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The Senate and Representative Democracy

Elaine Thompson

The organ by which the will of the people is expressed is not necessarily
the house of representatives alone.
EDMUND BARTON, 1891

Australia was created as a representative democracy. Uniquely at the time of Federation, both houses of the federal parliament were elected by the people—originally by universal male suffrage and within a couple of years by universal suffrage. Moreover, all those eligible to vote were also eligible to stand for election. As Reid and Forrest noted in 1989:

> The founders of the Australian federation were united in their expectation that the Commonwealth Parliament would embrace the highest ideals of political representation ... they were … unanimous that both houses should be elected.[1]

That commitment to representative government was embedded in the Constitution, which provides at ss 7 and 24 that both houses of the Federal Parliament are to be 'directly chosen by the people'. The Constitution also embraces the democratic commitment to 'one person, one vote', by providing in ss 8 and 30 that in choosing members of parliament 'each elector shall vote only once.'

While the Senate gives equal representation to each state regardless of population size, the Senate was never a crude 'states' house': unlike the United States Senate in 1900, its membership was not appointed by state legislatures; nor was it indirectly

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[1] G.S. Reid & Martyn Forrest, *Australia's Commonwealth Parliament 1901–1988: Ten Perspectives*, Melbourne, Melbourne University Press, 1989, p. 85.

elected via state legislatures nor appointed by state governments, and that remains the case.

Both Australian houses of parliament are elected, so that Australia's federal system is designed as one of joint democratic representation. The Senate's role in the joint representation of the people was further constitutionally embedded in s. 24, 'the nexus' guaranteeing that the membership of the House of Representatives shall be 'as nearly as practicable, twice the number of the senators'. That clause underlines the commitment of the founders to a dual system of representation of *the people* by ensuring that as the population expanded so did *both* houses of parliament. In that way—through the continuing expansion of the Senate as the population grew—it could continue to function as a representative democratic chamber.

The constitutional arrangements place the Senate as the second chamber, with extensive powers to review and reject legislation, as well as to judge and to hold to account the government formed from the majority in the lower house. It also has the power to reject supply and to force the government (and the lower house) to go before the people in an election or yield government. While the Senate has never rejected supply (the events of 1975 notwithstanding), the appropriateness of its power to do so remains much disputed.

Comparisons have been made between the upper houses of the United Kingdom, Canada and Australia, because they are all parliamentary systems. Such comparisons should be dismissed as irrelevant and indicative of a misunderstanding of the representative democratic nature of the Australian upper house. Because the House of Lords and the Canadian Senate are not democratically elected, their powers over the popularly elected house have been limited to, at best, delaying legislation and recommending amendments. By way of contrast, the constitutional arrangements of the Australian Senate gave it a representative democratic character and so justify its extensive powers.

However, despite the extensive constitutional powers given the Australian Senate, the domination by the major political parties of both houses of parliament between 1910 and 1949, and the resultant control by the government of the day of the Senate, ensured that the Senate did not fulfil the expectations of the creators of the Australian Constitution. By 1949, the Senate, while not quite moribund, was largely regarded as a weak institution, irrelevant to the conduct of politics.

The introduction of proportional representation (PR) helped change that view. Over the fifty years since PR, the Senate has developed into a vital, representative, democratic second chamber, which actively attempts to ensure 'that laws are supported by a majority, properly representative of the country, and ... that ministers are accountable for their conduct of government to the Australian public.'[2]

The nature of democratic representation

Representation is a complex idea and few agree on its content. However, a relatively simple test is whether or not there is agreement *within the particular society* that the

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[2] The Role of the Senate, *Senate Brief* No. 10, March 1998.

system is 'fair': 'fair' in that the outcomes of elections are regarded as legitimate and accepted, 'fair' in that the parliament is accepted as representing the people who elected it, and 'fair' in that the government is formed from the group that gained the support of the majority of the people. Governments formed from the will of the majority then are accountable to all the people through elected parliaments that are representative of the people. Debate arises over the extent of such accountability.

Party Representation: comparing the House and the Senate

Because representation in the House of Representatives is based around single-member geographically determined electorates, elections regularly produce distorted results. The chance for distortion in Australia is made greater by the requirement that electorates are drawn up within state boundaries. Under this system, governments often are elected with a majority of the seats without having gained a majority of the vote. Even when the distortion is not as dramatic as that, the percentage of seats gained frequently bears little resemblance to the percentage gained by that party of the popular vote.

