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Introduction

On my first full day in Australia, I visited the Sydney Aquarium where my encounter with an energetic platypus reminded me of a comparison between the platypus and the Parliament of the Commonwealth of Australia.[1]

In his essay, 'To Be a Platypus,' in *Bully for Brontosaurus* (1991), Stephen Jay Gould judges that the platypus 'surely wins first prize in anybody's contest to identify the most curious mammal' because of 'its enigmatic mélange of reptilian (or birdlike), with obviously mammalian characters.' (Gould 1991: 270) Not surprisingly, there had been a debate among Nineteenth Century scientists about how best to classify the platypus:

> During the half-century between its discovery and Darwin's *Origin of Species*, the platypus endured endless attempts to deny or mitigate its true mélange of characters associated with different groups of vertebrates. Nature needed clean categories established by divine wisdom. An animal could not both lay eggs and feed its young with milk from mammary glands. (Gould 1991: 275)

Gould sympathizes with those who rejected attempts to force the platypus to fit into the then-prevailing taxonomic structure, arguing that 'Taxonomies are guides to action, not passive devices for ordering.' (Gould 1991: 274) He also disposes of the argument that, because of its mélange of characters, the platypus must be primitive, inefficient, or defective. Quite the contrary, he argues. The platypus is 'a bundle of adaptations' that make it 'a superbly engineered creature for a particular, and unusual, mode of life.' It is 'an elegant solution for mammalian life in streams—not a primitive relic of a bygone world.' (Gould 1991: 276-277)

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1 The comparison was made by Melissa Langerman (in Bongiorno et al., 1999: 167), an astute observer of the latter, and perhaps the former as well, who had the good sense not to belabor the comparison, as I shall do here.

It requires no great astuteness, especially on the part of any Australian readers, to understand the relevance of the platypus to this study of the Commonwealth Parliament and especially the Senate of Australia. Both the platypus and the Parliament are uniquely Australian creations. Both display characteristics of two categories of things normally thought to be alternatives to each other: reptiles and mammals in the case of the platypus; parliamentary and strong bicameral regimes in the case of the Parliament. For this reason, both have been criticized as defective or logically incoherent. Yet a more persuasive argument can be made that the Parliament, like the platypus, also is 'a bundle of adaptations' that make it 'an elegant solution' to the challenges posed by the context of democratic governance in Australia.

So when I link the Commonwealth Parliament with the platypus, I do so with no intent to disparage one or the other.[2] (Many Australians are no more fond of their Parliament and its members than many Americans are of their Congress and its members, so I might be thought to be insulting the platypus, not the Parliament.) Instead, I choose this characterization, first, to emphasize the combination of elements that makes the Parliament a distinctive institution, and, second, to point to the most interesting question about it: how well have these seemingly inconsistent and even incompatible elements been joined together to make a political system that works?

These elements are the combination of responsible government and federalism, with the latter reflected in what Arend Lijphart calls 'strong bicameralism'. In fact, Australia is one of five contemporary regimes (the others being Colombia, Germany, Switzerland, and the United States) that he categorizes under the heading of 'strong bicameralism' because its two houses are symmetrical and incongruent. 'Symmetrical chambers are those with equal or only moderately unequal constitutional powers and democratic legitimacy.' 'Incongruent chambers' are 'elected by different methods or [are] designed so as to over-represent certain minorities.' (Lijphart 1999a: 206–207) If the two houses of an assembly are more or less symmetrical in their powers, neither has the constitutional authority to dominate the other. If they also are incongruent in their mode of election, they are likely to differ in their partisan composition. In a strong bicameral system, therefore,

2 After adopting the comparison for the title of this book, I learned that, in 1895, Alfred Deakin had compared the platypus to the Australasian Federal Council, the predecessor of sorts of the Commonwealth, as 'a perfectly original development compounded from familiar but previously unassociated types.' (quoted in Irving 1999: 132) Irving extends the comparison to the Constitution.

there is the prospect of conflict between the two houses, neither of which easily can impose its will on the other.

