Looking back at the dismissal

No event in Australian political history has so stirred or excited or angered people, including people who otherwise make an effort to avoid any interest or involvement in politics. The Dismissal has been described variously as a ‘coup d’état’,¹ as ‘a political revolution’,² as ‘a coup’³ and so on. In the Senate, it was described by many pejorative words, including ‘jackboot tactics’⁴ and ‘reprehensible’,⁵ that it ‘jeopardise[d] the defence of the country’⁶ and as an ‘impropriety’.⁷ The events of that period polarised people as has no other event I have known. It caused lasting bitterness, it entrenched a sense of injustice in the minds of a part of the Australian community—bitterness that was not resolved until Labor won again at the polls in 1983. I had not imagined, when we acted in the Senate, just how deep or prolonged would be the sense of wrong within sections of the Australian community as a result of our actions.

Many eminent constitutional lawyers have analysed the issues of legality and constitutionality raised by the events between 16 October and 11 November and, as Tom Hughes and S.E.K. Hulme set out in opinions tabled in the Senate,

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have concluded, generally, that the Senate acted within its powers, as did the Governor-General.\textsuperscript{8} It is not necessary for me to repeat or canvass their arguments. Since then there have been several questions put to the Australian people at referendum. None has sought to limit or remove any of the powers of the Senate, nor would such a referendum question succeed were it to be put.

But the issues raised by the deferral of Supply and the Dismissal go much further than merely the legality or constitutionality of what was done. They include questions of propriety, of judgment and of wisdom. There is also the question of whether Labor was robbed of its rightful chance to resist its opponents in the Senate by wrong Senate replacements—that is, whether in fact it was deprived improperly of its chance to exercise the mandate of the election of April 1974.

It is to these that I will now address some thoughts.

First, to the question of the irregular (and later forbidden) breaches of established practice associated with the replacements of Labor senators Lionel Murphy and Bert Milliner. I have no doubt that there were some notable breaches of propriety, but believe too that Labor cannot assert that it was beaten just because it was deprived of its rightful Senate numbers.

As a parliamentarian, I was upset by the behaviour of Tom Lewis in New South Wales, and outraged by that of Joh Bjelke-Petersen in Queensland, in not replacing Labor senators with the nominees of the Labor Party. In New South Wales the one-time Mayor of Albury Cleaver Bunton replaced Lionel Murphy, who went to the High Court from the Senate. Bunton described himself (as did Tom Lewis) as a ‘political neuter’ and he voted with the Labor Party, especially in the matters of deferral of Supply.\textsuperscript{9} After Murphy’s resignation, the Senate had made known its view that convention called for a replacement from the same party as the retiring senator and in a resolution:

\begin{quote}
The Senate commends to the Parliament of all the States the practice which has prevailed since 1949 whereby the States, when casual vacancies have occurred, have chosen a senator from the same political party as the senator who died or resigned.\textsuperscript{10}
\end{quote}

Tom Lewis ignored this expression of Senate view in the choice he made.

\bibliography{references}

\begin{itemize}
  \item[8] See, for example, Odgers (1976: 58, 61 ff.), which summarises succinctly that the Senate did possess the power to act; White and Kemp (1986: 135–9).
  \item[9] See, for example: Reid (1976: 326).
\end{itemize}
Christopher Puplick has provided me with the following account of the response of the party organisation in New South Wales to the decision to appoint Bunton:

When Lewis decided to appoint Bunton to the Senate (vice Murphy) there was considerable hostility within the party. A meeting was held of senior members of the State Executive, including Philip Sidney-Jones (president), Dr Peter Solomon (VP), Mr John Atwill, Sir John Pagan, (federal Executive members) and myself. It was decided to convene a special State Executive meeting at which Lewis would be asked to explain his decision. This was held at Ash Street. The meeting was attended by virtually all State Executive members. Lewis was present as was John Maddison, Minister for Justice. By agreement I spoke on behalf of the State Executive and was supported briefly by Peter Solomon. Maddison spoke at length to outline the law, precedent, and the constitutional position. Lewis then launched a tirade against me personally for my remarks and was exceptionally abusive. At the end of his tirade Jock Pagan told him he was a disgrace and owed me an apology. An even stronger rebuke was administered to him by Albert Hurley. At this point Lewis walked out. Discussion continued and State Executive resolved, without recording anything formal, that it believed that Murphy should be replaced by another Labor appointee. Sidney-Jones was instructed to convey the Executive findings to the Premier formally (John Maddison was still present) and later did so. The Executive decided not to make any formal statement on the matter. Subsequently Lewis wrote to the State Executive, noting its views and at the same time apologising to me for the nature of his remarks which he agreed had been intemperate and improper. I believe that this incident in fact commenced the breakdown in relations between the party and Tom Lewis which eventually led to his replacement by Willis.11

