Papers on Parliament No. 46

December 2006

Images, Colours and Reflections

Lectures in the Senate Occasional Lecture Series 2005–2006

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

Published by the Department of the Senate, 2006

Papers on Parliament is edited and managed by the Research Section, Department of the Senate.

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ISSN 1031–976X

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Government Advertising:

Parliament and Political Equality*

Graeme Orr

Thank you for coming on this Remembrance Day anniversary. It is 90 years since Gallipoli and 30 years since Gough. Both were bloody battles marking heroic failures; both occasions of national myth-making. When you subtract the conservatives in Australia—who should be at the Cenotaph—and the leftists—who should be maintaining their aged rage—there's not much of a political middle left in Australia. Today's talk is firmly addressed to that middle ground.

My speciality is the law of politics. If 1915 reminds us that war is the failure of politics,[1] and 1975 that politics can be a kind of war, you might ask why I bother. Politics is a battle, and battles aren't susceptible to rules. But Quixotic though it may be, the quest of the law of politics is for rules that promote political equality and deliberation over the law of the political jungle.

Today's talk is about advertising campaigns promoting government policy, and concerns with them. We'll consider the erosion of the distinction between descriptive language and rhetoric. After that I will explain the tenor and ramifications of the decision in *Combet v Commonwealth*, the High Court case challenging whether the IR

* This paper was presented as a lecture in the Senate Occasional Lecture Series at Parliament House, Canberra, on 11 November 2005.

1 Von Clausewitz hatched the expression, 'war is merely the continuation of policy by another means' as a half-truth, for dialectical purposes.

campaign had been authorised by parliamentary appropriation. And along the way I will propose some modest solutions designed to protect the cornerstone values of political equality and deliberation: an annual cap on government ad campaigns, and the funding of contrary cases where government insists on using public money to campaign on policies prior to parliamentary consideration.

Advertising by governments has become a sensitive issue. Or rather, advertising *campaigns*, to *promote* government policies, are proving intractably controversial.

Now of course governing involves a lot of *routine* advertising, eg on recruitment, public events, or consultation—perhaps even on Senate lectures! And governments sometimes must advertise to *mobilise* public action, especially against threats. So we expect propaganda in times of national security or public health need. Here's a clear example from Mr Curtin (Figure 1). Okay, he forgot to authorise it; perhaps his face was his authorisation.[2] And his guarantee that Sydney Harbour would be bombed was never fulfilled—least of all by Wellington bombers with Rising Sun insignia!

Figure 1

Reproduced from *Griffith Review* (2005) p. 32.

[2] Today we might baulk at images of politicians in government advertising (though they saturate mail-outs by parliamentarians). The Commonwealth Auditor-General recommended some restrictions on their use: ANAO, *Taxation Reform: Community Education and Information Programme*, Audit Report No. 12, 1998, p. 59 ('Auditor-General guidelines'). But the parliamentary committee endorsing those guidelines left out mention of restricting mug-shots: Joint Committee of Public Accounts and Audit, *Report 377: Guidelines for Government Advertising*, September 2000, p. 6 ('Parliamentary Committee guidelines'). Nevertheless, Prime Ministers/Premiers seem sensitive to the issue and prefer addressing 'signed' letters to the public (in newspaper or direct mail form).

In a liberal democracy, the effectiveness and legitimacy of such mobilisations can be problematic: witness the derision over the government's terrorism mail-out featuring fridge-magnet, and the government's attack on 'nanny state' proposals by Mark Latham to promote reading to children. The alternative to vigilance-against-such-state-inspired-vigilance is the Singapore route, with government supporting ventures like the 'Happy Toilets' campaign and the 'Singapore Kindness Movement'.[3] Nonetheless, most government advertising in Australia for community service purposes is honest and unobjectionable.

Being told what to *think* may be as much a concern as being told what to *do*. This is where advertising to sell government policy is problematic, for two reasons. One is that it erodes important, traditional distinctions between government and citizen. The other is that, especially when done on the scale of the past decade, it erodes political equality.

First, the relationship of government to citizen. Governments don't exist to self-promote, however much, like any organisation, individual administrations have a will to perpetuate their power.[4] Governments wield monopoly power over law-making and enforcement, and support this through compulsory taxation. Yes, they have an obligation to inform people about legal rights and obligations. But the rhetorical art of advocating partisan policy is something properly left to political activity via the parliament and media.[5] The flavour of this distinction is caught in the separation between public service values, and the politicised nature of ministerial staffers.[6] The dark arts of advertising, as opposed to delivering simple and clear information, are problematic for governance because advertising is an irresistibly insincere medium. At its worst it is an attempt to buy image. Advertising exists to seduce the viewer, having evolved to serve the profitability of vendors in a competitive market. However much rules of strict ministerial accountability have decayed in the Westminster system, we expect 'the truth, the whole truth and nothing but the truth' from government. Advertising tends to insincerity, yet sincerity is the quality we most want in government.

We live in an age of the permanent campaign and government by PR. Not all aspects of this are bad for democracy: government responsiveness to opinion-polling can be a valuable form of democratic accountability. But to give a picturesque example of how spin-doctoring corrodes valuable distinctions, consider the spate of commonwealth bills with sloganeering titles in recent years. The Workplace Relations (More Jobs,

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[3] 'Happy Toilets' involves the publication of rankings of public toilets on a five-star rating and followed a 'Toilets of Shame' campaign. As for the Kindness Movement, see Yeoh-En Lai, 'Singapore Aims to Modify Behaviour of its Residents', *Times Union*, 24/4/2005, A6. Note that Singapore is a city-state; our concern in Australia is with state and federal governments—ie those with broad legislative power—not local governments.

[4] This is an 'ought' claim: modern administrations are in fact heavily concerned with packaging and marketing themselves, especially through public resources. See, in the Australian context Greg Barns, *Selling the Australian Government: Politics and Propaganda from Whitlam to Howard*. UNSW Press, 2005.

[5] By 'partisan' here I simply mean the policy adopted by particular parties, especially when it is not subject to party consensus, ie it clashes with that of other parliamentary parties.

[6] However much that distinction may be blurred in modern government: For example, see Pat Weller, *Don't Tell the Prime Minister*. Melbourne, Scribe Publications, 2002.

Better Pay) Bill of 1999 adopted the PR title of the Liberals' election policy.[7] The New Tax System Acts spurned the term 'GST'. Not all such perversions are the fault of government, though we may be more forgiving of oxygen-starved private members coming up with beauties such as the Quieter Advertising Happier Homes Bill (ALP)[8] and the Migration Amendment (Act of Compassion) Bill 2005 (Liberal back-bencher). The purpose is to put motherhood slogans into the mouths of the media, and through that, to lull the critical faculties of busy citizens. My favourite in this Orwellian word-game is the Occupational Health and Safety (Commonwealth Employment) (Promoting Safer Workplaces) Amendment Bill of 2005—it 'promotes' safer workplaces by protecting the Commonwealth, as employer, from ACT criminal manslaughter laws. We owe these distortions of the principle that legislation should be descriptive, rather than tendentious, to US practice.[9]

The threat of excessive promotional advertising to political equality is clear. Commonwealth government advertising in financial year 2000–01—an election year—reached 156 million dollars. Yet public funding for the 2001 election was a quarter of that.[10] Public funding is meant to equalise the electoral playing field. It is democratic in that it follows the votes each party earns. Government advertising, in contrast, enures to the benefit of incumbent governments. They treat it as a spoil of office. Of course it is but one of a number of incumbency benefits—some problematic (such as excessive parliamentary allowances or unrestrained political donations) some inevitable (disproportionate media exposure) and some deserved (incumbents naturally prosper in times of prosperity). But it is not clear, either in principle or practice, why we would frame institutional rules to reinforce incumbency: the average government in Australia already receives three terms. The United States limits terms to counteract incumbency benefits,[11] to restrain the power of money in politics. We are at risk of the same pathology, except through public rather than private monies.

Governments of both persuasions have abused their discretion in Australia: over a billion dollars spent on advertising by the Howard government,[12] and over two billion in a similar period by the combined state governments.[13] That the federal government is the nation's largest advertiser, with individual states not far behind, is a concern in

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7 Similarly, today we have the Workplace Relations Amendment (Work Choices) Bill 2005—'Work Choices' being the PR title adopted to sell the policy, rather than a description of anything.

8 To set up an inquiry into the relative loudness of television advertisements!

9 Graeme Orr, 'Names without frontiers: legislative titles and sloganeering' (2000) 21 *Statute Law Review* 188; see also 'From slogans to puns: Australian legislative titling revisited' (2001) 22 *Statute Law Review* 160 (discussing the *Roads to Recovery Act 2000* (Cth) and US inspirations).

10 Source of advertising figure: annual reports collated in 'Federal Government Advertising', Parliamentary Library, Research Note No. 62, 2003–04, Table 1. Source of public funding figure: Australian Electoral Commission, *Electoral Pocketbook* (2002) p. 57.

11 For example, the President is limited to two terms.

12 Admittedly a deal of the expenditure is on uncontroversial campaigns such as defence force recruiting. On the other hand, the true figure may well be higher. Reporting on 'communications' expenditure is loose and not well co-ordinated, stimulating complaint from the leading academic researcher in the field, Dr Sally Young.

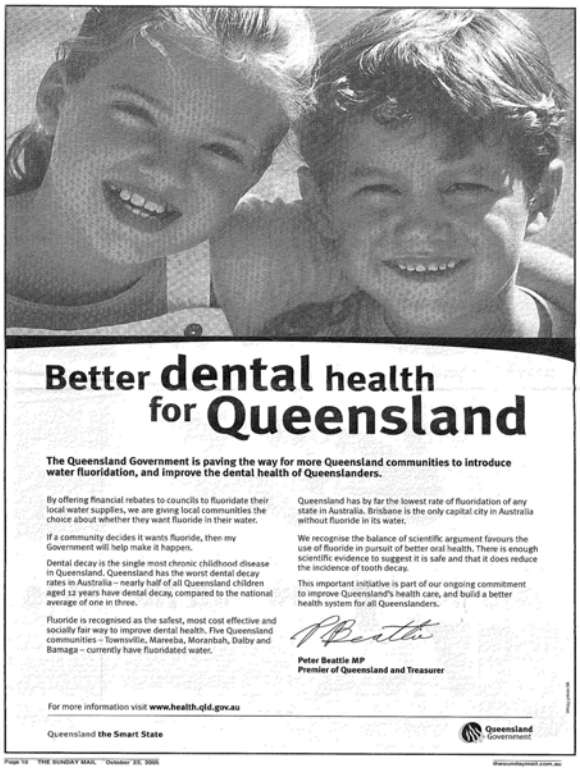
13 The Federal Minister put the states' spending at $2.15bn in the period 1996–2003: Senator Abetz, Submission to the Australian Senate Finance and Public Administration References Committee Inquiry into Government Advertising, 23/8/2004, p. 1: http://www.aph.gov.au/Senate/committee/fapa_ctte/govtadvertising/submissions/sublist.htm> (submission 9).

itself, given the dependency of media profitability on such advertising. Thankfully, however, crude attempts by governments to intimidate particular media outlets by threatening to withdraw such largesse are rare.[14]

I do not pretend it is easy to draw rules that, in a vacuum, will neatly divide acceptable from unacceptable. But it doesn't take much context to know what is beyond the pale.

Here is an egregious example from a self-confessed media tart, Queensland's Premier Beattie (Figure 2):

Figure 2



Better dental health for Queensland

The Queensland Government is paving the way for more Queensland communities to introduce water fluoridation, and improve the dental health of Queenslanders.

By offering financial rebates to councils to fluoridate their local water supplies, we are giving local communities the choice about whether they want fluoride in their water.

If a community decides it wants fluoride, then my Government will help make it happen.

Dental decay is the single most chronic childhood disease in Queensland. Queensland has the worst dental decay rates in Australia – nearly half of all Queensland children aged 12 years have dental decay, compared to the national average of one in three.

Fluoride is recognised as the safest, most cost effective and socially fair way to improve dental health. Five Queensland communities – Townsville, Mareeba, Moranbah, Dalby and Bamaga – currently have fluoridated water.

Queensland has by far the lowest rate of fluoridation of any state in Australia. Brisbane is the only capital city in Australia without fluoride in its water.

We recognise the balance of scientific argument favours the use of fluoride in pursuit of better oral health. There is enough scientific evidence to suggest it is safe and that it does reduce the incidence of tooth decay.

This important initiative is part of our ongoing commitment to improve Queensland's health care, and build a better health system for all Queenslanders.

Peter Beattie MP
Premier of Queensland and Treasurer

For more information visit www.health.qld.gov.au

Queensland the Smart State

Queensland Government

***Sunday Mail* 23 October 2005, p. 10.**

A Martian could guess from this ad that the Beattie government faces a political firestorm over health. In fact, over endemic failings in the public *hospital* system. Amongst other responses, it announced six million dollars in potential grants to local councils to fluoridate water—an inter-governmental matter, unrelated to hospitals, but promising good vibes on 'health'. The announcement received plenty of media attention, but that wasn't enough for a PR machine eager to negate health as a negative. So we got a wave of promotional ads—as if happy but caries-threatened children will run off to lobby their local councillors!

[14] *New South Wales v Bardolph* (1934) 52 CLR 455 is an example of preferential placement of advertising, by an ALP government, in a 'labor weekly'.

Under Commonwealth Auditor-General guidelines endorsed by an all-party committee, but rejected by the Commonwealth government, government advertising is only legitimate to serve a demonstrable need for information. That is, to mount 'information programs or education campaigns',[15] not to promote government policy. I recognise it is not always easy to segregate explanatory information from PR effect – as Justice Dawson said in Albert Langer's electoral case, it is not always possible to draw a clear line between selectively putting forward information, and advocating a cause.[16] The answer is to insist that governments be less selective in presenting information, and use less puffery and sloganeering. The most obvious selectivity is in the campaigns themselves: popular measures are sold well beyond their target audience (for example, businesses in the case of apprenticeship funding, and social security recipients in the case of 'work for the dole'. We can guess when a government's polling shows it is perceived negatively on an issue, for then we see an avalanche of advertising to soften those perceptions (witness, federally, the GST, Medicare and IR campaigns). Yet major policy changes with widespread impact but little electoral salience are *not* blitzed in the media (eg changes in HECS fees and rules, which affected several million current and potential students and families). Selectivity also occurs in the content of particular campaigns. Thus the IR ads do not come out and tell employees that a key aspect of the package is the removal of unfair dismissal rights. Rather, tucked away under headings such as 'Protection Against Unlawful Termination' we are told that 'businesses with up to and including 100 staff will be exempt from unfair dismissal laws.'

The Special Minister of State, in his response to a parliamentary inquiry,[17] asserted that government ads had to be liberally authorised 'Australian Government, Canberra', to meet not just broadcasting law,[18] but electoral law. That is an admission that some government advertising is 'electoral matter', ie 'matter intended or likely to affect voting at an election.' Yet the pure presentation of information about citizens' rights and obligations, if not done in an immodest manner, would never amount to 'electoral matter'.

I do recognise that strict content rules are not easy to draw. Indeed I suggest they are somewhat beside the point. It is the *total* amount of spending on selective, large scale *campaigns*, and their *timing* (with spikes in election years)—as much as the tenor of the campaigns—that jeopardises political equality. So I have called for a straight-forward approach, not based on content-restrictions alone: that is, for a legislated,

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15 Parliamentary Committee guidelines, see note 2 above.

16 *Langer v Commonwealth* (1996) 134 ALR 400 at 411–412.

17 Senator Abetz, Additional Submission to the Australian Senate Finance and Public Administration References Committee Inquiry into Government Advertising, 9/8/2005, p. 8: http://www.aph.gov.au/Senate/committee/fapa_ctte/govtadvertising/submissions/sublist.htm (submission 9A).

18 Which imposes obligations on the media, but only in relation to 'political matter': see *Broadcasting Services Act 1992* Schedule 2, cl 4.

annual cap on the executive's budget for campaign advertising.[19] For suggesting such husbanding of scarce taxpayer resources as a 'pocket money' approach, the Minister accused me of an 'offensive trivialis[ation]',[20] saying I am part of an elite that reads newspapers or accesses the internet. I did not realise that 'ordinary' folk needed the Chinese-water-torture of blanket television advertising. But surely having parliament setting limits on the executive, requiring the executive to prioritise resources rather than enjoying unlimited discretion to succumb to self-promotion, is consistent with both the basic principles of parliamentary sovereignty, and with liberal philosophy about the role and size of government. It may also assuage those 'ordinary' taxpayers who agree with the commentariat that expenditure on large scale campaigns is out of hand.

I am *not* however advocating a Calvinist or Luddite approach. Minister Abetz is fond of declaring that the days of the town crier are long past. It is a soundbite he has delivered so successfully that he risks contradiction. His message has penetrated *sans* advertising. As a government minister, he is a town crier, whose message is amplified via privileged access to the media.

The metaphor of the death of the town crier however neglects the fact that television came of age two generations ago: it is not a new medium. What is fairly new is the misuse of large-scale advertising campaigns by governments of both persuasions.[21] An historian might trace the milestones of manipulation to Sir Joh Bjelke-Petersen's purchase of air-time for a puff television programme called 'Queensland Unlimited'. Or she might highlight the desperate attempt by the Keating government to buy itself out of a hole by splurging on promoting its 'Working Nation' package. But searching for original sin is fruitless.

Senator Abetz is right, the world has moved on from the days when everyman took a daily newspaper. As a teacher, I am acutely aware that my students draw ideas predominantly from electronic media. When the High Court struck down Labor's short-lived ban on paid, broadcast, election advertising, the flaw in its reasoning was to reason from a US-style right to 'free speech'—Britain has a much broader ban, but is no less a representative democracy.

The High Court should have reasoned, without being too post-modern, that in a consumer age, television advertising may be essential to keep politics 'sexy' and

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19 Graeme Orr, Submission to the Australian Senate, Finance and Public Administration References Committee Inquiry into Government Advertising, July 2004, pp. 10–12: http://www.aph.gov.au/Senate/committee/fapa_ctte/govtadvertising/submissions/sublist.htm (submission 2). A cap, unless set risibly low, would meet the implied freedom of political communication. The government would still have freedom to disseminate information, it would just have to use its discretion in terms of large scale promotional campaigns; the governing parties and supporters would retain unlimited freedom to advertise; and the cap would be proportionate to fundamental interests, namely political equality and deliberation.

20 Abetz, note 17 above.

21 Sally Young, 'The History of Government Advertising in Australia', in Sally Young (ed.), *Government Communication in the 21st Century*. Cambridge, England, Cambridge University Press, 2007 (forthcoming).

before otherwise disengaged voters, especially given compulsory voting.[22] I noted earlier that governments exercise monopoly powers; they do not however have a monopoly in the world of communication and so they need to present *information* through various media, a rate that can compete with the blur of images and welter of words produced in an electronic age awash with consumption-driven marketing. Leftists who criticise government advertising on partisan grounds betray the progressive principle that governments have a central role to play in building society, just as conservatives who broach no caps on government advertising betray liberal principles about the size and purpose of government.

None of this however exempts governments from core strictures on their 'communication strategies'. Outside propaganda against genuine public order and health threats, their obligation is to present even-handed information about rights, obligations and institutions, not to tendentiously sell policies, least of all policies that require but have not yet received parliamentary attention.

The IR ad campaign has been roundly condemned, both in scope and intention. The government has been vague about the cost, suggesting very fluid costings or evasion born of immodesty. An official told a Senate Committee the budget was $55 million;[23] the PM having said '$30 to $40 million'[24] before the Minister confirmed the higher figure.[25] Senior journalists have said: 'the expenditure of so much public money on what are really party political advertisements is disgusting' (Laurie Oakes),[26] that the government is 'beyond shame' (Michelle Grattan)[27] and that the size of the campaign is so 'obscene' it risks 'disappearing up its own fundamentals' (Glenn Milne).[28] Even conservative supporters of the IR proposals have attacked the campaign per se, labelling it 'an advertising rort … a partisan ploy to prop up an unpopular policy'[29] and 'the greatest waste of money' (Jeff Kennett).[30] Milne quotes an unnamed government member saying 'the campaign has been over the top … an extraordinary display of hubris.'[31]

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22 I am not saying political advertising especially on television should be unlimited and remain free of 'truthfulness' standards: both may be needed in the interests of political equality and deliberation. But the High Court should at least have engaged parliamentary concern over the cost of elections (and consequent potential for corruption) and the boorish nature of much political advertising.

23 David Humphries, 'Work Changes Blitz Hits $55m … and Counting', *smh.com.au*, 1/11/2005. The figure consisted of $44: 3 million on the ads, $8 million on a call centre, and $2.6 million on a booklet. The call centre faced flak in itself, as an expensive way of reading out paragraphs from the government 'WorkChoices' booklet for those who could not access it from the internet.

24 *Commonwealth Parliamentary Debates* (House of Representatives) 1 November 2005, p. 1.

25 'IR ads Minister puts Cost at $55m', *ABC News Online*, 1/11/2005: www.abc.net.au/news/newsitems/200511/s1495543.htm

26 Laurie Oakes, 'Exit Stage Right', *The Bulletin*, 12 October 2005.

27 Michelle Grattan, 'Government beyond Shame over Ads', *Age*, 14 October 2005, p. 6.

28 Glenn Milne, 'Ads Succeed in Scaring off the Workers', *Australian*, 31 November 2005, p. 8.

29 'Editorial: an Advertising Rort', *Australian*, 31 August 2005, p. 31.

30 Michael Gordon, 'Kennett Swipes Ads as "Waste of Money"', *Age*, 13 October 2005, p. 8.

31 Milne, note 28 above. In contrast, government backbencher Peter Slipper MP complained that the campaign was 'ineffective', but one suspects he meant 'for the price, the rhetorical gains to the government have been muted.'

Figure 3

***Sun-Herald,* 23 October 2005, p. 18.**

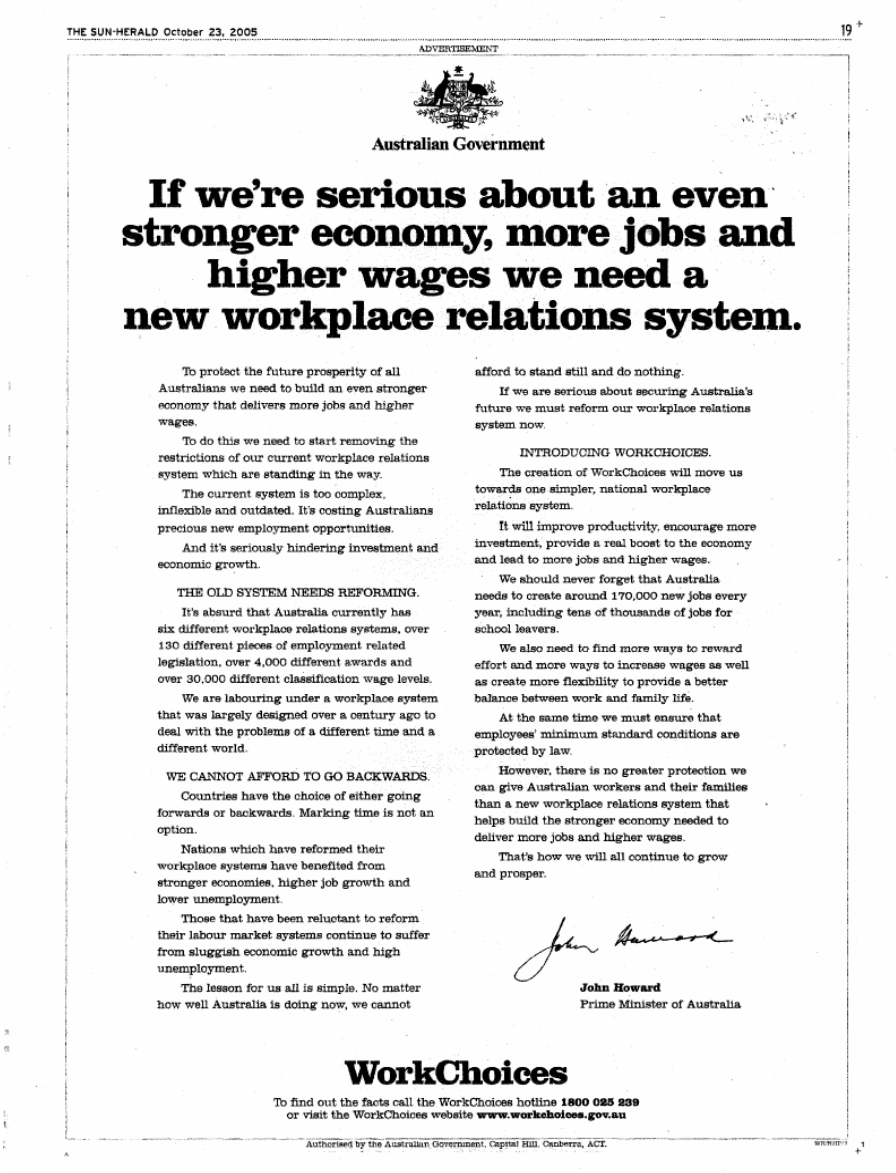
That a government advocacy campaign may backfire is no surprise. Persuasional advertising is risky, for if you are trying to persuade people away from a negative view, by drawing attention to the issue you may reinforce those negative views. Worse, excessive advertising dwindles the stock of public trust upon which government depends. Does this mean that government ads that advocate policy are less of a concern for political equality? Not really. Australians' 'bullsh** detectors' may be more folk legend than reality. And such ads are not designed to sway the partisan, but influence the disengaged.

Was there a demonstrable need for an IR campaign? Certainly not the one that occurred. Awareness of the existence of the proposals was already very high: post-

legislation information, especially targeted at workplaces, would have been entirely justifiable. Saturation bombing with tendentious television grabs was not. A proportionate response to correct specific misperceptions in the ACTU's ads may also have been justified in informational terms, and may have increased, rather than tarnished, trust in governmental information.

That said, it is undeniable that the newspaper ads have played an informational role. Internal critics wanted them to be simpler. External critics argue they gilded the lily. Admen speculate they were designed not so readers would absorb so much newsprint, but that the motivation for four-page spreads and the PM's signature (Figure 4) was to create the impression that the government is sincere and the package coherent. Perhaps the medium is the message.

Figure 4



THE SUN-HERALD October 23, 2005 19

ADVERTISEMENT

Australian Government

If we're serious about an even stronger economy, more jobs and higher wages we need a new workplace relations system.

To protect the future prosperity of all Australians we need to build an even stronger economy that delivers more jobs and higher wages.

To do this we need to start removing the restrictions of our current workplace relations system which are standing in the way.

The current system is too complex, inflexible and outdated. It's costing Australians precious new employment opportunities.

And it's seriously hindering investment and economic growth.

THE OLD SYSTEM NEEDS REFORMING.

It's absurd that Australia currently has six different workplace relations systems, over 130 different pieces of employment related legislation, over 4,000 different awards and over 30,000 different classification wage levels.

We are labouring under a workplace system that was largely designed over a century ago to deal with the problems of a different time and a different world.

WE CANNOT AFFORD TO GO BACKWARDS.

Countries have the choice of either going forwards or backwards. Marking time is not an option.

Nations which have reformed their workplace systems have benefited from stronger economies, higher job growth and lower unemployment.

Those that have been reluctant to reform their labour market systems continue to suffer from sluggish economic growth and high unemployment.

The lesson for us all is simple. No matter how well Australia is doing now, we cannot afford to stand still and do nothing.

If we are serious about securing Australia's future we must reform our workplace relations system now.

INTRODUCING WORKCHOICES.

The creation of WorkChoices will move us towards one simpler, national workplace relations system.

It will improve productivity, encourage more investment, provide a real boost to the economy and lead to more jobs and higher wages.

We should never forget that Australia needs to create around 170,000 new jobs every year, including tens of thousands of jobs for school leavers.

We also need to find more ways to reward effort and more ways to increase wages as well as create more flexibility to provide a better balance between work and family life.

At the same time we must ensure that employees' minimum standard conditions are protected by law.

However, there is no greater protection we can give Australian workers and their families than a new workplace relations system that helps build the stronger economy needed to deliver more jobs and higher wages.

That's how we will all continue to grow and prosper.

John Howard
Prime Minister of Australia

WorkChoices

To find out the facts call the WorkChoices hotline **1800 025 239**
or visit the WorkChoices website **www.workchoices.gov.au**

Authorised by the Australian Government, Capital Hill, Canberra, ACT.

***Sun-Herald,* 23 October 2005, p. 19.**

My criticism of the newspaper campaign itself is less crude and twofold. One is that for all its informational value, it falls into the insincerity trap. The government does have a case that workplace deregulation *may* bring economic benefits:[32] but it has a duty to honestly reason that case. Its case rests on enhancing managerial power, with consequent vulnerability for some workers, yet it mentions neither of these, although they are central to its policy. The second problem with the newspaper ads is that they are an affront to Parliament.[33] What if Parliament chooses to amend the package? Will the government run 'addenda' ads by way of correction?

The packaging of the overall campaign is a giveaway. Why the neologised term 'WorkChoices'? Where did the urge to splice words together, Frankenstein-like, come from?[34] Where will it end? Will we, as with racehorse names, have to start recycling? Or will we end up renaming the armed forces 'SecureYou'? It made sense in the 1970s to rename the corporatised units 'Telecom' and 'Australia Post', as the old name, 'Postmaster General' was outdated. But do we believe ComCare is more caring than the older workers' compensation boards?

This is not just a dispute about words. Language often masks ideology. Why did 'labour law' and 'employment law' evolve to replace 'master and servant' law?[35] Why did the government in 1996 move from 'industrial law' with its musty connotations of factories and awards, to 'workplace relations', except to convey a focus on individual workplaces and HRM values?

But we should at least demand our language is descriptive, not spin-doctored. The term 'WorkChoices' spins like a top. As the Boeing dispute illustrates, even under current law, employees, even a majority, have no right to 'choose' to collectively bargain. Nor does choice occur in a vacuum—some employee's choices will be reduced, as they will no longer be bargaining for equal or over-award conditions, but to maintain conditions.

Seemingly petty things can be revealing. When government is driven by image over information, and public relations over public service, it is no surprise to see governments at all levels engaging in 'branding'. A recipient of arts funding, for example, is told that the 'Australia Council co-brands with the Australian Government', so that the government insignia must appear everywhere, alongside the logo of the Council, an independent funding authority. If the purpose is to remind all concerned that the Council is not a charity, why not just say: 'This project is partly funded by Australian taxpayers?' But that would not achieve the feelgood effect of branding the 'Australian Government', a term that in common parlance represents a

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[32] Although Treasury made no study of economic impact of the bill as a whole (merely possible employment effects under various scenarios); Mark Skulley and Tracy Sutherland, 'Builders to Defy Ban and Rally', *Australian Financial Review* 7 November 2005, p. 5.

[33] Curiously the government suspended the advertising once the bill reached Parliament—a rather formalistic step. Parliamentary consideration hardly renders an issue *sub judice*. Coincidentally, at the same time, the Business Council of Australia launched its advertising campaign in support of the IR package: http://www.bca.com.au/content.asp?newsID=99262

[34] The Germans love portmanteau words, but for descriptive purposes.

[35] Because 'master/servant' reflected the common law's focus on the employer right to control, itself a hangover from feudalism. 'Labour law' focused on the collective protection of employees; 'employment law' focused on the individual aspects.

political entity, the executive of the day, rather than the apolitical and enduring entity we used to call the Crown. For this reason, I have advocated that government advertising be authorised not by a brand, but by an office: the title of the responsible minister or agency.[36] That would also clarify responsibility—which is the legal purpose of such tagging[37]—to an actual entity. 'The Australian Government, Canberra' is not a legal entity.

We are reminded of this by the fact that Mr Combet sued something called 'The Commonwealth of Australia', as well as the Minister for Workplace Relations and the Minister for Finance. I will now try to explain that case, in brief, lay terms, although the judgments are 125 pages (nearly double the WorkChoices booklet!) and the underlying law of appropriations is arcane.

In legal terms, the ACTU (with the support of an ALP shadow minister) sought to restrain the Minister for Finance from approving payment of the government's initial IR ads.[38] In reality, the case was primarily a political gambit. Had the ACTU won, the practical effect would have been to embarrass the government, which to meet the debts and to continue its advertising, would have had to approach Parliament for a special appropriation for the campaign. Although the case was argued against the backdrop of the centuries old tension between executive and parliament over control of the treasury, for precedential purposes it was framed as a fairly limited question of statutory interpretation.

That question was whether the 2005 Budget covered expenditure on an IR ad campaign. The relevant portfolio allocation was as follows: (Figure 5).

Figure 5

Appropriations Act (No 1) 2005 Schedule 1
Employment & Workplace Relations Portfolio 05–06

	Departmental outputs	**Administered expenses**
OUTCOME 1 Efficient and effective labour market assist	$1.2bn	$1.9bn
OUTCOME 2 Higher productivity, higher pay workplaces	$140m	$90m
OUTCOME 3 Increased participation	$72m	$560m

[36] Orr, note 19 above, pp. 12–13.

[37] That is, to have someone publicly accountable for the political content, but also formally traceable in case of breach of laws such as defamation, copyright.

[38] Either by a declaration that such approvals were not lawfully authorised by the existing Appropriation Act (ie the 2005 Budget) which the Minister would have been honour bound to abide by, or an injunction actually restraining him.

The ACTU argued that none of the departmental outcomes or the supporting portfolio budget statements mentioned anything approximating a campaign to advocate new policy, and that it contributed to none of the stated budgetary 'outcomes'. Yet in other areas, the budget statements specifically set aside monies for advertising and communication strategies. The government, in its defence, argued that advertising was a normal incident of government, and that the budget allocations were broad enough to allow flexibility. If necessary they said, the IR ad campaign could be fitted under the flexibly vague outcome of 'Higher productivity, higher pay workplaces'.

A majority of five to two agreed with the government. But four of them did so for narrow reasons that surprised, even blindsided, observers and participants alike. The four-judge opinion used very fine distinctions to argue that 'departmental items' did not have to be linked to outcomes at all; only 'administered items' did. The distinction they said was between expenditures 'managed' by an agency or authority on behalf of the government, as opposed to those 'controlled' by the department.[39] The majority gave no clue as to what constraints, if any, limit 'departmental expenditure'. To the minority, this leaves a lacuna in appropriations law. If 'departmental expenditure' is at large, this raises the spectre of billions of dollars being subject neither to input or outcomes limits. Presumably the limits, if any, must be set outside the budget process, and in a 'job description' based on the sorts of subject matters implied in the title of each portfolio, since the legislation administered by a department cannot delimit the field into which new policy measures may stretch.

Chief Justice Gleeson's separate reasons in support of the government's case, are considerably more credible and transparent.[40] Whereas the majority's method seems driven by a desire to escape the inescapable, namely confronting the controversial policy questions surrounding the limits of government advertising, the Chief Justice addresses them head on. 'Persuading the public ... of the merits of government policy may be as important to successful formulation and implementation of policy as the drafting of advice and legislation.'[41] Not that he would necessarily *approve* such advertising; just that under present arrangements it is a matter for political rather than legal sanctions. As long as budget outcomes are not so abstract as to be meaningless, it is up to Parliament to insist on more specific and transparent budgetary drafting if it so wishes.[42]

You might disagree, but at least we can engage with the Chief Justice's reasoning. My concern is with his statement that budgetary drafting including the vague 'outcomes' style of drafting represents Parliament's '… *choice* as to the manner in which it identifies the purpose of an appropriation.'[43] As a strong supporter of parliamentary sovereignty, the Chief Justice wishes to portray the budget papers as essentially the work of Parliamentary choice. Literally there is some truth to this: the House has the power to amend or reject, and the Senate can request amendments. But in substance he is ignoring the fact that the real power lies with the executive. There is an uncanny parallel with the term 'WorkChoices'—whose choice is it, in truth, when most

39 *Combet v Commonwealth* [2005] HCA 61, para 158.

40 Befitting his reputation for succinct judgments built on a robust literalism.

41 *Combet*, note 39 above, para 29.

42 Ibid., para 27.

43 Ibid., emphasis added.

individuals are powerless relative to their employer (or, conversely, where small businesses are suborned by a union)?

The unstated assumption in the Chief Justice's reasoning is that executive control of Parliament, especially the House, is not a matter for judicial notice. Rather, it is a *grundnorm*,[44] rooted in *realpolitik*. Perhaps it is, but it is also a constitutional problem if it threatens political equality. This is where the High Court leaves us: with the executive's interest in incumbency benefits prevailing over other values, giving the executive virtually unlimited freedom to mount repeated, large scale advocacy campaigns whenever it desires to assuage, or massage, community concern or opinion.

In a rich dissent, Justice Kirby devotes considerable attention to the underlying questions of policy, principle and constitutional balance. He concludes that *no* promotional advertising of pre-legislative policy fits the constitutional expression 'the ordinary annual services of the Government'.[45] He does so by deferring to the 1965 Compact—an agreement between the Senate and House—which requires that appropriations for expenditure on 'new policies not previously authorised by special legislation' are not covered by the ordinary Appropriations Act.[46] The Compact was meant to ensure that expenditure on policies not yet presented to the Senate, not be hidden in the ordinary Appropriations Act that the Senate cannot amend. Chief Justice Gleeson could reply that expenditure on *advertising* a new policy is not the same as expenditure to *implement* it; though the offence to the Senate is no less.

Justice Kirby's judgment would have rendered the IR campaign, like the pre-1998 election GST campaign, unlawful without special appropriation. He would not bar a government mounting such campaigns, but require them to openly cost and justify them, ahead of time, to the Parliament. This approach would ensure some of the parliamentary oversight that I seek in advocating a special annual appropriations bill to cap expenditure on large scale, especially electronic, campaigns.

The line that Kirby J draws around policy that is not yet approved by Parliament is not just a formal nicety to avoid the executive massaging popular opinion or, as he and McHugh J put it, pressuring parliament.[47] Parliament often delegates power to the executive and the executive has some prerogative powers. But what we are dealing with, in the IR and GST campaigns, are *pre*-legislative policies, and as McHugh and Kirby JJ said, the campaigns are far from being sketches of policy ideas, inviting public consultation. Rather they are rhetorical and argumentative campaigns in the same partisan mode as the ACTU's scare campaign.[48]

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44 That is, an unquestionable, grounding norm.

45 *Combet v Commonwealth*, note 40 above, paras 237–252, 261.

46 Usually labelled Appropriations Act (No 1).

47 Oral argument in *Combet v Commonwealth* [2005] HCA Trans 633 (29 August 2005) lines 3550-3578.

48 *Combet v Commonwealth*, note 39 above, per McHugh J at para 93 (describing the government's ads as 'feel good') and per Kirby J at para 181 (describing ads as 'not simply informative or descriptive' but 'argumentative … rhetorical').

But isn't the governmental lion entitled to respond, with lethal force if necessary, if it is attacked by the ACTU hyena?[49] The obvious retort to that line of reasoning is that the proper respondent to the ACTU was business, whether directly or by funding Liberal Party ads.[50]

Could it be that we critics of governmental use of public monies to campaign for government policy are just scared of debate via advertising? Justice Callinan, in oral argument, suggested that whenever the executive wanted to advertise, it could as part of its policy armoury.[51] Presumably he meant such advertising was legitimate to generate interest, possibly debate, as well as to smooth implementation. After all, Queensland and now New South Wales, albeit in small ways, have responded on the IR debate with some newspaper ads of their own. Shouldn't we be glad that free speech is reining? My first response is that more is not necessarily merrier, especially when taxpayers' money is involved. The Queensland ads, for instance, were risibly parochial (see figure 6).

Advertising may generate a pantomime wrestle—drivel rather than discourse—especially since, unlike commercial speech, there is no formal sanction for 'misleading or deceptive' political speech.[52] Second, it is purely coincidental that we have different parties in power at federal and state level, and the states' concerns with state power is only a sideline to the substance of the IR proposals.

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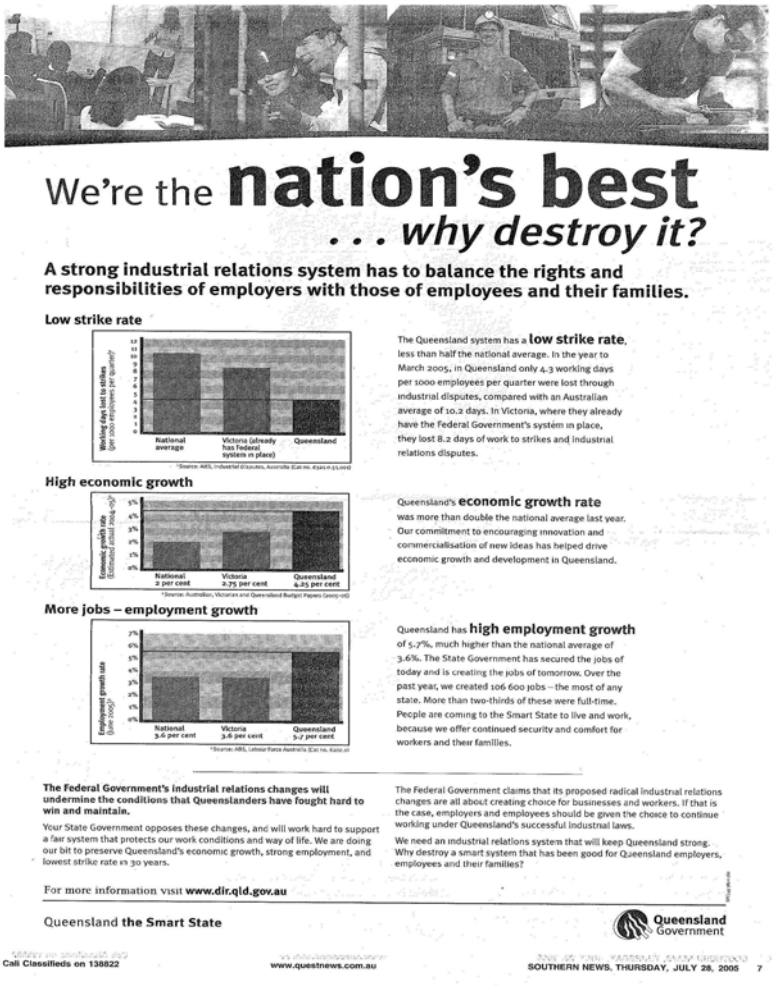
49 The ACTU of course would say it is the sleeping lion, attacked first by the government's policy.

