

Elections as Rituals: Private, Communal and Public*

Graeme Orr

Introduction—ritual and aesthetics

The area that we will traverse today falls within the law of politics. As a fairly new field, the law of politics hoovers up not just electoral law, but the rules governing parliaments, parties and money in politics. It mixes constitutional law, administrative issues and political science concerns, in equal parts. For the best part of two decades, I have been exploring the law of politics. It has been fun helping found a new sub-discipline.

Ten years ago I paused from the labour of wading through statutes and case law, and wrote an essay called ‘The Ritual and Aesthetic in Electoral Law’.¹ The essay was an attempt at a sociological understanding of elections *as events*, events we experience. Ten years later I turned the little tunes in that paper into a book titled *Ritual and Rhythm in Electoral Systems*.² Its title prompted one wag to ask whether I was Catholic. (I am not. As we will see, the ‘ritual’ is secular and the ‘rhythm’ has nothing to do with the Billings method and everything to do with the way elections set up the seasons of politics).

Today’s talk will distil some of the flavour of that book. Beyond thinking about elections, my overall theme is the importance of thinking about public institutions and practices in terms of how we experience them, and what meanings might be embedded in their forms and patterns.

On the way to this forum I was reflecting on the charms of Canberra. Non-Canberrans are meant either to embrace, with awe, Canberra’s great public buildings and national symbols. Or we are meant to malign its sprawling suburbs and lack of dynamism. But what strikes me most is that Canberra is a gracious and spacious city. It is quintessentially Australian in its natural environment. Yet in one key aesthetic aspect Canberra seems more European than English-speaking. It is the only city in Australia

* This paper was presented as a lecture in the Senate Occasional Lecture Series at Parliament House, Canberra, on 5 February 2016.

¹ Graeme Orr, ‘The ritual and aesthetic in electoral law’, *Federal Law Review*, vol. 32, no. 3, 2004, pp. 425–50; see also ‘Ritual in the law of electoral politics’ in Glenn Patmore and Kim Rubenstein (eds), *Law and Democracy—Contemporary Questions*, ANU Press, Canberra, ACT, 2014, pp. 115–29.

² Graeme Orr, *Ritual and Rhythm in Electoral Systems: A Comparative Legal Account*, Ashgate, Farnham, Surrey, 2015.

that doesn't bombard you with billboards and advertising. Commerce is here, but it is not the dominant motif. Canberra has an aesthetic that both reflects and reinforces the culture, and the public service and governmental values, of the place. In our lives, appearances matter.

Law and culture

Thinking about ritual occurs at the cusp of political culture and law. The institutions and rules of democracy at once open up *and* also constrain the space in which great public events like elections occur. Culture or law? Chicken or egg? At one level it hardly matters: they obviously feed back upon each other, symbiotically.



Figure 1: Japanese street campaigning.
Image courtesy of Nigel Orr

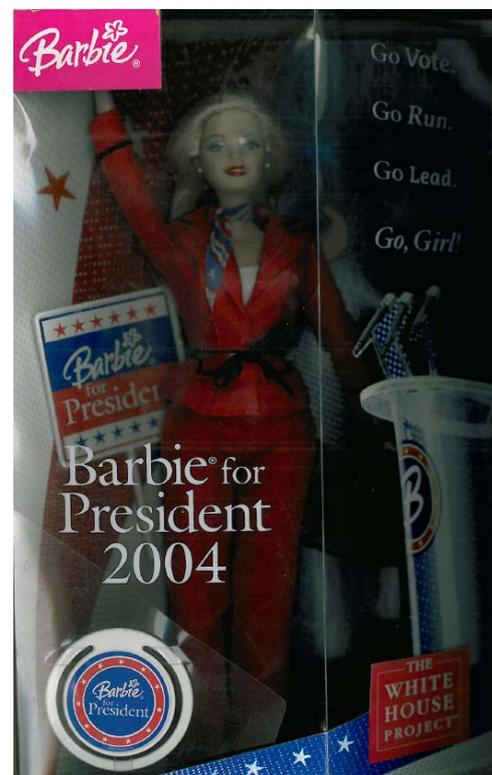


Figure 2: Barbie for President 2004 doll

Take Japan (figure 1). It has a parliamentary and party-based system, like Australia. So it has a collective rather than individualised politics. But unlike Australia, in Japan campaign expenditure is limited by law. And Japanese public funding of election campaigns not only pays for posters on billboards—billboards that are regulated by local government. It even funds one or more campaign vehicles (cars or boats) per candidate, whilst strictly limiting more costly forms of campaigning.³ Part of the rationale is equality of resources between candidates. But the law also perpetuates traditional street-level campaigning, complete with the white gloves.

³ *Public Offices Election Act 1950* (Japan), article 141. I am indebted to Akiko Ejima for this citation.

In such street-level campaigns we see the classic inversion of election time—when the rulers come down to us, to beg for votes. Yet Japanese law also bans house-to-house solicitation of votes.⁴ Such a ban once would have been rationalised as minimising opportunities to bribe individual voters: but in a wealthy contemporary democracy it suggests a cultural more. Face-to-face, domestic solicitation takes nerve and may be considered impolite.

In contrast, the United States notoriously has a more ‘look at me’ culture. The US Constitution requires a directly elected executive or presidency, not the parliamentary model where leaders are chosen by their MPs as peers. The first amendment of the US Constitution mandates free speech. This in turn forbids any limits on political expenditure, so private political money is king. And US statute law requires primary elections, where every elector can help preselect candidates for the general election. The whole structure, from Constitution to party primary laws, is designed to weaken parties and empower charismatic, well-heeled individual candidacies. ‘Go Vote, Go Run, Go Lead, Go Girl’, as in the Barbie-for-President 2004 doll I found in Los Angeles (figure 2).

