THE CROWN AND ITS REPRESENTATIVE IN THE COMMONWEALTH

ADDRESS BY

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It is a great pleasure to meet with and to address the Law Society of Scotland on this occasion. My theme is a Commonwealth one, and this venue is associated with a now famous Declaration of Commonwealth Heads of Government: the Gleneagles Declaration. The Commonwealth Heads, who know a good thing when they see it, chose to come here for part of their meeting and I am delighted - my wife and I are delighted - to join you here.

My subject is the Crown and its Representative in the Commonwealth. I shall concentrate on the role of representative, and that will give me an opportunity to tell something of my own experience as Governor-General of Australia from 1977-1982, and, more generally, to speak about an office within the Commonwealth - and I speak now of the Commonwealth of Nations - which in recent years, in Australia and elsewhere, has assumed an unusual prominence.

May I say, first, that Scotland figured prominently in the history of the early Governor-Generalship of Australia. The first to hold the office was the seventh Earl of Hopetoun. He had served as Governor of the Colony of Victoria, just before federation, and came to that office at the early age of 29. In 1900 he was appointed as Governor-General and arrived in December 1900, just in advance of the birth of the Commonwealth of Australia on 1st January 1901. He was "present at the creation", though he did not stay for long. After his return to the United Kingdom he became for a short time Secretary of State for

Scotland. He was created Marquess of Linlithgow, and was the only Governor-General of Australia to have a son who became Viceroy of India. Then, the sixth Governor-General was Sir Ronald Munro-Ferguson, later Lord Novar. He was Governor-General from 1914-1920, and was by general agreement one of the ablest men to hold the office. He also became Secretary of State for Scotland from 1922-1924, and he too had a link with India through marriage to the daughter of a Viceroy.

I must not go on in this way; were I to speak of Scots who had a close connection with the public life of Australia, I should occupy all of the time of this three day meeting, and while the account might give you some satisfaction, you would not be surprised and you have other things to do.

What I shall say, then, will principally concern the office of Governor-General of Australia, though I shall not limit myself to that.

I was the nineteenth Governor-General of Australia and the sixth Australian-born. I recall how when I was asked by the Prime Minister to come to Canberra late in April 1977 and when he told me that he wished to propose my name to the Queen as Governor-General in succession to Sir John Kerr who had privately intimated his intention to resign, many things came into my mind. One was that it was an extraordinary thing that I should have been the biographer of the first of the Australian-born Governor-Generals, Sir Isaac Isaacs. The decision of the Australian

government in 1930 to recommend Isaacs broke new ground. He had had a notable career. Born in 1855 in Melbourne, in humble circumstances, the first son of newly arrived immigrant parents, he grew up in rural Victoria, became a barrister and a leading member of the Bar, a colonial politician and minister (in pre-federation days), a very active member of the federal constitutional convention of 1897-8 which drafted the Australian Commonwealth constitution and a foundation member of the Commonwealth parliament and later Attorney-General. In 1906 he was appointed a Justice of the High Court of Australia and served with distinction for a quarter-century. In 1930 he was appointed Chief Justice of that Court, and in that year he was named as Governor-General.

The significance of the appointment of Isaacs lay primarily in the fact that it established the character of the 'modern' Governor-Generalship. For Australia, as for Canada some years before, it was early agreed in the process of constitution making in the 1890's that there should be a union under the Crown, with the Queen as Head of State and with a Governor-General as her representative. As her representative, he was charged with the performance of a variety of functions assigned by her. The Constitution, however, vested substantial powers and functions directly in the Governor-General without reference to the Queen, and these included power to appoint and dismiss ministers, to summon, prorogue and dissolve parliament, and to appoint judges. The command-in-chief of the armed forces was vested in the Governor-General as the Queen's representative.

