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Is It Time for a Fundamental Review of the Senate's Electoral System?*

Antony Green

In September 2013, I, like all residents of New South Wales, was presented with a peculiar physical challenge in exercising my democratic choices for the Senate.

In a voting partition 600mm wide, I was required to manipulate a ballot paper one metre wide containing 110 candidates spread across 46 columns in a typeface so small that the Australian Electoral Commission was required to offer voters magnifying sheets with which to read their ballot papers.

Even voters hale of limb and acute of vision would have found the process of voting awkward, let alone those less supple of limb or challenged of sight. With only two hands available, trying to find candidates using a magnifying sheet while manipulating the ballot paper in a confined space while completing the squares with your pencil was a difficult exercise.

If you chose to vote for candidates 'below the line' on the ballot paper, the complexity became more than just physical, as you were required to keep mental track of your sequence of preferences from 1 to 110 while at the same time moving the ballot paper back and forth, alternately swapping hands between the magnifying sheet and pencil.

While engaging in these Senate gymnastics, it was also important to avoid losing the important House of Representatives ballot paper.

Being well informed on the Senate voting process, I came well prepared for my trial by ballot paper. Using one of the internet sites that allowed voters to construct a sequence of below-the-line preferences, I had pre-prepared and printed my preferred ordering, and on polling day carefully transcribed my sequence on to the ballot paper.

More rational voters, when faced with having to engage in the pre-preparation, physical gymnastics and mental arithmetic required to cast a valid below-the-line vote, plumped for a single 'above-the-line' vote for their preferred party. An above-the-line vote is counted as a voter agreeing to their chosen party's lodged group ticket vote. Overall, 96.5 per cent of all Senate votes used the above-the-line option.

* This paper was presented as a lecture in the Senate Occasional Lecture Series at Parliament House, Canberra, on 14 February 2014.

Even a well-informed voter who inspected their preferred party's preference ticket, or went further and examined all the different parties' tickets, would have struggled to understand the implications of voting above the line for most parties. Understanding how a party's Senate preferences might flow requires a huge number of assumptions on the order parties would finish on the first-preference count, and on the order groups would be excluded during the distribution of preferences.

Support for non-major parties in the Senate reached a record 32.2 per cent at the 2013 election. Excluding the Greens, 23.5 per cent of voters selected a minor or micro-party. The surge in minor and micro-party support fed into the complex preference deals between numerous micro-parties on the Senate ballot, making it even harder to determine who would win the final seat.

Before election, few could have predicted that the Australian Motoring Enthusiast Party's Ricky Muir would defeat the Liberal Party's Helen Kroger for the final seat in Victoria. No one would have predicted the Liberal Democratic Party would poll 9.5 per cent in New South Wales, confusion between the 'Liberal Democrats' in Group A and the 'Liberal and Nationals' in Column Y adding another random element to the election result.

I am often asked for advice on understanding where a particular party's preferences will flow. My advice has always been, don't bother studying all the preference tickets to decide on which above-the-line vote to choose. It is usually quicker and simpler to number candidates below the line, at all times sticking to the rule that you should always list candidates in the order you would like to see them elected.

This brings me back to my starting point that in 2013 voters wanting to express their own preferences were forced to manipulate a gigantic ballot paper. Even the best-informed voter at some point exhausted their knowledge of the remaining candidates on the ballot paper. At some point voters had to resort to randomly numbering candidates of whom they knew nothing just to ensure that preferences for candidates they did know would be counted.

All this assuming the voter could even locate the candidates and parties they were looking for on the giant ballot paper, as was revealed with the confusion between the 'Liberal Democrats' and the 'Liberals and Nationals' in New South Wales.

The question this exercise raised for me was the following. Australia is a nation that introduced the secret ballot to the world, that led the world in broadening the franchise to adult males and then to females. How has a nation with this democratic tradition

managed to produce a Senate electoral system that is incomprehensible to all but the most psephologically skilled?

To conduct a Senate election whose result will be determined by Byzantine deals between unknown backroom operators is bad enough. But to give voters only two options in voting, to accept the deals or be forced to number up to 110 preferences, is an abuse of the power granted the Parliament by the Constitution to determine the method of Senate voting.

An election should be the process by which the will of the people is translated into representation in a chamber of parliament. In the case of the current Senate system, the will of the people can be interfered with by the strict control of preferences granted to political parties by the group ticket or 'above-the-line' voting system.

How did we get to this impasse and what are the solutions?

The Senate's electoral system

History rightly highlights the state representation and the structure of the Senate as being one of the critical issues that had to be resolved by the 1890s constitutional conventions. Equal representation for the states in a chamber effectively equal in power to the House was agreed to, but balanced by the double dissolution deadlock provisions in section 57 of the Constitution. The constitutional conventions accepted a powerful Senate as necessary to achieve Federation, even if it was at odds with the principle of governments being responsible to the lower house, the basic Westminster principle to which the constitutional framers were also committed.

Despite all the debate between large and small states over the structure of the Senate, the Senate operating as a chamber for state-based debate has rarely been in evidence since 1901. The Senate has proven to be just another backdrop for politics between nationwide parties.

Largely shorn of its states' house role, the Senate has become a 'house of review', though that role was only entrenched with the introduction of proportional representation in 1949. Since then the Senate's review roll has grown by the decade. Indeed, as control of the House of Representatives by the government of the day has become stronger, the Senate has assumed the role usually ascribed to the Parliament as a whole, that of keeping the executive accountable.

While the Constitution gave the Senate great powers, it was the change of electoral system in 1949 that gave the Senate legitimacy to use its powers. In my view, if the

problems revealed in the conduct of the 2013 Senate election are not resolved, then this raises the prospect of whether the Senate's legitimacy will be undermined.

In my view the historical discussion on state representation in the Senate too often overlooks the truly radical decision made by the constitutional conventions, that was to create the world's first popularly elected national upper house elected on a franchise the same as for the lower house.

The models available to the Constitution's drafters were the appointed New South Wales and Queensland Legislative Councils, the restricted franchise Legislative Councils in the other states, the appointed Canadian Senate, and the US Senate which at that time was yet to become a fully elected chamber.

Instead, the constitutional conventions crafted section 8 of the Constitution, stating that the Senate's franchise was to be the same as that for the House. It was a radical departure from Australian colonial practice, though perhaps knowledge that the Commonwealth would not be responsible for land laws made conservatives less fearful of a broad Senate franchise.

Often quoted in relation to the Senate's electoral system is the first part of section 7, which states 'The Senate shall be composed of senators for each State, directly chosen by the people of the State, voting, until the Parliament otherwise provides, as one electorate'.

According to Quick and Garran's *The Annotated Constitution of the Australian Commonwealth*,¹ the original version of this section from the 1891 constitutional convention stated that senators would be 'directly chosen by the Houses of the Parliament of the several States'. Quick and Garran refer to debate on the United States model of permitting the states to decide their own method of appointment, but the mood of the convention was for a uniform method of appointment.

By the 1897 convention Quick and Garran state the mood had turned in favour of popular election and 'Houses of Parliament' was replaced by 'people of the state as one electorate'. The sub-clause 'until the Parliament otherwise provides' was inserted in a later debate concerning whether states should vote as one or be subdivided into electorates. The conventions left it to the new Parliament to decide, and this also means that to this day the Parliament can legislate to divide states into electorates and do away with proportional representation.

¹ John Quick and Robert Randolph Garran, *The Annotated Constitution of the Australian Commonwealth*, Angus & Robertson, Sydney, 1901.

The Constitution produced a mass electorate voting as a whole but specified no electoral system. At the 1901 election Tasmania used Hare–Clark for its representation in both houses, while all other states used block voting for the Senate, where voters were given as many votes as there were vacancies.

The debate on the Commonwealth's first electoral Act in 1902 examined the use of proportional representation in the Senate but in the end did not adopt it.² Instead, block voting for as many candidates as there were vacancies to be filled was adopted.

The evolution of the Senate's electoral system in the century since that first debate has been driven by two important interactions. The first has been the desire to maintain some consistency between the methods for completing ballot papers for the House of Representatives and the Senate. The second has been through an interaction with experiments in the use of proportional representation by states.

Interaction with the House

The first change to the Senate's electoral system was as a consequence of full preferential voting being adopted for House of Representatives elections in 1919. If voters were required to number all squares on House ballot papers, it made sense that the Senate ballot paper should also be completed with numbers. Voters were required to number their ballot papers with preferences for twice the number of vacancies plus one, seven preferences for a normal three-member half-Senate election. Ballot papers were counted by exhaustive preferential voting. Votes were first counted treating the state as a single-member contest to elect the first senator. The elected candidate was excluded for the second count, their votes were distributed as preferences to other candidates in the count, and another single-member election conducted for the second senator. The process was repeated until all vacancies had been filled. In practice the result was the same as under block voting, delivering all seats in each state to the highest polling party.

The 1919 changes also adopted a new structure for the ballot paper. The vertical listing of candidates was retained, but strict alphabetic ordering was abandoned. From 1919 candidates were grouped together by party, with candidates listed alphabetically within each group. This change increased the tendency of voters to vote for parties over candidates. The number of preferences required changed from limited to full preferential voting in 1934.

² David Farrell and Ian McAllister, *The Australian Electoral System: Origins, Variations and Consequences*, UNSW Press, Sydney, 2006. See Chapter 2 which deals with the 1902 debate and subsequent changes.

The order groups appeared on the ballot papers was determined by a simple formula based on the first letter of the candidate names in each group. At the 1937 Senate election, the NSW Labor Party found a way to manipulate the formula by nominating four candidates whose name started with 'A', ensuring that Labor was allocated the advantageous first (top) grouping on the ballot paper.

In response three major changes to the ballot paper were introduced for the 1940 election. The first was to transpose the ballot paper into the horizontal format used today, with groups listed across the ballot paper and candidates within each group listed vertically. The second introduced a ballot draw to determine Senate group order. The third was to abandon alphabetic listing of candidates within groups, allowing parties to determine the order in which candidates were listed. While this change was unimportant under the winner-takes-all electoral system then in use, it became more important with the introduction of proportional representation in 1949.

Senate proportional representation and state interaction

The system that we in Australia call proportional representation is more correctly known as Proportional Representation by Single Transferable Vote (PR-STV). Of all forms of proportional representation, PR-STV is the least used internationally. While it is the only form of proportional representation used in Australia, elsewhere its use is limited to Ireland, Malta and Scottish local government.

Rather than achieving proportionality based on first preference vote share, PR-STV uses an interaction between first preferences, surplus votes of elected candidates and preferences from excluded candidates to determine elected members.

PR-STV's original proponent in the English-speaking world, Thomas Hare, did not advocate it as a form of proportional representation. The emphasis was on minimising the number of 'wasted' votes, votes that did not contribute to the election of a member. It was offered as an alternative to block voting then in use for UK multi-member electorates, and also to the high rate of wasted votes in single-member electorates.

However, this candidate-based electoral system has been heavily modified in Australia to become a party-based form of proportional representation. In various forms it is used for the Senate, four state Legislative Councils, lower houses in Tasmania and the ACT and local government in some states. Despite their similarity, no two of the PR-STV systems used in Australia are exactly alike.

There is a broad categorisation of PR-STV in Australia into the Hare–Clark variant used in Tasmania and the ACT which gives greater emphasis to voting for candidates,

and the Senate systems which look like party-list proportional representation but use preferences to determine the final vacancies. While the Senate system is party-based, its counting system remains candidate-based.

A modified version of Hare's electoral system was championed by Tasmanian Attorney-General Andrew Inglis Clark, and the Hare–Clark system, as it has become known, was first used at the 1897 Tasmanian election in multi-member electorates for Hobart and Launceston.³ The system was used again at the 1900 state election, and also to elect members to the House and Senate at the first Commonwealth election in March 1901, but then abandoned for the 1903 state election. In 1909 it returned in the form still used today, with the five House of Representatives divisions used as multi-member electorates for the state House of Assembly.

The original Hare–Clark system has a number of significant differences from the system we know by that name today. In 1909 candidates were listed vertically in alphabetic order with no grouping or party affiliations. Limited preferential voting was used, with voters required to give preferences for at least half the number of vacancies to be filled.

The Tasmanian ballot paper and counting system was adopted for the 1920 New South Wales election, though with one significant difference by including full preferential voting. A massive informal vote of 9.7 per cent at the 1920 election saw a switch to limited preferential voting for the 1922 and 1925 elections with voters required to number only as many preferences as there were vacancies to be filled. New South Wales abandoned the system and reverted to single-member electorates and optional preferential voting for the 1927 election.

In 1941 Tasmania adopted the Senate's new horizontal ballot paper, with candidates grouped by party but continuing to be listed in alphabetic order within the group. The number of preferences required was increased from three to equal the number of vacancies in 1976, when party names were included for the first time and candidate order changed to be by lot draw.

After the 1979 election, the randomisation of ballot paper order ('Robson Rotation') was introduced, resulting in the order candidates appeared within each group being varied from ballot paper to ballot paper. Bans on how-to-vote material were also introduced. These features were adopted for ACT elections in 1995. While the Tasmanian system has been known as Hare–Clark for nearly a century, the more

³ Details on the development of Tasmania's electoral system have been drawn from Terry Newman, *Hare–Clark in Tasmania: Representation of All Opinions*, Joint Library Committee of the Parliament of Tasmania, Hobart, 1992.

recent addition of Robson Rotation and bans on party how-to-vote material are now thought of as integral parts of the Hare–Clark system.

The decision to adopt PR-STV for the Senate in 1949 was a consequence of the decision to increase the size of the Parliament. There seemed little justification for expanding the size of the Senate while continuing with the ‘windscreen wiper’ effect of an electoral system that delivered all seats in each state to the same party. Principle pointed to introducing some form of proportional representation.

While the governing Labor Party backed Senate PR-STV on the basis of principle, there was also a large measure of self-interest involved. Labor’s huge majority from the 1946 half-Senate election would remain in place for another term, leaving Labor in control of the Senate after its expected defeat at the 1949 election.

The Senate’s implementation of PR-STV retained candidate grouping and the horizontal ballot paper, and crucially retained the provision that allowed parties to determine the order of their candidates. From its first use, the Senate system operated more like a party-list system of proportional representation, with the number of members elected being in proportion to the party’s vote, but who was elected for each party was almost always determined by the party’s ordering of candidates on the ballot paper. This is in contrast to Hare–Clark where voters determine the candidates of each party elected.

Until the 1970s full preferential voting remained manageable as average candidate numbers per ballot paper remained below 20. Since 1974 the average has only once fallen below 30. In 1974 there were 73 candidates on the New South Wales ballot paper and voters were required to number every square. Informal voting regularly passed 10 per cent in the 1970s, and the time taken to fill in giant ballot papers significantly slowed down the voting process with consequences for the conduct of the poll. Something needed to be done about full preferential voting.

The experiments relied on for Senate voting reform were conducted in the states, where the Labor Party’s policy switch from abolition to reform of state Legislative Councils saw proportional representation adopted in South Australia and New South Wales.

In South Australia the first statewide Legislative Council election was held in 1975. In reaction to the giant Senate ballot papers of 1974, South Australia opted for party-list voting. Eleven members were elected with a D’Hondt divisor quota of 8.33 per cent. Choice of candidate was not permitted and voters gave a first preference for a party with an optional second preference. A first-preference threshold equal to half a quota

was set. Any party failing to reach this quota was excluded and its second preferences were distributed. The D'Hondt divisor was applied to the new tallies and seats were allocated based on each party's nominated list of candidates.

The introduction of popular election for the NSW Legislative Council in 1978 borrowed extensively from the Senate's counting system. Again drawing on lessons from the 1974 Senate election, NSW Legislative Council elections were implemented with limited preferential voting. Fifteen members were elected with a minimum 10 preferences, altered to 21 members with 15 preferences in 1991.

These state experiments, along with continuing high informal voting at Senate elections, were influential to the Hawke Government's electoral reform package introduced in 1984. Two features of the 1984 reforms are central to the problems that arose in the 2013 Senate election. These are the registration of political parties and printing of party names on ballot papers, and the introduction of group ticket voting for the Senate.

In 1984 ticket voting was seen merely as a method of formalising the how-to-vote cards with which parties already influenced the flow of preferences. With the Coalition and Australian Democrats opposed to optional preferential voting for the Senate, ticket voting was essentially the solution to the major problem then afflicting Senate elections, informal voting.

Ticket voting certainly solved the problem of Senate informal voting, cutting the rate from an average of 9.7 per cent between 1974 and 1983, to 3.5 per cent since. Ticket voting has since been copied by all states using Senate-style proportional representation, even in NSW where limited preferential voting applied.

What had not been thought through was that the slight advantage gained by major parties from tighter control over preferences was an enormous gain for minor and micro-parties which previously had little control over preferences. Suddenly small parties had a commodity to trade, tied blocks of preferences delivered by group ticket voting.

The logical changes agreed to in 1984 eventually produced the illogical results produced in 2013 as small parties used ticket votes to 'game' the Senate's electoral system.

How ticket voting unravelled

The giant Senate ballot papers for the 2013 election were produced by an explosion of 'preference harvesting', the deliberate stacking of the ballot paper with extra parties

and candidates and the arrangement of preference tickets between minor and micro-parties to engineer the election of one of their number.

If these preference tickets were arranged on ideological grounds, you could argue that the tactic was valid as an accumulation of the will of the electorate. I would argue counter to this view though, that a different electoral system would encourage like-minded parties to coalesce and present a single platform to the electorate rather than reward the 'fractional' parties as ticket voting does.

But in 2013 it was clear that preference harvesting was entirely tactical and largely devoid of ideology. Its goal was to give one of the participating parties a chance of victory via a lottery of chance ordering and preference flows. It was designed to keep preferences away from larger parties with significant first-preference support.

The peculiar consequence of ticket voting first emerged at state Legislative Council elections. At the 1995 NSW election, Alan Corbett from a party called A Better Future for Our Children was elected to the Legislative Council. His election was more innocent than organised, as several other parties simply liked Corbett and his party. It was also due to the very low quota for the NSW Legislative Council and the result was more random than manipulated. Corbett polled just 1.28 per cent of the vote, winning an eight-year term in Parliament having spent just \$1,589 on his campaign.

Nick Xenophon was elected to the South Australian Legislative Council in 1997 by a similar method, all other parties on the ballot paper directing preferences to him because they liked his No Pokies message. Of all the micro-parties, Xenophon is the only one to have moved on from harvesting preferences to growing his own vote.

These were examples noticed by others, in particular Glenn Druery who was largely responsible for the flood of parties contesting the 1999 NSW Legislative Council election. That election was infamous for its 'tablecloth' ballot paper with 264 candidates triple-decked across 81 columns. Druery was to achieve greater prominence at the 2013 federal election as the so-called 'preference whisperer'.

Two years before the 1999 election I warned that preference harvesting would be a problem at the Legislative Council election. In the *Sydney Morning Herald* on 10 June 1997, I wrote:

Under current electoral laws, the 1999 election for the NSW Legislative Council could be reduced to political farce. Instead of 21 members elected reflecting the will of the people, the result could be distorted by electoral rorting and voter confusion.

I went on to warn about the dangers of larger ballot papers and smaller print size, and prophetically wrote:

The result of the election could be determined by voters incapable of reading the ballot paper, unable to manipulate a ballot paper one metre square, or simply bewildered and unable to find the party they want to vote for.

I also noted that:

The current growth in registered parties is clearly about manipulating this process with a string of stalking horse parties with attractive names running to attract votes that can be delivered as preferences to other related minor parties or perhaps to one of the major parties.

Each of these predictions proved true for the 1999 NSW Legislative Council election, and 14 years later, each of the comments would equally have applied to the 2013 Senate election.

The problem of preference harvesting took longer to be seen as a problem for Senate elections as the higher quota appeared to make it impossible. But as was shown by the 2013 election, the tactic can still work.

And those tactics can be remarkable. Ignoring the problems of the lost votes in the recent Senate election in WA, let me outline the extraordinary manner in which Wayne Dropulich of the Sports Party was elected. The Sports Party finished 21st of the 27 parties on the ballot paper. Twenty different parties contributed votes through preference tickets to the party's victory, with 15 of those parties having recorded a higher share of the vote. At three points during the distribution of preferences Mr Dropulich had the second lowest vote tally of remaining candidates, only to survive by gaining ticket preferences on the exclusion of the only candidate with fewer votes. Under no other electoral system in the world would Mr Dropulich have been elected ahead of the other parties whose preferences were funnelled to Mr Dropulich.

What is the solution?

The problem with the current Senate system is that the counting method is based on two key assumptions on how and why voters express preferences on their ballot papers. Experience tells us that the current electoral system means both assumptions can be breached.

The first assumption is that preferences on ballot papers express a preferred ordering of which candidates should be elected. Ticket voting and the tactical voting strategies adopted as part of preference harvesting mean that more than 90 per cent of ballots may have tactical rather than preferred orderings of candidates. In those circumstances, the counting system is not producing a ‘preferred’ group of senators but rather a group of senators whose election is heavily influenced by the small number of people responsible for drawing up the preference tickets. Senators elected on party first-preference votes are still being determined by voters, but who is elected once the distribution of preferences begins is being influenced by preference games.

The second assumption is that voters treat all their preference choices with equal weight. This is clearly breached by the random ordering of preference resorted to by voters simply trying to complete their ballot paper. This even occurs with some party tickets.

All preferential voting systems have the characteristic that the candidate with the highest vote can be defeated. But only Senate group ticket voting permits a party with few votes to have so much control over the preferences of those votes. As we saw with the 2013 election result, these ticket preferences can be stacked like Lego blocks, allowing candidates to be elected from tiny first-preference vote tallies.

The two most likely solutions put forward rely on abandoning the concept that all preferences are equal. One is to introduce a first-preference threshold which a party must achieve before it can receive preferences from excluded parties. A second is to make preferences more optional, giving voters the ability to weight their ballot paper towards the preferences they do have.

My problem with thresholds is that they are a change to the counting system designed to fix a problem with the method of voting. I believe that we need to focus on sorting out the ballot paper options presented to voters, and that will almost certainly mean permitting a move to some form of optional preferential voting.

My solution involves several changes.

Tighten the regulation of parties

Federal law requires only 500 members to register a party. Under state law, Victoria, Queensland and Western Australia each require parties to have 500 members for registration, NSW 750 and smaller states proportionally fewer. It is numerically easier to register a federal political party, and the tests applied to proof of membership are also weaker federally.

The surge of newly registered parties that was a feature of the 1999 NSW election was repeated ahead of the 2013 federal election. In 2013 a record number of parties registered and contested both the House and the Senate. The announcement of a September election in January gave prospective parties a deadline for registration. There was a 50 per cent increase in the number of registered parties between January and August 2013.

Registration brings political parties significant advantages in the electoral process. The first is having party names printed on ballot papers. The second is an ability to put forward lists of candidates by central nomination rather than be required to obtain nominators in each electorate. Some micro-parties used this facility to nominate candidates in states where they had little or no presence. Parties should be required to have more than the 500 members and conform to stronger proof of membership tests to qualify for the significant advantages provided by party registration.

Keep above-the-line voting but abolish between-party preferences

After the 1999 debacle, the NSW Legislative Council system was changed to abolish between-party preferences. Above-the-line voting was retained, but a single '1' became a vote for that party alone and could not be transferred to another party by preferences.

Voters were given a new above-the-line voting option, to number groups and parties above the line. A voter could vote '1' Family First and '2' Liberal, and the vote would be treated as preferences for all Family First candidates in order followed by all Liberal candidates in order. Parties can try to influence voters to fill in squares above the line using how-to-vote material, but like House elections, parties can only influence voters. The system advantages parties that actively campaign over parties that do not. A party that actively campaigns can increase its first-preference vote and also hope to influence how any preferences will flow.

The NSW Legislative Council elects 21 members with a quota of 4.55 per cent. A half-Senate election is for only six members with a quota of 14.29 per cent. NSW Legislative Council elections have seen only 20 per cent of voters make use of the new system. This high exhaustion rate could encourage parties to campaign more actively at Senate elections to encourage preference flows.

NSW has had three elections using the new system, but only once have preferences changed the order candidates were elected from the first-preference tally. That was in 2011 when just enough voters filled in preferences to deprive Pauline Hanson of election to the final seat.

Nomination and deposit laws

Another increase in deposits may be required. An additional deposit could be introduced for groups wanting to have an above-the-line voting box. I would also recommend that the use of nominators be reintroduced for Senate groups to overcome the problem of micro-parties making use of central nomination to nominate candidates in states where they have next to no presence.

Optional below-the-line preferences

Even if nothing else changed, a simpler method of below-the-line voting must be introduced. At the NSW Senate election, voters had two choices: select a single ticket above the line, or give 110 preferences below the line. In the Victorian Legislative Council only five preferences are required for a valid below-the-line vote, equal to the number of seats to be filled. Even if nothing else changes, something similar should be adopted for Senate elections.

Changes to formulas

Optional preferential voting would increase the number of ballot papers that exhaust their preferences before the end of the count. There should be changes to the method used to calculate transfer values to ensure that votes with exhausted preferences are left with an elected candidate rather than re-examined for continued distribution.

Conclusion

The aim in my suggestions is to put the power over electing senators back into the hands of voters. I suggest this be done by abolishing group ticket voting and ending party control over preferences. I want Senate elections to be like House elections, where parties and candidates can influence voter preference choices but they can't control them.

My solution requires a move to a more optional preferential voting system. There are hybrid methods, such as limiting the number of preferences a party ticket can include, but the more logical solution is to trust voters to express preferences to the extent that they exist, and to prevent parties from expressing preferences on voters' behalf.

Some would suggest moving towards the Hare–Clark method as used in Tasmania and the ACT. I disagree with this proposal because there is an issue of scale involved. Hare–Clark may work well in Tasmania and the ACT in electing a lower house with a quota of around 10,000, but I cannot see it being a sensible system for electing NSW senators with a quota of 600,000. In Tasmania and the ACT Hare–Clark is also

electing the lower house of government, whereas at federal elections the Senate is often an afterthought to the main contest for government in the House of Representatives.

I believe that the Senate electoral system has been largely operating as a mechanism for party-based proportional representation since 1949. However, parties have learnt to 'game' the ticket voting system introduced in 1984, and final Senate seats are now being determined too much by preference tickets.

Some would argue that all micro-parties did in 2013 was utilise the same rules that the major parties have used in the past to prevent parties like the Nuclear Disarmament Party and One Nation winning election to the Senate. That may be so, but I am not convinced that the electoral system should allow parties equal control over preferences independent of whether they poll 40 per cent and 0.2 per cent. Voters should control preferences and parties should be able to influence them, not control them as allowed in the current system. Abolishing ticket voting would see the ability of parties to influence preferences become dependent on their ability to campaign, not on their ability to do deals.

Above all, my concern is that if the Senate's electoral system continues to fall into disrepute, then the legitimacy of the Senate to act as a house of review is undermined. If the Senate is to continue to be trusted with the strong powers granted to it by the Constitution, then it needs to call on some form of democratic mandate to exercise its powers.

Abolishing ticket voting will remove the 'gaming' so prevalent at the 2013 Senate election, and put back into the hands of voters the power to determine the make-up of the Senate.



Question — Inscribed on the San Diego County government building in San Diego in California are these words: 'Good government demands the intelligent interest of every citizen'. Thought and consideration should be encouraged in every voter in our elections when they vote.

I agree with your point that the automatic progression of the vote on a registered ticket without knowing where it is going is basically the problem, but optional preferential voting itself would turn our proportional system to a semi-proportional system, with the remainder left over of the vote for the election of one or more of the last positions,

or less than the full quota, because of the exhausted vote. You quoted the New South Wales Legislative Council elections results for 2011. The last four positions were elected on less than a full quota because they had run out of preferences. But that exhausted vote amounted to two or more full quotas in all.

Antony Green — I think your most important question is about wasted votes, and I will address that directly. The current system elected somebody with 0.2 per cent and somebody with 0.5 per cent. That is far lower than anything that has been produced in New South Wales. I acknowledge that there is an issue with wasted votes, and does the last position go to a highest remainder method? Now, if a party is interested to try and ensure somebody wins that last seat correctly, it is therefore in their interests to encourage people to give preferences and to use some form of preferential voting. But if the alternative is to retain full preferential voting and bring back a record informal vote then you are just disenfranchising people again. They are trying to give a valid vote and you are saying, ‘I’m sorry, you haven’t met the rules; you’re out’.

Question — Is it possible to scrap the way we are conducting Senate elections now and replace it by the proportion of primary votes polled by the political parties? We elect six senators usually, if it is not a double dissolution, with 16.67 per cent of the vote. If the Greens poll more than 16 per cent in the House of Representatives contest, they get one. Labor could get three.

Antony Green — You could. You are talking about getting rid of preferences altogether, which is a perfectly valid proportional representation system around the world. Plenty of countries around the world are fully functioning democracies with party-based voting and no candidate choice. If you go down that path, you may want to have a bigger say in the internal democracy of political parties. There are some questions about the words ‘directly elected by the people’ in the Constitution. Now, my view is that that actually was a transfer from saying ‘elected by the houses of parliament’ to being elected by the people, so I think sometimes there is too much weight given to that phrase. But if you abandon voting for candidates altogether and remove that option from the ballot paper, the first challenge to the law would come on the basis that the people are not being directly elected. That is one of the problems for constitutional experts, because the High Court does not look at the constitutional debates. That is where the origin of the phrase is, but it is not part of it. They look at the words in the Constitution because they are accepted by referendum.

So there would be problems with going down that path and the main reason is because people would not be given candidate choice. It is an option, but the Australian way has always been to have some form of preferential voting and so some modification of the current system is the most likely outcome.

Question — You said at the commencement of your speech that the Senate is a house of review and that it is also a states' house. My question deals with it being a states' house. I would say that the biggest issue when it comes to the Senate is that Tasmania is heading towards becoming a rotten borough. Would you agree with me that one of the ways of getting us to face this big issue is to make Senate election day as miserable a day as we could possibly make it for electors and especially for people like you?

Antony Green — In preparing for this speech I went back to Quick and Garran's *The Annotated Constitution of the Commonwealth of Australia*, which is a fascinating thing to dig through. In the segments I quoted in relation to section 7 of the Constitution, they made the point that equal representation of states was the keystone of the arch of Federation—it was just not going to happen without that. Once they had made that decision, the other things flowed from it. There was the creation of double dissolution power and then, for those who know the Constitution debates in the 1890s, there were also the last-minute changes to weaken the Braddon clause and to weaken the double dissolution joint sitting provisions so that the Senate had slightly less blocking power. There was an extraordinary compromise.

You cannot fix the equal representation in the Constitution without unpicking the entire Constitution because in fact you need more than four of the six states—you need every state to agree—to have its representation changed. So it is very hard to unpick. The Constitution is there and we have to live with it the way it is, and that is just one of the problems we have.

Question — You said at the conclusion of your speech that the Senate should reflect the will of the people. At the beginning of the speech you also said, as I recall, that something like 20 per cent of the people vote for minor parties. Does this suggest that 20 per cent of the senators should be coming from minor parties, and how would you achieve that?

Antony Green — It is achieved currently by preferences. Let us be blunt about this. There was a deliberate putting of extra candidates on the ballot paper to increase the size of the minor-party vote. That is the tactic that is adopted: you flood the ballot paper with parties. People cannot find the candidates they are looking for and end up voting for somebody else, and once you have voted for the ticket above the line it is captured—it is in the pool, off it goes. That is what is wrong with the current system.

We saw this in New South Wales in 1999 when there were 264 candidates on the ballot paper. It was a deliberate attempt to increase that pool and capture the votes with tickets. Then there was the next election with a smaller ballot paper. Did that

vote all go to the minor parties that still existed? No, it just went back to major parties, to the established parties, the ones that were around. If you want to represent those parties, the 20 per cent, it is a perfectly valid thing. But why you are adopting a system where Mr Dropulich won that seat rather than the 15 parties that got more votes than him. That is what is wrong with the system as it is working with ticket voting. There is an extraordinary randomness and a preordained nature created by the tickets. The whole issue in Western Australia about those last two seats determined by this strange choke point in the count would not happen if voters gave their own preferences. There is no way a count between two candidates with 1¾ per cent could have that much impact on the eventual outcome of the election.

Someone was talking about wasted votes: you would still get minor parties elected, because if a party got eight to nine per cent of the vote and there was a high exhausted vote they could still get elected. But I would rather see the party with more votes from a pool of 20 per cent of the vote get elected than the one at the bottom of the pile who has managed to arrange a lot of preference deals.

Question — I am wondering if you have looked at a system that I believe is called ‘Borda’? I believe it is used in Nauru and some other places, and in that system—

Antony Green — Can I cut you short? How the hell do you count them? There are 4 million ballot papers! You are going to have to enter them all into a computer system—every one of them. It is just not practical. It is not practical other than for very, very tiny options.

Currently, one of the problems that has to be considered with any reform is that currently we data-enter five per cent of ballot papers, and that is a very long, complex count. Under a Borda count you have to enter every ballot paper; you would not have a hope of counting them by hand. That is what the problem is.

Question — I agree very much that reforms are needed, as you suggest, to allow electors’ true preferences to be implemented. What about electronic voting as another way of allowing true preferences to be represented? We do it in the ACT, and it would be great to have an option in the federal elections as well for electronic voting.

Antony Green — It will come. One of the responses people had for me when I was complaining about the size of the ballot papers is, ‘Why don’t we have electronic voting?’ And my response was: you get the same problem. People pay more attention to the top of the screen than to the bottom of the screen. If you have a gigantic ballot paper then the actual size of the ballot paper starts to interfere, and can interfere in the Senate.

But then you get, 'Well, randomise the candidates'. You have this constant problem of trying to get around the fact that you have so many candidates that you are interfering with voters' expression of will simply by the number of candidates who are there. Someone was quoting the San Diego courthouse. Of course, remember that the American solution to a lot of these problems has always been to have primaries—you have to get through a process to get on the ballot paper in the first place. They have gone down that path more than any other country in the world, but essentially we have a similar, slightly weaker version with nomination deposits and requiring the number of nominators.

Electronic voting will come. It will start with things like pre-poll voting. I covered the Griffith by-election on Saturday night; they took nearly 7,000 votes at the pre-poll voting centre. That is very difficult for them to count on the night, and that is a lot of ballot papers. Just the sheer difficulty of counting those ballot papers and dealing with the paperwork will encourage electronic voting, starting with pre-poll votes and postal votes. It will come, but it is a mechanism, it is not a solution to democracy.

Question — I wonder if in your deliberations with regard to reform that you have thought about, or intend putting forward, a recommendation with regard to the lack of representation of ACT voters in the Senate? As you would be aware, we have something like 350,000 people and Tasmania has something like 500,000 and yet they have 12 senators and we have two.

Antony Green — Good luck! One of the difficulties that applies there is that if you increase the number of ACT senators you may well influence the balance of power in the Senate. And so any attempt to change that is going to cause a great deal of interest.

I think that a bigger issue might actually be representation in the House. I think that the current formula actually makes it very difficult for the ACT to get a third seat. I think it has a population which probably justifies it, but the mechanism which has been cobbled from the Constitution actually makes it very difficult. I think that should be addressed first, and is more likely to be addressed.

Question — I wanted to query your proposition that there would be a need to change the counting rules if you had optional preferential voting. At the moment, it is possible to have exhausted votes and, therefore, the rules cope quite adequately with that. It may be desirable to make some changes to the rules based on the greater possibility, but I would argue that it is not, strictly speaking, essential.