In a study of the vote for each house in the 1998 election, Campbell Sharman found that in the House of Representatives the coalition parties won just under 40 per cent of the vote, but gained over 54 per cent of the seats, while in the Senate, the Coalition won 37.7 per cent of the vote, but gained 42.5 per cent of the seats.

> Even including those senators who began their terms in 1996, the composition of the new Senate gives the Coalition 46 percent of the seats, a figure which is a much more accurate reflection of the party vote for the House of Representatives … than the House of Representatives result itself … It is the House of Representatives that is unrepresentative, not the Senate ... The Senate is certainly more than representative enough to have its actions underpinned by a powerful sense of popular legitimacy.[3]

The Senate's claim to fairer party representation is also true if we look at the minor parties. For example, in the 1998 election, 25 per cent of voters voted away from the major parties, resulting in a net gain in minor party representation of two. The 1999 Senate gives to the minor parties and independents 12 of the 76 senators, or 16 per cent. The first preference vote for minor parties in the House of Representatives was around 20 per cent and yet only one representative was elected who was not from the major parties—an Independent in Calare (NSW).

The shift to PR has ensured that the Senate represents significant groups of electors not able to secure the election of members to the House of Representatives, and fulfils the expectations of 1948 Attorney-General H.V. Evatt, who on introducing the PR legislation, argued that 'the fairest system and the one most likely to enhance the status of the Senate is that of PR.'[4]

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[3] Campbell Sharman, 'The Senate and good government' *Papers on Parliament*, no. 33, May 1999, pp. 158–159.

[4] *CPD* (*Commonwealth Parliamentary Debates*), 16 April 1948, p. 965 quoted in Electing Australia's Senator*s*, *Senate Brief* No. 1, March 1998.

Minority representation

The situation with the Senate is complex. Because the Constitution gives equal representation to the states, and because the Australian states have different population sizes, a Tasmanian vote is worth 12 times a vote in NSW. If the notion of 'one vote, one value' is seen as central to representative democracy, the Senate fails one important test. However, 'one vote, one value' is only one definition of 'fair' representation. The granting of equal representation to the Australian states, regardless of their population size, was regarded as fair and proper because the founders were concerned to protect the smaller states from being swamped by the larger. That supplementary form of representation (over and above representation in the House of Representatives) was seen as essential for the operation of a federal system: hybrid forms of representation to match a hybrid form of government. The founding fathers deliberately chose that form of representation for the 'federal house' as an essential part of federalism, building dual forms of representation into the Australian system.

While the Australian system of representative government was not intended to be one of simple majoritarian representation, the major parties' domination of both the Senate and the House between 1910 and the late 1960s led to a view of the Australian system as one of majoritarian democracy. There developed a series of constitutional conventions supporting that view, the most important being that the Governor-General would always act on the advice of the Prime Minister and that the Senate would never use its powers to block supply.

Developments including the constitutional crisis of 1975 show that such a majoritarian view of Australian representative democracy is no longer valid. The slow break-down of voting support for the major parties has given Australia a system of representative democracy that is far more than majoritarianism—and slowly the executive is recognising that fact, albeit with ill-grace.

These developments have strengthened, not threatened, Australia's democracy. Democracy involves not just the unfettered expression of majority will, but also the creation of institutions that can hear, protect and enhance the voices of minorities. The representation of minorities can occur in many ways, for there is no one answer to what forms a fair representative system. The Australian founders chose to protect minority states, but there could be alternative forms of representation. For example, the famous Fabian G.D.H. Cole suggested that we should be represented in terms of our 'interests'. Thus we would vote *en masse* as citizens for some portion of the elected house(s), but we could also vote as 'factory workers' for a factory representative, or as women for a women's representative. The most radical suggestions for guaranteeing that the voices of minorities were heard against the cacophony of the majority came from Humphrey McQueen, who 30 years ago suggested that votes be allocated inversely to the power that individuals possess. Thus a party leader or business magnate would only be entitled to one vote—as a citizen. An elderly, single, Aboriginal woman caring for a number of children, such as the late Mum Shirl, would receive five votes.

