

to run things, any member could turn up to its meetings to listen and speak.

Of course all members cannot participate equally in an organisation, and organisations do need leaders. The hopes of these reformers could not be realised. But from these times survives the idea that any governing body should consult with the people affected by its decisions. Local councils and governments do this regularly—and not just because they think it right. If they don't consult, they may find a demonstration with banners and TV cameras outside their doors.

The opponents of democracy used to say that interests had to be represented in government, not mere numbers of people. Democrats opposed this view, but modern democracies have to some extent returned to it. When making decisions, governments consult all those who have an interest in the matter—the stakeholders, as they are called. The danger in this approach is that the general interest of the citizens might be ignored.

The removal of Whitlam

The Labor Party captured the mood of the 1960s in its election campaign of 1972, with its slogan 'It's Time'. The Liberals had been in power for 23 years, and Gough Whitlam said it was time for a change, time for a fresh beginning, time to do things differently.

Whitlam's government was in tune with the times because it was committed to protecting human rights, to setting up an ombudsman and to running an open government where there would be freedom of information. But in one thing Whitlam was old-fashioned: he believed in the original Labor idea of democracy. The party drew up its platform, the leader took the platform to the people, and if the party won the election the parliament should pass the platform into law.

The platform was very much the one Whitlam wanted. He had persuaded the party to revise it so that it was more appealing to middle-class people. In his opening campaign speech, he made many detailed promises, all drawn from the platform. Everyone knew what Gough Whitlam would do if he won the election.

He did not win the election by a large margin. It would take some time before all the results were known. In the Labor Party

the parliamentarians elect the ministers, so the ministers could not be chosen until the election results were finalised. But Whitlam did not want to delay. He wanted to start governing immediately. He told the governor-general to appoint himself and his deputy Lance Barnard as a two-man ministry. Whitlam took charge of 13 departments and Barnard 14. They began putting the platform into practice. No new laws could be passed because parliament was not yet assembled, but there were many actions the government could take on its own, and many changes could be made by altering regulations, not laws.

The two-man government stopped conscription; it freed seven young men who had been jailed for defying the conscription law; it began negotiations to recognise communist China; it took the sales tax off the contraceptive pill; it asked the Arbitration Commission to reopen the case on equal pay for women; it set up a commission to classify schools so that they could be funded according to need.

A new batch of decisions was announced every day. Never did a change of government make so much difference so quickly. Thousands of old Labor men had gone to their graves without ever seeing a Labor government like this one: it believed in the platform and was in a hurry to implement it.

However, when it came to passing new laws Whitlam met the barrier of the Senate. There had been no Senate election in 1972. Labor did not have the numbers there to pass its laws. The Liberals, the Country Party and the Democratic (anticommunist) Labor Party could together outvote Labor. Whitlam said he had the authority of the people—a mandate—to pass his platform. The opposition parties in the Senate said they too were elected by the people and they had the right to change and reject the Bills Whitlam sent to them. The Senate was a very strong upper house. The one limit on its power was that it could not amend the budget and tax Bills; it could, though, reject them outright.

The Labor Party thought all upper houses were antidemocratic, and its platform called for the Senate to be abolished. It was strange, then, that in 1970 the leader of the Labor Party in the Senate, Lionel Murphy, had introduced a plan, not to get rid of the Senate but to strengthen it. He organised with the other parties to set up a system of committees that were to look closely at the Bills sent to the Senate. Committees would include members of all parties

and each would specialise in one area of government. This made the Senate a much better house of review.

But Whitlam did not want his Bills reviewed; he wanted them passed. The Senate in fact passed many of his Bills, but by early 1974 six important ones had been rejected twice. When the two houses are deadlocked, the government can call a double dissolution election, which allows the people to elect a whole new parliament: the House of Representatives and all the Senate. Whitlam called such an election in May 1974. His government was returned with a reduced majority in the House of Representatives and it just missed out on controlling the Senate. At this election the senators from the Democratic Labor Party all lost their seats, which brought the history of that party to an end.

