

Papers on Parliament No. 40

December 2003

Bicameralism and Accountability:
Lectures in the Senate Occasional Lecture Series, 2002–2003

Published and printed by the Department of the Senate,
Parliament House, Canberra
ISSN 1031-976X

Published by the Department of the Senate, 2003

Papers on Parliament is edited and managed by the Research Section,
Department of the Senate.

Edited by Kay Walsh

All inquiries should be made to:

Assistant Director of Research
Procedure Office
Department of the Senate
Parliament House
CANBERRA ACT 2600

Telephone: (02) 6277 3164

ISSN 1031-976X

Papers on Parliament is available online at
<http://www.aph.gov.au/Senate/pubs/pops/index.htm>

Contents

| | |
|------------------------------------------------------------------------------------------------------------|-----|
| The Role of Executive Government in Australia <i>Don Russell</i> | 1 |
| Australian Bicameralism: Potential and Performance in State Upper Houses <i>Bruce Stone</i> | 19 |
| A Delicate Balance: the Accidental Genius of Australian Politics <i>Stanley Bach</i> | 39 |
| Accountability or Representation? Victorian Bicameralism <i>Brian Costar</i> | 65 |
| The Australian Public Service: Still Anonymous, Neutral and a Career Service? <i>Patrick Weller</i> | 79 |
| An Australian Story: the Troubling Experience of Economic Reform <i>Michael Pusey</i> | 95 |
| Vigour, Rigour and Charisma: the Remarkable Pompey Elliott, Soldier and Senator <i>Ross McMullin</i> | 109 |
| Contents of previous issues of <i>Papers on Parliament</i> | 125 |
| List of <i>Senate Briefs</i> | 133 |
| To order copies of <i>Papers on Parliament</i> | 134 |

Contributors

Don Russell is Head of Global Business Development for WestAM. He was Principal Adviser to Paul Keating 1985–93 and in 1996, and was Australia’s Ambassador to Washington 1993–95.

Bruce Stone is a Senior Lecturer in Political Science at the University of Western Australia.

Stanley Bach has spent more than 30 years working in and for the United States Congress. During 2002–03 he was Visiting Fellow in the Research School of Social Sciences at the ANU, and a Senate Fellow.

Brian Costar is an Associate Professor of Politics at Monash University, and is the Victorian Parliamentary Honorary Research Fellow for 2003.

Patrick Weller is Professor of Politics and Public Policy and Director of the Centre for Governance and Public Policy at Griffith University.

Michael Pusey is Professor of Sociology at the University of New South Wales.

Ross McMullin is an author and historian. In 2002 he published a biography of Pompey Elliott.

The Role of Executive Government in Australia*

Don Russell

For some 25 years my professional life revolved around the Commonwealth Government. This period covered my time as a public servant with the Commonwealth Treasury, my time as a ministerial staffer with Paul Keating and my time in Washington as Australia's ambassador to the United States.

In this I was privileged to have worked, or been in close contact with, a wide range of officials and politicians who held high office in both Australia and the United States. My time with Paul Keating was one of those rare opportunities to work with a remarkable political figure who has left an unrivalled legacy of achievement. The Keating years helped build the modern Australia. They also provided me with great insights into how governments and nations work.

I feel privileged for my time in the United States. It brought me into close contact with senior members of all branches of the US government, and gave me an appreciation of why Australia's founders deliberately chose to incorporate into our system a number of US-type institutions.

I have now been away from the Commonwealth Government for six years, which has allowed me to survey all of this, hopefully, with some perspective. My overriding impression is that our system of government is still evolving and that the power of the

* This paper was presented as a lecture in the Department of the Senate Occasional Lecture Series at Parliament House on 25 October 2002.

Prime Minister and the Prime Minister's Office continues to rise. At the same time, we have seen a trend of decline in the power and influence of the Public Service. The question is: does our system have the right balances? This paper explores these issues and makes some suggestions as to what might be done.

First, I will look at the logic behind US arrangements to better understand what it is we have incorporated into our system. Then I will look at the United Kingdom. Our system draws very heavily on British processes—why they provide a powerful discipline on government in the UK but have proved weaker here is an important part of the story.

The US approach

In the US, government is based very much on the notion that without explicit 'checks and balances' people or groups of people will abuse positions of power. This is the origin of the separation of powers and the creation of a judiciary, a legislature and an executive as three separate branches of government. It is also why the US incorporated into its Constitution a Bill of Rights, which constrains how US governments at both a state and federal level can deal with their citizens.

