

PAPERS ON PARLIAMENT

Number 14
February 1992

**Parliamentary Perspectives
1991**

Published and Printed by the Department of the Senate
Parliament House, Canberra
ISSN 1031-976X

The Department of the Senate acknowledges the assistance of the
Department of the Parliamentary Reporting Staff.

Cover design: Conroy + Donovan, Canberra

NOTE

This issue of *Papers on Parliament* includes lectures given in the Senate Department's *Occasional Lecture* series during the second half of 1991, together with a paper given by the Clerk of the Senate, Harry Evans, to a seminar organised by the Queensland Electoral and Administrative Review Commission in Brisbane on 26 July 1991.

It concludes with a digest of procedurally significant events in the Senate during 1991 which we hope to include as a regular feature of *Papers on Parliament*.

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Parliamentary Reform:
New Directions and Possibilities for Reform
of Parliamentary Processes

Harry Evans

Clerk of the Senate

Parliament and the Problem of Government

In considering the reform of parliament we are examining the alteration of the basic institutions of government, and it is therefore wise to refer to first principles, and to ponder how the task relates to the elementary problem of government. The great difficulty of government is the creation of authorities with sufficient power to achieve the desired aims of government, peace and order, while preventing the unintended misuse of that power. As James Madison expressed it, the problem is to allow the government to control the governed while obliging it to control itself.¹ In recent times the key to obliging government to control itself has been seen as making government responsible to society at large through democratic election. The problem cannot be solved, however, simply by ensuring that governments are democratically elected, even if that concept is extended to all matters conceptually relevant to free and fair elections. Although many people nowadays act and speak as if democracy in that sense is the solution to all problems, it is readily apparent with any reflection and experience that democracy alone is an inadequate solution. All problems connected with the administration of the law, for example, cannot be solved by electing judges and other officeholders in the legal system. As Madison also said, a dependence on the people is no doubt the primary control on government, but experience teaches us the necessity of "auxiliary precautions".²

The classical answer to the problem of government abusing its powers, as developed and expounded at the foundation of modern states, is the principle of the division or separation of powers.³ The rationale is that by dividing powers, the same or different categories of power, between different authorities, independently constituted and selected, the abuse of power can be prevented by reducing the quantum of power which can be brought to bear by any one authority, and by allowing the different authorities to restrain each other. The principle of the separation of powers was manifest in the British constitution as it emerged from the revolutions of the 17th century, and, even more explicitly, in the constitution of the United States. It is also reflected in the Australian constitutional apparatus, with the delineation of executive, legislative and judicial powers in the federal constitution. The greatest monument to the principle in modern times is the independence of the judiciary, which is regarded as an essential foundation of our polity. As has been suggested, we do not elect our judges because the principle of separation of powers in the administration of the law is more powerful than the dogmas of democracy.

¹ *The Federalist* No. 51, Everyman, 1970, p.264.

² *Ibid.*

³ Diamond, M., 'The separation of powers and the mixed regime', *Publius*, Summer 1978, pp.33-43, argues that separation of powers as formulated by the American founders was radically different from previous formulations of the division of power going back to classical times.

Notwithstanding the nostrums of the 17th and 18th century constitutionalists, the system of government in Britain evolved into one in which the executive and legislative powers were combined. It was explained as a system in which the executive power was exercised by a body, the cabinet, appointed by and responsible to the effective legislature, the lower house of parliament. This was the constitution described by Walter Bagehot. Since he described it, it has evolved into something quite different again.⁴ It is a commonplace of the literature on the system of responsible or cabinet government which Australia inherited from Britain that the executive government has come to control the legislature. It is more accurate to say that the legislative and executive powers have been combined in the same body of persons, the majority party in the lower house of parliament, while the remainder of the legislature, the opposition, hopes not to overthrow that combination of powers but to inherit it. It is also a commonplace that the modern phenomenon of highly organised and tightly disciplined political parties brought about this situation. This development has gone further in Australia than in Britain or elsewhere, because Australian political parties are much more disciplined than their counterparts in other parliamentary countries.⁵

We have thus embraced the very situation which our founding philosophers warned us against as the very epitome of tyranny: the concentration of legislative and executive powers in the same hands. Indeed, we have come to permanent submission to what they saw as the disease of elected government: rule by faction.⁶ Ours is a system of total monopolisation of both categories of power by the group which controls fifty percent of the party which wins forty-odd percent of the popular vote. Such a situation cannot be entirely accepted unless one abandons the institution of parliament altogether: if there is to be no legislature to some extent distinct from the executive government, why have an elected representative assembly at all? Once all notion of parliament as a body in some sense controlling and checking the executive is abandoned, parliament itself may as well be jettisoned also. The control of parliament by caucused party majorities therefore cannot be seen as other than a fundamental breakdown of the system of government.

It is tempting to believe that the problem with modern parliamentary government is simply a wrong view of democracy, and that a change of attitude is all that is required. Particularly in Australia, there is a tendency to define democracy as the right of the majority party to ride roughshod over minorities. There is little conception of the duty of the majority to conciliate the minority, as John Stuart Mill put it, "to concede something to opponents, and to shape good measures so as to be as little offensive as possible to persons of opposite views".⁷ This "salutary habit" is central to the role of parliament as a representative institution. Appropriate institutional arrangements, however, are required to foster its growth. Mill contended for bicameralism as a "perpetual school" of this process of conciliation. The institutional arrangements must first be right to avoid "the evil effect produced upon the mind of

⁴ This is argued in Evans, H., *Constitutionalism and Party Government in Australia*, ASPG, Occasional Paper No. 1, 1988, pp. 5-16.

⁵ Some 56 Labor Party members voted against their party on the main motion on the Gulf War in the British House of Commons, and 36 voted against a motion expressing support for the British forces, apparently with impunity; the few Australian Labor Party members who contemplated abstaining on a vote on a similar motion were apparently saved from a penalty heavier than censure by the circumstance that no division occurred in the House of Representatives.

⁶ In coining the expression "elective dictatorship" to describe the British system of government, Lord Hailsham was echoing the rejection of "elective despotism" by the American founders: *Elective Dictatorship*, BBC [address], 1976; *The Federalist* No. 48, quoting Jefferson's *Notes on the State of Virginia*, Everyman, 1970, p.254. Madison's famous discussion of the "disease" of republican government, rule by faction, in *The Federalist* No. 10, can be read as an analysis of modern party government.

⁷ *Representative Government*, 1861, Everyman, 1962, p.325.

any holder of power, whether an individual or an assembly, by the consciousness of having only themselves to consult."⁸

Executive government control, or majority party control, of the legislature is the underlying theme of the vast literature of parliamentary reform which has been generated since the modern party system began to emerge (in Britain before Australia) at the end of the last century.⁹ This literature is largely consistent not only in identifying the problem but in prescribing the remedies. While many remedies have been suggested, they all boil down to the restoration of the separation of powers in one guise or another. All reforms of parliament suggested over that period go more or less directly to detaching the legislature from the executive power and reconstituting something of an independent legislative body.

In this connection it is necessary to discount statements by some parliamentary reformers, for example, that doughty old author of reform, Professor Bernard Crick, to the effect that they desired merely to give parliament more effective means of scrutinising and publicising the activities of government, without giving it power to control or check those activities.¹⁰ This is a false distinction, because scrutiny is a form of power. One cannot scrutinise unless the ability to scrutinise is built into the exercise of the power which is scrutinised. Thus scrutiny of proposed legislation is possible only because governments go through the form of having their legislative proposals passed through parliament. Much of the executive government manipulation of parliament to protect the position of the executive takes the form of the prevention of scrutiny as an unacceptable exercise of power. By preventing the establishment of parliamentary committees of inquiry and by limiting debate on legislation through the use of gags and guillotines, executive governments seek to avoid scrutiny at the same time as they avoid any parliamentary control by the use of party majorities to endorse all government proposals. Enhancing scrutiny is just another way of attempting to restore a separation of powers.

This leads to a consideration of the remedies for the breakdown of parliament as an institution.

Auxiliary Precautions

One remedy for the extinction of parliament as an independent legislature is the construction or reconstruction of those "auxiliary precautions" which are required to supplement free elections. There has lately grown up in most western countries a renewed interest in constitutional checks and balances. This trend in thought is only beginning to reach Australia, which in this, as in most intellectual developments, is running behind the rest of the world. There has been a reaction against the 20th

⁸ *Ibid.*

⁹ The emergence of modern party government may be dated from Gladstone's campaign in the British general election of 1880. Early critique of majority party control of the House of Commons is in Maine, Sir H., *Popular Government*, 1885. In a speech in 1882 the Marquis of Salisbury said: "But bear in mind that the House of Commons which we admire, ... was a House of Commons freely elected, freely debating, freely checked by a Second Assembly ... A House enslaved by the caucus ... and muzzled by the *clôture* will be a very different body from that which has hitherto been the glory of English history ... Bear in mind that that is the danger to which we are all tending now; everything points to the increase of power in the hands of one individual, dictating Minister. The competition of parties is so keen, the power of applying pressure to individual members is so complete, that every year you will see our representatives, assumed to be independent, more and more exposed to the danger of being forced to fit their convictions into a single mould, provided by the man who happens to be at the head of the dominant party at the time. ... This is the justification for a second chamber ...". (But bear in mind that he was the leader of the Conservatives.) Beattie, A., ed., *English Party Politics*, vol.1 1660-1906, Weidenfeld and Nicolson, 1970, pp.157-8. An attack upon the cabinet system of government was made by Sir Richard Baker at the Sydney session of the 1897 Australasian Federal Convention: "... a struggle between the ins and the outs ... ten men trying to carry on the government, with another ten men trying to prevent them ... [presided over by] that modern autocrat, the Premier". *Debates*, pp.786-7.

¹⁰ *The Reform of Parliament*, 1964, 2nd ed. 1968, pp.238, 251-2, 260. He refers to control "realistically conceived".

century obsession with democracy as a cure for all political problems. In Britain, for example, there is a growing discussion of devices such as a written constitution, federalism, bills of rights and judicial review of legislation, revitalised bicameralism in parliament, and other constitutional devices hitherto alien to the British tradition of parliamentary sovereignty. This movement has gained significant converts, and it is represented by the Charter 88 organisation.¹¹

Although the philosophy of constitutional auxiliary precautions has been virtually dead in Australia for many years, this country has preserved in practice a constitutional structure founded on separation of powers and checks and balances. For example, the Australian parliamentary model encompasses strong bicameralism, now represented at the federal level and in all states except Queensland by powerful upper houses with more or less permanent non-government party majorities.¹² Australia has not followed the British path of taking power away from second chambers.

Australia has also been somewhat in the vanguard in the development of sub-constitutional auxiliary precautions: ombudsmen, administrative appeals tribunals, enlarged scope for judicial review of administrative decisions, independent prosecutors, and so forth. We have been able to recognise the desirability of such institutions without necessarily embracing the philosophy of separation of powers which underlies them.

Many of the suggestions made in recent times for the reform of government in Australia belong in this area of constitutional and structural changes, the area of auxiliary precautions. They need to be distinguished from measures to reform parliament, which go to refurbishing the legislature as the principal manifestation of the separation of powers.

Reform of Parliament: Conventional Measures

As has been observed, there has been a widespread belief over many years in the desirability and possibility of overcoming the debilitation of parliament by procedural and institutional reform of the legislative body. In the extensive literature embodying this belief, there has been one constantly recurring remedy: the establishment and maintenance of a system of parliamentary committees. This was the centrepiece of Bernard Crick's seminal work, *The Reform of Parliament*.¹³ Virtually every house of parliament has gone down the path of establishing a committee system to assist the legislature to examine and monitor the activities and proposals of the government, and to participate in policy formation. In Britain, where the system was adopted in 1979, it has enjoyed apparent success. If causing trouble for government is a measure of success, the system has been successful enough in the home of parliamentary government.¹⁴ This has not been enough for its proponents, including Bernard Crick, who has recanted in spectacular fashion.¹⁵ In Australia, committees and committee

¹¹ The manifesto of Charter 88 is *1688-1988: Time for a New Constitution*, ed. R. Holme and M. Elliott, Macmillan, 1988. The converts include Bernard Crick, who has "come to renounce and give up the demon drink of sovereignty and to sign the Charter": 'Beyond Parliamentary Reform', *Political Quarterly*, Oct.-Dec. 1989, p.398. Even Labor Party members have become converts to checks and balances: Allen, G., 'Restoring pride to Parliament', *The House Magazine* (UK), 11/2/91, pp.18-19; Mitchell, A., 'House cleaning', *ibid.*, pp.16-17.

¹² For the indigenous character of the Australian model see Sharman, C., 'Australia as a Compound Republic', *Politics*, May 1990, pp.1-5.

¹³ 2nd ed., 1968, pp.242-4.

¹⁴ Drewry, G., ed., *The New Select Committees: a study of the 1979 reforms*, 2nd ed., Oxford, 1989; also 'Select Committees: Progress Report 1989-90', *Contemporary Record*, April 1991, pp.29-30.

¹⁵ "... the parliamentary reform movement of the 1960's, ... now seems to have been (if I may recant) largely a waste of time and effort": *Political Quarterly*, Oct-Dec 1989, p.396.

inquiries can be readily vitiated by the complete party discipline: government party members on committees may simply continue to support the government in all things as they do in the whole house. For this reason, committee systems have expanded most readily and have performed most noticeably in upper houses where there is a lack of government party control, because of lack of a party majority, or because of dissidence in the government party, which has been largely confined to upper houses. This is well illustrated in the Senate, where every stage in the establishment of the committee system has been achieved because of lack of government party control (in some cases because of dissidence in the government party): the establishment of the Regulations and Ordinances Committee to scrutinise delegated legislation in 1932 (a delayed reaction to a dispute between the Senate and a government lacking a majority in that house); the establishment of the comprehensive standing committee system in 1970; the establishment of the Scrutiny of Bills Committee in 1981; and the procedure for the systematic referral of bills to committees, which, although established with government acquiescence, has run into government party resistance.¹⁶ In other words, this parliamentary reform has depended in Australia upon the constitutional division of power as manifest in bicameralism, rather than a capacity on the part of parliament to reform itself.

Other conventional parliamentary reforms, for example, the allocation of more time for non-government business, and the strengthening of procedural rights of non-government members, have also progressed furthest in upper houses in this country. The Senate, for example, has entrenched in its standing orders special precedence for consideration of disallowance motions, references to standing committees, backbench business, reports of committees and government documents, in addition to the usual opportunities for question and debate.

Reform of Parliament: New Directions

When considering new directions in parliamentary reform, therefore, one must be ever conscious of the restraint imposed by majority party control, which may defeat all reforms. There is no magic formula, and no measures which may be suggested, which can entirely circumvent that fundamental fact of political life. All parliamentary reform, except in second chambers, is at the mercy of majority party control.

There are, nonetheless, changes which, if they could be made in the first place, could greatly weaken the executive/majority party stranglehold over parliament and make some further progress in restructuring an independent legislature capable of preventing major abuses of executive power.

These changes may be divided into procedural and institutional reforms, and the procedural reforms will be discussed first because, although procedure is often seen as less important, they may be easier to achieve and may have greater effect.

Procedural changes

Australian houses have performed fairly badly largely because of poor time management. This problem is most apparent in the phenomenon of the end-of-sittings rush. The first three proposals listed here are therefore directed to this problem.

¹⁶ *Senate Debates*, 11/9/90, pp.2233-2236; 11/10/90, p.2967.

(1) Sitting times. The relatively short sitting times of Australian parliaments are clearly a significant barrier to their effectiveness in scrutinising government activities. Australian houses pass more legislation but sit on fewer days than their overseas counterparts, which suggests that legislating in Australia is an over-hasty process. This problem was referred to by the Senate select committee which recommended the procedures for referring bills to committees.¹⁷ Australian parliaments tend to sit only for the minimum time necessary to deal with government legislation. At the federal level, the sittings have been extended in recent years only by virtue of the more extensive scrutiny of legislation by the Senate. The practice has now arisen of the government rushing legislation through the House in order to get it to the Senate in time for Senate consideration, in accordance with a deadline which has been set by the Senate, and then adjourning the House relatively early in the sittings and bringing it back to deal, usually in the most expeditious manner possible, with amendments made by the Senate. What is clearly needed is more sitting days but with more sensible hours. To this end houses could set their own sittings in advance by means of a yearly calendar of sittings, entrenched in the standing orders, which may then not be departed from except by deliberate decision.¹⁸ The available time in a period of sittings could then be divided between legislating and other activities, including general debates on matters of public interest and the examination of government activities. This division could be based on a calculation of the time required to legislate without undue haste. The calendar could also include times for committees to meet.

(2) Determination of legislative program. Governments could be required to reveal in advance and in some detail at the beginning of each period of sittings the government legislative program. The nature and complexity of the proposed legislation could be indicated. The time allocated for legislation could then be divided by formal decision between items on the program in accordance with their nature and complexity. Some spare time could be left for urgent and unforeseen items, which could be exempted from the requirements of the program only by deliberate decision. This would be a self-imposed rational alternative to the guillotine, and would avoid the old parliamentary trap of a great deal of legislation accumulating at the end of the period of sittings with no time to consider it properly. Some time could be allocated to non-government legislative proposals.

(3) Allocation of non-legislative time. The time available for activities other than legislating could then be divided between specific proposals partly on the nomination of particular officeholders, for example, the leaders of non-government parties, and partly by ballot. This would avoid government and majority party monopolisation of the agenda and of the allocation of parliamentary time. The allocation of time to non-government legislative proposals could be done in the same way.

The remaining proposals go to the management of the legislative process, and the shaping of legislation by parliament, which is its principal rationale.

(4) Consideration of legislation by committees. Just as the establishment of comprehensive committee systems historically has been seen as potentially the most productive parliamentary reform, the consideration of legislation in committees, rather than in the whole house, has been seen as potentially the most productive improvement of the legislative process. Australian parliaments have been very backward in this regard. The first Australian house to adopt procedures for the systematic referral of bills to committees was the Senate in 1989, and that system is

¹⁷ Select Committee on Legislation Procedures, *Report*, 1 Dec. 1988, Parl Paper 398/1988, pp. 5, 39-40.

¹⁸ Something like this was recommended by the Procedure Committee of the British House of Commons, but only for the purpose of regularising the sittings, not for allocating time: *First Report*, 1986-87, HC 157.

still in a state of development, although it has so far proved very effective in relation to particular bills.¹⁹ As part of a system for the systematic consideration of bills by committees, committees should perhaps be given the power to make amendments to bills which would be reversible in the whole house only by special procedures, perhaps initiated by a specified number of members. Australian houses shrink from the idea of empowering committees actually to amend bills, but it appears that amendments are more likely to be constructively considered in committees.

(5) Publication of legislation in draft. There is a strong case for insisting that all legislation be published in draft form for review and comment before it is enacted, to detect problems with legislative proposals and to allow changes to be suggested before the formal legislative process begins. The procedures of a house could provide that no bill is to proceed unless it has lain on the table in draft form for a specified period, or the Governor-General or the Governor has certified (thereby making it a very deliberate government decision) that the legislation cannot be tabled in draft because of circumstances of urgency.²⁰ Provision could be made for debate and consideration in committees of draft legislative proposals. Any such debate and committee consideration should concentrate on likely problems and difficulties in application of the proposals.

(6) Coordination of technical scrutiny. There would appear to be a need for a stronger link between legislatures and the technical scrutiny of legislative proposals, and better channels for the technical contribution to legislation generally. The phenomenon of reports of law review commissions which contain excellent treatments of technical aspects of laws, but which gather dust on shelves, ignored by legislators, is all too familiar in many jurisdictions. In the Senate the Scrutiny of Bills Committee carries out a very thorough review of the technical and civil liberties aspects of legislation, but its reports are not always heeded when bills sprint through the houses. Perhaps there ought to be a committee, or a meeting of several committees, which could gather together all technical, law review and civil liberties aspects of the scrutiny of legislation, with formal links with technical and advisory bodies such as law review commissions, and with experts seconded to the committee. It could be given power to make appropriate amendments to bills, amendments which would stand unless explicitly reversed or altered in the house concerned. The two legislative scrutiny committees of the Senate provide models for the operations of such a committee, and indicate how productively members can be engaged in the technical scrutiny of legislation.

