



# **Backstage Performances of Parliamentary Scrutiny, or Coming Together in Parliamentary Committee Rooms**

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When new legislation comes before parliament, it is often referred to a scrutiny committee that undertakes detailed examination of the proposed law. The meetings of parliamentary scrutiny committees are often held behind closed doors and provide an opportunity for parliamentarians and their advisors to exchange views on the impacts of proposed laws, including their impacts on human rights. Responding to Lisa Samuels' provocation "to take encounter as a work" and to research on law as performance, this paper examines these moments of encounter as legal performances. We argue that these meetings, comings-together and encounters do the work of (per)forming human rights assessments of legislation. We also question how the spaces of committee meetings, the absence of an outside audience, and the differing levels of knowledge on the part of parliamentary actors affect the performance of human rights scrutiny.

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When new legislation comes before a Commonwealth parliament, it is often referred to a scrutiny committee. The scrutiny committee undertakes detailed examination of the proposed law and makes recommendations in the form of a report to parliament about the proposed law. Some parliamentary committee meetings are publicly broadcast, such as the United Kingdom's House of Commons' Culture, Media, and Sport Select Committee (2012) inquiry into News International and phone hacking, and the hearings of the United States House of Representatives' Select Committee to Investigate the January 6<sup>th</sup> Attack on the United States Capitol (2022). Many parliamentary committees do their work behind closed doors, where parliamentarians and their advisors have opportunities to frankly exchange views. This is particularly so when it comes to scrutiny of proposed laws' impacts on human rights in Australian parliaments with a charter of human rights. In these meetings, parliamentarians will scrutinize proposed legislation to determine its impacts on human rights and will make recommendations for the parliament to consider when voting on the legislation, including recommendations for amendments and, occasionally, for legislation to not be passed. Legislation that limits human rights may still be justified if the limitations are deemed reasonable (*Human Rights Act 2004* (ACT) s 28(1); *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 7(2); *Human Rights Act 2019* (Qld) s 13(1)). Whilst other work has examined the performance of human rights generally (see Rae; Madison; Slyomovics), in this paper we look at how this process of parliamentary human rights scrutiny is performed through legislative committee meetings. We argue that the performance of human rights scrutiny shapes parliaments' conception of human rights and the humans which are endowed with rights.

We approach these meetings or moments of encounter by parliamentary scrutiny committees as legal performances, informed by research on law as performance. In doing so, we draw from Richard Schechner's writings on rehearsal, Erving Goffman's conception of backstage performances, and Lisa Samuels' provocation "to take encounter *as a work*" (72). We argue that human rights scrutiny is made in and through these backstage meetings of parliamentary committees as moments of encounter – and these moments of encounter perform human rights scrutiny. Therefore, we argue that we need to take these backstage encounters seriously if we are to understand the ways in which human rights scrutiny is performed in

parliament and how conclusions are reached in contested claims for human rights. This poses a potential challenge, however, given that the work of scrutiny committees often takes place in private, with publics gaining only limited access to these encounters – a challenge that we attempt to overcome by speaking directly with performers in these human rights scrutiny processes, providing vital insights into how they conceptualize these backstage performances. However, the very challenge itself exposes how parliamentary performances of human rights scrutiny often exclude public audiences in ways that might be un conducive to reaching considered conclusions on the human rights impacts of legislation on the public and, at worse, that these processes might be considered as undemocratic insofar as they lack transparency. Through analyzing parliamentary scrutiny as performance, we aim to examine how public audiences access and understand these performances of parliamentary human rights scrutiny, and what obligations the actors in these performances might hold towards their public audiences.

## Theoretical background

The term ‘legal performance’ refers to the way in which law is applied and interpreted in and through performance (Hibbitts). It is also used to signal the “merging and interplay of two disciplines (law and performance [studies])” (Lubin 4). Legal performance has two components: it executes something and thus can be said to be performative (in an Austinian and Butlerian sense), and it presents social conflict on the stage of the court – or, in this case, parliament – and thus can be said to be a performance (Peters “Legal Performance” 185). Legal performance and the related interdisciplinary field of law as performance “are still emerging fields” (Mulcahy and Leiboff 3), though growing with recent publications (Read; Leiboff; Peters “Law as Performance” Mulcahy “Performing Law”). Here we draw from this research to examine the ways in which the *encounters* of parliamentary scrutiny committees do the work of performing human rights assessments of legislation.

The idea of parliamentary human rights scrutiny as a performance might be challenging to scholars of parliaments and human rights, in part due to the pejorative connotations of performance as spectacle. Instead, we suggest that looking at parliamentary human rights

scrutiny through “a performance lens” (Mulcahy, “Methodologies of Law” 167) allows us to see the ways in which performance is inherent to its effects. In doing so, we are particularly influenced by Richard Schechner’s writing on rehearsals and Erving Goffman’s conception of backstage performances. These encounters of parliamentary scrutiny committees occur in the backstage of parliamentary buildings, behind closed doors, akin to a rehearsal room in which the work of scrutiny is done before the scrutiny report is presented in the public stage of the parliamentary chamber.

Performance theorist Richard Schechner writes that “theatre is but one of a complex of performance activities which also includes rituals, sport and trials (duels, ritual combats, courtroom trials)” (“Performance Theory” 179). He advances the notion of a “‘broad spectrum’ of performance” and questions “how is performance used in politics” (“The Future of Ritual” 21). He further notes that “political ceremonies” can be said to “share qualities of both social and aesthetic drama” (“Performance Theory” 192) – they are performative in that they enact changes of status, but also performances that readily adopt costumes, grand stages and received manners of speech to enact their changes. The actor in these ceremonies, the parliamentarian, can often take “techniques from the theatre: how to release news, how to manipulate the public’s reactions, how to disarm his [*sic*] enemies; even how to make up his [*sic*] face, wear his [*sic*] costume, deliver his [*sic*] sentences” (“Performance Theory” 218). Schechner’s work considers the different phases of performance activities, such as workshop, warm-up, cool-down, and aftermath. In his writings on rehearsal, Schechner argues for turning critical attention “from a comparison of works in their finished phase to works in the process of being made” (“Performance Theory” 204). He argues that “one must fold each work back in on itself, comparing its completed state to the process of inventing it, to its own internal procedures during that time when it was not yet ready for showing” (“Performance Theory” 204). Here, we take up Schechner’s call to examine not the completed product of parliamentary scrutiny – the scrutiny report – but instead the encounters in which it is made.