Some uncertainty arose out of the conferring of powers on the Governor-General by reference to varying formulae: some were conferred on Governor-General in Council, others on him directly. By 1901,when the Constitution came into operation, Westminster principles had established that the Governor-General normally acted on ministerial advice and further that this did not necessarily depend on whether a particular function was assigned,in terms,to the Governor-General in Council. At the same time it was clear that there were powers which in law might be exercised by the Governor-General in his own,independent, discretion. In the first decade of the Commonwealth's history, Governor-Generals on three occasions rejected Prime Ministerial advice to dissolve the lower House of Parliament. The conspicuous case of the exercise of an independent power was, of course, the invocation by Sir John Kerr of the power to dismiss ministers in November 1975.

There is an interesting historical development in the office of Governor-General. A Canadian Governor-General in the nineteenth century spoke of the holder of the office as being "like a man riding two horses in a circus". So in one capacity, the Governor-General discharged the roles prescribed by the law and custom of the Constitution; in another he served, and saw himself,as principal representative of the British government in Australia; specifically as a protector and interpreter of British and imperial interests. So there was some conflict in the early years of the Commonwealth of

Australia between Governor-General and Australian ministers over immigration and tariff matters, defence and foreign affairs which were seen as having special implications, affecting Britain's wider imperial concerns. The Governor-General, moreover, reported to the British government, and communications between the Australian and United Kingdom governments were passed through the Governor-General's office. This gave rise to tensions between the Governor-General, acting as representative of British interests, and Australian governments and Prime Ministers, increasingly asserting a demand for more independent authority both in internal and external affairs. There was, too, a growing demand for an Australian involvement in the choice of a Governor-General to which, as time went on, the United Kingdom gave some recognition, though until a constitutional settlement was reached on this point in 1930, the United Kingdom government was the formal source of advice for the appointment of a Governor-General.

There is a notable passage in the memoirs of the Canadian Prime Minister, Sir Robert Borden which sets out the text of a paper written by General Smuts of South Africa in 1918 relating to the office and appointment of a Governor-General. Smuts argued strongly that a Governor-General should have no responsibilities to the British government and should perform in the Dominion functions analogous to those carried out by the monarch in the United Kingdom. He should not, therefore, serve as the channel of communication between the United Kingdom and

Dominion governments, and he should be appointed from the ranks of "eminent residents in the Dominion to which he is appointed". Borden relates that he represented these views to the British Prime Minister, Lloyd George, whose response he characterised as "more restricted". These views, however, pointed the way to the future. The Imperial Conferences of 1926 and 1930 dealt comprehensively with the reformulation of the relationships between the Dominions and the United Kingdom, the object being as Leo Amery, who was Dominions secretary at the time, wrote, to "get rid of every last vestige not only of substance but also of mere historical form which might be thought to limit the complete independence and equality of the Dominion government". The position of the Governor-Generalship was given special emphasis in 1926 because of a Canadian issue, when Lord Byng as Governor-General refused Mr. McKenzie King's request for a dissolution and subsequently granted one to Mr. Meighen. Amery recounts that in that case, Byng had declined to consult the Dominions Secretary in reaching his decision.

In 1926, the role of the Governor-General was reformulated, in the terms of a convention agreed to by the Imperial Conference, that he should occupy the same position in relation to his Dominion government as did the King in relation to the United Kingdom government. That role was not more precisely defined, but it followed that the Governor-General no longer served as representative and custodian of United Kingdom interests, which in due time

became the responsibility of officers, specifically appointed as High Commissioners. The Conference also dealt with communications: as between Commonwealth governments and the United Kingdom they would for the future be direct and not through the Governor-General.

