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**Justified Immunity or Unfinished Business? The Appropriateness of Parliamentary and Executive Immunities in the 21st Century\***

*Bret Walker*

It was a bracing experience to engage in discussion with the late great Harry Evans about parliamentary privilege. You were never left wondering what he thought after he had delivered one of his typically pungent opinions. If politics were merely the art of compromise, Harry Evans was not much of a politician. If good politics, however, requires a solid foundation of principle, Harry Evans was a leading exponent of the political process. It is not only our elected representatives who comprise the practice of politics, of course. This country was served splendidly by Harry Evans as a scholar, champion and practitioner of the law relating to the powers and procedures of the Senate. His contribution lives on, and my remarks have been stimulated by re-reading his writings on several topics. I am keenly aware of the further advantage I hold by reason of my memories of our several discussions on some of those topics. A real regret is being left wanting more of those challenging conversations.

The powers and immunities of the Senate as one of the Houses of Parliament are made known in a number of ways. Three of them are obvious from our most formal written instruments. But the content, even of them, is not so straightforwardly set out in prescriptive writing—and I think that is a good thing for our democracy. Let me explain.

Section 49 of the Constitution sets the pattern by providing initially for the powers, privileges and immunities of the Senate and House of Representatives, and the members and committees of each House, to be those of the House of Commons at Westminster as they were on New Year's Day 116 years ago. Not such a straightforward prescription, as any student of the successive editions of the magisterial *Erskine May* will know. The process of summary and selection from the problematic record of House of Commons practice that is the hallmark of *Erskine May*, together with the intimate involvement of the long line of Clerks in its compilation and composition, necessarily produce a normative character to its

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\* This paper was presented at the annual Harry Evans Lecture at Parliament House, Canberra, on 1 December 2017. The Harry Evans Lecture commemorates the service to the Senate of the longest serving Clerk of the Senate, the late Harry Evans. It examines matters Harry Evans championed during his tenure as Clerk, including the importance of the Senate as an institution, the rights of individual senators and the value of parliamentary democracy.

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apparently historical description. This is no cause for alarm, but rather a proper recognition of the adaptation of tradition to felt present forces. As the distinguished editors of the 22nd edition of *Erskine May* noted in 1997, quoting Justice Mahoney, then the President of the New South Wales Court of Appeal, from his reasons in the 1996 decision of *Egan v Willis*,<sup>1</sup> the verities of one era become the footnotes of the next.

The second source, obviously, is such legislation as the Commonwealth Parliament makes or ‘declares’, to use the language of section 49, concerning the privileges of the Houses. The *Parliamentary Privileges Act 1987*, importantly, left in place the House of Commons equivalency except to the extent of express provision otherwise in the Act.<sup>2</sup> As time passes, we might expect an esoteric market in Australia for the 10th edition (1893) and 11th edition (1906) of *Erskine May* so as to enable a fair beginning to the historical researches called for by our Constitution.

A major focus of political and scholarly concern with respect to parliamentary privilege is the scope and operation of Article 9 of the 1689 Bill of Rights.<sup>3</sup> In this country, we have tended rather grandly to assume for our various legislative chambers in the Federation the panoply of protections obtained by the Glorious Revolution against the supposed Stuart pretensions—‘Parlyament’ being taken by post-colonial extension not to refer only to Westminster.<sup>4</sup> Article 9 is certainly now an essential tenet of the Australian law of parliament in a country that simply did not import the ancient *lex et consuetudo parliamenti* [the law and custom of parliament] in the course of getting its political organs of so-called inferior legislatures.<sup>5</sup> Notwithstanding this radically different source of parliamentary privilege, the tradition in this country since 1855 has been to stress the so-called common law preceding Article 9 as somehow lending a normative majesty to its provisions for the establishment and protection of Australian parliamentary privilege.

Some may see a continuing post-colonial or post-imperial flavour in a noteworthy obiter comment by the Judicial Committee of the Privy Council advising on an appeal from the New Zealand Court of Appeal in a significant defamation dispute. Their Lordships noted the cagey opening words of subsection 16(1) of our Parliamentary Privileges Act, ‘For the avoidance of doubt’, set out the provisions of

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<sup>1</sup> *Egan v Willis* (1996) 40 NSWLR 650 at 676A-B.

<sup>2</sup> *Parliamentary Privileges Act 1987*, section 5, [www.legislation.gov.au/Details/C2016C00951](http://www.legislation.gov.au/Details/C2016C00951).

<sup>3</sup> For example, ‘That the Freedom of Speech, and Debates of Proceedings in Parlyament, ought not to be impeached or questioned in any Court or Place out of Parlyament’.

<sup>4</sup> For example, subsection 16(1) of the Parliamentary Privileges Act; *Egan v Willis* (1998) 195 CLR 424 at 444–445 [22], [23]; *Arena v Nader* (1997) 71 ALJR 1604.

<sup>5</sup> See, for example, Sir Donald Limon and W.R. McKay (eds), *Erskine May’s treatise on the law, privileges, proceedings and usage of Parliament*, 22nd edn, Butterworths, London, 1977, p. 65, footnote 3.

subsection 16(3), and proceeded to describe its declaration of the effect of Article 9 as containing what ‘in the opinion of Their Lordships, is the true principle to be applied’.<sup>6</sup> Whether that endorsement enhances the merit of an Australian statutory provision is very doubtful, not least because it seems to result in an enactment envisaged by section 49 producing no difference whatever to the pre-existing position.

I think the more momentous aspect of the delicately advanced exegesis, so to speak, of Article 9 by section 16 of the Parliamentary Privileges Act is the explicit prescription by subsection 16(2) of conduct and circumstances which will fall within the zone of immunity created by the expression ‘proceedings in Parliament’ in Article 9. Of course, it is to be remembered that all these provisions of section 16 express the effect that Article 9 ‘is to be taken to have, in addition to any other operation’. As I have said, there will continue to be an intellectual market for old English law books for those of us engaged with these topics. Probably the most practically significant provision in subsection 16(2) is paragraph (c), providing that proceedings in parliament extend to ‘the preparation of a document for purposes of or incidental to the transacting of any such business’, meaning ‘the business of a House or of a committee’. It seems clear to me that these are provisions, with or without the imprimatur of the Privy Council as merely declaratory of the pre-existing law, that require the character of protected activities to be those ‘which are recognizably part of the formal collegiate activities of Parliament’,<sup>7</sup> or have a sufficiently close preliminary connexion to them. Is the making of notes by a senator of representations from a constituent or, indeed, from any person concerned to raise a matter with a senator, that may or may not eventually be used, say, to inform a parliamentary question, within that statutory protection? I think it would be, but there is an unavoidable need for case-by-case determination whether such records, with merely potential later deployment in the chamber or in a committee, fit the description of having been prepared ‘for purposes of or incidental to the transacting’ of Senate business.

An illustration of the care that may be required by a senator who asserts Article 9 privilege based on paragraph 16(2)(c) emerges from the differing approaches of the three judges in the Queensland Court of Appeal decision of *O’Chee v Rowley*,<sup>8</sup> and especially the nuanced fact finding by Justice McPherson.<sup>9</sup> Unfortunately, the rather formulaic affidavit claiming privilege was so bare that the case does not cast any light on the difficulty of merely potential use of such documents for Senate business.

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<sup>6</sup> *Prebble v Television New Zealand* [1994] 3 NZLR 1 at 7–8.

<sup>7</sup> *The Joint Committee on Parliamentary Privilege Report of 1999* [UK], HL Paper 43–1, HC 214–1 quoted in *R v Chaytor* [2011] 1 AC 684 at 709 [55].

<sup>8</sup> *O’Chee v Rowley* (1997) 150 ALR 199.

<sup>9</sup> *O’Chee v Rowley* (1997) 150 ALR at 206, 208–210.

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I would argue that, as in science, material that is discarded is as genuinely valuable as that which is used, but I am not confident this view will necessarily succeed in a forensic contest.

Incidentally, I know of only one reference in the published writings of Harry Evans to the reasons for judgement of that very learned lawyer Justice McPherson in *O'Chee v Rowley*. In my opinion, the historical and purposive exposition by his Honour should be to the forefront of serious attempts to understand Article 9.<sup>10</sup> I wonder whether the late Clerk had formed a slightly jaundiced view of jurisprudence about parliamentary privilege north of the Tweed River, on the basis of some other reasons for judgement about which he certainly did, forthrightly, publish his views.

Harry Evans, I think, meant to commend Justice McPherson's learning and conclusion with his somewhat acid comment invoking them in criticising a judgement in 2000 in another defamation action by Mr Rowley concerning similar issues. The Clerk's letter to the Committee of Privileges reproduced in its 92nd report, to put it mildly, excoriates what he (I think correctly) regarded as obvious fallacies in the judicial reasoning in question. I should disclose that I too gave an opinion to the Committee of Privileges on the same matter. I am afraid I was also quite sharply critical of the conclusion in *Rowley v Armstrong* that the protection for proceedings in parliament did not extend to 'an informant...making a communication to a parliamentary representative'.<sup>11</sup> Of course, as Harry Evans pointed out, the universe of such communications could not possibly attract parliamentary privilege—but manifestly there will be some such communications that do so and certainly should. I hope that *Rowley v Armstrong* will not be regarded as good authority. But it may be that there is unfinished business to finish it off.

The third formal source of law concerning the Senate's parliamentary privilege has already been mentioned. That is the case law, whether in relation to constitutional law, so-called common law or the statute law on the topic. The famous staking out of pre-eminent judicial territory by John Marshall in *Marbury v Madison*<sup>12</sup>—'It is emphatically the province and duty of the judicial department to say what the law is'—is reflected, in the case of Australian parliamentary privilege, in the classical division of function between the courts and the Houses seen in the High Court's (probably Dixonian) formulation that 'it is for the courts to judge the existence in either House of Parliament of a privilege, but, given an undoubted privilege, it is for the House to judge of the occasion and of the manner of its exercise'.<sup>13</sup> The immunity

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<sup>10</sup> *O'Chee v Rowley* 150 ALR at 210–214.

<sup>11</sup> *Rowley v Armstrong* (2000) QSC 088 at [34]

<sup>12</sup> *Marbury v Madison* 5 US (1 Cranch) 137 (1803) at 5 US 177.

<sup>13</sup> *R v Richards; ex parte Fitzpatrick & Browne* (1955) 92 CLR 157 at 162.



from judicial review is the more telling for the fact that a term of three months' imprisonment had been imposed by the House on those contemnors.

I regret to say that judicial pronouncements on the existence and scope, or extent, of parliamentary privilege (including the question of the powers of the Houses) have been of very mixed quality in this country for a long time. Fortunately, as I later explain, the occasions have not been very numerous. Also fortunately, and this is not a paradox, it has been even rarer for the High Court or other appellate benches to have considered critical matters of parliamentary privilege. There remains a somewhat dispiriting array of single-instance decisions, most of which were reviewed unfavourably by Harry Evans.

One of the cultural problems in this area of discourse, I think, may be a muffled and distorted echo of the mighty institutional conflict between the House of Commons and the common law courts during the 19th century, of which *Stockdale v Hansard* remains an emblematic milestone.<sup>14</sup> As I see it, modern parliamentarians are really quite polite about the role of the courts of law in relation to parliamentary privilege—even Michael Egan.<sup>15</sup> Sometimes, the deference strikes observers like me as excessive. On the other hand, not all judges take the same level-headed and, with great respect, wise approach to the gravity of the matter as did all the judges, both in the New South Wales Court of Appeal and in the High Court of Australia, who decided the case of which the 20th anniversary arrives in 2018, a case I hope I will not forget, namely *Egan v Willis*.<sup>16</sup>

By way of foreign example, I draw to attention the unseemly sneer, as it strikes me, by quotation and repetition, in the reasons of Lord Rodger of Earlsferry in *Chaytor*. True, there was provocation—members accused of cheating on their expenses had the temerity to plead Article 9 and exclusive cognisance as a complete answer to ordinary criminal charges of fraud. His Lordship, unworthily I think, stated:

An invocation of parliamentary privilege is apt to dazzle lawyers and judges outside Parliament... Lord Brougham LC warned courts of justice against acceding to claims of privilege 'the instant they hear that once magical word pronounced'... Lord Denman CJ remarked that the privileges are 'well-known, so it seems, to the two Houses, and to every member of them, as long as he continues a member; but the knowledge is as incommunicable as the privileges to all beyond that pale'. Happily, it is

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<sup>14</sup> *Stockdale v Hansard* (1839) 9 Ad & El 1.

<sup>15</sup> See also David Clune, 'The Legislative Council and Responsible Government: *Egan v Willis* and *Egan v Chadwick*', *New South Wales Legislative Council Oral History Project*, August 2017, pp. 30–31, [www.parliament.nsw.gov.au/lc/roleandhistory/Documents/Booklet%20Part%20III.pdf](http://www.parliament.nsw.gov.au/lc/roleandhistory/Documents/Booklet%20Part%20III.pdf).

<sup>16</sup> *Egan v Willis* (1998) 195 CLR 424.

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unnecessary on this occasion to penetrate too deeply into these mysteries – if mysteries they be.<sup>17</sup>

That is no doubt a smart comment, but best kept within private clubs. It reflects no credit on Lords Brougham, Denman or Rodger. Their jobs, in the judicial department, were to delineate, not to deprecate.

There is not room here, nor do I really have the heart, to catalogue all the cases that Harry Evans frowned on, or even the slightly fewer judgements I myself most respectfully doubt. But it has to be said that there have been some beauties. It is remarkable how they have been permitted to fall out of sight in reviews of authority. It has been a kind of mercy. The worst of them is *Attorney-General (Cth) v MacFarlane*,<sup>18</sup> somewhat surprisingly given the excellent calibre of all counsel. Nonetheless, it is a puzzle that the Commonwealth Solicitor-General set out, successfully unfortunately, to persuade Mr Justice Forster that a major reason for the then Legislative Council of the Northern Territory not possessing the so-called grand inquest power or function, like that of the House of Commons, was that the Commonwealth Parliament itself had no such ‘inquisitorial function’. I say nothing of the particular resolution, which boldly set up a parliamentary ombudsman, in effect, that is, in relation to general administrative actions. I mean no disrespect to the distinguished lawyers involved in confessing that the argument and reasons (*ex tempore*, apparently) seem far more distant than 1971—especially in the clear implication of the continued substantive inferiority of even the federal parliament compared with our Westminster progenitor.<sup>19</sup>

A very different example is provided by the Queensland Court of Appeal decision in *Laurance v Katter*.<sup>20</sup> The strictures variously found in the reasons concerning the operation of section 16 of the Parliamentary Privileges Act, as its provisions would affect a defamation action, certainly do not exhibit any element of cultural cringe. The judges involved—Justices Fitzgerald, Davies and Pincus—were simply incapable of any such deficiency. But there are evocative discussions in their several reasons of a matter not yet conclusively determined, I think, in this country. What is the effect, if any, of Article 9 in its section 16 elaboration on the familiar case of a defamation action based on statements outside the House which repeat or involve reference to

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<sup>17</sup> *R v Chaytor* [2011] 1 AC at 722 [101].

<sup>18</sup> *Attorney-General (Cth) v MacFarlane* (1971) 18 FLR 150. Enid Campbell described it as ‘unusual’ in her *Parliamentary Privilege* (Federation Press, Sydney, 2003, p. 156). An understatement. See her earlier descriptions of the conclusion as ‘reading-down of the plain words of section 49’, and of the reasoning as ‘unsound’ and involving ‘question begging’ in ‘Parliament and the Executive’ in *Commentaries on the Australian Constitution: A Tribute to Geoffrey Sawer*, Leslie Zines (ed.), Butterworths, Sydney, 1977, pp. 92, 94 and 95.

<sup>19</sup> *Attorney-General (Cth) v MacFarlane* (1971) 18 FLR at 156–7.

<sup>20</sup> *Laurance v Katter* (1996) 141 ALR 447.

what has been said under absolute privilege inside the House? In such a case, does an allegation of dishonesty or bad faith made good against the member who defames outside the House, unlawfully involve impeaching or questioning the freedom of speech, debates or proceedings in parliament?

Some of the reasoning in *Laurance v Katter* has been superseded, or at least may need revisiting, in light of what I will compendiously call the High Court's proportionality method in relation to the so-called freedom of political communication. But what remains of continuing significance is their Honours' careful and constructive demonstration that Article 9's protection of parliamentary business should not be allowed to abrogate essential liberties of discussion and criticism by those of us who elect our representatives or are affected by their votes in parliament. Obviously, Article 9 does not mean, in Australia nowadays, that any of us are restrained by parliamentary privilege, rather than by the ordinary laws of defamation, concerning what we say about what goes on in this parliament. At least, if any individual entertains hope of disciplining the populace from questioning proceedings in parliament, by stifling or punishing vigorous criticism of parliamentarians and their conduct, good luck with that.

It is a serious black-letter question, which Justice Pincus in particular discussed, when a trial of a defamation published outside the House seems to require, perhaps as a matter of fairness, reference to statements inside the House.<sup>21</sup> I am not sure that *Laurance v Katter*, or any later decision, has finally settled the matter. It is not one of those aspects of parliamentary privilege where public benefit may be derived from uncertainty. Not without some doubt, I think the better view is that the implied impeaching or questioning of statements made inside the House in cases based on statements made outside the House does not contravene Article 9, as concluded in *Buchanan v Jennings*, another New Zealand Privy Council decision.<sup>22</sup>

It might be said that the present state of the law based on these three sources of parliamentary privilege doctrine has few bright lines. If that is so, it is partly because good courts of law are astute not to hedge such important organs as the Senate around with niggardly or cramped privileges. It is also because, as observed by Chief Justice Gleeson in *Egan v Willis*, 'conventions and political practices are as important as rules of law' in the context of the powers of a parliamentary House, such as compelling the production of state papers and in appropriate cases coercing members who are ministers to do so.<sup>23</sup> In the argument of that case, at first instance in the Court of Appeal, we had exhaustively proved and had attempted to analyse the historical

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<sup>21</sup> For example, *Laurance v Katter* (1996) 141 ALR at 483–486.

<sup>22</sup> *Buchanan v Jennings* [2005] 1 AC 115 [13].

<sup>23</sup> *Egan v Willis* (1996) 40 NSWLR at 663 D–E.

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practice of the Legislative Council in New South Wales, avowedly as an acceptable method of showing in law the extent of the relevant powers that were in question in that case. We started from parliamentary political conduct and not from abstract judicial statements. Both of those modes of proving a power admit the possibility of change, of course, but the former has hugely superior capacity to produce an appropriate flexibility in response to changing perceptions of what responsible government in a representative democracy needs.

It follows, I think, that in relation to bright lines and certainty of doctrine, we should be careful what we wish for. This is also why, in my opinion, parliamentary chambers should be wary of seeking judicial determinations of their privileges. I maintain, like Harry Evans, that the best (if not technically authoritative) views of parliamentary privilege are to be found in the records and reports of privileges committees. They are best because they are expressions from time to time of the views of those who are actually in the positions and with the duties for which these privileges are required.

One thing the history of the New South Wales Legislative Council calling for papers showed was that practice was against the interesting principle that Michael Egan valiantly maintains—that is, the government is responsible only to the popular or lower House, and not to an upper House, like the Senate, with a different kind of representation from the more or less equal electorates that characterise a popular House. As he has consistently put, enthusiastically and not unpersuasively, the government made by support in one House should not have to answer to the other House in a bicameral legislature, especially given the possibility that the other House will not be controlled, in the jargon, by the government party.<sup>24</sup> Fortunately, I think, for the beneficial role of chambers like the Senate, the majority view in the High Court in *Egan v Willis*, like that in the Court of Appeal, did not tie the scrutiny function to the function of making or breaking governments by votes of confidence, let alone deny it for a chamber not controlled by the government—the plurality thought ‘there may be much to be said for the view that it is such a state of affairs which assists the attainment of the object of responsible government...’<sup>25</sup>

In short, both as to the significance of a chamber like the Senate asserting a right or power, and as to the different role of a lower chamber like the House of Representatives in making or breaking governments, the statement by Mr Egan during the debate immediately preceding his suspension in 1996 is certainly not the law. Parliamentary privilege does not arise ‘merely because the House asserts [it]’, but a history of assertion goes a long way. In relation to the power of scrutiny of the

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<sup>24</sup> For example, *Egan v Willis* (1996) 40 NSWLR at 655G – 656B; Clune, op. cit., p. 30; *Egan v Chadwick* (1999) 46 NSWLR 563 at 571 [36], [37].

<sup>25</sup> *Egan v Willis* (1998) 195 CLR 453 [45].

executive, it is not the ‘key’ as a matter of ‘constitutional principle’ that the government answers, by a vote of confidence, to the lower or popular House.

Finally, I come to the question of whether the scrutiny function and powers of the Senate, as an Australian House, are impotent in the face of an executive claim of cabinet secrecy. Some may think that tradition and authority combine to render my inquiry hopelessly quixotic. I do not think so.

The authority on the question comes from another of Michael Egan’s eponymous contributions to the case law. The headnote to the report of *Egan v Chadwick* tersely records the majority holding, with respect to the production of executive documents to the Legislative Council, that ‘in respect of Cabinet documents their immunity from production is complete’.<sup>26</sup> I think the matter is not so simple, and I certainly dispute the correctness of such a view in relation to the Senate. Technically, it may be that the unique position of New South Wales concerning the source of powers of its Houses of Parliament, by the absence of any House of Commons equivalency, will be enough to distinguish *Egan v Chadwick* if the question arose in relation to any other Australian House, including the Senate. But I think that there are principled reasons against what is commonly understood to be the majority holding in *Egan v Chadwick*, which apply regardless of that Macquarie Street quirk.

The conceptual key to what I regard as the *Egan v Chadwick* error is the failure to accord to a parliamentary chamber the kind of control over its proceedings, for its functions, as the courts of law have now pronounced that they have over their own proceedings for their functions. Although it by no means appears in the reasoning of Chief Justice Spigelman and Justice Meagher, there may be an implied, if unexplained, claim of institutional superiority in that regard for the courts compared with parliamentary chambers. If so, I profoundly disagree.

In the courts of law, it is clear that there is no absolute bar against the compulsory disclosure or tender into evidence of even the most core cabinet documents, such as those recording the secret deliberations of its members. The four sets of judicial reasons in the *Northern Land Council Case* are a rich resource of learning, including germane political science.<sup>27</sup> It is noteworthy that the majority reasons in the High Court—if I may say so with respect—do not engage closely, or really much at all, with the tour de force that is the joint judgement in the Full Court of the Federal

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<sup>26</sup> *Egan v Chadwick* (1999) 46 NSWLR 563.

<sup>27</sup> Jenkinson J at first instance in the Federal Court, *Northern Land Council v Commonwealth* (1990) 24 FCR 576; Black CJ, Gummow and French JJ on appeal in the Full Court of the Federal Court, *Commonwealth v Northern Land Council* (1991) 30 FCR 1; Mason CJ, Brennan, Deane, Dawson, Gaudron and McHugh JJ, and Toohey J dissenting, in the High Court on further appeal, *Commonwealth v Northern Land Council* (1993) 176 CLR 604.

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Court. The only point of departure, as I read the decision, concerns what was called the threshold to be crossed before it would ordinarily be appropriate for a court to compel production to it of such documents.

Critically for present purposes, the High Court agreed with the conclusion below that there was no absolute bar against the production and use of cabinet documents in litigation, that is, for the administration of justice. Rather, it was emphatically noted that it would require ‘considerations which are indeed exceptional’ or ‘quite exceptional circumstances’ before a court should consider that the public interest in the due or proper administration of justice outweighed the public interest in the immunity from disclosure and in the confidentiality of such cabinet documents, being those ‘recording the actual deliberations of Cabinet’.<sup>28</sup> I stress that the High Court thus required that in such circumstances a court would decide for itself whether its function of administering justice justified in the particular case obtaining access to documents of a kind that, as a general rule, should be kept secret (at least, so it seems, until only historians and their readers would be interested in them). The courts award themselves or, from another point of view, impose on themselves the possibility in extreme cases of carrying out that balancing exercise.

This should be enough to render the admirably brief but quite unconvincing reasons of Justice Meagher on this point in *Egan v Chadwick* indefensible.<sup>29</sup> In that single paragraph, description of the cabinet as ‘the cornerstone of responsible government in New South Wales’ and the description of its documents as ‘essential for its operation’ led his Honour to hold that production of them could not be compelled by the Legislative Council—‘their immunity from production is complete’. His Honour thought such production could not occur ‘without subverting the doctrine of responsible government, a doctrine on which the Legislative Council also relies to justify its rights to call for documents’. His Honour expressly denied that any process could arise ‘for the courts—or anyone else—balancing interests against each other’. Finally, his Honour sought to refute an analogy with confidential government documents because ‘in the realms of Cabinet documents there is no room for holding that time will wither them’, meaning their confidential character. With great respect and also affection for a lawyer who did not lack self-confidence, I have to say that these pithy reasons are nonsense.

The High Court has no difficulty with the courts carrying out a balancing process when the administration of justice is the public interest competing against the public interest in cabinet secrecy. It is ridiculous to suppose that the Senate could not carry out a corresponding exercise when the public interest in responsible government

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<sup>28</sup> *Commonwealth v Northern Land Council* (1993) 176 CLR at 618–619.

<sup>29</sup> *Egan v Chadwick* (1999) 46 NSWLR at 597 [154].

through accountability to a parliamentary chamber is involved. Furthermore, the High Court plainly regards the age of cabinet documents as relevant in holding that there is no complete immunity from their production for the purposes of administering justice—the majority in *Northern Land Council* described the relevant class of documents as those ‘recording Cabinet deliberations upon current or controversial matters...’<sup>30</sup> And as for subverting responsible government by compelling the production of cabinet documents to a chamber that can, if it considers the public interest requires it, prohibit any further publication, we should reflect on that tool of executive public relations, the cabinet leak. In light of the complacency of successive governments with their own cabinet leaks, fears of subversion by scrutiny activities of the Senate are overheated and overwrought. I predict that these reasons expressed by Justice Meagher will not be regarded as supplying authority for the majority conclusion, both because they are plainly wrong and also because his Honour otherwise agreed with Chief Justice Spigelman, whose reasons were quite different on cabinet documents.

Indeed, it seems to me that the masterly and fascinating reflection on history and political science, as they informed the relevant doctrines of constitutional and parliamentary law, found in Chief Justice Spigelman’s reasons contains much that substantially tells against his Honour’s particular conclusion in relation to cabinet documents. In summary, this emerges from the judgement as follows. First, cabinet, its attributes of collective responsibility, the need for solidarity and secrecy, and all the rest, are matters of what the plurality in *Egan v Willis* described as ‘accepted precedent’ by reason of ‘conventional practices established and maintained by the Legislative Council’.<sup>31</sup> Second, those matters which come from a ‘combination of law, convention and political practice’ involve the manifestation of a concept that ‘itself is not immutable’.<sup>32</sup> Third, that flexibility is beneficial, lest definition produce rigor mortis, in the colourful observation of Sir Victor Windeyer on the centenary of Australian colonial responsible government.<sup>33</sup>

Those evolutionary features of parliamentary privilege go a long way to deny a legal rule that would prevent a parliamentary chamber shaping its own practices in order to fit its constitutional accountability function to the exigencies of future executive practices. Part of the healthy tension between a House and the executive comes from

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<sup>30</sup> *Commonwealth v Northern Land Council* (1993) 176 CLR at 617; see also *Sankey v Whitlam* (1978) 142 CLR 1 at 43.

<sup>31</sup> *Egan v Willis* (1998) 195 CLR at 454 [50], quoted (with a misprint ‘mentioned’ for ‘maintained’) in 46 NSWLR at 570 [30].

<sup>32</sup> Per Gleeson CJ in *Egan v Willis* at 40 NSWLR at 660, quoted in *Egan v Chadwick* (1999) 46 NSWLR at 568 [18].

<sup>33</sup> W.J.V. Windeyer, ‘Responsible government—highlights, sidelights and reflections’ *Journal of the Royal Australian Historical Society*, vol. 42, part. 6, 1957 p. 272, quoted in *Egan v Chadwick* (1999) 46 NSWLR at 570 [31].

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the unexcluded possibility that the House will exert some such exceptional power. If the rule said cabinet documents could never be compelled, it would be very different, in the institutional tussle for power, from the position if it said, as I think it should, not ‘never’ but rather ‘hardly ever’.

Next, a particular aspect of Chief Justice Spigelman’s reasons comes close to an internal contradiction in what is, on any view, a formidable exposition of judicial reasons. The Chief Justice had no doubt that documents which in a court would not be compelled to be disclosed by reason of public interest immunity or legal professional privilege could properly be compelled to be disclosed by and to the Legislative Council in its exercise of its ‘high constitutional functions’. His Honour expressly accepted my argument against an analogy of parliamentary scrutiny with courts or executive enquiries in relation to these forms of immunity, given the special ‘accountability relationship’ that obtains ‘between ministers and the Legislative Council’.<sup>34</sup> In short, documents that as a general rule are kept secret because of public interest could nonetheless be compelled to be produced in the Legislative Council, because that body was the proper body to decide case by case whether the ordinary solicitude for secrets between lawyers and clients or matters which may damage the broader public interest if published should prevail. Why was not exactly the same approach the proper one for cabinet secrecy? After all, if anything, the function of holding the executive to account as a matter of responsible government might be thought to render cabinet documents a peculiarly useful resort by the chamber in the course of such scrutiny.

The answer given by Chief Justice Spigelman rests on what his Honour regarded as the need to avoid a fundamental ‘inconsistency or conflict’ between the putative power to compel production and another aspect of responsible government, namely ‘the doctrine of ministerial responsibility, either in its individual or collective dimension’.<sup>35</sup> I do not suggest this is an easy question, or that my preferred answer is irresistibly correct—it is very much a preferred rather than uniquely correct solution. One respectful criticism of the majority approach in *Egan v Chadwick* is that it comes very close to assuming its own conclusion. That is, the question was whether normally secret documents could be compelled to be disclosed in the Legislative Council, and the answer by the majority seems to be that they could not be because they were secret.

A more pessimistic interpretation is that secrecy in relation to the heart of executive decision-making has been given an a priori importance above the role of a chamber like the Senate in holding the executive to account for, among other things, its

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<sup>34</sup> *Egan v Chadwick* (1999) 46 NSWLR at 573–574 [51]–[54], 577–578 [80], [81], [85]–[87].

<sup>35</sup> *Egan v Chadwick* (1999) 46 NSWLR at 574 [55], 576 [70].



decision-making. I do hope that is too gloomy a view, because, as you will have guessed, I enthusiastically support the dissenting approach in relation to cabinet documents taken by Justice Priestley. His Honour's reasons do not lend themselves to paraphrase, and I urge their re-reading. I conclude by indulging myself with these quotations. As to legal professional privilege, his Honour said:

Possession of the power to compel production does not mean that the power will be exercised unless the House is convinced the exercise is necessary; if exercised, it does not follow that the House will do anything detrimental to the public interest; the House can take steps to prevent information becoming public if it is thought necessary in the public interest for it not to be publicly disclosed.<sup>36</sup>

I interpolate that the Senate has ample powers to proceed in private session and to forbid publication of information. How could it be otherwise in the democratic parliamentary chambers of a country that has gone to war, and may do so again?

As to public interest immunity, Justice Priestley noted that courts, as a branch of government, may compel the executive to produce to the courts documents for which the executive claims such immunity, not leaving it to that branch of government to determine its own claim of immunity. His Honour then proceeded:

equally there should be no objection in the different situation that arises between the Executive and a House of Parliament to the possession by another branch of government other than the Executive, of the same power; the more so when the power is necessary for the proper carrying out of the function of that branch of government. The function and status of the Council in the system of government in New South Wales require and justify the same degree of trust being reposed in the Council as in the courts when dealing with documents in respect of which the Executive claims public interest immunity.<sup>37</sup>

In relation to legal professional privilege and public interest immunity, of course, all three members of the Court of Appeal agreed that they provided no ground for denying the Legislative Council power to compel disclosure. The reasons given by Justice Priestley, however, for his dissent as to cabinet documents seem to me every bit as cogent as those that all three judges expressed on these denied claims for immunity.

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<sup>36</sup> *Egan v Chadwick* (1999) 46 NSWLR at 593–594 [139].

<sup>37</sup> *Egan v Chadwick* (1999) 46 NSWLR at 594 [141], [142].

