

Beware the Gap! – Parliamentary Oversight or Parliament Overlooked?

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**by
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In recent years it has become a trend for political leaders to make speeches replete with the words “governance” and “accountability”. Thrown in for good measure are often the words “transparency” and “openness” as well. Their speeches buzz with a mantra for modern government, as the message is given to their citizens that, no matter what they may see or hear to the contrary, their government is attuned to the community’s desire to know what is going on, and is not only open to scrutiny, but welcoming of it. Governments, particularly theirs, it is maintained, are not like those private companies such as Enron where independent scrutiny was in name only.

Leaders of developed nations are telling us that “good governance” is what all countries must aim at, and in many cases are using their aid programs to promote this view. In a recent speech the Australian Foreign Affairs Minister used the word ‘governance’ 19 times. In the section on Governance, the word is used 11 times without ever being defined in anything other than broad, generalised terms.¹ Even more revealing is that nowhere in the speech is there a link between governance and parliament or more precisely, parliamentary oversight. The closest that the Minister comes to this is when he says:

“In my observation, over more than eight years as Minister, I would assess that a far greater influence on reducing poverty than any basic resource transfer is the quality of governance and effective economic, legal and social structures. By this I mean promoting economic stability and sound fiscal management.....maintaining the rule of law and property rights.....enhancing public sector effectiveness and service delivery.....strengthening democratic processes and institutions.....and combating corruption.”²

I have little argument with the sentiments expressed, the issue I have is, that while strengthening democratic processes and institutions is referred to, building the capacity of Members of Parliament to carry out their role in achieving good governance is almost entirely overlooked in practice. I should point out that this omission is not unique to the Australian Foreign Minister, in nearly all aid programs that have a capacity building emphasis, the emphasis is on building the skills in the bureaucracy. Rarely, if ever, is there a program aimed at building the capacity of Members of Parliament. Even more rare is a program specifically aimed at building the oversight capacity of Members of Parliament in countries with long established Parliamentary traditions. It seems there is an assumption that simply having a long

¹ Speech to the ACFID-AIIA Aid Forum by The Minister for Foreign Affairs, The Hon Alexander Downer MP
Australian Aid: Creating Prosperity Canberra, 11 August 2004

² Ibid

democratic tradition is, of itself, proof of appropriate parliamentary oversight of government.

Continually, there is rhetoric about the role that democratic institutions play in ensuring good, ethical governance, and providing safeguards against corruption. Yet when programs are designed the major democratic institution, the Parliament, is overlooked as the primary, and most effective long term weapon for scrutiny of government. This failure to address the capacity of members of legislatures to properly carry out their oversight role is the great governance gap and I will return to it later.

Before doing so I would like to outline what I believe to be the two major facets of an appropriate legislative oversight regime, with specific reference to Public Accounts or similar committees. These are firstly, the legislated oversight powers and the resources applied, and secondly, the understanding, competence and skill of the Members of Parliament charged with the oversight responsibility.

The Legislated Powers and Resources

Of fundamental importance is that the membership of the Committee should be representative of the Parliament itself. That is, it should draw members from both sides of the chamber, and in the case of bicameral institutions, from both chambers. In most Parliaments, the latter will be prescribed in the enabling legislation, while the former will be by convention with the legislation stipulating only the number of members to be on the Committee. This may seem, at first glance, unimportant but actually underlines that members take their position as a representative of the Parliament, not of their Party.

The legislation should also provide to the Committee the power to raise its own references, and to hold public hearings. The ability to pursue enquiries free from the restriction of having to gain a reference either from the Executive, or the Parliament is vital if the Public Accounts Committee is to avoid both the perception and the reality of outside intervention in its oversight role. The Parliament should, of course, have the capacity to vote a reference to the Committee, but the important issue here is that the Committee retains an undiminished power to pursue the enquiries that it believes should be held.

This investigative power of the Public Accounts Committee should be backed up with a legislated power to summons witness and demand the production of documents. This power should be seen in the way of a reserve power rarely used. In its normal workings a committee should seek to foster an environment where Ministers and the bureaucracy are confident of fair treatment, and so establish a cooperative relationship with them.