In relation to multi-authored works, Schechner argues that “the process of solidification, completion, and historical ratification is a process of rehearsal: how a work is reworked until it crosses a threshold of ‘acceptability’ after which it can be ‘shown’” (“Performance

Theory” 205). We argue that much the same could be said for the scrutiny process, in the sense that the scrutiny report is drafted and redrafted by the committee until it reaches a level of acceptability to a majority of committee members (allowing for the occasional dissenting report) at which it can be presented to parliament. As Schechner writes, “works change over time as they are adjusted to immediate circumstances” (“Performance Theory” 205). Similarly, the scrutiny report changes as the actors responsible for drafting it adjust their stance towards the legislation before them. This is also a time-bound process, given the urgency of presenting the report to the parliament before the legislation is finally debated and voted upon.

Schechner argues that the preparation for a performance – the set-up or warm-up – is “comparable to rehearsal, but not exactly identical to it” (“Performance Theory” 207). Nevertheless, “both rehearsal and preparation employ the same means: repetition, simplification, exaggeration, rhythmic action, the transformation of ‘natural sequences’ of behaviour into ‘composed sequences’”, akin to a ritual process (“Performance Theory” 207), in what he also terms a “frantic patchwork” (“Between Theory and Anthropology” 250). Here again we see synergies with the scrutiny process, whereby certain claims are repeated and some are simplified or exaggerated according to the will of the committee. As we have argued in other work, repetition and simplification are key aspects of parliamentary human rights scrutiny, which allow complex ideas to be transmitted, socialized, and normalized (Seear and Mulcahy 6). As we discuss further below, the rhythmic action of sitting also shapes scrutiny performances. Furthermore, natural discussions are composed into certain sequences or formats of the committee report, including headings and sub-headings. (We discuss the formatting of reports in Mulcahy and Seear “Tick and Flick”.)

Schechner’s performance theory was influenced by the work of sociologist Erving Goffman. Goffman writes that performance is “all the activity of an individual which occurs during a period marked by his [*sic*] continuous presence before a particular set of observers and which has some influence on the observers” (“The Presentation of Self” 19). As Schechner explains, however, Goffman “did not propose that “all the world’s a stage”, a notion which implies a kind of falseness or put-on. What Goffman meant was that people were always involved in role-playing, in constructing and staging their

multiple identities” (“Performance Theory” x). Both were influential for examining everyday practices outside the theater through what we term “a performance lens” (Mulcahy, “Methodologies of Law” 167). Goffman describes two key spaces of performance. The first is the frontstage, “the place where the performance is given” (“The Presentation of Self” 93). As he explains:

When one’s activity occurs in the presence of other persons, some aspects of the activity are expressively accentuated and other aspects, which might discredit the fostered opinion, are suppressed. It is clear that accentuated facts make their appearance in what I have called a front region; it should be just as clear that there may be another region – a ‘back region’ or ‘backstage’ – where the suppressed facts make an appearance. (“The Presentation of Self” 97)<sup>1</sup>

This second space, the backstage, is “a place, relative to a given performance, where the impression fostered by the performance is knowingly contradicted as a matter of course” (“The Presentation of Self” 97) or “where action occurs that is related to the performance but inconsistent with the appearance fostered by the performance” (“The Presentation of Self” 117).

We see strong connections in the dimensions of the backstage that Goffman describes and aspects of the scrutiny process that occurs in parliamentary committee rooms. First, Goffman describes the backstage as the space in which the performance is “constructed” (“The Presentation of Self” 97). Similarly, we see the parliamentary committee room as the space in which the scrutiny of legislation and the accompanying report on it is constructed. Second, Goffman describes the backstage as the space where stage props are “hidden so that the audience will not be able to see the treatment accorded them in comparison with the treatment that could have been accorded them” (“The Presentation of Self” 97). Similarly, we see these scrutiny processes as hidden, such that the public cannot see the debates about human rights limitations and their justifications. Third, Goffman describes the backstage as a space in which “the team can run through its performance, checking for offending expressions when no audience is present to be affronted by them; here poor members of the team, who are expressively inept, can be schooled or dropped from the performance” (“The Presentation of

Self” 97-98). Somewhat similarly, we see the parliamentary committee room as a space in which parliamentarians are educated by an external human rights advisor and, based on that advice, some of their objections may be dropped from the report. Fourth, and relatedly, Goffman describes the backstage as a space in which “the performer can relax; he [*sic*] can drop his front, forgo speaking his [*sic*] lines, and step out of character” (“The Presentation of Self” 98). Similarly, we see the scrutiny process as a space in which parliamentarians can step out of their usual character, persona and rhetoric and adopt different ways of relating to one another. It is this backstage space that interests us, given our focus is on parliamentary committee rooms where the scrutiny process occurs, possibly in ways that are inconsistent with the appearance of unanimity fostered by the scrutiny report that is presented to parliament.

