

## Freedom of Information Conference, 2023

### **The Importance of Practising Open Democracy: Too little or too much information?**

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Thank you for the honour of speaking to you today – as a policy generalist; as a former politician; an activist; and as a research psychologist interested in social change.

I will attempt to bring all these perspectives to bear on the question of the importance of practicing open democracy.

#### **Introduction**

As Australians we can be proud that our country was one of the first genuine liberal democracies in the modern world. Indeed, Australia was labelled the “democratic laboratory” and, in international comparisons, our democratic institutions and practices are generally assessed as robust, functional and fair.

While we may worry about and legislate to prevent foreign interference in our democracy, s important, but less appreciated, are domestic challenges to our country’s democratic institutions, practices, and governance. Our success may have bred complacency about these cumulative threats and, as exposed again during the recent referendum, there is a surprising level of public ignorance about the nature and proper workings of many of our institutions. Among the significant challenges to the health of our democracy is the reluctance of governments and public agencies to embrace the practices of open government – despite claims to the contrary - and to see the virtue in exposing the decisions of government to public gaze, both before and after decisions are made. Simultaneously, a welter of misinformation and disinformation characteristic of our digital age distorts the democratic process.

It is perhaps a paradox that both too little and too much information are feeding the observed decline in public trust in politics in Australia – and elsewhere – but they are related. Where information about the operation and decisions of governments is restricted, misinformation and disinformation can quickly fill the gap. Conspiratorial thinking is more likely to thrive when governments cover up and dissemble. I will return to this later, but I want to stress at the outset that the practice of open democracy has never been more important.

It is almost routine to observe that there is a palpable cynicism about and lack of trust in politics and politicians among the general public. And some fear this disdain is bleeding into people's attitudes to democracy as a system of government. ANU research released this week showed that while 77% of Australians were satisfied or very satisfied with democracy, this compared to 81% in 2008; the biggest drop was in the percentage who were very satisfied with the political system - 14.2% compared to 23.4% fifteen years ago. Similar Lowy Institute surveys show that younger voters are more likely to agree that in some circumstances a non-democratic government might be preferable. What they have in mind as an alternative is not clear.

A number of studies also show that, globally, trust in politics is also getting worse. One assessment reported that "citizens have grown more distant from political parties, more critical of political elites and political institutions, and less positive toward government." Such responses are easily amplified and manipulated in the social media space.

Even in countries long considered stable democracies, such as the UK and USA, there have been recent events which are incompatible with established practices of democratic governance and the rule of law (e.g., the armed assault on the U.S. Capitol in 2021 and the unlawful suspension of the British parliament in 2019.)

Here in Australia the revelation that the former Prime Minister had appointed himself to five ministerial positions without informing his colleagues in Cabinet and the wider public breached normal conventions. In her report to the new government, former High Court judge Virginia Bell agreed with the solicitor-general's advice that Morrison's actions fundamentally undermined the principles of responsible government. She said that the affair "corroded trust in government".

Some have argued that democracy and pluralism *are* under systematic assault; that internationally dictatorial regimes are stamping out domestic dissent and spreading their harmful influences to new corners of the world; that they are actively trying to influence elections and public opinion in democracies. Russian interference in the U.S. elections has been documented.

At the same time, many freely elected leaders are dramatically narrowing their interpretations of the national interest and appear increasingly willing to break down institutional safeguards and disregard the rights of critics and minorities as they pursue populist agendas, sometimes protecting party and corporate interests over public interest. For example, the creeping criminalisation of environmental protest in Australian states threatens

democratic freedoms that are fundamental to a vibrant and inclusive society and stifles debate about climate change risks.

### **What is democracy?**

Fundamental to the protection and restoration of democracy is a correct understanding of what it is.

While, by the end of the last century 120 of the world's 192 countries, many of them former communist regimes, had embraced some form of democracy as their system of government, the term democracy has been applied indiscriminately to states of all types; from repressive regimes like the "Democratic People's Republic" of North Korea to the freest polities of Scandinavia.

