My second example concerns a former Minister who wrote, at the time of Sir John Kerr's death, that he couldn't understand why Sir John, in 1975, in insisting on calling an election, hadn't allowed Gough Whitlam to go into that election as Prime Minister. After many years in Parliament and as a Minister and member of the Federal Executive Council, he still didn't know that, under our system of constitutional government, a Governor-General requires ministerial advice to dissolve Parliament and to issue writs for an election. That was the whole point and purpose of the 1975 dismissal, for Mr Whitlam had refused to give that advice, yet here was an experienced parliamentarian and Minister of the Crown who had been directly affected by the

dismissal who had never cottoned on to just why it had happened. So much for accurate understanding.

My third example concerns another former Minister who, along with his fellow Ministers, was photographed at Government House, Canberra, in 1973, with The Queen, just after she had presided over a meeting of the Federal Executive Council. The photograph was reproduced, with names underneath, in the Australian Labor Party's centenary history published in 1991. The National Library of Australia was preparing a copy of the photograph for a display to mark the publication of the history, when one of the staff noticed an error. The official standing at one end of the back row of Ministers was identified as the Official Secretary to the Governor-General, but it certainly was not I. It was, in fact, my successor as Secretary to the Federal Executive Council, and the National Library started telephoning to try and identify him. They eventually got on to me, and I was able to tell them who it was, but before that they tried Gough Whitlam. He could tell them that it was not I, but he didn't know who it was. Next they tried one of his Ministers – one with a reputation for a long memory. "Yes", he said, "that's a young David Smith." And then, no doubt to give some verisimilitude to his assertion, he added, "I can remember him pushing his way into the photograph." As I have said, it was not I, nor had my colleague pushed himself into the photograph: he stood well back while the Ministers took their places, and then quietly moved to one end of the back row. So much for accurate recall.

Well, if future historians can't rely on the memories, or the utterances, of old men, where else do they turn for their basic information? If there is one thing which my time in retirement, while doing some work at the Australian National University, has taught me, it is the extent to which students and scholars rely on the contemporary media for much of their information – on newspapers and journals, and on television and radio transcripts. My experience over 37 years as a Commonwealth public servant taught me that these sources can be as unreliable as old men's memories.

Derek Parker's book, The Courtesans, about the Parlia- mentary Press Gallery, should be compulsory reading for all contemporary historians. Parker deals mainly with journalists who write the way they do because of inherent bias and prejudice, and a jaundiced view of their role. His evidence of the poor quality of much of today's political journalism provides a salutary lesson for those who would place any reliance on it. There are also many journalists, sad to say, whose writings are suspect because they lack the ability to do any better.

The late Philip Graham, former publisher of Newsweek and The Washington Post, said that good journalism should aim to be "the first rough draft of history." On the other hand, Thomas Jefferson once said that "a man who never looks into a newspaper is better informed than he who reads them; inasmuch as he who knows nothing is nearer to truth than he whose mind is filled with falsehoods and errors." When one looks at the media in Australia today, one would have to conclude that Jefferson was closer to the mark than Graham.

Let me give a couple of examples from my own experience of what an incompetent journalist can do to the truth. I am regularly described as "the man who announced Gough Whitlam's sacking in 1975." Having put up with the inaccuracy for so many years, I finally decided to take up the issue when, shortly after I had retired in August 1990, the Australian Broadcasting Corporation used the description in a totally unrelated story about the tabling in Parliament of my final annual report as Official Secretary to the Governor-General. I wrote a polite letter to the ABC, pointing out that the description was inaccurate and untrue, as what I had announced from the steps of Parliament House in 1975 was not the sacking of Prime Minister Whitlam, but the Governor-General's proclamation dissolving both Houses of the Parliament on the advice of Prime Minister Fraser, for the purpose of holding a general election.

