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Contents

| | |
|--|-----|
| Liberal Women in Parliament: What Do the Numbers Tell Us and Where to from Here? <i>Margaret Fitzherbert</i> | 1 |
| The Scope of Executive Power <i>Cheryl Saunders</i> | 15 |
| Will Dyson: Australia's Radical Genius <i>Ross McMullin</i> | 35 |
| How Should Elected Members Learn Parliamentary Skills? <i>Ken Coghill</i> | 59 |
| 'But Once in a History': Canberra's Foundation Stones and Naming Ceremonies, 12 March 1913 <i>David Headon</i> | 83 |
| Paying for Parliament: Do We Get What We Pay For? Lessons from Canada <i>Christopher Kam and Faruk Pinar</i> | 101 |
| Is It Futile to Petition the Australian Senate? <i>Paula Waring</i> | 129 |

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Liberal Women in Parliament: What Do the Numbers Tell Us and Where to from Here?*

Margaret Fitzherbert

I hope you will forgive me for having what some may consider a slightly blunt title for my lecture. Numbers are the atom of politics. Nothing is possible without them. It is not possible for anyone to be preselected for a seat, or to win election to a parliament, or to gain a leadership role in a party, or successfully move their policy into reality—without numbers.

I am going to start my lecture with a short history lesson, mainly for the purpose of comparison. And this too is in large part about numbers.

Australian women have had the vote longer than almost every other country in the world, and were the first to get the right to be elected to the federal parliament, but it took decades to see the first women elected in 1943. It is no coincidence that one was the widow of a former prime minister, and both were elected during the Second World War—when Australia was having one of its periodic reconsiderations of the role of women.

The first two women elected represented both the major parties: Dorothy Tangney from the Australian Labor Party (ALP), and Enid Lyons from the United Australia Party (UAP), and later the Liberal Party. The two parties have often taken vastly different approaches to how to get its women into parliament—and for that matter, how, if at all, to appeal directly to women voters.

Today, the ALP has significantly more women in parliament than does the Liberal Party. It is timely to reflect on why this is, and also, what next for the Liberals.

For many decades, the non-Labor parties of Australia definitely had the numbers in terms of women.

In the early part of the twentieth century, the women who most actively supported them, by joining a party-like organisation, were the largest organisation of politically active women in the country. They were also the largest women's voluntary organisation.

* This paper was presented as a lecture in the Senate Occasional Lecture Series at Parliament House, Canberra, on 31 August 2012.

In time, this translated into a number of significant firsts. As is well known, non-Labor women became the first women elected to parliaments in almost every state, and in the House of Representatives. The first Australian woman minister—Florence Cardell-Oliver in Western Australia in 1947—was a Liberal. That same year, Annabelle Rankin became Opposition Whip in the Senate and was the first to hold such a role. The first female member of the federal Cabinet was a Liberal—Enid Lyons. The first woman to be a minister with portfolio, Dame Annabelle Rankin, was a Liberal. The first woman Cabinet minister with portfolio was of course Margaret Guilfoyle.

While this was happening, the UAP and then the Liberal Party had more women's votes than did the ALP. And in close elections, this really mattered. One reason why the Liberals did so well with the women's vote is that they pioneered campaigning directly to women. In the early days of the twentieth century they did this through direct canvassing by women, to women.

A number of organisations did this, and the best known is probably the Australian Women's National League. It was known as the AWNL and was a Victorian organisation. It held political meetings for women, and in the days before television these were routinely attended by hundreds. The AWNL was also a doorknocking machine that most political parties would envy today, and took their message directly to women in their homes.

The central party organisations of the non-Labor parties were certainly influenced by the women who were voluntary party workers, as well as paid organisers. From the early years of the twentieth century the non-Labor parties produced campaign material that was directed at women.

When the Liberal Party was formed it continued this tradition. It went further, by having a 'status of women' section in its party platform as early as the late 1940s. These turned into specific policies for women in the elections of 1946 and 1949.

The history of organisations like the AWNL fed into the new Liberal Party in the 1940s, and hundreds of the women who had gained real political skills in the AWNL took these to the Liberal Party.

Robert Menzies was also responsible for the Liberal Party's approach to women, as voters and as potential MPs. There are many reasons for this. He was from Victoria, and the electorate of Kooyong, where the AWNL was especially strong. By the time the Liberal Party was formed he had been working side by side with women in campaigns—and with women running campaigns—since the 1920s.

Well before the Second World War was over, Menzies came to the view that the war would irrevocably change the role of women in Australian society. He believed that through the war effort, women showed themselves as capable of work that had previously been thought unsuitable, or beyond their capacity. He also thought that women's aspirations and place in society would change dramatically. Menzies explained some of these thoughts in what became known as his 'Forgotten People' radio broadcasts of the 1940s. He also argued that a greater degree of gender equality was desirable:

In the long run, won't our community be a stronger, better-balanced and more intelligent community when the last artificial disabilities imposed upon women by centuries of custom have been removed?¹

In 1943 Menzies responded to the Women for Canberra movement. This was a local copy of the Women for Westminster campaign, which was a push to see more women elected to parliament.

Through one of his radio broadcasts Menzies said:

Of course women are at least the equals of men. Of course there is not reason [*sic*] why a qualified woman should not sit in Parliament or on the Bench or in a professorial Chair, or preach from the Pulpit or, if you like, command an Army in the field. No educated man today denies a place or a career to a woman because she is a woman.²

Menzies' Forgotten People speeches have been very well analysed and I do not propose to revisit all that here, except to say that what he did very well was appeal to women in ways that were very direct, as well as ways that were quite subtle. And in doing this, Menzies was light years away from the ALP and its approach to women at the same time.

Prime Minister John Curtin and the ALP continued to see women's political concerns as a derivation of those held by men and seemed to anticipate a return to more usual working conditions when the war ended.

So in the elections of 1946 and 1949 we see the Liberals address material to men and women, develop a women's policy statement, and have the extension of child endowment to first-born children as a key policy for women. Some advertisements

¹ Robert Menzies, 'Women in war', radio broadcast, 20 February 1942, in Margaret Fitzherbert, *Liberal Women: Federation to 1949*, Federation Press, Annandale, NSW, 2004, p. 247.

were directed only to women. For example, some advertising about strikes and industrial relations was directed at women, making the link that strikes and shortages affect women the most, as they are the ones trying to organise households and standing in queues to buy goods.

These sound like obvious tactics for a major party today, but in the 1940s they were new and radical.

History records that the Liberals won the federal election of 1949. In the years that followed they maintained a lead in votes from women, and they sent an increasing number of women into parliament. This was most pronounced federally.

Following the election of the ALP's Dorothy Tangney to the Senate in 1943, the next six female senators were Liberals until the election of Labor's Ruth Coleman in 1974.

But after this, things started to change. Today, when comparing the number of ALP women to the number of Liberal women elected to the federal parliament between 1943 and 2011, this is what the record tells us.

The ALP has elected 32 women to the Senate, while the Liberals have elected 24. In the House of Representatives, 53 ALP women have been elected, compared to 29 Liberals. This gives totals of 85 ALP women to 53 Liberal women.³

Today there are 15 ALP women senators and six Liberal women in the Senate. In the House of Representatives, there are 23 ALP women and 13 Liberal women.⁴

It is interesting to note that the ALP has been better at renewing in the House of Representatives. Every single one of its women was elected after the quota was introduced in 1994. Of the Liberals' 13 women, two were in the parliament before 1994.

In general terms, the state parliaments show a similar trend. I will not go through every state but let me highlight three states where there have been recent changes in government.

² Robert Menzies, 'Women for Canberra', radio broadcast, 29 January 1943, in Fitzherbert, op. cit., p. 250.

³ Joy McCann and Janet Wilson, *Representation of Women in Australian Parliaments*, Politics and Public Administration Section, Parliamentary Library, 7 March 2012, www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2011-2012/Womeninparliament.

⁴ 'Composition of Australian parliaments by party and gender, as at 5 September 2012', Politics and Public Administration Group, Parliamentary Library.

In Victoria, in the lower house, there are 19 ALP women (including the one elected at a by-election in July), and nine Liberal women. Of these Liberal women, five were elected at the last election, and it would not be unfair to say that most of them were preselected when their seats were not considered winnable.

In the Victorian upper house, the ALP has five women and the Liberals have six. The Liberals elected one new woman at the last election.

In New South Wales, the Legislative Council has five ALP women and three Liberal women. In the Legislative Assembly there are nine Liberals and eight from the ALP.

Now let me take you to Queensland, which of course has one chamber, the Legislative Assembly. Earlier this year it had an election of tsunami-like proportions. Today the ALP opposition has been reduced to seven members, of which four are women, and one of these was elected in 2012. The Liberals have a team of 78 (with two Katter members and four independents). This is an increase of 44 members. But only 13 women are among the 78 Liberal MPs.

Aside from the raw numbers, it is worth considering this: in each state, the Liberals have picked up new seats and what they hold is very likely a high watermark. It should be a golden opportunity to see a greater number of women elected as part of a pool of members that is also increased.

Instead, the number of women candidates was generally low. Campbell Newman was criticised for the number of Liberal National Party (LNP) women candidates running in Queensland—an election where the LNP was generally seen as unbeatable. During the campaign, Newman is reported as acknowledging that the LNP ‘had not done a good job in recruiting female political candidates’ when only 16 of the 89 candidates were female. ‘I wish we had more female candidates’, he said. ‘So long as I’m the leader of the LNP I will always push for more women to be represented’.⁵

What happened to cause these figures? You could probably construct a number of lectures based on that topic, so I will quickly summarise instead.

In the 1970s, the rise of second-wave feminism prompted a new approach by the ALP and the influx of a greater number of ALP women into state and federal parliaments. But the turning point was the federal election of 1983, when the ALP used an approach that was strikingly similar to that used by the Liberals in 1949: targeting

⁵ Darrell Giles, ‘LNP boys club is failing women’, *Sunday Mail* (Brisbane), 11 March 2012, www.couriermail.com.au/news/queensland/opinion-lnp-boys-club-is-failing-women/story-fnbwr276-1226295886185.

women, offering policies that were attractive to them (for example, equal opportunity legislation) and selecting more women as candidates. In 1983, for the first time, the ALP had more women in the federal parliament than did the Liberal Party. Since then, the Liberals have had more women elected to parliament than the ALP at only one election, in 1996.

Prior to 1996, women in the Liberal Party, and especially in NSW, began to push for a greater number of female candidates. They were frustrated by the low number that had contested seats at elections in the early 1990s and demanded that this be fixed. They set up structures to support more women candidates but in my opinion, the most valuable thing they did was elevate the issue and vocally demand that more women run, be taken seriously, and be preselected in winnable seats. When you look at this history of the Liberal Party and its forerunners, women's representation has been best when the women of the party have loudly demanded more seats and have organised to get them.

When the Liberal women did so well in 1996, it was seen by many as vindication of the Liberals' rejection of quotas. Many crowed that the Liberals had elected the greatest ever number of women to parliament without a quota.

The ALP quota was born in 1994 when the ALP introduced a 35 per cent preselection quota for women in winnable seats at all elections by 2002. The percentage of female candidates preselected increased from 14.5 per cent in 1994 to 35.6 in 2010. From 1 January 2012 the system has been altered so that the outcome should be that not less than 40 per cent of ALP seats will be filled by women, and not less than 40 per cent by men.

There were a range of arguments against the quota, most based on accusations of tokenism and complaints that preselection should be about merit. My own view is that the ALP chose a way of fixing the problem that was consistent with its own political culture. Gender became another factor that needed to be accommodated alongside other considerations like faction. Nearly twenty years after the quota was agreed, it is clear that it has resulted in a steady pipeline of women into parliaments around Australia. And yes, there have been some duds among their number, just as there are among their male colleagues. But there have also been a large number of women who are effective members of ministries and shadow ministries.

So, why do the Liberals lag on numbers of women MPs?

In my view there are a couple of obvious reasons.

The first is that unlike the ALP, there has not been persistent pressure to keep preselecting women.

I mentioned earlier that the Liberal Party and its forerunners have been most effective in getting women into parliament when party activists argued for women, identified women candidates and then supported them. There is evidence of this happening in a number of states as early as the 1920s. In fact, it is the reason why Queenslander and Nationalist Irene Longman became the first woman elected to a parliament from her state. It was especially prevalent right after the formation of the Liberal Party in the 1940s when the new women's councils in various states formally resolved to have at least one woman on their state Senate ticket. It was obvious too in 1996.

But after the tide of women members started to go out in 1998, the strong and vocal demand for women candidates seemed to diminish. Instead there was a view that merit-based preselections would take care of the problem.

This was a mistake, and it is a big contrast to the ALP.

Leaving aside the method it has chosen to use—in quotas—the ALP has had highly visible individual champions and organisational champions. The most visible ALP woman who has pushed and pushed for women in parliament is former premier, Joan Kirner. Joan is now in her mid-70s and she retired from parliament twenty years ago. But she remains unstoppable in arguing for women in parliament.

The ALP also has Emily's List, which offers financial and political support to pro-choice women candidates and MPs. It provides mentoring, training and research. These are no doubt valuable, but the other role it plays very effectively is a constant reminder within the ALP organisation—and in public—that the ALP must look for and promote women candidates.

The second reason why the Liberal Party finds itself on the back foot with women candidates is party culture. It is a culture which largely tolerates branch members asking women candidates for preselection questions about their parental and marital status.

More than forty years ago, Margaret Guilfoyle was asked at her first preselection who would look after her three children if she became a senator. Today, women who seek Liberal preselection are routinely asked exactly the same question by delegates.

Those who are unmarried or have no children also find that their circumstances are questioned by delegates. These issues have no place in a job interview—which is

what these conversations really are—even when they take place in a private home or at a branch meeting.

And in fact, if these questions did occur in a regular job interview, they would be illegal.

It is not a merit-based process if only the female candidates for preselection are asked who will look after their children if they go into parliament.

It is not a merit-based process if only the female candidates for preselection are asked if they are planning to have a family and how that might work with being an MP.

It is not a merit-based process if only the female candidates are told by delegates that maybe they should wait and try for a seat when their children are older.

And to use another example that I came across a few weeks ago, it is not a merit-based process if a local MP is asked to identify potential candidates and he names a woman—but then adds in rueful tone that she has just got married and he expects she will start a family within a couple of years.

If the Liberal Party is serious about boosting its numbers of women in parliament, then it needs to tackle this admittedly difficult problem. The first step is to acknowledge that it happens and to loudly condemn it.

There have been some moves forward on this front. In 2008, former Howard minister David Kemp's review of the Victorian Liberals identified the problem of women candidates being asked about their marital or parental status, and described this as unacceptable. The preselection form was altered so that it no longer asked candidates to list their children.

But the questions continue and there is no easy answer to them.

Leaving this aside, there is also the issue of what these questions reveal about the perceptions of preselectors, and what they look for in a candidate.

And there is also the distinct possibility that capable women look at what happens to others during preselection and decide to simply not try.

The fact that some women manage to overcome this kind of questioning does not mean that it does not have a detrimental effect. And it does not mean that the questioning should be tolerated.

The Liberal Party has historically strong links with the corporate sector, and I think it is time that it began to examine some of the efforts made within that sector to tackle cultures that impede the progress of women.

Having worked for a number of major corporates, I am not about to pretend that they represent some kind of gender utopia. But many of our biggest companies have at least acknowledged the impact of direct and indirect discrimination, have begun a discussion to raise awareness of the issue and have introduced policies and practices aimed at eliminating it.

I see no reason why a political party should not attempt to do the same.

The obvious question to ask is, why doesn't the Liberal Party introduce a quota system?

The first reason why it won't is that it has spent nearly twenty years opposing it, and it is hardly about to admit defeat now.

One exception to this approach is former Victorian senator Judith Troeth, who argued in June 2010 that the Liberals needed to adopt a quota for women. This had not always been her view, and it seems it developed from years of frustration at watching a small, incremental change in the number of Liberal women in the federal parliament.

She wrote:

The custom defence against quotas is the 'what about merit' argument, as if to be for quotas you must be against merit. Like the charge of tokenism, it eventually fails the test of reason after sitting in a parliamentary party room for nearly 20 years without seeing a progressive increase in the cohort of women members. As if those handful of women members who are there were the only 'women of merit' who put themselves forward for preselection.⁶

Senator Troeth noted that from 1944 the Liberal Party had reserved 50 per cent of the Victorian Division's executive positions for women. She called for the introduction of a quota system for the Victorian Division to endorse women for preselection in a minimum of 40 per cent of its seats for the Commonwealth election to be held in

⁶ Judith Troeth, *Modernising the Parliamentary Liberal Party by Adopting the Organisational Wing's Quota System for Preselections*, policy paper, 23 June 2010.

August 2010, recommended that the quota be increased to 45 per cent within a five-year period, and that women comprise 50 per cent of training candidates.

Senator Troeth's suggestions were not accepted, and unfortunately the issue was put to one side once more.

More recently there has been a low-key suggestion that, like major corporates, the Liberal Party should discuss targets for female representation. I am interested to see if these suggestions translate into action of any kind.

In two years' time, I am sure we will see the women of the ALP celebrating the twentieth anniversary of the introduction of a quota, and calculating the very large number of women who have gone into parliament as a result.

It is worth remembering that when the ALP began its efforts to increase female representation, back in the early 1980s, it had few women in parliament. Those who were there could usually see a lot more on the other side of the chamber.

Even if you do not agree with how they set out to fix the problem, the ALP at least admitted that its old approach was not working and that they needed to change how they worked to get women into parliament.

The Liberal Party certainly has a history of doing this in its own organisation. The most significant of these was the formation of the Liberal Party from the remnants of the UAP, as well as other organisations—including powerful women's organisations like the AWNL.

It is time for the Liberals to take a lesson from the past—acknowledge the problem, and stop relying on a blind faith in 'merit' to somehow provide a sudden increase in numbers of female MPs.



Question — What led you into the research of this? Was there a particular event that sparked your interest in this area?

Margaret Fitzherbert — There was a reference in one of the biographies of Alfred Deakin that referred to the AWNL and it was an extract from his diary in which he discussed how much he hated them and how badly they were treating him and it

struck me that he would not be saying that if they did not matter and I wanted to find out the story behind the quote. I spent some time at the National Library and looked at the papers and started to delve into some of the other primary sources that deal with this time. So that was the start of it.

Question — Given the somewhat negative portrayal of our current serving prime minister by some sections of the media, I was just wondering if you have any general comments to make about the role the media might play in encouraging, or more likely discouraging, women and particularly young women from entering politics and seeking high office?

Margaret Fitzherbert — I think this is a really complex issue and there are no easy answers. I think in general terms it is true that politicians of both genders are at times treated very badly and in a way that I think is unreasonable by the media and by people who use the media and by that I am thinking of blogs in particular. I think that there are times when Julia Gillard has been treated in a totally unreasonable way that is gender-specific. But I am also conscious that her predecessors have at times had their appearances ridiculed and have been treated with derision as well. There are quite a lot of studies that have looked into this and they do show that women tend to have things like their appearance and their families commented on far more. Does it put people off? I suspect it probably does and one of the ways that it does I think is when people's very personal decisions are questioned or when aspects of their family and their personal lives are put out there for public debate. I think that there are people out there who look at that and say that is not something I want to be part of.

Question — I was wondering if you could comment on whether women voters would back a woman representative to replace Tony Abbott at the next election?

Margaret Fitzherbert — If things proceed as they are now I think it very likely that there will be a woman opposing Tony Abbott for that election. The big issue there is incumbency; that is the thing you need to strip out of any study that looks at whether gender makes a difference. Most of the studies—and there is one that came out very recently from Canada that looked at this issue again—show that gender is generally neutral. If anything in some elections and in some electorates having a woman is a positive and that seems to be something that some of the states have played on a bit in years gone by.

Question — To what extent does having a female prime minister and a female attorney-general at the moment actually encourage women to see that there is a role for them in politics? I get the impression that Dame Margaret Guilfoyle might have

been a high watermark of some sort in Liberal women's participation. Why didn't that role model encourage more Liberal women to go into politics?

Margaret Fitzherbert — To address the second part of your question first, Beryl Beaurepaire said to me when I was researching Margaret Guilfoyle—and she was very much a contemporary of hers—she said, I think the problem with Margaret was she set the standard so high that people thought that they had to be as good as her and she was someone who on any measure was a standout. She was one of the stayers of the Fraser Ministry, one of the very few who was there at the start and there at the end. She was trusted by the prime minister, who many of her colleagues found notoriously difficult to work with. She was respected. She had a following in the community. She did some really significant reforms and she pioneered women's participation in economic portfolios, which was a very new thing. So she was a standout leaving aside her gender. If she had been 'Fred' Guilfoyle, she probably would not have been in the Senate, she would have been in the House of Representatives. So that was Beryl Beaurepaire's assessment, that she had set a standard that was impossibly high. I think that is quite perceptive in a way. I think there might have been something in that. I think at the time there was no general push as well that accompanied that, that Margaret Guilfoyle was sort of seen as special and a bit of a one-off in some ways.

As to the issue of whether having women in senior ministerial roles encourages others: I think it does. I think the younger you are the more powerful it is. I have three children. I have two daughters and the eldest is nearly ten and she thinks it is totally normal that the Prime Minister is female, the Governor-General is female and there are other women who are on television every night talking about their senior ministerial portfolios. If you grow up with that as normal rather than as something to strive for I think it cannot help but make a change.

Question — I always find it fascinating when white men look at a process that always selects white men and think it has merit. I do recollect, I think it was under the Keating Government, it was a front bench spokesman from the Liberal Party who I heard on *AM* one day, commenting how interesting it was that with exactly the same selection criteria for the Senior Executive Service, the Department of Social Security managed to have 50 per cent of women and the departments of Finance and Treasury had almost none. So it does seem to me that what you have here is very clearly a process that is not merit-based. But you also have a group of decision makers who simply fail to recognise this fact. How can you get them to see the reality?

Margaret Fitzherbert — The way Susan Ryan did this, and she discusses this in her autobiography, is she got the numbers. She got some research done that showed the

advantages that would flow to the Labor Party if they preselected more women and that was based very much on trying to capture that women's vote from the Liberal Party. The term that she used in her autobiography is 'numbers are like gold'. That was the only way she could get their attention. It was not by arguing that it was about merit or justice or it was fair, it was about showing this is how it will affect elections. I suspect that is partly key to it. You need real research to show how these things are going to happen. I suspect the other thing, too, is capturing the extent of the problem. When you have the sort of questioning I have talked about in preselections, that rarely becomes public. It is not a very visible problem and I think there is an awareness that it happens but I think most people would be surprised at the extent to which it happens. So I think that would be quite a powerful tool in starting to shift some views.

Question — What institutional structures are there in the Liberal Party? I understand that there is a focus on mentoring and training but what structures are there that could assist that might be similar to Emily's List, something that will facilitate the training, the mentoring and the recruitment of women candidates?

Margaret Fitzherbert — I cannot speak authoritatively on this but I do know there are a range of training programs for all sorts of people—young people, potential candidates, and women—and the women's ones do ebb and flow a little bit. I used to think that training programs were probably a good idea but I have come to the view that that is not the issue. It is not about skilling up the women or telling them what they need to wear or who they need to speak to or how to build a cv that looks good or how to write their preselection speech so that it lasts the right amount of time. It is actually about the process they are going through. I think that when you rely heavily on training and mentoring it implies in some ways that the women need help. Now I think all candidates need help but I do not know that women need particular help. I think they need a fair hearing. So that is a structural change that I would like to see in how this is dealt with.

Question — If the Labor Party uses student politics and activism generally and the junior trade union movement as something of a training ground, can you make some comparative comments about what the Liberal Party has in terms of early processes and structures for young emerging talent at university level?

Margaret Fitzherbert — There is some similarity in student politics. There are the Liberal students, there are Young Liberals as well, and there is a fair cross-over between the two. There are a range of people who have come out of that and in fact if you look at Victoria with Sophie Mirabella and Kelly O'Dwyer, they are both veterans of student politics so there is that funnel. The missing part in equivalence is the trade union movement. I do not believe that the Liberal Party has an equivalent to

that at all. Historically, many of the unions were not exactly helpful to the cause of women but that has changed over time—through again some quite deliberate strategies and effort—and has reversed and has become a quite powerful advocate in many instances for women. I think the Liberal Party does have less on its side of the ledger in that regard.

Question — Have the Liberal Party finished selection for candidates for the next federal election? Because if not, now is the time for a group of women to get in there.

Margaret Fitzherbert — They vary from state to state in terms of the timetables. In Victoria most of the marginal seats have just been completed. In Victoria on the basis of polling it is likely that there will be more marginal Labor-held seats in play than there have been previously. One woman candidate has been selected for the most marginal seat which is Corangamite. Sarah Henderson is going to contest that seat and if you were to put money on it she will probably do well and win the seat there. In the rest of the seats, if you look at seats like Deakin, Chisholm and so on men have been preselected. Slow progress. As to the other states, I think their programs might be slightly later. They are not done at the same times, so I cannot give any sense of what is happening in other states. I am not aware that there is a sudden groundswell in women for the next federal election but I hope I am wrong.

1. Introduction

I am pleased to have been invited to deliver this Senate Occasional Lecture as the basis for a paper on parliament. I propose to use the opportunity to bring together two topical, broadly related themes. One is the heavy reliance on government through the use of executive power in Australia. The other is the course of High Court decisions over the last decade or so that have placed new emphasis on the need to identify the parameters of federal executive power by reference to the rest of the Constitution. While much executive power is exercised pursuant to statute, the extent to which the executive can act without legislative authority, in the exercise of ‘non-statutory’ executive power, raises some complex constitutional questions. For the moment, the relevant cases culminate in *Williams v. Commonwealth*,¹ although more litigation can be expected.

My purpose in this paper is to explain what has happened so far and to argue that these developments offer an opportunity to craft, through both law and practice, an appropriate sphere for the use of non-statutory executive power for 21st century Australia. I begin by outlining the challenges of understanding the meaning of the key provision of the Constitution, section 61. In this part, I will also briefly canvass the types of cases concerning the executive power that came before the High Court in the first century of federation so as to show how and why the meaning of the section remained unsettled. In the next part I identify some of the patterns of use of executive power and explain the incentives for usage to increase, fuelled by the ambiguity of the power. Part 4 examines recent decisions of the High Court with particular reference to *Williams*, explores their implications for the scope of the power and identifies some of the key questions that remain for decision.

In conclusion, I argue that, while these developments have their challenges, they should be welcomed by the Parliament and the executive branch itself for their potential to enhance the Australian constitutional system. The effectiveness of Australian constitutionalism depends to a greater extent than in any other Western democracy on the vertical and horizontal allocation of power between healthy public institutions. The scope of federal executive power affects all the key constitutional

* This paper was presented as a lecture in the Senate Occasional Lecture Series at Parliament House, Canberra, on 28 September 2012.

¹ [2012] HCA 23.

principles that frame these institutional relationships: federalism, representative and responsible government, separation of powers and the rule of law.

2. The interpretive challenge

The Commonwealth Constitution famously drew on both the British and the United States strands of the common law constitutional tradition. As a generalisation, the institutions that it established are largely British in conception, although they necessarily were overlaid by federalism, as the *sine qua non* of the Constitution. The British Constitution is evolutionary and unwritten, in the sense that there is no codified constitutional document, so that the applicable principles have emerged in response to events over a very long period of time. At the core of the British Constitution is the relationship between the executive and a sovereign parliament, reinforced by the authority of independent courts to resolve disputes over the lawfulness of executive action and the meaning of legislation.

Two distinct lines of development of this relationship are relevant for present purposes. One is the passage of *de facto* executive power from monarch to ministers with the confidence of the elected house. Formal power remained with the monarch, however, giving rise to the distinction between the ‘dignified’ and ‘efficient’ elements of the Constitution to which Walter Bagehot referred² and inhibiting the emergence of a developed concept of the state.³ A second line of development marked the boundaries between power that could be exercised by the executive alone, subject to legislation to the contrary, and that which required authorisation from the parliament. The former included powers that originated in the prerogative of the monarch: the powers to make war and to conclude treaties are examples.⁴ It also included some powers of a kind that can generally be exercised by legal persons as long as they are not prohibited by law, of which a power to contract is an example.⁵ Matters that required parliamentary action, on the other hand, in this sense constituting ‘legislative

² W. Bagehot, *The English Constitution*, Chapman and Hall, London, 1867, p. 13.

³ Martin Loughlin, ‘The State, the Crown and the law’ in Maurice Sunkin and Sebastian Payne (eds), *The Nature of the Crown*, OUP, Oxford, 1999, p. 33.

⁴ An initial list of the current ‘prerogative executive powers’ in the United Kingdom appears in House of Commons Public Administration Select Committee, *Taming the Prerogative: Strengthening Ministerial Accountability to Parliament*, Fourth report, 2003–04, HC 422, 16 March 2004, pp. 9–12. Here and elsewhere they are distinguished from ‘legal prerogatives’ of various kinds, amongst which the committee included the principle that the Crown can do no wrong. For a more comprehensive list see Ministry of Justice, *Review of the Executive Royal Prerogative Powers: Final Report*, 2009, Annex.

⁵ By 2007, Harris records these as having been described in various ways, none of which was fully satisfactory, including ‘common law discretionary powers’, ‘non-statutory powers’ and ‘capacities’: B.V. Harris, ‘The “third source” of authority for government action revisited’, *Law Quarterly Review*, vol. 123, 2007, pp. 225, 226. Harris himself continued to refer to ‘the residuary freedom the government has to act where not legally prohibited’ as ‘the third source’ (p. 226).

power', included proposals to make or change law, to create offences, to impose taxation or to authorise public expenditure.

This is an oversimplification of the results of a complex history, which left unsettled a range of matters, including the scope and purpose of the prerogative as narrowly understood and whether it included the other non-statutory powers of the Crown or not.⁶ In recent years, in the UK itself, the uncertainty has led to debate on a host of questions, which in some respects parallel issues confronting Australia. These include: the legal character of the Crown and its relevance to the scope of non-statutory executive powers, in an age in which they are used for programmatic purposes;⁷ whether and to what extent the Crown can properly be equated with private persons for the purpose of identifying what the executive might lawfully do;⁸ the efficacy of accountability to parliament for the exercise of non-statutory executive power;⁹ whether and to what extent an exercise of either the prerogative in the narrow sense¹⁰ or of other non-statutory executive powers should require prior authorisation by statute;¹¹ and whether and in what circumstances a parliamentary appropriation constitutes adequate parliamentary approval.¹²

The framers of the Commonwealth Constitution faced the challenge of adapting this historically derived British conception of the executive and its authority to the very different Australian context of an entrenched written Constitution, which was both federal and perceived to be democratically advanced, and in which executive power would formally be exercised by appointed representatives of the Crown in each sphere. To add to the complications, Australia was not yet fully independent and at least some powers affecting Australia would continue to be exercised by the monarch in the United Kingdom, acting on the advice of British ministers.

⁶ These issues are canvassed in Sebastian Payne, 'The royal prerogative' in Maurice Sunkin and Sebastian Payne (eds), *The Nature of the Crown*, OUP, Oxford, 1999, p. 77. A leading protagonist of the view that the prerogative comprises the entire 'residue of discretionary or arbitrary authority ... legally left in the hands of the Crown' was A.V. Dicey, *Introduction to the Study of the Law of the Constitution*, 10th edn, McMillan, London, 1959, p. 424, quoted in Payne, p. 79.

⁷ Janet McLean, 'The Crown in contract and administrative law', *Oxford Journal of Legal Studies*, vol. 24, 2004, p. 129.

⁸ Harris, *op. cit.*, pp. 239–40.

⁹ The 2004 House of Commons report quotes Prime Minister Major: 'It is for individual Ministers to decide on a particular occasion whether and how to report to Parliament on the exercise of prerogative powers': House of Commons Public Administration Select Committee, *op. cit.*, pp. 7–8.

¹⁰ United Kingdom, *The Governance of Britain*, CM 7170, 2007; but see subsequently Ministry of Justice, *Review of the Executive Royal Prerogative Powers: Final Report*, 2009.

¹¹ Anthony Lester and Matthew Weait, 'The use of ministerial powers without parliamentary authority: The Ram Doctrine', *Public Law*, 2003, p. 415; Margit Cohn, 'Medieval chains, invisible inks: On non-statutory powers of the executive', *Oxford Journal of Legal Studies*, vol. 25, 2005, p. 97; Margit Cohn, 'Judicial review of non-statutory executive powers after *Bancoult*: A unified anxious model', *Public Law*, 2009, p. 260.

¹² Harris, *op. cit.*, p. 229.

The result was a brief section on executive power in a brief chapter of the Constitution dealing with the executive branch. Section 61 provides:

The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of the Constitution, and of the laws of the Commonwealth.

Relevantly for present purposes, the parliament may make laws with respect to 'matters incidental to the execution' of whatever power section 61 vests in the 'Government of the Commonwealth' (section 51(xxxix)).

There are at least two obvious words of limitation in section 61. One is the requirement for the power to be 'executive' in character rather than 'legislative' or 'judicial' within the meaning of sections 1 and 71 respectively. The other is the need for executive power to pertain to the 'Commonwealth' in contrast, in this case, to the states. The precise scope of neither of these limitations is apparent on the face of the section, however, and it is unclear whether the final clauses are words of limitation or not. Nor is it clear whether and if so how the old British understandings of executive power inform the section. Does section 61 allow for the prerogative in the narrow sense and, if so, to what extent? Does it allow for the so-called 'ordinary' non-statutory powers and again, if so, to what extent? Does it allow for potential new forms of executive action, some of which are driven by federalism, of which intergovernmental agreements are an example?

No section in a constitution can properly be interpreted in isolation from the rest of the instrument. In the case of executive power, the relevant context has several dimensions.

Most obviously relevant are the provisions dealing with federalism. Both legislative and judicial powers are explicitly divided between the Commonwealth and the states (sections 51, 52, 75, 76). Section 109 resolves inconsistencies between Commonwealth and state laws, with implications for conflicts between federal and state jurisdiction.¹³ Section 96 empowers the Commonwealth to make payments of financial assistance to the states, 'on such terms and conditions as the Parliament thinks fit'. An explicit provision to this end is unusual, in comparison with other, older, federal Constitutions.¹⁴ A Senate in which all original states are equally

¹³ *Felton v. Mulligan* (1971) 124 CLR 367.

¹⁴ Cheryl Saunders, 'The hardest nut to crack' in G. Craven (ed), *The Convention Debates 1891–1898: Commentaries, Indices and Guide*, Legal Books, Sydney, 1987, pp. 149–72.

represented has almost co-equal powers with the House of Representatives (sections 7, 53). The more limited power of the Senate in relation to financial legislation is closely circumscribed (sections 53–55).

A second group of provisions relates to representative government. Legislative power is vested in the parliament (section 1). Both houses of the parliament are directly elected by the people (sections 7, 24). The parliament exercises financial control through a requirement for moneys raised by the government to be credited to the Consolidated Revenue Fund from which it can be ‘appropriated for the purposes of the Commonwealth’ by the parliament in the form of a law (sections 81, 83).

A third group of provisions concerns responsible government. Particularly relevant for present purposes is the requirement in section 64 that the ‘officers’ who administer the departments of state are both advisers to the Governor-General and ministers, who must hold seats in the parliament. It is convenient also to mention two other provisions. Section 56 retains ministerial control over expenditure through a requirement for the Governor-General to recommend ‘by message’ the purpose of an appropriation to the relevant house before an appropriation law is passed. Section 2 enabled the monarch to assign ‘powers and functions’ to the Governor-General that were not encompassed by section 61. Since formal independence, however, this section has been regarded as spent.¹⁵

The meaning of section 61 has arisen before the High Court in particular contexts many times since federation. It is not necessary to canvass this case law in detail here. At risk of overgeneralisation, I assign it to three categories for explanatory purposes. In one category of cases, the principal question has been whether the power is executive in character, in circumstances in which it is relatively obvious that it pertains to the Commonwealth.¹⁶ In a second category of cases the power has readily been accepted as executive in character but it has been contested that it pertains to the Commonwealth rather than to the states.¹⁷ A third category, which I will not elaborate further at this point, deals with a range of other relevant matters including the relationship of an exercise of executive power to constitutional guarantees of, for example, property rights (section 51(xxxi))¹⁸ and the scope of the incidental legislative power in relation to executive power (section 51(xxxix)).¹⁹

¹⁵ Two assignments of power in 1954 and 1973 were revoked by the Queen in 1987 on the advice of the Prime Minister on the ground that they had not been necessary: Constitutional Commission, *Final Report, Summary, 1988*, AGPS, Canberra, 1988, p. 18.

¹⁶ The decision in the Tampa litigation is an example: *Ruddock v. Vadarlis* (2001) 110 FLR 491.

¹⁷ The *Australian Assistance Plan* case is an example: *Victoria v. Commonwealth* (1975) 134 CLR 338.

¹⁸ *ICM Agriculture Pty Ltd v. Commonwealth* (2009) 240 CLR 140.

¹⁹ *Davis v. Commonwealth* (1988) 166 CLR 79; Cheryl Saunders, ‘Intergovernmental agreements and the executive power’, *Public Law Review*, vol. 16, 2005, p. 294.

As far as the first category is concerned, there has been tension from the outset about whether, given the wording of section 61, constitutional or statutory authority is required for the exercise of executive power or whether the various common law understandings of inherent executive power inform a broader reading of the section in some way. Arguments in favour of the latter included that executive power existed ‘antecedently to ... legislation’, as Deakin once suggested;²⁰ that the Commonwealth executive had all the common law powers of a legal person; and that the description of executive power in section 61 as ‘extending’ to certain matters was not intended to restrict its scope. While these claims have never been accepted in their entirety by the court, over time it has been confirmed that, for example, section 61 does indeed incorporate some aspects of the prerogative, including the power to make treaties;²¹ that it authorises the executive to enter into at least some contracts (and to exercise some other non-statutory powers) without legislative authority;²² and that it is the source of power to make intergovernmental agreements.²³ The 1934 decision of the High Court in *New South Wales v. Bardolph*, that legislation was not necessary to authorise a state executive to make a contract ‘in the ordinary course of administering a recognised part of the government of the State’,²⁴ was roundly criticised by leading scholars, as drawing a distinction that would be difficult to sustain.²⁵

The second category of cases concerns the scope of Commonwealth vis-à-vis state executive power. It has some links with the first, insofar as a broad power for the Commonwealth executive to exercise the powers of a legal person to contract potentially denies federal limitations on the power as well. Many, although not all of the most significant cases, however, focused on the related question of the Commonwealth power to spend. Until the latter part of 20th century, it had been assumed that the answer to this question lay in the meaning of the requirement in section 81 for the Consolidated Revenue Fund to be appropriated ‘for the purposes of the Commonwealth’.²⁶ But in 1975, following a challenge to the validity of a regional assistance plan in the *AAP* case (*Victoria v. Commonwealth*), the focus shifted.²⁷ The outcome of the case was frustratingly inconclusive: the challenge was dismissed after

²⁰ Alfred Deakin, ‘Channel of communication with imperial government: Position of consuls: Executive power of the Commonwealth’, in Patrick Brazil and Bevan Mitchell (eds), *Opinions of Attorneys-General of the Commonwealth of Australia: Volume 1: 1901–14*, AGPS, Canberra, 1981, pp. 129, 131.

²¹ *Barton v. Commonwealth* (1974) 131 CLR 477, 498.

²² *Commonwealth v. Colonial Combing, Spinning and Weaving Co Ltd* (1922) 31 CLR 421.

²³ *R v. Duncan; Ex parte Australian Iron & Steel Pty Ltd* (1983) 158 CLR 535, 560.

²⁴ *New South Wales v. Bardolph* (1934) 52 CLR 455, 508, Dixon J.

²⁵ Enid Campbell, ‘Commonwealth contracts’, *Australian Law Journal*, vol. 44, 1970, p. 14; see also Leslie Zines, *The High Court and the Constitution*, 5th edn, Federation Press, Annandale, NSW, 2008, pp. 349–50.