The Journals of the Senate show that on the divisions crucial to the constitutional crisis Bunton voted consistently with Labor, as did Liberal Movement Senator Steele Hall. Each of them declared on or before 15 October that he would not be a party to any move of the kind that was eventually taken.12 To that extent the presence in the Senate of Cleaver Bunton seems not to have affected adversely efforts by the Labor Party to obtain Supply during the critical days. In short, the appointment of Bunton, however wrong it was, seems not to have altered adversely the balance of Senate numbers against Labor.

But Cleaver Bunton was not a member of the Australian Labor Party and should not have been imposed on the Senate. His appointment by the Government of New South Wales was morally wrong whatever the legal niceties might have been. Bill Snedden, then still leader of the Liberal Party, deplored his appointment and was right to do so. The will of the people in 1974, expressed at the polls, had been to elect a definite number of Labor Party senators and to establish a certain balance between parties in the Senate. By refusing to

11 Written document held by the author.
reappoint a Labor nominee, the Lewis Government besmirched itself and acted wrongly. In its defence, it was carried along by the anti-government fervour of the times and was genuinely outraged that Lionel Murphy should have been elevated to the High Court of Australia. Tom Lewis is reported to have said: ‘I am aware that tradition favours election of a member of the same party, but in the case of Senator Murphy’s resignation I am not going to be bound by hidebound tradition’. Looking back now, it is hard to see what the fuss was about; Lionel Murphy was a competent, qualified and respected justice.

But if the Bunton appointment was bad, the appointment of Patrick Field was outrageous. This was an appointment to replace an elected Labor senator who had died in office. To my mind now, in calmer retrospect, there could be no possible justification for doing other than appointing the nominee of the Labor Party to replace him. It is an absolute indictment of the honour and judgment of the then Country/Liberal Party Coalition Government in Queensland that it refused to send Mal Colston to Canberra, deciding instead to send a nominee of its own. The character assassination of Colston within the Queensland Parliament under privilege merely made matters worse. This thoroughly discreditable appointment sickens me now, as it always sickened me. Field should neither have sought nor accepted nomination, he should not have been chosen and he most certainly should not have taken his place in an elected chamber. In the Senate during the period of the crisis one of our amendments restated the principle and the convention that senators should be replaced from the same political party.

Although arrangements were made for Field not to sit, Labor lost the vote that Colston would have brought to divisions, and we on the Liberal/Country side gained a fortuitous and vital majority. The division lists show that Field voted only twice, on 10 September, and thereafter did not vote at all. Since the lists show that 59 senators were voting subsequently, it follows that Field was not paired, that Labor was disadvantaged as a result, and that we enjoyed a majority to which we were not entitled. We could, and should, have offered a pair to Labor to offset the appointment of Field.

It has often been asserted that without that fortuitous majority the non-Labor parties could not have engineered the constitutional crisis. This assertion might be convenient for Whitlam apologists and Labor propagandists, but it is not correct.

