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Senate Committees and Responsible Government

Proceedings of the
Conference to mark the twentieth anniversary of
Senate Legislative and General Purpose Standing Committees and
Senate Estimates Committees

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NOTE

This edition of PAPERS ON PARLIAMENT contains the proceedings of the one-day conference, held under the auspices of the Senate Department at Parliament House, Canberra on 3 October 1990 to mark the twentieth anniversary of the Senate committee system.

Over three hundred participants met in the Main Committee Room to discuss the conference topic, Senate Committees and Responsible Government.

An exhibition, also arranged by the Senate Department and entitled, The World of Senate Committees, was opened by former Senator John Wheeldon in the public area of Parliament House during the conference mid-morning break. The conference proceedings were divided into four sessions, each with a keynote speaker, a group of panellists and a period for comment from the floor.

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Historical Note*

On the evening of 11 June 1970 the Australian Senate passed an historic resolution. It decided to establish two groups of committees - the Legislative and General Purpose Standing Committees and the Estimates Committees. That decision has been described as having 'revolutionised the Parliament as a whole'¹ Peering confidently into the future, the *Sydney Morning Herald*² predicted that the 'introduction of a wide-ranging committee system will make the red-carpeted Upper House potentially the most powerful parliamentary chamber in Australia'.

While the Legislative and General Purpose Standing Committees and the Estimates Committees were by no means the first Senate committees, it is true to say that from 1970 onwards the Senate committee system took a great forward leap. The decisions made in June 1970 brought the Senate into the company of other modern legislatures, ultimately influencing the development of a similar committee system in the House of Representatives.

Parliamentary committees are as old as the federal Parliament itself, going back to 1901, the first year of federation, when a Senate select committee reported on steamship communication between Tasmania and the mainland of Australia.

Over the years Senate select committees have presented numerous significant reports ranging over subjects as diverse as the effect of intoxicating liquor on Australian soldiers in 1918, the development of Canberra in 1955, and agricultural and veterinary chemicals in Australia in 1990.

However, until 1970 there was no system of standing - or permanent - committees.

What led to the 'revolutionary proposals' passed in the Senate in June 1970 which resulted in the establishment of the standing committee system?

The story may be said to have started in 1932, with the appointment of the first Senate standing committee, the Regulations and Ordinances Committee, which had the task of scrutinising regulations made by the government under Acts of Parliament. The establishment of the committee followed a dispute between the Scullin Government and the Senate over the government's power to make regulations.

In 1948 the adoption for Senate elections of a system of voting known as proportional representation changed party representation in the Senate, so that party numbers were more evenly balanced.

It was to this changed Senate that the following recommendation was made on 15 May 1956:

that an additional function for the Senate is a standing committee system ... to watch and appraise the administration of the laws and to inform public opinion in relation to certain defined fields of governmental operations ...

The recommendation was included within a report³ made to the Senate by a senior Senate officer, Mr Jim Odgers, who had recently returned from three months in the United States of America studying the American system of government.

The Senators were not averse to Odgers' recommendation for a standing committee system, but no action was taken. Speaking during the debate in the Senate following the tabling of the Odgers report, Senator N.E. McKenna spoke of Odgers' 'burning ambition to see the Senate play a major role in this Parliament'. 'I merely say to him', continued Senator McKenna, 'that, whilst he need not despair, he must be patient. Speaking from an experience of politics extending over a considerable time, I know that it takes at least five years to secure the acceptance of a new idea.' Senator McKenna miscalculated. It was another fourteen years before Jim Odgers' vision of a permanent committee system for the Senate became a reality.

However, Odgers had planted the seed of the idea and other events assisted its propagation.

¹ G.S Reid and Martyn Forrest, *Australia's Commonwealth Parliament. Ten Perspectives 1901* Melbourne, 1989

² 3 November 1970

³ Commonwealth Parliament, Report on the United States Senate, Parliamentary Paper 36/1956

- 1988, Melbourne University Press.

During the 1960s and early 1970s an increasing number of well-informed and active Senators served on select committees. The reports of these committees attracted wide attention. Particularly notable were the reports on the container method of handling cargoes, the metric system of weights and measures, air and water pollution and off-shore petroleum resources. One of the best-known of the select committees of this time was the Select Committee on Securities and Exchange, whose public hearings attracted considerable public attention.

By 1967 public interest in Senate committees was such that in his policy speech for the Senate election for that year, the Leader of the Opposition, Mr Gough Whitlam, announced that the Labor Party in the Senate would establish a Senate committee system.

When Parliament resumed after the election, Senator Lionel Murphy became Leader of the Opposition in the Senate. Government backbench Senators were keen to expand the committee system. Mr Jim Odgers was now Clerk of the Senate.⁴

Senator Murphy saw the advantages of the proposed committee system, and lent his political weight to the scheme advocated for so long by Jim Odgers. The success of the select committees and the knowledge that comparable legislatures in other parts of the world were ahead of Australia in this particular area of parliamentary reform, contributed to the widely held view amongst the Senators that the time had come for the Senate to establish its own standing committee system.

Towards the end of 1969, at the direction of the Standing Orders Committee of the Senate, the Clerk prepared a report which was in fact a blueprint for a standing committee system. He pointed out that the Senate should have committees 'standing ready to consider any Bills, Estimates, petitions, inquiries, papers or other matters which the Senate may refer to such committees, on motion'.⁵

Odgers also envisaged such committees carrying out a 'watchdog' function in certain fields of government. He stressed that the role of these committees was not one of policy making 'but rather of inquiry and counsel and of throwing light into dark corners'.

It was this report, tabled in March 1970, which formed the basis of the subsequent debate in the Senate which occurred early in June 1970. There was general agreement that the time had come for a comprehensive standing committee system, but opinions varied as to when and how the system should be implemented.

Senator Murphy commenced the debate by moving for the immediate appointment of seven standing committees. The Leader of the Government in the Senate, Senator Kenneth Anderson, referred to 'the commonality of view' in relation to the Clerk's report, but wished to proceed a little more cautiously. Senator Anderson moved for the appointment of five Estimates Committees as an initial experiment towards a wider system. The Leader of the Democratic Labor Party, Senator Vincent Gair, was even more circumspect, considering that the proposals should be implemented gradually over a period of time.

In the event, the motions of both Senator Anderson and Senator Murphy were passed on 11 June 1970.⁶ Thus, in one evening, the Senate decided to establish both seven Legislative and General Purpose Standing Committees and five Estimates Committees. Their world would be far-reaching.

Today, there are eight Legislative and General Purpose Standing Committees made up of equal numbers of government and non-government Senators, standing ready, as Odgers wrote in 1970, to inquire into and report upon by bill, petition or other matter referred to them by the Senate.

* Taken from the text of the brochure, *The World of Senate Committees* written by Ann Millar of the Senate Department for the exhibition of the same name.

4 James Rowland Odgers was Clerk of the Senate from 1965-1979

5 Commonwealth Parliament, *Report for the Standing Orders Committee on Standing*

Committees, Parliamentary Paper 2/1970

6 Commonwealth Parliamentary Debates (Hansard), Vol.S.44, pp.2356,8

Conference Proceedings
Session One
The 'Revolutionary Proposals' of 1970

Mr EVANS - I welcome everybody to the Senate Department's conference on Senate committees. The President of the Senate, Senator the Honourable Kerry Sibraa, will open the conference this morning. I am told that Estimates Committee A is meeting during the morning and will be shown on television monitors which are in the foyer of the Main Committee Room.

I call on the President of the Senate, Senator the Honourable Kerry Sibraa, to open the conference.

The PRESIDENT - Thank you very much, Mr Evans. Honourable Senators, former Senators and seminar participants: it gives me a great deal of pleasure to welcome you all to this conference on *Senate Committees and Responsible Government*. As you would all be aware, the conference is being held to mark the twentieth anniversary of the establishment of Senate Legislative and General Purpose Standing Committees and also the Senate Estimates Committees.

I am delighted that so many former Senators, who have contributed so much to the Senate and its committee system over the years, have been able to join us today for this conference. It is also a tribute to the Senate committee system that we have so many participants at this conference, representing, as I understand it, a wide cross-section of federal and state parliamentarians, public administrators, constitutional lawyers and academics.

Twenty years ago, on the night of 11 June 1970, between 8 pm and 10.30 pm, a series of motions was put before the Senate for its decision. The result was the establishment of the Senate Legislative and General Purpose Standing Committees and the Estimates Committees as we now know them. I guess that this would come as no surprise to Senate watchers, but on that night debate in the Senate was split three ways, with three propositions put forward for consideration in the chamber. Eventually, two of the propositions won out that night - one put forward by the Labor Party Opposition for a series of Legislative and General Purpose Standing Committees, and another put forward by the Liberal Party Government for a series of Estimates Committees. The third, a compromise proposal by the Democratic Labor Party, which incorporated the principles of the standing committee proposal, was defeated.

As far back as 1956, a report had been tabled in the Senate concerning the desirability of establishing a system of standing committees. During the 1960s and early 1970s, an increasing number of well-informed and active Senators served on select committees. The hearings and reports of these committees attracted wide attention. One of the best known of the select committees of this time was the Select Committee on Securities and Exchange, whose public hearings attracted considerable public attention as indicated by the following quote from the *Courier-Mail* of 3 April 1971.

For some time the Senate has been trying to emulate its United States counterpart as a public watchdog, through the development of special committees.

Its bark has been heard as the fondly-nurtured puppy grew.

Now its mature bite has been felt.

I still quote from the *Courier-Mail*:

The scene: Crowded committee room L17 in Parliament House lined with portraits of Senate Presidents and filled with red-covered furniture, cigarette smoke, journalists - and the on-stage stars.

The occasion: The Senate Committee on securities and exchange, investigating, probing, cross-examining, even grilling some of Australia's top stockbrokers, company directors, businessmen, over the three big financial issues of the moment -the Minsec aftermath, the Antimony Nickel cornering on the Sydney stockmarket and the Leopold Nickel affair.

The article went on to say:

Whatever it finally reveals in its report, the fact remains that a Senate committee has begun to look as important as its elder United States brother.

If committees become televised, as is mooted, they will over-shadow the Senate itself.

I must say it has taken us twenty years to get the Senate on television, but at least we achieved this before the House of Representatives. The article continues:

No longer can Senators be given a scornful blanket label of 'those elderly gentlemen in another place' by members of the House of Representatives...

By 1967, public interest in Senate committees was such that, in his policy speech for the Senate election of that year, the Leader of the Opposition, Mr Whitlam, announced that the Labor Party in the Senate would establish a Senate committee system. The Standing Orders Committee of the Senate prepared a report which turned out to be the trigger for the establishment of the standing committee system. The report was tabled in March 1970 and the proposal was the subject of widespread commentary at the time. For example, the *Sydney Morning Herald* reported on 18 March under the heading 'Senate body urges new "watchdog" committee':

The report recommends a comprehensive committee system for the Senate comparable with highly successful committee systems in other Commonwealth countries.

It sees a ... committee system as standard and essential equipment of the modern legislature.

The *Australian Financial Review*¹ referred to the proposal as 'Senate's first step towards a bigger role'. A *Canberra Times*² headline ran: 'Senate seen as strong influence for public good', while the *Australian*³ chose the heading, 'The Senate bares its teeth'.

In moving for the establishment of the committee system, and as one of the principal advocates of a system of standing committees, Senator Murphy, then Leader of the Opposition in the Senate, said:

Mr Deputy President, this is the senior parliamentary institution in this country and it has arrived at the general agreement that there ought to be a system of standing committees in order that its functions may be carried out more effectively than they have been in the past. I think we are proud of the way in which this Senate has attended to its affairs over recent times. We feel that the Senate is becoming very effective, that it is carrying out its functions on behalf of those who elect us better as the days go by. I think that this step which we are proposing will be a considerable advance. It is something that will enable us all as individuals to participate more in the legislative process, more in the supervision of the administration as a whole. It will enable us to function more effectively.

During the debate Senator Wood noted the advantages which such a system would bring to all Senators and, indeed, to the Parliament. He said:

I think this is a wonderful opportunity for the senators of this country to perform a service to their people in a much better way than possibly they have in the past. They will have a closer and greater responsibility for legislation and a much better knowledge of its origin and purpose. I feel that this movement is possibly the greatest step forward that has been taken by this Parliament of Australia since its inception in the early part of this century.⁴

Former Senator Sim, who, I am happy to say, has joined us for today's conference, led the debate for the government of the day and strongly advocated the establishment of the Estimates Committees. By the middle 1970s, the Senate's Legislative and General Purpose Standing Committees had fully established themselves as powerful inquiry forces in the parliamentary arena. Over the twenty years that the committees have been operating, some 300 reports have been presented. While they have also been successful in the detailed examination of bills, in the main the committees have concentrated on non-legislative work. Even though their reports are recommendatory only, they have contributed substantially towards the attainment of the ideal of parliamentary control.

There is no doubt in my mind that the wide range of inquiries which have been undertaken, and the reports which have been presented, have increased the knowledge of participating Senators, focused interest upon the subjects that the committees have addressed, and increased the information available to the public about the aspects of government in Australia. Government responses to these reports have led to the introduction, modification, or even in some cases, withdrawal of legislation. Most reports

¹ 21 May 1970

² 29 September 1970

³ 11 April 1971

⁴ Commonwealth Parliamentary Debates (Hansard), Vol.S.44, 11 June 1970, p.2349

have been instrumental in reshaping public policy and putting various issues firmly on the government's agenda.

The effectiveness of the Senate committee system can be gauged not only by the response of its reports but also by the actual process of the inquiries which allows the widest possible parliamentary participation in this facet of parliamentary activity. All Senators and former Senators present will have their own recollections and stories to tell of their time on Senate committees. I hope that some of these will come out in the course of today's proceedings. For my own part, I particularly welcome the bipartisan personal friendships that I have been able to form when serving on Senate committees. I mention, in particular, people like former Senator John Knight and Senator Peter Sim with whom I served on the Senate Foreign Affairs and Defence Committee. These friendships would not have been possible if we had not been working together on the Senate committee system.

I found the committee work particularly stimulating at that time. I recall saying to former Senator Jim Cavanagh - the late Jim Cavanagh: 'I think it would be a good idea if committees were able to sit while the Senate is sitting. I find sitting here in the chamber particularly boring when we are in opposition and we know the way the votes are going. How do I go about this?' He said: 'Well, I will give you some advice. You give a notice of motion. It will come up for debate on a Thursday night' - I think it was then - 'and you will be able to put forward these very good arguments that you have just given me on why the Senate committees should be able to sit when the Senate is sitting'.

Thursday night duly came around and Senator Cavanagh sat in front of me and half turned around in his seat while I was speaking, nodding and encouraging me. I sat down and the first Senator to stand up and totally oppose me was Senator Jim Cavanagh. So, I learnt a little lesson in politicking that night.

But he was one of the old school of Senators who believed that we were sent here just to sit in the chamber. I must say, though, that I noticed a great deal of change in him as the years went by, and I think he became one of the staunch advocates of the Senate committee system.

The committee system, as we are all aware, is alive and well today. Even as we meet, an Estimates Committee of the Senate is deliberating upstairs and it is fitting that the Senate mark the twentieth anniversary of the committee system with a further development. On 5 December last year, the Senate resolved to adopt a number of procedures to provide for the reference of bills to standing committees for detailed consideration. A new committee, known as the Selection of Bills Committee, was established to recommend to the Senate which bills should be referred to committees. This Committee also sets the time within which reports should be presented.

This new process has only just commenced in this period of sittings, and while it is early days yet in the development of the new procedures, it is clear that if a constructive approach is adopted on all sides to the new proceedings, they will, in Senator Murphy's words, enable us all as individuals to participate more in the legislative process.

Today's proceedings have been arranged so that we may follow the establishment of the committee system, its consolidation, its effectiveness, and consider what the future may hold for the committee process. The approach of using panels of speakers has been adopted to obtain as wide a cross-section of views as possible. The program includes open forum sessions and I encourage participation from the floor. These proceedings will be chaired by the Clerk of the Senate, Harry Evans. I look forward to hearing contributions to the conference. I wish you all well in your deliberations, and I have now great pleasure in declaring the conference open.

Mr EVANS - On behalf of the conference, Mr President, I thank you very much for that very fine opening address which provides some very good background information to the conference.

I would like to introduce as our first speaker today a distinguished former Senator - now Mr Peter Rae officially, but we like to refer to him as Senator Emeritus Peter Rae. As the President has also mentioned, he was probably best known as the Chairman of the Select Committee on Securities and Exchange, which created a deal of attention during its inquiry, and he was also later the Chairman of one of the most successful of the standing committees, the Standing Committee on Finance and Government Operations, as it then was. He will be speaking on *The Revolutionary Proposals of 1970*.

Mr RAE - The Clerk, Mr President - if I can, for once, address you in that order - distinguished former Senators, ladies and gentlemen: it is my very great pleasure to be back here. I want to say, first of all, that I would not expect anyone to want me to open this paper with a trite, mundane and detailed clinical analysis of what happened with the revolutionary proposals of 1970, by which the Senate introduced into Australia a system of committees to supplement the operation of the plenary House of Parliament. I hope not.

It is well-known, as a fact, that in 1970 there was added to the existing standing committees, the Joint Committees and the provision for the establishment of select committees, a new, exciting, and in Australian terms, revolutionary *system* - I emphasise - a system. That much is well-known. How it came about, and some of the political inter-play which took place, is not so well-known.

A logical, progressive and totally altruistic development sequence? Could that be said to be the basis upon which the momentous events of 1970 took the Senate from the nineteenth century to the twentieth century as a parliamentary institution? Of course not.

The Senate is, was and always has been, a political body and part of a parliamentary process. It is likely to continue to be so.

In the 1960s Australia and its numerous parliamentary institutions were running behind developments in a number of comparable countries.

We needed to catch up, and catch up we did. Not only did we catch up, but we overtook to the stage where, by the mid-1970s, an Australian parliamentary sub-committee could travel overseas and return to report that, in comparable terms, our federal Parliament was going well. It was the Senate which was leading the way.

The Senate was resolving two fundamental aspects of its very existence - the interplay of individual and party political personalities, on the one hand, and, on the other hand, the desire to make an elected Upper House more relevant and more functional within what is collectively (and somewhat inaccurately) called the Westminster system. The result of that interplay is now well-known, but part of the fascination of a trip down memory lane is to review the means by which the result was achieved, notwithstanding the inherent problems of personality conflicts, the use or misuse of opportunities for the pursuit of personal political ambition, and the natural antagonism of the executive government to any change which may make them more readily accountable.

That the changes of 1970 came about can, I believe, be attributed to a combination of factors which were drawn together and quietly engineered by one of the great parliamentary reformers of our era, the late Clerk of the Senate, James Rowland Odgers, known to us all, or most of us, very affectionately as Jim Odgers.

Party politics produces strange bed-fellows, and at times Jim was accused of being a lackey of Lionel, that is Lionel Murphy, and a conspirator with Ken, that is Ken Anderson. Jim Odgers was a man with a vision, supported and encouraged by others, who included some relatively junior Senate staff members, such as the present Clerk, Harry Evans, and the Deputy Clerk, Anne Lynch, and conference commentator and former Clerk, Alan Cumming Thom. I wish to pay tribute to the work which all have contributed.

In case there should be any doubt, let me say that five years after resigning from the Senate, I remain an unashamed and unrepentant Senate chauvinist - proud to have shared eighteen years of development of the bicameral system in the world's best parliamentary democracy.

Let me make one point of fundamental - of absolute - importance. In 1970 the Senate came of age as a house of review. It has since then developed, but what I want to talk about is what came about in 1970. There has tended to be some emphasis upon the work in 1970 of one individual. I believe that that individual, Senator Murphy, played an important part, but not in the way which is often attributed to him. The most important part which he played was in ensuring the support of his party for the retention and development of the Senate as a house of parliament with a committee system, rather than as the person who developed the committee system. For that we have to look much further afield. What we have to do is look back at some of the antagonisms - and I mention them to remind people of what in fact happened.

It was the late Senator Ivor Greenwood who described the Murphy contribution in these terms:

I desire to speak to the point of order and not to engage in the flamboyance, the rhetoric, the speciousness, and casuistry which Senator Murphy has just given to the Senate.

It was that old war-horse, Senator Sir Reginald Wright, who said:

I rise because I have an abiding interest in the purpose and the efficiency of the committee system which the Senate has embarked upon. I disregard entirely the interchange provoked by

Senator Murphy when he imputed considerations extraneous to that purpose during the speech of Senator Byrne.

It was Senator Condon Byrne, the highly respected DLP Senator from Queensland, who referred to the difference of opinion by saying:

I point out to Senator Murphy that I have done my best not to intrude party political considerations into this debate.

It was Senator Sir Magnus Cormack, who I am delighted to see is able to be present with us and who played such a tremendously important part, and who criticised the Murphy proposal in relation to one aspect of the development by saying:

I think you spun this off the top of your head without thinking the problem through.

These were typical of some of the comments which were made at the time. It was a parliamentary interchange, a political interchange, which was taking place.

During this period, Senator Murphy had caused to be prepared some papers by the Legislative Research Service of the Parliamentary Library, and these papers provided a valuable review of the existing situation, and a contribution to the consideration of the roles to be played by an Australian Senate system.

One of these papers stressed the fact that the Canadian committee system, which had received government support, had been aimed at speeding up the passage of business through the Parliament in Ottawa.

The Senate Standing Orders Committee had its attention drawn to the difference between a committee system in a House such as the Commons, in London, with 630 members, and the Senate with (at that time) 60 members - a question of resources.

I go back to point out that the one constant behind the achievement of the combined Estimates Committees and Legislative and General Purpose Standing Committees to complement the select committees and other previously existing committees was the devoted conceptual contribution of Jim Odgers, and those who saw the new system in terms of the development of a constitutional parliamentary democracy with an adequate system of checks and balances, rather than a personal glory trail.

There are many milestones along the road. On 13 May 1965, one of those milestones was erected. What became known as 'the compact of 1965' was entered into between the Senate and the House of Representatives.

The Senators and staff who were involved have already been mentioned, but the Treasurer of the day - by whom the agreement was made - was the Rt Hon. Harold Holt who, on 13 May 1965, made a statement to the House of Representatives, in which he said that until the Parliament otherwise provides, the classification of appropriations for the ordinary annual services of the government, and appropriations not deemed to be appropriations for the ordinary annual services of the government, and which the Senate may amend, shall be in accord with certain criteria which he then spelled out.

The compact of 1965' was a response to the flexing of the muscles of the Senate. It was a recognition by the executive that the Senate had an important role to play in relation to appropriations. Commonwealth Parliamentary Debates (Hansard), Vol.H.R.46, 13 May 1965, pp.1484-5. See also G.S. Reid and Martyn Forrest, Australia's Commonwealth Parliament, pp.358-60

It is interesting to recall that the very first Budget presented to the new Commonwealth Parliament in 1901 was sent back by the Senate to the House of Representatives because it failed to itemise in sufficient detail the proposed appropriations.⁵

Sixty-four years later the House of Representatives accepted a further acknowledgment of the role of the Senate in relation to the scrutiny of the executive and the requirement of accountability by the executive to the house of review.

⁵ Commonwealth Parliamentary Debates (Hansard), Vol.H.R.46, 13 May 1965, pp.1484-5. See also G.S. Reid and Martyn Forrest, Australia's Commonwealth Parliament, pp.358-60

It was Senators Cormack and Wright who had, with the support of others, pressed to achieve this acknowledgment of the Senate's role. It was Harold Holt, Bob Menzies and others, who agreed to acknowledge it.

Small wonder then, that notwithstanding the distraction of the referendum proposal in 1967, which attempted to break the numerical nexus between the Houses, and the vigorous and successful defence of the Senate's one to two numerical balance, the Standing Orders Committee of the Senate turned its concentration to the development of a committee system.

During this period the Government Leader in the Senate, Sir Denham Henty, encouraged the establishment of select committees, such as those on water pollution and air pollution. That reflected the growing feeling in the Senate that greater use should be made of committees.

It was, however, the Standing Orders Committee, of which Senator Reg Wright and Senator Magnus Cormack had been members throughout the 1960s, that decided in August 1969 that it would ask the Clerk of the Senate to submit a paper on standing committees.

On 17 March 1970, that Committee tabled in the Senate a report relating to a system of standing committees.⁶ This included both Legislative and General Purpose Standing Committees and a grouping of Estimates Committees to investigate proposed expenditure and with the power to call upon departmental officers to give evidence.

In the introduction it said: 'The essence of the Report is that a standing committee system is standard and essential equipment of the modern legislature. Work-load alone is a compelling reason. Equally important to Parliament in its consideration of public affairs is that the legislature may, through its committees, call upon scholarly research and advice equal in competence to that relied upon by the Government.'

There were obvious differences of opinion which followed the tabling of the Odgers report. Skirmishes and counter-skirmishes took place. I have referred to some.

What we had in 1970 was the work of many people, of whom one received considerable publicity, while others were more modest about their vital role in what was undoubtedly an exciting development.

In talking of this, I should not omit reference to the then Leader of the Government in the Senate, Sir Kenneth Anderson, who had a particularly difficult role as a member of Cabinet which, from all indications, did not want a bar of this Senate revolution, and as the leader of an increasingly volatile group of Liberal and National Country Party Senators, who were increasingly determined to see these changes take place.

It is also interesting to note the role of the Democratic Labor Party who, one suspects, may have been influenced, in the course of some broader discussions on other matters, to play a role in slowing down the rate of change.

It was the DLP which insisted that although, in June 1970, the Legislative and General Purpose Standing Committees' establishment was accepted by the Senate, they should apply the principle of 'gradualism'. It was as a result of consultations between the Leader of the Government in the Senate and the DLP that Senator Anderson moved, on 19 August 1970, to confirm the establishment of the seven standing committees, but to limit them to two only during the first twelve months.

Bearing in mind the amount of political skirmishing which had taken place, I believe that Senator Anderson's description of the background to his motion was one of delightful understatement. He said: 'We have spent a lot of time on reconnaissance in this matter.'⁷

Concerns were expressed by the DLP Senators and by Senator Anderson as to the implications for resources of staff as well as Senators, should all of the standing committees be established at the one time. It was agreed to establish two on a trial basis. 'Gradualism' became the in-word.

The next skirmish was a rush to see who could achieve acceptance of the first reference to one of the two standing committees which were to commence immediately. These were the Committee on Health and Welfare and the Committee on Primary and Secondary Industry and Trade.

⁶ Commonwealth Parliament, Report for the Standing Order Committee on Standing Committees, Parliamentary Paper 2/1970

⁷ Commonwealth Parliamentary Debates (Hansard) Vol.S.45, 19 August 1970, pp.105-106

On 25 August, Senator Murphy moved that there be referred to the Standing Committee on Primary and Secondary Industry and Trade the matter of the desirability and practicability of establishing a national organisation to deal with the effects of natural disasters. He also listed a number of other references which were to go to the same Committee. But as Senator Cormack and others pointed out, this particular Senate committee had 'nothing to do with the concept of establishing a national organisation to deal with the effects of natural disasters.' Senator Murphy's proposal was rejected when the DLP voted with the Liberal and Country Party Senators.

On 2 September 1970, Senator Murphy moved that there be referred to the Standing Committee on Health and Welfare the following matter: 'The problems of, and the provisions for assistance to, the mentally and physically handicapped persons in Australia'. The debate which followed related to whether this was an appropriate matter to be considered by a standing committee or a select committee, and Senator Byrne, on behalf of the DLP, made it clear that his party was prepared to support the establishment of a select committee for the purpose of such an inquiry. Such was the strain between the various parties that the ultimate decision was made by Senator Turnbull, who was at that time a Senator elected from Tasmania as an Independent. He voted with the ALP, and the DLP Senators absented themselves from the vote.

The net result was that Senator Murphy's reference was carried 25 to 23. Had Senator Turnbull (whose attendance record was not absolutely perfect) not been present, the vote would have been 24 to 23 and still carried by the Labor Party. Had Senator Turnbull, being present, chosen to vote with the Liberal and Country Party Senators, then the vote would have been 24 all, and would have been carried in the negative.

So started the Senate Legislative and General Purpose Standing Committees.

The next day, and fortuitously with some appropriate homework having been done, a motion was carried unanimously for the reference of a matter to the Standing Committee on Primary and Secondary Industry and Trade. I had the honour to move that reference, supported by my two Tasmanian Liberal backbench colleagues, Senators Lillico and Marriot.

Curiously, the first matter referred unanimously by the Senate to a Legislative and General Purpose Standing Committee related to the problems of shipping across Bass Strait, which was also the subject matter of the first-ever reference to a select committee after the Senate was established in 1901.

Thus, by 3 September 1970, we had established two standing committees of the Senate, and each with a reference. We had also agreed by a motion moved by Senator Sir Kenneth Anderson on 19 August 1970 to the establishment of five Estimates Committees, which, as Senator Anderson said, meant that:

The Senate is breaking into a new field ... The idea is to do the work in the committee room in a more relaxed way. The Minister and officers concerned will be able to give information. The proceedings will be recorded in the daily Hansard and will be open just as they are here in the Senate ... The workings of the estimates committee will make for an easier obtaining of information... This is a challenge to us all.⁸

The Leader of the Opposition, Senator Murphy, stated:

The machinery provisions proposed by the Leader of the Government ... seem to me to be sensible. I cannot find any objection to them.

Senator Byrne, on behalf of the DLP, said:

We hope that, with the co-operation of all concerned, this committee system, which is a tremendous pioneering project in the operation of the Senate and parliamentary government in this country, will operate successfully... I believe that a good deal of understanding, goodwill and reciprocal sacrifices will be necessary if this system is to be operated successfully.

However, there was still some concern that we were overburdening the Senate with committees.