Such is the situation today in the Commonwealth Parliament of Australia, which has had symmetrical chambers since the beginning of the Federation in 1901 and incongruent chambers since the introduction in 1949 of proportional representation (PR) for electing Senators. Here is Lijphart on strong bicameralism in Canberra:

> The House of Representatives and the Senate in Australia do not have equal power, but by comparative standards the Senate is a very powerful body, and the relationship between the two houses can therefore be classified as only moderately asymmetrical; moreover, both houses are popularly elected. The two houses are also clearly incongruent in their composition. They already qualify for the label of strong bicameralism in this regard as a result of the equal representation of the states in the Senate in spite of the states' highly unequal populations—a feature of many federal systems. The difference in the methods of election—the majoritarian alternative-vote system for the House of Representatives and PR for the Senate—makes the two houses even more different in composition and reinforces their incongruence. STV [the single transferable vote] therefore has the effect of strengthening bicameralism and also the federalist character of Australian democracy on the second dimension. (Lijphart 1999b: 57–58)

An informed observer opened his generally sympathetic portrait of the Australian Parliament by writing of Prime Minister Gough Whitlam's 1972–1975 Labor Government that:

> At no stage did the Labor government have control of the Senate, so its legislative program was constantly under threat. In those three years the senate [sic] rejected more legislation than it had in its previous 71-year history. The government could never be certain that any particular bill would be passed, or even when it would be considered, by the upper house. This led to political as well as legislative problems for the government whose term could be threatened (and was eventually ended) by actions of the Senate. The timing of elections was largely dictated by questions of parliamentary tactics and by the government's opponents. (Solomon 1978: 9)

As this quotation suggests and as we shall explore in Chapter 4, the Whitlam Government was as unusual as was the manner of its demise. Nonetheless, this description is certainly not what we would expect to read about any government and parliament in the Westminster tradition. And in fact, what makes the Australian political system so interesting is precisely how it combines, by constitutional arrangement and statutory choice, some of the essential features of a parliamentary regime with other features that can put at risk a core relationship of such a regime—the responsibility of government to the house of Parliament which selects that government and invests it with its powers. Paradoxically

enough, as I shall argue, the very features that jeopardize the responsibility of government to parliament are precisely those that hold out the possibility of ensuring the accountability of government to parliament.

Those features that put parliamentary responsibility at risk centre on the constitutional powers of the Senate, which in turn reflect the federal character of the Commonwealth that was established in 1901 by separate colonies sharing the same continent. Just as the 'grand compromise' of the American Constitution created a bicameral legislature in which the two houses enjoy almost the same powers, the authors of the Australian Constitution agreed to much the same arrangement (though the nature and extent of the Senate's powers have been and remain a source of contention). And just as one house of the US Congress has two members elected from each state, regardless of population, so too do the Australian states enjoy equal representation in its Senate even though they also differ dramatically in population. And just as the US Senate differs from the House of Representatives in other ways, especially the length of terms, that can contribute to inter-cameral tensions and legislative disagreements, so too are there potential sources of tension and conflict between the Senate and House of Representatives in Canberra, deriving not only from different lengths of terms but from different methods of election.

Within a decade after 1949, when Australia began electing its Senators by proportional representation, the government and its dependable majority in the House began confronting a Senate that usually has had a non-government majority. Yet all legislation, including all those measures nearest and dearest to the hearts of each prime minister and cabinet, must be approved in both houses. (A double dissolution is a device to circumvent the requirement for Senate approval but, as we shall see, it is a cumbersome one that has been invoked only once in a century.) In short, the government is responsible to the House but its ability to secure passage of its legislative program, even its budget, is at the mercy of both the House and the Senate.

