

Australian Study of Parliament Group – Darwin – 3-5 October 2012

Constitutions – reviewed, revised and adapted

Committees – What are they good for?

Are committees different beasts depending on the structural makeup of the parliament they belong to? Do they have different roles, different levels of responsibility, different levels of influence?

Committees are a common feature of almost all parliaments that carry on the Westminster tradition. They carry out a whole array of functions of a legislature, which can include the initiation of legislation; the detailed scrutiny of legislation; the financial scrutiny of the executive's budget proposals; and 'a means of access for citizens to participate in law making and policy review.'¹

This paper looks at three committee systems to assess if they add value to the parliamentary democratic process and what factors are integral to their contribution. It provides a snapshot of the structural elements of three parliaments and committee systems. What makes for a successful committee system is perhaps too subjective a question to ask, particularly in the parliamentary context. However some of the great social contract theorists such as Locke, Mill and Rawls have all outlined in their various definitive works the elements that make a just political system and this paper highlights the importance of one of these conditions: participation.

Participation through the committees is one of the key elements by which a parliament should be measured. Participation by individuals and organisations makes for better inquiries and reports; better policy development and ultimately better legislation by a more informed legislature.

The Scottish Parliament is a unicameral system where the committees assume the role as the body of review and revision. The House of Assembly, the lower house of the South Australian parliament, is a small parliament with a relatively modern committee system designed in 1991. The Senate's committee system is an extension of the constitutional role and legislative responsibilities it carries out as an upper house.

¹ Evans, H and Laing, R (ed), *Odgers' Australian Senate Practice*, 13th Edition, Australian Parliament Dept. of the Senate, 2012, p. 443.

Scotland

The Scottish parliament was established under lofty ideals. There are not many parliaments that have had the opportunity to start from scratch in their design of a legislature.

The parliament was established under the direction of the Consultative Steering Group (CSG) which was formed after the devolution referendum in 1997 and its membership included representatives of all four major Scottish political parties, as well as of a wide range of civic groups and interests.² The referendum had produced a strong positive result in favour of devolution with 63.5% of voters in support.³ As a result, the parliament was arguably off to as good a start as possible.

One of the major factors in the early optimism about the devolution project was the inclusive nature of the parliament, which began with an agreement between some of the major political parties and representatives from civic society through the Scottish Constitutional Convention. This grouping was formed in 1989 to develop a blueprint for Scottish devolution.

This process did two things that have been resilient in the face of some long periods of negativity that have engulfed Scottish and UK politics in the last 10 years: The first is that it professionalised the NGO and 'peak body' sector that has now developed into a sophisticated lobbying body that has much greater influence than it did in a Scotland governed solely by Westminster; the second thing was that it engaged the media and provided a real and novel focus for the media that had been reporting limited Scottish issues from London. While this has not always been positive, it has led to a sharp focus on the work of the parliament, and consequently greatly increased the general interest and awareness of it.

Following the successful referendum the CSG developed four key principles that would govern the work of the parliament. These are:

Accountable

The Scottish Parliament is answerable to the people of Scotland. The Scottish Parliament should hold the Scottish Government to account.

Open and Encourage participation

The Scottish Parliament should be accessible and involve the people of Scotland in its decisions as much as possible.

² CSG Report, Scottish Office, 1998, available at: http://www.scottish.parliament.uk/PublicInformationdocuments/Report_of_the_Consultative_Steering_Group.pdf, accessed on 18 September 2012.

³ Scottish Parliament Referendum Results 1997, available at <http://www.scotlink.com/scottish-referendum/scottish-parliament-results.htm>, accessed 18 September 2012.

Power Sharing

Power should be shared among the Scottish Government, the Scottish Parliament and the people of Scotland.

Equal Opportunities

*The Scottish Parliament should treat all people fairly.*⁴

As is evident, participation and inclusiveness were judged to be central to the parliament's aspirations. The principles ***Open and Encourage participation*** and ***Power Sharing*** are both concerned with opening up decision making as much as possible, and go beyond the dual roles of representation and executive scrutiny that are normally undertaken by a parliament.