I received an equally polite reply, conceding only that their description of what I had done merely verged on over-simplification that did not convey precisely my role in the events of 1975. What was clearly untrue, wrong, false, inaccurate, call it what you will, was considered by the national broadcaster to be only "verging on over-simplification" or "lacking in precision," thus

giving new meaning to those words as well. After another letter in which I pressed my point, I received a grudging assurance that the inaccurate description would not be repeated, though the ABC's parting shot was that its news executives were a little surprised at my view on the wording about which I had complained.

My second example of the standards of accuracy, if one could use that word, employed by the media today arises from my recent contribution to the monarchy/republic debate. On 29 March, 1993 I wrote to the editors of four newspapers – The Australian, The Canberra Times, The Age, and The Sydney Morning Herald. I suggested that the Prime Minister could let the Australian people see a trial run of his proposal that Parliament should choose our Presidents by forgoing his right to nominate the next Governor-General and instead inviting Parliament to choose Mr Hayden's successor. In the event, Mr Hayden was invited to continue in office for another two years.

On 9 March,1995 I sent another letter to the same four newspapers, saying that it was timely that I renewed my earlier suggestion, particularly as the Australian people had made it clear that they would want to choose any Presidents and not entrust the task to Parliament. As we now know, the Prime Minister has rejected the proposal, even though it was publicly supported by some of his Ministers. Clearly he doesn't have the stomach to impose on himself what he is prepared to inflict on future Prime Ministers, namely, an elected rather than an appointed incumbent at Yarralumla. But that is another story. Let us see what the media did with my proposal.

My letter was published in The Canberra Times on 13 March, and in The Age on 14 March. Later that morning I was interviewed on my letter by ABC Radio, and soon after Sir Zelman Cowen telephoned me to talk with me about my proposal. On 15 March, 1995 The Australian reported my ABC Radio interview, and quoted accurately from that interview, in which I repeated my suggestion that Parliament should be invited by the Prime Minister to choose the next Governor-General.

However, what I had said on radio, though accurately quoted in The Australian so far as it went, apparently could not be allowed to stand on its own. As seems to be the custom with so many journalists these days, my own words had to be preceded by a summary of what I would be reported as saying in the very next paragraph, no doubt to help ignorant readers the better to understand what was to follow. Unfortunately, that summary lost some of its accuracy in the abbreviation.

That afternoon, in a public debate with Mr Barry Jones, Sir Zelman Cowen spoke in support of my proposal, and on the following day, 16 March, The Age reported the Cowen/Jones debate. Although that paper had published my letter two days earlier, my proposal was now described as Sir Zelman's proposal. In an obvious repetition of the previous day's inaccurate sentence in The Australian, Sir Zelman's proposal was contrasted by The Age reporter with my, by now, very different proposal. Sir Zelman was reported as suggesting that Parliament should nominate the next Governor-General, and I was credited, if that's the right word, with having proposed that Parliament should elect the next Head of State. On 17 March The Age, in its editorial, again very clearly contrasted these two very different proposals. And The Weekend Australian of 19 March wrote of the novel proposal put forward by Sir Zelman, although that paper had now somewhat belatedly published my letter on the previous day. On 21 March I managed to correct the record with a letter to the editor of The Age, but it is the incorrect front page story and editorial that will be remembered and repeated.

I have no concern that Sir Zelman's name has become attached to my idea; after all, he and I have worked together before. Indeed, I rather hoped that Sir Zelman's name might have made the proposal more palatable to the Prime Minister. Of far greater significance is the fact that, in a matter of only five days, one journalist's sloppy use of words was incestuously plagiarised by other journalists, without any attempt to check sources, as a result of which the Australian public was misinformed on an issue of public importance. To make matters worse, this staunch

constitutional monarchist was grievously misrepresented as proposing that his Sovereign be replaced by an elected Head of State!

Well, so much for the state of the media in the 1990s. Let me now go back to 1975 and look at what the future historian might find in the contemporary accounts of those days. Underlying those writings was the widely-held view that the Governor-General and the Senate had acted improperly, or illegally, or both. To set the scene for these impressions, everything associated with their actions had to be presented in some evil light.