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An interesting aspect of Justice Priestley’s reasons on public interest immunity is his Honour’s discussion of the views, both in government and in opposition, of Senator Gareth Evans, including evidence to the Senate Standing Committee of Privileges. Having described that distinguished former senator and minister as speaking ‘with the experience of an academic constitutional lawyer and a longstanding Member of the Senate’, Justice Priestley quoted Senator Evans’ opinion that the claim for immunity was:

ultimately one for the House of Parliament to determine. That follows from first principles if you accept that is the way the Constitution works on these matters...the technical power might be absolute but the way in which it may be exercised in practice should be regarded as subject to all sorts of conventions and limitations.<sup>38</sup>

We should all hope that the Constitution works on ‘first principles’ and I am sure, without needing to rummage through ‘all sorts’ of conventions and practices, the Senate will always very seriously consider the enormity of entrenching on cabinet secrecy.

I am not at all confident that the position I prefer will ever be the case in law or practice. More’s the pity. As Justice Priestley said:

notwithstanding the great respect that must be paid to such incidents of responsible government as Cabinet confidentiality and collective responsibility, *no legal right to absolute* secrecy is given to any group of men and women in government, the possibility of accountability can never be kept out of mind, and this can only be to the benefit of the people of a truly representative democracy.<sup>39</sup>



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<sup>38</sup> *Egan v Chadwick* (1999) 46 NSWLR at 594–595 [142].

<sup>39</sup> *Egan v Chadwick* (1999) at 46 NSWLR 595 [143], emphasis in original.

**Question** — You touched on the sense that amongst the legal profession there is a lack of deep understanding of parliamentary privilege and the law surrounding it and that is certainly the experience we have as Senate officers when people call with questions. Why is it such a foreign country to lawyers? Is it because there isn't that ingraining in legal training of separation of powers and how those principles operate? Or is it that we are not doing a good enough job of explaining it to people?

**Bret Walker** — It is neither of those. If I could venture this view—our law schools are not good enough in many ways. They are also splendid in many ways, let me make that clear. I am not saying we live in decadent times. I suspect our law schools have never been better. Not only last century when I was at law school, but today statutory interpretation is barely taught. It is treated as some kind of vaguely modern intrusion into the purity of doctrine. You will not be surprised to know that having a brief which does not involve a statute would not even happen once a year. Second, the process by which law is made, which is quite useful if you are interpreting statutes, is not taught at all. I suspect that for most law students the last time they learned anything or were taught anything about that was on an excursion in primary school in New South Wales to Macquarie Street.

And the third thing, of course, is that there is a genuine character of arcana to a lot of what happens in the chambers. Now I have obviously swallowed the Kool-Aid, but I think all that is fascinating and important and ought to be well-known. I don't think it is difficult but it does require, as Harry Evans said, a lot of reading and a lot of intense reading. But it is not all that different from company law or other aspects of constitutional law or criminal law or any complex law in that regard. So, the explanation is not really peculiar to the subject matter but I do relate it to a cultural neglect of the critical role of statute in society and therefore for lawyers.

**Question** — The subject matter of your talk was particularly relevant to a Harry Evans lecture as Harry Evans took a particular interest in parliamentary privilege and the Parliamentary Privileges Act was very much his creation. It was very controversial at the time and many were critical of some of the provisions, including 16(3), suggesting that it went too far. You referred to the difficulties that can arise in defamation proceedings. Another area may be criminal proceedings where 16(3) may prevent a defence from being fully laid out. You referred to *Laurence v Katter*—my vague recollection of the three judgements in that case is they were somewhat diverse, but one was a suggestion that 16(3) should be read down to make it constitutional. Another was a suggestion that it cannot be read down. Do you think 16(3) goes too far and should it be reviewed?

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**Bret Walker** — You do recollect correctly. I don't think 16(3) suffers any blot of constitutional overreaching. So whether you validate *pro tanto* [to the extent] or whether you read it down, whether it goes too far—I think all of those are wrong. It is clear that section 16 takes as its text Article 9. It says so in subsection one. It means you have to have Article 9 on your desk, certainly in your head, and you have to know something about Article 9 to understand the reach of subsection 3 of section 16, which tells us that this is what Article 9 is to be taken to mean. It is a very Harry Evans phrase—it is marvellous. I don't think any judges or majority of judges will be found in the High Court to push back against what really is a tremendously convenient, in the best 18th century sense of that word, resolution of outstanding political science questions. They are not constitutional law, they are political science questions.

As long as everyone remembers that whatever else it means, Article 9 does not mean what it says. Article 9 does not say that we cannot at barbeques, pubs, dinner parties and the theatre, even in this hallowed ground, say such and such member has made a disgrace of himself or herself by what has been said etc. It never did mean that, although in the 18th century there were abusers of Article 9 as expressed as a piece of political propaganda. There were abusers of that later who anachronistically sought to use it, as it were, as yet another tool of repression of what they would call political sedition. Those days are totally gone. The most executive minded person would not dare to run such an argument nowadays. And for those reasons it seems to me that we should regard the unfinished business to which I refer as most definitely including what will happen when a criminal accused wishes to refer to something, either said in parliament or to be found in papers, which would be covered by privilege.

I actually have a recollection, too hazy to be categorical, of a committal—I was appearing for a defendant—and it did not take more than a few hours of discussion with a very good prosecutor concerning why I wanted to see some parliamentary statements in evidence for that prosecution to go away. Now that was a happy outcome for my client, but the community never had the merits of that criminal accusation tried. And that is the pattern. There will be stays, formal or informal. Charges can be made to disappear after all. And it will be, I think, part of our British heritage that where we can fudge we will fudge—and that is a good idea with things like this, because when the stags butt each other in the glen sometimes they all end up more damaged than they want to be.

So it does seem to me that you are absolutely right, there is a lot of unfinished business concerning how parliamentary privilege may render prosecutions unfair and therefore, in my view, inappropriate to continue. I am not at all troubled by the fact that parliamentary privilege would prevent a member from being prosecuted because after all, if there is one thing we can be sure of, that is what Article 9 is for. That is

important because epithets like un-Australian are all very well as political invective but we do not want anyone ever to say that statements of a certain kind or to a certain effect by a member on the floor of the House constitute an offence for which he or she can be tried—that is exactly what Article 9 is for.

**Question** — In the past you have said it should be as much a political solution as a legal court solution. Where is the Senate up to on this?

**Richard Pye, Clerk of the Senate** — From the Senate’s perspective, the Senate very much takes the view, with regard to the resolution of disputes around access to government information, that inherently these are political disputes that will be settled in political ways. By political I do not mean to say that the powers of the Senate itself will not be used—you order a committee investigation into the withholding of information, you hold government legislation to ransom until you have the information you are looking for. So there are uses of Senate powers but they are being used in political ways. I embrace the suggestion Bret made that there are inherent dangers in seeking judicial determination of the powers and privileges of a parliamentary House and it would be all too easy to find your parliamentary chambers hemmed in by unfortunate legal decisions which are difficult to have reviewed. Fortunately the High Court has not said too much to hem in the Senate’s powers to date, not recently anyway, and should such a case go before the High Court obviously we will see if we can secure the services of Mr Walker to assist us!

**Bret Walker** — I have nothing to add but thank you.



## **The Anzac Connection: Trans-Tasman Ties in the Century since Beersheba\***

*Chris Seed*

### **The Trans-Tasman political ‘family’**

It has become a habit for leaders on both sides of the Tasman to refer in their official remarks to our two countries—New Zealand and Australia—as ‘family’. One may well argue that the recent parliamentary dual citizenship revelations simply take that sentiment to its logical—and literal conclusion—because a closer analysis shows the trans-Tasman political family tree to be surprisingly deep-rooted.

At a rough count, we have furnished each other (voluntarily) with no less than three prime ministers, possibly four, if John Gorton was indeed born in Wellington as has sometimes been claimed.<sup>1</sup> At least two Australian state premiers in recent decades—Joh Bjelke-Petersen and Mike Rann—came to Australia from New Zealand.

Remarkably, nearly every current major political party (or its predecessor) on either side of the Tasman has at one time boasted a leader or deputy leader who allegedly or actually hailed from the other side of the ditch.<sup>2</sup> Notably, although coincidentally, this includes the first Labo[u]r prime ministers of both countries—Michael Joseph Savage in New Zealand in 1935 and Chris Watson in Australia in 1904.

Indeed, in a situation people today might regard as a bit ironic, at the time Watson’s New Zealand heritage and upbringing was reportedly invoked to *support* his constitutional eligibility for Australian office. This was on the basis that it made him a subject of the Queen, notwithstanding his birth father’s more constitutionally questionable South American and German ancestry.<sup>3</sup>

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<sup>1</sup> *Australia’s Prime Ministers: Fast Facts: John Gorton*, National Archives of Australia website, <http://primeministers.naa.gov.au/primeministers/gorton/fast-facts.aspx>.

<sup>2</sup> They include New Zealand Liberals (predecessor of the National Party)—Prime Minister Joseph Ward (born Melbourne), New Zealand Labour Party—Prime Minister Michael Joseph Savage (born Victoria, Australia), New Zealand Greens—leader Russell Norman (born Brisbane, Australia), Liberal Party of Australia—Prime Minister John Gorton (allegedly born in Wellington, New Zealand), Australian Labor Party—Prime Minister Chris Watson (New Zealand mother and upbringing), The Nationals—Barnaby Joyce (New Zealand father), Australian Greens—Deputy Leader Scott Ludlam (born Palmerston North, New Zealand).

<sup>3</sup> ‘The new prime minister: sketch of his life’, *The Morning Bulletin*, Rockhampton, 30 April, 1904, p. 3. Accessed at National Library of Australia (NLA) Trove database.

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Legal interpretations aside, one of the better personal reactions to the dual citizenship story of the moment came from the Sky News commentator who observed that the relevant section in the Constitution existed to guard against politicians who were subjects of a ‘foreign power’ and that, with all due respect, New Zealand was neither.

In many ways, that kind of sentiment might hold a few clues about how we have arrived at the bond our two countries enjoy today.

### **The battle of Beersheba**

I should, however, return to the thematic starting point for this paper. On October 31 2017, Australian and New Zealand political and military leaders will meet in Israel to mark the centenary of the battle of Beersheba in World War I. Just like another watershed moment in our countries’ history, this one also features a battlefield in a far flung corner of the Mediterranean.

In some ways it will be an unusual commemoration. First, the outcome was somewhat different to that other Mediterranean campaign. Compared to Gallipoli—not to mention some of the other Middle Eastern battles—and certainly in comparison to the scale of our contribution and casualties on the Western Front, Beersheba was a relatively minor action. But to co-opt a clichéd phrase often used in relation to both New Zealand and Australia, it certainly ‘punches above its weight’ in name recognition. Like most such events in our national histories, that is probably because it’s a cracking yarn and a genuine piece of Anzac history.

For a start, unlike on the Western Front, Beersheba, and indeed the whole Middle East campaign, featured a combined New Zealand and Australian fighting unit—the Anzac Mounted Division. Formed in the wake of Gallipoli, this division included the New Zealand Mounted Rifles Brigade, the 1st, 2nd and 3rd Australian Light Horse Brigades and even the British Royal Horse Artillery Brigade.

By the time of Beersheba in October 1917, the Anzac Division, together with the Australian Mounted Division, had defended the Suez Canal in 1916 and played a key role in the critical victories at Romani and Magdhaba in January 1917 which drove the Ottoman forces back across the Sinai. In March and April 1917 the Anzac Division fought side by side with the Australian Mounted Division against heavily-defended Turkish positions in the first and second battles of Gaza.

At the time, the Anzac division was commanded by Australia’s then Major General Harry Chauvel. The failure of the Imperial forces to take Gaza in those battles saw him promoted in April 1917 and given command of the entire Desert Mounted



Column (shortly after renamed the Desert Mounted Corps). So in addition to being commanded by the first ever Australian corps commander, the Anzac division's antipodean credentials were further enhanced when Chauvel was succeeded by New Zealander, Major General Ted Chaytor. Notably too, Chauvel's new command also featured another unique Anzac unit—the Imperial Camel Corps Brigade (animals the Australians were perhaps more familiar with than their New Zealand counterparts).

In the wake of the unsuccessful Gaza battles, the new commander of the Egyptian Expeditionary Force, Sir Edward Allenby, decided Gaza needed to be enveloped rather than frontally assaulted. Chauvel's Desert Mounted Column was accordingly despatched to the eastern end of the Turkish lines and the town then known as Beersheba. The ensuing battle was a textbook case of trans-Tasman cooperation.

History has predictably focused on the famous late afternoon charge of the 4th Australian Light Horse Brigade. In fact, a fair dose of the day's action fell to the Auckland and Canterbury Mounted Rifle Regiments who took the strategic and heavily fortified high ground of Tel Sheva, to the north-east of the town, supported by the 3rd Australian Light Horse Brigade. At the same time, the 20th Corps, supported by the Anzac cameleers, conducted a separate attack on the town's south-western defences. Tel Sheva's capture and the 20th and camel corps' attacks paved the way for the famous Australian charge through the middle of the Turkish line.

From their hard-won position atop Tel Sheva, the New Zealanders had ringside seats for the charge. The highly decorated Auckland Mounted Rifles officer, Frank Twistleton, described the charge as 'the most showy fight I have ever witnessed... the Australians showed plenty of nerve and dash'.<sup>4</sup> By contrast, the 4th Australian Light Horse Brigade might well have thought back apprehensively to another famous cavalry charge sixty-three years earlier in Balaclava. In this case though, instead of Russian cannon, it was 'camels to left of them, Kiwis to right of them...' Not exactly the stuff of Tennyson. Happily for this Light Brigade, at least, no one had blundered.

Back on Tel Sheva, Lieutenant Colonel James McCarroll, Commander of the Auckland Mounted Rifles, described 'a great sight suddenly sprung up on our left, with lines and lines of horsemen moving. The Turks were on the run and the Aus Division was after them. Beersheba was ours'.<sup>5</sup>

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<sup>4</sup> F.M. Twisleton, *Letters from the Front*, Gisborne, New Zealand, 2009, p. 100.

<sup>5</sup> Entry for 31 October 1917, 'The private diary of Major James McCarroll', held by the Kauri Museum, Matakōhe.

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## **The Anzac centenary**

Fast forwarding one hundred years to the centenary commemoration, our representatives will no doubt reflect on that joint Anzac effort. As the Beersheba centenary commemoration is also one of the last major joint commemorations for the First World War centenary, they may also reflect briefly on the past three years of Anzac centenary commemorations, particularly the recognition given to the letters 'NZ' in Anzac. The Australian government has been scrupulous in acknowledging New Zealand throughout the centenary period. It is an approach we have seen echoed across the Australian community.

In practical terms, it has meant the Australian Governor-General attended the 2015 Anzac Day Dawn Service in Wellington, reciprocated by the New Zealand Governor-General travelling to Canberra later that evening to attend the Last Post Ceremony (the logistics of this transfer alone may have done more to unite our bureaucracies in shared horror than many other recent joint policy initiatives). Senior political representatives from both countries have attended each other's national services, and formed units from both the Australian Defence Force (ADF) and New Zealand Defence Force (NZDF) have participated in major commemorative activities in New Zealand and Australia and overseas.

The commemorations have led to a huge array of collaborative projects between our sound and film archives, cultural and community groups, and to nearly 200 requests to the New Zealand High Commission from schools and RSLs around the country for New Zealand flags and anthems to include in their own ceremonies. You can probably imagine the nervousness in our office as the New Zealand flag referendum came and went. It has been a great illustration that the bonds between both countries run much broader and deeper than the formal, government-to-government relationship.

Maybe we shouldn't be surprised by this. Australian public sentiment has been clear for a while. In the ten years the Lowy Institute has conducted its annual 'thermometer' of Australian attitudes towards other countries, New Zealand has consistently ranked as the country most warmly regarded by Australians. This year that sentiment maxed out at 85 degrees. That's hot, even by Australian standards. At the top of a 'real' mountain like Aoraki Mt Cook it would be pretty near boiling point.

It is a sentiment which few, if any, countries today could claim to match—let alone consistently over more than a century. In the current international context where many other long-standing and close relationships are appearing to fray, the resilience of the trans-Tasman bond seems even more impressive. However, the past hundred years

has been quite a journey, so it is worth briefly reflecting on some of the similarities and differences between 1917 and today to understand how far we have come.

### **The Australia–New Zealand relationship in 1917**

At face value, much about the Australia and New Zealand of 1917 would seem familiar to us today. Then, as now, Australians and New Zealanders travelled freely and extensively across the Tasman as tourists and migrants. This migratory pattern saw large numbers of New Zealanders and Australians serving in each other's defence forces. There were more than 2000 New Zealand-born soldiers in the Australian Imperial Force (AIF)—a remarkable figure given New Zealand's population was just on one million at the time. Of those 2000 soldiers, three would go on to win the Victoria Cross (VC) for Australia.<sup>6</sup>

The trans–Tasman migratory trend is also evident from the Beersheba casualty records. At least two of the 173 identified Australian casualties buried in the Beersheba cemetery are recorded as having been born in New Zealand. Likewise, one of the 31 New Zealand soldiers buried there is recorded to have been born in Australia.

The famous Anzac mateship was genuine, although even then it was not without its familiar ribbing and rivalry. Notwithstanding their recognised contribution, New Zealanders in the AIF were known for some time as 'Bill Massey's tourists'.<sup>7</sup> Gallipoli may have also produced one of history's more memorable trans–Tasman insults, from the Wellington Regiment's hard-bitten Lieutenant Colonel, William Malone, who once bluntly described his Australian comrades at Quinn's Post as a 'loose, beery lot with a Garibaldean, boy scout, scally wag look'.<sup>8</sup>

Also familiar are the accounts of sporting rivalry. One New Zealand record tells of a particularly 'fast and willing' game of rugby played on Lemnos Island between teams from the AIF and New Zealand Expeditionary Force, which the New Zealanders won.<sup>9</sup> Other official records also mention various cricket matches, but remain oddly silent as to the results.

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<sup>6</sup> Captain Alfred John Shout VC (born in Wellington), Private Thomas Cooke VC (born in Kaikoura) and Captain Percy Storkey VC (born in Napier).

<sup>7</sup> James Bennett, "'Massey's Sunday school picnic party': 'The other Anzacs' or honorary Australians?", *War & Society*, vol. 21, no. 2, 2003, p. 42. 'Bill Massey's tourists' was a reference to then New Zealand Prime Minister William Massey.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Otago Daily Times*, 16 December 1915, p. 4.

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Despite the rivalries, the 1917 trans–Tasman sporting relationship was perhaps even closer than it is today. Prior to the war, New Zealand and Australia sent combined ‘Australasian’ teams to two summer Olympics in 1908 and 1912. Even more remarkably, a New Zealander won gold in the pool (albeit as part of the relay team). The 1908 gold for rugby union was competed for and won by...the Wallabies!

Our leaders may well pause at Beersheba commemorations to reflect on how the world has changed since then. No doubt the New Zealand representatives present on 31 October will be too diplomatic to mention that date’s other trans–Tasman anniversary—the 2015 Rugby World Cup Final at Twickenham. Just as I am sure the Australians won’t mention Rugby Women’s Sevens or compare our respective Olympic rugby medal tallies. They might instead reflect on that historic Australasian effort, and note that if a similar joint team had competed at Rio in 2016, it would have won 47 medals, including 12 golds, placing Australasia fifth on the overall medal table. Not bad for a combined population of 29 million.

Sport, military and migration aside however, in other ways, the trans–Tasman relationship of 1917 was surprisingly a lot thinner than it is today. Politically, New Zealand’s decision not to federate with Australia (in spite of the Constitution’s optimistically premature preamble) had long been settled. Undoubtedly this decision was informed by a range of strategic and policy considerations, but it certainly seems to have accurately judged the public mood in New Zealand—at least insofar as this is reflected by an 1899 edition of a short-lived Wellington journal called *The Critic*, which published what it rather loosely described as a ‘poem’ warning against joining the Australian federation. The ditty predicted that if it joined the federation, New Zealand would be:

overrun with larrikins, bookies, spielers, medical quacks, yes-noes,  
uncaged gallows birds, sundowners, and others afflicted with delicate  
health and chronic fatigue, but active, however, in all the shades of  
iniquity...<sup>10</sup>

Whatever the reasons, because New Zealand remained a dominion of the British Commonwealth, Britain retained responsibility for its foreign and defence policy, which meant that the bilateral political relationship between New Zealand and Australia was largely transacted via London.

However, perhaps more striking was the relative absence of meaningful economic integration. The contemporary investment relationship consisted mainly of a few New Zealand branches of Australian trading banks, most of which were headquartered in

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<sup>10</sup> ‘What did you call me? Oz-NZ abuse’, *Sunday Star Times*, 31 January 2009.

the UK. Our shared emphasis on pastoral agriculture and exporting to Britain meant that New Zealand and Australia both accounted for less than 10 per cent of each other's total trade.

### **The trans-Tasman relationship today**

In the hundred years since 1917, the links between New Zealand and Australia have evolved to cover a broader, deeper and richer landscape. A 2015 study by McKinsey Global Consultancy described New Zealand and Australia as two of the most 'connected' countries on the planet.<sup>11</sup> It ranked the two ahead of Canada and USA, Malaysia and Singapore, and even the core EU member states France and Germany. The story of that evolution and the thickness of the modern relationship reflect a number of strands.

### **The Anzac (defence) connection**

The defence relationship provides a material example and a logical starting point. It is a bond that pre-dates Gallipoli, but in the past one hundred years has seen New Zealand and Australian defence forces serving or training alongside one another in conflict and peacekeeping operations on nearly every continent. This includes a sixteen year-long commitment in Afghanistan, and, in a distant echo of a century ago in Beersheba, it is continuing with the joint deployment of the Australian and New Zealand defence forces to the Building Partner Capacity mission in Iraq.

The relationship was underscored by New Zealand's 2016 Defence White Paper which restated Australia's place as New Zealand's only formal military ally. It is reflected in the day to day defence cooperation between the two countries. In 2016 more than two thousand NZDF and ADF personnel travelled across the Tasman on a range of business from training to study to pre-deployment preparations for Iraq. That is a rate of roughly seven people per day. At any given point in time, there are more than 80 NZDF personnel posted in Australia, either on training courses or embedded within the ADF. Of those that are in Australia for training, one in four serves as an instructor.

Those training exercises have come a long way too. For instance, on 4 March 1955, residents of the New South Wales town of Currarong reported their surprise at finding themselves under naval bombardment from none other than the New Zealand cruiser HMNZS *Black Prince* on a training exercise in nearby Jervis Bay. Fortunately no one

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<sup>11</sup> David Pralong, James Manyika, Sree Ramaswamy, Ben Fletcher and Kate Yang, 'Companions Abroad: Australia and New Zealand's participation in global flows', McKinsey & Company, 2015, <https://www.mckinsey.com/australia-and-new-zealand/our-insights/companions-abroad-australia-and-new-zealands-participation-in-global-flows>.

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was killed or injured by the half dozen or so errant shells. Local media reported a ‘gracious’ admission of responsibility from the vessel’s captain.<sup>12</sup> A subsequent naval inquiry determined the cause of the bombardment as a faulty firing mechanism. However, by then the *Melbourne Argus*, in the best traditions of Australian journalism, had issued a thunderous editorial laying full blame for the incident with the federal government in Canberra!<sup>13</sup>

Occasional broadsides aside, the intensive schedule of joint training exercises, personnel exchanges and deployments have continued to reinforce both countries commitment to our alliance relationship through doctrine, interoperability and a ‘mateship’ that is more or less unchanged from a century ago.

### **Bilateral relations and treaties**

In contrast to the defence relationship, in some respects the broader trans–Tasman political relationship has had to play catch-up. At the rarefied heights of world statecraft, international connections are usually measured by things like numbers of treaties and the intensity of diplomatic engagement. In the trans–Tasman case, however, formal diplomatic relations are a surprisingly recent phenomenon.

New Zealand did not appoint a High Commissioner to Australia until 1943—twenty-eight years after Gallipoli, twelve years after the first Bledisloe Cup match, and a decade after the suspicious death of New Zealand’s most significant agricultural export to Australia, Phar Lap. In other words, the appointment was perhaps somewhat overdue. In true trans–Tasman tradition, the New Zealand government thought long and hard about the best New Zealander for the job and settled on an Australian! Sir Carl August Berendsen was born in Sydney and spent the first twelve years of his life in Woollahra.

After serving as head of the New Zealand Prime Minister’s Department and effectively founding our Department of External Affairs, Berendsen was despatched as New Zealand’s first High Commissioner to Canberra in March 1943. His first task was to immediately commence negotiations towards our first significant bilateral treaty—the remarkably broad and prescriptive Canberra Pact—which was signed nine months later on 1 January 1944. All of this in the midst of the Second World War.

Impressive though Berendsen’s career may be, he was undoubtedly eclipsed by his Australian counterpart in Wellington—the extravagantly named and larger than life Thomas George De Largie D’Alton. A boilermaker by trade but boasting skills

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<sup>12</sup> ‘A captain courageous’, *The Argus*, 11 March 1955, p. 4. Accessed at NLA Trove database.

<sup>13</sup> *Ibid.*

including juggling, fire-eating, amateur theatre and navigating Tasmanian Labor party politics, D'Alton's overseas postings read a bit like a diplomatic cautionary tale. While in Wellington, he reportedly boasted the city's finest wine cellar (admittedly a slightly less impressive feat given the realities of 1940s New Zealand). D'Alton raised eyebrows after getting into a fistfight at a theatre and his posting was also memorably curtailed by having to return to Tasmania to answer criminal charges from historic corruption allegations.

Indeed, such was D'Alton's diplomatic 'brand' that a subsequent attempt in 1950 to appoint him Tasmania's agent-general in London prompted the outraged Speaker of the Tasmanian Legislative Council to dissolve the House and force a general election. Remaining in Tasmania, D'Alton spent the twilight of his career using his skills as an impresario to promote the Miss Tasmania Quest to raise money for the Spastic Children's Treatment Fund. Still, the mere 21 days between his commencement of duties in Wellington on 10 December 1943 and the signature of the Canberra Pact on 1 January 1944 is undoubtedly a record, one to which any High Commissioner would only hope to aspire.

Today, the trans-Tasman treaty architecture is a bit more substantial. New Zealand now has 77 treaties in force with Australia. This is more than we have with any other country apart from the UK. That comparison is slightly unfair though given many of the British agreements were automatically inherited from the colonial relationship, which effectively gave the British a couple of hundred years' head start. However, in addition to those 77 treaties, there are also more than 150 non-treaty level arrangements that we know of. So Australia is definitely catching up.

### **Prime ministerial meetings**

Formal treaties aside, the pinnacle of the political relationship today is the annual Australia New Zealand Leaders' meeting. Interpersonal relations between our political leaders have long been a mainstay of the trans-Tasman relationship, helped no doubt by the many family connections mentioned earlier.

Familiarity of course can also breed contempt and the antipathy reflected in some of our prime ministerial sledges is the stuff of legend. Sometimes these have been almost lyrical, like Sir Robert Menzies' quip, in response to a pretentious remark by New Zealand Prime Minister Keith Holyoake, that 'from such little acorns, great holy oaks grow'.<sup>14</sup>

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<sup>14</sup> Richard Woolcott, *Undiplomatic Activities*, Scribe, Melbourne, 2007.

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Others have been more pointed. For instance, in his memoir, Bob Hawke described David Lange as someone who ‘seemed to find sustained sessions of concentration difficult’.<sup>15</sup> Lange of course gave as good as he got, remarking that Hawke’s book ‘needed to be read by a psychotherapist rather than a politician’.<sup>16</sup> Then there is of course Sir Robert Muldoon’s famous response to the claim New Zealand’s best and brightest were leaving for Australia—he said their departure raised the IQ of both countries—which remains unparalleled even by rhetorical masters such as Keating. Compared to this, the ‘bromance’ and ‘pyjama diplomacy’ between Prime Ministers Key and Turnbull is a world of difference.

Whatever the reasons, for much of our history, such prime ministerial meetings occurred largely on an ad hoc basis. They were also not without their perils. In 1906, New Zealand’s longest-serving Prime Minister, Richard ‘King Dick’ Seddon famously died at sea en route from an official visit to Australia. Happily for High Commissioners today, trans-Tasman crossings are a less risky proposition. Though anyone who has flown into Wellington during a north-westerly crosswind may disagree!

The modern practice of annualised prime ministerial meetings is a surprisingly recent phenomenon, being a product of the Howard/Clark era. The sheer number of issues on the agenda demonstrates their necessity as well as the breadth of the modern relationship. For instance, during Prime Minister Turnbull’s visit to New Zealand in February 2017, the communique included topics ranging from the Trans-Pacific Partnership trade agreement, Brexit, the conflict in Syria, cybersecurity and the threat of terrorism, people smuggling, and the Pacific Islands Forum to the Paris Agreement on climate change.

The two prime ministers also witnessed the signing of a science and innovation agreement (which, when ratified, will take our total number of treaties to 78) and discussed ways to further integrate the trans-Tasman economies.

### **Governmental connections**

Prime ministerial meetings may be the apex of the political relationship, but the intensity of official contact that underpins them speaks to a much deeper agenda in which both countries are heavily invested. This is illustrated by the sheer volume of ministerial and official traffic between our two countries. In the year to June 2017, the New Zealand High Commission facilitated a total of 89 official visits in both directions across the Tasman. This included 36 ministerial-level visits as well as the

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<sup>15</sup> ‘What did you call me? Oz-NZ abuse’, op. cit.

<sup>16</sup> ‘Egos won’t get in the way with Rudd says PM’, *New Zealand Herald*, 27 November 2007.



annual meeting of prime ministers. The 89 trans–Tasman visits combined official and ministerial travel and also reflected two-way traffic. Set against the annual suite of Australian overseas travel, it is not a bad showing.

It also doesn't include many other points of engagement at places like the Asia-Pacific Economic Cooperation forum, East Asia Summits, the World Trade Organization and the World Economic Forum. Or indeed overseas commemorative events like Anzac Day at Gallipoli or at Beersheba. Nor does it include the numerous and regular ministerial interactions by email, phone or that bane of cautious diplomats the world over—texting. But it does provide a rough metric for the breadth and intensity of the cooperation between our two governments.

Some of those visits might even be for meetings of the Council of Australian Governments (COAG), where New Zealand is represented. On some COAG councils, New Zealand has voting rights to reflect those areas where we maintain joint regulatory agencies, such as on food standards. And on occasion we have even hosted COAG meetings in New Zealand. Below the ministerial level, our police forces, customs and border protection agencies, maritime safety, health, environment, science, education and treasury officials collaborate extensively on issues as diverse as:

- Antarctic conservation
- regional economic architecture
- whaling
- illegal fishing
- tax administration
- countering terrorism and transnational crime.

Recently, the Financial Markets Authority of New Zealand announced a further trans–Tasman collaborative initiative in respect of the emerging FinTech industries in both countries.

We have certainly come a long way since declining to join federation at the turn of last century. Although that decision has never been revisited—and isn't likely to be—all these interactions play a major role in reinforcing the principles, if not the letter, of cooperative federalism through the exchange of policy ideas across the Tasman.

### **Economic relationship**

As I mentioned earlier, it is in the economic sphere where the trans–Tasman relationship has undergone its most significant transformation over the past century.

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From its low point in the mid-20th century where Australia lagged many of New Zealand's regional trading partners to account for less than 10 per cent of our trade, it is now unquestionably our largest economic partner.

Former New Zealand Prime Minister John Key often remarked that the five guarantors of New Zealand's success were:

- water that falls on the right places at the right time
- the ability to produce protein in a world increasingly demanding it
- our English language
- geographic security
- a strong and prosperous Australia.

In his previous role as finance minister, Bill English would often list the four economic metrics he focused on more closely than any other—the milk powder price, the NZD exchange rate, the Australian House Price Index and the price of iron ore.

On almost any metric Australia matters to us more than any other international partner. Despite its recent displacement by China as our largest goods market, Australia remains New Zealand's number one trade and investment partner—our largest economic partner by far. Two-way trade totalled A\$25 billion in 2016. Australia takes nearly 20 per cent of our exports and provides 13 per cent of our imports. And in 2016 two-way investment across the Tasman exceeded A\$150 billion.

Underpinning all this is a suite of agreements which collectively are regarded as the world's leading trade and investment framework. Its centrepiece is the Australia–New Zealand Closer Economic Relations Trade Agreement (known as ANZCERTA or the CER Agreement). Although many in New Zealand would love to take the credit, the record shows it was very much an Australian initiative.

The idea was first proposed during a series of trans–Tasman political exchanges by Australian Deputy Prime Minister Doug Anthony in 1979. His motivations reflected a mix of the strategic and commercial, including to bolster the economic security of a key regional partner and to find ways to work better together internationally. He also wanted to prise open New Zealand's famously closed and protected market, which at the time was also Australia's number one export market for elaborately transformed manufactures.