Table 3.1   Senate party composition since 1949

Election	ALP	LIB	NATS	DLP	Aust Democrats	Greens	Greens (WA)	Indep	One Nation
1949	34	20	6						
1951	28	26	6						
1953	29	26	5						
1955	28	24	6	2					
1958	26	25	7	2					
1961	28	24	6	1				1	
1964	27	23	7	2				1	
1967	27	21	7	4				1	
1970	26	21	5	5				3	
1974	29	23	6					2	
1975	27	27	8					2	
1977	27	29	5		2			1	
1980	26	28	4		5			1	
1983	30	24	4		5			1	
1984	34	28	5		7			2	
1987	32	27	7		7			3	
1990	32	29	5		8		1	1	
1993	30	30	6		7		2	1	
1996	28	31	6		7	1	1	2	
1998	29	31	4		9	1		1	1

Source: G.S.Reid & Martyn Forrest, *Australia's Commonwealth Parliament 1901−1988: Ten Perspectives*, op.cit., p. 65, updated to reflect election results since 1987. Note the figures show the state of the parties from 1 July following the election except for the double dissolution elections of 1951, 1974, 1975, 1983 and 1987.

Representing Australia's diversity

For many years in Australia, it was (and still is in some quarters) argued that the world view, values and interests of minority groups such as Aborigines, non-English speaking background migrants or women could be represented by the white, almost overwhelmingly 'Anglo-Australian', highly educated, and largely male representatives who make up elected politicians in general, and the leadership of the major political parties in particular.

Twenty-five years of research into discrimination has shown, unambiguously, that men in positions of power do not share the world views and values of minorities. In the arena of elected politics, there has been a rejection of such a paternalistic version of representation and a commitment that the elected representatives in both houses of

parliament should reasonably reflect the population in terms of ethnicity, race and gender: that the parliament should be a microcosm in gender, race and ethnicity of the larger Australian population. The pre-selection practices of the major parties have been changing, especially with respect to the representation of women.

Ethnicity and race

Neither house of parliament can claim to be reasonably representative in terms of the ethnic and racial make-up of the parliamentarians. There is only one Aboriginal senator (new in 1999), only one senator of Asian background (new in 1999), and no more than six or seven senators from non-'Anglo-Australian' backgrounds. The only other Aboriginal to have served in the federal parliament also served in the Senate (Neville Bonner). Most senators are Australian born, and of those born overseas, most are from 'Anglo' or Irish backgrounds. Seven senators (9 per cent) were born in the United Kingdom, one in Eire, one in Zimbabwe, one in New Zealand and one in Papua New Guinea. All 11 are 'Anglo' in ethnic terms. In addition, one senator is from Germany, of German/English background. The House of Representatives contains no Aboriginal representative, and no member with an Asian background. It does, however, have eight representatives born in non-English speaking countries (about 5 per cent), and ten representatives who, while Australian-born, come from 'non-Anglo' ethnic backgrounds.

The Australian population has a very different profile. The present mix comprises about 74 per cent Anglo-Celtic, 19 per cent other European, Asian 4.5 per cent and Aborigines and Torres Strait Islanders at around 1.5 per cent. Also, 23.5 per cent were born overseas, and 15 per cent speak a language other than English at home.

Gender

Half of Australia's people are women, and while neither house approaches 50 per cent representation of women, there are 23 women senators in the present Senate, or 30 per cent. These numbers strengthen the Senate's claim to be more representative in terms of gender than the House of Representatives, where 33 of 148 members are women, or 22 per cent.

The Senate has also been the house in which more women play leadership roles. There is a strong historical base on which to make the claim that the Senate is more representative in the sense that it enables the world views and values of women to be heard through their attaining leadership positions. Table 3.2 summarises the advances in leadership which women have made in the Senate since 1949.

Had it not been for the change to proportional representation in 1949, these gains in the representation of minor parties, and the representation of women, as well as women's ascent to political leadership would not have occurred. In itself, PR was not a sufficient condition for such change—as evidenced by the fact that relatively little happened until the 1970s—but it was a necessary condition. There has been no similar progress in the House of Representatives in terms of leadership roles.

Table 3.2   Executive and Party Leadership in the Australian Parliament—positions first achieved by women senators

1966	Senator Annabelle Rankin becomes the first woman to administer a federal government department as Minister for Housing.
1976	Senator Margaret Guilfoyle becomes the first woman in Cabinet with portfolio responsibilities.
1983	Senator Susan Ryan becomes the first Labor woman in Cabinet.
1986	Senator Janine Haines becomes the first woman elected to lead a parliamentary party, the Australian Democrats.
1990	Senator Janet Powell succeeds Janine Haines as Leader of the Australian Democrats. She also becomes the first woman from either house to have a private bill passed by both houses (the *Smoking and Tobacco Products Advertisements (Prohibition) Act*, 1989).
1993	Senator Cheryl Kernot becomes the third woman to lead the Australian Democrats.
1997	Senator Meg Lees replaces Cheryl Kernot as leader of the Australian Democrats.

