

Some reflections upon the office of Governor-General in New Zealand

Sir Denis Blundell*

This paper is the edited transcript of an oral address given by Sir Denis Blundell at Victoria University of Wellington on 25 July 1979 to the New Zealand Section of the International Commission of Jurists. In the course of the address, Sir Denis discusses the constitutional and ceremonial aspects of the office of Governor-General, along with the unifying influence of being the representative of the Queen in New Zealand. In elaborating these points, Sir Denis draws on his own experience as Governor-General.

Mr President, Ladies and Gentlemen, I think it very good of you to come along on a night like this to listen to whatever I have to say. I must say I am a little shattered to find so many of my distinguished former colleagues in the law here, each of whom will know far more about the legal aspects of what I am going to say than I do myself. This is not a lecture in constitutional law and I say that especially to the young people from the Faculty here.

I intend no more than a chat on the office of Governor-General as I saw it, followed by some of the impressions I gained during those five wonderful years when my wife and I were privileged to hold that office. I am particularly glad to do so, and again especially for the younger folk, because, and if I remember to do so I will enlarge upon it later, throughout those five years I was concerned at the extent of ignorance and certainly considerable misunderstanding by people as to the office of Governor-General and where it fitted into the New Zealand way of life. For example, I remember so well — and this was the start of many such — we had a function at Government House in Auckland during my first year up there at which I had invited all the head prefects of all the secondary schools in the Auckland area. It was a sunny afternoon, we were out on the lawn and I was talking to one young lass and she said, "Oh, it's very nice to be here, Sir Denis, and I'm enjoying the occasion but I really don't think there is any need for a Governor-General. Mr Kirk is a very fine man and I don't

* G.C.M.G., G.C.V.O., K.B.E. From 1972 till 1977 Sir Denis Blundell was Governor-General of New Zealand. Prior to that, he had served as New Zealand's High Commissioner in London and earlier had practised as a barrister and solicitor in Wellington.

see why he doesn't do everything". This of itself indicates as to that particular young lady just how little she knew about the office.

I hope that as I move through what I have in mind to say, there will be something of interest and possibly something of information and instruction to you all, but I am well aware that in thinking of a talk like this I can either exclude altogether or mention only in passing something which may be of interest to any of you here.

I should say by way of introduction that I think in respect of my appointment and in respect of my term of office there were a number of unique features which I have only to mention to perhaps recall the memory of some of you in respect of them. First of all as to my appointment, I was the first resident New Zealander ever to be Governor-General in this country and my wife the first New Zealand woman to be the wife of a Governor-General. During my term I had the melancholy, for some, experience of having two changes of government and four Prime Ministers. I do not think any other Governor-General had had a combination such as that. Then we had, so fortunately for us, two full visits by Her Majesty The Queen in that period of five years, something again which was quite exceptional. So I have some sort of a special background as being first on the scene and in the circumstances I have mentioned. But I do wish to stress, and I need hardly do so, that I am talking of my personal experiences only. Each incumbent of this high office of course, brings to it with his wife, who is so very important, his own characteristics and his own way of doing things. There are certain "musts" that every Governor-General must do to the best of his ability; but there is in addition a very wide area where it depends upon the Governor-General's own inclination, his outlook and his wishes as to the extent of his activities in the affairs of the country as a whole.

May I then outline in as brief a form as is possible how I see the authority, the duties and the responsibilities of the office of Governor-General. I have read many times in the press and in other writings the statement that the office of Governor-General is largely ceremonial. In the very broadest sense there is some element of truth in that for of course there is a substantial ceremonial element, but the use of the adjective "largely" to my way of thinking is quite misleading and shows that the author himself or herself shares in the misunderstanding of where the Governor-General fits into the pattern in our way of life.

For me I put it under three separate headings. Firstly, the constitutional aspect. Secondly, the ceremonial aspect and thirdly the situation where the Governor-General represents Her Majesty The Queen as the head of the New Zealand family; in brief, where he makes such contribution as he can to being a unifying influence for all the people of our country.

