

Surveying Research on Parliament and Parliamentary Oversight of the Public Sector

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This presentation begins by offering a brief overview of the existing research into Parliament and Parliamentary Oversight of the Public Sector. It highlights the work of those who are experts in the area and concludes by identifying areas which would benefit from further research.

We have identified three major themes in the literature on Parliament:

- Independence of Parliament
- Scrutiny of the Executive
- Oversight of the Public Sector

Within these themes several important research questions arise.

Independence of Parliament

Independence of the parliament includes issues such as parliamentary privilege (Campbell 2003; Carney, Jersey, and Kirby 2003) and Podger's research which examines parliament's ability to control its own budget and whether parliamentary staff should be treated differently to other public servants.

Uhr, who is recognised as one of the leading scholars on the study of parliament, has written on many issues. His book *Deliberative Democracy* is often cited by parliamentary scholars. Other publications by Uhr canvass issues confronting parliaments, including how they can become more effective as core public institutions and how parliament might be reformed so that it is more effective. His research on reforming parliament outlines deficiencies which include the governments' lack of response to committee reports and the passive attitude parliament adopts to protecting its independent parliamentary officers such as auditor generals, the Ombudsman and anti-corruption bodies. All play a central role in

oversighting the conduct of public servants. These themes are expanded on when Uhr outlined ten measures for parliamentary reform at www.anzsog.edu.au (see introduction to the workshop). Uhr and Wanna combine to focus on the future roles of parliament.

Parliament's budget

Australian parliaments are generally subject to the dictate by the executive of their budget, whereas the UK and Canada accept that parliament will exercise independence in relation to its budget (Podger 2002). The advantages and disadvantages of both models invite further comparative analysis.

Role of Upper Houses

Proposals by Prime Minister Howard to reform the Senate and the forthcoming reforms of the Victorian upper house may well respectively nobble and liberate them from executive dominance. Reforms in NSW, SA, WA and recent reform in Tasmania provide opportunities for comparative research across jurisdictions. Such research can draw on the rich experiences in the various states including the forthcoming implementation of the Victorian reforms (Mulgan 2002b).

Boston suggests that amongst unicameral legislatures the New Zealand parliament's greater independence under MMP has not damaged governance (Boston, Church, and Bale 2003). The unicameral legislatures of Queensland, Northern Territory and the ACT, of which only the latter has significant

independence, provide further bases for comparison.

Parliament-public interface

In terms of the committee process, those of most Australian parliaments are less developed than those in many other jurisdictions. NZ and many other parliamentary systems provide greater opportunities through committee processes for public input into the legislative process (see also (Halligan, Power and Miller 2001). Effective committee systems which invite public input reduce executive domination over parliaments and enhance their independence. Research comparing the NZ experience with Australian jurisdictions could yield useful findings relevant to the independence and legitimacy of parliaments and their ability to scrutinise the conduct of public servants more effectively.

Parliamentary committees

The roles of committees such as public accounts and estimates committees are becoming increasingly important, particularly in the context of the complex contractual relationships which now exist in relation to privatisation and outsourcing.

Independent Officers of the Parliament

The independence of several office holders whose work scrutinizes the executive has been advanced in Australian and NZ jurisdictions (Buchanan 2001; Clark and Martinis 2003); see also (English and Guthrie 2000; Evans 1999). An assessment of the independence of auditors-general has been reported (Coghill 2004a). There is scope for further research into the factors affecting the independence of auditors-general, ombudsmen, anti-corruption commissions and privacy commissioners. We return to these officers of the parliament when addressing scrutiny of the public sector.

Political donations

The independence of parliamentary processes from the corrupting influence of donations to political candidates & parties is a significant issue affecting the integrity of the political

system (Fitzgerald 1989). UK has experienced cash for parliamentary questions. Heald has pointed to the subtle forms of influence used by the executive to encourage the use of private providers rather than public sector agencies (Heald 2003). Coghill has drawn attention to parallels between political donations and contracting to government (Coghill 2003). As Munroe has reported, Canada has recently introduced bans on corporate & union donations following concerns over their effects (Coghill 2004b; Munroe 2003). The extent, nature and effects of donations to Australian political parties and the risks they pose to the integrity of the public sector generally require detailed investigation.

Scrutiny of the Executive

Effective scrutiny of the executive underpins the effectiveness of the public sector. Issues include the executive's role in protecting or perpetrating politicisation of the public sector, with significant interest shown by academics, politicians, senior and middle level practitioners, and public service union members. Other matters of concern include the perennial problems of ministerial accountability for public service functions and more recently the handling of trade agreements and other international treaties.

Politicisation of the Public Service

Allegations of politicisation of appointments by the executive to the public service in several Australian jurisdictions have been researched by (Carr 2003; Halligan 1997; Mulgan 1998; Podger 1997; Weller and Wanna 1997; Weller and Wood 1999) and suggestions of its lesser role in NZ, responses to Admiral Barrie's role in the Tampa incident (Marr and Wilkinson 2003) and to controversy over the quality and use of intelligence leading up to the attack on Iraq, all invite critical scrutiny of the extent and effects of the manner of executive selection and appointment of public servants, including tenure. Collaborative research between academics and practitioners could help give greater understanding to practical affects and help define the conditions needed for protecting the integrity of the public service.