Such misuse of the word is, simultaneously evidence of the widespread appeal of democracy and a source of confusion, allowing dictators and autocratic governments to unjustifiably claim democratic credentials. This sleight of hand has also fed the misperception that all democracy requires is the regular performance of elections (even rigged ones).

As we know, democracy means much more than simple majority rule. In its ideal form, it is "a governing system based on the will and consent of the governed, institutions that are accountable to all citizens, adherence to the rule of law, and respect for human rights"<sup>1</sup>. All of these elements require the free flow of accurate information about both the institutions of democracy and their operation.

Democracy is, in reality, "a network of mutually reinforcing structures in which those exercising power are subject to checks both within and outside the government, for example, from independent courts, an independent press, and civil society" ... It requires "an acceptance of regular alternations in power, with rival candidates or parties competing fairly to govern for the good of the public as a whole, not just themselves or those who voted for them... Ideally, it ensures that all people, no matter the circumstances of their birth or background, can influence and participate in politics and governance and enjoy the universal human rights to which they are entitled"<sup>2</sup>.

In thinking about democracy, most of us would point to the minimum requirements of popular control and political equality<sup>3</sup>. In judging democracy,

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<sup>1</sup> Freedom in the World, 2022, [FIW 2022 PDF Booklet Digital Final Web.pdf \(freedomhouse.org\)](https://freedomhouse.org)

<sup>2</sup> Ibid

<sup>3</sup> Website: [www.idea.int/](http://www.idea.int/)

most of us would want to go beyond these two simple features to include the protection of civil liberties and human rights, particularly against crude majoritarianism and sectional interests.

The Democratic Audit of Australia and its international counterpart, the International Institute for Democracy and Electoral Assistance (IDEA),<sup>4</sup> also includes the quality of public debate and discussion, assessing “the degree to which debate and discussion can be distorted by manipulation, strategising, deception and restrictions on allowable communication.”

Many, myself included, would add the extent to which citizens can actively participate (beyond the simple act of voting) in the political life of the country. Again, central to these requirements is the free flow of quality information, particularly from and about government, and a minimum of the distortions which flow from uncorrected misinformation and disinformation.

Democracy in these terms, by definition, should be open.

### **The State of Democracy: Healthy or Diseased?**

In general, it is fair to say that democracy has functioned reasonably well when assessed against competing forms of government and methods for organizing society. Democracy has characteristically produced societies that have been relatively “humane, flexible, productive, and vigorous.”

However, democracy is also characterized by “unsightly and factionalised squabbling by self-interested, short-sighted people and groups.” Furthermore, the policy outcomes often result from “special pleading” from those best placed to “adroitly pressure and manipulate the system.” Guarding against such undue influence is one of the most challenging tasks for citizens – and the media - in protecting the core values of democracies. Preventing such undemocratic influence and exposing it to public view are also important objectives for right to information and freedom of information policies.

As Arendt argued, politics as it practiced infantilises citizens who act as though power can only be gained by begging for it from a reluctant state. Those who govern are not always willing to provide the information necessary for active, informed citizenship. I recently listened to an interview with a state government minister (who will remain nameless) who managed in the course of a 15 minute interview to refuse to make public four reports of

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<sup>4</sup> Website: [democratic.audit.anu.edu.au](http://democratic.audit.anu.edu.au)

significant public interest. In only one case was the justification – protection of individual privacy – reasonable.

### **Democracy in Australia**

Many Australians are frustrated when they perceive a political system which does not appear to respond to their needs and seems to be in the hands of players more interested in their own advancement than the general good. While I agree that there is a clear need for improvement, throwing the baby out with the bathwater is not the solution.

Public sentiments of distrust and disgruntlement are being amplified by populist political actors, not to achieve reform, but to create political opportunities for themselves in tearing down stable political institutions to create chaos.