The second question I would like to raise is about Senate casual vacancies. The elephant in the room here when we talk about people not knowing who they are

getting is the number of people who are appointed by state parliaments. We have the case of Senator Carr, who has hit his wicket before the ball has even been bowled, and we have no idea what we are going to get next year. Is there anything that can be done about that?

Antony Green — On the second one, we can try and come up with another mechanism, but in the end the Constitution provides a mechanism where the state parliament appoints somebody from the same party. Whatever we put in the Electoral Act, in relation to the Senate recounts after double dissolutions, it can be ignored if the Constitution says something else. That is the problem with filling casual vacancies.

Once you adopt optional preferential voting, there are things you can look at in terms of how preferences are distributed. The ACT and Tasmania use a very similar system—the Hare–Clark system—but in the ACT they exclude exhausted preferences when somebody is elected and do not include them in a surplus. In Tasmania they do include them in the surplus. New South Wales excludes exhausted votes. So there are different ways of doing it. It may depend on how many exhausted preferences we are going to get, but I think it is something that needs to be considered if you go down the path of optional preferential voting.

Are Australians Disenchanted with Democracy?*

Alex Oliver

The Lowy Institute has been conducting public opinion polls on foreign policy issues for a decade, and this year we will publish our tenth annual Lowy Institute Poll. Over the years, I and former poll directors have asked hundreds of questions of Australians of all ages, from all states, and all walks of life.

We have asked questions about the international economy, climate change, important bilateral relationships with nations like Indonesia, China, and the US, and attitudes to the rise of Asia. We have asked about the sorts of issues which Australians see as threats to this nation, from climate change to terrorism. Controversially, at the height of the Bush presidency in 2005, Australians ranked US foreign policy equally with Islamic fundamentalism as a threat to Australia.

We have asked questions about Australians' use of media in a rapidly changing media landscape, and about hotly debated issues like asylum seekers and foreign investment.

But one of the most thought-provoking findings from all of our decade-long polling has been on Australians' attitudes towards democracy.

These findings came almost by accident. We had been conducting opinion polls in some of the other nations in our region such as Indonesia, Fiji and, most recently, India.

In each of those countries, we asked a different range of questions, depending on the particular national and bilateral context. One common question, however, was one which has been asked in other countries by respected US non-profit global polling organisation, Pew Research Center, which has been conducting multi-nation opinion polls since the early 1990s.

The Pew 'democracy question' asked people to choose which statement most closely matched their own opinion:

- The first option was: 'Democracy is preferable to any other kind of government'

* This paper was presented as a lecture in the Senate Occasional Lecture Series at Parliament House, Canberra, on 7 March 2014.

- The second was: ‘In some circumstances, a non-democratic government can be preferable’
- And the final option was: ‘For someone like me, it doesn’t matter what kind of government we have’.

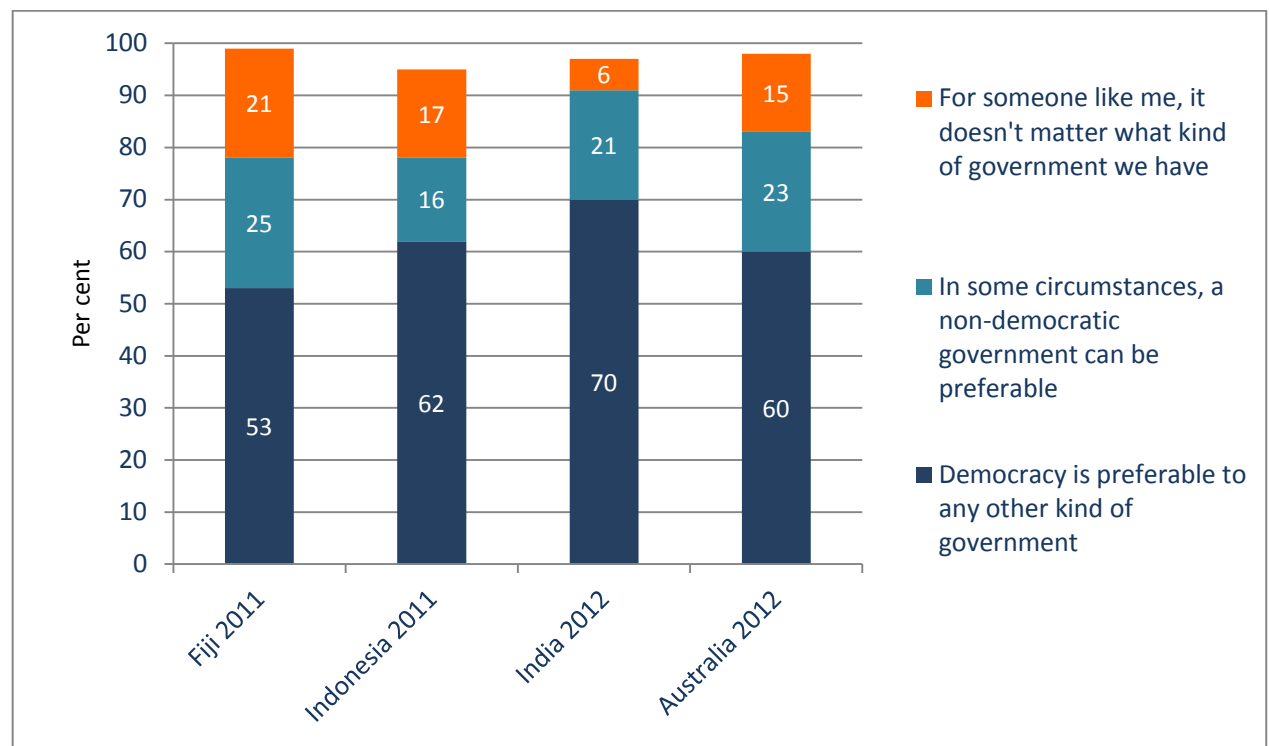
Fergus Hanson included this democracy question in three separate Lowy Institute polls in 2011 and 2012, in Fiji, Indonesia and India.

The results were markedly different across the three countries (see figure 1). Support for democracy in Fiji, under the undemocratic Bainimarama regime, was surprisingly slim. In India, with an older and more robust democracy, it was significantly stronger.

Fergus found these results intriguing and decided to include the democracy question in the 2012 Australian poll. My guess is that he assumed the results in Australia would be considerably different in a nation whose western democratic traditions went back to the beginning of the last century.

The results were surprising and confronting.

Figure 1: Lowy Institute poll–views on democracy



As it turns out, our 2012 poll (figure 1) showed that Australians were less supportive of democracy than people in India (a newer democracy than ours) and Indonesia (an emerging democracy), and ahead of only Fiji (not a democracy at all).

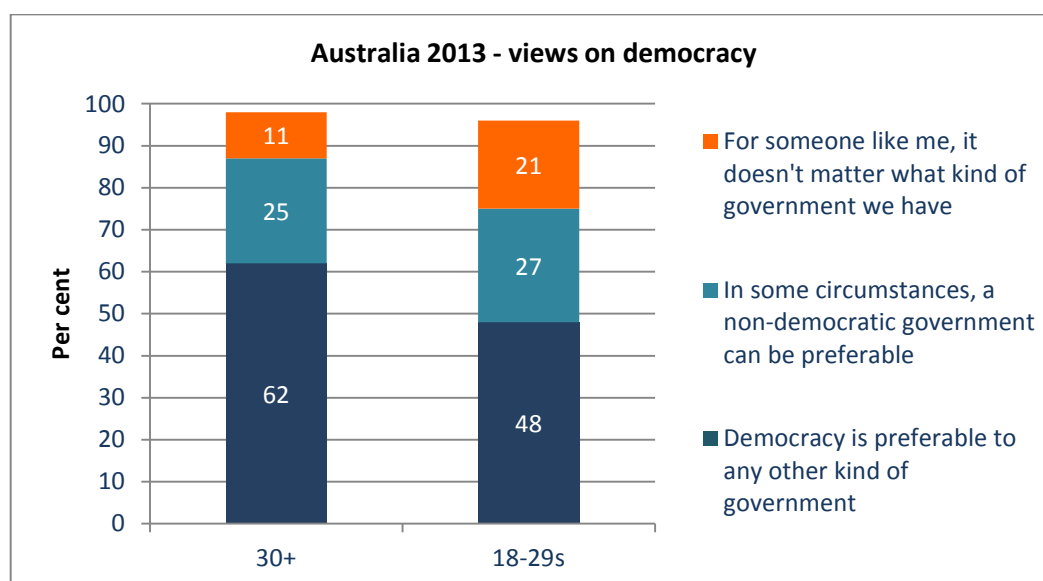
Only 60 per cent of Australians of voting age said that ‘democracy is preferable to any other kind of government’. Nearly a quarter said that in some circumstances, a non-democratic government could be preferable. Fifteen per cent said it didn’t matter what kind of government we have.

Even more challenging was the response of the younger age group—the 18 to 29-year-olds. Only 39 per cent of that them felt that democracy was the most preferable form of government. More than half either didn’t care, or thought a non-democratic system might work better in some circumstances.

Of course, these results were controversial. They generated a good deal of discussion among the commentariat. Some thought our results couldn’t possibly be right, that there must be some statistical skew in our survey sample of 1,000-plus adults, that we were asking the wrong question, or that the context of the poll caused people to misunderstand the question.

So, just to be sure, we asked exactly the same question in our 2013 poll (figure 2). This time, only 59 per cent of all adults said that democracy was preferable to any other kind of government. And for the younger age group (the 18–29s whose responses were so surprising the year before), less than half of these Gen Ys thought that democracy was preferable, and almost half (adding the top two boxes on the right hand column) thought that it either didn’t matter, or that a non-democratic system might work better. Australians under 30 and over 30 put very different value on democracy.

Figure 2: Lowy Institute Poll 2013—views on democracy— 18 to 29-year-olds vs over-30s



Our findings (if you will permit me to use a label which roughly aligns with the 18 to 29-year-olds in our polling) were that Gen Y in Australia were significantly less committed to democracy than their peers in India and Indonesia, and around as enthusiastic as Fijian young people about democracy.

In India, for example, 71 per cent of young people thought democracy was the preferable form of government, compared with 48 per cent of young Australians. That is a dramatic statistical difference. In Indonesia, the comparison was almost as striking, with two thirds of young people saying democracy was very important, compared with less than half of young Australians.

These democracy findings do not stand as isolated results in our polls. In our 2011 and 2012 polls we also asked in all four countries (Australia, Indonesia, India and Fiji) about the attractiveness of other western liberal values: the right to a media free from censorship, the right to freely express oneself, the right to a fair trial and the right to vote in national elections.

All of these rights were highly valued in all four countries. Ninety per cent of Australians strongly agreed with the importance of the right to vote in elections.

Which led us to wonder: do Australians not equate the right to vote with the principles of democracy?

The results posed other big questions: why do such a large proportion of Australians—whether young or old—not seem to value democracy as the most preferable form of government? Is this a phenomenon just for Australia, or are there democracies in other countries facing similarly existential questions with the waning of interest in the democratic ideal? And if so, why, and what could be done?

There is research in other countries on support for democracy. A large study in Canada in 2012 surveyed 1,500 Canadians on democracy and governance, as part of a very significant survey of 26 nations and nearly 41,000 people in the Americas.¹

In a format very similar to our own question on democracy, Canadians were given the statement ‘democracy may have its problems, but it is better than any other form of government’. In 2012, only 61 per cent agreed or strongly agreed—almost exactly the number who chose the very similar statement posed in our Australian poll (60 per cent).

¹ The Environics Institute, *AmericasBarometer: The Public Speaks on Democracy and Governance Across the Americas: Canada 2012 Final Report*, <http://www.vanderbilt.edu/lapop/canada/Canada-2012-Report.pdf>.

Interestingly, less than 50 per cent of young Canadians under 30 agreed that democracy was better than any other form of government—again, a result very similar to our own in Australia.

And in another very nice piece of timing for me, the United Nations recently released the results of what is thought to be the largest global survey ever, conducted by the UN Millennium campaign, the United Nations Development Programme (UNDP) and the Overseas Development Institute among others.²

The survey asked people to choose six factors out of a possible 16 which would improve their lives and those of their families: 1.4 million people have already responded.

Overwhelmingly, the results show that people want a good education. They also prioritise better healthcare and better job opportunities. The fourth highest response was for ‘an honest and responsive government’. However, political freedoms came third last of the 16 factors which people felt would improve their lives.

This suggests the same sort of disconnect between freedoms and democratic government which we have seen in our Australian polling work. The link seems to be missing between the concepts of good government, democracy and political freedoms. The proposition that it is difficult to have one of these without the others seems to have escaped not only Australians but their counterparts around the world.

What is behind this perplexingly low level of support for democracy?

When we released our results in 2012, there was considerable conjecture about the possible reasons.

Some of the theories advanced were these: firstly, that democracy has become the victim of its own success—it is taken for granted by a post-Cold War generation which has never witnessed any real ideological competitor to democracy. The second hypothesis was that political freedoms are shunted behind other priorities in a capitalist and consumerist society. Thirdly, that nations with different political systems, particularly in our region, are seen as successful despite being non-democratic, and present a somewhat viable, even attractive, alternative to our imperfect democratic system. Next, that Australians, and particularly young Australians, were increasingly being turned off by the tone of political discourse in Australia. And finally, that civics education was lacking in our schools today, or that

² My World: The United Nations Global Survey for a Better World, <http://www.myworld2015.org/>.

it fails to engage younger generations in conversations about the democratic system in all its glorious imperfection.

I would like to take each of these hypotheses and examine them one by one, though I will deal with a few quickly before getting to the thorny ones at the end.

Democracy the victim of its own success

Firstly, the idea posed by a policy analyst at the Centre for Independent Studies, Benjamin Herscovitch, responding to our first poll results on the democracy question in 2012. He advanced the intriguing theory that ‘democracy may actually be a victim of its own success’. That it is undervalued precisely because it is flourishing worldwide and has effectively prevailed over its ideological adversaries. This is worth looking at: is democracy such a standard model for development, so much the norm, that it is being taken for granted? Has it lost its gloss and become, as Herscovitch argues, ‘an almost mundane and commonplace political institution’?³

The work of Freedom House suggests that democracy is indeed becoming the norm, worldwide. Freedom House’s annual ‘Freedom in the World index’ has charted the spread of democracy since 1972.⁴ In the 40 years between 1972 and 2012, the number of ‘free countries’ in the world more than doubled, so that now 90 of the 200-odd nations of the world are genuinely free—with broad scope for open political competition, a climate of respect for civil liberties, significant independent civic life, and an independent media.

As a proportion of the world’s nations, free countries have increased significantly. In 2012, the number of electoral democracies stood at 118 of 195 countries surveyed, or more than half the world’s nations.

Herscovitch argues that this thriving democracy is a more valid explanation than other simplistic arguments such as capitalism, increasing consumerism or Gen Y flippancy. Much of the world’s adult population has not experienced world wars or the Cold War. What they did see was the collapse of the Soviet Union and the victory of democracy over Marxism and authoritarianism there.

For these younger generations, says Herscovitch, democracy is seen as a given.

³ Benjamin Herscovitch, ‘Why democracy is a victim of its own success’, *Canberra Times*, 28 June 2012, <http://www.canberratimes.com.au/federal-politics/why-democracy-is-a-victim-of-its-own-success-20120627-212r7.html>.

⁴ Freedom House, Map of Freedom in *Freedom in the World 2013*, <http://www.freedomhouse.org/report/freedom-world-2013/map-freedom-2013>.

Capitalism and consumerism

The second possible reason may seem overly simplistic, but it has been raised by academics, commentators and politicians around the western world. The argument for this theory is that our materialistic society—thriving on capitalism and consumerism—has raised generations in unprecedented prosperity, generations which see themselves as investors and consumers primarily.

It is easy to imagine Gen Y, growing up with myriad gadgets, from iphones to Xbox, Gameboys and Wii, distracted from a focus on civil and political freedoms.

In 2012, a gender-bending model named Jeffree Starr posted a status update on his Facebook page, which read: ‘we live in a world where losing your phone is more dramatic than losing your virginity’, and generated more than a million Facebook ‘likes’. I am being facetious, of course, but one wonders where ‘losing your vote’ might fall within this hierarchy of disasters for the Facebook generation.

Successful non-democracies in our region

After our poll was released in 2012, a journalist interviewed students at Melbourne University about why their generation seemed dismissive of democracy. One of them suggested that:

China is a society and a state that functions without democracy, so is it bad? You can’t just judge it (because it’s not democratic). It’s whatever works for that culture.⁵

This was thought-provoking for me. In our region, we have examples of what appear to be successful non-democracies, such as Singapore and China. Both are economic powerhouses which have transformed themselves within the space of a generation.

Is it possible that we are witnessing a generation who are aware of these different political systems and their successes, and who are consequently less wedded to the ideal of democracy as the only viable form of government for a successful nation? And how do they define that success? Is it primarily in economic terms? (and so I refer you back to hypothesis 2).

⁵ Rowan Callick and Sophie Gosper, ‘What’s democracy done for me lately, asks Generation Y’, *Australian*, 5 June 2012, <http://www.theaustralian.com.au/national-affairs/whats-democracy-done-for-me-lately-asks-generation-y/story-fn59niix-1226384017869#>.

Disillusionment with political discourse

The next possible factor, raised directly in response to our poll results by seasoned stalwarts like Laurie Oakes, was that the tone of today's political discourse has significantly worsened, and turned people off politics completely. Senator John Faulkner has spoken of the 'corrosive effect on our democracy of the increasing distrust of politicians and the increasing cynicism about politicians'.⁶ He refers to cases from his own side of politics like that of Peter Slipper and Craig Thomson.

Two examples of events in the last couple of years illustrate the extremes of current modes of political discourse: the first—the prime minister's 'misogyny' speech in 2012 which was viewed over 2½ million times on YouTube and went 'viral' around the world—was made possible via the internet. The second example to hit the headlines was an extremely crude mock menu, created on a prehistoric-era piece of paper and photocopied at a restaurant.

The first episode—the misogyny speech—suggests quite a high level of political engagement, at least with the issue of gender and politics which it raised. But both examples expose the political process to accusations that it is too aggressively adversarial, tawdry and brutal. Because of those deep flaws, the argument goes, Australians of voting age may tune out of political discussion and be discouraged from engaging in the democratic process. Perhaps this is the exception to the rule that all publicity is good publicity.

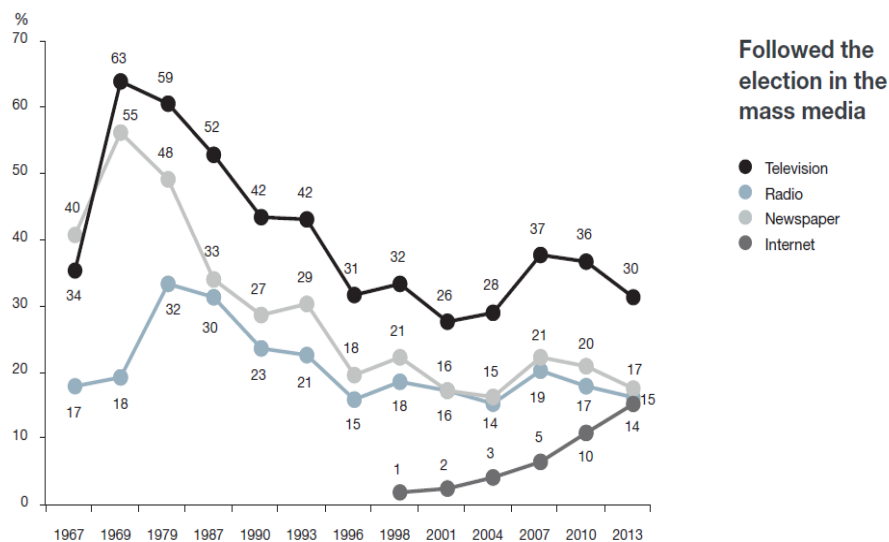
Just examining this possibility—that it might be the tone of political conversation that seem to be turning the nation's voters off democracy—I searched for data on this point. It turns out there is a great deal of data on political engagement not only in Australia but in other places around the world, where there are similar currents of concern about the durability of democracy when support is waning for the institutions which uphold it.

Starting here in Australia. The ANU has been conducting a longitudinal study on Australian elections since 1987, collating data going back to 1967.⁷ This chart (figure 3) shows the extent to which a large sample of Australians on the electoral roll have followed Australian elections in the mass media since 1967.

⁶ John Faulkner, 'The price of political fear', *Sydney Morning Herald*, 30 April 2012, <http://www.smh.com.au/federal-politics/political-opinion/the-price-of-political-fear-20120430-1xuik.html>.

⁷ ANU College of Arts and Social Sciences, Trends in Australian Political Opinion: Results from the Australian Election Study, 1987–2013, 2014, <http://aes.anu.edu.au/publications/aes-trends>, p. 7.

Figure 3



Source: ANU College of Arts and Social Sciences, *Trends in Australian Political Opinion: Results from the Australian Election Study, 1987–2013*, 2014, p. 7

So while interest in elections fluctuates widely, there has been something of a trend downwards since the late 1960s, followed by a slight uptick in the last decade—with a significant contribution from news found via the internet.

Many of the other markers—‘watched the leaders’ debates’, ‘interest in the election’, ‘care who wins the election’, ‘discussed the election campaign with others’, all show a similar overall downward trend since the mid-1990s, although some of the markers were low in the 60s and early 70s as well.

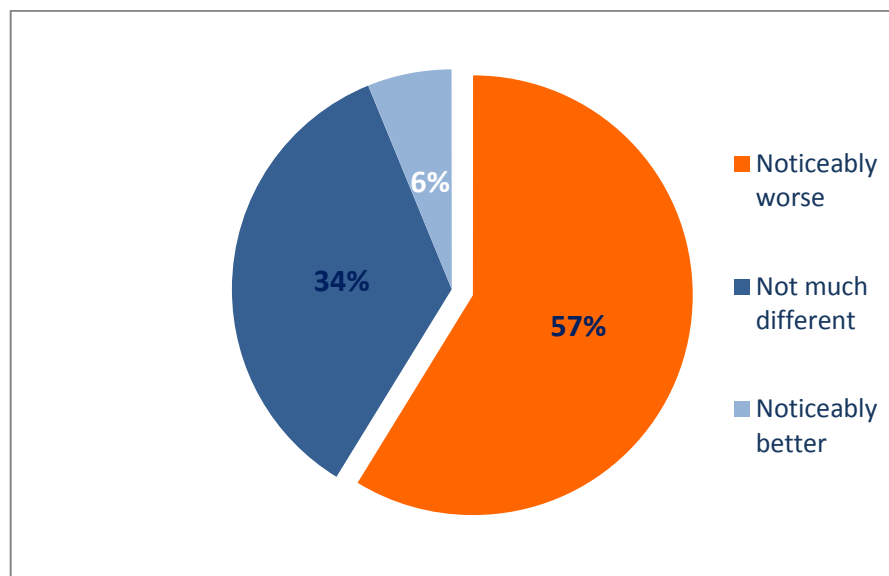
A different survey last year, the ‘Citizens’ Agenda’ from the University of Melbourne’s Centre for Advancing Journalism, found that Australians in 2013 felt that the tone of the political debate has indeed become noticeably worse than it was in the past.

The question they were asked was:

Thinking now about the tone of political debate in Australia at the present time: would you say it is noticeably better now than it has usually been in the past; not much different now from how it has usually been in the past, or it is noticeably worse now than it has usually been in the past?⁸

⁸ University of Melbourne Centre for Advancing Journalism, Citizens’ Agenda National Survey of Voters, May 2013, http://visions-download.unimelb.edu.au/HILDA/CA_natpoll.pdf.

Figure 4: Tone of the political debate 2013



Source: University of Melbourne Centre for Advancing Journalism, Citizens' Agenda, National Survey of Voters, May 2013

As you can see from the size of the largest slice of pie in figure 4, a majority of Australians think the tone of the debate has deteriorated.

In the same study, researchers probed the level of confidence of the Australian public in various civil society institutions: the federal government, the legal system, the print press, television, and universities. They asked Australians what sort of confidence they had in those institutions.

Figure 5: Level of confidence in institutions—adults

	Print press	TV	Federal government	Legal system	Universities
A great deal	4	6	6	13	28
Quite a lot	22	22	22	45	51
TOTAL CONFIDENT	26	28	28	58	79
Not very much	60	62	48	34	13
None at all	13	9	22	7	3
TOTAL NOT CONFIDENT	73	71	70	41	16
Don't know	1	1	2	1	5

Source: University of Melbourne Centre for Advancing Journalism, Citizens' Agenda, National Survey of Voters, May 2013

In results which may vex those who work in this place (figure 5), the 'federal government' scored only equally with 'television', and only marginally ahead of the '(print) press'.

Confidence in government lagged significantly behind confidence in the legal system, and universities scored most highly in levels of confidence, with nearly four in five saying they had a great deal or quite a lot of confidence in them.

Less than a third of Australians of voting age expressed confidence in the federal government.

This prompted me investigate whether this is just a phenomenon exclusive to Australians jaded from years of exposure to our particular brand of domestic politics, or whether it is replicated in other countries. The findings about support for democracy in other western nations such as Canada suggest that diminishing levels of confidence in its institutions may be one of the key drivers in the erosion of support for democracy.

The Americas survey from which I quoted earlier asked questions about trust in democratic and civil society institutions, ranging from the church, the armed forces, the police, justice system, parliament, right down to politicians. While the categories and questions were of course different, it was striking to see that trust in national parliaments and political parties languished at 30 and 40 percentage levels, right at the bottom of the list of 12 institutions.⁹ In Canada, trust in political parties was at the bottom of a list of nine institutions, behind even the media.¹⁰

In the US, when Americans were asked various questions about respect for political institutions, pride in their political system, and whether their political institutions protected basic human rights, the US registered only very bare averages on those issues in comparison with other countries in the Americas.¹¹

So there are echoes of the Australian phenomenon in other western nations. There is a sense of declining levels of trust in the institutions of our democracies.

The other important question raised by our findings was about the attitudes of youth. What was driving the even lower levels of support for democracy amongst young Australians?

Looking for studies on youth and their trust in political and civil society institutions to complement the data I have on adults in both Australia and other western

⁹ Mitchell A. Seligson, Amy E. Smith and Elizabeth Zechmeister (eds), *The Political Culture of Democracy in the Americas, 2012: Towards Equality of Opportunity*, 2012, p. 193.

¹⁰ *AmericasBarometer*, op. cit., p. 22.

¹¹ Seligson, Smith and Zechmeister, op. cit., pp. 202–3.

democracies, I found a significant study conducted with school age children by the Australian Curriculum Assessment and Reporting Authority in 2010.¹²

It surveyed around 13,000 school children in Years 6 and 10 to assess the impact of civics and citizenship educational programs in Australian schools.

The results from 7,000 Year 6 students and over 6,400 Year 10 students give an interesting picture.

At Year 6, the younger group, more than half the 7,000 students assessed expressed either quite a lot or complete trust in political parties, federal parliament and state/territory parliaments. There were strong levels of trust in law courts and the police. Only the media engendered little trust in a majority of Year 6 students.

Figure 6: Level of trust in institutions—school children

Year 10						
	Media	Australian political parties	Australian parliament	State/territory parliaments	Law courts	Police
Completely	6	3	9	7	15	26
Quite a lot	21	28	42	44	50	44
TOTAL TRUST	27	31	51	51	65	70
A little	52	52	39	40	28	20
Not at all	21	16	10	10	7	9

Source: Australian Curriculum, Assessment and Reporting Authority, National Assessment Program – Civics and Citizenship, Years 6 & 10 Report, 2010, p. 68

However, by the time they got to Year 10 (see figure 6), the levels of trust in those civic institutions had eroded considerably. The only institutions which registered significant levels of trust were law courts and the police. Australian political parties were trusted very little, and parliaments at both levels recorded only marginally positive levels of trust.

And those levels of trust are consistent with the lack of confidence that adult Australians, and indeed adults in other western nations, have in the political institutions in their own countries.

¹² Australian Curriculum Assessment and Reporting Authority (ACARA), *National Assessment Program: Civics and Citizenship Years 6 & 10 Report*, 2010, p. 68, http://www.nap.edu.au/verve/_resources/NAP-CC_Report_2010_251011.pdf.

Civics education

Reacting to our 2012 poll, an editorial in *The Age* newspaper in Melbourne¹³ argued that for democracy to be sustained, it is necessary to have a citizenry which cherishes democratic values and which comprehends what would be lost if representative institutions and the rule of law were to disappear.

The editorial pointed to the poll's other findings that the western liberal values of a right to a fair trial, the right to vote and the right to freedom of expression seemed to be more highly valued than the democratic system of government itself. It expressed alarm that the connection between the possession and protection of those rights and a democratic system of government no longer seems clear to people. That those rights—to vote, to a fair trial, to freedom of speech—only have a secure foundation when governments are accountable to the people. For that accountability, citizens need to participate in the political process. To sustain the democracy that permits that, civics education is fundamental.

Amanda Lohrey, in an article in *The Monthly* magazine in 2012¹⁴, argued that Australians, and particularly young Australians, hold naïve and simplistic views about politics. She pointed out that the reality, and the virtue, of our Westminster system is that it is 'adversarial'; it is 'institutionalised squabble' and we are the beneficiaries of this. 'The genius of our political system', she says, 'is that it has evolved a civilised machinery for keeping blood off the streets. It's called Parliament, and political leaders are warlords in harness'. We should not be surprised if some of the individuals in the system, like Slipper or Thomson, behave badly. Nor is that bad behaviour of untrustworthy characters any sort of inherent flaw in the system or harbinger of its decline. Amanda wonders 'about those people who routinely disparage politics and politicians. Have they never sat on a company board, or the committee of a sporting club, or a school's parents and friends executive? What lotus land are they living in, and when can I move there?'

Senator John Faulkner pointed out in 2012¹⁵ that 'the politics of distrust are easy'. He narrated an amusing story about the so-called 'Birthers' in the United States whose reaction to the election of Barack Obama was not to question his politics or policies, but to undermine the very legitimacy of his election as President. In their fantasy,

¹³ 'Democracy must be taught as well as caught', *The Age*, 12 June 2012, p. 10.

¹⁴ Amanda Lohrey, 'Comment: Australian democracy and the right to party', *The Monthly*, no. 80, July 2012, <http://www.themonthly.com.au/issue/2012/july/1341558536/amanda-lohrey/comment-australian-democracy-and-right-party>.

¹⁵ John Faulkner, 'The price of political fear', *Sydney Morning Herald*, 30 April 2012, <http://www.smh.com.au/federal-politics/political-opinion/the-price-of-political-fear-20120430-1xuik.html>.

Barack Obama was born outside the United States, by virtue of an incredibly complicated and extensive conspiracy between the Hawaiian department of health, his parents and grandparents, American Customs and Immigration, and Hawaiian state officials, all of whom contrived to conceal that he was actually born in Hawaii. This fantasy has taken such hold in the United States that 13 per cent of all adults and 23 per cent of Republican voters believe that it is true.

Faulkner is concerned at this growing trend in western democracies for political parties to respond to defeat by denying the legitimacy of the system itself and the integrity of the democratic process, as a way of deflecting their own failure and the failure of their policies to gain support in democratic elections. What is needed is for a better informed population about the realities of living the democratic ideal—that governing means compromise, and that it is never possible to achieve perfection.

In November 1947, Winston Churchill as leader of the conservative opposition, uttered these famous words in parliament:

No one pretends that democracy is perfect or all-wise. Indeed, it has been said that democracy is the worst form of Government except all those other forms that have been tried from time to time.¹⁶

It is precisely because of this inherent imperfection that civics education is important. If we are to build trust in our democratic system and the institutions which uphold it, then it is essential that we have a very realistic understanding of how politics works and why it is imperfect, frustrating, slow, and seemingly conducted by an unruly rabble of tremendously imperfect egotists.

Amanda Lohrey pointed out that Paul Keating must have understood this, because he inaugurated a program of civics education which was ultimately implemented by the Howard Government, but on an optional basis. This ‘Discovering Democracy’ program was found by independent evaluations not to have been used by 70 per cent of teachers, because they were either not trained or did not feel confident to use it.

There has been some progress since then. Civics education is a component of the current curriculum, and is intended to be part of the new national curriculum. A 2008 national declaration on education goals for young Australians included references to democracy and participation in Australia’s civic life.¹⁷

¹⁶ House of Commons debates, 11 November 1947, pp. 206–7, http://hansard.millbanksystems.com/commons/1947/nov/11/parliament-bill#S5CV0444P0_19471111_HOC_273.

¹⁷ Ministerial Council on Education, Employment, Training and Youth Affairs, *National Declaration on Education Goals for Young Australians*, 2008, http://www.curriculum.edu.au/verve/_resources/National_Declaration_on_the_Educational_Goals_for_Young_Australians.pdf.

However, despite some civics education, the level of students' knowledge is not translating to trust in government or political institutions. It is also not translating into a dedication to the democratic institutions which uphold our liberal democratic society, and is not translating into an interest in actually participating in the political process.

The implementation of civics programs in our educational system therefore needs to be done very carefully so that teachers not only understand the issues, but understand how to engage students in the democratic process and, importantly, to manage their expectations. The evidence at the moment suggests we have a long way to go in this goal.

Does this lack of interest in the democratic system mean that young Australians are apathetic in general? Is there anything inherent in the nature of this younger generation that should lead us to general hand-wringing and despair?

It is the way of all older generations to wring their hands at the failings of the younger generation. But there are several studies which suggest that, contrary to popular conceptions, the younger generation are far from disengaged from their rapidly evolving society.

Both Australian and international studies have observed young peoples' increasing participation in community-based or internet action, on issues like the environment, human rights or ethical consumerism.

The Australian civics assessment study in 2010¹⁸ asked students how important they felt it was to take part in various activities, from activities to protect the environment, promoting human rights, learning about political issues in the media, supporting a political party or even discussing politics.

In terms of political engagement, the results (figure 7) were pointing in the same direction as those from the international studies. Australian students are disengaged from the political process and not interested in participating, discussing or learning about politics:

- Only 18 per cent thought that learning about political issues in the press was important
- Only 10 per cent thought that supporting a political party was important and
- Discussing politics was right at the bottom of the list, at 6 per cent who thought it very important.

¹⁸ ACARA, *op. cit.*, p. 65.

Figure 7

Year 10 students	% saying 'very important'
Taking part in activities to protect the environment	31
Taking part in activities promoting human rights	25
Learning about political issues in the newspaper, radio, TV [etc...]	18
Supporting a political party	10
Discussing politics	6

Source: Australian Curriculum Assessment and Reporting Authority (ACARA), *National Assessment Program: Civics and Citizenship Years 6 & 10 Report*, 2010, p 65

However, the study found that more than a quarter of Year 10 students thought that taking part in activities to protect the environment, or to promote human rights, was 'very important'.

These findings about Australian schoolchildren and their attitudes to social and civic engagement are reinforced by other research in other western societies.

A new study, commissioned by the National Citizen Service in the United Kingdom and conducted by respected social research institution and think tank, Demos, was published recently.¹⁹ It looked at the defining attitudes, characteristics and aspirations of teenagers aged 14–17 years old today, those who are at the tail end of the Y-Generation and therefore the link between Gen Y and the next generation.

Common stereotypes of teenagers, and more broadly Gen Y, abound, whether in the UK, the US, Europe, or here. They are not positive.

They have been described as 'at best feckless and at worst feral'²⁰, lazy, apathetic, selfish, entitled whiners, narcissistic, binge drinkers, the generation which wins trophies just for turning up at sport. Sound familiar?

