

The 'Elective Dictatorship' — Fact or Fiction?

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During the 1980s and 1990s the term, 'elective dictatorship', coined by Lord Hailsham in 1976, gained some currency in Australia. Malcolm Aldons, after examining the meaning of the term, argues that it is an alarmist expression which contributes very little to understanding the workings of contemporary parliamentary democracy.

During the 2001 general election campaign in Britain the Conservative Party, in an obvious ploy to win votes, warned of an 'elective dictatorship' if the Labour Party was re-elected with a landslide majority of seats in the House of Commons (*The Canberra Times*, 2 June 2001). The warning came from, of all people, the former prime minister, Baroness Thatcher, whose period of office has been described as a 'generally perceived drift — some would say gallop — towards an elective dictatorship and an authoritarian administration' (McAuslan 1989).

Lord Hailsham is said to have 'minted' or 'coined' the expression 'elective dictatorship' (Marsh 1991; Evans 1993). In the 1976 Richard Dimpleby Lecture, delivered when the Conservatives were in opposition, he said, referring to Britain, that 'We live under an elective dictatorship, absolute in theory, if hitherto thought tolerable in practice'. He was concerned with the reduction of checks and balances in the exercise of power during a period that saw a continuous enlargement in the scale of government. He said the constitution gave 'absolute power to the legislature when all reason and human experience tend to show that ultimate powers are intolerable'. Lord Hailsham was quite clear about the change he wanted:

I envisage nothing less than a written constitution for the United Kingdom, and by that I mean one which limits the powers of Parliament and provides a means of enforcing these limitations either by political or legal means. This is the essence of the matter . . . (Lord Hailsham 1976)

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However, about six years later, when the Conservatives were in government and he was Lord Chancellor, Speaker of the House of Lords and a member of Cabinet, Lord Hailsham changed his tune. He did continue his criticism of executive control of the legislature, which he called a 'dangerous development'. Also, in the context of checks and balances, he discussed the role and functions of an Upper Chamber, pointing out that, for it to be effective, that chamber should have 'real power' but should 'not be in a position to destroy the ultimate sovereignty' of the Lower House. But he did not use the term 'elective dictatorship' and did not repeat his call for significant constitutional change (Lord Hailsham 1982).

Harry Evans, Clerk of the Senate since 1988, says that the phenomenon of an elective dictatorship 'is more highly developed but less analysed in Australia'. He traces this development to party domination of the legislature (Evans 1993, 20, 17). In his book, *Can Responsible Government Survive in Australia?*, David Hamer, writing on the basis of experience in both the House of Representatives and the Senate, devotes an entire chapter to the term — 'What is Wrong with an Elective Dictatorship?' He describes five defects of an elected despotism and concludes that 'each serious in itself, are devastating in sum' (Hamer 1994, 181).

These are strong and serious criticisms. The purpose of this article is to examine closely whether terms such as 'elected dictators' and 'accountable despots' have any significant value with particular reference to Australia.

Examination of the term 'Elective Dictatorship'

I believe it essential to construct an analytical framework to test or assess the value of the term. We should get a better understanding of the term and its usefulness by seeking answers to the following questions:

- What is an elective dictatorship?
- How has it come about and what are its dangers?
- What are the existing constraints on the use of power and are they adequate? and
- What are the solutions and would they eliminate the dictatorship?

Further, the case against and the solutions for removing the dictatorship should be clearly articulated and accurately portrayed to assist our understanding of the subject matter. Inaccuracy or fuzziness of explanation weakens the quality of the analysis. Finally, there should be a strong relationship, a good fit, between the problems identified and the solutions [the reforms] proposed. The stronger the relationship, the better the analysis.

Both Evans and Hamer equate elective dictatorship with the loss of responsible government. An elective dictatorship comes into being when strong, disciplined political parties prevent parliament from exercising its original and supposed

function of controlling the executive government. At its extreme these controls meant both in theory and practice that the parliament could dismiss the executive if not satisfied with the performance of that executive. But strong political parties have prevented this from happening in the twentieth century because party discipline binds members to support the party. As a result 'the executive is responsible to the party and not to the parliament, and . . . the parliament, particularly the lower house, never administers that responsibility' (Evans 1992, 22). Because party discipline is stronger in Australia than in other countries the elective dictatorship, so the argument goes, is more developed here.

It is important to note that the period of responsible government pre-dated that of representative democracy. I have argued elsewhere that the extension of the franchise in Britain to the working classes spawned the mass membership political parties, which represented different concepts of the common good so that representative democracy is not compatible with the narrower construct and the narrow voter base of responsible government (Aldons 2001). Beyme refers to the ivory tower view of parliaments of the 19th century, which he says were elected by a handful of citizens so that the parliament could make decisions independent of the people (2000).

