The Upper House Question

South Australian Bicameralism in Comparative

Perspective

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Contents

Abstract

This thesis presents an examination of bicameralism as it operates in Australia. The specific focus is the parliament of South Australia, where the existence of the Legislative Council recently came under threat. Prior to the 2006 State election, the Premier of South Australia, Mike Rann, announced that, concurrent with the 2010 State election, a referendum would be held at which the people of South Australia would be able to decide the future of the Legislative Council. They were to be presented with three options: the retention of the Legislative Council with no changes made; a reduction in the size of the Legislative Council from 22 members to 16, and a reduction in the term length served by members from eight years to four years; and finally, the abolition of the Legislative Council (the stated preferred position of Rann). The Government backed away from this commitment in 2009, instead seeking only the reform of the Legislative Council, as outlined in the second option above. At the time of writing, the Bill to enable the referendum has been defeated in the Legislative Council, and so the referendum was not held concurrent with the 2010 election. Rann has indicated that he will not back away from Legislative Council reform though, and so this remains a live issue.

The thesis considers the nature of Westminster-style bicameralism, as is practiced in South Australia, by canvassing its development in South Australia, as well as in several other parliaments, namely: the parliament of the United Kingdom, in which this form of bicameralism originated; the parliament of Canada; the parliament of New Zealand; and the other Australian parliaments. By examining these parliaments lessons about the development and nature of Westminster-style bicameralism are drawn. The methods of composition of upper houses are examined. It is concluded that the most effective upper houses are filled by a different method than their respective lower houses. It is also concluded that the most effective upper houses are those that enjoy the popular legitimacy conferred by election, which helps them to justify their scrutiny of the government of the day. The position of upper houses as 'houses of review' is detailed, with upper houses serving to fill a void left by the iron-clad executive dominance of lower houses, leaving them unable to fulfil their traditionally theorised roles as guardians of responsible government. Upper houses do not ensure responsibility in the way that was theorised for lower houses, that is they do not as a rule possess the legitimate power to formally sanction a government. Instead, by scrutinising government activity and legislation, they provide accountability, by exposing errors, corruption and malfeasance.

Finally, in light of the preceding studies, the thesis returns to the Legislative Council of South Australia, concluding that the Legislative Council is a valuable part of the South Australian parliamentary system, but one that could benefit from some suggested reforms.

Declaration

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The following conference paper appears in slightly modified form as Chapter Eleven of this thesis:

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Introduction

This thesis is about the nature and continued utility of bicameralism in the Westminster system of parliamentary democracy, and the evolution and distinctiveness of the type of bicameralism that has become characterised as "Australian bicameralism." The specific focus is on the parliament of South Australia, though the focus is not limited only to South Australia. To better illuminate the workings of, and variations in, parliamentary design, the parliaments of the other Australian states, the Australian Commonwealth parliament, the New Zealand parliament, the parliament of Canada, and the parliament of the United Kingdom will be also be examined.

Bicameralism is a generally understudied institution. Upper houses are perceived to be less interesting than lower houses. Except in times of extreme constitutional crisis they have no hand in determining the government of the day, which is always formed in the lower house. Oftentimes they are possessed of less power than their respective lower houses, and thus do not influence the development and passage of legislative programs to the same degree as lower houses. In some cases, even when upper houses are possessed of a considerable amount of power, they are loathe to use it for fear that using their power would expose them to accusations that they lack legitimacy. Such upper houses are frequently accused of being undemocratic relics, hold-overs from a time when the rich sought to preserve the status-quo from the reach of the average voter, concerned that too much democracy might flow from lower houses. Upper houses are also generally less reported by the media, who can find their proceedings arcane and irrelevant to the day to day political debates and machinations.

There is not a great deal of scholarly research performed on upper houses, especially on Australian upper houses at a state level. What research that exists tends to examine specific features of upper houses, or their relationship with lower houses. This thesis presents a holistic view of Australian upper houses, particularly

the Legislative Council of South Australia, by synthesizing such research as there is, and by making comparisons and contrasts with comparable parliamentary systems in the rest of the world.

Bicameralism is the oldest form of parliamentary design in the Westminster system. From the time that those who would advise the British monarch divided themselves into the Lords and the Commons, the parliament at Westminster has been bicameral. This form of parliamentary design was imported to Australia with little question or thought for the adoption or invention of a different system. Each of the colonies began with a Legislative Council, which upon granting of responsible government became the upper house of their parliaments, with a House of Assembly, or Legislative Assembly, as the lower house of parliament. The Commonwealth parliament consists of the House of Representatives as the lower house, and the Senate as the upper house. Queensland in 1922 became the first, and so far only, state to abolish its Legislative Council, since then it has been the only state in Australia not to have an upper house. Since the abolition of the Queensland Legislative Council, the Lang Government attempted to abolish the New South Wales Legislative Council in 1926, and for much of the twentieth century unicameralism was the official policy of the Labor Party. The institution of bicameralism has, however, proven to be very resilient. It has also proven to be highly adaptable. The Legislative Councils of the colonies began their existence as inhibiting forces on any overly hasty or radical expressions of democracy that may have emanated from the lower houses. This inhibitory role was felt to aid in the maintenance of governmental and social stability. The practical effect was that these early Legislative Councils served to protect the status of the wealthy elite that served in them. The Councils have now all evolved into fully democratically elected bodies that are arguably more representative than the lower houses of their respective parliaments (with the notable exception of the Legislative Council of Tasmania).

So why examine the state of bicameralism in Australia, and why specifically examine the South Australian Legislative Council? The reason is that South Australia was awaiting a constitutional referendum that had the potential to weaken the effectiveness of its Legislative Council. An outline of the announcement of the referendum, and the reasons for which it was announced, will now be undertaken. This will provide background detail of the reform that prompted the discussions that comprise the remainder of this thesis.

The announcement of the referendum

Mike Rann made the announcement that a referendum would be held to determine the future of the Legislative Council on the morning of 24 November 2005. The *Advertiser* (Adelaide's only daily newspaper) ran a front page headline stating: "Rann to call referendum for 2010; ABOLISH THE UPPER HOUSE." (*Advertiser,* 24 November 2005). The article went on to report that the referendum would present voters with three choices: 1) retention of the Legislative Council with no changes; 2) a 'reform' option consisting of a reduction in the size of the Legislative Council from 22 MLCs to 16 MLCs, and a reduction in the terms served by MLCs from eight to four years; and 3) abolition of the Legislative Council. This presented a problem for Rann. He announced a referendum plan that is unconstitutional. The *Constitution Act 1934* (SA) states in section 10A that a referendum must simply present a Bill to voters, who will vote 'yes' or 'no' to indicate their approval of that Bill. Thus the sort of referendum that Rann initially proposed, in which voters were to be asked to choose between multiple options, could not have taken place under the current constitutional provisions operating in South Australia.

When he made the announcement, Rann made it quite clear that he prefers abolition of the Legislative Council to the other options. He stated:

> [I]t's time to modernise our Parliament so it reflects the demands and expectations of a confident state as it prospers and grows into this 21st century…Let's face it, in my view the upper house has become a relic of a time in our democratic history that is long gone. It is passed its use-by date. (AAP Australian National News Wire; 24 November 2005)

When Rann dismisses the Legislative Council as a "relic", he ignores the achievements of the Dunstan Government in the 1970s, in which the Legislative Council, which at the time could legitimately have been described as a relic, was democratised and legitimised by the reforms made to it, most notably the introduction of proportional representation. These reforms will be further detailed in chapter three.

Why was the announcement made?

The immediate reason for announcing proposed changes to the Legislative Council were to become a matter for debate was to raise a smokescreen to distract attention from the business that the Legislative Council was engaged in, and to discredit it. At the time of the announcement, a Select Committee of the Legislative Council, convened by the non-Labor MLCs, was conducting an inquiry into the Ashbourne-Clarke affair. The Ashbourne-Clarke affair had cast a shadow over the entirety of the first term of the Rann Government, and had at one point threatened the ministerial career of the Attorney-General, Michael Atkinson. Briefly, Ralph Clarke, a sitting Labor MP, was disendorsed by the Labor Party in 1999, after assault charges were brought against him. In 2002, Clarke began legal proceedings against Michael Atkinson, alleging that Atkinson had defamed him in comments that he had made regarding Clarke's disendorsement. The legal proceedings against Atkinson were dropped in November 2002, and after this came the allegation that, through Randall Ashbourne, an adviser to the Premier, Clarke was offered positions on statutory boards in to convince him to drop the charges against Atkinson (Parkin 2003, 602). A Government investigation was launched into the matter, and this cleared Atkinson of any wrongdoing. Ashbourne was charged with abuse of public office (Manning 2004, 288). He was later acquitted during a very short trial, but the Opposition and minor parties in the Legislative Council, dissatisfied with the way the trial was conducted, convened a Legislative Council committee to investigate the matter (Manning 2005, 609-10). On the day that the announcement was made, the Legislative Council was to hear information from an important witness. Given the timing of this committee, only months out from a state election, it is not hard to believe that Rann would have made this announcement to discredit the Legislative Council, and to try and distract attention from the work that it was doing. Furthermore, at the time that the announcement was made, parliament had already been prorogued ahead of the state election in March. The non-Labor members of the Legislative Council had voted to continue the work of the Select Committee regardless.

The other, longer term, reason that saw Rann announce the referendum lies in how he views the relationship between Government, the Parliament and the People. The

comments and actions of Rann and his ministers show them to be believers in the delegate version of mandate theory.[1] After the 2006 election, the *Advertiser* reported comments by the Leader of the Government in the House of Assembly:

> Government Leader in the House of Assembly Patrick Conlon said the ALP had a mandate from the March 18 state election to have its proposals passed by Parliament without major changes or delays.
>
> ``The Opposition should recognise Mike Rann has a very clear mandate to govern,'' he said.
>
> ``This is an opportunity to recognise our right to govern and not to be unnecessarily obstructive.
>
> The warning is clearly aimed at the Legislative Council, which will still be controlled by the Opposition, the Democrats, Family First and No Pokies. (*Advertiser*, 27 April 2006)

Speaking to the House of Assembly shortly after Labor's victory in the 2006 election, in which it won an outright majority in the House of Assembly, Rann referred to "the government's victory at the recent state election and its return to office with a strengthened mandate." (*South Australian Parliamentary Debates*, House of Assembly, 27 April 2006). Shortly thereafter, the Deputy Premier, Kevin Foley, made reference to "[t]he mandate we received at the last state election," when responding to a question regarding police resources. (*South Australian Parliamentary Debates. House of Assembly*, 8 May 2006).

This prescriptive view of mandate theory is not a view that is unique to Rann and his Government. Indeed, it is hard to find a political leader in Australia at the moment who does not to some extent employ the rhetoric of this conceptualisation of the nature of government. An example is provided by John Howard's claim to a mandate after the 1998 election, the so called "GST election." It is useful to contrast this claim to a mandate with comments that Howard had made in 1987, where he disclaimed the existence of a mandate (Mulgan 2000, 318-319). Mandates are usually propounded by Governments seeking to extend and exercise power, and are often denied by Oppositions seeking to limit Government power (Goot 1999, 327, 341; Evans 2005, 11).

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[1] As will be detailed below, there are different conceptualisations of what exactly constitutes a mandate (if such a thing exists at all), however, at its most basic, a mandate is a 'commission to govern' (Emy 1996, 66) that includes the expectation of being able to implement policies over which the previous election was fought.

Whereas under representative and deliberative democracy, the members of parliament are seen to be representatives of the people gathered together to deliberate upon the issues of governance, adherents to the delegate version of mandate theory see members of parliament as delegates of their respective political parties, there to support and legitimise the political agenda of their leaders (Williams 2002, 28). This view of the mandate theory views elections not as events whose primary purpose is to determine the composition of the parliament, but rather as referenda on the policies of the political parties. Whichever of the parties receives a majority of the seats in parliament has thus received a majority of the delegates to parliament, and a right to implement the policy positions that it took to the people. This of course assumes that in a political contest that is dominated by two political parties, and hence two policy manifestos, that even the least known and promoted policies of the winning party have received an endorsement by the people. Even harder to accept is the proposition that all of the policies of the winning party can be considered to have majority support. On this view if there are only two policy manifestos that have a chance of being implemented, it is much more likely that voters, having examined all of the policy promises of the two parties (because of the other questionable assumption that voters are completely rational and perfectly informed) will have picked the policy platform that contains the greatest number of policies that they support. It is inconceivable that every policy in a political manifesto will appeal to more than a handful of people. Thus, for a party to claim that because their party won the majority of votes, that all of their policies have majority support, is clearly stretching credibility (Robinson 1999, 19-20). There is also a flip side to this theory, less readily acknowledged by the politicians who support it. If elections are referenda on policy, by all rights, major deviations from policy taken to the election should not be undertaken until an election has rendered them the same legitimacy as the policies that they have replaced (Emy 1996). Stanley Bach states that this view of the mandate theory removes all scope for compromise in the legislative process. He further concludes that there may be no place left at all for the deliberative process:

> Here is the mandate theory in full bloom. What need is there for any deliberative legislative process at all? The election determines a winner, so the winner – the government – has the right and responsibility, and should have the power, to do anything and everything that it said it would do. The government allows the Opposition to criticize its proposals, but the government would be violating its commitment to the public if it allowed itself to be swayed by the merits of the Opposition's arguments. (Bach 2003, 280)

This view of the mandate theory, echoed by Rann and his ministers, leaves no place for the Legislative Council in the South Australian parliamentary system. What need is there for a second house of parliament? The House of Assembly would suffice, as it does today, as an electoral college to determine the government of the day, and would be able to give legislative effect to the policy program of that government. If there was no scope for compromise, and no scope for the enactment of legislation outside of that proposed in the government's manifesto, then what need would there be for another house of parliament, especially one in which the government is in a minority. To combat this theory on its own terms, members of minor parties in the Senate, another popular target for mandate theory, have developed the concept of mandate further, and have made the claim that the upper house can claim a mandate as well, by claiming that by winning the balance of power position they have been given a mandate to demand policy changes from the Government (Mulgan 2000, 320). This is where the rhetoric of mandates reaches a new level of complexity, and absurdity.

The key problem with the delegate version of mandate theory is that it relies upon the assumption that all voters are well informed on all of the issues of the day, and rationally and clinically examine the policy platforms of the two parties. In short, issues, and only the issues, drive the votes of all voters. The problem is that this has been demonstrated to be false. As far back as 1958 a study showed that issues did not motivate the majority of voters at an election, and another survey has found that the perceived character and personality of politicians has a much greater effect in determining how people vote (Goot, 1999, 6). Voters do not engage in a sober and reasoned comparison of the policy of each party on every issue. Rather, votes are cast based on the general overall impression of competence and ability to govern presented by the parties (Thompson 2005, 10). Furthermore, as outlined above, even if voters are assumed to carefully weigh the policy options presented by the parties, it takes quite a logical leap to make the claim that the fact that someone votes for a party means that they support all of that party's policies, rather than deciding to vote for the lesser of two evils in a policy area about which they are concerned (Robinson 1999, 19-20)

Ultimately, the mandate is a rhetorical device used by those who want to emphasise the power of the Government, to the detriment of Parliament's power to deliberate on and amend legislation.

Who supported the abolition of the Legislative Council?

After Rann announced that there would be a referendum on the future of the Legislative Council, he received vocal support from both the *Advertiser*, the only daily newspaper in South Australia, and from Business SA, the peak business lobby group in South Australia. Writers at the *Advertiser* argued that the Legislative Council frustrated the will of the elected government and impeded its mandate, Greg Kelton argued that:

> For too long, the Upper House has frustrated the will of elected governments by refusing to pass or by changing legislation for which that government has a mandate. (*Advertiser*, 24 March 2007).

Business SA had long been calling for reforms that would leave the Legislative Council a much less powerful chamber (see for example Business SA Manifesto – Governance). The chief executive of Business SA was very supportive of the move to abolish or weaken the Legislative Council. He said:

> We will certainly be restating in our policy document, to be released in the election period next year, our position on parliamentary reform, including abolition … Governments are formed in the Lower House representing the will of the people and they should be allowed to exercise that mandate unfettered. (*Advertiser*, 24 November 2005)

The acceptance again of the mandate theory can be seen in the above quotation. This is an understandable position for business to be taking. The ethos of business is efficiency for the sake of profit. Business wishes to be able to achieve the maximum output in the shortest amount of time for the smallest expenditure, thus maximising profit. Indeed, in the Governor's speech in 2006, the referendum to determine the future of the Legislative Council was justified as being a response "to complaints by business over many years that Australia is over-governed" (*South Australia Parliamentary Debates,* Legislative Council, 27 April 2006). Government would certainly be much more efficient if the Premier announced a policy, legislation was drafted, and parliament quickly passed it. But this is not a process that would lead to good government. Democracy is not exclusively or even predominantly about efficiency. The legislative process has been designed to take time, and to take place in public view, so that the public can judge the performance of those members of

parliament that they have elected. The legislative process has to serve the public interest, and not the interests of narrow sectional minorities whose interests might conflict with the public interest. Whilst an environment in which legislation was passed quickly and efficiently might be one that is conducive to the operation of business, it is not one that is conducive to good government.

Who opposed it?

The opposition to the abolition of the Legislative Council came from the Liberal Party, as well as the minor parties and Independent members represented in the Legislative Council. There was support, however, amongst Family First and the Democrats for reducing the term lengths of MLCs from eight to four years (*Advertiser* 26 November 2005). The support for four year terms from members of the minor parties was understandable, as it would improve their chances of gaining Legislative Council seats.

Abolition deferred

When it became clear to the government that there was no groundswell of public support for the aboilition of the Legislative Council, emphasis was shifted to the pursuit of the 'reform' option, under which the size of the Legislative Council, and the term length served by MLCs, would be reduced.

The Government put the Bill to enable the referendum on the Legislative Council before parliament, and whilst the Bill was passed by the House of Assembly, the Opposition, minor party and independent members of the Legislative Council banded together to defeat it when it arrived in that chamber. The Government has, for the time being, been defeated in its plans to weaken or abolish the Legislative Council.

The Government has not changed its opinion on the Legislative Council, but has been delayed in fulfilling its goal of reforming the Legislative Council. Thus, the issue of the role and nature of the South Australian Legislative Council remains a live one, and one that it is likely that the Government will pursue again and it is therefore an issue that still requires close scrutiny and attention.

Thus, the Legislative Council should become the topic of debate and investigation. This thesis will demonstrate that the Legislative Council of South Australia remains an important part of the South Australian parliament, through its capacity to enhance the diversity of parliamentary representation; to improve the quality of legislation passed through the parliament; and to hold the government accountable and act as a house of review.

The debate surrounding the continued utility of the South Australian Legislative Council is only the most recent manifestation of a debate that has been ongoing for many years in Australia regarding the place and continued utility of Australian bicameralism. The Howard Government gaining control of the Senate in 2005 after the 2004 election sparked a debate around the effects that this would have on the role of the Senate and its ability to continue to hold the government of the day to account. The subsequent passage of the controversial WorkChoices legislation, which many believe to have doomed the government to defeat at the 2007 election, certainly seems less likely to have occurred in a parliament where the Government had not had control of the Senate.

In this thesis I also contend that self-interest has been a powerful factor in shaping bicameral development, though not always in the ways intended by the instigators of change. Obviously, in the cases of the Legislative Council of Queensland and the Legislative Council of New Zealand, the self-interested behaviour is easy to decipher. In both of these jurisdictions there were political parties that clearly stood to benefit from the abolition of the upper houses of the parliaments in which they served, and, through skilful political manoeuvring, they were able to achieve the abolition of these second chambers. The self interest in the case of the evolution of bicameralism in the Australian parliaments (other than Queensland) involved breaking the stranglehold of conservative parties, in the case of the States, or seeking to maintain a higher level of representation than would have been granted without reform, as in the case of the Senate. In the States, undemocratic methods of composition kept the Labor party from winning many seats in the Legislative Councils, and so even when they held substantial majorities in lower houses, they could be stymied by the members of the upper houses. Thus, the reforms that the various Labor Governments engaged in sought to rectify this imbalance, with proportional representation emerging as the compromise solution to which all sides could agree. The prior adoption of proportional representation by the Senate would have aided its adoption as the reform option of choice at a State level. The adoption of proportional

representation in the Senate came at a time when the Chifley Government realised it would lose office. By instituting proportional representation for the next Senate election, it felt that it could avoid the so-called "windscreen-wiper effect" of the then current electoral system (whereby majorities in the Senate swung dramatically one way and then the other) and maintain a majority of the seats in the Senate, which could then be used to frustrate the incoming Menzies Government.

Thus, no-one really intended for the upper houses to become the houses of review that they are today, and yet it was virtually inevitable that they would become so. Another contention that I will demonstrate in this thesis is that the review role performed by upper houses does not need to stem from any higher motives on the part of politicians, but rather that upper houses are able to channel politicians' desire to effect legislation that benefits their supporters, and to gain office, into good outcomes for the public at large.

There is increasing belief that the proper role for an upper house should not include it possessing the ability to block supply to a government. This is a view that is increasingly adopted by both politicians and by academics who study parliamentary design. In part, such a belief has been inspired by the Constitutional Crisis of 1975, when the Governor-General, Sir John Kerr, dismissed Prime Minister Whitlam from office after he was unable to secure the passage of supply through the Senate, which contained a majority of Senators hostile to his Government. After this crisis, there have been a number of calls for the power of upper houses to reject financial legislation to be either severely curtailed, or removed entirely. In this thesis, I wish to challenge this position. I argue that denying upper houses the capacity to express an opinion on the spending plans of a government fundamentally undermines the role of review that upper houses are increasingly expected to play. To review the actions of a government effectively it is required that all areas of government administration be open to review, and review is only effective if it is coupled with real sanctions. As one of the major threads of argument in this thesis stipulates that over the course of their evolution in the latter part of the twentieth century, upper houses have become strongly democratic chambers, possessed of at least equal, if not greater, levels of democratic legitimacy to their respective lower houses, it seems counter-intuitive to then deny those same upper chambers the power to scrutinise effectively the most significant area of a government's yearly operations, its Budget.

The first chapter of the thesis undertakes an examination of the historical origins of bicameralism in the Parliament of the United Kingdom. This was the parliament that most inspired the development of the Australian parliaments, as well as those of Canada and New Zealand, and so to gain a better understanding of all of the parliaments examined in this thesis it is necessary to analyse the forces that shaped the development of bicameralism. In many ways the story of bicameralism has been the story of adaptation and the resistance to adaptation. This chapter illustrates the tension between those who sought to defend the traditional role of upper houses and those who believed upper houses needed to change, as the growing power of the House of Commons lead it into conflict with the House of Lords. By the end of the chapter, the basic formulations and justifications for these positions have been identified and discussed.

The second chapter of the thesis considers the question of the decline of responsible government. Responsible government is the shorthand way of describing the system of accountability that is supposed to be ensured by the parliament, specifically the lower house. Responsible government sees the parliament as being supreme, with the executive serving at the pleasure of the lower house. In this manner, a chain of responsibility is constructed, with the executive being responsible to parliament, and the parliament being responsible to the people through periodic elections, and thus an indirect line of accountability existing between the people and their government. Under the theory of responsible government, parliament will monitor the performance of the government of the day, and if that government is found to be acting inappropriately, then parliament, through the mechanism of the vote of no confidence, will remove that government from office. The control of financial legislation by the lower house of parliament is seen to be the lynch-pin of responsible government. The theory goes that by forcing the executive to have its Budget passed through the parliament on an annual basis, that parliament retains the right to refuse passage, and thus cause the collapse of the government (a no confidence motion is a short-cut way of refusing the passage of supply, as it indicates that next time supply bills are presented, they will not be passed). As this chapter details, whilst the theory of responsible government describes a good system for keeping governments accountable, it no longer exists in practice (if ever it truly did). The lower houses of parliament are dominated by the government parties, which, due to party discipline, dare not act against the executive drawn from their party. Thus, there needs to be a second body, less dominated by the executive, that serves to impose accountability.

The third chapter of the thesis turns to examine the parliament of South Australia. The South Australian parliament, and more specifically the Legislative Council, is the primary focus of the thesis. This chapter examines the history of the South Australian parliament, from its foundation, until the announcement of the referendum in November 2005. The history of the South Australian parliament contextualises the current debate surrounding the nature and purpose of the Legislative Council. The chapter outlines the evolution of the South Australian parliament from its inception as an appointed advisory body to the Governor, to the granting of responsible government and the introduction of an elected parliament, with a hefty property qualification for the Legislative Council. The original rationale for the Legislative Council, as a brake on and a counterpoint to the more popularly democratic House of Assembly, is elucidated. The battle to democratise the Legislative Council is then examined. This serves to illustrate the difficulty that can be faced by those wanting to reform parliaments in the face of entrenched interests opposed to change. The reform of the Legislative Council is examined in detail to show how the adoption of proportional representation was not a solution completely ideal for any of the parties involved in its implementation, and is something that since its inception has caused much consternation for the major parties.

The fourth chapter of the thesis returns to the United Kingdom, to examine the bicameral evolution of the parliament at Westminster into the twentieth and twenty-first centuries. The Westminster parliament throughout most of this period served as an example of weak bicameralism. In 1911 the House of Lords was stripped of its power to block supply, leaving it with the power to only delay legislation. From this point, until the end of the century, the House of Lords served little purpose in day to day legislating. Though it remained possessed of the power to delay legislation, this power was used exceedingly sparingly. This led to the House of Commons becoming the unchallenged repository of political power, and the government of the United Kingdom being termed an 'elective dictatorship' (Hailsham, cited in Prasser, Nethercote and Aroney 2008, 1). The advent of the Blair government saw some limited reforms to the House of Lords, with it being transformed into a majority appointed body. The Lords still lag well behind the example of Australia's various upper houses in terms of its powers and composition, and while currently more active in the legislative process than before this recent reform, serves as an example of a largely ineffective upper house.

The next case study that is engaged in is the Parliament of Canada, and this comprises chapter five of the thesis. Founded at around the same time as the colonial parliaments in Australia and the New Zealand parliament, the Canadian parliament provides an important case study as the Canadian Senate is a truly undemocratically composed upper house with strong powers. Since its inception, the Senate of Canada has been filled by government appointment. Thus, its level of democratic legitimacy is low. The situation frequently arises that an incoming government faces a hostile majority in the Senate, which it transforms over the course of its period in office into a majority of its own party, which then faces a new government when it wins office. This undemocratic composition is coupled with powers greater than those found in Australian upper houses. Whereas Australian upper houses are unable to amend appropriations legislation, the Senate of Canada is possessed of the power to do so. The Canadian Senate provides a powerful example of the effect that legitimacy has on an upper house's ability and desire to wield the power that it possesses. The Canadian Senate does not enjoy much legitimacy, and so rarely employs the powers at its disposal. When it does, as occurred in the 1980s, the result is frequently public condemnation of the Senate's actions.

Chapter Six examines the parliament of New Zealand. As the only other case study of a parliament in which the upper house has been successfully abolished, comparisons can be drawn with the process of abolition in Queensland. The parliament of New Zealand provides further comparison with Queensland, in that it experienced the same level of executive dominance that was (and still is) experienced in Queensland. However, New Zealand in 1993 decided to adopt a form of proportional representation to elect the members of its unicameral parliament. Given that one suggestion that is often made is that the merits of bicameralism could be gained in a unicameral parliament through the use of proportional representation, this move to proportional representation by the New Zealand parliament provides a useful case study to see if it really does inculcate the same culture of scrutiny and review as that found in a house of review.

Chapter Seven follows the history of the parliament of Queensland. Queensland is the only State in Australia that has made the transition from bicameralism to unicameralism, with its Legislative Council being abolished in 1922. The process of abolition is detailed. It was quite a complex process, and worth studying as it shows the difficulty in abolishing an upper house even in a State where the upper house

was not constitutionally entrenched. The history of Queensland Government over the next three quarters of a century is examined. Queensland became renowned in the late 1980s for the corruption in government that was uncovered by the Fitzgerald Commission. This and other undemocratic practices of successive Queensland Governments are canvassed, providing an example of what can happen when a government is in a position in which it can govern with few institutional constraints. The reforms engaged in after Fitzgerald handed down his report are examined and evaluated, and it is suggested that the restoration of an upper house might have been the most effective reform that could have been instituted.

The eight chapter of the thesis examines the evolution of the other Australian State parliaments, as well as the parliament of the Commonwealth. These parliaments share many similarities with the South Australian one, and by examining the way in which they evolved, and the reforms that were implemented within them, a better understanding of the evolution of Australian bicameralism can be reached. The evolutionary trajectories followed by Australian upper houses have been quite similar, though more by accident than by design. Following the adoption of proportional representation for the Australian Senate by the Chifley Government in 1948, for the short-term goal of maintaining Labor's Senate representation, each of the mainland State parliaments have subsequently adopted proportional representation for their upper houses. Again, the adoption of proportional representation was generally done not to institute a system that would improve the level of accountability by providing for a house of review, but to improve the position of the Labor party in the upper house, at the expense of conservative parties. As this chapter will show, the only upper house arguably reformed for reasons other than these was that of Victoria, which was starting to look out of place as the only mainland upper house not to have adopted proportional representation. As the chapter will detail, though, the reforms to the Victorian Legislative Council have rendered it the least able house of review of the mainland parliaments.

Thus, this first part of my thesis presents historical detail on a number of upper houses. Whilst these case studies are canvassed quite extensively, this level of detail is necessary in order to provide an appropriate factual base on which to build an analysis of specific aspects of bicameralism, which appears in the next part of the thesis. The examination of the case studies reveals the fact that on the one hand, upper houses are constantly embattled institutions. Each of the upper houses in the case studies has faced demands that they be abolished, and in the cases of

Queensland and New Zealand, those demands were successful. At the same time, upper houses are very resilient institutions, whose level of public support is generally higher than the support afforded them by politicians. The case studies run the gamut of upper house design, from the weak House of Lords; to the Canadian Senate (which is powerful but at the same time cannot employ its powers due to a crippling lack of legitimacy); and to the parliaments of Australia, which are both powerful and democratically composed.

The subsequent chapters of the thesis then move to address specific aspects of bicameralism. The first area that is addressed, in the ninth chapter of the thesis, is that of the methods of composition that are employed to fill upper houses. The various methods of composition, from appointment, to single member preferential and non preferential systems, to systems of proportional representation, are analysed. The analysis focuses on the type of upper house that each of these methods of composition would create, and which method of composition leads to the most effective house of review.

The tenth chapter details the way in which upper houses serve their accountability role, by developing the concept of a house of review, which has become the accepted role of a modern upper house. Review encompasses both the review of legislation, and the review of the actions of government. The review of legislation is more than just a simple checking of the legislation to ensure that it is internally consistent and not plagued by drafting errors. The review of legislation also calls for the taking into consideration of views that were not heard in the legislation's initial passage through the lower house. In this sense, review encompasses a review of the purpose of legislation, which can involve changing it to render it more acceptable to a broader range of people and interests. The review of government action is a role that comes with few formal sanctions. Whilst most upper houses have the power to break governments by failing to pass supply, after the events of 1975 this is an option fraught with danger for the upper house in question, and the stability of the political system.

The final chapter of the thesis goes full circle, and returns the focus of the thesis onto the South Australian Legislative Council. The Legislative Council is evaluated next to the desirable characteristics of bicameralism identified from the preceding chapters and case studies. Whilst the Legislative Council is found to be a good example of Australian style bicameralism able to serve a role both in enhancing the legislative

capacity of the South Australian parliament and the level of scrutiny afforded to the government, it is not a perfect institution. This final chapter then proceeds to offer some ways in which the Legislative Council could be reformed to enhance its role as a house of review. It, in effect, offers a reform program for the Legislative Council that could be adopted by a party truly interested in reforming the Legislative Council to improve its effectiveness, rather than one that engages in false 'reforms' designed only to limit the Council's ability to review the legislative process and the government.

Chapter One – The Theory of Bicameralism

This chapter will present an overview of the general theory of bicameralism, detailing the characteristics that can be found in bicameral systems. Every bicameral system is different, and no bicameral system will possess all of the characteristics that are canvassed in the following sections. What this chapter shows is the range of potential that exists in bicameralism as a form of institutional design.

In this chapter an examination of the most common criticisms of bicameralism is also undertaken. The criticisms of bicameralism seem to come from the position of its incompatibility with a majoritarian conceptualisation of democracy, and so this construction of democracy, and the sort of legislature that it engenders, will also be examined. Finally, the principles that should ideally be embodied by a parliament in a liberal democracy will be presented.

The two models outlined will then serve to better illuminate the real world examples that will be elaborated upon in the subsequent chapters that comprise this first part of the thesis. These real world examples will be used, in turn, to examine (in the second part of this thesis) some of the specific characteristics of bicameralism detailed in the present chapter, in order to see if and how the practice of bicameralism lives up to the theory.

The quality of parliament in a liberal democracy should be judged by the ability of the parliament to embody liberal democratic principles. For the purpose of this thesis I contend that the ideal parliament will embody the following principles: one vote, one value; majority rule, with minority consent; institutions to express opposition to the government; responsible and accountable government; legitimacy; checks and balances that express the idea of limited government; representativeness; and political parties which are able to compete freely with each other for the organs of state power.

To begin, an historical examination of the development of bicameralism will be undertaken.

Bicameralism: the historical roots

Modern bicameralism has as its root the medieval social order. Medieval societies across Europe possessed rigid social hierarchies. The nobility and the commoners would meet to contribute revenues to the kings, and over time, these meetings became formalised as parliamentary institutions (Patterson and Mughan 1999, 2). By examining the evolution of bicameralism in England, the most pertinent example, we can see more clearly how this process occurred.

The origin of the English Parliament is hard to pin down, but a convenient date that is often used is 1265. This is when the parliament that was summoned by Simon de Montfort, included for the first time elected representatives of the boroughs and the cities. Representatives of the shires, the nobility and the higher clergy were also summoned, as they had been for previous parliaments. In 1295 representatives of the lower clergy also began to be summoned to this parliament (Preece 2000, 71). By the end of the thirteenth century the parliament was exercising a role not merely as a body that existed to raise and contribute revenue to the royal coffers it began also to exercise legislative powers, passing a series of motions that became statutes (Longford 1988, 31).

The groups summoned were similar to those being summoned in other European countries, with the exception that they met as a single body, prior to their later division into the House of Lords and the House of Commons. The maintenance of the class separation that helped to cause the division into the House of Lords and the House of Commons was aided by the custom of the King to hold plenary sessions of earlier assemblies. These plenary sessions saw the members of the upper classes standing towards the front of the hall, whereas the members of the lower social ranks stood towards the back of the hall (Preece 2000, 71).

The two house system formally originated from the unofficial meetings that occurred between the representatives of the shires, boroughs and cities to determine a collective response when the representatives of the upper classes in Parliament sought from them an opinion on a difficult question. At the time, it was considered

bad manners for a group of people to speak before those who were of a higher social order. Given this, the representatives of the lower classes would select one of their members to go before the representatives of the upper classes, and act as a 'speaker', transmitting the collective decision of the lower class representatives (Preece 2000, 71). The group of lower class representatives formalised their meetings into the House of Commons, with the representatives of the upper classes forming the House of Lords (Preece 2000, 71). This division occurred by 1332, and throughout the century the organization and formalisation of the House of Commons grew. By the end of the century it had entirely separated itself from the Crown and from the House of Lords, and had appointed a Speaker, who had the duty to transmit the decisions of the Commons to the King, and had the unrestricted right to do so (Longford 1988, 32).

The formation of a tricameral legislature, in which members of the clergy may have constituted a third house, was prevented by the actions of the clergy. The clergy withdrew their attendance from the early parliaments and taxed themselves separately. The situation remained thus for 200 years, until the members of the clergy were forced to rejoin the parliament. They became members of the House of Lords, as Lords Spiritual (Preece 2000, 72).

Thus the bicameral parliamentary system that has over the course of its existence influenced the formation of so many other legislatures, itself originated as a means with which to enable the members on different levels of the social hierarchy to meet and raise revenue for the King. The entrenchment of this hierarchical system became one of the major rationales for the existence of bicameralism, though as time progressed it has been supplanted by more equitable reasons, such as increased representativeness and legislative review.

Characteristics of bicameralism

Bicameral legislatures can possess some or all of a range of characteristic features. These characteristics can be divided into two main areas – representation and the ability to act as a House of Review and provide checks and balances. Both of these areas will be considered in turn. Firstly, though, the role of the theory of mixed constitutions will be examined, as this contextualizes the changing representational roles of upper houses.

Mixed constitutions and bicameralism

To properly contextualise the development and role of bicameralism in the parliament of Westminster, and of those parliaments that derived from it, an understanding of the constitutional settlement operating in Britain in the eighteenth and nineteenth centuries is required.

The British political system at this time contained a fusion of proto-liberal democratic ideas, and classical ideas of the mixed constitution. The House of Commons had gained ascendancy over the House of Lords, with Robert Walpole becoming what is now recognised as the first Prime Minister of the United Kingdom. He did so from the House of Commons, and thus commenced the process of shifting executive power from the monarch to members of the parliament (Wicks 2006, 53-59). Thus, the idea of popular rule as the basis for parliamentary sovereignty was becoming recognised.

At the same time that this was occurring there were aspects of the constitutional system that were decidedly undemocratic, namely the House of Lords and the monarch (and whilst technically the Lords and Monarch still occupy the same places in the constitutional order today, their powers have been significantly curtailed). In this next section I will outline the concept of a mixed regime, as the English constitution was at the time, and how this was felt to contribute to political stability and constitutional longevity.

The classical idea of a mixed regime was adopted to argue for a constitution that was not entirely democratic. The idea of a mixed regime, where various kinds of rule were combined, was an idea developed from the writings of Aristotle and Polybius.

Aristotle's *Politics* advances an argument for a mixed constitution to temper the extremes of a single style of political rule (IV, vii-ix). He argues for the blending of oligarchic and democratic elements to form a constitutional system that he terms 'polity,' and argues that such a mixed constitution should be recognisable as containing elements of both oligarchy and democracy, yet also be recognisable as neither. This duality suggests that the constituent elements should be so thoroughly mixed that no constitutional element is recognised as purely oligarchic or democratic (IV, 1294b14).

Polybius in his *Histories* (6.3, 3-5) writes:

> Most of those whose object it has been to instruct us methodically concerning such matters, distinguish between three kinds of constitutions, which they call kingship, aristocracy, and democracy…we must regard as the best constitution a combination of all these three varieties.

Polybius advocated the a constitution that combined these different constitutional forms because he believed that the resultant constitution would contain all of the inherent advantages of each constituent constitutional form, but would not contain the disadvantages of each, as they would serve to balance each other and form a sort of equilibrium (von Fritz 1954, 83).

Machiavelli adapted and modernised the concept of the mixed regime, whilst retaining the core benefit that a mixed regime was said to present. Machiavelli regarded the most stable political system as one that could respond well to unexpected events. Machiavelli built upon the concepts of Aristotle and Polybius, and his major contribution was to identify more thoroughly that which destroys regimes (McCormick 1993, 892). Whilst Polybius contended regimes went through cycles, ending up in a state of decline, Machiavelli saw regime destruction as an occurrence of chance, and saw mixed regimes as those best able to respond to the varied unexpected challenges that a regime might face.

The synthesis of these three conceptions of the usefulness of a mixed regime is that it promotes stability, both internally, by ensuring that no one constitutional constituent or social grouping gains excessive power, and externally, by improving the ability of the regime to respond to unexpected challenges.

These classical attitudes about the mixed regime persisted into the eighteenth century. The English government in the eighteenth century was composed of elements from each of the three simple forms of government: the King, a single ruler; the House of Lords, the aristocracy; and the House of Commons, a somewhat democracy (Lieberman 2006, 319, 324-325). By maintaining a governmental system composed of these three distinct elements, it was hoped the three elements would act to check and balance each other. The representative elements of the constitution were to be balanced against elements that were less representative (Lieberman

2006, 324-325). Thus, the democratic element of the system, residing in the House of Commons, was seen to be an important element of the system, but was also seen to be dangerous unless it was checked by the aristocracy represented in the Lords, and by the monarch.

Whilst the practical effect was to entrench society's elite in upper houses, resulting in the membership of these chambers being possessed of a great degree of wealth and status, the intent was to preserve a constitution that acted as a brake on excessive democracy, and to preserve the stability of the political order, and hence society as a whole.

Representation

Class-based representation has been on the decline since the early twentieth century. Upper houses still exercise a representative function, though what they represent has changed. Upper houses now can be organised to represent different territorial areas, ethnic groups, and minority interests (Russell 2001, 443). Thus, a thread can still be drawn between those kinds of modern bicameralism that incorporate differing bases of representation into the two houses of parliament, and the advocates of a mixed constitutional form. The representation of different interests in an upper house from those that are represented in a lower house is the aspect of bicameralism that can most contribute to moderation and stability of the bicameral system.

Territorial representation is perhaps the most famous justification for modern upper houses, thanks to the Senate of the United States of America. The Senate is comprised of 100 members, with each of the 50 states of the union providing two Senators (Patterson and Mughan 1999, 10). When Australia's Senate was being designed the constitutional framers borrowed from the American constitutional system, and so we now have a Senate in which each state provides an equal number of Senators. Bicameralism thus coexists well with federalism, and an overwhelming majority of the world's federations have a bicameral legislative structure (Patterson and Mughan 1999, 10). However the effectiveness with which territorial diversity is represented in upper houses is questionable (Russell 2001, 445). Party politics is likely to intrude, causing members of upper houses to vote on party lines, rather than as representatives of a particular geographical area. There are, however, upper

houses with a territorial basis for representation in which members are required to vote as a territorial block. Examples of this include the upper houses of Germany and South Africa (Russell 2001, 445).

Upper houses can also allow for a greater diversity of political and social interests to be canvassed than are in the lower house, increasing the quality of democratic representation (Griffith and Srinivasan 2001, 14). The method of composition for upper houses is almost always different to their respective lower houses (Preece 2000, 82). In many upper houses, minor parties that are unable to secure representation in the lower house can secure representation in the upper house, for example due to the operation of proportional representation. An upper house that contains members of minority groups can provide for the operation of a type of consensus politics that is not found in majoritarian lower houses (Russell 2001, 446).

House of Review and checks and balances

The legislative powers of upper houses vary. Often upper houses possess only the power to delay legislation that has been passed by the lower house: however, in some cases they possess the ability to veto such legislation. In most cases upper houses have very limited powers over financial legislation (Russell 2001, 446).

Upper houses, by their nature, provide the opportunity for legislative redundancy. In a bicameral system, for legislation to be enacted, it needs to pass through both houses. As established previously, the composition of an upper house in a given legislature will generally be different than its companion lower house. This allows for the performance of the classic function of an upper house – providing a different perspective regarding the business of the lower house (Russell 2001, 450). Whereas in the past this perspective was a generally anti-democratic position insofar as it sought to resist many of the changes that flowed from the more democratic lower houses, incidentally at the same time preserving the status and wealth of the social elite, now the perspectives of different parties and issue groups can be brought into government business.

Upper houses are well suited for this process of legislative review for another reason: members of upper houses generally have more time for legislative scrutiny than

those of lower houses. Members of upper houses tend to have fewer electorate duties than do members of lower houses (Russell 2001, 451), either because they are appointed to the upper house and hence do not have an electorate, or they are elected on a system of proportional representation. This leaves them with time to perform the sort of detailed scrutiny of legislation that cannot be performed by the members of the lower house. This includes the ability to develop committee systems to which legislation can be referred in which detailed scrutiny can be conducted (Russell 2001, 452).

This requirement for double passage of all legislation can allow for errors or problems in legislation to be found. The need for a second house to pass legislation also helps to slow down the legislative process. This is important as it allows for a period of public review to take place whilst the legislation is in passage through the upper house. This provides for the expression of public opinion, and thus for the better consideration of public opinion as it relates to the legislation in process (Patterson and Mughan 1999, 13).

Upper houses tend to possess less direct power over the executive than do lower houses. The basis of parliamentary systems is that the executive retains the confidence of the parliament. This has come to mean in practice that they must retain the confidence of the lower house. Upper houses cannot, as a rule, engage in a confidence vote (Russell 2001, 447) as they do not determine government. Paradoxically, this lack of a confidence vote can have a positive effect. It can create a more independent mindset in the upper house, as members of upper houses do not have to worry about their votes causing the downfall of a government. This, coupled with the greater diversity of representation and the possible lack of a government majority in the upper house, makes upper houses much less creatures of the executive than the lower house (Russell 2001, 47).

This independence from the executive can lead to a lessening of party discipline. In lower houses party discipline is necessarily strong. If the executive cannot maintain control over its backbench members, then it will not last long in office. This necessitates backbench unity in the lower house, but this unity prevents the members of the governing party of the lower house from performing a scrutiny function on the executive and voting in a way at odds with the executive. The members of the upper house are less constrained by the need to maintain party discipline, as there is less need for the maintenance of discipline due to the lack of

the ability to hold a confidence vote. This leaves even the governing party members of the upper house in more of a position to provide scrutiny of the actions of the executive (Russell 2001, 447).

The benefits of Bicameralism

There are several benefits that can flow from bicameralism. Meg Russell (2001, 453) lists the following as benefits: the independence that the upper house holds from the executive of the day; the consensus policy making that occurs from the fact that two houses have to pass legislation; and a closer scrutiny of the actions of the executive, as well as a closer scrutiny of the legislation passed by the legislature. To this list I would add the compound benefit to public engagement that flows from a diversity of representation: a greater diversity of views being represented in public debate and the added prominence that particular issue groups are afforded by representation in the legislature, and thus the greater potential for members of the public to engage with a politician that represents their particular point of view.

The effectiveness of bicameralism is contingent upon the existence of certain characteristics. To be effective, a second chamber needs to have reasonably strong powers, a composition that is in some way different to that of the lower house, and to be perceived to be legitimate by the public (Russell 2001, 455). The absence of these characteristics each in some way damages the effectiveness of an upper house.

Criticisms of Bicameralism

Bicameralism as a form of legislative design is, unsurprisingly, not without its critics. There are two major bases for criticism: the practical basis, and the philosophical basis. The criticisms of those who criticise bicameralism on a practical basis revolve around matters of efficiency. The big practical danger presented by bicameralism is that in a system where the upper house has the power to block legislation, legislative deadlock could occur. This can be ameliorated by the presence of procedures to resolve deadlocks when they do occur, but these procedures can often be time-

consuming, presenting a significant delay to the business of government (Russell 2001, 453).

Practical considerations can also be specific to the legislature in question. In a legislature where the upper house is unelected, it may be seen to lack legitimacy, and therefore arouse discontent and even hostility when it acts to delay or block legislation (though if the upper house is relatively powerless and cannot significantly effect the legislative process then this will engender much less discontent) (Griffith and Srinivasan, 2001, 8-9).