The deadlock provision in the constitution now allowed Whitlam to call a joint sitting of both houses of parliament to vote on the six Bills that the Senate had twice rejected. With members and senators voting together, Labor had a majority and it passed its six Bills. They included Bills to establish the first universal health system, the forerunner to Medicare; to allow the territories to elect two senators; and to keep the difference in population of electorates to no more than 10 per cent (instead of 20 per cent). This is the only time a joint sitting has been held.

The first duty of a government, even a reforming government, is to govern well. The Whitlam government was a blundering, poorly disciplined government. Whitlam himself was so committed to the platform and his mandate that he refused to change course when Australia, along with the rest of the world, entered an economic recession in 1974. He continued to spend big money on his reform programs when he should have been cutting back on spending.

The government's biggest blunder was to enter a dodgy scheme to raise a huge loan overseas so that the State could become the owner of mineral and gas resources. The government pretended that this was a loan for 'temporary purposes' so that it did not have to tell anyone about it, and it used as go-between a shady character from Pakistan, Tirath Khemlani, who said he had access to big money in the Middle East. No loan money ever showed up and when all this became public, the government was in very deep trouble. It promised that it had abandoned the whole scheme—but the minister responsible secretly kept up his contact with Khemlani. When this became known, the Liberal leader Malcolm

Fraser said that this government was so bad and so damaging to Australia that he would force it to go to the people.

He planned to do this by having the Senate block the government's budget. Without money a government cannot carry on. The Senate had the power to block the budget, but it had never used it. The founders of the constitution had given it that power thinking that it would be used very rarely, if at all. If a government ever introduced a budget in which all the money was to be spent in the big states, then the small states wanted the Senate to be able to reject it. But now the opposition parties in the Senate were blocking a budget not because they disagreed with it—they simply wanted to starve the government of money and force it to an election.

Whitlam said this action threatened the system of responsible government. Governments were made in the House of Representatives; it was not for the Senate to tell a government that its time was up and that it must face the people. The opposition parties said that as the power was in the constitution, it must be alright for them to use it. But Whitlam replied that they were breaking a convention, an unwritten rule, which had to be upheld if the system of responsible government was to work with a strong Senate.

Whitlam declared he would never give in and hold an election. He would make Fraser back down. He would break the power of the Senate for good. He would establish that only the House of Representatives, the people's house, controlled the fate of governments.

Whitlam's government was now very unpopular—which is why the opposition parties were keen to have an election. But polls showed that the people did not like what the opposition parties were doing. A few Liberal senators were not happy with the breaking of the convention, though they went along with it. They told Fraser that it would be much better to wait for the normal time of an election, when he would be sure to be elected without all the controversy over whether it was right to block the budget.

The government began to think of ways it could get money when its funds ran out. In the nineteenth century in Victoria, governments had found ways of holding on when the Legislative Council blocked their budgets. That had required the cooperation of the governor. Governor-General Sir John Kerr was certainly not going to support any dodgy schemes. He was naturally very worried that the two political leaders were bringing the system of government to breaking point.

DEADLOCK IN THE PARLIAMENT, 1975

The Senate will defer a vote on the budget until the Government calls an election because of:

- the continuing incompetence, evasion, deceit and duplicity of the Prime Minister and his Ministers as exemplified in the overseas loan scandal which was an attempt by the Government to subvert the Constitution, to by-pass Parliament and to evade its responsibilities to the States and the Loan Council;
- the Prime Minister's failure to maintain proper control over the activities of his Ministers and Government to the detriment of the Australian nation and people;
- the continuing mismanagement of the Australian economy by the Prime Minister and this Government with policies which have caused a lack of confidence in this nation's potential and created inflation and unemployment not experienced for 40 years.

Senate Debates,
1975, Vol. 66,
p. 1221

The House of Representatives responds:

- This House affirms that the Constitution and the conventions of the Constitution vest in this House the control of the supply of moneys to the elected Government.
- This House asserts the basic principle that a Government that continues to have a majority in the House of Representatives has a right to expect that it will be able to govern.
- This House condemns the threatened action of the Senate as being reprehensible and a constituting a grave threat to the principles of responsible government and of parliamentary democracy in Australia.

