

ADDRESS BY
HIS EXCELLENCY THE RIGHT HONOURABLE
SIR NINIAN STEPHEN, GOVERNOR-GENERAL OF THE
COMMONWEALTH OF AUSTRALIA
ON THE OCCASION OF THE OPENING SESSION OF A SEMINAR
ON ACCESS TO GOVERNMENT INFORMATION,
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The title of this seminar reminds us of the extraordinary increase in access to information of all kinds which has overtaken us. This enhanced access to information is the chief gift bestowed on us by the information revolution of the past 15 or 20 years. And its gift has been an abundant one; some might describe it as over abundant, fearing lest the relevant be submerged in a great tidal wave of unco-ordinated information. This fear echoes the thought which lies behind TS Eliot's lines when he wrote, "Where is the wisdom we have lost in knowledge? Where is the knowledge we have lost in information?"

Clearly enough, mere information, now proffered to us in such profusion, is only the raw material of knowledge. But so long as we recognise that information *is* only the raw material from which knowledge derives, not confusing information with knowledge, and so long as we are skilful in our use of the electronic tools which the information revolution has given us, narrowly focussing our retrieval processes, the raw material which information consists of can be precious stuff indeed.

The maxim that knowledge is power is now self-evident. But it has, I think, always been true. It is no surprise then that in past ages those possessing power sought to keep information to themselves, jealously guarding its storehouses and carefully regulating its flow so that it might pass only along secure channels and only to approved destinations.

That is what makes the title of this seminar an arresting one; arresting because it presupposes that there *should* be access to information possessed by government and because it implies that such access will be by members of the public generally and not only by those approved of by government. I rather think that such a notion would have been astonishing to the members of any seminar held 30 years ago and perhaps treasonous to one held 60 years ago.

This change in our perception of things merits recognition for at least two reasons. First, lest in the irritation of the moment caused by all the trivia of circumlocution and delay, we lose sight of the real advances that have been made in the second half of this century towards greater freedom of information and towards more open government. Secondly, so that recognition of this change may give us pause for a moment to consider what *are* the real virtues of freedom of information and of the open government to which it conduces. Open government has, in recent years, become very much a motherhood issue, an absolute good to be saluted in passing but seldom to be analysed or dissected.

I am not sure that, having had no more than quite casual encounters with open government, I am in any position to go very far in any such analysis.

Others better informed may care to do so in the course of this seminar. But I suppose that open government means government conducted without secrets, so that not only are all decisions of government made openly and openly announced but that the reasons lying behind those decisions, the broad policies which underlie them, are also disclosed, nothing being concealed or suppressed. The right to have access to government information then emerges as an aid to the attainment of that ideal of open government.

There may be aspects of this ideal of open government, carried to their logical conclusions, which may be demanding too much of mankind, and of womankind too for that matter. I say this without experience of government but with that degree of experience which each of us possesses of living together and working together in organised communities. It seems to me that harmonious life in society depends to a degree upon the very opposite of openness, upon concealment, without which much of life would immediately become intolerable. To explain what I mean may I attempt an analogy here between the ideal of absolute open government and that state, which fortunately exists only in science fiction, in which every one of us instantly acquires the ability to read the unguarded thoughts of others as clearly as if those thoughts were spoken as soon as they were conceived. Would partnerships see out a week, would seminars survive even an hour, would speeches by Governor-Generals endure more than a minute if suddenly we all acquired this gift of reading all the thoughts of others? I think not; not unless we at the same time all developed complete insensitivity to the opinions of others. The only bearable alternative would be a hermitic life in the desert, each in his own cave and remote from the hurtful thoughts of others.

All our rules of conduct, all the politeness which we teach our children as lubricants to living, are in a degree forms of concealment of our true feelings. Man tends, I think, to survive in society only by concealing, under the guise of politeness and tolerance, his feelings about his fellows. As you sit today in your chairs, politely enough and apparently interested in what I say, your actual thoughts are happily concealed from me; as from your neighbours will be equally carefully concealed your thoughts about each of them as you join with them in the coffee break.

Perhaps then, within government and in the dealings of governments with the public there is some room for polite reticence, if only to preserve our societal framework. This is not, for a moment, to deny the virtue of open government but only to suggest that there may be limits to frankness which our own earthy natures impose and beyond which we go at our peril.

Perhaps an instance of this occurs in the case of what used to be a proper consideration when Crown privilege was claimed for classes of documents. It was said that if Crown privilege did not apply to certain classes of documents public servants would not feel free to express candidly their views, particularly their advice to Ministers. In *Sankey v Whitlam* I rejected this consideration, sharing Lord Radcliffe's view that Crown servants were, or perhaps should be encouraged to be, "made of sterner stuff". I am now not sure whether that was not to some extent a perfectionist view, perhaps not according sufficient weight to human failings. So much of what we do and say in our daily life is predicated on the assumption that it will go no further; so many serious conversations begin with "Well, between you and me . . .", or end with "Well, I have been speaking frankly, just for your ears", or words to that effect.