This Demos report goes a long way towards debunking those stereotypes. It was a significant survey, not only of 1,000 teenagers themselves, but of 500 of their teachers and deputy school heads.

¹⁹ Jonathan Birdwell and Mona Bani, *'Today's teenagers are more engaged with social issues than ever ...': Introducing Generation Citizen*, Demos, London, 2014, http://www.demos.co.uk/files/Generation_Citizen_-_web.pdf?1392764120.

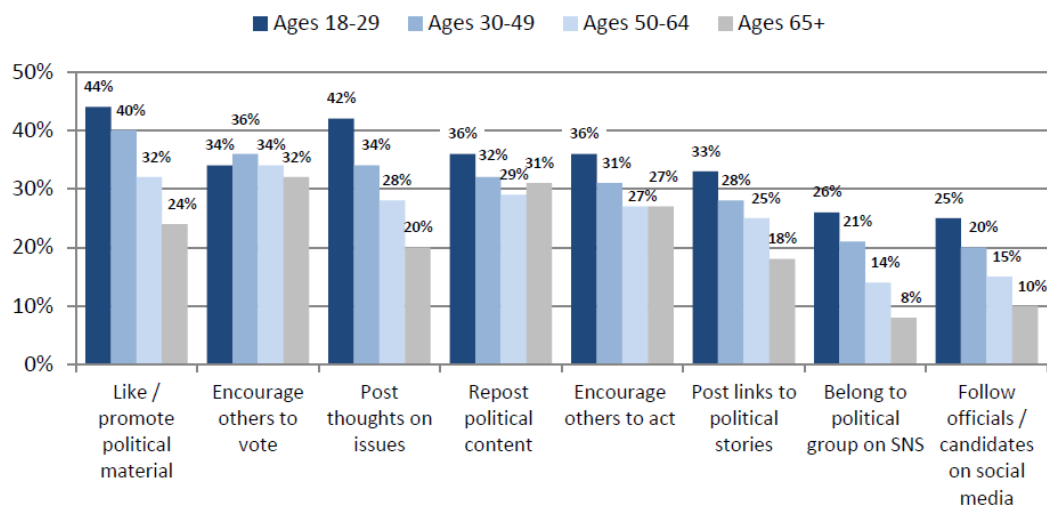
²⁰ *ibid.*, p. 11.

Today’s British teenagers, the report finds, are less engaged with traditional politics than previous generations. However, they are more likely to be engaged with social issues, both global and local, than previous generations of teenagers. They are either as likely or more likely to volunteer for good causes and organisations. They are more or as likely to express their political opinions creatively through art, film and music, to sign political petitions or set up their own socially motivated project.

These findings are reinforced by the Pew Research Center in its US survey in 2012 on civic engagement in the digital age (figure 8).²¹

Figure 8
Younger social media users are more likely to use the tools for civic activities

% of users of social networking sites or Twitter who use social media these ways



Source: Pew Research Center, *Social Media and Political Engagement*, October 2012

These American data suggest that young social media users actually have quite high participation levels in civic activities—the darkest columns are the 18–29s, and they range from the 25 per cent who might follow politicians on social media, to 33 per cent who post links to political stories, or a high 42 per cent who post thoughts on civic issues.

Another 2012 Pew study on civic engagement of Americans in the digital age²² found that younger Americans are just as likely as older Americans to engage in political activities, and are much more likely to be politically active on social networking sites than in other ways (such as face to face).

²¹ Pew Research Center, *Social Media and Political Engagement*, Pew Research Center Internet and American Life Project, Washington, DC, October 2012, p. 5, http://www.pewinternet.org/files/old-media/Files/Reports/2012/PIP_SocialMediaAndPoliticalEngagement_PDF.pdf.

²² Pew Research Center, *Civic Engagement in the Digital Age*, April 2013, p. 5.

It will not surprise you that this generation’s social activism is expressed in different ways and through different channels than in the past.

I refer, of course, to the ubiquitous social media.

Figure 9 shows the sheer numbers involved here. Half the Australian population—12.8 million people—are on Facebook. Half are on YouTube. Blog sites like WordPress and Blogspot are communication vehicles for significant numbers of Australians. Twitter is growing. Photo-sharing sites like Tumblr and Instagram are building their user bases. Many of our children are on one or all of these.

Figure 9

	Total users
Facebook	12.8 m
YouTube	12 m
WordPress	5.7m
Tumblr	4.4 m
Blogspot	3.0 m
Twitter	2.5 m
Instagram	1.6 m

Sources: Social media statistics Australia, socialmedianews.com.au; and Peter John Chen and Ariadne Vromen, ‘Social Media, Youth Participation and Australian Elections’, November 2012, www.aec.gov.au/About_AEC/research/caber/1b.htm

Social media and political engagement

The Demos study found that substantial numbers of young people use social media to become engaged with social issues. Nearly 40 per cent had signed petitions online, almost 30 per cent had used social media to raise awareness for a cause, and one in five had donated money online.

But what is clear from the evidence is that the political conversation has failed to make an impression on this generation.

Many of you may be aware of this next sobering statistic.

Just before the last federal election, there were approximately half a million 18 to 24-year-olds not on the electoral roll. There are only around 2 million

Australians in that age bracket. That is, one in four 18 to 24-year-olds are not even enrolled to vote.²³

And they make up a third of all voters of any age missing from the electoral roll.

Some commentators, like Ron Fournier in *The Atlantic*, have warned of a 'brain drain' in politics and the civil service as baby boomers retire, and Gen Y look elsewhere to make their mark.²⁴

Party membership is on the decline, both here and in other established western democracies. As journalist Jacqueline Maley presaged before the Labor Party conference in 2011: 'Mega-litres of bad coffee will be consumed, important decisions about party policy will be mostly pre-determined, and Australians under the age of 30 won't care about any of it'.²⁵

The way forward

So what are we to make of all of this? And when we have made something of it, what is to be done?

Is democracy losing supporters because it is being taken for granted after decades of prosperity and a lack of serious ideological competition?

Are other, more authoritarian, forms of government seen as viable options, given their economic successes?

Is it the tone of the debate which has turned Australians, particularly young Australians, off democracy?

Or is it a failing of our education system or the content of the conversation and debate about democracy in our modern society?

²³ Australian Electoral Commission, 'AEC working with Facebook to encourage young voters to matter this election', Media release, 21 June 2013, <http://www.aec.gov.au/media/media-releases/2013/06-24.htm>.

²⁴ Ron Fournier, 'The outsiders: How can Millennials change Washington if they hate it?', *The Atlantic*, 26 August 2013, <http://www.theatlantic.com/politics/archive/2013/08/the-outsiders-how-can-millennials-change-washington-if-they-hate-it/278920/>.

²⁵ Jacqueline Maley, 'Youth needs new reasons to become political', *Sydney Morning Herald*, 17 February 2011, <http://www.smh.com.au/federal-politics/political-opinion/youth-needs-new-reasons-to-become-political-20110216-1awil.html>.

It is, perhaps, a combination of all of these. However, looking at the list, there are only two over which we have any effective prospects of control.

Firstly, to disillusionment with the current level of political discourse.

Raise the tone?

All the evidence suggests that there is some degree of switching off from the political discussion because the tone of the debate has deteriorated.

I am not suggesting the tone of debate couldn't be improved, or at least its wit.

But is it really so different from the politics of the past?

Andrew Leigh, Labor MP and currently Shadow Assistant Treasurer, in a speech on civility and democracy last year²⁶, conducted an interesting analysis of uncivil language in parliament, by trawling through Hansard over the decades for the number of times the particular words 'liar/liars' or 'unparliamentary' were used, as common and most basic indicators of incivility in the House. He found that the most *uncivil* years in parliament, on this basis, were in the early 1950s, the late 1970s and the early 1990s. Today's parliament did not rate.

Mr Leigh also pointed out that Australians have never held their politicians in terribly high regard. He referred to this comment:

The standard of debate and discussion is appallingly low, the intelligence and purposefulness of those taking part less than evident ... 'No country deserves politicians as bad as these'.²⁷

That was written by social commentator Craig McGregor in 1966. There's nothing new in our lack of respect for our modern elected representatives.

Mr Leigh also referred to some of the famous political insults in the 1990s. I have done a bit of my own research:

Keating likened John Hewson's performance to being 'flogged with a warm lettuce'. When Hewson asked Keating why he wouldn't call an early election, Keating replied, 'The answer is, mate, because I want to do you slowly'.

²⁶ Andrew Leigh, 'Civility in Australia', speech to the CHASS National Forum, 20 June 2013, Parliament House, Canberra, <http://www.andrewleigh.com/blog/?p=4404>.

²⁷ Craig McGregor, *Profile of Australia*, Hodder & Stoughton, London, 1966, p. 217.

Of John Howard, dubbed ‘That old desiccated coconut’, Keating said: ‘he is the greatest job and investment destroyer since the bubonic plague’.

Of course neither the insults nor the wit are confined to one side of politics.

Peter Costello parried with the Labor government about the thought of Labor taking power: ‘That is enough to put me into a cold sweat. If I look tired it is because I have thought of that in the middle of the night’.

John Howard made a few mild-mannered insults of his own: this one on Kevin Rudd during a debate on sending military trainers to Iraq: ‘I think he’s getting a bit full of himself, I mean this is Mr Rudd walking both sides of the street—‘each way bet Kevin’.

Wilson Tuckey called Kim Beazley a ‘fat so-and-so’. Kim Beazley told Wilson Tuckey to ‘take [his] tablets’.

Politicians have always insulted each other. Some insults, like calling someone a ‘fat so-and-so’, are below the belt. But I do not think it is this sort of behaviour that undermines our democracy.

I think Senator Faulkner is close to the mark when he cites the sometimes hyperbolic criticisms of the former Labor minority government as being an illegitimate government simply by virtue of that minority, despite the fact that Australia had 13 previous minority governments since Federation, under Barton, Deakin, Watson, Reid, Fisher, Hughes, Scullin, Menzies, Fadden and Curtin. The Gillard Government was simply the 14th.

Education

What this points to is a need for a better civics education. A way to explain to younger generations about the democratic system we value, how it works, and why, by working perfectly, it will always be imperfect. About the Westminster system, separation of powers and independent judiciary. About why the other civil liberties we value—our free press, freedom of speech, freedom of religion, freedom of association, right to a fair trial—are at risk if we do not have a democratic system which makes our governments accountable. An article in *The Economist* recently neatly précised the 19th century political scientist Alexis de Tocqueville, saying ‘democracies always look weaker than they really are: they are all confusion on the surface but have lots of hidden strengths’. But it also argued that if we are to keep our democracies alive, they

must be assiduously nurtured when young, and carefully maintained when they are mature.²⁸

Role of the new media

The hardest part of this will be finding ways to engage younger generations in this discussion in ways they can relate to. It will mean talking to them in ways they can understand, and in places they can be found. That means, among other things, through the new media.

The Australian Electoral Commission has finally taken the bold step of allowing online enrolment. In the five weeks before closing off enrolments before the 2013 election, 830,000 online enrolment applications were received by the AEC. Online enrolment has been a huge step forward in improving the electoral engagement of youth. One thing that has not improved, though, is the informal vote, which last election at 6 per cent was the highest it has been in 30 years. The number of ‘blank’ ballot papers doubled between the 2007 and 2010 elections.²⁹

This is a small indication of the much bigger task ahead for government and educators, and that is to find ways to speak to young people about the issues they care about, and finding ways to link that conversation with democracy and political engagement. The first part is not that hard; young people can be found online, in volunteer groups, in social media campaigns. The hard part is bridging the gap between their preferred forums of engagement with social issues, and the traditional civil and political arenas.

One such bridge might be youth parliaments. While the YMCA runs youth parliaments in every state in Australia, and an Indigenous one, there is no federal government initiative that I know of engaging Australian students in federal politics. The Greens ran a pretty good policy in the last election which proposed opening up federal parliament for a sitting day for a special youth question time, and partnering selected youth participants with MPs and senators as mentors.

That is one idea.

²⁸ ‘What’s gone wrong with democracy’, *The Economist*, 1 March 2014, <http://www.economist.com/news/essays/21596796-democracy-was-most-successful-political-idea-20th-century-why-has-it-run-trouble-and-what-can-be-do>.

²⁹ Australian Electoral Commission, *Analysis of Informal Voting, House of Representatives, 2010 Federal Election*, Research Report No. 12, 29 March 2011, p. 5, http://www.aec.gov.au/About_AEC/research/paper12/files/informality-e2010.pdf.

The Economist put up another, using the example of the Finnish Government which has mandated that if citizens are able to garner 50,000 electronic signatures for any initiative, it must come before parliament for review. They call it E-democracy.

Another step might be to stop lamenting and berating the disengagement of this generation, and start working with the good things we know about them. It might give us more traction.

In 2007 *The New York Times* ran the winning essay from its college essay contest. It was entitled 'Coming of Age in Cyberspace', written by a senior at an Ivy League university on the east coast of America.³⁰ The young student wrote of her parents' incomprehension at her cohort's lack of rebelliousness and the absence of their counterculture, seeing these as signs of their apathy.

She argued that just because her generation of students is not engaged in traditional modes of counterculture does not mean they are not driving change.

She points out that the driving force for cultural change today is the future of technology. The Y-Generation is the one driving that change, using new technologies to reshape the world. Her generation is not given credit for that change, though: it is seen as the 'impact of technology' rather than the 'impact of her generation'.

So let's give them some credit. When you think about it, it is because Gen Y uses social media that politicians, businesses, civil society organisations, even crusty old diplomats, are getting on Facebook and Twitter. Hillary Clinton even had a famous chat on Tumblr. Like it or not, the picket line has been replaced with an online petition, captioned photographs and Facebook likes.

The new media expert Clay Shirky wrote in the journal *Foreign Affairs* about harnessing the power of these tools to build civil society and the public sphere, in the same way that the printing press helped the reforms of Martin Luther and pushed along the enlightenment and the scientific revolution.³¹

I do not have the answers, but want to leave you with this thought. Rather than fight these changes, we need to go with them. And not with a sigh of resignation or resistance, but with enthusiasm. Admire the new media as the digital town hall, a place of free assembly, community coordination and open conversations.

³⁰ Maha Atal, 'Coming of age in cyberspace', *New York Times* Blog, 24 September 2007, http://essay.blogs.nytimes.com/2007/09/24/coming-of-age-in-cyberspace/?_php=true&_type=blogs&_r=0.

³¹ Clay Shirky, 'The political power of social media: technology, the public sphere, and political change', *Foreign Affairs*, Jan/Feb 2011, <http://www.cc.gatech.edu/~beki/cs4001/Shirky.pdf>.

Embracing this generation and engaging in conversations on their terms may be the only way to preserve democracy for future generations.



Rosemary Laing (Clerk of the Senate) — It seems to me in our system of representative democracy young people are engaging in issues, if not with the actual political process. How then do you translate that interest in issues into participation in a system of representative democracy? And one of the difficulties I think that we have in Australia particularly is the stranglehold on candidates and preselection, the funding of candidates and having the capacity to get elected to parliament that the major political parties have on the system. Clearly from the data political parties themselves are not rating highly amongst any respondent group. So it seems to me as well as being a challenge for the institutions, there is also a challenge to political parties; if they want to remain as representatives of mass sections of the community, they also have to get in touch with young people.

Alex Oliver — I did try to find out about political party membership here in Australia and the figures aren't easy to find. Nobody publishes them for good reason apparently, because it is all on the way down. But it was published in the UK that only one per cent of Britons are now members of political parties compared with 20 per cent in 1950. So in half a century that is a very big drop. What should be a big concern to the major political parties here in Australia is how to get students and that generation involved in political party activity. I wonder whether it is because political parties have been slow to embrace this new way of conversing with that generation. I notice apropos of that a concerning development just in the last day or so where it looks like the people in this house are going to try and shut down the use of Twitter and social media during sessions of parliament and in the Senate.

Rosemary Laing — Not in the Senate.

Alex Oliver — So somebody made the point how is that going to encourage young people to participate in their democratic system if they are not talking with the same piece of machinery that they want to use?

Rosemary Laing — Just to clarify, I understand that the House of Representatives Procedure Committee may be looking at the use of devices...

Alex Oliver — One party has shut it down already...

Rosemary Laing — One of the ideas is you are in a chamber to debate and participate in business and if you are being wildly distracted by devices and things going ‘ping’ then it disrupts the deliberative process that is occurring. But I have certainly seen over the years a much greater reliance on things such as emails, Twitter comments and Facebook comments, that make their way instantly into the debate. In the Senate, for example, there might be discussions on the details of a bill and the participants in that debate, the senators, are getting on their laptops or devices instant feedback and suggestions which they then feed into the debate.

Question — I take your point about embracing the inevitable so I think that young people and increasingly older people are going to be using those forms of technology. One of the things that worries me though is that there is almost a superficial aspect to it. People have referred to ‘slacktivism’—that you can dip into an issue without becoming genuinely involved in it. You can sign up to the e-petition or like something on Facebook but perhaps you don’t give it a great deal of thought, perhaps you don’t do anything in terms of follow-up. Am I being overly pessimistic that there are risks in those types of technology being the main way that people engage in politics?

Alex Oliver — I think that is a very good point. That’s the way I felt about it. Last year I gave a very contracted version of this speech and I have moved on a bit since then. I was very sceptical about it. How many characters are there in a Tweet? 140? How can we possibly communicate anything meaningful there? I have read some stuff about this and the reaction to the Gutenberg printing press 500 years ago was exactly the same. One of the writers said the printing press had no impact the first 50 years and in fact more people were reading erotica in print than were reading important religious or political treatises like Martin Luther’s writing. But it didn’t lessen the impact of those important writings that benefitted by virtue of the printing press and in fact the impact of the development of the printing press and the whole print revolution really wasn’t felt for about the first 100 years. Everything seems to be going faster now and I suspect that in this century we have seen so much dramatic technological revolution that the impact of social media will be felt and sorted out and developed much more quickly than the printing press with its 100-year birth. I think we have some time to wait to see how all of these new media settle down, which ones are useful, which are discarded, which ones are trivial and which ones are not.

Comment — A lot of what you have argued is a phenomenon shared in a lot of Western democracies. I just wanted to add three things to the discussion. One is civics education has been a part of what is on offer in the UK but also in many European countries and large parts of America as well and it doesn’t appear to have had any particular impact on improving younger generations’ opinions of politics. That leads me to the second point: you need to explore what people imagine democracy actually

is. That is why they are responding to your question in the way that they are. What they imagine democracy is, isn't what they are actually experiencing. And I think that means that we need to have a much more reflective discussion. It is not just a matter of explaining democracy, people are beginning to change their ideas about the way democracy works and the way that it operates.

What is really fascinating is the way that the younger generations are both changing the way that politics is constructed but also they share with a lot of the older generations a number of reforms that they would like to see in the way that politics is done. In a lot of discussions about this sometimes people end up blaming the citizen, that citizens have just become too hopeless. I much more want to blame the political system. There is something gone wrong with the way that politics is conducted. I don't think it is necessarily the nature of the discourse although there is a lot of evidence to say that people don't like that discourse. Fundamentally people feel that they lack power in the system and a lot of the reforms they are committed to are all about both giving themselves a more direct say, but also actually trying to make representative politics what it should be, which is representative. So I think that you have picked up on important issues but I don't think that civics is the answer, the answer is to change the way that politics works.

Comment — I think the clue that I see in your data that gives us a little bit of an indication that there is a breakdown that takes place amongst young people is the evidence you put forward that said that at Year 6 level, which is the year level when most students look at civics and citizenship, we find that in fact they have a high level of trust for their systems of democracy including their parliaments. What happens in those four years between Year 6 and Year 10 that undermines their trust in their democratic institutions and their ability to feel as though they are represented in the democracy? I think that rather than blame our education system more broadly, which can only do so much to assist people to know and understand the procedures of parliament, we must look to society, and I include the parliament in that, to be able to provide good models for the standards we expect for peoples' participation in society and in our civic life more generally.

Question — I am wondering if our democracy is being eroded, and replaced in some cases by xenophobia and jingoism sponsored by shock jocks. Also, corporations may have a stand to oppose democracy because democracy may not be in their best interest.

Alex Oliver — I am not sure that the evidence suggests that. I think maybe I could bundle all that up into the tone of the political conversation which of course doesn't just happen here in parliament. We are backing up our findings in the last two polls

about the feelings of Australians towards democracy with some further questions this year and we are just coming out of field work. So watch this space because we have asked some questions which I hope will try and probe into some of the reasons behind these negative attitudes. I hear your point about the conversation which is more of a civic conversation in general than a political conversation in parliament and I don't know what the answer is. I am not convinced that it is the tone of the discussion. I lean more to Senator Faulkner's point of view that it must happen in the education sense. Evidence for the attitude changes between Year 6 and Year 10 students suggests that education may have a greater role to play. But I hope to be able to report back to you in a couple of months' time with some better data on what is behind this. When we got these results in the last two years in a row of course people were saying, what is driving this disillusionment? What are young people thinking about when less than half of them think that democracy is important? I am simply putting up some hypotheses here and I hope that we can test those with better evidence.

Comment — While I thoroughly agree that civics education is important, what happens after that? People go out and they want to participate. Look at the Iraq War and what happened at the federal level. Hundreds of thousands of people around the world said no but it still happened. At a local government level people say no to developments and huge numbers of people oppose them yet their councils go ahead with them. It is the capitalism and consumerism aspect that you talked about as being those other priorities which I would like to turn back to governments. They are being told what to do by big business and at the moment we are seeing disastrous consequences ahead of us with the current government's attitude to mining coal at a time we need to stop doing it. So I think that the media also has a big role to play. As well as changing the discourse in parliament we need to look at having principles to guide our politics and not just make these short-term decisions which are for profit and not looking to the future.

Question — Do you have any comments about effectiveness of what seems to be a growing trend of mouse signatures from organisations such as GetUp and Avaaz and so on?

Alex Oliver — I don't actually. I remember thinking that online petitions were extremely ineffective and I was corrected by the head of GetUp at the time who said that it had actually had some significant impact on government policy at the time. I haven't seen any data about that but I suspect that if the Finnish Government is prepared to look at the policy content of a petition that got 50,000 signatures then they think it has some impact, so that was a really interesting bit of evidence there. Obviously Finland's population is a lot smaller than ours and we would be looking at a petition that had a lot more signatures than that but I think that some of those big

online organisations like GetUp do get millions of signatures to some of their initiatives and that could well be an indication of how influential they may be on policy.

Question — Is there any work being done on the attitudes of the Gen Y people to democracy when they become 30 to 45 years old? In other words, do their attitudes change? Referencing the Gutenberg comment, surely readership levels are not unrelated to literacy. And the third point regarding the declining membership of political parties, surely that is a reflection of the iron hand of party machines and the control over the preselection process.

Alex Oliver — Which was Dr Laing's point, and I think that is a very valid one. As for your Gen Y question, well obviously we will have to wait as they are not 30 to 40 yet. We do have data on what over 30s think and we do know that values change as generations get older. That comment that was commonly attributed to Churchill, but I think it was a French premier who said it: if you are not a liberal when you are 20 you have no heart and if you are not a conservative when you are 30 you have no brain. We know those liberal values change and we know that older generations now are much more in support of democracy but we don't know what is going to happen to this generation until they grow up.

Trust in the Australian Political System*

Andrew Markus

Public opinion polls

Public opinion polling is a staple of political life; it is rare that a week passes without the report of a survey in one of our daily newspapers. We lack, however, the capacity to critically evaluate.

Leading newspapers report survey findings as fact, content to fill newspaper columns without any critical scrutiny. Sample size and margin of error may be reported at the foot of tables, but pass without comment. Minor shifts from one survey to the next are presented as significant, the shift of 1% or 2% in the support for a political party worthy of front-page coverage. Yet the margin error for such a survey is close to 3%; if the level of support for a political party is reported as 51%, then we can be confident at the 95% level that support is within the range 48%–54%. The 95% confidence level means that if the poll was repeated 20 times, on 19 occasions the result would be in the range 48%–54%. In other words, a small shift in level of political support is within the margin of error of the previous poll—there has been no statistically significant change.

A second issue is the capacity to locate findings within a context. The reporting of levels of political support is typically contextualised with reference to the findings of previous surveys, as is polling of attitudes to political issues. This is in contrast to reporting of a broad range of social issues. But findings of one political poll are rarely placed in the context of poll results obtained by other agencies, for example comparing Newspoll and Nielsen and *Essential Report*, with the exception of the week or so preceding an election. The different results obtained by different polling organisations largely pass without notice or scrutiny.

While there is a wealth of surveying of levels of political support, Australia lacks the depth of surveys in a number of western countries. We don't have an equivalent to the Eurobarometer, conducted by the EU for over twenty years; we don't have an equivalent of the annual British Survey of Social Attitudes, or the British Citizenship Surveys that were conducted between 2001 and 2011.

* This paper was presented as a lecture in the Senate Occasional Lecture Series at Parliament House, Canberra, on 11 April 2014.

The Scanlon Foundation surveys

One of our major assets is provided by the Scanlon Foundation, whose social cohesion surveys were first conducted in 2007 and annually since 2009. For the first time we have long run and systematic surveying to further understanding of public opinion on issues of relevance for social cohesion, with a specific focus on attitudes to immigration and cultural diversity.

The Scanlon Foundation utilises a detailed questionnaire that takes more than fifteen minutes to administer—and large samples that provide the basis for analysis of sub-groups. In addition to the six national surveys conducted to date, local area surveys were conducted in 2007, 2009, 2012 and 2013, with a large online survey of immigrants in 2013. Total respondents to the surveys now number more than 20,000.

The Scanlon–Monash Index of Social Cohesion aggregates data for 18 questions that cover domains of belonging, worth, participation, social justice and acceptance. Benchmarked data against the 2007 survey shows a decline in the Index from the base of 100 to 87.6 in 2013, with the largest decline in the indicators of acceptance/rejection, a finding of potential relevance to the current debate over possible changes to the Racial Discrimination Act.

The wealth of data obtained by the Scanlon Foundation provides for detailed mapping of public opinion on a range of issues of current national concern. The issue of asylum seekers arriving by boat is one example.

A recent survey for the *Essential Report* provided an indication of the level of concern over the asylum issue. Asked ‘which of these ... issues are you most concerned about?’, of non-economic economic issues ‘border security’ was ranked equal first, along with climate change. Amongst Liberal/National voters, ‘border security’ ranked a clear first, selected by 36%, by 11% Labor, and by 6% Greens.¹

The Scanlon Foundation surveys², along with most other surveys since the Tampa affair of 2001, have found that only a small minority of the population, typically in the range 20%–25%, support permanent residence for asylum seekers arriving by boat.

In seeking to understand attitudes, the Scanlon Foundation survey has asked: ‘What policy should government adopt towards asylum seekers trying to reach Australia by boat’ and presented four response options:

¹ Essential Media Communications, *The Essential Report*, 11 February 2014, http://essentialvision.com.au/documents/essential_report_140211.pdf, p. 10.

² Scanlon Foundation, Mapping of Social Cohesion Surveys, <http://www.scanlonfoundation.org.au/research.html>.

1. They should be allowed to apply for permanent residence
2. They should be allowed to apply for temporary residence only
3. They should be kept in detention until they can be sent back
4. Their boats should be turned back

In 2013, only 18% supported the eligibility for permanent residence, down from 23% in 2012. In contrast, over the last three surveys (2011–13), the proportion indicating the fourth option, the turning back of boats, has increased from 23% to 26% to 33%.

Cross-tabulation with other questions indicates that those favouring the turning back of boats are also more likely to be negative towards immigration and cultural diversity. For example, in response to the proposition that ‘accepting immigrants from many different countries makes Australia stronger’, 27% of the national sample is in disagreement, compared to 49% of those who are of the view that boats should be turned back.

Table 1: Cross-tabulation of selected questions, 2011–13 Scanlon Foundation surveys. Percentage

	National average	Agree that ‘boats should be turned back’
What do you think of the number of immigrants accepted into Australia at present? Too high	40	66
Accepting immigrants from many different countries makes Australia stronger. Disagree	27	49
Would you say your attitudes are positive, negative or neutral towards immigrants from Iraq? Negative	24	44

Source: Scanlon Foundation

This is just one illustration of the capacity of the Scanlon Foundation surveys to inform understanding of Australian public opinion; it provides capacity for detailed analysis of a broad range of issues, not least the theme of this lecture, trust in the Australian political system.

The significance of trust

Trust is a central concern for nation states, seen to be a key determinant of effective functioning of democracy. The recent OECD report, *Government at a Glance 2013*, notes in response to the question ‘why does trust in government matter?’:

Trust in government has been identified as one of the most important foundations upon which the *legitimacy and sustainability of political systems are built*. Trust is essential for *social cohesion and well-being* as it affects governments' ability to govern and enables them to act without having to resort to coercion. Consequently, it is an efficient means of lowering transaction costs in any social, economic and political relationship.³

Trust in government is necessary, for example, for gaining support for structural reform, for compliance with law and for minimising avoidance of rules and regulations, such as those relating to taxation. An important observation is that while trust takes time to be established it can be quickly lost. Decline in trust feeds further decline, for example by making it more difficult to retain and recruit the best people for public service.

International findings

To contextualise the Australian experience, surveys in a number of western democracies are considered. The focus is on a range of surveys, to determine patterns of consistency and change; time-series data is essential to provide a context for interpretation.

In Europe and the United States, there is evidence of stable indicators of trust in some countries, but also marked variation in others impacted by the Global Financial Crisis.

The Edelman Trust Barometer for 2014, which is based on 2013 surveys, indicated that trust in government fell ('plunges to historic low') globally by four percentage points to 44%. Amongst the general population, trust in government was below 50% in 22 of the 27 countries surveyed, with very low levels in Western Europe: 14% in Spain, 18% in Italy, 20% in France.⁴

The Gallup World Poll found that between 2007 and 2012 within OECD countries level of confidence in national governments fell from 45% to 40%, just five percentage points. But there was a large measure of change in some nations experiencing economic crisis.

³ OECD, *Government at a Glance 2013*, OECD Publishing, http://dx.doi.org/10.1787/gov_glance-2013-en, p. 21.

⁴ Michael Bush, 'Trust in government plunges to historic low', 19 January 2014, <http://www.edelman.com/news/trust-in-government-plunges-to-historic-low/>.

Table 2: Confidence in national government in 2012 and change since 2007. Selected countries, percentage

	2012	Percentage point change 2007–12
Greece	13	-25
Japan	17	-7
Czech Republic	17	-10
Hungary	21	-4
Korea	23	-1
Portugal	23	-22
Slovenia	24	-24

Source: OECD (Gallup World Poll)

The latest Gallup survey, conducted in April–June 2013, recorded further falls, although in some countries, given the very low levels of trust, the rate of decline was small or had stabilised. For example, in Greece it was 13% in 2012, 14% in 2013. The level of trust was below 20% in Greece, Italy, Portugal, and Spain.

Table 3: ‘In [country] do you have confidence in the national government, or not?’ Response: ‘Yes’, percentage

	2008	2009	2010	2011	2012	2013
Portugal	34	28	25	21	23	15
Spain	58	42	30	31	33	18
Greece	38	32	24	18	13	14
Italy	36	42	33	26	24	14

Source: Gallup

The United States has also experienced declining levels of trust. The *New York Times*/CBS News has been measuring response to the question ‘Do you approve of the way Congress is handling its job?’ since 2002. In February 2014 the level of approval, at 13%, was close to a historical low, having declined from 49% in July 2002.

A longer historical perspective, however, produces a somewhat different understanding—and highlights the need for careful reading of data. American Gallup polls confirm that the current levels of confidence are at a very low level, but there is no downward straight line to 2014.

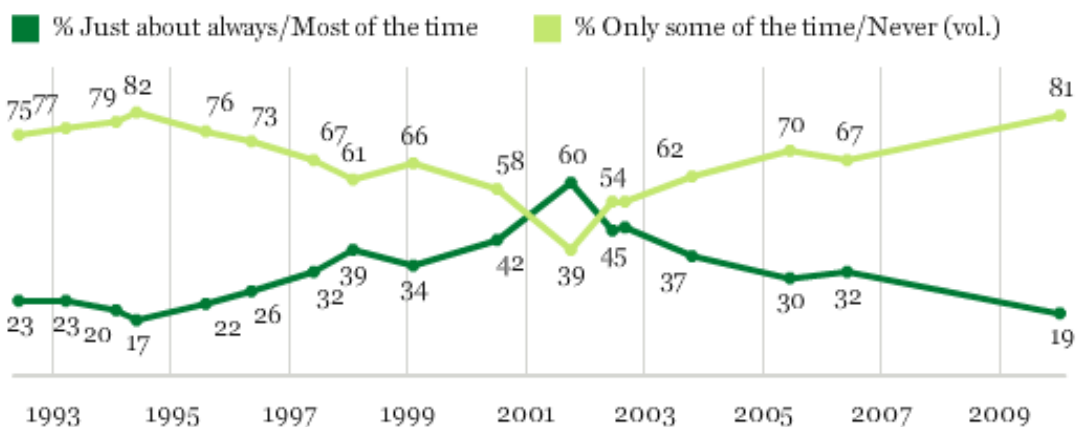
Table 4: ‘Do you approve of the way Congress is handling its job?’ Percentage

	Approve	Disapprove	DK/NA
July 2002	49	38	14
July 2003	39	46	15
Oct. 2004	38	46	16
July 2005	33	50	17
July 2006	28	58	14
July 2007	29	59	12
Sept. 2008	15	72	13
March 2009	30	56	14
July 2009	22	65	13
June 2010	19	70	11
June 2011	20	70	10
July 2012	12	79	9
July 2013	17	76	6
Sept. 2013	24	68	8
Feb. 2014	13	80	7

Source: *New York Times*/ CBS News Poll, 19–23 February 2014

Figure 1: Trust in government in Washington

How much of the time do you think you can trust government in Washington to do what is right -- just about always, most of the time, or only some of the time?



(vol.) = Volunteered response

GALLUP®

Source: Gallup, Trust in Government, <http://www.gallup.com/poll/5392/trust-government.aspx>. Copyright © 2013 Gallup, Inc. All rights reserved. The content is used with permission; however, Gallup retains all rights of republication.

In response to the question: ‘How much of the time do you think you can trust government in Washington to do what is right?’, with the response options ‘just about

always’, ‘most of the time’, or ‘only some of the time’, with ‘never’ a volunteered response, just 19% in the most recent Gallup survey indicated ‘just about always’ and ‘most of the time’. But this level has precedent; it is a return to the level of the early 1990s. Gallup polling indicates that trust was increasing in the late 1990s, reached a high point in the aftermath of the 9/11 attacks on the United States, and has declined since that time.

Decline of trust in the United States may also be indicated by the loss of trust in the major political parties. In 2002 there was almost equal support at close to 33% for the Republicans and Democrats—and for independents. In 2013, however, the recorded level of support for independents was 42%, the highest since Gallup began conducting interviews by telephone 25 years ago.⁵

Findings of the Scanlon Foundation surveys

Since 2007 the Scanlon Foundation surveys have included a question on trust in government. In wording similar to Gallup, respondents are asked: ‘How often do you think the government in Canberra can be trusted to do the right thing for the Australian people?’ There are four response options, ‘almost always’, ‘most of the time’, ‘only some of the time’, and ‘almost never’. The highest proportion indicating the first or second response options, ‘almost always’ or ‘most of the time’, was 48% in 2009, with a low point of 26% in 2012, a fall of 21 percentage points.