The campaign began with Malcolm Fraser's early arrival at Government House on that fateful day in November, 1975 before, and not after, Gough Whitlam, as the Governor-General had instructed. That was due to a simple error by someone on Fraser's staff, but was presented as the beginning of the Vice-Regal conspiracy.

It was alleged that Fraser was closeted in a room at Government House with the blinds drawn. Not so: he waited with me in a room next to the State Entrance, a room which at that time was used as a waiting room for visitors who had arrived early, and the blinds were not drawn.

It was alleged that Fraser's car was hidden round the back, out of sight. It was not. His car dropped him off at the State Entrance, and then drove around to one of the three "front of house" parking areas used by visitors. The driver chose the one which suited him best – the one which gave him the clearest view of the State Entrance, so he could see when to drive forward to pick up his passenger, and also the one which provided the best shade from overhanging trees on a warm November day. Unfortunately, that put the car on the inside curve of that part of the main drive which leads to the Private Entrance.

It is one of the traditional courtesies extended to a Prime Minister at Government House that he comes and goes via the Private Entrance, so called because it is used by the GovernorGeneral and his family, rather than via the State Entrance, which is used by all other callers on the Governor-General. The duty Aide-de- Camp for that day had been told to expect the Prime Minister and the Leader of the Opposition, and their estimated times of arrival, but nothing more. He knew from experience that the Prime Minister's convoy, consisting of the Prime Minister's car and the police security car which followed it, always travelled very fast, even within the grounds of Government House. He could see that Fraser's car, having arrived out of sequence, was now parked where it posed, at best, an inconvenience, and at worst, a serious hazard, to the Prime Minister's car as it swept around the bend.

The Aide-de-Camp used his own judgment, made a decision in the interests of safety, and asked the driver to move his car to the parking area outside the Official Secretary's office, and right next to the State Entrance, but on the other side of it. The car was not hidden around the back, but was in fact moved even closer to the front of the building and to the State Entrance than it had been. The Aide-de-Camp did not consult either the Governor-General or the Official Secretary, nor did he need to: the three Aides-de-Camp were responsible for the smooth and efficient arrival and departure of all visitors to Government House, and were constantly directing vehicles in the interests of safety and convenience. The first that either the Governor-General or I knew of what had happened to Fraser's car was when we read the press reports next day alleging some devious conspiracy to conceal it.

It was a measure of the man that Sir John refused me permission then to correct that story. The Aide- de-Camp had acted properly and in good faith, and Sir John would allow nothing to be done or said which suggested otherwise, even by implication.

The next pair of myths grew out of my reading of the Governor-General's proclamation from the steps of Parliament House. First it was alleged that I had come through the kitchens and, as the immediate past Prime Minister so elegantly put it, up the back passage; next that I had been spirited in through a side entrance. Both cannot be right, and in fact neither is right. I came, as always, to the front entrance. Far from arriving inconspicuously, as if on some furtive mission, I drove up to the front steps in a big, black Government House car, clearly identified as such by the traditional Crowns where number plates would normally be. I wore full morning dress, so I

could hardly have been mistaken for one of the mob that had gathered around the front steps. I was met by a Senate Officer and escorted into Parliament House via Kings Hall, far removed from the kitchens or side entrance.

The second allegation was that my reading of the proclamation was an unnecessary provocation on the part of the Governor-General. Not true. The practice of reading the Governor-General's proclamation dissolving the House of Representatives, or the House of Representatives and the Senate in the case of a double dissolution, was begun in 1963. When dissolution takes place, and the Governor-General subsequently, and usually on the same day, issues writs for the holding of ensuing elections, it is necessary that the people be aware that the dissolution proclamation has been issued and published, that members of the Parliament and its officials know at what time dissolution occurred, and that the order of the events on the day be able to be clearly established.

