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## **Canberra and the Parliament: An Increasingly Uncomfortable Marriage\***

*Jack Waterford*

The Constitution tells us that the seat of government of the Commonwealth shall be ‘within a territory in New South Wales’. Some people wonder whether this means that this seat, which may need a bit of a kick at the moment, is a specific spot or place somewhere inside the Australian Capital Territory or inside the city of Canberra, other than the territory itself. Strictly the answer, if there is one, is probably of very little constitutional, social or economic significance. But some of us would think that if the sum is less than the whole, that sum must embrace Capital Hill. That, after all, is where the Parliament of the nation is located and it is, after all, from where all the ministers of the executive government operate.

Now there will be some purists around, Sir David Smith perhaps, who might point out that the legislative power of the Commonwealth consists not merely of the physical parliament, or of its elected membership, but also of the Queen or the representative of the Queen. He might add strictly that the executive power of the Commonwealth is located not within the ministry as such but in the Governor-General as a completely empowered representative of the Queen, so that perhaps any notion of some physical spot or place must at the very least include the Governor-General’s residence at Yarralumla.

Neither the Queen nor the Governor-General share any power with the High Court of Australia, which is at the apex of the third, or judicial, arm of Commonwealth government, but it is located within a mile or two of both the Parliament House and Yarralumla. But we do not know whether the location of the court is of much assistance since it is by no means clear that the founding fathers intended or expected that the court would be located inside the Australian Capital Territory or at the seat of government.

There is a clue, perhaps, in section 125 of the Constitution that the location of the parliament is the key, since it is said in admirable subjunctive voice that ‘Parliament shall sit at Melbourne until it meet at the seat of Government’.

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This year, in any event, is one of anniversaries. For each of the sentences in section 125 of the Constitution the Commonwealth did select a city for a national capital and an area of land which was ‘not less than one hundred square miles’. In fact it was nearly nine times that, which was to enclose this capital. It was more than one hundred miles from Sydney as the Constitution required. The Commonwealth entered into negotiations with the State of New South Wales about acquisition of the land and a tranche of land—if somewhat different from that first asked for, though enclosing the same city area—was ultimately agreed and it was passed to the Commonwealth by a treaty which has some constitutional status.

A hundred years ago this year, this city was named Canberra and the Commonwealth dedicated itself to the purpose of establishing its capital, including, of course, a temporary Parliament House and administrative headquarters for departments of state. There were little problems such as World War I which slowed progress, but that parliament was complete and first sat here in May 1927, a bit more than 86 years ago. There were some further hiatuses such as the Great Depression and World War II, but then the Commonwealth became fair dinkum about its capital which from about the mid-1950s began to grow quickly.

A lake, which was envisaged by the man who designed the city, was opened fifty years ago. At around the same time, the Commonwealth was more than making good on its promises that not only would this capital be at the centre of public administration, but that it would also be a great national city. A centre of great educational, cultural, diplomatic and other national institutions and it would also, of course, be a model city. Not one built on extravagant lines, so much as one designed to demonstrate how sustainable and simple design operating outside a speculative land framework could provide Australians working here with comfort, amenity, environmental pleasure and wonderful facilities, ultimately sustained by the model of land development, including the leasehold system.

It was true that there was net subsidy in building the national city and in transferring to it public servants from all parts of Australia, but it was intended and expected that the system by which we allowed them to buy and to build, and to share the increasing value of the community’s resources, would ultimately put that account into balance, much as the Sydney Harbour Bridge, for example, paid for itself many times over with tolls.

I suppose I should interpolate here that the very story of this one hundred years has been one replete with stops and starts; not least ones caused by pressure on the budget bottom line. Outsiders saw Canberra as full of public servants all having permanency of employment with the city in some way being insulated against the economic

whims. Some critics could not understand why the capital was not in Sydney or Melbourne, not appreciating that it was fear of dominance by such centres which had so many potentially federating states wary.

That everything had to be new, however, meant that every facility was seen as a cost of government, a folly of public servants rather than an incident of community living. But with or without permanency, the local economy was the sum of money being spent locally and stops and starts might sometimes cause slight bumps in Sydney and Melbourne but had a habit of causing severe chills here. Canberra had bad experiences with depression and war, with massive inflation in the early 1950s, with the credit squeeze in 1961. When from the mid-1970s an incoming Liberal government decided that remorseless growth of the city had to stop, there was a pronounced local recession. At that stage the local building industry, which was constructing houses and offices for a public service and closely allied Beltway industries, was bigger than the public service itself. By about 1980 there was scarcely a building industry here at all.

When again we put on the tap, if only by a turn this time, it was very hard to lure back many burnt operators. Local businessmen began to argue that Canberra had to become a more diversified economy, lest the local economy be strictly a boom and bust one, unable to attract a population.

About the same time, as it happened, the Commonwealth Government was giving thought to a permanent Parliament House and where it should be located. Capital Hill was chosen and an international competition found a remarkable entry, one which, like the city's designers, Walter and Marion Griffin, had an especially Australian merit for its incorporation of the landscape into the design.

That plan was realised 25 years ago this month. The new Parliament House was one for more than 100 years, and it reflects this not only in the quality of its manufacture, but in the provision made for the needs of representatives of the people in new times, whether for staff or physical facilities in the scope allowed for developments even then broadly anticipated such as the telecommunications and information revolutions and the computer.

The house has also some features that are by no means necessary, capable down the track of providing even further scope for expansion. First it could be said to be as much designed around the needs of executive government as it is around the needs of two houses and their committees. The executive wing has come to house not only ministers and their immediate staff, but an array of minders, ministerial assistants and

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others so that the complete work of administering a government department can, apparently, be completed without having to leave this building.

Second, the house has allocated generous space to an array of ancillary parliamentary services and the needs of the media that could at some future time be folded into extra provision for parliamentarians. Some of this might occur in any event with the contraction of the media caused by the decline of the old newspaper. But even assuming a substantial continuing demand, modern communications technology may not make proximity so important even for services such as Hansard, the Parliamentary Library or parliamentary administration.

I should mention one other set of anniversaries while we are in a birthday mode; this is also the 25th year of the passage of ACT self-government legislation through this parliament. There are many people who will rush to tell you that they did not want it, indeed that they had specifically rejected it by referendum. Perhaps they did, even as others recognised that self-government was not merely a right but a duty. But in any event self-government did not occur because the child wanted to escape from its parents, it occurred because the parents, at least in the form of the Hawke Government, was sick of the expense and the responsibility of purely local administration. We were thrown from the nest.

If we were given some money and some concessions as an inducement to not make too much fuss, it was also clearly understood that if we wanted to keep living in the style to which we had become accustomed we were going to have to pay for the extra ourselves. Otherwise we would have to make submissions to the Commonwealth Grants Commission in the same way as everyone else and in modern days live off GST revenue or our own raised taxes. The citizens of the ACT receive these days much less revenue per capita from the Australian taxpayer than the citizens of South Australia, Tasmania or the Northern Territory. In terms of actually what goes in per region compared to what goes out, more than the citizens of Victoria, New South Wales and Queensland.

Even if, from the point of view of the people of Canberra, there has since been heavy cost-cutting and a reduction in both the quality and the quantity of state-level public services, the outside perception remains that the very existence of the city, and the lifestyle of its inhabitants, is a heavy and probably extravagant drain on other Australian taxpayers. The people of the national capital are thus part of a general conundrum. On the one hand there is ample evidence that Australians as a whole are rather proud of Canberra and of its institutions, and readily recognise both its outlines and its major buildings and avenues, particularly Parliament House, Old Parliament House, the Australian War Memorial and the lake. On the other hand they are as

suspicious of public servants or citizens of Canberra generally as they are of politicians and they include an affected dislike of us in their general hostility to government, particularly when the government of the day is unpopular, such as right now.

This year of anniversaries has seen some reflections on the institutions. Since the opening of the new Parliament House, nostalgics, including myself, have wondered whether we have lost something of the intimacy of the old house, and whether the new one has the buzz of the old. Many have complained of the miles of corridors, and others of how the claimed needs of security or the self-generating demands of security bureaucracies have strangled a certain democratic feeling. Others wonder whether the architecture itself reinforces not only the tyranny of the executive, but a culture of secrecy and privileged access. All of these are important issues, though not for today.

I want to use this conjunction of anniversaries instead to focus on the relationship between the city, that is to say the territory and its population, and the citadel—that great building here on Capital Hill, surrounded by a moat. One is, if one uses the constitutional words, within the other. Increasingly, however, there is a question of whether one is an alien—an essentially uncomfortable and difficult presence which is not at ease with its environment. If this is true what does it mean and what can or should be done about it?

I do not necessarily pretend that there was once a ready and free intercourse, in every sense of the word, between the old Parliament House, that more relaxed parliament house, and the city and its population, although the very ease of access to one is a point to be borne in mind. In 1930, or 1950, or indeed in 1970 or 1980, a far greater proportion of the people of Canberra had regular reason to be in or at Parliament House when it was in session. The relationship of many with it was not as mere Australian citizens, if one somewhat more conveniently located. Parliament was, after all, of the very essence of the reason why Canberra existed.

Some of us might have opinions about politicians in general, or politicians of a particular party, and for others, the nature of the inhabitants might not matter a jot. But we lived with each other. Alan Reid, the veteran journalist, once told me that I should always remember that one could work in a zoo without liking the animals. Many of those who were familiar with the building and the institution were, of course, public servants, though by no means all were advisers or private secretaries of ministers, or people conveying materials to and from the departments. There were also telegraphists and steno-secretaries, drivers and cooks, librarians, Hansard people and attendants. There were also journalists, lobbyists, urgers and other ne'er-do-wells in semi-permanent residence, as well as a somewhat bohemian culture founded on the

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existence of the non-members' bar and its related facilities. No one challenged one's right to be there, and anyone looking even vaguely purposeful could stride down the lobby corridors, or up to the press gallery, or along the passageways to ministerial and representative offices, such as they were. A number of local citizens would wander regularly into the public galleries when they were bored, or, perversely, when they expected a lively debate.

In 1972 when I was a copy boy at the *Canberra Times* and would make half a dozen trips to the old house every day, picking up and delivering material from various bureau and ministerial offices. Typically I could and would park within a cricket pitch of the front door and there was no ticketing or queuing to do so. On one occasion, on a hot February day, I saw a rather red-looking child in a car parked beside mine. Its windows were up and the car was locked. I strolled over to fetch a policeman and as he looked for a brick to break the glass, I found a piece of coat hanger with which I had become a bit of a whiz. We had just retrieved a very heat-stressed baby when a woman rushed down the stairs, glared at me and the cop and rushed off with the child in the car. I need hardly add that neither she nor the child were restrained, as they now call it.

The incident was over, in my mind at least, until an hour or two later when a most senior politician of Queens Council rang to threaten the editor of the *Canberra Times* that if we made any mention of the incident we would be sued by him personally and the woman (unnamed) to within an inch of our lives. Apparently he thought wrongly that we had deduced that the woman in question was his mistress and that her inattention to the needs of the child was a consequence of what they had been doing on the desk in his office. Now I tell this tale not so much to retail scandal, or to give you some clues as to who the person might be, but so as to underline the ease and speed of possible access to the old parliament. These days, the lover, even assuming he had the right security pass, would probably be held up for 15 minutes just getting in, and another 15 minutes just getting out of the place.

The new Parliament House, in short, sits isolated and alone at the top of a hill with stiff security. Aloof, and, it increasingly seems, disconnected from the city. That disconnect, and a steady stream of abuse, makes it sometimes seem an invader rather than the reason for our existence.

It was not at all new in 1972 for the people of Canberra to complain of the tendency on the part of some parts of the media, particularly those located outside the ACT, to use the word Canberra as some shorthand form of abuse for big 'G' or little 'g' government or for ministers or for the public service. We were used to, if not excited about, the ready assumption that all public servants wore cardigans, did very little

work and were generally useless, even as we ourselves knew that the service then was well into the process of becoming a merit-based, elite service capable of recruiting and training the best and the brightest young people in Australia.

In all of this, thus, we had some natural common cause with the wretched politicians. Even as we sometimes resented their tendency, the moment they were out of our sight, to pretend that they were not of us, but were part of them. The *Canberra Times* made a bit of a specialty of reporting comments made about Canberra by politicians in their own environments, including descriptions of public servants as pigs in the trough or the claim by John Fahey, if I recall, that no one in Canberra had ever seen or heard of a fibro house. Sometimes we retaliated, in the nicest possible way, of course, by making sure that local constituents were up with accounts of demands for special privileges or rights by the representatives.

One can, of course, write learned treatises showing that the Canberra economy is diversifying, that the Commonwealth public sector proportion of it is considerably reducing, and that many in the new jobs that are being created in an uncommonly educated and information au fait city are in education, communications and lobbying. But there is little point in this with a good deal of the general criticism of the city, given that a high proportion of it is essentially ideological, in the public sector bad/private sector good sense. Reason and facts mean very little in such a debate. In any event, it probably is still true that there is a close interdependence between the Commonwealth, as one of the high drivers of demand, and a specialised and alert Beltway private sector, whether in the lobbies, advocacy, regulation, in the supply of goods and services to government or in the sale of information about it.

Like it or not, we denizens of the seat of government are tarred with the same brush as the politicians. But some of it is increasingly tedious. Last week, for example, was budget week, so we had the usual cavalcade of journalists, artists, computer and production people brought up from Sydney and Melbourne to add economic and political analysis and colour reportage and gossip to the work of the resident parliamentary press gallery reporters in the coverage of what is, or once was, the government's economic and social manifesto for the year ahead.

These foreigners, as it were, arrive at the Parliament House lock-up, after a bus trip and a feed at a local swillery, at about 1pm. They are released from *durance vile* at 7.30pm having been fed by people associated with Parliament House catering fairly continuously during the intervening time. By then each team involved will have largely completed one of the biggest newspaper production jobs of the year, preparing up to 24 pages of detailed reportage and commentary based on Treasury documents, the claims of the politicians, and such access to expert opinions as one can manage

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given the blackout on external communications. After being let out, the journalists party—typically in Manuka, Kingston or Barton. Traditionally, employers are reasonably generous in picking up the tab, all the more so these days since they have seemed mean in resorting to buses rather than aircraft to move these teams of people around.

After the party, well past midnight, the journos go back to hotels, and, early in the morning, they motor off. A day or two afterwards, one or two of the conscientious writers will write a polemic deploring the ACT. Miranda Devine, who lives comfortably on the Sydney northern shore and writes for the *Daily Telegraph*, might provide a good example. The budget was ‘sombre’, ‘funereal’ perhaps, she wrote, but the mood of Canberra was ‘anything but’. Canberra was:

a town on steroids ... a cashed-up boom town of boutique hotels, gourmet restaurants, passionfruit martinis and funghi pizza. Jamie Oliver is opening a restaurant soon. Sydney might be in the doldrums, with shuttered shops and sky-high costs, where even law firms are laying off, and taxi drivers say business has never been so slow. But in Canberra it's clover. This is Wayne's world, a town of politicians and wall-to-wall public servants in protected jobs, untroubled by market disciplines and insulated from the wealth creators who fund it all. This is where the government's promises and wacky policies make sense, where big government is a growth industry that fuels the economy ... the postcode that has thrived most under this government is 2600—Canberra. No wonder the buzzing bars and restaurants around town on Budget night felt like the last days of Rome.<sup>1</sup>

No one will stand ahead of me in my admiration for Miranda Devine and in her capacity to craft a sentence and to arouse fear and envy and anxiety amongst her readers—almost all of whom earn an awful lot less than her, and some of whom even earn less than the median income of the people of Canberra. But I have to say it was fairly standard stuff, rendered only a little bit more bizarre by her failure to notice that the roisters she was deploring were people like her rather more than people like us. We Canberra folk do like to think we are special and that ours is a city of which Australians should be proud but most of us were home safely, perhaps too securely, in our beds. Indeed most of the Canberra that she imagines us to be, which is to say federal public servants, would not describe the last five years as being like life on steroids and a non-stop boom. Nor would those of us whose jobs hang off government, actually, such as journalists. It has, in fact, been a further extension of much of the agonies of the past 20 years, which is to say, of continuing cut backs,

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<sup>1</sup> Miranda Devine, ‘Party over but we’ll still pay for their fun’, *Daily Telegraph*, 15 May 2013, p. 13.

retrenchments and attempts to maintain quality in the face of efficiency dividends and government accounting tricks.

Politicians and a public want more and more from less and less resources and it is becoming more and more difficult to be effective and efficient. Whether the size of the public sector is expanded or contracted, and how much money that is put into the local economy, is no mere matter of numbers, it is also a matter of the work requiring to be done and the people who are screaming for results. When Devine is suggesting that the people of Canberra have no idea of what is going on in the so-called real world, the city and its public service inhabitants are merely paying the price of her primary view, one that colours each and every one of her articles—that the Gillard Labor government is hopeless and ought to be sacked. Now she may be right about this. She is certainly entitled to her opinion, but that need not depend on her flourishes about the government's professional advisers being out of touch with the real world, or Canberra lying in some sort of la-la land and not subject to ordinary market forces.

As I say there is nothing particularly new or particularly ignorant about such contributions and I am not dwelling on them as such. What may be changing, however, is the solidarity with which the inhabitants of Canberra grin and bear it, as a regrettable, but somewhat inevitable price that one pays for living in the national capital. It is, after all, what white people in Washington also have to endure, even though it is not necessarily what the people of Paris, or London, or Rome, or Berlin have to endure.

The first point I have already made: fewer local citizens have any much business in the house. Fewer, as a proportion of the population, actually work in it; even fewer have occasion to make regular professional visits, say to visit a minister or an estimates committee. Many fewer would feel the need or the inspiration to attend for some special occasion such as an apology or a demonstration.

This is not to say that Parliament House has a small staff, indeed it does not. But Canberra is a growing city and the federal public service is not growing at the pace of the city. Moreover, a high proportion, even if it is still a minority, of the denizens of the house are minders, operatives and other political staff, a very high proportion of whom do not actually live in the city, except when they are forced to do so. The dramatic exit from the city once Parliament rises is no longer primarily a matter for politicians; many more of the people with Blackberries growing out of their ears are hangers-on. The high consumption of such people—a high proportion of whom are very clever, very single and very well paid—is consumed in south Canberra, and a good many of them live in its townhouses and flats, providing, by the lifestyles and

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promiscuity, the backdrop of accounts about Nero fiddling while Rome burns. Their lifestyles are not terribly relevant to the populations of the Woden Valley.

Increasingly, moreover, the net economic activity of Parliament House in action does not cause any dramatic bumps in electricity consumption, or the local measures of economic output. Particularly if one factors in the ordinary, if more mundane, lives of ordinary Canberrans, in or out of the public service, living in regions such as Belconnen, Tuggeranong, or Gungahlin. Taxi drivers may notice when Parliament is sitting, and so might a few bars in Kingston and Manuka, and perhaps a few brothels in Fyshwick, but there is, by and large, a bigger bounce from a Brumbies match or a National Gallery blockbuster. In such a circumstance, some might reason, why should locals pay such a regular price for being blamed for what the itinerants, and their minders, do?

The lack of mutual reliance has been much aggravated by traffic engineering and by the development of a national security industry. Parliament House is increasingly difficult of access. The architecture remains attractive, but the bollards and the fences do not. Even more daunting are changed road arrangements, one-way traffic, privileged access for insiders, reduced access to the top of Capital Hill, the alleged need for security screening, the segregation of visitors from workers, the operation of pass laws and the creation of mini-Bantustans. There has not, in fact, been a security incident worth a cracker at either parliament house since someone shouted at David Smith in 1975, but no one can prove that this is not a result of the tens of millions of dollars we now throw at the task of keeping people away.

The process of keeping people out works also, of course, to keep people in. Canberra is a truly fabulous resource for anyone interested in almost any field of public policy. It has an experienced and professional independent bureaucracy. It has an array of think tanks, lobbies, industry and professional headquarters, and people engaged in the business of marshalling facts and preparing arguments. It has an educational industry engaging more adults than the Canberra-based federal public service including an array of institutes and bodies that are particularly focused on the needs of government. It has a big diplomatic, defence, intelligence and foreign affairs establishment. One in every fifty adults in the ACT now works in the intelligence and security business. Canberra's second biggest building, an especially unattractive Lubyanka, is soon being opened to prove it.

Quite apart from this being a bush environment, a social, sporting and cultural milieu bigger than that of Adelaide or Brisbane, which operates alongside schools and systems of high standard, for most of the powerful figures of Parliament House, these advantages, these opportunities, are passed by in the rush to get out of town as quickly

as possible, or in disinclination to leave a building it is somewhat difficult or time consuming to re-enter, even with a flash pass. And with the business of high government decision-making increasingly transacted by ministerial staff, more often than not communicating electronically, there is less of a need for interchange, even with public servants, let alone representatives of the so-called real world.

I have long thought that the processes of government would undergo beneficial revolution if both the executive government and the parliamentary press gallery were expelled from this house, given ready access but forced to headquarter themselves elsewhere, out in the real, if apparently still rarefied, air of Canberra.

For many Canberra citizens, in short, the la-la land is not the federal capital territory as a whole, but it is in the seat of government. And it is getting worse. It is not a party-political thing. Indeed, the fact that the soon-to-be incoming government is familiar with the system of running an administration means that it will slip readily back into the drivers' seats. If there are residual things, including public service professionalism and loyalty and confidences as between employer and employee which might prevent a blow-up, there is less and less of a congruence of interest, least of all in concealing from the public at large some of the grimmer secrets about the fault lines of modern government.

And there are fault lines. No matter how some seem to think that this is all a problem of management or perfect information, it is obvious that some of the systems do not work as once they did. The old economic levers no longer achieve anything like the same effects when they are pulled. That is in part because the economy is now far more complex and far more subject to other variables including the world economy. Nor can programs work as once planned and devised even by the best ministers or the purest intentions, not least because we are still essentially a full-employment economy in which skills and labour are not as mobile or available as some of the theoreticians fancy.

We have a pretence of open government and an obsession with information management, and all of its cousins including spin, concealment and outright lying. We have more and more dirty hands on the steering wheel and, as often as not, fewer records of who has said what and when. Perhaps we are more free of political corruption than the State of New South Wales. But those who are cynical can hardly help noticing how many players come from the same places and how handicapped these days so many of the checks and balances are.

Some of these problems can be addressed, but not by public relations stunts or mere promises of reform or better intentions. Some risks have to be taken. Mercifully they

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are all ones that tend in democratic directions based on the idea that the more open and accessible the councils of the people are, the more likely it is that these councils will do good work and do honest work. I have noticed no climb in public zeal for good government or good service to government, just a weariness with the way things are going.



**Question** — One aspect of this building is that it is very difficult to find your way around, particularly in the non-public areas. I often think of what Winston Churchill had to say following the bombing of the House of Commons and his insistence that the new House of Commons be of precisely the same dimensions as the old and the importance, as he saw it, of having a sense of crowding in the Parliament. Do you think that when designing the chambers they missed an opportunity to have that sense of crowding?

**Jack Waterford** — I think this is an important question and I was avoiding to a point all of the obvious differences between the old and new parliament house. I frankly yearn for the crowd, the squeeze, the noise and the feel of the old house and think that it is going to take a long time to recreate this. Like you, I have been lost in the corridors here and I sometimes think that it would be a good thing if, like the standard hospital these days, there were lines here which sort of said ‘x-ray equals green’, ‘pathology equals red’ and so forth so that you could follow these tracks up and down the corridors.

I do not have any problem with the idea that parliamentarians need offices and assistance and all of the facilities. Like you, I would still like that they themselves live rather more in a press rather than each in their own separate empire, far separated, and each, for that matter, finding it about as difficult to find their way around or to be allowed in the ministerial wing or whatever as ordinary members of the public.

I think we have gained great advantages at the same time from some of the nice spread-out geography of the house and the architecture of it. I do not see how we can fill it up just to achieve the effect; we might end up creating even more of a problem of minders and more isolation of ministers from the wider world than we currently have.

**Question** — I am interested in what you said about spin. I attempt to get away from spin by reading the *Guardian Weekly*. When are you going to use the *Canberra Times* to get out of the spin?

**Jack Waterford** — I would dearly love to not only get out of the spin but also to retain the links that we had with the *Guardian* until only about six months ago. But unfortunately they have thrown us out of the nest too. Not only did we lose a very good news service and a very good system of analysis and commentary coming out of it but, as devoted readers of the correspondence columns of the *Canberra Times* will know, we also lost a jolly good crossword. But as for the spin problem, over a period of time spin creates its own adverse effects and everybody agrees that in a British context Tony Blair was terribly effective and persuasive for the first year or so of his prime ministership. By about five years of it everybody was sick of the lying, the dressing up of mendacity and the pretence that things were not as they plainly were.

The average member of the public can normally tell when things are not as they are crafted to be. What troubles me about it at the moment is that there is this absolute obsession in the ministerial office to control the entire information flow of government. Material that once emerged routinely out of the system now must be managed by and massaged through the ministerial office. Even ordinary public service information, not information about the public service but about material that the public might want to know, must be fiddled with, played with and badged.

When I arrived in Canberra there was a bit of an impression around in some circles of government that it was a prima facie breach of the Crimes Act to be even seen talking to a member of the gutter press. That disappeared, certainly by about the 1980s or so, but it is coming back. In fact, I think there is more a reign of terror now on anybody suspected of leaking. The consequences of anything associated with leaking, particularly in this house I might say, are so much greater than once they were. Police, without anything in the way of warrants, are now routinely scrutinising all email that comes in and out of this house and are interrogating telephone records including mobile phone ones. It is reported on but very little comment is made about it. This does not really seem to me consistent with the needs or the threats being faced by the modern state. I think it has become an industry of its own that is injurious to good government.

**Question** — We are not alone with the United States where Canberra cops the same abuse as Washington. Can we learn anything from New Zealand where Wellington and Auckland are at logger heads or even in the Netherlands and the Hague, where the parliament is, and Amsterdam?

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**Jack Waterford** — One of the differences could be that in each of the examples you have chosen, one was a set aside capital and the other was an existing place where a capital was put. I am not sure that is necessarily the dividing point. Washington, for example, is a very large city but only a small part of it is focused on being the centre of government. The states of the United States in general have state capitals that are not their largest city. The capital of California is not San Francisco or Los Angeles, it is Sacramento; the capital of New York State is not New York it is Albany.

I read a lot of red-hot rhetoric against the size of the State and the need to bring down the size of governments. But the hostility that is focused particularly on Washington, does not seem to be focused on the good folk of Albany or Sacramento or Milledgeville or whatever in quite the same way. Maybe there is something to be learnt from that.

I am a little bit reluctant in some respects to conclude too much from the United States about this particular area of things because hostility to and distrust of government, particularly central government, has its own history in the United States which is not part of the Australian constitutional history. I think the start off of the Australian constitutional thing is a certain sort of larrikin air which is suspicious of anybody who is in power, that does not, by and large, like the officer class of anything and does not much like being pushed around or bossed about. Once you actually get to realise that public servants are not obscure clerks writing florid language but are schoolteachers or policemen or nurses or the administrators of low-level goods and services that are being provided in your community, people actually quite like public servants. We have always had a bit of a love affair with them; there have always been more public servants in Australia than anywhere else in the world.

**Question** — In this centenary year we might have expected this parliament and this city to extend its boundaries of imagination a bit, at least to the Commonwealth countries of the region where the people are trying to build parliament or some kind of democratic structures. But there is nothing I have come across to see this dimension, where Canberra and the Parliament become part of the democratic policy of the region and part of its political imagination. It seems to me that like London or New Delhi or even Washington, Canberra has failed in its imaginative possibilities to do something democratic within this small region called the South Pacific.

**Jack Waterford** — The first point I would note is that Canberra played a role in the building of a fine parliament house in Port Moresby. I say that because symbolically it was a fine parliament house as well as being a good building. Broadly, I generally agree with you. We neither are proud of our physical institutions nor of the concepts that they symbolise. We have not very well transplanted them even here and we have

not been very successful in broadcasting them about the world and particularly amongst our nearer neighbours, many of whom look to us for a lot of things. I think there has been a diffidence about this for quite some time.

Apart from this building itself, for example, I do not think that there has been a worthy piece of architecture in the Australian Capital Territory probably since the building of the National Library in the 1960s. It is not even that I think that the National Library is such a fabulously good building, so much as it is unobjectionable. I yearn for the day when the High Court of Australia and the National Gallery of Australia fall down. I do not think that there is a single building in Civic which is actually worth preserving for any sort of heritage or other reason, though I notice from time to time that various nostalgics argue that we ought to preserve that awful 1950s style of council architecture that are generally called the 'ABC' flats as sheer examples of awfulness.

There are some fabulous buildings—the Ainslie Primary School, the old Canberra High School and the Manuka Pool—but they were built in the 1920s and the 1930s. There was this sort of want of pride in itself and in a country which, actually from about the 1850s, was building fine public buildings—shire council offices, post offices, schools and railway stations—that one could be proud of. They said something, not just about the facility that was being provided but about a self-confident nation that was sure of itself and was doing something. We have stepped away from that and it is not an argument about privatisation or changing public functions or anything like that; it is a form of uncertainty, modesty or embarrassment perhaps.

Certainly we should not only have done that here but we should have done rather more to broadcast it abroad. Perhaps the more so when one thinks of some of the institutions and some of the systems that we have foisted on our neighbours—a level of provincial government in Papua New Guinea, for example, that was probably entirely unnecessary and which is at least one of the reasons why there is such a crisis of actual provision of services at village level. So I would like to see that confidence and that salesmanship, that physical building and also that physical self-confidence and selling of it.

**Question** — The Department of the Senate is arguing that it should only be required to disclose administrative documents under the Freedom of Information Act. Do you think that the amount of money spent on individual politicians would be considered to be administrative or do you think the decision maker would refuse to release this information and why? Maybe Dr Laing may want to answer this too.

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**Dr Rosemary Laing (Clerk of the Senate)** — That material you refer to *is* administrative. I think the distinction we draw is between administrative material and material that is covered by parliamentary privilege, which it is not the role of the courts or tribunals or outside bodies to interfere with. I am on the record as saying that there is no objection on our part for administrative material to be accessible to FOI. I have said that before in Senate estimates committees and I will be up before estimates committees next Monday and happy to answer questions at that time.

**Jack Waterford** — I do not want to get involved in this except to make two observations. The first one is there is sometimes a difference between what the public is interested in and what the public interest is. But it has been my observation from 40 years of professionally reporting politics that there is nothing that the public is more obsessively interested in than questions of entitlements and money paid to politicians.

## **Dysfunctional Politics in the United States: Origins and Consequences**\*

*James P. Pfiffner*

American politics has become dysfunctional in the sense that the two houses of Congress and the president cannot come to agreement on many fundamental issues of public policy. This situation, which has been characterised as a ‘stalemate’ or ‘gridlock’, is caused by the polarisation of American politics in the latter half of the twentieth century. Political elites in the United States, including party activists, politicians, and members of Congress, have moved toward the respective ideological wings of their parties in order to appeal to their parties’ base supporters. This polarisation has been hardened by the two parties’ use of parliamentary tactics in Congress to thwart the other party, with a consequent decrease of civility in Congress. Moderate members of Congress are a disappearing species, and the wings of the two parties are increasing their power. Thus in addition to the separation of power system, which provides many veto points to stop legislation, policy clashes and partisan rancour have decreased the ability of the national government to deal with major policy issues.

The 113th Congress, elected in 2012, passed only 15 laws as of July 2013, the lowest number since the 1940s. Of course, the number of laws by itself is not necessarily an indicator of good policy-making, but because of polarised gridlock, Congress and the nation have not been addressing important public policy issues. Immigration reform is crucial to beginning to regularise a path to citizenship or at least resident status for more than 11 million immigrants presently in the country. The postal service continues to lose money, but the two parties have not agreed on how to deal with the issue. More politically divisive issues, such as gun control and abortion, might get support in the Democratic Senate or Republican House, but they would have little chance of passing both houses and becoming law. Budget sequestration, across the board cuts in domestic and defence spending, have taken place because the two parties could not agree to a package of spending cuts and tax increases. Members thought that imposing non-focused, across the board spending cuts, would force the two parties to agree to address the fiscal deficit issue; even though all members thought that the indiscriminate cuts to all programs would not be good policy, the cuts

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did not provide the impetus needed to get the two parties to come to agreement on how to make selective cuts.

In examining the causes of dysfunctional politics in the United States, this paper will first examine the causes of polarisation among American political elites. It will then examine the consequences of this polarisation for Congress and public policy-making. The conclusion will speculate about American politics over the next several years.

## **I. The causes of congressional polarisation**

In trying to explain the vast changes that occurred in Congress in the latter half of the century—from a Democratic-dominated institution with significant overlap between the parties, to an ideological polarised battleground with virtually no middle ground—we can turn to Nelson Polsby, who argues that it all started with air conditioning. Though this claim might seem whimsical, his line of reasoning and evidence presents a plausible and often compelling explanation of change in Congress.<sup>1</sup> It goes like this.<sup>2</sup>

The development of affordable residential air conditioning in the south from the 1950s to the 1980s led to the migration of whites from the north to southern cities and suburbs. Many of these immigrants brought with them Republican voting habits. From the 1960s to the 1980s, approximately 40 to 50 per cent of southern Republicans were born outside of the south.<sup>3</sup>

Along with general urbanisation in the south and black migration to the north, the partisan complexion of the south began to change. The Republican Party was becoming a viable political party and beginning to attract more voters.<sup>4</sup> Partisan realignment in the south was further encouraged by the Civil Rights Act of 1964 and the Voting Rights Act of 1965, both of which increased the number of black voters who voted overwhelmingly Democratic.<sup>5</sup>

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<sup>1</sup> Nelson W. Polsby, *How Congress Evolves: Social Bases of Institutional Change*, Oxford University Press, New York, 2004.

<sup>2</sup> Much of this section is based on James P. Pfiffner, 'Partisan polarization, politics, and the presidency: structural sources of conflict', in James A. Thurber (ed.), *Rivals for Power: Presidential Congressional Relations*, 3rd edn, Rowman and Littlefield, Lanham, MD, 2006, pp. 33–58.

<sup>3</sup> Polsby, op. cit., pp. 87–93.

<sup>4</sup> *ibid.*, pp. 80–94.

<sup>5</sup> For analyses of the changing electoral make-up of the south and the partisan implications, see: Earl Black and Merle Black, *The Vital South: How Presidents Are Elected*, Harvard University Press, Cambridge, MA, 1992; Bruce Oppenheimer, 'The importance of elections in a strong congressional party era', in Benjamin Ginsberg and Alan Stone (eds.), *Do Elections Matter?*, M. E. Sharpe, Armonk, NY, 1996; Gary Jacobson, 'The 1994 House elections in perspective', in Philip A. Klinker (ed.), *Midterm: The Elections of 1994 in Context*, Westview, Boulder, CO, 1996; Gary C. Jacobson, 'Reversal of fortune: the transformation of U.S. House elections in the 1990s', paper delivered at the Midwest Political Science Meeting, Chicago, 10–12 April 1997; Paul Frymer, 'The 1994

Conservative whites began to identify with the Republican Party, and to send more Republican representatives to Congress. The creation of majority–minority districts concentrated more liberal blacks in districts while more conservative whites ended up in districts that voted Republican. The result of this realignment was that the Democratic Party in Congress lost its ‘Dixicrat’ (conservative southern Democrats) members and became more homogeneously liberal.<sup>6</sup> The conservative coalition, which had been thwarting Democratic presidents since Franklin D. Roosevelt, began to decline in importance; the conservative southerners were now in the Republican Party.

The increasing liberal consensus among the Democrats in Congress led the Democratic caucus in the House to become more cohesive and, through control of committee membership, assert its liberal policy views more effectively (for example, on civil rights, old-age assistance, health care, housing, and other federal programs). According to David E. Price, Democratic representative from North Carolina,

Revitalising the House Democratic Caucus proved necessary in order to rewrite the rules, depose recalcitrant chairmen, and otherwise effect the desired transfer of power. The leadership, moreover, was the only available counterweight to conservative bastions like the House Rules and Ways and Means Committees. Therefore, two key early reforms removed the committee-assignment function from Ways and Means Democrats and placed in a leadership-dominated Steering and Policy Committee and gave the Speaker the power to nominate the chair and the Democratic members of the Rules Committee.<sup>7</sup>

The number of Democrats in the House began to increase in 1958, and particularly in the Democratic landslides in 1964 and 1974. In order for the Democratic caucus to gain more effective policy control, more power was delegated to its leadership in the 1970s and 1980s.<sup>8</sup> As the Democrats in the House became more ideologically similar, their leadership became more assertive in the use of parliamentary tactics and evoked the ire of Republicans by denying them procedural rights in ways that were perceived

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electoral aftershock: Dealignment or realignment in the south’, in Klinker, *op. cit.*; Lawrence C. Dodd and Bruce I. Oppenheimer, ‘Revolution in the House: testing the limits of party government’, in Dodd and Oppenheimer (eds), *Congress Reconsidered*, Congressional Quarterly Press, Washington, 1997, pp. 29–60 and ‘Congress and the emerging order: Conditional party government or constructive partisanship?’, pp. 371–89.

<sup>6</sup> Polsby, *op. cit.*, p. 94.

<sup>7</sup> David E. Price, ‘House Democrats under republican rule’, *Miller Center Report*, vol. 20, no. 1, Spring/Summer 2004, p. 21.

<sup>8</sup> Polsby, *op. cit.*, pp. 80, 150.