While the Conference of 1926 affirmed the principle that it was the "right of each Dominion to advise the Crown in all matters relating to its affairs", the issues which arose out of the nomination of Isaacs by the Australian government in 1930 showed that there was doubt whether this applied to advice on the appointment of a Governor-General. So I come back to the case of Isaacs. When the Scullin government's intention to recommend his appointment became known, there was controversy in Australia over the nomination of an Australian, and some challenge to the standing of the Australian government to advise the King. Up to this time, the United Kingdom government made the formal recommendation though there had been growing pressure for Australian participation in the process, acknowledged in later years by the United Kingdom government, which placed a list of names before the Australian government for an indication of choice. In the case of Isaacs, King George V was opposed to the appointment on various grounds: he had a specific preference for the soldier Lord Birdwood who had commanded Australian troops in World War I; he believed that Isaacs was too old, and he was opposed to the appointment of a "local" man. The uncertainty over the source of recommendation was resolved

by reference to the Imperial Conference of 1930; that Conference's resolution, in its developed form, prescribes that the Governor-General shall be appointed by the monarch on the advice of the Commonwealth Prime Minister concerned, after informal consultation with the monarch. One of the objections in the Isaacs case was, it appears, the want of informal consultation, but in the event, the King assented. So in this sense the modern Governor-Generalship has been put in place by this case, and subsequent appointments of Governor-Generals have been made in accordance with this procedure. Sir Robert Menzies has given a characteristic account of the way in which the procedure operated in the case of the nomination and appointment of Sir William Slim in 1953. Within this framework there may be special cases: for example, the constitution of Papua-New Guinea provides that the Crown shall appoint as Governor-General a person elected by secret ballot of the parliament. The point is that the United Kingdom has no involvement. Anomalously, however, in the case of Australian State Governors, there is still such an involvement, but I shall not stay to explain that history. It is a survival which should disappear, and there is no reluctance on the part of the United Kingdom government to see it go.

The Isaacs case did not establish a settled practice of appointing a "local" person. He retired in 1936, and it was not until 1947 that another Australian was nominated. On that occasion objections were raised since the nominee, McKell, was the serving Premier of a

State. He served, however, with distinction and died only in January of this year at a great age, and I attended the funeral service at which his distinguished service in politics and as Governor-General was appropriately acknowledged. After he retired, three United Kingdom appointees served in the office, and it was not until the mid-sixties, when Lord Casey was appointed with general approval on the advice of Menzies, that the practice of appointing a line of Australians was settled. Sir Paul Hasluck, who was Casey's successor, judged that the "pattern has been clearly laid down for appointing an Australian as Governor-General" and this has been more recently affirmed by an Australian constitutional assembly. Some time earlier, Sir Robert Menzies speculated on the desirability of cross appointments, as for example between Australia and Canada, as did Casey. It was an attractive notion and might have been a worthwhile Commonwealth development, but its time is past. The case for "local" appointments is very strong; the reasons urged against the appointment of Isaacs fifty years ago do not make any sense at all in our day.

Australia led the way here; it was not until 1952 that a local appointment was made in Canada with Massey; it was not until much later that New Zealand had a Governor-General who was both a New Zealand citizen and resident. Canada has now taken a natural step in appointing a woman.

I have said that the modern Governor-General is the

representative of the monarch; in respect of the monarch there has been a constitutional evolution in the sense that the monarch is designated by a separate style and title in each country which retains the Crown as an integral part of its constitutional arrangement. In 1949, a major practical step was taken by Commonwealth governments in agreeing that India might retain membership of the Commonwealth as a sovereign independent republic, acknowledging the monarch as 'Head of the Commonwealth'. This furnished a precedent under which a majority of member states within the contemporary Commonwealth are republics, six others have their separate monarchical institutions, and seventeen acknowledge the Queen as their Head of State. Save for the United Kingdom, where she performs her functions in person, the Queen is represented in all other such states by a Governor-General. Since 1953, however, it has been accepted that "locally variable titles" may be adopted for the monarch in those Commonwealth countries in which she is Queen. So, to take the example of Australia, the Queen is designated primarily as Queen of Australia. A modern constitutional text states the position as being that it is accepted that while there is one Queen for several realms, she acts in a different capacity in respect of each realm. In the Commonwealth there are separate countries with a common law of succession, and this fact binds those countries in constitutional links by virtue of the shared monarchy.

