

**EDMUND BARTON: THE ONE MAN FOR THE JOB**

by Geoffrey Bolton, Allen & Unwin, 2000, pp. 385, RRP \$39.95. ISBN 1 86508 409 3

**BIG JOHN FORREST, 1847–1918: A FOUNDING FATHER OF THE COMMONWEALTH OF AUSTRALIA**

by Frank Crowley, UWA Press, 2000, pp.540, RRP. \$49.50.

Reviewer: Helen Irving\*

Like claimants to an inheritance based on paternity, there are many Australian Fathers' around these days. Federation took place before DNA testing, so we can never be completely certain who gets the money, although some of the past claims have been particularly weak (the decision to entitle a posthumously-edited collection of portraits by L.F. Crisp, *Federation Fathers*<sup>1</sup> when this includes George Dibbs, ardent NSW anti-Federationist, must remain the most bizarre).

In Faulconbridge, outside Sydney, Henry Parkes's gravestone bears the title that he alone wore for half a century, 'Father of Federation'. But the American expression 'Founding Fathers', as J.A. La Nauze pointed out in 1968, was almost never heard in Australia before Crisp himself employed it in 1949.<sup>2</sup> The term's use has since multiplied, almost dizzyingly in recent years, although the American attitude of reverence it is meant to convey still seems to lag a good way behind. In La Nauze's words, 'those who can claim [the title] will have a place in Australian history'.<sup>3</sup> But, marketing strategies aside, it is a trend that runs counter to the recent generation of Federation histories. These have painted Federation as a complex cultural and political process, one with many 'parents', including ordinary men outside the parliaments, artists, writers and even women.

It is refreshing then to find a new biography of one of the most obvious 'fathers' which avoids the temptation to employ the term. Geoffrey Bolton's *Edmund Barton* is subtitled simply, 'The one man for the job'. Even its blurb is restrained. It talks — accurately — of Barton as 'only one of the many who contributed to the federal cause', yet who came to be 'regarded as its actual and symbolic leader'. It has the virtues of old-style biography (of which the only other *Barton*, by John Reynolds,<sup>4</sup> is a fine example) without being the traditional one-dimensional portrait of a public man. It tells us what we need to know about Barton in order to understand his significance in Australian history, but avoids the Michael Holroyd *Lytton Strachey*<sup>5</sup> approach, in which (however elegantly) everything, including the metaphorical laundry list, is recorded.

Still we learn a satisfying amount about Barton's 'inner life' and much about his family circumstances. His wife, Jeannie, who is merely a shadow in Reynolds' book, is a living

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<sup>1</sup> *Crisp, Federation Fathers*, ed. John Hart, Melbourne University Press 1990. Crisp's original sub-title for the Dibbs essay called him a 'Prophet of Unification'.

<sup>2</sup> La Nauze, 'Who are the Fathers?' [1968] reproduced in H. Irving and S. Macintyre (eds), *J. A. La Nauze. No Ordinary Act: Essays on Federation and the Constitution*, Melbourne University Press, 2001

<sup>3</sup> *Ibid*, p. 87.

<sup>4</sup> Reynolds, *Edmund Barton*, Angus & Robertson, Sydney, 1948.

<sup>5</sup> 1967; 1<sup>st</sup> Penguin edition 1971, pp. 1144.

character in Bolton's. Barton's unwavering devotion to his family and his single-minded dedication to the Federation cause, his taste for idle pleasures and his willingness to endure great physical deprivation when inspired (as he was by Federation), emerge as continuous parts of his character. Barton's highly unusual combination of simple, personable and conciliatory character with great intelligence and talent was, as Bolton shows, one of the key elements in Federation's success. Bringing together not only disputatious colonies, but also warring parties and factions within the colonies, and finding a form of compromise in which most felt they had gained something, represent a skill of almost breathtaking proportion. Parkes was too vain to have pulled it together. Deakin, despite his nickname, was not sufficiently affable to have made all those big men believe they could be mates. Reid was 'too NSW' and Kingston too explosive. Both were disliked by too many. Griffith was too technical and insufficiently nationalist. Forrest was a clever player, but only as a big fish in a very small pond.

This much is clear from Crowley's biography of 'Big John Forrest'. The work is a combination of an abridged first volume of Forrest's life, first published in 1971, and the hitherto-unpublished manuscript of volume two. It fills one of the remaining serious gaps in Federation literature and completes the biographical line around the continent. It evokes some of the most elusive and fascinating questions for Federation historians: what interest did the distant colony of Western Australia really have in joining with the other colonies? What did the people of Western Australia believe they were doing in federating (with a high proportion voting Yes in the Constitution Bill referendum of 1900)? Why, then, did they seek to leave soon after 1901, and why have they gone on talking about secession ever since? These questions are not just historical curiosities. They go to the very heart of Australia's federal compact. They test the rival claims that the Constitution's authority derives from an Imperial Act and that it derives from the assent of the Australian people. They are questions about the foundations of the legitimacy of the modern nation state. This book does not directly explore such questions, but it is genuinely 'essential reading' for anyone who seeks to understand both the detail and the bigger picture of Federation.

John Forrest, a West Australian 'native' (born in Bunbury, in 1847), spent his early years as an explorer and surveyor, traversing the uncharted territories of the Crown Colony for many years, searching, among other things, for the lost Leichhardt expedition party, and forming an unusual appreciation of aboriginal skills and culture. In 1883 he was appointed Surveyor-General and, in the same year, sworn in as a permanent member of the first Executive Council of Western Australia. When his colony gained responsible government at the close of 1890, he became its first Premier and there he stayed until he entered the Commonwealth Ministry in 1901, outlasting all the other colonial premiers in a decade marked by an unusually high degree of political stability. He engaged in all the official Federation processes, despite much discouraging ambivalence in the west and the many days travelling which were necessary to reach even Adelaide, let alone the eastern cities. He reluctantly took part in the critical Premiers' Conference of early 1895, and although he disliked its Plan for an elected Convention and Constitution Bill referendums, in the end went along with much of it, where Queensland (also reluctant) only completed half the plan.

The Forrest who emerges is a 'Founding Father' because he finally brought his colony into Federation. But this was not the result of an ardent commitment to the goal. Forrest was moderately committed all along, but he waxed and waned with the fortunes of his

colony and as his own political stability demanded. His was the response of a practical, pragmatic politician, and he appears almost completely unmoved by the vision of greater, higher things that stirred his eastern counterparts. His idea of the future Commonwealth was Western Australia writ large. Forrest supported Commonwealth powers over postal and telegraphic services, for example, because without these powers he thought the Commonwealth would have little to do, with no land, or mines, or railways to administer. He had no anticipation of the Commonwealth's carving out a new, national realm, or of growth in the nature and scope of politics over the coming new century. And yet, his government was sufficiently progressive, for example, to adopt an advanced system of industrial arbitration in 1894, and to enfranchise its women before the turn of the century.

The women's vote in Western Australia has been a subject of much interest among feminist historians in the last two decades, and the opportunity to gain the Western Australian government's perspective from the inside is exciting. As in a number of places in the biography, however, Crowley does not appear to recognise the heightened level of interest in particular questions and does not anticipate his readers. However, while there are no new clues as to how women got the vote in Western Australia, it does happily put to rest the illogical claim that it had something to do with Federation.

It is in many respects a rather old-fashioned biography, heavy and plain like its subject, stuck in the era in which it first appeared. It includes too much detail about the young Forrest's expeditions and not enough about the Federal Conventions, telling us both more and less than we want to know. The bigger questions are only answered in between the lines and the important secondary characters in Forrest's life remain distant and wooden. The contrast between Bolton's Jeannie Barton and Crowley's Margaret Forrest is striking. It lacks the elegance and sparkle Bolton brings to his subject, and this is not simply a matter of differences in character. Barton was also a simple man, with none of the comical attributes of Reid, or the mystical intensity of Deakin, or the fiery passion of Kingston. He is difficult to make into a page-turner. His greatest weakness was food and drink. The greatest mystery that surrounds him was how a good natured but frequently indolent man could be so aroused by a hugely demanding political goal and how he could keep going despite many set-backs. We have much more of an appreciation of the answer now than we did before. Both books are historically invaluable. But Bolton's *Barton* is a pleasure to read. Which man would you choose as the 'Father'? Surely the one man for the job. ▲

**AUSTRALIAN PRIME MINISTERS**

edited by Michelle Grattan (Sydney; New Holland Publishers, 2000), 512pp

**THE AUSTRALIAN CENTURY: POLITICAL STRUGGLES IN THE BUILDING OF A NATION**

edited by Robert Manne (Melbourne: Text Publishers, 1999), 333pp.

