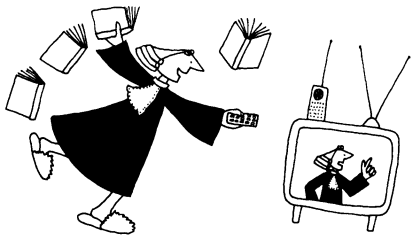
LAW & CULTURE



AUSTRALIA: THE STATE OF DEMOCRACY

Marian Sawer, Norman Abjorensen and Phil Larkin; Federation Press, 2009; 336 pp; $59.95 (paperback)

A few years ago, the convenors of the Australian National University's Democratic Audit asked scholars of politics and of law to report on democracy in this country. The result is *Australia: The State of Democracy*. Not an edited collection but an 'audit', the book's three authors have synthesised contributors' reports into a single volume in order to diagnose the 'health' of Australian political life. The result is a revealing full-body scan of the body politic and the institutions sustaining it.

I read this book during one of those compelling but disheartening moments in Australian politics: a federal election. Reading a comprehensive overview of Australian democracy while the election progressed raised some uncomfortable juxtapositions. Campaign rhetorics roundly ignore the complexities of policy. By contrast, *Australia: The State of Democracy* covers the national political and policy landscapes in considerable depth. Reading it at this time was therefore a reminder of all that was missing in the campaign. The experience placed in clear relief one of the book's own themes of public deliberation. Australian democracy may in some ways be open to public voices more than ever before, but amongst those voices the most tribal and uncritically cynical often dominate, oversimplify and occasionally derail policymaking. Even more, the book — and the recent election — implicitly raised the vexed question of what to do about it all.

The authors organise their book into thematic parts: 'Citizens, law and rights', 'Representative and accountable government', 'Civil society and popular participation' and 'Democracy beyond the state and federalism'. But the volume is not intended merely as a catalogue of subjects. The authors lead off with the sensible point that their analysis will be necessarily complex: democracy is not just about the values of 'popular control of government' and 'political equality'; it is also, at a greater depth, about social norms and practices. The introduction signals that the audit will do more than bean-count institutions, elections and laws on the books. The audit framework 'steps back from institutional indicators of democracy, such as competitive elections, to consider underlying principles and related values' (p 2). Beyond democratic formalities, the 'quality of public debate and discussion' is key, as is accommodating minority interests — or 'civil liberties and human rights'. It is a strength of the volume that it opens with this acknowledgment, even if judging a democracy against multiple and often contradictory values threatens to complicate the analysis.

The authors then approach their subjects in the traditional way of encyclopaedists: by systematising in order to eliminate dark spaces in the collective knowledge. Others have already shone light on many of these spaces; no additional data were culled from new polls for the book, and few new empirical studies undertaken. The principal goal here is to fit all the existing knowledge together. Apparently by design, however, the picture formed of Australian democracy is never crystal clear. The authors and their contributors often are more mosaicists than systematisers. The action, in terms of the four values identified initially, is not in explicitly tying the materials in the chapters to the values, but in producing an appropriately diverse and complex picture. The book therefore seems to understand its own premise merely as a metaphor, dismissing the possibility of clear benchmarks to enable a straightforward democratic audit. There is no strong claim here to perspectival coherence. The general state of health of Australian democracy is left to us to judge. In this most postmodern of audits, there is no bottom line, no red or black ink and no forward plan. Indeed the introductory notes on the vagueness of democratic standards signal that what is to come will be a wealth of raw data and discrete analyses; make of these what you will.

But what of the specific content? Unsurprisingly, in a book informed by many leading political science and legal writers, the level of comprehensiveness is strong, and the errors few. Headlines, legal developments and recent quantitative studies all get added to the mosaic. The book does not, then, strive for timelessness. Like modern web encyclopaedias, this one becomes a snapshot in time. The year is 2008. The auditors are openly critical of a decade of democratic retrenchment under John Howard, and occasionally critical but generally optimistic about reforms under a new Rudd government. The audit's implicit promise might be that new editions will follow this book in a few years' time. (Maybe the next one will even be online.)

Left to generate my own audit benchmarks, then, what I took from the book telescoped my own academic fixations. For me, this book was about the prospects in Australia of deliberative democratic politics. Indeed, when the election began I was busy analysing polling data on deliberative democratic 'citizens' assemblies' (CAs) — the very bodies Julia Gillard proposed to lead a climate change response. This led to lessons not only about how policy gets formed — and reframed and politicised — during an election, but how in particular a policy to improve political discourse gets dissected *in* the political discourse. From the outset, the reception to the Labor proposal of a CA was almost uniformly dismissive. The national print media's treatment ran to two articles in favour (the first an article detailing my poll results, showing that Australians trusted CAs over parliament by 2-to-1), and the rest against. The columnists, as they do, travelled in packs from which few strayed, and threw against the CAs a consistent set of critical tropes: We already have a citizens' assembly — it's called parliament. We wouldn't let a CA diagnose illnesses, so why let them lead the climate change response?