The examples can be multiplied. We can contrast our neighbours, across the ditch in Aotearoa. New Zealand has a modest campaign culture, more like the British than Australia’s. There is an accent on text-based campaigns through billboards and pamphleteering. There is also a healthy dose of humour and even disrespect, as the practice of comic defacing of electoral billboards reveals. NZ law plays a big role in this, by setting short parliamentary campaign periods and then regulating them—quite unlike the US. NZ law in fact limits (as the UK bans altogether) paid television advertisements at election time, in favour of a rationed system of free air time for parties. NZ also tones things down by banning electioneering *completely* on polling day.⁵

Why we have elections—the purposes and values behind electoral democracy

Lawyers and government officials prefer to think in terms of analytical classifications or normative goals rather than messy things like culture. Figure 3 offers a diagram which I discuss with my students in the law of politics. It shows the various answers to the question ‘Why do we have elections?’ The diagram groups together the

⁴ ACE, *Election System in Japan*, ACE Electoral Knowledge Project, 2007, pp. 42–3.

⁵ Andrew Geddis, *Electoral Law in New Zealand*, LexisNexis, Wellington, NZ, 2007, chapter 9 (broadcasting rules) and *Electoral Act 1993* (NZ) section 197. In comparison Australia allows open slather election advertising and broadcasting, except for a ‘blackout’ on broadcast advertising in the last three days of the campaign. Like the New Zealand ban on any campaigning on polling day, this was designed to create a quiet period of repose.

different concepts through which we can understand electoral democracy, and the goals that might drive regulation.

The top two quarters of the diagram are by far the dominant strains in official and academic thinking. Officially, we think about elections either as instruments of government or as triumphs of liberal democracy. Yet when you talk to the media, or follow conversations at parties, the bottom half of the diagram rears its head. The elections as charade view is a cynical, outsiders' counterpoint to the idea of elections as integrity mechanisms. My theme today however occupies the neglected other quadrant. It is the idea of electoral democracy as a 'secular ritual'.

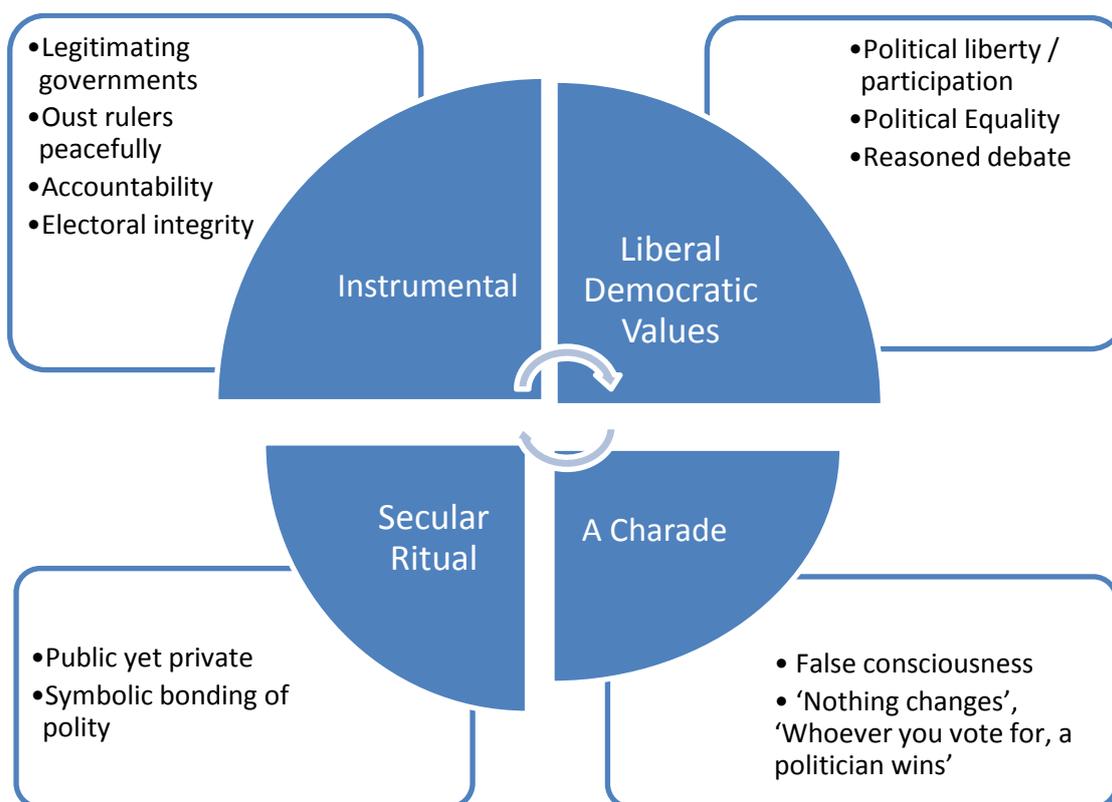


Figure 3: Purposes of elections

We can define ritual as any *patterned human activity embodying social value or meaning*. The patterned, recurrent and hence rhythmical nature of rituals does not mean that just any old habit is a public ritual. I scratch my flaky scalp when I am bored or agitated: it is just a habit with no meaning. Rituals can also be private: someone who takes her coffee at the same place and time every day might seem to be in a routine or even a rut; but if the café is where she met her late partner, we would recognise that she is living out something meaningful embodied in a personal ritual. It is my contention that when we think about electoral democracy and constitutional law and institutions more widely, we need to think about public or shared rituals. In saying we need to, I do not mean we should worship ritual uncritically. Rituals can be

rich and positive. But they also can be ‘ritualistic’, in the negative sense, like a North Korean harvest festival.