(7) Constructive use of delegated legislation. There would appear to be considerable scope for better use of delegated legislation. Better use should be distinguished from *more* use. The pressure is for more use of delegated legislation to relieve the burden on legislatures, and in all jurisdictions there are complaints of the proliferation of delegated legislation generally and in particular of quasi-legislation, such as guidelines and manuals of practice. Different types of delegated legislation and quasi-legislation have multiplied like rabbits even at the federal level in Australia, where there is an extremely rigorous system for control of all delegated legislation through the two legislative scrutiny committees and the power of disallowance. Of

¹⁹ The procedures were adopted on 5 December 1989, substantially as recommended by the select committee. *The Senate: Standing and other orders of the Senate*, February 1990, pp. 135-143. Even ministers have been constrained to concede occasionally that committee scrutiny has improved legislation: Senator Tate, Minister for Justice, *Senate Debates*, 8/12/88, p.3792; 20/12/88, p.4652; 17/10/89, pp.2018-30. For colourful but significant testimony by the British Attorney-General, Sir Patrick Mayhew, of the value of committee scrutiny of legislation, and a tilt at party control, see 'Can legislation ever be simple, clear and certain?', *Statute Law Review*, Summer 1990, pp.1-10.

²⁰ It has been suggested in Britain that major bills should take 2 years to prepare: Renton, Lord, 'Modern Acts of Parliament', *The House Magazine* (UK), 11/2/91, p.14.

course such a rigorous, and perhaps even more rigorous, system for the scrutiny and control of delegated legislation must be kept in place to ensure that parliament really is the legislature. It may be possible, however, to make more creative use of delegated legislation, particularly legislation which is subject to approval and amendment by the houses without the necessarily more complex and extensive legislative process which applies to bills. Some houses already make considerable use of delegated legislation subject to approval and/or amendment. The Senate has been edging into greater use of these devices on an ad hoc basis. Recently an act was amended so that it would not come into operation until the regulations made under it were approved by both Houses, and certain quasi-legislation was made subject to an amendment and approval process.²¹ There would appear to be great scope for more use of this sort of legislation. Delegated legislation, of course, is particularly susceptible to publication in draft form.

(8) Legislative standardisation. There would also appear to be considerable scope for greater use of standard and model provisions subject to parliamentary scrutiny and approval before adoption. Many provisions in bills are very similar and exhibit only minor variations, which sometimes are the product of nothing more than different drafters. Legislatures spend a good deal of time considering and passing provisions which are much the same as many other provision previously considered and passed. There may be value in a house approving, with or without amendment, and with standard variations, a standard or model set of provisions relating to such things as compulsory access to premises and documents by regulatory agencies, and those provisions could then be adopted in future legislation without further scrutiny or consideration. They could be adopted by reference, a technique which has been used by the Australian federal houses, for example, in relation to disallowance provisions.²² This suggestion could save legislative time and effort while extending the parliamentary examination of legislation.

Institutional changes

Parliaments are only as good as their members. Procedural changes can achieve the aim of restoring the legislative function to the legislature only if the members are not prevented from acting as legislators. Many of the features of our current system seem to be designed to prevent members performing the functions they are supposed to perform. Institutional changes may therefore best be directed to allowing members to operate as members of a legislature. Thus the following suggestions.

(1) The standing of members of parliament. There is a severe problem in Australia of the standing of members of parliament. As part of a general cynicism about political processes, Australians regard politicians with great distrust, with the exception of some individuals who for some inexplicable reasons attract public admiration and thereby become a menace to good government by encouraging a sort of caesarism. This is not a situation which can be readily remedied by legislation, but there are some measures which can be taken to assist a general education program on political processes. Although it is a proposition much disputed, a substantial increase in the salaries of members would appear to be necessary to attract to politics able people who are otherwise discouraged. Other measures relating to remuneration could be taken, such as providing substantial remuneration for chairmen and deputy-

²¹ The *Therapeutic Goods Act 1989* did not come into effect until the regulations under the Act were approved: Senate approval was granted on 20 December 1990. Charters of the rights of residents of nursing homes and aged persons' hostels and forms of agreements between residents and the proprietors of such establishments under two statutes were extensively amended and approved by the Senate on 17 December 1990.

²² The use of the words "x is a disallowable instrument" now attracts all the tabling and disallowance provisions of the Acts Interpretation Act: section 46A of that Act.

chairmen of committees, so that their salaries approach those of junior ministers. Members need to be provided with more highly paid and highly qualified staff (as distinct from more staff) to assist members to control the information flood and to focus attention on the vital issues and decisions.

(2) Code of conduct. As part of the process of improving the standing of members of parliament and boosting public confidence in the political process, Australian houses could adopt a comprehensive and fairly objective code of conduct for their members, and detailed procedures for its enforcement. The code should not be a "rubbery" one, capable of variable interpretation, such as recently caused difficulties in the United States Senate,²³ but could contain specific rules which can be added to and supplemented from time to time. The code could cover conflicts of interest and actions giving the appearance of exercising legislative duties in return for reward, and other matters which are not amenable to enforcement by the criminal law. Sanctions could range from admonition to expulsion by the house.

(3) Reservation of parliamentary offices. It could greatly assist the functioning of houses of parliament and avoid partisan monopolisation and abuse of power if some parliamentary offices were explicitly reserved for non-government members. For example, if the presiding officer is a member of the government party the deputy-presiding officer could be a non-government member. Chairmanships of specified committees could be reserved for non-government members, as is done in the United Kingdom Parliament and some other legislatures. Chairmen and deputy chairmen could be of different parties.

(4) Legislative regulation of parties. Australian parliaments, following the British tradition, have been very reluctant formally to recognise and regulate political parties in legislation. That taboo has now been broken with provisions for the registration of parties, the placing of party names on ballot papers, and public funding of election campaigns. Australian parliaments may have to consider legislative intervention in the processes by which political parties operate. It has been noted that extreme party discipline has been universally recognised as the core of the problem of executive domination of parliament. The fear of members of being summarily deprived of their preselection is the core of extreme party discipline. It is commonly said that the preselection of particular members is controlled by particular persons or small numbers of persons. Perhaps the time has come to consider legislating for fair candidate-selection processes. In the United States the latter part of the 19th century was the era of the domination of government by party machines and political bosses. A reform movement grew up to break machine power and boss rule. This was done largely by state legislation requiring the selection of candidates by primary elections. Such primary elections have been suggested as a reform for countries with parliamentary systems.²⁴ Perhaps something of the sort should now be considered. Part of the aim of any such legislation would be achieved if the existing law and practice relating to the protection of members from improper pressures were to be taken seriously and adhered to.

²³ An admittedly jaundiced view of this aspect of the "Keating Five" affair is in an editorial, 'The Keating Dive', *Washington Post*, 1/3/91, p.A14.

²⁴ Paterson, P., 'Primaries: Reforming the Candidate Selection Process', *People and Parliament*, ed. J.P. Mackintosh, HSPG, 1978; Rogaly, J., *Parliament for the People: a handbook of electoral reform*, Temple Smith, 1976. There have been some changes in candidate selection in Britain, in the direction of establishing known and fair procedures, and involving ordinary party members: 'Candidate selection: Reform in Britain', *Contemporary Record*, April 1991, pp.19-22. See also Gallagher, M., & Marsh, M., eds., *Candidate Selection in Comparative Perspective: The Secret Garden of Politics*, Sage, 1988.

(5) Self-reform of the press. Members of parliament will not function as legislators until the Australian press reforms itself. There are now in Australia no serious *parliamentary* reporters, and no serious *parliamentary* reporting ; the legislative work of parliaments, even when it greatly influences the lives of the people, goes largely unreported. So long as the press persists in reporting, in a trivial and sensational manner, only the incidents which lend themselves to that treatment, there is a strong disincentive for members to perform legislative duties at all, much less diligently. This is not a matter that parliaments can do anything about, but those with an interest in making parliaments work can constantly draw attention to it.

Reform and Revolution

It is assumed for the purposes of this discussion that the aim is to modify the parliamentary or cabinet system of government to improve its operation, rather than to engage in radical constitutional restructuring, such as a complete or partial separation of the executive from the legislature. Australia does not appear to be ready for any such radical constitutional restructuring.

The purpose of reforming institutions, indeed, is to make them work better before their unworkability becomes a ground for revolution. The longer reform is neglected the more radical become the necessary reforms and the greater the likelihood of revolutionary change. Proposals for reform should be moderate and achievable, but in order to be moderate and achievable must be timely. Whether the suggestions made here are moderate, or excessively moderate, achievable or timely is a matter of judgment. Other proposals, more moderate or more radical, and perhaps more achievable, have been and will be suggested. Before adoption all reform proposals should be subjected to intensive discussion and examination, but the time eventually comes when something must be tried. The system of party government we have had since the rise of modern parties is beginning to give the appearance of requiring a major overhaul.

How Parliament Works in Practice

Mr John Black, Dr Michael Macklin and Mr Chris Puplick

Former Senators

Mr BLACK - Thank you for coming along this afternoon. There are more people here than I expected to see. I can only assume that they want to talk to Michael Macklin about some of the problems within one of our parties which is contributing wittingly or unwittingly to our work. I also notice that that chaos is being replicated on a somewhat grander scale overseas and that in six to nine months we may have Boris Yeltsin here to give us a few hints on how to cope with unruly constituent bodies; how to fill a constitutional void; how leaders should deal with an economy that is in a shambles with an inefficient manufacturing industry and overvalued currency, a chronic overseas debt, massive unemployment and underemployment; and a leader who has tried for far too long to compromise, lead and follow at the same time.

Essentially, what we are dealing with in the work that we are attempting is one which is stripped away from party politics. That really is surprisingly simple for us to do. It is far more relaxing for a start. But when we had cast off the party and the factional armour that we wore in the chamber, we found we had a lot more in common with each other than we did with the people cheering from the sidelines, who were a bit like fans at a football match. If you walked off with your nose unbroken, they were always a little bit disappointed that you were not trying hard enough.

What we are endeavouring to do now is analyse some of the problems confronting Australians as individuals, the problems they have in dealing with a political system. It is a system which bears very little resemblance to the system we all read about at school. I think we probably all use the same sorts of text books. However, we are working on that side of the problem, as I said.

We are dealing with the difficulties that have arisen because of the aggregation of power by the Federal Executive wing in the Australian system at the expense of the States and the legislature. We are also dealing with the extent to which the individual's contribution has been reduced significantly by new technology on the one hand and by the increase of sophistication and internationalisation of debate on the other.

We worry that individuals are unable to continue to have the sorts of inputs that they used to have into the political system as far as preselection procedures are concerned. They are increasingly being captivated by collegiate systems, by executive selections and 24-hour specials, such as we saw with the Democrats yesterday, and the individual is being denied a say. There are moves to remedy that but, hitherto, they have been rejected resoundingly by power brokers of all major parties.

I turn next to election campaigns and the role of public funding and massive individual donations. Without going into any recent allegations about the source of those donations and what is offered in exchange, I find, coming from Queensland,

that it is best not to talk about political corruption, because politicians are all before the court, out on bail or about to leave on a work release scheme. So you are not really safe legally or healthwise. Suffice it to say, the system has been corrupted to the extent that the individual now not only has no say in the selection of candidates, even if he or she is a member of a party, but also very little say in the way the campaign is conducted. The money those individuals have raised is largely irrelevant because it is so small compared with public funding and compared with the sorts of donations that we have all read about recently.

As far as policy formulation is concerned, basically the timeframe is concentrated to the extent that party members can do little more than give direction about general philosophy. When it comes down to the nitty-gritty decisions about whether we should flog off the Commonwealth Bank to rescue our comrades in Victoria, who are in imminent danger of disappearing down the Port Phillip Bay plug hole, that sort of thing is basically worthless. It is inflexible as far as the day-to-day problems and exigencies of executive government are concerned.

We deal also with the way in which the factions have operated as the thought police, not only of the party, but also of the Parliament, and the extent to which they have arisen. I will leave that for my two colleagues to deal with. Suffice it to say that the concerns we have had, I think, are real. If we wish to do anything about them, the idea of taking an apolitical view so we can at least agree on the analysis is a very useful starting point.

My conclusion before I have written it - politicians always make a conclusion and then write a report to substantiate it; it is a habit I got into - is that the system we have does not work and that we elect people to both lead and represent us at the same time. Those roles are essentially different. As I said earlier, a little tongue-in-cheek, Gorbachev tried to marry those two roles and he has been unsuccessful. Sometimes you simply have to forgo one role at the expense of the other.

It would be preferable for our political system to have one side representing the people and one side seeking to provide leadership; the first side following public opinion and the second side leading public opinion. At least if they were all honest about that and those two roles were separated, I think you would have a better quality of government. You would probably do a lot of lobbyists out of jobs because representatives would in fact be doing the job that they were elected to do, that is, represent people at the decision making level of the legislature and, as part and parcel of that function, provide a fair degree of influence for ordinary Australians in the conduct of the Executive. At the end of the day the Executive always needs money and the Parliament is the body that has to provide that.

Having covered the general principles of the work that we are dealing with and alluded to some of the specific problems in so far as the parties are concerned, I will just pass over to my two colleagues on my left, ironically enough, to deal with their components.

Mr PUBLISH - I have been on not only Mr Black's left but just about everybody else's left at some stage during the course of my political career. This afternoon, I intend to focus on just how genuinely difficult it is to be in opposition. In particular, I will focus on how difficult it is from a structural and a resource point of view for an opposition - even one which is talented and hungry for office - to actually play within the confines of the institutional and the structural rules under which both the Parliament and the political system operate at the moment.

There is a great deal written about Cabinet, Cabinet committees, Parliament, parliamentary committees and there is even a certain amount written about opposition and the process of being in opposition. There is almost nothing written by way of a study of what makes an effective Opposition leader; what are the talents required for a Leader of the Opposition; and how the alleged engine-room of opposition, the shadow Ministry, or shadow Cabinet, actually operates. If anybody were looking for an area which has not been explored in terms of Australian political science I put that forward as one which would actually be worthy of a great deal of study and attention.

The first and most important constraint under which an Opposition shadow Cabinet, shadow Ministry, operates is that in almost no instance is it the master of the question of timing. Consider the sort of problem which arises for an Opposition dealing with a complicated piece of legislation introduced one Tuesday in the House of Representatives. It is perhaps scheduled for debate either that same week or the following week, which itself is the result of some months - indeed some years - of work by a Public Service, external advisers, the Treasury Department, the Finance Department, the Attorney-General's Department, the Office of the Parliamentary Counsel, eventually coming forward in a piece of legislation, which may run to 10 or 20 pages, in terms of a tax Bill, or a copyright Bill, 50 or 60 pages. One then says to one's parliamentary opponents, 'This is a matter for debate within five or seven working days. It is now up to you to determine a policy position, to consult your own party, to consult interest lobby groups outside, to draw up amendments and, in fact, put together the opposition's alternative on that particular piece of legislation'.

The physical constraints, the institutional constraints, which arise under those circumstances are enormous. You can understand, for example, when one is faced, as we usually were in the shadow Cabinet, with legislation introduced, particularly in a post-Budget situation, everybody goes away - shadow Ministers usually with a staff consisting of two, if they are lucky three people - and is required to put together a response, to make sure that that response has the support of the back bench committee and the party room, bearing in mind that you are only going to have one meeting a week of those parts of your political system, to consult outside groups, and prepare a written response.

One then gets that written response to a small group of people based within party secretariats, who constitute the shadow Cabinet Secretariat, who then have to arrange for the reproduction and distribution of that material, so that my normal routine as a member of the shadow Cabinet would be for a shadow Cabinet meeting to take place on a Monday morning. This means being in Canberra on a Sunday night. The air express delivery system would arrive at my home on a Saturday morning with anything up to 150 sheets of paper in terms of shadow Cabinet submissions to be read, commented upon, responded to and debated the following Monday morning.

All of that, of course, is to be done without any departmental assistance, without any access to the sort of allegedly accurate costing of the Departments of Treasury and Finance, without any access to the resources of the Attorney-General's Department - in terms of what you might want to take as a legal point on any of these matters - and then to think about the amendments, to agree to the amendments in principle, and then probably have less than 12 hours to get those amendments drawn up in a fashion which allows them to be actually introduced for debate. Then, given all of that, you will perhaps find yourself in a situation in the House of Representatives in which the Bill, in any case, is declared urgent and subject to the guillotine.

I now go to the resources side in terms of what staff are available, for example, to persons such as myself, whose shadow portfolios at one stage included environment, heritage and arts, managing Opposition business in the Senate and also being the Party spokesman in the Senate for immigration, health, administrative services, the Electoral Act and housing, bearing in mind that, at least in the Senate, there is some capacity and, indeed, an increasing capacity for amendments to be introduced and passed, and indeed for the processes of time to be put back into the system.

So to this extent the Senate, institutionally, in fact, is not just the Parliament's more thoughtful and, in some respects, more important chamber; it is fundamentally the Opposition's last hope of having any substantial impact upon the parliamentary system. As such, the relationship between the Opposition - whoever happens to be in opposition - and the Senate will be one of continuing development of those trends which go back to the days of Lionel Murphy in terms of making government somewhat more accountable.

I want to say something very briefly about the difficulties and the position of the Leader of the Opposition. This I confine purely to talking about the Liberal Party. The Leader of the Opposition possesses one great tool which is not really in the gift of the Leader of the Labor Party; that is, the Leader of the Opposition has, under the Liberal Party system, the unfettered right to pick the members of his shadow Ministry. The only persons who are, in some respects, forced upon him are his Deputy Leader in the House of Representatives and his Leader and Deputy Leader in the Senate. Not even that, however, is an immutable rule, particularly when one comes to coalition arrangements. You can ask Senator Boswell his views on that at some later stage.

The leader, however, has the juggling act to do: how many from the Senate; how many from the House of Representatives; and how many from each State. He has to balance the shades of opinion - we do not have factions in the Liberal Party - which exist within his political organisation. He has to decide whether to have a number of women in the shadow Ministry, whether to have people who have previously served in administrations or whether to experiment with entirely new people. He has, therefore, that power of patronage, which he has to exercise with some care. As Mr Gorbachev found, sometimes picking one's closest colleagues is, in fact, a very difficult art to perfect.

Leaders of the Opposition then have to make some decisions about the extent to which they are going to be, as John has said, leaders or followers. I do not propose to go into detail about that at this stage, simply to say that one can see in the Leaders of the Opposition under whom I served - John Howard, Andrew Peacock and John Hewson - quite different styles in terms of leadership, in terms of collegiality and in terms of where they sat around the shadow Cabinet table. Do you sit at the head and lead the debate? Do you sit in the middle and speak last or, indeed, not put your point of view forward at all if there is a clear majority of your colleagues heading in one direction on an issue which you regard as not central to your particular interests or your particular policy prescriptions? Or do you take the leadership position and then find that very often, particularly when policies are controversial, they are supported on the basis of an inverted pyramid?

The support is strongest at the top and the further down you go, the weaker it becomes until you eventually come to the rank and file party membership at which there is no support whatsoever. In fact, you have to spend time educating down the process that certain things are basically good and you can still win elections while believing in them. Again, that is a question of which direction you think power and authority, influence and policy-making ought to flow.

The final point is that Oppositions have to choose one of two roles. It is very difficult sometimes to make this choice. When you are in opposition, one of the things that will always happen is that you will be potentially set up by the bureaucracy. People who have lost in Cabinet will make sure that the appropriate shadow Ministers know that they lost in Cabinet. They will let you know the arguments they put forward which were rejected. You have to make sure that if you buy any of those, you also try to find out why they were rejected, instead of simply going in there and finding yourself potentially being used as a cat's paw for those within the bureaucracy who have lost the debate and are determined to have a second run at the argument by remounting it, particularly in the Senate or in Senate Estimates committees.

I could never have been an effective member of Senate Estimates committees, if certain departmental officers had not told me which questions to ask of other departments or, indeed, if certain Treasury officers had not told me which pages to look on to see why the figures did not match up in different departmental documents. You have to be very careful about the extent to which you allow yourself to be used in this respect.

These are the key problems for an Opposition: do you bow down to the demands of the interest group who will always come to you with a take it or leave it, reject this outright, never offer any compromises attitude or do you decide - and this is the most difficult of all tests - to correct or try to correct what you think is bad government legislation? Do you try to correct it? Do you try to amend it? Do you think it is so bad that you should let it pass and let the Government wear the consequences of it? To put it in a nutshell, the key dilemma for an Opposition - no matter how it is led, how it is resourced or how it operates - is whether, in fact, it should perceive itself as an Opposition or as a government in exile. As soon as I work out precisely what the answer to that question is, I will patent it.

Dr MACKLIN - I should make clear at the very beginning that there is a very good line from the *Goon Show* that covers what I am about to say. Spike Milligan used to always open up his contribution by saying, 'Good morning. Of course, I speak entirely from memory'. What I am about to say about the Australian Democrats, I think, can fall in line with the same type of exercise.

I want to look at the quaint notion that we have of democracy in Australia - that somehow or other the Parliament actually represents a democratic operation. I wanted to take the legislative process as probably the best example. I am dealing, admittedly, with a very small number of Bills. After all, no-one is terribly interested in the vast bulk of Bills. It is a bit difficult to get too excited about the Laying Chicken Levy Bill or the Pig Slaughter Levy Bill, but I have noticed some ex-colleagues getting themselves whipped into a real old fervour on Bills like those.