Reviewer: Neville Meaney\*

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Who are Australia's political heroes? Why are Australians, unlike the Americans, not familiar with the leaders who made the nation and guided it through the great crises of the 19<sup>th</sup> and 20<sup>th</sup> centuries? Why do they not have any sense of their political history? The onset of the debate over republicanism and the centenary of federation seems to have caused publicists and pundits to become quite concerned about this widespread ignorance. No doubt, looking back from this contemporary vantage point at the piecemeal severing of ties with Britain over the last thirty years, they are aware that Australia has come to the end of an era and as a result they now search around for an indigenous tradition which will have its own legitimacy. And, in one sense, this is what these two complementary books are about.

But such a *search*, like the criticism of Australian ignorance which prompts it—at least in the form in which it presents itself — is misplaced. It was the intimate ties with the 'Mother Country' which gave authority to Australia's political culture, its political ideas and institutions, its constitutional conventions and customs. Since, unlike the Americans — and it is always the Americans who are the touchstone for this critique — Australians had no reason to rebel against Britain or Europe, they could, even as they pragmatically mutated their colonial inheritance for their own purposes, take it for granted as the validating principle of political life. They had no need of a national myth of liberation from old world oppression and, therefore, no need of distinctive political heroes and martyrs.

Moreover, this disquiet with Australians' failure to remember and revere their prime ministers when compared with Americans' veneration of their presidents lacks a proper sense of the differences between the two political systems. Indeed, it is true that Americans have a national holiday on Presidents Day, appropriately enough George Washington's birthday. Yet it is inconceivable that there should be, in either Australia or Britain, a national holiday in honour of prime ministers. In Australia we do have the Queen's Birthday holiday but for a variety of reasons, national and constitutional, it does not have the same connotations as Presidents Day. The president is both the formal head of state as well as the effective head of government. The president is the symbol of the nation as well as its chief executive officer. Under the parliamentary system which Australians have inherited, these roles are divided, the monarch being head of state and the prime minister, as the first minister of the crown, responsible for politics and policy. Thus it is perfectly understandable why Australians have not had the same impulse to see the prime minister as the personal embodiment of the nation and its values.

Michelle Grattan in her introduction sets *Australian Prime Ministers* in this context. She writes that 'Australians are largely ignorant about their early prime ministers, and frequently cynical about their contemporary leaders' and reminds us that two-thirds of

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the people have not heard of 'the founding prime minister, Edmund Barton, who putatively might be considered Australia's equivalent of George Washington'. The book, however, is not hagiography. The authors treat the twenty-five prime ministers, generally speaking, with a sympathetic detachment. The approaches vary from a rather simple chronicle to a more serious and coherent attempt to explain and evaluate: Paul Kelly's Fraser and Neal Blewett's Hawke are particularly good. Overall, as one might expect from such a work, there is no unifying theme. That the task has been to provide a political biography of all the prime ministers regardless of the time they served, including even the seat-warmers, Page, Forde and McEwen, has meant that the emphasis is on the office as such and not the political achievement. As for content, given the character of the work, it might be useful to compare the entries in the *Dictionary of Australian Biography* with these essays. It should also be noted that there are a number of factual errors in the accounts. The most egregious is the statement in the Fisher chapter that he won an August 1914 election and 'As prime minister Fisher inherited the Great War then thirteen days old.' (p.82) Other examples of carelessness can be found in the assertion that in 1919 Enid Lyons was troubled by the prospect that if her husband entered Federal politics in that year, she and her family would have to remove to Canberra (p. 161), and in making Billie Hughes External Affairs Minister from February 1936 instead of November 1937. According to the 'Acknowledgments' many people read drafts and checked texts. It is surprising that so many obvious mistakes escaped these eagle eyes.

In *The Australian Century*, the authors by looking at the great political issues and conflicts of the Commonwealth years show how these prime ministers, at least the most notable among them, responded to these crises. This is another multi-authored volume: indeed, two of the contributors, Paul Kelly and Ian Hancock, appear in both works. This book covers, in chronological order, Federation, the First World War, the Great Depression, the making of the Liberal party, the split in the post-second World War Labor party, the so-called 'Whitiam Revolution' and Globalisation under the Hawke and Keating administrations. It reveals a broader intent in its two final chapters which deal with 'Aboriginal Rights' and the movement 'Towards the Republic'. That is, there would seem to be some kind of search for an Australian political tradition implicit in the enterprise, possibly a hint of a teleological national story. But, even if it can be discerned, this purpose lacks any clear definition or integrated direction.

It is good that these books are attempting a revival of interest in Australia's political history. There is, however, a need to redress the poverty of scholarship dealing with Australia's intellectual history in a much more self-conscious, wide-ranging and rigorous manner. Australia's political culture cannot be understood by examining it only from within its own parameters. While a too easy reliance on a British heritage may have led to the lack of curiosity about the ideas which shaped our political institutions, moved our political leaders, gave authority to their actions and morally justified their policies, an ignoring of that heritage will not help us to appreciate better the way in which Australians have adapted that past to their peculiar federal system and to their own choices and values. The only worthwhile freedom which a republic can achieve is one which in absorbing that past makes it over so that it no longer stands above us or is separate from us but simply serves us. Let us in every sense make more of our Commonwealth. ▲

***A WITNESS TO HISTORY: The Life and Times of Robert Arthur Broinowski***,  
by Richard Broinowski (Melbourne University Press, Carlton South, Vic., 2000)

Reviewer: Derek Drinkwater\*

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The biographer and historian, Philip Guedalla, defined biography as 'a region bounded on the north by history, on the south by fiction, on the east by obituary, and on the west by tedium'. Richard Broinowski's well-written life of his grandfather remains securely in the sphere of biography, the author having prevented it from overbalancing into history, fiction or obituary. This book is devoid also of any literary tedium. It tells the private and public story of an unusual individual who was, as the present Clerk of the Senate writes in his Foreword, an exemplar of the self-educated and public-spirited Edwardian (and, for that matter, Georgian) middle-class, that contributed so much to the life of post-colonial Australia in the early decades of last century.

Robert ('Bruno') Broinowski was born in Melbourne in 1877, one of seven surviving children of the artist and ornithologist, Gracius Broinowski, who produced several enduring works on Australian wildlife. Like those of his friend, Edmund Barton, Gracius' finances fluctuated, but he managed to send his son to Sydney's St Aloysius' College. After working briefly in Barton's Sydney law office, Robert became a clerk in the Department of Defence in 1902, and served as private secretary to three ministers of defence between 1907 and 1911. He then transferred to the Department of the Senate as Clerk and Shorthand-Writer, and went on to serve as Clerk of the Papers (1915–20), Usher of the Black Rod, Clerk of Committees and Accountant of the Senate (1920–30), and Clerk-Assistant and Secretary of the Joint House Department (1930–38). Robert retired, after three years as Clerk of the Senate, in 1942. He spent an active retirement in Sydney, where he died in 1959. His grandson states in his Introduction that Robert was usually 'an observer and facilitator more than a participant'. Yet, as he rightly adds, in this role Robert generally occupied the box seat. What makes Robert such an interesting biographical subject, however, is not only his achievement as a servant of the Parliament, but also his pro-active presence in the society around him — in Melbourne, Canberra and Sydney. He was, in Richard Broinowski's words, 'a poet, a supporter of Australian writers, an early and prolific radio broadcaster, a naturalist, a bush-walker and an amateur anthropologist'. His Melbourne interests included repertory, literary and walking clubs, and poetry magazines, one of which (*The Spinner*) he edited from 1924. To him Canberra is indebted for the rose gardens at what is now the Old Parliament House. He was active, too, in several of the capital's artistic and literary bodies, and in its tennis, bowling and hockey organisations. In retirement Robert was a wartime propagandist; reviewed and wrote articles for the *Sydney Morning Herald*; produced Australian Broadcasting Commission scripts; and became a regular radio broadcaster.