Finally, we turn to artist Lisa Samuels’ conception of encounter. In her analysis of artworks, Samuels suggests the need “to take encounter *as a work* and to redistributed [*sic*] its elements as an art” (72). She argues that we should not just see encounter as a mechanism “to get somewhere else”, but that we should stay with encounter as a mode of engagement (62), and she invites “lingering in the relational encounter” (63). Samuels further notes that encounter is a complex and recurring experience. The recurrent dimension of encounter “invokes the spelling ‘re-currents’ as in the circulation of fluid, its always-reoccurring movement” (62). Working with Samuels, we examine parliamentary committee encounters as recurring performances that shape legislative scrutiny, but note they are fluid, fluctuating, and often fleeting. We argue that these performances matter to the way in which scrutiny of legislation is conducted in Australian parliaments, as well as how human rights are conceptualized, more broadly.

## Method

In Australia, it is not possible to directly observe closed parliamentary committee meetings. To gain insights into how these processes work, therefore, we draw from thirty interviews we conducted with parliamentary actors – including parliamentarians, their advisors, and other parliamentary staff – about human rights scrutiny processes. These interviews were conducted as part of a research project,



approved by our university ethics committee, which examines how alcohol and other drug laws are subject to parliamentary human rights scrutiny in those Australian jurisdictions that mandate it. The interviews were guided by an interview schedule in which we asked participants to describe how the parliamentary human rights scrutiny processes work. Interview data were then transcribed verbatim by a professional transcriber, checked and de-identified. Both authors read the transcripts, developed a coding framework, and double coded the interviews. In this piece, we use pseudonyms to protect interviewees' anonymity and have removed key biographical details (such as the political party to which interviewees belong, or any portfolios that they might hold) to further reduce the risk of identification, given that they are public figures.

Drawing from these interviews, we explore three dimensions of the legal performance of parliamentary scrutiny: the *space* of committee meetings; the absence of an outside *audience*; and differing levels of knowledge on the part of parliamentary *actors*. If we take Peter Brook's famed adage that "a man [*sic*] walks across [an] empty space whilst someone else is watching him [*sic*], and that is all that is needed for an act of theatre to be engaged" (9), then we can deduce that the necessary components of performance are a space, an actor, and an audience. These, we argue, are equally applicable to legal performances as they are to theatrical performances.

## Space

The work of parliamentary scrutiny often occurs in committee rooms. These are smaller, more intimate spaces than parliamentary chambers. In our analysis of the space of the committee room, we consider how it impacts the other two dimensions of the performance of human rights scrutiny: the actors and the audience. We argue that the configuration of the space can both constrain the actors and the presence of and engagement by public audiences.

If we look at a three-dimensional view of a committee room in the Victorian parliament, we can see tables placed in a horseshoe arrangement with a chair behind each, so that parliamentarians can face one another. A public gallery with chairs arranged in rows is not used during scrutiny committee meetings. The images of bewigged

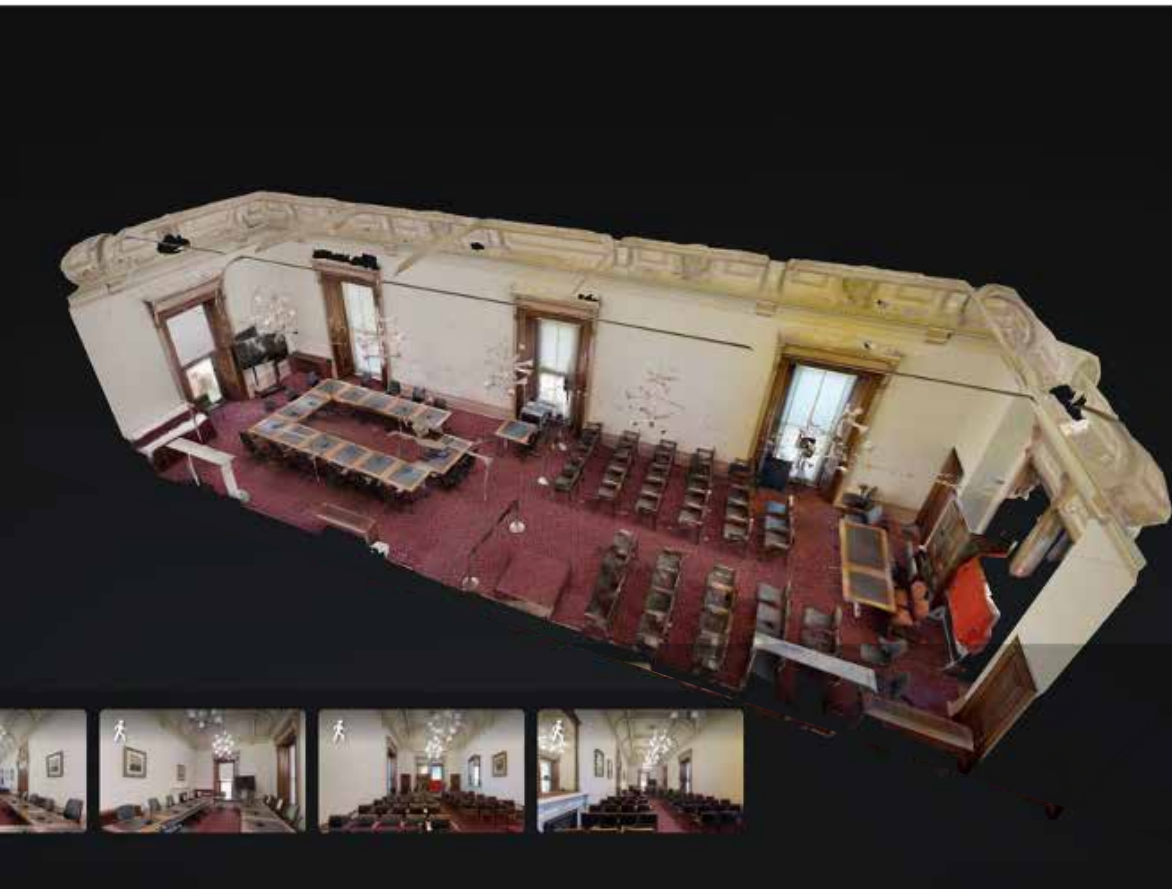


Figure 1. Still of Victorian parliamentary committee room

and bearded men and the architectural details, including dark wood paneling, vaulted ceilings, and fireplaces, speak to the history of the place and the ways of doing things inside it. These portraits of men remind us that this was – and is – a male-dominated space.

