

PARLIAMENTARY COMMITTEES

1. Parliamentary Committees form a significant instrument for

- i. gaining and preserving good government
- ii. gaining and preserving a free and democratic society operating under the rule of law.
- iii. discovering material which forms a vital basis for assessing the worth of
 - a. legislation.
 - b. government administration
 - c. policy whether government or otherwise
 - d. community activities
 - e. community structures

2. A proper appreciation of the role of committees needs an understanding of what they are and what they do.

The Committee System is **a creature of Parliament**. It is not a dimension of the Executive nor of the Judiciary. This is essential to understand.

Australia's Parliaments have great power and authority. Of the three arms of Government, the Legislature, the Executive, and the Judiciary, **Parliament is the only one elected directly by the people**. Legislation to be valid must be made by it, or pursuant to a statute enacted by it. The laws it makes bind the other two arms. These laws are crucial to the well-being and future of the Commonwealth, the States, and the Territories within which they apply. These laws are vital to people's health, wealth, and happiness, to the opportunities that will be available to them, to their civil rights, and to their sense of those rights; in short to what sort of life they will have. These laws should not be made unless properly scrutinised to see that they are good ones.

Yet the House of Representatives in the Federal Parliament rarely uses its power and authority on its own initiative. Generally it takes effective action and passes bills only at the instance of the Government of the day. **That the Executive has captured the House of Representatives and its equivalents elsewhere has long been recognised.**

The Australian Law Journal for January 1991 contains *the Blackburn Lecture* delivered by **The Honourable Justice Brennan, as he then was, on the 7th August 1990 and entitled "Courts, Democracy and the Law"**. In it he said:

“The theory of responsible government, which made the fate of an Executive Government dependent on the confidence of the Parliament was, so to speak, turned on its head by the political dependence of the majority members of the Parliament on the Executive Government. Policy formulation became primarily an executive function. As the pressure on legislative time intensified, a virtual monopoly over initiatives for legislation passed to the Executive Government. The influence of Ministers in debate, whether in the party room or Parliament, was enhanced by the support they could command from the public service. These developments virtually destroyed the Diceyan theory.”

In his Lecture Justice Brennan said:

“As the wind of political expediency now chills Parliament’s willingness to impose checks on the Executive and the Executive now has a large measure of control over legislation, the courts alone retain their original function of standing between government and the governed.”

The Courts do outstanding work but Parliament too must do its duty.

It is proper that the Courts have a generous jurisdiction in matters affecting the people. But Parliament must act, and be seen to act, in vindication of a good civil life.

Mr Isaac Isaacs, as he then was, addressed the Australasian Federal Convention in Melbourne on the 8th March 1898. He said: **“We want a people’s Constitution, not a lawyers’ Constitution.”** [See page 2002 of the Official Record Of The Debates.] He later became a Justice, and then Chief Justice, of the High Court : he was certainly not against lawyers. What he was saying was that the people were entitled to rely on the Institution they directly elected.

Members of Parliament should at all times be conscious of the need for people subject to its laws to have a good civil life.

There are powerful forces available to the Executive whereby it can take control of the House of Representatives and exercise great influence in the Senate. It holds the majority of members in the House. It has the Public Service to advise it, to carry out the laws made on its initiative, and to execute the programs it succeeds in realising. **The party system ensures Cabinet of its command over both the outer Ministry and the backbench in the overwhelming majority of cases.**

The factional system alive in both major parties reinforces the party system.

Still there is **tension at work the heart and soul of Parliament** created by the mixing of its ancient role as a check upon the exercise of otherwise unfettered executive power, and, its more recent role as the determiner of who is to exercise that power at any given time. Hopefully its ancient role has not been altogether surrendered.

The interests of Australia demand that there be a counterbalance to the awesome power of the Executive. The Commonwealth Constitution provides the Legislature and the Judiciary to do this. Yet neither of these possess the resources of the Government. **The Parliament in particular is poorly provided for.**

This is bad for Australia. The separation of powers is a fundamental and traditional principle for bringing high quality to the civil life of this Nation. This requires that **the three arms of government be provided with proper and equivalent resources to do their work.** Where, as is now the case, budget appropriations are comparatively slender for the Parliament and generous for the Executive that is not happening.

No matter what its resources Parliament must strive to carry out its tasks. These include enacting good legislation, testing the worth of the Executive's administration, enquiring into matters of public significance, and protecting the rights, safety, and liberties of the people.

Committees are crucial to the Parliament's ability to carry out its duties. Though they are mealy resourced, in general, they do their work splendidly.

Still for a better civil life a more equitable balance must be struck between the **resources** given to the Executive and those allotted to the Legislature and in particular to the committees of Parliament

Over the years I spent doing work on committees, **their staff, usually with outstanding competence, dedication, and learning, carried out work which included**

1. research into many and varied matters
2. arranging for witnesses to give evidence
3. obtaining other sorts of evidence
3. drafting reports to be settled by members of Parliament
4. having those reports published
5. giving advice
6. providing opinions in various areas of knowledge
7. discussing matters with the parliamentary members of the committees whose staff they constitute
8. preparing press releases
9. arranging for meeting places in Canberra and interstate.
10. establishing electronic contact with witnesses overseas
11. writing papers for committee members to deliver at conferences and other sorts of meetings

Types of committees I have served on

- [1] Senate **Legislative Committees** which
[a] look at legislation referred to them by the Senate

[b] test departments in respect of their budget appropriations and their annual reports. When performing this function they are known as Estimate Committees

[2] Senate **References Committees** which look at matters other than those dealt with by the Legislative Committees referred to them by the Senate, usually an issue of interest to the Public.

[3] **Joint House Committees** made up of both members of the House of Representatives and senators usually dedicated to a discrete matter such as migration or corporations or foreign affairs and trade or treaties.

[4] **Select Committees**

The staff of the Committee System determines the quality of its work. Accordingly what I would like from advisers includes:

[1] competence

[2] frank advice

[3] true guidance

[3] advice and guidance which has intellectual integrity

[4] lucid and hopefully elegant writing which conveys exactly what needs to be said

[5] writing which has intellectual integrity

[6] the ability to get the evidence of good witnesses --- from within Australia and overseas --- either by video or perhaps audio link or by a personal visit

[7] courtesy---to members --- to staff--- to witnesses

[8] enthusiasm of the right sort which means commitment to Parliament and dedication to the work in hand

[9] appropriate attention to each and every member of the Committee---for example letting all of them know what is happening---giving what each has said proper weight

[10] to do work on the basis that one of the prime purposes of the Committee System is to test the Government of the day on its legislation and administration