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as unfair.<sup>9</sup> Newt Gingrich led the outraged Republicans in the House to develop Republican candidates, particularly in the south, and orchestrate the development of Republican candidates, which culminated in the 1994 election landslide that put the Republicans in charge of Congress for the first time in 40 years.<sup>10</sup>

Thus it was that the introduction of air conditioning in the south led to Republican domination of southern congressional delegations which led to a more homogeneous, liberal Democratic Party in Congress, which led to more polarised parties and finally to the Republican takeover of Congress.<sup>11</sup> This polarisation was exacerbated and perpetuated by bipartisan gerrymandering that reinforced the polarising trend.

Redistricting, among other factors, has led to an increasing proportion of safe seats, with fewer congressional districts ‘in play’, that is, that might be won by either party. According to Gary Jacobson’s analysis, the number of safe seats increased significantly between 1992 and 2002: Democrats’ safe seats increased from 142 to 158, and Republicans’ safe seats increased from 139 to 198.<sup>12</sup> Thus the total number of safe seats was 356 of 435, but the number of House races that were actually competitive were many fewer than that.<sup>13</sup> In the 2004 elections 83 per cent of House races were won by margins of 20 per cent or more, and 95 per cent of districts were won by more than 10 per cent. Only seven incumbents were defeated, and four of those were in recently redistricted Texas. Overall, Republicans gained five seats in Texas alone. Excluding Texas, the Democrats picked up four seats and the Republicans two.<sup>14</sup>

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<sup>9</sup> Burdett A. Loomis and Wendy J. Schiller, *The Contemporary Congress*, 4th edn, Wadsworth/Thomson Learning, Belmont, CA, 2004, pp. 150–60.

<sup>10</sup> For an analysis of the 1994 elections and the 104th Congress, see James P. Pfiffner, ‘President Clinton, Newt Gingrich, and the 104th Congress’, in Nelson W. Polsby and Raymond E. Wolfinger (eds), *On Parties: Essays Honoring Austin Ranney*, Institute of Governmental Studies Press, Berkeley, CA, 2000, pp. 135–68.

<sup>11</sup> Polsby puts it this way, ‘air conditioning (plus other things) caused the population of the southern states to change [which] changed the political parties of the South [which] changed the composition and in due course the performance of the U.S. House of Representatives leading first to its liberalization and later to its transformation into an arena of sharp partisanship, visible among both Democrats and Republicans’ (Polsby, *How Congress Evolves*, op. cit., pp. 3–4).

<sup>12</sup> Gary C. Jacobson, *The Politics of Congressional Elections*, 6th edn, Pearson Longman, NY, 2004, p. 252.

<sup>13</sup> Charlie Cook, ‘Value of incumbency seems to be growing’, *National Journal*, 20 March 2004, p. 906.

<sup>14</sup> These data do not include two seats that were subject to run-off elections. Ordinarily, states redistrict themselves following each decennial census. But Representative Tom DeLay engineered a redistricting in Texas after the 2002 elections that forced seven incumbent Democrats out of office (four in general elections, one retirement, and two losing in primaries). See Jennifer Mock, ‘Texas “firewall” strategy for House pays off with five-seat GOP pickup’, *CQToday*, 4 November 2004, p. 15; David S. Broder, ‘No vote necessary’, *Washington Post*, 11 November 2004, p. A37; Editorial, ‘Scandal in the House’, *Washington Post*, 4 November 2004, p. A24.

Redistricting, from the 1970s through 2004 in the south and elsewhere, led to safer districts, which along with the advantages of incumbency, led to the election of more liberal Democrats and more conservative Republicans. If congressional districts are competitive, with elections won and lost by small margins, candidates must move to the middle of the ideological spectrum to try to capture a majority of votes. But safe seats put moderate candidates of both parties at a disadvantage. Turnout for primary elections is low, and most of those who actually vote are committed partisans; that is, true believers who hold more extreme views than most voters in their parties. Thus in order to get nominated and then to remain in office, members must please their respective wings or be outflanked by more extreme candidates.

Congressman Jim Leach (R-Iowa) explains the problem this way:

A little less than four hundred seats are totally safe, which means that there is competition between Democrats and Republicans only in about ten or fifteen percent of the seats.

So the important question is who controls the safe seats. Currently, about a third of the over-all population is Democrat, a third is Republican, and a third is no party [independent]. If you ask yourself some mathematical questions, what is a half of a third?—one-sixth. That's who decides the nominee in each district. But only a fourth participates in primaries. What's a fourth of a sixth? A twenty-fourth. So it's one twenty-fourth of the population that controls the seat in each party.<sup>15</sup>

This gradual polarisation of Congress over several decades was caused mostly by members being replaced by less moderate candidates in their seats, but some of the changes were individual members changing their own ideological perspectives and becoming less moderate in order to head off a challenge in the primaries.<sup>16</sup> As Representative Leach put it, 'It's much more likely that an incumbent will lose a primary than he will a general election. So redistricting has made Congress a more partisan, more polarized place'.<sup>17</sup>

Once in office, the advantages of incumbency help keep the more extreme members in office for longer periods of time. But even more important than advantages for

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<sup>15</sup> Quoted in Jeffrey Toobin, 'The great election grab', *New Yorker*, 8 December 2003, p. 76.

<sup>16</sup> See Gary C. Jacobson, 'Explaining the ideological polarization of the congressional parties since the 1970s', in David Brady and Mathew McCubbins (eds), *Party, Process and Political Change in Congress*, Stanford University Press, Stanford, CA, 2007. For an argument that individual shifts in ideology contributed to the overall shift, see Sean M. Theriault, 'The case of the vanishing moderates: Party polarization in the modern Congress', Manuscript, University of Texas, Austin, 2004.

<sup>17</sup> Quoted in Toobin, *op. cit.*

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individual incumbents (for example, name recognition, media coverage, travel to the district, raising money, etc.), is the advantage gained through safe partisan majorities of congressional districts ensured through skilful drawing of district boundaries (gerrymandering).<sup>18</sup> Thus the advantages of incumbents who sought re-election, always considerable, have become even more effective. From 1984 to 1990 House members seeking re-election were successful 97 per cent of the time and in 2002, 98 per cent were successful. Senators were a bit more vulnerable, but still quite successful, winning 86 per cent of bids for re-election from 1982 to 2003 and 95 per cent in 1996.<sup>19</sup> In 2004, aside from the redistricted Texas, 99 per cent of House incumbents won re-election, with only three incumbents being defeated.<sup>20</sup>

Some scholars have argued that the election of more extreme partisans to Congress was caused by voters who had first become more polarised.<sup>21</sup> But Morris Fiorina in his book *Culture War?* argues that although political elites in the United States (party activists, members of Congress, etc.) are ideologically polarised, the vast majority of citizens in the country are not.<sup>22</sup> Recent presidential elections have been decided by very small margins and the total vote for Congress has been evenly divided, but this does not mean that voters are *deeply* divided, only that they are *evenly* divided.

After the 2000 election the media featured coloured maps of the country that indicated states carried by George W. Bush as red and those carried by Al Gore as blue. The broad swaths of red and blue seemed to show a country deeply divided, but many of the states were won by very small margins. A comparison of the red states with blue states shows very little ideological difference among voters, 30 per cent of whom place themselves in the middle of a seven point political spectrum, and a third of the voters considered themselves independents or not affiliated with the Democrats or Republicans.<sup>23</sup> Fiorina concludes that 'it is not voters who have polarized, but the candidates they are asked to choose between'.<sup>24</sup>

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<sup>18</sup> Bruce Oppenheimer argues that individual incumbency advantage has been decreasing and that very high re-election rates of House incumbents is primarily due to the partisan loading of districts. See 'Deep red and blue congressional districts: The causes and consequences of declining party competitiveness', in Lawrence Dodd and Bruce I. Oppenheimer (eds), *Congress Reconsidered*, 8th edn, Congressional Quarterly Press, Washington, 2005.

<sup>19</sup> Loomis and Schiller, *op. cit.*, p. 66.

<sup>20</sup> In Florida, if an incumbent is not opposed, his or her name does not appear on the ballot. Thus the candidate is 'automatically reinstated in Washington' without any constituent having to cast a ballot in his or her favour. Broder, *op. cit.*

<sup>21</sup> See Jacobson, *The Politics of Congressional Elections*, *op. cit.*, pp. 236–43.

<sup>22</sup> Morris Fiorina, *Culture War?: The Myth of a Polarized America*, Pearson Longman, New York, 2005.

<sup>23</sup> Based on data from the National Election Studies at the University of Michigan. Fiorina, *op. cit.*, pp. 23, 28, 43.

<sup>24</sup> *ibid.*, p. 49.

Even on the hot button issue of abortion, public attitudes are not more polarised than they were 30 years ago, when the Supreme Court decision on *Roe v. Wade* made abortion legal in the United States. The gap between Republicans and Democrats is significant, but relatively small.<sup>25</sup> And although there is a gender gap on many political and policy issues, there is very little difference between men's and women's attitudes about abortion. Fiorina concludes that with respect to abortion there is 'a gender gap among high-level political activists that is not apparent among ordinary Americans, and minimal partisan disagreement about the issue at the mass level contrasted with vitriolic conflict at the elite level'.<sup>26</sup> Similarly, on the volatile issue of homosexuality, attitudes in the United States have been more accepting in recent years, and the differences among partisans are different but not drastically so. Fiorina concludes that, overall, Americans 'look moderate, centrist, nuanced, ambivalent—choose your term—rather than extreme, polarized, unconditional, dogmatic'.<sup>27</sup>

The overall argument here is that political parties and political elites more broadly are much more polarised in the early years of the twenty-first century than several decades ago. But that they have been at least since the middle of the twentieth century, but they must choose between candidates who are more extreme than they are. According to Fiorina, 'Even if they still are centrists, voters can choose only among the candidates who appear on the ballot and vote only on the basis of the issues that are debated. Elites nominate candidates and set the agenda, and voters respond'.<sup>28</sup> There is 'little reason to believe that elites are following voters. Rather, they are imposing their own agendas on the electorate'.<sup>29</sup> To oversimplify, instead of voters choosing their candidates, candidates choose their voters (through gerrymandered redistricting).

In addition to the genuine polarisation of elites (partisans and office holders), Fiorina attributes the broad perception of polarisation of the electorate in the country to an explosion of advocacy among those who are most committed to their political causes combined with more media attention to the conflict generated by extremists on both sides of volatile issues. The question of polarisation in the 2004 election will be addressed in the conclusion.

We have examined the partisan changes that began in the south and the resulting polarisation in Congress; the following section will analyse the consequences of that partisan polarisation in the behaviour of individuals and political parties in Congress.

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<sup>25</sup> *ibid.*, p. 60.

<sup>26</sup> *ibid.*, p. 79.

<sup>27</sup> *ibid.*, pp. 92, 95.

<sup>28</sup> *ibid.*, p. 114.

<sup>29</sup> *ibid.*, p. 130.

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## II. The consequences of structural change: partisan polarisation in Congress

The consequences of partisan realignment in the south and more committed partisans in Congress have been the disappearance of moderates in Congress which has, in turn, led to policy stalemate and the decline of civility.

The next section will present evidence that Congress is indeed much more polarised than it was in the middle years of the twentieth century (though comparable to polarisation in the late nineteenth century). This polarisation will then be linked to increasing problems of policy gridlock or stalemate. The second section will note some dimensions of the decline in civility which has made Congress a less congenial place to work and has led some eminent, moderate legislators to retire rather than continue in office.

### A. *The waning centre*

In the middle of the twentieth century the two political parties in Congress were not ideologically monolithic. That is, each party had a significant number of members who were ideologically sympathetic to the other party. The Democratic Party contained a strong conservative wing of members, the Southern ‘Boll Weevils’, who often voted with the conservative Republicans. The Republican Party contained a noticeable number of moderates, mostly from the northeast, the ‘Rockefeller Republicans’, who would often vote with the Democrats. These cross-pressured members of Congress made up between one-fifth and one-third of each house of Congress from 1950 to the mid-1980s.<sup>30</sup>

In the last 15 years of the twentieth century the cross-pressured members of each party all but disappeared. Jon Bond and Richard Fleisher have calculated the number of liberal Republicans and conservative Democrats in Congress from the 1950s through the 1990s and have documented their decline. The number of conservative Democrats in the House has decreased from a high of 91 in 1965–66 to a low of 11 in 1995–96. In the Senate the high of 22 in the early 1960s was reduced to zero in 1995–96. Liberal Republicans similarly fell from a high of 35 in the early 1970s to a low of one in 1993–94 in the House and a high of 14 in 1973–74 to a low of two in 1995–96 in the Senate.<sup>31</sup> This disappearance of the middle is a convincing demonstration of ideological polarisation in Congress.

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<sup>30</sup> Jon R. Bond and Richard Fleisher, ‘The disappearing middle and the president’s quest for votes in Congress’, *PRG Report*, Fall 1999, p. 6.

<sup>31</sup> *ibid.*, p. 7. The authors calculate their ideological scores from the rankings of liberal and conservative groups, Americans for Democratic Action (liberal) and American Conservative Union (conservative).

Sarah Binder has also found that the area of ideological overlap between the two parties in Congress has drastically decreased from a relatively high level of overlap in 1970 to ‘virtually no ideological common ground shared by the two parties’.<sup>32</sup> The *National Journal* developed its own ideological scale of liberal and conservative voting and has calculated individual scores for members of Congress. Since 1981, most House Democrats would be on the liberal end of the spectrum and most Republicans on the right. There were always a number of members of each party whose voting record put them in the middle, overlapping ideological space. In 1999, however, only two Republicans and two Democrats shared the middle ground.

Up to the mid-1990s the Senate had a middle group of 10 to 17 centrists from both parties who often voted with the opposite party. But in 1999, for the first time since the *National Journal* began calculating the scores in 1981, all of the Republicans had a score to the right of the most conservative Democrat, and all of the Democrats had a score to the left of the most liberal Republican.<sup>33</sup> The polarisation in the Senate was exacerbated in 1996 by the retirement of 14 Senate moderates who contributed significantly to the civility of the Senate and who could reach across party lines in policy deliberations, among them Republicans Alan Simpson (WY) and Hank Brown (CO) and Democrats Sam Nunn (GA) and Bill Bradley (NJ).<sup>34</sup>

What the above data mean in a practical sense is that each of the political parties in Congress is more ideologically homogeneous and that there is greater ideological distance between the two parties. Thus there is less need to compromise in a moderate direction when reaching a consensus within each party. And it is correspondingly more difficult to bridge the ideological gap between the contrasting perspectives of the two parties. Finding middle ground where compromise is possible becomes much more difficult. It is more likely that votes will be set up to highlight partisan differences and used for rhetorical and electoral purposes rather than to arrive at compromise policies.<sup>35</sup>

Another measure of partisan conflict that reflects the polarisation in Congress is the ‘party vote’ in which a majority of one party opposes a majority of the other party in a roll-call vote. This measure of polarisation has been increasing in recent years, especially in the House. From 1955 to 1965 the percentage of votes in the House that

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<sup>32</sup> Sarah Binder, *Stalemate: Causes and Consequences of Legislative Gridlock*, Brookings, Washington, 2003, pp. 24, 66.

<sup>33</sup> Richard E. Cohen, ‘A Congress divided’, *National Journal*, 26 February 2000, p. 4. The *National Journal* calculates its own liberal-conservative scores for members of Congress.

<sup>34</sup> Burdett A. Loomis, ‘Civility and deliberation: A linked pair’, in Burdett A. Loomis (ed.), *Esteemed Colleagues: Civility and Deliberation in the U.S. Senate*, Brookings, Washington, 2000, p. 9.

<sup>35</sup> On the decrease of the number of moderates in Congress see also Sarah Binder, ‘The dynamics of legislative gridlock, 1947–96’, *American Political Science Review*, vol. 93, no. 3, September 1999, p. 526.

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were party votes averaged 49 per cent; from 1967 to 1982 the percentage was 36 per cent. But after 1982 it began to climb, and in the 1990s, it reached 64 per cent for the 103rd Congress.<sup>36</sup> Party voting reached a record 73.2 per cent in 1995.<sup>37</sup> Senate scores on party voting roughly paralleled those in the House though at slightly lower levels, reaching a Senate record of 68.8 per cent in 1995.<sup>38</sup> Party unity scores, in which members of the two parties vote with their majorities on party-line votes, also increased to unusually high levels.<sup>39</sup>

Partisan differences in the Senate are often registered by the threat of members of the minority party to filibuster. The filibuster is a time-honoured convention (formalised in Rule XXII) in which any member (or members) can hold the floor as long as he or she wants in order to delay the consideration of legislation. Before the 1970s the filibuster was used occasionally when senators felt strongly about an issue and were willing to block Senate business in order to achieve their goals. In the 1950s filibusters were occasionally used to keep the majority from enacting civil rights legislation. In the early decades of the twentieth century use of the filibuster would occasionally peak at 10 per Congress, but in the 1980s and 1990s the use of the filibuster exploded to 25 or 30 per Congress.<sup>40</sup> The increased use of the filibuster and other dilatory tactics, such as ‘holds’ on nominations, has amounted to a ‘parliamentary arms race’ in which each side is willing to use the extreme tactic because the other side has used it against them.<sup>41</sup>

In addition to actual filibusters, the mere threat of a filibuster can slow the legislative process. As Barbara Sinclair has calculated, threats to filibuster major legislation have increased significantly in the past three decades. Presidential threats to veto bills also have increased sharply in the 1990s, from 15 to 25 per cent in the 1970s to 60 to 69 per cent in the late 1990s.<sup>42</sup> Binder found that in the 103rd and 104th Congresses

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<sup>36</sup> Barbara Sinclair, ‘Transformational leader or faithful agent?’, *Legislative Studies Quarterly*, vol. 24, no. 3, August 1999, pp. 421–49; and *CQ Weekly Reports*, 27 January 1996, p. 199.

<sup>37</sup> It was the highest since CQ began keeping the data in 1954, *CQ Weekly Reports*, 27 January 1996, p. 199. According to John Owens’ calculations party voting was the highest since 1905–06. See John Owens, ‘The return of party government in the U.S. House of Representatives: Central leadership—committee relations in the 104th Congress’, *British Journal of Political Science*, vol. 27, 1997, p. 265.

<sup>38</sup> See Richard Fleisher and Jon Bond, ‘Congress and the president in a partisan era’, in Bond and Fleisher, *Polarized Politics*, CQ Press, Washington, 2000, p. 4. Party unity voting fell off slightly from 2001 to 2004 because of consensual voting on homeland security issues in response to the terrorist attacks of 2001. Jacobson, *The Politics of Congressional Elections*, op. cit., p. 231.

<sup>39</sup> Sinclair, op. cit.

<sup>40</sup> Richard E. Cohen, ‘Crackup of the committees’, *National Journal*, 31 July 1999, p. 2212. See also Sarah A. Binder and Steven S. Smith, *Politics or Principle?*, Brookings, Washington, 1997, p. 10.

<sup>41</sup> Binder and Smith, op. cit., p. 16.

<sup>42</sup> Barbara Sinclair, ‘Hostile partners: The president, Congress, and lawmaking in the partisan 1990s’, in Bond and Fleisher, *Polarized Politics*, op. cit., p. 145.

either an actual filibuster or the threat of one affected almost 20 per cent of all items on the congressional agenda and 40 per cent of the most important issues.<sup>43</sup>

One consequence of the polarisation documented above is that Congress is less able to legislate in order to deal with pressing policy issues. The farther apart the two parties are ideologically (polarisation), the less likely they are to be able to find common ground to pass laws. And often, the parties would rather have an issue to debate than compromise and accept half a loaf.<sup>44</sup>

According to Binder's systematic comparisons of the ratio of actual laws enacted to important issues considered by the political system, two dimensions of polarisation outweighed even the effect of divided government: the ideological gap between the parties and the ideological distance between the two houses of Congress. Thus if one is concerned with the problem of 'gridlock' (which she defines as 'the share of salient issues on the nation's agenda left in limbo at the close of each Congress'), ideological polarisation in Congress is even more important than divided government (when the president's party does not control both houses of Congress).<sup>45</sup>

### *B. The decline of civility*

The traditional norms of courtesy, reciprocity, and comity that marked the 1950s and 1960s in Congress began to break down in the 1970s.<sup>46</sup> Reflecting broader divisions in US politics over the Vietnam War and Watergate, life in Congress became more contentious. Legislative language had traditionally been marked by overly elaborate politeness in order to manage partisan and sometimes personal conflict. But instances of harsh language and incivility became more common and more partisan in the 1970s and 1980s. In the House the Republicans felt increasingly suppressed by the majority Democrats through the rules of debate and legislative scheduling and, under the leadership of Newt Gingrich, began to use obstructionist tactics to clog up the legislative process.<sup>47</sup> The predictable Democratic response was to tighten up the rules even more to deal with disruptive tactics. After Republicans took control of Congress in 1994, relations between the parties continued to deteriorate.

Even the usually more decorous Senate suffered from declining civility. In the early 1980s Senator Joseph Biden remarked, 'There's much less civility than when I came

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<sup>43</sup> Binder, *Stalemate*, op. cit., p. 93.

<sup>44</sup> *ibid.*, p. 58.

<sup>45</sup> Sarah A. Binder, 'Going nowhere: A gridlocked Congress?', *The Brookings Review*, Winter 2000, p. 17.

<sup>46</sup> See Eric M. Uslaner, *The Decline of Comity in Congress*, University of Michigan Press, Ann Arbor, MI, 1993.

<sup>47</sup> Eric M. Uslaner, 'Is the Senate more civil than the House?', in Loomis, *Esteemed Colleagues*, op. cit., pp. 32–55.

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here ten years ago. There aren't as many nice people as there were before ... Ten years ago you didn't have people calling each other sons of bitches and vowing to get at each other'.<sup>48</sup>

Scholars David Brady and Morris Fiorina summarise the political context:

In a context in which members themselves have stronger and more distinct policy preferences, where they scarcely know each other personally because every spare moment is spent fund-raising or cultivating constituents, where interest groups monitor every word a member speaks and levy harsh attacks upon the slightest deviation from group orthodoxy, where the media provide coverage in direct proportion to the negativity and conflict contained in one's messages, where money is desperately needed and is best raised by scaring the bejesus out of people, is it any wonder that civility and courtesy are among the first casualties?<sup>49</sup>

Near the end of the 106th Congress, even the leadership in both houses was not able to restrain the harsh feelings that had been building up. Speaker of the House J. Dennis Hastert, who had taken over the speakership at the beginning of the 106th Congress, had a reputation (in contrast to his predecessor, Newt Gingrich) as a mild-mannered and workmanlike legislator who was more concerned with making deals and legislating than making symbolic points through hostile rhetoric. Yet one year into his speakership, the level of hostility between Hastert and Minority Leader Richard Gephardt was quite high.

The two leaders seldom talked with each other, even on necessary procedural issues, and they held each other in contempt. According to Gephardt, 'Frankly, the relationship is really no different than it was with Newt Gingrich ... Their definition of bipartisanship is, "My way or the highway"'.<sup>50</sup> According to Hastert, Gephardt's 'sole purpose is to try to make this House fail'.<sup>51</sup> Hastert went so far as to campaign in Gephardt's district for his Republican challenger in the 2000 election campaign, a very unusual breach of the usual House leadership decorum.<sup>52</sup>

The Senate was not spared the leadership animosities that plagued the House in 2000. Senate Majority Leader Trent Lott and Minority Leader Tom Daschle became

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<sup>48</sup> *ibid.*, p. 39.

<sup>49</sup> David Brady and Morris Fiorina, 'Congress in the era of the permanent campaign', in Norman Ornstein and Thomas Mann, *The Permanent Campaign and Its Future*, Brookings-AEI, Washington, 2000, p. 147.

<sup>50</sup> Eric Pianin and Juliet Eilperin, 'No love lost for Hastert, Gephardt', *Washington Post*, 20 March 2000, p. A4.

<sup>51</sup> Karen Foerstel, 'Hastert and the limits of persuasion', *CQ Weekly*, 30 September 2000, p. 2252.

<sup>52</sup> *ibid.*

particularly bitter in the second session of the 106th Congress as the Senate struggled with passing legislation during an election year. In early June 2000 Majority Leader Lott complained, 'The last couple of weeks before we went out has been the most obstructionist I've ever seen them'.<sup>53</sup> According to Daschle, 'No Majority Leader in history has attempted to constrain the Senate debate as aggressively as Senator Lott has chosen to do', and it amounted to 'a Senate version of dictatorship that I think is unacceptable'.<sup>54</sup> Lott replied, 'I have to go on the record saying I do believe I have been maligned unfairly ... to come in here and think we have to have a right to offer non-germane amendments to every appropriations bill that comes through, and then criticize us for not getting our work done—Oh, boy, that is really smart, really smart'.<sup>55</sup>

From the perspective of the Democrats, the Republican majority was refusing to confirm the nominees of President Clinton and was preventing them from offering amendments to legislation so they could have their priorities voted upon. From the perspective of the Republicans, the Democrats were trying to obstruct the flow of legislation with their amendments so that they could blame the Republicans for being a 'do nothing Congress' in the election campaign. The unusual personal bitterness and intemperate language reflected election-year politics in which much was at stake, but it also was a product of the polarisation of the Congress over the past several decades.

The decline in civility that marked the end of the 1990s continued into the early twenty-first century, as the polarised politics of the era continued to erode the relatively more decorous times of the mid-twentieth century. With the narrow Republican control of the Senate at stake, Majority Leader Bill Frist of Tennessee decided to go to South Dakota to campaign against Minority Leader Tom Daschle. Such personal campaigning by the Senate Majority Leader in the Minority Leader's home state was unprecedented in the twentieth century and highlighted the animosity that marked the polarisation in Congress.<sup>56</sup> Frist was successful when Daschle lost his bid for re-election in 2004.

On the floor of the Senate, the personal animosity resulting from the polarisation was illustrated when Vice President Cheney publicly said to Democratic senator Patrick Leahy, 'Fuck yourself'. Although such insults are common among politicians (and non-politicians), they are most often expressed in private. This particular insult was particularly egregious because it was not a comment about a third party but stated

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<sup>53</sup> Lizette Alvarez and Eric Schmitt, 'Undignified and screaming, Senate seeks to right itself', *New York Times*, 7 June 2000, p. A26.

<sup>54</sup> David Baumann, 'The collapse of the Senate', *National Journal*, 3 June 2000, p. 1758.

<sup>55</sup> Eric Schmitt, 'When senators attack: "Why, I oughta...":' *New York Times*, 11 June 2000, p. wk7.

<sup>56</sup> Carl Hulse, 'A longtime courtesy loses in the closely held Senate', *New York Times*, 24 April 2004, p. A7; Sheryl Gay Stolberg, 'Daschle has race on his hands and interloper on his turf', *New York Times*, 23 May 2004, p. 18.

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directly to the person insulted; it was not private, but public; it was said on the floor of Congress; and it was said publicly by the President of the Senate, the Vice President of the United States. In explaining his remark, the Vice President did not address a substantive difference between the two men, but said that it correctly expressed his feelings, ‘I expressed myself rather forcefully, felt better after I had done it’.<sup>57</sup>

Democrats in 2004 also complained that Republicans systematically excluded them from important conference committee negotiations between the two houses and that the procedural rules were used against them in ways that exceeded the Democrats’ partisan use of procedures in the later years of their domination of Congress. Republican senator John McCain commented on the partisanship of the procedural battles, ‘The Republicans had better hope that the Democrats never regain the majority’.<sup>58</sup> House Democrats also broke an unwritten seven-year truce on ethics charges in the House when they charged Majority Leader Tom DeLay with improprieties with regard to the 2002 redistricting of Texas that gained the Republicans several seats and his tactics in winning votes on a close Medicare vote in 2003.<sup>59</sup>

Former Tennessee senator and Republican National Committee Chair, William Brock, attributed the incivility, with ‘less dialogue, less comity, and more partisanship’, to safe districts and the resulting polarised politics:

Consistently now in general elections, well over 90 percent of congressional races are virtually uncontested ... If a candidate need talk only to those who are most fervent in support of the party, he or she doesn’t have to listen to, or even speak to, people at the center, much less those of the other party ... We’re increasingly moving to a political system that looks, and feels, like a political barbell: one where all the weight is at the ends of the spectrum, leaving those in the center with little voice or opportunity for impact.<sup>60</sup>

### **Conclusion: polarised politics and the 2012 elections**

In 2000, George W. Bush and Al Gore were both in the middle of the political spectrum. Once Bush came to office, however, he pursued a consistently conservative

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<sup>57</sup> Dana Milbank and Helen Dewar, ‘Cheney defends use of four-letter word’, *Washington Post*, 26 June 2004, p. A4.

<sup>58</sup> Charles Babington, ‘Hey, they’re taking slash-and-burn to extremes!’, *Washington Post*, 21 December 2003, pp. B1, B4.

<sup>59</sup> Charles Babington, ‘DeLay to be subject of ethics complaint’, *Washington Post*, 15 June 2004, p. A5.

<sup>60</sup> William E. Brock, ‘A recipe for incivility’, *Washington Post*, 27 June 2004, p. B7.

policy agenda, particularly his large tax cut proposals. After the atrocities of 9/11, the country united behind him, and Congress passed legislation intended to deal with terrorism. Arguing that Saddam Hussein was poised to use chemical, biological, and nuclear weapons (WMD) against the United States, President Bush was able to convince Congress that war with Iraq was necessary. In the 2004 campaign for the presidency, John Kerry favoured reducing US involvement in Iraq, but President Bush was able to convince enough voters that he was stronger on defence than Kerry and won the election.

By 2006 disenchantment with the War in Iraq was sufficient to allow the Democrats to win control of Congress for the first time since the Republican sweep in 1994. In 2008 Barack Obama beat John McCain in a historic election as the first African American to win the presidency. The Democrats still controlled Congress, and Obama was able to get some important Democratic policies passed in Congress. Large fiscal measures were passed in order to bail out financial institutions and stimulate the economy to recover from the Great Recession. Most prominently, Obama was able to push a historic health care financing reform, the Affordable Care Act (also known as Obamacare), through Congress over virtually unanimous Republican opposition. The law set in motion a plan to provide almost all Americans with health insurance. This law became a rallying point for Republicans who have continued to try to undermine or repeal it.

In 2010, due in part to the sluggish economy, which had not recovered from the Great Recession and the Affordable Care Act, Republicans were able to rally and mobilise voters to take back the House of Representatives. They were aided by ‘Tea Party’ groups throughout the country (named after the Boston Tea Party, a demonstration against British taxes in 1773). Tea Party supporters represented the most conservative base of the Republican Party, though they did not necessarily support the Republican Party establishment. Mainstream Republicans were tugged to the right in order to gain the support of, or avoid denouncement by, Tea Party activists. Tea Party supporters were able to influence a number of primary elections in the Republican Party, and some of their representatives pushed out more moderate Republicans in primary elections. In several Senate elections the Tea Party Republicans were so extreme that Democratic candidates were able to win, possibly saving control of the Senate for the Democrats.

The 2012 election for the presidency was bound to be close. The economy had still not recovered, and its poor state favoured the Republicans, as it would for any party out of office. The eventual Republican nominee, Mitt Romney, was hampered by having to win enough Republican primary elections to win nomination. The Tea Party and conservative wing of the Republican Party, however, saw Romney as a

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moderate—someone who would be willing to compromise with Democrats, which they considered selling out to the opposition. Thus when he ran in states in primary elections, Romney had to contend with several other would-be nominees who were far to his right. He thus presented himself to primary voters as a ‘severe’ conservative. His primary opponents painted him as a rich plutocrat who was not concerned with the problems of regular Americans.

President Obama did not face any serious challenges in the Democratic primaries and was able to stay in the moderate, ideological centre and not have to contend with opposition from the left wing of the Democratic Party. Romney’s image suffered from his primary opponents, who had attacked him as elitist and allowed the Democrats to continue to build on this negative image. Romney’s gaffs reinforced this image, when he spoke of his wife’s two Cadillacs or when he characterised 47 per cent of Americans as being dependent on government help and unwilling to take responsibility for themselves.

Public opinion polls indicated that more Americans supported domestic Democratic policy priorities (with the exception of disapproval of the state of the economy) than agreed with the Republican agenda of tax cuts and cutting government programs. National security policy has always been a weak point for Democrats running for office who were often accused of being ‘soft’ on communism or terrorism. But Obama was able to neutralise the national security issue through his aggressive drone policies and having made the decision to kill Osama bin Laden in May 2011.

Both parties focused their election campaign on the nine states that were evenly divided and could have been won either by the Democrats or Republicans. In the November election, most of these swing states went for Obama, and he won a solid victory with 51 per cent of the vote and a 332 Electoral College majority. In congressional elections, the Democrats picked up eight seats in the House of Representatives, not nearly enough to overcome the sizable Republican majority. In the Senate, the Democrats lost several seats, but not enough to surrender control to the Republicans.

Overall, after the 2012 elections, the status quo prevailed, with Democrats controlling the presidency and the Senate, and Republicans controlling the House of Representatives. Because of the polarisation of Congress described above, compromise on major issues was difficult. Fiscal policy was a sticking point, with House Republicans adamantly opposing any increase in tax revenues and Democrats not willing to cut social programs without some tax increases. Legislation dealing with climate change had virtually no chance to pass the House. Immigration reform

was possible but would have to overcome strong opposition from the right wing of the Republican policy.

Polarised politics are now endemic in the American political system and this condition is not likely to be alleviated soon. In 2014 the Democrats will likely lose seats in the House; during ‘off year’ elections, the president’s party has lost seats in every election but three in the past century. The president’s party in the Senate also most often loses seats, so it will be a struggle for Democrats to keep control of the Senate. Thus divided government is likely through 2016. The presidential vote in 2016 is too far off for speculation, but after eight years of Democratic presidents, Republicans will be energised and have plenty of policy targets to shoot at. If a Republican candidate can be found who is acceptable to the disparate and contentious Republic coalition, Republicans will have an edge in the 2016 campaign. But even if Republicans take control of both houses of Congress and the presidency, the Democrats, using tactics pioneered in Congress by Republicans, will do their best to thwart Republican priorities.

Thus polarised politics are entrenched in American politics and government, and policy-making on important issues is likely to suffer for the foreseeable future.



**Question** — Over one hundred years ago a politician of Irish extraction called Plunkitt put together a tome called *Plunkitt of Tammany Hall* and one of the classic chapters was on the congressman and it started like this, ‘the congressman is a hog, take a stick to him and beat him over the snout with it’. Have things improved?<sup>61</sup>

**James Pfiffner** — Plunkitt was the guy of ‘honest graft’, and Tammany Hall was a political machine in the State of New York that really controlled everything. They controlled the money and so forth and a lot of that was putting people of your party in power, jobs and so forth, relatively corrupt. In terms of controlling members of Congress, hitting them on the snout with a two-by-four catches their attention. The way you do that in the United States now with the safe district is somebody comes from your right. So if you are a moderate you do not have that two-by-four to smack them with so it cannot catch their attention. On the other hand, if you are on their far right or the far left, you have got that two-by-four which basically is a threat for the

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<sup>61</sup> Editor’s note: The quote ‘You can’t use tact with a Congressman! A Congressman is a hog! You must take a stick and hit him on the snout!’ is from chapter 7 of *The Education of Henry Adams* (1919) by Henry Adams.

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next primary election—if you don't elect me, I am going to be a true blue conservative or Democrat, so the people in the far wings have that two-by-four but the people that are in the middle do not.

**Question** — There is a trinity of woes I am going to raise. One is the Tea Party, which you did raise, the second one is the original sin of slavery, which you started your talk with, talking about the south, and you have covered the guns. So you have covered my three items and you have done them so beautifully but you have left out the question: where does the civilisation of the USA go to?

**James Pfiffner** — Thank you, and I think you have put your finger on very difficult fissures in American politics. The Tea Party, interestingly, are not really a political party and many of them do not want to be seen as part of a political party; they see themselves as sort of objecting. On the other hand they are in favour of conservative republican parties and the Republican Party calls on them very much to be part of their coalition. So the Republican Party, even if the leaders want to be moderate and do some compromising, are stuck with their very important faction there.

Slavery is the original sin in the United States. I think a lot of that has changed the laws over the last several decades. When I was young in the 1950s there was real segregation in the north as well as the south, it was terrible. There is a civil rights revolution in the United States, so republicans are not racist and very few people in the United States are really racist. Nevertheless, the dynamic of African Americans in US politics is a very real one. It doesn't mean racism, but it is still real.

And of course guns are one of those things that are just hopeless in the United States. When I went to Washington in the early 1970s I was walking down Sixteenth Street towards the White House and looking around, and I looked up at this big building and it looked like a bank. Huge pillars and five or six storeys tall and at the top it said NRA (National Rifle Association). All of a sudden it clicked in my head. That stuff I had been reading in textbooks, that makes sense. Those people really are powerful, so it is a very effective political weapon that can be used. As to the effect on civilisation, our politics are very contentious and polarised but I think our civilisation is still there. I do not think it is completely the end of western civilisation in the United States as difficult as our politics are.

**Question** — Do you think that the dynamics of the Electoral College system compound what you have said? What I have in mind is that in virtually all the states there is a winner-take-all system which means that in practice attention is directed to certain states such as Colorado and not to other states. I was wondering, if a proportional representation system were used within the Electoral College system,

wouldn't there then be a greater requirement to take into account the views of people throughout the nation?