Table 5: ‘How often do you think the government in Canberra can be trusted to do the right thing for the Australian people?’ Percentage

	‘Almost always’ or ‘most of the time’
2007	39.0
2009	47.6
2010	31.4
2011	30.5
2012	26.2
2013	27.2

Source: Scanlon Foundation

There is scope to analyse these findings by a number of demographic and attitudinal variables, including gender, age, level of education, financial status, country of birth, and intended vote. For this sub-group analysis, data from the four surveys conducted

between 2010 and 2013 are aggregated, to increase sample size and hence level of reliability. In these years there was only minor variance in the level of trust (27%–31%).

The sub-group analysis indicates that highest levels of trust are obtained for those intending to vote Labor (49%), aged 18–24 (42%), with a university degree (39%), and those who describe their financial circumstances as ‘prosperous’ or ‘very comfortable’ (37%).

Table 6: ‘How often do you think the government in Canberra can be trusted to do the right thing for the Australian people?’ Response: ‘almost always’, ‘most of the time’, 2010–13, percentage

Gender	Female	Male				
	27.6	30.4				
State	Victoria	NSW	WA	SA	QLD	
	31.1	28.2	29.7	29.5	26.3	
Region	Capital	Rest of state				
	30.8	25.7				
Age	18–24	25–34	35–44	45–54	55–64	65+
	42.1	30.9	29.9	25.5	26.1	23.2
Highest completed education	BA or higher	Diploma/ Technical Certificate	Trade/ Apprenticeship	Year 12	Up to Year 11	
	39.3	28.3	27.4	31.6	20.6	
Financial situation	Prosperous/ very comfortable	Reasonably comfortable	Just getting along	Struggling to pay bills / poor		
	37.0	31.8	24.2	20.3		
Intended vote	Labor	Liberal/ National	Greens			
	48.5	18.7	27.3			
Birthplace	Overseas-NESB	Overseas-ESB	Australia			
	33.4	26.8	28.2			

Source: Scanlon Foundation

The lowest levels are obtained for those intending to vote Liberal or National (19%), with highest completed education below Year 12 (21%), and aged 65 or over (23%).

⁵ Jeffrey M. Jones, ‘Record-high 42% of Americans identify as independents’, *Gallup Politics*, 8 January 2014, <http://www.gallup.com/poll/166763/record-high-americans-identify-independents.aspx>.

These are overlapping variables and indicate differences within segments of the population. For example, high educational attainment is associated with higher income; those aged 65 or over have a relatively high proportion with limited formal education. The association of intended vote with level of trust is an important finding, one to which I will return.

A range of additional variables is available for analysis of the Scanlon Foundation surveys. These include surveys of local areas and point to geographical areas where level of trust in government is below 20%.

In 2012 and 2013 surveys were conducted in nine low socio-economic localities, each with a sample of 500. Six of the areas surveyed are urban and with high levels of immigrant concentration; the other three are regional.

As noted, the national level for trust in 2012 and 2013 is in the range 26% to 27%; the finding of the local area surveys is that level of trust is above the national in one area, five are within two percentage points of the national, and three are below, with two markedly below: Logan, a suburb of Brisbane, recorded 18%, and the Atherton Tablelands, also in Queensland, recorded 16%.

Table 7: ‘How often do you think the government in Canberra can be trusted to do the right thing for the Australian people?’ Response: ‘almost always’, ‘most of the time’. 2012–13, Percentage

Greater Dandenong (Melbourne) 2012	Fairfield (Sydney) 2012	Mirraboooka (Perth) 2013	Bankstown (Sydney) 2012	Hume (Melbourne) 2012	Logan (Brisbane) 2013
31.4	28.2	27.8	26.0	22.6	18.0

Shepparton (Victoria) 2013	Murray Bridge (SA) 2013	Atherton Tablelands (Qld) 2013
27.1	22.4	16.1

Source: Scanlon Foundation

Findings compared

Are the levels of trust—and the pattern of decline—found in the Scanlon Foundation surveys replicated in other surveying? The answer is yes on both counts.

The Australian Election Study conducted by researchers at the Australian National University asks if ‘people in government can usually be trusted to do the right thing?’

It recorded a decline of nine percentage points between 2007 and 2013; the Scanlon Foundation survey showed a decline of 12 percentage points over these years.⁶

The Gallup World Poll included Australia and recorded a fall in trust between 2007 and 2012 of 11 percentage points; for these years the Scanlon Foundation survey recorded almost the same proportion, 13 percentage points.

Levels of trust recorded in several Australian surveys in 2013 produced similar results: 27% in the Scanlon Foundation survey, 28% in a survey conducted for the University of Melbourne Centre for Advancing Journalism, 34% in the Australian Election Study.

Interpreting the findings

How are these findings on the level of trust in the federal government to be interpreted? Has there been a substantive change in the level of trust in the Australian political system?

One unambiguous data source is voting in federal elections. The record indicates a decline in the vote for the major parties, increasing support for minor parties and independent candidates. These results may point to growing distrust of the party system, a pillar of Australian democracy.

Antony Green's analysis of the Senate vote shows that since 1949, on two occasions the minor party vote was close to 20% (1969, 1990), in 1998 it reached 25%, and in 2013 registered the highest proportion, 32%, almost one in three voters.

A similar pattern is evident in the recent House of Representative vote, but in 2013 the minor party vote, while the highest since 1949, was only marginally above the 1998 level.

⁶ Ian McAllister and Sarah M. Cameron, *Trends in Australian Political Opinion: Results from the Australian Election Study 1987–2013*, Australian National University, Canberra, 2014, <http://aes.anu.edu.au/publications/aes-trends>.

Figure 2: Minor party vote at federal elections 1949–2013



Source: Anthony Green's Election Blog, ABC Elections, 19 November 2013, <http://blogs.abc.net.au/antonygreen/2013/11/record-vote-for-minor-parties-at-2013-federal-election.html>

The Sydney-based Lowy Institute conducts surveys that focus on foreign policy, but include questions of domestic relevance. In 2012 and 2013 respondents were presented with three statements about democracy and asked 'which one of the three statements comes closest to your own personal views about democracy':

1. 'Democracy is preferable to any other kind of government'
2. 'In some circumstances, a non-democratic government can be preferable'
3. 'For someone like me, it doesn't matter what kind of government we have'

In 2012, 60% of respondents indicated the first option, and in a preference that was interpreted as cause for unease, 23% indicated agreement with the second option, that 'in some circumstances a non-democratic government can be preferable', while close to 15% indicated the third, that 'it doesn't matter what kind of government we have'.⁷ Almost identical results were obtained in the 2013 survey.⁸

⁷ Fergus Hanson, 'Lowy Institute Poll 2012: public opinion and foreign policy', 5 June 2012, <http://www.lowyinstitute.org/publications/lowy-institute-poll-2012-public-opinion-and-foreign-policy>.

⁸ Alex Oliver, 'Lowy Institute Poll, 2013', 24 June 2013, <http://www.lowyinstitute.org/publications/lowy-institute-poll-2013>.

These findings, which do not provide evidence on change over time, may nonetheless be used as an indicator of dissatisfaction with the Australian political system. What has been seen as a surprisingly high proportion, close to 40%, failed to provide unambiguous endorsement of democracy as the preferred form of government.

But there is scope for other interpretations, starting with a closer look at the response options provided.

There is a logic to a question which provides three response options by way of statements: such an approach encourages a division of opinion, rather than a strong endorsement of one option. Agreement at the 90% level is obtained by questions which provide just two response options, such as ‘yes’ or ‘no’, or by a Likert scale which provides four or five response options, with the top two responses (such as ‘strongly agree’ or ‘agree’) aggregated.

There is also scope for close examination of the response options in the Lowy survey: the second option, ‘in some circumstances, a non-democratic government can be preferable’, is not necessarily a rejection of democracy, it is a response conditional on the meaning attached to the qualifier ‘in some circumstances’.

The question used in the Lowy survey is one that was popular in the 1990s in cross-national research; over the last 15 years researchers have sought a more precise approach, asking for views on the appropriateness of democracy for the respondent’s own country—and whether democracy can solve the problems faced by the country. Such questions have been asked with a 10 or eleven point response scale.⁹

There is other, albeit limited, survey data available on the level of support for democracy in Australia.

The fifth wave of the World Values Survey conducted between 2005 and 2008 included a question on attitudes to a ‘democratic political system’. The proportion indicating the first level agreement, ‘very good’, was 58%, close to the first level of response obtained by the Lowy poll. A further 32% indicated ‘fairly good’, a combined 90%.

Of particular note, the distribution of Australian responses was almost identical with those obtained in New Zealand, Great Britain, and Canada, and whereas the 2012 Lowy Institute poll found stronger support for democracy in India than Australia, the pattern of differentiation between the two countries was not replicated in the World Values Survey.

⁹ Larry Diamond, ‘Introduction’, *Journal of Democracy*, vol. 21, no. 4, October 2010, p. 102.

Table 8: ‘I’m going to describe various types of political systems and ask what you think about each one. Please tell me if it would be very good, fairly good, fairly bad, very bad for the government of this country ... Having a democratic political system’. 2005–08, percentage

	Sweden	Italy	NZ	Great Britain	Australia	Canada	India	US	China	Russian Federation
Very good	76.2	63.9	59.7	58.4	57.5	57.0	52.0	45.2	34.3	24.4
Fairly good	21.7	31.5	34.3	32.2	31.5	34.8	39.7	40.4	59.4	54.6
Fairly bad	1.7	4.0	3.4	5.8	8.0	5.3	5.9	10.7	5.2	16.2
Very bad	0.4	0.6	2.6	3.6	3.0	2.9	2.4	3.7	1.1	4.8

Source: World Values Survey, 2005–08

The democracy question was also included in the 1995 World Values Survey administered in Australia. The results obtained were close to the 2005 pattern, with a lower proportion indicating agreement at the highest level (‘very good’), and a higher proportion at the second level (‘fairly good’), a combined 87%.

Table 9: ‘Please tell me if it would be very good, fairly good, fairly bad, very bad for the government of this country ... Having a democratic political system’. Percentage

	Australia 1995	Australia 2005
Very good	51.3	57.5
Fairly good	36.0	31.5
Fairly bad	9.0	8.0
Very bad	3.6	3.0

Source: World Values Survey

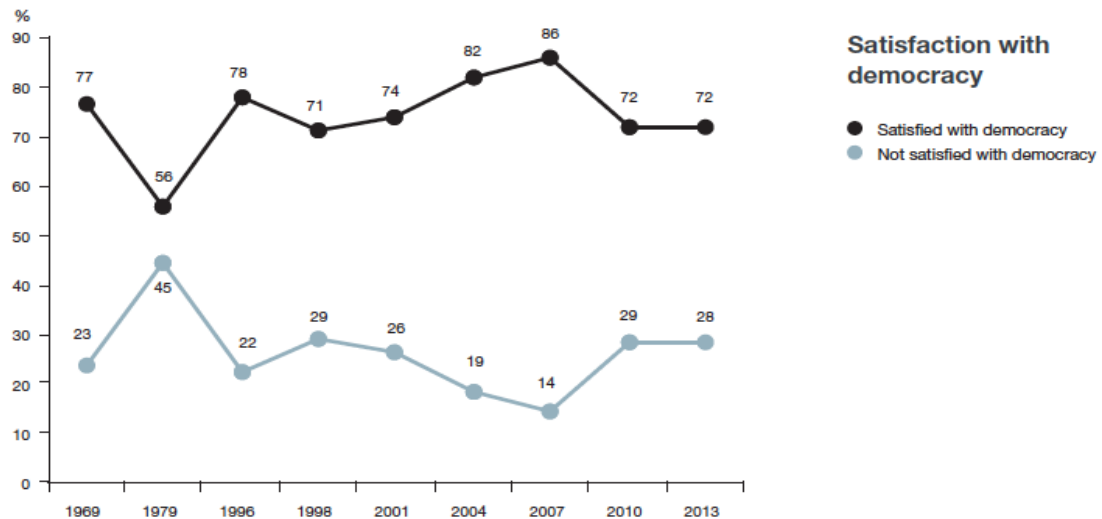
A key source of time-series data for determining shift in political opinion is the Australian Election Study. The AES includes questions on both trust and democracy.

With relevance for the hypothesis under consideration (there has been a substantive change in the level of trust in the Australian political system), the time-series data does not indicate a significant one-directional shift in opinion; rather, the finding is one of variability. Thus, dissatisfaction with democracy was at a peak in the second half of the 1970s, while current level of satisfaction matches that of 1998, 2001, and 2010. While in 2013 trust in people in government is relatively low, it is at the level of 1993, 1998, and 2001.

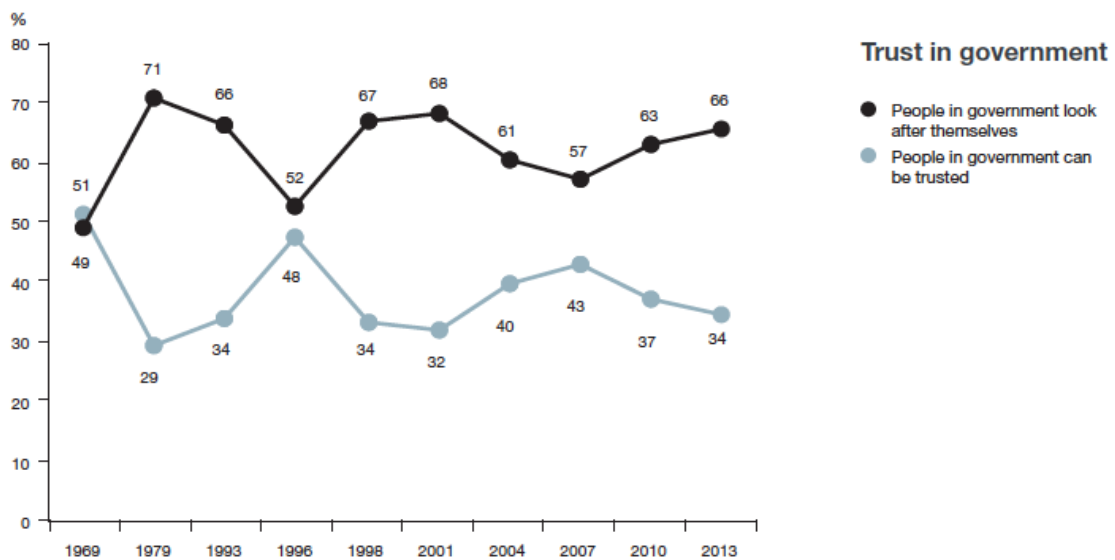
Australian democracy

Given the lack of unambiguous evidence of long-term decline of trust in the Australian political system, how are the findings obtained by the Scanlon Foundation and other surveys to be explained?

Figures 3 & 4: Australian Election Study, selected questions



Notes For satisfied with democracy, estimates combine (1969, 1979, 1998-2013) 'very satisfied' and 'fairly satisfied'; (1996) 'satisfied' and 'fairly satisfied'. For not satisfied with democracy, estimates for 1996-2013 combine 'not very satisfied' and 'not at all satisfied'.



Notes For people in government look after themselves, the response categories are (1969, 1979) look after self; (1993-2013) 'usually look after themselves' and 'sometimes look after themselves'. For people in government can be trusted, the response categories are (1969, 1979) 'do the right thing'; (1993-2013) 'sometimes can be trusted to do the right thing' and 'usually can be trusted to do the right thing'.

Source: McAllister and Cameron, *Trends in Australian Political Opinion* (2014), p. 47

While Australians indicate relatively high levels of belonging and pride in their country and its way of life, and similarly high levels of life satisfaction, they have relatively low levels of trust in politics and politicians. This may be linked to an Australian scepticism. A number of commentators have observed the Australian characteristic of cynicism; Australians are not great believers.

It is true that low levels of trust characterise public opinion in much of the western world. But it is a noteworthy finding that the Gallup World Poll in 2012 found the average confidence in national government within the OECD at 40%, while Australia, without the level of dislocation consequent on the Global Financial Crisis, recorded confidence in government at just a marginally higher 42%.

The World Values Surveys conducted in the 1990s (Australia 1995) included questions on attitudes to nine institutions. A tabulation of results by Rodney Tiffen and Ross Gittins found that the mean score for the nine institutions in a cross-country analysis which comprised sixteen European countries and the USA and Canada yielded an average of 49%, while the average for Australia was 44%.¹⁰

In 1995, 31% of Australians indicated a 'great deal' or 'quite a lot' of confidence in parliament, compared to 48% in France, 46% in the United Kingdom and 38% in Canada. In the 2005–08 World Values Survey, the Australian level of confidence in parliament was little changed, at 34%. Just 14% indicated confidence in political parties.

Consistent with this pattern of response, when in 2013 the Scanlon Foundation survey asked Australians to rank nine institutions or organisations in terms of levels of trust and confidence, institutions of Australian democracy ranked at the bottom.

The highest level of trust or confidence was in hospitals, police, public schools, and employers, followed by the legal system and television news. Trade unions, federal parliament and political parties were lowest ranked.

Indication of 'a lot of trust' ranged from 53% for hospitals and the police to 9% for trade unions, 7% for federal parliament, and 3% for political parties.

¹⁰ Rodney Tiffen and Ross Gittins, *How Australia Compares*, Cambridge University Press, Cambridge, England, 2004, p. 244.

In late 2013, after the federal election, the Edelman Trust survey asked Australians ‘how much do you trust government leaders to tell you the truth, regardless of how complex or unpopular’. Just 7% responded ‘a great deal’.¹¹

Table 10: ‘I’m going to read out a list of Australian institutions and organisations. For each one tell me how much confidence or trust you have in them in Australia’. 2013, percentage

	‘A lot of trust’	‘Some trust’	‘Lot’+ ‘some’
Hospitals	53	35	88
Police	53	34	87
Public schools	42	42	84
Employers	23	53	76
Legal system	23	44	67
TV news	11	50	61
Trade unions	9	40	49
Federal parliament	7	39	46
Political parties	3	36	39

Source: Scanlon Foundation

In a survey of recent arrivals, also conducted in 2013 by the Scanlon Foundation, immigrants were asked to indicate levels of institutional trust. In a finding that may indicate that with increased length of residence immigrants learn the negative views of parliament and political parties in the land of their adoption, those who arrived more recently (between 2000 and 2010) have a more positive view than those who have been here longer.

Table 11: ‘Below is a list of Australian institutions and organisations. Please indicate, for each one, how much or how little trust you have in them in Australia?’ Response: ‘a lot of trust’, ‘some trust’. Percentage

	Arrived 2000–10	Arrived 1990–99
Federal parliament	30.9	21.3
Political parties	20.9	14.6

Source: Scanlon Foundation

Evidence of lack of trust and the low ranking of politicians is not difficult to find. Since the 2013 election, *Essential Report* has on two occasions (November 2013, March 2014) asked respondents to rank attributes that fit the Liberal and Labor

¹¹ Edelman Trust Barometer, 2014 Annual Global Study (Powerpoint, summary report, at edelman.com).

parties; fifteen attributes were specified, including the view that the party ‘keeps its promises’ and is ‘trustworthy’.

For the recently elected Liberal Party, the attribute that it keeps its promises was ranked 13 out of 15; ‘trustworthy’ was ranked 14. For Labor, ‘keeps its promises’ ranked 15, ‘trustworthy’ ranked 13.

The top ranked attribute for both parties was: ‘will promise to do anything to win votes’.

Table 12: Attributes of political parties: ‘which statements do you feel fit the Liberal Party/Labor Party’, selected statements, percentage

	Liberal		Labor	
	5 Nov 2013	25 March 2014	5 Nov 2013	25 March 2014
Will promise to do anything to win votes	63	67	63	63
Out of touch with ordinary people	56	59	53	49
Have good policies	46	44	41	44
Has a good team of leaders	46	43	31	34
Keeps its promises	39	35	36	30
Trustworthy	35	32	29	31

Source: Essential Media Communications, *Essential Report*, 25 March 2014, http://essentialvision.com.au/documents/essential_report_140325.pdf, pp. 5–6

The substantive explanation for increase or decrease (from a low base) in the level of trust in the federal government is the electoral standing of the party in power.

For a brief period, Prime Minister Rudd galvanised the hopes and aspirations of a relatively high proportion of the electorate. His 73% approval rating in 2008 was the highest for any political leader that has been obtained by Newspoll; in March 2009, Nielsen recorded 74% approval. In September 2009, 67% preferred Kevin Rudd as prime minister, the Leader of the Opposition, Malcolm Turnbull, was preferred by 19%. When the Rudd Labor government was perceived not to be delivering on its promises, the level of approval crashed—and did not recover under Prime Minister Gillard.

Using Scanlon Foundation survey data, the following table correlates level of trust in the federal government and support for the Labor Party, the party in government across the 2009–13 Scanlon Foundation surveys. Over this period trust in the federal government declined by 21 percentage points from its peak in 2009; the level of

support for Labor declined by almost the same proportion amongst survey respondents. With the decline occurring in tandem, the difference between support for Labor and trust in the federal government remained within six percentage points in the surveys between 2009 and 2012. One interesting feature of this analysis is that while support for Labor rose sharply amongst survey respondents in 2013, there was no corresponding rise in the level of trust in government.

Using a different data set, the Edelman Trust Barometer reaches a similar conclusion: ‘Over time, Australia’s trust in government appears to fluctuate in line with Australia’s electoral cycle, particularly changes in the country’s leadership ... Australians are fickle’.¹²

Table 13: Trust in the federal government and level of support for the Labor Party. Percentage

	Trust	Vote Labor	Variance (percentage points)
2007	39.0		
2009	47.6	42.6	5.0
2010	31.4	29.3	2.1
2011	30.5	25.1	5.4
2012	26.2	20.1	6.1
2013	27.2	32.3	(5.1)

Source: Scanlon Foundation

The alignment of the level of trust in government and political identification is further indicated by correlating trust with intended vote—thus in 2013, 43% of Labor voters indicated trust in the federal government, compared with just 19% of Liberal voters.

Table 14: ‘How often do you think the government in Canberra can be trusted to do the right thing for the Australian people?’ Response: ‘almost always’, ‘most of the time’, by intended vote. Percentage

	Labor	Liberal
2009	61	34
2010	51	20
2011	49	20
2012	49	16
2013	43	19

Source: Scanlon Foundation

¹² Edelman Trust Barometer, *Trust in Asia Pacific, Middle East and Africa 2014* (at edelman.com), p. 13.

There may not be much that can be done to markedly improve trust in the Australian political system. But we do have understanding of the factors that determine approval above the base level. The Edelman organisation has articulated the strategy for business to build trust. Much of the strategy has direct applicability to government. It includes:

Engagement

Listen to needs and feedback; communicate frequently and honestly on issues of national significance.

Integrity

Ethical conduct of individuals in government—and legislative policies which are seen to be ethical; ethical administrative practice; take responsible actions, transparently and openly.

Purpose

Addresses social needs; work to protect and improve the environment; create programs that positively impact the community.

Operations

Have highly-regarded and widely admired top leadership; deliver consistently on policy undertakings.



Question — Thank you very much for that talk which was fantastically insightful into trying to understand why such large numbers of Australians are distrustful of our politicians. Where I would disagree with you is that I think the way to really come to grips with that is to do it through focus group research. It is incredibly expensive and would entail very large numbers of people but BIS Shrapnel did that in 1998 and it was paid for by insurance companies and banks and so forth who were just trying to work out the attitudes of Australian towards financial products and where they were going to invest. They had high quality people teasing out what was the underlying concerns of these thousands of Australians and what they discovered was a profound reaction against neo-liberalism, privatisation, deregulation and user-pays and that was what was really underlying and driving the Hanson phenomena and the reductions of the tariffs in Victoria driving the Cleary phenomena. Coupled with that we have also had this phenomena of politicians starting with Blair and with Clinton and this era of spin in which you get up and say one thing and go off and do something else. This combination of spin and implementing an economic agenda which was not really in the interest of a lot of Australians and which a lot of Australians profoundly disliked.

Andrew Markus — That was an interesting comment but with respect you are approaching this from the point of view that you know the answer. If we asked you to write down what can politicians do to make things work, you gave us nearly 10 points there. What I am trying to do is to understand at a macro level how different societies operate. You are not going to achieve that by doing focus groups because they are macro questions and you can't answer macro questions with micro methodology. Nonetheless, I am not saying that qualitative research and focus groups are not very important but it is a different terrain and what I have tried to indicate to you is that by long-run data analysis you can understand the trends and changes in societies. Now why exactly that is occurring—you are giving us some of the answers and your understanding of why they are occurring, whereas I am answering more in macro issues. Not necessarily what governments do but how they do it, how they communicate, are they abiding by their promises and, where we touch on the same term, are they meeting real needs? I think what you were saying was governments were not meeting real needs, they were not meeting expectations.

Question — We used to have a political party that ran on the catch phrase 'keeping the bastards honest' and then every time there was an election they wouldn't respect whoever won power and wouldn't let them implement their policies. They would always want to bargain or say no. Isn't that a problem all round the world? How do you get political parties to accept election outcomes and vote according to what the majority of the population said? Until you change the system, you are always going to get a constant 40 per cent result here or overseas because people just get cynical. Does any country come up with a solution that if you go to an election and you win an election you actually get to do what you promised to do?

Andrew Markus — I think we all know what Winston Churchill said about democracy—something along the lines of it is a pretty bad system but it's the best one we've found so far. It is an imperfect system, and you understand my approach to it. As I have been doing this research and as I try to engage with public opinion over the last 10 years what I have been impressed by is that there is a stability and a coherence that can be upset by a huge economic crisis. But what we want to do is to understand how Australian society functions. What are its strengths and what are its challenges? For me, we are not going to perfect it. We are not going to keep the bastards honest. It is not going to happen. But we can produce leadership that goes that much above the base, or that goes that far below the base. So if it is 30 per cent we can get leadership that will go from 45 down to 15. We are not going to get 90. The people who have tried for the 90 have ended up with political systems that are actually worse than what they had before.

Question — I was wondering if you could comment on the possible effect of televising parliament. I am not sure when that came in but I was wondering whether making visible to the people the behaviour particularly at question time might be regarded as rather unedifying and might affect the trust issue.

Andrew Markus — The first thing you want to work out is how many people actually watch anything like that. Some people would catch it on the TV news where there would be brief excerpts but I don't believe that many people would sit through televised parliamentary debates and so on. Run the hypothesis: the more we have actually shown people how politicians behave, the more it has turned people off. My answer is no, they were already turned off.

Question — One of the ways that recent developments in Australian politics has been described is 'hyperpartisan'. That so much needs to be happening and seen only through the partisan lens. I was just wondering if you had any thoughts on that and whether there is any evidence that it is one of the factors in the trend that you noted in Senate votes towards independent and minor parties and away from the major parties.

Andrew Markus — When we first started getting this data which showed that there are lower levels of trust in the government in Canberra I was thinking along those lines. But then having to more carefully look at a whole range of data my answer is there haven't been shifts that are out of the normal range. These sorts of explanations—this is what the politicians have done wrong and that has driven people to the third parties—I don't think are really supported.

One of the issues has been that the business of government has become more complex. Would you not agree with me that in the last five years running government has been more difficult than it was in 2001? If for no other reason than the economic climate is so difficult and the recovery from the global financial crisis has been so difficult. So it has made it more difficult for politicians in Australia to deliver on people's needs. Like infrastructure. We have a huge infrastructure deficit in Australia. And every year that we don't deal with that in a systematic way it gets more difficult because the deficit grows. But it is difficult to fund those and people have tried various means of funding including government-private ownership partnerships and so on. But again, in the economic climate that we have in this country it is difficult to fund that. Not everyone will agree with that.

There is another view that says the money is all there you just have to run it properly. I don't subscribe to that view. I think it is overly simplistic. Where you have these major crises of confidence and we look at history—because I am by training a historian—it is the economic crises that make it more difficult for governments to

govern. It is huge levels of unemployment, youth unemployment, which drives those indicators in Italy and Greece and Spain. So for me that emergence of the third parties can be interpreted as a reflection of that reality that the existing parties for whatever reason are not delivering.

The Senate and Public Sector Performance*

Stephen Bartos

Gary Banks, Dean of the Australian and New Zealand School of Government, observed in his 2013 Garran Oration that Australians have lost trust in politicians and public servants. Trust was also the theme of Professor Andrew Markus' last Senate Occasional Lecture, on politicians and the political system. My work in public sector governance has been concerned primarily with ways to improve public sector performance. This lecture therefore addresses the pivotal role the Senate can play in improving public services, by holding managers to account.

Performance and trust are inextricably related. One of the ways organisations build trust¹ and confidence is to deliver, reliably and consistently, what clients or customers want. In the case of the public service this means delivering good advice to ministers, quality services to the public and cost-effective regulation.

A 1992 evaluation of a decade of public service reform found that a random sample of the public expected that the private sector would do a better job than the public sector, but where the respondent had contact with the public service their perceptions were far more favourable.² It would be interesting to see whether a similar story applies today, in light of the media coverage of the Royal Commission into the home insulation program, Centrelink waiting times and the like. While it would be relatively easy for the public service to conduct a similar survey and compare it with the 1992 baseline I am not sure it would want to—but more on that later. The key point from that survey is that when public servants deliver to the public, it builds support and trust.

Let us take as a given that we all do want better public services. They are hugely important to Australia. As shown in the 2014–15 budget papers, Australian Government payments are 25.3 per cent of the nation's gross domestic product—or a quarter of the total of all of the country's goods and services produced. Despite

* This paper was presented as a lecture in the Senate Occasional Lecture Series at Parliament House, Canberra, on 30 May 2014.

¹ Not empirically proven. As Kieron O'Hara notes (*Trust: From Socrates to Spin*, Icon books, Cambridge, 2004) 'we do not understand it [trust] ... sociologists, economists and philosophers have studied it, and agree on little, except that it is a mystery'.

² Taskforce on Management Improvement, Commonwealth of Australia, *The Australian Public Service Reformed: An Evaluation of a Decade of Management Reform*, AGPS, Canberra, 1992, pp. 403–4.

everything you hear about budget cuts, the decline over the forward estimates period is small, to 24.8 per cent. For the foreseeable future, the federal level of government is about a quarter of all activity in the country. These payments go to social security, health, education, defence³ and numerous other functions. It is in all of our interests to see that these funds are spent wisely.

We elect a government to do this. Politicians and political parties compete for our votes based on who we think will make the best choices.⁴ The literature on governance tells us however that we cannot rely on managers alone to deliver good results. A system of accountability that holds them to account for performance is also vital.

There are numerous differences in systems of corporate governance worldwide, but a common characteristic of effective boards is that they exercise independent and objective oversight of the management of the company.⁵ In Australia the ASX Corporate Governance Council⁶ suggests that the board will usually be responsible for ‘overseeing management’s implementation of the entity’s strategic objectives and its performance’. Good boards⁷ devote much of their time to quizzing the CEO and management on performance; and for their part good managers welcome this scrutiny. It helps to ensure that they deliver the best results possible. A tough board that asks difficult questions about proposed strategy and risks, and whether promised results have been achieved, helps the company succeed. That is an imperative in a competitive market: the alternative is bankruptcy.

The public sector does not face the same commercial pressures and incentives. Public sector bodies have a variety of different objectives, achievement of which can be difficult to measure. A self-interested minister or public servant who is allowed to choose between meaningless waffle or genuine performance information against which he or she can be held to account will choose the former.⁸ These are well recognised problems. They are overcome through effective institutional arrangements for scrutiny and accountability. In Australia chief amongst these is the role of the

³ Listed in order of size. Together these four functions account for some two thirds of budget spending (64 per cent) in 2014–15. See Table 3, Estimates of Expenses by Function, Statement 6, Budget Paper 1.

⁴ Not just on spending but also taxes and regulation.

⁵ Organisation for Economic Co-operation and Development, *OECD Principles of Corporate Governance*, OECD, Paris, 2004.

⁶ *Corporate Governance Principles and Recommendations*, 3rd edn, ASX Corporate Governance Council, Sydney, 2014, recommendation 1.1.

⁷ Richard LeBlanc and James Gillies, *Inside the Boardroom: How Boards Really Work and the Coming Revolution in Corporate Governance*, John Wiley and Sons, Ontario, 2005.

⁸ Not all public servants are self-interested; there are instances where public servants have provided clear and meaningful performance indicators for programs they run without any external prompting.

Senate. The Senate can be a highly effective institution in ensuring the public service is held accountable for performance.⁹ Its ability to do so is limited by the support and information it receives; while it has some of the enabling or supporting factors in place, there is room for further improvement.

I have characterised accountability not as a set of rules but as a relationship. There must be ‘a person or body who is held accountable, and a person or body to which they account’.¹⁰ In the Australian public sector, accountability of public servants is to ministers, and the ministers’ accountability is to the parliament. Nevertheless there is also a duty on public servants to explain and justify their actions directly to the parliament. In this week in particular, as the Senate legislation committees conduct their estimates hearings, the accountability relationship comes to the fore. The task of ensuring accountability applies in practice, as well as on paper, rests with both parties to the relationship: the Senate and the public service.

The Senate’s capacity to exercise its role in the accountability relationship has had ups and downs over the past 115 years. It depends on the composition of the Senate, the strength of its committees, the structures and advice which support it, and the political environment. There are two factors in play at present which have the potential to weaken Senate scrutiny: blurring of the lines between public servants and ministers, and lowered standards of performance information.

Our system of government has traditionally recognised a difference between the roles of public servants and of ministers. Australia has a hybrid system of government with elements inherited from the colonial Westminster legacy, from United States constitutional thinking (which itself derived from earlier concepts from Montesquieu and other European political philosophers) and a commitment to federalism that cemented states’ rights in the Constitution. Although our Constitution specifies a separation of powers—that is, a strong distinction between the legislative, executive and judicial branches of government—Australia has maintained a commitment to an independent, apolitical public service. This is a contrast to the United States where the executive branch comprises the President, his or her staff, the Cabinet and the senior levels of the public service. Australia’s tradition was inherited from the United Kingdom, which had introduced an independent, merit-based public service in a series of reforms over the mid to late 1800s.^{11,12}

⁹ This is not to suggest it is equivalent to a company board in scrutinising performance (differences are too numerous to cover here) but it is just as important.

¹⁰ Stephen Bartos, *Public Sector Governance Australia*, CCH Australia, North Ryde, NSW, 2004.

¹¹ Public Service and Merit Protection Commission, Commonwealth of Australia, *Serving the Nation: 100 Years of Public Service*, Public Service and Merit Protection Commission, Canberra, 2001. The 1854 Northcote Trevelyan report, although credited with establishing the modern British civil service, actually took more than 40 years to be implemented.

While Australians have never had a high regard for politicians, public servants were traditionally seen as different and attracted a higher level of respect. In recent years as the distinction between the public service and the government of the day has eroded, the public service is closing the ratings gap on trust that it previously had with politicians. The conflation in the public mind of government ministers and the public servants in their departments has been a source of problems for both, and has diminished the ability of the Senate to hold public servants to account.

Estimates hearings have always had elements of political theatre and parochial self-interest. It used to be the case that the Department of Finance provided advisers to each of what were then known as the estimates committees of the Senate, to assist them in understanding the budget estimates they were examining. I was appointed to head the Communications section in the Finance department in 1987 and prepared diligently for the first estimates hearing in which I was to exercise this advisory role. I knew expenditure details for the Communications portfolio back to front. I had a salutary lesson in the realities of political priorities when it turned out none of the senators on that committee needed any of the materials that I prepared. The main issue of substance I recall being discussed was the number and timing of ABC broadcasts of Tasmanian horse races. I believe the senator concerned was worried that horses in his state were not getting a fair go. Indeed, Tasmanian senators are particularly noted for pursuing their state's interests. So although I am about to discuss current problems in our accountability systems, I do not want you to think that I am nostalgically harking back to an ideal time when every question went to the heart of a major national interest. The Senate, as it should, has always reflected a wide variety of concerns.