The philosophical argument generally employed against upper houses revolves around conceptions of popular sovereignty and the popular will. The opponents of upper houses generally hold to a kind of parliamentary majoritarianism in which the will of the majority is the will of the people and is expressed most clearly in a single chamber. This is a form of utilitarianism in which the greatest happiness is achieved by empowering the will of the majority, at the expense of the minority (Rockow 1928, 584). The will of the majority is expressed through the party that wins majority status in elections in which there is full adult suffrage. A second chamber then either acts as a duplicate of the first, if it has a relatively similar composition, in which case it is useless, or it acts to divide the will of the people, which, under the majoritarian view of the democratic process should not be done. Under this view, the will of the people cannot have two different outcomes (Griffith and Srinivasan 2001, 9).

The process of delay that can arise from the existence of a second chamber has also been posited as a problem. According to the majoritarian view, since the parliament is elected by the general will of the people, any delay in passing legislation is unnecessary, and will actually delay benefit to the people for whom it is intended (Rockow 1928, 583). Second chambers are dangerous because they may lead to the will of the majority being frustrated. In a lower house constituted on majoritarian grounds, any legislation passed is then in the hands of the upper house, which may contain minority interests, and these minority interests may hold a sufficient number of votes to overturn the legislation passed in the lower house. Thus the minority defeat the will of the majority (Rockow 1928, 585). This is perceived to be highly undemocratic by majoritarians.

The abolition of upper houses is thus commonly argued from a majoritarian perspective. Successfully abolishing an upper house can be a long and difficult

process, and governments that set out to abolish upper houses cannot be assured of success. The practice has developed therefore to settle for less than abolition, by instead acting to reduce the powers, and hence the relevance and legitimacy, of upper houses. The legitimacy of upper houses may be eroded through a modification of the way in which they are composed. For example an elected upper house may be changed to be an appointed upper house (Preece 2000, 75). This would both decrease the legitimacy of the upper house, as it would no longer be constituted by popular election, and it would also increase the control possessed by the government of the day, as it would be able to decide who received seats in the upper house.

The majoritarian parliament

Given that the philosophical rejection of bicameralism canvassed in the last section turns upon a particular conception of the popular will that sees populist majoritarianism as being the best means upon which to design a system of representation, it will now be useful to examine exactly what such a system, in theory, would entail.

The theoretical system that most closely matches this conception of majoritarian democracy is the traditional Westminster model of parliamentary design. At its heart, the Westminster system refers to the system of parliamentary democracy that evolved in, and was exported from, the United Kingdom. It gets its name from the seat of the UK parliament at Westminster. Apart from this, there are few definitions of the Westminster system that are entirely consistent. This is due to the nature of the constitution of the United Kingdom, which remains uncodified. It exists in a collection of statutes and traditions that developed over hundreds of years, and does not then lend itself to easy elucidation. That it is a majoritarian system is, however, commonly accepted.

In his book, *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries*, Lijphart (1984, 4) defines the Westminster system in the following way: "[t]he essence of the Westminster model is majority rule." He sees the Westminster system as being the answer to the who's interests should the government govern for?, the answer being the majority of people. He characterises

this model of democracy as being opposed to a more consensual model of democracy, which sees the answer to the dilemma as being the largest number of people as possible, rather than a bare majority of people, even if that means that overall fewer people will be completely satisfied with any given policy outcome.

Lijphart identifies nine characteristics that comprise the Westminster model. The first of his (1984, 6) characteristics is "the concentration of executive power: one-party and bare-majority cabinets." Here Lijphart refers to a cabinet drawn from one party that holds a majority of the seats in parliament. Thus, the party that will, in ordinary times, possess a moderate majority, will have significantly greater power than the opposition party. The second of Lijphart's (1984, 6) characteristics is "Fusion of power and cabinet dominance." In the Westminster system the executive and the legislature are joined, as the executive is drawn from amongst the legislature. Although the cabinet is theoretically dependent on retaining the confidence of parliament, in reality the parliament is subservient to the cabinet. The third characteristic of the Westminster system is "asymmetric bicameralism" (Lijphart 1984, 7). In the traditional Westminster system the lower house is dominant. The House of Commons has the greater legislative power, the House of Lords merely holds the power to delay legislation. Lijphart posits that a unicameral system of parliament might make for an even purer version of the Westminster system, as it would be a better example of majority rule, but the Parliament at Westminster can be classified as near unicameral because of the comparative weakness of the House of Lords. A "two-party system" is the fourth of Lijphart's (1984, 7-8) characteristics. In British politics there are only two parties that are able to win enough seats at an election to form government, the Labour Party and the Conservative Party. Though there are minor parties, they win few seats in comparison to the two major parties, and the two major parties are able to form cabinets on their own. The fifth of the characteristics (Lijphart 1984, 8) is a "one-dimensional party system." Socioeconomic policy differences are what divide the major parties in the British parliament, and so parliamentary debate revolves around different conceptions of the role of government in regards to such policies. This is also the case amongst the electorate, who vote according to their socio-economic policy preferences. Other differences, such as religious, ethnic, and regional differences, do not feature in the political debate.

The sixth of Lijphart's (1984, 8) characteristics of the Westminster system is that there is a plurality system operating for elections. The members of the House of

Commons are elected via a first past the post system in which the candidate with the greatest number of votes wins, even if this leaves them with less than a majority of votes in the electorate. The seventh characteristic is "unitary and centralized government" (Lijphart 1984, 8). In Westminster at the time of writing, the overwhelming majority of the power resides in the parliament at Westminster, rather than being divided amongst a number of tiers of government (although the devolution enacted by the Blair Government in which some legislative autonomy was granted to Scotland, Ireland and Wales, has reduced, somewhat, Westminster's level of adherence to the Westminster model, although not as much as a move to a true federal system would have (Bogdanor 2001, 1-3)). The eighth of the characteristics of the Westminster system is an "unwritten constitution and parliamentary sovereignty" (Lijphart 1984, 9). The British constitution has not been codified, and exists as a range of separate statutes, accompanied by a range of conventions that have developed over the centuries. The Parliament is not bound to follow any of these rules, conventions can be ignored, and statutes can be changed, though in practice, custom leads to this happening rarely. The final characteristic is "exclusively representative democracy" (Lijphart 1984, 9). All power is concentrated in the House of Commons, where the representatives of the people sit. There is no place for direct democracy, in the form of referendums, in the Westminster model.

This majoritarian model clearly concentrates power in the hands of the political party that wins the majority of the votes in an election. There are some desirable features to such a model. It is simple and easy to understand. If efficiency is held to be desirable, then the Westminster model can be held to be more efficient than a legislature with reasonably strong bicameralism. But as Lijphart points out, there are no formal restraints and checks on the ability of the majority to do whatever it wants (1984, 10). He can point, in the British system, merely to custom and civility to protect the rights of minority groups (Although, again, since the time he wrote the parliament has enacted a statutory Bill of Rights that affords some level of protection to minorities).

Whilst the example of Britain shows an extreme form of majoritarianism which would not fully come to pass in Australia were upper houses abolished (due to the existence of a written constitution that incorporates a referendum process), it is useful to as a conceptual model to illustrate the large degree of power that a government could wield, through its control of a single house parliament.

Conclusion

The remainder of this thesis will seek to identify those characteristics of bicameralism that are desirable for better parliamentary operation. In doing so, both in a practical sense, and a theoretical sense, those parliaments that have been modified from the original Westminster system to include stronger bicameralism will be compared and contrasted with those parliaments that have retained the basic characteristics of the Westminster system outlined above.

Chapter Two – The Decline of Responsible Government

In this chapter I will discuss the nature of responsible government in Australia, and how it can not be relied on as a means of ensuring the continued accountability of the executive. The traditional view of the Westminster system places much importance on the theory of responsible government as the means by which the executive is ultimately held to account by the people, through their elected representatives in the parliament. Yet, there are many problems with this theory. Government dominance of lower houses ensure that these bodies cannot play a formal accountability role, and it is hard to argue that they ever played such an accountability role in Australia. Instead, I will argue that we must now rely on upper houses as the next best means of ensuring executive accountability, through ensuring that governments are forced to provide information to the people, enabling voters to make more considered judgments at election time.

The parliament is the link between the people and those who govern them. Under the parliamentary system that operates in Australia, and in the rest of the case studies, the members of the government are drawn from the parliament. Indeed, this is the cornerstone of responsible government. The theory goes that by locating ministers in parliament, they will be subservient to that body, and parliament will be able to question and scrutinise the activities of ministers. Parliament should have primacy because the members of parliament are the representatives of the people. If ministers are found to be engaging in corrupt practices or mismanagement, or are found in some other way to be deficiently performing their duties, then parliament can act to discipline them. As I will argue, this best case view of responsible government is far from describing the realities of what actually occurs in parliament.

This is an important area of study, because the necessity for parliamentary accountability can be all too easily minimised. The claim that we exist with a system of responsible government acting to provide ministerial accountability can appear valid on the surface, and so can lead people to believe that they do not need to pay

attention to the actions of their government. As the next chapter in this thesis will be a discussion of the contribution made to accountability by upper houses, it is important to show why upper houses have needed to take up this role, and that this is ultimately explained by the failure of responsible government.

Responsible government in theory

Responsible government, as a theory, was articulated by Bagehot, examining the parliament at Westminster between the two Great Reform Acts, the first in 1832, and the second in 1867. These reforms saw the extension of the franchise. The first created an environment in which responsible government was able to work much as the theory suggested it should; the second began the process of its destruction as a means of holding the government to account. Crossman (1963) argues that the period between these two Acts saw a parliament that contained a large number of independent members with no strong ties to any party. Consequently their votes were less able to be influenced by party leadership. On several occasions the government of the day lost votes of confidence in the House of Commons and was forced to resign. This was responsible government working as intended. The problem came, ironically, when the franchise was extended the second time. This greatly expanded the number of voters, and led to the age of mass political parties. Electoral success depended upon being a member of a political party. This was due to the changing nature of political campaigning. As the number of voters expanded, in order to be elected, a candidate had to reach and convince a wider number of voters. This took both more time and, importantly, much more money. Candidates came to rapidly appreciate the resources available to them after they joined a political party. Becoming a member of a political party also allowed them a shorthand way of describing their beliefs. Political parties have set platforms of beliefs, so if a prospective MP could introduce him/herself as a member of a political party, it saved him/her from having to articulate her/his political beliefs to each new voter that s/he met. Concurrent with the increase in the membership of political parties was the increase of the control of those who led the parties. Given that Parliament now contained mainly representatives of political parties, who were reticent to vote against the interests of their party, responsible government was imperiled.

Responsible government is argued to have two facets. The first of these is collective cabinet responsibility. Collective responsibility encompasses the responsibility of the executive as a whole to parliament. If the government is defeated on a motion of confidence, then it is obliged to resign (Sutherland 1991, 95). A corollary to this principle is that of cabinet solidarity. Cabinet solidarity dictates that whatever may transpire in a cabinet meeting, ministers will publicly present a united front. Any minister who is unable to support the actions of the government in public is therefore required to resign from the ministry. Three principles then make up collective responsibility – first that the government is a united body, and succeeds or fails as a distinct group, second that the government speaks with a united voice, and third that the government as a collective takes responsibility for policy defeats, and if defeated on a confidence motion, resigns as a collective (Sutherland 1991, 95).

Individual ministerial responsibility relates to the minister's administration of his/her department. Firstly, it identifies the minister as having legal responsibility for the actions undertaken by his/her department. Secondly, and more importantly for our present study, it identifies the minister as the ultimate repository of accountability for their department's actions in the eyes of the parliament (Sutherland 1991, 96). If the minister is not able to satisfy parliament that they or their department have not engaged in misconduct, then they are expected to tender their resignation. Parliament also retains the option of formally censuring a minister by the passage of a successful censure motion. Again, in these circumstances, a minister is then expected to resign.   Dean Jaensch describes responsible government as constructing a chain of accountability: "public servants are responsible to the Minister, the Minister is responsible to the Cabinet, the Cabinet is responsible to the Parliament, and the Parliament is responsible to the people" (1986b, 107).

Responsible government in practice in Australia

Highlighted in the previous section was the theory of responsible government as it should exist. The reality is quite different, and the reason for this is quite easy to see. The theory of responsible government does not pay enough attention to political parties. Parties are now for most people the gatekeepers to success in political life. The vast majority of the vote that any candidate will receive will come from the party label under which they are running. Given this, when a candidate is successfully

elected to be a member of parliament, they know that they are there because of their party. Their ultimate loyalty will thus lie with their party. If their party happens to be in government, is it then reasonable to assume that they will make a consistent habit of voting against the government. Can it honestly be believed that a member of parliament would seek to embarrass a government of their party by asking difficult and embarrassing questions of a minister in question time? And can it be conceived that a member of the governing party would vote to censure a minister, or vote no confidence in the Government, in any but the direst of circumstances? Conversely, are members of the opposition, who have a vested interest in embarrassing the government, going to objectively and fairly consider the actions of the government, or are they going to move motions of censure and no confidence at times that they believe will prove most politically opportunistic? Party thus defeated responsibility.

In Australia, ministers do not usually resign as a matter of principle. When there has been a mistake made in the department that they administer, a minister has only ever resigned if they are in some sense personally culpable for the mistake. This occurs at their discretion, or the discretion of their prime minister. Parliament has no practical say in the removal of the minister from office. Thus, the responsibility role attributed to parliament in theory does not in practice describe what actually occurs (Weller 2007, 209-212).

Responsible government now mainly serves to describe the logic of government formation. The leader of the majority party or coalition in the lower house forms government, and becomes its head. This is because they can ensure the passage of supply, and hence survive any confidence motions. It can almost be argued then that government is formed on the basis that it will be able to successfully resist parliamentary sanctions.

Jaensch (1986b, 125-126) postulates that responsible government has not vanished entirely, although he believes that it has deteriorated into a much less useful form. In Australia, political parties hold party room meetings, in which, amongst other things, proposed legislation is discussed. A notable feature of these meetings is that they are held behind closed doors. No publicly available records of these meetings are kept, and so no member of the public can ever be sure of what is discussed in these meetings, and what contribution is made by whom. The public can never see the process of debate over the legislation, it can never know the original intention of ministers, and it can never know which members of the party room sought to modify

legislation, and which were successful. This level of secrecy is obviously undesirable, as it reduces public knowledge, and the ability of voters to make an informed decision at election time. Secondly, it is not hard to imagine it being a not particularly effective way to hold the executive to account. Most, if not all, of the non executive members of the party room (especially in a small Parliament like South Australia's) would like to themselves be a member of the executive one day, and they know that the goodwill of those in positions of power in the party would have a large say in determining whether they reach that position. Therefore, they must balance those ambitions against disagreeing with and potentially embarrassing ministers in front of the rest of the Parliamentary party. It is much better for democracy, and more effective, if members of the executive are held to account for their actions in Parliament, in full public view.

Upper houses and responsible government

The surest demonstration of the need to move beyond the concept of responsible government to ensure government accountability is provided by Australian upper houses. The powerful nature of these upper houses, uncommon in Westminster systems, has led to distortions in the theory of responsible government. Specifically, the ability of Australian upper houses (with some exceptions) to block appropriations legislation is argued to have destroyed the traditional line of accountability in responsible government – that governments are responsible to lower houses by virtue of this house's ability to refuse to pass supply.

There are those who try to defend the traditional view of responsible government in Australia, yet at the same time try to adapt the nature of the Senate so that it fits this view (see for example, Kerr 1978, Barwick 1983). This is problematic, as it leads to two lines of thinking that are both deeply flawed. Under the first line of thinking, upper houses are defended as the true upholders of responsible government, stepping up to fill the void left by the assured government dominance of the lower houses. Under the second line of thinking, upper houses are the reason that there is confusion over the nature of responsible government, and need to be weakened in order to restore the primacy of the lower house as the dominant house of parliament. Both of these lines of thinking revolve around the ability that most Australian upper houses have to

block supply. They are theories developed in reaction to the 1975 dismissal of the government of Gough Whitlam, after the Senate refused to pass the Budget.

Briefly, in October 1975, the Coalition Opposition in the Senate found itself in a majority position, after retirements of Senators had led to the appointment of Coalition sympathising independents to the Senate. The Leader of the Opposition, Malcolm Fraser, decided to use this majority to force the Government of Gough Whitlam to an early election. He declared that the Coalition would not pass the Government's Budget legislation through the Senate until the Government had agreed to call an election. Over the next month negotiations were engaged in, in an attempt to find a solution, but neither Whitlam nor Fraser would give in. Whitlam refused to call an election, and Fraser refused to allow the Senate a vote on the Budget. The Governor-General, Sir John Kerr, eventually intervened, and removed the Whitlam Government from office. Fraser was installed as Prime Minister on the condition that he would secure the passage of the supply bills. The supply bills being passed, Kerr dissolved parliament and called a double dissolution election, which he was able to do only due to the presence of double dissolution triggers (see Kelly 1995, Oakes 1976).

From this crisis then has come an argument that government in the Commonwealth parliament (and by extension of logic, in the various state parliaments), is responsible to both the House of Representatives and the Senate. That is, if the Government of the day loses the capacity to secure supply, it is incumbent upon it to resign. This view can be argued thus – the parliament is required to pass annual appropriations to support the activities of government. The government must secure passage of its supply bills through parliament. If it is unable to do so, then it must resign, as its failure is an expression of the parliament's lack of confidence. The Australian parliament consists of the House of Representatives and the Senate, both of which are vested with the constitutional power to refuse to pass appropriations legislation. Ergo, the government is responsible to both of the houses of parliament. This position has been argued by Kerr (1978), who dismissed the Whitlam government for failure to secure supply, and by Sir Garfield Barwick (1983), the then Chief Justice of the High Court, who advised Kerr upon the course of action that he took.

The flaws with this position are easy to spot. If those upper houses that still possess the power to veto a budget use this power to argue that a government owes to it all of the trappings of responsible government, that is, the need to survive confidence

motions and the need for ministers to resign if censured, then one of two things will happen. Either the upper house would find itself stripped of its power to block supply, or it would become as dominated by the government as the lower houses. The first scenario has already occurred preemptively in some Australian upper houses. Under the second scenario, political parties would go to elections arguing the importance of being given the ability to govern, through the possession of a majority in the upper house. After the election, they would seek to form a coalition with a sufficient number of minor parties that they would be able to pass supply, and so the upper house would turn into a *de facto* lower house, where executive dominance would ensure that the government succeeded at securing the passage of all its legislation. This would seriously undermine any scrutiny function that the upper houses could exercise, and would lead to the diversity of opinion currently represented in the upper houses being, to a large extent, silenced.

Yet, to support the removal of the ability of upper houses to block supply would also bring negative consequences. Stone (2007, 8-9) contends that the removal of the power of upper houses to block supply would weaken them relative to the lower houses, and thus reduce their power to hold the executive to account, and as Reid and Forrest (1989, 331) argue, the ability of the Senate to scrutinise the government is dependent on its ability to threaten the legislative program of the government, whilst balancing this with the maintenance of public legitimacy and approval. Finally, Preece (2002, 143), in a paper examining the financial powers of upper houses, and the effect that they have on governance, observes:

> Abolition of the upper house or drastic reduction in its powers does not seems to have resulted in better economic performance. The United Kingdom, since 1911, New Zealand, since 1950, Sweden, since 1970, and Canada, since 1982, have performed significantly worse economically as compared to broadly similarly advanced economies, than they did before those dates. Meanwhile, countries with powerful bicameral arrangements have consistently been close to the top of the economic ladder: notably the United States, Switzerland, Australia, France, and, since 1945, Germany and Japan.

Stone recognizes though the problem presented by the ability of an upper house to force an election in the lower house through the blocking of supply, and suggests some solutions. Firstly, he suggests that any rejection of supply by the upper house trigger an immediate double dissolution election, after which, were the lower house to pass supply again, it would be considered to have passed the whole parliament.

Second, he suggests that in the event of a deadlock over the budget, government departments be authorised to spend at the rate they did over the last budgetary period (Stone 2007, 8). This second suggestion in particular would reduce the power of the upper houses to force early elections, as it would remove the sense of imminent disaster that currently accompanies the rejection of supply.

Beyond responsibility

In developing a new system of accountability then, we have to accept that there is no way in which Australian upper houses can assume a traditional responsible government role. So, what sort of accountability function can be played by upper houses? Harry Evans, the long time Clerk of the Australian Senate, offered up his opinion on how the Senate can ensure accountability (Evans 1999). Whilst he was referring specifically to the Senate, his idea can be extended to cover upper houses in general. Evans sees the new model of accountability as the executive being made answerable to the people. This is the endpoint of the chain of responsibility detailed earlier. In Evans' view, the executive is rendered directly accountable to the people by the scrutiny of the Senate. Evans states:

> Governments should be accountable to Parliament, that is, obliged to give account of their actions to Parliament and through Parliament to the public. Governments are then responsible to the electorate at election time (Evans 1999).

The Senate uses the powers at its disposal to examine the actions of the government and the departments that it administers, and the actions of individual ministers, looking for any examples of impropriety. If any such examples are found, then they are made public, and the government is challenged to fix them. The outcome of this, as Evans sees, is to render the actions of the government transparent, so that voters can pass a judgment at the next election fully cognizant of all of the facts as they pertain to the actions of the government.

Evans sees this as a less effective means of ensuring the accountability of the executive than the traditional model of accountable government, yet it is the only one

that has is now practicable (Evans 1999). The quest for accountability is often a battle between the government of the day, who seeks to suppress the ability of the upper house to hold it to account, and the upper house, that can employ its powers to extract information and legislative concessions from the government, without overstepping the boundaries of reasonable action, and risking losing public support (Evans 1999).

The next chapter of this thesis will therefore examine the methods by which upper houses are able to ensure that government is to some level accountable to the people. The means by which government seeks to avoid scrutiny will also be examined. Finally, the study of accountability mechanisms will be concluded by a series of case studies, showing examples of upper houses attempting to scrutinise the actions of the government, or procure legislative concessions.

Chapter Three – The History of the South Australian Parliament

This chapter will trace the development of the South Australian Parliament, from the time of its inception, until the advent of the Rann Government, and the Constitutional Convention that it initiated. This historical overview will serve to illustrate the changing nature of bicameralism in South Australia, and the pressures and struggles that occurred as the Legislative Council resisted all efforts to reform it until 1973, when reforms were instituted that rendered it arguably more democratic than the House of Assembly.

When the South Australian Constitution was designed, the founders accepted the need for a bicameral parliament. The lower house, the House of Assembly, was to be the house of the people, and so the franchise was to be wide. The upper house, the Legislative Council, was to be the house of the property holders. It was seen to be the house where the educated, wealthy, propertied members of society could be represented, and was to exist as a check on the popularly democratic lower house that the founders feared would produce badly designed and hastily conceived legislation that would lead to social instability (Jaensch 1986b, 366). This was typical of the general constitutional design carried out in the Australian colonies:

> The wide franchise granted in the Assemblies was to be balanced
> by Legislative Councils, controlled by those with a stake in the
> country. To accomplish this, the Councils in all the colonies were
> planned to be constitutionally powerful, politically conservative and
> beyond the control of the great unwashed (Jaensch and Bullock
> 1978, 14).

Thus, from the time of its inception the Legislative Council was a very conservative chamber, whose primary interest was in the maintenance of the status quo against radical expressions of democracy, and the privileged position of the landed elite. This conservative composition was aided in two ways. First, following the

introduction of democratic government in the 1850s, the Legislative Council franchise came with a property qualification, which, though quite liberal for the time, disenfranchised the section of the population that was mainly concentrated in the metropolitan areas. The Legislative Council franchise was also voluntary. This became a problem for the Labor Party from the middle of the 1900s, when many of their supporters met the property qualification to vote for the Legislative Council, but did not exercise this right, either through a lack of knowledge, or through apathy. Second, the Legislative Council districts were weighted to favour the rural areas of the State, where conservative interests were most strongly represented. The South Australian Legislative Council was one of the most powerful upper houses in the world. It was possessed of the same legislative powers as the House of Assembly, save that it could not initiate or amend money Bills, but it could still reject them or suggest amendments to them (Jaensch and Bullock 1978, 14-15).

The power of the Legislative Council was increased in 1881, when provisions for resolving deadlocks between the two houses of Parliament that clearly favoured the Legislative Council were introduced. When the two houses had become deadlocked over a Bill, the deadlock provisions required the House of Assembly to go to a general election. After the election, an absolute majority of the House of Assembly had to pass the deadlocked Bill again. If the Legislative Council again rejected the Bill there were three options that could be taken. First, the Bill could be abandoned. Second, a double dissolution election could be held. Third, one or two new Members of the Legislative Council could be elected in each of the Legislative Council districts. Given the rural overrepresentation and conservative dominance in the Legislative Council, the election options were virtually guaranteed to return a Legislative Council that would remain hostile to the passage of a deadlocked Bill. Yet, these were the only options (Jaensch 1986b, 371-372). The House of Assembly would have had to face one or two general elections, and there would have been the possibility of a Legislative Council election, but for all the expense, and risk to political careers, the deadlocked Bill would still have had little chance of passing. It is easy to see why these deadlock provisions were never invoked. The Legislative Council was left in the position of having a virtually guaranteed veto over legislation that it did not support.

Between 1881, when the new deadlock provisions were introduced, and 1913, the size of the Legislative Council and the electoral boundaries for the districts changed three times. From 1913 the Legislative Council existed in the same form until the

introduction of proportional representation in the 1970s. It consisted of five electoral districts, each returning four members. The arrangement of the districts allowed for a significant degree of malapportionment in favour of rural South Australia. Three districts were situated in rural areas and two in metropolitan areas. The only district that could be expected to return Labor Party members of the Legislative Council was Central No. 1. This meant that the greatest level of representation that the Labor Party was able to achieve in the Legislative Council until the 1970s was four members (Griffith and Srinivasan 2001, 28). As a result the Legislative Council remained a considerable impediment towards progressive policies.

The Playmander

The Playmander, the systematic malapportionment of House of Assembly electorates that was to keep the Labor Party out of Government for three decades was not instituted by the man who it came to be named after, Thomas Playford, but it proved to be of great benefit to him, and once it was established, he was not averse to maintaining and extending it.

In 1936, the then Premier, Richard Butler, of the Liberal and Country League (LCL), established an electoral commission to redraw the electoral boundaries for the seats in the House of Assembly. The terms of reference to the commission stated that the 2:1 ratio of rural to metropolitan seats had to be maintained that there had to be a reduction in the size of the House of Assembly from 46 to 39 and that single member electorates operating on a system of preferential voting should be introduced (Cockburn 1991, 240). This final change proved to be the most problematic for the Labor Party. With the introduction of the new electoral system, the Labor Party would not occupy the Treasury benches again until 1965. It was acknowledged at the time by the Government that the changes to the House of Assembly would over-represent majorities, but it claimed that it could not support a system that gave more than 50 per cent of the seats in the House of Assembly to the metropolitan area. As the Government had the numbers in the House of Assembly the reforms were passed (Cockburn 1991, 240).

The changes had a greater effect than was initially claimed. There were 26 rural electorates and 13 metropolitan electorates, and so on the face of it there existed a

2:1 representation of rural areas to metropolitan areas. But when the number of electors represented in each area is examined, the true extent of the malapportionment becomes clear. The metropolitan electorates contained on average 15665 electors. The rural electorates contained on average 5718 electors. Thus, the extent of the rural malapportionment was actually 3:1 (Jaensch 1986a, 244-245). The true and debilitating extent of the malapportionment can be seen in the following table, reproduced from Jaensch (1970, 98):

NOTE:
This table is included on page 44
of the print copy of the thesis held in
the University of Adelaide Library.

The Largest/Smallest measure is a simple ratio of the largest to smallest electorate enrolement. The Dauer-Kelsay index represents the smallest proportion of the electorate that could support a lower house majority. Finally, the Kaiser Index of Quality is a scale of 0-1, where a score of 1 indicates perfect equality of apportionment, and a score below 0.7, in Kaiser's judgement, represented a very poor equality of apportionment (Jaensch 1970, 98).

Most of the Labor Party's vote was locked into the metropolitan areas where it would have little effect. Hence, the Labor Party was dramatically underrepresented in parliament throughout the entire period of Playford's more than 26 years as Premier (Jaensch 1986a, 261). By 1955 the extent of the rural malapportionment had reached a ratio of nearly 4:1, but by then the Labor Party was finally able to exploit it. Areas that had been classified as being 'rural' under the original malapportionment, had, under the industrialisation policy of the Playford Government, become more characteristic of the metropolitan area, and had started to develop a strong Labor vote. This led to Playford being forced into a minority government in 1962 (Jaensch 1986a, 261). Realising that his position was becoming untenable, Playford

attempted to institute a new Playmander which would consist of a House of Assembly of 42 seats, 20 of which would be rural seats, 20 metropolitan, and the final 2 under a new category of "provincial." On the surface, this would appear to be a positive reform, but the Labor Party would have lost out. The effectiveness of the industrialised areas in the rural seats would have been weakened, and the lower number of voters in metropolitan seats would have enabled the Liberal and Country League to make some gains there. The Labor Party, realising this, took advantage of the precarious situation that existed in the House of Assembly, and had two of their members abstain from voting on the Bill that would legislate for this new electoral system. This prevented a 19-19 tie, and so prevented the independent Speaker, who had agreed to use his casting vote to support the government, from voting on the Bill. Since the Speaker was unable to use his casting vote, the Bill was unable to pass, as it required the support of an absolute majority of the House of Assembly, that is, 20 members. That the Labor Party abstained meant that the Bill received 19 votes for, and 17 votes against, and hence failed to pass with an absolute majority (Jaensch 1986a, 262). Playford lost the 1965 election due to his industrialisation policies. The rural seat of Barossa returned a Labor member. This coupled with the capture of the seat of Glenelg, gave Labor 21 seats in the House of Assembly (Blewett and Jaensch 1971, 32). The Labor Party was returned to Government for the first time in more than thirty years. The new Government had a long list of policies that it wanted to enact after such a prolonged period on the Opposition benches, including reform of the electoral system. However, the actions of the Legislative Council, in which, thanks to the continued rural malapportionment, voluntary voting, and property qualification that existed in that chamber, prevented much of this program from being enacted.

1965-1975: reforming the South Australian Parliament

Labor had won government at the 1965 election with 21 seats out of 39 in the House of Assembly, but held only 4 seats out of 20 seats in the Legislative Council. In 1965 the South Australian Legislative Council was the only Australian Legislative Council that still possessed a property franchise, a heavily malapportioned electoral system, and a complete power of veto over all legislation (Jaensch and Bullock, 1978, 15). This veto power was exercised extensively against the legislative program of the new Government with the Legislative Council vetoing eleven Bills, and adding heavily

partisan amendments to twelve others (Sumner 2003, 41).   It was apparent to the Labor Government that if it wished to retain power after the 1968 election, it would have to reform the electoral system that still clearly benefited the Liberal and Country League. Thus, in 1966, the Government presented a Bill to parliament that sought to reform the electoral systems of the House of Assembly and the Legislative Council. The Bill would have created a House of Assembly of 56 seats. Further, the Bill proposed that an independent electoral commission be created to design the electoral boundaries of the new seats so that they would not disadvantage any party. The Legislative Council would have had the boundaries of its districts redrawn so that the rural malapportionment would have been lessened. The Bill would also have introduced adult suffrage for the Legislative Council in line with that operating in the House of Assembly, thus removing the property qualification. The Liberal and Country League used its majority in the Legislative Council to defeat the Bill (Sumner 2003, 23-25).

After the 1968 election change became inevitable. The need to reform the electoral system became apparent to the new Premier, Steele Hall, and other small "l" liberals in the Liberal and Country League after they were returned to government on 46.1% of the two party preferred vote (Sumner 2003, 25).   The Electoral District Redistribution Bill, introduced to parliament in 1968, was passed in this climate, though not without some resistance from the Legislative Council. The LCL members of the Legislative Council looked upon Legislative Council reform with distaste, no matter which party proposed it. The LCL members of the Legislative Council viewed themselves as a different body to the LCL members of the House of Assembly. They made decisions to the House of Assembly members separately, holding separate party room meetings. Ren DeGaris, the Leader of the LCL in the Legislative Council, and the leading advocate against the reform of the Legislative Council had stated in an interview his view of the Legislative Council:

> It's not ancient, and it shouldn't be changed. You see, the best upper houses in the world are the strong ones, totally independent of party politics. They are the appointed ones – not elected by the people. Six-year terms in South Australia are not long enough. It doesn't give a man the chance to make himself independent of outside pressures – such as getting re-elected. (cited in Jaensch and Bullock 1978, 4).

The next question put to DeGaris was "How can you advocate putting so much power into the hands of people who have no responsibility to the voters. You just

can't do that in a democracy!" To which DeGaris replied: "Democracy, Pah!" (cited in Jaensch and Bullock 1978, 4). DeGaris had also authorized the production of a pamphlet entitled "The case against the abolition of the Legislative Council" (Blewett and Jaensch 1971, 117). Another pamphlet produced by the LCL Legislative Councillors was entitled "Why South Australia Needs the Legislative Council." It gave five reasons: the Legislative Council acted as a House of Review, it protected people's rights, it guarded against class legislation (i.e. legislation that only benefited one section of society), it prevented governments from breaking their election promises, and it prevented governments dismissing appointed officials without good reason. No mention was made of the undemocratic features of the Legislative Council (Blewett and Jaensch 1971, 118).

The Electoral District Redistribution Bill provided for a 47 member House of Assembly, in which the rural malapportionment would be greatly reduced (Sumner 2003, 26). Whilst this did not create a completely fair electoral system, the Labor Party realised that the Bill would be extremely important for them in the short term, and so they supported the passage of the Bill through the House of Assembly. The other significant event of 1968 was a constitutional amendment that required that the Legislative Council could be abolished only after a referendum. Premier Hall tied the referendum requirement to a Bill to remove the property qualification for the Legislative Council and introduce compulsory voting that had been introduced by the Labor Party. He thought that the Labor Party, whose platform at the time still bound them to the abolition of the Legislative Council, would not be able to support the measure if it contained this requirement (Dunstan 1981, 161). However, Opposition Leader Don Dunstan was happy to support the measure, as he saw it as a way to overcome the voluntary voting for the Legislative Council that damaged Labor's electoral prospects:

> [Hall] said he would support our Bill for adult suffrage if we would support measures entrenching voluntary enrolment and voting for the Council, and that it could not be abolished except by referendum of the people. I immediately said 'We'll accept that, and he was caught. He had not realised that with adult suffrage there would be a common roll for the Assembly and the Federal Parliament. As it was, enrolment for the Assembly was not compulsory, but as it took place on the same form as enrolment for Federal Parliament which *was* compulsory, that made no difference. And since electors of the House of Assembly once enrolled, were compelled to go to the poll to vote, voluntary voting for the Legislative Council was irrelevant. (Dunstan 1981, 161).

The final entrenchment of the referendum provision came not with this Bill, which the LCL in the Legislative Council could not bring itself to pass and let lapse, but as part of the Bill the following year that redistributed electoral boundaries (Dunstan 1981, 162).

By far the most important electoral reforms to the Legislative Councils were enacted in Don Dunstan's second term as Premier, which began in 1970 when the Labor Party won office thanks to the redistribution in the House of Assembly. For the first three-years, the new Government continued to govern in the face of a hostile and majority LCL controlled Legislative Council. After the 1973 election, the Government found itself in a position where it could begin to act to reform the Legislative Council. The Government found itself in this position after it managed to win an extra two seats in the Legislative Council. This took Labor's representation in the Legislative Council to six seats, the highest that it had ever been. Dunstan was also helped by a destabilising struggle that had begun in the LCL. The previous year, Hall had been forced to resign from the leadership of the LCL. Relations between Hall and the LCL members of the Legislative Council were undergoing a steady decline. The LCL MLCs, fearing that Hall was going to exclude them from future shadow ministerial positions, pushed for the introduction of elected Cabinets. Hall opposed this and said that a shadow Cabinet vote in favour of this would be treated as a vote of no confidence in his leadership. The vote passed, and Hall resigned (Jaensch and Bullock 1978, 1-2). He went on to form a breakaway grouping within the LCL, known as the Liberal Movement (Jaensch and Bullock 1978, 47). This group was made up of the progressive wing of the LCL. After the 1973 election, one MLC was a member of the Liberal Movement, and another two were former members, who retained sympathy towards its goals, which included the reform of the electoral system. Thus, Dunstan was faced with a Legislative Council in which nine of the 20 members were in favour of electoral reform. This, coupled with the fact that it was very likely that the Labor Party would further increase its representation in the Legislative Council at the next election, convinced Dunstan that it was the best time to act to successfully institute reform of the Legislative Council (Jaensch 1981, 226-227). The LCL, surprised by the potential change to the composition of the Legislative Council, became concerned about protecting the existence of the Legislative Council, and so acquiesced to most of the Dunstan reform plan.

Dunstan managed to introduce two major reforms – adult suffrage, as opposed to the property qualification that had previously existed, and a form of proportional

representation for Legislative Council elections. That these two Bills easily passed the House of Assembly was unsurprising, Dunstan was in a majority there and the LCL in the House of Assembly was easily convinced of the need for reform. The fact that the Legislative Council changed its rhetoric and became supporters of one vote, one value, and supported the passage of adult suffrage was more of a surprise. It also supported the introduction of the list system of proportional representation proposed by Dunstan, seeking only minor amendments such as voluntary voting, and voluntary preferential voting (Jaensch 1981, 227-230).   In 1981 the Liberal Government changed the form of proportional representation to the fully preferential one that exists today (Griffith and Srinivasan 2001, 30). Compulsory voting for the Legislative Council was subsequently introduced in 1985 (Griffith and Srinivasan 2001, 30).

The introduction of proportional representation for Legislative Council elections dramatically changed its composition. Whereas before the introduction, the LCL had been possessed on a continuous and overwhelming majority of the seats in the Legislative Council, the composition of the Legislative Council after the introduction of proportional representation has seen neither of the major parties able to gain a majority of seats.

(reproduced from Macintyre and Williams, 2008)

That the Legislative Council is dominated by no one party has allowed it to develop into a genuine House of Review, in contrast to its original role as a house to protect the interests of the privileged.

2003: The results of the Constitutional Convention

The next significant reform of the Legislative Council was not considered until early in the twenty-first century. The Rann Government was elected in 2002 with 23 of the 47 seats in the House of Assembly. It governed (initially) with the support of Peter Lewis, a former Liberal turned independent, who was made Speaker of the House of Assembly. To secure the support of Lewis, Rann had to agree to a Compact for Good Government that Lewis had drafted. This, in part, called for the establishment of a Constitutional Convention to examine potential reforms to the State Constitution. The Convention was held over the weekend of 8-10 August. It featured a form of deliberative polling that determined the attitudes of a group of delegates to the Convention before and after they were presented with information on possible constitutional reform, and were given a chance to discuss the issues in small group settings.

A majority of the delegates to the Constitutional Convention supported the retention of the bicameral system of parliament. The delegates believed however, that work

should be done to strengthen the accountability powers of the Legislative Council. There was also majority support for the introduction of four year terms for the Legislative Council. Despite the view expressed by Peter Lewis, a majority of the delegates supported ministers continuing to be drawn from the Legislative Council. The delegates to the Convention also supported an increase in the size of the House of Assembly. There was a high degree of support expressed for the work done by politicians and in the effectiveness of parliament as it currently exists (Issues Deliberation Australia, 2003). It thus seems that there is little popular desire for the reform of the Legislative Council, other than for the introduction of four-year terms.

Conclusion

It can be seen from this brief overview that reforms to the South Australian Parliament have left it a very different institution to the one formed in the 1850s. The nineteenth century parliament was unrepresentative of the majority of the people in South Australia. This was especially the case with the Legislative Council dominated by the conservative rural establishment. The unrepresentativeness of the parliament continued into the twentieth century, with malapportioned electoral districts for the House of Assembly and the Legislative Council providing the rural electors with voting power several times in excess of that possessed by city voters. This malapportioned parliament made electoral success extremely difficult for the Labor Party and the electoral system for the Legislative Council ensured that when the Labor Party did win government, those parts of its electoral program that greatly offended the sensibilities of the rural elite could be vetoed, and this was the experience of the Labor Government 1965-1968. This provided a clear and compelling requirement for electoral reform for the members of the Labor Party, but this desire for reform stretched across party lines into the progressive section of the LCL. The electoral reforms enacted democratised the South Australian Parliament, removing much of the rural malapportionment in the House of Assembly, and introducing proportional representation and universal adult suffrage to the Legislative Council.

The effects of these changes were to produce a parliament, and especially a Legislative Council that was much more representative of the will of the people. The old Legislative Council, with its massive skew towards conservatism was replaced by

a democratically elected and widely representative body that has not been under the control of either major party since the introduction of proportional representation. There was to be no more domination by the rural elite, and though both major parties were going to have to negotiate to pass their legislative programs, the level of obstructiveness of the past no longer existed. The adoption of proportional representation for upper house elections has since been copied by the parliaments of New South Wales, Western Australia, and most recently Victoria. The Legislative Council of South Australia has evolved substantially and is no longer the anti-democratic house of the elite that it once was.

Chapter Four – The Parliament of the United Kingdom

This chapter will consider the evolution of the Parliament of the United Kingdom from the beginning of the twentieth century through to the present, and will specifically focus on the changing power dynamic between the House of Lords and the House of Commons. The early years of the twentieth century saw the House of Lords decline in power and relevance. The Parliament Acts of 1911 and 1949 removed the power of the House of Lords to veto legislation and this, coupled with the introduction of the Life Peerages Act of 1958, rendered the House of Lords little more than a dignified retirement home for former MPs, or as a reward for people who had performed favours for the government. Yet, in 1999, a program of reform was begun, which saw the House of Lords begin to regain its status as a valid and valuable part of the parliament. Thus, this chapter presents a study of the role of power and legitimacy in bicameralism, and shows what becomes of bicameralism when the upper house possesses neither. The chapter also demonstrates the role of reform in restoring a sense of purpose to a moribund upper house.

The Parliament Act (1911)

The status of and power afforded to the House of Lords relative to the House of Commons declined at the beginning of the twentieth century. The supremacy of the House of Commons as the sovereign legislative body was confirmed by the passage of the Parliament Act 1911. The Parliament Act stripped away the ability of the House of Lords to veto legislation, replacing it with a power of delay of two years for ordinary legislation, and one month for money Bills.

The Parliament Act was born from a period of protracted political conflict. The Liberal Party formed Government in 1906 in a landslide. They won 377 seats in their own right, out of the 670 seats in the Commons, but could depend upon the support of the 53 Labour MPs, as well as that of the 83 Irish Nationalist MPs. Arrayed against them

were the Unionists (Wicks 2006, 84). However, the situation in the House of Lords was the inverse of that which existed in the House of Commons. In the Lords, the Unionists held a substantial majority (Wicks 2006, 84).

The Liberal Party was elected to Government on a platform of social reform. The Lords allowed passage of most of the social legislation proposed by the Government, though some major platform Bills were vetoed. The Unionist Lords stated their reason for vetoing legislation was that, in their opinion, the legislation proposed did not enjoy popular support (Smith 1992, 174). Thus, the Lords attempted to portray themselves as the defenders of the people's will. The Government, in 1909, introduced into parliament a so-called 'People's Budget,' the purpose of which was to substantially increase the provision of social welfare. In order to fund this extra spending, taxes in several areas had to be increased. In the view of the Opposition, these tax increases constituted an attack on the landed wealthy (Smith 1992, 174). The Government held out hope that the Lords would pass the Budget despite their objections, as convention stated that the House of Lords should not block a supply Bill that has passed the House of Commons. The Lords, however, resolved to block the Budget, both because of the tax increase, and because several non-financial measures had been included in the Budget bills, in order to try to sneak them past the Lords' veto. The Lords viewed this practice of attaching non-money measures to the Budget Bills, known as 'tacking,' as being against the spirit of parliament, and so wanted to stamp it out (Smith 1992, 174-175).

The passage of the Budget through the House of Commons presaged the fate that awaited it in the Lords – at all readings the Unionists opposed its passage, rejection by the Unionist-dominated Lords thus appearing ever more likely (Wicks 2006, 86). The Government pre-empted the Lords' votes by waging a rhetorical campaign against the legitimacy of the Lords, an act that at that time was unprecedented (Wicks 2006, 86). Upon the entrance of the Budget to the House of Lords, the Lords successfully carried a motion in which they refused to give assent to the Budget until a general election had been fought on the issue (Smith 1992, 175).

An election was duly held, in which the Liberals lost their majority status, being forced to govern from a minority position with the support of Labour and the Irish Nationalists. Nevertheless, the Lords relented on their opposition to the Budget, and proceeded to pass it (Wicks 2006, 89). The debate turned to reform of the House of Lords.

Previously, in 1907, Prime Minister Asquith had suggested that the veto power of the Lords be replaced with a power of suspension, but this suggestion had not been acted upon (Wicks 2006, 90). In March 1910 a series of resolutions were introduced into the House of Commons. The resolutions called for the end of the Lords' ability to amend or reject money Bills, and proposed that their power of veto would be changed to a power to delay bills for two sessions. There was also a bill providing for the maximum duration of parliament to be reduced to five years, down from seven.

Not all of the Lords were in denial about the tenuous nature of the position that they now occupied. Some members of the House of Lords advocated reforms to the composition of their House, rationalising that this would grant them more legitimacy, and thus stave off more far-reaching changes (Wicks 2006, 90). In the face of Cabinet division, in which part of the Cabinet wanted to limit the powers enjoyed by the Lords, and part wanted to modify the House's composition, a compromise was reached. The powers of the House of Lords would be modified in an initial reform that would act as a prelude to the reform of the composition of the Lords (Wicks 2006, 91). This led to the insertion of the famous preamble to the Parliament Bill: "whereas it is intended to substitute for the House of Lords as it at present exists a Second Chamber constituted on a popular instead of hereditary basis."

A complication to the debate was added by the Irish Nationalist Party, which desired rapid reform of the House of Lords. They refused to pass the new Budget through the House of Commons until action was taken to reduce the power of the House of Lords, by the creation of more peers if necessary. The situation was further complicated by the death of King Edward VII. The constitutional battle would no longer be overseen by an experienced monarch. Both of the major parties had concerns about the judgement and ability of the new King George V to handle a constitutional crisis. Thus, the two parties agreed to enter a constitutional conference to attempt to find a solution that was mutually agreeable (Wicks 2006, 91).

The conference was unable to reach a compromise. The Liberals advised an election to be called for December 1910. King George agreed in secret that were the Liberal Party to win the election, he would create more Liberal peers, giving the Liberals the numbers in the House of Lords to pass reforms to its powers (Wicks 2006, 92-94).

The election saw the Liberals very slightly improve their parliamentary strength relative to the Unionists. The Liberal Government immediately reintroduced the Parliament Bill. What then followed was months of debates, in which numerous amendments were made and rejected, and the Bill went back and forth between the Houses. At one stage, the Bill passed its second reading in the House of Lords, but then was amended so dramatically in the committee stage as to be unrecognisable (Wicks 2006, 95). Eventually, in July 1911, King George's pledge to create new peers was revealed.

