

GETUP! SEMINAR ON THE SENATE

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Some of you may remember a certain powerful premier of a certain northern state who was asked to explain the separation of powers, and had some difficulty. This was perfectly understandable, as the separation of powers is not very healthy in Australia. We think of it in terms of the independence of the judiciary, but the separation between the legislature and the executive is almost unknown. In spite of the warning by Montesquieu 250 years ago, that control of the legislature by the executive government would result in tyranny, we have allowed that situation to develop, particularly in Australia. Here the executive government not only controls the legislature but exercises an iron discipline over it. This is particularly obvious in lower houses around the country, where the executive totally dominates and absolutely controls those houses, to the extent that the legislative function is virtually killed off.

According to the textbooks, the functions of the legislature include making the laws, scrutinising legislative proposals to ensure that they are in the best possible shape to achieve their purposes, scrutinising the activities of government and the conduct of public administration, and conducting inquiries into matters of public concern to frame solutions to public problems. The reality, as we well know, is very different. Legislation framed by the executive alone is rammed through lower houses with the least possible delay and examination, scrutiny of government is severely limited lest it disclose matters embarrassing to government, and inquiries are limited to matters which cannot cause the executive any difficulty or embarrassment.

This picture has been somewhat modified in Australia over the years by second chambers, upper houses around the country which have spent long periods not under executive control. That lack of control has been due either to the absence of a government party majority or to the difficulty of executives in controlling their upper house members. The second factor should particularly be emphasised. For long periods in the past, government backbenchers in upper houses regarded themselves as free of the intense executive control imposed on their lower house colleagues. This situation has changed only in relatively recent times.

These circumstances are noticeable in the case of the Senate, which has had long periods of lack of executive control, due either to the absence of a government party majority, or, over many years, the inability of governments to direct the senators belonging to their party.

As a result, the Senate has over many years built up a wide range of mechanisms to perform its traditional legislative functions, and particularly accountability mechanisms to compel governments to account for their activities. These measures, with very few exceptions, have been imposed on executive governments because of the lack of government control over the Senate. I emphasise again that in many instances that lack of control took the form of the freedom of government backbenchers in the Senate from executive direction. To give one example, the estimates hearings, which are widely regarded as the most effective accountability mechanism in the Senate, were established in 1970 largely through the efforts of a group of government backbenchers who wanted to improve the Senate's methods for scrutinising government finance.

As a result of that history, the Senate has a culture of relative freedom from executive direction and relatively effective accountability procedures. The question is whether that culture will survive into the future.

The point that we should be emphasising is that greater accountability of the executive government is not only good for the rest of us, but is good for governments too. Executive governments themselves suffer from a lack of effective parliamentary accountability. They make more mistakes and they experience more policy failures when they are not adequately scrutinised and made to explain themselves by an effective legislature.

Some years ago a famous Dutch-American political scientist conducted a comprehensive survey of a range of countries around the world. He classified them according to whether their political systems were majoritarian, that is, whether they allowed a party to get the numbers in the legislature and ram through their agendas, or whether they were more consensual, that is, they had stronger legislatures able to impose accountability and compromise on the executive. He measured the performance of those countries by a range of indicators, such as economic growth rate, inflation rate, inequality of incomes, crime rates, and so on. He found that those countries with stronger legislatures and supposedly weaker executives performed on all of those indicators better than, or as well as, the countries with weaker legislatures and stronger governments. The claim that strong government is necessary for economic and social success is a myth.

So, next time you are talking to a minister of the Crown, you must say to them: "Absolute power is bad for you. It not only has a bad effect on your character, it does not allow you to be as effective as you would otherwise be. In order to be successful, you must be restrained by a stronger legislature." That is the message I would like a group such as this to convey.

Harry Evans