

THE GOVERNORS

WITH A NOTE ON GOVERNMENT HOUSE

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Since the inauguration of parliamentary government in 1857, South Australia has had twenty-nine governors — though many people have been led to believe there have been only twenty-eight in that time.¹ Until the 1980s our governors were appointed by the reigning monarch on the advice of the imperial Secretaries of State for the Colonies and their more recent counterparts.² Nevertheless, in the latter part

1. The lists currently presented on the Government House website and many official publications acknowledge only twenty-eight, for they omit (Sir) William Cairns, appointed to succeed Sir Anthony Musgrave in 1877. After fifteen years' service in Ceylon (Sri Lanka), where he had risen to be postmaster-general, Cairns had held vice-regal office in Malacca, St Kitts, British Honduras (now Belize), Trinidad and Queensland — where the town that has become the city of Cairns was named in his honour when it was founded in 1876. Some reference works, such as the first 21 numbers of the *South Australian Yearbook* (issued between 1966 and 1986) have wrongly included Cairns in the list of lieutenant-governors and other persons who have administered the government of South Australia during the illness or absence of a governor. In reality, he was duly commissioned by Queen Victoria and installed as South Australia's tenth governor. He resigned after only eight weeks in Adelaide, because of insomnia and what nowadays would probably be diagnosed as depression. He himself asserted that his symptoms were the effects on his 'nervous system' of twenty-five years residence in tropical climes. Leaders of government and society in Adelaide exhibited more indignation than sympathy at this unfortunate development. Their attitude eventually led to denial of his having been a fully-fledged governor. I am preparing an article on him, with the working title 'South Australia's Forgotten Governor', for the *Journal of the Historical Society of South Australia*. For the time being, see R.B. Joyce, 'Sir William Wellington Cairns', in *Australian Dictionary of Biography*, Vol. 3, ed. D. Pike, MUP, Melbourne, 1969, pp. 330-1.

2. The title of the relevant British minister was altered as the nature of the Empire changed. He was styled Secretary of State for Dominion Affairs in 1925-47, for Commonwealth Relations in 1947-66, and for Commonwealth Affairs in 1966-68. In 1968 the department was merged with the Foreign Office. Since then its ministerial head had been styled the Secretary of State for Foreign and Commonwealth Affairs.

of the Playford era, British ministers began to accept and act on recommendations from South Australia's premiers.³ The *Australia Acts*, 1986, now require the Queen to act *only* on the advice of the current premier when appointing, or dismissing, a state governor. That advice is forwarded directly to her, not through a British minister.

In the 1890s, Premier Kingston had tried to persuade Downing Street to let him have a say in vice-regal appointments. When his requests were rejected, he made the post less attractive to people coming from overseas by abolishing the vice-regal expense allowance of £2,670 a year. Hence, for the next seventy-five years, each governor had to pay the salaries of his private secretary⁴ and aide-de-camp, and the wages of his domestic servants. Kingston had also demanded that the governor pay income tax, his postal, telegraph and stationery bills, and the premiums for insuring the contents of Government House.⁵ When London responded by appointing as the next governor Sir Fowell Buxton, a wealthy brewery-owner and philanthropist, Kingston legislated to reduce the governor's salary by twenty per cent, to £4,000 a

3. This certainly happened no later than early 1961, as I was assured in the 1970s by people who had been involved in Sir Edric Bastyan's nomination and appointment. Bastyan's case set a further precedent in that he was a divorcee who had remarried while his first wife remained living. With characteristic stubbornness, Playford brushed aside complaints from some members of the Adelaide gentry who insisted that the principle that had led to the abdication of King Edward VIII in 1936 should continue to be a bar to vice-regal office as well.

4. This was harsh because, in those days, the governor's secretary was also the Clerk of the Executive Council, and his duties in that role took up at least half of his time. But Kingston and his immediate successors remained unmoveable on the point, because the governor rather than the premier chose the person who filled the post.

5. Kingston further demanded that the governor should no longer bring his own domestic servants (which often included a nanny, a governess and/or a tutor, a seamstress and a lady-in-waiting, as well as a butler, footmen, a valet, a coachman, a groom, a housekeeper, chamber-maids, laundry-maids, at least one cook and a scullery maid) with him from his previous or his usual dwelling-place, but should engage them locally on arrival in South Australia. This was vigorously rejected, and Kingston was compelled to withdraw the demand on the ground that, as the governor would henceforth have to find the whole expense of the wages of all his household servants, he must be conceded an unfettered right to employ whomsoever he wanted. Kingston was subsequently persuaded to agree to pay for those of the governor's telegrams that were certified to be on public service. He and his successors did hire and pay the wages of the head-gardener and groundsmen.

year. This explains why, whenever no affluent individual could be found to take the post on those terms, in the period 1909-1971, Government House was presided over by an admiral, a general or an air vice-marshal, all of whom had decent armed-forces pensions (or half-pay, in the case of the last member of that group) to assist them to make ends meet in South Australia.⁶ In those years it helped that federal governments honoured the tradition that governors should not have to pay income tax.

