

## **RESPONSIBLE AND ACCOUNTABLE GOVERNMENT IN AUSTRALIA**

Stanley Bach

What is interesting about the Australian political system? Where to begin? To an American observer, government and politics in Australia offer innumerable instructive examples for, and points of useful comparison with, other democratic polities.

To cite just a few examples: in an era characterized by so many new or revised democratic constitutions, where better than Australia to look for both the possibilities and pitfalls of borrowing from abroad? To anyone interested in the impact a constitutional court can have on the allocation of government power, what better example to study than the High Court of Australia and its impact on the distribution of authority between the national government and the States. What problems can arise in the relationship between a head of state and a head of government? Who better to ask than the Australians who still have vivid memories (and opinions) about the “dismissal” of 1975? How can changes in electoral systems affect the ability of governments to govern? Just ask any Australian prime minister of recent decades. And perhaps most generally, how can inherited norms and expectations affect implementation of what might seem to be unambiguous constitutional assignments of governmental powers? What does it matter, for instance, that the Commonwealth constitution doesn’t even mention the office of prime minister? And the list could go on.

Of special interest to me is how the Australian political system copes with a concern—one that I share and that perhaps is more widespread among Americans than Australians—that governmental power is a dangerous thing and its exercise needs to be controlled. What I have in mind is more than the opportunities that the power of government can create for ill-gotten gain and other forms of personal corruption, though these exist in every political system. I am at least equally concerned with the danger that those holding political power will want to exercise it, even with the best of intentions,

with minimal interference from others. In fact, it may well be that the more convinced office-holders are of their own wisdom and virtuous intentions, the less patient they will be with institutions, and the people inhabiting them, who stand in their way. If the classic formulation is “who guards the guardians?”, I would rather ask “who governs the governors?”.

U.S. Supreme Court Justice Louis D. Brandeis once wrote that “[s]unlight is said to be the best of disinfectants.” While recurring elections that are “free and fair” obviously are essential for popular control of the exercise of governmental power, Brandeis’ assertion points to the conclusion that, while such elections are necessary, they are not sufficient. First, if elections are to permit effective control of government, the electors must be able to be as well-informed as they choose to be as to what their government has been doing in their name, and with what effects. And second, a great deal can happen between elections, so they can come too late to redress fully the damage that their governors already may have been done.

I conclude that government must be transparent if it is to be accountable, and that it must be subject to effective countervailing controls before its decisions are made and implemented. For both purposes, an independent judiciary is essential, but it is largely a reactive set of institutions that must wait for conflicts to reach it. All of which brings me to the parliament (or congress, or whatever), which can be empowered and organized to shine light on the government’s past actions and to review, revise, or even block the government’s intended actions.

What makes Australia particularly interesting in this context is that the danger of insufficiently controlled power is unusually great and the potential for coping with this danger is equally great.

The danger arises from the transition that occurred from responsible government to responsible party government, when combined with virtually inviolable party discipline in parliamentary voting. In a parliamentary system with two (or essentially two) highly

disciplined parties, the government is held to account for what it has done only to the extent that its own parliamentary majority wishes, and its legislative proposals are delayed, changed, or thwarted only to the extent that the same majority is prepared to do so.

In Canberra, the House of Representatives usually is a dependable agent and ally of the government it has created. In the real world, MPs comprising the government's majority have not much incentive to critique government's policies and monitor its actions in ways that cast the kind of sunlight on them to which Brandeis alluded. To the extent that such reviewing and monitoring takes place, it is most likely to take place behind the closed doors of their party room or in even more informal and non-public ways that are at odds with a fully informed electorate and, more generally, with the degree of transparency that true accountability requires.

In similar fashion, government legislation isn't very likely to be revised in significant ways during formal parliamentary proceedings. Amendments and alternatives proposed by non-government representatives have very little chance of success, and changes advocated by the government's own MPs are, again, most likely to succeed if made in the privacy of their party room or during even less visible private consultations.

This is not to minimize what an unhappy government majority in parliament can do. Prime ministers can be replaced and governments can be compelled to accept important amendments to their legislation. But a party room is not the parliament itself. There is an important practical and principled difference between what a parliamentary majority party does and what is done by parliament as a constitutional institution. Imagine—and, if memory serves, this is not quite as far-fetched as it may seem—that the ALP and the Coalition each empowered some non-parliamentary group to elect or change its leaders in parliament and to approve, revise, reject, or even initiate the legislation it proposes when in government. Would this change in practice change the effect of current practices in any fundamental way?

In sum, the difference between responsible government and responsible party government is a difference in kind, not merely in degree. And it is no small thing if it means that the parliamentary majority party has little incentive actively to hold its leaders, and their actions, decisions, and proposals, to account in plain view of the electorate.

This is the danger to which I alluded above. It is present in every parliamentary system, but to a far greater extent if parliament is populated by two opposing, disciplined camps. The potential for coping with this danger, to which I also referred, lies in the Senate which, thanks to the Constitution, is as powerful as it chooses to be and which, thanks to legislative choices and the public's voting behavior, now rarely is controlled by the government.

The posture of modern Australian governments toward the Senate is somewhat reminiscent of what Henry II is supposed to have said of Thomas à Becket, "who will rid me of this turbulent priest?", or words to that effect. Fortunately, the Australian people have not been inclined to do so. So the Senate remains the necessary institution to control the exercise of government power between elections. How well has the Senate acquitted itself? In my view, better than its detractors would have liked, but not as well as it might.

So perhaps the next theme to be addressed I this forum might be: "What's interesting about the Australian Senate?"

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