Given the benefits that have since accrued, surprisingly the merits of the Australian proposal were not immediately apparent to New Zealand. Though some agencies embraced the idea, records from the time reveal significant nervousness from others.

In one Australian report, the author expressed frustration at the failure of New Zealand officials to see the big picture and the fact that they remained ‘fixated on specific tariff lines for whiteware’.<sup>17</sup> Another report of a meeting between trans-Tasman agency heads noted the acrimonious exchange between the two transport secretaries on the issue of air services ‘had to be seen to be believed!’<sup>18</sup>

New Zealand accounts note similar frustrations. For example, New Zealand officials felt their Australian counterparts seemed unable to acknowledge the country’s manufacturing sector or that New Zealand was ‘more than just a farm or holiday destination’.<sup>19</sup> As *The Pretenders* might say, ‘some things change, some stay the same’.

Fortunately, the leaders of the time grasped the value of the initiative and managed to cut through the bureaucratic reservations—no mean feat given their own interpersonal differences. Although it was negotiated by the governments of Malcolm Fraser and Muldoon, the CER Agreement, which was signed in 1983, helped catalyse the massive structural economic reforms of the Hawke/Keating and Lange/Douglas Labo[u]r governments.

Successive administrations have assiduously built on the CER foundation over the years. Later agreements and arrangements have delivered mutual recognition for goods and qualifications, liberalised investment screening thresholds, established joint standards regulators, and harmonised our business law regimes.

The most recent addition to the economic piece has been the signature in 2017 of a science, research and innovation treaty. This agreement builds on extensive research and institutional collaboration between Australia and New Zealand and strategic co-investment in major science infrastructure like the Australian Synchrotron and Square Kilometre Array. It aims to give effect to the vision of both governments for a trans-Tasman innovation ecosystem. The agreement also forms part of an intensive whole of government and business agenda to deliver a single economic market across the Tasman.

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<sup>17</sup> Cablegram from L.H. Border (Australian High Commissioner) to N.F. Parkinson (Secretary of the Department of Foreign Affairs), 12 April 1979. Cited in Pamela Andre, Stephen Payton and John Mills (eds), *The Negotiation of the Australia New Zealand Closer Economic Relations Trade Agreement 1983*, Department of Foreign Affairs and Trade, Canberra, 2003, p. 5.

<sup>18</sup> Letter from B.F. Doran (Acting Head, New Zealand Section, Department of Foreign Affairs and Trade) to G.R. Bentley (Australian Deputy High Commissioner to New Zealand), 29 February 1980, *ibid.*, p. 223.

<sup>19</sup> Report to New Zealand cabinet by Brian Talboys, New Zealand Deputy Prime Minister, 30 March 1978, *ibid.*, p. 21.

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## **Culture and people**

The significance of the modern relationship between Australia and New Zealand is of course not limited to the military, government or even the economy. For most New Zealanders, Australia assumes a far greater importance. Free movement across the Tasman has been a foundation principle of our two countries since the 18th century.

Today, we are coming closer together in population terms. There are currently around 640,000 New Zealand-born people living in Australia (that's about 12 per cent of our population) and around 80,000 Australian-born people in New Zealand. This difference is also a surprisingly recent phenomenon. It was not until 1967 that the numbers moving from New Zealand to Australia overtook those coming the other way. Although the absolute figure may seem like a big difference, as a percentage of host population, it is actually surprisingly proportionate. It means that New Zealanders in Australia and Australians in New Zealand both constitute roughly two per cent of our respective populations.

That trans-Tasman population has carried its passions with it. New Zealand's rugby, soccer, basketball and even American football teams all play in Australian domestic competitions. We listen to musicians like Crowded House, Gotye and Kimbra, watch TV shows like *Neighbours*, *Home and Away* and *Top of the Lake*. We are even united in our mutual attempts to variously claim and then disown actors like Russell Crowe!

These ties are also reflected in the vast array of professional and cultural Australasian associations spanning the ditch. From chartered accountants to philosophers, convenience stores to pharmacies, even our parliamentary staff cooperates outside of work hours through the Australia and New Zealand Association of Clerks-at-the Table.

## **New Zealand's value proposition**

As the McKinsey report made clear, our relationship is deeper and broader than nearly any other country, but it is also incredibly intimate. Yet while Australia's significance to New Zealand is well-established, the question remains, what's in the relationship for Australia? In New Zealand, we think quite a lot.

Economically, New Zealand is Australia's seventh-largest two-way trading partner and we are Australia's fifth-largest market for services exports. However, headline export statistics only tell part of the story, especially those based on value during a commodity boom. One often overlooked aspect of New Zealand's trade with Australia is that we are disproportionately important to small and medium-sized enterprises in Australia. More than 18,000 Australian businesses export to New

Zealand, compared to 6000 exporting to China. While China predominantly buys mineral commodities, New Zealand is a particularly important market for higher cost and labour-intensive industries like Australian pharmaceuticals, medical devices, engineering and manufactured goods, as well as IT and especially services. The growth rates in these export sectors have been even more impressive.

New Zealand and Australia remain each other's largest source of foreign tourists. In 2017 an estimated 128 flights a day—that's 47,000 a year—carried nearly seven million individual passengers back and forth across the Tasman. Put simply, this means New Zealand underpins a lot of Australian jobs and a lot of good times.

Recent experience has also shown that free movement across the Tasman is not a one-way street. Since 2012, the traditional dynamic of trans-Tasman migration has almost completely reversed. Australian migration to New Zealand is now up 50 per cent. While some people have been tempted to describe this in triumphal terms, the reality simply reflects that the automatic stabilisers of our single economic market are working precisely as they were intended to adjust to shifting economic conditions to the benefit of both our economies.

Integration is also literally paying dividends for Australia. Between 2000 and 2016 Australian investment in New Zealand tripled, meaning we are now the fourth largest destination for Australian investment, accounting for A\$106 billion in 2016. New Zealand is also Australia's eleventh largest source of foreign investment with over A\$45 billion invested in Australia. That represents a greater investment than from Canada, from Germany and France or from Korea and India combined.

Drilling below the headline stats to the enterprise level, among New Zealand investors are companies like Fonterra, which is now Australia's leading foodservice and dairy ingredients provider, processing 1.7 billion litres of Australian milk a year and employing 1650 Australians. It also includes companies like Meridian and Trustpower, which are among the largest investors in renewable wind energy in Australia. Their investments continue a venerable tradition of New Zealand contributions to greening Australia's energy mix, dating all the way back to New Zealand engineer Bill Hudson, who headed the construction of the Snowy Hydro scheme.

Such investment also extends to the technology sector, with companies like Datacom, which was chosen last year by international healthcare provider Bupa as the preferred vendor for 7000 residents and 8000 staff across 70 of its aged care facilities in Australia and New Zealand. The deal represented a multi-company collaboration involving two other trans-Tasman companies—Medi-Map from Christchurch, and

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SmartWard, a Canberra-based business. It also opened opportunities for all three with Bupa in other international markets.

In Australia, investment in New Zealand is sometimes portrayed politically as a negative, particularly relative to smaller sums invested in other Asian markets. One answer to this is that governments don't invest, companies do. This means investment does not always reflect political imperatives, but rather a clear-eyed commercial decision about risk, stability, and the predictability of return. These factors are why so many Australian companies decide to invest across the ditch.

New Zealand also adds plenty of value outside the economic sphere. On the defence side, New Zealand and Australia are trusted and interoperable security partners with a proven track record of working together well. The decision of the two countries to collaborate in Iraq is the continuation of a century of joint security efforts. Royal New Zealand Air Force aircraft and Royal New Zealand Navy vessels have been used as substitutes and supplements for Australia's own deployments, even on occasion patrolling Australia's southern waters.

The two defence forces have worked incredibly closely in responding to any number of humanitarian and disaster recovery efforts in the Pacific. Our frontline agency collaboration has also extended to Australian police helping out in Christchurch following New Zealand's worst ever natural disaster and to New Zealand firefighters battling bushfires in Australia on nearly an annual basis for the past decade.

We have been each other's first port of call—and the first to offer assistance—following major disasters and other domestic events. When Australia hosted the G20 in Brisbane, more than 200 New Zealand police were deployed to Queensland and sworn in as temporary Australian police officers. The in-depth familiarity this reflects in terms of law, doctrine, operating procedures and trust is remarkable and shows just how connected our two systems are.

The cooperation between New Zealand and Australia is so instinctive that it can be easy to forget that we are talking about two separate countries and not—as even the Australian Constitution suggests—another Australian state. We are separate countries, with distinct identities and often different approaches, albeit with enduring values which are fundamentally aligned.

To many outsiders we look, sound and are the same. Although a growing acknowledgment of our distinctiveness has enabled us to better complement one another on the world stage. From 2013 to 2016, Australia and New Zealand concluded

consecutive terms on the United Nations Security Council, a scenario that would have been unthinkable a decade ago.

### **Unfinished business**

As close as our two countries are, like any family we have had, and continue to have, our differences. As with most siblings, many of these differences have become less significant as we have matured. Even underarm bowling may be forgotten eventually!

Equally, neglect—real or perceived—can make even the closest relationships brittle. For all our genuine success, Australia and New Zealand are not immune to the same global trends eroding so many other long-standing relationships around the world. Whether that trend is protectionist sentiment threatening to roll back firms' access to government procurement markets, or fiscal pressures being invoked to tighten people's ability to move, live, study and contribute across the Tasman.

Most of these issues are of course long-standing and do not lend themselves to easy fixes. Nonetheless, our two countries need to remain focused on them and their very real, immediate and longer-term consequences for our increasingly integrated populations. In doing so, we must also remain mindful of how far we have come and of the investment that so many successive governments, institutions, businesses, organisations and people have put in to creating, growing and maintaining the relationship New Zealand and Australia enjoy today. Not least because it reminds us what is at stake and the importance of getting it right because in an increasingly uncertain global environment family relationships matter more than ever. As has always been the case, so much of New Zealand and Australia's success in the world is underpinned by getting things right between ourselves—just as we did a century ago at Beersheba.







This paper explores how politics and the media lost their purpose in the digital age and what needs to be done to restore respect for the system. With the new Parliament House celebrating its thirtieth anniversary this year, I will begin by reflecting on what the move to the new building meant for the relationship between the politicians and the parliamentary press gallery. The new building physically separated politicians and journalists for the first time.

Today, we wonder how it was that the press gallery actually functioned in that little rabbit warren in the Old Parliament House. As you walk through the prime minister's suite you wonder how good policy came out of that space because it is very cramped.

I never experienced the forced intimacy of the old House. I arrived in Canberra in October 1988 as the occupants of the new House were still settling in. Nearly every minister threw a corridor party—and then they threw another one, and then they threw another one! In those days, John Howard was the best thrower of office parties and all and sundry in the building were invited. Looking back, it feels like they were trying to hang on to some of the informality that existed in the old House.

There are two other anniversaries I want to note—the 25th anniversary of the 1993 ‘True Believers’ election which the Australian Labor Party won against the odds, and the 20th anniversary of the 1998 election. Both elections served as referendums on tax reform. The coalition put the GST question to the people from opposition in 1993 and lost the election, but in 1988 it put the question again, this time as the government, and won. I see these GST debates as a dividing line because after 1998 the political system said ‘we can’t do big reform any more’.

People on the Liberal side will tell you the scare campaign Paul Keating ran in 1993 gave both sides of politics permission to be more negative. There had been negative scare campaigns in the past, most of them in the foreign affairs space, but up until that point it was rare for a political party to devote all its communication to saying the other side is about to rip you off and not offer an alternative. It is a little unfair on Paul Keating because he did offer some fairly big alternatives in 1993, but the lesson both sides of politics drew from that election was ‘I can just be negative and I can win, and I can win when I have nothing else to say’.

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\* This paper is an edited transcript of a lecture given by George Megalogenis in the Senate Occasional Lecture Series at Parliament House, Canberra, on 16 March 2018.

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There is a question mark about whether this was the starting point of the disruption as several other things were happening at that time which, with the benefit of hindsight, are more significant. For instance, the 1993 election campaign was essentially a year-long campaign after Paul Keating took the leadership from Bob Hawke at the end of 1991. As well, in 1992 Newspoll went from a monthly survey to a fortnightly survey. I actually think that was the first step into the abyss for the political system, the modern abyss that we are in now. Leaving to one side how journalists behaved when they felt they had to report Newspoll and not policy, when Newspoll went fortnightly the very first thing that changed is that the major parties found it easier to dismiss their leaders.

In the parliamentary term between the 1993 and 1996 elections the Liberal Party had three leaders—John Hewson, Alexander Downer and then John Howard. The first two were punted because the polls said they were not going to win the next election. The polls did not actually say that but that was what the back bench thought. Alexander Downer was the first main party leader in our political history who did not contest an election. The very first disruption then is that the opinion poll became news and we need to keep that in mind when we consider what is not working today. This was way before the internet and before the televising of federal parliament (although that happened in the early 1990s). Those who follow my work in the media know it is something I lamented and I went on a poll ban. At first, I said I would avoid reporting on opinion polls outside of an election year. Now the ban is permanent.

I want to take a look at *The Australian's* front page on the 1998 tax package. The thing to remember is that the GST was being discussed by the Howard government for a full year before we saw the package. In the year before the package was released a lot of work went into identifying problems in the old system that the government wanted to fix. So that is one year's worth of preparation before the release of this document. The main story on the front page is as straight a news report as you can get. The first 12 paragraphs are just a recitation of what the package will mean for individuals. The first person quoted in the piece is John Howard, but he is quoted in the fourteenth paragraph. Then Opposition Leader Kim Beazley gets a line towards the end before the main story spills on to the next page.

The front page includes nine case studies of people from the real world who we had lined up weeks in advance to take a question from us the night the package was released. The question centred on what they would gain and lose under the package and we got a two-line response from each of them. We had already spoken to these interview subjects about their lives and about their expectations for the package which



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into it at our end, in a sense, to honour the work a government had already put into it—now I do not mean honour in the sense that we wanted to barrack for one side or the other.

There is a second news story written by Richard McGregor that basically breaks down the deal to give the states the revenue from the GST. Paul Kelly has an analysis down the bottom of the front page. We have some pictures up the top pointing to our analysis inside. Now the critical thing about this lift-out is that I was able to arrange in advance for someone from each part of Australian society—whether it was business, community organisation or tax expert—to write an analysis. They were able to tell you as a reader their take on the GST. The only other thing in journalism today that has this level of detail is the Budget lift-out. The Budget lift-out produces that level of detail almost by default because 20 to 30 journalists are locked up in a room for six hours and produce all the copy they can. The other point is that when a Budget is released the government still feels obliged to give you the balance sheet—what you gain and what you lose.

In 1988 the GST package was released only a fortnight before the election was called but after the election was run and won by the government there were another seven or eight months of negotiation with the Senate, including referrals to Senate committees. So even though Labor might have argued the electorate only had two weeks to absorb the GST, the system had a long time to absorb the GST before it was legislated. In the first iteration of the debate, independent Senator Brian Harradine finally told John Howard he would not pass the package in the form it was presented to the voters—he did not want food in. After a couple of days John Howard said he would talk to Meg Lees and the Democrats and get food out. On the first year anniversary of implementation *The Australian* did a ‘go back to the field’ report on the impact of the GST.

Compare that to the front page of *The Australian* following the release of the mining tax package in 2010, twelve years after the GST front page. The mining tax had no run-up. It was basically dropped on the electorate without warning. There was a 1500 page document dubbed the Henry Tax Review<sup>1</sup> which was released on the same day as the mining tax. There was almost no ability for someone like me to prepare case studies. Just think about the capacity constraint on the journalist when a government dumps 1500 pages worth of very rich material analysing the tax system but decides to junk the report, and then releases the small bit of paper that says here are the six things that we are going to do and the big one is we are going to tax the mining sector with a super profits tax.

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<sup>1</sup> The official title of the document is *Australia’s Future Tax System Review*.

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STIMULUS SPENDING LIMITS GOVERNMENT RESPONSE TO HENRY TAX REFORM BLUEPRINT

# Swan mines boom to boost super

DAVID UREN  
MATTHEW FRANKLIN

KEVIN Rudd has sweetened his re-election pitch with a plan to boost employer superannuation contributions to 12 per cent and milk the mining boom with a \$0 billion super-profits tax.

But while the Prime Minister will also reduce company taxes and ease the burden on small business, he has ignored most recommendations of the 1500-page tax review by Treasury secretary Ken Henry, including personal tax reform and an overhaul of property tax issues such as negative gearing and capital gains tax.

The government appears to be keeping some voter-friendly changes in reserve for the approaching election campaign, including simplified tax returns, reserving its right to make further announcements in coming months.

While Wayne Swan labelled the economic reforms the most profound of his lifetime, the opposition moved quickly to set up an election campaign clash on the proposals.

Tony Abbott declared himself hostile towards the resources tax and warned employers would have to fund the push to lift compulsory superannuation changes from their current level of 9 per cent to 12 per cent.

"This is not a plan to sweep the economy," the Opposition Leader said. "This is Kevin Rudd's plan to kill the mining boom."

The Treasurer, anticipating the opposition's position, cemented tax and superannuation reform as election issues by warning that the superannuation changes, likely to be popular with voters, would not proceed without the new resources super tax to pay for them to increase retirement security.

"No super-profits tax, no super improvements, infrastructure, or tax cuts," Mr Swan said. "It's not possible to do one without the other."

The proposed resource super-profit tax will scoop 40 per cent of its, once companies have paid off the cost of developing a mine. The extra \$9bn a year raised from the tax will be used to rebat miners for the existing royalties they pay

**HENRY'S KEY RECOMMENDATIONS**

- Impose a 40 per cent "resources rent tax" on the mining sector
- Cut the company tax rate from 30 to 25 per cent
- Flatten personal tax rates, increase the personal tax-free threshold from \$6000 to \$25,000
- Replace state-based taxes such as payroll and stamp duty with broader consumption taxes including land tax on family home
- Clarify negative gearing
- Combine all family tax benefits into a single means-tested payment
- Taxes on interest earned from savings be slashed by 40 per cent
- Remove the Medicare levy
- Ration fuel indexation
- Introduce traffic congestion charges

**SWAN'S KEY CHANGES**

- Impose a 40 per cent "resource super-profit tax" on the mining sector from 2012-13
- Raise the compulsory superannuation rate from 9 to 12 per cent by 2019-20
- Cut the company tax rate from 30 to 28 per cent by 2014-15, two years earlier for small businesses
- Create a \$700m infrastructure fund to help build state infrastructure from 2012-13
- Continue to allow workers approaching retirement to top up their super by \$50,000 a year

to state governments, adding an extra layer of complexity to the system, and will fund the government's other proposals. These include a cut in the company tax rate from 30 to 25 per cent in 2013-14 and then to 28 per cent in the following year. The lower tax rate will cut in earlier, at 2012-13, for small businesses with less than \$2 million turnover, who are also being offered improved treatment of depreciation deductions.

However, the government decided the panel's bolder recommendation of a company tax rate of 25 per cent could not be afforded at present.

The government has timed the



Wayne Swan, left, Kevin Rudd and Ken Henry at Parliament House in Canberra yesterday following the release of the Henry tax review

introduction of the new resource tax so that it starts delivering revenue to the government a year before the company tax cut and superannuation changes start making serious inroads to budget costs.

As the Prime Minister began a round of electronic media interviews last night to promote his proposals, the Minerals Council of Australia backed the opposition, warning it would resist the

## Logic and political reality collide

DENNIS SHANAHAN  
POLITICAL EDITOR



COMMENTARY P8, 24

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THE policy purity and the logic of the Henry tax review reforms have collided with the political reality and financial limits of a Labor government that is strapped for cash in an election year.

Reasonable policies have been spun into political weapons of class warfare because of the proximity of an election, and ambitious attempts to cut the tax burden and lift savings have been incremen-

tally phased into the future because they simply can't be paid for now.

All its superannuation savings for lower-income earners and a cut in the company tax rate, especially for small businesses, are moves in the right direction, if not as Ken Henry had prescribed, but any immediate large move has been deemed impossible.

As Wayne Swan declared in the

Henry review lock-up in Parliament House yesterday, some things are just not "doable." There is also a range of other recommendations that are just "not acceptable" to Labor. That which is both acceptable and doable has been recast by a government fighting the impressions of being a policy-free and promise-breaking administration — one seeking to appear

Continued on Page 7

## Battle lines are drawn for poll

PAUL KELLY  
EDITOR-AT-LARGE



THE nation is now engulfed in a new election year struggle over a new tax — the immediate spotlight of the anti-climactic Henry review decision.

Farwell ETS, but welcome to the 40 per cent Resource Super Profits Tax, the Rudd government's huge redistribution from the resources boom to finance improved superannuation, infrastructure and lower corporate tax.

Most of the wanted Henry review has been put on ice. In its highly selective response, Labor has avoided losses, averted sweeping changes to the income tax system, shown an election-year caution but engaged in two critical long-run reform battles: a tax redistribution from the resources sector to the rest of the economy, and lifting the superannuation contribution rate from 9 per cent to 12 per cent.

These are iconic imposts that reflect Labor's values but provoke Coalition retaliation. Given the commodities boom, some form of new profits tax is justified. Labor is right to build upon the Keating legacy and plan to boost superannuation — a position that rejected Ken Henry's own views.

Wayne Swan calls this profits tax "a world-class reform" to spread the benefits, combat the two-speed economy and deliver a fair return from our natural resources wealth.

The irony is that the new tax, estimated to raise \$9 billion by 2013-14, one of the few of the 38 recommendations in the Henry review actually taken up by the Rudd government.

Tony Abbott likened the resources tax to the ETS. He brands

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## Man who wouldn't kick the hornet's nest

INSIDE STORY

TOM DUNNEVIC  
NATIONAL CHIEF REPORTER

ON the eve of Wayne Swan's annual Christmas surfside soiree in Queensland's Sunshine Coast, Ken Henry dropped off a three-part extravaganza about our possi-

ble fiscal destiny. Now in public release, you know it as Australia's Future Tax System.

But the Treasury secretary's epic script has had a four-month behind-the-scenes rewrite and metamorphosis in the hands of Swan & Co. The look on Henry's face as the Treasurer outlined the Rudd government's response to the review was the quite miserable, but it was decidedly akin to

a stiff-lipped director watching his studio's blunt-edged cut of his masterpiece.

The Henry sequel we saw yesterday, shaped by the government's message and polling merchants, had the slogan "stronger, fairer, simpler" but could just as easily be seen as something weaker, shorter and safer than the original.

Ken Henry was asked to look

at reforming the tax system, not create a new one from scratch," says a key player in the review.

Continued on Page 7

club mode yesterday, confidently jousting with reporters who suggested the government's response was lacking in either courage or imagination, the new policy narrative is strikingly familiar to those with a sense of Labor history and the Treasurer's long-held policy positions: the living standards of ordinary workers, building a stronger economy, leaving a

THE Henry review offered a path to a simpler tax system that reduced the distortions propping up the housing market, reformed family payments and restored indentation for fuel excise.

Continued on Page 6

## Blueprint to nowhere

THE Henry review offered a path to a simpler tax system that reduced the distortions propping up the housing market, reformed family payments and restored indentation for fuel excise.

It wanted to improve work incentives in the tax and welfare system by introducing a single family benefit, consistent means tests and a two-tier personal tax system.

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35 per cent would apply on every dollar earned between \$25,000 and \$180,000. The top rate after that would be 45 per cent, based on an indicative table in the report.

But the Rudd government, fearing a backlash from changes that involved losses, ruled out anything that looked like a tax on the family home, penalised single-income families or motorists.

GEORGE MEGALOGENIS P7

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Courtesy of News Limited

So how does a newspaper react to that reporting challenge? A big pile of paper gets thrown at you with a couple of hours to digest. We did a pretty good job but unfortunately we did not do the job we could have done and we certainly did not do the job we did in 1998.

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The first couple of paragraphs in the main story read almost identically to the first couple of paragraphs of the story we wrote in 1998. It says:

Prime Minister Kevin Rudd has sweetened his re-election pitch with a plan to boost the employer superannuation contribution by 12 per cent and milk the mining boom with a 10 billion dollar super profits tax.

In fact it is a sharper lead than we had in 1998. The second paragraph tells you that Kevin Rudd has junked the Henry Tax Review. Now guess who was the first person quoted in that story? Was it Kevin Rudd, Treasurer Wayne Swan, or Leader of the Opposition Tony Abbott? Six paragraphs in we quote Tony Abbott saying this is not a plan to grow the economy, this is Kevin Rudd's plan to kill the mining boom. Tony Abbott's is the first active voice you read in that story. The first active voice you read in the story in 1998 is way down the end of the first column. The first active voice is actually the most prominent thing you see in the 2010 copy.

Why did we react to the mining tax politically? One of the reasons we reacted to it politically as a paper is that the story had already moved on. That Sunday we were in the lockup for the mining tax and then everybody scurried out of the lockup and did their Sky News report or their ABC News report or tweeted. Everybody barrelled out of that room and had already started to interpret the thing politically. So the next day's paper could only think politically. Now if I were the editor I might have tried to do something different but I am not sure how different it could have looked.

There are two comment pieces in the 2010 coverage rather than one and an 'Inside Story' which we prepared in advance. Within the body of the paper there are no thoughtful analytical pieces by affected parties but about half a dozen knee-jerk comment pieces. It would be easy for people to look at that paper and say this is a once over, easy effort. One of the reasons why the paper could only do this—and I think it did pretty well under the circumstances—is because politics did not give us time to digest the package. The mining tax was very popular but it was dead on arrival for another reason—the first thing the public heard about it was the opposition to it. Everybody on the Labor side understands the lesson from this period. However, when we look at these two front pages we are looking at two different worlds—1998 has thoughtful analysis, a year's worth of preparation, and we knew there would be another year or so of debate before this thing was finally in your pocket or comes out of your pocket, whereas 2010 was hit-and-run.

Another example of the hit-and-run approach is the list at the bottom of page two telling you where you could see all your favourite journalists from *The Australian*—Paul Kelly will appear here, here, and here, Dennis Shanahan will appear there. There

was a line saying I would be live blogging at midday on the Monday. For the life of me I cannot imagine how it was that I could have got my head around the mining tax package on one day, when the next thing I had to do was answer questions from readers.

From that point on it was the speed of the change that basically talked me out of journalism. This was the year when I felt daily journalism had become too quick for boring policy focused journalists like me. The election campaign that year—2010—was the first election campaign where a story you broke would not be followed up by your colleagues. Not because it was not a good story—and a couple of mates did ring me after one particular piece I wrote and said ‘love your story mate but I am sorry we can’t follow it up because the bus is taking us out here’, and then Mark Latham’s about to monster Julia Gillard somewhere, and Tony Abbott’s hiding away because he is 20 points clear in the polls. It almost became impossible to be a thoughtful journalist in this world.

Now the biggest disruption between 1998 and 2010 was not Newspoll but the digital revolution. I am going to try and put myself in the shoes of a politician. I see this thing called social media and I see this guy—‘George M’ for argument’s sake—who is always asking me these terrible nit-picking questions about the impact of this or that line of this package. I am sick of talking to him; and now I don’t need to talk to him because I can get my message out immediately to the people I need to persuade via social media.

The language Tony Abbott used to oppose the mining tax had been fashioned in that digital world and he had only been Opposition Leader for six months at that point. That language fit on a tweet and it got you the top line of a television news bulletin that night. At the same time television news had contracted, it had shrunk the air time it gave to national affairs to basically a sound bite.

Incidentally, Kevin Rudd had been the first to successfully adapt to the digital age. You can see this by comparing the very long election campaign of 2007, the year of Kevin07, with the 1998 campaign. All through 1998 journalists were trying to figure out the impact of the GST on this or that, but all the way through 2007 we were trying to stop Kevin Rudd long enough to ask him a question. Of course he would not take a question from the press gallery because he could go on FM radio, he could go on social media and he could go on Rove McManus where he gets asked who he would turn gay for.

The thing that really annoyed John Howard during the 2007 campaign was that Kevin Rudd did not have two bad days in a row. It was the first time in John Howard’s



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public life that an opponent did not have two bad days in the media in a row, and if you do not have two bad days in the media in a row, the other side can't get their hooks into you. Kevin Rudd was so quick and so intuitive in his adaptation to this new media that it looked like all the rules had been rewritten.

There were a couple of politicians before him who had used new media to basically jump traditional containment lines—not just the press gallery, but also their party rooms—to make a case to the public to elect them. The first and most famous example that political academics cite is Robert Menzies and his use of radio.<sup>2</sup> It took Menzies a long time to remake himself—he was a prime minister who could not hold his government together during the war. But by 1942 he was issuing these sermons to middle Australia about the 'forgotten people', sermons that by 1949 have him elected at the top of a boom. Labor lost power at the top of the boom to a guy who remained prime minister for the next 16 years.

The next one after Robert Menzies was then ACTU President Bob Hawke who used television in the 1970s in the way Donald Trump uses Twitter today. So whereas Robert Menzies was this comforting voice in your lounge room coming through the wireless, Bob Hawke was in your home and it was the first time you had heard a politician speak to you like this. Bob Hawke was still doing public rallies, still doing all the other things he needed to do, still taking questions from the regular press, but he got into middle Australia via another means and he was the first one to do so.

When Bob Hawke turned up most people did not know what an ACTU president was. Suddenly here is this guy in your living room who is fighting for your side if you are a Labor voter. And if you were a conservative voter, Hawke showed you another side of himself, which was that he liked to cut deals and he understood business. Even though in those early days he had very little support in the Labor party caucus, by the mid-seventies Bob Hawke was able to position himself as an alternate prime minister.

The difference with social media, compared to radio and television, is that when you do that disruption, when you grab a political system from the outside as Kevin Rudd and later Barrack Obama did, and then subsequently Donald Trump, it is just as easy for your opponents to use that system to stop stuff from happening. So what Robert Menzies and Bob Hawke were able to do through radio and television, in a world where we still operated at the pace of that 1998 lift-out I mentioned, was gain attention. But the system still worked the way it always worked—the public service gave advice, the government prepared the ground for a big policy reform and sold its case to the people and it took questions from the media.

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<sup>2</sup> In 1942, Robert Menzies broadcast a series of weekly Friday night talks on 2UE and affiliated stations, the most famous of which is 'The Forgotten People'.



In the social media age the temptation to avoid all those other things is overwhelming. If I were in Kevin Rudd's shoes or even, by the end of it, John Howard's shoes, and I thought that I could avoid taking a question from a journalist like me I would probably take up that opportunity for a year or two. But—and this is the big 'but'—if I then saw the main party vote, which had been reliably 40 per cent when we got kicked out of government and 50 per cent when we entered government, start to leak I would think differently. The two parties used to rely on 80 or 90 per cent of the Australian population turning out for them nearly every time an election was held. So the contest was in and around that last 10 per cent—half of whom probably were not paying attention and the other half of whom were active swinging voters. When you are pitching to that five per cent, social media is not the most logical means of appealing to them because they weigh up their vote. So you need to slow down your communication to make sure you have persuaded them. That was how the system operated for as long as anyone could remember.

But the contest today is for a larger floating voter, covering not 10 or 20 per cent of the electorate, but 30 or even 40 per cent. You only need the two main parties to each lose 10 per cent of their respective primary vote to the independents to have a US-style disruption in the political system. It means when you go to work, even the day after you get elected, you only have about a third of the electorate committed to you and two-thirds ready to dump you almost immediately. In that world—and this is the world in which a lot of politicians have been operating over the last 10 or so years and this is the world where a government thinks it can drop a mining tax policy on you and expect to have it passed within a week—why do you think they are struggling to get their message out?

Now this is the most complicated bit of this story for me because I am asking people in public life to take the media on trust again. If I took a survey today of this room, trust in parliament is presumably where everybody would expect it to be—fairly low, trust in media you would also expect to be fairly low. Trust in the public service you would hope is still fairly high, but there would be a question mark because of outside forces. Trust in something like the ABC you would think would still be fairly high, but a question mark again for the ABC. When I think about the question of how to restore respect in parliament, I do not think you can restore respect to parliament until politics treats the media with respect again.

This is a very difficult thing to explain to politicians, not because they are difficult people, but it is just very difficult in this environment to get them to trust what it is I am about to suggest to them, to trust that it is in their short-term interest. I think one of the reasons our two parties are on the nose is that politicians are asking the people to process information faster when than is humanly possible. This was already

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apparent by 2010 with the mining tax ‘here is a big pile of paper, digest it, oh hang on someone has just said no, alright I’ll drop it’. Public engagement in politics has not changed. People are still interested in politics but most of the time they want to be left alone. Because I have been living outside of the political bubble for a few years now, I can tell you the two things that went completely off the scale were Bronwyn Bishop’s helicopter ride and Barnaby Joyce. Conversations at cafes and with neighbours would become intensely political for two seconds before you returned to real issues like the footy!

