

## **The good, the bad and the ugly — perceptions of parliament — the conference in summary**

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In opening the conference, the Speaker of the House of Representatives, Harry Jenkins, referred to the curious phenomenon of white line fever that somehow makes respectable representatives behave like football supporters. He also referred to the difficulties experienced in controlling the media in Parliament House, Canberra, particularly on those occasions when there have been leadership challenges or changes.

The role of the media in shaping perceptions of parliament was a recurring theme of the conference and it was observed that more transparency and an open information flow did not necessarily lead to better perceptions of parliament and its members.

The keynote address was delivered by Emeritus Professor John Warhurst who gave us 15 snapshots of the good, the bad and the ugly that traversed the spectrum of perceptions of parliament from the altruistic ideal of public service in the public interest, to the venal, the narrow and the embarrassing. He drew attention to the paradox that saw the institution and its inhabitants simultaneously admired and scorned and suggested that perceptions of parliament were not necessarily related to performance. If this is so, then there is a huge challenge for those of us who believe in the institution of parliament to continue to try to explain what it does and why it has value on so many different levels as an essential part of what we like to think of as a civil society.

It is difficult to single out particular highlights among the papers because all provided an interesting perspective on the conference theme of the good, the bad and the ugly, from John Halligan on whether trust in parliament is too low and what can be done about it, to Harry Jenkins on the problems of trying to corral the media in Australia's Parliament House and Helen Ester on the particular origins and evolution of that problem, to Judy Madigan on what we should mean by ministerial responsibility and Brian Costar on the gap between perception and knowledge that

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leads to alarming ignorance of matters parliamentary in the bureaucracy and the legal profession.

Helen Ester's account of the evolution of parliamentary reporting in Canberra was illuminating. The cracks in the system identified by Helen were exacerbated by the creation of the national capital on a greenfields site where, in 1927, apart from old Parliament House, East Block and West Block, there was virtually nothing but sheep paddocks. The pragmatic decision to house the executive and the press gallery in the same building as the parliament certainly sowed the seeds of future difficulties in the relationship, difficulties that led to such episodes as the treatment of Australian journalists during the US presidential visit in 2003. The terms of engagement between the press and the rest of the occupants of Parliament House in Canberra continue to be compromised by that early decision. Too much familiarity breeds contempt — on both sides — and a lack of respect for the institution. It also fosters laziness and complacency on the part of the press and too much spoon-feeding. However if, as Crispin Hull argued in the debate, politicians need the press more than the press need politicians, these comfortable arrangements are unlikely to change any time soon.

Common perceptions of parliament are informed by what the mass media is prepared to show and the most familiar images shown are those depicting the great contest of question time. Ironically, however, this monster was created for us by the federal houses which, in the early 1990s, authorised the ABC to broadcast question time 'live' and also authorised television stations to broadcast excerpts of their proceedings. Until then, permission had been required on a case-by-case basis. The audio-visual broadcasting infrastructure was also not easily accessible until new Parliament House was occupied in 1988. These decisions made available to the steadily agglomerating television networks a completely new source of news and current affairs footage at no direct cost. Any network with facilities in Parliament House (which they all had, courtesy of the arrangements described by Helen Ester) could take the 'feed' from the official coverage of both chambers and rebroadcast it, subject to certain conditions.

From that time, there have been noticeable changes in the behaviour of members and the dynamics of the chambers, underpinned by the use of marketing strategies to manipulate the perceptions of viewers. One phenomenon is the emergence of power dressing, including having the right tie design and colour. Another emerging phenomenon is the placement behind the Prime Minister and senior ministers of members with marginal seats, perhaps an example of celebrity by association. Also common nowadays are those staged shots of party leaders or frontbenchers talking to the media surrounded by faithful acolytes nodding in agreement, often crowded together in front of a bookcase filled with Hansards and flanked ostentatiously by Australian flags. Only the occasional unsanctioned wide shot discloses the deception by revealing the slabs of blank wall on either side. It is important to expose these phenomena because they go to the heart of perceptions and the importance of subliminal messages in shaping those perceptions.

Perhaps the most intelligent commentary about public affairs is not coming from our senior press gallery analysts but from shows like *Gruen Nation* (ABC Television). The Gruen commentators reveal to us the use of product placement strategies for seating arrangements in the chamber to ensure that those members on narrow margins get their faces on television whenever the leader is featured. A great deal of care must go into thinking up these strategies, but how much of that effort is undermined by the reality of question time and the regular display of incivility and schoolyard bullying? Speaker Jenkins made a significant impact earlier this year when he asked members of the House to stop and reflect on what they looked like to the outside world. Since the 2010 federal election, we have also been promised a ‘new paradigm’ and a ‘kinder, gentler parliament’, not as a result of any pre-election policies, but as a response to the ‘crisis’ of a hung parliament.