**James Pfiffner** — Yes, the Electoral College system in the United States means that the president is elected not by the popular vote but by electors. Each state has a number of electors in their congregational delegation, plus two for the Senate. Each state after the 1830s has decided that it can get the most leverage of its electoral votes by putting them all in one basket. All you have to do is get the most votes in one state in order to get all of their electoral votes. Virginia has, say, 11 electoral votes and if you get 51 per cent of the vote, Democrat or Republican, you get all 11. It is not done by proportional representation. What that means is that if you can get the large states you will get a big chunk all at once and proportional representation would reduce that.

Electoral College results focus on the swing states. At the last election there were about nine swing states and the rest were basically safe one way or the other. Texas is safely Republican at this time and California and New York are safely Democratic and so the candidates for president do not go very much to those states even though they are very large and they have lots of electorate votes because it is a done deal. They know that the Republicans are going to take Texas and so Democrats do not go there to campaign much. Whereas the Democrats might get 40 per cent of the vote in Texas, all of those votes are not added up with all the rest of the Democratic votes in the country at the state level. So this causes presidential candidates not to swing throughout the country but to focus on the few states that might go one way or the other. This time it was about nine states and they spent all their time there. With proportional representation if you have 40 per cent of the votes in Texas you get 40 per cent of their electoral votes and that would make presidential candidates worry. Republicans would go to California and campaign hard to get 40 to 45 per cent of the votes because it would help them. As it is now with all of those votes in one basket, they know if they get 49 per cent it is not going to do them any good, so that, I think, is one of the problems.

I have written in favour of doing away with the Electoral College. I think the person who gets the most votes should win. In the United States it is not that way. Most of the time the person who wins the majority of the votes does win the presidency but about four times in US history it has not, and one of those four times was George Bush v. Al Gore in the 2000 election. Gore won 500,000 more votes totally in the United States than Bush did but it came down to Florida. It was very close there, down to 527 votes or something and interestingly Ralph Nader, the Green candidate, won a couple of million votes there. If you think that the Greens normally would have voted Democratic, which most of them probably would have, Gore would have been

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president, but he wasn't because of the Electoral College. So that is my criticism of the system.

There was an amendment proposed in Congress to change this in the 1960s, and it got through one house but not the other house. It is just not likely to happen because the calculation is 'how is this going to affect my party—Democrat or Republican—next time?' Everybody sees that there is too much risk of change there and so it is not likely that is going to change in the United States but it is one of those anomalies. Thank you for bringing that up.

**Question** — I wanted to ask a little bit more about this business of primary voting which is a fairly unique feature to America. Your analysis suggests that it ought to be blindingly obvious to moderates that they ought to get off their bums and go out and vote in the primaries. Is your analysis very new and why doesn't that response happen?

**James Pfiffner** — It is hard to get moderates out to vote. There are plenty of moderates in both parties that do vote but they do not have a chance to win. In safe districts there are not moderate candidates to vote for, so convincing them to do that is very difficult because the system is loaded in favour of the people who actually do turn out. If the political parties were in charge you might have a situation where the professionals would say 'well we want to get somebody moderate to middle, more likely to win' and so forth. This happened in presidential politics in the early twentieth century but once you turn it loose to the voters, Democratic voters or Republican voters, it is very difficult to get everybody to turn out. Even if the moderates turned out in a safe district, they still could only vote for one candidate or the other and those would probably be polarised.

In a sense it has always been that way but it is much worse now because there are more safe districts now due to redistricting, so the consequence of that is much greater now than it was in the past. Some states have said 'let's have a non-partisan commission of former judges, draw district lines' and so forth. That might help at some point in the future but it is not a simple thing to draw districts that are evenly split. It is easy to draw them so you are pretty clear that they are loaded one way or the other. Even if you had non-partisan commissions I am not sure that it would solve that whole problem. Polarisation is built into the American political class pretty strongly now. The safe seats keep that going but it is not the only cause.

**Question** — Professor I wondered if you could comment on the legislative innovation or otherwise around the Farm Bill and does this redefining the scope of the issue offer a pathway forward through gridlock?

**James Pfiffner** — The Farm Bill in the United States basically has been a deal between big agro-business, which gets billions of dollars in support, and liberals who are in favour of food stamps. That is, a subsidy for poor people whose income is below a certain level for a family of two or three or whatever it is. So liberals favour that, a social program to help poor people. Republicans favour big business and farming. Even if you are a liberal in the mid-west or you have large wheat fields, you cannot be against the Farm Bill. This was a combination that got the Farm Bill, which is worth quite a few billion dollars, to pass every year. Recently the Republicans in the House said ‘Okay, they’re having difficulty, the House and the Senate, coming to an agreement on this’, so the House said ‘Let’s take the food stamps and set them over here and just vote on the Farm Bill’, which basically says you Democrats vote for our piece of this, which is support for farmers and large businesses, and the Democrats say, ‘No way, because what you are trying to do is take food out of the mouths of poor hungry people’ and so forth. So that is where it stands now but it is interesting and striking that log rolling and pork barrelling—‘you vote for our stuff, we will vote for yours’—even something as solid as the Farm Bill is now hung up and cannot pass because of this polarisation and Republicans refusing to go along and pulling the food stamps out of it. It is a symptom of the polarisation that I have been talking about.



## **Political Engagement among the Young in Australia\***

Aaron Martin

Young Australians are often claimed to be disengaged from politics on a number of levels. But is this true, and to what extent? In this paper I want to interrogate the accusation that young people are disengaged from politics through the use of survey data looking, in particular, at political participation. This work draws on a book I published last year entitled *Young People and Politics: Political Engagement in the Anglo-American Democracies*.<sup>1</sup> In the second section of the paper I want to consider more generally democracy in the twenty-first century and outline some voter engagement projects I was involved with over the course of the last election, namely Vote Compass and the Citizens' Agenda, and examine the potential of these tools to engage the young.

### **Political participation**

We live in a period when the lack of political engagement among Australians, and others around the world, is commonly remarked upon. Pippa Norris writes that 'Many are alarmed that Western publics have become disengaged from public affairs, detached from campaigns, and bored with politics, producing, if not a crisis of democracy, then at least growing problems of legitimacy for representative government'.<sup>2</sup> This concern is particularly salient as it relates to young people.

But exactly what is the nature of that problem? Let me concentrate for the first half of this paper on political participation.

I should mention that by political participation I mean not only voting and joining a political party but what I would call 'non-electoral' forms of political participation as well, such as attending a demonstration and signing a petition. One of the features of political participation today is an expanding array of political activity beyond electoral forms of political participation such as voting or joining a political party.

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\* This paper was presented as a lecture in the Senate Occasional Lecture Series at Parliament House, Canberra, on 20 September 2013.

<sup>1</sup> Aaron Martin, *Young People and Politics: Political Engagement in the Anglo-American Democracies*, Routledge, London and New York, 2012.

<sup>2</sup> Pippa Norris, *Democratic Phoenix: Reinventing Political Activism*, Cambridge University Press, Cambridge, England, 2002, p. 221.

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We need then to distinguish electoral forms of political participation from non-electoral forms of political participation and ask whether young people are turning their backs on voting to engage in other forms of participation such as attending demonstrations or signing petitions.

In the literature there is often a debate between those who argue that political participation is in decline<sup>3</sup> and those who argue that political participation is evolving with non-electoral forms of participation such as signing a petition or attending a demonstration replacing electoral forms of participation.<sup>4</sup>

I think it is useful to see the data I am presenting here in light of those debates.

### *Electoral engagement*

Electoral engagement, I argue in my book, constitutes the most substantial form of political engagement for most citizens.

The first thing I will address is attitudes towards voting. The Australian Election Study asked respondents the following question: Would you have voted in the election if voting had not been compulsory? In 2010, 88 per cent of older people (aged 60 and over) said they would have voted but only 78 per cent of young people (aged 18–29) said they would have voted.<sup>5</sup>

We also have data from the International Social Survey Program (ISSP) which shows that this is accompanied by low levels of civic duty. In 2005 the ISSP asked ‘how important is it to always vote in elections?’ Respondents were asked to respond on a scale of one to seven, one being ‘not at all important’ and seven being ‘very important’. In terms of those who responded that voting is ‘very important’ older people are twice as likely to say voting is very important (the respective figures being 84 and 42). So, young people do not seem to see voting as a civic duty in the way older generations do. We know that these attitudes have real effects in relation to

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<sup>3</sup> R. D. Putnam. *Bowling Alone: The Collapse and Revival of American Community*, Simon & Schuster, New York, 2000; Gerry Stoker, *Why Politics Matters: Making Democracy Work*, Palgrave Macmillan, Basingstoke, England, 2006.

<sup>4</sup> Ronald Inglehart, ‘Postmaterial values and the erosion of institutional authority’, in J. S. Nye, P. D. Zelikow and D. C. King (eds), *Why People Don’t Trust Government*, Harvard University Press, Cambridge, Mass., 1997; Russell Dalton, *The Good Citizen: How a Younger Generation is Reshaping American Politics*, CQ Press, Washington, DC, 2008; Norris, op. cit.

<sup>5</sup> For the remainder of the paper ‘young people’ will refer to those aged 18 to 29 and ‘older people’ to those aged 60 and over.

young people being much less likely to be enrolled to vote and much less likely to vote.<sup>6</sup>

What about broader measures of political engagement such as party identification? In terms of those who do not identify with any party in 2010, 24 per cent of young people did not identify with any party as compared to just seven per cent of older people. This trend has been increasing over time.

So, I think it is clear that electoral politics is becoming less attractive to the young.

#### *Non-electoral political participation*

Okay, so what about non-electoral participation? As I mentioned earlier there is a debate about whether political participation is evolving or declining. So here again we have data from the ISSP on non-electoral participation. The data shows that the most common form of activity is signing a petition and young people are more likely than older people to have done this in the past year, 47 per cent to 35. The same applies for boycotting products, which young people are 16 percentage points more likely than older people to have done in the past year. Far fewer people have attended a demonstration but again young people are three times as likely as older people to have attended a demonstration in the past year. Young people are also much more likely to have participated in political activities over the internet (16 per cent to 6) and are much more likely to have visited a politician's or political organisation's website (40 per cent to 13).

Now, that data does not prove that young people today are more likely than young people 20 or 30 years ago to engage in these activities, but other literature suggests that these findings reflect generational rather than lifecycle effects. So, it seems that the way young people engage in politics is changing over time and this will obviously have implications for electoral commissions, parties and other organisations.

In short, it seems that electoral politics is becoming less attractive to the young and non-electoral politics more attractive.

#### *Implications*

There are a number of implications for these findings. First of all, electoral commissions will have to work hard just to maintain the current rate of youth voting

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<sup>6</sup> Aaron Martin, 'How high is voter turnout in Australia and could it be increased? Lessons for policy makers', *Representation*, vol. 49, no. 2, 2013.

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(electoral commissions are flying into a stronger headwind than before, it seems, in terms of attitudes).

Secondly, parties can no longer rely on habitual party supporters. Other research I have done shows voting patterns among younger generations are much more volatile than before with young people being less likely to support minor parties.<sup>7</sup>

Because young people seem to be amenable to different types of political participation, this creates opportunities for other organisations to mobilise young people in a way not possible before. The internet seems more a symptom than a cause of this.

We should also be aware of resource inequalities inherent in this change in styles of participation. If the trends I have documented continue, political participation will increasingly become the province of the resource rich (those with more education and so on) who are more likely to participate in non-electoral forms of political participation.

In summary, the political engagement/participation marketplace is more crowded and competitive than it was when you had parties as the sole conduits for political activity.

### **Democracy in the twenty-first century and voter engagement tools**

Having established the extent of young people's political participation I now want to turn to broader conceptions of democracy and outline some voter engagement tools I have been involved with as they relate to this.

#### *Democracy in the twenty-first century*

There are many different conceptions of what democracy entails in the twenty-first century. There has been a voluminous literature devoted to this topic. The debate feeds into an ongoing argument about what exactly the people's role should be in politics:

Historically, there has been a widespread suspicion of placing day-to-day political decisions in the hands of ordinary citizens, a suspicion that started

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<sup>7</sup> Aaron Martin and Juliet Pietsch, 'Future shock or future stability?: Generation change and the Australian party system', *Australian Journal of Politics and History*, vol. 59, no. 2, June 2013, pp. 212–21.

with Plato and Aristotle and continued with democratic theorists such as John Stuart Mill.<sup>8</sup>

But there exists a sharp tension between these suspicions and the views of those advocating a more participatory form of democracy. Put simply, these views can be divided between the ‘bringing the people in’ and the ‘leaving the people out’ positions.

### *Participatory democracy*

Supporters of participatory democracy see the solution to the democratic malaise as making politics more participatory—bridging the gap between politics and the people, the rulers and the ruled. This line of argument contends:

that democracy cannot be fully realised until citizens express their shared interests as members of a community ... participation in the democratic process is seen as vital to the political education of citizens if they are to develop this civic orientation.<sup>9</sup>

There is a long line of thinking in this area dating back, in modern political theory, to Rousseau and Mill. Jean-Jacques Rousseau ‘saw individuals as ideally involved in the direct creation of the laws by which their lives are regulated, and he affirmed the notion of an active, involved citizenry’.<sup>10</sup> John Stuart Mill argued that ‘by actively participating in the civic life, rather than allowing others to make decisions in their own interest, people learn and grow. In this view, involving the public can make better citizens, better politics, and better governance’.<sup>11</sup>

Modern variants of this argument include that of Benjamin Barber who views modern democracy as ‘weak democracy’ whereby people have little say in government affairs. This is in contrast to the ‘strong democracy’ that he endorsed, a democracy that ‘reflects the careful and prudent judgment of citizens who participate in deliberative, self-governing communities ...’<sup>12</sup>

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<sup>8</sup> Ian McAllister, ‘Party elite, voters and political attitudes: Testing three explanations for mass-elite differences’, *Canadian Journal of Political Science*, vol. 24, no. 2, 1991, p. 237.

<sup>9</sup> Paul Webb, Tim Bale and Paul Taggart, ‘Understanding democratic disconnect: An agenda for research’, Paper presented to the Elections, Public Opinion and Parties Annual Conference, University of Nottingham, 8–10 September 2006, p. 9.

<sup>10</sup> David Held, *Models of Democracy*, Polity, Cambridge, UK, 2006, p. 45.

<sup>11</sup> Norris, *op. cit.*, p. 5.

<sup>12</sup> Benjamin Barber, ‘Three scenarios for the future of technology and strong democracy’, *Political Science Quarterly*, vol. 113, no. 4, Winter, 1998–99, p. 585.

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These views have evolved into a distinct theory of participatory democracy. Carol Pateman, one of the most important thinkers in developing the notion of participatory democracy, argues that ‘participatory democracy fosters human development, enhances a sense of political efficacy, reduces a sense of estrangement from power centres, nurtures a concern for collective problems and contributes to the formation of an active and knowledgeable citizenry capable of taking a more active interest in government affairs’.<sup>13</sup>

The views of Pateman and C. B. Macpherson<sup>14</sup> hold that if people know that meaningful channels exist for them to get actively involved then a greater number will. This is not to discount the significant obstacles that may stand in the way of participation. Further, Pateman doubted whether many citizens would be very interested in issues outside of their community or electorate and that the role of the citizen in national politics would always be highly restricted. Theories such as these allow us however to see richer channels for participation than elitists allow. And, support for more participatory democracy has some empirical support and is in line with the views expressed by the Power Report in the United Kingdom.<sup>15</sup> Further, many have argued that from the increase in activism in other non-conventional forms of politics (as discussed in the previous section) we can infer an eagerness to get more involved in conventional politics, if it was seen to be more attractive—a question I will return to.

### *Elitism*

Challenges to participatory democracy have evolved from earlier arguments concerning representative democracy. By the eighteenth century, faced with an increasingly expanded citizenry, representative democracy was seen as a more practical model. ‘By ingrafting representation upon democracy’, wrote Thomas Paine, a system of government is created that is capable of embracing ‘all the various interests and every extent of territory and population’.<sup>16</sup> John Stuart Mill, an enthusiastic advocate of participatory democracy, was very much aware of its shortcomings in a large, modern society and also supported representative democracy. However, the debate amongst advocates of representative democracy has become more fractured. In trying to find a suitable form of government for such a large *polis* as we have today became an issue of contention. Debate has continued up until the present day about the best way to solve this problem.

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<sup>13</sup> Held, *op. cit.*, p. 212.

<sup>14</sup> *ibid.*

<sup>15</sup> Power Inquiry, *Power to the People: The Report of Power: An Independent Inquiry into Britain’s Democracy*, sourced from [www.powerinquiry.org/report/documents/ii.pdf](http://www.powerinquiry.org/report/documents/ii.pdf) (accessed 11 November 2006).

<sup>16</sup> *ibid.*, p. 94.

Trying to find a model that would fit with modern, complex society Max Weber and Joseph Schumpeter ‘shared a conception of political life in which there is little scope for democratic participation and individual or collective development’.<sup>17</sup> Schumpeter believed the ‘essential role of citizens should be relatively limited, confined principally to the periodic election of parliamentary representatives, along with the continuous scrutiny of government actions’—that would provide a check against the emergence of tyranny.<sup>18</sup> This was in line with concerns expressed at the time that ‘excessive’ participation might produce the mobilisation of the demos with highly dangerous consequences.<sup>19</sup> According to this formulation of politics, the notion of ‘rule by the people’ comes into question. Schumpeter certainly did not shy away from this. He wrote: ‘democracy does not mean and cannot mean that the people actually rule in any obvious sense of the terms “people” and “rule”. Democracy means only that the people have the opportunity of accepting or refusing’ the politicians that rule them. ‘Democracy is the rule of the politician’, he wrote.<sup>20</sup>

Elitists argue that the consequences of political participation by the public are either neutral or negative. According to this view political apathy or disinterest lies not so much with politicians and parties as with ‘the widespread failure of ordinary citizens to understand the fundamental nature of politics and citizenship’.<sup>21</sup>

Elitists are deeply sceptical of the public’s capacity to be involved in decision-making. They argue that the level of knowledge of the average citizen is dangerously low—a suspicion dating back to early survey research in the 1920s and 1930s which revealed that the majority of citizens were ‘not well informed, not deeply involved, not particularly active; and the process by which they come to their voting decision is anything but a process of rational calculation’.<sup>22</sup> In support of these arguments they also cite the separate works of Philip Converse and George Bishop. In his famous experiment Converse found that people, afraid of responding ‘I don’t know’, often answer survey questions referring to non-salient political issues almost randomly—a ‘non-decision’ as he termed it.<sup>23</sup> Building on this work is Bishop’s experiment that found that people voiced opinions on a government statute that never existed as did readers of the *Washington Post* when the paper celebrated the ‘20th anniversary’ of this Act.<sup>24</sup> This research should highlight the extent to which voters can hold

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<sup>17</sup> *ibid.*, p. 125.

<sup>18</sup> Norris, *op. cit.*, p. 5.

<sup>19</sup> Held, *op. cit.*, p. 142.

<sup>20</sup> *ibid.*, p. 145.

<sup>21</sup> Webb, Bale and Taggart, *op. cit.*, p. 239.

<sup>22</sup> Gabriel A. Almond and Sidney Verba, *The Civic Culture: Political Attitudes and Democracy in Five Nations*, Sage, Newbury Park, Ca., 1989, p. 338.

<sup>23</sup> James S. Fishkin, ‘The nation in a room: Turning public opinion into policy’, *Boston Review*, March/April 2006.

<sup>24</sup> *ibid.*

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contradictory and illogical positions and have little capacity for decision-making, argue elitists. Lack of interest in politics therefore may not be a problem but rather seen as favourable.

Further, some find fault with the finding that people have any desire to get more involved in politics. John R. Hibbing and Elizabeth Theiss-Morse in their book *Stealth Democracy* present a very strong counter to the participatory model of democracy. They find fault with much of the research that shows that while people may be disengaged with conventional politics they hold favourable attitudes towards participatory democracy. They argue that:

The last thing people want is to be more involved in political decision making: They do not want to make political decisions themselves; they do not want to provide much input to those who are assigned to make these decisions; and they would rather not know all the details of the decision-making process. Most people have strong feelings on few if any of the issues the government needs to address and would prefer to spend their time in nonpolitical pursuits.<sup>25</sup>

Their study found support for the idea that people want ‘Stealth Democracy’ that is hidden from view. ‘The people as a whole’, they say, ‘tend to be quite indifferent to policies and therefore not eager to hold government accountable for the policies it produces’.<sup>26</sup>

In regards to the above theories we may ask: what does politics mean to young people in the twenty-first century? In light of the lack of political participation (electoral engagement in particular) that characterises democracy in the twenty-first century this question is especially pertinent. Some have suggested that what is perceived as the current malaise may, in fact, be the default setting for democracy in the twenty-first century.<sup>27</sup> Peter Mair has argued that ‘what we now see emerging is a notion of democracy that is being steadily stripped of its popular component—a notion of democracy without a demos’.<sup>28</sup> The theories relating to participatory democracy and elitism prove fertile ground for exploring questions of importance to this study. Do young people actually want to get more involved in politics?

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<sup>25</sup> John R. Hibbing and Elizabeth Theiss-Morse, *Stealth Democracy: Americans Beliefs About How Government Should Work*, Cambridge University Press, Cambridge, England, 2002, pp. 1–2.

<sup>26</sup> *ibid.*, p. 2.

<sup>27</sup> Webb, Bale and Taggart, *op. cit.*, p. 2.

<sup>28</sup> Peter Mair, ‘Democracy beyond parties’ (paper posted on the eScholarship Repository, University of California, 2005), <http://escholarship.org/uc/item/3vs886v9> (accessed 15 November 2006), p. 1.

*The Citizens' Agenda*

In order to examine these questions, albeit in an indirect way, I would now like to examine a few voter engagement projects I was involved with over the course of the last election to examine whether, when given the choice, people chose to engage or not. We cannot at this stage say a lot about the extent to which young people participated in these voter engagement projects (although we will be able to say more as we analyse the voluminous data collected). These projects do nevertheless allow us to think about the questions above and then relate that back to young people.

The first thing I should say is that the context of the election had an effect on these projects, in good and bad ways. A poll that colleagues and I released on behalf of the Centre for Advancing Journalism at the University of Melbourne highlighted the magnitude of this problem. Majorities said the quality of political leadership, and political debate, was noticeably worse now than it has usually been in the past. Fewer than 10 per cent said it was 'noticeably better'. On top of this only 28 per cent said they had confidence in the federal government!

The first project I will discuss was called the Citizens' Agenda. This was a project that I was involved in with colleagues from the Centre for Advancing Journalism at the University of Melbourne.

It worked thus: we chose 10 electorates in which to conduct a Citizens' Agenda. These seats were chosen on the basis of a range of criteria including marginality, state representation, internet penetration and rural and urban locations.

In these 10 electorates a new social media group called OurSay organised the logistics of voting and the town hall meetings which followed. On the website citizens could either post a question, vote for a question (each registrant had seven votes) and/or then comment on a question. The question with the most votes was then discussed in a 'town hall' meeting which we invited all incumbents and contestants in the particular seat to attend.

Bob Tapscott has said that 'The first era of representative democracy was great ... But there was a weak public mandate and an inert citizenry'. He suggested we can now move 'toward a second era now where you have a culture of public deliberation and active citizenship'.<sup>29</sup> The Citizens' Agenda was our attempt to contribute to this.

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<sup>29</sup> Gavin Newsom and Lisa Dickey, *Citizenville: How to Take the Town Square Digital and Reinvent Government*, Penguin Press, New York, 2013, p. 11.

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I wrote an opinion piece in *The Age* before the election in which I ended the article saying: ‘This is a “world-first” trial and we’re excited to be a part of it. But do citizens actually want to be part of this conversation? Over to you’.<sup>30</sup>

Well, what happened? The success, as you may expect, was patchy. In the seat of Melbourne we had 195 questions posted on the OurSay website, 5973 votes and 227 comments. The town hall meeting was attended by over 250 people with the three major candidates contesting that seat attending this event and answering questions. The top question with 697 votes was by Mike Pottenger who asked: ‘In 2013, corruption and problems of integrity have been prominent nation-wide. What do you consider to be the most important reform needed in our political system to improve integrity and accountability, and what do you see as the biggest obstacle to that reform?’

Compare this to the electorate of Fowler in the west of Sydney where we had only eight questions, 102 votes and no comments. Only one candidate (from the Australia United Party) agreed to turn up. And the event overall was poorly attended and not something we would call a success.

We are at the very early stages of the data analysis but one thing that has emerged is that the project, in many seats, seems to have engaged the already engaged. Another thing, more specific to the topic of this paper is that, on average, participants at the town hall meetings tended to be older which raises questions about the commitment of young ‘clicktivists’ to political engagement.

We will be reporting in much more detail on this over the next few years. But for now we can say that when given the opportunity to participate in a ‘participatory democracy’ activity like this a relatively small amount of people took this up. As mentioned above, the views of Pateman and Macpherson hold that if people know that meaningful channels exist for them to get actively involved then a greater number will. But we could not see an overwhelming uptake of the Citizens’ Agenda. There could have been other reasons for this: we may not have advertised the events well enough or it may have had something to do with the nature of the election. But at this stage we could only label the Citizens’ Agenda a moderate success. Widespread ‘participatory democracy’ it was not and young people on average did not seem more engaged than others in this project.

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<sup>30</sup> *Age* (Melbourne), 13 June 2013, <http://www.theage.com.au/comment/having-our-say-in-the-political-conversation-20130612-2o49k.html>.

*Vote Compass*

Compare this to Vote Compass where we had more than 1.3 million people log onto the site and complete the survey.

What is Vote Compass? Vote Compass is an interactive electoral literacy application developed by a global non-profit network of political scientists. Its objective is to promote democratic engagement during election campaigns.

Australia was by no means the first country for Vote Compass to be used. Vote Compass was developed by Canadian political scientists and first launched during the 2011 Canadian federal election campaign in partnership with CBC, the Canadian equivalent of the ABC. It drew nearly two million respondents, making it one of the largest datasets of Canadian public opinion of public policy issues in the country's history. Vote Compass has since been run in two provincial elections in Canada and the last US election.

The premise of the application is relatively straightforward: based on their responses to a series of public policy propositions, users are presented with an analysis of how their views compare with the positions of each of the political parties.

The project is motivated by many of the concerns expressed in this paper. A desire to stimulate voter engagement in election campaigns in particular, but also to spread awareness of the public policy positions adopted by parties, increase accountability of politicians to their platforms, and prompt government to be more responsive to public opinion.

How does it work? Anyone can log onto the website and fill out a questionnaire of 30 questions (which included questions on issues like the economy, health, education and foreign affairs). We arrived at this set of questions after whittling down a list of over 100 questions which we developed over the course of a two-day meeting in Sydney. This was followed by numerous email and Skype correspondence to discuss what questions should be included. We arrived at what we thought were a set of questions that were representative of the most important issues facing Australia.

An example of the questions asked were:

- Australia should end the monarchy and become a republic
- The government's parental leave pay should be the same for all working mothers
- How many new immigrants should Australia admit?

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- Australia should spend more on foreign aid
  - Students in government and non-government schools should receive the same amount of federal funding
  - How much should the federal government do to tackle climate change?
  - The national budget deficit should be reduced, even if it means fewer public services
  - Private health insurance rebates should depend on income
  - The Australian Constitution should recognise Indigenous people as Australia's first inhabitants
  - Marriage should only be between a man and a woman
  - How much should the government spend on defence?
  - Boats carrying asylum seekers should be turned back

We then identified 17 broad areas like climate change, gender equality, immigration, budget deficit and defence and then asked respondents to ascribe an importance to issues as we recognised that people do not feel the same way about all issues and some will be more important to some people than others. For example, economic issues may be more important than other issues to many people.

As mentioned previously, based on people's responses to a brief questionnaire, Vote Compass generates an analysis of how the respondent's views compare to the positions of the parties. For various reasons we decided to only include the Coalition, the ALP and the Greens. We placed respondents' answers and the parties' positions on an economic right and left and social liberalism and social conservatism scale.

We then calibrated the parties. Party positions in Vote Compass were determined by way of a two-part process. A research team of political scientists based at the University of Melbourne analysed the available data on party positions vis-à-vis the issues reflected in the questionnaire. Based on this analysis, a determination was made as to how each party would respond to each proposition. The research team then initiated a direct dialogue with each of the parties represented in Vote Compass as an additional check as to the accuracy of its calibrations. All parties were provided with an opportunity to review and, if necessary, challenge the calibrations before Vote Compass was launched.

Voters could engage with this tool as much or as little as they liked. To complete the survey and see the results could take less than 10 minutes but respondents could go deeper into the results and compare themselves to the parties on particular issues or look up the party's position on different issues.

What lessons can we take from this? Clearly Vote Compass tapped into something. My personal view is that it was representative of the tenor of the election in which there was not a lot of substantial policy discussion. Vote Compass provided voters with an easy way to see where the parties stand when this was often obscured in media coverage. It was also novel for many and interactive.

We also did not have a major media partner with the Citizens' Agenda whereas the ABC heavily promoted Vote Compass. The Citizens' Agenda is also obviously more labour intensive in terms of attending a town hall meeting. It required something more than just filling out a survey.

So what does all of this mean for young people? It is actually a little too early to say. Vote Compass was completed more by young people than older people but its success was in engaging the disengaged, to the extent that many people came to Vote Compass from other streams aside from through the ABC site so it did not just engage ABC viewers and listeners.

## **Conclusion**

I have tried in this paper to show how engaged young people are in politics, in terms of their political participation in particular. In terms of electoral engagement the picture is quite bleak. This is concerning. My personal view is that there is no replacement for the aggregating mechanism that electoral politics and voting in particular play, which is why I am very admiring of the work that electoral commissions and politicians do. Electoral politics matters. And it is largely to do with the success of electoral politics, I think, that young people are a little neglectful of it. In terms of non-electoral politics, young people are more engaged. However, there is a real danger of resource inequalities being exacerbated here.

In the second section of the paper I outlined some models of democracy and gave examples of two voter engagement projects I was involved with. These are attempts to 'bring the people in'. In the case of the Citizens' Agenda it has been a moderate success but has been limited in large part to the already engaged and those attending many of the town hall meetings tended to be older rather than younger. Vote Compass, on the other hand, has engaged the disengaged to an extent and, we hope, improved the public's knowledge of the positions of the parties. There was clearly some appetite for this.

But in terms of what democracy means in the twenty-first century and what young people's place in it will be, that remains to be seen. What does seem certain is that different forms of engagement will continue to transmogrify with reverberations being felt around the political landscape.



**Question** — Your figures about engagement, or lack of engagement, of young people are very contemporary figures. Is this a new phenomenon? Is there any reason to believe that young people are less engaged now than in the past or, alternatively, is the inference one draws from your figures that people become more engaged as they become older?

**Aaron Martin** — That is an excellent question and it gets to the point that I made about ‘have young people always been this way?’ and the question of ‘is this actually generational effects or is it life cycle effects?’ The answer on electoral politics is that this is a generational phenomenon. In other words, young people today are less electorally engaged than were young people 20 or 30 years ago, so there is something different about young people today. On non-electoral participation, the honest answer is that we do not have the data to say because we have not asked these questions over a long period of time. On non-electoral participation, yes, young people are more engaged. Will that continue as they age? We do not know but we will find out. In regards to electoral engagement, I actually have figures in the book that show what is happening over time, but we are not sure in terms of non-electoral participation.

**Question** — Is it something different about young people today, or is it something different about politics or the political issues?

**Aaron Martin** — I guess that there is no clear answer to that. You could blame young people and say, ‘it’s actually young people’s fault they are lazy’ or you could say ‘actually, it’s just the rational reaction to the political system which they don’t feel is responsive to them’.

**Question** — Australia has an aging population which is changing its demographics. Is that having an impact on the engagement of the younger population?

**Aaron Martin** — It could do. I haven’t actually looked at that in a lot of detail. I think there will be various challenges in terms of where we allocate resources, because there will be an ageing population that will require certain resources to deal with. But the answer is I do not know whether or not that is having an effect.

**Question** — I get the impression that the older population has a slightly more conservative bent to the younger population and they are beginning to dominate the

political discussion and that might be causing younger people to become less engaged, because they feel their voice is becoming more marginalised.

**Aaron Martin** — I could say something in regards to the US, and what happened in 2008 with Barack Obama. It is a different system to Australia but I still think this story is constructive. When Obama was running for the presidency in the primaries in 2007, the conventional wisdom was that young people do not vote in primaries and it is no use in going after them; it is better to actually try and mobilise the base, which is older people. One of the things Obama thought was ‘if I just try and mobilise older people I am not going to beat Hillary Clinton for the nomination and John Edwards as well’, and the second thing was ‘well, that’s the conventional wisdom but maybe they can be mobilised’. He was laughed at by people in the Clinton team and others for deciding to go after the young people, because it was considered that young people do not vote. He went after that group, he mobilised their support, he won the nomination, and he won the presidency. I think even though there might be this tendency to just try and mobilise older people there is some advantage in trying to mobilise young people as well.

**Question** — My question is about Vote Compass and how it didn’t have questions about some very important issues that young people would be interested in. For example, the great increase in casual and part-time work, youth unemployment, crippling levels of HECS debt, the decline in apprenticeships in this country, and the housing affordability issue, would be five issues that would resonate with young people and I do not recall seeing them in the Vote Compass repertoire of questions. Was there any youth input into devising Vote Compass?

**Aaron Martin** — Vote Compass was not designed for young people and in a way it is a slightly uncomfortable fit with the focus of the talk today, which is young people. We designed the tool to represent the issues that we thought were most important in terms of Australians generally and we only had so much space because we didn’t want to design a questionnaire that had 100 questions in it. We started off with about 150 questions, which we got down to 30, so I think it is a good point but the tool was really designed for the general population to represent their policy interests rather than just young people’s.

**Question** — I only voted once in the United Kingdom before I left for various other countries and at that time you could not vote until you were 21. Because you could not vote you became more and more anxious to be able to vote. At the time I did vote in the United Kingdom, the two main political parties were very demarked, one from the other. You had a Labour Party which was in favour of nationalisation and which had social security from the cradle to the grave, whereas you had a conservative party

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which went back to the policies of before the 1939–45 war. Isn't this one of the problems today, that there is far less demarcation between the main political parties?

**Aaron Martin** — There is reasonably good evidence that reducing the voting age from 21 to 18 had a deleterious effect on voter turnout. The argument is that you could not have picked a worse year to try and engage young people in their first act of voting than at age 18, because they are finishing high school, trying to get a licence, thinking about university and just generally have other things on their mind. So it is a really terrible year to try and engage young people to be enrolled to vote and then to turn up. There is an argument that 16-year-old voting would be preferable because young people are less distracted by those sorts of things and you could enrol people through their schooling. There could be some truth to the idea that once you have actually got to a point you have been waiting for you might engage more. As to whether the parties are different or not, that is a question which I do not know the clear answer to but I think it is a really interesting empirical question.

**Question** — You mentioned that earlier generations were more likely to be involved at a younger age. I was wondering if this was due to the very times, such a World War II or the Depression and so on, and whether those older people who got more involved when they were young retained their interest? Have you studied the younger people who have been involved and those who have not been involved? Has there been any criteria such as the suburb they lived in, the school they attended, their apprentice, their services or their profession that they were in and so on?

**Aaron Martin** — The answer to a few of those questions is 'I don't know'. My book looked at young people in general so I am not sure about what specific groups are doing and I didn't do qualitative interviews, although I will in the future.

But I wanted to pick up on what I think is the most substantial point there, which is that in the past politics had a much more visible effect on people's lives. The two events that you pinpoint, the Depression and both world wars, in both of those cases the State or the political system, was doing a few really crucial things. It was sending you off to war, it was sending your friends off to war, and you saw your friends being killed in war, all as a consequence of decisions made here. It is probably the most serious decision a nation can make, to send young people to war. In the case of the Great Depression, you had enormous levels of unemployment where people were really poor and then you had this state come in and basically engage in programs that got tonnes of people into employment and out of having to beg for food. So in that case, is politics important to your life? Of course it is, it is crucial.

My argument is that politics today is also really crucial and also really important because although we cannot see it, if it was taken away we would find out really quickly. So young people's neglect of electoral politics is in part driven by the success of politics. I think you are absolutely right that in times past that connection was more visible. I think it is very important now to realise what a tremendously large and positive impact politics actually does have on our lives.

**Question** — Mine is not so much a question as an observation. With my participation with the election in Malaysia, I found that it is not so much the young or the old but it is more the digital divide. What we found was that in the areas where we could reach people via the internet, Twitter and Facebook, most of the people, young and old, would vote for the opposition for change. Yet for the areas that we could not penetrate through digital means, they would vote for the government because the newspaper was completely controlled by the governing party. I do not think that same issue applies in Australia. If it does, I am interested to know.

**Aaron Martin** — I can just say a few things about that. I do think that the digital divide does play out in Australia and I think we saw that with the Citizens' Agenda in particular and some people were engaged and others not engaged and I think the internet has tremendous potential to mobilise people. My larger concern though is that that just becomes a substitute for more substantive engagement. I think it was 'Groucho' Marx who said 'those who win are those who turn up'. I think that can also be said to relate to electoral politics; you do have to turn up and actually have to leave your computer screen and get engaged to effect real change. So yes, the digital divide does exist, but I think in terms of substantial change a lot of that occurs offline.

**Question** — With my experience in Malaysia, of what I observed, it did actually bring the highest voters. They do not have compulsory voting and I think last election they managed to get 82 per cent of people coming out and the opposition did get a popular vote, despite the fact that they lost the election to gerrymandering. But the digital power did get people to come out.