In 1968, Premier Hall nominated the first Australian who filled the post. The Army records in Canberra state that the person chosen, Major-General Sir James Harrison, was 'seconded for duty as Governor of South Australia', and for six months also served as Acting Head of Central Command. Lieutenant-General Dunstan (Governor from 1982 to 1991), has refused to believe it, but that is what's recorded. This double duty could have led to conflict if, for example, a Premier of New South Wales had exercised his rights under the Constitution of the Commonwealth to

6. Lord Kintore, Governor of South Australia from April 1889 until April 1895, claimed he had had to spend £12,000 of his private means in that time. *St James's Gazette*, 12 November 1895, p. 3. Kingston's cuts reduced South Australia from a first-class to a second-class colony in the British Colonial Office's rankings. Even before 1895, the governors of the adjoining colonies and of several smaller overseas ones, such as Jamaica and Hong Kong, had been better remunerated. In South Australia, most of the former expense allowance of £2,670 had gone to pay the salaries of the private secretary (who received as much as some ministers of the Crown) and the aides-de-camp. The wages, meals and livery or work-clothes of the fourteen or more domestic servants had absorbed most of the balance. Hence, even when the salary still stood at £5,000, the governor had had to pay the cost of the food and drink served at the banquets, balls, dinner, luncheon and garden parties he was expected to give. When he had to meet all those expenses, as well as giving the expected decent annual donation to all the charities and community service organisations of which he was patron, from a salary of £4,000, it's no wonder each governor needed supplementary sources of income. Despite having inherited Truman's Brewery in London, Governor Buxton was a teetotaler. Nevertheless his diary for 1897, now in the Essex County Record Office, records that his guests at Adelaide's Government House in that year consumed the amazing total of 171 bottles of sherry, 129 bottles of port, 235 bottles of chablis, 464 bottles of champagne, 724 bottles of claret, 25 bottle of liqueurs and 193 bottles of spirits. See my 'Pursuing Further Varieties of Vice-Regal Life', in *Journal of the Historical Society of South Australia*, No. 17, 1989, p. 80. And, as he had done in England, Buxton distributed much to the needy through almoners counselled never to disclose the identity of the giver. In three years in Adelaide, his expenditure and gifts exceeded his salary by £38,000. C.E. Owen Smyth, 'Some governors I have known', *Register*, 22 December 1923.

require troops to be sent to keep the peace in Broken Hill. That would have put Harrison in the position of having to act on orders from the federal Minister for Defence at the same time as he was obliged to act in his official capacity only on his South Australian ministers' advice. It was lucky that such a scenario did not develop.

When Harrison reached the prescribed age for retiring from the Army in May 1969, the Hall government relieved him of the responsibility for paying his staff and the domestic servants. Premier Playford had given the governor a small salary increase in 1963, but the position was not remedied until Premier Dunstan asked Sir Mark Oliphant if he would accept the post, in 1971. As Oliphant had only a modest pension from the Australian National University and almost no savings, Dunstan agreed to raise the salary to \$20,000, and to provide a car. In terms of purchasing power, that was, however, only a fraction of the remuneration that had been paid to a governor before 1895.

The British appointees, like the subsequent Australian ones, were a varied and interesting group.⁷ Six were Irishmen.⁸ Three were Scots.⁹ Sir Anthony Musgrave hailed from the rocky West Indian island of Antigua. Even three of the eleven who had been born in England were Celts: the family of Sandy Hore-Ruthven (afterwards Lord Gowrie) was Scottish; that was also the case with Barclay-Harvey, who succeeded his father as laird of Dinnet and proprietor of large estates in Aberdeenshire; and Galway's father was an Irishman, his mother a Scot. And Jervois (who claimed that his name should be pronounced 'Jarvis', a fact recorded by contemporaries but now very largely forgotten), though born on the Isle of Wight, was proud that his ancestors were Channel Islanders. Of the seven more recent appointees who have been Australian-born, only four have been natives of this state. The most recent of our governors of English birth was Sir Eric Neal, who is entitled

7. All who had died by 1980 have entries in the *Australian Dictionary of Biography*.

8. MacDonnell, Daly, Cairns, Robinson, Le Hunte and Dugan.

9. Fergusson, Kintore and George.

to consider himself Australian, not just because his family migrated here when he was only a toddler, but because he acquired Australian citizenship in 1949.