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15 Senate voting lists from 10 September are contained in Journals of the Senate—56th Session (1975), and confirm these figures.
At all times the Liberal and Country parties together (with Michael Townley, who had now accepted the position as Liberal whip) had enough Senate votes to negate any proposition of any kind put up by the Government. During the debate on the Loan Bill in October 1975, we demonstrated that we could run and maintain a filibuster and could negative any attempt by the Government to force a vote (should it have moved the standard closure, or ‘gag’, motion ‘that the Question be now put’). We could, and did, negate any other procedural motion that the Government might run whenever we wished to do so. We could, and did, arrange a long list of speakers on any Bill; we could and did put down long lists of questions as we did on the Loan Bill; we could encourage each senator to speak for the maximum time allowed (then one hour) and could under the same standing order then move for a substantial extension of time at the end of the hour (although we could not debate that motion); we could move amendments to the main question to permit every senator to speak again to the amendment even if that senator had spoken already to the main motion. So it was that I made my speech on the Loan Bill in two parts between 14 and 16 October and could have spoken again if needed. We could have encouraged our speakers to exercise a right of reply in closing debate on any motion they had moved.

Further, the Standing Orders of the Senate provide a number of ways in which oppositions can take over business. Some of these include debates on matters of public importance and motions of urgency; motions to suspend standing orders; long speakers’ lists on motions of condolence; debates on the first reading of any Bill that the Senate may not amend; and long debates on the committee stages of any Bill. This last is a particularly powerful weapon for any opposition since one is permitted to speak many times (as many times as one wishes) in committee. Finally, Odgers has set out other means by which our numbers would have been sufficient to achieve the end we sought.

In short, we could have maintained our position of deferring the Appropriation Bills in 1975 without ever voting to defer them by:

a. using every opportunity to advance our own business

16 Senate Standing Order 407A in force at that time.
17 Senate Standing Order 407 in force at that time.
19 Senate Standing Order 64 in force at that time.
20 Senate Standing Order 448 in force at that time.
21 See Senate Standing Order 189 in force at that time, which read: ‘Except as to Bills which the Senate may not amend, the Question “That this Bill be now read a First time” shall be put by the President immediately after the same has been received, and shall be determined without Amendment or Debate.’
22 Senate Standing Orders 407 and 407A in force at that time.
23 Odgers (1976: 62 ff.).
b. speaking to maximum length on every motion brought forward by the Government

c. speaking on every available first reading

d. filibustering on every second reading and in every committee stage debate

e. prolonging every second reading debate with amendments moved after most senators had spoken and at all times using our numbers to defeat any government motion of a procedural kind.

I was later the government whip for three years, between 1978 and 1980 (and deputy whip for two years before that), and have no doubt about the feasibility of the tactics outlined above.

So, it is possible to be quite definite that Labor was not beaten just because two non-Labor state governments had acted improperly in not sending Labor replacements to the Senate. Those actions were improper and unjustified and they did give us a fortuitous and unexpected advantage. They did allow us to use simpler tactics to achieve our end. But we could always have achieved our goals, albeit with much more difficulty, even had Labor senators replaced the two who left.

As a result of the actions by the Governments of New South Wales and Queensland, the people agreed in 1977 at referendum to alter the Constitution to ensure that, for ever after, a replacement in the Senate should be the nominee of the same party of the departing senator.24 In the late 1980s, premier Robin Gray of Tasmania sought to oppose the particular choice of the Labor Party (John Devereux) as a replacement for Don Grimes, arguing that the choice of the member of the appropriate political party was one for the Parliament of the state, not for the political party concerned. He wanted a choice of nominees from the party from whom the Parliament would choose one person. No political party should accept such a situation. The position taken by Robin Gray did not, and does not, represent the wishes of the Australian people expressed in that 1977 referendum, nor does it express the spirit of that constitutional amendment.

I have explained earlier that we could still have pursued our policy of deferring Supply in the Senate had these two Labor senators been replaced ‘properly’, as they should have been. We had numbers sufficient to block any affirmative motion by the Government and so could have continued to deny passage of any affirmative proposition (for example, that the Budget Bills be voted on)

24 At a referendum on 21 May 1977, the people of Australia agreed to amend Section 15 of the Constitution to ensure that the Bunton/Field appointments could never again occur. The first senator to be elected after this amendment was Austin Lewis and we always referred to this particular amendment in the Senate as ‘the Austin Lewis amendment’.
while ever our numbers held. The process would have been more difficult to initiate and maintain. Also it would have been more difficult to present and sell than the course we actually took.