Accountability

The apparently permanent appearance in politics of a situation in which the balance of power in the Senate is held by minor parties and independents is a direct flow-on from the introduction of PR. It has led a general trend towards the enhanced influence of the Senate over the government, a trend profoundly strengthened with the birth in 1977 of the Australian Democrats led by Senator Don Chipp (to whom we owe the phrase 'keeping the bastards honest').

'Keeping the Bastards Honest': holding ministers accountable

The Senate, through the use of its power of censure, has developed an important role in holding ministers answerable. It will censure a minister if it believes a minister has not acted with propriety, has failed to declare an interest in a matter, has refused to produce documents in compliance with a Senate order, has misled or lied to the Senate.[5]

The power of censure is taken very seriously by the Senate *and* by the government because a Senate censure can have, and has had, repercussions on the credibility of the government as a whole. It has led to the resignation of ministers. For example, in

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[5] *Odgers' Australian Senate Practice*, 9th edn, Canberra, Department of the Senate, 1999, pp. 455ff.

1992, during the Keating Labor government, the Senate censured the Minister for Transport and Communications, Graham Richardson for, among other things, 'attempting to interfere in the justice system of another country.' Questions were also raised in the Senate over whether he had lied to the Senate. Richardson resigned. During the Howard government also, the Senate's actions have led to ministerial resignations. In 1996, the Senate passed a resolution calling on the Assistant Treasurer, Senator Jim Short, and the Parliamentary Secretary to the Treasurer, Senator Brian Gibson, to explain apparent conflicts of interest arising from their shareholdings. Both subsequently resigned.

However, Senate attacks do not always result in resignations. For example, between January and May 1998, the Labor Opposition launched a sustained attack on the Minister for Resources, Senator Warwick Parer. Central to the attack was the claim that Parer had failed to disclose to the Senate a full list of his financial interests, as required, and that his personal interests were in conflict with his ministerial duties. The Prime Minister supported his close friend, refusing to yield to the pressures and force the Senator's resignation.

The success of the Senate's attempts to hold ministers fully accountable depends (as it does in the House) on whether the individual minister is a 'mate' of the leader and whether there is enthusiastic, consistent media coverage. If there is enough pressure and if there is evidence that the issue is damaging the leadership and/or the government, then the Prime Minister will usually ask the minister to resign as a damage-limitation strategy.

While this multi-step system of holding ministers accountable may be a long way from the text-book descriptions of the conventions of ministerial responsibility, it nonetheless demonstrates the serious role that the Senate plays in 'keeping the bastards honest'.[6]

'Keeping the Bastards Honest': budgetary accountability

In 1993, because the Keating government lacked a majority in the Senate, the Budget was held up for so long that parliament sat until Christmas. As a response in part to its embarrassment at being forced to back down publicly over a number of budget positions, the government recognised the power of the Senate and shifted the Budget from July back to May, and developed a time-line for budgetary negotiation.

The Howard government further developed the 'behind closed doors' aspect of budgetary procedures. For example, for much of February, March and April 1999, substantial new policy proposals were considered by the Expenditure Review Committee (ERC), after which the decisions went to the rest of Cabinet for routine acquiescence. These government budgetary decisions are still subject only to the internal checks within the party and the common sense imposed by the need to maintain electoral popularity. The difference from the past is that the closed processes of Cabinet once produced a budget that was non-negotiable and the progress of which through both houses of parliament was regarded as automatic. Today, the budget that emerges in May can be challenged, on some items at least. The absolute power, legitimacy and authority of the government to dictate the budget has been modified.

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[6] ibid.

While the government retains the initiative with respect to the budget, the minor parties and independents have, since 1993, been able to negotiate specific items in return for their support for the whole budget. The new system is different and has opened the budget to a new level of scrutiny.