By and large, the Bills go through as examples or excuses for people to make speeches. I am looking at a small group of Bills. They probably come generally as a political initiative which is then flicked to the bureaucracy which spends a vast amount of time, energy and effort writing up legislation. Some of that is of an absolutely enormous kind. For example, the corporations legislation package was the largest ever introduced into the Australian Parliament. It landed on my desk one morning and had I do not know how many volumes. The phone rang; it was a journalist on the other end who said, 'The corporations legislation was introduced today', and I said, 'Yes, I have it sitting on my desk'. He said, 'What is the Democrats attitude on it?'. I said, 'I have a very straightforward attitude; I am going to read it.

What are you going to do?', and I slammed down the phone. I think that is a reasonable example of what the fourth estate actually believes democracy is about.

After the legislation comes into the House of Representatives, who actually gets to read it? The Minister is far too busy to read the legislation. Somebody in his office has read the legislation. Ministers who are on top of it have a reasonable working knowledge of the legislation; others have none at all. Then again, in the House of Representatives it is not really necessary to have read the legislation, even if one is speaking for or against it. There are positions, as Chris has just pointed out, where someone has done the leg work; someone has put up the proposition and if you are wheeled in and happen to get a guernsey that day, then that is the position to take.

The input so far from the elected representatives of the people is roughly on a standard of most of the decrees being issued in the Soviet Union at the moment - they do not get a look in. After some period of time, it then finds its way to the Senate where, in fact, some people actually do read it. You would be surprised to know that it would be lucky if six to 10 of the 76 senators read a Bill - and then only on a very good day and with a very short Bill.

Once a Bill goes over about five or six pages, the number of avid readers tends to drop off exponentially. When it gets to a volume of reasonable size, hanging in there by the skin of their teeth are the Opposition spokesperson, the Democrats spokesperson and, hopefully, the adviser to the Minister in the Senate, who has absolutely no idea what the Bill is about anyhow because he is not dealing with that area. As an ex-Finance Minister used to say quite candidly to the Senate, 'I have not the faintest idea what is in it, but anyhow it is our policy so you blasted well like it'. Some of those types of candid comments are very nice to go back in the *Hansard* to read because they do illustrate the actual situation.

The grand total of excursions into legislation by the elected representatives of the people - 148 in the House of Representatives and 76 in the Senate - will probably on a good day on a small Bill reach the staggering number of about 10. Most of those do not have much of a view on the Bill because although they have read it, they did not understand it. That reduces the number even further. It would be lucky if the number of people who, as representatives of the people, actually read it and understood were two.

What is the whole exercise of parliamentary democracy about? Would it not be better to short-circuit all of that, go straight from the bureaucracy into legislation and then leave it at that? Chris and I were actually involved in an exercise where the bureaucracy was doing precisely that for a long period of time in Australia by, in fact, not getting into law many Bills that had been passed by Parliament. On one occasion, we finally got a bureaucrat to tell us why the legislation was not operational. A bureaucrat, who has since been moved, I understand, said in response to why one piece of legislation had not become law was that it was not considered appropriate by the bureaucracy. That candid comment probably had that person shifted very quickly. But it was a proper comment in a sense.

What we are dealing with, I think - as John and Chris have already suggested in their comments - is how we get the parliamentary system operational again in an effective and useful way so that when people go out there to vote there is a connection between the electorate and the legislation. Admittedly, our system probably operates better than most and what, in fact, one may be looking for is an exercise which is not attainable - well, fine - but I believe that the system can operate better than it is currently.

Here are some interesting statistics: the Australian Parliament meets about half as long as the Congress or the House of Commons in England or even the Canadian Parliament does. It passes, roughly, about twice the number of laws. That means, of course, that Australian politicians are four times as efficient as those in the United States - which is something to take home and feel warm about - or is it that they are four times less efficient?

The normal way of measuring the level of productivity is to consider the amount of stuff shoved through in a certain time, but that may not be the way we ought to judge a parliamentary exercise. Quite possibly, it may be that the education of politics in Australia ought to be directed at the education of the electorate, because while it is pretty simple to hold up to ridicule the parliamentary process and politicians, the responsibility for that lies with the electorate, because that is precisely what it wants and the type of support it provides to parliamentarians and politicians.

I have already illustrated this in terms of the media's attitude that one can form an immediate opinion about the largest piece of legislation ever to be introduced into Australia - the corporations law, no less, which governs the whole basis of industry and commerce in the country. The media wanted an immediate response from me when that piece of legislation hit my desk. If that is not a denial of the notion of how we ought to operate in a democracy, I do not know what is. But what type of thing did the electorate actually expect? It expects, of course, that members will be in their electorates and not wasting their time in Parliament and, if they are not there, the electorate gets very upset.

You may remember the controversy, some time ago, when it was discovered that some members of parliament had moved their families to Canberra. If you are expecting people to operate as people and you say that their family will live 4,000 miles away and they will not see their kids, I think question marks have to be put over that. The amount of time and resources that one wants to devote to the Parliament, of course, are infinitesimal in terms of the amount of time and energy that is created and devoted to the bureaucracy. Chris has already outlined fairly effectively the vast imbalance in that area and that has never been and will not be addressed because it is not in the interests of the executive side of government to make sure that parliaments are strong and effective.

All of those remedies do not, in fact, lie in the hands of the Parliament; they actually lie in the hands of the electorate. If the electorate actually wants a fully functioning, democratic, parliamentary government, it is going to have to pay for it. If it does not want to pay for it, then I suggest that it is a very good idea not to whinge about it and just put up with three or four people occasionally reading a bit of legislation that they pass.

Mr EVANS - Being very modest people, our speakers have left plenty of time for questions. I ask each of our speakers to give some thought to the question that if they were in the position of Boris Yeltsin and were reforming the legislature and society by decree, what would their first reforming decree be?

Mr BLACK - The first decree would have to be to give yourself limited tenure.

Mr EVANS - What would your next reforming decree be?

Mr BLACK - It is only fair that I share this answer with my colleagues. If you give the people a chance, they clearly want strong leadership, and they are clearly

supporting people such as Boris Yeltsin in that regard. They also want to have a say in how their lives are run.

Have a look around Australia. The executive wing of government does not control parliaments in any of the bicameral systems in Australia - at the Federal or State level. The only State where we managed to abolish the second House was Queensland, and we had some pretty rotten and corrupt governments for about 30 to 40 years afterwards. Queensland has reinstated a form of an upper House with the CJC and EARC. Those bodies basically comprise public servants doing the jobs that politicians should be doing - telling the Government what to do and correcting it when it is wrong. Clearly, Boris Yeltsin needs to set up that sort of structure. All I can do is wish him luck.

Mr PUPPICK - From a purely legislative point of view, in terms of institutional changes, I would do at least two things fairly promptly. First, I would actually provide a limitation on the time between the introduction and the formal debate of a piece of legislation. That is actually within the hands of the Parliament to do, if it wishes to.

Structurally, the second thing I would do - having thought about this for a considerable period - is abolish the concept of having Ministers in the Senate. I would change that aspect of the bicameral operation of the Parliament. I would remove the existence of Ministers as such in the Senate, and simply have a series of managers of government legislation who would be responsible for taking particular Bills through.

Thirdly, I would find some greater protection for the system of compulsory voting. I would put it in the Constitution so that it could not be abolished by an Act of Parliament.

Finally, I would go back to the days when Parliament was reported substantially differently. In some respects, I think we have allowed a considerable amount of trivialisation of the Parliament. There is a failure to concentrate on those aspects of the Parliament which are meaningful in terms of the way in which legislation is processed - that does not include Question Time. These are the sort of things that I would be looking at in an institutionalised sense.

I cannot resist taking up Michael's comment. When he said he was going to introduce a comment from the *Goon Show* about the current state of one of our political parties, I thought he was going to say that she had fallen in the water.

Dr MACKLIN - I think one needs to correct the imbalance of resources between executive government and parliamentary operations. It is interesting to look back at the introduction of computers. It was a reasonably bloody fight to get computers into the Parliament. At a time when the entire industry in Australia and the entire bureaucracy had gone to them years before, it was not thought appropriate that members of parliament should have access to information; it would tend to cloud their judgment.

One way of dealing with that is not to increase the number of people on the payroll, but to have a percentage of people in each department actually seconded to Parliament and be available for parliamentarians in the Opposition or in any other party that has an influence on the outcome of legislation. I would make it a percentage because that would actually stop the simple substitution of an extra number in a department to counterweight the numbers coming here. So if the department's numbers increased, the numbers available to Parliament would increase. That would start to balance things out.

In order for the Parliament to meet for considerably longer there needs to be a clear view on the part of all parties in Australia that members of parliament would move themselves and their families to Canberra. They would then be able to operate the Parliament on a much longer timeframe. It is not possible to give to legislation the type of debate and attention that is needed by dashing in and out, which is the current process. All of those things can be done by decree, but whether the people would actually support them is another matter.

It was interesting that last week barricades went up around the Russian Parliament building and around the Australian Parliament House. But the difference is interesting: in one country they were trying to get the freedom to have an influence on their own lives and in the other they were worried about the cost of a jam roll and a cup of tea.

Perhaps politics in this country needs to be elevated to a serious business. There needs to be a recognition that what we are about is trying to put the parliamentary system into operation. I think we believe that it operates and that is probably the biggest difficulty. The last decree that I would issue is that everybody in this country would have to have some reasonable amount of time having a political education so as to realise that democracy does not work unless people know how to operate the system.

QUESTIONER - My question concerns some of the areas where parliaments are not working very well. I have just come back from Westminster, Bonn and New Delhi and some of those parliaments are similar to ours and some are different. One of the questions raised was whether there should be a maximum tenure on the life of a person in parliament of, for example, six to eight years. Another issue is that the first-past-the-post system is being denounced as being a manipulation. Another issue is that constituency boundaries are quite arbitrary and there should not be single member constituencies. There should be at least two people and about half of them should be women. Should there be citizen initiated referenda and should not something be done about our so-called democracy, which is a layered democracy where issues get split between the community, local government, the State Governments and Federal Parliament?

Mr PUPLOCK - Let me pick a couple of them. I say that the most insane, unhelpful and destructive change that could be made to the nature of the Australian political culture is to introduce citizen initiated referenda (CIR). In my judgment, that would lead to the community permanently debating those issues which are the most socially divisive and difficult. There will always be CIR on the death penalty, abortion law reform and on those issues which are the most socially destructive and divisive, which should not, in my view, be worked out through that process. The real political issues, not the personal ones, will always be determined in a CIR framework on the basis that the largest quotient of ignorance will prevail.

In terms of the structural things about voting systems, I think that we have a good system federally for the drawing of boundaries. I think that the way in which the Electoral Commission and the augmented Commission works and the fact that the Parliament does not have the right to interfere with those boundaries once they have been set down by the Electoral Commission makes it a good system. The quota system which is used for that is quite fair and proper.

Having a Senate with proportional representation and a lower House of single member constituencies which is based not on first-past-the-post, which I think is a disastrous system, but on a preferential system, in that sense structurally we have a quite good system.

I do not believe in maximum tenure of office. Frankly, if people are around in politics too long, it is a matter for the electorate, their parties and their constituents to determine. Believe me, I think that under the current political climate that we operate, that is a problem which takes care of itself. We do not need a structural arrangement to automatically terminate people's tenure of office after a certain number of years.

Mr BLACK - With regard to tenure of office, I think about eight years is long enough at the top. But then again, it gets a bit hard to implement that. In one way or another, the people decide sooner or later.

I think that by and large our system is a lot better than some of the others around the world that it could be compared with. The problem we have now is that the power of the Executive is such that it has basically frozen out the participants to a large extent and has been successful in implementing procedures that are not necessarily popular and persuading itself that people have accepted those sorts of changes. I think we are going to see a very interesting example of this sort of process with the GST and the Liberal Party where you have a package which is loved by the people at the top of the pyramid, but at the bottom of the pyramid they are a little alienated from the whole thing.

The problem that has grown up is that the membership bases of the parties as a result of this alienation are now too small for them to have a meaningful input into the selection of candidates who are going to be representatives. Clearly, you need to have some kind of opening up of preselection procedures to supporters of political parties as opposed to the combination of the mad, the lonely and the ambitious. If you want to open it up a little more broadly so that your candidates are representative of the community, I think you need some kind of primary system of preselection such as in the States.

Dr MACKLIN - In terms of maximum tenure, I think it is not a practical suggestion for the Australian political scene. Notionally we are still a democracy, so people should be able to stay around as long as people want to put them in office. I think that individuals ought to set their own maximum exercise and get in, do what they can and then get out.

I do not think anybody is going to look at the first-past-the-post system in Australia. With regard to multi-member electorates, again I think Chris has suggested that probably the Federal system by and large ends up with roughly about the best. In a sense, John also referred to the fact that where people have been able to use the bicameral systems around Australia - that excludes my own State of Queensland - they have chosen to have the Parliament out of the control of the Executive in each of those States and at the Federal level. I think that is an interesting fact.

Look at the United States, for example. Its operation allows it to support different parties in the Executive from the Congress. That has been a situation that has grown and almost become stable for its type. In other words, checks and balances are desired by people. The people are trying to use the system. As John suggested, the

upper House will not be resurrected in Queensland because if you have total control of the parliamentary system, why would you want to give it away.

I differ from Chris on the citizen initiated referenda issue. I think it is a good idea. I see it as at least some way of trying to spark the electorate into getting out there, thinking about and debating politics, and debating politics as though it really matters and not something that they despise. There are not too many other suggestions around at the moment that may help us do that. We really need to kick-start the exercise in some way.

QUESTIONER - To what extent is the role of Parliament being usurped by legislation by press statement and discretion being left in the hands of Ministers which Parliament then does not have to approve when it makes decisions about things?

Mr PUPLOCK - A great deal of legislation by press statement is going on. It has been going on for some time. The real question is whether the Parliament is prepared to pass legislation to give effect to things which have some date attached to them which relate purely to the date of the press release concerned. I think there is some justification in backdating some of the legislation which arises, say, through the announcement of a change in a sales tax or a customs tariff type of arrangement, because you have to drop that on the table and say, 'as of such and such a time' so that the system does not get rorted by the elapse of time between the introduction of legislation and its final passage, which may be delayed for any number of reasons.

In terms of just about everything else, I do not believe that legislation should be given effect to until such time as it has been passed through the Parliament and a promulgation date has been written into the legislation. That is in the hands of the Parliament. If the Parliament allows itself to be ridden roughshod over all of these sorts of things, that is a fault in the way in which the parliamentarians themselves operate.

In terms of delegated legislation and discretion in the hands of Ministers, I think that the processes by which the Senate for a long time has looked at the question of delegated legislation in fact provide in this country probably the best degree of parliamentary oversight of that particular aspect of parliamentary activity of just about any Westminster type of government. In some areas, ministerial discretion has become an issue, excessively so. It has been abolished, for example, by and large in the immigration area. I think in some areas we have taken away from Ministers the right to make decisions on individual cases, which I think they ought to be able to make as Ministers, and we have straitjacketed them in a way which does not give them enough discretion. That is a checks and balances problem.

Dr MACKLIN - I do not find any problem with discretion being in the hands of Ministers, providing that there is supervision of that discretion. Chris has alluded to the fact that at least in the formal sense, we do quite well in Australia in that area. I suppose that informally it is taken care of by Estimates committees and the like.

At the end of the day, it really depends on how vigilant the parliamentarians are and how much time, energy, effort, and resources they have got. If, in fact, you make sure that they do not have any of the time, energy, staff and resources to be able to look at the discretion of Ministers then it will get out of hand. I think that there has to be an ability for the Executive Government to undertake its role properly and that must include discretion.

I think on the point of press statements, again my position is identical to Chris's. By and large, it is in the hands of the Parliament whether it is constantly backed into a corner where it has to pass these things. I remember that some years back a statement was made, but the legislation did not come into the Parliament for well over a year and a half. That was a piece of taxation legislation which people in the community had been expected to operate on. I think that is simply unacceptable.

One way for Parliament to deal with this is for Parliament itself to say that it will not accept any backdating other than, say, three months or whatever. In other words, it is up to the Executive Government to get its act into gear. If it has to make a pre-emptive statement about, for example, a loophole being found in a taxation law, then it makes that statement and says, 'As of today, this is what is going to happen' and immediately gets the legislation drafted and into Parliament. But to allow the thing to go over three months or so is unconscionable.

Mr BLACK - In relation to the general question we are, as we indicated, writing a book about the political system. In the process of actually planning that book we wrote another one based around some anecdotes and so on that we discussed at the time. The book is about a senator called Frank Bragger who bears no resemblance to any one of us or indeed anyone - 'No-one could ever be that bad', I think is the phrase we use. I might just quote very quickly from two paragraphs of that book about the media, senior politicians and particularly Cabinet Ministers. These are little editorial notes that we made:

Frank knew some of the senior Canberra press gallery members were so used to being wet-nursed by their favourite Cabinet leaks that they had lost the capacity to recognise, research and write real news stories. There was no need to work if you had a good Cabinet leak. You got the PM's views in Cabinet, full Cabinet debates, the Cabinet Minister's views, but above all, you got the well-researched views of his or her department.

....

Frank was learning to become a Cabinet Minister. Some of the Cabinet were past-masters of the leaking game and were rarely criticised for their performance by the gallery roundspersons covering their portfolios. Unless of course, they didn't do exactly as they were told by their department, in which case they were accused in the media of "caving in to pressure groups" or "taking the short-term option". This is departmental code for actually doing what the electorate wants. Unfortunately, while Cabinet Ministers come and go, smart journalists know that a good departmental leak can go on leaking forever. - Ed.

That sums up my views.

QUESTIONER - How do you now see the role of the Australian Democrats? Can they survive as a political force in the Parliament?

Dr MACKLIN - I made a statement to my former colleagues when I left this place that I thought there was an interesting exercise in terms of people who leave Parliament. Some of them, in fact, spend the rest of their lives making comments about their former colleagues, detailing how they ought to operate. Others go off and lead their new lives and make only general comments about politics and the system. I

am falling into the latter. I have already declined to make any specific comments and I will go on declining to make any specific comments about the current circumstance in my Party.

I get a vote, interestingly enough, on the new leader, despite the fact that I am not in Parliament. The Australian Democrats is the only party which allows the members to elect the leader. That is a secret postal ballot. I really love secret postal ballots, because they are secret.

Mr PUBLISHICK - I think the short term answer to that is yes. I would refer you simply to that wonderful scene in the film called *The Lion in Winter* where Katherine Hepburn, playing Eleanor of Aquitaine, ends up sprawled all over the floor and looks up into the camera and says, 'Well, what little family doesn't have its ups and downs?'

QUESTIONER - Who dominates the Executive? Is it politicians or is it the bureaucracy? Who do they dominate if upper Houses are not in the control of the governing party?

Mr BLACK - Within the political component, that is, the members of Cabinet, the power resides - whatever the party - with the senior finance Ministers and the Prime Minister, who is able to pretend to be an umpire whilst at the same time is able to move the goal post after the ball has been kicked. I do not think there is any doubt about that, nor is there much doubt that anything has changed since Keynes's time. Treasurers and finance Ministers are all, I guess, intellectually captive to varying degrees to the sorts of economic philosophies that were peddled to them when they were students. I do not think anything much has changed in either the Government or the Opposition. They fall in love with an idea because of its intellectual elegance in their past and they sort of nurture it in their bosom until they get in a position to do something about it, whatever their party wants or whatever the people want.

Mr PUBLISHICK - I think the dominance question over the Executive is, in fact, a function of the way in which a Prime Minister or leader of an executive operates. I think quite clearly that the individual style and personality of particular leaders is of critical importance. In this regard, I happen to believe in the Carlyle philosophy of history in terms of what are the engines that make the thing operate. But the most skilful domination of an executive is by the senior bureaucrat who can, in fact, show the political leaders how to effectively implement their political programs with minimum hurt to the electorate and minimum change in the overall direction the country is taking. The bureaucrat who manages both to persuade the political masters that their most favoured schemes can, in fact, be enacted and, at the same time, do so without disturbing the fundamental directions of economic and social policy in the country - shows real domination. The key to it is to never be found out.

Dr MACKLIN - When one sits across from Ministers over a 10-year period, as I did, and gets to ask questions of both Liberal and Labor Ministers, it becomes pretty clear to one that you are not talking about a single domination of the bureaucracy over the Ministry or vice versa. You are talking about an individual case. Some Ministers obviously run their own agenda and others do not. It becomes very clear after a while who is doing what, particularly when governments change.

