

The folly of our founding fathers

Much praise has been showered on our nation's founders during this Centenary of Federation year. They have been commended for their foresight and good sense in establishing a system of parliamentary government that has endured the strains and stresses of Australia's first century. But an essay written for the Parliamentary Library's *Vision in Hindsight* project challenges the prevailing view by suggesting that our nation's pioneers may have in fact saddled us with a constitutional folly.



The three lawyers responsible for the actual drafting of the Australian Constitution at the Federal Convention of 1897 were (left to right) Sir John Downer, Edmund Barton and Richard Edward O'Connor. Photo: Newspix

In their essay on relations between the Parliament and Executive Government, Canberra academic Jim Chalmers and senior Queensland public servant Dr Glyn Davis argue that Australia has been left with party, rather than parliamentary, government because of gaps left in the Constitution.

"In Australia," say Chalmers and Davis, "the reluctance of our founders to make explicit the relationship between Ministers and the Parliament has allowed disciplined political parties to thrive and has facilitated Executive dominance. Power has become skewed in the Executive's favour, replacing the Parliament as the primary forum for decision-making with the party room.

"The folly at the heart of the founders' blueprint for the Australian system of government was the presumption that

'responsible government' would exist despite warnings of impending party consolidation."

"They failed to heed the warnings."

According to Chalmers and Davis, the founding fathers debated at length the notion of responsible government, including issues such as how the Executive should be formed and how Ministers should be chosen. But they failed to heed the warnings that parliamentary government would become party government, and so placed too great a reliance on conventions about Executive accountability to the Parliament that were

transplanted from British and American models of government.

"Though aware of the risk of 'party government', the constitutional founders underestimated the extent to which parties and, by extension the Executive, would dominate the Commonwealth Parliament. Though considered at the Convention debates, delegates nonetheless crafted constitutional arrangements that made traditional responsible government (however shadowy the definition) reliant on independent votes, moving coalitions of interests, and on a Senate as the defender of State, rather than party, rights. For those seeking to establish responsible government in Australia, these were not wise assumptions for the coming century."

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Chalmers and Davis point out that, by the end of Federal Parliament's first decade, the pattern of two party parliamentary politics had already been set with the fusion of the non-Labor parties and the emergence of a disciplined and increasingly successful Labor Party. In their view, the rise of this two party split of Parliament profoundly undermined the notions of responsible government upon which the Parliament was designed.

"While the character of the Senate, the scrutiny of Question Time, and the probing of parliamentary committees constrain the power of government, the Parliament has, however, remained a forum dominated by Ministers of state."

Chalmers and Davis argue that because the founders did not specify the requirements for responsible government in the Constitution, but instead left such matters to convention, they created a vacuum at the centre of the Constitution. Ministers have been allowed to fill that space, which might otherwise have belonged to the Parliament.

"Legislative power was to be vested in 'a Federal Parliament, which shall consist of the Queen, a Senate, and a House of Representatives', but in practice control over the Parliament's agenda, its legislative program, order of business and even frequency of meeting are all in the hands of Ministers.

"In the trinitarian struggle between the Executive, House of Representatives and the Senate, significant advantages are held by Ministers. Their power is not absolute, but it is less constrained than the founders might expect. Parliament has become the forum for

partisan struggle rather than a place of review and reckoning."

According to Chalmers and Davis, this contrasts with other parliamentary systems in which a proportional voting system produces a wider spread of party representation and the need to build and maintain coalitions. "It contrasts even with the original British model, in which frequent sitting days, and some tradition of conscience voting, ensure more thorough scrutiny of government action."

While noting that party loyalty within the electorate is declining, Chalmers and Davis argue that the persistence of single member electorates and preferential voting for the House of Representatives ensure parties will remain in control of Parliament.

"Parliament has become the forum for partisan struggle."

Various reforms are mentioned in the essay as a way of enhancing the role of Parliament. These include a more independent Speaker's role, an extension of Question Time, additional research and support staff for Members and Senators, and more time for bills from private Members. Other proposals mooted are the use of proportional representation for House of Representatives

elections, larger parliaments, more time for deliberation, more scope for the examination of spending, and not allowing Ministers to be drawn from the Senate.

But Chalmers and Davis are pessimistic about the likelihood of any such reforms being implemented. They say there must be incentive for the Executive, as the body ultimately responsible for implementation, to initiate reform. This is unlikely, they argue, because the only actors with the power to reform are those whose influence would be curtailed.

Chalmers and Davis are a little more optimistic about the ability of the Senate and the work of parliamentary committees to curtail the dominance of Ministers. Yet they suggest that broader reform may not be possible without constitutional change.

"The ideal of a chamber which is a forum for discussion followed by the casting of votes free from party discipline remains fanciful. While party discipline has not been absolute, and Members have on occasion crossed the floor, government defeats in the House, as seen in 1941, remain the exception rather than the rule. While parties control the Executive, and the Executive the Parliament, real reform without fundamental constitutional change is not possible."

Although Chalmers and Davis conclude that the founding fathers created a constitutional folly by enabling Executive dominance of Parliament, they acknowledge that we gain much in stability and policy coherence as a result. At the same time, they argue that we "lose the vitality and the innovation possible when Parliament is a more equal player".

Vision in Hindsight

Vision in Hindsight: Parliament and the Constitution is a collection of essays each of which tells the story of how Parliament has fashioned and reworked the intentions of those who crafted the Constitution. The essays are published as research papers available on the Parliamentary Library's web site (www.aph.gov.au/library). A selection of the essays will be included in a volume of work to be published in November 2001.

With the agreement of the Parliamentary Library and essay contributors, *About the House* is publishing summaries and extracts from some of the *Vision in Hindsight* essays. A full copy of the essay by Jim Chalmers and Dr Glyn Davis, entitled 'Power: Relations Between the Parliament and the Executive' is available from the Parliamentary Library's web site at: www.aph.gov.au/library/pubs/rp/2000-01/01RP14.htm

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