Many people have asked me since 1975 whether our numbers would have continued to hold as they did for the 27 days of the crisis. I have already recorded my own disquiet early on, and it is common knowledge that Alan Missen, Don Jessop, Eric Bessell, Neville Bonner, Condor Laucke and probably others were unhappy at our use of Senate power to deny Supply to an elected government.25 Withers had told me (and it is recorded earlier) that one of those named above was ready to crack.

There seems no doubt to me that our numbers would not have stood firm for more than another day, or two days at the outside. The pressure on senators was enormous, with highly targeted campaigns against some of us thought to be unhappy with our course and against the wives of others; I know, for example, that Barbara Jessop was under a lot of pressure in Adelaide. My own mail was enormous, with old friends assailing me with demands that I vote (or abstain) to allow for the early passage of the Appropriation Bills. Of all these doubters, Missen was the one of greatest clarity of view and experience. He was a man of courage and determination and I wonder how long it would have been before he, or one of his colleagues, would have cried ‘enough’. But we will never know.26

The Senate stayed the course. Reg Withers and his whips did a masterly job in marshalling the senators, in stroking those who needed it, in staying close to all with doubts, and generally giving an exemplary display of the management of people. As one of those who had to be cossetted, I can say that I received a lot of invitations during that time to drink whisky with the leader.

In the foreword to this manuscript, I asserted that I was—now from a distance—relatively dispassionate about the events of which I was part in 1975. Critics might well argue that I am not dispassionate, that I have a position to protect, that I wish to ‘justify’ what we did and to present it in the best possible light. Such critics might like to examine my later history.

In 1987, when it was necessary, I resigned from the Shadow Cabinet over a matter of principle27 and have never returned. For a long time I was not wanted and was not asked. Then I was invited to rejoin the front bench but declined to accept. Following that resignation in 1987, I voted for the government measure over

26 Alan Missen died in 1986. See my parliamentary eulogy on his passing in part two of this volume.
27 See my daily diary from 1987.
which I had resigned,\textsuperscript{28} crossing the floor to vote with Labor and against my colleagues for the first time in my career in the Senate. In 1988, I abstained from votes on some referendum questions; that same year I crossed the floor to vote with Labor on a resolution related to immigration, and in 1989 I abstained from voting with my party and colleagues against the Government’s War Crimes Bill.

I have written and spoken out in recent years, since my perceptions became clear, on a ‘liberal’ rather than a ‘conservative’ philosophical agenda and have been an editor of the Liberal Forum Occasional Papers series as well as contributing to books produced by the Liberal Forum. My reputation is secure from these activities and I have no fear about analysing honestly the merits and weaknesses of what I did 40 years ago. If I reach a different conclusion now, it is simply that I see things with the advantage of more experience and more political wisdom. I hope any critics will accept this.

There seems to have been an inexorable movement that swept all the actors towards those cataclysmic events of late 1975. The press was interested in the possibility of Senate deferral of Supply for the entire duration of that Parliament. Questions about possible deferral were among the first thrown at Malcolm Fraser when he became Leader of the Opposition. Those questions continued almost daily. They produced their own dynamic: if the journalists and leading television interviewers continued to pursue this matter, perhaps it was a matter to which we should have been directing more serious consideration. But of course the press did not do this alone. Input from impatient and ambitious figures in the Opposition was part of the daily interaction that produces press stories and in which journalists are briefed. It was as if we backbenchers were getting briefing from ambitious leaders via the press.

There is no doubt that as a groundswell of interest in the matter increased, it was handled quite delicately within the parliamentary party. First the leadership group took a view that, according to some commentators, was heavily influenced by Country Party fears of a possible redistribution. It was then taken, not once but several times, to the Shadow Executive, which was gradually locked in. Those of us with doubts were encouraged to see Fraser individually and efforts were made to listen to each of us. By the time the matter came to the Coalition parties for approval, almost all resistance had been removed or dealt with. It was a fait accompli by the time our party room considered it formally—so much so

\textsuperscript{28} The measure was the Equal Employment Opportunity (Commonwealth Authorities) Bill, which became Act No. 20 of 1987. I crossed the floor together with six colleagues: Senators Robert Hill, David Macgibbon, Christopher Puplick, Baden Teague, Michael Townley and Reg Withers. Together we made up one-quarter of the Liberal Party senators.
that when Alan Missen objected in the party room, he was invited to withdraw (with Philip Lynch) to consider the matter further. He gave way only in the interests of collegiality.