Some things have however changed. Up until the public sector reforms of the mid to late 1980s the public service asserted to itself a right to pursue its activities independently from the politicians of the day. Ironically, this gave public servants themselves greater political freedoms. The Department of Finance for a couple of years prided itself on employing the ACT president of both the Liberal and Labor party. It proved they were even-handed. I should here disclose that many years ago I was active in the latter; I allowed my membership to lapse after I was appointed to the APS senior executive service in 1989. I took the view that while in theory it is fine for public servants to participate in politics, in practice it becomes increasingly difficult at senior levels. Having worked at a senior level for the Hawke, Keating and Howard governments I saw successes and failings in all of them, and today am neither affiliated with or lean towards any of the major parties. One thing though worth

¹² Although some characterise ours as a hybrid 'Washminster' system (a term coined in Elaine Thompson, 'The "Washminster" mutation', *Australian Journal of Political Science*, vol. 15, issue 2, 1980) it would perhaps be better characterised as a uniquely Australian system of government that draws elements from multiple traditions.

emphasising is that despite what uninformed commentators may say, ministers from all sides (or at least the Finance ministers I worked with) were personally and sincerely committed to making well-informed decisions in the best interests of the country. I remain proud of having provided advice to John Fahey as Finance minister that helped him to the best ever track record¹³ in managing government expenditure so as to achieve sustainable government finances.

Through the 1970s and 1980s it was still possible for public servants to express independent views at variance from the government. Public comment was not monitored or controlled. It was common to see uncensored journal articles from Treasury economists, health, social security and other experts contributing factual information to public policy.¹⁴ That has been overtaken by a new approach which appears de facto to be that public servants should say little, and when they do say anything it is only to explain government policies.

In a similar vein, it was once expected that public service departments would provide their own independent evidence to Senate and other parliamentary inquiries into questions of public administration, including expressing divergent views on how best to regulate for performance reporting and accountability.¹⁵ Today we see only one government view expressed, generally by a central agency. For example in the recent inquiry on the Public Governance, Performance and Accountability Act regulations the only dissenting views came from the Australian Public Service Commission and the Auditor-General: this is, from independent statutory bodies. This is despite the significant misgivings many departments and agencies have about progress with those regulations.

The diligence with which public servants remain close lipped and keep disagreements behind closed doors today means that the Senate, and the public, is often unaware of undercurrents of policy and public administration. A diversity of views might provide early warnings of potential problems—but today these rarely reach the public domain.

The drivers of this increased secrecy and closing of the ranks are not necessarily the public servants involved in the policies concerned. The public service has always had division between those who seek to avoid accountability and those who welcome it. Their influence ebbs and flows. Which tendency gains ascendance depends on the

¹³ Measured in terms of the budget figures and final outcomes achieved; noting that in politics different players have very different yardsticks against which to measure success.

¹⁴ Then, as now, partisan political comment was not condoned. However presentation of factual material was acceptable even in cases where the facts in question did not support a particular government line.

¹⁵ Including proposing alternatives to ideas put forward by the Department of Finance—for examples, see numerous Joint Committee of Public Accounts and Audit and Senate Finance and Public Administration inquiries in the 1990s.

stance adopted by the government and senior public service leadership. It seemed for a while that the proponents of openness were gaining the upper hand. The public service had become increasingly open from the time of the Coombs Royal Commission into Australian government administration in 1996. Administrative law reforms such as the Ombudsman Act and freedom of information under the Fraser Government were followed by publication of estimates and performance information in the 1980s under the Hawke Government, and the introduction of program budgeting. These changes received strong support from Senate committees.

Recent reversals are driven not simply by personal preferences but by more fundamental forces: most importantly, the relationship between government and media. We have seen greater centralisation in the offices of successive prime ministers (from both sides) and a desire to control media messaging on a daily basis. The level of control requires every public statement to be ‘on message’. Given that, as noted earlier, public servants should be responsive to ministers it, has become increasingly difficult for them to participate in public debate.

It has not always been like this. The Senate has in the past been one of the nation’s strongest advocates of transparency in government and civil liberties. One wonders for example what Senator Alan Missen might have made of the secrecy surrounding so-called ‘on water’ matters or the reported ban by the Prime Minister’s Department on public servants commenting in social media even outside of their work. However we must recognise the environment has changed. My aim is not to lament the changes but to set out possible ways in which they might be addressed.

It is also important to note that one of the underlying reasons for greater identification of public servants with ministers is highly desirable—a culture in the public service of greater responsiveness. The days of public service mandarins who ruled vast bureaucratic empires and regarded ministers as a passing inconvenience are long gone. Few would welcome their return. One of the main objectives of public sector reform has been to improve the responsiveness of the public service to governments, of whatever political persuasion. It has been specified as one of the public service values in the *Public Service Act 1999*.¹⁶

It is surely better for government priorities to be determined by elected politicians than by unelected public servants. It is called democracy. The trade-off is that responsiveness inevitably means that public servants and their work are more closely

¹⁶ Section 10(1)(f) ‘the APS is responsive to the Government in providing frank, honest, comprehensive, accurate and timely advice and in implementing the Government’s policies and programs’.

identified with the priorities of the government of the day. They are no longer seen to be pursuing a separate agenda.

This creates a practical difficulty for the workload of Senate committees. Because public servants are now closely identified with ministers and government policy it becomes very difficult for a government senator to quiz a public servant on performance. If the scrutiny either deliberately or inadvertently reveals a performance failing then it reflects back adversely on the minister. This is less of a problem immediately following a change of government, but the longer a government remains in office the more likely it is that any problems raised by a senator will be sheeted home to a government decision. This means that only half a committee asks searching questions—diminishing its capacity to improve performance.

The other problem I want to cover is that of incomplete, and sometimes incomprehensible, performance information. Our accountability arrangements depend on the provision by the public service of clear and reliable performance information to the Senate. Ten years ago when teaching at the Australian National University to an executive cohort from the public service I distributed, for amusement, a fictional confidential briefing on how to escape accountability. It is at Appendix A. Among other things it suggested constantly changing objectives and performance information, together with reallocating organisational responsibility for programs, so nobody could ever be held to account. The course participants told me it was not fiction, it was pretty much a description of the way they operated. Little has changed since.

The literature on accountability reveals that from an academic perspective not much has changed either. Professor Richard Mulgan¹⁷ has written extensively and perceptively on the topic. With a few changes of names and cases, his articles and books from 10 or more years ago could apply equally today. Resistance to stronger accountability through external oversight persists in our system of governance, even though the evidence gathered by Mulgan (and others in the field of public administration) demonstrates that it is necessary and desirable. Good performance information is an essential component.

The former Management Advisory Board (MAB), the key advisory body on Commonwealth public administration from the late 1980s until its replacement with a Management Advisory Committee following the passage of the *Public Service Act 1999*, devoted enormous effort to defining and obtaining service-wide agreement to concepts of accountability. It issued an exposure draft in June 1991 and then final

¹⁷ ‘“Accountability”: an ever-expanding concept?’, *Public Administration*, vol. 78, issue 3, 2000, pp. 555–73.

report on accountability in June 1993. This remains a foundation document, referenced in current Australian Public Service Commission online guidance for public servants.

The MAB report noted that ‘the quid pro quo for the devolution of greater authority has been the expansion of accountability mechanisms’. Key components of the accountability system include ‘clear statements of the government’s objectives and the organisation’s role in achieving them’ and ‘management information systems ... to monitor and report on program performance’. Presciently it noted that ‘officials will increasingly be required to provide support to government in its parliamentary accountability activities’.¹⁸

Twenty years on, the public service still struggles to account for performance. Last year’s report by the Australian National Audit Office (ANAO), *The Australian Government Performance Measurement and Reporting Framework—Pilot Project to Audit Key Performance Indicators*, noted that ‘it is time for greater attention, investment and resourcing to be given to the quality and integrity of KPIs used by public sector entities to inform decisions about the performance of government programs’. Of 31 KPIs examined, five did not even meet the Finance department definition of ‘measuring the impacts ... on the target group’ and were descriptions of activity instead. Of the remainder, 22 met at least one of the criteria of being focused, understandable, measurable and free from bias, but there was only one that met them all. This is an important stream of work for the ANAO, which has been continued.¹⁹ As noted in its report of February 2014, alas, the ‘continuation of the pilot project observed little change within the guidance promulgated by Finance for the 2013–14 financial year and observed that agencies’ implementation of performance measurement and reporting requires further development’.²⁰ Progress on improving performance information has been slow.

It is highly unlikely that this is because public sector performance is unmeasurable. Experience shows that where agencies put their minds to it they can develop clear and measurable objectives and very effective performance indicators. The more likely explanation for progress having taken one step forward, two steps back, is other changes in the political and economic climate.

¹⁸ Management Advisory Board, *Accountability in the Commonwealth Public Sector*, AGPS, Canberra, 1993, pp. 7, 15.

¹⁹ Australian National Audit Office, *The Australian Government Performance Measurement and Reporting Framework: Pilot Project to Audit Key Performance Indicators*, Australian National Audit Office, Canberra, 2013, pp. 21, 70.

²⁰ Australian National Audit Office, *Pilot Project to Audit Key Performance Indicators*, ANAO, Barton, ACT, 2014, p. 21.

The 1996 National Commission of Audit commented that ‘performance information is crucial in assessing whether policy goals have been achieved and how effectively the public sector has performed’. Among other things it recommended that government ‘adopt a strategic cross-program and organisational approach to setting key results areas for portfolios’ and that ‘Ministers should publish and report against annual plans that clearly explain strategies for restructuring and reducing costs’.²¹ Very little of that audit became official policy. Its focus on reducing costs was seen as too extreme. However, the 1996 and 1997 Commonwealth budgets did put a heavy emphasis on the cost savings from privatisation and contracting out. A consequence was that performance-reporting mechanisms were seen in market terms and some of the previous government approaches such as mandatory evaluation were dropped.²² The logic was internally consistent: if all activities could be put to the market, competitive processes would provide all the indicators of performance needed. The government over the course of its remaining terms in office decided it had no appetite for wholesale marketisation, but did not reinstate firmer performance management regimes.

Another factor was the 1999–2000 reforms to put the budget onto an outcomes, outputs and accruals basis. With some modifications over time it remains the Commonwealth budgeting system. The intention was to improve performance reporting; in practice results were mixed. Presenting the budget on an accruals basis brought it into line with annual reports, reported on that basis from the early 1990s. We saw for the first time an estimate of Commonwealth net worth, an important measure of the government’s stewardship of the economy and its own resources. Balance sheet information, better statement of risks, and more comprehensive financial accounts added to the capacity of senators and others to judge the budget. At the same time other information was lost. In some cases it was for practical rather than sinister reasons: for example graphs in the budget papers showing historical expenditure trends by function could not be produced due to a break in the series. The idea was that these could be reinstated once sufficient time series data had been collected, or if past years’ data could be converted.²³ That could be done now should government decide to do so.

In other cases the reduction in information was, unfortunately, occasioned by the reform. In theory, appropriations to outcomes, identifying the purposes to be achieved, was more in line with the Constitution and more informative than the

²¹ National Commission of Audit, Commonwealth of Australia, *Report to the Commonwealth Government*, June 1996, pp. 116, 120.

²² Although it should also be noted that the evaluation policies by this time had become stale and in many cases evaluations were conducted purely for compliance rather than to find out information on performance.

²³ Retrospective conversion of past years’ numbers proved too complex and difficult a task.

previous system of appropriating the inputs to agency activity.²⁴ In practice many agencies took the opportunity of the introduction of a new system to reduce their reporting points, present vague objectives, and develop correspondingly by the performance measures. It reveals the limitations of devolution. In retrospect, it would have been better to have had greater central direction to preserve the integrity of performance reporting.²⁵

Just as important was the experience of the mining boom of the 2000s, when government finances were under no pressure and the public service grew rapidly. The financial imperative to justify every dollar spent was no longer a driver of better performance reporting. In these sleepy years of Commonwealth public administration, performance reporting standards slipped.

The March 2010 report on public service reform, *Ahead of the Game*, does not specifically address the failings in performance information. It does have a chapter that asks ‘How is the APS performing?’ which looks at citizen engagement and calls for greater openness and transparency. It ducks the question of agency efficiency, saying there is no reliable data and more work is needed; although one of the positive outcomes arising out of this has been a series of capability reviews of major departments. While the largely diagnostic earlier chapter says the public service needs to ‘strengthen the accountability of APS leaders’, there are no recommendations on how to do this in the later sections of the report, except perhaps tangentially in the calls for more open government.²⁶ It is hard not to conclude from the report’s absence of commentary on accountability that the public service at the time saw little need to become more accountable to the parliament for performance. It is perhaps not surprising to see some degree of complacency and introspection given that the report was prepared by an advisory group dominated by public servants and with a secretariat drawn entirely from the public service.

Technological change has also played a part. At first sight it might appear that we have more information than ever, available through department and agency websites. In practice only a tiny proportion is actually useful for accountability: that is, providing evidence on how well agencies have delivered against the objectives and at what cost. Much of what is available online is in effect publicity material—useful for those wanting to find out what the agency does but not helpful for Senate scrutiny of

²⁴ There had previously been reporting known as program ‘budgeting’ which was nothing of the sort: it was reporting against artificially constructed collections of activities that rarely aligned with appropriations. Its value was however that it set out the objectives and performance measures for each program.

²⁵ There is an alternative account that suggests there was a deliberate effort by central agencies at the time to encourage departments to avoid accountability.

²⁶ Terry Moran, *Ahead of the Game: Blueprint for the Reform of Australian Government Administration*, Department of the Prime Minister and Cabinet, Canberra, 2010.

performance. The sheer bulk of online material acts as a barrier to scrutiny because few stakeholders have the time or energy to trawl through it for useful information.

Some—of course by no means all—of the current problems in political trust stem from the decline of performance information. Without wishing to prejudge current Royal Commission processes, it seems likely that a better appreciation of performance indicators (or more simply, what works and what doesn't) would have been helpful in designing financial stimulus programs. The previous government could have been saved a deal of the criticism it attracted.

Some—again far from all—of the government's present troubles in explaining the May 2014 Budget arise from the lack of decent baseline performance information and lack of data on trends. If these were more widely available they would help illustrate the budget sustainability problem to a wider audience than the economists and other commentators who enjoy reading through tables and numbers in the budget.

What this illustrates is that holding public servants to account, while clearly a vital institutional function of the Senate, one which delivers benefits to the nation, is also a positive for government. Without it, government effectiveness declines.

So the question is, how can the Senate be enabled to ask the tough questions about performance?

Some answers lie within the government's own control. The recent National Commission of Audit addressed this head on, and one of its recommendations (Recommendation 9 of its second report, *Improving information on government programmes and public sector performance*) was that:

Australians should have useful information about the objectives of government programmes, how much the government plans to spend, what it actually spends, and what it achieves. To improve information and drive better public sector performance, the Commission recommends that:

- a. all information on programmes be provided in portfolio budget statements with appropriate scope and depth;
- b. more meaningful key performance indicators be developed for each programme and be included in portfolio budget statements;
- c. the Australian National Audit Office undertake regular audits of each department's 'programme performance information' and its relevance,

as contained in portfolio budget statements, including the efficacy of key performance indicators and the quality of the reporting against each indicator; and

- d. the Department of Finance develop and maintain a central register of all programme expenditure on a programme-by-programme basis to better inform ministerial decision-making.²⁷

It also recommended reinstating mandatory evaluation (recommendation 10, second report); the one weakness of the recommendation was in relation to reporting the results, suggesting ‘final evaluation reports being provided to the Department of Finance on completion’.²⁸ This approach means that if an evaluation finds problems it can be buried; which while it has obvious short-term political appeal does not lead to long-term performance improvement. A much better option would be for the evaluation reports to be conducted independently, and published on completion. This would allow not only the Senate but also the public to be better informed. It is after all public money used both for the program being evaluated and the evaluation itself.

The government is yet to respond to these recommendations, but there seems no earthly reason why it should respond anything but favourably.

There could also be better support to the parliament itself (particularly the Senate) in understanding the estimates that it examines after the budget and in additional estimates processes. In my report to the Business Council of Australia on budget integrity, published as an attachment to their 2011–12 budget submission²⁹, I noted that a parliamentary budget office could be tasked not only with costing proposals but also with fiscal sustainability reports, evaluation of major areas of spending that are difficult for government to address internally, and reviewing tax expenditures. I also suggested that it should play a role in explaining and commenting on budget and economic matters—which presently are far more of a mysterious black box than they should be. In the end, the Parliamentary Budget Office (PBO) has largely been confined to the costings role. It may do work behind closed doors on budget analysis, but there is no apparent education and explanation that is released publicly. It appears to play no role in assisting parliamentarians scrutinise performance. A PBO that does little outside costings is of some but only limited benefit. In many respects it takes workload off the public service, particularly Finance and Treasury, which aids the executive rather than legislative branch of government. The PBO is however a

²⁷ National Commission of Audit, *Towards Responsible Government: Phase Two*, National Commission of Audit, Canberra, 2014, p. xxiii.

²⁸ *ibid.*, p. xxiv.

²⁹ Stephen Bartos, *Enhancing Budget Integrity in Australia: An Options Paper for the Business Council of Australia*, Sapere Research Group, January 2011.

creation of the parliament: so it would be within the scope of the parliament to structure it to deliver more value through independent advice on performance measures and how well agencies are delivering against them.

Another step forward that may arise from the government's consideration of the Commission of Audit and from the implementation of the *Public Governance Performance and Accountability Act 2013* is more information in the budget papers themselves. In the 2014–15 Budget there were some positive developments. A table showing all agency outcomes was published in Budget Paper 4, Agency Resourcing. Tables showing staff by agency were moved from an appendix to Statement 6, Budget Paper 1, into Statement 4. Presenting the information in this way is a good move. Hopefully it will over time translate into better organised and more informative portfolio budget statements.

Although this week reminds us that the budget is an important occasion on which to examine estimates, it is not the most important time for addressing performance. This is because budget measures affect only a tiny proportion of total revenue and expenditure. Between the election and the Mid-year Economic and Fiscal Outlook, policy decisions on expenses had a \$2 billion impact on the 2014–15 bottom-line, and May budget policy decisions a further \$1.9 billion. Total Commonwealth expenses were \$415 billion.³⁰ That is, the policy decisions that have generated so much heated debate this month amount to less than 1 per cent of total budget expenses. It is even less, a mere \$673 million, measured in underlying cash terms.³¹

In any one year budget decisions are not even the tip of the budget iceberg but the seagull sitting on top of it. Admittedly the budget can often announce changes in direction that are small in the first year but end up shifting large amounts of spending over time. In the case of the most recent budget, for example, decisions on indexation have a compounding effect that means they will make a significant difference to savings in later years. Past government decisions on health and education have been identified in the most recent budget as having the reverse effect, loading large amounts of additional spending into later years. Even so, these amount to only some 10 per cent of the budget over the longer term. The vast bulk of Commonwealth spending churns on regardless of budget decisions.

Generally speaking this has been true of all budgets from all sides of politics (with some exceptions, including the introduction of the GST and major budget restructuring in the late 1980s).

³⁰ Figures from Budget Paper No. 1, Statement 6, Table 2, Reconciliation of expense estimates, p. 6–6.

The Senate does have an opportunity to examine the underside of the iceberg in its hearings on additional estimates, when it has the benefit of agency annual reports. It is perhaps a dubious benefit—annual reports vary considerably in the extent to which they reveal anything at all meaningful about performance. There are other ways to supplement this information. Evaluations, mentioned previously, will help. There is a further recommendation in the Commission of Audit second report that the Department of Finance conduct ‘rolling strategic reviews of major spending programmes’ (recommendation 11). As with the evaluation recommendation, this one has the defect of recommending a secret process inside government, with ‘results and any recommendations to be brought forward by the Minister for Finance as part of the annual Budget process’. That said, if the government agrees to the recommendation when it further considers the Commission report, there will always be the prospect of the Senate Finance and Public Administration Committee asking Finance to tell it what reports it has done, and then farming out the work of investigation of the reports to the legislation committees covering the identified programs.

That though brings us to the elephant in the Senate committee room—how can this be done in a way that genuinely addresses performance rather than it turning into a political circus?

There is a possible answer. Something the Commonwealth lacks, but is effective in other jurisdictions, is a clear statement from government as to the matters of public administration for which it is responsible, and a corresponding statement from the public service about the matters for which it takes full responsibility. Allusions to the distinction between policy and administration in the official witness guidelines are no substitute for a clear, officially endorsed delineation of roles and responsibilities.

We need look no further than New Zealand, which was a leader in codifying statements of expectations and intent and, while retaining the basics of that approach, has moved on to a set of key result areas identified by government with clearly allocated responsibilities and accountabilities from the public service for implementation. Prime Minister John Key has set out 10 priority results and targets to be achieved, and the public service reports on its progress collectively through the State Services Commission and through individual departmental reports. This approach appears from the outside to be working³², and to have helped that country address some of its underlying budget problems.

³¹ There are significant differences between fiscal balance and underlying cash estimates—see tables 5 and 6 in budget statement 3.

³² Noting that most of the reporting on it comes from those within the system, so a degree of caution about the reports is warranted. See State Services Commission, ‘Better public services: results for New Zealanders’, www.ssc.govt.nz/bps-results-for-nzers.

Clarification of this nature will be a threat to those public servants who hide behind the blurred lines between them and government to avoid accountability. For public administration more broadly, it would be a plus.

There will be practical barriers. Some ministers prefer not to have clear statements of roles, because it gives them greater freedom to operate. In many activities, there is a genuine overlap where it can be difficult to determine with any clarity a dividing line between the role of ministers and the role of the public service: examples include the conduct of economic policy, the design and development of regulation and other areas of policy development. Fortunately these are only a tiny percentage of public service activity; most of the work of the public service is in program or regulation administration. It is an instance where attempting to achieve a complete coverage would doom the whole initiative to failure, whereas a rough and ready approach with some exceptions would provide greater certainty in almost all cases.

A possible model would be a cascade downwards from an overall statement of what items the public service could be expected to be accountable directly, perhaps issued by the Public Service Commissioner, supplemented by additional information from each agency.

Amongst the beneficiaries would be ministers themselves, already struggling to cope with workloads.³³ They will be reassured that they do not have to be on top of every administrative detail inside their portfolio agency.

The end result could be a committee hearing where a senator questions a public servant about matters that are clearly a public service, not minister's, responsibility. If problems are identified, it might be quite feasible and proper to hear a ministerial response along the following lines:

Thank you senator for helping identify my department's difficulties in administration of program X. That is great news: we can now deal with the problems. It will help improve public services for all Australians.

They could go on to say either:

I am shocked, heads will roll

Or preferably:

³³ Not a new phenomenon—see Patrick Weller and Michelle Grattan, *Can Ministers Cope?: Australian Federal Ministers at Work*, Hutchinson, Melbourne, 1981.

Heads will not roll. We need the knowledge the public servants involved now have inside those heads about how to avoid the same mistakes in future. They know they made mistakes, and learned valuable lessons.

Let us not get too carried away or optimistic. Senate hearings will always contain politics, because of course all senators are politicians. However, a clear and open statement of what public servants are really responsible for, together with performance information that can hold them to account, will at the very least be an improvement on what we have today.

APPENDIX A: A confidential guide to senior managers on how to keep performance free from scrutiny and accountability

All senior managers have at one time or another faced the annoying problem of parliament or the public seeking to know if they are doing a good job. How can you avoid these embarrassing moments?

1. Make sure that your performance reporting structure changes each year. This makes it almost impossible for you to be held to account. If possible, change your outcomes and outputs descriptions so that nobody is clear about what it is you are meant to be achieving. Frequently it does not matter if you make any real changes to your activities as long as the definitions are changed. If you can change the actual objective without anyone noticing, make sure it is changed to one that is a lot easier to achieve. Keep it as vague as possible.
2. If you can't change the outputs and outcomes structure, at least use a different set of performance criteria each year—that way nobody will ever find out if you are improving or getting worse over time.
3. If you have been forced by difficult senators into providing performance measures that are consistent year on year, ensure that they are impossible to measure in any one year. Goals over the course of the next decade are ideal—by the time the decade is over nobody will remember who was involved.
4. It is important never to be fully responsible for something. It is easier to 'assist' or 'contribute to' an objective. Even if your only contribution is correcting the spelling in another department's policy statement you can include it in your performance information as 'contribution to'—that way you get to share the credit if the policy is a

success. Conversely, if the policy is an abject failure you can always say ‘all we did was correct the spelling, we did not write the policy itself, that was entirely up to department x’.

5. Make sure that you reallocate responsibility for delivering each outcome and output to a different organisational unit each year. The best way to do this is to send only parts of each output to another area, leaving a small part remaining in the original area responsible—that way with any luck neither of them will ever have to answer any questions about performance.
6. If all else fails, change the managers. The new management will have two years in which they can blame any failings in performance on the previous regime while taking any credit for improvements themselves. You know there will be an election called sometime inside three years, a time when nobody pays any attention to performance management anyway.



Question — Both sides of politics commit to running a budget surplus over the economic cycle. I was wondering if you could explain to me what that actually means and in doing so could you refer to structural budget figures because they were in the budget papers for a short period of time. They seem to have disappeared for the last few years and I was wondering if the Commission of Audit looked at structural budget figures at all in their recommendations?

Stephen Bartos — That is a number of different questions but let’s get first to that issue of running a surplus over the course of the economic cycle. Traditional notions of the economy are that we go through periods of growth and then decline. Interestingly in Australia we have gone through a period now of 23 years of nothing but growth but even so in some periods the growth has been stronger than others. The idea of maintaining the budget in balance over the course of the cycle is that when times are good you save some money and when times are bad you can then have the ability to spend some more money. So maintaining the budget either in balance, that is on an even keel, or in a slight surplus over the course of the cycle, enables you to deal with any economic downturns that might come much more effectively.

Now there are real difficulties in measuring that. So economists who look at what is the structural state of the budget have to take in to account what might have happened

without government spending, what is happening in the rest of the world and working that out is in fact an incredibly complex thing to do. In Australia it has been made a little more difficult by the fact that with that really long period of economic growth what really is the structural state of the budget? To illustrate that difficulty, Treasury, at the time of the global financial crisis, argued we needed a lot of government spending in order for us not to dip into a recession. In effect what they did was use government spending to build a little bridge over the chasm. That was seen as a desirable thing in the Treasury documents of the time. It has also since been criticised by what was then the opposition, now the government, for having done too much of it. So working it out exactly is incredibly difficult.

I suspect that is why we do not have as much information about the structural state of the budget in the budget papers themselves but I would encourage, if anyone here is from Treasury, some of that material that Treasury works on about trying to calculate that to be released into the public domain perhaps through the Treasury website. The Parliamentary Budget Office (PBO) has done a paper on this as well and that is publicly available.

The other thing to mention is that the budget at the moment is not in a state of real difficulty short term. The thing that is worrying policy makers is the longer term effects of trends particularly in health spending and in social welfare expenditure as the population ages.

Question — My question relates to the role of the Senate in relation to accountability for delivery of services. Government is responsible for the delivery of a wide range of services. Many services that used to be delivered directly by the public sector are now contracted out to the private sector and of course a wide range of issues arise in relation to the way those services are delivered by the private sector. What should be the role of the Senate in pursuing accountability for delivery of services where they are delivered by the private sector? Should it be confined to questioning officials on their management of the contracts? Should the Senate go further and seek to call private sector contractors who are delivering services under contract?

Stephen Bartos — That is a very tricky question because in terms of an in-principle answer you would think that they ought to be able to call the private sector contractors but in practice I do not think that they would be able to go there. It would just be practically too difficult and it is not something institutionally that is built into the thinking of the providers. It might be extremely difficult to get people willing to provide those services if they were subject to that kind of process, but even more importantly, I do not think it would be feasible to retrospectively apply that. So, in other words, if people who have currently got a government contract for delivery of

service were suddenly told you didn't know at the time you bid for it but we are now going to make you appear before the Senate committees. I think this wouldn't be something you could do.

You could introduce it prospectively for the future but one of the ways around it, and I think this is something that can be done, is to actually hold the public servants to account for the performance of those contractors. All of those contracts do have performance information imbedded in them that is reported to the public servants. To ask the public servants how are your contractors performing against that performance information and getting them to talk that through I think is your other option.

Don't get me started on how much of that might be classified as 'on water' or commercial-in-confidence or some other way of avoiding scrutiny. That is an increasing problem as well and is an unresolved question where I, to be honest, think that the Senate does have a role. The commercial-in-confidence excuse for not talking about the performance of your contractors tends to fall apart in reality because most of the contractors have agreed that that can be made available. It is not really commercial-in-confidence; that is just a smokescreen. So I think that there is a proper and important role for the Senate in quizzing about that. You have been observing these things for a long time, yourself, so what is your view?

Questioner — There is a gap in the public accountability in the whole administrative law area and in this area and my own view is that contracts for performance of public services should include provisions to ensure proper accountability.

Rosemary Laing — May I add something? On a technical basis, the estimates process itself is limited under the standing orders to senators asking questions of ministers and officers about the items of expenditure. But that is only the estimates process. In every other mode of operation Senate committees have the power and the ability to call basically anyone before them. So if there was an inquiry into the delivery of a particular service there is no inhibition on the power of the Senate and its committees to call private contractors as well as government officers.

Now the reality, as we have mentioned, is that the commercial-in-confidence blanket that people hide under can be a deterrent to the provision of information to the Senate for our benefit. But there are some rules in the Senate about a requirement that if you are going to make a commercial-in-confidence claim you need to provide an explanation of the actual harm to the public interest, and in that case, what commercial harm will result from the disclosure of the information. In fact the Auditor-General has been working for many years on government contracts, contracts for provision of services, to ensure at the behest of the Senate that they do not contain

unnecessary confidentiality provisions that would prevent the provision of information to parliament. So I think that there are some solutions there.

Stephen Bartos — You are quite right. Because it has been the news of the week, we are looking a lot at the estimates hearings but the legislation committees have inquiries that are wide-ranging on all sorts of other things and that is a very important mechanism of the Senate.

Question — I just have a question in light of Senate estimates. As you would be aware a very common response that public servants do give is ‘that is a matter for the government’ in order to avoid providing further information on that topic. Do you have any comments about whether in your experience you have seen that increasing in recent years and also any suggestions you might have for, when that sort of response is given, what the role of the Senate should be in prosecuting that matter further?

Stephen Bartos — Partly that was why I was advocating something that gave more clarity around that. I did mention the guidelines to official witnesses and they do provide that public servants do not comment on matters of policy, they comment on matters of administration. There is quite extensive guidance in those guidelines for witnesses and they change from time to time but that particular set of provisions has been around for as long as I can remember.

Rosemary Laing — Since 1989.

Stephen Bartos — So that is an area where it is a pretty well established part of the way things work. Does it happen more often now? Look, I think what I am seeing is a greater reluctance on the part of public servants to provide any information. Not just because it might be policy-related but for the other reason we were just talking about of commercial-in-confidence or for various other reasons. That is not because they have become inherently more secretive but because a lot of the incentives on them, as I was trying to explain in the lecture today, are to actually try and protect ministers. So I think the incentives have changed a bit so we probably are seeing more of that behaviour of trying to avoid questions.

Rosemary Laing — Might I add something on that as well? Any of these claims by ministers or witnesses or public officials that they can’t answer that question because it is a matter for the minister, that is not a conclusive answer for a Senate committee. A Senate committee may, if it chooses, press the witness and insist on an answer. It can also put the alternative view: ‘Listen, it’s not for you to tell us what information we are allowed to have—the elected representatives of the people here—it is for us to determine whether we accept the ground you are putting forward for not answering

that question'. That is certainly becoming more accepted as a method of going about these things.

Stephen Bartos — It is certainly the case that the Senate has always had amongst the ranks of senators people with a really strong commitment to openness, accountability and transparency and in the formal lecture I mentioned people like Senator Andrew Murray or Senator Alan Missen. I think Alan Missen would be horrified at some of the secrecy and also some of the assaults on personal freedoms at the moment.

Question — We have focused very much in your talk and in the discussion about accountability around public administration. That still leaves us a long way from accountability for real outcomes. In the news this week we see that Australia is now almost equivalent to the US in terms of obesity rates at the same time the government is abolishing the preventive health agency and making it harder to go to the GP, these sorts of things. I am interested in whether you see any future where the Senate might take more of a role in thinking about and taking some role in accountability around outcomes and whether that would be a good thing, whether it is ever likely to happen and what some mechanisms for that might be?

Stephen Bartos — Absolutely one hundred per cent the Senate should be concentrating on whether outcomes are being achieved. That was really one of the goals of a lot of the public sector reform of the late 1980s, even through to the mid-1990s, to try and get a greater focus on outcomes, better performance reporting against outcomes rather than just processes or activities that were being conducted. It is really important for the focus to be on 'well, yes, fine, but does it make a difference to the lives of Australians?' That is vital.

Now, as I indicated in the lecture, I do think much of that focus did fall away in much of the 2000s. It really is quite important that the work of the Australian National Audit Office on trying to get better accountability against outcomes, and the work of Senate committees does get supported because really the purpose of the scrutineers is to ask 'have you achieved any results?' That is the most important thing to actually ask questions about.

The Impact of Social Media on Political Journalism*

*Judith Ireland and Greg
Jericho*

Judith Ireland — I appreciate that every journalist will have a different view about social media. After all, it's up to each of us to determine how we use it: who we follow, how enthusiastically we post and how many pictures of adorable kittens we retweet amongst our serious political commentary.

I have mostly worked for the web in the Fairfax Media bureau here at Parliament House for the past three years, both as a breaking news reporter and blogger. And this provides the basis for my thoughts about the impact of social media on political journalism.¹

Some journalists in Canberra have wholeheartedly embraced social media, to the point where it is one of the main ways they do their jobs. Others grumble about how silly and shallow it is and how they shouldn't have to have an account.

I would place myself somewhere in the middle of the spectrum. I joined Twitter three years ago and while I use it almost every day, I am not a 24/7 tweeter.

At the moment, on *The Pulse* live politics blog, I work with photographers Andrew Meares and Alex Ellinghausen to cover sitting days as they happen. This means having three TV screens, two computer screens, two telephones and the radio going all at once to try and stay on top of what politicians are doing and saying.

Alex, Andrew and I tweet the highlights throughout the day. But I also keep a beady eye on Twitter to see if people have comments or questions about what we are doing.

And to see what else is happening. Because if something breaks, it will break via social media first, not the wires, radio or the 24 hour TV channels.

* These papers were presented as a lecture in the Senate Occasional Lecture Series at Parliament House, Canberra, on 27 June 2014.

¹ I would like to thank Peter Hartcher, James Massola and Annabel Crabb for their advice when preparing this lecture. Any errors or omissions are my own.

There is no shortage of things that have changed around how Australian politics is covered over the past decade.

Four different federal governments, a hung parliament, a brave new Senate, the internet and 24 hour news—as well as big revenue challenges and job cuts in the media industry—have all shaped the process and output of political journalism.

But social media has also had an impact on the way we do our jobs.

I am going to largely restrict my social media comments today to Twitter. While there are far less Twitter users than Facebook users in Australia (about 2.9 million² compared to about 12 million³), I would argue that when it comes to political journalism, Twitter is the more interesting and significant beast.