Two contrasting perspectives on parliamentary responses to crisis were offered by Phil Larkin in his paper on how the Wright Committee in the United Kingdom used the recent expenses scandal to get traction for some fundamental reforms to House of Commons procedure, and Scott Prasser’s paper on ways in which the Queensland Parliament has not responded to the challenges posed by the Fitzgerald review. Long characterised as an elective dictatorship in the words of Lord Hailsham, the House of Commons has adopted some downright parliamentary reforms in moving to electing select committee chairs and by trying a model for programming business that is more responsive to contemporary needs. It will be fascinating to see whether these reforms take hold and whether, by providing more opportunities for backbench business, some of the attention is drawn away from the executive and towards the ordinary backbencher who is representing a constituency. This is apparently the aim of the reform package agreed in the wake of the 2010 federal election but whether it is any more than a pipedream only time will tell. In Queensland, the pace of reform accelerated under minority government but, according to Scott Prasser, has gone backwards when governments have comfortable majorities (and no upper house to bother them). A poor record of sitting days is not unique to that parliament, however, and for the now completed 42<sup>nd</sup> Commonwealth Parliament, the Senate sat for only 129 days, down from an average of around 200. Such low figures over a comparable period have not been seen since the Second World War and the Great Depression. The ‘new paradigm’ will be welcomed by many if it leads to a more realistic sitting pattern.

Brian Costar introduced his provocatively titled paper about the Damian Green affair in the United Kingdom (when parliamentary officials allowed police into the Palace of Westminster without a warrant to search the offices of a member arrested in connection with Home Office leaks) with several examples of cases revealing an alarming rate of ignorance of parliamentary privilege amongst senior public servants and lawyers. To those cases can be added the following examples, all of which occurred in the Senate over the past twelve months.

- A bill to standardise the various secrecy provisions across the tax legislation, overseen by the Treasury Department, proposed to criminalise the provision of

certain information to parliamentary committees. The explanatory memorandum to the bill argued that there would be minimal impact on parliamentary privilege. The whole idea, however, was contrary to centuries of practice enshrining the fundamental right of parliament to receive information from citizens without interference.

- A departmental head under investigation in a possible contempt matter routinely copied his submission to his own minister as well as to the Prime Minister's office, staff of which were also under investigation for the possible contempt. While one side saw it as potential collusion (and therefore improper interference with a contempt inquiry) the other saw it as an expression of the Westminster principle of responsible government which has public servants answerable to parliament only through their ministers. The secretary actually produced legal advice to justify his actions, despite the fact that there were no questions of law involved. The committee concerned effectively dismissed the advice as ignorant.
- Separately, on another issue, the Senate ordered the same secretary to appear before a committee. On this occasion he recognised the Senate's constitutional powers of inquiry and appeared without demur, using the opportunity to explain complex policy matters to a hitherto hostile opposition. Not so another head of a statutory agency who argued that he had a special status on the basis that he was a judge in another life and should therefore not have to appear before Senate estimates. He was ordered to appear, appeared under protest and asked for the order to be relaxed. A resolution to relax the order was put to the Senate but defeated.
- The Defence hierarchy issued an instruction to its personnel prohibiting (on pain of disciplinary charges) any contact with a parliamentary committee inquiring into a particular episode involving naval discipline except with the clearance of the minister's office, another potential interference with the ability of the committee to carry out its functions. The minister, a highly experienced senator, had the instruction withdrawn at first sight and replaced with the correct advice.

Brian asked, perhaps with his tongue in his cheek, whether a few more convictions for contempt would strengthen perceptions of the role and importance of parliament. While the power to punish contempt is an essential power for parliaments to protect the integrity of their proceedings, its use is unlikely to improve perceptions of parliament in the community. It is too esoteric an area. It has no resonance with the masses and, if anything, only reinforces the perception of parliament as elitist and rather precious. Until people value parliament and what it does they will not understand the point of the contempt jurisdiction which is all about protecting the ability of parliament to function without improper interference. And while a few good contempt convictions might be salutary, parliaments have shown great restraint in exercising these considerable powers. Fitzpatrick and Brown and Easton are exceptions and it is hoped that they will remain very rare exceptions.