The thing is when you discuss issues with these same people they have all the time in the world to talk to you about the local school or about the council trying to re-pave the road and mucking it all up and so on. Most of the political parties have been told this repeatedly—if you can find an issue that the electorate is already engaged in and you can slow your conversation down and talk to them about it, they will respect you for it. But in this souped up media environment it is very difficult for one side or the other to take that leap of faith. As I said, what I am trying to propose here is something else. I am trying to propose that politics find a way to resubmit to scrutiny from media.

The other day I saw Shadow Treasurer Chris Bowen on 7.30 trying to explain to Leigh Sales the superannuation changes the Labor Party had just announced. It was a brilliant interview by Leigh Sales and an interesting performance from Chris Bowen. She asked him very specific questions about who was affected—the sorts of questions you would have seen answered in that 1998 lift-out. He replied with a very broad number and then did not want to engage in the detail. This observation is not just about Chris Bowen by the way, but when I saw that I thought you have not had enough exposure as a politician to that sort of questioning because for a minute there he looked a little flummoxed. This is also not an observation specific to Labor—I can make that observation about pretty much any politician across the board. The willingness to submit yourself to an interview by somebody who is not on your side requires not just confidence in your own message but also an understanding that the system relies on that dialogue to be able to then make deeper connections to the electorate. How do we know this? We know this because in the past when the two parties had closer to 90 per cent of the primary vote locked up between them, leaders on both sides—prime ministers, opposition leaders, treasurers, shadow treasurers—would sit down at Parliament House and take all questions for an hour and a half.

We would come out of those press conferences with five or six stories. If you compare the answers given by Paul Keating or John Howard to the very combative but direct questions from the press gallery to the equivalent press conference now—remember how the thing is set up, firstly there might be 10 or 20 journalists there so

there should be 20 to 30 Australian flags behind the leader. I have just made that up. It is obviously not 30 but I think we went close one day didn't we? The leader has got to project total confidence. A journalist asks a hard question and then the leader has to belt the journalist. Of course it was ever thus. The journalist asks another hard question and the leader says right, I've got to zip.

I am not suggesting they were the glory days but in the 1980s and 1990s politicians still had not been tempted by this idea that they could avoid the press gallery completely. They still had not had the digital temptation. There had been temptations of television and radio but the engagement was still mediated by the press gallery. To put them back in that room now when they are not ready for that conversation would make for the most diabolical viewing. But, and this is again the big 'but', I think politicians would be the better for it in the long run.

I will personalise this—John Howard was very good at staying in touch with press gallery journalists who consistently gave him a hard time. He thought taking their questions kept him 'match fit'. He went on talkback radio not to arouse an audience so much as to prove he could take any question from talkback. He viewed these things as tests of temperament. Today—and this has been the case now for about the last 10 or so years—most people in parliament want to know how a journalist votes even though they deny it. They want to know which way a journalist leans. Most journalists do not want to be forced to choose but outside of the press gallery there are a lot of journalists—more commentators than journalists—prepared to pick a team. Why is that? It may be easier to gain access that way, but really, why is that?

I think part of the reason is once politicians left the mediated space of the press gallery and wanted to talk directly to people, some journalists decided to go where the audience was and followed the politician down that tunnel. By the way, I do not think it is a good place for journalists to be but I think there was a structural temptation. We have had the experiment and it is not working.

Now how do you fix it? I know I keep posing this question and I am sort of waiting, not for a flash of inspiration, but for the moment where I want to say the most controversial thing. The most disturbing thing about the relationship between media and politics today is the idea on both sides that when you get into government the communications minister and even the prime minister run the ABC. The last thing you would want to do in terms of the national interest is contest your national broadcaster's right to exist. To politicise it to the extent it has been politicised by both sides over the last 10 or 15 years is almost the last step into the abyss.

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Because I am quite aware of a lot of the goings on behind the scenes in the political sphere, I can tell you for a fact that for the last 10 or 15 years both sides have yielded to the temptation to micromanage the ABC. Bob Hawke and Paul Keating and John Howard were at war with the ABC but in that world there was still an understanding that there were some separations of power. Now because the ABC has the last big audience in the media and is the last media institution that is respected, the temptation to try and co-opt that to a political purpose is manifest in the political system.

So, the first temptation to go down the rabbit hole of digital media has not worked, but politicians think hang on a minute, the ABC is still viable, I will latch onto that. For the life of me I cannot understand why ministers—plural—across both sides of politics would be contesting panellists on *Q&A*, and then waste the day after a *Q&A* episode arguing the toss over a question that was asked in the room. I cannot understand why you would devote that much energy to that particular issue. Actually I do know why, and it is not corrupt intent, it is just an attempt to control what is left because everything else does not add up at the moment for people in public life.

Remember I think the primary point—and it is the primary take out for the politician—is that your public language will improve if you take questions from people who are trying to make your life harder. At the moment too many people in public life will only do interviews with the person they think is not going to give them a hard time. That micro communication to who you imagine is your base does not get you back to 50 per cent of the primary vote at an election. Weirdly at the last federal election Labor almost won on a primary vote in the mid-30s. Can you imagine how volatile the situation would be for any side of politics to come into power with a primary vote in the mid-30s?

The people who are consuming politics at whichever speed they are consuming it today can be turned into a 40 or 50 or 60 or 70 per cent support on an issue. The same-sex marriage vote last year tells you there is a super majority on some social reforms—in that case it was plus 60 per cent and there was a majority in every state. I think the public is not as negative as perhaps politics perceives it to be. It is possible to build big majorities, but to build a majority like that you have to view the Australian people in the way they were viewed in the past, as a coalition of interests, and you have to build a big coalition to win.

If you are in public life have a good look at the way press conferences were conducted in the past. They were very scratchy, the questions were longwinded and none of us had media training. We were print people and we would be yelling over each other to get the treasurer's ear or the prime minister's ear but people felt an obligation to answer our questions and at length. Even though the cycle has sped up, and given the

public were able to consume that information back then, wouldn't you be looking for some way to recreate that deeper conversation? As I say, I think the language of those conversations, even if they are presented in a slicker way, will improve if your ideas are contested. I am not saying lay off the ABC—by all means go to war with them, but go to war with them on your idea. Do not go to war with them because they disagree with you. Go to war with them in the ideas space. Prepare to take the questions, knowing that the audience is going to listen to you if you give them a decent answer.



**Question** — I think the point you made about building up a debate—an argument—is a good one but take for example the Australia 2020 Summit which was set up by then Prime Minister Rudd. It was treated with such cynicism in the run up to it, as well as during and after it. So I think we are wishing and hoping versus reality. Perhaps you blame the way the government of the day handled the 2020 summit but I think the media and the commentators played a part as well.

**George Megalogenis** — That is actually a very good example. So what you are really looking at there is a very, very cynical public mood. It was also just before the GFC. So we were in a time and place then where people thought the government was just there to write a cheque for them. I do understand that Kevin Rudd wanted to reset that debate with the 2020 summit. Now I think he should have just kept coming back. He moved on very quickly from the 2020 summit. In fact I remember in the week after the 2020 summit, there were three announcements on completely different matters—three announcements through that week. You are describing the week I called Rudd our first federal premier—in print, sadly for me.

That is not the public mood now. How do I know this? I have been spending a lot of time researching a couple of other ideas and, partly because I am on a deadline, I do not want to waste your time by giving you the thesis. But I will start at the most basic level of consumer behaviour. Consumers have moved off the 'I', from the 'what's in it for me', to a sense of purpose. It is a very strange world we are moving into—and marketers will tell you this, where people are starting to think about community. So people are more likely to buy things now that make them feel good about themselves as opposed to buying things that have been sold to them.

The people who used to think about self accepted the cynicism as a market transaction. Now they are over the cynicism and are looking to reconnect in some

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other way. So I think the electorate is probably more open to that type of engagement now than it was then. The other thing to remember is the one thing to come out of that summit which stuck is the National Disability Insurance Scheme. The National Disability Insurance Scheme is almost a counter example of everything else that has been tried for the last 20 years.

If I can very quickly summarise one of the other things that concerns me about politics today is that an incoming government feels that its first three years in office is about erasing the last three years. In the last ACT election you had a yes/no referendum on a light rail. Victorians are about to have their second election centred on roads versus rail, knowing that the side that wins is going to undo whatever else the other side has done. A contract to build a road in Victoria was cancelled and a billion dollars was paid to the contractor for not actually doing a day's work. This is how politics is today—in that world I think it is possible to go back to where Kevin thought we could be in 2008.

We might be having a different debate if the climate change package had been landed in 2009 with the Labor and Liberal parties agreeing but Rudd was trying to destroy Turnbull at the same time as negotiating. Most people acknowledge that. Kevin Rudd publicly acknowledged it. When the Liberals switched to Tony Abbott and the deal was off, Rudd didn't take option two, plan B—which was to go to the Greens. So the thing crashed and burned. He had enough votes in the Senate to pass the thing, with a couple of Liberals crossing the floor. That would have been the most powerful statement that could have been made at the time in politics—that the party that went off the reservation on climate change could not stop something because a couple of people of conscience on their side crossed the floor. It might have been possible that something like that could have happened in 1998 where a couple of Labor people crossed the floor to let the GST pass. That of course did not happen and we ended up where we are today. But that does not mean the next 10 years has to be like the last 10 years. That is probably the long way of answering that question!

**Question** — I was particularly interested in your comment that politicians should be encouraged to move from the instant grab on social media to a longer analysis. The ACT chief minister recently said he hates journalists and does not want anything to do with them. He has retracted that somewhat but he still said, for the very reason you outlined, that he wants to go to other media. My guess is for exactly the reasons you have described—it is a quicker way to get your message out to people. Given that scenario, how do we change politicians to help them understand there is another way of doing things?

**George Megalogenis** — That is a good question because I am talking about politics and the media but the most important part of this story is still the public. So how do people with goodwill shape politics? In the first instance they are doing it anyway because they run a revolving door of government. We are turning governments over more quickly now which is a sign of the system's trouble. In the democratic sense the people are already doing the first thing. But the more interesting issue is how does the public sphere, in a sense, pull rank on politicians and slow them down to get them to talk about their issues?

Through my research I am finding that people are trying to do this but they are doing it in a way that actually does not help us in the short-term. They are opting out of politics and trying to do good elsewhere. At the moment people are more likely to belong to a sporting association or sporting club than they are to join a trade union or go to church, and certainly to join a political party. Unfortunately, if sport is your default institution then the game is already up, so to speak. So there is this sense, not so much that there are solutions out there, but there is a willing audience and I think I was alluding to that earlier.

I am telling politicians not to micromanage the ABC—an ex-journo shouldn't be micromanaging the ABC either—but maybe the ABC could go on strike and not interview a politician for a week and see what happens. And see what happens when they open up the public space to people of goodwill, people who are knowledgeable about specific issues and people who, because they are not trained in media, are going to talk to you in a fresh way. That might be just a trial balloon for a week. Michael Brissenden's recent *Four Corners* report on climate change did not include one politician. It was very refreshing not to hear a party line because it would have wasted a minute or two of what was otherwise a brilliant program.

**Question** — Do the influences you described apply internationally? And related to that, can we learn anything from any examples happening around the world today?

**George Megalogenis** — I think every western democratic system has been disrupted in similar ways. I don't want to pretend to be an expert in any of the individual systems but I will make two observations. In the last decade or so it has been possible for politicians to rise in a blink of a twit. It is also possible for a politician when they are given equal status to the leaders of the main parties to suddenly get a surge in their vote. In the 2010 British election the Liberal Democrats were suddenly front of mind because the three leaders had a debate together. So the Liberal Democrats led by a guy Britons hadn't heard of suddenly had a big surge in their primary vote and of course the party was dead after five years because their vote collapsed in 2015. So it is possible to gain attention quickly.

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One thing you can say post-Trump is that pretty much every other jurisdiction that has had a national election has elected a very handsome young man as a sort of counterpoint to Trump. Think of Trudeau and Macron. I have a handsome man theory of politics and that is that the disruptor only works the once against, unfortunately, a woman. I think some older electors have a lot of psychological reasons against having women in power, which is very, very unfortunate. So whereas you might get a disruptive figure stopping a woman from getting national office, the guy who comes after him tends to be the opposite because the public are then projecting back for some sense of normalcy and they end up electing somebody younger.

Now in all these systems, the big switch you get is when you energise voters under thirty-five. It is less possible to do this overseas than in Australia under a compulsory voting system. The under 35s are the big profound switchers where majorities become possible again. And we have only had one example of that in Australia in the last 20 years in 2007 with Kevin O'Keefe. Post the Brexit vote you see great concern in the British political system about how a lot of young people did not turn out for that plebiscite. It was only a plebiscite but they ended up leaving the EU anyway. Well, they are planning to—they have not gone yet.

There is a democratic survival instinct that centres on deep engagement with young people—which means after I get them the first time to get me into power I find a way to hang on to power via them. If you could activate a larger portion of the electorate than has been activated now, I think you would have big changes in a lot of the debates we are having now. As I said the reason why I mentioned overseas is because there are a couple of cases where you see that ‘oh thank god that looks like a normal person, I'll give him a majority’ reaction. What happens next is probably the test cases that we are more interested in—how does Canada govern, how does France govern, with an activated youth vote?

**Question** — You talked about respect, particularly politicians learning to respect the work of journalists and then conversely journalists being more respectful of politicians. I think you have left the important bit out and that is the public. One of the things that frequently comes up on social media is that the public does not trust journalists anymore. One of the examples you alluded to from recent times is the Barnaby Joyce saga. Why did journalists bother to keep talking to Barnaby Joyce once it was clear he had done what he had done? Can you comment on the public getting respect for journalism?

**George Megalogenis**— I didn't mention the public but they are front of mind for me. But I don't want journalists to pitch directly to the public because I don't think that is the role of journalism. Then you would have a totally conflicted system, then you



would have journalists not acting as filters of information and translators of information, rather you would have an alternate power centre. In the Australian system journalists are not expected to pick a team but I think the public is already sensing that a fraction of them have picked a team and that then leads to a total collapse in trust. Another fraction, because they don't know how to get people to engage with deep thoughtful journalism, are doing the show trial of celebrity. So maybe the public are noticing the fringes.

Because we are in the parliament the subject matter is the people who govern us and the people who can test ideas in the public spaces as politicians, but the 'subject matter' have to change their behaviour to be able to give journalists a chance to restore respect in journalists. I do like the idea of a ban on politics for a week on the ABC but that is probably not going to happen, but I think the idea that journalists could somehow pitch directly to the people is where a lot of these sticky digital traps occur.

The impression that you get instant validation, from people you have never met, seems to tell you that you are okay, but I think that that is the worst possible way to function. Most authors would like to have their manuscripts published without an editor. In fact that is the worst thing an author could do. Absolutely the worst thing an author could do is to rush a manuscript through. The first test is the editor and the editor's trying to help the manuscript flow. Of course even if manuscripts are well edited, after you publish them you still have six or seven other ideas you wish you had put into the thing. Going to the other side of the story, basically having a journalist pitch for love from the public without a contest or without an editor is probably the worst idea. I know you weren't suggesting that but I am just following some of these thoughts through.



# **Taking Back Control: Parliament, Sovereignty and Brexit\***

*Ben Wellings*

## **Introduction**

When thinking about what I might about say in this lecture it occurred to me that it would be appropriate to look at parliaments and sovereignty, which are hugely important concepts when it comes to understanding Euroscepticism and Britain's place in the European Union (EU). I was particularly impressed—or scared depending on how you look at it—when I went over to the United Kingdom in July 2016, in the immediate aftermath of the Brexit vote, to do some research and it struck me that I could not really tell who was in charge. In that time after the Brexit vote when David Cameron had stepped down, Teresa May was not yet prime minister and, because of various back-stabbings and underhanded tactics, neither Michael Gove nor Boris Johnson nor Andrea Leadsom would be prime minister of the UK, I felt like that apocryphal Martian who arrives in London and says 'take me to your leader' to which someone replies 'well I'm sorry, I don't really know who that is at the moment'. However it was not just a question of leadership, it was also a question of which corporate body was in charge. Was the government in charge of the United Kingdom? Was parliament in charge of the United Kingdom? Were the people in charge of the United Kingdom? Where did sovereignty now lie? Brexit opened the opportunity for various different bodies to take back control not just from the EU but also from each other.

The Leave Campaign's quite ingenious three-word slogan, 'Take Back Control', can be read on all sorts of different levels. On one hand, it was about taking back control of local communities from foreigners, from immigrants. On the other hand, it was also read as a constitutional argument about taking back control from Brussels and restoring the full sovereignty of the Westminster Parliament. However, in the wake of the vote there were all sorts of grey areas which allowed various different parliaments, not just the Westminster Parliament, to take back control from each other. So first of all Brexit is not just the referendum vote of June 2016, but it is the politics of nationalist mobilisation leading up to that vote and it is also the politics of disengagement subsequent to that vote. So when I talk about Brexit I am referring to an extended period in the first three-quarters of this decade and extending back into the previous one. Brexit also opened up questions about sovereignty—

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post-sovereignty and good old-fashioned state sovereignty—and where different understandings of sovereignty might pertain within the United Kingdom itself.

This lecture will have the following structure. Initially I want to address the place of referendums in the British Political Tradition and how that relates firstly to popular sovereignty, which has quite a peculiar position in British political theory, and secondly to populism, a slightly newer, though not unheard of, phenomenon in British politics. In the United Kingdom Brexit is a peculiar expression of a populist moment happening around the world.

I will also break down the United Kingdom into its constituent components because that is a very important element in understanding Brexit. I want to look at the current UK government's understanding of sovereignty and what I am calling the 'new English unionism'. I should point out that 'unionism' in British political terminology has a different meaning to unionism in Australia. In the UK it is not about trade unions—rather it is about supporting the political union of Great Britain and Northern Ireland, and in particular the really important relationship between Scotland and England. I will explore England's place in this moment of Brexit and then look at the devolved administrations—Scotland, Wales and London. Scotland is the most salient and important of these instances because it has the greatest autonomy from Westminster.

Then I will discuss sovereignty, Brexit and the border shared by the United Kingdom and the Republic of Ireland in the province of Northern Ireland. It is with the Republic of Ireland that the United Kingdom has a land border with the EU. Questions of sovereignty are especially pertinent in that part of the United Kingdom.

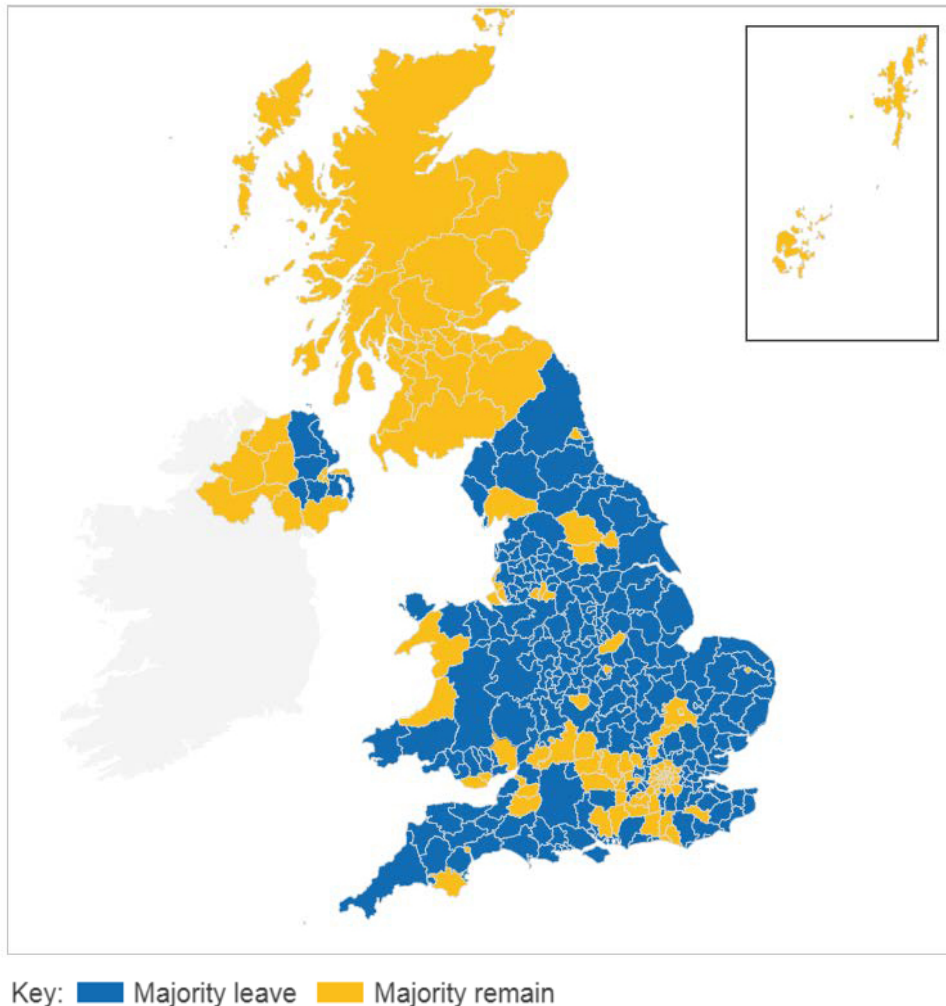
Lastly, I want to focus on parliament itself. By parliament I mean Westminster and in some ways I am reflecting my English bias because there are many parliaments in the United Kingdom now. That fact has not always percolated down or up, depending on your point of view, to Westminster and to the English electorate more broadly. Nevertheless, Westminster still has an important position in the United Kingdom and, for reasons I will explain later, I refer to it as the 'squeezed middle' as a result of Brexit.

### **Brexit and the pluri-national United Kingdom**

Figure 1 shows the distribution of support for Leave and Remain in the 2016 Referendum. The yellow is Remain and the blue is Leave. It brings out starkly the national differences the Brexit referendum threw light upon. What stands out most obviously is Scotland—the voting preferences and the area covered by Scotland

overlap. It will come as no surprise that Northern Ireland is divided and that cleavage fell very closely along sectarian lines. The picture is a little more problematic and dispersed when you get into England and Wales, but England outside of London was predominantly for Leave.<sup>1</sup>

Figure 1: How the UK voted in the Brexit referendum. Courtesy of the BBC



This illustrates important national differences which were evident in the nationalist mobilisation that took place up to and before the actual vote itself. In the two decades before the Brexit vote there had been a process of embedding devolved administrations throughout the United Kingdom, including in Scotland, Wales and London, Northern Ireland and more recently in some north-western regions of England. However, the UK is not a federal structure but a devolved one where, until

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<sup>1</sup> The BBC reported that England voted for Brexit by 53.4 per cent to 46.6 per cent. Wales also voted for Brexit, with Leave receiving 52.5 per cent of the vote and Remain 47.5 per cent. Scotland and Northern Ireland both supported staying in the EU. Scotland supported Remain by 62 per cent to 38 per cent, while 55.8 per cent of people in Northern Ireland voted Remain and 44.2 per cent Leave. [www.bbc.com/news/uk-politics-32810887](http://www.bbc.com/news/uk-politics-32810887).

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as recently as 2016, notionally Westminster could rescind the powers of any devolved assembly. We might call the UK a 'quasi-federation' which is in the process of removing itself from another quasi-federation, the European Union. These different moving parts opened up a lot of grey areas within British politics. A colleague of mine who is a legal scholar once told me that you are not a good lawyer if you can't exploit the grey areas. I think that this is true in politics as well; you need to be able to exploit those grey areas, and that is what Brexit has enabled. Brexit has deepened these divisions and opened up political opportunities for actors within these institutions and politics. In this sense Brexit represented a moment where key actors sought to 'take back control' not only from the EU but from each other too.

### **Referendums and the British Political Tradition**

Since 1997 referendums have become a feature of British politics, especially when associated with constitutional reform. Until that time, referendums were not common in British politics, but since the election of New Labour in 1997 they have been conducted with increasing frequency. In 1997 referendums were used to endorse the decision to establish or re-establish a parliament in Scotland and an assembly in Wales. There was a second referendum on Wales in 2011 that increased the legislative powers of the National Assembly for Wales. In 1998 referendums were held in the Republic of Ireland and Northern Ireland ratifying the Good Friday Agreement. In 2004 there was a referendum in the North East of England on whether there should be a regional assembly, with the electorate voting overwhelmingly 'no' by a margin of 78 to 22 per cent. Lastly, there was, of course, the Scottish independence referendum in 2014 and in 2016 the EU referendum itself.

So you can see that something has changed in the nature of British politics in that there is this increasing recourse to the device of a referendum. Often referendums are used as a de facto endorsement of decisions that have already been made. The 1997 referendums were a case in point. The New Labour government had already decided to devolve powers to Scotland and Wales but referendums were deployed to give that decision extra legitimacy and act as a bulwark to the powers being rescinded by any future Conservative government. An important, unintended consequence of this use of referendums is that they have become a bulwark against the re-extension or the reclamation of powers by Westminster in these devolved areas.

Something else to note are the occasions on which referendums *did not occur*. Over the last 20 years these have included the non-referendum on the United Kingdom joining the euro in 2003 and the referendum on the draft Constitutional Treaty of the European Union, which the UK avoided in 2005 because the French and Dutch electorates had already rejected the Treaty. The point here is that sometimes simply

threatening to have a referendum is enough to derail a course of political action or proposed policy. In those two instances the implied notion was that the public was so Eurosceptic they would reject these initiatives anyway. In hindsight that notion was probably correct enough to make conducting a referendum a high-risk political venture.

However, all this political activity around referendums masks the fact the device was a novelty in British politics. I am referring to UK-wide politics here because there are local instances of referendums, even in the 19th century. For example, in the 19th century there were local referendums on establishing public libraries. In 1946 the people of a town called Stevenage in Hertfordshire had a referendum on whether they wanted a 'New Town' built next to them to accommodate people from London as part of the solution to the postwar housing shortage. They voted to reject Stevenage New Town. A series of referendums were held in Wales in 1961 on whether to rescind a ban on Sunday drinking. Some areas voted to rescind the 1881 prohibition and other areas voted to retain it with the result that as late as 1996 there were dry and drinking areas in Wales. Then there was the so-called 'border poll' in 1973, which asked voters in Northern Ireland whether they wished Northern Ireland to remain part of the United Kingdom or to join the Republic of Ireland. The result was 98 per cent in favour of remaining in the United Kingdom, but the nationalist community boycotted the vote. Questions of participation are important here and whether referendums assume a settled definition of the people whose will the vote is supposed to reflect. The first UK-wide referendum was held in 1975 and was on whether the UK should remain a member of the European Economic Community, or Common Market as it was then commonly known.

The outcome of the Stevenage referendum noted before—the new town was built anyway despite objections—gives some sense of the principal problem of referendums in British politics. If you believe and uphold the doctrine of parliamentary sovereignty then referendums in British politics can technically only ever be advisory. The principle of parliamentary sovereignty says that no parliament can bind its successor. It asserts that there is no higher authority than parliament in the United Kingdom and therefore joining the European Union problematised that particular understanding of sovereignty. When the 1975 referendum on the Common Market took place it opened up an alternative source of authority in British politics that was not parliament. It was 'the People'. That might sound strange in a democracy—and of course elections have an inbuilt notion of popular sovereignty—but there was a very strong strand in British politics that was a mixture of Tory paternalism, Labour welfare statism and a civil service 'Sir Humphrey'-like steering from Whitehall that added up to an attitude of 'government knows best'. It was a view that the United Kingdom existed under what in 1976 Lord Hailsham, former Lord

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Chancellor of the United Kingdom, called an ‘elective dictatorship’. That is to say, every four or five years the electorate votes enormous powers to the executive government via parliament and the executive government rules with great leeway for action until the next election comes around.

There are some subtle differences to the Australian situation where the notion of sovereignty is built into section 128 of the Constitution, which provides that any proposed change to the Constitution must be endorsed by a double majority of states and electorates at a referendum. By contrast, in the United Kingdom constitutional change does not automatically trigger a referendum. Rather, a referendum is a political decision. The postal ballot on marriage equality held in Australia in 2017 is the closest analogy to the way referendums come about in the United Kingdom. When party leadership loses control of an issue and can no longer manage it through conventional means, the issue is then presented to the electorate as a matter of either conscience or supreme national importance that must be decided by ‘the People’, who are suddenly constituted as a source of authority above that of the politicians and the executive government.

In 1975, when Harold Wilson decided to implement a referendum on Britain’s membership of the Common Market, he borrowed heavily from Australian practice. As an aside, one thing he opted not to do was use computers to count the vote because he felt they were unnecessary—and so the votes were counted by hand! The reason the issue of the UK’s membership of the European Economic Community went to a referendum was because the Labour Party, which was in government, was so irrevocably split on the Common Market, both in the cabinet and between the leadership and rank and file, that the pro—or at least agnostically—European leadership decided to put this to ‘the People’ rather than risk a damaging party split. There was a two to one vote in favour of staying in the Common Market, but concerning popular sovereignty the cat was out of the bag. The 1975 referendum set a precedent that ‘the People’ needed to be consulted on an important constitutional matter such as this. When the Labour Party came back to power in 1997 it adopted this model of using referendums as a means of endorsing constitutional change that had already been decided upon.

Fast-forward to the Conservative-Liberal Democrat coalition government of 2010–2015. Through the *European Union Act 2011* (UK), the government built in the necessity for a referendum on any future transfers of power (‘competencies’ in EU parlance) from Westminster to the European Union. At the time this innovation was called a ‘referendum lock’ and it was designed to halt the further extension of EU powers over the United Kingdom. If the European Union wanted to increase its competencies over the United Kingdom, then the United Kingdom government was—



in certain circumstances—obliged to hold a referendum to gain popular consent. Potentially that meant a lot of referendums. However, there was the caveat that what represented a fundamental transfer of competency would be a political decision based on the government’s interpretation of the powers to be transferred. Nevertheless it built into the British political system an explicit place for referendums that had not been there before.

As Emma Vines and I tried to make the case when analysing the *European Union Act*,<sup>2</sup> this had the unintended consequence of undermining that which it sought to protect. The idea behind the Act was to use a referendum to protect the sovereignty of Westminster from further competences the European Union might try to extend over the United Kingdom. However, what it did was open up an alternative source of authority or sovereignty by building ‘the People’ and the referendum device into the British political system itself. In the years after 2010 it was also an attempt to manage the growing rise of popular discontent toward both the British political class and the European Union, particularly in the wake of the global financial crisis and the parliamentary expenses scandal of 2009. This kind of populist revolt was exemplified by the UK Independence Party (UKIP) and its erstwhile leader Nigel Farage. His speech to the European Parliament in June 2016, five days after the referendum, illustrated the populist element in British Euroscepticism.<sup>3</sup> He said:

What happened last Thursday was a remarkable result, it was indeed a seismic result, not just for British politics, for European politics but perhaps even for global politics too because what the little people did, what the ordinary people did, what the people who have been oppressed over the last few years and see their living standards go down—they rejected the multinationals, they rejected the merchant banks, they rejected big politics and they said, actually, we want our country back, we want our fishing waters back, we want our borders back, we want to be an independent self-governing, normal nation and that is what we have done and that is what must happen.<sup>4</sup>

Farage was pitting the ‘little’ and ‘ordinary’ people against not only the European Union but also the pro-European political class in the United Kingdom. This shift stemmed from notions of popular sovereignty and populism. Drawing on Professor Cas Mudde’s work, populism is slightly different from established party politics because it suggests that basically conflict in society is between a pure people, who are

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<sup>2</sup> Ben Wellings and Emma Vines, ‘Populism and sovereignty: The EU Act and the in-out referendum debate, 2010–15’, *Parliamentary Affairs*, vol. 69, no. 2, 2016, pp. 309–26.

<sup>3</sup> Chris Gifford, *Journal of Common Market Studies*, 2014.

<sup>4</sup> Nigel Farage, ‘2016 Speech to the European Parliament’, 28 June 2016, [www.ukpol.co.uk/nigel-farage-2016-speech-to-european-parliament](http://www.ukpol.co.uk/nigel-farage-2016-speech-to-european-parliament).