⁸ Commonwealth Parliamentary Debates (Hansard) Vol.S.45, 19 August 1970, pp.103-4

History shows that in the twenty years Senator Byrne's plea has been heeded - there has been a good deal of understanding, goodwill and reciprocal sacrifices, even though there have been very rough patches.

The system has meant that we now obtain automatically a vast amount of information in relation to the operation of government which, prior to 19 August 1970, was not within the wildest dreams of those who believed in the principle that governments dealing with taxpayers' funds should open the books to public scrutiny.

When the Senate agreed to establish the Estimates Committees it did so bearing in mind that the Principal Parliamentary Reporter and the Government Printer had said that it would not be possible for more than three Estimates Committees to sit at any one time.

It was therefore necessary to develop a timetable to enable the committees to meet. This timetabling of committee hearings was to become an important part of their operation, as it was necessary to bring witnesses from departments, and sometimes from interstate. The attempt to avoid a host of witnesses waiting for their particular department or authority to come before an Estimates Committee was later to be the basis for considerable criticism of the Estimates Committees as they were seen to be wasting valuable time.

Later, various experiments were tried by way of giving notice of areas as to which questions would be asked, but none seemed to resolve the problem. Suffice it to say that on Thursday, 24 September 1970, under the chairmanship of Senator (later Sir Condor) Laucke, Estimates Committee C, of which I was a member, set to work.

The Chairman announced:

I declare open this inaugural public sitting of the Senate Estimates Committee C. In so doing, I wish to say that this marks an important development in the committee system in the Senate's consideration of the annual estimates. This new procedure of having the annual estimates referred to 5 Estimates Committees for examination represents the third stage in the Senate's development of an effective method of budgetary examination. In each stage advancement has been made to greater effectiveness. It is very interesting to note in looking back that before the 1960s the Senate practice was to await the receipt of the Appropriation Bill from the House of Representatives before examining the details of departmental votes ...

Consideration by the Committee of the Whole usually began there late in the Budget session and this, combined with the seemingly inevitable rush of end of session work, meant that the Senate was always under extreme pressure to conclude its business ... In 1961 the Senate overcame the delay in considering the details of the proposed expenditure by the procedure of considering them in the Committee of the Whole on a motion to take note of the proposed expenditure which was moved after the general debate on the Budget papers had been concluded and before the Appropriation Bills had been received from the other place.⁹

Senator Laucke went on to explain the matters which were referred to Estimates Committee C. The general division tended to relate to the ministerial responsibility or representative responsibility of particular Ministers in the Senate.

Although the Senate had authorised departmental officers to be called before the Committee and questioned, the early practice was to direct questions to the Minister, and for the Minister to be allowed to answer any question if he or she so desired. Alternatively, the Minister could refer a question directly to an officer. However, from the start, it was recognised that departmental officers 'should be excused from answering questions if the answer involves giving opinions on matters of policy which are the concern of the Minister.' On this occasion, Senator Wright was the particular Minister concerned and he had brought with him the Director-General of Works, as well as several officers from the department. The Minister commenced with a fairly lengthy statement about the activities of his department, including details of expenditure on furniture and fittings - a matter to which I shall return shortly.

At first questions tended to be answered in somewhat the same way as they had been in the Committee of the Whole with Ministers using their extensive briefing notes for the purpose of answering questions.

Later it became possible - as a result of negotiation - for the explanatory notes to be made available on a basis of strict confidentiality to each Senator involved. Senators were thereby able to prepare questions with a greater degree of knowledge.

Later still, in the evolution of the Estimates Committees, the explanatory notes were automatically published as public documents, and a great deal of information was thereby made available, not only to Senators, but also to members of the House of Representatives, and to the public at large.

To return to the matter of furniture and fittings, I recall asking the Director-General of Works questions which related to the manner in which the department kept an assets register, and generally controlled the supply of furniture and fittings. The answers seemed to me to be unsatisfactory. Some months later, the Director-General said to me that as a result of my questions, they had reviewed their system and it was his anticipation that the result of introducing a new system would save very substantial amounts of money, and that alone justified the establishment of the Estimates Committees. Regrettably, not all departmental officers had the same warm view in relation to Estimates Committees.

One of the early questions which arose in 1971 related to the extent to which statutory authorities were required to answer questions, even if those questions involved commercial confidentiality. The Senate clarified the matter by resolving that there are no areas of expenditure of public funds where statutory authorities have a discretion to withhold details or explanations from Parliament, or its committees unless the Parliament has expressly provided otherwise. This resolution was carried on 9 December 1971 and re-affirmed and strengthened on a number of occasions, including 1974, 1980, 1984 and 1986.

However, the question of commercial confidentiality remained a problem. Standing committees were able to overcome the problem by taking such evidence *in camera*, but the Estimates Committees had no power to take evidence *in camera*.

I recall that the occasion which led to the first resolution involved Senator McAuliffe, who was President of the Queensland Rugby League, and wanted to know details of the amounts spent by the ABC in purchasing rights to televise other sporting events. To overcome that particular impasse, I adjourned the Committee, and Senator McAuliffe and the officer from the ABC were able to have a quiet word in the corridor.

There are many other stories arising from developments involving the inter-locking committee system. Other speakers will no doubt relate some of those stories, and some of the important aspects of inter-relationship, including aspects of privilege, as well as the protection of witnesses.

I conclude by drawing attention to what I regard as the greatest test which the 1970 system had to withstand. In 1974 a Joint Committee (that is, a committee of both houses) on the parliamentary committee system was established with a majority of members from the House of Representatives. When that Committee finally reported in 1976 it recommended a strengthening of the Senate system, and it recommended against Joint Committees, other than in special circumstances.¹⁰

The 1970 system had survived its major test - not only had it been effective, but the Committee described as the committee to end all committees had given it the nod.

Whether its development has continued and grown with the same rate of success is far more controversial. Has the system lived up to its early expectation? Does the current Senate take full advantage of that which it inherited? These are questions for others to answer.

I want to congratulate those who were involved in the early days of the committees, and particularly my old mentor Magnus Cormack, in relation to whom I want to tell a story that he may have forgotten. It concerns how the Senate Select Committee on Securities and Exchange report was published, because there was an election in 1974 after the report was actually with the printer, but before it had been tabled in the Senate. When the Parliament resumed after 1974, Senator Murphy was not enthusiastic about reconstituting the Securities and Exchange Committee so that it could table its report. After numerous discussions with Senator Murphy, I said: 'Well, it looks as if I am left with the only alternative. I will still table the report'. He said: 'You can't'. I said: 'I can. I'll read it for one hour every night on the adjournment'. Senator Murphy thought that might be more interesting to the media than all the other things that had happened during the day. So the Committee was reconstituted, the report was presented, and one of the more outstanding committees, I believe, of the Senate - from a point of view of public recognition - was able to give an impetus to the whole of the movement towards the

¹⁰ Commonwealth Parliament, Joint Committee on the Parliamentary Committee System, A New Parliamentary Committee System, Parliamentary Paper 128/1976

development of the Senate committee system, which started from those revolutionary proposals of 1970 in which Jim Odgers played such an important part. Many other people also played an important part over a very considerable period of time, dating through the latter part of the 1950s and certainly throughout the 1960s.

Thank you very much for the opportunity to be back here. I conclude by saying that I wish the conference well; I wish the future of the Senate well. It is a great institution; it has its future in front of it, and I look forward to seeing that future.

Mr EVANS - Thank you, Senator Emeritus Peter Rae. I will now introduce the members of our panel who will speak briefly on Senator Rae's paper, and on their own contributions to the discussion. The first is another 'Senator Emeritus', Gordon Davidson from South Australia, who was a distinguished chairman of select committees prior to the establishment of the standing committees and, subsequent to that, of a standing committee. There is also Professor Geoffrey Sawyer, who is well known to us as an eminent constitutionalist; Mr Alan Cumming Thom, a former Clerk of the Senate; and Mr Chris Puplick, another 'Senator Emeritus', until recently a Senator, though lamentably not one at the moment. They will speak briefly in that order.

Mr DAVIDSON - Mr Clerk, ladies and gentlemen: it is of course a very great privilege this morning to share in this twentieth anniversary occasion of the Senate committees. It was my good fortune to serve within the Senate committee system from its inception in 1970 until my retirement from the Senate in 1981. Of the eleven years I was involved in membership of the Standing Committee on Education and the Arts, I enjoyed the privilege of seven years' chairmanship. After nearly a decade of retirement from the Senate and that activity, I am very grateful, in the first instance, to be present this morning for this observance and very appreciative of the compliment paid to me in giving me this involvement. Peter Rae, in his paper outlining the 'revolutionary' proposals of 1970, has painted a splendid backdrop to the period, which I believe returned to the Senate some of its significance, some of its effectiveness, for which it was designed and established. Those of us who worked with Peter Rae recall very appreciatively his leadership and his encouragement, not the least of which was his instituting the calling of working lunches. These were delightful occasions on which some marvellous plans were laid by the Chairmen of the standing committees for the establishment of their work.

Of course, not everyone was, or is, an enthusiast for Senate committees, especially Prime Ministers and Ministers generally. I recall when Senator Denham Henty called me into his office to invite me to be the chairman of the water pollution committee which he was establishing then. He told me that he had been trying for a long time to get it established. Then he added, and he was going back a bit: 'The old man' - that was Sir Robert Menzies - 'doesn't regard these proposals with any favour.' 'Backbench Senators', Menzies was reported to have said, 'will have access to matters not meant for them and to material which is inappropriate for their role in Parliament'. I suppose that Sir Robert Menzies was making a comment as a man of his style and a man of his time, and I believe that there is a much more enlightened approach today. But governments and their leaders have always been cautious in their attitudes to parliamentary committees.

The debate that gets the most reference is that of 11 June 1970, but that debate actually had commenced on the evening of 4 June 1970, when Ministers and others took part. The cautious attitude then expressed, with respect to having two groups of Standing Committees (Legislative and General Purpose Committees, and Estimates Committees) is understood and appreciated, but relationships have changed and developed as the style of Parliament and the Senate has evolved. These various styles and changes reached an interesting point as the Senate came up, as Senator Peter Rae has said, in the 1960s and 1970s. There were now more Senators in the Senate. The effects of the proportional representation system had long become a fact of life with an even division within the Senate, and other facts of life within the national constituency at large had also appeared. All these things together meant - and I say this with all respect to our predecessors - that, as I said in my speech of 4 June, we were welcoming a different kind of Senator. Furthermore, some of us had experience of either chairmanship or membership of select committees, and some had served on the Regulations and Ordinances Committee. All of these facts found expression in those debates in June 1970. For all that, the debates were a mixture of caution and enthusiasm on both sides, but without doubt the Senate wanted its committee system. After all, the Senate was a very suitable legislative chamber to undertake that kind of work. It was a house of review, it was a house with equal representation from all the states.

My involvement in the committee system was almost entirely in the field of education, to which was sometimes added the matters of science or the matters of arts, and sometimes both. Our references handed to us by the Senate covered a wide field: teacher training, children's television, education in the work force, literacy and numeracy, symphony orchestras, education of isolated children and a number of others; plus two or three bills, one of which was returned with a recommendation that the bill not be proceeded with. The feature of the Senate committee system in action was that it was a Senate on the

move. It carried the powers and prestige of the Senate. It was on the move, going out to the people and, of course, by its nature, the people were able to come to it. They would come as individuals or in groups with submissions and oral evidence prepared. We were welcomed by communities, received by local authorities, and our exchanges were useful. As in all public exercises, of course, there were doubtful cases, some of them very doubtful, but these received appropriate attention.

A feature which I think was of some value to Senators was that in their work they had access to and received matters of substance and interest which they collected during that time. They were able to make use of that material in the course of their public duties at home or in the constituency. For the chairman it was an additional opportunity. Speaking only for myself, I lost count of the number of school libraries, science laboratories and other building extensions I had the privilege of opening. The number of representations, conferences and speech days and seminars was legion. It is true my political temperament is such that I enjoyed all of these occasions very much indeed.

Whilst in this vein, I take a moment to recognise the contribution made by those who supported the Senate committee system, the members of the committee secretariat who work so hard and diligently in assisting the members to do the work. In my own case, men like John Lipscombe, Bob Thompson, Bert Nicholls and others of their colleagues were invaluable. I also include the officers of the various departments who prepared the material and the Legislative Research Section of the Parliamentary Library.

Mr President, I have spoken from experience and the time distance from that experience may have lent some enchantment to the view. But on this twentieth anniversary occasion we recognise that the 'revolutionary proposals' of 1970, which was the heading of Peter Rae's address, are still operating today. New styles, new thoughts and new technology are already new influences in the processes of the committee system. Parliament House exerts an extraordinary presence on committees and their contribution. Australian life and times have undergone further evolvments and the Senate, once more, is welcoming a new kind of Senator.

The standing committees have moved to reflect all of this. The President referred this morning to the Scrutiny of Bills Committee and the procedures that were arranged only this year for enabling more bills to be referred for detailed consideration. These and others are new forward-looking processes and others will follow. They will give an element of fulfilment to what Jim Odgers wrote all those years ago and which has been quoted this morning: '... a standing committee system is standard and essential equipment of the modern legislature'. Today I think Jim Odgers would be pleased.

Mr EVANS - Thank you, Gordon Davidson. I will now call on Professor Geoffrey Sawer.

Prof. SAWER - Thank you, sir. I think perhaps I should inject a slightly sour note into these proceedings. The Senate has, from its inception, been regarded with, at best, tolerance and, very frequently, with venomous hatred by the Australian Labor Party. I am not altogether sure that when Senator Murphy gave his enthusiastic assistance to the development of Senate procedures in this matter he was very much interested in the long haul. I think that he was trying to obtain particular advantages at the particular time against a particular political background.

My belief that the Australian Labor Party still, to this day, has a slightly jaundiced view of the Senate is supported by the constitution and platform of the Party. The 1988 edition, which I understand is the edition currently in force, has, under the head of Constitutional Amendment, quite a number of paragraphs dealing with the position of the Senate. It includes, for example, the proposition that the House of Representatives has a primacy in the government of Australia. There is no faint suggestion that the Senate has anything like an equal position. The Australian Labor Party says that the Constitution should be amended to prevent the Senate from deferring or blocking money bills. It says that the government should be responsible, in a direct sense, only to the House of Representatives and that the Westminster rule, such as it used to be - of course it is no longer in England itself - governing the relationship of governments to upper houses, does not apply in relation to the Senate.

On the other hand, there is a much later provision which does offer a little bit more encouragement to the enthusiastic backers of the Senate; that is, the statement that the Parliament should continuously review government activity through a viable committee system of both Houses of Parliament. That seems to me to relax the sourness in relation to the Senate and its committees, to the extent of tolerating the possibility of a joint committee of the two Houses to continuously survey activities of government, and so forth.

The question that arises in my mind, and, I hope, in the minds of some of you who are in immediate and direct contact with the present politics and constitutional activities of this country, is whether there could exist a joint committee system such as I have just mentioned as being supported by the Australian

Labor Party's constitution. As far as I can see at the present time, there is not any very enthusiastic movement to set up committees in the House of Representatives. This is one of the great differences between this country and the Mother of Parliaments at Westminster. At Westminster there is an extremely elaborate system of House of Commons committees and 90 per cent -or more than that, I think - of the bills that come before the House of Commons never reach the Committee of the Whole House. They are shunted off upstairs to these various bills committees, and it does seem to be the experience of that Parliament that this is a much more efficient method of handling legislation than that which used to depend inter alia on a Committee of the Whole House. Is anything like this going on in the House of Representatives? How will this affect, if it affects at all, the position of the Senate in these matters? These are matters for the future that I think our learned friends may wish to consider. As things stand at present, I return to my initial question. Is the general attitude of the Labor Party, as it is at present, represented adequately by those provisions in its constitution? Or, has the Labor Party finally and definitely settled to accept the Senate as, so to speak, a legitimate - not just a tolerated, but a legitimate part of the government of the country? And not only a legitimate part of it, but along one possible line of development for the future, an equally important House as the House of Representatives - equally important precisely because it is now operating with great success and against a background of long experience and developed skills as the sort of committee system which the House of Commons has in England.

This may well turn out to be, therefore, a basis for legitimacy of the Senate, which was certainly not contemplated by our founders, who did not contemplate in the slightest degree that the Senate should ever be anything more than a house of review. It seems to me that its present committee system makes it much more than a house of review. It puts the Senate as a whole, via its committees, in the position which at Westminster is possessed by the committees of the House of Commons.

Mr EVANS - Now that I come to think about it, when we were arranging the conference somebody did say: 'Let's get Geoffrey Sawyer. He will introduce a sour note'. I call Mr Alan Cumming Thom, a former Clerk of the Senate.

Mr CUMMING THOM - Thank you, Harry. As a Clerk Emeritus, which might be the appropriate description, I feel very much like a grade cricketer who has been selected for his first Sheffield Shield game and he goes into bat for the first time when the score is about three for 350, because just about everything that should be said on this particular issue has already been said. Most of what I had on my copious notes here has already been said, so I have just said to Harry that I will throw these away and try again.

In doing so, of course, I also have to follow Peter Rae and say that I am an unrepentant Senate chauvinist. We were all brought up on the Senate staff to be complete and utter Senate chauvinists. We make no apologies for it.

I want to extend the historical background a little because it is very usual for people, and I have done this myself, to say that the committee system which the Senate has - incidentally, I think it is indubitably the best constructed committee system in any legislative chamber in the world, and I have some experience of some of them - grew from the select committee system of the early 1960s, the late 1960s and then the later developments. But I just want to put a slightly longer historical perspective on it and I am encouraged to do so because in this brochure which I think you all have in your folders, I note that reference is made to the adoption of the proportional representation system for the Senate in 1948 and the expanded numbers in the Senate from 1936 to 1960. It looks back in historical perspective, and I confess I only joined the Senate in 1955, so I was not in on those events. In 1955 it was very obvious that the Senate had received not just a blood transfusion but a heart transplant.

There was an atmosphere of enthusiasm from the new Senators. They had no intention of sitting there and just being backbench warmers; they wanted to do something. Some of you may recall Senators Don Willesee, Ian Wood, Hannaford, Kendall, McCallum and Reg Wright. Senator McCallum's name goes down in Canberra history and in Senate history as very significant because in 1954-55, I think it was, the Senate appointed a committee on the development of Canberra. The secretary of that committee is my good friend and former Clerk of the Senate, Roy Bullock, who is over on the side there. John McCallum chaired a committee in 1954-55 which did more to develop Canberra than any other single event and gave a taste to those Senators in the 1950s of what could be done by Senators doing a job of work instead of just being a voting number.¹¹

There was reaction from the new Senate - the expanded Senate - which had been split on the lines of 33 from one party and 3 others, which is not really a very good House. In the early 1950s it suddenly

¹¹ Commonwealth Parliament, Senate Select Committee on the Development of Canberra, Report, Parliamentary Paper 51/1954-55

became a House evenly divided. It was later somewhat complicated by the split when Senator George Cole walked across the chamber. I remember it well. He announced that he was no longer staying with his party; he was now Democratic Labor. I think it had another name first up - but any way he left.

Thus in the 1950s, there was a Senate which was evenly divided and enthusiastic to do a job, and this continued right through. As ex-Senator Peter Rae says, at this time also Jim Odgers had received a Smith Mundt grant to go to the United States and study the congressional system and he came back and produced a report which promoted the concept of a committee system. A great deal of credit has to go to him for that. Incidentally, he also recommended the establishment of a research service within the Library, having seen the Library of Congress as a research area. So, those matters were all coming together in the 1950s. In the late 1950s there was a Select Committee on Payments to Maritime Unions,¹² which was an incredible experience. Jim Odgers asked me to be his assistant on that. It was quite an education because, in one meeting down in the Legislative Council chamber in Sydney, we had 300 members of the Seamen's Union who came to the public gallery and booed and hissed when their Secretary, Elliot, was giving evidence. Senator Wright was at his judicial best as Chairman. All that was part of a learning experience for people like myself, and also for the Senators on the Committee.

The events from 1962 onwards are fairly clearly set out and I will not refer to them any further, except perhaps to give credit to one whose name never gets a mention and that is Senator Seddon Vincent from Western Australia, who was a keen amateur repertory man - Senator Davidson would remember him well - who chaired a Committee on the Encouragement of Australian Productions on Television.¹³ It produced a very influential report and I remember that our previous President, Senator Douglas McClelland, who was on that Committee and afterwards became Minister for the Media, said quite openly and quite publicly that the experience and knowledge he gained from that Committee stood him in great stead as the Minister and he understood all about the television industry, which in those days was still in its embryonic stages. Those are the benefits that came from those early select committees, but I wanted to bring that story back to the 1950s and the new Senate, because I do believe it is not only relevant, but also quite critical in the development of the system.

The other thing which I wanted to touch on was the administration and support to which Gordon Davidson has referred briefly. The planning for a staff to support the growing system was actually started in the late 1960s. Up to that time the people who staffed committees were the procedural officers like myself, Keith Bradshaw, Bert Nicholls and others. We took the committees - in fact the Usher of the Black Rod's official title was Usher of the Black Rod and Clerk of Committees. It was an old traditional title which went right back to the early days. This was becoming impossible because in the late 1960s, for example, I had two committees as well as my full time job as a procedural officer, so it was clear that we had to get staff.

I am delighted to see in the audience today the very first of our specialist committee staff, Arthur Higgins. A great deal of credit for the substantial and successful support of the committee system lies at the feet of Arthur Higgins. He was brought on - I think from memory he assisted me on the Select Committee on Medical and Hospital Costs¹⁴ - to break him into the strange world of committees.

So a conscious effort was made to provide a qualified, enthusiastic support staff. When the expanded system came some years later, I remember Arthur and I experienced a lot of trepidation in the selection of appropriate staff. Staffing was a very difficult problem because you had to decide whether you were going to have a lot of specialists or whether you were going to have generalists. Experience overseas, which fortunately I managed to get in 1972, led me to certain conclusions about what sort of staff we should have. Great selection processes went on to make sure that we got the sort of staff who could work with Senators because there is no use in having a string of degrees if you cannot work with a team of six or eight Senators, all of different political persuasions. Naturally the work, being in a political environment, can attract people who want to make a political input and there is one thing you cannot have on parliamentary staff and that is people who wish to make a strong political input. It just does not work.

Because of my own position, I thought I should say just a few words about the staffing arrangements. It was not easy. We had to work out what were the best procedures. A great deal of work went into how meetings should be conducted from what we had learned in select committee work and from what I had picked up overseas. A tribute must be given to the President of the day, Sir Magnus Cormack. I will just give one example of the sort of great operator he was, because when the standing committees finally got under way in about 1971, we had one on Foreign Affairs and Defence.

¹² Commonwealth Parliament, Senate Select Committee on Payments to Maritime Unions, Report, Parliamentary Paper 51/1958

¹³ Commonwealth Parliament, Senate Select Committee on Encouragement of Australian Productions for Television, Report, Parliamentary Papers 304,304A/1962-63

¹⁴ Commonwealth Parliament, Senate Select Committee on Medical and Hospital Costs, Reports, Parliamentary Papers 196/1969, 82, 82A/1970

There may be officers here from Foreign Affairs and Defence, but I mean no offence when I say that in those days the Foreign Affairs Department had a feeling that it was beyond scrutiny and public involvement and that it should not be asked to explain itself. They let this be known and Sir Magnus, who was, as I say, one of the great operators, directed me to take Arthur Higgins to see the Department officially and tell them the parliamentary side of things - that they had to turn up. This was rather a task for myself. We went and talked to, from memory, a deputy secretary and first assistant secretary - or people of that level - and Arthur and I had to come to an agreement virtually forcing them to do something they did not want to do.

The upshot was that the very first meeting of the Foreign Affairs and Defence Committee was held in public, which they swore they would never do, but we had reached a little compromise behind the scenes. They produced a public submission and when that was over they went *in camera* and produced the private submission. But we had broken the ice and once that was broken and the Department - as with so many other departments - saw how well it could be handled, there was never any further problem.

I would love to expand on Estimates Committees at great length because they have been responsible for a complete revolution in public administration in Canberra. It is an example which could well be followed in other Parliaments. We did a great deal of soul searching about how departments could be dealt with. We had to work out procedures and eventually we got through all that. A lot of education went on. Some of us were asked to go and address groups on what this meant for the Public Service, what it meant for the Parliament and so on.

Having had that experience, when I told my good friend and colleague, John Uhr, I would give him something, he once said - I do not know whether wittingly or unwittingly: 'You have not produced your sermon yet'. All sermons have to have a text or a theme. Perhaps with my own background it is not surprising that I think of text, and for the Latin scholars amongst you - and I do not suppose there are too many - or the students of Robert Browning's Rabbi Ben Ezra, or perhaps a wider group of you who saw the film *Dead Poets' Society*, I think the theme for the establishment of these committees and the continuing theme -and I hope the theme for the future will be *carpe diem*, because that is exactly what the Senate did as a reformed group from 1950 onwards. It seized the day; it still seizes the day.

Peter Rae has mentioned briefly Senator Murphy's contribution, which was very significant. It gave a great deal of encouragement to the system. That event of putting his motion on the *Notice Paper* was a classic example of *carpe diem*. The report was sitting there, and he hopped in first, seized the opportunity, got his motion on the *Notice Paper* and then got all the credit for it. That is the way life goes. But that is my text, if I may say so. The Senate, as much through evolution as revolution, developed this by seizing the opportunity to create this great system. It really is a great system. I trust that it will continue to seize whatever opportunities come its way to keep itself in the forefront.

Mr EVANS - Last, in what might be called the historical section of the conference, former Senator Chris Puplick will speak from a position of youthful vigour.

Mr PUPPLICK - Thank you. As some of you may know, I am actually a trained historian by profession. Although I do not go back quite as far as some of my distinguished colleagues on this panel, I do go back in this business sufficiently far as having been on the staff of the Minister for Social Services, as it then was, who was actually responsible for writing the submission which went to Dame Ivy Wedgwood's first committee on mental health and hospital services in Australia.¹⁵ So, I do go back at least that far in terms of some association with Senate committees. There are a couple of points that I think again need to be put in their perspective. The first is that the Senate is, always has been, and, unless the Hamer proposals are adopted, is always likely to be, a partisan political house where at the end of the day what actually counts is whether the Government or the Opposition has the numbers. Therefore, most of the Senate committees which have been able to have a significant influence upon outcomes have been those which have been dealing with matters which were not highly political or highly contentious, such as the development of Canberra, or, indeed, of a technical nature, such as the development of the national compensation scheme. Senate committees by and large are very good at producing a great deal of information on the public record. They are great at producing a great deal of interest for those who are intimately concerned with the problem and, indeed, for some, although not all, of the Senators who are serving on the committee. The question is, of course, whether they actually produce any results when it comes to matters of significant public policy. The answer to that depends on the extent to which government members on parliamentary committees have the guts to take on

¹⁵ Commonwealth Parliament, Senate Standing Committee on Social Welfare, Mentally and Physically Handicapped Persons in Australia, Parliamentary Paper 45/1971

their own political party and their own executive or the extent to which they are simply wimps and creatures of Caucus and of party discipline.

The Senate committees have, however, been sufficiently successful as to now be substantially under threat. Anybody who has looked at the development of the Estimates Committees, for example, will know that the Government (and this would apply to any government) is now in the monumental phase of ensuring that it takes as many matters as possible off the Budget and thus away from Estimates Committees as much as it can in terms of scrutiny.

I give you one very simple, very small example. When I first sat on the committee which handled the arts department estimates we used to look at the substantial amounts of money which went to the Australian Opera. From time to time I would call the general manager of the Australian Opera to answer for the millions of dollars which they were getting. So what happened? The Australian Opera got turned into a company limited by guarantee in New South Wales and we were promptly told that, as a result, of course, we could not call their officers before Estimates Committees. The department would answer. The department, of course, never knowing anything sufficiently, always promised to get the results, always got the results and always got the information four or five weeks later.

What is now happening, of course, is that increasingly things are being transferred into budgetary arrangements which take them away from the purview of the Estimates Committees. The attitudes of Ministers for Finance, one suspects, vary largely with the personality and nature of the Minister for Finance. However, at the end of the day, it is the job of the Minister for Finance to be the Government's hatchet man and to ensure that minimum expenditure takes place in areas where the Parliament has the capacity to scrutinise what is going on with the executive.

As I say, very often Senate committees produce very interesting and informative reports which actually then do not get their recommendations even considered by the Parliament. I will give you two examples. One committee on which I sat, the Legal and Constitutional Affairs Committee, recommended just under ten years ago that Australia should abolish compulsory military service. We actually recommended in the report on conscientious objection to military service that it was about time that we took off the statute books the law which allows any government at present to call up people for military service.¹⁶ That of course has never been debated and it is unlikely to be debated.

We wasted a great deal of our time in being gainfully occupied, without scrutinising what was actually happening politically. We produced a very interesting report which I doubt anybody has actually paid any attention to, and which is certainly not going to be acted upon by any government as far as one can see.

My friend John Black may raise later the contemporary issue which I raise. It will be interesting to see whether the recommendations of the drugs in sport inquiry are ever acted upon, or whether the executive government has decided that rather than do something about the chronic problem of drugs in sport, it would rather allow its friends in the sporting mafia around Australia to continue to run their affairs entirely without any responsibility to the public.

As I said, the success of Senate committees will depend upon the extent to which government members are prepared to buck the system. Again, I give two examples. Our friend Peter Durack is here; he has suffered through this interminably. If the Government members on the Constitutional and Legal Affairs Committee had not on the first day of debate on the Freedom of Information Bill been prepared to cross the floor on seven separate occasions - so that the bill was then temporarily pulled from the Notice Paper while real discussions took place between recalcitrant members of the Government, including the members of the Committee which had made these recommendations about freedom of information - that bill would never have seen the light of day in precisely the powerful form that it has at the moment.