For students of Parliament Broinowski, as a former Clerk of the Senate, and parliamentary officer of thirty years standing, has special interest. As a close observer of World War I, the Great Depression, half of World War II, and the end of the old Australia, he was well placed to observe and reflect on the implications of these events for the governance of the country. Unlike many of his contemporaries, Robert supported

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\* Derek Drinkwater, an officer of the Department of the Senate, was Assistant Editor, *The Biographical Dictionary of the Australian Senate: Volume 1: 1901–1929* (Melbourne University Press, 2000).

the creation of a national capital at Canberra and, as Usher of the Black Rod, played a central role in its establishment. He also fought hard, under successive Senate Presidents, to protect Senate powers from Executive incursions, especially during wartime. Robert's written comments on a 28 July 1942 letter from Prime Minister John Curtin complaining about proposed Senate Estimates indicate how firmly he was prepared to defend the Senate, while remaining convinced that after World War II, 'Parliament would re-emerge . . . as the proper legislative arm of government'. The book contains some of Robert's excellent judgments on the political *dramatis personae* of the period, taken from his unpublished works such as 'The Precursors'. On William Morris Hughes, for example: 'The place Mr Hughes occupies in Australian history will rest on the fact that he was the first to state Australia's case to the world on the high level of world politics'.

Robert's zealotry in the performance of his duties prompted both amusing and acerbic responses. As Usher, he banned parliamentary staff from playing ping-pong within Parliament House, an action that annoyed members of the Parliamentary Staffs Sports Association, of which Robert was President. The ban drew this response from C. J. Dennis:

*Oh, his brows were wreathed with thunder, as he gazed in stupid wonder,  
As he heard the sinful ping-pong and the sacrilegious pong.  
And he said, 'Henceforth I ban it. If I knew who 'twas began it  
I would have him drawn and quartered, for 'tis obviously wrong.'  
Then back adown the corridors, unbending as a god,  
Went the adamantine Usher of the Big Black Rod.*

The journalist Richard Hughes' criticism of a Senate decision acknowledged Robert's influence as Clerk in a backhanded way: 'the real ruler of the Senate is a thin querulous fellow, with a beaky nose, light, angry eyebrows, and a small wig. He hisses acid instructions and advice to the timid senators like a bad-tempered stage prompter'.

Richard Broinowski has avoided hagiography and produced a sound biographical study (what Sir Harold Nicolson would have called a 'pure' biography) and a revealing historical portrait of a nation in transition. The Epilogue, in which the author describes a meeting between himself and Robert in the Canberra of today, is a moving and well-crafted conclusion to the book. There are occasional slips, however: the senior public servant, Atlee Hunt, spelt his name with one t, not two; to open the Commonwealth Parliament in May 1927, King George V did not send the second of his *two* sons, but the second of his *four* surviving sons (his fifth son had died in 1919); and in Chapter 12 Robert's radio broadcasting career is said to have begun in both 1925 and 1926. The C. J. Dennis ping-pong verses (there were five), appeared in the Melbourne *Herald* on 17 July 1929 and not, as Richard Broinowski states, in the *Bulletin* 'sometime in 1930'. The author also sometimes lapses into contemporary cliché with expressions such as 'mutually supportive'. Nevertheless, readers will find depicted here an admirable, flawed man, many of whose public and private hopes were disappointed, but who never ceased to find solace in new plans and endeavours. Those with an interest in one of Australia's more illuminating marginal commentators, whose contribution to Commonwealth parliamentary practice and early twentieth century Australian cultural life has been largely overlooked, would do well to read this engaging book. ▲

***THE RULE OF LAW AND THE CONSTITUTION,***

by The Hon Murray Gleeson AC, The Boyer Lectures 2000, ABC Books, Sydney, 2000, iv + 138, ISBN 0 7333 0975 5. RRP A\$19.95 (softcover).

Reviewer: Dr Fiona Wheeler\*

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Traditionally, Australian judges are not heard on the airwaves. The conventions that govern judicial behaviour dictate that judges should generally avoid public comment on matters liable to excite political controversy. In our information-hungry world, the extent to which judges can — or should — make public addresses or speak to the media is hotly debated. However, even the more adventurous judicial spirits acknowledge that there are significant constraints on what judges can say extra-curially.<sup>6</sup>

In this context, the current Chief Justice of the High Court — Murray Gleeson — was an interesting choice to deliver the Boyer Lectures 2000. Doubtless those responsible for his selection did so with an eye towards the centenary of federation and a desire to promote a better understanding of the Australian Constitution and the institutions of national government it established. The result — *The Rule of Law and the Constitution* — is a solid survey of this area with an emphasis upon the role of law as a ‘civilising influence’ enabling communities to grow and prosper.<sup>7</sup> The difficulty, however, is that Gleeson must steer clear of potentially controversial comment. As he acknowledges, ‘[j]udges are limited in their capacity to engage in political agitation’ a convention that forms ‘an important part of the fabric of our constitutional arrangements’.<sup>8</sup> Thus, *The Rule of Law and the Constitution* lacks the critical edge one might otherwise expect from this sort of publication. It is a conventional account of the role of law in the Australian nation.

Chapter One (‘A Country Planted Thick with Laws’) introduces the reader to the Constitution and sketches the largely ‘unnoticed’ role that law plays in ensuring that Australians live in one of the most stable world democracies. Chapter Two (‘Becoming One People’) recounts the virtual ‘miracle’ of federation in 1901.<sup>9</sup> In many ways, these are the two most interesting chapters in the book. Safe in the relatively uncontroversial realm of history, Gleeson allows his admiration for the achievement of federation full sway. He lauds the ‘imagination, courage and practical wisdom’ of the founders,<sup>10</sup> emphasising the frequently neglected point that our Constitution ‘was not drafted by civil servants in London’, but was written and voted upon at colonial referenda by Australians.<sup>11</sup>

The remaining four chapters survey the founders’ handiwork in more detail. ‘Aspects of the Commonwealth Constitution — Part 1’ provides a general overview of the Constitution, whereas ‘Aspects of the Commonwealth Constitution — Part 2’ focuses upon the Constitution and the protection of individual rights. The High Court is discussed in ‘The

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<sup>6</sup> See generally Hon Justice Thomas, *Judicial Ethics in Australia* (2<sup>nd</sup> ed, 1997) Ch 7.

<sup>7</sup> See p 75. See also p 1: ‘The law restrains and civilises power’.

<sup>8</sup> At p 107. See also pp 120–123.

<sup>9</sup> See the quote from Alfred Deakin at p 38.

<sup>10</sup> At p 12. See also pp 21, 36 and 51.

<sup>11</sup> At p 37. See also pp 12 and 14.



Keystone of the Federal Arch' and the common law and the courts form the subject of 'The Judiciary'. Two recent speeches given by Gleeson complete the collection.

Despite Gleeson's restrained tone, the book still provides an insight into his vision of the High Court and its relationship with the other branches of government and the Australian people. In particular, Gleeson's theory of constitutional interpretation stresses fidelity to the text and the limits thereby placed on judicial creativity. He emphasises that judges cannot ordinarily fill the silences of the Constitution,<sup>12</sup> a clear reference, among other things, to the Constitution's failure to incorporate a Bill of Rights. Of course, even Justice Kirby — the most adventurous interpreter of the Constitution on the High Court today — does not deny that the text is paramount.<sup>13</sup> However, Gleeson lays bare his traditional approach when he maintains that members of the High Court 'are expected to approach their task by the application of what Sir Owen Dixon described as "a strict and complete legalism"'.<sup>14</sup> For constitutional lawyers, 'Dixonian legalism' is a badge of orthodoxy.