I went through this exercise in the early 1980's. I had asked a number of questions and there was then an election - one of those early elections that happened only 18 months into my six-year term when I first got into the Senate. I thought I was

settling down for six years and I had actually believed that the term for senators was six years. That was the first mistake I made.

I had asked a series of questions and I got the answers, none of which were satisfactory. Then we had an election. I came back to office and as I went through my in-tray I found all these answers and I did not think they were too good. I thought to myself, 'We have a whole new set of Ministers', so I went into Parliament and asked all the same questions again. I got the same set of answers back. Nothing had changed. We had an election; we had a dramatic change, as it were, from one political system to another - from one party of conservatives to the new radical socialists - and the bureaucracy gave me the same answers. The bureaucrats were not fazed and neither was the Minister, who thought that the answers that were given were perfectly in keeping with whatever it was he or she believed.

That, however, did not happen with every Minister and undoubtedly there were some who made their mark on their departments and ran their own agendas. So I think that one should not make the very broad statement that it is a one-way street. By and large, those Ministers who make their mark are soon inundated with further work and are often moved pretty rapidly. I suppose at the end of the day one would despair of the political system if one knew that there was some other way of dealing with the matter. I suppose that is the very circumstance which the Soviet Union is going through, at the moment, of trying to work out a system which will actually combine the input of people with running an effective and efficient government.

The Role of the Leader of the Government in the Senate

Senator John Button

Minister for Industry, Technology and Commerce and
Leader of the Government in the Senate

It is always encouraging to be introduced as 'live'; sometimes one has doubts about it. I see that some of these seminars have taken quite a long time. Something like 30 or 40 minutes was allocated to me. I assure you that I do not wish to speak for that length of time. In this business, one becomes a sort of programmed person and one learns that attention spans of audiences diminish year by year, which is probably a consequence of television. In the Senate, of course, we are rarely allowed to speak for more than 20 minutes and it is difficult to do anything else but that. That is probably a good thing, too.

One of my favourite stories concerns Noah Webster, the author of *Webster's Dictionary*, who was an eccentric man and a great stickler for the precise meaning of the English language. The story goes that Noah Webster was in his study one morning when his wife burst in and found Noah Webster with his female secretary sitting on his knee. Mrs Webster said, 'Noah, I am surprised'. He said, 'On the contrary, madam, you are astonished. It is we who are surprised'.

I am quite surprised and astonished to be talking about this topic. It is a very difficult one because, of all the topics one might consider, this one depends very much on the style and personality of the Leader of the Government in the Senate. Awful things are said about leaders: leaders without followers, leadership without followership, people who follow leaders out of sheer curiosity. It is therefore a difficult subject to talk about. Secondly, one does not often indulge in much introspection about these things. One does not often ask oneself, in a job like this, 'What am I doing here?', to use the title of Bruce Chatwin's novel.

I want to make a few points about the Senate and the role of the leader in the proceedings of the Senate. I think the complexity and pressure of the job of Leader of the Government in the Senate comes from a number of tasks reposing in the Leader of the Government in the Senate who has to be a type of multi-function politician compared with, say, a Prime Minister or, certainly, a Deputy Prime Minister.

The Leader of the Government in the Senate is responsible for defending the Government, if that is possible, at all times; he has ministerial responsibility for a major portfolio; and he is the third ranking person in the Government with Cabinet and party responsibilities. You compare those functions, for example, with those of the Deputy Prime Minister. Paul Keating always used to say that the only additional function he saw that he had as Deputy Prime Minister - he was not an enthusiastic Deputy Prime Minister; he has always been an enthusiastic potential Prime Minister - was that of having to meet the Prime Minister at airports when he returned from overseas. That sometimes falls to the Senate leader too. I just make the point that Senate leadership has different responsibilities.

In a sense, the Senate leader is the person with whom the buck stops in the Senate as far as the Government is concerned. The Senate leader also has to understand and, as far as possible, comply with the forms and procedures of the Senate, which has

numerous standing committees and legislative committees scrutinising legislation. So I say at the beginning that the role is much more complex than comparative roles in the House of Representatives.

I want to elaborate on that in some ways. Compiling a list of the Senate leader's responsibilities, as I have just done, can be very depressing. As Mark Twain once said of Wagner's music, 'It is not as bad as it sounds'. There are certain compensations for being leader in the Senate - things which Paul Keating in graphic description once referred to as 'the psychic salary of politics'. That is to say, there are certain things which motivate politicians, things which they enjoy and get a buzz from, which are perhaps associated with being leader in either of the Houses or, particularly, in the Senate. I do not want to go into all of that because that is clearly a subject for a further seminar sponsored by the Senate.

I must say that the role of government leader in the Senate is easier if things are going well for the government of the day. It is much harder if, as Reg Withers, a former Senate leader, once said, 'the Government has its feet in the clag', a graphic description which I have always remembered - more recently in the last 12 months.

I begin by detailing some of the considerations which, in my mind, make the job of the Senate leader different from that of the House of Representatives leader. The first point I would make is that the Leader of the Government in the Senate has not a terribly distinct role from the Leader of the Opposition in the Senate. They are on opposite sides, of course. I have been both, but compare that with the Leader of the Government in the House of Representatives, the Prime Minister, and the Leader of the Opposition. The Prime Minister and the Leader of the Opposition are involved all the time in a continual arm-wrestling process, a presidential style tussle which is highly adversarial.

Although we do not have a presidential system, Australian elections continue to be decided to a large or significant extent upon the performance of the leaders of the major political parties. There is a lot of interest and concern which attracts to the performance of Prime Ministers and Leaders of the Opposition in the House of Representatives which does not attract - for which I am extremely grateful - to the leader and Opposition leader in the Senate. We have opinion polls all the time about most favoured Prime Minister and most disliked alternative which concentrate very much on the performance of the leader and Opposition leader in the House of Representatives.

I was addressing a group of students a few minutes ago. I told them the famous Staten Island ferry story from when President Roosevelt was President of the United States. A congressional candidate complained about insufficient attention being given to his constituency and his campaign in terms of funds and time. It was explained to him that, 'You really have to understand your position by watching the Staten Island ferry come into the dock. When it comes in, it washes up all the driftwood, garbage and scum onto the beach. The Staten Island ferry is Roosevelt and you are the driftwood and scum which washes onto the beach when he comes in'.

That is increasingly true in Australian politics. Therefore, in terms of the function of the Leader of the Government in the Senate, there is less national political responsibility and fewer preferred leader polls. In the Senate there is less adversarial content in the debate between leader and Opposition leader and less of the pressure-cooker atmosphere of the House of Representatives, which is the House of high drama.

The Senate is a much more intimate chamber. Senators probably get to know each other better than members of the House of Representatives. In passing, I make the point that in some ways the Houses are very divorced. I do not know many members of the House of Representatives and, frankly, I do not want to. I only see them from time to time. The Senate is very divided from the other place, particularly in this building, I think. There was a more intimate atmosphere in the older building where you could walk out into Kings Hall and meet constituents, members of the House of Representatives and so on. In this building the whole thing is much more anodyne. In so far as the Senate is concerned, there is a much better and more friendly atmosphere. There are times of considerable passion and sometimes abuse. I suspect you get to know the personalities on either side of the House much better than you do in the House of Representatives.

I was talking to Don Chipp, coincidentally, about this the other day. He was talking about politicians abusing each other. I said, 'But I never did that to you, Don. We never had that sort of relationship. When you were Leader of the Democrats I never abused you.' He said, 'Oh, yes, you did. You called me a Thespian once. You said that I was displaying synthetic emotions'. It is strange that after all these years he should remember that. That would be regarded as mild in the context of the House of Representatives.

You feel this intimacy much more in the Senate, particularly at Question Time. This may be a bold boast which will come unstuck one day. Reading the newspapers each day before Question Time, I tend to see where the nasty questions are likely to come from; I can put names on them. An Opposition senator who has not been in the Senate very long is highly political and goes for the jugular. When I read some horror story in the newspaper in the morning I know there will be a question from him and I know what it will be. It is probably a week or a fortnight later that the Opposition in the House of Representatives wakes up to this issue. But it always surfaces in the Senate from one or two people. When one looks at the fabric of politics, one can see questions of that kind coming and who is likely to ask them. I think that is largely a function of the intimacy of the Senate process.

The most important point about the Senate for all politicians is that the Government does not have the numbers in the Senate. The Government in the Senate is dependent upon minority party support or independent support, not only in passing legislation, but also in relation to procedural matters. For example, you will remember that a week or two ago there was a great hubbub here which seemed to me to be particularly crass. It related to whether Ros Kelly had used the word 'crass' about the Prime Minister or the State Premiers in comments that had been recorded on tape. The question of whether the Government was bound to table or disclose the contents of an alleged transcript of a tape recording, or the tape recording, involved quite a significant procedural matter in the Senate. Whether the Government had to do that or was going to be required by the Senate to do that was a procedural matter which required a lot of negotiation. In a sense, the Government was unsuccessful at this. If the Opposition was bent on that course, it had to have the support of the Democrats, which it got. That matter relates very much to a whole set of negotiations, and so on, resulting from that dependency on minority party support.

Similarly, the passing of legislation is dependent upon minority party support. I think that since 1973 - with the exception of two or three years in the period of the Fraser Government when it had a majority in both Houses - the Government party has not had a majority in the Senate. That means that the Government has to be in constant negotiation with the Opposition, with the Democrats and sometimes with independent senators. The Government has to be in negotiation in the process of

acquiring numbers to pass legislation by argument, threats and sometimes promises. For example, one can make promises in the course of the committee stage of legislation. If an amendment looks as though it might be carried, one can sometimes get it withdrawn on the basis of an undertaking to review the substance of that amendment or to introduce another amendment at a later date if the Government's view of the matter does not prove to be correct.

Those sorts of things can be the subject of promises and sometimes threats to sit all night or something like that, which can be used to try to get acceptance of the Government's position in that process of negotiation. Except on procedural matters, where Oppositions are notoriously difficult, negotiations with the Opposition are usually fairly straightforward, whoever is in government. Usually the Opposition of the day has a party position on legislation or the contents of legislation. It sticks to that position and it is quite clear.

I cannot say the same for the Australian Democrats. When they were led by Don Chipp, they usually had a clear position. One could negotiate on the assumption that the word of the Leader of the Democrats could be respected and they would deliver on undertakings. That was largely so under Janine Haines's leadership and it is increasingly less so as the Democrats try to decide who their leader is. Certainly, they are not a party of happy little vegemites at the present time. It is very difficult to negotiate with the Australian Democrats on the certain understanding that you will get legislation through. At times, the same sorts of difficulties occur with the independents, if they be necessary in the equation.

The other problem is that some of the independents and some of the Democrats often salve their commitment to single issue politics - and that is what a lot of them are about - by declining to participate in votes at all or in committees of the Senate. From time to time we will get single issue independents - and I include the Democrats in that - declining to participate in votes, which makes the task of negotiations even more difficult. These sorts of negotiations, certainly in my earlier time as leader in the Senate, depended very much on leaders; for example, the interaction between me and, say, Fred Chaney or Don Chipp. Negotiations depended very much on those sorts of things.

With the passage of time and the decline in the respect for the major political parties, more complex negotiations have been required. In that process of complex negotiations, you get into the mess of individual Ministers trying to negotiate their legislation with independents and Democrats; the role of Manager of Government Business in the Senate becomes a much more important function in negotiating with minority parties; the Whips, to some extent, negotiate with minority parties as well, with the Leader perhaps having to be brought into it at a certain stage. The point I want to make from all that is that the necessary process of conciliation and negotiation tempers the mood of the Senate considerably more than is the case in the House of Representatives.

One of the most salutary things in politics is to have the experience of being in a minority. I can say that because I have been in that position for most of my life in the Labor Party and elsewhere. Being a minority government in the Senate is a very salutary experience and very difficult. Being experienced at being in a minority is important.

That experience, of course, has never been shared by the House of Representatives. Mr Chaney, a former senator, once described the situation in the Senate in these words: 'Compromise by Opposition and Government is a necessity in the Senate'. That

is true. Compromise by Opposition and Government is a necessity if the legislative program is to be dealt with. If there are to be civilised rules for what takes place in the Senate, that degree of compromise is necessary and it is imposed on the major political parties by the presence of minority parties and the need to conciliate and negotiate.

It is never so in the House of Representatives. It can introduce legislation, perhaps spend a lot of time not debating the issues with much care, and can be assured of a certain result which can be imposed on the House of Representatives by the government of the day at any time in terms of gags or other constraints on the Opposition.

One function of the Leader of the Government in the Senate which I want to refer to particularly is that at Question Time. I suppose the Leader of the Government always 'cops it worst', if that is an appropriate expression, at Question Time because he or she is the Leader of the Government and, secondly, because of the representational role which the leader has to perform in the Senate. For example, at Question Time I represent the Prime Minister, the Treasurer, the Minister for Finance, my own portfolio - Industry, Technology and Commerce - and the two junior Ministers, the Minister for Science and Technology and the Minister for Small Business and Customs.

I was in India a couple of years ago and I had a meeting with Rajiv Gandhi. Before I went in to meet with him, I looked at what his responsibilities were. They were Prime Minister, Minister for Communications, Minister for Science and Technology, Minister for Space, Minister for Electronics, Minister for Ocean Development and Minister for Personnel Administrative Reforms. I thought, 'What an extraordinary man this is'. The way Indian politics seems to work is that if a Prime Minister is attracted to any particular topic, as Rajiv Gandhi was, he can become Minister for that particular subject. That is very much the Indian way. I noticed he had seven portfolios. In a representational capacity I have six at Question Time.

There are a lot of difficulties associated with that. I do not want to refer to any personalities, but one can imagine a particular time in Australian political history when representing the Prime Minister and the Treasurer on the same day was not always an easy task. That, of course, is made more difficult by the electronic capacity of senators now to listen to what is going on in the House of Representatives. So there are always trick questions. I am asked a question, I give an answer and three minutes later the Prime Minister is asked the same question in the House of Representatives and he gives a different answer. That becomes a split in the Government, a disaster and a blot on the landscape for everybody concerned. There are difficulties associated with a multi-representational role.

In addition to the representational capacity one has in the Senate at Question Time, there are, of course, some senators in the Opposition who always ask questions of the leader, irrespective of his ministerial responsibility or the topic. I do not know whether Flo Bjelke-Petersen is here, but she tends to be one of those senators; Senator Boswell tends to be one of those. Flo always asks questions of me, I think - I have to say this - because she thinks I am nicer than a lot of the other Ministers. That is an historical thing.

I digress for a moment. I nearly was not here one year because of Senator Bjelke-Petersen. She opened the Benalla Flower Show one year. The mayor of Benalla was a Labor mayor. He introduced Flo - this was a few years ago - as a megastar of politics who was above all the hurly-burly. In her response she said, 'They are not all bad on the Labor side. In fact, Senator Button and I are very good friends'. That was a

week before I had a preselection in Victoria, of all places. Talk about the kiss of death. She certainly gave it to me on that occasion.

There are a number of senators who always ask questions of the leader, irrespective of ministerial responsibility - some because all sins of the Government are seen as represented by the leader and others out of genuine curiosity. You get some questions which I call 'water engine' questions. David Marmet, the American playwright, wrote a beautiful essay once called the *Water Engine*, which is a discussion of oral history in the United States as distinct from written history. The point he was making is that everybody in the United States really knows deep down that the CIA was responsible for the assassination of President Kennedy. There are a whole variety of things like that which are strong in the oral history of the United States. As Marmet put it, everybody knows that there was a man in Kentucky who invented a motor vehicle engine which would run on water, but General Motors and Ford conspired to have him assassinated and the water engine has never reached its full potential as a result.

I get a lot of water engine questions such as, 'Isn't there some sort of thing out there which is beneficial to this country that nobody knows about?' You know what I mean, Mr Clerk. You have to listen to them. All sorts of vague beliefs about this country's culture, aspirations and problems are reflected in what I call water engine questions.

I just say in relation to Question Time that I do not know what effect - the Clerk would be a better observer than I am - the broadcasting of Question Time has had on Question Time in the Senate. I think it might have led to shorter answers by Ministers in the House of Representatives; I am not sure. But I doubt if it has had very much effect on Question Time in the Senate. Indeed, I do not think many people are very conscious of Question Time being broadcast. I am not. But I have to tell you that a three-year-old called Rebecca writes to me quite regularly from a station in western New South Wales. The letters are written by her nanny. Apparently, where she lives, Question Time in the Senate comes on straight after Sesame Street. When she first wrote to me, she said, 'I love you, Senator Button'. I am hoping that it is the nanny rather than Rebecca. I wrote back and said, 'Well, look, I am sure Sesame Street is much better than Question Time in the Senate'. I got a letter on Friday saying, 'No, Question Time in the Senate is better than Sesame Street'. We are showing a lot of improvement, Mr Clerk.

I want to talk about some of the other burdens attached to the Senate leadership which are different from those attached to the House of Representatives leadership. The first of those is Estimates committees, which involve very long hours and require a detailed knowledge by Ministers. This is not just a function attaching to the leader; a detailed knowledge is required by Ministers of a range of portfolios, which is not so in the House of Representatives. I think very few procedures in the House of Representatives require Ministers to spend the time taken in preparing for Estimates committees in the Senate. I think we as a government have tended to let Estimates committees get a little bit out of hand and go into greater detail than perhaps they ought to. That is something of a charitable largess which we have extended to the Opposition, and it may have been abused.

The second point I will make about the differences for Ministers between the House of Representatives and the Senate functions is that there are fewer Ministers in the Senate. There is always this consistent conflict between one's exercise of ministerial or Executive responsibility and one's function as a leader in the Senate. For example, I remember that a few months ago when the Government had 'its feet in the

clag', to use then Senator Withers's expression, lots of urgency motions and so on were being moved by the Opposition in the Senate. The Expenditure Review Committee, which is a Cabinet subcommittee which takes up a lot of time, was going on at the same time. I did not appear in the Senate for some of these debates, but after two or three days the Opposition started to say, 'Well, he is not prepared to defend the Government in the Senate' and 'He is not interested'. All of these sorts of conclusions were drawn. You then have to make a decision as to whether you are going to continue to attend Cabinet meetings or whether you are going to perform the Senate role which, in a sense, the Opposition seeks to impose on one.

I do not think that is always understood by senators, particularly senators who have not been in government, and that conflict between ministerial and Cabinet responsibility and one's functions in the Senate creates a lot of difficulty. Indeed, I think it creates a lot of concern in the public. All these delegations of children and community groups who come and watch debates in the Senate are often surprised to see only one Minister there. That may be for the most venal or worst possible reasons you can imagine, but usually it is because Ministers are very much involved in Executive functions.

The third point I will make in relation to the comparison of the Senate and the House of Representatives is that, of course, in the Senate there is much more time for debate; there are many more opportunities for an Opposition; and more detailed knowledge is required of legislation. If you cannot gag legislation in the Senate, which you cannot do without the support of the minority parties, the debate can go on and on and all sorts of questions tend to be asked which are not asked in the House of Representatives because the Government has curtailed the time for debate. So in the House of Representatives you get set speeches and perhaps less exploration of the more detailed issues associated with legislation.

The other matter that I draw attention to is the considerable demand on the Government leader in the Senate to speak on matters such as censure motions, urgency motions and so on. Certainly, I think they are ones which the Leader of the Government is largely required to defend in the Senate and that creates all sorts of conflicts with ministerial responsibilities.

As I said, the Government in the House of Representatives can jam legislation through. There is no capacity to do this in the Senate. The debate is more difficult; sometimes more intricate. The other important point I would make here is that there is probably less ministerial briefing by ministerial counterparts and public servants in the Senate than there is in the House of Representatives. This is not always understood in the House of Representatives. The processes of the Senate and the difficulties are not well understood.

The very fact that you are not a majority party in the Senate has never been well understood. We have been in government nearly nine years now and I think it is starting to be understood. In the early years of government, people would say, 'Well, we will do this'. Everybody would agree that that was an appropriate decision. The question would never be asked as to whether the Senate would pass this legislation or not. We always got into difficulties about that sort of thing. But I think there is more understanding now of the difficulties in getting legislation and other business through the Senate, but it seems to have taken a long time. The other thing associated with that, of course, is the much longer Senate sitting hours, which I think is also not understood.

I do not want to spend my whole time here saying we are not understood. That is cry-baby stuff - seeing ourselves as victims of the system. All I can say about that is that in a sense we are victims of the system and I will reiterate the point in that form.