As an aside on the Damian Green affair, after several cases in the Commonwealth jurisdiction in the 1990s involving police searches of members and senators offices — with a search warrant — there is now a protocol between the Attorney-General and the Presiding Officers binding the AFP to follow particular procedures when carrying out searches. These procedures preserve the rights of members to claim privilege over documents and to have any disputed documents independently assessed by a third party arbiter. Other jurisdictions have developed similar protocols.

Several papers at the conference covered the use of new media and the impact that the internet and social networking sites can have on perceptions of parliament. Peter Brent is currently investigating these issues during his fellowship with the Australian Parliamentary Library. Juliet Pietsch's study of the relationship between media use and levels of political trust was also illuminating and reinforced the paradox identified by John Warhurst that levels of political trust in Australia may traditionally be quite low but at the same time we esteem local members who we think do a good job for their communities. There is some cause for optimism in some of the figures that suggest trust improves where educated and young people have access to information that they can select for themselves through the internet. But Harry Jenkins' caution also resonates: putting out large quantities of information about travel details and travel allowance payments, the register of members' and senators' interests and widely available information on members' and senators' entitlements, does not necessarily lead to better perceptions about parliaments and their members through greater transparency. It often just provides fodder for the tabloids.

One thread that ran through several presentations was the value of committee work. If there is any room for optimism, it is most likely to arise in this area. We need to draw attention to the body of committee work that has made a difference to people. Examples abound in all jurisdictions but in the conference summary the Senate Community Affairs Committee was referred to as an example of a committee which has really made a difference in various areas of great sensitivity, including through its inquiries into the forgotten Australians, child migrants and children in institutional care. For the members, the witnesses and the staff these were traumatic inquiries. Dreadful stories were told, often for the first time, but somebody wanted to listen and for many people it was a cathartic and validating experience. It led to a national apology and to ongoing work on issues of recompense. It was followed by an apology by the British government and by many of the churches involved. Perhaps it is only parliamentary committees that can successfully carry out these kinds of inquiries. They have a unique role in tackling the really difficult issues and in putting a human face to the system. This is not a role that the bureaucracy is equipped to perform and nor should it try. Parliamentary committees are uniquely placed to explore policy issues and consult with all stakeholders, not just those whose message is packaged blandly enough for bureaucratic processes to accommodate.

To turn now to whether the conference suggested any answers, several threads can be summarised as follows.

First, we need to cultivate the good. We can do this by trying to make citizens' interactions with parliament through individual members, committees or dealings with the Houses positive ones, by actively supporting parliamentary education programs, particularly for our future electors but for other groups where possible. We can provide professional education for those who have to interact professionally with the parliament — public servants, staffers, lobby groups — and promote the great work that parliamentary committees do in being genuinely consultative. Importantly, we can provide information freely through well designed and easy to use websites so people can make up their own minds if they wish to.

Secondly, we need to deal with the bad. Redrawing the boundaries between an encroaching executive and an intrusive press may not be possible in the short term, but when newspapers are dead and broadband is king, perhaps the media will not need to live cheek by jowl with us. We need to hold to account those who bring the parliamentary profession into disrepute by, for example, misusing entitlements, but we must also try to make the system as robust as possible with proper auditing, risk management and transparency and include the sorts of things Scott Prasser was talking about — a pecuniary interests register, constraints on post-separation employment, transparent political donation laws, robust electoral systems and Freedom of Information laws, and maybe even the regulation of political parties to make them more democratic and accountable. An adequate number of sitting days and a fully functional committee system are essential. Perhaps a couple of high profile contempt cases might help correct widespread misconceptions about parliament but they would need to be cases where it is obvious that what is at stake is the ability of parliament to function on behalf of the people, and that any action taken is clearly action to protect that ability. It is not about collecting scalps to shore up the dignity of the parliament. In the meantime, however, we have to continue with efforts to educate the public service and the legal profession, among others.

Finally, we have to learn to live with the ugly. Although nothing can be done to change the business model of the mass media, in the future people will be far more selective about the information they absorb because they will have a huge range of choices on the internet. Perhaps one of those choices will be public broadcast channels along the lines of C-Span in the USA. I am reminded that when the ABC used to broadcast parliament on its mainstream radio channels (its only channels in those days) some of the best informed people in the country were the farmers who ploughed, sowed, harvested and mustered with their radios tuned to the parliamentary broadcast.

In the end, we should take inspiration from cartoonist Geoff Pryor and his colleagues by caricaturing the ugly and laughing at it! ▲