At the same time, Gleeson is an advocate of constitutional 'vitality', claiming that '[m]aintaining the fitness of our Constitution is a challenge that faces each generation of Australians'.<sup>15</sup> However, in Gleeson's opinion, it is the sovereign people,<sup>16</sup> rather than the unelected High Court, that has primary responsibility for this task. It hardly needs to be said that Australia's referendum record—only 8 out of 44 proposals put to the people under section 128 of the Constitution have been carried—is not a promising one for proponents of formal constitutional change. However, Gleeson's lectures offer three interesting reflections on this situation.

First, he emphasises that federation was only achieved because of the preparedness of the leaders of the federation movement to compromise.<sup>17</sup> Although Gleeson eschews comparison with today's leaders, one cannot help reflecting on the lack of compromise between certain 'yes' groups at the recent republic referendum. Second, Gleeson offers the astute observation that the colonial referenda that ultimately voted in favour of federation were not conducted under a system of compulsory voting. In other words '[p]erhaps compulsory voting is a force against change if people are not satisfied that they fully understand the need for and the implications of change'.<sup>18</sup> This is highly political territory and Gleeson is quick to add that '[t]his is not an argument against compulsory voting, but it may mean that special care needs to be taken to inform the electorate fully of the implications of change'.<sup>19</sup> Finally, Gleeson makes the point that under s 128 of the Constitution, the Commonwealth Parliament has a monopoly over

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<sup>12</sup> At pp 16 and 56.

<sup>13</sup> Graeme Hill, ' "Originalist" vs "Progressive" Interpretations of the Constitution—Does it Matter?' (2000) 11 *Public Law Review* 159, 159 and Justice Michael Kirby, 'Constitutional Interpretation and Original Intent: A Form of Ancestor Worship?' (2000) 24 *Melbourne University Law Review* 1, 11–14.

<sup>14</sup> At p 85. See also p 134.

<sup>15</sup> At p 58.

<sup>16</sup> At p 6.

<sup>17</sup> At pp 11–13, 31–33.

<sup>18</sup> At p 17.

<sup>19</sup> At p 17.

the initiation of referenda to alter the Constitution. He suggests this too may inhibit change as people in a federation may resist change emanating from the centre.<sup>20</sup> This particular issue has attracted attention on other occasions. For example, in 1988 the Constitutional Commission recommended that the Constitution be altered to allow State Parliaments to initiate constitutional referenda.<sup>21</sup>

*The Rule of Law and the Constitution* contains some other interesting comments. Notable is Gleeson's pithy defence of politics as a profession: 'To despise politics is to despise democracy.'<sup>22</sup> At the same time, Gleeson counsels that those in politics must respect the role of judges, referring to 'parliamentary conventions' that 'restrict the ability to reflect adversely upon the integrity of individual judges'.<sup>23</sup> Disregarding such conventions, says Gleeson, 'involves a cost to the community'.<sup>24</sup>

Certainly, Gleeson is mindful of the convention of judicial restraint in public speaking in these lectures. Nonetheless, his book reminds us that we often take the smooth functioning of our legal system for granted. It also challenges the Australian people, drawing on the spirit of those who achieved federation one hundred years ago, to take an active role in shaping their constitutional future. ▲

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<sup>20</sup> At pp 56–57.

<sup>21</sup> Constitutional Commission, *Final Report of the Constitutional Commission* (1988) 851.

<sup>22</sup> At p 48. See also his comments about the Commonwealth's 'external affairs' power in s 51(xxix) of the Constitution (pp 51–52) and his remarks on appointments to the High Court (pp 80–82).

<sup>23</sup> At p 107.

<sup>24</sup> At p 107.

**REPRESENTATION AND INSTITUTIONAL CHANGE: 50 YEARS OF PROPORTIONAL REPRESENTATION IN THE SENATE** (Papers from a conference of August 1999)

Edited by Marian Sawer and Sarah Miskin, Papers on Parliament, No. 34 December 1999, Published and printed by the Department of the Senate, 1999.

Reviewer: Malcolm Aldons\*

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This collection of conference papers has contributions from political scientists, senators (past and present), the media, lobbyists and senior officers of the Senate. The papers cover a number of very important issues associated with proportional representation (PR) for the Senate and, despite the sole dissenting voice of Senator Helen Coonan, constitute a strong if not impregnable defence against changing the existing system of voting in Senate elections. But the papers also reflect a lopsided and exaggerated view of Senate importance because the role of the Senate in the wider context of the functioning of Australian parliamentary democracy is not dealt with adequately.

The papers can be divided into two groups. The first is on the theory of PR and the keynote address is by Arend Lijphart, Research Professor in Political Science, University of California, the leading international authority on the institutional impact of PR.

Lijphart uses both qualitative and quantitative analysis to conclude that PR systems clearly outperform non-PR systems. The qualitative analysis includes the admission by the 'conventional wisdom' that PR is better at representing. Using regression analysis he concludes that 'PR has a uniformly better macro-economic performance record than majoritarian systems, especially with regard to the control of inflation'. But the most important conclusion is a negative one, namely, that majoritarian democracies are not superior to PR as policy-makers.

I find it surprising that anyone can say that PR is better at controlling inflation without telling us why or how. After all, the statistical relationship could be coincidental, not causal. Nevertheless, if we accept Lijphart's conclusions, should not PR be extended to elections for the House of Representatives?

If PR best embodies the concept of 'one vote, one value' and if this is the sole determining criterion for electoral systems, then the answer is obvious. However, the paper by Senator John Faulkner, current Leader of the Labor Opposition in the Senate, refers to a Research Note by the Parliamentary Library, which says that electoral systems have a number of functions and they need to be held in balance for the effective operation of the democratic process. One of these functions is that seats won should, as far as possible, be in proportion to the votes received. This approach implicitly questions the Lijphart methodology and this in turn suggests an evaluation of our electoral system against clearly defined criteria as a more appropriate way of judging the need for electoral change.

Chaney, a senator for a decade and a half before spending one term in the House of Representatives, says that if the voting system for the Senate is changed we could end up with two versions of the House of Representatives. This he believes would not be

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good for democracy. Yet no one has asked the other question: if the voting system for the House is changed, would we end up with two versions of the Senate and would this be good for democracy?

The second group of papers covers the value of the Senate under PR. The papers can be sub-divided into three parts — value and effects, current problems and future potential.

The first of these, value and effects, is probably the most important. It is connected with the rationale for bicameralism.

Marian Sawyer (Australian National University) quotes from the 1897 convention debates that the only check against the ‘tyranny of the House of Representatives’ is the check of another chamber. Elaine Thompson (University of New South Wales) represents this as a public interest requirement, as does Chaney.

The second feature of Senate value that can be traced to PR is the growth of minor parties and independents. They bring to the political process a diversity of viewpoints and voices not heard in the House of Representatives. Campbell Sharman (University of Western Australia) says that this has resulted in the lack of government (or Opposition) control the Senate. ‘From this lack of government control has sprung the independent role of the Senate in scrutinising legislation and in holding governments publicly accountable through the use of an extensive committee system’. The Australian Democrats, a predominantly upper house party, help to reinforce this independence.

All this feeds into the question of how the Senate uses its power and the answer, or partial answer, is to enhance accountability. Thompson says that the committee system in the Senate ‘is a significant development allowing the Senate more effectively to review government decisions and to attempt to keep the government accountable for its actions’. Both Sharman and Ian Marsh (Australian National University) say similar things, adding that the committees provide avenues for the development of consensus politics. Harry Evans (Clerk of the Senate) lists a dozen significant Senate ‘accountability measures . . . all founded on the requirement that governments explain what they are doing and why’.