To protect the integrity of its reports, the legislation should also provide that the Public Accounts Committee reports directly to the Parliament rather than through a Minister or other intervening mechanism. Included in this should be a provision allowing the tabling of reports out of session to ensure that they retain their currency.

Allied to the direct reporting should be a provision requiring the Government to respond to the Committee's recommendation within a set time, preferably not longer than six months. This response should also be subject to tabling in the Parliament. A further desirable aspect related to Committee reports is that the Standing Orders of the legislature contain a provision that lays down a specific time when Committee reports can be considered by all members.

It is also essential that the Public Accounts Committee has a strong relationship with the Auditor General, and that this relationship has statutory protection. The Committee must have the power to initiate follow up inquiries into audit reports presented to Parliament by the Auditor General. This power should not be limited to purely financial audits, but also allow follow-ups to performance reports. While most of these enquiries will be conducted contemporaneously with the Auditor's report, it is highly desirable that the Committee can also conduct enquiries at a later time, perhaps two or three years after Government has responded to audit recommendations to see if, and how, those recommendations have been implemented.

To ensure that the Auditor General's office is able to carry out the function that is expected, it is appropriate that legislation gives the Public Accounts Committee a role in scrutinizing and recommending to the legislature on the adequacy of the annual appropriation for the audit office. While some may wish to argue that this is interfering with the Government's ability to plan and direct resources as it believes appropriate, it should be borne in mind that in the Westminster tradition the Auditor General's duties are carried out on behalf of the Parliament, and are the linchpin of parliamentary oversight.

Outside of the audit inquiry role good parliamentary oversight requires that the Government's yearly budget estimates are scrutinized and reported to the Parliament. In many legislatures the audit and estimates roles have been split. However, this is not necessary, and in Victoria it is combined in the Public Accounts and Estimates Committee. While this creates a greater workload for the Committee, there are some advantages to having a single committee for both functions. Not the least of these is the building of a body of knowledge and expertise within the committee that can be usefully applied to both roles. However, whether or not the roles are combined or split it is essential that both are carried out.

Given all of the appropriate powers, a Public Accounts Committee is still unlikely to be able to carry out its oversight role to a satisfactory standard if it has not been adequately and appropriately resourced. Legislation enabling the Committee should ensure that its budget is a part of the appropriation for Parliament, and that it is not under the control of, or directed through, a Minister. Again, it is important that the underlying principle that Public Accounts Committees carry out their work on behalf of the Parliament needs to be statutorily recognized in regard to its budgets.

The budget provided must be of sufficient size to ensure that the Committee can be backed up by a secretariat of sufficient size and skills to ensure that analysis of the government's financial documents is rigorous and independent. For similar reason the committee should be able to appoint its own secretariat staff according to its determined needs. Support for the Committee can be gained from two other sources.

Firstly, the Committee may well establish a secondment arrangement with the Auditor General's office that allows audit staff to work for a period as a part of the Committee secretariat. This serves the dual purpose of providing specialist skill to the committee, and of educating audit staff as to the role, purpose and work of the Committee, thus further strengthening the relationship between the two arms of parliamentary oversight.

The second area of support is from academia and the professions. Many from these areas are prepared to provide *pro bono* advice and assistance to the committee as a public service, thus giving the committee expertise which it could not afford to obtain in any other way.

The Competence and Skills of Members of Parliament Charged with the Oversight Role

Members of Public Accounts Committees will, necessarily, be chosen from those elected to Parliament, although the Pacific Island nation of Tuvalu is an exception, and has, because of the small size of its legislature, included non-elected people on its Public Accounts Committee. In practice, the selection of members of the Public Accounts Committee will generally have less to do with their financial and audit skills and abilities than with more political influences. Government members will be drawn from those who did not make the ministry and will likely include some senior members, perhaps former Ministers among them, some young members marked as on the way up, and those whose status within the government entitles them to appointment to a prominent committee. They remain, of course, members of the government party and are expected to be loyal to it and provide a level of protection to Ministers in hard times. On the Opposition side, the membership will generally come from frontbenchers who are expected to use the committee to promote themselves and their party, and if possible to bring down a minister.