Climate change may now be the leading example of the abuse of complexity in democratic rhetoric. The main problem of complexity in politics is that complex policy challenges necessitate complex solutions, about which the voting public is always under-informed. Responsible political leadership responds with accordingly complex policy solutions. But more demagogic routes are often irresistible. It is easy to cast as sinister — and unduly expensive — solutions premised on chains of probabilistic causation, and therefore

on benefits expected in the distant future. Indeed, the contrarian impulse is embedded in our formally oppositional politics, which invents factual opposites even where they do not realistically exist.

Enter the CAs, which are meant to help us perform politics differently — more collaboratively and with fewer preformed partisan positions. In the inaugural example, British Columbia's CA in 2004, the body's 160 members were selected to be demographically representative of the larger polity. In their initial 'learning phase', an array of scholars tutored members for months. The CA then took submissions from 3000-plus members of the broader public, and finally deliberated and voted by near-consensus to recommend a new electoral system — as contentious a matter as any. The public response, and even that of political scientists not normally known for starry idealism, was widely optimistic. (Fifty-eight per cent of voters endorsed the CA's recommendation in a referendum; an epic figure by Australian referendum standards.) None of this either mattered or was known to media commentators.

Is Parliament a citizens' assembly? Only on a deliberately literal and obtuse understanding, which confuses a thing with its label. Parliament is a political cauldron in which a climate change policy — itself a flawed political compromise — twice failed, and arguably took down with it both party leaders who had lent it support. And what of the analogy of letting CAs diagnose diseases? Citizens' assemblies do not make scientific determinations. Medical diagnoses do not require democratic legitimacy. These disanalogies become evident only when terms are defined, examples explored and purposes investigated. Some who favour climate change action forget how difficult it is to achieve action through traditional routes. Parliament has an anti-deliberative record of frustrating action. (Indeed, if doctors needed Parliamentary endorsement for their diagnoses, citizens' assemblies *would* be an improvement.) The role of a CA is to translate scientific premises into specific policy prescriptions chosen from among many options. More important still, its roles are to bypass the partisan distortions of normal legislative politics; to give citizens rather than political professionals democratic decision-making power; and therefore to bridge the gap in trust that usually makes sweeping policy reform imposed from on high unpopular in Australia. Citizens' assemblies are designed to address complex and contentious policymaking, and to get the policymaking done. This necessarily requires in the first instance an authoritative body enjoying significant public trust for being deliberative, fair and impartial. Parliament is not that body.

There is a potent irony in the poor reception the CA received. The election highlighted an Australian deliberative Catch-22: that achieving institutional change to improve political deliberation may require, in the first place, some higher and better form of deliberative process. Yet, as mentioned, deliberation is a key subject of *Australia: The State of Democracy*, particularly in its third part, and by cataloguing many of the areas where laws fail to support robust public discussion, the book actually offers implicit hope. The solution suggested is that we might carefully tinker to remove some of the existing legal impediments to robust discussion. Again, the great value of the book's treatment is in its authoritatively broad sweep of the landscape, which helps to settle some of the usual — and usually ill-informed — debates.

The evidence speaks for itself as it begins to add up. Some recent laws intensify the concentration of media ownership, which already was more pronounced here than in any other western democracy; only three groups now own most Australian newspapers, in contrast with the 21 leading proprietors active several decades ago. As well, diverse educational programming on the ABC and SBS has come under risk from economic pressures and occasional political interference. In addition, the absence of formal protections for free speech is often dismissed as irrelevant, so long as speech remains free in practice in Australia; yet often it does not. The authors show, for example, how punitive defamation and national security laws, and weak freedom of information and whistleblower protections, chill journalistic speech and help confine discussion of public issues to the narrow universe of government spin. And so on. In copious and clear detail, this book shows us how some of the poor practice of political debate — a cultural and political problem — can be linked to lagging or malign laws. Yet as noted, the volume's most valuable contribution to understanding political deliberation may be the standard it offers to help gauge the situation directly, as the book's comprehensive detail becomes a reminder of all that is lacking in the rhetoric of Australian elections.

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OFFENDING YOUTH: SEX, CRIME AND JUSTICE

Kerry Carrington with Margaret Pereira, The Federation Press, 2009, 209pp, $59.95 (paperback)

'My parents don't understand me' seems to be the teenage mantra for every generation. Teenagers have been stigmatised since the beginning of time (or so it would seem) and no matter how much we swear up and down as kids that we won't become our parents, somehow we do.

It may surprise readers to know, however, that the perception of the 'evil teenager' and juvenile delinquency is actually a relatively new concept, having emerged in the late 19th century amid significant economic, social and political change.

Offending Youth: Sex, Crime and Justice is a documentation of the history of juvenile delinquency and punishment within Australia, beginning with 19th century institutions for neglected children through to today's welfare and justice system.

Based upon Kerry Carrington's 20 years of research into juvenile delinquency and juvenile justice, the majority of the research and cases in *Offending Youth* are Australian. However, the authors do a good job of incorporating research from the United States and the United Kingdom when they are engaging with issues and stereotypes found within youth culture more generally.

The first section of the book focuses on societal changes, beginning with the abolition of child labour and the introduction of compulsory schooling. At this time there was a growth in governmental control on family life, and the number of children who were