'Keeping the Bastards Honest': Senate oversight through its committees

As a result of PR, party numbers in the Senate have been more evenly balanced, and 'political behaviour in the Senate came to reflect a greater flexibility and hence independence than existed in the more rigidly party-dominated and disciplined House of Representatives.'[7] This more flexible environment enabled the Senate to emerge as an important power centre, especially but not exclusively in terms of overseeing government activities, and scrutinising and challenging legislation. This process began seriously under Lionel Murphy in the late 1960s and gathered strength from 1970 when major reforms were put in place creating new standing committees. In 1970, a comprehensive system of legislative and general purpose standing committees, which would 'stand ready' to inquire into matters referred by the Senate, was introduced. These committees looked at policy and administrative issues covering the full scope of government activity. Estimates committees were also established at this time to scrutinise the particulars of proposed government expenditure. At the time, the *Sydney Morning Herald*, peering confidently into the future, stated that the 'introduction of a wide-ranging committee system will make the red-carpeted Upper House potentially the most powerful parliamentary chamber in Australia.'[8]

Between 1979 and 1982, the Senate Standing Committee on Finance and Government Operations, chaired by Senator Peter Rae, surveyed all the non-departmental units of government (quangoes) it could find, and recommended that annual reporting, financial oversight and governmental control be vastly improved. The committee had found:

> somewhat to our surprise, that no section of government had a complete list of the statutory authorities ... The Committee found ... that while governments have been forever increasing their demands on the private sector for information - economic, demographic and so forth ... they have never brought together the same information in relation to the activities of the public sector.[9]

The findings of the Rae committee 'lifted the lid on a can of worms so complicated, so non-productive, so incestuous and so arrogantly insensitive as to boggle the imagination—to stand as a stinging rebuke to lazy, negligent parliaments over many years.'[10] Rae found at least 1000 of these bodies with total assets of more than $11 billion. Few were required even to report annually to parliament. In addition, they had

[7] 'Senate Legislative and General Purpose Standing Committees: the First 20 Years 1970–1990', http://www.aph.gov.au/senate/committee/history/conthist.htm, 8 June 1999.

[8] *Sydney Morning Herald*, 3 November 1970, quoted in ibid.

[9] Peter Rae, 'The Financial Accountability of Statutory Authorities', in J.R. Nethercote, ed., *Parliament and Bureaucracy*, Sydney, Hale and Iremonger, in association with the Australian Institution of Public Administration, 1982, p. 242.

[10] *Australian*, 15 February 1980.

a combined deficit, outside the official Budget deficit, of $698 million. As a result of this Senate review, some of the quangoes were shut down and the reporting processes of those that survived were reformed. Serious reviews began about which government trading enterprises ought to be privatised, and which corporatised.

In the 1990s, the Senate was

> instrumental in bringing the sports grants case to a constructive conclusion with undertakings that accountability mechanisms in public administration will be strengthened. In its review activity, it has revealed serious deficiencies costing millions of dollars in the performance-based pay program in the public service. It disallowed a generous determination in favour of the former controller-general of customs. And it maintains a continuing and active vigilance over the civil liberties of citizens through the work of its standing committees on regulations and ordinances and scrutiny of bills.[11]

Such developments have strengthened the Senate's oversight capacity, with the Senate by and large acting responsibly for the public interest.

The Senate restructured its committee system in October 1994 by establishing a pair of standing committees—a References Committee and a Legislation Committee—in each of eight subject areas: Community Affairs; Economics; Employment, Education and Training; Environment, Recreation, Communications, and the Arts; Finance and Public Administration; Foreign Affairs, Defence and Trade; Legal and Constitutional; Rural and Regional Affairs and Transport.[12]

The Senate has built up its committee expertise and developed 'multi-purpose bodies, capable of undertaking policy-related inquiries, examining the performance of government agencies and programs or considering the detail of proposed legislation in the light of evidence given by interested organisations and individuals'.[13] Another valuable role is the scrutiny of policy, legislative and financial measures. The Senate's committee system is a significant development, allowing the Senate more effectively to review government decisions and to attempt to keep the government accountable for its actions.

On occasion, however, the Senate's committees become stages for narrow adversarial partisan politics. For example, in 1994 there was a clash between government and the Senate when a Senate committee examining foreign ownership in the print media requested documents and government witnesses for its hearings. The government, having opposed the committee's formation, refused to comply. While the Senate attempted to make the executive accountable to the instrument of the people,[14] the

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[11] 'The Senate and responsible government', editorial, *The Independent Monthly*, June 1994, p. 8.

[12] Senate Committees, *Senate Brief* No. 4, December 1998.

[13] *Odgers' Australian Senate Practice*, op. cit., chapter 16, Committees.