Though Goffman argues that “the front tends to be relatively well decorated, well prepared, and tidy; the rear tends to be relatively unprepossessing” (“The Presentation of Self” 107), here the backstage committee room is beautifully decorated, perhaps with an eye to the public that may sometimes enter, though not during scrutiny meetings. Goffman argues that “the backstage character of certain places

is built into them in a material way, and that relative to the adjacent areas these places are inescapably back regions” (“The Presentation of Self” 107). Here, this might be seen in the positioning of the table. It is arranged in a way that allows those at it to directly face one another, but it is hard to see each of the faces from the public gallery at the other end of the room. What this suggests is that the primary audience for the committee’s performance is each other, and that the outside public is but a secondary audience to their performance.

One parliamentarian, Alexander, stated that the work of the scrutiny committee involved “the committee members sitting there, having the legal professionals talk us through the report they’ve written up, maybe ask a question or two.” Similarly, Isabella averred that “the human rights law people would be at the table with these pieces of work.” Here, the term ‘at the table’ operates in literally and metaphorically, signaling the group that makes decisions. As we noted elsewhere, “this account conjures a particular version of the process; one in which committee members are seated around a table with the legal advisor – talking, questioning, listening” (Mulcahy and Seear, “On Tables” 294).

In her work on legal performance spaces, Dorota Gazy has explained that “spaces have effect on how we act and how we behave” (qtd in Mulcahy “Interview”). The furniture acts as an obstacle to free movement, signaling “how they want us to behave: you come, you go, you sit” (qtd in Mulcahy “Interview”). Gazy has conducted interventions, bringing dancers into the courtroom space and restaging family law disputes in the home (Mulcahy, “Dances with Law” 118-121). These performance interventions demonstrate how space shapes legal performances, including the way it restricts certain movements. Here, the spatial arrangement invites a transactional approach; there is limited space to move around, step back, hide. A parliamentarian familiar with the space will move to their seat; pulled in, their legs are trapped under the table, constraining free movement.

Goffman concludes that “the decorations and permanent fixtures in a place where a particular performance is usually given, as well as the performers and performance usually found there, tend to fix a kind of spell over it; even when the customary performance is not being given in it” (“The Presentation of Self” 108). Here, empty chairs suggest the absence of performers usually found there; the empty

room calls attention to the absent bodies. In our own experiences of appearing before parliamentary committees, we recall being called in to the committee room at a time when it is ready for the audience to enter. The stage must be prepared for outsiders to enter.

The experience of the public as outsider audiences attending parliament is shaped by the architecture of the space. In entering the parliamentary building, outsiders will usually enter through elaborate doorways; different from the side doorways through which insiders enter. The entry is not inviting and, as Renske Vos points out, “often layered with security precautions, which serve to keep unfamiliar people out” (153). Goffman writes that “the outside decorations of the building must in part be seen as the aspects of another show” (“The Presentation of Self” 117). This is a show of authority, that says that these are insider spaces to which the outsider should feel humbled by admittance. Even when inside the space, they sit at the edges, in a public gallery, away from the actors (Mulcahy and Seear, “Playing to the Gallery”). Further, even if meetings are open, packed galleries are unlikely, especially as audiences can watch online. So, despite the purported transparency that open committee hearings may provide, transparency is limited to those who have the capital and capacity to attend such meetings.

Importantly, the scrutiny process occurs predominantly “behind closed doors and is not visible to publics” (Mulcahy and Seear, “On Tables” 294). The doors are closed to intruding publics, and yet there are the rows of empty chairs that infer that the public is always watching this parliamentary work, akin to a gallery of ghosts. Goffman observes:

Persons may become so sacred that the only fitting appearance they can make is in the centre of a retinue and ceremony; it may be thought improper for them to appear before others in any other context, as such informal appearances may be thought to discredit the magical attributes imputed to them. (“The Presentation of Self” 104)

We do not believe that a parliamentarian is such an ‘exalted person’ – they are, after all, representatives of and from the people – but it could be that magical attributes imputed to the scrutiny process make it improper for it to be conducted before a public audience.





Figure 2. Still of Dorota Gazy, *Court Dance*

Some argue that technical human rights scrutiny lends itself to 'behind the scenes' operations (Moulds 88; Rice). But why? Maybe debates about human rights are messy and thus unfit to be seen by the public? Or maybe the backstage enables "work control", concealing "the amount and kind of work that had to be done, the number of mistakes that were first made before getting it fixed" (Goffman, "The Presentation of Self" 99), recalling the oft-quoted phrase that laws, like sausages, should not be watched in the making (Goldsmith 515). Another possibility, as indicated by one of our interviewees, Charles, is that private committee meetings have the benefit of allowing committee members to "actually have difficult conversations with one another" in a way that may not be possible in more public arenas. Furthermore, Goffman argues that "it is often expected that those who work backstage will achieve technical standards while those who work in the front region will achieve expressive ones" ("The Presentation of Self" 108). In this case, backstage is technical scrutiny work, frontstage is expressive performance. None of our interviewees reported the kind of heightened emotions that sometimes play out in parliamentary chambers in committee rooms. Instead, as Angus averred, "if you're in a committee, you do get a bit together. There is a groupiness that happens, not a lot. You are trying to have that rapport." As Goffman describes, "in back regions [...] the very fact that an important effect is not striven for tends to set the tone for interaction, leading those who find themselves there to act as if they were on familiar terms with one another in all matters" ("The Presentation of Self" 109). Perhaps without a crowd watching on, parliamentary combatants are likely to peacefully focus on the technical task at hand.