Facebook and other social media like Google+ are important for sharing articles and generating traffic back to our websites—and there is certainly a difference between stories that do well on the web versus the paper and social media—but Twitter is more important in terms of agenda setting.

In a relatively short space of time, Twitter has become part of the fabric here in the press gallery. While it existed at the time of the 2007 federal election, it wasn't part of the political play.

The 2009 Liberal leadership contest between Malcolm Turnbull and Tony Abbott was a key moment for establishing Twitter in Canberra. When journalists used Twitter to provide live updates as the race unfolded, it demonstrated how it can bring moving politics alive.

Fast forward to today and it is standard practice for MPs and journalists to be on Twitter (Peter Hartcher and the real Christopher Pyne being notable exceptions here).

Four impacts

So what is the impact of this? I would like to talk about four effects of social media on political journalism, the first of which is speed.

² A. Hyland, 'Twitter Australia MD eyes bigger online ad share', *Australian Financial Review*, 19 March 2014.

³ M. Ross, 'Facebook turns 10: the world's largest social network in numbers', *ABC News*, 4 February 2014, <http://www.abc.net.au/news/2014-02-04/facebook-turns-10-the-social-network-in-numbers/5237128>.

As I mentioned before, one of Twitter's major features is that it is the speediest way to shout something from the rooftops. There is no middle person—no editor, no producer, no publishing process—just 140 characters and the 'tweet' button.

Journalists can now tweet about press conferences and question times as they happen. We can post stories or developments throughout the day, needing only our phones to do so. We can also post things that are interesting or quirky but not worthy of an entire story. Such as 'Clive Palmer just hung up on me again'. Or 'Labor have released a transcript of Malcolm Turnbull's interview with Alan Jones'.

I think this enriches the coverage we provide. It allows us to give readers more of the nuts and bolts of politics—and can help to build trust with audiences by being less mysterious about what we do.

Something that is also useful for the blog and online is that MPs and other political players, such as interest and community groups, will react very quickly on social media if something is happening. And this can be less scripted than the usual talking points. For example, by the time Wayne Swan had been named and sent out of parliament on 22 June for 24 hours, he had already posted his reaction:

Happy to be thrown out of QT if it helps shine the light on Abbott Gov
trash talking Aus economy & telling lies about debt and carbon price.

The communications flow is of course two-way and this gets to the second impact: feedback.

Social media is not simply a way for journalists to talk quickly and directly to their audiences, it is a way for audiences to talk back to them.

This works in several ways (some very welcome, others less so).

Twitter provides a constant straw poll. By looking at hashtags, trending topics or things like retweets or favourites, you can get a sense of whether something is getting a public reaction.

Take, for example, when Tony Abbott said 'I am a conservationist' during a TV interview in Washington DC. I was watching the interview and at the end had to call my editor to discuss if we would write a story and if so, what the lead would be out of the five or so topics covered.

When Abbott called himself the ‘c-word’, I tweeted his comment directly, almost as a note to myself. It immediately started getting a reaction. People were retweeting it, some critically, some just out of interest. And this acted as a reality check for me: the most revealing thing about the interview was not the Prime Minister’s nuanced messaging about the relationship with China, but his self-described environmental credentials.

In this sense, social media is a way for journalists to get out of the so-called ‘Canberra bubble’. I am not a self-hating journalist and I am not saying that we always need to be corrected. But listening to politicians and other reporters talk politics all day long can obviously skew your world view about what is important.

Social media has also made it much easier for members of the public to tell journalists what they think of their work. Yes, they still can ring through from the switchboard (although you can get pretty wary about taking calls this way), send an email or comment on an article (*The Pulse* usually receives more than 300 a day)—but it is far easier to just tweet.

I won’t dwell on online abuse here, other than to say that if your opening comment is an expletive about my IQ, I will probably just block you. But amongst the unpleasantness out there, there are also the people who get in touch to politely point out I have made a typo on the blog, to ask what the ‘Reps doors’ mean and to wonder how the double dissolution trigger created last week might play out.

Or to tell me it is not fair to pick on Ricky Muir because he is not a senator yet.

Again, I think this helps ground what we do on the blog. It forces me to think about how someone who does not work full-time in politics will engage with what we are covering. And it makes the final product a bit more collaborative.

In terms of feedback, I should probably also note it is not just readers who challenge your take on things. We now see MPs taking to Twitter to dispute stories and journalists to disputing right back. This gets back to the nuts and bolts that social media can show: an argument that may have previously just happened over the phone is now happening in the public domain as well.

The social media feedback works in a broader sense too. And this leads to the third impact: story generation. The chat on social media can create stories in and of themselves.

I seriously wonder whether Tony Abbott's 'Canadia' gaffe would have become such a big story without social media.⁴ The same goes for the mini-hurricane over his press release that combined comments about D-Day commemorations with his desire to repeal the carbon tax.⁵

They were both stories built around the *reaction* the incidents received. And that reaction was generated via social media.

Perhaps most significantly, social media reaction played a large part in the analysis of Julia Gillard's 2012 misogyny speech. It took it out of the hands of the day to day politics (i.e. Gillard defending Peter Slipper in the role as Speaker) and into a much broader debate (i.e. the state of modern gender relations / what it was like to be Australia's first female prime minister). It also played a role in suggesting to mainstream outlets that they pay more attention to the March in March rallies earlier this year.

So social media provides not just a reality check but another input into what the news actually is and what it means.

Stories can also emerge fully formed out of social media. An example of this was the sexist menu at that Mal Brough fundraiser last year, which came to light after a staff member at the restaurant posted it on Facebook.⁶

With social media it is now almost impossible to suppress information in the way it was say, in the 1980s, when the Packer, Murdoch and Fairfax families and the ABC had the Australian media just about tied up. If they didn't cover something it didn't exist.

Social media alone can't take credit for this information free-for-all. The internet, with sites such as Crikey and New Matilda and blogs, have all contributed to this new environment—even if tools like Twitter, Facebook and YouTube make sharing information even easier.

The fourth impact of social media on political journalism is a sub-set of story generation. Twitter has provided a reliable new source of gaffe production. Letting MPs loose on 140 characters has had some 'interesting' results.

⁴ AAP, 'PM's "Canadia" mispronunciation a Twitter hit', *West Australian*, 9 June 2014.

⁵ A. Back, 'Tony Abbott raises eyebrows after linking WWII D-Day memorial with policies on mining and carbon taxes', *Sydney Morning Herald*, 2 June 2014.

⁶ K. Murphy, 'Julia Gillard calls for Mal Brough to be disendorsed over sexist menu', *Guardian Australia*, 12 June 2013, <http://www.theguardian.com/world/2013/jun/12/julia-gillard-abbott-sexist-menu>.

In November 2009, at the height of the Turnbull leadership crisis, Joe Hockey tweeted:

Hey team re The ETS. Give me your views please on the policy and political debate. I really want your feedback'.⁷

In the careful dance that the leadership aspirants were doing, this tweet didn't help Hockey's chances. Turnbull was for the ETS, and challenger Tony Abbott was against. The tweet made Hockey look like he didn't have a view.

Others—across the political spectrum—have come unstuck in less subtle ways.

In 2012, Labor backbencher Steve Gibbons got in trouble for tweeting—among other things—that Julie Bishop was a 'narcissistic bimbo'.⁸ Brendan O'Connor last year received a similar backlash when he suggested Tony Abbott's rural fire service volunteering was a 'stunt'. And Liberal pollster Mark Textor became a Twitter quitter after his 'Pilipino porn-star' comments—made in response to revelations Australia tapped the phone of Indonesian President Susilo Bambang Yudhoyono.⁹

Tweet gaffe stories follow a similar (and at times tedious) trajectory: the tweet is noticed, condemnation builds until the offender apologises (or is forced to apologise) and the tweet is taken down. All the while, the easy outrage distracts from whatever else we could be focusing on in that day of politics.

I do have a hunch, however, that MPs are becoming savvier about the gaffe potential of social media. And the parties are aware of this too, certainly around election times. I don't think we are seeing as many 'oops' moments as we used to, even a year ago.

Here, I would also add that in terms of generating stories, Twitter is no substitute for the old-school journalistic techniques of contacts, sources and an encyclopaedic knowledge of Australian politics. While social media can provide good kindling—and at times the odd worthy log—it does not fuel daily news production.

Four questions

Having talked about what I would class as four mostly positive impacts of social media on political journalism—speed, feedback, story generation and gaffe production—I would like to raise four questions about it.

⁷ J. Ireland, 'When tweets go wrong', *Sydney Morning Herald*, 15 January 2013.

⁸ J. Swan, 'Labor MP retreats after labelling Bishop a "bimbo"', *Sydney Morning Herald*.

⁹ M. Whitbourn, 'Mark Textor quits Twitter after death threats', *Sydney Morning Herald*, 23 November 2013.

The first of these is: why are people really here?

Many of those in and around politics are not on Twitter just to discuss policy in a big digital version of a Viennese coffee house. We are there because it is also an important part of maintaining a ‘brand’ or presence in political discussions. Journalists tweet stories they have written; MPs tweet events they have attended and announcements or speeches they have made.

A not-insignificant part of social media is self-promotion.

For journalists in an era of questionable job security, having as many social media followers as possible is also seen as a positive to employers. And comfortingly means you are self-sustaining as an information source (even if you are not self-sustaining as a financial one).

As I alluded to at the start, an important part of being on Twitter is keeping an eye on what your colleagues and competitors are doing. This brings me to the second question: is there too much speed?

Because everyone is constantly watching everyone else on social media, it further compresses the time that a story is an exclusive. It means that as soon as someone tweets a new development, everyone else can leap on that too. If they don’t, they might have their news desks calling to ask why they haven’t.

Given that Twitter is updating by the second, this can be dizzying. You have to remind yourself that instead of watching social media all the time—lest you miss something—perhaps you should just pick up the phone and talk to someone instead.

The fact that we now tweet as we go through the day also means that unlike the old days, when you had the whole day to perfect a story—you are providing readers with a draft, that can change, or in some cases, turn out to be wrong.

As we saw with Clive Palmer’s amazing press conference on Wednesday, sometimes it could be more useful for everyone to wait for the answer than wade through hours of confusing speculation.

My third question about social media and journalism could also be asked more generally about the internet: is it too distracting?

Another way Twitter has impacted on—certainly my journalism—is that it is a powerful procrastination tool. While writing this presentation, one minute I was

searching for a particular tweet about the carbon tax and the next, found myself immersed in an article about the perils of maintaining a fringe. The next I knew it, I was looking at pictures of deli goods that someone bought at my local IGA.

Perhaps this says more about my self-discipline than the evils of Twitter, but I do wonder if the productivity we gain through social media's speed is lost through its many distractions.

The fourth and final question I have about social media is one that has been asked before: as compelling as Twitter can seem—who is tweeting and how representative are they?

No matter how conscious you are to follow people from across the political spectrum, your followers list is not a carefully chosen focus group or a scientifically sampled poll: we self-select who we follow. And the most retweeted comments or people with the most followers are not necessarily the most correct.

In Australia, a 2012 study by Sentia Media found that while it was a 'reasonably sound bellwether' of public opinion, Twitter leant to the left and was more vitriolic and polarised than talkback radio.¹⁰ A Pew poll of US tweeters last year found Twitter conversations can be at times more liberal and more conservative than survey responses.¹¹

This is not to dismiss what is going on here. It could be argued that Twitter in Australia serves as a counterbalance to the more right-leaning talkback. But what journalists and others thinking about social media and politics need to be careful of is directly correlating a few retweets with voter or reader 'sentiment'.

Social media is an unwieldy and mixed bag for political journalism. It is both liberating and informative that individuals have their own platforms. It also facilitates a conversation between journalists and audiences that enables the two groups to understand the other better.

But social media does have its drawbacks. It speeds everything up in ways that are not always conducive to sanity. And at times, can serve as a distraction to the day's news. It can also be very distracting on a personal level too.

¹⁰ P. Hartcher, 'Tweeters, talkers reveal their stripes', *Sydney Morning Herald*, 14 December 2012.

Yet, I can't imagine a time in the future when social media—in some form—will not continue to play a part in political journalism. It is too useful and too entertaining not to.

Greg Jericho — Fortunately, Judith and I are taking slightly different aspects given that her role has got a little bit more of a practical view of it. I am taking a bit more of a theoretical view about it, but I hope I have some good practical examples in there.

The topic of my lecture is 'Social media and political journalism: the contested space'. Even though I blog on economics and write mostly about economics, my PhD was in English literature. Like all good PhD students, I had a favourite theorist, and my favourite theorist was Mikhail Bakhtin, a Russian literature critic who had some theories about language that are relevant for what is happening now with social media and political journalism in traditional media. Bakhtin's theory was that language is never unitary, that the modern language has evolved from a primitive 'monoglossia' to a 'heteroglossia'. Now, what he meant by heteroglossia is that there are lots of different voices, jargons and slang; lots of different groups contributing their own aspect to the whole language. Bakhtin would argue, for example, that the dictionary might contain the vocabulary of English, but it is not out of the dictionary that the speaker gets his or her words. Instead of the static nature of the dictionary, for Bakhtin language was fluid and organic. He wrote that the word in living conversation is oriented towards a future 'answer-word'. We say things expecting a response.

This is crucial with social media, because that is really what it is all about. Yes, it speeds up everything because we are tweeting the moment we see something, but for me the key impact of social media on political journalism—and on all journalism—is that it has introduced this dialogic nature. Language has become a dialogue; the language of political commentary and political reporting has become a dialogue. And it is not just between Dennis Shanahan and Lenore Taylor or Laura Tingle, as it was previously. It is now between those players and the audience. The audience has shifted from being passive (reading the newspaper and perhaps writing a letter to the editor) to now being able to respond either with a tweet, a blog, with a comment on Facebook, that can actually generate a dialogue.

Now this has some traps and some concerns for the traditional media people, because if meaning and truth of things and their version of events is now contested, then that

¹¹ A. Mitchell and P. Hitlin, 'Twitter reaction to events often at odds with overall public opinion', Pew Research Centre website, 4 March 2013, <http://www.pewresearch.org/2013/03/04/twitter-reaction-to-events-often-at-odds-with-overall-public-opinion/>.

diminishes their authority. And when you are a newspaper, your authority is pretty important in getting people to buy your product.

The Australian blog sphere started in around the early 2000s but it really started getting going around 2006 or 2007 in the run-up to the election of 2007. The big area where there was a lot of growth was in what's called 'psephology', where it was commenting on polls—about Newspoll, about Nielson polls and so on and so forth.

The Australian at the time really didn't like this, and they responded on 12 July 2007 with an editorial about these blogs which at that stage were hardly read by anyone. This was really before Twitter; Facebook was sort of there. What these blogs were doing was criticising how *The Australian* was reporting Newspoll and how they were interpreting it. And so *The Australian* fought back and it wasn't just a criticism, it was trying to take ownership again of meaning and of truth, saying that we, the newspaper, we, the members of the press gallery, know the truth of things. Our version of the truth is really the only truth.

It starts off by saying, 'The measure of good journalism is objectivity and a fearless regard for truth'.¹² It suggests that the online news commentary doesn't have this. In one of the greatest lines of all time in any Australian newspaper editorial, it says, 'Unlike Crikey, we understand Newspoll because we own it'.¹³ So you can see it's not just a case of our words are true because we have got the experience of Dennis Shanahan or whoever it was who was writing about it, but because we actually own the truth. How dare these other voices try and stratify or spread out the different versions of what something is.

It didn't just happen in Australia. In America in the run-up to the 2012 election, there were again a lot of these psephologists, people like Nate Silver, writing a lot of blogs, ironically writing a lot of them on *The New York Times* and *The Washington Post* websites, where they basically declared that the election was over in about June. There was a long time to go before the election, but these guys were basically saying, 'If you look at all the polls, if you look at how they are reacting, there's no way Obama's going to lose'.

Peggy Noonan, writing the day before the election in *The Wall Street Journal*, reacted really in this traditional journalism's sense of 'How can you guys sitting at home in front of a computer know the truth? We are out there on this sweaty, cramped bus following these guys around, eating crap food for three months. We know the truth'. She argued:

¹² 'Editorial: history a better guide than bias', *Australian*, 12 July 2007.

¹³ *ibid.*

Who knows what to make of the weighting of the polls and the assumptions as to who will vote? Who knows the depth and breadth of each party's turnout efforts? ... maybe the American people were quietly cooking something up, something we don't know about. I think they are and I think it's this: a Romney win.¹⁴

Simon Jackman of *The Huffington Post*, predicted an Obama win the day before the election, and things pretty much happened as he expected. He actually did know what the people were thinking. But there was this real sense of how can bloggers do this? They are not doing it the right way. How can they own the truth? If a blogger is able to declare the election three months out, then why is anyone going to bother reading our coverage of the election when basically the race is already run?

It wasn't just polling where they were concerned about the truth. In a wonderful example in 2010, *The Australian* wrote a story saying that 'Rio Tinto shelves billions in projects'.¹⁵ A couple of hours later Rio Tinto, perhaps thinking this might affect their share price, put out a statement to the stock exchange saying 'no decision to shelve projects'. You might think, well there you go, the meaning's pretty clear there, *The Australian's* going to have to back down. But of course not. This was how they responded: by saying that 'Rio Tinto reaffirms reviewing iron ore projects'. In the article, the journalist wrote:

In an announcement to the Australian Securities Exchange today, Rio said there had been no final decision by its board to 'shelve' any projects in Australia following the announcement of the government's proposed new mining tax.

In the Australian Pocket Oxford Dictionary, the world shelve is defined as 'to put aside, esp[ecially] temporarily'.¹⁶

They used that to justify that their original story was actually correct, that they were using 'shelve' to mean that, not what Rio Tinto were actually meaning when they were saying the word 'shelve'. It's this sense of, 'the words we use are the correct words and they are really the only interpretation of meaning that you can have'.

Another example was the Andrew Bolt case when he was found to have breached the Racial Discrimination Act. Chris Kenny, at the time he was writing on it, was not just

¹⁴ Peggy Noonan's Blog, *Wall Street Journal*, 5 November 2012, <http://blogs.wsj.com/peggynoonan/2012/11/05/monday-morning/>.

¹⁵ 'Rio Tinto shelves billions in projects', *Australian*, 6 May 2010.

¹⁶ Sarah-Jane Tasker, 'Rio Tinto reaffirms reviewing iron ore projects', *Australian*, 6 May 2010.

arguing whether the act was right or wrong, it really came down to the truth and who gets to determine what truth is. Kenny wrote that Justice Mordecai Broonberg:

said some of Bolt's words meant more than their literal meaning and that while he accepted the literal meaning of some of Bolt's mitigating phrases, he found Bolt did not believe them.

So now when airing opinions on matters of public interest, Australians are subject to sanction by a court according to a judge ascribing extra meaning to the words we use, or denying our sincerity in the use of other words.

If that is not frighteningly Orwellian, nothing is. And, may it please the court, that is exactly what I meant to write. No more, no less.¹⁷

This kind of view was being parodied back in the nineteenth century. Lewis Carroll in *Through the Looking Glass*, had Humpty Dumpty saying 'When I use a word, it means just what I choose it to mean—neither more nor less'. Clearly we have moved beyond this and knowing that you can't just say, 'Oh look, I was just kidding when I said that, you can't take it in a different way to what I said'. Given that Chris Kenny has just been involved in a defamation hearing when he took a different view of what was said by the Chaser guys, I think he is on board with that view of what language is. Especially when you think that back in March, Chris Kenny wrote that he is quitting Twitter¹⁸, whereas if you actually go on Twitter, you will see that Chris Kenny is still very much there. So who knows what meaning really is anymore.

Sometimes with social media the criticism will be 'oh look, it's just an opinion'. And it certainly is true, there is a lot of opinion on social media, blogs, Twitter and Facebook. But what we often find is that the media will try and suggest that their opinion is actually the truth. This happened back in 2012 when *The Australian* put out a 'Top 50 Most Influential People in Australian Politics' list. What struck me when they were launching this list was that they tried to explain how they came up with them. The journalist wrote:

The list went through a multi-stage assessment process.

A long list was compiled and considered by an editorial committee comprising The Australian's editor in chief Chris Mitchell, editor Clive

¹⁷ Chris Kenny, 'Silencing dissent won't resolve indigenous issues', *Australian*, 3 October 2011.

¹⁸ Chris Kenny, 'Why the unbearable darkness of the twitsphere has made me quit Twitter', *Australian*, 22 March 2014.

Mathieson, political editor Dennis Shanahan and online national affairs editor Ben Packham.

The list was then culled and further soundings taken before the committee convened again to sign off on the final document.¹⁹

There is a sense of we're 'signing off' on something like it is an audit process, and we have now got the final unquestioned document on who are the most powerful people in Australian politics ranked in the correct order. It is this sense of never considering that, really, what you have got is four journalists who sat around and came up with their opinion, and that is no more weighty or less than if I got four of my mates who were very interested in Australian politics to also come up with an order.

A classic example was the misogyny speech. When this was reported, the press gallery reported it from a political angle. But the blogs and especially Facebook looked at it from a completely different angle. They didn't really care about the politics or whether Julia Gillard's speech would improve the Newspoll rating. It had nothing to do with that. It was purely 'here is a woman basically standing up to a man'. It was done in the context of every woman who has had a crappy boss or has had to put up with something like this from someone. Here was someone saying what we always wished we could say, and said it better than we could ever say it.

That is a perfectly valid version of interpreting that speech, just as interpreting the political aspects of that speech, as the press gallery did, is also valid. But instead of many of the news organisations then realising 'ooh, we missed an aspect of this', what they did was to fight back and say no, your version of that speech was not true, it was not accurate, you've got it wrong. We have got it right, we know what is right, and here's Dennis Shanahan, Paul Kelly, Christopher Pearson, Chris Kenny, Peter van Onselen and so on to tell you why you've got it wrong. It got to the ludicrous point of Dennis Shanahan going on *Jezabel* and reading the comments and passing them on to let us know this is what the commenters on *Jezabel* website are really talking about. It is just something that really doesn't work in a social media environment because social media doesn't allow for a unitary meanings of words, of events or of truth.²⁰

One of the things that happened as a result of this misogyny speech is that Macquarie University changed, or broadened, the meaning of 'misogyny' and of course that got criticised. So suddenly the dictionary was wrong. Suddenly dictionaries weren't static—who knew that the English language actually evolved?²¹

¹⁹ Ben Packham, 'Influence in politics is more than power', *Australian*, 2 February 2012.

²⁰ Dennis Shanahan, 'PM's speech goes from bad-ass to bad', *Australian*, 13 October 2012.

²¹ Christian Kerr, 'Silly Macquarie', *Australian*, 18 October 2012.

An example about this contestability of truth, of meaning, of events, that I was involved with was the G20 summit in Mexico that Julia Gillard went to in June 2012. In *The Daily Telegraph* (and in *The Australian* and other media outlets, even the ABC) it was reported that Julia Gillard had been ‘slapped down’ at the summit by the President of the European Commission Jose Manuel Barroso.²² I read the article and thought it was the standard thing, that Gillard was mentioned in one sentence and it had been hyped up and I thought nothing more of it. Australian journalists over in a foreign country have got to get some sort of an Australian angle. But then I was on Twitter, as I always am, and Annabel Crabb tweeted this: ‘Just listened to the entire Barroso press conference. His rant about criticism of Europe was in response to Canada. Not Julia Gillard’. And she then tweeted a link to the speech. It was true; Julia Gillard didn’t get a mention. The response that had been used to the ‘Julia Gillard slapdown’ was actually a response to a question from a Canadian journalist asking about Stephen Harper.

And so I wrote a blog on my own blog page. There had been a number of job cuts by Fairfax that day and in the context of everyone complaining about media readership and people not paying for it, I wrote I am finding it hard to justify buying newspapers when I am not trusting what is being reported in them. Trust is a fairly crucial thing and one of the reasons that newspapers are losing that is that we can actually go watch the raw data. We can go watch the speech and get our own view. We don’t need Simon Benson to write about the speech for us; if we have got the time we can go listen to it and draw our own conclusions.²³

A couple of days later Simon Benson wrote on his blog on *The Daily Telegraph*’s page that ‘Anyone who thinks Julia Gillard’s lecture to Europe went down well with the leaders of the largest economic bloc in the world, obviously wasn’t in Los Cabos this week’.²⁴ Again, that sort of sense of ‘how would you know the truth of something, you weren’t there, you weren’t part of it, you can’t do this unless you’re actually a member of the press gallery; if you write for this newspaper, then you’re able to know what the truth is’.

He had this odd sort of thing right down the bottom where he said ‘If only the armchair experts like former Labor staffer Annie O’Rourke had actually gone to the G20 instead of googling it they too may have learned something’. I was wondering

²² Simon Benson, ‘PM Julia Gillard “slapped down” at G20 summit by the President of the European Commission Jose Manuel Barroso’, *Daily Telegraph*, 19 June 2012.

²³ Greg Jericho, ‘Fairfax and G20 visits—What do we need? What do we trust?’, Grog’s Gamut, 19 June 2012, <http://grogsgamut.blogspot.com.au/2012/06/fairfax-and-g20-visits-what-do-we-need.html>.

²⁴ Simon Benson, ‘Why Gillard looks like a European bloc-head’, Simon Benson Blog, 21 June 2012, *Daily Telegraph*, http://blogs.news.com.au/dailytelegraph/simonbenison/index.php/dailytelegraph/comments/why_gillard_looks_like_a_european_bloc_head.

why the mention of Annie O'Rourke, and that was because she had tweeted to him '@simonbenson please read this. You are the reason people don't believe they should pay for media'.

One of the upshots of this was that Nick Green and a few other people made a complaint to the Press Council about the reporting of this speech. I had nothing to do with complaining to the Press Council; if I think something's wrong I will just write a blog about it. But one of the things was that they cited my blog coverage of this speech in their submission to the Press Council. And the Press Council agreed with them, which is why if you go to the website with Simon Benson's article now you will see a link to the Press Council adjudication.²⁵

To me, this was a wonderful example of this collision between social media and traditional media. And the best thing about it wasn't really because of my involvement, but because it all started with Annabel Crabb, a foundation member of the traditional media. It was her use of social media that alerted me to this speech which then enabled me to write something which then cannonballed on towards this complaint being upheld by the Press Council. It would never have happened were it not for social media. I wouldn't have seen the tweet by Annabel Crabb because that wouldn't have existed. I wouldn't have been able to watch the speech on the internet because before social media there was only just dial-up and I wouldn't have bothered doing it. And as a result, the version of truth of that speech would have been what was reported in the newspaper. That contestability of meaning and of truth is given a real turbo-charge through social media.

This doesn't mean that social media always ends with us getting a better version of the truth. A classic example was with the Boston Marathon bombings. When that happened, social media went into overdrive. They were going to solve the case. If you went on Reddit you could see they had found all the photographs and they had worked out it was a missing student from Brown University that did it. Or perhaps that it was that person holding the bag. And rather stupidly, the traditional media got caught up in this. *The New York Post* put this on the front page. Instead of the traditional media standing back and going 'well, that could be a bit iffy', they tried to replicate it. And now they are getting sued for a great deal of money by the two guys they depicted, because of course they weren't involved at all.

To conclude, the interaction between social media and traditional media is a bit like how data is used for the unemployment rate. The Australian Bureau of Statistics puts out original data, the raw data, the actual number of people who were unemployed

²⁵ 'Adjudication No. 1561: Nick Green/The Daily Telegraph (April 2013)', Australian Press Council, 3 April 2013, <http://www.presscouncil.org.au/document-search/adj-1561/>.

that month, and then they put out the seasonally adjusted version which takes into account the fact that there's always a lot more people unemployed in January every year because it is holidays and businesses aren't hiring. So the original data really isn't real and so they do a seasonally adjusted version to try to get a bit more context into things. Then they also have the trend line, which is a rolling 13-month view of things.

Twitter and a lot of social media is a lot about the original data. It's raw, it's rushed, it's 'this is what's happened'. It is actually true, but if you are reporting that as the only truth, then you are missing out on something; you are missing out on the context of the seasonally adjusted version. And perhaps the media should be trying to give us that view. The thing is, sometimes the trend line version is better but sometimes the seasonally adjusted gives us a bit more of an indication that we've turned a corner, whereas the trend is a little more slow about doing these things. But they're all true; all three of those are true.

What is the best version? What is the context that we should be focusing on? I think that is where we are with social media and traditional media and the reporting of politics. It is this real sense of everyone trying to contest between the original, the seasonally adjusted and the trend. They are all true, but there is a good debate to be had there. If it is a good debate where journalists and people on social media are aware that their truth is not the only truth or the only version of events, we are going to get a fuller picture of things.

And I think if you are a journalist who can't cope with that, then I think you really should think about getting into another profession because social media is never going away. This contest of ideas, this contest of what truth is, is here to stay.



Question —What is the context of financial management and media ownership on political commentary?

Rosemary Laing — Who owns the media? Would either of you like to make a brief response?

Judith Ireland — I think that is interesting in terms of social media. In Australia, even though the media landscape in some ways has diversified with the internet since about the 1980s, it is still a very small media landscape. So with social media, we are

not just relying on people with a lot of money to give us information, and I think that is a positive thing.

Greg Jericho — For me, it brings to mind also that whole thing of trust and knowing who is the person tweeting. Quite often people use pseudonyms and I have certainly used a pseudonym. In America, not so much in Australia, there are examples of astroturfing—using social media to suggest that there is this groundswell of view, whereas it is actually just companies trying to do that. So just because they are on social media, doesn't mean they are not owned by somebody.

Question — Greg, you made some really interesting comments that social media is a lot more than just Twitter. It is really interesting, picking up Judith's point, that when we talk about social media in Australia, some of the audience's reaction is 'my goodness, this is happening so quickly', but we are so slow compared to what is happening State-side. What do you think of broadcast phenomena such as *The Daily Show*, *The Colbert Report* or even *The Young Turks Network*? Do you think we are big enough for some of those sorts of things to happen down under?

Greg Jericho — Well, the evidence so far would be that outside of the ABC, no. *The Hamster Wheel* tries to do it, and Shaun Micallef. It costs a lot of money to do these shows, you need a lot of research. When I worked on *The Hamster Wheel*, my job was to look at all the raw footage of all the Parliament House interviews and read every newspaper and all that just to find something funny in there. And I was just one of the people who was doing that. They were watching every TV show all the time. It is an amazing amount of resources and if you can get a million people watching, you are doing extremely well. I think commercial networks just can't justify it.

Judith Ireland — I would love Micallef to be on every night in Australia, and he is a patchy commodity, I think, at best. And I think other political comedy shows haven't lasted the distance. I am an optimist on this one because I think we need more satire as an antidote to the news, but yes, I think we should not hold our breath on that one.

Question — How much has social media opened up the world to extraordinary conspiracy theorists who see politics through that prism? We saw it with Julia Gillard, and a lot of bloggers out there running conspiracy theories about her and Bruce Wilson, the AWU person. Also Greg's last comment I thought was very interesting. Once upon a time we used to think that the daily newspaper was the first draft of history. Now it is Twitter is that is the first draft of history and maybe newspapers are the ones that have to step back. I would be interested on your comments on those two things, especially the conspiracy theories.

Greg Jericho — It is fertile ground for conspiracy theorists. Just think of the missing Malaysian Airlines aircraft. If you are on Twitter, the number of theories being put out by nameless people or by Rupert Murdoch as well suggesting terrorism and everything was involved. I guess that is my point about that original raw data, that when you are reading Twitter you always need to be aware of those things.

When Nelson Mandela was seriously ill there were so many people desperate to be the first to tweet that he had died. And it's like, I am pretty sure that when he actually does die, we will all know about it through an official source, there is no need to think, 'this announcement must be it'.

When you are dealing with social media you must be aware of what type of media it is, just as when you read any magazine, you always view it in the context. If you are reading *New Weekly*, you might view a story in there about someone's friend saying that someone's marriage is on the rocks a bit differently than if that story was put up on the ABC website. So I think you have always got to be aware of the context, and not think that social media is perfect.

Judith Ireland — I think politics is full of conspiracy theories. Staffers and MPs are constantly peddling conspiracy theories about the other side, so in one sense we are used to that. I think that the Julia Gillard/AWU example is a really good one that has leaped the conspiracy theory fire line, if you like. We have now got a Royal Commission and some of this stuff is now being seriously looked at, whether or not it is true. Some of these blogs were very persistent about the things they were saying about Julia Gillard, and so that shows their power. Also just in question time, if I am tweeting about something Pyne has said, a whole lot of people will come back with low-level conspiracy theory stuff all the time. I get back to the fact that in politics people are constantly putting out sexy stories about the opposition and you have got to filter through that in the same way.

Question — Do either of the speakers have a view about the change to the rollout of the NBN given that it facilitates engagement through being able to watch videos and post things faster?

Greg Jericho — I don't think it is too much of an impact. One of the great things about social media and in fact about a lot of the internet is that it is actually very much a written medium which actually doesn't take up many megabytes or megabits, or whatever it is, to do. And sure, being able to watch question time live on a livestream it certainly helps if you have got broadband, but for a lot of the social media use and the actual discussion about reporting, it doesn't really need too much bandwidth.

When I started my blog, I had a dial-up and it certainly is easier and better when you have got the faster broadband but it is not too much of a barrier.

Question — I would be interested in the reaction of both speakers to the Clerk's question earlier about who uses social media. My impression was that roughly two thirds of the people here indicated that they were not using social media. Is that an indication that there are still a lot of people in the community who prefer serious, in-depth, considered journalism to these quick, short, pithy immediate responses?

Judith Ireland — I think one of the things with Twitter is it does tend to be younger people on social media, although there are large take-ups of social media amongst people over fifty. I think that is an issue in terms of the point I touched on at the end of my talk about how inclusive the conversation is and who is not there as part of the conversation, and I do think that is really important.

I think that Twitter in particular is a mix because it might be a link to a really interesting in-depth, long-read article. A big part of it is those quick-fire things: 'Tony Abbott just said this, oh my god'. But it does have links to other articles. It is also a conversation. As Greg was talking about, it is about people interacting with things, revising what has been said, so I think there is an in-depth side to social media aside from what the 140 characters would suggest.

Greg Jericho — For me, the great thing about Twitter is the conversations I have with people who are a hell of a lot smarter than me, who can point me in the direction of articles and academic pieces that I probably wouldn't have come across if I wasn't on Twitter. It is very much a generational thing, and older people are less likely to be using it than younger people, but even that is changing. You have got to realise, we now have people in university who can barely remember not being able to access the internet by phone. It is a fundamental change that has occurred, and it is little wonder that there are some people who are struggling to keep up with it.

But as I say, don't be fooled into thinking it is just people tweeting about cats or something. It can be if that is all you want to do, but it is actually an amazing tool for finding that in-depth discussion that you might really enjoy, but that you are missing out on because you are thinking 'I'll get that if I just use the newspapers'. Some of these blogs are written by Nobel laureates who are incredibly interesting and that you only really become aware of through social media.

**Competing Notions of Constitutional
'Recognition': Truth and Justice or Living
'off the Crumbs that Fall off the White
Australian Tables'?***

Megan Davis

As a lawyer I have been intimately involved in the development of the current iteration of constitutional recognition as a member of the former prime minister's Expert Panel on the Constitutional Recognition of Indigenous Australians. Prior to that I had written extensively on constitutional reform and Indigenous peoples, which includes my doctoral thesis where I explore the importance of a constitutional right to equality for Aboriginal women.