50 The Business Council of Australia representing major business CEOs, eventually undertook such a campaign: see note 33 above.

51 Oral argument in *Combet*, note 47 above, lines 4551–4574.

52 Only South Australia and the Northern Territory have anything approximating a 'truth in political advertising' law, and then only in relation to certain election advertising. Also, recently, the commercial media dropped its self-regulatory scheme to hear complaints of misleading political advertising—leaving political advertising almost totally unrestrained in either amount or content.

Figure 6



We're the **nation's best**
. . . why destroy it?

A strong industrial relations system has to balance the rights and responsibilities of employers with those of employees and their families.

Low strike rate

The Queensland system has a **low strike rate**, less than half the national average. In the year to March 2005, in Queensland only 4.3 working days per 1000 employees per quarter were lost through industrial disputes, compared with an Australian average of 10.2 days. In Victoria, where they already have the Federal Government's system in place, they lost 8.2 days of work to strikes and industrial relations disputes.

High economic growth

Queensland's **economic growth rate** was more than double the national average last year. Our commitment to encouraging innovation and commercialisation of new ideas has helped drive economic growth and development in Queensland.

More jobs – employment growth

Queensland has **high employment growth** of 5.7%, much higher than the national average of 3.6%. The State Government has secured the jobs of today and is creating the jobs of tomorrow. Over the past year, we created 106 600 jobs – the most of any state. More than two-thirds of these were full-time. People are coming to the Smart State to live and work, because we offer continued security and comfort for workers and their families.

The Federal Government's industrial relations changes will undermine the conditions that Queenslanders have fought hard to win and maintain.

Your State Government opposes these changes, and will work hard to support a fair system that protects our work conditions and way of life. We are doing our bit to preserve Queensland's economic growth, strong employment, and lowest strike rate in 30 years.

The Federal Government claims that its proposed radical industrial relations changes are all about creating choice for businesses and workers. If that is the case, employers and employees should be given the choice to continue working under Queensland's successful industrial laws.

We need an industrial relations system that will keep Queensland strong. Why destroy a smart system that has been good for Queensland employers, employees and their families?

For more information visit **www.dir.qld.gov.au**

Queensland **the Smart State**

Queensland Government

***Southern News* 28 July 2005 p. 7.**

If we want, in the interests of deliberative democracy, to invest public money in rhetorical advertising to stimulate public interest and debate on issues of the day, there is a simple model we can follow. It is the referendum model, where 'yes'/'no', or rather 'pro'/'con', campaigns would be funded.[53] Campaigns in relation to policy debates would be monitored by parliamentary committees representing government and non-government positions (if any) on the issues in question. I am not advocating 50:50 funding: a straw-vote of parliamentarians would measure support for the policy, and funding would be divided proportionally.[54]

My proposal to adopt a referendum funding model is particularly directed at promotional advertising of pre-legislative policy. That, after all, is what a referendum

[53] I discuss referendum law, including campaigning, in 'The Conduct of Referenda and Plebiscites: a Legal Perspective' (2000) *Public Law Review* 117 especially at 123–124 (funding) and 127–128 (advertising). The only flaw in the referendum funding model is that it puts no constraints on governments at different levels: eg if applied to a state policy debate, it would not inhibit the federal government weighing in heavily on one side, or vice versa.

[54] There could be a multiplier—eg $1.50 to the government's position versus $1 to the counter-position—if it were felt that the government as government deserved a louder voice.

is about—except that it is a matter of constitutional policy leading to a change in legislative form of the Constitution, rather than a matter of amending general legislative policy. It makes no difference that a referendum is, in form, an exercise in direct democracy and examples like the pre-legislative advertising of the GST and IR policies a matter of indirect democracy. The key point is that both are acts of deliberative democracy, and at best government advertising should engage and inform public understanding and debate.

But the same principle could be applied to any large scale campaign to promote policy, with a multiplier (so the government's voice was accorded greater weight). The government would always remain the initiator—it proposes policy and it would decide which issues of the day would benefit from advertising to stimulate wider public debate.

I make this proposal in the spirit of the 'second best', since I suspect we won't be able to wean governments from the addictive desire to engage advertising agencies to promote controversial policy. But if, as a polity, we want to *publicly fund* soundbite and banner ads, in the interests of political equality, we need to ensure the resulting discourse is not one-sided.

Question — Do you have any comment on the fact that in the way things are currently structured there doesn't seem to be anybody who has a vested interest in change. The government know they have a great perk; the opposition know that if they undermine it when they get there it'll be a problem; and the media know that it doesn't matter who is in government, they're the winners all around. I have this feeling that we the public are being disenfranchised by these three pigs at the trough.

Graeme Orr —You're right to say whenever there's an issue relating to incumbency benefits or the spoils of office or even with electoral rules generally, there is a potential that the members of the club will frame the rules to suit themselves on the understanding that when they get into power it will benefit them. You might say that the government at some point is going to lose its tenure. Governments have some enlightened self interest at least when they think they are nearing the end of their terms to bring in some restrictions that would then apply in the future to the new government, and if the new government tried to do away with the restrictions, well it would look pretty suspect. It's much harder to do away with something than make a case for it, than to bring it in, in the first place. I agree with you, but I don't expect there to be any reform and I'm just trying to give ideas for alternative mechanisms. What tends to drive change for example, as in Canada, is when you have a particular problem or scandal or enough public uproar and then you get some beneficial change coming in.

Question — One party that might have a vested interest in reforming the current system is the Democrats. They keep going to elections with the promise to keep the bastards honest, but all I see from them is a reality where they keep the bastards dishonest. Governments will say 'If elected we will privatise Telstra.' They win an election and the Democrats say 'We won't let you do what you promised.' The government won an election three times in a row on the policy of abolishing the Medicare surcharge but the Democrats won't let them do it. Yet if the Democrats turned around and said: 'We will support what you promised in the election on the condition that you sit down and follow through on other commitments you made when you were in opposition ie to reform the system on electoral spending' you might get a good outcome. That's the only pressure point I can see where you're going to get fundamental reform and change. And I think it's really sad that the Democrats having tried to sit down and take this position have actually ended up, in my opinion, doing the opposite and keeping them dishonest.

Graeme Orr — So you're suggesting that the other pathway to reform is to do some log rolling and say 'look we will support you on this substantive issue if you agree to our changes to these kind of constitutional systemic questions', just as minority governments sometimes, like Peter Lewis in South Australia, come to an agreement to reform institutional aspects. Yes I'd agree.

Question — I have a concern about your proposal for a cap on government advertising. Now obviously if Parliament was to set it, it would be at a sufficiently high level to allow for covering elections, even if there is no spike allowed. I feel the danger is that you're actually legitimising abuse of public funds. Once you have a cap there's an expectation that you'll actually use it up to the maximum and it may be actually a better system that we have in place now, where there is at least a degree of public unrest about the use of monies in campaigns rather than having it forgotten because it's part of an ordinary government expenditure in legislation.

Graeme Orr — You are quite right. When New Zealand brought in caps on expenditure in electoral campaigns, they initially set it at a level that was so high that the parties did not spend that amount in the first election which applied. So obviously if you design a cap, you've got to have it at a suitable level, like goldilocks style, not too hot, not too cold. In Canada for example, after the scandals, the government has implemented policy where they're going to reduce expenditure by something like 15 per cent over a triennium. So you can also do it that way where the government makes a virtue out of winding back the amount of expenditure that it had previously been using in a previous administration. A cap on its own is certainly not enough. There still has to be rules and procedures about content and so on.

Question — I want to make a comment, both on the legal issues and on the advertising issues. While agreeing with all the points you've made, there is one other aspect that you haven't touched on that I find quite concerning and that is lack of transparency about government advertising. The fact that market research leading up to it, the processes for deciding on it, any evaluations that might be done about it—all of that is kept completely hidden from public view, and that's a bit of worry in terms of democratic processes.

On the High Court case, Combet and Others and the Commonwealth of Australia, my reading of the plurality judgement is the same as yours, and it does worry me to this extent, that four of the High Court judges have argued that ministers can do virtually whatever they like with departmental funds and the precedent that sets suggests that they could for example, have wild parties with beer and pork and so on in marginal electorates, that they could employ their relatives, they could channel money to their friends: classic nepotism and pork-barrelling. None of this seems to be ruled out by that plurality judgement, and I can't help but feel that if they had before them a case about pork-barrelling or nepotism, they would have decided the other way, that what they were really doing, the reason why they decided that way is that is they were trying to find a way to allow this advertising campaign to stand.

Graeme Orr — On the second point first, there are laws about electoral bribery, that's what I wrote my PhD on. So I don't know about the wild parties and the treating in the electorates. I think your critique of the decision is right to one extent. It does raise the much bigger question of what limits there are, but the narrowness of its reasoning also may limit its precedential value. They relied on just a couple of words in the current definitions in section 7 and section 8 of the Act. So if you have a different budgetary process with a different style of drafting and so on, this judgement is very narrow and may not govern. I don't know whether it's going to necessarily drive a truck through the law of appropriations, but it does, as I said, raise a lacunae about what are the limits of departmental expenditure, other than the good sense of the ministers.

Question — I'd like to invite you to comment on another proposal for addressing this issue, and that is to establish an all party parliamentary committee that would look at, examine, and recommend on all proposals for public campaigns above a certain threshold and with a number of exemptions for public health issues and national security concerns. The idea is modelled partly on the current Public Works Committee, which is a joint committee and under legislation all public works above six million dollars must go past that committee. One of the attractions of this parliamentary committee model is that it's consistent with the Court's ruling that this is a political matter and should be dealt with inside the political arena. So if you could possibly comment on that?

Graeme Orr — I guess that the problem with that, as the minister has said, is the potential for gridlock. The upside, as you suggested, is that it would put a strong filter through so that issues and campaigns that are mounted really would have to have a very wide form of consensus behind them. I think it's in Canada that they're setting up a proposal; they have a system where they have advertising experts and an academic expert sitting on a committee to look at the issues, even the content of advertising. That may be another alternative to try and make it independent, but I think you make a very good point. The High Court says it's up to the political process, then there still have to be some limits on the executive.

Question — Was Combet's challenge too narrow? I'm not too familiar with the whole thing, but did they limit the avenue in which they were attacking.

Graeme Orr — Well, we lawyers are always narrow. When you come before a court to plead, you need to be, especially before the current High Court, which is not very interested in the policy issues. They couldn't just come in and attack 'Government

advertising generally.' They'd look at that as an issue of political equality. They needed to bring in those kinds of bigger questions, but by linking it to a question of statutory interpretation. When I read the transcripts and followed the case, I thought there were going to be two ways the court could go: one is Chief Justice Gleeson's way, to say well, Outcome Two, 'Higher productivity, higher paid workplaces', is broad and vague and parliament is responsible for that if you like. The other way was simply to say well, no, other parts of the budgetary papers talk about specific advertising campaigns. If you've got something expressly mentioned in one part of a statute and it's not expressly mentioned in another, then that would tend to suggest that there wasn't money put aside in the budgets for particular pre-legislative policy. I thought the arguments about the Senate Compact were also quite strong. So I'm sure the ACTU were advised by their lawyers that they had a more than highly arguable case, but as has happened with a lot of matters of interpretation, it could go either way.

Providing Advice to Government*

Scott Prasser

Advice Opinion given or offered as to action; counsel; information given; news; formal notice of a transaction.

Oxford Dictionary

Introduction

This paper analyses the various sources and processes involved in providing policy advice to Australian governments with particular attention to developments at the Commonwealth level. Both internal sources of advice such as the public service, and the growing array of external advisory bodies such as parliamentary committees, royal commissions, public inquiries and ministerial staff and consultants are assessed.

There are several key issues about advice to governments and the advisory processes that need to be discussed.

First, the Australian advisory system, especially at the national level, has become more diverse and complex. Whether this is a function of the growing complexity of public policy issues and/or the desire for wider ranges of policy advice by elected officials is one consideration that needs assessment. It is probably the result of both

* This paper is based on a lecture presented in the Senate Occasional Lecture Series at Parliament House, Canberra, on 24 February 2006.

pressures. Not that long ago, the former director of the now defunct Commonwealth Futures Commission, Sue Oliver, lamented that:

> Australia … has a closed, non-porous policy making system compared with, for instance, the United States and its use of congressional committees. Congressional committees provide a stage for lobby groups and think tanks to bring their ideas, research and advocacy within the political process. No such formal process exists in Australia at government level for reaching out for new ideas or, at the very least seeking to achieve co-operation between … interest groups.[1]

The argument being that Australia was supposed to have a very executive dominated political system, that governments at both federal and state level in Australia relied heavily on their departments for their advice and that decision making was made behind closed doors with key interest groups having special access.

Given such views were being expressed long after the many initiatives of the Whitlam Labor Government (1972–75) that were largely sustained by successive commonwealth administrations and adopted to some extent across the states, such as increased numbers of ministerial staff recruited from outside the public service, greater use of external consultancies, expansion of the use of public inquiries and the establishment of many new special advisory commissions, this view needs to be seriously challenged.

Also, the Australian advisory system was not as closed as many thought even before the election of the Whitlam Government. Dr H.C. Coombs, long time head of the Reserve Bank of Australia and senior advisor to many Commonwealth governments observed that: 'although it is the convention … prime ministers should and almost invariably do rely upon the head of their department and his colleagues to inform and advise them,' this is, 'as a rule as much honoured in the breach as in the observance.'[2]

Further, the 1976 Royal Commission into Australian Government Administration (Coombs Commission) highlighted the extensive range of advisory sources that had long been available to government.[3] They were considerably broader and more numerous than suggested by Oliver and others.[4]

Also, Australian governments have long established special statutory and permanent advisory bodies—the Tariff Board and its successors like the Industries Assistance Commission spring to mind as does the Universities Commission established by the Menzies Government during the late 1950s.

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1 Sue Oliver, 'Lobby groups, think tanks, the universities and media.' *Canberra Bulletin of Public Administration* No. 37, December 1993, p. 134.

2 H.C. Coombs, *Trial Balance*. Melbourne, Sun Papermac, 1981, p. 263.

3 Royal Commission into Australian Government Administration, *Report*. Canberra, Australian Government Publishing Service, 1976.

4 P. Weller et al. (eds), *The Hollow Crown: Countervailing Trends in Core Executives*. London, Macmillan, 1997.

Australian Commonwealth and state governments, like their counterparts in the United Kingdom, Canada and New Zealand, have also long used public inquiries—those ad hoc, temporary, task forces, committees, working parties, commissions and royal commissions, composed of members drawn from mostly outside of government. Importantly, these bodies employ extensive public consultation processes to collect information and hear witnesses. They also publicly release their reports and much of the underpinning evidence, unlike many government/departmental reports. Nevertheless, public inquiries as a distinct system and ongoing part of the policy advisory process remain both a neglected area of study and an unrecognised part of the executive advisory process.

Altogether, these different institutions are anything but a non-porous system of advice. Of course, the Australian policy advisory system like the Westminster system from which it was developed, has always been more open and diverse than its formal arrangements and conventions seemed to suggest. B.C. Smith observed about the British system of advisory processes in 1968 that:

> It has long been common practice in British government … to establish formal means by which ministers and governments can seek opinion and advice and information from outside the Civil Service … it is not easy to establish the precise numbers of advisory bodies … because there is no single definition of an advisory body.

The other aspect about advice is appreciating what it is. Many think that advice is just information, and certainly there are agencies, like the Australian Bureau of Statistics and to some extent the Australian Institute of Criminology, that collect data and provide minimal commentary on the information provided. These bodies give integrity to the information collected. But advice, as discussed later in this paper, is more than data collection and simple information provision. While it does involve collecting data, for such information to constitute advice it has to be processed considerably. This involves sorting, filtering, categorising, interpreting, understanding, selecting, analysing, and eventually, somewhere along the line, someone has got to give recommendations and thus advice.

There are many opportunities in these various processes for information to be distorted and for poor advice to be prepared. For instance, if the basic raw data is poorly 'harvested' then subsequent analysis, no matter how good, will be inaccurate. Due diligence is needed to ensure the veracity of both the methods of collecting information and its processing. Sometimes, as recent examples overseas highlight[5] governments do not seek to inform themselves of the basic core information and data before making decisions. Advice tendered can be so ideologically driven that 'facts' are diverted, perverted or just ignored.[6] Of course, advice and information, sometimes

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5 See B. Woodward, *State of Denial: Bush at War, Part III*. New York, Simon and Schuster, 2006; and R. Suskind, *The One Percent Doctrine: Deep Inside America's Pursuit of its Enemies Since 9/11*. New York, Simon and Schuster, 2006.

6 H. Orlans, 'The political uses of social research', *Annals of American Academy of Politics and Social Research*, Vol. 394, March 1971, pp. 28–35.

called ‘intelligence’ can get distorted by hierarchical structures in organisations[7] and within various advisory committees—the ‘groupthink’ phenomenon.[8]

So, in summing up, this paper suggests that Australia actually has a more complex, diverse, sophisticated and porous policy advisory system, than many suggest. Certainly, while the Australian system is not without its flaws, and these will be highlighted later, one of the arguments in this paper is that since the 1970s in many ways the Australian advisory system has become more open and complex than its United Kingdom counterpart. Thus, an important area for further research is to identify more accurately and to classify more clearly the range of advisory policy institutions so as to distinguish them from each other and appreciate their varying roles and impact on the advice they provide. It would also be worthwhile to understand the different types of advice offered by different institutions and to analyse when and why such advice is both sought and accepted. Such issues are beyond the scope of a paper of this type, but remain areas for further research.

What are some issues in the advisory process?

There are a range of issues that we should consider in relation to the advisory process.

One of the emerging issues given the perceived increasing politicisation of the public service, is whether governments receive the full range of views that are available. Do governments seek or receive alternative views? This has been one of the underlying complaints against the Howard Government in Australia, the Bush Administration in the United States, and Blair Government in the United Kingdom in relation to the Iraq War. It has been the basis in Australia, in particular, of complaints by certain former officers serving in Australia’s intelligence services and been subject to various investigations (eg the Flood Inquiry).

Of course, there are other factors at work than just perceived politicisation of the public service. Hierarchy, poor communication processes, departmental politics, and groupthink all contribute to alternative views sometimes being suppressed, ignored or just not heard through the ‘babel’ of advice that percolates up through any bureaucracy.

Nevertheless, many believe that increasing political intervention in senior public service appointment processes, the pressure to give advice that the public service thinks its masters want rather than what they need, is an important underlying cause of these problems.[9] That many departments now see their minister as their primary ‘client’ and the view that the ‘minister always gets what he wants’ are reflections of this trend. In such an environment it is increasingly difficult for alternative view-points to get up through the system. Are there ways of overcoming this problem? Whether governments can afford to have alternative advice sources either within or

7 A. Downs, *Inside Bureaucracy*. Boston, Little Brown, 1967.

8 P. Hart, *Groupthink in Government: a Study of Small Groups and Policy Failure*. Baltimore, John Hopkins University, 1990.

9 J. Johnston, ‘Serving the public interest: the future of independent advice.’ *Canberra Bulletin of Public Administration*, No. 91, March 1999, pp. 9–18.

close to their ears, and if so, how this can be best arranged are real issues that need to be addressed.

Another concern is that governments sometimes seem to be deaf, or they do not really want to listen to advice even if it is tendered. Sometimes this deafness is selective. Governments too often appear to have made up their minds before acting. Advice seems superfluous or if sought at all is only used to bolster particular courses of action. In other cases governments ask: 'Why weren't we told?' after some scandal becomes public. In many cases, governments were told, but for all sorts of reasons deliberately ignored the advice, or did not listen properly to what was being said. This seems to lie at the heart of the issues concerning the oil for food scandal in Australia. It has also been a feature of complaints about corruption as occurred in Queensland during the 1980s under the National Party. Everyone knew, it seems, about police corruption, except the government. During 2005 the then Queensland Health Minister, Gordon Nuttall, stated he was unaware of complaints about overseas doctors—a view he subsequently changed when contradicted by his own departmental deputy director-general in front of a parliamentary estimates committee.

Expertise versus political advice is another emerging issue. Public servants are often told: 'You don't understand the politics of this issue' as a reason for not presenting certain advice to ministers. Well, most public servants generally do understand the politics of the issue, but want their expert 'fact' based advice to get into the minister's office where the political judgements can then be made, but at least based on having the 'basics' in place. Too often the desire for 'political' advice so dominates the advisory process, made worse by the extensive growth of inexperienced people called ministerial advisors who sometimes interfere and interrupt the flow of accurate information, that 'expertness' or content-rich advice gets driven out of the advisory process. There is a place for political advice, but ultimately 'good' politics will be driven by 'good' policy.[10] Extreme examples of politics driving out rational advice may be seen when scientists are asked to skew findings to suit certain political agendas as occurred in Queensland under National Party governments in relation to environmental issues during the 1980s. More recently, it has been argued that CSIRO scientists have been prevented from making public statements concerning greenhouse issues as it contradicted the Howard Government's view on global warming.[11]

Suppression of unpalatable information and advice and secrecy in terms of the basis of why governments take certain policy actions are further related issues. This has become more problematical partly because of the increasingly politicised public service that too easily does a government's bidding. There are numerous antidotes to these issues, although freedom of information laws, given the way they have been misused in Australia, are not always effective. Too often, we have only found out about these problems following special external inquiries, like royal commissions which with their very real powers of investigation have helped clear the clogged information channels, opened up secret files and highlighted how governments suppressed information and advice on particular issues. The 1980 Royal Commission

[10] Scott Prasser, 'Aligning 'Good' Policy with 'Good' Politics', in H.K. Colebatch (ed.), *Beyond the Policy Cycle: the Policy Process in Australia.* Sydney, Allen and Unwin, 2006, pp. 266–292.

[11] 'The Greenhouse Mafia,' ABC Four Corners Program, 13 February 2006.

into the Federated Ship Painters' and Dockers' Union (Costigan Royal Commission) and the 1987 Royal Commission into Aboriginal Deaths in Custody are examples in exposing what government did and did not know and also what they were unwilling to ask. More recently, in 2005, as is discussed below, two royal commissions in Queensland highlighted how complaints about the malpractices of overseas doctors and vital information about public hospitals were deliberately suppressed and distorted by successive health ministers and cabinets.

Content knowledge inside the public sector seems to be suffering in the face of a managerial revolution that has been enacted around Commonwealth and state bureaucracies. Once upon a time we used to have public servants who had real content knowledge in the policy area they worked. These days, with the emphasis on managerial competence and performance, policy content knowledge is often lacking. Exacerbating this problem is that senior public service managers, the Senior Executive Service (SES), are recruited on short-term contracts and have little time to understand the history of policy issues or to take full responsibility for the many changes they often instigate. Once upon a time, senior public servants rose up through the ranks, and had experience about what worked, and what did not work in the field. This is a real problem in the advisory game, and partly explains why governments sometimes seem not to learn from previous mistakes.

Short-termism in thinking about policy issues further undermines effective policy advice. Governments are very focused on one thing: getting re-elected, maximising votes, and doing what they have to do to get over the line at the next election. It is extraordinary how this not just focuses their attention, but monopolises their thinking. It is made worse at the national level (and in Queensland) by the three year term. The average length of most federal governments is about 2.2 years. Few policy initiatives can be developed, implemented and have any real impact in such short timeframes. This also drives governments to demand immediate results and to allocate resources to those areas of public policy most amenable to this sort of pressure, to being able to show 'measurable' results. It reduces the willingness of governments to allocate resources to long term strategic thinking—a particular problem about Australian policy making noted by others.[12] This problem is further exacerbated, as noted above, by the short term contracts of the SES.

Another issue is organisational amnesia. It has become a real problem in Australia and other democracies where public sector 'reform' has become the goal, rather than the means, for many governments.[13] Because during the last couple of decades the public service in Australia and elsewhere has been constantly restructured, increasingly politicised, and run by managers with limited tenure, the bureaucracy is no longer good at being a bureaucracy. It has lost its organisational memory. There is often a two and a half year turnover in staff and different organisational units. In the Queensland Government a science and technology unit established in 1994 was abolished in 1998, and its personnel dispersed and programs dismantled. The same

[12] Ian Marsh and D. Yencken, *Into the Future: the Neglect of the Long Term in Australian Politics*. Melbourne, Australian Collaboration and Black Ink, 2004.

[13] C. Pollitt, 'Institutional amnesia: a paradox of the "Information Age?" '*Prometheus*, Vol. 18, No. 1, 2000, pp. 5–16.

unit was re-established in 2000. The new appointees had no idea what had gone on before and had to start all over again. The public service had forgotten what had been done previously, and given the increasing high turnover of senior staff we have a situation of 'stop-go' policy making and reinventing the wheel.

The national advisory field: Who's who in the advisory zoo?

While we have already mentioned some of the different advisory bodies earlier let's identify these more clearly and make some assessments as to their roles and potential areas of reform.

Some key issues in reviewing these different bodies and institutions include:

- What are they?
- How independent are they?
- How do they work?
- What type of advice do they provide?
- How are they perceived?
- Are they effective?

These are the questions that we should be asking about our policy advisory mechanisms. The point is we have multiple mechanisms and multiple processes in place. It is not just a single system and not all policy advisory bodies are created equal.

The following bodies work in the national advisory field in and around government, and are essentially run by governments, or sponsored by governments, or paid by governments. These bodies are set in order of their closeness to government:

- **Government departments**, and inside departments, there are numerous policy units. Twenty years ago you would not have seen a policy unit in existence. Now, such units are commonplace. The issue with departmental advice, for reasons already outlined, is that it is increasingly driven by political considerations and ministerial intervention. Some departments like Treasury still have a certain degree of perceived independence and prestige, but one suspects that even here there is a decline in their status.

- **Ministerial minders**, of which there were only a few 30 years ago have grown in number and changed in origin. There are now an estimated 400–500 ministerial staff in Canberra. Most are recruited from outside the public service. While there is a legitimate role for externally appointed ministerial staff as a means to check departmental advice and to provide 'political input' ('hot' advice, see below) the issue is whether they impede advice from agencies and have the experience to provide the sort of advice needed.

- **Consultants**, while used previously have now increased dramatically in numbers and costs.[14] They are everywhere, and have varying degrees of openness in their processes and reporting. Some see their use, especially by the Howard Government, as a means of avoiding the more open external public inquiries. Others see consultants as a means of bringing greater expertise into government.

- **Advisory bodies attached to government departments** that relate to different interest groups or key sectors, such as the AIDS, environmental issues, or manufacturing advisory groups. These are particularly seen at the state level and such bodies are what may be described as 'representative' advisory bodies as they try to include in their membership representatives from across a particular policy community. In some cases such advisory groups hold a certain expertise, but they primarily reflect the expertise of interest groups rather than holding 'independent' expertise.

- **Specialised policy bureaux** within government are another category and are found specially at the Commonwealth level. These bureaux are sometimes statutory based, but often are not. They are seen as having a particular expertise in an area of policy and a certain degree of independence. The Office of National Assessments is one example. Others of interest include the Australian Bureau of Agricultural Resource Economics (ABARE). Such bodies have been entitled policy research advisory bodies (PRABs) because they provide policy advice based on research and analysis and not just through the collection of information from interest groups.[15]

- **Statutory-based advisory bodies**. The aforementioned Tariff Board is an example and it has evolved into the Productivity Commission (previously the Industries Assistance Commission and then Industry Commission). These bodies conduct inquiries, release draft reports and inject considerable amounts of 'rational' policy information (although often from certain limited perspectives) and some degree of independent analysis into the public arena.

There is considerable waxing and waning of these different advisory bodies as governments come to power with new interests and as problems and issues emerge. Some get reviewed and are abolished (eg Australian Institute of Multicultural Affairs was abolished in 1986, but was replaced by the Bureau of Immigration Research a couple of years later, which has since been abolished). Others are modified, amalgamated, or given renewed missions.[16] The Australian Institute of Criminology, for instance,

[14] J. Martin, *Reorienting a Nation: Consultants and Australian Public Policy*. Aldershot, England, Gower, 1998.

[15] Scott Prasser and S. Paton, 'Advising Government,' in J. Stewart (ed.), *From Hawke to Keating: Australian Commonwealth Administration.* Canberra, Centre for Research in Public Sector Management and the Royal Institute of Public Administration Australia, 1995, pp. 105–149.

[16] Ibid.

was reviewed during the 1980s and given a renewed mandate. It is presently being reviewed again.

- **Intergovernmental bodies**, ministerial councils, and the Council of Australian Governments are key advisory agencies focusing on federal-state related policy issues. There were over 90 of these at one stage. However, given the centralisation tendencies of the present Howard Government and its adoption of what may best be described as 'feral federalism' then the real policy roles of these bodies needs considerable reassessment.

- **Parliamentary committees** have since 1970 at the Commonwealth level in particular become more prolific in number, wider-ranging in scope and thanks to the Senate, more probing in their investigations.[17] To some extent, they have taken on some of the roles of public inquiries. However, parliamentary committees have several flaws. For instance, they are composed of elected officials and thus often become arenas for partisan battles. Such partisan membership also means that they lack the same sense of independence or expertness as other advisory bodies. Their inquiries are often controlled by executive government, as are their resources. Rarely will a parliamentary committee inquiry satisfy those wanting expert or independent policy advice.

- **Public inquiries**, as noted, are temporary, ad hoc bodies appointed by executive governments with the majority of their members drawn from outside of government. They are not chaired by current politicians. They can be royal commissions, task forces, working groups, commissions, and committees of inquiry. At the national level there have been over 120 royal commissions since federation, and some 500 less formal public inquiries. With the Whitlam Government there was resurgence in public inquiry use, including royal commissions—a resurgence that has been maintained until the Howard Government. Although public inquiries are temporary bodies, the suggestion is that public inquiries have been used to provide advice on some of Australia's most important policy changes (eg pensions, public service, financial deregulation, national competition policy, television) as well as to investigate areas of corruption, and as such constitute an ongoing and important part of the policy advisory institutional framework in Australia.[18]

In addition, there are other policy advisory bodies that are external to government, though some are funded in whole or part by government. These include:

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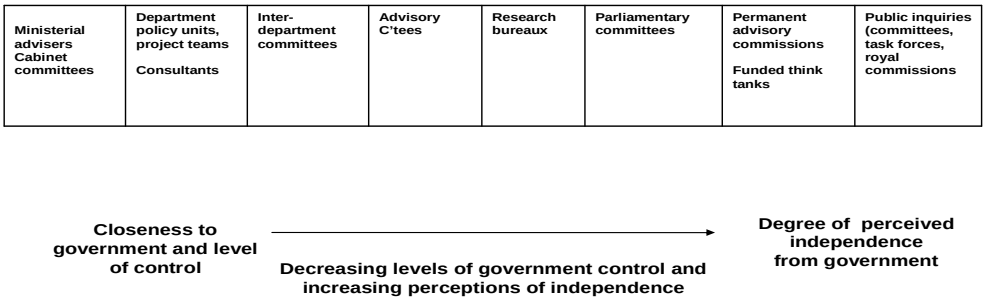
[17] H. Evans, 'The Case for Bicameralism,' paper presented to the *Improving Accountability in Queensland: The Upper House Solution?* National conference organised by the Faculty of Law at the University of Queensland and Faculty of Business of the University of Sunshine Coast, Brisbane, 21 April 2006.

[18] D.H. Borchardt, *Commissions of Inquiry in Australia*. Bundoora, Vic., La Trobe University Press, 1991; Scott Prasser, *Royal Commissions and Public Inquiries in Australia*, Sydney, LexisNexis, 2006.

- Research advisory bodies attached to universities, usually funded by government or supported by consulting activities;
- Party political research bodies or those closely attached to particular parties such as the Menzies Research Centre based at federal Liberal Party offices in Canberra;
- Interest groups are increasingly sophisticated in their research techniques and capacities. The National Farmers Federation, for instance, employs a large research team;
- Lobbyists have varying research capacities;
- Think-tanks, a particular United States phenomenon,[19] do exist in Australia, but although there are numerous bodies with this title there are relatively few in number that are privately funded. Examples include the Centre for Independent Studies, The Sydney Institute, and the long established Institute of Public Affairs in Melbourne. Although some think-tanks are rumoured to have secret 'ins' with government and produce reports such roles are more often than not exaggerated and their research capabilities often limited.

Figure 1 outlines, from left to right, the relationship between decreasing government control and increasing perception of independence in advisory bodies. Starting on the left, ministerial advisors owe their livelihoods to ministers. Therefore they will do what they are told. Department policy units, project teams, consultants—they owe their allegiance to the department. They will do as they are told. Interdepartmental committees are set up by executive government and operate within departmental structures and are rarely public. Advisory committees are attached to departments and their members are appointed by executive government. Research bureaux are a bit more independent because they often produce public reports and they can get some criticism. Parliamentary committees are even more independent, because they are in the public arena, their processes are public, but as noted they are made up of partisan members who often fight out the partisan game. Permanent advisory bodies like the Productivity Commission and special think-tanks are much more independent. Public inquiries are the most distant from executive government though appointed by them. This is because their membership is drawn from outside government and their processes are highly public limiting overt government interference in their investigations and deliberations.

Figure 1
Executive government control of advisory bodies



[19] Y. Dror, 'Think Tanks: A New Invention in Government,' in C.H. Weiss and A.H. Barton, (eds), *Making Bureaucracy Work*. Beverly Hills, California, Sage Publications, 1980, pp. 139–152.

The state advisory scene

While the state advisory environment largely follows the national scene there are important differences.

For instance, there are fewer advisory bodies overall, and they are on a lesser scale than their national counterparts. There are few external advisory bodies to government. There are not many independent statutory advisory bodies, as distinct from regulatory bodies. There are no bodies like the Productivity Commission investigating assistance to business or reviewing micro-economic reform issues. Assistance to business remains very much an executive government prerogative kept secret under the 'commercial in confidence' umbrella.

There are fewer parliamentary committees at the state level and they appear far more under executive government control than their Commonwealth counterparts. Upper houses have exerted some influence from time to time and it will be interesting to see the impact of the changes made to the Victorian upper house after the 2006 state election.

State governments also tend to resort to public inquiries less frequently and on a narrower range of topics than at the national level. State royal commissions have in recent years only been appointed in emergency crisis situations like the hospital crisis in Queensland, or corruption and maladministration scandals with the banks in Victoria, South Australia and Western Australia during the 1980s or in relation to police corruption (Queensland, New South Wales, Western Australia).

Interest groups do have a state organisational base, but these have limited research capacities and are more focused in responding to member needs and direct lobbying than ongoing policy research and debate. Indeed, excessive criticism of a government can result in certain peak industry associations being locked out of the consultation process by the offended state government as occurred with Commerce Queensland following the 2003 state election.

External think-tanks rarely have a state focus. The Brisbane Institute is one example of this, but its impact has been limited, partly because it relies on support from the state government or those with state government links and its criticisms of some policy areas have not been appreciated inside government.

Oliver's assessment about the closed and non-porous nature of the policy advisory system in Australia is much more appropriate if applied to the state government scene. However, even here, some careful concessions need to be made as to its veracity.

Some recent trends in providing advice to government

In addition to the different advisory bodies identified above a number of other trends can be observed in relation to advisory mechanisms in Australia.

First, one of the trends inside government is increasing centralisation at a departmental level. One of the great developments in the Australian public sector in

the last decade has been the rise and rise of the Prime Minister's Department[20] and its state counterparts, the various premiers' departments.

These new central agencies have come to rival the traditional ones like Treasury. If the range of functions of premiers and prime ministers' departments are analysed it seems they incorporate the whole range of government functions reflecting their whole of government monitoring role and the increasing policy and political importance of the prime minister and premier.

These departments of premiers and prime minister are often the incubators for new policy areas and units (eg women's units, multicultural affairs) or provide accommodation for serious problem areas (eg indigenous affairs) where there may be concerns about the competency of line agencies (and their ministers) to tackle the issues appropriately. There is a sense that premiers' departments want to control everything. In Australia, and to a lesser extent the United Kingdom, premiers' and prime ministers' departments have really become the prime policy co-ordinator in both providing advice and in overseeing the implementation of executive decisions. Despite all those management words like strategies, whole of government collaboration, partnerships and so on, premiers' and prime ministers' departments are really about exercising control on behalf of the chief executive officer.

Second, there has been, as noted, the ongoing increase in the number of ministerial minders. Their numbers at the Commonwealth level have quadrupled during the last two decades.[21] While there is an argument that ministerial minders can provide the strategic advice needed to drive policy initiatives through over-cautious departments concerned more with maintaining and implementing policy, there has not been enough attention as to the problems minders cause.

In relation to minders there are three issues:

1. Many minders are young inexperienced people who think that doing policy is writing a comment on a briefing paper from a department. They often do not understand the background to issues or have any experience in the ground implementation of policy.

2. Ministerial minders are activity-driven people and this, plus the need to justify their position, means that they will tend to criticise, knock, expose minor problems in public service advice and to treat such advice with some suspicion, as if the public service is trying to get something over the minister. This creates a very difficult relationship between ministers and the public service.

3. There is the issue of accountability. Ministerial minders increasingly act as de facto ministers, giving instructions not just to senior public servants, but to those down the line. This has raised some concerns of late and provoked

[20] Patrick Weller, 'Do prime ministers' departments really create problems?' *Public Administration* (London), Vol. 61, Spring 1983, pp. 59–78.

[21] M. Maley, 'Too many or too few? The increase in federal ministerial advisers, 1972–1999', *Australian Journal of Public Administration*, Vol. 59, No. 4, December 2000, pp. 48–53.

> suggestions[22] to set some parameters for the interactions between ministerial minders and the public bureaucracy. The problem is that minders are not able to be held to account under present arrangements.

In relation to policy research advisory bodies like policy bureaux inside departments and statutory based advisory agencies, one important trend under the Howard Government has been for these bodies to be consolidated and reduced in numbers. They still exist, but they are not as numerous as they once were. The Howard Government seems less interested in seeking alternative, independent sources of advice the longer it is in power.[23]

The growth of consultancies needs further assessment. Consultancies offer governments several advantages: (a) they can be expert and (b) they do not have to be public. So you can get an outside expert person in but you do not have to make the process public. One of the reasons there has been a slight decline in the external, open and more independent public inquiries under the Howard Government is because it has sought to use consultants more often. The Howard Government is not alone in this practice.

Related to consultancies is the increasing outsourcing of policy advice to bodies outside of government. Whether this is resulting in a loss of expertise or a hollowing out of executive government remains to be seen, but it is certainly an area worthy of further monitoring.[24]

Public inquiries in Australia, royal commissions and other bodies identified above, declined for a long time in numbers from the post-World War II period, right through to 2nd December 1972, when with the election of the Whitlam Government public inquiries increased in numbers dramatically. Figure 2 compares the number of public inquiries under governments between 1949 and 2003.

The Howard Government, and its current state counterparts, have been less enthusiastic in appointing public inquiries in general and royal commissions in particular. Since 1996 the Howard Government has only appointed four royal commissions. Other governments have also followed this practice. The Bracks Government has resisted appointing a royal commission into the police, while in Queensland the two royal commissions established by the Beattie Government into the overseas doctor issue only occurred when all other options had been tried.[25] John Howard, like the current state Labor premiers, has learned that appointing inquiries can be a tricky business. Nevertheless, public inquiries in Australia have become, and remain, a quite important advisory mechanism. They are appointed both for legitimate policy reasons of getting information, trying to sort out what to do, and for what may be called politically expedient reasons of showing concern, raising the flag, and

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22 Australian Public Service Commission, *Supporting Ministers, Upholding the Value.* Canberra, 2006.