Of those who had been chosen by British ministers, seven (Jervois, Bosanquet, Bridges, Hore-Ruthven, Dugan, Norrie and George) had held high rank in one of the armed services. Four (Fergusson, Buxton, Weigall and Barclay-Harvey) had been members of the imperial House of Commons. Seven (MacDonnell, Daly, Musgrave, Cairns, Robinson, Le Hunte and Galway) had had lengthy careers in the British colonial service before they were sent to South Australia. The ninth Earl of Kintore and the second Baron Tennyson were chosen in an era when members of the ruling classes in Britain believed that most Australians loved members of the British peerage and delighted in welcoming them to our shores. Their appointments were made late in the nineteenth century, before Belloc lampooned one nobleman (who had been imposed on another colony) by writing the ballad of *Lord Lundy* (1907),¹⁰ and before Sir John Squire penned his *Lord Globule*,¹¹ The worldlings of

10. Belloc's irony was directed at the appointment, in 1899, of a hapless twenty-seven-year-old, Lord Beauchamp, as Governor of New South Wales. The fictitious young 'Lord Lundy' was shoved into politics 'towards the age of twenty-six', performed miserably, and suffered an ignominious fate. As Belloc put it:

The Duke — his aged grandsire — bore
 The shame till he could bear no more.
 He rallied his declining powers.
 Summoned the youth to Brackley Towers,
 And bitterly addressed him thus —
 "Sir! You have disappointed us!
 We had expected you to be the next Prime minister but three:
 The stocks were sold; the Press was squared
 The Middle Class was quite prepared.
 But as it is! ... My language fails!
 Go out and govern New South Wales!

Reprinted in H. Belloc, *Cautionary Verses*, Duckworth, London, 1940, pp. 54-7.

11. Squire was offering a pastiche of Belloc. His verses on 'Lord Globule' have an equally dramatic ending:

Fate was too strong; they had to bow;
 Globule at home had been a failure;
 And they could only give him now
 The Governorship of South Australia.

Westminster were slow to learn that South Australians assessed individuals on their achievements, rather than on their parentage. We can guess that no one in Downing Street had heard those amusing verses that begin:

I am the Honourable Thomas John Montmorency FitzHugh,
But the Aussies call me Tommy, the Pommy jackeroo.¹²

Until the inauguration of parliamentary government, the governor had ruled South Australia. Though he had to consult the principal officials, sitting as Executive Councillors, he was free to act in defiance of their advice. This was because he had responsibility for everything that was done in the Crown's name in South Australia, and therefore could not be required to act against his own judgement. Today the governor still presides at the weekly meetings of the Executive Council. But since 1857 that body has consisted of ministers who hold office at the pleasure of the House of Assembly, not at the pleasure of the governor, and who are answerable to the Parliament (and at election-times to the people) rather than to the governor.

Section 7 of the *Australia Act* provides that, within each state, the prerogative powers of the Crown 'are exercisable only by the Governor of the State'. This means that the governor retains power to

- summon, prorogue and dissolve Parliament;
- recommend measures to Parliament;
- make grants or leases of Crown land;
- appoint ministers and dismiss them;
- assent to Bills passed by both Houses of Parliament;
- appoint judges, royal commissioners and the higher public servants; and
- exercise the prerogative of mercy.

J.C. Squire, *Tricks of the Trade*, Martin Secker, London, 1917.

12. A ballad remembered from my student days. I've never seen it in print and would be glad to hear from anyone who has.

The Act also gives the Governor sufficient power to appoint the State's Lieutenant-Governor, though fifteen years passed before this was fully grasped by everyone involved in such appointments.¹³ These prerogative powers are exercised on the advice of ministers. The reason is that a constitutional governor can never be held accountable, within the sphere of his or her government, for the policy or the conduct of public affairs. That responsibility rests with the ministers, who share in the

13. One of the first South Australians to realize that the governor's role had been augmented was former Solicitor General, Mr Brad Selway QC. He firmly expressed this view at meetings of the State's Constitutional Advisory Council in 1995-96. Mr Selway (who afterwards became a Justice of the Federal Court – not long before his untimely death) considered it is a clear implication of the *Australia Act* that, except in the commissioning of a new governor, all the Crown's powers and functions in State matters are to be exercised by the governor. This applies even when Her Majesty is actually present in South Australia, unless the Premier should ask her to do something specific, such as opening Parliament. Selway's interpretation of the statute prompted an inquiry which revealed that, in 1990, when preparing the paperwork for the appointment of Dr Basil Hetzel as Lieutenant-Governor, staff in the premier's Department had pulled out the file on the appointment of the previous Lieutenant-Governor, Sir Condor Laucke, who had been commissioned four years before the passage of the *Australia Act*. Following the procedure used in 1982, and without thought about the consequences of the *Australia Act*, in the case of Dr Hetzel they had simply drafted a recommendation for Premier Bannon to send to the Queen, asking her to make the appointment. Further inquiry has found that this had subsequently been deemed appropriate because, when in 1986 new letters patent reconstituting the office of Governor of South Australia had been issued, that instrument had confirmed the practice that had applied since the late nineteenth century by giving Her Majesty power to appoint a lieutenant-governor as well as a governor. In the appointment of Mr Bruno Krumins (a migrant from Latvia who had come to Australia at the age of twenty-five) as Lieutenant-Governor in 2000, Premier Olsen's advisors did not follow the advice of the Constitutional Advisory Council (First Report, entitled *South Australia and Proposals for an Australian Republic*, SACAC, Adelaide, 1996, Recommendation 26). Instead, taking the view that the letters patent *required* an approach to the Queen, they too recommended Her Majesty rather than the Governor be asked to make the appointment. Mr Selway then became the driving force behind amendments, made in 2001 by a South Australian Order in Council, which varied the letters patent by expressly conferring on the governor the power to appoint a lieutenant-governor. *South Australian Government Gazette*, 25 October 2001, p, 4687. This finalized the matter. See Bradley Selway & Chad Jacobi, *The Constitution of South Australia: 1998-2003 Supplement, Corrections and updates to 30 April 2003*, p. 5, para 3.2.2. This 67-page work is an online publication available at www.federationpress.com.au/pdf/SelwaySept03.pdf. It presents revisions to Mr Selway's *The Constitution of South Australia*, Federation Press, Sydney, 1997. The first edition of that book had been written in haste when Prime Minister Howard announced he was planning a national convention to consider proposals for an Australian republic.