In 1963 the Attorney-General of the day gave advice that a public reading of the proclamation from the steps of Parliament House by the Governor-General's Official Secretary, in the presence of the Clerks of the Chamber or Chambers being dissolved, would meet all of these requirements, and so the practice was begun. The first public proclamation reading in 1963 was followed by similar public readings in 1966, 1969, 1972, and 1974, before we came to the 1975 reading, and there have so far been eight more since then. My first reading was in 1974, when Sir Paul Hasluck dissolved both Houses of the Parliament on the advice of Prime Minister Whitlam.

In furtherance of the 1975 mythology, what was correct in 1974 was branded incorrect in 1975: that which had become necessary and routine on five occasions between 1963 and 1974 was suddenly denounced as unnecessary and provocative on the sixth occasion in 1975.

So far I have dealt only with minor events which preceded the main game: each was not greatly significant by itself, yet together they helped establish an atmosphere designed to taint the public's perceptions of what was to follow. They suggested an aura of irregularity or impropriety emanating from Government House, which the critics then sought to transfer to the major events of the day.

The original attack, of course, had been on the Senate's refusal to pass the Government's Budget. The Government's view was that the Constitution and its associated conventions vested control over the supply of money to the Government in the lower House, and that the actions of the upper House in threatening to block that supply of money were a gross violation of the roles of the respective Houses of the Parliament in relation to the appropriation of moneys.

This view of the respective roles of the Houses of the Parliament had not always been the view of those who were now in government, and particularly of their leaders. Back in 1957, Senator Lionel Murphy, then Leader of the Opposition in the Senate, had this to say about the upper House and money bills: "There is no tradition, as has been suggested, that the Senate will not use its constitutional powers, whenever it considers it necessary or desirable to do so, in the public interest. There are no limitations on the Senate in the use of its constitutional powers except the limits self-imposed by discretion and reason. There is no tradition in the Australian Labor Party that we will not oppose in the Senate any tax or money Bill, or what might be described as a financial measure."

In 1970, the then Leader of the Opposition, Gough Whitlam, had this to say:

"The Prime Minister's assertion that the rejection of this measure does not affect the Commonwealth has no substance in logic or fact... The Labor Party believes that the crisis which would be caused by such a rejection should lead to a long term solution. Any Government which is defeated by the Parliament on a major taxation Bill should resign... This Bill will be defeated in another place. The Government should then resign."

When that same Bill reached the Senate, this is what Senator Lionel Murphy, Leader of the Opposition in the Senate, had to say: "For what we conceive to be simple but adequate reasons, the Opposition will oppose these measures. In doing this the Opposition is pursuing a tradition which is well established, but in view of some doubt recently cast on it in this chamber, perhaps I should restate the position. The Senate is entitled and expected to exercise resolutely but with

discretion its power to refuse its concurrence to any financial measure, including a tax Bill. There are no limitations on the Senate in the use of its constitutional powers, except the limitations imposed by discretion and reason. The Australian Labor Party has acted consistently in accordance with the tradition that we will oppose in the Senate any tax or money Bill or other financial measure whenever necessary to carry out our principles and policies. The Opposition has done this over the years, and in order to illustrate the tradition which has been established, with the concurrence of honourable Senators I shall incorporate in Hansard at the end of my speech a list of the measures of an economic or financial nature, including taxation and appropriation Bills, which have been opposed by this Opposition in whole or in part by a vote in the Senate since 1950."

At the end of his speech Senator Murphy tabled a list of 169 occasions when Labor Oppositions had attempted to do, unsuccessfully, what the Liberal/National Party Opposition were to succeed in doing five years later.

Two months later, on 25 August, 1970 the Labor Opposition launched its 170th attempt since 1950. On that occasion, Gough Whitlam had this to say:

"Let me make it clear at the outset that our opposition to this Budget is no mere formality. We intend to press our opposition by all available means on all related measures in both Houses. If the motion is defeated, we will vote against the Bills here and in the Senate. Our purpose is to destroy this Budget and to destroy the Government which has sponsored it."