There is also the matter of the public interest in these proceedings. Goffman writes of a mechanic that "customers often feel the right to watch him as he does his work" ("The Presentation of Self" 100). That is, we suggest, because the repairman's work affects a good a person owns, so there is a personal investment in seeing that good taken care of. Similarly, members of the public have an investment in decisions affecting their human rights and thus may have an interest in watching how these processes play out. In his review of the parliamentary human rights scrutiny system in Victoria, Michael Brett Young made several recommendations "to facilitate public participation in the scrutiny process" following submissions recommending the scrutiny committee actively engage with the

community and facilitate public input into its scrutiny work (185). This is suggestive of a growing public interest in better understanding what goes on in these proceedings and in securing access to them. However, the hostile architecture of the space – expressed in closed doors and actors’ chairs not being oriented towards the public gallery – often precludes public access to these performances of legislative human rights scrutiny.

## Actors

In this section, we consider the actors, the parliamentarians, who bring differing levels of knowledge and experience to these scrutiny performances. In our analysis of the parliamentarians as actors, we consider both actor training and how the actors relate to one another in performance. We should caution that we as researchers can only speculate on the backstage performances of others to which we are not in team (Goffman, “The Presentation of Self” 115). We have not been admitted to closed door committee meetings. We do, however, draw from accounts of these backstage performances from our interviews and ethnographic studies of backstage spaces to inform our analysis.

In relation to actor training, to take one example, the Commonwealth Parliamentary Joint Committee on Human Rights contains one member that has served on it for five years, one for two years, one for one year, and the remaining seven for just four months.<sup>2</sup> Committee members have previously served as political advisors, business directors, consultants, and campaigners. Three have legal qualifications. This raises the question of actor training. Many of the parliamentarians we interviewed remarked that they had no comprehensive training in human rights scrutiny but learnt the part as they went on. Alexander told us that, “when it comes to something as important as scrutiny [...] there’s no guidance, there’s no training.” This often meant that they deferred to the human rights legal advisor. As Alexander explained, “there’s no alternatives that committee members can go to, to try and get a different piece of advice. So, you really just have to deal with what they give you.” This places a great deal of power in the legal advisor as trainer and creates what we have termed “a culture of reliance on only some perspectives” (Mulcahy and Seear, “A Culture of Rights” 14). Furthermore, legal



training is often conducted through text-based modes such as guides, guidance notes, and other resources, but it may be necessary for training to expand to consider legal performance beyond text and into ways of engaging sensitively with public audiences on legal matters (Bankowski, del Mar and Maharg).

Training aside, there is also the question of who the actors are performing for. The absence of a public audience during these proceedings does not mean there is no audience to these encounters; instead, parliamentary actors are important audiences to each other's performances. In reflecting on the preparatory phase of artwork, Schechner argues that "only performance requires it to be public, that is, acted out among the performers as rehearsal" ("Performance Theory" 204). In this context, committee members and parliamentary staff act as witness to the proceedings. As Goffman puts it, "team-mates in regard to one show will be to some degree performers and audience for another show, and performers and audience for one show will to some extent, however slight, be team-mates with respect to another show" ("The Presentation of Self" 112). We go further to say that these team-mates are, in the group setting of the committee, always audiences to one another and that this duality may affect the performance of scrutiny. As Alexander explained, "most of the debate in the committee that I've seen amongst committee members comes from government members going in to play for government bills [...and] running defence for the bill." Angus suggested that in "any parliament, there's always politics" and that this politicization was not just inter-party but intra-party, as "you may have discrepancies between various members from the same party on political issues." Another parliamentarian, Charles, stated that debate is "usually almost ideological and party positions," and that this can be challenging, particularly when another member is opposing a point on purely political grounds. Charles suggested that, in trying to engage other members of the committee, "you try and sort of free yourself from those partisan shackles [...] and just try and get down to what are the key facts of the matter so that, irrespective of one's ideology, they could be convinced. At least that's my approach."

Charles' reflections suggest a degree of collaboration amongst committee members. Samuels links the concept of witness to withness: "events have us witnessing each other, and parts of our tarrying can

be [...] carried out as witness” (64). For Samuels, “*witness* names sustained closeness with the event of one’s interpretive reading” (60). In this context, as much as the parliamentarians are witnessing each other during these processes, they are also with each other during this process; this mutual audiencing creates what Goffman terms “backstage solidarity” (“The Presentation of Self” 114). This is perhaps evident in the very low number of dissenting reports in parliamentary human rights scrutiny. As Schechner describes, “these preparations literally ‘compose’ the performance *and the group* [...] allowing for a settling in to the task at hand” (“Performance Theory” 207; emphasis added). The group’s witness is composed during these encounters, as they settle into ways of working together on the scrutiny task.