[14] See, for example, Innes Willox, *Age*, (Melbourne), 15 February 1994; P.P. McGuinness, *Australian*, 19–20 February 1994; editorial, 'Give and take in the Senate', *The Weekend Australian*, 12–13 February 1994.

government treated the inquiry in purely partisan terms. The result was a stand-off, but the Senate played an important role in exposing government actions to publicity and increased public awareness.

Community participation

Committees also provide a formal channel of communication between parliament and the public that encourages greater community participation in the parliamentary process. In recent years, select committees have inquired into matters such as superannuation, uranium mining and milling, the Victorian casino, aircraft noise in Sydney, a new tax system, and currently, the socio-economic consequences of the National Competition Policy.[15]

Citizens can and do participate in law making and policy review. Anyone may make a submission to a committee inquiry and the Senate now 'goes to the people', meeting outside Canberra and 'gaining first hand knowledge of and exposure to issues of concern to the public.'[16] For example, when the Senate Employment, Workplace Relations, Small Business and Education Legislation Committee considered the Higher Education Legislation Amendment Bill 1999, 28 witnesses gave evidence at the one day scheduled for public hearings. The committee also received form letters from more than 3000 students. In addition, the committee received more than 400 submissions including some 160 from private individuals. The submissions from organisations ranged from the Armidale and District Soccer Association to the Australasian Union of Jewish Students, NSW; from the Australian Vice-Chancellors' Committee, to the University of Sydney Students' Representative Council, Aboriginal Affairs Department NSW, and the Young Liberal Movement, Queensland.

In the period 31 May 1999 to 9 June 1999, the Senate advertised (on the World Wide Web as well as in more traditional channels) public hearings on the following issues (among others):

- Aboriginal Land Rights (Northern Territory) Amendment Bill (no. 2) 1999
- Examination of Developments in Contemporary Japan and the Implications for Australia
- Deregulation of the Australian Dairy Industry
- Statutory Powers and Functions of the Australian Law Reform Commission (Sydney and Melbourne)
- Health and Aged Care
- ATSIC
- Office of the Status of Women
- Environment and Heritage
- Communications, Information Technology and the Arts
- 1999–2000 Budget Estimates[17]

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[15] Senate Committees, *Senate Brief* No. 4, December 1998. I am indebted to Wayne Hooper from the Senate for these recent committees.

[16] *Odgers' Australian Senate Practice*, op. cit.

[17] Senate, Public Hearings, http://www.aph.gov.au/senate/committee/hearings/hear.htm, 2 June 1999.

The Senate has demonstrated a serious commitment to public participation in its committee processes. Such participation is no longer *ad hoc*, but an institutionalised part of the Senate's procedures.

Managerialism and accountability

Over the past fifteen years, there have been attempts to create a 'new' public administration, with the development of the managerialist state through privatisation, corporatisation, and contracting-out. The 'new' public administration has led to new concepts of public sector accountability focusing on efficiency, outcomes, and concepts such as risk management and letting the managers manage. According to some of the proponents of the managerialist state, accountability can be assured by ensuring the private sector delivers the services the government has contracted to it in a client-sensitive way, and through creating legally enforceable contracts ensuring compliance by service providers. This process is said to be efficient because competition between service providers will ensure that 'clients' or 'end-users' have a choice of price and product.

The most extreme proponents argue that the mechanisms parliament has put in place to enhance the accountability of bureaucrats, including freedom of information, administrative appeals tribunals and Ombudsmen, are irrelevant to modern governance. For example, a sometime chairman of the Public Service Board publicly attacked these mechanisms suggesting that their operation may well mean that 'Australia's economic performance and well-being suffers'.[18] Another example can be found in the discussion paper on public service reform put out by Workplace Relations Minister Peter Reith in 1996, 'Towards a Best Practice Australian Public Service'. Neither its Table of Contents nor its overview make any reference to democracy or accountability—let alone equity, responsibility, ethics or participation.

Its overview begins:

> To provide the Australian people with better government the Australian Public Service (APS) has to undergo significant change. It no longer enjoys a monopoly in the delivery of government services so it must prove that it is able to compete on cost and quality with best practice in the private sector … The culture of the APS does not sufficiently promote high performance or drive innovation, and the important contribution often overlooked or stifled by process and unnecessary regulations. There is evidence of a lack of collective vision amongst its leadership. Management remains cautious and conservative.