functions of sovereignty on condition that they accept the duty of answering for the way in which it is exercised.

South Australian legislation has given the governor additional powers. Most of these provisions, such as power to appoint members of the boards that manage statutory corporations, expressly require the governor to act with the consent of the Executive Councillors.

But this combination of conventions and legislative requirements has not meant that all governors are simply 'rubber-stamps'. The governor's intelligent consent to ministerial advice is always necessary. He or she is obliged to read and make judgements about a large flow of official papers. If any are submitted so near to the time of an Executive Council meeting that the governor cannot examine them properly, he or she is entitled to defer consideration of their contents until another meeting. A governor is also entitled to request ministers to supply the fullest information on every matter submitted for his or her approval, and no minister may perform an executive act in the name of the Crown — for example, the proclamation of a state of emergency, in the event of major bushfires, floods or other disasters — unless it has received the sanction of the Governor in Council.

The governor has the right to be consulted, the right to encourage, and the right to warn. It has sometimes happened that when asked to assent to a Bill, the governor has pointed out that a particular sentence in the legislation does not make sense, or that some provision appears inconsistent with other legislation or exceeds the lawful powers of the Parliament. In such cases, if ministers cannot resolve the governor's doubts, they have advised him to refer the Bill back to Parliament for the fault to be rectified.

The prestige of their office had helped many governors to have an influence on what happens. Sir Mark Oliphant's successful appeals that something be done to remedy the blight on views towards the south-east from many parts of Adelaide (the product

of large-scale quarrying on the city side of the Adelaide Hills) are widely remembered. But much more has been achieved without publicity. When I interviewed former premiers as part of the preparation for writing an article on Governor Bastyan, Mr Steele Hall revealed something quite extraordinary. As many can recall, in the 1968 General Election, Labor won a sizeable majority of the votes cast for the House of Assembly, but only the same number of House of Assembly seats that the Liberal country League candidates gained. This gave Tom Stott, the sole independent elected, the balance of power. Even after Stott indicated that he would support the LCL, Dunstan did not hand in his commission but announced he would wait until Parliament met, a couple of months later, so that *it* could resolve who would lead the next administration. In the meantime, Dunstan used the full resources of office to orchestrate a massive publicity campaign, not just to put pressure on Stott, but also to destabilize the expected Hall Ministry. What was never disclosed at the time is that, after Dunstan was defeated on the floor of the Assembly and had resigned his commission, Sir Edric sent for Hall, led him into the study in Government House, invited him to sit in an armchair, and standing before him said that he would commission him as premier if he would give an undertaking not to rest until he had secured the support of enough of his parliamentary colleagues to legislate to remedy the electoral malapportionment that had so long been a striking a feature of the South Australian political landscape.¹⁴ Hall accepted office on those terms, and proceeded to carry out his pledge, knowing that such action could split his party as well as costing him the next election, as it did. Several people, on both sides of politics, have told me Hall was wrong, as well as foolish, to agree to a demand no governor had the right to make. Yet I believe South Australia is a better place because he yielded. And it is arguable that, given that the rumpus Dunstan was creating was posing a threat of public demonstrations becoming violent, Governor Bastyan's conduct in the matter was a legitimate exercise of his reserve powers — of which, more presently.

14. Though Dean Jaensch and other political scientists have dubbed this 'the Playmander', as a historian I think it can more fairly be called the 'Butlermander', after the younger Sir Richard Butler, who, as Premier in the 1930s, was the principal architect of the form it had through the middle decades of the twentieth century.

No one has more highly lauded the importance of having a state governor than former premier, Mr Don Dunstan. He claimed that the office 'is a practical necessity', integral to our form of government. He added that without 'a Head of State independent of the Legislature, Judiciary and Executive ... one of the essential checks in the constitution would be missing'. After explaining the 'enormous power' that ministers have, by regulation, proclamation and ministerial directive, to affect the lives of citizens 'very markedly', Mr Dunstan offered examples from his own experience in government to show the value of having a head of state who had unfettered power to ask awkward questions, especially during Executive Council meetings. He added that if ministerial submissions were not subject to such scrutiny, it would be

extremely easy for Ministers to exceed the authority which they have been given. ... The fact that the occasions when the Head of State's questioning what is put to him by Ministers are rare, arises because the office exists — in itself it inhibits the improper use of executive authority.'¹⁵

The degree to which the governors have carried out this role has depended very much on their background and personality. Those most active in performing it have been the ones who had been members of the imperial Parliament, those who had already served as governors in other places, and, perhaps especially, those who have had training and much experience in the law. I have given examples of their various approaches elsewhere.¹⁶ Meanwhile, each of those who became a governor

15 D.A. Dunstan, 'The States, the Governors and the Crown', in *Republican Australia*, ed. G. Dutton, Sun Books, Melbourne, 1977, pp. 202-4.