We have all heard about the great work of the Scrutiny of Bills Committee. Again, the recommendation for its establishment came from the Constitutional and Legal Affairs Committee, and it was put into place only because the members of that Committee crossed the floor to vote against the Government, which said at the time: 'What we don't need is another silly committee called Scrutiny of Bills'. I think, therefore, it makes the point that it is the extent to which the individual Senators on the committees are prepared to follow through what they recommend as to whether, in fact, great progress is going to be made.

¹⁶ Commonwealth Parliament, Standing Committee on Constitutional and Legal Affairs, Conscientious Objection to *Conscripted Military Service*, Parliamentary Paper 233/1985

I make a concluding point, Mr Chairman. It seems to me that there are now three types of Senate committees. First, there are those which genuinely seek information on a matter which, by and large, governments are not absolutely wedded to. I do take the Freedom of Information report as one of those. The Government was wedded to the concept, but at the end of the day was quite flexible about the precise nature, the scope, the trade-offs, that it was prepared to have with the committee and the chamber to get the bill in its final form.

Secondly, there are those which are very contentious and where the outcome is largely unpredictable, and I quote here, not a Senate committee, but a joint select committee; namely, that on the Australia Card.¹⁷ Until the end of the day we never knew what the recommendation was going to be about the bill, but I also use the Australia Card committee to make a very interesting point. We spent months on the Australia Card. We analysed it, we prodded it, we examined it, we had it debated, we brought it backwards and forwards in the Senate. Every Senator was concerned about it and every last one of us missed the fatal flaw. The bill was analysed to death and we all missed the fatal flaw which eventually brought about the collapse of the Australia Card legislation. There is a salutary lesson there.

The third type is increasingly, I regret to say, the Senate committee set up to legitimise government policy. When we had the Select Committee on Television Equalisation,¹⁸ we had agreed there were would be four from each side. The Opposition appointed its four members to that Committee first. I was one of them. When the Government decided to appoint its members to the Committee, it said: 'We've appointed our members'. I said: 'Who is going to be chairman?'. It said: 'Graham Richardson'. I said: 'Who is going to be his No. 2?', and it said: 'Robert Ray'. I then said: 'Well, in that case, can I just have my TA money now because I really don't know that it is going to get very far, as far as I am concerned, in terms of doing anything other than saying that the Government's plan for television equalisation is terrific?'.

Frankly, it would have been beneficial for me, and probably a great deal more useful in terms of my time, simply to take the travel allowance money and not bother to turn up, because I could have written the report on day one. I do believe that there is, therefore, a clear necessity for us to understand, in discussing Senate committees, the purposes for which an executive will allow or encourage a committee, or not poison a committee when it is set up.

If we understand that at the end of the day, no matter what we might say about the powers and responsibilities of committees, the powers and responsibilities of the Senate, the bottom line is that we are all politicians and we are all there to serve the interests of our political parties just as much as we are serving the interests of the institution. I think we will then discover the best method of using the Senate Committee system to improve the public administration and, hopefully, the public welfare of the people of Australia.

Mr EVANS - Thank you, Chris Puplick. We might take a short time for any questions, observations, attacks or support from the floor. Are there any brief, pithy and succinct ones?

Mr GUEST - Being the only member of the Victorian Legislative Council here says something about the prospect for reform that I have been pushing for fourteen years in the Victorian Legislative Council. I wanted to ask - I am going to try to make this very brief - about some of the constraints on reform. It seems to me that a lot of details which appear to be only remotely connected to effective upper houses are nonetheless very important. One of them would be the electoral system. The fact that I seem to be at the moment the only person seriously interested in reforming a politically important but, in a parliamentary term, fatuous and ineffectual body, I think has got a lot to do with the fact that we have individual electorates and a lot of members have to come from 200 or 300 miles away and they have to serve their electorates from 200 or 300 miles away. I would be interested in comment on the electoral system as an important aspect of effective upper houses.

I hope that these panellists and later panellists might comment too on matters concerning the size of committees. Our committees under the joint parliamentary investigatory committee system in Victoria are far too large; it is very difficult to get quorums. The joint system, I have to say, and as Professor Sawyer has mentioned, is a failure and largely serves government purposes. Any other constraints of a practical nature I would be very interested to hear about.

Mr EVANS - I will call on Peter Rae to respond to those points.

17 Commonwealth Parliament, Joint Select Committee on the Australia Card, *Report*, Parliamentary Paper 175/1986

18 Commonwealth Parliament, Senate Select Committee on Television Equalisation, *Report* Parliamentary Paper 106/1987

Mr RAE - I believe that there was an attempt in the mid-1970s to answer the joint committee question. The question was asked of the Joint Committee on the Parliamentary Committee System.¹⁹ As one person described it, it was the committee to end all committees. One might have thought, because of a preponderance of members from the House of Representatives, that there would be a domination of the results by the House of Representatives. In fact, the Senate received the nod from that Committee to retain its separate Senate committee system. It received the nod from that Committee to be able to develop. One of the major reasons given in that report was that the Senate committee system was able to get a quorum together, was able to work efficiently and tended to operate as a unit, whereas if you tried to draw from the two different Houses of Parliament, you tended to get conflicting interests even if they were only in the physical opportunities for the meetings of the committee, let alone the interests of the members. So one of the great subsequent victories from 1970 was the fact that a joint committee of the Australian Parliament, when it finally reported in 1976, supported the Senate committee system.

But that was substantially the thrust of the reform. The work that was done by that Committee was quite substantially done by Senate members of the Committee and the results of the Committee's report were to encourage the Senate committee system to talk about what might happen in the House of Representatives, but which has never, as someone has already commented, led to the development of a committee system comparable with the Senate committee system.

There have been various attempts, expenditure committees and the like, but all have tried for a while and never seem to have succeeded to the extent to which the Senate committee system has. One of the things that I did not say when I was speaking earlier, if I may just make the comment, is that part of the success, I believe, of the Senate committee system is its interlocking nature so that you can get a complete coverage of government activity. That is one of the important things which a Senate as a house of review can do which I do not believe that the house of government can do so readily. I believe the answer to your question is long live the separate committees and the development of a committee system in each of the houses, if they both wish it, but certainly in the house of review.

Mr EVANS - I might just briefly respond to the question about the importance of the electoral system. I think, as Alan Cumming Thom made clear, the election of Senators on a state-wide basis and the proportional electoral system has been quite crucial in the development of the committee system in the Senate, and the development of the Senate into the place it is today.

Short adjournment

Speech by the Hon. John Wheeldon when Opening the Exhibition The World of Senate Committees during the Conference mid-morning Adjournment

This is the first time I have been into this building. I remember that when I saw it being constructed, I could not help thinking about Oswald Spengler, the author of *The Decline of the West* who was described by H.R. Trevor Roper as a disreputable sage, but attracted the enthusiastic support of Hitler and various others. He is not someone whom I would frequently quote, but he did, I think, make some fairly perceptive observations. One of them was to the effect that when a culture is in decline it erects more and more grandiose buildings and engages in much more spectacular fanfare than when it is flourishing. I would not want to be too categorical in saying that what I see around me now is a further instance of this phenomenon, but I do think it is quite remarkable that, at a time when the reputation of Australian Parliaments has never been at a lower ebb, the accommodation in which these discredited legislators sit is much more splendid than that of any of their predecessors.

¹⁹ Commonwealth Parliament, Joint Committee on the Parliamentary Committee System, A New Parliamentary Committee System, Parliamentary Paper 128/1976

I think that the virtue in having these discussions about the Senate Committees here today is that, once again, despite the criticisms from some of my old comrades in the Labor Party, including myself in my earlier years, the Senate done something to restore the public faith in the institution of Parliament.

I also believe that the Senate has never been given the credit that it should have been given for acting as something of a saviour of the federal system. It is often said, rather glibly, that because people vote according to party lines and because you do not find all the Senators from one state voting against all the Senators of another state that therefore the Senate is not a states' house. But I do not think there is any doubt that having equal representation from the states does balance the representation of the states within the political parties, which, together with the recognition given in the upper house of the Australian Parliament of the equality of the states, does have some effect in preserving a federal system.

I think that experience shows the federal system is an invaluable system for a democracy. I do not think that it was any accident that when Hitler took power in 1933, one of the first things that he did was to destroy the federal system; that democracy in West Germany flourished with a federal system and that in East Germany, the so-called German Democratic Republic, the federal system had been destroyed, and that one of the first things that was decided upon their reunification with West Germany was the re-establishment of the federal system and the re-establishment of the old federal states that had been abolished in 1949. I think the federal system is perhaps more important in a country the size of Australia than even in smaller countries. A federal system and a division of powers is important for the maintenance of free institutions. I do not think it is any accident that Switzerland and post-war Austria, both very small countries geographically without great populations, have very rigid federal systems.

The other way in which the Senate has been of value to democracy through the fact that the survival of the government does not normally depend on what happens in the Senate (although when there is a denial of supply, then the majority in the Senate obviously can bring down a government). A defeat of government legislation in the Senate is not of the same significance a defeat in the House of Representatives. A vote of no confidence in the Senate does not have the same force of a vote of no confidence in the House of Representatives.

For these reasons, it has been possible for members of the Senate to engage in co-operative enterprises which cross party lines in a way in which it is virtually impossible in a lower house which is a house of government. It is easy in the House of Representatives of the United States which, under a different system from ours, is not a house of government. And although I am sure that Professor Sawyer is right in saying that the House of Commons committees have also been able to achieve something, I would suggest that what has been done in the House of Commons committees has been very much of a technical nature, and not in relation to matters where there can be fundamental disagreement between the parties.

Senator Puplick has referred, not without some justice, to the fact that on the whole the success of the Senate committees in discussing and dealing with the matters that have been brought before them, has been largely in areas of a technical nature also, and non-controversial. I think that one of the instances which he quoted does not fall into that category, at least it did not seem to me at the time, when I was the Minister of a rather strange department called Repatriation and Compensation which was responsible for one of the last (though it failed) social measures of a Labor Party anywhere in Australia - the National Compensation Scheme. Certainly the doing-over that my bill got in the Standing Committee that discussed it seemed to me to be on questions of basic political principle, rather than detail.²⁰ And I think also the Select Committee on Securities and Exchange²¹ could hardly be described as being purely technical. A proposal that there should be Commonwealth government legislative regulation of the trading in shares and securities is not a matter of detail. It is a matter of fundamental principle which I think is only now, some twenty years later, being recognised as perhaps being as essential as the committee said it was at the time.

Now, one may imagine perhaps that with the growing together of the political parties in Australia, so that, as my American wife says, you cannot tell the players without a score-card, the vehement differences between the people on opposite sides of the respective houses would decrease. We are in a situation now, when one takes the two major parties, where the differences are no longer of the seemingly fundamental kind that they were twenty years ago. Both parties, for example, enthusiastically accept the capitalist ethos and the competition is largely as to who can make capitalism work more successfully. I do not think there is any argument about that; I think that would be what members of the federal government would boast of and I think that when you have a situation where a State Premier

²⁰ Commonwealth Parliament, Senator Standing Committee on Constitutional and Legal Affairs, Clauses of the National Compensation Bill 1974, Parliamentary Paper 142/1975

²¹ Commonwealth Parliament, Senate Select Committee on Securities and Exchange, Australian Securities Markets and their Regulation, Parliamentary Paper 98/1974

who is being referred to as 'Mother Russia', votes in favour of the privatisation of the Commonwealth Bank, one can see how meaningless the previous exchanges of unpleasanties between the parties on purportedly ideological grounds have become.

One might think that this would mean that there would be more tolerance and greater courtesy between members of the opposing parties. I do not believe that this is so. When it was taken for granted that there were rather profound differences between the parties but that they had to work together so that Parliament would function, even though their ultimate goals were quite different, it was easier to get some sort of understanding and some sort of *modus vivendi* than it is when there is no real difference on policy, but the parties feel that they have to establish a spurious distinction from each other by personal insults. So that, as the differences between the political parties decrease, the allegations of bribery, corruption and immorality increase.

However, through the existence of the Senate committees, these deteriorating standards of political behaviour, can to some extent be overcome. This does not mean that the fate of the major issues of life and death confronting the country can be dealt with by Senate committees, but these committees can enhance respect for the parliamentary institution. People from many parts of the world must have found it puzzling, at the time when Eastern Europeans were struggling to have free elections, that the most common complaint about elections here in Australia is that we have too many of them, that somehow this is an insult to the Australian people - that they have elections once every couple of years and sometimes even once a year! People have to go to the trouble of walking to a polling booth and re-electing or defeating their government. I think this is to a large extent a result of the poor regard in which Australian politics and Australian politicians are held by the Australian people.

I believe that Senate committees have done valuable work, and even if they have been hindered by governments, they certainly still have more resources available to find out what is going on, than does anybody else. Because of their ability to call witnesses they certainly can do a lot better than any journalist or any private citizen in finding out what is going on. There are facilities open to Senators (and other Members of Parliament) to complain, on the record, about any attempt by government to withhold information or to mislead the public.

The Senate's committees have not only been useful in what they have been able to achieve, but, I think, much more importantly than that, that at a time when the parliamentary system in Australia is held in poor regard and where major statements are not made within the Parliament, but are made on television or at football matches, they have helped to save Parliament from becoming completely redundant.

This exhibition, *The World of Senate Committees* commemorates the establishment of the Senate's Legislative and General Purpose Standing Committees and Estimates Committees twenty years ago. I have much pleasure in declaring the exhibition open.

Session Two Senate Committees - Keeping Parliament Responsible

Mr EVANS - For this segment of the conference our principal speaker is former Senator David Hamer who has recently retired as a Senator and from the position of Deputy-President of the Senate, and who has had a leading role in recent developments in the Senate committee system. He will be speaking on the somewhat cryptic title Senate Committees - Keeping Parliament Responsible.

Mr HAMER - Mr Clerk, ladies and gentlemen: I hope to be more controversial than those we have heard so far, because all is not sweetness and light and ease with the committee system or the parliamentary system. When Walter Bagehot wrote, in 1867, his seminal work called *The English Constitution* his main thesis was that the political system, as it was, bore no relation to the political system as it was portrayed. It had changed at least thirty years before. He argued that what everyone was talking about - the way the political system worked - was based on the settlement of 1688, where you had a separation of powers between the executive and the legislature in the Parliament.

He argued that since the first Reform Act of 1832 this had completely changed. The House of Commons performed both functions: choosing the executive - as he said, it could choose and dismiss as it liked - and the quite separate task of being the legislature. He claimed that the Commons could dismiss whom it liked, appoint whom it liked, but was not bound to accept the proposed legislation of the executive it had chosen. The essence of his system was responsibility: the responsibility of the Cabinet to the House of Commons, and the responsibility of the House of Commons to the people.

It will be my thesis that 125 years later we will fall into exactly the same trap. We are still talking as if the system he described, which is an accurate description of what it was in his time, still applied when what we are doing now is as out of touch with what he described as the previous system was when he spoke. What has happened since then has been the enormous growth of party discipline. What we now have is not a responsible government; it is a party government. Australia has gone to the extreme lengths of viewing all legislation as a vote of confidence and any legislation amended by the House of Representatives against the Government's wishes as a vote of no confidence in that Government. This is an extreme version of party government.

What has been going on in the executive? The Government has been confusing executive power with legislative power. In fact, the Government regards the two as synonymous and the Government is no longer responsible to the House of Representatives. The House of Representatives chooses it, to use the American expression, as an electoral college, but thereafter the Government knows it is not going to be thrown out by that electoral college. It has tenure as long as it can hold its party together. Its responsibility is to its party, not to the Parliament. Very recently, the Treasurer said that Question Time in the House of Representatives was not a right, but a privilege granted by the Government.¹ I think the sense of responsibility has gone slightly astray there.

As far as legislation is concerned, the Opposition does not intend or hope to amend Government legislation. It debates it, tries to make points with a view to winning the next election, and tries to become the next electoral college. As far as legislation is concerned, the House of Representatives is a mere rubber stamp. You can see it perhaps in its extreme form at the end of a session where forty bills can be guillotined through the Parliament in a week with virtually no effective debate. That is not a legislature and it cannot be a legislature under the present system. I am not saying it does not do anything. It acts as an electoral college; it acts as a sounding board for the next election. I suppose you could say that it puts the senior members of the Opposition, the alternative Government, on the public payroll. It does those things, but it cannot be a legislature. You could ask, I suppose: 'Does that matter?'. Why do we not have an elected dictatorship, to use the words or the expression I think first coined by Thomas Jefferson, but repeated more recently by Lord Hailsham, two very different characters separated by two hundred years? But that is not what we are discussing today.

I would love to argue the damage and dangers of an elected dictatorship, but what we are trying to argue is how we have responsible government. I am making the point that the Government feels responsible to the government party; it does not feel, in any significant way, responsible to the House of Representatives.

¹ Commonwealth Parliamentary Debates (Hansard), Vol.H.R.164, 24 November 1988, p.3206

If you are going to have a legislature, under our system all you have is the Senate, and the Senate is a very good legislative body. Proportional representation ensures that the Senate represents, more accurately than the single member constituency system in the House of Commons, the range of views in the community. It is, admittedly, slightly distorted by the fact of equal representation of the States. Nevertheless, the composition of the Senate is much more representative of the general viewpoints of the community than the House of Representatives, with single member constituencies, ever can be.

It is also vital, if the Senate is going to perform as a legislature, that it is not controlled by the Government. Under our system of twelve Senators for each state and two for the Australian Capital Territory and for the Northern Territory, and the system of electing Senators by proportional representation, it is most unlikely that the Senate will ever be controlled by the Government, and with party discipline as it is, once you have a legislature controlled by the Government, it functions very poorly.

If the Senate is a legislature keeping responsible government alive, how does it do it? I would like, firstly, to draw out one area that people do not look at very often and that is delegated legislation - regulations. The Senate has had a committee dealing with those matters for sixty years and it calls on the advice of an eminent lawyer who goes through every regulation. About fifteen hundred regulations are issued each year. By a quirk, when the Acts Interpretation Act was written in 1901, each House of Parliament, separately, was given the right to disallow regulations. No government would contemplate doing such a thing now and in other jurisdictions it is always that both houses have to do it; that is, the Government controls the lower house, meaning the Government is in control of whether regulations are disallowed or not. But in 1901 the concept was that the House of Representatives represented the people and the Senate represented the states. It was logical to give each house, separately, the right to disallow regulations it did not like.

What happens in the Senate is that each instrument of delegated legislation is examined by the Standing Committee on Regulations and Ordinances, and if it breaks certain rather formal rules, notice of disallowance is given. The rules show the way in which that Committee operates. They are: to look at each regulation to see that it is in accordance with the statute; that it does not trespass unduly on personal rights and liberties; that it does not unduly make the rights and liberties of citizens dependent on administrative decisions which are not subject to review on their merits by a judicial or other independent tribunal; that it does not contain matter more appropriate for parliamentary enactment.

Now most of these rules are basically non-party political, although the last one has some potential party political elements, and the Committee is nearly always unanimous; it gives notice of disallowance and the Government usually gives in or compromises. In fact, my impression is that Ministers are usually slightly surprised at what their public servants have been trying to get away with. Anyway, there is normally an agreement reached, an offensive regulation is withdrawn and the system works very well.

There is one of the Committee's rules that I draw particularly to your attention and that is the one with respect to containing matter more appropriate for parliamentary enactment. There is a tendency to widen the scope of regulations rather than include such material in the principal Act. Sometimes that is necessary for future examination and development. Too often, matters that should be in the main Act and debated by the Parliament are put into regulations. I think that is an area where the Regulations and Ordinances Committee has got to be rigorous to see it does not happen. That is not to say, by the way, that although we can disallow regulations which are what might be called improper in the way they operate, the Senate retains the power to disallow regulations on other grounds.

The most dramatic instance of the Senate's power to disallow regulations concerned the Australia Card, which required a regulation to bring it into operation. The Senate gave the warning that it would not pass such a regulation, and the whole Australia Card scheme collapsed.² In that way, the Senate was reflecting the general wishes of the community more accurately than the Government or the House of Representatives. That is a very rare use.

One other matter I should mention is in relation to the commencement date of legislation. In my view, all too often these days, the Government is putting in clauses that allow it to decide when laws that are passed by the Parliament should come into operation. We want to ask ourselves, why should the executive have such a power? Why? The legislature has passed a law which should come into effect. If the Government can see good reasons why a law passed in good faith by the Parliament should not come into effect, it should come back to the Parliament and argue its case. It should not arbitrarily withhold the full enactment of the law because, again, that is usurping the function of the legislature.

² Commonwealth Parliamentary Debates (Hansard), Vol.S.122, 8 October 1987, pp.861-75

The Regulations and Ordinances Committee is well established, as it has existed for nearly sixty years. I would like to draw everyone's attention to that fact, even though it was firmly opposed by the Government of the time when it was first set up. Governments do not like what they are doing to be looked at.

Based on the success of the Regulations and Ordinances Committee, a Scrutiny of Bills Committee was set up in 1981. This was to do essentially the same job with bills, using the same sort of terms of reference. In my view, it is not yet as successful as the Regulations and Ordinances Committee. The matters which are usually raised in the Committee are sent around to all Senators. As yet, it has not developed a method where, as a united group, it can impose its will on the Government. There is no machinery to ensure that it can make the Government come to heel, as there is with disallowance. It should have that. I draw your attention, again, to the fact that the setting up of a Scrutiny of Bills Committee was opposed by the Government.

We now come to the matter of the consideration of bills. They can be, in fact they nearly always are these days, considered in the Committee of the Whole. The Government does not control the Senate. The way bills tend to get through is by a process of deals; however, that is a very inefficient way of dealing with complex legislation. After the next election, the balance of power may be in the hands of independents. At the moment, the balance of power lies with the Australian Democrats, and the Government has been doing deals with the Democrats, saying: 'We will accept your amendment to this, or two or three amendments', which is very satisfactory to the Democrats. The trouble is, from the point of view of proper legislative procedure, that the Democrats are then locked into supporting the remainder of the bill and also refusing to send it off to a committee.

As one leader of the Australian Democrats said to me when I asked him why they would not support what was, in my view, a very defective, non-urgent bill being examined by a committee, he said: 'Oh, we have got our four amendments agreed to; why should we want to go off to a committee?'. That is the danger of trying to do complex drafting of bills by agreements on the floor of the chamber. A number of bills have been sent off to our standing committees - about four a year out of 180. That is not very many, bearing in mind that in the House of Commons, for instance, virtually every bill goes off to a committee. Some committees have never had a bill referred to them. I think I am correct in saying that governments oppose bills going to Senate committees.³ Their attitude is: 'This bill has been drafted by the Public Service, been through Cabinet, been through party committees, been through party meetings, possibly outside bodies and we have all agreed on it, why should Parliament be examining, correcting and altering it?'. What the Government wants is a rapid rubber stamp from both houses of Parliament. This applies to all governments, not any particular government. They do not want committees to examine bills and find defects in them though I think that it is the almost universal view that bills that have been referred to committees have been greatly improved.

As a result, in 1988 the Senate set up a select committee to look at the question: should more bills be referred to standing committees and, if so, how? That Committee reported in December 1988.⁴ I was a member of that committee and we were conscious of two particular matters. The first was that we could not produce a system that would create unreasonable delays in the passage of legislation. In my view legislation is very rarely as urgent as the government contends. Nevertheless, you could not have an enormous backlog of legislation.

The second matter that occupied our attention was that if we were going to have separate committee hearings on bills the Senate would have to sit longer, and we found no enthusiasm amongst Senators for sitting longer. I think there should be more enthusiasm. After all the Senate sits for about eighty days a year - it will be much less this year with the election and the very short Autumn session. The House of Representatives sits about ten days less. The Canadian and British Parliaments, to take two examples, both sit for double that time - about 160 days a year - and, incidentally, they pass about one third the number of Acts per year that we do. When looked at on a productivity basis we pass six times as many bills per day as they do. That is one area where high productivity I do not think is admirable. I think we should sit longer, but there are difficulties.

The first problem is that the political expectations are that Senators will be back in their states. This does not really come from the electorate as a whole; it comes from party members. All Senators know that feeling - you are expected to be back in your state, what are you doing wasting your time in Canberra, you should be opening a tea party somewhere in Victoria or whatever state it is. That is one thing. It is a genuine problem.

³ See Senator Durack's comments, p.49

⁴ Commonwealth Parliament, Senate Select Committee on Legislation Procedures, Report, Parliamentary Paper 398/1988

The second problem is the amount of free travel that Senators get. I have not checked recently, but it used to be the case that American Senators were eligible for four free trips home a year. Our Senators have limitless travel. For instance, when they tried to reorganise parliamentary sittings so that they sat from Tuesday to Friday one week and Monday to Thursday the next, the idea was that people would be staying in Canberra over the weekend. No one stayed in Canberra. That is no reflection on Canberra; they just preferred their homes. This included Western Australians who went home on Friday afternoon and came back on Sunday night. No one stayed in Canberra. Everyone wants to get away and I think the free travel is one of the factors that makes it more difficult to keep people in Canberra longer.

The third problem is that the minor parties in our system have no representation in the lower house. Therefore they have to do in their own states many of the functions that would be carried out by the representatives of the major parties. For those reasons there are great difficulties, in a sense, with sitting longer but I think the Senate should sit longer and the Senate certainly should not be governed in how long it sits by the House of Representatives which, as I said, is an electoral college, a political stage, but not a legislature. Why a legislature should have its length of sittings decided by a body with totally different functions is not clear to me.

Anyway, the select committee looked at the matter and made some suggestions for saving time in the Senate's procedures - I was always doubtful whether in fact they would work because they required goodwill and cooperation. When people are given opportunities to talk, goodwill and cooperation are not usually very evident. The suggestions could work, but I do not know whether they will. In my view the public examination path is vital. The reason something like the Regulations and Ordinances Committee works so well on a bipartisan basis is that it gets expert apolitical advice on pointing out technical problems or difficulties. If all they got was political advice, they would split along political lines. These standing committees, if they are going to look at bills, must get criticism from people without a political axe to grind on how the bill would work, what its problems are or what unintended consequences there might be. Therefore, it is vital they should take public evidence. Also, although I hate to use the word, if it took public evidence it might reduce the amount of alienation in the community from the political process. People feel they have no involvement in politics, no chance to influence it. If proposed laws that were going to affect them were open for their criticisms, it would be an improvement.

The second recommendation of the Committee was that there should be a Selection of Bills Committee, which is really the Whips committee, that would recommend which bills go to which committee, and by when the committees should report, and at what stage the bill should go to a committee. In my view, bills should very rarely go to a committee before the second reading. The second reading can properly be decided and determined on the floor of the Senate. Normally a detailed examination of a bill's provisions and possible difficulties in wording should be made by a committee after the Senate - representing as it does, pretty well, the strands of political opinion in the country - decides whether it wishes the bill to go ahead. There was an arrangement for the Selection of Bills Committee's report to be considered daily by the Senate in regard to what bills should be referred.

Finally, and perhaps most controversially, the Committee recommended that each Wednesday should be set aside as a committee day. It was deliberately put in the middle of the week so that Senators would not be tempted to go home. The Senate would sit on Tuesday and Thursday, and Wednesday would be a committee day, to get good attendance.⁵

But there were problems with this system. Firstly, there was the disruption caused by the election. The report was produced -I have it here; it is worth reading if anyone is interested - before the election. No one knew who was going to be in government, so both sides were genuinely looking for a good solution. No one knew who was going to be in opposition in the next Parliament. But the election caused disruption, the short Autumn sitting caused disruption, and the system is only now gradually coming into existence.

The Government, having won the election, became more questioning about the desirability of doing it at all. I think that has been reduced; nevertheless, it is an inevitable result of government. I repeat - governments do not want Parliament to look at their laws. They want Parliament to rubber-stamp them.

I would like to see a situation where all bills, or virtually all bills, go to a committee, because the ones that sometimes contain the most traps are the ones everyone agrees with. Everyone agrees with the bill because it is a good idea; no one looks at the fine print of the clauses. So they are the ones that perhaps should be quickly scrutinised with outside assistance to see that there is nothing in them that should be amended.

⁵ The Senate ultimately decided that Friday should be set aside as the day on which bills should be referred to committees.

But if we can make this advance, converting the Senate into a proper legislature - recognising that the House of Representatives, whatever its qualities, is no longer a legislature, cannot be a legislature - if we can accept that and convert the Senate to do that role properly, we would have made the most dramatic advance in the system of responsible government that has been achieved for nearly a century.

Mr EVANS - Thank you, Senator Emeritus David Hamer. As the first of our panellists, we are very privileged to have a very distinguished serving Senator, Senator the Honourable Peter Durack, a Senator of very long standing - the father of the Senate, in fact the longest serving Senator - and a former Attorney-General.

Senator DURACK - Mr Chairman, members of the panel, ladies and gentlemen: I puzzle somewhat over the title of this session: *Senate Committees - Keeping Parliament Responsible*. I think what we are really talking about is keeping the Parliament up to its role under a system of responsible government.

In any democracy, whether it is the Westminster model or not, there is of course always great tension between the executive and the legislature, and those tensions are resolved in the United States by the sort of very formal process, the very public one that has been going on recently, between President Bush and Congress to get a budget through under the pressures that the system has already put in place under the Gramm-Rudman Act.

In our system - which is broadly referred to as the Westminster system, of course - we have sought to resolve that tension by having Ministers as members of the legislature, and part of the legislature. The theory of that - as Mr Hamer has already referred to, espoused very clearly 150 years ago by Bagehot - has worked in its own way, but certainly in modern times it has not worked very well, and there have been all sorts of ways of trying to improve that relationship and to lessen those tensions, if in fact they ever can be lessened. Probably it is good that there are tensions; that is part of the lifeblood of our process of democracy. Nevertheless, those tensions have to be resolved. Over the last twenty years or so there have been very great advances made in resolving those tensions and in ensuring that the executive is more responsible and accountable to Parliament and indeed to the people. One of those ways - which may be discussed today, I do not know - is of course the development of the system of administrative review, a very elaborate system in Australia. Probably we have led the western world in that sphere. Professor Pearce is quite an expert on it and in his role as Ombudsman has contributed greatly to that process.