²⁶ See in particular *Attorney-General (Vic) v. Commonwealth (Pharmaceutical Benefits case)* (1945) 71 CLR 237.

²⁷ *Victoria v. Commonwealth (AAP case)* (1975) 134 CLR 338.

Justice Stephen, the seventh member of an otherwise equally divided court, denied the plaintiff state standing.²⁸ The reasoning was potentially instructive, however. While some justices interpreted section 81 broadly to encompass whatever purposes the parliament determined,²⁹ one of these, Justice Mason, pointed to the distinction between appropriation on the one hand and engaging in a spending program on the other. The latter depended on the executive power, as a last resort. And in this case, in his view, the program exceeded the bounds of the power. In what subsequently became an authoritative statement, he observed that section 61:

is not unlimited ... its content does not reach beyond the area of responsibilities allocated to the Commonwealth by the Constitution, responsibilities which are ascertainable from the distribution of powers, more particularly the distribution of legislative powers ... and the character and status of the Commonwealth as a national government.³⁰

This understanding of the breadth of section 61 was reconfirmed in 1988 in the very different context of a challenge to the validity of legislation empowering the Australian Bicentennial Authority, where the joint judgment of Mason CJ, Deane and Gaudron JJ also noted that:

the existence of Commonwealth executive power in areas beyond the express grants of legislative power will ordinarily be clearest where Commonwealth executive or legislative action involves no real competition with State executive or legislative competence.³¹

3. The use of executive power

The strengths of non-statutory executive power are that it can be used quickly and strategically in ways that are flexible and informal. In Commonwealth–state relations it may also, at least superficially, reflect consensus rather than ownership by one sphere of government. Executive power performs a valuable role in government for these reasons. The flip side, however, is that it has less desirable properties as well. It lacks the legitimacy, public exposure, quality control and accountability that typically are associated with legislation. In any system, it therefore is necessary to strike an appropriate balance between reliance on executive and legislative power. Constitutions provide the framework, the precise meaning of which is still being

²⁸ Of the remaining justices, Barwick CJ and Gibbs and Mason JJ found for the plaintiff and McTiernan, Jacobs and Murphy JJ for the defendant Commonwealth.

²⁹ Justices McTiernan, Mason and Murphy.

³⁰ (1975) 134 CLR 338, 396–97.

³¹ *Davis v. Commonwealth* (1988) 166 CLR 79, 93–94.

settled in Australia. Within that framework, it is up to governments and parliaments to justify the choices that they make, by reference to the principles at stake.

There are various incentives for governments to resort to use of executive power, generally and in the Commonwealth sphere. Most obviously, it avoids the need for legislative approval including passage by the Senate in which, more often than not, governments lack a majority. A requirement for appropriation, where it exists, has never been much of a hurdle in the budget context and is even less so since the ‘high level of abstraction’ of the description of the purpose of an appropriation was accepted by the High Court in *Combet v. Commonwealth*, without remedial response from the Parliament.³² Reliance on executive power also appears to avoid several of the few guarantees of rights in the Constitution, dealing with property and religion,³³ and does not attract parliamentary scrutiny under the new procedures for human rights protection.³⁴ Recourse to non-statutory executive power minimises and partly eradicates review of the lawfulness of executive action: the Administrative Decisions (Judicial Review) Act, including its right to reasons applies only to decisions pursuant to legislation;³⁵ and while review is procedurally possible under the alternative avenues of the Judiciary Act and the Constitution, for the moment at least there is uncertainty about the standards of lawfulness that apply.³⁶ Administrative Appeals Tribunal review also is available only for decisions under legislation.³⁷ Even review of the constitutionality of executive action is complicated by the nature of the proceedings and the character of the instruments before the court, as the reasons of the various justices in the *AAP* case show.³⁸ These incentives are further fuelled by ambiguity over the constitutional scope of executive power, insofar as it leaves open the possibilities either that the ambit of executive power is significantly wider than that of legislative power or that it offers the potential to broaden legislative power through use of the express incidental power in section 51(xxxix).

Cause and effect is almost impossible to establish in circumstances of this kind. Nevertheless, Australian governments rely very extensively on the use of executive power, unsupported by legislation. Australia is not alone in this; it is a phenomenon elsewhere, particularly in countries that share an underlying tradition of inherent

³² *Combet v. Commonwealth* (2005) 224 CLR 494. The quotation is from the reasons of Hayne J, *Williams v. Commonwealth* [2012] HCA 23 [222].

³³ Both section 51(xxxi) and most of section 116 operate as a constraint on legislation.

³⁴ *Human Rights (Parliamentary Scrutiny) Act 2011*.

³⁵ *Administrative Decisions (Judicial Review) Act 1977*, section 3 (definition of ‘decision to which this Act applies’). This would not change pursuant to the recent report of the Administrative Review Council, which resisted amendment of the ambit of the Act to incorporate executive schemes: Administrative Review Council, *Federal Judicial Review in Australia*, September 2012.

³⁶ *Judiciary Act 1903*, section 39B; Constitution sections 75(iii), 75(v).

³⁷ *Administrative Appeals Tribunal Act 1975*, section 25.

³⁸ *Victoria v. Commonwealth (AAP case)* (1975) 134 CLR 338.

executive power, sourced neither in Constitution nor statute. The debate in the United Kingdom, to which I referred briefly earlier, is a response to concern about the extent to which notions of executive power with their roots in the 17th century are appropriate in the 21st.

In Australia, reliance on executive power is particularly striking in two spheres of domestic activity. One is intergovernmental relations. It would be a diversion to attempt to describe and explore the implications of this complex field here. I note in passing, however, that a very considerable proportion of government in Australia takes place in the exercise of executive power under the rubric of intergovernmental relations, largely bypassing the systemic procedures for political and legal accountability. The abandonment of the former terminology of ministerial councils in favour of reference to the 'COAG Council System', without any public deliberation at all, is merely another recent straw in the wind. I acknowledge some attempts to enhance transparency and accountability in relation to aspects of the intergovernmental arrangements, including the decision of the ACT government to regularly table agreements and a record of negotiations in the ACT legislature.³⁹ Nevertheless, the development of a dense network of arrangements around the purely executive institution of the Council of Australian Governments (COAG) is an issue that Australians should think about comprehensively, sooner rather than later, from the perspective of the democratic structure of government.

The second growth area for executive power within Australia is in relation to what the Commonwealth Ombudsman has described as 'executive schemes'.⁴⁰ In a 2009 report triggered by public complaints about several such schemes, the Ombudsman identified both the strengths and the weaknesses of the implementation of programs through executive action alone, with particular reference to accessibility to the public, consistency of decision-making and accountability. The report explores a series of case studies in depth, providing useful insight into some of the difficulties that arise. It does not seek to quantify the number of such schemes. Thanks to the recent legislative reaction to the decision in *Williams*, however, it is now clear that there were at least 420 extant programs that were considered to have been put at risk by the decision, for which retrospective validation was sought.⁴¹ The list does not make gripping reading, but it is a mine of information about a hitherto opaque aspect of government activity.

³⁹ Correspondence with the Clerk of the Legislative Assembly. Reference is made to the practice on Chief Minister and Cabinet, Intergovernmental Relations, <http://www.cmd.act.gov.au/policystrategic/igr#IGA>.

⁴⁰ Commonwealth Ombudsman, *Executive Schemes*, Report no. 12, 2009.

⁴¹ *Financial Framework Legislation Amendment Act (No. 3) 2012*, inserting schedule 1AA into the Financial Management and Accountability Regulations 1997.

The most famous executive scheme, for the moment, is the National Schools Chaplaincy Program (NSCP).⁴² This is the scheme that was challenged in *Williams* and it is worth focussing on it briefly, not only for that reason but also as an example of its kind. The scheme provided funding to assist schools to establish or extend chaplaincy services. It involved a commitment to expenditure of \$207 million over five years from 2006–07.⁴³ Parallel programs operated in many states and the Commonwealth also provides section 96 grants to states for various aspects of primary and secondary education. The first appropriation to fund the program was made in *Appropriation Act (No. 3) 2006–2007*. The framework of rules for the program took the form of administrative guidelines, including a code of conduct, which were incorporated to the extent relevant into contracts made with service providers in relation to particular schools on the application of each school. The guidelines were revised within government at least three times between 2006 and 2011; further changes were made in 2012. Several of these revisions extended the arrangements to allow funding for secular pastoral care workers, a change which a 2011 departmental report recorded as supported by all the respondent organisations, representing ‘the majority of schools across Australia’.⁴⁴ An Ombudsman report on the program in 2011 noted insufficient guidance in program documentation on, *inter alia*, key terms, including ‘pastoral care’ and ‘proselytise’, and on minimum qualification requirements.⁴⁵

As this description demonstrates, the NSCP is a purely executive program, operating through spending pursuant to contracts in an area primarily of state responsibility. Even the initial appropriation was effected in the bill making provision for ‘ordinary annual services’, despite the compact of 1965.⁴⁶ The multiple changes made to the program guidelines, during its relatively short life, are of a kind that should have been obviated by the greater care that attends policy formulation and drafting through legislation. Most importantly of all, perhaps, this is a significant policy initiative in a country where considerations of both multiculturalism and secularism suggest that the

⁴² Since 2012, the National Schools Chaplaincy and Student Welfare Program.

⁴³ A further \$222 million has been committed until 2014.

⁴⁴ Australian Government, *Consultation Process and Outcomes for the National School Chaplaincy Program*, September 2011, p. 1: <http://www.deewr.gov.au/Schooling/NSCSWP/Documents/ConsultationProcessOutcomesNSCP.pdf>.

⁴⁵ Commonwealth Ombudsman, *Administration of the National School Chaplaincy Program*, July 2011.

⁴⁶ This was justified as a ‘new activity within an existing outcome’ and so ‘not a new policy’: *Williams v. Commonwealth* [2012] HCA 23, [490], Crennan J. Justice Crennan quotes the outcome as ‘improved learning and literacy, numeracy and educational attainment for school students, through funding for quality teaching and learning environments, workplace learning and career advice’.

introduction of chaplains into schools requires sensitivity, careful program design and public debate.⁴⁷

In *Williams*, the father of children at the Darling Heights State School in Queensland challenged the validity of the Agreement under the program in relation to this school and the payments made pursuant to it.⁴⁸

4. Recent decisions of the High Court of Australia

The decision in *Williams* did not come out of the blue, but is the latest in a string of cases in which the High Court has stressed the need to understand Commonwealth executive power by reference to the text and structure of the written Constitution. With hindsight, an early seed was planted in the very different circumstances of the *Tampa* litigation (*Ruddock v. Vadarlis*),⁴⁹ when Justice French, then sitting as a member of the Full Court of the Federal Court, observed that:

the executive power of the Commonwealth under s.61 cannot be treated as a species of the royal prerogative ... While the executive power may derive some of its content by reference to the royal prerogative, it is a power conferred as part of a negotiated federal compact expressed in a written Constitution distributing powers between the three arms of government reflected in Chapters I, II and III of the Constitution and, as to legislative powers, between the polities that comprise the federation.⁵⁰

Almost contemporaneous with the *Tampa* case was the High Court decision in *R v. Hughes*⁵¹ in which, while the court avoided decision on whether legislation authorising the conferral of state executive power on Commonwealth officers could be justified as an exercise of the incidental legislative power in support of the executive power, it noted that ‘the scope of the executive power, and of s. 51(xxxix) in aid of it, remains open to some debate and this is not a suitable occasion to continue

⁴⁷ Cf. Margit Cohn’s suggestion, drawing in Israeli case law, that ‘primary’ arrangements should require legislation: Cohn, op. cit., 2009, pp. 278–80. Characteristics of such arrangements include ‘the extent of effect on the general public; the purpose of the arrangement; the degree of social dispute over its particulars; its budgetary implications; the extent of legislative involvement ...; the urgency of the executive action; and its time-span’.

⁴⁸ The plaintiff initially sought to pursue an argument that the scheme was contrary to section 116, for requiring a religious test as a qualification for office under the Commonwealth. The argument failed on the ground that there was no relevant ‘office under the Commonwealth’.

⁴⁹ *Ruddock v. Vadarlis* (2001) 110 FCR 491.

⁵⁰ At [183]. This observation in turn echoed an earlier remark of Justice Gummow, also at that point a Justice of the Federal Court, ‘In Australia, ... one looks not to the content of the prerogative in Britain, but rather to s 61 of the Constitution, by which the executive power of the Commonwealth was vested in the Crown’: *Re Ditfort; Ex parte Deputy Commissioner of Taxation* (1988) 19 FCR 347, 369.

it’.⁵² Later in the decade, in a different context again, the High Court confirmed that a section 61 agreement could not ‘facilitate’ a payment to states that was not authorised by section 96: in this case, because section 96 was itself subject to the requirement in section 51(xxxi) for the acquisition of property on just terms.⁵³

For present purposes, however, the immediate forerunner of *Williams* was the decision in *Pape v. Federal Commissioner of Taxation*.⁵⁴ *Pape* involved a challenge to the tax bonus legislation that formed part of the Australian fiscal stimulus package at the outset of the global financial crisis in 2008–09. The most likely source of power was the incidental legislative power in support of that aspect of the executive power that was described by Mason J in the *AAP* case as giving the Commonwealth ‘a capacity to engage in enterprises and activities peculiarly adapted to the government of a nation and which cannot otherwise be carried on for the benefit of the nation’.⁵⁵ In the event, the validity of the legislation was narrowly upheld on that basis.⁵⁶ Despite disparities between the reasoning of the justices, *Pape* established at least three propositions. First, the source of the power to spend lies in section 61 and not in the appropriation provisions. Secondly, the Commonwealth’s power to spend is not unlimited, although in this case it was sustained as an exercise of the ‘nationhood’ component of the executive power, on the assumption that this was a short-term, emergency response to a crisis that raised little if any potential conflict with state executive power. Thirdly, section 51(xxxix) is constrained, particularly when used in support of the executive power with implications, still not fully explored, for the enactment of ‘coercive laws’.⁵⁷

In *Williams*, the scope of the executive power was raised in a different context. The principal target of the challenge was the contract, to which Commonwealth spending necessarily was incidental. In the absence of legislation, no question of the scope of section 51(xxxix) arose.⁵⁸ Nor was this a case in which the activity in question was ‘peculiarly adapted to the government of a nation’; on the contrary, the states were engaged in similar programs.

⁵¹ *R v. Hughes* (2000) 202 CLR 535.

⁵² *ibid.*, p. 39.

⁵³ *ICM Agriculture Pty Ltd v. Commonwealth* (2009) 240 CLR 140.

⁵⁴ *Pape v. Federal Commissioner of Taxation* (2009) 238 CLR 1.

⁵⁵ *Victoria v. Commonwealth (AAP case)* (1975) 134 CLR 338, 397.

⁵⁶ By French CJ and Gummow, Crennan and Bell JJ. Hayne and Kiefel JJ partly upheld the legislation by reference to the taxation power. Heydon J dissented.

⁵⁷ *Pape v. Federal Commissioner of Taxation* (2009) 238 CLR 1, [10], French CJ.

⁵⁸ Although see the questions raised by Hayne J about whether substantive provisions of the appropriation legislation went beyond mere appropriation to structure the expenditure: *Williams v. Commonwealth* [2012] HCA 23, [223]–[233].

When the case began, it seemed likely that the outcome would turn principally on the question whether the challenged action could have been the subject of legislation. This perception drew on what came to be described in the case as the ‘common assumption’ that the executive power ‘extends at least to engagement in activities ... which could be authorised by ... a law made by the Parliament, even if there be no such statute’.⁵⁹ Two possible heads of power were claimed by the Commonwealth to this end: the corporations power in section 51(xx), on the ground that the other contracting party, the Scripture Union of Queensland, was a trading corporation and the power in section 51(xxiiiA) to make laws for the ‘provision of ... benefits to students’. In the end, three of the seven justices of the court approached the problem in this way. Two of these held that neither head of power was applicable and would have invalidated the contract on this basis.⁶⁰ The third would have upheld the contract by reference to the benefits to students power.⁶¹

In the event of the failure of the argument based on the ‘common assumption’, the Commonwealth had an alternative, broader position, which drew on the concept of the executive as a legal person, with an unlimited power to contract, subject to legislation to the contrary. This argument was put, but failed. It is now established, if it was not before, that the Commonwealth as a whole constitutes a polity within which authority is allocated between the various branches according to the Constitution including, in relation to the executive, section 61.⁶² The executive power is not unlimited. Quite apart from the obvious relevance of the federal division of power, the presence in the Constitution of section 96 as a mechanism through which the states are offered and have the option to accept grants on condition militated against an understanding of it that would make section 96 redundant and potentially would be coercive in effect if section 51(xxxix) were brought into play. In any event, the court denied that conclusions about the scope of Commonwealth power could satisfactorily be derived by analogy from the capacities of legal persons, given the public character of Commonwealth funds, its accountability obligations and the coercive mechanisms at its disposal.⁶³

These findings alone make *Williams* significant. Much of the interest of the case, however, derives from the treatment of the ‘common assumption’ by a majority of the court.⁶⁴ During the course of the hearing, the tenor of argument changed in a way that persuaded these justices to approach the question of the validity of the contract rather differently. This meant that they were not prepared to assume that the power to

⁵⁹ Gummow and Bell JJ, [125].

⁶⁰ Hayne and Kiefel JJ.

⁶¹ Heydon J.

⁶² French CJ [21], Gummow and Bell JJ [154], Hayne J [204].

⁶³ In particular, Gummow and Bell JJ [151]ff.; Crennan J [519–523].

⁶⁴ French CJ, Gummow and Bell JJ, Crennan J.

contract was always necessarily executive in character, so that the only outstanding issue was whether a contract fell within the Commonwealth sphere. The question thus became whether a contract of this kind required supporting legislation rather than merely the possibility of supporting legislation, determined by reference to a ‘hypothetical law’.⁶⁵ To answer it, they drew on the rest of the constitutional context, ultimately concluding that this contract did not fall within inherent executive power and so required statutory authority.

While the emphases in the three sets of reasons differed, all pointed to constitutional provisions dealing with federalism and representative government. The relationship between the legislature and the executive is relevant to both, given the role of the Senate in the original conception of the Constitution, as the house through which the states have a say in legislation. By contrast, neither house is involved in the exercise of executive power beyond the function of appropriation, in relation to which the powers of the Senate are limited.⁶⁶ In the absence of legislation, moreover, there is no constitutional rule to resolve inconsistency between the exercise of federal and state executive power where, as in the circumstances of *Williams*, there is potential for conflict between the two.

I conclude this part by summarising what I take to be the effects of this complicated case. In considering whether government action that is not authorised by legislation is supported by section 61 it is necessary to consider not only the division of power between the Commonwealth and the states but also the relationship between the executive and parliament. Both are relevant in determining the constitutionality of contract and spending programs. At least some such programs will require authorising legislation which may, of course, expose the lack of an adequate head of legislative power. The touchstone for making these decisions is the text of section 61, understood in the context of the rest of the Constitution. Both the power in the nature of the prerogative ‘properly attributed to the Commonwealth’⁶⁷ and the power derived from nationhood are untouched by *Williams*, at least directly, and remain sources of non-statutory executive power, subject to federal limitations. The potential for conflict with state executive power is an indicator that the limits may have been reached. The judgments also suggest, some more explicitly than others, that there is a range of activities, including contracts, undertaken in the ‘ordinary course of administering a recognised part of the Government of the Commonwealth’⁶⁸ that fall within the scope of inherent executive power on the basis that they involve ‘the execution and

⁶⁵ French CJ [36].

⁶⁶ French CJ [21], [60], Gummow and Bell JJ [136], [145], Crennan J [544].

⁶⁷ French CJ [4].

⁶⁸ This quotation, which in effect is a description of the plaintiff’s argument is taken from the reasons of Gummow and Bell JJ: [138].

maintenance’ of the Constitution, possibly by reference to section 64.⁶⁹ Distinguishing these from contracts of the kind invalidated in *Williams* is one of many challenges for the future.

5. Opportunities

The immediate reaction to *Williams* on the part of the government and Parliament was to enact legislation designed to reverse it. The *Financial Framework Legislation Amendment Act (No. 3) 2012* purports to retrospectively validate more than 400 executive programs, including the National School Chaplaincy and Student Welfare (NSCSW) Program and to authorise additional programs to receive statutory approval through regulation. The substantive validating provision in new section 32B(4) confers power on the ‘Commonwealth’ to administer an arrangement in the regulations, subject to law if, ‘apart from this subsection’ the ‘Commonwealth’ does not otherwise have power to do so. Decisions under this section are excluded from the operation of the Administrative Decisions (Judicial Review) Act. Each program is described in terms of very general outcomes. The only information about the NSCSW Program, for example, is that its objective is: to assist school communities to support the wellbeing of their students, including by strengthening values, providing pastoral care and enhancing engagement with the broader community.⁷⁰

The Act itself would be a worthy subject of another lecture. There is a question whether the general validating section is effective for the purpose. Even if this is accepted, so that adequate supporting legislation is in place, there is another question about whether it is valid in relation to each of the programs, in the sense that a head of power can be found. The description of the NSCSW Program, for example, does not encourage reliance on the corporations power and does not necessarily meet the description of the provision of benefits to students.

However problematic the legislation for the purposes for which it was enacted, the mere fact that it provides statutory authority for these programs, however vague, has political and perhaps legal implications. Any new program added by regulation presumably should attract the attention of the Senate Standing Committee on Regulations and Ordinances which, according to its terms of reference, should ask whether it makes rights unduly dependent on administrative decisions that are not subject to independent merits review and whether it contains matter more appropriate for parliamentary enactment. Both the new legislation and any amending regulations also should be subject to a statement of compatibility and examined by the Parliamentary Joint Committee on Human Rights by reference to the seven human

⁶⁹ For example, French CJ [4], [65], [78].

⁷⁰ Financial Management and Accountability Regulations 1997, 407.013.

rights treaties that fall within its remit. It remains to be seen whether the statutory setting affects the processes of judicial review as well.

I suggested at the outset of this lecture that *Williams* provides the opportunity to craft a conception of executive power that is suitable for 21st century Australia. From that standpoint, the Amendment Act is a disappointment. Temporary validating legislation of some kind would have been understandable, not only because of the politics of sudden cessation of these programs but because of the anxiety that the decision may have caused in the short term to recipients of federal funds pursuant to them. Legislation in this form is appropriate only as a stop-gap, while more tailored and longer term solutions are found.

The responsibility for such solutions lies with all branches and spheres of government, including this parliament. In time there will be more litigation and the contours of the constitutional doctrine will be developed further. But it is essential also for the Parliament to have a principled view about the policies and programs that should be dignified by legislation. It is desirable for the states to work out with their Commonwealth counterparts how section 96 might be used more efficiently to administer spending programs that continue to exist. And the executive should welcome these developments as well, although it may not presently think so. 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.



Question — You mentioned at the end the challenge to the Parliament to take up the implications of the *Williams* case and the government’s response to the *Williams* case which the Parliament agreed to. It should have been a stopgap measure but it has now become a permanent measure. It was passed with great urgency by both houses because there were very compelling reasons to fix up this problem that the High Court had exposed through the *Williams* decision. But now we are left with this huge delegation of power to the executive to make regulations to validate all sorts of programs that may or may not have a connection with Commonwealth legislative power. How might the structures of the parliament be up to that challenge?

Cheryl Saunders — Well there is a question about that, particularly in the wake of *Combet* where the structures of the parliament were not up to the challenge. There are

all sorts of imponderables here. One is whether the legislation will survive challenge; another is if the chaplaincy scheme comes back whether its description will survive challenge. There is a sense in which the Parliament will not be able to avoid this entirely. Again, if you think about the terms of reference of the Senate Regulations and Ordinances Committee, it has a job to review all of these regulations which is remarkably useful. Now of course it can dodge it, but nevertheless the question will have to be considered at some stage.

Question — Going back to Justice French’s decision in *Tampa*, as a non-lawyer it seemed to me on reading it that it almost allowed unlimited power to the executive which effectively equates with the government of the day. I wonder if you could just comment a little bit further on that?

Cheryl Saunders — I was not happy about the *Tampa* decision either. There are several aspects of the *Tampa* decision. One is what the court said about the scope of executive power and the other was what the courts said about the relationship between executive power and legislative power given that there was a Migration Act. The question was the extent to which the executive power survived the enactment of legislation. But I think that what was actually found by the majority in the *Tampa* case in relation to executive power is not as broad as all that. If you look at the way in which Justice French, with whom Justice Beaumont agreed in the *Tampa* litigation, framed the executive power that he found to exist, it was not as broad, for example, as the executive power that Chief Justice Black was playing with. Nevertheless, there was concern at the time that this seemed to be a new sort of executive power and where did it come from? Justice French looked at that and said ‘Oh my God, is this a recipe for continuing to expand executive power?’ Now that questions of executive power are beginning to come up in other contexts, what we are seeing instead is the idea that the executive power is our executive power not just an inherited one that needs to fit within the bounds of the Constitution. It may be expansive in some circumstances but there will be also cause for retraction in others. What we are seeing is the tailoring of executive power by reference to the Constitution as a whole. It is quite an interesting time, really, from that point of view.

Question — Anne Twomey said that the *Pape* decision was a lost opportunity to examine and limit the scope of executive government. How would you respond to that?

Cheryl Saunders — I am not sure that we know the answer to that question yet. *Pape* is interesting because you get an outcome in *Pape*. A majority decision for a particular outcome but a different majority for a set of principles. At least two or three of the potential dissentients in *Pape* really constitute a majority for limiting the executive

power by reference to principle. So insofar as the actual outcome in *Pape* does not reflect that statement of views about the effect of federal limitations on the executive power, I suppose so. On the other hand, as the court said in *Pape* and said again in *Williams* reflecting on *Pape*, *Pape* was a very particular set of circumstances, what was perceived as an economic crisis requiring a quick and speedy reaction by governments. We as a country are still all debating whether that was so or not but at the time, if you think back to the angst, it was easy to understand it. So I do not think you can read too much into *Pape* because I think we are still seeing the playing out of this process of accommodating the very vague terms of section 61 to the rest of the Constitution.

Question — Now that the genie is out of the bottle and given the uncertainties around the effect and validity of the amendment Act, to what extent do you think that the legislative intervention has actually reduced uncertainty?

Cheryl Saunders — In relation to some programs it probably has on the assumption that the general statute itself is valid and that the very general enabling provision works, which I guess is something that we need to think about. A lot of the programs that were added in there dealing with veterans' affairs, for example, clearly survive on federalism-type grounds so perhaps it gave people some comfort in that respect. It certainly postponed the evil day but I think unless both government and parliament turn their minds to really thinking rather more deeply about the various categories of exercise of executive power now and craft appropriate legislative solutions I think that the uncertainty that you refer to will bubble on and continue to haunt all of us including the court.

Question — If there will be a change of government, for example, where there may be cuts to grants programs, do you think that if there is a contract that is ongoing and they are cutting the grant they would then need to change the regulations?

Cheryl Saunders — Not necessarily, I think, but I must say I have not looked at the legislation for that purpose. I do not want to answer off the cuff because I really need to look at it and think about that. My immediate assumption is no but that may not be right. Clearly some of these contracts are going to end anyway even if they are not arbitrarily cut and so it must have been envisaged that the arrangements would naturally come to an end. But whether they contemplated taking them out, perhaps they should or otherwise it would be a mess.

Question — Within the battle between inherent power and the power derived from statutory authority, would it be correct to say that just as the defence heads of power in the Constitution and the power of the executive has as a result waxed and waned

depending on the defence threat, that much of the executive power of the Commonwealth would not be fixed no matter what we do because it will wax and wane depending on the crisis involved, if indeed it is a power for dealing with a crisis?

Cheryl Saunders — The power for dealing with a crisis is only a very small part of the executive power itself, and that is certainly not what we are talking about in relation to *Williams*, and it has got to be a fair old crisis that we are talking about as well. Now if it is a defence crisis it is not going to be such a difficulty in any event because that clearly falls within the Commonwealth realm. The reason why *Pape* was interesting was because it was not so obvious that that fell within the Commonwealth realm. So I do not think that the analogy of waxing and waning really helps terribly much with the executive power.

Question — I am wondering if you could comment on possible comparisons with other countries while noting that there might not be many that have a federation with written constitutions in the common law system. I am wondering if other countries have dealt with this issue of executive power and where they might be at?

Cheryl Saunders — Yes, it is a very interesting comparative project actually, exactly how interesting I had not really fully understood until preparing this paper. In relation to other countries similar to us in the sense that they inherited institutions originally from the UK there is a similar debate going on. There has been a debate in the UK itself. A lot of it there has revolved around the issues that I deliberately dodged here namely defence and external affairs. Much of the debate there was prompted by the government's decision to engage in the second Gulf War without recourse to parliament. So there has been a big debate in the United Kingdom about whether both the prerogative in the narrow sense on the one hand and the so-called ordinary executive powers on the other should in some way be tamed by legislation.

Others have engaged in that debate as well. There is a very interesting series of articles by an Israeli academic called Margit Cohn who has done a lot of comparative work in the area and come up with some solutions of her own, one of which I actually quote in the paper, about where the lines might be drawn between inherent powers to contract and powers to contract that need statutory authority, for example.

If you move outside the British common law tradition to say the continental legal tradition or versions of it, you find an entirely different ball game. There because there is no notion of inherent executive power pre-existing constitutions that has survived, they just assume that you will find your executive power either in legislation or in the constitution. That, of course, is the logic of a written constitution, but it just

takes a while to work around to it. So there are some very interesting comparisons, I think, to be drawn with, for example, Germany in how the concept of executive power has developed and its relationship with both the constitution and legislation.

Question — My question refers to sections 59 and 60 of the Constitution. Section 61 allows for a narrow prerogative of the monarchy. A recent letter to the *Canberra Times* raised the question of a possible referendum law passed by parliament for the establishment of a republic even before the referendum had been put could fail to receive assent from the Crown. Would you care to comment?

Cheryl Saunders — I have not seen that letter so I probably should not comment on that. One of the other things that has happened over the last one hundred years is not only have there been changes in the way that executive power is exercised and changes in the way the court has interpreted executive power but there have been changes in the relationship between the United Kingdom and Australia with Australia becoming independent at some undefined point during that time. Now that also actually has affected the meaning of section 61. I briefly mentioned in passing another section, section 2 of the Constitution, which authorises the Queen to confer certain powers and functions on the Governor-General. Now that is a reference to the period that immediately followed federation when Australia was not fully independent and did not have a full complement of prerogative power anyway. The full power to enter into treaties and declare war on part of Australia was not in section 61 in 1902, it still lay with the United Kingdom and there was a question of whether additional powers might be passed over under section 2. Now, subsequently, Australia became fully independent, the court interpreted section 61 as picking up all those extra powers and section 2 became redundant. But this is part of the backdrop of understanding section 61 and the reason I make those points is the two sections that the questioner just referred to are also parts of the Constitution which have also in effect become redundant over time for precisely the same reasons.

Will Dyson: Australia's Radical Genius*

Ross McMullin

I will start with a true story about how I first came across Will Dyson many years ago. I was doing research on a project about the First World War that led me to study Australia's war art. One day, at the Australian War Memorial's research centre, I was given a file to look at about Dyson the war artist. A letter in the file jumped out at me. Dyson was not impressed by the proposed distribution of his war lithographs:

I see that the State Governors of Australia have been included in the list of recipients ... In the name of the digger I protest ... [I don't want them given] to the collection of poor relations and broken wined English party hacks out to grass that make up the State Governors.¹

That letter made me sit up. Here was someone interesting I wanted to find out more about. What I discovered was that Will Dyson was a remarkably talented and versatile artist–writer.

He was a brilliant and forceful cartoonist. Australia has been blessed with plenty of outstanding cartoonists, but Dyson was right up there with the best of them.

He was our first official war artist. Many artists followed Dyson in the First World War and later conflicts, but I am not alone in believing that he remains our finest ever war artist as well as our first.

Dyson was also a sublime writer of prose and poetry. He wrote about Australia's soldiers as superbly as he drew them.

He took up etching in his later 40s, and won international acclaim in this field also.

Besides all this, he was an instinctive radical with dazzling wit and a convivial personality. He married Ruby Lindsay and knew all her famous artist brothers well—Norman, Lionel, Daryl and Percy Lindsay.

* This paper was presented as a lecture in the Senate Occasional Lecture Series at Parliament House, Canberra, on 19 October 2012.

¹ Letter, Will Dyson to A. Box, n.d., Australian War Memorial file 18/7/5.

Dyson was described in his heyday as the most famous Australian in the world. He should be much better known today than he is.

But the Will Dyson story is not just a celebration of fame and achievement. It is about a sensitive soul, the ups and downs of a sentimental larrikin.

It is partly a love story.

It is about his love for Australia's soldiers. 'I never cease to marvel, admire and love with an absolutely uncritical love our louse ridden diggers', he declared.² He produced hundreds of Western Front drawings of profound empathy and sympathy and was wounded twice in the process. Dyson's reverence for Australia's soldiers, their perseverance and exploits, was enduring.

It is about his love for his country. Will Dyson was born in Ballarat, grew up in Melbourne, and had a profound sense of attachment to his homeland even though he had to venture overseas to make his mark. But this connection frayed. In 1929 he lamented that Australia had become 'a backwater, a paradise for dull boring mediocrities, a place where the artist or [someone] with ideas could only live on sufferance'.³ The 'guidance of the country [had fallen] into the hands of rich drapers, financial entrepreneurs, newspaper owners, people who in other countries were kept in their place'.⁴ Australians might have a reputation as hardy pioneers and explorers, he said, but what was overdue was some serious exploring of 'our great empty mental spaces'.⁵ In his final years he was describing Australia as 'a beautiful country to die in'.⁶

And it is about his love for Ruby Lindsay.

In October 1918, nine years after their marriage, Dyson wrote that 'never by any circumstance moral or physical did I deserve the wife I got'.⁷ This was a love that never died, even after Ruby died.

As well as being in a number of ways a story about love, it is also a story about hate.

² Ross McMullin, *Will Dyson: Australia's Radical Genius*, Scribe, Melbourne, 2006, p. 218.

³ Nettie Palmer, *Fourteen Years: Extracts from a Private Journal 1925–1939*, Meanjin Press, Melbourne, 1948, p. 54.

⁴ *ibid.*

⁵ McMullin, *op. cit.*, p. 340.

⁶ Vance Palmer, 'Will Dyson', *Meanjin*, vol. 8, no. 4, 1949, p. 222.

⁷ Letter, Will Dyson to Edward Dyson, n.d. [c. 11 October 1918], Edward Dyson papers, State Library of Victoria, MS 10617.

Dyson revered Australia's soldiers and their achievements, but he utterly detested war. 'I'll never draw a line to show war except as the filthy business it is', he told his friend Charles Bean, the Australian official correspondent at the Western Front.⁸ Dyson found the many months he spent at the Western Front harrowing for more than the obvious reasons.

Bean observed that Dyson experienced at least ten times more of the real Western Front than any other official artist, British or Australian. But it was not just the horrors and dangers that left Dyson feeling ripped apart. He felt inspired by the Australian soldiers' endurance and accomplishments, but at the same time he felt dismayed that a fine Australian generation was being destroyed before his eyes.

And further on hate, the ferocity Dyson displayed as a cartoonist stemmed from his loathing of suffering, inequality and flagrant social abuses.

His friend G.D.H. Cole said Dyson 'hated the things a decent man ought to hate—oppression and snobbery and cruelty and highfalutin nonsense'.⁹

This is also the story of a brilliant creative artist, a genius, who concerned himself with important issues affecting art, politics and society without ever losing his sense of fun.

Dyson was convivial, amusing and a natural comic performer. He had a striking flair with words, evident in his witty cartoon captions, sparkling after-dinner speeches and scintillating conversation.

He would dash off a letter on a long ship voyage saying 'Today is Sunday but it is so like any other day that it would take a learned theologian to tell the difference'. At the famous Café Royal in London he entertained onlookers by pretending to carry on conversations in a variety of European languages that sounded exactly like the real thing when the only language he actually knew was English. If asked to provide a receipt he would write 'I am graciously pleased to confer upon the above mentioned sum the distinction of having been received by me.'¹⁰

He would give an after-dinner speech to a gathering of Australian artists welcoming him home by saying 'England [used to] send criminals to Australia, and we retaliated by sending artists to England'.¹¹ At this time he also remarked that 'My work in

⁸ C.E.W. Bean, *Gallipoli Mission*, Australian War Memorial, Canberra, 1948, p. 111.

⁹ McMullin, *op. cit.*, p. 411.

¹⁰ *ibid.*, p. 48.

¹¹ *Herald* (Melbourne), 9 April 1925.

London was finished ... There was no further use in continuing to live on the outer fringes of Empire—I resolved to return to the passionate throbbing life at its centre. I have bought a house at Moonee Ponds.’¹² This was of course well before Edna Everage made Moonee Ponds internationally renowned.

And Dyson and his friend Jimmy Bancks, the creator of Ginger Meggs, often used to amuse themselves on a train in the following way. One of them would open a window and the other would promptly close it. A swiftly escalating exchange of insults would follow, to the alarm of other passengers. Just when it seemed that a nasty fight was about to commence, Dyson would ask Bancks which school he attended, Bancks would concoct a likely-sounding but non-existent institution in reply, and Dyson’s attitude would transform in an instant. ‘Why, that was my school—this would not have happened if you had been wearing the old school tie!’ With that he would vigorously shake Bancks’s hand, apologise profusely, and concede: ‘Have the window any way you want it, dear old chap!’

Will Dyson was born at Ballarat in 1880. Some years later his family moved to Melbourne. As he grew up the biggest influence on his development was his eldest brother Ted. Edward Dyson was a well-known and remarkably prolific freelance journalist and writer who was fifteen years older than Will (who was known as Bill by everyone who knew him well). Between Ted and Bill among the siblings was another prominent creative brother, Ambrose Dyson, a capable professional cartoonist. There was creative talent among Bill’s sisters too.

After the Dysons moved to Melbourne they became close friends with another remarkably talented family, the Lindsays of Creswick.

The Dysons and the Lindsays had plenty in common. Art and girls, books and boxing. Learning to draw, yearning for talk, searching for fun. They were prominent in bohemian groups such as the Prehistoric Order of Cannibals and the Ishmael Club. Bill Dyson’s closest friend was Norman Lindsay.

Bill first became noticed as a caricaturist.

He would prowl city streets stalking his prey, looking for quirks of character, mannerism and dress. Some of his targets became perturbed by his pursuit. There are reproductions in the book of his brilliant and penetrating caricatures of identities as diverse as Henry Lawson, John Wren, and Victorian premier Tommy Bent, the notorious rogue who reportedly declared to a journalist: ‘I know what you’re going to

¹² *Home* (Sydney), 1 August 1925.

say against me, Mr Carey. You're going to say that I have a wife and family in every suburb and that I neglect them. I *don't* neglect them, Mr Carey.'¹³

Another Will Dyson caricature that is often reproduced is his drawing of Labor MP King O'Malley.

Bill and Norman had similar interests and were determined to be artists, but had very different priorities in their work. For Norman, his weekly cartoon for the *Bulletin* was a chore to be dashed off as quickly as possible before he returned to what he regarded as the real work that mattered far more to him. For his *Bulletin* cartoons, he was happy to do what the editors wanted: instructions were welcome, the subject matter did not matter, and whether it was right-wing or left-wing by and large he did not care.

Dyson's attitude to cartooning was very different. He was a radical, a supporter of left-wing causes and issues. Receiving instructions about what kind of political cartoon to draw was absolute anathema to him. He would pace up and down, developing his ideas or honing a caption for a drawing, just like the traditional genius at work. Nothing annoyed him more than editors altering his work.

