

The Office of Governor-General by PAUL HASLUCK, K.G., P.C.; Former Governor-General of Australia. (Melbourne University Press, 1979), pp. 1-47. Paperback, recommended retail price \$3.40 (ISBN: 0 522 84187 2).

The Office of Governor-General is a somewhat pretentious title for a short 47 page publication consisting of the text of the Queale Memorial Lecture delivered in 1972 and notes and information intended to supplement and update it.

The Queale Memorial Lecture was established to cover some aspect of "management or commerce or industry". Stressing and widely construing the word "management", Sir Paul chose to focus the lecture around the work of an Australian Governor-General so far as it is involved in Australian government. Very briefly in language comprehensible to the layman, Sir Paul sketches the political and constitutional basis, background and context in which the office of Governor-General has been established and functions. He sets out to cover a wide area and this has resulted in a superficial treatment of topics considered and, in places, misleading comments.¹

The text of the lecture which is printed exactly as delivered is followed by some brief comments on the text and some new material about the way Sir Paul worked when he was Governor-General. He says "I saw a need to make this addition because in various books and newspaper articles published concerning the events of November 1975 statements have been made which reveal either ignorance by the writers of how things were done or faulty memory or false gossip about what was done" (page 3). The statements he refers to include erroneously reported incidents involving Sir Paul during the time he was Governor-General. He however does not make direct comments on the actions of the Senate nor the dismissal of the Prime Minister in 1975.²

Sir Paul and Sir John Kerr in different ways were determined to map out a role for the Governor-General which made the incumbent of the office something more than the puppet of the executive. Sir Paul did this by carefully examining all papers referred to him for signature as a person in whom executive power is vested, and when he thought necessary raising questions and referring back to relevant sources. The best part of the publication is the detailed explanation of the manner in which he operated (pages 17-22 and 35-42).

His rationale for the office of Governor-General emerges from his analysis:

So long as the Crown is part of the Executive, it will be difficult for any elected Government to act in a wilful and high-handed way in disregard of the law or the public interest unless it is prepared to expose itself as deliberately choosing to disregard the law and the public interest; and it will be impossible for any bureaucracy to do

¹ See for example the brief analysis of the Crown and the exercise of the prerogatives of the Crown in the States severally and in the Federation (p. 9).

² But see non-committal comments on 1975 (p. 2) and a series of oblique comments on the actions of Sir John Kerr, quoted *infra* pp. 113-114.

unobtrusively anything other than what Parliament has empowered it to do (page 20).

He also makes a point that the Governor-General has the responsibility to ensure that the system works according to law and conventions (page 20).

He sees the Governor-General as part of the system of checks and balances in a liberal democratic constitution, which by creating restrictions on exercise of power at times cause frustrations to governments, but which have the ultimate justification of providing safeguards against abuse of power. But Sir Paul unfortunately does not consider the effect of the absence of devices in the institutional framework other than public opinion or the sense of duty and responsibility of the incumbent of the office, which prevent abuse or unconstitutional use of power by a Governor-General.

It is a pity that if it was Sir Paul's intention to provide a rationale for the office of Governor-General that he did not go further and write a book on the subject. He could have explained and tightened up the section on theory, provided more details about the practice (particularly about the public and ceremonial functions which are very briefly discussed) and considered and attempted to rebut the criticisms made of the office by those who advocate its abolition because they see it at its best as useless and at its worst as a danger to democratic government. While doing this he could have integrated the lecture with the notes and additional information that follow it—the failure to do so being a serious defect in the present publication which is somewhat disjointed. As an illustration reference may be made to the two sections in the publication headed "The Executive Council". Sir Paul is eminently suited to write such a book. Unfortunately despite the title he has not done so.

Sir Paul makes it clear that he does not wish to enter into political controversies nor make comments about his successors in office (page 2). But in an oblique way he does as the following quotations demonstrate:

He has a responsibility for seeing that the system works as required by the law and conventions of the Constitution . . . (page 20).

Sir John stressed that the law must prevail over conventions in his statement of 11 November 1975.