I was appalled at the actions of some of the recent referendum “NO” campaigners who tried to create the impression that the Australian Electoral Commission was biased – a playbook imported directly from the United States where claims of electoral rigging are believed by an alarming proportion of the population. It’s hard to think of a more irresponsible claim.

Such tactics detract from a serious-minded assessment of the problems we face as a community and debate about what changes are needed to improve our democracy: the disquieting alliance of our political parties with corporations and large organisations; the erosion of civil rights and minority interests; the politicisation of the public service; the permanent state of vitriolic antagonism between the major parties; the elevation of executive secrecy above public disclosure; the readiness of governments to mislead both the people and the parliament; and the failure to enunciate and plan for the long term challenges we face as a community. To nominate just a few!

For some people, this disenchantment spills over into disparagement of government action and a retreat into individual solutions to social and economic problems. This, of course, suits the neoliberal agenda, but is anathema to effective joint action necessary to reduce inequality, improve broad social outcomes and to protect the environment.

Fortunately, there are optimists who believe it is possible to renovate our institutions. Whatever the ascribed causes of these problems, it is clear that continuing reform of our political system is needed.

I will review a couple of these areas in more detail.

## The first - Equality of Influence

Despite the otherwise general equality in voting power, there are reasonable concerns that not all citizens are equally able to *influence* their representatives; that the ordinary voter's needs and views are ignored, while preference is given to the interests of the wealthy, to big business and to political cronies.

Several features of our political system contribute to these attitudes. Substantial campaign donations to the major parties by corporations and large organisations such as unions and business foundations foster the perception (and perhaps the reality) that it is possible to buy privileged access to MPs and ministers and that this influence is in proportion to the amount of money donated.

As Melbourne University Professor Joo-Cheong Tham wrote this week in *The Conversation*, the expose by Nine media of the activities of Visy chair, Anthony Pratt, has provided compelling insights into how big business influences politics. It also shows the urgent need to reform political funding laws.

The tape recordings exposed a concerted effort by Pratt to cultivate relationships of political influence through three strategies which are typical of many attempting to wield such influence:

- Making regular large political contributions;
- lobbying including through meetings with ministers and their advisers, and holding fundraisers at his home;
- employing former senior political leaders as advisers.

As Tham, who has researched this field for many years, points out, this is a familiar strategy for other businesses, particularly those in high regulation sectors such as resource companies.

There is no suggestion of any illegality, but there is a huge problem with what Tham has described as "corruption as undue influence".

Like many Australians, I am perturbed at these tendencies which often take place away from public view or come to be known long after the event. The risk is that reliance on donations may create a strong inducement for political parties to bias their policies toward business and high income earners who provide the bulk of the funding, thus conspicuously undermining the promise of democracy that we all share equally in political power. Those who can afford the big donations, the flights to Canberra, the permanent lobbyists and the hospitality may well drown out other less well-funded voices.

There is also a risk that government contracts might favour donors. Analysis by the Centre for Public Integrity found that Labor and the Coalition parties received nearly \$4.3 million from the “big four” consulting firms - KPMG, Deloitte, PwC and EY - while the value of Commonwealth procurements from these firms had jointly increased by over 400 per cent in the same period. Similar patterns are evident, but less well scrutinised at the state level.

As the High Court emphasised in the case of *McCloy v New South Wales*, there can be corruption in the absence of quid pro corruption – the brown paper bag variety. Specifically:

- “*clientelism*” corruption, which “concerns the danger that officeholders will decide issues not on the merits or the desires of their constituencies, but according to the wishes of those who have made large financial contributions valued by the officeholder”
- *war-chest corruption*, where “the power of money may [...] pose a threat to the electoral process itself”.

As the Pratt case demonstrates, what we should be concerned about is the risk of such corruption which would probably not be captured by any of the anti-corruption bodies in Australia. Important though they are for exposing corruption.