If Public Accounts Committees are to achieve the objective of being the primary mechanism for scrutiny of government, members working on Parliamentary Committees need to be able to distinguish between their roles as members of Parties, and their role as a committee member. The latter role is to represent the Parliament as an entity, and the public generally, in holding executive government to account. The WA Inc Royal Commission, discussed this and said that there existed a

"...legitimate and natural desire to use the Parliament to embarrass opponents and to obtain electoral advantage."

However it also goes on to state

"Parliamentary conduct cannot be allowed to subvert Parliament's proper role in the securing of full, fair and accurate information from the Government and from the officers and agencies of government."³

This applies equally to opposition MPs as it does to government MPs serving on committees, and the achievement of bi-partisan reports and recommendations can be a

³ Report of the WA Inc Royal Commission p 2-3

powerful factor in gaining credibility for the committee, and for the ultimate acceptance of the recommendations by government. However, there is a fine line between achieving reasonable bi-partisan positions that put pressure on government to improve, and having bland recommendations purely to have agreement.

It is to the credit of the members of Public Accounts Committees in most jurisdictions that they generally act with serious regard to their role, generally produce unanimous reports and recommendations, and add considerably to better financial and performance outcomes. That this should be so, despite the considerable pressures that can be placed on members to toe the party line, should be a matter of comfort to the public generally and to those interested in combatting official corruption, incompetence or poor management, however it is rarely remarked upon.

There is very clearly a great need for support of members of Public Accounts Committees everywhere if they are to play their scrutiny role to the maximum benefit of the people that they represent. A Public Accounts, or similar, committee of the legislature is, and should be regarded as the pre-eminent Committee of the Parliament. It derives from Westminster, where

“Legislative oversight of the Executive has been a contentious matter since the earliest days of the United Kingdom (U.K.) House of Commons in the late 14th century. In the case of the oversight of finance and the budgetary process, the crucial question is in which organ of the state should the oversight role be vested? Taking into consideration the well documented development of the U.K. Parliament, the one aspect of governing which tilted the balance of power with respect to the question posed above was the financial needs of the Sovereign. As the Head of State's financial needs increased, so was the need to raise levels of taxation which eventually led to Parliament demanding the right to oversee the activities on which the taxpayer's money was spent.”⁴

Over time, as the Executive, whose members were within the parliament, replaced the Sovereign as the holder of the taxing and spending powers, there was a need to address how Parliament's oversight role could be best pursued. By 1857 Westminster had established a Select Committee of Public Monies chaired by Sir Francis Baring. His Committee found that

“... although the auditing of departmental accounts was in the hands of the Audit Board, many were only partly audited and that the Treasury accounts were not audited at all.”⁵

and went on to recommend the establishment of a Standing Committee. *Subsequently*, the Chancellor of the Exchequer, William Gladstone, proposed to Parliament in 1861 *“that a Select Committee on Public Accounts be established*

⁴ Parliamentary Oversight Of Finance And The Budgetary Process - The Report Of A Commonwealth Parliamentary Association Workshop, Nairobi, Kenya, 10th -14th December, 2001 p1

⁵ “Dry and Repulsive” –The Parliamentary Component of Supreme Audit Institutions⁵ W R Stent Department of Economics and Finance La Trobe University, 2004 p2

to review the accounts of the public expenditure after they had gone through the regular process of examination in the hands of the executive Government

In nominating the members of the committee, Gladstone claimed that they were chosen with a view to give satisfaction to both sides of the House, and fairly to represent all parties, while bringing as much talent, knowledge and experience as possible to discharge these important functions”⁶.

Clearly, on its establishment, the first Public Accounts Committee was viewed by the Parliament as carrying out an important oversight role in relation to the raising and spending of public money, and Gladstone’s comments emphasised that it should have the appropriate capacities.

While Public Accounts Committees have existed in Westminster style parliaments for almost one hundred and fifty years, the context in which they operate has changed enormously. Parties now dominate the political landscape in a way not imagined well over a century ago,

The rise of Party Government, along with Party dominance of Parliament through the twentieth century, has led to questioning of the effectiveness of the traditional accountability approaches. The Clerk of the Australian Senate, Harry Evans, echoed the thoughts of many commentators when he said

“modern political parties ... are organisations designed to prevent parliamentary government from working”⁷.