So my book was born of dissatisfaction with the language and concepts we use to describe and evaluate the framework through which we run elections. That language and those concepts draw on ideas of elections as instrumental competitions for power, whose *integrity* must be managed. Or they draw on theories of elections as great exercises destined to achieve *liberal values* like political freedom and equality and, if we are optimistic, popular deliberation. In the instrumental or integrity model, the analysis is drily numerical. In the vision of elections as cornerstones of liberalism, the analysis is lofty.

Don’t get me wrong. Each of these perspectives is vital to encapsulate the ideal of free and fair elections. However, we—especially academics, bureaucrats, politicians and judges who study or shape the electoral process—rarely address elections from the *experiential* dimension. There are exceptions. Some historians have focused on early elections as communal events.⁶ Sociologists also sometimes consider the colour and meanings of wider political practices, like public demonstrations. In recent years, two insightful professors of politics, Ron Hirschbein and Stephen Coleman, have explored the rites and experiences of voting in the US and the UK.⁷

The study of electoral systems however has largely lacked this dimension. It has been fixated on the outcome of electoral democracy and not on the journey. It concerns itself with ‘purposive goals’ rather than the ‘latent function’ of elections, to quote from Professor Jean Baker.⁸ We purport to know a lot about elections, through abstractions, book learning and through quantitative studies of voter behaviour and electoral statistics. We do so without sufficient concern for knowing about the electoral experience, let alone how systems and rules shape that experience.

Cocooned in these instrumental and liberal analyses, we forget that elections are *nothing* if not grand social events, events whose configuration shapes our experience of electoral democracy. Elections are giant rituals. They are recurring political masquerades and festivals. Each election itself is then made up of lots of what I call

⁶ An excellent example, from the US perspective, is Mark W. Brewin, *Celebrating Democracy: The Mass-Mediated Ritual of Election Day*, Peter Lang, New York, 2008. From the UK perspective see Frank O’Gorman’s work, especially his *Voters, Patrons and Parties: The Unreformed Electoral System of Hanoverian England, 1734–1832*, Clarendon Press, Oxford, 1989. Jon Lawrence has recently woven past and present campaign styles and norms together in his incisive and entertaining *Electing Our Masters: The Hustings from Hogarth to Blair*, Oxford University Press, Oxford, 2009.

⁷ Ron Hirschbein, *Voting Rites: The Devolution of American Politics*, Praeger, Westport, Conn., 1999 from a philosophical perspective, and Stephen Coleman, *How Voters Feel*, Cambridge University Press, Cambridge, 2013 from both an empirical and theoretical sociology-of-politics perspective.

⁸ Jean H. Baker, *Affairs of Party: The Political Culture of Northern Democrats in the Mid-Nineteenth Century*, Cornell University Press, Ithaca, 1983, p. 262.

‘everyday rituals’: campaign activities, balloting, declarations of results, investitures. They are events whose rhythms, patterns and activities are either set or contoured by law and administrative institutions.

Western analysts have tended to ignore or even deride ritual understandings of politics. A US professor noted once that ‘anthropological studies have too often been dismissed as bearing only on the political organization of “primitives” living in small-scale societies’.⁹ So we find it easy to stare at other cultures, or to look back on our past, as quaint foreign countries. Like in the painting ‘The Chairing of the Member’ (figure 4). In it British artist William Hogarth caricatured a typically feisty Oxfordshire election in eighteenth century England.¹⁰ Polling, before the late Victorian era, was a multi-day festival: colourful, full of reciprocity, bribes and booze, with voting by voice rather than secret ballot.



Figure 4: William Hogarth, An Election: Chairing the Member, 1754–1755 © Sir John Soane’s Museum, London

Then leap forward to today. To the image in figure 5, taken in a New South Wales town early on an election morning in 1998. That’s a family, including casual Australian Electoral Commission (AEC) workers, heading down the road to set up the one-day-every-3-or-4-years ritual of secret balloting. They carry with them the recyclable cardboard booths which act as shelters to cater for the pencil on paper ballot which is mandated by law in Australia.¹¹ And, unlike the US or UK, which vote

⁹ David Kertzer, *Ritual, Politics and Power*, Yale University Press, New Haven, 1988, p. x.

¹⁰ See further Christina Scull, *The Soane Hogarths*, Trefoil Publications/Sir John Soane’s Museum, London, 1991 and David Bindman et al (eds), *Hogarth’s Election Entertainment: Artists at the Hustings*, Apollo Magazine/Sir John Soane’s Museum, London, 2001.

¹¹ ‘[E]ach voting compartment shall be furnished with a pencil for the use of voters’: *Commonwealth Electoral Act 1918* (Australia) section 206. Pencils are more failsafe than pens or computers. That few Australians object to their use reflects a high level of trust. Unfortunately, when he thought he

on Tuesdays and Thursdays, it's a Saturday, not a busy work day but traditionally a family day.

Hogarth's pre-reform election is bursting with public ritual. But various democratic reforms—especially secret balloting, clamping down on corruption in the form of direct treating of voters—have led to the ritual becoming quieter, embedded as part of the ritual of the 'everyday'.



Figure 5: The locals at Hill End, north of Bathurst, preparing for the 1998 election, Robert Pearce / Fairfax Syndication, FXJ196360

On its face there is a linguistic contradiction here. The coming together of a secular society as a polity is hardly 'everyday', not in the sense of something that happens every day. An election is a national moment; a constitutive one and a theatrical one. Our triennial elections establish the rhythm of the political seasons. But at the level of legal rules and administrative practice, elections are also a quotidian or everyday experience. No more so than in the trip to the local school or community hall, as we are summonsed—indeed compelled to turn out by law in Australia—back to the site of our coming of age and rounding out as citizens.