*House of
Representatives,
Debates*, 1975,
Vol. 97, p. 2199

Whitlam said again and again in public that the governor-general could act only on his advice. In normal times that was true. But in times of crisis a governor-general does have special powers—reserve powers. Kerr began to think he would have to use them. He should have warned Whitlam that he was worried about a government trying to govern without money and that he might have to act. But he was put off by Whitlam's bullying style; he was afraid that if he told Whitlam that he might have to use his powers, Whitlam would ask the Queen to dismiss him.

So Kerr acted secretly. Without any warning, on 11 November 1975, he dismissed Whitlam as prime minister, installed Fraser as caretaker prime minister, and on his advice called an election for both houses of parliament.

On 11 November the money had not run out. Some constitutional experts say that Kerr should not have acted until the money had run out. If the government had then tried to spend money not voted by parliament, it would have been acting illegally and a governor-general would certainly have been right to dismiss it.

Kerr said that he had not acted too soon. He explained that the rule of our system is that a government denied money has either to resign or call an election. Everyone agrees that that is the rule if the government is denied money by the lower house. There is no agreement that this rule applies when it is the upper house denying the money. However, Kerr had the support of Chief Justice Barwick in his interpretation of the constitution. After Kerr had made up his mind to sack Whitlam, he checked with Sir Garfield



The governor-general's secretary reads the notice dissolving parliament 11 November 1975, with Gough Whitlam, the sacked prime minister, looking on

Barwick to see whether he was doing the right thing. Barwick said he was: as the Senate can deny a government money, the government is ultimately responsible to two houses, not one.

The Labor Party and its supporters could not accept this view. They hated Sir John Kerr and what he had done. They felt they were no longer living in a democracy. They said to each other: we come to power after 23 years with a clear program of reform, and what happens? The Opposition in the Senate blocks important parts of the program; then it cuts off the government's money; then the governor-general dismisses the government and installs the leader of the opposition as prime minister. What's the point of trying to win elections if that's how we are treated?

The Liberal Party said the holding of an election could not be against democracy. The system of government had come to a stalemate and the governor-general let the people decide who should rule. Fraser won the election in a landslide. The people had not liked his tactics, but when they had a chance to pass judgement on Whitlam, they took it.

For the Labor Party and all who supported and sympathised with it, constitutional reform became a top priority. The Senate's



Malcolm Fraser, the Liberal leader, at a rally during the 1975 constitutional crisis

Kerr & the consequences

Speakers include Patrick White, Franca Arena, Donald Home, James McClelland, Frank Hardy, Barbara Murphy, Sarah Sheehan. Music starts 4.30 p.m. Come rain or shine.

November 11 Rally Sydney Town Hall Square. 5.15 pm.



for a democratic constitution.

A call for continuing citizen activity

Fellow Australians,

We believe that Australian political institutions are at present facing a danger which has serious implications for all Australians and all political parties. This is the use of an undemocratic constitution as an anti-democratic weapon.

We therefore urge all Australians to take part in a broad national movement that will work towards a People's Convention framing a new Constitution that will have as its guidelines:

- *All public power emanates from the Australian people.*
- *Australian democracy is founded on freedom of opinion and information and on a universal and equal voting system fairly reflecting the political wishes of all Australians.*
- *Governments are chosen by and can only be dismissed by the Australian people.*

- *The inclusion of a Bill of Rights guaranteeing the liberties and rights of all Australians.*

In the meantime we deplore any suggestion to make our Constitution even more undemocratic.

Further, we believe, that with no proper constitutional safeguards, one of the few ways to prevent further erosion of the rights and liberties of all Australians is by continuing public outcry at the events of last November 11 and their consequences.

Accordingly, we urge all citizens who share our concern to organise and take part in activities that will mark this November 11 as a Day of Peaceful Protest.

Donations welcome, payable to Citizens for Democracy, P.O. Box K2, Haymarket 2000.