I therefore conclude that it is inappropriate and unproductive to label the present system of representative parliamentary democracy an elective dictatorship just because the executive is not responsible to the legislature in the way it was during the so-called golden age of responsible government. We cannot turn the clock back and restore responsible government to its ideal and pristine status of about 140 years ago by abolishing the modern political party or by restricting the franchise to the propertied classes.

The concern of Lord Hailsham was executive control of a sovereign parliament. Australia does not have a sovereign parliament. Australia has a specific set of checks and balances that impinge on the exercise of power. Are these constraints on the use of power adequate and how do they affect the Australia's 'elective dictatorship'? Evans much more than Hamer provides significant information and analysis on these matters.

First, he refers to the 'establishment of a structure of non-parliamentary safeguards and institutions' such as freedom of information legislation, the administrative appeals system, other review mechanisms [the Ombudsman] and a host of others such as independent commissions against corruption. He says that these changes have put Australia ahead of other countries, namely Britain, Canada and New Zealand. 'Australia has exhibited the most radical changes in the system of government, through purely legislative and non-constitutional means' (Evans 1992, 29, 30).

Second, he refers to the reform movements in these countries and says that they are asking for what Australia already has:

The most striking feature of those reform movements is that they are demanding the very institutions which Australia already possesses: written constitutions with the authority of popular approval, elected second chambers as brakes on the powers of governments with entrenched control of lower houses, constitutional and legislative safeguards against excessive government power, and real federal systems. (Evans 1992, 31)

Indeed, it can be argued that the sharing of power between the States and Canberra is a fundamental structural check on the use of power not available in unitary systems such as the United Kingdom.

Hamer, Evans and a host of others refer to the importance of the Senate as a constraint on executive power and give a number of examples. To these may be added two recent and significant ones. In 1993 the Labor Government was forced to negotiate with the holders of the balance of power in the Senate to enable certain budget measures to be passed (Wanna et al. 2000, 228). More recently, the Liberal–National Party Coalition Government had to negotiate with the Australian Democrats to secure Senate passage of the bills relating to the goods and services tax. This executive bargaining on crucial matters is not consistent with the behaviour of an elected dictator.

Third, in respect of constitutional power, Evans says that the judiciary ‘is a significant restraint on governments and their subordinate lower houses’ (Evans 1993, 20). Given all this it is surprising that he used and continued to use the term elective dictatorship in respect of Australia, although acknowledging that ‘Australia has avoided the worse elements of this degeneration’ (Evans 1999). How is it possible for Australia to have all these restraints on the use of power, including the very significant restraint of the Senate as a house of review, and also have an elective dictatorship?

The answer is, to use his words and argument, that these features ‘ameliorate the concentration of power in the hands of the dominant party of the day’ (Evans 1993, 20). In other words, I presume they lessen the impact but do not remove the dictatorship because nothing short of the existence of responsible government in the House of Representatives can do that.

Evans proposes proportional representation (PR) as being worthy of closer examination as a cure for the party disease that is responsible for the elective dictatorship. This is the only remedy that improves the functioning of Parliament. According to him the other remedies such as the administrative review processes make up for the defects of Parliament. Evans says that it is PR that has made the bicameral system a restraint on governments at the federal level, claims that PR produces a more representative result and argues that, because a party cannot gain an absolute majority in the lower house, compromise will result (Evans 1993, 20 21).

Since he wrote, the Senate celebrated 50 years of proportional representation and the conference papers on the subject (*Representation and Institutional Change: 50 Years of Proportional Representation in the Senate*, December 1999) constitute a strong if not impregnable case for the retention of PR for voting in Senate elections. But the question of the extension of PR for elections to the House of Representatives was not dealt with in a satisfactory way (Sawer & Miskin 1999). Will the introduction of PR for the House, accepting the reasoning of Evans, lead to restoration of responsible government and therefore elimination of the elective dictatorship?

The answer is that, in certain circumstances, it could but, in other circumstances, it could make things much worse. For example, if a major party has to rely on the support of independents, this could introduce an element of responsible government to the House. Further, shaky and temporary coalitions would produce a similar result but frequent changes in government could lead to instability. But if, as a result of PR, we end up with two versions of the Senate and the same major-minor party coalition in control of *both* the House of Representatives *and* the Senate, then the PR cure for party government and the elimination of the elective dictatorship will be worse than the disease.