Despite showing conspicuous talent in a range of spheres—caricaturist, cartoonist, writer—Dyson struggled to find a niche in Australia. As an example of the kind of discouragement he had to contend with, Dyson drew a striking caricature of a wealthy Adelaide businessman, mayor and politician named Lewis Cohen. He put considerable effort into devising appropriate captions for his art, and in this instance he came up with one that was clever and hardhitting: 'The poor man's friend: A man whose principle is to take great interest in assisting the poor.' When the caricature was published, however, all the caption said was 'Mister Cohen. The poor man's friend' and Dyson's forceful caption was lost.

It was this kind of treatment that prompted Dyson to decide to venture to London in 1909 at the age of 29. He was hoping to find a slot in a broader cultural environment. It was a bold step, a real gamble. He married Ruby, and persuaded Norman to go with them.

After a while in London, however, Norman returned to Australia following a big row with Bill. Bill stayed in London with Ruby, and was engaged by the radical London *Daily Herald* as its cartoonist. This was a big breakthrough, a marvellous opportunity, and he grasped it with relish. The timing was perfect. This was a time of political,

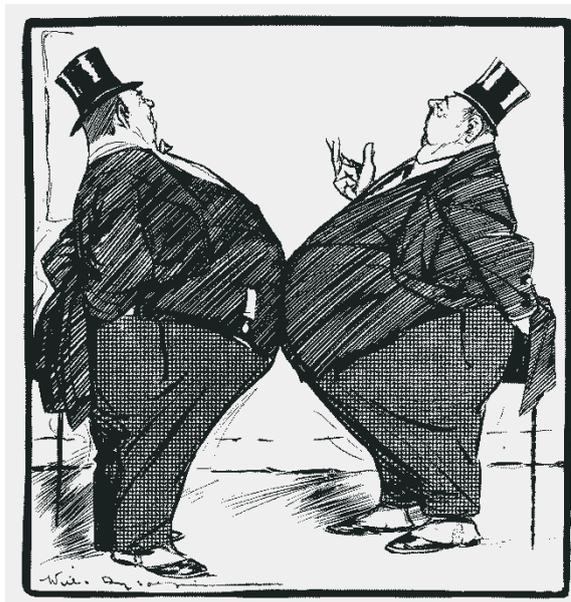
¹³ Geoffrey Serle, *The Rush to be Rich: A History of the Colony of Victoria, 1883–1889*, Melbourne University Press, Melbourne, 1971, p. 265.

industrial and social upheaval in England. Strikes were numerous, suffragettes were militant, politics was turbulent. The *Daily Herald* gave Dyson editorial freedom and encouraged him to go for the jugular.

He certainly did. Traditionally, English cartoons had lacked vigour and passion. Dyson's were very different. His angry, rebellious shafts against inequality and suffering were intensely passionate. The *Daily Herald* maximised their impact with whole-page reproduction. Both workers and intellectuals admired them.

The workers liked Dyson's boldly drawn figures representing clear symbols of the noble, wronged toiler versus his oppressive employer, who Dyson drew and labelled as 'Fat', an evil-looking man in formal dress featuring top hat and spats, with several chins and a huge paunch, sometimes waving a cigar and resting on a pile of moneybags.

The intellectuals savoured Dyson's wordy, witty captions. G.B. Shaw, G.K. Chesterton and H.G. Wells praised the Australian newcomer as the most brilliant and forceful cartoonist Britain had known for decades. Another Dyson enthusiast declared that the 'capitalist is not merely drawn—he is quartered ... [in] some of the most passionate, skilful and unmerciful cartoons it has ever been my good fortune to encounter'.¹⁴



'Economic Darwinism', *Cartoons* (London, 1913)



'Labour Wants a "Place in the Sun"', *Cartoons* (London, 1913)

One of my favourite Dyson cartoons of this period showed two of these gross rank Fat men together, with one of them saying to the other: 'The visionaries and Socialist

¹⁴ Anthony Ludovici, *New Age* (London), 5 June 1913.

demagogues may rant against us, my boy, but they can't alter the divine law of the Survival of the Fattest!' Dyson called it 'Economic Darwinism'.

'Labour Wants a "Place in the Sun"' is a typically powerful cartoon of easily grasped symbolism. Dyson's caption has one of his notorious Fat men (wearing a top hat labelled Capitalism) rebuffing the worker: 'Back to your abyss, sir! As it is already there is scarcely enough sun to go round!'

Around 1913 Dyson was far from the only radical to be profoundly disillusioned by the ineffectual performance of the British Labour Party. In one cartoon he depicted a number of recognisable British Labour MPs praying for what he felt they seemed to yearn for most—a top hat.

Dyson's cartoons supported impoverished stragglers and militant suffragettes. In one inventive cartoon he combined both these concerns. With arrested suffragettes going on dedicated hunger strikes for their cause, the authorities responded with brutal enforced feeding. Dyson drew a destitute mother and daughter passing a newspaper placard headlining the latest news about this brutal treatment of the suffragettes. Dyson has the impoverished little girl seeing the placard and saying 'Mummy, why don't they forcibly feed us?'



'In the Midlands', *Cartoons* (London, 1914)



'The New Advocate: Death of Miss Davison', *Cartoons* (London, 1914)

When Emily Davison was fatally injured while carrying out a suffragette protest, Dyson responded with a grim cartoon.

Dyson's *Daily Herald* cartoons had an astonishing impact. His success was rapid, unforeseen and stunning. The *Daily Herald* took advantage of Dyson's spectacular success by producing volumes of his cartoons. Sales were extraordinary. The first print run of 10 000 sold out in three days. The *Daily Herald* urgently printed another 25 000. The celebrated cartoonist blossomed as a speaker, excelling as an after-dinner speaker and even as a stirring orator at a huge strikers' rally that generated a capacity audience at the Albert Hall. A well-known Australian journalist working in London described Dyson as the most famous Australian in the world.

For Dyson, life was never better. He and Ruby, whose art had prospered in London, were residing in fashionable Chelsea, suburb of numerous artists. They had become parents with the birth of Betty in 1911.

The First World War smashed this serenity like a wrecking ball demolishing a house. Dyson loathed war, but felt England was entitled to defend itself against German aggression. His response to the outbreak of war was a series of drawings attacking rampant militarism that came to be known as the Kultur cartoons. This was because these cartoons, while expressing a universal anti-militarist message, did so in a way reflecting Dyson's perception of the immediate context in that the figures representing evil had upturned moustaches and were recognisably Prussian. This was appropriate as far as Dyson was concerned because he felt German aggression was most to blame for the war. But he was to regret his choice of image, because the cartoons were later used for crass propaganda purposes that were repugnant to him.

One of them was about Germany's submarine campaign, and he called it 'Freedom of the Seize'.

'Wonders of Science!' had a big impact on the notorious newspaper proprietor Lord Northcliffe. When he first saw it, he imperiously cancelled the advertising covering the entire back page of his *Daily Mail* and inserted this drawing instead. It 'occupies a larger space than any cartoon has ever before been given in a British Newspaper', claimed the *Daily Mail* as it waxed lyrical about this 'young man with the most virile style of any British cartoonist'.¹⁵

Dyson of course would have scorned any suggestion that he was not fervently Australian, and he was profoundly moved by Australia's contribution at Gallipoli. He retained a strong sentimental attachment to his homeland. His emotions were further stirred when Australian soldiers became involved at the Western Front in 1916 and soon sustained immense casualties, almost 30 000 in two months. Dyson felt impelled to contribute. He volunteered to go to France and sketch Australian soldiers for

¹⁵ *Daily Mail* (London), 1 May 1915.

posterity, to provide a record of this important part of the national story. His application declared that he wanted ‘to interpret in a series of drawings, for national preservation, the sentiments and special Australian characteristics of our Army’.¹⁶



‘Freedom of the Seize’ (1915)
Australian War Memorial ART02256



‘Wonders of Science!’, *Kultur cartoons*,
(London, 1915)

Some Western Front artists gravitated to colourful landscapes or scenes of dramatic action—blood-and-thunder bayonet charges, lethal military hardware, straining horses dragging big guns forward. Dyson’s focus was different. He concentrated on the men.

What he drew in his black and white sketches was much harder to draw—exhaustion and endurance, grit and grime.

He sketched Australians waiting, resting and sleeping. He captured them stumbling out of the line drained and dazed. He drew weariness, perseverance, fatalism.

Dyson was especially stirred by what they did in 1918. In this crucial year the Australian soldiers were influencing the destiny of the world more than Australians had ever done before and more than Australians have ever done since.

On 21 March 1918 the Germans launched an immense offensive that drove the British back no less than 40 miles. Australian units were rushed to the rescue, and were prominently involved in plugging the gaps in the British defences. These were desperate days. For the British, it was the biggest crisis of the war. There was

¹⁶ Will Dyson to Official Secretary, Commonwealth of Australia, 1916, AWM 409/9/14.

widespread genuine concern that after years of fierce fighting, awful hardships and frightful casualties Britain and its allies might well lose the war.

The arrival of Australian formations in vulnerable sectors was inspiring and influential. Distressed French civilians whose homes had been in the path of the German advance were in terrified retreat, struggling along with whatever possessions they could gather or carry in the sudden crisis, typically elderly or women (because the French men were away in the army), often with a crying child clinging to mother's skirts. And you have got the situation transformed by the arrival of the Australians, confident, unflustered by the dismay all around them, ready to do the business and stop the Germans in the gravest crisis of the greatest war there had ever been.

Many of these retreating civilians recognise the Australian uniform, and they become exultant. They start raving about 'les Australiens merveilleux', ['the marvellous Australians'] and many of them actually turn around and go back to their homes because they are so confident the AIF will stop the Germans. Some of the finest national declarations in Australia's entire history are to be found here, like the reassuring words of some of these diggers to the distraught French women: 'Finis retreat madame, beaucoup Australiens ici'. ['No more retreat madame, many Australians here'] That's got to be one of the all-time great national statements, surely: 'Finis retreat madame, beaucoup Australiens ici'.



'Welcome Back to the Somme' (1918) Australian War Memorial ART02252.001

Will Dyson depicted these stirring events in a drawing he entitled 'Welcome Back to the Somme'. He showed Australian soldiers marching towards the fray and being

greeted by civilians delighted to see them. The key to the drawing is the raised hand of a woman who is beckoning to other retreating civilians, urging them to turn around and return, as she is doing, to their vacated homes because the Australian soldiers have arrived.

A few weeks later the German advance was threatening the city of Amiens. The sense of crisis for the British was still acute. The important task of safeguarding Villers-Bretonneux, a strategically vital town that overlooked Amiens from the east, was allocated to a British division. On 24 April 1918 the Germans attacked, drove the British out of Villers-Bretonneux, and captured it. Concern about this situation reached the highest levels. Two Australian brigades (one led by that redoubtable commander General Pompey Elliott) were assigned the task of recapturing the town.

Will Dyson and Charles Bean were, typically, on the scene. When they heard about the proposed counter-attack, a complex manoeuvre in the dark without artillery support, Bean was pessimistic, as his diary attests: 'I don't believe they have a chance. Went to bed thoroughly depressed ... feeling certain that this hurried attack would fail hopelessly'.¹⁷

Bean was mistaken. This daring venture on the third anniversary of Anzac Day was brilliantly successful, one of the Australians' finest exploits, and signalled the end of the dangerous German thrust to Amiens. It intensified Dyson's worship of Australian soldiers, which was very evident in a letter he wrote to Ted shortly afterwards:

the boys are more eager, cheerfull, bucked up and full of fight than ever before. Weather is good, food is good and they are at the height of their reputation. What they have done is in so striking a contrast to what the others did not do ... God alone knows what terrible things are coming to them, but whatever they are they will meet them as they have met everything in the past. These bad men, these ruffians, who will make the life of Australian magistrates busy when they return with outrages upon all known municipal byelaws and other restrictions upon the free life—they are of the stuff of heroes and are the most important thing on earth at this blessed moment.¹⁸

Dyson wrote about Australia's soldiers as superbly as he drew them. What I have just read was a private letter to his brother, but he produced a book called *Australia at War*

¹⁷ AWM 38 3DRL 606/108, pp. 23–4.

¹⁸ Will Dyson to Edward Dyson, 'May' [c. 20 May 1918], Edward Dyson papers, State Library of Victoria.

that is little known but a classic. In this book Dyson reproduced some of his drawings with a personal inscription on the page alongside.



'Stretcher-Bearers Near Butte de Warlencourt' (1917)

Australian War Memorial ART02266

To accompany his superb drawing 'Stretcher-Bearers', Dyson wrote this:

They move with their stretchers like boats on a slowly tossing sea, rising and falling with the shell riven contours of what was yesterday no man's land, slipping, sliding, with heels worn raw by the downward suck of the Somme mud. Slow and terribly sure through and over everything, like things that have got neither eyes to see terrible things nor ears to heed them ... The fountains that sprout roaring at their feet fall back to the earth in a lace-work of fragments—the smoke clears and they, momentarily obscured, are moving on as they were moving on before: a piece of mechanism guiltless of the weaknesses of weak flesh, one might say. But to say this is to rob their heroism of its due—of the credit that goes to inclinations conquered and panics subdued down in the privacy of the soul. It is to make their heroism look like a thing they find easy. No man of woman born could find it that. These men and all the men precipitated into the liquescent world of the line are not heroes from choice—they are heroes because someone has got to be heroic. It is to add insult to the injury of this world war to say that the men fighting it find it agreeable or go into it with light hearts.¹⁹

¹⁹ Dyson, *Australia at War*, op. cit., p. 38.

This is what he wrote about 'Dead Beat', his drawing of an exhausted young Australian soldier:

He was there as we came back ... I have not drawn him as childish as he looked ... He ... had lost himself and floundered all night in shell holes and mud through the awful rain and wind ... He had floundered into the cover of the tunnel and stopped there, disregarded, save for occasional efforts to assist on the part of the men—attempts that could not penetrate through to his consciousness past the dominating instinct to sleep anywhere, anyhow, and at any cost ... he looked so very young—that quality which here has power to touch the heart of older men in the strongest way. To see going into the line boys whose ingenuous faces recall something of your own boyhood—something of someone you stole fruit with, or fought with or wagged it with through long hot Australian afternoons—to see them in this bloody game and to feel that their mother's milk is not yet dry upon their mouths.²⁰



'Dead Beat' (1917) Australian War Memorial ART02210

This is sombre and sobering, appropriately so bearing in mind the context and what Dyson was witnessing and recording. Inevitably, though, being Dyson, he found scope even in these ghastly surroundings for his legendary wit and repartee. He sometimes did amusing drawings as well.

²⁰ *ibid.*, p. 18.

When a machine-gun officer retrieved a drawing Dyson had left near the front line, Dyson drew for this machine-gunner an impromptu thank-you caricature of a bedraggled wet digger. Although it is a quick black and white sketch, the artist's skill is very evident in the inflamed nose and dripping moustache indicating a heavy cold as this disgruntled digger ploughs through shin-deep mud and slush while rain continues to fall. He is clearly fed up with France in winter. Dyson's caption has him asking 'Isn't there ever any flamin' droughts in this country?'



'Isn't there ever any flamin' droughts in this country' (c. 1917–1918)
Australian War Memorial ART16157



'The Cook' (1917)
Australian War Memorial ART02304

And Dyson had a thing about quirky military cooks. He depicted them as eccentric in a number of drawings. To accompany his portrait study of one of these cooks, a tough, hardened veteran full of character, Dyson wrote a suitably droll inscription:

I sometimes think it is the primitive emotions of grief and disillusionment and ferocious despair induced by the cooking of the cooks that makes some of our battalions so awe inspiring in the attack ... I have often suspected that Australian units select their cooks not on their ability as chefs but for the stories that can be told about them to other units.²¹

This was not the only kind of writing Dyson did about the Australian soldiers he so admired. He also wrote striking poetry.

²¹ *ibid.*, p. 20.

As well, Dyson was a member of an informal group that loosely gathered around Bean and included other war correspondents such as Keith Murdoch (father of Rupert) and photographers such as Dyson's friend George Wilkins. This group influenced numerous decisions affecting Australia's soldiers. Dyson, with his razor-sharp intellect and conversational sparkle, was a key member of the group.

Among the significant developments Dyson involved himself in were these:

- the controversial question of who should be the chief commander of Australia's soldiers;
- a program to educate influential visitors about their exploits;
- the creation of a war art scheme involving other artists;
- and, especially, the post-war commemoration of the conflict in Australia.

Under the stars at Pozieres the group discussed Bean's vision for the institution that became the Australian War Memorial in Canberra. It was Dyson who remarked that battlefield models had been especially evocative in equivalent institutions that he had visited, and his recommendation that they should be a priority for Australia's memorial was heeded. The upshot was the creation of the superb dioramas that have been such a feature of the Australian War Memorial, and still are today.

Dyson provided the Memorial with over 270 drawings, a unique record of the war experience. Bean thought they were wonderful. He envisaged that the Australian War Memorial would have a special Dyson gallery to display them. But by the time the building of the Memorial was complete, it was 1941 and another world war was under way. Later conflicts have further restricted the Memorial's capacity to display Dyson's drawings, so the Dyson gallery never eventuated. However, I am delighted that there might well end up being a special Dyson corner or section in the renovated World War I galleries that are being redesigned at the moment.

Dyson's months at the front affected him severely. Although a non-combatant, he saw plenty of the real war. Influential businessman W.S. Robinson, one of the distinguished visitors Dyson guided around, described Dyson and his intrepid photographer friend George Wilkins as 'two of the bravest men I've ever met'.²²

²² W.S. Robinson, *If I Remember Rightly: The Memoirs of W.S. Robinson, 1876–1963*, Cheshire, Melbourne, 1967, p. 106.

The effect of all this was obvious to Ruby. He 'looks years older and is very grey', she observed. 'I couldn't get over the change in him last time he came back. The war has altered him a lot poor old Bill'.²³

Worse was to come for Dyson. In March 1919, when he was just getting used to peacetime and the resumption of domestic life with Ruby and little Betty, Ruby died of Spanish flu.

Dyson was devastated. The eulogies that poured in emphasised the remarkable impression Ruby's personality, manner and beauty had made on those she met even briefly. Dyson was never the same again. Even managing a partial recovery took him months.

In this mood of bleak despair Dyson drew his most famous cartoon, 'Peace and Future Cannon Fodder'.



'Peace and Future Cannon Fodder', *Daily Herald*,
London, 17 May 1919

This was his response to the notoriously one-sided Treaty of Versailles. In this 1919 cartoon he predicted not only that this tainted treaty would produce another world war, but also the actual year when hostilities properly began. This remarkably prophetic drawing has been described as one of the most outstanding political cartoons of all time—by any cartoonist, in any country.

Still preoccupied with Ruby's death, Dyson was intent on producing two books in memory of her. One volume commemorated her art. He called it *The Drawings of Ruby Lind*. In an introductory tribute he wrote that Ruby's 'death

²³ Letter, Ruby Lindsay to Edward Dyson, 8 October 1918, Edward Lindsay papers, State Library of Victoria.

came after the Armistice, when it seemed that we might dare to hope again. ... It was as though War before departing utterly from us had added her death as a foot-note, to enrich with a final commentary the tale of his crowded horror.'²⁴

The other book consisted of poignant poems Dyson had written since her death. He called it *Poems in Memory of a Wife*. In one of them, a poem he called 'Lament', Dyson berated the 'griefless Gods' for ruining his life '[t]hat lacking her lacks all that gave it worth', so that now 'silence tolls through nights that never end'. He imagined Ruby urging him to stop punishing himself with remorse, assuring him of her knowledge that she would always remain etched in his memory and embodied in Betty. In the final poem, 'Surrender', Dyson the poet called on himself to accept the tragedy and cease behaving as if his bereavement was different from countless others since 1914:

Now wrap you in such armour as you may,
 And make your tardy peace with suffering,
 Since grief must be your housemate to the end ...
 Nor is it meet that in these bloody years
 Such traffic you should make of common wounds.
 What is your grief above our mortal lot
 That in a world where all must carry scars,
 You clamour to the skies as though were fall'n
 A prodigy to earth in this your woe.
 Now make your peace, and go as you have gone:
 The world was so before this grief befell,
 But you, the broken, have in breaking learned
 A wisdom that you lacked when you were whole.
 ... in your veins no flavoured stuff doth flow
 That fate should beat upon your head in vain.
 ... Now bend thee to the yoke,
 And teach thy heart no longer to rebel.²⁵

The surrender that Dyson is describing is essentially a self-administered anaesthetic to cope with the pain of Ruby's death. But this deactivating of his ability to feel emotions at their most acute also had an impact on his cartooning. It deprived him of the emotional force that had inspired his best cartoons.

In 1925 he returned to Australia, having accepted a five-year contract to work for the *Herald* group of publications run by his former Western Front associate Keith

²⁴ *The Drawings of Ruby Lind*, Cecil Palmer, London, 1920, p. 10.

²⁵ Will Dyson, *Poems in Memory of a Wife*, Cecil Palmer, London, 1919.

Murdoch. In Melbourne he was a prominent cultural and social celebrity. Parties came to life when he arrived. He would often be called on to provide certain celebrated performances such as his imitations of Queen Victoria (with a chamber pot perched precariously on his head) or a South American tribesman calling to his mate. These were such hilarious impersonations that they repeatedly generated helpless tears of laughter among his audiences.

Socially he had a lively time in Melbourne, but professionally his return was less successful. His cartoons were clever, inventive and sometimes vigorous, but lacked the searing power he had consistently displayed before the war.



'Parliament is Sitting (Out) Again',
State Library of Victoria



'Public Health Also Ran',
State Library of Victoria

One he drew during the 1925 federal election campaign he called 'Parliament is Sitting (Out) Again', with the caption: 'A Comment on Australia's Much-Deplored Apathy in Regard to Things Political'. Dyson has drawn The Elector preferring to dance with the attractive jockey labelled Sport rather than with the unattractive matron labelled Politics. Whenever I see this cartoon I am reminded that there was a break, a day off, during the 2007 federal election campaign for Melbourne Cup Day. Some things do not change.

Another cartoon that reflects Dyson's frustration with the sense of priorities Australians displayed was his 'comment on the increasing attendance of women at wrestling matches'. In this drawing of a wrestling bout, a fierce flapper labelled Miss

1927 is opposed to a dainty damsel from a Jane Austen novel (Ideals of 1826). It is a one-sided encounter. He titled it 'A Fall in Ideals'.

Dyson also drew a graphic criticism of Australia's public health, which he entitled 'Public Health Also Ran'. This was a racetrack scene, with the tortoise of public health a long way behind a repulsive fly ridden by its unwashed swagman named Dusty Rhodes.

There was also a cleverly conceived cartoon about industrial relations. The matronly figure labelled 'Law' knits away at her 'red tape' while the younger female 'Employer' calls to the young male trade unionist: 'Couldn't we get on better together if she were not here?' Dyson's brilliant title is 'The Mar-in-Law'.



'The Mar-in Law', State Library of Victoria

Dyson was struggling to come to grips with postwar Australia, aftermath Australia. He had returned to a scarred, chastened Australia that had paid a terrible price for its eager enthusiasm to participate in the Great War. This profound legacy was economic, social, political and cultural. There was also a profound emotional legacy. As Bill Gammage put it: 'Dreams abandoned, lives without purpose, women without husbands, families without family life, one long national funeral for a generation and more after 1918'.²⁶

²⁶ Bill Gammage, 'Was the Great War Australia's War?' in Craig Wilcox (ed.), *The Great War, Gains and Losses: ANZAC and Empire*, Australian War Memorial and Australian National University, Canberra, 1995, p. 6.

Dyson responded to this emotional legacy sympathetically in his work. Each Anzac Day and Armistice Day a stirring new Dyson cartoon and stirring new verse from his friend C.J. Dennis appeared prominently in the *Herald* side by side.

On Anzac Day 1927 Dyson's moving drawing called 'A Voice from Anzac' had such an immense impact that the *Herald* printed a thousand copies of it.

But the legacy of the war shaped Australia in ways that Dyson deplored. In Australia, in the mid-1920s, forward-looking, visionary idealism was scarce. Complacent conservatism with a materialist emphasis was the dominant political ethos, epitomised by the Bruce Government's focus on men, money and markets. The pre-1914 era of Australia as a pioneering social laboratory was long gone.

Dyson was disenchanted with postwar Australia politically and socially, but especially frustrated with it culturally. After being accustomed to having his say on a big international stage, Dyson found Melbourne restrictive and parochial. One day at the *Herald* office he came across playwright Louis Esson talking earnestly to a senior writer. Dyson interrupted: 'If you say anything intelligent in this place, I'll tell on yer!'²⁷



'A Voice From Anzac'
Australian War Memorial ART19662

Partly out of frustration, he embarked in his later 40s on a new art form, etching. He proceeded to make a pronounced success of this as well. Whatever Will Dyson did he did well.

When he took his satirical etchings overseas, they were acclaimed in America and England. At that time America was grappling with the issue of prohibition. Dyson thought the solution was simple. What the Americans should do is apply psychology to the problem and ban soft drinks instead. It 'should be obvious even to a legislator', he said.²⁸

²⁷ Vance Palmer, op. cit., p. 221.

²⁸ McMullin, op. cit., p. 334.

By now the Great Depression had arrived. One of his etchings was a devastating comment on the miseries of the Depression. It depicted a dazed, downcast representation of God lamenting to a forlorn Christ beside him: 'My son, alas! We are powerless, the bankers have spoken'.

Mussolini was at times frustrated that his forces did not progress in Abyssinia rapidly enough, and Dyson has drawn the all-powerful dictator being asked by an innocent boy 'But, Duce, can't you stop the rains?' I really like the pained expression on Mussolini's face.

Dyson also provided superbly inventive drawings about that other international crisis, the Bodyline cricket controversy.

Dyson followed the controversy from England with intense interest. In one of his cartoons an Australian batsman, injured but defiant, is arriving to present his Leg Theory Protest at the League of Nations Council. With bemused delegates from China and Persia looking on, the Australian is shown energising an attendant: 'Tell 'em I'm here, Cobber. It's urgent!' The cartoonist signed this drawing 'Will Dyson of Wagga-Wagga'.

During the 1930s Dyson drew numerous cartoons stressing the evil of war and the folly of rearmament. There was one that simultaneously covered concern about inflation and concern about rearmament:

'Daddy, what makes the cost of living go up?'
'The cost of dying, my son.'



'But, Duce, Can't You Stop the Rains?'
State Library of Victoria

Someone who knew him well in this period told me that even as an experienced cartoonist there was always an air of tension about him. Each morning a batch of newspapers and the daily supply of cigarettes would be delivered, he would tensely search the papers for ideas, and pressure would build until he devised and drew his cartoon in time for the next morning's *Daily Herald*.

Will Dyson died in January 1938, aged 57, of heart trouble. Too many gaspers.

His friend Nettie Palmer wrote that ‘something extraordinarily vital and irreplaceable has gone out of the world’ and reiterated that Dyson was a genius.²⁹

Dyson’s art lived on after him. His cartooning influenced later Australian cartoonists despite the fact that he only lived in Australia for five years after he became famous as a cartoonist. The modern communications we take for granted these days did not of course exist back then, so it was not easy for Dyson’s contemporaries to fully appreciate how extraordinarily successful he rapidly became as a cartoonist overseas. Some realised, though—Dyson’s friend Hal Gye, a talented cartoonist who illustrated *The Sentimental Bloke* by C.J. Dennis, admired Dyson’s spectacular success from afar. Gye wrote this: ‘How I enjoyed his fat, opulent-looking, bloated blokes; how I liked the dynamic technique of ‘em; the stinging captions—world-fame, and an Australian’.³⁰

Dyson’s work continued to influence later cartoonists. Two of his nephews became noted cartoonists, and he was naturally a strong influence on their work and progress.

Although Dyson’s significance has been very under-recognised in Australia overall since his death, it is a different state of affairs with cartoonists. When I mixed with cartoonists in the course of my work on the book, I was struck by the way they revere him. In 2006 I did a combined event for the Sydney Writers’ Festival with Bill Leak, and he could not praise Dyson highly enough: he went into raptures about the quality of Dyson’s work. More recently, in 2009, the Australian Cartoonists Association decided to set up a Hall of Fame for the greatest Australian cartoonists of all time, and they appropriately inducted Dyson as one of its initial members.



Question — I was very struck with what you said about that extraordinary cartoon where he predicted the Second World War, even to the date. That was absolutely remarkable and you said it was one of the most famous cartoons of all time. Has it been recognised by historians as something really special in terms of political prediction?

Ross McMullin — Yes. They decided to mark the turn of the millennium with a competition where people assessed what were the greatest cartoons of the twentieth century and that cartoon featured very prominently.

²⁹ Nettie Palmer, *op. cit.*, p. 241.

³⁰ H. Gye, ‘The Dyson Mob’, Chaplin papers, University of Sydney, p. 19.

Question — I was struck by the gorilla teetering on top of the tower and wondering how many years later the original *King Kong* was filmed and whether something that appeared on the back page of a British newspaper might have had an influence.

Ross McMullin — Yes, well Dyson was given the whole page for those pre-World War I cartoons. Compared to how Dyson had struggled to find a niche in Australia beforehand, it was a remarkable turnaround in a very quick time.

Question — Perhaps some young set designer, later to have a career in Hollywood, remembered that and it became the climax of the movie.

Ross McMullin — It was extraordinary to go that quickly from a position I have described to then become someone who was on the spot and well-credentialed to make the comment that he was the most famous Australian in the world. It was a remarkable transformation, even though I think it could be said that Victor Trumper might have had his claims at that particular time, although Victor Trumper probably was not that big in America.

How Should Elected Members Learn Parliamentary Skills?*

Ken Coghill

This lecture will deal with three aspects of parliamentarians' skills:

1. the functions of the parliamentary institution and the skills required for their execution
2. how parliamentarians acquire their skills, and
3. how should parliamentarians acquire their skills?

Today's lecture is hosted by one of the world's most long-established and respected parliaments. Given Australia's role in parliamentary strengthening, it is fitting that the lecture takes an international perspective.

Parliaments spearhead governance in democracies. Efforts to strengthen parliaments made over the last decade by organisations including the Centre for Democratic Institutions, the United Nations Development Program and the World Bank Institute are therefore unsurprising. However, since parliamentarians (members of parliament and senators) perform central yet unique functions affecting the effectiveness of parliaments, a considerable focus has been placed on ways of improving their knowledge, skills and abilities.

It is against this background that the lecture discusses recent research by my colleagues and me investigating how parliamentarians acquire knowledge, skills and abilities for their parliamentary functions and how parliamentarians could be assisted to better fulfil their responsibilities in relation to the parliament. The emphasis is on the implications for the functioning of the parliament as the supreme political institution within the system of government. The study concentrated on the skills relevant to the parliament's functions rather than for the career of the individual parliamentarian. It did not investigate campaign or other political skills.

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1. Parliamentary functions and the skills required

The effectiveness of parliament is, like virtually every social institution, dependent on the capabilities of members and senators to discharge their functions. It is then surprising to find so little said about those capabilities and how they are acquired. We can speculate that that is due to the greater interest of the media and the media's consumers in the contests of ideas and the struggles for power. The public's focus is on politics, not parliament.

Scholarly journals are more likely to publish studies of parliament but again report few studies about the capabilities required.

Let us look a little more deeply. What are those capabilities?

To answer that question, it is an advantage to be a public management scholar in a department of management in a business faculty, rather than a political scientist in an arts faculty. The public management scholar can easily collaborate with human resource scholars.

We learn from human resource scholarship that capabilities can be classified as knowledge, skills and abilities. Moreover, we learn that the particular knowledge, skills and abilities required by the individual reflect his or her functions and in turn the functions of the organisation—in our case a house of parliament.

The functions and relationships of the parliament within the democratic system clearly affect the effectiveness of national governance—its capability to provide goods and services and to adapt to changes—for example, changes internally to its demography and externally to demand for its exports.

We may think 'everyone' knows the functions of a parliament—but do they?

Most parliamentary scholars take Walter Bagehot's (1867) description of the British House of Commons as holding an 'elective', 'expressive', 'teaching', 'informing' and 'legislative' function as a starting point for defining parliament's functions in more detail. Robert Hazell reports that there are seven classic functions of legislatures. These are: representation, legislation, deliberation, scrutiny, budget setting, making and breaking governments, and redress of grievances.¹

¹ R. Hazell, *The Challenges Facing Our Parliaments: How Can We Improve Their Performance?* NSW Parliament, Sydney, 2001, p. 16.

Notwithstanding the different foci of ... individual parliaments, a number of common themes emerge from these definitions and descriptions. They relate to the three basic functions of representation, legislating, and oversight with four functions—deliberation, budget setting, making and breaking of government, and redress of grievances—either being subordinated to one of the core functions or combining them. These correspond to the seven functions identified by Hazell (2001) and provide a convenient summary of the functions.²

Legislatures in executive presidencies differ in that they do not make or break government nor redress grievances.

Table 1: Parliaments studied (interviews)

| Parliament | Number of interviews | Parliamentary system | Executive presidency | Established democracy | Emerging democracy | One party | Bicameral | Global region |
|-----------------------------------|----------------------|---|----------------------|-----------------------|--------------------|-----------|-----------|---------------|
| Australia | 9 | ✓ | | ✓ | | | ✓ | Oceania |
| Canada | 10 | ✓ | | ✓ | | | ✓ | North America |
| Ethiopia | 11 | | | | ✓ | | ✓ | Africa |
| Indonesia | 3 | | ✓ | | ✓ | | | SE Asia |
| Jordan | 14 | ✓ | | | ✓ | | ✓ | Middle East |
| Marshall Islands | 13 | ✓ | | | ✓ | | | Oceania |
| Papua New Guinea | 11 | ✓ | | | ✓ | | | Oceania |
| South Africa | 8 | ✓ | | | ✓ | | ✓ | Africa |
| Timor Leste | 13 | ✓ | | | ✓ | | | SE Asia |
| Tonga | 11 | ✓ | | | ✓ | | | Oceania |
| United Kingdom | 12 | ✓ | | ✓ | | | ✓ | Europe |
| Uruguay | 8 | | ✓ | ✓* | | | ✓ | South America |
| Vanuatu | 15 | ✓ | | | ✓ | ✓ | | Oceania |
| Vietnam | 11 | ✓ | | | ✓ | | | SE Asia |
| Total number of interviews | 155 | *democracy restored after military rule 1973–85 | | | | | | |

² K. Coghill, P. Holland, A. Kinyondo, C. Lewis, and K. Steinack, 'The functions of parliament: Reality challenges tradition', *Australasian Parliamentary Review*, vol. 27, no. 2, Spring 2012, p. 56.

Our recent research commenced with a pilot study of the induction for Australia's new senators in 2005 and expanded to a full-scale project spanning various national parliaments with different constitutional models and histories of democracy. These ranged from the Australian House of Representatives and the House of Commons at Westminster to the newest, the Parlamento Nacional of Timor Leste (table 1).

Parliamentarians and officials were also surveyed, with responses received from parliaments listed in table 2.

Table 2: Parliaments studied (survey)

| Parliaments from which responses were received from parliamentarians and officials | |
|--|--------------|
| Argentina | Lithuania |
| Australia | Luxembourg |
| Austria | Malta |
| Bangladesh | Mauritius |
| Belgium | Mexico |
| Bhutan | Netherlands |
| Bosnia and Herzegovina | New Zealand |
| Bulgaria | Norway |
| Canada | Peru |
| Chile | Poland |
| Costa Rica | Romania |
| Czech Republic | Slovakia |
| Ecuador | Slovenia |
| El Salvador | South Africa |
| Estonia | Spain |
| France | Sri Lanka |
| Greece | Sweden |
| Iceland | Switzerland |
| India | Uganda |
| Israel | UK |
| Jordan | Uruguay |
| Latvia | Zambia |
| Parliaments from which responses were received from parliamentarians only | |
| Albania | Hungary |
| Belarus | Malaysia |
| Colombia | Panama |
| Dominican Republic | Paraguay |
| Germany | Rwanda |

One of the interview questions asked was about the parliament's functions identified by Hazell. This was important because national parliaments are sovereign institutions. As such, their functions are self-defined within the provisions of the national constitution. It follows that the perceptions of the members of a parliament are crucial to understanding the actual contemporary functions of that parliament. Parliamentarians and senior staff of their parliaments were asked to 'Rank the (functions referred to above) of Parliament in ... order of importance'.

The research exposed considerable differences both in what interviewees see as the main functions of parliament and in how they see the intertwined relationships between the seven classic functions (table 3). Furthermore, strikingly different weights were given to particular parliamentary functions by parliamentarians and training providers (parliamentary staff and other providers of parliamentary capacity building) within the same parliamentary chambers.

Table 3: Parliamentary functions: average rating

| | Representation | Legislation | Scrutiny | Making or breaking government | Deliberation | Redress of grievances | Budget setting |
|---------------------------------------|-----------------------|--------------------|-----------------|--------------------------------------|---------------------|------------------------------|-----------------------|
| MP interviewees | 2.2 | 2.0 | 3.7 | 5.9 | 3.8 | 5.4 | 3.9 |
| Training provider interviewees | 3.18 | 1.77 | 2.77 | 5.27 | 4.10 | 5.73 | 3.25 |

Note: 1 = highest rating (i.e. most important); 7 = lowest rating (i.e. least important)

MPs rated representation much more highly than did training providers; the latter rated scrutiny rather more highly than did parliamentarians (table 3). At first glance, the rating of representation is consistent with Michael Mezey's finding that:

in virtually all countries, representatives devote a significant portion of their time to being present in their community and helping constituents with individual problems that they might be having with various branches of government.³

³ M.L. Mezey, 'Representation and constituency relations', *Comparative Assessments of Parliament (CAP) Note*, December 2011, p. 18. Retrieved 10 November 2012 from http://www.cid.suny.edu/capnotes1/Mezey_CapNote_011912.pdf.

Representation could be seen as ambiguous. It could be providing Mezey's 'constituency services' or it could be deliberating in parliament on legislation and resolutions on behalf of constituents. However, given that overall it was rated differently and more highly than legislating or deliberating, we can accept that the answers generally referred to 'constituency services'. However, it is important to note that some did not see 'constituency services' as the function of the parliament but a matter for the presidential executive, in Uruguay for example.

The low significance given to making or breaking government is puzzling, especially in Australia and the UK, where the compositions of the current governments are a direct result of who can command majority support in the lower house. If either government lost the confidence of the house, that government would be broken.

These findings suggest two things. Firstly, representation, legislating and scrutiny are the most important functions of the parliament and accordingly the functions for which appropriate skills are most important to the institution.

Secondly, the low rating accorded to 'making or breaking government' may indicate a surprising blindness to a fundamental aspect of the operation of the constitution. The latter is not out of the question, having regard to Dodi Indra's finding of a poor understanding by Victorian parliamentarians of the function of the Auditor-General's office and its relationship to parliament. That is, as the supreme audit body acting on behalf of the parliament, in Australia and many other democracies.⁴

At a minimum, that requires that the features of the constitutional context in which parliament functions must be clarified for all newly elected and continuing members of a parliament.

The parliamentary functions must be discharged effectively and efficiently. For that to occur, its members—the parliamentarians—supported by the parliament's officials must have the capacities to contribute effectively to that discharge.

There is a range of perspectives on the appropriateness of training for parliamentarians. Some argue that the capacities with which a parliamentarian comes into parliament are those on which he or she had been elected; to alter these could be to interfere with democratic representation. Others view training as appropriate if limited to processes and the practical aspects of legislating. Yet others have few reservations about any training, including negotiation or other political management

⁴ D. Indra, *The Performance Audit Expectation Gap: A Case Study of Performance Auditing in the Victorian Public Sector*, unpublished manuscript, Melbourne, 2005.

techniques. There are differences as to whether the more political skills are best provided by parliament, political parties, or others.

There were some distinctive cultural differences pertaining to what is acceptable ethically. For example, many have no difficulty with representation of particular constituent issues, such as assistance to obtain public housing, but in Uruguay such assistance to an individual is to confer an unfair advantage.