This revelation caused disarray in the Unionist party, and led to it splitting into two factions. There were those, which included the Leader of the Opposition, Arthur Balfour, who favoured the passage of the Parliament Act, to stave off a mass creation of Government peers. Some in the Unionists though wanted to fight the Bill to the bitter end, and hold on to any small chance that the power of the House of Lords would not be reduced. Amidst scenes of chaos in the Parliament, the King advised Prime Minister Asquith to send the Bill to the House of Lords one last time, to give it a final chance to pass it before the new Liberal peers were created. Asquith agreed, and the Bill went before the House of Lords. The debate in the Lords raged for two full days. In the end, the Government won, securing 131 votes, to 114 against (Wicks 2006, 96-97). The Parliament Bill passed, and received Royal Assent as the Parliament Act 1911.

The Parliament Act (1949) and the Life Peerages Act (1958)

The Labour Party won an absolute majority of the Commons for the first time in 1945 and was returned to Government, where it faced a House of Lords in which it was overwhelmingly outnumbered by Conservative peers. The first meeting of Labour Lords after the 1945 election saw in attendance eight members. This represented half of Labour's full voting strength of 16, in a house of 831 regularly voting members (Longford 1988, 162). The Labour Party wanted to take quick action on a number of issues, but knew that certain parts of their legislative program, such as their Bill for nationalising Iron and Steel, were unlikely to be accepted by the House of Lords. Worried about facing a series of two year delays on their legislative program, the Labour Government resolved to pass a new Parliament Act that would effectively halve the Lords' power of delay (Longford 1988, 164). It is important to note though

that the new Parliament Act was devised as a preventative measure, the Government found itself under no specific threat from the Lords (Crick 1970, 124). The House of Lords had only used their suspensory veto twice since the passage of the 1911 Parliament Act, to delay the Home Rule Act 1914 and the Welsh Church Act 1914, and so it could not be argued that there was a precedent of delay for Labour to guard against (Crick 1970, 124). Yet the Lords used their suspensory veto for only the third time to delay the passage of the new Parliament Bill. Thus, the power of delay led to the Bill being enacted two years later. With the Parliament Act 1949 came a further reduction in the power of the House of Lords. During the debate on the Parliament Bill in the House of Lords, Lord Salisbury amended the Bill to add the recognition of a government mandate. This led to the development of what became known as the Salisbury Doctrine, in which the House of Lords agreed not to oppose any Bill that had been foreshadowed in the election manifesto of the governing party (Crick 1970, 124-125).

The Life Peerages Bill was introduced in 1957, and fulfilled a promise that the Government had made to reform the composition of the House of Lords. The Leader of the House of Lords, the Earl of Home, stated that the Bill was necessary due to the fact that many of those who inherited peerages had no interest in participating in debates in the House of Lords. The creation of life peers was thus a practical response to the declining talent pool found in the House of Lords (Dymond 2008, 8). The Opposition countered that the purpose of the Bill was to stave off more wide ranging reforms to the House of Lords. They alleged that the intention behind the Bill was to improve the public perception of the House of Lords enough to be able to retain the hereditary principle, in spite of it increasingly being seen as anachronistic (Dymond 2008, 9).

The Bill came to the vote in 1958, and passed its third reading on 2 April 1958. It received Royal Assent on 30 April 1958 (Dymond 2008, 15).

The enactment of the Life Peerages Act 1958 brought a significant change to the composition of the House of Lords. The Act provided that the monarch, really the prime minister, would be able to appoint any person to be able to sit in and vote as a member of the House of Lords for the rest of their life (Crick 1970, 131). The intention behind the Life Peerages Act was to increase the diversity of representation in the House of Lords. Given that entry to the House of Lords could be achieved by a means other than by heredity, political representation in the House of Lords became

marginally more balanced, with Labour Governments being able to appoint some Life Peers who supported them. A major achievement in this regard was enabling women to sit in the House of Lords for the first time. Prior to the passage of the Life Peerages Act, women who had inherited peerages were barred from sitting in the House of Lords. Though this had been challenged several times by female peers, they had never been successful in gaining a seat in the Lords. Bills that proposed allowing female peers the right to sit in the House of Lords had also been unsuccessful (Dymond 2008, 17-18). The Life Peerages Act, however, specified that women could be made Life Peers (Dymond 2008, 18). Thus, of the first group of 14 life peers announced, four were women (Dymond 2008, 15). Female hereditary peers were finally able to sit in the House of Lords after the passage of the 1963 Peerage Act. The other significant feature of this act was that it allowed peers to renounce their peerage, and so be able to stand for election in the House of Commons (Dymond 2008, 22).

Recent reforms of the House of Lords

New Labour was elected to Government in May 1997 promising a program of modernisation and a number of Constitutional reforms were detailed in their manifesto. Along with a degree of devolution and consideration of electoral reform was proposed reforms of the House of Lords (Labour Manifesto, 1997). As Vernon Bogdanor (2001b) contends, this was an unusual reform ambition for Labour. Prior to this time, Labour had evidenced little desire to engage in a large-scale reform of the constitution, instead they had sought to concentrate their energies on achieving the social reforms desired by their membership.

Nevertheless, the election manifesto that the Labour Party took to the 1997 election stated its desire for modernisation:

> The House of Lords must be reformed. As an initial, self-contained reform, not dependent on further reform in the future, the right of hereditary peers to sit and vote in the House of Lords will be ended by statute. (Labour Party Election Manifesto 1997).

A fully reformed House of Lords, one envisioned in the preamble to the 1911 Parliament Act, which stated the intention "to substitute for the House of Lords as it at

present exists a Second Chamber constituted on a popular instead of hereditary basis", has not yet come about. What did occur were some cautious reforms that removed the most patently undemocratic aspects of the House of Lords.

The process to bring about reform of the House of Lords was rather convoluted. This was necessarily the case given that any legislation to modify the House of Lords had to be passed by the Lords themselves. Labour's election manifesto canvassed the first stage of the reform program – the removal of the right of hereditary peers to sit and vote in the House of Lords. At the time, the majority of the members of the House of Lords still belonged to the hereditary peerage. Furthermore, the vast majority of these hereditary peers belonged to, or were strongly sympathetic to, the Conservative Party. This resulted in a permanent Conservative majority in the House of Lords, which could disrupt the legislative program of any Labour government that was elected. Thus, from the point of view of the Labour Party, the removal of the hereditary peers was the logical starting point for Lords reform. It would not only remove the most patently undemocratic aspect of the House of Lords, the right to a seat based solely upon an accident of birth, but also at the same time reduce the disparity of seats held by the two major parties.

The Government needed to tread carefully. The Conservative majority in the Lords possessed the power to delay all of the Government's non-financial legislation for a period of a year. Secret negotiations were begun between Derry Irvine, the Lord Chancellor, and the Leader of the Conservative Party in the House of Lords, Viscount Cranborne (the Grandson of the Marquis of Salisbury with whom Labour had negotiated reform of the Lords in the 1940s). Cranborne extracted a concession from the Government. In return for the passage of the Bill ending the right for hereditary peers to sit in the House of Lords, 92 hereditary peers would be allowed to remain. These hereditary peers would be elected by the hereditary peerage as a whole. It was agreed that it would be best for a member of the crossbench, unaligned with either of the major parties, to present this compromise solution into the House of Lords. Lord Weatherill, who convened the crossbench peers, agreed to propose the amendment, and so it became known as the Weatherill amendment (Rawnsley 2001, 201-3).

As a means to compromise, the move to allow 92 hereditary peers to remain has been criticised. It has been proposed that a better compromise would have seen a number of hereditary peers be allowed to remain in the House as life peers. This

would have avoided the remnant of hereditary peers, which still remains in the House (Shell 2000, 303). The paradox of course is that, in the absence of further reforms, the election of the 92 remaining hereditary peers from amongst the hereditary peerage as a whole now constitutes the sole (and slight) democratic aspect of the Lords.

The Government then established the Royal Commission on the Reform of the House of Lords, to enquire into possibilities for further reform of the House of Lords. The chair of the commission was Lord Wakeham, a Conservative peer. The Wakeham Commission suffered from two major design defects. First, it was given very little time to report, having been established in February 1999 with instructions to present its completed report nine months hence. Second, it was presented with confusing and limiting terms of reference:

> Having regard to the need to maintain the position of the House of Commons as the pre-eminent chamber of Parliament and taking particular account of the present nature of the constitutional settlement, including the newly devolved institutions, the impact of the Human Rights Act and developing relations with the European Union:
>
> - to consider and make recommendations on the role and functions of a second chamber;
> - to make recommendations on the method or combination of methods of composition required to constitute a second chamber fit for that role and those functions;
> - to report by 31 December 1999 (Cm 4534 – A House for the Future 2000, 4)

The terms of reference contained a logical inconsistency: the devolved institutions, the Welsh Assembly and the Scottish Parliament, did not meet for the first time until after the Wakeham Commission presented its report. How these institutions then were supposed to be considered by the members of the Commission is hard to comprehend. The other problem that the terms of reference presented was self-inflicted. The members of the Wakeham Commission chose to interpret the provision that the House of Commons is the pre-eminent chamber to mean that the House of Lords in no single aspect could be more powerful than the House of Commons, and this then severely curtailed the range of institutional design options that the Commission was able to consider. Yet, as has been pointed out, the members of the Commission could have paid regard simply to the fact that the House of Commons is the chamber in which government is made and broken. This, absent any other

factor, endows the House of Commons with pre-eminence (Russell and Cornes 2001, 82).

The report of the Wakeham Commission, *A House for the Future* (2000), was released in December 1999. The report presented three major reform options for the House of Lords. Each reform option assumed that a new House of Lords would be comprised of a majority of appointed members, with a minority gaining seats through direct election. The reform options were united in the appointed component being made up of 550 members. The difference lay in the number of members to be elected, and the time at which they would be elected. The first option called for a 65 member elected component to be elected concurrently with members of the House of Commons at each general election. The second option called for 87 elected members, who would be elected at the same time as the members of the European Parliament. The final option called for an elected membership of 195, with members being elected on a staggered basis. Under this final option, one-third of the membership would be elected at each European Parliament election (Cm 4534 – *A House for the Future* 2000, 116-119).

To increase the legitimacy of the appointed component of the House of Lords, the report of the Wakeham Commission proposed that an appointments commission be established. The appointments commission would consider suitable candidates for appointment to the House of Lords, balancing the twin objectives of ensuring proportionality between the parties, reflective of the number of votes received at the last general election, and ensuring as well that 20 per cent of the members of the House of Lords would sit on the cross-bench as independents. The appointments commission would thus remove the power of the prime minister to engage in political patronage through appointments to the House of Lords, whilst at the same time ensuring that neither of the major parties would control a majority of the seats in the House of Lords. In evaluating who should gain membership of the House of Lords, the Wakeham Commission decided that the appointments commission should be required to make sure that 30 per cent of its appointees are women, and that the appointees represent a broad cross section of ethnicities, regions, and professions. The intention was to make the House of Lords as representative of the whole of British society as possible (Cm 4534 – A House for the Future 2000, 130-143).

The report of the Wakeham Commission also recommended the establishment of new committees to monitor the constitution, human rights, and the devolution of

power to Scotland and Wales (Cm 4534 – A House for the Future 2000, 53-57, 64-65). There were also some limited recommendations concerning increased accountability, the major suggestion here being allowing Commons ministers to answer questions in the House of Lords (Cm 4534 – A House for the Future 2000, 80-82).

Upon publication the Wakeham report faced criticism. Many people believed that the report had not gone far enough in recommending changes (Norton 2004, 4). The Government took little action to implement the reforms contained in the report. Prior to the 2001 election the only reform that had been implemented was the creation of an appointments commission. This appointments commission was not the fully independent body suggested in the Wakeham report, however. Under the appointments commission that was introduced, the prime minister retained much authority, possessing the ability to decide the number of new peers that would be created, what the party balance in the House of Lords should be, and who the Labour party's nominees would be. The leaders of the other political parties retained the ability to decide who would be appointed to the House of Lords for their parties' seats. The main role of the appointments commission was to decide who would sit on the crossbench (UCL – The Constitution Unit, 2001).

The 2001 election saw Labour returned to government. After the election, they proceeded with the next stage of their House of Lords reform process. A white paper was produced entitled *The House of Lords, completing the reform.* The white paper agreed with some of the reforms put forward by the Wakeham commission, but stated the Government's intention not to proceed with certain of the report's recommendations. The Government agreed that the new House should be largely nominated, and contain a significant independent cross-bench. It also agreed that there should be a minority of directly elected members. The main difference between the Government position and that of the Wakeham report is that it believed the new House should contain 120 independent members appointed by the appointment committee, 120 directly elected members, 16 Bishops, at least 12 Law Lords, and no more than 332 nominated political members, the party balance to be determined by the appointments committee. The Government suggested shorter terms of five to ten years, down from the fifteen recommended in the Wakeham report. The Government also called for simultaneous elections for the House of Commons and the elected component of the House of Lords, and for all elected members to be elected at the same time (*The House of Lords, completing the reform*, 2001).

The reception of the white paper was even frostier than that accorded to the Wakeham report. After the publication of the white paper, the Conservatives declared their support for a majority elected, minority appointed house. The Liberal Democrats declared their support for a fully elected House. Public submissions invited by the Government resulted in 89 per cent approving a House that was at least 50 per cent elected (Norton 2004, 5-6). The Government saw from this that the proposals in the white paper would not gain legislative or public support. Thus, a joint committee of the House of Commons and the House of Lords was established to consider the next stage of the reform of the House of Lords.

The committee initially dealt with developing a number of options for the composition of the new House. The options that resulted were –

1. Fully appointed
2. 80 percent appointed, 20 percent elected
3. 60 percent appointed, 40 percent elected
4. 50 percent appointed, 50 percent elected
5. 60 percent elected, 40 percent appointed
6. 80 percent elected, 20 percent appointed
7. Fully elected

In the House of Commons, an amendment was moved to add an eighth option – abolition (McLean, Spirling and Russell 2003, 299).

In debates in the House of Commons, Tony Blair reversed his earlier support for a mixed appointed/elected House of Lords, stating that he now believed that it would be unworkable, and that an all appointed house would be best (*Parliamentary Debates*, House of Commons, 29 January 2003). These views were echoed by the Lord Chancellor (UCL – The Constitution Unit 2001). The various options were put before the Houses of Parliament to be voted upon. The House of Commons rejected all of the options and the House of Lords supported only the option that recommended that the House remain fully appointed.

This ended any major attempts to reform the House of Lords. In 2007, another indicative vote was taken in the House of Commons, seeking to discover what proportion of elected versus appointed Lords was most desired. The option that

received the most support was for the House of Lords to become fully elected (BBC 2007). Yet a similar vote in the House of Lords saw the maintenance of a fully appointed House being the only option supported (BBC 2007). Thus, there is still an impasse between the two Houses. Given the irreconcilability of the two sets of opinions, and the fact that the Government has achieved its major goal in Lords reform – removing the permanent Conservative majority – it appears that there will be no further significant reforms made in the near future, and that the House of Lords will for some years yet remain an appointed body.

Thus, the parliament that provided an exemplar for the Australian parliaments has fallen behind these bodies in terms of its democratic evolution. The House of Lords has moved from being a hereditary to an appointed chamber, but has stalled on the cusp of democratisation. The House of Lords remains a half reformed chamber, more legitimate than when it was hereditary, but still lacking the legitimacy that direct election would bring. In powers as well it remains weaker than any of the Australian upper houses. Until its method of composition is rendered democratic, and its powers over legislation are restored, the House of Lords will be unable to provide the same level of scrutiny and review as is provided by the upper houses of the Australian parliaments. This theme will be further explored in chapters nine and ten of this thesis.

Chapter Five – The Parliament of Canada

This chapter will consider the bicameral evolution of the Federal Parliament of Canada. This is in many ways a much more straightforward story than those told in the other case studies. This is due to the fairly static nature of the Canadian Constitution, which has evolved little since Confederation in 1867. The Senate that exists today is in substance the same house that existed from the time of Confederation. This chapter will begin with an examination of the Senate's current position in the Canadian political framework. It will then turn to an overview of the historical development of the Senate, with a special focus on the history of the Senate in recent decades. This historical overview informs the final section of this chapter, which considers some of the calls for Senate reform that have been made in recent decades. The consideration of the parliament of Canada that will be undertaken in this chapter will illustrate the case of a static bicameral system that has not changed significantly from the time that it was founded. Thus, a contrast is presented with the bicameral evolution that was shown in previous chapters to have occurred in the parliaments of Australia.

Prior to moving any further with the discussion of the Senate of Canada, it is worth making a note about the provincial legislatures. Prior to Confederation, Canada existed as a group of colonies, which possessed their own sovereign legislatures. These legislatures were for the most part bicameral, being possessed of a democratically (to an extent) elected lower house, and an upper house filled in most cases by appointment, though in the case of one (Prince Edward Island), election based on a property franchise (Docherty 2008, 145). The provincial Legislative Councils were for the most part abolished quite early in the lives of the provinces (White 2006, 258). The later entrants into the Confederation were established as unicameral parliaments, as by the time of their entry into the Confederation, unicameralism was seen as the norm in the provinces (Docherty 2008, 146). We can thus see that there was no long term historical development of bicameralism in Canada. The upper houses that existed at the time of Confederation were largely

anti-democratic, and there was little that they could do to defend their position. With little to recommend them, they were abolished as a matter of expediency, before they could evolve into a useful part of the parliamentary systems of the provinces. The relative shortness of their existence also meant that they were not viewed as a traditional feature of the provincial parliaments. By the time of Confederation in 1867, one Legislative Council had already been abolished. Twenty-six years after Confederation, another three had been abolished. Provincial upper houses did not then even have the weight of history to help protect them from abolition.

Having noted the early abolition of the provincial Legislative Councils, it is necessary to note that the Provinces have been experiencing the typical problems of unicameralism. Provincial assemblies have a representational deficit, in which minor parties find it hard to get representation anywhere near proportionate to the level of the vote that they receive (Docherty 2008, 147-149). There is also an accountability deficit. This is due to the fact that, as is typical in a majoritarian unicameral assembly, the Government of the day has control of the majority of the members of the chamber. The members of the governing party are not going to engage in intense scrutiny of the activities of the Government, and are not going to vote to censure it or any of its ministers (White 2006, 257). Thus, the provincial assemblies suffer from the same lack of scrutiny and from the same high level of party discipline that characterise most Westminster style lower houses around the world, and it is hard to argue that they would not benefit from the introduction of properly structured upper houses.

The founders of Canada's system of government were concerned with designing a system that contained checks and balances. They sought to protect the division of power and the rights of minorities. To this end, they designed a bicameral parliamentary system, in which the upper house, the Senate, was to act as a check on the actions of the lower house, the House of Commons, and was also to protect minority rights and uphold the federal principle (Ajzenstat 2003, 3-5). In protecting minority rights, the rights of minority social or ethnic groups were not considered so much as the rights of those who happened to be in the political minority. The founders of the Canadian confederation believed that a two house parliament would allow for a more effective opposition to the actions of the Government of the day to exist (Ajzenstat 2003, 6-7).

The design of the Senate was a matter of much thought and debate, taking the most time of any item of discussion at the Confederation debates (Thomas 2008, 131). The Senate was seen to be complementary to the House of Commons, which was to be the superior of the two chambers. Its roles were to represent the regions, though not equally, and review legislation (Stilborn 2008, 1-3).

The Senate was initially composed of 72 members. There were 24 members each provided by Ontario and Quebec, and 12 members each from New Brunswick and Nova Scotia. Senators were appointed by the Prime Minister and were subject to entry qualifications. Senators had to be over 30 years of age and own property worth at least four thousand dollars (Stilborn 2008, 1). The membership of the Senate was therefore on average older than that of the House of Commons, and had to be possessed of reasonable wealth. Thus, the Senate, by only allowing the seating of those with wealth, existed as a means to protect the wealthy, as well as a means to check the lower house. The age requirement was also intended to ensure that Senators would have had previous experience in another job, and so would be able to bring differing perspectives to political debate (Thomas 2008, 132). The power of the Prime Minister to appoint Senators was used quite openly as a power of patronage. On average, 95 per cent of Senators are appointed by Prime Ministers of the same party (Thomas 2008, 132). Thus, over time, a governing party is able to build itself a large majority in the Senate. It is important to note that the provinces that initially returned members to the Senate did not return equal numbers of members. There was no move towards equal numbers of Senators from each province, as was the case with the Australian Senate. The Canadian Senate cannot thus claim to be a house that allows for the protection of the interests of the smaller provinces against those of the more populous provinces. It is also important to note that the qualifications for membership of the Senate remain as they were in 1867. Senators still need to be aged over 30, and still need to own property valued at over $4000 (Paré 2009, 1) (this second criterion obviously has become much less onerous to fulfil as time has passed).

The size of the Senate expanded as more provinces were granted Senators. The current Senate currently consists of 105 seats, a proportion of which are often vacant, especially under conservative governments. Originally, Senators were appointed for life, but this was changed in 1965, when a retirement age of 75 was imposed. This has expanded the power of patronage that is available to Prime Ministers. By forcing the retirement of Senators once they reach the age of 75, it is

more likely that Prime Ministers will be presented with vacancies to fill. For a large part of its existence, the Senate has not been a particularly active chamber. In its early days, it was an active player in the legislative process. It provided several cabinet ministers, and vigorously debated legislation (Hamer 2004, 37). As society increasingly democratised, the Senate as an appointed chamber found itself lacking comparative legitimacy. This was due both to the fact that it was filled by appointment rather than election, and by the fact that appointments have always been made in a highly partisan manner. The Senate now usually only contains one minister, the Leader of the Government in the Senate.

The power of the Senate over legislation is almost equal to that possessed by the House of Commons. Legislation may originate in the Senate, and the Senate possesses a power of veto over all legislation. The only difference between the Senate and the House of Commons in terms of legislative power is that money bills may not originate in the Senate (Sharman 2008, 7). The Senate is slightly more powerful than its Australian equivalent, as it has been found to be legal for the Senate to pass amendments to money bills. The only other area where the legislative power of the Senate differs to that possessed by the House of Commons is that it possesses only a six month suspensive veto over legislation to change the Constitution (Sharman 2008, 7).

Over the course of the twentieth century, the Senate began to amend legislation less frequently. It was seen to be increasingly illegitimate due to its undemocratic composition and therefore found it hard to justify altering legislation that had originated in a democratically elected chamber (Thomas 2008, 133).

From the 1960s, the Senate has been developing a system of committees, both standing and special, in order to investigate legislation and events. Senators from minor parties have been the biggest supporters of the committee system, and are the most active in it. The Government of the day does not, however, usually pay a great deal of attention to reports that the Senate committees prepare which it does not like, stressing the unelected nature of the Senate versus the popular support enjoyed by the Government in the House of Commons (Sharman 2008, 12). Committees can often used as a way to influence the legislative process without actually making formal amendments to legislation. By researching the ramifications of legislation, Senators are able to air arguments that support the kind of legislative outcome that

they would like to see, and in this way add pressure for legislation to reflect these views (Thomas 2008, 134).

In the 1980s, the Senate found a degree of activism that it had never before possessed. Between 1940 and 1984, the Senate had not rejected a single government Bill. In 1984, the Conservative Party gained office after a long period of Liberal Party rule. Just prior to losing office, the Liberal Party had managed to have several of its House of Commons members appointed to the Senate. The tactic of the Liberal party was to use the Senate to frustrate the new Government in the House of Commons (Hamer 2004, 275). In 1984, the Senate consisted of 99 Senators, of whom 73 were members of the Liberal party. The House of Commons contained a large Conservative majority (Franks 1999, 124). The Liberal Senate majority resolved to use the power granted to the Senate to influence to the greatest degree possible the passage of legislation.

Initial skirmishes between the two houses concerned the Senate's threats to block a Bill authorising the borrowing of money, and to amend a Bill to extend the time for which dangerous offenders were jailed (Franks 1999, 126). A more serious disagreement occurred over the Government's plans to amend the *Drug Patent Act* to free patent holders from competition for new products that they produced for a period of ten years after they were introduced into the market. Though the House of Commons had debated the Bill at length, and had held a thorough inquiry, the Senate ignored this, and proceeded to hold their own inquiry. The inquiry took three months to report, and recommended numerous amendments that altered many of the provisions of the Bill. The Commons rejected the amendments, returning the Bill to the Senate. The Bill went between the two Houses of parliament for months, until the Liberals backed down and allowed it to be passed a year after it was first introduced into the House of Commons (Franks 1999, 126-128). These skirmishes presaged a more serious battle that was to come over the Government's plans to introduce a GST.

The Mulroney Government introduced a Bill to provide for the introduction of a Goods and Services Tax on 10 April 1990. The Bill passed the House of Commons after nine months of debate and was then sent to the Senate (Franks 1999, 134). The Bill was referred to a committee, and members of the Liberal party spent the next two months travelling around Canada publicly arguing against the introduction of a GST. After two months, the committee released its report, which found, unsurprisingly, that

a GST should not be introduced. Over the next few weeks those watching the Canadian Senate were presented with scenes that would have looked more in place in the United States Senate. Liberal Senators filibustered in the classic American way, with material totally unrelated to the Bill being read, purely to waste time (Hamer 2004, 276). A Senate Committee report, which the Government tried to block, recommended that the GST Bill not be passed (Franks 1999, 134).

This led to Mulroney taking a completely unexpected action. He enlarged the Senate by eight members, adding eight Conservative Senators. This changed the balance of power in the Senate so that the Conservatives now had a slight majority. To achieve this majority, Mulroney employed a never-before-used Constitutional provision (s. 26 of the Constitution Act 1982 (Can)), which allowed for the appointment of four or eight new Senators on the recommendation of the Governor-General to the Queen. The decision to add members to the Senate caused anger from members of the Opposition and from some of the provinces. Two of the provinces, British Columbia and Alberta, challenged the validity of the Government's action in court. The decision stood, with the Library of Parliament publishing a report that concluded that the purpose of the appointments power was to break the exact kind of deadlock that was occurring (Franks 1999, 135). The Government was thus able to secure passage of its GST legislation.

The actions of the Senate over the 1980s and 1990s show that, while for most of its existence it has been a chamber that has had little influence on the political process, this does not always have to be the case. Whilst it does not have any electoral legitimacy, and thus suffers in the eyes of the public[2], it can get around this problem when it acts in concert with what it perceives to be the public will. Many of the bills that were delayed during the period of Senate activism were bills with which significant sections of the public had problems, and by choosing to delay these bills, the Senate could achieve partisan goals with a measure of public support. Ultimately though, the anti-Government majority in the Senate was eroded by the passage of time, and the appointment of the extra eight Senators. The Liberal Government of the 1990s too faced a Senate majority from another party, and it too suffered defeats in the Senate, though not with the frequency that the previous government had. The Senate in time returned to a Government majority, and became again complacent

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[2] A recent Angus Reid poll, conducted in September 2009, found that 75% of Canadians do not like the current form of the Senate. 30% would like to see the Senate abolished entirely, and 45% feel that Senators should be elected by the people (Angus Reid Strategies 2009, 1).

(Franks 1999, 140-144). Thus, the Senate as it currently exists is capable of a much greater degree of activism than in the past would have been believed.

Moves to reform the Senate

Debates surrounding the ways in which the Senate is structured and functions have been a feature of Canadian politics for many decades. From the 1960s onwards there has been a constant stream of reports and proposals relating to ways in which the Senate might be reformed. These proposals and reports can be divided into two types. The early reports were released under the assumption that the system of appointment would remain in place and that reforms would focus primarily on the means by which appointments were made. The more recent proposals have begun with the assumption that the only way for the Senate to exercise its powers legitimately is if it becomes an elected body.

The early proposals began in the 1960s. These reform proposals were born of increasing tensions between Quebec and the rest of Canada, and new theories of government that were becoming institutionalised in political discourse (Stilborn 2003, 32). These early proposals took issue less with the fact that the Senate was appointed than with the fact that it was not seen to be doing its job as the representative of the regions. Consequently, reform proposals from this period were content with the maintenance of an appointed upper house (Stilborn 2003, 33). The support for an appointed upper house is not just a passive acceptance of the maintenance of aspects of the then current Senate; in some reports appointment was actively defended. The arguments advanced included the assertion that an elected upper house would cause confusion in the lines of government accountability, and that an elected upper house would come to rival the House of Commons in power, and in doing so would become an echo-chamber for the partisan concerns of the lower house, to the detriment of regional representation (Stilborn 2003, 33-34).

The reports of the 1980s and 1990s began to conclude that the method of the composition of the Senate would need to be changed were it to become a fully legitimate parliamentary chamber. The several reports published throughout the 1980s echoed the proposition that the only way to create a chamber that would have the legitimacy to wield political and legislative power would be through election (Paré 2009, 2). Thus, the tenor of the debate changed. No longer were reform advocates

advancing plans to tweak minor aspects of the Senate's design, rendering it more effective at fulfilling its original roles but substantively unaltered from its founding principles. Rather reform advocates were now pushing for a completely overhauled chamber (Stilborn 2003, 34-35).

The push for an elected Senate is regionally based. It was begun, and continues to be promoted, by the Western provinces. Politically, the West can be regarded as more conservative and *laissez-faire* on the whole than the rest of Canada (Lusztig 1995, 36). For this reason, ideological sentiment there tends to favour smaller, less powerful central government. The western provinces have resented what they see as examples of heavy handed centralising legislation being passed by the Federal Government, and have been pushing for the equality of power and recognition between the provinces. Consequently these provinces support what they refer to as a triple-E Senate – elected, effective and equal (Lusztig 1995, 35-39).

Whilst several reports have been published calling for an elected Senate, reform has been unsuccessful. The party that has most frequently formed government, the Liberal Party, does not support an elected Senate. The only major party that does support an elected Senate at the Federal level has been the Conservative Party and its predecessors. The proponents of the triple-E Senate were able to convene a round of constitutional discussions in the 1990s that led to the production of the Charlottetown Accord. This proposal stated that individual provinces would be given the right to decide whether Senators from their province would be elected by a direct vote of the people or would be elected indirectly through a vote of the provincial legislature. The proposal was submitted to a national referendum, but it failed to gain majority support across the country (Thomas 2008, 137). Some provinces have tried to go it alone and help start an elected Senate. Most famously the province of Alberta, in 1989, introduced the Senatorial Selection Act. This Act provided for provincial elections for would-be Albertan Senators. Those who won the elections would have their names placed on a list, which would then be provided to the Prime Minister of the day, who was expected to make Senate appointments for Alberta from this list. The level of success that this process has enjoyed has been minimal. After the first election in 1989, the elected candidate was duly appointed to the Senate by the then Conservative Government. However, subsequent elections, held under federal Liberal Governments, saw the elected Albertans passed over for ones favoured by the Governments (Mar, Boutrogianni and Pelletier 2006, 9-10).

The Conservative Government of Stephen Harper has been the latest to attempt reform of the Senate. Harper committed his Government to appointing the Senators elected by votes in their province wherever possible, and introduced Bills into the parliament to provide for 8 year Senate tenures for newly appointed Senators (whilst allowing current Senators to serve until they turned 75, as was the expectation when they were appointed (Stilborn 2008, 9-10). Harper also introduced a Bill that would formalise the process of elections by provinces that chose to participate in them. The Bill required the Prime Minister to consider the list of elected nominees before choosing whom to appoint (though the Prime Minister would not be bound to appoint someone off of the list) (CBC News, 2006). The Bills to provide for shortened tenures and for provincial elections both lapsed at the end of the Harper Government's first parliamentary session. They were reintroduced at the beginning of the second session, but at the time of writing have not been passed.

It is important to point out that though Harper desires reform of the Senate, his record is still that of a pragmatist. Though he committed to appointing only Senators elected through provincial elections, soon after winning government he appointed one of his loyalists to the Senate, and then promoted him into the Cabinet (CBC News, 2006). Furthermore, Harper filled the 18 seats that were vacant at the end of 2008 with his own appointees, as he feared that his Government would soon lose office after a threatened no-confidence motion (CBC News 2008).

Thus, it appears as if reform of the Senate will be unlikely to proceed in the near future. The diversity of opinion on what the precise nature and role of the Senate should be is too great, and even those who promote reform of the Senate, at least at the Federal level, appear to be willing to act counter to their rhetoric at the hint of partisan advantage. Thomas (2008, 137-138) contends that there are many factors that make Senate reform unlikely, including: Prime Ministerial reluctance to surrender patronage; a desire not to complicate the political process by creating a chamber of equal legitimacy to the House of Commons; the division of opinion between those provincial governments that want to reform the Senate and others who do not believe that it serves to protect their interests; and difficulties in reaching agreement on the exact mechanics of a reformed Senate. Given then this lack of political will, the division of opinion between reform proponents, and a general lack of public interest in the proceedings of the Senate, it appears likely that the Senate will continue existing as it is, fundamentally unchanged from when it first convened in 1867.

Chapter Six – The Parliament of New Zealand

The parliament of New Zealand provides an important case study, and as it was founded at around the same time as the colonial parliaments of Australia, and with the same rationale, comparisons between the developmental paths of these parliaments can be quite illuminating. The parliament of New Zealand evolved in a different direction than most of the Australian parliaments. Like Queensland, its upper house was abolished. More recently, and unlike Queensland, it moved to a form of proportional representation for elections to its lower house, to combat suggestions that the Government dominated parliament, and was unrepresentative of the diversity of opinion in New Zealand society. This section will begin with an examination of the abolition of the Legislative Council. The subsequent nature of Parliament will then be explored, then the move to proportional representation, and the effects that this has had on politics in New Zealand. This examination of the parliament of New Zealand will provide a second example of what can occur when a parliament makes the transition from a bicameral form to a unicameral one. Unlike Queensland, which turned to extra-parliamentary mechanisms to attempt to compensate for some of the deficiencies that the lack of an upper house caused, the New Zealand Parliament moved to a system of proportional representation in order to combat the executive dominance characteristic of majoritarian unicameral parliamentary systems. By studying the move to this new system of election, and the effects that this has had on the operation of government in New Zealand, we can see whether or not this is a viable alternative to a bicameral parliamentary design.

The Government of New Zealand consisted of an elected House of Representatives and an appointed Legislative Council (until 1951), and a Governor appointed by the Queen. The Governor was responsible for making appointments to the Legislative Council. The Legislative Council was initially constrained in its size, but in 1862 this was dropped, and it could be made as large as the Governor was willing to make it. Appointments to the Legislative Council were made for life (Hamer 2004, 19). In

1891, appointment for life was dropped, and was changed to appointment for seven years (Hamer 2004, 61).

The abolition of the Legislative Council

The New Zealand Legislative Council was never modernised into a democratically elected house. Rather, it was abolished in 1951. That the Legislative Council was abolished can be explained in large part by the actions, or rather lack of action, engaged in by its members. By the 1940s, the Legislative Council displayed little inclination to serve as an effective legislative body. Thus, in practice if not in fact, New Zealand had already been experiencing a kind of unicameralism. That this was the case is emphasised by the fact that it was National that revived the debate on abolition. A conservative party that should have ideologically been in support of bicameralism was able to explain their support for abolition by stating that New Zealand was already unicameral in practice (Jackson 1972, 183). The cost of running the Legislative Council was also advanced as a reason for its abolition. It was thought that there was little point paying to sustain a legislative body that added nothing to the legislative process (Jackson 1972, 184).

The debate leading to the abolition of the Legislative Council raged over most of the 1940s. That the Labour party was in government proved an aid to the abolition cause. The leader of National, S.G Holland, was no friend of the Legislative Council. It had been alleged that he harboured resentments relating to the Legislative Council's previous rejection of a Bill that he supported, but it is more reasonable to believe that his opposition to the Legislative Council was a philosophical one, albeit one that did not sit comfortably with the prevailing ideology of his party (Jackson 1972, 185). The majority of the Nationals supported a reformed upper house, but they were willing to follow their party leader in arguing for the abolition of the current appointed Legislative Council as a means for causing difficulty for the Government (Jackson 1972, 185). Furthermore, those in the National Party who believed that a reformed Legislative Council was the best option to pursue became convinced that legally, there was no provision for reforming the Legislative Council, and that the current Legislative Council would have to be abolished and replaced with a newly constituted body (Jackson 1972, 185-186).

In 1947 Holland introduced a private member's Bill calling for the abolition of the Legislative Council, leaving the Government in a difficult position. Abolition of the Legislative Council was seen to be a part of its policy, and Prime Minister Fraser had previously called for the abolition of the Legislative Council in parliament. However, since winning office in 1935, Labour had not moved on Legislative Council reform, and had instead had merely had appointed sufficient members to give it a Legislative Council majority (Benda 1950, 66). Despite some public disagreements from his own side, the Prime Minister fought against the Bill. The argument that the Prime Minister employed was that the Parliament could not legally abolish itself. The two houses of Parliament were constitutionally entrenched, and a previous Government, in 1929, had requested that the Statute of Westminster contain a provision preventing the New Zealand Parliament from modifying the Constitution. Whilst as an argument this was technically correct, it could only be employed as a delaying tactic. In 1947, the Government of New Zealand decided to adopt the parts of the Statute of Westminster that had not been initially adopted, in order to remove several loopholes and inconsistencies in the law. This had another effect though. It removed the legal excuse for not abolishing the Legislative Council, as under the fully adopted Statute of Westminster, the parliament of New Zealand gained the ability to request that the British parliament vote to allow the New Zealand parliament powers to amend the Constitution (Jackson 1972, 189). Thus, the legal objection to the abolition of the Legislative Council could no longer be sustained. While the debate over the legality of the abolition of the Legislative Council was still raging, Holland had been working on making its abolition more politically palatable, by suggesting that the money saved from no longer needing to fund the existence of the Legislative Council could be used to establish a superannuation fund for MPs. Holland coupled this suggestion with a Bill proposing the abolition of the Legislative Council. Though this Bill was defeated, its defeat was only narrow, and Fraser was losing the initiative. He therefore set up a committee to report on the feasibility of making the New Zealand parliament unicameral (Jackson 1972, 189-190).

The establishment of the committee was both a means to ameliorate the concerns of those members of the Labour Party who supported the abolition of the Legislative Council, and an attempt to make Holland's position untenable. By holding a series of committee debates on the future of the Legislative Council, the possibility of reform was raised. The official contribution by the Legislative Council suggested that it be reformed to become a mixed appointed/elected body, with one-quarter of its members being appointed, and the other three-quarters being elected (Benda 1950,

67). Whilst talk of reform was undesirable to Holland, it was supported by many of his party members, and so he was forced to support the work of the committee (Jackson 1972, 190). Holland was saved by the fact that the committee was unable to reach any solid conclusions, and he was thus able to minimise its importance. The next suggestion made was that a referendum be held. The idea was bounced back and forth, with both sides of the debate at times supporting and refuting the necessity for a referendum (Jackson 1972, 191-193). In the end both Fraser and Holland decided not to support a referendum. To Fraser, a referendum might strengthen the Legislative Council, which the Labour Party still opposed on ideological grounds, even if it was temporarily politically useful. Holland feared that a referendum might seem as though he were seeking to absolve himself from the responsibility of deciding to abolish the Legislative Council, which might weaken his case against it (Jackson 1972, 192).

Ultimately, abolition of the Legislative Council could proceed only after the Labour Party lost the 1950 election. Upon his ascension to the Prime Ministership, Holland introduced again a Bill to abolish the Legislative Council. The Bill stipulated that the existence of the Legislative Council was to cease from 1 January 1951. The Bill, after some half-hearted Labour opposition, ultimately passed the House of Representatives without a division being called. The Government used its appointment powers to create 26 new members of the Legislative Council, quickly termed the 'suicide squad' by members of the opposition (Benda 1950, 69). These new appointments, when added to the current Councillors supporting abolition, secured the Government a strong majority for the passage of the abolition Bill, which passed with 26 votes in favour and 16 opposed (Jackson 1972, 194-197). Thus, the Legislative Council of New Zealand, from 1 January 1951, ceased to exist.

The post-abolition parliament

Arend Lijphart (1984) regarded the New Zealand parliament after the abolition of the Legislative Council as the purest embodiment of Westminster style majoritarianism. He argued this case by comparing New Zealand to his ideal model of a Westminster parliament (outlined in chapter one of this thesis). He saw firstly New Zealand possessing a concentration of power in the executive, cabinets comprised of only one party, and bare-majority cabinets. The New Zealand parliament was dominated

by two parties, Labour and National, which have periodically alternated between being in Government and Opposition. These two parties formed governments on their own, and did not have to rely on other parties to help them achieve a parliamentary majority. The cabinets were also always comprised of one party and members of other parties were never invited to join. The second majoritarian characteristic embodied by the New Zealand parliament was a "[f]usion of power and cabinet dominance" (Lijphart 1984, 17). Notionally, the government relied on the confidence of parliament to retain office, but the strength of party discipline meant that the government ended up dominating the parliament.

Third, New Zealand's unicameralism helped it to embody pure majoritarianism, through the removal of the second chamber that could express a differing view to the lower house (Lijphart 1984, 17). Fourth, New Zealand's stable two-party system was characteristic of a strongly majoritarian system. Minor parties won seats extremely rarely, with the vast majority of seats in parliament being won by the two major parties. Fifth, New Zealand's party system was one dimensional. Parties differed along almost entirely socio-economic issues, with the Labour party representing a left-of-centre position on such issues and the National party representing a right-of-centre position (Lijphart 1984, 17-18).

The sixth characteristic of Westminster majoritarianism fulfilled by the unicameral New Zealand parliament was the possession of a plurality system for elections to parliament (Lijphart 1984, 18). Elections to the New Zealand parliament were carried out using first-past-the-post voting, which overemphasised the number of seats won by the victorious party in an election, and made minor party representation extremely unlikely (although the setting aside of a small number of seats for Maori's, which the Maori population of New Zealand could vote for instead in their local seats, caused New Zealand to deviate slightly from pure majoritarianism). Seventh, New Zealand possessed unitary and centralised government. The abolition of the provincial governments in 1875 left New Zealand in possession of only the central government (Lijphart 1984, 18-19). Eighth was the unwritten constitution and parliamentary sovereignty. Like the United Kingdom, the Constitution of New Zealand was to be found in a variety of statutes and conventions. There is no all encompassing constitutional document. Thus, parliament is sovereign, unbound by significant constitutional restraints (Lijphart 1984, 19). Finally, the New Zealand system embodies representative democracy, though it has deviated from this Westminster

majoritarian ideal through relatively frequent employment of referendums, a form of direct democracy (Lijphart 1984, 19).

From the above Lijphart concluded (1984, 19) that "New Zealand is more clearly majoritarian, and hence a better example of the Westminster model, than British democracy." Soon after this was written, the parliament of New Zealand entered a period that would culminate in a fundamental change to the way that it was elected, with the plurality electoral system being replaced by a system of mixed member proportional representation (MMP).

The Move to MMP

The focus of this next section will be the change in the New Zealand electoral system, from first past the post, to mixed member proportional. The key questions to be addressed are, why did a country with such a track record of majoritarianism embrace a proportional electoral system? And how were these changes implemented?

The constitutional architecture of New Zealand gained prominence in academic and political discourse in the 1970s. Geoffrey Palmer, when first elected as a Labour MP in 1979, claimed that the constitutional situation was such in New Zealand that governments possessed 'unbridled power', and academics began to regard New Zealand as the purest example of Westminster majoritarianism (Vowles 2000, 680).

The public mood for change grew out of political dissatisfaction that began in the 1970s and grew in intensity throughout the 1980s. This dissatisfaction with and alienation from the two major parties was caused by their failure to heed the desires of the electorate, and their seeming to act in a way contrary to that expected by the majority of voters.

The National Government elected in 1978, led by Robert Muldoon, was characterised by a harsh, authoritarian and dominating style of government. The Government used its parliamentary majority to push through many unpopular reforms (Vowles 2000, 681). Labour, on their return to government in 1984, contributed to this alienation by continuing with the Muldoon Government's program of radical market liberalisation

and by implementing a raft of policies that had not been mentioned in the lead up to the election campaign (Vowles 2000, 683).

The voter dissatisfaction that grew throughout the 1970s and 1980s can be seen clearly in the increased share of the vote received by minor parties, particularly the Social Credit Party, which won 16.1 per cent of the vote in the 1978 election, and 20.7 per cent of the vote in the 1981 election. Due to the first-past-the-post electoral system, the votes received by the Social Credit Party were not translated into seats, and they only won one seat at the 1978 election and two seats at the 1981 election (Levine and Roberts 1997, 25-26). Thus, the support of a significant minority of voters for parties other than the major two was unable to be translated into equivalent representation. This led to the nature and adequacy of the New Zealand electoral system becoming a matter of public debate. Prior to the 1984 election, Labour committed to establishing a Royal Commission into the electoral system were they elected to power (Levine and Roberts 1997, 26).

Having won the 1984 election, Labour fulfilled its campaign promise to establish a Royal Commission into the electoral system. The Minister for Justice, Geoffrey Palmer, announced the formation of the Commission in February 1985 (Atkinson 2003, 201). The reform drive within Labour was led by Palmer, who was able to secure some other reforms, notably the amalgamation of parliamentary and local body enrolment, and the Constitution Act 1986 (NZ), which combined in one document a large number of disparate pieces of constitutional legislation. The Constitution Act could not be regarded as a complete constitution, comparable to those found in a country like Australia, but it served as a basic guide to institutions and their powers (Atkinson 2003, 202).

The Royal Commission handed down its report in 1986, and the report strongly argued the need for change (Vowles 2000, 682). The report recommended that New Zealand move to a system of proportional representation, and that the type of proportional representation should be German style mixed member proportional. The new parliament would be expanded in size to 120, and of these MPs 60 would be elected based on the old system of first-past-the-post in single member electorates, and 60 would be proportionally elected on a nation wide closed-list system. A four percent electoral threshold was suggested for the list MPs, though this threshold would be waived for any party that won a constituency seat (Atkinson 2003, 205). The report of the Commission moved to reassure those worried about a

profusion of minor parties by pointing to the electoral threshold as a means of stopping micro parties from winning seats, and thus preventing an excessive fragmentation of the party system (Vowles 2000, 682).

The report of the Royal Commission suggested that a referendum would be the best way of giving effect to the changes to the electoral system. Under the Electoral Act 1956 (NZ), changes to the New Zealand electoral system could be made in one of two ways. Firstly, a Bill giving effect to the changes could be passed through parliament, requiring the support of 75 per cent of MPs. Alternatively, the changes could be given effect by a simple majority at a referendum (Atkinson 2003, 205). The Commission also considered the feasibility of citizen initiated referenda and the reestablishment of an upper house, but rejected both, arguing in the case of an upper house that proportional representation in the House of Representatives would have the same effect (Atkinson 2003, 205).