**Aaron Martin** — Maybe I will just end by saying that I made a case before about the importance of politics and Malaysia and other countries which are not established democracies are interesting cases. I was speaking to a group of Iranian dissidents a few years ago and I said 'where does politics happen for you?' Their basic answer was 'it happens everywhere, so when we go to see a sporting game there is politics, when we speak to our friends it is politics'. Part of the genius of politics in a successful democracy like Australia is that it allows politics to happen in one place and for us to get on with our lives without worrying about being coerced to do things by the government in other areas. So we can go to the football and not worry about it

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being a political thing. So I think that is worthwhile remembering and actually reminding ourselves that in contrast to countries like Malaysia where you might have high levels of corruption or gerrymandering and in contrast to countries like Iran where politics is everywhere in a really oppressive sort of way that we can actually get on with our lives for the most part and do not actually have to engage in politics so much. That, in part, is due to the success of our political system.

**Women in Federal Parliament: Past,  
Present and Future\***

*Rosemary Crowley,  
Amanda Vanstone and  
Laura Tingle*

**Rosemary Crowley** — In the last 200 years or so, women have campaigned to be able to vote in their relevant elections and, by the late nineteenth century, women in the western world had finally won the right to vote! Curiously, Australia, the British colony, was way ahead of the mother country. But the right to vote did not improve the lot of the majority of women—they were still second-class citizens. As our parliaments are the places for making the rules that govern our society, and where things could be changed, we needed women in parliament!

I acknowledge the arrival in this place 70 years ago of Dame Enid Lyons and Dame Dorothy Tangney and the women who followed them. But something more was needed and so emerged the women's movement of the late 1960s and 70s. It was not the first campaign by women but it was timely. The 1970s was a decade of great change—and/or the desire for change—in society, particularly seen in the women's movement, the Women's Electoral Lobby (WEL) and the development of women's shelters.

The dramatic effect of the WEL publication of the attitudes to women by men in parliament before the 1972 election, and newspapers articles about the same, produced a heady mix of public discussion and debate about the place of women in our society. In Australia it corresponded with the election of the Whitlam Government. Gough Whitlam addressed gatherings with the great words 'men and women of Australia'. I felt very clearly that I was being addressed! Whitlam won the election. Amongst other things he appointed the first women's adviser—in the world, I think, and certainly the first in Australia. Women were having a different presence in the public service and in the community. Free tertiary education made it possible for a great increase in the number of women going to university. Then Whitlam was sacked but the women's movement did not die.

In the 1970s there was a small increase in the number of women entering the parliament—and a further significant increase with the 1983 election of the Hawke Government. There were now six women in the House of Representatives—Joan

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\* These papers were presented in the Senate Occasional Lecture Series at Parliament House, Canberra, on 18 October 2013. The lectures marked the 70th anniversary of the election of the first women to the federal parliament and the 100th anniversary of women winning the right to vote and stand for election in Australia.

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Child, Ros Kelly and Elaine Darling were elected in 1980 and they were joined in 1983 by Wendy Fatin, Jeannette McHugh and Helen Mayer—and all six were Labor. They joined senators from all parties with the majority also Labor—Margaret Guilfoyle, Margaret Reid, Shirley Walters, Florence Bjelke-Petersen and Kathy Sullivan, Liberal and National; with Janine Haines, a Democrat; and Susan Ryan, Jean Hearn, Pat Giles, Ruth Coleman, with new chums Olive Zakharov, Margaret Reynolds and Rosemary Crowley—13 senators and seven of them Labor.

I was one of those 1983 senators and when I was elected I was the first woman the South Australian Labor Party had ever sent to Canberra, a mere 89 years after women had won the right to both vote and stand for parliament in South Australia. I believe I am the first federal woman minister from South Australia but I do not match the achievements of Amanda Vanstone, who served 10 years in cabinet, and is the longest serving woman cabinet minister.

The Labor government was elected with a platform that included the document *Towards Equality*.<sup>1</sup> That document spelled out 42 proposals to advance the position of women in Australian society and to give them ‘a choice, a say and a fair go!’ It included sex discrimination legislation, affirmative action proposals, child care, women’s health programs, equal employment programs, anti-domestic violence campaigns, education programs for girls, women and sports and superannuation and Medicare and more. The document also had clear descriptions of mechanisms to see all these things happen, including government mechanisms, like the Office of the Status of Women and women’s desks in departments and a women’s budget paper.

It was Labor senator Susan Ryan who had carriage of the sex discrimination and affirmative action legislation. The Sex Discrimination Bill led to some of the most outrageous claims and contributions I ever heard in the Senate. The bill actually made it unlawful to treat people differently in a number of areas, like housing, education, financial matters, employment and clubs on the basis of their sex, marital status, pregnancy or sexual preference. According to those senators who opposed the bill, this was going to lead to disaster—women would no longer want to stay at home, men would no longer open doors for women, women would no longer want to have children and much more outrageous nonsense. The major misunderstanding was that the bill was all about women and that of course set the misogynist hares running. In fact the bill was about removing different treatment of men and women in the designated areas.

Susan Ryan copped an awful attack, both in the parliament and in the newspapers, and both personal as well as political. After a lengthy debate, the bill passed with a

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<sup>1</sup> *The Australian Labor Party and the Status of Women: Towards Equality*, ALP, Canberra, 1982.

number of opposition senators crossing the floor to vote with the Labor government on this bill. The world did not stop spinning. Australia was not overrun by communists. Women did go on having babies, caring for them, cooking, getting married, and much more. And the media changed their stories and articles—the mad attacks stopped.

The bill was designed so that anyone experiencing discrimination could easily bring their complaint to the Human Rights and Equal Opportunity Commission, and it was free and complaints were mainly settled without recourse to courts and legal expense by getting the parties involved to sit down together and sort things out. The bill had another great design. At the end of each year there had to be a report of the complaints brought and to the shock of many, the first year had complaints from mainly working class girls about wrongful dismissal and from men in the army on the grounds that if they were single they had to live in barracks, use the mess hall and the ablutions block but if they were married they got a four-bedroom house—discrimination on the grounds of marriage status. No one had predicted this outcome but it did two things—it helped men and boys to know the law was there for them too, and it led to the defence forces changing the accommodation they have for all their members.

The affirmative action legislation which followed required that companies with more than 100 employees establish affirmative action proposals for women. An affirmative action agency was established to oversee the changes and to assist in its implementation. The establishment of a committee to work with business meant that there was little objection and the bill passed easily.

In 1984 Bob Hawke recommended that all government departments prepare an assessment of the impact on women of all ongoing and new programs and to identify priorities for women—to go with the new women's budget paper.

I thought that when we got into government with increased numbers of women, it would be all systems go for changes for women, amongst other things. I have to say I was quite taken aback when I discovered many women, not Labor, were opposed to our reforms, like sex discrimination legislation and affirmative action. They were also opposed to Medicare, one of the greatest benefits for women ever. Women were the ones who had to take sick family members to the doctor and when they could no longer afford that, they either shopped the doctors or had the family, particularly the children, get sick and sicker. Medicare was, amongst other things, a great women's reform.

However, the Labor government was in office and all these things happened—and much more. The women's budget paper showed how much each department spent on

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women and on men. It was a huge eye opener. For example the sports department showed that men's hockey had half the number of members as did the women but it got twice the amount of money. That got changed. What the Labor women and government did was to change things and change them for the better. We put new items into the parliament and onto the agenda. I remember Labor senator Pat Giles telling me that she had put uterus onto the Senate agenda.

I am not sure if it was Pat or me, but one of us asked Mr President if he was aware that Hansard, that claimed to be a record of all that was said in the Senate, was editing what we said into the third person masculine. Men and women became men, he and she became he. I had learnt from Gough Whitlam to read my Hansard every day and so I picked up these changes. There was sucking in of breath along the corridors of power but we got that changed. Now Hansard does record what is said.

Susan Ryan and I established early morning exercises in parliament which were great as preparation for those very long days. Susan knew of my interest in women's sport and so she appointed me to chair a government inquiry into women, sport and the media. It recommended the establishment of a Women's Sports Promotion Unit in the Australian Sports Commission and increased funding for women's sport. I have to say that 30 years on, not much has changed for financial assistance for our women sports champions—though the recent netball game against the Kiwis was live on TV and that is a great advance. The questions we asked back then are still pertinent today—women's sport does not get fair recognition or support. But it is not riven with scandalous and outrageous salaries or betting scandals.

Susan Ryan also established women's study courses in philosophy departments of a number of universities. Women went into those courses in considerable numbers. If they passed their first year, they had automatic entry into university—and many women made the grade and got university degrees. They then entered the workforce and contributed to the economics of the country. They were all older and had no need of child care. They were an economic benefit and I wonder if anyone has done the numbers and measured their contribution.

Yes, we women changed the agenda but the changes for women and for society were much more than items on the agenda. What changed after the sex discrimination legislation and the other reforms was a great broadening or transforming of society itself. We the people of Australia now had a different way of understanding the country we lived in, and of how we talked about it. There was a new conversation, a new language, a new culture in Australia. It may have taken time to change but change it did.

If you find it hard to accept that claim, then look at our society now and consider the changes for our sons and daughters, if not for our grandchildren. We now have many more women and men working in non-traditional jobs. The changes have expanded our economy as well as our conversation and culture. No, the changes did not happen overnight but happen they did.

The society we now live in is so much better for expanding the opportunities for everyone. That is why those people still missing from the main story must have our consideration, whether they are Aboriginal, Asians, migrants or newcomers from wherever, refugees and asylum seekers and always the women as well as the men.

From all of this, it follows that more women into parliament would be a good thing. But how to achieve that? There is an argument against increasing the number of women in parliament, as we do in the Labor Party, by preserving a number of places for women, because it leads to claims that such selection necessarily means tokenism and picking second-rate women.

I am amazed that some of the Liberal women still persist with this, when it is patently clear that excellent women have been elected into the Labor ranks. It irks me that one argument says that if you have to pick a woman, then you will only get token choices or second-rate candidates. It is not only offensive, it is wrong. Labor people are able to do two things at once—choose a woman and a woman of quality. These arguments sit strangely in a party which has a requirement that 50 per cent of all their Liberal committee members must be women. This was established by the women in Toorak in the 1940s when Bob Menzies was trying to establish the Liberal Party and he needed money. He approached the good matrons of Toorak who said yes, he could have the money, as long as 50 per cent of Liberal committee members were women. And so it has been ever since. And why is it never said of men? If we have to pick men, why is that not tokenism?

Another important outcome of our Labor rules changes—to guarantee 35 per cent women at that stage—was that a Liberal woman parliamentarian said to me in the corridors of power, that our success made it that much easier for the Liberal women. And I was able to tell her, after Liberal women's success in a subsequent election, that her party's success had the same sort of benefit for Labor women.

If you look at the figures today, you will find the evidence that the number of Labor women in all our parliaments is now 41.7 per cent, significantly more than the conservative women. There was a continuing increase of women of all parties in the 1980s and 90s. Three Liberal women joined the Senate, including Amanda Vanstone, Jocelyn Newman and Sue Knowles. There was also a Democrat and independent

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woman from Western Australia, one new Labor senator and also three Labor women in the House. Carmen Lawrence joined in 1994, Cheryl Kernot in 1990 and Natasha Stott Despoja in 1995. I am not going to list all the women who have entered. That percentage is now 40 per cent for the ALP and the figures bear out the effectiveness of this process.

Because I was the first ALP woman from South Australia, I established a number of ways to keep in touch and inform women, from small groups to meetings with other women's organisations and holding functions with good and interesting speakers. I appreciated that the women were very supportive and proud of me and of women in parliament—mostly.

There are two stories from my time in parliament. I visited Maputo, the capital of Mozambique, and met with a newly formed women and the law group. I was hoping to ask them questions but I never got one out. They devoured me with their questions—'what is your parliament like?', 'Can you describe how it takes place?' I told them how there is a very big room with a table in the centre: that the speaker sits at the top of the table to keep order and that one party sits on one side of the room and the other party on the other side. They looked at me with huge wide eyes. 'In the same room?', they asked. I regard that as one very sad statement of the effect of years of civil war. Yes, in our country we sit across from each other in the same room, testament to our country and its systems, with all their imperfections. It is also a very good reminder of just what we have in this country and why we should value it more and rubbish it less.

I went on a delegated legislation conference in London with the wonderful Annie Lynch, Deputy Clerk of the Senate. She was very proud that she had an all-women delegation, senators Pat Giles, Kay Patterson, Bronwyn Bishop and me. I spoke about the Scrutiny of Bills Committee, established by Alan Missen, a Liberal from Victoria, before I came into parliament. Annie later sent me the speech from the House of Lords where they quoted me on their way to establishing a scrutiny committee in their own parliament—a thoughtful act on Annie's part and much appreciated. Annie Lynch was a woman pioneer herself.

I mention this to remind me of how wonderful the staff of the Senate were and I suspect still are. They went out of their ways to assist us in the course of our work. I served on a number of Senate committees and later chaired some and the secretariat staff, along with the library staff, were just wonderful. I thank them all again. I also thank my personal staff again—much of what is attributed to us is the work of so many others.

Yes, I want to see more women in our parliaments. It is beyond debate, to my mind, that if we promote democracy, particularly its representative dimension, then we must accept 50 per cent women in our parliaments and nothing less. This must be the goal for the next century into the next millennium. Until women stand equal alongside men, we will not have achieved.

What our recent parliamentary history shows is that more women in parliament means just that—more women—but it is no guarantee of improvement of conditions for women.

I support the increased number of Liberal women and women of non-Labor parties in parliament and I congratulate them and at the same time, I oppose their policies, especially the things the Liberal governments did in 1996, and since, to dismantle the government machinery to assist policies and programs for women. One of the women elected in 1996 was Pauline Hanson who led a virulent and misinformed campaign against Australian Aboriginals and Asian migrants. I strongly opposed what she said. But if men of very different attitudes have been elected to our parliaments, then the same must also hold for women.

Against these negatives is the excellent counter of the RU486 legislation. Women from four parties in the Senate united to submit a bill to allow the importation of this medication for abortion. What an example, and what a success!

I have raised the importance of the cultural change that the women and the Labor government effected. It goes to the important point I made earlier—that when women were able to have a voice and to be listened to, they opened huge possibilities for the whole of society. They dramatically extended the agenda, they broadened the topics for discussion, they increased the economic wealth, the range of jobs, the education provision, the range of research and the intelligence of the community. Perhaps most importantly, they opened new areas for discussion, new items on the political agenda, and the language that went with that. And I love that the conversations—the cultural changes for women—are now happening in so many other countries. These changes enrich our country; so it is for our world.

Not long after I entered parliament, I was accosted by a Liberal man in parliament who challenged with ‘it’s not fair, why don’t we have a men’s health program?’ Back then I was inclined to say ‘you have been running the country for a century so what’s stopping you!’ Now I realise that back then there was no conversation about men’s health, no language about it, except about how they got heart attacks from the pressure of their busy lives. It was not talked about. Women started the conversation for women’s health and that has led to men’s health expansion to many areas—

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significantly to depression and *Beyond Blue* started by Jeff Kennett and prostates are now on television. See what we started!

The parliamentary way is not the only way to advance the cause of women, but it comes with the weight and the protection of the law and once in place, it is not so easy to dismantle.

I want to finish with a few words about our recent prime minister, Julia Gillard. There have been many women, on all sides of politics, who have been ministers, speakers, president of the Senate; women as heads of banks and on boards; women as premiers; women governors in three states, and one woman Governor-General. All of these women have acquitted themselves very well. Never have I read or heard any attack on those women except the premiers. There has been some attack but nothing like the vicious, virulent, persistent, sexist campaign waged against Julia Gillard after she became prime minister.

Some political cartoons were rough but it was the sexist ones that reached new levels—unheard of levels—of gross and disgusting sexism. It was fiercely overboard and it is worthy of some significant analysis—by others than me.

I liked that Julia said that her being the first woman prime minister has made it that much easier for other women to become prime minister in the future. I am sure that is true and I hope that the standards set for Julia Gillard are never repeated again. I have not checked the cartoons from 1943 but I am sure that there were never any to match 2013!

In the days after Julia Gillard was replaced I could not believe the air space in our news, papers, television and other sources. A letter to *The Age* on 16 September 2013 by Anne Cooper of New South Wales says in part:

Since Gillard was removed as prime minister by her party there have been no references to the sex of either of the male leaders, no reference to the authenticity of their relationships, no mention of their male privilege and no implication that their behaviour or performance is in any way related to gender. Every woman and man in this country who possesses an ounce of self-awareness has been deeply and painfully affected by the treatment of the former PM.

The wonderful example and lead that earlier women in parliament have provided, like Amanda Vanstone and I, has been set back by the treatment of our first woman prime minister. I trust that her generosity and dignity will lead to a better and balanced

picture so that in the not too distant future Australia has more women prime ministers who will be accepted in their own country.

I had the great good fortune to be in parliament in a government committed to improving things for women, with a number of women in its ranks. Women in parliament made a difference and the first steps were taken all those 70 years ago by two gracious women.

**Amanda Vanstone** — In looking at the records of the number of women in parliament I was shocked to realise that up until the recent election I had met and known reasonably well most of the ministers and many of the members.

Anyone can look up the records and see the numbers for themselves. What I will try and do is to give some of the flavour and feeling of being in the parliament in the eighties, nineties and early two thousands. In 15 short minutes it is impossible to do more than metaphorically run with a supermarket trolley down the aisles in my brain and pick out a few products. This is not a considered treatise.

How lucky was I to have my first years in parliament when both Susan Ryan and Dame Margaret Guilfoyle were in the Senate. Dame Margaret, a Liberal, was the first female in cabinet with a portfolio. There is often a lot of focus on the first this or that which is understandable. That might mean that the second and subsequent office holders get less credit than they should. Susan Ryan followed her. Sure she was not the first federally but she was the first for the Labor Party.

Margaret was an iron fist in a velvet glove. Labor senator John Button's remarks on her valedictory, that he would look across the chamber and amongst swine and see a rose, are testimony to her capacity. She kept perspective.

I recall walking over with her from the old Parliament House to the Lobby restaurant for a lunch at which some New South Wales party members and donors had wanted to meet some of 'the women'. Our party meeting had run over time and we were a little late. Sensing my concern about being late she gently but firmly made the correct situation crystal clear. We were senators doing our job, we are employed by the people of Australia and grateful as we are as Liberals to donors and simpatico as we may be with party members, we do not work for them, they are not our bosses.

On another occasion there was a party room debate as to whether we would move a censure motion over the government's treatment of a particular public servant believed by many to be Liberally-minded. Sensing an imminent biff many were into

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the fray and baying for blood. Margaret sat quietly and as the debate drew to a close made her contribution. She politely admitted she was simply unaware of how many of the speakers had direct knowledge of this matter (which I read as a sweet and charming code for: I am unaware because no direct knowledge has been evident in the debate and I suspect none of you have any). She recalled her knowledge of this person and his record under the previous Liberal government in dealing with a minister and her attitude was to say the least not positive. She made it clear that if there was to be a motion she would not be supporting it. I cannot recall now whether she said she would be absent from the vote or whether she said she would make her views plain if necessary. Maybe nothing was said on that. Her contribution made many who had spoken in the heat of the moment, more out of a desire to attack Labor than out of knowledge or principle, recant. It was calm, strong, informed and pointed. It was impressive. As I recall no motion was put.

In the old Parliament House, the architecture or more specifically the layout and facilities ensured ministers intermingled more with backbenchers of both sides. There was no ministerial wing. Rooms had a hand basin, a bench, a few cups and saucers and an electric kettle. The bathrooms were intermingled throughout the hallways. That meant the corridors had people going to and fro from the cafeteria, the dining room and the bathroom. That flow of people in turn meant that everyone would see each other much more frequently than in the new Parliament House.

That is how as a relatively new young backbencher for the opposition I ended up talking to the famous Susan Ryan whilst washing our hands in the bathroom. I still remember her saying that when my lot finally got into government I would be grateful for having had the experience of opposition. At the time I thought ‘this is easy to say from government’, but I know it was true.

One night I went with a staffer to her office to congratulate her on the passage of a bill for which I had not voted. The fact I did not like the bill did not mean it was not an achievement. Senator Crowley may remember this night. The then Finance Minister Peter Walsh was there and there was a justifiably celebratory mood. Her response to my arrival was not laced with the sourness that comes from narrow world views and petty politicians. Quite the opposite. She happily announced that perhaps tonight was a good night to break out that one bottle of ‘ideologically unsound’ champagne. How could I say no?

Both Guilfoyle and Ryan are the real trailblazers for women and for their respective parties. Neither played the victim card. They simply did their jobs and did them well.

Neither would have had a particularly easy time of it. The difficulty may not have been any overt discrimination. Rather it is just a fact of life that if you are the new one in and you are from a different world you will not feel as included as all the others do. They know each other, perhaps have overlapping networks they share that you do not. You will necessarily feel a bit on the outer if only in a social sense.

To the extent that agenda issues are discussed 'off line', that can mean that you are not in those discussions, because you do not go to the bar for a drink before dinner, or play tennis with the guys in the morning or whatever. You may say, 'So what? In the end, agenda items have to be dealt with at the meeting. Everyone gets to have their say at the meeting.'

But if informally, with no intention to lobby or to exclude, over the course of a few days before a meeting, discussion has taken place that leads many at the meeting to one particular point of view then there is much less chance that the outsider, however informed, will get much of a chance to sway opinion.

If Bob has already told Simon, Martin and Richard informally over the last few days that he thinks ABC, he is unlikely to have a female come in and occasion him to go back on what he told Simon, Martin and Richard. There are two exceptions to this. When ABC is not very important and everyone is happy to let other opinion hold sway is one. But if ABC is not important it probably will not get into the informal chatter before meetings anyway. That is more for the interesting and important stuff. The other example is where the outsider presents compelling evidence that ABC is a bad idea.

That might need a little explanation. Compelling does not mean strong and persuasive argument to the contrary. In politics and policy in particular there are usually a number of possible courses of action and the debate is about preferred direction from a range of roughly equally safe options rather than a good vs evil option. The outsider has little chance of changing the course of the meeting on preferred safe options. Generally to get a look in one might need to show the preferred option is high risk or to show that an alternative option offers much greater reward in terms of better outcomes or electorate approval.

From my own experience over time in parliament, being the only woman or one of two women at a meeting is a particular experience. Very few men go to meetings where they are the only male and certainly even less male politicians find themselves in this position. Men or women may have changed since those days but my recollection is that men were used to holding the floor, or to rephrase that, unaccustomed to women doing so.

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At the same time men wanted to be seen to ‘do the right thing’ and therefore your opinion was often sought when your perspective was not likely to add anything new because it was an issue where different gender simply did not bring a different perspective. Being the odd one or two out is not particularly difficult, it is just that the constancy of it is a bit wearing.

We all understand that a lot of small talk goes on before a meeting, whilst awaiting everyone’s arrival or during a coffee or lunch break. Where this is focused on the issue of the day or politics generally there is no issue. But a reasonably sized group of men, predominantly from the eastern states might want to talk about rugby union or rugby league or cricket or racing. That can leave many women out in the cold. (At least Victorians understand AFL.) It is important to note that no one is trying to be exclusionary.

I am certainly not suggesting that women, when together will focus on recipes and handy housekeeping tips. I am simply pointing out that left to our own devices any large group of one gender will not necessarily be a comfortable place for one or two of the opposite gender.

Every now and then I would have women MPs and senators and sometimes just the women senators for end-of-session drinks. We would laugh and tell stories about the guys who took themselves too seriously on both sides, the ones who were a bit slow off the mark and one who would often be so openly fake with his compliments that we were all revolted. All parties were there and nobody was, shall I say, indiscreet. I can assure you no man would have felt very comfortable and the reverse applies when the boys get together.

Guys are just going about their business and being themselves. They have grown up in a culture that led them to be in all-male meetings that led them to talk blokey talk when they are together. Having women around was as new for them as it was for the women.

Even in the late eighties and early nineties when there were significantly more women, albeit still, as now, a minority, women were seen as being ‘new’.

Some of the men would seek to make light-hearted jokes if two or more women were dining together. ‘Ah ha, the sisterhood are dining tonight!’ It was ridiculous. Was it out of the need to appear savvy or did they feel a little unsettled? Who knows? But what I do know is no one would seek to make either a comment or joke about a group of guys eating together. Some would stop by the table and make useless idle chatter. Perhaps to be nice, condescending as that attitude is (poor women they need a bit of

TLC) or more likely to confirm in their own minds and that of colleagues that they were SNAGS.

This reminds me of the story of the woman who says when she wants to go out, have a few drinks, relax, take in a movie and have some chat about interesting issues she goes out with the girls. When she is looking for a man she looks for a DIMBO (deliciously inviting male (brains optional)).

It is important to focus on the history of women moving into parliament as we are doing today. Nonetheless one way to help women parliamentarians is to stop asking them in the electorate to talk about being a woman in parliament. Stop tying them to that goldfish bowl. If we want to help them we will ask them to talk about the economy or taxation or industry. Stop making them the issue and give them a platform for the hard issues of the day. Women will succeed by doing their job well, not by being seen first as female and second as competent.

Reg ‘the toecutter’ Withers once responded to a question from me about what he thought by saying, ‘You’re paid the same as me, elected by the same. You figure it out’. He may have been attempting to be rude, surely not, but I did not take it that way. To me it was an affirmation of equality.

One of the difficulties for women in politics then was a particular weakness of many men. Ego is very important to them. Unlike women they have not been toughened up with centuries of being the downtrodden underdog. Their egos are thus particularly fragile.

A young man who worked for me was kind enough to point out to me what is now glaringly obvious. He said I thought if I went into a meeting with all the facts and figures and a well thought-out argument that I stupidly expected to win the day. He pointed out that if in his time in the public service another bloke had ‘showed him up’ at a meeting it would not be forgotten. The male ego, he pointed out, just hates others looking smarter. In front of other men, a woman being the perpetrator would be regarded as much more humiliating.

A road test confirmed that if I used almost the same strong language a male colleague had used when ‘going around the table’ I would be seen as being a very aggressive female whereas he would be simply making a strong point.

Here is a tip for dealing with those old world guys, young as they may be, who just have not moved into the century where women are equal. When they say something you think is ridiculous, do not verbalise it. He will go straight into defence mode,

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which sets up barriers. Just say, 'that's a really interesting idea' (as you tell yourself how crazy is interesting), then say you know lots of people who would agree with that (there are lots of crazies out there). He will feel relaxed, not under attack. Then say something like 'Just before you make your mind up on this ...' (He thinks this affirms him as the decision maker) 'there are just a few risks to watch out for, so as to ensure you don't end up getting burned' (He is thinking you want to help him). He will be ready to listen.

Much is said about women being able to achieve their full potential. We see in the paper today women who have made tremendous contributions across so many fields. It is tempting to think that it is a little easier for women in fields outside politics because of the nature of politics. It is a bit clubby, very competitive and combative and very public. In reality every industry has its peculiarities and the women recognised today have surely each faced their own set of problems.

Much is also said about selection on merit, both for preselection and for becoming office holders. A former senator and then MP, Kathy Sullivan, used to often respond to that remark with the question 'Really, how did you get here?'

On that topic the real benchmark is not whether effective women get their due. The truest test of equality is whether, if you think of the least effective man in a job, an equally ineffective woman could get that job?

A parliament, a ministry and a cabinet must reflect the community. The Liberal organisation gave John Howard a victory that swept many women into parliament. The time is obviously here to regain that focus and as MPs and senators retire make special efforts to entice competent women into taking on the role.

There are so many issues where gender perspectives are the same and others where they are not. I can recall a bill to deal with the sex slave trade which was necessary because Australia's slavery laws were the old adopted English laws. We can forgive lawmakers for not imagining that we would need new ones in Australia.

As the then Justice Minister I was able to introduce such legislation and finally it was passed. No doubt it has been amended and amended since the late 90s. I am not sure how quickly a male would have done that. In any event if you want to understand how sexist and shallow our society can be, consider the media's first response to the release of some intelligence highlighting the problem. The phone calls came thick and fast: 'Have you got one, have you got one we can interview?' She would have been just a piece of meat for the media machine.

Just a few products from the supermarket aisle.

**Laura Tingle** — When Bill Shorten’s election as leader of the federal parliamentary Labor Party was announced, the *Sydney Morning Herald* columnist Mike Carlton, with tongue in cheek, tweeted:

Mr Shorten looked radiant in a tailored charcoal suit, crisp white shirt and crushed mulberry tie.

A younger female tweeter responded, also with just a touch of irony:

I thought his hips looked big.

It is true, isn’t it, that what male politicians are wearing, or whether it makes their bum look big, is not always the first port of call in the way they are portrayed in the media, though there are exceptions such as Bob Katter and his very large, very Queensland hat.

It is hard not to start a review of the way the media has portrayed female parliamentarians on the very sore point of the obsessions with what they look like, if for no other reason than we have just gone through a tumultuous period in federal politics where what the prime minister was wearing, what she looked like, became an essential part of the daily political discussion.

Images are so powerful and the media, both because it works in shorthand and because it reflects back on us the views in our community, is prone to stereotyping.

A UNESCO report in 2009 described the common images of women in the media: ‘the glamorous sex kitten, the sainted mother, the devious witch, the hard-faced corporate and political climber’.<sup>2</sup>

Perhaps one of the reasons the media has had such trouble over the years—not just here but around in the world—in finding a way to portray women in politics is because so many of those stereotypes do not quite work. And of course, that may be partly because none of those stereotypes go to basic questions of competence and properly won authority.

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<sup>2</sup> UNESCO, *Getting the Balance Right: Gender Equality in Journalism*, International Federation of Journalists, Belgium, 2009, p. iv, [http://portal.unesco.org/ci/en/files/28397/12435929903/gender\\_booklet\\_en.pdf/gender\\_booklet\\_en.pdf](http://portal.unesco.org/ci/en/files/28397/12435929903/gender_booklet_en.pdf/gender_booklet_en.pdf).

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I am going to talk a lot about stereotypes, and how the ones applied to women in federal parliament by the media have evolved over the years. But if I was to only venture down that path, I would be doing a considerable disservice to the history of women in the federal parliament. I sometimes think that the frustration with dealing with the stereotypes overlooks both what actually happens in the parliament, the considerable advances that have been made by women in becoming accepted in parliament, their enormous contribution to policy and politics and also the positive changes that have taken place in the way the media portrays women MPs, certainly during the almost 30 years I have worked in the Canberra Press Gallery.

The thing that struck me when I started preparing this paper was how utterly shocking the numbers were—and had been—when I arrived in Canberra. In 1987, it was not only unusual for there to be female ministers, it was still astonishingly unusual for there to be federal politicians. There had only been 25 female senators since federation. But more extraordinarily from the perspective of 2013, just 11 female members of the House of Representatives elected in 86 years.

When I arrived in Canberra, there had been one Liberal cabinet minister—Margaret Guilfoyle—and one Labor cabinet minister—Susan Ryan. I remember when Ryan was appointed education minister by Bob Hawke in 1983. The cartoonist Patrick Cook drew Hawke saying something to the effect of ‘I have already made my biggest decision ... finding a job important enough for Susan Ryan’.

It was light-hearted but the cartoon reflected the mood of the times. Women in parliament were a trend that male politicians knew they should ascribe to. We were still talking serious novelty value in the media. It was post women’s lib but a time when the media went out looking for stories about successful women in business and politics but found them quite thin on the ground. The issue of the role of women was, by 1983, part of the fabric of the new government. Anne Summers was poached to head the Office of the Status of Women in the Prime Minister’s Department.

Yet I remember very well from this time the conundrum faced by my good friend Jillian Broadbent, who went on to be a member of the Reserve Bank board and the Chair of the Clean Energy Finance Corporation. In the early 1980s she was a director of one of Australia’s most successful merchant banks. Invariably, when journalists wanted to write a piece about women in business they went to her, because they had found earlier profiles in the clippings. Broadbent got to the point where she declined, in her wonderfully gracious way, to be part of any more of these pieces. ‘If people just keep seeing me and a couple of other women in all these pieces’, she said, ‘they’ll come to the view that we are the only ones who have actually made it’.

So the more sophisticated end of the media was a bit stuck: on the one hand you wanted to profile prominent women where you found them. On the other, there was always the risk that by writing 'gee and she's a woman' pieces, you were continuing the idea that it was unusual for women to be in such roles. Which at the time it was! And whether it was male politicians coming to terms with female arrivals, or the media, it was a little unclear how to proceed.

When I arrived in Canberra, the numbers of female senators was starting to grow but the number of MPs in the House of Representatives was still relatively small. There were 15 senators but just five female MPs. One of the first MPs to get a lot of media attention was Ros Kelly, the Member for Canberra. Ros got a lot of media attention. Not a lot of it was positive. A 1995 profile of Kelly notes that:

From the press has come allegations of using her children, her dog, her football team (the Canberra Raiders), a cooking book she wrote for constituents, her hair and more to further her political career.<sup>3</sup>

Her travails in dealing with the attitudes of her fellow MPs were also recorded:

In 1981, she won an apology from Sir Billy Snedden for a sexist innuendo in parliamentary debate. Two years later, the Coalition MP Bruce Goodluck suggested neglect in her return to work within a week of the birth of her first child.<sup>4</sup>

Mick Young was said to have commented when he was stood down as Special Minister of State during the Paddington Bear affair in 1984 that 'Within half an hour, Ros was in my office taking measurements for curtains'.<sup>5</sup>

In 1987, *Woman's Day* ran a profile of Kelly when she was appointed a junior minister. The heading? Ros Kelly: 'I'd quit politics for my family'.

Why have I spent so much time on Ros Kelly? Partly because she was becoming a minister at the time I arrived in Canberra but importantly she was the first Labor woman from the House of Representatives to become a minister.

As I mentioned earlier, there had always been more women in the Senate than the House and there is a very different atmosphere in the red chamber which I think was reflected in the way women in the parliament were portrayed. The more civilised

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<sup>3</sup> *Sunday Age*, 10 September 1995, Agenda, p. 3.

<sup>4</sup> *ibid.*

<sup>5</sup> *ibid.*

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nature of the Senate, its less gladiatorial atmospherics, its focus on the details of policy, tended to filter down to the way women senators have been portrayed over the years. If you think of the names that come to mind in terms of prominent federal female politicians in the last 30 years, so many of them are senators: Margaret Guilfoyle, Susan Ryan, Janine Haines, Cheryl Kernot, Rosemary Crowley, Amanda Vanstone, Bronwyn Bishop, Sarah Hanson-Young, Penny Wong. It is not a question of 'softer' treatment in the media, just the likelihood that, earlier on, the substance of what they were saying was likely to be able to cut through, rather than the stereotypes about the fact they were women.

It has been different in the House. I have always thought that there is no tougher test for a politician than standing at the despatch box in the House of Representatives. My personal view is that few women over the years have actually been able to muster the sense of authority and control over the chamber that you need to really pass that test. (Of course, not all blokes manage it either but it has been even harder for women and it has influenced the way they have been reported on in the media.)

Ros Kelly, for example, never quite conquered the House from the despatch box. The women who have managed it who immediately come to my mind are Carmen Lawrence, Bronwyn Bishop, Julie Bishop, Julia Gillard as deputy prime minister, and Tanya Plibersek.

I have also talked about Kelly because I think the 1980s really started to see the long road proper travelled upwards by women in federal politics in Australia. We had moved on from militant feminism to a time when women were seeking to get into politics simply because they wanted to do it and had the qualifications for the job.

There is a fascinating Canadian study from the 1990s that reviewed the changing media portrayals of women. There are lots of similar studies conducted in Europe and the US more recently with very similar findings. And it is a depressingly similar story to the Australian one, showing a certain lack of creativity in media stereotypes, and I think gives us some insights into the universal roots of the recent debate in Australia about the treatment of our first female prime minister.

The Canadian study argues that in the first two-thirds of the century, two strategies were used to 'normalise' women in politics, for which the authors of the study mean a woman's 'femaleness' was neutered. The stereotypes were built around a female MP's family relationships. Various examples given were women elected to parliament who were represented as the wife/widow, and thus as appendages of powerful husbands whose seats they had inherited. 'This implied that they held power not in their own right but in someone else's name', the study said,

Golda Meir and Indira Gandhi, two powerful prime ministers, in contrast, were degendered in a different way: as ‘grandmother Golda’ and ‘Nehru’s daughter’ respectively. Their political status was lowered because their actions were viewed through a family lens.<sup>6</sup>

The other set of stereotypes focused negatively on a female politician’s sexual capacities. For example ‘spinster’ was a stereotype with a pedigree going back to the suffragette movement of the turn of the twentieth century.

The study argues that one of the things that changed the stereotypes was neither changes in the way female politicians operated nor the way the media operated but the fact that, in many democracies, a gender gap started to be observed between the voting intentions of men and women which forced both the political establishment and the media to rethink the way politics worked.

