

FRIENDS OF PEEL CATHEDRAL ANNUAL LECTURE

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PARLIAMENTARY DEMOCRACY, EFFECTIVENESS AND EFFICIENCY IN SHORT MEASURE

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I was pleasantly surprised to be asked by the Lord Bishop to give this lecture. All the more so having regard to the two distinguished speakers who have preceded me. After all I am not an academic, unless you count time served in the University of Life. I am not a senior statesman or politician, indeed, I never even reached, nor aspired to reach) the Legislative Council. Assuredly, I am not as jurist or lawyer, although as a young man in military service I was on more than one occasion accused of being a barrack room lawyer. That said, who else to deliver the THIRD leg in this series of lectures than a Manxman, particularly one in the Island's political scene !!!!. Be that as it may Lord Bishop, U thank you for the opportunity and the privilege og being asked to give this talk.

When I first set my mind to this task I envisaged a more expansive approach that that for which I have settled. I thought in terms of a talk embracing the Constitution, Tynwald and Government, and the interface between the three elements. An analogy could have been drawn with the proverbial three-legged stool with the Members of Tynwald perched precariously on the top. Alternatively I could have drawn a comparison with Jake the Peg courtesy of Rolf Harris, and the three wobbly legs with strings attached, politically not inappropriate. We would of course, have been here all night so I settled for Tynwald and its relationship with Government, which I have titled Parliamentary Democracy, Effectiveness and Efficiency in Short Measure.

At the outset I must recognise that Tynwald has a long and proud history and its importance historically and institutionally is a matter of record, not to overlook the claim that Tynwald is the oldest continuous Parliament in the World. Such Heritage is not to be cast lightly aside. However it is the functionality of Tynwlad that matters most, and whether the structures and systems meet present day parliamentary and governmental needs. Inherent in that question is whether or not the processes are relevant to the 21st century and the people it purports to serve. To me the bottom line is that tradition is important but cannot be a reason for not meeting

the community's political expectations.

Another prerequisite is to take note of two developments in recent past. Firstly changes to the Island's demographics; starting with the intake from the United Kingdom of persons of retirement age in the 1970's and followed by the arrival of the economically active and their families in the mid-1980's. This has contributed to a situation where in the order of half the people presently living in the Isle of Man were not born here and may be unaccustomed to local culture and way of life albeit some, to their credit, have become staunchly Manx by dint of application. Importantly, and I concede it is a generalisation; these good people have been conditioned to materially different political processes. Therefore in terms of relevance and acceptability we must take account of the Island's changed and still changing, demographics.

The second event which has had considerable impact is the displacement of the Board System of Government by the Ministerial System in 1987. Under the Board System the Governor and the Executive Council were very largely the Government of the Day, the power mainly residing in the Governor. The Chairman and Members of Executive Council were appointed by Tynwald, little distinction being drawn between membership of Keys and Council. Chairmen of Boards were drawn from both Keys and Council. There was no formal collective responsibility but a feeling of 'ownership' was broadly felt in both Executive Council and Boards, majority decisions being the order of the day. The Keys, being the popularly elected body, viewed itself as an opposition.

With Ministerial Government the Governor has taken more of a back seat. The Chief Minister and Ministers, the great majority drawn from the Keys, make up the Council of Ministers and are de facto the Government of the Day. Members of the Legislative Council are voted in by Keys which I will argue, is unduly influenced, if not controlled by the Government. The concept of collective responsibility took hold and now embraces Ministers, Chairmen of Statutory Boards and members of Departments. Political advancement, and to some extent financial remuneration for Members are in the hands of the Chief Minister and the Council of Ministers as opposed to Tynwald. The working relationships and atmosphere within the legislature has significantly changes, and the Tynwald Members feeling of ownership in government has dissipated.

Putting the spotlight first on parliamentary democracy, few in the Western World would dispute that it is an inalienable right, albeit an argument can be made as to where the line is drawn between democratic rights of the individual and the requirements of present day government. However most people would agree that parliamentary democracy should not be compromised to achieve political objectives, neither should this be conveniently set aside in the name of political

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expediency. Yet this, I would suggest, is what has happened here on the Island, and regrettably has been acquiesced to, if not condoned by the majority of our parliamentarians.