Yet, there are danger signs that accountability is being undermined in today’s Senate. The major point in a paper by Anne Lynch (Department of the Senate) is the growth of dissent along party lines in Senate committee reports. She traces the genesis of split inquiries to the highly contentious and ‘coloured’ Senate select committee inquiries of the past. Lynch adds that many senators who are responsible for the operation of the committees have caused the split and believes that behavioural change, ‘a return to the culture of enforced reasonableness; can in turn return Senate committees to their better days. Former Senator Kathy Sullivan, a member of the House of Representatives for the past decade and a half, has also noticed this trend for Senate committees to divide along party lines and says that this undermines the effectiveness of those committees.

The question is whether this loss of corporate character and the consequential development of the Senate as just another party political chamber will affect adversely future prospects for accountability and consensus democracy. Although of course not answering this question, Marian Sawyer wants the Senate to play a leading role in involving more groups in policy development to reflect electoral change. Ian Marsh also wants the policy process opened up. He refers to the pluralisation of Australian society, the development of major social movements outside the main political parties and the

need for a strategic phase of policy development. At the institutional level he sees committees as the only mechanism to assist in this development. Given the need for consensus building, it is disappointing that Marsh could not put the members of the House of Representatives into his equation by proposing the use of joint committees.

This is a very interesting collection of papers. Given their scope it is not surprising that they raise some important questions that need answers. But the series is lopsided because it fails to place the Senate in a broader framework. Accountability is a term that requires definition and clarification. It is incorrect to say, as Chaney does, that the House of Representatives is increasingly irrelevant as a chamber that calls the executive to account. The feature of accountability here is through the House to the electorate. There are also other forms of accountability, including administrative review and the media, which play an important and even essential part. In the Senate itself we need to distinguish between accountability that is connected to the review function of the Senate and its power to amend or reject legislation and accountability that does not have this connection. Committees that examine legislation are an example of the first. Committees that examine non-legislative policy are an example of the second. The latter are clearly attempting to influence not Senate but government outcomes.

If we attempt this and other work and more of it that has an empirical content I am confident it will give us a better appreciation of all the parts that go to make up Australian parliamentary democracy. ▲

***THE NEW ROLES OF PARLIAMENTARY COMMITTEES***

Edited by Lawrence D Longley and Roger H Davidson, Frank Cass & Company Limited, London 1998

Reviewer: Malcolm Aldons\*

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This book should be of immense interest to scholars and students of legislatures but not necessarily to all practitioners. Other than the contribution by the editors there are 10 other contributors, all by scholars (academics), so the emphasis on theory is not surprising.

There are three cross-sectional features of the book worth emphasising. The first is the new importance of parliamentary committees. Parliamentary committees figure significantly on all continents, increasingly serving as the main organising centres of both legislation and parliamentary oversight of government. The trend is away from ad hoc committees to parliamentary committee systems that are specialised and permanent and replicate executive departments. The conclusions of the editors is that 'active parliamentary committees fit well into separation-of-powers systems and are inherently at tension with the classical model of parliamentary government'.

The second is the functions of committees and there is a veritable smorgasbord here. Shaw's listing is conventional. Those of Norton, although not in this book, are broader and include certain important and what can be termed 'nondecisional' functions (*Does Parliament Matter?* 1993). The functions listed by Strom are very different. He says recent neo-institutional literature on legislatures stress four functions — the non-controversial economics of operation which encompass the other three, gains from trade, information acquisition and partisan co-ordination.

I suspect that these neo-institutional functions are too American for general application and have other limitations as well. This raises important questions as to whether committees can have functions different to legislatures and the similarity of functions from one legislature to another.

The third cross-sectional feature of the book covers the power and related powers of parliamentary committees. The party-committee relationship is relevant for all legislatures. David Olsen says that 'Parties and committees are . . . contradictory and even mutually exclusive means of internal organisation [in a legislature]. The importance of each is inversely proportional to the other. The more important the committees the less important the parties and vice versa' (Quoted in Shaw. D Olsen, *The Legislative Process: A Comparative Approach*, Harper & Row, New York, 1980, page 279).

Shaw says that 'a strong committee in a legislature is one that has a significant independent impact on public affairs'. Strom adds that committee powers are defined 'by the role of committees in the policy-making process and mainly by the ability of committees to influence parliamentary outputs' (page, 47).

Committee power can be measured or assessed in at least two ways. Damgaard advances three criteria for examining the relationship between parties and committees. They cover appointment of chairs, freedom of members and sanctions (E Damgaard,

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'How Parties Control Members', in H Doring, ed., *Parliaments and Majority Rule in Western Europe*, St Martins Press, New York, 1996).

Based on Doring's study of 18 Western European legislatures Strom identifies four categories of committee power. The categories are initiation of legislation, rewriting of bills, control over committee timetables and information acquisition. The first three categories exist in nine legislatures but it is only in Sweden and Switzerland that committees have initiation powers, power to rewrite bills and to control their own agendas without recall from the plenary. Committees of the US Congress are said to be a model of strong committees. Shaw, however, refers to 'American exceptionalism'. He gives four reasons for this — weak political parties, anti-statism, vigorous application of the separation of powers and comity, that is, autonomy in deciding the level of resources for a committee-driven bureaucracy. Rommetvedt questions the assumption that strong committees are a necessary condition for parliamentary influence based on his study of the Norwegian Storting. Other contributors show that committees are weak in South Korea (Park) and Japan (referred to in Shaw) because of party domination and are becoming weak in the Russian Duma for the same reason (Haspel). In the 'mother of parliaments' Norton finds something to cheer about — a nascent institutionalisation of committees. Based partly on the 'batting average' of the percentage number of recommendations accepted, Shaw concludes 'that the new British committees have made their mark'.

This is a very interesting book but, as one scholar acknowledges, comparative legislative studies of committees is in its infancy. Nevertheless, some comments are in order. All the contributors were asked to examine a number of questions relating to parliamentary committees under three broad headings: changes in functions, changes in external relations and changes in internal relations. Although these categories and the questions in each of them are very good, what is missing is the key relationship of committees to the political system. This relationship should cover the relationship of committees to government and parliament and hence to the political and electoral processes. It is only when these relationships are teased out that we can appreciate the significance and limitations of the work of committees in different legislatures. It would also be interesting to find out why there has been this shift to permanent committees and committee systems. There is sufficient information to explain Senate developments of the 1970s and 1990s. There may not be much public explanation of the 1987 House of Representatives reforms. Halligan et al advances some very interesting and plausible explanations for the growth of policy work by committees. Be that as it may, the Commonwealth Parliament cannot escape being tagged as an 'arena' parliament, or chamber-oriented institution, in which committees are not the focal point of parliamentary activity.

Finally, and in order to get a better appreciation of strong committees it would be useful to find out whether there have been comparative studies of the nine countries referred to in Strom, particularly the legislatures of Sweden and Switzerland. ▲

***PARLIAMENTARY COMMITTEES: ENHANCING DEMOCRATIC GOVERNANCE***

The Report of a Commonwealth Parliamentary Association Study Group  
Cavendish Publishing Limited, London. 1999

Reviewer: Malcolm Aldons\*

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This interesting book with a very suggestive title can be divided into two parts. Dr Gordon Barnhart, former Clerk of the Canadian Senate, has written the first 10 chapters. He acted as rapporteur for the study group. The remaining 15 chapters are written by members of eight parliaments.

Both parts contain considerable material on procedure and related matters such as the size and types of committees, witnesses, and staffing and facilities. Because my interests centre on the performance of committees, I will concentrate on such matters.

Giles Radice, a long-serving Labour member of the House of Commons, asks the question, what are committees for? The answer is that committees are not an end in themselves. The main but not the sole purpose of a committee and, in fact, the Parliament is to hold the executive accountable [Barnhart].

But strong, disciplined political parties prevent the convergence of ideal and reality, and the government view of Parliament determines the extent to which the executive is accountable. As Barnhart writes, 'The more powerful the political parties, the less influential the committees.'