James Calomeris
Patrick White
Jack Munday
Russel Ward
John Ducker
Faith Bandler
Geoffrey Dutton
James McClelland
Louis James
Jack Garland
Frank Hardy

Jack O'Toole
Sarah Sheehan
I.L. Wheelwright
John B. Healy
Marco Gazzard
Graham Richardson
Donald Home
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Dorothy Buckland

Allan Ashbolt
Barry Egan
Antonio Barmonte
Dick Diamond
Donato Di Giacomo
Sergio De Mari
John McCarthy
Greg Symons

November 11. Rally. Sydney Town Hall Square. 5.15 p.m.

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*Citizens for
Democracy
advertise their
rally on the first
anniversary of
the Whitlam
dismissal*

power to block a budget must be removed. The power of the governor-general must be curbed. A movement called Citizens for Democracy held huge rallies in Sydney and Melbourne. Many books were written on the constitution and how it might be changed. But the constitution remained the same.

After only seven years Labor returned to power. With Bob Hawke and then Paul Keating as prime minister, the Labor government lasted for 13 years (1983–96), the longest period ever for a federal Labor government. This government was not as radical as Whitlam's and it was much better run. It never controlled the Senate, but it achieved most of what it wanted. There was never any suggestion that its budgets would be blocked. The anger of 1975 began to ebb away.

During the time of this Labor government, the balance of power in the Senate was held by a new party, the Australian Democrats. The party was formed in 1977 by Don Chipp, a progressive Liberal who thought Malcolm Fraser's Liberal government was too conservative. The Democrats' policy was somewhere between that of the Labor and Liberal parties. One of its aims was to make sure that the government, whichever it was, kept to its promises—its slogan was 'Keep the Bastards Honest'. But knowing how much bitterness flowed from the dismissal of Whitlam, it promised that it would never block a government's budget.

Small parties like the Democrats can gain seats in the Senate only because it is elected by proportional representation. The whole state votes as one and parties get seats in proportion to their overall vote. A party that gains only 10 or 15 per cent of the vote never wins a seat in the lower house, but that's enough to win a Senate seat.

Proportional voting for the Senate is not set down in the constitution. It was introduced by parliament in 1949. And it can be abolished by parliament. The Liberal and Labor parties are sometimes annoyed by the influence of the small parties in the Senate, but they would be very unpopular if they tried to change the system of voting. More and more people think it is a good thing that the major parties do not control the Senate. Thousands of people at elections vote for a major party, Liberal or Labor, and then vote for a small party in the Senate.

Because neither of the major parties is likely to control the Senate, the Senate acts as a true house of review. In the Senate a government has to argue its case and accept amendments. The

Senate committee system set up in 1970 works only because the government has to listen to what the Senate says.

The Labor Party no longer argues that upper houses should be abolished. In three states Labor governments were responsible for giving upper houses new life.

In 1961 a Labor government in New South Wales made the last attempt to abolish the upper house. A referendum on the issue was lost. In 1978 another Labor government made the upper house into a body elected by the whole state with proportional voting—something like the Senate. A Labor government introduced a similar system to South Australia in 1974. In Western Australia in 1987 a Labor government divided the state into six regions for Legislative Council elections. By proportional voting two regions elected seven councillors and four regions elected five councillors. In these upper houses, as in the Senate, small parties and independents have a good chance of being elected. Governments are not likely to control them.

Once an upper house checking an elected government seemed to many people undemocratic; more people now think an upper house not controlled by the government is a proper part of a democracy.

Revealing government secrets

Gough Whitlam had plans to give the people more power, as against their governments. There was to be a Commonwealth ombudsman, a new court where people could challenge what ministers and public servants did in administering the law, and a freedom of information law. None of these came into force in Whitlam's three years as prime minister. His government had so many plans and was so often in crisis that many things did not get done.

The Liberals were not opposed to this part of Labor's program. The Fraser government set up an Administrative Appeals Tribunal in 1976 and a Commonwealth ombudsman in 1977. Freedom of information came later—in 1982—and after a long struggle.

The campaigners for freedom of information said governments gained a huge power by collecting information and being able to keep it secret. Governments told people only what they wanted them to know. If the people were to control their governments, instead of being controlled by them, they must have access to the