As Jack Kane, one-time Federal Secretary of the Australian Democratic Labor Party and former DLP Senator for New South Wales, wrote in 1988:

"There is no difference whatsoever between what Whitlam proposed in August, 1970 and what Malcolm Fraser did in November, l975, except that Whitlam failed – the Budget being carried by a bare majority of twenty-four to twenty-two. Senator Murphy, for Whitlam, sought the votes of the DLP Senators, unsuccessfully. That is the only reason why Whitlam did not defeat the 1970 Budget in the Senate and thus fulfil his declared aim to destroy the Gorton Government."

So much for the Senate's actions in l975 being a gross violation of its proper role. Of course, we are all accustomed to politicians who have one view when in Opposition and a different view when in Government. But I know of only one journalist in only one newspaper – Wallace Brown in The (Brisbane) Courier-Mail – who reminded the community, during l975 or since, of the views held and expressed by Whitlam and Murphy in 1967 and 1970. What is even worse, students studying Australian politics at school and at university are still taught that the Senate's actions in l975 were unprecedented and improper, but they are not told that what it did then was so clearly and forcefully and repeatedly enunciated by Lionel Murphy and reinforced by Gough Whitlam, years earlier, and attempted on so many previous occasions by their side of politics.

I can imagine some of you thinking that it's not really surprising to find politicians changing their views as they move from one side of Parliament to the other. Well, let's see if we can find higher authority to dispel the myth that the blocking of Supply by the Senate, under the present provisions of the Constitution, is the violation of its role that it was claimed to be during the debates of October and November, 1975.

On 30 September, 1975 the High Court handed down its judgement in Victoria v The Commonwealth. Four of the learned Justices expressed opinions which supported the view that, except for the constitutional limitation on the power of the Senate to initiate or amend a money Bill, the Senate was equal with the House of Representatives as a part of the Parliament, and could reject any proposed law, even one which it could not amend. The judges who expressed these opinions were Sir Garfield Barwick, the then Chief Justice; Sir Harry Gibbs and Sir Anthony Mason, who each, in turn, became Chief Justice; and Sir Ninian Stephen, who later became Governor-General.

It is true that Commonwealth Law Reports are not widely read, but the relevant parts of these judgments were incorporated in Hansard on 30 October, 1975. Yet still the media, and particularly the Parliamentary Press Gallery, except for Wallace Brown, kept silent on this issue.

As a result, many adult Australians still believe, and many young Australians are still taught, that the Senate has no right to block Supply.

The next major myth which was developed at the time had two stages. The first stage was that the Governor-General could act constitutionally only on the advice of his Ministers, or more particularly at the time, on the advice of his Prime Minister, and then only in accordance with that advice. The second stage, once the phrase "reserve powers" began to gain currency, said that the reserve powers of the Crown had long since lapsed into desuetude. The politicians and the commentators forgot, if they ever knew, that Lord Casey, as Governor-General, as recently as 19 December, 1967, had exercised the reserve powers following the disappearance of Prime Minister Harold Holt. Without ministerial advice, for there was no-one who legally could give it, the Governor-General revoked Holt's appointment as Prime Minister, in accordance with s.64 of the Constitution, exactly as Sir John Kerr did with Whitlam's appointment, and chose John McEwen to be the next Prime Minister, exactly as Sir John Kerr did with Fraser's appointment.

Notwithstanding the fact that Whitlam was constantly reminding the Governor-General, both privately and publicly, that he could act constitutionally only on the advice of his Prime Minister, the existence of the reserve powers would have been, or should have been, well known in Labor circles. One of the most definitive and scholarly works on the subject, entitled The King and His Dominion Governors, had been written in 1936 by H.V. Evatt, then a Justice of the High Court, later to become a member of the House of Representatives and Leader of the Parliamentary Labor Party. Evatt believed that the reserve powers exercisable by The King (at that time) or by his representative in a Commonwealth country needed to be more precisely defined, and that the principles upon which they would be exercised should be settled and stated as clearly as possible. But whether they remain undefined and unregulated or not, the reserve powers of the Crown do exist, as Evatt acknowledged all those years ago, and they are exercisable by a Governor-General.