These considerations highlight the importance of clarifying the context and objectives of training.

In management speak, the parliamentarians are the organisation's principal human resources and the development of their knowledge skills and abilities is human resource development. Human resource development necessarily involves adult learning as distinct from children's development and education.

Much is known about human resource development in business and in the public service but very little concerning parliamentarians had been published prior to our research.

Let us now turn to how parliamentarians learn skills relevant to parliamentary functions.

2. How parliamentarians acquire skills

Adult education and training theorists have established that adults including parliamentarians can enhance their knowledge, skills and abilities when exposed to andragogical techniques in organisations and that this in turn improves the effectiveness of organisational performance.

Importantly, studies from human resource development can help in understanding how training can impact parliamentarians. This is despite significant differences between parliamentary and other careers, including different 'recruitment' processes, potentially short careers, party discipline and the unique institution in which they work—the parliament. Newly acquired knowledge, skills and abilities induced by experiential forms of training programs can potentially improve performance, to the benefit of the parliament, political parties and individual parliamentarians' re-election prospects.

That leads us to consider what types of programs are offered to newly elected and continuing parliamentarians.

Sources of programs offered to parliamentarians

Sources for the design and delivery of programs offered to parliamentarians vary significantly and this is based on how established a parliamentary democracy is in a particular country. Indeed, in well-established parliaments such as Australia, Canada and UK, there is a wide range of training providers from which parliament and parliamentarians can choose to receive training. These normally span three common sources. The first is in-house training programs, provided by parliamentary staff and external providers. These providers usually focus on providing orientation and induction to new parliamentarians.

The Australian Senate and House of Representatives provide significantly different induction programs.

In July 2005 the new senators had been elected several months in advance of the commencement of their terms on 1 July and ample time was available between that date and their first sitting. The 2005 Senate induction program had an unusually large number of new senators, including one former member of the House of Representatives. The program extended over four days and was well-attended. It did incorporate adult learning techniques including a form of experiential learning—a mock sitting. Officers of the Senate observed that since mock sittings were first included in induction programs, newly elected senators had become skilled more quickly.

The 2010 House of Representatives program was held over one and a half days as is customary. House of Representatives staff indicated that this is the maximum period which newly elected members of the House of Representatives can make available in the context of the short time between the declaration of the polls and the first sitting, and demands on them during that limited time. The program did not include any mock sitting.

In the UK following the 2010 elections, an extensive range of professional development programs were offered to the 232 newly elected members of the House of Commons. They were offered by a range of organisations including the Hansard Society. The proportion of parliamentarians who participated appears to have been quite small—estimated at about 19 per cent.

The second source of programs offered in well-established parliaments is from political parties. Loyalty to political party means that party-member parliamentarians are likely to accept requests to participate in training which the party organises. They

provide workshops and mentoring programs to their candidates and parliamentarians so as to maximise their effectiveness as party-member parliamentarians.

One Australian Labor Party parliamentarian reported having attended a half-day media training program at the national office of the party in the lead up to the 2007 elections when, as he explained, 'there was an expectation that Labor would win the election'.

Similarly, a Canadian parliamentarian from a conservative party stated that his party had been providing 'hour long Monday night experiential programs to its caucus members' coupled with 'one-on-one mentoring among parliamentarians'.

Party whips in particular play a central function in organising and providing various forms of training to caucus members in these established parliaments. Indeed, according to one Australian parliamentarian, whips provide a popular and practical source of training to Australian parliamentarians. They do so, he said, 'by assigning MPs motions to raise in the parliament and when and how to do so'. They also provide parliamentarians with a common line of argument a party has adopted concerning a particular policy issue should parliamentarians get to be questioned by the media. These party-sourced training programs are normally well-regarded and attract maximum attendance as parliamentarians tend to strictly adhere to party-organised events.

The third common source of training in established parliaments is the parliamentary library. This source is valuable particularly to parliamentarians who opt to engage in self-learning techniques. In this case, the only involvement of parliamentary staff is in terms of directing parliamentarians on how and where to get relevant materials to enhance their learning experience. The data shows that this source of training is mainly accessed by senior parliamentarians who want to supplement their knowledge, skills and abilities with up-to-date relevant information.

In Canada, members of their House of Commons hire experienced staff to act as 'both enablers and trainers'. As a result, such staff usually attend training programs with the view of, in turn, training parliamentarians. As one parliamentarian stated, 'I have got three full-time staff in my constituency office ... I learn through them'. These sentiments were echoed by another Canadian parliamentarian who pointed out that whenever he hears of some good training program around the world he sends his trusted staff because, 'he gets the best training from this trusted staff'.

The majority of the nascent parliaments, on the other hand, do not have the luxury of many internal sources of training from which to learn. They mainly depend on

training programs provided almost exclusively by external organisations. For instance, Pacific parliaments such as Papua New Guinea, Tonga and Vanuatu have, for more than a decade, relied on training programs provided and/or sponsored by the (Australian) Centre for Democratic Institutions and the United Nations Development Program. This has resulted in concerns from Pacific nation parliamentarians that training programs provided in their parliaments are usually out of context and therefore inappropriate for them.

It is because of concerns about the applicability of training programs offered by external providers that there has been a trend in some larger emerging democracies to establish their own parliamentary training bodies. For example, in order to improve the effectiveness of parliamentary training in Vietnam, the Training Centre for Elected Representatives (TCER) was established in 2005. The body has since been tasked with formulating a training program that stretches throughout the entire parliamentary term—five years. Similar institutions have since been established in countries such as Pakistan and South Africa.

MPs in several nascent democracies cited other sources of training that are either not used in other parliaments or less frequently used. These include the use of field trips and (in South Africa) encouraging parliamentarians to undertake relevant university courses.

The nature of the programs currently provided for parliamentarians

Training programs are normally identified by the Office of the Clerk (or equivalent, for example Secretary General) and/or political parties represented in the parliaments. These are mainly designed and delivered based on the perceived knowledge, skills and abilities needs that parliamentarians have at a particular time. For instance, the offices of the Clerk are responsible for conducting and/or organising orientation and induction programs for new parliamentarians.

Importantly, no known rigorous training needs assessment has been conducted to inform training design and delivery in parliaments. Certainly, feedback from participants in programs is common and training providers make professional observations and assessments of training needs, but without comprehensive training needs assessments it is difficult to identify potential relevant training designs and delivery techniques.

Information about training programs was collected from interviews at parliaments listed in table 1 and surveys of parliamentarians and officials at parliaments listed in table 2.

Training programs available in parliaments studied usually differ in nature depending on the intended objective of the training providers/organisers. For instance, in well-established parliaments, most of the in-house training programs (seminars and workshops) are mainly delivered in lecture format.

These programs, which can take up to a fortnight are usually meant to give orientation and induction to new parliamentarians on important matters they need to know about in order to perform their duties efficiently and effectively. The majority of parliamentarians shun these types of training programs, because as adults, parliamentarians prefer adult learning techniques, which are more experiential than pedagogical.

At the other end of the scale, some parliaments do little more than welcome the new parliamentarian and leave him or her to sink or swim alone.

Figure 1

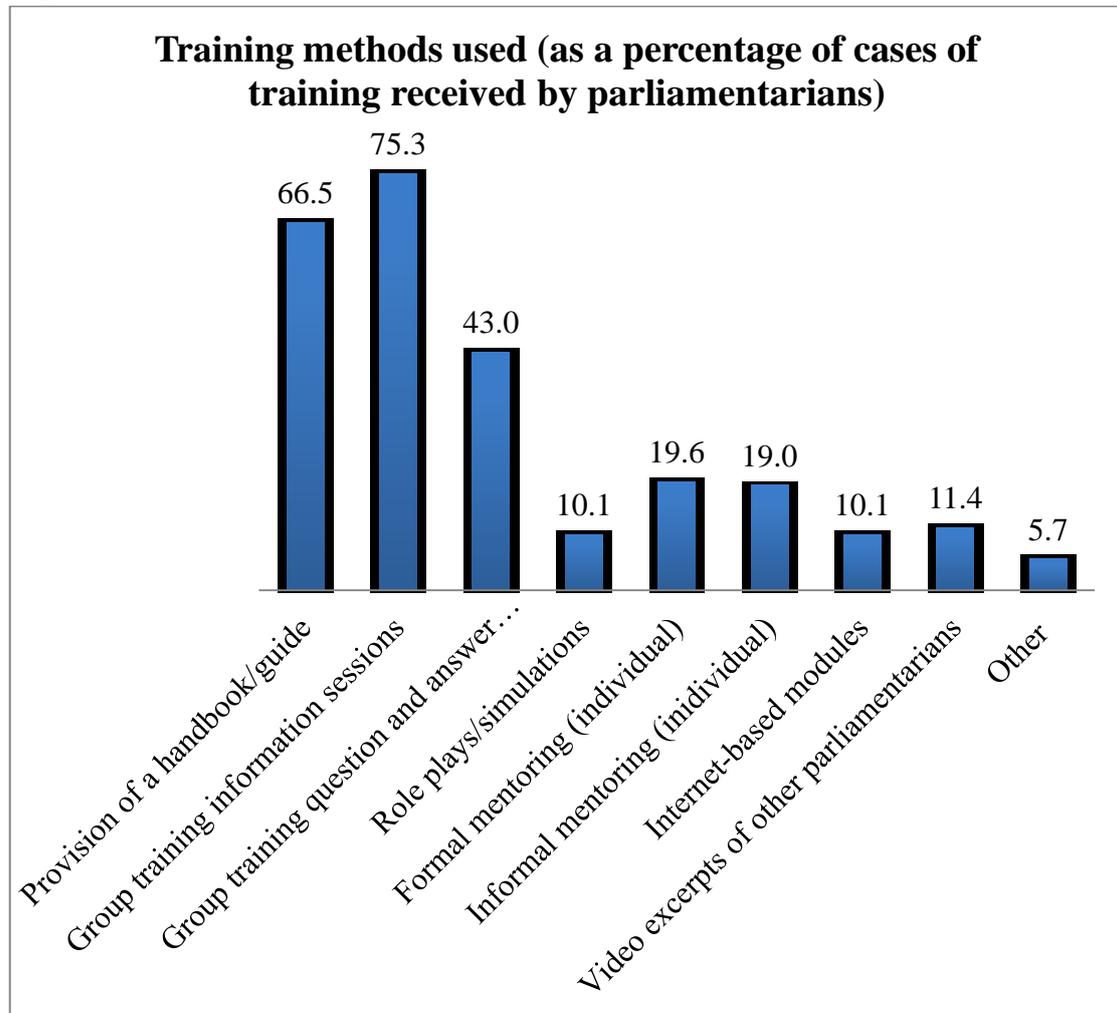
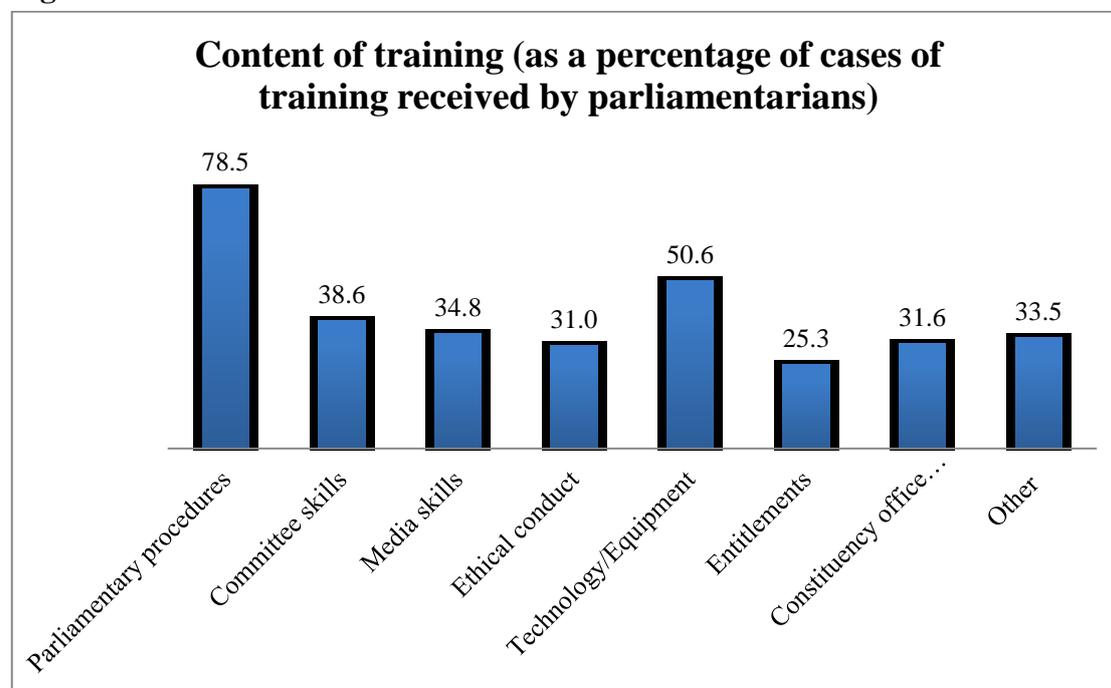


Figure 1 shows the training methods used in programs provided to research respondents. Very few programs use adult learning techniques.

The content of training reported in our research is shown in figure 2.

Figure 2



Content typically includes parliamentary procedures including standing orders, legislative processes and technology/equipment. Surprisingly, entitlements information was not universal. Some programs address ethical conduct whilst others deliberately eschew the topic on the basis that parliamentary officials should not try to tell parliamentarians how to behave.

Many parliamentarians interviewed demonstrated a strong interest in being better informed on policy issues. Training in budget processes was particularly highly valued, where offered.

Most party-based training programs such as mentoring did not rely on lecture-style presentations. They are mostly hands-on in nature and therefore more effective. In South Africa for example, senior parliamentarians are usually tasked with the responsibility of assisting new parliamentarians to effectively and efficiently perform their various functions.

Mentoring does have its problems for while some senior parliamentarians can do an excellent job in mentoring, they can also 'use their experience to spoil aspirations or lead new parliamentarians in the wrong direction' as one Ethiopian parliamentarian

explained. It follows then that mentoring should be supplemented by other forms of training programs so as to allow new parliamentarians not to be overwhelmed by domineering senior parliamentarians.

Party training can also involve some group work. For instance a Canadian parliamentarian stated that his party provides a weekly group work session to consider legislative matters or questions to be posed in the house in the following week.

Another type of program offered at the party level in established parliaments is on-the-job training. These programs are usually coordinated by party whips. For instance, a party whip in Australia provided a training scenario showing his approach when training a new parliamentarian. He pointed out that:

I have done it for people before ..., little tips like I might approach them and say: now, look you got 20 minutes to speak on these Bills. Don't go in there with a speech worth 20 minutes. Go in one with 15 minutes worth. If you fall short no one's going to say, 'Well they're a fool. They don't know enough about the subject to talk for 20 minutes'. And inevitably because you'll feed off an interjection, or something else will pop in your mind and then ... you'll go 20 minutes anyway. And again, if you try to go 20 minutes you'll get distracted and you'll run out of time and you'll miss saying the most important thing you wanted to, the point you wanted to make.

The most prominent types of in-house training available in both established and nascent democracies are seminars and workshops offered in lecture format. As is the case in established parliaments, parliamentarians in emerging parliaments do not embrace these types of training programs. As an Ethiopian parliamentarian pointed out 'interactive workshops help more than lectures'. A South African parliamentarian claimed he was 'hijacked by one of his colleagues' to attend a training session which was of no benefit to him. He explained:

I sat there, listened to him (the trainer) when he was talking he was doing graphs, economic graphs and then I looked at him (his colleague) and said I am not putting my foot in here again. I am lost. There is nothing that encourages me to come back here.

Self-training methods using documentation such as handbooks, online materials and DVD-stored parliamentary materials provide another form of training. Although data from the interviews shows the method is not widely used, some parliamentarians both

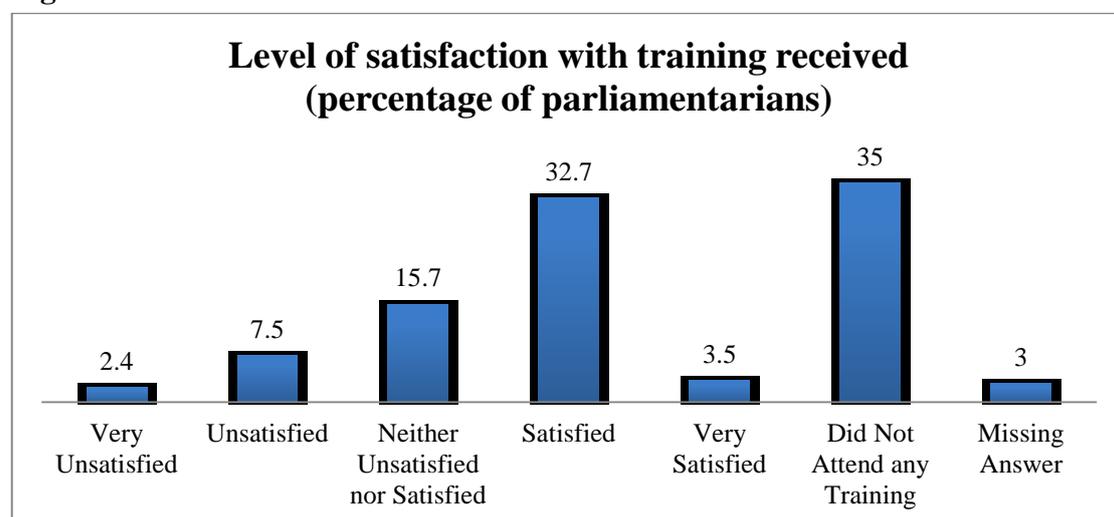
in established and nascent democracies have reportedly used this method to reinforce their knowledge, skills and abilities on specific parliamentary issues.

A few parliaments have provided field visits for their parliamentarians. Indeed, parliamentarians from Jordan, Ethiopia and Vietnam have toured other parliaments, particularly established democracies in order to gain knowledge, skills and abilities through an exchange of ideas with their counterparts.

The most disappointing finding was the modest level of satisfaction with the programs undertaken, as reported by the parliamentarians participating in the research.

As figure 3 indicates, only approximately 36 per cent of all respondents (equal to 60 per cent of program participants) were satisfied or very satisfied.

Figure 3



Voluntary or mandatory?

Whilst many jurisdictions regard parliamentarians as not being subject to direction and hence not capable of being directed to participate in induction or other programs, a significant proportion of jurisdictions do in fact require parliamentarians to participate in such programs. Participation rates are much higher in parliaments where attendance is mandatory—often approaching 100 per cent.

Whilst some parliamentarians agreed that participation in training should be mandatory, all felt that it should be sufficiently well-designed and delivered as to attract attendance.

Effectiveness or otherwise of methods used to evaluate such programs

There seem to be no rigorous methods used to evaluate training programs provided in any of the parliaments studied. Only a few training providers insist on asking training participants to complete evaluation forms immediately after a training program has ended. However, even these types of evaluation are not comprehensive enough, as they do not allow time for parliamentarians to apply what they may have learnt during training before assessing the benefits of the training program.

A common problem embedded in most of the training programs is that they were designed and delivered without first conducting a thorough training needs assessment. This, together with the lack of rigorous evaluation of training programs has meant that similar mistakes are repeated in each training cycle. It is not surprising then that parliamentarians from both established and emerging democracies point to the same issues rendering training programs ineffective. These issues include, but are not limited to, the fact that these programs are perceived by parliamentarians to be too short and basic to be effective, their content too general to have practical relevance and training techniques too didactic to keep adult parliamentarians interested during training sessions. The need for training providers to conduct comprehensive training needs assessments and program evaluations is urgent. Ignoring this need will guarantee ongoing dissatisfaction with training programs and continued low levels of attendance by parliamentarians.

Prior learning

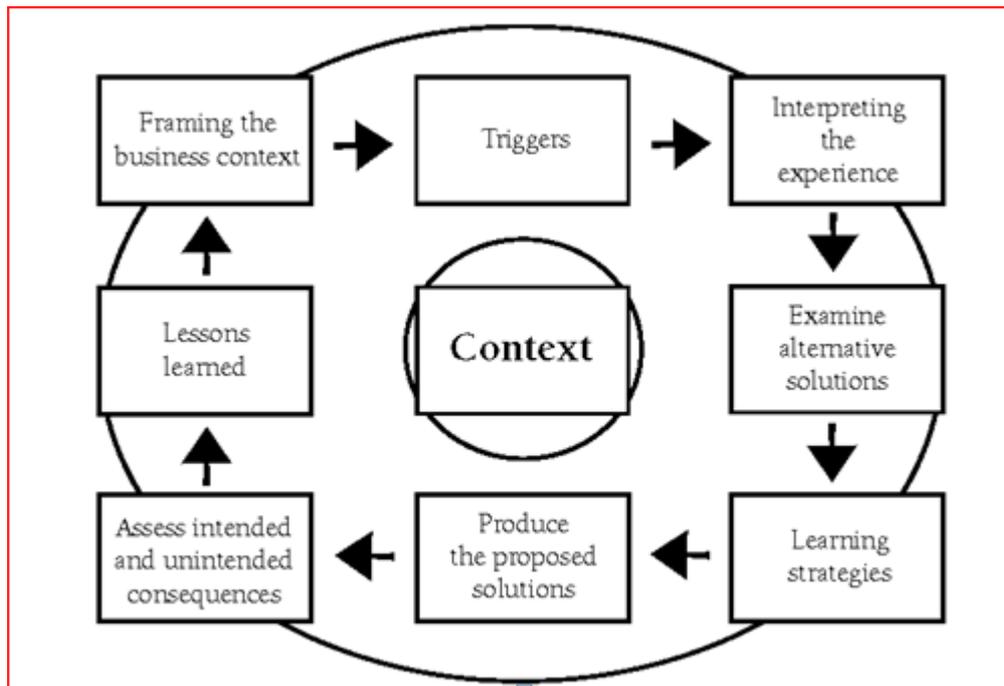
Most parliamentarians take office with at least some of the generic skills needed to contribute to the functioning of the parliament, such as public speaking and debating. Some have learned through prior service in elected office at local, state or provincial level. In the special case of the French Senate, its members are elected by and from the 36 000 local governments, so that they have well-developed knowledge, skills and abilities in most but not all of the Senate's functions. Some previous occupations involved certain relevant skills, the law being the example most commonly cited.

Whilst very few enter national parliament fully equipped with all the skills required to contribute to each of the parliament's functions, it is important to recognise that each new parliamentarian will have unique strengths, weaknesses and training needs.

Informal and incidental learning

Parliamentarians, like adults in many professions, learn many of their knowledge, skills and abilities through informal processes and incidental learning.

Figure 4: Marsick and Watkins's informal and incidental learning model as adapted with Cseh



Source: V.J. Marsick and K.E. Watkins, 'Informal and incidental learning', *New Directions for Adult and Continuing Education*, vol. 2001, issue 89, p. 29.

Professors Victoria Marsick and Karen Watkins use figure 4 to explain that:

(t)he circle in the center represents (their) belief that learning grows out of everyday encounters while working and living in a given context. A new life experience may offer a challenge, a problem to be resolved, or a vision of a future state. The outer circle represents the context within which the experience occurs, the personal, social, business, and cultural context for learning that plays a key role in influencing the way in which people interpret the situation, their choices, the actions they take, and the learning that is affected.⁵

The model depicts a progression of meaning making that, in practice, is often more of an ebb and flow as people begin to make sense of a situation. With each new insight, they may have to go back and question earlier understandings. The model is arranged in a circle, but the steps are neither linear nor necessarily sequential.

Whilst it is important to recognise that incidental learning does occur, it is inherently not systematic and may be quite asynchronous with the need to apply certain

⁵ V.J. Marsick and K.E. Watkins, 'Informal and incidental learning', *New Directions for Adult and Continuing Education*, vol. 2001, issue 89, p. 29.

knowledge, skills and abilities. For example, the parliamentarian needs to know and understand the basic standing orders (rules of procedure) from his or her first sitting.

Furthermore, incidental learning risks inadvertently learning incomplete or incorrect knowledge, compromising the performance of the parliamentarian and by extension, the functioning of the parliament. However, when incidental learning does emerge, it can sometimes be built upon by trainers.

Summarising how parliamentarians do develop their skills, we see that these range from very brief welcomes and a reliance on incidental learning to substantial programs utilising adult learning techniques, such as those provided by the Australian Senate, and formalised programs provided by dedicated institutions such as the Training Centre for Elected Representatives (TCER) in Vietnam.

3. How should parliamentarians acquire their skills?

These findings of the experiences of parliamentarians in undertaking training relevant to parliamentary functions lead us to suggestions for assisting them to develop that knowledge, skills and abilities. There are three major suggestions.

Firstly, the content of programs should reflect the institutional interest of each parliament in its members having the capacities to contribute to the effective functioning of the parliament through:

- contextual understanding of the parliament's functions
- analytical, deliberative and communications skills
- information technology abilities and
- ethical competence (moral reasoning capacities).

The success of parliamentary training is predicated on a comprehensive training needs assessment and an understanding of common practices in the particular parliament and its unique features—assessments identifying what parliamentarians in the particular parliament need to effectively perform their function in an efficient manner.

Rigorous evaluation of programs is an essential corollary.

Secondly, participation in training programs should be strongly encouraged. The extent to which the parliament can make participation mandatory will vary according to domestic conventions and practice. Nonetheless, support and encouragement by party whips are generally accepted by party-member parliamentarians as imperative requests. Accordingly political parties should treat participation in training as if it is a condition of parliamentary party membership. However, the benefits must be

demonstrated and recognisable by parliamentarians if programs are to be a catalyst for them to embrace training.

Results from established parliaments suggest that party-based training programs are not only well attended but are also perceived by parliamentarians to be more effective than programs delivered by other providers. There is, therefore, an opportunity among donors and external training providers to collaborate with political parties if they want their efforts to improve parliamentary performance to be realised.

The trend in nascent democracies to establish training centres for parliamentarians can also be emulated across similar parliaments. This is because local bodies, such as TCER, can potentially design culturally and constitutionally sensitive programs and also monitor and evaluate these programs to make them more effective in the future.

Thirdly, adult learning techniques should be adopted and applied, having regard to both human resource development theory and practice and the responses of parliamentarians who participated in the research.

Conclusion

This lecture began from the premise that induction and training for parliamentarians should serve the interests of good governance through more effective functioning of the institution of parliament. It has demonstrated that there are widespread weaknesses in the development of the knowledge, skills and abilities that parliamentarians need in order to contribute to that effective functioning of the parliament.

However, the unique features of each parliament dictate that parliamentary training programs must be localised and rigorously evaluated. Without that, there is the risk that flawed training programs will be replicated and recycled.

Nonetheless, it is clear that three principles should inform the development of programs for newly elected and continuing parliamentarians:

- program content orientated to improved functioning of the parliament
- high levels of participation and
- use of adult learning techniques.

The governance of representative democracies could be improved by the application of these principles.



Rosemary Laing (Clerk of the Senate) — Obviously a central purpose of training is to improve the functioning of parliament. How do you measure that? How do you judge what is an improved function of parliament? What are you looking for and who determines it?

Ken Coghill — As I indicated, parliament is a sovereign institution within the limitations of its role as prescribed by the Constitution. But within that it is a sovereign institution which makes its own way and in our view the appropriate way to measure the performance of the parliament is according to the standards which it establishes for itself. There is not an independent international or outside institution which can say the ‘Australian Senate is doing this wrongly’ or should do something in a different way. I should add that this is an important issue for the Inter-Parliamentary Union, which is one of the partners in this research project. As an association of all of the world’s parliaments, they cannot get into the business of saying to some, ‘Well you are doing things which we regard as unacceptable or incorrect’.

Rosemary Laing — I suppose the media play a strong role in judging whether a parliament is being effective or not but one does not always trust the measures that the media like to use.

Ken Coghill — I think you make a really important point there and the media being what it is tends to report very much on politics and very little on parliament and I would like to think that we could somehow encourage some greater reflection on the way in which the parliament is functioning and the way in which the media reports what goes on in politics.

Rosemary Laing — I suppose another issue is that there is a much greater capacity for people to have direct access to the parliament through webcasts and live transmission and to make those judgements for themselves.

Ken Coghill — Yes, certainly, and I think one of the issues for the future is how the parliamentary chambers can improve the interaction which they have with the public in addition to directly through their elected representatives.

Question — You talk about mentoring and you talk about the role of whips which presupposes political parties which of course in Australia have a very significant role to play. Has your research found anything about independents and members of minor parties who do not have the infrastructure to fall back on?

Ken Coghill — The obvious point is that yes they have real difficulties because they do not have the infrastructure of a party to fall back on, to use your terms, and that in my view makes it all the more important that the parliament as an institution ensures that assistance and support is available to all members of parliament irrespective of party.

Rosemary Laing — How would one go about designing a training needs analysis for members of parliament?

Ken Coghill — Essentially it would be, in my view, getting together a group of senior senators in your case, including the President, to firstly get their consensus view on what are the really important functions that this particular chamber is performing and going from that to what are the knowledge, skills and abilities that each senator should have in order to maximise his or her input to it. That is a very brief summary of what I would suggest.

Question — I am interested in how the media influences the way things are reported, which can affect the motivations of members but also the expectations of the community, particularly in the context of the differences between the findings you have made in developed and emerging parliaments. I am interested to know whether your studies have taken account of some of those differences in the cultural development of approaches to parliamentary democracy because where someone does not quite know what a parliamentary democracy is supposed to do they are also not going to necessarily know that the member's job is effective legislating. Or is it going to be more providing infrastructure resources to the immediate community?

Ken Coghill — As you may have noticed, five of the countries which we studied intensively were in the Pacific and that issue was very strongly identified by Abel Kinyondo who was the PhD candidate who made that his study. You are absolutely right, there are members of parliament in some of those jurisdictions who are quite content to leave legislating to the experts and just put up their hands to wave it through and in the meantime go back to being a big man in their home constituency and dispense funds in that constituency. One of the really important points which I think Abel made in his research is that this makes the role of the parliamentary staff in those parliaments absolutely crucial and his argument, which I accept, is that there should be a very strong emphasis on giving those parliamentary staff the skills to help their members of parliament understand what the implications are of the institution of parliament and their functions within it and that in fact they have quite a profound responsibility for the legislation which they are presently just waving through.

In our view the best suggestion we have—I would not say it is necessarily the solution—is that there should be more emphasis going into support for indigenous parliamentary staff in those parliaments so they can play a role in helping the members of parliament understand what their constitutional responsibilities are and how those can be better discharged than they are at the moment.

Question — I am particularly interested in three aspects: one is leadership or team building, one is communication and thirdly the issue of running a department or being a CEO—the issues of governance and management. I would appreciate it if you could tell me where at the moment the parliamentarians get that training and secondly, how could it be improved?

Ken Coghill — So far as leadership is concerned, from my own knowledge as a member of the Australian Labor Party for over forty years, it tends to depend on firstly the initiative of the individual and secondly, if the individual is lucky, mentoring from someone who can see that individual's potential and is keen to support it.

In communication there is more done, but it is done by the political parties in my observation. I am not aware of a parliament in which there is a significant amount of training in communication skills. However, I would argue that it is a legitimate thing for a parliament to do, that it is in the interest of the parliamentary institution, irrespective of what interest parties may have in it. It is in the interest of the parliamentary institution for its members to be good communicators both within the chamber in making decisions and in communicating to the public about the decisions and deliberations of the parliament itself.

As to running a department, I assume you are thinking here of ministerial responsibility and that is something we have not looked at in this study; it simply was not part of this study.

Question — What do you think should be the training available in leadership and team building?

Ken Coghill — Again, it seems to me that here is something which almost exclusively applies to political party members and not to independents because independents by and large are not part of a team—although there was a case in which a group of people were elected as the United Independents to a NSW local government authority. But to come back to your question, it seems to me that again those skills are things which it is appropriate for a parliament to undertake. In cases where there is a training centre for elected representatives—so its equivalent as in

Vietnam, South Africa and Pakistan—I think it is a more appropriate thing for the training centre to take on rather than a parliamentary institution. The reason I say that is that the officers of the parliament might find themselves in a pretty awkward situation if it looks as if they are providing training to the benefit of the opposition even if they are being even-handed in the way in which they provide it.

Rosemary Laing — And it is really not something that we have expertise in providing.

Ken Coghill — No, and in areas where you do not have expertise, I think it would often be important to bring in people from outside, whether they be private consultants or academics or whatever it may be.

Question — If I read your graph correctly, it suggested that about one-third of incoming MPs did not attend the training sessions. Has there been any analysis as to whether they were unable to attend or why they voluntarily did not attend?

Ken Coghill — It is fairly hard to get answers from people about why they did not do something. The figures vary enormously. I quoted the figure from the United Kingdom from the last election where about one-third of the members were newly elected members and only 19 per cent attended one or more training programs. Now my view is that the very poor attendance needs to be rectified in two ways. Firstly, the programs have got to be designed both in terms of content and delivery so as to be attractive—word of mouth indicates that something is worth going to. Secondly, I think there ought to be a lot of work particularly with the party whips and the party leaders to in effect make it a condition of parliamentary party membership that new members attend and participate in parliamentary induction training programs. Those are the two responses that I would suggest.

Rosemary Laing — Can I add something to that? I have been involved in orientation programs for senators since 1993 and it has never actually been an issue for us. We have had 100 per cent attendance for every round of training and I do not know why that is and there has never been any question of making it compulsory or mandatory, so perhaps we are offering something that is seen as being useful.

Ken Coghill — Well, certainly the limited feedback that I have received suggests that the Senate program is highly regarded by its participants.

Question — Usually when people want an influential and well-paid career, they go and do their training first. I am concerned and confused as to why none of the educational institutions actually offer parliamentary training as it would be a highly

subscribed course, I would have thought, particularly here in Canberra. You would then be able to pick your aspiring politicians from amongst that group and they would pay for it themselves.

Ken Coghill — In the master's program that I teach, we have had some possible future MPs. I would not put it in the terms that they were necessarily aspiring at the time of their enrolment to be a candidate at the next election, but we have had a small number. They have found it very difficult to combine formal university education with their political and other activities. While they are a candidate they are doing two things, they are holding down a job of some sort and they are being a candidate. To add university studies on top of that is not impossible but it is very difficult. I think what would be more appropriate would be short courses which might extend over days or weeks rather than months. As to why they have not been offered to date, my experience since moving to the university sector is that it is fairly inflexible and the funding regime and everything else that applies to universities makes it much more attractive to teach a formal degree course than it does to run short courses.

Comment — I suppose what I was getting at is that as part of an undergraduate course there would be a high degree of interest about parliamentary processes and those sorts of things. As I understand it most MPs train in law. There is no reason why some parliamentary training could not be offered during that degree. A lot of our politicians are actually sons or daughters of former politicians. They have decided very young to enter politics.

Ken Coghill — Yes, just on your point about the law, in fact most people are surprised when they actually look at the figures at what a small proportion of members of parliament do have a law degree. It is not a tiny proportion but it is far from a majority. That is something I would like to set the record straight on. Certainly many of the young people I met who have an interest in a possible political career—not necessarily in elected office but maybe working in politics—take either an undergraduate degree that includes politics and very often foreign affairs and international relations. That is my observation of the people I meet now who want to get into a political career in one form or another.

**‘But Once in a History’: Canberra’s
Foundation Stones and Naming
Ceremonies, 12 March 1913***

David Headon

When King O’Malley, the ‘legendary’ King O’Malley, penned the introduction to a book he had commissioned, in late 1913, he searched for just the right sequence of characteristically lofty, even visionary phrases. After all, as the Minister of Home Affairs in the progressive Labor government of Prime Minister Andrew Fisher, he had responsibility for establishing the new Australian nation’s capital city. Vigorous promotion of the idea, he knew, was essential.

So, at the beginning of a book entitled *Canberra: Capital City of the Commonwealth of Australia*, telling the story of the milestone ‘foundation stones’ and ‘naming’ ceremonies that took place in Canberra, on 12 March 1913, O’Malley declared for posterity that ‘Such an opportunity as this, the Commonwealth selecting a site for its national city in almost virgin country, comes to few nations, and comes but once in a history’.¹

This grand foundation narrative of Canberra—with its abundance of aspiration, ambition, high-mindedness, courage and curiosities—is still not well-enough known today. The city did not begin as a compromise between a feuding Sydney and Melbourne. Its roots comprise a far, far, better yarn than that. Unlike many major cities of the world, it was not created because of war, because of a revolution, disease, natural disaster or even to establish a convict settlement.

Rather, a nation lucky enough to be looking for a capital city at the beginning of a new century knuckled down to the task with creativity and diligence. The federation founders knew they had been blessed. Globally, the ‘science’ of town planning (as it was first called) had only recently emerged, and those directly involved in construction of the Australian capital wanted to take full advantage of the most sophisticated design and planning expertise on offer, from any source. It was a unique opportunity. Discussion soon focused on a city shaped organically, within the

* This paper was presented as a lecture in the Senate Occasional Lecture Series at Parliament House, Canberra, on 15 February 2013. An exhibition on Canberra’s foundation stones and naming ceremonies curated by Dr Headon was on display at Parliament House from 14 January to 3 April 2013.

¹ *Canberra: Capital City of the Commonwealth of Australia*, Government Printer, Victoria, [1913], p. 13.

landscape, not one plonked down, in the words of the first Member for Eden–Monaro, Sir Austin Chapman, ‘like a tent’.²

Federation Australians wanted their future capital to be, as William Astley, an opium-addicted journalist and immensely skilled short story writer of the time so memorably described it, the ‘Treasure-house of the Nation’s Heart’.³ Only in this context can we make sense of the major moments in Canberra’s early history, from federation in 1901 to the beginning of the Great War in 1914: the absorbing if eccentric ‘Battle of the Sites’, 1902–08, to find a capital location; the erection of the first Commonwealth infrastructure on the plains, hills and mountains of the Monaro; the exhausting five-year survey of the Federal Capital Territory borders that took its protagonists deep and dangerously into the southern alps; and the extraordinary international design competition for ‘the Federal Capital City of the Commonwealth of Australia’, won by an inspired husband-and-wife design team from Chicago who, in Walter Griffin’s resonant words, ‘planned a city not like any other city in the world ... an ideal city—a city that meets my ideal of the city of the future’.⁴ Walt and Marion Griffin produced by far the most expansive dream in an era given to such imaginings.

Not surprisingly, when Prime Minister Andrew Fisher and the Governor-General, Lord Thomas Denman, delivered their speeches in the luncheon tent on Kurrajong (now Capital) Hill a century ago, they responded not only to the historic significance of the occasion, but also to the prevailing set of political and cultural circumstances. Fisher anticipated a city where ‘the best thoughts of Australia’ would be expressed, a ‘seat of learning as well as of politics, and ... the home of art’.⁵ The Governor-General went one better, envisaging a city that reflected ‘all that is finest and noblest in the national life of the country ... a city bearing perhaps some resemblance to the city beautiful of our dreams’.⁶

In this paper, and the exhibition I have curated in the Presiding Officers’ Gallery of Parliament House (on display from 14 January–3 April 2013), I will focus attention on six aspects of what was, one hundred years ago, a great day out on the 12 March 1913, for all who participated. First, the build-up, the days and weeks immediately preceding 12 March, as it began to dawn on a panicking media in Victoria that their ‘marvellous Melbourne’ might soon be replaced by some remote, woebegone bush location in arch-rival New South Wales. Secondly, the sheer pageantry of the morning activities, and the formal ceremonies of the big day, as hundreds of mounted

² House of Representatives debates, 24 September 1908, p. 390.

³ Price Warung, *Bathurst, the Ideal Federal Capital*, Glyndwr Whalan, Bathurst, 1901, p. 3.

⁴ *New York Times*, 2 June 1912, <http://www.library.cornell.edu/Reps/DOCS/nytimes.htm>.

⁵ *Canberra*, op. cit., p. 23.

