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CONSTITUTIONAL CRISIS IN AUSTRALIA

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STUDENTS of parliamentary democracy will be greatly perturbed over the events that threaten to disrupt the administration and plunge Australia into chaos. Australia has a bicameral legislature with a House of Representatives and a Senate following the model of the United States. To allay the apprehensions of thinly populated States like Queensland and Western Australia, the Constitution has provided that, with the exception of amending or initiating money Bills, the Senate will have equal powers with the House of Representatives. Thus, statutorily, the Australian Senate could veto all Bills except money Bills passed by the House. In actual practice, however, since its inception in 1901, the Australian Senate, like other Upper Houses elsewhere, has been content to display a condescending approval to the Bills presented to it, rarely going beyond amending a clause here or a phrase there. Very few Bills have been rejected by the Senate during the 72 years before the Labour Government under Mr Gough Whitlam took office. In 1972, when Labour gained control of the House of Representatives and formed the Government, it

was in a minority in the Senate. The Opposition liberals and country parties commanded sufficient members to defeat or delay any legislation not suited to their taste and have, as a matter of fact, exercised the veto on as many as 90 occasions since January 1973.

The Liberal Opposition accused the Labour Government of several scandals and finally resorted to the expediency of deferring the budget of the Prime Minister, Mr Whitlam, cutting out funds and authorization of expenditure in order to force the Prime Minister to call general elections which are not due till 1977. About four months back, a scandal relating to

raising foreign loans for the development of Australia's mineral resources through private channels without parliamentary scrutiny led to the dismissal of a Cabinet Minister. A recent disclosure by a Pakistani finance broker of a plan to raise funds from the oil-rich Middle-East countries to finance acquisition of certain mineral resources from multinational corporations which owned them was in direct contravention of what the Minister for Minerals had stated in Parliament. This disclosure led to the Minister's dismissal from the Cabinet. The Leader of the Opposition, Mr Malcolm Fraser, characterized the Whitlam



Labour Government as the worst that Australia had ever had, that the Government had been guilty of misconduct and that the people of Australia should decide on its continuance in office in a general election. The Opposition feels justified in blocking the grants and forcing the Government to seek a fresh mandate.

The Prime Minister, Mr Whitlam, is angry at the abuse of the Constitution, breaking of conventions and forcing a duly elected Government out of office through improper and objectionable means. The Prime Minister objects to the Senate blocking a Government which has a majority in the House of Representatives and consequently the right to govern the country. The Prime Minister has naturally reacted by threatening to curtail the powers of the Senate.

The constitutional crisis in Australia has two aspects which are of immense interest to other democracies in the world. One concerns the relative powers of the Upper and Lower Houses in a Federal Constitution. In unitary Constitutions like that of the UK, the Upper House has ceased to exercise any but delaying actions in respect of controversial business but in Federal Constitutions, where the constituent units are zealous of their rights, the Upper House does possess varying degrees of control over Bills emanating from the Lower House depending on the nature of the federal structure. But that such powers did not, beyond protecting the rights of the constituent units from federal infringement, extend to the realms of paralysing the administration by refusal or deferral of supplies, will easily be conceded. Restrictions exist in many Constitutions and also in the Australian Constitution on the Senate's power to amend or nega-

tive a money Bill. But the Australian Senate, by deferral of the budget, has brought about a situation similar to the rejection of the budget. As a result of the Senate action, funds for payment of civil and military services and for all other activities will run out within a few weeks and the Government may be brought to a standstill. It is not easy to envisage a situation pregnant with such grave consequences. The world will be watching with interest the final solution of the dispute in Australia.

The other aspect relates to the right of the Opposition to force elections on a duly elected Government before the expiry of its term. From Mr Fraser's point of view, the Whitlam Government has forfeited its right to govern by virtue of the scandals that have rocked the country and that political decency requires that the Government should seek a fresh mandate from the people. The convention regarding the calling of elections by a government charged with misconduct is no less valid than the convention that the Upper House does not thwart duly elected governments with majority in the Lower House. When the Opposition feels that the Government was clinging to power against all decencies, it had an obligation to act. Mr Whitlam counters these arguments with the assertion of the right of the Government to run its normal course, the duty of the Opposition to wait till the next general elections which in this case is 18 months ahead, and the impropriety of subverting the Constitution by blocking grants through Senate action. There can be no readymade solution to the tangle. Such situations have arisen in the past in other countries and will arise in future also. While it is true that a duly constituted Gov-

ernment cannot be forced to seek a fresh mandate merely because of certain lapses, it cannot be asserted that under no circumstances can a duly elected government be forced to go to the polls before its term. Mr Anthony Eden, notwithstanding an absolute majority in the House of Commons, had to go to the polls after the Suez crisis in 1957 by the volume of public criticism. In a true democracy, it is public opinion which should determine the proper course of action. To defy public opinion in a democracy is to court disaster.

We hope that in the current constitutional crisis in Australia public opinion will assert itself and dictate the line of action necessary for preserving democracy for posterity. If public opinion is deeply concerned over the financial scandal and charges of maladministration, the proper course of action for the Prime Minister is to call elections without taking refuge in the niceties of constitutional propriety. If, on the other hand, public opinion in Australia backs the Prime Minister, as it is reported to do, the proper course for the Opposition is to withdraw the obstruction and observe the convention relating to Senate action in respect of money Bills without sticking to the letter of the Constitution. After all, the best democracy is a government run in consonance with public opinion.

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