One of the major themes in recent analyses of the US national political system has been the frequency and consequences of divided government—when a President of one political party confronts one or both houses of Congress controlled by the other party. In a classic parliamentary system, such divided government is impossible by definition: a government remains in office only so long as it enjoys the support, or at least the acquiescence, of a majority in Parliament or in the only house of Parliament that matters. But in Australia, with its strong bicameralism, both houses matter. So when the government

lacks a secure majority in the Senate, that too is a form of divided government.

Richard Broome describes the climactic stage of enactment by Australia's Parliament of the *Native Title Act 1993*, a landmark law affecting Aboriginal land rights:

> Because the Opposition [Liberal and National parties] opposed the entire Mabo bill its fate rested with two 'Green' Party senators, Christabel Chamarette and Dee Margetts who held the balance of power in the Senate. This effectively made the Bill more pro-Aboriginal as the 'Greens' pushed for amendments that had Aboriginal approval. As the nation watched, there were six days of emotion-charged scenes in Parliament as the Opposition filibusted [sic], the 'Greens' were pressured by radical and pragmatic Aboriginal opinion and horse-traded with the Government over 200 amendments, and the Keating [Labor Party] government threatened to sit till Christmas to pass the bill before 1994. On 21 December the Native Title Act was passed at 11:58 pm to ringing applause from Government, Green and Democrat members and the packed public gallery, after the longest debate in the Senate's history. (Broome 2002: 240)

Two Senators holding the balance of power? Six days of emotional debate? Filibustering in the Senate? Horse-trading with the government over 200 amendments? Threats to remain in session until Christmas? All this reads much more like a report from Capitol Hill in Washington than from a capital city that enjoys the efficiency of responsible parliamentary government.

As Solomon (1978: 9–10) observed, the parliamentary situation prevailing twenty years earlier, in 1972–1975, encouraged observers to conclude that 'a government must have a majority in the Senate if its very existence were not to be at risk.' The government is responsible to the House in that only the House can dismiss it through a vote of no confidence. As a matter of constitutional principle, the Senate cannot require the government to resign. However, as we shall see, the Senate demonstrated in 1975 that it could, if it had the will to do so, try to compel the government to resign or propel the nation into a political crisis. 'Thus only the House of Representatives can give a government life, but both houses can administer the death penalty, although the Senate may take a long time to put its wishes in to effect.'

This situation raises several questions: How has Australia managed to create and maintain a stable and effective democratic structure when it appears to have been designed by two different architects, one from London and the other from Washington, who appear not to have spoken with each other? Why was the structure designed as it was? And why did Australia exacerbate the problem embedded in its Constitution by amending its electoral laws in 1949 in ways that increased, and may

have been expected to increase, the likelihood of there being different balances of partisan forces in the two houses?

In fact, the situation is even more intriguing. In the passage quoted above, we are told that the Senate rejected more legislation during the three-year tenure of the Whitlam Government 'than it had in its previous 71-year history.'

> Many governments had survived in the face of hostile Senates. Their legislative programs might have been (and often were) subject to harrassment [sic], but most proposed laws were passed. While the Senate was aware that it probably had the power to force a government to the polls, this power was rarely discussed and the threat of its use never made.[3] (Solomon 1976: 10)

Why did relations between the Labor Government and the Opposition-controlled Senate lead in 1974–1975 to what is almost ritualistically described as a constitutional crisis? And why does that conflict stand in dramatic contrast to the far more pacific relations (notwithstanding rhetoric to the contrary) that, both before and after, have characterized the cohabitation of the House and Senate under the roof of Parliament House?

These are among the questions that I shall address, if not answer to everyone's satisfaction. I begin, naturally enough, with a description of the constitutional context, which is particularly important in Australia because much of what is most significant about the Commonwealth Constitution of 1901 lies in what it does not say. I turn next to a discussion of double dissolutions and joint sittings, which are the constitutional devices for resolving bicameral deadlocks. I then examine how Australia's party system has developed and how its procedures for electing Representatives and Senators have changed. Virtually every student of the Australian political system seems to agree that the emergence of disciplined parliamentary parties and the introduction of proportional representation for Senate elections have combined to transform parliamentary government in Canberra.