On this, Goffman observes that backstage, actors have a comfortable familiarity with one another: “since back regions are typically out of bounds to members of the audience, it is here that we may expect reciprocal familiarity to determine the tone of the social intercourse, Similarly, it is in the front region that we may expect a tone of formality to prevail” (“The Presentation of Self” 111). He goes on to describe the behavior amongst actors in these spaces in detail:

Throughout Western society there tends to be one informal or backstage language of behaviour, and another language of behaviour for occasions when a performance is being presented [...] backstage conduct is one which allows minor acts which might easily be taken as symbolic of intimacy and disrespect for others present and for the region, while front region conduct is one which disallows such potentially offensive behaviour. (“The Presentation of Self” 111)

Goffman concludes that “we are likely to learn that labourers use a backstage manner and are unlikely to learn that lords use it too” (“The Presentation of Self” 115); nevertheless, these behavioral traits hold even amongst parliamentarians when backstage (some of whom, in the British parliament, are lords). Within the parliamentary chamber, there are strict conventions. For example, in the House of Representatives, a member cannot be referred to by name (and instead must be referred to by their office or electoral division), use offensive words to describe another member, use objectionable words, dress in an informal manner, sit on the arm of a seat, or eat;

this is allowed in backstage spaces, however. Furthermore, in the House, a member must address any remarks to the Speaker, cannot converse aloud or make any noise or disturbance whilst another member is speaking, and cannot personally reflect on another member; rules that do not apply in committees. The committee room thus allows for what Schechner terms “mood displays” (“Performance Theory” 246). As Goffman describes, “performers act in a relatively informal, familiar, relaxed way while backstage and are on their guard when giving a performance” (“The Presentation of Self” 114). There is, we suggest, a mutually constitutive relationship between rooms and behaviors.

Furthermore, differences of gender, age, ethnicity, etc., will impact backstage informality because of societal expectations of behavior (Goffman, “The Presentation of Self” 113). It cannot be forgotten that the parliamentary has historically been – and still is – dominated by older white men and their behavioral expectations code the place, for example, in terms of working hours, restrictions on breastfeeding in chambers, and practices of sexual harassment (which we discuss further later). Writing on parliaments as gendered workplaces, Josefina Erikson and Cecilia Josefsson observe:

Parliaments have often been described as gendered organisations, gendered institutions and male-dominated institutional settings permeated by a culture of masculinity. This masculine culture originates from a time when politics was an all-male business, and it underpins both formal rules created by men to suit men and informal norms regarding how a politician should behave. Women entering politics are confronted by this pre-existing culture, regarded as ‘space invaders’, and constrained in various ways by rules, norms and practices that obstruct their political work. Numerous empirical studies have found that women MPs are negatively influenced by such obstacles in their parliamentary work. (20-21)

It is reasonable to assume that the same may apply to parliamentary committees and may in fact be heightened as closed committee rooms are what Goffman terms “shielding places” that enable “*involvement shields*,” behind which individuals can safely do the kind of things that

ordinarily result in negative sanctions” or engage in “situationally improper” behavior (“Behaviour in Public Places” 39). Ostensibly ‘proper’ or ‘improper’ behaviors in these backstage parliamentary settings are often gendered. As Erikson and Josefsson conclude, “gendered ‘logics of appropriateness’ set the terms for appropriate behaviour within an organisation in general and prescribe appropriate masculine and feminine behaviour in particular” (33).

Importantly, these ways of acting backstage are not aberrations but part of the performance of parliamentary scrutiny. As Goffman says, “it may be necessary to handle one’s relaxation [...] as a performance. One may feel obliged, when backstage, to act out of character in a familiar fashion and this can come to be more of a pose than the performance for which it was meant to provide a relaxation” (“The Presentation of Self” 116). One parliamentarian, Charles, stated that in the parliamentary committee room, there is “a fair degree of horse trading.” As the allusion to horse trading suggests, co-operative decision-making is common in committee meetings. Charles claimed that most committee recommendations “will be consensus recommendations because they’re just common sense, reasonable things to do.” As Goffman describes, “when the audience is not present, each member of the team is likely to want to sustain the impression that [...] he [*sic*] is not likely to play his [*sic*] part badly when the audience is present [...] Each team-member will want the audience to think of him [*sic*] as a worthy character” (“The Presentation of Self” 112). Furthermore, each team-member is also “likely to want his [*sic*] team-makes to think of him [*sic*] as a loyal, well-disciplined performer” that “can be trusted with the secrets of the team” (“The Presentation of Self” 112-113). However, interviewees also pointed to the persistence of political divisions in these spaces. Alexander described “government members going in to play for government bills that are, in the view of the legal advisors, going to infringe upon human rights in some way.” Adam noted that parliamentarians would “have voted in a party room for a policy” that they would then have to assess the justifiability of from a human rights perspective. The party room – as both a literal and figurative room<sup>3</sup> – seeps into the committee room, though the two are separated. Whilst we have argued for the benefits of public performance of parliamentary scrutiny, we also acknowledge that “it could be [...] more difficult for members to move away from party political positions in public hearings due to the attention that these hearings



Figure 3. Image of the front page of a scrutiny report

attract from media, and easier for them to develop positions that enhance human rights compatibility in private hearings” (Mulcahy and Seear, “On Tables” 295).

Ultimately, these performances generate a human rights scrutiny report that becomes public. This public document details how proposed legislation impacts the human rights of publics. It is often a balancing exercise, that weighs the rights of some publics against the interests of others. If we think of the parliamentarian as actor, we might ask: what kind of obligation do they carry to the publics that may be affected by their work? In the next section, we shall consider this question in light of public audiences to scrutiny work.

## **Audience**

In the last section, we argued that the parliamentarians act as audience to each other, but it should also be noted that their backstage performances have a public audience always in mind. In writing on parliamentary debates on roadside drug testing in one Australian

parliament, we noted that “legislators had frequent recourse to ‘the public’ [...] but often they were invoking different publics, ranging from road accident victims and their families to drivers to non-government organisations concerning alcohol and other drugs, motorists, health, civil liberties, and residents’ associations” (Mulcahy and Seear, “Playing to the Gallery” 260). As Schechner writes, “the rehearsal is a way of selecting from the possible actions those to be performed, making them as clear as possible in regard both to the matrix from which they have been taken *and the audience with which they are meant to communicate*” (“Performance Theory” 207; emphasis added). The work backstage is geared towards a public audience with whom the end product – the scrutiny report – will be in communion, so this working and reworking backstage is done in preparation for its eventual audience. Within these meetings, there is always an absent but imagined public audience to which the proposed legislation will ultimately apply (Mulcahy and Seear, “On Tables”). As Goffman puts it, “those who are outside will be persons for whom the performers actually or potentially put on a show” (“The Presentation of Self” 117). This is a diverse cohort, and as such it can be difficult for actors to ascertain what the public audience wants or to weigh up competing audiences’ demands.