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expressive of the general will and all kinds of virtuous values in the political community, and an elite who have been corrupted through their proximity to power, either in a direct sense by lining their own pockets or indirectly through too much proximity to vested interests that are beyond the reach of democratic control.<sup>5</sup> Populism is a slightly difficult ideology, if we want to call it that. It is not necessarily formed as a coherent set of ideas to frame political action but it is an expression of political resentment. Confusingly it has some overlap with the concepts of democracy, nationalism and nationhood, all of which also place ‘the People’ at the centre of their political worldview. In the United Kingdom context it opened up an important question—if ‘the People’ are sovereign, which ‘People’ exactly are we talking about? If you seek to express a general will through a referendum device it assumes that you know who or what the political community is, or indeed that one exists. As Brexit illustrated that was not necessarily something that could be taken for granted in the United Kingdom in 2016.

### **Brexit and the ‘new English Unionism’**

This leads to the government’s position and what I am going to call for now the ‘new English Unionism’. I have suggested before that the politics of nationalist mobilisation complicated the understanding of the United Kingdom as a single political community. When Theresa May said in the wake of Brexit that ‘we voted to leave the European Union as a single United Kingdom and therefore we will leave the European Union as a single United Kingdom’ she was making a claim rather than reflecting a settled political reality. That claim was an attempt to take back control from other parts of the kingdom whose governments were, and are, seeking to defend and extend their own autonomy even to the point of secession from the UK. When Theresa May came back from Buckingham Palace on 13 July 2016, having accepted the Queen’s invitation to form a government (another source of sovereignty in the United Kingdom), the first thing she did, other than thank David Cameron for being a terrific prime minister, was defend the English version of the Union. She did not immediately highlight leaving the European Union. If we take the way her speech was constructed as an indication of political priorities, maintaining the United Kingdom was a greater priority to her than leaving the EU. In her speech, May said ‘not everybody knows this, but the full title of my party is the Conservative and Unionist Party, and that word “unionist” is very important to me’. She continued:

It means we believe in the Union: the precious, precious bond between England, Scotland, Wales and Northern Ireland. But it means something else that is just as important; it means we believe in a union not just

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<sup>5</sup> Cas Mudde, ‘The popular zeitgeist’, *Government and Opposition*, vol. 39, no. 4, 2004, pp. 541–563.

between the nations of the United Kingdom but between all of our citizens, every one of us, whoever we are and wherever we're from.<sup>6</sup>

What she was trying to do was talk not just about the political union of the United Kingdom but the social divisions opened up by the distribution of votes for Remain and Leave across the United Kingdom, but especially in England. When Theresa May told voters that the United Kingdom was 'precious' to her, this was a southern English Conservative prime minister defending an English version of Britishness. This defence of British sovereignty is one version of what I have called elsewhere 'English nationalism'. If we attempt the difficult task of disentangling England from Britain, the Leave campaign's version of English nationalism, which was characterised by the desire to defend British sovereignty, is an example of a conflation between England and Britain in political ideology and rhetoric.

This statecraft returns us to Brexit as a three-level game—extracting the UK from the EU, seeking alternative or 'traditional' allies outside of the EU, whilst keeping the United Kingdom together. The Conservatives, who until 2017 were very much the 'English party' by deed if not by name, were now playing a double game with England. England was crucial to understanding the vote to Leave, but it was also crucial if the Conservatives were to keep the United Kingdom united because if the English stopped believing in the United Kingdom then there would be trouble. This UK government perspective, which by virtue of its support within the Conservative Party becomes de facto 'English unionism', was a very English conception of United Kingdom's sovereignty as singular and unified. Despite political developments discussed below, it still assumed that Westminster could rescind the devolved administrations in Scotland and Wales in the same way as it has done in Northern Ireland, although for very different reasons. If this power was enacted it would be very provocative and inflammatory. Although technically possible, it was and is politically impossible, even before the developments in Scotland and Wales discussed below.

### **Brexit and the devolved administrations**

Now you can imagine how that kind of understanding of sovereignty is received in Edinburgh and Cardiff. It sets alarm bells ringing. Predictably it was resisted by the devolved administrations, both the Scottish National Party administration under Nicola Sturgeon and the Welsh Labour administration operating in Cardiff under Carwyn Jones. The reason that there is this disjuncture here is because the notion of the British constitution—remember I am not referring to a written document but to an

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<sup>6</sup> Theresa May, Theresa, 'Statement from the New Prime Minister, Theresa May', 13 July 2016, [www.gov.uk/government/speeches/statement-from-the-new-prime-minister-theresa-may](http://www.gov.uk/government/speeches/statement-from-the-new-prime-minister-theresa-may).

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accepted way of doing things sometimes characterised as a ‘customary constitution’—has been steadily challenged by changes in Scotland and Wales since devolution in 1999 and the way that has bedded down. This change has not been well understood or recognised in Westminster or Whitehall despite the *Scotland Act 2016* (UK) and the *Wales Act 2017* (UK).

Thus as Britain comes out of the EU we have different and competing understandings of sovereignty operating within the United Kingdom. In Scotland these differing conceptions of popular sovereignty have existed for a long time. In reverse order, there have been so-called ‘Claims of Right’ made on behalf of or by the Scottish people in 1989 after the imposition of the poll tax, in 1842 in relation to problems in the Scottish Kirk, and even in 1689 after the ‘Glorious Revolution’ of 1688. As I noted, this reality has gone little noticed in Westminster or Whitehall, even by Downing Street, but it is an established way of understanding sovereignty in Scotland. A good expression of this was when the Scottish Parliament opened in 1999 and Winnie Ewing, who as the oldest member of the House chaired the opening session, made the point that this was a reconvening of the Scottish Parliament which had not met since 1707 rather than an establishment *de novo*. She said ‘I want to start with the words that I have always wanted either to say or to hear someone else say – the Scottish Parliament, which adjourned on March 25, 1707, is hereby reconvened’.<sup>7</sup> So if you think that Australian parliamentarians do not meet often enough, then three centuries is extreme! The point Ewing was making by referring to this as a *reconvening* of the Scottish Parliament is that it had been in abeyance since 1707 and now it was back. So what in London was seen as a constitutional innovation, in Edinburgh was seen as a restitution.

The Scots had their own independence referendum in 2014 which was another way of ‘taking back control’, in this instance from Westminster, even if the idea was to retain a measure of oversight from Brussels within the European Union. However, the fact that the English majority at Westminster agreed that a referendum should take place and that the result should be respected regardless of the outcome, seemed to suggest that the United Kingdom was now a voluntary union and the idea that it was unitary had broken down. The ‘Catalan option’, if I can call it that, was technically possible—London could have done what Madrid did and just declare the referendum illegal and ignore the outcome, but the fact that it did not do this fits into notions of incrementalism in British politics. Despite this, the idea that Scotland was somehow different did not enter very strongly into the official thinking of Theresa

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<sup>7</sup> [www.abc.net.au/news/2014-08-28/scotlands-independence-referendum---18-september-2014/9388476](http://www.abc.net.au/news/2014-08-28/scotlands-independence-referendum---18-september-2014/9388476).

May's government. May's method and means of getting the UK out of the EU involved a reassertion of the UK government's control over Scotland.

Yet the Scotland Act reasserted that the devolved parliament cannot be rescinded without recourse to a referendum in Scotland. The Wales Act mimicked the Scotland Act in stating that the National Assembly for Wales, or Senedd, could not be rescinded without a referendum. Here again the sovereignty of the Welsh and Scottish people was now a bulwark against the extension of executive control over the United Kingdom. We are now waiting for the possibility of another referendum on independence in Scotland as and when the terms of the Brexit deal are announced. I am not sure if that would be an easy thing for the Scottish National Party to win despite the very pro-EU vote in Scotland in 2016. Then there is London that is very connected to the European Union. This might be an apocryphal story but they do say that London is France's seventh most populous city because of the number of French people who have moved to London to work. The London administration is very unfavourably disposed towards Brexit but it does not have the strength and the autonomy that the Scottish Parliament has.

### **Brexit and Northern Ireland**

This leads to perhaps the most difficult and contentious part of Brexit and the kind of shared sovereignty that operates in the UK. The border between Northern Ireland and the Republic of Ireland—which is to say the land border between the United Kingdom and the European Union—is the hardest square to circle in the Brexit negotiations. This is partly because there is a fear that reimposing a physical border in Ireland will reignite 'The Troubles'. The Good Friday Agreement, which just had its 20th anniversary, brought an uneasy truce to the province but the government of Northern Ireland has not sat since January 2017 and Westminster is applying 'direct rule' in Northern Ireland. The difficulty that comes in the negotiations is because in December 2017 it was agreed that there would be no restitution of a hard border in Northern Ireland as part of the Brexit deal. On the other hand, it was also stated that Britain would not be part of the Single Market. At the moment those two things seem to be contradictory. The question is what happens to Northern Ireland? Where will the border of the United Kingdom start and stop, on what side of the Irish Sea will the United Kingdom border be located? If Northern Ireland remains within the Single Market, or even enters into a customs union with the EU, it effectively means Northern Ireland is not as much a part of the United Kingdom as it once was.

So here there are all sorts of overlapping sovereignties. This is not just a question of the United Kingdom and Westminster dealing with a devolved assembly. To some extent the Republic of Ireland has a say in the governance of Northern Ireland and the

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European Union used to have a lot of say in the governance of Northern Ireland. All these things are in the ‘grey areas’ that are coming apart in the Brexit negotiations. The British government is not keen on losing Northern Ireland, although the constitutional position in the Good Friday Agreement is that if there is a referendum in favour of Northern Ireland leaving the United Kingdom the result will be honoured. Presumably Northern Ireland would leave to join the Republic of Ireland but I am not sure how keen the Republic of Ireland would be about that.

However, the British government position is that it will not lose Northern Ireland. On 29 March, one year after the triggering of Article 50,<sup>8</sup> Theresa May pledged to defend the integrity of the United Kingdom, which she described as the world’s most successful union. She said there was no way we would break that up. On the other hand, a YouGov poll, commissioned by radio station LBC exactly one year before Britain was due to leave the EU, found that overall most people in Britain would prefer to leave the EU than keep Northern Ireland in the UK. Sixty-one per cent of voters who claim to have voted Conservative in 2017 said they would rather leave the EU than retain Northern Ireland. Seventy-one per cent of people who said they voted for leaving the EU in 2016 said they would rather leave the EU than retain the United Kingdom.<sup>9</sup> The ensuing headline that the majority of ‘Brits’ wanted to abandon Northern Ireland obscured the Englishness of the poll. For Scots it was notably different. The poll found that more Scots wanted to keep Northern Ireland in the UK than leave the EU. So this was an English response.

Having looked at the devolved administrations, I want to return to the importance of England. England is crucial to what happens in Brexit and for that reason I want to argue that the idea of a ‘new English Unionism’ is not quite right. It is clear from the language she uses that Theresa May is referring to a form of Unionism that has its roots and wellsprings in England, particularly in southern England. However, if we take the YouGov poll as evidence that the strength of being British is weakening, then the Union that Theresa May says is so precious to her is actually degrading. Although we think of Euroscepticism as a British phenomenon, it is by and large an English phenomenon. In polls where people are asked what nationality they think they

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<sup>8</sup> Article 50 of the Lisbon Treaty provides the formal mechanism for a country to leave the EU. Any EU member state can decide to leave the EU. Under Article 50, it must notify the European Council and negotiate an agreement setting out the arrangements for its withdrawal. The member state concerned has two years to negotiate this unless it and the European Council unanimously agree to extend this period. Article 50, [www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-european-union-and-comments/title-6-final-provisions/137-article-50.html](http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-european-union-and-comments/title-6-final-provisions/137-article-50.html).

<sup>9</sup> Results of the YouGov poll, which was conducted on 22 and 23 March 2018, [d25d2506sfb94s.cloudfront.net/cumulus\\_uploads/document/bhy62x09m0/LBC\\_Results\\_180322\\_w.pdf](https://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/bhy62x09m0/LBC_Results_180322_w.pdf). Voters were asked ‘Which of these is a greater priority for you? That the United Kingdom leaves the European Union–That the union between Northern Ireland and the rest of the United Kingdom is maintained–Neither of these is important to me–Don’t know’.

are and that response is then linked to their attitudes towards European integration, most people who self-identify as British are pro-EU and most people who identify as English are anti-EU. So the idea of England is crucial to this.

### **Westminster: the squeezed middle**

Throughout this Westminster Parliament was the ‘squeezed middle’. One of the great ‘left behinds’ of the Brexit vote was the parliament. Firstly, parliament was sidelined by the popular sovereignty implicit in the vote and the referendum device and the populism of the campaign and its aftermath. At the same time, in the wake of Brexit, parliament was also sidelined by the executive government’s desire to take back control from various administrations and its interpretation of the popular vote as giving it a mandate to get out of the EU without having to seek recourse to parliament. This was challenged by various MPs, including Labour MP David Lammy from Tottenham, who is a strong believer in the principle of parliamentary sovereignty and was particularly vocal in saying the referendum was only advisory and parliament should have a vote on whether to leave the EU or not. That might be technically correct but, as I have said before, it is politically inflammatory and parliament was not able to do it.

There was also a challenge put in the UK High and Supreme Courts and the High Court initially voted that parliament should have a say on Brexit. Initially the government wanted to use the Royal Prerogative to leave the EU. The Royal Prerogative is a measure used to declare war or permit conflict with other states, for example Britain’s involvement in Syria. The High Court decided that using the Royal Prerogative to get out of the EU was not compatible with the British constitution. For their troubles, the Justices of the High Court were labelled ‘enemies of the people’ by the *Daily Mail* for not upholding its interpretation of the popular will. Yet it is important to point out that in claiming a democratic mantle, the *Daily Mail* is not a democracy itself—no one voted for the editorial board of the *Daily Mail*. I am using this as an indication of the way parliament was squeezed between popular sovereignty, populism and executive authority. Of course parliament now has the right to have a so-called ‘meaningful vote’ on Brexit. It is not clear how meaningful that vote can be once the Brexit deal is known in October. Remember before the vote parliament was pro staying in the EU and it is not really clear how much time parliament has or how much authority it can bring to bear on the negotiations, which are like a large ship coming into port—it needs a long time to stop or turn around. While a measure of voice has been given to parliament, Westminster is still one of the great left behinds of the whole Brexit episode.

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## Conclusion

So if we understand Brexit as not just narrowly the referendum on Britain's membership of the EU in 2016 but we think of it as an ongoing politics of nationalist mobilisation, before and after the referendum, it represents a moment where key actors sought to take back control, not just from the European Union, but from each other too.



**Question** — David Cameron went to the 2015 election promising he would give the people a vote on leaving the EU. Leading into that election all the polls showed the result would be very close but then Cameron won a thumping majority. He then held the Brexit referendum and was shocked when the Leave vote won. It seemed like there was a complete misreading of the electorate, including by the prime minister who then had to fall on his sword. It was extraordinary that even Cameron could not see that the election victory might have been primarily due to his Brexit policy.

**Ben Wellings** — I think you are right to highlight how at that time it was difficult to think forward in politics, even a couple of years. We have had all sorts of other elections, not least here in Australia and in the United States, which followed a similar pattern. A lot of dealignment had taken place. In the United Kingdom, the UK Independence Party was an important part of that dealignment. It forced the Conservative Party to think about how they were going to see off this threat from UKIP and the referendum pledge was an example of that. When Cameron made that pledge in 2013 it seemed like quite a remote possibility. Winning with that majority and Cameron's desire to get the referendum out of the road early in the next term of his government suggested the referendum would be another *ex post facto* endorsement of some settled policy and then it turned out not to be. There was an awful lot of misreading from politicians, academics and pollsters. Since then there have been parliamentary inquiries in Britain as to why the polls were so inaccurate. I think that this dealignment and a disillusion with politics was making that 'weather system' hard to read, if I can use that analogy.

**Question** — I have two questions. Firstly, much of the coverage here in Australia about Brexit is fairly superficial and it mainly focuses on the argument about whether it should be a hard or soft exit. Is the general population in all parts of the UK tuned in to this debate or have they now moved on and left others to argue about it? That leads to my second question—where do you think the UK will be in 10 years' time? Do you



think we are creating earth tremors now that may end up as an earthquake or will it all just move on and people will go back to their ordinary lives?

**Ben Wellings** — First of all I think it is very hard to talk about the United Kingdom electorate in general anymore. If we think about the electorates—I will keep it at the political rather than the social level—it is difficult to talk about them as a unitary body. Even the 2017 general election, which was regarded as the most ‘British’ in that we saw a return to 82 per cent of voters voting for the two main parties and those parties’ votes distributed throughout the UK, which basically meant the Conservatives won some seats in Scotland again. Despite that, I think that Brexit is understood differently in different parts of the United Kingdom. Now I am thinking of the political classes as much as the electorate.

So in answer to your question about whether the electorate is engaged, I am not sure. I think a lot of people thought that when the United Kingdom voted to leave the EU on 23 June that it would leave the day after. Just recently I was looking at petitions to parliament and one of the petitions said we need to get out of the EU right now because that sentiment was not well understood. One of the problems with referendums is that issues involved often are not very well understood. I think there is some frustration with the negotiation stage and people are questioning why David Davis, [then] the Secretary of State for Exiting the European Union, keeps going to Brussels and so on. But in Northern Ireland the debate and engagement is quite different to say southern England.

Where will the United Kingdom be in 10 years from now? I will settle for the safe prediction. It will still be off the coast of France! Then there is this question about what will be left and will it be any different. The Labour Party has pledged to make the government ensure that when Britain gets out of the EU that UK citizens are in exactly the same position as when it was in. To me that is clearly an unrealistic proposition. You cannot leave a club and have the same rules. Materially the UK is going to be worse off. I am going to bring in the Anglosphere here, which was one of the off-the-peg winners of Brexit when no one had any idea of what to do. Three of the cabinet ministers Teresa May appointed—Boris Johnson, David Davies and Liam Fox—are supporters of the so-called Anglosphere. The idea is that Britain will increase trade with countries like Australia and Canada. Of course both countries would love to trade more with the United Kingdom. The idea that importing goods from Australia or Canada will replace trade with the EU will not work. Even a free trade deal with the United States is dependent on how the President is feeling when he wakes up. So I think the UK will be materially worse off 10 years from now. It will not be part of the European Union—that sounds obvious but people have been saying it might still be—and I think the UK will find itself more isolated than it has been.

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**Question** — What about the administrations in Wales, Scotland and Northern Ireland—will they start assuming or wanting more powers?

**Ben Wellings** — I think Northern Ireland will have more to do with the Republic of Ireland and therefore the EU. Scotland will continue on its trajectory, which seems to be the fundamental idea of Scottish nationalism of more autonomy slightly short of independence. Wales will continue to be more or less in step with England. The question is England. It has no government of its own—Westminster has direct rule over England. One change may be that more English people will simply say that is not good enough, however I am not sure regional assemblies will be the answer. I think 10 years from now the governance of the United Kingdom will be very lopsided.

**Question** — You referred to the Royal Prerogative to go to war and the possibility of war against Syria. My recollection is that before Tony Blair joined the military action against the Iraqi regime, he sought parliamentary approval and obtained it. The first time David Cameron wanted to invade Syria he sought parliamentary approval and did not obtain it. He then tried again a year or two later and did obtain it. Many then wrote that a convention had developed in the UK that the UK would not go to war without the approval of the parliament. I gathered from your comment about the Royal Prerogative to go to war that you do not agree that such a convention exists.

**Ben Wellings** — That is a good point. In August 2013 David Cameron, as you said, did not get that approval. So that means in February 2003 we got an approval, in August 2013 we did not get approval and in 2015 we did. So it is only two to one in favour. It raises the question of what constitutes a convention. We have seen instances where the executive has overturned what seemed to be enshrined in legislation. I am referring to a different example but one I think is pertinent—the *Fixed-term Parliaments Act 2011*. One of David Cameron’s initial ways to try and build certainty into the British political cycle was to introduce fixed-term elections of five years. That was simply overturned when the political opportunity came along for Theresa May to deliver what she thought was going to be a knockout blow to Jeremy Corbyn’s Labour Party. I am not convinced that any sort of convention has bedded down yet with regard to the Royal Prerogative. The other thing is that it is not actually a declaration of war but an authorisation of military action. So strictly speaking it could be the case but I don’t think it has happened enough yet to be a convention.

## Architecture, Power and Parliament: How do Buildings Shape Politics?\*

Kim Dovey

Parliament House in Canberra is 30 years old this week. The lawns have been mowed to mark the occasion and the fence to keep the citizens off the hill is under construction (Figure 1). While it is customary on such occasions to avoid criticism of the celebrant and I could happily extoll the virtues of what is surely a masterfully composed building, I want to explore the relations of architecture to power, which requires that we put architecture in its place as part of a much larger assemblage. I have only once published a critique of this building and that was nearly 20 years ago in the book *Framing Places*.<sup>1</sup> I will repeat some of that material here because not much has changed. This is a first point about this relationship of architecture to power—architecture has great inertia, it produces durable change. I will begin with a few general observations about these relations before returning to Parliament House with a gentle critique and a little birthday gift.



Figure 1: Parliament House at 30 (2018). Photographer: Kim Dovey

If power is a general capacity to get things done, then political power is but one dimension of this very strange concept that often seems to be everywhere yet nowhere. When we look at a place like Parliament House or Canberra as a whole then it would seem to be all about locating the centre of power in space. Yet another principle in understanding this relationship is that power often works by hiding itself

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\* This paper was presented as a lecture in the Senate Occasional Lecture Series at Parliament House, Canberra, on 11 May 2018.

<sup>1</sup> Kim Dovey, *Framing Places: Mediating Power in Built Form*, Routledge, London, 1999.

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in plain sight and in silence. Architecture and urban design frames space, both literally and symbolically. In the literal sense our lives take place within the clusters of rooms, buildings, streets and cities we inhabit. Our actions are enabled and constrained by walls, doors, rooms and corridors, by streets, fences, gates and guards. As a form of discourse, buildings and places also tell us stories, they construct narratives and mythologies. In each of these senses architecture frames the places of everyday life.

A frame is also a ‘context’ that we relegate to the ‘taken for granted’. Like the frame of a painting or the binding of a book, architecture is often cast as necessary yet neutral to the life within. Most people, most of the time, take architecture for granted. This relegation of architecture and space to an unquestioned framework is the deepest linkage of built form to power. As Pierre Bourdieu puts it ‘The most successful ideological effects are those that have no words, and ask no more than complicitous silence’.<sup>2</sup> The more practices of power can be embedded in the framework of everyday life, the less questionable they become and the more effectively they can work.

When we think of political power we generally refer to the power of the state over its citizens. Here we must make the key distinction between *power to* and *power over*.<sup>3</sup> The term ‘power’ derives from the Latin *potere*—‘to be able’, the capacity to achieve some end. Yet power in human affairs generally involves control ‘over’ others. This distinction between *power to* and *power over*, between power as capacity and as a relation, is fundamental. *Power to* is the original or ur-form of power, the capacity to act, empowerment. While less primary, *power over* is much more complex and incorporates a range of forms and practices such as force, coercion, manipulation, seduction and authority. These practices all have crucial connections to architecture and urbanism which I have explored elsewhere in relation to building types such as shopping malls, corporate towers, courthouses, housing enclaves and public space.<sup>4</sup>

### **Authority/legitimacy**

‘Authority’ is a form of *power over* that is integrated with the institutional structures of governance and which relies on an unquestioned recognition and compliance. It is the most pervasive, reliable, productive and stable form of power, but it rests upon a base of legitimation.<sup>5</sup> We recognise the authority of the state as legitimate only when it is seen to serve a larger public interest. The key linkage to architecture here is that authority becomes stabilised and legitimated through its symbols—the trappings of power. The nation state is not visible, it is what Ben Anderson calls an ‘imagined

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<sup>2</sup> Pierre Bourdieu, *Outline of a Theory of Practice*, Cambridge UP, London, 1977, p. 188.

<sup>3</sup> Steven Lukes, *Power: A Radical View*, Macmillan, London, 1977.

<sup>4</sup> Kim Dovey, op. cit., 1999; Dovey, *Becoming Places*, Routledge, London, 2010.

<sup>5</sup> Hannah Arendt, ‘Communicative power’ in S. Lukes (ed), *Power*, Blackwell, Oxford, 1986, p. 65.

community' that must be rendered visible through an iconography of buildings, maps and monuments, often represented on money and stamps, that affirm the story of the nation, enabling citizens to imagine what they cannot see.<sup>6</sup> The anthropologist Clifford Geertz puts it well:

No matter how democratically the members of the elite are chosen...they justify their existence and order their actions in terms of a collection of stories, ceremonies, insignia, formalities and appurtenances...that mark the center as center and give what goes on there its aura of being not merely important but in some odd fashion connected with the way the world is built.<sup>7</sup>

When such narratives are embodied in architecture and urban design, the ways the world is built resonate with the ways the city is built to become part of the unquestioned framework of political life. If citizens take the state for granted then we enter into this 'silent complicity' and state authority is affirmed. It is common to conceive of the nation state as somehow timeless when it is a relatively modern institution that is mostly established by violence. Australia is one of the more democratic and just societies on the planet, yet it was founded by the violence of a British invasion, and the authority of the state thus established is based in part on forgetting that founding violence. Thus new mythologies such as the Anzac myth are born to legitimate the nation state and rendered permanent in vistas, buildings and monuments.

In 1651 Thomas Hobbes famously observed that the state is our defence against the natural order of 'dog eat dog'. State power involves a contract between the state and its citizens—we surrender our autonomy, our *power to*, and we grant the state *power over* us in order to avoid a life that would otherwise be 'solitary, poor, nasty, brutish, and short'.<sup>8</sup> While Hobbes was defending a 17th century monarch under conditions of a civil war, the principle remains for a democratic state—state power is not natural but is a form of contract between the state and its citizens. On the frontispiece of Hobbes' book *Leviathan* (designed with Abraham Bosse) the king is depicted transcending the landscape and city with his body formed by the bodies of citizens. He holds the symbols of force and religion in each hand and the trappings of power below include castles and churches along with weapons, instruments of torture and the Star Chamber. These days we seek to break with monarchy, to separate church and state

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<sup>6</sup> Benedict Anderson, *Imagined Communities: Reflections on the Origins and Spread of Nationalism*, Verso, London, 1983.

<sup>7</sup> Clifford Geertz, 'Centers, Kings and Charisma' in S. Wilentz (ed), *Rites of Power*, Philadelphia: University of Pennsylvania Press, Philadelphia, 1985, p. 15.

<sup>8</sup> Thomas Hobbes, *Leviathan*, Oxford UP, Oxford, 2010, chapter XIII, p. 9.



Figure 2: Frontispiece to Thomas Hobbes, *Leviathan*, 1651. Source: Creative Commons<sup>10</sup>

and to hide the torture, and the legitimating images have become much more sophisticated. However, Hobbes' key insight retains its resonance—that the state is a contract to protect citizens and therefore requires our agreement, which we can always withdraw.

This idea of power as embodied in citizenship can be linked to the work of Hannah Arendt, who defines power as something that is produced when citizens act together in the public realm—'Power corresponds to the human ability not just to act but to act in concert'.<sup>9</sup> For Arendt, power is the opposite of violence. In her inspiring words:

Power is actualized only where word and deed have not parted company, where words are not empty and deeds not brutal, where words are not used to veil intentions but to disclose realities, and deeds are not used to violate and destroy but to establish relations and create new realities. Power is what keeps the public realm...in existence.<sup>11</sup>

This brings us back to the distinction between *power over* and *power to*. Practices of power involve a complex intersection of top-down and bottom-up practices, *power over* and *power to*, formal and informal, authoritarian and democratic. This requires a multi-scalar understanding that does not presume that top-down trumps bottom-up.

<sup>9</sup> Arendt, op. cit., 1986, p. 65.

<sup>10</sup> [https://commons.wikimedia.org/wiki/File:Leviathan\\_by\\_Thomas\\_Hobbes.jpg](https://commons.wikimedia.org/wiki/File:Leviathan_by_Thomas_Hobbes.jpg).

<sup>11</sup> Ibid.

The revolution in thinking about power initiated by Michel Foucault is crucial here—power is not something ‘held’ by agents so much as it produces a disciplined ‘subject’.<sup>12</sup> Power is distributed and exercised through the micro-practices of everyday life including the gaze of surveillance and the architecture of segregation. At the smallest scale any building plan mediates social encounters through privileged enclaves of access, privacy, amenity and control. Buildings produce and reproduce zones of surveillance and control on the one hand, together with privacy and privilege on the other. Some capacities are enabled while others are constrained. Deleuze and Guattari take this much further to celebrate the informal rhizomic practices of power that operate within and against tree-like formal hierarchies.<sup>13</sup> In this sense power is neither good nor bad—it is what produces our world. The relationships of architecture to power operate at multiple scales and they are a complex assemblage of the formal and the informal.

### **Legitimizing urbanism**

Before I digress too far into theory I want to take a brief global tour of the trappings of power constructed in urban space.<sup>14</sup> Here we find that urban design schemes that are used to legitimate the state have a good deal of formal congruence regardless of history, culture or degrees of democracy. These are regimes of large-scale urban order, replete with expressions of stability, straight lines or strict curves expressing discipline, hierarchy and social order. It is the condition of the state to maintain law and order and the forms of legitimation of the state tend towards the stable, the strict and the straight. This remains the case from older centres, such as Beijing through to Paris, Washington and Delhi, to the more recent designs in Kuala Lumpur and Astana (Kazakhstan). Canberra is no exception.

The word ‘state’ shares the Greek root ‘sta’ with words like stand, stable, static, statue, statement, standard, stage, status and establish. To legitimatise authority, architecture and urban design need to signify a stable system of law and order. Ideal forms such as the pyramid and dome embody the expression of stability, hierarchy and symmetry, a centralised order where power is concentrated and flows downwards and outwards. Relative scale works to signify power through the ways that urban prominence is read as dominance—large-scale urban form establishes a figure/ground relationship as a landmark. A centre of power is often established by verticality or horizontal expanse at a scale that overwhelms the human subject.

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<sup>12</sup> Michel Foucault, *Discipline and Punish: The Birth of the Person*, Vintage, New York, 1977.

<sup>13</sup> Gilles Deleuze and Félix Guattari, *A Thousand Plateaus: Capitalism and Schizophrenia*, Athlone Press, London, 1987.

<sup>14</sup> Kim Dovey, *Urban Design Thinking: A Conceptual Toolkit*, Bloomsbury Academic, London, 2016, p. 125–34.





Figure 3: Centres of power—Astana, Delhi, Canberra. Images courtesy of Google Earth/Geo Eye

There is an aesthetic thrill, a pleasure in being overwhelmed by urban scale—a sense of the sublime to which we surrender when intimidation is mixed with awe and inspiration. The key institutions, monuments and rituals of state authority are arranged through an organisation of street vistas to produce a collective orientation towards the centres of power.

When major transformations of political power occur we often see transformations of urban form which produce a reorientation to new monuments, avenues and citadels of the new order. If the state can be identified with landscape and nature then this becomes a literal naturalisation of political power. The ground or earth upon which



the city is based is the most stable of images. Architectural styles with a strong degree of formal order, symmetry and hierarchy are the most easily deployed as representations of law and order. The hierarchical order of the neoclassical resonates well with the hierarchic order of the state. Yet the neoclassical linked equally with both democracy and tyranny—there are no architectural styles that cannot be used to legitimate authority. Gothic revival architecture was chosen for the British Houses of Parliament where it resonates with the traditional connection of church and state, yet throughout much of the empire, where power was less legitimate, neoclassical held sway. Vernacular architecture can be used to evoke the idea that authority is indigenous and authentic—Hitler’s passion for the German vernacular linked to ‘blood and soil’ remains a bit unnerving. Finally, urban design works as a stage set for the urban choreography of political rallies or the symbolic display of military force. The most interesting current version of this is enacted regularly on Kim Il-sung Square in Pyongyang.

Another key principle here is that the need for legitimation increases as power becomes more authoritarian.<sup>15</sup> The more legitimacy you have the less you need the trappings—in an effective democracy they largely disappear. Extravagant expressions of legitimacy through urban form tend to emerge in new or vulnerable states. The Parthenon was in part a legitimating gesture linked to the threat to the Athenian state from the Peloponnesian War.<sup>16</sup> New Delhi was built by the British just as their power in India declined. Indeed, the design of the new Australian Parliament House has been interpreted by James Weirick as a response to the legitimation crisis produced by the Whitlam dismissal in 1977.<sup>17</sup> Such crises occur when subjects of authority lose faith in its fairness. With their capacity to stabilise identity and symbolise a grounding of authority in timeless imagery, architecture and urban design are regularly called on to legitimate power in a crisis.