Voting—a private affair

Let us now focus on polling day, that traditional culmination of the electoral ritual. Polling is at once a private, a communal and also a public action. To cast a ballot is

was narrowly losing the 2013 election in Fairfax on the Sunshine Coast, Clive Palmer MHR raised vague claims about ballots being erasable. When at the completion of recounts he narrowly won the seat, Mr Palmer did not pursue the allegations.

the most public of citizen actions, yet it is done in private. In figure 6, we have an image of Tiwi Islanders voting behind those cardboard screens. If you believe the ballot is a sign of hope, if not in its transformative potential, then watching people disappear behind a voting screen or compartment evokes the metaphor of a ‘closet of prayer’, which appears in Les Murray’s poem ‘My Ancestress and the Secret Ballot, 1848–1851’.¹²



Figure 6: Tiwi Islands polling place during the 2010 election, Australian Electoral Commission, Creative Commons Attribution 3.0 Licence, <http://creativecommons.org/licenses/by/3.0/au/>

The everydayness of the ritual of modern voting was foreseen as long ago as the late 1850s. Here’s a quote from an observer in Victoria, just after secret balloting was first instituted in Australia:

The [secret] ballot does away with all the base dissembling and hollow protestations of the canvass ... of kissing squalid children, flattering slatternly housewives, and cajoling partial fathers. It abrogates the demoralising influences of the flagon and the purse ... *everything proceeds with the same tranquil placidity as if the community was undergoing a trying operation under the influence of chloroform, waking up to*

¹² Les A. Murray, *Subhuman Redneck Poems*, Farrar, Strauss and Giroux, New York, 1997. For a history of the secret ballot in Australia (also invoking that poem) see Michael McKenna, ‘The story of the “Australian Ballot” ’ in Marian Sawyer (ed.), *Elections: Full, Free and Fair*, Federation Press, Annandale, NSW, 2001, p. 45.

*consciousness on the declaration of the poll ... the proudest civil rights may be exercised with all the peace and security of a religious ceremony.*¹³

As they pander to ‘working families’, modern politicians might chuckle at the vain hope that campaigning would ever be free of solicitation. Campaigning, as we have noted, *inevitably* involves a ritualised inversion of the normal order of ruler and ruled, where every candidate from the prime minister down asks for our votes.

But what was noticeable, even in the 1850s, was a utilitarian desire to chloroform the hubbub of elections. This was to be done with the legal technology of the secret ballot and orderly polling stations. Admittedly at the time there was some push-back: South Australian Governor Ferguson lamented the lassitude he saw in the quietness of the secret ballot.¹⁴ But the technocrats had their way.

Voting—a communal affair

The secular ritual of polling day is itself now under threat, by what is known as ‘convenience voting’.¹⁵ I have traced that term to at least 1948 in the US, where a reformer, who wanted all voting to be by postal ballot, argued for ‘laws to make possible the economy of carrying the one or two ounce ballot to the polls instead of the 100 or 200 pound elector’ to the polls.¹⁶ (Obesity, it seems, was a problem even then.)

Postal voting has had a renaissance, driven partly by cost-saving considerations. All-mail elections have been trialled in local government in Australia and in the UK. They are also mandated by law at all levels of elections in a few US jurisdictions, currently Oregon, Washington and Colorado. In Queensland, postal voting on demand was recently legislated as a right.¹⁷ As a technology this is ironic, given that the red post-box is going the way of the dodo. Nevertheless postal voting, once the preserve of the immobile or infirm, now accounts for over 10 per cent of turnout in Australia.

Even on integrity grounds, this is curious. Postal voting was originally a legally guarded *privilege*, because it cannot guarantee a secret ballot. As recent UK electoral sorting cases show, postal voting has obvious integrity weaknesses. Parties in

¹³ William Kelly, *Life in Victoria, or, Victoria in 1853 and Victoria in 1858*, Lowden, Kilmore, Vic., 1977, p. 318. Emphasis in the original.

¹⁴ Cited in McKenna, *op. cit.*, p. 60.

¹⁵ For more, see Graeme Orr, ‘Convenience voting: the end of election day?’, *Alternative Law Journal*, vol. 39, no. 3, 2014, pp. 151–5.

¹⁶ George F. Miller, *Absentee Voting and Suffrage Laws*, Daylton, Washington, 1948, p. 18.

¹⁷ See now *Electoral Act 1992* (Qld) section 114.

Australia have even manipulated the law to make themselves conduits for postal voting.¹⁸

Even more significantly, pre-poll or early voting in person is also on the rise. In contrast to postal voting it doesn't save money. Admittedly, in parts of the US early voting is critical. Americans vote on Tuesday, a working day. In less resourced communities and in states that mandate photographic voter ID, minorities have to push hard for the right to queue at pre-polling stations. However in Australia pre-polling attracts mostly staunch middle-class electors. Typically these are people who think 'I always vote for party X so let's "get it out of the way" '. This is a consideration of pure convenience. In the 2015 Victorian state election, over 30 per cent voted early, whether in person or by post, and a majority voted this way in one recent by-election.¹⁹ Electoral commissions, encouraging this trend, are thus gearing up for elections where almost half may vote early. All this threatens the once every year or so experience and symbolism of polling both communally and on the same day.

In the brave new electoral world, internet voting, we are told, is inevitable. It is being rolled out and trialled in NSW, although at this stage just for visually impaired and service people. Yet will we stop to consider the shift in performative meaning of logging in, at any time, to vote on our iPhones? And how that differs from visiting a communal polling station on election day? It is a change on par with the way the ritual of brewing and sharing tea was replaced by the convenience of the tea bag or, in a more blokey metaphor, the way T20 cricket, in short bursts at night, is threatening the more leisurely formats of the past.

