DEMOCRACY IN DANGER?

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This edition of Social Alternatives will focus on the theme of democracy in danger. It will consider some criteria for democracy and the case put by those who fear for democracy’s health. The validity or otherwise of these fears will be evaluated through a series of cases explored in the articles in this edition. The first four articles relate to Australia; the fifth explores the threat to civil liberties and abuse of executive powers in the US since 9/11. The sixth article examines the way the Japanese Prime Minister has used executive power to undermine the non-aggression clause in the Constitution. The final article shows how the privacy rights of passengers to the USA have been undermined, with public opposition in Europe, but with barely a murmur in Australia.

Which aspects of democracy are under consideration? There is a vast literature and almost endless debate on the precise meaning of democracy but there is substantial consensus on some of the characteristics that define democracy. These include the right of citizens to elect their governments at regular intervals through free and fair elections at which the field is not skewed too far in the government’s favour. All adult citizens have the right to vote and should be able to exercise it without hindrance and the votes of all citizens should be of equal value. Democracy, however, should be more than an elected dictatorship. It implies the rule of law, the right to stand for election and to join political organisations. It encompasses a role for opposition, freedom of speech and the availability of information so that governments can be accurately judged. It includes toleration for those who ‘will sometimes give air to opinions which are uncongenial to the government of the day’ and an expectation that governments will not conceal the truth or contrive ‘to propagate untruth’ (Maddox 2005, 491, 490). In recent years exporting democracy has become a cause for some governments, most notably the United States but willingly supported by the Australian government. It is therefore timely to consider how well democracy lives up to the ideal.

In the last decade questions have been raised about the health of democracy:

There appears to be a considerable amount of discontent and disenchantment about the operation of democracy both in those countries that have practised democracy for decades and those who are more recent converts (Stoker 2006, 7-8).

Three major threats to democracy have been identified. The first is the domination of Executives who have assembled a formidable array of powers through both legitimate and more questionable means that enable them to ignore or manipulate the views of citizens and avoid the scrutiny and accountability mechanisms built into democratic systems. Several articles in this edition will take up aspects of this theme.

The second threat is the power of incumbency. Incumbency has always brought advantages, including the ability to decide election dates and to direct government spending to marginal electorates. However, some advantages of incumbency are now undermining even further any concept of a level playing field between government and opposition. One of these is the ability to use government funded public affairs departments to, commission private sector pollsters to explore public reaction to policy options, or contract advertising agencies and public relations firms to promote public support for particular policy decisions (Ward 2003, 34).

This has been exploited in the past by both ALP and coalition governments. However, the Howard Government has far exceeded its ALP predecessor. Campaigns nominally explaining policy changes, but in fact with an overt political focus, are often run in the months before elections. Examples include the selling of the GST before the 1998 election, the Medicare campaign before the 2004 election and the campaign to sell the industrial relations laws in 2005. In 1998 the Government spent a staggering $211 million on advertising, a large part on the pre-election campaign on the GST. Between May and August 2004 in the pre-election period, the Government ran ‘newspaper, radio and television advertisements’ and spent up to $95 million dollars. This was far greater than the amount spent by the political parties (Young 2005, 3-4). Australia has no effective rules governing such spending, although a code has been
approved by the Senate it has not been implemented by the government (Argy 2005, 5).

Another advantage of incumbency is the ability to institute new rules that benefit the governing party. The Howard Government has recently increased the amount of money members and senators can spend on postage and printing. The annual allowance can now be rolled over from year to year allowing the accumulation of funds for electioneering. This will benefit the governing party most as it has the most sitting members.

Another set of changes with the potential to benefit the government have been made to disclosure laws. Until 2006 political parties were required to lodge returns disclosing all donations of over $1500. This has been increased to $10,000 and each branch of a party is treated separately, effectively allowing donations to total up to $90,000. The government’s justification for this change is perverse to say the least. It notes that ‘high degrees of transparency in donations to political parties and candidates should reduce the potential for undue influence and corruption’ (JSCEM 2006, 7). Yet this change will make it more difficult to know if the government is beholden to individuals or corporate donors who might seek to unduly influence it.

The third area where threats have been identified to the health of democracy resides in the response of governments to 9/11, and the Bali, Madrid and London bombings. In Australia the federal government responded with a surge of draconian legislation. Initially the outcome was tempered by what they could push through the Senate, even though the ALP supported most proposals. Even with control of the Senate, the Government has at times faced a limited revolt among its own backbenchers and Senators over provisions in security legislation. However the legislation passed still poses a serious threat to civil liberties and has the potential for innocent parties to get caught up in provisions that reach well beyond terror suspects.