Now may I enlarge upon each of those in turn. I deal first with the constitutional aspect. Where does his authority come from — what sources? Subject to what restrictions and so forth? Here I am thinking more in terms of the law and of conventions as I will indicate. As I see it his authority stems from three sources. The law as prescribed by our own Acts of Parliament is the

first one. The second, the authority and the instruction he receives from the Letters Patent which the Queen issues to him on the assumption of office and the Instructions which go with those Letters Patent, and thirdly, the so important aspect of conventions.

Now may I again deal with each of these in turn? First, the constitutional side. Here so far as the office of Governor-General is concerned we do in fact have a partially written constitution although, as you will all know, we have no written constitution in the sense that Australia, for example, and Canada each has. Some of the most important powers of the Governor-General come from the New Zealand Constitution Act of 1852 as amended many many times down the years since it was first passed. And in summary the important provisions of our law which you will find which are still current under that Act are I think these: "the Governor" is defined as a person who lawfully administers the affairs of New Zealand and "Governor" was changed to "Governor-General and Commander-in-Chief" as a result of the Letters Patent to which I will refer next. Then other sections in that Act which are still the law of this country do the following: they establish the New Zealand Legislature which at first was bicameral — the Legislative Council and the Legislative Assembly — and is now only the House of Representatives and the Governor-General. So by our law the Governor-General is part of the legislative process of this country. Then there is the provision which gives to the Governor-General the power at his discretion, and I emphasise at his discretion, to give assent to or to withhold assent, to amend or to refer back to the House, Bills presented to him which have passed through the House. May I emphasise that a Bill can go through all its stages in Parliament, be complete so far as Parliament is concerned and yet it is still wholly ineffective as a matter of law until it receives the royal assent. Then the Governor-General has to give his prior consent by way of warrant for any legislation introduced into the House which will involve the appropriation of public monies. It is one of the earlier procedures which happen while Parliament is sitting that from time to time a whole lot of documents come up from the Cabinet office with the request that the Governor-General give the necessary warrant for the expenditure of public monies. Another section gives the Governor-General authority at his discretion to call, prorogue and dissolve Parliament.

I move on from there to the Letters Patent. These go back to 1917. There were Letters Patent beforehand but the ones issued by the then King George V replaced those and they are the ones currently in force and they are given to all Governors-General. Sir John Kerr, for example, had them in Australia, indeed every Governor-General in Australia has them and the same in Canada and in other countries which have the Queen as the Head of State and in respect of which there is a Governor-General. These Letters Patent empower the Governor-General on behalf of the Queen to do the things that the law has prescribed. There are several of them and I hope I can remember most of them. One provision in them confirms that the Governor-General acts on behalf of the Queen. They give him the specific authority at his pleasure to appoint judges, justices of the peace, commissioners and ministers. This last gives authority to the Governor-General which occurs after each general election and the swearing

in of a new ministry is derived from it. They authorise the Governor-General also to appoint an Executive Council. An Executive Council by long custom now is confined to members of Cabinet and the Governor-General who, when he is present, acts as Chairman. The Letters also, and this is important, bestow upon the Governor-General the right so far as he may lawfully do so and again at his pleasure, to revoke the appointments of ministers, justices of the peace and so forth. For example he may not revoke the appointment of a judge because our law has other provisions in that regard but there are no qualifications so far as the Letters Patent are concerned upon his right to dismiss ministers and appoint new ones. Another important provision empowers the Governor-General to exercise the prerogative of mercy. Accompanying these Letters Patent are Letters of Instruction which direct the Governor-General how he should go about his duties. A very important one of these is the provision that the Governor-General in the exercise of the powers and duties which he has shall, and that is mandatory, be guided by the advice of his ministers. But that is not in absolute terms because the provision goes on to qualify this to the extent if in any case he feels for his own reasons that he should not accept the advice he may do so but must report that forthwith to the Queen. So the obligation to accept advice, while very strong and mandatory, is not an absolute one. Then in the case of pardons the Letters Patent give the Governor-General the right to grant pardons, remissions of fines, remissions of forfeiture, but the Instructions require that he should act in respect of any such grant on the advice of at least one minister. The Instructions are silent as to what he may or may not do if he does not agree with the specific advice to grant a pardon or a remission as the case may be.