Labour rejected the proposals of the Commission as being too radical (Vowles 2000, 683). The National opposition also rejected the recommendations contained in the report. Neither Labour or National were committed to implementing any of the report, until in the lead up to the 1987 election, the Prime Minister, David Lange, misread his speech notes in the leader's debate and committed Labour to holding a referendum on the electoral system by the 1990 election (Atkinson 2003, 206.)

Labour won the election, and bought itself some time by sending the report of the Royal Commission to a parliamentary committee (Atkinson 2003, 207). In April 1989 the Government stated that no referendum would be held. Later that year, in August, Geoffrey Palmer became Prime Minister, and introduced an electoral reform Bill that gave effect to some of the minor recommendations of the Royal Commission (Atkinson 2003, 207-208).

National promised that a referendum on the electoral system would be held in 1992, if they were voted in at the 1990 election. Within months of National subsequently winning office in a landslide, they were criticised for abandoning a number of election promises. They knew that they had to keep the promise to hold a referendum (Atkinson 2003, 209-211). A two-stage referendum was devised. First, voters were asked whether or not they supported the current electoral system. Voters were then asked to indicate their preferred option between four types of electoral systems – mixed member proportional, supplementary member, preferential voting, and the

single transferable vote. The turnout for the referendum was low, with 55.2 per cent of voters attending. Of these voters, 84.7 per cent voted to change the electoral system, followed by 70.5 per cent voting to adopt MMP (Atkinson 2003, 214).

The Government then developed a three part electoral reform Bill. The Bill provided for the holding of a referendum to determine whether or not MMP would be adopted, and also revised electoral law so as to enable MMP to be introduced. Were the referendum to introduce MMP unsuccessful, then the latter part of the Bill was to be repealed. The Government went with the form of MMP that was recommended in the report of the Royal Commission, with some small changes. The suggestion by the Royal Commission that an Electoral Commission be established was rejected (Atkinson 2003, 214). The final section of the reform Bill provided for a referendum on the reintroduction of an upper house (Atkinson 2003, 214).

The Bill was sent to the Electoral Law Committee, which after seven months of deliberations recommended that the election threshold be increased to five percent, that the number of South Island electorates be fixed at 16, that an Electoral Commission should be formed to handle party registration and public education, and that the separate Maori seats should be maintained. The Committee successfully sought to have the upper house referendum removed from the Bill (Atkinson 2003, 215).

The referendum was held concurrently with the 1993 election, and MMP was supported by 54 per cent of voters. The vote share received by the two major parties declined to only 70 per cent of the vote. National was able to retain government with 35 per cent of the vote, at the last election held in New Zealand under first-past-the-post.

What has the effect of MMP been?

MMP has not been the unqualified success that its proponents hoped for. It has not restored New Zealand's parliament to some sort of 'golden age,' where legislative independence and enlightened debate trump partisan loyalties. Neither though has it been the unmitigated disaster feared by its detractors. Since the advent of MMP New Zealand has not been plunged into some sort of Italian-style parliamentary

anarchy, with governments changing between breakfast and lunch. The true effect of MMP has been measured and moderate.

The first election under MMP in 1996 proved contentious, and threatened the legitimacy of the new electoral system. On election night, a parliament, but not a government, had been elected (McLeay 1997, 23). A period of two months of negotiations followed the election, in which the support of the New Zealand First party, as the third largest party represented in the parliament, would be decisive. National had come out of the election holding 44 seats out of the 120, and this combined with the 17 seats of New Zealand First would have been the easiest way to get to a parliamentary majority. Yet the political rhetoric of New Zealand First prior to the election had seen it opposed to National on most major issues. Public expectation prior to the election was that New Zealand First would not enter into a coalition with National. Thus when a coalition between National and New Zealand First was announced, there was public disappointment and distrust of the new electoral system.

Throughout 1997, public opinion tended against the new electoral system. The support for MMP was polled to be as low as 30 per cent, with the support for first-past-the-post put at double that (Vowles 2000, 692). In 1998, the coalition between National and New Zealand First collapsed, yet National was able to form new governing arrangements and avoid prolonged political uncertainty. In the face of this, public support for MMP increased to 34 per cent (Vowles 2000, 692). By the time of the 1999 election, MMP enjoyed plurality support, with 46 per cent of voters in support of MMP, with the remainder split between first-past-the-post and being uncommitted to either (Vowles 2000, 692). So while the practice of MMP got off to a shaky start, experience gained by the political parties has enabled them to better work in a new parliamentary environment, and voter familiarity has led to an acceptance of the system after initial suspicion.

What effects has MMP had on the political system of New Zealand? Coalition and minority governments have had positive effects. They have led to an increase in argument and discussion over policy, as well as leading to a greater awareness of public policy making. There has been an increase in the level of political representativeness of parliament, with eight parties successfully contesting seats at the 2005 election (Vowles, Banducci and Karp 2006, 272). The diversity of parliament has also increased, with more Maori and female members (Vowles,

Banducci and Karp 2006, 274-275). There has also been an increase in political trust and satisfaction with the political system amongst voters. Between 1993 and 2002, trust in the government to do what is right from 31 per cent to 44 per cent, trust in political parties rose from 44 per cent to 65 per cent, and the belief that MPs were out of touch fell from 61 per cent to 49 per cent (Vowles, Banducci and Karp 2006, 277-278).

However, the hopes of proponents of MMP have been dashed in some areas. Adversarialism has not been replaced with consensus. The parliament remains divided between the governing parties on the one hand, and non-governing parties that see themselves as an alternative government on the other (Mulgan 1999). The advent of MMP also did not lead to a substantial strengthening of parliamentary committees, which remained under-resourced and subject to partisan disputes (Mulgan 1999). Finally, voters are no longer able to use the electoral system to throw out an undesired government. The electoral system allows for the election of a parliament, which then negotiates the formation of a government, leading to voters being removed from direct government formation (Mulgan 1999).

Overall, the experience of New Zealand after the introduction of MMP appears positive. Voters appear to be happy with the new system. Governments have held to their election commitments and to voter expectations more closely, remedying the dissatisfaction experienced in the 1970s and 1980s. Parliament still continues to be dominated by the executive, however, and has not regained much independence, and so the introduction of MMP cannot be regarded as having solved all of the problems caused by the absence of an effective upper house.

Chapter Seven – The Parliament of Queensland

The State of Queensland is different to the other Australian States. It is the only State in Australia that possesses a unicameral Parliament, after the Labor Government of Premier Theodore was able to abolish the Legislative Council in 1922. It was also the Australian State with the highest level of proven political and official corruption at the end of the 1980s when the Fitzgerald Report was completed. In this chapter I will argue the linkage between the absence of an upper house in the Queensland Parliament, and the systemic corruption exposed by the Fitzgerald Inquiry in 1989.

That Queensland is the only State in Australia to be possessed of a unicameral Parliament makes it particularly important to study. The experience of Queensland since its Legislative Council was abolished in 1922 provides us with the best example that we have of how political culture in Australia interacts with unicameralism. It is not an encouraging picture. Queensland's political culture has been characterised by: corruption amongst both members of parliament and public officials; maladministration; rorting of the electoral system; executive dominance; and a culture of winner-takes-all politics, where compromise was equated with weakness. The experience of Queensland is a lesson in what can happen in a political system where the Government, and indeed public officials as a whole, are not subject to adequate scrutiny, and are basically in the position of elected dictators.[3] Given the absence of an upper house, the only democratic check that any government in Queensland has to face is an election every three years, though even then, prior to the 1990s, the government was able to determine the exact design of the electoral system, which led to systematic malapportionment by the government in order to help it retain power. Between the three-yearly elections, government was possessed of the power to do whatever it was able to, subject to constitutional constraints.

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[3] It is important to note that the corruption experienced in Queensland was not specific to either of the main parties, Whilst the corruption of the National Party under Bjelke-Petersen is what is best remembered in Queensland, previous Labor Governments had abused the position of power that they occupied.

Queensland politics throughout the century had a set of defining characteristics that did not depend upon the party in power. Neither Labor nor Coalition governments in Queensland sought to place limits on government power, both parties practiced interventionist government, the difference between them being that they sought to benefit different groups using the powers that they could deploy (Wanna 2003, 78.) As Wanna (2003, 78) puts it: "it was a political culture focused on ends not means." The style of politics practised in Queensland was unintellectual and illiberal, and there was little thought given to abstract concepts such as civil and political rights (Wanna 2003, 78).

The abolition of the Legislative Council

The Legislative Council of Queensland, in common with the Legislative Council of New South Wales, was formed as an appointed house, and remained such at the time that the Labor Party first won office in its own right in 1915. The members of the Legislative Council were appointed based on the advice of the government of the day, and as such some effort was made to appoint a sufficient number of members sympathetic to the legislative goals of the new government so as to give it a reasonable chance of passing legislation (Murphy 1980, 96.) Membership of the Legislative Council was by necessity restricted to those of relative wealth, as members of the Legislative Council were not paid a salary. MLCs therefore had to be able to pay for their own transport costs to and from Brisbane, as well as their accommodation costs there (Murphy 1980, 95-96). Given that government in Queensland, prior to the election of the Labor government in 1915, alternated between the Liberals and the Conservatives, the overwhelming majority of the appointees to the Legislative Council were ideologically hostile to most of the policy platform of the Labor Party. By the time it won office, Labor had only four appointees out of a 39 member Legislative Council, these four appointees having gained their seats during a brief Labor-Liberal Coalition government (Murphy 1980, 96).

The abolition of the Legislative Council arose as an issue after the Labor Party gained office in 1915. It came into power wanting to introduce a reforming legislative program, but, like most Labor governments at that time in Australian State politics, found itself subject to obstruction and amendment from the very conservative

Legislative Council. Furthermore, it possessed, as part of its platform, and consistent with ALP policy in other jurisdictions, the desire to abolish the Legislative Council as it was seen to be an undemocratic institution, existing in contrast to the core democratic value of one vote, one value (Murphy 1980, 97). The Labor party held 45 seats in the Legislative Assembly to the Opposition's 27 after the 1915 election, but in the Legislative Council it held only 4 seats out of 39 (Harding 2000, 162).

Unlike in New South Wales, the option of swamping the Legislative Council with Labor appointees in order to gain a working legislative majority was not a readily exercisable option. The Governor was much less inclined to accept the advice of the Government when it was suggested more MLCs be appointed. This was due to the *Parliamentary Bills Referendum Act 1908* (Qld), which stated that a Bill twice passed by the Legislative Assembly and twice rejected by the Legislative Council could be put to a referendum at which all of the voters in Queensland were entitled to vote. If the referendum was successful, then the proposed Bill was enacted into law, and if the referendum was unsuccessful, the Bill was not. The *Parliamentary Bills Referendum Act* was thus regarded as an adequate defence against charges that the Legislative Council had little legitimacy to exercise power. The argument went that any Bill twice rejected by the Legislative Council could be put to the people, who would either confirm the Legislative Council's rejection, by voting to reject the Bill at the referendum; or the people would reprimand the Legislative Council, through an affirmative vote at the referendum, overriding the veto of the Legislative Council. The problem with this theory was the time and expense required to hold a referendum. Using the *Parliamentary Bills Referendum Act* was never going to be a means of passing an entire legislative program (Melbourne 1963, 479-480).

The other important reform passed prior to Labor gaining power was a reduction in the size of the parliamentary majority required to enact constitutional changes. Prior to the reform, a two-thirds vote of each house was required. After the reform, this threshold was reduced to the same majority vote required by any other vote (Murphy 1980, 98).

The leader of the move to abolish the Legislative Council was the new Labor Premier, T.J. Ryan, who was also the Attorney-General. He was thus in the position of prosecuting both the political and the legal case against the Legislative Council (Harding 2000, 163). As successful abolition of the Legislative Council would require the Legislative Council passing a Bill to abolish itself, it was decided in Caucus that

the best course of action would be to use the *Parliamentary Bills Referendum Act* to abolish the Legislative Council. To this end, the first Bill to amend the Constitution of Queensland by abolishing the Legislative Council was introduced in 1915. The Bill was passed in the Legislative Assembly, but after a filibuster that lasted for four days, the Legislative Council amended the Bill, turning it into a list of ten reasons for why the Legislative Council continued to serve a valuable purpose and should not be abolished (Harding 2000, 165.) The following year, an identical Bill was introduced into the Legislative Assembly, and again passed there. The Legislative Council again rejected the Bill, and it managed to add another four reasons for preserving the Legislative Council to their original list. This left the Government in a position to invoke the *Parliamentary Bills Referendum Act* (McPherson 2008, 235). Premier Ryan had presaged this course of action in the second reading speech for the *Constitution Act Amendment Bill 1915* (Qld) on its second passage through the Assembly:

> You are aware, Mr. Speaker, that the Bill was passed last session by this House and was rejected by the Legislative Council, and is being reintroduced this session in accordance with the forecast in His Excellency's Speech, with a view of again testing the feeling of the Legislative Council with regard to it; and, if they should still be opposed to the passage of the measure, then, of course, we shall have to appeal to the people under the provisions of the Parliamentary Bills Referendum Act...the view of the great body of the people must ultimately prevail. If the people are in favour of the Council, of course the members of that House will remain there; but there are so many reasons why the people should be against the Council, that I have every confidence that when this measure is placed before them there will be an overwhelming majority in its favour. (*Queensland Parliamentary Debates*, Legislative Assembly, Volume 123, 585).

A referendum to determine the future of the Legislative Council was to be held on 5 May 1917. This date was decided on as a cost saving measure, as it was the same day as the Federal Election, as well as a referendum on liquor licensing (Murphy 1980, 101).

The referendum was subject to a legal challenge that alleged it to be unconstitutional. The Supreme Court of Queensland supported this view, and an injunction to stop the referendum was issued a few days before it was due to be held. The day before the referendum was due, the High Court overturned the injunction and allowed the referendum to proceed, stating that its legality could be determined later (McPherson 2008, 235). In August 1917, the High Court unanimously overturned the decision of

the Queensland Supreme Court, and declared that the referendum and the process leading to it was legal (McPherson 2008, 235). The result of the referendum was decisive: 179,105 votes were cast in favour of retention, with 116,196 votes being cast for abolition (Murphy 1980, 102). The Government had thus established a legal means to secure the abolition of the Legislative Council, but had failed to win the political argument in the eyes of the voters.

Following the failure of the referendum, Premier Ryan managed to convince the Governor to appoint an additional 13 Labor party members to the Legislative Council. The stated reason for this was to allow the Labor party to provide a quorum without relying on a large number of opposition members. The new Labor party members had to sign an agreement to support the abolition of the Legislative Council in any vote in Legislative Council (Murphy 1980, 103).

The Government, fresh from defeat at the referendum, introduced in 1918 another Legislative Council abolition Bill (Melbourne 1963, 482-483). Again the Legislative Council rejected this Bill, and again the Bill was reintroduced the following year. It being rejected by the Legislative Council a second time, the way was clear for a second referendum to be held (Melbourne 1963, 483). Events, however, conspired to give the new Premier, E.G. Theodore, another option. The Government gained a majority in the Legislative Council in 1920. In the previous year two non-Labor members of the Council had died, and had been replaced with Labor members. The Governor, in 1919, and then the Lieutenant Governor acting as Governor, who was sympathetic to the Labor Party, in 1920, agreed to appoint more Labor members to the Legislative Council. Labor now had the numbers to pass a Legislative Council abolition Bill through both houses of parliament. The Government did not immediately move to do so. At the Labor-in-politics conference in June 1920, the reasons for this were given: first, that the abolition of the Legislative Council would require the agreement of the British Government, which was uncertain, and second the abolition of the Legislative Council should be put before the people of Queensland to decide on again. It was decided that the Government would fight the next election stating its desire to abolish the Legislative Council (Murphy 1980, 109-110).

The Government won the election in October 1920, but its Legislative Assembly majority was reduced from 24 to four seats (Murphy 1980, 110). The government did not move quickly to abolish the Legislative Council. Indeed, the Legislative Council

gave little trouble, with a large government majority and sporadic attendance by the opposition ensuring a speedy passage of Government Bills (Murphy 1980, 112).

The Country Party proved to be the reason abolition re-emerged. It seemed almost certain that Labor would be lose the next election, leaving the Country Party forming government with a Labor dominated Legislative Council. The Country Party saw the abolition of the unelected Legislative Council as being the first step to their preferred model of upper house – an elected one based on a property-restricted franchise. To this end the leader of the Country Party taunted Premier Theodore in Parliament about his failure to abolish the Legislative Council (Murphy 1980, 112-113).

In October 1921, Theodore was advised that the assent of the British Parliament to a Legislative Council abolition Bill would be easy to receive, and so the abolition of the Legislative Council was proceeded with as some of the last business of the 1921 session of Parliament. The Bill to abolish the Legislative Council passed easily through both the Legislative Assembly and the Legislative Council. The last meeting of the Legislative Council ended at 8:37pm, Thursday 27 October 1921. The *Constitution Act Amendment Act 1922* (Qld) abolishing the Legislative Council was proclaimed on 23 March 1922 (McPherson 2008, 236)

In 1934, the Constitution was amended to entrench the abolition of the Legislative Council (McPherson 2008, 236). Now, as per the *Constitution Act Amendment Act 1934* (Qld) the restoration of an upper house to the Queensland Parliament would require a successful referendum, which is ironic, given that its abolition was proceeded with in spite of a failed referendum.

The abolition of the upper house resulted in a unicameral parliament elected on a majoritarian electoral system which, on balance of probability, would see the government of the day holding a clear majority of seats. This put successive governments of Queensland in position to wield power unfettered and unscrutinised by institutional constraints, to the detriment of the people of Queensland, as the next section will demonstrate.

The Fitzgerald Inquiry

The Fitzgerald Inquiry was a watershed moment in the political history of Queensland. Before the Fitzgerald Inquiry, there was a general suspicion that to some extent corruption existed in Queensland (Sturgess 1990, 3). No one could guess at the extent of the corruption, however, that would be uncovered.

The Fitzgerald Inquiry, formally entitled *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct*, was gazetted on 26 May 1987. This followed the broadcast of a program by journalist Chris Masters on the ABC program *4 Corners* entitled "The Moonlight State"*.* The program alleged that there was systemic corruption in the police force of Queensland, specifically in the policing of gambling, prostitution and drugs. Earlier that year, the *Courier Mail* newspaper had published articles by journalist Phil Dickie that made similar allegations. The day after the *4 Corners* broadcast, Acting Premier Gunn announced that an inquiry would be held to investigate the matters raised (Fitzgerald 1989, 2-3).

The Chairman of the Fitzgerald Commission was Tony Fitzgerald QC. The Inquiry was not established with the status of a royal commission, but with the lesser status of Pursuant to Orders in Council. The initial remit of the Inquiry was to investigate the allegations specifically raised in "The Moonlight State". As the work of the Inquiry continued, it became apparent that the corruption was far more widespread than indicated by the ABC broadcast. The terms of reference of the Inquiry were therefore expanded on the request of Fitzgerald on two occasions, 24 June 1987, and 25 August 1988 (Fitzgerald 1989, 3). The Inquiry was then able to make broad investigations into any areas of corruption that it wished, and was given extra resources, as well as the ability for Ministers and former Ministers to give evidence to the Inquiry (Fitzgerald 1989, 3).

The Commission had public sittings on 238 days and 143 people and organizations were consulted by the Inquiry. Seventy written submissions were received by the Commission and 339 witnesses appeared before it (Fitzgerald 1989, 4). At the end of the public process, Fitzgerald published the findings of the Inquiry, hereafter, the *Fitzgerald Report*.

As expected, the *Fitzgerald Report* detailed numerous instances of corruption throughout the Queensland Police Force. The most widespread form of police corruption was the practice of 'verballing.' This refers to the practice of police officers manipulating or falsifying evidence, intimidating witnesses, obtaining admissions by using threats or through the offering of inducements. Verballing would be used when police were unsatisfied with the direction in which a case seemed to be going, and it could be used to produce the desired outcome (Fitzgerald 1989, 206-207). The other major form of corruption came from police officers using their powers for personal gain. Police would steal seized property and evidence, and solicit bribes and favours to provide information to criminals, or to overlook their activities (Fitzgerald 1989, 207-208). Fitzgerald found that there was a significant problem in the culture of the police force. A majority of the members of the police force were not themselves engaged in corrupt practices, and if offered the opportunity to do so, would not take it. These police officers would, however, ignore the corrupt practices of their colleagues because the police culture of the time valued loyalty to colleagues above all else (Fitzgerald 1989, 200-202).

The report made findings well beyond the scope of its initial remit and included a chapter that examined the political context in which the corruption of the police force occurred (Fitzgerald 1989, 123-144). It is this section of the report that is most relevant to this chapter. The report identified several areas of concern involving the system of government. The most prominent of these were the nature of the electoral system, the nature of parliament in Queensland, the politicisation of the public service, the lack of freedom of information laws, and the lack of transparency in ministerial financial disclosures and political donations. These will each be considered below. Many of these shortcomings in the Queensland political system had been identified in publications prior to the report of the Fitzgerald Commission. However the *Fitzgerald Report* carried enough weight however to spur the defeat of the Government of Premier Ahern and the election of an ALP government led by Wayne Goss to take action to fix these problems. Accordingly, the next section will detail and evaluate the reforms undertaken post-Fitzgerald.

Rorting the vote

The electoral systems operating in Queensland throughout the twentieth century present the starkest example of the systematic manipulation of what should be a pillar of democracy to suit the government of the day. Queensland has experienced long periods of rule by the same political party. The Labor Party formed governments from 1915 to 1957, only broken once for three years. The Country Party-Liberal coalition then ruled from 1957 to 1983, after which the (re-named) National Party won another two terms in office in its own right. The Labor Party has again held power from 1989, with only a brief interruption between 1996 and 1998, when a National-Liberal coalition gained minority government. The longer that a party is in power, the more its members can adopt a 'born to rule' mentality. The longer a party is in power, the more it is able to design and staff public institutions to better advantage its goals. And the longer that a government is in power, the more chance it has to bestow patronage on groups that can in turn help them retain power. Successive Labor and Coalition governments over the course of the twentieth century modified the electoral system to ensure that they maintained the government in power. This section will examine these changes.

The type of electoral system

The most obvious way in which the Queensland electoral system was manipulated was in the choice of the method for counting votes, and these methods have been altered when partisan advantage was perceived.

The electoral system used until 1892 was first-past-the-post. Just after the birth of the Australian Labor Party it was changed to contingent voting. Under contingent voting, voters assigned preferences to candidates. If no candidates received an outright majority, then all candidates except for the two who had won the most votes were eliminated, and the preferences of the eliminated candidates were distributed, leaving one of the remaining candidates with a majority (Sawer 2001, 23). The rise of the ALP introduced the potential for three-cornered contests, which were damaging to the non-Labor parties. Thus, the liberal and conservative members of Parliament, collectively comprising the non-Labor members, modified the electoral system in a way that would ensure their continued advantage (Wear 2005, 88).

Under contingent voting, the non-Labor parties could swap preferences and avoid losing out to a Labor candidate holding a plurality of the vote in a three-cornered contest.   In 1942, the Labor Government reintroduced first-past-the-post voting (Wear 2005, 88.) The rationale for this move was the simplicity of first-past-the-post, but the true reason is thought to lie in the loss of a Labor held seat at a by election, in which non-Labor preferences were directed to a candidate endorsed as "King O'Malley Labor" after the Federal Labor MP who had broken with the party (Wear 2005, 88). Thus, expediency again trumped responsible electoral management. The Labor Government was determined to stop the Liberal and Country Parties to benefit from being able to swap preferences. Despite this, Labor lost Government in 1957 to the Liberal-Country Party coalition, which then instituted compulsory preferential voting, as was the case in the rest of Australia (Wear 2005, 88), reinstating the ability for preference swapping. The final change to the electoral system of Queensland came in 1992, when the newly created Electoral and Administrative Review Commission recommended the reintroduction of optional preferential voting (Wear 2005, 88).

Neither the Labor Party nor the Coalition was averse to modifying the electoral system for partisan advantage. The ultimate power of designing the electoral system rested with the party of government, thanks to their control of the single house Parliament, and so these changes were able to be instituted without any consultancy or review, and in the face of strong, but futile, disagreement from the Opposition.

The Zonal system

The zonal system divided the State of Queensland into four regions: the South Eastern Zone, the Provincial Cities Zone, the Country Zone, and the Western and Far Northern, was introduced in 1949. The South Eastern contained the most seats, having 51 of the 89 seats located in it. It was also by far the smallest zone in terms of land area. The Country Zone was the next largest, containing 17 seats. The Provincial Cities Zone was based around regional centres such as Cairns, and contained 13 seats. The final zone, the Western and Far Northern was by far the largest of the Zones, taking up most of the land area of the State of Queensland, and contained the final eight of the 89 seats in Parliament (Coaldrake 1989, 28). The practice of dividing Queensland into different electoral zones was instituted by the

Labor Government of Premier Hanlon. Interestingly, Johannes Bjelke-Petersen spoke out expressing his complete opposition to the division of Queensland into zones, though he was to benefit greatly from this change once he was Premier, and would make no move to abolish the system when he was in a position to do so (Lunn 1987, 119-120). [4]

The purpose of the zones was to help to justify the implementation of a system of electorates in which there would be great disparities in the numbers of voters enrolled in each electorate. Using the 1986 enrolment figures, Peter Coaldrake (1989, 28-30) details the extent of the disparity:

> [T]he average number of voters in a South-Eastern zone seat was 19,357, in the Provincial Cities 18,149, in the Country zone 13,131, and in the Western and Far Northern zone 9816. That is to say, the value of a vote cast in the urban south-east of the state may be less than half that of a ballot cast in the western area.

When the system was introduced Hanlon attempted to justify the difference in electorate weighting by reference to the size of the rural electorates, and the difficulty that MPs would have were they to represent an equal number of electors as the urban electorates. The real reason was political expediency, and had to do with the nature and situation of Labor's support base. At the time, the Labor party's level of support was high in rural areas, due to the extent of mining in Queensland. Yet the population in these areas was declining. To preserve their position in power, it was felt that the voting power of those people left in the rural areas would have to be increased, so that they would continue to return sufficient MPs for Labor to retain government. This worked, allowing the Labor party to retain government with 42 seats to 33 at the 1950 election, despite their primary vote being 2.3 per cent less than the opposition parties (Coaldrake 1989, 30). After the electoral victory of the Coalition in the 1957 elections, the zonal system was modified slightly, so that it better enhanced the support of the Country Party, and to a lesser extent, the Liberal Party.

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[4] Though the zonal system helped to disadvantage the ALP over the long period of the Bjelke-Petersen premiership, it is interesting to note that at the zenith of its power, at the 1986 election, the National Party was able to win 23 seats in the South Eastern Zone, even though this was the zone with the highest enrolment quota, and the preserve of the ALP (Coaldrake 1989, 38)

Direct Government intervention in redistributions

The final way in which the electoral system was rorted was through the direct intervention of the Government in electoral redistributions. Though Queensland had a panel of electoral commissioners whose job it was to draw electoral boundaries, they could not be regarded as an independent electoral commission. Rather than reporting to parliament, they reported directly to the Premier, and the details of all of their meetings were kept secret. An example of the way in which the electoral commission was controlled can be seen in the 1983 redistribution, which followed almost precisely the new suggested boundaries contained in the National Party submission, whilst the submissions of the Labor and Liberal parties were virtually ignored (Wear 2005, 93).

Though this view of the Queensland electoral system is widely shared, it is not universal, with some people, such as Malcolm Mackerras (1990) declaring that the rorting of the electoral system was never directly responsible for the three decade period of non-Labor dominance. What cannot be doubted is the intent, as is evidenced by the following statement by a National Party cabinet minister –

> I told the Premier, if you want the boundaries rigged, let me do it, and we'll stay in power forever. If you don't do it, people will say you are stupid. In South Australia Steele Hall redistributed himself out of office. I don't think you'll be able to blame Joh or me for doing anything like that. (Russ Hinze, quoted in Wear 2005, 93).

Finally, there is one way in which the electoral malapportionment is universally agreed to have contributed to the 19 year Premiership of Joh Bjelke-Petersen. It worked to disadvantage the Liberal Party relative to the National Party, making sure that the Liberals were never able to win a majority of seats within the Coalition and thus would never be able to provide the Premier (Jaensch 1985, 244-245, 247)

The Parliament

To examine the political context of corruption, Commissioner Fitzgerald examined the role that Parliament should have played in Queensland. His ideal version saw Parliament as a place for debate, where the laws that govern Queensland should be

developed and refined, and a means by which the people of Queensland could be informed of proposed new laws. Fitzgerald also saw the Parliament as a place where the Opposition could perform a valuable scrutiny function (Fitzgerald 1989, 123-124). Needless to say, the reality of Parliament in Queensland fell well below the standards set by Fitzgerald's ideal, and the primary cause of this was its unicameralism.

The abolition of the Legislative Council left a greater burden on the Legislative Assembly, as it could no longer share legislative functions with an upper house, or rely on the upper house to perform the scrutiny of government that the Legislative Assembly could not perform. This was never recognised to be a problem, and this in part has left the Legislative Assembly incapable of performing adequately any of Fitzgerald's ideal functions for a Parliament (Coaldrake 1985, 221).

Procedural features

Question Time typified the inability of the Parliament to bring the executive to account. Prior to 1970, all questions in Question Time were questions on notice. Even after questions without notice were permitted, ministers would insist that the questions be put on notice before they would answer them, turning them back into questions with notice (Coaldrake 1985, 224). Question Time was further subverted as an accountability institution by the practice of allowing lengthy ministerial statements to be made in place of some or all of Question Time (Ransley 1992, 153).

The ability of the Parliament to review the annual Budget was also severely constrained. Each year estimates were reviewed by a committee comprising the whole of the Legislative Assembly. The problem with this method of scrutiny was that the Government could determine which departments' finances were examined, and so it would only pick those it thought safe to examine. The work of the Estimates Committee was further hampered by the limited amount of time available to it, and the for ministers to spend much of this time on unproductive activities. Finally, the committee was not often in possession of sufficient budgetary information as would allow for a proper scrutiny of Government departments (Ransley 1992, 150-151).

Ministerial statements became another area in which the Opposition was at a disadvantage relative to the Government. For many years there was no right of reply

granted to the Opposition to a ministerial statement. Thus, the Government was possessed of an effective means of propagating its message, whilst the Opposition was not possessed of the right to respond. The right of reply was extended to the Opposition in 1983, but it was discretionary, subject to the decision of the relevant minister, and not always granted (Coaldrake 1989, 60).

Institutional features

Speakers of the lower houses in Australia are not generally noted for their complete impartiality. Unlike in the parliament of the United Kingdom, they do not resign party membership when they ascend to the Speaker's Chair. However, while Australian Speakers are known for showing some favouritism to the Government, they do as a rule exist and act with a degree of independence from the Government of the day. In Queensland this was not the case, with the office of Speaker being seen as an overtly partisan appointment that was subordinate to the executive (Ransley 1992, 156). Successive Speakers in Queensland were accused of being subordinate to the Government, and showing favouritism to it. Some Speakers, for example, would pass notes to Government ministers advising them of how to best use the Standing Orders of the parliament to defeat an attack by the Opposition (Coaldrake 1985, 232). Under the Premiership of Bjelke-Petersen, many of the administrative functions possessed by the Speaker were transferred to the Premier's Department, further eroding the power and independence of the Speakership (Coaldrake 1985, 232).

The Opposition, apart from suffering from the absence of proper scrutiny systems and from a partial Speaker, suffered a lack of resources. The level of resources assigned to the Opposition was at the sole determination of the Government, and the paucity of resources assigned show the lack of regard the Government gave to the legitimate roles of Oppositions (Coaldrake 1989, 61). The position of Leader of the Opposition came with only a few staff members, and the Deputy Leader of the Opposition gained the service of one staff member. This level of staffing was in contrast to that enjoyed by the Government, which had 18 teams of staff members providing parliamentary support (Coaldrake 1989, 61). Until 1979, when they were given Parliamentary accommodation, members of the Opposition had had to use offices located one and a half kilometres away from the Parliament (Coaldrake 1989,

61). Finally, the Government controlled the level of access that members of the Opposition enjoyed with members of the Public Service and the media (Ransley 1992, 157).

The Politicisation of the Public Service

Fitzgerald, in his report, posits the idealised model of public administration, based on the notion that "Governments answerable to the people decide policy, and public servants implement it" (Fitzgerald 1989, 129). He then argues that the public service in Queensland had become a politicised entity, and that this was a result of the ability of the Executive Government to control the career paths of the members of the public service (Fitzgerald 1989, 129).

The public service in Queensland existed as a closed shop. All of the appointments of heads of departments in Queensland came from within the public service (Wiltshire 1985, 186). Promotion could be achieved in two ways. The first was by length of tenure. If a person stayed in the public service, then as the years progressed they could be assured that promotions would come their way. The second means of promotion was through working directly with ministers. This means of promotion was much faster and hence much more desirable for those who wanted to advance far in the public service. A significant number of public servants who rose to the top of their departments did so after serving as a staffer to a minister, and so were promoted through patronage, not ability (Coaldrake 1989, 73-74).

Public servants also engaged in dubious management practices to help further the goals of their departments. The most famous of these involved the misuse of the voucher system for departmental acquisitions and spending. The rorts of the voucher system included ordering equipment or services, but then paying for them in instalments, so that no single payment would have to cross the threshold at which ministers or cabinets would have to sign-off on it, therefore absolving the minister or cabinet as a whole of direct responsibility (Coaldrake 1989, 78). Other rorts involved providing work to favoured companies, without tendering for quotes, engaging in creative accounting except in the periods of the year that were known to include

audits, and hiding ministerial expenses by debiting them against general areas of departmental expenditure (Coaldrake 1989, 78-79).

Fitzgerald contends that the politicisation of the public service led to a decline in the quality of public administration, as the responsibility of public servants to the people of Queensland was trumped by their desire to please their political masters and hence retain and advance their careers (Fitzgerald 1989, 129).

Government processes and secrecy

Fitzgerald devoted some space in his report to criticising Cabinet processes, especially for their impermeable secrecy.

In a section entitled "The Executive", Fitzgerald first made note of the fact that the Cabinet in Queensland took an active role not just in the formulation of policy, but in its implementation, which was traditionally the role of the public service (Fitzgerald 1989, 125). The contract system in Queensland was under the direct control of Cabinet, and could be changed without reference to parliament. Fitzgerald points out, without drawing conclusions, that contracts were not always subjected to tenders or quotations, and that sometimes contracts were not awarded to the lowest bidder (Fitzgerald 1989, 125). Fitzgerald continues by pointing out that there was no public explanation provided as to why certain contracts are entered into (Fitzgerald 1989). The imputation Fitzgerald was making here was that there was potential for corrupt practices to be engaged in when Cabinet awarded contracts, with contracts potentially being given to companies favoured, for one reason or another, by the Government. The Cabinet also took active involvement in the issuing of land grants, mining tenements, and property rezonings. Fitzgerald again raises the potential for maladministration and corruption to occur, highlighting the potential for personal considerations to intrude on such decisions (Fitzgerald 1989, 125-126).

Fitzgerald also raised some concerns about the potential for financial impropriety. Whilst again not making any specific allegations, he reflects on a public perception that the Queensland Government had been giving favourable treatment to organisations and individuals that donated money to the National and Liberal Parties. He refers specifically to the fact that the Government was known to accept large cash

donations from people or groups who hoped to have successful dealings with it (Fitzgerald 1989, 86). Again, Fitzgerald contends that nothing can be proven from these donations, but the fact that they were generally kept secret, and were received from people who proceeded to benefit from Government decisions, did not cast the Government in a good light (Fitzgerald 1989, 86).

Fitzgerald also criticised the lack of a proper pecuniary interest register. Whilst he acknowledges in his report that a pecuniary interest register had been recently adopted, he questioned the fact that only the interests of the minister had to be made public. Whilst the interests of a minister's family were included in a confidential register, this was not able to be examined by the public, and so public scrutiny on a minister's decision making could not be properly exercised (Fitzgerald 1989, 137).

The Post Fitzgerald Reform Program

In this section the reforms that were carried out as a result of the Fitzgerald program will be canvassed and evaluated. While some reforms were initiated by the National Party Government prior to the report being completed, the bulk of the reform program was implemented after 1989 by the Labor Party Government of Wayne Goss, who campaigned on a platform of implementing the recommendations of Fitzgerald in their entirety. The establishment of three extra-governmental bodies was the major result of the *Fitzgerald Report*. Two of these, the Criminal Justice Commission (CJC) and the Electoral and Administrative Review Commission (EARC), were formed as a direct result of the recommendations contained within Fitzgerald's Report. The final of these bodies, the Public Sector Management Committee, was created not on the recommendation of the *Fitzgerald Report*, but was inspired by the other two bodies. These three Commissions will be considered in turn. Before assessing each individual reform, I want to make the general point that, whilst these initiatives were worthwhile reforms that strengthened the operation of the democratic system in Queensland, they were in all less valuable than the reintroduction of an upper house would have been. The simple reason for this is that in all cases, the reforms undertaken and the bodies established existed only at the pleasure of the government, which, due to its control of the unicameral parliament, could reverse the establishment of any review or reform body, and could ignore any of the recommendations made by these bodies with which they did not agree.

The Electoral and Administrative Review Commission

The EARC was established to recommend general changes to public administration in Queensland. Thus, it stood at polar opposites to the Criminal Justice Commission, which was formed to look at specific allegations of official misconduct.

The role of the EARC was to suggest reforms to the system of government and public administration in Queensland, to increase the level of accountability, and thus help prevent the recurrence of the corruption and maladministration that had been in existence (Sherman 1992, 204). The EARC was designed as a review institution, thus it possessed only the powers to review government structures and public administration. It did not itself possess the powers to institute any changes. The EARC was to report its findings periodically to parliament, which could then decide whether or not to act on these findings (Sherman 1992, 204). The administrative review component of the Commission was initially intended to include a review of the Public Service. To avoid duplication, this component was removed when the Public Sector Management Commission was created (Prasser 1996, 121).

The EARC was therefore intended to be a body that existed for a limited period of time, unlike the CJC, which was to be a permanent watchdog. The EARC was disbanded at the end of 1993 (Prasser 1996, 118). At the end of its four-year review, it had recommended a number of significant changes to the political system in Queensland.

Reforming the electoral system

The most commonly referred-to success of the EARC is in the breaking down of the zonal system, and the introduction of one vote, one value electorates to Queensland. There is a qualification that has to be made: perfect one vote, one value was not adopted. Given the sparsity of the population in much of rural Queensland a compromise was made to try to keep the size of electorates manageable. Electorates that were larger than 100,000 sq km were allowed to have lower electoral

enrolments than geographically smaller electorates. This exception ended up affecting five of the 89 electorates (Hughes 1992, 179).

Freedom of information

In a political system where the Parliament is hamstrung in its scrutiny functions, and where the Government was not prone to any voluntary provision of information, the ability for extra-parliamentary institutions and actors to apply scrutiny is rendered all the more important. One of the suggestions that Fitzgerald made to combat the culture of secrecy that he saw existing in the Government of Queensland was the introduction of Freedom of Information legislation (Fitzgerald 1989, 129).

This was one of the areas put under consideration by the EARC, and it recommended that the introduction of Freedom of Information legislation would be beneficial to governmental accountability (Prasser 2004, 34). The recommended Freedom of Information system was heavily altered by the Goss Government, however, and many exemptions were inserted. Whilst the Freedom of Information system did help to make government more transparent, much of the secrecy that was criticised by Fitzgerald was maintained (Prasser 2004, 34).

Other Areas

The EARC proposed that the restrictions on public assembly that had been put in place under Bjelke-Petersen, courtesy of Bjelke-Petersen's control of the unicameral parliament, be removed, and a law protecting the right for peaceful public assembly be enacted. The right to assemble for peaceful purposes was regarded by the EARC as a necessary outlet for the expression of concerns by minorities and the marginalised (Sherman 1992, 207). The EARC also proposed whistle-blower protection legislation be implemented to enable those who know about maladministration and corruption to be able to speak out publicly (Sherman 1992, 208). The path to implementing whistle-blower protection in Queensland was one that was littered with many abortive starts, but eventually, in 1994 whistle-blower protection legislation was passed (De Maria 1995, 272).

Failures of the EARC

Whilst the EARC successes, as detailed above, were significant, it also experienced some significant failures. One of its recommendations sought to increase the resources allocated to the Opposition, to better equip it to perform its role as an alternative government. To this end, it was recommended that the Opposition be given resources at 20 percent of the level enjoyed by the ministry. This proposal was rejected by the Goss Government (Prasser 2004, 20). The rationale for this rejection was that it would cost too much, but it was hard to not see it as revenge by the new Government for their treatment in Opposition, as on becoming the Government, they had embarked in an expansion of the resources available to ministers (Prasser 2004, 20).

The second failure of the EARC concerns the rejection of its plans to reorganise local government. The EARC engaged in the first review of local government boundaries in Queensland for sixty years, and recommended a raft of boundary changes and Council amalgamations. These did not accord with the views of the Government, who declined to act to effect change (Prasser 2004, 28). Thus, the fact that the parliament was unicameral meant that the Government possessed the unchallengeable ability to ignore the electoral reform suggestions that it did not want to implement.

Reforming the Public Service and the Public Sector Management Commission

The first Legislative action of the Goss Government was to establish a Public Service Management Commission, which would monitor and suggest reforms to the Public Service (Hede 1993, 90). The PSMC was not recommended in the Fitzgerald report, but to help give it legitimacy, Goss tied the PSMC to Fitzgerald, referring to the PSMC as a part of the Fitzgerald trilogy, the other two sections being the CJC and the EARC (Prasser 2004, 23).

Over the two years following its inception, the PSMC completed a number of reviews focussing on the management of the public service departments, but also looked at

the operational processes within these departments (Hede 1993, 92). One of the goals of the PSMC was to break down the patronage and cronyism that existed in the public service (Colley 2006, 53). To this end, a merit system of employment, supported by equal opportunity legislation, was recommended to replace the system of seniority that had been operating until this time (Colley 2006, 53). There was a great deal of resistance to the introduction of the merit system from within the public service (Colley 2006, 53-54). When the National Party returned to office under Rob Borbidge in 1996 it reversed much of the centralisation of the public service that had occurred and the merit system was weakened. When the Beattie Government came to power, it did not act to re-implement the original, stronger, merit system (Colley 2006, 55-56).

The other significant reform to the public service that occurred under Goss was the introduction of a contract based Senior Executive Service (SES). A contract system had been introduced by the previous Government, but the new SES was designed to increase the mobility of the senior levels of the public service, allowing for more transfers between departments and from outside the public service (Hede 1993, 93-95). The Government was soon accused of using the contract system of the SES to engage in the same sort of politicisation of the public service as occurred under the previous Government. Upon entering office, the Goss Government replaced most of the heads of department with its own appointees, and under the SES, appointments were to be vetted by the relevant minister (Prasser 2004, 24-25). Furthermore, the centralisation that resulted from the work of the PSMC left a lot of power over the actions of the public service in the hands of the newly created Office of Cabinet (Prasser 2004, 25-26). This has led to the conjecture that the Goss Government used talk of reform to replace the politicisation of the public service under the previous Government with the sort of political control favoured by it (Prasser 2004, 26-27). Whilst the reforms to the public service certainly increased its efficiency and quality of administration, it is doubtful whether they led to a significant decrease in politicisation.

The Criminal Justice Commission (later Crime and Misconduct Commission)

The Criminal Justice Commission was established to examine specific instances of corruption and criminality in the police force, the public service, and amongst politicians.

The CJC, in its role as a reformer of the police force and the criminal justice system, enjoyed rapid and considerable success (Dann and Wilson 1993, 202-207). Problems arose, however, with its political oversight function (Lewis 1997, 1). The CJC was subservient to parliament (and hence any Government that enjoyed control of the unicameral parliament) as it was overseen by a parliamentary committee, and yet it had to investigate allegations of corruption by politicians (Lewis 1997, 1).

An early embarrassment was caused when 54 members of parliament had been found to be abusing their travel privileges, leading to the dismissal of two ministers (Prasser 2004, 29-30). After this, the Government began ignoring reports by the CJC, and publicly criticising it, leaving the CJC having to publicly respond to defend itself (Prasser 2004, 31). The powers of the CJC were progressively downgraded and it was sidelined over the life of the Goss Government (Prasser 2004, 32-33). This again shows the ability of a Government in a unicameral parliament to modify the powers of, and ignore the recommendations of, a body with which it disagrees, or feels would be politically damaging.

The CJC was replaced with a Crime and Misconduct Commission in 2001. The CMC's role is to act as an integrity institution. It undertakes investigations of corruption and performs an advisory role, helping public service agencies deal with incidences of misconduct in their departments (Morre 2006, 280).

The necessity for the reintroduction of an upper house

The question that now needs to be addressed is this: were the reforms inspired by the Fitzgerald report successful? If success is defined as Queensland being left with a less corrupt and maladministered system of government, then the answer is yes. If

success is defined as fixing the root cause of the corruption and maladministration, to decrease the chances that such maladministration could recur, then the answer is no.

The problems Queensland experienced, and to some degree continues to experience, were caused by executive dominance. Once a party won office in Queensland, there was nothing standing in the way of it being able to exercise whatever power it chose. By definition, the Government dominated the parliament, rendering that institution useless, and consolidated this power by stacking the public service. The police force being seen as an arm of Government further tightened the Government's control.

The reforms of the Fitzgerald report, by the simple necessity of this Government dominance, had to be approved by the Government. Legislation was needed to enact the various reform bodies, and then further legislation was needed to act upon their recommendations. Therefore, at all times the reform process was in the hands of the Government. Whilst there was significant public pressure for reform, the Government could cherry-pick from the options available, and choose not to institute those reforms that they thought would be too damaging to their power. For example, perhaps the most obvious result of the reform process was the redrawing of electoral boundaries to remove malapportionment in all but the five largest electorates. The Labor Party would have had no problems with this reform occurring, and would have instituted a similar reform even had it not been recommended by the EARC, as the electoral system as it stood was perceived to benefit the National Party. In contrast, the Government rejected the recommendation that the Opposition be allocated additional resources, to enable them to better fulfil its functions. In rejecting this recommendation, the Government was acting to preserve its position of dominance.

Freedom of Information provides an example of a reform that was enacted against the best interests of the Government. But since its inception, Freedom of Information had been progressively weakened. This, coupled with the exemptions that existed in the original legislation, that saw Cabinet and publicly owned corporations not subject to the legislation, has meant that the Freedom of Information system in Queensland has not performed adequately (Prenzler 1997, 15). This has been recognised by the FOI Independent Review Panel, which was established to review the Freedom of Information system. The panel has released a report calling for wholesale reform of the Freedom of Information system (Solomon, Webb and McGann 2008).