There are deliberative and participative angles to this shift from 'election day' to 'election month'. Not knowing who has voted early, parties are wondering how to stage campaigns. But my concern here is to tease out the ritual and rhythmical elements in the shift.

A *London Times* columnist recently wrote that 'the act of voting [in Britain] has all the glamour of queuing for a wee at a school jumble sale'.²⁰ This wasn't a whinge: she meant that the pedestrian nature of voting at a local school had an 'authenticity', a symbolic value in which 'we the people' see 'we the people' gathering to put pencil marks on paper and exercise recall power over our political masters. It is quite a leap

¹⁸ See further Norm Kelly, *Directions in Australian Electoral Reform: Professionalism and Partisanship in Electoral Management*, ANU E-Press, Canberra, ACT, 2012, chapter 9.

¹⁹ Nathaniel Reader, 'The growth of early voting in Australia', paper to the Challenges of Convenience Voting Workshop, University of Sydney, 4 November 2015.

²⁰ Carol Midgley, 'The British ballot box is a glamour free zone—long may it last', *The Times* (London), 6 May 2010, p. 33.

from the tangible communal paper ballot to the ephemerality of e-voting anytime from anywhere.

Voting—a public affair

Finally there is the rhythm of election night. Election night is a time when elections and drinking are reunited. (My book includes chapters on both alcohol and betting at election time). Political parties may be wary of offering alcohol—the old crime of treating—at meetings these days. Indeed Australian law has, since 1902, forbidden voting on the licensed parts of premises even though, in some small towns, the pub has always been the one and only public venue.²¹ But well-lubricated election night *parties* remain the climax of the ritual for many.



Figure 7: National Tally Room, 2010, Australian Electoral Commission, Creative Commons Attribution 3.0 Licence, <http://creativecommons.org/licenses/by/3.0/au/>

Australia once had a National Tally Room, as depicted in figure 7. It evolved from the practice of newspapers setting up giant tally boards on election night. A National Tally Room was born out of a desire to have a public focus for election results. The National Tally Room became an institution: overseen by the Electoral Commission, open to all citizens and a tangible symbol of democracy. It was a scene of triumph and despair. Australians of a certain age still recall Prime Minister-elect Bob Hawke being mobbed in 1983 as Malcolm Fraser wept whilst he lost office.

But the National Tally Room died at the hands of cost-cutting, the advent of computerised feeds, and a drift by media and politicians to more controlled environments. Just as political parties shy away from public rallies, so they prefer now the secure interior of a hotel ballroom, whilst the media sucks in the electronic data and brands it with their own graphics. No more the gaze of the physical tally board, that symbol of the river of numbers, encompassing each individual vote, forming a flood that sweeps away rulers.

²¹ See now *Commonwealth Electoral Act 1918* (Australia), section 205.

Now I do not wish to be a Luddite. The public space of election night has been, at least since the mid-twentieth century, a mediated one for most people. Electronic voting in time will transform the public rhythm of election night, with its parties, live crosses, and *schadenfreude*. With e-voting, the results can all be known instantly, then dumped en masse into a super computer, rather than unfolding with suspense. (Relatedly, many countries ban opinion polls in the last week or two before polling day—ostensibly for integrity reasons, but also for deliberative repose.²² Limiting opinion polls also invests the event of election night with greater suspense).

Compare Australian and British election nights. The British vote until 10pm GMT, whereas Australian polls close four hours earlier. The British have a curious ritual of counting every ballot on election night. British people vote on a single ballot, with a cross, so the count is simpler than here where preferential voting is used. Moreover, unlike in Australia, British postal votes have to be in by close of polling. As a result, city councils, who manage each count, can race to be the first to declare each result. Talk about ritual triumphing over purity! When, in 2010, to save money on overtime (and perhaps ensure more accurate counts) British returning officers sought to delay counting until the morning after polling, there was a backlash in the form of a ‘Save General Election Night’ campaign. It succeeded in generating a law mandating that counting start no later than four hours after polls close.²³

Under UK law the local mayor, as nominal returning officer, declares the poll for each House of Commons constituency. These declarations happen across over 600 communal tally rooms. The customary rule is that all candidates attend and are invited, like Edmund Burke of old,²⁴ to give a final address to their electors. Even a re-elected PM can thus be brought down to level. After the Iraq war, Tony Blair faced not only a Monster Raving Loony Party candidate wearing a ‘Blar’ hat, but an independent candidate whose serviceman son had died in the invasion of Iraq.²⁵

Conclusion—ritual and civic quietism

In contemporary times, fear or resentment of electoral passivity is often not far from the surface. Especially amongst political progressives. A US professor wrote, in *The New Yorker*, that she longed for more electoral ‘hue and cry ... Sometimes, inside that

²² See Graeme Orr and Ron Levy, ‘Regulating opinion polling: a deliberative democratic perspective’, *UNSW Law Journal*, vol. 39, no. 1, 2016, pp. 318–40.

²³ *Constitutional Reform and Governance Act 2010* (UK), section 48. I am indebted to Dr Heather Green for this reference.

²⁴ Compare Burke’s famous ‘Speech to the Electors of Bristol’ (3 November 1774) where he set out the concept of an MP as a trusted agent, elected to exercise discretion, in distinction to an MP being a delegate following the bidding of their electors.