⁶ *ibid.*, p. 31.

horsemen and other units supplied splashes of wild colour and an immensely satisfying display of military pomp and gravitas. Thirdly, I will provide a brief overview of, not one, but the three ceremonies on 12 March that made it such a distinctive, nationally significant suite. Fourthly, I will say a few things about the formidable cluster of individuals gathered on the deep crimson mat atop the newly laid foundation stones on that sunny autumn day on the Limestone Plains of the Monaro. Next, I will explore Raymond Longford's beautiful footage of the day's activities, the nineteen minutes of film which somehow has miraculously survived, when some 85 per cent of our silent film history has not. And finally, I will touch on the notable absentees on the day, individuals who we might reasonably have expected to be VIPs, but who were in fact 'no-shows' for a variety of reasons, reasons ranging from dementia, to the demands of other, important posts, to straight departmental stupidity and ignorance.

In the days leading up to Wednesday, 12 March 1913, Canberra experienced one of its more extreme autumn storms. Indeed, had the politicians who selected the Canberra location in 1908 been exposed back then to the conditions that prevailed in early March 1913, they would surely have looked for a site elsewhere. It was pelting down.

The day before the much-anticipated public occasion, the lead journalist in the local newspaper, the *Queanbeyan Age*, nervously reported on the 'unabated fury' of the weather and its destructive impact on the temporary structures for accommodation and general amenity—'the persistent screaming of the wind, the creaking of tent poles, and straining of ropes ... It was bitterly cold, and men and horses both suffered severely'.⁷ The field hospital was flooded.

It was so cold and miserable that the men of the 28th Light Horse were unanimous in wanting to call the new city 'Antarctica' because of the sheer severity of the wind, 'with the force', one of them commented, 'almost of a blizzard'. The officers' mess tent, to the amusement of the lower ranks, was 'blown to ribbons'.⁸

While Canberra's Commonwealth officials were worried stiff, Victoria's newspapers predictably revelled in the prospect of a looming, country New South Wales public relations disaster, holding firm to the notion that Melbourne should remain Australia's capital forever. But they were destined to be disappointed. On the morning of Canberra's first ever significant national ceremonies, the sun rose brightly on the green-tinged Monaro plains. Locals, departmental staff, VIPs—everyone involved—beamed with delight. A relieved *Queanbeyan Age* reporter noted that 'Wednesday was beautifully fine, and even warm towards the finish of the affair ... thus it

⁷ *Queanbeyan Age*, 11 March 1913, p. 3.

⁸ *ibid.*

becomes a matter for special congratulation that such auspicious weather was enjoyed for this day of paramount importance'.⁹

Melbourne's *Age* newspaper grudgingly observed that 'Luck, as usual, has been kind to the Labor Party',¹⁰ while the *Sydney Morning Herald* was inclined to credit the 'pleasing change' to the presence of the Governor-General and his statuesque wife, Lady Denman.¹¹ The Minister for Home Affairs, the larger-than-life King O'Malley, was never in doubt, firm in the belief that (as reported in the *Argus*) 'the fates had always been kind to him'.¹²

For the team of government department staff, the big day began early. According to the formal program, after a 6.45 am breakfast the VIPs housed in Queanbeyan began making their way to Kurrajong Hill at 8.20 am for an 11.30 am start, hours later. Some 400–500 official guests had travelled on the Tuesday from Melbourne's Spencer Street Station and Sydney's Central, and all had to be transported to the ceremonial site. Trying to leave nothing to chance, departmental officials asked that the general public, mostly residents of nearby Queanbeyan, Goulburn, Bungendore and Yass, attempt to avoid 'the main road as far as practicable'.¹³

The locals, however, were never going to have any part of that sort of bureaucratic, risk management rubbish. The report of the *Queanbeyan Age*, under the heading 'The Great Trek', confirms that this was one request that was totally ignored. As the journalist playfully recorded:

Long lines of automobiles filed out of the town ... Fine four-horse drags swung along on the wake of the motors passing in clouds of red dust scores of less imposing equipages. There were old 'busses ... sulkies, buggies, waggonettes, wagons, lorries, cabs, sociables, carts, bicycles, and every conceivable form of vehicle [was] requisitioned and joined the procession. At the cross-roads the throng was reinforced by farmers' carts and buggies from the surrounding country. Scores of horsemen gave a true colonial flavour to the scene, while hundreds more, failing to find means of transport, tramped to the scene. It was a unique picture, the green undulating fields with thousands of sheep quietly feeding being disturbed from their solitude by the bustle of a great historic occasion.¹⁴

⁹ *Queanbeyan Age*, 14 March 1913, p. 2.

¹⁰ *Age* (Melbourne), 12 March 1913, p. 2.

¹¹ *Sydney Morning Herald*, 12 March 1913, p. 12.

¹² *Argus* (Melbourne), 12 March 1913, p. 13.

¹³ *Queanbeyan Age*, 11 March 1913, p. 4.

¹⁴ *Queanbeyan Age*, 14 March 1913, p. 2.

Since most guests, invited and uninvited, made their way to Kurrajong Hill with plenty of time to spare, all were looking for a little preliminary entertainment. The arrival by car of the Governor-General's wife, Lady Gertrude Denman—Trudie, Trude—well ahead of her husband, was just what they were looking for. A favourite with most Australians, including members of the governing Labor Party, Lady 'Trudie' was immediately presented with a bountiful bouquet of flowers by a local resident, six-year-old Stella Broinowski, daughter of one of the Commonwealth's senior draughtsmen resident in Canberra. The crowd loved it. Closer inspection of the car in which she was travelling would probably have revealed her dainty silk parasol and rather large make-up case. Both items are on show in the exhibition.

Students of fashion in the audience might be interested to know that, according to the account of Adelaide's *The Register* newspaper, Lady Trudie wore 'a striking dress of green and white, and with a black hat trimmed with a white ostrich feather ... [and] a beautiful pearl necklace'.¹⁵

When Governor-General Lord Thomas Denman arrived—like his partner, immaculately dressed, sporting an imposing hat with feathered plumage (also in the exhibition)—he headed immediately to the foundation stones area, where he reviewed the cadets and troops, joined by Prime Minister Andrew Fisher, Minister for Home Affairs King O'Malley and Senator George Pearce.

The few scattered citizens living on the Limestone Plains had never before seen its like. Not only a visit by the 'bright and glittering'¹⁶ Governor-General, his wife, the prime minister and so many VIPs from across the continent, but all sorts of added attractions. Sir Walter Barttelot and Major Arnold Quilter, aides-de-camp to the Governor-General, were striking in the uniforms of, respectively, the Coldstream Guards and the Grenadier Guards. The Australian Field Artillery was there, stationed on Camp Hill (a spot about 70–80 metres north of Old Parliament House on Federation Mall), to fire, first, a 19-gun salute, and then, after Lady Denman had named the new capital, a 21-gun salute—right on cue. The Mounted Rifles took part, along with the 7th, 9th, 11th and 27th Light Horse; then there were the dazzling plumes and scarlet sashes of the NSW Lancers. In all, over 700 troops participated in the ceremonial parade.

And on top of all of this pageantry, some of the 'honorary' local boys were involved as well. The guard of honour for Lord Denman comprised two Royal Military College (RMC), Duntroon, senior classes—about seventy fresh-faced cadets in their early twenties, known to the locals, including apparently the eligible younger women. The

¹⁵ *Register* (Adelaide), 13 March 1913, p. 7.

¹⁶ *Sydney Morning Herald*, 13 March 1913, p. 9.

heads of the Limestone Plainers were spinning with excitement. They were used to the occasional exercise of the RMC boys, under Captain Smith, but nothing like this grand spectacle being acted out in front of them.

To digress for one moment, on the trail of a spot of gossip. A few of those present in the crowd on the day had reason to be titillated by more than simply the pageantry. You see, it was rumoured that Sir Walter Barttelot—the Coldstream Guard, who was in Australia with his wife, Lady Barttelot, herself the lady-in-waiting to Lady Denman—was involved in a dalliance, an illicit affair with the aforesaid Lady Trudie. The anecdotal evidence for this is strong, and we do know that, shortly after the Australian sojourn, the Denmans would amicably agree to live separate lives, for the rest of their life. They would die within three weeks of one another, in 1953, forty years later.

Sir Walter, however, was not so fortunate. He and his fellow aide-de-camp, Major Quilter, both of whom fought at Gallipoli, would be dead by 1918. But whereas Arnold Quilter was killed at Krithia, on the Gallipoli peninsula, walking stick in hand as he led a desperate attack on a fortified Turkish position, Sir Walter died rather less gallantly. As the British military attaché based in the Iranian capital of Tehran, he died on 23 October 1918, a bare three weeks before the armistice, killed in bed by a cuckolded husband. Sir Walter, it appears, was a serial offender.

And on that prurient note, back to the main narrative.

On the big 12 March day, Sir Walter and Major Quilter, ‘resplendent in scarlet and tall black bearskins’,¹⁷—were surrounded by what Bill Lawry might today describe as ‘a happy crowd’. The *Sydney Morning Herald* reporter observed that ‘People sat there in the hot sun possessing their souls in patience’,¹⁸ but they were delighted when the real action began, as scheduled, at precisely 11.30 am with the first ceremony in the official program: the ‘Laying of the Foundation Stones of the Commencement Column’. The column, designed to proclaim the new national capital as imperial, national and federal, would never be built, so it is just as well that the natural performer in the Minister for Home Affairs, King O’Malley, made sure he emphasised the theatrical elements of the day.

O’Malley presented Lord Denman with a ‘gold trowel’, personally inscribed as a keepsake of the occasion, and asked him to lay the first foundation stone. The *Queanbeyan Age* takes up the story:

¹⁷ Michael Hall, ‘A splendid destiny’, *Canberra History News*, no. 445, February/March 2013, p. 12. This is also the source for the biographical information about the philandering Sir Walter Barttelot.

¹⁸ *Sydney Morning Herald*, 13 March 1913, p. 9.

A man went to the winch and turned the handle. The foundation stone, already half suspended in mid air, moved higher into the air, and a man at the stone itself governed its movements. When the stone was in its right position the man held his hand up; then he brought over some cement to Lord Denman.

The Governor-General of Australia took up a quantity of cement with his gold trowel. There was a metallic ring as the trowel touched the granite, and, turning to the Prime Minister and the people, His Excellency said: 'I declare this first stone ... well and truly laid'. Loud cheering followed.¹⁹

Shortly after, Prime Minister Fisher followed suit with his personally inscribed golden trowel, declaring his stone 'well and truly laid'—amid cheers and, it was reported, a shout of 'Good boy, Andy'.²⁰

With typical showmanship, O'Malley just had to be different, so his stone was laid 'truly and permanently'.²¹

Onlookers could hardly fail to have noticed the stark contrast of accents featured: Denman, born to privilege, with his refined English accent; Fisher, down in the grim Scottish coalmines as a boy and still audibly connecting to his northern hemisphere roots; and O'Malley, unashamedly mid-western American, even though he had to maintain the farce that he was born in Canada in order to stand for election in a British Empire country.

I should note that, for the first time since 12 March 1913, two of these 'working' trowels, those of Fisher and O'Malley, are on show in the exhibition. I hope to have Lord Denman's trowel soon, to reunite the glittering triumvirate for the first time since 12 March 1913—but that will depend on the efficiency of application of the English export regulations pertaining to the small ivory handle.

Generally believed in Australia to have been lost for many decades, recent research by myself and historian Barbara Coe led to confirmation of the whereabouts of both the Denman and Fisher trowels. Fisher's is part of the private collection of Sydney businessman Trevor Kennedy, while the extended Denman family in England have made sure that Thomas' golden trowel has stayed safely in its keeping throughout the last century. O'Malley's trowel became part of the collection of the library of the 'Parliament of the Commonwealth' (and, later, the National Library of Australia) in

¹⁹ *Queanbeyan Age*, 14 March 1913, p. 2.

²⁰ *Advertiser* (Adelaide), 13 March 1913, p. 9.

²¹ *Queanbeyan Age*, 14 March 1913, p. 2.

1934 when the Parliamentary Librarian, Kenneth Binns, asked O'Malley to donate it to the Commonwealth. O'Malley was pleased to do so, as he informed 'Brother Binns'.

Despite vocal crowd interest in the laying of the new city's first three foundation stones, it is certain that the vast majority had come for one reason, and one reason only. They wanted to be among the first to hear the chosen name of the nation's fledgling capital.

So, with the stones well and truly laid, the Governor-General and Lady Denman, along with the prime minister, adjourned to a spot at the bottom of the temporary stand and, accompanied we are told by 'massed bands', led a rousing rendition of the hymn, 'All People That on Earth Do Dwell' (Psalm 100, often referred to as the 'Old Hundredth'). Then all three, with Minister O'Malley, moved down to a temporary platform on top of the stones.

The *Adelaide Advertiser* reporter present spoke for the multitude in titling his splendid coverage of the day's second ceremony, 'The Secret at Last':

When Lady Denman stepped to the centre of the column, which had been converted into a crimson-coloured platform, there was an almost breathless silence. Local residents grouped at the corner of the stand shifted nervously, since the whispered information that they were to be singularly honoured had been almost too good to be true. Lady Denman carried in her hand a small golden casket, between the covers of which was hidden a card bearing the mystic word that would be known all over the Empire a couple of hours later. A fanfare of trumpets sounded by buglers announced that the psychological moment had arrived. As the echoes of the last notes died away in the little valleys between the hills, Lady Denman looked around upon the circle of waiting spectators and smiled. 'I name the capital city of Australia, Canberra', she said. There was a frantic outburst of cheering from a group of local residents, who all along desired to have the original appellation retained. The infection was carried even into the ranks. Everybody cheered ... Another salute of 21 guns was fired. Cheers were given for all who took part in the proceedings, for the King, and for the Commonwealth.²²

Lady Denman's announcement finally put to rest months of speculation, as Australians across the country sent in a flood of suggestions—some serious, some not—for the political leaders and departmental staff to consider. There was no

²² *Advertiser* (Adelaide), 13 March 1913, p. 9.

competition, but this did not stop some 800 Australian and overseas aspirants from submitting their preference. The choice of a name for the new city was never going to be easy. Too many people were interested in the outcome. The response of the *Age* newspaper typified the carping Melbourne press in suggesting, on the day of Canberra's big event, that 'the people have been contumeliously ignored in the matter of choosing a name'.²³ But this was simply not true. Commonwealth records indicate that all the suggestions sent in by members of the public were carefully logged by departmental staff, as were the results of a poll of federal parliamentarians.

We know that the final choice was enormously popular with the many locals present, and generally popular across the country. It was a thankfully 'prosaic name', according to the *Launceston Examiner*, 'certainly an improvement on many of the freak names which were suggested'.²⁴

And there were, to be sure, a host of 'freak' names.

These included a broad mix of suggestions, creative, tongue-in-cheek and brain-dead—among them, those citizens keen on local fauna and birds, who favoured names such as Kangaemu, Cooeeoomoo, Blue Duck, Cookaburra and Marsupiala. Then there were those eager to express their cynicism about politics, who opted for pejoratives such as Bungtown, Bunkum, Pawnbroker, Thirstyville, Cackleton and Gonebroke. There were those seriously deficient in either imagination or the imperatives of nomenclature, who favoured the likes of Wheatwoolgold and Sydmeladeperbrisho. The utopians chipped in with Perfection, Climax, New Atlantis, Paradasia and Avalon. Then, of course, there was the humourist replete with obligatory race overtones, with his Too-muchee-white-fellah-sittee-down-longa-Molonglo-big-one-water-hole.

Such extreme names, 'freak' names according to the *Launceston Examiner*, rubbed shoulders with a small group of genuine contenders—among them, Acacia, Eureka, Federata and Eucalypta. Minister O'Malley's choice was Shakespeare; the prime minister favoured the Aboriginal word 'Myola', until someone pointed out to him that his choice came perilously close to an anagram of O'Malley, with whom he had a professional, rather than a close relationship. Myola, the early favourite, was out!

It appears that the final decision on the name was made through a majority vote of the Labor caucus, who plumped for the local name 'Canberra'. This decision, however, produced immediate frustration concerning both the meaning of the name and its pronunciation.

²³ *Age* (Melbourne), 12 March 1913, p. 2.

²⁴ *Launceston Examiner*, 14 March 1913, p. 4.

Was ‘Canberra’ derived from the town of ‘Canbury’, in England? Did it come from an Aboriginal word meaning ‘meeting place’? A ‘woman’s breasts’ (Black Mountain and Mt Ainslie)? No one knew for sure. And then there was the matter of the word’s pronunciation. Three syllables or two? The final government decision—a triumph of pure pragmatism—was whatever pronunciation Lady Denman used on the day, that would be it. Perhaps because of her English origins, she opted for ‘Can-bra’. And so it was.

Like her male counterparts, Lady Denman had an ideal souvenir of the day: the gold case that she opened to reveal the city’s name. Personally inscribed like the trowels, but also with an engraving of the Denman crest, the object has remained in the Denman family since 1913, and is on show in the exhibition for the first time in a hundred years. It doubles as a serviceable cigarette case, and was put to constant use by chain-smoker Trudie for the rest of her life.

The third and last formal ceremony of a busy program involved a luncheon, the ‘official banquet’, for some 450 guests in a marquee situated not far from the foundation stones. While the menu and toasts might arouse some curiosity today amidst a television food show epidemic, it is the substance of the main speeches and toasts—by Prime Minister Andrew Fisher, Lord Denman, Minister O’Malley and the Attorney-General William Morris (‘Billy’) Hughes—that rewards more intense scrutiny. All four speeches are reproduced in the volume King O’Malley commissioned in 1913, *Canberra: Capital City of the Commonwealth of Australia*, mentioned earlier.

Fisher produced his usual solid effort, anticipating the coming capital as a home for higher learning, politics and art, but it was the Governor-General who soared with by far the best speech of the entire occasion, a ‘really eloquent’ peroration according to the *Sydney Morning Herald*, the ‘best speech ... he has delivered since he came to Australia’.²⁵ The speech included some jokes about the suggested names of the capital, as the Governor-General wrestled with the pronunciation of the unlikely ‘Syd-Mel-Ad-Per-Bris-Ho’. There was also a compelling transition into the subject of ‘the creation of a national Australian spirit’, and a visionary conclusion which no doubt had an impact on everyone present:

The city that is to be should have a splendid destiny before it, but the making of that destiny lies in your hands, the hands of your children, and those who come after them. Remember that the traditions of this City will be the traditions of Australia. Let us hope that they will be traditions of freedom, of peace, of honor, and of prosperity; that here will be reflected

²⁵ *Sydney Morning Herald*, 13 March 1913, p. 9.

all that is finest and noblest in the national life of the country; that here a city may arise where those responsible for the government of this country in the future may seek and find inspiration in its noble buildings, its broad avenues, its shaded parks, and sheltered gardens—a city bearing perhaps some resemblance to the city beautiful of our dreams.²⁶

This was no easy act to follow, although O'Malley and Hughes acquitted themselves pretty well. O'Malley produced a speech that the *Argus* newspaper labelled grandiloquent,²⁷ and the *Sydney Morning Herald* suggested could 'only be described as O'Malleyan'.²⁸

Billy Hughes put his mischievous sense of humour to good use, interspersing personal anecdote with sharper comment. However, when he stated that the Limestone Plains were 'an ideal spot for a capital in every way',²⁹ it was clear to his audience that this tough-minded, uncompromising Sydney unionist had become a true Canberra convert. While Hughes was neither temperamentally attuned, nor indeed destined to play a leading role in the national capital's Big Picture, he is well worth reading on the finer grain detail. Several decades after the 'Battle of the Sites' to find a region to host the capital, Hughes lyrically captured the essence of earlier, more generous times in the autobiographical volumes he penned in his eighties, as he finally sat down to reflect on a turbulent life. A sentence from his *Policies and Potentates* (1950) captures the spirit of the enterprise:

The story of how the Parliament of the Commonwealth came to choose Canberra as the Seat of Government is a chapter of history about which lingers the fragrance of romance.³⁰

And there is certainly a 'fragrance of romance' attached to some of the key players on 12 March. Take, for instance, the 'legendary' King O'Malley. Formerly a slightly tainted insurance agent, real estate agent and banker in the United States, O'Malley reinvented himself as a colonial politician, Commonwealth politician, compelling orator, tall-tale teller, finance guru and, it seems, charmer of the gentler sex. He was a genuine one-off, defying easy description. At the age of, perhaps 30, in 1888 he came to Australia to stay, returning only once, briefly, to the country of his birth, and dying in Melbourne just before Christmas, 1953, the same year as the Denmans. He left a healthy estate. O'Malley was accorded a state funeral, as the last survivor of the

²⁶ *Canberra*, op. cit., p. 31.

²⁷ *Argus* (Melbourne), 13 March 1913, p. 13.

²⁸ *Sydney Morning Herald*, 13 March 1913, p. 9.

²⁹ *Canberra*, op. cit., p. 41.

³⁰ W.M. Hughes, *Policies and Potentates*, Angus and Robertson, Sydney, 1950, p. 54.

Commonwealth of Australia's first national parliament of May 1901, which included a galaxy of future prime ministerial stars—Edmund Barton, Alfred Deakin, Chris Watson, George Reid, Andrew Fisher, Joseph Cook and Billy Hughes.

O'Malley may have been 95 when he died, but we will never know because he had to claim, in Australia, that he had been born in a British Empire country, in order to stand for an Australian parliament. He told a lie—a 'beautiful lie', to use Mark Twain's apt phrase—a lie that everyone in Australia was in on, for all knew that King O'Malley had been born in the United States.

It was O'Malley's good fortune to be popular with enough members of the Labor caucus to see him appointed as Minister for Home Affairs in Andrew Fisher's second government, 1910–13, despite Fisher's dislike of O'Malley's brash American ways. The Home Affairs portfolio meant that he, O'Malley, had responsibility for the national capital's foundation years, and he certainly made a distinctive mark. Those he liked were routinely greeted as 'Brothers'; those he disapproved of were 'roosters', often 'gilt-spurred roosters'.

On 12 March 1913, O'Malley was in his element on the big stage. It is difficult to judge who depicted the extroverted O'Malley best that fine autumn day: official photographer Claude Vautin in his genuinely iconic images, or the *Queanbeyan Age* journalist who wrote that O'Malley 'stood by the side of the stone which he was to lay, planted his right foot on it, folded his arms and surveyed the beautiful sweep of country in front of him ... Mr King O'Malley stood there like a king—monarch of all he surveyed'.³¹

And what about the English visitors on the same podium, the Denmans, Tom and Trudie?

We know that Australia's fourth Governor-General, Lord Dudley, was a very poor fit for the job, a man who expected to be treated with deferential regard and to have the whims of his toffy lifestyle encouraged and funded by the locals. Federation Australians deplored his pomposity, spendthrift habits and carousing ways. The Australian press responded on occasion with venom, despite the aura of the viceregal office, John Norton's *Truth* newspaper exciting its readers with scurrilous reference to Dudley's 'concupiscent capers ... libidinous lecheries and lascivious lapses'.³²

³¹ *Queanbeyan Age*, 14 March 1913, p. 2.

³² Quoted in Christopher Cunneen, *Kings' Men: Australia's Governors-General from Hopetoun to Isaacs*, George Allen & Unwin, Sydney, 1983, p. 86.

In stark contrast, the fifth Governor-General, Thomas Denman, the third Baron Denman, was a much more comfortable fit for the new job. Both he and his immensely talented, strong-willed partner shared an enthusiasm for the antipodean challenge, both wanting, as Gertrude put it, to 'work hard'. They understood Australia, and the locals responded with a great goodwill. The Denmans were popular.

Tom Denman was widely praised in Australia as one of our own, a true man of action. Coming through in the same Sandhurst class as Winston Churchill, he served with distinction in the Boer War, was wounded and, on returning to England, he entered politics as a young and progressive Liberal peer in the House of Lords. A keen 'sportsman' in sport-mad, post-colonial Australia, Denman played a handy game of billiards and golf, a good game of tennis, and he could ride with the best of them, making a name for himself in England as a steeplechaser.

With less opportunity because of the constraints placed on women at the time, Trudie Denman carved out a truly remarkable life. She refused to be merely a decoration of her husband. In 1912, when fishing off Sorrento in Victoria, she hooked a shark five feet long. When it was hauled on board, still very much alive and thrashing, Lady Denman calmly 'shot the monster', according to *Society* magazine, 'with her own revolver, one bullet doing the trick'.³³

Encouraged by her parents, Gertrude Pearson, Lady Denman, was a free, independent spirit, a keen golfer, tennis and hockey player, and lover of the outdoors. She was one of the first women to obtain a driver's licence in Britain; she almost single-handedly organised for tens of millions of cigarettes to be sent to the English soldiers fighting in France in the Great War; she was in charge of the Women's Land Army in World War Two; she once dug a great big hole in the lawns of Government House, in Melbourne, to practise her bunker shots; and she loved the theatre, passionately, becoming good friends with our own grand dame, Nellie Melba.

I wonder was it Melba's sense of humour that Trudie especially enjoyed, the Australian diva's well-documented, rather risqué ways. On one occasion when on a ship between the hemispheres, Melba was served a rapidly melting jelly, promptly remarking to the waiter: 'There are two things I like stiff, my man, and jelly is one of them'. Perhaps it was a taste for the wicked that forged a bond between independent Nellie and independent Trudie.

³³ Cutting from *Society* magazine, 7 February 1912, included in the album of newspaper cuttings kept by Lady Denman's lady-in-waiting, Lady Barttelot, during the Denmans' years in Australia. The album is now in the private collection of Lady Margot Burrell.

Tom Denman had a peerage but little money, so the Pearson fortune of Gertrude's father, Lord Coudray, certainly assisted his career path. While the Denmans did bring to Australia their personal servants, two carriages and three motor cars, commensurate with their social position, they also brought a no-frills attitude. Both hated excessive formality, and this was quickly noted and admired by their hosts.

So tangible was this chemistry between the Denmans and the Labor men that, as I was told earlier this week by the Denmans' grandson, Mark Burrell, Lord Thomas Denman, 'D' as the family always affectionately called him, took it upon himself to write to the King suggesting that the Australian government should take charge of its own Australian navy. And this in 1913, as tension between Britain and Germany was rapidly escalating. The suggestion in the letter was never likely to be acted upon at that time; indeed, Lord Thomas Denman, it was felt by his aristocratic and political peers, had, to use Mark Burrell's phrase the other day, 'gone native'. Crossed over. He had committed the cardinal sin of choosing the periphery, Australia, over the metropolis, England—the colonies over the Empire. He was shunned. Hindsight, fortunately, enables Australians to elevate him to the ranks of our most progressive early Governors-General.

This close Denmans/Labor relationship was visibly on show on the 12 March 1913, as we can see in Claude Vautin's fine photographs—and, in particular, in the precious Raymond Longford/Ernest Higgins film footage of the day's events. This classic nineteen minutes of footage has its own distinctive story, its own set of small, yet significant miracles. When the firm of Spencer's Pictures decided to cover Canberra's 12 March ceremony, it just so happened that the most significant person on their books, actor and director Raymond Longford, in time acknowledged as the most important film-maker in the history of Australian silent film, was between pictures. Spencer's sent him down to direct their film, together with Ernest Higgins, a highly talented cinematographer.

Longford is best known today as the director of the one acknowledged classic of the thirty-year Australian silent film era, *The Sentimental Bloke*, of 1919, based on C.J. Dennis' popular literary work. The female star of 'The Bloke' was Lottie Lyell, Longford's professional, and life, partner. As film biographer William Drew has written: 'In their films, rich with humour and insightful observation, [Longford and Lyell] revealed to the world for the first time on screen the plucky, resourceful, democratic national character of the Australian ... [Longford and Lyell] belong not only to Australian, but also to world cinema'.³⁴

³⁴ William M. Drew, 'Raymond Longford (1878–1959) and Lottie Lyell (1890–1925)', <http://www.gildasattic.com/longford.html>.

Raymond Longford comes to Canberra for the 12 March 1913 festivities. His film survives against the odds. You could not have script-written it any better than that.

Finally, a few moments on one of the 'lost' narratives of the day. Numerous letters included in the bulging National Archives of Australia file throw light on individuals from many walks of life—former prime ministers, significant surveyors, journalists, members of parliament, departmental heads and staff, union officials and prominent Monaro residents, to name a few—who failed to make Minister O'Malley's invite list in the first round. The reasons appear to have ranged from bias, to oversight, to just plain human and departmental ignorance. Other 'no-shows' included invited individuals absent for reasons ranging from severe illness to necessary formal duties.

The most notable absence was, of course, the Griffins from Chicago, whose entry number 29 had, only nine months earlier, won the international competition to design the 'Federal Capital City of the Commonwealth of Australia'. The exhibition deals with the complex story of why this happened.

Three former prime ministers who had a hand in the early national capital story were also unable to attend. Australia's first prime minister, Edmund Barton, could not be there due to High Court duties as Acting Chief Justice, though he was there in spirit. The *Sydney Morning Herald* report mentions the 'finely worded letter' sent by Barton, and read out on the day by Lord Denman, being 'loudly cheered' by the crowd.³⁵

Sadly, Australia's second prime minister, Alfred Deakin, missed the event due to the cruel onset of dementia which, as early as 1910 and in his own diary words, 'crippled' his memory and public speeches, making certain that his last decade of life (until his death in 1919) was a 'chaos' as he sat 'among the ruins or pick[ed] his way carefully across the debris to the haven of complete forgetfulness'.³⁶

George Reid, Australia's fourth prime minister and a key Canberra supporter in later 1908 when it counted, had to miss the ceremonial day because he was busy with official duties elsewhere, as the (first) High Commissioner to Great Britain. In this capacity, Reid had his own important symbolic event to worry about when the King laid the foundation stone for Australia House in London on 24 July 1913.

Perhaps the most heart-wrenching of all the absentee stories relating to the event was that of Arthur Lloyd. Chief Surveyor of the New South Wales Public Works Department in 1906 when all New South Wales site options were on the table for

³⁵ *Sydney Morning Herald*, 13 March 1913, p. 9.

³⁶ Alfred Deakin penned these words in his (private) notebooks, quoted at length in Walter Murdoch, *Alfred Deakin*, Bookman Press, Melbourne, 1999 [1923], pp. 270, 278.

consideration, Lloyd was personally responsible for a superb map on display in the exhibition. Signed on 28 March 1906, the map records 14 sites that he surveyed, making it clear that he favoured sites ‘J & K’—sites coinciding almost exactly with today’s Belconnen and central Canberra. Overlooked in the first round of invites, poor old Lloyd endured the ignominy of having to request an invitation to the 12 March event. Sadly, it is by no means clear whether the man a journalist once described as the ‘Duke of Canberra’ was present on the day.

Our national capital has a rich and compelling foundation story, at once local, regional, national and international. It was Australia’s unique good fortune that, at a key moment in the evolution of global discussion and enlightened planning about cities, we went in search of a new capital city, to be built from the ground up.

The founders, a century ago—human, flawed, but aspirational, determined, unwilling to shy away from the big questions and big issues—methodically worked their way through the capital city discussion for well over a decade, in the first years of federation, inspired and refreshed by ‘City Beautiful’ and ‘Garden City’ considerations. The events of 12 March 1913 provide us with considerable insight into personalities and political issues. It was a day of high significance.

Australians should know more about their national capital. Let us hope that by the end of this special centenary year, laden with so much culture, history and heritage, we will have set about embracing the challenge.



Question — Can you tell us a bit about where the foundation stones were originally laid and the circumstances of them having been moved?

David Headon — Their present spot began, officially, on 12 March 1988. On that day there was a woman who was a special guest at the ceremony (I only learned a few weeks ago) called Mary Canberra Murray. There was quite a celebration that day when three additional plaques were laid by Prime Minister Bob Hawke, the Minister for Arts and Territories Gary Punch and the Governor-General Sir Ninian Stephens. Mary Canberra Murray, born on 12 March 1913, joined the celebrities, quite rightly, on the podium.

Now, when you are walking from the foundation stones straight back towards Parliament House on the left hand side of Michael Nelson Tjakamarra’s mosaic and

water feature, if you look down you will see a small plaque. That is where the original stones were sited. They went into disrepair. It does look as though King O'Malley's stone was pinched, and replaced. But the others are originals.

Question — I noticed that in Queanbeyan there is a statue of a chap named John Gale and he is described there as the father of Canberra. I have never heard that description being used within Canberra itself. What is the story there?

David Headon — John Gale has got a great story. He was the individual who worked so hard as a journalist and community leader in Queanbeyan from the 1890s to establish a capital city in this region. Ian Warden in the *Canberra Times* has written about him a bit. Chris Watson, the first Labor prime minister for a few months in 1904, and George Reid were the two other crucial advocates at a key time for Canberra. In 1906 Watson came here and Gale took him trout fishing to Uriarra. Greg Wood, who gave the Sir John Butters Oration in 2008, talked about the fact that a future capital had to be a place where white men could catch trout in the local rivers. Indeed, the primary pitch for Queanbeyan/Canberra was on the basis of sport, shooting, fishing etc.

Gale took Watson to Uriarra, but Watson was already pretty much 'on message', about the area. Of all the communities in New South Wales perhaps the most progressive in pushing the capital argument were the Queanbeyan people, and John Gale—especially in the pages of the various newspapers that he edited. Gale was very much a key player. In his book *Canberra: The Community That Was* Greg Wood talked about the dispossession story of whites as well—not the black dispossession story, but the white dispossession story. It dawned on some of the local property owners, quite late in proceedings that they were actually going to get only a small amount of money for their properties. They went into a bit of a panic. It becomes a more complex and contested story the closer you get to that land being taken back by the Commonwealth. There are a couple of quite good histories of Queanbeyan which recognise that.

Question — I understand the National Film and Sound Archive (NFSA) has done some amazing work on the Longford footage, and we will all get to see that between now and the 12 March 2013. Also, in the exhibition O'Malley looks a little dishevelled. I would have thought he would really look his spritely best on that occasion but not so.

David Headon — Absolutely. O'Malley was generally speaking a dapper dresser. In fact, in my exhibition there is a replica of O'Malley's original tie pin on loan from Peter Barclay, owner of King O'Malley's Irish Pub in Civic. Peter had that replica

made because O'Malley wore it often on fine suits. I read somewhere that on 12 March 1913, O'Malley managed to forget his suit, and therefore had to go with his 'C' grade or 'D' grade suit—the rather dishevelled suit that he wore on the day.

In terms of the Longford film and the National Film and Sound Archive, I am absolutely delighted to say that the NFSA has recognised the ultra-significance of that original nineteen minutes of superb film of the 12 March 1913 event, and has created a new, pristine print, which will be running on various screens around Canberra on 10 March 2013. It is a beautiful enough film, the old print, but we really look forward to seeing the refurbished version that will be shown for the first time around Canberra, and presumably around the country, in a matter of weeks.

Paying for Parliament: Do We Get What We Pay For? Lessons from Canada*

*Christopher Kam and
Faruk Pinar*

I. Introduction

The quality of a representative democracy depends on electing highly qualified and talented people to office, and then effectively motivating those people once they are in office and beyond the immediate reach of voters. The remuneration paid to office-holders presumably plays an important role in this regard. Attractive levels of remuneration make it more likely that qualified and talented individuals will seek election and that incumbents will remain in office long enough to develop valuable expertise and skills. Conversely, levels of remuneration that are too low may invite ill-equipped or ill-suited individuals to seek office and force otherwise talented office-holders to leave politics in search of more lucrative employment.

Academic observers and parliamentarians have long complained that the Canadian Parliament suffers from the latter condition. A central weakness of the Canadian House of Commons, Charles Franks laments, is its *amateurism*¹: MPs are not as qualified as might be desired, and too many arrive in the House too late in life to acquire the experience necessary to act as effective legislators and representatives. A series of policies—notably the introduction of salaries and pensions for MPs in 1953 and substantial increases in salaries in 1963 and 2001—were adopted precisely to attract and retain a ‘better grade’ of MPs. The hope was that the increased compensation would induce talented (and well-paid) individuals to enter politics and establish long-standing parliamentary careers. We focus in this paper on the first of these dimensions, that is, the attraction and election of qualified individuals to political office (leaving the matter of retention to another paper). Specifically, we pose three questions. First, did these changes attract a younger set of parliamentary candidates or result in the election of younger MPs to the House of Commons? Second, did these same changes alter the professional backgrounds from which parliamentary candidates were drawn? Third, did the introduction and subsequent increases in MPs’ salaries and pensions encourage more highly educated candidates to stand for election to the House of Commons? Our analysis of the MPs and candidates

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¹ Charles E.S. Franks, *The Parliament of Canada*, University of Toronto Press, Toronto, 1987, p. 75.

at federal elections from 1867 to 2011 reveals little evidence that these reforms achieved their stated objectives. The candidates who contested parliamentary elections following these reforms were not younger than expected given contemporaneous changes in the general population. Similarly, whilst the introduction of salaries and pensions in 1953 and the salary increase of 1963 coincided with an increase in the number of candidates drawn from law (a highly paid field) relative to the number of candidates drawn from teaching (a modestly paid field), the increases were small in magnitude, short-lived, and statistically indistinguishable from random variation in the data. Lastly, we find no evidence that the 1953 and 2001 changes to MPs' remuneration succeeded in increasing the percentage of university degree-holders entering the House of Commons. Only the 1963 salary increase does appear to have succeeded in this respect, however.

Our work contributes to a growing body of literature on the desirability and effectiveness of using monetary compensation to motivate and control elected representatives. Many of the theoretical contributions to this literature make clear that increasing the remuneration of elected politicians does not necessarily improve the quality of elected politicians, and it may actually produce unintended side effects. This can happen for a variety of reasons, but the literature highlights three main possibilities. First, if aspects of a politician's job are undesirable, highly talented individuals may leave politics to less talented individuals even as the salaries attached to political office increase.² Second, whilst higher salaries may induce highly qualified individuals to enter and remain in politics, they also provide strong incentives for poorly qualified individuals to enter politics.³ At the limit, poorly qualified candidates may crowd out well-qualified candidates. Third, the marginal effect of increased pay on the behaviour of politicians may diminish and sharpen the trade-offs confronting voters as it does so.⁴

These theoretical results have motivated empirical work on the remuneration of politicians. Some of this work supports the conventional wisdom that higher pay

² Mathias Messner and Mattias K. Polborn, 'Paying politicians', *Journal of Public Economics*, vol. 88, no. 2–3, 2004, pp. 2423–45.

³ Andrea Mattozi and Antonio Merlo, 'Mediocracy', *National Bureau of Economic Research Working Papers*, no: 12920, 2007, www.nber.org/papers/w12920. See also, Panu Poutvaara and Tuomas Takalo, 'Candidate Quality', *International Tax and Public Finance*, vol. 14, no. 1, 2007, pp. 7–27.