The separation of Executive and Parliament has been blurred to the point of being indistinct, the accounts are more complex, public activities more diverse, question time is a set piece designed for the media, but Executive resistance to scrutiny is no less intense. The rise of ‘managerialism’ with the public being defined as customers of services provided by government rather than as citizens has also limited accountability in a number of ways.

However, the public’s belief in the institution of Parliament remains strong, and they want it to exercise an ethical governance role. The Public Accounts Committee is fundamental to achieving this. Yet while more and more attention is being paid to ‘scrutiny of government’, more and more articles are written about it, and more and more aid money directed at it under the objective of achieving good governance, the role of Public Accounts Committees barely rates a mention. Strong, democratic parliaments with members who understand their role and are properly resourced to perform it can hold governments accountable, weak institutions will not. Building the capacity of members of legislatures, and in particular those serving on ‘scrutiny of government’ committees probably represents the single most effective long term approach to ensuring a regime whereby official corruption, incompetence or poor management, if they exist, are most likely to be uncovered. Yet of the billions of

⁶ *Ibid* p2

⁷ Evans H. ‘Party Government: The Australian Disease and Australian Cures’ *Legislative Studies* 7 (2) pp 17-23, 1993

dollars spent each year⁸ on capacity building barely a dollar is spent on it.. So the question is, how do we achieve focus on the ‘governance gap’ and what can be done about it?

This “gap” has been commented on elsewhere by people such as Rick Stapenhurst of the World Bank Institute who, in the paper “A Bigger Role For Legislatures” observed

“ To keep Governments accountable, parliamentarians need to develop a clear understanding of how national budgets are drawn up, processed, and implemented. At the same time, the role and powers of both parliamentary bodies and independent institutions which report to parliament (including supreme audit institutions) could usefully be strengthened, including by making independent sources of information available to them... ”⁹.

But who is to provide this ‘clear understanding’ to parliamentarians? Where is the ‘independent source’ of information?

In February 2003 the 7th Biennial Conference of the Australasian Council of Public Accounts Committees (ACPAC) met in Melbourne to discuss emerging issues in public accountability. In looking at the need for PACs to support one another, it considered the issue of the possible creation of a global network of Public Accounts, or like Committees. The Conference, which had set aside specific time to discuss this, was attended by delegations representing all Australian States and Territories, the Commonwealth, New Zealand, New Guinea, East Timor, Singapore, Canada, Newfoundland and Labrador, South Africa, Ireland, Zambia, and Namibia. Also in attendance were the Auditors General for most of these jurisdictions, as well as a representative of the World Bank and the Commonwealth Parliamentary Association. Apologies were received from a number of jurisdictions that indicated their interest in further international development but were unable to attend at that time, including Scotland, India and Northern Ireland.

As a result of the discussion, the Conference endorsed a resolution supporting the move toward an international body of Public Accounts or like Committees to be known as the International Conference of Public Accounts Committees (ICPAC). ICPAC was envisaged as becoming more than a regular meeting of member delegations, but was to develop a support structure that would provide training and support for both Public Accounts Committees, and individual committee members. The resolution specifically provided four key roles for ICPAC

1. The exchange of practice information across the regions;
2. Development of accountability standards and approaches;
3. Development and introduction of Best Practice frameworks;
4. Development of training material for members of Public Accounts or like Committees and staffs.

⁸ Australia, alone, is spending AUD645 million on ‘governance’ related activities in its 2004-05 aid budget.

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As the then Chair of the Australasian Council of Public Accounts Committees, I was given the task by the Conference of looking at the feasibility of such an organisation being established by 2006.