Whether these principles have been adhered to and produced the desired inclusion that the drafters hoped is a question that has been recently discussed as part of the 10 year anniversary of the parliament. One area where participation can be judged is in the legislative processes of the parliament itself.

There has been a significant increase in legislation since devolution from an average of 5 Scottish bills being passed per year from 1979-1999, to around 16 per year from 1999 to 2007.⁵ The committees consider the general principles of a bill in its first stage and report back to the full parliament. The second stage then involves the detailed consideration of the bill and any amendments to the bill by the committee before being referred to the full chamber for the stage 3 debate to pass the bill. In addition, the committees have been actively involved in pre-legislative scrutiny of legislation. The heavy involvement of committees throughout the process has resulted in 'much greater public involvement in the legislative process than exists at Westminster'.⁶

During pre-legislative consideration of the Planning etc. Scotland Bill the Communities Committee organised a conference in the chamber 'for members of the public and representatives of community groups, as well as a further three events for planning professionals, councillors and developers'.⁷ The committee commented that these events ensured that it was 'well informed of the various viewpoints of key stakeholders before initiating the formal consideration of the legislation'.⁸ The Bill was amended significantly by the committee in its Stage 2 consideration.

⁴ <http://www.scottish.parliament.uk/visitandlearn/Education/18651.aspx>

⁵ Keating, M., Cairney, P., *The New Scottish Statute Book: The Scottish Parliament's Legislative Record since 1999, The Scottish Parliament 1999-2009: The First Decade*, The Hansard Society, Luath Press Ltd., Edinburgh, 2009, p. 37.

⁶ Johnston, J., *The Legislative Process: The Parliament in Practice, The Scottish Parliament 1999-2009: The First Decade*, The Hansard Society, Luath Press Ltd., Edinburgh, 2009, p. 29.

⁷ Johnston, J., *The Legislative Process: The Parliament in Practice, The Scottish Parliament 1999-2009: The First Decade*, The Hansard Society, Luath Press Ltd., Edinburgh, 2009, p. 30.

⁸ Johnston, J., *The Legislative Process: The Parliament in Practice, The Scottish Parliament 1999-2009: The First Decade*, The Hansard Society, Luath Press Ltd., Edinburgh, 2009, p. 30.

Another example of extraordinary legislative scrutiny that invited extensive community interest was the European and External Relations Committee's consideration of the European Commission Green Paper on a maritime policy. The committee held two significant events as part of its input into the EU legislation. The first was a conference in Scotland that was attended by '[o]ver 80 delegates from organisations across Scotland ... representing industry, academia and the public sector, as well as Members of the Scottish Parliament (MSPs) and MEPs.'⁹

The second event was a seminar held by Scotland Europa, the Scottish Government agency representing Scotland at the EU level, in Brussels on 6 February 2007 and was jointly hosted by the South West UK Brussels Office and representatives attended from Wales, English regions, Schleswig-Holstein, Asturias and South-west Finland.¹⁰ Both of these novel events formed the basis of the committee's response to an important policy initiative that affected Scotland, in an area that Scotland had had very limited input prior to devolution.

While the ideals of the four principles may remain ideals, it cannot be denied that having them in place at the very least provides a benchmark for the parliament to aim for and to assess its performance against. The participation of those outside the legislative bubble has been greatly increased 'through intensive lobbying and consultation at both parliamentary and executive levels, and clearly, in most cases, enjoy greater access to government, and greater influence on policy-making, than they did before 1999.'¹¹

South Australia

The Parliamentary Committees Act (1991) provides for nine Standing Committees; five are administered by the House of Assembly and four by the Legislative Council. The *Aboriginal Lands Parliamentary Standing Committee Act 2003*, provides for a tenth Standing Committee which is administered by the Legislative Council.¹²

There have been papers presented to this conference in recent years that have described the committee system in South Australia in considerable detail. Dr Jordan Bastoni and Dr Paul Lobban both discussed issues that ultimately inhibit the committees in both the Upper and Lower Houses of the South Australian Parliament. These problems essentially reflect the committee system being dominated and controlled by the executive.