²⁵ The image now graces the front cover of Lawrence’s book, op. cit.

tiny booth, behind that red-white-and-blue curtain, it's just a little too quiet.'²⁶ A fellow American, Professor Hirschbein wrote similarly that he is worried that 'for many, Election Day is bereft of its former liturgical fullness ... the carnival spirit is gone.'²⁷ I wonder what they would have thought about the Liberal National Party proposal in Queensland in 2014 to ban all electioneering on polling day. (A measure I opposed as a final leaching of the colour and activity of the day as much as a risk to the freedom of non-party activists to protest, or opposition parties to use how-to-vote cards to encourage preference swaps.)

At the heart of this concern lies a regret about contemporary electoral quietism. It is the feeling that whilst we don't want the excessive money or razzamatazz of the US, elections in other developed countries today are *too* placid or insufficiently passionate. This regret can be a friendly critique of electoral democracy: elections are worthwhile, but they should be *more* engaging. It is thus a rallying cry for 'elections plus', a call for a more integrated participatory democracy throughout the electoral cycle.

Once one established practice or rule supersedes another, the old practice becomes seen as 'archaic and senseless' and the new one, in time, comes to feel natural. This is true of politics, where streamlined forms of electoral administration and top-down, professionalised and centralised campaigns now seem natural or inevitable. In turn, older forms of electoral practice appear highly ritualised: we gape at the past as if it were a foreign country, like early anthropologists at the workings of some unfamiliar tribe.

It is unrealistic to expect the typical election in a settled democracy to bear the same passion as when the ballot was younger. Ultimately, the lament is not for a lost oasis, as it is for a perceived lack of political engagement and interest. There is no magic wand to revivify politics—it is not something laws or electoral commissions can ordain. The law can create the space, but it is up to parties and citizens to fill that space.

Whilst the lament about electoral quietism carries a whiff of nostalgia, it is far from new. As I said earlier, when secret ballot laws were introduced, there were those who despaired that elections had assumed a new 'quietness and indifference', just as others welcomed a 'tranquil placidity' around election day. Contemporary concerns about

²⁶ Jill Lepore, 'Rock, paper, scissors: how we used to vote', *The New Yorker*, 13 October 2008.

²⁷ Hirschbein, op. cit., p. 130.

‘civic privatism’, to borrow a phrase from Professors Ackerman and Fishkin,²⁸ thus turn out to be nothing new.

Just as there was no ‘sausage sizzle’ in the electoral days of rolling out the barrel, my ultimate point is that the electoral processes and rituals of today are different from but not necessarily lesser than those of the past. However, if we do not attend to describing and understanding the ritual dimension of public law and practices, we cannot begin to appreciate their importance. Let alone openly undertake the normative task of deciding which elements we want to savour, update or farewell.



Rosemary Laing — I am glad you mentioned the sausage sizzle at the end, because there is also the cake stall. There is also running the gauntlet of all the people handing out how-to-vote cards and the dreadful choice between, do I politely just accept them all and collect them, or, do I say, ‘No thank you, I’m fine’?

Question — Did you know that there is actually a Twitter account and now somebody is developing an app that will tell voters where the sausage sizzles are on polling day so that they can queue up? Last election, in 2013, there were reports, I believe, from the account in some polling stations, of the queue being twice as long for the polling booth because people turned up just for the sausage sizzle.

Graeme Orr — Well I am a former vegetarian and I think it is great, and yes, I mentioned snagvotes.com in the book. These are totally organic, grassroots community-style things that you don’t usually see overseas. The whole idea of where we vote is interesting because people say: ‘Yes, voting at schools has certain meanings’, whereas others say, ‘Well look if you go to school or church halls, you are going to influence the way people think’.

We do these political acts in a physical space. If those physical spaces can be welcoming then obviously it is better than in a country where you might turn up at a courthouse to vote and, if you had been in trouble with the law or you are young, that is not going to be so welcoming. Or if you had to turn up at an Electoral Commission office, colourful as they are, that would have a more bureaucratic feel than the sausage sizzle at the local school, the P&C, the ladies auxiliary and the scouts and all that.

²⁸ Bruce Ackerman and James S. Fishkin, ‘Deliberation day’, *Journal of Political Philosophy*, vol. 10, no. 2, 2002, pp. 129–30.

Question — The last election I voted at, my local school did their fete and they had a jumping castle at an election. I thought: this is the best thing ever; we should make this the law!

Graeme Orr — I won't ask how many times you pushed aside the kids to jump in the jumping castle. There are some academics who had funding in America to trial the idea of having non-alcoholic fetes and parties at election day. Part of the problem they have is voting on a Tuesday. Schools are all taken, unless it is an election in a holiday, and they are set in November so it is unlikely.

Question — Something you didn't mention is the good old-fashioned public meeting. I do wonder whether such things can exist in Australia any more, particularly in the light of the episode that occurred at the Queensland election last year where a gentleman went along wearing a t-shirt standing next to people with the logo, 'I am with stupid' on it and was arrested by ten of Queensland's finest. Now it is unimaginable that in the Menzies era persons seeking to disrupt a public meeting by interjecting or otherwise would have had the police called on them. I was talking to some of my electoral friends in East Timor and described the way in which campaigning has become so sanitised in Australia today. Their response was, 'How hopeless are your politicians that they won't stand up in front of whoever wants to come along and answer whatever is said to them?' How have we got to this point of the sanitisation of this institution of the public meeting?

Graeme Orr — I almost thought you were going to say we can't have public meetings because there will always be some person who wants to upstage it. That may be a good thing. I don't know. In my next project, I want to look at the issue of the regulation of speech horizontally. So the way that social media and employers and others are protecting their brand and image by trying to crack down on what people say and do and how they express themselves, people over whom they have some contractual power. I am reminded of a lovely photograph of a guy who used to run in the New Guinea elections, Mr Shit, who was half advertising his business which, I think, was to suck out excrement from drains. But he would appear on the ballot paper and with his t-shirts as 'Mr Shit'. So there is some of that kind of colour. We don't necessarily want people running to promote the fact that they are a prostitute, which happened in Queensland a few years back. Or people who run (I won't mention names) allegedly to get the money that follows the four per cent of the vote.