So up to this point of time you can see that the Governor-General as a matter of our law has very extensive powers in theory. It is also, I think, curious in passing to note that nowhere in the legislation, in the Letters Patent or in the Instructions is any reference made to the most important person of all, the Prime Minister. The requirement that the Governor shall act on advice means advice from the Executive Council or a minister. This is a curious anomaly. I often wonder why it has not been rectified because it is of such vital importance in law and in practice. I seem to remember that the Prime Minister was not known to English law as such until the year 1917, the same year as the Letters Patent were promulgated and it was only then brought into and recognised in English law by the establishment of the residence at Chequers. But we have, I repeat, no reference throughout all this to the position of the Prime Minister.

Then we come to the third point, how do these powers operate having regard to the conventions which have been built up over the centuries as Britain moved from a position where the Crown exercised tremendous, often virtually absolute, authority to the situation where it rightly is now, where the affairs of the country are administered by the elected representatives and at best the Crown has a basic reserve power in the background to be used if and when the occasion arises? There are a number of conventions. I have never seen them collected in any writing. But basically they are in accordance with what I mentioned just now in respect of the Instructions to the Governor-General, that he should act on the advice of ministers and I strongly believe and accept that the Governor-General

should, other than in the most rare and special of circumstances, act upon the advice given to him especially by the Prime Minister and, in less important occasions and matters, by one or more ministers. But that in turn is subject to another convention which again is not absolute in terms. The Prime Minister and his ministers should have the necessary authority to give advice to the Governor-General and the mere fact that they are named and currently are Prime Minister or a minister as the case may be, is not necessarily the only answer. Basically the test is for any Prime Minister or minister to be able to advise the Governor-General that the government holds an effective majority in our House of Representatives. Once that ceases then the right and the authority to give advice to the Governor-General moves very much into a grey area, an area where perhaps the Governor-General in certain circumstances may be quite justified in acting on his own. But even that qualification which I have mentioned, the need to have an effective majority in the House of Representatives, is not in law an absolute one as was evidenced, and some of you may remember it, by the relatively recent events in Fiji where, as the result of a general election, the Opposition party obtained a clear majority over the government of the time and yet, the Governor-General did not call upon the current Prime Minister to resign nor did he call upon the leader of the newly elected majority party to form a government because within that party there were such dissensions that it was uncertain whether they could in fact govern. In these special circumstances the Governor-General there, exercising his discretion, decided to leave the current Prime Minister and his government in office and he directed there be a general election some three or four months later when the government on this occasion was returned with a working majority.

So there in brief terms is the constitutional position of the Governor-General. I will refer to how I saw this operating in practice in a few moments if I may.

I go on to the next aspect of the Governor-General's duties as I saw them which is the ceremonial. In this I mean the purely ceremonial aspect where he acts as the Head of the New Zealand state. These must be someone to do these things and I have in mind such occasions as the opening of Parliament, investitures, receiving the credentials of diplomats coming to New Zealand, Waitangi Day, in his capacity as Commander-in-Chief, attending parades by the armed services. All those to my way of thinking, and there are many others, come under the heading of ceremonial. Of course they are important but, as I said a little while ago, not "largely" descriptive of the Governor-General's office.