And lest 1936 be too far back in time for the modern-day politician or the modern-day political journalist, let us come forward and look at the 1951 double dissolution which Prime Minister Menzies recommended to Governor-General Sir William McKell. On that occasion the Governor-General did in fact accept the advice of the Prime Minister, supported by the opinions of the Attorney-General and the Solicitor- General, that the Senate's failure to pass a Bill which had twice been passed by the House of Representatives satisfied the requirements of s.57 of the Constitution and allowed the Prime Minister to recommend a double dissolution. Significantly, nowhere in the documents submitted to the Governor-General in 1951 by Prime Minister Menzies was there any reference to any obligation or supposed obligation on the Governor-General's part to accept the ministerial advice. On the contrary, the Prime Minister advised the Governor-General that he was entitled to satisfy himself and to make up his own mind on the matters submitted to him.

Interestingly enough, and especially so in the light of the Labor view in 1975, the Labor view in 1951 was that the Governor-General was not obliged to accept the Prime Minister's advice, and indeed should not accept it; that he should not accept the advice of his Law Officers, and should instead seek independent legal advice; and that he should seek it from the Chief Justice of Australia, Sir John Latham.

This 1951 view held by the Labor Party that the Governor-General should consult the Chief Justice brings me to what was probably one of the biggest canards put about after 11 November, 1975 – the views expressed by so many politicians, academics and journalists that Sir John Kerr, in consulting the Chief Justice, and Sir Garfield Barwick, in responding to that request, had acted improperly and unconstitutionally, and almost without precedent.

May I interpolate here that, in describing this as one of the biggest canards of l975, I am of course reserving the label of biggest canard of all for the assertion that the United States Central Intelligence Agency was involved in the dismissal or in events leading to it. Such an assertion is totally untrue, no evidence in support of it has ever been produced, and there is no evidence that

even those who spread the story ever believed it themselves. I therefore propose not to dignify it by making any further reference to it.

Well, back to the question of advice from the Chief Justice. The attacks, when they came, were two- fold, and sought to discredit both the Governor-General and the Chief Justice. Once again, as in the case of the blocking of Supply by the Senate, there is considerable anecdotal evidence that many Australians believe, and that many students have been taught, that they acted improperly, unconstitutionally and without precedent.

In fact, we know of at least three Chief Justices who have given advice to Governors-General on the exercise of their Vice-Regal powers. They were Sir Samuel Griffith, Sir Owen Dixon and Sir Garfield Barwick. They gave their advice, when it was asked for, to no less than seven, or to one-third, of our twenty- one Governors-General since Federation. They were Lord Northcote, Lord Dudley, Lord Denman, Sir Ronald Munro-Ferguson, Lord Casey, Sir Paul Hasluck and Sir John Kerr. The research into these consultations was done by Dr Ron Markwell, formerly an Australian Rhodes Scholar, Visiting Fellow in Politics at the University of Western Australia, and Junior Dean at Trinity College, Oxford, and currently Fellow and Tutor in Politics at Merton College, Oxford.

Markwell also concludes that at least one other Chief Justice, Sir John Latham, and four Justices of the High Court, Sir Edmund Barton, Sir Keith Aickin, Richard O'Connor and Dr H.V. Evatt, would have agreed with the proposition that such consultation was permissible. There are also many examples of State Governors consulting a Chief Justice, but I need not go into details here. The Whitlam myth that "only one Governor-General, Sir Ronald Munro-Ferguson, had consulted with a Chief Justice..." has been finally laid to rest.

The final myth or legend which I want to deal with is the one which presented Sir John Kerr in retirement as an exile and a recluse. He had asked The Queen that he might be allowed to retire early, and he stepped down in December, 1977 after only three and a half years in office, in order that a successor might set about healing the national wounds. He had withstood the public protests and demonstrations of 1976, and had a further year, 1977, virtually free of such annoyances. He had asserted his right, as was also his duty, to go about his public engagements throughout Australia without let or hindrance, and the overwhelming majority of his fellow Australians continued to welcome him warmly.