Similarly, the Criminal Justice Commission was created to police politicians and public officials, and investigate allegations of corruption and abuse of power. Yet it was established by parliamentary legislation, proposed by the executive, and was monitored by a parliamentary committee in which the governing party possessed a majority. Thus, while it had to police the actions of the government, it was wholly subservient to them. The treatment of the Criminal Justice Commission by the Parliament confirmed its subservience, with often spurious references being made by MLAs of either side, to score political points against their opponents (Lewis 1997,1). The successor to the CJC has been ignored by Government, or had its processes subverted, when its findings were unfavourable to the Government, such as in the case of Minister Gordon Nuttall, who was investigated by the CMC over allegations that he mislead an estimates committee, and after briefly standing aside, was reappointed to the ministry from where he attacked the CMC (Prasser 2007, 16-17). Premier Beattie denied that Queensland needed an upper house, arguing that the CJC/CMC performed that role already (Grundy 2005). But given the lack of regard paid by the Government to any recommendations from the CJC/CMC that it did not approve of, the reintroduction of an upper house that could force scrutiny and change onto the Government seems patently necessary.

The introduction of an upper house to Queensland would be the best way to reduce the dominance of the executive. As Scott Prasser and Nicholas Aroney (2007) contend:

> The abolition of the Legislative Council has led to what many commentators regard as Australia's most executive dominated system of government. Queensland's unicameral legislature exacerbates the 'winner takes all' approach characteristic of Westminster systems regardless of which party is in power.

A reintroduced upper house should be designed along the lines of those that exist in New South Wales, Victoria or South Australia. Here there are upper houses based either upon whole of state electorates, or one vote, one value electoral districts, elected through a system of proportional representation. The use of proportional representation almost always returns a house that is in control of neither the Government of the day nor the Opposition. This thus institutionalises a house in which consensus needs to be sought in the legislative process, and that has a vested interest in providing scrutiny of the executive. Both increased executive scrutiny and

an increased willingness to compromise would be invaluable in the Queensland political system.

There are some who argue that the introduction of proportional representation into the Legislative Assembly could produce the same benefits as the restoration of an upper house elected through proportional representation. But as Aroney and Prasser contend (2007, 8), this contention is false. A fully separate house, possessed of near equal powers to the Legislative Assembly would possess a much greater check on the actions of Government.

To establish an upper house, a few factors will need to be considered. Aroney and Prasser (2007, 8), as well as Stone (2006, 3), and Colin Hughes (2008, 280-281), believe that the idea of reintroducing an upper house will be made more palatable to the general public if it were not seen as causing a significant increase in the number of politicians, and suggest that the Legislative Assembly can be reduced to in part help compensate for the members of the new Legislative Council.

Aroney and Prasser (2007, 8-9) and Stone (2006, 12-16) and Hughes (2008), argue for proportional representation to be the form of electoral system for a new upper house. This helps to create the incongruence in composition between the two houses required for strong bicameralism. Additionally, Hughes (2008, 282-284) makes the point that were the new upper house to be elected on a system of electoral districts, such as the Victorian Legislative Council is, then it may be difficult for minor parties to achieve election due to a prohibitively high quota. For this reason, Hughes (2008, 284), recommends one state-wide district, ensuring that minor parties are able to secure representation.

The level of power over money bills is another issue to be considered. New South Wales and Victoria have removed the power for their Legislative Councils to reject supply, and replaced it with a one month suspensory veto. All other Australian upper houses retain the right to reject supply (Stone 2008, 180). Those who argue against allowing upper houses to block supply do so out of a fear that the crisis of 1975, which saw the dismissal of the Whitlam Government, could be repeated. Stone posits the opposing case, questioning why:

> upper houses whose democratic credentials are generally as good,
> if not better, than lower houses should not have the capacity to play

a role in budgetary policy or to threaten to withhold support for a budget, at the least, until executive government takes action to resolve serious concerns about its behaviour, for instance by holding a public inquiry. (Stone 2008, 180)

Finally, deadlock procedures will need to be considered so as not to cause insurmountable disagreements between the Legislative Assembly and a new upper house (Stone 2006, 5-8).

The introduction of an upper house will not be a panacea that will forevermore cure the ills of the Queensland political system. I do not contend that a new upper house is the perfect option for reform. A new upper house would provide, however, a body that could apply scrutiny to all of the activities of government, greater representation of political views, a forum in which the Opposition of the day can better carry out its role, a place for legislative review to occur, and a brake on hasty government action. The reintroduction of an upper house should not replace reforms already enacted. Redundancy in political systems is important. The more ways in which scrutiny can be applied the less chance there is that Queensland will experience the mismanagement and corruption that characterised its governance for much of the twentieth century.

Chapter Eight – The Development of the Other Parliaments of Australia

This chapter examines key developments in the bicameral evolution of the five other Australian parliaments, apart from South Australia, which have maintained bicameral systems. A full and detailed history of the evolution of these parliamentary systems cannot be given, for reasons of space. Rather, there is a bias towards those reforms that have occurred more recently, and those that serve to indicate different paths down which bicameral development has progressed. This examination of the significant events in the historical development of these Australian upper houses will help to inform the conclusion to this chapter, where the current state and nature of Australian bicameralism will be defined. The evolution of Australian bicameralism, and the legitimacy that accompanies it, can also be credited with saving upper houses from abolition. Moving towards greater democratic legitimacy has been seen as an acceptable alternative to abolishing biased upper houses, and this, at different times, is what has occurred in each of the Australian states, with one significant exception. Though bicameral evolution in Australia has proceeded down somewhat different paths in some of the specific changes that have occurred in the parliaments, broadly, the story of Australian bicameralism is shown to be the democratisation and legitimisation of the upper houses.

Tasmania

The Tasmanian parliament is now different to all of the other parliaments in Australia despite the fact that it began in a way consistent with that of the other Australian colonies. A Legislative Council was convened to advise the Governor. When responsible government was granted, this Legislative Council became the upper house in a bicameral parliamentary system. What differentiates Tasmania is how the electoral mechanics of the two houses, the Legislative Council and the House of Assembly have evolved.

The electoral systems used to elect members to the Tasmanian parliament are the inverse of those for the other Australian parliaments. Preferential voting is used to elect the members of the Legislative Council, and a form of proportional representation, known as the Hare-Clark system, is used to elect the members of the House of Assembly. The Hare-Clark system was first used in the election of 1909. The rationale for the introduction of the Hare-Clark system was to remove partisan competition from the lower house. It was thought that a system of proportional representation would enable a diversity of opinion to be represented in parliament. Instead, the same two party system emerged in Tasmania as emerged in the rest of Australia (Herr 2005, 132). Until the late 1980s, Tasmania's parliament was defined by majority government. Indeed, the ALP managed to form an unbroken series of governments between 1934 and 1969. When the Liberals won the 1969 election as a majority government (that is, a government comprised of one party or a permanent coalition that is not reliant on parliamentary support from other parties or independents), they lasted for two years, and suffered a heavy defeat at the ensuing election (Madill 1997, 69). The situation changed with the rise of the Greens. In 1989, the ALP was able to secure minority government by entering a coalition with the Greens. This ended a bit over two years later, precipitating an election at which the ALP was heavily defeated (Madill 1997, 69).

The Legislative Council of Tasmania is unique amongst Australian legislative bodies in that a majority of its members are independents. Of the three political parties that viably compete for seats in the Tasmania parliament, until recently only the Labor Party was represented in the Legislative Council, and it usually only holds a small number of the fifteen seats. In August 2009, the Liberal Party stood a candidate successfully in a by-election for the Legislative Council seat of Pembroke. Though the rest of the members of the Legislative Council are independents, in the sense that they do not identify with a party label, they are generally very conservative. Furthermore, some of the independent MLCs maintain links with the Liberal party, with some holding party membership and serving on the state executive, whilst still identifying themselves as independents in Parliament (Thorpe 2007, 39).

The Legislative Council of Tasmania wields a great amount of power. Lin Thorpe, a Labor MLC in Tasmania, believes that it is one of the most powerful upper houses in the Commonwealth (2007, 38). The Legislative Council is able to block supply, and thus cause a situation in which the government of the day might be dismissed, but

cannot itself be dissolved, and so could exercise the power to bring down a government without having to face the electors itself (Thorpe 2007, 39). The Legislative Council is the only one of the Australian upper houses that continues to use a system of single member electorates to elect its members. Members are elected by preferential voting and serve for a period of six years. Elections are staggered, and held every May, at which time two or three Members of the Legislative Council are elected. Given that these elections are staggered, and take place outside of the timeframe for elections to the House of Assembly, there is less pressure for Members of the Legislative Council to comment on the political issues of the day that shape election campaigns for the House of Assembly (Thorpe 2007, 38-39).

Members of the Legislative Council also benefit strongly from incumbency. Once a person wins a seat in the Legislative Council, it is very hard for him/her to lose it. There are several reasons for this. The first is that there is often little challenge to a sitting member. At an election, the sitting MLC may face one or two challengers, though sometimes MLCs are able to contest elections unopposed. The second reason has to do with financing. There is a limit in place that states that only $12000 can be spent on an election campaign for the Legislative Council (ABC Elections 2009). This makes it difficult for challengers to buy enough media exposure to get their ideas across and to become recognizable to the electorate. The third reason has to do with the way that votes are recorded in the Legislative Council. Most votes are taken 'on the voices' which means that the individual votes of MLCs are not recorded. This means that most of the time it is impossible to identify how a particular MLC voted on an issue, removing the ability for the electorate to cast judgment at election time. Finally, many MLCs hold positions in local councils, often as mayors or deputies. This again aids incumbency as it helps them to raise their profile in their electorate (Thorpe 2007, 39).

The major change that occurred recently in Tasmania, and needs to be examined in this overview of the Tasmanian parliament, is the recent reduction in the size of the Parliament. In 1998 the size of the Tasmanian Parliament was reduced. The House of Assembly was reduced from 35 to 25 members, and the Legislative Council was reduced from 19 members to 15 (Herr 2005b, 2).

Why was this change implemented? The official reason was to increase the efficiency of government by reducing the number of politicians compared to the

overall population (Herr 2005b, 1). The general view seems to be that it was really intended to reduce the parliamentary presence of the Greens (Crowley 2000, 2). There were two periods of minority government preceding the move to a smaller parliament, between 1989-1992, and between 1996-1998. The members of the public, like the major party politicians, tended to view the Greens as the cause of the government instability that characterised these periods (Herr 2005a, 131).

> The changes introduced were effective in the short term. After the 1998 election there was only one member of the Greens left in the House of Assembly. The votes received by the Greens recovered at the subsequent elections, however, with the result that there are now four members of the Greens in the House of Assembly, giving them a proportionally greater presence in the House than prior to the changes being introduced.

The changes have come at a detriment to the functioning of the Tasmanian parliament. The size of the ministry was reduced from ten to seven when parliament was reduced, leaving fewer ministers to manage the same number of portfolios. The number of ministers was later increased to nine, a ministry of seven revealing itself to be untenable. The number of ministerial staff also grew considerably. This directly contradicts the claim that the reduction in the size of parliament would be a cost-saving measure, with members of the Liberal Party claiming that the cost of ministerial staff had increased by 25 percent in one year (Herr 2005b, 2-3). The decrease in the size of parliament has also increased the pressure on the Opposition, who after the 2002 election, had so few members in parliament that it was unable to provide a shadow ministry the same size as the government's ministry, and had no backbench (Herr 2005b, 3).

Thus, there exists today in Tasmania arguably the most powerful upper house in Australia elected upon the least democratic system operating for upper house elections in Australia. Paired with this, there exists a House of Assembly, which, due to the recent reduction in size, has become a less effective house of government.

New South Wales

The Legislative Council of New South Wales is the oldest house of parliament in Australia. It was initially formed as a body of appointed members who advised the

Governor of the colony as he performed his duties. The role of the Legislative Council changed upon the grating of responsible government in New South Wales in 1856, and it became the upper house of the new parliament. However, while the lower house, the Legislative Assembly, was an elected chamber, the Legislative Council remained an appointed chamber (Griffith and Srinivasan 2001, 86), though there was a failed attempt in 1859 to render the Legislative Council an elected body (Smith 2003, 47). The government of the day controlled appointments to the Legislative Council, and would make appointments to the Legislative Council in order to achieve partisan advantage there. Appointments to the Legislative Council were made for life, and though the Constitution specified a minimum size for the Legislative Council, it did not specify a maximum size (Griffith and Srinivasan 2001, 86). Because of this, the number of Legislative Council members grew rapidly. Between the years of 1872 and 1889, the Legislative Council doubled in size (Smith 2003, 47). By 1932, the Legislative Council consisted of 126 members, slightly less than four times the size of the initial 32 members Council (Griffith and Srinivasan 2001, 86).

According the New South Wales Constitution Act 1855 (Imp) that established responsible government in New South Wales, all amendments to that Act could be made subject to the successful passage of an amendment Bill through both houses of parliament, requiring only a simple majority in each (Smith 2003, 44). It was not long before a government sought to take advantage of this provision to try to abolish the Legislative Council.

Since its formation, the ALP had not enjoyed an easy relationship with the membership of the Legislative Council, mainly because the Legislative Council has rejected a greater proportion of Labor Party Bills than those presented by the non-Labor members of parliament (Smith 2003, 47). The early Labor governments of the twentieth century sought to avoid confrontation with the Legislative Council, and engaged in negotiation in order to get their legislation passed, until the Lang Government sought to abolish the Legislative Council in 1925. The method by which Premier Lang sought to abolish the Legislative Council borrowed heavily from the successful abolition of the Queensland Legislative Council that occurred three years previously, by the Theodore Government. Lang stacked the Legislative Council with a 'suicide squad' of Labor members who would enter the Legislative Council to give the government a majority, and thus the ability to pass the amendment Bill that would abolish the Legislative Council. The plan failed when a sufficient number of the new

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Labor members abstained from voting, or voted against the Bill, to cause its defeat (Smith 2003, 47). In response to the attempted abolition of the Legislative Council, the Nationalist Government that had by that time won office, entrenched the Legislative Council, so that the successful passage of an abolition Bill through a referendum would be required (Smith 2003, 47).

In 1933, some significant referendums were supported that made extensive changes to the Legislative Council. The Legislative Council was transformed into a 60 member body, and its size was fixed. The members of the Legislative Council were elected on a system of proportional representation by the members of the Legislative Assembly and the Legislative Council. The MLCs served a twelve-year term, and 15 of them retired every three years. The Legislative Council was stripped of its power to amend and reject money bills, though it retained equal powers to the Legislative Assembly with respect to all other legislation (Page 1991, 23). Thus, the Legislative Council went from being an appointed body in which members served for life, to an indirectly elected body in which members served for a period of twelve years. The introduction of universal suffrage for the Legislative Council was to occur in another 45 years.

In 1978 the *Constitution and Parliamentary Electorates and Elections (Amendment) Act* (NSW) received the approval of 73 per cent of the voters of New South Wales at a referendum. The Bill proposed reforms to the Legislative Council that left it a democratically elected body.   Members were elected from a single statewide electorate on a system of proportional representation. The size of the Legislative Council was reduced to 45 members, and the election of the new members occurred in a staggered fashion, over the next three electoral cycles. In the first election for the new Legislative Council, 15 of the original appointed members of the Council retired, and 15 new ones were elected in their place. This occurred until the Legislative Council was constituted as a directly elected body (Page 1991, 23-24).

The reforms that were made to the Legislative Council only effected its composition. Its powers remained the same as they were prior to the reforms (Page 1991, 24). This means that the New South Wales Legislative Council has the weakest legislative powers of all of the Australian upper houses, as the Legislative Council does not possess the ability to block supply.

For the first decade under the new system of voting, the Labor Party held a majority in the Legislative Council. They also held a majority in the Legislative Assembly at this time. Because of this, the impact of the reforms on the Legislative Council did not appear to be that great. Since the Labor Party lost government in 1988, however, neither of the major parties in New South Wales have been able to secure a majority of the seats in the Legislative Council (Smith 2003, 48). This has led to the rise of a diverse group of independent and minor party MLCs. However, since the last election, in 2007, the number of members sitting on the cross benches of the Legislative Council has declined. After the 1999 election, there were 13 independent or minor party MLCs in the now 42 seat Legislative Council. Following the 2007 election, this number has been reduced to 8 (Spies-Butcher 2007, 697-8).

The formation of a comprehensive committee system in the Legislative Council is the other major change that has resulted from the conversion of the Legislative Council into a popularly elected house. The genesis of the modern Legislative Council committee system can be found in the work of the Select Committee on Standing Committees for the Legislative Council, formed in November 1986 (Griffith 2002, 52). The result of this was the formation of two standing committees, one of which dealt with state development, the other with social issues. The number of committees increased since the formation of the first two, and the number of members that have comprised the committees has fluctuated. The one constant that has characterized the committee system is that the committees are always controlled by a government majority (Griffith 2002, 52). Despite this, the committee system has facilitated the evolution of the New South Wales Legislative Council into a genuine house of review. This, coupled with the move to democratic legitimacy and increased representativeness has resulted in the New South Wales Legislative Council becoming a much more legitimate and effective house of parliament.

Western Australia

Western Australia covers the largest land area of any of the Australian States. For this reason, the debate over the design and rationale of election systems in Western Australia has turned on the question of how much voting equality can be sacrificed to geographical considerations. The practical effect of this is that Western Australia, for most of its history, possessed a very malapportioned electoral system (Moon and

Sharman 2003, 184). The sparse distribution of population over much of the State led to proposals, when responsible government was granted, that it be divided into separate territories for the purposes of administration. This idea was debated until 1920, when it was finally abandoned (Moon and Sharman 2003, 185).

Western Australian malapportionment has been characterised both by its extent, and the length of time that it has persisted. The population dispersion (more than 70% of the population of Western Australia reside in Perth) has led to the argument being made that representation of remote communities necessitates malapportionment, so that the members representing these areas do not have unfeasibly large seats to represent (Moon and Sharman 2003, 198-9). Western Australian malapportionment was able to exist for as long as it did because for much of the time it did not seem to influence the competitiveness of the major parties. Both Labor and the Coalition had seats in which they enjoyed advantages because of the malapportionment (Moon and Sharman 2003, 199).

The situation in the Legislative Council did not echo the party competition that could be found in the Legislative Assembly. The non-Labor parties in Western Australia were able to maintain an unbroken run of Legislative Council majorities from the time that responsible government was granted in 1890, until 1996 (Griffith and Srinivasan 2001, 69). The Legislative Council was formed with a strong regional bias (Griffith and Srinivasan 2001, 73); it was created as an elected house, but the conservative dominance of the house was ensured by having a property qualification for voting (Moon and Sharman 2003, 185-6).

The Legislative Council was empowered with virtually the same level of power as the Legislative Assembly, only without the ability to amend financial legislation. There were also no deadlock procedures formulated (Moon and Sharman 2003, 185). This put the Legislative Council in a powerful position, and the permanent non-Labor majority wielded this power every time a Labor government was formed in the Legislative Assembly. Such Labor governments would find large parts of their legislative agenda blocked or amended by the Legislative Council. This led the Labor Party for many years to have a policy of abolition of the Legislative Council. This was dropped by the Labor government of Brian Burke, who set about enacting reforms to the Legislative Council instead (Moon and Sharman 2003, 186).

Prior to the 1987 reforms initiated by Labor, some other reforms to the Legislative Council took place. The number of provinces used to elect members was changed on multiple occasions, as was the proportion of the Legislative Council that faced the voters at each election. The time between such elections was also changed. Finally, the property qualification for Legislative Council elections was removed (Griffith and Srinivasan 2001, 73).

In 1987, the Labor Party was able to pass a Bill introducing proportional representation to the Legislative Council, with the help of the National Party (Pepperday 2003, 3). The form of proportional representation was not based on a whole of state electorate, rather six electoral regions were created. Three of these regions were designated as metropolitan, and the others, non-metropolitan. One of the metropolitan seats returned seven members, as did one of the non-metropolitan seats. The other two metropolitan seats, along with the other two rural seats, each returned five members. Thus, there was still a large degree of electoral malapportionment in the new system, as the population of the metropolitan areas greatly outnumbered the population of the non-metropolitan areas (Griffith and Srinivasan 2001, 73). The other significant change that was instituted by this set of electoral reforms was the removal of staggered elections for the Legislative Council. Instead, fixed four year terms for the Council were instituted, with the entirety of the Council facing election every four years (Griffith and Srinivasan 2001, 73).

So the state of play after the 1987 reforms saw a parliamentary system that still suffered heavy electoral malapportionment in both of its houses. The next reforms were to come after the 2001 general election, after which Labor held a majority in the Legislative Assembly, and for the first time in the history of the Legislative Council, the Labor party and the Greens between them held a majority of the seats (Kelly 2006, 419). Because of these numbers, Labor decided to enact electoral reforms.

To pass reforms, Labor needed the support of the Greens in the Legislative Council. Labor wanted to reform the electoral system to reflect 'one vote, one value' principles. Some of the Greens had other ideas, for example, wanting to see a Legislative Council that represented regions based on their patterns of biodiversity, arguing that a representation purely of people was discriminatory (Kelly 2006, 420). In the end, Labor agreed to a Green plan that would increase the size of the Legislative Council to 36, and create six electoral regions of six members each, three metropolitan and three rural. This 'reform' would leave the Legislative Council badly

malapportioned, but it was a price that Labor was willing to pay in order to get its reforms for voting equality in the Legislative Assembly passed (Kelly 2006, 420-1).

The process for passing the legislation was long and complicated, resulting in a series of court challenges. For reasons of space, the process will not be detailed here (but see Kelly 2006, 422-3; Johnston 2005). The reforms were finally enacted after the 2005 election, when, with the support of a Liberal MLC turned independent, Labor was able to pass its electoral reform package through the Legislative Council with the constitutionally mandated absolute majority. The reforms went a significant way to instituting 'one vote, one value' for the Legislative Assembly. However, the reforms actually increased the malapportionment of the Legislative Council slightly (Kelly 2006, 424-5).

Malapportionment has been one of the hallmarks of the Western Australian electoral system since its inception, and it looks like it will continue to be for the Legislative Council in the foreseeable future.

Victoria

The Legislative Council of Victoria is the most recently reformed of the Australian Legislative Councils. The reforms transformed the Victorian Legislative Council from an unrepresentative chamber that contained a nearly permanent conservative majority, to a more democratic and more representative chamber, elected under a (somewhat restrictive) form of proportional representation.

The Legislative Council of Victoria began with the same rationale as all of the colonial Legislative Councils in Australia – to act to curb any excesses of democracy instituted by the Legislative Assembly. In this, the Victorian Legislative Council was aided in a very similar way to the South Australian Legislative Council: there was a property qualification and malapportionment in favour of the rural areas. Members of the Legislative Council were not paid, helping to ensure only those who were possessed of wealth were able to become MLCs (Costar and Gardiner 2003, 34). The Legislative Council had the power to reject all of the bills passed by the Legislative Assembly, and it faced election at a different time than the Legislative Assembly, with its members being elected for a period twice as long as members of

the lower house (Costar and Gardiner 2003, 34). This persisted until 1950, when the Legislative Council was made subject to universal adult suffrage in line with the Legislative Assembly, and a series of electoral districts returning two members each, elected through preferential voting, were established (Strangio 2004).

In 1999, Steve Bracks became the Premier of Victoria at the head of a minority Labor Government, after having secured the support of three independents in the Legislative Assembly. The support of the independents was gained through a promise to enact parliamentary reforms, including reforming the Legislative Council (Costar 2004, 67). This accorded with the goals of the ALP, who had never enjoyed a high level of representation in the Legislative Council, which, despite the widening of the franchise, had remained dominated by conservative members. The ALP, in the more than 100 years for which it had existed, had held a majority in the Legislative Council for a period of only three months (Costar 2004, 67). Prior to the late 1970s the policy of the ALP had been to abolish the Legislative Council. This changed through the 1980s to a policy of introducing proportional representation for Legislative Council elections (Strangio 2004).

The Bracks Government put a constitutional reform bill before the Legislative Assembly on 24 November 1999. The bill proposed to reduce the size of parliament. The Legislative Assembly would be reduced from 88 to 85 members, and the Legislative Council would be reduced to 35, from its then membership of 44. The ability of the Legislative Council to block supply would also be removed, and its term length would be made equivalent to that of the Legislative Assembly. The bill also proposed the introduction of proportional representation (Tunnecliffe 2004, 2). This bill was withdrawn after it became apparent that it would not receive the support of the Legislative Council. The Government then introduced two new bills, one that would give effect to proportional representation for the Legislative Council, and another that would introduce some other constitutional changes, namely fixed four year terms, four year terms for MLCs and the removal of the ability of the Legislative Council to block supply. Both bills passed the Legislative Assembly, but were defeated in the Legislative Council, which was heavily dominated by the Opposition (Tunnecliffe 2004, 2-4).

The Bracks Government then moved to institute a more broadly consultative constitutional reform program. A constitutional reform commission was established, consisting of a retired Supreme Court judge and two former Liberal parliamentarians,

one from the State parliament, and one from the Commonwealth parliament. The Commission was empowered to consider public submissions and to consult widely in developing its recommendations. To assist the public debate, a discussion paper outlining the issues under consideration was prepared and circulated. The report of the Commission, entitled "A House for our Future" was released on 30 June 2002 (Tunnecliffe 2004, 4).

The report of the constitutional commission called for substantial changes to be made to the Legislative Council. The Government did not include all of the suggested reforms in the Bill that it subsequently introduced to parliament, but there were several significant changes incorporated into the Bill:

- Eight New multi-member Council electorates (Provinces) using the single transferable vote proportional representation (STV PR) method, each returning five members;

- Australian Senate system of 'above and below the line voting' i.e. a modified list system;

- Optional preferential (contingent) voting 'below the line';

- Fixed concurrent terms for both houses of four years;

- Candidate's address to be printed on the ballot paper;

- Government mandate to be recognized;

- A system for resolving deadlocks between the Houses;

- A prohibition on the Council blocking supply;

- Entrenchment (by way of plebiscite and special majority) of fundamental provisions of the Constitution Act. (Costar and Gardiner 2003, 36).

The Constitution (Parliamentary Reform) Bill 2003 passed the Legislative Assembly and the Legislative Council at the end of March 2003 (Costar and Gardiner 2003, 37). Apart from the changes listed above, a couple of minor amendments were inserted as the Bill was being passed. These amendments gave the President of the Legislative Council a deliberative vote, specified that each electoral region of the Legislative Council be made up of eleven contiguous districts, and removed the title 'Honourable' from members of the Legislative Council (Costar and Gardiner 2003, 37).

The reforms enacted to the Legislative Council left it a more legitimate chamber, though a significantly less powerful one. The introduction of proportional representation increased the diversity of the Legislative Council. At the 2006 election, the first to use proportional representation, the composition of the 40 member Legislative Council was: 19 Labor, 15 Liberal, three Greens, 2 Nationals, and one member of the Democratic Labor Party (Costar 2007, 690) In contrast to this, after the 2002 election, the 44 seat Legislative Council returned 25 Labor Party, 15 Liberal Party, and 4 National Party MLCs (Costar and Campbell 2003, 321). This greater diversity of representation has occurred despite the fact that the form of proportional representation introduced uses eight districts of five members each, which keeps the quota for election high, at 16.7 per cent. The relative power of the Legislative Council, as compared to the Legislative Assembly, has declined. The power of the Legislative Council to block supply has been removed, depriving the Council of a negotiating tool.[5] The reform Bill also inserted a new section, 16A, into the Victorian Constitution, which requires the recognition of the principle of the Government's mandate. The Legislative Council cannot be forced to take notice of this statement (Tunnecliffe 2004, 11), but it gives the Government in the Legislative Assembly a rhetorical weapon to wield against decisions made by the Legislative Council with which it does not agree. Finally, s. 65 of the *Constitution Act 1975* (Vic) now provides that the Legislative Council can no longer block annual appropriations legislation, a significant reduction in the power of the Council (Costar 2008, 204). An amended s. 9 of the Constitution now declares a Bill that does not pass the Legislative Council in a form acceptable to the Legislative Assembly within a period of two months (following a dispute resolution conference of representatives from the two houses) is considered to be a deadlocked Bill. Once a Bill is deadlocked the Government can call an election for the Legislative Assembly, after which a joint sitting of the Legislative Assembly and the Legislative Council can be held. Alternatively, after the next regular general election, a joint sitting can be held to consider all deadlocked Bills (Costar 2008, 204-205). Thus, in many ways, the legislative power of the Victorian Legislative Council is effectively little more than a power of delay.

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[5] It is worth noting that the power of the Legislative Council over supply had been on the decline even before it lost its veto power. An unintended consequence of the move to fixed terms in 1984 was that it became practically impossible for an election to be forced in the first three years of a government's term as a consequence of the Legislative Council blocking supply (Waugh 2002, 243).

The Australian Senate

The Senate is the upper house of the Commonwealth Parliament, the lower house being the House of Representatives. It is the most famous and well studied of all of the upper houses in Australia, and it is known around the world as the example of the strong, incongruent bicameralism that has been termed 'Australian bicameralism.'

The Senate is one of the compromises that allowed Federation to occur. The rationale behind the existence of the Senate is well known. It was initially designed to be a house that represented the interests of the States, though it is virtually universally acknowledged that this has not been the case, and though it was recognised at the time of the Constitutional Conventions in the 1890s that the power of the Senate made it a threat to traditional theory of responsible government, no clear resolution of this problem was reached. The nature and role of the Senate was one of the most debated topic at the Constitutional Convention debates precisely for the reason that instituting a strong, elected upper house was seen to challenge the primacy of the lower house. There were some at the Conventions who wished to see the concepts of responsible government abandoned, and a new theory of government be embraced that would incorporate from the beginning a role for a powerful upper house (Galligan 1995, 75). The final view of the Convention delegates was to simply try to combine the two institutions (responsible government and strong bicameralism) and trust in the politicians of the day to be able to resolve any problems that this might lead to (Galligan 1995, 75).

There are two important points to note about the initial design of the Senate. These are the equal representation of the states in the Senate, and the ability of the Senate to reject supply bills.

The equal representation of the States was the deal that was necessary to bring the smaller states into the proposed federation. The smaller states of Queensland, South Australia, Western Australia, and Tasmania were told that the Senate would be their guarantee of being heard in the new Federal Parliament (Millar 2000, 134). Thus, in the initial Senate, each of the Federation States were granted six senators, and this parity has been maintained as the number of senators from each state has

increased to ten in 1948, and most recently to twelve in 1983[6]. This builds in to the Federal Parliament an inherent malapportionment. The smallest State, Tasmania, elects as many Senators as the largest State, New South Wales, meaning that the vote of an elector in Tasmania is worth several times that of the vote of an elector in New South Wales.

The equal representation of the States was matched by an equal power to legislate, save with respect to money bills. S. 53 of the Australian Constitution stipulates that supply bills must originate in the House of Representatives, and that the Senate may only accept or reject them, but may not directly amend them. The Senate is however, granted the power to request that amendments be made by the House of Representatives. This, coupled with the ability of the Senate to reject supply bills, gives them a virtual power of amendment, even if an actual one does not exist (Bach 2003, 129-131). The power that the Senate has in its power to reject supply bills has not yet been invoked. However, the events of 1975, where the Senate deferred its vote to pass the supply bills, which eventually led to the dismissal of the Whitlam government, illustrate the power that the Senate can hold over the government of the day.

The move to proportional representation

Prior to reforms instituted in 1948, the Senate was elected under a block vote system. This system of block voting was a preferential system that massively over-represented the party that received the majority of the vote. Often it granted the winning party all of the seats that were being contested (Weller 2006, 13). This led to sweeping changes in the Senate, where, at each half Senate election, all the seats up for election might change hands.

In 1948, legislation was passed through parliament that changed the method of election to the Senate. The old system of block voting was replaced by the single transferable vote method of proportional representation. This change enabled the

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[6] The size of the Senate was increased so as to enable an increase in the size of the House of Representatives. The Australian Constitution in s.24 provides that the number of members of the House of Representatives should be as near as practicable twice the number of members of the Senate. So to increase the size of the House of Representatives, the size of the Senate needed to be increased.

evolution of the Senate as it exists today, and arguably paved the way for the adoption of proportional representation in many of the Australian states.

The move to proportional representation came about indirectly. The Chifley Labor Government in 1946 considered changing the size of parliament. Parliament had remained the same size since Federation – there were 75 Members of the House of Representatives, and 36 Senators. This meant that the average enrolment in a House of Representatives seat had increased from 12000 at the time of Federation to 63000 by the time Chifley was considering the reforms. Chifley was considering increasing the size of the House of Representatives to 121, and due to the nexus provision, that stipulated that the Senate must be half the size of the House of Representatives, the Senate too would have to be enlarged. (Uhr 1999, 3-4)

There were two reasons as to why Senate reform began to be discussed in relation to increasing the size of parliament. The first related to the block voting electoral system, and the gigantic government majorities it facilitated. At the time the reforms were being considered, the ALP held all but three of the seats in the Senate. The second reason builds on the first. Chifley began to fear that the ALP would lose the 1949 elections, and that they would therefore lose most of their Senators as well. Chifley saw reform of the Senate as a way for Labor to retain its numbers in the Senate. The effect of moving to proportional representation would mean that the half Senate election would return about equal numbers of Senators to each of the parties, and this, when combined with the numbers that the ALP had in the Senate, would leave them in with a majority for several years into the future (Uhr 1999, 4-5).

Chifley's prediction proved to be correct, and Labor lost the 1949 election, but was able to retain a majority in the Senate. The new Prime Minister, Menzies, was able to prematurely defeat this majority by calling for a double dissolution election in 1951, which saw the control of the Senate pass, for a period of four years, to the Coalition. After that, the Senate would remain generally in a position where neither of the major parties held an outright majority. After 1955, until 1974, the DLP held the balance of power in the Senate, and tended to favour the Coalition over Labor. Following the 1974 double dissolution election, the Coalition held a majority of the seats in the Senate (with the backing of two sympathetic independents). After the 1975 election the incoming Fraser Government was possessed of a majority in the Senate in its own right. This lasted until the rise of the Australian Democrats. After 1981, the Democrats, and later the Greens, held the balance of power (Weller 2006, 14). This

lasted until 2004, when the Howard Liberal/National Government gained a majority. After the 2007 election, the balance of power again passed into the hands of the minor parties and independents. It is the era 1981 to 2004 in which the Senate earned its reputation as a House of Review, aided by the formation of the extensive Senate committee system that had begun to be formed a decade before.

The committee system

The next major reform of the Senate saw the development of the modern Senate committee system. Whilst the Senate had previously convened standing and select committees, the committee system introduced in 1970 increased the scale and purview of Senate committees.

In June 1970, five estimate committees and two legislative committees were formed. Over the following year, another five legislative committees were created, bringing the total number of committees formed to twelve (Ashe 2006, 51). The original membership of the committees was agreed to be eight, though this was subsequently reduced to six. The government members formed the majority on the committees, with three members on each committee. The opposition received two seats on each committee, with the final seat going to either a member of a minor party or an independent. A government member who possessed a casting vote chaired each committee, giving the government control of the committees (Ashe 2006, 51-52).

1994 saw the second major reform of the committee system. The committee system was changed in order for it to make committee membership more proportional to the overall membership of the Senate (Ashe 2006, 53). The reforms established the paired committee systems, with eight pairs of committees being formed to examine different areas of government operation. One committee in the pair was a legislative committee, which had a government majority, and examined specific legislation that was put before it. The other committee in the pair was a general reference committee that had a non-government majority, and examined matters referred to it by the Senate in the area of its purview (Ashe 2006, 53).

The most recent reform of the committee system came during the final term of the Howard government, when it secured a majority of the seats in the Senate. The stated rationale for the changes introduced was to streamline the Senate. To this end, the changes reduced the number of Senate committees to a proposed ten (though this was later changed to eight) and removed the paired system. There is now only one Senate committee for each area of examination. Finally, the committees all now have government majorities (Ashe 2006, 54-55).

Conclusion: Australian Bicameralism

Arend Lijphart (1999, 315) identified the two characteristics that determine the strength of a bicameral system as: the level of symmetry of power between the two houses, and whether or not the methods of composition for the two houses are incongruent. Strong bicameralism exists when the powers of the two houses are equal, or near equal, and their method of composition is incongruent. By this measure, all of the bicameral parliaments in Australia possess strong bicameralism, though there is some variation in this level of strength between the parliaments.

With the recent move to proportional representation for Legislative Council elections in Victoria, all of the bicameral parliaments in Australia can be said to possess incongruence of composition between their houses.

Lijphart (1999) pointed out that the move to proportional representation in the Australian Senate reduced the inherent majoritarianism of the Australian electoral system, by providing a parliamentary voice and legislative powers to members of minority political interests. The same point can be made of the Legislative Councils of the Australian states, excepting Tasmania. In these states, the use of proportional representation in Legislative Council elections has led to the representation of groups who would have been unable to secure lower house seats in their respective parliaments. The same observation can be made for the Tasmanian House of Assembly, where in recent years the stranglehold of the Liberal and Labor parties over this house has been broken, leading to the representation of the Greens.

The powers of each of the Legislative Councils remain quite strong. The most notable exceptions here are the parliaments of New South Wales and Victoria. The

Legislative Councils of these two parliaments have each been stripped of their power to block supply, and the Legislative Council of Victoria is directed by that State's Constitution to consider the Government's mandate when determining how to vote on legislation. The reduction in power resulting from these limitations is not that significant, however, and in all areas other than money Bills, Australian upper houses have coequal legislative powers to their respective lower houses.

Bruce Stone (2002, 268) contends that the two countries which can be said to truly evidence strong parliamentary bicameralism are Australia and Germany. He goes on to state that of these two countries, only the upper houses of Australia are elected. This electoral legitimacy is the other characteristic of Australian bicameralism. Of the six Australian upper houses, five of them are filled through proportional representation (the exception being, as we have seen, the Legislative Council of Tasmania). This use of proportional representation endows the Legislative Councils with equal, and in some cases arguably greater, democratic legitimacy to their lower houses. The continued malapportionment of the Western Australian Legislative Council, and the strongly incumbent-favouring electoral system of the Tasmanian Legislative Council, see these two upper houses as possessing relatively less democratic legitimacy than the other Australian upper houses. The malapportionment of the Senate, which is required for equal representation for each State, also could be perceived to damage legitimacy in this way.

We can thus talk about "Australian bicameralism" as a particular model of bicameralism as only in Australia has strong bicameralism been combined with the legitimacy that is granted through direct election.

Discussion: Lessons from the Case Studies

The last several chapters of the thesis have been devoted to an examination of specific parliamentary systems, located around Australia and the world. The parliaments studied were chosen because they were all derived from the Westminster model of parliamentary organisation. Furthermore, each of the parliaments examined was located in a state or country settled by migrants from Great Britain that had English as its primary language. The intention behind this choice was to achieve the greatest level of cultural and social similarity between the countries examined, so that those differences that exist within their parliamentary systems could be better investigated. The examination of the different methods of parliamentary organization will compose much of the remainder of this thesis. The goal of this will be to identify which features of upper house design best provide for a well functioning, effective parliament, and which features should be avoided. Before I outline the differences between these parliamentary systems, which will form the basis for the in-depth analysis in the following chapters, I want to outline a major similarity between these parliaments.

That upper houses are embattled institutions is a generally accepted concept (Aroney, Prasser and Nethercote 2008). An examination of the case studies shows just how true this statement is. Each of the upper houses that have been considered in the previous chapters has at some point in its history had members of parliament, as well as groups in society, demanding that it be abolished, or at the very least be subjected to radical reform. Yet in only two cases were these calls for abolition successful. Instead, in most cases upper houses have changed gradually, through evolutionary change. Nevertheless, the commonality shared by all upper houses is that they remain embattled. Much more than their respective lower houses they are subject to scrutiny, and forced to engage in constant justifications of the actions that they take. Upper houses are frequently thrown back into the fire of widespread condemnation if they are not careful in the ways in which they exercise their powers.

The evolutionary history of bicameral development, and the embattled position that upper houses have occupied for most of their existence will be now further elucidated.

Bicameral development

The upper houses in each of the parliamentary systems under examination began life in the same way. Inspired by the House of Lords in their foundations, the newly formed upper houses became bastions of privilege. While the job of the lower houses was to represent the desires of the people, fairly and equally (to the extent that electoral laws provided), the job of the upper houses was to act as a check upon any democratic 'excesses' that might result from the decisions of the representatives of the people in the lower house. In doing so they also defended the interests of the privileged few against the more numerous mass of 'common' people. The upper houses were to be the guardians of the social order, and providers of stability. To achieve this representation, early upper houses were not democratically composed. They were either appointed, as was the case for the upper houses of most of the Australian colonies, the New Zealand Legislative Council and the Senate of Canada, or they were elected by a restricted franchise, which gave the vote only to those members of the public who possessed a certain amount of wealth. The only exception to this, as we saw, was the House of Lords, which until recently had a majority composition drawn from the nobility.

At the turn of the twentieth century, universal suffrage had been achieved for lower house elections in Australia, and it was on the way to being achieved in other parts of the world. Yet, with the exception again of the Australian Senate, upper houses were either undemocratic, existing as appointed bodies, or only moderately democratic, with only voters who possessed a certain minimum level of property being eligible to vote for members of an upper house. Groups in society, as well as political parties in parliaments, began to question the fairness of a system that led to the existence of a house of parliament with the ability to institute, modify or veto policies that would affect all of society being so unrepresentative of the population at large. As we saw, the charge against upper houses was predominantly led by parties from the left of the ideological spectrum. To parties such as these, upper houses were repugnant on two levels. To understand the ideological objection, knowledge of the objectives of

left-wing parties is required. Parties of the left generally seek to implement change, some of it quite radical. They see government as playing a more active role in society than parties of the right. To such parties then, a unicameral parliament makes a lot more sense. In such a parliament, after an election, there is usually a clear winner and a clear loser. In such a situation, the victorious party is able to implement their policies without much in the way of obstruction, as it will be in a majority position. If an upper house exists however, it may serve as a chamber that can disrupt a progressive agenda. Thus, parties of the left, especially in the first half of the twentieth century, found upper houses at best a nuisance, and at worst and active block to the progress that they sought to achieve.

Parties of the left also found themselves with a pragmatic objection to the continued existence of upper houses. Given that upper houses existed generally to serve the interests of the wealthy and propertied elite, they tended to contain an inbuilt conservative majority. Thus, even leaving ideology to one side, parties of the left found themselves with a valid reason to object to the existence of upper houses, in that even having suffered a major electoral defeat in the lower house, conservative parties were able to use the upper house to frustrate the actions of the new progressive government. The pragmatic objection to the existence of upper houses seems to be the one that has been of more importance. This can be seen by the willingness of parties of the left to on occasion abandon their desire to abolish upper houses when they manage to gain control of them. As we saw in the case study of New Zealand, the Legislative Council there was controlled for much of the last decade of its existence by the Labour Party, and thought the Prime Minister had called for the abolition of the Legislative Council in the past, during the 1940s, when the abolition debate was raging, he became a staunch defender of the house that was now able to benefit his government.

Eventually, the position of upper houses, that were increasingly perceived bastions of privilege, became untenable. The pressures for abolition grew, and it became harder and harder to publicly defend such patently undemocratic bodies. The conflict, between those who wanted to abolish upper houses, and those who wanted to defend them as they existed, led to two outcomes. Either the upper houses were to some degree reformed, or they were abolished.

Reform vs. abolition

One of the main reasons that upper houses were reformed rather than abolished is entrenchment. By entrenchment I mean factors that conspire to increase the difficulty of carrying out the abolition of an upper house. Where the level of entrenchment is low, such as it was in the cases of Queensland and New Zealand, a government that desires the abolition of an upper house will find it much easier to give effect to that desire.

What factors, then, makes an upper house more entrenched? The most obvious is election. If an upper house is elected, the government may the direct ability to secure the majority of votes required to pass a Bill effecting the abolition of the upper house. Thus, the electoral base does not need to be wide, and thus the upper house does not need to be overly legitimate, for the government to lose its most convenient way of abolishing an upper house. Depending on the ideological position of the political party seeking to abolish the upper house, a narrower electoral base for the upper house may prove to present a greater challenge when it comes to securing a majority than a broader electoral base, as discussed before in reference to parties of the left. This, however, does not explain the situation of the United Kingdom parliament. The House of Lords is now an appointed chamber (albeit with a small remnant of hereditary members elected by their peers), yet there are no moves to abolish it. This is due to several reasons. Firstly, the House of Lords has one thousand years of history behind it, which in itself would likely render its abolition quite unpopular in the eyes of the people. Secondly, the Labour Party, historically the party that supported most strongly the abolition of the House of Lords, was forced to abandon its support for abolition in order to convincingly argue the case for reform. The final reason is the success of the reforms themselves. The members of the House of Lords are more active in political life than they have been for many years. Legislation is being debated, members are serving on committees, and the Lords are even daring to use their powers of amendment and delay. Thus, the grounds on which abolition of the House of Lords can be convincingly argued have been weakened. The second means by which an upper house becomes more entrenched is through a constitutional provision guaranteeing its right to exist, subject only to change by referendum. Such a provision exists in Australia at a Federal level and in many of the States. To abolish an upper house in these jurisdictions would require a referendum to be held, at which the majority of voters voted for abolition.

The two upper houses that were abolished, those of Queensland and New Zealand, were not entrenched in the manners described above. They were both appointed houses, and while the Governors-General in both cases could exercise discretion in deciding whether to acquiesce to demands to appoint new members to the Legislative Councils, persistent Governments could after a time secure appointment for their nominees. These two Legislative Councils were also not constitutionally entrenched, and so could be abolished without recourse to a referendum. There were also unique factors that helped to contribute to the New Zealand Legislative Council being abolished. The New Zealand Legislative Council could not rely on conservatives to defend the status quo. In the case of New Zealand, unlike all the other case studies, the pressure from abolition actually came from the party of the right. This, coupled with the fact that the Labour Party's defence of the Legislative Council lasted for about as long as they could use their powers of appointment to fill its seats, meant that there was little chance that the Legislative Council could survive.

In the case of the other upper houses, constitutional entrenchment, or an inability to secure the majority support required for abolition led to the adoption of reforms, rather than abolition. Those same parties that sought abolition decided that the maintenance of the status quo was obviously undesirable, but abolition was just as obviously impossible. At the same time, the defenders of the status quo realised that their position was becoming completely untenable. Over the course of time both sides of the debate realised that a compromise solution was the only way to resolve the disagreements between them at all satisfactorily. That compromise solution was the democratisation of the upper houses, the happy accidents of the history of bicameralism. The democratisation of Australian upper houses led to the strongest, most democratically elected upper houses in parliamentary democracies in the world. Australian upper houses combine proportional representation (except in Tasmania), electoral incongruence, and near equal powers to their respective lower houses (with the exception of the Legislative Councils of Victoria and New South Wales, whose powers to block supply have been curtailed). The democratisation of the House of Lords on the other hand could only be charitably described as minimalist. No longer do hereditary peers dominate the House, and there is a balance of parties enforced that ensures that neither of the major parties enjoys a majority of seats. Yet the House of Lords remains unelected.