The Senate has been monitoring the impact of managerialism. For example, a May 1998 Senate committee report, *Contracting Out of Government Services*, raised concerns about the accountability mechanisms that were being developed. The committee supported the view of the Commonwealth Auditor-General that contracting out of a service 'does not equate to contracting out the responsibility for

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18 R.W. Cole, 'The public sector, the conflict between accountability and efficiency', *Australian Journal of Public Administration*, vol. 47, no. 3, September 1988, pp. 223–232.

the administration of the service or the program.'[19] While the Senate committee readily acknowledged the problems with traditional modes of public service delivery of services, it nonetheless insisted that where:

> public money is expended on the provision of services, the responsibility for that expenditure remains with the government agency contracting the service ... The importance of making the public sector transparent and accountable has been a continuing theme of public administration and the parliamentary process for many years. ... The committee wishes to ensure that these advances ... are not undermined.

> There is real concern that the progress that has been made may be threatened as significant areas of public expenditure are subject to contracting out and operational responsibility is transferred from the public to the private sector … that agencies may be less accountable for the manner in which they discharge their responsibilities.[20]

Because the Senate is concerned not to let the managerialists weaken public sector accountability, the Senate and the government continue to argue over issues of accountability with respect to the 'new' public administration. The Senate tries to remind the government that 'letting the managers manage', for example, does not imply:

> that only the managers have any right to know how they are managing. A necessary accompaniment of devolution is increased accountability ... The quest for economic rationalism should not blind us to the old philosophical debate about ends and means. Parliamentary committees have a proper interest in both.[21]

Conclusion

At an institutional level, Australian democracy remains firmly centred around partisan politics and the executive remains dominant. Nonetheless, since 1949 the Senate has developed from an all but moribund institution to a vibrant part of Australia's system of representative government.

This change could not have occurred had the Senate remained under the control of either major party. The introduction of proportional representation in 1949 gave hitherto unrepresented groups a chance to gain a place in the Senate. The result was the growth of a series of small parties as well as the election of a number of independents. Proportional representation combined with a growing propensity of Australians to vote away from the major parties and to 'ticket switch' by giving their vote to one party in the House and another in the Senate. The 1984 changes to the Senate's voting system further enhanced the growth of minority parties. The continued decline in the vote for the major parties, combined with the change in the

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[19] Senate Finance and Public Administration References Committee, *Contracting Out of Government Services, Second Report*, Canberra, Department of the Senate, May 1998.

[20] ibid.

[21] Linda English, 'Redefining public accountability', *Australian Accountant*, March 1990, p. 24.

quota required for election to the Senate, has made it easier for minor parties to be elected. The placing of the party names on to the ballot paper, and the introduction of the 'contract-bridge' above-the-line, below-the-line system of voting, increases the visibility of the minor parties and makes it easier to vote for them. As a consequence, since the 1970s, it is usually the case that neither major party controls a majority in the Senate.

Proportional representation, the voting patterns of Australians and its constitutionally embedded powers have given the Senate a base on which to develop into a serious, expert parliamentary institution. The Senate's activities ensure that the government is not unchallenged, and there is a growing acceptance that the Senate, as an institution, has the right to take on the government. The government partially acknowledged the power of the Senate in that it changed the budget process and now accepts changes to specific budget items.

John Power has described the strengthening of the Senate's various roles as a move towards a consensual style of politics in which there are no longer clear-cut choices; instead policy packages emerge out of hard negotiation.[22] The major parties have been forced to modify their policies, and the minor parties have used 'their numbers to check the power of the Government in ways that undoubtedly have been in the public interest. In the process they have forced the Government to agree to some worthwhile reforms, such as the improvements in accountability.'[23] These developments seem to be, as the Clerk of the Senate Harry Evans noted, part of a slow, step-by-step process of reform towards a system where the Senate can work so that the 'exercise of power ... [is] carefully watched and monitored.'

However, developments in the direction of a more managerialist state represent a fundamental challenge to the idea that when public monies are being spent, the public interest is best served and protected by holding the policy-making arm of government, the executive, directly accountable to the elected representative institutions of the parliament. Were managerialist developments to continue, large areas of policy could be excluded from the Senate's oversight. For the moment, the Senate is resisting managerialism and continuing to insist (where it can) on the traditional accountability of government to the parliament.

Governments do not like it, but (to twist Malcolm Fraser's words) democracy was never meant to be easy.

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[22] John Power, *Canberra Times*, 23 February 1994.

[23] Editorial, *Australian Financial Review*, 8 March 1994.