At the time, the Constitution was deemed to provide for a government in Washington with considerable powers, and the Bill of Rights was very much the quid pro quo that was required to get the Constitution approved. The Bill of Rights was designed to protect Americans from a powerful government in Washington rather than to codify the rights of citizens.

The concern that elected officials will abuse their power is very real to Americans as is the fear that the 'tyranny of the majority' may lead to unfortunate outcomes for minorities or individuals. Americans are uncomfortable with 'winner takes all' politics and their system of government has been elaborately designed to diminish this possibility. To Americans, democracy does not mean an elected George III, to return to the debates of 1776. You will often hear this said by Americans and it means that electing someone with absolute power is not democracy even if the mandate of such a person is regularly renewed.

For a long time, the Americans believed that they could operate with a congressional form of government; that is, one without a President. Lying behind all of this is the conviction that elected officials are not necessarily well motivated. Indeed, if individuals or groups secure power it is assumed that this power will be used to further the interests of those involved. The only way that good outcomes can eventuate is if no one has unfettered power and if those with power have to exercise it in a transparent, contestable and accountable way.

For example, Americans would assume that without scrutiny, government contracts would go to supporters of the government and that policy decisions would be skewed towards those who put the government there in the first place. Americans assume instinctively that politics is about plunder. Why put an elected official in place unless he or she is working for you at the expense of others? They would also assume that elected officials would use every influence that comes from their office to secure their position and weaken that of their opponents even if this comes at the expense of good government.

It should come as no surprise to Americans to be told that the US Congress was slower than the Australian Parliament to recognize the need for disclosure laws for politicians. Americans believe that only an elaborate system of 'checks and balances' will ensure that elected officials are mindful of their responsibilities to the broader community and that the power of government is used for worthy purposes.

Americans, however, are very wedded to the status and standing of the Office of President. As head of state, the President represents the nation and its ideals and Americans are very supportive of any President whenever he is performing this role.

To many outsiders, the American system appears dysfunctional. It seems to put major roadblocks in the way of anyone attempting to put a new policy in place or to even modify an existing one. The 'checks and balances' appear to be a recipe for gridlock. On the other hand, Americans will assure you that their system works exactly as designed. It is accepted that there are hurdles, but these exist to inhibit sectional interests profiting at the expense of the wider community. If significant change is to occur, it needs something close to a consensus. As the Chairman of the Senate Finance Committee, Patrick Moynihan, argued from the start during President Clinton's ill-fated attempt to reform health care: big social programs like universal health insurance either achieve a consensus and pass the Senate with large majorities, or they do not pass at all.

Outsiders would see the impeachment of President Clinton as an extraordinary aberration, highlighting the weaknesses of the American system of government. Americans tend to see it as a validation of their system of 'checks and balances' and further evidence of the strength of their Constitution and the wisdom of the founding fathers. The popular house impeached the President and the more balanced house exonerated him. The debate was conducted publicly and the President was given time to build popular support. In the end, the President's party fared well in the mid term elections of 1998, the Speaker of the House, Newt Gingrich, was forced to resign and a consensus built that the Independent Counsel Act should be allowed to lapse. This brought to an end an experiment in executive oversight that had its origins in a perceived need to deal with the excesses of the Nixon White House.

To Americans their democracy may be noisy and inefficient but it has a built in capacity to self-correct. Self-correction may take decades but the system will remain grounded on what people really want. In the long run, the practical workings of even the Bill of Rights only guarantee those freedoms that the majority will support.

Americans would also say that because they are a violent, immigrant county with a wide diversity of cultures, the US would have fractured long ago if they had tried to run their country with a 'winner takes all' system of government. Abstracting from the issue of slavery, memories of the civil war still exist but they are remarkably muted given that some 500 000 Americans died and that it happened little more than four generations ago.

The American capacity to accommodate a diverse range of ethnic and cultural backgrounds stands in marked contrast to what is happening in much of the rest of the world. Elsewhere, we see countries being redefined on a narrowing set of ethnic characteristics. Ancient events continue to drive emotions and behaviour. In the US, it took just over 100 years, but the South did eventually vote for the party of Lincoln.