16. E.g., my paper, 'Varieties of Vice-Regal Life', *Journal of the Historical Society of South Australia*, No. 3 (1977), pp. 15-48, my chapter on 'Constitutional and Political Development, 1857-1890', in *The Flinders History of South Australia: Political History*, ed. D Jaensch, Wakefield Press, Adelaide, 1986, pp. 95-177, and my book, *South Australia and Federation*, Wakefield Press, Adelaide, 2002, pp. 199-202, 301-3, 334-5. For those governor's who have to date been the subject of *Australian Dictionary of Biography* articles, visit www.adbonline.anu.edu.au/adbonline.htm . Enter the site, click

after attaining high rank in one of the armed services had for decades been accustomed to obeying orders. On the whole, they continued to accept, and do, what they were told. Besides, they were generally more interested in touring the State, and meeting the people at agricultural shows, social functions and schools, or in Aboriginal communities and railway or mining towns, than they were in agonizing over documents.¹⁷

But even within each group there were marked differences. No one has ever led ministers such a merry dance as did Mr Justice Poole, who administered the government for six months in 1925, when Governor Bridges and Lieutenant-Governor Murray took their sabbaticals simultaneously. For a year beforehand, the Labor Government led by John Gunn had (through Bridges) been asking London to appoint only Australians to the office of state governor. Gunn and his fellow-ministers at first disregarded Poole's insistence on being informed of any important decision his ministers might make, and on his right to be advised, if he desired it, of the legality of any proposed action. But after Poole told them that, until satisfied of the legality of the government's plans, he 'would give no assistance to any executive action which might be necessary' to carry out their projects,¹⁸ they were forced to take notice. His subsequent behaviour in querying ministerial plans and policies, demanding reports on a wide variety of matters from senior public servants, especially from the Crown Solicitor, with a conscientiousness that showed he would suffer no attempt to hoodwink him, completed Gunn's change of heart. When Governor Bridges returned from England, the ministers advised him that, because of the difficulty they had had in getting their measures past Poole, they had entirely abandoned their push to end the importation of governors from Britain.¹⁹

on 'Search' in the 'People' box, and when this brings up the 'People search' page, key in the governor's surname and click on 'Go!'.

17. Major-General Sir Winston Dugan (1934-1939), afterwards Lord Dugan, was the extreme example of that.

18 C.O. 532/308/39-40. Public Record Office, London. Microfilm copy in the Australian Joint Copying Project collection, the Flinders University Library.

19 T. Bridges, *Alarms and Excursions*, Longmans, London, 1938, p. 141.

By contrast, Chief Justice Sir Mellis Napier, who between April 1942 and May 1973, served as Governor's Deputy on 179 different occasions, totalling 9 years and 140 days,²⁰ was more gentle and compliant in his approach. He never bombarded ministers with memos, and even in his confidential reports to London on South Australian affairs I have not spotted a hint of tension. Napier's delight was in the trappings of office. He loved to reside in Government House, invite relatives and friends to stay there, dress up in his Lieutenant-Governor's uniform at every possible opportunity, give parties and make use of the rather good wine cellar — until Governor Norrie decided it was prudent to lock it and take away the key whenever he left the State, and advised his successor, Sir Robert George, to do the same.²¹ But another former judge, the remarkably energetic Dame Roma Mitchell (Governor from February 1991 to July 1996), whom the public perceived to be an outstanding success, was, behind the scenes, unusually zealous, eagle-eyed in scrutinizing everything that was presented to her, regularly consulting the parliamentary or executive instruments governing the powers and composition of one or another of the boards running the more than a hundred government committees and statutory corporations, and totally uninhibited in asking questions or pointing out any errors she found in Cabinet submissions. Her performance may well be a reason why permanent members of staff in the Department of Premier and Cabinet now routinely scrutinize all submissions from ministers before a governor sees them.

The major responsibility for critical examination of the propriety of ministerial conduct belongs to Parliament. Furthermore, the courts have the duty of settling disputes about the legality of ministerial action whenever parties appearing before them require it. Nevertheless, Premier Dunstan was right to note that a timely question

20. *South Australian Yearbook* No. 21, 1986, Australian Bureau of Statistics, Adelaide, 1986, p. 147. Napier's service as administrator of the government exceeded that of even our longest-serving Governor, Sir Donald Dunstan. And though Lt-General Dunstan was Governor from 23 April 1982 until 5 February 1991 (8 years and 148 days), Lieutenant-Governor Sir Condor Laucke performed the vice-regal role for a total of more than 300 days in that period, when Sir Donald was either ill, out of the state or visiting remote parts of it.