23 G. Barker, 'Yes Minister', *Australian Financial Review* 10 October 2000.

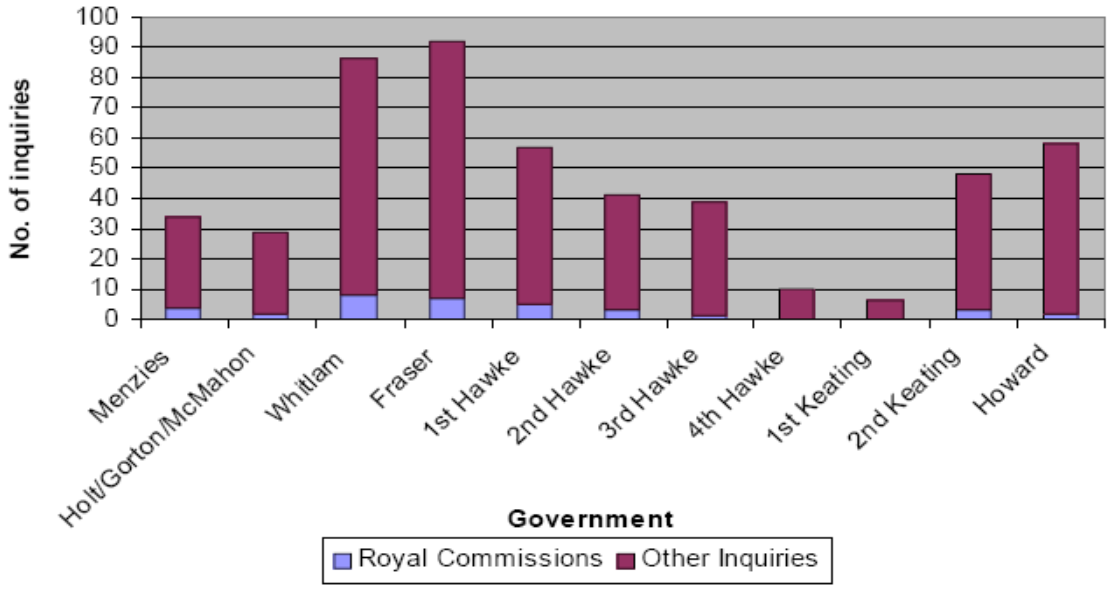
24 F. Argy, 'Arm's Length Policy-making: The Privatisation of Economic Policy' in M. Keating, J. Wanna, and P. Weller, (eds), *Institutions on the Edge? Capacity for Governance.* Sydney, Allen and Unwin, 2000, pp. 99–125.

25 Scott Prasser, 'Royal commissions in Australia: when should governments appoint them?' *Australian Journal of Public Administration*, Vol. 65, No. 3, September 2006, pp. 28–47.

agenda management. Certainly, the evidence is that the public inquiry mechanism has been invoked much more in Australia in recent years than say in Canada, the United Kingdom or New Zealand.[26] It is worth considering why this is so. One explanation is that with the erosion of independence of the public service, increasing political intervention in appointment processes and even questionable independence of universities, public inquiries and especially royal commissions have become the 'institution of last resort' for governments concerned about ensuring there is a legitimate and independent process of investigation underway.

Figure 2

Number of Royal Commissions and other public inquiries per government 1949–2003



Problems with advisory mechanisms

Let's now review some of the tensions in providing advice to government. Some of these have been discussed, but in a couple of cases they need further elaboration.

One tension is between government departments and external advisory bodies. Government departments do not really like external advisory bodies, whether permanent or temporary. Take the environment area, where we have bodies like the Wet Tropics Authority and the Great Barrier Reef Marine Park Authority (GBRMPA) in North Queensland. These bodies are not just regulators, they are also advisory bodies and they offer alternative viewpoints to those of departments, have their own expertise and rationale, are given their own budgets, and have some freedom to pursue

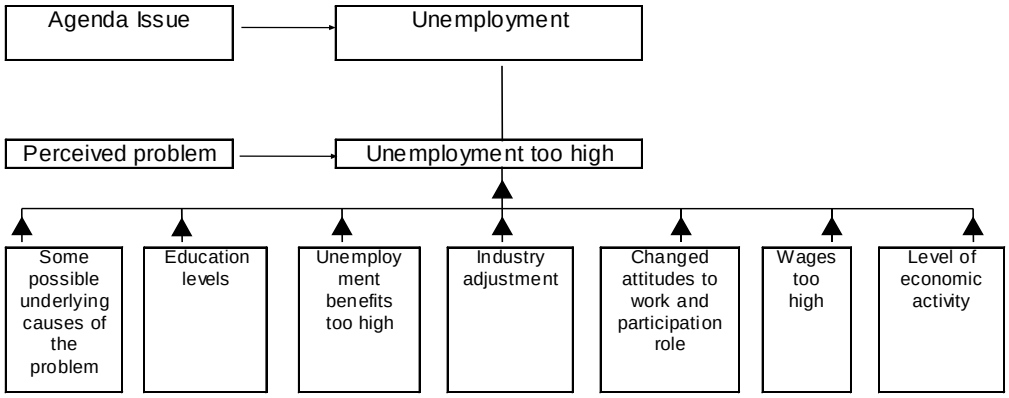
[26] N. D'Ombrain, 'Public inquiries in Canada', *Canadian Public Administration*, Vol. 40, No. 1, Spring 1997, pp. 86–107; G. Lindell, *Tribunals of Inquiry and Royal Commissions*. Sydney, Federation Press, 2002; B. Easton, 'Royal Commissions as Policy Creators: The New Zealand Experience', in P. Weller (ed.), *Royal Commissions and the Making of Public Policy*. Melbourne, Macmillan, 1994, pp. 230–243.

their own lines of research. There is thus a tension between the Environment Department and these bodies, because there is an issue of control, alternative sources of advice and competing expertise. In recent times, the tendency in this policy area has been for departments to seek to incorporate these bodies back into their particular administrative orbit. Hence, the Wet Tropics Authority, following a review, is a shadow of its former self in terms of independence, staffing and powers. A review of the GBRMPA released in 2006 is expected to produce similar results.

Another tension is between competing expert views. Figure 3 gives an example of competing expert views on the issue of unemployment. A lot of different views are given about what causes unemployment. Unemployment can be viewed as an education issue, a result of too generous unemployment benefits, an industry adjustment problem; some think it relates to the way we look at participation rate, and values and attitudes towards work; and some economists think wages are too high, and some look at it as a demand function. We have to get expert knowledge, but there is different competing expert knowledge out there, and this is often very difficult for governments to resolve.

Figure 3

An example of competing expert advice



Based on A. Harding, 'Unemployment policy: a case study of agenda management', *Australian Journal of Public Administration*, Vol. XLIV, No. 3, September 1985, pp. 224–246.

One of the tensions that is not fully appreciated is what has been described as 'hot' advice versus 'cold' advice. Figure 4 compares the characteristics of what I call 'hot' and 'cold' advice. Bureaucrats and academic experts believe their role is to give cold, rational advice. They are not ignorant of the political context, but see their role to give the advice that is factually based and long term in focus. Hot advice is what drives ministers and their minders. It is meant to be an overlay to rational advice, and serves a very legitimate role in a democracy. After all, democratic policy-making is not just about implementing formula based policy solutions, but about accommodating interests, building support and developing policies that are acceptable and able to be implemented. However, the problem is that 'hot' advice seems to be coming more dominant and the public service is increasingly expected to move more and more into the hot side of the advisory game—to think about the political consequences rather than to focus on developing rational policy proposals. We have this sort of disjunction

because the public service, especially at the SES level, is increasingly politicised or at least has a more tenuous hold on its position than previously. In such circumstances, it is often very hard to provide cold, rational, and independent advice.[27]

Figure 4

Hot and cold advice

Rational (cold) advice	Political (hot) advice
Information based	Relies on fragmented information, gossip
Research used	Opinion/ideologically based
Independent/neutral and problem solving	Partisan/biased and about winning
Long term	Short term
Proactive and anticipatory	Reactive/crisis driven
Strategic and wide range/systemic	Single issues
Idealistic	Pragmatic
Public interest focus	Electoral gain oriented
Open processes	Secret/deal making
Objective clarity	Ambiguity/overlapping goals
Seek/propose best solution	Consensus solution

Source: S. Prasser, *Royal Commissions and Public Inquiries in Australia*, Sydney, Lexis Nexis, 2006.

Another tension has been that bodies like that of the auditors-general that are supposed to provide independent reviews of government have been under attack by executive government, especially at a state level. It is a real problem in Victoria and New South Wales. In Queensland recently, when the Auditor-General was to review government spending on advertisements he was summoned to the Premier's office and on the same day it was announced that the Department of the Premier and Cabinet would be reviewing the Auditor-General's office. Now that seems to be having a loaded gun at the Auditor-General's office. After all, the Auditor-General is supposed to be an officer of parliament, not an officer of the executive. These are exactly the problems that the Fitzgerald Inquiry highlighted in 1989 about Queensland government. They are important issues we should consider when assessing the policy advisory process.

As more and more advisory processes come under executive government influence and control, the public questions the legitimacy of the advice that governments choose to use and to justify its decisions. In Queensland when the Department of Premier and Cabinet several years ago produced a report about public hospital waiting lists and availability of doctors, the Australian Medical Association (AMA) was sceptical about the validity of the analysis. Because of the way our public sector has been politicised, we no longer believe its assessments. We now have a crisis in legitimacy in the policy advisory game. Who do we believe when they say the best advice given to us was by the department, or by another body? Do we really believe it is independent advice? This is one of the great challenges facing our democracy. In the case of the Queensland health issue, the subsequent royal commission in 2005 confirmed the AMA's concerns.

[27] See Johnson 1999, op. cit.

Given these trends, then one of the last key independent advisory mechanisms that has too often been forgotten is public inquiries such as royal commissions. Why do they get appointed? They are, as noted, 'institutions of last resort.' When something is really rotten in the state of Denmark, we can at least hope we might get a bit of truth from these sorts of bodies. They are perceived to be independent; they usually have a rational process; they use open public processes and report publicly. The public service is too overloaded and politicised to do this sort of work. Other advisory mechanisms are also compromised, but public inquiries are seen to be impartial, independent and they are often made up of people who are considered to be authoritative, and expert in the policy problem, and they are composed of members whose futures do not lie with ongoing government employment.

Royal commissions in particular are the 'Rolls Royces' of inquiries, because they have real power: they can make people appear as witnesses, they can make people give evidence, and they can enforce the collection of information. Royal commissions are the last bastion of independent advice, and because of their public processes, we can see them in action. We can see the squirming of witnesses in their seats; we can see the evidence being collected, and inevitable contradictions and inconsistencies. In Queensland during the recent second royal commission into the overseas doctors' scandal (Royal Commission into Queensland Health—the Davies Royal Commission) we could see the former ministers for health trying to explain how they covered up waiting lists, suppressed information and misused the cabinet process to avoid freedom of information laws. We finally found that there is not just one waiting list in Queensland, but several waiting lists.

Why rational advice goes astray

While those of us in the public service and the numerous advisory bodies and even elected officials themselves want to give and receive rational policy advice based on sound analysis, clear options, some form of checking of resources, and cost benefit analysis, government and policy advisors alike are constantly being knocked off course by other influences and players. Some of these pressures as outlined in Figure 5 below include:

- **Ideology and beliefs**: While important, ideologies are highly value-based and not always developed as a result of clear analysis. New governments are particularly influenced by these traits and often try to retain their ideological purity even when circumstances indicate the inappropriateness of policy based on such frameworks. Interestingly, the present Labor Opposition's prime criticism of the Howard Government's industrial relations changes is that they are anchored too strongly on ideological rather analytical perspectives;

- **Party politics**: Sometimes rational policies cannot be pursued because party politics, history and platforms are totally opposed to these proposals. This has become less of a problem as parties have become less ideological. The Labor Party too has become less bound by the party platform. However, what is not always understood is that governments often choose policies based less on rational analysis and more on market expectations (surveys and opinion polls) and on what their opponents are or may be proposing;

- **Departmental politics**: We know that government and the public bureaucracy is not a single monolithic structure, but consists of competing agencies chasing bigger shares of the budget and greater control over different policy areas. This public choice view[28] may be open to criticism, but anyone who has worked in the bureaucracy appreciates that government policies are easier to develop than to implement and that what is sometimes the 'right' policy is impossible to implement because of departmental rivalries and competing agency perspectives of particular policy issues;

- **Organisational factors or 'group-think'**: As highlighted, a major impediment to rational policy advice in any organisation is preventing alternative viewpoints to be expressed. Organisational factors such as hierarchy and groupthink stifle innovative thinking. There needs to be a means for alternative viewpoints to be expressed without people being skewed in the process;

- **Irrational and illogical thinking, lack of facts**: So many government decisions are based on hints and ideas, rather than sound analysis. Governments, as observed in relation to many large 'prestige' projects fail to test if there is a real demand for such monuments (the 'build it and they will come' syndrome) and even when a project is clearly over-budget and failing to meet its most basic requirements, governments continue to pour funds into these projects because of previous investments which they are unwilling to write off (the 'sunk costs' approach);[29]

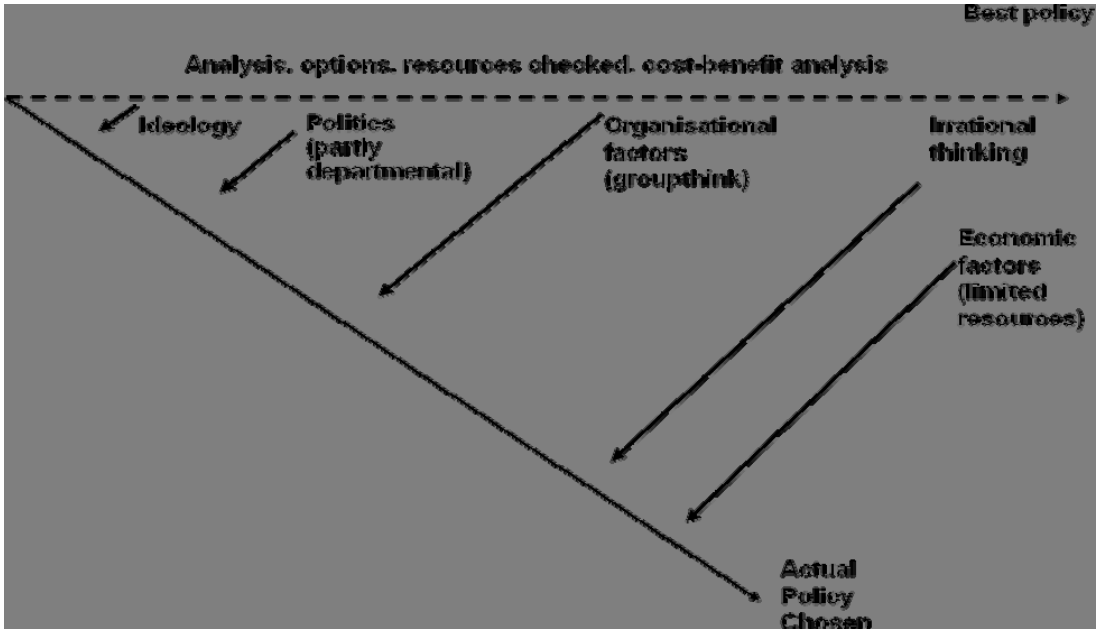
- **Economic factors**: Of course, all policy advice has to be tempered by an appreciation of economic and budget realities. There is never enough money to implement policies as fully as intended. Compromises have to be made and budget limitations acknowledged. Sometimes, such exigencies doom policies to failure.

[28] W.A. Niskanen, *Bureaucracy and Representative Government*. Chicago, Ill., Aldine-Atherton, 1971.

[29] See B. Flyvbjerg, N. Bruzelius and W. Rothengatter, *Megaprojects and Risk: An Anatomy of Ambition*. Cambridge, Cambridge University Press, 2003.

Figure 5

Why rational advice goes astray



Queensland Health: a closed system?

Examination of the recent Queensland overseas doctors' crisis highlights some of these different issues.

The background to the Queensland hospital crisis was that complaints from professional bodies, individual medical staff and some patients, about the competence and qualifications of overseas doctors eventually became a public scandal. The issue was intricately entwined with other health issues such as public hospital surgery waiting lists, hospital funding, specialists' wage levels, the adequacy of medical training and recruitment and Queensland's over-reliance on overseas doctors. Eventually, the Beattie Government appointed a royal commission to investigate the allegations. While the initial royal commission was later disbanded following Supreme Court findings of the perceived bias of its chair, a new royal commission, the Davies Royal Commission, was quickly appointed.

The Davies Royal Commission discovered a number of issues pertinent to our focus on advisory processes. Complaints about medical malpractice were suppressed by senior health department staff. Information about hospital performances and the state of the Queensland health system was not released or deliberately misleading. Information and briefings up the Health Department's hierarchy was often distorted or did not go above certain levels. Ministerial press statements, departmental annual reports, and answers to questions in parliament were inaccurate. The Health Department suffered from too many reorganisations, overcentralisation and inadequate funding. Senior Health Department officials lacked content knowledge and there were suggestions that there had been political interference in appointment processes. Alternative viewpoints and criticisms were not tolerated. There was a lack of independent external review processes. Both ministers and cabinets were

condemned for deliberately seeking to misuse freedom of information exemption to suppress information on vital issues like hospital waiting lists and acting contrary to the public interest. Indeed, the Davies Royal Commission exposed that there were not one, but two hospital waiting lists and explained how governments manipulated these to promote false public perceptions of public hospital performances.

Conclusions: suggestions for better advisory processes

It is no use complaining unless you have some solutions.

First, it seems clearly established that the Australian policy advisory system is more complex and porous than contended by Oliver. The Australian policy advisory system is also reasonably diverse—not as much as in the United States, but scale, resources and complexity are really on a different level. There are, in the Australian system, numerous entry points for interest groups and there are numerous public and semi-public platforms for advocacy. Our public inquiries and some of our statutory-based advisory bodies like the Productivity Commission are really very good at providing opportunities for genuine input.

Of course, unlike the Swedish commission inquiry and policy development process, Australia's policy processes appear ad hoc. For instance, it is up to executive governments to decide when to appoint a public inquiry or not. So there's no certainty about that. In Sweden a public inquiry is appointed before any major action occurs. These inquiries are not dominated by government or even parliament but are an independent process.

This does not mean that all is well. The Queensland hospital crisis illustrates just how policy and advisory processes can deteriorate. There is a tendency in recent years at the national level for executive government to seek greater control on both internal advisory processes, to reduce independent sources of advice, and to rely more on internal sources of advice, but not necessarily on the department, but rather on the ministerial office with its increased number of ministerial staff. It is the ministerial office that has become an increasingly important driver of policy advice. Also, governments continue to act secretly.

How can we ensure there is better policy advice going to governments? Is such a goal a lost cause?

Ideally, we have to get better separation/insulation between elected officials and departments. They have become too close. Ministers now appoint department heads. At state level, political interference has gone down further and further into the lower levels of bureaucracy. We are filling positions with 'yes' people all the time. So there has to be some insulation.

Also, we need greater transparency in what is being asked for from the public service and what is being provided. We need to know more accurately just how the economy, health, the environment and industry sectors are really performing. Some real performance reports in the annual reporting process might allow better assessment of advice and information about what governments do.

Ministerial minders have become a problem and ought to be reigned in both in relation to their numbers, roles, and accountability arrangements. Minders are often supposed to be 'second guessing' the public service advice. Too often they seem to be just guessing. They often do not know what they are talking about; they cannot have the experience of people in the field who have to deliver policies and know the realities of doing policy as distinct from just thinking about policy in an abstract way.

Next, we need to depoliticise the public service. How do we do that? We have done away around Australia with that unique Australian development, the public service board. Public service boards were established in Australia following royal commissions into political corruption of the public service.[30] Public service boards were a great Australian innovation and unfortunately in the drive to 'managerialism,' we abolished them around Australia. Their successors, the different public service commissions, have different roles. So there needs to be some sort of independent body to insulate the public service from political interference, and to oversee appointments and promotions.

In addition, we need to re-examine the appointment processes of senior public servants, department heads, judges, and heads of statutory bodies. Such positions have become partisan prizes. The American Senate confirmation process might be one alternative so as to ensure governments appoint people who are competent and not just the party faithful, and to restore some bipartisan ownership of such appointees. More recently, others have proposed that Australia should adopt recent models from the United Kingdom in relation to more independent processes in the appointment of judges.

Then of course there is the need to initiate parliamentary reform, especially in revitalising upper houses around state parliaments. All knowledge does not reside in executive government and it is good for governments to have to do deals and argue their case and get proposals through parliament as successive Commonwealth governments have had to do with the Senate for some time. In Queensland we do not have an upper house and it shows in the lack of accountability and the executive dominance of all decision making. Even though the Howard Government now has the numbers in the Senate, the very nature of Coalition politics and its thin majority means the Howard Government cannot take the Senate for granted. The Howard Government still has to negotiate to get its significant legislation through the Senate.

Certainly reforming parliament and establishing effective upper houses rather than creating extra-parliamentary institutions like anti-corruption bodies can improve the accountability game and the openness of the policy development process. We have a Crime and Misconduct Commission in Queensland that does great work, but they can also be under pressure from the government from time to time.

Last, we have to restore content knowledge over managerial competencies in the senior ranks of the public service. This will lead to a much better advisory process. Experience and knowledge about the subject matter surely must count. Unfortunately,

[30] H. Zafarullah, 'Public Service Inquiries and Administrative Reform in Australia, 1895–1905', PhD Thesis, Department of Government, University of Sydney, 1986.

as a society we often do not always give due weight to experience and content knowledge. Good process, although important, alone will not drive effective policy advice.

The Australian policy advisory process has many positives. Some major policy problems have been effectively managed during the last decade, but certain trends identified in this paper need to be reversed if we are going to improve the quality of government and the quality of decision-making in this country.

Question — I don't think that the problem with the ministerial advisors is that they are necessarily ignorant young Turks, because if you look at the Prime Minister's office you have some extremely experienced people in there, including a number of former public servants and a number of other public servants who are effectively on secondment and will go back into the bureaucracy at very high levels. The question seems to me the issue of accountability of those people, or the lack of accountability. Would you like to comment on that?

Scott Prasser — Well, I think that is one of the gaps that has developed. The fact that ministerial minders don't have to appear before committees of Parliament seems to be an issue. It's true what you say about the Prime Minister's office. I was referring to ministerial minders very broadly. I think that the whole ministerial minder process, which has grown topsy-turvy in the last 20 years, needs to be reviewed. Secondments from government departments to ministers' offices have long been the case, but it's the bringing in of people from outside the system. The sort of people I am talking about are often chasing political seats and go on to become members of Parliament themselves. I have no problem with secondments from departments and so on. But the ministerial minder system needs to be reviewed and I think some of the great leaders in Australia understood that there should be some limitations on just how many ministerial minders should be in vogue.

When I worked in Canberra, ministerial staff was five. One officer was seconded from a government department, and three administrative people and myself were brought in from outside. Today it's much bigger than that. One of the problems with ministerial minders is that many things are said and done in the name of the minister without necessarily correct authority. On the issue of accountability, when we got a note from a ministerial minder about doing something, we had to ask ourselves should we do it, or should it go back through the system. There was a bit of a view that we should just do what the ministerial minder said. But if things went wrong, who would cop the flack about that instruction? There are some issues there about the merging between ministerial minders and the bureaucracy, which I think need to be resolved.

Question — I'd like to ask a question about how you get away from the contract system in the senior public service. There are some very high salaries paid for those people on contract and they are managing upwards the whole time. As soon as they give advice that the minister or whoever immediately above them doesn't want, their contracts are in jeopardy, and this goes down to perhaps the third or fourth level in departments.

Scott Prasser — Good question. I'm going to write a book one day and it's going to be called jumping. Once upon a time ministers jumped up and down because they had to face elections and they used to get in a sweat about that. Then we started appointing and putting on contract department heads. They started jumping up and down—they wanted to get brownie points and meet their performance targets and KPIs and that sort of thing. Then we started appointing executive directors on contracts, the next level down, and they started jumping, and then further on. Everyone was chasing the short-term gain all the time and they worried about their performance and their KPIs, and the trouble is this was very short-term focused. My experience with what we have now is that people on contracts are often afraid to tell the minister the truth about what's going on. In Queensland the department heads report to the Premier, not to their minister. What department head is going to tell the Premier really bad news about certain things, when their performance contracts, their extra pay, are all decided on this sort of basis? I think this is a crazy system we've got ourselves into. Now I know the old system of seniority certainly had its problems, but I think this present system needs to be totally examined.

Question — I'm wondering if you think that the Freedom of Information Act is in any way having negative impacts on public servants being prepared to offer frank and fearless advice. How do you think it might be changed to get the balance right and encourage public servants to offer more frank and fearless advice?

Scott Prasser — You think because of FOI public servants won't offer frank and fearless advice?

Question — In the short term FOI was one step forward, but I think in the medium to long term, it has been two steps back. Because FOI has made advice more transparent, people have developed more and more mechanisms to get around it and it is perhaps now having a negative impact. Public servants know that if they do offer that frank and fearless advice, or a variety of expert opinion, that will then come out. They might have several people say one thing and one person say the other, and then opposition parties will use that to attack the government. So the government doesn't really want to get that variety of expert opinion and public servants are adjusting to that new reality, and I believe a lot of the mechanisms you are talking about are working to circumvent the transparency of the system and I wonder if that is leading to a good outcome. They talk about the doctrine of unintended consequences—something looks good in theory, but when put into practice, it has the opposite effect.

Scott Prasser — America's FOI has been in operation for a long time and I think it has been a good thing. My view is that we should have departments and ministers separated more. I think that when ministers request information, it should be very clear what they are requesting and the information should be transparent. I think we should put the onus back on the politicians. What I liked about the old National Party

government in Queensland—I know that's not a popular thing to say—is that they didn't pretend to dress their decisions up as totally rational decision-making. They didn't pretend that they were doing it for the public good. They said they were doing it for votes. When Russ Hinze was asked: 'Mr Hinze, are you moving the road to the Gold Coast near your hotel that you own, and aren't you also the Licensing Minister as well?', he replied: 'Of course I am, and what sort of minister do you think I am?'

When David Hamill, the Labor Party Minister for Transport was talking about roads to the Gold Coast, we went through this charade of reports and consultations and so on, but we knew the game that was being played. I think the onus has to be put back on the politicians. We provide the advice, and it is up to the politicians to input their political process. Bodies like the Productivity Commission and the Industry Assistance Commission get their terms of reference, they do the investigation, they give the report, and if the government wants to reject the report on ageing, or ship-building or whatever it may be, they can do it. I think too much advice is tailored to what public servants think ministers want, rather than tailored to what they need. I don't think FOI is a problem. I think the way it has been manipulated by some governments is the problem.

Citizens' Assemblies and Parliamentary Reform in Canada*

Campbell Sharman

Canada, like Australia, is a federation and, like Australia, has a system of government based on British-derived parliamentary and monarchical traditions. But Canada's structure of government differs in two important respects: it has no history of strong, elected upper houses in its state and federal parliaments and, since 1982, it has had a constitutionally entrenched Charter of Rights and Freedoms. Some Australians—though fewer than in the past—would like Australia to become even more like Canada by reducing the influence of upper houses on the parliamentary process in state and national politics. And some commentators—particularly those with legal backgrounds—have argued that Australia should follow Canada and adopt a constitutionally entrenched bill of rights to limit the scope of parliamentary governments.

But there is another difference between the two countries which few Australians would wish to remove. There is evidence that many Canadians are unhappy with their parliamentary institutions to an extent that is not mirrored in Australia. While Australians may grumble about their politicians, there is no widespread public debate about electoral reform or the need to transform parliamentary politics. Australians know that their governmental system is not perfect, but there is no general feeling that

* This paper was presented as a lecture in the Senate Occasional Lecture Series at Parliament House, Canberra, on 31 March 2006.

state and federal parliaments are somehow unable to deliver the kind of government that citizens expect. In contrast, five of the ten Canadian provinces[1], as well as the national government in Ottawa, have been prompted to commission studies into ways of making parliamentary government more responsive to community preferences.

In this talk, I will take a look at the most adventurous of these inquiries, the British Columbia Citizens' Assembly on Electoral Reform.[2] I will be concerned with how it was set up, what it recommended, why it has generated wide interest in Canada and beyond, and why it raises important questions about the design of parliamentary institutions.

Politics in British Columbia

Of all Canada's ten provinces—the Canadian equivalent of the Australian states—British Columbia's politics is most like Australia's. For the last fifty years, control of the unicameral provincial parliament, has been a contest between two major parties, one centre left with support from a well organized trade union movement, the other centre right with support from business interests. This characterization of the party system in British Columbia is over simplified; there have been several major party realignments, and there is an important populist component in BC politics. But the point is that elections since the 1950s have been predominantly two-horse contests.

This pattern has been reinforced by the use of a first-past-the-post electoral system which has been employed for all but two of British Columbia's elections since it gained self-government in 1871. Such a system over-represents the largest parties and penalizes small parties unless their support is regionally concentrated. This makes for single party majority governments even though the winning party has fewer than half the votes, and means that minor parties are unlikely to secure representation in parliament.

Why should anyone complain about such an arrangement? Isn't that exactly what a British derived parliamentary system is supposed to produce? Single party majority governments can get things done and there is no question of who is responsible at election time for government policies which have gone wrong. And if the governing party really makes a mess of things, the first-past-the-post electoral system punishes governments by magnifying electoral swings against them.

This is all true, but there are a number of costs to single party majority governments based on a first-past-the-post electoral system, and particularly so if parliamentary parties are strongly disciplined. Such a system greatly reduces the ability of the parliament to check the actions of premiers and their ministers and to force them to answer awkward questions. The system, by excluding the representatives of smaller parties, not only produces a distorted picture of the range of views in the community and fosters an adversarial style of parliamentary and electoral politics, but makes the operation of parliament dependent on the will of the governing party.

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1 British Columbia, New Brunswick, Ontario, Prince Edward Island, and Quebec.

2 For information on the Citizens' Assembly and its report, see British Columbia, Citizens' Assembly on Electoral Reform, *Making Every Vote Count: the Case for Electoral Reform in British Columbia*. Technical Report, Vancouver, 2004, and its website www.citizensassembly.bc.ca/public

These costs may not be an issue for most of the time, but when a government starts to behave arrogantly, ignores issues which many in the community feel are important, is reckless with its treatment of public funds, and attempts to hide its policy failures, public dissatisfaction with the operation of parliament will start to grow. Such situations developed in all Australian states during the 1980s and 1990s and led to major inquiries into the operation of parliamentary government, most notably in Queensland and Western Australia.

A similar situation arose in British Columbia in the 1990s. At the 1996 provincial election, the governing party, the New Democratic Party, was returned to office with a majority of seats even though it won fewer votes than the opposition party, the Liberals. The government had a five year term, and what was a slightly unpopular government at the beginning of its term, ended in complete disarray, with allegations of corruption, the resignation of two premiers, and a series of policy failures. At the following election in 2001, the Liberals won 77 of the 79 seats in the legislature, leaving the New Democrats with only two.

The incoming Liberal premier, Gordon Campbell, had campaigned on a platform which had included a strong commitment to restoring public trust in the institutions of government. These commitments included the introduction of fixed four year terms for the provincial parliament—similar to the system now operating in South Australia—and making some cabinet meetings open to the press. But the most adventurous commitment was the promise to set up a randomly selected citizens' assembly to inquire into the electoral system and make recommendations for change if the assembly thought this was warranted. This commitment was the idea of the Liberal leader and was regarded with misgivings by many in his caucus.

The structure of the Citizens' Assembly

The final design of what became the British Columbia Citizens' Assembly on Electoral Reform was not settled until early in 2003 after a consultant's report and a great deal of discussion in the Liberal Party cabinet and caucus. In its final form, the Citizens' Assembly had 160 members, one man and one woman from each of British Columbia's 79 electoral districts, and two first nations' members. The members were chosen by a process which involved several steps. First, invitations were sent to a randomly selected, age stratified, panel of electors from the electoral roll in each district, inviting them to attend a meeting in that district. At the meeting, there was a presentation by Citizens' Assembly staff explaining that members of the Assembly would have to be willing to spend 12 weekends in the coming year (2004) and travel to Vancouver for each meeting (expenses would be paid by the Assembly). At the end of the meeting, those who were willing to make such a commitment had their names put in a hat, and one man and one woman were selected. This process was repeated for all 79 electoral districts in the province.

All the members had been chosen by the end of 2003 and the Assembly began its work in January 2004. There were three phases: six weekends in the first three months of the year were spent learning about electoral systems and the political process; during the period over spring and summer, each member attended several public hearings around the province and considered submissions made to the Assembly; and

six weekends in the last three months of 2004 were spent deliberating on whether British Columbia needed a new electoral system and, if so, what system should be adopted.

The random selection process produced a Citizens' Assembly with a range of ages and occupations which closely mirrored the composition of the province, and the equal numbers of men and women members gave the Assembly a special claim to represent the community. The element of self-selection—the willingness to attend a selection meeting and accept the commitment of spending 12 weekends during the year discussing electoral systems—meant that a large majority of the selected members had an enthusiastic acceptance of their task. Almost all members had little knowledge of or interest in electoral systems when they were selected but, when it was explained to them, they felt the task was important and proved willing to devote an extraordinary amount of time and effort to the Assembly's work.

The news media were initially sceptical about the ability of 'ordinary people' to become familiar with the complexities of electoral rules and their parliamentary consequences but, as the Assembly's meetings progressed, the tone of media reporting moved from mild condescension to admiration both for the substance and the tone of the Assembly's discussions. The faith in 'ordinary people' being able to make decisions on complex political issues had been overwhelmingly endorsed. The public goodwill towards the Citizens' Assembly process was perhaps its most important achievement.

The way in which the members of the Citizens' Assembly had been selected was only one of the unusual features of the Assembly. Another was its independence from government influence. Apart from formal accounting requirements and some general specifications about the timing and format of the Assembly's recommendations, the Liberal government went out of its way to leave the Assembly to do its work in the way of its own choosing. But perhaps the most unusual feature was the Assembly's ability to decide on the wording of a referendum question if the Assembly decided that a change of electoral system for the province was needed. This reinforced the unusual independence of the Assembly and confirmed the intention of the government to withdraw from the process; the choice of electoral system was to be left to the Assembly and the public.

But what about the apprehensions of the Liberal caucus? The electoral system controls access to parliament and sets the parameters for a parliamentary career. Why would members of parliament be willing to cede control over this critical issue to a bunch of ordinary people and a public referendum? The answer can be found in the conditions that were put on the timing of a possible change and the rules for the success of the referendum. The Citizens' Assembly was to complete its work by the end of 2004; if it recommended a referendum on electoral change, this referendum would be held with the scheduled provincial general election in May 2005. Even if the referendum passed, no change to the electoral system would take place until the general election to be held in May 2009.

Of greater significance, a referendum on electoral change would be successful only if it gained the support of 60 per cent of the voters, and majorities in 60 per cent of the 79 electoral districts in the province. This was the price the Liberal caucus extracted

from Premier Campbell for the endorsement of his proposal for a Citizens' Assembly on Electoral Reform. The bar for electoral change was set high, perhaps so high that change was unlikely.

The Assembly's consideration of electoral change

The debate in the Citizens' Assembly over electoral change was driven by a fundamental concern with the style of politics the Assembly members favoured. The chair of the Assembly had been a university principal and had been chosen by the government for his skill as a facilitator and as a person who believed in consensus building. He was keen that the Assembly members decide early on what were the most important values for an electoral system to reflect. These turned out to be an electoral system which maximized electoral choice, produced a proportional outcome (a close fit between the share of votes gained by a party and the seats won), and retained an elector's access to an identifiable local member.

Missing from this list was the creation of majority governments. The members were not persuaded of the benefits of single party majority governments as one of the values to be promoted by an electoral system. If a clear majority of voters supported a single party, that was one thing, but they did not support the idea that the virtues of a single party majority government were sufficient to justify an electoral system which turned a plurality of votes into a majority of seats. This view was coupled with a mild suspicion of parties. Parties might be necessary to structure electoral choice and to organise the legislature, but parties were associated in the minds of most members with the distortion of the representative process and the perpetuation of confrontational politics in both parliament and the electorate.

This view of the political process was at odds with the parliamentary tradition of British Columbia and led the members of the Citizens' Assembly inexorably towards a recommendation for change to the electoral system. A desire for proportionality meant that any system based solely on single member districts was precluded, including what Australians call preferential voting (and the rest of the world calls the alternative vote, except the United States which calls it instant runoff voting). The list system of proportional voting used in parts of Europe was not acceptable because it enhanced the power of parties over members of parliament.

Much to the surprise of most commentators and perhaps to some Assembly members, the Assembly did not endorse a mixed member proportional (MMP) system of the kind used by Germany and adopted by New Zealand. Before the Assembly had begun its deliberations, it had been assumed by commentators that, if the Assembly recommended change, the MMP system would be its choice. Other inquiries into electoral reform in Canada had recommended MMP systems of various kinds. The attraction of MMP is that it appears to combine the best of both worlds. The voter has the choice of a local member by the familiar single member, first-past-the-post system, coupled with the choice of a party list from which the number of seats proportional to its vote share can be allocated to the party in the parliament. This hybrid system sounds simple but it is the most complex of all electoral systems to design. The Citizens' Assembly seriously considered adopting an MMP system but abandoned it because of its complexity and the difficulty of reducing party control over the members of the party lists.

The system the Assembly endorsed was a variant of proportional representation by the single transferable vote (PR-STV), similar to the systems used for the ACT Legislative Assembly, the Tasmanian House of Assembly, and the Irish Dail (the lower house of the Irish parliament). Some aspects of the proposed system were like the system used to elect the Senate and the upper houses in New South Wales, South Australia, Western Australia (and soon, the Victorian Legislative Council) but without the option of 'above the line' voting (which the Assembly explicitly rejected). The Citizens' Assembly was not required to set out the electoral boundaries for the proposed system but stipulated that the multimember electoral districts required by the new system could have no fewer than two or more than seven members (it was assumed that almost all districts would have three, four or five members). The new system was labelled BC-STV and incorporated a number of features to ensure that voters had lots of choice and that parties could not rank their candidates on the ballot in a party preferred order.

It could be argued that the choice of the three core values by the Citizens' Assembly—electoral choice, proportionality, and access to a local member—meant that PR-STV was the only logical outcome. It not only incorporates these values but can have the added characteristic—shared with similar systems in the ACT and Tasmania—of having a slightly anti-party effect. To be successful, a candidate needs both endorsement by a party and a degree of personal appeal to ensure that voters will vote for him or her rather than other candidates running under the same party label. Under this version of PR-STV, there are no safe seats which are the gift of the party organization; parties cannot play favourites with particular candidates by guaranteeing that a place on the party ticket will ensure a seat in parliament.

The outcome

The Assembly's recommendation of PR-STV had been signalled during the final weeks of the Assembly's deliberations, but the recommendation still came as a shock to many of the political class. For parliamentarians and established political parties it represented at best a major challenge to the existing pattern of electoral and parliamentary politics and at worst a threat to the influence of the major parties. Some groups which favoured electoral reform were not happy with the Assembly's commitment to PR-STV. The electoral system of choice for several of these groups was MMP, and the rejection of this system by the Citizens' Assembly undid the image of MMP as the perfect electoral system and the unquestioned choice for reform minded people. Even the Greens, who had much to gain from a proportional electoral system, were divided over the virtues of PR-STV; several of those in executive positions in the party liked the idea of MMP with closed party lists as a way of ensuring a socially diverse slate of candidates.

But the challenge for the Assembly's recommendation was to gain public support for the new system at the referendum to be held with the provincial general election in May 2005. The government had not allocated funds for 'Yes' and 'No' campaigns. There is no evidence that this was part of a plot to thwart electoral change, but derived from a failure to plan for the period between the release of the Assembly's final report in December 2004 and the election in May 2005. The consultant's report on the setting up of the Assembly had assumed that the publicity and information generated

by the Citizens' Assembly itself would carry over to the referendum so that a separate campaign for any referendum proposal was not necessary.

This was not the case. The Assembly ceased to exist at the end of December 2004 and, although a great deal of information had been distributed to the public by the end of 2004, there was no administrative structure to mount a campaign leading up to the referendum in May 2005. This task was left to the individual members of the Assembly, the large majority of whom campaigned vigorously for their recommendation.

Although the two large parties were unhappy with the proposed BC-STV, they did not campaign against it. Winning the general election was the dominant issue; electoral reform was a minor—and awkward—side show. The premier had said that individual members of the Liberal Party could make up their own minds and campaign either for or against the referendum proposal, but he was not going to participate in the debate himself. This gave Liberal candidates an excuse to avoid comment on electoral reform and the referendum; their mantra was that 'it was up to the people to decide'. The New Democratic Party was divided on the issue but electoral reform was a minor concern for a party struggling to ensure substantial representation in the legislature and to regain its position as an alternative government. As a consequence, there was little mention of the referendum although the NDP leader indicated that she would have preferred an MMP system, a comment which implied a vote against the proposed BC-STV system.

This meant that the debate over the merits of electoral change was often lost in the noise of party campaigning. There were no television or radio commercials for or against electoral change and the debate, such as it was, was carried out in talk-back programs, news stories and commentary in the press. Citizens' Assembly members were the major players in fostering a 'Yes' vote and many worked tirelessly to publicize the virtues of the proposed electoral system and to respond to critics.