Unlike Evans, Hamer provides more detail on his version of the term. He identifies five dangers of an elective dictatorship. The first is that 'the responsibility to the electorate is crude and unsatisfactory' because three years or more 'is a long time to allow any group untrammelled power'. The second objection is inadequate 'answerability to parliament'. One of the examples of evasive devices used by the Executive to reduce answerability is crown privilege and he cites the case of the 1975 overseas loan investigations where the Senate 'yielded' to the Government's claims of privilege (Hamer 1994, 178, 179).

Hamer could not have chosen a worse example. The Senate may have yielded but it had bigger fish to fry. During the same year (1975) the Senate's deferral of consideration of the annual appropriation bills led to the dismissal of the Whitlam Government and this Senate action was later trumpeted as being in accordance with the 'principle of responsible government' (Odgers 1996, 368).

The third Hamer danger in an elective dictatorship is the power of governments to make appointments and the vast expansion of government activity opens the door for patronage and the potential for corruption. The fourth objection is 'the inability of the parliament to assert proper control over the government's defence and foreign policy activities'.

The fifth and final objection to an elective dictatorship put forward by Hamer is government control over the legislative process. The result is inadequate public scrutiny and the potential for serious abuse such as retrospective legislation, the invasion of personal privacy and the granting of excessive powers under delegated authority. 'The only defence against such abuses of power is a parliament which is

willing and able to force their removal. The by-passing of parliament as far as legislation is concerned is the most serious consequence of elective despotism' (Hamer 1994, 180, 181).

The Hamer view is that each of these five defects is 'serious' and, when aggregated, are 'devastating in sum'. Although there is some relevance and accuracy in what is said, overall the case made is both inaccurate and unconvincing. His first danger is that the responsibility to the electorate is insufficient because the period of government of three years or more is too long for the use of 'untrammelled power'. In the first place this view of untrammelled power is inaccurate. There are checks and balances that restrain the use of power. One of the reasons for establishing a strong Senate was to prevent the 'tyranny of the House of Representatives' (quoted by M. Sawyer in *Representation and Institutional Change*, 1). Second, the question of whether a period of office of three years is too long or too short, and Hamer advances both views, should depend on the application of the Madisonian principle that 'the greater the power is, the shorter ought to be its duration' (quoted in Uhr 1998, 88; also see Hamer 1994, 178, 45).

The Hamer solution to the first danger is fixed four-year term parliaments (Hamer 1994, 184, 190). As he says, the fixing of the term will certainly remove the power of the incumbent prime minister to call an election when political circumstances are favourable. But extension of the parliamentary term to four years worsens the problem even if one assumes that fixed term parliaments in some way reduce or lessen the effects of an elective dictatorship. After all, New South Wales has a fixed term parliament. Has this lessened the elective dictatorship there?

According to Hamer, the most serious objection to an elective dictatorship is the bypassing of parliament in respect of legislation. This, too, is inaccurate. The Executive does not get its own way because of the checks applied by the Senate. I have discussed this feature earlier. Hamer acknowledges the work of Senate committees and describes Senate consideration of delegated legislation as 'exemplary' (Hamer 1994, 187). His conclusion of inadequate consideration of bills by the Senate is hardly a consequence of the elective dictatorship. The government does not have the numbers to control the Senate and, therefore, cannot bulldoze its legislation through this chamber. The solution of the Senate sitting longer and examining more bills will improve the functioning of parliament but this has nothing to do with the dictatorship. This 'serious' objection to the elective dictatorship is to a problem that does not exist.

The Hamer analysis has several weaknesses and I attribute them in part to the confusion over precisely what is an elective dictatorship. Hamer has two versions. First, he tells readers, as Evans does, that disciplined political parties have led to executive control of the parliament. This has resulted in the loss of responsible government and emergence of an elective dictatorship. According to Hamer, this feature applies particularly to lower houses of parliament (Hamer 1994, 175, 178). It must surely follow, then, that removal of this executive control of lower houses

will at one and the same time restore responsible government and remove the elected dictatorship. Unlike Evans, however, Hamer does not discuss options that could lessen the grip that the executive has on lower houses. He changes his position.

In the last chapter (*Where Do We Go From Here?*), Hamer discusses the need for 'effective parliamentary controls' to prevent or curtail 'abuses of party power'. However, none of this extends to the Lower House because he also says that the 'role of the House of Representatives would be unchanged'. His cure for the elective dictatorship is now the Upper House. According to him, to avoid an elective dictatorship upper houses must take over the roles abandoned by lower houses, namely the legislative and critical public inquiry roles (Hamer 1994, 193, 184, 190 and 143.).

