

Realising Democracy: Electoral Law in Australia

Graeme Orr, Bryan Mercurio and George Williams (eds)

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The integrity of electoral processes is something that Australians have long taken for granted. In the nineteenth and early twentieth centuries, Australians were of course some of the world's keenest innovators in electoral principles and the constitutionalisation of democracy — as Marian Sawer and John Uhr remind us in this book. Since then, we have tended to sit back and assume that the systems work perfectly, without risk of corruption or of slipping behind world democratic 'best practice'. Increasingly, we also do this without remembering exactly how they do work or who looks after their health and well-being.

Such dangerous presumption has allowed the content of Australian electoral law to slip into a strange, opaque field dominated by the very legislators whose election it is the function of electoral law to regulate. This edited collection, arising from an Australian Research Council project supported by Australia's Electoral Commissions, is one of the single most concrete steps towards a broader, more critical, revitalised debate about the integrity of Australian electoral processes. By bringing together practising electoral administrators, international perspectives, historians, political scientists and lawyers, this well-edited book escapes some of the problems suffered by the few political scientists who struggle regularly to provoke debate regarding long-term trends in the democratic process — as against the short-term party-political reasons for, and implications of how, politicians might be tweaking the electoral laws. As one myself, I can say that political scientists talking generally about better democracy tend to sound like naive idealists. These authors, talking about the hard truth of our electoral processes and their structural weaknesses, set out a focused field of critical inquiry into questions of clear practical importance and real democratic risk.

The key problem — as identified at the outset by then Australian Electoral Commissioner Andy Becker — is that, even within electoral administration, there is a focus on the technical processes of electoral laws, 'rather than the philosophies underpinning them'. Gerard Carney, Stephen Gageler and others explain that this too is the approach of Australian courts, which tend to eschew the use of over-arching democratic principle or intent when resolving electoral disputes, typically framed as contests between those with an 'interest' (i.e. political parties) rather than in terms of what makes for healthy democracy. The increasing legislative and institutional independence of electoral commissions, reviewed by Colin Hughes but also pervading the book, provides only part of the answer — however independent their administration, the rules themselves are written and maintained by the legislators whose conduct they regulate. Michael Maley's excellent comparative reflections on the lessons of international electoral assistance confirm the problems of a society in which democratic principles are now

perhaps *too* well institutionalised, with more left out of our constitutions than is included in them, as against societies where the rules of democratic engagement are much more fragile, but therefore also living and dynamic topics of often-volatile debate.

One of the best chapters is Joo-Cheong Tham's review of the limits of current electoral campaign financing and disclosure systems, perhaps the single most important area for review, criticism and reform across the Australian electoral landscape. Since this was written, debate over electoral funding and disclosure has only continued to hot up, as shown by controversy around release of the 2005 report in this area by the Commonwealth Parliament's Joint Standing Committee on Electoral Matters — to which Tham and Orr made powerful submissions. Another major related contribution by Orr since this book was his report for the Australian National University's Democratic Audit Project, *Australian Electoral Systems — How Well Do They Serve Political Equality?* (2004). The current debates, which can perhaps best be followed through the Democratic Audit website (<http://democratic.audit.anu.edu.au>), demonstrate the enduring pertinence and quality of the contributions in *Realising Democracy*.

Apart from being an enduring reference on the landscape of Australian electoral law, this book demonstrates the need (and perhaps provides a basis) for an effective, ongoing multidisciplinary text in the area. While Australian political science and legal textbooks abound, it seems startling that none describes and monitors in any detail the law and behind-the-scenes practices of Australian democratic systems in the way this edited volume begins to do. *Realising Democracy* provides an excellent conceptual basis for the areas and issues on which there deserves to be more structured, ongoing analysis and education, not just among political and legal practitioners and students, but as a long-term investment in the re-empowerment of Australian citizens generally in their own democratic fundamentals.

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