There are a whole series of steps in that direction over the last twenty years that I do not propose to go through, but certainly it has been a very important development. During this same period, however, there have been very great advances within the Parliament itself, that is the federal Parliament, but particularly by the Senate, and there is no doubt whatever that the Senate has played the leading role by far in making its contribution to the resolution of this problem.

My first experience of Parliament was in the lower house of the Western Australian Parliament in the mid-1960s, and the experience there was very salutary. One found that there was no standing committee except the Standing Orders Committee, which had not met for about seven years when I joined the Assembly. There were no other standing committees. There was the odd select committee, but they were very rarely appointed. Ministers brought in bills, and would not allow any word of a bill to be changed no matter how inappropriate it might be. There was this rigid dominance, or rigid attitude by the executive dominating the legislature and, from what I have heard, that was the position which applied in the federal Parliament as well during that era.

I suppose if one is frank about it, it probably still applies pretty considerably in the House of Representatives. But for various reasons, that has certainly changed in the Senate, and I had the good fortune to become a member of the Senate just after these revolutionary changes, which have been outlined during the first session this morning, were made. All I can say is that there has been, and now is, a vastly different attitude to the question of responsible government in action in the Senate than there was twenty years ago in the Western Australian Legislative Assembly. I might say that there have been improvements in Parliaments around Australia as well over these years, but I think in many ways that leadership has come from the Senate.

The committee system that has been established definitely contributes to the resolution of that tension between the executive and the legislature. The Estimates Committees probably have been the most revolutionary in the sense of providing information to Parliament, but the process of the standing committees of the Senate has also made a remarkable contribution.

The question has been asked earlier this morning by Professor Sawyer: what about the role of the House of Representatives, what about joint committees? Certainly, there are a number of joint committees that

have been established in recent years and many of them statutory committees; there are also select committees. One of the most noteworthy, in my view, is one that I, in fact, established as Attorney-General - a joint select committee to review the Family Law Act which had come into operation some years ago. It was, of course, a revolutionary Act. In many ways, decisions were made on a non-party basis. I thought it was a very suitable that both Houses of Parliament should participate and provide a sounding board for community opinion about the way that Act was working. There are now proposals that something similar should be done again.

By and large, the House of Representatives has not proved very good at establishing a committee system. I do not know why that necessarily should be so. When all is said and done, it works very effectively in Westminster, as again Professor Sawyer has noted. But here, it seems the responsibility has been left to the Senate and that responsibility has been taken up by the Senate, and I think has been very successfully discharged by it.

There are, of course, reasons for this. Obviously, the fact that the Government by and large is not game to control the Senate has contributed to its success. It also involves, as Chris Puplick mentioned earlier this morning, having bloody-minded Senators who are prepared to buck their own party from time to time, and that is not confined only to Senators on one side of the chamber. Nevertheless, there obviously are a number of reasons why the Senate has had this opportunity. The important thing is that it seized the opportunity and has given the leadership and has done a lot to resolve this deficiency in our system which was so apparent to me, as I said, twenty-five years ago when I first joined the Western Australian Parliament.

One of the least successful features of the Senate committee system has been the failure to refer many bills to Senate committees. David Hamer has already indicated the report of the Select Committee on Legislation Procedures, and that report is in the process of being implemented. Indeed, in the usual parliamentary style there has been considerable behind-the-scenes negotiations going on between Government, Opposition, Democrat and independent Senators. We are probably going to come up with some compromise to determine what bills should be referred to committees and when those committees should sit. It may not necessarily be on a Wednesday as has been recommended. But these are minor matters. The fact is that a lot more bills will be referred to Senate committees - the standing committees of the Senate - than have been in the past.

I also take issue with David Hamer that governments have always resisted referring bills to committees. He should not have said that because he was a member of a committee that reviewed the Freedom of Information Act. That was not resisted; the sending of the bill to a committee was not resisted. Even though I might have had a lot of difficulty with the recommendations of the committee, governments have not always resisted sending bills to committees. It is very interesting that the Government of today has not resisted this proposal and there is a more formal process for sending bills to committees. I am sure that will be only beneficial.

There are some bills, of course, that are more appropriately dealt with by committees than others. I think taxation bills, for instance, are ones which have been badly neglected by Parliament, and I am hoping that they will be corrected by the new system. But, certainly, the Committee of the Whole debate in the Senate, I hope, will not be lost as a result of this process. I think, in fact, the committee report will only assist and improve the debate of the Committee of the Whole. That is another area where the Senate has been effective in the past, whereas the House of Representatives has not been. I am looking forward to an improvement in the whole process as a result of the latest initiative in the Senate.

Mr EVANS - Our next panellist is a recently retired Senator, John Black, who will, no doubt, be remembered, in the immediate future anyway, as the Chairman of the Standing Committee on Environment, Recreation and the Arts which carried out the Drugs in Sport inquiry.⁶

Mr BLACK - I will continue the Mutt and Jeff act that Chris Puplick was kind enough to initiate on our behalf this morning and respond to the question that he asked. I think that a goodly portion of the recommendations of my Committee will be adopted by the Government - those relating to law enforcement and regulation of the professions. I have less optimism about those recommendations relating to the regulation of sport. Every now and again in the Labor Party we slaughter the odd sacred cow, but I am afraid that one is still roaming free.

I also would like to take up a point that David Hamer introduced when he was talking about Paul Keating and the attitude of the executive to the Senate and to the Parliament generally. I bring into the

equation, because it has not been done hitherto, the role played by the media and, of course, by the Democrats.

As a naive young Senator, I was really chuffed to make it to my very first Caucus meeting because I had the view that is where things really happened in government. I can recall reading about the days of the Whitlam Government when the Caucus presumed to move some amendments to budgets and, in some cases, was relatively successful in doing that. It created a little bit of a disturbance at the time, but it ensured that Caucus remained relevant to the procedures in this place. I sat at my first Caucus meeting for my first Budget briefing. In came the Treasurer, still with the make-up which had been freshly applied for the press conference to the journalists in the lockup. The idea was that if we changed anything that he had already given a press conference about, then it would embarrass the Government to the extent that the pressure would be intolerable. Hence we were told that we could not change anything in the Budget because the press had already been told about it.

We got the briefing about what the figure was going to be - at that stage I think it was still a deficit - and we were exhorted not to tell anybody about it because it would reduce the media impact. This was so, although it was about five to eight at that stage and the Treasurer was about to walk in and tell the world. So we had been given this pretty important piece of information and we were, as I say, feeling pretty chuffed about it. Walking back to the Senate side to listen to the Budget being delivered there, we ran into the Democrats who were told about it two hours before because they got their own special briefing.

So if you have a look at the order in which people are actually told about the Budget it gives you an idea as to their various positions in the pecking order. The Finance Minister is briefed at around about 2 o'clock in the afternoon and the Cabinet shortly after that. But they go through the figures so fast that you have to write them down really quickly so you really cannot get an accurate figure. Then come the Democrats and the second eleven, the outer Ministry. Then the Treasurer puts on his make-up and goes to talk to the media. Then comes the Caucus and a few minutes after that the people. That will give you a pretty fair idea as to the hierarchy of things around here. It also reinforces my next point.

When I was chairing the Senate Standing Committee on Environment, Recreation and the Arts, I presented a couple of reports before I dealt with drugs in sport; one was on Kakadu National Park, and the other was on the environmental impact of development assistance. The intellectual input into the report on Kakadu National Park was far superior to anything that I think either my Committee or I were able to do with the later ones. It was a good deal more complex. Similarly, the environmental impact of development assistance was a very difficult thing to deal with, but because the media had not been involved in the early stages of those inquiries, it felt no commitment to and had no involvement in the process itself, and hence there was very little media support for either of those recommendations. After that, I resolved to involve the media at all stages of the drugs in sport inquiry. If I had resolved to keep them out of it, they probably still would have been involved, but I think that was a very successful part of those inquiries.

If we are talking about making Senate committees more relevant, the media have to be direct participants in the process because they can effectively put pressure on the executive to be responsive to what people actually want. There is no doubt that, to varying degrees, Cabinet Ministers act as representatives of their departments. If they can get their departments' views through the Cabinet, and if they do not have a Senate to worry about, it is all plain sailing and the Public Service can go on running the country the way it feels that it should, without having any nuisances like me asking questions about where the money is being spent. So I think that the media have to be involved and that is something that has to be taken into account.

I fully support all of the decisions that have been taken to open up the Senate to television broadcasting. In fact, I fail to see what logical grounds we can use to discriminate against television as a legitimate arm of the media. I was always at a loss to understand the reasons. I think, frankly, that some of my colleagues were afraid of the bright lights. Do not ask me why.

As far as the Senate committees are concerned, I think another thing that we have not touched on, that ought to be dealt with, is the extent of the pay for members. I am not one now, so I can talk about that. I can tell you it is bad. There is not a great deal of incentive to become a committee chairperson; you need to be a bit masochistic or you are simply told to do it because the Manager of Government Business has to find about forty of these chairpersons. So you have to be pretty bad not to get at least one. So there is no incentive there. Everybody wants to be a Minister, because the pay is better. I think committee chairpersons receive about \$6,000 a year.⁷ If you compare that amount to the amount paid on a daily

⁷ At the time of this Conference, the Chairman of a Senate standing committee was receiving an allowance of \$6 310 per annum, and the Chairman of a Senate select committee an allowance of \$1 718 per annum.

basis to at least one of the commissioners conducting an inquiry into Aboriginal deaths in custody, you will find that we get paid about as much in a year as one of the commissioners gets in a day. So it is not a really big incentive. I think if we allied a move there with a move to remove the Ministers altogether from the Senate, then you would actually find the Senate doing the job that it is supposed to do, and that is to keep an eye on the Government. Clearly, nobody else within this place is actually doing that at this particular time. The media does it from time to time to varying degrees, but not with outstanding success because they tend to become bit players in the process.

I think if it is handled correctly, and dealt with on an issue basis rather than on a party basis, the committees can work effectively. I had no party votes whatsoever during the course of the two-year inquiry into drugs in sport. When the committee membership changed after the last election, I think I had two within forty-eight hours, including a rescission motion. So I think that is an extremely important part of the whole process. You have a problem where Senators see their role as the chairperson of a committee as being part of a stepping stone, if you like, to greater things, and everybody aspires to be in the executive and hence they want to defend it wherever they can. So you get the situation arising now where the Whips and the managers of business call all the chairmen of the committees together for a bit of a pep talk about not letting these committees get away with scrutinising government actions too much: 'You are working a little bit hard, fellas, just slow it down a bit'.

The same sort of thing goes on with the Estimates Committees, where the legislative body, which is the Senate, is basically drawn into a conspiratorial role, whereby it acts as protector of the Government. Of course, at those informal discussions - you will be pleased to know this, Harry - we all say very nice things about you and your defence of the Senate committee system.

I think that it is true to say that the Labor Party has not been very supportive of the Senate in the past. I can recall a situation when it was against party policy to actually retain the Senate, and we supported the abolition of it. That was a very strongly held view in the Queensland ALP - which I think is probably a pretty good reason why you should not support it. In fact, one Senator who had all the right qualifications, the right trade union background and so on, and the numbers to be preselected some years ago, was actually asked what he thought about the Senate. Instead of saying he thought it was an appalling organisation and should be abolished, he actually supported the Senate. Of course, he lost the vote. From then on, everybody was sent off to the Senate after reciting the fact that they felt it was a body which was unworthy and should be abolished as an impediment to the democratic processes.

In conclusion, I think there are a number of things that can be done, the sorts of things I mentioned about the number of Ministers in the Senate and the level of remuneration and so on. They are things that could be put in place without a great deal of change. I do not think any legislative changes would be needed. Then you would create an incentive, I guess, for the members of the Senate to develop some sense of pride in being members of the legislature. As things now stand in other countries, such as the United States, people can aspire to a career as a member of the legislature and hold their heads up proudly and say: 'I did a good job; I was responsible for this piece of legislation or amendment'. It can be quite a satisfying career without entering the executive. In Australia, because the executive is selected from the legislature, both the Senate and the House of Representatives, the executive is the ultimate goal to which all the members aspire. Whilst that remains the case, then the Senate will make a good deal less progress in acting as an effective watchdog on the House of Representatives or the electoral college, as David called it. Thank you.

Mr EVANS - Our next comment comes from a very distinguished academic who has maintained a great interest in parliamentary matters over the years, and now occupies the position of Commonwealth Ombudsman: Professor Dennis Pearce.

Prof. PEARCE - This morning's session sounded to me the sort of thing I get all the time from the executive: 'We are all splendid chaps, and one should not dare question us'. I was beginning to wonder how this whole conference was going to proceed. But I think it changed its tone from Chris Puplick on. I think this session has served very usefully to reveal a range of matters that it is necessary for persons interested in the Parliament to address. The committee system has taken us a certain way, but there are still matters that need attention which the future is going to require the committees to look at if they are going to live up to their early promise. I want to deal with two matters in that context. One of them did get a fairly extensive mention in David Hamer's presentation. But there is an aspect of it I would like to follow up, and that is this question of responsibility for legislation.

The committee system that was set up, and which we are here now to celebrate, is, of course, the Legislative and General Purpose Standing Committee system. The legislative side has not had much emphasis at all, although the Senate has two committees which have been concerned with legislation.

David Hamer mentioned those. They are the Regulations and Ordinances Committee and the Scrutiny of Bills Committee.⁸ The Senate is justifiably very proud of the Regulations and Ordinances Committee. It says so with frequency, in fact, to the point where in relation to that Committee I just see some dangers of complacency creeping in. Nonetheless, it has served an immensely useful purpose, and it has picked up that element of the legislative package which must not be neglected. In sheer volume it far exceeds the bills element of the legislation. It does not matter much whether you are prosecuted under a section of an Act or a regulation. It hurts just as much, as the controls that are imposed by delegated legislation are just as significant. So, the Regulations and Ordinance Committee has had a fairly significant task. It has managed to achieve that because of the support that it has received from the Senate.

It is a very different tale for the Scrutiny of Bills Committee. I was the first adviser to the Scrutiny of Bills Committee. We had great hopes for its value as a body, that it would do for bills what had been done for regulations by the Regulations and Ordinances Committee. It was intended that the Scrutiny of Bills Committee, among other things, would coordinate with the Regulations and Ordinances Committee because the pattern of delegated legislation can only be that which is directed by the primary legislation. The Scrutiny of Bills Committee has not really come up to the mark. I think that is fair to say, and I think David Hamer indicated that. Others who have been involved probably can give a better insight than I can about the reasons, but certainly it has not had the support from the Senate that the Regulations and Ordinances Committee has had. It has made reports, but there has not been the follow-on to take steps to implement what the Committee has said that has occurred in relation to the Committee concerned with delegated legislation.

I would hope that this new move to refer bills to the Legislative and General Purpose Standing Committees may break this pattern. I would hope that the way to the future for the Senate on the legislation side is to see itself functioning on a coordinated basis, which is something it never has seemed to have done. So the impact of the whole legislative package runs through Legislative and General Purpose Standing Committees, the Scrutiny of Bills Committee and then if the committees can coordinate their activities we will get, I think, true responsibility for legislation. So I see that as being a point at which the committee system is at something of a crossroad. It can go forward and assume a much more significant role than it has up to date on the primary legislation side - a role that might be equivalent to that which it has provided on the delegated legislation side.

Another little point I wanted to pick up - quite briefly, because we are very much down on time I can see - follows on from what Senator Durack has said. The administrative review system was largely set up because it was felt that the Parliament was no longer carrying out its function of being responsible for executive action vis-à-vis individuals. I think it is almost at the stage where the Parliament has, to a large extent, abdicated that field for Ombudsmen, the Administrative Appeals Tribunal and the multitude of other tribunals that have been set up.

What I would like to see happen, which does not seem to me to be happening, is for there to be feedback to the Parliament from those administrative review bodies. By that means the Parliament can reassume a responsibility for an area in which it is either not doing terribly well or which it has completely abandoned. There has been a failure to make use of these institutions which are out there looking at the interrelationship between the executive and the individual in a manner that is of considerable significance to the public in general. For example, the Government has always paid great heed to the Auditor-General's report and uses it for Estimates Committee purposes and other purposes.

There has been no really effective use of the information that is contained in the Ombudsman's annual reports. There have now been thirteen annual reports and they have been reviewed by a parliamentary committee on two occasions. The Ombudsman has submitted only two special reports, despite a power to do so. In relation to those reports the committee concerned endorsed the Ombudsman's recommendations; the recommendations went back to the agencies concerned, which said: 'We are not the least bit interested in giving effect to what you are saying', and that was the end of the matter. That is a problem, I think, that the committees have got to come to terms with, at two levels. One problem is in relation to the administrative review system where a resource that could be used to further increase the power of the Senate is being wasted. Secondly, I do have a feeling with the committees that they get topics, they deal with them, they report on them and they say: 'Thank God we have done that, and now we will go on to the next one'. There is not sufficient follow-up to committee reports. I think that is an element of responsibility that the Senate committees need to grapple with if they are going to roll forward from the splendid start that has been there over the last twenty years, and make a really effective system for the governance of our country.

⁸ These two standing committees are generally referred to as the legislative scrutiny committees.

Mr EVANS - We are very pleased to have Professor Diane Yerbury, the Vice Chancellor of Macquarie University, who will give us another view from, I think I could fairly say, a totally different direction.

Prof. YERBURY - Thank you very much, Mr Clerk. I guess the reason I am here is as living proof to quaking public servants and shaking statutory officers that there is life after the Senate Estimates Committee, having survived some marathon drilling, especially from Senator Michael Baume of the Waste Watch Committee in one of my previous existences as Chief Executive of the Australia Council. It is that aspect of parliamentary scrutiny that I want to talk about, and well might these hapless officers quake and shake.

I am not going to reassure them by airily pretending to those who have yet to undergo this twentieth century version of the Spanish Inquisition that there is really nothing to it. With experienced inquisitors, with the appropriate fanaticism and lack of mercy, no detail of operations is too insignificant for their attention, no contract or grant too modest, no expenditure too routine to be passed over without scrutiny and commensurate misery for the officers concerned.

I have read somewhere that people who have swotted for the sort of three-year final exams that we used to torture students with go on having bad dreams about exams on and off for the rest of their lives. In my case that was well deserved because I managed in one never-to-be-forgotten law exam to get 4 per cent after advising the examiner that trade regulations are regulations regulating trade, after which I ran out of ideas. That is indeed the sort of experience that nightmares are still made of 30 years down the track, and I am sure you will have no difficulty in appreciating the nightmare-making qualities also of defending the Community Arts Board's 'Art in Working Life' program from Senator Michael Baume's relentless questioning as to why we gave a particular grant, say, to an anarchistic performance group to parody life on the assembly line and the details of how every cent of that was actually spent. He could keep up that sort of questioning for hours tirelessly, and we would prepare ourselves for days for this ordeal by Baume quite literally by having a couple of our more obsessive and sadistic officers impersonate him. They would pounce on us, unannounced, at any time of the day and often late into the night, with remorseless interrogations, and quite seriously, this was part of our homework to manage this exam to beat all exams. The Senators probably had no idea what they were inflicting on us.

Some Senators were obliging enough to have their research officers telephone our authorities or departments beforehand with sudden and esoteric questions about matters in which they had never previously shown any interest whatsoever, but which, carefully nurtured, might just yield the stuff that political and bureaucratic embarrassments are made of.

Truly we would go down on our knees before our little cots at night, ladies and gentlemen, with pathetic gratitude for such unplanned tips. And, sometimes, they actually would turn out to be pointers to what otherwise might have been a ticklish inquiry in the committee.

Another Senator I used to go down on my knees to express gratitude for was actually Senator Chris Puplick, as he then was. A rare breed is Chris. He was genuinely more interested in the arts and getting the best value for public subsidy to the arts than in conducting the longest interrogation in Senate history or tossing in the curliest, most unpredictable, nastiest question that a macabre Senatorial mind could possibly devise. So, he would actually thoroughly brief himself, and even allow us to brief him beforehand and on a continuing basis so that a Senate Estimates Committee hearing was only one part of a continuing accountability process in which he kept himself informed of our expenditures. I sincerely regret that we never managed to persuade him that the Australia Council was really one of the most worthwhile institutions in Australia. We obviously went wrong somewhere.

You will realise that I am addressing my remarks, of course, mainly to the public servants and fellow victims who have to appear before these committees and, as someone who has experienced some dreadful moments at the hands of these fearful committees and has the scars to prove it, perhaps I might be permitted, Mr Clerk, to pass on a few basic survival tips about the homework one can usefully do in advance.

Firstly, I would advise, find out as much as you can about the Senate committee system and what it is all about which, of course, is what you sensible people are all here for today. I do not want to kid you that this background knowledge will actually minimise the pain, but at least you will appreciate more fully why you have to grin and bear it and you might even conclude that it is all in a good cause.

I would go on to suggest, too, that you familiarise yourself with the proceedings, the setting, and the type of questioning beforehand if you have not actually done this before. Go and see for yourselves as an observer and remember it really is a spectator sport - it is like feeding animals at the zoo. Talk to others who have done it and if all else fails, read the Hansard. I know that sounds like a fate worse than death, but it really is a faithful record of what does happen before a Senate committee and much more

faithful, to be honest, than asking others for their war stories. Then, if all else fails, you can actually talk to the Senate officers because they do really know exactly what is going on and are usually very competent, obliging people. I used to pick their brains quite shamelessly.

Then, of course, you can always try talking to the Senators themselves; though some, to carry my zoo analogy a bit further, might argue that that is really putting your head in the lion's mouth. But certainly you should find out who they are, who is likely to ask you questions, and what their particular interest and pet enthusiasms and obsessions are. I used to go further than this and would actually offer to brief them well before the committee hearings - even immediately after a committee hearing while it was fresh in my mind.

Gritting my teeth - and to be honest lying through my teeth - I would write to them or ring them up after a particularly devastating question and say how delighted I was at their evident interest in the inner workings of the Australia Council and the arts, and how happy I would be to brief them on this in future and to take them and show them this, that or the other. Of course, this is not something I recommend you do without letting your Minister's office know.

Next on my list is preparation. If there is any one secret for survival, I would name sheer hard grind. There is nothing like doing your homework and being on top of your facts, and at least knowing enough so that you do know what you do not know, and know when to take the question on notice. I used to prepare very well-organised briefing folders, with the idea that I could look up just about any briefing paper in a matter of seconds. Then, of course, I would have nightmares about leaving them on the plane. Sometimes, too, I found it helpful to take along with me enough copies of information on a particular matter so that I could table it if that question came up. I was never denied permission to table a document and I was once actually thanked, which unexpected kindness almost reduced me to abject tears and to a dangerous desire to tell all.

One thing that is important in your preparation is to make sure that your subordinates tell you all in advance. It is even worth giving an amnesty to find out the unspeakable facts of a disastrous error, at least a couple of hours before a steely-eyed Senator confronts you with it. Sometimes your Minister might also appreciate at least a few minutes advance notice. If it is a big enough organisation or budget, or complex enough, do not forget that you can always spread the misery around a bit. There is such a thing as overkill but I never encountered any difficulty in taking along, say, two officers with me to a Senate committee or inquiry and, of course, then we could divide up the preparation of work between us. So if the Senator asked about equal opportunity for performing seals, that was his job. If he wanted to zero in on the rights of Melbournites to have far more literary grants or huge subsidies for the state opera, that could be her responsibility.

Essentially, what comes out at these committees is what the Government and its leading public servants want to come out. When all else fails, tell yourself that except for the unlikely eventuality that what you have said, or failed to say, hits the press, it will soon be buried and forgotten in Hansard and few people will ever actually get to know the gory details. If that is not the case, and you do gain some often well-deserved notoriety or even find yourself the subject of a parliamentary inquiry or a cause célèbre, remind yourself that this is merely the price of democracy on the one hand, and genuinely improved administration on the other. If even that worthy thought fails to cheer you up, tell yourself: 'Never mind, it may be the waste-watchers chance to be in the sun today, but in twenty years time parliament may just hold another seminar and we can come along and have a few minutes to turn the tables on them'. Thank you very much.

Mr EVANS - Once again we will take a moment for a question, comment, or attack from the floor. I see a distinguished former Senator - Senator Mulvihill.

Mr MULVIHILL - Yes. Mr Chairman, my question is to former Senator John Black. By way of preface, I refer to the danger we all face as Senators on committees in that we must not emulate Joe McCarthy by overdoing our right to interrogate people. I put it to Mr Black this way. Some years ago I had to lean on amateur athletics officials because the money various governments gave them was given to sprinters and none was given to field games girls. As a result of my direct questions, Gael Mulhall got a special grant. I wonder whether you overdid it in questioning one girl about her urine sample.

Mr EVANS - John Black, would you like to respond to that?

Mr BLACK - The questioning that you are talking about, Tony, was conducted *in camera*, so I cannot talk about it. That more or less ends that. What the Committee was concerned about was a situation where there is testing for performance-enhancing drugs and we thought that a lot of legal problems would arise in relation to privacy and so on. We felt it would be good to get the ground rules established before we started to run into the problems.

I think a case in point was the New South Wales Rugby League, which thought it would be a good idea to have drug-testing, but they were not quite sure what they were going to do if they actually caught anybody. We thought about all the sorts of problems that had arisen in relation to, say, random breath tests, where somebody is picked up and refuses to give a sample. That is deemed, in effect, to be a positive sample. We also thought about the problems which could arise, for instance, if the passenger of the car offered to provide the breath sample. What sort of penalty ought to be administered in that situation?

So what we were concerned about was simply a desire to ensure that there was integrity and impartiality in terms of the imposition of penalties. Six months after writing to the management of the sport concerned, and not receiving an answer, we simply indicated that it would be a good idea if perhaps they concentrated their minds on it. That is basically the end of the matter.

Mr HAMER - Perhaps I could answer a question that Professor Sawyer asked before which was not answered in the first session, with respect to the House of Representatives committee system. I will just say very briefly that the House of Representatives set up, in 1987, a system of eight standing committees. I do not think they are what we would like to see, because they have a Government majority on them - which is proper in view of the fact that the Government has more members in that House - but they virtually act under the Government's control. The Minister can give them references to pursue, and because of the Government majority they can only do business the Government wants.

Of course a good committee will investigate matters the Government does not want investigated, to find out why the Government does not want such investigation, but these committees are not working for the Parliament; they are working for the Government. There was a proposal that there should be joint committees on this system between the House of Representatives and the Senate - the idea being, in the proposal put forward, that the Senate committees, who also have a Government

majority, could decide on their own to go on a joint investigation with the House of Representatives. This would result in the Senate committees also working for the Government rather than for the Senate. It was therefore resisted. I do think, although they may do useful work, that the House of Representatives committees must always be regarded as doing work on behalf of the Government - not on behalf of the legislature.

Mr EVANS - There might be time for just one more brief question, comment, or attack. Brian O'Donovan.

Mr O'DONOVAN - I am a former public servant and a lawyer, and have been the object of committees' attention rather than participating in their deliberations. The first comment I would like to make is in relation to Professor Yerbury's instruction on how to go about preparing for committees. That may be very appropriate if you happen to be an officer of a statutory instrumentality, but your Minister may not be entirely happy with your consulting with Senators of both sides if you happen to be an officer of a department. So I think there is some caution to be made there.

That is not really what I got up to say. I really wanted to say, what is this chap Hamer doing? Is he putting the boot into lawyers? Does he want to improve legislation by having it go through committees and having it so good that lawyers cannot make a living? Does he also want to have it start when it gets assent?

I have just looked at the Public Service Act and it has, I think, six subsections under the heading 'Commencement'. Two of its sections commenced on the date of assent, one of those being the short title, the other being the commencement section. The first of them commenced two years after assent and the last of them nine years after assent. All that is in a single section.

Regrettably, there seems to have been a change in the drafting system. I find in the most recent pieces of legislation that the date of commencement of a section is now printed at the end of that section. That seems to me to be a regrettable piece of retrogression.

Prof. YERBURY - Just quickly, I agree that statutory authorities and departments are different in this regard but, even as a statutory officer, I would advise, as I always did, that one lets the Minister's office know that you propose to contact the Opposition and what you are going to tell them. The Minister, in my experience, is not terribly keen on finding out afterwards that the Opposition knows more than he or she does.

Mr EVANS - If I could just make a comment on commencement clauses. Recently there was initiated in the Senate a move to have a statement tabled showing all the provisions of Acts which commence on

proclamation, those which have not been proclaimed, and the reasons for their non-proclamation. The first list when it was tabled so outraged a number of Senators that I think a very effective clamp has now been put on commencement clauses whereby no provision will commence more than twelve months after the date of assent.

Luncheon adjournment

Session Three Senate Estimates Committees - Do These Watchdogs Bite or Only Bark?

Mr EVANS - This session of the conference focuses on Estimates Committees, about which a good deal has already been said. We have this somewhat dramatic title *Do these watchdogs bite or only bark?* We have here to speak on this topic one of those fanatical and sadistic persecutors that Dianne Yerbury referred to earlier on, namely Senator Peter Baume, who is going to use technology to assist him in his address.