Their opponents were an odd collection of political activists and media commentators. Much of the opposition to BC-STV was based on faulty information and, in some cases, appeared to be wilfully uninformed about the nature and operation of PR-STV; a great deal of the time of those arguing for BC-STV was spent trying to correct inaccurate claims made about the proposed system. The most effective arguments against change were of three kinds: if it ain't broke don't fix it; it is too complicated and too much of a change from the current system; and, it will foster a very different, and less desirable, style of politics from the one British Columbia had been used to. This last objection was the key one. Several former ministers and senior public servants argued that the Citizens' Assembly had been too concerned with the problems of fair representation and had ignored the importance of effective government which only single party majority government could deliver. For these commentators, coalition and minority governments would undermine the system of government which had served British Columbia so well for most of the period since 1871.

On election night, the results showed that the Liberal government had been returned but with a much reduced majority. The referendum results were slow to come in, but it was clear from early in the counting that a majority of voters supported change; the

only question was whether the majority was large enough to clear the two additional requirements. By the end of counting, all but two of the 79 electoral districts returned majorities for electoral change. But the province-wide vote was only 58 per cent in favour, 2 per cent short of the required number.

This result was remarkable. Even though the referendum did not fulfil the requirements for acceptance, a substantial majority of the electorate had voted for electoral change in spite of an almost complete lack of organized campaigning.

But what had the voters really been voting for? A survey run by members of the Political Science Department at the University of British Columbia showed some counter-intuitive results. Few voters knew much about the proposed electoral system, and knowledge of the system was not the key for explaining how people voted. For voters with higher than average education, believing that the members of the Citizens' Assembly, although ordinary people, had become expert in electoral matters, predisposed these voters to support the new electoral system even though they knew little about it. For all other voters, believing that the members of the Citizens' Assembly had been ordinary people like them, predisposed these voters to support BC-STV irrespective of the extent of their knowledge of BC-STV.

The critical factor, then, turned out to be trust in the randomly selected members of the Citizens' Assembly, moderated by voter beliefs about the Assembly's expertise and representativeness. Forty-six per cent of the electorate returned the Liberal Party to government (with 58 per cent of the seats), but 58 per cent of the voters supported an electoral change recommended by the Citizens' Assembly even though most had little idea of how the proposed electoral worked and what effect it would have on the political process.

In a strange way, this encapsulates the problems facing Canadian parliamentary government. Why would a randomly selected group of citizens evoke more trust from the electorate than representatives chosen by the voters themselves? What was it about the Citizens' Assembly that led many hundreds of people to express gratitude for the opportunity to make a submission to a body which they believed was willing to listen to their opinions and debate the relevant issues fairly and openly? One response might be that the Citizens' Assembly was set up to deal with an issue which dealt with process rather than substance, and one which had long excited the interest of a small, but vocal, minority. In addition, the decision by the major parties to avoid participating or commenting on the work of the Assembly had given it the appearance of being above politics and separate from the sniping and back-biting of day-to-day partisan politics. It was not the composition or mode of operation of the Assembly that distinguished it, but the nature of its task and the way the governing and opposition parties had withdrawn from the work of the Assembly.

There is some truth in this view, but it does not do justice to the Citizens' Assembly. The way in which the Assembly handled its task was very different from the usual style of parliamentary politics. Its deliberations were not adversarial, the discussion was based on principle not partisan difference or personal contestation, and votes were taken only after extended attempts to accommodate differing views. Perhaps these characteristics are not possible in parliamentary politics, but they explain the goodwill always evident in the Assembly and the admiration of seasoned political

commentators towards the quality, sophistication and passion brought to the Assembly's final deliberations. The way the Citizens' Assembly dealt with its task was a stark contrast to partisan political debate, and demonstrated to many Canadians why they felt that conventional parliamentary politics had lost its way.

Consequences and implications

The experience of the British Columbia Citizens' Assembly has generated three sets of consequences. The first, and most immediate consequence, was its recommendation for BC-STV, and the narrow defeat of this proposal at a popular referendum in 2005. But its recommendation is not dead—only sleeping. Several months after the election, Premier Gordon Campbell proposed that reform be given further consideration. While committed to the same special majorities for success at a referendum, the premier recognized that there was broad support for electoral reform and that consideration of BC-STV during a general election campaign was likely to have denied electoral reform the full discussion the issue deserved. Accordingly, after the 2006 census, a redistribution of electoral boundaries would be made in 2007, and maps created showing the boundaries for the existing single member district system, and the boundaries for a BC-STV system. Another referendum under the same rules would be held on the BC-STV system in 2009 at the same time as the next provincial general election due in May 2009. Money would be allocated for 'Yes' and 'No' campaigns at the referendum.

As Sir Humphrey might say, this was a brave decision and must have troubled many in the premier's cabinet, caucus and party who may have thought that the issue had been put to rest. But 2009 is a long way away, and the defeat of the proposal in 2005 may have reduced apprehensions about the likelihood of change.

The second set of consequences follow from the success of the Citizens' Assembly process. The widespread admiration for the activities of the Assembly—and the kudos it brought to the government which set it up—have not gone unnoticed in other jurisdictions. The province of Ontario is setting up a similar Citizens' Assembly on the electoral process and the model has been adopted in a modified form for Dutch deliberations on electoral reform during 2006.

Other Canadian provincial governments have had their fears confirmed—giving a group of citizens the power to suggest electoral reform is too risky. If electoral change is to occur, it must be through the traditional methods of partisan debate and governmental decision.

Many aspects of the Citizens' Assembly process have caught the imagination of commentators and academics: the combination of random selection and self-selection as a way of choosing members of an assembly; the concern with consensus and the articulation of common values; the sequence of study, deliberation and decision which characterised the Assembly's operation; and the stress on openness, accountability and public consultation. The combination of these features have impressed those who study public participation in the political process. For some, a citizens' assembly is a new way of involving citizen voters in public decision-making in policy areas extending beyond electoral reform. For others, it demonstrates the power of participatory democracy and the need to transform existing representative institutions.

Whether the concern is exploring new modes of citizen involvement in public policy, or reworking ideas of representative democracy, the Citizens' Assembly has become the focus of a great deal of attention.

The third issue raised by the Citizens' Assembly—and the one I am most concerned with today—is the reason why such an Assembly was felt to be necessary. The political process in Australia differs little from that of British Columbia and the style of parliamentary politics is certainly no less combative and abrasive than that in Canada. And yet there have been few demands for electoral reform in Australia and dissatisfaction with the parliamentary process has not prompted calls for wholesale review of the style of parliamentary government. I believe that the explanation for the apparent satisfaction with representative government in Australia stems from the two institutional differences I mentioned at the beginning of this talk—the tradition of strong, elective parliamentary bicameralism, and the absence of a constitutionally entrenched bill of rights.

Bicameralism

Let me start with the less contentious of the two. The origins of bicameralism in Australia were shaped by the broad franchise granted to the Australian colonists when they gained self-government one hundred and fifty years ago. The political establishment was apprehensive that governments based in a popularly elected lower house might propose radical legislation and that, whatever other arguments there were for an upper house, a powerful conservative brake on the lower house was a political necessity. The colonies differed in how the members of the upper house were to be selected, but the legislative powers given to upper houses were extensive and included the power to block financial legislation and veto constitutional change.

As an article by Bruce Stone has shown,[3] state upper houses (and the Commonwealth Senate which copied their design) have travelled a long way from their origins. From being seen by many as houses of conservative obstruction, they sank into political irrelevance by the 1950s only to emerge in the second half of the 1900s with justifiable claims to be the more representative and responsive of the two chambers of parliament. The adoption of proportional representation has played a critical role in this transformation by frequently removing control of the upper house from both the government and the opposition parties and giving the balance of power to minor parties and independents. This has enabled upper houses to play an active and autonomous role in scrutinizing legislation and monitoring executive activity.[4]

Governments are dependent for their existence on majority support in the lower house and, as consequence, disciplined political parties ensure that the executive controls the parliamentary process and stifles any signs of parliamentary independence. This is not to deny that lower houses have an important function as a place for debate over issues of current political concern, and as a forum for testing leaders of both the government and opposition parties. But lower houses do not give an opportunity for using the

[3] Bruce Stone, 'Bicameralism and democracy: the transformation of Australian state upper houses', *Australian Journal of Political Science*, Vol. 37, No. 2, July 2002, pp. 267–281.

[4] See Campbell Sharman, 'The representation of small parties and independents in the Senate', *Australian Journal of Political Science*, Vol. 24, No.3, November 1999, pp. 352–361.

formal machinery of parliament to do what parliament is supposed to do—force governments to justify their policies and to amend them if parliament requires.

This is where upper houses have played a critical role. By providing an avenue for independent parliamentary scrutiny, upper houses provide an opportunity for the direct involvement of interests other than those of the governing party in the framing of legislation and public policy. While governments loathe this interference in what they regard as their right to govern without unwelcome parliamentary questioning of their policies, upper houses are a public demonstration of the ability of parliamentary institutions to represent a diversity of interests. And the differing electoral systems between upper and lower houses permit differing patterns of representation which, by itself, enhances the claims of parliament to speak for the whole community.

In this way, upper houses have given a visibility and legitimacy to the parliamentary process that is usually denied to unicameral parliaments. It was striking to see how much media commentary on government control of the Senate after the 2004 election—assuming that all National Party senators are part of the government—viewed the prospect of the loss of effective Senate scrutiny as a loss of a critical aspect of the parliamentary process and, perhaps surprisingly, as a source of danger for the government. Governments are more error-prone without effective parliamentary scrutiny and, more to the point, the public has less reason to pay attention to parliament or to view it as forum for debating public policy.

Canada has no tradition of strong, elective parliamentary bicameralism.[5] Five of the provinces have had second chambers but none was fully elective and all were abolished by the 1960s. The Canadian Senate has been a nominated house since it establishment in 1867 and, although there is perennial talk of its reform, the Senate remains a creature of the national executive and a source of patronage appointments for the prime minister. On those occasions, as now, where the government faces a hostile partisan majority in the Senate, its lack of political legitimacy severely limits the Senate's ability to use its extensive powers to thwart the government.

The lack of elected upper houses has meant that the Canadian public equates parliament with an executive controlled, party dominated institution in which the idea of community representation has been lost in the continuous struggle between government and opposition. This pattern is replicated across all of Canada's provincial parliaments. It is hardly surprising that governments, when they wish to demonstrate their concern with public disenchantment with the parliamentary process, have turned to extra-parliamentary inquiries for advice on parliamentary and electoral reform. And it explains the overwhelming public endorsement of the Citizens' Assembly when it appeared to embody all the desirable characteristics which the parliamentary process lacks.

So, strong elective bicameralism inoculates the parliamentary process against the most egregious forms of executive dominance of parliament and, in so doing, helps to preserve public faith in representative institutions. There are, of course, no guarantees and it is one of the ironies of Australian politics over the last fifty years that upper

[5] For a comprehensive analysis, see David E. Smith, *The Canadian Senate in Bicameral Perspective*. Toronto, University of Toronto Press, 2003.

houses have blossomed at the very time that the pressures for executive dominance have been growing. Canada has not been so lucky.

Parliament and the judiciary

But what about Canada's constitutionally entrenched Charter of Rights and Freedoms adopted in 1982; hasn't that operated to check the excesses of executive government? The answer is a qualified yes. The list of individual and group rights in the Charter has provided an avenue to strike down legislative provisions and limit government action in a way which had not been possible before. This has given Canada a much larger component of consensus politics by greatly increasing the scope for minority veto of government action and requiring judicial sanction for a wide range of public policy issues.

But this change has had a number of effects on the parliamentary process. The monopoly of legislative and executive authority in areas of social policy has been broken, the visibility and political salience of the judiciary has been increased, and, to the extent that the Charter is a national instrument whose final interpretation rests with a national Supreme Court, there has been a transfer of power from parliamentary politics in the provincial sphere to judicial politics in the national sphere.[6] The biggest loser has been the executive branch of government. It is not that judges are constantly looking over the shoulders of provincial premiers—only a minute proportion of governmental activity is scrutinized by the courts—but that there is a rival institution to speak to the public on behalf of citizen voters and claim constitutional legitimacy. After more than twenty years experience with the Charter, it is clear that the settled pattern of majoritarian parliamentary politics has been disturbed; there is now a more limited scope for mass politics and those institutions which rely on public endorsement through elections. Even if the Charter has done no more than change the way governments consider the consequences of legislative action, it is hard not to see the Charter and the potential of judicial involvement across the whole ambit of public policy, national and provincial, as major contributors to a sense of uncertainty and a loss of legitimacy felt by governments and parliaments. Where it can be deployed, the politics of individual rights can trump the politics of collective choice.

The result has been further erosion of the political legitimacy of the parliamentary process. This is, perhaps, an inevitable consequence of a bill of rights in a parliamentary system unless the parliament is sufficiently representative and politically self-confident to challenge the judiciary when parliament believes the judiciary to be mistaken in its judgement or at odds with the clear choice of the electorate. This is not the case in Canada where considerable deference is paid to the Supreme Court of Canada; to suggest that some of its decisions are unreasonable or wrong-headed is regarded as heresy by large sections of the political class. The courts have gained a large measure of the public support which used to attach to parliament as the forum in which public policy decisions are made.

[6] For a forceful statement of this view, see F.L. Morton, 'The effect of the Charter of Rights on Canadian federalism', *Publius*, Vol. 25, No.3, Summer 1995, pp. 173–188.

Citizens' assemblies and parliamentary reform

The rehabilitation of parliamentary legitimacy in Canada could be achieved by extensive reform of the parliamentary process to ensure, for example, representation of a wide range of interests, a legislative process which required the consent of parties other than the governing party, and a parliamentary committee system controlled by non-government majorities. But to list these requirements is to indicate why such changes are unlikely; each strikes at the current style of majoritarian politics and severely limits the power of the executive in a realm which it sees as its own.

Nonetheless, Canadian governments have become aware that some kind of change is required. But, as we have seen, Canadian governments are in a bind. At the provincial level, there are no upper houses to use as surrogates for lower house parliamentary reform, and at the federal level, the difficulty of reforming the Senate is compounded by questions of federal representation. And the prospect of using even the limited opportunities provided by the constitution for partial constraints on the scope of judicial activity would be highly contentious.

All that is left is electoral reform of the lower house of parliament. But even moderate change in the system of representation is regarded with great apprehension by current governments and the parties which support them. The adoption of electoral systems based on proportional representation would mark a major shift from majoritarian to consensus politics, a change which would have major implications for the style of parliamentary government. This is why the experience of the British Columbia Citizens' Assembly on Electoral Reform is critically important and widely celebrated. It has reaffirmed the belief in the ability of ordinary citizens to deal effectively with complex constitutional issues, and provided persuasive justifications for a move away from the current system of executive-dominated politics. In so doing, the Citizens' Assembly has reminded Canadian governments that there are broadly popular solutions to the decline in parliamentary legitimacy. The challenge is for a government to be brave—or foolish—enough to take the plunge.

And the Citizens' Assembly is a reminder to Australians about how fortunate most of us are to have avoided two, once fashionable, alterations to our governmental system: the abolition of upper houses and the adoption of a constitutionally entrenched bill of rights. Citizens' assemblies may well be set up in Australia, but it will be for their inherent virtues not because of the decline of parliamentary legitimacy.

Question — I am a bit cynical about citizens' assemblies. It's the sort of thing that you would put up as a vote-winner, if you wanted to be elected to power. You would put up a citizens' assembly and make it appear that citizens have some power without really giving them any. You would set, for example, a high majority 60 per cent

required to endorse changes, that sort of thing. So it seems to me that it sounds good, but as an effective way of really giving power to the people, I would have thought there are better ways, for example direct referendum questions.

Campbell Sharman — There are really two parts to your question about the Citizens' Assembly. There is the design of the Citizens' Assembly itself, which was clearly a serious and successful attempt to produce an institution which reflected community views and expressed informed opinions on matters of public concern that were not driven by party considerations. How you turn the recommendations of such a Citizens' Assembly into law is a separate question. I would agree that the rules for adopting the recommendations of the citizens' assembly were set high as a result of the fears of the Liberal Party caucus, but not the Premier. The Premier was apparently willing to take the risk of change. British Columbia, as I mentioned earlier, has experience with reform: voters have the ability to recall MPs in mid-term by popular vote, for example. But, again, the requirements are set so that the process of recalling an MP is very difficult.

Question — The point I was trying to make is that it appears the Citizens' Assembly is quite a significant institution, but it was very much a vote-winner, obviously with a massive majority. People were disenchanted with politics and politicians, and this looked to the people like a way to give some of the power back to them, but it didn't really give much power.

Campbell Sharman — Don't forget there are several issues here. There was a general election and the Citizens' Assembly was one of the few good things that a large proportion of British Columbians thought the government had done. But the assembly wasn't set up to win votes, certainly not by the Premier. I think he genuinely believed it was a good thing. But, if you are talking about how to translate the decisions of citizens' assemblies into law, that's another issue.

Question —The Citizens' Assembly, was it all open to the public, the deliberations, or did they meet in a closed forum?

Campbell Sharman — All the plenary sessions where the Assembly members discussed things and made decisions were open. The breakout groups, after an initial trial, were kept private simply because the members wanted to discuss things without being looked at like fish in a goldfish bowl. If you look at the Citizens' Assembly website, you will find all the information that they produced, and videos of all the plenary sessions and deliberations. The idea was to be as open as possible, to put as much as possible on the web, and let anyone who turned up watch the plenary sessions.

Question — I must say the website is very useful. On the recommendations for the multi-member constituency, was it optional or full preferential voting for all of the candidates recommended, and in an odd-numbered constituency, would the remainder left over elect the fifth person, say in a five member? And secondly, overall did they consider compulsory or non-compulsory voting in the Assembly?

Campbell Sharman — On your first question, the goal was to permit voters to vote for one or as many candidates as they wished in order to make the system as user-

friendly as possible. Now, if a large number of electors just voted for one candidate, there would be problems with proportionality. But we believed, when we were talking with the members of the Assembly, that it would be in the interests of political parties to get people to vote for a slate of candidates. On your second question, the candidate with the largest remainder would be elected. There would likely be a lot of exhausted ballots because of the lack of available preferences which follow from the voters not being compelled to rank all candidates. As for compulsory voting, Canadians agonise about their relatively low turnout at elections. But compulsory voting is regarded as the work of the devil, and somehow unnatural, for reasons which I think are rather odd.

Question — Interestingly enough, I think in Australia at the moment there is a trend that upper houses and/or balance of power parties are on the slide. The federal government now has control of the upper house; in the ACT in the last election the Labor government won complete control; in the Tasmanian election recently the Labor Party actively campaigned on the danger of minority parties getting in and having a balance of power. And the same in South Australia, and so on. When you look at the tension between having a party that has the ability to govern and loses the check and balance, it seems to me in Australia that people are saying well, we want parties to govern, but we also want a check and balance and one way of doing it is to allow the federal government to have absolute power, and on the opposite side of politics at the state level we're also going to invest power in them and let them get on and govern. When you look at Queensland, I think for the Senate 70 per cent of the vote went to the coalition, and at the last state election I think that 75 per cent of the vote went to the Labor Party and gave them absolute power. Do you think that is what is driving this weird dichotomy? Does the experience in Canada and elsewhere suggest that people want an upper house that can be a check on the executive power? In Australia they are actually becoming marginalised.

Campbell Sharman — In some ways I'd like to think that people did vote differentially between federal and state elections. But what you're trying to do is fight executive power on one side with executive power on the other. So, if you're interested in representation, that may not be the solution, unless you are a pressure group, when you can play one government off against another. On the other issue, it seems to me you have conflated a couple of things. The Tasmanian result and the ACT result in producing majority governments are the result of a majority of people voting for a single party. For those who like the strife and disagreement produced in parliament by minority governments, that may be a shame, but these two systems only produce majorities if majorities exist in the electorate. Where a majority of seats is elected by less than a majority of votes, this is usually the product of single member district electoral systems, and this is what the Citizens' Assembly—and people who think that representation is important—complain about. As for the Senate at the moment, this seems to me to be an unstable situation and the result of an electoral fluke. A relatively small change in the pattern of votes will restore the balance of power to minor parties or independents. Indeed, at the moment, the temptation for a senator in a large party to defect must be very large. So I would see government control of the Senate as being unstable, something that would more often than not collapse.

Religion in 21st Century Australian National Politics*

John Warhurst

Introduction

The religious factor generally means a number of things in politics. One is the political activity of the organised face of religion, the churches and their agencies and lobby groups, and the attitude of governments towards those churches. Another is the relationship between religious affiliation and parliamentary representation. A third is the relationship between individual religious belief and the actions and voting behaviour of citizens. This lecture, largely about Christianity, discusses all these things and more, and tries to convey the overall flavour of religion and politics early in the twenty-first century. It reveals the wide range of intersections between religion and politics.

Before going any further I should make clear that religion is often a slippery variable to deal with. The religious affiliations of individual MPs, much less private citizens, are often not at all clear. One certainly needs to distinguish between religious background, such as family and schooling, religious and denominational affiliation, and religious practice and values.

Religion and politics has a long and often controversial history in Australia, most of it associated with Christianity. One resolution of the relationship came with the incorporation into the Constitution of s. 116. That section reads:

* This paper was presented as a lecture in the Senate Occasional Lecture Series at Parliament House, Canberra, on 5 May 2006.

> The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

In discussions of the religious component of twentieth century Australian politics most attention has been given not to constitutional issues but to the link between denominations and parties in voting and representation, Catholics with Labor and Protestants with the Coalition, as well as the denominational character of the Labor Party Split of the 1950s that produced the Democratic Labor Party. Professor Judith Brett, for instance, begins her survey of the literature as follows:

> It has long been recognised that the foundation of the Australian party system had a religious dimension, with an affinity between the main Australian nonlabour parties and Protestantism and between the Labor Party and Roman Catholicism.[1]

This was the standard characterisation of religion and politics that Dr Marion Maddox set out to move beyond in her 2001 parliamentary monograph.[2] Since then she has become the major analyst of religion and politics in contemporary Australia, concentrating on the impact of religious faith per se on politics rather than merely denominational affiliation. It is also the view that Brett has set out to revise by emphasising the positive connections between Protestantism and the Coalition parties rather than the connections between Catholics and Labor.[3] Apart from the Defence of Government Schools constitutional case, party politics took centre stage. Little attention was paid to personal religious belief outside these parameters, perhaps because it was assumed, conscience voting apart, that party discipline was more important than individual beliefs. Political leaders rarely chose to wear their religious faith on their sleeves in an ostentatious way, reflecting not only the pitfalls of party politics in a sectarian climate, but also Australia's political style and culture.

Voting and religion in the Howard era

Much has changed. After John Howard's first victory in 1996 one of the Liberal Party's first claims was that the government's higher vote had reversed a number of its historic electoral weaknesses, including a weakness among Catholics, by then Australia's largest Christian denomination. This was a new development. Andrew Robb, then Liberal Party federal director but now an MHR, claimed that 'a 9 per cent deficit among Catholics was turned into an 11 per cent lead.'[4] By the 2001 election

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1 Judith Brett, 'Class, religion and the foundation of the Australian party system: a revisionist interpretation', *Australian Journal of Political Science*, Vol. 31, 2002, pp. 39–56.

2 Marion Maddox, *For God and Country: Religious Dynamics in Australian Federal Politics*. Canberra, Department of the Parliamentary Library, 2001, p. 39; and see *God under Howard: the Rise of the Religious Right in Australian Politics*. Sydney, Allen and Unwin, 2005.

3 Brett, 'Class … ' 2002, op. cit., and *Australian Liberals and the Moral Middle Class.* Cambridge University Press, 2003.

4 Andrew Robb, 'The Liberal Party campaign', in Clive Bean et al. (eds), *The Politics of Retribution.* Sydney, Allen and Unwin, 1997, p. 40.

the Australian Election Survey reported that the Coalition still led Labor among Catholics by three points (45 per cent to 42 per cent). In 2004, while the political scientists Dr Clive Bean and Professor Ian McAllister point out that Catholics are still more likely to vote Labor than other denominations like Anglicans and Uniting Church members, the Coalition led Labor among Catholics by nine points (50 per cent to 41 per cent).[5] The old alliance between Catholics and Labor still has some relative strength, but in absolute terms it has gone.

Throughout the Howard decade the Coalition has also enjoyed a striking electoral lead among those who attend church regularly. Research into voting in previous decades showed a similar, though not so clear pattern.[6] This phenomenon holds across all denominations. By the 2004 election the Coalition lead Labor among regular churchgoers (at least once a month) by 22 points (55 per cent to 33 per cent), while its lead among those who never attended was just seven points (46 per cent to 39 per cent).[7] This combination of strong support among church-goers and better performance among Catholics has been an important element in Howard's dominance.

Changing denominational composition of the political parties

The Howard government is the first federal Coalition government in which Catholics have played a major role. While this fact has been commented on from time to time, sometimes it is submerged under the exaggerated concentration on the religious affiliation and personal religious background of just one of its senior ministers, Tony Abbott. This concentration culminated in the reportage of the February 2006 debates about the so-called 'abortion drug' RU-486 (see below). The general trend is of greater significance, however, than the role of any one individual.

Historically Catholic representation in the Coalition parties was minimal, almost non-existent, and there was active antipathy towards Catholic MPs such as Sir John Cramer as late as the 1950s.[8] Professor Joan Rydon notes 'the almost negligible Catholic component of the non-Labor parties' in her survey of the Commonwealth Parliament from 1901 to 1980.[9] Representation of Catholics in the Fraser ministry (1975–83) was still minimal, though it did include Philip Lynch, Fraser's deputy for a time. But it had jumped dramatically 13 years later in both the Liberal and National parties. National Party Catholics have included two Deputy Prime Ministers, Tim Fischer and Mark Vaile. Senior Liberal Party Catholics have included Abbott, Brendan Nelson, Helen Coonan, Joe Hockey and Kevin Andrews to name just some current senior ministers. Prominent Catholics earlier in the Howard era included Communications minister, Richard Alston, Resources and Energy minister, Warwick Parer, and Aboriginal Affairs minister, John Herron. By 2006, other Catholics

5 Clive Bean and Ian McAllister, 'Voting behaviour: not an election of interest (rates)', in Marian Simms and John Warhurst (eds), *Mortgage Nation: the 2004 Australian Election.* Perth, API Network, 2005, pp. 323–4.

6 Clive Bean, 'The forgotten cleavage? Religion and politics in Australia', *Canadian Journal of Political Science*, Vol. 32, No. 2, June 1999.

7 Bean and McAllister, 2005, op. cit., p. 324.

8 See 'The Liberals', Episode 1, Australian Broadcasting Commission video, 1994.

9 Joan Rydon, *A Federal Legislature: the Australian Commonwealth Parliament 1901–1980*. Melbourne, Oxford University Press, 1986, p. 39.

included new minister, Senator Santo Santoro, and up and coming parliamentary secretaries such as Robb himself, Malcolm Turnbull and Christopher Pyne. One step behind were senators George Brandis and Brett Mason. Prominent in another way has been Senator Bill Heffernan, the Prime Minister's outspoken NSW party ally and one-time parliamentary secretary. The overall change has been remarkable.

By contrast, the place of Catholics in their 'traditional' party, Labor, seems much diminished and less obvious, despite Kim Beazley's family connections with the church and Kevin Rudd's Catholic origins. Many of them appeared to be isolated in the Catholic right faction, especially the NSW Right, and the party's culture and history did not encourage them to emphasise their religious belief, because it stirred internal party divisions and conflict. Furthermore, anti-Catholic prejudice had become endemic in the Victorian branch of the party following the Labor Party split.[10] As a consequence there is hardly a major federal Labor figure whose Catholic identity seems important. Most of the leading humanists in the Parliament are in the Labor Party and several of them, led by Dr Carmen Lawrence, formed a cross-factional Humanist Group in September 2000 to counter what they saw as the growing influence of religion in parliamentary debates and decisions.

There should be no uncritical assumption that the increasing presence of Catholics among Coalition parliamentarians and growing Catholic voting support for the Howard government automatically means growing 'Catholic influence' whatever that might mean. By way of comparison, the evidence suggests that the Labor Party did not favour Catholic interests directly during the years of Catholic ascendancy in that party. In fact, the Catholic campaign for state aid for its schools came to fruition not through the Labor Party but with the assistance of the Liberal Party and the Democratic Labor Party. It was the Catholic Social Studies Movement, led by B. A. Santamaria, and the DLP not Labor that were seen as evidence of church intrusion into Australian politics. However, it is argued that the previous Catholic affinity to Labor has been a conservative influence in general on Labor policies, especially through its opposition to socialism.[11]

Catholic Liberals are inclined to downplay the possibility of a particular Catholic influence on their party. The policy consequences of this shift has drawn attention mainly in relation to moral issues such as euthanasia (Andrews) and abortion (Abbott), though it has led to an uneasy relationship between these Liberal ministers and their church on the employment and industrial relations issues for which they have been responsible. The same was true of Herron's responsibility for Aboriginal affairs. The journalist and author David Marr, in his celebrated attack on religious influence in contemporary politics, is not primarily concerned with Catholic Liberals. His targets are rather the Catholic bishops, former chief justice Sir Gerard Brennan and Independent Senator from Tasmania, Brian Harradine. But Marr does allege:

[10] Paul Strangio, 'Closing the Split? Before and after federal intervention in the Victorian ALP', in Brian Costar, Peter Love and Paul Strangio, (eds), *The Great Labor Schism: a Retrospective*. Carlton North, Vic., Scribe, 2005, pp. 340–365.

[11] Roger Thompson, *Religion in Australia: a History.* Melbourne, Oxford University Press, 1994.

> Conservative Catholics have joined the Liberals and have made the Coalition side of politics more conservative as a result.[12]

Marr poses an interesting question. Catholic influence in the Liberal Party is probably more about social conservatism than bricks and mortar. Nevertheless, the Howard government has expanded Labor's support for private denominational schools. But one might have expected some moderating Catholic influence on social welfare policies, of the sort evident in Harradine's refusal to support the government's taxation reform package in 1999 and perhaps in Senator Barnaby Joyce's (Catholic) concerns about the 2005 industrial relations reforms. Yet it is hard to see.

Greater attention has been given to the apparently greater policy influence within the party of evangelical Christians, also with a conservative moral agenda. Here attention has been focused on the role within the party of the conservative faction, the Lyons Forum, a faction in which Catholics have played a part but appear not to have been the driving force.[13] The Lyons Forum actively pursued family-friendly policies and appears to have been at its height in the first and second Howard governments before some of its activists were either defeated (its chairman, Chris Miles, Braddon, Tasmania was defeated in 1998) or promoted into the ministry (Andrews in 2001).

In the third Howard government attention was focused rather more on the religiosity of leading government figures, including Treasurer Peter Costello (a Baptist) and Nationals' leader John Anderson (an Anglican). This religiosity was demonstrated in part by the apparent courting by Costello, in particular, of leading evangelical churches, such as Hillsong in Sydney.[14] By the time of the 2004 federal election it was this relationship, and the rise of the Family First Party (see below) that attracted most attention.[15]

Public presentation of religious beliefs

The public presentation of personal religious beliefs, now widespread in public life, is of equal interest to the denominational changes that have taken place. More than any other federal government the senior members of the Howard government have been active, in word and deed, in emphasizing (or at least being open about) its religious credentials and beliefs and in emphasizing the positive contribution of Christian values to Australian society. One has only to compare the publicly Christian approach of the Howard-Anderson-Costello-Abbott team, for instance, to the privately Christian, even secular, approach of the Fraser-Anthony-Lynch team in the 1970s to see that this is true.[16]

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12 David Marr, *The High Price of Heaven.* St Leonards, NSW, Allen and Unwin, 1999, p. 218.

13 Maddox, 2001, op. cit., pp. 199–244.

14 Maddox, *God Under Howard,* 2005, op. cit., pp. 163–164.

15 H. Manning and John Warhurst, 'The Old and New Politics of Religion', in Marian Simms and John Warhurst (eds), *Mortgage Nation: the 2004 Australian Election.* Perth, API Network, 2005, pp. 263–270; Marion Maddox, 'Interlude: One Country under Howard', in Peter Browne and Julian Thomas (eds), *A Win and a Prayer: Scenes from the 2004 Australian Election.* Sydney, UNSW Press, 2005.

16 S. Mutch, 'Religion in Australian politics: a surfacing debate', *AQ: Journal of Contemporary Analysis,* September–October 2004, pp. 15–16.

The reason for this change might include a combination of the so-called international clash between fundamentalist Islam and Western Christian nations together with the particular personalities that just happen to have emerged in leadership positions in the Coalition. Howard himself, it should be noted, has not been the leading figure in this development, despite the attention given to his personal Methodism-cum-Anglicanism. Perhaps decreasing sectarianism has played a part.

Nevertheless, whatever its origins, this has occurred to the extent that following the 2004 federal election it drew a response from Labor in the form of Foreign Affairs shadow minister, Kevin Rudd, who formed a party discussion group on religion, faith and values to educate Labor colleagues and to warn them very publicly about the dangers of allowing the Coalition to capture the growing religious vote.[17] Rudd and other Labor figures, while revealing a typical Labor wariness of the mix of religion and politics, believed that 'the Coalition is intent on exploiting religion for political purposes.'[18] At the 2004 election the contrast with Labor had been made somewhat clearer because Labor leader, Mark Latham, was a declared agnostic.[19] Latham was privately dismissive of religion and these views became public on the publication of his diaries.[20] This has led Anglican Bishop Tom Frame to claim that in recent years 'Labor leaders have exhibited an open disdain for all things religious.'[21] By 2005 the new Labor leader, Kim Beazley, a Christian himself, had overcome his traditional aversion to mixing religion and politics by speaking about his own faith at an Australian Christian Lobby conference in Canberra.

The second aspect of the public presentation of religious beliefs is more debatable in my view. In her major work Marion Maddox (2005) argues that, just as in the USA, the government has been speaking in code about matters such as values in education to attract the support not only of religious believers but also others who would not identify with a church. It does this, argues Maddox, through 'ambiguously Christian rhetoric' and 'a carefully pitched Christian right 'dog whistle' strategy'.[22] She emphasizes Howard campaign strategies borrowed from the American religious right, and supported by home-grown conservative religious activists and think-tanks, to attract a wider non-religious public.

Government appointments

Religion and politics is also more prominent, though not widespread, in public appointments. The most controversial Howard government appointment in this context has been that of Archbishop Peter Hollingworth as Governor-General in June 2001. Hollingworth at the time of his appointment was Anglican Archbishop of Brisbane. Opinions vary markedly on the constitutional propriety and/or political sense of Howard's choice, but it certainly drew further attention to church-state

17 'Kevin Rudd and the God Factor', Compass, Australian Broadcasting Corporation video, 2005.
18 Martin Ferguson in the *Weekend Australian* 27–28 November 2004.
19 'What our leaders believe', Compass, Australian Broadcasting Commission video, 2004; Maddox, 'Interlude …', 2005, op. cit.
20 Mark Latham, *The Latham Diaries.* Carlton, Vic., Melbourne University Press, 2005.
21 Tom Frame, 'The Labor Party and Christianity: a reflection on the Latham diaries', *Quadrant*, Jan–Feb 2006, pp. 26–32.
22 Marion Maddox, 'Interlude …', 2005, op. cit., pp. 46–47.

issues. Some argued that it was contrary to the spirit of s. 116, though Maddox convincingly argued that it was absolutely in accord with the 'no religious test' segment of that section.[23] Hollingworth was the first member of the clergy to be appointed Governor-General, though such appointments had been made in other countries and as Governor by Australian states. The Prime Minister defended the appointment by reference to the diverse religious affiliation of previous Governors-General, such as the well-known Catholicism of his predecessor, Sir William Deane, and the Jewish faith of Sir Zelman Cowen. But he had taken a further step by his appointment of Dr Hollingworth.

The Hollingworth appointment should be seen partly as an attempt to counter the outspoken Sir William Deane, whose social comment on Indigenous rights had a clear Catholic inspiration. Furthermore, it was a public counter-balance to the criticism the Howard government was receiving from church leaders, including other Anglicans. Later, in 2005, at a time of considerable church criticism of the government's industrial relations package, Howard appointed a prominent conservative Anglican layman, Professor Ian Harper, to head the Fair Pay Commission. Harper, publicly presented as an active Christian economist, soon rejected criticism of the industrial relations reforms by the Anglican Archbishop of Sydney, Peter Jensen.[24]

Public policy debates and conscience votes in parliament

The Christian churches have played a significant public role in numerous policy debates, including taxation reform, the treatment of refugees and asylum seekers, and industrial relations reform. These partisan issues are discussed in the sections that follow.

Before addressing these issues, attention should be drawn to the role of the churches in issues that were resolved by the parliament in the traditional non-partisan way, by use of the free or conscience vote. The first was the euthanasia issue in the first Howard term, and the second was the issue of the so-called 'abortion pill', RU-486, in the fourth Howard term, 2005–06 (there was a third conscience vote in 2002 on stem cell research).

There are similarities between the two cases beyond the use of the conscience vote and the party divisions that inevitably followed. The first involved a successful private members' bill moved in the House of Representatives by Kevin Andrews to overturn euthanasia legislation introduced by the Northern Territory parliament. The second involved a cross-party private members bill introduced into the Senate by four women, Lyn Allison (Democrats), Claire Moore (Labor), Fiona Nash (Nationals) and Judith Troeth (Liberal) to overturn the ministerial control over RU-486 exercised at the time by Tony Abbott, the Minister for Health. The Prime Minister personally supported the first and opposed the second (while the Opposition Leader on each occasion, Kim Beazley, supported both). The parliamentary debates each had strong religious-secular overtones, though this was only part of the story and many other themes also featured. Notably each generated enormous religious (primarily but not solely Catholic) pressure group activity closely associated with Catholic

[23] Marion Maddox, *God Under Howard*, 2005, op. cit., pp. 310–11.

[24] *Sydney Morning Herald* 12 and 14 October 2005.

parliamentarians in both parties, Labor as well as Liberal, and Catholic church leaders. In 1996 it was called the Euthanasia No! campaign and in 2005 it was Australians against RU-486.

There are also differences. The euthanasia issue contained an important states-rights element. It also had less far-reaching connections to related issues, while RU-486 was linked to attitudes to 'life' issues such as stem cell research, access to IVF, and cloning. The abortion issue, exemplified by the gender of the four movers of the bill, contained a much more explicit gender dimension. In 2006 only three women senators out of 25 voted against the private members bill.

An analysis of parliamentary voting patterns on the RU-486 legislation shows that Catholic MPs voted overwhelmingly against the bill, though with some notable exceptions, such as Coonan, Nelson, Hockey and Turnbull. Among the bill's opponents Catholic Labor MPs were almost totally isolated from their party colleagues, while Coalition Catholics could see that they were not.

At the time the issue of religion surfaced to an extent rarely seen in Parliament. Abbott accused his opponents of a 'new sectarianism' because they were implying that a Catholic could not be Minister for Health: 'The last time this kind of sectarianism and alleged inability of a minister to carry out their duty in the national interest was in 1916 at the time of the conscription debate. I thought we had moved on from there.'[25] Among those seeking change Senator Kerry Nettle (Greens) was photographed wearing a YWCA T-shirt with the slogan 'Mr Abbott, Get your rosaries off my ovaries.'[26] This T-shirt became a particular focus for the debate about the intersection between religion and politics, including numerous claims that it was offensive to Catholics.[27]

Faith-based delivery of government services

Another controversial element of religion and politics is the role of the churches in the delivery of some government services. Privatization of the delivery of government services has enabled some churches and charity groups, such as Mission Australia, Wesley Mission, the Salvation Army and Anglicare, to successfully tender to participate in the delivery of government programs in several fields, including relationship counselling. As far as services to the unemployed were concerned this opportunity arose with the privatization of the Commonwealth Employment Service and its eventual replacement by the Job Network program. Various church agencies were involved such as the Salvation Army's 'Employment Plus' program.

Controversy followed in December 1999–January 2000 over allegations that both the staff employment practices and the client practices of these Christian agencies might breach the separation of church and state and infringe the non-discriminatory nature of the delivery of secular government services. The critics included not only the Labor

25 Quoted in D. Shanahan, 'Abbott condemns "sectarian" critics', *Australian* 9 February 2006.

26 *Herald Sun* 10 February 2006.

27 See C. Pearson, 'Bigotry makes a rebirth', *Weekend Australian* 11–12 February 2006; and D. Shanahan, 'Morality issues can't be ducked', *Australian* 10 February 2006.

Opposition and the Democrats but also Jewish community representatives[28] Tony Abbott, Minister for Employment Services at the time, jumped to the defence of the agencies and charged critics with religious intolerance.[29]
The controversy extended to the churches themselves, some insiders doubting the wisdom of such a close association with government.[30] Insiders were worried that the churches' critique of the government might be compromised. In the case of the Catholic Church for instance, its agency Catholic Welfare Australia was responsible both for the management of Centacare's Job Network contracts and for critique of government welfare policies.

Church leaders' criticisms of the Howard government

The next theme of this lecture is the interaction between church leaders and the Howard government. The main Christian churches, Catholic, Anglican and Uniting, represented by the statements of their leaders and leading agencies, have become a consistent element of the opposition to the Howard government on some of the major issues of the decade.