In the context of the Commonwealth as a whole, the

Queen carries the title of "Head of the Commonwealth". The meaning and significance of this title has been debated recently; so it has been said by the learned editor of the Round Table that "when speaking as Head of the Commonwealth, (the Queen) neither seeks nor expects guidance or clearance from any one government, not even that of the U.K.". I believe that this, and comparable propositions, call for careful examination, but an address concerned with the office of Governor-General is not the place for it.

Notwithstanding the fact that the modern Governor-General is seen as the personal representative of the Queen who is Head of State, he does not seek instruction from her, but acts on his own authority, informing her thereafter of what he has done. In some cases, the particular power exercised is conferred specifically on the Governor-General by the constitution; the source of power which my predecessor Sir John Kerr exercised in November 1975 was statutory; it derived directly from the constitution, and it swallowed up any prerogative power. In his book Matters for Judgment (1978), Sir John Kerr stressed that his actions were his own, that at no stage did he consult with the Queen before taking action, and that he advised her immediately of what he had done. "My view (he wrote) was that to inform Her Majesty in advance of what I intended to do and when, would be to risk involving her in an Australian political and constitutional crisis in relation to which she had no legal powers and I must not take such

a risk". On 12th November, the day after the Governor-General had dismissed the Whitlam government, the Speaker of the dissolved House of Representatives made an approach to the Queen asking her to restore the Whitlam government The answer was that this was constitutionally inappropriate, and that the relevant powers were reposed in the Governor-General.

In subsequent exercises of significant discretionary powers, it is clear that Governor-Generals have acted without consultation with the monarch. There is the notable case of the appointment of a Prime Minister, followed by the grant of a dissolution to him, by the Governor-General of Fiji in 1977. There is the further case of action taken by Sir Paul Scoon in Grenada late in 1983. That case attracted wide attention because of the international implications and the United States military intervention without the prior knowledge of the United Kingdom government. Sir Paul Scoon's answers to the questions posed to him by journalists in November 1983 are better understood in light of the constitutional evolution I have traced.

Q. Was there some problem about the fact that you did not contact Her Majesty's government (in the United Kingdom)? Being the Queen's representative in Grenada, do you regard your action in going to the OECS and the possibilities that arose from that to be in any way in conflict with your appointment?

A. They don't conflict at all. Her Majesty has many governments. You see, lots of people don't understand the constitutional position of Grenada. The Queen is the Head of Grenada and the British government can't dictate to the government of Grenada what to do, nor can the British Government give any orders to the Governor-General of Grenada as distinct from the Queen of Canada or Australia, as the case may be. I think that people miss that point all the time. I don't understand all this about the British government. I had no thought at all of contacting the British government on this matter.

Mrs. Thatcher made clear in answer to a parliamentary question that no request from Sir Paul Scoon for military assistance had been passed through United Kingdom channels and that no such request was reported to the United Kingdom. This is in accord with modern notions of Commonwealth; while it is a recent, small and weak member of the association, Grenada stands in the same independent relationship to the United Kingdom as do all Commonwealth countries. Further, Sir Paul Scoon stated, and the Palace confirmed, that there was no prior communication with the Queen on the request for intervention. Had the Governor-General communicated with her in advance on this matter, it might have placed her in an intolerable situation. As Queen of Grenada, she would know what was happening; as Queen of the United Kingdom she would <u>know</u> what she could not communicate

to her United Kingdom ministers. This is not the only problem which can arise from the fact of the Queen's single person and the multitude of her separate titles, but it is a significant one and it requires her representatives to act appropriately, as in this case and in this context, Sir Paul Scoon undoubtedly did.