Senator PETER BAUME - Thank you, Mr Clerk. My colleagues - past, present and future - and ladies and gentlemen. We can look at Senate Estimates Committees and consider whether their bark is worse than their bite under five headings. We can say that they are better than their detractors allege; we can say that they are not as good as their supporters believe; we can say that the best is yet to come; and we can say that there are some recurring problems, issues or opportunities - call them what you will. Then, and only then, can we look at the question of the bark and the bite. I turn first to the argument that Senate Estimates Committees are better than their detractors allege. First of all, some officers of the Public Service take an unduly adversarial view of the estimates process. Professor Yerbury and Mr Clerk say that some Senators take an unduly adversarial view too. Some officers take a very defensive approach to the estimates, the rule being: say as little as you can get away with. For those people, the estimates process is better than they think it is, for reasons I will set out. The process is improving. The understanding of the estimates is improving and the preparation by Senators is improving.

However, Senate Estimates Committees may not be as good as their supporters believe. This may come as news to some Honourable Senators. A number of reasons offer themselves. Firstly, egomania detracts from good performance and the Senate has a number of egomaniacs. There are new Senators and there are old Senators. There are experienced Senators and there are inexperienced Senators, and new Senators sometimes do not cope as well as experienced Senators. On one occasion, two committees met simultaneously so I requested a colleague to ask some questions on my behalf. Afterwards he sent me the following note:

Peter, I think I was talked off the question of such and such. I was told that it was more related to another department. I did not get much further. Yours sincerely.

He was a new Senator.

Smart Senators do better than dumb Senators. The Senate represents the Australian public. It has both. There is no place for Perry Mason at the Estimates Committees, and we have some examples of people who would like to be Perry Mason. Prior preparation helps and I want to say a little about that. We are presently examining the estimates of the Department of Community Services and Health, and in a moment I will refer to the information provided to us by the Senate Department. That is what I take to the meetings of the Estimates Committee. These folders contain the information divided up so I can use it, interleaved with material which has come to me throughout the year. There are copies of the Hansards to which I wish to refer, particularly the answers given by the same officers last time round. Scrutiny of Bills digests may tell us things we need to know, and there are numerous printed reports, newspapers and other documents, all of which relate to what is in the estimates. Prior preparation is actually an advantage. It is desirable that there be a concentration of effort. You can only do an effective job in depth in a couple of areas in any department. It is not a bad idea to decide what those areas will be and to shut up for the rest of the examination. This is a task some Senators find almost beyond them.

Finally, tedious activity is not the same as effectiveness. That is a lesson not understood by every member of the Senate. However, we have been talking today about an emerging process - about committees which began and which have developed, and which continue to develop, and the Estimates Committees continue to develop. The three points I will make seriatim.

The first is that the potential of Estimates Committees is now understood better and that is an advantage and that is still happening; secondly, there are skills which are improving and that continues; and thirdly, that innovation continues. We will deal first with the question of the potential of Estimates Committees.

The potential of the estimates is now understood better. This yellow document from the Department of Community Services and Health is typical of the documents now received from departments of state for those programs which are on budget. You remember what Senator Puplick said this morning, that one of the arts of government is to take as much off budget as you can. But for those things on budget this is

a very comprehensive and well-prepared document. It has changed dramatically over the past five years.

One of the nice things is that departments are now being introduced to program budgeting, with all that means. Secondly, we are getting better answers. To a question of fact there are actually three answers - 'Yes', 'No', or 'I do not know and I will find out'. It is sometimes quite difficult to get officers to give the third of those answers, but it is happening more often.

The other point about the potential being understood better is that people are now realising there is something in it for them and more and more department heads are leading their departmental teams of officers and, like Senators, the departmental heads are learning a great deal.

We can say that the skills are improving. It is not a bad idea to ask single questions. If you ask six questions, any officer worth his or her salt, will select the weakest of the six questions and answer that one. If you ask a single question then that is the question that must be answered. Secondly, the rules require that we ask questions of fact. Some people cannot do that. However, I can tell you there is no question of policy that I know that I cannot convert to a series of questions of fact. Thirdly, it is a good idea to have some purpose about what you are doing and there are questions of thinking in advance as to what your purpose is - what information you are trying to extract. It follows that one should not go fishing. Fishing is not usually profitable; and I say that innovation continues.

The questioning has changed because, partly, the form in which the estimates are presented has changed. When I first came here, when great and famous Senators present today were at their zenith, a lot of questions were asked in the estimates about tea ladies, indoor plants, and paper clips. Today, because of the presentation of the Budget in program form, there are more questions which go to purposes and outcomes. The questions are changing. Secondly, the Senate is innovative in the way it treats the process itself and we now have a new Senate process which tends to limit, to some extent, what transpires when the estimates reports go back to the Senate. The only trouble is that some of us have found a way to drive a horse and cart through those new processes. But we are moving towards getting a better Committee of the Whole debate later.

We do have some recurring issues and some recurring opportunities. First, the chance to examine the goals and objectives of programs. It is not unreasonable, ladies and gentlemen, to ask of a housing program that someone is housed. It should not be inappropriate under a health program to ask whether the health of anyone has been affected, and yet those questions when first asked raised quite perplexed responses from the officers to whom they were addressed.

Goal and objective setting is not a bad basis for program budgeting, and it is not a bad basis for estimates questioning. If one is going to have program budgeting one must also have some measures of what one has done, particularly in relation to the objectives one has set. It is no good saying our objective is to make Australia great and powerful and our performance measure is to find which day of the week it is. The two do not necessarily fit together and we have had some difficulty assisting in the process of helping people develop performance measures. But, to the credit of the Public Service, the performance measures contained in documents like this are immeasurably better than they were even two or three years ago.

This brings us really to the point of this session. Is the bark of Estimates Committees worse than their bite? You will recall that a quotation that appeared in an editorial in 1970 was given to us, I think, by Mr President this morning in his opening address. The answer as to whether the bark is worse than the bite is to some extent in the eye of the beholder. If you do not like Estimates Committees you will say that they are useless. If you see them as the enemy, you will go away and have a cup of coffee and tell people how well you did in beating those Senators.

However, a department head may learn things about his department he did not know. We once demonstrated to the Deputy Head of Community Services and Health that his department was importing a prohibited substance, that it knew it was doing so, and that it had taken no action to correct it. I thought the Deputy Secretary's eyes would bulge out of his head when that was revealed. He learnt plenty. As far as he was concerned that was not a wasted estimates examination.

Secondly, like it or not, information is obtained and different Senators have different needs for information and different uses. Thirdly, the principles upon which the estimates proceed are now established and the battles of determining what should go in Appropriation Bill (No. 1) and Appropriation Bill (No. 2), fought on our behalf by a previous generation of Senators, have now lead us to the stage where we can get first class estimates documents which we can use. Fourth, education occurs out of the process for all parties, for everyone involved. Fifth, the estimates present a unique

opportunity, one which the House of Representatives does not have and which my colleagues in state Parliaments say they envy, a unique opportunity in a unique legislative chamber.

I finish by making one final observation. The glorious revolution of 1688 did not, in any way, end the struggle of the people against the Crown. It was merely one stage. That struggle continues today. In this country, the Crown is represented by the executive, the people are represented by the Parliament. The battle is far from over. Those of us who serve in the Parliament are determined to use the estimates as one of the weapons in that continuing battle.

Mr EVANS - I thank Senator Baume for that interesting address. Our first comment is to come from Senator Bruce Childs, who is the Chairman of Estimates Committee A.

Senator CHILDS - Mr Clerk, ladies and gentlemen: I have heard Senator Baume's presentation before and by and large I agree with it. I also believe, of course, that one of the key things that should be said is that the estimates system is the main way in which the Opposition has the opportunity of testing the Government. I accept that, having spent time in opposition and I hope not to do it again. I do realise that it is an important opportunity for the Opposition to probe the Government. Having said that, I have some sympathy with the list of points that Senator Baume has drawn your attention to, particularly when he referred to tedious activity. I have just been with an Estimates Committee and we are up to thirty-eight and a half hours of discussion, and we have many more to go. I cannot complain, because essentially with Estimates Committees the personalities of the people that you get in the draw determine, if you like, the length and the nature of the committees. Probably overall they even out. Some people are lucky or luckier than others.

I say this because I am very proud of the fact that we have created a first. We had a 4 a.m. conclusion to a meeting the other day, so that puts me in the record books. I just wonder how long we will go before that is eclipsed by another committee. We also had sandwiches at lunch time today, so we are now doing what a lot of other committees do in this Parliament, and that is to eat while we work. That is another first.

I am not sure that these things are good. They become part of an overall pressure of work and I would just like to draw attention to the fact that what you tend to have happen in this place is additional things to do. I often say it keeps us off the streets. One aspect of committee work that we have to acknowledge is that we are continually finding there is the pressure to do more. This has increased since I have been in the Parliament. The standing committees are looking at annual reports; they are looking at legislation; they are looking at their ordinary work that they are expected to do in references, and now we have an increase in the pressure on Estimates Committees, at least from my perspective. So I would suggest that one of things that we should look at is whether the time that we allocate is adequate.

I agree with what Senator Baume has said. Even though the primary advantage is with the Opposition, it is absolutely true that people are gaining information. I find that, every time I sit through an Estimates Committee, I am learning more about the departments - usually departments that we, as Senators, have chosen to get more information about. So you do have some say where you will go, and you find that you gain more and more knowledge.

I think the other essential thing that Senator Baume has brought out is that we are sensitising officers. You do not know whether you are going to be caught out, if you are an officer coming before a committee. Sometimes you notice the sigh as an officer is relieved of the responsibility of appearing, but all officers have had to think about what they are doing. I think that is a subtle thing, but I certainly believe it is a very significant point.

I would just like to mention a couple of things that I think might be worth looking at. Some of the people who are talking most about how we should save public funds are the people who allow a cast of fifty public servants to wait while they ask ridiculous questions, repetitive questions, questions that they really could gain in other ways. In other words, they are wasting the precious time of Estimates Committees by asking the wrong sort of questions. I would suggest that this is one of the things we have to look at.

It has come to me in these last few hours of sitting on an Estimates Committee that many times officers will be present, but there will be no questions on the program for which they are responsible in that particular hearing. I believe that Senators could be asked to indicate twenty-four hours before a department is due to appear before us, whether they have questions on every program, and if there is a program that clearly has not got a series of questions to be asked, then those officers should be discharged. We would save a lot of money in officers' time.

I just mention one other thing that I think is worth thinking about. I have seen, in recent times, a danger of the development of, if you like, majority and minority reports. Indeed, last year I think we had a minority report that was longer than the report itself. I think there is a danger that if we become too political in the issues that we are determined to pull out of Estimates Committees, then there is a danger that the give and take that our whole committee system relies on will fall through. In other words, if you belonged to a government group of Senators, you would be stupid to allow an opposing Senator or Senators to make their political points in a minority report to be then used as propaganda in the chamber, if you did not make the majority report another propaganda-type document. I do not think it is a general thing, but it is certainly something that I think you have to place on the record because otherwise those fine balances that represent the Senate system will fall into disrepute. I would just leave these things as points that perhaps people might think about.

Mr EVANS - Thank you, long-suffering Senator Childs. Next we have Dr Michael Keating, the Secretary of the Department of Finance - a thoroughly evil organisation, I can assure you - who is going to give us a view from the Public Service side of things.

Dr KEATING - Thank you very much. I am not sure I can speak on behalf of the total Public Service, as we tend to be seen also as a rather inquisitorial agent, somewhat like the Senate Estimates Committees. I thought that it might be useful just to start by saying what I see as the three requirements for accountability by the Commonwealth budget sector. The first is the compliance with the law, ethical principles and any specific directives from the Parliament. The second is efficient resource use and the third is contributing to the achievement of program objectives - in other words, effectiveness.

Traditionally, public sector accountability has focused on the first of these, that is the compliance with the law, ethical principles, and so on, with some focus also on efficiency. What is new, I think, and what has been added to those traditional concerns has been the concern about effectiveness. As Senator Baume so graphically described it, there is a lot more information now on effectiveness in terms of performance, setting out goals, and so on. I see that as adding another dimension to accountability and in no sense is it intended to replace the traditional concerns about compliance with the law and efficiency. I do believe that it is a more productive way to go in many respects. But in deference to Senator Bishop, who is not here, I must record that I agree with her comment that a corrupted process is very likely to lead to a corrupted outcome.

I would have to say that, while I am always encouraged by Senator Baume's remarks about the progress we have made, I think we still have some way to go in developing objectives against which performance can be tested and in developing the related measures of performance. But, like Senator Baume, I think we are making progress. I think that further progress will depend importantly upon the intelligent use that is made of the information by the Parliament. After all, the performance of any actors or players is determined by the audience's reaction, and the Parliament, in many ways, is our most important audience for this sort of information which, in fact, is prepared for the Parliament. We certainly, in that context, welcome the changes in the questions which focus on goals, objectives and outcomes, and less on paper clips and tea ladies. We also, I think, welcome Senator Childs's suggestion that there is the opportunity for much information to be obtained in other ways than sitting until four o'clock in the morning repeating the same question, the point of which is not always obvious.

The question which does arise, and not only in my mind, I hasten to add, is: how well equipped are the Senate Estimates Committees to make use of all the information that is becoming available? The committees have no permanent staff, they meet in a compressed time frame, and as Senator Childs described it, under considerable pressure. Sure, you have notched up thirty-eight hours and I do not think you have quite finished, but the thirty-eight hours were probably worked over two or three days. While I am not a medical doctor, like Senator Baume, I do recall his being concerned about the quality of decisions made at four o'clock in the morning. Can I perhaps just refer to a very recent report by the House of Representatives Standing Committee on Finance and Public Administration,¹ which has been looking at the financial management improvement program, and, in that context, accountability to the Parliament. It has suggested that the additional information which is now becoming available, should be fed into the parliamentary standing committees and that they should make use of it pursuing scrutiny. They also call for better coordination of parliamentary committees to minimise overlap and duplication. The advantage of those standing committees is that there is a longer time for a reference and to pursue issues in depth. The sort of performance information we are making available now, to be used intelligently I think, does require it to be used to select areas and to pursue those areas in depth.

I think, looking to the future, an issue that is likely to become increasingly important both for the Parliament and the executive, is the issue of who is accountable for what. I think that is taking on a

¹ Commonwealth Parliament, House of Representatives Standing Committee on Finance and Public Administration Not dollars alone: review of the Financial Management Improvement Program, Parliamentary Paper 175/1990

greater significance in the light of the enhanced information on program effectiveness which is now becoming available.

As the Prime Minister put it in his recent Garran Oration, which is again repeated in that report of the House of Representatives Standing Committee on Finance and Public Administration, the old distinction between policy and administration is becoming blurred. Many parliamentary committees like to think that they are focusing on administration, notwithstanding Senator Baume's comment that there is no question on policy which will require a factual answer. I think also in that context - going back to what Senator Childs said - there is the question as to how far you can expect to be bipartisan if the line between policy and administration becomes blurred.

Finally, I would just like to take a minute to take this opportunity to thank Senator Baume for his assistance in the development of performance and evaluation in the public sector. I would like to say that in my view no member of Parliament has done more to advance the course of evaluation.² Indeed, his chiding and his encouragement have been important influences on our work. I hope you will forgive me, Senator, for wondering if you can be any more productive in your new career. That may, in fact, be a backhanded compliment to both you personally and to the role which parliamentary scrutiny can play in developing better public policy and greater value for the taxpayer's dollar.

Mr EVANS - Dr Keating's reference to Senator Peter Baume's new career is the fact that the Senator has announced that he is leaving the Senate to become a professor. I asked him recently whether he can really manage the enormous increase in status which this involves. Our next comment comes from Dr John Uhr who is an academic, who has written a great deal about accountability in general and parliamentary committees, and Estimates Committees also.

Dr UHR - My task is made much easier by virtue of the second of the anniversaries we are celebrating today. Not only is it twenty years since the establishment of the committee system, but it is also almost exactly one year since the Senate held, in October 1989, a general review of the achievements of the Estimates Committee component of the Senate committee system. Senator Baume was a leading participant, an engaged participant, in that seminar, as was Dr Keating. One of the distinguished group of invited members of the estimates community, which included key parliamentary and Public Service officials, was Alan Kerr, whom I see here; he would certainly remember the occasion. In the brief time available to me, I want to draw out some of the issues that arose in that historic seminar.

Pretty much everything that needs to be said about the Estimates Committees is already on the public record. Now I think is the time, as others have said, for proper decision and some reform and action. The transcript of that 1989 seminar's confrontation between Parliament and administration - it was uncharacteristically frank and occasionally quite unsavoury - has been published and it is available from the Procedure Office of the Department of the Senate. It has been published by the Department of the Senate under the title of *Senate Estimates Scrutiny of Government Finance and Expenditure*, and I commend it to you.³ I have to confess that this advertisement is somewhat self-serving as the publication includes my own background or issues paper prepared for that particular seminar, entitled *The Debateable Role of Senate Estimates Committees*, which was a quite critical evaluation of their historical performance. I refer you to that paper for a more extensive account of my own view as to why committees have gone, I reckon, about as far as they are likely to go in their current form. Here I want simply to try to keep the pot boiling by restating the need for urgent change to move the Estimates Committees or process on to the next stage of their development.

The key issue now is that the Estimates Committees have to try to clarify their own role. Three distinct tasks seem to have become merged and somewhat confused in their procedures and processes. Are the Estimates Committees primarily legislative scrutiny bodies examining the form and the content of those particularly important bills known as the Appropriation Bills, or are the Estimates Committees budget review bodies examining the details of the financial policy of the Government's Budget package and strategy, or, indeed, are they expenditure and administrative review bodies examining and evaluating Public Service performance, trying to examine value for money over the long haul? My 1989 paper for that particular seminar uncovered fundamental uncertainty amongst the Estimates Committees themselves and noted the many committee calls for wholesale review of the process.

This wholesale review still has to be acted upon. This role of uncertainty certainly suits some Senators. It means that public officials, and indeed the public, can never really anticipate what might be asked of them. Of course, the positive side of this role, uncertainty, the amazing flexibility, for want of another

² Commonwealth Parliament, Senate Standing Committee on Social Welfare, *Through a Glass, Darkly: Evaluation in Australia Health & Welfare Services*, Vols 1 and 2, Parliamentary Papers 71/1979 and 160/1979. Under the chairmanship of Senator Peter Baume this report was to influence the whole concept of evaluation and performance standards in the Australian public service.

³ Department of the Senate, Procedure Office, *Papers on Parliament*, No.6, Canberra, 1990

term, exercised by committees as to their form and content, including, sadly, the agenda and the sitting times, as Senator Childs pointed out, means that nothing is off limits to a committee or a particular committee member. The *status quo* is certainly politically convenient to some.

There are three weighty indicators of what I would regard as poor performance, or certainly under-performance, by the committees. First, there is the history within the committees themselves of their own complaints that frequently they do not know what they should be doing, in terms of models of best practice in regard to priorities, focus and follow-up. Now is the time for the Senate to act upon these internal calls for review and reform and either to restructure the process or to proceed as at present, but after a conscious and deliberate choice to maintain the current flexibilities, if I can use that term. I will say more about this in the conclusion.

The second indicator of under-performance is the ever increasing confusion on how best to estimate, review, evaluate or scrutinise policy matters when they are managed by public officials. The fiction, of course, is that the Estimates Committees examine administration but not policy. The reality, as Dr Keating has pointed out, and as has Senator Baume from a different perspective, is that it is always difficult to disentangle the two, policy and administration. Of course, politicians, inevitably, will be more interested in administrative interpretation, implementation and evaluation of public policy than in public administration as such, and who can blame them?

I want to add to this little celebration of Senator Baume by reminding you, should you need reminding, that, of course, early on in his Senate career he chaired a famous exercise in parliamentary evaluation, the Senate Social Welfare Committee's inquiry and report called *Through a Glass, Darkly*. That inquiry boosted the circulation of a category of evaluation known as appropriateness, which was located at the top rung of the finally complete audit ladder, building on the existing categories of compliance, efficiency and effectiveness.

In this view, launched by Senator Baume back in 1979, a little over a decade ago, a complete program evaluation would require of a program manager that she or he be able to give a public account of the program's social impact in terms of the appropriateness of its outcomes, at least such as are within the management's discretionary control. In other words, the model public manager must be able to discern and explain what is effective and feasible policy and thus know not only what she or he can do, but what she or he should be doing and giving it effective policy.

The basic idea behind this rather daring proposal about appropriateness being the proper focus for program evaluation really has been picked up by the reformers of public management - those people locked in what Harry Evans calls, 'the evil Department of Finance', which, of course, is not evil at all - and the package of financial management improvement programs really now does call upon program managers to justify the appropriateness of their program's social impact.

The legislative logic - the things that we should be focussing on today I think - governing this would seem to be that the Estimates Committees, as part of the appropriations process, must try to satisfy themselves as to the appropriateness of government programs.

Also a little over a decade ago down in the House of Representatives, the House of Representatives Expenditure Committee published its own excellent report called *Parliament and Public Expenditure*.⁴ The warnings were clear even at that early stage that program budgeting and program evaluation were going to take us into a new world of evaluation. That 1979 House of Representatives committee recognised that in moving up the ladder of evaluation, ascending up from compliance, through efficiency, towards effectiveness would inevitably bring the evaluating bodies, like parliamentary Estimates Committees, ever more closer to policy and hence to the realm of political judgment and political conflict.

Program and performance budgeting, as promoted by that very same expenditure committee, which sadly is no longer with us although it may be rolled into the Finance and Public Administration Committee, would certainly bring more reasonable control of public expenditure. But, program budgeting in its early 1979 estimate would also, the Committee reckoned, bring the light of publicity to bear on the reasonableness of public officials' discretion in managing the policy process.

A number of Estimates Committees soon accepted and picked up this warning - that the program format would transform the estimates process; transform them away from the traditional explanation of items of proposed expenditure towards justifications of policy outcome. With the early trialing of performance budgeting back in the now distant past of the mid-1980s - Senator Rae would certainly

⁴ Commonwealth Parliament, House of Representatives Expenditure Committee, *Parliament and Public Expenditure*, Parliamentary Paper 66/1979

remember all these daring experiments with program budgeting - the committees, as long ago as eight years, recognised and warned that this process of reform although certainly good in itself, was going to introduce a fundamentally different explanatory mode into Canberra public administration with officials being more and more directly involved in policy questions as they grappled with explanations as to precisely what program objectives, policy priorities, and administrative performance, and indeed, value for money really meant.

The Estimates Committees seemed to sense that the estimates of a program's success can get very close to political evaluation, especially when measuring social impact rather than simply reckoning administrative inputs. In the paper which is appended towards the end of the 1979 report I have examples, which I will not go through now.

The third indicator of under-performance is that from a perspective of the public official, all this role uncertainty, all this confusion about what is policy and what is administration, looms in the form of what I have called accountability traps. For the public official, try as one might to do the right thing by Parliament or to be a model of parliamentary accountability, one just never really knows what should be, or is going to be, expected of one.

Different committees exact different standards of assessing value for money or indeed public accountability. Different Senators pursue and punish different types of lapses, and committees increasingly publish, as Senator Childs put it, dissenting or minority reports, thereby overloading the feedback system with mixed messages about rewards and punishments and about what is in store the next time around.

One thing is certain: as they stand, the Senate Estimates Committees deviate very far from the simple matter of estimates -the Budget estimates. Again, in the transcript of the confrontation, if you like, between Parliament and public officials there are many examples of public officials complaining that the committees, while they may be called Estimates Committees, are really policy evaluation committees drawing public officials into uncertain and awkward but remarkably effective nets or traps.

The root problem, in my view, is that the Estimates Committees try to do too much. Within a Westminster derived system they try to do two Washington-style committee operations -they try to combine the congressional tasks of program authorisation with that of agency appropriations. In the United States Congress agency programs require legislative authorisation and often periodic re-authorisation before the funding process gets under way. Separate committees complete the different tasks. Program performance levels and agency administration are reviewed in one early process, funding levels later on.

Of course, the chaotic United States budget process is certainly no model for Parliament to follow. I think Senator Durack may have mentioned this this morning. But comparison does indicate that the Estimates Committees' next step might well be to separate the review of the global expenditure process, the budget priorities, from the more detailed and methodical pre-Budget review and authorisation of program legitimacy or appropriateness - use whatever term you want.

Part of the problem, of course, is not of the Senate's own making. Our Australian tradition of governance holds that departmental programs, indeed departments as such, generally do not require any legislative authority. So there are very few opportunities, apart from the Budget bills, for parliamentarians to examine general bureaucratic performance. You cannot really blame Senators for using their one window of opportunity to pursue this matter.

My conclusion is really quite modest. It recommends one practical step forward. The next phase of estimates developments is for the Senate to act upon the repeated committee calls for more methodical agency evaluation and to divide the work of the committees into two. On the one hand, give the different standing committees - the legislative and general purpose committees, armed as they are with all the powers of parliamentary inquiry into portfolio spheres of interest - the task of detailed performance evaluation, assessing the value for money return on the investment in a particular sector, portfolio sectors and public administration. On the other hand, replace the Senate Estimates Committees with a smaller, more cohesive body to examine Budget priorities and strategies. The Estimates or Budget Committee would focus on the executive's Budget strategy as managed by the key central agencies - those companion evil agencies of the Treasury, Finance and possibly Prime Minister and Cabinet, while the performance review work would be done on a portfolio by portfolio basis within the existing standing committees, so long, of course, as they are not swamped by their new legislative references. The non-estimates committees would then focus on aligned department performance, building upon the valuable leaps forward in public accountability now found in the explanatory notes that Senator Baume has pointed out and, of course, the agency annual reports.

My concluding comment is that the Estimates Committees have now done fairly much all that they originally set out to achieve. The fact that the explanatory notes in particular are now so helpful is a sign of the success of the committees, but also, I think, an indicator of the need to devise new arrangements to respond to the demands over the next twenty years.

Mr EVANS - I should perhaps mention that more or less in conjunction with the new system for referring bills to committees the Senate agreed to a new system for the scrutiny of annual reports of government agencies by the standing committees and for examination of the operations of departments and agencies through the medium of that scrutiny of annual reports. That may indicate some groping towards what John was just talking about.

Mention has been made of the press - usually unfavourable mention I have to say, hitherto. We now have a distinguished member of the press gallery, namely Michelle Grattan, to comment on this aspect of the conference.

Ms GRATTAN - I am not surprised, after hearing Senator Baume talk about how the Senate Estimates Committee system dog can best show its teeth, that the public servants tend sometimes to watch their ankles a bit. It seems to me that the gentleman from the Department of Community Services and Health, who discovered that his department was importing prohibited substances, might not have found the session in which he made this discovery a wasted one, but it sounds to me a particularly painful one for the man concerned.

Of course, the whole system of the Senate extracting detailed information from public servants, and especially information that touches on policy matters, inevitably raises this question of the difficulties of the Westminster system and the division between policy and administration, and ministerial responsibility and Public Service responsibility. This has been mentioned by both Mr Black and Dr Keating in their addresses. I think that, in looking at the future of the Estimates Committees, that is a particularly important and difficult question.

With all the talk of Parliament becoming less relevant, the committee system, however, for all those difficulties and other faults that it might have, does seem to be one of the areas that go against the fashionable theory that Parliament these days is just a talk shop with no real function. It is therefore unfortunate that committees in general, Estimates Committees in particular, and also the whole Parliament, are not as adequately reported in the media as they might be. The difficulty is that it becomes something of a vicious circle. If things are not reported out of Parliament very much, there is less incentive for the politicians to maximise their efforts in Parliament. Alternatively, the politicians feel that the only way to get publicity is to grandstand in the Parliament or the committees, and that leads to a very spurious and futile form of politics.

Of course some committees - and here I am covering not just Estimates Committees, but committees in general - are well reported; for example, the drugs in sport inquiry. There is less following of the detail of the less glamorous inquiries, and certainly less following of the detail in the Estimates Committees which, in fact, provide a great source of information, as has been mentioned by previous speakers. What we lose by not adequately reporting these committees is a glimpse of some of the bureaucratic underlay of politics. One might ask: if there is so much material there, why is the coverage not better?

I think there are a number of reasons for this and I just want to cover some of them briefly. Firstly, the committees have lost some of the novelty value that they had when they were set up twenty years ago, when the whole system was new and it was seen as a big innovation and a way for the Labor Opposition of the time to use Parliament productively and to combat the executive. Secondly, following committees is very time-consuming and the media, which have a lot on their plates, usually tend not to bother. It is labour intensive work sitting through hours of hearings on the off chance of something coming up. This is no excuse, however, for it not being carried out, and even less excuse for the media not pursuing, with as much attention as they should, the written record of the committees and the sort of material that Senator Baume was talking about earlier. Thirdly, the executive has less time and regard for Parliament these days, and the media have picked up some of this negative attitude.

Also, if you look at your newspapers now compared to twenty years ago, you will find very little coverage of ordinary backbench debate in Parliament. This again stretches to the committee system. Also, it seems to me that fewer MPs and Senators these days make a name for themselves as senior backbenchers known primarily for their parliamentary committee work. Of course there are notable exceptions but, as a generalisation, I think that is the case. Some of the exceptions very soon find themselves promoted into the Ministry - people such as Senator Collins - and vanish out of the committee system. Similarly, I think the media are, at the moment, lacking in specialists covering the Senate, and that contributes to this neglect of both parliamentary coverage of the Upper House and the

coverage of the committee system. Also important is the fact that the Opposition and the Democrats do not seem to be all that successful in publicising their activities on committees.

Committees, and Estimates Committees in particular, are, in political terms, it seems to me, very much an oppositionist sort of forum - one of the ways in which a lively opposition, one which is really on the ball, can make a great deal of use of the Parliament. But the Opposition has to sell - if I can put the point bluntly - the material it gets out of those committees, or it hopes to get out of those committees. In a system where everyone is competing for time and attention, that is the only way of doing it. Of course, sometimes this is done. For example, the material that emerged during various inquiries about ATSIC⁵ was marketed fairly thoroughly by the Opposition. But, in general, I think a lot of things that have both political interest and administration interest simply get lost because nobody bothers. The material is extracted but nobody points it out.