You may be interested in this little story on this matter of the ceremonial. I was in London as the High Commissioner when my appointment was announced and I thought, well, despite the very strong advice I had had from my two immediate distinguished predecessors that I should continue as they had to wear the plumed hat and the particular Governor-General's uniform, this was quite unsuitable for a New Zealander. As I said to my wife "I'd feel an awful Joe underneath one of those hats" and I proposed to abandon it. There was an alternative uniform as Commander-in-Chief which would cover at least a lot of the occasions when a uniform was necessary. Just two or three weeks before

we left, the Queen kindly invited my wife and me to have lunch with her at Buckingham Palace and there were only the three of us. In the course of this I said to Her Majesty "Well I would like your Majesty to know that I would like to dispense with the traditional plumed hat and the rest of the uniform but if your Majesty feels that one should continue to wear it then of course I will". She is a very wise lady. She talked about her own clothes, how important it was when you are the central figure in public to wear bright clothes so people could pick you out, how it worked in with the television and so forth. But she did not go so far as to say "Yes I want you to wear it". And so it was left to me. But my wife and I, when we left, both felt that if she had said what she really wanted it would have been to continue with it, but, happily, she left it to my discretion and I think that uniform has gone from our scene altogether. It is not good riddance after bad rubbish but I think it is more appropriate with the change of times.

Then I come to the third and to me a most important part of the Governor-General's duties and responsibilities: what I said earlier as representing the Queen as the Head of the New Zealand family, the unifying influence. A friend wrote to me in London and said in brief, "For goodness sake once you get to New Zealand, get out of Wellington". What he meant was, you cannot do the job as Governor-General by staying in the capital city or in the major centres only. I did not need that advice for that was how it seemed to me anyway. I am intensely proud of my country and of New Zealanders and I was also intensely proud to be our Governor-General. I wanted to meet as many New Zealanders of all ages and all races as I possibly could and in their own areas as well as the relatively few that we could invite to Government House. And so it was that we instituted the policy of going right across the board in the invitations we extended to our fellow New Zealanders to come and have a drink or a cup of tea with us at Government House. One of the very first was at Government House, Wellington, where we had about 600 or 700 youngish people gathered together from as I said right across the board — nurses, people who work for the scouts, the guides, young teachers, young people from the armed services and so on. Such a crowd we did not meet them individually on arrival; they gathered in the lovely Ballroom. We went on to the dias and welcomed them and then went down, my wife one side and I the other to meet as many of them as possible. It was noticeable standing there how everyone was so well dressed. They had all gone to a lot of trouble to be in their best clothes and to be neat and tidy except for two. They had the dirtiest old jumpers on, dirty socks, jandals which hardly would stay on and they really looked scruffy. But neither my wife nor I was allowed the opportunity to speak to them. As soon as we got close to either of them (we both found this out) they ducked off. They were not prepared to meet us. I think the message had got across to them. Whatever they were intending to achieve by turning up to their Government House, not our Government House, like that had long disappeared when they saw how all the other young people were dressed. We did this same thing in Auckland, in Christchurch when we had a month there, in Dunedin, where we had three weeks. We always tried to get as broad a cross section of our community to Government House where we could meet them and they could meet the

Queen's representative. But it was travelling around the country where we gained the greatest sense of satisfaction. It takes an awful long time, we worked hard at this for five years, and there was only one part that we missed out — around the East Cape of the North Island; and that was simply because my wife was going into hospital and I had to return before reaching there.