About the time at which I published my life of Sir Isaac Isaacs, I was also responsible for an introduction to the second edition of Dr. H. V. Evatt's important book The King and His Dominion Governors, which was first published in 1936 when Evatt was a member of the bench of the High Court of Australia. The book was a study of cases of the exercise of discretionary ('reserve') powers of monarch, governor-general and governor, and Evatt argued the case for the desirability of defining those powers as precisely as possible. The exercise of power by my predecessor Sir John Kerr was a conspicuous exercise of such a power. He dismissed the Prime Minister, Mr. Whitlam,and his government because that government could not obtain supply by reason of the failure of the Upper House, the Senate to pass the supply bills. In face of this,Mr. Whitlam's refusal to recommend a dissolution or to resign was the basis of the Governor-General's action. That action was deeply divisive and there were many evidences of the "rage" for which Mr. Whitlam called as a response, and this was expressed in angry demonstrations against the Governor-General, particularly in 1976.

The Governor-General had his supporters, not only in the political field, but also among constitutional lawyers. He had sought the advice of the Chief Justice of Australia, Sir Garfield Barwick, who stated unequivocally that the Governor-General had both power and duty to act as he did. More recently, Barwick, in retirement, has restated his views in a short book whose title states his position: Sir John Did His Duty. The conclusions of that book have been sharply debated and combated; more generally, the propriety of the Chief Justice's action in tendering advice has been challenged as inappropriate judicial involvement in a matter which might raise justiciable issues, and, more generally, as action calculated to draw the judiciary into controversial policies. As to this, there have been earlier cases in which highly placed judges have given advice to Governor-Generals or State Governors. Recent research discloses a substantial number and range of cases in which the first Chief Justice of the High Court, Sir Samuel Griffith, gave such advice.

Sir John Kerr, in his book Matters for Judgment, gave over the greater part to argument directed to the justification of his action in November 1975. The book contained an epilogue written by the Canadian scholar, Dr. Eugene Forsey, who uncompromisingly supported Sir John's action. "Never for a moment did I doubt the correctness of the action Sir John took . . . . I could not see, and still cannot see, what else he could have done in the circumstances . . . . the Governor-General alone

could preserve the rights of the people of Australia and he did his duty." Forsey judged that Kerr's book would "serve to dissipate whatever vestiges remain of the dangerous and subversive rubber stamp theory of the powers of the Crown and its representatives".

The arguments against the Governor-General's action have been stated in various ways. It is said that, whatever the power, there was no duty to act in this way. As an exercise of power it has been questioned as premature in its timing. It has been charged against him that he acted "by stealth" in not warning the Prime Minister of his intention to dismiss him if he did not comply with his request to resign or recommend a dissolution. At the time of his death, it was reported that Sir William McKell, (Governor-General from 1947-1953) had said in an earlier interview, embargoed until his death, that his criticism of Kerr's action was that he had not informed the Prime Minister of his intention. As to this issue, the point is made that the Governor-General was vulnerable in the sense that,unlike the monarch, he holds office "at pleasure". A disclosure of his intention might have led to "a race to the Palace" with the Prime Minister seeking to defeat the Governor-General's intention by having him recalled before he could achieve his purpose. It appears to be generally accepted that the power to recommend termination of a Governor-General's appointment rests with the Prime Minister,as does power to recommend appointment. Even so, there are questions: does advice to the Queen to

recall a Governor-General oblige her to comply forthwith? It may be that she is entitled to consider the matter free of such pressure; it may be, more doubtfully, that she may give the Governor-General an opportunity to be heard. There are no certain answers to these questions; the crisis suggests that thought should be given to the provision of some security of tenure for the Governor-General to allow him to act free of such pressure.