The result was a whole new set of stereotypes emerged in the 1980s and 1990s, the most spectacular and most visible being that of the ‘superwoman’, applied to a ‘young, intelligent, active and ambitious woman who succeeds on “all levels” and “has it all”’. She combined a family with her career, and was seen as being ‘as groomed as she is competent’ in her ministerial responsibilities. The superwoman embodied both ‘traditional characteristics (family and children) with the modern traits of the businesswoman (superior IQ, enormous capacities for work, an iron constitution as well as charm and generosity)’.<sup>7</sup>

A second stereotype was that of ‘the champion’, which tended to be applied to women politicians ‘of a certain age’ who had led a more traditional life:

Often a woman narrated in this way has come to politics after she has proved herself in another domain, perhaps business, sports or various charitable organizations. Her children are usually older, and her family obligations more compatible with her public representation duties. She, too, pays attention to her grooming, is open to the media and aware of her previous accomplishments.<sup>8</sup>

There were others as well including being ‘one of the boys’ who benefit from a kind of acceptance but are, at the same time, ‘continually reminded that they are an

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<sup>6</sup> Kathy Megyery (ed.), *Women in Canadian Politics: Toward Equality in Representation*, vol. 6, Dundurn Press, Toronto, 1991, p. 136.

<sup>7</sup> *ibid.*, p. 143.

<sup>8</sup> *ibid.*, pp. 143–4.

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anomaly and may be placed in the unenviable position of being used as an alibi *against* women's interests'.<sup>9</sup>

The study noted that the important difference in the two eras of stereotypes was that, at least, the stereotypes had moved from women politicians being defined by what happened at home to being defined by their relationships in the public domain.

Built upon those stereotypes were narratives that applied only to women and which, amongst other things:

- tended to ignore the substance of a female MP's speeches in favour of her personal characteristics (like her looks, dress, hair)
- made women politicians responsible for women as a class and
- used 'feminism' to denote a negative personal characteristic.

The study argued that women MPs were evaluated differently to men:

- Women had to live up to a considerably higher standard of excellence than do men.
- The political performance of women was judged only by the extremes of the scale (good and bad), while men are evaluated across the whole scale, including the mediocre middle range.
- Women politicians had to live up to a moral code of sexual abstention not imposed on men.<sup>10</sup>

I have to say that all these things sound exceptionally familiar to me.

Ros Kelly observed at the end of her career, 'The media either absolutely loves you or absolutely hates you. There's no in between. Carmen [Lawrence] called it the Madonna-or-the-whore approach. I think it's absolutely right'.<sup>11</sup>

Cheryl Kernot was often described as a 'superwoman' in the years when she was at her political peak as leader of the Australian Democrats because she had a young daughter. But the number of female politicians in Canberra in the 1980s and 1990s who were younger and had small children was still reasonably limited.

The prominent women who received a lot of focus as personalities—rather than as ministers—in the 1980s and 1990s tended to be a little older. Think Bronwyn Bishop and Carmen Lawrence. Bishop cut through in her early days by breaking the more polite habits of the stereotype and monsterring public servants in estimates

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<sup>9</sup> *ibid.*, pp. 144–5.

<sup>10</sup> *ibid.*, pp. 151–2.

<sup>11</sup> *Sunday Age*, 10 September 1995, Agenda, p. 3.

committees. It was this aggression which helped cast her for some as a potential future prime minister. She brought this aggression to the House and has always applied it, along with her experience as an amateur thespian, at the despatch box.

Lawrence was a competent minister but she brought a politically lethal history of ugly controversy with her from her time as premier in Western Australia. When the relentless pursuit of her over those events by the Liberal Party led to a state Royal Commission, we saw one of the stranger episodes unfold involving the role of women in politics. Lawrence would attend the Royal Commission each day, surrounded by female supporters, bunches of flowers thrust at her like some feminist martyr. Female journalists in Canberra suddenly seemed under pressure to take Lawrence's side because they were women, rather than report the unfolding controversy for what it was: another nasty political contretemps in which Lawrence's hands were not entirely clean.

In 1996 and 1998, the surge of younger women coming into the parliament really started to take off. Female MPs with little kids became less of a novelty, just something that posed even more challenges for hard-working politicians. The women MPs tended not to plaster their kids all over their politics and media profiles. The number of female cabinet ministers increased and became less of a subject of controversy. They were written about for delivering, or not delivering, on their jobs.

But the real challenge came as women started to move into leadership positions. Julie Bishop ascended to be deputy leader of the Liberal Party. This put her at the centre of tactics meetings and shadow cabinet deliberations. But she sometimes found herself not written into accounts of the machinations of these bodies. And her ability to survive a cavalcade of opposition leaders passing through the top office between 2007 and 2009 tended to be written in negative rather than positive terms.

Julia Gillard was well liked as a deputy leader and deputy prime minister and reported on positively in the media for her competence and hard work. She was a strong performer in parliament. At the same time, it is hard to forget that an image that had a powerful effect on people's view of Gillard was the one of her sitting in the empty kitchen with the empty fruit bowl.

But the events of 2010 and her rise to the prime ministership saw all the stereotypes come screaming back, though Lady Macbeth seemed to be the dominant one.

It is worth noting that it was not just in Australia where the media had trouble making the leap from the general proposition of women in politics to the idea of a female

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political leader. In the US, the 2008 election campaign saw both Hillary Clinton and Sarah Palin drawn using different stereotypes.

One review of the campaign noted that it took a while for the media to really investigate the largely unknown Palin's record as governor of Alaska, or her view on important, controversial issues. Instead they focused on her unconventional family, beauty, and her intelligence or her lack of intelligence. She was asked inappropriate questions about her breasts and wardrobe. One spokesperson from CNBC stated, 'Men want a sexy woman ... Women want to be her; men want to mate with her'.<sup>12</sup>

Hillary Clinton, on the other hand, was already a well-known figure in politics. Newspapers often drew man-like features on Clinton as an army general, poking fun at her powerful presence. In one extreme case displayed on the YouTube internet website a KFC bucket read, 'Hillary meal deal: 2 fat thighs, 2 small breasts, and a bunch of left wings'. (Sound familiar?)

The weird thing about all this to me is that while all these things happen here and overseas, the electronic media in particular has an insatiable demand for women, particularly women who speak with authority on any subject, either on television or the radio.

Even after twenty years, I am still shocked when I have to turn down a radio or TV producer's request to appear on their program because of other commitments and they ask whether I know of another woman who could do it, even once another blonde woman.

This brings us to changes in the media that have in turn affected the way our federal politicians are portrayed. Once again we are not just talking about Australian phenomena. Media scholars refer to the 'tabloidisation' of the media. That is, a journalism that thrives on sensation and scandal, personalises, simplifies, ignores the public issues in favour of private ones, and favours striking visuals over serious analysis.

That process in Australia has been fuelled by the decline of the broadsheet papers and print media generally and in federal politics by the crossing of the Rubicon by Laurie Oakes in 2002 when he criticised Cheryl Kernot for failing to mention in her autobiography her extramarital affair while leader of the Democrats with Gareth Evans, then deputy Labor leader and a key figure in her move to Labor.

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<sup>12</sup> Donny Deutsch interviewed on CNBC program *Squawk on the Street*, 4 September 2008.

Some claim that this passed the legitimate public interest test since it cast a new light on Kernot's decision to change parties. I have never been completely sure about that. What it certainly did was make our politicians' private lives fair game. This had not generally been the case before this. And going back to the Canadian study, I believe it has revealed a different media standard for the way the media expect women to conduct their personal lives to the way it treats men.

Extensive revelations of male MPs' travel rorts in the late 1990s rarely explicitly mentioned, for example, that the wrongfully claimed expenses sometimes, but not always, involved the fact that the MPs were not sleeping in the beds they were supposed to be sleeping in.

More recently there have been cases of coy stories appearing suggesting federal ministers are having affairs with their staff with no names given, but rather threats that they will be exposed if they do not desist.

All this brings us to Julia Gillard. Nobody quite put the role of Gillard's gender in the nature of her prime ministership better than she did on the day she lost the leadership of the Labor Party: 'It doesn't explain everything, it doesn't explain nothing, it explains some things'.

Julia Gillard worked unbelievably hard and achieved a lot. She gave it her all. But my own assessment of her was that she was always a deeply flawed prime minister, even before she had to confront a wall of media and public hostility and craziness.

Certainly the circumstances of her rise created a new hostility to Gillard and awoke what turns out to be an element of appalling misogyny in Australian society to which I can attest from the emails and letters I have received about the former prime minister over the past few years which have been truly shocking in their nastiness. And I am not easily shocked.

But beyond the really crazy level of abuse, I think the former prime minister's portrayal in the media suffered because it affronted almost all of those too easy stereotypes I spoke of early. She was not married. She did not have kids. She could neither be cast as some bloke's female relative or as superwoman. When the media did discuss her relationships with men it was either to use them to ascribe sexually transmitted criminality to her, or to implicitly question her own sexuality.

And of course most noticeably, there were no limits put on either the comments or the aspersions cast on Gillard, even if she held the most powerful job in the country. So it was okay to suggest she be drowned in a sack, stand in front of signs saying 'ditch the

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witch’, or ask her whether her partner was gay. It did not even stop after she left public life.

I am ashamed to say the *Australian Financial Review* ran a gossip item just last month, on the back of a piece in *Woman’s Day*, for God’s sake, which asked whether Gillard and her partner Tim Mathieson had split up. The former prime minister was furious about the piece.

I found it objectionable for other reasons. On Friday, our Rear Window gossip column sanctimoniously thundered:

why the hell haven’t any other media organisations chased this huge story? Surely, the immediate breakdown after losing office of the former prime minister’s seven year de facto relationship is news of national significance? This is a bloke who lived in the Lodge, stayed at Kirribilli House and did the First Bloke thing with enthusiasm.<sup>13</sup>

Four days later, after Gillard had angrily denied the story and demanded, unsuccessfully, that it be removed from our website, Rear Window wrote this piece as it noted Gillard’s appearance at the Opera House with Anne Summers:

We wondered a few weeks ago whether Gillard might use the venue to unleash. We just hadn’t thought it would be on us. It was a piece in Bauer Media rag *Woman’s Day* that did that damage.<sup>14</sup>

How utterly gutless and pathetic. All that brave journalism demanding someone chase this ‘huge story’ of ‘national significance’ had simply become an innocent report of what a woman’s magazine had said. What is certainly true is that if you inserted ‘John and Janette Howard’ into that copy it would not have got into the paper.

I will conclude on that career enhancing note but simply observe that one of the changes that is taking place with social media and the internet is that our politicians—both male and female—have more ability to portray themselves as they wish to the public.

It is worth looking at the websites of our MPs and senators and see how they are choosing to do so and whether, even there, they are able to escape the stereotypes.

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<sup>13</sup> ‘Strange silence on Gillard status’, *Australian Financial Review*, 27 September 2013, p. 37.

<sup>14</sup> ‘A night at the opera with Julia Gillard and Kim Williams’, *Australian Financial Review*, 1 October 2013, p. 45.



**Question** — I do not have a question, I would just like to make a public acknowledgement and a thank you to Rosemary Crowley. You don't remember me Rosemary. When you were the Minister for the Status of Women in 1994, you and I met and discussed the possibility of having a national day that focused on breast cancer awareness and research, and you were very enthusiastic about it. I had been lobbying for three years, unsuccessfully, all of the politicians, and they were supportive but no one would take any action. You told me to write the proposal, and the subject for the proposal and the budget. It was accepted and in September 1994 Mrs Keating launched Australia's Breast Cancer Day. She announced the establishment of the Kathleen Cuninghame Foundation, now known as the National Breast Cancer Centre, for breast cancer awareness, and the National Breast Cancer Foundation for research. So because of your action, you have been responsible for saving many women in Australia from developing breast cancer and making them more aware of the disease. So thank you very much.

**Rosemary Crowley** — Thank you so much. I didn't expect a plaudit. But one of the things I did want to talk about was changed language, and one of the best examples I know, is that men had no health problems, except heart attacks, up until very recently. There was no language for men to talk about men's health. I think it is absolutely critical that blokes now learn to talk about health and that they are encouraged politically to do what women very comfortably did. So thank you for that support. So prostates, and probably a few other things besides, will soon hit the agenda.

**Question** — I have questions for Amanda Vanstone and Rosemary Crowley. Amanda, I have just been re-reading Tony Abbott's *Battlelines*. I note his comments on the Howard cabinet, that they could always rely on Amanda Vanstone to put a woman's perspective when needed. Otherwise she 'brought a practical common sense to the consideration of political problems'. So I'd like to ask you for a couple more examples of the women's perspective that you brought to cabinet, apart from the very good example of sex slavery, which you did talk about.

And to Rosemary Crowley, you emphasised the importance of measurement of the impact of policy on women and of decent data for this purpose. So I wonder why you think that the Australian Parliament, unlike parliaments in other Western democracies, has never had a standing committee on gender equality to oversight gender analysis of policy in government and the collection of adequate data. It seems to me if we had such a standing committee it probably would have pre-empted what happened this

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year, which was the dropping of the time use survey, the only ABS survey which measures women's unpaid work and its intersection with paid work and its contribution to the economy. We lost that this year. We didn't have a standing parliamentary committee with a mandate to keep an eye on things such as that. Thank you.

**Amanda Vanstone** —Look I don't know that I can help, because while some people do keep diaries, I never did. When I started in parliament, there weren't computers and I was terrified that if I kept a diary people would nick it, and if you told the truth in it—and why would you keep a diary if you didn't—your colleagues might find out what you thought of them! It might not be such a good idea for all relationships. As we all know, it is best sometimes to keep some things to yourself. But I think there would be plenty of occasions on a day-to-day basis where gender perspective might make a difference and be different, but I didn't try and keep a list of them. The welfare area would be an obvious one. There might be one in health. Perhaps there would be in sport. There would be a whole range of them but none particularly stand out.

I haven't read *Battlelines*. I do not read political commentary books because I think I am too busy saying what I want to say. To be frank, I am not terribly sure about them. In fact I was harassed by a publisher today who has been at me about writing a book. I am just not comfortable about it, because I know that if I sign on the dotted line—they send you letters with, you know: 'Money; sign here'—I will produce something and then they will try and goad me into telling stories I do not want to tell. If you have made a part of your political life being the good team player, I do not see why you would chuck that away for a lousy book where you pontificate on other people. I might do it, but that means I would have to avoid that, and that means they may not be interested in the book.

**Rosemary Crowley** — One thing I know about Amanda, it would make a good read whatever she wrote.

As to the data, about disaggregated data, I think it is terribly important and I was really very disappointed that one of the first things Mr Howard did was to do away with the women's budget paper. That was an amazing, interesting thing. I finished up at the United Nations shortly after that and I was approached by South Africa and Japan—because you have had a women's budget paper, we are planning to introduce those and would I care to support it? I was delighted to support it. I think South Africa has succeeded but Japan has not or the other way round. And it might be very interesting to do what you are proposing, which is to have something other than party political people who might set up the requirement for the data. The data from the

women's budget paper was extraordinary. It really quite shocked people. The example about women's sport is to the point and very easy to understand.

If you looked at social security, which spends a lot of money, I would suggest more than 50 per cent, certainly, would go to women. Whether you talk about aged pensions and so on, they would be much more fifty-fifty. But the data was really very interesting. People were shocked when they had a look at the disaggregated data, and I think it actually allows for more considered future policies in certain areas. So I would strongly support some way of getting back to collecting or having that kind of data and any other disaggregated data about men and women. It saves a lot of stupid arguments, and that is one of its very best reasons. So thank you for the question, I wish we had it still, one way or another.

**Question** — How can we encourage and empower more ethnic representation in parliament and particularly ethnic women?

**Rosemary Crowley** — In a way, what I would say was powerful about the women's movement was that it was started by women outside of parliament and so I would have thought that the best thing would be for ethnic women—and I don't know whether you would say all ethnic women, or whether it would be this group and this group and this group. But I think that the powerful thing about the women's movement in the sixties and seventies was that it was women who started it and women from across the board. In fact, I do not know how many of you were alive in the seventies. Very few; you are all too young. But I had lived in America in the sixties, where I learnt to riot with the best of them, and I think one of the things they had was the burgeoning women's movement. And it began to be in all places, everywhere. Would we go and protest at supermarkets at the price of goods? Would we protest at universities about something? Would we protest in schools about education and so on? But it was from the women themselves, and I would suggest that that would be one awfully good way to start. But you also might find a political group that was sympathetic and you might want to see if you could get some support and help in that direction too. What I do say is: we need more representation. Until we are actually in our parliaments talking about all the people in Australia, for and on behalf of all the people in Australia and, more importantly, listening to them all, then I think we are still short of what democracy really means.

**Amanda Vanstone** — I would like to add to that. I think it is a difficult road, and the reason I think it is difficult is this: unless you are a full-blood Indigenous Australian, you have got migrant blood in your veins. That is what we are: one of the big three migration nations—us, Canada and the United States. And so really, if you rephrase what you have said, it comes down to a representation of newer migrants here rather

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than older ones. Then that leaves you being seen to represent a smaller proportion of people. And the reason I think it is hard is, we are having trouble enough getting 50 per cent women in, so if you want to get more in from a smaller cohort it is going to be harder unless you run, in the end, on the basis of capacity. I think that is the way, always, to get in.

**Laura Tingle** — I was just going to add at the end, I was at a diplomatic function last week where a group of businessmen from another country were talking not about the lack of ethnic women in the parliament but the lack of ethnic diversity in the parliament. I think there is that broader point. Rosemary and Amanda know much more about the machinations of parties and how they choose people, but it seems to me that we are still stuck in a bit of a period of tokenism about these things. Where people say: ‘Oh look. We’ve got a Vietnamese person. Oh, actually, no they’re not, they are Chinese. You know, same sort of thing’, or whatever. It was the other way round during the election campaign, I think.

I think that the reality is that it goes to the way the parties choose people and that in the same way they do not see women as tokens, as our representatives, they sort of say ‘We are a much more diverse society and we should represent all of those diversities in the parliament’.

The winner of the 1911 international competition for the design of a new capital city for the new Commonwealth of Australia having been announced in 1912, and subsequent revelations of the interference of the department in the original design later that year having been made known to the winner, Walter Burley Griffin of Chicago wrote to King O'Malley in January 1913:

I had entered this Australian event to be my first and last competition, solely because I have for many years greatly admired the bold radical steps in politics and economies which your country has dared to take, and which must, for a long time, set ideals for Europe and America ahead of the possibility of their accomplishment.

Griffin's perception of the new city was that it would be a symbol of this bold new Commonwealth, as both a national and international entity.

While much of the 2013 year-long celebration of the city's naming on 12 March 1913 has been in Canberra itself, and by, with, and for Canberrans, there was always a view to the celebration of the national and international dimensions of Canberra. Indeed, the celebration has been ultra-local, regional, national, international, and very soon will also be extra-terrestrial, as a flag bearing the Centenary of Canberra logo will be taken by a Japanese astronaut into outer space.

In fact, I will begin with the logo, as there is a national aspect to its origin. Four years ago, we invited recent graduates and young professionals, at least one from every state and territory, to participate in a workshop to develop a new logo. These young professionals experienced an excellent induction into both the physical and symbolic realities of their national capital. Mentored in the task by His Excellency, Mr Michael Bryce, architect and designer of several very successful Australian logos, they came up with terrific ideas which resulted in a brand marker which has worked very well for us ever since. Its incorporation of Griffin's circles and triangles, and a 1913 font, yielded a sunny energy that still, for me, reflects that group of bright young designers. A number of these young Australians came to the capital for the first time, with the predictable prejudices of those who have only heard about it second or third hand, and often from those who have never been to the capital, or perhaps visited 30 years ago

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\* This paper was presented as a lecture in the Senate Occasional Lecture Series at Parliament House, Canberra, on 15 November 2013.

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or more, when it was still in its infancy. Some had received worn-out messages that there was nothing to do, no young people—a barren place, which I imagine was not even true in the pioneering frontier-town days.

Having freshly experienced the capital as it was in 2009 (it has already changed in the last four years), their opinions altered dramatically. One of the participants said ‘If Canberra *is* blank, then it’s a blank canvas on which we can draw ourselves in any way we want’.

He and his young colleagues learnt quickly that even though Canberra may indeed appear empty on the occasional, cold, high country night, this is a superficial impression; they became convinced of the richness beneath, in the history of the capital, in its collections and achievements, and to what extent all that can be drawn on for inspiration and fresh innovative content.

This also emerged as an emphasis of the Australian Theatre Forum which was hosted by the Centenary this year and which drew eager participants from all over the country. The collections here were acknowledged as rich resources for further creativity, not just in theatre, but for film, dance, literature and the visual arts.

Taking the time to invest in more than a superficial scan inevitably leads visitors to the conclusion that this capital, like other national capitals, represents an invaluable asset, not only in the cultural treasures it holds on behalf of the Australian people, but in encouraging participatory democracy via an understanding of the high ideals, vast aspirations, and history of achievement in arts and science (those two mainstays of article 27 of the United Nations’ Universal Declaration of Human Rights) upon all of which the capital has been built. And that asset is precious. Let me reference just one of the reasons why.

During the lead up to this year’s Centenary, the *Australian Financial Review* published the results of a survey of young Australians who were asked about systems of government. Oddly, and worryingly, in an age when a kind of cultural democracy is all-pervasive (you can vote on anything as your favourite film, piece of music, performer etc and you can blog your views to the world—to hell with expert opinion), a number of these young Australians said they did not particularly value democracy—and that another system might serve Australia just as well. This is quite different for young new Australians, many of whom seek residence or asylum here precisely *because* of our democratic system and the belief that they might get a fair go. But if there is complacency in young, second, or longer generation Australians, then I believe that strong signs and symbols of democracy are important, and believe that the national capital is well placed to provide them.

Much of this was discussed in our National Press Club conversation, 'The Future Journey of Democracy', a collaboration between the Centenary and the Canberra Multicultural Community Forum, and moderated by the ABC's Geraldine Doogue. There was a simultaneous conversation, both gatherings linked by satellite, at Federation Square in Melbourne, for the festival I direct there, The Light in Winter. The voices heard were Australian voices of diverse cultural background: Indigenous Australian, Muslim, Somalian, Iranian, Indian, Burmese, Greek, and many more. A valuable understanding quickly occurred, that the tools of democracy are *already* different throughout the world, and that the concept of democracy needs to be flexible enough to morph, in order to meet the needs of new and evolving democracies in places like North Africa, Burma, and Somalia, and even countries like India whose enormous population still struggles to achieve more effective participatory democracy. The key was thought to be 'inclusion', and one of our many challenges in nurturing and maintaining effective democracy is to ensure that these kinds of conversations, especially those which *include* the culturally diverse voices of Australia, replace the complacency which clearly dominates the social and political engagement (or lack thereof) amongst any number of Australians, certainly *not* just *young* Australians, whose democratic responsibilities are often neglected.

This focus on national symbolism has long been part and parcel of what the PACER (Parliament and Civics Education Rebate) program does annually for around 160,000 Year 6 schoolchildren from all round the county. For these young people, as for many recent new Australian residents, the capital makes for an inspirational visit. The curiosity they display at the Museum of Australian Democracy, and the obvious awe and respect they feel at the Australian War Memorial, are two of the more obvious signs that the capital's symbolic role is functional and powerful.

One of the ongoing projects which has reached far further than the borders of the ACT is the Canberra Diaspora. This project acknowledged the transitory nature of a national capital in which, for more than one hundred years, there has been a continuous process of movement in and out: from Indigenous habitation and ceremonial meeting and pilgrimage to the higher country, to pastoralists who then had to be moved on, then surveyors, engineers, builders and all the service-providers that entails, to Defence personnel, medical professionals, scientists, educators, students, politicians, public servants, diplomats, artists and sportspersons and at any time the 25 per cent of the population which comes from a non-English-speaking background. We appealed particularly to those who had been here, had served and made their contribution and gone again. The dedicated website has stories from all over Australia and the world, and I quote just one in support of arguing the importance of the symbolic role of the capital.

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Jacqui Martin now lives in Melbourne and at the time she uploaded her video she was head of marketing at La Trobe University. If you go to the website you will see she describes very funny stories about her first two trips to Canberra—both times vowing she would never return again. On the third visit she was strong-armed to the War Memorial for the first time, and she describes turning around in the tomb of the unknown soldier—looking down Anzac Parade across Lake Burley Griffin, to old Parliament house, to new Parliament House and says: ‘I actually burst into tears, and it was the first time in my forty something years of being in Australia that I really knew what it meant to be Australian’.<sup>1</sup>

There is a massive unrealised potential for the capital to be seen and used even more in this way. I suggest that, paradoxically, one of the biggest thorns in the side of such ambition is the tendency for some of those involved in political life, both politicians and press, to diss Canberra for very dubious and ill-considered reasons. I will say a bit more about that later, but would add now that I also believe the whingeocracy is probably, in any case, in its decline, since for younger generations and more recent Australian citizens, this *is* where the capital is, and *does*, happily for them and for many of us, have the kind of symbolic status demanded of a capital.

With regard to young visitors, I should add that Canberra has welcomed many more young people from all over Australia this year. To mention just a few, the Tournament of Minds national finals saw hundreds of bright youngsters engaged in finding performative solutions to complex challenges, and the Youth Parliament again considered the big issues for Australia. In the sporting domain, major gatherings such as the Kangaroo Cup and Special Olympics swimming added participatory sports to the capital’s special Centenary elite sporting program (for which the Australian Institute of Sport is the national centre). At the other end of the age scale, in the participatory stakes, the many Masters events held in Canberra this year demonstrated an enthusiasm for holding signature national competitions in the capital. Record numbers were recorded for many, including the Masters rowing event on Lake Burley Griffin, wildly under-rated it seems for such purposes. Not so, with Mt Stromlo, now rated as the home of mountain-biking in Australia; and how good it was to hear Canberran Caroline Buchanan named as Australian Cyclist of the Year 2013.

In that elite sporting realm, Canberra proved itself to be a successful host to major international events. Golf Australia is now quoted as saying that the Handa Women’s Australian Open, here for the first time at Royal Canberra Golf Club, was the best ever. The first ever international cricket match held in Canberra’s history (hard to believe, but true), between Australia and the West Indies, under brand spanking new lights at Manuka, was a sell-out success. Similar crowds and expertise in production

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<sup>1</sup> Jacqui Martin’s story for Canberra Diaspora, <http://vimeo.com/41272439>.

and delivery were reported for the Australia and New Zealand rugby league test, the Brumbies v. British and Irish Lions and the netball test. Add in all those Masters events, plus the national Indigenous golf competition, and together they demonstrate the capacity for the capital to host a wide range of major events, not for the pleasure of Canberrans alone, but as a sign of the increasing sophistication of this still young city, and of the well-rounded culture of this place. In the past, Canberra has been falsely represented as nothing *but* politicians and public servants, but one of the many legacies of 2013 will be some powerful busting of that outdated myth.

That Canberra has the liveliest and most participatory sporting community per capita in Australia is important for Australians to understand about their capital. That it has a lively and active Indigenous community which continues to preserve and expand traditional culture and practices is also important for Australians to understand. How many were aware prior to this centenary year and the profile it has created, that within 40 minutes drive from their capital, and within the ACT borders, we can view ancient rock art and hear the stories of those who once traveled long distances to observe law in the high country, to understand craft and food gathering practice, and how the land was cared for.

The enthusiasm and support across the board, of both Canberrans and the record number of visitors to the capital this year, surely justifies ambitions not only for first-class sports facilities in the capital, but also new performing arts facilities (this is the role that the Kennedy Centre plays in Washington), and that place called the Australian Forum, where the biggest and boldest ideas are debated. I would argue, as a South Australian, that these are not local facilities for the benefit of Canberrans alone, but constitute infrastructure, I hope undeniably excellent in architectural ambition, which strengthens the capital and makes us ever prouder of the way in which it symbolises our noblest aspirations—in arts, sports, ideas, science, research and innovation of all kinds.

In that case, these projects demand federal government participation, and at the same time they enable the continuing development of a city which Walter and Marion Mahony Griffin imagined one hundred years ago, and as Prime Minister Andrew Fisher expressed at the time:

Here, on this spot, in the near future, and, I hope, the distant future too, the best thoughts of Australia will be given expression to, both in legislative

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and administrative acts. I hope this City will be the seat of learning as well as of politics, and it will also be the home of art.<sup>2</sup>

The federal government's generous contribution to the new National Arboretum Canberra already ensures an enduring legacy of the centenary year, one which is beyond the ambitions of political terms and indeed beyond the ambitions of any single lifetime: it will be at its best 100 years from now. I hope that one of the over-arching legacies will be the stimulus of a continuing collaboration between the federal and territory governments to allow this young city to continue to mature, for the benefit of all Australians.

While the capital has been enriched throughout 2013 by a program which has celebrated the history and the achievements of this still young city, its present capabilities, capacities and rich cultural landscape, its symbolic role as the seat of federal government, and thus its connection to the nation and the world, have also been firmly in mind, and ever present throughout the year.

A priority in programming was Indigenous content. I detailed this content in my Schuman Lecture in July this year and it can be found online at [canberra100.com.au](http://canberra100.com.au) and also at the ANU's Centre for European Studies. The program demonstrated not only the richness of local Aboriginal culture, and allowed many local traditional stories to be told and talent to be profiled, but saw Indigenous Australians from all over the country welcomed here and meeting local communities—they came from Roeburne in the Pilbara, from Elcho Island and the Torres Strait Islands, East Arnhem Land, Central Australia, Brisbane, Melbourne, New South Wales and South Australia.

This was a vast and rare program, made possible by the federal government's contribution to the Centenary program, and included *Seven Sisters Songlines*, a collaboration with the ANU's Diana James as part of a huge survey of performative and visual representation of this story which is told, sung, danced and painted by Indigenous Australians across a vast sweep from west to east coasts. These collected representations are building to an even more comprehensive survey in future years, and we were honoured to support one of the first major manifestations, directed by Wesley Enoch, Stradbroke Island man, and first Indigenous artistic director of a state theatre company (Queensland). The performances were held at the National Museum of Australia which holds within its architecture the symbolic red line which points us directly to Central Australia whence this particular version of the story and its owners and performers came.

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<sup>2</sup> Andrew Fisher, Speech at the ceremony to lay the foundation stones for Canberra, 12 March 1913 in *Canberra: Capital City of the Commonwealth of Australia*, Government Printer, Victoria, [1913], p. 23.

Acknowledgement of original habitation and custodianship for tens of thousands of years constituted an appropriate prelude to a celebration of the energy and activity of the last one hundred.

In a nod to the original quest for a site for the new capital, we ensured the inclusion of the borders in an early salute to the surveyors, and to the ACT's 'unmade edges' in community artist projects at Tharwa, Uriarra, Hall, Pialligo, Oakes Estate and Stromlo. The surrounding region has also seen activity, acknowledged by the Centenary, in Goulburn (for the 150th anniversary of their status as Australia's first inland city), Queanbeyan in its 175th year, Leeton (also designed by Walter Burley Griffin and celebrating 100 years in 2013), Yass, the Snowy Mountains, Bega and Jervis Bay, while the Wreck Bay community presented a superb exhibition *Windsongs and Waterlines* at Canberra Museum and Gallery and Lanyon.

Beyond the borders and nearby sites (many of which were candidates around 1910 for the new capital), the connections to regional Australia have been significant. Because of the role I undertook here, as Creative Director of the Centenary of Canberra, I have had to learn and understand much more about Canberra and its history, present and future. I first visited Canberra, often, but fleetingly, for family reasons; but since my second Canberra phase, a much deeper encounter with the place twenty years ago, I understood that whatever opinion might be expressed outside, possibly in ignorance of the real Canberra, the minute they are invited to the capital there is a sense of pilgrimage, and, whether in celebration or in protest, by invitation or intent, a sense of occasion. Since the time when Canberra gave me the priceless opportunity to add another string to my professional bow, that of artistic and creative direction, I have understood that to be invited to the capital just to join a meeting, or to come here to lobby and persuade is a matter of pride to any Australian. There is an instant sense that one's ideas, one's work, one's life *matters* on a national scale.

Any artist I invited to participate in the National Festival of Australian Theatre was intensely proud to show their work here: and so it was this year for all those companies which comprised Collected Works: Australia, the Canberra Theatre Centre's 2013 subscription program, which included works from every state and territory in the country.

This season included multi-Helpmann Award winning *The Secret River* which was co-commissioned by the Centenary of Canberra, along with the Sydney Theatre Company and the Sydney and Perth festivals. It also included Circa's *Wunderkammer* from Queensland, *Shrine* from Black Swan in Perth and Big hART's *Hipbone Sticking Out* from Roeburne, *As We Forgive* from Tasmania, *Thursday* from Brink in South Australia, Bell Shakespeare's *Henry 4*, which premiered in Canberra, and for

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which John Bell was a Helpmann Award nominee, Ilbijerri Theatre Company's *Jack Charles v. The Crown* from Victoria, *Home at the End* from the ACT and *Wulamanayuwi and the Seven Pamanui*, the first ever theatre show from the Tiwi islands.

State and territory governments contributed generously to ensure this remarkable season. It spoke volumes for the challenges we continue to face in touring the very best of our theatrical and choreographic endeavours for the pleasure and enlightenment of all Australians. We produce so much good work, and tell so many superb stories in such skilled and awe-inspiring ways, yet fail to ensure that the best of this creative endeavour is shared with all Australians: their efforts are largely confined to local seasons only. One of the many enthusiastic reviews of *The Secret River* declared it 'unmissable': yet even with sold-out seasons in only three cities, most Australians will never see it. The season for Canberra's Centenary displayed the quality of the national wealth of performing arts which could be shared annually with so many more, if we could establish an effective and suitably funded touring mechanism—at very least to all capitals, if not regional centres as well.

The flipside of that national coin is, of course, the nurturing, encouragement and profiling of the creativity arising from the regions themselves. One of the most profound connections we made between the regions and the capital was via a project called One River, also made possible by the federal government's assistance. You can still explore this project by searching One River online: the website will be archived by the National Library of Australia for at least the next five years.

The project evolved from the moment I learned that Canberra is the biggest city in the Murray–Darling basin, and that the Murrumbidgee River runs through the ACT to join the waters which eventually flow to the mouth at Goolwa. The reality of this mighty river system provided a way for Canberra to unite four states and a territory during the centenary year.

My motivation for the project came from a personal place of long-held affinity with the river. My mother was born on the banks of the Murray at Cadell, where her father operated the Cadell–Morgan punt. I have been aware of the river and its people all my life. On my father's side, my late aunt had once been the Mayor of Goolwa and I had been aware of the silting issues at the mouth for many years. I had a mentoring role for some years at the Mildura–Wentworth Arts Festival, and was aware of the pain which diminishing and inconsistent water allocation issues caused. I had a heartfelt pull to river issues, and for the first time, unexpectedly, the Centenary of Canberra gave me the opportunity to create a conversation wider and deeper than the divisive question of water allocation.

This meta-project linked many individual projects the length and breadth of the Murray–Darling through Queensland, New South Wales, the ACT, Victoria and South Australia. In this respect it means the debunking of another myth about the national capital—that it is remote. What other city can claim such physical links to four states and a territory?

The project also demonstrates the liveliness of remote communities throughout the system, and these are evident on the website. The main focus of the project eventuated in 10 artist projects—in Augathella, Mitchell, Bourke, Canberra, Narrandera, Sandigo and Boree Creek, Lakes Mungo, Hattah and Hawthorn, Mildura–Wentworth, Albury–Wodonga, Murray Bridge and Goolwa–Murray Mouth. These projects have demonstrated the power of the arts to connect communities and to allow stories to be told and shared in lively, creative and engaging ways. Thousands of river people have been involved.

An installation, *Treasures of the River*, in Augathella, saw a call-out from schoolteacher and emerging artist Joanna Sutton for historical photographs from residents in the district. Working with students, Joanna in turn turned a selection of these photographs into postcards and mounted them as a large-scale installation. The project brought this small community together, to relish the artwork, to appreciate the presence of the artist in their town, and to add value to an appreciation of where they live. The local tourist information office is going to sell the packaged cards and there has been a subsequent geocaching project to uncover the secrets of the Warrego. The artist told me, with genuine passion, that the project had brought her and her husband into contact for the first time with a comprehensive range of the community who had been keen to show their photos and have the conversation.

The conversation was also extended to experts in a series of symposia which included water experts, and beautiful films made by Malcolm Mckinnon—all of which can be found on the website.

Artist Jude Roberts worked with residents in Mitchell, to place large stretches of paper at the waterline of the Maranoa River. The water itself made the marks, all different at different sites, and these huge scrolls eventually became the materials for beautiful installations, both abstract yet at the same time singing a highly local, authentic and organic song. These were seen in Mitchell, the Maranoa Gallery and Canberra.

These projects all, but *all*, demanded conversations with many locals; they all proved to be galvanising for their communities. More importantly, all those artists (plus family or friends) gathered in Canberra at Belconnen Arts Centre where they were

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able to talk with each other and see evidence of each other's project. This links to the previous point about distance and the arts. It may not be well understood that this kind of gathering is a rarity in Australia: time and distance inevitably prevents the majority of our artists from ever seeing the work of other artists and, more importantly, meeting and talking with them. Linked-up projects like this, as well as genre-specific festivals provide a vital platform for the understanding and advancement of our artists and their work. Taking advantage of the digital age can also assist in this. An effective and wide-reaching national broadband network could offer multiple enhanced opportunities for connecting to projects, process, outcomes and dialogue in real time.

In this project, a shared notion of river life was palpable and respectful, and CEO of the Murray–Darling Basin Authority, Dr Rhondda Dickson, said that they would no doubt draw on these projects and the notion of shared values and memories in their ongoing work. This project makes a positive contribution to many and varied communities who have been perceived and portrayed for so many years as embattled, yet have so much in common.