⁴ To see how this can happen consider a dishonest but very competent politician. The politician's competence provides her with lucrative opportunities in the outside economy, and hence salary increases are correspondingly less effective at constraining her behaviour. Voters may be unwilling to pay the very high salary necessary to keep this politician on her best behaviour, and if this is the case, voters will have to either tolerate the incumbent's dishonesty or make do with a less competent (but perhaps more honest) alternative. Timothy Besley, 'Paying politicians: Theory and evidence', *Journal of the European Economic Association*, vol. 2, no. 2–3, 2004, pp. 193–215; Francesco Caselli and Massimo Morelli, 'Bad Politicians', *Journal of Public Economics*, vol. 88, no. 3–4, 2004, pp. 759–82.

improves the quality of candidates and the performance of incumbent politicians. Claudio Ferraz and Frederico Finan, for example, study the impact of federally imposed, population-based limits on the salaries of Brazilian municipal politicians.⁵ They find significant jumps in the quality, productivity, and tenure of Brazilian municipal politicians at the boundaries of each salary band. In an effort that is similar to our own, Michael Atkinson and Dustin Rogers show that a 2001 increase in Canadian MPs' salaries resulted in the election of more educated MPs at the subsequent election in 2004.⁶

Other empirical studies, however, demonstrate that some of the more pessimistic predictions of the theoretical models are also encountered in the real world. Kaisa Iona Kotakorpi and Panu Poutvaara, for example, show that a significant increase in the remuneration of Finnish MPs led to an increase in the educational status of female candidates but had no discernible effect on the educational status of male candidates.⁷ The result demonstrates higher pay may not always or uniformly improve the quality of candidates who offer themselves for public office. Raymond Fisman et al. demonstrate a more worrisome possibility.⁸ The authors consider the impact of a 1994 harmonisation of the salaries of members of the European Parliament (MEPs). Prior to harmonisation, the salaries of MEPs varied substantially depending on the MEP's nationality. Fisman et al. show that MEPs for whom harmonisation implied a salary increase were more likely to run for re-election than MEPs for whom it implied a salary decrease.⁹ However, they also find that the overall quality of MEPs as measured by their educational pedigree *declined* following harmonisation. This last result is consistent with the theoretical prediction that increased political remuneration may lead low-quality candidates to crowd out high-quality candidates.

We adopt an approach that is common in many of these empirical studies, and take advantage of a series of policy interventions (specifically the 1953 introduction of salaries and pensions and salary increases in 1963 and 2001) to identify the empirical implications of increasing the remuneration offered to Canadian MPs. We also share with a number of these studies a focus on the educational attainment of candidates. Educational attainment is an observable correlate of political skill (e.g., of rhetorical

⁵ Claudio Ferraz and Frederico Finan, 'Motivating politicians: The impacts of monetary incentives on quality and performance', *IZA Discussion Papers*, no. 3411, <http://hdl.handle.net/10419/35111>.

⁶ Michael M. Atkinson and Dustin Rogers, 'Better politicians: If we pay, will they come?', presented at the Annual Meeting of the Canadian Political Science Association, Edmonton, 2012, www.cpsa-acsp.ca/papers-2012/Atkinson.pdf.

⁷ Kaisa Iona Kotakorpi and Panu Poutvaara, 'Pay for politicians and candidate selection: An empirical analysis', *CESifo Working Paper Public Choice*, no. 3126, <http://hdl.handle.net/10419/39019>.

⁸ Raymond Fisman, Nikolaj A. Harmon, Emir Kamenica and Inger Munk, 'Labor supply of politicians', *National Bureau of Economic Research Working Paper*, no. 17726, www.nber.org/papers/w17726.

⁹ *ibid.*

and analytical ability), but it is also a proxy for an individual's earning power in the outside economy and hence of their opportunity cost for participating in politics. An increase in MPs' salaries and pensions should therefore attract more educated candidates to contest elections. We focus on candidates' professional backgrounds (and the teaching and legal professions in particular) for similar reasons. Not only are many more candidates drawn from these two professions than any others, but we have good information from the census on the percentage of teachers and lawyers in the general labour force and on the average earnings of individuals in these two professions. This allows us to assess whether MPs' salaries and pensions were sufficient to encourage lawyers and teachers to become parliamentary candidates in greater numbers than we might expect given the prevalence of these professions in the labour force. Finally, our interest in the age distribution of parliamentary candidates stems from longstanding complaints about the amateurism of the Canadian MPs. If higher levels of remuneration do not induce a younger set of parliamentary candidates to contest elections, and do not result in the election of younger MPs, they are very unlikely to generate longer parliamentary careers. Our examination of the age of parliamentary candidates and first-time MPs sets our study apart from Atkinson and Rogers' study.¹⁰ However, we would also emphasise that our study is also more extensive than Atkinson and Rogers' study (which focuses on the period between 2000 and 2004) in that it takes in a much longer span of Canada's post-confederation history (we trace changes in MPs' remuneration from 1867).

The remainder of the paper is structured as follows. The section immediately following this introduction sets out the context in which the reforms to MPs' salaries and pensions were introduced. We begin by describing the House of Commons' amateurism problem in greater detail. We then relate the grounds on which policy-makers justified the introduction (and increases) of parliamentary salaries and pensions. This section makes clear that a central motivation for the introduction and increase in MPs' salaries and pensions was to induce younger and more qualified individuals to enter the House of Commons. Implicit in the argument that higher levels of remuneration were needed to attract more qualified individuals to the House of Commons is the claim that existing levels of remuneration were insufficient to achieve this. Thus we end the section by describing the history of parliamentary remuneration in Canada and making an effort to develop some standardised basis on which to assess trends in the economic value of MPs' earnings over time. The third section of the paper considers whether the introduction of MPs' salaries and pensions in 1953 and the substantial increase in salaries in 1964 and 2001 resulted in a more professionalised, educated, and younger pool of candidates and first-time MPs. The fourth section of the paper discusses our results.

¹⁰ Atkinson and Rogers, *op. cit.*

II. Context

1. *The amateurism of the Canadian House of Commons*

Michael Atkinson and David Docherty observe that Franks’¹¹ description of Canadian MPs as political amateurs might be interpreted in a number of ways.¹² Amateurism could be taken to imply a lack of training or dilettantism, for example. Certainly, this aspect of Canadian MPs’ amateurism is recognised in the literature. ‘The most notable feature of the Canadian data on previous elected experience,’ V.S. Harder wrote, ‘is the overwhelming lack of it’.¹³ However, Franks’ description of Canadian MPs as amateurs was also intended to stress that they were not *career politicians*.¹⁴ The latter label was due to Anthony King, who used it to describe the character of typical British MPs of the postwar period.¹⁵ British MPs were career politicians not so much by virtue of the fact that they earned their incomes from politics as by their deep psychological commitment to life in politics. These were individuals who, as Weber phrased it, did not just ‘live off politics, but for politics.’¹⁶

One of the empirical hallmarks of a career politician, King argued, was the early age at which they entered the House of Commons.¹⁷ Early entry to the House was important for two reasons. First, it was almost a necessary initial condition of a long parliamentary career. Second, an early entry into politics implied that the individual had surrendered outside career options (in law, medicine, business, etc.) and thereby fully (if implicitly) committed themselves to a political career. Franks’ description of Canadian MPs’ as political amateurs thus implies a corresponding lack of commitment to a political career. Many Canadian MPs perceived their job as a form of community service that was ancillary to their established professional careers. Canadian MPs therefore entered the House later in life, their time in politics representing either a sabbatical from or a capstone to their professional careers. Indeed, prior to 1900 (in the days when the MP’s job was a part-time one) the average age of Canadian MPs on their first entry to the House was 42 years; by 1950 the average age of entry had actually increased to 44 years, despite the fact that the MP’s

¹¹ Franks, op. cit.

¹² Michael M. Atkinson and David C. Docherty, ‘Moving right along: The roots of amateurism in the Canadian House of Commons’, *Canadian Journal of Political Science*, vol. 25, no. 2, 1992, pp. 295–318.

¹³ V. S. Harder, ‘Career Politics and Political Parties’ in J-P Gaboury and J. R. Hurley (eds), *The Canadian House of Commons Observed: Parliamentary Internship Papers*, University of Ottawa Press, Ottawa, 1979.

¹⁴ Franks, op. cit.

¹⁵ Anthony King, ‘The rise of the career politician in Britain – and its consequences’, *British Journal of Political Science*, vol. 11, no. 3, 1981, pp. 249–85.

¹⁶ Max Weber, ‘Politics as a vocation’ in H.H. Gerth and C. Wright Mills (eds.), *From Max Weber: Essays in Sociology*, Routledge and Kegan Paul, London, 1948, p. 84.

¹⁷ King, op. cit., p. 250.

job was by that time a full-time one. Identifying whether the introduction and increase in salaries and pensions lowered the average age at which first-time MPs entered the House is, of course, one of our central concerns.

2. Arguments for higher salaries and pensions

Amateurism is an academic label, and MPs themselves did not employ the term when they debated the introduction and subsequent adjustment of salaries and pensions. It is clear from their comments, however, that MPs had arrived at a similar diagnosis of the situation. When the prime minister of the day (Rt. Hon. Louis St. Laurent) introduced the legislation to provide MPs with salaries and pensions, he justified the measure as one that would ‘strengthen our parliamentary institutions’. Salaries and pensions, St. Laurent argued, ‘would encourage the right kind of men to run for public office, and afterwards, when they had acquired experience, to remain in public life as long as their constituents wished them to do so’.¹⁸ Implicit in St. Laurent’s comments was the contention that parliament had failed to attract and retain the ‘right kind of men’.¹⁹ Agar Adamson, who followed St. Laurent in the debate, was more direct. Professionals could not be expected to give up their careers and enter the House under the current arrangement (i.e., the sessional indemnity), Adamson argued, ‘A pension scheme was necessary if the House was to induce professionals to become MPs’.²⁰

Similar arguments were presented by the government house leader (Rt. Hon. Mitchell Sharp) when the issue of parliamentary salaries and pensions was revisited in 1974. More important than the financial pressure that low salaries placed on the House’s current members was that, ‘people who should be considering running for Parliament are deterred by the insecurity coupled with the low prevailing rates of remuneration’.²¹ Gerald Baldwin spoke for the official opposition, and he largely concurred with Sharp’s assessment. It was imperative, Baldwin stressed, that the House be provided with ‘a continuing inflow of people—hopefully *young people* [our emphasis]’.²² An inflow of youth was vital because it took many years for an individual to develop into an effective member.

¹⁸ Prime Minister Louis Stephen St. Laurent, *House of Commons Debates (Hansard)*, 25 June 1952, p. 3678.

¹⁹ Indeed, in a 1981 debate on MPs’ pay, Walter Baker wryly observed that any argument that higher salaries were needed to attract better people to the House was an admission that the current membership left a lot to be desired. Government House Leader Walter Baker, *House of Commons Debates (Hansard)*, 9 July 1981, p. 11395–6.

²⁰ Member of Parliament Agar Rodney Adamson, *House of Commons Debates (Hansard)*, 25 June 1952, p. 3687.

²¹ Government House Leader Rt. Hon. Mitchell William Sharp, *House of Commons Debates (Hansard)*, 17 December 1974, p. 2333.

²² Official Opposition House Leader Gerald William Baldwin, *House of Commons Debates (Hansard)*, 17 December 1974, p. 2337.

Concerns about the financial pressures on sitting MPs were also expressed in these debates, but as this brief review makes clear, leading parliamentary figures were at least as concerned with the effect of salaries and pensions (or the lack thereof) on the type of people who sought entrance to the House of Commons. The argument was repeated in periodic reports on the remuneration of MPs. Higher pay was necessary to attract young professionals ‘of proven ability’²³, and the plain fact, as one report directly stated, was that ‘good pay is required to attract good people’.²⁴ Of course, not all MPs who participated in these debates agreed with the adoption (and later increases) of salaries and pensions. Most objections, however, were motivated by a concern for economy or to avoid the appearance of self-dealing. In contrast, few opponents of these measures disputed the central claim that the levels of parliamentary remuneration then on offer made it difficult to attract and retain talented individuals to the House of Commons.²⁵

3. The remuneration of MPs, 1867–2011

Implicit in the argument that higher salaries and pensions were needed to attract young and highly capable people to the House of Commons is the claim that existing levels of parliamentary remuneration were insufficient to do this. Judging the factual basis of this claim requires examining what MPs earned at various points in time and developing some basis for comparing the value of those earnings over time. We begin this task by relating the history of remuneration of the members of the House of Commons. This history can be divided into three broad periods:

1. An initial period (1867–1952) where the main vehicle of remuneration was a sessional indemnity;
2. A second period (1953–2000) which saw the introduction of pensions and annual salaries supplemented by a series of allowances;
3. Finally, a third period (2001–2012) in which the elimination of allowances was offset by a substantial increase in MPs’ salaries and (less noticed) an

²³ Canada. Advisory Committee on Parliamentary Salaries and Expenses (Beaupré Committee), *Report of the Advisory Committee on Parliamentary Salaries and Expenses*, [Ottawa], 1970, p. 39.

²⁴ Canada. Commission to Review Allowances of Members of Parliament (Blais Commission), *Supporting Democracy*, [Ottawa], 1998, vol. 1, p. 15. The commission was chaired by Jean-Jacques Blais.

²⁵ Max Saltzman (in the 1952 debate) and Stanley Knowles (in a 1981 debate on MPs’ pay) were significant exceptions to this generalisation. Knowles disputed the argument that higher salaries would attract more talented or better qualified individuals to seek election to the House. The only thing that could be guaranteed, Knowles argued, was that higher salaries would attract people interested in higher salaries (*House of Commons Debates (Hansard)*, 9 July 1981, pp. 11395–6).

increase in the set of parliamentary positions that drew additional stipends. Elements of the pension plan were also scaled back during this third period.

Table 1 below offers further details on the amount and nature of the remuneration provided to Canadian MPs in each of these periods. The information for the years benchmarking the beginning and end of each period provide a sense of the pace and nature of change in MPs' pay over time. Changes in the main instruments of remuneration can be understood as institutional responses to broader political forces. The switch in 1953 from a system of sessional indemnities and per diem allowances to one of fixed annual salaries and pensions, for example, reflected the professionalisation of Canadian politics and a shared recognition among MPs that national politics no longer operated on a part-time or casual basis. Similarly, the consolidation of MPs' various allowances into a single parliamentary salary in 2001 was a concession to the public's demand for greater transparency in how MPs were remunerated.

It is hard to compare the economic value of MPs' remuneration at different points of time on the basis of table 1. First, the full value of MPs' remuneration prior to 1953 hinged on the number and duration of parliamentary sessions in any given year. Second, the nominal amounts of MPs' non-taxable allowances understates the full economic value of these allowances. Third, the amounts shown in table 1 are expressed in nominal terms and so do not reflect changes in purchasing power or relative earning power over time. Figures 1–3 attempt to put the amounts shown in table 1 on a more comparable footing. To do this, we have:

1. translated the sessional indemnities and per diem allowances of the first period into annual amounts conditional on the number and length of the parliamentary session in each year;
2. translated MPs' non-taxable expense allowances into a taxable equivalent and added this amount to their base salaries;²⁶ and
3. translated the resulting amounts into real terms on the basis of i) the consumer price index (so as to account for inflation and control for purchasing power); and ii) average salaries in law and teaching, two professions from which many

²⁶ We estimate the taxable equivalent by multiplying the base amount of the tax-free allowance (\$22 500) by a factor of 1.4. This scaling factor is based on the results of a comparative study of Canadian legislative salaries conducted by the British Columbia legislature (see www.leg.bc.ca/bcmlacomp/media/PDF/Remuneration-Comparisons.pdf). Clearly, this is just an approximation and in reality the scaling factor would vary by an MP's province of residence and what tax bracket they fell into given any outside earnings, tax shelters etc.

MPs are drawn (so as to account for relative earning power and give a sense of the opportunity cost of serving in the House of Commons).

Table 1: The remuneration of Canadian MPs, 1867–2012

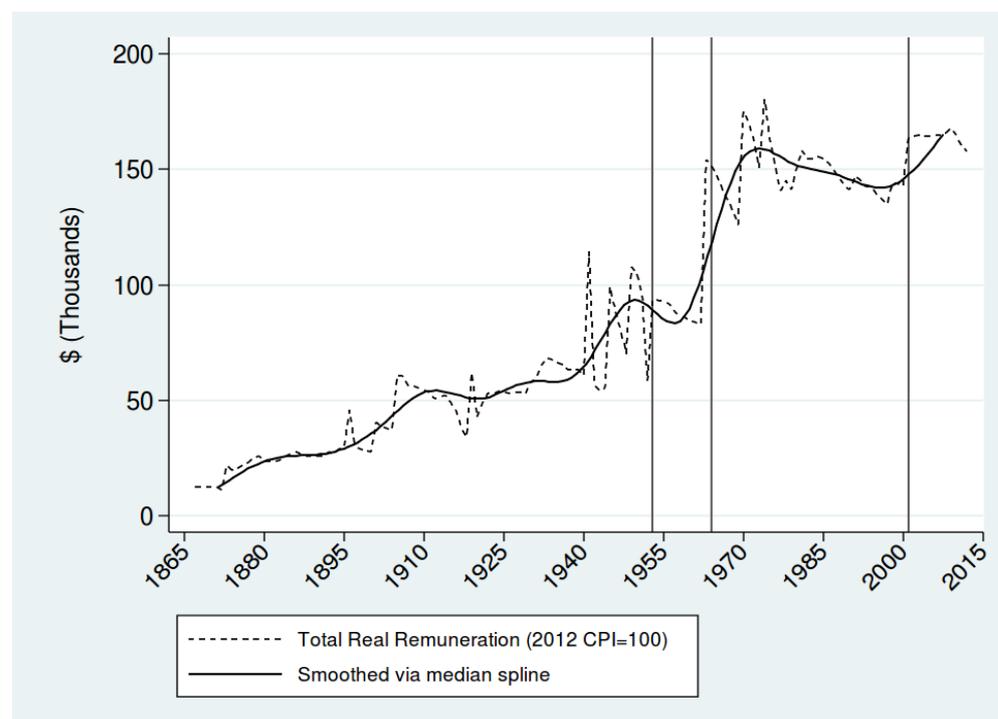
| | Main vehicle of remuneration | Pension | Additional allowances |
|-----------------------------|--|---|--|
| Period 1 (1867–1952) | Sessional indemnity | | |
| 1867 | <ul style="list-style-type: none"> • \$600 for sessions >30 days • \$6 per diem for sessions < 30 days | — | <ul style="list-style-type: none"> • Mileage compensated at \$0.10 per mile |
| 1952 | <ul style="list-style-type: none"> • \$4000 for sessions > 65 days; • \$25 per diem for sessions < 65 days | — | <ul style="list-style-type: none"> • \$2000 tax-free expense allowance |
| Period 2 (1953–2000) | Salary | | |
| 1953 | <ul style="list-style-type: none"> • \$8000 per annum | <ul style="list-style-type: none"> • Vested after: 6 years • Age of eligibility: on defeat or resignation • Indexed to CPI at age 60 • Accrual rate: 5% • Limit: 75% of best 6 years' salary • MP's contribution: 11% of salary | <ul style="list-style-type: none"> • \$2000 tax-free expense allowance |
| 2000 | <ul style="list-style-type: none"> • \$68 200 per annum | <ul style="list-style-type: none"> • Vested after: 6 years • Age of eligibility: 55 • Indexed to CPI at age 60 • Accrual rate: 4% • Limit: 75% of best 5 years' salary • MP's contribution: 9% of salary | <ul style="list-style-type: none"> • \$22 500 tax-free expense allowance • \$12 000 additional (housing) allowance |
| Period 3 (2001–2012) | Salary | | |
| 2001 | <ul style="list-style-type: none"> • \$131 400 per annum | <ul style="list-style-type: none"> • Vested after: 6 years • Age of eligibility: 55 • Indexed to CPI at age 60 • Accrual rate: 3% • Limit: 75% of best 5 years' salary • MP's contribution: 7% of salary* | N/A—but many parliament positions draw additional stipends |
| 2012 | <ul style="list-style-type: none"> • \$157 731 per annum | | |

Source: *Indemnities, Salaries and Allowances: Members of the House of Commons* (www.parl.gc.ca/ParlInfo/Lists/Salaries.aspx?Menu=HOC-Politic&Section=03d93c58-f843-49b3-9653-84275c23f3fb).

*The rate of MPs' contributions has varied over time.

Thus, we ignore the economic value of mileage and housing allowances and pensions. The former can safely be ignored because the amounts are generally small. Excluding pensions from the calculation is more controversial, however, because these amounts can be quite significant. For example, any current MP who retired at 60 years of age after just eight years' service would be entitled to upwards of \$50 000 per annum indexed to inflation—and this sum might well be collected for 20 years given modern lifespans. This substantially distorts any effort to compare the financial position of MPs before and after the introduction pensions. Equally, any effort to translate pensions into an income equivalent rests on a host of actuarial assumptions (e.g., the average length of an MPs' tenure, the probability that the MP held a parliamentary position that conferred an additional stipend, the average age of retirement and years of survival after retirement, etc.) that inject tremendous uncertainty into any resulting estimate. More important, we feel, is to recognise that the introduction of pensions fundamentally reduced the risk inherent in a parliamentary career.

Figure 1: MPs' annual remuneration in real terms, 1867–2011



Sources: Data on MPs' remuneration obtained from *Indemnities, Salaries and Allowances: Members of the House of Commons* (www.parl.gc.ca/ParlInfo/Lists/Salaries.aspx?Menu=HOC-Politic&Section=03d93c58-f843-49b3-9653-84275c23f3fb). Price indexes obtained from Blais Commission, *Supporting Democracy* (1998, vol. 2, pp. 88–91) and CANSIM Table: 3260020 Vector: V41690973.

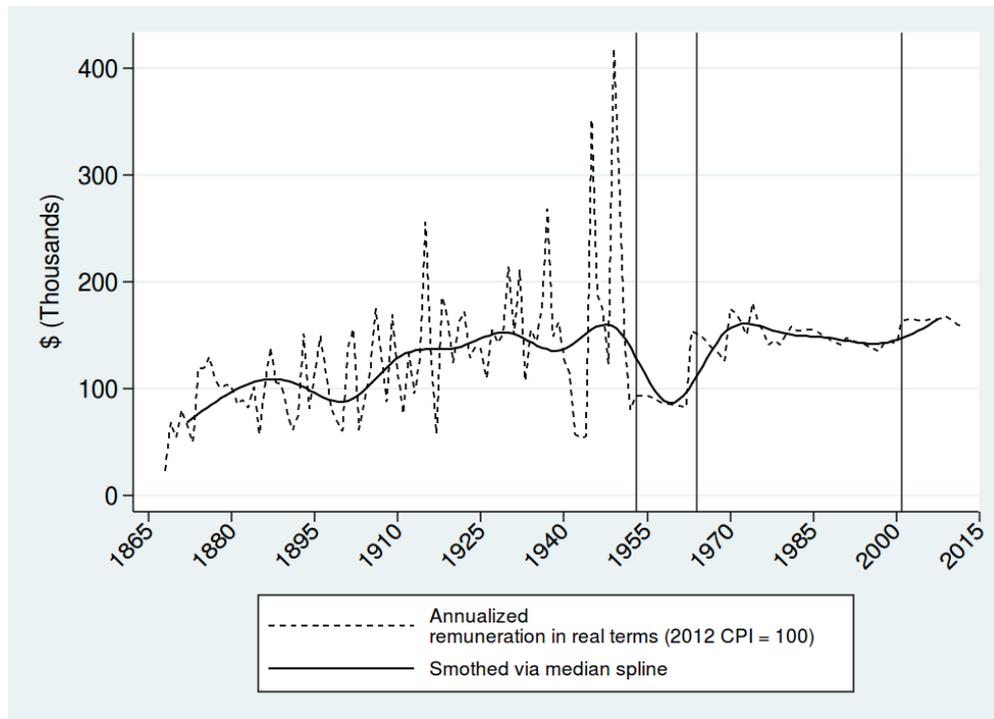
Figure 1 shows a long-run increase in remuneration of Canadian MPs in real terms. Certainly, there were identifiable periods of stagnation in the level of remuneration that MPs' received, for example, between 1955 and 1963 and 1975 to 2001. Equally, pay increases in 1964 and 2001 more than offset any short-term decline in the

purchasing power of MPs' salaries. Even the decline in the real value of MPs' remuneration immediately following the introduction of salaries is a bit of an illusion. When MPs were paid by the session, years in which the House sat for two sessions brought MPs a windfall. Such years were rare in the 1920s and 1930s, and hence the \$8000 salary introduced in 1953 significantly increased the level of MPs' remuneration relative to the 1920s and 1930s. In 1949, 1950, and 1951, however, there were two sessions in the year and MPs earned \$8000 per annum. The initial annual salary of \$8000 thus appears as a continuation of immediately prevailing conditions, but these conditions were quite atypical. Indeed, the overall upward trend in figure 1 belies the claim (oft-repeated in the Hansard and various commission reports) that the real value of MPs' remuneration was in long-term decline; quite the opposite, the upshot of figure 1 is that the real value of the remuneration paid to MPs was increasing over time. The central reason why our estimates show no evidence of a long-term decline in the real value of MPs' remuneration is that we have included the non-accountable, tax-free allowances that MPs received between 1945 and 2000 as part of MPs' annual earnings. The decision is easy to defend: the Blais Commission report itself remarked that MPs had come to view their tax-free allowances as part of their salaries.²⁷

MPs' earnings may have outpaced inflation, but they did not necessarily keep pace with the growing demands of the job—and these had changed dramatically over the course of 150 years. The job of a nineteenth-century Canadian MP was a part-time one. There would typically be just one session per year. Sessions comprised an average of 70 sitting days and a little over 100 days in total. There were no specialised committees to attend. By the 1950s the job of an MP was a full-time one and an exceedingly demanding one. Sessions nowadays take up the whole calendar year, requiring MPs to travel regularly between Ottawa and their constituencies and to maintain two permanent residences. In addition to participating in the chamber, MPs sit on several committees and grapple with ever more complex policy questions. MPs always had to attend to their constituents, of course, but electorates are now so large that MPs must establish and then manage an office, staff, and budget to meet constituents' needs.

²⁷ Blais Commission, *Supporting Democracy*, op. cit., vol. 1, p. 32.

Figure 2: MPs’ real remuneration ‘annualised’ by the duration of parliamentary sessions



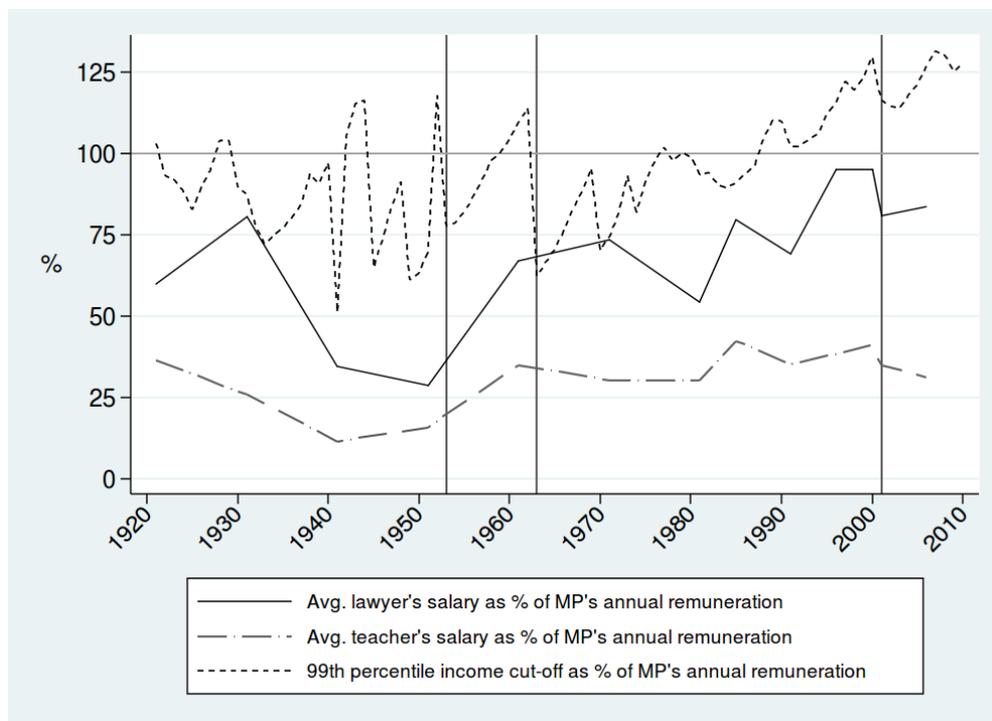
Source: Parliaments—Duration of Sessions, www.parl.gc.ca/ParlInfo/compilations/parliament/Sessions.aspx?Language=E.

To better compare the value of MPs’ pay across time, figure 2 ‘annualises’ remuneration by multiplying MPs’ earnings by a weighted inverse of the session’s duration. A session of 122 days, for example, would see that year’s pay multiplied by three (i.e., $365.25/122$).²⁸ This methodology gives one a sense of what MPs in the era of sessional indemnities would have earned annually had their jobs been full-time ones as is the case nowadays. The Blais Commission used a very similar methodology. Estimates of the relative value of MPs’ pay generated by this methodology are certainly more supportive of the commission’s contention that the value of MPs’ pay had stagnated. There are points, notably in the late 1950s and early 1960s, where the introduction of fixed salaries left MPs worse off than they were in the late 1890s *given the time demands of the job*. Bear in mind that this comparison rests on the counter-factual notion of MPs in the 1870s having been paid year round; in fact, they were not. Moreover, as we noted above, the effect is amplified by the fact that MPs were unusually well-compensated for their time in the few years just prior to the introduction of salaries as a result of there being two sessions per year. Even so, it is clear from figure 2 that the 1964 pay hike was required to bring MPs’ remuneration

²⁸ All sessions after 1953 (when salaries and pensions were introduced) were assumed to last the entire year (i.e. they were weighted by a factor of one).

back into line with increased time demands of the job. The 2001 pay increase had a similar albeit less dramatic effect.

Figure 3: MPs’ annual remuneration compared to salaries of lawyers and teachers and to the 99th percentile income cut-off



Sources: World Top Incomes Database (<http://topincomes.g-mond.parisschoolofeconomics.eu/#Home>); Dominion Bureau of Statistics: *Seventh Census of Canada, 1931* (Ottawa: J.O. Patenaude, King’s Printer, 1936); *Eighth Census of Canada, 1941* (Ottawa: E. Cloutier, King’s Printer, 1943); *Ninth Census of Canada, 1951* (Ottawa, E. Cloutier: Queen’s Printer, 1953); *Census of Canada, 1961* (Ottawa: King’s Printer, 1967); *Census of Canada, 1971* (Ottawa: Statistics Canada, 1977); *Census of Canada, 1981* (Ottawa: Statistics Canada, 1983); *Census of Canada, 1991* (Ottawa: Statistics Canada, 1994); *2001 Census of Population* (Statistics Canada catalogue no. 97F0019XCB2001003); *2006 Census of Population* (Statistics Canada catalogue no. 97-563-XCB2006062); Employment Income Statistics in Constant (2005) Dollars, Work Activity in the Reference Year, Occupation—National Occupational Classification for Statistics 2006 (720A) and Sex for the Population 15 Years and Over With Employment Income of Canada, Provinces and Territories, 2000 and 2005—20% Sample Data (2006 Census Analysis Serial no. 97-563-XCB2006062) (Ottawa: Statistics Canada, 2008).

Figure 3 offers a third perspective on the value of MPs’ remuneration over time. The figure expresses the annual salaries of lawyers and teachers and the 99th percentile income cut-off as percentages of MPs’ annual remuneration. In 1921, for example, lawyers’ average annual salaries comprised approximately 60 per cent of an MP’s annual remuneration, whilst teachers’ average annual salaries comprised just below 40 per cent. In other words, MPs were better paid in 1921 than the average lawyer and much better paid than the average teacher. Indeed, the level of MPs’ remuneration in

1921 left them just outside of the highest one per cent of income earners in the country at that time. One can discern in figure 3 a ratchet-like pattern to MPs' relative financial positions in which they decline steadily for some period until sharply increased by a pay hike. Note, for example, that MPs did very well in the 1930s and 1940s relative to teachers, lawyers, and the very rich (i.e., the top one per cent). This was because MPs' remuneration in those decades was conditioned on the number and length of parliamentary sessions, and hence in contrast to the incomes of other groups was largely unaffected by the long economic downturn of the Great Depression and Second World War. One can also see that the introduction of salaries in 1953 left MPs in an enviable financial position, well within the top one per cent of income earners in 1953. This was then followed by a steady decline in the relative value of MPs' incomes as the incomes of teachers, lawyers and the very rich increased rapidly in the postwar period. The 1964 pay raise brought this decade-long decline to an end and restored MPs' relative financial advantage. A much longer period of decline then set in. The decline accelerated in the 1990s (a product of a freeze in MPs' pay and an economic boom that propelled incomes of the well-off) until it too was halted by the pay raise of 2001.

Despite this ratchet-like rise and fall in MPs' relative earnings, the central thrust of figure 3 is that MPs have always enjoyed a premium in earnings relative to lawyers and teachers, at least since 1921 (which is as far back as we have been able to recover these data from the census). This is a striking result because it stands in sharp contrast to the conclusions that the Blais report drew from similar data. The Blais Commission's data showed that lawyers were out-earning MPs by 1985 and significantly out-earning them by 1990. The same report showed that teachers' annual salaries were on average 87 per cent of MPs' salaries in 1996²⁹, much higher than any corresponding figure in our own data. These results contrast sharply with ours. A number of factors contribute to these discrepancies, but the most important is our decision to count as part of MPs' annual remuneration the taxable equivalent of MPs' non-accountable expense accounts. When these allowances were phased out in 2000, they amounted to \$22 500 per annum. We estimate the taxable equivalent of this \$22 500 to be \$31 500, or about 46 per cent of an MP's 2000 base salary of \$68 200. The Blais Commission ignored these amounts and based the comparison solely on MPs' salaries. We consider their decision an odd one because the commissioners themselves stressed that MPs had come to view the non-accountable tax-free allowance as part of their salaries.³⁰

²⁹ Blais Commission, *Supporting Democracy*, op. cit., vol. 2, pp. 91–2.

³⁰ *ibid.*, vol. 1, p. 32. Two other factors also contribute to the discrepancy between our results and those of the Blais Commission:

1. The Blais report based its comparison of MPs' and teachers' salaries on the salaries of *secondary school* teachers. In contrast, our comparison is based on the salaries of *primary and secondary school* teachers. Our decision on this matter was driven by the fact that the census

It is useful to review the discussion to this point. Salaries and pensions were introduced in 1953 because MPs largely agreed that the low pay and inherent insecurity of a parliamentary career deterred young, qualified professionals from entering the House. Pay hikes in 1964 and 2001 were predicated on similar arguments. Our examination of the level of MPs' remuneration suggests that MPs' earnings were never so low as to make being an MP a wholly unattractive economic proposition; over the long run MPs' pay kept pace with inflation and with earnings in law and teaching. However, there were periods where a sharp increase in the workload relative to the pay (e.g., 1955–1963 in figure 2) or a salary freeze (e.g., 1990–2000 in figure 1) caused the value of MPs' remuneration to stagnate temporarily. The data make clear, however, that the pay hikes of 1964 and 2001 (especially the former) brought about abrupt ends to these periods of stagnation. It is not unreasonable to hypothesise that such surges in the level of MPs' remuneration would attract young professionals to contest parliamentary elections. It is less clear that the introduction of salaries and pensions in 1953 was as powerful an inducement to these sorts of candidates. The \$8000 salary was a significant increase on what MPs earned in the 1930s (see figure 1) and it left them well within the top one per cent of Canadian income earners (see figure 3), but it may not have adequately compensated MPs for the increased time demands of the job (see figure 2). That said, the introduction of pensions ostensibly reduced the risk inherent in a parliamentary career, and this should have made it a more attractive career option for young professionals.

did not distinguish between primary and secondary school teachers until 1971. The implications of this decision are not trivial. Secondary school teachers earn significantly higher salaries than primary school teachers. Moreover, even as late as 2005 female teachers earned substantially less than male teachers. Not only do primary school teachers outnumber secondary school teachers 2:1, but primary school teachers are disproportionately female. The upshot is the Blais Commission was essentially comparing MPs' salaries to those of the very highest earning teachers.

2. The census and labour force surveys from which our data are derived provide estimates of lawyers' *salaries*. This raises two issues. First, lawyers who are employed by larger firms may earn significant annual bonuses that do not appear in our data. Second, lawyers who are paid mainly via salary tend to be either associates or in-house counsils. In contrast, senior partners may be remunerated by other means (e.g., by taking a dividend of the firm's profits). We are therefore sensitive to the possibility that our own comparison of MPs' and lawyers' earnings is based on an underestimate of lawyers' earnings. Still, looking at industry reports (e.g., Robert Half Legal 2011, 18 [www.law.ca/system/files/RHL_SalaryGuide_2011%5B15D.pdf]) shows that MPs' earnings are commensurate with those of lawyers of 4–9 years' experience at mid- and large-sized Canadian law firms. Only the most senior lawyers at the largest firms earn substantially more than MPs.

III. Did salaries and pensions work as intended?

1. Methodology

In this section we assess whether the introduction of and subsequent increases in MPs' salaries and pensions induced younger, more educated, and more professional individuals to stand for office and enter the House. Our methodology is straightforward in that it involves simple comparisons of the characteristics of candidates before and after changes in level and form of MPs' remuneration. There is always a possibility that changes in the characteristics of the candidate pool simply reflect contemporaneous changes in the population at large. To account for that possibility we focus on whether there is a discontinuity in the characteristics of the candidate pool (e.g., a dip in candidates' average age) *relative to the population at large* immediately following these changes. Still, this is a lenient standard of evidence. If changes to MPs' salaries and pensions do not generate effects that meet this standard, we have little reason to accept the broad claim on which these policies were based, i.e., that high levels of remuneration are necessary to attract highly qualified individuals to the House of Commons.

We also track changes in the age distribution, professional composition, and educational attainment of first-time MPs. This is partly because the quality of data on MPs is sometimes better than it is for candidates, but more importantly because the ultimate aim of these policies was to improve the quality of MPs in the House.³¹ We caution against focusing too narrowly on the qualities of new MPs, however, as doing so can lead to misleading inferences. For example, if different parties attract candidates from different socio-economic backgrounds (and this seems likely), the characteristics of new MPs will be a function of the ebb and flow of the parties' respective fortunes at elections rather than a response to changes in the level of MPs' salaries.

2. Data sources

The Library of Parliament's PARLINFO database on members of parliament and parliamentary elections and candidates serves as our main source of data.³² One of the main strengths of the database is that it provides an occupation for almost every single candidate who has contested a parliamentary election. This enables us to track changes in the occupational composition of the set of parliamentary candidates with a fair degree of accuracy. It is sometimes the case that the same individual is listed as

³¹ We limit our attention to first-time MPs for the logical reason that the characteristics of sitting MPs cannot be due to policies that were passed after they were elected.

³² The database can be accessed at www.parl.gc.ca/parlinfo/.

having more than one occupation (e.g., a lawyer who is elected as an MP is subsequently listed as a parliamentarian). In addition, not all occupational labels can be readily matched to the occupational categories employed by the census, obscuring information about an individual's earning power in the outside economy (e.g., as when a candidate is listed as a 'businessman' or 'retired'. We deal with these issues by recording the first-listed occupation for a candidate unless that occupational label is uninformative, in which case we replace it with the second-listed occupation if one is available. This mainly affects parliamentarians and retirees who we list under their prior occupations when at all possible.

The PARLINFO database is less helpful in tracking candidates' ages and educational qualifications. For the most part, the database provides these data only for MPs. However, we are able to get a fairly good sense of the age distribution of unelected candidates by using the data provided by the three candidate surveys conducted in 1993, 2008, and 2011. We are also able to find the ages of many candidates by searching for profiles of parliamentary candidates, and these were relatively easy to find from 1984 onward. For educational qualifications, however, we are confined to the data that PARLINFO provides on MPs. The database often lists MPs' academic and professional designations and titles (e.g., The Hon. Stephane Dion, BA, MA, PhD.), and from these designations we can accurately infer that the MP in question attained a certain level of education. We are sensitive to the fact that the absence of any such designations cannot necessarily be taken to indicate that an MP *did not* attain a certain level of education. When an MP's educational credentials were not listed but the MP's prior occupation was such that a particular level of education could be inferred safely (e.g., The Hon. Dr Grant Hill, MD), we assumed the individual had the minimum level of education consistent with that occupation. In particular, we assumed that medical doctors, university professors, lawyers, engineers, and teachers had at least an undergraduate degree. We confined these inferences to the period after 1970 by which time most professions had become credentialed and formalised. Few secondary teachers in the 1950s, for example, had university degrees; by the 1980s, most did. We were able to check some of our inferences against concrete data from the 1993 candidate survey. It was only very rarely (i.e., in fewer than one case in 100) that we imputed a higher level of educational attainment to an individual than they in fact possessed; it was more often the case that we underestimated the individual's level of education because many of the professionals we assumed to have undergraduate degrees also held higher degrees. For this reason, we measure educational attainment by the percentage of undergraduate degree holders among MPs. We are confident that this statistic is a reliable estimator of the *minimum* percentage of undergraduate degree holders among MPs, but stress that it is not to be taken as a measure of the average level of education among MPs.