It is not surprising then that Milliken (Canada) refers to the uncertainty and confusion over exactly what should be the role of a parliamentary committee. He quotes the views of Canadian professors Sharon Sutherland and C.E.S. Franks that all-party committees do not mesh in with the concept of responsible government and that strong committees blur the distinctions between political parties and give power to 'irresponsible' committees rather than 'responsible' government. Perhaps as a result of this, Barnhart poses some interesting questions about committees. They include whether committees are just 'make work' bodies that have very little effect on public policy, and whether, in the real world, members can toss aside their partisan beliefs so that the government back bench can combine with the Opposition to make the Government accountable.

Most of the country pieces are of interest and value. Jim Anderton (New Zealand) discusses committees in the context of the mixed-member proportional (MMP) electoral system. He says that under MMP it is most unlikely that any one political party will be able to form the executive. The longer-term effects of MMP on the functioning of the New Zealand Parliament and its committees should be of great interest to researchers and practitioners alike.

Senator David MacGibbon (Australia) deals almost exclusively with the Australian Senate. He points out that normally, in Australia, committees are seen by government as a nuisance and refers to the 'all-too-frequent division of committee reports along party line' [reports that examine bills]. He may be lamenting the fact that the Senate has lost its proud record of corporate character and is now, like the House of Representatives, just another party-dominated chamber.

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Milliken (Canada) refers to the incidental functions of committees. These include educating parliamentarians, mobilising consent and contributing to the policy process. Radice (United Kingdom) draws a very fine line between criticism and accountability. He says that with their built-in government majority, select committees of the British House of Commons should not be expected to criticise their own government. They can, however, rightly and properly, hold that government to account.

A very interesting contribution comes from India. Sing describes the development of the committee system in India and refers to the government 'Action Taken Reports' presented to the House from time to time. Such reports outline progress made in implementing committee recommendations and also discuss any unresolved differences between the committees and government. Although there is a response mechanism in Australia for committee reports, it lacks the direct references to implementation that exist in India. Sing also makes a significant point when he says that 'effectiveness of the committee system can only be gauged from the response the committee reports generate from the various sources like the government, the Press and the public.'

What this book lacks is a rigorously developed conceptual framework, which can be applied to assess the performance of parliamentary committees. This framework should include the different political cultures of different countries. Because committees are not an end but a means for achieving an end, the starting point is the functions of Parliament. Perhaps the clearest relationship between functions and committees is in the Australian Senate. Several Senate committees give effect to specific Senate functions and they all connect to the basic function of the Senate — the house of review function.

When we take a broader approach to the functions of Parliament we find there are the functions of manifest and latent legitimation and accountability, what I call the 'holistic functions'. These functions are discharged in various ways and one of them is the multi-function parliamentary committee. Committees are virtually indispensable for giving effect to these functions and, therefore, very definitely enhance democratic governance. The World Bank [1992] defines governance as 'the exercise of political power to manage a nation's affairs.'

We need to go further. We need to tease out the various meanings of the term 'accountability' to find out which parts fit in with committee work. We need to work out ways of assessing or measuring committee influence and we need to examine whether committee processes are both public and participatory.

This is a better approach than vague tests and hollow claims of committee effectiveness. It is only when this work is completed that we should consider whether and how committees should be strengthened. But calls for executives to loosen their grip and for members to buck party discipline may go unanswered as they have in the past. The only other options available are the status quo with some cosmetic changes or the possible prospects offered by the changes to the electoral system in New Zealand. ▲

***PARLIAMENTARY DEMOCRACY: DEMOCRATIZATION, DESTABILIZATION, RECONSOLIDATION, 1789 – 1999,***

by Klaus von Beyme, Macmillan Press Ltd. Hampshire and London 2000.

Reviewer: Malcolm Aldons\*

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This book, a welcome addition to the literature on comparative legislative studies, looks beyond national boundaries and thus increases our understanding of that pervasive phenomenon: parliamentary democracy.

Beyme observes that the ‘Parliamentarism of Representative Government’ [he coins several words that the computer questions!], that is, the process by which the executive became accountable to the legislature, was a nineteenth century development. So was the consolidation of parliamentary government. But because the minimum requirement for democracy was universal adult male suffrage, the ‘democratization of parliament’ occurred during the twentieth century. The rise of dictatorships destabilised the system but the period after 1945 saw new waves of parliamentarism and democratisation — in the former colonies of the British Empire, in Southern Europe in the 1970s and Eastern Europe after 1989.

The book has seven chapters. I do not propose to describe the contents of each or any of them but rather will discuss the salient features of the book.

Beyme says there are many types of parliamentary government. He lists six common institutional characteristics and also refers to certain socio-structural features essential for the consolidation of parliamentary democracy. The institutional factors include the various ways the parliament controls the government (questions, committee inquiries) because the government needs to have the confidence of the parliamentary majority to survive. The socio-structural features include organised parties and the development of a political culture favourable for changing governments by peaceful means.

He observes that other models of parliamentary government have joined the Westminster model. We therefore have the following four models: majoritarian (UK, Ireland, Sweden and Norway); majoritarian–federal (USA, Canada, Germany and Australia); consensual–unitary (Israel and Denmark); and consensual (Switzerland, Belgium, Netherlands, Italy and France). Presumably alluding to the consensual models, Beyme refers to the ‘cogovernment of the opposition’ and to cooperative work in legislation found frequently in ‘consociational democracies’, all of which is alien to the majoritarian Westminster model.

All this is very interesting. All of this is necessary background for a discussion on parliamentary committees. Beyme notes that most continental parliaments have developed strong committees and, with the exception of the Netherlands, these committees are under the efficient control of the party groups. The main work of committees from a transnational perspective does not lie in autonomous decision-making but rather in the power to amend bills.

This takes me to the chapter on functions. The author examines four functions in order to assess the impact of parliamentary work on government-legislative relations. These functions are the representation and articulation of interests, the controlling function, legislation and recruitment. Beyme says that parliamentary control has declined most

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rapidly and even in legislation, said to be the most important, parliamentary initiatives are declining in all parliamentary systems.

He also refers to party cooperation in legislation and concludes that the success of the opposition should be evaluated by the successful amendment to government bills.

This chapter and particularly the comments on legislation (including that on committees) would have been enhanced by the typology of legislatures used by Phillip Norton. He divides legislatures into three types: those that rubber-stamp the decisions of the executive; those that can amend or reject but cannot initiate; and those that can initiate their own legislation.

Chapter 6, *The Government and the Parliamentary Majority*, is also interesting. Here Beyme combines rational-choice theory with neo-institutional research to challenge the traditional view on the weakness of minority government. This view maintains that, because they do not last as long, minority government has less stability than majority government. He questions the relationship between minority government and less efficiency, pointing out that even without comparative analysis the Scandinavian parliamentary systems are hardly less efficient than the rest. 'Otherwise these countries would not be at the top of the ladder in welfare and liberal lifestyle.' He makes a valid point that 'it is not the number of parties that is decisive for government stability but rather the traditions of conflict resolution in the various parliamentary systems.' Therefore 'consociational' democracies can have as much stability as majoritarian systems.

Because of the timing of the two publications, Beyme was not able to support his qualitative analysis with the quantitative analysis of Lijphart (article in *Representation and Institutional Change — 50 Years of Proportional Representation in the Senate*, December 1999). Lijphart's paper was on proportional representation and the traditional argument is that PR produces minority governments that are less stable. The conclusions of Lijphart are that PR has a much better record than majoritarian democracy on all the measures of democratic quality and that the latter does not have a better record at governing.

Unlike those who lament the loss of responsible government, Beyme sees the bigger picture and the difference between the ideal and reality. He says that a certain amount of tension between ideal and reality is useful 'as long as the ideal is not too unrealistic or utopian' [emphasis added]. Reformers want a return to the 'good old days' that were an ivory tower parliament elected by a handful of citizens, so that the parliament could make decisions independent of the people.