One of the key figures in the creative team was Malcolm Mckinnon who reported:

Above all, the experience of working on ONE RIVER prompted me to think, as I frequently do, about the disconnect between, on the one hand, the deeply rooted and often heartfelt 'common wisdom' of people whose lives are truly connected with the rivers in some way or another and, on the other, the abstracted and politicized realm of public policy and planning. This, for me and for so many of the people I encountered in my travels across the basin, constitutes one of the great conundrums and great frustrations and it raises of course the inevitable question of where do we look for leadership and inspiration. At a political level, my experience working on the project made painfully evident, once again, the negative impacts of parochial state governments in the management of an ecosystem spanning multiple jurisdictions.

Aside from that, I was moved by the enormous generosity of people willing to share their stories with a complete stranger, and the openness of people to talk about places they cared deeply about and to embrace the opportunity for storytelling that the project presented.

We must bear in mind, that these were *artist* projects that happened through the Centenary of Canberra program, which had a care for, and an eye to, the country as a whole. There are lessons to be learnt about the power of the arts to tell the most important stories, and tell them in a way which strikes a chord, not just with art lovers,

but with *anyone* who can be drawn into the content of those projects. In the case of One River, a long string of river communities were drawn, through the arts, into reflections on their place, their history, present and future. Nothing could be more important for participation in the democratic process than to understand country, and to connect as community.

There was a subsequent event of importance under the One River banner. A ceremony at dusk, on the banks of the Murrumbidgee, within ACT borders, saw the sharing of song and dance between traditional custodians of that land, Paul House and the Ngambri dancers and Ngarrindjeri elder Major Sumner and the Tal-kin-geri Dancers, from the mouth of the Murray around Goolwa. The tangible connection between the two places was made movingly manifest when the southerners offered a whale dance, and we realised that whales will eventually swim in the water we saw running fast and clear in the Murrumbidgee that evening. In an interview, Major Sumner, who has also danced the Darling in the past, described a tradition that goes back millennia, which had vanished after European occupation, but has not been lost forever:

It's a long ways, but our people were involved in ceremonies, including the Murrumbidgee, all the rivers that connect up to the Murray and the Darling and all the water from here eventually gets down to our country ... So ceremonies were right along the rivers and all we are doing is putting the energy back in and getting the ceremonies going again.<sup>3</sup>

The One River project was launched in November 2012 as part of Goolwa's City of Culture program, and at that time, Ngunnawal ranger and cultural adviser Adrian Brown had been south to meet Major Sumner (known as Uncle Moogy) for the first time, and began then to learn something about that country. The River Ceremony emerged from that meeting, and via One River. The lessons for future pathways to genuine processes of reconciliation are many—they require respect for the protocols demanded and the individuals involved, they simply need the long time it really takes, and the best results often occur through arts and culture, which are an integral part of Indigenous Australian life, not a luxury leisure, as they can still be regarded by some Australians. As Central Australian Senior Law Woman Inawinytji Williamson said of the *Seven Sisters Songlines* project:

This is how we look after strongly this big important creation story and teach the young ones who come after us so that they can look after it in their turn and teach their children, the many to follow.<sup>4</sup>

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<sup>3</sup> *One Very Big Year Snapshot*, [Centenary of Canberra Task Force, Canberra, 2013], <http://www.canberra100.com.au/about/snapshot/>, p. 54.

<sup>4</sup> *ibid*, p. 15. Translated by Dr Diana James.

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This was a theme that emerged throughout the Indigenous program—most recently through a small project to allow ACT local Duncan Smith and his Wiradjuri Dancers to develop the *Biarni* creation story beyond just song and dance, to a theatrical form for children. It had its first showing at the Centenary's Children's Festival in Glebe Park and its potential is solid.

As examples of further exchange on the national and international basis, elders from Roeburne had come to Canberra for a development phase of the Big hART work *Hipbone Sticking Out*. In the rehearsal rooms of the Canberra Theatre Centre, I saw that group of elders and youngsters share song and dance with Duncan and his family. The indefatigable choreographer Elizabeth Cameron Dalman, whose company Mirramu and its studio sit at the edge of Lake George, created *Morning Star* with longtime collaborator, Torres Strait Islander dancer Albert David, and invited East Arnhem Land dancers, including the great dancer and songman Djakapurra Munyarryun, to join them. They premiered the work at the National Gallery of Australia, and presented excerpts as part of Canberra's big birthday bash around the lake on 12 March. More recently, excerpts have been seen in Taiwan where Elizabeth has long-established connections.

There has been more to all this than is understood when one simply claims a huge and comprehensive Indigenous Cultural Program. I might just add that Canberra resident, and a member of the Centenary of Canberra's informal Indigenous Cultural Reference Group, Jennifer Kemarre Martiniello, had a remarkable year: with a brilliant exhibition at the Canberra Glassworks and work also featured at the ANU and at the Canberra Museum and Art Gallery; the awarding of a prestigious two-year Australia Council Fellowship at the Red Ochre Awards presented at the Sydney Opera House; and ultimately winning the overall 2013 Telstra Indigenous Art Award presented in Darwin. What a remarkable list of achievements in just one year. Also in this year, Indigenous media have really shone: the support our program had from the *National Indigenous Times* and NIDTV exceeded expectations.

In other programs of national significance, the Museum of the Long Weekend saw vintage caravans driven from 40 different spots around the country to meet on the shores of Lake Burley Griffin in Canberra. They came from as far afield as Roeburne in the Pilbara, from Cairns, and from the south of Tasmania. This was a joyous gathering of beautiful vintage vehicles, many of which had been curated by artists to tell tales of the caravaners and their long weekends and longer journeys. The décor of 40s, 50s and 60s was exquisite. Again, these people talked to each other, visited each other's caravans and shared stories. This is very much the ethos of caravanning life.

It was pure pleasure for those of us who have such a romantic notion of a caravan life we have never experienced ourselves—we have perhaps just observed our parents or aunts and uncles and grandparents live that particular dream. But Scott Rankin, Artistic Director of Big hART, the remarkable company which produced this project, has a deeper philosophical underpinning of the project. He believes that, in this era of the apparent necessity of ever-increasing productivity, many governments and businesses neglect the positive values of leisure; that nation-building happens just as effectively at *rest*, as at hard-bitten hard-nosed ‘work’. There are, of course, multiple examples of the truth of this: Walt Whitman quietly wandered the woods, and came back to write the wise words that would influence millions thereafter, including Walter Burley and Marion Mahony Griffin, and their plans for this capital city. Canberra still sits within a green landscape very much because of the kind of philosophies which Whitman and others espoused.

British composer Edward Elgar wandered endlessly in his nearby forests, then sat down and wrote almost perfectly, with few alterations, the entire melodic lines, and orchestrations, which he had imagined in the wilds, of musical works which became emblematic for Britain. These are nation-building moments which began with the creativity of artists not at their desks or in their studios, but wandering in nature.

I think we all know of ourselves, and certainly it is true for me, that the best ideas come flooding in at unexpected moments of relative emptiness in the mind. When the mind is cluttered and over-busy, genuine creativity rarely emerges. Scott has a great point. And for all the focus on family, in an age when the concept of consistent stable nuclear families is so challenged by the reality of family breakdown and breakup, why would we *not* look more carefully at the exquisite bonding, as well as the learning, which always occurs on a good holiday. This ability to relax, to talk together round the fire at night, is surely an important factor in the development of healthy and engaged societies—something we would wish for all our citizens, yet so obviously absent for so many driven in a work-work-work society. This simple device, a project around caravans, stimulates profound considerations for national life.

National institutions played an important role in celebrating Canberra’s Centenary, not only the National Gallery of Australia and the Australian War Memorial, but the Mint, the Australian National Botanical Gardens, the Royal Military College Duntroon, the National Portrait Gallery which made huge efforts to connect its themes to the chronologically themed sequence of the centenary year, and perhaps most significantly the National Museum of Australia, with its *Glorious Days: Australia 1913*, the National Australian Archives with its *Design 29* and the National Library of Australia with *Dream of a Century: The Griffins in Australia*.

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The Museum of Australian Democracy continues to present its year-long *Art of Influence*, and amongst many other exhibitions allowed us to see Arthur Boyd through a new political perspective. And *this* Parliament House celebrated its 25th year, especially through the beautiful publication *Interwoven*, by Pamille Berg who had originally commissioned the art and craft for this house, and through *Monument*, a ballet commissioned by the Centenary of Canberra from the Australian Ballet to celebrate this anniversary. The work was choreographed by Garry Stewart, and designed by Mary Moore (both from Adelaide) with music by ex-Canberran Huey Benjamin. It was extremely well received by the public, and in reviews, and we are confident after its world premiere in Canberra this year, it will be seen further afield in years to come, as will the commissioned musical work by Andrew Schultz, *Symphony No 3: Century* which had its world premiere here on the 11 March.

While much of the Centenary's arts program sought to profile the many excellent qualities of local artists, it should also be noted that Canberra saw the work of other major performing arts companies in addition to the Australian Ballet—the Sydney Theatre Company, Bell Shakespeare, Bangarra, Black Swan State Theatre company, Sydney Dance and the Australian Chamber Orchestra all gave terrific guest appearances. And all these added to the list of all those national institutions based here in the capital. In addition to the Australian Theatre Forum *To the Heart of It*, Canberra also hosted *Fear No Art*, the Australian Performing Arts Centre Association's national conference, which saw practitioners, producers and administrators from all over the country meet and debate in Canberra.

The project Portrait of a Nation acknowledged the streets of Canberra as a dictionary of Australian biography, and invited locals to research the famous and often forgotten Australians their streets are named after, and to celebrate them. The project had student project connections through the National Portrait Gallery and national connections to other places, through a Victorian schools' project for instance, where the name and the person also occurred.

The year has also been outstanding in terms of architecture and design: not only the new publication *One Hundred Canberra Houses* which gives an alternative history of the capital through its domestic architecture, and the publication of a noble history of engineering here in the last one hundred years, but in terms of actual construction such as Nishi, perhaps the most sustainable apartment building in the country, and the new Embassy of the Netherlands with similar environmental credentials, the Boundless all-abilities playground being established on the shores of Lake Burley Griffin through the generosity of contributions by public servants, the naming of the Centenary Hospital for Women and Children, a new national rock garden (also lakeside), the new Centenary Garden at Hennessy House, the re-establishment of

Constitution Avenue and of course the magnificent National Arboretum Canberra. The face of the city has changed.

Designers have been actively engaged throughout the year especially in the Legacy of Good Design project for which local craftspersons pitched prototypes which could be reproduced in number. A suite of five objects were then produced as quality memorabilia for the Centenary: they have been selling like hotcakes and it seems certain that this craft/reproduction model will leave a legacy for future years.

Architecture and design students have been engaged through projects like Shine a Light, and more particularly through two important hypotheticals—the Lodge on the Lake and the CAPITheticAL. The CAPITheticAL was an international design competition for a hypothetical capital for Australia in the twenty-first century. Administered on our behalf by the Australian Institute of Architects, the competition asked architects and designers to put themselves in the shoes of those 1911 competitors who responded to the original international competition for the new capital. We demanded of them that they engage with the history of the original competition, and in particular with questions about what the capital of a democratic country should be, what it should contain and what it should symbolise. We also provided provocations—if this is the Asian century should our capital be physically closer to Asia? If the Australian people eventually said yes to a republic, would there be the call for a new capital—and where would you start?

There were more than 1200 registrations of interest from nearly 30 countries and, in the end, 120 actual entries from 27 countries. The international multipliers represent a very sizeable promotional aspect of the competition: tens, if not hundreds, of thousands more people around the world are now aware of Canberra, perhaps for the first time. The expert jury reported that highest on the list of concerns were, predictably but satisfyingly, sustainability and the nature of democracy. The ultimate winner of the \$70,000 first prize was Ecoscape Australia, based in Fremantle, WA. It recommended maintaining the capital in Canberra, but through an ingenious set of references to the Griffin design, connected Canberra to a northern base which would be the administrative headquarters for Asian and Indigenous development. The hypothetical northern capital displayed heroic design for sustainability and great beauty on the shores of Lake Argyle.

The expert jury, chaired by Professor Barbara Norman, said:

the top three entries form an important and integrated narrative about the future challenges and the nation's capital, that include: better connecting to the north, our indigenous communities in that region and to SE Asia;

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recognizing and responding to extreme weather and climate change and living with our environment; and embracing regional Australia as a critical consideration in our strategic national vision.<sup>5</sup>

Again—a simple competition, steeped in the history of the national capital, allowed a complex dialogue about Australia’s futures to evolve in a virtual space of international dimensions.

And on other international fronts, actual rather than virtual, the Centenary was equally active. Local artists DJs D’Opus and Roshambo said of their Centenary exchange project in Brasilia where they performed at the Cena Contemporânea: ‘We cannot express what a fantastic opportunity it was and the new creative spark it has given us for writing new music.’

Their exchange counterparts Sistema Criolina from Brasilia performed here in Canberra and were equally happy to have had this experience. The project has opened up new possibilities for exchange in the future, especially as Australia increasingly looks with business, educational and cultural eyes towards countries like Brazil.

Jyll Bradley is the award-winning British artist and creator of our sole directly commissioned international work, *City of Trees*, which was both a recorded sound project (which you can download from the Canberra 100 website) and an exhibition at the National Library of Australia. Jyll wrote:

there can be few honours greater than to be invited to take part in the centenary of a country’s capital city. I still have to pinch myself that this was so, and this privilege was mine ... Like Canberra perhaps, the show didn’t give itself away upfront, but required patience and discovery. For me the city is as much what you bring to it as it brings to you. In my own humble opinion I believe that this was what Walter and Marion had in mind. The city they created, whilst full of symbolism, is not an easy read, it’s a layering of events both personal and collective. It is the people who bring content to place, by way of symbiotic exchange. The city creeps up on you slowly, but once it’s under your skin it is so forever. I think on a deep psychological level this has been my abiding experience of the city, it’s in the water, the light, and the air and the trees.<sup>6</sup>

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<sup>5</sup> ‘CAPITheticAL winners’, *Architecture Australia*, vol. 102, no. 2, March 2013, <http://architectureau.com/articles/capithetical-winners/>.

<sup>6</sup> *One Very Big Year Snapshot*, p. 48.

Ronan Moss of Canberra Lab, that exciting collective of young architects, participated in a large-scale installation of photographs at New York's Photoville festival as local Canberra photographers had work such as the Belco Boy shown against the New York skyline. Ronan reported enormous pride and pleasure to be able to make a project there:

it represented the 'changing spirit' of Canberra and the growing confidence of Belconnen, with its potent mix of students, public servants and communities from around the globe ... The work was about Canberra seen through a contemporary lens.<sup>7</sup>

In the capital itself, the recent Windows to the World acknowledged that often hidden aspect of Canberra—its around 100 diplomatic missions, and the incredible cultural richness they represent; Dean of Ambassadors and Commissioners, Pedro Delgado, Ambassador for Argentina, reported a sell-out success of this Spring program which allowed embassies to open their gates to allow the public to discover their gardens, architecture, food and other aspects of culture. It is a no-brainer, and hopefully will continue in future years

The participation of the diplomatic community has been exceptional all year with contributions to the program of the Canberra Symphony Orchestra, the anniversary of the unique relationship with France at Telopea Park School, a new Embassy of the Netherlands and their hosting of a solar car team and a quartet of the Royal Concertgebouw Orchestra coming up, and so many others.

*Within* the community, our collaboration with the Canberra Multicultural Forum, saw not only the important forum on the 'Future Journey of Democracy', but also the Harmony Day bus tours which took participants to diverse places of culture and worship throughout Canberra, including synagogue, Buddhist temple, Indigenous cultural centre and mosque.

On the international front we connected with India (where Centenary historian Dr Dave Headon and I were part of a memorial at Walter Burley Griffin's gravesite in Lucknow, and a design seminar in Delhi), and with London as I delivered the Arthur Boyd Memorial Lecture at Australia House where we met the late Lord Denman (whose predecessor had laid Canberra's foundation stone). This resulted in the current Lord and Lady Denman's visit for the March celebrations. I launched the Centenary program in Washington and in Chicago where I was privileged to be shown so much

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<sup>7</sup> Megan Doherty, 'Belco gets pride of place in New York', *Canberra Times*, 11 October 2013, <http://www.canberratimes.com.au/act-news/belco-gets-pride-of-place-in-new-york-20131011-2vctc.html>.

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of Walter and Marion's architecture by that city's cultural historian (every city should have one), and we had those artist projects in Brasilia and New York, and performances from troupes from sister cities Nara and Beijing, as well as from Dili on the occasion of the re-signing of the friendship agreement with the ACT.

With all this great good news, and such overwhelmingly positive results for the Centenary of Canberra, I hesitate to return to the detractors—but alas I must, as my opportunities for advocating the importance of Canberra, though I shall always be its champion, will clearly diminish.

One of the chief goals of the Centenary of Canberra was to increase pride in the national capital. But we have to ask *why* would that even *need* to be a goal, one hundred years after the capital's naming, and a good 70 years since the start of its establishment? Well, in one of his first public statements, a recently elected member of this Parliament stated that he wouldn't be spending much time here because Canberra is a 'sterile' place. The Prime Minister himself said just a couple of weeks ago 'We don't want MPs hanging around Canberra all the time'. This is fair enough—one understands the need for elected members to be at home, working in their constituencies and gathering information nation- and world-wide, but unfortunately people *outside* the capital often misinterpret this as 'why would you want to hang around Canberra?'

Such sentiments have been reinforced time and again by the leaders of our country: Prime Minister Howard refused to live in the capital, and Prime Minister Keating who *did*, called it 'Australia's worst mistake'. Prime Minister Fraser agreed with him. And apart from the *Sydney Morning Herald's* architecture writer Elizabeth Farrelly who continues her naïve wish for Canberra to *be* Sydney, there is another small gaggle of curmudgeons who diss the capital at every opportunity. Given the opportunity to observe these detractors at close hand for four years and more by now, I suspect what links them all, and the reason for their unabated spleen, may be political disappointment—mainly blokes, who didn't achieve the political success or access or influence they sought, and blame the city for that self-perceived failure, rather than themselves and the choices they may have made.

I wonder if newly elected members, and members of the press gallery, get an introduction, an induction, to the city that will play host to their workplace for the next few years. And if not, I wonder if they *could* be given that opportunity. It is often said that members only ever see inside this house and their own apartments. Again, one understands the pressure of work, meetings, late night sittings, and the desire to get home to family and constituency—but I just wonder if they ever get real insight to the city and people beyond these walls. Canberra does not deserve just to be used and

abused. Hundreds of thousands of Australian citizens work to keep the city functional—the drivers, plumbers, gardeners, doctors, engineers, painters, artists, sports trainers, and public servants—all of them work hard to ensure the maintenance of a fine city which has proved for decades now its capacity to host federal government and a hundred international diplomatic missions, as well as fine scientific institutions and the care and protection of the nation’s cultural treasures.

There *are* good restaurants here, beautiful wineries, terrific local galleries and musea. And I speak not as a Canberran, but as an Adelaideian who has lived for long periods in Sydney, Melbourne, and London and enjoyed bigger cities like New York, Paris, Tokyo for lengthy periods and visited scores more. I know what I am talking about when I say that Canberra is a fine city with many sophisticated advantages, yet with the pleasures of living in a relaxed and very green country town. Many Australians understand this.

The loud, negative and sometimes influential handful are in fact out of touch with what the majority of Australians thought about Canberra more than six years ago when planning for the Centenary began, the majority of a large sample believing that the Centenary of Canberra was a celebration for all Australians. And so it has proved to be, with a genuine feeling of connection to the capital frequently and variously expressed throughout 2013. The artists, scientists, elite sportspersons, Masters sports participants, young sports participants, vintage car and caravan owners, the 500 humans who constituted the Human Brochure which tweeted and blogged tens of thousands of positive messages about the city, the record number of participants and visitors in Canberra this year, all agree that Canberra is a pleasurable and entertaining city, safe, full of smarts and clean high country air.

Most importantly, even as we all rightfully and dutifully take an excited interest in what goes on within these walls, the nation-building projects which are decided here, the debate which occurs around them, we also need to acknowledge that Canberra is a place worthy of its status as the place where all this occurs. My hope is that we increasingly see that pride reflected from the top, from up here, and communicated honestly, not in ignorance, through Australian and global media.



**Question** — We are the lucky ones who live in Canberra. We can do all of this. We have to resist the media using the word ‘Canberra’ when they mean the federal

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government! The two magnificent books which are available in the foyer here—are they being posted free to every school and every public library in Australia?

**Robyn Archer** — The simple answer to the question is no, but it can all be accessed through the website. We still have a few of them left, and they will be in libraries.

**Question** — Can corporate bodies or philanthropists be encouraged to have photographed the unmissable-type activities of which you spoke so that they can then be recorded on a DVD and made available—maybe at a cost, maybe free—to the ABC and then available to every school, senior people, to Australia, via TV?

**Robyn Archer** — There are a couple of things there. As to your first comment about the media using ‘Canberra’ as a substitute for ‘government’, in fact our research showed that when it was bad news it was ‘Canberra’, when it was good news it was ‘the federal government’. However, it was the subject of my National Press Club address in the middle of 2012—and it hasn’t done a blind bit of good, I can tell you! I kind of never thought it would but, boy, hasn’t it! It is just everywhere and frequently now, alas, on the ABC as well.

As to the availability of the stuff, we have got hundreds and thousands of photographs and we are compiling, as it were, ‘wrap’ documents which will be online and a few of which will be printed, but we just do not have the budget to do it. Festivals have a thing called post-festival depression, and normally they are only two or three weeks. Well, we have had a year of it and we are experiencing the longest, most difficult time while the work is thundering. I have something like 11 commitments—public addresses—in the next week alone, and the program does not really finish until mid-December. We have got staff starting to move on to other jobs already. I think at the very end, probably in January, there will be four people left that were originally there from the beginning. So it is a sad period.

But be aware that kids in particular can access the internet through their schools and it is probably more important for us to send out a wide message to say, ‘Have a look at it before it goes’. Our National Library is archiving at least that, probably the Canberra Diaspora as well, and One River will be up there for a while. So there will be a lot of evidence. If you go to the website now there is a lot. But, you know, snap up the books and send them to your friends, for sure.

**Question** — I had the great good fortune of working in this building for many years, but I have had also had the greatest of pleasure working as a volunteer this year for the Canberra centenary. Can I ask: will there be a gentle follow-up to this year? Can we not go into a deep despair of moving on from the centenary? Can we not go into

that depression? But will we be able to—through the Canberra Theatre, perhaps—keep bringing wonderful shows from the other states and territories, keeping that wonderful connection going and finding other ways with our Indigenous people to continue telling the story of the river and many other opportunities that must be out there to continue to connect Canberra in the strongest possible way?

**Robyn Archer** — I think, because of the year, Canberra is a much easier sell now. I think the mood has changed enormously. I will take the opportunity to thank you and all the volunteers. As in any major event, the volunteers in Canberra have been absolutely superb and they have really turned out and received lots of good rewards at Windows to the World, where suddenly they themselves got to sit inside the embassies, and have a good time.

As to the flow, I did say four years ago—and this is sort of what is happening—that I did not think that there should be any kind of big finish to the centenary. It has been suggested that any number of events—including the Voices in the Forest, which is at the Arboretum next weekend and which I hope my virus will spare me to still be able to sing at—could be used as a sort of big ending event, and I said all along I did not want there to be an ending. What I wanted is that by the time we hit spring, we would pretty much know whether the year had been a success, and we did, and it was. But, by spring, the healthiest reflection would be that people were starting to talk about next year and the next 10 and 20 and 100 years, and I do think that that is kind of happening. I would rather that there not be an ending as such, but just saying, ‘Okay, well that has been a great year and now we are just moving on’.

And I think part of the answer around that is in this changed infrastructure. Even though our brief wasn’t exactly infrastructure, there has been a lot of new stuff gone up. It does look a bit different around the place. But more, perhaps, significantly is the ephemeral notion of ‘the mood’. The mood is definitely up. I have been saying to a lot of people recently that the success of a program is very much in the uptake of your audience and your community. Those big books that the lady before was referring to are a blueprint. They came out, one in September and one in March, to indicate what we would be doing, but they are just the plan. So, if people don’t take it up, then it doesn’t exist, in a way.

And what has been the greatest reward, as people ask us. You know, the inevitable KPIs—how do you measure your success? One of my greatest measures of success is that the community responded so generously, that they came, that shows and events were booked out and that they spontaneously did things. Not only have we had volunteers coming in but many people proposed projects of their own accord and just went out and did them. One of the most remarkable, of course, is this program that

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was called The Musical Offering, which has seen more than, I think, 600 performances, all free to the public this year, but absolutely one on every day of the year—and I sang myself at the 300th day, at the National Portrait Gallery, a few weeks ago. This was just done by citizens. They decided that they were going to have a free musical event every year—and there have been hundreds of those kinds of things. So, in a sense, that is the success and I think that is what has lifted the mood.

How the ACT Government leverages off this success is really over to them. That is the next important way of saying: will there be bits of actual things that went on that may be repeated? Windows to the World is a good example. The parties at the shops is a great example. Daughter of Skywhale, of course, is what you all want to see! I jest, although she is going up in Melbourne. She has had many great subsequent visits and is up in Melbourne on December the first or second, I think. But what is more important for me is that I know that Canberra quite often, at any change of government, can get a bit gloomy. There are shifts in the public service and employment. What I had always hoped was that with a federal election as part of this year that maybe the buoyant mood of the centenary would keep people's spirits up, moving in a rather more positive way. Certainly, from the feedback that I get, that is the case, and what is most important is that so many people have been out and seeing things and there have been so many more visitors to the capital this year so far. That is what we need to preserve. It needs to be that great spirit to carry forward.

Somebody, very kindly, at the Business Council gala dinner the other night, thanked me for the work that I had done, and I was at great pains to say, 'Well, I am just that creature out the front of the ship, breasts to the wind—and very exposed from time to time, I might say! But behind me I have a massively well-constructed, beautifully functioning ship of a team that has been responsible really for the delivery of this. But somebody expressed to me at that dinner that quite often I used the word the 'infancy' of early Canberra. Many people have been talking about its recent history as its adolescence, and somebody said to me the other night: 'We feel that what the year has done has tipped it from adolescence into that over-18 period. It has actually come of age. It has actually matured'. And that, I think, is the hope of the future for the city. Its potential is great. The conversations that the ACT has around the futures are very healthy. There is a lot of planning going on, and I think just the uplifting of the profile of a good twenty-first century city, in which this house sits and all that major national stuff goes on, as well as in the institutions. That is the kind of nice fit that we would like to see in the future—equally praised, equally valued.

## **International Election Observation: Coming Ready or Not\***

*Michael Maley*

### **Introduction**

International election observation has become so entrenched an element of the democratisation process in the last 25 years that we are now relatively used to seeing media coverage of the activities of, or assessments made by, international observers. The work done in support of democracy by one of the most prominent of their number, President Jimmy Carter, was cited as one of the reasons for the award to him of the Nobel Peace Prize of 2002.

In association with this growth, much has been done with the aim of making observation more systematic, professional and reliable.<sup>1</sup> At its best, participation in election observation can be an extraordinarily exhilarating experience. Observers often see critical moments in history unfolding before their eyes, as in South Africa in 1994; and the joy displayed by people who are exercising their democratic rights for the first time is something that stays with you for the rest of your life, if you care about such things.

At its worst, however, election observation may be the moment when you see people's hopes thrown into doubt or dashed; and when you, as an observer, are suddenly placed in a unique situation of responsibility to tell the truth to the world on their behalf. There was a spectacular example of this only a couple of months ago, in Azerbaijan.

In Australia, we have never experienced judgemental international observation of our elections, though election administrators from friendly foreign counterparts of the Australian Electoral Commission (AEC) have since 1996 been coming here regularly to take part in structured election visitor programs.

Australia has, however, engaged quite actively in the observation of elections in our region, in neighbouring countries such as Indonesia, East Timor, Solomon Islands and

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\* This paper was presented as a lecture in the Senate Occasional Lecture Series at Parliament House, Canberra, on 6 December 2013.

<sup>1</sup> For an example of the sorts of detailed handbooks which the better organisations now use for the guidance of their observers, see Organization for Security and Co-operation in Europe, *Election Observation Handbook*, 6th edn, 2010, <http://www.osce.org/odihr/elections/68434>. The European Union has for several years had a structured training and accreditation program for its election observers.

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Cambodia. In some cases the delegations in question were formally deployed by the Commonwealth Parliament; and two of our recent foreign ministers have served as election observers. Australians have also taken part in election observation operations mounted further afield by international organisations such as the United Nations and the Commonwealth Secretariat, in places including Namibia, Cambodia, South Africa, Mozambique, Zimbabwe, Nigeria, Kenya and Sierra Leone. I had the good fortune to be involved in a number of these operations; and in some other cases, I briefed the participants before they left our shores. Invariably, it was clear that the observers understood that they were doing something really important, which would be a memorable moment in their careers.

Election observation is now a massive field of endeavour. In recent decades dozens of international bodies have deployed thousands of observers to hundreds of elections. Associated with observation, a significant literature has developed, not just on the process in general but also on specific aspects of its implementation, such as the concept of ‘free and fair elections’.<sup>2</sup> Rare indeed is the individual whose personal experience can cover even a substantial fraction of this activity; and I certainly would not claim to be such a person. What I am going to discuss here therefore very much reflects my own, possibly idiosyncratic, perspective on this topic; and other experts in the field, whose views I greatly respect, might well reach different conclusions. My aim here is to provoke thought, not to provide definitive answers.

The balance of my paper today falls into three broad parts:

- First, I want to provide you with some background information about the observation process: examining how it is defined; outlining the standards which are applied to or by observers; and discussing observers’ typical activities.

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<sup>2</sup> See, for example, Eric C. Bjornlund, *Beyond Free and Fair: Monitoring Elections and Building Democracy*, The Johns Hopkins University Press, Baltimore and London, 2004; Horacio Boneo, ‘Observation of elections’, in Richard Rose (ed.), *International Encyclopedia of Elections*, CQ Press, Washington D.C., 2000; Thomas Carothers, ‘The observers observed’, *Journal of Democracy*, vol. 8, no. 3, 1997, pp. 17–31; Judith Kelley, ‘Assessing the complex evolution of norms: The rise of international election monitoring’, *International Organization*, vol. 62, no. 2, 2008, pp. 221–55; Judith Kelley, ‘The more the merrier?: The effects of having multiple international election monitoring organizations’, *Perspectives on Politics*, vol. 7, no. 1, 2009, pp. 59–64; Judith Kelley, ‘D-minus elections: The politics and norms of international election observation’, *International Organization*, vol. 63, no. 4, 2009, pp. 765–87; Judith G. Kelley, *Monitoring Democracy: When International Election Observation Works, and Why It Often Fails*, Princeton University Press, Princeton and Oxford, 2012; Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights, *Election Observation: A Decade of Monitoring Elections: The People and the Practice*, 2005, <http://www.osce.org/odihr/elections/17165>.

- Having done that, I will move on to a discussion of the broader context in which observation takes place, from the point of view both of the target country, and of the observers themselves.
- Finally, I will flag some of the present and looming challenges to which the observation process gives rise.

In the course of this discussion, I will be touching at a number of points on some other questions:

- Does observation always live up to expectations?
- Can it sometimes be damaging rather than beneficial?
- What lessons have been learned, and how have approaches to observation changed?
- What (if anything) do international observers contribute that local observers cannot?

### **Definition of ‘election observation’**

In one sense, of course, every voter, candidate, party worker, journalist, etc. is an election observer: he or she participates in, and therefore ‘observes’, at least part of the election process. My focus, however, is on something narrower, of which the following is a widely accepted definition:

the systematic, comprehensive and accurate gathering of information concerning the laws, processes and institutions related to the conduct of elections and other factors concerning the overall electoral environment; the impartial and professional analysis of such information; and the drawing of conclusions about the character of electoral processes based on the highest standards for accuracy of information and impartiality of analysis.<sup>3</sup>

The key elements of this are its emphasis on a systematic and comprehensive approach; the priority which has to be given to impartiality and accuracy; and the fact that observation is an inherently judgemental activity. Implied, though not explicitly

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<sup>3</sup> National Democratic Institute for International Affairs, *Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers*, 2005, [http://www.ndi.org/files/1923\\_declaration\\_102705\\_0.pdf](http://www.ndi.org/files/1923_declaration_102705_0.pdf), p. 2.

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stated, is the notion that observers stand apart from the election process, and have absolutely no right to intervene in it.<sup>4</sup>

An important point to flag here is that an election process is an especially intimate part of the exercise by a nation of its sovereignty. International election observation is only ever undertaken at the invitation of the country holding the election (though this ‘invitation’ may be a standing one flowing from international commitments, as in the case of participating countries of the Organization for Security and Co-operation in Europe (OSCE)—from whence flows the reference in the title of this paper to observers ‘coming ready or not’). Assessment of elections by foreigners is therefore an inherently delicate process, which can sometimes present observers with possible conflicts of interest at the personal, organisational, or even national levels.

### **Sources of standards**

Election observers typically have to come to terms with two different types of standards.

First, there are those that govern their own behaviour by defining what constitutes the proper and professional performance of their tasks. These can come from a range of different sources. Very often, host countries will set out expected standards of behaviour, either in the electoral law, or in a code of conduct for observers. International discussions over the years have also led to the promulgation of generic codes of conduct.<sup>5</sup> At the heart of virtually all such documents are the following five key ethical principles:

- Election observers must recognise and respect the sovereignty of the host country.
- Election observers must be non-partisan and neutral.

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<sup>4</sup> There are, in fact, models for activities akin to observation, but distinct from it, which do contemplate intervention in the process in various ways: for example, the ‘certification’ undertaken by the UN of the 2007 elections in East Timor; the ‘verification’ by the UN of elections in the 1990s in Angola and Mozambique; and the ‘supervision and control’ by the UN of the 1989 elections in Namibia.

<sup>5</sup> See, for example, International IDEA, *Code of Conduct for the Ethical and Professional Observation of Elections*, International IDEA, Stockholm, 1997, [http://aceproject.org/main/samples/em/emx\\_o012.pdf](http://aceproject.org/main/samples/em/emx_o012.pdf); National Democratic Institute for International Affairs, *Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers*, op. cit.; and Global Network of Domestic Election Monitors, *Declaration of Global Principles for Non-Partisan Election Observation and Monitoring by Citizen Organizations and Code of Conduct for Non-Partisan Citizen Election Observers and Monitors*, 2012, <http://www.gndem.org/sites/default/files/declaration/Declaration%20of%20Global%20Principles%20%28as%20of%204.3.12%29.pdf>.

- Election observers must be comprehensive in their review of the election, considering all relevant circumstances.
- Election observation must be transparent.
- Election observation must be accurate.<sup>6</sup>

Secondly, there need to be standards by which observers can assess elections: any objective and credible process of judgement and evaluation must have at its heart a defined set of criteria which enable good processes to be distinguished from bad ones. There have tended to be two main approaches to this.

The first has been to expect that an election should be ‘free and fair’. For this time-honoured expression to be useful in practice, it needs to be given substance and content. One still sometimes hears it said that the concept of ‘free and fair’ elections is a vague and ill-defined one, but in fact a good deal of energy has been devoted in the last 25 years to defining the concept, on the whole successfully. On 26 March 1994, the Inter-Parliamentary Council of the Inter-Parliamentary Union (IPU) adopted a *Declaration on Criteria for Free and Fair Elections* which has become a bedrock document in this area.<sup>7</sup> The IPU has since sponsored a number of detailed studies of the international law and practice surrounding free and fair elections, and the concept has also been given close attention by scholars.<sup>8</sup> Broadly speaking, it can be said that an election will be free and fair if the following tests are met:

- The election is administered impartially, and opportunities exist for complaints about the process to be lodged and dealt with in an even-handed and transparent way.
- People qualified to vote, and only people so qualified, are able to do so.
- They can vote in an open and neutral political environment where contending views can be safely expressed in an election campaign.
- Votes are not bought and sold.

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<sup>6</sup> International IDEA, *Code of Conduct for the Ethical and Professional Observation of Elections*, op. cit., p. 11.

<sup>7</sup> Inter-Parliamentary Union, *Declaration on Criteria for Free and Fair Elections*, Geneva, 1994, <http://www.ipu.org/cnl-e/154-free.htm>.

<sup>8</sup> See, for example Guy S. Goodwin-Gill, *Free and Fair Elections: International Law and Practice*, Inter-Parliamentary Union, Geneva, 2006, [www.ipu.org/pdf/publications/free&fair06-e.pdf](http://www.ipu.org/pdf/publications/free&fair06-e.pdf); Jørgen Elklit, ‘Free and fair elections’, in Richard Rose (ed.), *International Encyclopedia of Elections*, CQ Press, Washington D.C., 2000; and Jørgen Elklit and Palle Svensson, ‘What makes elections free and fair?’, *Journal of Democracy*, vol. 8, no. 3, 1997, pp. 32–46.

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- Voters can cast a secret ballot, without fear of any adverse consequences.
  - Everyone votes only once.
  - They know the nature and significance of the act of voting.
  - Their votes are counted and tabulated accurately, without any fraudulent interference.

In practice, these criteria will typically be elaborated into more detailed performance benchmarks relevant to the circumstances of a particular election.

One sometimes hears these criteria for a free and fair election described as ‘aspirational’, the implication being that it would be unreasonable to judge too harshly a country, especially a poor country, which fails to satisfy them. I would have to say that I flatly disagree with that perspective.