Finally, we can note that our data on the Canadian population (or more often the economically active portion of the Canadian population aged between 18 and 64 years) are drawn mainly from the decennial censuses conducted in the first year of each decade. Half-decennial censuses were also conducted in 1986, 1996, and 2006. We are often able to take advantage of annual statistical surveys conducted by the Dominion Bureau of Statistics or Statistics Canada to fill in some of the data in non-census years. Where no such data are available, we assume a linear interpolation of the data between census years.

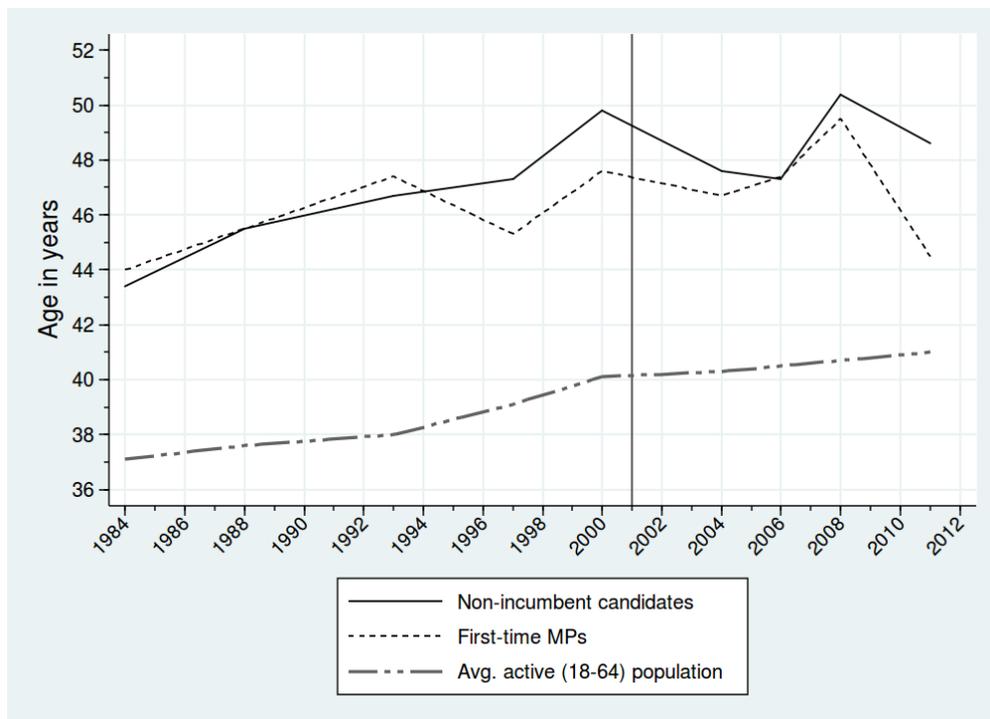
We remind the reader that our interest in the age, occupational status, and educational qualifications of parliamentary candidates is not motivated by any normative contention as to the superiority of young, educated professionals as MPs. Rather we are interested in these characteristics mainly because MPs themselves saw higher salaries and pensions as means to attract people with these characteristics to the House of Commons. Our interest in the age of candidates also comes about because it is an obvious metric of the amateurism of the Canadian House of Commons. Canadian MPs are unlikely to become long-serving professional politicians unless they manage to enter the House at a young age; this requires that they stand as candidates at a young age. Similarly, it is useful to focus on these traits (as opposed to less well-defined notions of quality, competence, or talent) because they provide a concrete means to assess whether changes in the level of MPs' remuneration had any effect. We are well aware that youth, professional standing and educational attainment are imperfect indicators of political quality, competence or talent. However, it strikes us that if changes in the level of MPs' remuneration have no effect on the age, occupational status, and educational qualifications of parliamentary candidates (and no better indicator of quality, etc. is on hand), then one has no empirical basis whatsoever for claiming that higher pay attracts better politicians. This does not imply that evidence of such changes is sufficient to establish that higher pay attracts better politicians, but such evidence is certainly necessary if the claim is to be empirically grounded.

3. Changes in age

Figure 4 graphs the average age (in years) of non-incumbent candidates and MPs elected for the first time. Figure 4 also shows the average age of the Canadian population 18 to 64 years. One might reasonably consider this group to be the population from which candidates are drawn, and hence it provides a frame of reference with which to assess whether or not changes in the age of candidates and MPs are merely reflective of similar changes in the population at large. We have reliable data on candidates' ages only for the 1984–2011 period, and so we focus on the impact of the 2001 pay hike. The hypothesis is that the pay hike should induce younger individuals to contest elections in an effort to enter the House because it

makes a parliamentary career a relatively more attractive career option. Put differently, a significant increase in MPs' salaries might induce those young professionals who might only enter politics once well-established in their chosen fields instead to enter politics immediately and establish political careers. Consistent with that hypothesis, figure 4 shows a marked decline in the age of non-incumbent candidates (and a correspondingly modest decline in the age of first-time MPs) at the 2004 elections, the first election held after the 2001 pay increase came into effect.³³ These changes, moreover, ran against the trend of a gradually ageing population of 18–64 year-olds.

Figure 4: Age of non-incumbent candidates and first-time MPs, 1984–2012



Sources: Candidates: 1993 Canadian Candidate Study; 2008 Comparative Candidate Study; Survey of Candidates of the 41st Federal Election (www.elections.ca/res/rec/eval/pes2011/can/can_survey_e.pdf). In addition, the authors conducted newspaper searches for candidates' birth dates at all these elections. MPs: Members of the House of Commons (www.parl.gc.ca/parlinfo/Lists/Members.aspx); CANSIM Table 51001 (http://estat.statcan.gc.ca/cgi-win/CNSMCGI.EXE?Lang=E&RootDir=Estat/&ESTATTemplate=Estat/CII_PICK&Version=2&Array_Pick=1&ArrayId=510001&SDDSLOC=//www.statcan.ca/cgi-bin/sdds/sdds.cgi?sdds=*).

If we confined our attention to the dramatic change in the average age of non-incumbent candidates at the 2000 and 2004 elections, we might well conclude that the 2001 pay increase worked as intended. However, this conclusion does not hold up well when considered against the full span of the data. First, the decline in the age of

³³ The average age of non-incumbent candidates declined by 2 years and 2 months, from 49.8 years to

non-incumbent candidates in 2004 is relative to a spike in the average age of non-incumbent candidates at the 2000 election. Second, the decline in the age of non-incumbent candidates in 2004 is quickly reversed at the 2008 election. A more compelling interpretation of the data is that the trend in the average age of candidates simply mirrors that in the general population, with differences between the two groups a function of a fairly stable age difference between candidates and the population (of about seven years) and the short-run effects of election swings. The low average age of non-incumbent candidates and first-time MPs in 1984, for example, coincides with the election of a massive Progressive Conservative majority under Brian Mulroney. Similarly, the decline in the average ages of non-incumbent candidates and first-time MPs in 2011 is due mainly to the surprising electoral breakthrough of the New Democratic Party and election of many first-time NDP candidates. Consistent with this alternative interpretation is the fact that the data definitively reject the hypothesis that the average age of candidates declined after 2001; in fact, it increased by two years—exactly as much as the population average.

4. Changes in professional background

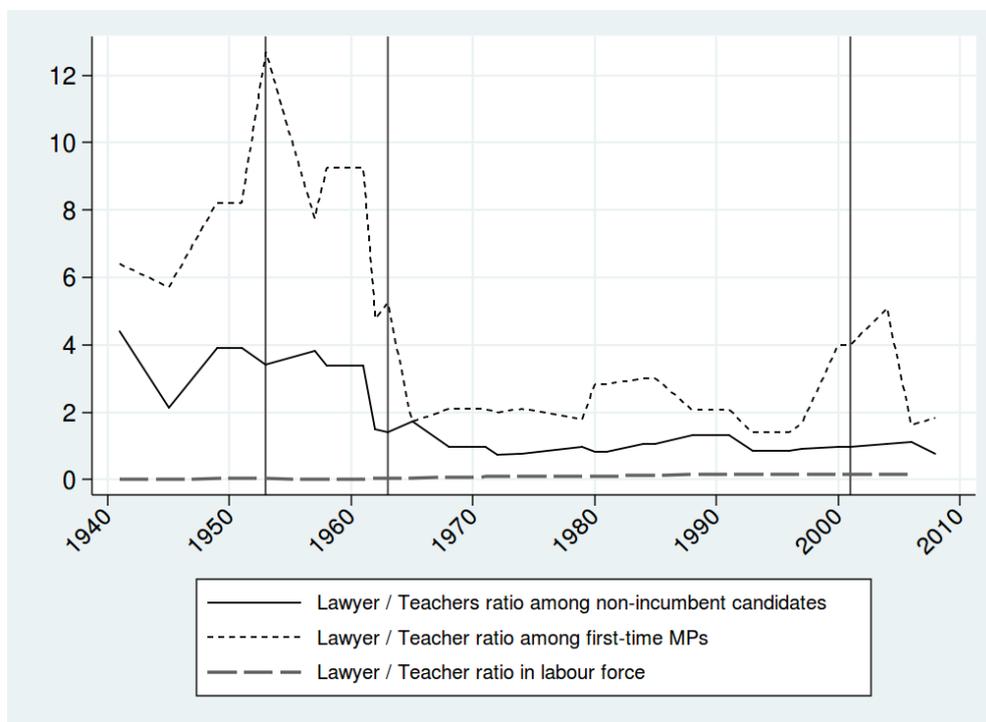
The full set of occupations from which candidates are drawn is both highly diverse and unstable over time (e.g., with telegraph operators giving way to software engineers). It is neither sensible nor informative therefore to assess changes in the occupational diversity of candidates and MPs by tracking every change in every occupation. We focus instead on *changes in the ratio* of lawyers to teachers among non-incumbent candidates and first-time MPs. We do so for three reasons. First, lawyers and teachers are identifiable and longstanding occupational groups. Second, law and teaching are among the largest sources of candidates and MPs, with just over 18 per cent of candidates and 30 per cent of MPs drawn from these two occupations. Third, we have a clear sense (from figure 3) of the relative opportunity costs of serving in parliament for members of these two professions. This information allows us to construct a reasonable hypothesis about how the ratio of lawyers to teachers in the candidate pool should respond to changes in the level of MPs' remuneration.

Our theoretical argument begins with the observation that being an MP has always been a less attractive economic proposition for lawyers than teachers. It is therefore reasonable to assume that changes in the remuneration of MPs have a much greater marginal effect on the propensity of lawyers rather than teachers to seek election to parliament. Consider, for example, the hypothetical impact of a modest change in MPs' remuneration in the 1990s when the annual incomes of lawyers and MPs were almost equal. At that point, a deterioration in the remuneration of MPs would be sufficient to dissuade the average lawyer from taking up a political career. In contrast,

47.6 years. A t-test indicates that this difference is statistically significant at $p < .05$.

an improvement in the remuneration of MPs at this point might be sufficient to convince the average lawyer to enter or remain in politics. For the average teacher, however, a career as an MP implies (and has always implied) a substantial increase in income. Modest increases or decreases in the level of MPs' remuneration do not really alter this essential fact and hence should have little impact on the average teacher's decision to enter or withdraw from politics. If changes in MPs' remuneration mainly affect the propensity of lawyers to enter politics and have little effect on the propensity of teachers to enter politics, it follows that the ratio of lawyers to teachers (i.e., the number of lawyers divided by the number of teachers) in the candidate pool should increase when MPs' pay rises and decrease when MPs' pay falls.³⁴

Figure 5: The ratio of lawyers to teachers among non-incumbent candidates and first-time MPs



Sources: The national statistics such as number of lawyers, teachers and labour force were found in following resources: Dominion Bureau of Statistics, *Seventh Census of Canada, 1931* (Ottawa: J.O. Patenaude, King's Printer, 1936); *Eighth Census of Canada, 1941* (Ottawa: E. Cloutier, King's Printer, 1943); *Ninth Census of Canada, 1951* (Ottawa: E. Cloutier: Queen's Printer, 1953); *Census of Canada, 1961* (Ottawa: King's Printer, 1967); *Census of Canada, 1971* (Ottawa: Statistics Canada, 1977); *Census of Canada, 1981* (Ottawa: Statistics Canada, 1983); *Census of Canada, 1985* (Ottawa: Statistics Canada, 1989); *Census of Canada, 1991* (Ottawa: Statistics Canada, 1994); *2001 Census of Population*

³⁴ It could, of course, be the case that lawyers' propensity to enter or leave politics is driven more by changes in lawyers' salaries rather than by changes in the remuneration of MPs. Such a dynamic could result in lawyers retreating from politics even as the remuneration of MPs increases. Even if this were the case, however, the ratio of lawyers to teachers among parliamentary candidates would still provide an accurate estimate of the *relative* willingness of lawyers and teachers to enter politics.

(Statistics Canada catalogue no. 97F0019XCB2001003); *2006 Census of Population* (Statistics Canada catalogue no. 97-563-XCB2006062); Employment Income Statistics in Constant (2005) Dollars, Work Activity in the Reference Year, Occupation—National Occupational Classification for Statistics 2006 (720A) and Sex for the Population 15 Years and Over With Employment Income of Canada, Provinces and Territories, 2000 and 2005—20 per cent Sample Data (2006 Census Analysis Serial no. 97-563-XCB2006062) (Ottawa: Statistics Canada, 2008.) Statistics Canada. *Table 051-0001—Estimates of population, by age group and sex for July 1, Canada, provinces and territories, annual (persons unless otherwise noted)*, CANSIM (database), Using E-STAT. Occupational data on MPs and candidates are obtained from www.parl.gc.ca/parlinfo/Lists/Members.aspx.

Figure 5 above shows the ratio of lawyers to teachers among non-incumbent candidates and first-time MPs from 1940 to 2011. The graph also shows the ratio of lawyers to teachers in the Canadian labour force. The thick dashed line representing the latter ratio is essentially flat. This tells us that there were no fundamental changes in the balance of lawyers to teachers in the labour force throughout the period, and suggests that it is unlikely that changes in the ratio of lawyers to teachers among candidates and MPs are a result of changes in economy at large. The most striking feature of figure 5 is the sharp decline in the ratio of lawyers to teachers among first-time MPs. It is tempting to interpret this decline as evidence of lawyers withdrawing from politics in response to the decade-long stagnation of the value of MPs' pay in the mid-1950s (per figures 1 and 2), but such an interpretation cannot be sustained. The ratio of lawyers to teachers among first-time MPs confounds the willingness of members of these two professions to enter politics with their relative success at getting elected. It is the former not the latter that we expect to be affected by changes in the value of MPs' pay. The ratio of lawyers to teachers among non-incumbent candidates was actually quite stable from the late-1940s to the early 1960s. This suggests that lawyers remained quite willing (or at least as willing as teachers) to enter politics notwithstanding any stagnation or deterioration in the real value of MPs' remuneration, at least until 1962. There was at that point a steep and sudden decline in the ratio of lawyers to teachers among non-incumbent candidates at the 1962 election. This decline was not due in any obvious fashion to changes in the level or value of MPs' remuneration, however: it occurred nine years after the introduction of salaries and pensions and a year before the 1963 pay hike; the decline in the real value of MPs' salaries that occurred in this period set in over the course of several years, not all at once just prior to 1962; the same is true of the increases in lawyers' salaries that occurred in this period.³⁵ The only features of figure 5 that are consistent with the argument that higher pay for MPs attracts well-paid (and implicitly highly qualified)

³⁵ Moore describes a terrific growth in the demand for and remuneration of legal services starting in the late-1940s and lasting through to the early 1970s. Much of the initial growth, Moore argues, was driven by the adoption of the Rand formula (governing industrial relations) in 1944 and significant overhauls of the tax code in 1949 and 1952. The reader will note that all this legislation pre-dates the sharp and sudden decline in 1962 of candidates drawn from the legal profession. See Christopher Moore, *The Law Society of Upper Canada and Ontario's Lawyers 1797-1997*, University of Toronto Press, Toronto, 1997, chapter 5.

individuals to enter politics are the two slight increases in the ratio of lawyers to teachers among non-incumbent candidates that occur immediately after the introduction of salaries in 1953 and the pay hike of 1963. Equally, these increases were not only short-lived, they were small in magnitude relative to the sudden drop in the ratio of lawyers to teachers among candidates at the 1962 election, and they are statistically indistinguishable from random variation in the data.

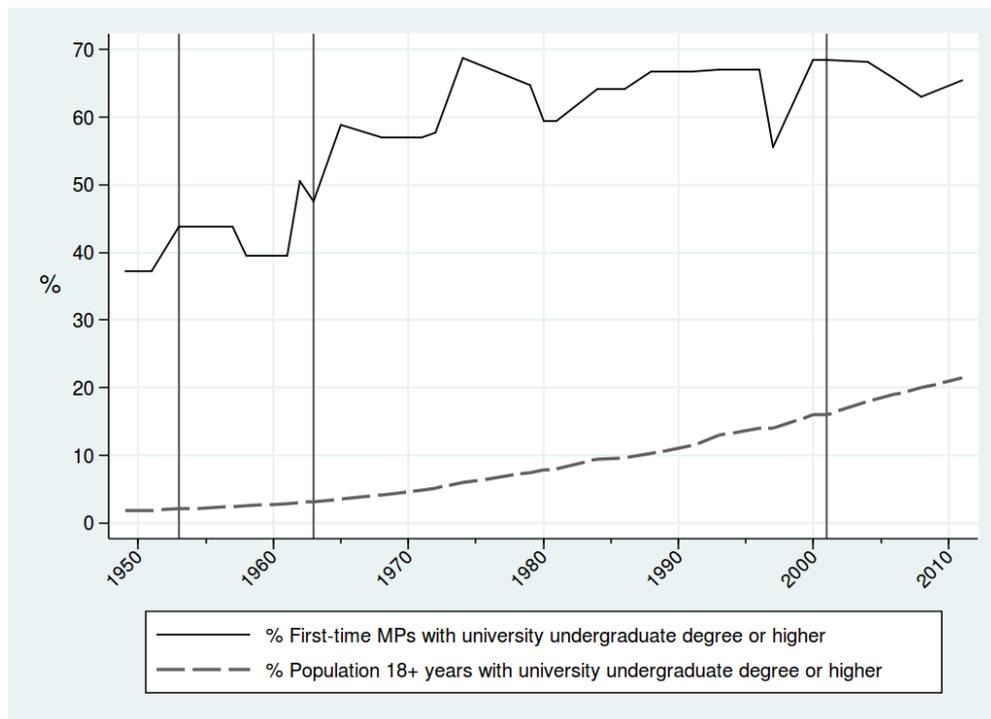
5. Changes in educational attainment

Figure 6 shows the percentage of first-time MPs who possess an undergraduate university degree. We remind and caution the reader that this percentage is a minimum estimate, i.e., the percentage of MPs with undergraduate degrees is at least as high as shown in figure 6, but it may be higher. Recall also that we do not have a similar time series for parliamentary candidates, and as figure 5 above shows, there can be significant differences between MPs and candidates. MPs were always substantially better educated than the general adult population. In the 1950s this was largely due to the fact that only a small fraction of the population had graduated from university. However, it remains true even today when upwards of 20 per cent of Canadian adults possess university degrees. The House of Commons has obviously been successful in recruiting educated individuals. What is less obvious is what role if any MPs' salaries and pensions have played in recruiting these educated individuals. Even to the naked eye, it is clear that the salary hike of 2001 had little impact in this regard. Aside from the dip in the percentage of degree-holders among first-time MPs in 1997, the percentage of first-time MPs with degrees was fairly stable from 1984 onward. Certainly, the percentage of new MPs with degrees did not rise after the 2001 pay hike (though it was already at a very high level). Much the same can be said with regard to the introduction of salaries and pensions in 1953; it had little immediate impact.

The 1963 salary increase stands out as quite different. The percentage of degree-holders among MPs elected at the 1965 election, the first general election to follow the pay increase, was 11 per cent higher than among those elected in 1963. Part of this increase was due to an increase in the number of university graduates in the adult population—but only a small part: the percentage of degree-holders among the adult population increased from 2.9 to 4.8 per cent between 1961 and 1971. One might contend that the sharp increase in degree-holding MPs at the 1965 election was merely the continuation of a trend that began at the 1962 election, when the percentage of first-time MPs with degrees jumped from 39.5 to 50.5 per cent. There is also a second surge in degree-holding first-time MPs in 1974, years after the 1963 salary increase to account for. Yet the continuation of the 1962 trend was not inevitable. In fact, it stalled almost immediately as the percentage of new MPs with

degrees at the 1963 election fell slightly to 47.5. Similarly, the surge in 1974 tells us only that the 1963 salary increase was not a *necessary* condition for attracting degree-holders to the House of Commons; it certainly appears to have been *sufficient* condition, however.

Figure 6: Percentage of first-time MPs with undergraduate university degree or higher



Sources: 1949–1989: Derived from *Historical Statistics of Canada*, Degrees awarded by Canadian universities and colleges, by sex, Canada, selected years, 1831 to 1973 (Table W504-512), Ottawa: Statistics Canada, 2008 (www.statcan.gc.ca/pub/11-516-x/11-516-x1983001-eng.htm). 1990–2008 HRSDC calculations based on Statistics Canada. *Labour force survey estimates (LFS), by educational attainment, sex and age group, annual* (CANSIM Table 282-0004). Ottawa: Statistics Canada, 2012; Members of the House of Commons (www.parl.gc.ca/parlinfo/Lists/Members.aspx).

IV. Discussion

The introduction in 1953 of salaries and pensions for MPs, and the subsequent increases and alteration of these benefits in 1963 and 2001, were policies that were intended to attract a ‘better grade’ of candidate to the House: young, well-educated, and professional. We have attempted to assess the effectiveness of these policies. Our evidentiary standard has not been overly demanding: all we required to declare these policies as having achieved their objective was to observe a change in the age distribution, professional composition, or educational attainment of candidates or first-time MPs independent of what we might expect given contemporaneous changes

in the broader population. Despite this lenient evidentiary standard, we find only one unambiguously positive result. The 1963 salary increase appears to have been sufficient to attract a cohort of well-educated first-time MPs to the House. Otherwise our results are negative. There is no evidence that higher salaries or pensions induced younger individuals to stand for office. Whilst the introduction of salaries and pensions in 1953 and the salary increase of 1963 coincided with an increase in the number of candidates drawn from law (a highly paid field) relative to the number of candidates drawn from teaching (a modestly paid field), the increases were small in magnitude, short-lived, and statistically indistinguishable from random variation in the data. There was also no indication that the changes in MPs' remuneration effected in 1953 and 2001 had any impact on the educational attainment of first-time MPs.

Perhaps it could be argued that these negative results come about because the salary and pensions increases effected in 1953, 1963, and 2001 were not sufficient to raise MPs' remuneration to a level high enough to attract and retain highly qualified individuals. We think this is a difficult counterargument to drive home. Figure 1 shows that MPs' salaries have kept pace with inflation over the long run. Figure 3, moreover, shows that if MPs' salaries no longer place them in the top one per cent of Canadian income earners, they still place MPs among the top five per cent (and this without accounting for the present value of their pensions). Figure 3 also makes clear that MPs are paid as well as all but the best-paid lawyers (see note 6) and substantially better than teachers. MPs' remuneration has also kept level (albeit just) with the increased demands of the job as measured by the duration of parliamentary sessions. Indeed, the claim that the value of MPs' remuneration has eroded substantially over time rests almost entirely on the premise that the non-accountable tax-free allowances that MPs received between 1945 and 2000 did not count as income. We reject this premise, not least because the Blais Commission itself rejected it.

What does this tell us about the desirability and effectiveness of using monetary compensation to motivate and control elected representatives? The argument that higher pay is necessary to attract highly talented or qualified individuals to enter politics does not appear to hold in the Canadian case. This might well be because the level at which Canadian MPs are remunerated is sufficiently high that additional increases generate only small marginal effects. This is probably the case with respect to educational attainment, for example, where more than two-thirds of new MPs hold undergraduate degrees and there is correspondingly less room for further increases. This case is harder to make with respect to the average age of candidates, however, because that has remained stubbornly high. Indeed, the evidence strikes us as quite consistent with the view that many candidates are drawn to politics, not for monetary

but for ideological, personal, or altruistic reasons.³⁶ This does not imply that one could slash Canadian MPs' salaries and pensions without effect. However, we should not worry that temporary declines in the economic value of MPs' remuneration will translate directly into a decline in the quality of MPs. Further, we should desist in justifying MPs' salaries and pensions on the need to attract talent to the House. A far stronger justification for paying MPs sufficiently (and that may be less or more than they currently receive) is that a certain level of income for MPs is necessary to prevent the House from becoming a plutocratic rather than a representative institution.



Question — Is your data looking at the upper house and the lower house or just the lower house? It is my understanding that in Canada you have got almost tenure in the upper house, so if you are looking for a job with job security you would naturally want to go to the upper house and not the lower house and that might skew the results. Why do you think the results are so different between Australia and Canada, given that remunerations are quite similar in their amounts?

Christopher Kam — The Senate in Canada is appointed, so whilst one might wish to go to the Senate, it is the prime minister who must ask or invite you to go. I have some data that I am working with, that shows you that senators stay about four terms. Moreover, even senators who are defeated MPs will stay that long. That tells you that there is a significant pent-up demand of a desire to stay in politics.

Why is the situation different in Australia? I think that begs a question about the different socio-economic and historical structure of our electoral politics. The fact of the matter is in Canada we have massive electoral swings and people are not deeply attached to parties. In Australia, both those conditions are not true and so you get much less volatility in Australian elections with the result that you have many more safe seats. We have maybe 25 or 30 per cent of seats in Canada that are safe and we have swings of 20 per cent.

Question — Have you thought to include the recruitment strategies of leaders of parties and the overall mix of professional and educational qualities as an explanatory factor? Second, what about implicit bargains for people who run or stay in office such as other career opportunities and appointments that only come through connections with the party? And thirdly, what about the strength of the party apparatus? For

³⁶ See, for example, Pippa Norris and Joni Lovenduski, *Political Recruitment: Gender, Race and Class in the British Parliament*, Cambridge University Press, Cambridge, 1995.

example, if you look at the Australian Labor Party it is very well organised which varies tremendously from Canada.

Christopher Kam — Those are great questions. Let me say that I have not talked to party leaders yet about their recruitment strategies but we do have some recent data from 2008 that tell us that 50 per cent of candidates were not invited by anybody. Here is the reality of Canadian politics: most constituency associations are not doling out a scarce good, they are desperate for warm bodies to put in front of the electorate, so they have to take what comes to them.

Post-parliamentary careers are much more of a phenomenon in Britain as an institution—where even backbenchers will get them—than in Canada. So we have some people of course such as Jean Chrétien or Marc Lalonde who go to the legal firm McCarthy Tétrault and have very good jobs. This is not true, as many commissions who have investigated the matters have found, of the vast majority of MPs who languish in two years of unemployment.

Your observation on the strength of parties to secure these kinds of goods or post-parliamentary careers is, I think, a very good one and it strikes me that one of the things that we have been very good at in Canada is killing parties. We absolutely killed the Conservative Party of Canada and it took fifteen years to reinvent itself. We pretty much drove a stake through the Liberal Party at the last couple of elections and so parties as organisations are incredibly weak, they are more franchise organisations rather than hierarchical corporate structures in Canada.

Is It Futile to Petition the Australian Senate?

Paula Waring

Senator TURNBULL—Mr President, I should like to ask you a series of questions regarding the presentation of petitions to this House. Is this merely a futile exercise or has it some significance? I ask out of curiosity: What happens to the petitions? Is any machinery established in the Parliament to inform honourable senators of the results of the petitions, just as we receive answers to questions?¹

When this question was put to the President of the Senate, Sir Alister McMullin, by Tasmanian Independent Senator Reg Turnbull on 14 November 1968, the pattern of use of petitions by citizens was on the cusp of change. Australians had exercised their right to petition the Senate since federation but their use of this right was sporadic. In thirty of the years between 1901 and 1968 no petitions had been presented at all. Numbers of signatures on petitions amounted to tens of thousands in one year then crashed to a handful in the next.

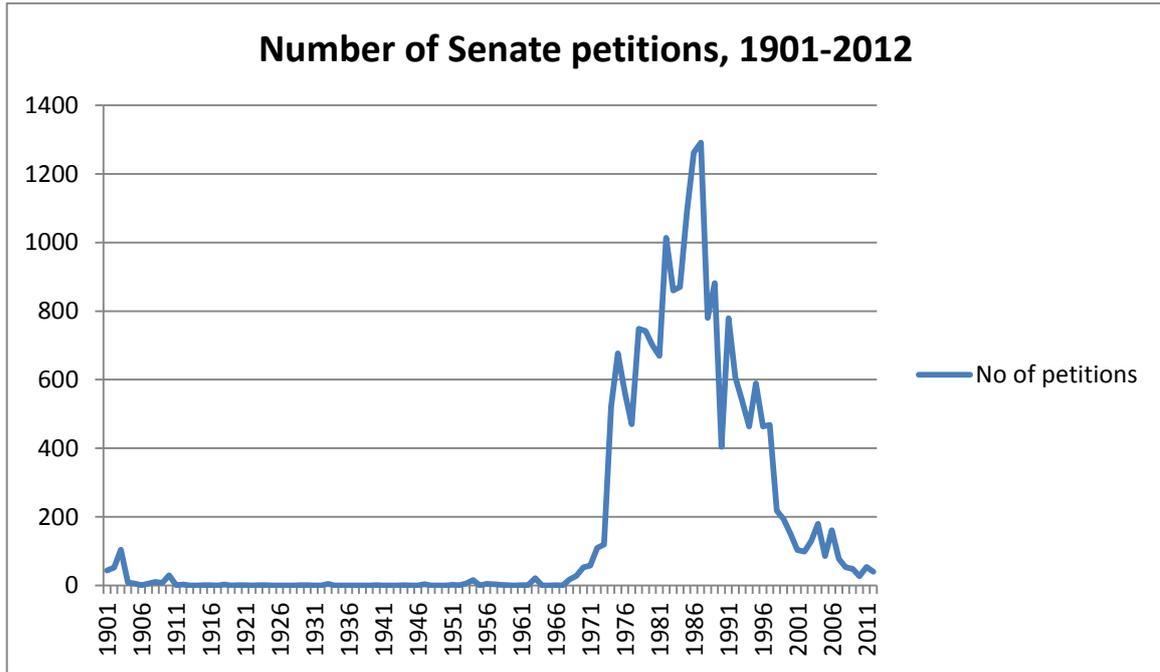
From 1969 there was a distinct increase in the volume of petitions received by the Senate (see figure 1). Total numbers of petitions received in a single year peaked at 1291 in 1987. Total numbers of signatories to petitions received each year rose into the tens of thousands and then hundreds of thousands, reaching their zenith in 1995 with 687 320 (see figure 2). If each signature received in that year was unique, the total signatories would represent 3.8 per cent of the population of Australia at that time.²

McMullin's answer to Turnbull's question was that there was 'no machinery to follow up petitions' and that it was 'for Ministers whose departments are involved to take whatever action they desire'. With the introduction of the Senate committee system in 1970 changes were made to the procedures for dealing with some of the issues raised in petitions. Within a few years, however, these would falter under the rising workloads of the new committees and the sheer mass of petitions received.

¹ Senate debates, 14 November 1968, p. 1987.

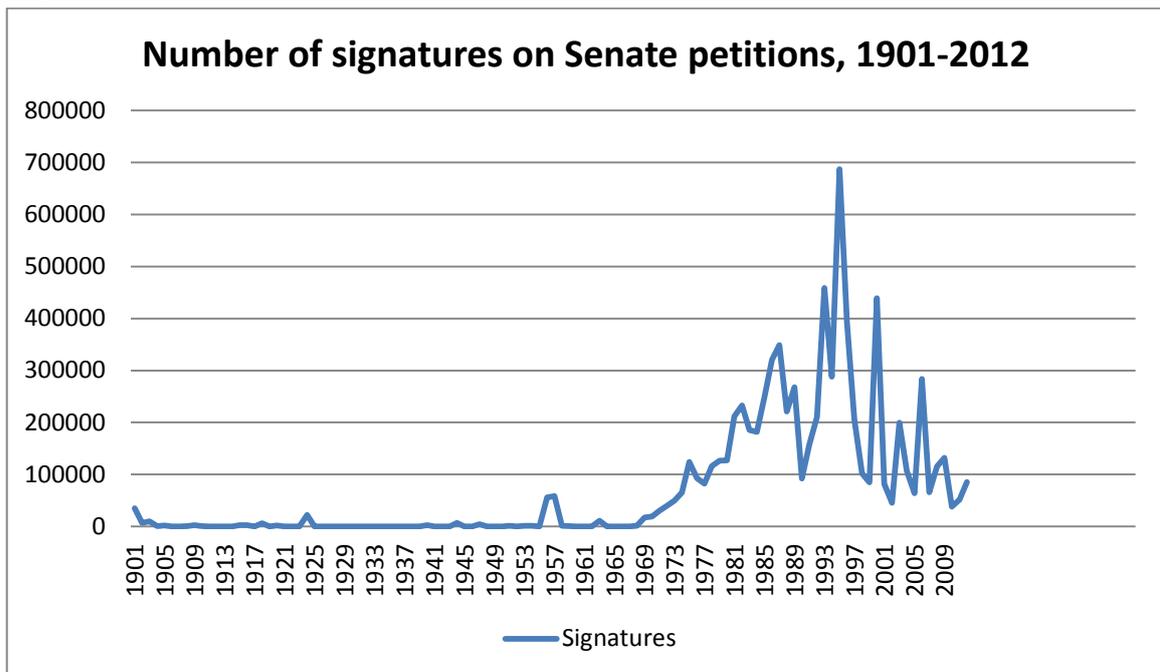
² Population figures from Australian Bureau of Statistics, Australian Historical Population Statistics, 2008, <http://www.abs.gov.au/ausstats/abs@.nsf/mf/3105.0.65.001>.

Figure 1



This paper examines the history and effectiveness of petitioning the Senate to consider whether, despite the haphazard procedural machinery to deal with petitions, petitioning has indeed been futile. And if it is largely futile, how can we explain the industry of the Australian citizenry in submitting more than 19 000 petitions and 7 million signatures over that time?

Figure 2



Petitions as social history

An examination of the broad sweep of petitions presented in the Australian Senate since 1901 provides an interesting summary of the popular concerns in Australian political and social life. Some issues never change such as the two petitions received by the Senate in 1902 relating to the ‘conservation of the waters of the Murray for the purposes of navigation’ made necessary by the ‘improper diversion of the waters ... for irrigation purposes’.³ Taxation, pension entitlements and family allowances have also been perpetual favourites which have appealed to petitioners throughout the decades since federation.

The largest number of petitions received on one subject in a single year was the Catholic Church’s 1995 petition on landmines which attracted 224 110 signatories. As Senator Mal Colston observed, large petitions give ‘an indication, if not of the strength of feeling, perhaps the amount of organisation’ behind such petitions.⁴ Moral and ethical questions including abortion, pornography, human embryo experimentation, and changes to divorce and family law, have always garnered extensive organised support. Other topics that have attracted large numbers of signatories include: gambling, government aid to denominational schools, home loan interest payments, sex discrimination, a bill of rights, the flag, nuclear arms reduction, the Australia card, the Australian Broadcasting Corporation, pharmaceutical drugs and services, live animal exports, industrial relations legislation, gun control and refugee laws.

Some large petitions are on more unusual topics. The greatest number of signatories to a single petition between 1901 and 1955 was a petition signed by 22 000 people in 1924 urging that the New Hebrides, then controlled jointly by Britain and France, pass to sole British control. It was also a topic outside the federal government’s control. As the Minister for Home and Territories observed, ‘this is one of those thorny questions with which it is exceedingly difficult to deal successfully’ for the simple fact that ‘neither France nor Great Britain will give up its claim’.⁵ The petition signed by 57 303 people for the prohibition of commercial trading in or export of domestic cat and dog skins in 1981 is an issue that has disappeared from the public memory, as has the concern by 121 229 signatories protesting against the Minister for Health’s endorsement of the *Cleo* magazine safe sex guide in 1995.

Petitioners have not shied away from bold topics such as the 2252 petitioners who sought the abolition of state governments and parliaments in 1909 and the 10 000

³ Senate debates, 8 October 1902, p. 6; 9 October 1902, p. 16597.

⁴ Senate debates, 29 April 1982, p. 1685.

⁵ Senate debates, 27 August 1924, p. 3624.

petitioners in 1979 who called for citizen initiated referenda. The 1957 petition seeking an alteration to the Constitution 'so that there could be created a Commonwealth Department of Native Affairs' was ten years ahead of its time.

Sometimes it is the omissions which are of interest. During the divisive conscription plebiscites of 1916 and 1917 the topic of interest to petitioners was the Federal Wheat Scheme. During the First World War the issue that attracted the greatest number of signatories was a proposed tax on children's admission to picture shows. During the decade of the 1930s, when Australia was in the grip of the Great Depression, more petitioners were concerned for improvements in the deplorable treatment of Aboriginals than unemployment. The Communist Party Dissolution Act of 1950 passed without a single petition on the subject.

Grievances by or concerning individuals were relatively rare. In June 1903 an importer of watches and jewellery, appropriately named Magnus Goldring, petitioned the Senate after his goods were detained and business documents seized by Customs officials. The Melbourne *Argus* noted that 'the chamber was content to have the petition read and pigeon-holed' but that 'pressure will probably be brought to bear on Ministers in the House of Representatives next week'.⁶ Mr Goldring pursued the matter further in the courts. In 1997, the case of a general practitioner who had an adverse determination made against him by the Professional Service Review Tribunal was taken to the parliament by 952 petitioners. Occasional petitions have also requested that individual migrants be permitted to remain in Australia or called for government actions to bring about the release on human rights grounds of prisoners held overseas.

The increase in petitioning since the late 1960s coincided with a general rise in public activism and grass roots political movements. After 1969 many of the topics of petitions reflected the expansion of federal government involvement in policy areas such as education, the environment, health, roads and Aboriginal affairs. As numbers of petitions burgeoned they covered the length and breadth of human endeavour from the local to the international, the personal to the political, and the practical to the puritanical. There were petitions on the perceived evils of new technologies from television violence and mobile phone towers to internet gambling and pornography. There were calls for research into solar energy, learning disabilities, breast cancer, chronic fatigue syndrome and white tail spider bites. Petitioners asserted the need for political rights, land rights, humanitarian rights, children's rights, a bill of rights and plant variety rights. They took up the cause of political prisoners in Chile, logging in Sarawak, famine in the Ukraine and huskies in Antarctica.

⁶ *Argus* (Melbourne), 10 July 1903, p. 6.

What each of these petitions has had in common is a request for *action* by the Senate or the parliament and on that front things get a little more complicated.

Judging success in petitions

The first petition to the Senate, on 21 May 1901, was from the General Assembly of the Presbyterian Church of NSW calling for the sittings of the Senate to be opened by prayer. Church organisations have been notable petitioners throughout the history of the Senate with their administrative structures enabling them to effectively utilise their parishioners as a concentrated resource of potential signatories. In 1901 the church's efforts were not solely directed towards petitions. Newspapers at the time reported that members of both houses of parliament were being 'inundated with letters from constituents' urging support for the proposal.⁷ Things had proved more controversial for the Methodists when they debated this issue at their general conference when dissent was expressed objecting to the 'mockery to God of statutory prayer' and that 'Prayer in Parliament would not better the members' lives nor help them to pass more righteous legislation'.⁸ The Senate agreed to open proceedings with prayer on 14 June 1901.