Missen was never happy with what we did. This is well illustrated by some events in 1985, 10 years after the Dismissal. Peter Rae produced a memo that was signed by nine of us who had been part of the events. The memo read:

OFFICE OF SENATOR PETER RAE, SENATOR FOR TASMANIA

11th November 1975

Remember the day when the steadfastness of Coalition senators was rewarded.

Remember the overwhelming vote of confidence given to us by the people in the ballot which followed.

11th November is the anniversary of the day when democracy prevailed—when Whitlam failed in his plan to ‘smash the Senate.’

To commemorate that occasion, the following, who all participated in voting in 1975, and are still in parliament, are gathering for lunch in the members’ guests dining room at 12.45pm on the 11th November 1985:

Senators Baume signed
Carrick signed
Chaney signed
Durack signed
Guilfoyle signed
Jessop signed
Missen refusal
Rae signed
Sheil signed
Townley signed
Withers signed
and Kathy Sullivan apology

Alan Missen’s refusal was typical of the man. Instead of signing Rae’s missive as the rest of us did, he wrote the following message beneath the proforma document:

Peter Rae,

Although I said I would attend a luncheon, as you suggested, it was when I understood it was a reunion for those who went through the ‘fires’ of 1975. I now find that you are arranging a cheap function to glorify your cause.
As you well know I regard the Opposition’s conduct in Oct/November 1975 as indeed the nearest thing to wrecking democracy and I am determined to see that no such selfish venture occurs again. It has taken the Senate ten years to live down that event.

In view of your invitation and particularly the terms in which it is couched, I would not be seen dead at such a function.

Alan Missen

Missen then circulated an article from the Melbourne Sun of 9 November contrasting the giant wake to be held by the Labor Party with the ‘celebration’ of the Liberals—that is, the luncheon referred to above. Missen added the following note to Jessop and me only:

This will show you the reasons why I objected so vehemently to the invitation. I do not blame Peter Rae. I do not think he would perpetrate such a dirty trick. One of the conspirators of 1975 has obviously leaked this false information.

Alan Missen

It is proper here to make some observations about the Senate as an organic entity, an entity separate from the people who make up its membership. During my time there I sat with some of the longest-serving senators ever. Justin O’Byrne served 34 years; Reg Wright and Ian Wood served almost 25 years each. Yet each of them once was a new senator entering a functioning and powerful Senate. When each of them left, he left behind him a functioning Senate. What is more, the day after each person leaves it is as if he or she has never been there. The corporate memory is for the institution and not for the individuals who sit in it.

Each of us has to live with this knowledge of our own transience and unimportance compared with the continuity and power of the Senate itself. Some cope with this by avoiding all thought at all. They glory in their own temporal and temporary power, generally unaware of how momentary it all is. Some just put the thoughts aside as they knuckle down to the work of the day in the chamber or in one of the many senate committees. A few, however, having realised the message of history, dedicate themselves consciously to the institution—to the Senate—and become what are called ‘institutional’ senators. They do have a reputation that continues within the Senate itself even after they are gone. But they are few, and the price they pay is that they make the

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29 All these documents are in the author’s possession.
30 Justin O’Byrne served from 1 July 1947 to 30 June 1981; Reginald Wright and Ian Wood each served from 22 February 1950 to 30 June 1978.
‘institutional’ decision at the cost, too often, of advancement within their party. They often forgo advancement towards executive government because their commitment is less to the party and more to the Senate.

Even during the crisis I was aware that some of my colleagues were ‘institutional’. Sadly, my appreciation of their contribution grew only with the passage of time and with increasing wisdom. During my first Parliament I was too new, too unaware and too caught up with the great power struggle into which I had been thrown.