Like the members of the recent Commonwealth Joint Standing Committee on Electoral Matters who examined the last election, I believe it is time to reign in the exponential growth of corporate donations and to curtail the proliferation of misleading media advertising that passes for policy debate during elections.

A lot of people expressed surprise during the referendum campaign that it is perfectly legal to spread misinformation and disinformation and tell outright lies during referenda and federal election campaigns, so I am pleased that the TEALS are pressing for the introduction of “truth in advertising” requirements to be extended to political messaging as has been legislated in South Australia and the ACT.

It may be that there is also now an opportunity to address the corruption risks of political funding. The current government has given a commitment to reform federal political finance laws based on the electoral committee report I mentioned.

This report recommended:

- strengthening disclosure obligations through “real-time” disclosure and reducing the disclosure threshold to \$1,000
- caps on political donations
- caps on expenditure
- administrative funding (to assist with compliance with new laws)
- increased public funding
- additional resources for the Australian Electoral Commission.

Similar reforms are needed at the state level.

In the interim, Freedom of Information applications and investigative journalism can expose special favours and the undue influence associated with political donations. In the longer term, legislation to explicitly curtail such risks should be enacted.

The capacity of large corporations to exercise undue influence is also evident in the “revolving door” between government and industry. In W.A., the door to privileged access is wide open between government and the resources sector. There are many examples of former politicians moving seamlessly from Ministerial positions to lobbying and well-paid board positions in industry: it is their inside knowledge and connections with government which are being purchased. The former Premier was appointed to two such positions within months of resigning his position, a similar path to the one taken earlier by his Treasurer. Restrictions on such movements and improvement in the regulation of lobbyists are sorely needed.

### **Freedom of Information/ Right to Information**

It is obvious that one of the important countervailing forces to these and other corrosive influences is access to accurate information about government and government relations.

The United Nations has long recognised the right to access information; enshrining the right to “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers”.

Laws reflecting these values are introduced - and were introduced here in Western Australia - because of the belief that democracy thrives when people can see, understand and participate in the decisions that affect their lives, when decision-makers are accountable for their actions, and when leaders lead with integrity.

None of this is possible without access to accurate and timely information about government actions and decisions, preferably in advance of them being



made. Digging up the failures and scandals of the past may be satisfying to investigative journalists – and a salutary lesson for those contemplating similar actions – but is less important for a healthy democracy than setting up robust systems to facilitate open government.

Freedom of information and Right to Information laws are particularly effective in providing a framework that requires public officials to act impartially and give reasons for their decisions. They can also strengthen the effects of other open government reforms, which can make it more likely that officials will behave ethically and legally. Australia has been signed up to the Open Government Partnership since 2015, with the goals of increasing the transparency and accountability of government, although citizens might be forgiven for being unaware of this commitment.

Right to information is an essential anti-corruption tool since enables corruption to be detected, helps deter corruption, and facilitates the development of remedies for wrongdoings using the information obtained.

Effective right to information laws also provide the means to empower the public to monitor the delivery of public services such as health care, housing, education and social benefits and advocate for changes in policy and practice. Recent Royal Commissions into Robodebt, Aged Care and Disability services, for example, were all underpinned by the media and others gaining information about government decision-making and practices which would not otherwise have been disclosed.

Other interactions with the state, such as when a public body is buying services – think PWC - providing permits for constructions or industrial activities, selling public property or appointing individuals to public offices can all be scrutinised. The evidence shows that making such information more readily available actually improves government effectiveness. However, as you would all be well aware, roadblocks and delaying tactics may be employed by the public service and politicians to thwart these processes.

I want to turn briefly to an area where regulation to protect the quality of information is proving more problematic – the Internet.

Although the symptoms and causes of democratic backsliding are complex and difficult to disentangle, the role of the Internet and social media is frequently raised.