Recently I was here in Canberra with my former expert panel colleague Henry Burmester QC. We were presenting to lawyers at the Australian Government Solicitor on constitutional recognition and we were reflecting on the fact that it is now 2014 and we have been giving exactly the same speech for almost four years since the panel handed its recommendations to the prime minister in January of 2012. Henry and I were reflecting on the much anticipated report of the current Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples as a useful way to focus or refocus the current, although relatively faint, public discourse on constitutional recognition.

Recently the ABC ran a story about a growing Aboriginal resistance to recognition and in *The Spectator* the issue attracted a somewhat spiteful commentary on the supporters of recognition. Consolidating thinking around options for reform is critical to sharpening the debate and tempering overblown allegations that such reform undermines Aboriginal claims to sovereignty, or undermines the right to equality for all Australians, or that it will lead to the reintroduction of child brides or Aboriginal spearing.

In light of this, rather than speaking about the expert panel's recommendations, although I will refer to them, I wanted to approach the current recognition iteration from a different perspective or through an alternative lens. That is, to attempt to capture both historically and in a contemporary sense the competing notions of constitutional recognition—that of the State and that of Aboriginal and Torres Strait Islander peoples. One can see that beginning to play out in the faint but growing

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public discussion on this issue, and I think it can be amplified in a negative way when there is no actual model for people to debate and discuss. One is hesitant to ventilate these competing notions but I do not want to shy away from the fact that they exist. I don't think by speaking about them it should detract from the importance of the contemporary task of constitutional recognition of Aboriginal people. As an expert panel member and Aboriginal person and a constitutional lawyer, I support constitutional recognition and reform wholeheartedly, subject to a model. What I suppose I did not see as an expert panel member is how these competing notions, ideas and motivations are playing out. How they intersect, overlap, reinforce, conflict or indeed sometimes cancel each other out.

Indigenous and non-Indigenous Australians ought to come to understand that these competing notions of recognition exist and understand why they exist. I certainly do not make claim to any definitive or exhaustive explanation of them, but if we come to understand these competing sentiments then we can proceed with integrity and not be sidelined by petty irritations. This lecture will map, chronologically and somewhat discursively, these competing beliefs.

First of all the expert panel and the current process did not emerge from nowhere. It doesn't exist in a vacuum, it is part of a historical trajectory in this country. Secondly, mapping this trajectory out is an important exercise because if 1967 was a form of recognition, which I believe it was, why are we back here? The answer to that question is complicated. It is likely that the State as the recogniser and Indigenous peoples as the recognised, are back here, motivated and informed by divergent forces. For example, the starting point for mainstream conversations in Australia on constitutional reform is always, by necessity, the notorious double majority that plagues constitutional evolution in Australia. Yet for many Aboriginal and Torres Strait Islander peoples, it is not an inescapable proposition that the recognition project and/or the model of recognition should be understood apropos the question of justice and redress. That is to say, the starting point for many Aboriginal and Torres Strait Islander peoples is what is fair and what is just. This is unfinished business foremost in the minds of the community and somewhat of a utilitarian calculus in the minds of the State.

The relatively crude exercise of calculating reform on the basis of what minor, inoffensive gesture is likely to receive bipartisan support and thus automate a majority of states in a national majority, is of course at odds with the question of fairness and justice, because that agenda, that Indigenous people themselves have mapped out over 50 or 60 years, is an agenda that is quite formidable. If one is to consider the concept of what is fair and just in regard to constitutional recognition, and I am not sure the community is convinced that that is the case in this current iteration, equity cannot be

viewed solely through the eyes of the State. It needs to be considered through the eyes of the people who have been dispossessed and disempowered, a people who are still grieving the loss, who feel deeply and sincerely that they have been wronged and for which there has been no resolution.

The historical trajectory since 1967 is an essential part of this story of Indigenous constitutional reform and recognition as it animates why Aboriginal and Torres Strait Islander peoples are likely not to accept a mere symbolic gesture when it comes to constitutional recognition. By mere symbolic gesture, I mean things like a 1999-style preamble, or indeed deletion of section 25 and section 51(xxvi) because they mention the word race. The literature reveals to us that indeed from an Aboriginal and Torres Strait Islander perspective we are back here because of a technical problem with the text of the Constitution. We are back here for reform rather than recognition in a strict sense. Still, that reform agenda, amendment or repeal of section 51(xxvi), was accepted by the expert panel as a type or form of recognition. If anything, this lecture explores how this current recognition project carries with it a confluence of ideas that if not made more coherent by leadership, meaning concrete options for discussion and debate, risks confusing the public.

So I suggest that the historical trajectory of the current project can be viewed through three phases. First, the post-1967 referendum era, then the reconciliation era, in which in particular I will draw upon two High Court decisions. The reconciliation era in particular saw the consolidation of Indigenous peoples' notions of recognition. Then the post-1999 referendum recognition era, where State notions of recognition really start to take shape. So that is the order I will follow. In my comments I will interchange recognition with reform. While recognition is the word adopted by the State, the recogniser, it is the case however, that in a textual sense anyway the word does tend to convey the image of a weaker form of constitutional recognition. It tends to obfuscate and I suppose for many in the Indigenous community, there is a fear that it excavates Indigenous aspirations or Indigenous visions of equity of their substantive features. For that reason I interchange it with reform.

Post-1967 referendum era

A few comments first about the 1967 referendum. I do agree with scholars such as John Chesterman, Brian Galligan, Bain Attwood and Andrew Markus about the mythology of 1967 and overstating the significance of it.¹ There is an over reliance on the so-called popular movement or campaign as the primary driver of that success. We know that the key factor was bipartisan support. The evidence tells us that the

State can succeed at virtually anything at referendum if bipartisan support is there, although one knows that the nature of Australian history means that may not be the case in the future. Significantly, bipartisan support was related to external factors, important geopolitical factors that exerted pressure on the Australian polity including an international normative shift to racial non-discrimination and equality at the United Nations. Keep in mind that at the time Aboriginal people lived in subhuman conditions in reserves and missions around the country. This was the tail end of the protection era; the protection era that was preceded by the frontier period, or what is known as the killing times. This was a period when states and territories regulated the lives of Aboriginal people, including their freedom of speech, freedom of movement, right to marry and right to have an income. So these geopolitical forces were critical to that bipartisan support. Also there had been growing agitation by politicians themselves, for example, Opposition leader H.V. Evatt in 1957.

In addition, more time and energy was spent on the 'nexus' question of the referendum. The Aboriginal question was not as prominent. In fact, the nexus question attracted so much negativity that it aided the success of the Aboriginal question. This explains why some are attracted to running a recognition referendum at the same time as an election, so the ballot box attracts the negativity. That is all I wanted to say about the referendum.

What is significant about the 1967 referendum is that it provided the federal parliament with constitutional authority to make laws for Aboriginal and Torres Strait Islander peoples and this ushered in a new era of law and policy making. Not at first, because the initial response of the Commonwealth Parliament was to continue to defer to the states and not use the race power. Indeed the evidence reveals that for Aboriginal and Torres Strait Islander peoples the elation of 1967 quickly dissipated with the dawning realisation that perhaps the State was not going to use section 51(xxvi) to pursue the political agenda that they had hoped for.

The election of the Whitlam Government in 1972 saw a new era of law and policy begin with a number of measures aimed at improving the plight of Aboriginal and Torres Strait Islander peoples. The Whitlam government supported the right to self-determination as the foundation of its Indigenous policy. New measures included the creation of Aboriginal legal and medical services and the establishment of a land commission for the pursuit of land rights in the Northern Territory. Whitlam also ratified the International Convention on the Elimination of All Forms of Racial Discrimination and legislated for the Racial Discrimination Act, an Act that has

¹ Bain Attwood and Andrew Markus, 'Representation matters: the 1967 referendum and citizenship', in John Chesterman and Brian Galligan, *Citizens Without Rights: Aborigines and Australian Citizenship*, Cambridge University Press, Cambridge, 1997, pp. 118–40.

become the most important statute for Indigenous peoples in their continuing fight against racial discrimination and for equality. As Noel Pearson has written of the significance of this Act, 'at the level of legal policy at least, we were at last free from those discriminations that humiliated and degraded our people'.² The Whitlam legislation meant freedom.

In this historical trajectory there are two significant things: the Racial Discrimination Act, extremely important to Aboriginal and Torres Strait Islander peoples and their rights, and the use of section 51(xxvi) reveals the potential of this head of power to achieve redress and self-determination, a promise that it will achieve the political agenda that Aboriginal and Torres Strait Islander peoples had determined for themselves.

Next, following a double dissolution election in 1975, the Fraser Government was elected. Important here in the historical trajectory towards constitutional recognition is the establishment in 1977 of a new representative body, the National Aboriginal Conference (NAC). This was the first Aboriginal organisation to be incorporated under the *Aboriginal Councils and Associations Act 1976*, supported by the race power. The NAC advocated on issues of sovereignty, land rights, the right to self-determination and racial non-discrimination. The work of the NAC is significant here because it advocated for a treaty between the Aboriginal people and the State as a way to resolve the unsettled issue of Aboriginal sovereignty. The Fraser Government responded by committing to future discussions. Meanwhile NAC resolved to replace the word 'treaty' with the word *makarrata*. This is a Yolngu word that has a number of interpretations but essentially means cessation in a conflict or 'things are alright again after a conflict' or 'coming together after a struggle'.

During 1981 the NAC travelled Australia consulting with communities. Their interim report laid out a vision of what it was that Indigenous peoples wanted of the State, in particular with respect to the use of section 51(xxvi). The report demanded recognition of Indigenous sovereignty and the recognition of Indigenous laws. It expressed a desire to negotiate land rights including freehold title of all that land upon which Aboriginal people presently live. The subcommittee also argued for greater participation of Aboriginal and Torres Strait Islander peoples in the Australian political life. That included the reservation of parliamentary seats at a federal, state and local level. Other proposals included the repatriation of Indigenous human remains and the teaching of Aboriginal culture in schools. The subcommittee also

² Noel Pearson, 'The reward for public life is public progress: an appreciation of the public life of the Hon. E.G. Whitlam AC QC, Prime Minister, 1972–75', address delivered to the Whitlam Institute, University of Western Sydney, 13 November 2013.

called for the abolition of statutes in any part of the Commonwealth that make the Aboriginal status different in any other way than that of other citizens.

Early in 1981, the Minister for Aboriginal Affairs and the NAC exchanged letters about the issue of makarrata, in which the minister encouraged the NAC to commence negotiations with the states and territories. However the NAC's work was impeded by a lack of funding and its abolition by the Hawke Labor government in 1985. But it is important to note that in this trajectory the NAC plays a very important part. Prominent in the communities they consulted were aspirations for treaty and sovereignty and better political participation through reserved seats. There were extensive consultations and substantive thinking about these issues. How could it be done in our Constitution? How could it be done in this federation? The one thing I will briefly note here is that with the abolition of the NAC you can see that our history is littered with representative bodies set up by government, whether statutory or not, and abolished by government. No doubt this informed the decision of the National Congress of Australia's First Peoples in choosing a corporate model which, after initial funding from government, is meant to be, or to become, self-sustaining.

I return to Bob Hawke, because Australia was now preparing to celebrate its bicentenary year, and Aboriginal people declared a Year of Mourning. The Hawke Government established a new commission to review the Australian Constitution called the Constitutional Commission. The final report made a number of recommendations on Aboriginal and Torres Strait Islander peoples and the Constitution. The commission recommended the deletion of section 25 of the Constitution, stating it was no longer appropriate to include in the Constitution a provision which contemplates the disqualification of members of a race from voting. The commission expressed concern section 51(xxvi), which had been amended in the 1967 referendum, enabled the Parliament to pass both special and discriminating laws that could be in favour or adverse; prescient in terms of the historical trajectory.

The commission recommended a new power that would authorise the Parliament to make laws with respect to 'Aborigines and Torres Strait Islanders'. In addition, the commission recommended the insertion of a racial non-discrimination clause titled section 124G. The 2011 expert panel's recommendations mirror very closely the recommendations of the 1988 commission. The commission also seriously considered the contemporaneous treaty debate and the potential constitutional authority for an agreement between the Commonwealth and Aboriginal and Torres Strait Islander communities. They were not talking about some pan- Aboriginal agreement, they were talking about negotiations in individual communities. The commission built upon the work of the Senate Standing Committee on Constitutional and Legal Affairs in 1983, which had drafted a section 125A as a new constitutional provision for the

power of the Commonwealth to enter into agreements with representatives of the Aboriginal people. Such a power could not be used until an agreement was already negotiated.

This work of the Constitutional Commission was and remains significant and was drawn upon by the expert panel. It is, after all, important that we do not keep reinventing the wheel. In 1983 and 1988 we have non-Indigenous state public institutions laying intellectual and constitutional bases for a potential agreement-making power in the Constitution. Also the Constitutional Commission identifies a non-discrimination clause as appropriate in a review of the Constitution noting the potential discriminatory power of the Parliament and impact of section 51(xxvi).

Reconciliation era

Continuing along this history, Australia celebrated its bicentenary in 1988 and during the celebrations the Barunga statement, two paintings and a text, was presented to Prime Minister Bob Hawke. The Barunga statement—inspired by the 1963 Yirrkala bark petitions that objected to mining on Yolngu country and the failure of Parliament to consult with Yolngu on the mining lease—called upon the Commonwealth to use its 1967-granted authority under section 51(xxvi) to recognise Aboriginal and Torres Strait Islander peoples' right to self-determination, including a nationally elected organisation to oversee Aboriginal and Torres Strait Islander affairs, a national system of land rights and a police and justice system. It also called upon the Commonwealth Parliament to negotiate a treaty recognising the prior ownership, continued occupation and sovereignty of Aboriginal and Torres Strait Islander peoples and affirming Aboriginal and Torres Strait Islander peoples' human rights and freedom. In response, Bob Hawke said that there would be a treaty within the life of the Parliament.³

Prime Minister Hawke was able to deliver on the Barunga statement's call for a representative body and in 1989 the Parliament gave effect to the Aboriginal and Torres Strait Islander Commission, known as ATSIC. However, he was unable to deliver on two successive promises, one for national land rights and secondly for a treaty. Hawke's inability to deliver on these two issues important to the Aboriginal and Torres Strait Islander peoples ushered in the next phase of this journey to constitutional reform: reconciliation.

It is important to note here that this is not reconciliation as in the ventilating of stories or a truth and justice process, such as that which is common in many jurisdictions around the world. Rather, reconciliation as a kind of political confection as a

³ Prime Minister Robert Hawke, Speech delivered at the Barunga Sports and Cultural Festival, Northern Territory, 12 June 1988, <http://pmtranscripts.dpmc.gov.au/browse.php?did=7334>.

compromise for renegeing on those promises made to the Aboriginal and Torres Strait Islander peoples. That might sound cynical but it is certainly the view of many Aboriginal and Torres Strait Islander peoples.

The statutory Council for Aboriginal Reconciliation had three goals: to create documents of reconciliation, to develop partnerships in reconciliation and to build a people's movement for reconciliation. Throughout the 1990s we see this reconciliation movement grow, led by the Council for Aboriginal Reconciliation. However, before moving on from the reconciliation phase we cannot understand the current iteration of constitutional recognition without contemplating two particular events or, to be more specific, decisions of the High Court. So I want to look at two matters briefly: the aftermath of *Mabo*, the *Wik* decision⁴, and the High Court decision in *Kartinyeri*.⁵

Before we look to *Wik*, it is important to note that after the High Court's decision in *Mabo*, there was actually a three tier response: a Native Title Act, the creation of a land fund for Indigenous people who may not benefit from native title and a social justice package (led by the Council for Aboriginal Reconciliation, ATSIC and HREOC, or the Australian Human Rights Commission as it is known today). This social justice package was aimed at addressing dispossession as a response to *Mabo*. The social justice report, *Recognition, Rights and Reform*, included ways in which the federal parliament could build upon its post-1967 authority that was granted overwhelmingly to it by the people of Australia, to better include Aboriginal and Torres Strait Islander peoples in the delivery of services and development of policies that affect their lives. So this included major institutional and structural change including constitutional reform and recognition, recognition of regional self-government and regional agreements and the negotiation of a treaty or comparable document which must address the issue of compensation. By the time that report was completed there was a change in government and the new government declined to embrace the social justice package, but it is important for me to raise because the failure to implement the third tier of the Parliament's response to *Mabo* was raised during the consultations with communities conducted by the expert panel. Every Aboriginal and Torres Strait Islander community around Australia asked what had happened to the social justice package. It is important because it was the State's full response to *Mabo*, but it also gives you an insight into what Aboriginal and Torres Strait Islander peoples thought was an appropriate settlement with respect to dispossession as recognised by the High Court. Fifteen years after the National Aboriginal Conference it was exactly the same thing. It was about some form of

⁴ *Wik Peoples v Queensland* (1996) 187 CLR 1.

⁵ *Kartinyeri v Commonwealth* (1998) 195 CLR 337.

agreement to facilitate settlement, reconciliation and ultimately forgiveness with respect to dispossession.

The *Wik* decision was a very difficult stage in the reconciliation era. The High Court found that pastoral leases could co-exist with native title. I do not want to dwell on the vehement reaction from those sections of the Australian community who opposed *Wik*, except to say the racial tensions were so acute that some feared that there would be a race-based election.

The negotiations for the Native Title Amendment Act were brutal. We know this because the many leaders involved in these negotiations have written or spoken extensively about it, including on the 10-point plan or 'bucket-loads of extinguishment' that saw, among many things, the introduction of a strict registration test for Aboriginal and native title applicants and limited the right to negotiate for claimants. Relevant to the recognition project, is this: the Native Title Amendment Act suspended the application of the Racial Discrimination Act so that the government could single out Aboriginal native title claimants for adverse treatment on the basis of their race. So in this case reducing the rights of native title claimants and advancing the rights of other landholders. The UN committee overseeing this legislation, the UN Committee on the Elimination of Racial Discrimination, determined the amendment was a clear cut example of racial discrimination, but it is not necessary for me to descend into forensic detail about the politics of this. The relevant point for this excursion is the way in which principle statute, the way in which this Racial Discrimination Act that Indigenous peoples rely upon so much, is so easily disallowed by the Commonwealth Parliament with barely a whimper from the Australian population. Every entity in Australia is bound by the principle of racial non-discrimination except for the federal parliament.

The next significant challenge to reconciliation is the High Court's decision in *Kartinyeri* in 1998. One of the first acts of the new government in 1996 was to pass legislation under section 51(xxvi), the race power that was amended in 1967, to deny the Ngarrindjeri Aboriginal women the Aboriginal and Torres Strait Islander Heritage Protection Act to prevent the construction of a bridge over an area that encompassed what the women asserted was secret women's business. This Act, the Hindmarsh Island Bridge Act, suspended the Racial Discrimination Act from operating with respect to this legislation so that the Aboriginal and Torres Strait Islander Heritage Protection Act applied everywhere in the country except for Hindmarsh Island. So here contemporaneously to *Wik*, the Racial Discrimination Act has been suspended in order to discriminate in an adverse fashion against Aboriginal and Torres Strait Islander peoples.

This legislation was challenged by the Ngarrindjeri women in the High Court on the basis that the race power as amended in 1967 couldn't be used in an adverse or detrimental manner by the Commonwealth. The High Court split on whether the race power could be used to discriminate against Indigenous peoples. The judgement was inconclusive and left open the possibility that the Commonwealth still possesses the power to enact racially discriminatory laws. However, as the expert panel found, it is almost universal legal consensus that the race power does permit the federal parliament to single out one group for adverse discriminatory treatment on the basis of race.

This decision was a turning point. The very power that was amended in 1967 and had been the focus of so much post-1967 referendum advocacy was now regarded as a power to make laws that discriminate in a negative way against Aboriginal and Torres Strait Islander peoples. I refer to those two decisions because we must recall these two events if we are to fully contemplate the motivation for a non-discrimination clause in the Constitution. Not as some ambit claim for a bill of rights for Aboriginal people, but a reasonable and unremarkable response to the majoritarian tendencies of the Australian polity. Before moving on it is important to note that we were quite taken, especially myself as an Aboriginal lawyer, by the deep memories of these two decisions in the High Court in communities during our expert panel consultations. These two cases were cited and are alive and well in indigenous community narratives about the State.

Before I wrap up the reconciliation phase, it is important here to note that we begin to understand recognition from the perspective of the recogniser or the State. In many ways it departs at this point from entertaining Indigenous claims. During the second term of the Howard Government we see this new phase of reconciliation and that is the potential recognition of Aboriginal and Torres Strait Islander peoples in the preamble of the Constitution as part of a broader referendum on the republic. Prime Minister Howard himself took the lead in drafting a new preamble leading up to the 1999 referendum which included Indigenous recognition. The eventual vote in the referendum, of course, saw the preamble rejected by every state and territory and nationally by 60.7 per cent of the population. This was especially pronounced in electorates with Aboriginal and Torres Strait Islander population.

The significance of recalling this, however, is not to rehearse the controversies associated with the language that was chosen. It is to make this point: that after decades of advocacy for Indigenous rights, the political agenda that I have described to you in part, set out, or laid down by Aboriginal and Torres Strait Islander communities had been cherry picked by the State and by 1998 gave singular prominence to recognition in a preamble. We identify this as the point where the State

and Indigenous ideas about recognition diverge, with structural reform giving way to mere recognition or 'poetry' as it is so disparagingly referred to in communities.

Following the failed referendum, the nation moved towards the final chapter of the reconciliation era. In its final recommendation to the Australian Government, the Council for Aboriginal Reconciliation recommended the following measures:

The Commonwealth Parliament prepare legislation for a referendum which seeks to:

- recognise Aboriginal and Torres Strait Islander peoples as the first peoples of Australia in a new preamble to the Constitution; and
- remove section 25 of the Constitution and introduce a new section making it unlawful to adversely discriminate against any people on the grounds of race.

In addition it recommended that:

Each government and parliament:

- recognise that this land and its waters were settled as colonies without treaty or consent and that to advance reconciliation it would be most desirable if there were agreements or treaties; and
- negotiate a process through which this might be achieved that protects the political, cultural and economic position of Aboriginal and Torres Strait Islander peoples.

Finally it recommended that the 'Commonwealth Parliament enact legislation ... to put in place a process which will unite all Australians by way of an agreement, or treaty, through which unresolved issues of reconciliation can be resolved'.⁶

Post-1999 referendum recognition era

We then move into this post-1999 recognition phase which continues with advocacy for a treaty. I will truncate that by merely mentioning that a treaty campaign was led by ATSIC, building upon the final report of the Council for Aboriginal Reconciliation, not negotiating a treaty but facilitating a process for consulting with communities. It is also interesting to reflect that on 8 November 2000, *The Sydney Morning Herald* reported an increase in the number of Australians who supported a treaty with Aboriginal people. The Herald/AC Nielson poll found 53 per cent of Australians in favour of a treaty with those opposed dropping 6 per cent to 34 per

⁶ Council for Aboriginal Reconciliation, *Reconciliation: Australia's Challenge: Final Report of the Council for Aboriginal Reconciliation*, Council for Aboriginal Reconciliation, Canberra, 2000, pp. 105–6.

cent. The poll also found support for reconciliation had risen. These figures are interesting because they illustrate two things: firstly, how a campaign can sharpen the population's focus on an issue that they would not normally be engaged with, and secondly, the importance of leadership. In any event ATSIC was criticised by the government for its treaty campaign for elevating symbolic measures over practical measures and addressing Aboriginal disadvantage. In part it led to its demise.

This brings us to about circa 2005 and it is important to note again here that the desire for a treaty is well and alive in Aboriginal and Torres Strait Islander communities. It is at this point we witness the consolidation of the federation's appetite for only symbolism.

The post-republic recognition phase leads a number of state governments to recognise Aboriginal and Torres Strait Islander peoples in their constitutions: Victoria in 2006, Queensland in 2010 and then New South Wales. Finally in 2013 South Australia also passed an amendment of recognition. However each of these states includes in this recognition a non-justiciability clause, or no legal effect clause, stating that the parliament does not intend this section to have any legal force or effect. This is despite the fact that unlike the double entrenchment of the Australian Constitution, state constitutions are mere Acts of Parliament. They do not require referendums for amendment. Any subsequent Act of Parliament can override any recognition clause. The fact that the states felt compelled to include such a clause was justifiably regarded during the expert panel consultations as a form of non-recognition.

Constitutional recognition was well and truly back on the agenda. Three days before the 2007 federal election, Prime Minister Howard announced his renewed support for recognition in a new preamble. This is significant of course because the prime minister had an irrefutably difficult relationship with Indigenous peoples during his very long term of office. Also he had eschewed symbolism preferring hard-headed, pragmatic measures aimed at real, substantive change: practical reconciliation over symbolic reconciliation. In any event, his last-minute and welcome conversion to symbolism created bipartisan support, given that the ALP policy platform at the time also supported recognition of Indigenous peoples in the preamble. And although defeated at the 2007 federal election, there has been a steady momentum in the public conversation on recognition in a preamble.

I will skip over the much maligned Australia 2020 Summit except to say that it was an outcome of the final report, although it did note the importance of not just symbolic recognition but substantive changes in the text of the Constitution.

Following on from 2020 however, the federal government conducted one of its community Cabinet meetings in Eastern Arnhem Land. While there, Prime Minister Rudd was presented with a Yolngu leaders' statement of intent. This document was developed following meetings at Maningrida in 2007 and other related meetings over the previous 18 months representing seven homelands and 8,000 Indigenous peoples. It argued for recognition of their fundamental right to live on their land and practice their culture and constitutional recognition of Indigenous prior ownership of the land. In accepting this communique, the prime minister pledged his support for recognition of Indigenous peoples in a preamble to the Constitution, essentially cherry picking substantive recognition for preambular recognition. This was a misreading of the Yolngu statement of intent, this expression of an Indigenous vision of truth and justice by the Yolngu merely seven years ago.

This brings us to the expert panel in 2010, where Prime Minister Julia Gillard constituted a panel to report to government on the possible options for constitutional change. It is important to note here that the Greens and the Independent Rob Oakeshott in their letters of agreement in supporting the prime minister or the government, specified that Gillard put into action these continual indications of political support for recognition.

So over the course of 2011, we conducted a broad national consultation program which included a formal public submissions process and a process of public consultation meetings. We agreed on four principles to guide our assessment of proposals for constitutional recognition, namely that each proposal:

- contribute to a more unified and reconciled nation;
- be of benefit to and accord with the wishes of Aboriginal and Torres Strait Islander peoples;
- be capable of being supported by an overwhelming majority of Australians from across the political and social spectrums; and
- be technically and legally sound.⁷

Of course, the fourth one picks up on the unintended consequences of the drafting in section 51(xxvi) in the 1967 referendum.

The recommendations of the expert panel, like those of the Constitutional Commission, included the repeal of sections 25 and 51(xxvi). We recommended that a new section 51A be inserted. Due to the many constitutional risks identified by the many constitutional lawyers we consulted, we rejected a standalone recognition

⁷ Expert Panel on Constitutional Recognition of Indigenous Australians, *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution: Report of the Expert Panel*, January 2012, p. 4.

preamble at the beginning of the Constitution and placed a recognition statement as a preamble to a new head of power in section 51A. We also recommended, like the commission did, a section 116A be inserted, a prohibition of racial discrimination, and lastly, that a new section 127A be inserted which is a recognition of Indigenous languages, on the strength of the overwhelming concern about the rapid disappearance of Aboriginal languages.

Conclusion

I want to conclude by drawing together some of the insights in that not entirely comprehensive trajectory. I have outlined some of the competing notions of recognition. What does this mean? There are different expectations of this current project. It explains in part the confusion and misunderstanding about the current iteration. Of course it does not explain some of the deliberate mischief, some of it organised by some members of the Aboriginal community itself. But my concern and the concern of many expert panel members is how is this to be managed?

Non-Indigenous people frequently tell me that only preambular recognition will succeed. We are told that time and time again by constitutional lawyers and politicians. Indigenous people tell us that they will not support symbolic recognition. The task is not aided by the State's waning interest in reconciliation. The 1990s reconciliation was somewhat of a confected process of political convenience that emerged from a failed executive promise to enter into negotiations for a treaty with Aboriginal people in the 1980s. Today the contemporary version of reconciliation is focused on things like employment covenants, while meritorious, avoid engaging with a substantive question of all reconciliation movements globally—truth and justice.

It is not surprising that scholars note that Australia's reconciliation process is rarely, if ever, cited in the literature on Indigenous peoples and reconciliation around the world. We saw during the Howard era that rights became decoupled from recognition, partly informed by a desire to focus on the practical and not the symbolic. Still, the architects of practical reconciliation embrace symbolic reconciliation, again partly because of the double majority and a desire to achieve *anything* as opposed to nothing, but equally because of a genuine, normative rejection of any concept of wrongdoing.

The expert panel's work signified a major shift in the trajectory of Aboriginal and Torres Strait Islander peoples' advocacy for rights and recognition. The panel consisted of Indigenous and non-Indigenous people of left and right and of politicians of all political parties. It is not true to say that the panel was a bunch of ranting lefties, nor is it accurate to generalise the panel as conservative. For us, *Wik* and *Kartinyeri* were a conundrum: majoritarianism trumps statute as in *Wik* and the Constitution

trumps statute as in *Kartinyeri*. The upshot is that section 51(xxvi), as amended in 1967, is a problem. The ease with which a parliament, without check or balance—save for the ballot box every three years; a most flippant but common refrain—can discriminate against Aboriginal people on the basis of race, troubled many during that process. The *Wik* amendments were often referenced, as I said, during panel consultations because it was difficult for the community to swallow, almost 20 years after the fact, the very real potential of economic development in addressing disadvantage through native title had disappeared before their very eyes. I am not referring to those who have had very significant economic development outcomes as a consequence of native title. I am talking about those many communities that do not. And because we are 2 million of 22 million people, very few people raised an eyebrow.

It is difficult for those Indigenous peoples that we consulted. All other comparative developed liberal democracies within Indigenous populations have adopted measures aimed at ameliorating the harsh majoritarian tendencies of minimalist ballot box participation through treaties, agreements, other constructive arrangements, parliaments, designated parliamentary seats, Indigenous electoral roles, entrenched Indigenous rights, non-discrimination clauses in the Constitution, the list goes on. Why is it that Australia, once regarded as an innovator in public policy, is incapable of conceiving and implementing similar measures here at home?

Can I return to end on the Indigenous community's criticism of the expert panel and this is feeding, in part, the Aboriginal resistance to this current movement. That is that we ignored the substantive: treaty and sovereignty. The expert panel took seriously Aboriginal and Torres Strait Islander peoples' desires for a treaty and settling the unfinished business of sovereignty and we reflected those concerns in the report. There are two chapters devoted to that, but on the basis of the methodology that I referred to we decided that it was not the time to go ahead with those. I do not think sovereignty can be dealt with in that process—or a treaty.

Constitutional recognition will not impact upon Indigenous claims for sovereignty. To quote the legal advice, 'the fact of settlement from its beginning produced institutions of government that necessarily, continuously proclaimed their own legitimacy. Given the previous presence of Indigenous people, now comprising the territory of the nation Australia, contemporary legal doctrine implies acceptance that the basis of settlement of Australia is and always has been ultimately the exertion of force by or on behalf of British arrivals. They did not ask permission to settle. No one consented; no one ceded. Sovereignty was not passed from Aboriginal peoples to the settlers by any actions of legal significance voluntarily taken by or on behalf of the former or any of

them'.⁸ It goes on to say 'recognition of Aboriginal and Torres Strait Islanders in the Constitution as equal citizens could not foreclose on the question of how Australia was settled because the reasoning noted above proceeds on the basis of the common law constitutional consequences of perceived and judicially received history. That will not be altered by future amendments to the text of the written Constitution'.⁹ It is mischief on the part of those who proclaim the contrary although it is a complex legal question. And some of that mischief is being conducted in the most abusive and unproductive fashion.

On the issue of treaty it was argued that communities themselves were not ready for a treaty. Some communities were. Some communities were quite advanced in negotiating with local governments and state governments on the basis of a number of different forms of tenure right across Australia. But essentially it was felt that communities were not ready yet to enter into those treaties. But primarily the fault, we felt, lay fairly and squarely at the political class in Australia. When we handed down the report, the climate was toxic, much as it is today. We felt the current class of political leadership was incapable of leading a nationwide settlement between Aboriginal and Torres Strait Islander peoples and the State.

So to conclude, I have referred to this notion of truth and justice throughout this lecture. What do I mean by that? It means the ventilating of stories of a narrative that is inconclusive of Aboriginal and Torres Strait Islander peoples in Australia. If one thinks that is already the case then one really needs to get out to more Aboriginal communities. This is about the frontier wars, the killing times. This is about the protection era. It is about stolen wages. It is about stolen generations. Not as just an Indigenous narrative, as an Indigenous story, but as a shared national experience. A reconciliation process that is a shared national exercise becomes about forgiveness.

This process has not occurred in Australia. My fear is that the current iteration is somewhat dislocated from reconciliation in the pursuit of truth and justice. Reconciliation will require reorientation if it is to achieve the ends of truth and justice, and this includes the anger in the Aboriginal community, which while normatively valuable, is unproductive in the long term. It must give way to something else. I had wondered whether I was being too provocative when I used Charles Perkins' quote, living 'off the crumbs that fall off the White Australian tables' but I think we must take seriously the characterisation in many parts of the Aboriginal community of symbolic recognition as weak and insincere and we must recognise resistance as a stance worthy of defence.

⁸ Expert Panel on Constitutional Recognition of Indigenous Australians, op. cit.

⁹ *ibid.*

Four years ago when we comprehensively consulted communities they only spoke of sovereignty and treaty. I took you all the way back post-1967 and measured that trajectory where communities talked about sovereignty and treaty. Communities are alive to this. Truth and justice is not only what the coloniser wants, or what the coloniser can convince an elite leadership into compromising on, it is also about listening to what it is that the community is saying. To label the advocates of treaty and sovereignty as radical is unfair. Those comparative jurisdictions that have engaged in this process have comparably better health and wellbeing outcomes. This year's *Closing the Gap* statistics revealed that life expectancy has not changed and unemployment went backwards. Yet the polity continues to condescendingly reject Indigenous ideas based on a curious reversal of that which is considered practical and concrete in other jurisdictions, but regarded as symbolic or pilloried as a rights agenda in Australia. Yet the fact remains we have never tried it. All of those other jurisdictions have done something we have not done and that is grapple with our history in an open and honest way.

When I was writing this lecture it made me reflect on a recent book review written by the inimitable Nicolas Rothwell who was reviewing a really excellent book by scholar Timothy Bottoms.¹⁰ It is a new book on the frontier, or the killing times, called *Conspiracy of Silence*. In this review he noted that the frontier wars were pretty much endorsed by academic experts today. He lamented that the nation has not caught up. In fact the media is still stuck in some sort of Windschuttle-era binary. But in fact history has moved on; historians have moved on. Rothwell pondered 'a history once suppressed, now accepted, but not exactly embraced and enshrined at the heart of modern Australia's image itself. How could it be? Chapter by chapter, region by region, killing by killing, tale by tale' and he concluded, as I do when I reflect on this process, that 'so we stand gazing back on our past, on the deeds that made the nation, unsure quite what to think, how to feel, what steps to take'.¹¹

I am a fully-fledged supporter of recognition but what I do not want is mob backed into a corner where they feel obliged to accept another political confection. If that were to occur, there would be no revisiting of constitutional reform. We would be the one State that had gone the other way, successfully executing recognition in a way that the State has never had to give up an inch of space in its public institutions, in its public law to the recognition of first peoples, except for a mere nod or, as Charles Perkins so presciently captured, 'the crumbs that fall off the White Australian tables'. A sign of maturity will also be that Aboriginal and Torres Strait Islander peoples have the space to politely decline the offer of recognition.