The parliamentary actors, as representatives of the public, often felt the need to be guided by this absent public in their parliamentary scrutiny deliberations. As Charles described, “I am so aware of how the decisions that I make in this job affect tens of thousands, hundreds of thousands of people.” They also acknowledged, in a way that reflects our earlier discussion, that “I have a responsibility as a legislator to not allow my own lived experience to have undue influence over my politics and over my policy [...] because I represent more than me.” The differing perspectives of these parliamentary actors and the audiences to which they appeal affect the legal performance of legislative scrutiny. As we have noted elsewhere, the “representative dimension [of politics] can infuse the way in which parliamentarians assess the human rights compatibility of legislation” (Mulcahy and Seear, “On Tables” 296), but it also raises difficult questions of how an actor represents different – and sometimes irreconcilable – positions and audiences.

The absence of a public audience also affects the behavior of those within the space in other ways. In the backstage, Goffman writes,

“performers behave out of character while there” (“The Presentation of Self” 98). There, the performer will “go out of play’, that is [...] drop from his [*sic*] face the expressive mask that he [*sic*] employs in face-to-face interaction” (“The Presentation of Self” 105). This unmasking allows the parliamentary actors to engage in less inhibited behavior. A recent review of Commonwealth parliamentary workplaces found that “the operation of the chambers can contribute to, and normalise a masculinised and competitive culture, both inside and outside the chamber” (Australian Human Rights Commission, 269). There are different rules of etiquette in backstage spaces, however (Goffman, “The Presentation of Self” 107). Whereas there are orders that regulate conduct in the parliamentary chamber, these are less present in the committee room space, particularly in private. Perhaps because of this, there is an emphasis on closing doors to public audiences. As we have written elsewhere, “the committee room’s door offers a powerful barrier to community engagement, but also a potential pathway in” (Mulcahy and Seear, “On Tables” 305). The closed door forecloses any possibility of public participation, except through glimpses that may be caught through it.

Occasionally, public audiences are invited into public hearings. As Charles described, “the virtue of the public hearings allows those legislators who are wavering one way or another to be able to base their opinion at least [partly] on public support or opposition.” The presence of a public audience can work to break down political and ideological barriers on the part of parliamentarians.

Nevertheless, there is a segregation of the public audience, which occurs through both architecture (as discussed above) and the actors’ behavior. Goffman writes that the performer will “segregate his [*sic*] audiences so that the individuals who witness him [*sic*] in one of his [*sic*] roles will not be the individuals that witness him [*sic*] in another of his roles” (“The Presentation of Self” 119). This is because of the need for performers to maintain consistency to their audience. In some instances, actors will avoid public friendliness to certain audience members. In our own experiences before parliamentary committees, we have noted how some parliamentary actors with whom we are friendly will adopt consciously formal modes of address in the committee room to avoid any perception of partiality or impropriety, but then drop that formality in social settings. There is a sense in which the parliamentary actor is playing the part of a