I think we covered every part of New Zealand and in a way I am sure that no other New Zealander would do, not even a politician. For example, I always recall this as one of the highlights of our travels. We left Te Anau one morning about 9.30 having first met the local people and several students from Manapouri College. We then moved slowly across South Otago and on Wednesday afternoon at 2.30 we left Milton to go to the airport at Dunedin. In that time we had had 23 gatherings and I had made 23 different speeches! This was stopping off at small rural places as well as the towns meeting the people, having a chat with them, joining them for a cup of tea and so on. They all seemed to look forward to the visit. The visit gives something to their community. The children are told about the Queen and the Governor-General at school, old and young are brought together. It is all very exciting, very tiring but believe me, it is so worthwhile. Then what a great experience it was to be guests on the maraes of the Maoris, to receive the wonderful welcome from these people and to learn again that there are no more loyal supporters of the Crown in New Zealand than our Maori people. The same, though necessarily to a lesser extent because they do not have the maraes in the same way, applied to our Polynesian people. But one way or another to meet all these folk and to bring the Queen to them I felt was most rewarding and most necessary. I believe so fully in what Prince Charles himself said that the first duty of the monarchy is the welfare of the people as a whole. Goodness knows how many speeches one has to make and at all sorts of functions; the opening of conferences, centenaries and so forth. Believe me, it is mighty hard work because you have got to know something about the locality you are in or the business of the gathering and refer to it. You are prohibited by very wise convention from getting on to matters of political controversy and in this day and age in New Zealand there is not a lot to talk about that does not involve political controversy as you will know. Yet you are supposed to make some substantial contribution to the particular function. Hard work but most rewarding. This I found was one of the greatest aspects of the office of Governor-General but one about which you see or hear very little in the news media except perhaps a report the Governor-General has been somewhere else, that he met so and so or he has opened such and such a gathering.

It is under those three headings that I think the office of the Governor-General must be looked at.

How did all this work out in practice? Well, happily we never had in my time, we never have had and one hopes we never will have, a constitutional crisis such as faced my old friend, a former colleague in the law, Sir John Kerr in Australia. But that of course is not to say it will not happen here. And how relieved I was! But before each general election I used to think out for myself what was going to happen if the people returned both parties equally or with

the addition of one or more Social Credit or other parties. What may one have to do? I had my own ideas about it. But if in the future that should happen it is just as well for some of you to remember the sort of things that may arise. The Governor-General would have to act on the advice of the Prime Minister, if he is in the position to be able to give it. If he is defeated at the election or seems likely not to have a majority in the House and still will not tender his resignation which is highly unlikely but not impossible, what is to be done about it? You have got to remember that by the time our writs are in after a general election it is nigh on Christmas in the New Zealand scene and nobody wants another general election straight away. The party coffers are empty, people are going away on their holidays and you must give them time to have some second thoughts. On the other hand, if the government remains in power it can delay the opening of Parliament until the end of May or some time in June and, with the immense authority it has to operate through regulation and Orders-in-Council it can do an awful lot of legislating and administering of the affairs of the country while it may in fact prove to be a minority government. There will not have been the essential proof in Parliament of losing out on a vote of confidence or on a vote on supply. These are the sort of things that the Governor-General would have to think of if the politicians did not themselves meet the position. They have in the past and I repeat I feel sure they will in the future.

I refer to other aspects that were of interest. The Governor-General normally attends meetings of Executive Council while in Wellington. He does not have to attend every meeting but that was my practice. He is given the agenda beforehand and he is encouraged to raise any points which he may have on the matters which are the subject of the agenda for that particular day. The meetings are held in private and no one may discuss outside what was said; but it is proper for me to say that on quite a number of occasions I did have points to make. These were always carefully considered and discussed and on a friendly basis. In practice too the Governor finds himself doing a few other things that people do not know about. I do not know how many Acts of Parliament there are of ancient lineage which contain specific authority for the Governor-General to be the final arbiter in disputes but on two occasions I ran into some ancient sections in the Counties Act of 1870 where to my horror I found I could be the final arbiter in respect of a dispute between a group of ratepayers in Whangarei and the Whangarei County Council regarding the provision of sufficient funds for the repair of roading. It did not seem to me that was a job appropriate for the Governor-General. I understand the Counties Act is in the course of consolidation and amendment and I hope those sorts of provisions go.