Is Tynwald a Parliamentary Democracy? Most of the Island's residents understand this to be the case but when you look closely at the position it is highly questionable. Some 200 years ago Aristotle contended that a democracy when put to the strain grows weak and is supplanted by oligarchy. I fear that parliamentary democracy on the Island is under strain and has weakened in recent years, and in the Council of Ministers we are not far removed from an oligarchy – such is the control of Tynwald. This situation, viewed in the knowledge that parliamentary democracy survives only if political structure and systems leave control in the hands of Parliament, leaves me deeply concerned.

If Tynwald is to regain control, then it must have ready access to information concerning Government policies, expenditure and activities and there must be in place the parliamentary mechanisms and resources to evaluate them. Also within parliament there must be the structure and capacity to formulate alternative policies for consideration by Members and the public at large. Without these parliamentary 'checks and balances' parliamentary supremacy (and parliamentary democracy) cannot be sustained.

The problem of which I speak is not peculiar to the Isle of Man but in that fact there is little comfort. A Select Committee at Westminster (1977) has expressed somewhat similar concerns and put the situation as follows:

“The essence of the problem is that the balance of advantage between Parliament and Government in the day-to-day working of the constitution is now weighed in favour of the Government to a degree which arouses widespread anxiety and is inimical to the proper working of our parliamentary democracy.”

If parliamentary mechanisms and procedures to provide the necessary 'checks and balances' and maintain parliamentary supremacy are inadequate in the United Kingdom then here on the Island they are seriously deficient. Let me illustrate that by comparison with the United Kingdom situation.

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Whatever the shortcomings of the House of Lords it is undoubtedly of greater worth than the Legislative Council in contributing to the need for parliamentary supremacy. The Lords, ordinarily sitting separate from the Commons, is tasked to provide (and does provide) reasonable scrutiny of legislation, policies, expenditure and activities, which cannot be said of the legislative Council here on the Island. Apart from occasional Questions, most of which lack substance, the only dedicated task which it carries out is to review primary legislation.

We have no Party Political System and in the context of the 'checks and balance' essential to parliamentary supremacy such a system offers much more than the disjointed efforts of the Island's legislators. To underline but one point, whatever the downside to a Party Political System it does provide a choice for the electors between packages of policies and those who would execute those policies, and until that shortfall is met, parliamentary democracy on the Island will be largely an illusion.

The Island's only Standing Committees (of Scrutiny) are those on Expenditure and Public Accounts, Constitutional Matters and Economic Development; three – as opposed to some 20-odd in the United Kingdom. The numerical comparison is not important, the problem here is that members of parliamentary committees of scrutiny hold positions in Government, giving rise to potential if not actual conflict of interest. Unlike the United Kingdom, there are no Standing Committees staffed by backbenchers "shadowing" government departments.

There is no Parliamentary Ombudsman albeit the provision of such a system has been under consideration for a number of years. The right of Petition for Redress of Grievance is not substitute for a Parliamentary Ombudsman, accepting that the latter has its limitations. The petition for Redress of Grievance procedure is quaint, and occasionally the process comes up trumps but that is hardly a realistic measure. After all your Petition may not be accepted for investigation. Even if accepted, the process can take months, the procedures lack both substance and fairness, and when it comes before Tynwald the Government can, and do, influence the outcome. Of course the Parliamentary Ombudsman has no power of enforcement but in practice achieves a high degree of compliance.

The External Audit by a firm of accountants, and the Internal Audit Division of Treasury, certainly do not equate to the National Audit Office. The former execute a book-keeping exercise; Internal Audit, which is part of Treasury, carry out a more forensic audit but it is not directly answerable to Parliament as the National Audit Office is. The need is for a broadbased forensic audit that provides the information Tynwald needs to test underlying policies and strategies.

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Parliamentary Supremacy is further undermined by the patronage of the Chief Minister. Effectively Ministers, Chairmen of Statutory Boards and Members of Departments are beholden to the Chief Minister and Council of Ministers for their political appointments and a significant part of their financial remuneration. The product of this patronage is that the Government has de facto control of the legislature and inordinate security of tenure of office. There are, of course, occasions when Government lose the vote in Tynwald and Keys but it is more often than not attributable to their own political mismanagement.

How does this inbuilt majority arise? There are 10 members of the Council of ministers who to a large extent are united by collective responsibility. The Council of Ministers have in their gift five chairmanships of Statutory Boards, the holders of which are committed to support the Council of Ministers in respect of their areas of responsibility. The Council of Ministers then allocate the remaining members to departments and the Boards, who in like fashion to the Chairmen of the Statutory Boards, are tied to the Government as far as their duties and responsibilities are concerned. Then of course there are some Ministers and members who, (as Lord Beaverbrook said of Lloyd George), don't care in which direction the car is travelling, so long as they remain on board.