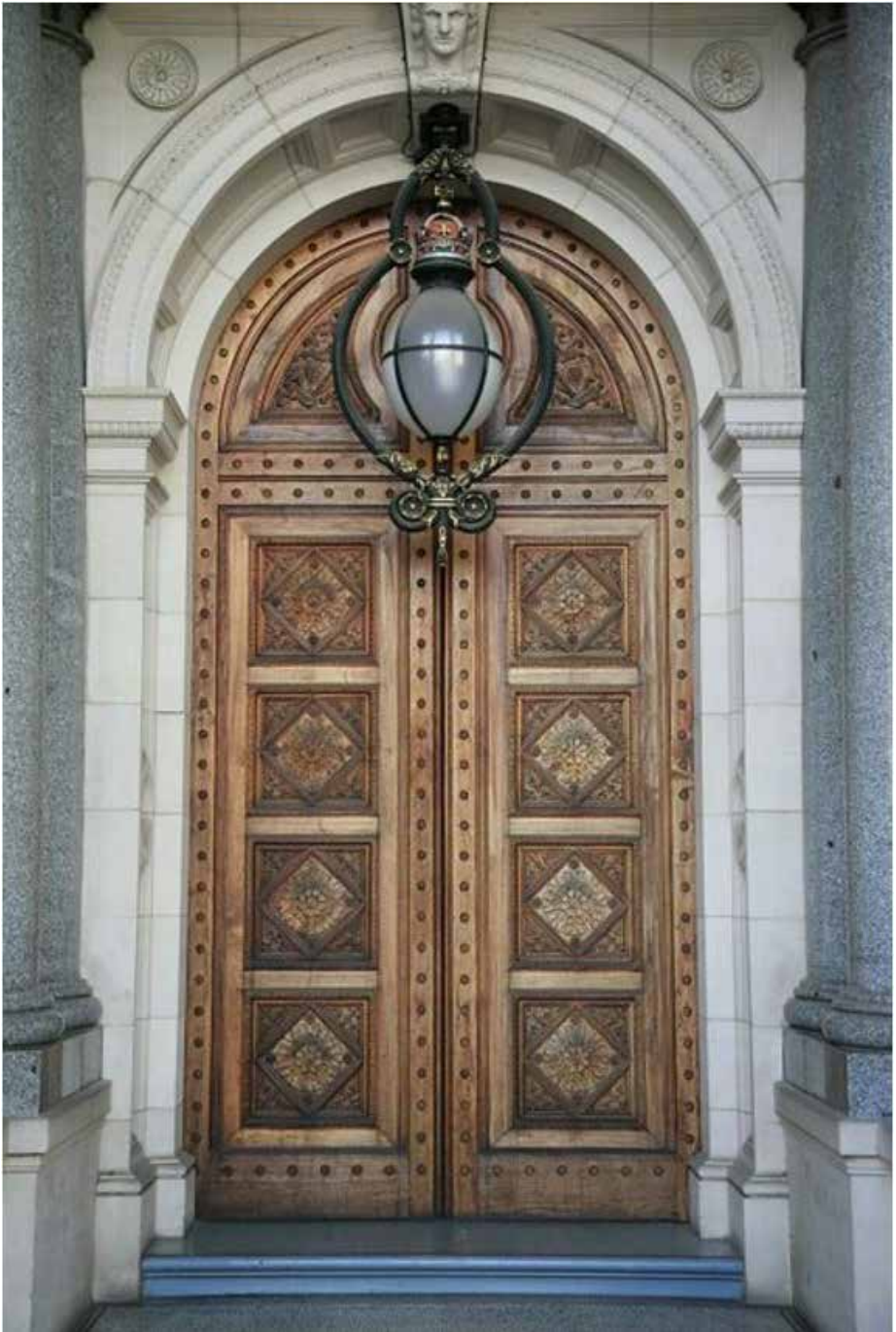


Figure 4. Image of Victorian parliament door



politician in their performances before an audience in the committee room. Another reason for this segregation might be due to the committee deliberations being a rehearsal for the final tabling of the report. As Schechner describes, “the whole workshop-rehearsal phase of performance needs protection and isolation, a well-defined safety net” (“The Future of Ritual” 217), that allows for performers to “play with words, things, and actions” (“Between Theatre and Anthropology” 110) and in which “a technique is developed that will make the performative communication effective” (“Between Theatre and Anthropology” 291). It is in the rehearsal space of the closed committee room that the parliamentarian develop their report that is communicated to the wider parliament and public.

In conclusion, whilst there is some degree of skepticism towards public audiences being admitted to committee meetings, the actors in these encounters have a public audience in mind. This absent yet omnipresent public audience shapes the behavior of the parliamentary actors in their performance of scrutiny. In other work, we have pointed to frequent recourses to actual or imagined ‘publics’ in debates on human rights impacts of legislation and how these serve to remind legislators that publics hold an interest in these debates as they are affected by them (Mulcahy and Seear, “Playing to the Gallery”). However, given that the public is a diverse audience, it can be difficult for parliamentary actors to weigh up their competing demands when performing scrutiny.

We have argued elsewhere that “parliamentary human rights scrutiny committees need to open doors to people [...] and bring them to the table when it comes to scrutinising human rights compatibility” (Mulcahy and Seear, “On Tables” 307). One way of doing this may be through providing “the opportunity for more community engagement, including through calls for public submissions on legislation” (“On Tables” 306). As other scholars have noted, public engagement “can often lead the parliament [...] to hear from a more diverse range of stakeholders’, including those that ‘have a firsthand understanding of various legislative schemes” (Grenfell and Debeljak 812). In that way, the public audience can participate in the performance of human rights scrutiny and potentially steer the performance in different directions.

## Conclusion

Thinking through parliamentary human rights scrutiny as performance and adopting a performance lens to analyse this process raises complex questions that might not have been asked were we simply to look at human rights scrutiny reports as instruments. Most importantly, it invites us to dwell on the publics that are audience to and affected by the performance of human rights scrutiny – how they can access and understand these performances, and what obligations the actors in these performances might hold towards their public audiences. We argue that these meetings, comings-together and encounters affect the way human rights assessments are performed. By that, we mean that the factors we have explored – the space in which this legal performance occurs, the experience of the actors, and the different audiences to the performance – affect the way human rights assessments are performed and can shape the resulting product: the scrutiny report that is then presented to the parliament. If this is so, then we contend that parliamentary spaces need to be reconfigured to accommodate and engage public audiences and that parliamentary actors need to be trained to consider the impact of their human rights scrutiny work on public audiences.

Whilst most legal scholars have tended to look at the scrutiny reports themselves, occasionally supplemented with information from interviews with relevant parliamentary actors, we have instead taken a different approach. Heeding the call from Samuels to figure encounter as a work worthy of study, and drawing from performance research from Goffman and Schechner, we have examined the performative factors of space, actors, and audience in parliamentary scrutiny. Examination of the elements of legal performance, we conclude, provides a richer understanding of the parliamentary scrutiny process itself. It exposes the ways in which parliamentary spaces and the actors therein exclude public audiences, and challenges us to think through ways in which public audiences can be better engaged in parliamentary human rights scrutiny.

This approach also raises questions that are worthy of further investigation. For example, Schechner argues that the rehearsal process “plays with performers’ personal life experiences [and that] materials brought into and uncovered by workshops and rehearsals” also have bearing on the process (“The Future of Ritual” 40). With this in mind, we might

question to what degree to parliamentarians' personal life experiences and other materials brought into the parliamentary committee have a bearing on the human rights scrutiny process? This and other questions are beyond the scope of this particular example, but point to the ways in which an examination of the performative dimensions of parliamentary human rights scrutiny can call into question established practices.

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## Notes

- 1 We note that it appears Goffman uses the term 'facts' to refer to aspects of activity.
- 2 The Committee membership can be found at Parliament of Australia, "Parliamentary Joint Committee on Human Rights – Committee membership".
- 3 In Australia, the term 'party room' is uniquely used to refer both to the room in which members of the parliamentary group (a political party or coalition of political parties) meet and the parliamentary group itself.