Also in respect of most of our universities, the Governor-General is what is called the "visitor". You might have heard that name, but there is some uncertainty as to the precise nature and extent of his powers. In the Acts to which I am referring, and they apply to most of our universities, there is a provision in one part which says that the Council of the University in effect shall have the full control and management of the affairs of the university. Then further on in the Act there is a provision which says that the Governor-General

shall be the visitor of the university and shall have all the powers and authorities that a visitor usually has. To ascertain these may involve going right back into the Dark Ages. Basically, the visitor can be the final arbiter when differences arise within the domestic scene of the university. Indeed it has been held in our Supreme Court that the visitor must so act and the court may not be used to oust his jurisdiction. But, as I found in practice, a real difficulty can arise when the facts are in dispute for, as I understand it, there is uncertainty as to the extent, if any, to which the visitor may delegate. Obviously, it is not right or practicable for the Governor-General to have to attend what may be a lengthy hearing in order to determine where the truth lies. I was faced with this position on what could have been a very lengthy inquiry but, fortunately, the parties eventually resolved it themselves. In another case the complainant accepted an appointment outside New Zealand. I understand this whole question of the Governor-General being a visitor is under consideration.

I was surprised to find also that I could be the final right of recourse in complaints by officers in the armed services. I found wading through the maze of regulations no easy task. The first appeal I allowed, the others I rejected. Then came a change of government and this jurisdiction, as I was informed, was transferred to the Minister of Defence.

Do you think that the Governor-General makes an important contribution or is he merely a figurehead? I am obviously the most biased speaker here on this point. But from my own experience I consider he has a very important part to play. It is nowhere near as important as the political aspect but there is a part to play and the reserve powers the Governor-General possesses may at any stage mean that he is the one person who can resolve an impasse which the politicians cannot or will not resolve. All three factors (constitutional, ceremonial and unifying) make the office an important and, I believe, necessary part of our system.

The query has been raised in the past whether we should have a President. I believe that it is now a non sequitur as most people seem happy to retain the link with the Crown. Such a change would indeed be an upheaval involving New Zealand becoming a republic with a written constitution. The position has altered materially with having our own people as Governor-General. I believe that was a wise and timely change giving full recognition to our independent sovereignty. For myself I would hope that continues with the exception that from time to time, and if possible, a member of the royal family should occupy the office though not necessarily for the full normal term of five years.

I certainly would not discount a former politician from being appointed. Here, as you will understand, I am on delicate ground and leave it at that. In brief, however, I believe the office should be open to any New Zealander considered able to discharge the duties properly. Now that we are dealing with New Zealanders, I think that at least the Leader of the Opposition ought to be consulted about the choice of Governor-General. He may soon become Prime Minister. Obviously he ought not to be able to make the decision but he should be asked to concur where possible in the recommendation to Her Majesty.

What do I think of my country at the end of the term? If you only looked at the newspapers, or listened to a few grumbles in a shop, or watched T.V. you would think it an unhappy divided country with depressing periods. It is inevitable that these things are happening to a certain extent and that sad things are going on in our community and that there are too many of us who are ruining the country with our selfishness. But one lasting impression which my wife and I were left with was that the great heart of the New Zealand people is in the right place. The people are generous and understanding and for the most part the children are good and ready to help others. Every now and then things go a bit wrong but basically, we are a good people. We saw this in the telethons which we should not dismiss as hysterical. Notwithstanding all our troubles, and we have had many like them in the past, I have unbounded faith in our country.



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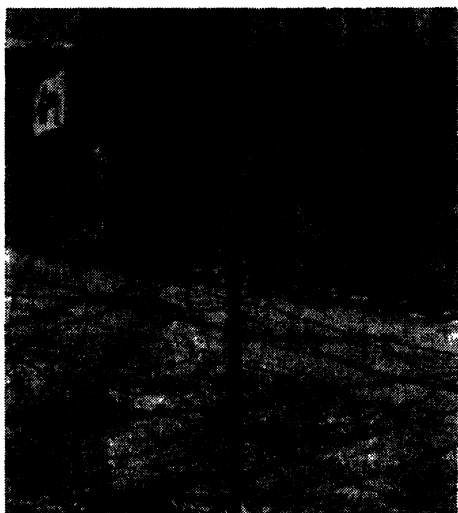
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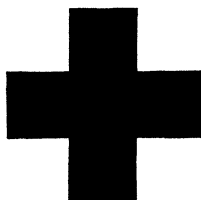
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