Finally, the committees have not become the sort of television events that we see in committees in the United States, and I think that also affects the coverage. It is, of course, up to committees whether television coverage is allowed and in some cases they will not, or do not, want that, but that would certainly be a way of encouraging more attention. On the other hand, I think that, from the television point of view, probably these sorts of inquiries do have the limitations of, as I mentioned before, being very time-consuming, so they would not necessarily attract a lot of coverage. If they were structured in such a way that there was some opportunity for television coverage, certainly I think that would give them much more public attention.

It seems to me that the committee system really has many possibilities for giving both the media and, more importantly through the media, the public and the specialised groups in the community - the interest groups - an insight into the workings of government and an opportunity to show not only how things operate but also what is going wrong, how decisions have been made and what sort of consequences they are having. It is a great shame that more public attention is not devoted to exploiting these possibilities. It seems that this is something that both the activist Senators and the media should turn their attention to. Thank you very much.

Mr EVANS - Our commendably succinct panel has left very adequate time for questions, comments, observations or scathing attacks from the floor. Are there any such?

Mr CLYDE - I note that Dr Uhr and Senator Peter Baume have both referred to the fact that it is now becoming a little bit blurred as to the role of officials and that they are questioned now on policy matters. I also noticed Senator Button sitting in at the inquiry that Senator Childs is, in fact, chairing at the moment. Is it desirable, and is it possible that it will happen, that Ministers will attend more Senate Estimates Committee hearings? In fact, should it be made mandatory that they should do so?

Senator BAUME - The theory is that no Estimates Committee should meet without a Minister present. The practice is not always followed - by agreement, generally. But we should have Ministers there because it has emerged from the discussion that there is not always a clear dividing line between what is policy and what is administration.

As the aims shift - and I come back to what Dr Keating and Dr Uhr said - the questions of effectiveness and appropriateness are both very value-laden concepts, are they not? What they mean depends on who you are and what values you take into the exercise. You do need Ministers there for several reasons. Someone has to speak for the Government where the questions are questions of government policy. Ministers are the appropriate people to do that. Secondly, officers require proper protection when questions move beyond some boundary, which I cannot define with accuracy; the Ministers must be there to move in and say: 'I will take that question. That is a question more appropriately raised in the Senate, in a political atmosphere and I invite you to do so'.

That puts an end to that line of questioning but you should not have officers left unprotected to take that kind of thing. Where that boundary is, I do not know; colleagues might know. I take entirely the point that was made by the commentators. We are in a mobile and emerging estimates situation. The goals of the committees are changing and as they change we are moving far more towards very heavily value-laden questions and that will simply add to the difficulties we face.

CHAIRMAN - Does any other member of the panel wish to comment on that?

Dr UHR - One of the real hazards that is emerging now is the blurring of distinction between policy and administration. The explanatory notes are now so good that we are finding that the Estimates

⁵ Commonwealth Parliament, Select Committee on Administration of Aboriginal Affairs, Report, Parliamentary Paper 474/1989. See also Commonwealth Parliamentary Debates (Hansard), Senate Estimates Committees, October 1988

Committees are taking them as part of their preparation for their own inquiry and using them as the beginning point rather than annual reports.

The difficulty of the annual report is, as Dr Keating has pointed out to me - and it became evident in last year's seminar - that they are departmental reports on performance. The explanatory notes are ministerially authorised reports on portfolio priorities to the extent that the Estimates Committees concentrate on the portfolio explanatory notes. It is only proper that the Minister be there to protect and to help steer that process to the extent that the committees move away from the explanatory notes towards the annual reports. Then presumably it is only proper that the department speaks in its own name. That is part of the logic of devolution. That would mean that the Ministers would, at least at that point, back off. The questions, of course, will still be policy ones. It is just going to get harder and harder I believe.

Mr EVANS - If I could add a comment to that. The Senate has a code of practice⁶ binding on all its committees for dealing with witnesses; it is binding on Estimates Committees as well as standing committees. One of the rules in that code of practice is that departmental officers shall not be asked to give their opinions on matters of policy. But I think there is a distinction between giving opinions on matters of policy and, on the other hand, explaining what the policy is; explaining how the policy is coherent; how it relates to other policies or other aspects of policy; what are the means chosen for carrying out the policy and why those particular means were chosen for carrying out the policy; why those means are thought to be the best means of carrying out the policy; and questions like that which have to do with the policy but which do not involve expressing opinions on matters of policy contrary to that rule. A lot of good public servants spend a good deal of time doing that sort of thing and in some cases doing it very well. Are there any other questions or observations?

Mr MUSIDLAK - I was quite interested in the excuses about the media not really covering estimates proceedings and particularly from a media that in Australia is characterised by a dependence on handouts, scuttle-butt and leaks, not necessarily in that order. Unless you have people in the media who take a fairly strong interest in the way that government departments operate, attendance at Estimates Committees will probably be a waste of time, but is that not a challenge to the media to spur the specialist writers to get a better grip on their subject areas and to write some more thoughtful review pieces?

Ms GRATTAN - Firstly, they are not excuses and I want to emphasise that point if it was not clear enough first time round - explanations perhaps, not excuses. I agree with your point entirely about the desirability of the media moving more into reporting of departmental politics and policy work and into more specialist areas. This has happened in some areas, I think, to a greater extent than others. I think, for example, the reporting of economics has become better and more specialised in recent years. The reporting, on the other hand, of some of the social policy areas has probably deteriorated in the last few years when there has been less emphasis on that area of policy. It has become generally less fashionable, if you like, and probably less fashionable in the media.

So the media ought to be moving more strongly into those areas, but there is another aspect of this too. I think that government, with a big 'G' and a small 'g', should also recognise that this is an important area for the dissemination of public information and, to the maximum extent possible, an open or more open attitude should be encouraged in the bureaucracy. One of the unfortunate by-products of the proliferation of public relations machines in the bureaucracy, I think, is that senior public servants have thought: 'Well, we've got bureaucrats and a PR section to do that, so push the media over into those sections'. Most of them are, with one or two notable departmental exceptions, pretty useless and that has contributed to a lazier media in that respect of reporting and perhaps more nervousness among senior public servants who, in some earlier years, might have been more inclined to talk to the media themselves.

Senator PETER BAUME - I do not want to comment on every question, but that is an interesting one. I have three points. One of the wisest Senators with whom I worked was Reg Withers, who reassured me one day when I was worried about the editorials running against us in the broadsheets. Withers said: 'Don't worry what the broadsheets are saying, worry about what the tabloids are saying'. So that raises the question: What is the news? Who reads the economic analysis that has improved so much? The answer is a very small group of people.

I suppose the other point is that the wonderful things that Estimates Committees do are not reported because they simply do not rate in the market operation, the brokerage or whatever it is that goes on. The Senators who may be very good at asking questions and at understanding the process may be very

poor at then undertaking the brokerage between themselves and reporters, most of whom, I have found, have been very professional but who are entitled to a bit of information if they are going to write a story. I find that does not happen. So the fault, if there is a fault, lies very much, I think, with the politicians as well as with the press. I would not want anyone to think it is because the press is not interested. It is partly because the politicians do not tell them.

Mr EVANS - That might be regarded as an unusually charitable view of the matter.

Mr VIGOR - I am very interested in the plans from inside the Public Service to use some of the available electronic data processing facilities for providing more direct information to Senators and to the committees. When I was there, we were changing from the expenditure type of reports to the program budgeting reports and I think that has been an improvement. But some of the baby seems to have been thrown out with the bath water in terms of the type of information which I was seeking about the effectiveness of programs and the types of expenditure which were going on within the administration. The Public Service seems to have redirected all of the opprobrium in Estimates Committees from themselves onto the Ministers by gradually moving Senators more and more towards policy by the nature of the explanatory notes. A fair amount of leading goes on in the types of notes that Senator Baume was showing. Quite a bit went on when I was there. What chance will Senators have of getting direct access, if they are interested, to the actual figures and the types of manipulations which take place before they get presented to the Estimates Committees?

Mr EVANS - That is a different view of what we have just been speaking about. Would you like to respond to that, Dr Keating?

Dr KEATING - I would have to say that I am not sure that I have fully understood the question. You are absolutely right that in moving to program budgeting and concentrating on outcomes quite a bit of the input detail which was typically in what we now call the running costs has been lost. But let me hasten to add that we are speaking about cost-effective outcomes. It is not just a matter of how many people achieve better health, but one of whether they achieve better health in a cost-effective way. That information is not as readily available, so it is, in fact, a considerable amount of work to find out how much we spent on paper clips. In that particular case, I doubt that we could. Quite a bit of work would have to be done to find the answers to the questions about the tea ladies and, on reflection, we could not get the answers about the paper clips.

I wonder what conclusions you hope to draw when you find out that the telephone bill went up during the pilots' dispute. What sort of conclusion do you hope to draw in terms of efficiency? If the focus is on efficiency what really is important is what the running costs of the program were relative to those outputs. So you have a choice, in effect, between ringing someone up and flying to see them, and what is really interesting is, having regard to that choice, what was the total cost of the two relative to achieving the program output. That is what we are focusing on now and that seems to me more productive.

Mr VIGOR - I was thinking of neither paper clips nor stationery. I was thinking about the type of thing that has been gradually happening, which is that more and more programs which are unexceptionable are being put into the Explanatory Notes (now referred to as Program Performance Statements) with full descriptions, as Senator Baume said, of successful programs and that more and more of the programs which are open-ended are being pushed into special appropriations classes, put into trusts, put into commercial organisation, basically privatised.

I know this is not your department, but surely when you look at each year's estimates you see that fewer expenditure figures are actually being scrutinised by the Parliament. It is more satisfactory, of course, because it has been chosen and sifted. I am quite happy to be told that I am not right, but I suspect that I am.

Dr KEATING - I am very glad you are happy. The truth of the matter is that before we moved to program budgeting, the only bills which were considered, or the only expenditure which was considered by Senate Estimates Committees were those estimates which were in Appropriation Bill (No.1) and Appropriation Bill (No.2). Parliament used to come under Appropriation Bill (No.3) in those days, but now it has its own bill. The only estimates considered were those in Appropriation Bills (No.1) and (No.2). That meant standing appropriations were not considered by Estimates Committees. The fact of the matter is now that all Budget outlays, whether they are covered by standing appropriations or in Appropriation Bills (No.1) and (No.2), are now reported to the Senate Estimates Committees. So that is an enormous increase in the amount of information or, if you like, the coverage of parliamentary scrutiny through the Senate Estimates Committees.

Senator PETER BAUME - Mr Puplick referred to this problem this morning. He will be aware of the point Mr Vigor was making. Dr Keating points out that most things are available for questioning in the estimates. I think the salaries of all officers are virtually available and one can take the salaries item, so my older Senate colleagues taught me early on, and ask: 'Does this salary cover the payment of the aged pension?'. The aged pension itself may not be in the estimates - it is actually under the program - but if it were under another piece of legislation, provided the salaries of the officers administering it were in the estimates, I think you could get a leg in the door. There is almost nothing you cannot ask about.

There are two other points. One is that there are other sources available to which Honourable Senators often do not give enough attention - annual reports, larger numbers of statistical tables, periodical reports by departments, a whole lot of information; it is not a bad idea to read it occasionally. The other point to make is that the very emphasis we have been putting in this discussion is on the need to continue to change the committees, to recognise the problems, including the ones you are referring to, and to find ways to respond to those for the mutual benefit of all parties concerned.

Mr EVANS - Technically the Estimates Committees do not have special appropriations before them. Technically, they are not supposed to be looking at special appropriations, but they always have. As a matter of practice, they have always probed around in special appropriations. With program budgeting, that has been put on an official basis. Are there any other brief, pithy questions or observations?

Mr O'DONOVAN - One of the benefits of Senate Estimates Committees that seems to me to have been overlooked is that they give the opportunity to the public servant, whose anonymity has been broken in some way or another - and this happens more and more often - to defend a position that he has taken, and to defend it in a situation where the ultimate judgment can be made by the public, particularly if the press takes it up, in an objective way without having thrust down its throat the views of those who disagree with the judgment that has been made by the public servant.

I spent a long day in the Senate in 1982 in relation to bottom-of-the-harbour tax prosecutions. I was very glad that at the end of that day, about 10 o'clock at night, Michelle Grattan rang up and asked me what had gone on before the Committee, so that she could publish much of it the next day in the *Age* - I think she was working for that newspaper then. I think that is an important thing for public servants.

If I may say something very briefly about what Dr John Uhr had to say, it seems to me that if these committees are going to look at the appropriateness of government policies, either they are going to be attended only by Government Ministers, or we are going to have a different Public Service. If government policies have to be defended by public servants, then they will have to behave either strictly as lawyers in accordance with instructions on the basis that they really do not have any view one way or the other as to the appropriateness, or that these are the defences that they are told to put - 'Those are my instructions'. Alternatively, they are really members of the party and they put the views of the party. I do not disagree with what Dr Uhr says, but it seems to me that one really does need to look very carefully at the future of the Public Service. We read in a very recent report that the Public Service Commissioner himself is saying how terribly hurt he is about people talking about political appointments. Perhaps we ought to get a black book and have the top echelons of the Public Service coming in and out with government.

Mr EVANS - That raises a great many questions. I will repeat what I said earlier. I have seen some very skilful public servants expounding what the policy is, and how the policy is coherent, and on what bases the policy was decided without actually expressing an opinion about the policy.

Short adjournment

Session Four Senate Committees - Can They Halt the Decline of Parliament?

Mr EVANS - For the final session of the conference, we have a most question-begging title: *Senate Committees - can they halt the decline of Parliament?* To speak on that question-begging title, we have Dr Brian Galligan who is a distinguished academic and who, at the moment, is Deputy Director of the Centre for Research on Federal Financial Relations, a body whose publications I commend to everybody as extremely interesting and informative documents.

Dr GALLIGAN - Thank you, Mr Chairman and Mr Clerk, for your introduction and also for the invitation to speak to this gathering of distinguished Senators and fellow participants. Let me begin¹ with a number of observations about Australian politics in general and *Senate Committees and Responsible Government*, the topic of this Conference, in particular. The first is that the Senate and its Committees are not well known or appreciated either by professional commentators on Australian politics, academics or journalists, or by the public at large. The reasons for that are complex and have to do with a number of factors. These include the propensity of the media for the more dramatic, sometimes more significant, but often more ephemeral aspects of political leaders, partisanship and executive policy-making, the strong tendencies in our political culture towards democratic majoritarianism and executive dominance of the Parliament, and, the one I shall be most concerned with in this paper, deep-seated misunderstandings of Australian constitutional theory. The Senate and its Committees are unlikely to be much appreciated nor their public status recognised unless the fundamental issues of political theory and constitutional design are sorted out and confidently espoused.

The second and related point is that neither the Senate nor its Committees have reached anywhere near their full potential within Australian politics. Revolutionary as the establishment of a comprehensive system of General Purpose Standing and Estimates Committees in 1970 might have been, twenty years later the Senate remains a secondary institution of Australian government. It has yet to achieve its proper status as a first rank institution comparable, for example, with its American model. I know all the weighty reasons that are put forward, legitimately, to explain why that is the case. These include, on the American side, the additional powers that the United States Senate has in ratifying treaties, endorsing senior judicial and executive appointments, and for impeaching the President, and more importantly the fact that the President is entirely separate from Congress. On the Australian side, there are the well known reasons of disciplined parties, a Westminster-style system of responsible government that locates the political executive primarily in the House of Representatives, and more generally the strong majoritarian strand of Australian political culture that sees the Senate as less democratic and significant than the House. While all of this is true, to a large extent, it is based on a rather static and increasingly dated view of Australian politics.

This brings me to my third observation. Australian politics has changed considerably in recent years and will likely change more: away from the dominance of political parties in setting the political agenda and from partisanship in the implementation and monitoring of public policy. This is happening to a considerable extent already with parties reacting to new issues and ideas which they adopt and implement. The peace movement, the women's movement, the Aborigines' movement and the environmental movement have been broadly responsible for setting the agenda in major areas of public policy irrespective of the party in office. Moreover, managerialist ideas of efficiency and propriety in public sector management have been transforming government administration under Labor governments and eroding virtually all of Labor's traditional preferences for public ownership, larger government, and even centralisation of power in Canberra. Politics and public policy-making have become too complex for disciplined political parties to monopolise. Our major parties can no longer claim to be the sole repositories of appropriate policy or adequate distillers of best administrative practice. Nor are periodic elections in any sense an adequate means of democratic participation and political accountability. We need a diversity and range of political institutions to cope with the increasing complexity of policy issues and to represent diverse democratic interests.

The old progressive model of centralised decision-making by enlightened individuals representing majoritarian or progressive interests that dominated Australian political thinking for most of the post-

¹ I am indebted to John Uhr and John Nethercote for various ideas in this paper, and to John Uhr for much of the section on responsible government and the Senate's role in protecting rights. This version is clearly my responsibility since they both know far more about Senate committees.

war decades is now obsolete. Interestingly, it is being jettisoned by Labor in government at a faster pace than many of the Left's traditional scribes or conscience-keepers can cope with. Fortunately, we have in Australia the institutions of government that are suited to the new politics of complex issues and enhanced democratic participation. Essentially, this is our federal system of government and a bicameral national legislature constituted on different bases of democratic representation. Federalism multiplies governments and increases democratic participation in diverse levels of government, while bicameralism gives us two distinct houses of the national legislature that can improve governance through extending democratic representation and parliamentary oversight. The range of scrutiny and investigatory roles that are evident in the Senate's committee system that we are considering today is an obvious example.

If I am right, and we are entering an age of the politics of complicated issues and enhanced democratic participation, then we are indeed fortunate in having a constitutional system that is suitably designed for the new politics. But we need to rethink our constitutional ideas and understand the system we have if it is to develop and realise in practice its full potential. The new politics requires an appropriate notion of responsible government that will embody the recognition and enhancement of the Senate and its Committees, and modification of the old paradigm of party responsible government that has been dominant in Australian political orthodoxy to date.

For too long in Australia we have neglected the systematic and searching investigation of our federal democratic system of government. There are a good number of texts on Australian democracy and national government,² but none that are adequate or up-to-date on Australian federal democracy and our federal system of government. To understand the design of the Senate and its constitutional role we do need to appreciate the character of Australian federal democracy and how the Senate fits into our system of federal government. Needless to say, without such critical exploration, our collective appreciation of the system overall and of its various major parts is sadly deficient. This is apparent across the whole spectrum of our polity: from political leaders down to the citizenry, among professional commentators, be they journalists or academics, and even among the judiciary who are in a somewhat more formal sense the guardians of the Constitution.

Fortunately, for our lucky country, this has not mattered for most of the time: the system of government has worked pretty well for nearly a century, coping with great national developments and the occasional traumas of war and depression. In fact, as we begin to survey the sweep of our national history since federation, celebrating the milestones in the drafting of our Constitution through the '90s and its adoption in 1901, we will surely come to appreciate that our institutions of government have been far more significant to our collective national identity than is generally recognised - more significant in fact than any of the individuals who have worked them - and that they have been fundamentally federal in character. I am not suggesting that institutions stand alone and separate from political culture and tradition and the dynamic processes of government; rather, that they formally embody a distillation of the collective wisdom of our nation and its political ideals and traditions that structures current politics and channels it in predictable and acceptable ways.

What we need then is neither a new constitution nor major tampering with the one we have got. The 'horse-and-buggy' or 'short-pants' analogies are silly and trite. Far too much political energy has been dissipated in Australia in the pursuit of constitutional change, or in wishing that we had some other system, invariably simplified and idealised - like Henry Lawson's Bush with a capital B. Earlier on this political schizophrenia was kept alive by a Labor Party committed, at least formally, to abolishing federalism and centralising power. 'Labor versus the Constitution' was an appropriate way of summing up the first half decade of Australian federal history, as Whitlam did, in 1957;³ and the tensions between Labor and the Constitution remained during Whitlam's troubled term of office.⁴ But Labor has been progressively reconciled with federalism so that despite his government's rather poor achievement, Gough Whitlam could proclaim in 1978 that there was nothing a Labor government would now want to do that could not be done under the existing Constitution. The Hawke Government and the crop of state Labor governments throughout most of the 1980s have completed and consolidated this historic process of reconciliation. Hawke's recent call for 'closer partnership' with the states in rethinking and restructuring inter-governmental arrangements is a milestone towards revitalising the operation of Australian federalism.⁵

² For example, the leading text on Australian government for most of the post-war has been L.F. Crisp, *Australian National Government*, Fifth edn, Longman Cheshire, Melbourne, 1983 (first edn, 1965). Modern examples are G. Maddox, *Australian Democracy: in Theory and Practice*, Longman Cheshire, Melbourne, 1985; B.Brugger & D. Jaensch, *Australian Politics: Theory and Practice*, Allen & Unwin, Sydney, 1985

³ Gough Whitlam, *On Australia's Constitution*, Widescope, Camberwell, Vic., 1977

⁴ G. Evans, ed., *Labor and the Constitution, 1972-75*, Heinemann, Melbourne, 1977

⁵ R.J.L. Hawke, 'Towards a Closer Partnership' Speech to the National Press Club, Canberra, 19 July 1990

As with federalism, there is no need for Senate abolition or basic reconstruction, as has been so often recommended, but rather institutional innovation and more informed theoretical appreciation. In the Senate's case the former has been going on, intermittently, over a long period of time with the creation of the various sorts of committees. This process of creative institutional innovation only peaked in 1970 with the establishment of a plethora of Legislative and General Purpose Standing Committees and Estimates Committees. Reid and Forrest's recent classic account of Parliament⁶ is a substantial aid to greater appreciation of our parliamentary institutions of government.

The misunderstanding of the Senate is closely linked to its supposed role in the Australian federal system, and to the way in which federal and national elements of government are thought to be combined within a federal system of government. When the Australian founders met in the Federation Conventions of the 1890s to draft the Constitution, they were practiced experts in colonial responsible government, in the generic Westminster sense of the term, but had at best only a bookish knowledge of federalism. Therefore they, or at least the better read among them, looked to established federations including the Canadian and the Swiss, but particularly the great American model for which James Bryce's recently published *American Commonwealth* (1888) gave a comprehensive account.⁷ Bryce's book was revered as 'the bible', frequently referred to by delegates and displayed on the conference table throughout proceedings.⁸ Unfortunately, as James Warden has recently shown at length, Bryce's understanding of American federalism was fundamentally flawed: he had a too mechanical model of coordinate governments with separate and distinct powers working entirely independently of one another.⁹ This model neither captured the inter-governmental nature of American federalism nor represented the essentially concurrent division of powers that the Australians were putting in place. So Bryce only served to distort the early understanding of Australian federalism by dissociating explanatory dialogue from actual design.

More significant for muddying the understanding of Australian federalism and the role of the Senate is Quick and Garran's *Annotated Constitution of the Australian Commonwealth* because it became, as Geoffrey Sawer put it in his foreword to the 1976 reprint, the closest we have to a 'Book of Authority' in the field.¹⁰ Here we find a caricature of the supposed roles of the Senate and the House of Representatives based on a distortion of federal theory. Quick and Garran were spot on in articulating the 'problem' to be resolved by the framers of the Australian Constitution as being the same as that confronted by the American founders more than a century earlier:

The problem to be solved in the case of the Australian colonies desiring to federate was similar to that which had to be solved by the framers of the American Constitution; it was - how to reconcile the creation of a strong national government with the claims and susceptibilities of separate, and, in their own eyes, *quasi-sovereign* States.¹¹

The problem was with Quick and Garran's articulation of the solution. Despite a superficial plausibility that has reinforced the prejudices of subsequent generations of Australian practitioners and commentators who would prefer a fully Westminster system of more direct majoritarian government, Quick and Garran's 'solution' evidenced a fundamental misunderstanding of federalism and a related distortion of the roles of the two Houses of the Commonwealth Parliament. To be fair to Quick and Garran, I quote them in some detail:

The solution of the problem was found in a Parliament partly national and partly Federal. The national part of the Parliament is the House of Representatives - the organ of the nation. The Federal part of the Parliament is the Senate - the organ of the States, the visible representative of the continuity, independence, and reserved autonomy of the States, linking them together as integral parts of the Federal union....

The House of Representatives is one of the two Chambers of the legislative organization of the Federal Government. It gives particular force and expression to what may be described as the national principle of the Commonwealth. In that great assembly the national principle will find full scope and representation. Its operation and tendency will be in the direction of the unification and consolidation of the people of the Commonwealth into one integrated whole, irrespective of State boundaries. ...

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

7 James Bryce, *The American Commonwealth*, Macmillan, London, 1880

8 J.A. La Nauze, *The Making of The Australian Constitution*, Melbourne University Press, Melbourne University Press, Melbourne, 1972, pp. 85,273

9 James Warden 'Federal Theory and the Formation of the Australian Constitution'. Ph.D. Thesis, Australian National University, Canberra, 1990

10 John Quick & Robert R. Garran, *The Annotated Constitution of The Australian Commonwealth*, 1901 edn, reprinted by Legal Books, Sydney, 1976

11 *Ibid.*, p.414

The House of Representatives is not only the national chamber; it is the democratic chamber; it is the grand depository and embodiment of the liberal principles of government which pervade the entire constitutional fabric. It is the chamber in which the progressive instincts and popular aspirations of the people will be most likely to make themselves felt. This characteristic is not founded on any difference in the franchise of the House of Representatives from that of the Senate, because both franchises are the same; it arises from the fact that, by the Constitution, it is expressly intended to be such a House, and that by its organisation and functions it is best fitted to be the arena in which national progress will find room for development.¹²

According to Quick and Garran, the two Houses of the Commonwealth Parliament represent the duality of citizenship that federalism entails. This is in addition to the more obvious duality of being a citizen of a state and of the Commonwealth. This first sense of duality is a departure from American federal doctrine, as we shall see, but the extraordinary glosses that Quick and Garran put on the House of Representatives and the roles that they attribute to it and the Senate are antithetical to American doctrine. Such appellations for the House of Representatives, from the above passage, as 'democratic chamber', 'grand depository and embodiment of the liberal principles of government', chamber of 'the progressive instincts and popular aspirations of the people', arena of 'national progress', are entirely foreign to American federalist thought and reflect a strong bias in favour of parliamentary responsible government along Westminster lines. Quick and Garran's final flourish completes the dualist caricature of the two Houses:

From this dual citizenship, and, in order to assist in its preservation, every citizen living under such a form of government has a duality of political rights and powers...to join in returning members to the House of Representatives in which centralizing, consolidating, nationalizing, and progressive elements of the community are represented, and also to assist in returning members to the Senate, in which the moderating, restraining, conserving and provincial elements of the community are represented.¹³

But neither the Commonwealth legislature nor Australian federalism are like that. Quick and Garran are wrong about the basic character of modern federalism that the Americans invented in the late eighteenth century and the Australians copied a century later; they are partly wrong about the dual citizenship that such federalism entails and how that is embodied in Australia's federal Constitution; and they are also quite wrong about the representative character of the Senate and its role in Australian governance. All three errors are related so let us consider them briefly in turn.

First, the Americans did indeed face the same problem as the Australian founders of how to reconcile strong national government with the continuing existence of quasi-sovereign states, as Quick and Garran point out. The solution was not found, however, 'in a Parliament partly national and partly Federal' but in a compound republic consisting of national and state governments with dual citizenship in both. The American invention was not a blend of national and federal in the modern sense, but rather of national and confederal which was the meaning of federal as understood up to the American founding. A federal or *confederal* form of government (the terms were interchangeable) was essentially a league of independent sovereign states with a weak central organisation based on delegated authority. Citizens were only citizens of each league state, while the states were members of the confederation and nominated delegates to its central agencies. As a result, confederation was a weak form of national government, and that was especially so in a democracy where power comes from the people. An example was the first American constitution, the Articles of Confederation, that proved too weak a form of government in fighting the war of independence and for constituting a strong nation afterwards. Therefore, in 1789, the American founders invented a new composite form of government whereby national elements, in which citizens were directly citizens of the nation, were grafted onto the old federal or confederal form, in which citizens remained members of semi-sovereign states. They called this new composite form federal, won the ratification debate, and thereby revolutionised modern constitutional design.¹⁴

For our immediate purposes, what follows is that the Senate is not primarily a federal part, but rather part of the national part of government. This is, of course, closely linked with the second issue of dual citizenship. The duality of citizenship within a federal system (and from now on I shall be using federalism in its modern American and Australian sense) means, strictly, citizenship in the two levels of government, national and state, that make up the composite republic. The dualistic divide is in no sense between House of Representatives and Senate, as Quick and Garran would have it. That is not to deny the federal element in the representative organisation of the Senate where the determining element is

¹² *Ibid.*, pp.414,448

¹³ *Ibid.*, p.450

¹⁴ M. Diamond, 'The Federalist's View of Federalism', in G.C.S. Benson, M. Diamond, et al. *Essays in Federalism*, Institute for Studies in Federalism, Claremont Men's College, 1961, pp.21-64

not equality of voters and of local constituencies, as with the House of Representatives, but of state constituencies of voters. The relevant point, however, is that the Senate is an integral, and virtually co-equal, part of the national legislature: the citizens in voting for the Senate and the Senate in representing the citizens are exercising and fulfilling national functions. The state part of the duality of citizenship and of government is restricted to participation in state elections and politics and in state governments representing their state citizens. By painting the Senate as part of the federal, by which they mean state or state-representing, element of our system of government, Quick and Garran distort both our federal Constitution and the role of the Senate.