But I think the death of the public meeting and the rally is probably traced back to John Hewson's days. He went around the country and there were lots of Labor Party operatives and activists trying to create a sense of disorderliness. But it is very odd in

a country like Australia, with its Irish and Indigenous roots and so on, that we have got this fear of disorder. In terms of law, the public meeting was written long ago into early Australian law and British law—the idea that candidates were entitled at law to free use of rooms in schools and school halls for those traditional gatherings and meetings, with adults turning up and having to sit in tiny chairs and pews. But to have a kind of deliberative discussion, well that’s now almost gone even in the United Kingdom. But we certainly have a top-down culture and such a control-freak culture. I won’t condemn Queensland’s finest; you can. I guess it is a worry and a concern.

Question — In Sweden, elections are very quiet affairs. It is always the same time of the year. It is a dark time of the year, it is cold and you go in and you quietly leave. So even the sausage sizzle isn’t there. But I did want to mention a ritual that has gone the same way in Sweden as what you are describing—that is, paying taxes. When I was younger, I lived very close to the main tax office and the date for paying taxes was the same date for everybody. People would come on the date with the envelopes. Now these days you can pay with a text message; you can sign your tax declaration. But in those days you paid on the day. There was a marching band, people out with big sacks to gather the envelopes—it was a huge street party for paying taxes. But election day was actually very quiet, so everything you are describing about elections, I remember with paying taxes. Now you do it with your phone.

The point I wanted to make was about climate and ritual and colour. Your book is very focused on, in general, quieter countries. So Sweden is very cold, very dark and not a lot of colour and noise outside. But in countries where they have elections outdoors, you really see what you are describing. This sense of something public, of something that engages people, so when elections are held under a tree and when counting is very public, ‘Frelimo un voto’ and people yelling and screaming. You can see that in one of the neighbouring countries here in Indonesia, where it is a public count in the village square. Everybody is there to watch it. So I think that in addition is this idea of warmer weather and outdoors that adds to colour and noise.

Graeme Orr — Two things: one is the change in public space, that political scientists and sociologists have tracked for centuries now, which you have effectively touched on there. The other thing, our public spaces are becoming more internalised, individualised or transactionalised, to use the jargon. I was thinking the other day, it is mentioned in my book, of watching my children grow up. Their generation is highly ‘iPadic’. It happens very young, as you may know, because these devices are so well designed and intuitive. And yet, with something as fundamental as money—you mentioned taxes—the tangibility of coins and even our polymer plastic notes is fundamental to them coming to understand the idea of all this: is it contained value, is it value, or is it something I should worship? Much different from plastic credit cards.

And now we are moving into the era of, as you say, you just text your account details. It is just digits somewhere in some big computer, so the meaning of money changes particularly. And yet, watching my kids, they need that tangibility to at least at some point begin to understand an abstract concept like money and certainly, an abstract concept like democracy.

Question — Could I solicit a comment from you about how-to-vote cards, which are surely strange and, in my view, one of the silliest parts of elections. In the age of convenience pre-poll postal voting, are we all headed the way of the ACT where in practice how-to-vote cards are banned and election days are dreary and colourless?

Graeme Orr — I must have been a bit of a nerd, but I used to actually collect how-to-vote cards. I thought it was like collecting football cards. The reds versus the blues and the greens. Because I liked blue and white—that was my football team, not Canterbury Bankstown, but Brisbane Brothers—I remember saying to my mother when I was very young, ‘I am going to follow these Liberals, the blues’. A few weeks later I went back to her and I said, ‘No, I heard that these Liberals and these people—the Country Party back then—they are ganging up on the reds and that is unfair! I am going to follow the reds.’

More seriously, you wouldn’t invent how-to-vote cards in any other system. They are an artefact of the preferential voting system. We are not going to get rid of them, because it suits the major parties because they are the only ones who can get enough activists to man the polling stations. They are having increasing problems with three-week long early voting. They will almost have to do a ‘Clive Palmer’ and pay people to hand out how-to-vote cards. I think they are a horrid waste of paper and so on, but they are still part of the whole process. As Rosemary said, do you accept them all, to not reveal your ballot? Or do you get in a huff and only take the ones from the party you like? Do you take them home to write your shopping lists on! It’s a big issue.

Rosemary Laing — Graeme, you had a lucky childhood, because when I was a child we had to stay in the car. Polling places were not places for children, according to my parents at least. We missed out on the ritual of the polling booth. It was a very serious place where mummy and daddy went to do something very important.

Graeme Orr — Well, (a) that would be illegal in Queensland and (b) you would probably die, if it was a summer election!

Question — I was wondering what impact you think compulsory voting has had on the ritual of election day. There are not that many countries that compel people to be there and you get pictures in newspapers all across the world of that shot of people

lined up at the polling booth—one with a surfboard in thongs and all this kind of stuff—because everyone has to be there. It presumably makes it a different ritual from someone making an active choice to go out of their way to go to their local school to be there and vote.

Graeme Orr — Yes, compulsory voting is interesting. I have to give a talk in April at the National Law Reform Conference at the ANU. Compulsory voting is an interesting thing in Australia because I don't think it necessarily changes politics dramatically. In the long term it may mean that our policies are a little bit more egalitarian. I am not sure, but it also encourages out a lot of people who would not otherwise vote, who are suburbanites. Not the guy with the surfboard, but people who are suburbanites, with kids, who are too busy for politics. They appear to be late swinging voters. Really it is just people turning up and saying 'I will stick to the devil I know'. So it can actually have a status quo effect at state and national elections. That is my theory at least.