The democratisation of the upper houses, carried out initially in Australia in hope, and more recently on sufferance, led to upper houses that were more legitimate, and

hence more willing to play an active role in political life. But has it led to the most effective type of upper house that could exist?

The next chapters of this thesis will be devoted to discovering which factors of parliamentary design lead to the most effective upper houses and the best intercameral relations. To do so, the differences between the various case studies in two key areas will be examined and compared, to determine the most effective parliamentary design.

The first area that will be examined relates to the mechanics of parliamentary design. In this section the different ways in which the seats in upper and lower houses are filled will be elaborated and contrasted. The effects of size will also be examined. Of the case studies, there are two upper houses that remain unelected, the House of Lords (discounting, of course, those hereditary peers elected by a very restricted franchise) and the Canadian Senate. Of these two upper houses, the Canadian Senate remains the most undemocratic. There is an appointments commission that ensures that a single party will not again dominate the House of Lords. Members to the Canadian Senate on the other hand are appointed by the government of the day in such a way as to help them gain or maintain a majority of the seats in the Senate. In other words, appointments to the Canadian Senate are made purely for partisan advantage. Each of the upper houses in Australia is elected. There are differences between them that affect their composition. Firstly, and most obviously, the Legislative Council of Tasmania is filled through preferential voting. It also retains a conservative majority, though the conservative members sit as independents and purport not to support any political party. The other upper houses are filled through proportional representation, but even here there is difference. The Legislative Councils of New South Wales and South Australia are filled through whole of state elections. Thus, in both of these upper houses the threshold for election is quite low. The Senate and the Legislative Councils of Victoria and Western Australia are filled by multi-member electoral districts. In the case of the Senate, the electoral districts are the six states each returning six members at each half Senate election and the two territories each returning two members at every election. The Western Australian Legislative Council is elected from six six-member districts, and the Victorian Legislative Council is elected from eight five-member districts. There are also variations in the methodology of the form of proportional representation used to fill the seats in these upper houses.

There are many effects that result from the different methods of composition. The most obvious is the representative diversity of the house in question. Less obvious is its ability to play a role in the political process. This is due to the fact that varying the method of composition lessens or increases the perceived legitimacy of the house in question, and this in turn has an effect on their ability to prevail in legislative battles, and to secure public support. This can be seen in the House of Lords prior to its reform, where the Salisbury Convention declared that no Government legislation that had been included in an election manifesto would be opposed, and in Canada where the Senate has only sporadically employed its veto power. The subsequent chapter in this thesis will examine matters pertaining to composition and will answer the issues raised here. It will do this examining the representational effects of the various methods of composition, the nature of legitimacy and the effect that composition has on it, and the relationship between two houses of parliaments that are composed by different methods, and the effects that different methods of composition have on this relationship.

The other major area of difference between the upper houses studied is their ability to affect the legislative process and to keep the government of the day accountable. The second chapter of the thesis delved into the issue of the means by which upper houses affect the legislative process, and the effects that this can have. It examined the effects of increasing and decreasing the legislative power of an upper house on the legislative process of a parliament, and sought to answer the question of whether upper houses should possess the ability to block supply. The use of the mandate to attempt to hamstring the legislative ability of upper houses was examined. Whilst in all jurisdictions the government of the day has claimed to possess a mandate to implement its policy platform unobstructed, in some parliaments it has risen to the level of a convention to be followed. For quite a time, as stated above, the mandate was recognised in the House of Lords by virtue of the Salisbury Convention. In Australia, the concept of a government mandate has recently been inserted into the Victorian Constitution.

The upper houses examined in the case studies are possessed of differing levels of legislative power relative to their respective lower houses. The Australian upper houses come off the best in a direct comparison. One facet of the strong bicameralism that they exhibit is that they are possessed of near equal legislative powers to their respective lower houses. The area of weaker power surrounds the passage of supply bills. All financial legislation in Australian parliaments must

originate in the lower house. The upper house still has to approve these bills, and except in the case of the Victorian and New South Wales Legislative Councils, can reject them, but they are not possessed of the ability to formally amend such legislation. This is not as significant a difference in power as might initially be assumed, as the various upper houses are free to refuse to pass supply bills until amendments to them are made in the lower houses. The Canadian Senate is perhaps even more powerful legislatively than the Australian upper houses. It is not able to initiate financial legislation, but it does possess both the ability to reject such legislation, as well as a formal ability to amend it. As discussed in the chapter on the Canadian Senate, it rarely wields its legislative power to anywhere near its full ability. The House of Lords comes off worst in the comparison of relative power. The Parliament Act 1911 stripped it of its power to veto all primary legislation, leaving it with the ability only to delay legislation. It can thus never present a permanent block to the will of the Government of the day.

Finally, the upper houses studied differ in the extent to which they act to hold government to account, and the means that they use to achieve this accountability. The most common way in which accountability is achieved is through committee systems, and the upper houses studied show quite a lot of variation in the design, power and scope of their committee systems. For example, the Australian Senate has an extensive committee system that considers a range of areas, and is drawn purely from the membership of the Senate. The South Australian Parliament, on the other hand, does not have anywhere near as comprehensive a system of committees, and those committees that do exist are generally, though not exclusively, joint committees, in which membership is drawn from both houses of parliament, diminishing the accountability role of the Legislative Council. The methods by which members of the government of the day can be formally questioned in parliament also differ. For example, in the parliament of Canada, the only minister that sits in the Senate is the Government Leader, who has to then field all questions directed to the Government. Question time in the Australian Senate, on the other hand, is more procedurally advanced than in the House of Representatives. Questions and answers in the Australian Senate have time limits imposed on them and there is the opportunity for the questioner to pose supplementary questions.

As can be seen then, though the parliaments studied had similar origins, and have proceeded down similar developmental paths, there are major differences in the

areas of composition, powers and accountability mechanisms that have an effect on the operation of these parliamentary systems.

Chapter Nine – Methods of Composition

The method by which a house of parliament is composed is of great significance to the role performed by, and the nature of, that house. The method of composition directly determines who will be elected to a given house of parliament and what term length they will serve. It will also determine the size of the constituency that they will serve. The method by which a house of parliament is filled can also have indirect effects. These include the level of legitimacy that members of that house enjoy, and consequently their perceived capacity to act. Electoral systems serve as the interface between the public and the politicians who govern them. The choice of electoral system for a chamber has a direct effect on the nature of that chamber, and the effectiveness with which it carries out its roles. There is no such thing as a neutral electoral system that does not in some way influence the conduct of the house that it serves to fill. Thus, when determining the effectiveness of bicameral systems, it is of great importance to examine the precise effects of the electoral systems that are used to compose their parliamentary chambers.

The effect of political legitimacy will also be examined. If we assume that true public legitimacy can only be granted to a legislative body when it has been elected by the people for whom it will legislate, we must then investigate whether different electoral systems promote differing levels of legitimacy.

The various case studies considered in previous chapters of this thesis reveal the range of electoral systems that operate even in this fairly narrow cross-section of world legislatures. Those that operate in the parliaments of Great Britain and Canada are perhaps the most regressive and simplistic. Both of these countries fill their House of Commons by first past the post voting, and fill (entirely in the case of Canada, and for the most part in the case of Great Britain) their upper houses by appointment, thus avoiding entirely having an electoral system for these upper houses. In Australia, lower houses are filled by a couple of variations of preferential voting, otherwise known as the alternative vote. Upper houses (with the exception of

Tasmania, as we have seen) are filled in Australia by a form of proportional representation, little used outside of Australia, known as the Single Transferable Vote. Finally, New Zealand fills its single house parliament with a form of proportional representation known as Mixed Member Proportional.

In this chapter I will first offer a précis of each of these electoral systems, stating their respective characteristics, with a primary focus on how representative they are, and to what extent they allow for stable government. These two considerations seem to be the overriding factors in electoral system design, and for this reason, they are emphasised.

The chapter will then move to consider the differences between majoritarian electoral systems, which include first-past-the-post and preferential voting, and consensus systems, which include proportional representation. The debate amongst the supporters and the detractors of these various systems is long raging and fiercely fought. The two types of electoral system will be contrasted to examine which, if either, is inherently better for use in forming an upper house, and which is better in forming a lower house. This analysis will be conducted from the assumption that in a Westminster-derived parliamentary system, the lower house of parliament should be the house of government, and for that reason should possess primacy over the upper house, which should be the house of review. The purpose of the examination then will be to determine which electoral system best allows each house to fulfil its particular role.

The purposes of electoral systems

As previously indicated, no electoral system exists that translates perfectly the will of the voters into a representative body, and so, all electoral systems in some way influence the nature of the body that they will constitute. Before discussing the nature and effects of specific electoral systems then, it is worth engaging in a brief overview of the common purposes of electoral systems. This will better allow for a comparison of different methods of election for upper houses, and the effects that these systems have.

Donald L. Horowitz (2006) identifies six broad goals of electoral systems. Due to the comprehensiveness of his classifications, it is worth summarising them here.

The first potential goal of electoral systems as articulated by Horowitz (2006, 4) is "proportionality of seats to votes." This goal measures the ability of electoral systems to translate votes received accurately to seats given. A political party under an electoral system that achieves this goal would find the proportion of seats that they won in a legislature matches the proportion of the popular vote that they received. Thus, a party that wins 10 percent of the vote should win 10 percent of the seats. Horowitz comments that whilst proportional representative electoral systems are often viewed to be the best option when attempting to secure proportionality of seats to votes, majoritarian style electoral systems can be rendered more proportional through more honest electoral system design, by eliminating malapportionment and gerrymandering.

The second potential goal of electoral system design that Horowitz (2006, 5) articulates is "accountability to constituents." This goal refers to the ability of electors to determine who their representative will be directly. A common system that does not allow this to occur is the closed list form of proportional representation. Here, the party chooses the order in which the candidates running for that party will appear on a ballot paper. The voters in this system only get to decide which party they will vote for. The more votes that a party receives, the more candidates they will elect, starting from the top of the party list and working down. It does not matter if voters do not like the order in which candidates are presented, they can only vote for the list as it is presented, not the individual candidates that they would prefer. Systems that do not grant as much control to the party leader are open list PR, single transferable vote PR, and constituency based electoral systems. However it must be noted that even under these electoral systems parties do not surrender all control. For example, in Australia, where upper houses are elected through STV PR, parties get to decide the order in which candidates appear on the ballot paper. Given that the vast majority of Australian electors (around 95 per cent) decide to vote above the line, meaning that they have their preferences assigned the way that the parties determine, this strengthens control of the parties even in a theoretically open system. It is argued then that plurality or preferential systems operating in single member districts are best at ensuring accountability to voters, as they directly choose who to support from a field of candidates.

The third goal of electoral system design Horowitz (2006, 5-6) articulates is "durable governments." Here Horowitz refers to the potential trade-off that exists between electoral systems that represent the gamut of public opinion, but that might then be so fragmented as to be unworkable; and electoral systems that over-represent more mainstream political opinion, at the cost of representational diversity, but which then render government formation and maintenance easier. General opinion promotes the merits of durable government, as it is seen to enable consistency of policy and responsibility, and an avoidance of instability whilst a coalition is being assembled.

The fourth goal of electoral system design is "victory of the Condorcet winner" (Horowitz 2006, 6). The Condorcet winner is the candidate in a field of candidates who would beat every other candidate in a paired head to head contest. The Condorcet winner is therefore considered to be the most popular overall candidate, and some then consider that a well-designed electoral system should help secure their success. Preferential electoral systems, including the alternative vote system used in Australian lower houses, are thought to be particularly good at picking the Condorcet winner, even though the goal of a preferential system is to find the least disliked candidate, as preferential systems avoid the situation of the Condorcet winner losing the vote due to vote splitting, which can happen in plurality systems.

The fifth goal of electoral system design is "interethnic and interreligious conciliation" (Horowitz 2006 6-7). This refers to the ability of an electoral system in a society with strong religious or ethnic cleavages to produce moderate politicians who are advantaged by seeking support across ethnic or religious groups. Conversely, electoral systems that do not encourage moderate behaviour, but instead return politicians who represent narrow bands of support may make conciliation more difficult.

The final goal of electoral system design, as identified by Horowitz (2006, 7) is "minority officeholding." This goal is related to the first, but whereas the first goal called for a proportionality between votes for a party and seats won, this goal calls for a proportionality between the proportion of an ethnic group in a society and the number of seats that that group wins in parliament. This is thought by some to help to advance issues important to ethnic minorities. Proportional systems are obviously better at achieving this, as majoritarian systems run on single member constituencies are not going to return sufficient members from an ethnic minority that is spread over a large geographic region.

The final two goals of electoral system design are detailed in reference to societies with significant ethnic or cultural disparities, and so are less important for this present study, which considers societies that are, for the most part, quite homogenous. The first four goals of electoral system design though detail the obvious trade-offs and choices that have been made in designing the electoral institutions of the political systems examined in the case studies. The next section will examine these methods of composition in more detail, before an evaluation of their comparative effectiveness is undertaken.

Methods of composition

In this next section, I will consider the types of electoral systems that operate in the case studies examined earlier in the thesis. I will examine the basic characteristics of these electoral systems, which will then inform the comparison between them that will take place in the subsequent section of this chapter.

The types of electoral system examined can be divided into two broad categories, majoritarian and consensus. Majoritarian electoral systems include plurality based electoral systems such as first past the post voting, as well as majority based electoral systems such as the alternative vote, often referred to as preferential voting. Consensus based electoral systems usually offer some form of proportional representation, be it list-based proportional representation (though this system is not employed by any of the parliaments examined in the case studies), mixed member proportional representation, or the single transferable vote style of proportional representation.

Each of these electoral systems has its own unique characteristics and means of translating the will of the people into seats in a legislature, and so each will be dealt with in turn.

There is another method of composition used in two upper houses examined in the case studies other than a form of election. Both the House of Lords and the Canadian Senate are appointed houses. Thus, the following section of the thesis will also examine the operation of the appointment systems in these two cases, and

determine the effects that these systems have. Especially in the case of the House of Lords there are those who defend the appointment system as having created a more dynamic and effective house, and so while on the surface it seems easy to dismiss unelected houses as patently undesirable and thus unworthy of further attention, they do deserve study.

Majoritarian electoral systems

Perhaps the most basic electoral system of all operates in the parliament at Westminster. Here the House of Commons is filled by first-past-the-post voting.

First-past-the-post voting is the simplest of all of the electoral systems. Under it, the candidate that receives the highest number of votes wins the election. Whether or not the candidate received a majority of the votes is immaterial, as long as they have a plurality they win the election. Thus, in an election where a field of candidates run, the vote could be split fairly evenly between several candidates. Under such an election, a candidate could win a seat having secured only 30 per cent, or conceivably even less, of the total vote. Thus, first-past-the-post voting is referred to as a plurality style electoral system, as it rewards any candidate that can secure a plurality of the vote, irrespective of the size of the plurality.

The obvious effect of this style of electoral system is that it is intensely majoritarian. Under a system of first-past-the-post voting, it is very likely that a seat will go to a major party. Under this system, minor parties do not usually win parliamentary representation that is anywhere near the level of vote that they receive, and they often only win seats under this system if their vote is highly centralised, such that in a given seat they can win a sufficient proportion of the vote that they can move ahead of the major parties.

Parliaments elected under first-past-the-post voting tend to significantly over-emphasise the margin of victory of the winning party, and conversely, assign to the losing parties even fewer seats than their respective shares of the vote would seem to entitle them to. It is argued that durable government is the main advantage of this form of electoral system. This refers to the existence of a government that is composed of one-party, normally with a clear overall majority of the seats. Three

important consequences are said to flow from having a government composed of only one party. These are, first, that such governments are stable. The benefit of having stable governments that do not collapse between elections is that it increases the stability of the political system as a whole. Confidence in democracy can be weakened when governments cannot survive for the term of office that they are elected (Blais 1991, 242). Second, governments formed as a result of plurality elections tend to be more cohesive. This is due to the fact that such governments are generally formed from one party, and thus the ideological positions within the government are more consistent than would be the case if the government were composed of many different parties. As the role of governments can be argued to be to exercise power, and to choose a line of policy to follow out of many competing alternatives, the logic of cohesiveness is apparent (Blais 1991, 241). The final benefit of durable government is seen to be decisiveness. The outcome of an election held under a plurality system is very obvious most of the time. Generally, one party is clearly the victor, and the other is the loser. A government either retains office, or it loses it. The outcome of an election in a fragmented party system is much less clear. Given the nature of coalition formation, a new government may be formed from some of the parties that made up the old government. Furthermore, the results as presented to the voters on election night do not necessarily represent the final stage in who has won government. After results are presented, there can be a period of negotiation and coalition building that stretches over weeks. Thus, ambiguity is introduced into the election process. This ambiguity is argued to give voters less control over the dismissal of a government that they feel is not performing well. Thus, the decisiveness offered by plurality voting is thought to lead to greater government accountability to voters (Blais 1991, 241).

Most lower houses of parliament in Australia, as well as the upper house of Tasmania, are elected by a form of voting known as the alternative vote. This form of voting is also referred to as preferential voting. The logic behind preferential voting is to find the Condorcet winner, the candidate in a field of candidates that would beat every other candidate in a head to head match up. The way that this occurs is through the use of preferences. Under preferential voting, a voter will be given a ballot paper that lists all of the candidates running in their particular electorate. The voter will indicate their preferred candidate by placing the number "1" next to the candidate's name. They will then go on to assign preferences, placing a "2" next to the name of their second favourite candidate, and so on, until numbers have been assigned to all of the candidates on the ballot paper.

When the votes are tallied, the candidate who received the fewest votes is excluded, and their votes are then assigned to the other candidates according to the second preferences indicated by the voters who voted for the excluded candidate. The process is repeated then for the next least popular candidate. The process of exclusion is continued until only two candidates remain, one of whom will have a majority of what is referred to as the two-party preferred vote. Thus, under this electoral system, the candidate who initially wins a plurality of votes may not be the candidate who goes on to win the seat. A plurality leader can be overtaken by another candidate after the assignment of preferences. Preferential voting then does not set out to find the most directly popular candidate in a given field of candidates; rather it seeks to find the least unpopular candidate.

Thus, whilst preferential voting is obviously still a majoritarian electoral system, it is less intensely majoritarian than first past the post. Rather than rewarding the candidate that achieves a plurality, it instead forces the construction of a majority through the assignment of preferences. The candidate that is thus able to secure a sufficient preference flow to construct a majority is the winner, and this may be a different candidate than the plurality winner on the first ballot. Thus, preferential voting can be defined as a majority system, as it forces winners of elections to be majority winners, rather than simply plurality winners.

Houses of parliament constituted by preferential voting tend to be less disproportionately filled than houses constituted by first past the post voting. Nevertheless, the victorious party at a general election will still find itself in having won a greater percentage of the seats than its percentage of the vote share. Similarly, the losing parties will find themselves possessed of a smaller share of the seats than their level of votes would seem to have entitled them to.

Preferential voting can be seen to exist closer on the continuum of electoral system design to consensus based systems. Indeed, Benjamin Reilly (2001) highlights a couple of consensus elements present in preferential voting. The first element that he highlights is the tendency for preferential systems to lead to moderate policies being presented by political parties. He views preferential voting, due to the need to secure preferences, as a means to combat extremism in politics. Given that politicians must secure a majority of the two-party preferred vote in order to be elected, they need to secure the largest share of the vote possible, and this is

achieved by taking up relatively centrist policy positions (Reilly 2001, 78-79). This contrasts to first past the post voting, where politicians need only to win a plurality of the vote, and can hence appeal to a core base of ideological support that does not necessarily have to be centrist.

Consensus systems

Consensus based systems are the antithesis of majoritarian systems. Rather than seeking to construct an inflated majority for the victorious party, these systems seek to translate the proportion of the vote received by a party into as similar a proportion of seats in a house of parliament as possible. There are three main types of proportional representation. These are list-based proportional representation, the single transferable vote, and mixed member proportional. In a list-based system of proportional representation voters vote for a list of candidates put forward by a party in multi-member electoral districts. Under the single transferable vote system, voters vote for individual candidates in a multi member system (though in Australia the use of 'above the line' voting has merged the distinction between these two systems) (Lijphart 1984, 153-154). Finally, in a mixed member proportional, voters receive two votes. The first vote is for a constituency member, elected in the voter's seat. The second vote is for a party list, in which the jurisdiction votes as one constituency. Thus, mixed-member proportional combines a single member constituency system and a list-based system in the same house. The intention is to add a greater degree of proportionality to the result than would be gained from an election conducted solely with single member constituencies (Palmer and Palmer 1997, 27-28).

New Zealand has recently experienced a rare occurrence: a wholesale change of electoral system. It moved from a system of first past the post elections to mixed member proportional representation. Mixed member proportional representation combines single member constituency elections with a party list election; the goal of the latter is to add a level of proportionality to the result. Voters in mixed member electoral systems are given two votes. One vote they cast for their local constituency member, and the other vote they cast for the party list that they prefer.

Evidence from New Zealand is generally regarded as proving the move to MMP a beneficial one. The representativeness of the New Zealand parliament increased,

with several minor parties winning seats (Vowles, Banducci and Karp 2006, 272). MMP also led to an increase in the diversity of parliament, with a greater number of women and members of ethnic minorities being represented (Vowles, Banducci and Karp 2006, 274). The use of MMP has also led to a less polarized party system, despite predictions that the opposite would occur. The move to MMP has also resulted in a small increase in the level of trust that voters have towards politicians, and an increase in the confidence that they have in the political system (Vowles, Banducci and Karp 2006, 276-277).

Criticisms of the move to MMP focus on the list MPs. Critics claim that given that the list system that operates is a closed list system - meaning that voters can only vote for the list in the order that it is presented, that the first loyalty of list MPs is to their party not to voters, and the entire process of electing list MPs is quite secretive (Vowles, Banducci and Karp 2006, 275-276). An unforseen problem that has resulted from the introduction of MMP relates to government formation. After the 1996 election, the formation of a government took several weeks, occurring only after a period of intense negotiations. This was something that the New Zealand public were not used to. Similarly, after the 2005 election, the Labour government, and the minor parties that supported it, lost their parliamentary majority. They nevertheless were able to negotiate the continuance of the government, by offering ministerial positions and other concessions to two minor parties that had not been viewed as being sympathetic to the philosophies and ideologies of the Labour party. Thus, some voters felt cheated, in that having seemingly rejected the government, it was nevertheless able to continue to govern (Vowles, Banducci and Karp 2006, 279-280).

Perhaps the most famous consensus based electoral system to Australian readers is the single transferable vote. Yet STV is an uncommon electoral system. There are few political jurisdictions in the world that employ it, list PR and mixed member proportional being much more commonly adopted forms of PR. Yet STV has proven a very popular electoral system in Australia. It was first adopted at the state level for the Tasmanian House of Assembly. Its popularity surged after it became the electoral system of the Australian Senate in 1948, with the first STV elections to that body occurring in 1949. In the years after STV was adopted in the Senate all Australian upper houses, excepting that of Tasmania, have eventually adopted it as their electoral system.

The first point to make about STV is that it is a true proportional system. Advocates of the rival list PR system have claimed for many years that STV is the inferior system, and that the results that it produces cannot be regarded as proportional Farrell and McAllister 2006, 83-84). Examination of the electoral system in action, however, confirms its status as a true proportional system (Farrell, Mackerras and McAllister 1996, 29). The other point to make about STV is that it is a candidate centred electoral system, rather than a party centred system like other forms of proportional representation. This means that it has a lot more in common with the plurality and majoritarian electoral systems, in that they all emphasise the connection between an electoral candidate and their constituency (Farrell, Mackerras and McAllister 1996, 26). Some argued that this causes an internal logical consistency in STV, in that it is argued to be a proportionally representative system that is centred on candidates rather than parties, when parties are what are being represented proportionally. Two suggestions have been offered to get around this conceptually. First, assume that voters vote for blocks of candidates from one party, or second, assume that any cross party transfers cancel each other out (Farrell, Mackerras and McAllister 1996, 29). In practice, as indicated, STV produces proportional results, and so this internal inconsistency does not seem to matter practically.

The form of STV used in Australia is generally regarded as being the most democratic of all the jurisdictions that employ STV, as district magnitude in Australia is generally quite high. This results in fewer votes being wasted, and therefore more proportional outcomes. On the other hand, the Australian STV system does not give voters as much flexibility as other STV systems, because Australian voters are required to preference all candidates on the ballot paper (Farrell, Mackerras and McAllister 1996, 35-36). A problem with the Australian version of STV relates to party control. STV is quite a complicated system, and some voters take the opportunity to lodge a donkey vote, that is, to fill out the ballot paper in the order that the names are listed. This therefore rewards people who are at the top of the ballot paper. Thus party leaders gain power over candidates, as they decide ballot ordering. The introduction of above the line voting, where parties can determine the order of voters' preferences, exacerbated this, as parties now assign votes straight down their party's section of the ticket (Farrell, Mackerras and McAllister 1996, 32). This means that in Australia, candidates for upper houses can be encouraged to seek support from the leaders of their party more than the electorate.

The problem with appointment – an examination of political legitimacy

As previously indicated, two of the upper houses examined in the case studies are not filled by an electoral system, but by a system of appointment. These upper houses, the House of Lords and the Senate of Canada, are then not reflective of the will of the people, but of those who make the appointments. This next section will examine the consequences and nature of chambers filled by appointment. Particular reference will be made to the House of Lords. It is both the better known chamber, and it has recently moved from an hereditary system to a system of appointment. With regards to the House of Lords, particular attention and analysis will be paid to an argument propagated by Meg Russell, which seeks to assert that the newfound legitimacy of the House of Lords does not need to be supported by election, as this may threaten the legitimacy of the House of Commons. This proposition will be refuted with an examination of the effect of election on legitimacy.

The House of Lords was reformed in 1999, when most of the hereditary peers were removed, and the House was reconstituted as a primarily appointed chamber, as has been outlined previously in the thesis. Meg Russell (2008b, 121) observes that the reform to the House of Lords had an unexpected consequence. It was assumed that the reform to the House of Lords would produce an even more docile chamber than had already existed. This was due to the fact that the partisan balance in the chamber would move away from the overwhelming Conservative majority, to the benefit of Labour, who were in government. Yet, as Russell outlines, this was not the case. The House of Lords, in fact, became a much more vocal player in the political process. The House of Lords has little power relative to many other upper houses, being possessed only of the power to delay government legislation, not to defeat it permanently. Yet it had been unwilling to use this power, and had in fact forbade itself from even considering using its delay power against any Bill that the government of the day could claim a mandate for, under the terms of the 1945 Salisbury Convention (Crick 1970, 124-125).

Yet, after the passage of the reforms to the House of Lords it has used its power of delay hundreds of times (Howe 2007, 2000). The reason for this new-found assertiveness is, according to Russell (2008b, 122), that the Lords feel themselves to be more legitimate following the reforms. Russell (2008b, 123) feels that this

increased level of legitimacy can be ultimately explained by the changed party balance in the House since the passage of the reforms.

Since the passage of the reforms, the number of Conservative Lords has decreased, and the number of Labour Lords has increased. Thus, the composition of the House of Lords is such that neither of the major parties is in a majority position. Labour finds itself with a small plurality of the seats, with the Conservatives being the second largest party. The Liberal-Democrats and independent Lords hold the balance of power. Russell argues that this has created a situation that would be familiar to observers in Australia, in which there frequently exists an upper house that is not dominated by any one party (Russell 2008b, 123). Furthermore, Russell argues that the Lords are appointed rather than elected does not matter, as the appointments process currently provides a good party balance. She goes on to argue that to institute any electoral system for the House of Lords would be to decrease the stability of the parliament. If the same electoral system as in the House of Commons was instituted, then the House of Lords would become a redundant reflection of the Commons. If, on the other hand, proportional representation was introduced into the House of Lords, then the risk would be run that the Lords would be seen as the more legitimate body, as it would be seen to have a fairer electoral system. Thus, the primacy and legitimacy of the House of Commons would come under attack, and electoral reform would be demanded. Were this the case, Russell contends that the House of Commons would move to a proportional representation system, and then the point of bicameralism, that there exist chambers with incongruent electoral systems, would be rendered void (Russell 2008a). It is for this debatable reason that Russell argues against any hasty moves towards a democratic House of Lords.

Should the artificial construction of the party balance in the House of Lords really be held in the same regard as the composition of the Australian Senate? The Australian Senate is an elected body. It has the composition that it does as a result of democratic elections. The House of Lords, on the other hand, has the composition that it does because of negotiations between the government, the opposition, the Liberal-Democrats and the appointments commission. Is this truly a sound base on which to build legitimacy?

Thus, the argument made by Russell is that the move to an appointed House of Lords has increased the level of legitimacy that the Lords *perceive* that they have, and that this perception stems in part because the House of Lords as appointed is

more representative of the vote share at the last election than is the House of Commons. This is the critical point. The opinion of the Lords is that the House in which they serve is now constituted in such as way as to render them legitimate, and because of this legitimacy, they now feel that they are empowered to stand up to the government of the day. Note that the level of power possessed by the House of Lords did not change between the time that it existed as a hereditary body and the time that it was made into a primarily appointed one. All that changed was the method of composition of the chamber. Yet, as Russell indicated, the Lords have become much more willing to stand up to the government of the day, and engage in scrutiny of its legislative program, and the Lords are now willing to deploy their power to delay this legislative program when they feel that delay to be deserved.

Yet, is there much really on which to base this newly perceived legitimacy? Certainly, the move from an hereditary system to a system of appointment is a positive step, insofar as filling a house based purely on heredity is about as undemocratic a system as can be conceived. An hereditary system implies by its nature that there exists in a society a group of people more talented and deserving of political office merely by an accident of birth. A system of appointment, on the other hand, at least can be argued to recognise merit, and not simply assume that membership of a house of parliament is won due to birth.

However, the system of appointment on its own does not necessarily endow a chamber with legitimacy. To see that, we only have to look to another of the case studies, the parliament of Canada. As previously canvassed, the Canadian Senate is an appointed body that for much of recent history has been seen as an illegitimate body. There have been occasions in which it has been compelled to use its powers, but it has never enjoyed widespread support in doing so and there is a large reform movement in Canada.

Public legitimacy and support for different electoral institutions has been measured in a study by André Blais and Peter Loewen (2007). They measured voter satisfaction with electoral systems in countries that operate plurality, majority and proportional representation electoral systems. In their study they discovered that systems of proportional representation tended to generate the highest level of satisfaction with democracy, and the highest perceptions of electoral fairness. On the question of responsiveness, the results were mixed, with none of the electoral systems being seen to be substantially better than the others (Blais and Loewen 2007, 48-51).

Analysing the results, the authors find that the representativeness of a legislative body is an important factor in determining the levels of responsiveness, and fairness of the electoral system. The greater the proportionality of votes to seats, the higher the levels of responsiveness and fairness. The same cannot be said of satisfaction with democracy, which exists independent to the level of representativeness of the electoral system (Blais and Loewen 2007, 51). Therefore, it seems that proportional representation, on the whole, engenders greater levels of public support than do plurality and majoritarian systems, and can hence be considered the more legitimate electoral system.

Discussion

In a series of articles that initially appeared in the *Journal of Democracy*, Arend Lijphart and Guy Lardeyrat argued the cases respectively of the merits of proportional representative and majoritarian electoral systems. To conclude this chapter on electoral systems, it will be useful to briefly examine the arguments that these two scholars advanced. We will start with the defence of what are termed "consensus" electoral systems made by Lijphart.

To Lijphart, the benefit of proportional representation is that it produces a more representative parliament than do majoritarian electoral systems, and that it produces divisions of power, rather than having it concentrated in the hands of a single group (Lijphart 2006, 74). Lijphart alleges that proportional representation improves the quality of democracy in a political system in which it is adopted. To Lijphart, the democratic quality of a political system comes from its capacity to produce a representative parliament, to hold the government to account, to produce equality, and to encourage participation (Lijphart 2006, 76). Lijphart contends that advocates of majoritarian electoral systems do not deny proportional representation's ability to produce a political system that evidences the above characteristics. Rather, he identifies a disagreement about the primary purpose of a parliament. Those who support majoritarian electoral systems support a government that has clear lines of accountability, that has a capacity to make consistent policy and provide firm leadership, and has the capacity to govern. By contrast, advocates of proportional representation advocate the importance of representativeness, and the unity and

inclusiveness of government. They also value the input of minority parties into the policy making process (Lijphart 2006 76-77).

To Lardeyrat, the virtues of majoritarian electoral systems are their ability to produce stable government. He begins his argument in support of plurality electoral systems with the observation that they result in bipartism; meaning political systems comprised of two parties. He argues that the benefits of this are stable governments that can engage in secure decision making, with power regularly alternating between the two parties. He charges PR electoral systems with the opposite – ephemeral governments and uncertainty (Lardeyrat 2006, 87). As well as the promotion of stability and efficiency, Lardeyrat sees plurality electoral systems as encouraging a strong opposition, which pressures the government to perform well.

In terms of representation, Lardeyrat concedes that proportional representation electoral systems increase the representation of minority groupings. However, he sees this as a negative, as the existence of many minor parties, running on specific issues, can serve to cause or exacerbate divisions within a society. Furthermore, he believes that when minor parties are involved in the formation of government, they can often wield far more power than their numbers in parliament would dictate, as they can be the votes that separate victory from defeat for the government (Lardeyrat 2006, 88).

Conclusion

But might it not be short-sighted to trumpet the virtue of one form of electoral system to the exclusion of the others? In promoting majoritarian electoral systems in opposition to proportional electoral systems, we ignore the benefits that can be accrued by using both electoral systems. This is the opportunity afforded in a bicameral parliament. The presence of two houses allows for the adoption of two electoral systems. In this way, advantages from both electoral systems can be implemented within the one political jurisdiction. I contend that the system that exists in most of the parliaments of Australia, in which the lower house is elected through the alternative vote, and the upper house is elected by the single transferable vote, is a particularly elegant form of electoral system design. When compared to the

common goals of electoral system design, articulated by Horowitz, and summarised earlier in the chapter, this can be proven.

The first of Horowitz's goals for electoral system design was "proportionality of seats to votes." The benefit that accrued from this goal of electoral system design was a fair representation of political opinion. Under a system in which parties win the same share of seats in a house of parliament as they do votes at an election, all shades of political opinion will be represented fairly and in proportion to the level of support that they have in the community at large. Following from this then, is the assumption that all such groups should get a say in the legislative process, and that good legislation is made when multiple political viewpoints can be taken into account.

Yet, like so many goals of electoral system design, the desire to achieve proportionality of seats to votes stands in opposition to another goal of electoral system design - "durable government." This goal of electoral system design referred to the benefits that flowed from quick and efficient government formation, and the certainty that a government, once formed, would be relatively durable, and would not fragment before the next election. This would allow for policy consistency, allowing the voters to be able to understand the choices that were being made on their behalf, and thus be able to render fair judgment at the next election. So, when an electoral system is being designed, trade-offs have to be made between representation on the one hand, and durability on the other.

If we examine the Australian system, however, it could be argued that both goals are served. Lower houses are elected through a majoritarian system, by the alternative vote, and upper houses are elected through a proportional system, through the single transferable vote. Thus, governments elected in the lower house are generally over-represented in the share of seats that they receive, and thus benefit from the stability that this provides. Yet, legislation that is proposed by the government must be approved in both houses of parliament, which means that the upper house, which by virtue of proportional representation, is much more accurately representative of the will of the people, must also pass legislation. Thus, any legislation that does pass parliament will still need to secure support from a diverse range of groups in order to be enacted. This means that all shades of political opinion have a chance to be represented during debate, yet legislative defeats that the government might suffer will almost always occur in the upper house, where it will not affect the stability of the government. Thus, in combining proportional representation with preferential voting,

Australian parliaments can secure both a wide range of political viewpoints being represented, and highly stable government.

The second goal of electoral system design articulated by Horowitz was accountability to constituents. By this, he meant the ability that voters have to vote out members of parliament who are not performing well, versus the ability of party leaders to control who would be elected. The system he identified with being most easily manipulated by parties was the closed list system of proportional representation, in which the list of candidates for election is chosen by party headquarters and voters cannot change the order of candidates on the list. If we look at the electoral system that operates in Australia, both the preferential electoral system used for lower house elections, and the single transferable vote style of proportional representation seem to give voters a degree of choice as to who to support, though preferential voting only gives voters the ability to decide their inter-party preferences, whereas STV allows for intra-party choice. In both these systems, the power of parties ends at the choice of candidates. There is a caveat. The above the line voting that has been instituted for upper house elections does create the same problems as can be found in the closed list system of proportional representation, especially considering 95 per cent of voter exercise their right to vote above the line. As voters' votes are distributed according to the will of the political party that they vote for when they vote above the line, they regain control over the order in which candidates are elected. However, above the line voting does have the benefit of reducing the incidence of informal voting, thus adding legitimacy to the outcome of the election.

Overall then, it would appear that in Australia our electoral system is designed quite well. It serves the twin goals of both representative and durable government, and it allows for a good degree of electoral accountability to operate. Overall, due to the nature of lower house elections, and the manner in which governments are formed, the electoral system in Australia must be classified as a majoritarian one. But, as it has been characterised by Lijphart (1999), it is a modified form of majoritarianism that does contain significant consensual elements. This is not just due to the presence of upper houses that are elected through proportional representation, though this is a significant factor in modifying majoritarianism. It is due also to the fact that the form of majoritarian electoral system chosen for the lower houses, the alternative vote, is one that allows minor parties some modest say in determining the formation of government, by allowing them to recommend preference flows, and thus

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influence the outcome of a limited number of seats. The need to compete for minor party preferences in key seats also means that major parties will seek to accommodate certain policy positions favoured by minor parties, thus giving them some indirect influence in the policy debates of the day.

The electoral system that we have in Australia would then seem to combine those beneficial features alleged by both Lijphart and Lardeyrat. The lower house of the typical Australian parliament is a majoritarian house, in which governments are generally elected with a clear capacity to govern. Decision making can be decisive, and voters can hold the government to account for the consequences of the decisions that they make. Yet at the same time, the typical Australian upper house is elected through STV proportional representation. This means that it possesses the level of representativeness advocated by Lijphart, and thus give minor parties a voice in the policy making process, whilst the instability and lack of direct governmental accountability that could be a problem were proportional representation introduced into a lower house is avoided.

Chapter Ten – The House of Review

As has been comprehensively demonstrated previously in this thesis, upper houses are continually evolving institutions. Beginning as chambers of the aristocratic or propertied members of society and defenders of the status quo, over time they have changed, especially in Australia, to become houses of review. This, the penultimate chapter of my thesis, will now seek to examine and detail what is meant by the term house of review. In so doing, examples of particular events and practices in parliaments, mainly, but not exclusively, those of Australia, will be examined to elucidate this concept. The most effective example of a house of review is the Australian Senate, and this chamber will serve to illustrate many of the points to be made. As it is the focus of this thesis, frequent mention will also be made of the South Australian Legislative Council.

The term "house of review" has been frequently analysed and defined, and from some of these definitions I will synthesize the core attributes of the concept (Russell 2001, Uhr 2001, Aroney 2008, Mulgan 1996). The designation "house of review" encompasses two broad attributes, namely scrutiny and accountability. These attributes are applied to legislation and to the actions of the government of the day in particular, but also occasionally to the actions of non-government members of parliament.

The scrutiny function exercised by the upper house involves the detailed examination of legislation that comes before it. Given that in Australia governments are generally in a minority position in upper houses, they do not have the iron-clad control over the proceedings of upper houses as they do in lower houses. This increases the likelihood that upper houses will engage in more detailed examination of legislation that is complex or contentious. In many upper houses this scrutiny of legislation is aided by a system of standing committees to which legislation may be referred, the exemplar of such a system is the one developed by the Australian Senate.

Scrutiny also extends to the actions of members of the Government, be they Government MPs or members of the public service. Again, due to the lack of government control, upper houses are in a position to investigate issues of probity or lack of competence, and publicise their findings. Such investigations have frequently led to the resignation of ministers for acting irresponsibly or corruptly. The ability of upper houses to convene committees that can compel evidence has aided this scrutiny function.

Upper houses also possess an accountability role, which flows from the scrutiny role. Where scrutiny involves the investigation of improper behaviour, accountability involves the publicising of this fact so that voters can render an appropriate judgement (see particularly Evans 1999).

Finally, review also encompasses a representativeness function. The composition of upper houses is much more democratic than that of lower houses, much more closely reflecting the diversity of political opinion that exists in the community at large, or at least how such opinions were expressed electorally. Thus, legislation that passes through such representative upper houses necessarily must have a political majority to be passed. Legislation that passes through the lower house can be passed by a government that received only forty percent of the primary vote at the last election, and therefore cannot be said to represent a majority of the political opinion in the community.

The important point to remember about bicameralism, especially as it pertains to the upper house acting as a house of review, is that it, much like the other checks and balances that exist in Westminster style parliamentary democracies, relies upon the division of power against power (Evans 2008a, 67-68). The reason that upper houses are able to act as houses of review is that they are not controlled by the government of the day, and thus governments are unable to control the actions taken by upper houses. However, the reason that they act to review the actions of government is that it is in the political interests of the majority of the members of upper houses to wield the powers of upper houses in a way that puts the government of the day and its legislation under scrutiny.

Those members of the opposition and the cross benchers who constitute the majority of the membership of the upper houses find it in their political interest to expose malfeasance and incompetence amongst members of the government and to find

flaws in the legislation proposed by the government as it enables them to argue that they would do a better job at governing than the current government. Minor parties have a different reason to see upper houses continue to provide scrutiny of the executive, and to provide this scrutiny more effectively. Minor parties promote themselves as being a check on both major parties, and often stake their election on being responsible wielders of their balance of power position. This scrutiny and review also benefits the voters though. Armed with a better knowledge of the actions of the government, and the detail of various legislative proposals than they would have otherwise possessed, they may make a more discerning judgement when next it comes time for them to cast a vote.

Thus, the political interests of the members of the upper houses, and the interests of the voters in being better informed about the actions of the government, are synthesised. Both are served by the opposition and the cross bench members of upper houses thoroughly scrutinising the actions of the government and its legislative program.

The system of review thus works because it does not rely overly on politicians performing actions that would be against their best interests. I am not arguing here that the only reason that a scrutiny function is exercised is because it would be in the political interests of the members engaging in it to do so. The politicians who comprise the membership of upper houses, like all politicians, also act out of a desire to serve the public. However, what I do contend, is that without this desire, upper houses would still be quite effective review bodies.

Prior to examining the specifics of review as it pertains to legislation and government action, it will be instructive to examine what occurs when an upper house comes under the control of the government of the day.

The Senate after the 2004 election

As stated earlier, as a result of the 2004 election, the Coalition Government was able to command a majority in the Senate from July 2005 until the fall of the Government in November 2007. This next section will examine the actions that the government

took to modify the Senate, once they had the ability to institute procedural changes and restructure the committee system.

The available evidence shows that the government control of the Senate did weaken its effectiveness as a house of review. However, the Senate was not rendered completely ineffective. This shows that the role of the Senate as a house of review is one that has developed a general level of acceptance, such that a government that finds itself commanding a majority in the Senate will nevertheless not be able to completely evade its scrutiny and revision functions.

Several procedural changes were made to the Senate. The first of these changes involved the allocation of questions in question time. The number of questions that were assigned to the government was increased, and, conversely, the number of questions that were assigned to the opposition and minor parties was decreased. This change particularly upset the minor parties. At the time, there were three minor parties represented in the Senate, but they had to divide two questions between them each question time. The changes in the number of questions were according to Senate rules that had been established prior to the government's winning of a majority, and so can merely be shown to be evidence of the government using all advantages available to it (Singleton 2008, 77).

The second procedural change related to the way in which the business of the Senate was conducted. Prior to the 2005 Senate changeover, legislation had generally been debated to the length that the Senate desired. After July 2005, the use of the gag, to silence individual members, and the use of the guillotine, to limit debate on Bills, was increased. Both of these procedures were employed more times in the last two years of the Howard government than they had been in the nine years prior to the 2005 change-over (Singleton 2008, 79-81).

The Senate committee system was also 'streamlined'. The paired committee system was abolished. Instead, rather than having separate reference and legislation committees in the same area, the committees were combined. Additionally, all of the Senate committees were chaired by Government Senators (Ashe 2006, 54-57).

The above actions by a Government that found itself in the unusual position of having a majority in the Senate illustrate the somewhat tenuous nature of upper houses as houses of review. As governments do not appreciate that upper houses have

evolved into houses of review that would scrutinise their legislation and the actions undertaken by their members, they exist in an uneasy relationship with them. All Governments would prefer to operate without the scrutiny and legislative amendments that existing with an upper house entails. Unsurprisingly then, when they perceive an opportunity to weaken that power of scrutiny, they take it, unless, like Chifley in 1948, they feel that they are about to lose an election.

It might be assumed that it would be a good thing from the perspective of a government to gain control of an upper house. It means for the most part that the government in question would no longer need to negotiate with members of the upper house with whom there were ideological differences in order to pass its legislation, and it means that such a government would not have to worry about potentially damaging inquiries being initiated.

There is a recent example from the Commonwealth Parliament though that shows that the converse might be the case, and that gaining control of an upper house can prove to cause more harm for a government than good. This relates to the previous section of this chapter, where the contention was made that one of the benefits of having legislation passed through an upper house possessed of a different political balance than the lower house was that it created a more consensus based position on legislation.

The improvements to legislation that come from being passed by a true political majority, rather than the artificial majority that is constructed by the preferential system used to elect lower houses can be illustrated by the two major changes to the workplace relations system undertaken by the Howard Government. When Howard first gained office in 1996, he brought with him the intention to reform the system under which industrial relations was conducted. He desired a move towards individual bargaining and away from the system of collective negotiations, and this desire for change sprang at least in part from a desire to weaken the union movement, which benefits from collective bargaining. He introduced a bill into parliament to amend the *Workplace Relations Act*. Howard possessed a commanding majority in the House of Representatives and passage of the Bill through that house was guaranteed. Howard did not possess a Senate majority, and so had to negotiate to gain passage of the legislation through the Senate. In the end, Howard passed a version of industrial relations reform that was weaker than he

would have liked, but was preferred by a larger segment of the public and the parties in parliament (Singleton 2000, 139-142).

The contrast to this is the way that the parliament handled the legislation to establish WorkChoices. Reform of the industrial relations system was, as we have just seen, something that Howard had intended to pursue from the start of his government. As political reality had intervened, in the form of a Senate not controlled by the Government, the reforms instituted then had to be wound back. After the 2004 election, when it became apparent that the Government would receive a majority of the seats in the Senate, Howard decided to introduce new industrial relations reforms.