The petition on prayer was unusual for its attention to matters relating to the proceedings of parliament. Petitions in the Senate have more usually concerned themselves with government legislation and policy and constituent matters which impinge upon areas of federal government responsibility. It was also unusual that the petition, or at least the immediate campaign in which the petition was central, can be directly attributed to the change in procedures. As has been the experience in analyses of other parliaments, assessing the effectiveness of petitions is a subjective and selective exercise.⁹ In many cases obtaining complete information on the background to decision making is difficult. Nonetheless, in judging the success of petitions to the Senate throughout its history it is necessary to consider the effect they have had on some of the central functions of parliament: to debate issues of importance, to conduct inquiries into matters requiring further consideration and to formulate legislation to serve the needs of the community.

Petitions and legislation

Seeking to influence the parliament to amend, support or reject legislation is a core aim of the petitioner. In some cases the compelling arguments contained in the

⁷ *Advertiser* (Adelaide), 20 May 1901, p. 6.

⁸ *Kalgoorlie Miner*, 23 May 1901, p. 6.

⁹ Karen Ellingford, 'The purpose, practice and effects of petitioning the Victorian Parliament', *Australasian Parliamentary Review*, Spring 2008, p. 100.

petition have been enough to bring about change or at least to bring the matter to serious debate.

In July 1903 a petition signed by two members of the Women's Federal Political Association of Victoria was presented calling on the Senate to amend a clause in the Naturalization Bill which removed voting rights from women who married men who had none. In debate the petition (and a letter from another women's organisation which had taken up the same issue) was brought to the attention of the Senate. The provision was deemed 'unconstitutional' and the clause struck out.¹⁰

In 1911 the sole petition received by the Senate was from two ministers of the Hebrew Church of Victoria objecting to a clause in the Electoral Bill which fixed Saturday as the polling day for elections. When the bill was discussed in committee of the whole later that day the minister bringing the bill before the Senate was asked whether in view of the petition presented, he would modify the clause to meet the objections of the Jewish community. What followed was a heated, wide-ranging and at times humorous debate on whether the conscientious objections and right to enfranchisement of any section of the community should be subordinated to the convenience of the majority. Senator Anthony St Ledger argued:

I say that the respectful petition of those who have approached the Senate in proper form ought to be regarded. Unless some insuperable difficulty or some national issue is involved, which transcends the objection raised by these people, their views should be respected.

While the Senate voted in favour of Saturday polling, the minister agreed to confer with the department to see if absent voting on the grounds of conscientious objection could be embodied in a regulation.¹¹ The Electoral Act was not amended to include religious beliefs as grounds for postal or pre-poll voting until 1961.

In debates throughout the history of the Senate petitions have been used by senators as evidence of the strength of public feeling. Senator Alexander Matheson in debate on the Electoral Divisions Bill 1903 remarked:

Only to-day a petition has been presented to the Senate on behalf of the people of New South Wales, as represented by an enormous meeting held in the Park in Sydney, protesting against this Bill ... They took so much interest in the subject that they have sent a petition to the Senate, and the Minister can produce no petition advocating that the Commissioners'

¹⁰ Senate debates, 8 July 1903, p. 1820; 16 July 1903, p. 2200.

¹¹ Senate debates, 15 November 1911, pp. 2703, 2715–28, 2740–1.

distributions should be dissented from. Where do the Government get their mandate from?¹²

During the hard-fought debates over the Wool Tax Amendment Bills in 1991 the Senate requested that the House of Representatives change the wool tax rate for 1991–92, as specified in the bill, from 15 per cent to 10 per cent. When the House of Representatives rejected the Senate's request, an opposition senator used petitions that he claimed represented a quarter of wool growers in Western Australia in arguments supporting the opposition's preferred 10 per cent tax. When the bill was again debated by the Senate the government reached a compromise with the Democrats to impose a 12 per cent tax.

In 1994 Senator John Woodley, in response to representations he had received, moved an unsuccessful motion to amend a Social Security Bill to reduce the age at which women became eligible for the widow's allowance from fifty to forty years. Woodley initiated a petition 'to show the members of this parliament just how much concern there really is out there in the community for the position of widows'. In 1995 he presented six petitions containing over 16 000 signatures in the Senate before attempting to amend a Social Security Bill again. On this occasion, evoking the public's strength of views did not produce any great effect and his motion was defeated when the opposition supported the government.

Similarly, in the second reading debate on the Aboriginal Lands Rights (Northern Territory) Bill 1976, Senator Jim Cavanagh referred to the 'many hundreds of petitions containing thousands and thousands of signatures [that] take up the time of both Houses every morning', noting with regret that this 'is the greatest expression of public opinion on this Bill. Yet it has made no difference to the Bill'.¹³

From the very earliest days of the Senate, petitioners recognised that an organised campaign could be an effective tactic to pressure parliament to bring about legislative change. Church groups were quick to respond to the 1901 Divorce and Matrimonial Causes Bill, a private senator's bill which sought to pass uniform divorce laws for the Commonwealth. Church officials delivered sermons, held public meetings and distributed leaflets and petitions against the measure. Petitions signed by a total of over 13 000 people continued to arrive in the Senate over a nine-month period. The bill did not progress beyond the first reading.

In August 1903 the House of Representatives carried two amendments to the New Guinea Bill prohibiting the sale of intoxicating liquor in New Guinea. In a pre-

¹² Senate debates, 9 September 1903, pp. 4814–15.

¹³ Senate debates, 7 December 1976, p. 2768.

empty strike to shore up support for the provisions, 79 petitions carrying 4244 signatures were presented to the Senate calling for a prohibition on the introduction, sale, and manufacture of intoxicating liquors. As it turned out the government withdrew the bill and it did not reach the Senate.

In his 1943 collection of broadcast essays, *The Forgotten People and Other Studies in Democracy*, Member for Kooyong Robert Menzies alluded to the emergence of ‘pressure politics’, ‘the “pressure” taking the form of hundreds, and in some cases ... thousands of stereotyped letters signed and sent to members of Parliament, on some particular topic, by their constituents’. Echoing Edmund Burke’s views on representation¹⁴ Menzies continued:

many electors believe that the function of their member of Parliament is to ascertain, if he can, what a majority of his electors desire, and then plump for it in Parliament. A more stupid and humiliating conception of the function of a member of Parliament can hardly be imagined.

One of the more notable instances of the utilisation of petitions in pressure politics in the Senate was in opposition to the push to nationalise banking in the 1947 Banking Bill. In fact the four petitions containing 4365 signatures received in the Senate on this issue were modest compared to the House of Representatives, which received 92 petitions. What was significant was the degree to which opposition to the issue was played out in the Senate in terms of electoral mandate.

In October 1947 the Leader of the Opposition Senator Walter Cooper moved a motion in the Senate for a referendum, noting that his belief that the majority of Australians opposed bank nationalisation was ‘fortified by the number of petitions and letters of protest submitted by tens of thousands of people to members of Parliament’.¹⁵ The gathering of these petitions (in large part by the private banks) was a matter of great contention in subsequent debates, with allegations that they had been gathered by paid canvassers and thus did not represent ‘a spontaneous reaction of the electors’,¹⁶ that the signatures were duplicated, that the signatories did not appear on electoral rolls and included school children, that bank employees had been forced into signing and that signatories had been misinformed by ‘propaganda’ to sign. In the assessment of historian Ian Hancock, by November 1947 ‘Australian society was more sharply divided than at any time since the great conscription debates of 1916–17’.¹⁷ Although

¹⁴ Edmund Burke, Speech to the electors of Bristol, 3 November 1774: ‘Your representative owes you, not his industry only, but his judgment; and he betrays, instead of serving you, if he sacrifices it to your opinion.’

¹⁵ Senate debates, 23 October 1947, p. 1215.

¹⁶ Senate debates, 20 November 1947, p. 2351.

¹⁷ Ian Hancock, *National and Permanent*, Melbourne University Press, Carlton, Vic., 2000, p. 86.

the application of pressure politics could not prevent the Banking Bill from becoming law at the end of 1947 (the opposition in the Senate at the time consisted of only three senators), the Act was later overturned by the High Court.

In 1974 the Family Law Bill, which sought to eliminate the concept of fault in divorce and make irretrievable breakdown of marriage the sole grounds for divorce, became another high water mark of concerted campaigning of the Senate. During 1974 the Senate received 126 petitions in favour of the bill, 34 against and 122 seeking its deferral, resulting, according to one senator, in the Senate finding itself 'in the absurd position where it is regaled from both sides of the chamber on the same day by a senator presenting a petition supporting the Bill and the same senator presenting a petition opposing the Bill'.¹⁸ On 13 November the Senate received a record 67 petitions on this issue in a single day. The volume of petitions received on this bill and the time required to read them in the Senate was responsible for changes streamlining the procedures for dealing with petitions in the Senate.¹⁹

The deluge of public opinion on the Family Law Bill could hardly be ignored and a number of senators used the strength of feeling in the petitions to argue both in favour of passing and of delaying the bill. Senator Geoffrey McLaren was one to express petition fatigue:

Like other senators, I have had many representations made to me about this subject ... To my mind, the people who have approached me with their personal plea have been more convincing than have those people who posted a stereo-type letter to me. They have been more convincing than the 5,000 people who signed petitions ... I believe that in any matter such as this, when one can sit down and talk to a person, one gets right to the heart of the problem.²⁰

The bill passed the Senate after a free vote on 27 November 1974.

Petitions and committee inquiries

Another significant measure of the effectiveness of petitions is the influence they have had on parliamentary inquiries. Parliamentary inquiries can inform government policy and result in reform to legislation. They can also perform an important accountability function, examining government performance and the effectiveness of its policies. Importantly, they also provide an avenue for members of the public to have their

¹⁸ Senate debates, 19 November 1974, p. 2519.

¹⁹ Rosemary Laing (ed.), *Annotated Standing Orders of the Australian Senate*, Department of the Senate, Canberra, 2009, p. 254.

²⁰ Senate debates, 30 October 1974, p. 2167.

views heard by parliamentarians through submissions to inquiries and by giving evidence at public hearings.

Senate standing order 91 adopted in 1903 allowed for the possibility that a petition 'respecting any subject then under the consideration of a Select Committee' may be referred to that committee. Interestingly, between 1901 and the early 1980s, when the Senate was deluged with petitions on proposed hydroelectric developments in South West Tasmania, the subjects of petitions and the subjects of Senate select committees did not coincide and there is no evidence of petitions having been referred to select committees during that time.

Petitions have, however, called for Senate inquiries to be established, starting with the petition from the Hobart Chamber of Commerce in 1904 to refer the Navigation and Shipping Bill to a select committee. Later topics suggested by petitioners for inquiries included education (1968, 1969), the banana industry (1968, 1969), the cost of living in the ACT (1968), Lake Pedder (1972), the Australian Government Insurance Office (1975), South West Tasmania (1981), the wellbeing of Aboriginals in Queensland (1983), animal welfare (1983), nuclear disarmament (1986–86), strengthening the family (1983), Constitution alteration legislation (1988), higher education funding (1993), the banking industry (2002) and rural and regional health services (2003).

In August 1968 petitions from two New South Wales public schools calling for a Commonwealth inquiry into 'the needs of pre-school, primary, secondary and technical education' were presented in the Senate. Between March and May 1969 the Senate also received a batch of eight identical petitions containing over 12 000 signatures calling for a national inquiry into all aspects of Australian education.

On 18 March 1969 an opposition senator, Senator Samuel Cohen, moved that a select committee be appointed. The wording of the scope of the proposed inquiry echoed the 1968 petition. His remarks on the need for the inquiry referred to the first of the 1969 petitions, noting community concern which had been:

manifested in such ways as the presentation of petitions of the kind that was presented to the Senate this afternoon by Senator Wriedt on behalf of a considerable number of citizens interested in promoting education at all levels in the Australian community.

Cohen also referred to other forms of pressure for an inquiry including 'oft repeated requests of educationalists and parents', ALP policy and newspaper editorials, reasoning that 'if the Government will not act this Senate should set up its own select committee and get on with the job'. After over four and a half hours debate, in which

government senators argued that there was little evidence of community support for a Senate inquiry as such, the motion was lost when the DLP, which had the balance of power in the Senate, supported the government in its opposition to an inquiry.

The petitions requesting an inquiry into hydroelectric developments in South West Tasmania met with more apparent success. Between 1981 and 1983, 162 petitions relating to South West Tasmania bearing 17 800 signatures were presented in the Senate. On 23 September 1981, three months after the first petition requesting an inquiry was received, the Senate passed a motion to establish the Select Committee on South West Tasmania. Having been initiated, however, the petitions juggernaut was hard to stop and petitions calling for an inquiry continued to arrive in the Senate 31 months after the inquiry was set up and five months after the report was tabled. In debate on the motion in the Senate, while it was mentioned by one senator that 'there is a good deal of feeling on this subject among the people of Australia and it is not confined to Tasmanians',²¹ the petitions to the Senate were not mentioned explicitly. In the Franklin dam campaign petitioning was but one strategy in a well-orchestrated movement with a high media profile and awareness among senators.

Campaigns that get a senator on side with their cause from the outset can have greater success. In February 1995 Democrats senator John Woodley moved a notice of motion of his intention to refer the proposal for a high voltage powerline between Queensland and New South Wales (known as Eastlink) to a Senate committee. In February and March four petitions reinforcing the call for a Senate inquiry were received from over 2000 people. In an adjournment debate in early March, Woodley referred to the many representations he had received personally as well as the petitions in the Senate and expounded on the concerns of the petitioners at some length.²² His motion to refer the matter to the Economics Committee was agreed in the Senate on 30 March.

Other petitions have sought to influence existing and proposed inquiries. In October 1983 a petition supported Senator Don Chipp's notice of motion for a select committee on animal welfare. Chipp's motion was passed by the Senate the following month. In May 2003 the Senate agreed to the appointment of a select committee to consider the government's proposed changes to the Medicare scheme. In the course of the inquiry several petitions relating to Medicare and health services were drawn to the attention of committee members including a petition of 11 000 signatures circulated by the Public Hospitals Health and Medicare Alliance of Queensland which

²¹ Senator Missen, Senate debates, 23 September 1981, p. 926.

²² Senate debates, 2 March 1995, p. 1349.

opposed the package.²³ A petition in September 2003 sought to have the terms of reference of the Senate Select Committee on Ministerial Discretion in Migration Matters widened. In November 1978 a petition urged the parliament to support the recommendations of the Joint Select Committee into Aboriginal Land Rights.

Mechanisms for petitions and the rise of the Senate committee system

In April 1969 the President of the Senate, Sir Alister McMullin, inspired by the question on the futility of petitions asked of him by Senator Turnbull in November 1968, presented a paper on petitions at the Conference of Presiding Officers and Clerks-at-the-Table. In it he mused on whether:

the Senate might adopt the pattern in certain other Parliaments and establish a Petitions Committee or other machinery to consider and, if necessary, report upon the action or redress sought in petitions.²⁴

He went on to conclude:

As a traditionalist, I cherish the concept of Parliament as the citadel of civil rights and liberties and think it would be a pity if the right of petitioning Parliament, with its roots deep in history, were to fall into disuse for want of parliamentary consideration.²⁵

At least on that score he need not have worried.

In 1970 the Senate was revolutionised by the establishment of the Senate standing committee system. In March of that year the Clerk of the Senate, J.R. Odgers, presented a case for a standing committee on petitions.²⁶ While this was not adopted, consideration of the need to deal with petitions was evident in Senator Lionel Murphy's June 1970 motion for the establishment of the Senate legislative and general purpose standing committees, which stated:

A Standing Committee shall be empowered to inquire into and report upon such matters as are referred to it by the Senate, including any Bills,

²³ Senate Select Committee on Medicare, *Medicare: Healthcare of Welfare?*, October 2003, PP 340/2003, pp. 2, 244.

²⁴ *Second Conference of Presiding Officers and Clerks-at-the-Table of the Parliaments of Australia, Papua and New Guinea, New Zealand, Fiji, Nauru and Western Samoa*, Parliament House, Brisbane, 8 to 10 April 1969, PP 106/1969, p. 63.

²⁵ *ibid.*, p. 66.

²⁶ *Report from the Standing Orders Committee Relating to Standing Committees*, 17 March 1970, PP 2/1970, pp. 18–19.

Estimates or Statements of Expenditure, messages, petitions, inquiries or papers.²⁷

In a further report by Odgers in 1971, on the administration of the new estimates and standing committees, he confirmed that one of the considerations advanced in support of the new committee system was ‘the lack of any formal follow-up procedure to examine citizens’ grievances or requests, as expressed in Petitions’.²⁸

On 3 November 1970 two identical petitions, seeking Commonwealth cooperation and financial assistance for crime prevention, were referred to the Standing Committee on Health and Welfare.²⁹ Odgers noted that:

This first reference of a Petition to one of the new Legislative and General Purpose Standing Committees is a significant development in Senate procedure, reflecting a recognition of the trend towards more public participation in the consideration of national affairs.³⁰

This reference, later transferred to the Standing Committee on Social Environment, was the subject of a report presented to the Senate in April 1972.³¹ In the report the committee noted that the petitions did not constitute a request for an inquiry into the matters raised. Instead the committee referred the text of the petitions to the attorney-general, treasurer and prime minister for comment. As these were the first petitions to be referred to a committee, the members felt ‘the utmost care should be taken to avoid setting precedents that could prove to be undesirable’.³² The committee confined its recommendations to matters within Commonwealth jurisdiction including the compilation of comprehensive and uniform crime statistics; the establishment of—and determination of research priorities for—the Institute of Criminology and the Criminology Research Council; and the need for a common approach and uniformity of laws in areas with ‘direct inter-jurisdictional involvements’.

One committee member, Senator Jim Keeffe, presented a dissenting report. In the Senate he remarked:

Over a long period I have dissuaded people from presenting petitions here ... I have adopted this attitude because there has been a long-standing

²⁷ Senate debates, 4 June 1970, p. 2049.

²⁸ *Committees of the Australian Senate*, 1971, PP 32/1971, p. 8.

²⁹ Senate debates, 28 October 1970, p. 1549; 2 November 1970, p. 1827; 3 November 1970, p. 1930.

³⁰ *Committees of the Australian Senate*, op. cit., p. 9.

³¹ Senate Standing Committee on Social Environment, *Report of Petitions Seeking Co-operation and Financial Assistance for Crime Prevention*, April 1972, PP 30/1972.

³² Senate debates, 13 April 1972, p. 1082.

tendency for petitions to be presented, duly recorded in Hansard and then duly stacked away, never to be seen or heard of again.³³

Keefe argued that the committee had not met the request of the petitioners and had conducted only a superficial inquiry and that ‘when the Senate deems a petition of this nature important enough to refer to a Standing Committee, then only an in-depth examination of the petition can be described as satisfactory’. He concluded that ‘it is apparent that the wide difference between my own thinking and that of a majority of the Committee is on the method of handling petitions of this nature in future’.³⁴

In early 1971 arguments were advanced that all matters raised in petitions should be referred to a committee. One proponent, Senator Jim Cavanagh, stated ‘I do not propose that committees should inquire into all the details raised in petitions, but the petitions should be considered because they express what is concerning the electors and what they think should be done’.³⁵

By the end of that year, concerns were being expressed at the large volume of work before standing committees, with the Leader of the Government in the Senate concluding: ‘The weight of work in the committee field is reaching the stage where it is exhausting for senators’ and ‘if we overload the functions of these committees, we will be setting about to destroy something that has been created in the interests of good government’.³⁶ In debate it was noted that the present references before committees were ‘unequal’. Petitions were singled out:

Petitions are propositions coming from the good people outside which honourable senators have decided should not be lightly put aside without some inquiry. But whether that inquiry should rank in priority over explicit references from the Senate is another matter.³⁷

Between 1970 and 1973 a dozen matters originating from petitions were referred to committees for inquiry with nine resulting in reports.³⁸ A 1971 petition praying for the transferability of pensions overseas ended happily when amendments to this effect were made to the Social Services Act in 1973. There was, however, no evidence that the petition had directly influenced the changes.

³³ *ibid.*, p. 1085.

³⁴ Senate Standing Committee on Social Environment, *op. cit.*, p. 12.

³⁵ Senate debates, 15 March 1971, p. 511.

³⁶ Senate debates, 23 November 1971, p. 1993.

³⁷ *ibid.*, p. 1995.

³⁸ Parliamentary papers 259/1971, 30/1972, 219/1972, 39/1973 (interim report), 123/1973, 124/1973, 46/1974, 283/1974, 83/1975, and 190/1976.

The concerns of petitioners were not upheld in the 1971 report on the supply of liquid petroleum gas to the Australian market, although the matter did receive serious consideration with advice provided from the minister, written submissions sought and evidence taken at public hearings. An inquiry into ultrasonic aids for the blind found, after considering submissions and oral testimony, that contrary to the petition, the government should not implement a program for the general issue of these devices. The inquiry into the proposed construction of Black Mountain Tower in Canberra found no justification for further inquiry and did not call witnesses or examine alternative sites, resulting in a dissenting report by two committee members who considered that the committee had ‘completely ignored the petitioners’.³⁹

A 1972 reference to the Social Environment Committee on the administration and operations of the Postmaster-General’s Department was rendered obsolete, in the opinion of the committee, by the appointment of the Australian Post Office Commission of Inquiry by the government in 1973. No further action was taken on the reference. Similarly, a petition calling for wide-ranging social services legislation reforms was not inquired into further by the Health and Welfare Committee on the grounds that a number of other committees and commissions of inquiry were considering the same matters. The Education and the Arts Committee also used the existence of other inquiries in its reasons to not further investigate its petition on the state of the arts in Australia.

In the last of the references to the standing committees of this period, on a 1973 petition objecting to the proposed national health scheme, the Health and Welfare Committee determined that the petition was ‘an expression of opinion’, that legislation to partly implement the scheme had already been passed, and that no further action would be taken.

Despite the President of the Senate informing the Senate in October 1972 that the Standing Orders Committee was considering the questions of the automatic reference of petitions to standing committees, no further announcements ensued for a decade.⁴⁰

By 1975 Senator Keeffe was wistfully reminiscing:

We did for a short period follow the practice of sometimes taking the message from a petition to a relevant standing committee. I guess we still have that right although it is not exercised very much.⁴¹

³⁹ Senate Standing Committee on Social Environment, *Report on the Petition Relating to the Proposed Construction of a Post Office Tower on Black Mountain in the Australian Capital Territory*, 26 October 1972, PP 219/1972, p. 5.

⁴⁰ Senate debates, 18 October 1972, p. 1603.

⁴¹ Senate debates, 20 August 1975, p. 78.

In 1979 the Democrats attempted to refer a petition on citizen-initiated referenda to the Constitutional and Legal Affairs Committee. According to the proposal, a petition signed by two per cent of the population would be put to a referendum and if carried would become law. The motion to refer the petition to the committee failed due to a lack of support from either the government or the opposition.

In November 1982 the Senate accepted recommendations of the Standing Orders Committee that all petitions be referred to standing committees on the initiative of the President.⁴² In theory committees could seek references from the Senate to inquire into any matters raised in petitions. In practice this did not occur until the mid-1990s when between 1995 and 1997 the Environment, Recreation, Communications and the Arts Legislation Committee reported on a number of matters including mobile phone coverage in the NSW Alps, national broadcasting services to Bass Strait islands and defence facilities at Jervis Bay. The petitioners' concerns were referred to the relevant ministers, departments or authorities and their responses published.⁴³ After 1997 the practice lapsed.

In 2005 petitions on gynaecological cancer organised by the Gynaecological Awareness Information Network were referred by the Senate to a committee, thus becoming something of an exemplar of petition-initiated public policy. In November 2005 Senator Lyn Allison spoke at length on several petitions signed by almost 3000 women calling for increased funding for the management and prevention of gynaecological cancers and sexually transmitted infections. In December the Senate agreed that the petitions be referred to the Community Affairs References Committee. After an informal inquiry and roundtable discussion, in which the committee obtained information and community views on the issues raised in the petition, the Senate again referred the matter to the standing committee for a formal inquiry.

In its report, *Breaking the Silence*, the committee considered the views and evidence it had received from 72 submissions, seven public hearings and two site visits. It made a number of recommendations which were agreed to by the government including the establishment of a centre for gynaecological cancers to provide a 'national voice' for gynaecological cancer issues and the development of a human papilloma virus vaccination program. The inquiry's success on this occasion can be attributed partly to the cross-party support that it achieved from the outset as well as to the important personal dimension provided by a participating member of the committee, Senator Jeannie Ferris, who contributed her own experience of ovarian cancer to the inquiry.

⁴² Senate Standing Orders Committee, Reports, April 1982, PP 82/1982 and November 1982, PP 313/1982; Senate debates, 27–29 April 1982, pp. 1543–7, 1632–40, 1681–7; 25 November 1982, pp. 2849–54; Laing, op. cit., p. 255.

⁴³ Environment, Recreation, Communications and the Arts Legislation Committee, Reports, October 1995, PP 472/95; June 1996, PP 100/96 and June 1997, PP 134/97.

Petitions as publicity

Even in the vast majority of cases where the parliament does not act specifically on the contents of a petition, it can be argued that the act of petitioning itself serves a purpose in raising awareness of the issues of concern. The degree to which the presentation of petitions in the Senate can be used to generate publicity for a cause has fluctuated over time. The public profile of the parliament increased with the broadcasting of its proceedings on radio from 1946 and on television from 1990. As Senator Colin Mason observed in 1982:

The use of broadcasting has given these petitions a certain amount of clout ...When those many thousands of people who sign those petitions hear that at least the fact that they have done so is getting through to the rest of the community through the broadcasting of the Senate, they feel that something of importance has happened.⁴⁴

This trend, however, was undermined by standing and sessional orders on the reading of petitions in the Senate which were progressively amended in order to reduce the time required to present petitions in the chamber. Between 1901 and 1974 the ‘prayer’ (the text containing the request for action by the Senate or parliament) of each petition was read aloud in the Senate, although it was not the practice to read the names on a petition unless this was specifically directed.⁴⁵ From 1972 identically worded petitions presented on the same sitting day were read only once.⁴⁶ The subject and the number of signatories only were read by the Clerk after 1974 although a petition could be read out in full if requested by a senator and the text was less than 250 words. From 1982, only the subject and the number of signatories could be read. In 1997 the reading of petitions was abandoned entirely and instead a list was created and circulated to senators each sitting day.

As the reading of petitions became more restrictive, the printing of them on the public record became more expansive. From 1901 only a general indication of the subject matter and number of petitioners was printed in Hansard. On rare occasions the Senate asked for the petition to be printed, usually because a senator stated their intention to take action on it. Full versions of early petitions were sometimes appended to the *Journals of the Senate*. From late 1968 fuller versions were printed in Hansard, containing both the preamble and the prayer.

⁴⁴ Senate debates, 27 April 1982, p. 1544.

⁴⁵ Senate debates, 8 September 1910, p. 2791.

⁴⁶ Senate debates, 10 May 1972, p. 1501.

The Senate standing orders on the presentation of petitions do not allow debate on the topic of the petition,⁴⁷ thus curtailing opportunities for awareness-raising (and frustrating historians wishing to appreciate the background and motivation for petitions). An exception appeared in 1980 when Senator Brian Harradine presented a petition signed by 18 000 residents of Tasmania on the inadequacy of family allowances. He sought and, surprisingly, was granted leave from the Senate to make a 'statement of about one minute's duration on the petition's historical significance and the shortness of time available to people to sign it'. In this statement Senator Harradine revealed that the petition had been distributed to '75 per cent of householders by 300 volunteers over the last couple of weeks' and that the 'spontaneous response reveals the depth of feeling amongst families that they have been getting a raw deal'. His statement was terminated on a point of order by the opposition whip who expressed concerns that in allowing debate 'we are establishing a precedent which will not serve us very well'.

Some senators have used adjournment debates and matters of public interest (items of Senate business that allow backbenchers to pursue topics of their own choosing) to expand on matters raised in petitions they presented earlier, or intend to present in the future, in the Senate. Adjournment debates in particular were commonly used to present the contents of petitions that did not conform to the standing orders. Senator John Knight's 1979 comments on a non-conforming petition on the closure of a Canberra high school, for instance, incorporated a detailed submission by the parents' and citizens' association, thus enabling the petitioners to incorporate far more information into Hansard than if the petition had been presented in the usual way.

In 1969 Senator Keeffe used an adjournment debate to circumvent the refusal of the Clerk of the Senate to allow a petition to be presented in the Senate that named servicemen killed in the Vietnam War. Senator Keeffe read the petition, including the list of 324 names, aloud in the Senate. The broader issues of the Australian participation in the war, and the use of the names of the dead to influence opinion, were then debated at some length.⁴⁸

Views of senators on petitions

Senators for the most part have staunchly defended the democratic principles underpinning the petitioning of parliament. In 1910 Senator John Keating counted

⁴⁷ The procedural rules debarring debate on petitions were introduced in the House of Commons in 1842 and 1853 after numbers of petitions increased to the extent that debating petitions began to dominate the business of the House. See Niamh Corbett, 'Parliamentary petitions: an untapped library resource', *Australian Library Journal*, August 2011, p. 221; Lord Campion (ed.), *Sir Thomas Erskine May's Treatise on the Law, Privileges Proceedings and Usage of Parliament*, 15th edn, Butterworth, London, 1950, p. 819.

⁴⁸ Senate debates, 26 November 1969, pp. 53–9.

petitioning among the 'three inherent rights of the individual, the right to petition Parliament, the right of public meeting, and the right of free speech'.⁴⁹

Yet, when it came to the effectiveness of petitions, assessments could be brutally honest. According to Senator Bob Brown in 1997:

An enormous amount of effort goes into signing petitions, some of them with tens of thousands of signatures. Yet at the end of the day they have little above zero impact on the thinking of we senators.⁵⁰

Views in earlier decades were much the same. Senator Keeffe in 1975 deemed them 'frankly, not worth the paper they are written on'.⁵¹ Senator Mason in 1982 said 'We all know that when petitions hit this place no further action is taken about them'.⁵² Senator Robert Ray's views concurred:

No one takes any notice of petitions. They have no effect at all on governments ... If people bring me a petition and say that they want to send a petition to parliament I simply say to them that it will be ineffective. My advice is that the best thing to do is to write an individual letter to their local member of parliament, telephone them and keep on their back. That way is far better.⁵³

That petitions rarely had any effect upon senators' opinions was not the point, according to a backhander delivered by Senator Hugh de Largie in 1912:

That does not matter. The right of petition should be continued to the people, because it is the only way in which some persons are able to let their views be known. Their petitions may appear to be drivel to us, but they are matters of serious moment to the petitioners.⁵⁴

Other senators were more generous in their views on the value of petitions. Senator Mason, in describing petitions on lead petrol petitions received in 1982, also noted their value to the petitioner:

Week after week, those petitions, signed, as they were, by virtually every parents and citizens association in Sydney, had an effect. They were

⁴⁹ Senate debates, 8 September 1910, p. 2793.

⁵⁰ Senate debates, 6 March 1997, p. 1426.

⁵¹ Senate debates, 20 August 1975, p. 78.

⁵² Senate debates, 27 April 1982, p. 1544.

⁵³ Senate debates, 29 April 1982, pp. 1684–5.

⁵⁴ Senate debates, 6 December 1912, p. 6537.

listened to by other people and by the people who produced them. I think they believed, with some right, that purely by the presence of those petitions, purely by the fact that they had brought them in, they had contributed to this country's political life.⁵⁵

In 1910, in response to Senator Patrick Lynch's view that petitions were 'an obsolete practice', Senator Thomas Chataway retorted 'I am satisfied that if Senator Lynch were one of a minority seeking redress, he would be one of the first to petition Parliament if he thought he had a good case'.⁵⁶

At times senators themselves have indeed enlisted petitions in support for a cause, as related previously in Senator Woodley's campaign for widows' allowances. In another example, in May 1989 Senator Julian McGauran, inspired by the stories of some of the 'unsung heroes of the Vietnam War', began a personal campaign in the Senate for the creation of an 'end of war list' which would recognise individual acts of valour that had been overlooked in the course of the war.⁵⁷ McGauran used just about every means available to a backbencher to raise awareness for the issue from notices of motion, questions to ministers and adjournment debates to a private senators' bill which was passed by the Senate in November 1989. In the Senate McGauran was at pains to demonstrate broad support for his cause:

My campaign ... is backed up by the Vietnam Veterans' Association and the Returned Services League of Australia. Further, a grassroots campaign has been launched to make the weight of public support obvious to this Government.⁵⁸

Petitions were the spearhead of this grassroots campaign. The RSL wrote to all its branches in Australia requesting its members to sign a petition of support. The first of 33 petitions, bearing over 7500 signatures, was presented to the Senate in June. Two days later McGauran gave a notice of motion referring to the 'petitions presented to the Senate the past 3 days expressing support for the establishment of an End of War List' and containing a threat that 'further petitions will be presented to the Senate every sitting week for the remainder of 1989'.⁵⁹ Despite his efforts the End of War List Bill lapsed in the House during 1990 and it took until 1998, after a change of government, for an end of war list to be announced, albeit in a more limited form than originally envisaged by McGauran.

⁵⁵ Senate debates, 25 November 1982, p. 2851.

⁵⁶ Senate debates, 8 September 1910, pp. 2792–3.

⁵⁷ Senate debates, 6 February 1995, p. 557.

⁵⁸ Senate debates, 24 May 1989, p. 2545.

⁵⁹ Senate debates, 16 June 1989, p. 4202; 7 September 1989, pp. 1139–41.

Even when the Senate as a whole does not act to forward the interests of petitioners, individual senators may, especially when the petitions are of a more local nature and address more typical constituent matters. When Senator Margaret Reid presented a petition in the Senate in 1986 dealing with traffic issues in her territory she took further action herself, referring it to the Minister for Territories and asking that he look into the matter, later informing the Senate of his reply.⁶⁰ Individual senators have also taken up petitioners' issues in question time.⁶¹

Perhaps imitation was not the sincerest form of flattery when, in the historic last sitting day of the Senate in the provisional parliament house on 2 June 1988, Senator Michael Baume presented a petition with 19 signatories asking the Senate to have the cappuccino machine from the old building brought up and 'carefully restored to its former glory' in the new staff cafeteria. True to petitioning tradition, the plea was unsuccessful and a new machine was installed. As the President of the Senate Kerry Sibraa recalled, it may have been the last day in the old house but 'the big issues were on'.⁶²

Are petitions futile?

While petitions can have some influence in shaping legislation and policy and stimulating the course of debate in the Senate, their impact is undeniably small when considered alongside the sheer bulk of the petitioning history in the Senate. By their very nature petitions cannot guide decision making. As a poll or referendum they are flawed. As Senator John Button observed:

One of the unfortunate things about petitions, of course, is that petitions present all points of view ... It is important that people are involved in that issue, but ultimately the Government has to make a decision about the issues involved.⁶³

Where the aims expressed in petitions have met with some success they are often carried on the back of a large campaign with wider influences in the media and elsewhere. In such cases judging the success of a petition is effectively a judgement on the success of the campaign. Other methods such as taking up constituent issues with representatives and direct lobbying of senators to introduce notices of motion, move legislative amendments and ask questions of ministers are more effective in bringing about change. Members of the public can contribute to committee inquiries

⁶⁰ Senate debates, 19 March 1987, p. 1041.

⁶¹ For example, Senate debates, 29 September 1953, p. 274; 24 October 1963, pp. 1387–8; 29 October 1963, p. 1513.

⁶² Senate debates, 2 June 1988, pp. 3403, 3449; *Sunday Age* (Melbourne), 4 March 2001.

⁶³ Senate debates, 28 April 1982, p. 1633.

by writing submissions and giving evidence in hearings. However, while this may be effective when an inquiry is already in place it is of little comfort when the issue of concern to petitioners is off the political agenda. Helping to determine subjects of inquiries is an area where petitions have some continuing role to play.

After the late 1990s the Senate experienced a sharp decline in the numbers of petitions, although there have been spikes in numbers of signatories when particular issues have risen to public attention such as the introduction of the goods and services tax (2000), live animal exports (2003) and proposed changes to refugee laws (2006). This general trend has been mirrored in the House of Representatives although the exact timing differs. Possible reasons for the decline in petitioning activity in the federal parliament might include disillusion with its effectiveness, disengagement from the political process, and the preference for other means for obtaining redress. In the Senate context, the election of minor party senators with environmental and socially conservative agendas may have channelled concerns in some contentious policy areas directly to these representatives.

Despite the enthusiasm of a few concerned individuals and repeated consideration by the Standing Orders and Procedure committees, the Senate has decided against sustained measures to make petitioning more effective. In 1970 the Clerk of the Senate, J.R. Odgers, commented that a Senate petitions committee ‘would add prestige and importance to the Senate as the House with the special function of seriously considering petitions and the grievances of petitioners’.⁶⁴ With the formation of the House of Representatives Standing Committee on Petitions in 2008 this opportunity was lost.

The House of Representatives Petitions Committee was established out of concern for both the rarity of ministerial responses to petitions, and the decline after the 1990s in the tradition of petitioning.⁶⁵ In the five years since the committee has operated (2008–12) compared to the previous five years (2003–07) the number of signatures on House of Representatives petitions has increased by 32 per cent (The average number of petitions has more than halved although the inclusion of identical petitions makes this statistic more complicated.) By comparison, in the Senate over the same time periods average numbers of petitions and average numbers of signatures have both declined (by 65 per cent and 41 per cent respectively).

According to one commentator, a key issue in determining the effectiveness of petitions is ‘whether they are considered by the relevant decision maker, who then

⁶⁴ *Report from the Standing Orders Committee Relating to Standing Committees*, op. cit., p. 19.

⁶⁵ House of Representatives Standing Committee on Petitions, *The Work of the First Petitions Committee: 2008–2010*, 2010, p. v.

explains by way of response what, if any, action is to be taken and why'.⁶⁶ The House of Representatives Petitions Committee refers matters to ministers for their responses and follows up on some matters in discussions with petitioners and public servants. While the ministerial responses may not produce the actions the petitioners are seeking, the explanations received constitute a form of accountability and a dialogue between representatives and citizens.

Perhaps searching for tangible results for petitions is beside the point and their primary purpose when directed towards the Senate is to inform, to express views and to engage. Even without direct action they may be 'inwardly digested' by senators.⁶⁷ To Senator Dee Margetts:

Petitions constitute an aide-memoire for us of the issues that are important to the community. With petitions, we know what the issues are. We know how many people are supporting a petition. If the same issue comes up day after day in large numbers, it is important—not just that it happens and not just that it gets written down somewhere—that we know, because we are the people to whom those people are sending the message.⁶⁸

Arguments found in the academic literature that petitions 'foster a sense of unity and purpose within a community which is then publicly demonstrated when the petition is presented to the House'⁶⁹ have long been recognised by senators. In the words of Senator Button:

What is important, of course, about the collecting of petitions in this community, if we are frank and honest, is the involvement of members of the public in being concerned about an issue confronting this Parliament and discussing it with their neighbours, workmates and colleagues and getting them involved to the point at which they read the petition and say: 'I am concerned about that, too. I will sign it'. That is the important community process.⁷⁰

⁶⁶ Gareth Griffith, 'Public petitions: A case study of New South Wales', *The Parliamentarian*, no. 2, 2011, p. 148.

⁶⁷ Senate debates, 28 April 1982, p. 1632.

⁶⁸ Senate debates, 6 March 1997, p. 1425.

⁶⁹ Sonia Palmieri, 'Petition effectiveness: Improving citizens' direct access to parliament', *Australasian Parliamentary Review*, vol. 23, no. 1, 2008, p. 123.

⁷⁰ Senate debates, 27 April 1982, p. 1546.