21. Information from Dr the Hon. A.J.de B. Forbes, who had been an honorary aide-de-camp at the time.

from the governor can nip a potential problem in the bud and save people the expense of litigation.

A governor is not obliged to act on the advice of ministers in absolutely every instance. The governor still has an over-riding duty to promote the peace, order and good government of the state. This is the justification for what are called his or her 'reserve' powers. These enable the governor to act as an umpire on the rare occasions when that becomes necessary. While there have been many instances of tension developing between a governor and his or her ministers, save in only a couple of trifling instances,²² no hint of it has ever been leaked to, or detected by, the media. Since 1857, South Australia has been fortunate, and very unusual, in having witnessed no sensational public conflict between the governor and the ministers, or between the governor and the Parliament. But if there should ever be a crisis, constitutional or otherwise, that Parliament cannot resolve, the governor alone may be in a position to make a decision to untie the knot.

This is the most important of the reasons why a governor must remain above politics. However much he or she may happen to disagree with what ministers are doing, or proposing to do, the governor may remonstrate with them only behind closed doors — within the Executive Council chamber or in Government House. Failure to observe the rule that he must stand apart from all party strife and pressure groups, and not engage in public debate on any contentious matter, was the chief fault of Sir Henry Galway, on whom I presented a paper at last year's History Trust conference on the Great War and its Aftermath. Though we never had a Lord Lundy or a Lord Globule in South Australia, in Galway we did have a personification of Colonel Blimp. Governor from April 1914 until April 1920, he could not keep his opinions on many controversial political topics private.²³ His appointment to the office was the only really bad one made to date. The choice of Cairns in 1877, and

22. Such as Governor Oliphant's displeasure at two who turned up to conduct business in casual attire after he had put on a suit for the meeting.

23. See my article, 'More Varieties of Vice-Regal Life', in *Journal of the Historical Society of South Australia*, No. 9 (1981), pp. 4-53.

of Nicholls in 1976, was unfortunate because of the serious ill-health they suffered. Yet that was no fault of theirs, and they did no harm in the short periods they held the post. Galway's conduct, by contrast, alienated a generation of Labor politicians and resulted in the next two Labor ministries treating his successors at Government House with considerable disdain.

A fourth appointment that can be considered unfortunate (though not because of the conduct for which several historians have criticized him) was that of Sir Richard MacDonnell, who was in office at the time parliamentary government was introduced. He believed that South Australians were not ready for the change. He therefore strove, first to undermine not only the aspirations of the colonists for a greater degree of self-government, but also the order, from the imperial Secretary of State for War and the Colonies, that the South Australian Legislative Council should prepare a new Constitution under which a more democratic system could operate. Secondly, after London had returned the first Constitution Bill for revision and rebuked him for his meddling, MacDonnell sought to overawe the first ministry. In each instance, the local political leaders came up with successful strategies for nullifying MacDonnell's efforts, and so the great step towards democracy was achieved.²⁴ Indeed, Sir Richard's behaviour had so fired the radicals of that day that, from 1857, our constitutional arrangements were considerably more liberal than would otherwise have been the case.

Far more serious in its consequences was MacDonnell's role in siding with and encouraging his ministers in the disputes that erupted between the Parliament and the judiciary in 1861. When the Supreme Court's judges rightly held that local legislation was invalid if it had been enacted in defiance of provisions in the *Australian Colonies Government Act*, 1850 (a U.K. statute of paramount force under

24. See former Governor Sir Keith Seaman's chapter, 'The South Australian Constitution Act of 1856', in *The Flinders History of South Australia; Political History* (cited in footnote 16 above), pp. 81-94, and p. 115 in the same volume. Also my *South Australia and Federation*, p. 99. For an account by a participant in those events, see B.T. Finnis, *The Constitutional History of South Australia*, Rigby, Adelaide, 1886, pp. 269-412.

which the province's *Constitution Act* had been passed), or instruments of the Queen in Council issued in pursuance of that imperial measure, or other British laws applying to the colony, and even in defiance of the *Constitution Act* which South Australia's legislators had themselves placed on the statute book, MacDonnell sided against the judiciary. His behaviour, during the protracted struggle that ensued, was extraordinary, given that for four years he had served as Chief Justice of the Gambia — though that was a post which, due to the climate and the prevalence of tropical diseases that were still untreatable in the middle of the nineteenth century, was long able to attract only lawyers who were both briefless and penniless. The results of his intervention in South Australia were tragic. If only he had had a better grasp of the law, had been less pompous,²⁵ had possessed even a slight sense of humour, had invited the judges to dinner and gently persuaded them to use more temperate language, especially when accepting submissions from the bevy of barristers who were always ready to challenge the validity of local statutes or the actions of ministers, the crisis might have been resolved harmoniously. Instead, by his partisanship, and his defiance of admonitions from Downing Street forwarding reports from the English Law Officers of the Crown who insisted that the judges had only been doing their duty, he exacerbated the conflict. Parliament overawed the ageing and infirm Chief Justice Cooper, who was wanting to retire, by threatening to deny him a pension (in that century judges had no statutory right to such a benefit), and also Mr Justice Gwynne, by threatening to remove him from office simply by repealing the *Third Judge Act* under which he had been appointed. Meanwhile, resenting MacDonnell's conduct and fortified by the imperial Law Officers' opinions, the senior puisne judge, Mr Justice Boothby, became ever more extreme in his