This statement needs qualification as it does not apply to all church leaders, some of whom, such as the Salvation Army's Major Brian Watters, have accepted government appointments and some of whom have been most supportive of particular public policies. Catholic Cardinal George Pell of Sydney, for instance, offered timely support for the government's taxation and education policies respectively just before the 1998 and 2004 federal elections. At the time of the 2004 federal election he was joined by the Catholic Archbishop of Melbourne and the Anglican Archbishops of Sydney and Melbourne. It does not apply to all policy areas either. In the traditional areas of personal morality the churches have generally supported government attempts to maintain the status quo, or at least to resist moves in alternative directions. This included not only opposition to euthanasia and abortion (above), but also to same sex marriages. The federal parliament, led by the government but with Labor support, made clear its opposition to same sex marriages just before the 2004 election.

But overall the assessment is correct and it predates the Howard government. There has been considerable church criticism of federal government economic policies from the time of the major statement, 'Common Wealth for the Common Good', by the Catholic bishops in 1992.[31] The churches have been consistent critics of the attachment of both major parties to market-dominated economic rationalism as an approach to policy-making, as well as to particular economic and financial policies, such as taxation reform. While generally unsuccessful and often unacknowledged, the churches have been one of the last of the traditional institutions to resist the allure of the economic nostrums of the so-called New Right. There has been considerable church criticism of social policies, such as mandatory detention of refugees and

28 *Sydney Morning Herald* 21 January 2000.

29 *Australian* 8–9 January 2000.

30 D. Grace, 'Preaching the gospel of the Job Network', *Sydney Morning Herald* 30 December 1999; W. Brennan, 'Our quango which art in employment', *Sydney Morning Herald* 6 January 2000.

31 Australian Catholic Bishops' Conference, *Common Wealth for the Common Good. A Statement on the Distribution of Wealth in Australia*. Melbourne, Collins Dove, 1992.

asylum seekers, and infringement of Aboriginal rights.[32] In foreign policies the churches have questioned Australian military commitments to the Gulf and Iraq wars.

Some of this church criticism has been central to election debates and to the campaign contest between the government and the Opposition. In the lead-up to the Howard era the churches were leading critics in 1992–93 of the then Opposition leader, John Hewson's, Fightback! policies, especially the introduction of a GST on food and essential services. The tenor of church opposition continued when Howard moved to introduce a GST in 1998. Only then-Archbishop Pell demurred from the unified Catholic opposition on that occasion by arguing that there was no single Catholic position.

The most recent example occurred with industrial relations reform in 2005. The Catholic bishops, joined by many other Christian leaders such as the new Anglican Primate, Archbishop Philip Aspinall of Brisbane, were united in their concerns. Bishop Kevin Manning of Parramatta expressed the wish that 'in the new legislation, our cherished tradition of solidarity, mateship and fairness would not be dealt a blow in the name of productivity and profits.' Cardinal Pell was concerned that the reforms would effectively reduce minimum wages and urged much wider consultation before the legislation was passed.[33]

The criticism was not solely of the Howard government, though this did little to mollify Coalition members. Opposition to economic rationalism pre-dated the Howard decade and applied also to the Labor Party. In 2003 Australian Christian leaders, joined by Jewish and Muslim leaders, called on all state and territory leaders (all of them Labor) as well as the prime minister to develop a national strategy to reduce poverty. In June 2004 an interfaith coalition of mainstream Christian churches also launched an anti-poverty election campaign.[34]

The Howard government's criticisms of church leaders

Paradoxically, perhaps, given the general positive stance of Government leaders towards personal religious belief and towards the place of Christianity in the formation of Australian national identity, the relationship between the Howard government and most major Christian leaders has often been very strained. According to the government they have been speaking out of turn.

The Prime Minister has argued on principle of the churches that: 'Their primary role is spiritual leadership, which I respect and support.' He added: 'I think church leaders should speak out on moral issues, but there is a problem with that justification being actively translated into sounding very partisan.' At the same time, February 2004, he said: 'It's a difficult area. I don't deny the right of any church leader to talk about anything. But I think from the point of view of stresses and strains when the only time they hear from their leaders is when they are talking about issues that are bound to

32 Frank Brennan, *The Wik Debate: Its Impact on Aborigines, Pastoralists and Miners.* Sydney, UNSW Press, 1988; Frank Brennan, *Tampering with Asylum.* St Lucia, University of Queensland Press, 2003.

33 *Catholic Weekly* 10 July 2005.

34 *Canberra Times* 25 June 2004.

divide their congregations.' He implied that Coalition supporters would be particularly offended by such criticism of the government: 'Some of the church leaders have been particularly critical of our side of politics [and] they end up offending a large number of their patrons.'[35]

Such reflections by Howard followed numerous flare-ups in the relationship since 1996, including suggestions by back benchers that, because of church support for Aboriginal native title, rural churchgoers punish their churches by withdrawing financial support. They also followed some attempts to mend the relationship by some closed-door meetings between church leaders and their co-religionists in the ministry. But there is little evidence of any major improvement in the relationship.

Foreign Minister Alexander Downer's Sir Thomas Playford Memorial Lecture, 'Australian Politics and the Christian Church', in 2003 is the most considered and extensive elaboration of the Coalition government's position and can thus be used as an exemplar.[36] Downer's lecture, delivered with obvious feeling, brings together many criticisms, some by prominent conservative journalists, of church social justice statements over several decades. The lecture was very personal in its critique of church leaders who have spoken out against the government's Iraq military commitment. His targets included Archbishop Peter Carnley of Perth, then Primate of the Anglican Church, Downer's own denomination, and the then president of the Uniting Church, Professor James Haire.

The Foreign Minister argued that the church leaders had misplaced priorities, caused perhaps by their unhealthy attraction for personal publicity. He perceived 'the tendency of some church leaders to ignore their primary pastoral obligations in favour of hogging the limelight on complex political issues.' It seemed to him that too often 'the churches seek popular political causes or cheap headlines. And this tends to cut across the central role they have in providing spiritual comfort and moral guidance to the community.' And again, 'Apart from disdain for traditional pastoral duties and pontificating self-regard, how best to explain the clerics who issue press releases at the drop of a hat on issues where the mind of the church itself is unresolved or not yet engaged?'

The priorities of the church leaders were not to Downer's liking: 'Those clergy who have lost sight of the fundamentals have filled the vacuum with all manner of diversions. For some, social work has become the be-all and the end-all. Environmental issues, feminist and gay agendas and Indigenous rights provide constant grandstanding opportunities.'

The Foreign Minister regarded the tone of the criticism of church criticism as intemperate. Here he was referring particularly to comments by James Haire: 'I find the accusation of political depravity—not just misguidedness in particular policies, mind you, but depravity—profoundly personally offensive as well as foolish. That he was attacking both the major parties is no comfort.'

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35 *Herald Sun* 16 February 2004.

36 Alexander Downer, 'Australian Politics and the Christian Church.' The Sir Thomas Playford Lecture, University of Adelaide Liberal Club, 27 August 2003.

He accused church leaders of having an anti-government agenda and of playing party politics: 'Most intoxicating of all, and most divisive for their congregations, is overtly partisan politicking.'

Finally, Downer accused his church opponents of misplaced certainty and ignorance. He complained that 'political and social judgements are delivered with magisterial certainty, while utterances on fundamental Christian doctrines are characterized by skepticism and doubt.' He concluded: 'The greatest challenge today for leaders of all religions is to forego the opportunity to be amateur commentators on all manner of secular issues on which they inevitably lack expertise, and instead to find the spark of inspiration to give our lives greater moral and spiritual meaning.'

The Foreign Minister's statement remains representative. There has been no defence of the church leaders or rebuttal of Downer's position from within the government that I know of, despite the number of Christians in its ranks. Government ministers have attempted to bypass church leaders in favour of direct communications with church members, a style which echoes the prime minister's own preference for talk-back media and the tabloid press.

Family First Party

The most recent development in religion and politics has been the emergence of the Family First Party. The emergence of this new party at the 2004 federal election was just one aspect of the larger relationship between the Howard government and evangelical Christians. Despite the success of FFP it remains a less significant phenomenon than the direct influence of evangelical Christians within the Coalition. Evangelical lobby groups, like the emerging Australian Christian Lobby, are another notable element of this evangelical story.

Leading ministers in the Howard government have clearly felt more at home with the individualist aspirations and traditional family values contained in the messages of the newer evangelical churches than with those of the more critical mainstream church leaders. Moreover these churches have been growing quickly, though from a small base, and could offer visiting political speakers large, and often youthful, audiences. For these reasons, the Treasurer agreed to speak in 2004 and 2005 at the annual Hillsong conferences in Sydney. As the 2004 election approached, considerable attention was focused by the media on the growing alignment between the newer Christian denominations, generally referred to as Pentecostal Christians, and the Howard government. In particular, confirmation of the link was found in the suburban Sydney seat of Greenway, where the Liberal Party's candidate Louise Markus was a Hillsong staff member. Markus was to win the seat from the Labor Party, whose candidate happened to be a secular Muslim.

Family First had no national profile until shortly before that federal election, but had held a seat in the South Australian state parliament since its formation in 2002. It boasted a strong supporter base among Pentecostal Christians, especially the Assemblies of God churches. During the election campaign the Coalition agreed to exchange preferences with FFP and Howard personally encouraged the link. FFP refused to give preferences to a lesbian Liberal candidate in Brisbane and to one or two sitting Liberal MPs who supported same sex marriages. The exchange of

preferences assisted the Coalition, while FFP won a Senate seat in Victoria on the basis of a 1.9 per cent primary vote and shrewd preference deals with Labor and the Democrats among others, who were taken by surprise by the outcome.

The subsequent relationship between FFP Senator Fielding and the government has been fraught. Fielding, while providing the decisive vote to overturn compulsory student unionism, has become a critic of the government on a number of issues including family-unfriendly industrial relations reforms. It remains to be seen whether FFP is a party with growth potential or a flash-in-the-pan. But for the time being its growth and the Democrats' decline alters the minor party balance between left and right parties in the Coalition's favour.

Islam and politics

The politics of Islam in Australia cannot receive the attention in this lecture that it deserves. It is a story in itself. The significance of the small and fragmented Islamic community in Australian politics has largely followed September 11 2001. During the last four or five years the emphasis in government pronouncements about the place of Judaeo-Christianity as the centre-piece of Australian values and identity has served to increase the isolation and alienation of that community from other Australians. At times, government leaders such as Peter Costello drew implicit negative comparisons between Islam and Christianity.[37]

Apart from matters of security and terror the Muslim community has made few interventions in public policy at the national level. Nevertheless, they share common conservative social values with Christians. They also share common interests with low-fee Christian schools and welcomed Labor's education funding plan in 2004. These common interests and values may become more significant in the longer term.

Conclusion

Not for the first time religion has had a heightened profile in Australian politics during the Howard era. Just as in the 1950s Labor Split the overall impact of religious intervention appears to have benefited the Coalition parties. In fact, some elements of the story, such as the growing presence of Catholics in the Liberal Party and the diminished contribution of Catholics in the Labor Party, are actually a long-term consequence of the Labor Split. The cultural receptivity of the parties towards religion has altered.

Nevertheless, although the ultimate impact of religion on the parties may not yet be equivalent, the last decade is a more interesting story. During the Howard decade the influence of religion has been markedly more varied and has crossed denominational boundaries from the mainstream to the newer evangelical churches. Furthermore, religion and personal religious belief has been much more public. A wider cultural change has occurred in twenty-first century Australian politics.

[37] Mutch, 2004, op. cit., p. 16.

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Question — Will the Labor Party, with interest to win back church-goers, through what I see as more social initiatives that are attractive to the Christian community, be successful, or will the Coalition's weighting towards identifiable moral Christian issues continue to keep it with the church-going majority? What would Labor have to do to win back more of the church-going community?

John Warhurst — Well I suppose that's a question that Kevin Rudd and his colleagues are ruminating about. I think there will be a swing of the pendulum. As Kevin Rudd has said, it's not that Labor doesn't have a great many policies attractive to church-goers, it is rather that in the current climate the balance between what I might call very roughly 'left church policies' and 'right church policies' tends to have focused very much on the right church policies—the right in political right terms. Kevin Rudd's position, as I understand it, is that the Labor Party ought to be more open and more concerned about making contact with the church community, and I suspect it will do that. There are many individuals within the Labor Party who are already doing that. I think the time will come when the balance between the social justice issues and the so-called moral issues may swing in the community in a way which benefits the Labor Party. There is a legacy in the Labor Party of not being willing to speak openly about religion and matters of faith, and it relates to the sort of political history that I was speaking about. I think that Kim Beazley and and Kevin Rudd, and NSW Labor senator Ursula Stephens, and there are plenty of others, are probably focused on the issue more than they were. I think Family First was probably a bit of a wake-up call to many in politics, even though it was only a very small party and remains only a very small party. In general terms, despite all the emphasis in talking about churches and politics, church attendance is going through the floor. Churches have had terrific public problems with their profile, with issues like child abuse for instance, and therefore might be thought to be not politically salient. I think events of the last few years have shown that they are politically salient, and Labor as a major party if it ever lost sight of that, will realise it pretty quickly.

Question — My question is about the boundaries of morality. First of all, in the rather quaint notion of a conscience vote, because what are the others which are not conscience votes; what's happening to the politician's conscience at that time? And

the second one is the restriction of the notion of morality when politicians say that church leaders may not speak about politics, but they speak about morality as if there is some boundary between morality and politics. Whereas I would have thought that morality affects even political behaviour.

John Warhurst — I think on both those questions I'd be pretty close to your point of view. Clearly, the notion of perhaps a 'free vote' is a better way to describe those votes than a conscience vote, because many people have rightly said does this mean that MPs are not exercising their conscience on other occasions; and many people have also argued, and I would agree with them, that there are a whole lot of other issues to do with war and peace for instance, and other issues which are equally as moral, equally as concerned about ethics, and yet the parties don't see their way clear to allow a free vote. I think the issue is that our political party system is a very disciplined one. The free votes are not offered out of the goodness of the hearts of the party leaders. They are offered because they believe that on these few issues they really will have a revolt on their hands if they don't allow a free vote, and that people would leave parties, they would cross the floor, they would do a whole lot of other things. And maybe also they see these issues, although they are terrifically important public policy issues, as in the end, not election-determining issues for most voters, but as a set of so-called moral issues. That would be my answer to your first question.

On the question of the boundary between morality and politics, I have friends who have argued to me that the absolute separation of church and state ought to be taken so seriously that they would dispense with the support of the church leaders on issues like asylum seekers and refugees and issues of mandatory detention and aboriginal rights. I don't hold that view. My view is that an injection of religious values into public debate is absolutely to the benefit of Australian public discourse and public life but that there are times when you can overstep the mark. I think the mark is overstepped if there is an implication that religious values are superior to other values. That in a sense the religious opinion is being delivered from on high. I think that is crossing the line. There is a very interesting situation going on in South Australia at the moment where the second most senior Catholic Prelate has been a member of the Labor Cabinet for the last three years, and has just been appointed Commissioner for Social Inclusion. That appointment has been criticised by the Liberal Party as bringing the church too close to the government, and I'm inclined to agree with that. I think churches would be wise to not get sucked in to too close a relationship, for their own benefit as well as the benefit of the wider community.

Question — You have made the point very strongly that church and state is not what is was. They are in a sense, moving very close together. My question, or observation I'd like your reaction to is, the inability it would seem in public dialogue on matters where religion is raised, to actually argue a point on religious things. I mean the Bible, or in church as it were, historical teaching doesn't mention anything about RU-486 or industrial relations or things like this. But what we have is a situation where people are lobbing hand grenades at each other from firm positions that they have established before they entered into the public sphere. There is also another particularly worrying aspect, that there is still some embarrassment about talking about religion. So people have their own views which are formulated on a religious or other moral basis as you mention, but the actual reasons for their belief is subterranean and below the level of political discourse, which is to me dangerous. Your reaction to that?

John Warhurst — Well you raised quite a number of points there. Perhaps I would start with the last one, that religious values are in some sense subterranean. While I can see what you are getting at, I think it is very hard. Who are we to know where anyone's values on a political issue really come from deep down? I think church agencies, church lobbies, church leaders should be treated like every other lobby group in the community, and that is in any intervention in public debate, the public should clearly know where it is coming from. They should know the credentials of the person who is giving it. When churches intervene in public life they should not expect to be treated as anything special. If there is a sense in which church leaders feel they might be protected from public debate, then I reject that notion as well. If you put your oar in you can expect to be belted over the head, and I don't think the community would want any less than that as far as any contribution to public debate. One of the points that the foreign minister made in a speech, with which I quite strongly disagree, was the notion of some sort of ex-Cathedra statement, and you do see that from time to time as if, you know, the poor old MPs running around making legislation should all stop work and listen to the pronouncements of a religious leader. I don't think that for one minute. But I do think Australian public debate would be the worse if religious leaders were bullied from making public announcements. Political party members and supporters will be disappointed because those public announcements are going to threaten their party 50 per cent of the time, probably, and I think party members and parliamentarians just have to get used to that. There is no going back. I don't think there is any sense in putting the genie back in the bottle as far as religious interjection in politics is concerned. There are occasions when it maybe threatens section 116 and they have to be examined carefully on a case by case basis.

Another thing that is often forgotten is that there are a lot of organisations in the community at the moment that suffer declining attendance rates. Wherever you are, declining attendance rates are the thing. Trade unions are down at a level not much higher than the number of people who attend a church, a mosque or a synagogue on a Sunday, so that overwhelming view that it's such a small section of the community that it can be neglected is false.

Question — I want to refer to the Australian Constitution mentioned earlier in that it requires that its laws regarding office be secular. It's quite right that when swearing an MP into the federal parliament, they can either take an oath or they can make an affirmation. However, each section starts off with prayers, it mentions God. It should be secular, and my question is this: people say 'oh, they never call a quorum' but a quorum has been called in the House of Representatives and it refers to the period when the office of a minister was questioned because he wasn't religious, so it's relevant. And maybe this is unconstitutional that we have those prayers, and attempts have been made to change it. Should those prayers not be read unless they eliminate God and just refer to serving the people, or removed completely, or should there be a standing order that says that a quorum shall not be called during those prayers? At the moment, it's open to the religious factions to force it.

John Warhurst — I take your point. I think whether or not it breaches section 116, the question of prayers in parliament is something that needs rethinking. It is being rethought in a whole lot of other organisations and many of them are dropping

explicitly religious prayers to open their proceedings, and I think parliament ought to go down that track as well. Now, I wouldn't want to impose any solution, but, other institutions have various approaches. Some of them mix up the prayers by having invocations to non-Christian religions as well as Christian religions, and I've seen that work very well, for instance, in places like university colleges on campus which used to always have a Christian flavour which, in a multi-cultural environment, won't work. Is a minute's silence appropriate, or is all of this just something to be put to one side? I think Peter Baume is someone who has written about his experiences as a Jewish MP and tended, I think, not to make too much of it and just mentally signed off and, you know, spent the time reflecting, meditating perhaps, on the work, but went forward. I'm reminded of the debate of the Constitutional Convention over the preamble which has a similar character to debate about prayers in parliament. The surprising outcome then was that a whole lot of people were saying: 'Well, I'm an atheist, but I rather like the idea' or 'I have no objection to the idea of a religious preamble to our Constitution because it has a spiritual character which can perhaps appeal to a range of people.' So that's how I would answer that.

Question — You commented that there seem to be a surprisingly high portion of practicing Christians supporting the coalition. Then you referred to the increasing outspokenness of church leaders of the major Christian denominations, against a number of Howard Government policies. Do you think there is hope that either in the short term or long term, the influence of the leaders will seep through down to their congregations and have some impact on what are pivotal, moral/Christian issues on which the government is taking very non-moral stands?

John Warhurst — The short answer is probably not, and it opens, I think, a whole bigger question about the extent to which MPs from a particular denomination or religious background would find their primary advice or formation of their consciences, to use a religious term, in their religious leaders. I made the point right at the beginning about religion being a slippery concept in that it is very hard to say of any MP, well that person is a religious person, because they could take it seriously, not so seriously, just happen to have gone to a particular school. There would be a few religious MPs, I would think, and the extent to which religious leaders are public figures of some consequence, then I think those MPs will take notice of them, and I don't think it will be just their own religious leaders often.

Question — I meant people like us who cast a vote on polling day, not so much the MPs.

John Warhurst — I think there is a sense in which some of that will sink through too, and it won't just be to church goers, it will be more broadly. I can think of a few figures who have clearly been important parts of the debate on asylum seekers and refugees or indigenous rights. They may not be church leaders; they could be someone like Father Frank Brennan, who I think probably has fairly wide respect across the community, and I think his views, and others, are likely to seep through. But I wouldn't be waiting for earth-shattering change, and I think that is perhaps one of the differences between the fifties and the two thousands, the fifty year gap has meant that church leaders can no longer rely on the authority of their words, they have to rely on the persuasion of their words—in most cases, not in all cases. You will get people who will accept it, but in most cases, and this would certainly apply to

articulate voters and members of parliament, they will say, 'well, show us your arguments' and they would be persuasive, and that's how it will stand, I think.

Question — My question loosely follows on from the previous question and it is about your thoughts on actual church power. When we've discussed the last ten years, the Howard years, the use and the influence of Christian thinking on moral issues, what's loosely called, family-friendly politics: same sex marriage, abortion, euthanasia, what have you; these issues have been supported by the coalition, and have been used to great success. But I see that more of a taking on a neo-conservative view, you know, like America. Do you think that in the last ten years the churches have influenced the coalition on issues which do not relate to the neo-conservative agenda?

John Warhurst — That is a very good question. I think there would be church victories on traditional bricks and mortar issues, which I know are not quite what you were thinking of, but I think that on debates about health, welfare, aged care, there would be church victories on a regular basis in terms of government grants to churches, that sort of self-interested projection of church interests. I think there are plenty of victories there, and those institutions are so deep in our everyday life, education, politics, health politics, and so on, that perhaps we don't think of them a lot. Has the church had victories in other areas? I think the church agencies would say that they have had victories around the edges. I think that's what they would say, that on issues like Job Network and quite technical issues perhaps about breaching requirements and the way the unemployed are treated, that the church agencies would, having got into the business of delivering so-called 'faith based programs', many of them would be trying to take the rough edges off those programs in a way which made a difference to their unemployed clients. I think in some of the issues to do with native title, the churches have been influential—one among a number of power voices. I wouldn't use the word 'power' so much but I think they still do have clout, they are very well organised, and in reference to an earlier question, there is still a sense, I think, in which the churches are one of the best organised social institutions. So if an MP is to take notice of anything in terms of the ability to stage a rally or make a persuasive statement, or even threaten their electoral future, then the churches are as well placed as most organisations.

Victoria's Charter of Human Rights and Responsibilities: Lessons for the National Debate*

George Williams

Introduction

Thank you for the opportunity to address you today about an important development in Australian constitutional history. That development is the drafting and enactment of Australia's first charters of rights. The first such law was passed here in the Australian Capital Teritory in the form of the *Human Rights Act 2004*. It was Australia's first bill of rights and, unlike the recent civil unions law, survived the possibility of disallowance by the federal government. Australia's second, and the first in a state, is the Victorian Charter of Human Rights and Responsibilities. It has been passed by the lower house of the Victorian Parliament and is about to come on for debate in the upper house. The Bracks Government in Victoria has a majority in both houses so it is expected that the law will be enacted to come into force on 1 January 2007 (with some parts delayed to 1 January 2008).[1] Tasmania has also started a process to consider whether it should enact a Victorian-style charter, and Western Australia and

* This paper was presented as a lecture in the Senate Occasional Lecture Series at Parliament House, Canberra, on 7 July 2006.

1 The *Charter of Human Rights and Responsibilities Act 2006* was passed by the Victorian Parliament and assented to on 25 July 2006 (Act No. 43 of 2006).

NSW may not be far behind.

I was fortunate to chair the community process that recommended enacting the Victorian Charter. Today, I want to reflect on the state of the bill of rights debate generally in Australia as well as the lessons that can be learnt from the Victorian initiative. After setting out some background and explaining what occurred in Victoria and what its Charter will look like, I will explore some lessons for the national debate. While these lessons relate to how a charter of rights could be pursued at the national level, they also apply to other debates involving legal change aimed at addressing issues of social injustice or symbolic reform, such as those over an Australian republic and a treaty with Indigenous peoples.

Before I continue, I should state clearly my position on a bill of rights. My view is that we do need better formal legal protection for human rights at the national level and in each of the states and territories. In a federal system, such protection is needed wherever government exercises significant power. Such change would be important in modernising our democratic process and in improving the performance of parliaments and governments in exercising power on behalf of the people.

I also believe that such change is needed because it has become all too clear that Australia does have a range of serious human rights problems, such as the detention of young children seeking asylum, the indefinite detention of asylum seekers who cannot be deported and our overreaching terror laws (which in some respects, like the new powers for ASIO, go beyond even the laws enacted in the United States). There are also problems in regard to the undermining of our most important political freedoms. A good example is the right to vote, with this Parliament at the last sittings enacting law that, unusually since Aborigines were denied the vote in 1902, narrowed rather than expanded the franchise. That law, enacted as a so-called 'electoral integrity' measure, removes the vote from prisoners and also forces the closure of the electoral roll on the day that the election is issued, thereby denying thousands of Australians the chance to change their enrolment details and many young Australians the chance to vote for the first time.

When it comes to change to our system of government, people often say 'if it ain't broke, don't fix it'. However, when it comes to the protection of our fundamental freedoms, our system of government is broken and we do need to fix it.

Background

Australia is now the only democratic nation in the world without a national bill or charter of rights. Some comprehensive form of legal protection for basic rights is seen as an essential check and balance in democratic governance around the world. Indeed, I am not aware of any democratic nation that has gained a new constitution in the last two decades that has not included some form of bill of rights, nor am I aware of any such nation that has ever done away with its bill of rights once it has been enacted.

Why then is Australia the exception? Why has Australia not gone down the rights protection path like other nations? The answer lies in our history. Although we like to think of Australia as a young country, constitutionally speaking, we are one of the oldest in the world. Our national constitution remains almost completely as it was

enacted in 1901, while the constitutions of the Australian states go back as far back as the 1850s.

By contrast, over 56 per cent of the member states of the United Nations made major changes to their constitutions between 1989 and 1999. Of the states making such changes, over 70 per cent even adopted a completely new constitution.[2] It is not surprising then that Australia was described by Geoffrey Sawer as far back as 1967 as 'constitutionally speaking … the frozen continent'.[3] This is even more applicable today, with the last successful vote to change the constitution in 1977, when it was amended, among other things, to set a retirement age of 70 years for High Court judges. A further eight, unsuccessful proposals have been put to the people since that time. The period since 1977 is now the longest that Australia has gone without any change to the constitution (the next longest period was between 1946 and 1967). The political party most often associated with constitutional reform, the Australian Labor Party, has itself not succeeded in having the people support a referendum since 1946.

To go back to when we drafted our national constitution and considered inserting guarantees of human rights is to return to the 1890s. At that time, apart from the United States, other nations commonly did not have anything like a bill of rights as part of their system of government. The United Kingdom, upon which our own system is based, then did not have its *Human Rights Act 1998* and instead relied upon the common law tradition and the notion that parliamentarians could be trusted to protect human rights. It made sense in Australia at that time to rely upon the same.

There was an additional reason why rights guarantees were not included in the new Australian Constitution. The framers sought to give the new federal and the state Parliaments the power to pass racially discriminatory laws.[4] This is clearly demonstrated by the drafting of certain provisions. For example, the Constitution, as drafted in 1901, said little about Indigenous peoples, but what it did say was entirely negative. Section 51(xxvi) enabled the federal Parliament to make laws with respect to '[t]he people of any race, other than the aboriginal race in any State, for whom it is deemed necessary to make special laws', while under section 127 'aboriginal natives shall not be counted' in taking the census.

Section 51(xxvi), the races power, was inserted into the Constitution to allow the Commonwealth to take away the liberty and rights of sections of the community on account of their race. By today's standards, the reasoning behind the provision was clearly racist. Edmund Barton, our first Prime Minster, stated at the 1898 Convention in Melbourne that the power was necessary to enable the Commonwealth to 'regulate the affairs of the people of coloured or inferior races who are in the Commonwealth.'[5]

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2 Heinz Klug, *Constituting Democracy: Law, Globalism and South Africa's Political Reconstruction.* Cambridge University Press, 2000, p. 12.

3 Geoffrey Sawer, *Australian Federalism in the Courts.* Melbourne, Melbourne University Press, 1967, p. 208.

4 George Williams, *Human Rights Under the Australian Constitution.* South Melbourne, Oxford University Press, 1999, pp. 33–45.

5 Mr Barton, 27 January 1898, 'Debates of the Australasian Federal Convention, Third Session, Melbourne, 1898.' in *Official Record of the Debates of the Australasian Federal Convention, 1891–1898.* Sydney, Legal Books, 1986, Vol. 4, pp. 228–29. Available on the Internet at http://www.aph.gov.au/Senate/pubs/records.htm

One framer, Andrew Inglis Clark, the Tasmanian Attorney-General, supported a provision taken from the United States Constitution requiring the 'equal protection of the laws'.[6] This clause might have prevented the federal and state Parliaments from discriminating on the basis of race, and the framers were concerned that Clark's clause would override Western Australian laws under which 'no Asiatic or African alien can get a miner's right or go mining on a gold-field.'[7] Clark's provision was rejected by the framers who instead inserted section 117 of the Constitution, which merely prevents discrimination on the basis of state residence. In formulating the words of section 117, Henry Higgins, one of the early members of the High Court, argued that was acceptable because it would allow laws 'with regard to Asiatics not being able to obtain miners' rights in Western Australia. There is no discrimination there based on residence or citizenship; it is simply based upon colour and race.'[8] While in a 1967 referendum Australians chose to strike out the words 'other than the aboriginal race in any State' in section 51(xxvi) and to delete section 127 entirely, the racist underpinnings of our Constitution remain. We have yet to fully move on from a system of government founded upon values and policies like the White Australia Policy.

Victoria's Charter of Human Rights and Responsibilities

One way to make a break with our past is to recognise that the accepted wisdom and values of the 1890s do not hold true today. More than a century later, it is not sufficient to trust our political leaders to do the right thing. We also need law that protects our freedoms from the misuse of power and provides a way for parliaments to pass laws and governments to apply them based upon modern human rights principles like freedom from racial discrimination. The Victorian Charter of Human Rights and Responsibilities is just such a law.

The community consultation

The origins of the Victorian Charter lie in the Justice Statement issued by Victorian Attorney-General Rob Hulls in May 2004. This proposed new directions for the Victorian justice system over the following decade. It dealt with a range of matters, including the idea of a Charter of Rights for Victoria. The Statement did not say that a Charter was needed, but that there should be a public discussion to address the issue.

One year later, the Attorney-General announced the appointment of a four person committee to consult with the community. It included Rhonda Galbally AO, renowned for her community leadership in addressing disadvantage in Victoria, Andrew Gaze, a basketballer and Captain of the Sydney 2000 Olympic team, The Hon Professor Haddon Storey QC, a former Victorian Liberal Party Attorney-General, and myself as

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6 Draft of a Bill to Constitute the Commonwealth of Australia, 9 April 1891. Appendix to 'Debates of the National Australasian Convention, 1891.' *Official Record*, op. cit., Vol. 1, p. 962, and on the Internet at http://www.aph.gov.au/Senate/pubs/records.htm

7 Sir John Forrest, 8 February 1898. *Official Record*, op. cit., Vol. 4, p. 665; and on the Internet at http://www.aph.gov.au/Senate/pubs/records.htm

8 Mr Higgins, 3 March 1898. *Official Record*, op. cit., Vol. 5, p. 1801; and on the Internet at http://www.aph.gov.au/Senate/pubs/records.htm

the chair of the committee. The time frame was tight, with only six months given to consult with the community across the state and to report back to the Attorney-General by 30 November 2005.

We were appointed to operate independently of the Attorney-General and of government. However, the Victorian Cabinet did release a Statement of Intent upon our appointment that set out the government's preferred position on any human rights model for the state. The government indicated its support for the protection in any law of only a limited set of human rights, rights taken from the International Covenant on Civil and Political Rights, and not for the protection of other rights taken from other international conventions, such as women's rights, Indigenous rights or economic, social and cultural rights more generally (such as the rights to education, housing and health). The government also said that it was interested in a model in which the courts would have a role to play, but which retained parliamentary sovereignty. It specifically said it was interested in a model like that in the United Kingdom and New Zealand, as adapted recently to the ACT, and that it did not favour anything like the 1791 constitutional Bill of Rights found in the United States.

As a committee, we wanted to have a genuine grassroots consultation about the issue. We felt that people who often felt alienated from government should be given a say. We were also aware, however, of the challenges facing us. These included the reluctance of some people, including young people, to be involved and lack of information many Australians have about basic issues of government and human rights. A 1987 survey, for example, conducted for the Constitutional Commission found that 47 per cent of Australians were unaware that Australia has a written Constitution.[9] Similarly, the 1994 report of the Civics Expert Group[10] found that only 18 per cent of Australians have some understanding of what their Constitution contains. Significantly, only one in three people felt reasonably well informed about their rights and responsibilities as Australian citizens.

To deal with these challenges we designed a community process very different from how other inquiries, such as a parliamentary committee, might work. We believed that the way to get people involved was not through the media but to meet with people in their communities in small groups and to work through their community organisations. This sometimes involved what we called 'devolved consultation' whereby we provided small amounts of funding to groups to assist us to get people with special needs involved, such as homeless people. This also involved extensive travel throughout Victoria. We talked to people ranging from community groups in Mildura, to Indigenous people in Warrnambool, to the victims of crime in Melbourne and to the Country Women's Association in Gippsland.

On the road, we held up to four meetings per day, with each typically lasting two hours. These were not open town hall meetings, but meetings arranged through local groups or in some cases through information in the local media. The meetings were structured so that a large part of the meeting was spent listening to people and what they knew about the question, followed by us providing the basic information they needed to have a say.

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9 Constitutional Commission, *Bulletin*, No. 5, September 1987.

10 Civics Expert Group, *Whereas the People: Civics and Citizenship Education*. Canberra, AGPS, 1994.

We then directed the conversation to ten key questions we needed their help to answer, which were open-ended questions like whether change was needed and what rights they thought were the most important to be protected. We also sought information from them on broader issues such as the role of education and of the community in the rights protection process. We also developed a website and invited young people to engage with the process over the internet. One of the great successes of the process were the many young people who took part in this way.

We also ran a parallel process of consultation with the Victorian Government. We believed that the journey people need to come on in terms of understanding the issues in order to form an opinion applied equally to government. I met with the senior executives of all government departments, sometimes on a number of occasions, in order to inform them of the process and to factor in their views. I was also fortunate to address meetings of the secretaries of all departments and to talk to a number of Cabinet ministers. In addition, the Department of Justice set up an inter-departmental committee with representatives from across all of Victorian government to shadow our community process so that as ideas emerged but before our report was written departments had a chance to comment to make sure that our thinking was informed by current practice.

Overall, the consultation process was very successful in its engagement with the community. We held 55 community meetings around the state as well as 75 more focused meetings with government, peak organisations and the like. In most of these meetings, and indeed for most of our process, our efforts were directed not to those who already believed that such change was needed but to groups who felt disconnected from the political process or ambivalent or antagonistic to change. Hence, much of our work involved bodies such as victims' rights groups or the Country Women's Association or within government bodies such as Victoria Police. The process led to a report, *Rights, Responsibilities and Respect*, informed both by community thinking and by what could actually work in government.[11]

All up, we have received 2 524 written submissions from across the community. These submissions, whether received via the internet, written on the back of a postcard or set out in a letter, amount to the highest number of submissions ever received for a process in Australia that has looked at this issue. By comparison, the parliamentary committee that considered a bill of rights for New South Wales in 2000–2001 received 141 submissions.

What the community told us

After six months of listening to Victorians of all ages and backgrounds across the state, it was clear that a substantial majority wanted their human rights to be better protected by the law. While Victorians did not want radical change, they did support reform to strengthen their democracy and system of government. Overall, 84 per cent of the people we talked to or received submissions from (or 94 per cent if petitions and the like are included) said that they wanted to see the law changed to better protect their human rights.

[11] *Rights, Responsibilities and Respect: the Report of the Human Rights Consultation Committee*. Melbourne, Department of Justice, 2005.

Many people wanted to see their human rights better protected to shield themselves and their families from the potential misuse of government power. For even more people, however, the desire for change reflected their aspiration to live in a society that strives for the values that they hold dear, such as equality, justice and a 'fair go' for all. The idea of a community based upon a culture of values and human rights is one that we heard again and again during our consultations. Victorians sought not just a new law, but something that could help build a society in which government, Parliament, the courts and the people themselves have an understanding of and respect for our basic rights and responsibilities.

The Charter

Based upon what we heard, we recommended that the Victorian Parliament enact a Charter of Human Rights and Responsibilities. The Bracks government accepted this recommendation in December 2005 on the day that our report was released. Then, after five more months of working the implications of our report through government, it introduced the Charter into Parliament in May this year.

The Charter is not modelled on the United States Bill of Rights. It does not give the final say to the courts, nor does it set down unchangeable rights in the Victorian Constitution. Instead, the Victorian Charter will be an ordinary Act of Parliament like the human rights laws operating in the ACT, New Zealand and the United Kingdom. This will ensure the continuing sovereignty of the Victorian Parliament.

The United Kingdom has a system of law and government similar to Victoria and its *Human Rights Act 1998* has been a success without giving rise to the litigation and other problems sometimes associated with the United States Bill of Rights. Its law has also proved effective in balancing issues such as the need to fight terrorism with the democratic and other principles required for a free society. In Scotland, which has a similar population size to Victoria, a recent article surveying the impact of the United Kingdom Human Rights Act in the Scottish courts between May 1999 and August 2003 found that human rights arguments were raised in 'a little over a quarter of 1 per cent of the total criminal courts caseload over the period of the study'.[12] Overall, the authors concluded that 'it seems clear that human rights legislation has had little effect on the volume of business in the courts.'

The Charter of Human Rights and Responsibilities is generally written in clear language. It also includes a preamble that sets out the community values that underpin it:

> On behalf of the people of Victoria the Parliament enacts this Charter, recognising that all people are born free and equal in dignity and rights.
>
> This Charter is founded on the following principles—
>
> - human rights are essential in a democratic and inclusive society that respects the rule of law, human dignity, equality and freedom;

[12] Tom Mullen, Jim Murdoch, Alan Miller and Sarah Craig, 'Human Rights in the Scottish Courts', *Journal of Law and Society*, Vol. 32, 2005, pp. 148, 152.

- human rights belong to all people without discrimination, and the diversity of the people of Victoria enhances our community;
- human rights come with responsibilities and must be exercised in a way that respects the human rights of others;
- human rights have a special importance for the Aboriginal people of Victoria, as descendants of Australia's first people, with their diverse spiritual, social, cultural and economic relationship with their traditional lands and waters.

In this form, the Charter can be used in schools and for broader community education, such as for new migrants to Victoria.

The Charter protects those rights that are the most important to an open and free Victorian democracy, such as the rights to expression, to association, to the protection of families and to vote. These rights are contained in the *International Covenant on Civil and Political Rights* 1966, to which Australia has been a party for many years. Some of the rights in this instrument have been modified or even not included so that the Charter matches the contemporary aspirations of the Victorian people and so that it contains only those rights that have broad community acceptance. The Charter, for example, does not deal with the issue of abortion, instead maintaining the status quo.

The rights in the Charter are not absolute and can be limited, as occurs in other nations, where this can be justified as part of living in a free and democratic society. Elected representatives in Victoria can continue to make decisions on behalf of the community about matters such as how best to balance rights against each other, protect Victorians from crime, and distribute limited funds amongst competing demands. The Charter even recognises the power of the Victorian Parliament not just to balance such interests but to override the rights listed in the Charter where this is needed for the benefit of the community as a whole.

Many Victorians said that the Charter should also contain rights relating to matters such as food, education, housing and health, as found in the *International Covenant on Economic, Social and Cultural Rights* 1966, as well as more specific rights for Indigenous people, women and other groups. While we agreed that these rights are important, we did not recommend that they be included in the Charter at this stage. We recommended, and the Charter reflects, that the focus should be on the democratic rights that apply equally to everyone.

This needs to be seen in light of the fact that the Charter includes a mechanism for review and change in four and then eight years. This will enable these rights and other issues to be considered again down the track. Indeed, I do not expect that the Charter will remain unchanged, but that it would be updated and improved with the benefit of experience and in line with community thinking. The Charter will be the start of incremental change, not the end of it.