⁹ Scottish Parliament European and External relations Committee, *Committee's response to the European Commission's Green Paper on a maritime policy*, 14 March 2007, available at: <http://archive.scottish.parliament.uk/business/committees/europe/inquiries/maritime/eur-maritime-response-01.htm>

¹⁰ Scottish Parliament European and External relations Committee, *Committee's response to the European Commission's Green Paper on a maritime policy*, 14 March 2007, available at: <http://archive.scottish.parliament.uk/business/committees/europe/inquiries/maritime/eur-maritime-response-01.htm>

¹¹ McMillan, J., *The Principle of Power-Sharing, 10 Years On*, *The Scottish Parliament 1999-2009: The First Decade*, The Hansard Society, Luath Press Ltd., Edinburgh, 2009.

¹² Parliament of South Australia, *House of Assembly Annual report 2010-11*, p. 21.

Dr Bastoni provided a case study of an instance where the Upper House had established a select committee to investigate what was known as the 'Atkinson-Ashbourne-Clarke' Affair.¹³ The case involved allegations that a senior staffer to the Attorney-General, Michael Atkinson, had offered various positions on government boards to a former Labor MP in return for him dropping a defamation action against the AG. Bastoni (2011) contended that the subsequent Legislative Council Select Committee into the affair had been undermined by the Executive who launched a campaign to abolish the Legislative Council to coincide with the inquiry, and then prorogued parliament earlier than was necessary, thus removing the protection of parliamentary privilege from witnesses giving evidence to the committee, and consequently greatly reducing the impact of the inquiry.¹⁴

Dr Lobban described his experience as Secretary to the Economic and Finance Committee (EFC) over the last ten years. For that time, and the previous ten years the committee produced a total of 76 reports, 30 of them routine reports such as annual reports or statutory reports on the Emergency Services Levy that have been produced annually since 2000. This leaves 46 non-routine reports produced in 20 years.¹⁵ In addition to this relatively sparse output the EFC are one of the few parliamentary finance committees that have no involvement in the annual budget process. This is left to the two Estimates Committee that are established for roughly one week each year.

My experience of the SA parliament concurs with the conclusion of both the previous contributors. As Secretary to a Select Committee on Private Certifiers in 2010 my view is that the influence of the committee was minimal. The resourcing of the select committees in terms of providing a research officer is ad hoc, and usually results in the government department that is subject to the inquiry providing a research officer from its own staff. The parliament had no input, nor authority over that officer or their output. As far as I'm aware the government never responded to the committee's report.

The other distinction that the SA Parliament's committee system had for me was that the chairs of the standing committees sit on the recruitment panels for the secretaries to the committee. The secretaries are on five year fixed term contracts which can be extended once, but only by a decision of the committee. Given that all four standing committees have a government appointed chair, this in effect means that not only do the executive decide on the activities of the committee, but they also have a significant input in the selection of those who staff them.

¹³ Bastoni, J., The Executive versus the Legislative Council: A Case Study from South Australia, *Australian Study of Parliament Group Conference*, October 2011, p. 3.

¹⁴ Bastoni, J. pp 5-6.

¹⁵ Lobban, P., Who Cares Wins: Parliamentary Committees and the Executive, *Australian Study of Parliament Group Conference*, October 2011, p. 5.

My own experience and my concurrence with Drs Bastoni and Lobban leads me to the same conclusion as Bastoni and McIntyre (2010) who concluded in their paper, “*What’s In It for Us? Why Governments Need Well Resourced Parliaments*” that:

Committees are a vital part of all Australian parliaments — but not all work as well as they might. When they are hamstrung in their scale and their scope, they are of limited value. The committee systems that exist at a State level tend to exhibit a common set of flaws. They, like the parliamentary bodies from which they are drawn, are too dominated by the executive.¹⁶

Australian Senate

The modern committee system was established in the Senate in 1970 when the Senate agreed to the appointment of seven legislative and general purpose standing committees, and five estimates committees to examine the annual estimates of departments in a more orderly and effective manner.¹⁷ The *Sydney Morning Herald*, reported at the time that the 'introduction of a wide-ranging committee system will make the red-carpeted Upper House potentially the most powerful parliamentary chamber in Australia'.¹⁸

The system has undertaken a number of amendments from 1990 to the present system which incorporates the functions of the both the general purpose and estimates and legislative committees into a paired arrangement of reference and legislative committees under the same banner.¹⁹

One of these committees, the Community Affairs committee exemplifies the added value that the committee system can bring to parliamentary democracy, fulfilling its particular role by comprehensively inquiring into issues that arguably no other sitting body could consistently carry out with comparable authority or independence.