25. In each of the other four colonies in which he held vice-regal office, MacDonnell's 'abrasive personality made him deeply unpopular' — in one instance he survived an assassination attempt. So did his views on policy. For example, in his next post, as Governor of Nova Scotia in 1864-65, he upset many by being 'profoundly critical' of proposals for the confederation of the Canadian colonies. Throughout his final appointment, as Governor of Hong Kong from 1865 until 1872, he had much contact with one of the most outstanding diplomatists of the nineteenth century, Sir Rutherford Alcock, who was Britain's Minister Plenipotentiary in Peking (Beijing) in those years. It's recorded that Alcock described MacDonnell as 'coarse, bumptious, and exceptionally uncouth and uncourteous'. G.C. Boase & L. Milne, in the *Oxford Dictionary of National Biography*, OUP, Oxford, 2004, Vol. 35, p. 311.

opinions, with the result that, as well as being deprived of his place on the bench, his conduct has been vilified by radical legal writers and judges ever since.²⁶

It is curious that, just as Sir Mellis Napier secured the appointment of his lawyer-son as a Queen's Counsel (which was a disaster for that individual because not a soul was prepared to pay the high fees charged by silks to a person whose previous practice record had been so dismally unsuccessful), so Sir Richard MacDonnell's father, as head of Trinity College, Dublin, in 1862 had taken the equally inappropriate step of making his son a Doctor of Laws for his performance in South Australia!

The public role of governors is still evolving. It took an important new direction in Dame Roma Mitchell's term. With full support from the Brown Ministry, she made a significant contribution to raising the State's profile overseas by making official visits to countries such as New Zealand, China and Indonesia. She was able to achieve access to the most senior people, with positive and practical results for the State. In Indonesia, for example, she received the red-carpet treatment when she visited President Suharto and other high officials. This greatly facilitated follow-up calls on those officials by a delegation of forty South Australian businessmen, ready and keen to negotiate and conclude deals in that country. Subsequent premiers have supported her successors in following her example.

Almost half a century after Governor Galway's public utterances had, for a significant minority of South Australians, weakened their previous assumptions that Australia's

26. P. A. Howell, 'The Boothby Case', MA thesis, University of Tasmania, 1965, chapters 1- 5. There is a summary in the chapter, 'Constitutional and Political Development, 1857-1890', cited in note 16 above, at pp. 133-142. For examples of different assessments, see the public lecture the Hon. Justice Perry delivered during the present conference (his paper has the title 'The True Guardians of Democracy – the Parliament or the Courts?' and is published elsewhere on this present website), or A.C. Castles & M.C. Harris, *Lawmakers and Wayward Whigs*, Wakefield Press, Adelaide, 1987, especially at pp. 126-34. For commentary on the latter, see my article, 'Tribunals and Tribulations', *Journal of the Historical Society of South Australia*, No. 18, at pp. 148-153.

constitutional links to the United Kingdom were worth retaining, Labor's Mr Dunstan concluded that the overall record had so demonstrated the usefulness of the gubernatorial office that South Australia should continue to have a state governor, and one who was completely independent of the federal head of state, if Australia severs its ties with the monarchy. Nineteen years later still, all members of the State's Constitutional Advisory Council,²⁷ which I had the privilege to chair throughout its existence, drew the same conclusion.²⁸

GOVERNMENT HOUSE

Government House is one of the state's most significant buildings. Its first twelve rooms, standing at what is now its eastern end, were erected at the end of the 1830s. It was the place where many of the documents now held in the State Records Office were produced and long stored. The initial Council of Government met there, as did the first Legislative Council until the first chamber in what is now called Old Parliament House was opened in October 1843. In 1855-56, Government House was doubled in size and it was given a new guardhouse and gates. Further additions were made in 1862-63, 1869 and 1872-78, and a number of alterations and improvements were made in the course of the twentieth century.²⁹ One of the most notable changes carried out in recent decades was the second Dunstan Ministry's elimination of the 'Gothic' details that had characterized the interior of parts of the mid-Victorian portion, so that the building now presents a harmonious whole as a fine example of a William IV era house.

Since the 1920s, it has from time to time been suggested that the governor could be moved to a house in the suburbs, as was done in Queensland and, seventy years

27. Appointed by the Governor in Council, the SACAC was a broadly representative body of people from a variety of ethnic backgrounds and occupations, including six lawyers. Half of the lawyers had been nominated as representatives of the three largest political parties active in the State at that time.