I think in recent years the composition of the Senate in terms of personnel has changed quite significantly. I do not think this point is particularly relevant to anything, but the Senate has become a more serious political chamber, I think, than it was when I first came in. Sure, there were crises in the Senate at the end of the Whitlam Government and so on. There was also a hard core of senators when I first came here who saw the Senate as a sort of congenial club. I think more man-hours or person hours were spent in the bar in those days than now. There were a number of senators who really enjoyed debating for its own sake and less for the purpose of achieving or trying to achieve a political debate; they enjoyed the form and discussion. Senator Wright was one of those. He was a great Liberal senator from Tasmania. He loved debate. He spent hours in the Senate debating issues and taking points of order and so on. On Labor's side, somebody like Senator Cavanagh was the same. They used to enjoy each other going on for hours. I think that is much less so now. I think the Senate's business in a political sense is a more serious business in some ways than it used to be.

Finally, I just want to say something about the role of the Senate leader as the 'Third Man', as it were, in party political terms, which imposes, I think, additional obligations. For those of you who have seen the film, there is no Harry Lime theme played for the Senate leader, but masses of time has to be spent wading through political sewers, escaping through manholes and so on - all the things that Harry Lime had to do in the film. In the political process, the Senate leader has to spend a lot of time on that sort of stuff. It is not always easy in the leadership of political parties to balance some of the frictions which develop, particularly at the top. There is a different role in all of that for somebody who is slightly detached from it, but not enough, unfortunately, as Leader of the Government in the Senate. As Senate leader I have additional burdens at election time through involvement with the National Executive of the Labor Party and other Party committees.

To summarise, I think that if one analyses the role of Senate leader, one sees that it is distinctly different from other leadership roles in the parliamentary system, largely because of the nature of the beast itself - the Senate - but also because in recent years the significance of minority parties in the Senate has made it quite a distinct sort of role. At all times, historically and now, there is the added complexity of the multi-functionalism that is expected - as Minister, as Cabinet Minister, as party functionary and so on - which I think makes the function much more difficult.

Political Literacy: Educating for Democracy

Hugh Collins

Professor of Government and Politics
Murdoch University

What is political literacy? What meaning are we to give to this topic?

Clearly, the idea of political literacy is part of the broader and more general concept of literacy. So before venturing into the specific terrain, it will be useful to get our bearings by considering some features of this larger landscape.

The first feature to remark upon is that *all* literacy is political.

Literacy has always been closely associated with the service of the state. Even non-literate rulers needed scribes to keep their records, to convey their instructions and to preserve their histories. Sir Humphrey Appleby is but the latest in that official line - and it is entirely in character for that role that Sir Humphrey is portrayed as the consummately literate figure, least himself on those rare occasions when he is lost for words, truest to life, as we might say, when composing or flourishing the unanswerable minute or artful disclaimer.

Indeed, Mr Clerk we might note that the title and function of your own Office relate directly to this scribal tradition. One of your distant official forebears provides an early example of the political function of literacy in this broad sense. Classicists among us may recall a famous passage in which Thucydides recounts an episode from the Sicilian campaign of 414BC. The Athenian commander, Nicias, wanted his perilous position to be fully understood at home. As well as the oral report entrusted to his messengers he took the unusual step of setting down his views in a letter, which was read to the Assembly by its clerk.¹ (Nicias's action was sufficiently novel for us to assume that his letter had more effect than latterday petitioners to the parliament may receive or expect.)

Among some scholars, literacy's close association with the state has reduced its reputation. Literacy is dangerous, they argue, precisely because it arms the state with such effective instruments of control as the bureaucratic file, the military directive, and the police warrant. From this perspective, campaigns for mass literacy can be disparaged as imperialist extensions of state control. Foucault and his disciples extend these ideas to suggest that all forms of codifying and communicating ideas create power which can be used coercively and repressively. The force of their argument is evident in the widespread concern in this parliament and the nation that a further concentration of media ownership in Australia would create a private locus of power incompatible with democracy.

Yet in emphasising the dangers of literacy, the radical critique risks romanticising the condition of the illiterate. In the modern world, to be illiterate is to suffer deprivation and vulnerability. The boundary line between the literate and the illiterate marks out differentiations of power, which are characteristically associated with significant social divisions such as class, gender, religion and ethnicity. Only literacy can confer the emancipatory possibilities of a fully human existence in the late

¹ Thucydides, *Peloponnesian War*, vii.8.2. For a discussion of the significance of this passage see William V. Harris, *Ancient Literacy*, Harvard University Press, 1989, p. 78.

twentieth century. As Professor Jeanne Chall has remarked, like the rich who doubt that money brings happiness, it is only the well-educated who question literacy's value.²

Literacy does not necessarily equate with subservience. The power to read and write is a double-edged sword. It can control to be sure, but it may also be used to resist and to liberate. Classicists present would surely remind us that one of literacy's earliest functions was to ostracise politicians. (And anyone finding in these precincts a potsherd bearing the name of the Member for Blaxland might kindly give it to Mr Ian Warden, whose columns seem always to treat this place as a vast archaeological dig.)

The second feature I want to describe in the general landscape of literacy is a cluster of dimensions in which we customarily think about literacy. I shall call these dimensions literacy's extent, its depth, and its specific domains.

By extent, I mean the way in which we talk about literacy as a property to be maximally spread across a whole population. Much discussion of literacy refers to both the desirability and the means of extending it. Such concerns imply a horizontal dimension by which we measure the breadth of literacy across a society. Literacy campaigns are typically concerned with this dimension, seeking to maximise the sheer number of literate individuals.

By depth, I mean the way in which we distinguish levels of literate competence. This vertical dimension of literacy is implicit in such phrases as 'basic literacy'. We frequently distinguish, and we often need to certify, more or less elementary and more or less advanced levels or degrees of literacy. For example, what level of literacy is required to fill in a tax return, to apply for a driver's license, to enrol as a voter, or to read the *Sydney Morning Herald*?

By specific domains, I mean the way in which we treat literacy as parcelled out into particular contexts. Our adjectives give this game away, for we speak readily of mathematical literacy, or scientific literacy, or economic literacy, and so forth. Counsellors in study skills centres will tell you that it is common for students excelling in one field to encounter major difficulties in another. The diligent undergraduate who is scoring A's in History and Mathematics and Fs in Biology does not need a 'back to basics' regime, but specific attention to the levels of comprehension and capacity to use the correct language in the problem subject. The specialisation and fragmentation of modern knowledge (and some of my colleagues would underline this point by speaking of knowledges) make the field or domain dimension of literacy inescapable.

Recognising the domain dimension of literacy brings us to the heart of today's topic. For, in these terms, to ask the question, what is political literacy?, is to ask whether there is a specific domain here. I shall argue that there is. After briefly sketching the nature of this domain or field, I shall turn in rather more detail to the other two dimensions in which political literacy may be analysed. For the dimension that I have labelled 'extent', I shall focus chiefly upon debates about political literacy and schooling. For the dimension I have called 'depth', I shall consider the implications of political literacy for office-holding in our system of government. And I shall conclude by assessing the health of those institutions essential to political literacy in contemporary Australia - the press, the universities and the parliament.

The Domain of Political Literacy

What is the domain of political literacy? In a simple term, it is the polity. And in Canberra in the 1990s it seems important to assert the salience of a public sphere distinct from the economy. In this public sphere we are concerned with the exercise of power in society. For a democracy, that will mean constitutionally-guaranteed procedures both legitimising rule and also permitting changes of the rulers and in the rules by which the system functions.

We are inheritors of a long tradition of reflection upon politics and the state, so our domain contains a series of debates in which some old questions are continually reworked (for example, the question, what is an individual's obligation to the state?), while some new questions are posed as a consequence of historical change (for example, how is security to be achieved in a world with nuclear weapons?).

The task of political science, as I understand it, is to maintain and renew this tradition of reflection. Any number of methodological approaches and areas of enquiry have contested, indeed still strive, for sovereignty within political science. But considered as a collective enterprise, the distinctive preoccupations of this field of study have been constant over time and consistent with the nature of the domain it seeks to understand. These preoccupations have been to describe the institutional forms and processes by which power is exercised and organised, and to develop normative evaluations of these forms and processes. For many of us, the fascination of the subject is the interaction of these twin concerns - the constant dialogue between power's pattern and its purposes.

I have identified the preoccupations of political science within the domain of political literacy, because in each of the other dimensions of political literacy to be examined I shall be discovering more issues for the scholarly agenda of political science and more employment for its artisans.

Let me turn, then, to the dimension of political literacy that I have called its extent.

In contemporary discourse, political literacy usually refers to learning in schools about the institutions and processes of a specific political system. Having tried the experiment, I can report that plugging the term 'political literacy' into a bibliographical database will prompt a slew of references dealing immediately with curriculum issues in schools or with the political socialisation of youth - again with a heavy emphasis on schools and schoolbased learning.

The Extent of Political Literacy

In this dimension, then, political literacy has been understood as attempting a mass programme through education for citizenship. Here I shall briefly review some of the British reports and programs which have been especially influential in this context, before turning to recent Australian reports, with which I shall be primarily concerned.

I begin with the British case, because for curriculum specialists the most influential perspective upon political literacy and political education arises there. A 1974 statement by Professor Bernard Crick and his colleagues in the Hansard's Society's Working Party on the 'Program for Political Education' signalled a new direction for political education in secondary schools in the United Kingdom.³ Crick

³ Bernard Crick and Alex Porter, eds., *Political Education and Political Literacy*, Longman, 1978. This report includes the earlier working papers, several of which were published in *Teaching Politics*, the journal of the Politics Association.

and company sought to shift the focus of political education from imparting particular information to the development of political skills. For them, the application of knowledge was uppermost. "Political Literacy", they said, 'must imply the ability to use knowledge to effect in politics.'⁴ This activist program won significant policy support and dominated the academic debate about political education in Britain for a decade thereafter.⁵

The influence of this approach is to be found in a Report entitled *Encouraging Citizenship* by the Commission on Citizenship, which was established in December 1988.⁶ In his foreword to that Report, the Speaker of the House of Commons identifies official acceptance of the teaching of citizenship in schools as one of the Commission's 'major achievements'. By citizenship education he means encouraging young people 'to acquire and practice the basic skills of citizenship.'⁷ Most of this Report is devoted to citizenship education in schools and through voluntary service.

In Australia these two themes - an activist pedagogy and an emphasis upon educating for citizenship - dominate the treatment of political literacy in two recent reports by the Senate Standing Committee on Employment Education and Training. These reports are *Education for Active Citizenship in Australian Schools and Youth Organisations*, which was published in February 1989, and the follow-up report, *Active Citizenship Revisited*, tabled in March of this year.⁸

In its 1989 Report the Committee reviewed evidence of widespread ignorance of and apathy towards politics among Australian youth. In the Committee's assessment, such political ignorance, and the apathy towards political participation associated with it, are matters of grave concern. 'High levels of political ignorance in a community are ... a danger sign', the Report asserts. 'They are a warning that the quality of democracy may be under threat.'⁹

The chief responsibility for this condition, in the Committee's view, lies with our schools - a judgement shared by many young people surveyed in recent Electoral Commission studies. To quote directly from the Report:

In essence what is occurring across Australia is that even on a conservative view of the matter, students stand more than an even chance of completing their secondary education without taking any course which genuinely prepares them to be an informed and active participant in the democratic processes of Australian society.¹⁰

The Committee's recommendations for action flow directly from its assessment of the seriousness of the 'unmistakable deficiencies' it has identified. It calls for the

⁴ *Ibid*, p. 32.

⁵ See Tom Brennan, *Political Education and Democracy*, Cambridge University Press, 1981; Colin Wrings, *Democracy, Schooling and Political Education*, George Allen & Unwin, 1984; Robert Stradling, 'Political Education: Developments in Britain' in Derek Heater and Judith A. Gillespie, eds., *Political Education in Flux*, SAGE Annual Reviews of Social and Educational Change, Vol. 3; SAGE Publications, 1981, ch. 3; Ian Lister, 'Political Education in England, 1974-84: a briefing paper presented to the Global Education Centre of the University of Minnesota,' *Teaching Politics*, 16 :1, January 1987, 3-25. For a perspective of particular interest to Australia, see Alan Reid, 'An Outsider's View of Political Education in England: Past, Present and Future,' *Teaching Politics*, 14:1, January 1985, 3-19.

⁶ *Encouraging Citizenship: Report of the Commission on Citizenship*, HMSO, 1990.

⁷ *Ibid*, p. vi.

⁸ Parliament of the Commonwealth of Australia. Senate Standing Committee on Employment, Education and Training. *Education for Active Citizenship in Australian Schools and Youth Organisations*, AGPS, February 1989; *Active Citizenship Revisited*, AGPS, March 1991.

⁹ *Education for Active Citizenship*, p. 9.

¹⁰ *Ibid*, p.31.

provision in the curriculum of secondary schooling of a programme of education for active citizenship. It calls upon the Commonwealth to designate this area as a priority for improvement, and to seek the cooperation of State authorities towards the same end. With some compelling evidence of problems in the attitude and training of teachers, it urges much greater emphasis upon the pre-service and inservice education of teachers in this area. It devotes detailed attention to the need for better teaching resources for the type of courses it is promoting as well as reviewing the range of recent innovations in this area.

The emphasis is upon schools and the curriculum. The framework for action is the encouragement of active citizenship.

Even before the Committee revisited the scene in its second Report earlier this year, the 1989 statement was having a discernible impact. One of the welcome aspects of the Committee's approach had been to talk directly with high school students. This experience evidently impressed members of the Committee, since most referred to it in their parliamentary speeches at the time the Report was tabled. It also ensured an interested reception for the Report in schools and syllabus committees, which as Chair of a State Committee I can attest. The Report's recommendations attracted, as well, the interest of State parliamentarians and parliamentary officers. In Western Australia, for example, *Education for Active Citizenship* is one of the stimuli behind the development of a parliamentary and electoral education centre, as well as for a major review of the senior secondary curriculum in Politics.

In all these ways, I consider the work and influence of the Committee to have been immensely helpful. The recognition and prominence it has given to the services of the Parliamentary Education Office, for example, is most important. With the teaching materials contained in the Parliament Pack, in the interactive, computerised interest of the Parliament Stack, through several videos, and in the newsletter and conferences presented by the Office, teachers and students alike have a much richer, more interesting and - best of all - constantly updated set of curriculum resources for understanding Australian national politics. For those students able to visit the capital, the activities arranged by the Office are an admirable example of active learning. When one adds to these good things the comparable work undertaken by the Australian Electoral Commission through its own study kits, school visits and Electoral Education Centre, the old complaint that interesting resources are lacking can no longer be sustained.

While saluting the Committee and its Reports for promoting and possibly protecting, these ventures, there are three aspects of its work that I wish to discuss more critically. Each relates to the question of political literacy. The first has to do with the notion of active citizenship; the second, with the contribution of Political Science to political literacy in schools; and the third, with school governance.

First, then, to active citizenship as a framework for political education.

'Active citizenship' no doubt commended itself to the Committee as a convenient phrase for its purposes. It helps to underline the Committee's concern that education in this area should not be primarily a matter of book-learning but rather the development of skills by which that learning might be put to use.

Now it cannot be denied that a certain air of wholesomeness surrounds the idea of citizenship. Doubtless, this partly accounts for its rhetorical convenience to the Committee. Yet, paradoxically, the apparently wholesome notion of active citizenship espoused in the 1989 Report drew fire from conservatives and radicals alike. Each of

these parties read the Report as a manifesto for the other's opinions. Thus, the radical critique presents 'active citizenship' as a conservative plot to produce pliant and obedient subjects, achieving stability by inducing false consciousness among the ranks of a potentially rebellious generation. By contrast, to conservatives the encouragement of activity, especially among the young, necessarily implies politicisation; the Report is exposed as a radical scheme to introduce into schools issues that belong in whatever is left of the family. Little wonder that the 1991 Report, *Active Citizenship Revisited*, spends its first chapter defending the 1989 Report against much of this crossfire.

I find the crossfire more educative than either of the critiques alone. These contrary readings reveal the fuzziness of the conceptual framework.

I believe that the issues may be more directly faced, the central difficulties more sharply focussed, if instead one approaches them from the perspective of educating for democracy. If the problem of democracy is made the framework for enquiry we shall immediately confront a principle which I believe to be fundamental. This principle holds that political education in a democracy should be hospitable to rebel and to conformist alike.

Now I have to say at once that the Report is not hostile to that assertion. My argument is simply that this principle is clearer, and its implications for curriculum content and practice more immediately engaged, if the conceptual framework for political literacy is the problem of democracy rather than the idea of citizenship. Good democrats will be good citizens; the reverse is not as obvious.

This brings me to my second difference of emphasis with the Committee's Report: the place of political science in political education. To be sure, *Education for Active Citizenship* recommends that courses in Politics should be available as electives at matriculation level in all secondary systems in Australia. With that splendid advice I have no quarrel. But the strategy adopted by the Committee for extending political literacy is to separate (some might say rescue) this area from the grip of specific Politics courses, relying instead upon opportunities for informing and equipping students in literary, historical or other social studies.

My contention is that, if the aim is to achieve a critical reflection upon politics, the core of this subject matter will be inescapably drawn from political science.

The alternative is to deal with politics superficially - as a matter of rote learning or of following rules without understanding what lies behind the rules.

Rote learning has long been a feature of political education, both formal and informal. As well as objections to the method in principle, it frequently miscarries in practice. My spouse informs me, for example, that as a young primary school pupil she regularly vowed at school assembly to fear God, honour the King, and promise Chifley to obey his laws. (This innocent evidence of incipient republicanism might have alarmed her teachers, but would not now surprise her friends.)

The problem I have with the thrust of the Committee's recommendation may be illustrated by an example drawn from an earlier attempt to inculcate citizenship. The syllabus for Civics in Western Australian primary schools in the 1930s was very precisely laid down. It moved from lessons on not spitting on trams and not writing on desks, to how to use a public library and how to obtain information from government departments, and finally to a course in history celebrating in Whiggish

fashion the culmination of human progress in the British Empire and parliamentary institutions.¹¹

Now the early stages of this 1930s curriculum certainly dealt with some useful aspects of civic courtesy and responsibility. Not spitting on the tram and not writing on the desk will likely remind one generation here of Tootle's instruction in *Staying On the Rails No Matter What*. (And in view of recent history in my state, some of you might think that Western Australia would have done well to keep the curricular emphasis of Lower Trainswitch into the 1950s and '60s).

Political literacy, at least in a democracy, has to move beyond this level to help students understand why certain forms are followed. As a concrete example, providing information about voter enrolment is undoubtedly one aspect of educating for citizenship. But this should quickly lead to learning about how votes for the Senate are counted. That lesson will in turn hinge upon why votes matter, upon different electoral systems and their consequences - in short, upon the whole theory of representation.

In this manner we are brought directly to central issues in the study of politics - to exactly that focus upon the evaluation of institutions that I described earlier. Political education in schools will require teachers whose training includes the academic study of politics, so that they have a grasp of the theoretical problems. In turn, political science in the universities will need to consciously equip teachers-in-training and to respond to the demands in schools for resources and ideas.

The Senate Select Committee on Political Broadcasts and Political Disclosures has recently heard from Mr Rod Cameron of ANOP of the effect of political ignorance upon the style and pitch of advertising in election campaigns.¹² His statement is a vivid illustration of the reasons for improving political literacy. But that improvement will rely upon the resources which only political science can supply.

My third comment on extending political literacy through the schools is that political education for democracy has direct implications for school governance. The 1989 Report acknowledges, but does not explore, this issue. Yet it is I believe, one of the major inhibitors to action and needs to be faced openly.

If students are to be encouraged to reflect critically upon problems such as power, authority, law, dissent and freedom, their reflection will include the structures of authority nearest them as well as the formal institutions of government in the nation. Education for democracy will almost certainly produce demands for democratic, participatory structures in schooling. Canberra led the way here in the '70s and early '80s: I believe, sadly, that has all changed. But in school governance, as well as in classroom practice, extending political literacy will have direct impact and we need to face that.¹³

The Depth of Political Literacy

¹¹ See Cherry Collins, 'An Australian approach to schooling: the record, the reward and the risks' in William G. Cameron, ed., *Australian Education 1988: A Turning Point*, The Australian College of Education, 1989, pp. 23-38, esp. p. 27.

¹² *Commonwealth Parliamentary Debates*, Senate Select Committee on Political Broadcasts and Political Disclosures, 11 October 1991, p.281.

¹³ For attention to classroom practice especially, see Alan Reid and Bill Whittingham, 'The Constitutional Classroom: A Political Education for Democracy,' *Teaching Politics*, 133, September 1984, 307-330; Alan Reid, 'Approaches to Political Education - Classroom Practices', in Laurie Lewis, ed., *Social Education and Political Literacy*, Social Education Association of Australia, Monograph Series No. 3, Melbourne, 1987.