¹⁰ Nicolas Rothwell, 'Mapping the massacres of Queensland Aboriginal society', *Australian*, 29 June 2013.

¹¹ *ibid.*

**‘Abolition Difficult, Reform Impossible, Status Quo Unacceptable’:
Can Canada Fix Its Senate?***

Linda Trimble

Introduction

It is a great pleasure and privilege to be here today, in the Australian Senate, to tell you about the travails of the Canadian Senate. The title of my lecture—‘abolition difficult, reform impossible, status quo unacceptable’—is from a tweet posted by Brad Wall, the Premier of the Canadian province of Saskatchewan. Mr Wall is so exasperated with the Senate his government passed a resolution supporting its abolition.¹ I agree with Mr Wall about one thing; the status quo is indeed unacceptable. But I disagree with his assertion that reform is so difficult to achieve we are better off scrapping the Senate. I think modest but meaningful reforms are achievable in the short run, and I am not giving up hope of significant reforms in the long term. I will begin by outlining what’s wrong with Canada’s Senate. Then I will discuss recent attempts to fix it and explain why they failed. I will argue that abolition is next to impossible and extremely reckless. In contrast, I contend, reform is difficult but certainly not unattainable.

What’s wrong with Canada’s Senate?

The vast majority of Canadians think the Senate in its present form is unacceptable. Public opinion research illustrates a profound level of distaste for the Red Chamber, as it’s called. A survey conducted in January of this year found that only a third of Canadians think the Senate performs a necessary and useful political function.² According to another poll, 50 per cent of Canadians want to get rid of the Senate altogether, 43 per cent want it reformed, and only seven per cent feel the Senate should be left as it is.³

* This paper was presented as a lecture in the Senate Occasional Lecture Series at Parliament House, Canberra, on 8 August 2014.

¹ Brad Wall, ‘Time to consider abolition of the Senate’, *Canadian Parliamentary Review*, vol. 16, no. 4, 2013.

² Ipsos, News & polls, 2 January 2014, <http://www.ipsos-na.com/news-polls/pressrelease.aspx?id=6376>.

³ Angus Reid Global, ‘Should the Canadian Senate be abolished? 50% surveyed say yes’, 8 November 2013, <http://www.angusreidglobal.com/polls/48846/should-the-senate-be-abolished-50-of-canadians-surveyed-say-yes/>.

There are four reasons why so many citizens, and politicians, think the Senate needs an extreme makeover. The first is a recent spending scandal that implicated, and embarrassed, the government of the day and discredited the parliamentary system. Second, senators are appointed, not elected, thus the Senate is seen as an anachronism in a modern democracy. Third, fairness in representation is an ongoing concern, especially in my region, Western Canada. Fourth, many argue that the Senate in its present form is not an effective parliamentary institution. As one commentator asserted, rather brutally, Canada's Senate is a 'colonial relic' with 'negligible significance'.⁴ Why such strong words about Canada's upper house?

The scandal

Let's begin with the scandal, which is the major factor propelling increased support for doing away with the Senate. The controversy centred on the bad behaviour of four senators, three of whom were appointed by the current Prime Minister, Stephen Harper, and were members of his party, the Conservative Party of Canada. All four of these senators made improper claims for housing and travel expenses.

Senators are allowed to claim a housing allowance of \$21,000 per year if their primary residence is more than 100 kilometres from Ottawa, Canada's capital city. Three of the senators at the heart of the scandal claimed this allowance even though they lived in Ottawa and spent little time in their primary residence. One of them, Mike Duffy, actually stayed in hotels when he was in his home province! Also, a couple of these senators claimed travel expenses for trips that were not actually about Senate business. For example, Mr Duffy used Senate dollars to pay for travel devoted exclusively to campaigning for the Conservative Party during the 2011 election.

We are talking about roughly half a million dollars—a small amount when you consider that over \$100 million per year is required to fund the Senate's business, including senators' salaries and allowances. So why were people so incensed despite the fact that this is not a lot of money, and the senators were required to pay it back? Well, a report by a pollster hired by the government to look into Canadian's reactions to the scandal said people are 'frustrated to think that public servants used Canadians' hard-earned tax dollars to live lush lifestyles while taxpayers personally struggled to make a decent living'.⁵ This study also found that Canadians believe representatives from both houses of parliament are cheating on their taxpayer-funded expense claims. In short, Canadians think the Senate scandal is evidence of a pervasive culture of corruption and entitlement, and of unlawful behaviour by public officials. Fraudulent

⁴ Abbas Rana, 'Senate a "colonial relic," should be abolished: former Tory MP Boyer', *Hill Times*, 23 June 2014, <http://www.hilltimes.com>.

expense claims are a criminal offense; indeed, the four senators are under investigation by the RCMP, Canada's national police service. Fraud and breach of trust charges have been laid against three of the senators, with more charges pending.

The spectacle of parliamentarians breaking the law is problematic for the governing party, which appointed three of these four senators. Perhaps even more damningly, the Prime Minister's Office (PMO) was directly implicated in events that occurred after the scandal broke. The government tried to quell the controversy by announcing that Mr Duffy agreed to voluntarily repay his improperly claimed expenses. But a television station revealed that PM's chief of staff, Nigel Wright, personally footed the bill for Mr Duffy, writing a personal cheque in the amount of \$90,000 to cover Mr Duffy's reimbursement. Although Mr Wright resigned when this story broke, and Prime Minister Harper denied knowing anything about his chief of staff's involvement, it all seemed rather sordid. The PMO gave no explanation for Mr Wright's generosity. Mr Duffy claims it was an attempt to shut him up, and he also maintains that the PMO tried to whitewash a Senate report into the expense claims controversy. Regardless of the veracity of Mr Duffy's assertion, it seemed the highest levels of government were trying to cover up, or at least mitigate, the scandal. Here is an example of a typical news headline: 'On cheque to Mike Duffy, the buck stops at the Prime Minister'.⁶

Last November, desperately trying to put the issue to rest, the Conservative government orchestrated a vote in the Senate to suspend the senators without pay for the remainder of the parliamentary session. The resolution passed, and three senators were suspended,⁷ but the media kept the scandal in the public eye, as more and more damning revelations emerged. In sum, it all looked very, very bad for the governing party, and not just because of the misuse of public funds by Conservative senators and the involvement of the Prime Minister's Office. The Conservatives first came to power by crusading against government corruption, and the party campaigned on a promise to reform the Senate. In fact, because he was so keen on reform, the prime minister was initially reluctant, and slow, to make appointments to fill Senate vacancies. As Mr Harper stated when first elected in 2006: 'If a legislative body is going to be serious, it has to be elected'.⁸

⁵ Dean Beeby, 'Government polls Canadians about Senate scandal; most fed up with "rich politicians"', *Globe and Mail*, 14 February 2014.

⁶ Lori Turnbull, 'On cheque to Mike Duffy, the buck stops at the Prime Minister', *Globe and Mail*, 23 October 2013.

⁷ The fourth senator at the heart of the scandal, a Liberal appointee, had retired from the Senate a few months prior to the suspension vote.

⁸ For example, see: <http://www.youtube.com/watch?v=yYgIJTSt7No&feature=related>.

The prime minister's assertion that the Senate can't be taken seriously in its present form brings me to the three other problems with the institution: the Senate is not elected, it is not equal in its representation of the provinces, and, according to many critics, it is not effective in its exercise of legislative duties. Canada's Senate is one of only two appointed upper houses in the western world, so it is a relic of a much less democratic age. Even a sitting senator is on record as saying the upper house 'has no democratic validation'.⁹ One of the reasons the Senate is in such disrepute is that the appointments are all about patronage. Senate seats are rewards for long party service and there is no tradition of prime ministers making appointments to the Senate from outside their own parties.

Another issue is representation. The distribution of Senate seats is bizarre, and to do it justice requires a lengthier explanation than I have time for today. The short version is that Senate seats are assigned based on a principle of regional representation derived at Confederation. Based on this formula, seats were allocated to the original provinces, which were seen to constitute three distinct regions. Senate seats were added or redistributed as provinces and territories were created or joined the federation.¹⁰ As a result, representation is based *neither* on population *nor* on the principle of equality of the provinces. For example, 10 senators represent the three quarters of a million people living in the province of New Brunswick. My home province of Alberta has over 4 million residents, but only six senators. Another way of making this point is to say that New Brunswick has 75,000 people per senator, while Alberta has 660,000 people per senator. The distribution of Senate seats is a significant issue in Western Canada, especially the provinces of British Columbia and Alberta which have rapidly growing populations.

Finally, effectiveness is a concern, especially for those, like Prime Minister Harper, who believe that an appointed body cannot perform a valuable role. Because the Senate is not elected, it lacks democratic legitimacy and very rarely exercises its power to defeat bills passed by the House of Commons. Constitutionally, the Senate has almost identical powers to the lower house. The only difference is that the Senate cannot introduce money bills. So, while in principle the Senate has a veto over all legislation, in practice the veto has rarely been used. Although this fact is often cited as evidence of the Senate's uselessness as a legislative body, most critics would be outraged if the Senate actually used its powers in this manner. An effective bicameral

⁹ Ian Austen, 'Dispute over Canadian senators' expenses balloons into larger political scandal', *New York Times*, 24 October 2013.

¹⁰ There are 105 senators in the Canadian Senate: 24 from each of the four regions (Ontario, Quebec, Western Canada and Atlantic Canada), six from Newfoundland and Labrador, and one from each of the three Territories.

parliamentary system should regularly see issues resolved before they result in a legislative impasse.

So what *does* the Canadian Senate actually do? Its key function is one of legislative oversight; so-called sober second thought. This is a task which, by many accounts, Canada's Senate performs very well because of the impressive legislative skills of senators who are experienced legislators, having held office in the House of Commons or a provincial assembly.¹¹ Others have served as lawyers, judges, chiefs of police, and any number of public roles, and they bring a wealth of experience to bear. Moreover, they have the time to inspect legislation, line by line, and correct errors. As a former leader of the Liberal Party of Canada observed, 'This Senate, this imperfect institution we've got, does a very important job of catching our mistakes—this is said to you as an MP ... sometimes stuff slips through, and the Senate catches it'.¹²

Also, Senate committees make valuable contributions to policy development. They conduct investigations, studying issues the House doesn't have time to delve into, listen to testimony from witnesses whose voices are not often heard, and produce reports which sometimes prompt the government to change the laws. For example, the Carstairs Report, which investigated the issue of government support for end-of-life care, recommended the extension of income security and job protection to family members who take time out of the workforce to care for dying relatives. Despite being authored by a Liberal senator this very sensible recommendation was implemented by a Conservative government.

While some senators arguably do not earn their pay packets, others are incredibly dedicated and hardworking, and steer important legislative initiatives. But this work is typically ignored by the media, thus is largely unseen and unsung. Indeed, a public opinion survey found that very few Canadians can explain what senators do on a daily basis, nor can they identify the role of the Senate in the Canadian parliamentary system.¹³ This is not surprising, because what Canadians *do* hear about is senators who don't show up for work, for example the so-called 'siesta senator' who actually lived in Mexico and only appeared in the Senate once or twice a year, just often enough to keep his job according to the very lax rules in force at the time. And, of course, Canadians have heard a lot about the four senators at the heart of the recent scandal, thus it is not surprising people think senators do very little to earn their salaries of \$135,000 per year, not including per diems and other expenses.

¹¹ David Docherty, 'The Canadian Senate: chamber of sober reflection or loony cousin best not talked about', *Journal of Legislative Studies*, vol. 8, no. 3, 2002, p. 28.

¹² http://www.youtube.com/watch?v=_bAgLQsQWQU&feature=related.

¹³ Beeby, op. cit.

Why not reform the Senate?

Demands for Senate reform are practically as old as Canada. In fact, calls for reform began a few years after Canada was created in 1867. The most recent proposals centre around variants of a 'Triple E' model: elected, equal and effective. This model champions an upper house that is elected by the people, has an equal number of senators from each province, and features mechanisms to address legislative gridlock (because of course an elected Senate is a democratically empowered Senate). One of the biggest proponents of the Triple E Senate model was the Reform Party of Canada, which eventually morphed into the Conservative Party of Canada. Thus our current governing party strongly endorses the Triple E approach. In fact, the Conservatives campaigned on Senate reform, emphasising the need to democratise the Senate. Immediately upon being elected, the Harper Government tabled legislation designed to do just that. But because the Conservatives held a minority of the seats in both the House of Commons and the Senate, the legislation had insufficient support.

Fast-forward five years, to the 2011 election, when the Conservative Party won a majority. The Harper Government quickly reintroduced the Senate reform bills as one piece of legislation, called the Senate Reform Act, which had two provisions.¹⁴ The first was to set term limits for senators. Instead of holding the position until age 75, as is currently the case, senators would sit for a single nine-year term. Second, the legislation empowered provinces to implement a democratic mechanism for the selection of Senate nominees. However the prime minister would have retained the power, and duty, to make the appointments. As a result, instead of creating a Triple E Senate the Senate Reform Act provided, at best, half an E, as the so-called 'democratic consultation processes' were entirely voluntary. Some provinces, like mine, which already has a mechanism for electing senators, would have opted in but others would have declined. Had the Act been passed and implemented we would now have a quasi-elected Senate, one with no equal representation for the provinces, and no system for addressing legislative deadlock.

The reason why a government so keen on a Triple E Senate took such a limited approach to reforming the institution is that it was trying to avoid negotiating a constitutional amendment. The Constitution Act clearly requires any changes affecting the fundamental nature of the Senate—such as electing senators, redistributing Senate seats and reducing the powers of the institution—to be implemented in collaboration with provincial governments. The Harper Government argued that its Senate Reform Act represented mere tinkering with the existing design, thus did not require consultation with the provinces. This of course was patently

¹⁴ Government of Canada, 'Backgrounder: Senate Reform Act', <http://www.democraticreform.gc.ca/eng/content/backgrounder-senate-reform-act>.

untrue; electing senators, even if the prime minister formally appoints them, is contrary to the Senate's original design. So why didn't the federal government try to get the provinces on side and negotiate a constitutional amendment to provide for an elected Senate, and take care of the other two E's—equal and effective—at the same time? That a government so intent on democratising the Senate would take a half measure, one that was clearly unconstitutional, may seem deeply puzzling to non-Canadians.

The best way to explain this seemingly bizarre approach is to observe that members of the political class now characterise the Constitution as a no-fly zone. Since 1995, Canadian governments have been fearful of re-opening deep and still painful wounds rendered by three rounds of constitutional deliberations held in the 1980s and early 1990s. The first round succeeded in patriating¹⁵ the Constitution, adding a Charter of Rights and Freedoms, and entrenching a series of constitutional amending formulas. But it also sparked an intense national unity crisis because the province of Quebec was excluded from the final deal-making process, and its interests were not reflected in the agreement. Two subsequent attempts to address Quebec's constitutional demands and other unresolved issues, including Senate reform, failed, decisively and dramatically, prompting a referendum on Quebec sovereignty in 1995. When the 'yes' vote came perilously close to succeeding, Canadians saw their country on the brink of being ripped apart. These lengthy, turbulent constitutional deliberations have been likened to a national psychodrama. As a result, for the past 20 years, governments of various political stripes have made it clear that they will not perform what they see as the Canadian equivalent of opening Pandora's box.

In summary, because Mr Harper did not want to engage in a lengthy and possibly futile process of constitutional deliberations on the structure of the Senate, the Senate Reform Act was represented as plausibly within the boundaries of the constitutional law, and within the jurisdiction of the federal government. To no one's surprise, it was immediately challenged in the courts and vehemently opposed by several provincial premiers. Western Canadian provinces were concerned that they would be severely under-represented in a democratically empowered, and thus legislatively powerful, Senate, and the province of Quebec objected to any attempt at institutional redesign without consultation. Recognising that the courts would eventually settle the matter, the federal government asked the Supreme Court of Canada to rule on the constitutionality of its legislation. It also asked the Supreme Court to answer a number of hypothetical questions about Senate reform. For instance, would abolishing the Senate require the unanimous agreement of the provinces and the federal government?

¹⁵ 'Patriation' is a peculiarly Canadian colloquialism referring to the process that passed *The Constitution Act, 1867* into law as a Canadian statute, thus 'bringing the constitution home' to Canada. Before 1982, it was a British statute called *The British North America Act*, and it could only be amended by Act of the British Parliament.

On 25 April, the Supreme Court rendered its decision.¹⁶ The ruling was unanimous—and said what everyone already knew—the federal government’s Supreme Court Act did indeed violate the constitutional law. According to the court’s decision, the federal government cannot try to transform the Senate into an elected body without the consent of at least seven provinces representing at least fifty per cent of the population. Also, the court ruled that it is not within the jurisdiction of the federal government to unilaterally impose term limits on senators. Finally, in the opinion of the court, abolition of the Senate does indeed require *unanimous* agreement of the federal government and all 10 provinces, rendering abolition next to impossible.

Abolition irresponsible, meaningful reform possible

Yet calls for abolition are growing stronger. The website of an organisation called Democracy Watch urges Canadians to ‘send a strong message to key politicians that you want them to stop playing games and immediately take action to shut down the Senate’.¹⁷ To give you a sense of the strength of public antipathy toward the Senate, here’s why Democracy Watch wants the Senate obliterated:

The Senate is unelected, unaccountable, unrepresentative, secretive, unethical and undemocratic—and a waste of your money. Many senators have their jobs only because they are a friend of, or did favours for, a Prime Minister, and they have their job (with you paying their salary) until age 75 even if they do little or nothing.¹⁸

Abolition is now being bandied about as a sensible option. The current official opposition party, the New Democratic Party, has long been a champion of scrapping the Senate, and there is growing support for this approach from some provincial governments. As I mentioned earlier, Saskatchewan passed a resolution calling for the Senate to be abolished, and some pundits are suggesting we press the delete button on the current Senate and start over, building an entirely new upper house. In his hot-off-the-press book, provocatively titled *Our Scandalous Senate*¹⁹, former Member of Parliament Patrick Boyer advocates holding a national referendum on abolition. If a majority of Canadians support demolishing the upper house, he says, then the federal and provincial governments would be obliged to honour the public’s wishes. But, quite frankly, it is not going to happen because of the constitutional requirement of unanimity. Some provinces will never agree to abolish the Senate.

¹⁶ Reference re: Senate Reform, 2014 SCC32.

¹⁷ Democracy Watch, ‘Shut down the Senate campaign’, <http://democracywatch.ca/campaigns/shutdownsenate/>.

¹⁸ *ibid.*

¹⁹ Patrick Boyer, *Our Scandalous Senate*, Dundurn Press, Toronto, 2014.

In my view, getting rid of the Senate is politically irresponsible. Canada needs an upper house, not least because of the extreme concentration of power in the executive branch of the national government. The type of careful legislative oversight that the Senate provides is crucial given the fusion of powers, and the Senate does play a significant role by scrutinising and improving the quality of legislation, even if it rarely exercises its legislative veto. In any case, abolition should not be championed as a knee-jerk, ill-informed reaction to the unethical behaviour of a few senators.

If not abolition, what about reform? There was a bit of hysteria about prospects for reform after the Supreme Court rendered its decision. 'Did the Supreme Court just kill Senate reform?' asked a columnist for a national newsmagazine²⁰ and his answer was 'yes'. 'That terrible screeching noise you heard this morning was the wheels of Senate reform in Canada grinding to a halt', he declared. 'Supreme Court ensures our widely reviled patronage house (the Senate) will say forever', announced the headline for a newspaper article, whose author believes the practical effect of the court's decision 'is to make Senate reform impossible'.²¹ The federal government agrees. Immediately following the court's opinion, the prime minister announced that the government of Canada would not continue its work on Senate reform. This stance may be politically expedient for the Conservative Party, as it can throw up its hands in defeat, blaming the Supreme Court for the lack of government action on parliamentary reform. Also, the decision fuels Conservative Party supporters' deeply held antipathy towards the Supreme Court.

One could not fault Canadians for thinking the sky had suddenly fallen on Senate reform. But giving up on reform ignores a couple of obvious modifications that could be enacted quickly, and quite easily. The first is removing the property requirement for Senate appointees, and the second is changing the mechanism for selecting senators. In my view, these two initiatives could dramatically alter the make-up of the Senate.

In the Senate reference case, the Supreme Court was asked whether or not the federal government could unilaterally remove the property requirement set out in the *Constitution Act, 1867*. That the court said yes was read as throwing the Harper Government a bone, but I think it is much more significant than that. The property requirement was designed to foster an upper house that represented the propertied elite. The Constitution Act requires every senator to own land worth least \$4,000, plus real and personal property worth at least \$4,000, above debts and liabilities (which rules me out, frankly). As David Docherty writes, 'it is clear that the intention of the

²⁰ Emmett Macfarlane, 'Did the Supreme Court just kill Senate reform?', *Maclean's Magazine*, 25 April 2014.

framers of the Senate was to use the property qualification as part of the method of making the upper chamber a more elitist and conservative body than the lower house'.²² The Senate continues to reflect this outdated perspective as senators overwhelmingly represent the interests of the corporate class. Indeed, some own and run businesses. For instance, we have a senator who owns two major sports teams, the Toronto Argonauts and the BC Lions.²³ Others serve as directors or board members of major corporations. In fact, one of the senators at the heart of the scandal claimed travel costs for performing exactly these sorts of corporate duties, so taxpayers were funding her travel to sit on the board of a publicly traded corporation.

Arguably the interests of the middle or working classes and the economically marginalised could be much more effectively voiced in the Senate if the property requirement was lifted. It is a simple matter of passing a piece of legislation. The province of Quebec would have to agree to agree to this change for its Senate appointees, who are required by the Constitution Act to hold property in Quebec, but there is no evidence that the Quebec Government would oppose such a move, and the province might in fact welcome the chance to update an arcane provision of the Constitution.²⁴ After all, no one would lose, and arguably Canadians would gain a great deal if a much wider range of people were qualified for appointment to the Senate. This initiative might well boost representation from groups that tend to have fewer economic resources, such as women, racialised minorities and indigenous Canadians.

The second interim reform is even easier to accomplish because the decision can be simply and straightforwardly taken at the prime minister's discretion. Canada's first minister can immediately change the appointment process. Even some Conservatives think this is a good idea. For instance, the Conservative Party's former campaign manager, Tom Flanagan, urged the government to develop a Plan B for Senate reform in the likely eventuality that the Supreme Court decision did not go the government's way.²⁵ Professor Flanagan proposes that provincial governments set up advisory committees to recommend names for the consideration of the prime minister. Peter Russell, Canada's pre-eminent constitutional and parliamentary scholar, has an even bolder suggestion: 'What if the prime minister was brave and principled enough to publicly commit himself to ending patronage to the Senate and agree to be advised on

²¹ Andrew Coyne, 'Supreme Court ensures our widely reviled patronage house (the Senate) will stay forever', *National Post*, 25 April 2014.

²² Docherty, op. cit., p. 30.

²³ Joanna Smith, 'Many Canadian Senators make money outside the Senate', *National Newswatch*, 4 July 2013.

²⁴ See Hon. Dan Hays, 'Updating some antiquated constitutional provisions relating to the Senate', *Canadian Parliamentary Review*, Spring 2009, pp. 21–5.

²⁵ Tom Flanagan, 'House of Lords offers a Plan B for Senate reform', *Globe and Mail*, 27 May 2013.

Senate appointments by a non-partisan council of Canadians representing all fields of endeavor?'²⁶

In January, the leader of the Liberal Party, Justin Trudeau, announced that this is exactly the action he would take if his party formed the government. Trudeau recommends a non-partisan appointment process that would fill the Senate with independents. As he stated: 'The Senate must be non-partisan, composed of thoughtful individuals—-independent from any particular political brand'.²⁷ To show the strength of his intentions, Mr Trudeau announced that, from that moment forward, Liberal senators were ejected from the Liberal Party's parliamentary caucus, exempted from the strictures of party discipline, and free to vote as they choose. The reaction from pundits was mixed. One columnist called 'Trudeau's Senate idea fresh, brave—and worth considering'.²⁸ Another judged the proposal 'a breathtaking confusion of stupidities' because, of course, the Liberal senators continue to maintain their partisan allegiances.²⁹ Will Mr Trudeau actually implement this policy if elected? We will see. If he is electorally successful in 2015, he will confront a Senate full of Conservative appointees and the temptation to restack the deck with Liberals may prove irresistible.

Trudeau's announcement was clearly designed to provoke the government and keep the Senate story alive in the media, and was successful on both fronts. In response to the Liberal Party's position, the prime minister said changing the appointments process is merely cosmetic and will do nothing to make the Senate more democratic and accountable. To quote Mr Harper directly: 'What the Liberal party doesn't understand is that Canadians are *not* looking for a better unelected Senate. Canadians believe that for the Senate to be meaningful in the 21st Century, it must be elected'.³⁰ But without any immediate prospects for an elected Senate, maybe Canadians would in fact prefer a better, unelected Senate. And if the prime minister is so determined that the Senate be elected, why didn't his government initiate discussions with the provinces about constitutional reform? As the Supreme Court's ruling demonstrates, a constitutional amendment is necessary to achieve an elected Senate, and this requires federal-provincial negotiations. Here is the prime minister's explanation for refusing to even try:

²⁶ Peter Russell, 'The Senate again? Let's figure it out', *Ontario News Watch*, 12 February 2013, <http://ontarionewswatch.com/onw-news.html?id=532>.

²⁷ Gloria Galloway and Josh Wingrove, 'Trudeau cuts Liberal senators loose in push for a non-partisan Red Chamber', *Globe and Mail*, 29 January 2014.

²⁸ Jeffrey Simpson, 'Trudeau's Senate idea fresh, brave—and worth considering', *Globe and Mail*, 30 January 2014.

²⁹ John Pepall, 'Trudeau's Senate plan: "a breathtaking confusion of stupidities"', *Globe and Mail*, 30 January 2014.

³⁰ Steven Chase, 'Canadians want an elected Senate, Harper says after Trudeau boots senators', *Globe and Mail*, 29 January 2014.

We know that there is no consensus among the provinces on reform, no consensus on abolition, and no desire of anyone to reopen the Constitution and have a bunch of constitutional negotiations.³¹

He is right about the fact that there is no agreement on how to fix the Senate; there never has been. But does this mean we should simply give up on trying to reform the upper house? I don't think so.

We desperately need a national conversation about the role of the Senate. As political scientist Emmett Macfarlane argues, 'It is one thing to make the case that the current situation is unpalatable, it is another to answer the question, "what should the Senate be for?"'³² Of course Canadians will disagree about the answer to this question, and about whether or not we even need an upper house. But saying we cannot start the conversation because provincial governments will not be able to reach a consensus suggests Canadians should not have a say in the design of their national institutions. Maybe politicians find consolation in this self-imposed constitutional straightjacket, as it allows them to avoid risk and uncomfortable levels of scrutiny.

In my view, Mr Harper's assertion that there is no desire to reopen the constitutional dialogue is short-sighted. Maybe now, in the wake of the Senate scandal, is the perfect time for a single-issue round of constitutional reform, focused exclusively on the Senate. Everyone is talking about it anyway, but the fact that Canadians know so little about the functions of the Senate indicates that a conversation would play a highly useful educative role. Even if nothing came of the deliberations people would learn about the Senate's past, and be encouraged to thoughtfully consider its possible futures. That said, I would not bet a great deal of money on the likelihood of a federal government starting constitutional talks in the near future, because Mr Harper's belief that 'there's no desire of anyone to reopen the constitution' is a mantra among federal politicians. For instance, former Liberal leader Stéphane Dion similarly declared, in the wake of the Supreme Court decision, 'There is no appetite among Canadians to reopen the Constitution'.³³ Political leaders utter this assertion with such synchronistic finality it is now accepted as capital-T truth, but public opinion polls reveal increasing support for constitutional reform, in the province of Quebec and indeed across the country.³⁴ For instance, a survey conducted a couple of years ago, well before the Senate scandal erupted, found 61 per cent of Canadians are prepared to reopen the

³¹ Quoted in Rana, op. cit.

³² Emmett Macfarlane, 'What do we really want to do with the Senate?', *Maclean's Magazine*, 22 July 2013.

³³ Jordan Press and Mark Kennedy, ' "Significant reform and abolition are off the table": Stephen Harper "disappointed" by Supreme Court Senate reform decision', *National Post*, 24 April 2014.

³⁴ Philip Authier, 'Majority of Quebecers want constitutional reform, poll finds', *Montreal Gazette*, 26 March 2012.

Constitution in an effort to reform or abolish the Senate.³⁵ As well, talking about the Constitution is not so risky anymore. The Quebec sovereignty movement is currently in abeyance, so there is less of a risk of sparking a national unity crisis by engaging in constitutional deliberations on Senate reform.

Another reason to hope for transformation via constitutional amendment is because younger people are much more likely than older citizens to prefer reforming the Senate to abolishing it. As a public opinion survey conducted last November found, 18 to 34-year-old Canadians are significantly more likely than those aged 35 and above to support reform, or to say the Senate should be left the way it is. While 66 per cent of Canadians aged 55 and over feel the best outcome for the Senate is to scrap it, only 36 per cent of those under 35 advocate abolition.³⁶ So the students I teach, the future generations of policy-makers, are more positive about the prospects for fixing the Senate, and more likely to see constitutional reform as an enticing possibility. Because the post-traumatic stress disorder produced by previous rounds of constitutional negotiations affects mainly affects people my age and older, it is not surprising a younger generation is more willing to give constitutional reform another try.

Conclusion

To sum up, the status quo is unacceptable. At the very least, the prime minister has a duty to address the problems that generated the expenses scandal, and to clean up the appointments process. Moreover, it is disingenuous and irresponsible of the current government to throw up its hands in the wake of the Supreme Court decision and refuse to pursue any form of dialogue or action on Senate reform. Substantial reforms are possible, even without a constitutional amendment. The federal government can easily remove the property requirement for senators and dramatically revamp the way in which appointments are made. As Canadians wait in vain for politicians to agree on how to democratise the institution, maybe we do want an improved unelected Senate. My argument, in one sentence, is this: status quo unacceptable, abolition irresponsible, meaningful reform possible and definitely worth pursuing. I sincerely hope a future government will gather sufficient courage and fortitude to engage Canadians in a national deliberation on the future of the Senate.

³⁵ Joan Bryden, 'Most Canadians now willing to reopen Constitution, poll finds', *Globe and Mail*, 26 May 2011.

³⁶ Angus Reid Global, op. cit.



Question — In your talk there was one thing I was hoping you would refer to and that is the First Nation people and how they fit in. Having been out of Canada for many years I was aware there were serious problems at the time. There has been some change and your talk has very much brought me back into line with what the immediate situation is and I appreciate that. In terms of politics, and I say the same thing for Australia, would there be a possibility of having plebiscites which in fact would lead to the government having to at least justify why they would not support such an act, in your case wanting to change the Senate. If there could be a plebiscite which is taken seriously then there could be a possibility of some reform coming in that direction.

Linda Trimble — We do have a modest tradition of referendum on constitutional reform. The third round of constitutional negotiations was presented to Canadians in a national referendum and failed to be passed. There is no legislative foundation for a citizen initiative on Senate reform, so as for an initiative that comes from citizens and that put to them in a plebiscite. I can't see any government proceeding in that manner. There is some discussion that the present government, the Conservatives, would hold a referendum on abolition but it has said it will not do that. So, highly unlikely. I think that Canadian governments tend to be a little bit afraid of citizens and democracy.

With respect to First Nations there have been very few Indigenous senators appointed. Representation of under-represented groups in the Senate is one of the issues that is discussed when people talk about reform and many see the appointments process as a really appropriate and quite useful mechanism for addressing imbalances. Previous governments have done a fairly good job of appointing women to the Senate to the extent that women hold about 34 per cent of the Senate seats and only 25 per cent of the seats in the House of Commons. Addressing these imbalances in something that prime ministers could quite easily do but have only been modestly inclined to do.

Question — This is a very minor point and yet it is a bit of a triggering point both in Canada and in Australia and that is the matter of the representatives' expenses. I appreciate that is a detail but nevertheless a significant one. As you know we have had similar problems here in Australia recently. There was suggestion here from Clive Palmer, one of our MPs, that a simple solution to this problem was to give representatives a flat amount—no questions asked, spend it as they will. As an old accountant that strikes me as a very sensible solution and I wonder whether you have any thoughts on that and whether it has been considered in Canada.

Linda Trimble — It hasn't been and I agree with you it sounds quite sensible. The problem is that it is significantly more expensive to be a senator from Alberta, flying to Ottawa and conducting Senate business in Ottawa, than it is to be a senator from Ontario, the province in which the capital city is located. So there would have to be scaled expenses and I am sure that would generate a lot of controversy about which senators should have access to more money.

There just simply needs to be more oversight. All these senators had to do was write 'Senate business' on their expense claims and the three senators at the heart of this controversy told the media and parliamentarians they were told this was okay. The Senate needs to clean up its act, much in the way it had to clean up its act in the wake of the siesta senator who could turn up a couple of times a year and still be considered to be performing his duty as a senator. I think there is now some inclination to put in place procedures for more oversight in the Senate because I believe other senators will be implicated as auditors start scrutinising their expense claims.

Question — You talked about the siesta senator. Did it lead to reforms and change?

Linda Trimble — Yes it did, so senators are now required to turn up more often and have to pay fines if they miss a certain number of sessions. It was highly publicised in the media and was quite a subject of controversy.

Question — Given your comments on the large power of the executive in Canada it seems to me that in practice the only way that there might be reform of the Senate might be either if there is another scandal or if there is a change of government in 2015 in the first blush of enthusiasm before any incoming government, whether liberal or new democrat, gets used to the idea of power.

Linda Trimble — I think that is true. I was thinking as I was walking over here that the title of my talk should be '*will* Canada fix its Senate?' Canada can fix its Senate; the question is do we have the political will among our federal and provincial politicians to do so? As I mentioned, the temptation to use that power to make patronage appointments is very strong amongst prime ministers. So if we have a change in government we may see some reform of the Senate. The current official opposition party, the New Democratic Party, supports abolition of the Senate and has been vociferous on this point. So if it is elected in 2015, which is unlikely, Canadians would expect the party to act on its promise by consulting with the provinces about abolition. The Liberal Party, which is more likely to unseat the current government, supports reforming the appointment process as the short-term strategy. Again, I am not going to hold my breath on that one but Mr Trudeau was very pointed and made a big show of making this declaration of expelling the liberal senators from his caucus

and saying ‘we are going to change the appointments process’. I am less optimistic about the Liberal leader’s willingness to initiate constitutional talks to reform the Senate.

Question — I come from Queensland and we abolished our nominated upper house in the 1920s and I think it explains quite a lot about Queensland now. I have been looking at it historically and it seems fairly inevitable when you look at that political reform to do with suffrage especially that the house would be abolished. So to contextualise it in terms of the progressive granting of rights, getting rid of property, voting and women’s suffrage, does abolition seem inevitable if the pressure is kept down on reform?

Linda Trimble — I don’t think it is being seen as a crisis so I don’t think that there is undue pressure to abolish the Senate. Canadians will probably forget unless another scandal emerges. There have been a number of issues of corruption and bad behaviour in the federal government of late that Canadians quickly forget when an election rolls around so I don’t see an impending crisis at all. It would have been wonderful for the government of the day to seize the moment and say our Senate Reform Act failed, it is time to consider other possibilities. I was quite disappointed but not at all surprised when that didn’t happen.