Although parliament has declined in importance, it fulfils what Beyme calls symbolic functions, that is the legitimisation functions of Norton. If we concentrated exclusively on the 'decisional' functions of parliament, for example, the controlling function, we would conclude, as Gordon Reid did about 25 years ago, that the Australian Parliament is a weak and weakening institution. However, if we look beyond these decisional functions to the functions of manifest and latent legitimisation and accountability, what I call the holistic functions (see my article, 'Responsible, Representative and Accountable Government' in *Australian Journal of Public Administration*, March, 2001) then the picture brightens considerably.

This book is recommended reading for those interested in parliamentary democracy. Assuming that it has not been done before, what is now needed is a comparative analysis of the Westminster model and other types of parliamentary democracy. ▲

***DEADLOCK OR DEMOCRACY? THE FUTURE OF THE SENATE***

Edited by Brian Costar University of New South Wales Press Ltd, Sydney 2000 (List Price: \$12.95)

Reviewer: Malcolm Aldons\*

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This book is a companion to other writings on Senate reform. And as the contributors suggest, or imply, we are no nearer to achieving consensus today as we were 25 years ago.

The Introduction (Brian Costar) says the key issue addressed by the contributors to the book is 'on how to resolve the dilemma of creating and maintaining effective yet accountable governments.' His answer is to seek behavioural solutions. But this does not recognise that behavioural change, namely the loss of the Senate's corporate character is, probably the cause of any problem!

The contribution by Senator Helen Coonan (Safeguard or Handbrake on Democracy?) is the feature article. Her major point is that proportional representation (PR), as it exists today, is a flawed system because the minor parties are over represented and therefore hold the balance of power. However instead of concentrating on traditional review, these parties have used their voting power against the government. The result is that 'at very best ... government will be by compromise. That, in turn, means at least delay, at worst inability on the part of government to respond in what it considers to be effective and necessary ways to crises in the national and international spheres.'

Senator Coonan examines several matters that could either solve her problem or improve the system. She questions the need, today, for the smaller States to have, irrespective of population, the same number of Senators as the larger States. She calls for research into the feasibility of a threshold system for PR used by many European democracies, a system designed to exclude parties or candidates who secure only a minimal share of the votes. The Senator says that the double dissolution procedure is not adequate and puts forward an alternative. 'Where the Senate disagrees with the House on two occasions over the same bill there should be provision for a joint session of both Houses.'

However, the Senator's call for bipartisan support has gone unanswered. Senator Meg Lees (Parliamentary Reform: The Baby and the Bathwater) says that the 'problem Senator Coonan seeks to solve simply doesn't exist ... (because) there is no objective evidence that the current Senate is hostile or is behaving any differently than former Senates over the past 20 years.'

It is all about power, according to Senator Lees. Therefore, the calculated, orchestrated and sustained attack on the Senate . . . is motivated by an overwhelming desire for absolute power on the part of the executive.' She places emphasis on reforming the electoral system for the House of Representatives, which although interesting is outside the focus of the book.

Senator John Faulkner (A Labor Perspective) pours cold water on the Coonan views without criticising the Senator. Senator Faulkner says that 'the Senate system does produce a result which accurately reflect the voting strengths of parties within State and

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\* Formerly Committee Secretary, Department of the House of Representatives, Canberra.

Territory boundaries.’ He adds that PR has given the Senate a popular legitimacy the institution previously lacked. But the increasing influence of the minor parties and independents has resulted in the growing frustration of governments.

The Senator says the minor parties are here to stay. Australians just won’t buy changes to the electoral system without the voters having their say. A 1997 *Bulletin* Morgan poll showed that 72 per cent of voters opposed any electoral change designed to make it easier for the major political parties to control the Senate.

Senator Faulkner does not accept that Senate power over ordinary legislation poses a threat to the system of responsible government. Senate power over supply does. A government should be responsible only to the House of Representatives so that the government continues in office only if it has the confidence of that house.

He says that matters of Senate reform are ultimately for the Australian people via a constitutional referendum. But there is little point in using this method if the major parties do not agree on the questions to be put.

In the three articles by the three Senators I do not think there is one reference to ‘accountable government’ or ‘accountability’ although there are several references to ‘responsible government’. The contribution by Harry Evans, Clerk of the Senate (Accountability Versus Government Control: The Effect of Proportional Representation) rectifies this omission.

Evans says that PR is a superior electoral system because it is more representative and therefore more democratic. Because PR deprives governments of control, such houses can act as a check on the use of power. This is of course even more accurate because of the power given to the Senate in the constitution. Evans thus points out that upper houses have only one hold in enforcing accountability and that is the power to withhold assent from legislation. ‘An upper house without legislative powers could simply be ignored by a government assured of the passage of its legislation. A reviewing house without power over legislation would be ineffective.’

I think it would be difficult to argue against this conclusion. Nevertheless, the value of the Senate and the secretiveness of government can be exaggerated. The term ‘accountability’ has different meanings and one of them is extra-parliamentary accountability such as administrative review. This form was a government initiative. Another meaning is that the government is accountable to the electorate through the Parliament. But few would disagree with the statement that the Senate plays a vital part in the process of accountability. Be that as it may, Senator Coonan’s views should be examined further. Their value would be enhanced if her party endorsed them. However, this is election year and that would be asking for too much. Perhaps all we can hope for is for the major parties to give us an undertaking that reform of the Australian Senate would take place only if the electorate directly approved such reform. ▲

***FIGHTING FOR THE REPUBLIC,***

by Malcolm Turnbull, Hardie Grant Books, 2000, ix, +262.

Reviewer: David Flint\*

Malcolm Turnbull had everything going for him. During the better part of a decade, with up to \$150 million of taxpayers' money, his Australian Republican Movement produced not one, but two republican models. And by the 1999 referendum he has the full support of the ALP, who promise to campaign as if it were a federal election. There are revealing glimpses in this memoir of Turnbull's instructions on how Kim Beazley should present the case! He also has the support of a good part of the Liberal Party organisation, and most sitting politicians. (A whopping 93% in Tasmania.) The establishment is not only on side, but is uncharacteristically outspoken. The Vice Chancellor of Melbourne University warns a No vote will result in acute international embarrassment! Three distinguished jurists, Sir Zelman Cowan, Sir Anthony Mason and Sir Gerard Brennan, certify the model as safe, even though two of them had previously expressed serious reservations. The overwhelming majority of Australia's political journalists, editors and the press throw themselves enthusiastically into the campaign. And Turnbull has vast resources — in the Convention elections he outspends Australians for Constitutional Monarchy 5:1.

And yet, he loses. By a landslide. All States and the Northern Territory vote No. Seventy two percent of all electorates, rising to ninety three percent in Queensland and Western Australia. Why?

The Yes campaign is at best mediocre. There are too many contradictory messages from the ARM and its satellite organisations.

And as Turnbull fears, the No case, through the careful husbanding of its funding, gets a 'better bang for its buck'.

The ARM makes the mistake of thinking they are fighting an election. Campaign Director, Greg Barns — 'aggressive, blunt and often very abrasive' — decides to target individuals. He launches 'a very personal attack on Flint'. All a complete waste of time, nobody is standing for election. The personalisation of the campaign is exposed in these memoirs. It is clear that Turnbull does not think much of those who dare oppose him.

Thus John Howard is Nick Minchin's 'ventriloquist', Ted Mack delivers 'a contemptible tirade', Sophie Panopoulos is 'most offensive', Phil Clearly 'irrational', Peter Reith 'shameless'. Kerry Jones is 'cynical', 'shrill', 'personal', 'provocative' and 'outrageous as usual'. David Flint speaks with an 'affected pseudo British accent'. He predicts Flint's book, *The Cane Toad Republic*, will be remaindered. Flint is not a 'constitutional lawyer at all'. (This from a writer who claims every single constitutional text refers to the Queen as head of state — presumably in invisible ink.)

Opposition from within is equally *verboten*. Steve Vizard is 'troublesome'. Mark Day is almost expelled for asking whether Turnbull is past his use-by date.