I turn now to the dimension that I labelled 'depth'. The emphasis on schooling which has been so common in the general treatment of political literacy has been restricted, I think to that earlier dimension of 'extent'. Yet you may have noticed that in discussing political education within schools, I was already calling for a deeper understanding of politics than mere instruction alone can offer. What holds for the governed applies also for their governors. In a democracy we should require office-holders to have an even firmer grasp of the values of the system and of the importance of relating what they do to its fundamental framework. We should surely expect more of ministers and senior public servants than we do of the nearly-18-year-olds who have been the focus of most attention concerning political literacy.

Perhaps I am especially conscious of this because in Perth we are involuntary witnesses to the need for it. At the Royal Commission investigating what is colloquially known as WA Inc, there is a daily parade of testimony illustrating the need for political literacy at the heart of our political system.

Before all the evidence is in, and before the Royal Commissioners have reported, it is important to suspend judgment. Nevertheless, taking the testimony that we have heard simply as a set of dilemmas, I believe there is already much to learn. We have seen in the testimony offered so far dilemmas of ministers in relation to senior public servants; dilemmas of members of cabinet in relation to decisions of the premier and a smaller group of ministers; dilemmas of department heads in relations with ministers and senior ministerial advisers; dilemmas of public servants cast suddenly into commercial roles; dilemmas of business executives in their relations with government, with political parties, and with the public sometimes, indeed, in distinguishing which of these they were concerned with at any moment; dilemmas of accountants and lawyers in their obligations to their clients and to the public.

All I wish to pull out of the evidence presented so far is my own impression that, in the testimony offered, the witnesses have had no vocabulary for articulating these dilemmas. What happened is presented neither as an exercise in expediency nor as a burden of responsibility; it typically emerges from the realm of necessity. There is no rationale except, characteristically, the denial of choice. This is a gross failure in political literacy.

We shall have to look to the Royal Commissioners to provide guidance about how such dilemmas are to be articulated; how a constitutional theory might connect these holders of office to the specific structures of power in which they find themselves; in short, how a language of politics is to be used.¹⁴

I have to say that the precedents for this are not encouraging. On the other side of the nation, for example, we can look at the Report of the Fitzgerald inquiry.¹⁵ I would argue that in chapter three its treatment of parliamentary accountability in Queensland is thoroughly unconvincing and a further example of the need for more specialised attention to these problems. Indeed, as an aside, I should confess that in seminars with senior public servants I have at times used an extract from that part of the Fitzgerald Report without revealing the source, inviting them to offer it a grade as if it were a piece of undergraduate writing. Upon their assessment, it has failed more often than it has passed.

¹⁴ Since this lecture was delivered, the Royal Commission has issued a Discussion Paper inviting public comment on that part of its Terms of Reference requiring it to report 'whether... changes in the law of the State, or in administrative or decision making procedures, are necessary or desirable in the public interest.'

¹⁵ *Report of a Commission of Inquiry Pursuant to Orders in Council* [The Fitzgerald Report], Queensland Government Printer, 1989.

Most recently we saw further evidence of this kind of deficiency, I believe, in the Report of the Finn Review: the report of the Australian Education Council's Review Committee, *Young People's Participation in Post Compulsory Education and Training*.¹⁶ It too is concerned with education, but in this case education for work rather than for citizenship. Among the list of recommendations it shows key areas of competence which the committee wants our schooling to provide. Under 'cultural understanding', the Report suggests that students need understanding and knowledge of Australia's historical, geographical and political context. Politics as context is a neatly passive way by which these representatives of the social partners in our corporatist state can deflect students from understanding the specific choices, specific values, and specific institutions, that are leaving them in the conditions in which they find themselves in 1991.

Work is being done on these questions. I salute my colleague Dr John Uhr, a former servant of the Senate with a keen eye for the way these problems arise, for doing much of the best work - again an example of political science in action.¹⁷ Today in Queensland there is a seminar discussing a code of conduct for officials which has been developed by the Electoral and Administrative Review Commission in Brisbane.¹⁸ In New South Wales, the Independent Commission Against Corruption has begun intensive sessions with public servants and public sector employees more generally, reviewing their work practices against the values which their ordinary activities are intended to promote.¹⁹ I believe that, in addition to giving attention to political literacy in schools, the Senate's committees could help by focusing attention on the broad ramifications of political literacy for representative democracy. This will have to include the education of office-holders and electors alike.

Free Institutions and Political Literacy

To educate for democracy requires free institutions. Three especially are of concern: the press, the universities, and the parliament. Each is intimately associated with political literacy. But the conditions in which they are able to support political literacy in Australia today are not uniformly positive.

No account of political literacy can ignore the press. Newspapers remain the primary means by which a literate population obtains political information and exchanges political opinion. Precisely because the written word provides a journal of record, the newspapers become the raw material for much other discussion (on radio and TV, in the parliament, in the classroom, on the factory floor, and in the boardroom). For the broadest possible political debate we shall need a range of opportunities for journalists and a diversity of vehicles of opinion. Concentration of press ownership is therefore undesirable from the perspective of educating for democracy and improving political literacy. The recent indication that a majority of Senators and Members take this view is a vindication of parliamentary democracy.

¹⁶ *Young People's Participation in Post Compulsory Education and Training* [The Finn Report], The Committee, 1991.

¹⁷ See, for example, John Uhr, 'Ethics in Government Public Service Issues', *Discussion Paper* No 19, ANU Graduate Program in Public Policy, June 1990; 'Ethics and the Australian Public Service', *Current Affairs Bulletin*, April 1990, pp. 22-27; 'Dilemmas in Administrative Responsibility', *Canberra Bulletin of Public Administration*, No 59, August 1989, pp. 25-27.

¹⁸ Electoral and Administrative Review Commission, 'Codes of Conduct for Public Officials', *Issues Paper No. 15*, EARC, 1991.

¹⁹ See paper by Mr Ian Temby, QC, 'Combating Corruption', at Conference on Business-Government Relations in Western Australia - Challenges for the Futures, Fremantle, W.A., 25 October 1991.

A further reason for seeking a diverse press and an improved one is that political journalism in Australia has been focussed almost entirely upon the executive and its rival. Little interest has been shown in parliament as an institution and in its contribution to politics. As in so many areas of vital public concern in Australia, for this we must rely on the ABC and Radio National. Dr Jenny Hutchison and her team on 'Ring The Bells' provide the only but excellent source of continuing information and analysis of the parliament.²⁰ It is an example others might follow.

The universities' contribution to political education in our democracy arises from their opportunity to reflect critically upon issues, institutions and values in the public sphere. That capacity requires a position of relative autonomy.

This is not the occasion for a generalised lament about the contemporary condition of our nation's universities. Especially in Canberra, you will already be aware of the increased control exercised by government, of the reduction in research funding outside the control of government, and of the increase in student load unfunded by government. I would simply highlight today the exhaustion which the combination of turbulence and overstretch have imposed upon university staff. This is especially the case in the social sciences, which, together with humanities, do not enjoy so favourable a student:staff ratio as other departments of knowledge. The consequence is a dulling of our critical capacity which may be convenient for the executive, but is unhealthy for democracy and scholarship alike.

I have acknowledged today that political science could and should be doing more in the development of political literacy. I doubt our capacity to meet these tasks if present conditions persist. As Alfred North Whitehead observed:

The modern university system in the great democratic countries will only be successful if the ultimate authorities exercise singular restraint ...²¹

The ultimate authorities in Australia have lately shown little restraint.

Finally, the parliament. This is surely the heart of the domain of political literacy. It is at the centre of the polity. Its connection to political literacy has long been its privileged place as a forum of protected speech on all matters. As well as that traditional role of statements in the chamber, there is the new and vigorous function of committee work. It is significant that I have dwelt today on a Senate Committee Report. For the hearings of parliamentary committees serve an educative function for committee members, but also for the public. They have proven a means for bringing wider voices into the public sphere - for joining expertise with power.

In Professor Reid's exposition of the 'trinitarian struggle' the role of parliament is shown to be crucial in the achievement of democracy, as both support for and restraint upon government.²² Happily, this institution offers at present a more encouraging prospect than either the press or the universities, although - I assume - only at the price of constant vigilance.

Mr Clerk your invigilating bell must be about to ring. In the manner of practised examinees, therefore, I had better return to the question.

²⁰ See Jenny Hutchison, 'Ringling Parliament's Bells on Radio National', *Media Information Australia*, No. 57, August 1990, 19-23.

²¹ A. N. Whitehead O.M., *The Aims of Education and Other Essays*, Ernst Benn Limited, 1950, p. 150.

²² G. S. Reid and Martyn Forrest, *Australia's Commonwealth Parliament 1901 - 1988: Ten Perspectives*, Melbourne University Press, 1989.

What is political literacy? As today's lecture has attempted to show, there is no simple answer to this question. Rather than offer a definition, I have proposed a framework in which to examine the problem.

Political literacy may refer to the extended provision of an elementary description of our political system - of politics as context. Such a description by itself may suit subjects; citizens it will hardly serve; democrats, never.

At a deeper level, political literacy in a democracy is presented as the capacity for critical reflection upon political institutions and processes, especially in terms of the values engaged by these institutions and processes. I have argued that such critical capacity is essential for office-holders in our system. Yet if our rulers are not to be a guardian class set apart from the ruled, political literacy of this kind will have to be fostered in the schools also. Enabling all to share in and to influence our political debates, we might then approach a contemporary version of the classical sense of democracy as ruling and being ruled in turn.

Does political literacy matter? Yes, it does: certainly, to all who care about the quality of Australian democracy. And here I am in full agreement with Senator Aulich and his colleagues.²³ The challenge is to build upon their recommendations, to ensure good educational programmes not only for all young adults, but also for office holders.

If political literacy is to flourish, the institutions vital to its success will be a free press, unfettered universities and an effective parliament. Here we might wish for more encouraging prospects.

Almost a century ago Sidney Webb set out in a letter to Graham Wallas his reflections upon Australian Democracy after accompanying Beatrice on her visit to the colonies. To his own surprise, Webb found the Australian Democracy 'an admirable success in all essentials' although he did find it lacking in intellectual leadership. The gentle English Fabian tells the friend who was later to become the first professor of political science at the London School of Economics and Political Science that:

The politicians and the newspapers are in fact, the *best* product of Australia; and they are very good indeed.²⁴

Do we still find intellectual leadership lacking in our politics? Would we give our politicians and journalists the same excellent report card in the 1990s that Webb handed in for their predecessors of 1898?

Sidney Webb chose his yardsticks for democracy wisely. In this domain, at this time, the achievement of political literacy will require the best that the universities, the press and the parliament singly and together can contribute. Educating for democracy makes us allies in this cause.

²³ *Education for Active Citizenship*, p.5.

²⁴ A. G Austin, ed., *The Webbs' Australian Diary 1898*, Sir Isaac Pitman & Sons Ltd., 1965, p. 115. (Emphasis in original).

Procedural Digest 1991

The following information about procedural developments and items of procedural interest is adapted from the Department of the Senate's Procedural Information Bulletin. Details of legislation and other matters considered by the Senate may be found in *Business of the Senate 1 January 1991 - 31 December 1991*, available from the Senate Table Office.

Items are arranged in alphabetical order.

Abstentions

On 18 April the Australian Democrats expressed an intention of abstaining in the vote on an urgency motion calling for the recall of the Ambassador to Ireland and the Holy See, Mr Brian Burke. The motion was passed by 31 votes to 30. There is no provision in the procedures of the Senate for Senators to record an abstention; if Senators are present in the chamber when a vote is taken they must vote with the ayes or the noes, and can abstain only by leaving the chamber. Later in the day, Senator McLean, by leave, moved a motion to record the abstentions of members of his party, but the motion was negatived (lost).

Amendments to leave out clauses

When a bill is considered in committee of the whole the procedures are designed to ensure that every clause of the bill is agreed to by a majority. Very often, however, bills are taken as a whole by leave instead of clause by clause. Groups of amendments are often moved together by leave, and sometimes an amendment is to leave out a clause. Such an amendment involves the possibility of a clause being carried without a majority, because if the ayes and noes are equal in the Senate, the question is negatived. (Unlike the Speaker of the House of Representatives, the President does not have a casting vote.) A question "that the clause be left out" will be lost if there are equal numbers of ayes and noes, but if the question is framed "that the clause stand as printed" and the ayes and noes are equal, the clause that does not have majority support will not be agreed to.

Appropriation Bills

A special appropriation bill was introduced on 19 February to fund expenditures arising from the Gulf War. On the introduction of the bill, Senator Harradine exercised his right to have the various questions for the introduction of the bill divided so that he could speak on the motion for the first reading of the bill. Senator Harradine wished to express his concern about the intention to continue debate on the bill later that day. The Leader of the Opposition in the Senate joined the debate, and indicated that the Opposition might revive the use of the procedure whereby on the first reading of a bill which cannot be amended by the Senate, matters not relevant to the bill may be discussed.

The additional estimates contained in the additional appropriation bills were referred to the Estimates Committees on 14 March. The reference also covered the special additional appropriation bill passed earlier in the year in consequence of the Gulf War. This enabled Estimates Committees to examine the expenditure authorised by that bill.

The main round of Estimates Committee hearings took place in the sitting weeks from 3 to 12 September, during which the Committees heard evidence for a total of approximately 133 hours. Two Committees did not complete their examination of estimates during this period and subsequently held further hearings, clocking up approximately 170 hours of public hearings.

The appropriation bills were finally passed on 7 November. Notwithstanding lengthy scrutiny of the bills by Estimates Committees, consideration of the bills in committee of the whole was very extensive.

The statement of expenditure under the Advance to the Minister for Finance was the subject of considerable debate on 11 November before it was approved, indicating continuing scrutiny by Senators of expenditure from the Advance.

Australian Senate Practice

The sixth edition of *Australian Senate Practice*, by J.R. Odgers published by the Royal Australian Institute of Public Administration, was tabled in the Senate by Senator Durack on 15 October. Speaking to a motion to take note of the document, Senators Durack and Harradine referred to its value to the Senate and to the public, and to the circumstances of its publication after the death of the author in 1985.

Calling Senators in Debate

On 5 June, when the Senate was debating the matter of the leadership of the government, the Deputy-President called Senator McMullan, the Parliamentary Secretary Assisting the Treasurer, who moved a closure motion, which was successful. Opposition Senators questioned the action of the Deputy-President in calling Senator McMullan immediately after the Leader of the Government in the Senate had spoken, and asked him whether he knew in advance that Senator McMullan was going to move the closure. The Deputy-President stated that in departing from the practice of calling Senators from each side of the chamber alternately, he had been influenced by the fact that five Opposition Senators had spoken in succession before the Leader of the Government, and he confirmed that he had known in advance that Senator McMullan was going to move the closure.

On the following day the Deputy-President made a further statement on the matter. He incorporated in *Hansard* a document which was

circulated by the then Deputy-President in 1987 and which sets out the practices of the Senate in giving the call. The Deputy-President stated that perhaps he should have given more weight to the fact that Senator McMullan was moving the closure and potentially terminating the debate. He undertook to refer the matter to the Procedure Committee.

Censure motions

A motion to censure a minister was passed on 4 June. Senator Richardson, in his former capacity as Minister for the Environment, was censured for his handling of the matter of payment of money under an agreement to a timber processing firm.

In some houses when a motion of censure against the government or a minister is moved at the time normally devoted to question time, debate on the motion is regarded as replacing question time. Such a motion was moved in the Senate on 9 December at 2 pm when questions would normally have been called on. The view was taken, however, that the routine of business specified by the standing orders continued to operate unless some decision was made by the Senate to alter it, and therefore question time took place after the censure motion had been determined.

Delegated Legislation

Senator Harradine introduced on 20 June a private Senator's bill to amend the Acts Interpretation Act, which would provide for delegated legislation to be published in draft form before it is made, for the prohibition of prejudicial retrospectivity of delegated legislation to be clarified, and for the disallowance of parts of provisions in delegated legislation. These reforms have been under discussion for some years and have been referred to in past reports of the Regulations and Ordinances Committee.

Disallowable Instruments

One part of the extensive government amendments of the Transport and Communications Legislation Amendment Bill was designed to shorten the statutory periods for the disallowance of instruments under the Telecommunications Act. The normal statutory period for giving notice of disallowance and for disposing of a disallowance motion is shortened from 15 sitting days to 5 sitting days in respect of instruments made during a limited time. The amendments also provided for an affirmative resolution of both Houses which would circumvent the disallowance procedures.

The government indicated that the rationale for the amendments is to enable intending telecommunications carriers to conclude the processes of entering the industry more quickly. The Senate agreed to the amendments, but it was stressed that they were not regarded as a precedent and were accepted only because of the particular

circumstances surrounding the recent amendments to the Telecommunications Act.

Dissolution Proclamations

For many years proclamations by the Governor-General dissolving the House of Representatives for an ordinary general election have included a phrase purporting to discharge Senators from attendance. In 1988 it was pointed out by the then Clerk-Assistant (Table), in a paper published in *Papers on Parliament No 2*, that there is no constitutional basis for this practice and that it arose through a misreading of earlier dissolution proclamations.

On 16 August the President tabled correspondence between the Clerk of the Senate and Government House relating to the 1990 dissolution proclamation. The result of the correspondence is that the government's advisers have indicated that the phrase in question will not be included in future dissolution proclamations.

Legislation

The two items of legislation creating the greatest procedural interest during the year were the *Wool Tax (Nos 1 to 5) Amendment Bills 1991* and the *Political Broadcasts and Political Disclosures Bill 1991*.

Wool Tax (Nos 1 to 5) Amendment Bills 1991

The package of bills for restructuring the wool industry was the subject of highly unusual proceedings which were not concluded until the last minute before the Senate rose for the winter long adjournment. It is believed that one aspect of those proceedings is quite unprecedented.

The most contentious matter in issue was the rate of tax on wool to be set by the legislation. The Government proposed a maximum rate of 15% under the bills, but both the Democrats and the Opposition wished to have a lower rate. The Democrats moved to substitute a rate of 12%, but this amendment was defeated. The Democrats then moved for a rate of 13% with the intention of giving the government, as Senator Bell expressed it, a last chance to vote for a rate closer to that proposed by the government before the even lower rate proposed by the Opposition was put. This second Democrat amendment, however, was defeated, and the Opposition amendment providing for a rate of 10% was then moved and carried. As they were bills imposing taxation, the amendments were moved in the form of requests to the House of Representatives.

Before dealing with the wool tax bills, the Senate had considered and amended two of the other bills in the package. With the rate of tax set, it was necessary to return to one of those bills to make a consequential amendment.

The non-government parties then adopted the tactic of sending the wool tax bills back to the House of Representatives while retaining in the Senate the other bills in the package. This was done by adjournment of the debate on the motion for the third reading of those bills and a motion fixing the resumption of the debate as an order for consideration after the wool tax bills were returned from the House and considered by the Senate. These tax bills, being the subject of requests, were not read a third time: the third reading of such bills does not take place until the Senate's requests have been dealt with.

On 20 June the wool tax bills were returned from the House of Representatives with the requested amendments not made. A government motion that the requests not be pressed was negatived, and a message was accordingly sent to the House indicating that the Senate had resolved to press the requests.

The bills were returned from the House of Representatives on the last day of the sittings with the requested amendments still not made, but with a government undertaking that a lower rate of taxation than the statutory ceiling of 15% would be initially set by regulation, and with a consequential amendment made to the bills. The government undertaking, however, did not satisfy the majority of the Senate, and the government motion that the requests not be pressed and that the substitute amendment be agreed to was negatived. The adjournment of the Senate was then moved.

In consequence of behind-the-scenes discussions, however, the question for the adjournment of the Senate was negatived after some debate, and the responsible Minister, Senator Cook, then by leave moved that the message from the House of Representatives be recommitted to the committee of the whole for reconsideration. The same motion as was previously negatived was then moved again in committee, this time accompanied by a government undertaking that the regulation-making power would be used to lower the rate of taxation initially to the figure of 12% originally suggested by the Democrats. This motion was carried, the resolution reported, the report of the committee adopted and the bills read a third time. It was then necessary to recommit three of the other bills to make amendments to them, one of which altered the amendment previously made. The motion for the recommittal of those bills could be moved to supersede the motion for the third reading, and this procedure, also not often used, was employed to get the bills back into committee and amended as required. Those bills were then reported and given a third reading, thereby allowing the package of legislation to be passed, when it had appeared only an hour or so before that the wool package was doomed to failure.

While these methods could be considered somewhat unusual, they allowed a last-minute agreement between the Houses to be reached. The primary device, whereby the House of Representatives message was recommitted after it had been considered, may be regarded as irregular. It depended for its effectiveness upon a message not having been dispatched to the House indicating that the Senate had again

resolved to press its requests. Had the message been sent, the motion could not have been moved. The motion had to be moved by leave, because there is no provision in the procedures for such a motion to recommit a House message which has already been dealt with. Once a message from the House of that sort has been considered a message should be sent to the House and there is then no basis for the Senate to change its mind unless the bill is again returned from the House. In a bicameral system of two Houses of virtually equal powers, however, it is important not to restrict unduly the methods by which the Houses may treat with each other and the means whereby they may reach agreement. It was for this reason that the revised standing orders adopted in 1989 retained the procedures for conferences between the Houses, although a conference has not been held for many decades.