There is another quite general observation that might be made about open government and its handmaiden, access to government information. It is perhaps best approached by drawing a distinction between the quite broad and general principles upon which open government is based and the narrowly confined considerations which affect Crown privilege. When it is Crown privilege which is in issue there are two principal considerations to be weighed each more or less clearly identifiable, though their respective weights may not necessarily be easy to determine. On the one hand is the claimed need for secrecy urged by government, based perhaps upon defence considerations, or matters affecting relations with foreign countries, or budget secrets or the like. To be weighed against that claimed need for secrecy is the proper administration of justice, the right of parties before the courts to the unfettered use of the ordinary processes of the law in placing before the court the evidence they require to pursue their claims or make good their defences.

But once one leaves the field of Crown privilege and the rights of the individual enforceable in the courts of law and is instead concerned with access to government information in pursuit of the general aim of open government, the nature of the competing considerations become less clear cut, at least on one side of the scales. In favour of non-disclosure, of refusal of access, there may remain the familiar arguments about governments' need to preserve secrecy on one ground or another. But in favour of disclosure, of free access to government information, is something both less precise and perhaps even more important than when rights of individual litigants in the courts are in issue. It is the interests of citizens generally, of participatory democracy in action that here are in question. And just because they are less precise they are the harder to evaluate.

What is the good which we call in aid when we advocate free access to government information? It finds its roots perhaps in notions of participatory democracy. We are not content to let our elected governments do as they will, with only the sanction of periodic elections, perhaps years off, to keep them on the rails. We want to maintain a running scrutiny of policy as it develops, to understand the issues as they arise and to form our own views of them and also to oversee the administration of affairs as it proceeds from day to day.

In finding this to be the wellspring from which the demand for free access to government information arises, I have put to one side demands for access so as better to enforce claimed rights by recourse to legal process; that lies rather in the area of Crown privilege. If I have correctly identified the reason for this demand for free access to government information, it suggests certain conclusions.

First, it suggests a distrust of government and a disinclination to leave government to those who govern. Perhaps this is in turn a reaction to the growth in many Western democracies of what is sometimes disparagingly described as big government. This disparagement is scarcely fair.

It is difficult to envisage in the short term any marked retreat from the present level of government intervention in Australia. Our nineteenth century colonial history, so different from the American experience in that same century, set the scene for extensive government involvement in our daily lives. This was in part the outcome of our geography, of our immense distances, our harsh interior and our small population concentrated around the arc of the

eastern seaboard and sparsely sprinkled over the hinterland. These all led to reliance being placed upon the colonial governments in overcoming the problems posed to white settlement in Australia. In the event we have become conditioned to extensive government involvement in our daily lives. Our governments are continuously subject to popular pressure for intervention: "There ought to be a law against it" or "The government should step in and help" is a common cry.

Whatever the origins and whatever the merits of a high degree of government involvement in our daily affairs, it seems also to breed, in our democratic climate, a reluctance to leave the legislature and the executive to run affairs as they see fit. Those affairs are so very intimately our own. When European governments over 100 years ago concerned themselves with little else but external affairs and tariffs and when foreign wars were fought only by professional armies, the ordinary citizen could afford largely to ignore the day-to-day activities of governments. Today the feeling seems otherwise.

But if the growth in importance of government is a factor, the media must also surely have played a major part in the demand for open government and hence for free access to government information. The role of the media in this whole matter is one of considerable interest and which could in itself be a complete seminar topic. Is the media merely responding to a spontaneous public demand for close examination of the day-to-day workings of government? Or is it rather that the media have themselves created a demand by their venturesome exploits in investigative journalism? And, whichever be the case, has there not of recent years been something of a tendency for the community to feel that it makes for a dull day if there is nothing by way of startling revelations about one or other of our various governments with which to start the morning?

But these are questions for another seminar and another day. Your topics at this seminar, focussed on access to government information, are absorbing enough in all conscience. You survey the Australian scene first thing tomorrow morning and explore the United States experience before lunch, exemptions under the Freedom of Information Act follow in the afternoon and on Sunday the reason for giving reasons is reasoned about, followed by what is optimistically described as a summing up, a task in itself so forbidding with a topic so diverse and far reaching that I am relieved to see that you have enlisted Mr Justice Kirby to undertake it.

Your seminar is to consider one of the most pertinent issues of the day, vital to the well-being of participatory democracy and replete with areas where value judgments must be made and reconciliation of conflicting public interests undertaken. It is the fourth in the series which this Faculty of Law has arranged on the theme of "Australian Lawyers and Social Change" and the Faculty is to be congratulated on the choice of subject. The papers it has generated and which I have seen will add much value to the literature in the field.

There will always be room for shades of opinion about the degree to which government should be open. One thing is clear; that the debate should proceed, not just in this seminar but in the years ahead, so that the evolving concepts may continuously best serve the interests of our democracy.

I am delighted to declare open the seminar.