Ministerial accountability

Traditional notions of ministerial responsibility have been heavily researched and there is little we could add that is not well known to many in this workshop. However, some interesting issues have arisen in recent years, ranging from the extra-ordinary levels of discretion permitted under legislation and exercised by ministers (e.g. immigration matters (Carrington 2003) to the refusal to provide information held by the executive, including but not limited to the appearance of ministerial staff before parliamentary committees. (Duffy 2002; Holland 2001-2; Lindell 2002; Podger 2002; Randall 2003; Ray 2002; Senate Finance and Public Administration References Committee; Senate Select Committee on a Certain Maritime Incident 2002).

Treaties

The recent trade agreement negotiated between Australia and USA has highlighted the starkly different authority for treaties, with Australia continuing to regard treaties as matters of executive prerogative and USA requiring them to be submitted to Senate Approval. Whilst there have been reforms to the level of information and consultation surrounding international agreements, the basic process remains outside parliaments authority except where legislative amendment is required. The question for researchers is – should it be?

Oversight of the Public Sector

The major issues affecting oversight of the public sector by parliament are well known and have been articulated in this survey by scholars including Rhodes, Wanna, Weller, Uhr, Mulgan, Halligan and others. The added difficulties introduced by new public management are still filtering through and require further investigation. The active interest of the public service highlights the potential for joint research.

Contracting out of government services

Argy and others have pointed to the disjunction between public values and new public management reforms (Argy 2003). Other evidence has also emerged of such a disjunction between the attitudes and opinions expressed

by the public and those reflected in reforms introduced as part of new public management (Inglehart, Basanez, and Moreno 1998; Kasser 2002; Newspoll 2000; Willacy 2001).

Whilst many of the issues concerning outsourcing and contracting have been ameliorated (e.g. surrounding secrecy, access by Auditors General), major questions, as Uhr(1999) points out, still remain over the extent to which the people's democratic authority is being delegated without protection of the public interest being assured. Mulgan in particular notes that accountability is attenuated, public access to information is reduced or denied, rights to redress are privatised and lost (Creyke 1998; Mulgan 1997; Mulgan 2002a). Governance by a network of organisations reduces the potential for the Parliament as a centralised source of power to maintain democratic authority (Rhodes 1996; Rhodes 1997; Rhodes 1998; Rhodes 2000). Through the exercise of publicly authorised power by private corporations, opportunities for parliamentary scrutiny are inhibited. Similarly, the delegation of functions to largely autonomous authorities (e.g. ACCC, RBA) removes opportunities for formal parliamentary intervention (other than by legislative amendment). These disjunctions undermine the legitimacy of the parliamentary system (Gregory and Painter 2003; Verspaandonk 2001-2). Little research has been reported which investigates the relationship between the effects of new public management and the reflection of social values through the parliament or the informal factors and mechanisms that operate.

New institutions such as anti-corruption commissions, crime and misconduct commissions, privacy commissioners and bodies established to specifically scrutinise the conduct of police assist the parliament to oversight the conduct of public servants. Lewis (2000) argues that these bodies need to be accountable to a parliamentary committee rather than the parliament as a whole. The reasons for this are that a select committee is smaller in membership and has more time thereby enabling it to gain greater levels of expertise and to be more flexible. Committees can achieve high levels of trust between members making decisions less likely to be partisan, can work out of the intense public gaze customary with the full house and can maintain confidentiality where necessary in the public interest.

Additional problems arise for these relatively new accountability institutions when they are also given jurisdiction to oversight the conduct of parliamentarians (ICAC in NSW and Crime and Misconduct Commission in QLD (Lewis 1999) – while Lewis’s research focuses on police, the principle can be applied more generally. Lewis and Fleming’s work on values and new institutions is also relevant (Lewis and Fleming 2003).

An area which has attracted little research is the effectiveness of these bodies beyond the role they fulfil in addressing community perceptions that external, independent organisations are needed to investigate and oversight complaints against public servants and politicians. Prenzler and Lewis are currently researching this issue but are only in preliminary stage of their study. David Brereton (2000) has done some work on the effectiveness of such organisations (he was the former research director of the CJC) but his work basically raises the need for further research on effectiveness.

Future Research Agenda

To recap - major potential areas for research in collaboration with practitioners emerge from this presentation including:

- The efficiency and effectiveness of anti-corruption commissions, Ombudsmen, Auditors General and similar.
- Greater scrutiny of the public sector through parliamentary committee processes
- Nature and effects of donations to candidates and parties as it affects the integrity of the public sector, especially in the context of strong incentives towards outsourcing and contracting.
- The area we are most interested in researching is the skilling of parliamentarians.

Professional skills of parliamentarians

Weller and Grattan (1981) have canvassed the capacity of ministers to handle the responsibilities of office. Their work invites questions about the professional development of parliamentarians more generally. Collaborative research with the Victorian parliament has exposed concerns amongst members of parliament at the limited training and professional development they receive

(Lewis and Coghill, unpublished). An unpublished parliamentary internship paper has reviewed induction and training programs for parliamentarians throughout Australia (Grant 2003, unpublished). Coghill has recently received a small faculty grant that has allowed for closer examination of the professional skills of parliamentarians.

Members of parliament receive what can best be described as a very brief overview of the basics of procedures and entitlements. The apprenticeship model, which has been discredited for other public servants, still applies for parliamentarians. Indeed new ministers who have responsibility for government departments simply learn on the job and from the mistakes of others, as Button recounted (Button 1998). A program was provided for New Labour shadow ministers prior to election of the Blair government and Coghill conducted a pilot program in 2002 for Victorian parliamentary secretaries, designed to assist preparation for ministerial office.

There appears to have been little research published on the technical and professional skills parliamentarians require to serve as effective representatives, as committee members or as ministers. Research into the professional development needs of parliamentarians to support their roles in scrutiny of the executive and oversight of the public sector is sorely needed.

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