

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

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 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 Sawer (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 Sawer 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

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,

'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

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.

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

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 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

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 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. ▲