28. First Report, Recommendations 1, 2 and 20.

29. *Heritage of the City of Adelaide: an Illustrated Guide*, ed. S. Mardsden, P. Stark & P. Sumerling, Corporation of the City of Adelaide, 1990, pp. 252-4.

later, in New South Wales. Initially, these proposals came from members of the Adelaide gentry, such as the Duncans of 'Strathspey' at Springfield (now the administration block of Mercedes College), who saw no other way of getting a good price for mansions that no longer satisfied them, for the normal resale value of their dwellings had fallen far below the costs they had incurred in building and decorating them, and in having their extensive grounds landscaped and improved.

The Gunn Ministry (1924-26) welcomed such offers of a new location because its members thought the middle of the Government House grounds was the perfect site for a memorial to the South Australians who had fallen in the Great War. They considered it would be good to have such a monument surrounded by spacious lawns and paved areas, ideal for commemorative parades, as is the case with the equivalent memorials in Melbourne, Sydney and Hobart. In the event, only a small part of the south-eastern corner of the grounds was carved off as the memorial's site.

In the ensuing decades, it has occasionally been suggested that removal of the governor would allow Government House to be thrown open to the public as a new museum, art gallery or whatever, or else replaced with a modern building more suitable for such new purposes. Some proponents of change have claimed it would save money. That notion is foolish because, over the last twenty-five years, well over half the cost of keeping Government House has been the expense of maintaining and renovating its buildings and grounds. This would be a continuing expense if the governor were to be evicted. Demolishing the main building is totally out of the question, because it is not only the oldest and most historically significant structure in the State, but also one of the most interesting architecturally. The wonderful stained-glass windows would be inappropriate in a building devoted to any other purpose, and would look out of place if removed to a modern building in the suburbs. The same applies to the huge portraits of former kings and queens, and much of the furniture and furnishings. The surrounding gardens are integral to the place's attraction. Hence most people consider it must be preserved at all costs.

Moreover, the expense would escalate if it were thrown open to the public on a daily basis. Toilet blocks and other new facilities would have to be built. Cleaning and maintenance bills to remedy wear and tear would rise. Above all, instead of just a policeman at the gate, a large body of security personnel would have to be employed, as is presently the case at the Art Gallery of South Australia, where, on busy days, there is a guard in virtually every public room.

Furthermore, the present Government House is ideal for the many purposes it serves. As well as being a trustee of the particular constitutional arrangements operating at any time, the governor acts on behalf of the whole community and as a focus of the unity of the people. This is most obvious when a governor takes parades, invests new members of the Order of Australia, or visits the Aboriginal lands and other places in the country. But governors host numerous social functions at their official residence. Every year they entertain not only leading members of the community and distinguished visitors to the State, but also thousands of people from all walks of life. Governors have given an enormous amount of support to voluntary workers, especially to those who battle to preserve the best elements in our heritage or improve the quality of life for others. There have been special garden parties or receptions for Red Cross workers, the St John's Ambulance Brigade, welfare workers, the police and their spouses, school teachers, justices of the peace, the Salvation Army, those who have given a hundred litres of blood to the Blood Bank, and those who devote so much of their time to organisations like the Scouts and Guides, the YMCA and YWCA, Legacy, the Kindergarten Union, heritage organisations, representative groups from different ethnic communities, and so on and so forth. There have also been garden parties for Aboriginal people. The house itself and its contents are so interesting that scarcely a week passes without at least one visitor remarking that the experience has been a high point in his or her life. Many of these guests come by public transport, and for them the central location is most convenient. For others, there are large parking stations within a couple of hundred metres. The driveways permit disabled persons to be brought to the house's private entrance.

On really great occasions, balls have been held in huge marquees on the lawns. Governor Oliphant sensibly broke with a practice that had endured for a century by taking his oaths of office in the garden, instead of in the Adelaide Town Hall, so that several thousand members of the public were able to attend. The grounds are also the site for annual functions such as the Merit Certificate ceremony for those who excel in Year 12 examinations. They can bring relatives to the occasion. For many smaller groups, there have been luncheons, and weekly or at least fortnightly dinner parties, including a dinner for members of the Council of the Historical Society of South Australia, and another for the members of the *Australian Dictionary of Biography's* South Australian Working Party. The ballroom is ideal for investitures. The state and private dining rooms are perfect for their purposes, as are the other reception rooms. Any new Government House would need to have apartments of similar proportions. Maintaining the existing ones must be more economical than it would be to create new ones of comparable elegance and charm in another place.

For those who have not received invitations to a function, and those who want to revisit, the general public are invited once or twice each year. There is no evidence that this is insufficient access. As it is a place of special interest and importance to South Australians, there can be no case for opening it daily for the benefit of tourists making a brief visit to Adelaide from interstate or abroad. There is no other purpose to which Government House could be put that would be of greater value to South Australians than the use that has been made of it for the past 167 years. This will remain true regardless of whether we become a republic or not.

pah / The Governors / 8 March 2007. Revised 25 March 2007.