An important aim of the Charter of Human Rights and Responsibilities is to create a new dialogue on human rights between the community and government. The Charter will mean that rights and responsibilities are taken into account from the earliest stages of government decision-making to help prevent human rights problems

emerging in the first place. The key aspects of this dialogue, as adapted and improved from best practice in the ACT and nations such as the United Kingdom, Canada and New Zealand, will be:

- The **community** will receive the benefit of the rights listed in the Charter.
- Public servants will take the human rights in the Charter into account in developing new **policies**.
- **Public authorities** like government departments will be required to comply with the Charter. If they fail to do so, a person who has been adversely affected by a government decision, as is possible now under Victorian law, will be able to have the decision examined in court. There will be no right to damages.
- Government departments and other public authorities can undertake **audits** of their programs and policies to check that they comply with the Charter.
- Where decisions need to be made about new laws or major policies, submissions to Cabinet will be accompanied by a **Human Rights Impact Statement**.
- When a bill is introduced into the Victorian Parliament, it will be accompanied by a **Statement of Compatibility** made by the person introducing the bill setting out with reasons whether the bill complies with the Charter. Parliament will be able to pass the bill whether or not it is thought to comply with the Charter.
- Parliament's **Scrutiny of Acts and Regulations Committee** will have a special role in examining these Statements of Compatibility. It will advise Parliament on the human rights implications of a bill.
- Victorian courts and tribunals will be required to **interpret** all legislation, so far as is possible to do so, in a way that is consistent with the Charter. In doing so, they will need to take account of why the law was passed in the first place.
- The Attorney-General and renamed Victorian Equal Opportunity and Human Rights Commission will be able to **intervene in a court or tribunal** that is applying the Charter to put submissions on behalf of the government and the public interest. Community and other groups might also be given leave to intervene.
- Where legislation cannot be interpreted in a way that is consistent with the Charter, the Supreme Court will be able to make a **Declaration of Inconsistent Interpretation**. This will not strike down the law and Parliament could decide to amend the law or to leave it in place without change.
- Where the circumstances justify it, Parliament will be able to pass a law that **overrides** the rights in the Charter. This will prevent a Declaration of Inconsistent Interpretation being made in respect of the law for five years. The override can be renewed.

Lessons for the federal debate

If we were to pursue a charter of rights or other like major changes at the federal level, I think we can learn from what has been achieved in Victoria. My five lessons are:

First, start with a community-based process in which people have a real say and ownership of the outcome. This may require an independent panel rather than a

parliamentary inquiry in order to dispel concerns about the motivation for change being a self-serving one on the part of politicians. In any event, such reform cannot and should not be imposed on the community. It must gain wide support before moving forward. Indeed, the only charter processes that have succeeded in Australia, in ACT and Victoria, both had this.

Second, keep the process short and sharp. Momentum is crucial and support can dissipate quickly. A reason that the Victorian process worked was that it took place over six months with then another six or so months leading to the introduction of the law. This timeframe maximised the chances of maintaining energy, commitment and discipline around the issue. The multi-year timeframe that has been put forward by some for an Australian republic, by contrast, is just asking for trouble.

Third, commit to a process around a sound and achievable model. We should jettison the US and a constitutional bill of rights. If that is to ever occur, it is a generation away. We should focus the community debate around the ordinary acts of parliament in the UK and elsewhere as the start of incremental change. This is achievable and the right place to start. By contrast, the debate about any treaty with Indigenous peoples is often hampered by a lack of an acceptable model.[13]

Fourth, locate the debate in values and good governance. Many Australians care about human rights not for their own sake but because they are part of a larger debate, such as about responsibilities and issues of governmental accountability. Human rights work well as a concept for the converted and the well-educated, but a broader set of tools needs to be deployed in talking to the community at large.

Fifth, get your language right. The debate should not be about a bill of rights at all, but a charter of rights or an ordinary human rights act. The language we use will signal to people whether the proposal is like the US Bill of Rights, which they rightly do not want in Australia, or a different approach. For example, when NSW Attorney General Bob Debus said in March this year that he would take a proposal to Cabinet for a community process like that in Victoria, Premier Morris Iemma said in a media report that 'he does not support the introduction of a bill of rights but is willing to consider Attorney-General Bob Debus's proposal for a charter of rights.'[14]

Question — If the model you are going to propose is a charter of rights or a bill of rights that prescribes the matters that have to be considered when enacting legislation, why limit it to civil and political rights? Why not expand it further? If you are going to have a charter of rights that is limited to civil and political rights, those rights that we hold so dear that they need to be protected no matter what, why don't we have a

[13] But see Sean Brennan, Larissa Behrendt, Lisa Strelein and George Williams, *Treaty*. Annandale, NSW, Federation Press, 2005.

[14] 'Iemma Willing to Consider Charter of Rights Proposal', AAP, 20 March 2006.

civil or criminal process for ensuring that those are upheld rather than just a system that requires we talk about them? Does having just that limited set of rights mean that particular legislation might ignore a broader set of human rights and norms?

George Williams — There is of course a much broader set of rights that we could have taken into account. Internationally, there are not only civil rights, but also economic, social and cultural rights relating to housing, health and other matters, but we did not recommend their inclusion. Hilary Charlesworth, who ran the ACT process, did recommend that they be included, but the government did not accept that recommendation. We didn't recommend it because the community did not support it.

When we asked people which rights should be included, 95 per cent said civil and political rights, including voting and other matters, whereas only 42 per cent said the broader range of rights. That surprised me, it was much lower than I expected it to be, but I think it shows what a shift we've seen over the last ten years.

In the discussions I had with the community I would say: 'Which rights?' and they would say this or that, and I would say: 'What about education?' and they would say: 'That's not a right, you can go to a private school these days. The government is not the only educational provider.' I might say 'Health and bulk-billing?' and they would say: 'Well, maybe it was in the past, but it's not a human right in Australia any more.' People increasingly describe those things as privileges and I don't think that would have been the case ten years ago. Of course, in different sections of the community there was a different outcome, with particularly the Aboriginal community, homeless and others arguing very strongly for their inclusion. But we felt that the first stage in Victoria should only include those things that did have clear majority support, and the thing to do was to look at it again in four years time as part of the ongoing process.

The second thing you raised is about remedies and how these things are enforced. What we did recommend is that the courts have the sorts of roles that I've talked about but that there be no right to damages, for example, and no right to other remedies such as striking down legislation. I'm very comfortable with that, because personally, I think it's misplaced to think that the courts are going to solve these issues. I think they've got to be involved, but litigation is such an unwieldy and difficult way that in the end the real remedies are going to come from the political process and through getting it right in the first place. It is not perfect by any means, and indeed in many cases you can point to cases where it doesn't work, but the version we came out with is one that is focused more on parliaments, more on bureaucracies, and that's a different approach than say the US-style bill of rights, but one that the community came out strongly in favour of. In particular, they spoke against anything like a lawyers' picnic; they were very worried about an explosion of litigation which could have occurred under other models. The model we ended up with, the modelling we've done, suggests that there will be very small if any increase in litigation.

Question — Given that human rights are in at least one view for protection of minorities who may be out of fashion, I'm surprised at the comments that the human rights set out in the legislation should be subject to revision according to the passing view. This could lead to an erosion of protection for people who might need protecting. This might in fact be an argument for entrenchment. One clause that I

would have thought there would have been general community support for would have been for a very strong and entrenched clause for just compensation where the government takes property compulsorily. Just one other thing, on the watchdog. Is it proposed that there should be a new watchdog, or is going to be assigned to the Ombudsman, or is there indeed not going to be a watchdog?

George Williams — Thank you for those questions. Yes, there is always a danger when you've got a model that can be changed that things can be wound back. It is possible the whole Charter could be repealed and individual rights wiped out. That's in the nature of parliamentary sovereignty. But I don't think it's realistic. If you look at the experience in other countries, once you have one of these instruments they tend to become very popular. Canada is a good example, which started with about fifty/fifty support for their charter in 1982. In the most recent poll, Canadian support of their charter was 85 per cent. It is politically unthinkable that it could be wound back. It is very hard for any government to explicitly say: 'We are going to take away your right to free speech, your right to privacy or other matters,' even when they construct it around targeting a particular minority. A good example is the communist referendum in Australia in 1951, which was targeted just at communists, yet it failed because when you fix upon taking rights away that people see as having more general application, it may be legally possible, but it's not politically possible. I think revision is built into the charter in a positive way, to expand the rights of protection, and also to include over time rights such as education and other matters. That's the direction I think it's likely to head in. There is a risk it won't, but as I say it's a risk that goes with the territory.

In terms of other rights, like just compensation, we looked very carefully at this and Simon Evans from the University of Melbourne gave us some very good submissions on it. He is probably the leading Australian expert on this topic. I'd have to say unfortunately the High Court jurisprudence on just compensation is an utter mess. In the end it protects you sometimes where you think people ought not to be protected and other times you ought to be protected but you're not. Property rights are so problematic in terms of how the law deals with them that it's hard to see that they're going to give you the sort of guarantee you want even though *The Castle* might suggest otherwise. *The Castle* is perhaps the perfect example, because it's exactly why you need such a guarantee; on the other hand it's the perfect example of a case that would have gone the other way if it had actually gone to the High Court. So in the end we do have a property right in there but it means governments can only acquire property where it's done in a lawful and not arbitrary fashion, but there is not a clear compensation term.

The third question is about watchdogs. That is really important and I'm glad you've also asked about that. The powers of the Ombudsman have been expanded in Victoria to take into account human rights where they relate to any complaints. There is also an expanded role for the renamed Victorian Human Rights and Equal Opportunity Commission, and what that body will do is things such as an annual report, where they will report on the state of human rights in that state from an independent perspective, a bit like what the federal body does to draw attention to this issue every year, or the Auditor-General or others do to make sure it's always on the political agenda. They've also got a role in the review of the legislation every four years, a very prominent educational role.

We've learned from the UK that it is not just education for judges or education for the community that is needed, so we've also recommended education for parliamentarians. In my experience they are one of the groups that most need education about human rights protection, so we've included them. The other thing the body will do is undertake audits of bureaucratic practices, so they will be able to look at current departmental practices. If this is at federal level, let's say with immigration, the Ombudsman's report will assess that current work against human rights standards to see if it's operating in the best way. So the watchdog's a really vital part of what we are proposing.

Question — Do you see, with the work that you've done recently with the community in Victoria, any differences in attitudes in Britain and Australia towards the judges? The reason I ask the question is that during the Thatcher years, when there was a debate in Britain about the need for a written constitution and for a bill of rights, that was often opposed by people on the left because historically the judges in Britain have not been the defenders of civil liberties and human rights. There is good empirical work that shows that in fact, over crucial issues, they have really spoken with one voice, and that was part of the reason for renegotiating the proposals in Britain and ending up with what is in fact a compromise. I'm wondering if in Australia there is that same antipathy, and whether Australians see the judiciary as potentially problematic because of the conservatism underlying Australian constitutionalism. You said right from the beginning the point was made it wasn't to be a US-style bill of rights. I'm wondering whether from a government point of view that's because a US-style bill of rights means a constitutional veto, whereas for the public it's to do with some perception about litigiousness which also all comes from all the *Law and Order* and *LA Law* that we get here. Might there be at some stage in the future more receptiveness among Australians for a constitutional bill of rights than there will ever be in Britain, because of the cultural and historical differences between the two countries?

George Williams — Thanks for that great question. I feel as if I should write a book in response. I'll answer as best I can. I should start by saying that I'm not against a constitutional bill of rights, but for me if it were to come it's a generation or more away.

You have got to go through a process whereby you get acceptance of human rights principles, work through a parliamentary sovereignty model, and then perhaps entrenchment is possible. Canada did it that way. They had a 1960 ordinary act of parliament like Victoria has got. And in 1982 they entrenched it. In 1982 they could do it because they had gone through that step first, and there was a sense that it worked, they didn't need to be scared about it, so they could move there.

I spent a fair bit of time in the UK as part of this process, as well doing my own academic work over there, and a couple of things struck me about their process. One, they are in the midst of an enormous constitutional change. The House of Lords as their final court of appeal is going, being replaced by a Supreme Court. House of Lords reform is still on the agenda there, they've got their Human Rights Act, in fact it's the biggest series of constitutional changes in the UK since the 1840's; it is that enormous. There is a sense there that almost anything is achievable. I don't think

they'll get a written constitution, but frankly it wouldn't surprise me if they did the way things are going and particularly with the integration into Europe and the potential of a European written constitution that may in the end force the Brits to have their own as well, so they are heading in that way.

The other thing that I would say about the UK Human Rights Act was that they have a real legitimacy problem with it. It was imposed by government, they did not have a community process and it really has never been owned by the community in the UK. That makes it harder for judges there, because the judges are doing something not because it's come up from the community, but because it's really just a parliamentary-imposed model and that does cause problems when judges reach controversial opinions. People don't feel as confident in those results as they might otherwise. It again reinforces to me that you've got to have a community process to bed this down rather than doing it through other ways.

In terms of how I would see these things applying in Australia, if you ask people who they trust more, judges or politicians, they would almost always say judges. But if you also asked them who they wanted to be making the final decision on contentious social and political issues, they'd say politicians. There is a bit of a disconnect between those things that needs to be worked through. In the end people feel you should leave the most contentious things within the realm of the political process, and you should not close off debate by having a constitutional veto. I think in the United States even those pro-choice people in the area of abortion would have to recognise that one of the biggest impediments to actually moving forward is the *Roe v Wade* decision. The courts have effectively taken it out of the political realm, and in the end it's not a good long-term strategy for progressive law reform to leave it to judges. Courts also change, and I think you'd also have to recognise that in Australia we do have a very conservative judiciary. Five out of the seven High Court judges were appointed by the current Howard Government. A case that I was involved in as a barrister recently gives an example of this, a case called *Plaintiff S157*. A human rights case it certainly was, but the strategy we took in the High Court was to not mention the words 'human rights' at all, because we felt that would be really counter-productive to our argument, because if the judges thought it was a human rights issue they wouldn't like it at all. This would change if we had a charter, but nonetheless if you leave these sorts of decisions to the judges you may actually get a worse outcome than you would through the political process.

Question — I have lived in Britain since I was born but I've been here now for over 40 years and I love Australia. The anomaly I see for a charter of rights is how the states can override the territories when the territories want a certain right and the states don't agree. They can just knock it off now. That is not a charter for human rights; do you understand what I'm trying to say?

George Williams — I understand, but it's not the states that can override the territories but the federal government or the federal parliament. The ACT Legislative Assembly is not a sovereign body, and there really is a second class democracy in this territory, because you don't have the same level of political say as other states do.

Question — That is what I'm on about. I think that should be put right first. The territories have been overridden. That is what I really want to be put right.

George Williams — I agree. I would like to see it put right. In the Northern Territory it's pretty easy. They can become a state through an ordinary act of the federal parliament, and that will resolve that issue in all likelihood. The ACT is in a difficult position. The likelihood is that by virtue of some High Court decisions, the ACT can never become a state, because it contains the Commonwealth seat of government. If that's the case the ACT is caught in this perpetual second class realm. The only way of getting around that would be to have a referendum and change the national constitution, which you could do, but I suspect that the ACT is just stuck unfortunately.

Question — My question stems from the last two questions. With the direction Australia is heading, with charters of rights coming out of the states and territories, do you think we have a positive forecast for that, or is it potentially flawed in the sense that we don't get all jurisdictions enacting charters of rights? Would it have been better to wait for another generation to get a national bill of rights?

George Williams — I think there is a real possibility that within the next couple of years we'll have the majority of states and territories with a charter of some kind. That will certainly be a big change, and yes, I do think the states and territories are the right place to start. Canada, before it got its 1982 constitutional instrument, had charters in the provinces first, and it worked quite well. Even if we had a national charter of rights we would still need them in the states and territories, if only because constitutionally federal laws can't deal with all state activities. There are immunities and other points that make it very difficult. In particular, no federal law can make sure that state parliamentary activities are conducted and bureaucratic activities are conducted in a way that is consistent with human rights principles. When we recognise that the states and territories tend to control police, health and education, to some extent a national bill of rights may actually miss out on some the most vital community services. So from my point of view any element or tier of government in a federal system that exercises real political power on behalf of the people ought to operate within a human rights framework, and I'm very comfortable with that starting in the states and territories.

Incumbency Dominance: an Unhealthy Trend?*

Paul Strangio

Introduction

The Australian public, whether at federal or state elections, has been a reluctant trader of government horses. It's a crude measurement tool, but nonetheless instructive to note the average length of incumbency of the last five governments (including the present incumbent) federally and in each of the states. In making this calculation, I am collapsing together sequential prime ministerships of the same partisan stripe, for example at the Commonwealth level aggregating the periods in office of the Menzies, Holt, McEwen, Gorton and McMahon Governments, and the Hawke and Keating Governments, while in quantifying the term of the current incumbent measuring their period of occupation up until the next time they are due to visit the polls. Given that on present expectations several of these governments are likely to be returned, the resulting figures have, if anything, a bias to understatement rather than inflation. The average incumbency federally is eleven years and six months, while for the states the corresponding figures are: Queensland nearly fifteen years, New South Wales a little over thirteen years, Victoria approaching eleven years, South Australia just short of eight years, and Western Australia and Tasmania trailing a little behind at roughly seven and a half years.

In other words, once elected governments are usually guaranteed tenure equivalent to at least two electoral cycles, with 'oncers' very much the exception in all jurisdictions (the only cases in the past two decades are the Field Government in Tasmania, 1989–

* This paper was presented as a lecture in the Senate Occasional Lecture Series at Parliament House, Canberra on 25 August 2006.

92, and the Borbidge Government in Queensland, 1996–98). Various factors contribute to the relatively slow rate of government alternation, including, first, the near universal employment of single member preferential electoral systems for the houses of government (the exception being Tasmania) which encourages majoritarian outcomes (that is, stable partisan majority governments); second, a remarkably durable two major party system, Labor versus non-Labor (it is no coincidence that in Victoria, where a two party system did not effectively congeal until the 1950s, the state experienced a chronically disordered local political scene in the first half of the twentieth century that was characterised by minority ministries of largely fleeting tenure); and, third, until recently, a high level of major party partisan identification among voters.

Incumbent governments have also been advantaged by other more intangible factors such as a sober, practical-minded (some would say conservative) national temperament that is sceptical of change. And, needless to say, incumbency has its built in advantages in the form of the resources, visibility and prestige that accompany office. In this lecture I want to elaborate on the advantages of incumbency to argue they have been augmented over recent decades as a result of systemic changes in governance to the extent that the playing field between governments and their oppositions is becoming unhealthily unbalanced. What makes this phenomenon all the more disturbing, I will go on to suggest, is that it is occurring in parallel with a growth in authority of those situated at the apex of executive power—a trend in itself potentially inimical to democratic governance.

Patterns of incumbency, past and present

Before turning to the contemporary setting, I should say that there have been previous eras where the political landscape has seemed to freeze over—when we have had a collection of simultaneously heavily entrenched incumbent governments, politically and electorally ascendant in their respective jurisdictions. The post-war era springs to mind, with the Menzies hegemony having coincided with the age of the so-called 'boss' premiers in the states, when the likes of Henry Bolte in Victoria, Thomas Playford in South Australia and Eric Reece in Tasmania appeared to become institutionalised in office. Indeed, juxtaposed against the post-war era, when federally and in all of the states there were examples of governments surviving for more than a decade and in some cases much longer, the contemporary political scene hardly seems sclerotic. Having said that, I think many of us today would shrink at the scenario, which became something of the norm in several states during the middle quarters of the twentieth century, where one party (or coalition of parties) effectively became the de facto party of government and its opponent(s) the permanent opposition.

What then of the present political landscape? We have at the federal level, of course, a Liberal-National Coalition government now into its second decade in office and in a strong position (despite the overblown rhetoric of the effects of the Australian Electoral Commission's proposed redistributions in New South Wales and Queensland) to extend that tenure toward fifteen years at next year's election. At the same time, the federal Coalition government is encircled by, or encircles, uniform Labor governments in the states and territories. The oldest of these is the Carr-Iemma Government in New South Wales, which predates the Howard government by one year, having come to office in March 1995. The youngest is the Rann Government in

South Australia, which came to office as a minority administration in March 2002. All of these governments, federal, state and territory, have been re-elected at least once; in fact, since early 2002 there has been an unbroken sequence of 11 elections at which governments have been re-endorsed by their publics. What is particularly striking is how incumbents have flourished in their return visits to the ballot box, most gaining rather than shedding fat.[1] Those in this category are:

- the Howard Government federally, which has increased its margin at both the 2001 and 2004 polls
- the New South Wales Carr Government increased its primary vote at both the 1999 and 2003 elections and has maintained nearly 60 per cent of the seats in the Legislative Assembly
- in Victoria at the November 2002 election, the minority Bracks Government built on Labor's substantial swing of 1999 to secure what has been described as the Victorian ALP's first genuine landslide victory in the state's history, as well as becoming the first Victorian Labor government to control the upper house
- similarly, in March 2006, the Rann Government in South Australia increased its primary vote by 8.85 per cent and in doing so went from minority status to a position of controlling nearly 60 per cent of the lower house seats
- the Gallop Government in Western Australia also followed this trend, building on its February 2001 election victory by gaining an additional 4.65 per cent of the primary vote in February 2005.

Election results in the territories have also been a bonanza for incumbents. In October 2004, the Jon Stanhope-led Labor administration increased its primary vote by over 5 per cent; while in the Northern Territory Clare Martin's progress has been still more spectacular, with her government's share of the primary vote jumping by 11.3 per cent in June 2005, increasing the ALP's seat share in the NT unicameral parliament from 52 to 72 per cent. Only in Queensland and Tasmania have the state Labor governments conceded ground in their most recent electoral outings (February 2004 and March 2006 respectively), but in each case the voting share lost was minimal and both administrations maintain commanding positions in their legislatures. In Queensland, Premier Beattie is now seeking a third term and most pundits believe Labor will be re-elected, albeit with a reduced majority.[2]

Taken together these figures clearly paint a picture of prospering incumbents. We don't have to rely solely, however, on election results to illustrate this ascendancy, or its flipside opposition desperation. Take, for example, some of the strange goings-on in relation to opposition party leaderships over recent months. In my home state of Victoria, such has been the predicament of the state Liberal Party confronted with opinion polls suggesting that the Bracks government might further add to its majority at this year's November's election, that in May not only did its leader, the hapless Robert

[1] The following election result data is drawn from the Australian Government and Politics Database, http://elections.uwa.edu.au/

[2] As it turned out, the Beattie government's share of the primary vote remained virtually steady and it emerged with only one less seat in the 89-seat Legislative Assembly than held before entering the election (Labor had conceded three seats in by-elections between the 2004 and 2006 general elections).

Doyle, fall on his sword but his demise unleashed a brief media frenzy over an (aborted) second-coming of Jeff Kennett (endorsed no less than by the normally ultra-realistic Prime Minister Howard) in which it was seriously proposed that Kennett would ride back into Spring Street and single-handedly restore the fortunes of the state Liberals, the same party he left in such a mess in 1999.[3] The second example was a tale not of the resurrection variety but of the coming man genre. Following his high profile media performances during the Beaconsfield Mine Rescue, and against the background of continuing angst about the poor poll showings of Kim Beazley, there were front page newspaper reports of a campaign emanating from the New South Wales Labor Right to accelerate AWU National Secretary Bill Shorten's entry into parliament, install him in the federal Labor leadership whereupon, according to the theory, he would vanquish all comers (Howard or Costello) at next year's federal election.[4] Notably, neither Kennett nor Shorten had a seat in parliament when being touted as would-be political saviours.

Nor are these instances of fanciful indulgence in messiah politics the only measure of the collective parlous condition of oppositions across the country. During May, the Queensland state Liberal and National parties announced their intention to merge. A bird that was never going to fly (it was predictably thwarted by the parties' federal counterparts), its proposal was widely attributed in media reports to the 'desperation' of the non-Labor parties to find some means of breaking Peter Beattie's near decade-long political dominance in Queensland.[5]

If then it is the case that incumbent governments are generally thriving in Australia today, while their oppositions languish, why is this so? The most obvious explanation for the resilience of the current batch of incumbents is their good fortune in occupying office during a period of sustained prosperity. Once more we can discern a parallel here with the post-war era, although it's worth noting that the current period of economic expansion, while not matching the growth rates achieved during the peak years of the post-war boom, is now of longer duration. The post-war boom did not gain momentum until the mid-1950s (there was Fadden's 'horror budget' of 1951) and was rudely interrupted by the credit squeeze recession of 1961. By comparison, Australia is currently enjoying an economic growth cycle that has extended for some fifteen years. While there is considerable variation in the budgetary positions of the states, the cumulative years of economic growth have generally meant that governments have had ample financial reserves from which to draw to offer sweeteners to the public, especially during election years. We need look no further than the 2002 and 2004 federal elections for evidence of this: on both occasions the Howard Government has spent prodigiously to shore up its support stocks.

Another theory that has been postulated for the stable configuration of a Liberal-National Coalition federal government surrounded by wall-to-wall state Labor governments is that Australians have become comfortable with this arrangement (the discrepancy in voting behaviour is especially stark in Queensland where the ALP holds

[3] See, for example, the *Age* 5 May 2006.

[4] See, for example, the *Daily Telegraph* 16 May 2006.

[5] See, for example, 'Coalition parties mull action against QLD merger plan', *The 7.3 Report*, 30 May 2006, transcript accessed at http://www.abc.net.au/7.30/content/2006s1651370.htm

71 per cent[6] of Legislative Assembly seats but only 21 per cent of the state's House of Representatives seats). Whether by conscious calculation or intuition, voters are hedging their bets in something of a variation of the 'split ticket' phenomenon whereby some electors, desirous of the check and balance provided by governments not controlling both houses of parliament, vote one way in the House of Representatives and another in the Senate (a notion dented but not exploded by the 2004 result). In this case, it has been hypothesised that, it is not only a matter of voters opting for a de facto method of devolving partisan political power, but that they are happy with the policy equilibrium produced when the conservative parties have stewardship of the 'big' issues of the national economy and national security while Labor governments are entrusted with (or relegated to) the 'softer' social issues of health and education at the state level.

Yet perhaps there are other systemic or institutional forces in operation that are favouring governments and disempowering oppositions that go beyond the good economic times or a new dispensation of the coalition running the nation and Labor managing the states, or for that matter the fallibilities of opposition leaders. It is to these I now wish to turn. By no means an exhaustive list, I intend to focus on three major areas.

The human armoury of incumbents

The first of these is the density of the human armoury shielding governments, by which I mean the proliferation of partisan ministerial minders or advisers at the disposal of incumbent governments. If there is a moment when the 'modern' era of Australian politics dawned and when so many of the abiding preoccupations of contemporary political discourse crystallised then it was with the election of the Whitlam Government in 1972. The social movements or cultural rights agenda was placed on the mainstream political map, while as the Whitlam experiment unravelled by 1974–75 the shift began from the Keynesian to neo-liberal paradigm of economic management. What is less often remarked is that the 1970s were a point at which a revolution in governance models also started to take shape—the emergence of the now ubiquitous political adviser class is an important part of that story. The Whitlam Government's decision to establish a rudimentary ministerial staff structure was driven, as much as by anything else, by Labor's 'suspicion of the public service elite' it regarded as 'conditioned in a policy sense by 23 years of working with the Liberal and Country Party coalition'.[7] Labor's courtiers were to provide an alternative source of policy advice to the government. By the time the Whitlam Government was defeated in 1975 its ministerial staff ranks had expanded to nearly 200, though many were seconded from within departments.[8]

From this sapling has grown a sturdy oak. The increase in numbers of ministerial staff plateaued during the Fraser era, but in a portent of another future trend Fraser concentrated his government's adviser resources in the prime minister's office. The growth in numbers of advisers was renewed during the Hawke-Keating Labor years,

6 This dipped to 66 per cent following the September 2006 Queensland state election.

7 James Walter, *The Ministers' Minders: Personal Advisers in National Government*. Melbourne, Oxford University Press, 1986, p. 52.

8 Ibid., pp. 53–4.

climbing towards 300 by the early 1990s. The Howard Government came to power pledging to cut back on ministerial staff but, in practice, has done the reverse. Recent figures indicate the number of ministerial staff is now in the vicinity of 450, with the Coalition government also employing a record number of departmental liaison officers (some 71).[9] The 100 per cent plus increase in ministerial staff since the Whitlam era is mirrored in the doubling of the number of staff employed in the prime minister's office: it was about 20 under Whitlam while Howard's private office boasts around 40 members. The cost of employing the Howard Government's ministerial and liaison staff is running at about $52 million per annum.[10]

Not only have numbers increased but the functions of ministerial staff have diversified and their authority grown. If originally conceived as 'policy wonks', they now fulfil a variety of functions including interface with the public service, media and relevant stakeholders, as well as helping to drive the strategies and tactics of permanent political campaigning. In Victoria, we recently got a glimpse into the world of one senior ministerial adviser to the premier Steve Bracks when his notebook found its way into the hands of the Liberal Party. His jottings revealed that, among other things, he was spending his time crafting tactics to improve the public presentation of government ministers during parliamentary question time, and devising plans for digging information on the private financial interests of the newly appointed opposition leader, Ted Baillieu.[11] These activities might sound rather pedestrian, but they exemplify the twin modus operandi of the ministerial staffer: that of loyal defender of, and attack dog for, the executive. Or, as one writer has evocatively described ministerial advisers, they are 'the "junk-yard attack dogs" of the political system: the hard men and the hit men'.[12]

In the aftermath of the 2001 Children Overboard Affair, a raft of literature was published lamenting the lack of accountability of ministerial advisers (disquiet had been sharpened by the Howard Government's decision to block ministerial staffers from appearing before the Senate Select Committee inquiry into the affair).[13] Those concerns are well founded and in that context we should welcome the various recommendations that have been proposed for improved scrutiny of ministerial staff activity. The conventional argument that these private office staffers are accountable to the parliament and ultimately the people via their minister is unsustainable, given their burgeoning ranks, the enhanced authority they enjoy and evidence their actions are increasingly autonomous of close ministerial oversight. Yet, while suggestions for the implementation of a code of conduct and associated accountability mechanisms are important, greater accountability will not in itself address the growing density of ministerial advisers and the fact that their proliferation and expanding activities is potentially arming incumbent governments with a distinct advantage in firepower over oppositions (as well as shielding executives from other institutions we rely upon to maintain a check on government). For instance, while the Howard Government has a

9 Ibid., ch. 4; *Age* 25 June 2006.

10 *Age* 25 June 2006. See also Megan Kimber, 'Ministerial Advisers: Guardians or Usurpers of Responsible Government?' Refereed Paper presented to the Australasian Political Studies Association Conference, University of Adelaide, 2004.

11 *Age* 16 June 2006.

12 Patrick Weller, *Don't Tell the Prime Minister*. Melbourne, Scribe Publications, 2002, p. 72.

13 For a good summary see Kimber, 'Ministerial Advisers', op. cit.

small army of 450 advisers, the Labor opposition has, by comparison, about 90 staff allocated to it under the Members of Parliament Staff Act.[14] That is, a ratio of five to one. Another example of imbalance (and here I again turn to Victoria) is that, according to figures recently cited by the *Age*'s state politics editor Paul Austin, the Bracks Government's media unit is 22-strong, whereas there are only about 18 journalists, print and electronic, reporting Spring Street politics.[15] In short, the government's media minders outnumber the press gallery.

Asymmetry in non-human resources

My second point relates to the substantial and growing financial resources that incumbent governments are able to exploit in promoting their policies and programs to the broad community and in a targeted fashion within individual electorates. In a replica of the refrain regarding ministerial advisers, over recent years political oppositions have continually banged the table about the urgent requirement for curtailing the amount of taxpayer money devoted to government advertising and insisted that there ought to be stricter regulation of that advertising. Once in office, however, the major parties have shown little will to follow through on such pre-election high dudgeon. As opposition leader in the mid-1990s, John Howard pledged that the Liberal Party would instigate tough guidelines for government advertising, including a requirement that campaigns be vetted by the Auditor-General. Those strict guidelines never materialised. In 1998 the Australian National Audit Office developed a set of guidelines for government advertising but they have not been adopted; while the Coalition Government also ignored the findings of a 2005 Senate Committee inquiry into Commonwealth government advertising that recommended tighter controls through the auspices of the Auditor-General.[16]

Meanwhile, the Howard Government has presided over a growth in government advertising, and in doing so continued a trend evident under its Labor predecessors. In another parallel with what occurred during the Keating prime ministership, the past decade has witnessed a series of sharp spikes in government advertising prior to elections: in 1998, 2001 and 2004.[17] Furthermore, we look set for another pre-election splurge next year. At Senate Estimates Committee hearings in May it was revealed that at least $250 million had been allocated in the 2006/07 Budget for government advertising campaigns, with the lion share of that spending timed for the lead up to the 2007 election.[18] Such a level of expenditure would make it the biggest year on record for Commonwealth government advertising spending exceeding 2000/01, a year in

[14] *Age* 25 June 2006.

[15] Paul Austin, State Political Editor of the *Age*, addressing the Victorian Parliamentary Internship program, 4 August 2006, Parliament House, Victoria.

[16] Sally Young, *The Persuaders: Inside the Hidden Machine of Political Advertising.* Melbourne, Pluto Press Australia, 2004, p. 125; Colin A. Hughes and Brian Costar, *Limiting Democracy: the Erosion of Electoral Rights in Australia.* Sydney, UNSW Press, 2006, p. 63; 'Federal government advertising 2004–05', *Research Note*, No. 2, 2006–07, 20 July 2006, Parliamentary Library, accessed http://www.aph.gov.au/library/pubs/rn2006-07/07rn02.htm

[17] 'Federal government advertising', *Research Note*, No. 62, 21 June 2004, Parliamentary Library, Department of Parliamentary Services; 'Federal government advertising 2004-05'. op.cit.

[18] '250 million and counting—Estimates reveal pre-election government advertising binge', Media Release—Australian Labor Party, Kelvin Thompson, Shadow Minister for Public Accountability, 24 May 2006. Also see *Age* 24 May 2006.

which the Commonwealth government had the dubious distinction of being the top spending advertiser in the country, eclipsing the nation's biggest commercial giants.

It is telling that, when the Coalition's projected government advertising expenditure for 2006/07 came under fire from the Beazley opposition, the Liberal's Finance Minister Senator Nick Minchin retorted that Labor governments were engaged in their own advertising sprees in the states (a you-tooism defence that the then Special Minister for State, Senator Eric Abetz, also resorted to when the Coalition's government advertising attracted public criticism before the 2001 federal election).[19] The Liberal senators have a point. According to University of Melbourne political scientist Sally Young, state governments collectively spent an estimated $423 million on government advertising in 2001. Moreover, among the worst offenders were the Labor governments in New South Wales and Victoria, despite their leaders having promised to rein in this growth industry before being elected to power.[20] That there exists this consistent yawning chasm between what political parties say they will do about government advertising when in opposition and their behaviour once in office is no mystery. Quite simply, it is a case of being unable to resist one of the prime spoils of incumbency. To quote Young: 'Government advertising has become one of the greatest benefits of incumbency … Both federal and state governments have used their incumbency advantage to mount massive, publicly funded "government information" campaigns'.[21] While we may argue about the efficacy of some of those campaigns, the fact that governments of all persuasion have succumbed to the practice, suggests the major parties are in no doubt about the political salience of government advertising and that it does deliver a significant edge over challengers.

Incumbents (and here I am speaking specifically about the situation that applies federally) are also the chief beneficiaries of the generous and growing postage and printing entitlements provided to members of parliament. In 2005, the maximum postage allowance for members of the House of Representatives was increased from a little over $4 million per annum to in excess of $6.5 million per annum, meaning that over a three-year term the total available pool is nearly $20 million or the equivalent to an average maximum allowance of $44 042 per annum for each member.[22] If the Howard Government gets its way, the printing entitlements for House of Representatives MPs is also about to be substantially raised. In 2001, the government introduced a so-called printing allowance 'cap' of $125 000 per annum for each member, that had the effect, intended or otherwise, of giving license to a surge in printing expenditure.[23] Two years later, the Senate stymied an attempt by the Coalition to inflate the cap to $150 000 per annum. With that barrier now effectively removed, the government has not only moved to proceed with the increase, but to also permit MPs to roll over 45 per cent of their unspent entitlement, creating a scenario in which in the 2007 election year a member will have at their disposal as much as $217 500 for

19 *Age* 24 May 2006; 'Government advertising in question', *Lateline*, ABC Television, 18 June 2001, http://www.abc.net.au/lateline/stories/s314955.htm

20 Young, op. cit., pp. 122 and 128–9.

21 Ibid., pp. 123–4.

22 *Commonwealth Parliamentary Debates* (*CPD*), House of Representatives, 17 August 2006, pp. 91–2, accessed http://www.aph.gov.au/hansard/reps/dailys/dr170806.pdf; Hughes and Costar, *Limiting Democracy*, op. cit., p. 63.

23 Young, op. cit., p. 74.

printing expenses.[24] The upward spiral in postage and printing entitlements has coincided with the availability of new technologies enabling electorate offices to more effectively exploit those funds for direct mail-out campaigns within constituencies. While direct mail campaigning remains relatively unobtrusive compared to electronic media advertising, party insiders and close observers of politics concur that it is an increasingly important (permanent) campaign tool—a tool which also relies on electorate profiling information that the major parties are collecting on their databases.

The relevant point here is that incumbents are best situated to pursue these campaigns courtesy of their generous postage and printing allowances (as well as being best placed to compile information on constituents to feed into party databases and to utilise those databases through the human and technological resources in electorate offices). When the increased postage allowance was announced in mid-2005, the NSW Labor MP Daryl Melham pointed out that, because of the Coalition's large preponderance of members in Queensland, the increased allowances would translate into an extra $947 354 per annum for government MPs compared to $274 914 for opposition members.[25] A similarly disproportionate effect will flow from the move to raise printing entitlements. To put it another way, the advantage of these public-funded expenses goes to all sitting MPs but that advantage compounds for the government, especially where its electoral ascendancy is most pronounced. The principle seems to be: to those who have more will be given.

The collapse of mass political parties

The imbalance in resources, human and financial, available to governments and oppositions is exacerbated by the collapse of 'mass' participatory parties in any meaningful sense. This is the third systemic factor to which I wish to give attention. There was a time when the major parties in Australia resembled social movements; they had a life force and raison d'être transcending the objective of winning and holding executive office. Those days are all but gone, the parties dying from the head down. It is a crisis afflicting both of the major parties, Labor and Liberal, though it is the travails of the former that over recent years have been the subject of the most intense self-analysis (as one of my Monash University colleagues Professor Jim Walter recently observed, the ALP has spawned a veritable 'cottage industry' of books devoted to its problems since 1996, most written by present and former Labor parliamentarians[26]). Membership figures do tell a sorry story for Labor. While its federal structure makes it difficult to accurately gauge the party's nation-wide membership, informed estimates put it at around 40–50 000, which is a far cry from its mid-twentieth century peak of some quarter of a million) and a figure rendered still more dismal by assertions by party elders that, if one subtracts the stackees, the 'legitimate' rank-and-file figure is closer to

[24] *Commonwealth Parliamentary Debates* (*CPD*), House of Representatives, 17 August 2006, pp. 91–2, accessed http://www.aph.gov.au/hansard/reps/dailys/dr170806.pdf

[25] Ibid., 15 June 2005, pp. 162–4, accessed http://www.aph.gov.au/hansard/reps/dailys/dr150605.pdf

[26] A recent example is Barry Jones (ed.), *Coming to the Party: Where to Next for Labor?* Carlton, Vic., Melbourne University Press, 2006.

20 per cent of that number (about 8–10 000).[27] This collapse in membership has left the ALP increasingly vulnerable to manipulation by factional or feudal warlords, unrepresentative of the wider society, short on ideas and with attenuated capacity for creative policy-making, and dominated by a so-called political class or nomenclature.

While the ALP has loomed largest in contemporary tales of political party dysfunction, neither are things particularly rosy in the Liberal garden. For instance, a recent *Four Corners* investigation into the affairs of the NSW Liberal Division showed that it too is suffering a contracting base—a former president claimed its membership had fallen from some 40 000 members in the mid-1970s to around 15 000 of which only about 3000 or 20 per cent were 'active or non-stacked' (a proportion that corresponds with the estimate of nominal/non-legitimate versus legitimate members in the ALP).[28] The same program documented the fierce factional struggle between moderates and the hard right in the NSW Liberal Party, while its Victoria counterpart has experienced a long and debilitating rivalry between the Michael Kroger/Jeff Kennett camps. Still on the Liberal Party, it is interesting to note that Wayne Errington and Peter Van Onselen, otherwise largely sympathetically disposed putative biographers of John Howard, recently identified as a major oversight of the Howard prime ministership that 'he has not lifted a finger' to reform the Liberal Party's weak structure and predicted this will be recipe for the party to 'flounder once again when next in opposition'.[29]

And therein lies my point. The infirm condition of the major parties is not so much a problem when they are in office. Indeed, it can be an advantage with few pesky members to call governments to account or harass them about departures from party doctrine. Moreover, when in government, parties are propped up by public infrastructure. It is when deprived of that apparatus upon losing office that their fragilities are fully exposed. In other words, left to their own devices, they have little in the way of human resources (nor increasingly of an 'embracing ideology'[30]) to sustain them or upon which to draw for renewal. Accordingly, parties are vulnerable to freefall in opposition as happened to the Liberals between 1993 and 1996 and has been Labor's fate since 1996. Thus I would suggest the hollowing out of the major parties and the fact that executive office has become their *sin qua non* to the exclusion of much else is another factor skewing the political playing field in favour of incumbents and disabling oppositions. Paul Kelly neatly summed up this point in his 2005 Cunningham Lecture:

> The major parties are weak, beset with falling membership, decline of voter loyalty and ideological confusions. In oppositions these weaknesses are crippling … The purpose of these parties now is to provide a structure and a leader to capture executive power. Without executive power, they look non-viable. In government, weakness

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27 Former New South Wales Labor government minister Rodney Cavalier has offered a still direr analysis of the state of the ALP's grass roots. See, for example, 'Labor in Crisis', *Background Briefing*, ABC Radio National, 5 February 2006: http://www.abc.net.au/rn/talks/bbing/stories/s1560765.htm

28 'The Right Stuff', *Four Corners*, ABC Television, 17 July 2006: http://www.abc.net.au/4corners/content/2006/s1688866.htm

29 *Age* 12 July 2006.