Once we realise this, we can simply put aside the encomiums about the House of Representatives being the truly national and democratic chamber, grand depository and embodiment of liberal principles, and promoter of centralising, consolidating, nationalising and progressive elements. To the extent that these are appropriate ways of describing the attributes of a national legislature, they apply just as much to the Senate. Nor is the Senate the home of the moderating, restraining, conserving and provincial elements of the community. Rather, the two Houses are essentially two parts of the national legislature constituted on two different formulas of representation, one of which has a federal element. But the Senate is not meant to be restricted to, or understood in terms of, some limiting notion of representing or protecting state rights or interests. In fact, quite the contrary, as the American model demonstrates. The American Senate has had a more national role than the American House of Representatives because its members are less tied to the minutia of local representation - 'piss-ant politics', as Lyndon Johnson might have called it. In the Australian instance,¹⁵ a responsible government executive and disciplined parties have substantially overridden the tyranny of local representation, while certain foreign affairs and executive functions that the American Senate exercises are absent. Nevertheless, the Australian Senate remains essentially a national part of the federal duality with a national role comparable to that of the House of Representatives.

Misunderstandings of Australian federal democracy and the national role of the Senate, that are in one way or another derivative of Quick and Garran's Book of Authority, abound in modern times. For example, constitutional lawyers Colin Howard, Charles Sampford and David Wood have all come out recently with proposals for reinterpreting or reconstituting the Senate in order to give it, in their view, an appropriate and legitimate role within the Australian system of government. Howard wants the Senate constituted by representatives of state governments rather than elected by the people of the states because he assumes that the Senate must represent some 'identifiable state interest'.¹⁶ Sampford claims that the "'federal" principle justifying the Senate's equal legislative power' can only be justified to prevent legislation contrary to the interests of a majority of States.¹⁷ Wood sees the Senate's sole legitimate function as protecting states' rights as distinct from national legislation. In a virtual reincarnation of Quick and Garran's Book of Authority, Wood distinguishes federalism from democracy, makes the Senate's role entirely federal, meaning the protection of states' rights and interests, and makes the House of Representatives the repository of unrestrained majority will.¹⁸ John Uhr and I have dealt critically with these authors elsewhere:¹⁹ I mention them here only to indicate that the matter of properly interpreting the federal character of Australian democracy and the national role of the Senate are live ones.

My purpose then is to correct the Book of Authority and the strong tradition of misunderstanding and misrepresenting the character and role of the Senate. Only if we get the larger picture of Australia's constitutional theory and institutional design right can we properly contextualise and evaluate the Senate's committees and how they relate to questions of parliamentary decline and responsible government. My reading of the record when the Legislative and General Purpose Standing Committees and Estimates Committees were introduced in 1970,²⁰ and of subsequent accounts by insiders and experts,²¹ is that the national legislative role of the Senate was taken for granted. If that is the case, my contribution might be in articulating the constitutional justification that is presupposed by this major institutional development. Once we are aware and convinced of the Senate's constitutional role, then arguably we can better defend and advance its enhanced national role that the establishment and consolidation of the comprehensive committee system in 1970 entailed.

15 For an Australian's, reflection on the constraints of single member districts and shorter terms, see Derek Drinkwater, 'Reflections on the Committee Systems in The House of Representatives', *Legislative Studies*, Vol. 5, No. 1 (Autumn 1990), pp.42-45

16 Collin Howard, *Australian Federal Constitutional Law*, 3rd edn, Law Book Company, Sydney, 1985, p.97. *ibid.* p 96, for this and the following quotations

17 C.J.G. Sampford, 'Reconciling Responsible Government and Federalism', in M.P. Ellinghaus, A.J. Bradbrook and A.J. Duggan (eds) *The Emergence of Australian Law*, Law Book Company, Sydney, 1989, p.365

18 David Wood, 'The Senate, Federalism, and Democracy', *Melbourne University Law Review*, Vol.17, No.2, Dec. 1989, pp.304-5

19 Brian Galligan & John Uhr 'Australian Federal Democracy and the Senate', *Public Law Review*, 1990

20 Commonwealth Parliamentary Debates (Hansard) Vol.S.44, 4 June 1970, pp.2048,2342

21 For example, A.R. Cumming Thom, 'The Australian Senate Committee System - Recent Developments', in *The Table*, Vol.45, 1977, pp.51-60

Much of what the Senate actually does has more to do with protecting individual citizen's rights than states' rights or executive responsibilities.²² In this respect the Australian Senate's actual role has been consistent with the original federal theory outlined by American constitutionalists. An institution such as the Senate can help make government responsible by defending and promoting individuals' interests in having duly processed government. The current Australian critics of our constitutional arrangements simply fail to appreciate the legitimate checks and balances dimension that is an integral part of federal institutions such as the Senate.

A form of British styled responsible party government emerged very early in the life of the Commonwealth, as is documented in Reid and Forrest's recent history of the Commonwealth Parliament.²³ The Senate quickly emerged as more a party house than a states house, yet it also accepted the primacy of the lower house as the house of government. The potential of the system to protect fragmented or loose parties encouraged early, if only occasional, expressions of a local variant of checks and balances quite removed from party government as practised at Westminster. The Australian hybrid model combined federalism and a responsible government executive grafted onto and, to a considerable extent, understood in terms of, established colonial institutions and practices.²⁴ It was a flexible system with room for considerable latitude in determining who was responsible for governing what. In the wake of executive consolidation in the lower house, the Senate began to experiment with defining its own role under the Constitution. If the House found little dispute with its claim to be the home of executive government, the Senate claimed greater responsibility for scrutinising the execution of government. The working out of Australian parliamentary government has involved an indeterminate clash between executive notions of mandate and parliamentary notions of public accountability, frequently located in the Senate and often justified in terms of federal constitutionalism.

In the Australian model the Senate has strong ties with state parties but has never been a states' house because state parties are primarily branches of federal parties with similar ideological colour and policy programs.²⁵ The Constitution is basically one of institutional divisions and checks on power - between national and state governments; within the national legislature between the House of Representatives and the Senate; and of governments with constitutionally specified powers and a court exercising judicial review. Rights are protected by a combination of constitutional checks and restrictions on the federalist side, and by evolved practices of responsible government and the 'common law' on the side derived from Westminster.

Australian neglect of federalist theory has hidden a powerful source in the *Federalist Papers* justifying senates as both rights-protectors and nation-builders. The hybrid quality of Australian constitutionalism ought to encourage commentators to devise new evaluative frameworks adapted from the standards of federal constitutionalism identified by Madison in *Federalist Papers* 10, 51 and 62-63 which explains activities remarkably akin to a number of Australian Senate activities. Madison's argument is in two parts: first, an explanation of federalism as promoting rights, and second, a defence of a federal upper house as a nation-building institution, particularly through the promotion of a rights-oriented process of governance, as distinct from simple majoritarianism. The relevant Madisonian distinction is between the Senate's enhancement of responsible government and the defective energies of popular government.²⁶ Coining the very word 'responsibility', Madison sought to render popular government reasonable through checks and balances, including a Senate structured with incentives to resist populism and to foster deliberative processes of governance. Rather than being a states house, the distinctiveness of the Senate consists in its 'sense of national character', and its ability to help convert popular sentiments into the public interest. In this Madisonian view, responsibility rests particularly with the Senate which alone 'may be justly and effectually answerable' for policies which respect the long term interests of the public - for public policy rightly understood. In any society, the 'view of its rulers' must be made to blend with 'the cool and deliberate sense of the community'.²⁷

The Senate's place in Australian constitutionalism fits the Madisonian model of a custodian of responsible governance. As Reid and Forrest have clearly demonstrated, the potential scope of legitimate Senate activity is vast, and historically the Senate has contributed importantly, even if more frequently on rights as affected by executive administration rather than on public policy.²⁸ The point, however, is that the Senate displays a sense of constitutional purpose that rests on rights promotion, not protection

22 What follows is a somewhat shortened version of a section of Galligan and Uhr, 'Australian Federal Democracy and the Senate'; see also Galligan, Knopff and Uhr, 'Australian Federalism and the Debate Over a Bill of Rights', *Publius: The Journal of Federalism*, Vol.20, No.4

23 *op. cit.* especially pp. 14-24, 70-79

24 This latter point is insisted upon by Campbell Sharman 'Australia as a Compound Republic', *Politics*, Vol.25, 1, pp.1-5

25 Joan Rydon, 'The Federal Structure of Australian Political Parties', *Publius: The Journal of Federalism*, Vol.18, No.1, Winter 1988, pp.159-71

26 David Epstein, *Political Theory of the Federalist*, University of Chicago, Chicago, 1984, pp.167-70, 179-85, illustrates the vital link between federal institutions and the promotion of rights

27 *Federalist Paper* No.63

28 *op.cit.*, pp.172-77, 216-30

of state interests as traditionally claimed. Two examples of Senate Committees that we are not celebrating today illustrate the point. The first is the establishment in 1932 of the celebrated Senate Standing Committee on Regulations and Ordinances to review delegated legislation. This Committee has developed an international reputation for its extraordinarily successful amendment of government regulation so as to protect the rights and liberties of citizens.²⁹ Fifty years later, the Senate established a related Standing Committee for Scrutiny of Bills to improve the impact of primary legislation on civil liberties. Both committees explain their rights promotion in terms of related improvements in the due processes of responsible governance. In the words of a Chair of the Senate Regulations Committee, that body operates through 'a miniature code of legislative propriety' and pursues 'issues of personal liberty and parliamentary propriety', examining 'the justice and propriety of ways and means'.³⁰ So too, the Bills Committee is responsible for alerting the Senate 'to the possibility of the infringement of personal rights and liberties or the erosion of legislative power of the Parliament'.³¹ These two legislative scrutiny committees have protected rights and liberties while strengthening the governing processes.

Understood in this way the Senate is not simply a federal institution with a states' rights function but a national institution with multiple purposes of national governance and protecting individual rights. Nor is the Senate simply at odds with parliamentary responsible government but can be seen as an institutional means of ensuring broader responsibility of government. John Uhr and I have been at some pains to emphasise the rights protection role of federalism and the Senate because it is important and largely neglected. It complements and extends the legislative review and executive scrutiny function that have received considerable coverage by numerous authors cited in the final section of this paper.

I have titled this section 'Great Expectations, High Hopes and Manifest Uncertainty',³² and this comes from the introduction to an excellent volume published in 1980 which was a review at that time of the major developments in the parliamentary scrutiny of administration edited by my friend and colleague John Nethercote.

Let me come finally to the question posed for this session: can Senate committees halt the decline of Parliament? I've been avoiding this question partly because I don't know the answer, and partly because I suspect my guess is probably somewhat at odds with the sentiment of this gathering.

A calculated response would insist on specifying the time frame. Whether Parliament has declined and is continuing to do so would depend upon the original point of reference. The answer would be different if that were 1905, for example, before disciplined parties were dominant and when the Commonwealth was putting in place major legislation on a range of national policies; or 1935, before proportional representation had been introduced in the Senate; or 1965, before the establishment of the Senate's Legislative and General Purpose Standing Committees and Estimates Committees. As well, the prudent respondent would want to link the committee system with the Senate's overall standing and role. Furthermore, there are matters of complexity and degree: something as complex as the decline of Parliament, if indeed it is occurring, could not be simply halted as a car or a horse might be. A detailed evaluation of practical work of the Senate committees would be required, including assessment of the significance of the issues that have been taken up and dealt with, the quality of their investigations, and the follow-through and impact of this work in improved legislation, greater scrutiny of public spending, and in better governance overall. Clearly this would require detailed and systematic research which has, to my knowledge, yet to be done.

So, in the absence of that,³³ let me conclude by reminding you of the high expectations raised by the Senate's 1970s committees innovation and the ambitious claims that have been made. J.R. Odgers heralds the introduction of Legislative and General Purpose Standing Committees as beginning 'a new era in Australian parliamentary history'.³⁴ Senator Alan Missen, although critical of aspects of the committees such as their inadequate staffing and insufficient legislative scrutiny of actual bills, described the creation of a fully-fledged Senate committee system as 'not only be[ing] a truly remarkable development, but a development which public opinion has firmly accepted as a beneficial addition to the parliamentary scene'.³⁵

Likewise, Reid and Forrest say that the 1970s innovation 'revolutionised the Parliament as a whole', 'contributed substantially towards the attainment of the ideal of parliamentary control', and is 'the

²⁹ See Anne Lynch, 'Fiftieth Anniversary of the Australian Senate Standing committee on Regulations and Ordinances', *The Table*, Vol.50, 1982, pp.70-74

³⁰ Commonwealth Parliament, Senate Standing Committee on Regulations and Ordinances 83rd Report, pp.10, 13,15, Parliamentary Paper 377/1988

³¹ Commonwealth Parliament, Senate Standing Committee for Scrutiny of Bills, Annual Report 1986-87, p.2, Parliamentary Paper 443/1987

³² J.R. Nethercote, ed., *Parliament and Bureaucracy*, Hale & Iremonger, Sydney, 1982, p.1

³³ But see valuable considerations by M.E. Aldons, 'Parliamentary Committees, Problems of Evaluation', *Legislative Studies*, Vol.2, No.2, (Spring 1987); and Derek Drinkwater, 'Case Study of a Senate Committee', *Legislative Studies*, Vol. 4, No.2 (Spring 1989)

³⁴ J.R. Odgers, *Australian Senate Practice*, fifth edn, p.476, AGPS, Canberra, 1976

³⁵ Alan Missen, 'Senate committees and the legislative process', in J.R. Nethercote, ed., *Parliament and Bureaucracy*, p.125

show-piece of the Senate post-war achievement', and that 'the work of these committees has made an important contribution towards the attainment of a parliamentary control of the Executive'...³⁶

When it comes to being specific about what has actually been achieved, even sympathetic authors like Reid and Forrest are rather vague. For example:

There can be no doubt, however, that the extensive range of enquiries undertaken and reports presented have widened the knowledge of participating senators, focused interest upon the subjects that the committees have addressed, stimulated officials to keep abreast of topics which are the subject of enquiry, and increased substantially the flow of literature about aspects of government in Australia.³⁷

There can be no question of enhanced scrutiny and criticism within the Commonwealth Parliament if quantitative measures are the appropriate ones, as Sir William Cole pointed out:

In the past fifteen years the investigatory activities of parliament and its committees have expanded dramatically. If committee activity alone is examined it will be found that, as compared with the situation twenty years ago, there has been a fivefold increase in the number of reports; the reports themselves are five times as long as previously; and the numbers of official witnesses alone have increased in similar proportions.³⁸

And as John Nethercote points out: 'even modest developments in parliament's role have considerable consequences for ministers, for parliamentarians themselves and for officials'.³⁹

My own sense is that we should be less optimistic at the beginning of the 1990s than most commentators were through the 1970s and early 1980s. The break-through was made and consolidated in the 1970s and the enhanced role thereby achieved for the Senate and its committees has been continued in routine fashion through the 1980s. The great expectations have not been realised, however, nor has the incipient renaissance fully emerged. Some new stimulus is required. Perhaps that fillip can come from greater appreciation of the Senate's role in Australian constitutional theory and design.

Mr EVANS - Thank you, Dr Brian Galligan. Since we were in this segment, trying to look to the future - if there is any future, since the future belongs to new Senators - we decided to select a collection of new Senators and we thought that was appropriate. I call on the selection of new Senators to respond to Dr Brian Galligan's paper and also to add any comments of their own. First I call Senator Rod Kemp from Victoria.

Senator KEMP - Mr Clerk, colleagues past and present, ladies and gentlemen: when I was asked by the Clerk to make some comments today I pointed out to him that in fact I was more a student than a teacher. I said that I would certainly like to come, but thought that I could actually learn more than perhaps I could teach. I suggested to the Clerk that I would be quite happy to step aside if he could find a better person to commentate. I did not hear back from him, which I can only assume is not meant as a compliment to me but perhaps is more an indication that my colleagues were more fleet of foot. One of the reasons I stood for the Senate was an earlier experience I had as a staff member of a Liberal Minister. During my preselection for the Senate I was asked by Jeff Kennett, whose name would be known to a few people here, the reason I wanted to join what he called an 'old man's house'. I pointed out to him that it was not. In fact, one of the features of the Senate which I found particularly attractive was its very extensive committee system. I found that particularly appealing, and that was one of the reasons why I decided to throw my hat in the ring for the Senate. The Senate, I would have to say, is in many ways its own worst salesman. The image that Brian mentioned, I think, is very common throughout the community. I think it is changing.

Opinion polls have been taken over the years on the question: 'Should we abolish the Senate?'. In the fifties a full third of our people thought it would be wise to abolish the Senate, another third thought it would be wise to keep the Senate and the final third had no particular opinion at all on that matter. That has actually changed. The latest opinion poll I could come across was taken in 1980, and that showed that a vast number of Australians feel that the Senate is now serving a useful role. It is interesting that this change has come about as the Senate itself has flexed its muscles.

36 op. cit., p.375

37 Ibid., p.376

38 R.W. Cole, 'Responsible Government and the Public Service', Patrick Weller & Dean Jaensch, eds., *Responsible Government in Australia*, Drummond, Richmond, Vic., 1980, p.169

39 'Introduction', in J.R. Nethercote, ed., *Parliament and Bureaucracy*, p.6

Mention has been made here of the tremendous work of our colleagues in the sixties and seventies in the formation of a committee system. There was also the constitutional crisis of 1975, when the Senate flexed its muscles in a very vigorous way. This, strangely enough, has not only failed to hurt the standing of the Senate and the public appreciation of its work - some of my colleagues may differ with me on that - and its capacity to protect the Australian public and body politic but has helped further to endear it to our public. I was interested in doing some research for these brief remarks to come across a paper by Senator Button. Senator Button, one of our most distinguished colleagues, said in 1979: 'If, however, the power to frustrate is removed,' - he was speaking about supply - 'it is no more unprincipled for the Senate to exist than it is for the human being to have an appendix. If in this situation the appendix and the Senate could each be made to serve a useful function, both the human body and the body politic would be better served'. I suggest that is a bit of the reason why we have this dilemma in selling ourselves to the wider public. The Labor Party - and I think this has been mentioned by other speakers - has had a view on the role of upper houses. I suspect this has made it hard for Labor Party members to get out and effectively sell the role of the Senate, as former Senator Black pointed out to us this morning. Nonetheless, it is quite clear from the papers which have been given here today that many Labor Party Senators have made a very effective contribution to the development of the Senate and of the committee system in particular. I give them full credit for that.

The issue in this particular section is the decline of Parliament and whether the Senate can help arrest that decline. My view, and I think it is the view of the Liberal Party, is that the last decade has seen a very substantial decline in the appreciation by the public of Parliament in general and politicians in particular. It seems quite interesting that at the moment both political parties are, in their own ways, seeking to address effectively this particular problem. You will be aware of newspaper reports about Mr Hawke and Dr Hewson and of the discussions that they have had looking at ways in which the performance of this Parliament can be improved.

I was interested in one of the lessons that we could perhaps draw out from the papers this morning. Why did this change come about? How did this Senate, which seemed to be not a particularly active body in the 1950s and the 1960s, come to develop this very powerful committee system? It came about in a number of ways. It came about because of the work of former Clerk Odgers and the research that he did. That was made very clear in Senator Rae's paper this morning. It came about also because of the idealism of a number of Senators: Senator Rae would certainly be one of those; Reggie Wright would be another; and Lionel Murphy would be another one who has contributed to it.

It also came about because the politics were right. The politics at that time made it sensible and wise. For people who were actually in the game of winning in politics there was a sense that if certain proposals were adopted in relation to the committee system they would at least obtain some advantage - perhaps at the expense of their opponents. It came about through a mixture of hard research, the work of a number of Senators who had perhaps a broader national perspective and, indeed, with the application of some short-term political advantage.

It seems to me that there is a great ferment now occurring on what we should do about the Parliament. How can we, as politicians, improve our standing? Over the next few years politicians should see how they can improve the performance of Parliament. Some of these will be, of course, looking at the role of the Senate and Senate committees. Hearing the proposals that Mr Hamer and a number of others have made here today, it seems to me to be the right time for these sorts of proposals to come up, because the public is worried about politicians and worried about this Parliament. Politicians should now start to look at the changes that they can make because they want, in the end, to address effectively what the public is concerned about.

It is quite possible that because of the research which has now been carried out - partly as a result of this meeting here and of the work of others before, like Senator Hamer, that maybe in the next few years there will be the chance at least to adopt some of the proposals which have been put forward.

I will lay my cards on the table. I am a very strong supporter of upper houses. I am a strong supporter of the institution of the Senate. I believe the changes which have been made over the last two decades to this chamber have added greatly to the lustre of our system and have added greatly to the capacity of the people to look closely at what the executive is doing.

In conclusion, I do not know whether I am a sign of the future, but I would like to give full credit to the colleagues who have preceded me and to indicate that I certainly hope that we will prove worthy of the legacy that they have left.

Mr EVANS - Our next new Senator is Senator Nick Sherry from Tasmania.

Senator SHERRY - Mr Chairman, ladies and gentlemen: I do not know whether Rod was trying to provoke me into doing a re-run of my maiden speech, but I do not really see that the topic in this session has been particularly relevant to warrant my going into the ins and outs of the powers of the Senate because the question that we have to address is the decline of Parliament. It seems to me that is not particularly unique to Australia; it is a problem that exists in all democracies, and the relative power of the Senate and its performance is not necessarily central to that. I have to be quite honest - there were two reasons why I stood for the Senate: I was, like Rod, attracted to the Senate-style approach, the ability to come to grips with issues more readily than you can in the House of Representatives; and frankly, the other reason was that I could not get elected to the House of Representatives.

I think if we look at what was perceived to be the importance of Parliament, there is no doubt that Parliament as an institution worldwide is rapidly declining. It is certainly no longer the centre of vigorous debate, questioning, and determination of policy. That is relatively rare. It certainly does not, in my view, alter policy except at the direction of the executive. Certainly, it now very, very rarely has the ability to bring about the demise of a government or the particular change of a particular policy. As I have mentioned, that is not unique to our political system. I think the reasons for this change are important because it shows what a committee system is up against in terms of trying to arrest the decline of Parliament.

Some of the reasons for the decline of Parliament include the enormously complex scope and range of issues that Parliament now has to cope with; the sheer size of the public sector; the media concentration on our political process in terms of the leaders - it is almost a presidential approach in terms of the media attitude; the very close advice - and some would say control - of Ministers by such persons as advisers and minders (Ministers now do not say a word out of place if they can avoid it and they are very carefully briefed on issues and policy); and the rise of very rigid political parties. I do not make any value judgment as to whether those sorts of things are good or bad but they are leading to a decline in the role of Parliament.

I cannot reminisce very much about my performance in the various committees although I do want to briefly relate my first day on Estimates Committee F to illustrate what I believe is a great problem that the committee structure has in arresting the decline of Parliament. Estimates Committee F examines the estimates of the Departments of Primary Industries and Energy, and Industrial Relations and it apparently, as I understand, completed its deliberations in one day which is something of a record. I asked six questions and my colleagues from the National Party and the Liberal Party must have asked 400 or 500. So my strike rate by comparison was pretty poor, but I thought my strike rate by comparison to some of my Labor colleagues was pretty good because at the conclusion of the day, having asked six questions, my Labor colleagues, I think, had asked one or two. So with great pride I bounced up to one of my Labor Senate colleagues and started talking about it and he said: 'Yes, Nick, you have set a record for a first time appearance. Don't do it again'.

The fact is that when you are in government you do not want to be scrutinised by committees. I have to say I did feel a little better later on, though, because although the Liberal Party-National Party members asked many questions in the industrial relations area - I have an industrial background - they missed almost every relevant question that they should have asked.

The great problem that the committee structure has to come to grips with is the enormous range of issues. If I look back over the last couple of weeks as a new Senator, I see no major issue that came out of the Estimates Committee of world shattering newsworthiness or political importance or that is going to change the direction of this Government. There is simply nothing that has come out of that process. I am not saying that Estimates Committees do not fulfil a useful role. They certainly do keep public servants on their toes. They certainly play an important part in dealing with some issues over a period of time. But in terms of the total picture, their ability to arrest the decline of Parliament, in my view, is fairly minimal.

I suppose, from my personal point of view - I am not a historian by background, although I do have a very deep interest in history generally - it has taken 800 years for Parliament to obtain its powers and wrest control - largely control of the political policy-making process - from the executive, yet in probably the last forty or fifty years we have gone into a very rapid decline in the sense that the executive is wresting back much of that 800-year accumulation of powers by Parliament. What concerns me more than anything is what is going to happen to our democratic process if the committee system cannot succeed in halting the decline of Parliament and I believe the committee structure cannot halt that decline - and what processes we can have to halt that decline of Parliament if we regard, as I do, the role of Parliament as central to our democratic process. I am very concerned about where that will lead us in the future.

Mr EVANS - Senator Vicki Bourne is a Democrat Senator from New South Wales.

Senator BOURNE - Like my colleagues, I am a first time Senator. If Parliament is declining then the enemy is the executive. I think that has come out a few times during our discussions today. The executive is wresting more and more power away from the Parliament and towards itself and, of course, you have to expect it to do that. What we have to do is try to grab a bit of it back again. I think one of the only places we can do that now is in committees - in Senate committees in particular, because, of course, the Senate does not have a majority with the Government.

It became obvious to me that you change a little when you get elected. I did not think I would, but I suddenly found myself defending New South Wales all over the place - with family, with friends. This was before Parliament had even sat and I had not been sworn in, but I suddenly decided that I was actually a representative of the people of New South Wales and I had to defend them and I started doing that. I think probably other people have found that they have had exactly the same experience.

When you get elected, you become a parliamentarian rather than a politician. You are still very interested in politics; you want to keep your party going; you want to keep going; you want to keep your job, but you are also very interested in representing people and making sure that the people that you represent get the best deal. You turn from the politician who is just after a bit of publicity to get elected - a lot of publicity to get elected, and if you are a Democrat that is not easy - into somebody who is genuinely representing people.

That shows up a lot in committees. Because I am a Democrat, I am on four committees. The Scrutiny of Bills Committee is one that has been actually talked about a bit today. I must say, in defence of the Scrutiny of Bills Committee and of our secretary, Stephen Argument, who is around here somewhere, that an awful lot of work is put into it and a lot does come out of it. I have a few figures here. The Scrutiny of Bills Committee has drawn attention to about one-third of all bills which have been presented to it, but only one-tenth of their suggested amendments have actually got through. Now, that really is a problem and that is one that has to be addressed. The Regulations and Ordinances Committee does do better. I want to make only two brief points. There is a very unfortunate trend towards the dominance of the Parliament by the executive. That is continuing. I think what Dr Galligan said about a time frame is also true. Since about the middle of the century, we have been a bit better than we were. Since about the middle of the last decade, we have been going downhill. So we have to wrest that back, and one way to do that is through committees.

I am on three committees in addition to the Scrutiny of Bills Committee. The committees are remarkable because, when nobody else is around, parliamentarians actually tend to agree with each other. On the contrary, we try to come to agreement by consensus. We try not to abuse each other. It is really quite different from the chamber. You would be very surprised; I was. If that sort of spirit of parliamentarianism can be kept up, that is one way to halt the decline of Parliament.

Scrutiny of legislation is the other thing, I think, that is really important. Between 1901 and 1910, twenty-three bills were passed through the Parliament per year. In the last decade an average 170 per year were passed. Obviously there are a lot of reasons for that. One reason is the dominance of the executive which has the ability, in the lower house particularly, to gag, to guillotine, to get as many bills through as it likes without proper scrutiny. That is another thing that has to be looked at.

The Senate's great strength is that there is no majority for the executive, that it has to listen to reason and that it has to send bills off to select committees when it is forced to do so. As a Democrat, I feel a bit of an inherited guilt over select committees, I must admit, because about nine or ten years ago we discovered that one way to stop a bill going straight through was to send it off to a select committee. So a lot of things were sent off to select committees by Democrats, to the point where there was even a cartoon that had Moses pointing at someone - probably a Democrat - saying, 'The road to hell is paved with referrals to committee'. I think that is still considered by the executive to be the case.

Mr EVANS - Senator William O'Chee from Queensland has the distinction, I think, of being the youngest of the new Senators.

Senator O'CHEE - Mr Chairman, past and present Senate colleagues, ladies and gentlemen: the topic for discussion in this session presupposes that there is a decline of Parliament. In order to answer that question, I believe it is necessary first of all to ask what is the role of Parliament so that one can assess whether there is, in fact, a decline of Parliament and, therefore, whether Senate committees can play a part in arresting the supposed decline of Parliament.

All of the people who have spoken this afternoon, including Dr Galligan, have viewed the decline of Parliament in terms of some sort of Diceyan division between Parliament, the executive and, unmentioned today, the judiciary. The assumption is that Parliament has declined as the executive has

risen. If we take that as the starting point, we must therefore ask: what is the role of Parliament that makes it different from the executive and why will the goals and objectives of the Parliament be different from the goals and objectives of the executive? I talk about the Parliament in this way in a conceptual term rather than the goals and objectives of the individual parliamentarians.

The role of the executive is to implement the policy of government. I think there are many people who believe that the role of the Parliament is to be a talking shop, a debating chamber, or whatever, where the principles and policies of the government are brought into question. I believe there are a whole heap of reasons why the executive has risen at the expense of the Parliament, at the expense of the discussion of government policy, government principles and objectives. Partly, they relate to the media because it is much easier, of course - it is less so now, perhaps, with the televising of the Senate - to get your message across over radio or television, or whatever, than it is to actually get what you say in Parliament out to the people. That is very clear. But the question of whether the Senate committees can play a role in transforming the balance of power is another thing.

One of the reasons that matters are referred to Senate committees is very simple - there is not enough time to deal with them in the Senate itself. That is why they are referred to committees. This therefore raises the question: if the Senate is supposed to be a place where matters are discussed, is it satisfactory that they are discussed in the committees? One can raise a substantial argument that the rise of the committee system is a derogation of the authority of the Senate and, therefore, in some respects, may contribute to a perceived decline in the role of the Senate, if one looks at the Senate or the Parliament as a place of debate.