Taken as a whole, the criteria represent little more than a minimalist statement of requirements which normally need to be met in order to ensure that an election represents a genuine expression of the will of the people of the country. Except in unusual circumstances, such as, for example, those associated with an ongoing conflict, there are few if any reasons why a country cannot meet these tests to a high standard, *provided that the political will to do so exists*. (I should here observe in passing that any reasonable observer will be prepared to make allowances for shortcomings in an election process which flow from unavoidable environmental factors, such as poverty, bad weather, poor infrastructure or lack of transport resources. But too often, misbehaviour by autocratic politicians seems to be treated as just another environmental factor. Since one of the aims of democratisation is to eliminate such misbehaviour, to discount it when assessing elections is in my view downright perverse.)

All of that having been said, there are some challenges which can arise when assessing the freedom and fairness of elections. Perhaps the greatest is that of deciding what judgement should be made of a process which substantively satisfies some of the key requirements, but falls short on others. This is by no means an unusual situation, and the problem is that there are, in fact, no clear international standards for giving weight to the different criteria. This introduces an element of subjectivity when observers are expected or even pressured to make an overall binary judgement on whether or not an election has been ‘free and fair’. This, however, is not so much an argument against the validity of the various elements of the tests for freedom and fairness, as an argument against overall binary judgements. Perhaps the

most honest way of resolving this dilemma is for observers to provide assessments against the individual criteria, while leaving it to others to make their own overall judgements.

A second difficulty is that in some cases, an electoral process which has clearly been deficient when judged against the freedom and fairness criteria may nevertheless be validated by its own outcome. The 1999 ‘popular consultation’ (referendum) to determine the future of East Timor provides a good example of this. The pre-voting period was so drastically tainted by intimidation directed against supporters of independence by militias sponsored by the Indonesian military that an objective observer assessing the process without knowing the outcome could hardly have reached any other conclusion than that the poll would not be free and fair. As it happened, however, the voters stood up with great courage to the pressure which had been placed on them, and voted for independence. In the circumstances, no reasonable observer could have doubted that the result of the ballot should be implemented. This case highlights the need for the exercise of intelligent judgement when assessing the quality of an election process: in such extreme situations, a mechanistic application of tests can give rise to a manifestly unreasonable conclusion.

Having discussed freedom and fairness, I now want to highlight the second main approach to the sourcing of standards for elections. It has been argued from time to time that the application of international standards in some sense impinges upon the sovereignty of the country whose elections are being observed. This has given rise to an alternative approach, most associated with the work of the Carter Center. They tend to pursue their analyses by exploring the legal commitments, domestic and international, which a country itself has voluntarily made; and testing the quality of the country’s election against those commitments. In pursuit of that approach, the Carter Center has developed a very substantial database for the identification of such commitments.<sup>9</sup> The implication of this is that a slightly different set of tests may have to be applied in each country.

### **Typical observation activities**

So far we have discussed what observation is, and the standards which are relevant to it. Let me now consider in a little more detail specific observation activities. The public often perceives observers stereotypically as people who arrive in a country a few days before polling day, visit as many polling stations as possible, deliver a judgement late on polling day or within a couple of days thereafter, and depart.

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<sup>9</sup> The Carter Center, *Database of Obligations for Democratic Elections*, 2013, <http://www.cartercenter.org/des-search/des/Introduction.aspx>. See also European Commission, *Compendium of International Standards for Elections*, 2nd edn, 2007, [http://eeas.europa.eu/human\\_rights/election\\_observation/docs/compendium\\_en.pdf](http://eeas.europa.eu/human_rights/election_observation/docs/compendium_en.pdf).

Among the professionals, this is no longer the case. In the last 25 years, one of the biggest changes in defined best practice for election observation has been the greater emphasis placed on the duty to be comprehensive. It is now generally recognised that, as the late F. Clifton White put it, ‘only an amateur steals an election on polling day’. More generally, it has come to be realised that an election takes place at the end of a cycle of preparatory activities, all of which potentially can impact on its success or failure and therefore need to be assessed. Bodies such as the European Union and the OSCE’s Office of Democratic Institutions and Human Rights (ODIHR) now insist on deploying long-term observers weeks if not months in advance of polling, and on analysing as many elements of the process as possible, including in particular the legal framework for the election, the nature of the political environment (including opportunities for media access), and both pre- and post-election dispute resolution.

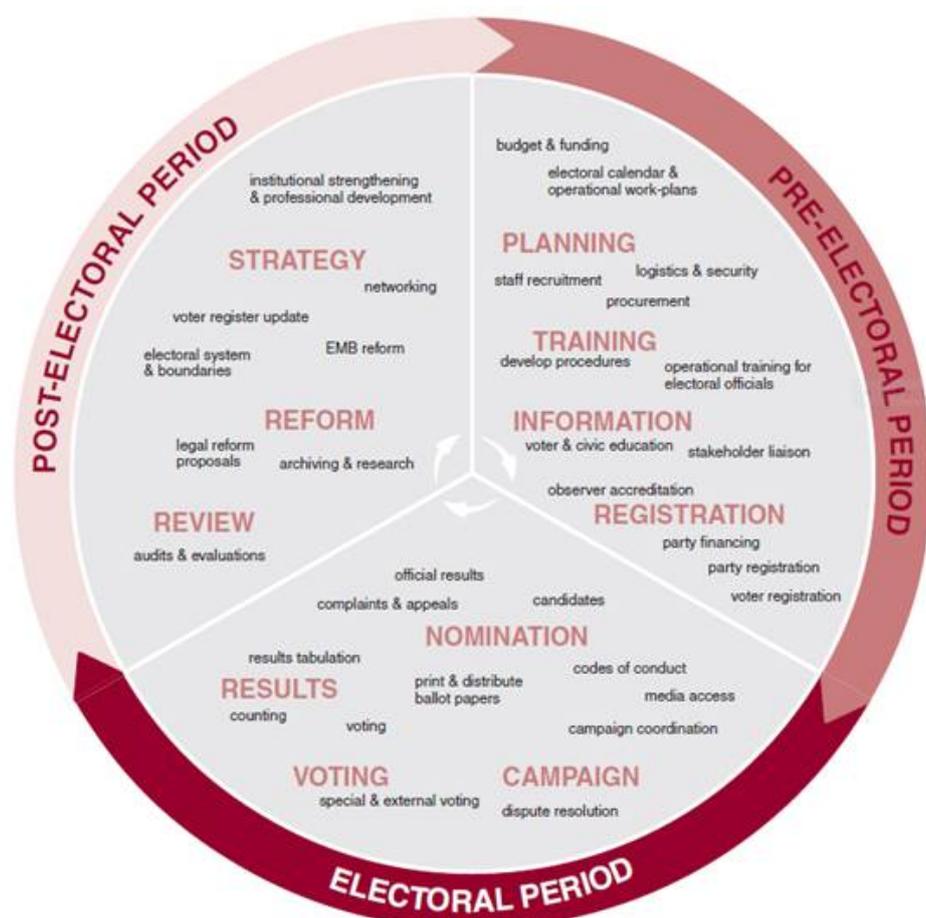


Figure 1: The Electoral Cycle from International IDEA, *Electoral Management Design: The International IDEA Handbook*, International IDEA, Stockholm, 2006, p. 16 © International Institute for Democracy and Electoral Assistance 2006

The work of modern observers can often extend beyond the simple recording of information; compilation and analysis of data may also be required. This sometimes takes the form of a ‘quick count’, which involves observers from a random selection of polling stations transmitting count results to a central point for compilation, to

enable an early indication of the nationwide electoral trend.<sup>10</sup> In Indonesia, quick counts conducted by civil society organisations working in conjunction with the National Democratic Institute for International Affairs (NDI) have been spectacularly accurate at recent polls. Increasingly, observers are also finding it necessary to engage in ‘election forensics’, analysing results reported from polling stations in an attempt to identify implausible or suspicious-looking patterns in the data which may require further investigation.

International observation continues, however, to face one unavoidable challenge, which is the simple scale of election processes. Years ago I made a comment in a paper, which has since been very widely quoted, that an election is the largest and most complex logistical operation which a country ever faces in peacetime, since it involves putting the entire adult population of the country through a prescribed process, under tight timeframes, sometimes as short as one day. If you think about what would be involved in vaccinating every adult in a country against polio on one day, you get a sense of the scale of the activity. Furthermore, elections by definition are decentralised: the voting facilities have to be taken to the people, wherever they are. In the smallest countries, for example some of the Pacific island states, it may be possible for international observers to visit a fair proportion of the polling stations. But in a country like Indonesia, which has nearly half a million polling stations, coverage on such a scale is simply out of the question. This means that even observers who aspire to judge every functional aspect of the election process must inevitably draw their conclusions on the strength of very limited information.

Depending on the character of the country and of the observers, other obstacles are also likely to be found in their path. It will not always be the case that international observers will speak the language of the country; and they may or may not be well attuned to the sorts of subtle cultural signals which will tell them what is really going on in a place. As it happens, I do not speak Tetum, the lingua franca of East Timor, let alone any of the other languages which are spoken locally. In the observation I have done there, I have however always been lucky in having the indispensable assistance of Timorese friends who interpreted for me: which involved not just translating conversations, but also ‘interpreting’ in a broader sense the environment in which the election was taking place—whether for example, the voters felt confident or fearful.

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<sup>10</sup> See, Melissa Estok, Neil Nevitte and Glenn Cowan, *The Quick Count and Election Observation: An NDI Guide for Civic Organizations and Political Parties*, National Democratic Institute for International Affairs, 2002, [http://www.accessdemocracy.org/files/1417\\_elect\\_quickcountdbk\\_1-30.pdf](http://www.accessdemocracy.org/files/1417_elect_quickcountdbk_1-30.pdf).

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Sometimes, observers are deployed who have neither a knowledge of the local language and culture nor a deep understanding of electoral processes. For them, the events they are witnessing may be particularly opaque.<sup>11</sup>

Faced with these sorts of challenges, it is tempting for observers to fall back on a relatively mechanistic approach to the work, which involves visiting as many polling places as possible, and completing at each one a detailed questionnaire documenting aspects of the process—did the poll open on time?; were the ballot boxes properly sealed?; was indelible ink correctly applied to the voter’s fingers?—and so on. This is fine as far as it goes, but unless the polling places visited have been chosen at random, there is no particular basis for extrapolating statistical findings so as to reach conclusions about the overall process. (Many an observation team has proudly asserted that its members visited a ‘random’ or ‘representative’ sample of polling places, but in most cases that simply is not true: especially when teams include VIPs, they tend to go to places that are secure, accessible and comfortable.)

Notwithstanding these challenges, there is great pressure on observers to reach an overall conclusion; and in this sense, election observation is still far short of being a science. Natural scientists are driven to their conclusions purely by evidence, and feel no particular embarrassment in noting that on a specific point, the evidence is inconclusive. But rarely indeed will you find election observers who at the end of the process say ‘we are unsure what we saw, and we cannot offer a conclusion’. That is not what is expected of them by any of the other players, and, perhaps more significantly, is not an approach which will ensure the free flow of funding for future observation operations.

Indeed, I am aware of only one case—though there have probably been a few others—of an observer who was prepared to come out after an election and say, in effect, ‘I am genuinely unsure what I saw’. The person in question, Miss Ellen Bork, expressed this view in the *Washington Post* after spending time in Cambodia during the highly problematical elections of 1998.<sup>12</sup> Realistically, observers should be saying these sorts of things rather more often than they do.

A greater willingness to offer indeterminate conclusions would also open the way to a more sophisticated approach to the challenge observers invariably face of balancing in

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<sup>11</sup> Such observers can be positively dangerous if they go beyond the gathering of information and seek to provide advice to a country concerning future electoral policy. For better or for worse, the documented recommendations of international observers often carry considerable weight; but opinions on complex issues (such as, for example, how a country should manage its voter register) are really not worth much if based only on insights gained during a short visit at election time.

<sup>12</sup> See Ellen Bork, ‘“Miracle on the Mekong” or orchestrated outcome?’, *Washington Post*, 5 August 1998.

their analysis what they have seen during the observation process, and what they know (or should know) of the history of a country. Realistically and typically, an observer going into a country with a history of democracy and legitimate elections will start with a presumption that that is what he or she is going to see, and will require overwhelming evidence to the contrary before concluding that the election was not free and fair. On the other hand, an observer going into a country with a history of oppression, insecurity and electoral manipulation can rightly bring to his or her work a major element of scepticism, such that most compelling evidence will be needed for the election to be given a pass mark. Both of these perspectives are easier to implement in practice if observers are relieved of the obligation to make binary judgements, and are prepared in some cases to issue reports which express legitimate uncertainty.

There is one more point I would like to make here, and that relates to the priority which should or should not be given to eyewitness reports. I have taken part in observer briefings where it has been argued by some of those present that conclusions must be reached purely and exclusively on the basis of what observers see with their own eyes. To me, that seems likely to be very limiting in practice. The obligation on observers to be transparent and accurate does not intrinsically exclude reliance on compelling second-hand or circumstantial evidence. Judges, juries and police are not expected to act only on the basis of what they have seen with their own eyes. In any case, as was noted over 50 years ago by the late journalist and broadcaster Malcolm Muggeridge, there have been any number of cases where the purported testimony of eyewitnesses turned out to be fundamentally unreliable.<sup>13</sup>

### **Context of observation**

My description of election observation up to this point may well have given you the impression that it is a relatively straightforward exercise, albeit one requiring a good deal of attention to detail and careful judgement. Such a view is probably too sanguine: one of the great paradoxes of observation is that while it is supposed to be politically neutral, it takes place in a highly politicised context, which is what I now want to discuss.

At one level, it might be thought that the purpose of observation is an obvious one, rooted purely in the definitions, standards and activities we have already discussed. Observation, on that view, is an objective, almost clinical, process of finding facts, applying principles and reaching conclusions; similar in many ways to the work of a judge, jury, or auditor. The ultimate purpose of such work is to tell the truth, it being believed that in the long run this is the best way of enhancing the consolidation of

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<sup>13</sup> Malcolm Muggeridge, 'The eye-witness fallacy', *Encounter*, vol. XVI, no. 5, 1961, pp. 86–9.

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democracy in a country. It is also often hoped that the work of observers will in itself have a direct positive impact on an electoral process. The following objectives will often be seen as important:

- to identify, well before the campaign, polling and counting phases of the process, shortcomings, for example in the legal framework, or in planning and preparation by the election management body, which are likely, if unaddressed, to undermine the quality and credibility of the election.
- to influence in a constructive way the persons and institutions responsible for developing the legal, regulatory and administrative framework for the electoral process.
- to support, through the conduct of professional analysis, the work of citizens and organisations in the country who are actively seeking to enhance the quality of electoral processes.
- to deter fraud, maladministration and misbehaviour by making it clear that it is unlikely to go unreported.
- to facilitate rapid reaction to emerging problems, for example intimidation, violence, or conflict between supporters of parties or candidates, by putting in place a mechanism for objective and timely reporting on them and, thereby,
- to bolster public confidence, and to encourage those who have lost through a legitimate process to accept defeat gracefully.

In practice, however, different players are likely to have different hopes for, and expectations of, the observation process.

First, we can consider the country which has invited observers to be present. Its hope will undoubtedly be to bolster the perception of the legitimacy of its election process, and of the government which flows from it. If the country is genuinely trying to improve the quality of its democracy, it is likely to be open to constructive observations and criticisms which will help it to improve future elections; but it will not want to see its elections damned. It may also invite observers as part of a broader strategy of engagement with allies, neighbours, friendly countries and international organisations, especially if those players have been involved in providing prior support for the consolidation of the electoral and democratic processes in the country. Sometimes, invitations will have been issued under a degree of pressure or duress, for

example if it is made clear to a mendicant country that permitting observers to be present will be a precondition for ongoing aid.

Secondly, we can consider countries or organisations which deploy observers. Again a number of different interests are likely to come into play. Where a country deploys an official observer mission to another country, that is usually done in the context of a much broader political relationship between the two countries, and sometimes with other countries in the region as well. The broadest purpose of the deployment is likely to be to enhance, in whatever way is thought desirable in the short term, the national interests of the deploying country. More specifically, a country may wish to become officially engaged in the observation of an electoral process in another country for some or all of the following reasons:

- to send a signal of political support for the other country's democratic process.
- to send a similar signal of political support to the voters of that country.
- to avoid giving offence, in circumstances where it might be impolitic for an invitation to observe to be refused.
- to signal an ongoing commitment to the country if other, perhaps more expensive, forms of support (such as a military presence on the ground) are being withdrawn or refused.
- to attempt to exercise beneficial short-term influence in cases where an electoral process in the other country appears likely to run into difficulties.
- to obtain the type of broader influence over the electoral process which can only be applied by those who are seen to be constructively engaged with it.
- to influence, post-election, the way in which the electoral process is generally perceived.
- to illuminate decisions on the retention of sanctions or the delivery of development assistance, in cases where the quality of the electoral process in question has implicitly or explicitly been identified as a determining factor to be taken into account.
- to respond to domestic interests/pressures (for example, from a community of expatriates originally from the country in which observation is contemplated).

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All but the last of these objectives are also likely to be relevant to observation by intergovernmental organisations (which, furthermore, will face internal imperatives to take account of the perspectives of their constituent members).

Electoral observation may also be seen as an instrument for strengthening the democratic institutions and culture in a country. From this perspective, additional objectives may be:

- to highlight to the people of the country the importance of, respect for, and compliance with, democratic norms.
- to provide moral and practical support to the people and institutions in the country who are also pursuing that aim.
- to build links between people and organisations in different countries who or which are engaged with, and supportive of, electoral processes.
- to encourage the use of common measurement tools, especially in situations where the relationship between well-intentioned observer groups has been competitive rather than complementary.
- to support the development of a domestic capacity for analysis and observation (and perhaps, thereby, to help develop future cadres of international observers).

A good deal of election observation these days takes place under the auspices of respected international bodies which owe a substantial portion of their credibility as observers to the reputation they have built up for objectivity and honesty. Organisations which fall into this category include ODIHR; the European Union; and, from the United States, NDI. These bodies are active in a range of different countries, and have more to lose from adopting a biased or tendentious approach to observation than from 'letting the chips fall'.

Finally, some observation is done by relatively small ad hoc groups whose interest is not in the observation process per se, but in a relationship with a particular country. I took part in such an observation process last year, under the auspices of the various friendship groups which have sprung up across Australia linking localities here to towns and villages in East Timor. In that case, one of the primary purposes of the exercise was to strengthen people-to-people links.

Observers, whatever their hopes and expectations, are also to some extent at the mercy of the objective realities of the country in which they are deployed.

At one end of the scale, some countries are still running elections which are truly dire: corrupt, badly organised, and in no sense free and fair. More often than not, these do not pose such a problem for observers, because they will not be there. Where the defects have been centrally organised by the incumbent regime, it is unlikely to want to have independent witnesses on the ground. Occasionally, such defects are not centrally organised, but rather arise from a lack of security, the enduring influence of a basically non-democratic culture, or widespread retail rather than wholesale fraud. In such a situation, friendly countries may well be invited to send observers, but, sensing the way the wind is blowing, may decline to do so, knowing that their delegations on the ground could find themselves impossibly conflicted between telling the truth and causing offence to allies or friends. 'Them that ask no questions isn't told a lie'.<sup>14</sup>

At the other end of the scale, observers will sometimes find themselves looking at a good, peaceful election, which presents them with really no ethical or moral dilemmas. They will be able to make positive comments and suggestions, and their hosts will wish them well as they leave.

In the middle of the scale, one finds perhaps the most challenging context: elections which are not a pure charade, but are nevertheless obviously seriously defective in one way or another. These are the polls the perceptions of which are likely to shift one way or another, depending on what international observers have to say about them.

Taken as a whole, these contextual issues can significantly complicate the work of observers, and at times place them under considerable stress.

## **Challenges**

I would like to conclude by discussing some of the challenges which I think international observation is facing or will soon face. I want to mention three which seem to me to be particularly significant: politicisation; increasing population mobility worldwide; and the ever-widening use of technology in elections.

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<sup>14</sup> The fact that the decision whether or not to deploy observers may be a difficult one was one of the reasons why International IDEA decided to promulgate guidelines on the subject. See International IDEA, *Election Guidelines for Determining Involvement in International Election Observation*, 2000, <http://aceproject.org/ero-en/topics/election-integrity/Guidelines%20for%20determining%20Observation.pdf>.

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Of these, politicisation is perhaps the most obvious challenge. Nations invite international observers to be present in the hope that their elections will be endorsed. For this to be helpful to democracy, however, observers need to maintain their standards, so that the conduct of legitimate elections is the only road to endorsement. Some autocrats, however, have realised that with a bit of luck and effort, they can have their cake and eat it too. For them, the ideal is to be able to manipulate an election to their own advantage, while still having it endorsed by the international community. This aim may be achieved in a number of ways. Manipulation may be made ever more subtle, perhaps taking the form of low-level but pervasive intimidation which can be difficult for outsiders to detect, but nevertheless most effective. If, for example, an incumbent regime makes it clear to its people, through the totality of its conduct over a long period of time, that if it loses an election there is likely to be chaos or bloodshed, this in effect is a form of collective intimidation directed at the entire population; but it may not need to be manifested in overt acts of violence while observers are around. At this point, some of the constraints faced by observers start to come into play. Those who make a fetish of eyewitness evidence will deny that factors such as that I have just described can legitimately be taken into account in assessing an election.

More particularly, however, these sorts of strategies on the parts of autocrats may be complemented by weakness on the part of observers. As I noted previously, observation is often undertaken in pursuit of political purposes other than those which are most obvious. If, for example, an official observer team has been deployed from one country to another with the aim of strengthening a bilateral relationship, its default position is likely to be a preference not to have to say anything terribly critical: it may well then seek to ‘paint a bullseye around the spot where the arrow happened to land’. Observers who want to proceed in that way with a degree of sophistication have a number of options open to them. They may refuse to take account of events which they have not seen with their own eyes; they may give the benefit of the doubt to the incumbents; or they may seek to take advantage of ambiguities in the concept of free and fair elections to make sanguine rather than critical comments.

This syndrome can be particularly troubling in situations where observers see their role as being one of resolving conflict rather than supporting democratic processes. Reasoning from such a mindset, it is all too easy for observers to conclude that criticism of an election process is likely to lead to further conflict, and that therefore it is more responsible for them to pull their punches. This, however, basically creates an in-built bias in favour of incumbents, since they are the players who typically control the apparatus of state repression, and therefore have the greatest capacity to turn violence on and off. (I would observe in passing that this is one of the reasons why

there are far more examples of elections being stolen by incumbent governments than by oppositions.)

Even where observers are determined to do their job properly, attempts may be made to pressure or manipulate them. A former colleague of mine who has done a lot of work internationally gave me the following example of this quite recently:

A good friend of mine was involved in another observation team ... some years ago and she would not agree to the wording of the report—the pressure put on her ended up with a call from the President’s office telling her to sign—those guys really protect each other.

My personal view is that the single greatest threat to the integrity of election observation comes from attempts by observers to anticipate the possible political outcomes flowing from their observations, and to tailor their findings accordingly. When such an approach is taken, true neutrality is impossible to achieve. When briefing observers in the past, I have always told them that their role is akin to that of a jury, and that jury members have no right or responsibility to consider whether a particular conviction or acquittal is likely to give rise to trouble in the streets. The same sort of thing, of course, could be said of auditors: if they find that a corporation’s books have been cooked, the fact that revealing this may cause the share price to tank is not their problem. In both cases, the standard neutral approach of letting the chips fall is motivated by a belief that in the long term having neutral juries and auditing is overwhelmingly more important for a society than any short-term costs which may flow from particular judgements. To put it bluntly, observers who cover up malpractice for political reasons are accessories after the fact, and are as culpable as the fraudsters.

The politicisation of international election observation leads to some sad conclusions<sup>15</sup>:

- First, a dishonest, tendentious or politicised observation process can be positively damaging, if it helps to confer undeserved legitimacy on an election or a government.
  
- Secondly, the people of the country concerned will typically know what has in fact been going on, and the sight of international observers involved in what

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<sup>15</sup> For a discussion of the very public (and, on the face of it, bitter) dispute over politicisation which broke out between different organs of the OSCE in the aftermath of the Azerbaijan election of October 2013, see European Stability Initiative, *Disgraced: Azerbaijan and the End of Election Monitoring as We Know It*, 2013, [http://www.esiweb.org/pdf/esi\\_document\\_id\\_145.pdf](http://www.esiweb.org/pdf/esi_document_id_145.pdf).

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they are likely to see as a cover-up may encourage them to lose faith in democracy, and in the international community as a guarantor thereof.

In addition, politicisation can fundamentally call into question the point of investing in international rather than domestic observation. There are, in fact, considerable benefits in developing a domestic election observation capacity in a country. It can help to build a sense of popular ownership of the democratic process. Domestic observation can provide a much more comprehensive coverage of an election than international observers can ever hope to achieve, and at much less cost. Domestic observers are also likely to have language skills and cultural sensitivity which will give them much greater insights into what is really happening at the grass roots. Against all these points, it has historically been argued that international observers bring to their task technical knowledge, experience and a disinterested neutrality. But if, in fact, international observers are also pursuing extraneous political interests, their comparative advantage largely falls away.

Let me turn now to what I see as the second major challenge which observers are increasingly facing: that of population mobility. It used to be the case that observers of elections of a particular country could simply focus their activities in that country. Now, however, the increasing ease of population movement is leading worldwide to greater pressures on election management bodies to provide out-of-country voting facilities. This is true both for rich countries, whose citizens can readily afford to travel, and for poorer countries, where they are enjoying increasing opportunities to go to richer countries where they can earn money which can be remitted home. Out-of-country voting typically uses different modalities to voting at home, including postal and pre-poll voting, and voting in embassies, as well as different counting mechanisms. If a significant proportion of a country's population are voting in other countries, the imperative for election observation to be comprehensive implies that observation operations will have to be much more widespread. This gives rise to implications beyond mere cost: just because country A has invited observers to go there to witness its election does not mean that country B, where country A's citizens are also voting, will be prepared to welcome observers too.

A final challenge arises from the increasing technological sophistication of elections.<sup>16</sup> In bygone days, voter registration tended to be done on cards or in books, and was readily observable. Now, particularly in Third World and post-conflict countries, registration tends to make use of computerised biometric technology, and assessing whether the underlying systems are accurately recording data requires a good deal

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<sup>16</sup> For a discussion of a recent case in which expensive technology failed to live up to expectations, see Joel D. Barkan, 'Technology is not democracy', *Journal of Democracy*, vol. 24, no. 3, 2013, pp. 156–65.

more technical knowledge on the part of observers than was previously the case. This is even more pronounced when electronic voting is introduced: and a number of organisations have already started to examine the distinctive challenges associated with observing electronic elections, where there may be no ballot papers, and possibly significant distrust of the machines being used.<sup>17</sup>

Most problematical of all is the observation of internet voting. Throughout the world, election management bodies are coming under increasing pressure from voters, political parties and governments to implement, or at least consider implementing, some sort of internet voting. Additional impetus is given to this by the sense that internet voting may provide a cheap, convenient and effective way of enfranchising out-of-country voters.

There is a widespread, naive sense that because the internet is used in so many different contexts, including sensitive ones such as banking, it must be possible in principle to use it relatively easily for voting. In fact, nothing could be further from the truth: internet voting gives rise to a large number of difficult problems, most of which have not yet been solved, and some of which are arguably insoluble in principle. One of these is simply how to make all elements of internet voting transparent to observation by party agents and observers.<sup>18</sup>

For that reason I have a strong suspicion that sometime in the next 10 years we are going to see a meltdown at an election somewhere in the world where a failed attempt has been made to introduce internet voting. It is anyone's guess how any observers deployed to monitor that election will be able to cope.



**Question** — I wonder about turning the tables—what your views would be about Australia inviting international observers to come and take a look at our next election.

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<sup>17</sup> See, for example, Jordi Barrat, *Observing E-enabled Elections: How to Implement Regional Electoral Standards*, International IDEA, Stockholm, 2012, <http://www.idea.int/democracydialog/upload/Observing-e-enabled-elections-how-to-implement-regional-electoral-standards.pdf>; Vladimir Pran and Patrick Merloe, *Monitoring Electronic Technologies in Electoral Processes: An NDI Guide for Political Parties and Civic Organizations*, National Democratic Institute for International Affairs, 2007, [http://www.ndi.org/files/2267\\_elections\\_manuals\\_monitoringtech\\_0.pdf](http://www.ndi.org/files/2267_elections_manuals_monitoringtech_0.pdf); and The Carter Center, *The Carter Center Handbook on Observing Electronic Voting*, 2nd edn, 2012, [http://www.cartercenter.org/resources/pdfs/peace/democracy/des/Carter-Center-E\\_voting-Handbook.pdf](http://www.cartercenter.org/resources/pdfs/peace/democracy/des/Carter-Center-E_voting-Handbook.pdf).

<sup>18</sup> For a detailed discussion of many of these issues, see Electoral Council of Australia and New Zealand, *Internet Voting in Australian Election Systems*, 2013, <http://www.eca.gov.au/research/files/internet-voting-australian-election-systems.pdf>.

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Clive Palmer and others have made comments about the possibility of poor identification processes and also the possibility of multiple voting in Australia. So, with that put in the public arena, I wonder what your comment would be.

**Michael Maley** — Provided that you get professional observers, I cannot see any objection in principle to such a process. As I mentioned earlier, the different OSCE (Organization for Security and Co-operation in Europe) countries have all made a commitment to have their peers coming as observers and, frankly, Australia has nothing to be ashamed of in its processes. I cannot see any objection in principle to it.

**Question** — Michael, you are with the Centre for Democratic Institutions (CDI). What is their focus at the moment in terms of international elections?

**Michael Maley** — They are not deeply involved in international elections. Their work has tended to be more on parliamentary strengthening and political party strengthening. But as of now there is a process being kicked off within the government—because CDI is a totally government-funded organisation—to think more about what is the best sort of Australian involvement in governance support around the world. That is going to take a bit of time. What comes out of that I think remains to be seen. But there are several well-known pillars of any sort of democratic, representative process. One is free, fair and legitimate elections; another one is an effective, empowered parliament; a third one is a community engagement with both parliamentary processes and electoral processes.

It is very easy to think of elections as being something that is delivered by an electoral commission to the community, but if you look around the world one of the things that you pick up is that the most successful elections in the most successful democracies are all basically community undertakings. Everybody has a legitimate role to play. We do not tend to think about this very much in Australia, because the contribution that the people make and the parties make is what they don't do. They don't misbehave. It never enters your mind to try to buy your next-door neighbour's vote. You don't threaten people as they are going to a polling place. But when you go to a country where these sorts of problems are endemic, you come to realise just how important is the contribution that everybody makes, not just the electoral commission. And a lot of thinking about how to strengthen governance and democracy in other countries is going beyond just the mechanics of the process to thinking about how you can reinforce this democratic culture. And cultures are not things that are made and unmade overnight. I used to say to people, 'You wouldn't think you could get the Mafia out of Sicily by running a civic education program'. There are a lot of interests that are there and it takes time, but it is worth the effort.

**Question** — Do we still need international observation in light of the three points that I am going to highlight: Firstly, if we need it, where can we place it on the electoral cycle if it is really a relevant point to the electoral cycle process? What I have observed is that there is somehow a spirit of silence or a dominant influence among the observers. That is, if the EU or another organisation—maybe a smaller one—is going to observe the same elections, if the dominant one starts making a statement that these elections were not free and fair, you find that everyone who is observing the elections—their results are still flowing around them. So there is like what I am going to call a standard deviation of the reports that are being issued by observers. Their reports or their recommendations tend to go around the very same things.

The second thing that I have observed is: are international observers really independent from their financiers? I will give you an example. If am working for the EU and the EU has been pressing for a regime change in that country and I go under the sponsorship of the EU, in my observation report will I really be independent from those who sponsored me? If my sponsors are saying the regime is bad and I go there and do a report, what are the chances that I will do a report and say, ‘These elections were free and fair’? Will I not be influenced by those who sent me?

The third point is: do we still need the international observers when you can go and observe a thing happening and you regret that you cannot change it but you do not have the powers to do so? Should we not divert these resources to support the stakeholders who are really involved in the elections from preparation up to implementation, who might have the power or put the money to a better use which can directly influence the outcome of the election?

**Michael Maley** — I would make a few observations in response to the points that you have raised. Where you get involved in the cycle is possibly not as important as what you cover in the cycle. And in any given country you have a history of how elections have proceeded in the past which may inform your thinking about which areas of activity require the greatest concentration of effort as an observer to try to make some sort of evaluation of the process. So in some countries, for example, it is well known that there are problems with the voter register and there may be problems because of fraud; there may be problems because of the inherent difficulty in keeping a database up to date if you do not have a culture of updating your information and so on. And in those sorts of circumstances observers will take that into account and try to concentrate on, or make sure that they give due attention to, the issue of voter registration. In other areas, typically as you get towards the election process in things like nomination there are great opportunities there for manipulation of the process through rejection of legitimate nominations and all sorts of things. For some things, like the electoral law, you do not necessarily have to be in the country when the law is

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being made. You can read it as a desk exercise. You do not even have to be in the country to do that sort of analysis.

So it is going to vary a little bit from topic to topic as to what is the optimal way of approaching it. Typically what bodies like the European Union do these days when they deploy observers is they will have a multidisciplinary team—they will have a legal expert, they will have what they call an elections expert, they will have a security expert, usually a media expert and sometimes a gender expert—to try to make sure that a lot of these key functional activities are properly covered in their analysis and work.

On the question of independence: it is a very difficult one, and I am sceptical about whether a lot of bodies are as independent as they say they are. Having seen this from the inside, I do have a sense that there are a lot of different interests coming around, and any observer team has a lot of pressure on it one way or the other. I have been put under this sort of pressure myself—not intensely, but it was there. That is not to say that you cannot still do a professional job. What you really want to look at is the quality of the analysis. You can tell a good report from a bad report, and this is important when you have competing conclusions coming out from different observers. You really have to look at: how did they do their work? Were they there just for a few days, or did they really intensively analyse the situation? How much evidence have they presented in their reports? How well analysed is it? Is it just impressionistic, or did they cover a lot of places?

One of the arguments that is going on about this election in Azerbaijan is that the one team that was critical basically visited, I think, 58 per cent of polling booths. They covered the counting at a lot of places, and they saw it going to pieces in a lot of places with ballot-stuffing and fraud and that sort of thing. Some of the other groups, which said how good it was, did not actually watch any counting and really just said, ‘We went around, and we liked what we saw’. You would have to say that you give priority in analysing those sorts of conclusions to the people who have actually presented some evidence and some argument.

**Question** — You may have covered some of what I wanted to ask about in what you have just said, but could I ask you to tell us a little about the composition of an Australian observer delegation and how it would work? Is it composed solely of electoral officials? You have mentioned security people. Would it include diplomatic officials either from the local embassy or from the Department of Foreign Affairs? If it does have this wider composition and there are different views on the effect on the bilateral relationship, how would those sorts of issues be worked through?

**Michael Maley** — It is going to vary from case to case. Sometimes there is a desire to make these parliamentary teams. Typically what you will have there is the MPs as the lead players, often supplemented by electoral officials—usually only one—and sometimes diplomats or retired diplomats who can contribute to the deliberations and who are experienced with the country. You sometimes have parliamentarians who have been to a country several times, so they bring back their own experiences as well.

If, on the other hand, it is purely an official delegation, you will not necessarily have MPs there. It may well be a situation where you do not really want to get involved very much in observation of the country but to say no would itself be a political signal you do not want to send. So you then have the option of getting people from the embassy in the capital accredited as observers, and they might do a very low-key operation where they do not say very much and report back to the government rather than issue a public report. So there are a lot of different options along the continuum.

Australia has not really been involved in developing its own systematic methodology for observation in the way that the European Union or the Carter Center have done. They have put a lot of effort into saying exactly how they are going to do their work, because it is their core business, whereas, in Australia, election observation is very much an adjunct to the broader political and bilateral relationship between Australia and the country concerned, and there tends frankly to be a bit of scrambling around when an invitation comes to observe—Should we accept? Should we decline? If not, how are going to do it?—and there is not a template that is conveniently there, ready to be used.



# ***Williams v. Commonwealth*—A Turning Point for Parliamentary Accountability and Federalism in Australia?**

Glenn Ryall

## **I Introduction**

*Williams v. Commonwealth*<sup>1</sup> has been heralded as a turning point in our understanding of Commonwealth executive power. Many were surprised when the High Court, relying to a large extent on principles underlying parliamentary accountability and federalism, held that the Commonwealth executive did not have the power to enter into a funding agreement with a private company that provided chaplaincy services in a Queensland government school. The court thereby cast doubt over the constitutional validity of a significant proportion of Commonwealth expenditure.

*Williams*, however, can be viewed not only as a turning point in our understanding of Commonwealth executive power, but also as a turning point for parliamentary accountability and federalism in Australia. Despite this, the decision has been unjustly criticised as not according with the intention of the framers of the Constitution. It has also been suggested that the court misunderstood the role of Parliament in reaching its decision. On the contrary, however, by highlighting the importance of parliamentary control of the executive branch the court clearly demonstrated a true appreciation of the role of the Parliament. While the legislative response to the decision may raise doubts as to whether, in a practical sense, *Williams* can be considered a turning point for parliamentary accountability and federalism, these doubts are ameliorated by the general consensus that if not all of the legislative response, at least certain spending schemes authorised under it remain invalid.