### **The Commons**

I want to zoom down now from larger to smaller scale and from the general to the particular. British parliamentary democracy was born in a chapel of the medieval palace at Westminster, where the first House of Commons was formed in 1547.<sup>18</sup> The 13th century St Stephen's chapel was a chamber of about 20 by 11 metres with an

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<sup>15</sup> Dennis Wrong, *Power: Its Forms, Bases and Abuses*, Harper and Row, New York, 1979, p. 111.

<sup>16</sup> David Milne, ‘Architecture, politics and the public realm’, *Canadian Journal of Political and Social Theory*, vol. 5, no. 1-2, 1981, pp. 131–46.

<sup>17</sup> James Weirick, ‘Don’t you believe it: Critical response to the new Parliament House’, *Transition*, Summer/Autumn, 1989, pp. 7–66.

<sup>18</sup> Maurice Hastings, *Parliament House: The Chambers of the House of Commons*, Architectural Press, London, 1950; M.H. Port, *The Houses of Parliament*, Yale University Press, New Haven, 1976.

altar at one end and tiered choir stalls lining both sides. The altar position became the Speaker's chair and members filled the stalls. The choir boys were replaced by the opposing parties, no longer singing to the same hymn sheet. The room was remodelled by Christopher Wren in 1707, adding galleries and the central table, but the spatial structure remained identical. The building was razed by fire in 1834 and Charles Barry designed a new building, with a relocated and expanded chamber of 21 by 13 metres set deep within the building after an enfilade of halls and lobbies (Figure 4).

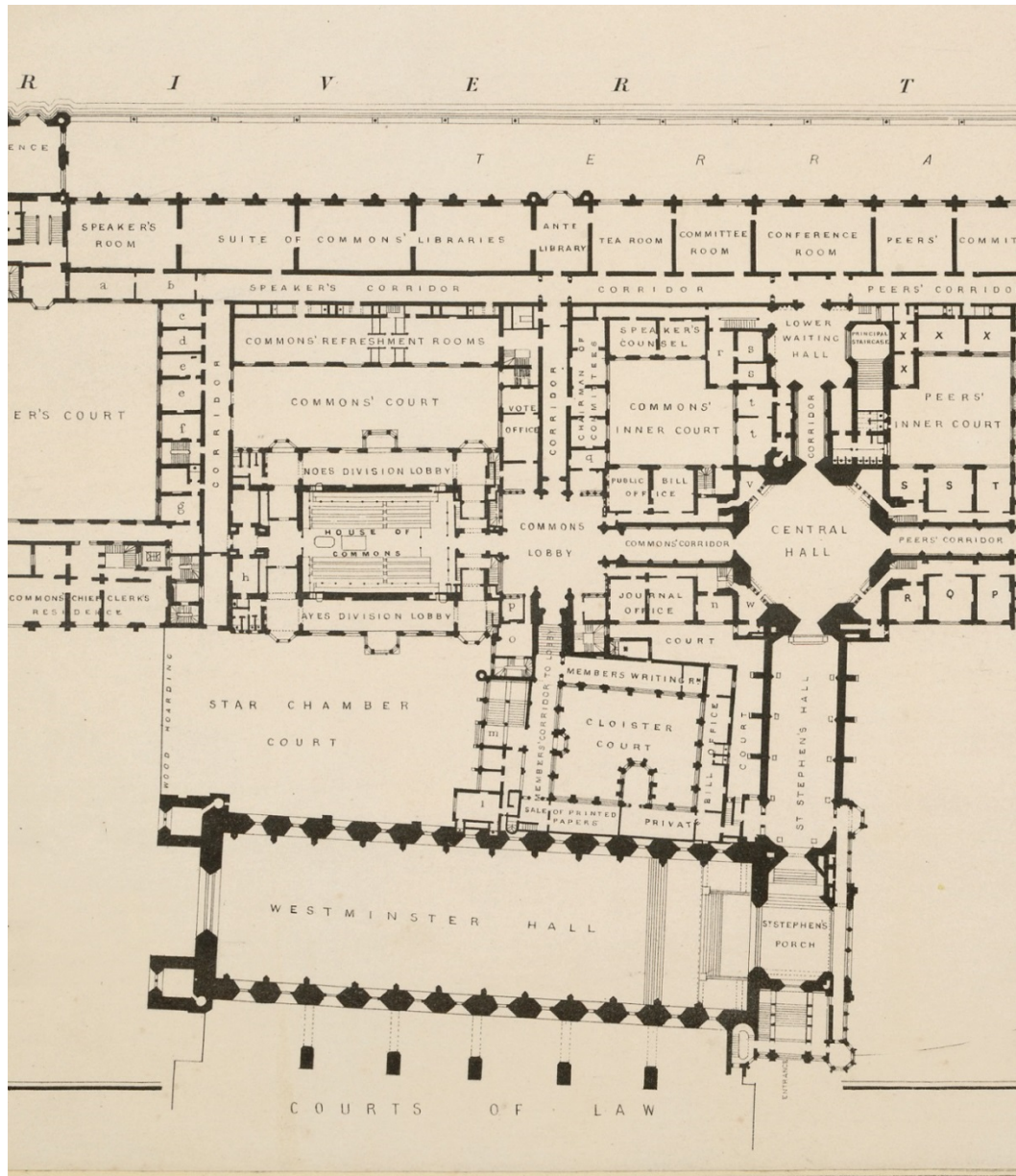


Figure 4: British House of Commons, from the *Plan of the Houses of Parliament and Offices, on the principal floor of the Palace of Westminster* (1852). © British Library Board<sup>19</sup>

<sup>19</sup> British Library Board, Shelfmark: Maps Crace Port. 11.55, Item number: 55, <http://www.bl.uk/onlinegallery/onlineex/crace/p/00700000000011u00055000.html>.

This building was the centre of an extraordinary amount of debate over issues of style. It was the key building of the 19th century ‘battles of the styles’, the struggle for priority between gothic and classical revival for prominence in public architecture. While these debates are of note, my interest here is on the way the debate over style obscured a non-debate over the spatial program which was largely removed from the architects’ domain.<sup>20</sup> However, this debate did erupt a century later when the Commons chamber was bombed in 1941 and Winston Churchill, in a speech arguing for its replication, made his famous claim which has become a catchcry of architectural determinism, ‘we shape our buildings and afterwards they shape us’.<sup>21</sup> The practice of oppositional debate was further inscribed as ‘sword lines’ about 3 metres apart were woven into the carpet, beyond which debaters were not permitted to step (Figure 5). This was designed as a space where it would be safe to be as aggressive as you might like—a crossing of swords without bloodletting.<sup>22</sup>



Figure 5: The British House of Commons, courtesy of UK Parliament<sup>23</sup>

While I am not normally a fan of spatial determinism, this polarised spatial structure with the two parties facing off at sword fighting distance does produce particular forms of discourse. The Speaker on the raised remnant of the altar calls for ‘order’ as members are reduced to shouting to be heard. This is a spatial framework that favours those, such as Churchill, who are skilled at loud debate from a standing position. In this sense it is also a ‘men’s house’—being naturally less dominant in height and

<sup>20</sup> Port, op. cit.

<sup>21</sup> House of Commons Debates, 28 October 1943, vol. 393, cc 403, <https://api.parliament.uk/historic-hansard/commons/1943/oct/28/house-of-commons-rebuilding>.

<sup>22</sup> Charles Goodsell, *The Social Meaning of Civic Space: Studying Political Authority through Architecture*, University Press of Kansas, Lawrence, 1988.

<sup>23</sup> [www.parliament.uk/business/news/2013/november-/commons-private-members-bills-1-november-2013/](http://www.parliament.uk/business/news/2013/november-/commons-private-members-bills-1-november-2013/).

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voice, women are disadvantaged. In her recent anthropological study of the British House of Commons, Emma Crewe argues that ‘Many women feel uncomfortable and hesitant in the chamber...men have more confidence, aggression, deeper voices and relish the quick repartee.’<sup>24</sup> Churchill’s determinism was overstated but the House of Commons is his best evidence. The behaviour it produces rarely occurs in other public debates or courtrooms, where the issues being debated are more important than the spectacle. The House of Commons was a place where rhetoric trumped policy. Churchill’s arguments won the day and the House was rebuilt to a congruent design. However, this was not the first time the Commons had been reproduced.

### **Provisional parliaments**

From 1901 to 1927, Australia’s first provisional Parliament House was the Victorian Parliament House in Melbourne, designed by Peter Kerr and constructed in stages from the 1850s to 1890s. It was structured with the two houses flanking a central hall on a main axis as at Westminster but here located much closer to the street entry. The Legislative Assembly chamber closely resembled the British Commons with oppositional seating that was later converted to a horseshoe. The Melbourne grid was not designed as a capital and the chosen site was on a hill at the top of Bourke Street where it remains as a centrepiece of the so-called Marvellous Melbourne period.

However, once the 1890s depression collapsed the economy, the dome of the building was never completed, opening up other opportunities. One I like is a rather polemical vision by ARM Architecture for a grand function room, surmounted by a large public open space with a ‘crown’ of solar collectors (Figure 6). While we might debate the details, this is the kind of design thinking we need for a democracy of the 21st century.<sup>25</sup>

The Australian Parliament moved to Canberra in 1927 when the second provisional Parliament House, designed by John Smith Murdoch, was completed. The structure was very similar to the Melbourne building with the two houses flanking the central hall, again with a relatively direct entry from the street. The House of Representatives was much wider than the original and in a horseshoe formation, however, the structure of oppositional debate at sword fighting distance between front benches was maintained. The central hall was highly accessible with members and senators, the public and the press all crossing paths. Unlike its British predecessor, this building also housed the prime minister and cabinet in one corner of the ground floor, but with

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<sup>24</sup> Emma Crewe, *The House of Commons: An Anthropology of MPs at Work*, Bloomsbury, London, 2015, p. 215.

<sup>25</sup> Rob Adams, Ronald Jones and Kim Dovey, ‘Future Melbourne’ in K. Dovey, R. Adams and R. Jones, (eds), *Urban Choreography: Central Melbourne 1985–*, Melbourne University Press, Melbourne, 2018.



Figure 6: Victorian Parliament House as imagined by A.C. Cooke (1878) and ARM Architecture (2006). Images courtesy of State Library of Victoria and ARM Architecture <sup>26</sup>



no executive enclave. A tradition of strong press access grew in this building. As Michelle Grattan wrote ‘the old building is an intimate place. If something is going on it literally buzzes around the corridors. Ministers, backbenchers, staff and media cannot escape one another’.<sup>27</sup> In this circumstance, informal rules emerged to regulate such contact. One of these was that

members would make themselves available for ‘doorstop interviews’ on entering and leaving the building, provided that they were not asked for public comment in the corridors. The front steps became the scene of many such interviews.

The provisional parliament was not an effective emblem for a growing nation and it outlived its functions, but the paradox was that its dysfunctionality had a democratic function. Robert Haupt described it as a:

cheek by jowl jumble of corridors, rooms, cubicles and annexes so hated by those who worked there and yet so vital to our intimate political style in which a chance remark in Cabinet in the morning could become a pointed parliamentary question to the Prime Minister in the afternoon, the lead item to the evening television news and the subject of a scathing political commentary in the following morning’s press.<sup>28</sup>

<sup>26</sup> Design for the Victorian Parliament, showing the dome which was in the original design. A.C. Cooke, *Illustrated Australian News*, 10 June 187, [handle.slv.vic.gov.au/10381/83679](http://handle.slv.vic.gov.au/10381/83679).

<sup>27</sup> Michelle Grattan, ‘Old habits at odds with new house’, *The Age*, 9 May 1988, p. 13.

<sup>28</sup> Robert Haupt, ‘Journey’s end for a ship of state that served us well’, *The Age*, 6 May 1988, p. 3.

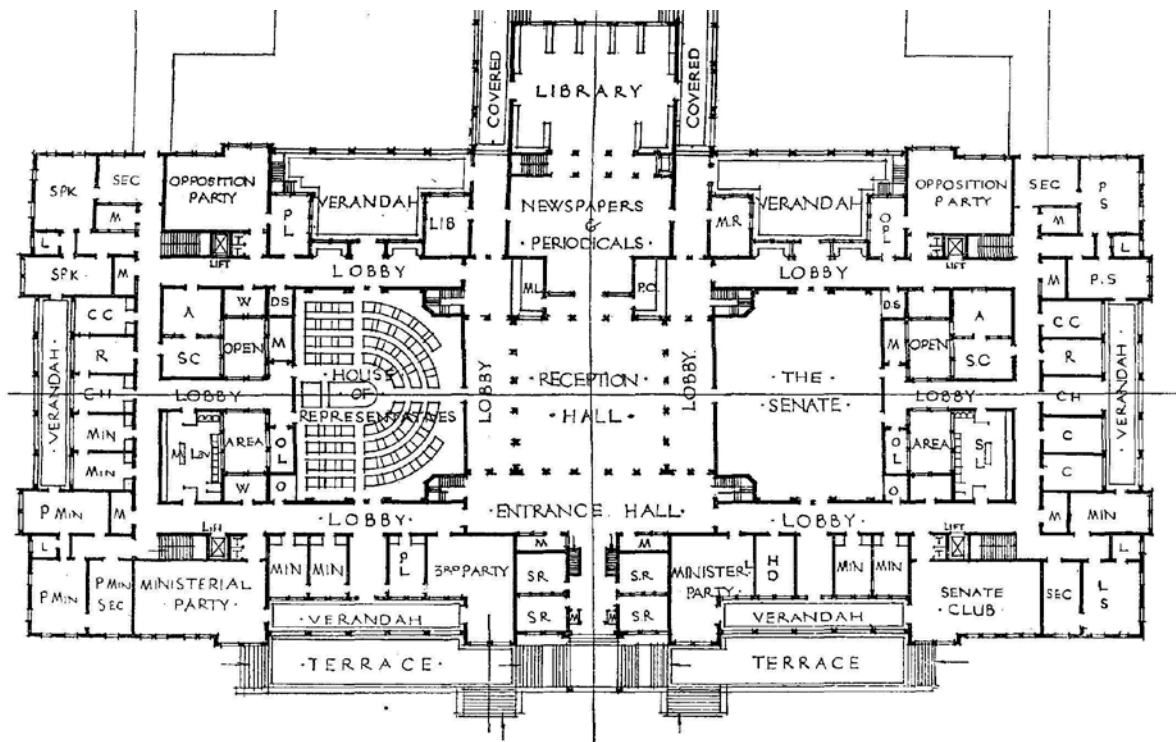


Figure 7: The main floor plan of the provisional Parliament House, Canberra<sup>29</sup>

Similar to the street, the corridor or lobby of a public building is no one's place and therefore everyone's. It is a place framed in such a manner that any conversation can be started or terminated at any time. It is a space 'between' functions where the flows of information are as unpredictable as the flows of people. Some things may be said in a lobby that will remain otherwise unsaid, and certain people may speak who may not otherwise be heard. It is a space of possibility. This was a building that embodied practices of democracy within its spatial structure. As a platform for such intensities of encounter the building worked like a small city, but in this sense the building did not 'work' for politicians.

### Segregation

The design of the new Parliament House was the result of a public architectural competition and is largely the work of Italian/American architect Romaldo Giurgola. However, it is crucial to note that the architects were not responsible for any part of the spatial programming. The Parliament House Construction Authority produced two volumes of competition conditions that stipulated a clear segregation of people within the building and four separate entrances for the executive, Senate, House of Representatives and the public. Internal divisions were equally explicit—'Circulation space around and between chambers at chamber floor level should not be accessible to

<sup>29</sup> Taken from the report of the Standing Committee on Public Works, on the *Erection of Provisional Parliament House, Canberra*, July 1923.

tourists’—citizens were reduced to ‘tourists’. Ministers and backbenchers were also separated—‘Ministers...should not have to use a circulation system flanked by Senators’ suites’.<sup>30</sup>

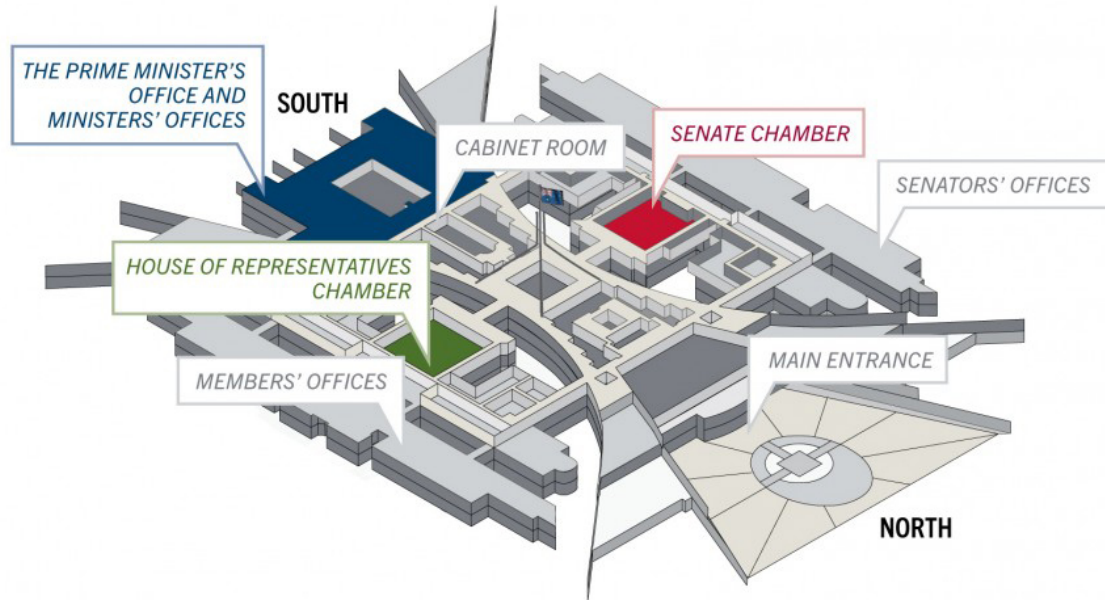


Figure 8: Floor plan of the Australian Parliament House

The program largely determined the plan since it diagrammed the various parts of the building with the two houses as wings of a cruciform with the new executive on the axis at the top (Figure 8).<sup>31</sup> Any competition entry which did not reproduce some version of this diagram with its four distinct entries could not meet the brief—the winning plan was one of very few competition entries that did.<sup>32</sup> The plan was essentially four separate buildings in a cruciform with four entrances for four classes of people whose paths rarely cross.

The executive entry is on the axis opposite the public entry and it grants ministers a high level of control over press contact, renders the doorstep interview voluntary and grants them media access on their own terms. Within the executive block each minister is provided with a suite of about nine rooms, the spatial structure of which was completely determined and diagrammed in the program (Figure 9).

<sup>30</sup> Parliament House Construction Authority, *Conditions for a Two-Stage Competition*, 2 vols, Canberra, 1979.

<sup>31</sup> *Ibid.*

<sup>32</sup> Andrew Hutson, ‘Square peg in a square hole’, *Papers on Parliament*, no. 55, February 2011.

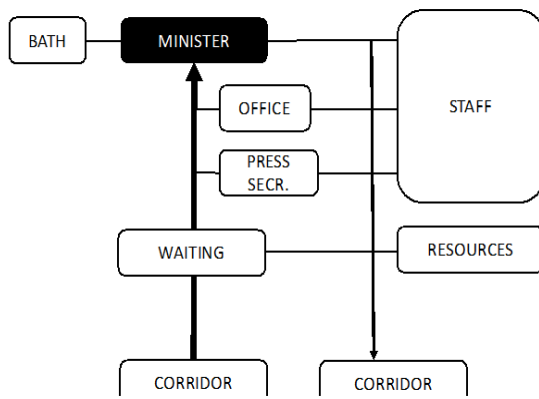


Figure 9: Spatial program for ministerial offices (based on Parliament House Construction Authority diagram, 1979)

Such diagrams are the spatial genotypes of how power is practised through spatial segregation.<sup>33</sup> The minister's office is several segments deep from the access corridor and is structured to enable a 'backdoor'

entry and exit. Thus just as the minister can regulate contact with the press as she enters the building, the same is possible with anyone entering or exiting the office. This spatial structure juxtaposes a formal entry suite with an informal back suite of advisors that also serves as a back entry/exit. This genotype is the standard that has developed over centuries from western palace architecture where an enfilade of formal rooms leads to the centre of power, which is then serviced by an informal entry/exit for mistresses and informal advisors. The cabinet was originally named after a small room for informal advisors located near the king's bedroom.<sup>34</sup>

The general argument here is that the building reflects a shift in power from parliament to executive, counter to the interests of the press and citizens. A survey of the press soon after completion found that a majority felt the building had caused an increase in the power of the executive. However, informal power works in multiple ways and it has also been argued that the new building enables the plotting for leadership coups to be carried out in greater secrecy. The building has also rendered the corridors of power somewhat dysfunctional. The severely bloated spatial program causes a proliferation of corridors and lobbies that dissipate all intensity. It has been criticised from this perspective by everyone from Barry Jones 30 years ago to Malcolm Turnbull. The doorstep interview with ministers has been largely replaced by the staged forecourt interview, which at least keeps the minister fit since it requires a five minute walk each way.

### House as hill

While the spatial program was largely decided by politicians and bureaucrats, the architect's primary legacy lies in the forms of representation and the composition of the building. Burley Griffin's urban design for Canberra was to leave this site, Capital

<sup>33</sup> Dovey, *Framing Places*, op. cit., p. 23.

<sup>34</sup> Mark Girouard, *Life in the English Country House*, Penguin, Harmondsworth, 1980.



Hill, as a public open space from which to look down and across the parliamentary triangle to the water. The decision to locate Parliament House on the hill is just one in a long series of violations of the Burley Griffin plan driven by a variety of bureaucratic and political imperatives. One of the attractions of Guirgola's design was that it resisted the impulse for an imposing edifice. Instead the building excavates several storeys off the natural landscape which it then reconstructs artificially. This tactic enables a very large building to blend into the landscape and one enters the parliament as if into the land it stands for—Parliament House as a hill rather than on the hill. Citizens could initially walk on top to produce a potent legitimating image, although that access is now sadly denied.

The public parts of the building comprise a sequence of spaces from the grand entry plaza through to the heart of the building. This spatial and architectural narrative proceeds from the grand plaza, representing Aboriginality and the desert, to the building entry which is depicted in terms of the arrival of European civilisation. The walls and building entrance containing the forecourt signify Greek and Egyptian architecture as they accentuate the sense of entering the earth and the rise of European civilisation. The main entry space also signifies the 'colonial verandah', which reconstitutes and frames the colonial gaze back over the Aboriginalised landscape. The deliberate use of a semiotic approach to architecture results in guides and guidebooks decoding the building for citizens who must learn how to see it.<sup>35</sup> The grand foyer of marble columns is meant to evoke the hall of Old Parliament House but here it is stripped of its members. This is followed by the Great Hall and finally the new Members Hall, flanked by the two houses. Here the House of Representatives—why did we ever abandon that wonderful word 'Commons'—has been expanded in size yet again, as if the architecture might ameliorate the intensity of political debate. Here we also find the programming of separate lobbies for the government and opposition—whatever happened to the ideal of a common public realm?

The new Members Hall between the chambers is the symbolic centre of the nation. In the architects' drawings this was the key node point of the building, filled with members chatting and lobbying. Yet members have no reason to be there and it is generally empty (Figure 10). The large square slab of water covered black granite becomes a mirror designed to promote contemplation and to signify permanence and purity, surmounted by the pyramidal roof and flagpole. What it most evokes is contemplation of what kind of democracy we have become, together with a desire to throw coins and to wish the hall were not so empty. The throwing of coins is a refreshing spectacle since nowhere on the site does the building provide any genuine public space for political speech.

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<sup>35</sup> Haig Beck, *Parliament House Canberra: A Building for the Nation*, Collins, Sydney, 1988.



Figure 10: Members Hall, Parliament House. Image courtesy of DPS AUSPIC

While the architects should have known this would happen, the emptiness at the centre of parliament is largely produced by the program they were forced to follow. It can also be seen as an early and uncanny reflection of global transformations that were accelerating from the 1970s—now generally known as neoliberalism, the Washington consensus or a ‘post-democratic’ condition.<sup>36</sup> From this view, the power of the nation state is in decline as the global neoliberal consensus holds sway. The state becomes more corporate and political power shifts from parliament to the executive. Public cynicism about politics rises as commitment to democratic institutions falls and parliamentary democracy is viewed by many as an empty charade.

Visible above the empty Members Hall is the giant pyramidal flagpole representing a symbolic joining of the two houses with the executive and public entry. Some critics have argued this is a weakness of the design, yielding as it does rather directly to heroic patriotism and its likeness to the icon of the Italian Fascists—a bunch of ‘fasces’ lashed together with an axe. In my view this is not a helpful critique since these are just the normal trappings of power—the state always seeks images of disparate parts conjoined into an aspirational whole. And without the flagpole one would not even see Parliament House from a distance.

So what might be done about this post-democratic house on the hill? With regard to Parliament House itself, I would suggest not a lot. One cannot change the circulation structure dramatically, nor shrink the building or its chambers. The architectural composition of the building is beautiful in many ways and will only be damaged by

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<sup>36</sup> Colin Crouch, *Post-democracy*, Polity, Cambridge, 2004.

major changes. We could start with granting public access to the central hall because there is no reason members should not mingle with citizens, as they do with safety in the street every day. While this may not change the practice of politics, it would at least relieve the image of such an empty centre. We could also reopen the roof as a public park—the parliament belongs to its citizens and should not be expropriated in an endless and ultimately hopeless quest for ‘security’. However, if we were to think a little more broadly about this house on the hill perhaps more transformational change is possible.

### **Re-framing parliament**

At the larger scale of the urban landscape Parliament House is a citadel, separated from the city by three broad ring-roads which make it nearly impossible to approach on foot. The practices and representations of democracy have been segregated from the community. The main approaches to the parliament show it in a bushland setting, an effect that has been achieved by encircling parliament with a vast moat of parkland (Figure 11). While I am sure there are many who will leap to the defence of this parkland and Burley Griffin’s long-lost vision, spare me two minutes to launch a small thought bubble wherein we might see this as a space of possibility. Ninety per cent of Australian citizens live in urban environments. We may complain about our cities and escape from them when we can, but we vote with our feet because cities are where most of the jobs and opportunities are. Canberra is a city that pretends to be bushland and achieves this only with a very low density and a devotion to cars.



Figure 11: The street view of Parliament House. Image courtesy of Google Street View <sup>37</sup>

The key challenge for all Australian cities is that they are so heavily car dependent, and while we rave on about walkability and about healthy and low-carbon cities we so rarely build them. The closest we come are those popular inner city neighbourhoods

<sup>37</sup> Image capture March 2015, ©2018 Google, <https://goo.gl/maps/7dzhcUgTL3H2>.

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with medium-density housing, a lively mix of places to live, work and visit, serviced with good public transport. So why not turn the moat of parkland enclosing Parliament House into a new inner city (Figure 12). Even if we were to leave the 20 hectare citadel as it is, the moat occupies a further 30 hectares of space all within a 400 metre walking distance of the centre. What are the possibilities if this area were developed to about four to ten storeys, while leaving the triangular slice facing the lake clear for symbolic purposes (or a possible Aboriginal embassy)? If programmed with a mix of residential, office, retail and other uses, then this could become a popular new suburb of Canberra, housing substantial populations, facilities and opportunities within walking distance of parliament. Why not use some innovative and agile thinking to demonstrate how a low-carbon, walkable city can work—a ‘smart city’, ‘healthy city’, ‘productive city’, ‘creative city’. Perhaps we could invent some new slogans to help change the national imaginary.



Figure 12: Putting the polis back into politics—a thought bubble

What Parliament House needs after 30 years is some neighbours and a transformation of the national imaginary. A citizen is a denizen of the city—this would put the city back into citizenship, re-framing parliament to reflect where 90 per cent of all Australians live. Putting the politics back into the polis where it began might also help to legitimate the authority of the nation in a different way for the centuries to come. It might indeed make Canberra a little more resilient—history tells us that cities last longer than nation states.





**Question** — You highlighted that Parliament House is a result of an architectural competition rather than a competition to make the most functional parliament from the point of view of providing access to the people and for those representing them. Bearing in mind old Parliament House, could you give examples of parliament houses in western democracies which more closely meet the attributes which you feel are desirable?

**Kim Dovey** — I think the one that we used to have is not a bad model. This is not an area in which I have done much research so I do not feel all that competent to compare the current Parliament House with other models. I do believe we need to rethink the oppositional two-party model of the chamber with the two major parties opposing each other spatially. There is an element of architectural determinism and a gender bias that operates there.

I don't have a model of a different form that I think works particularly well. If I have a model of democracy it goes back in a sense to Hobbs where we see democracy is based in citizenship—it is based in 'us' and it is based in a power that resides in the people—and the forms of architecture that flowed from that. Watch that space because, as I said, I think when democracy is truly legitimate, the trappings of power tend to disappear. So one answer to your question is that you will not see the trappings of power, you will not see the images because a democracy that is really working does not need to announce itself.

**Question** — Picking up on your thought bubble at the end—what do you think the real estate values would be like in those areas surrounding Parliament House? Could I mischievously suggest to you that all you are doing is putting a reinforcing citadel of the elite around the already isolated parliament?

**Kim Dovey** — I realise I was opening up a can of worms. Let me open it! Let me go right down that path. Of course at worst simply giving over more and more public space to private markets and to profit is neoliberalism at its worst. That was certainly not my intention. My intention was to point to what I see as a serious problem with Canberra. To some degree Canberra lacks the intensity of a real city. The production of waste corridor space within Parliament House is reflected, to my mind, at the larger scale in Canberra. Cities work better when there is a level of intensity.

I had not been in Canberra for a while but when I arrived yesterday afternoon I had a long walk right around the perimeter of Parliament House and through that bushland and I saw almost nobody. Again this morning, I walked to Parliament House—it can be done, it is not easy—and again there was nobody there. It is underutilised for an urban space. I love the bush and I love escaping the city but when I am in the city

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I want to be in the city. I think there are ways of managing urban development that are in the public interest. A true democracy does not stop urban development from happening, it does not wipe out markets and it does not stop developers from making a profit. It simply manages that in a way that produces a public benefit and that is what I am proposing.

**Question** — You have spoken about the intimacy of the Old Parliament House where members and ministers mingled much more freely. In the new Parliament House, the executive is removed and, as you said, that has made the executive much more remote from the ordinary members of the parliament. As I understand it that physical separation was part of the design brief. Who was responsible for the design brief? Were they officials? Were politicians involved? And do you think they understood the long-term political implications of that physical separation?

**Dovey** — My understanding is that the people who were responsible for the brief were a mix of bureaucrats and politicians. Were they aware of the long term? And why did it go that way? It went that way because that is the way they saw their interests. If you ask a politician whether they want to be ambushed at a doorstep interview, then the answer is no. If you ask them whether they would like more control over the relationship with the press, then the answer would be yes. There is no point in blaming politicians, or indeed the bureaucracy, for pursuing their own interests.

The problem with the design brief was that there was not long-term input from anyone who understood how buildings really work. I think that is the deeper problem. So that is the answer to the second part of the question—no they did not understand the long-term consequences or that buildings and architecture work in a lot of very subtle ways that are not usually formally written down. No one formally says what is supposed to happen in a lobby or a corridor any more than anyone formally says what should happen on a sidewalk, but these are very interesting places because they enable so many different things to happen and they enable so much mixing and encounter. It is the chance encounter that in a sense is so productive. This is how cities work. Good cities work by bumping us into each other in walkable ways, where we can stop and have an encounter or a conversation with each other. It does not work of course when we are in cars. The same thing happens at different scales. So the inner cities I talked about as a model for the sort of thing that we should perhaps reproduce here is part and parcel of what happens inside public buildings as well.

**Question** — Parliament House was built in the 1980s just at the forefront of communication changes and I am wondering how much criticism of the building is actually related to electronic devices. Having just been on a bus in Sydney and a tram

in Melbourne—nobody talks to anyone because they are all on their phones. Parliamentarians are no different. The press is no different. If you go to a cafe, no one is talking. So how much has the way we communicate now, in that we would rather text someone than meet them in a corridor, affected how you view this building?

**Dovey** — I am not really sure. To some degree new information technologies do enable us to avoid that kind of random contact. However, I am simply suggesting that there is something about face to face contact which is very, very different. When you communicate through a mobile phone you are generally communicating with people with whom you already have a relationship and there is nothing random about it. So it does not replace what happens in streets, sidewalks and corridors. Certainly the widespread use of mobile phones was not prevalent enough in the 1970s to have impacted on the programming of this building. Are you suggesting that our tendency to have our eyes glued to screens has prompted the criticism of the Parliament House? I do not necessarily see that connection. It is more likely to lead to less criticism. If I am glued to my Facebook, then I can wander the corridors of Parliament House without making any kind of critique of it at all because I will not be watching it. It will be just passing by.