As we all know, most of the deliberations of Senate committees are not public deliberations; there is no Hansard.⁴⁰ It is not possible to see what went on during those deliberations. One of the problems we face at the moment is the fact that a new committee procedure has been introduced for the consideration of bills. Unfortunately, the hope of the framers of that committee procedure that we would see an increase in outside people being called before public hearings of those committees has been obliterated by a decision on the part of the Labor Party to restrict the procedure at those hearings and to restrict the number of people who will appear before them and, therefore, the evidence that we bring into Hansard. If the Senate committees are to contribute to increased public debate, they can do it only by increasing the evidence available for public scrutiny in the Hansard. In many respects that debating function is lessened by private, non-recorded deliberations of those committees.

On the other side of the coin, there is an argument that can be raised that the Senate committees increase the scrutiny of executive activity because they take it away from the simple Caucus system. The committees require reports and, therefore, it requires perhaps more intellectual comment than one would get in the normal course of chamber discussion and it requires members of those committees to exercise their intellect in addressing the problem.

But, of course, the Senate committee system itself is a problem. If one looks at what Dr Galligan has said this afternoon about the Senate having a particular role in a national structure of representing particular state electorates, or if one just goes to the traditional view that the Senate is the States House - I think we are probably splitting hairs to find differences between those two viewpoints at a superficial level - one sees that the Senate committee system is unsatisfactory because there is no guarantee in the process that every state will necessarily be represented on each committee. So, in some respects, the committee system actually decreases the power of states or state electorates by failing to guarantee representation of each state upon those committees. Of course, anything that attempts to devolve authority or to refer matters away from a larger body of representative people to a smaller body of elected members who are not elected by the people will always run that risk.

I believe there is a lot of power, perhaps untapped power, in the Senate committee system; something which we will see extended, I hope, over the next five, ten, or fifteen years - not necessarily, but perhaps to the extent of the American Senate committees' power. For that reason, whilst not wishing to canvass the issue of whether there has been a decline of Parliament, I believe it is fair to say, without any shadow of a doubt, that the Senate committee system has a major role to play in the forthcoming years in changing the definition of the organs of Parliament. That is, I believe, perhaps the greatest contribution to the Parliament of this nation.

Mr EVANS - Our final comment comes from Peter Bayne, who is a lawyer - at the moment attached to the Parliamentary Library.

40 Verbatim reports of all committee meetings held in public are recorded in Hansard.

Mr BAYNE - Thank you, Mr Chairman, and may I say I express my appreciation for being invited to speak. I do not have a great deal of experience with the Senate and perhaps, unencumbered by too much in the way of knowledge or, on the other hand, despair, or cynicism, I can offer a few short, sharp comments about the potential, I think, for Senate committees to play a greater role in our system of responsible government. Throughout today's proceedings there has been frequent mention of the new Senate procedures for the referral of bills to the Legislative and General Purpose Standing Committees of this Senate.

My remarks are directed to the potential which this procedure offers for the exercise of Senate influence on the administration of the law by the administrative branches of government. The law I am talking about is that which underpins the administrative machinery of government which creates administrative agencies, such as departments and statutory authorities, or which selects existing ones and empowers them to take action which affects the citizens or the inhabitants of Australia. There are many examples one can find from the statute book of that kind of law.

Characteristic of that kind of law is that it often authorises the exercise of a discretion or the making of a discretionary judgment by the administrative official or the agency concerned. Let me give you two examples. Both come from the Social Security Act. First, there is provision in that Act which authorises the Secretary to waive the recovery of an overpayment of pension or benefit. That is all it says. It gives no indication of the circumstances in which waiver might be appropriate or the circumstances under which it might not. Another example which is less open-ended but which involves nevertheless the making of a discretionary judgment is the provision in the Act which requires a decision about whether a person is qualified for unemployment benefit to turn in part on the answer to the question whether the claimant had taken reasonable steps to obtain work - again, that is all it says.

Now the exercise of those kinds of discretions involves all Australians. It involves millions of dollars, involved, of course, in how those discretions are exercised. It affects, directly, of course, the people who seek benefits or whose benefits are sought to be withdrawn. When Parliament enacts those kinds of provisions and, as I say, they are all through the statute book, it is in effect not making a law at all. What it has really done is left that task to administration. So when the Department of Social Security states a policy in its manuals as to when it will or will not waive recovery of an overpayment, or when it will or will not find that someone has taken reasonable steps to obtain work, the Department is, through its manuals, in effect, rewriting the law.

There are occasions when Parliament does get to know about the way in which the administration has rewritten the law. If a regulation is made to fill out a discretion, or to fill in the gaps of a discretion, then the Regulations and Ordinances Committee will find out and may be able to do something about it. But that is relatively rare. In most times when the administration, as it does frequently, fills out the discretion by announcing some policy - which you can get under the Freedom Of Information Act from the Department - Parliament is unaware of the way the administration has filled out the content of the discretion. Certainly, it has had no opportunity to have any impact on how the discretion is filled out.

The reason to say all that, or to outline all that, is because it seems to me these new procedures do permit the Senate, if it wishes, to have some influence on how the discretions are filled out. These procedures may do this because they provide the opportunity for Senators in the examination of a bill, clause by clause, to question the agency about the policy it will follow as to how particular statutory discretion is going to be applied. It also gives the Senators some opportunity to impress their perception of what policy should be in the sense of guiding the exercise of that discretion.

I take the point that has just been made that this may not happen in the foreseeable future to any great extent, but the potential is there for these committees to hold hearings, to call before them public servants and to ask them: 'What do you mean by this provision in the statute?'. One can imagine the situation, in other words, where a Senator will pick up a bill which has provision in it, such as that the secretary can waive over payment of discretion, and say: 'Now, what do you mean? What have you got in mind there? When are you going to waive recovery and when won't you waive recovery?'. In that way a record can be built up. The Hansard record is very important, as Senator O'Chee has just explained. A Hansard record can be built up of the agency's viewpoint.

The other thing to say, of course, is that in that process members of the public can come along and they can have their say as to how the discretion should be exercised. On the basis of that, there will be a parliamentary record of the perception held by the Senate committee. Whether that comes about is a matter to be seen. There are some famous examples from the past of Senate committees doing just that in a very detailed way, raking over a bill, asking the agency or the public servants how it is going to

work, and having some impact on the form the bill finally takes. The committee consideration of the Freedom of Information Bill is a prime example.⁴¹

What could follow if a Senate subject committee takes on this role? In the first place the Act might be amended to tighten up the discretion. That may not always be desirable. It may be seen that we cannot do much better than have a very open-ended form of wording and simply leave it to future experience to fill in the gaps, subject to some broad guidelines being stated in the parliamentary record. Even if the Act is not amended, what may emerge is a clear statement of policy about how the Act will work by the agency perhaps in answering questions. One might add that the Ministers might find out a good deal about how their departments intend to apply Acts through this process as well.

The other thing that might follow is that bodies like the Administrative Appeals Tribunal which interpret these Acts, when they hear appeals from an administration, may pay some regard to what is being said in Parliament through the process I have described. That may require some change on their part, but again there is a basis on which they can take that action. Finally, there will be also a basis for Estimates Committees and the like to review the way in which legislation is worked if they have this yardstick presented to them in the parliamentary record generated through the close scrutiny of bills through the subject committees.

Finally, let me quote from a speech I came across recently. It is the maiden speech of Senator Durack. Given that he obviously has had a strong role in the development of these committees over the last two decades, it is appropriate to refer to his maiden speech in which he said:

Another vital role which we must evolve and to which I propose to give great attention is the close scrutiny of Bills, as they are presented, to ensure that they meet the prime requisites of legislation in that they do not provide for wide discretions in the Executive and as far as possible they create specific obligations or confer specific benefits. In this way I believe that the Parliament can, even with the pressures of this age in which we live, go a long way towards performing its historic and fundamental role as the instrument to control the Executive Government.⁴²

Now that is an ideal, if you like, that has been repeated throughout today's proceedings. What I am suggesting is that this new procedure, if the effort is put into it, could well help the realisation of that objective. Thank you.

Mr EVANS - We have time for some succinct questions, comments or observations.

Dr CLARK - A partial solution might be for the Senate to let the public know what it is doing. I will give one example. Following Senator Peter Rae's idea many years ago and a successful motion by Senator Hamer last year, the standing committees now examine annual reports. But the many people in the public who read the reports of government departments and authorities do not know that those reports even exist, how to get hold of them, or even that committees are looking at annual reports. So it seems to me that a very active promotions campaign and a very active publications unit would help a great deal in letting the public know one of the things the Senate is doing. There are many others that could also be publicised.

Mr EVANS - Yes. This was a point that was touched on earlier and I made the point in return, the somewhat negative point, that people do not want to be chopping down more trees to churn out more paper, which may or may not be read by people who are deluged with paper already. But I think one thing that has come out of this conference is that there is a need for some new publicity mechanism on the work of committees in particular. Would any member of the panel like to comment on that point? Are there any other questions?

Ms NETTLEINGHAM - I am, with other people, responsible for preparing my Department's annual report. It was with great interest that we got hold of a report from the Senate Standing Committee on Transport, Communications and Infrastructure. The Committee produced a report in May of this year detailing its comments and findings on the Department's annual report. We were looking for some feedback. The total comment was: 'apparently satisfactory' and I do not really think that that is enough for departments to go on, to know whether we are producing what is necessary and whether what we are producing is actually used.

⁴¹ Commonwealth Parliament, Senate Standing Committee on Constitutional and Legal Affairs, Freedom of Information, Parliamentary Paper 272/1979

⁴² Commonwealth Parliamentary Debates (Hansard), Vol.S.49, p.572

Mr EVANS - Well, that is a product of the new procedures, which I mentioned earlier, for the scrutiny of annual reports by committees. They are required by the procedures of the Senate to say whether a report is apparently satisfactory or not. If they find that a report is not apparently satisfactory they are required to look further into it and they are also required to examine other reports selected for examination. Now, that is an attempt to enable the committees to deal with the enormous mass of annual reports and the enormous mass of information that is contained in them and, at the same time, for the Senate to have some assurance that the committees are looking at all of the reports and are, at least, making a judgment on them.

It is simply not possible for each committee to examine, in detail, every annual report that comes before it, but that device and that phrase is an attempt by the Senate to ensure that each committee looks at every annual report it gets and makes some sort of judgment on it apart from the ones that it selects for further examination. Is that a fair comment Mr Hamer? Does any member of the panel wish to comment on that point?

Dr KUKATHAS - I am very sympathetic to everything that has been said by the various speakers who are obviously concerned about the decline of Parliament. I wonder if I could offer a different way of looking at it. Perhaps it is fair to say that Parliament has declined if you look at its powers in relation to those of the executive but that is not to say that its powers have declined absolutely. Perhaps another way of looking at it would be to say that Parliament has, in fact, increased its powers as a result of the ascendancy of the executive. This is because Parliament and the executive are not the only players. In fact, the other player is not just the judiciary but, perhaps, the society at large.

One way in which the powers of Parliament may have increased is in the very fact that the executive does now take much more responsibility for larger areas of public interest. As a result of this, Parliament itself now takes on more responsibility. If I can give a very simple sort of an example: perhaps twenty years ago it would have been much less likely for the executive to think to involve itself in the affairs of the universities - to see the universities as a part of, say, a system of national planning. Now, looking at it in this way, the executive has much more say in the way universities are run. This has to be scrutinised by Parliament. Much more responsibility for what actually goes on in universities is now not just in the hands of the executive but in the hands of Parliament and its committees. In this respect, Parliament has declined relatively to the executive, but perhaps not relative to the society at large.

Mr EVANS - I was waiting for someone to raise the question generally of the size of government and whether governments are attempting too much. Does any member of the panel want to comment on that point?

Senator SHERRY - Just very briefly, I agree. I would never have believed when I entered this place that I would have ended up on a committee on Animal Welfare.

Dr GALLIGAN - I have not been terribly convinced at all, listening over a period of time to people talking about the decline of Parliament. It does seem to me that you can go back to the Commonwealth Parliament in the first ten years to federation but that was rather a unique situation. Even then life was much more leisurely. You read the stories of the early parliamentary leaders. They had a more leisurely life. I think that this was part of the argument that I was trying to run regarding the complexity of policies and issues. The reason why the executive has grown, too, is because there are so many more things - perhaps some things that it need not be involved in, but a whole lot of things - that it is expected that the public governmental sector will be involved in. I think, if that has disproportionately gone to the executive, it is, in a sense, difficult to say that Parliament has declined. So I would agree with that rather different way of putting it.

Senator O'CHEE - I think the comment is a very interesting one. When people talk about the division between the executive and Parliament and the judiciary, and perhaps the people, they talk about it on the basis of having inherited those principles or concepts from the Westminster system. In a federal system - because the Westminster system is not intrinsically a federal system - I believe there is a difference between the two organs of Parliament. Not only does the Senate have a different set of constituencies from the House of Representatives but increasingly it is taking on different functions. There may well be very much truth in what you say. If one looks at, for example, the role of the Senate in scrutinising, and perhaps disallowing, various instruments of delegated legislation, then the House of Representatives is, and always has been, the electoral college of the government - as David Hamer said. There is no reason to believe that the role of the House of Representatives has changed at all over the period of time since federation. But it may be a different matter with the Senate.

Senator KEMP - Yes. It seems to me there are a number of senses in which you can talk about Parliament declining. The first sense is the public perception of the Parliament and how the public itself

regards Parliament and how it regards the behaviour of those in the Parliament. I made a judgement - and I do not think people have argued against that - that in that sense Parliament has declined.

The other issue is whether the Parliament is, in fact, fulfilling its proper function in effectively dealing with the legislation which has been put through the Parliament by the executive. I think, in a sense, this whole meeting today has been to look closely at that particular issue. I think the conclusion of the gathering here, or the speakers today, is that things in some ways have got better and they have got better to the extent that the Senate has improved its own role in the system, its own powers and its own capacity to scrutinise what the government is doing.

The other point that was made, and I think it was raised by Dr Clark, was that government itself has now stretched itself into so many nooks and crannies in our system and in our lives. Part of the public debate in the last eight years or so has been the extent that the government should withdraw from certain areas. We are seeing that, of course, in the current debate on the privatisation of various government enterprises. We are seeing that in the debate on the need to look more closely at the regulatory activities of government. All those things in themselves are probably connected in the sense that people are unhappy with their politicians and, of course, that in the end of the day translates into a fairly poor public perception of Parliament and politicians.

Mr MUSIDLAK - I am a little troubled, but not surprised, at the pessimism shown, because most of the discussion has tacitly assumed that the executive is setting the agenda and that the Senate is just responding in whatever way it can. Yet this morning we had the descriptions of the big issues - water pollution, air pollution, and so on - that people in groups and at individual cost decided to look at in the sixties and in the seventies, at a time when the resources of the public sector had not been mobilised to support a particular position and were able to get a lot of issues into the open and to mobilise the public to involve itself and to insist that some action be taken. I think that is a real challenge to the Senators. While there are problems in Australia there are opportunities.

Dr GALLIGAN - I think that is a good point. I think the disappointment - and this is just a broad brush impression - of looking at the Senate in the eighties as opposed to the seventies is that somehow, in a sense, it has been left behind. It seems to me that the agenda is being set now, not by the parties - they are in a sense trying to keep up and take it into themselves - but by larger groups and movements and new ideas out there, depending on the area, at quite a rapid pace. I think this was part of my argument that we have in the institution of the Senate rather a good arrangement for doing the sort of thing you were talking about, which it seems to me the Senate did more in the seventies; that public policies, like the environment, are so complex that in a sense you cannot leave them to anybody, either any one government or any one institution of government, whether executive or legislative or whatever. So if the executive is still making the running on policies it is often because it is pulling those things in. But if you say: 'Look at the environmental question', it seems to be thrown back between some of the key Ministers and the spokesmen of the big movements out there. It seems to me that somehow the Senate has not really realised the potential that it has.

Mr EVANS - From the history of those early select committees on, for example, air pollution and water pollution, they were examples of the Senate and the Parliament keeping up with the issues of the day, as Dr Brian Galligan has mentioned. In other words, they were keeping up better than they are now. Is there one last brief comment or question?

Mr GUEST - I would like to ask a question following that last remark. Is it possible that the Senate has now, in an attempt to achieve parliamentary respectability and to do something really useful, burdened itself with far too much routine work; a routine which it is now proposing to add to by looking more closely at legislation to the exclusion of some of the innovative work which was done in earlier years?

Mr EVANS - I suppose that depends on what you regard as routine work and what you regard as getting on to the issues. Does any member of the panel wish to comment on that? As I say, I think that is very much a matter of value judgement. I should say that this new system of referring bills to committees and of having the committees look at annual reports is a deliberate attempt, as I read it anyway, to steer the Senate committees towards more scrutiny of the activities of government departments and more scrutiny of legislation as against inquiring into general topics like air pollution, water pollution and so on. In other words, it is an attempt to make the priorities different and make the agenda different. Is that a fair comment, Mr Hamer? It represents, if you like, a value judgment on the part of the Senate that that sort of work is more, in some senses, productive. I think we will make that our last comment.

On behalf of the conference, I would like to thank all the speakers and panel members. I believe that out of this conference will come an agenda for future developments. An American author referred to the American Revolution as 'a revolution of sober expectations'. I think any revolution in Parliament has

to be a revolution of sober expectations and a revolution of modest expectations. The agenda which will come out of this conference, I think, will be an agenda of sober and modest expectations but, from my point of view, a valuable agenda for all that. I see Peter Rae trying to attract my attention.

Mr RAE - Mr Chairman, may I, as the first speaker after the President, who opened, simply take the opportunity of speaking on behalf of, I am sure, everybody who participated in this day and thanking you very much and thanking Ann Millar and all the rest who made possible this extremely successful day and one which, obviously from the number of people who have attended, a lot of people have found a great deal of interest in. May I say thank you on behalf of one and all.

Mr EVANS - I thank 'Senator Emeritus' Rae for that very good point on which to end. I certainly extend my thanks to Ann Millar and the other organisers of the conference.

You will be able to obtain a transcript of the conference, which will be made available to the participants later and which will also be available to other interested people, by contacting Ann Millar in the Research Section of the Senate Department. We hope that that document will provide a valuable record of what, I think, has been a very valuable conference. Thank you very much.

Address by
His Excellency the Honourable Bill Hayden, AC
Governor-General of the Commonwealth of Australia
on the occasion of a dinner for the Conference
Senate Committees and Responsible Government

Canberra, Wednesday, October 3rd 1990

May I say at once how pleased I am - if a little apprehensive - that you have invited me here tonight to join you for this dinner and to speak at the conclusion of your Conference on *Senate Committees and Responsible Government*. Apprehensive, if only because by tradition after-dinner speeches are meant to be light and humorous affairs, rather like a dessert.

I know that you have already had a heavy day of discussion on the topic. And yet, to be frank with you, whatever else may be said about Senate Committees they have never been regarded as terribly amusing by those witnesses, ministers or public servants called to give evidence before them. Important, yes. To be taken seriously, of course. An invaluable source of information, advice and sometimes unwelcome scrutiny, certainly. But as an entertainment, no.

In any case, I am doubtful whether as Governor-General, or as a Member of the House of Representatives for twenty-seven years, it would be considered proper for me, in front of this audience, to make light at the expense of the Senate - the third component of the Australian federal Parliament - and one very conscious of its role and traditions as a House of Review.

But having said that, and apologised in advance for the scarcity of many jokes, let me go on to say what a pleasure it is for me to be with you tonight among so many old friends and colleagues.

I don't often come to the Parliament any more. Indeed, I had no sooner moved into my office here in this vast new building two years ago, when my appointment as Governor-General was announced and I immediately had to move out again. I had no chance at all to find my way around the labyrinthine corridors. And so I dare say it's just as well, on those few occasions when I return in my present job, that ceremony requires I be escorted by the Usher of the Black Rod and various other male and female attendants - some of them from time to time, including my own staff, wearing swords. I assume it is to ensure that I don't get lost, rather than any risk that I might cut and run for it.

And yet as a parliamentarian, and as one who throughout my public life has been committed to the concept of responsible parliamentary government, the purpose of today's Conference and this dinner is one that I hold in very high esteem. For it is to commemorate the twentieth anniversary of the establishment of the Senate's Legislative and General Purpose Standing Committees, and also of the Estimates Committees - as distinct from the select committees set up from time to time to examine specific references.

However daunting these permanent committees may sometimes appear to those called before them (and I daresay sometimes even to those who serve on them), there is general agreement that by and large their contribution to what has been

called the 'watchdog' role of the Parliament has been extremely important, both to the Senate and the institution as a whole.

It's true enough that there was some scepticism when the standing committees were established twenty years ago. I know that the party of which I was a member and our Senate Leader, Senator Murphy as he then was, were very strong supporters of the innovation - although I seem to recall some cautionary voices whispering at the time: 'Lionel, don't do it!' But a right once asserted and used is very difficult to unassert and withdraw. This is especially so in a parliamentary context where precedent counts, and where the competing forces between the parties and between the houses for the exercise and limitation of power, are in a constant state of change and evolution.

This is a time, in fact, when we hear a great deal about what is sometimes called 'the decline of Parliament' - of the pre-eminence of the executive, the bureaucracy and the party system, and of the corresponding loss of independence by the backbench. And yet as I remarked when I was here just under eighteen months ago to open a conference of Australian Delegated Legislation Committees, it is through the committee system - Standing as well as Select - that the life and work of the parliamentary institution continues vigorously and unabated.

I think we are all aware that many - perhaps most - members of the public are under the impression that the *only* function of Parliament is to debate and vote on legislation, and who are consequently dismayed when they come here to see half-empty chambers at other than question time. But as you well know, the legislative function is only the part of it, and the parliamentary ritual only the most visible part of it for Members and Senators. The far greater part of the work is done *outside* the chambers. There is ministerial or 'shadow' ministerial policy and administrative work; interviews and requests on behalf of constituents; the endless travelling to keep in touch with the electorate; the demands of parliamentary and party committee enquiries. And even with the legislative program, on most important issues today the *real* debate is conducted in the party forums with pre-determined positions translated to the chambers.

This is not to denigrate the public role of Parliament as a place where the logic and the merit of both policies and personalities may be questioned and tested - and even in the Senate, where majorities can fluctuate, as a place for persuasion, if I may use that polite expression. These functions are still of the greatest importance within the Westminster system of responsible government.

But it is to suggest that with the development of the committee system, and especially of the standing committees over the past two decades - first in the Senate and latterly in the House of Representatives - the focus of some of Parliament's most constructive and useful work has tended to shift. To shift, that is to say, away from the adversarial arena of the two chambers, where one is usually trying like mad to gain the attention of the media and one's political colleagues (or not, as the case may be), to the more considered and often bi-partisan atmosphere of the committee rooms. Or generally so. If there is one cautionary note I would sound this evening, it is of the need for members to resist any temptation to misuse the very great powers of the committees at the expense of witnesses who usually are at a disadvantage. Politics, under our system, is for politicians; and responsibility is assumed by ministers. Fortunately, most members acknowledge this and fulfill their committee obligations conscientiously: to pursue issues at length; to examine evidence not merely on details

of policy and administration but, perhaps of equal if not surpassing importance, on many general questions of great public moment.

I was interested to notice that over the past two decades only about twenty-five bills have been referred to the Senate standing committees for report - although I am aware that new procedures introduced only this year will enable much more legislation to be referred under recommendation from the Referral of Bills Committee. Even so, during those same twenty years the standing committees have produced some 287 reports on general issues of the greatest significance to Australians. Just taking a few at random from the current list, I see that the Senate committees are enquiring into the Australian tourism industry, the employment of people with disabilities, Australia's relations with India, the implications for Australia and the region of economic and political reform in the Soviet Union, debt recovery and, of particular interest I think, the cost of legal services and litigation.

In the House of Representatives, if I may refer briefly to another place, there are enquiries into Aboriginal and Islander community services, literacy needs in the workplace - a subject of much importance in this international literacy year. There are committee hearings into corporate practices and the rights of shareholders, equal opportunity and the status of women, Australia's relations with Papua New Guinea, Australia's foreign debt and current account, and so on.

I will not belabour you with an exhaustive list. I merely make the point that the breadth and depth of the subjects investigated by the parliamentary committees is considerable and often of profound relevance to this country, its citizens, and those charged with decision-making. So that people who sometimes complain that parliamentarians are not doing very much because they are not sitting in the chambers throughout the year, quite frankly miss the point. I do not necessarily blame them. For one thing, not a great deal appears about committees in the public media - unless there is some clash of personalities, so much easier for most journalists than the difficult business of concentrating minds on abstract analysis and review. And for another, most Australians have only a limited knowledge of how the parliamentary system works - and that, too often, grounded in the teaching of late 19th Century notions when the floor of the House really *was* a place where the decisions of independently-minded men were influenced by the sway of public argument. I might add that I also suspect, in this age of cultural internationalism, that Australian perceptions of *Parliament* are more than a little affected by the United States Congressional system (as dramatised for us on television), where the legislature and the executive are quite distinct bodies, and all senior appointments must be ratified by Congress. Perhaps the decision to televise question time in the Senate, such is the power of the medium, may do something to restore the balance.

Whether the past or present, the Congressional or the Westminster systems are to be preferred, is a matter of opinion. I have known no other than the one we have today, and as I say I believe it works well.

But it does seem to me that we must all deplore the sometimes quite abysmal levels of ignorance about Australian political institutions and practice - especially among young people - as outlined in last year's report on 'Education for Active Citizenship' by the Senate Standing Committee on Employment, Education and Training.¹ I must tell you that I have referred to this report frequently in my speeches to youngsters

¹ Commonwealth Parliament, Senate Standing Committee on Employment, Education and Training, Education for Active Citizenship in Australian Schools and Youth Organisations, Parliamentary Paper 121/1989

visiting Canberra. And while it may only be wishful thinking, it would be nice to hope that one day Australians might grow up with the same passionate conviction about their Constitution, their history and their political institutions as people in the United States have in theirs.

However that may be, I suppose one question exercising your minds is how *effective* the Standing and Estimates Committees have been over these past twenty years? Speaking subjectively, and as a former minister, one would have to say that the experience has been varied. Sometimes they have been an irritant. Sometimes a source of valuable second thoughts. Sometimes - to be honest with you - a useful delaying tactic to stall the necessity to make an unpalatable decision.

But even where one might, in the end, not have accepted recommendations for various reasons, always I found the committee reports to be repositories of much important information and advice, and in themselves notable contributions to the development of public policy. I was very glad to see that this personal view was more or less echoed by my late friend, Professor Gordon Reid, in his bicentennial book *Australia's Commonwealth Parliament*² published last year and which I had the privilege of launching here in the Parliament House. It is true that Professor Reid remarked that the record of the committees had been a mixed one in terms of their contribution to the legislative process. Indeed, political attitudes on the floor have rarely been moderated by even the most comprehensive and well-considered report. But he went on to say this - and I hope you will bear with me if I read two sentences from Gordon's book:

Collectively, the work of these committees has made an important contribution towards the attainment of a parliamentary control of the Executive, but as with all committee activities, there can be only subjective judgements about how much control exists and about its value in government as a whole. There can be no doubt, however, that the extensive range of enquiries undertaken and reports presented have widened the knowledge of participating senators, focused interest upon the subjects that the committees have addressed, stimulated officials to keep abreast of topics which are the subject of enquiry, and increased substantially the flow of literature about aspects of government in Australia.

Ladies and gentlemen, I don't want to detain you for very much longer. But it does seem to me that this passage bears very directly upon the other aspect of the subject you've been discussing today - parliamentary committees and their impact upon concepts of *responsible government*. It's true that the definition of 'responsible government' is by its very nature an imprecise one - a much easier doctrine to preach than it is to practice, as Gordon Reid pointed out in his book. Does it mean merely that governments are responsible to the electorate through the ballot box? Or simply that Ministers - the executive - must be chosen from Members of Parliament to whom they are directly answerable? Does it mean, on the fundamental question of money supply, that governments must possess the confidence of one house - the 'popular' house - or, in the Australian federal system, of both? These questions of principle and practice have been a source of much contention and divided opinion over the years, as even a cursory reading of the constitutional convention debates a century ago makes quite clear.

² op. cit., pp.375-6

Much as I might be tempted, I do not propose to express a view on these issues tonight, other than to say this: I think that Gordon Reid touched the heart of the matter when he spoke in the passage I quoted from the chapter on *Parliamentary Control of the Executive*. The forms and practices by which this is achieved may have changed and evolved over the years, as I remarked earlier in my speech. But surely it is evidence of a dynamic and flexible system of government that it *can* develop and adapt itself to new circumstances, while all the time remaining relevant and faithful to the central democratic idea: that it is the people, through their representatives, who ultimately control the executive, and not the other way around.

In the evolution of parliamentary government in Australia, I believe that the development of the committee system in the Senate and the House of Representatives over the past twenty years has made a profoundly important contribution as I've tried to indicate. It's for this reason that I was so pleased to be able to join you this evening - even if we all acknowledge that the system as it has so far evolved does not necessarily represent the apogee of human achievement, but rather is another step in a continuing process. How the parliamentary system, and of the committees within it, may develop in future is a subject on which you are now far better qualified than I am to express an opinion. But in a sense, forms and institutions are less important in my view than those deeply held beliefs of a free, open, and democratic society they seek to express.

I have referred already to the debates of the constitutional conventions. And I should like to conclude this evening with a remark by the statesman, Alfred Deakin, who expressed the thought far more eloquently than myself.

Speaking at Adelaide in 1897 Deakin said this: 'The forces of national life are not to be confined by artificial forms. The power of ideas is the true power behind the people and behind the throne.' Thank you.