At around the same time both the Commonwealth Parliamentary Association (CPA) and the World Bank had also been looking at the role of Public Accounts Committees as an important instrument in providing accountable government. In collaboration, the World Bank and the Commonwealth Parliamentary Association conducted a study to assess how PACs were working in practice. That report, which was presented to the 2003 ACPAC Conference, noted that

“In western countries, recent private sector business failures have underscored the importance of good corporate governance and accountability, and the role that Boards of Directors and broad, independent audit play in detecting and hopefully preventing problems. Not surprisingly, the subject of corporate accountability has sometimes been discussed in the legislature (as it has in the US Congress), and the lesson has not been lost on parliamentarians that they, like Boards of Directors, have significant financial oversight responsibilities, and that minding the public’s business is no easier and cannot be taken casually any more than in the private sector. In fact, it may be more difficult to hold governments than corporations to account, because parliamentarians are seldom chosen for their financial acumen and often have little incentive to develop or put accountability skills or experience into practice.

Whether they like it or not, however, members of parliament are bombarded with oversight and audit matters, as governments publish voluminous accounts and performance reports, and auditors produce more commentaries, on an increasingly complex array of governmental functions.” (Role and Performance of Public Accounts Committees p6)

The Report found that “strong parliamentary oversight and scrutiny regimes are an essential part of combating corruption and promoting good governance” and they identified the following as main priorities for action.

- *Capacity Building.* A need to improve institutional capability, that is, the ability of Parliaments, PACs and Auditors-General’s officers to carry out their functions by being provided with sufficient resources and having adequate training and access to the expertise that they require.
- *Information exchange.* PACs need to have the means to exchange information and ideas so as to keep them up-to-date with important developments, changing standards and best-practices as they emerge.

Individual recommendations of the Study Group included:

- There should be greater direct contact between Parliaments, especially PACs, and international financial institutions
- Parliaments should regard the PAC as their pre-eminent committee
- Specially structured training be provided to PAC members.
- PACs in smaller and developing Parliaments need improved access to information technology.
- Research should be undertaken into establishing a basis for making international comparisons of PAC performance.

Among the Report's recommendations were, that exchange of practice information across jurisdictions is desirable, and that there was a need to prepare PAC members to make an effective contribution.

I was convinced that the key to meeting the goals of ACPAC, the World Bank and the CPA successfully was in being able to underpin the ICPAC with an independent, academic research base, and that this should be the first step. La Trobe University in Melbourne, Australia was enthusiastic, and Dr Bill Stent, Honorary Visiting Fellow in the Faculty of Law and Management at La Trobe University was co-opted to help develop a workable model.

The Research Centre model developed was, in many ways, unique. Firstly, the initiative for its establishment came from an expressed need that had been determined from within the relevant organizations, ie: Public Accounts Committees, rather than as a training opportunity by an external source. Secondly, it is differentiated from other Schools and Centres for Management and Governance because its primary market is members of Public Accounts Committees, and the Committees themselves, rather than Public Sector managers. Thirdly it envisaged that there would be a heavy emphasis on the use of peer involvement to produce effective and relevant training.

The requirements to be met by the proposed Centre were many. It was to be a strong base for independent research, as well as training and support for members of Public Accounts and similar committees. It would also be expected to have a significant involvement in the organisation of an International Conference of Public Accounts Committees (ICPAC), supporting the academic content and ensuring the currency of issues that are presented to the ICPAC.

Further, this Centre would be a world first, but needed to be capable of being replicated elsewhere, so that ultimately there may be created a global network of independent academic research bodies working on issues of public accountability, and supporting the role of parliamentarians through training and advice.

Ultimately, on July 7, 2004 the La Trobe University Council determined to establish the La Trobe University Public Sector Governance and Accountability Research Centre with Professor Kerry Jacobs as its inaugural Director. It is currently embarking on a baseline study of practices and procedures of Public Accounts Committees in Australia and New Zealand in conjunction with accounting firm KPMG.

This Centre represents the first serious attempt any where in the world to address the gap in capacity building for parliamentarians and I am hopeful that it will gain the support that it needs to be a true, independent resource for members of Public Accounts Committees everywhere.

The capacity of Public Accounts Committees to be instrumental in achieving high standards of ethical governance through holding governments to account has been overlooked for decades. We need to gain the support of civil society, aid institutions, international financial agencies, and others who have an interest in honest stable government, the eradication of corruption and strong democratic institutions to overcome the 'governance gap'. If we do not constantly pay attention to improving

the capacity of those in our parliaments to carry out their most important role, and continue to focus our efforts elsewhere, we will only ever make short term gains.

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