The reforms in question were contained in the *Workplace Relations Amendment (WorkChoices) Act 2005* which made amendments to the *Workplace Relations Act 1996.* The effect of WorkChoices was to centralise the vast majority of the workplace relations system under the Commonwealth Government, removing the control of the States, through the use of the Commonwealth Government's power over corporations. The WorkChoices legislation aimed to increase the adoption of individual workplace agreements. This had begun with the 1996 reforms, but as canvassed earlier, these reforms were curtailed by the Senate. The WorkChoices changes included the removal of the no-disadvantage test; increasing the ease with which workplace agreements could be made, and decreasing the scrutiny afforded to the applications; reducing the scope of awards; weakening the AIRC by removing several of its powers; requiring secret ballots to be held before strikes were launched; and the removal of unfair dismissal claims from organisations that employed fewer than 100 people (Stewart and Williams 2006, 33). These reforms proved controversial. The Opposition Labor Party, along with the Greens and the Australian Democrats, opposed the changes in the legislation and ultimately voted against it. The legislation also provoked great outcry from voters. The WorkChoices legislation was significant in that people did not only fear the effect that it would have on them, but many of those who were secure in their jobs and not threatened by the legislation feared the effect that it would have on family and friends.

The amending legislation was rushed through the Senate, and the Government made no effort to assist non-Government Senators, or court their support of the legislation. The legislation, which ran to 1252 pages, was submitted to a five day committee

hearing, and five days of parliamentary debate, before the vote was put (Singleton 2008, 81).

The Howard Government lost the 2007 election, and many argued one of the factors that contributed significantly to this defeat was the introduction of WorkChoices (Brett 2007). Voters feared the effect that it would have on them, and the effect that it would have on people they knew. This created a large level of fear and resentment that the Labor Party and the ACTU were able to exploit through their "Your Rights at Work" campaign. This $20 million campaign ran effective television commercials depicting workers negatively affected by the reforms, and these commercials, along with other appeals, resonated with voters.

It is arguable that control of the Senate can therefore be seen as a negative for Howard. Whilst initially he may have been happy at finally being able to govern without the constraints and negotiation presented by a Senate which was not under the control of the Government, after the election of 24 November 2007, he might appreciate more the fact that occasionally the Senate saves governments from themselves (Evans 2008b, 5). The WorkChoices reforms were only able to get through the Senate because the government had won a one seat majority there. Only the Coalition supported their passage through either house of parliament. Thus, they were lacking in any broad basis of support. The Government did not need to listen to any suggestions from other political parties, and so did not have to moderate their legislation from its original intent. Supporters of other parties could not see any concessions won by their party, and so had no reason to be supportive of the new legislation. Had the Senate not been under the control of the Government, they may not have been able to get any workplace reforms passed, or those they did get passed may have been heavily amended by the time of their passage. However, the Government would also not have found it in the position of alienating parts of its support base, ultimately to its electoral detriment.

Legislation

The less publicised, but nevertheless important, role of upper houses is to provide scrutiny of legislation. The legislative functions of upper houses in a bicameral

system can be divided into two classifications - redundancy and ensuring majority support for legislative outcomes.

Uhr (2008, 14) argues that redundancy is the principle that best explains the internal logic of bicameralism. The redundancy offered by bicameralism is of value because institutional systems do not always operate the way that they were intended. When they do not, it is important to have a safety mechanism that can be employed to correct the fault. Uhr (2008, 15) warns though that it is necessary to guard against the use of inefficient redundancies. Only those redundancies that add value to the overall system should be used. This is the counter to those who see all the redundancy presented by bicameralism as an ill. Rather than serving as an inefficient waste, the legislative duplication of bicameralism, in which both houses of a legislature must consent to a Bill before it can be enacted into law, serves to prevent hasty or ill-informed legislation being passed through parliament. As Aroney (2008, 225) argues, the presence of an upper house that has a different representative basis from the lower house increases the potential that a broader debate be taken over proposed legislation than would occur in an unicameral system, as well as increasing the chance that technical faults with legislation will be detected and fixed. The fact that upper houses are less associated with the executive can also help to promote a different kind of debate, one that is less partisan in tone than that of the lower house, and focuses more on deliberating over the merits and effects of legislation (Aroney 2008, 226).

Aroney (2008, 34-35) and Russell (2001, 443-446) argue that the representational diversity of bicameralism is also beneficial to the legislative process. Legislation that passes through the lower house of a parliament only needs generally to be supported by the governing party, which, through the operation of majoritarian voting systems that tend to exist in lower houses, are usually not representative of a majority of the population, at least directly. Thus, the presence of upper houses that are proportionally composed, and are possessed of the ability to act as veto players in the legislative process, necessarily widen the representative base of legislation that is passed through the parliament.

If we take the current parliament of South Australia as an example the above point can be illustrated. At the general election of 2006 the Labor Party won government. In the House of Assembly, it won 45.88 per cent of the primary vote, which translated to 28 of the 47 seats in the lower house. In the Legislative Council, however, Labor

holds only eight of the 22 seats, and so must negotiate to gain the support of the cross bench, consisting of two independents, two members of Family First, a Green and a Democrat, or with the eight members of the Opposition Liberal Party in order to pass its legislation. Thus, whilst legislation can pass the lower house with only the support of the Labor Party, by the time it passes the upper house its basis of support has been widened, and a more consensus based position on legislation has been reached.

An important development in the consideration of legislation by Australian upper houses has been the creation of a number of standing committees to which legislation can be referred. As discussed in chapter four of this thesis, the exemplar in this regard has been the system of standing committees developed in the Senate. These committees, though recently weakened, have been the scene of important battles over the nature of legislation, and many concessions have been made to legislation following its consideration in committee. When legislation is introduced in the Senate, a Selection of Bills Committee, on which all parties are represented, decides if it will proceed to a Senate Committee, with around 35 per cent of Bills being referred to a committee in recent years (Stone 2007, 5). An example of a committee acting to improve legislation is given by Senator John Hogg (2008, 97):

> [T]he Senate considered a range of anti-terrorism bills that had been rushed through by the House of Representatives on the day following their introduction. These bills were referred to the Senate's Legal and Constitutional Legislation Committee which, after receiving more than 400 submissions, recommended wide-ranging amendments to the bills.
>
> After considering the committee's report, and mindful of the need to achieve other support from the floor of the Senate for their proposed legislation, the Government accepted most of the committee's recommendations, thereby producing legislation of superior quality than that rushed through the House of Representatives in the first instance.

The situation at a State level is less satisfactory. Due to their smaller size, many of the State Legislative Councils are unable to staff a full standing committee system. In many of the States a compromise has been reached, in which the majority of the committees are joint committees, comprised of members of both the upper and the lower houses. Whilst such committees do serve a useful purpose in performing scrutiny of legislation, they also present drawbacks. The first drawback that is presented is that such committees often do not have enough time to engage in a

detailed scrutiny of legislation. The presence of lower house members, who have a greater number of electorate duties to attend to than do the members from upper houses, means that the times in which the committees can meet are often constrained. Second, having joint committees blurs the nature of the review role. The presence of a standing committee system drawn entirely from the upper house bolsters the upper house's authority as a house of review. By having a system of joint committees, in which the majority of the membership of the various committees is drawn from the lower house, the upper houses role as a body of review is not fostered as strongly as it otherwise might be (Stone 2008, 191-192).

The South Australian Legislative Council is one of those that is too small to have a truly effective committee system. The size of the Legislative Council constrains it from developing the sort of comprehensive committee system that would dramatically strengthen its accountability function. From this, it can be concluded that enacting the part of Rann's 'reform' referendum option that relates to reducing the Legislative Council to a membership of 16 would not help the cause of governmental accountability.

But as Uhr (2001) contends, surely the meaning of the term review should not be purely reactive? If all that is implied by an upper house's power to review legislation is that it responds to legislation that is sent to it from the lower house, accepting the basic premise of the legislation, but making changes around the legislation, then this is selling the role of review short. Why upper houses that are as democratically legitimate as their lower house counterparts, if not more so, should restrict themselves to this essentially reactive role is unclear. The proper conception of review, Uhr argues, should surely be to amend legislation that comes before the upper house, and when necessary, to start afresh on some legislative proposals, essentially redrafting the legislation entirely.

From this point of view, whilst Australian upper houses lead the world in terms of review of legislation, they still fall short of the perfect ideal of legislative review. Again, if we take the Australian Senate as an example, and examine its legislative record from 1996-2004, we find that for the various years, between 62 and 75.7 per cent of Bills were passed by the Senate without any amendments (Bach 2008, 406). Some of these Bills would have been non-controversial legislation, but the above figure still suggests that the Senate is quite careful in exercising its ability to amend legislation, especially when it is remembered that a proportion of the Bills that were

amended would have been done so at the initiation of the Government. For the period 2005-2007, when the Government possessed a slender one-vote Senate majority, the number of Bills passed without amendment rose to 88.1 per cent (Bach 2008, 406).

The data suggest that the Senate deployed its power to amend Bills carefully. The majority of amendments passed to Bills were reserved for those that the majority of Senators found to be truly contentious (Bach 2008, 408). Whilst this then can obviously present a less than ideal circumstance to the Government, it is hard to argue that the Senate over the period 1996-2007 abused its power to amend legislation. If anything, the Senate trod very carefully, reserving its powers only for those Bills that it found particularly concerning. This is probably a reflection of the continued embattled nature of upper houses, which still must be careful to avoid the wrath of governments that may seek to curtail their powers.

Looking at the House of Lords provides a case study of an upper house that is not possessed of the same level of legislative power as Australian upper houses. Since the passage of the 1911 and 1949 Parliament Acts the House of Lords has not possessed a veto power over legislation, rather it has only possessed the power to delay it. The delay power was used only rarely up until the reforms of the Blair Government. Prior to that, as discussed in previous chapters, the Lords did not feel that they possessed the requisite legitimacy to challenge the government of the day on its legislative program. Since the passage of the reforms, this has changed, and the House of Lords has emerged as an active player in the legislative process, using its power of delay to institute changes to legislation (Russell 2008b, 122). However, the power that the House of Lords possesses in this area is ephemeral however. Whilst in most cases the government will accede to the reforms instituted by the House of Lords, there is no guarantee that this will occur. If ever there is any legislation that the government is determined to pass through parliament without modification, then they will accept the 13 month delay presented by a House of Lords veto, and pass it once this delay has expired. It would be such legislation, that the government is determined not to negotiate on at all cost, that would present the most concern for the public, and as such, the fact that the House of Lords is unable to insist on the amendments that it presents exists to its great detriment.

Representation

The representational diversity of upper houses in Australia allows them another means of aiding accountability of the government for the legislation that it proposes. The lower houses of Australian parliaments are, by definition, controlled by the government of the day. Because of this, even very contentious legislation can be ensured through these houses. The control of the government extends to the time allocated to the debate. On many pieces of legislation, governments can use their control of the numbers in lower houses to bring debate on legislation to an early close, through the use of the gag and the guillotine, to stop individual speakers and the house as a whole, respectively, from speaking on legislation.

Upper houses in Australia, by contrast, are generally characterised by the lack of government control. The government of the day is usually in a minority position in these houses. This robs them of the potential to employ the gag and the guillotine, unless members of the cross-bench or the opposition collude with them to provide the majority required. This rarely occurs, as it is generally in the interests of minor parties and the opposition to let debate continue on legislation that the government would be more comfortable rushing through parliament. If governments wish to have legislation rushed through parliament, then that generally presents a good sign that the legislation is deserving of close scrutiny. Thus, even when there is agreement between the government and the opposition, or the government and the cross-bench, on the merits of a piece of legislation, the full time for debate will generally be allotted to it.

This presents an obvious accountability benefit. Even if a position in a debate is not supported by a majority of the members of the upper house, it will generally be given time to be aired. Thus, when legislation is debated, views from all sides of the debate get a chance to enter public discourse on an issue. So to do stakeholders get a better chance to have their views represented, by finding a member who is of like mind to promote their views in parliament.

The passage of recent legislation through the South Australian Parliament illustrates this. The Government of Mike Rann introduced legislation to make changes to the Workcover system. The legislation was issued in response to revelations that government liabilities under Workcover had been increasing significantly in recent

years. The Clayton Report, handed down in late 2007, revealed that unfunded liabilities were approaching $1 billion, and recommended that many of the benefits offered under the scheme be curtailed as a consequence (Manning 2008, 641). The resultant plans to do so were the cause of much outcry from the union movement, as well as groups such as the Law Society, who felt that the changes proposed by the Government went too far in stripping entitlements from workers (*Australian* 12/5/08).

The legislation was greeted with heated opposition from certain sections of the community, most notably the union movement, which organised protests against the legislation and sought to have the Government reverse its position and not proceed with the passage of the Bill. The fate of the Bill was a forgone conclusion however. Both the governing Labor Party and the Opposition Liberal Party supported the aims of the legislation and intended to vote it through. Thus, there was a majority in favour of passing the legislation in both the House of Assembly and the Legislative Council.

When it come time to debate the legislation, though the passage of the Bill was a forgone conclusion, two members of the Legislative Council, Mark Parnell and Ann Bressington, set out to detail their concerns with the legislation, and the reasons why they were unable to vote for it. This resulted in an extraordinary display, in which Mark Parnell spoke on the Bill for a total of eight hours (including a break when parliament rose for dinner.) Bressington then spoke on the Bill for five hours straight, from 11pm to 4am the next day. In the course of their speeches, they engaged in a forensic breakdown of the Bill, highlighting the various components with which they had disagreements. They also read into the Hansard the concerns of various groups in society who felt that there would be negative consequences from the legislation, most significantly the union movement (*South Australian Parliamentary Debates* – Legislative Council, 8 May 2008). In the latter case then these two MLCs became the parliamentary representatives for the union movement against their more traditional representatives in the Labor Party, due to the policy difference between these two groups. The actions of Parnell and Bressington did not delay the passage of the Bill, and so cannot be termed a filibuster, as it was disparagingly referred to by the *Advertiser*, who to further their campaign against the Legislative Council also accused Parnell and Bressington of "gasbagging" (*Advertiser* 5/10/08).

Thus, while Parnell and Bressington were ultimately unable to influence the course of the legislation, they were able to draw attention to the fact that there were significant portions of society that had concerns about the legislation. They were thus able to

record in the Hansard their concerns, and the concerns of other people, bringing to public attention views that may not otherwise have been heard. If the legislation does cause significant problems in the future, then the public will be better informed about the legislation, and will be better placed to render their verdict on those parties that supported it. Those who seek to agitate for change to the legislation can also now do that from a stronger position.

Accountability

Not being controlled by the government of the day, upper houses are free to exert a form of accountability on the executive that the lower house is unable to. In some ways the form of accountability exercised is less effective than that that should be exercised by the lower houses. According to the theory of responsible government outlined in the previous chapter, a lower house should be ever vigilant, questioning the ministers that sit in it, and evaluating the actions of the government as a whole. If fault is found in either, then ministerial and governmental resignations can be effected by official powers of the house. This is not the case with upper houses. A no confidence motion passed in an upper house cannot force the resignation of a government, and an upper house cannot censure lower house ministers.

Thus, the form of accountability exercised by upper houses is necessarily different from that which should be exercised by lower houses. Upper houses exercise accountability by investigating the actions of government, and where improper action is found, exposing it to the people so that they can render their judgment when next they have the opportunity to vote (Evans 1999). This form of ministerial accountability can occur, as in the lower houses, through the mechanism of question time, though question time is generally as ineffective an institution as it is in the lower house. The real accountability function of the upper houses is exercised through procedural means, through the more extensive debates that can occur on matters, but most importantly through the committee systems of the upper houses.

Perhaps the most powerful weapon for scrutiny and accountability is the select committee. Whilst the Senate and the New South Wales Legislative Council are the only upper houses in Australia that can be argued to possess comprehensive sets of standing committees, all of the Australian upper houses at times make use of select

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committees. Select committees are temporary committees established by upper houses to inquire into specific matters. They are possessed of the same powers as standing committees, and so are able to compel witnesses to testify to them, thus making them very powerful bodies. The use of select committees has in the past uncovered abuses of power, ministerial corruption and incompetence, and government maladministration. A recent example of a select committee inquiry in South Australia concerned the so-called Ashbourne-Clarke affair, which concerned allegations of improper conduct between a government official and a member of parliament (Manning 2005, 609-10). It was this committee that may have helped to spark the call for the abolition of the Legislative Council, as it successfully continued to sit after the last sitting of parliament before the 2006 State election, in defiance of Rann's wish that it cease its inquiry.

Committees can often be divided on party lines. The non-government Senators will release a report detailing one version of events, and the government Senators will release a dissenting report that tells their version of events. While the lack of consensus in committee recommendations can be seen as a negative, the relationship between consensus and committee recommendations is a little more complex than that. In the case of committees where the upper house is in the situation where the government is in a minority position, committee recommendations are more likely to be recommended if there is a consensus. Where there is an upper house in which the government is in a majority, then it is more likely to accept the recommendations if there is dissent within the committee. An explanation offered for this is that governments do not like to see their committee members making compromises unless they have to (Holland 2009, 12-13). Furthermore, even when a committee is divided, and multiple reports are released, the release of multiple reports still leaves the public much more informed than they might otherwise have been, and they can use their judgment to decide which of the positions put forward more accurately describes the truth of the matter.

Committee systems would also be improved if the convention that members of one house cannot be compelled to appear before the other were dropped (Drinkwater 1999). This convention serves merely to shield members of lower houses from facing the scrutiny of upper house committees, which have to make do with questioning upper house ministers who represent their counterparts in the lower house. The convention that ministers from one house cannot appear before the other house is said to date from parliamentary convention in the United Kingdom at

the time of Federation in 1901 (Holland 2004, 4-5). Thus, the Commonwealth Parliament is regarded as having adopted the same convention. The problem with this reasoning is that whilst there was indeed a convention that members of the House of Commons could not be compelled to appear before the House of Lords, and the Lords before the Commons, that convention was frequently ignored (Holland 2004, 6-7). The same should occur in the Australian parliaments, to better enable committees to conduct their investigations.

Criticism of the house of review conceptualisation

A chapter on upper houses would not be complete without an examination of the most common criticism that is levelled at upper houses and their role as houses of review. Unsurprisingly, two of the most common groups of critics are politicians and the news media. The general complaint that comes from these two groups originates in a particular view of the role of government, and that is that governments are elected to govern (Sharman 1999). This view sees the government as being possessed of the right to have its legislative program passed by the parliament, without it being subject to delay, modification, or veto. This criticism has been levelled at the Australian Senate in recent years by members of the Coalition and the Labor Party. Helen Coonan (1999), a then minister in the Senate, wrote a paper in which she accused the Senate of being unduly obstructionist to the legislative program of the Government, and that governments should not be forced to compromise with a plethora of minor party candidates in order to have their legislation passed. She went on to suggest 'reforms' to the Senate that would help to fix this 'problem', including the removal of proportional representation, which would have turned the Senate into a pale imitation of the House of Representatives. Similarly, John Faulkner (2003), a Senator from the Labor party, and currently a minister, has expressed his opinion that the Senate is possessed of too much legislative power, and has called for the Senate's power to reject supply to be removed. Finally, the Howard Government released a discussion paper in 2003, *Resolving Deadlocks: a discussion paper on Section 57 of the Australian Constitution*, which canvassed changing the procedures governing deadlocks. Two possible alternatives were posited. The preferred suggestion was that, rather than requiring a double dissolution to be held before a joint sitting of the House of Representatives and the Senate could be convened, that the joint sitting could occur

as soon as a deadlock occurred. The second suggestion was that a joint sitting would be held after each general election, during which any bills that were deadlocked in the last parliament could be voted on. Both of these suggestions would have weakened the legislative power of the Senate in comparison to the House of Representatives. Of course, all of the above criticisms come from politicians who were either in government or seeking to be in government, but they typify the view of those who would like to see upper houses weakened.

As Sharman (1999) contends, the above views confuse the concepts of governing and legislating:

> Of course the government is elected to govern in the sense that, once the ministry is commissioned, the government can use the vast range of legislation on the statute book and deploy all the resources of the public service to pursue its policies. It does not mean that the government can make any new law it wants by the stroke of the Prime Minister's pen. Governing is not the same as legislating and, while the role of government includes making proposals for legislation, the only body that can make laws is the Parliament. So, even though it is true that governments are elected to govern, it is not true that they are elected to have passed any law they fancy.

The above characterisation of upper houses as institutions that get in the way of governments being able to govern, echoes the flavour of the accusations made against the South Australian Legislative Council, canvassed in the third chapter of this thesis. When Rann and his ministers, and his supporters in the media and the business community, state that the Legislative Council is an impediment to good government, good government in their mind comprises the ability to govern without being questioned, or forced to revise and modify their intended course of action. This, to a point, is understandable, as politicians fight hard to gain office, and are passionate about the ideas that they espouse. Once they get into a position where they are able to wield power, and effect change in a community, then naturally they wish to take advantage of the opportunity. To find themselves opposed by an institution that does not share their views must be frustrating. However, this is the very reason that such an institution needs to exist. No politician, or group of politicians, is possessed of all wisdom in any given area. The government of the day needs to be challenged with differing views, to ensure that the widest number of people are represented in the policy making process.

Conclusion

The importance of upper houses as houses of review is becoming increasingly appreciated, as upper houses continue to evolve better procedures for engaging in review. Review is a multi-faceted concept, encompassing the scrutiny and revision of legislation, as well as the scrutiny of government action, but it primarily revolves around increasing the representativeness of the legislative process, and the accountability of the government to the people. In terms of design, Australian upper houses lead the world in providing for democratic houses of review, although, within Australia, the Senate leads the Legislative Councils, which are still catching up to the Senate in developing procedures that will better enable them to perform their review functions. Whilst the precise nature of what constitutes a house of review remains a contested concept, and whilst there are some who believe that upper houses have no place in exercising review, it is a valuable function that has enhanced both the legislative and accountability processes in the Australian parliaments. It is also one that governments should appreciate more than they do. Though the presence of houses of review forces governments to compromise on their legislative programs, the level of compromise that governments have to engage in is by no means excessive, and is arguably less than they should, were legislative power divided on a strictly proportional basis. There is evidence, in fact, that the moderation of some of the more extreme pieces of legislation that governments occasionally try to pass can in fact work to the benefit of governments, and keep them from alienating supporters that were it not for the presence of an upper house, they would have.

Chapter Eleven – The South Australian Legislative Council into the Future: an analysis of potential reforms

In this chapter, I offer a summary of the contribution that the Legislative Council makes to upholding South Australia's parliamentary democracy, but then, noting that the Legislative Council is not a perfectly designed institution, I investigate some ways in which it might be reformed.

The Legislative Council in the balance

On a best practice basis, the Legislative Council of South Australia is good, but not perfect. In the next section the Legislative Council will be judged on the basis of its representativeness, its power, and its ability to hold the government of the day to account.

The Legislative Council is composed through a system of proportional representation. The particular form of proportional representation used is the single transferable vote (STV). STV is in line with the other Australian upper houses (barring Tasmania).

An upper house should be elected, and its electoral system should be one that gives that upper house popular legitimacy. STV certainly fulfils these criteria. In comparison to the forms of STV instituted in the rest of Australia, the South Australian Legislative Council compares well. The system is implemented over the whole of the State, removing any chance for malapportionment or electoral gerrymandering, and ensuring that perfect one-vote, one-value is observed. The number of members elected at each election (11) means that the quota for election is the second lowest in Australia, at 8.33 per cent of the total vote it is second only to that for the New South Wales Legislative Council, at 4.55 per cent. This low quota for election enables a diverse range of minor party and independent candidates to be elected. Currently,

more than one-quarter of the seats in the Legislative Council are held by minor party or independent MLCs (out of the 22 seats, one is held by the Greens, two by Family First, and three by independents).

The Legislative Council is powerful. It is possessed of the same legislative powers as the House of Assembly, barring the ability to initiate or amend appropriations Bills. This is the appropriate level of power for an upper house and this can be illustrated by reference to the House of Lords and the Canadian Senate. The House of Lords since it was reformed in 1999 is becoming a more effective house of review even though it possesses only the power to delay legislation (Russell 2008b). However the House of Lords remains weak in comparison to the House of Commons. If ever there is any legislation that is truly repugnant to the House of Lords, it cannot stop it becoming law, provided that the delay of one month for appropriations Bills and thirteen months for other Bills is something that the government is willing to bear. On the other hand, the Canadian Senate is possessed of the power to veto legislation, and, unlike the Australian upper houses, it is also possessed of the power to amend appropriations legislation (Thomas 2008, 133). Nevertheless, it is loathe to employ these powers, feeling that it lacks the legitimacy to use them, being undemocratically composed by a system of appointment. Thus, whilst it is desirable for an upper house that is going to exercise a proper scrutiny function on the lower house to be possessed of the power to veto legislation that originates in that house, this power of veto must be accompanied by the legitimacy granted through election. If this is missing, then the power of veto will only be used sporadically, and its use will rarely enjoy public support.

Given the composition of the South Australian Legislative Council, and the level of power that it wields, it is in the position to be able to hold governments to account. It is able to scrutinise and amend legislation, and it has established select committees to enquire into areas of government administration and conduct that exhibited potential improprieties.

There are some problems with the Legislative Council, however, and reforms to help fix these problems will be the subject of this chapter. In acknowledging that there are aspects of the Legislative Council that could be improved, I am not suggesting that were no reforms made that it would be an unnecessary part of the South Australian parliamentary system. As detailed above, the Legislative Council presents a good example of an effective upper house. Rather, the reforms I suggest will help the

Legislative Council move closer to 'best practice' and will serve to improve the quality of South Australian bicameralism. The reforms that I suggest will be analysed against and contrasted with the Constitution (Reform of Legislative Council and Settlement of Deadlocks on Legislation) Amendment Bill 2009. This was the Bill by which Rann sought to provide for a referendum seek to reduce the size of the Legislative Council to 16 members and the length of the terms served by members of the Legislative Council to four years. Furthermore, the Bill sought to modify the system for resolving deadlocks and will give the President of the Legislative Council a deliberative, rather than a casting, vote.

The Legislative Council is too small to truly comprehensively fulfil its functions. The size of the Legislative Council constrains it from forming a comprehensive standing committee system. The Legislative Council is too dominated by party, to the detriment of its review functions. Finally, two procedural aspects of the Legislative Council, the resolution of deadlocks and the filling of casual vacancies, are archaic and in need of clarification and reform.

The removal of ministers from the Legislative Council

One of the reforms called for by Peter Lewis, the independent who became Speaker in Rann's first government, in his Compact for Good Government was to remove ministers from the Legislative Council (Lewis 2002). The rationale behind this is that the Legislative Council's role is that of a House of Review, and the presence of ministers in the Legislative Council turns it into a reflection of the House of Assembly. Remove the chance of gaining a ministry, Lewis argued, and members of the Legislative Council would take their review role more seriously. The major flaw in this idea is that the removal of ministers would remove the focal point for scrutiny, that is, representatives from the government. Thus, this reform could only be considered if a fairly major change to the nature of parliamentary practice was undertaken, and that is to allow ministers from the lower house to be present in the upper house to conduct the passage of legislation through that chamber. Ministers acting in this way would be able to conduct all of the formal processes of seeing a bill through the Legislative Council, but would be unable to cast a vote on the Bill. The accountability mechanism of question time (such as it is) could be retained in this way as well. There are two ways that this could be done. The first, and probably more impractical

way, is that question time in the Legislative Council could be conducted at a different time to question time in the House of Assembly. The ministry could then attend both question times. A more practical proposal could see a roster system develop, where a few ministers attended question time in the Legislative Council each day, so that over the period of a sitting week, or fortnight, the entire ministry has fronted the Legislative Council for question time.

The removal of ministers from the Legislative Council, as stated previously, would be intended to sharpen the review role of the Council. As has already been stated, the Legislative Council needs a stronger committee system. Such a system would be aided by the removal of ministers and shadow ministers from the Legislative Council, as members of committees would be able to devote much more of their time to committee work. This may even help to overcome the size problem identified earlier, where the Legislative Council was identified as being below the size threshold required for a comprehensive committee system to be developed. The Legislative Council committee system should be comprehensively designed, along the lines of the Senate Committee system.

It has been suggested (Hamer 2004, 369-70) that one way to increase the prestige of an upper house in which ministers were no longer present would be to institute extra pay for the chairs of committees to that received by a minister. Committee chairs under this system would be shared amongst all parties. This would have the effect of raising the status of committees, and encouraging diligent performance on them; presumably the pinnacle of a career in the Council would be becoming chairperson of a committee. This sort of a system might also serve to reduce some of the partisanship of the Legislative Council. If MLCs spent much of their time serving on committees, which all parties had a chance to chair, then they might gain a greater appreciation of the review role of the Council. Giving all parties a chance to chair committees, and thus gain the increased status commensurate with the position, might also serve to ameliorate some of the negative partisanship that can exist in the Legislative Council. John Uhr (2003, 234) makes a similar point, contending that the positions of importance in the Legislative Council, such as that of presiding officer and the chairs of committees, should be shared amongst all of the parties, rather than being determined by the political party that holds the majority of the seats in the House of Assembly.

There does exist a potential problem with the removal of ministers from the Legislative Council, and that is that such a removal would place an undue burden on the House of Assembly (Macintyre 2003, 243-44). Currently, three of the fifteen ministers are drawn from the Legislative Council. Were there no longer to be ministers drawn from the Legislative Council, then the House of Assembly would have to provide all fifteen. This would prevent problems both for the government, who would have to appoint most of its members to the ministry regardless of talent, and for the Opposition, who might not possess sufficient members to even field a full shadow ministry. There are two potential solutions to this problem. The first, and by far the simplest, would be to limit the size of the ministry to twelve ministers. It is hard to see how a reduction in the size of the ministry of three could have serious negative consequences on the functioning of government. More controversially, the parliament could become more like those of continental Europe, where some ministers can be drawn from outside parliament (Stone 2008, 179). Expanding on Stone's idea, such ministers should run departments, and be able to sit in the House of Assembly and speak to Bills, but should not be given the right to cast a vote on any matter, so as not to disturb the party balance determined at the last election.

The reform of deadlock provisions

The reform of the provisions regarding deadlocks between the House of Assembly and the Legislative Council are desperately needed. The South Australian Constitution can be argued to provide the worst system for resolving deadlocks of all of the Australian Constitutions. The relevant section of the Constitution provides:

> 41—Settlement of deadlocks
> (1) Whenever—
> (a) any Bill has been passed by the House of Assembly during any session of Parliament; and
> (b) the same Bill or a similar Bill with substantially the same objects and having the same title has been passed by the House of Assembly during the next ensuing Parliament; and
> (c) a general election of the House of Assembly has taken place between the two Parliaments; and
> (d) the second and third readings of the Bill were passed in the second instance by an absolute majority of the whole number of members of the House of Assembly; and
> (e) both such Bills have been rejected by the Legislative Council or failed to become law in consequence of any amendments made therein by the Legislative Council,

it shall be lawful for but not obligatory upon the Governor within six months after the last rejection or failure—

(f) to dissolve the Legislative Council and House of Assembly by proclamation to be published in the Gazette; or

(g) to issue writs for the election of two additional members for each Council district.

(2) If the Legislative Council and House of Assembly are so dissolved—

(a) all the members of both Houses of Parliament shall thereupon vacate their seats and members shall be elected to supply the vacancies so created; and

(b) the order of retirement as between members of the Legislative Council elected after such dissolution shall be as provided in section 15 of this Act and one-half of such members shall retire after three years' service calculated from the first day of March of the year of their election or after such further period as is provided for in section 14.

This is a clearly inadequate system for resolving deadlocks between the two houses. It is easy to imagine that after the process outlined above has been followed, there would be the possibility of a status quo outcome, where the numbers in the House of Assembly and the Legislative Council remain the same, or at least similar enough that the disputed legislation is still unable to pass. In this instance, the only further recourse that exists is to hold an election for two more members of the Legislative Council (there now being only one Legislative Council district). Given the mechanics of proportional representation, such an election is all but guaranteed to return one Labor MLC and one Liberal MLC; again, such an outcome would merely maintain the status quo, and the dispute over the deadlocked Bill would be no closer to being resolved (Macintyre and Williams 2008, 219-220). At this point, the Constitution provides for no other options, and so the deadlocked Bill will remain so until enthusiasm for it wanes, or the subsequent general election delivers a parliament of a different enough complexion to see it passed. The standing orders for the houses of the South Australian Parliament do provide for a conference of managers to take place (House of Assembly Standing Orders sections 218-228, Legislative Council Standing Orders sections 251-262). However, the provision for this conference of managers still does not resolve the problem of resolving the deadlock with certainty, in the event that the conference is unable to reach a compromise solution.

The Australian Constitution provides for a more certain, but still inadequate, means for the resolution of deadlocks. The Rann Government's Legislative Council reform Bill sought to change the system of resolving deadlocks into one similar to that which exists in the Australian Constitution. Section 57 provides that if a Bill is twice passed

by the House of Representatives, but twice rejected by the Senate, with at least three months between the first passage and rejection and the second, then the prime minister can advise the Governor-General that a double dissolution should be held. After the double dissolution, the prime minister can advise the Governor-General to call a joint sitting of parliament. At this joint sitting, the Bill or Bills that are deadlocked are put before the parliament, and debated again. The members of the two houses of parliament then vote on the Bills, and if they are able to secure passage then they are sent to the Governor-General for assent.

Thus, the method for securing a resolution of the disagreement between the two houses is to become a de facto unicameral system for the purposes of the disputed Bills. This is unsatisfactory as it seems to admit to a fault or failure in the bicameral system. When the situation becomes too difficult to resolve, the bicameral system, with all its attendant benefits of scrutiny, division of power and representativeness, is discarded.

A better model that has been suggested would involve a holding of a referendum regarding the deadlocked Bills. This is similar to a provision (s. 5B) in the *Constitution Act 1902* (NSW), though it would be more straightforward than that provision (Hamer 2004, 367). At the referendum, the deadlocked legislation is put before the voters. If the referendum is successful, then the legislation is given assent. This then exchanges the representative democracy embodied in the parliament for the direct democracy that would be far too impractical to ordinarily engage in. It has strong logic though in the case of deadlocked Bills. By becoming deadlocked, such Bills have been shown to be the cause of significant and entrenched differences of opinion. In the case of such Bills it seems then strange to have a rule that states that ultimately one house of parliament will always be able to prevail over the other. By holding a referendum on the Bill or Bills in question, the people get to decide their fate, and so the outcome of the deadlock has the greatest democratic legitimacy.

Hamer (2004, 367) makes the important point that such a system may in fact lead to fewer Bills becoming deadlocked. It is politically embarrassing to advocate something that it subsequently defeated at a referendum. In the case of deadlocked Bills in the proposed system, the political parties on the losing side would be embarrassed in this way. Thus, before a Bill reached the stage where it became deadlocked, all of the politicians involved might be more willing than they otherwise would to

compromise and negotiate the successful passage of the Bill to avoid the potential embarrassment of defeat.

Casual vacancies

Just prior to the 2007 election, Nick Xenophon, an independent member of the Legislative Council, resigned his membership of that chamber. The reason for this was so that he could contest the 2007 Federal election, at which he was successful in gaining a seat in the Senate. His resignation from the Legislative Council left a vacancy there which had to be filled. The existence of this vacancy exposed the flaw in the current method by which casual vacancies are filled, and commenced a month of political game playing.

Xenophon, it can be fairly said, was not well regarded by the members of the Labor party, especially by the Premier, Mike Rann. There is no love lost between Rann and Xenophon (see e.g. the *Australian,* 4/11/09). This could be both because Rann does not appreciate the fact that on several occasions aspects of his legislative program have been modified by Xenophon, exercising his share of the balance of power in the Legislative Council. It might also spring from the fact that Xenophon is the most successful independent political campaigner in the history of South Australia. This was shown by the fact that he was able to win more than 20 per cent of the statewide vote for his election to the Legislative Council in 2006, gaining him two and a half quotas. This share of the vote was actually only a few percent less than that received by the Liberal party. This popularity gave Xenophon a public soapbox which he used to promote the benefits that he perceived independent candidates to possess. This made him dangerous then to the electoral positions of both of the major parties, but especially to the Labor party, as it was in government, and thus had the most to lose. Given this situation, Rann resolved to try to cause some trouble for Xenophon when he retired, and thanks to uncertainty (detailed below) with the rules governing the replacement of retiring Legislative Council members, he was able to. Rann was able to prevaricate for a month, claiming that the government's constitutional lawyers needed to investigate what course of action to take in the circumstances. Eventually, Rann conceded that the appropriate course of action to take in this instance was the appointment to the vacancy of the third person grouped under the 'No Pokies' label, John Darley (Parkin 2008, 323-24).

The following are the relevant provisions of the South Australian Constitution.

> (1) Subject to this section, where a casual vacancy occurs by death, resignation or otherwise in the seat of a member of the Legislative Council, a person shall be chosen to occupy the vacant seat by an assembly of the members of both Houses of Parliament.

> (5) Where a casual vacancy in the membership of the Legislative Council is to be occupied by a person chosen by an assembly of the members of both Houses of Parliament, and the member, whose seat has become vacant, was at the time of his or her election publicly recognised by a particular political party as being an endorsed candidate of that party and publicly represented himself or herself to be such a candidate, the person chosen by the assembly to occupy that vacancy shall, unless there is no member of that party available to be chosen, be a member of that party nominated by that party to occupy the vacancy.

These provisions stipulate that the member to replace the retiring MLC is chosen at a joint sitting of the two houses of parliament, and that the new member should be selected from the same political party as the retiring member, should one be available and willing to be selected. The obvious problem presented is when an MLC who is not a member of a political party retires from the Legislative Council. This is also what occurred when Xenophon resigned. As an independent, there was not a party structure in place that could be drawn upon to select a new member. Xenophon however did run on a ticket grouped with two other independent candidates, Ann Bressington and John Darley, under the banner of "Independent Nick Xenophon-No Pokies." Xenophon argued that the fair thing to do would be to replace him with John Darley (as Ann Bressington had been elected with Nick Xenophon thanks to preference flows from him). The Government prevaricated over this, claiming that it needed to consult its lawyers to determine the constitutionality of this proposal. By contrast, the Democrats argued that the fairest solution in cases like this would be to go back to the votes cast on election night, and continue the count to find the twelfth person who would have been elected, and replace Xenophon with this candidate (a proposal that incidentally would have seen Xenophon replaced by a Democrat). Eventually, the Government acknowledged that it should appoint the third person grouped with Xenophon, John Darley, to succeed him.

This action averted any immediate problem, but it has not addressed the long term defect in the Constitution, which is who should be appointed in the event that an independent resigns who was not grouped on the ticket with anyone else. Clement

Macintyre and John Williams (2008, 222) suggest that in this case, the retiring member would guide the joint sitting on who should be selected to replace them. This seems to be the most sensible solution, and seems to keep within the rationale of the current provision for replacing a member, that the candidate nominated by the retiring member's party be selected. In the case that the retiring member either refuses to nominate a successor, or is unable to, the only fair solution would seem to be to return to the count from election night, and select as the replacement the next candidate who would have been elected. Both of these solutions should be amended into the current provision for the filling of casual vacancies.

The Size of the Legislative Council, the Committee System, and the Term Lengths of Members

This next section of the chapter will address a series of interrelated reform options, revolving around the size of the membership of the Legislative Council, the term lengths served by members of the Legislative Council, and what sort of committee systems should exist.

One of the reforms advocated by both Mike Rann, in his referendum proposals, and Peter Lewis, in his Compact for Good Government (2002) was a reduction in the size of the Legislative Council. I will discuss a reduction in the size of the Legislative Council to 16 members here, as that was the proposal that was being put forward by Rann.

The obvious effect of reducing the number of Members of the Legislative Council would be that there would be fewer MLCs to scrutinise policy, especially MLCs from minor parties. There would also be fewer MLCs to serve on committees. Bruce Stone (2008, 178) has argued that there is a minimum number of members serving in an upper house in order to properly constitute a comprehensive committee system. In an upper house, as traditionally constituted in Australia, he contends that this threshold is around 40 members. However, if ministers are removed from the upper house, this threshold can be somewhat lowered. The Legislative Council as it is currently constituted then does not have the requisite number of members to form a truly comprehensive committee system. Currently, members from the Legislative Council serve with members of the House of Assembly on a range of joint committees. This is undesirable for several reasons. It reduces the authority of the

Legislative Council as a house of review, as many of the committees have a large part of their membership drawn from the House of Assembly. It also means that the committee system has to bow to the scheduling demands of the House of Assembly members, who have to do a lot more constituency work than do the Legislative Council members, thus reducing the amount of time for which the committees can meet (Stone 2005, 43).

If anything the size of the Legislative Council should be increased, to allow it to better fulfil its review functions through the establishment of a comprehensive committee system. The size of the Legislative Council definitely should not be reduced, with its current membership, it could still produce a committee system which, whilst not comprehensive across all of the areas of government, could focus on the areas of major legislative significance.

Jenni Newton-Farrelly (2007) has modelled Rann's proposals for a change in the number of, and length of terms served by, members of the Legislative Council, examining the composition of differently constituted houses based on the 2006 election results. In Rann's preferred option of a 16 member house elected for four year terms, she calculated that there would be six Labor candidates elected, four Liberal candidates elected, one Democrats candidate elected, one Green candidate elected, one Family First candidate elected, and three Independent-No Pokies candidates elected. The position of the minor parties does not seem to be too significantly affected, at first glance. However, the 2006 election was a particularly good one for non-major party candidates, thanks to Nick Xenophon, who received nearly as many votes as did the Liberal Party. In an election not contested by Xenophon, it would have to be assumed that the major parties would both do better, especially the Liberal Party which seemed to lose a large share of its vote to Xenophon. The other important point to make about a reduction in the size of the Legislative Council is whilst the potential remains for candidates to be elected in the same proportion as they were when the house was larger, this still leaves the government of the day needing to find fewer votes to pass its legislation.

The introduction of four year terms for members of the Legislative Council is easy to support on a democratic basis. Staggered terms are a hang-over from the pre-democratic days of the Legislative Council when its members were supposed to consider the 'long view' and not the day-to-day squabbles of politics. Staggered terms were also supposed to insulate the members of the Legislative Council from

short term shifts in public sentiment (Stone 2008, 183). It is not clear why either of these grounds for having staggered terms should apply today. Why we should have members of the Legislative Council deliberating on the Legislative program of the government elected at the election prior to that government is also quite difficult to justify. Shorter term lengths allow voters to more frequently pass judgment on their representatives, and stop these representatives from becoming complacent. A reduction in the length of the terms served by the members of the Legislative Council would thus add to the legitimacy of the members of that chamber when they seek to amend or block sections of the government's legislative program

What can be cause for concern, and an argument for the retention of staggered terms, is the possibility that the Legislative Council may fall into the majority control of one party. Research has shown that the Liberal Party would in fact have been in this position, holding 12 seats, if all of the members of the Legislative Council had been elected at the same time after the 1993 election (Newton-Farrelly 2000, 16). This election was anomalous in the history of South Australian elections, given that the Liberal Party managed to win 51.8 per cent of the *first preference* votes in the Legislative Council. Newton Farrelly has calculated that in a 16 member house elected on four year terms, for a major party to win a majority, based on historical voting trends they would need at a very minimum 48.2 per cent of the first preference votes. For a party to win a majority in a 22 member house they would need to secure at a minimum 48.7 per cent of the primary vote (Newton-Farrelly 2000, 14). Thus, it is unlikely in anything less than the landslide election of 1993 that either of the major parties would gain a majority of seats in an upper house in which staggered terms were removed in either a 22 member or a 16 member upper house. Because of this, the remaining justification of staggered terms, that it helps prevent major party upper house majorities from occurring, does not seem to justify the inherent anti-democratic nature of staggered terms. All of the members of the Legislative Council should thus be elected at the same time.

The power to reject appropriations bills

Power over appropriations legislation has always proved a contentious area. The parliament of the United Kingdom led the way in what is becoming an increasingly advocated trend with the passage of the Parliament Act 1911 in which the power of

the House of Lords with respect to appropriations legislation was limited to a suspensory veto of one month. The Legislative Councils of New South Wales, and more recently, Victoria, have adopted a similar provision in regard to their upper houses. For many, such a position of financial deference goes without saying as being the appropriate distribution of power between the two houses (eg Carney 2006, 32).

However, Stone (2007, 8-9) contends that the removal of the power of upper houses to block supply would weaken them relative to the lower houses, and thus reduce their power to hold the executive to account; as Reid and Forrest (1989, 331) argue (in the context of the Senate), the ability of the Senate to scrutinise the government is dependent on its ability to threaten the legislative program of the government, whilst balancing this with the maintenance of public legitimacy and approval.

The banning of parties from the Legislative Council

The role that the Legislative Council should perform is generally agreed to be that of a house of review. It is argued that party affiliation prevents the Legislative Council performing this role, as the members of the Legislative Council will not exercise their powers in ways detrimental to their respective parties. Some have suggested then that the best way in which to combat this is to ban political parties from the Legislative Council altogether. One recent notable advocate for this was the former Speaker of the House of Assembly, Peter Lewis. In his Compact for Good Government (Lewis 2002), he suggested change be undertaken to:

> remove all members of political parties from the Legislative Council as of the general election of March 2010 by requiring that no candidate seeking election to the Legislative Council as and from the next election may be a member of any political party registered with either Electoral Commission for the purpose of the provisions of the Electoral Act of either State or Federal Parliament.

There are numerous problems with effecting such change. Firstly, and most basically, this presupposes that simply by removing the labels of political parties the cooperation and consensus that exists between members of the Legislative Council will be significantly weakened. This ignores basic political reality. Wherever there are members of parliament there will be alliances between those who have similar views.

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This is how the party system developed in the first place, it was merely a coalescence and formalisation of parliamentary factions already in existence.

Banning candidates from standing for election as a member of a political party would be anti-democratic, insomuch as it would violate the principle of freedom of association. Furthermore, the banning of political parties could be confusing to voters, who often use a candidates party membership as a shorthand guide to the views that candidate represents. Without the label of political parties, voters who do not have the time to closely research each of the candidates' policy positions may feel that their ability to exercise a meaningful choice between competing candidates has been compromised.

The notion of banning political parties may have come from an examination of the situation in the Tasmanian Legislative Council. The Tasmanian Legislative Council is a chamber that is composed mainly of independent members. There is a problem with comparing the situation in Tasmania to a potential change to the composition of the South Australian Legislative Council. The situation in Tasmania is the result of a unique political culture arising from several factors that are specific to the Tasmanian Legislative Council. As we have seen the Tasmanian Legislative Council is not elected on a system of proportional representation, rather, it is composed of 15 single member districts. These districts are quite small, and this enables candidates to easily spread their messages and ideas amongst the voters. There are also tight spending limits on elections to the Tasmanian Legislative Council, candidates can spend only $12000 on their campaign. Finally, the Tasmanian Legislative Council is elected on a complex system of rotation that sees two or three members elected to the Council each May. This system of election decouples Legislative Council elections from those of the House of Assembly, meaning that the campaigns for the Legislative Council can be focussed much more on local factors, and the views and qualities of the candidates, rather than being overshadowed by a competition for government. This unique political culture is perfectly suited for a popular local candidate to gain a seat in the Legislative Council and to continue to hold it until they choose to retire. The incumbency rate in the Legislative Council is extremely high, and in many electoral districts there are no challengers at elections, as potential candidates see little chance for success in running against many of the more popular members of the Legislative Council (Thorpe 2007, 39). Yet, for all this, it is still possible to identify clear ideological consistencies amongst the members of the Legislative Council. Whilst party is for the most part not overtly present, most of the

independent members of the Legislative Council could be classified as conservative, and vote accordingly. Indeed, many of the 'independent' members of the Legislative Council are members of the Liberal Party, though they run as independents (Thorpe 2007, 39).