There is a much broader argument against the action of the Governor-General. It is voiced in terms that the Governor-General transgressed the limits of power which British monarchs had long accepted, that under no circumstances should the Governor-General act otherwise than on the advice of freely elected ministers. As put by a former minister in the dismissed Whitlam government in 1977, a monarch or representative who acknowledged that his role was "purely ceremonial and divorced from the exercise of real political power" had been broadly acceptable; the claim to and exercise of the power used by Sir John Kerr was not. It was charged against the Governor-General that he had entered politics so that the office would now be seen as a destroyer of political consensus, a cause of civil discord, and as the principal enemy of political democracy. The terms in which claims and charges are made expose the passions stirred by what was done; it is important to preserve perspective and to remember what one scholar, who was not a supporter of Sir John Kerr's action, wrote. Professor

Geoffrey Sawer characterised it as"ludicrous" to make him appear "as some monster carrying out a coup d'etat"; that it was necessary to recall the origins of the event and to remember that the Governor-General had sought to aid the crisis in a way which had the effect of leaving the final decision to the electorate.

In writings in various parts of the Commonwealth there are far-reaching statements which draw attention to the availability of power to monarch or representative to act in time of crisis or urgent threat to institutions. So in an essay by Sir Paul Hasluck, the fourth Australian-born Governor-General, first published in 1972, and reprinted in 1979 , it was said that

> In abnormal times in the 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 overrule 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.

There are comparable statements in the books. It is to be

seen that there may be consequences to monarch or representative acting in this way. Mr. Asquith, as Prime Minister, warned King George V on the eve of the first world war of the dangers of royal action, independent of ministerial advice,on the Irish Home Rule Bill. In such a case, the King "would,whether he wished it or not, be dragged into the arena of party politics. and, at a dissolution following such dismissal of ministers . . . it is no exaggeration to say that the Crown would become the football of contending factions". In one of the great Pakistani constitutional cases of the mid-1950's, the Chief Justice, Munir, C.J., spoke of action in such circumstances. The consequence of action by the Governor-General was that "he can create a constitutional crisis of the first magnitude and though eventually he himself may have to go, he can in appropriate cases rivet the attention of the country to the issue".

The exercise of power by Sir John Kerr in November 1975 produced this outcome in his case. He tells how he debated the desirability of resignation in the immediate aftermath of his action in November 1975; in the event he judged it better that he should stay and face what might come. But, by 1977, he decided to resign; this, he said, was based on a judgment that the best interests of national unity would be served by it. This view, I believe, was shared by many who did not question the propriety of his action in 1975.

There is obviously a concern that such a crisis should not present itself again. The relationships and the powers of the two Houses of the Australian parliament remain unchanged; these relationships generated the crisis of November 1975. To change these requires constitutional amendment and there is no clear evidence that support for this would be forthcoming. Then there are precedents in other Commonwealth constitutions for the spelling out with greater precision of the powers and role of the Governor-General; but it is not clear that this has been done with conspicuous success.

In a recent essay, in 1983, Sir Paul Hasluck, without offering any judgment on Sir John Kerr's action, expressed the view that the crisis of 1975 might have been avoided had there been "more talking and a higher degree of confidence between Governor-General and Prime Minister". He develops this:

> The role of the Crown (and hence the Governor-General) to be consulted, to encourage and to warn can only be fulfilled if they talk to each other in terms which reflect that they have respect for each other. The clearest way to improvement is not by changing the constitutional role of either office, but by establishing more strongly a convention that the Prime Minister makes regular calls on the Governor-General as a matter of governmental routine.

Whether the crisis of 1975 might have been averted by more contact and more confidence between Prime Minister and Governor-General I cannot say. Sir John Kerr's account in Matters for Judgment states his view that no amount of talk or discussion would have moved a Prime Minister who on the issue held a quite inflexible position. More generally, what Sir Paul Hasluck has to say about relationships between Governor-General and Prime Minister is significant. He makes reference to Bagehot's famous passage in the English Constitution (1867) in which he says that the monarch's effective power is to be found in his celebrated rights to be consulted, to encourage, and to warn. When a monarch has a great store of knowledge and experience, as the Queen surely has, and has amassed over many years, and with a settled practice of regular and frequest consultation with her Prime Minister, there is the best assurance of understanding between them. A Governor-General is not likely to have comparable experience and the magic of monarchy, about which Bagehot wrote, is not shared by him, but he has (in my experience) copious sources of information on a continuing basis, and he can acquire and contribute a useful and growing experience. The misfortune, in my view, and as I understand it, in the view of Sir Paul Hasluck, is that a practice of regular meeting and consultation, as between Queen and Prime Minister, has not been established between Governor-General and Prime Minister. I sought to press the desirability of such regular meetings upon the Prime Minister, but without success. Our meetings were interesting,