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\* Chair, Australians for a Constitutional Monarchy

Yet other errors are made. In the Electoral Commission pamphlet for all voters, many of the Yes case pages are totally blank. Opposite each is a page full of more reasons to vote No!

But all this is all peripheral, for there are two fundamental reasons for the defeat. First the model. It is unacceptable. Not only is it a politician's republic, but it is one in which it will be far easier for the Prime Minister to sack the President than his cook. The people smell a rat. The lesson from this is that politicians should reflect very carefully before they divert any more of the people's hard-earned money from, say, health, or education, or roads, to this folly. Not only because the onus is on the Turnbolls of this world to demonstrate — in the words of one of the Founders of our nation — that there is strong evidence that the adoption of the precise model they propose, and not some vague idea, is 'desirable, irresistible and inevitable'.

The other fundamental reason is that this issue just does not register with the Australian people. Forget about single issue opinion polls. Just think of the issues Australians really care about — the Olympics, the flag (and don't the republicans hate that), East Timor and what happened to the Rugby League.

Months before the referendum, Turnbull confesses this, but only to his diary. He writes: 'we have Buckley's chance of winning.' Why? 'The problem is nobody is interested..'

This confession makes more fatuous Turnbull's claim when he grudgingly concedes defeat, that history will remember John Howard for only one thing — that he was the Prime Minister who broke the heart of the nation. (Turnbull's advisers should have warned him not to say this — but they had their own delusions. Greg Barns and others wanted him to claim the defeat as 'a victory for the republic'. Some victory!)

That this is a non-issue was obvious in the campaign itself. The *Daily Telegraph*, Sydney's largest circulating newspaper, promoted a major debate on the republic before the referendum. The promotions appeared regularly on its daily page 'Queen v Country'. As paid advertisements they would have cost a small fortune. With outstanding speakers, in Parramatta Park, the geographic heart of the city, the very centre of the *Telegraph's* readership, at lunchtime on a Friday, it was sure to attract such a crowd as would rival an AFL grand final! How many attended? Tens of Thousands? Thousands? Perhaps hundreds? No. About seventy. Seventy, including the speakers and the *Telegraph's* staff.

Mr Turnbull was right in July 1999, and he is still right today. Nobody is interested. ▲

**DEMOCRACY IN EUROPE**

by Larry Siedentop. Penguin, 2000. xii + 234 (incl. index). 234pp. ISBN 0 713 99402 9

Reviewer: Mark Thomas\*

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Development of the European Union (EU) has inspired more clichés and caricatures than polemics. Larry Siedentop, a lecturer in political thought at Oxford University, has now sought — zealously, passionately but thoughtfully — to redress that balance.

Since Siedentop is English, his analysis of the EU could easily be misconstrued as another disgruntled contribution to the ‘little England’, mad cow, ‘Brussels sausage’, budget rebates, ‘save the pound’ style of London tabloid complaint about the alleged risks and costs of British association with the Union. All the sorry contortions and permutations in that debate during the past few decades have been chronicled recently (and splendidly) by Hugo Young. Siedentop, though, is not at all a xenophobe or little Englander. He may be suspicious, resentful and anxious about some foreigners (senior French officials and their model of the state specifically), but tries hard to document the basis for his discontents.

*Democracy in Europe* is intended to comprise ‘a book of reflections, and, I hope, provocations to argument’. Rather than add to the British debate on Europe, in its current form, Siedentop proposes an entirely new form of — more informed, more thorough, more philosophically grounded — debate. He advocates a ‘great’ constitutional debate, one designed ‘to establish the goals of European political integration, the limits which such integration ought to respect, and the means by which new powers and institutions can be made accountable’.

Eurocrats, as well as elected European leaders, may respond that such a debate is a work in progress, advancing incrementally as the Union develops in stages, refined and elaborated as the EU’s ‘broadening and deepening’ proceeds, endorsed by the public at elections and in referenda, hammered out in political arbitrage, with the results then embodied in treaties, conventions and regulations. With the EU, perhaps, you make it (ever closer union) by doing it, as well as learning it (integration, that is) by doing it.

Siedentop’s rebuttal, and this is the core of his argument, would be that centralisation and uniformity should have aroused — at the very least — a more sceptical response from the European ‘political class’ and the publics they represent. Over-rated economics becomes Siedentop’s principal target. His essential premise is the notion that ‘in Europe, the language of economics has driven out the language of politics/constitutionalism’. At a more strident pitch, he would claim that ‘economists have become the witch-doctors of the modern world — performing rites and intoning formulas’.

The point of assailing ‘economism’ is to suggest, in practice, that EU centralisation and uniformity may not actually suit citizens’ interests. Or, in Siedentop’s more emphatic and exaggerated prose, ‘uniformity can easily become a kind of God, worshipped in its right’. As for centralisation, that might connote authoritarianism and rule by strangers (a phrase borrowed from Montesquieu), with the net effect perhaps being ‘to make a Europe safe for bureaucrats’.

This intensely felt argument rests on a set of foundations, some more solid - in the sense of cogent, well-read, persuasive and coherent — than others. Take the foundation in

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history. Siedentop argues that ‘the process of state formation was, especially on the continent, essentially a despotic one’. Leaving aside the dated Anglo-centrism in his reference to ‘the continent’, Siedentop’s short-hand might well arouse the ire of the French, the Italians, the Portuguese and the Greeks, to name a few. Similarly, he claims that Beethoven’s change of heart on Napoleon (after he composed the ‘Eroica’ symphony) ‘symbolises the volte face of a whole generation of continental Europeans’. I wonder what sort of tangible evidence could be accumulated in support of that proposition.

Moving on to contemporary judgments, Siedentop argues that the ‘younger generation’ were celebrating their own confusion in their expression of feelings for Princess Diana. He claims, starkly but a bit too simply, that ‘the moral identity of Europe has become problematic’.

The much greater strength of *Democracy in Europe* lies in Siedentop’s capacity to apply philosophical precepts to political action. He does so in a consistently challenging way; this is where the provocations to argument really cut in. Siedentop suggests, for instance, that Brussels should impose only minimal standards, ‘not going beyond basic intuitions of justice’. Well, what might they be? how would a consensus on their form and connotations be agreed? which European states would start that debate from agreed premises and shared values?

I suggest that Siedentop would be well-equipped to lead a debate on that matter, as he would on his contention that power is often ceded to a political class ‘which has emerged in a morally acceptable way’. Here again, how would the claims of talent, education, wealth, heritage, ambition, clout and leverage be balanced one against another? Is it true, as Siedentop muses elsewhere, that a shared language is an indispensable civic bond for a working federation? Are the Belgians and the Swiss quite on the wrong track there?

*Democracy in Europe* contains plenty of practical recommendations as well: for a European Senate staffed by leading national politicians; for greater regional autonomy; for expanded engagement of lawyers in the political process, through creation of an adjudicating Supreme Court. The heart of the book, though, is still the philosophical tenets and Siedentop’s serious, dogged attempt to apply them to political action.

Siedentop’s book also contains a long (much too long) complaint about the way in which, as he sees it, the French model of the state is winning out (over British and American variants) as the form of a united Europe. This French win (perceived here as a response to German re-unification) is depicted as a victory for centralised authority, which ‘whatever its name — resembles nothing so much as the unitary French state’. In Siedentop’s analysis, ‘the French have to give more to Europe than any other country, because they believe in Europe as a moral and cultural undertaking’.

In Siedentop’s cosmology, the French know what they want and how to get it. They are clever, focused, deft, well-trained, determined and consistent. It is their ideas of the state (at home) and federalism (in Europe) about which he has reservations. This approach may over-estimate the extent, and the duration, of French power within the EU. It may over-simplify the reasons for that period of power. It may, conversely, under-state the influence not only of the Germans but of the Spanish and Italians. Flaws in political analysis do not, however, invalidate the great strength of *Democracy in Europe*, the attempt not so much to condemn current French thinkers as to exhume much older ones (de Tocqueville and Montesquieu particularly) and apply their thinking to the problems of Europe today. ▲