Few items appear on the Keys or Tynwald agendas which do not have support from the Council of Ministers, Treasury and at least one Department. This ordinarily accounts for half of the Members present and voting. Additionally the record shows that most Members of the Legislative Council ordinarily support the Government; the majority of such Members being sensitive to the fact that the Council of Ministers represent the largest single voting block within Keys and is critical to their prospects of re-election to Legislative Council. Clearly the balance of advantage between Parliament and Government in the day-to-day working of the Island's Constitution is weighed heavily in favour of Government – a manifestly undemocratic situation.

Collective responsibility is not unreasonable in its application to Members of the Council of Ministers, or indeed Chairmen of Statutory Boards, if confined to their particular responsibilities, but quite a different matter when applied to Members of Departments and Boards. It is especially objectionable in regard to Members of departments where the decision is that of a Minister (with which Members of the Departments may not agree) and may be overturned by the Council of Ministers. To enforce collective responsibility on Members in these circumstances is a travesty, and lays bare the fallacy of claims that members have independence of action.

Of course there is nothing to stop any Member putting down a Motion for debate or introducing

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a Private members Bill, providing that in the latter case the Member first obtains the approval of the house to do so. However these facilities ultimately count for little when Government effectively have a majority of votes in their gift, a gift that has not been granted to them by the electorate.

These systemic shortcomings give rise to a human reaction which aggravates the position. Some members do not recognise and do not wish to recognise, the need for an effective system of 'checks and balances' to maintain parliamentary supremacy. Even spasmodic and superficial scrutiny, such as presently takes place, is viewed by some as an encumbrance. Other members well know the importance but have subordinated the requirement to personal political advancement and financial remuneration. It is well recognised by the Members of the Legislature that there is only one King-Maker, the Chief Minister and the Government is content to perpetuate this situation as it strengthens its control of the legislature.

Additionally some Members lack an appreciation of their role as a Member of the Legislature in relation to Government. This lack of understanding results in a significant number of Members functioning in a quasi-Civil Service rather than political role. The position is aggravated by the fact that many governmental functions have been unnecessarily cast at national level, in part for want of a local authority structure capable of undertaking the tasks. Unquestionably the issue is a qualitative one, for with a tri-cameral legislature and some 40 local, combined and special authorities the Island must be the most over-governed territory in the Western World. Given a small national legislature this often pointless pre-occupation with Government duties, real and imaginary, effectively denies Tynwald resources for parliamentary scrutiny of Government policies and activities.

This demand for increased scrutiny of Government policy and activities and the formulation and promulgation of alternative policies, is not to deny the need for a political framework that accommodates progressive and dynamic government, or the need for Government leadership and direction. Indeed, structure and system should be keys to ensuring the right Government leadership and vision is in place, but many question whether this has been achieved. Attaining the optimum political framework is a moving target which has attracted little interest from past Administrations; when you are holding four aces you may not be anxious to throw in your cards and reshuffle the pack.

Of course there would be a cost attached to a stepping up of 'checks and balances' to ensure the supremacy of Tynwald and securing parliamentary democracy. However, if the increased scrutiny resulting from enhanced 'checks and balances' deterred but a small part of the recurring Government maladministration it would show a healthy return. I do not need to

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catalogue the mishaps over recent years which have cost the Island's taxpayers dearly, the media has done that for us. It may be true that 'Truth is often eclipsed but never extinguished' but such is the nature of politics that belated exposure can be relatively worthless; it must be timely to have the greatest value.

An issue central to parliamentary democracy and the effectiveness and efficiency of the legislature is the constitution of the Legislative Council and the role it performs. Whether we evaluate the Legislative Council by comparing its current functions against the broadly accepted functions of second chambers, or against the accepted attributes of second chambers, it does not measure up well. This raises the question of whether or not there is a need for the legislative Council and whether the duties could be just as efficiently performed in a single chamber legislature by an element of that body. A Select Committee of the Keys in 1998 concluded that the future of the Legislative Council turns on its democratic legitimacy, and unless it is to be subject to popular election then its role should be restricted. My personal view is that to further restrict its role would make a very strong case for its abolition.

Lack of democratic legitimacy apart, the Island cannot afford the luxury of the Legislative Council as presently established and the options are quite clear. Either the Legislative Council is made subject to popular election and its role extended or it is abolished and the Island adopts a single chamber legislature. I favour the latter as it would allow greater flexibility and choice in the use of the Members, a matter which is vitally important when you have a small (33 Member) legislature. Alas Select Committees come and Select Committees go and the Legislative Council remains unchanged. The simple fact is that turkeys do not vote for Christmas.