One other question has been asked more and more as we have distanced ourselves from that turbulent time. It is whether we were wise, whether we were prudent, to act as we did when we did. Was it a premature act by impatient people? Was it unnecessary as the Government self-destructed? Why did we not wait patiently for the elected government to serve out the miserable time left to it, taking the high moral ground in the meantime? Whether or not the Senate will ever take such a course again, one matter of interest should not be overlooked. The people seemed to disapprove of what we did in the Senate to defer Supply and so force a general election. But, that having been done, the people did not hesitate to vote the Government out decisively. So we see a paradox: distaste for what we did, but an avidity to act decisively on the results of that action.

There seems little doubt in retrospect either that the Whitlam Government was damaged irretrievably by the events of 1975 or that it would be defeated soundly whenever an election was held. By waiting it would have been possible for Malcolm Fraser to have been installed with a legitimacy he was never able to achieve. His premiership was forever tainted by the events of 1975 in the eyes of a significant minority, and the question arises of whether this was either wise or necessary. But none of us realised that in 1975. None of us thought ahead clearly enough to foresee the terrible legacy that the Dismissal left in the minds of too many Australians.

Too many people either have forgotten the temper of those months or were never close enough to experience the atmosphere. It was something I had never known before and I have never met since. Events, disclosures, developments, statements burst upon us daily. Titans in the forms of the prime minister and the Leader of the Opposition seemed to be engaged in some gigantic struggle that simple backbenchers like me struggled to follow and to understand. We suffered from information and emotional overload, from unbearable tensions, from unsustainable heat, battle and smoke. We experienced more ministerial casualties than I have ever known before or since. We had media attention and comment unparalleled in my experience.
It was almost impossible to maintain a calm and studied judgment and I believe we lost our collective judgment as the weeks progressed. Some writers have concentrated on our fear of the outcome of a half-Senate election in the special circumstances of that time. In retrospect, it is clear that such an election for half the Senate would have gone heavily against the Government, just as the general election did in December 1975.

I believe now that my original reticence to defer Supply was correct and that we should not have embarked on the course we did. Not because it was illegal—for it was clearly legal and clearly within the scope of powers properly available to the Senate. Not because it was improper—for it was clearly not improper for the Senate to act as it did. My objection then, as now, was that the action was premature, foolish and unnecessary, and that the costs of acting as we did outweighed the benefits we obtained. Government with legitimacy could have been ours had we waited another year and a half at the most. There is little possibility that the Whitlam Government could have recovered the ground it had already lost; there was little likelihood that Gough Whitlam could have bested Malcolm Fraser in a head-to-head contest, and the vaunted dangers from Labor’s proposed redistribution were potential advantages at best. An election held within a normal time frame would have seen a legitimate Liberal/Country Party Coalition government installed under calmer circumstances and possibly for a longer term.

Steele Hall raised these questions in a letter written to Malcolm Fraser on 1 October 1975. He urged Fraser not to take the course we eventually took, and predicted accurately some of the less pleasant consequences of any grab for power. He said:

> It would be extremely difficult to develop a popular base for your leadership in a community which contained the bitter and growing discontent of Labor supporters who believe the ballot box had lost its democratic function. Strategically, our non-Labor side of politics must surely be better served by planning to win a significant number of years of office at a normal election rather than by prejudicing the length of that office by grabbing at 16 or 17 months of Labor’s remaining term.\(^\text{31}\)

I changed my mind and agreed to the course for several reasons. First, as a freshman senator, I was dragged along by great events before I had become politically mature. Second, peer pressure on me from within the party (but not from Fraser directly) was enormous. Third, I was outraged at the serial revelations of misconduct by minister after minister. It was after the dismissal of Connor that I told Fraser finally that I was ready to support deferral of Supply and,

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having told him that, I was prepared to see it through. But now, from a vantage point 40 years on, I think that I was wrong on balance. If I was now called on to make a similar judgment it would be against deferral of Supply as we did in 1975. Not that we have a great deal to worry about there; Reg Withers told me,32 almost at the time, that the Senate, in spite of its undoubted power, would not refuse Supply again to any government in our lifetimes. I think he was right.

32 Withers, Rt Hon Reginald Grieve, Personal communication with author.