30 Rodney Cavalier, 'Could Chifley Win Labor Preselection Today?' in Jones (ed.), 2006, op. cit., p. 62.

> becomes strength, demoralisation becomes empowerment and a modest leader becomes a giant killer.[31]

Prime-ministerial dominance

Kelly's observation about leaders metamorphosing into 'giant killers' once surrounded by the trappings of office provides a convenient bridge to my final point. I have argued that the advantages of incumbency are being buttressed by systemic forces operating in the political system, but this is also occurring in tandem with what some of the most respected observers of Australian politics such as Paul Kelly, Ian McAllister from the Australian National University and James Walter have identified as a trend towards greater concentration of authority in executive governments, and more particularly, in the office of prime ministers (and by extension that of premiers and chief ministers).[32]

According to these writers, this centralising of power is itself a product of evolving patterns of governance and related institutional trends (indeed, in several cases these trends overlap with the forces that I have suggested are bolstering incumbent governments). Thus, for example, reforms to the public service of recent decades designed to make the bureaucracy more responsive to the government of the day have enhanced the capacity of the executive to dictate and drive policy agendas, while the proliferation and entrenchment of a like-minded adviser class (densest in and around the prime minister's office) is another development funnelling power to the top of the executive as well as potentially choking off alternative ideas to governments. Another factor implicated in this trend towards hyper-powerful executive leaders is the hollowing out of the major political parties that once constrained parliamentarians and the related fact that, against the background of the decline of mass participatory political parties, leadership preferment has become all the more important to the advancement of the career paths of subordinates. In turn, dwindling levels of voter attachment to, or partisan identification with, the major parties has meant leaders have become an increasingly significant agent for mobilising voter support. As the major parties lose ideological coherence, leaders became a surrogate for party identity and ethos: they are their chief marketing weapon. Nor should we forget, as one senior Labor shadow minister reminded me when I wrote an article discussing these themes for the Melbourne *Age* recently, that the media is a willing accomplice in the presidentialisation of our political system by routinely concentrating on the utterances of leaders to the exclusion of much else.

Conclusion

To conclude: it could well be that the current period of incumbent ascendancy is a passing trend. A downturn in the economy or some unanticipated catalyst for a major

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[31] Paul Kelly, *Re-thinking Australian Governance: the Howard Legacy*. Cunningham Lecture 2005, Occasional Paper Series 4/2005, Canberra, Academy of Social Sciences in Australia, 2005, p. 3.

[32] Ibid,; Ian McAllister, 'Political Leaders in Westminster Systems' (draft), in Technical Report Seminars, Political Science Program, Research School of Social Sciences, Australian National University, at http://eprints.anu.edu.au/archive/00002580/; James Walter, 'Why Howard goes too far: institutional change and the renaissance of groupthink', Refereed paper to the Australasian Political Studies Association Conference, University of Adelaide, 29 September–1 October 2004.

shift in the voting public's mood may thaw the currently frozen-over political map. Even so, the benefits of incumbents that I have outlined in this lecture, when combined with what Paul Kelly has dubbed the trend to 'prime ministerial governance', or what James Walter calls prime minister 'predominance', are troubling. If incumbents gain too many advantages over their challengers, we have a situation that lends itself to the institutionalisation of governments. Equally, if too much power is concentrated at the top end of governments—if leaders become too untrammelled—then this plainly compromises the notion of democratic governance. We are better served when power is held lightly, when those in whom it is entrusted are necessarily cognisant that it is a transient gift, and when its exercise is contested, mediated and checked. In the United States, the 22nd amendment to the Constitution limits a president to two terms of office, the fundamental rationale of which is that longer tenure might result in excessive concentration of power in the executive. This is not a perfect comparison I know, and no-one is suggesting that in Australia we ought to have a sunset clause for governments or indeed prime ministers. But we should be vigilant that we are not headed down a path in which our institutions and systems of governance are progressively being tilted in favour of incumbents, for once governments become impervious to challenge, we have a recipe for bad government no matter of what partisan stripe, no matter who leads them.

Question — My view on the situation is that it's been so from very beginning, this situation. Alfred Deakin, when he went to negotiate for the Australian Constitution, had a couple of observations on British government. One of them was in essence that there was a waste of talent on the opposition benches. The other thing, which he admired, was the basic retention of the feudal and aristocratic nature of the government institutions, and that's basically what we've inherited. I would see that really in essence we still have the kingship feudal framework that was there before and that is why it comes as no surprise to me what we have at the moment. Given that situation I was wondering if you were aware of any alternatives.

Paul Strangio — I don't think we've quite grasped the ramifications of things like the change to the political parties and what consequences that has for our political system. There is a lot of political science work about the march from mass political parties to electorate professional parties to cartel parties, but the parties remain absolutely essential to how a political system works and should operate. The parties are in crisis and yet they remain central to the process. I'm not here today to provide a map forward for great institutional change but I do think that there are changes occurring but we haven't quite grasped the consequence of them.

Question — Can you see any benefits to the current arrangement? It seems to me that you do get a check and balance. You get a very strong political party at one level of

government and you get a very strong political party at the other level of government. You get party operatives gravitating towards the party in power so they get fulfilling, challenging opportunities, they get to maximise their input. You get a pluralistic debate happening, you get both parties getting represented in the media whether in national broadsheets or what not. I noticed that when Howard first got into power the COAG meetings seemed to go nowhere. Huge efforts were put into getting all the premiers and the prime minister together, and Jeff Kennett led a walkout. Now they're all Labor premiers they have these very cordial meetings where they slap each other on the back and they come out with announcement after announcement after announcement of things they're going to achieve and things they have achieved. I'm wondering if you can see any advantages to the current system, or is it all negative?

Paul Strangio — I don't see it as all negative. I think the Australian voting public, whether intuitively or consciously, sees some advantages in that sort of partisan check that's occurring with Labor and the states and federally with the coalition parties. What I would say is that clearly for the Labor Party, they would trade the states for the commonwealth, I would imagine, any day. It does raise all sorts of issues too about the convergence of their ideologies. If you go back to the post-war era, when Menzies was in operation, Bolte often felt constrained, and he would have liked to bang the table even more as a state parochial, but because he had a Liberal prime minister there was some constraint. So it has always been the case that actually, oddly enough, the states and the commonwealth sometimes work better when there are parties, governments, of different persuasion.

Question — There isn't that much difference between the political parties. If you've got good functioning political parties, governments can govern at the state level and governments can govern at the federal level. We've gone through the worst drought in a century, we've gone through an Asian financial crisis, we're going through an oil shock at the moment. For the first time ever in Australia's history America went into recession and Australia didn't follow. Things are working pretty well in the country; we have the longest period of economic growth out of any country in the world. Basically things are working pretty well. There seems to be an upside to it all.

Paul Strangio — Perhaps, but I would still come to my fundamental point, that I think it's unhealthy when governments last too long. We have to be concerned when governments start to get institutionalised in office, and I think that there is a point at which when that occurs, the system benefits from being broken open occasionally. Creative chaos.

Question — What is the alternative for a government to lose? It seems from what you've said that from the factors which are behind strengthening incumbency, external factors such as the state of the economy and those sort of things, are the ones that are going to undermine the security of a government. In fact it seems to me that the dictum: 'Governments lose, oppositions don't win' is even truer that it ever was. One wonders what you see as the factors for: 'It's time for a change.'

Paul Strangio — Mark Latham said around the time of the launch of his *Diaries* that in reality federal Labor's best chance was to hope like hell for a recession or something that cracks the current stability. But the issue is the natural tendency of government incumbents to grab more power over time, to insulate and institutionalise

themselves in office. Those factors that I've referred to, those institutional factors, are the ones that I think we need to be most concerned about. Incumbents are tilting the playing field towards themselves as they always have done. We need to be mindful of those things, and they need to be contested. They are the things we need to be conscious about, not hoping for an economic downturn for those who don't want the Howard government to continue. That's not really the argument. It is about those other things I was discussing.

Question — I just wanted to make a comment. My grandfather was one of the founders of the Liberal Party. He's been dead 50 years and I guess I have a dialogue with grandfather from time to time when I see what's happening at the moment, in terms of the political scene today. The Nobel Prize laureate Jose Saramago has written a book called *Seeing*. It's a novel, a work of fiction, in which he asks: 'What is democracy?' I think that's perhaps a question in terms of the whole political scene at the moment. It's an interesting read.

Question — Would you say that John Howard really has been lucky? He was pretty shaky before *Tampa* came along and he was pretty shaky before Latham self-destructed.

Paul Strangio — All prime ministers, all governments will always rely on elements of good fortune to maintain them in office. John Howard went close to being a oncer. The fact that he went close to being a oncer has often been suggested as a problem for the Labor Party, because they deluded themselves about how easy the road back into power was after 1998. No, I don't think that Howard has been just lucky. I think most people would agree he's a very astute, perhaps the most astute political leader that we've had in this nation's history. I don't know if we've quite had a political leader who's been troubled less by power. Most other prime ministers have seemed to have been worn down psychologically and even physically by the burdens of office. Office is a difficult thing; it wears out executives. In something else I have written recently I've suggested that another potential danger of executive power being concentrated in executives, and governments going on too long, is what damage it does to those in office. Paul Keating recently observed how difficult it is to preserve an 'inner soul' when you are in executive government. I'm not going to say anything about our prime minister in that regard.

Red, White and Blue, What Do They Mean to You? The Significance of Political Colours[*]

Marian Sawer[#]

The political meaning of colours is a tantalising subject, something with which we may feel very familiar, but which also includes mysteries and controversies. Colours have long been important symbols of political parties or social movements. For centuries people have worn colours to show they identify with a cause and colours have also been part of the emotional life of social movements.

When we see television coverage of election night in the United Kingdom (UK), at the declaration of the poll in different constituencies we see the candidates lining up wearing their huge campaign rosettes. They are red for Labour, yellow (gold) for the Liberal Democrats, blue for Conservatives, and green for Greens.[1] This particular alignment of colours with the political spectrum tends to be taken for granted in much of the world—leading to cognitive dissonance over recent developments in the United

[*] A lecture based on this paper was presented in the Senate Occasional Lecture Series at Parliament House, Canberra on 29 September 2006.

[#] My thanks to Merrindahl Andrew, Janette Bomford, Dorothy Broom, Jenni Craik, Nick Harrigan, Leonora Howlett, James Jupp, Claus Offe, Paul Pickering, Elizabeth Reid, Sean Scalmer, Pat Thane and David West for their advice and assistance to the survey respondents and two anonymous reviewers.

[1] Historically, however, party colours in the UK varied with the local party organisation, rather than being uniform across the country. When William Gladstone contested Newark in 1832 the local Tory colour was red and this remained a Conservative colour in other areas up into the 1960s. In the 1870s blue was a Conservative colour in Lancashire but a Liberal colour in Cheshire and Westmorland. Purple and orange were Conservative colours in Surrey and Kent, but Liberal colours in Wiltshire.

States of America (USA) where the strongholds of the (conservative) Republicans are now described as ‘red states’, while the Democrats have become blue. The discomfort caused by this seemingly arbitrary assignment of colours underlines the fairly stable meanings accumulated by political colours in much of the world. These meanings are reinforced by the stories told about them by social movements themselves—now available on numerous movement websites. These websites are the source for much of the following overview of meanings accruing to the colours red, black and green.

Red and its dangers

By the late nineteenth century red was being appropriated by the socialist movement. It was associated with the May Day processions inaugurated by the Second International in 1889 at which red flowers were worn. Red had become a symbol of radicalism in the course of the French revolution. Apart from the red ‘liberty caps’, the red flag also became the symbol of radicalism and revolt. In 1789 the National Assembly, increasingly worried about mob violence, had prescribed the hoisting of a red flag as the signal that martial law had been declared. Two years later La Fayette raised it in an incident on the Champs de Mars, which ended with his troops firing on a pro-republican crowd. By 1792 the red flag was appropriated by demonstrators, who enscribed their flag ‘Martial law of the people against the revolt of the court’.[2] The symbol of state power had become the symbol of popular protest and was seen again in the upheavals of 1830 and 1848.

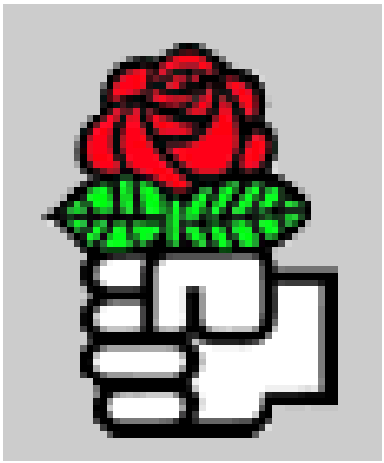
By the time of the Paris Commune in 1871 red was used not only for liberty caps and the radical flag but also for ribbons and armbands, and competed with the tricolour of the moderate republicans. After the bloody suppression of the Commune, Christian and radical iconography became merged in the meaning of the flag that ‘shrouded oft our martyred dead’.[3] The red flag became an emotive symbol, to the extent that its public display was banned in Australia by regulation under the War Precautions Act in 1918. One of those arrested in Brisbane for carrying the red flag in 1919 told the court that he was a socialist and carried the red flag because he believed it was the flag of the working class and symbolic of the ideals he held.[4] ‘Red’ was to become shorthand for the international communist movement as well as for social democrats who sang *The Red Flag* at party conferences.

Flag of the Portuguese Socialist Party

[2] J.A. Leith, ‘The War of Images Surrounding the Commune’, in J. Leith (ed.), *Images of the Commune*. Montreal, McGill-Queen’s University Press, 1978, p. 119.

[3] J. Connell, ‘The Red Flag’, verse 1, line 2.

[4] G. Souter, *Lion and Kangaroo: the Initiation of Australia*. Second edition, Melbourne, Text Publishing, 2000, p. 372.



Socialist International logo

Today, modernising labour parties tend to shy away from the use of red unless in the form of the red rose of the Socialist International rather than the blood-soaked flag of popular revolt. The red rose has long been a symbol of the Swedish Social Democrats and has a range of emotional resonances. These were evoked in the 1911 James Oppenheim poem *Bread and Roses*, which in turn was inspired by banners carried by striking women textile workers.

In 1969 a member of the French Socialist Party commissioned the symbol of a clenched fist holding a red rose. This interesting combination of symbols was soon adopted as the official logo of the Socialist International and by some of its members.

In the UK the Labour Party adopted its own new logo, the red rose without the radical fist, in time for its 1986 conference.

UK Labour logo, 1986

Party of European Socialists logo

The Socialist Group in the European Parliament also uses the red rose without the fist, combining it instead with the European Union's ring of stars.

Some have interpreted the replacement of the fist by the rose in the iconography of left parties as an attempt to move away from masculine imagery in the context of the increasing role of women in the Left. The period of the transition from one symbol to another was also the period when the traditional gender gap between male and female support for the Left was closing, and indeed, Left parties in Europe were starting to attract more support from women than from men.[5]

While this lecture will not go into the colour blue, which is usually associated with conservative parties, I shall include here the UK Conservative party logo, the liberty torch borrowed from the Statue of Liberty in New York.

UK Conservative Party logo, 1987

This logo was adopted by Margaret Thatcher in 1987 in response to the Labour Party's rose. It was reworked in 2004 by Maurice Saatchi to give the hand holding the torch a muscular arm to signify 'our determination to roll up our sleeves and get things done.'[6]

[5] R. Inglehart and P. Norris, *Rising Tide: Gender Equality and Cultural Change around the World*. Cambridge, England, Cambridge University Press, 2003, Chapter 4.

[6] Conservative Party (UK), *Conservative Identity Guidelines*, viewed 17 October 2006, at www.conservatives.com

Conservative Party logo, 2004

The red, white and blue, that echo the colours of the Union Jack, are intended to reassert the fact that 'we are the only major national party which will defend Britain's sovereignty'[7]—meaning against further integration into Europe. In both the UK and New Zealand, parties now need to register their logos with the Electoral Commission and the logos appear on ballot papers.

In Australia and New Zealand both labour and conservative parties now directly use the national flag and its colours in their iconography. Appeals to patriotism are seen to trump appeals to socialist solidarity.

ALP logo, 1979

In 1995 the Australian Labor Party changed the waving national flag logo it had used since 1979. The logo now has a new version of the Southern Cross and excludes other elements of the national flag such as the canton featuring the British Union Jack.

7 Ibid.

ALP logo, 1995

But while in some countries political parties on both left and right now use the national flag or its colours to help recruit patriotic emotion, in France the *tricoleur* is regarded as too emotive to be used for partisan purposes. The combination of the colours red, white and blue in election posters is forbidden under French electoral law.[8]

Meanings of black

While red was becoming an emotive signifier of the socialist movement in Europe and beyond, black was developing its own political history, in part arising from the conflict between Marx and Bakunin in the First International. The first reports of black flags being flown at anarchist demonstrations come from the early 1880s, when former Communard Louise Michel is said to have flown it at a demonstration in Paris. Soon after it was flown by anarchists in Chicago. The anarchist army of Nestor Makhno marched under black flags in the Ukraine during the Russian Civil War and, famously, black flags were last flown en masse in Russia at the funeral of Peter Kropotkin in Moscow in 1921. In recent years black has been worn and black flags carried by the anarchist and autonomist contingents involved in anti-globalisation protests both in northern Europe and in the USA.

The anarchist symbol of a circle surrounding an *A* is now regarded as one of the most widely recognised political symbols.[9]

8 *Code Electoral*, France, Article R.27.

9 P. Peterson, 'Flag, torch and fist: the symbols of anarchism', *Freedom*, Vol. 48, no. 11, p. 8.

anarchist symbol

Another widely recognised symbol using white and black is the Campaign for Nuclear Disarmament (CND) symbol, designed by artist and designer Gerald Holtom in 1958. Although originally designed for the British CND, it became used more generally around the world as a peace symbol, being easier to draw than Picasso's dove.[10]

CND badges

The CND symbol is based on the semaphore signals for the initials N and D, but also signifies a human being in an attitude of despair, with arms stretched outwards and downwards as in Goya's image of a man before a firing squad. The first CND badges were black on white ceramic and came with an explanation that the fired pottery badges would be one of the human artefacts that would survive a nuclear explosion.

Various meanings have accumulated around black as the anarchist colour. In particular it has been interpreted as the colour of nihilism, signifying the negation of the flags of the nation state and outrage at the slaughter perpetrated in their name.[11] It

[10] A history of the Campaign for Nuclear Disarmament (CND) logo, viewed 17 September 2006, at http://www.scientium.com/diagon_alley/archival/reference_asides/peace_symbol.htm.

[11] J. Wehling, 'Anarchism and the History of the Black Flag', 1995, viewed 15 October 2004, at www.spunk.org/library/intro/sp001492/blackflg.html

is a denial of the traditional 'call to the colours' and the duping and regimenting of the masses through false patriotic emotions. The historical association between anarchism and socialism has also resulted in the use of flags combining red and black. The anarcho-syndicalist movement in Spain has used red and black flags since before World War I and they have also been adopted in Latin American countries with close links to Spain, for example, by the Sandinistas in Nicaragua.

But black had also become the colour of the fascist movement with the march on Rome of Mussolini's Blackshirts in 1922—as distinct from the Redshirts who participated in Garibaldi's campaigns in the previous century. This appropriation completely subverted the political meaning of black. From being a symbol of protest against the use of national colours to arouse false patriotism and send citizen armies to the slaughter, it became a symbol of ultra-nationalism and gender hierarchy. In 1926 the Secretary-General of the Italian Fascist Party sent a circular letter to women's fascist organisations forbidding them to wear black shirts because they were a symbol of combat. In the UK the British Union of Fascists followed Mussolini in adopting black shirts, leading to the banning of the wearing of political uniforms under the *Public Order Act 1936*. Black had become the colour both of anarchism and of fascism, political ideologies at opposite ends of the spectrum in terms of attitudes towards political authority. In different contexts, black is also the colour associated with the robes of Christian clerics and is the colour, for example, of the German Christian Democratic Party.

Shades of green

Exemplifying the diverse meanings carried by political colours in different cultural, national and historical contexts is the colour green. Green is the colour of Islam and today of Islamic political parties. Historically green was a colour of radicalism in Britain and was associated with the Levellers in the seventeenth century and the Chartists in the nineteenth century. The Chartists also borrowed the red cap of liberty from the French revolution.[12] Green has been the colour of Irish nationalism ('They are hanging men and women for the wearing of the green') but took on new meaning with the rise of the environmental movement in the twentieth century. Its use to represent the cause of the environment has links with its traditional Christian meaning of growth, life and hope. Around the world it has been appropriated as the name of environmental parties (Die Grünen or The Greens)—helping them demarcate themselves from old-style sectional politics by abandoning the word 'party'.

Green has become symbolic shorthand for a whole set of values concerning both the environment and the nature of politics.[13] This symbolic shorthand may have had its origins in the 'green bans' imposed by the Builders' Labourers' Federation on development projects in Sydney in the early 1970s. The German activist Petra Kelly was inspired by the green bans during a visit to Australia.[14] The German

[12] P. Pickering, 'Class without words: symbolic communication in the Chartist Movement', *Past and Present*, Vol. 112, no. 1, 1986, pp. 144–162.

[13] It should be noted that the term 'green' had also been incorporated in the name of the organisation 'greenpeace', founded in 1971.

[14] Senator Bob Brown, *Commonwealth Parliamentary Debates*, Senate, 21 March 1997, p. 2189.

environmentalists went on to adopt the name ‘Greens’ when they contested their first national level election in 1980. In order to break though the five per cent threshold for representation in the Bundestag the Greens presented themselves as encompassing many shades of green, including farmers as well as deeper green fundamentalists. The world’s first environmental parties, such as those formed in Tasmania and New Zealand in 1972 and in the UK in 1973 had not used the word ‘green’ in their names.

The role of ribbons

The seventeenth century English Levellers referred to above wore sea-green ribbons and coloured ribbons have been handed out by political parties to their supporters as long as political parties have existed.

The famous sequence of paintings by William Hogarth, *An Election*, on the subject of the 1754 election in Oxfordshire, depicts the blue ribbons of the Tories and the orange ribbons of the Whigs being worn on hats and clothes. But ribbons have also been associated with modern social movements, signalling the political allegiance and values of the wearer.

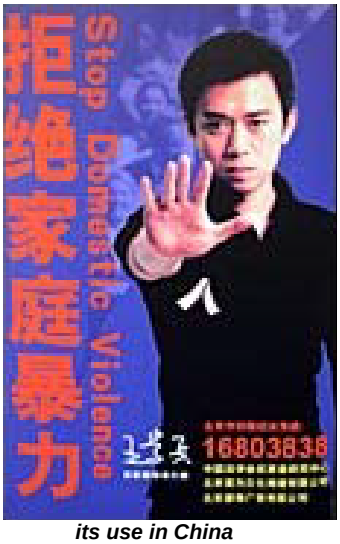
In the nineteenth century white ribbons were worn by the Woman’s Christian Temperance Union (WCTU), an important player in the early suffrage victories in Australia, Canada and New Zealand. The WCTU in New Zealand started publishing its journal *White Ribbon* in 1895, and the same or similar titles were used for WCTU journals in other countries and internationally.

WCTU white ribbon

In Canada, Louise McKinney, a WCTU leader who often wore the white ribbon, became the first woman elected to a legislature in the British Empire when she was elected to the Alberta legislature in 1917. Later she was involved in the ‘person’s case’ of 1929, which finally decided women’s right to be appointed to the Canadian Senate. When she died, over a hundred WCTU women lined up at the graveside to deposit white ribbons on the casket.

Today the white ribbon is used to mark the International Day for the Elimination of Violence against Women on 25 November. The white ribbon campaign was initiated in 1991 by Toronto academic, Michael Kaufman, and by Jack Layton, now Leader of the New Democratic Party. The white ribbon was adopted as a symbol of men’s opposition to violence and was soon taken up by men’s groups all over Canada as well as internationally.

white ribbon logo



its use in China

In Australia the 2005 white ribbon campaign was launched by the federal Labor Leader, Kim Beazley, and the Labor Party provided white ribbons for its parliamentarians and party members to wear.

The white ribbons worn by 'men working to end violence against women' have significant resonances with the earlier WCTU campaigns. Domestic violence or wife-beating, as it was then known, was one of the catalysts of the temperance campaigning of the WCTU, which saw alcohol as the major cause of male violence against women.

As I have said, the wearing of coloured ribbons to signal political allegiance was already popular in the eighteenth century, but it seems to have undergone a general revival in 1991. This year saw not only the start of the white ribbon campaign but also of the wearing of red ribbons to signify support for those living with and affected by HIV/AIDS.

The symbol was devised by painter, Frank Moore, of the Visual AIDS Artists Caucus in New York State. He saw red as signifying blood and danger and the tails pointing down as life flowing away. It was worn by British actor, Jeremy Irons, at the Tony awards in 1991 and is now worn around the world on International AIDS Day on 1 December each year. The success of these campaigns led to the adoption of coloured ribbons for many other causes.

AIDS Ribbon

The colours of Indigenous and other social movements

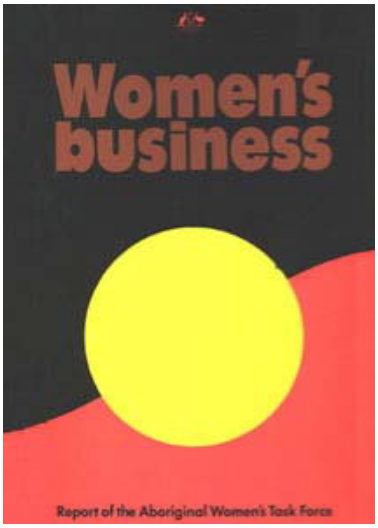
Colours have also been important for contemporary Indigenous movements. In Australia the red, yellow and black of the Aboriginal flag designed by Harold Thomas became a major part of the assertion of a collective Aboriginal identity. The black symbolised the Aboriginal people and the red, the land and Aboriginal relationship to it. The yellow sun was the giver of life. The flag was first flown in Adelaide in 1971 and in the following year at the Aboriginal Tent Embassy outside Old Parliament House in Canberra. It has been flying outside Old Parliament House since the revival of the Aboriginal Tent Embassy in 1992, and indeed, became an official flag of Australia in 1995 under section 5 of the *Flags Act 1953*.

Aboriginal journalist and photographer, Brenda Croft, wrote of the emotional impact of the colours on her at the time of the bicentenary of white settlement:

> Everywhere you looked you saw the colours of red, black and yellow; and it really struck me that the Aboriginal flag was absolutely the symbol that united all Indigenous people in Australia, regardless of whether they came from traditional communities or from urban environments.[15]

Both Indigenous and non-Indigenous Australians have come to use the colours, to signify their support for a whole process of redress for historic wrongs.

In 1978 the Australian Public Service Board, for example, approved the use of the colours on Aboriginal recruitment material and they were soon used in a range of government publications.



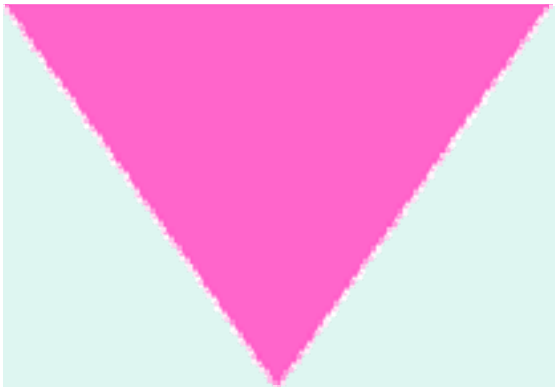
Report of the Aboriginal Women's Task Force, 1986

[15] B.L. Croft, Account of Invasion Day, 26 January 1988, *Cook's Sites* exhibition, National Library of Australia, Canberra, 16 March to 18 June 2006.

The colours have been used by all the organisations set up to promote reconciliation and were worn by many of the hundreds of thousands of Australians who participated in the Journeys of Healing or Walks for Reconciliation that took place around Australia in mid-2000. In Sydney a 'river of people' flowed for five hours across the Sydney Harbour Bridge, bearing and wearing the colours.

Another set of colours that have come to represent Black pride are the Rastafarian colours of red, gold and green, which have spread far beyond those actually professing the Rastafarian religion. The Rastafarian religion dates from the 1930s and sought to promote pride among Jamaicans in their African origins. It was popularised by reggae musician, Bob Marley, in the 1970s and is said to have about a million followers worldwide, but many more would recognise the colours, to which black is sometimes added.

The emergence of the gay liberation movement in the early 1970s saw another search for symbols of identity.



the pink triangle

The pink triangle used by the Nazis to identify homosexual prisoners in concentration camps was rediscovered in the mid-1970s and, like other symbols already mentioned, appropriated by the oppressed as part of the new politics of pride. The colour pink became a signifier of gay identity and in Sydney the lead float in the 2001 Gay and Lesbian Mardi Gras promoted the rights of gay and lesbian families under the banner 'Beyond the Pink Picket Fence'. Articles appeared in the business pages about the power of the 'pink dollar'.

Another gay symbol is the rainbow flag designed by San Francisco artist, Gilbert Baker. Originally with eight stripes, practicalities quickly led to a six-stripe version (red, orange, yellow, green, blue, violet).

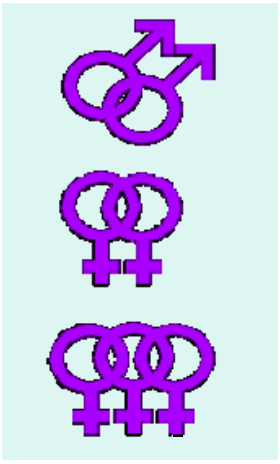
rainbow flag

When Harvey Milk, San Francisco's first gay city supervisor was assassinated at the end of 1978, there was a mobilisation of the local gay community that helped popularise the new rainbow flag. It is seen in gay pride marches internationally and is flown above the Harvey Milk Plaza in Castro Street in San Francisco.

Castro Street flag

The colours are different from those of another rainbow flag, the Buddhist flag (blue, yellow, red, white, orange), which was invented in the nineteenth century and is used during Buddhist celebrations in almost 60 countries.

The colour lavender became associated with lesbians in the 1930s in the USA. Thirty years later Betty Friedan, founder of the National Organization for Women, famously regarded lesbians as the 'lavender menace'. She believed the lesbian issue was dangerous and diversionary for the women's movement. In 1970 she refused to join other feminist leaders in donning a lavender armband to show solidarity with lesbians.[1] Other visual symbols of lesbian identity included linked female symbols and the double-headed axe, a symbol of the Greek earth goddess, Demeter. The use of such symbols has formed part of the assertion of lesbian visibility.



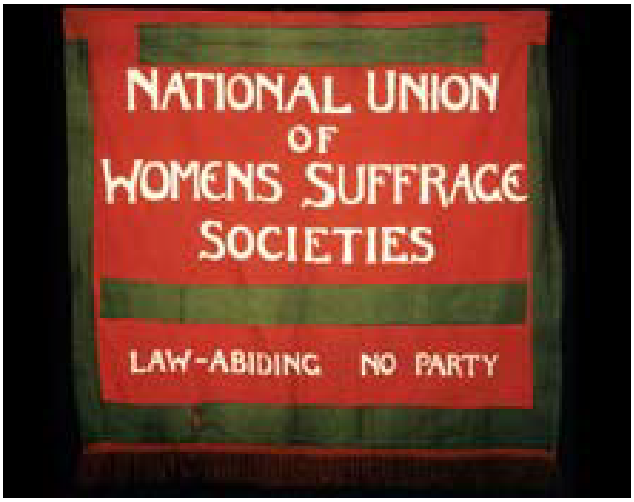
gay, lesbian and sisterhood symbols

The wearing of political colours is a significant statement of identity and/or values. Such public displays help engender an emotional unity and can be an important resource in building social movements and other campaigns. The colours may be chosen because of existing political meanings, but they also develop new meanings as they become part of the vocabulary of collective action and cross oceans and time zones. The case study that follows presents the story of how a set of political colours crossed the world and, over time, signalled both emotional solidarity and more complex themes of contestation and co-option.

The invention of women's movement colours

Green, white and purple became important colours for the women's movement in the last quarter of the twentieth century, although they were originally only the colours of one organisation in one country in the years before World War I. This case study explores how colours which originally expressed organisational identity (and rivalry) within the British suffrage movement, came to be a signifier of sisterhood and of the international women's movement.

In the UK the women's suffrage organisations all adopted distinguishing sets of colours in the first decade of the twentieth century. The largest and longest established organisation, the National Union of Women's Suffrage Societies (NUWSS) was the first to adopt identifying colours (red and white), which it did for its first big street demonstration in 1907. It later added green so its colours became red, white and green.



NUWSS colours

The following year the more militant Women's Social and Political Union (WSPU), founded by Emmeline Pankhurst, decided to adopt its own political colours to distinguish it from NUWSS.[16] The idea for the WSPU colours came from Emmeline Pethick-Lawrence. She described the colours as white for purity in public as well as private life, purple for dignity, self-reverence and self-respect, and green for hope and new life.

From the start the WSPU tricolour was a huge commercial success and manufacturers seized on the opportunity to provide anything from playing cards to bicycles, but particularly clothing, ribbons, scarves, brooches and hatpins in 'the colours'. The estimated 30 000 marchers in the 1908 WSPU demonstration wore mainly white or cream with purple, green and white accessories. Some 10 000 scarves had been sold just before the march.

WSPU colours

[16] See L. Tickner, *The Spectacle of Women: Imagery of the Suffrage Campaign*, 1907–14. London, Chatto & Windus, 1987, pp. 93–96, for the fullest account of the adoption of the WPSU colours.

Emmeline Pankhurst's daughter Christabel wrote of 'The Political Importance of the Colours', emphasising their emotional significance: 'To members of the Union the tricolour is full of meaning and they now understand to the full the devotion of a regiment to its colours.'

She contrasted the appeal to reason made in speeches to the visual appeal of the colours:

> Heralded by music, with colours flying, the dress of everyone in the ranks lending itself to the colour scheme, the procession of women marches through the streets, by this means proclaiming to the world that they have joy in their political battle and confidence of victory.[17]

She also saw the colours as compensating for media neglect—while the press might lead people to think that suffragettes had given up the fight, the public display of the colours afforded visible proof of the continuing struggle.

But despite the popularity of the WSPU's purple, green and white colours it was still the NUWSS that dominated the women's coronation procession of 1911 in which all the suffrage organisations participated. This huge procession through the streets of London was timed to coincide with the coronation of George V, for which journalists and statesmen had gathered from around the world. Journalist Henry Nevinson reported that 'it seemed as though the red, white and green flags would never cease.'[18] Nevinson was himself a WSPU supporter and carried a purple, green and white flag on horseback during this demonstration.

And these were not the only suffrage colours to be seen in such processions. The Women's Freedom League (WFL) used the colours gold, green and white and these were the colours worn by Australian Muriel Matters when she soared above the House of Commons in an airship painted with the slogan 'Votes for Women'. She scattered 56 pounds of leaflets in the colours from the airship, describing them as floating down to the people below 'like beautifully coloured birds'.[19] The WFL was one of the 'militant' suffrage organisations, but broke away from the WSPU on the issue of internal democracy (or lack of it). Significantly the WFL chose its colours through a referendum of its branches.

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17 C. Pankhurst, 'The political importance of the colours', *Votes for Women*, 7 May 1909, p. 632.

18 H. Nevinson, *Votes for Women*, 23 June 1911.

19 *Daily Mirror* 17 February 1909.

WFL colours

Other suffrage organisations, and even the National League for Opposing Women's Suffrage, each had their own unique combination of colours. Nonetheless, the WSPU colours were displayed in dramatic incidents such as when Emily Wilding Davison ran in front of the King's horse at the Derby, carrying folded WSPU flags under her coat. Davison's funeral was the occasion for a massed display of WSPU iconography in London streets, including the black draped WSPU flag and the coffin with a purple velvet pall embroidered with silver arrows, the symbol of her earlier imprisonment.

Conserving the colours

Mrs Pankhurst suspended WSPU militancy during the war, in favour of patriotic activity, supporting the conscription cause in Australia and the harsh treatment of conscientious objectors in Wales. After having started her political career as a member of the Independent Labor Party, she became increasingly identified with the Conservative Party for which she stood as a parliamentary candidate after the war. The WSPU eventually transmuted into the Suffragette Fellowship, founded in 1926. Over the next 50 years the Fellowship devoted itself to memorialising the WSPU campaign in various ways and to commemorative activities.[20] For example, each year it celebrated women's suffrage day, prisoners' day and Mrs Pankhurst's birthday.

After Mrs Pankhurst's death the Suffragette Fellowship organised a fundraising drive for various memorials of her, the most famous being a statue at Westminster. Conservative Prime Minister, Stanley Baldwin had committed himself to dedicating it before his election defeat, and unveiled it in March 1930. The Fellowship had ordered all the bunting, banners and canopy in the WSPU colours, thus ensuring the historic pre-eminence of the WSPU in the public memory of the suffrage campaign, now co-opted as part of the Conservative celebration of nation and sacrifice. The annual celebrations of Mrs Pankhurst's birthday now involved a procession after a church service and the laying of flowers and wreaths at the foot of the statue. Mrs Thatcher, as a young Conservative MP, spoke at the commemoration in 1960. In 1993 she was

[20] L.E.N. Mayhall, 'Domesticating Emmeline: representing the suffragette: 1930–1993', *NWSA Journal*, Vol. 11, no. 2, 2005, viewed 27 March 2005, at http://www.iupjournals.org/nwsa/nws11-2.html

present at the wreath-laying and then dedicated a plaque in honour of the 75th anniversary of women's suffrage.

The Suffragette Fellowship could be categorised as an 'abeyance structure'—a structure that continues during a period of social movement downturn and preserves the collective memory of the struggle and the identity and meanings associated with it.[21] This public memory was not politically innocent—the Suffragette Fellowship was ensuring it was the WSPU that was identified with the suffrage campaign, not the much larger constitutionalist movement, nor the non-violent wing of the militants. But as an abeyance structure, the Suffragette Fellowship was enshrining a particular narrative of sisterhood and of women's collective agency—the 'sisterhood is powerful' theme that was to re-emerge in the second wave. So while Conservative politicians were annexing the WSPU to a conservative narrative of British rights and freedoms, of sacrifice and reward, the Suffragette Fellowship was also preserving memories of sisterhood and political agency.

At the centre of this narrative of sisterhood were the WSPU colours. As with other important political colours, different and plausible etymologies grew up around them. Mrs Pethick-Lawrence herself contributed to the mythologising of the colours in later years and the sometimes contradictory meanings attributed to them.[22] The meaning of purple was sometimes given in the press as loyalty or courage. Later the colours were also explained as an acronym for Give (green) Women (white) the Vote (violet); this explanation turned up in government publications in Australia in the late twentieth century and was confidently repeated in women's movement newsletters:

> Ever wondered why feminists tend to turn out to special women's functions and marches etc wearing various shades of violet?
>
> The women's movement as we know it today, flowed from the suffrage movement of the late 19th century and early 20th century when women considered the right to vote was paramount in the fight to achieve their many other rights. The banners and voices cried out 'Votes for Women' and 'Give Women the Vote'.
>
> The colour violet (vote) came to represent suffrage and a renewed fight for women's rights. The combination of the colours green, white and violet represented the acronym: (Green) **Give** (white) **Women** the (Violet) **Vote.**[23]

The colours come to Australia

Australian suffragist Vida Goldstein, who first stood for the Senate in 1903, was responsible for the initial introduction of the WSPU colours into Australia. She had been in correspondence with the Pankhursts and adopted what she then thought were

[21] P. Bagguley, 'Contemporary British feminism: a social movement in abeyance?' *Social Movement Studies*, Vol. 1, No. 2, 2002, pp. 169–185.

[22] A Brisbane activist in the latter 1970s believed that purple stood for strength, white for purity and green for truth (L. Singh, 'Taking to the Streets', Museum of Brisbane, July 2006).

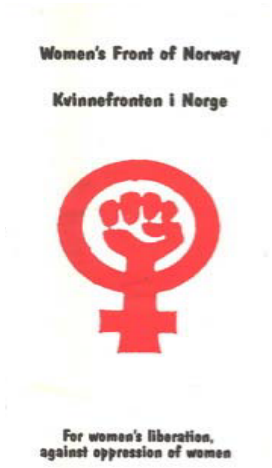
[23] This confident assertion had its origin in the NSW Department for Women website.

the WSPU colours of lavender, green and purple for the Women's Political Association in 1909, in time for her Senate campaign of 1910. She described their meaning as being lavender for the fragrance of all that is good in the past, green for growth, unfolding and development, and purple for the royalty of justice and the equal sovereignty of men and women.[24] The following year she came to the UK to campaign for the WSPU for eight months. While in London she persuaded Margaret Fisher, wife of the Australian Prime Minister, and Emily McGowen, wife of the Premier of New South Wales, to pin on the WSPU colours when they joined the Australian and New Zealand contingent in the women's coronation procession.