I fervently hope that Australia in the future will always have the good fortune to have Governors-General with some experience of the working of government. To be an eminent citizen is not a full enough qualification . . . (page 22).

Did Sir John Kerr have adequate experience?

I believe that one of the highly useful roles a Governor-General can play is in ignoring divisions and trying to set up an idea that we are all Australians even if we differ in our views . . . (page 30). [A] wealth of tradition and patriotism helps the Crown to attract to itself the loyalty and affection of the people in a way in which an elected leader, backed by little more than half the voters, and opposed by the others, may not be able to do (page 7).

Sir John in his actions apparently did not think it relevant to avoid actions which would deepen divisions in Australian society.

I will respect the secrecy of Executive Council proceedings . . . (page 40).

I never told anyone what passed between a Prime Minister and myself in private unless, by agreement between us, some formal action was to follow our conversation and then I told only the official who had to attend to the matter (page 31).

In their writings Sir John Kerr and Mr Gough Whitlam both breached this principle.

I never discussed affairs of state on social occasions (page 31).

By comparison reference may be made to the public discussion at a banquet by Mr Whitlam and Sir John Kerr about the possibility of the dismissal of a Prime Minister.

I regard the maintenance of a close relationship between Governor-General and Prime Minister with mutual respect, trust and confidence, as an essential element in good government (page 33).

Sir John Kerr kept Mr Whitlam in the dark about his plan to settle the Supply crisis.

No meeting of the Executive Council was ever held in my absence without my express permission (pages 36-37).

Never in my time was a meeting of the Executive Council held without my knowledge (page 42).

One notable Executive Council meeting was held without Sir John Kerr's permission and knowledge and he subsequently reluctantly ratified what took place.

As for further appointments after retirement I take a narrow view that for an Australian the Governor-Generalship is the apex (page 46).

A UNESCO appointment would clearly not have been accepted by Sir Paul.

After any conversation [with a Prime Minister] on questions of substance I made a hand-written note in a personal journal of the subjects discussed and any points of which I might need an exact record (page 33).

Sir John Kerr's recording procedure was exposed to be inadequate by the manner in which Mr Whitlam was able in his book to show up as incorrect statements made by Sir John as to dates and times.

The phrase "reserve powers" is not used nor is the extent of these powers probed by Sir Paul. He does not discuss in detail the basis of and principles governing the exercise of the reserve powers.³ He does, however, without citing authority, make statements in this context regarding relationships between the Governor-General and Parliament:

Such an extreme illustration⁴ underlines an important point. In normal times when customary practices and procedures are being followed and the Constitution and laws of the Commonwealth are

³ See Cooray, *Conventions, The Australian Constitution and the Future* (1979) ch. 2 for discussion of relevant principles.

⁴ The illustration referred to is that where a Bill is put through both Houses of Parliament providing for delay in conduct of elections, the Governor-General could refuse to assent to it.

being scrupulously observed, the role of the Governor-General in Parliament would seem to be a matter of unbroken routine. In abnormal times or in case of any attempt to disregard the Constitution or the laws of the Commonwealth, or even the customary usages of Australian government, it would be the Governor-General who could present the crisis to Parliament and, if necessary, to the nation for determination. It is not that the Governor-General (or the Crown) can over-rule the elected representatives of the people but in the ultimate he can check the elected representatives in any extreme attempt by them to disregard the rule of law or the customary usages of Australian government and he could do so by forcing a crisis (page 14).

If a Prime Minister were to advise a mid-term dissolution simply because "he would like to have an election", a Governor-General would quite reasonably ask for additional reasons to support a general argument that Parliament had become unworkable or that some exceptional and unforeseen situation had arisen which could not be resolved by Parliament itself (page 16).

The Governor-General-in-Council should not reject outright any Ministers' recommendation but he should be able to defer it or suggest reconsideration of it so as to ensure that his advisers have fully examined all aspects of the matter and are of one mind (page 40).

The above statement regarding a mid-term dissolution is clearly erroneous in view of the 1977 precedent and the first quotation requires further qualification.⁵

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⁵ See further Cooray, *op. cit.* ch. 2.

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