Since 2002, the Government has passed 28 pieces of legislation relating to terrorism. These include the Security Legislation Amendment (Terrorism) Bill. The definition of terrorism in the bill initially failed to identify ‘the intent’ to commit a terrorist act and ‘was so wide that it would have criminalised many forms’ of protest and could have ‘extended to protest by farmers, unionists, students, environmentalists and online protestors’ (Williams 2005, 2). The bill was amended to tighten the definition of terrorism and exclude protest and industrial action. The Bill had also attempted to give the Attorney-General the right to nominate organisations to be proscribed as terrorist organisations. That clause was rejected in the 2002 legislation but introduced into a 2004 Act, leavened only by the right of appeal against the designation to Parliament.

In 2002 the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 [No. 2] allowed suspects to be held for seven days and questioned for 24 hours during that period. Initial plans to remove access to a lawyer were replaced with the requirement that the lawyer not be a security risk. Such provisions recently caused controversy when the Attorney-General demanded all defence lawyers face a security clearance before being allowed access to the evidence against their clients. The legislation removes the right to silence and forbids relaying any information about such detention.

The Anti-Terrorism Act (No 2) 2005 has introduced provisions that have already caught up academic researchers and students in its wide ranging net. It includes the extension of the definition of terrorist organisations to include organisations that advocate terrorism, a new regime of preventative detention and ‘control orders’ that allow imprisonment or close monitoring of suspects who are not charged. It established new powers to enforce compliance with requests for information, offences for providing false or misleading information and further provisions relating to criminalisation of the financing of terrorism (Attorney-Generals Department 2006). These powers could trap donors to charities and staff at finance institutions. The additions to what had been seen as the outmoded crime of sedition have required university libraries to remove books listed by the Classification Review Board. They have forced Professor Hassan to limit an Australian Research Council funded project examining suicide bombing. The Greens and the Democrats severely criticised the original bill and even the Government majority sought some changes (Senate 2005).

Though it is necessary for governments to protect their populations in times of security threat, some provisions of the Act as finally passed place severe limitations on civil liberties. Even more alarming is the potential impact of the Act on the ability of scholars to undertake research which might lessen the danger of terrorist attack.

The articles in this edition touch on several of these themes. The domination of politics by the executive is assisted by the increased resources and skills available to ministers.

In her article ‘Overblown or overload? Ministerial staff and dilemmas of executive advice,’ Anne Tiernan explores the role of ministerial staff who provide support to Ministers in undertaking their exacting workload. They also provide an invaluable asset to the Executive and government funded support to further partisan agendas. The article examines some of the controversies provoked by ministerial staff behaviour and considers the challenge their activities pose to traditional Westminster lines of accountability. They have at times proved disruptive to relations between ministers and their public service staff.
Viewed as extensions of their Minister they have fallen outside the scrutiny of parliament fuelling concerns that ministerial staff may be used to limit ministerial accountability. She concludes that better ways must be found to accommodate the presence of ministerial staff and confront the dilemmas they pose.

Control over institutions provides another threat to accountability and transparency. When the Government won control of the Senate after the 2004 election grave concern was widely expressed for the future of Australian democracy by a wide range of commentators. In his article, ‘The Australian Senate, House of review, obstruction or rubber stamp?’, Patrick Weller argues that it is only since the Australian Democrats won the balance of power in 1980 that the Senate has acted as a house of review where governments have had to negotiate with other parties and committees have scrutinised governments. This is an atypical scenario for the Senate as it was controlled by government for most of its history. In the brief periods it was controlled by the opposition it was determinedly obstructionist to the government. He then examines differing scenarios for the Senate based on electoral outcomes and evaluates each of them. He identifies some democratic deficits embedded in the Senate and argues that each electoral outcome can result in a Senate that can be justified as the democratic outcome of free and fair elections. For most of its history the Senate has been a frail shield for democracy but from 1981 to 2005 the Senate was able to scrutinise government and limit government secrecy. That is now going to happen far less frequently.

In her article, ‘Limiting the Franchise’, Bronwyn Stevens argues that the government has used its powers of incumbency to introduce changes to the Electoral Act that will make it more difficult for citizens to enrol, amend their details on the electoral roll or cast a provisional ballot. The rolls will close for enrolment the day the writs for the election are issued and then three days later for those who will turn 18, become Australian citizens before the election or those wishing to change details. The right to vote has been removed for all prisoners. The article argues that the justifications for such changes are not credible, leading to suspicions that the government has made these changes out of a belief that they will gain a partisan advantage.