## **II Background to *Williams***

Under the National School Chaplaincy Program (NSCP), schools were eligible to apply for financial support from the Commonwealth to establish a chaplaincy program or enhance an existing program provided within the school. No statute was enacted for the creation, administration or funding of the NSCP—the Commonwealth instead relied entirely on its executive power in section 61 of the Constitution.<sup>2</sup> The plaintiff in the case, Mr Ron Williams, commenced proceedings in the High Court challenging

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<sup>1</sup> (2012) 248 CLR 156 (*Williams*).

<sup>2</sup> Shipra Chordia, Andrew Lynch and George Williams, '*Williams v. Commonwealth: Commonwealth executive power and Australian federalism*', *Melbourne University Law Review*, vol. 37, no. 1, 2013, pp. 191–2.

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the validity of a funding agreement under the NSCP between the Commonwealth and the Queensland Scripture Union. In the end, the critical question in the case was whether the ‘executive power was sufficiently broad, in the absence of statutory authority, to empower the Commonwealth to enter into the Funding Agreement and make payments under it’.<sup>3</sup>

Prior to the decision in *Williams* many had assumed that the scope of Commonwealth executive power in section 61 of the Constitution extended at least to the subject matters of the heads of Commonwealth legislative power within the Constitution. In addition, it was assumed that the Commonwealth executive did not require any specific statutory authority to engage in activities related to those subject matters. These assumptions have led to the Commonwealth executive implementing many direct spending schemes through executive contracts between the Commonwealth and private parties. These spending schemes have been used to implement a broad range of Commonwealth executive policy objectives without the support of legislative authority. It has been suggested that these executive contracts (which are often used in a regulatory manner to influence and control the behaviour of the recipients of funding)<sup>4</sup> now account for between five and 10 per cent of all Commonwealth expenditure.<sup>5</sup>

### **III The decision in *Williams***

In *Williams* the High Court overturned all of the above assumptions. A majority concluded, primarily on the basis of federal and related parliamentary accountability considerations, that Commonwealth executive power is not coextensive with Commonwealth legislative power and that, in most circumstances, the Commonwealth executive requires statutory authority before it can enter into contracts with private parties and spend public money.<sup>6</sup>

#### ***Concerns relating to federalism***

##### *Defining federalism*

Harrison Moore explained the meaning of ‘federal government’ in the following terms:

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<sup>3</sup> *ibid.*, p. 193.

<sup>4</sup> Cheryl Saunders and Kevin Yam, ‘Government regulation by contract: Implications for the rule of law’, *Public Law Review*, vol. 15, no. 1, 2004, p. 53; Nicholas Seddon, *Government Contracts: Federal, State and Local*, 4th edn, Federation Press, Annandale, NSW, 2009, pp. 55–65; Gabrielle Appleby, ‘There must be limits: The Commonwealth spending power’, *Federal Law Review*, vol. 37, no. 1, 2009, pp. 93, 97.

<sup>5</sup> Chordia, Lynch and Williams, *op. cit.*, p. 190.

<sup>6</sup> *ibid.*, pp. 190–1.

A ‘federal government’ exists where, in a political community, the powers of government are distributed between two classes of organization—a central government affecting the whole territory and population of the Sovereignty, and a number of local governments affecting particular areas and the persons and things therein—which are so far independent of each other that the one cannot destroy the other or limit the powers of the other, or encroach upon the sphere of the other ...<sup>7</sup>

In relation to Australia, in *Capital Duplicators Pty Ltd v. Australian Capital Territory*, Brennan, Deane and Toohey JJ stated that:

The Constitution was enacted to give effect to the agreement reached by the people of New South Wales, Victoria, South Australia, Queensland, Tasmania, and Western Australia to unite ‘in one indissoluble Federal Commonwealth’. The Constitution is no ordinary statute; it is the instrument designed to fulfil the objectives of the federal compact ...<sup>8</sup>

A key theme at the National Australasian Convention debates was a desire to ‘put the preservation of state rights beyond the possibility of doubt’.<sup>9</sup> Both the Commonwealth and the states would each be sovereign within their respective fields and each would be free to perform its functions and exercise its powers without interference, burden or hindrance from the other government. The Constitution was to be ‘an agreement among sovereign powers to give up some of their power to a new central body, but preserving their sovereignty over what they retained. The State was not subordinate to the Commonwealth, nor the Commonwealth to a State ...’<sup>10</sup>

#### *Main federal concerns*

Citing concerns about the federal balance, the majority dismissed a submission that the Commonwealth executive’s capacity to contract was effectively unlimited. For example, French CJ was concerned that attributing such a wide power to the Commonwealth executive would undermine the authority of the states:

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<sup>7</sup> W. Harrison Moore, *The Constitution of the Commonwealth of Australia*, 2nd edn, Charles F. Maxwell (G. Partridge & Co.), Melbourne, 1910, p. 68.

<sup>8</sup> (1992) 177 CLR 248, 274.

<sup>9</sup> *Official Report of the National Australasian Convention Debates*, Sydney, 5 March 1891, p. 82 (Alfred Deakin).

<sup>10</sup> Leslie Zines, *The High Court and the Constitution*, 5th edn, Federation Press, Annandale, NSW, 2008, p. 1.

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There are consequences for the Federation which flow from attributing to the Commonwealth a wide executive power to expend moneys, whether or not referable to a head of Commonwealth legislative power, and subject only to the requirement of a parliamentary appropriation ... Expenditure by the Executive Government of the Commonwealth, administered and controlled by the Commonwealth, in fields within the competence of the executive governments of the States has, and always has had, the potential, in a practical way of which the Court can take notice, to diminish the authority of the States in their fields of operation.<sup>11</sup>

In addition, French CJ, Gummow and Bell JJ, and Crennan J also rejected the Commonwealth's submission that the executive 'was empowered to enter into contracts on matters that *could* be the subject of legislation, even if no such legislation had been enacted'.<sup>12</sup> In rejecting this submission, they drew heavily on, among other things, the principles of federalism, including the potential for section 96 to be bypassed, a diminished role for the Senate (as a 'states' house'), and an inability to resolve potential inconsistencies between Commonwealth and state activity.<sup>13</sup>

Hayne J and Kiefel J did not find it necessary to determine whether the Commonwealth executive was empowered to enter into contracts on matters that *could* be the subject of legislation because they determined that the Constitution did not empower the Parliament to enact a statute in support of the chaplaincy program.<sup>14</sup> However, both Hayne J and Kiefel J expressed concerns about the potential widening of Commonwealth legislative powers 'by way of an unlimited executive power operating in combination with the incidental legislative power contained in s. 51(xxxix) of the *Constitution*'.<sup>15</sup> For example, Kiefel J was concerned that such 'an extension of power may enable the Commonwealth to encroach upon areas of State operation and thereby affect the distribution of powers as between the Commonwealth and the States'.<sup>16</sup>

#### *'Implied nationhood power' not applicable*

The court was unanimous that this case was not an instance in which the 'implied nationhood power' would permit Commonwealth executive action in the absence of

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<sup>11</sup> *Williams v. Commonwealth* (2012) 248 CLR 156, 192–3 [37].

<sup>12</sup> Chordia, Lynch and Williams, *op. cit.*, p. 191.

<sup>13</sup> *ibid.* See *Williams v. Commonwealth* (2012) 248 CLR 156, 192–3 [37], 203–4 [58], 205–6 [60]–[61] (French CJ), 232–3 [136], 234 [143], 235 [145] (Gummow and Bell JJ), 347 [501], 348 [503], 353 [522] (Crennan J).

<sup>14</sup> Chordia, Lynch and Williams, *op. cit.*, pp. 191, 214.

<sup>15</sup> *ibid.*, p. 191.

<sup>16</sup> *Williams v. Commonwealth* (2012) 248 CLR 156, 370 [581].

statutory authority.<sup>17</sup> The court noted that that the states were capable of providing chaplaincy services, as highlighted by the Queensland Government's own funding scheme for school chaplaincy services. There was, therefore, no justification for Commonwealth incursion into an area of state competency by executive action alone:<sup>18</sup>

... there is nothing about the provision of school chaplaincy services which is peculiarly appropriate to a national government. They are the province of the States, in their provision of support for school services, as evidenced in this case by the policy directives and funding undertaken by the Queensland Government. Funding for school chaplains is not within a discernible area of Commonwealth responsibility.<sup>19</sup>

### ***Concerns relating to parliamentary accountability***

Related to these concerns about federalism were the court's concerns about various accountability matters, such as parliamentary control over executive spending and the use of 'public moneys'.<sup>20</sup> The court noted that the system of responsible and representative government established under the Constitution required that the Parliament, as the directly elected representatives of the people, must have control over the expenditure of money by the executive.<sup>21</sup> For example, Gummow and Bell JJ stated that:

... there remain considerations of representative as well as of responsible government in cases where an executive spending scheme has no legislative engagement for its creation or operation beyond the appropriation process.<sup>22</sup>

Similarly, Crennan J noted that the 'principles of accountability of the Executive to Parliament and Parliament's control over supply and expenditure operate inevitably to constrain the Commonwealth's capacities to contract and to spend'.<sup>23</sup>

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<sup>17</sup> Chordia, Lynch and Williams, op. cit., pp. 198–9.

<sup>18</sup> *ibid.*, p. 199.

<sup>19</sup> *Williams v. Commonwealth* (2012) 248 CLR 156, 373 [594] (Kiefel J).

<sup>20</sup> Gabrielle Appleby and Stephen McDonald, 'Looking at the executive power through the High Court's new spectacles', *Sydney Law Review*, vol. 35, no. 2, 2013, pp. 270–2.

<sup>21</sup> *ibid.*, p. 270.

<sup>22</sup> *Williams v. Commonwealth* (2012) 248 CLR 156, 232–3 [136].

<sup>23</sup> *ibid.*, 351–2 [516].

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### *Practical implications of the decision*

It therefore appears that concerns about the impact of non-statutory executive spending schemes on federalism and the principles of parliamentary accountability underlying responsible and representative government—concepts which the court stressed are central to the Australian constitutional framework—underpinned the court’s decision. With these principles in mind, the court held that if the Commonwealth executive wishes to spend money in areas beyond the day-to-day running of the government it must be authorised to do so by legislation or alternatively it may utilise the provisions of section 96 of the Constitution to grant money to a state with relevant conditions attached. The court noted that if Commonwealth expenditure is limited in this way there is an opportunity for the people of each state, either through their elected state governments or their elected representatives in the Senate to exercise greater control over the expenditure.<sup>24</sup> In relation to the significance of section 96 in the federal structure, Gummow and Bell JJ noted with approval the reasons of Barwick CJ in the *AAP Case*.<sup>25</sup> Barwick CJ noted that the economic circumstances of a state may leave it with little option but to accept a section 96 grant with conditions attached but that at least such ‘intrusions by the Commonwealth into areas of State power ... wear consensual aspect’.<sup>26</sup>

It has also been suggested that the principles which limit the Commonwealth executive’s capacity to contract and spend may also limit its capacity to participate in intergovernmental agreements. It is therefore possible that specific legislative authority is required before the Commonwealth executive can be empowered to enter into most types of intergovernmental agreements.<sup>27</sup> If this is the case it would underscore the importance of *Williams* as a turning point for parliamentary accountability given the increasing number of intergovernmental agreements which undermine usual parliamentary scrutiny processes. This occurs, for example, where the executive demands that the Parliament pass ‘uniform legislation’ without amendment because the legislation reflects an agreement reached with other jurisdictions—an agreement in which the Parliament has had no involvement at all.

Overall, the fact that the court has held that it is unconstitutional for the Commonwealth executive acting alone to spend money in areas beyond the day-to-day running of the government, and that the Parliament must be more involved in such decisions, means that *Williams* can be seen as a turning point for parliamentary accountability and federalism.

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<sup>24</sup> Appleby and McDonald, *op. cit.*, pp. 274–5.

<sup>25</sup> *Williams v. Commonwealth* (2012) 248 CLR 156, 235–6 [148].

<sup>26</sup> *Victoria v. Commonwealth* (1975) 134 CLR 338, 357.

<sup>27</sup> Chordia, Lynch and Williams, *op. cit.*, p. 230.

#### IV Criticisms of the decision in *Williams*

Despite this, the decision in *Williams* has been subject to a number of criticisms. Of relevance here are the criticisms that the decision did not accord with the intention of the framers of the Constitution and that the court misunderstood the role of the Parliament, and in particular the Senate, in protecting responsible and representative government and federalism. It is necessary to address these criticisms in order to dispel suggestions that the victory for parliamentary accountability and federalism that *Williams* represents came about as a result of the court ‘getting it wrong’.

##### *The decision does not accord with the framers’ intentions*

Appleby and McDonald have suggested that the decision in *Williams* ‘substantially alters our understanding of the Commonwealth Executive, and significantly removes it from our British origins and, on one view, from the intentions and expectations of the framers’.<sup>28</sup>

In this context, however, it is important to note that while the Constitution drew on ‘British origins’, the framers explicitly and deliberately departed from the British model in many respects. In the Australasian Federal Convention debates, Sir Richard Baker, in answering a suggestion that the framers ‘ought to stick hard and fast by all the lines of the British Constitution’, stated that:

... in this constitution which we are now considering, we have departed at the very start from every line of the British Constitution, except that principle which is common to all manner of constitutions all over the world—that there should be representatives chosen by the people. We are to have two houses of parliament each chosen by the same electors ... We are to have, instead of a highly centralised government such as they have in Great Britain, a division of powers—in fact we are to have, at all events, an attempt at a federation.<sup>29</sup>

The High Court has previously stated that ‘Probably the most striking achievement of the framers of the Australian instrument of government was the successful combination of the British system of parliamentary government containing an executive responsible to the legislature with American federalism’.<sup>30</sup> In *Williams*, the court has drawn on this combination of responsible and representative government

<sup>28</sup> Appleby and McDonald, *op. cit.*, p. 272.

<sup>29</sup> *Official Record of the Debates of the Australasian Federal Convention*, Sydney, 17 September 1897, p. 789 (Richard Baker).

<sup>30</sup> *R. v. Kirby; Ex parte Boilermakers’ Society of Australia* (1956) 94 CLR 254, 275.

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and federalism, and the role of the Senate as a ‘states’ house’, to provide the foundation of limitations on the Commonwealth executive.<sup>31</sup>

It is clear that the framers of the Constitution appreciated the tensions inherent in the integration of the traditional concept of British responsible government with federalism.<sup>32</sup> However, in the end this tension was managed by, at least partially, moving away from this form of responsible government in order to accommodate federalism. This is demonstrated by the outcome in relation to the Senate’s powers with respect to ‘money bills’. Delegates from the larger colonies demanded that the ‘majority must rule’ and that the Senate should not have the power to reject or amend ‘money bills’.<sup>33</sup> On the other hand, delegates from the smaller colonies argued that if the traditional British conception of responsible government was not altered so that the Senate did have adequate financial powers ‘we may as well hand ourselves over, body and soul, to those colonies with the larger populations’.<sup>34</sup>

The extent of the financial powers of the Senate was one of the most contentious issues at the debates and one in which the possibility of federation itself was at stake. For example, Sir John Forrest went on to say that if strict adherence to British responsible government were ‘the only terms upon which [the larger colonies] want Federation, they must federate for themselves, and leave the other colonies to stand out of the compact’.<sup>35</sup> In the end, the smaller colonies largely achieved their aims with the Senate having nearly the same legislative powers as the House of Representatives,<sup>36</sup> including the power to reject all bills. The framers therefore created a very powerful upper house with equal representation from each of the constituent bodies of the federation—a clear departure from the British conception of responsible government in order to accommodate federalism and representative government. Thus when the entirety of Australia’s constitutional arrangements are examined in their context it is inaccurate to contend that the decision in *Williams* resulted in a departure from the intention of the framers as Appleby and McDonald suggest. The limitations on the Commonwealth executive outlined in *Williams* simply underscore Australia’s

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<sup>31</sup> Appleby and McDonald, op. cit., p. 273.

<sup>32</sup> *ibid.*, pp. 273–4.

<sup>33</sup> See, for example, *Official Record of the Australasian Federal Convention*, Adelaide, 13 April 1897, pp. 499–500 (Richard O’Connor).

<sup>34</sup> *Official Record of the Australasian Federal Convention*, Adelaide, 13 April 1897, p. 490 (John Forrest).

<sup>35</sup> *ibid.*

<sup>36</sup> Although proposed laws appropriating revenue or moneys, or imposing taxation, would not be able to originate in the Senate and the Senate would not be able to amend proposed laws which imposed taxation, appropriated revenue or moneys for the ordinary annual services of the government, or increased any proposed charge or burden on the people. The Senate would, however, be able to request amendments to bills it could not amend. (Constitution, s. 53)

unique constitutional arrangements—arrangements which should not automatically be equated with British traditions.

At the time the Constitution was being framed Robert Garran predicted that:

... the parliamentary system for federal purposes may develop special characteristics of its own ... Thus the familiar rule that a Ministry must retain the confidence of the representative chamber, may, in a Federation—where both Chambers are representative—develop into a rule that the confidence of both Chambers is required. This would mean that executive (as well as legislative) acts should have the support of a majority of States as well as of a majority of citizens.<sup>37</sup>

Garran's prediction that a government may need to have 'the confidence of both Chambers' has long been demonstrated to be accurate. As former Clerk of the Senate J. R. Odgers noted:

... to form a Government a party or group needs the support of a majority of the members of the House of Representatives. In normal circumstances the composition of the Senate plays no part in the determination of which political group shall form the Government. However, as was illustrated by the double dissolutions of 1974 and 1975, a Government which has been denied Supply by the Senate cannot govern constitutionally and should either advise a general election or resign.<sup>38</sup>

Leigh Sealy has suggested that the underlying proposition of the decision in *Williams* may be 'that the Commonwealth government is not only responsible to the people through the House of Representatives but is also (at least in a structural, if not a practical sense) responsible to the States, through the Senate'.<sup>39</sup> Rather than being a departure from the framers' intentions, the decision in *Williams* appears to be fully consistent with Garran's suggestion that 'executive ... acts should have the support of a majority of States as well as of a majority of citizens'<sup>40</sup> and his recognition of the centrality of federalism and representative government to Australia's constitutional framework.

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<sup>37</sup> Robert Garran, *The Coming Commonwealth: An Australian Handbook of Federal Government*, Angus & Robertson, Sydney, 1897, p. 150.

<sup>38</sup> J. R. Odgers, *Australian Senate Practice*, 6th edn, Royal Australian Institute of Public Administration, Canberra, 1991, pp. 2–3.

<sup>39</sup> Leigh Sealy, 'Adrift on "the Sea of Faith": Constitutional interpretation and the School Chaplains Case', Paper presented at the 2013 Constitutional Law Conference, Sydney, 15 February 2013, p. 10.

<sup>40</sup> Garran, *op. cit.*, p. 150.

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### *The court misunderstood the role of the Parliament*

The importance of political accountability and the role of the Senate in Australia's federal system of representative government was highlighted in many of the judgments. This has also been subject to criticism. French CJ highlighted the requirements of 'political accountability' on the Commonwealth executive,<sup>41</sup> and suggested that:

A Commonwealth Executive with a general power to deal with matters of Commonwealth legislative competence is in tension with the federal conception which informed the function of the Senate as a necessary organ of Commonwealth legislative power. It would undermine parliamentary control of the executive branch and weaken the role of the Senate.<sup>42</sup>

He concluded by noting the Constitution must be understood by reference to the distinctive system of government created in Australia discussed above—a system which combined a 'truly federal government' and responsible government as central pillars of the Constitution.<sup>43</sup>

Gummow and Bell JJ noted that there 'remain considerations of representative as well as of responsible government in cases where an executive spending scheme has no legislative engagement for its creation or operation beyond the appropriation process'.<sup>44</sup> They suggested that absence of such engagement means that there is 'a deficit in the system of representative government'<sup>45</sup> and that the NSCP contracts:

... present an example where within the Commonwealth itself there is a limited engagement of the institutions of representative government. The Parliament is engaged only in the appropriation of revenue, where the role of the Senate is limited. It is not engaged in the formulation, amendment or termination of any programme for the spending of those moneys.<sup>46</sup>

Hayne J noted that the Constitution provides for parliamentary control 'over raising and expenditure of public moneys'.<sup>47</sup>

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<sup>41</sup> *Williams v. Commonwealth* (2012) 248 CLR 156, 192 [35].

<sup>42</sup> *ibid.*, 205 [60].

<sup>43</sup> *ibid.*, 205–6 [61].

<sup>44</sup> *ibid.*, 232–3 [136].

<sup>45</sup> *ibid.*, 234 [143].

<sup>46</sup> *ibid.*, 235 [145].

<sup>47</sup> *ibid.*, 258–9 [216].

Crennan J highlighted the fact that prior to federation ‘it was appreciated that the sharing of political power was an important mechanism for avoiding arbitrary government’.<sup>48</sup> She emphasised the importance of accountability of the executive to the Parliament through parliamentary debate, the requirement for the executive to provide information to the Parliament, and the fact that the ‘ultimate passage of a Bill into law may involve a number of compromises along the way, reflected in amendments which secure the Bill’s final acceptance’.<sup>49</sup> She concluded that these:

... mechanisms and layers of accountability ... permit the ventilation, accommodation, and effective authorisation of political decisions. The notion of a government’s mandate to pass laws and to spend money rests both on democratic representative government and on the relationship between Parliament and the Executive, involving, as it does, both scrutiny and responsibility. While the Executive has the power to initiate new policy and to implement such policy when authorised to do so, either by Parliament or otherwise under the *Constitution*, Parliament has the power to scrutinise and authorise such policy (if it is not otherwise authorised by the *Constitution*), and the exclusive power to grant supply in respect of it and control expenditure.<sup>50</sup>

Before concluding that ‘expenditure by the Commonwealth Executive will often require statutory authority beyond appropriation Acts’,<sup>51</sup> Crennan J noted that the NSCP had not ‘been subject to the parliamentary processes of scrutiny and debate which would have applied to special legislation’ and that the Senate had no power to amend the original appropriation Act.<sup>52</sup>

Appleby and McDonald question why the Senate (and the Parliament more generally) must be involved in a stronger way in relation to the authorisation of executive expenditure.<sup>53</sup> They suggest that it is not obvious why the terms of the Constitution are said to require the positive enactment of legislation as a precondition for the expenditure of money, and query why it is not ‘sufficient that the Parliament has the power, should it choose to do so, to legislate to prevent spending without prior parliamentary approval, to apply pressure to Ministers or, in an extreme case, to withdraw its confidence in the government’.<sup>54</sup> They note that ‘the Parliament has undoubted power to pass a bill restricting the executive and preventing it from

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<sup>48</sup> *ibid.*, 350 [510].

<sup>49</sup> *ibid.*, 351 [515].

<sup>50</sup> *ibid.*, 351 [516].

<sup>51</sup> *ibid.*, 355 [534].

<sup>52</sup> *ibid.*, 354–5 [532].

<sup>53</sup> Appleby and McDonald, *op. cit.*, p. 264.

<sup>54</sup> *ibid.*, p. 270.

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spending in particular ways’ and that if the Senate favoured such a bill and the House of Representatives refused to pass it ‘the Senate could press the House to pass it and, in the most extreme case, could refuse to deal with other business unless and until the Bill were passed’.<sup>55</sup> Alternatively, it is suggested that the Parliament could subsequently legislate so as to prevent or claw back expenditure of which it did not approve.<sup>56</sup>

While the above propositions are correct, the response to Appleby and McDonald’s queries appears to lie in the aspects of the judgments of the majority outlined above. The methods of parliamentary control outlined by Appleby and McDonald would not answer the majority’s concerns in relation to federalism and the principles of parliamentary accountability which underlie representative and responsible government—both of which the court has stressed are central to Australia’s constitutional framework. For example, preventative measures or measures to claw back expenditure of which the Parliament did not approve could be impractical—for example, how would the Parliament know that it does not approve of a particular spending scheme before it is even created and if the Parliament did ‘claw back expenditure’ how would the Commonwealth recover the money from recipients? Moreover, such measures would not result in parliamentary engagement in the ‘formulation, amendment or termination’<sup>57</sup> of any spending scheme, nor would it ‘permit the ventilation, accommodation, and effective authorisation of political decisions’.<sup>58</sup> In addition, it would not allow the Senate to fulfil its constitutional mandate of ensuring equal representation of the people of the states in political decisions at the Commonwealth level.

In this context it is important to note that it is extremely unlikely that a bill which sought to restrict the executive from spending in particular ways would pass the House of Representatives which is invariably dominated by MPs forming or otherwise supporting the executive government. As French CJ notes, the ‘Executive has become what has been described as “the parliamentary wing of a political party” which “though it does not always control the Senate ... nevertheless dominates the Parliament and directs most exercises of the legislative power”.’<sup>59</sup> It is true that the Senate could utilise various mechanisms to encourage the executive-dominated lower house to pass such a bill. However, this would not answer the majority judges’ concerns in relation to the need for active parliamentary oversight in the ‘formulation, amendment or termination’<sup>60</sup> of spending schemes—oversight which the court

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<sup>55</sup> *ibid.*, p. 265.

<sup>56</sup> *ibid.*, p. 270.

<sup>57</sup> *Williams v. Commonwealth* (2012) 248 CLR 156, 235 [145].

<sup>58</sup> *ibid.*, 351 [516].

<sup>59</sup> *ibid.*, 205 [61].

<sup>60</sup> *ibid.*, 235 [145].

highlighted is a necessary condition of the centrality of federalism and representative and responsible government to Australia's constitutional framework.

## V The legislative response

As noted above, on the face of the decision, it appears that *Williams* was a turning point for parliamentary accountability and federalism. However, it is necessary to consider the Commonwealth's legislative response to the decision. The immediate legislative response was the *Financial Framework Legislation Amendment Act (No. 3) 2012* (Cth) (FFLA Act). The FFLA Act purports to retrospectively provide the legislative support for over 400 non-statutory funding schemes whose validity was thrown into doubt following *Williams*.<sup>61</sup> Any future additions to the list of spending schemes will be made by the executive in the form of a disallowable instrument.<sup>62</sup>

The former Chief Justice of the New South Wales Supreme Court, James Spigelman, has expressed concerns about the Commonwealth ignoring the limits on executive power in the Constitution—particularly after the decision in *Pape*.<sup>63</sup> In relation to the FFLA Act he noted that 'the Commonwealth proceeded to virtually replicate its view of the Executive power in the form of a statute'.<sup>64</sup> He expressed concerns that this may amount to a breach of the rule of law:

It is not permissible to approach the Constitution on the basis that whatever is in the institutional interests of the Commonwealth must be the law. It is not consistent with the rule of law that the Executive and the Parliament proceed on the basis that an arguable case is good enough, as distinct from a genuine, predominant opinion as to what the law of the Constitution actually is ... The Constitution is a document which is to be obeyed. It is not an envelope to be pushed.<sup>65</sup>

### *Constitutionality of the FFLA Act*

Several specific concerns about the constitutionality of the FFLA Act have been raised. First, there are concerns that by providing for approval of expenditure by regulation the FFLA Act will not answer the High Court's concerns in relation to parliamentary accountability and federalism. Secondly, it appears that many of the

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<sup>61</sup> Daniel Stewart, 'Williams v. Commonwealth and the shift from responsible to representative government', *AIAL Forum*, no. 72, 2013, p. 75.

<sup>62</sup> Appleby and McDonald, *op. cit.*, p. 277.

<sup>63</sup> *Pape v. Federal Commissioner of Taxation* (2009) 238 CLR 1.

<sup>64</sup> James Spigelman, 'Constitutional recognition of local government', Speech delivered at the Local Government Association of Queensland 116th Annual Conference, Brisbane, 24 October 2012, p. 12.

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schemes provided for in the FFLA Act may not be supported by a head of legislative power.

*Providing for approval of spending schemes by regulation*

The process by which the FFLA Act itself was passed and the fact that it simply listed over 400 schemes, or purposes of schemes, in the regulations, resulted in extremely limited parliamentary oversight and virtually no involvement of the Parliament in the ‘formulation, amendment or termination’<sup>66</sup> of the schemes.<sup>67</sup> By amending the regulations through an Act, the usual disallowance, drafting, publication, parliamentary scrutiny and consultation procedures provided for in the *Legislative Instruments Act 2003* (Cth) did not apply. Noting the concerns raised by the High Court in relation to parliamentary accountability, it has been suggested that the usual disallowance and other procedures should have applied to the listing of the schemes to provide for a greater opportunity for parliamentary scrutiny of each of the schemes.<sup>68</sup> Former Chief Justice Spigelman suggested that:

The essential character of the Act is that, to a significant degree, it abdicates Parliamentary control of expenditure. No doubt, this is based on the political popularity of the expenditure, or at least most of it, coupled with a sense of urgency. However, this conduct was not consistent with the central significance of such Parliamentary control in the text of our Constitution and in our Constitutional history, not least as manifest in the English Civil War or, to bring the drama home, in the dismissal of the Whitlam Government.<sup>69</sup>

The Senate Standing Committee for the Scrutiny of Bills has queried ‘whether it is appropriate to delegate to the Executive (through the use of regulations) how its powers to contract and to spend are to be expanded’ and has also expressed some concerns in relation to the transitional provision which provided for retrospective validation of the schemes.<sup>70</sup>

New additions to the list of schemes will be subject to the usual disallowance and other parliamentary scrutiny mechanisms. However, the Senate Standing Committee

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<sup>65</sup> *ibid.*, pp. 12–13.

<sup>66</sup> *Williams v. Commonwealth* (2012) 248 CLR 156, 235 [145].

<sup>67</sup> Amanda Sapienza, ‘Using representative government to bypass representative government’, *Public Law Review*, vol. 23, 2012, pp. 165–6.

<sup>68</sup> *ibid.*, pp. 162–4.

<sup>69</sup> Spigelman, *op. cit.*, p. 14.

<sup>70</sup> Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, *Alert Digest*, no. 7, 27 June 2012, pp. 5–6; Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, *Report*, no. 11, 19 September 2012, p. 380.

on Regulations and Ordinances has expressed concerns about the lack of information provided about new schemes that have been added by regulation since the passage of the FFLA Act.<sup>71</sup> In any event, these mechanisms are not comparable to the level of parliamentary scrutiny that would be applied to new schemes established by an Act of Parliament—there remains virtually no ‘engagement of the institutions of representative government’ as mandated by the court.<sup>72</sup> Moreover, as Sapienza notes, when the broad wording of the regulation-making power is put together with the broad wording of the schemes many new spending initiatives may be able to be instituted by the executive without any parliamentary scrutiny at all.<sup>73</sup>

It has been suggested that ‘the emphasis in the judgments on the parliamentary role may raise questions as to whether the legislative function of authorising expenditure by the executive can properly be the subject of delegated legislation’.<sup>74</sup> In this regard, Leslie Zines has suggested that limits on the Parliament’s power to delegate its legislative power ‘should be based on the policies behind the separation of powers or the principle of responsible government’.<sup>75</sup> If the FFLA Act were invalid on the basis that it is not constitutionally permissible for the Parliament to delegate its legislative function in relation to authorising executive expenditure this would go some way to upholding the principles of federalism and representative and responsible government outlined by Zines and in the *Williams* decision itself.

Overall, Anne Twomey has suggested that the FFLA Act simply attempts to restore what the Commonwealth ‘wrongly believed to be its former powers, without actually listening to or taking to heart the High Court’s concerns about a democratic deficit, the important role of parliamentary scrutiny and the importance of federal considerations’.<sup>76</sup> She argued that the FFLA Act ‘in a bald-faced manner, rejects the fundamental propositions put by the High Court in the *Williams* case’.<sup>77</sup> Similarly, former Chief Justice Spigelman came to the conclusion that:

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<sup>71</sup> Senate Standing Committee on Regulations and Ordinances, Parliament of Australia, *Delegated Legislation Monitor*, no. 1, 7 February 2013, p. 26. See also Senate Standing Committee on Regulations and Ordinances, Parliament of Australia, *Delegated Legislation Monitor*, no. 1, 7 February 2013, p. 36 (regarding the ‘Mature-Age Participation – Assistance Program’).

<sup>72</sup> *Williams v. Commonwealth* (2012) 248 CLR 156, 235 [145].

<sup>73</sup> Sapienza, *op. cit.*, p. 165.

<sup>74</sup> Appleby and McDonald, *op. cit.*, p. 279; referring to Geoffrey Lindell, ‘*Williams v. Commonwealth*: How the school chaplains and Mr Pape destroyed the “common assumption” regarding executive power’, Paper presented at AACL Seminar, Sydney, 13 August 2012, p. 25.

<sup>75</sup> Zines, *op. cit.*, p. 203.

<sup>76</sup> Anne Twomey, ‘Parliament’s abject surrender to the executive’, *Constitutional Critique* (Constitutional Reform Unit, Sydney Law School), 27 June 2012, <[http://blogs.usyd.edu.au/cru/2012/06/parliaments\\_abject\\_surrender\\_t\\_1.html](http://blogs.usyd.edu.au/cru/2012/06/parliaments_abject_surrender_t_1.html)>.

<sup>77</sup> *ibid.*

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Whatever may have been the need for a temporary stop-gap, this legislation, some of which, in my opinion, is unconstitutional, if left as a permanent feature, will create a very real risk of continued, and quite possibly frequent, disappointment of the Commonwealth's expectations.<sup>78</sup>

If the High Court also came to the view that the FFLA Act does not adequately address its concerns about the importance of federal considerations and responsible and representative government (demonstrated through effective parliamentary scrutiny of proposed spending schemes) then it is possible that the FFLA Act, and the mechanism established under it for approval of spending schemes, may be invalid in its entirety.

*Not supported by a head of legislative power*

As noted above, concerns have also been raised in relation to whether the schemes provided for in the FFLA Act are supported by a head of legislative power. Twomey notes that many of the schemes will fall under a head of legislative power and that 'it is conceivable (although contestable)' that the FFLA Act would be enough to support them. However, others will not be supported by a head of legislative power and will remain invalid.<sup>79</sup> For example, grants relating to schools, higher education and research institutions, local government, and the NSCP itself may remain invalid.<sup>80</sup>

In relation to the NSCP, there are 'serious doubts as to whether the High Court will find the legislative authorisation of this program bears a sufficient connection to a head of Commonwealth legislative competence', particularly as Hayne and Kiefel JJ held that a hypothetical law authorising the program would not be valid.<sup>81</sup> In addition, because of the way in which many of the schemes are defined by very broad 'objectives' as indicated above, it is possible that 'a law authorising expenditure on them could not be characterised as a law with respect to any subject matter of Commonwealth legislative power'.<sup>82</sup>

By attempting to restore, in essence, 'the understanding since Federation ... that the Government could rely on executive power to make certain payments (e.g. grants to individuals or community groups)'<sup>83</sup> [which the High Court has determined was an inaccurate understanding], the legislative response to the decision does appear to have

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<sup>78</sup> Spigelman, *op. cit.*, p. 14.

<sup>79</sup> Twomey, *op. cit.*

<sup>80</sup> Appleby and McDonald, *op. cit.*, p. 277.

<sup>81</sup> *ibid.*, p. 278.

<sup>82</sup> *ibid.*

<sup>83</sup> Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, *Report*, no. 11, 19 September 2012, p. 389.

raised doubts as to whether, in a practical sense, *Williams* could be considered a turning point for parliamentary accountability and federalism in Australia. However, the doubts are ameliorated by the general consensus that if not the whole FFLA Act, at least certain spending schemes (such as the NSCP) authorised under it, remain invalid and would be struck down by the court in any future litigation.

## **VI Conclusion**

Of course, a single decision of the High Court will never completely halt Commonwealth intrusions into areas that have traditionally been state responsibilities or rectify the vertical fiscal imbalance in the Australian federation, nor will it ensure that there is a perfect system of responsible and representative government in Australia. Any consideration of the impact of the decision in *Williams* must therefore take this into account. With this in mind, it has been suggested that, on balance and even taking into account the legislative response, *Williams* can be considered a turning point for parliamentary accountability and federalism in Australia. The fact that the court has held that it is unconstitutional for the Commonwealth executive to spend money in areas beyond the day-to-day running of the government without statutory authority means that it is now clear that the Constitution mandates (when compared to the erroneous understanding prior to *Williams*):

- an increase in executive responsibility to the Parliament
- an increase in executive responsibility to the people through improved political processes and procedures and
- improved state ‘sovereignty’.

The decision can also be seen as a positive one more broadly because, as Cheryl Saunders suggests:

At a time of financial constraint there is much to be gained from procedures that ensure that spending programs are not undertaken hastily, that there is a broad-based commitment to them, that they are well designed and implemented and that money is well spent.<sup>84</sup>

It is clear, however, that this story is far from over. Recently, the Senate Appropriations and Staffing Committee stated that it intends to consider the implications of the *Williams* decision and the legislative response ‘with a view to ensuring that the Senate’s constitutional rights are not affected’.<sup>85</sup> Moreover, Mr

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<sup>84</sup> Cheryl Saunders, ‘The scope of executive power’, *Papers on Parliament*, no. 59, 2013, p. 30.

<sup>85</sup> Senate Appropriations and Staffing Committee, Parliament of Australia, *Annual Report 2012–13*, p. 5.

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Williams' second challenge to the NSCP<sup>86</sup> suggests that it is too early to establish the extent to which *Williams* represents a turning point for parliamentary accountability and federalism in Australia. However, it is clear that starting this journey is a significant step in itself.

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<sup>86</sup> *Williams v. Commonwealth*, Case no. S154/2013, High Court of Australia.