It would seem that the problem that Peter Lewis and other advocates of the removal of party from the Legislative Council have could be solved by different, and perhaps more elegant, means. The real problem is the control that party leaders have over candidates under the sort of proportional representation that is practiced in the Legislative Council. This is a commonly observed problem with proportional representation electoral systems. Securing election is less about performance in the election campaign than it is with securing a position at the top, or close to the top, of the list of candidates for a political party. In elections to the Legislative Council it is all but certain that the first three candidates on the lists of the two major parties will be elected. So, in a sense, they achieve election to the Legislative Council when the order of the party list on the ballot paper is finalised, not on election day itself. Thus, these candidates owe their election to the Legislative Council primarily to those who decide the order of candidates on the ballot paper – their parties. That these members of the Legislative Council would be inclined to continue to seek the support of these party leaders to retain their position on the ballot paper is then quite understandable. Rather than engaging in the heavy-handed action of banning political parties from the Legislative Council, reforms to weaken this level of party control could be undertaken.

The best way in which the control of party leaders could be weakened is through electoral reform. The current design of the Legislative Council would need to be changed to be more like the Hare-Clark system used in Tasmania's House of Assembly (Farrell and McAllister 2006, 62-63, 177-78). In this electoral system, Robson Rotation is used on the ballot papers. Under this system, the order in which candidates are listed on the ballot paper is randomised, with each candidate being listed in each position on the ballot paper an equal number of times. This removes the possibility for parties to produce how to vote cards that direct voters to fill in the ballot paper in a particular order. Thus there are no guaranteed winnable spots on the ballot paper. This removes a lot of the control from the parties, as there are no longer 'winnable' positions on the ballot paper, into which they can place their favoured candidates. This means that candidates have to build their own profiles and gain support from the electorate much more on their own merit than do candidates

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for the mainland upper houses. It also stops any party from benefiting from donkey voting.

Conclusion

If the aforementioned reforms were enacted, the reformed Legislative Council would be constituted as a more effective house of review. Ministers would no longer be able to sit in the Legislative Council, removing some of the day to day squabbles of government, and removing an avenue for promotion that so often is won through being an effective partisan warrior. To encourage people of talent, and the formation of an effective committee system, all members, regardless of the party they belong to, would have the chance to chair committees, and these committee chairs would be paid at the same level as ministers. To encourage more independently minded members, Robson Rotation would be introduced, so that members of the Legislative Council would need to compete for their places by convincing voters of their merit, not by convincing their party leaders to give them a winnable spot on the voting ticket. The system of filling casual vacancies would be modified to add certainty to the process of replacing MLCs who do not belong to a political party. The system of resolving deadlocks would be replaced by one in which a deadlocked Bill would be put before the voters at a referendum, so that these contentious pieces of legislation can be resolved in a way in which they find true majority support. Four year terms for the Legislative Council would also be adopted, adding legitimacy to the actions of MLCs when they seek to challenge the government of the day, as there would no longer be present members who were last elected prior to that government.

These reforms will only be successful in constituting a more effective house of review if certain popular, or at least oft-mentioned, reforms were not enacted. The Legislative Council must retain its power to reject appropriations Bills. A house of review must be able to review a government's entire legislative program, and there seems to be no reason why a house whose democratic legitimacy is arguably greater than the house of government should be unable to review the spending of the government. So too should the Legislative Council not be reduced in size. At the moment it already teeters on the threshold of having too few members to be an effective house of review, and it certainly possesses too few members to constitute a truly comprehensive committee system. To reduce its size further would significantly

adversely impact its ability to challenge the government, and this is presumably the intention behind this 'reform' idea.

In advocating these reforms, I have little expectation that any will be enacted. Having said that, there are two particularly important reforms that could be enacted without significant difficulties: the procedures for filling casual vacancies and resolving deadlocks both need urgent attention. It is only a matter of time before one or both of these provisions will be called upon and be found lacking.

Conclusion

This thesis has examined the nature and utility of bicameralism from multiple perspectives. Bicameralism has been considered from an historical perspective, a practical one, and a theoretical one. The first conclusion to be drawn from this study is that bicameralism is an ever-evolving form of parliamentary design.

Consider the earliest form of bicameralism in the Westminster parliament. This sprang from a distrust of the ability of democracy to deliver a stable regime, and the belief that stability only came from balancing different forms of rule against each other. The aristocratic House of Lords thus acted as a brake on the development of democracy in the House of Commons. Many of the aspects of parliamentary design that we take for granted today sprung from the clash between the House of Commons and the House of Lords, most famously the provision that upper houses cannot be the initiators of Bills that appropriate money, which occurred as part of the House of Commons' campaign to gain independence from the throne and the Lords.

Bicameral design has been in constant evolution since then, nowhere more so than in Australia. Far from being undemocratic bodies, upper houses in Australia are now generally more democratically composed than their lower house counterparts. We have thus come to a situation where those houses formerly classified as democratic laggards are now the exemplars of how to organise a democratic legislative body. Over the last century the various lower houses of the Australian parliaments have changed little in procedure or composition. Perhaps the most significant changes have been electoral ones, to remove various distorting inequities in the franchise, and the ever growing strength of party discipline, with its concomitant decline of the status and importance of the backbench MP. Across the same period, upper houses have been almost completely transformed, gaining renewed legitimacy through the adoption of proportional representation, which in turn has broken the stranglehold of government control, freeing upper houses to engage in further institutional and procedural reform.

It can now be argued that Australian bicameralism, which consists of elected strong bicameralism, is the most effective form of parliamentary bicameralism that has been instituted in the world. The parliaments of Australia are the only Westminster style parliamentary systems in the world in which elected strong bicameralism is practiced, and they are thus exemplars for the rest of the world to follow.

Lijphart made the observation that, for bicameralism to be strong, the upper house of a parliament needed to be possessed of two characteristics: the first was that it needed to have broadly equal powers to the lower house of parliament. Without this level of power then it would not be able to exercise an effective role in policy making, as the lower house would always be free to ignore the positions that the upper house took on issues. By being possessed of broadly equivalent powers to their lower houses, upper houses are able to engage in effective bargaining with lower houses, and are able to achieve changes in government policy. The second characteristic essential to strong bicameralism is that there is partisan incongruence between the two houses. If the political compositions of the two houses of parliament are the same, then they will generally agree on legislation, and matters of scrutiny and accountability. This will render the upper house a pale reflection of the lower house, and thus basically useless in the broader legislative process.

To Lijphart's two characteristics, Stone has added one other: that the upper house be elected. This, he contended, is what creates Australian bicameralism: Australia contains the only parliaments in the world that are both strongly bicameral with both houses of parliament being elected. This addition of election to the other characteristics of strong bicameralism is important. By being elected, Australian upper houses are afforded a degree of legitimacy that is lacked by many other upper houses throughout the world. This means that upper houses here are free to be active players in the policy development process, and are free to engage in intensive scrutiny of the actions undertaken by governments, because the members of upper houses do so with the knowledge that they have been elected to the positions that they hold, and thus enjoy the support of the public to perform the roles that they do.

The system of election used for most Australian upper houses, proportional representation, ensures that for the vast majority of the time that there will be partisan incongruence between the two houses. It also ensures that the partisan balance in upper houses will be such that neither of the major parties will hold a

majority of the seats. This is due to the ability of minor party and independent candidates to win seats in a proportional representation system. The lack of a major party majority means that the government of the day, whichever side of the political spectrum it hails from, needs to engage in negotiation with members of the upper house from outside its party to gain passage of its legislation.

Thus, the presence of proportional representation in upper houses means that they actually behave as legislatures. Lower houses in Australian politics are generally dominated by one major party and minority governments have, historically, been relatively rare (though there have been several minority governments in the States in recent years, they remain the exception rather than the rule). Thus, there is little cause for governments to negotiate passage of legislation through lower houses. Governments draft the desired legislation, introduce it into the lower house, and can be certain that it will be passed. Lower houses, thus, frequently serve no purpose in the legislative process, and all too often serve merely to rubber-stamp the decisions that have been taken by the executive. If parliaments contained only lower houses, or if upper houses existed only as partisan reflections of the lower houses, then governments would never need to negotiate with people possessed of different opinions on legislative issues as the discussion of the unicameral parliaments above has shown. Upper houses possessed of basically the same degree of legislative power as their respective lower houses break this pattern. They are possessed of a majority that more accurately reflects the wishes of the voting public. Thus, any legislation that is negotiated through upper houses can be said to be supported by the representatives of a true majority of the population. The presence of upper houses can thus act to build what Lijphart termed as consensus positions on policy issues, and can have a moderating effect on the legislative process.

That the superiority of Australian bicameralism is the case can be shown by the reform debates that are occurring in parliamentary systems that are less democratically advanced than those in Australia. As the case studies of the Canadian Parliament, and the Parliament of the United Kingdom examined earlier in the thesis showed, there are calls for reform in both of these countries that would see their parliamentary systems moving closer to those adopted by Australia. In Canada, there is the call for the triple-E Senate, which would change the Senate to a design virtually equivalent to that of the Australian Senate. In this system, the Canadian Senate would become the cornerstone of a renewed federalism, by ensuring equal representation for the provinces, with a democratic electoral system, and powers and

procedures that would enable it to be an effective part of the legislative and accountability system. The House of Lords has been stalled in a stage of semi-reform for a decade. Notwithstanding the reforms of 1911, prior to the reforms enacted in 1999 by the Blair government, the House of Lords existed as an historical anachronism. It was a chamber in which the majority of the members took their seats by accident of birth. The reforms in 1999 changed that. Whilst a small minority of hereditary peers remain, given that they are elected by the rest of the peerage, they can be regarded as the most democratic part of the House of Lords (although this is not a claim they should make with pride). The pressure for an elected House of Lords is growing stronger, and it is inevitable that this is the direction in which the House of Lords will progress. There have been several abortive attempts to introduce at least a proportion of elected members into the House of Lords, but under the Blair Government it was never seriously pursued. Gordon Brown has recently suggested that he would investigate changing the electoral system for both the House of Commons and the House of Lords, although many have, probably correctly, dismissed this as a way of distracting attention from the travails of his ever more fractured government. Nevertheless, the growing strength of public and academic opinion that the House of Lords needs to be democratised means that it is an issue that will have to be dealt with seriously by all political parties soon, and when the House of Lords is rendered elected, it will be distantly following the pattern laid down in the previous century by Australia.

The evolution of Australian bicameralism is interesting in that those parties who initially instituted it now are those parties that complain about the difficulty of governing in a bicameral system. When the Legislative Councils were reformed, the intention was to remove the conservative majority, and to give the Labor Party a chance at winning a majority in its own right. Since that time, the continued decline of the share of vote received by major parties, to the benefit of minor parties, has led to the current state of affairs, where in the ordinary course of events neither of the major parties can expect to win a majority of the seats on offer at an election. The evolution of Legislative Councils into houses of review was thus an accident, though one that has served to benefit the people that the various parliaments legislate for. The trend now on both sides of politics is to decry the power wielded by upper houses, and claims that the mandates won by governments at elections are being frustrated by obstructionist upper houses are familiar to all who follow politics. Thus, upper houses have remained embattled institutions. They began their life as institutions that operated in resistance to popular democracy. They are now

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institutions criticised chiefly by politicians of the major parties, and the criticism can be said now to spring from the fact that upper houses are too democratic, due to the fact that neither of the major parties are likely to gain a majority of the seats in upper houses, as the victorious party at an election will not find itself in possession of a larger number of seats than it is entitled to by its share of the vote, as is generally the case in elections to the lower houses.

This is beginning to result in campaigns by politicians from both the Labor and Liberal-National side of politics to reduce the power and effectiveness of the upper houses. Senator Coonan (1999) called for the proportional representation system of the Senate to be replaced with one more conducive to returning majority representation. In 2003, Prime Minister Howard released a discussion paper that canvassed changing the deadlock power (The Department of Prime Minister and Cabinet 2003). The preferred suggestion sought to remove the requirement for a double dissolution election to be held, instead allowing a joint sitting to be held as soon as a deadlock occurred. The alternative suggestion was that a joint sitting be held as a matter of course after any election, at which any deadlocked bills could be voted on. These suggestions both would have seen a significant weakening of the legislative power of the Senate. Senator Faulkner has long called (e.g. 2003) for the Senate's power over legislation, especially financial legislation, to be curtailed, and of course in South Australia there is a government that has been engaged in a rhetorical war with the Legislative Council for the entire time that it has been in office.

The most recent sign though at politicians' newfound desire to curtail upper houses power was shown in the recent reforms to the Victorian Legislative Council. Though the reforms there were ostensibly to turn the Victorian Legislative Council into a house of review in the same style as the other Australian Legislative Councils, this was not completely effected, and it has been argued that the Victorian Legislative Council cannot be classed in the same group as the other mainland Australian Legislative Councils (Stone 2008, Costar 2008). There are a few reasons for this, covered initially in Chapter 4, but I will briefly reiterate them. The first is the electoral system, which whilst STV proportional representation, borders on the only semi-proportional, as the five member districts mean the electoral quota is 16.66 per cent. This is designed to reduce the chance of minor party MLCs being elected, and resulted in the government coming within a few votes of winning a majority of the seats in the Legislative Council at the 2006 election. The second reason is that the constitutional provisions governing legislation render the Victorian Legislative Council

clearly inferior to the Legislative Assembly. The Legislative Council is not possessed of the ability to block Bills appropriating money for the ordinary annual services of government. The second, and more significant provision weakening the Legislative Council's legislative power states that after any general election, a joint sitting of the two houses of parliament can occur, to which any Bill that filled the provisions of being a deadlocked Bill during the life of the last parliament can be voted on. This has the effect of reducing the legislative power of the Victorian Legislative Council effectively to a power of delay. The delay might be a lengthy one – up to four years – but assuming that a government is returned at an election, any of its legislation that was deadlocked will be passed.

This sort of weakening of power is made more possible in electoral systems where the houses of parliament are not constitutionally entrenched. Where the people have to be consulted at a referendum, they will be much less willing to change the powers of upper houses than are politicians. For the people to vote to abolish an upper house entirely would be virtually inconceivable.

This brings us now to the irony of bicameralism, especially as it exists now in South Australia. The Labor Party, the champions of a more democratic Legislative Council throughout the 1960s and 1970s got what they wanted. The Legislative Council is very democratic in its composition, with more than one quarter of its members sitting on the cross-benches. This surge in support for members of minor parties, and independents, typified by the 20 per cent of the vote received by Nick Xenophon at the 2006 State election, demonstrates that voters value the chance to elect candidates to parliament who do not come from either of the major parties. Yet, the success of the Labor Party in rendering the upper house more democratic is precisely the reason that they now wish that it could be abolished. This then is the irony of South Australian bicameralism. It is strongly supported by the people[7], yet as an institution it remains embattled from the same political party that created it.

The Rann Government's plans for the Legislative Council were not conducive to the continued maintenance of a vital part of the South Australian governmental system. The abolition of the Legislative Council would have seen the removal of the valuable scrutiny that it provides, and would have seen a lessening of political diversity with

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[7] The delegates at the Constitutional Convention in South Australia in 2003 were polled on their level of support for the bicameral system at the end of the Convention. 80% of

the significant curtailment of minor party representation in the South Australian parliament. The reduction in the size of the Legislative Council would have lessened the ability of the Legislative Council to perform its functions of scrutiny and review.

The Legislative Council in South Australia, like other upper houses elsewhere in Australia, remains an important and valuable institution. It is not, though, a perfect institution. Parliamentary institutions are in a constant process of evolution, and the Legislative Council itself should continue down a path of gradual and measured evolutionary reform. However, these reforms should spring from a desire to ensure the Legislative Council is best possessed of the means to act as a house of review; they should not be imposed from above by a government seeking to curtail a legitimate source of scrutiny and review.

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delegates supported the retention of bicameralism, and 84% believed both houses should possess the power to veto legislation (Issues Deliberation Australia 2003, 24)

Primary Sources

Acts and Bills

Commonwealth of Australia Constitution Act 1900 (Imp)

New South Wales Constitution Act 1855 (Imp)

Constitution Act 1902 (NSW)

Constitution Act 1934 (SA)

Constitution Act 1975 (Vic)

Constitution Act 1982 (Can)

Constitution Act 1986 (NZ)

Constitution Act Amendment Act 1922 (Qld)

Constitution Act Amendment Act 1934 (Qld)

Constitution and Parliamentary Electorates and Elections (Amendments) Act 1978 (NSW)

Constitution (Parliamentary Reform) Bill 2003 (Vic)

Constitution (Reform of Legislative Council and Settlement of Deadlocks on Legislation) Amendment Bill 2009 (SA)

Life Peerages Act 1958 (UK)

Parliamentary Bills Referendum Act 1908 (Qld)

Parliament Act 1911 (UK)

Parliament Act 1949 (UK)

Workplace Relations Amendment (WorkChoices) Act 2005 (Cth)

Workplace Relations Act 1996 (Cth)

Other Primary Documents

A House for the Future, cm 4534, January 2000. Available at http://www.archive.official-documents.co.uk/document/cm45/4534/4534.htm

Angus Reid Strategies. 2009. *Large Majority of Canadians Calls for Senate Reform*. Available at http://www.angusreidstrategies.com/uploads/pages/pdfs/2009.09.01 _SenateCAN.pdf

Department of the Prime Minister and Cabinet. 2003. *Resolving Deadlocks: a discussion paper on Section 57 of the Australian Constitution.* Barton: Legal and Culture Branch, Department of Prime Minister and Cabinet.

Fitzgerald T. 1989. Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct. Brisbane: Government of Queensland.

Issues Deliberation Australia. 2003. South Australia Deliberates: The Future of our Parliament: Final Report to Parliament.

Labour Party Manifesto 1997. Available at http://www.bbc.co.uk/election97/ background /parties/manlab/9labmanconst.html

Lewis P. 2002. Compact For Good Government.

Parliament of Queensland. *Parliamentary Debates,* Legislative Assembly.

Parliament of South Australia. *Parliamentary Debates*, House of Assembly.

Parliament of South Australia. *Parliamentary Debates*, Legislative Council.

Parliament of South Australia Parliamentary Paper. Assembly of members of both houses for the election of a member to fill a vacancy in the Legislative Council. 21 November 2007.

Parliament of South Australia. *Standing Orders – House of Assembly*. Available at http://www.parliament.sa.gov.au/NR/rdonlyres/1D95F380-2D1B-4E8E-8FDF-BABAE9A61281/4162/standingordershoa.htm

Parliament of South Australia. *Standing Orders – Legislative Council*. Available at http://www.parliament.sa.gov.au/LegislativeCouncil/BusinessoftheCouncil/StandingO rders

The House of Lords – Completing the Reform, cm 5291, November 2001.

Secondary Sources

AAP Australian National News Wire; 24 November 2005

ABC Elections. 2009. *Tasmanian Legislative Council: 2009 Elections*. Available at http://www.abc.net.au/elections/tas/2009/legislativecouncil/background.htm

Advertiser, various dates.

Ajzenstat J. 2003. 'Bicameralism and Canada's Founders: The Origins of the Canadian Senate.' In *Protecting Canadian Democracy: The Senate You Never Knew*, ed. S. Joyal. Montreal: McGill-Queen's University Press.

Aristotle. 1992. *The Politics*. London: Penguin Books.

Aroney N. and S. Prasser. 2007. 'An Upper House for Queensland: an idea whose time has come.' *Democratic Audit of Australia Discussion Paper*, available at http://democratic.audit.anu.edu.au/papers/20070213_aronprass_upphqld.pdf

Aroney N. 2008. 'Bicameralism and representations of democracy.' In *Restraining Elective Dictatorship*, eds. N. Aroney, S. Prasser and J.R. Nethercote. Crawley: University of Western Australia Press.

Ashe A. 2006. 'Reform of the Senate Committee System: Evolving back to the past?' *Australasian Parliamentary Review*, 21(2): 50-59

Atkinson N. 2003. Adventures in Democracy: a History of the Vote in New Zealand. Dunedin: University of Otago Press.

Australian, various dates.

Bach S. 2003. *Platypus and Parliament*. Canberra: The Department of the Senate.

Bach S. 2008. 'Senate amendments and legislative outcomes.' *Australian Journal of Political Science*, 43(3): 395-423

Barwick G. 1983. *Sir John did his Duty*. Wahroonga: Serendip Publications.

Bastoni J. 2007. 'A Defence of the South Australian Legislative Council.' *Refereed Paper presented at the 2007 APSA Conference*, available at <http://arts.monash.edu.au/psi/news-and-events/apsa/refereed-papers/au-nz-politics/bastoni.pdf>

BBC News, various dates.

Benda H.J. 1950. 'The End of Bicameralism in New Zealand.' *Parliamentary Affairs* 4(1): 57-72

Blais A. 1991. 'The Debate over Electoral Systems.' *International Political Science Review*, 12(3): 239-260

Blais A. and P. Loewen. 2007. 'Electoral Systems and Evaluations of Democracy.' In *Democratic Reform in New Brunswick*, ed. W. Cross. Toronto: Canadian Scholar's Press.

Blewett N. and D. Jaensch. 1971. *Playford to Dunstan: the Politics of Transition*. Melbourne: Cheshire.

Bogdanor V. 2001. *Devolution in the United Kingdom*. Oxford: Oxford University Press.

Bogdanor V. 2001b. 'Constitutional Reform.' In *The Blair Effect: The Blair Government 1997-2001,* ed. A. Seldon. London: Little, Brown and Company.

Brett J. 2007. *Exit Right: the unravelling of John Howard*. Melbourne: Black Inc.

Business SA. *Manifesto – Governance*. Available at http://www.business-sa.com/library/FW1_Governance.pdf

Carney G. 2006. The Constitutional Systems of the Australian States and Territories. Cambridge: Cambridge University Press.

CBC News, various dates.

Coaldrake P. 1989. *Working the System: Government in Queensland.* St. Lucia: University of Queensland Press.

Colley L. 2006. 'Approaches to the Merit Principle in Queensland Public Service Recruitment 1859-2000. From rich and dumb to gender discrimination to politicisation?' *Australian Journal of Public Administration*, 65(1): 46-60.

Costar B. and G. Gardiner. 2003. 'From Breaking Governments to a Brake on Government: A New Bicameralism in Victoria?' *Australasian Parliamentary Review,* 18(1): 33-45

Costar B. 2004. 'Reform at last: The Victorian Legislative Council 2003.' *Democratic Audit of Australia Discussion Paper* available at http://democratic.audit.anu.edu.au/papers/20040407_costar_vic_lc.pdf

Costar B. 2007. 'The Victorian State election: maintaining Labor.' *Australian Journal of Political Science*, 42(4): 683-691

Costar B. 2008. 'Reformed Bicameralism? The Victorian Legislative Council in the Twenty-First Century.' In *Restraining Elective Dictatorship*, eds. N. Aroney, S. Prasser and J.R. Nethercote. Crawley: University of Western Australia Press.

Cockburn S. 1991. *Playford: Benevolent Despot*. Kent Town: Axiom.

Coonan H. 1999. 'The Senate – Safeguard or Handbrake on Democracy?' *The Sydney Papers,* Summer 1999: 107-123

Crick B. 1970. *The Reform of Parliament*. London: Weidenfeld and Nicolson.

Crossman R.H.S. 1963. 'Introduction.' In *The English Constitution,* W. Bagehot. London: The Fontana Library.

Crowley K. 2000. 'Disenfranchising the Greens: Labor's Electoral 'Reform' Strategy in Tasmania.' Paper presented to the *Australasian Political Studies Association Conference 2003*, available at http://apsa2000.anu.edu.au/confpapers/crowley.rtf

De Maria W. 1995. 'Whistleblowing.' *Alternative Law Journal* 20(6): 270-281

Docherty D.C. 2008. 'Upper Houses in the Canadian Provinces.' In *Restraining Elective Dictatorship*, eds. N. Aroney, S. Prasser and J.R. Nethercote. Crawley: University of Western Australia Press.

Drinkwater D. 1999. 'To speak or not to speak: ministerial accountability in the Senate and the House of Representatives.' *Legislative Studies*, 13(2): 47-54

Dunstan D. 1981. *Felicia: the political memoirs of Don Dunstan.* South Melbourne: Macmillan.

Dymond G. 2008. 'The Life Peerages Act 1958.' *House of Lords Library Note*, available at http://www.parliament.uk/documents/upload/HLLLifePeeragesAct1958.pdf

Emy H. 1996. 'The Mandate, the Senate and Responsible Government.' *Australia and World Affairs*, 30: 5-13

Evans G. 2008b. 'A Case for the Upper House: The Role of the Senate in Improving Legislation and Government Performance.' *Paper presented at the Don Chipp Foundation 2008 Grants Presentation Day*, available at http://digital.library.adelaide. edu.au/dspace/bitstream/2440/47950/1/A_Case_for_the_Upper_House.pdf

Evans H. 1999. 'The Senate and Parliamentary Accountability.' *ANU Graduate Program in Public Policy Discussion Paper* 65.

Evans H. 2005. 'Mandate Theory: a bundle of fallacies.' *Impact*, Summer 2005: 11

Evans H. 2008a. 'The Case for Bicameralism.' In *Restraining Elective Dictatorship*, eds. N. Aroney, S. Prasser and J.R. Nethercote. Crawley: University of Western Australia Press.

Farrell D., M. Mackerras and I. McAllister. 1996. 'Designing Electoral Institutions: STV Systems and their Consequences.' *Political Studies,* XLIV: 24-43

Farrell D.M. and I. McAllister. 2006. *The Australian Electoral System: Origins, Variations and Consequences.* Sydney: University of New South Wales Press.

Faulkner J. 2003. 'Senate Reform.' *The Sydney Papers*, Winter/Spring 2003: 101-109

Franks C.E.S. 1999. 'Not Dead Yet, But Should It Be Resurrected? The Canadian Senate.' In *Senates: Bicameralism in the Contemporary World,* eds. S. Patterson and A. Mughan. Columbus: Ohio State University Press.

von Fritz K. 1954. *The Theory of the Mixed Constitution in Antiquity.* New York: Columbia University Press.

Galligan B. 1995. *A Federal Republic.* Cambridge: Cambridge University Press.

Goot M. 1999. 'Whose Mandate? Policy Promises, Strong Bicameralism and Polled Opinion.' *Australian Journal of Political Science*, 34(3): 327-352

Griffith G. and S. Srinivasan. 2001. 'State Upper Houses in Australia.' *New South Wales Parliamentary Library Research Service*, Background Paper No.1, 2001.

Griffith G. 2002. 'The New South Wales Legislative Council: an analysis of its contemporary performance as a house of review.' *Australasian Parliamentary Review*, 17(1): 49-66

Grundy B. 2005. 'The Missing Constitutional Ingredient: An Upper House.' *Proceedings of the Samuel Griffith Society*, volume 17.

Hamer D. 2004. *Can Responsible Government Survive in Australia?* Canberra: The Department of the Senate.

Harding J. 2000. 'Ideology or Expediency? The Abolition of the Queensland Legislative Council 1915-22.' *Labour History* (79): 162-178

Hede, A. 1993. 'Managerial and Equity Reform of the Public Sector.' In *The Goss Government*, eds. B. Stevens and J. Wanna. Melbourne: Macmillan.

Herr R. 2005a. 'Reducing Parliament and Minority Government in Tasmania: Strange Bedfellows Make Politics – Badly.' *Australasian Parliamentary Review* 20(2): 130-43

Herr R. 2005b. 'Democracies and Small Parliaments: Some Diseconomies of Scale.' *Democratic Audit of Australia Discussion Paper*, available at http://democratic.audit.anu.edu.au/search_keyw_frm.htm

Holland I. 2004. 'Reforming the conventions regarding parliamentary scrutiny of ministerial actions.' *Australian Journal of Public Administration*, 63(2): 3-15

Holland I. 2009. 'Senate Committees and the Legislative Process.' *ANU Parliamentary Studies Paper* 7, available at http://www.parliamentarystudies .anu.edu.au/papers_etc/2009/publications/Holland-final(rev1).pdf

Horowitz D. 2006. 'A Primer for Decision Makers.' In *Electoral Systems and Democracy*, eds. L. Diamond and M.F. Plattner. Blatimore: The Johns Hopkins University Press.

Lord Howe. 2007. 'If it ain't broke…' *Journal of Legislative Studies*, 13(2): 197-203

Hughes C. 1992. 'Reforming the Queensland Electoral System.' In *Keeping them Honest: Democratic Reform in Queensland*, eds. A. Hede, S. Prasser and M. Neylan. St. Lucia: University of Queensland Press.

Hughes C. 2008. 'A Model Upper House for Queensland.' In *Restraining Elective Dictatorship*, eds. N. Aroney, S. Prasser and J.R. Nethercote. Crawley: University of Western Australia Press.

Jackson K. 1972. The New Zealand Legislative Council: a study of the establishment, failure and abolition of an upper house. Dunedin: University of Otago Press.

Jaensch D. 1970. 'A functional "Gerrymander" – South Australia, 1944-1970.' *The Australian Quarterly*, 42(4): 96-101

Jaensch D. and J. Bullock. 1978. *Liberals in Limbo*. Richmond: Drummond.

Jaensch D. 1985. 'The 'Bjelke-mander'.' In *The Bjelke-Petersen Premiership 1968-1983: Issues in Public Policy*, ed. A. Patience. Melbourne: Longman Cheshire.

Jaensch D. 1986. 'Parliament and Government.' In *The Flinders History of South Australia – Political History* ed. D. Jaensch. Netley: Wakefield Press.

Jaensch D. 1986a. 'The Playford Era.' In *The Flinders History of South Australia – Political History* ed. D. Jaensch. Netley: Wakefield Press.

Jaensch D. 1986b. Getting our Houses in Order. Australia's Parliament: how it works and the need for reform. Ringwood: Penguin Books.

Johnston P. 2005. '*Attorney General (WA) v Marquet*: Ramifications for the Western Australian Parliament. *Australasian Parliamentary Review,* 20(1): 117-129

Kelly N. 2006. 'Western Australian Electoral Reforms: Labor Finally Succeeds.' *Australian Journal of Political Science*, 41(3): 419-426

Kelly P. 1995. *November 1975*. St. Leonards: Allen & Unwin Australia.

Kerr J. 1978. *Matters for Judgment: an autobiography*. South Melbourne: Macmillan.

Lardeyrat G. 2006. 'The Problem with PR.' In *Electoral Systems and Democracy*, eds. L. Diamond and M.F. Plattner. Blatimore: The Johns Hopkins University Press.

Levine S. and N.S. Roberts. 1997. 'MMP: The Decision.' In *New Zealand Politics in Transition*, ed. R. Miller. Auckland: Oxford University Press.

Lewis C. 1997. 'The Criminal Justice Commission: A Political Football?' *Queensland Review*, 4(2): 1-11

Lieberman D. 2006. 'The mixed constitution and the common law.' In *The Cambridge History of Eighteenth-Century Political Thought*, eds. M. Golde and R. Wokler. Cambridge: Cambridge University Press.

Lijphart A. 1984. Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries. New Haven: Yale University Press.

Lijphart A. 1999. 'Australian Democracy: Modifying Majoritarianism?' *Australian Journal of Political Science*, 34(3): 313-326

Lijphart A. 2006. 'Constitutional Choices for New Democracies.' In *Electoral Systems and Democracy*, eds. L. Diamond and M.F. Plattner. Blatimore: The Johns Hopkins University Press.

Longford, F. Pakenham, Earl of. 1998. *A History of the House of Lords*. London: Collins.

Lunn H. 1987. Joh: The Life and Political Adventures of Sir Johannes Bjelke-Petersen. St. Lucia: University of Queensland Press.

Lusztig M. 1995. 'Federalism and Institutional Design: The Perils and Politics of a Triple-E Senate in Canada.' *Publius – The Journal of Federalism* 25(1): 35-50

Macintyre C. 2003. 'The Size of Parliament and the Location of Ministers.' In *Peace, Order and Good Government: State Constitutional and Parliamentary Reform*, eds C. Macintyre and J. Williams. Kent Town: Wakefield Press.

Macintyre C. and J. Williams. 2008. 'The embattled South Australian Legislative Council.' In *Restraining Elective Dictatorship*, eds. N. Aroney, S. Prasser and J.R. Nethercote. Crawley: University of Western Australia Press.

Machiavelli N. *The Discourses.* Available at http://ebooks.adelaide.edu.au/m/machiavelli/niccolo/m149d/

Mackerras M. 1990. 'How Unfair is Queensland's Electoral System?' In *Corruption and Reform: The Fitzgerald Vision*, eds S. Prasser, R. Wear, and J. Nethercote. St. Lucia: University of Queensland Press.

McCormick J.P. 1993. 'Addressing the Political Exception: Machiavelli's "Accidents" and the Mixed Regime.' *American Political Science Review*, 87(4): 888-900

McPherson B.H. 2008. 'A Constitutional History of Parliament of Queensland.' In *Restraining Elective Dictatorship*, eds. N. Aroney, S. Prasser and J.R. Nethercote. Crawley: University of Western Australia Press.

Madill F. 1997. 'Love and hate under Hare Clark.' *Legislative Studies*, 11(2): 68-74

Manning H. 2004. 'South Australia: July to December 2003.' *Australian Journal of Politics and History*, 50(2): 287-294

Manning H. 2005. 'South Australia: January to June 2005.' *Australian Journal of Politics and History*, 51(4): 606-612

Manning H. 2008. 'South Australia: January to June 2008.' *Australian Journal of Politics and History*, 54(4): 640-646

Mar G., M. Bountrogianni and B. Pelletier. 2006. 'Round Table on Senate Reform.' *Canadian Parliamentary Review*, Winter 2006-07: 9-16

McLean I., A. Spirling and M. Russell. 2003. 'None of the Above: The UK House of Commons Votes on reforming the House of Lords.' *The Political Quarterly*, 74(3): 298-310

McLeay E. 1997. 'Forming a Government.' *Legislative Studies*, 11(2): 23-34

Melbourne A.C.V. 1963. Early Constitutional Development in Australia: New South Wales 1788-1856, Queensland 1859-1922. St Lucia: University of Queensland Press.

Millar A. 2000. 'Why the Senate?' *The Sydney Papers,* Spring 2000

Moon J. and C. Sharman. 2003. 'Western Australia.' In *Australian Politics and Government: the Commonwealth, the States and the Territories,* eds. J. Moon and C. Sharman. Cambridge: Cambridge

Morre J. 'The Public Sector Integrity Systems in Queensland and Victoria, Australia, and the Impact of Recent Ethics Management Measures: A Practitioner's View.' In *World Ethics Forum Conference Proceedings: Leadership, Ethics and Integrity in*

Public Life, eds. C. Sampford and C. Connors. Queensland: The Institute for Ethics, Governance and Law.

Mulgan R. 1996. 'The Australian Senate as a 'House of Review.' *Australian Journal of Political Science*, 31(2): 191-204

Mulgan R. 1999. 'Have New Zealand's Political Experiments Increased Public Accountability?' *Australian National University Graduate Program in Public Policy, Discussion Paper No. 59*

Mulgan R. 2000. 'The "Mandate": A response to Goot.' *Australian Journal of Political Science*, 35(2): 317-325

Murphy D.J. 1980. 'Abolition of the Legislative Council.' In *Labor in Power: The Labor Party and Governments in Queensland 1915-57*. St. Lucia: University of Queensland Press.

Newton-Farrelly J. 2000. 'The South Australian Legislative Council: possible changes to its electoral system.' *South Australian Parliamentary Library Information Paper,* No. 17.

Newton-Farrelly J. 2007. 'Report on the results of the South Australian state election 18 March 2006.' *South Australian Parliamentary Research Library Research Paper*, No. 1 of 2007.

Norton P. 2004. 'Reform of the Lords: A View from the Parapets.' available at http://www.revolts.co.uk/ REFORM%20OF%20THE%20HOUSE%20 OF%20LORDS .pdf

Oakes L. 1976. Crash through or Crash: The unmaking of a Prime Minister. Richmond: Drummond.

Page B. 1991. 'Developments in the Legislative Council of New South Wales since 1978.' *Legislative Studies*, 5(2): 23-31

Palmer G. 1979. Unbridled Power?: an interpretation of New Zealand's constitution and government. Wellington: Oxford University Press.

Palmer G. and M. Palmer. 1997. *Bridled Power: The New Zealand Government under MMP*. Oxford: Oxford University Press.

Paré J. 2009. 'Senate Reform in Canada.' *Parliamentary Information and Research Service*, August 2009, available at http://www2.parl.gc.ca/Content/LOP/ResearchPublications/prb0908-e.pdf

Parkin A. 2003. 'South Australia: January to June 2003.' *Australian Journal of Politics and History*, 49(4): 597-603

Parkin A. 2008. 'South Australia – July to December 2007.' *Australian Journal of Politics and History*, 54(2): 320-325.

Patterson S. and A. Mughan. 1999. *Senates: Bicameralism in the Contemporary World.* Columbus: Ohio State University Press.

Pepperday M. 2003. 'Understanding the Adoption of PR in Australian Upper Houses or: Why do Politicians Give Away Power?' Refereed paper presented to the *Australasian Political Studies Association Conference 2003*, available at http://www.utas.edu.au/government/APSA/M.Pepperday2.pdf

Polybius. *The Histories*. Available at http://penelope.uchicago.edu/Thayer/e/roman/texts/polybius/home.html

Prasser S. 1996. 'The Electoral and Administrative Review Commission in Queensland: A Model for Reform and Change?' *Canberra Bulletin of Public Administration*, (79): 118-126.

Prasser S. 2004. 'Post Corruption Cleanups: Government Reform or Putting in a New Political 'Fix'.' *University of the Sunshine Coast Faculty of Business Working Paper Series*, December 2004.

Prasser S. 2007. 'Queensland's Wicked Ways.' *Public Administration Today*, January-March 2007: 16-17

Prasser S., J.R. Nethercote and N. Aroney. 2008. 'Upper houses and the problems of elective dictatorship.' In *Restraining Elective Dictatorship*, eds. N. Aroney, S. Prasser and J.R. Nethercote. Crawley: University of Western Australia Press.

Preece A.A. 2000. 'Bicameralism at the end of the Second Millennium.' *University of Queensland Law Journal*, 21(1): 67-84

Preece A.A. 2002. 'Upper Houses and Financial Legislation.' *University of Notre Dame Australia Law Review*, 4: 115-144

Prenzler T. 1997. 'The Decay of Reform: Police and Politics in Post-Fitzgerald Queensland.' *Queensland Review*, 4(2): 13-25

Rawnsley A. 2001. Servants of the People: The Inside Story of New Labour. London: Penguin.

Ransley J. 1992. 'Reform of Parliamentary Processes: An Assessment.' In *Keeping them Honest: Democratic Reform in Queensland*, eds. A. Hede, S. Prasser and M. Neylan. St. Lucia: University of Queensland Press.

Reid G.S. and M. Forrest. 1989. *Australia's Commonwealth Parliament 1901-1988: Ten Perspectives*. Carlton: Melbourne University Press.

Reilly B. 2001. 'Preferential voting and its political consequences.' In *Elections: full, free and fair,* ed. M. Sawer. Leichhardt: The Federation Press.

Robinson I. 1999. 'The Myth of the Mandate.' *Australian Rationalist*, (48): 18-20

Rockow L. 1928. 'Bentham on the Theory of Second Chambers.' *The American Political Science Review*, 22(3): 576-590

Russell M. 2001. 'What are Second Chambers For?' *Parliamentary Affairs*, 54: 442-458

Russell M. and R. Cornes. 2001. 'The Royal Commission on Reform of the House of Lords: A House for the Future?' *Modern Law Review*, 64(1): 82-89

Russell M. 2008a. Presentation on the House of Lords as part of the panel *European Arrangements, Old and New: UK and Italy*.

Russell M. 2008b. 'Reform of the House of Lords: lessons for bicameralism.' In *Restraining Elective Dictatorship*, eds. N. Aroney, S. Prasser and J.R. Nethercote. Crawley: University of Western Australia Press.

Sawer M. 2001. 'Pacemakers for the world?' In *Elections: full, free and fair,* ed. M. Sawer. Leichhardt: The Federation Press.

Sharman C. 1999. 'The Senate and Good Government.' *Papers on Parliament*, 33

Sharman C. 2008 'Political Legitimacy for an Appointed Senate.' *IRPP Choices*, 14(11)

Shell D. 2000. 'Labour and the House of Lords: A Case Study in Constitutional Reform.' *Parliamentary Affairs,* 53(2): 290-310

Sherman T. 1992. 'Electoral and Administrative Review Commission and the Fitzgerald Legacy.' In *Keeping them Honest: Democratic Reform in Queensland*, eds. A. Hede, S. Prasser and M. Neylan. St. Lucia: University of Queensland Press.

Singleton G. 2000. 'On the waterfront: The Howard government's approach to industrial relations.' In *The Howard Government*, ed. G. Singleton. Sydney: University of New South Wales Press.

Singleton G. 2008. 'The Senate a paper tiger?' In *Howard's Fourth Government*, eds. C. Aulich and R. Wettenhall. Sydney: University of New South Wales Press.

Smith R. 2003. 'New South Wales.' In *Australian Politics and Government: the Commonwealth, the States and the Territories,* eds. J. Moon and C. Sharman. Cambridge: Cambridge University Press

Solomon D., S. Webbe and D. McGann. 2008. *The Right to Information: Reviewing Queensland's Freedom of Information Act.* The State of Queensland: Department of Justice and the Attorney-General.

Spies-Butcher B. 2007. 'The New South Wales Election of 24 March 2007: explaining the re-election of an unpopular government.' *Australian Journal of Political Science,* 42(4): 693-699

Stewart A. and G. Williams. 2007. *Work Choices: What the High Court Said.* Sydney: The Federation Press.

Stilborn J. 2003. 'Forty Years of Not Reforming the Senate – Taking Stock.' In *Protecting Canadian Democracy: The Senate You Never Knew*, ed. S. Joyal. Montreal: McGill-Queen's University Press.

Stilborn J. 2008. 'Senate Reform: Issues and Recent Developments.' *Canada – Library of Parliament*, January 2008, available at http://www2.parl.gc.ca/Content/LOP/ResearchPublications/prb0742-e.pdf

Stone B. 2002. 'Bicameralism and Democracy: the transformation of Australian State upper houses.' *Australian Journal of Political Science*, 37(2): 267-281

Stone B. 2005. 'Changing Roles, Changing Rules: Procedural Development and Difference in Australian State Upper Houses.' *Australian Journal of Political Science*, 40(1): 33-50

Stone B. 2006. 'Australian State Upper Houses: A Comparison.' *Paper presented at Improving Government Accountability: The Upper House Solution?*

Stone B. 2008. 'State Legislative Councils – designing for accountability.' In *Restraining Elective Dictatorship*, eds. N. Aroney, S. Prasser and J.R. Nethercote. Crawley: University of Western Australia Press.

Strangio P. 2004. 'Labor and the Reform of the Victorian Legislative Council 1950-2003.' *Labour History*, 86: 33-52

Sturgess G. 1990. 'Corruption: The Evolution of an Idea 1788-1988.' In *Corruption and Reform: The Fitzgerald Vision*, eds S. Prasser, R. Wear, and J. Nethercote. St. Lucia: University of Queensland Press.

Sumner C. 2003. 'Constitutional and Parliamentary Reform for South Australia.' In *Peace, Order and Good Government: State Constitutional and Parliamentary Reform*, eds C. Macintyre and J. Williams. Kent Town: Wakefield Press.

Sutherland S.L. 1991. 'Responsible Government and Ministerial Responsibility: Every Reform Is Its Own Problem.' *Canadian Journal of Political Science*, 24(1): 91-120

Thomas P.G. 2008. 'An upper house with snow on the roof and frozen in time: the case of the Canadian Senate.' In *Restraining Elective Dictatorship*, eds. N. Aroney, S. Prasser and J.R. Nethercote. Crawley: University of Western Australia Press.

Thompson E. 2005. 'What is a mandate?' *Impact*, Summer 2005: 10

Thorpe L. 2007. 'Reforming the Legislative Council: a personal view.' *40 [Degrees] South*, 46: 38-41

Tunnecliffe W. 2004. 'Constitutional Reform and the Victorian Experience.' Paper presented to the *ASPG Australasian Conference Perth 2004*

Uhr J. 1999. 'Why We Chose Proportional Representation.' *Papers on Parliament 34*, available at http://www.aph.gov.au/Senate/pubs/pops/pop34/c02.pdf

Uhr J. 2001. 'What is a House of Review?' *Constitution Commission of Victoria Opening Address*, 16 August 2001

Uhr J. 2003. 'Reforming the Parliament.' In *Peace, Order and Good Government: State Constitutional and Parliamentary Reform*, eds C. Macintyre and J. Williams. Kent Town: Wakefield Press.

Uhr J. 2008. 'Bicameralism and democratic deliberation.' In *Restraining Elective Dictatorship*, eds. N. Aroney, S. Prasser and J.R. Nethercote. Crawley: University of Western Australia Press.

Vowles J. 2000. 'Introducing Proportional Representation: the New Zealand Experience.' *Parliamentary Affairs,* 53: 680-696

Vowles J., S. Banducci and J. Karp. 2006. 'Forecasting and Evaluating the Consequences of Electoral Change in New Zealand.' *Acta Politica*, 41: 267-284

Wanna J. 2003. 'Queensland.' In Australian Politics and Government: the Commonwealth, the States and the Territories, eds. J. Moon and C. Sharman. Cambridge: Cambridge

Waugh J. 2002. 'Blocking Supply in Victoria.' *Public Law Review*, 13: 241-245

Wear R. 2005. 'Adventure, Heterodoxy, and Knavery: Queensland's Electoral Experience.' *Queensland Review*, 12(2): 87-96.

Weller P. 2006. 'The Australian Senate: House of Review, Obstruction or Rubber Stamp?' *Social Alternatives,* 25(3): 13-18

Weller P. 2007. Cabinet Government in Australia, 1901-2006: Practice, Principles, Performance.

White G. 2006. 'Evaluating Provincial and Territorial Legislatures.' In *Provinces: Canadian Provincial Politics*, ed. C. Dunn. Peterborough: Broadview Press.

Wicks E. 2006. Evolution of a Constitution: Eight Key Moments in British Constitutional History. Portland: Hart Publishing.

Williams P. 'Tampa, Terrorism and Temptation: The Howard Government and the Misuse of "Mandate."' *Social Alternatives*, 21(3): 28-34