The confusion arises because of the absence of any connection between problem and solution. If the elective dictatorship has arisen because of party domination of the House of Representatives, it is impossible to remove this dictatorship by Senate reform. All that this reform can achieve is to 'ameliorate' the excessive use of power but the dictatorship would still remain.

Hamer's detailed and careful research makes a useful contribution to our understanding of the operation of parliamentary institutions. His proposed changes will generally improve the functioning of our parliamentary democracy. He makes more than a dozen suggestions. They include fixed four-year term parliaments, simultaneous elections for the House of Representatives and the whole of the Senate, referendums as the final solution to disagreements between the two houses, removal of ministers from the Senate, and written rules on the powers of the governor-general (Hamer, 1994, 184–90). However, at no point in his final chapter does Hamer tell readers which of these proposals lessen or eliminate his five 'serious' dangers of an elective dictatorship or restore responsible government. It is wishful thinking to believe that these changes will usher in a new age of responsible parliamentary government in Australia.

Conclusions

In Britain there are different views on the usefulness of the term 'elective dictatorship'. One view is that the fear of elected dictators is misplaced and that the idea is a contradiction in terms — dictators do not get elected (Mount 1994, 2). Another view is that the term of office of Prime Minister Thatcher marked the arrival of the elected dictator. When governments dominate the Commons with large majorities, the select committees are seen as a countervailing force that act as a restraint on the use of power (Hawes 1993, 206, 209).

However, as used by Australian reformers, the term 'elective dictatorship' is an alarmist expression that contributes very little if anything to our understanding of

the workings of parliamentary democracy in the late twentieth and early twenty-first centuries. The fundamental flaw of the term is that it is based on or related to the so-called golden age of nineteenth century responsible parliamentary government whose use-by date has long passed. The term has limited application to Australia because of the existing constitutional and legal checks and balances. *It just does not follow* that because there is greater party domination of the Lower House in Australia than elsewhere, the elective dictatorship is more developed here. The opposite is more accurate. That is, because our checks and balances on the use of power are much stronger than elsewhere, the elective dictatorship, assuming there is such a thing, is less developed in this country.

These shortcomings are compounded by a lack of accuracy and fuzziness in identification of the assumed problems of the elected dictatorship and a weak relationship, a poor fit, between the problems and the solutions [the proposed reforms]. Over and above all this is lack of recognition of the societal restraints on the use of power that are outside the traditional constitutional, legal and parliamentary spheres.

We can hardly turn a blind eye to these constraints. They include public opinion and the watchdog role of the media. Public opinion can be seen as too fickle a constraint but in the volatile political world of today it could be, when combined with the others, a powerful constraint. The media is seen, and sees itself, as a major instrument of accountability. It provides a forum for the accountability of public and private power. Associated with this are the effects of the growth of a better-educated and discerning electorate. It is said that, because of this, 'those directly affected by policy decisions are insisting on their right to be consulted' so that this 'has produced a huge growth in consultative arrangements and in administrative law' (Keating 2000, 18).

Further, in recent times there has been a proliferation of interest groups and social movements. This increase has been described as 'arguably the single most significant change in the character of post-war domestic politics. The pluralisation of Australian society is the fundamental fact' (Marsh 1999, 193). The movements include environment, ethnic, consumer, Aboriginal, women, gay, peace/third world, animal rights and the 'new right' or neo-liberal movement. A feature of these movements is that they are all organised independently of the major political parties. As if this was not enough, there is now the matter of governments meeting the requirements of good governance. The Manila Declaration of the 1999 World Conference on Governance defined the term as a 'system that is transparent, accountable, just, fair, democratic and responsive to people's needs' (quoted in Coghill 2001, 68).

Societal constraints on the use of power are formidable. Governments are being questioned and judged as they never were before. The demands for transparency and accountability are increasing. The electorate is very volatile. New institutions of accountability are being created. Governments have now to answer to the

concerns of international organisations. In addition, it is said that there has been a decline in community trust in government. This has been attributed to governmental incapacity to satisfy different and incompatible expectations of different groups over apparently insoluble problems. In this context there are calls for a complete re-examination of our political institutions, particularly with the view of making Australian parliamentary democracy more participatory (Keating 2000, 27, 28).

It would be a great pity if this future and hopefully futuristic twenty-first century research were to be shackled by the fundamentalism of the nineteenth century concept of responsible government or by its alarmist companion — the 'elective dictatorship'. ▲

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