Since the start of 2000 the Community Affairs Committee has conducted a series of lengthy high profile inquiries into Child Migration; Forgotten Australians; and Forced Adoptions, amongst many others.

¹⁶ Jordan Bastoni and Clement Macintyre, “What’s In It for Us? Why Governments Need Well Resourced Parliaments”, *Australian Parliamentary Review*, Autumn 2010, 25(1): 180-181.

¹⁷ Evans, H and Laing, R (ed), *Odgers' Australian Senate Practice*, 13th Edition, Australian Parliament Dept. of the Senate, 2012, p. 445.

¹⁸ Senate Legislative and General Purpose Standing Committees: The First 20 Years 1970 – 1990, Available at:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=history/first_20_years/intro.htm#1, accessed on 24 September 2012.

¹⁹ Evans, H and Laing, R (ed), *Odgers' Australian Senate Practice*, 13th Edition, Australian Parliament Dept. of the Senate, 2012, p. 445.

The *Child Migrants* inquiry in 2000-2001 considered the plight of an estimated 10 000 child and youth migrants that arrived in Australia in the 20th Century.²⁰ The committee's report was tabled in 2001 and traversed the issues relating to child migration such as loss of identity, a sense of belonging and loneliness that had a profound impact on the migrants throughout their lives. The report recommended various measures to address the sense of isolation many of the migrants felt such as access to records, travel and reunion assistance and family tracing.²¹

The *Forgotten Australians* inquiry, launched in 2003, had its genesis in the Child migrants report as it received many submissions from children born in Australia who had endured many of the same experiences in institutional care as migrant children. The report estimated that '[u]pwards of, and possibly more than 500 000 Australians experienced care in an orphanage, Home or other form of out-of-home care during the last century'.²² The committee received 740 for this inquiry. Akin to the stories of the migrants the evidence received by the committee was often disturbing and included stories of physical and sexual abuse.

The most recent inquiry of the three into *Former forced adoption policies and practices* reported in February 2012. This inquiry explored the practices of forced or coerced adoption primarily from the 1950s to the 1970s. Again the evidence the committee received during the inquiry was highly disturbing and often recounted for the first time by those affected. As was the case in previous inquiries, the recommendations sought to address the detachment and isolation that those affected suffered, and continue to suffer as a result of the adoptions.

The three inquiries above resulted in significant government actions in the form of official apologies and redress schemes. There have also been substantial actions in the states and territories to open up the records of past practices to those affected, and to make them available.

The ability of the committee to undertake these types of inquiries with a national, and sometimes international scope is unique to the committees of the Commonwealth Parliament. The Senate committee inquiry process has the gravitas, authority, scope and ability to recommend and instigate wide-ranging change that is not matched by any other sitting body in Australia.

²⁰ Dermody, K, et al, 2006, Parliamentary Committees and Neglected Voices in Society, *The Table*, p. 46.

²¹ Dermody, K, et al, 2006, p. 47.

²² Senate Community Affairs Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, August 2004, p. xv.

Success factors

The Scottish Parliament's committee system is integral to the legislative process. As such the process is opened up to broader civic society that has the opportunity to influence the legislation at various stages of its passage with generous time allocated to each stage, including a pre-legislative stage. The Scots have learned the lessons from parliamentary history and reaped the benefits of being a new parliament in an old world.

The Senate has in place a sophisticated and resourced committee system that allows its committees the freedom to address issues that no other body could, providing a national context and authority that by virtue of being an Upper House is relatively independent from executive interference.

The South Australian Parliament is a small parliament that in terms of available members and staff, suffers from the resourcing and independence issues that this brings. The committee system has never been allowed to be fully independent, and has routinely been subject to the executive exercising its power to dilute the level of scrutiny that it placed under.