After her return from the UK Goldstein continued to use the WSPU colours, for example, in her campaign for Kooyong in 1913, and corrected them to purple, green and white. These were the colours she used for the flag of the Women's Peace Army when opposing conscription during World War I—somewhat paradoxically, given the opposite stance on the issue adopted by Mrs Pankhurst. I have not found any further evidence of the use of the WSPU colours in Australia between the two waves of the women's movement, although they were used on the dust jacket of a Goldstein family memoir in 1973.[25]

From 1975, however, which had been designated by the United Nations (UN) as International Women's Year (IWY), the WSPU colours were to become a generalised visual cue for the women's movement. The way this happened is an interesting story in itself. At first there were no distinguishing colours used by the women's liberation groups that appeared in the USA and elsewhere in the late 1960s. There was, however, a new iconography—the widespread use by women's groups of the female symbol. This stylised version of Venus's looking glass had been long used in science to denote the female. After so many centuries of scientific research demonstrating the mental and other forms of inadequacy of the female, the symbol was appropriated in much the same way as the gay movement appropriated the pink triangle used by the Nazis to denote homosexuals.

In Australia, as in the USA and the UK, women's liberation groups placed the radical symbol of the clenched fist in the mirror and often used the radical colour of red. This was also true of women's liberation groups in other countries, such as the Women's Front of Norway, active for more than 30 years from 1972. Because of its traditionally masculine as well as radical connotations, the image of the clenched fist in the mirror provides the same kind of visual jolt as the Socialist International's clenched fist holding the rose.



Women's Liberation logo

[24] J.M. Bomford, *That Dangerous and Persuasive Woman: Vida Goldstein*. Carlton, Vic., Melbourne University Press, 1993, p. 93.

[25] L.M. Henderson, *The Goldstein Story*. Melbourne, Stockland Press, 1973.

In 1975 Midge Mackenzie's very popular BBC series *Shoulder to Shoulder* was shown on television and the accompanying large format Penguin book presented a wealth of photos depicting the 'stirring history of the Militant Suffragettes'. It was almost entirely about the WSPU; other militant organisations, such as the Women's Freedom League, were not mentioned. Published in IWY, a time of raised consciousness nationally and internationally, the Mackenzie book and television series provided a narrative of women's heroic struggles and achievement, which many women's movement activists were happy to appropriate.[26]

So it was the WSPU and its colours that came to represent the collective power of women. The colours came to be part of the historical memory of the struggles for suffrage even in countries far away from the UK and where strategies quite different from those of the WSPU had been employed in the suffrage campaign. It should be remembered that the visual imagery of the successful suffrage campaigns in New Zealand and Australia tended to focus on the white ribbon of the Woman's Christian Temperance Union, no longer seen as a symbol of women's empowerment in the 1970s.

Others apart from Mackenzie were also promoting the Pankhurst legacy. From 1980, Dale Spender, the best-selling feminist author of *Man Made Language* and many other books, played an important role in promoting the WSPU colours. Spender was Australian but based in London from 1975–88. She had clothes made in purple, green and white when she launched the Pankhurst Trust in the late 1970s.[27] Subsequently she began wearing only purple and this shorthand for the WSPU colours also became quite common as a feminist signifier.

The colours of state feminism

The full WSPU colours became particularly important in Australia and this appears to have been, in part, because of their adoption and promotion by 'femocrats' (feminist bureaucrats) in government. Femocrats became 'colour entrepreneurs' (to use a phrase applied to those building on the power of colour as an institutional resource and a source of group meaning). So the story of the colours is also partly the story of the significance of so-called 'state feminism'. The way movement activists who had moved into government brought movement repertoires with them can also be seen in the use of 'cartooning for equality'.[28]

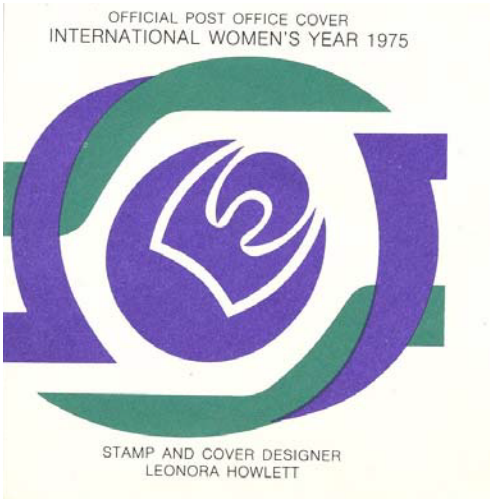
In 1973 there was much hullabaloo in the Australian media over the appointment of a women's adviser to the new Labor Prime Minister, Gough Whitlam. The successful candidate was Elizabeth Reid, who, on appointment, plunged into innovative policy work and initiated government funding of a range of women's services. She obtained a relatively large financial commitment for the celebration of IWY, which provided grants for many innovative feminist projects across the country—a national consciousness-raising exercise that had long-lasting repercussions. Part of this consciousness-raising was the revival of the WSPU colours. Reid directed they be

[26] Midge Mackenzie, *Shoulder to Shoulder*. New York, Knopf, 1975.

[27] Dale Spender, personal communication, 18 October 2004.

[28] M. Sawer, 'Cartoons for the cause: cartooning for equality in Australia', *Ejournalist*, Vol. 1, No. 2, 2001, p. 114, at http://www.ejournalism.au.com/ejournalist/sawer.pdf

used for the IWY symbol designed by artist Leonora Howlett. They were first widely seen in a first day cover and stamp released by the Australian Post Office in March 1975.



Australian IWY stamp

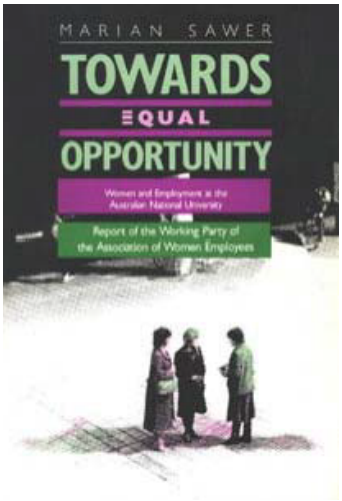
The highlight of IWY was the Women and Politics Conference, which brought some 700 women to Canberra. For many, like those from local government, it was their first encounter with the new women's movement. But the conference was also reaching back to the first wave of the women's movement. The conference newspaper, *The New Dawn,* echoed the name of the first feminist newspaper in Australia, *The Dawn*, founded in 1889.[29] *The New Dawn* made a different kind of connection with the first wave of the women's movement by using a masthead with the WSPU colours. The colours were also used for the conference posters and the cover of the two volume conference proceedings, probably the first use of the WSPU colours for an official government publication.

Women and Politics conference poster, 1975

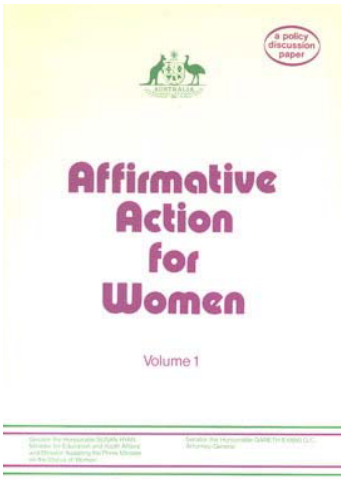
[29] *The Dawn* survived a boycott by the Typographical Association, angered by its use of women printers, and was published from 1889 until 1905. The name was also used for newsletters of the Women's Service Guilds of Western Australia and the Australian Federation of Women Voters.

After 1975 purple, green and white became more generally used by government bodies such as the National Women's Advisory Council (NWAC) appointed by conservative Prime Minister, Malcolm Fraser. NWAC adopted a logo that had the women's symbol in green with a purple keyhole through which a woman was walking.[30] The colours were used extensively by NWAC in conducting consultations around Australia over a plan of action for the UN Decade for Women. The colours were also taking to the streets and International Women's Day marchers in Sydney handed out purple and white gladioli to women shoppers in 1980, with a leaflet 'Glad to be women'. The retrospective appropriation of British militant activism was being used to fortify current struggles, whether by government advisory bodies or at the more radical end of the women's movement.

By the 1980s the prominent second wave organisation, Women's Electoral Lobby (WEL), was also using the WSPU colours—WEL had previously used a women's symbol containing its acronym but with no particular set of colours. Now purple, green and white adorned both WEL and other women's movement banners, posters, T-shirts and badges. It was used by the newly-elected Hawke Labor government for its many reports and policy initiatives relating to the status of women and also by women's policy units in state governments and by women's information services, signalling solidarity with the women's movement. It was used by women's research centres in universities and by equal opportunity commissioners.

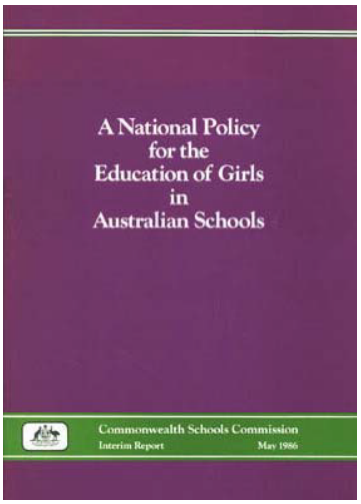


Towards Equal Opportunity, 1984



Affirmative Action for Women, 1984

[30] When the Hawke Labor Government was elected in 1983 its advisory body, the National Women's Consultative Council, maintained the use of the WSPU colours for its publications and newsletter.



National Policy for the Education of Girls, 1986

When the conservative Howard Government was elected in 1996 there was, at first, a retreat from the use of women's movement colours in the federal bureaucracy. However, they were revived with the official celebration of the Australian suffrage centenary and the Office of the Status of Women produced commemorative publications in the correct pantones.[31] The Minister Assisting the Prime Minister for the Status of Women announced the commissioning of a commemorative fountain in the 'suffragette shades of green, white and purple'.[32] In fact, women were both voting and standing as candidates for the Commonwealth Parliament in Australia well before the invention of either the term 'suffragette' or the WSPU colours.

The emotional meaning of women's movement colours today

While the colours were not part of the Australian suffrage struggle, they have been part of the women's movement both inside and outside the state in Australia for the past 30 years and so have an emotional resonance. A small sample of women's movement activists was surveyed in 2005, with equal numbers of women who joined the women's movement in the 1970s and the 1990s.[33] Even among those who had joined the movement in the early 1970s none remembered having worn the colours before 1975 and most started wearing them later, for movement events such as International Women's Day. They gave reasons as to why they started wearing the colours such as 'to identify myself visually as being in solidarity with other women on particular women-oriented occasions' (R5); 'an expression of solidarity with sisters in their/our continuing struggle' (R10); 'a manifestation of my feminism and my commitment to the women's movement' (R7). One said: 'I wanted to be like Dale

[31] Myra Scott, *How Australia Led the Way: Dora Meeson Coates and British Suffrage*. Canberra, Office of the Status of Women, Department of the Prime Minister and Cabinet, 2003.

[32] K. Patterson (Minister Assisting the Prime Minister for the Status of Women), 'Fountain to celebrate the Centenary of Women's Suffrage', media release, Parliament House, Canberra, 23 November, 2003.

[33] Ten women were surveyed in November 2005, five being older and five younger feminists. They were asked questions about why and when they started wearing the colours, the meaning the colours had for them and their emotional response to them. (Response=R).

Spender, who only ever wore purple clothes' (R6), while another indicated that for her purple had taken over from the full set of colours (R2).
Both the older and younger feminists stressed that they saw the colours as an externalisation of feminist values and an expression of a collective identity as feminists. Seeing the colours made them 'feel happy that there are a lot of people who share my values' and gave them 'a feeling of belonging' (R3). As one said: 'I enjoy the feeling of community, of sharing a political identity with others. And of knowing that others share the struggle' (R4). One spoke of 'Warmth from kinship, seeing kindred spirits and recognising the numbers of them, especially at big events like the women's day breakfast when about 1000 women in purple would turn up … It is reinforcing and encouraging' (R6). Or as another said: ' … it's a welcoming, embracing thing. It reminds me of the number of women in the room who are part of what I am part of and that is very important for feeling as though the movement moves on.' (R8)

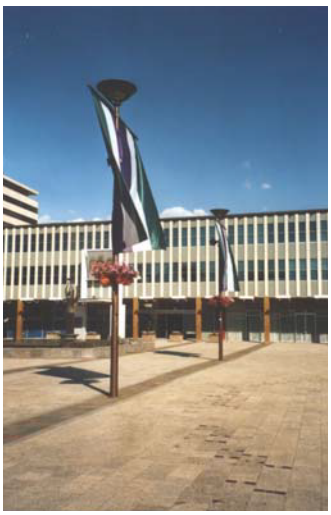
A number of both older and younger women felt the colours were an important link to the history of the women's movement. For one they meant 'wearing my politics on my sleeve, as it were, and identifying with first-wave feminists who initially proposed these as signifiers of the women's movement.' (R5) They were 'A connection with our foremothers and their long and painful struggle and remembering the suffragettes and the symbolism of Green, White and Violet.' (R10) Most saw the link to the suffragettes as important, 'although they now mean feminism.' (R1) One said: 'they give me a strong sense of the history and ongoing struggle of women to achieve equality' and provided 'a sense of solidarity with other women, a strong sense of belonging to a very large community, gratitude to the women who wore the colours originally and worked so hard at great personal cost to make gains for women's equality.' (R7) Another described 'A feeling of pride knowing how hard women have fought for equal rights in the past, in the present and will still need to do so in the future. I feel part of herstory.' (R9)

On the other hand, for one of the young activists the colours were a symbol that had lost its force for many young women and were more a matter of nostalgia (R3). One of the older feminists was more hopeful of the colours being taken up by new groups of women:

> If the colour purple is used vividly and strongly, as it was for all the bags etc. of the Women in Policing Globally Conference held in Canberra in October 2002, that is a sign of being a consciously assertive feminist organisation … I felt that the women in this organisation were at the stage of struggle that most women in Australia were in 20 years ago, and with good reason. (R10)

Conclusion

In 2005 the WSPU colours were flown by two governments in Canberra during the week of International Women's Day: the Labor government of the Australian Capital Territory flew them outside its Legislative Assembly building while the conservative federal government displayed them on street banners.



Banners outside ACT Legislative Assembly building, 2005

Commonwealth banners in Northbourne Avenue, 2005

The use of the WSPU colours by a very conservative federal government, which had just demoted the last women's unit in government to the Department of Family and Community Services, signals perhaps yet another shift in their historical meaning. They were to signify celebration of national history—not an oppositional discourse of struggle and engagement with the state.

The visual strategies of political parties and social movements tell us much about how they are trying to connect with their supporters. They are creating symbolic languages that are about emotional identification as well as about organisational needs for distinctive brands and brand loyalty, to use the language of modern marketing. These symbolic languages may long outlive their organisational origins, as we have seen in the case of the WSPU colours. They may become part of the contestation over public memory, with radicals appropriating symbols associated with past oppression and with conservatives appropriating once radical symbols.

Symbols may be adapted to appeal to changed constituencies, as we have seen with the red flag transmuting into the socialist rose, but with the red signalling continuity with the emotional legacy of past struggles. Political colours are part of the language of collective action and we need to appreciate the emotional significance of colours in providing a sense of political community and shared values.

Question — Firstly, I don't understand why the rose is a symbol. Secondly, have you heard that the dominant form of the Australian flag until Prime Minister Menzies was the red version of what we've got now? I have heard that he gazetted the blue version because of his dislike of the symbolism of red.

Marian Sawer — The rose was meant to symbolise that workers were not just interested in some material comfort, in the struggle for bread, but also in the struggle for some spiritual beauty in their lives. The rose is the symbol of that; that in things like the eight hour day you must have time for recreation, not just beer and skittles, but also engaging in the cultural life of the community. On the blue and red ensigns, I'm sure there are people here who know much more about this than I do. There is a wonderful book by Elizabeth Kwan on the Australian flag which looks at how both the red and the blue ensign were used until the adoption of the blue ensign in 1953. It took a long time for the Australian flag to become uncontested.

Question — I'm wondering what symbols and colours we may see in the future?

Marian Sawer — This is an enormous challenge. What will the symbols of the future be which will give us new hope beyond the current situation? I don't know what they are going to be. I just hope they appear—but in the meantime I think we are going to have a lot of red, white and blue which is probably why I titled my talk that way. I do hear very often at home, my husband, who is an unassimilated Englishman, singing in the shower: *There'll always be an England:*

Red, white and blue,
What does it mean to you?
Surely you're proud,
Shout it aloud,
Britons awake!
The Empire too,
We can depend on you.

So I think there is going to be a lot more emotional mobilisation around those colours in the next few years.

Question — Our national colours are green and gold and yet our major political parties seem reluctant to identify with them in any emblematic way. Do you think there is subterranean thinking that's been going on for a long time in this country that, indeed, the use of green and gold may be a differentiator as we move forward, perhaps, to a republic?

Marian Sawer — The Australian Democrats have used the green and gold of the national colours. The Australian Greens also use green. I don't know why we are afraid to make more of the green and gold, I think that would be a very good idea. There are efforts to promote Wattle Day and so on and maybe that's one of the things that will unfold in the future.

Pictures of Parliament: Canberra and Berlin

A Review of Two Publications

R.L. Cope

Images of the House. The First Hundred Years, House of Representatives 1901-2001. Canberra, Department of the House of Representatives, 2002. xii, 124 p, illus.

Biefang, Andreas*: Bismarcks Reichstag. Das Parlament in der Leipziger Strasse, Fotografiert von Julius Braatz.* (Photodokumente zur Geschichte des Parlamentarismus und der Politischen Parteien vol. 6) Düsseldorf, Droste Verlag, 2002. (Issued on behalf of Die Kommission für Geschichte des Parlamentarismus und der Politischen Parteien, Bonn).

The two works reviewed here are both similar and dissimilar.[1] They have the common objective of providing a photographic record of the interior of a legislative body and of its representatives: the Australian volume covers the first century of the House of Representatives, and the one devoted to the Reichstag in Berlin covers a briefer time span, a mere two months in the year 1889. This was during the short period preceding the end of the era of the Iron Chancellor, Otto von Bismarck, following the accession to the throne in 1888 of the fateful Kaiser Wilhelm II. It is a historical curiosity that

[1] Thanks are expressed to Meg Crooks (Department of the House of Representatives, Canberra), and to Dr Martin Schumacher, Bonn/Berlin who provided the copy of *Bismarck's Reichstag* and the speeches delivered at the launching of the book.

photos were taken by Braatz on the very last day (18 May 1889) Bismarck was to enter the parliamentary premises (p. 12). At this time the Reichstag was still meeting in a provisional parliamentary building in Leipzig Street in Berlin. It did not move until 1894 to the massive Wallot building near the Brandenburg Gate. Like the German Reichstag, the Australian Parliament, a mere 30 years younger than its German counterpart, met in different buildings until the New and Permanent Parliament House was opened in May 1988 by the Queen. Apart from these external similarities, there is in fact little to compare and contrast between the two parliaments or, more accurately, the two lower houses of the respective parliaments. For these reasons the two works here under review will be analysed separately.

Canberra Images

Images of The House, dealing with the Australian House of Representatives at Canberra, is a well-produced, largely pictorial work, which will be welcomed by a range of users for the variety of its photos (black and white, and coloured) and for its readable, informative text. The photos are amply annotated and come from private sources, public collections and archives, and from organizations. Many different photographers are responsible for them, but details are not generally given of photographers' names. There are some 243 photos in the book; some full-page coloured photos are strikingly handsome, others photos are small and not coloured. Some of the best photos are unexpected and would not be publicly known. These are usually less stiff, formal or posed than the many official photos. The photo on page 86 showing Bob Hawke being hit in the face by a cricket ball while playing in a match introduces a personal touch that is an asset to a work which could be all too rigid with many posed official groups.

The author of the text (Meg Crooks) is not named on the titlepage, but she is acknowledged in Appendix C. The eight chapters are divided into themes (e.g. In the Chamber, Three Buildings, One House, Dissolving Parliament) and the photos illustrate the themes. This gets away from the purely chronological arrangement that a centennial work often invites. A number of persons have had a hand in advising on the selection of photos and on the general structure of the volume. The diversity of material chosen is excellent and would remind many readers of significant events and personalities, not all of them members of parliament. There are three Appendices giving details of the provenance of the photos, full titles of person mentioned in the text and finally acknowledgments. Appendix B with full titles does not give the academic qualifications of the persons listed for reasons that seem obscure. Dr Cairns is always called by that title, but there is no indication of the justification for this title.

The Foreword by Speaker Andrew states: 'Images of the House' illustrates the diversity of characters, issues and events of the House of Representatives during its first one hundred years' (ix). On the same page he writes: 'The images capture everything from routine to momentous occasions, including the importance to the community and the members of the physical 'place' of the parliament'. He mentions as well that this work is but one of projects undertaken by the House to mark the centenary. But the others, about which readers might be equally curious, are not listed in the book. What are they? The Speaker's Foreword suggests *Images of the House* is an embracing work, covering many facets of the life and role of the House of Representatives. It also promises a 'glimpse into Australian society'. The reader is

indeed given much that lives up to these words, and few would not leaf through this handsome book without pleasure and instruction. It should also be mentioned that images include political cartoons, archival pictures of pages from important official publications, scenic photos of areas being visited by parliamentary committees, photos of political demonstrations, official receptions, banquets, commemorative ceremonies, portraits of individuals, and sporting functions with members involved. Some photos come from events overseas at which members of the House of Representatives were present. Some photos, such as that on p. 166 showing the first flight of an Australian Prime Minister (S.M. Bruce in 1924) about to take place, mark historical events in the country's progress. Perhaps the number of group photos is inevitable, but the reader may well feel that fewer of these, but more photos with identifiable persons, might be preferable. But nevertheless there is plenty here to vindicate the Speaker's remarks about 'the diversity of characters, issues and events'. This book would make an excellent gift at a reasonable price. It is well produced, handles easily, and should help in parliament's efforts at political education.

The House of Representatives has not in the past been noticeable for any zeal or flair in publicising itself. *Images of the House* shows a very welcome change in this regard as do two other recent excellent publications: *Your Key to the House* and the periodical *About the House.*[2] Through these publications Australian citizens can now get an easier insight into more aspects of the work and parliamentary environment than was previously the case. Unfortunately, the latter two works are not listed or mentioned in *Images of the House*, which seems a good opportunity missed. On the other hand, the website of the House is a good guide to its publications and activities. The entry for *Images of the House* is commended to the notice of interested readers.[3]

Despite the wealth of images offered to readers, there are some puzzling omissions, which give rise to questions. The title 'Images of the House', so self-explanatory and obvious at first glance, does cause us to ask how images of parliament are generated and conveyed to the Australian public. The answer springs out at us: the media are surely for the majority of Australians the creators of our images. Many photos in the work are the work of press photographers who receive due acknowledgment, but why is there so little to show the media actually at work in parliament? One would expect to see some 'images' of notable Parliamentary Press Gallery representatives over the decades. Frank Browne, the producer of a Sydney political news and scandal sheet *Things I Hear* who, together with Ray Fitzpatrick, fell foul of C. A. Morgan MP and the House Committee on Parliamentary Privilege in 1955, is the only journalist this reviewer could find featured as an individual. Some photos of the House in session give a glimpse of the Press Gallery above the Speaker's chair, but the figures are too tiny to be readily identifiable. Television journalism is even less obvious in the book's coverage. The Editor does in fact state: 'You can observe the importance to a member's parliamentary work of the media … '(p. ix), but this does not emerge convincingly in the range of images chosen.

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2 The website is located at http://www.aph.gov.au/house/pubs/images/index.htm

3 *About the House: House of Representatives Bulletin.* [two-monthly] Canberra, Department of the House of Representatives. *House at Work. Ordinary People in an Extraordinary Building.* Canberra, Parliamentary Education Office, 2001. *Your Key to the House. A guide to your House of Representatives.* Canberra, Department of the House of Representatives, 2002.

Whilst The House is paramount in its own right, it does not operate, and probably cannot, without the ancillary services of parliament, such as Hansard, Catering, Cleaning, Security and Library, to mention those that are most obvious. There is a striking lack of any direct images of them that show their inter-relationship to the work of the House. Perhaps this may be for good and sufficient reason, but this reviewer thinks the lack needs explanation. Surely a rounded picture would give us a glimpse behind the scenes where we might be shown, inter alia, the recreation and sport facilities in the Federal Parliament. Are views of the parking facilities or of the parliamentary dining room, amenities of undoubted importance to members and staff, not available? Is this a trivial point to make, or is there some point in regarding the work and role of the House of Representatives in broader terms than is done in the present case?

Another puzzling lack is the absence of photos conveying an accurate view of members' working environment, although floor plans of members' offices in the old building and the new one are featured on p. 115. Photo 231 on p. 113, showing part of the area where Neville Howse MP is seen writing, can scarcely be said to do justice to the litany of members' complaints about cramped and unsuitable accommodation in the old Parliament House. This was one of the powerful motivators for the enormous expenditure on the building now on Capital Hill. The superior accommodation for members in the New and Permanent Parliament House is not shown in any detail at all for readers to get an impression of the décor, furnishings and facilities of a backbencher's office and of the quarters occupied by his/her staff. Might the lack of such information feed the suspicious mind that it is not 'politic' to show such things? In the present security conscious world, such arguments might be advanced, but then the whole work would need 'sanitising'.

Another disappointment is that there is no photo of King's Hall or of the splendid Great Hall in the new building. Indeed the only criticism of any consequence that this reviewer would make of the book is that the photos of the New and Permanent Parliament House convey no adequate sense of the nature of that building.[4] The reader fails to see its opulence, its lavish spatial aspects, its splendid ceramic panels and other works of art, and its 'forbidden city' image so often commented on by those who work in it. If considerations made it impractical to cover these points in *Images of the House*, there should surely be at least a reference to the excellent book *House at Work*, issued by the Parliamentary Education Office in 2001. This latter book gives brief personal accounts by both members and staff of how they find the new building. Those are impressions worth recording and noting.

Since *Images of the House* does not purport to be a quasi-reference work, it foregoes any bibliography or index. Was this a mistake? The reviewer feels the extra effort of providing some reference apparatus would have added value to a good work and answered some of the questions raised above. Perhaps there is room for further

[4] Some of the questions relating to the nature of a parliamentary building are examined in the following publication: 'Housing a legislature: when architecture and politics meet', by R.L. Cope in *For Peace, Order, and Good Government: the Centenary of the Parliament of Australia*: *Papers on Parliament* No. 37, November 2001, pp. 83–130.

publications on the parliamentary building by the House of Representatives. A good model would be the publication of the House of Commons at Westminster entitled *Art in Parliament.*[5] The House and the Senate have splendid works of art in their accommodation: they are certainly worth celebrating as a public asset.

It is obvious that different approaches are possible to the production of a book with this theme. The present result is generally very satisfactory and would meet the needs of many readers. Let us wish it good success with the book-buying public. It deserves a wide, appreciative audience. It is a book which will outlive the quickly forgotten centenary and should prove to be of historical interest to later decades of students of the Australian Parliament. We are not likely to see again this range of photographs brought together in one publication.

One small spelling mishap was noticed on p. 52 where Anderson appears as Andersen.

Berlin Images

Bismarck's Reichstag also commemorates an anniversary: the 50 year existence of the German body called Commission for History of the Parliamentary System and of Political Parties. This notable event is dealt with in the appendix to this paper. The photos come from two sets done by 'Court Photographer', Julius Braatz in the 1880s and 1890s, those of chief interest dating from April and May 1889. The 1889 photos form the content of both the contemporary exhibition in the refurbished Reichstag in Berlin and its catalogue, which is the book under review. They are here published for the first time in their existing entirety. The Editor, Andreas Biefang, discovered photos by Braatz, the existence of which had been previously unknown. Biefang surmises that these photos may be the first photo documentary or report ever made of a legislature as distinct from photos of individual parliamentarians. This may be true, but we need to recall that the American State Capitols were much photographed in the early days, so the German claim may need to be modified. The interesting feature of these photos is that they are all taken on the personal initiative of Braatz. The substantial scholarly text by Andreas Biefang (11–115) explains the unusual circumstances which led to the photos being made with considerable co-operation from the Reichstag authorities and the members themselves. The result is not only an important documentary record of the Reichstag in 1889, but it also provides a valuable visual impression of the composition of the Reichstag's membership. The social historian will find this insight well worth attention. The work's title in English is *Bismarck's Reichstag. The Parliament in Leipzig Street. Photographed by Julius Braatz.*

The Editor is at pains to describe the photographic context of the period, presenting us with a veritable cornucopia of information and insights about the early history of photography of German parliamentarians. There are also useful glances at the situation in other countries. His bibliographical references are particularly valuable for

[5] *Art in Parliament. The Permanent Collection of the House of Commons. A Descriptive Catalogue*. Compiled by Malcolm Hay and Jacqueline Riding with contributions from Christine Riding and Annabel Cassidy. London, The Palace of Westminster and Jarrold Publishing, 1996.

anyone wishing to look deeper into this history. The first part of the book is devoted to the career of Julius Braatz and the development of a career in photography. The title 'Court Photographer' did not imply that the holder was in the employ of the Court since it was possible to acquire the title from some Courts by paying a fee. This was the case in Bavaria, for example (p. 36). Braatz got his title not from the Kaiser, but from his brother Prince Friedrich Carl von Preussen. This fact led to some official questioning of the way Braatz made use of the title in his business.

Biefang examines the stylistic practices adopted by Braatz in his photographic portraiture, but perhaps his claim to fame is that he was the first photographer to see the parliament as a theme in itself. Photos or sketches of parliamentarians were quite common from about the 1840s onwards (in Germany and elsewhere), but Braatz was the first to go beyond the traditional practice to take interior shots, including some taken from the floor of the Chamber whilst in session, and shots of parliamentary facilities, such as the Parliamentary Library, the Reichstag refreshment rooms and postal facilities. He showed members at work and relaxing, and not simply posing for an 'official photo'. He wanted to convey an impression of their special environment as well as of their work.

Until this exhibition in 2002 Braatz was almost totally forgotten, but Biefang makes a very good case for a renewal of interest in him as one of the founders of photo reporting, a phenomenon we nowadays take for granted. In addition, the work of Braatz fills some gaps in the study of parliamentary symbols and iconography. The semiotics of parliament will profit from the study of what Braatz has captured on film. This is in part because the provisional building of the old Reichstag was demolished in 1898. This provisional building whose history Biefang traces in some detail, was seen as representing in its architecture and interior design a 'popular or bourgeois spirit' which was far from what Bismarck or his imperial master, Kaiser Wilhelm II wanted. This building was replaced by the grandiose Wallot building, restored most notably by Sir (later Lord) Norman Foster in the 1990s.[6] The Wallot building was commissioned by the Kaiser to represent a vision of the power and prestige of imperial Germany and the rule of the House of Hohenzollern. The Kaiser took a direct personal interest in the project and intervened in matters of detail when he saw fit.

Braatz published two works on the Reichstag. These are *Der deutsche Reichstag in Wort und Bild* [The German Reichstag in Word and Picture, 1892] and *Der deutsche Reichstag und sein Heim* [The German Reichstag and its Home, 1889]. The 1892 work was simply a collection of small individual studio photos of the head and shoulders of members, which were printed in small frames arranged in alphabetical order within their respective parties (Fraktionen). There were twenty-five frames per page. The result is a static photographic gallery. These are reproduced in the present book (pp. 122–137).

The 1889 publication, which is by far the more important and which makes up the bulk of this book, is quite different in intention. It consisted of a number of party group photos, a few photos of individuals, photos of meeting rooms and other

[6] See *Rebuilding the Reichstag*, by Norman Foster [and others]. London, Weidenfeld and Nicolson, 2000.

interiors, sometimes empty and sometimes with members present, glimpses of members at relaxation and sometimes speaking to the Chamber. In all, the book offers 158 black and white full-page pages and 192 smaller photos. Braatz originally offered his 1889 photos for sale as singles or in groups according to the desire of the person ordering a set. 240 shots were taken and 184 were placed on sale. (p.101). There are also other photos, not the work of Braatz, reproduced in this work. Most of the 1889 photographs of members in party and sometimes mixed groups show them usually at a table in one of the Reichstag vestibules and generally under one of the wall medallions featuring busts of notable German patriots accompanied by quotations from their works. Several individual photos are very striking: those of Bismarck, aged 74 but looking much older, and of Field-Marshal Moltke (he was a parliamentarian from East Prussia) are particularly impressive. The shots of the Chamber in session are of great interest: not all members chose to speak from the rostrum but instead spoke from their seats within the tiered semi-circular rows. One gets the impression that members moved around the Chamber freely during debate. This made the photographer's job very difficult. Braatz succeeded admirably. There is some slight evidence of blurring, but the photos compensate with the reality they convey. Of course, the party group photos were posed, but Braatz managed to instil a fair degree of liveliness into these photos. They are far from static or monumental. Members may be reading or smoking in these shots.

As mentioned above, the photos were taken in May 1889 and on the last day Bismarck was to enter the Chamber. It was also shortly before he ceased to be Chancellor. As a member of the Upper House (Herrenhaus) Bismarck had the right to be present at debates of the Lower House as well as the right to address it. He is shown both sitting in the Chamber and then addressing it. On May 18, 1889 Bismarck addressed the House in order to secure passage of the Invalid and Old Age Pension Bill, a contentious measure opposed by the strong left-wing members. Bismarck's speech, said to be one of his best, was a triumph. This may explain why the Chancellor stayed in the building after delivering his speech. Photos show him socialising with members and allowing Braatz the unusual opportunity to photograph the Chancellor with different members. Bismarck commented to Braatz that when he was being photographed he was unsure whether he was to be shot or photographed. These photos contain a good indication of the special feelings of the occasion.

Among the groups Braatz photographed were the Polish members of the Reichstag and those from the recently annexed Alsace-Lorraine. Of the latter, 10 of the 15 members were priests and some wore clerical costume. Some also refused to be photographed. The group of Social Democrat members include Bebel, Liebknecht and Dietz (p. 232). Biefang mentions in his notes that the photograph with Bebel was doctored by scholars in the former German Democratic Republic when they used it in a biography of Bebel. Apparently the words on the wall medallion behind Bebel were not deemed politically correct to be seen in his presence and were brushed out.

The photo-reporting aspect of the book is emphasised by the number of photos where members are smoking cigars. Biefang comments that these instances reflect the men's club aspect of the Reichstag. The only woman in all these photos is a waitress in the refreshment rooms (p. 266). Amongst the rooms photographed is that used by the Speaker (p. 261), by the Chancellor (p. 259), and on p. 86 where Bismarck is shown seated at this desk with his large pet dog in the foreground. The Clerk's office is

shown (p. 235) where he and two colleagues are seen standing together. Some of the photos are of empty rooms.

This handsomely produced book offers those interested in German parliamentary and political history insights that would not otherwise be easily found, but beyond that it offers students of parliament, especially those interested in parliamentary sociology, architecture and symbolism stimulating lines for further investigation. Biefang's text (pp. 11–115) is a most valuable analysis, enriched by a detailed bibliography and notes. It is a stimulating contribution to the study of an under-researched aspect of parliamentary institutions in Germany and, one might add, in the Westminster system as well. In his Foreword to this work, the well-known German historian Klaus Hildebrand writes that Andreas Biefang's analysis and the photos he has brought together have produced a 'first class source for the history of the parliamentary system' [Parlamentarismus]. He also notes that the Commission for the History of Parliamentary Institutions and Political Parties has produced in this work a contribution to the promising field of parliamentary iconography. *Bismarck's Reichstag* is indeed a treasure trove, which should be found in every major research and parliamentary library.

Appendix

The Commission on the History of the Parliamentary System and the Political Parties: Its First Half-Century

The German body whose title may be translated as Commission on the History of the Parliamentary System and the Political Parties (The Commission) has no direct counterpart in English-speaking countries. The British History of Parliament Trust is a body that seems slightly comparable, but then only in a limited and less impressive sense. Both the range of Commission's work and the distinction of so many of its monographs, reference and documentary source works give it a unique status within Germany and, more broadly, across the international scholarly world. Germany has strong traditions dating from the mid-nineteenth century in the fostering of basic historical and social research, based on the study of archival and documentary sources. Germany still possesses famous historical research institutes to this day. The German models in turn were notably influential in the development of the American university schools of history.

The Commission came into being in 1951, largely on the initiative of several prominent historians and social scientists of the day. Their objective reflected in part the post-war wish amongst Germans to understand better the course of political events in Germany in the twentieth century. Why the German political and parliamentary systems succumbed so swiftly to the totalitarian onslaughts of National Socialism

seemed indeed a question necessary to analyse if the new Germany were to have a secure future and move beyond the dead-ends of the past. The overall aims of the Commission encompassed thus broad educational goals and a desire to make available to the German community original documents and sources to enable a balanced and verifiable interpretation of the past. In addition, the Commission began to publish detailed scholarly and well-documented monographs on specific political and parliamentary themes. These monographs range from minute examinations of important topics to broader surveys. Indispensable collections of the minutes of parliamentary party caucus meetings for some major parties are another aspect of the Commission's publishing programme. Indeed, it is no exaggeration to say that the publishing programme of the Commission has greatly extended the boundaries of parliamentary and political knowledge in Germany and, to some extent, of Europe. We should also mention that the Commission has also drawn on the practical experience of parliamentarians who have also written monographs in its series. The result is an impressively authoritative series of fine works which command the respect of experts.

The fiftieth anniversary of the Commission was celebrated with speeches at the opening of the exhibition of the parliamentary photos of Julius Braatz in May 2002 at the Paul-Löbe building, one of the complex of buildings in Berlin which make up the premises of the Reichstag. Speeches reviewed the origins and work of the Commission and paid tribute to the work of its numerous authors, including its energetic Secretary General, Dr Martin Schumacher. The Commission for the History of the Parliamentary System and the Political Parties is an independent non-parliamentary body, but supported over the years in varying ways by the Bundestag and now in particular by the State of North Rhine-Westphalia, whose territory takes in the city of Bonn, the Commission's location. The work of the Commission also receives financial grants from private foundations and research organizations. The financing of a body such as the Commission, which undertakes long-term research requiring a painstaking assembling of often obscure and not easily located material, now makes it necessary for it to seek extra aid wherever it can be found.

The Commission has a board of governors who are prominent historians and political scientists. Their stature as scholars and researchers ensures that the Commission's publications maintain a high scholarly standard meeting the rigorous demands of modern scholarship and research. The Commission's own small staff produces publications of a reference nature rather than monographs devoted to individuals or on specific limited themes. Anyone examining publications of this body will be struck with the fine standard of printing and presentation. The Droste Verlag in Düsseldorf is the publisher of the Commission's publications and deserves mention for the excellence of its work. Australians might see a similarity of standard in the publications of the Melbourne University Press. Electronic publication is also now entering the

Commission's ambit and its website is informative on this and other aspects of its work.[7]

Since the Commission is not the only body in Germany working in the field of parliamentary and political history, it tries to avoid overlapping with others by entering into co-operative arrangements. This has happened with several of the large political party foundations, with parliamentary parties and authorities of the Bundestag, and with other specialised research institutes. Such arrangements help secure good outcomes for all concerned. It is not feasible to mention by title the numerous publications of this body although some have been reviewed in recent times in Australia.[8] In its 50 years of existence the Commission has published over 200 titles, many of international importance and certainly in themselves an invaluable research and reference collection on modern German (and European) political and parliamentary history. It is clearly a body worth the attention of all those concerned with the course of parliamentary history, in particular that of Germany.

Because of the severe pressures the public finances of the various German states and its Federal Government are now experiencing, the announcement that the State of North Rhine-Westphalia was no longer able to continue its financial support for the Commission came as a considerable blow. Although some period of grace was allowed before the cessation of support, it was a time of major upheaval until finally the Federal Parliament, the Bundestag, agreed that it would fill the gap. This necessitated the transfer of the Commission's seat from Bonn to Berlin where, since late 2005, the Commission is now located. We must await developments to gauge the effects of this transfer on the scope and work of the Commission. Certainly the economic difficulties of contemporary Germany may have ramifications for scholarship and study there that cannot be foreseen at present. But the Commission remains a unique body admirably serving in a non-partisan manner both the parliamentary and political system and equally enhancing the reputation of Germany for scholarly excellence and reliability.

7 The Commission's website is http://www.kgparl.de

8 Reviews of two major biographical reference works by the Commission, and a review of a very detailed monograph on the history of payment of members of the Reichstag can be cited as examples. See, for example: *Australasian Parliamentary Review*, Vol. 16, No. 2, 2001, p. 198ff.; *Legislative Studies*, Vol. 15, No. 1, 2000, p. 66ff., and *Legislative Studies*, Vol. 13, No.1, 1998, p. 105ff.

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