You may have been aware - but I wasn't until yesterday- 24-31 October was UNESCO's Global Media and Information Literacy Week. The UNESCO's Director-General is quoted as saying:

"With the spread of rumors and the distortion of facts, the boundary between true and false has become blurred. This is undermining the very foundations of our societies and democracies and putting lives at risk..."

In Western democracies, recent evidence suggests that social media is *causing* some anti-democratic political behaviours. Social media have also been blamed for increasing political polarisation. Some scholars have openly questioned whether democracy can survive the Internet.

A recent report commissioned by the EU on technology and democracy reminded us that, "A functioning democracy depends on the ability of its citizens to make informed decisions. And that "Open discussions based on a plurality of opinions are crucial"; however, they warned that "the digital information sphere, which is controlled by few actors without much oversight, is bringing new information challenges that silently shape and restrict debate."<sup>5</sup>

On the other hand, social media has been proclaimed as a 'liberation technology', owing to its purported role in the 'Arab Spring', the Iranian Green Wave Movement of 2009, and other occasions when it was used to mobilise the public against autocratic regimes. Early enthusiasts saw the opportunity for wider debate and democratic engagement.

There is also some evidence that access to the Internet leads to enhanced transparency and reduction of corruption. In one cross-national analysis of 157 countries, Internet access was found to be associated with lower rates of official corruption. But we may ask was this cause or consequence?

As my friend and former colleague, Steve Lewandowsky and his fellow researchers have pointed out: "This is the fundamental paradox of the Internet and social media: They erode democracy and they expand democracy. They are the tools of autocrats and they are the tools of activists. They make people obey and they make them protest. They provide a voice to the marginalised and they give reach to fanatics and extremists."<sup>6</sup>

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<sup>5</sup> European Commission, Joint Research Centre, Lewandowsky, S., Smillie, L., Garcia, D. et al., *Technology and democracy – Understanding the influence of online technologies on political behaviour and decision-making*, Publications Office, 2020, <https://data.europa.eu/doi/10.2760/709177>

<sup>6</sup> Lewandowsky S, Pomerantsev P. Technology and democracy: a paradox wrapped in a contradiction inside an irony. Mem Mind Media. 2021 Dec 9;1:mem.2021.7. doi: 10.1017/mem.2021.7. PMID: 36415623; PMCID: PMC7613775.

They proposed that to understand this paradox, we must examine the “unique pressure points that arise when human cognition is let loose on the internet”. He and his colleagues comprehensively reviewed and synthesized the available data on the link between digital media and various politically important variables such as participation, trust and polarization. Using sophisticated analytic techniques which assist in untangling causal connections, they asked the question “If, to what degree and in which contexts, do digital media have detrimental effects on democracy?”

They concluded that for democratic countries, evidence clearly indicates that digital media increase political participation and may improve political knowledge and exposure to diverse viewpoints in news. On the negative side, however, they reported a larger and robust finding that digital media use is associated with eroding the ‘glue that keeps democracies together’: trust in political institutions. Their results also indicate that digital media use is associated with increases in hate, populism and polarization. They argue that the interaction between our cognitive habits and the architecture of the information space have created a “perfect storm” for democracy.

Solutions to these problems are not easy – and the corporate players notoriously unco-operative. Some governments and the EU are beginning to regulate misinformation and disinformation. In Australia, as well as a voluntary code of practice, the Government has recently released an exposure draft of a Bill aimed to combat misinformation and disinformation.

Criticisms have included the obvious definitional difficulties and the threats to free speech which is why some prefer a focus on media and information literacy, rather than regulation. However, surveys indicate that 30% of the adult Australian population have low levels of media literacy.

Whatever the policy tools – and I hasten to note that this is not a field where I feel competent - vigilance is urgent.

As well as engaging the general public and their representatives more fully in the democratic process, I believe initiatives to improve the quality of and access to information can transform our political system to produce a more engaged and active democracy and to protect against corrosion. The goals of greater transparency, improved citizen equality, civic participation and an informed public debate are surely worth striving for.