

Rethinking Legislative Powers: Parliamentary Responses to International Challenges

*John Uhr**

I Introduction

This chapter is something of a companion to Ann Capling's chapter on treaty-making and the Australia-United States ('US') Free Trade Agreement ('FTA'), which details the remarkable resurgence of Australian parliamentary interest in scrutiny of executive powers over international treaties. My focus is more institutional than policy based, putting a broader frame around Ann Capling's topic of the political management of trade policy. This framework is one that examines the parliamentary power to settle disputes between parliamentary and governmental institutions, over test cases of national sovereignty such as defence and national security policy. My analysis was initially prepared before the Howard government's historic win, at the 2004 Australian elections, of a majority in both Houses of the Commonwealth Parliament. At this stage, it is too early to determine the extent to which the measures of parliamentary activism examined here are likely to be overtaken by a new submissiveness to the controlling interests of the governing party.

My hunch is that a government majority in the Senate will not automatically turn back the tide of parliamentary events. Early signs from government senators indicate that even they do not envisage government domination of what is a remarkably independent parliamentary institution.¹ My case, however, does not rest solely on evidence from the Senate. To begin with, the title of this chapter refers to the considerable rethinking

* The author thanks ANU PhD scholar Stewart Ashe and ANU colleague Roland Rich for helpful comments on an earlier version: 'Terra Infirma? Parliament's Uncertain Role in the "War on Terror"' (2004) 27 *University of New South Wales Law Journal* 339.

1 See, eg, Senator George Brandis, 'The Australian Senate and Responsible Government' (Speech delivered at University of New South Wales Law School, Sydney, 18 February 2005).

This is a preview. Not all pages are shown.