**Question** — What I am saying is that even though places are provided for people to meet, they tend not to do that anymore. They very much focus on their own business. I am saying it is an impact not an intention.

**Dovey** — I do not really go along with this notion that the technology has changed and therefore everything has changed. Some people say public space is now obsolete because everything happens on the Internet or everything happens on screens and in virtual space. If that is true then what are you people doing here! Face to face contact survives and indeed in many ways it thrives. Why are cities thriving? Why are people moving to cities? Why are cities the places producing the ideas that are producing the jobs? It is because cities are productive and they are productive because they are sites of intensive face to face interaction. In my view that is the primary productivity of cities. Face to face contact has not become obsolete and it won't become obsolete. Information technologies will change the way in which that is seen and indeed it can even stimulate face to face contact. When you make contact with people in virtual space often that leads to a face to face contact as well.





# Political Engagement in the Australian Digital Context\*

Ariadne Vromen

## Introduction

This paper is in three main sections and is based on approximately ten years of my research into digital political engagement in Australia. I focus first on how young citizens use digital media to engage in politics, and show that these shifts have increased political equality by including more voices in public life. I particularly focus on the idea of *engaged citizenship* where processes of personalisation and storytelling now dominate, and there has been a shift away from the norms of the dutiful citizen with set allegiances and ideologies. Second, I consider how new advocacy organisations have emerged that use digital tools to change and challenge traditional politics and the existing policy agenda. Lastly, in thinking about the role for representative government in this new and changing environment, I introduce the idea of digital rights that brings to the fore current concerns about commercial social media platforms' collection and targeting of data, as well as contentious issues such as privacy, surveillance and freedom of speech.

## How citizens participate online

Thinking about political engagement in terms of what individuals do, and where the internet now features as a mobiliser or space for participation, preoccupies most of us who study participation. From 2013 to 2015 I led a comparative project called The Civic Network where we sought to understand how the internet and social media were transforming the way young people were engaging in politics in Australia, the USA and the UK.

To analyse political engagement we constructed two distinct measures—the first was *individual political engagement*, and was based on a series of questions about 12 distinct acts of civic or political engagement (modelled on items used by Zukin et al).<sup>1</sup> This inclusive list featured conventional political activities such as contacting leaders and trying to influence how others might vote in an election, as well as more civic-oriented acts like raising money for charitable causes, and newer political

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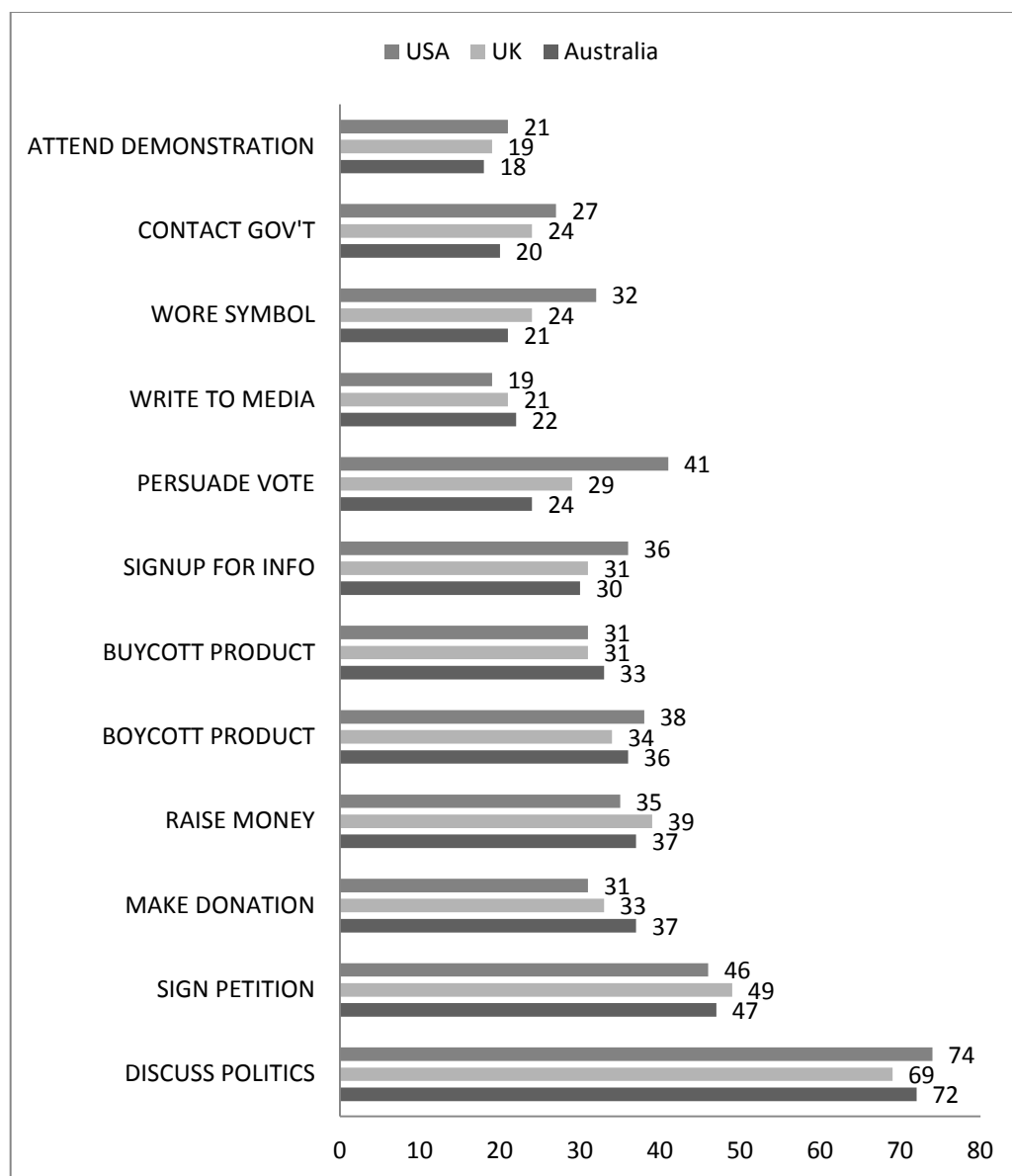
\* This paper was presented as a lecture in the Senate Occasional Lecture Series at Parliament House, Canberra, on 17 August 2018.

<sup>1</sup> Cliff Zukin, Scott Keeter, Molly Andolina, Krista Jenkins and Michael. X. Delli Carpini, *A New Engagement? Political Participation, Civic Life, and the Changing American Citizen*, Oxford University Press, New York, 2006.

activities such as buying (or not buying) goods or services based on political or ethical reasons, as well as attending a demonstration or a political rally.

Figure 1 shows the distribution across the three countries of what proportion of young people had participated in each act in the previous year. There is only one act which a majority had participated in—discussing politics with friends and family. An average of 19 per cent of young people across the three countries had not participated in *any* of these 12 acts in the previous year—or 81 per cent of young people had engaged in at least one form of individual political engagement (with a mean of 4.10 acts and a standard deviation of 3.88), demonstrating a broad spread of political engagement

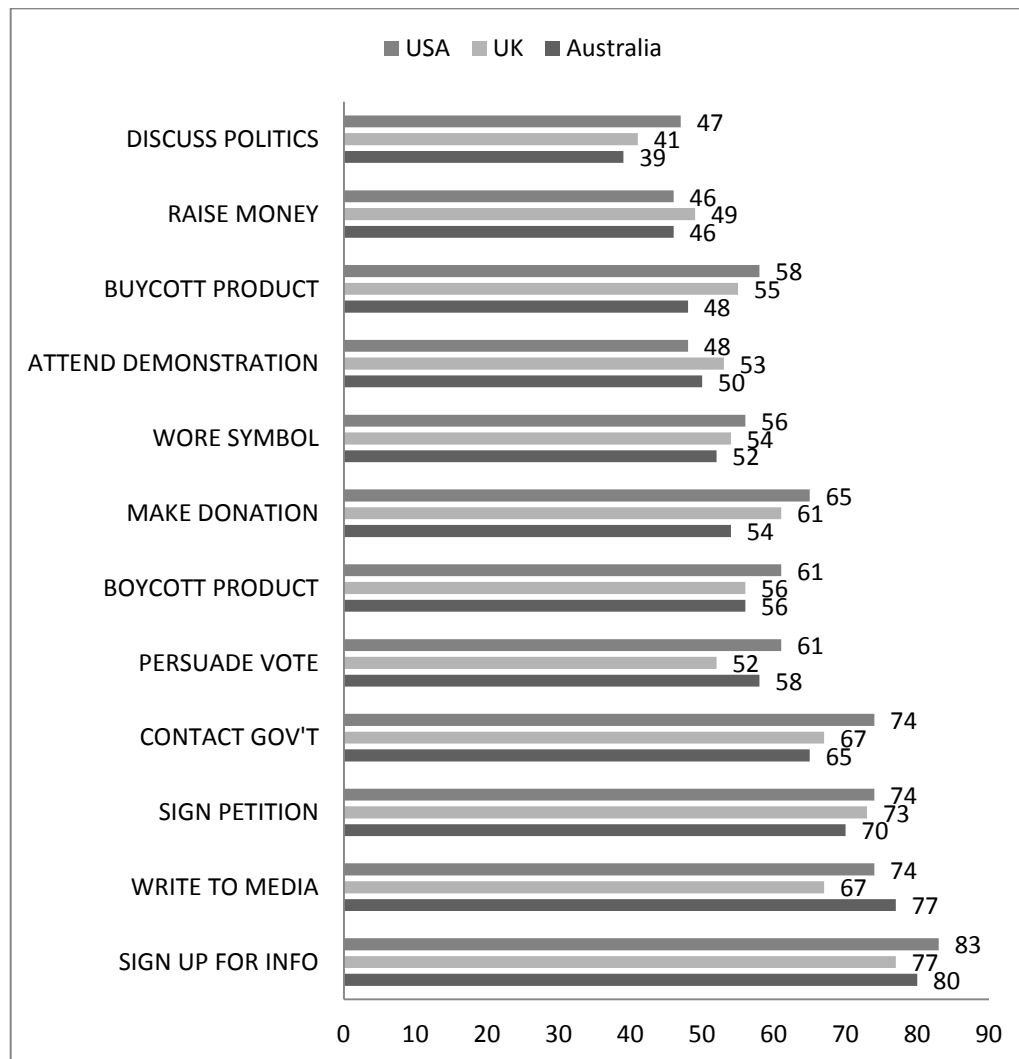
Figure 1: Per cent of individual political engagement in previous year<sup>2</sup>



<sup>2</sup> Adapted from Vromen, Xenos and Loader, *ibid.*

among most young citizens.<sup>3</sup> There were relatively few differences across the three countries, with the 12 acts staying in more or less the same rank order of occurrence. The exceptions are the two acts of ‘persuade others to vote’ and ‘wearing a symbol’ which young Americans were much more likely to have done. This can be attributed to the 2012 Presidential election having occurred within the year timeframe the survey applied to.

Figure 2: Per cent of individual political engagement acts performed online<sup>4</sup>



Participants were also asked whether they engaged in these activities either online, offline, or in some combination of online or offline forms. Figure 2 shows that in all three countries most of these political acts are no longer mainly engaged in offline by

<sup>3</sup> Ariadne Vromen, Michael Xenos and Brian D. Loader, ‘The Networked Young Citizen as POPC (permanently online, permanently connected) Citizen’ in Vorderer, Hefner, Reinecke and Klimmit (eds), *Permanently Online, Permanently Connected Citizen: Living and Communicating in a POPC World*, Routledge, London, 2018.

<sup>4</sup> Adapted from Vromen, Xenos and Loader, *ibid.*

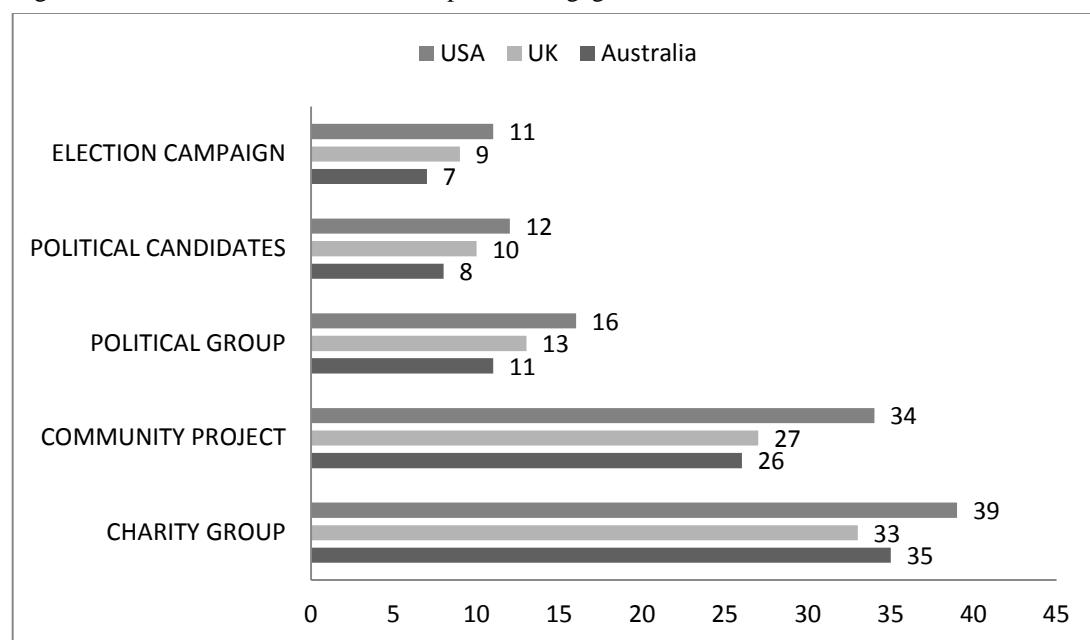
young people. In fact, participation happened online for over two-thirds of young people who:

- signed up for information
- wrote to the media
- signed a petition
- contacted government.

There were only two acts that clearly remain offline for a majority of young people across all three countries—raising money and discussing politics. The majority preference to discuss politics mainly offline and in person is significant for thinking about how political talk occurs (or not) on social media platforms and within young people’s networks.

We also wanted to understand political activities that specifically involved citizens working with others in organisations and groups, or *collective political engagement*. Similar to individual political engagement, we sought to capture a wide array of types of engagement, and included items related to political groups or causes, non-political or charitable groups, and groups associated with political candidates or parties. In all, we asked participants whether they joined, worked, or volunteered with five different kinds of groups, allowing them to count activities that may or may not have involved the internet to varying degrees. Figure 3 shows that young people were less likely to have participated in collective political engagement than most of the individual acts.

Figure 3: Per cent involved in collective political engagement<sup>5</sup>

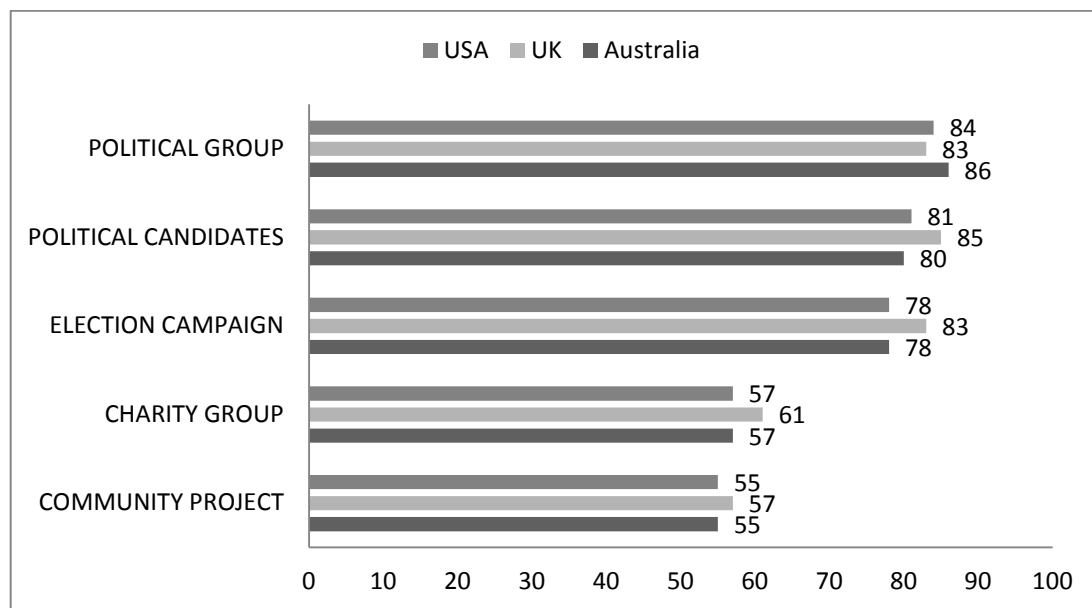


<sup>5</sup> Adapted from Vromen, Xenos and Loader, *ibid.*

In fact an average of 54 per cent of young people across the three countries had *not* been involved in a group. Young people in all three countries were more likely to have been involved in a charity group or community project than a more explicitly political group and young Americans were more likely to have been involved in all five groups than Australians or Britons.

Figure 4 shows whether internet use featured in young people's collective political engagement. Interestingly the three more overtly political groups were much more likely than the charity group or a community project to involve the internet. Digital mechanisms have become an integral part of young people's political and electoral campaigning, but are used more sporadically by grassroots civic groups.

Figure 4: Percent of collective political engagement involving some internet use<sup>6</sup>



### **The communicative shift in participation for individuals**

While digital first is important for many individual and collective acts of engagement, what of the role of social media platforms? Australians are some of the heaviest users of social media and smart phones across the world. Social media use, predicated on interaction between an individual and a list of friends or followers, has become ubiquitous. For example, in Australia alone Facebook has 15 million users, Twitter nearly 3 million, Instagram around 5 million, and newer platforms such as Snapchat are growing in popularity all the time. This means 63 per cent of all Australians have a Facebook account, while 97 per cent of young people under 25 are on Facebook, and nearly 40 per cent of people under the age of 30 use Twitter every

<sup>6</sup> Adapted from Vromen, Xenos and Loader, *ibid.*

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week.<sup>7</sup> These free social media platforms are fun and easy to use, and are based on building community and promoting interaction with others.

Over the last fifteen years or so there has been extensive debate about the extent of the internet's capacity to be a new outlet for civil society and to increase citizen-based engagement. Access to internet-based technologies was initially characterised as a digital divide, based on class differences, but the advent of mass use of social media, in particular Facebook, challenged some of the perceptions of what the internet can be used for and how social networks lead to participation. New types of political campaigning and organisation have been facilitated by innovative digital tools, and political organisations have emerged that exist primarily online. The 2008 Obama Presidential campaign heralded a new phase in the use of innovative digital technology and social media for mobilisation, and is still often used as the comparator for all that has come since. The campaign also showed the importance of online donations and fundraising as a cornerstone of contemporary campaigning, and the requisite sophisticated technology and databases needed for accurate tracking and targeting data.<sup>8</sup>

There has been an extensive debate over the capacity of online politics to both deepen and expand citizen participation. In an early evaluation of whether the internet facilitates political engagement, Pippa Norris differentiated between 'cyber-optimists' and 'cyber-sceptics'.<sup>9</sup> While there is less polarity now in positions taken by those who write on the democratic potential of online political engagement, disagreement and different interpretations about its value for participation remain. Many argued that the internet provided *new* ways of participating in political processes and thus merited original analysis. The internet extended the space available for what was already known about the individualisation of political engagement, but also incorporated politics into other parts of social and economic life that were also increasingly happening online. Social media use rapidly became politicised in two ways. First, via citizens sharing political and civic information with peers in semi-public spaces, and second, through the political sphere adopting or incorporating these mechanisms for contacting citizens. Andrew Chadwick suggested that citizen use of the internet had the capacity to change political engagement irrevocably:

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<sup>7</sup> David Cowling, 'Social media statistics Australia – January, 2016', *Social Media News*, [www.socialmedianews.com.au/social-media-statistics-australia-january-2016/](http://www.socialmedianews.com.au/social-media-statistics-australia-january-2016/); Ariadne Vromen, *Digital Citizenship and Political Engagement: The Challenge from Online Campaigning and Advocacy Organisations*, Palgrave Macmillan, Basingstoke, 2017.

<sup>8</sup> Bruce Bimber, 'Digital media in the Obama campaigns of 2008 and 2012: Adaptation to the personalized political communication environment', *Journal of Information Technology and Politics*, vol. 11, no. 2, 2014, pp. 130–50.

<sup>9</sup> Pippa Norris, *Digital Divide: Civic Engagement, Information Poverty and the Internet Worldwide*, Cambridge University Press, Cambridge, 2001, pp. 96–8.

Political life in Facebook ‘piggybacks’ on the everyday life context of the environment, in much the same way as ‘third places’ function in community building, social capital, and civic engagement away from the home and the workplace. Politics here aligns itself with broader repertoires of self-expression and lifestyle values. Politics in Facebook goes to where people are, not where we would like them to be.<sup>10</sup>

Chadwick saw that social media was taking offline approaches to produce everyday forms of political engagement and community building online. Leading scholars suggested that online spaces and social media have changed political engagement to the extent that communicative acts in and of themselves are a form of political engagement that we need to better understand.<sup>11</sup> The Pew Internet and American Life project pioneered research on social media based engagement and identified that young people lead the way in posting views about political and social issues; sharing news articles; following politicians and watching political videos.<sup>12</sup>

In The Civic Network project we analysed how young people in the UK, Australia and United States were using Facebook and Twitter for political engagement. Figures 5 and 6 show the incidence of different kinds of Facebook-based actions among young people aged 16 to 29 (over 90 per cent of young people in each country used Facebook and the Table is based on them). A majority of the young people surveyed in all three countries who use Facebook follow links to news or political information posted by others into their newsfeed. Overall large numbers, up to 40 per cent, are doing symbolic work on Facebook of liking and sharing the political views and posts of others. Arguably these acts are now very important within the semi-public networks of extended friends and family, and often communicate young people’s identity and world views. Over a third of young people also post comments on politics or social issues, suggesting that it has become a normalised space for everyday discussion and debate for politically engaged young people. The symbolic uses of social media to express political viewpoints are also important. For example,

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<sup>10</sup> Andrew Chadwick, ‘Web 2.0: New challenges for the study of e-democracy in an era of informational exuberance’, *IS: A Journal of Law and Policy for the Information Society*, vol. 5, no. 1, 2009, p. 30.

<sup>11</sup> W. Lance Bennett, ‘The Personalization of politics: Political identity, social media, and changing patterns of participation’, *The Annals of the American Academy of Political and Social Sciences*, vol. 644, no. 1, 2012, pp. 20–38; Mats Ekstrom, ‘Young people’s everyday political talk: A social achievement of democratic engagement’, *Journal of Youth Studies*, vol. 19, no. 1, 2016, pp.1–19; Jay. G. Blumler and Stephen Coleman, ‘Democracy and the media—revisited’, *Javnost—The Public Journal of the European Institute for Communication and Culture*, vol. 22, no. 2, 2015, pp. 111–28.

<sup>12</sup> Lee Rainie, Aaron Smith, Kay Lehman Schlozman, Henry Brady, Sidney Verba, *Social Media and Political Engagement*, 2012, [http://www.pewinternet.org/files/old-media/Files/Reports/2012/PIP\\_SocialMediaAndPoliticalEngagement\\_PDF.pdf](http://www.pewinternet.org/files/old-media/Files/Reports/2012/PIP_SocialMediaAndPoliticalEngagement_PDF.pdf); Kay Lehman Schlozman, Sidney Verba and Henry E. Brady, ‘Weapon of the strong? Participatory inequality and the internet’, *Perspectives on Politics*, vol. 8, no. 2, pp. 487–509.

note the increasingly common phenomena of changing a Facebook profile picture to invoke empathy or solidarity with an event or cause.

Figure 5: Using Facebook for communicative politics<sup>13</sup>

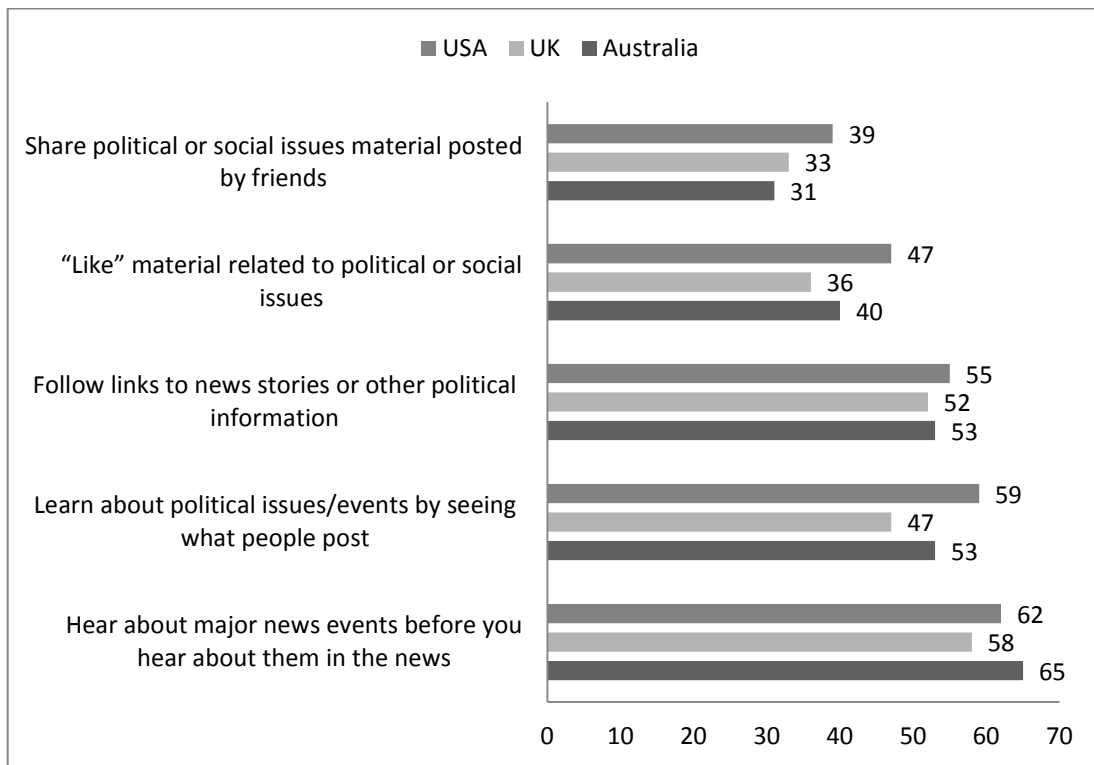
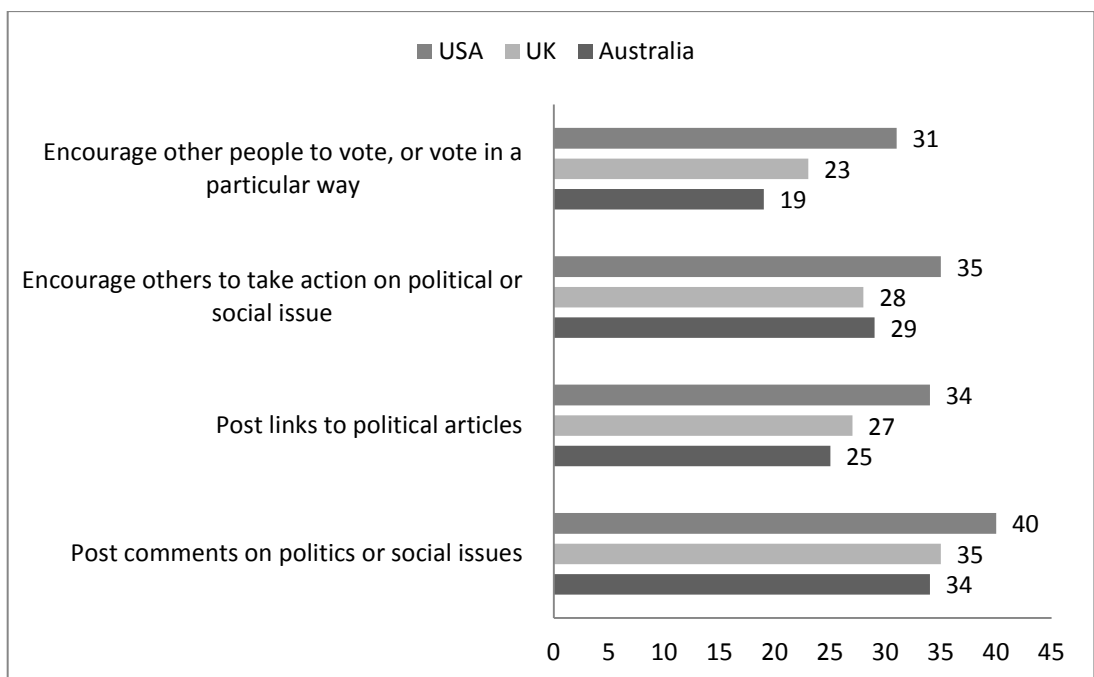


Figure 6: Using Facebook for proactive political engagement<sup>14</sup>



<sup>13</sup> Adapted from Vromen, Xenos and Loader, op. cit.

<sup>14</sup> Adapted from Vromen, Xenos and Loader, ibid.



Facebook has broad appeal as an avenue for youth engagement, and the communicative, symbolic and expressive forms of Facebook-based politics are the most widespread acts. Only six per cent of young people who use Facebook have *never* engaged in any of the nine acts in Figures 5 and 6. Considering just the proactive political acts on Facebook we still find large majorities of young people have engaged in at least one of these, as only 27 per cent have *never* done so. However, our qualitative data revealed that young people also have a considerable ambivalence about doing ‘politics’ on Facebook, as is detailed below. This also reflects the high levels of scepticism and feelings of exclusion many young people hold about formal, electoral politics in many advanced democracies.<sup>15</sup>

Twitter use is not ubiquitous in the same way as Facebook; and while a higher proportion of young people in the USA and the UK use it overall, this does not cause much variation in its use for politics beyond accessing news and information. For example, these figures range from a low of 16 per cent (i.e. 40 per cent of 40 per cent) of all young Australians to 26 per cent in UK, and 22 per cent in the USA read about news and politics on Twitter. However, only 10 per cent in Australia, 16 per cent in UK and 15 per cent in the USA discuss politics on Twitter. Overall the more politically interested and those from backgrounds with parents who had gone to university were most likely to use Twitter for politics. In the UK and USA, young men were also more likely than young women to tweet, retweet or reply on politics and news. This reinforces the findings of a large body of research that the use of Twitter for politics is exclusive to a select group of citizens who are already politically engaged and are large consumers of news media.<sup>16</sup> Facebook is more likely to provide a space for incidental exposure to political content due to its more extensive networks and frequent use by individuals.<sup>17</sup> The Pew Research Center conducted a study in the USA on an all ages group and found that just 16 per cent of registered voters followed a politician or party on either Facebook or Twitter, but that those under 50 were more likely to do so and the most common major reason for doing this was to feel more connected with the politician or party.<sup>18</sup> Our research also

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<sup>15</sup> Ibid; see Erik Amna and Joakim Ekman, ‘Standby citizens: Diverse faces of political passivity’, *European Political Science Review*, vol. 6, no. 2, 2014, pp. 261–81.

<sup>16</sup> Marija Anna Bekafigo and Allan McBride, ‘Who tweets about politics? Political participation of Twitter users during 2011 gubernatorial elections’, *Social Science Computer Review*, vol. 31, no. 5, 2013, pp. 625–43; Leticia Bode and Kajsa E. Dalrymple, ‘Politics in 140 characters or less: Campaign communication, network interaction, and political participation on Twitter’, *Journal of Political Marketing*, vol. 15, no. 4, 2016, pp. 311–32; Andreas Jungherr, ‘Twitter use in election campaigns: A systematic literature review’, *Journal of Information Technology & Politics*, vol. 13, no. 1, pp. 72–91; Peter Chen, *Australian Politics in a Digital Age*, ANU E-Press, Canberra, 2013.

<sup>17</sup> Emily K. Vraga, Leticia Bode, Anne-Bennett Smithson and Sonya Troller-Renfree, ‘Blurred lines: Defining social, news, and political posts on Facebook’, *Journal of Information Technology & Politics*, vol. 13, no. 3, 2016, doi/abs/10.1080/19331681.2016.1160265.