In terms of the ritual, yes, I think it adds to the order and quietude of the ritual. It certainly makes the Electoral Commission very keen to maximise turnout, for good reasons. One argument is you are going to have more convenience voting when you are compelled to vote. You have got to make it as easy as possible. On the other hand, it has done away with some of the hand-to-hand or face-to-face nature of politics. The whole 'get out the vote' that you might have known from the UK, or the use of cars and conveyances, getting your activists in jalopies to go around and pick up people, particularly elderly people, to make sure they get out. Once upon a time that was made illegal by law. At least paying someone the bus ticket was made illegal in the 1880s. But now it is an integral part of the communality of election day in other countries—less so in Australia.

Question — A quick comment and then a question. For those who are relatively new to voting, one of the reasons we have had how-to-vote cards in Australia is, as Graeme mentioned, the preferential voting system. But also, prior to 1984 party names were not written on ballot papers. So if you wanted to vote for a particular party's candidate, you needed their how-to-vote.

Just one question—I invite you to comment on the shrinking unregulated space around elections given, for example, that following the Western Australian Senate issue the AEC's regulations around polling places and handling of ballot papers were tightened up. Also, in some states how-to-vote cards are now required to be on a certain template. The increasing professionalisation of elections management is arguably shrinking the space in which ritual can thrive in Australia or so it seems to me anyway. Do you have any comments about that?

Graeme Orr — Certainly, as a law person, we love laws and our bias is towards what we call ‘juridification’. So you take things that happen naturally in society and then you start adding these layers of regulation. Always for good reasons, or apparently good reasons, but it is used to add more and more and then it can become a kind of stifling edifice. There is obviously a risk of that, yes. As you say, it can be part of the professionalisation, it can be part of what I call the ‘juridification’. It can also just make things more difficult for newer entrants and players in terms of participation, because they are less likely to have good legal advice or they are more likely to get caught up in the net. Even local constituencies and branches are less able to deal with some of the laws that are otherwise very favourable, such as proper accounting of political money, that can often catch up newer players or outsiders, some of whom are bringing both the new blood and colour to election campaigns. So it is obviously something we need to be thinking about.

Question — During the talk you noted the demise of the National Tally Room. That got me thinking about its place in the concept of ritual. It was a big part of the rhythm and the ritual for decades. I was thinking it was maybe more than just ritual because on election night it is part of the nation’s expectations. They know what the outcome is going to be or what it will probably be. The tally room, of course, was televised and the commentators were in the tally room as well. It did occur to me that those things happening within the tally room, run by the Electoral Commission, gives the whole process of reporting of what is going on an authenticity that it might lose if it is left to be done from television studios. Do you have any thoughts about that?

Graeme Orr — Yes, there is a certain gravitas that can come with it. The place was always buzzing and it must have been an enormous logistical nightmare to run. What we have moved to now is Antony Green and people getting the feeds into Channel Two and Channel Nine and so on. When we move to internet voting there will be the potential for all the results to be known almost instantaneously, apart from those that rely on late postal votes. There might come a time when there will be a lot of people saying: ‘How can we trust this? I go to vote and I press something on a screen and then it enters the black box and it comes out with a set of numbers that are delivered to us by five different networks’. I can see your point exactly.

I don’t think we have completely lost rituals though. The ability of the modern media to cross to peoples’ backyards, to get ‘beamed’ into the backyards of the winning or losing candidate with the booze flowing and their kids in the background, and people crying or not crying, or laughing. Then they will be put on the spot and they may not be well versed in dealing with the media, especially with live crosses on national TV. That is one thing we have gained in the swings and roundabouts of the change from a

more singular physical focal point of the National Tally Room to this more dispersed coverage.

Question — The diagram you used took me to thinking that you would be following the thread of how ritual can offset cynicism. Your bottom left quadrant can offset your bottom right quadrant. I want you to think about how you might stretch that thread out. I feel a lot of people in Australia will be very cynical about politics, that politicians are all the same and that it doesn't matter what we do. Yet they still love a good election day. They will still go down and buy a sausage. How do those two things offset and, as we go forward with the future of ritual, can it still combat that cynicism?

Graeme Orr — Yes, I think Australians have by nature, at least allegedly, strong 'bullshit' detectors, as we say. Some very small-l liberal academics have said to me, 'Look, ritual is a good way of describing what goes on, but if you are going to try to design rituals top down, that tell people that you will be marched off to school like scouts to worship Anzac Day, it is a worry.' We are a long way from that situation. What I see instead, is in Queensland we may have almost a snap referendum coming up in the next month or two, to do away with three-year cycles and go to a four-year rhythm. Now, the major parties have both backed that. The bill has gone through parliament. The business community, or at least the Chamber of Commerce and the large businesses, are all behind it. So far the Council for Civil Liberties and a few academics like me are saying, 'Hang on a minute, even if you think that we need fewer elections ...' The argument will go, 'Oh people don't really enjoy voting and we need more time as public servants to develop policy.' I understand that. And maybe another year's job security for politicians will make them more in touch with people! I don't know. Queensland does not have an upper house, does not have a bill of rights, does not have proportional representation. It has only got one major newspaper. We are the last state that needs to be voting less often. So there is my plug on a different issue.

But I think you are right. Opinion polls say most Australians would still turn out even without compulsory voting. They believe that they would still want to vote, they are habituated to vote and we only need compulsory voting because there are these other people who have to be prodded along. I think we do have relatively high levels of trust in our institutions—on international standards, certainly. A lot of people seem to value the communal aspects of voting but there are others obviously who don't. If we get a generation who get used to voting on a computer we might lose that.