informative and cordial, but episodic. The testimony of a recent New Zealand Prime Minister confirms that there is no regular meeting there. Apart altogether from its possible effect in moderating crisis, I am sure that only benefit can come from a scrupulous adherence to the practice of regular meeting, consultation and exchange of views.

The events of November 1975 have focused attention on the exercise of constitutional and political power by a Governor-General; the critics of its exercise, therefore, in defining the acceptable role of the Governor-General frame it in terms that it is "purely ceremonial and divorced from the exercise of real political power", that he has (or should have) no real power "but to open fairs, cut ribbons and the like". The language is that of ceremony - and it distracts attention from the fact that by a due attendance to the business of his office, by the exercise of functions and influence within the limits described by Bagehot, a Governor-General can, in appropriate cases, exercise an effective influence on the processes of government. In the Australian context, my own experience of the workings of the Federal Executive Council illustrates this. In the Council, week by week, the Governor-General presides, advised and attended by ministers. In the Council, a great deal of governmental business was done, including the making of regulations, orders, proclamations and a wide range of appointments, as well as other diverse governmental business which was required to be overseen and

approved there. Sir Paul Hasluck,who had wide experience of the work of the Executive Council from both sides - as a minister as well as Governor-General- has written in some detail about its work, and much of his experience, which is certainly more extensive,corresponds with my own. The Governor-General can and I believe does play a useful role in requiring ample and clear explanation for what is proposed. In my own case, having sighted the papers, I would ask questions of officers in advance of Council meetings to satisfy myself that I understood what was being done and that it was being done regularly. I would raise questions with the attending ministers in Council, so that they could take into account the doubts, questions and concerns of the Governor-General before they formally tendered advice to him. The Govenor-General's experience in questioning proposed actions and procedures and in raising points, as that experience grew, was intended, and I think was calculated, to serve the interests of regularity which in the press of big, busy and complex government, may not always be assured. As I said in a speech to the National Press Club in Canberra shortly before I left office in July 1982, such activity and conduct on the part of the Governor-General allows him to play a useful and, it maybe, an important role in government which is consistent with a meticulous respect for the principle that the Governor-General acts on the advice of ministers. A vigilant and enquiring Governor-General comes to be recognised as such in the departments which have the responsibility for preparing and conducting substantial

business of government . This is specially true in the busy work of the Executive Council; it is true also of other areas of business in which the Governor-General plays a part. Approval of a document or of a course of action which falls within his purview,is not to be regarded as a mindless,unenquiring, mechanical endorsement.

More generally, the description of the ceremonial role of the Governor-General's office as that of "chief ribbon bestower and chief ribbon cutter", tends to diminish the significance and often to obscure the character of what is done in this demanding area of the Governor-General's activity. Questions are sometimes asked whether an appointee is "too well qualified" as if to say that the office calls for no substantial qualities of mind. Once again, my experience corresponds with that of Sir Paul Hasluck: what was asked of me in a wide range of activities made a full call upon my physical and intellectual capacities. In my speech to the Press Club,I said that it appeared to me to serve no useful purpose to characterise the office of Governor-General as trivial and empty. As with the monarch, so too with the Governor-General, much time and energy go into the performance of a wide range of non-constitutional, non-political and in this sense ceremonial activities, into what Bagehot described as the discharge of the dignified role of the monarch. If observers are pleased to describe this as ribbon bestowing and ribbon cutting, let it be recognised that the bestowing

of ribbons is a recognition of significant and diverse community service by individuals, and that is no poor thing, while the many ceremonies and openings (the ribbon cutting) are associated with a wide variety of activities in the life of the nation from the broadly national to the local. They took, and they take the Governor-General to many places in a vast nation-continent; they lead him in speech to an interpretation of many significant activities, issues and occasions. The openings, the meetings in which the Governor-General participated were not infrequently those of national and international bodies, of professions, industries, of specialists, of academic bodies and learned societies.