<sup>18</sup> Monica Anderson, ‘More Americans are using social media to connect with politicians’, *Pew Research*, May 19 2015, <http://www.pewresearch.org/fact-tank/2015/05/19/more-americans-are-using-social-media-to-connect-with-politicians/>.

found a general openness from young people to engaging with both politicians and political celebrities on social media, but a wariness if they were not being either authentic or interactive.<sup>19</sup>

Table 1: Young citizens' use of Twitter for politics (per cent of all Twitter users)<sup>20</sup>

Country	Australia	UK	USA
Per cent 16-29 year olds use Twitter	40 per cent	59 per cent	49 per cent
Read information about news and politics	41	44	45
Share information about news and politics (tweets or retweets)	28	31	36
Discuss politics or issues in the news (replying to others' tweets)	25	26	30
Follow politicians or government	34	29	31
Follow newsmakers/media	32	32	36
Follow celebrities who sometimes tweet about politics	50	50	48

Overall, The Civic Network project demonstrated that social media, particularly Facebook, has become an everyday source of news and information on politics, and is increasingly used by young people to show a personalised, symbolic solidarity with political issues. We also found that there is an equalising effect, with socioeconomic status not being the main divide between those who use social media for politics and those who do not, instead it is mainly driven by political interest and existing active engagement. However, in our online focus groups young people voiced their reluctance to actively 'do politics' on Facebook for fear of conflict or being corrected by others in their personal networks of friends and family.<sup>21</sup> This reinforces our finding in Figures 1 and 2 that discussing politics with others is the key participatory act that young people still tend to do offline rather than online. Despite their own reluctance, the young people who participated in our qualitative research still saw promise in using social media to connect them to broader processes of formal politics. Perhaps somewhat unexpectedly, when asked the question, 'What do you think about politicians using Facebook and twitter?', our participants were generally favourable in their responses. There was little surprise that politicians were adopting social media

<sup>19</sup> Brian D. Loader, Ariadne Vromen and Michael A. Xenos, 'Performing for the young networked citizen? Celebrity politics, social networking and the political engagement of young people', *Media, Culture and Society*, vol. 38, no. 3, 2016, pp. 400–19.

<sup>20</sup> Adapted from Vromen, *Digital Citizenship and Political Engagement*, op. cit., 2017.

<sup>21</sup> See Ariadne Vromen, Brian D. Loader, Michael A. Xenos and Francesco Bailo, 'Everyday making through Facebook engagement: Young citizens' political interactions in Australia, UK and USA', *Political Studies*, vol. 64, no. 3, 2016, pp. 513–33.

and many respondents considered it essential for them to use such communication channels as a means of keeping up-to-date. As one person remarked, 'if politicians do not connect through social media then they don't connect at all' (male, Australia). This was especially evident where participants believed it helped politicians to 'connect' with young people. For example:

[Social media] does, in fact, have the potential for getting the 'audience' to give feedback and have discussions, even if it is just among themselves. They can reply to posts and then to each other's replies to get a good discussion going that way (female, USA).

While there was a strong expectation of a normalisation of the use of Facebook and Twitter by politicians, with the possibility for two-way interactive engagement, there was also a concern about the capacity of politicians to use social media appropriately. Our respondents were, for example, aware that politicians rarely answered online queries personally or posted content themselves, at least respondents did not realistically expect them to always do so. What respondents generally objected to was that they received no replies, and that politicians never engaged in discussions in person or appeared unaware of the interactive and participatory capacities of social media platforms.<sup>22</sup>

### **The communicative shift in participation for organisations**

I have argued above that individual and collective forms of citizen engagement are increasingly more likely to occur via online means, and that the interactive and communicative dimensions of social media use matter for political expression. But how do political organisations respond and adapt to this new context? What distinguishes 'born digital' organisations from political organisations? Does it also mean that new, citizen-driven issues make it onto the political agenda more often?

The field of digital politics has been dominated by individual levels analyses—either based on surveys of individuals' recollection of what they do online, or increasingly scraped data analyses of what people, including elites and citizens, post online. Less often is the unit of analysis organisations that shape and influence the political agenda via advocacy, lobbying and campaigning. However, over the last five to ten years, digital politics research that focuses on organisation and new forms of collective action has been growing steadily. Three main challenges are offered by born digital organisations. First, they often adopt both formal and informal structures at the same time—that is hierarchical, bureaucratic structures *and* horizontal,

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<sup>22</sup> See Loader, Vromen and Xenos, 2016, op. cit., for further analysis.

networked structures. This means hybrid organisations emerged that had very little centralised infrastructure or resources and were nimbler than long established, heavily bureaucratic advocacy organisations. Second, complex layers of communication and campaign coordination are simply easier through using the internet, and able to reach more people who are targeted by data profiles of their political interests and past behaviours. Third, the often ad hoc nature of digital tools in campaigns means that individual involvement with organisations can be more fluid and temporary, rather than a long-term commitment of time or money.

David Karpf usefully summarised three generations of advocacy organisation types, which he described as identity, issue, and activity-based.<sup>23</sup> These types were broadly defined as epoch specific, but all three types of organisations continue to exist, and arguably the period of time in which an organisation was created has a large effect on its capacity to change and adapt to the digital context. In Australia, a union or a professional association is an example of a typical identity-based organisation, an environment or human rights organisation is an example of an issue-based organisation, and GetUp is an activity-based organisation. The Table below shows the contrast between activities for individuals, the way revenue is accrued, members are involved, and how to characterise an organisation’s role in advocacy. I would argue that all organisations have changed the range of activities available for members and

Table 2: The shift to hybrid online advocacy organisations<sup>24</sup>

	1st Generation: Identity-based	2nd Generation: Issue-based	3rd Generation: Activity-based
Typical activities	Attend meetings, hold elected office, participate in civic activities	Write letters, sign petitions, mail donations	Attend local meet-ups, vote online, submit user-created content
Funding source	Membership dues	Direct mail, grants and patron donors	Online appeals (micro-donations), grants and patron donors
Organisation characteristics	Cross-class Membership Federations	Single issue Professional Advocacy orgs	Issue generalists Internet-mediated

<sup>23</sup> David Karpf, *The MoveOn Effect: The Unexpected Transformation of American Political Advocacy*, Oxford University Press, Oxford, 2012.

<sup>24</sup> Adapted from Karpf, *ibid.*

supporters to adapt to the digital context. However, it is both their approach to funding sources and their approach to advocacy that are less likely to adapt or change in light of the challenge presented by the younger born digital, third generation organisations. A fourth area of contrast, which is explained below, is the use of communicative devices and narrative that either drive fact-driven research or the use of storytelling.

I have conducted research on GetUp since they emerged in 2006 and my analysis of their evolution over time is a core part of my 2017 book, *Digital Citizenship and Political Engagement*. Karpf's 2012 book was mainly on how the Democratic Party aligned MoveOn, as a third generation activity-based digital advocacy organisation, transformed political advocacy in the USA. GetUp, a sister organisation to MoveOn through the international Online Progressive Engagement Network (OPEN), has had a similar effect in Australia, with many organisations now emulating its approach to internet-mediated forms of member participation and engagement. In particular, there has been a re-evaluation of traditional ideas of members as financial supporters, as is core to the second generation organisations, with members now seen as 'communication recipients'.<sup>25</sup> Supporter lists, still called member lists by some, are sent mobilising emails and supporters can pick and choose what actions to get involved in, from signing an online petition, writing a letter to a campaign target, attending a local campaign meeting or event, to donating money to fund advertising, billboards, and other forms of campaign work. All three kinds of advocacy organisations use email-based supporter lists, and have invested in database management to segment and target information and campaign actions at sections of their lists based on individuals' previous preferences and behaviours. They focus time and resources on building and analysing their supporter lists and jealously guard them from competitor advocacy organisations. However, there is a range in the level of sophistication with which advocacy groups either value or organise digital forms of mobilisation. This can be in contrast to their approach to facilitating longer term donors and offline participants.

Most older organisations still use membership fees or direct mail monthly donations as their core source of funding. Third generation organisations have some funding from core donors, but for most of their revenue they rely on ad hoc micro donations that are specific to campaign calls to action made via email or on their social media pages, predominantly Facebook. For example, GetUp's annual revenue in 2016 was \$10 million, 25 per cent of which came from mainly monthly donations from one per cent of their membership base of over one million supporters and the other 75 per cent was from ad hoc, micro donations. The use of campaign driven micro donations was pioneered and then consolidated by Organizing for America and the

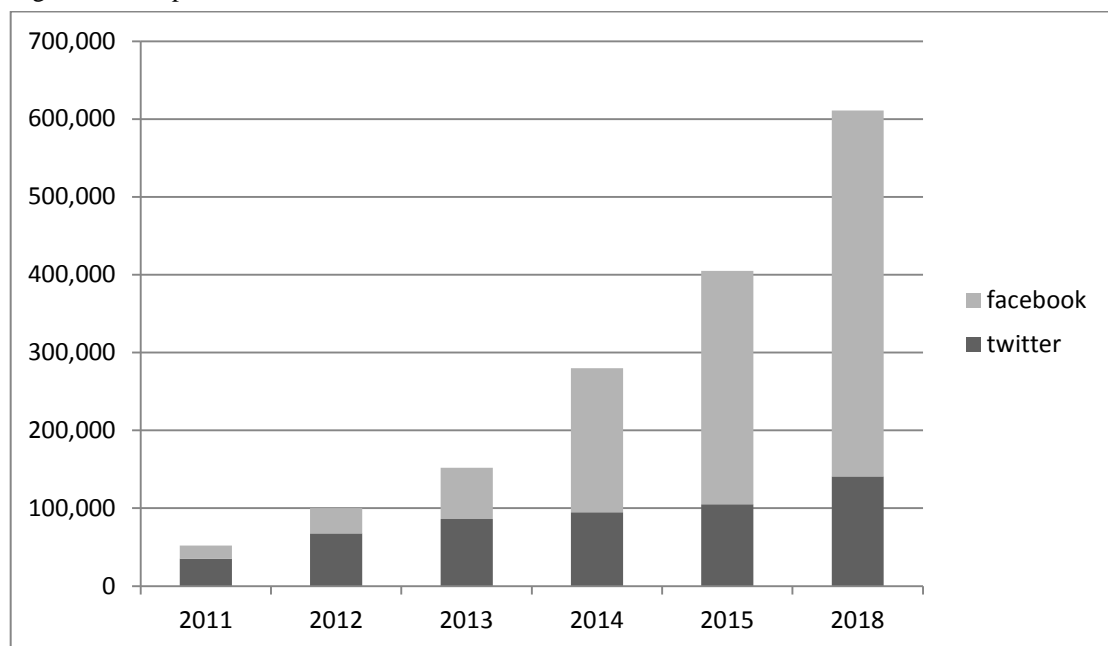
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<sup>25</sup> Ibid.

Obama Presidential 2008 and 2012 campaigns. In Australia, many political parties and advocacy organisations make appeals for campaign specific micro donations, but most do this to grow their supporter lists with the hope of converting the smaller donation into a regular donation or paid membership. Only the small group of third generation, born digital organisations have been able to turn this into a sustainable funding model.

While email is still the main way of creating supporter lists, email itself is becoming passé, and click-through rates for even opening emails, let alone taking an action requested by an email, are in decline.<sup>26</sup> Advocacy organisations have also needed to invest in harnessing their web presence and social media pages, mainly Facebook, and to a lesser extent Instagram, Twitter and Snapchat, to diversify the potential audience for supporters and activists. Yet the active use of both organisational websites and Facebook pages are highly variable. Most organisations still use these sites to broadcast information rather than to mobilise or organise their supporter base into interaction and discussion with the organisation, or into taking an action either online or offline. Here again, GetUp is an anomaly as over time it has deliberately built up its followers on Facebook, from just 17,000 in 2011 to nearly 500,000 in 2018 as shown in Figure 7 below.

Figure 7: GetUp Social media followers 2011-2015, 2018<sup>27</sup>



<sup>26</sup> David Karpf, *Analytic Activism*, Oxford University Press, Oxford, 2016.

<sup>27</sup> Adapted from Vromen, *Digital Citizenship and Political Engagement*, Palgrave Macmillan, Basingstoke, 2017.

It has done this to diversify the supporter base and GetUp community to a younger demographic. During the 2016 national election campaign GetUp extensively used paid targeted advertising and political profiling on Facebook to distribute its messaging to potential new audiences.<sup>28</sup> Twitter is used in a different way to mainly target and get attention from political elites, especially the media, and GetUp currently has 140,000 Twitter followers. GetUp has only just over 7000 followers on Instagram, and there is little evidence of any Australian advocacy organisation using it successfully as a campaign tool.

Another diffusion from GetUp to other advocacy organisations in Australia is the shift towards use of narrative driven storytelling approaches in campaigns that also encourage participants to develop personal action frames to express themselves and connect with like-minded others. Many Australian advocacy organisations now share a commitment to a storytelling and values-led strategy, often understood as a ‘theory of change’ approach. Storytelling is a recognised social movement device and analytical approach for explaining politics via cause and effect relations, through a retelling of a detailed story, rather than by appeals to mainly logic, statistical data and evidence.<sup>29</sup> Stories used in many advocacy campaigns characteristically have a plot and identifiable characters, a beginning and middle to the story, but the recipient of the story can create, or rather act out, the end. Stories focus on how language or rhetoric is used, and the underlying ‘common sense’ emotional frames used for the delivery of political messages. This style of campaigning has been successful against better resourced and influential opponents when stories build a popular narrative of ‘people over power’, and focus on moral urgency rather than technical rationality. Storytelling has been used in campaigns around Australia on issues as diverse as climate change, the Great Barrier Reef, workers’ rights, marriage equality, refugees and mental health. While the use of storytelling in Australia was inherited from the 2008 Obama presidential campaign, and pioneered by GetUp and Australian Progress, it is now increasingly used by a large range of conservative as well as progressive advocacy organisations. For example, we saw storytelling used by Christian groups during the 2017 marriage equality plebiscite campaign and, after the 2016 election, many actors ranging from Australian Conservatives leader Cory Bernardi to the Business Council of Australia suggested their organisations needed to engage in a strategic rethink and adopt new grassroots campaigning and digital tactics.

The online petitions platform Change.org has come to the fore in Australia due to the communicative and digital turn in participation and growth in third generation, activity-based organisations. Petitioning itself has a long history. Charles Tilly located

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<sup>28</sup> For more analysis of this, see Ariadne Vromen, ‘GetUp! in election 2016’ in *Double Disillusion: The 2016 Australian Federal Election*, ANU Press, Acton ACT, 2018, pp. 397–419.

<sup>29</sup> Francesca Polletta, Pang Ching Bobby Chen, Beth Gharrity Gardner, and Alice Motes, ‘The sociology of storytelling’, *Annual Review of Sociology*, vol. 37, 2011, pp. 109–30.

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them as already part of repertoires of contention in his studies of 18th century Britain. In *Democratic Phoenix* Pippa Norris analysed them as non-conventional acts, along with protest events.<sup>30</sup> Yet the use and signing of petitions are now arguably mainstream—many Australians have signed one and online petitions themselves are underpinned by both the logic of creating large numbers of supporters and an internet logic of sharing and diffusion.

There are three main types of online petition platforms—those hosted by governments or parliament, those run by advocacy organisations where citizens can either sign and/or start a petition (for example, GetUp and their citizen-led platform Community Run, and the union-run Megaphone), and commercial platforms such as Change.org. However, the existing research mainly focuses on government-hosted sites, especially successful petition platforms in the US, UK, Germany and Scotland. The accessibility and usability of these petition websites differs, as does their approach which ranges from maximalist to minimalist and mainly centres on a contrast between citizen versus parliamentary control. A minimalist model usually simply transfers the style and feel of a written petition into the online context, and many online petitions still require sponsorship by a member of parliament as a prerequisite for recognition and standing of the petition.<sup>31</sup> The Queensland and Tasmanian state parliaments have long-standing petition platforms, while Victorian Parliament introduced one last year. At the national level, the House of Representatives introduced an online petitions platform in mid-2016. To date it has had 256 petitions started on it, with a total of 137,000 signatories.<sup>32</sup> From a cursory look there was an official response to approximately 40 per cent of these petitions. The minimalist and relatively recent use of online petitions in Australian parliaments has opened space for successful and extensive citizen engagement with extraparliamentary platforms such as Change.org.

The international founder of Change.org, Ben Rattray, suggests that the more personal or emotive the issue of a petition, the more powerful the response from the public.<sup>33</sup> The focus on emotive, personal stories is important to new kinds of mobilisation and citizen-led activism, as noted above. For our current project we studied over 17,000 Change.org petitions with over 3.5 million signatories, three-quarters of whom

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<sup>30</sup> Pippa Norris, *Democratic Phoenix: Reinventing Democratic Activism*, Cambridge University Press, Cambridge, 2002.

<sup>31</sup> C. Grover, 'E-Petitions', Parliament of Victoria paper, 2016.

<sup>32</sup> House of Representatives Standing Committee on Petitions, *Making Voices Heard: Inquiry into the e-petitioning system of the House of Representatives Petitions Committee*, 2018, [www.aph.gov.au/Parliamentary\\_Business/Committees/House/Petitions/Inquiryintoe-petitions/Report\\_1](http://www.aph.gov.au/Parliamentary_Business/Committees/House/Petitions/Inquiryintoe-petitions/Report_1)

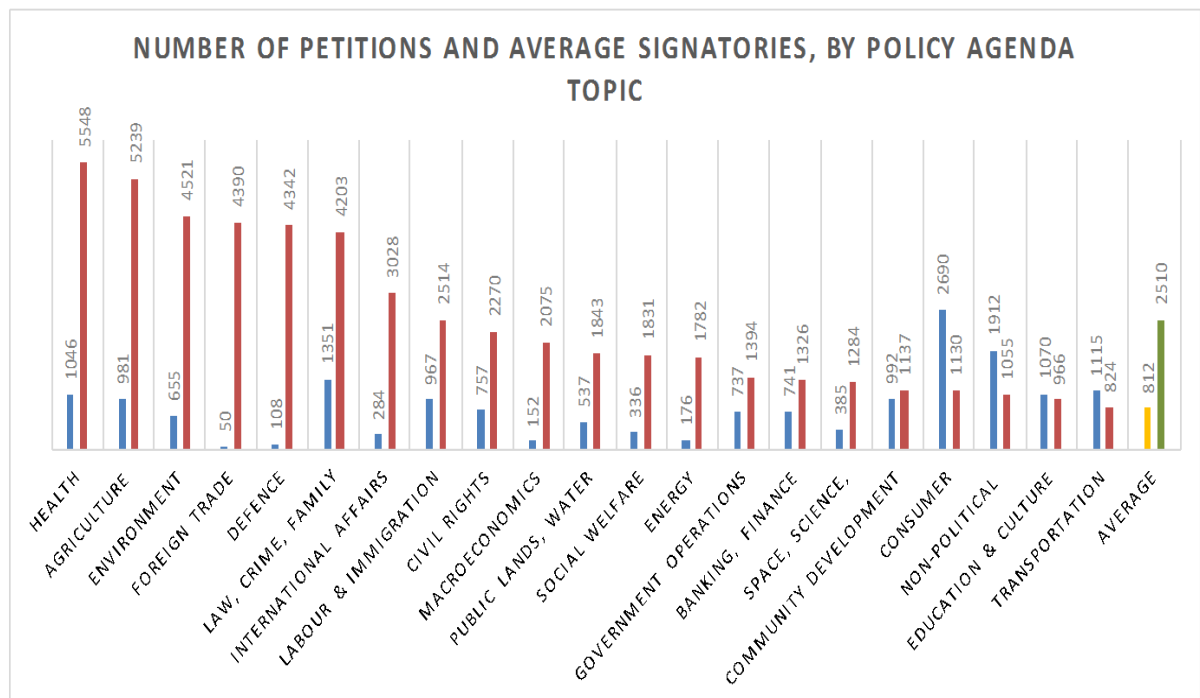
<sup>33</sup> Nick Bryant, 'Why Change.org's "army of Davids" is neutering more global Goliaths', *The Sydney Morning Herald*, 3 March 2018.



had only ever signed onto one petition.<sup>34</sup> We found that 50 per cent of petitions are targeted at one of the three levels of Australian government. Petitions are classified as open, closed, or as a ‘Victory’, but a declared ‘Victory’ accounts for only five per cent of the total, or 10 per cent if excluding open petitions, demonstrating that most petitions do not directly change policy or politics, however some may still generate public attention or debate. We used the Australian Policy Agendas project codebook (adapted from Dowding and Martin) to code the issues on which citizens have launched Change.org campaigns.<sup>35</sup>

As seen in Figure 8, the numbers of petitions are not evenly distributed across policy code areas. The top areas are health, law and crime, transport, and education (each about seven per cent of our dataset), and together consumer and non-political petitions make up 27 per cent of all the petitions. There is a larger than average response by signatories to many policy agendas topics, such as health, agriculture (which includes many animal rights petitions) and the environment. By contrast, consumer and non-political petitions with above average numbers of petitions started on Change.org have far less average sign-ons than petitions on other topics. For example, during our timeframe, there were over 2000 petitions on consumer issues but the average number

Figure 8:



<sup>34</sup> Darren Halpin, Ariadne Vromen, Michael Vaughan and Mahin Raissi, ‘Online petitioning and politics: The development of *Change.org* in Australia’, *Australian Journal of Political Science*, 2018, <https://www.tandfonline.com/doi/abs/10.1080/10361146.2018.1499010>.

<sup>35</sup> Keith Dowding and Aaron Martin, *Policy Agendas in Australia*, Palgrave, Basingstoke, UK, 2017.

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of signatories on petitions is only 1130. Yet overall, law and crime has attracted well above the average number of petitions and a substantially higher than average number of signatories. In new work we are particularly exploring the underrepresentation of macro-economic issues in our petitions dataset, even though these are the policy agendas—including government taxation, revenue and spending—that dominate national level legislation.

### **The growing awareness of the dark side of digital and lack of a democratic panacea**

Throughout this paper I have been somewhat optimistic about how the digital context has transformed political engagement for Australians. I have pointed out growing levels of political equality among young people in their capacity to engage in politics using digital tools and social media platforms such as Facebook in particular. There are more opportunities than ever before for a wider range of voices to be represented in politics. I have pointed out the emergence of new kinds of born digital advocacy organisations that have lowered the threshold for organisation and engagement. These organisations have challenged the advocacy and interest groups sector more broadly to think about how they activate their membership and use social media to communicate and fundraise. I also pointed out that the communicative turn in political engagement and organising is significant. The use of storytelling and narrative driven campaigning, as opposed to arguments based purely on logic and statistics, has grown to the point where many established political organisations, from political parties to lobby groups, now also use these techniques in their promotional work. Storytelling has facilitated the success of new online petitioning platforms such as Change.org that are driven by a social media logic of sharing and diffusion to gain large numbers of supporters quickly.

Yet I am not naively sanguine about the digital context effect on politics. There are already glimpses in my long-term research that many remain disaffected by politics and conflict-driven debate on social media only exacerbates this. Further, there is also some evidence that contemporary advocacy using digital storytelling focuses more on issues than can be personalised and less on more collective issues such as macro-economic or infrastructure reform. Storytelling is also increasingly used by some groups to perpetuate division and a society underpinned by us versus them politics. Some of these concerns have led me to work with collaborators on a new project that explores the digital rights and responsibilities citizens have. It especially explores what we could consider the ‘dark side’ of the everyday use of for-profit digital platforms such as Facebook, Twitter and Change.org that monetise our actions mainly via targeted advertising, and what future regulations Australian society might expect.

The digital rights research agenda focuses particularly on topical issues of internet-based privacy, surveillance and fair speech. In short, we found that a majority of Australians are *concerned* by online privacy violations by other people, governments or corporations and especially by social media platforms. Most want to see better protections for our digital data put in place, and this desire will only have increased since the scandalous use of Facebook data by Cambridge Analytica became an issue of mainstream media debate. We also found that Australians are not strongly wedded to the North American ideal of absolute speech freedom online. Just over a third (37 per cent) of those surveyed agreed that they should ‘be free to say and do what I want online’, but 30 per cent disagreed and a third expressed reservations about the idea. Young people under 40 and men were more likely than women to assert their right to free expression. When we asked about specific instances of online speech we found that 56 per cent think it is acceptable to criticise government policies online, but only 31 per cent think it is ever acceptable to criticise religious organisations or beliefs. Similarly, only 26 per cent think it is acceptable to criticise minority groups. Men are much more likely than women to think this is okay, and to an extent older people. While most Australians had not experienced negative impacts from risky or harmful online speech themselves, 39 per cent have been affected by mean or abusive remarks, and 27 per cent have had personal content posted on social media without their consent. More than was the case for privacy issues, Australians want greater regulation of online discussion environments.<sup>36</sup>

With these growing concerns among citizens about the ubiquitous use and misuses of digital media, how ought representative democracy and governments respond? Unsurprisingly, I have no simple answers beyond that government and other political actors, including politicians, need to adapt and be responsive to citizens’ practices and concerns. There can be no one size fits all inclusive strategy—people are diverse and need diverse strategies. Yet foremost we are beyond the dutiful citizen era of collective allegiance to political processes and ideologies. Politics is personal now, and all kinds of political actors need to think harder about how they can pander not to self-interest, but focus meaningfully on how collective identities and ideas can be mobilised in an era of increasing inequality and exclusion. As part of this, I have argued that while social media is a normalised, communicative space for politics and everyday life, *it is not a democratic panacea*. There are light *and* dark sides of horizontal networks—conflict avoidance, censure and surveillance need to be recognised, as well as optimistic stories of alternative spaces with new voices. Increasingly we need to ask whether social media can be a safe space for young people to exercise political voice, as well as whose voices are prioritised by both

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<sup>36</sup> Gerard Goggin, Ariadne Vromen, Kimberlee Weatherall, Fiona Martin, Adele Webb, Lucy Sunman and Francesco Bailo, *Digital Rights in Australia*, University of Sydney, NSW, 2017.

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politics and by algorithms. Yet overall formal ‘Politics’ itself needs to change. Can it abandon the increasingly adversarial partisanship and polarisation that increases citizen disaffection and trust? Can we reset and relearn the terms of debate and disagreement to focus on unifying ideas and not be so personalised and polarised? And lastly, how can we all revalue and reintegrate citizens—their views, needs and experiences—as more than voters but as an essential part of politics itself?



**Question** — You spoke about spaces that are explicitly political. Scott Wright has a theory about how politics is performed in spaces that are not explicitly political, like discussion forums about daily life or hobbies, and in these spaces people have arguments and disagreements and that is how they come to politics. I was wondering if you could comment on people who appear to be less interested in politics but who are doing it in a different way.

**Ariadne Vromen** — Scott Wright’s research has been very influential on my own, particularly his work on third spaces and everyday spaces. With the work we are doing on Change.Org, we found a lot of people would not necessarily classify their petitions as capital ‘P’ political, even when they are about issues of power and redistribution and wanting some sort of response from a political actor, a corporation or a government. Part of our process was to say that these things are political because they are meaningful to citizens and on the issues that matter to them. Like Facebook more broadly could be that third space because politics is not the main reason people go on Facebook. Unsurprisingly, people go on Facebook to have that connection and communication with family and friends who might be around the country or around the world, or it might be to follow their interests or passions—I follow a few too many dog-related Facebook pages at the moment!—so politics is incidental. A lot of people have incidental exposure to political debate and issues. So I guess it is really important to think about how they feel about having those third spaces to have a say, to be heard and to make a difference.

**Question** — I was really interested in your data about the reluctance of young people to participate in politics online. I am not sure if you are aware of this but this year in the University of Canberra’s *Digital News Report*<sup>37</sup> we asked questions specifically about that and we found that people aged in their 30s and under were more reluctant

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<sup>37</sup> *Digital News Report: Australia 2018*, <https://www.canberra.edu.au/research/faculty-research-centres/nmrc/digital-news-report-australia-2018>.

than other age groups to express their political views online. We also found that in Australia we have a greater reluctance than in many other countries. I wondered in comparison to the UK and US whether you found that. That is my first question.

My second question, given that there is this reluctance and part of the strategy of these advocacy organisations is to get people involved in a discussion, have you found whether or not they are shifting to closed group messaging apps like WhatsApp to have that discussion? We are finding that in countries where free speech is limited people are going to WhatsApp and other closed spaces because they feel safer.

**Ariadne Vromen** — That is a really good point. I think there is clearly a shift to other platforms away from Facebook, even if it is to Facebook Messenger where people get to decide who is a part of their group and sometimes those groups can be really large. But there is a shift to Messenger or WhatsApp and people see that as a known space where they can talk about issues that matter to them. That is definitely going on, especially for young people.

I do not have a lot of the research on it but I think the comparative angle is really interesting. We found in general that young Americans were the most participatory, the Australians were in the middle and the young Britons were the least, even though for young Britons there have been bigger issues around turnout. Brexit and the recent elections show they are less likely to vote. I think all of those issues are interrelated about whether or not people feel that they have a voice, that they have representation and that the issues that matter to them are on the policy agenda. Part of what we are interested in is if there is that relationship there. In other work we have looked at the relationship between the issues that matter to people and they were quite different across the three countries as well.

**Question** — I was just wondering if you could talk a little more about the ‘dark side’, the idea that anti-social media is a crime against democracy, and the use of online intimidation and threats to silence politicians and so on.

**Ariadne Vromen** — The Digital Rights Project really grew from this concern about a few different things. Firstly, all of these social media spaces were not set up necessarily as a political space and to encourage political engagement. Most of them are for-profit sites that monetise our data and sell our product to advertisers to target us, to profile us, in that kind of market relationship. Increasingly, what we are interested in is how political organisations are using these techniques as well. We have seen the controversy around the Trump election and also Brexit, about how organisations like Cambridge Analytica were using processes to create profiles of people and target often quite negative advertising at people, often to depress their

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turnout or change their vote altogether. This is controversial but then all kinds of organisations are using these processes so maybe we also need to think about the positive sides of how targeted advertising and profiling are used to encourage sharing and to encourage the spreading of different kinds of stories and agendas as well as seeing the dark side.

I think the other thing you are referring to in particular is trolling and most people on social media, on digital media are not trolling. That is not the way they approach the use of digital media in their everyday lives but increasingly it is becoming a problem. I think you are right—political actors from all kinds of persuasions are targeted with a lot of negative feedback and a lot of trolling which does not create a space for interaction or meaningful, authentic engagement between citizens and political actors. I guess that is why we found that people want more regulation in this space. They want particular accounts to be shut down. They want to be able to appeal to Facebook and have slanderous posts taken down. I think this is the point where we have the broader debate about the role of government in regulating here and about our expectations that these platforms will themselves regulate speech and the answers are not simple or easy. That is partly why my answer is to recommend we think about regulation but also think about how we get to a point where we can engage in debate and disagreement that is constructive rather than detrimental and mean and exclusive and shutting down all kinds of discussion or difference.

**Question** — I work in the federal parliament and one of my roles is around how the Parliament does digital outreach. I had a conversation with a Presiding Officer from another parliament and they referred to the way that disruptive technologies have influenced other industries, for example Uber and Airbnb, and said if parliaments are not able to adapt there is potential for disruption like that which will be to the detriment of parliaments and how they operate. I am interested in your thoughts about whether that is a concern and to what extent institutions like the federal parliament should consider new movements like Change.org and GetUp as part of the new society that we work in and where that interface is with this institution.

**Ariadne Vromen** — Again it is not easy to answer. I think your focus on disruption is interesting and I guess you are thinking about the mismatch between what capital ‘P’ politics cares about and the kinds of things citizens are getting active and mobilising on, and how you increase that conversation in an interactive, productive and responsive way. In our work we found that young people were uncomfortable about discussing politics with their friends and family but on the other hand they all wanted to see politicians and political actors on social media and interacting with them. They thought that was a really good thing but they were also very clear about what they thought interaction meant and what authenticity meant. They said we do not

want an anonymous political staffer writing the post. We want to know it is them. We want a more personal connection and we want to feel like we have been listened to.

How do we shift to that process where people feel like they are heard and they are included? The petitioning process does a little bit of that at a broader, aggregated level, but how do our political institutions adapt to this context where people expect those horizontal connections and horizontal networks. They are less about traditional forms of hierarchy that politics or even those first or second generation advocacy organisations are built on. I would say relax a little bit more and give citizens a little bit more control and benefit of the doubt, particularly for things like petitioning platforms within parliament and within institutions. And if you are going to have it, you need to promote it and you need to make it easy and accessible. You also need to make content really engaging and sharable. I do not think it is an easy solution but I think there are different ways it can be done and Scottish Parliament is a really good example of a different way of doing much of that work.