With this context in mind, I review the sequence of events that brought down the Whitlam Government in 1975. The events of that year and the one preceding it undoubtedly stand as the most dramatic (and the most chronicled) events in the century-long political and constitutional history of the Commonwealth—events that demonstrate

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3 In 1970, however, Whitlam had said in debate that 'We all know that in British parliaments the tradition is that, if a money bill is defeated, as the receipt duties legislation was defeated last June [in the Senate], the government goes to the people to seek endorsement of its policies.' (*Commonwealth Parliamentary Debates* (House of Representatives), 1 October 1970: 1971–1972)

how much practical power the Senate can exercise, but power that it had never used before and has not used since. To understand how the 1975 crisis could occur, I look back to the constitutional debates of the 1890s and the parliamentary debates of 1948 to understand the thinking and expectations of the Constitution's authors, and the motives and expectations of the Labor Government that instigated PR for Senate elections beginning in 1949.

Next I explore some of the practical consequences and strategic possibilities that flow from the failure of successive governments to command a majority in the Senate. For the government, its core problem is the need to assemble majority coalitions by finding some votes from among non-government Senators. For the Opposition (or other parties represented in the Senate), it has the opportunity to assemble its own winning coalitions to defeat or amend government legislation. I look at the voting patterns in the Senate during recent years for evidence of the government's record of successes and failures, as well as the strategies and track record of the Opposition and other parties. For instance, which parties have joined together most often in winning coalitions? How often have non-government parties attempted to amend or defeat government legislation in the Senate, and how successful have these efforts been? Data on Senate divisions offer some purchase on these and related questions. Chapters 6 and 7, in which this analysis is presented, may be too detailed for the interests of some readers who may prefer just to skim them.

I then examine the Parliament's procedures for resolving whatever legislative differences arise between the House of Representatives and the Senate. This is only one dimension, though a critically important one, of a pattern of bicameral relations that I attempt to sketch. Finally, I address the question of electoral mandates and how it relates to the Senate, and then assess some of the proposals that have been made to 'reform' the Parliament, and especially the Senate, reflecting their proponents' conceptions of what the Senate is and should be. I conclude with some of my own thoughts about the political logic and health of the Commonwealth system of government, and whether Australians should view it with concern, satisfaction, or both.

The coverage of what follows is admittedly selective and incomplete; indeed, it is unapologetically idiosyncratic. One of the advantages of writing any book about such a big subject is that it cannot possibly be comprehensive in its coverage. Selectivity is unavoidable (as, of necessity, is an inability to plumb every subject to the depth it may deserve), so I have allowed myself to make a virtue of that necessity, devoting more attention to some subjects than to others because they strike me as particularly interesting or having particularly

important implications for understanding the Australian political system.

The other side of selectivity, of course, is that there are important elements missing in what follows. For example, I devote little attention to the Senate in its first half-century because these were what Reid and Forrest (1989: 477) call its 'years of dependence' that 'did little to enhance its reputation for providing an effective scrutiny of proposed laws, or of the activities of the Executive Government.' More important is the absence here of a careful examination of the powers, activities, contributions, and both strengths and weaknesses of the Senate's committees. The Senate takes considerable pride in its committee system and with good reason, especially when it compares its committees with those of the House or of any true parliament. The current state and the future of the committee system, and whether it should be seen as a glass half-full or a glass half-empty, is a complex and multi-faceted subject that merits extended treatment in its own right. Among the other important subjects not addressed here are the Senate's leadership and especially its presiding officers, and the internal organization and activities of its parliamentary parties. These subjects also are worthy of much more study, and they combine to illustrate just how much more there is to be learned and conveyed to the interested public about not only the Senate but the Commonwealth Parliament as a whole.