Victoria Palmer and Julie Mathews ‘In excising democracy’ focus on the unethical nature of the federal government policy ofexcising Australian territory in order to remove democratic rights from refugees. They argue that tolerance and diversity are being pushed aside as the government manipulates the plight of the most vulnerable to gain electoral advantage. They critically evaluate government policy that has seen refugees, including children, detained for long periods of time in abhorrent and unjust conditions. They scrutinise events surrounding the Government proposal to excise the whole Australian mainland from the migration zone and the withdrawing of that bill. They examine the changes made to the visas issued to refugees and argue that they deny vulnerable people access to minimal human rights and due process. They conclude that it is crucial that public debate and scrutiny are applied to the treatment of refugees in order to rehabilitate democratic processes.

Australia is not alone in these extensions to executive authority. In ‘Patriot Games: Taking Liberties’, Michael Buky examines the US response to 9/11 and argues that this has resulted in a serious undermining of civil liberties previously seen as a cornerstone of the US system of democracy. He outlines the provisions of the Patriot Act and examines the erosion of the principle of habeas corpus. He considers the increased role of the military in domestic security and the establishment of military tribunals to try alien terrorists outside the US legal system or the protection of the Geneva conventions. He rejects the justification for these actions and questions whether it can actually be claimed that the US is at war. If it were, detainees would be entitled to the protections of the Geneva Conventions and not subject to arbitrary arrest, abduction and torture.

Similar fears have been expressed in Japan too. In ‘Koizumi’s Japan’, Donna Weeks focuses on Japanese Prime Minister Koizumi’s response to 9/11 and argues that he joined US President Bush and Prime Ministers Blair and Howard in using 9/11 to advance executive power. The article focuses particularly on attempts to weaken or undermine the intent of Article 9 of the Constitution by which ‘the Japanese people forever renounce war’. It asserts that Koizumi has manipulated fear to advance a nationalist agenda and overcome public resistance to instituting a ‘more constitutionally sound military role for Japan’. To change the clause constitutionally would require the support of both houses of the diet and the support of Japanese voters at a referendum. While the attempts of the Prime Minister to strengthen the role of the military have been met with approval by western commentators, there remains substantial resistance in Japan.

The final article, ‘Passenger Name Record: Undermining the Democratic rights of Citizens’, examines the threat to the privacy of citizens of the European Union (EU) from US demands that data held by airlines on passengers flying to US be transferred to US Customs. European airlines were placed in a dilemma by these demands as they would not be allowed to land in the US unless they complied, but they would be in breach of EU privacy laws if they did. The data included information about destinations, car hire, hotel accommodation and credit card details as well as who passengers were travelling with and details of special
meals that could identify their religion or race. An agreement reached between the unelected EU Commission and the Department of Homeland Security was overturned by the European Court on narrow legal grounds after it was referred by the EU Parliament, but was later re-negotiated on the correct legal grounds. The referral of the agreement to the Court encouraged public awareness and debate on the issue and gave the EU the opportunity to negotiate a slightly improved agreement. Australian airlines are also under the same obligation to transfer such data but there has been little public discussion of the issue here, even though it appears that such transfer may have been in breach of Australian privacy legislation.

The articles in this edition of Social Alternatives raise questions about the health of democracy. The evidence presented here indicates that Executives in Australia, the US and Japan are becoming extremely powerful in ways that make it difficult for citizens to scrutinise them. Governing parties are using to the full the powers of incumbency to benefit themselves and tilting the playing field against oppositions. Governments in Australia and the US have responded to terrorist threats by curtailing civil liberties to an alarming extent. However there are some hopeful signs too. Pressure from the European Parliament forced the renegotiation of an agreement on how passenger data would be delivered to US officials and the Australian Senate is still occasionally scrutinising governments even though the pressure is now coming from within the coalition itself. The Australian Electoral Commission has been given more funding for electoral education and will try to ensure that not too many voters are unwillingly removed from the electoral roll. Prime Minister Koizumi was not able to entirely undermine the non-aggression clause and Japanese forces in Iraq were defended by Australian troops. President George Bush will now have to account for his attempts to exceed the boundaries of executive power to the US Congress. Democracy does still provide a way for governments to change hands without violence. Thomas Jefferson said the price of liberty is eternal vigilance. In these fraught times we all need to be especially vigilant to prevent threats to democracy, such as those identified here, from entirely undermining it.

References
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Bio
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