Nevertheless, he felt that the fairest thing he could do for his successor would be to remove himself from the local scene for a few years. Living and travelling in the United Kingdom and Europe was no exile for Sir John, and those who attended his memorial service will have heard one of his more recent friends, a young Australian scholar at Oxford, speak of his time in England. This was Don Markwell, to whom I have already referred.

The friendship began in 1982 when Don Markwell was one of a group of Australian students who invited Sir John to speak at an Australian dinner in Oxford. Of their first meeting Markwell said:

"... we were pretty nervous about entertaining so great a figure. But all went well. There was immediate warmth between us, all reserve vanished, and an enduring friendship began."

Some nine years later, at Sir John's memorial service, Markwell was able to say:

"The man I knew was a man who enjoyed life – a serious-minded man, certainly, with a strong sense of duty, and a man of industry and achievement; but one whose seriousness was balanced by a buoyant sense of humour and of fun; a man who rejoiced in the joy of life. He was no exile, no embittered recluse."

To be the personal representative of his Sovereign and to be the de facto Head of State of his country was the high point in Sir John's career, but, if history is to deal with him accurately and fairly, he deserves to be remembered for more than that. In the words of Sir Anthony Mason, Chief Justice of Australia, who also spoke at the memorial service:

"John Kerr's record of achievement speaks for itself. Behind the record was a distinguished lawyer with wide-ranging interests in law reform, politics, administration and public and

international affairs. His vision of the law extended well beyond the preoccupation of a technical, professional lawyer. He was conscious of the intricacy of the relationship between law, government and society. These are all values which modern legal education seeks to foster in future generations of Australian lawyers."

Back in May, 1976 Geoffrey Sawer, Emeritus Professor of Law at the Australian National University, in the course of reviewing two books on the fall of the Whitlam Government, and commenting on a third which had been published earlier, noted that all three books, which had been written within a few months of the event, predicted that the actions of the Senate were likely to produce lasting instability in Federal politics. I only hope that any future historian who refers to those and to other writings penned early in 1976 will also look at later writings. In the almost 20 years that have elapsed – not a long time in the course of history – perspectives have already mellowed, even for those who were themselves close observers of the constitutional crisis and its participants, and I doubt that even the authors of the books reviewed by Professor Sawer would hold the same view today. Certainly we have seen no evidence of the lasting instability which they predicted.

Writing in 1991 immediately after Sir John Kerr's death, Peter Bowers, political correspondent for The Sydney Morning Herald in 1975, had this to say about the event:

"November 11, 1975 changed the way a lot of Australians thought about politics but did it really change our lives? I think not. And perhaps that is the real, the reassuring lesson of that day".

The next day, Michelle Grattan, political correspondent for The Age in 1975, and until recently the Editor of The Canberra Times, had this to say about the man:

"However, the historians will probably be kinder to Sir John than the contemporary commentators, for two reasons. Time will produce cooler assessments, that will take greater note of his dilemma and be less swayed by Whitlam's case. And the apparent absence of enduring harm will count in Kerr's favour."

I don't think that either of those distinguished journalists could have written those words 20 years ago. But they were able to write them 16 years later, demonstrating just how quickly perceptions of people and events can mellow and change with the passage of the years. Unfortunately, most of the books about 1975 were written in the years immediately following, and by political journalists at that. Many of these journalists were committed to the Labor Party's view of events, or found it easier to accept the Labor view rather than do their own research.

Thus the history of l975 has so far been written, not by the victors, as is usually the case with the writing of history, but by the vanquished. That is why I said at the beginning of this address that our Constitution was not only at risk from political and administrative action, and imaginative judicial interpretation, but that it was also possible to subvert it by misrepresenting the meaning and the significance of action taken in accordance with its provisions. This, I believe, is yet another area in which members of The Samuel Griffith Society must take an interest if we are to achieve the purposes for which this Society of ours came into existence.