Now to the Council of Ministers – the heart-beat of the Ministerial System of Government, if on occasions it needs the assistance of a pacemaker. I recognise, of course, that changes to the Board System of Government were needed but I question whether the Ministerial System as it has developed has produced the answer. There were in excess of 20 Boards, each with its own Chairman and Political members, functioning largely as independent entities. The Executive Council, on which only some Boards were represented, was unable to provide the strategic direction, the determination of priorities and co-ordination needed for present-day government. Jersey and Guernsey belatedly recognised similar disadvantages in their committee system and have moved (or are in the process of moving to a different political structure.

The essence of the Island's proposed Ministerial System of Government was that the various areas of Government activity would be absorbed into nine Departments, each headed by a Minister, and the overall co-ordination and direction would be provided through the Council of

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Ministers, comprised of the Chief Minister and Ministers. Effectively, this was intended to provide a Board of Directors with the Chief Minister largely filling the role of the Chairman of the Board. To the designers' credit, there was some recognition of the need to maintain Parliamentary Supremacy, in that Ministers and Board Chairman were to be approved by Tynwald.

Regrettably, the Ministerial System was seriously undermined some 1 – 3 years after its inception when the law was changed to allow the Chief Minister to hire and fire his Ministers. Interestingly Jersey and Guernsey in their move to a new political structure have recognised the merit of Ministers being subject to parliamentary concurrence. Of course, viewed in isolation, it is not unreasonable that the Chief Minister should pick his team and answer for the Administration's performance, but this is to ignore two important factors. Firstly the deficiency in the system whereby the electorate is denied the opportunity through the electoral process to influence the choice of policies to be pursued and the Chief Minister to oversee their implementation. Secondly the patronage placed in the Chief Minister's hands, which as I have already said, provides the Government with inordinate security of tenure in office.

The acceptability of the Ministerial System of Government, and in particular the Council of Ministers, would have been a materially different proposition if the system had incorporated two important features. Firstly, if it had provided for the electorate to express an opinion on the candidates for Chief Minister and the policies which they proposed to pursue. This could be accommodated at a General Election by requiring all candidates prepared to be nominated as Chief Minister to publish a 'Statement of Proposed National Policies', in addition to their personal manifesto. Candidates for Chief Minister presently publish such a statement, but it occurs after the General Election which from the electors' point of view is worthless. If published prior to a General Election, candidates in constituencies could be questioned on their position in relation to candidates for Chief Minister and their proposed policies, and electors' could vote for the constituency candidate most aligned with their views.

A variation of this theme has recently been promoted in Keys, the proposition being that the choice of Chief Minister would be determined by the electors at a General Election. Unquestionably this would give the Chief Minister a stronger mandate but the subsequent formation of the Council of Ministers could be more problematic; the members returned not necessarily having pinned their colours to the mast as part of the election process. Such a change could be a step too far, at least at this juncture. Be that as it may, of one thing I am convinced, the turnout for elections will continue to wane unless and until the electorate are provided with the opportunity to materially influence the policies to be pursued by the incoming Government and the Chief Minister who will be charged with their implementation.

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The second feature that should be incorporated is to stipulate the number or percentage of Members who may hold Government positions, say possibly 70 percent, coupled with a restructuring of those Standing Committees and support elements committed to the scrutiny of Government policies, expenditure and activities. Opportunity could be afforded for Members to exchange roles part way through the legislative session. Inherent in this proposition is equality of status and remuneration between those Members engaged on governmental duties and those on parliamentary duties. This would ensure that there are backbenchers unencumbered by the Queen's (Chief Minister's) shilling to redress to some extent the present imbalance in the authority between Tynwald and the Government.

This talk will almost certainly have raised in your mind the question of whether or not there is a place for party politics. When I entered Tynwald nearly 20 years ago there was a strong aversion to party politics; to some extent that aversion still exists but less so with increasing knowledge of the merits and de-merits of the Ministerial System of Government. I was engaged for a number of years in the search for an alternative falling short of party politics, and in 1991 this gave rise to the Alternative Policy Group, later to become the Alliance for Progressive Government. Although the membership at one stage represented a quarter of the legislature it ultimately failed for two reasons; membership constituted a major impediment to political advancement and insufficient members were prepared to forego the financial reward attached to Department and Board membership.