Political Broadcasts and Political Disclosures Bill 1991

This bill was debated towards the end of the Budget sittings following an inquiry by a select committee. It was clear that the bill would be the subject of an intense political battle, because of the strong resistance by the Opposition to its principal aim, as it was originally drafted, to prohibit political advertisements on television and radio. The opening shots were fired on 2 December before proceedings on the bill had actually commenced, with two unusual notices of motion given by the Opposition. One motion provided for the bill to be divided, so as to separate the provisions relating to political broadcasts from the provisions relating to the disclosure of political donations, and specified the way in which the bill was to be divided and the amendments which were to be made to each resulting bill. The other motion provided for an instruction to the committee of the whole on the bill to divide the bill. These motions were eventually moved on 4 December, after the second reading of the bill, and were debated and negatived.

Before proceedings on the bill actually commenced, it was known that the Government and Australian Democrats had agreed to amend the bill so as to provide for certain restrictions on political broadcasts rather than a prohibition. This involved extensive amendment of the bill and the proceedings were expected to be extremely protracted. On 3 December, however, the Government and most of the Australian Democrats voted together to impose a limitation of debate, or a "guillotine" on the bill. The guillotine provided for proceedings on the bill to be concluded by 7.30pm on the following day. Normally in the Senate limitations of time provide for quantities of time rather than fixed terminating times. One of the indirect results of the fixed time was that the Senate sat all night on 3 December to conclude the second reading debate on the bill. In the past, a fixed-time guillotine has been regarded as suspending all other business until consideration of the bill in question is concluded, but this interpretation has not been followed for many years, and the normal routine of business continues where such a limitation is in place. Thus the normal routine of business was followed on 4 December.

Senators of the non-government parties and the independent Senators have had on the Notice Paper since 1986 contingent notices of motion to allow them to move suspension of standing orders to dispense with key elements of a guillotine, for example, the prohibition on debate on a motion declaring a bill to be an urgent bill, the limitation on debate on a motion to allot time for the consideration of the bill, and the limitation of time itself once imposed. On 3 December Senator Hill used one of these contingent notices to move suspension of standing orders in relation to the limitation of debate on the allotment of time. The suspension motion was negatived. Later in the debate Senator Hill attempted to move again the same suspension motion. The President then made a ruling, pointing out that this raised the possibility of an endless series of motions for the suspension of standing orders endlessly extending the time for debate on the allotment of time (in the past, it has been accepted that debate on a suspension motion, which is limited to 30 minutes, would not take up the time available for debate on the allotment of time). The President ruled that only one motion to suspend standing orders to extend the time allowed for debate could be moved pursuant to the contingent notice. This ruling was accepted at the time, but a similar ruling was to cause intense dispute later.

The bill was considered at length in committee of the whole on 4 December and extensive amendments were made to it, including amendments moved by all parties. A motion moved by the Government to extend the time allowed for the bill to noon on 5 December was agreed to and on the following day a further extension of time was agreed to (the standing order relating to the guillotine, standing order 142, has always been interpreted as allowing such motions for extensions of time). On 5 December a motion was moved by the Government to allow all circulated Opposition and Democrat amendments which had not been moved to be put at the expiration of the allocated time; the standing order contemplates only circulated government amendments being put in that circumstance.

In the committee of the whole on 5 December the Chairman of Committees ruled that a motion to suspend standing orders to remove the limitation of time on the bill could not be moved twice. On this occasion, however, the ruling was disputed and a motion of dissent was moved. The dissent having been reported to the Senate, the President upheld the Chairman's ruling and pointed out that it was then open to any Senator to move a motion of dissent from the President's ruling. This procedure, which is in accordance with the standing orders and long-established practice, was disputed, no doubt due to the heat of the occasion, and after some confused debate it was provided by motion, moved by leave, that the matter be dealt with by consideration of a motion to dissent from the *Chairman's* ruling. This motion of dissent was negatived and the committee of the whole then resumed.

On 9 December, in accordance with an undertaking given during debate, the President made a statement further explaining his and the Chairman's rulings. The essence of the statement is that when the

Senate has determined that a bill is an urgent bill and must be dealt with by a particular time, the Chair is under an obligation to ensure that the procedures do not operate in such a way as to subvert and frustrate that decision of the Senate. Once the Senate has been asked, by way of a motion to suspend standing orders pursuant to contingent notice, to change its mind and alter the limitation of time imposed on the bill, and had refused to do so, the Chair could not allow an endless series of motions to suspend standing orders which would defeat the limitation of time. The President's statement was extensively debated and eventually referred to the Procedure Committee. It appears from the debate that the matters in dispute were not so much the President's ruling in relation to suspension motions, but the fact that the President did not hear further argument before upholding the Chairman's ruling, and the refusal of the Chair to hear further points of order during the proceedings on the bill. In his statement the President pointed out that it is always open to the Chair to determine a matter without hearing any debate, and that an endless series of points of order (which also raise the possibility of an endless series of motions of dissent from the rulings of the Chair) could also be used to subvert the limitation of time, and that it must be open to the Chair to decline to entertain any further points of order.

Loan Bill

For the first time in a number of years a loan bill was introduced by the government; because the budget has been in surplus in recent years it has not been necessary for the government to seek parliamentary authorisation to borrow money to cover the deficit. The bill, debated on 13 March, applied to the 1990-91 financial year only. The government did not attempt to extend into future years the authorisation to borrow. Such attempts have previously been rejected by the Senate.

"Macklin motions"

A practice initiated by the Australian Democrats some years ago and named after the Australian Democrat Senator who first moved the motion continues to be employed towards the end of each period of sittings. Its effect is to set a deadline by which government bills to be considered by the Senate by the end of a period of sittings must be introduced into that House. A motion passed on 14 May set a deadline of 7 June for the Autumn sittings while the deadline for the Budget sittings was set as 15 November by a motion agreed to on 14 October. While most legislation continues to be introduced towards the end of a period of sittings, the setting of a cut-off date prevents any significant diminution in the level of scrutiny by the Senate.

Motions for Tabling of Documents

Frequent use is now being made of motions requiring the tabling of documents. Such matters often arise suddenly and may not relate to an item of business that is already before the Senate. A motion to bring on a completely new item of business can be moved only by leave or

by the suspension of standing orders. In order to overcome the requirement in standing order 209 for an absolute majority to carry a motion for the suspension of standing orders moved without notice, and to allow for a motion to bring on an item of new business, a contingent notice of motion is used. The contingent notice of motion enables a Senator, at virtually any time, to move a motion for the suspension of standing orders to allow a further motion to "provide for consideration of a matter". In order to bring on without notice some completely new item of business, therefore, two procedural steps are necessary: the suspension of standing orders pursuant to the contingent notice, followed by the motion to provide for consideration of the matters. The later motion usually provides that a motion relating to a particular matter may be moved forthwith and have precedence over all other business until determined. This provision is designed to prevent debate on the substantive motion being adjourned in the normal way, which, in relation to a motion moved by a Senator other than a minister, would put the substantive motion at the end of the list of general business for the next day of sitting.

These procedures were used on 8 May by the Leader of the Opposition in the Senate, Senator Hill, to enable him to move a motion requiring the tabling of documents relating to the intervention by the Minister for Administrative Services in the evaluation of certain tenders. A motion that the substantive motion be put forthwith was amended to provide that it be put at a later hour that day. It was so put and the matter was twice adjourned because an undertaking was given in relation to the tabling of the documents, which were tabled later in the day. The motion requiring the tabling was not called on again that day and so went to the bottom of the list of general business orders of the day.

These procedures were used to move a motion on 16 May to require the tabling of advice from the Human Rights Commissioner in relation to the government's proposal for a prohibition on political advertisements on radio and television. After the two procedural steps had been taken and the substantive motion moved, the Minister for Defence raised a point of order, the gist of which was that the document in question was advice to government and should not be tabled. After considerable discussion on the point of order, the debate was adjourned at the request of the Deputy-President to enable him to consider a ruling, which was delivered later in the day. Pointing out that standing order 164, which provides that documents may be ordered to be tabled, does not contain any exceptions or exemptions as to the documents which may be ordered to be tabled, the Deputy-President indicated that the argument which had taken place really related to the question of whether the motion should be passed rather than whether the motion was in order. If the responsible minister considered that there were reasons for not tabling the document, that was a matter which might be argued in debate. The motion was certainly in order. Debate on the motion continued, but it was negatived, the Leader of the Australian Democrats indicating that the document in question was advice on the government's proposal and that it would be more appropriate to await advice on the bill which

had been introduced after the preliminary advice had been given. On 28 May, the government tabled the advice from the Human Rights Commissioner and an advice from the Attorney-General's Department.

On 10 September the Senate agreed to an order requiring the government to table a tape recording of conversations between the Minister for Arts, Sport, the Environment, Tourism and Territories and representatives of conservation groups. This discussion had become the subject of conflicting reports and disputation. Under the standing orders, "documents" includes any item recording information, and covers sound and video recordings, specimens of which have been tabled previously.

On 12 September, a letter from the Leader of the Government was tabled, indicating that the government would not table the tape recording, but attaching an extract from the transcript of the tape recording. A motion to censure the government for its failure to table the tape recording was then carried. It was pointed out in the motion that, unlike previous refusals to provide documents in response to orders of the Senate, this refusal was not based upon any claim of executive privilege. A motion was then moved by Senator Coulter to require the tabling of an intergovernmental report connected with the matter, and debate on that motion was adjourned.

Orders for returns have been relatively common in recent years, but refusals by the government to comply with them have been rare. The last occasion of such a refusal occurred in 1982, when the then government declined to table certain documents relating to tax avoidance, on the ground that disclosure of the documents might prejudice legal proceedings.

Notices of Motion

In August 1990, standing order 76 relating to notices of motion was amended to require that a notice must consist of "a clear and succinct proposed resolution or order of the Senate relating to matters within the competence of the Senate," without extraneous matter or quotations. The reference to matters within the competence of the Senate was intended to prohibit motions congratulating sporting teams and the like. The President made a statement on 13 November indicating that notices were again becoming unduly prolix and that he intended to enforce the rules more strictly.

New Committees

Several new committees were established during the year. These included:

Joint Committee on Corporations and Securities (established 19 February 1991 on commencement of the *Australian Securities Commission Act 1989*);

Joint Select Committee on Certain Aspects of the Operation and Interpretation of the Family Law Act (established 13 March 1991);

Select Committee on Superannuation (established 5 June 1991);

Select Committee on Community Standards Relevant to the Supply of Services Utilising Telecommunications Technologies (established 21 June 1991);

Select Committee on Political Broadcasts and Political Disclosures (established 14 August 1991; reported 28 November 1991); and

Standing Committee on Rural and Regional Affairs (established 4 September 1991).

The last committee partly replaced the former *Select Committee on Animal Welfare* which presented its final reports to the Senate on 3 September 1991, and was thereby dissolved.

New Senators

Two new Senators were appointed during the year and a third appointment foreshadowed.

Following the resignation of Senator Peter Baume on 28 January 1991, his replacement, Senator John Tierney, was appointed by the Governor of New South Wales and sworn in on 12 February. The New South Wales Parliament was not sitting at the time. While other states take the view that an appointment to the Senate can only be made by the Governor if the state Parliament is prorogued, the New South Wales authorities interpret section 15 of the Constitution as allowing an appointment by the Governor whenever the state Parliament is not sitting. Where a Senator is chosen by the Governor to fill a casual vacancy, that Senator holds his place in the Senate only until the expiration of 14 days after the next sitting of the state Houses of Parliament; the Houses choose a person to hold the place after that time. Because the same person is invariably chosen for a vacancy on both occasions, it is usually said that the Senator's appointment has been 'confirmed', but technically the Senator has been chosen to fill a vacancy for two different periods. The 'confirmation' of Senator Tierney's appointment to the Senate by the New South Wales Parliament was notified to the Senate on 9 April 1991. It is the practice not to swear a Senator in again in these circumstances.

Senator Paul McLean resigned from the Senate on 22 August, following which the Senate adjourned for a week. During that week, the New South Wales Parliament appointed Senator Karin Sowada as his replacement. Senator Sowada was sworn in on 3 September 1991, the Senate's next sitting day.

Towards the end of 1991 Western Australian Green Senator, Jo Vallentine, announced that she would be submitting her resignation

from the Senate at the end of January 1992. It is expected that she will be replaced by Ms Christabel Chamarette.

Parliamentary Secretaries

The appointment of Senator McMullan, the Parliamentary Secretary assisting the Treasurer, as the Manager of Government Business resulted in his performing a greater role in the chamber and in questions to the President about his powers under the procedures of the Senate. In response to those questions the President made a statement on 18 June, in which he pointed out that apart from answering questions at question time, which only a minister could do, there were few procedural steps which could only be taken by a minister, and that when Senator McMullan took those steps he was taken to be acting on behalf of a minister, although that was not always indicated. The President pointed out that a statement by a Senator that he or she is acting on behalf of another Senator is invariably accepted by the Senate, and stated that the Chair intended to uphold that convention. The President incorporated in *Hansard* a paper on the powers of parliamentary secretaries which had been circulated at the time of Senator McMullan's appointment.

Senator McMullan then gave notice of a motion for an order which would empower a parliamentary secretary to do that which only a minister is empowered to do, except answer questions at question time. On the following day, Senator McMullan changed his motion to refer the proposed order to the Procedure Committee. This committee reported on 22 August, recommending that parliamentary secretaries be formally empowered to take certain procedural steps hitherto taken only by ministers, except answer questions at question time. On 3 September, the Senate agreed to a special order to this effect. The order covers the appearance of parliamentary secretaries before estimates committees on behalf of ministers.

Petition from Foreigners

The President referred on 6 March to a petition presented on the previous day, the propriety of which had been questioned by some Senators. The petition had been presented by leave because it was not in the proper form, but the cause of the Senators' concern was that it had been signed by foreign nationals resident outside Australia. The President pointed out that there is nothing to prevent the presentation of a petition from foreigners not resident in Australia. One can think of many circumstances in which such a petition is quite appropriate in the context of the traditional function of a petition seeking redress of grievances.

Private Senator's bill passed

Senator Watson's Income Tax Assessment (Valueless Shares) Amendment Bill was passed by the Senate on 17 October. Senator Watson is a member of the somewhat exclusive group of private Senators who have had more than one bill passed by the Senate. He

has also succeeded in having another of his bills, also relating to taxation matters, find its way to the statute book, although this was not done directly but by the government adopting his proposal in a government bill.

Privilege

The Committee of Privileges presented a report on 6 March 1991 on a case of alleged improper interference with a witness. The case was interesting in that the activity which was the subject of the report consisted of an apparent threat by a person to circulate a document containing an allegation that another person had given false evidence to a Senate committee, in an apparent attempt to influence that other person in relation to a contested position in a private association. This raised the question of whether such an action could be regarded as interference with a witness, as the action was apparently not taken in consequence of a witness's evidence and was not taken with any purpose of influencing a person in relation to evidence. The Committee found that there was not sufficient evidence of an intention to interfere with a witness to find that a contempt had been committed. The Committee's report was adopted by the Senate on 7 March.

On four occasions during the year, the Committee reported on cases of persons aggrieved by remarks made in the Senate. In each case, the Senate accepted the Committee's recommendation that a response by the aggrieved person be published.

On other matters of privilege, the question of the application of statutory secrecy provisions to the work of parliamentary committees was again raised following contrary advice given in 1990 to the Joint Committee on the National Crime Authority on this question. The Solicitor-General had given advice that the secrecy provisions in the National Crime Authority Act may affect the giving of evidence before the Joint Committee, but this view was disputed by advice to the Committee from the Clerk of the Senate.

On 30 May, Senator Crichton-Browne tabled an opinion by the Attorney-General's Department suggesting that another set of statutory secrecy provisions could prevent the provision of evidence to a parliamentary committee. He also tabled a commentary by the Clerk on that opinion. Later the same day, yet another secrecy provision was raised and another Attorney-General's Department opinion was tabled by the Minister for Justice. This opinion, however, contradicted the other Departmental opinion tabled earlier, and indicated that secrecy provisions could not prevent the giving of evidence to a parliamentary committee. On 4 June, Senator Crichton-Browne tabled a commentary on the two opinions, pointing out the contradiction between them and suggesting the matter should be resolved.

The basic question in issue was whether statutory secrecy provisions, which say nothing about parliamentary inquiries, have any application to such inquiries. Largely on the basis that of the principle

that parliamentary privilege is not affected by a statutory provision except by express words, the advices given by the Clerk argue that such provisions have no such application.

On 16 August, the Minister for Foreign Affairs, on behalf of Senator Tate, the Minister representing the Attorney-General, tabled an opinion of the Solicitor-General which conceded that a statutory secrecy provision having general application does not apply to the provision of information to a parliamentary committee, on the basis that the law of parliamentary privilege is not altered by a statutory provision unless the provision clearly has that effect. However, the Solicitor-General's opinion also suggested that a statutory provision may alter the law of parliamentary privilege not only by express words but by 'necessary implication', and that the secrecy provisions of the National Crime Authority Act may have some application to the Joint Committee established under that Act.

On 9 September, Senator Crichton-Browne introduced a bill which would amend the Parliamentary Privileges Act to make it clear that the law of parliamentary privilege is not altered by another statutory provision except by express words.

The final matter of parliamentary privilege considered during 1991 arose in connection with the Transport and Communications Legislation Amendment Bill 1991, an omnibus bill amending various statutes in the transport and communications area. The bill contained provisions to amend the Parliamentary Proceedings Broadcasting Act to extend to the televising of the proceedings of the two Houses and their committees the absolute privilege currently given by the Act to radio broadcasts of the proceedings of the Houses.

It is not known how these provisions came to be included in the bill, and there appears to have been no consultation with the Houses before the provisions were introduced. In the proceedings on the bill in the Senate on 14 November, the provisions in question were struck out of the bill with the agreement of all parties. It was pointed out that the absolute privilege given to radio broadcasts was enacted when the only broadcast of proceedings was the virtually continuous radio broadcast by the Australian Broadcasting Commission. Now that television stations are authorised to televise extracts of proceedings of the Houses and their committees, the question of extending absolute privilege to those broadcasts involves different issues. It was also pointed out that the Parliamentary Privileges Act provides privilege for all fair and accurate reports of parliamentary proceedings, and that this cover is probably as much as is appropriate for the televising of extracts. Edited television extracts, it was pointed out, could constitute highly unfair and inaccurate reports of proceedings and should not have absolute privilege.

It appears that further consideration will need to be given to this matter of the appropriate protection to be given to broadcasts of proceedings.

Procedural changes

Several reports of the Procedure Committee were considered during the year and the recommendations of the Committee determined. The outstanding matter in the First Report of 1990, the proposed new procedure for the presentation and debate of committee reports, was referred back to the Procedure Committee on 12 February. The Second Report of 1990 was considered on 13 February and the following decisions were taken in relation to the major matter covered by the report:

Electronic Voting The Senate took note of the committee's recommendation that electronic voting not be introduced at this stage.

Disclosure of in camera evidence The Senate rejected a motion proposed by the majority of the committee which would have forbidden the disclosure of in camera evidence taken by a committee in a dissenting report, and passed the alternative resolution recommended by the minority, whereby guidelines are adopted for the treatment of in camera evidence in a dissenting report.

Access to Video Recordings of Senate Proceedings The Senate adopted the recommended resolution specifying conditions for access to video recordings of Senate proceedings by persons other than television stations.

Publication of Documents Presented During Adjournments On the recommendation of the committee, the Senate made permanent the authorisation of the publication of committee reports presented to the President during long adjournments of the Senate, and also agreed to a similar resolution relating to government documents presented to the President.

Reference of Bills to Committees The Senate rejected a recommendation that the orders of the Senate of 5 December 1989 containing the new procedures for the reference of bills to committees be terminated at the end of this period of sittings. This means that those procedures now remain in force until the end of the current session, which will probably last until the end of the current Parliament.

Committee Reports The Senate agreed to a proposal that the consideration of committee reports be transferred from Wednesdays to Thursdays.

Quorum

The bill to alter the quorum of the Senate from one-third to one-quarter of the Senators, which was first introduced in 1989 following a recommendation of the Select Committee on Legislation Procedures, was finally dealt with and passed on 21 August, on a division,

members of the Opposition opposing the bill. The House of Representatives agreed to the bill 12 September. The quorum of the Senate is now 19 Senators rather than 26.