From the earliest days of the Commonwealth of Australia, the Governor-Generals have recognised the importance of travelling throughout Australia and have been clear about the reasons. Lord Hopetoun, the first Governor-General, saw this as providing a needed national focus in the early days of Australian federation. In an early speech he promised to demonstrate "to the many that they are living under one central government". Right up to the present day his successors have followed this course and for the same reasons of national identification. At an earlier time it was done, often arduously, by slower means of transport. In our day jet aircraft annihilate distance; that diminishes some of the rigor, but makes possible an ever expanding opportunity for travel.

Like the monarch he serves, a Governor-General gives a great part of his time and energy to the discharge and to the preparation for the discharge of such duties; much of what he does lies outside the work of government, responsibility for which is reposed in the hands of those whom Bagehot characterised as the possessors of "effective" power. I believe that it is the case that the Governor-General, like the monarch, makes his major contribution through the continuing and, I hope I may say, the committed performance of these duties. If I may be permitted to refer again to my speech to the Press Club, I believe that through this work, through his travels and participation in such activities, the Governor-General offers encouragement and recognition to Australians, many of whom may not be very powerful or visible in the course of every day life, and to the efforts of individuals and groups who work constructively to improve life in the nation and the community. My experience of the office was that much was demanded of me and I sought to respond as best I could. Sir Paul Hasluck has said that Australians both expect and appreciate statements by a Governor-General on matters of current concern at a level different from that of party political controversy and I shaped what I said in accord with that. Knowledge, experience and capacity were constantly called on and tested in responding to what was asked and expected of me. As well I saw, as did Hopetoun in the beginning, that a major role was performed by the Governor-General in the discharge of a myriad functions all over the Australian continent. The

responses were often quite remarkable and were certainly moving. It cannot be better put than in Hasluck's words, that the office of Governor-General is the highest single expression in the Australian governmental structure of the idea that Australians of all parties and all walks of life belong to the same nation. Recognition of this places heavy burdens and responsibilities on the Australian who holds the office.

. It also offered him a marvellous opportunity to learn about his country and its people and a very special opportunity to serve it and to serve them.

Oriel College
Oxford.

16th July, 1985.

Dear Mr. Herron,

In the Law Society Journal for June 1985 in the Obiter column your correspondent refers to a speech made by me to the Law Society of Scotland in April in which I am reported as saying in relation to the events of November 11th,1975, that I believed that Sir John Kerr was correct in the course he followed. That statement is entirely wrong; I expressed no such opinion or any opinion on the propriety of the Governor-General's action. I have not done so and I shall not do so

I learned of the publication of this statement when other newspapers made enquiry of me by telephone. I then wrote to you and you informed me that the basis of your correspondent's report was a press notice of the Law Society of Scotland. That is certainly the case, though when I first enquired of the Law Society of Scotland I was informed that no such press notice had been issued. That was wrong and the statement in that press notice is wrong.

I have provided you with a full text of my speech.

I draw your attention to the fact that other newspapers which took their report from your journal checked with me and I would hope that on any future occasion you would do the same. I know that a release from the Scottish Law Society is entitled to respect, but it was wrong and you repeated that error which could so easily have been avoided.

I ask that you give appropriate publicity to this statement.

Sir Zelman Cowen
Provost.

The President,
The Law Society of
New South Wales,
170 Phillip Street,
Sydney 2000,
Australia.