Referral of Bills to Committees

The new procedures for the referral of bills to committees will remain in force until the end of the current session, which will probably last until the end of the current Parliament, following the rejection by the Senate of a recommendation by the Procedure Committee that they be terminated (*supra*). Numerous bills were referred to the standing committees under these procedures but the old procedures for referring bills remain in place and available to be used. A reminder of this was provided on 11 April when the Australian Capital Territory (Electoral) Amendment Bill 1991 was referred after the second reading to the Standing Committee on Environment, Recreation and the Arts on the motion of the responsible minister. In May, two more bills, the Defence Force superannuation legislation and the Sex Discrimination Bill 1991, were referred to committees under the old procedures, bypassing the Selection of Bills Committee.

The new procedures provide for expedited passage through the committee of the whole stage by way of a motion for the adoption of the standing committee's report. The question arose whether this procedure was available for bills referred under the old procedures. On a strict reading, the procedure was only available for bills referred under the new procedures but it was considered more rational to allow any bill referred to a committee, whether under the old or the new procedures, to be dealt with by that procedure. The rights of Senators are not abridged by this interpretation because any Senator can prevent the motion for the adoption of the standing committee's report by circulating amendments not recommended by the standing committee, thereby ensuring that the bill is considered in the normal way. There is also the opportunity to move further amendments to the bill by way of amendment to the motion for the adoption of the standing committee report, if the Senator proposing further amendments chooses to proceed that way. These applications of the procedures were adopted during the consideration of several bills which had been referred to committees under the old procedures.

There is, however, one difference of treatment required for bills referred under the old procedures which cannot be ignored because of the explicit terms of standing order 115(3) and paragraph (8) of the new procedures. The standing order requires that where a bill has been reported on by a committee a future day is to be fixed for the next stage of the bill, and the automatic fixing of the day for the next stage under the new procedures cannot be separated from the operation of those procedures. It was necessary, therefore, that motions be passed on 29 and 30 May for the further consideration of bills referred to committees under the old procedures. On the first occasion of such a motion, the Manager of Government Business referred to the absence of a provision for automatic consideration of these bills, and suggested that the Procedure Committee consider the

matter. Standing Order 115 could easily be amended to provide for automatic further consideration of all bills reported from committees.

Regulations Disallowed

On 14 February, the Senate disallowed regulations which would have empowered the charging of an admission fee for the Australian War Memorial. After the disallowance motion was passed, the Minister for Justice and Consumer Affairs, Senator Tate, by leave moved a motion to refer matters arising from the making of the regulations to the Standing Committee on Community Affairs. His stated intention was to have that committee inquire into the financial implications of the disallowance of the regulations for the War Memorial. His motion was withdrawn when it was agreed that the matters he wished to be examined could be examined in the relevant Estimates Committee.

Special Sitings

The parliamentary year began with special sittings of both Houses on 21 and 22 January to consider a motion supporting the government's policy on the Gulf War.

When the leaders of the non-government parties announced that they wanted a special sitting to consider the commencement of hostilities against Iraq, it was certain that the Senate at least would sit, because under the long-standing provision, contained in the new standing orders, relating to the times of sitting, an absolute majority of Senators, represented by their party leaders, have the power to require the President to recall the Senate. In the event, the government decided that both Houses should meet.

As well as debating the Gulf War motion, the Senate transacted other business including the giving of notices and the tabling of documents. A Question Time was held on 22 January and other business included opposition motions relating to the situation in the Baltic States, and a motion condemning the Australian Broadcasting Corporation for its refusal to send messages through Radio Australia to Australian service personnel in the Gulf.

A special sitting also occurred at the beginning of 1992 when the President of the United States of America, Mr George Bush, visited Australia. The leaders of the major parties had expressed the intention of granting Mr Bush the honour of addressing both Houses of the Parliament at formal sittings of the Houses. A similar honour was conferred on the Australian Prime Minister when he visited Washington in 1988. Unlike the United States Congress, however, the Australian Parliament has not had a practice of "joint sessions" addressed by distinguished visitors, or, indeed, of allowing the Houses to be addressed by anyone other than their own members. It was therefore necessary to devise special resolutions to bring about the proposed occasion.

In framing the resolutions, it was necessary to make it clear that the proposed meeting was not in any sense a joint sitting of the Houses such as occurs under section 57 of the Constitution in relation to a continuing disagreement between the Houses over legislation which has been the subject of a simultaneous dissolution of the Houses. The occasion was therefore brought about in the following way. The House of Representatives passed a resolution inviting the US President to address the House at a special meeting to be held on 2 January 1992, and inviting the Senate to meet in the House of Representatives chamber for that purpose. This resolution was then forwarded to the Senate by message. The Senate then, on 28 November, passed a resolution inviting the US President to address the Senate and accepting the invitation of the House to meet in the House of Representatives chamber for that purpose. The Senate's resolution also concurred with provisions in the House's resolution to the effect that the address by the US President would be the only business transacted at the meeting, which would be concluded forthwith after the address. The Senate's resolution was passed only after some debate on the implications of it and a statement by the President explaining the provisions of the resolution.

Sub judice - the Westpac letters

It has long been a convention that matters subject to legal proceedings should not be debated in the Senate and successive Presidents have made rulings on the 'sub judice' principle. The principle was again tested during 1991 in relation to the so-called 'Westpac letters'. Speaking on the adjournment debate on 12 February about the lending activities of banks, Senator McLean indicated that he intended to refer to certain documents in his possession relating to the activities of the Westpac Banking Corporation. The President interrupted the debate and stated that he had received submissions from Westpac to the effect that the documents should not be disclosed in proceedings in the Senate, on the ground of the sub judice principle. Senator McLean had also made submissions to the President urging him to permit disclosure of the documents on public interest grounds and because of the right of the Senate to debate matters of public interest. In weighing up the competing claims, the President stated that disclosure of the documents would prejudice legal proceedings being undertaken by Westpac to have the documents suppressed by the courts, in that disclosure of the documents would probably terminate the proceedings. He ruled that the documents should not be disclosed. Senator McLean was also prevented from quoting parts of his correspondence with the President which would have indirectly revealed the contents of the documents.

The President's ruling aroused great controversy in the press. Senator McLean asked him to reconsider the ruling but the President declined to do so. Banking practices were the subject of an urgency motion proposed and then withdrawn by Senator McLean. This step was criticised by the Leader of the Opposition who successfully moved that the Senate invite Senator McLean to proceed with the urgency motion, which was duly debated and negatived.

The documents in question were read out in the South Australian Legislative Council on 20 February. Westpac continued its action in the courts, however, to have the documents suppressed, and on the basis that those actions were continuing, the President's ruling was not changed.

In response to questions in the Senate about the possible use of the documents by the Senate Standing Committee on Legal and Constitutional Affairs in relation to its inquiry into the cost of justice, the President replied that the committee could have the documents laid before it and hear evidence in relation to them, but in considering the publication of the documents, the committee should have regard to the President's ruling in the Senate. In the absence of a contrary order by the Senate, a committee had power to order the publication of documents laid before it.

On 5 March, Senator McLean asked the President whether he would review his ruling following a judgment by the New South Wales Supreme Court dismissing an application to remove the injunctions against publication of the documents. The President stated that he would not alter his ruling while that judgment was subject to appeal in the New South Wales Court of Appeal, but indicated that he might review his ruling when the judgment of the Court of Appeal was known.

On 7 March the President informed the Senate that the documents in question had been ordered to be published by the House of Representatives Standing Committee on Finance and Public Administration, that the Managing Director of Westpac Banking Corporation had indicated to the Committee that the bank would not contest the action to have the injunctions removed, and that in view of these developments, the ruling of 12 February was no longer operative. Senator McLean then tabled the documents by leave.

The sub judice principle was again raised in August when Senator Aulich took a point of order in relation to a notice of motion given by Senator Baume. The basis of the point of order was that the notice of motion was making allegations against a person who was the subject of criminal proceedings, which proceedings were mentioned in the notice but which were not connected with the allegations. The point of order raised the possibility that legal proceedings could be prejudiced by making allegations against a person even the allegations were not connected with matters at issue in the criminal proceedings. The President, in accordance with the less restrictive interpretation of the sub judice principle in recent years, ruled that the notice was in order as long as it did not refer to the merits of the legal proceedings.

Tabling of Documents by Minister

Documents required to be tabled by statutory provisions, including delegated legislation made under statutes, are usually forwarded to the Clerk of the Senate and tabled by the Clerk at the appropriate

time. There is, however, nothing to prevent such documents being tabled by some other method, including by a minister or by another Senator. An example of this occurred on 8 May with the tabling by a minister of certain determinations under the Social Security Act. These determinations related to the controversial question of rates of interest deemed to be earned by the funds of social security benefits recipients, and were tabled immediately after they were made, the government obviously wishing to have them tabled without delay.

Television

The order of the Senate allowing the televising of Senate proceedings was amended on 9 May on the motion of Senator Vanstone to remove the prohibition on televising the adjournment debate.

Unanswered Questions on Notice

During 1991 there was regular use of the procedure for extracting answers to questions on notice which remain unanswered for thirty days. The established practice now is that if an explanation of failure to answer questions within thirty days is not forthcoming when requested at the end of question time, a motion for an order for the answers and explanations to be tabled is moved.

Unparliamentary language

An interesting discussion on unparliamentary language took place on 14 and 15 October. In response to questions about a ruling he had made, the Deputy-President explained that, while a statement that a Senator had misled the Senate was not necessarily unparliamentary, because it did not necessarily imply that a Senator had wilfully or deliberately misled the Senate, as with all expressions regard must be had to the context of the use of it. Other words uttered by a Senator had led him to conclude that such an implication was being made. This assessment of the significance of the Senator's word was subsequently disputed. The distinction between saying that a Senator had misled the Senate and saying that a Senator has deliberately misled the Senate is similar in principle to the distinction between saying that a Senator's statements are not correct and saying that they are lies.

Unproclaimed legislation

A list of legislation which commences on proclamation but which has not yet been proclaimed was tabled, in accordance with an order of the Senate, on 30 May. The list contains reasons for the non-proclamation of legislation and enables this aspect of government action to be scrutinised.

Appendix - Senate Committees

Committee Reports Presented

During the year, the following reports were presented by Senate Standing, Joint and Select Committees:

Committee of Privileges

Possible improper influence or penalty on a witness in respect of evidence before a Senate committee (30th Report) (6 March 1991)

Person referred to in the Senate (Sir William Keys) (31st Report) (11 March 1991)

Person referred to in the Senate (Ms Patsy Harmsen) (32nd Report) (21 June 1991)

Person referred to in the Senate (Dr Alex Proudfoot, FRACP) (33rd Report) (3 September 1991)

Person referred to in the Senate (Ms Jeannie Cameron) (34th Report) (14 November 1991)

Committee's work since the passage of Privilege Resolutions of 25 February 1988 (35th Report) (2 December 1991)

Procedure Committee

First Report of 1991: Powers and functions of Parliamentary Secretaries in the Senate (22 August 1991)

Second Report of 1991: Presentation of committee reports; Estimates committees; Deputy-chairmen of standing committees; calling of Senators in debate; Restoration of bills to the notice paper; Government responses to committee reports (12 September 1991)

Regulations and Ordinances Committee

88th Report - Report for 1989-90 (16 May 1991)

89th Report - Report on Scrutiny by the Committee of Regulations made under the *Sex Discrimination Act 1984* (16 October 1991)

90th Report - Annual Report 1990-91 (12 December 1991)

Scrutiny of Bills Committee

Reports - First Report to Twenty-second Report

Alert Digests - First to Twenty-second

Standing Committee on Community Affairs

National Health Amendment Bill 1991 (18 June 1991)

National Food Authority Bill 1991 (18 June 1991)

Social Security (Disability and Sickness Support) Amendment Bill 1991 (22 August 1991)

Report on the examination of annual reports - No. 1 of 1991 (12 September 1991)

Health Insurance Amendment Bill 1991 (11 November 1991)

Health and Community Services Legislation Amendment Bill 1991 (Clauses 13, 38 and 53) (2 December 1991)

Standing Committee on Employment Education and Training

Active Citizenship Revisited (14 March 1991)

Education Services (Export Regulation) Bill 1990 (7 May 1991)

Report on the examination of annual reports (5 September 1991)

Come in Cinderella: The emergence of adult and community education (27 November)

Standing Committee on Environment, Recreation and the Arts

Australian Capital Territory (Electoral) Amendment Bill 1991 (28 May 1991)

Report on the examination of annual reports (21 June 1991)

Australian Capital Territory Self-Government Legislation Amendment Bill 1991 (26 November 1991)

Standing Committee on Finance and Public Administration

Estimates Committee documentation and procedures (9 May 1991)

Military Superannuation and Benefits Bill 1991 and Defence Force Superannuation Legislation Amendment Bill 1991 (28 May 1991)

Petroleum Resource Rent Legislation Amendment Bill 1991. Clause 15 of the Petroleum (Submerged Lands) Amendment Bill 1991 and Clause 4 of the Petroleum (Submerged Lands) (Royalty) Amendment Bill 1991 (5 June 1991)

Health Legislation (Pharmaceutical Benefits) Amendment Bill 1991 (Clause 7) (18 June 1991)

Report on annual reports tabled July 1990-June 1991 (21 June 1991)

List of Commonwealth Bodies (presented to Acting Deputy-President on 27 June 1991, pursuant to resolution of the Senate of 13 February 1991; tabled 13 August 1991)

General Insurance Supervisory Levy Amendment Bill 1991, Insurance Laws Amendment Bill 1991, Life Insurance Policy Holders' Protection Levies Bill 1991, Life Insurance Policy Holders' Protection Levies Collection Bill 1991, Life Insurance Supervisory Levy Amendment Bill 1991, Insurance Acquisitions and Takeovers Bill 1991 (8 October 1991)

Fringe Benefits Tax Amendment Bill 1991, Income Tax (International Agreements) Amendment Bill (No. 2) 1991, Income Tax (Deferred Interests Securities) (Tax File Number Withholding Tax) Bill 1991 and Taxation Laws Amendment Bill (No. 3) 1991 (26 November 1991)

Standing Committee on Foreign Affairs, Defence and Trade

United Nations peacekeeping and Australia (29 May 1991)

Scrutiny of annual reports - No. 1 of 1991 (21 June 1991)

Report on the examination of annual reports - No. 2 of 1991 (11 December 1991)

Standing Committee on Industry, Science and Technology

Rescue the Future - Reducing the impact of the greenhouse effect (presented to the President on 23 January 1991, pursuant to order of the Senate of 23 August 1990; tabled 12 February 1991)

Fisheries Administration Bill 1991, Fisheries Management Bill 1991, Fisheries Agreements (Payments) Bill 1991, Fisheries Legislation (Consequential Provisions) Bill 1991, Fishing Levy Bill 1991, Foreign Fishing Licences Levy Bill 1991, Statutory Fishing Rights Charge Bill 1991 (First Report) (18 June 1991)

Primary Industries (Industry Councils) Bill 1991 (18 June 1991)

Australia's anti-dumping and countervailing legislation (21 June 1991)

Scrutiny of annual reports: Reports tabled - Budget sittings 1990 (21 June 1991)

Fisheries Administration Bill 1991, Fisheries Management Bill 1991, Fisheries Agreements (Payments) Bill 1991, Fisheries Legislation (Consequential Provisions) Bill 1991, Fishing Levy Bill 1991, Foreign Fishing Licences Levy Bill 1991, Statutory Fishing Rights Charge Bill 1991 (Second Report) (13 August 1991)

Fisheries Administration Bill 1991, Fisheries Management Bill 1991, Fisheries Agreements (Payments) Bill 1991, Fisheries Legislation (Consequential Provisions) Bill 1991, Fishing Levy Bill 1991, Foreign Fishing Licences Levy Bill 1991, Statutory Fishing Rights Charge Bill 1991 (Final Report) (9 October 1991)

Report on the examination of annual reports - No. 2 of 1991 (12 December 1991)

Standing Committee on Legal and Constitutional Affairs

Crimes (Investigation of Commonwealth Offences) Amendment Bill 1990 (9 April 1991)

Trusts (Hague Convention) Bill 1991 (9 April 1991)

Aboriginal Development Commission - Legal costs in relation to Senate privileges matter (14 May 1991)

Sex Discrimination Amendment Bill 1991 (29 May 1991)

Scrutiny of annual reports - No. 1 of 1991 (4 June 1991)

Unauthorised procurement and disclosure of information (5 June 1991)

Health Legislation (Pharmaceutical Benefits) Amendment Bill 1991 (Clause 11) (18 June 1991)

Copyright Amendment Bill 1991 (16 August 1991)

The twentieth anniversary of the Committee (2 December 1991)

Scrutiny of annual reports - No. 2 of 1991 (9 December 1991)

The adequacy of existing legislative controls in the *Trade Practices Act 1974* over mergers, monopolies and acquisitions (19 December 1991)

Discussion and background papers presented in relation to the inquiry into the cost of legal services and litigation in Australia:

No 1 - Cost of Legal Services and Litigation: Introduction to the Issues (17 April 1991)

No 2 - Lawyers' Fees (17 April 1991)

No 3 - Contingency Fees (16 May 1991)

No 4 - Methods of Dispute Resolution (9 September 1991)

A Survey of reforms to the English legal profession

Standing Committee on Rural and Regional Affairs

Report on the examination of annual reports - No. 1 of 1991 (12 December 1991)

Standing Committee on Transport, Communications and Infrastructure

Aspects of the proposal for a Very Fast Train (13 March 1991)

Scrutiny of Annual Reports - No. 1 of 1991 (17 June 1991)

Carriage of Goods by Sea Bill 1991 (3 September 1991)

Broadcasting Amendment Bill 1991 (17 October 1991)

Report on the examination of annual reports - No. 2 of 1991 (11 December 1991)

National Road Transport Commission Bill 1991 (18 December 1991)

Select Committee on Animal Welfare

Culling of large feral animals in the Northern Territory (21 June 1991)

Transport of livestock within Australia (presented to the President on 8 August 1991, pursuant to resolution of the Senate of 13 February 1991; tabled 3 September 1991)

Equine welfare in competitive events other than racing (presented to the President on 8 August 1991, pursuant to resolution of the Senate of 13 February 1991; tabled 3 September 1991)

Aspects of animal welfare in the racing industry (presented to the President on 8 August 1991, pursuant to resolution of the Senate of 13 February 1991; tabled 3 September 1991)

Select Committee on Community Standards Relevant to the Supply of Services Utilising Telecommunications Technologies

Telephone services (Interim Report) (12 December 1991)

Select Committee on Political Broadcasts and Political Disclosures

Political Broadcasts and Political Disclosures Bill 1991 (28 November 1991)

Select Committee on Superannuation

Background document (9 December 1991)

References to Committees

The following matters, excluding legislation, were referred to committees during 1991:

Community Affairs

Implementation of the pharmaceutical restructuring measures (3 June 1991)

Medicare benefits (19 December 1991)

Employment, Education and Training

Proposal to divest the Australian National University of administrative and financial control of the John Curtin School of Medical Research (3 December 1991)

Finance and Public Administration

Management and operations of the Department of Foreign Affairs and Trade (19 June 1991)

Foreign Affairs, Defence and Trade

Relations between Australia and the republics of Latin America (9 April 1991)

Industry, Science and Technology

Generation, transmission, distribution and use of electricity and gas in Australia (21 June 1991)

Legal and Constitutional Affairs

Adequacy of the existing legislative controls in the Trade Practices Act over mergers and acquisitions (16 May 1991)

Rural and Regional Affairs

National Drought Policy (7 November 1991)

Lot feeding in Australia (7 November 1991)

Transport, Communications and Infrastructure

Satellite launching facilities in Australia and the role of the Government (9 April 1991)

Community Standards Relevant to the Supply of Services Utilising Telecommunications Technologies (select committee) (21 June 1991)

Superannuation (select committee) (5 June 1991)

Joint Statutory Committee on Corporations and Securities

Proposals for the establishment of a scheme for the voluntary administration of insolvent companies (28 November 1991)

Joint Committee on Electoral Matters

Resource sharing in the conduct of elections (9 September 1991)

Joint Committee on Foreign Affairs, Defence and Trade

Annual Report by the Department of Foreign Affairs and Trade on the Government's international efforts to promote and protect human rights (7 May 1991)

Australia's relations with Indonesia (20 June 1991)

Australia's relationship with the World Bank and the IMF (27 November 1991)

Defence Report 1990-91 (15 November 1991)

Joint Committee on Migration Regulations

Refugee/humanitarian visas and permits

Review arrangements

Conditional migrant entry (1 July 1991).

Further information about Senate committee activities is available from the Clerk-Assistant (Committees) or the Senior Clerk of Committees, The Senate, Parliament House, Canberra. (06) 277 3371 or (06) 277 3506