One can believe that the future lies with those countries or regions that can manage cultural and ethnic diversity. For from diversity comes energy and, most importantly, critical mass. If there is a lesson from the US, it is that diversity requires a political structure that decentralises power or sets up a system of ‘checks and balances’.

In concept, an ‘elected George III’ or a ‘winner takes all’ system of government may bring a semblance of efficiency but it also brings a rigidity that makes such systems unresponsive to changing circumstances and ill suited to deal with diverse interests.

The UK approach

On the face of it, a British Prime Minister would appear to have powers akin to an elected George III. He or she controls the Cabinet and the House of Commons, and the House of Lords is no longer a major constraint. In Britain there is no written constitution and no formal equivalent to the Supreme Court.

However, a British PM is constrained by an elaborate and well-entrenched system of convention and by a Cabinet backed by a powerful and effective civil service. The UK is the home of the unwritten Constitution and while it may appear to be a self imposed discipline it would be unheard of for any British government to flout its provisions. Convention keeps British governments grounded on due process and ensures that the Cabinet and the Civil Service are actively involved. Ministers and the Prime Minister are also held to account at Question Time where lying and general incompetence are ruthlessly punished.

To the British, good government does not necessarily mean great public scrutiny but it does mean that decisions should be taken once issues have been properly assessed and the advocates of the various alternatives have had their say. The clearinghouse of this process is the Cabinet. A well-briefed Cabinet with a number of influential members is a powerful check on any individual minister or even a Prime Minister.

The British Civil Service sees itself as serving the government of the day but collectively it also sees itself as the guardian of the public interest. Over the years, the British have worked to secure a reasonable balance between the need for ministers and departments to operate in an atmosphere of trust and the need to protect good government. This has required a measure of common sense and diplomacy. A tradition has therefore built up to resist ill-conceived policy and anything that undermines due process and good government.

Americans are baffled as to why the British system works.

The Australian approach

Right from the start, Australia opted for something of a hybrid.

Our system of government involves a number of explicit ‘checks and balances’ that are missing from the UK model. We have a written Constitution, a High Court and a Senate with powers similar to those of the lower house, and a franchise designed to protect the interests of the smaller states. The provisions of the Constitution also provide for a Governor-General to act as a check on the power of any Australian government and in the early years these provisions of the Constitution were viewed as having real meaning.

At the end of the nineteenth century, Australia was a much more homogeneous country than the US and on a per capita basis almost certainly richer. For the times, class antagonisms were muted. Ordinary people had incomes and living standards higher than anywhere else in the world. Governments were socially progressive and worker based parties had already organised their way into government. Like the US, Australia was an immigrant country but immigration at that stage was overwhelmingly from the UK, unlike the US, where immigrants were arriving from all over Europe.

We had the ugly history associated with the dispossession of our aboriginal population, the transportation of the convicts, the presence of the Irish and a degree of frontier lawlessness. However, we had nothing of the history of violence experienced by the Americans and nothing in Australia's history matched the dislocation associated with the War of Independence and the Civil War.

However in becoming a nation we did have to accommodate one source of diversity. We were willing to become one country, but many people were loyal to the state in which they lived. More importantly, there already existed power structures at a state level and a class of professional state politicians.

We looked, therefore, to the US to build into our system of national government explicit 'checks and balances' to protect against 'winner takes all' politics at a national level. The result was a federal system, a written constitution with limited federal powers, and a High Court and a Senate modeled very much on their US counterparts. The new federal arrangements accommodated the interests of the states so effectively that until World War Two, the Premier of New South Wales continued to be regarded as the most important political figure in Australia.

Our Constitution also provides for a Governor-General to take an active role in the operations of the Australian government, a role most clearly set out in Section 58 and Section 62:

58. When a proposed law passed by both Houses of the Parliament is presented to the Governor-General for the Queen's assent, he shall declare, according to his discretion, but subject to this Constitution, that he assents in the Queen's name, or that he withholds assent, or that he reserves the law for the Queen's pleasure.

The Governor-General may return to the House in which it originated any proposed law so presented to him, and may transmit therewith any amendments which he may recommend, and the Houses may deal with the recommendation. ...

62. There shall be a Federal Executive Council to advise the Governor-General in the government of the Commonwealth, and the members of the Council shall be chosen and summoned by the Governor-General and sworn as Executive Councillors, and shall hold office during his pleasure.

At the time, Section 58 in particular made the Australian Governor-General a much more influential figure than the British monarch. It was assumed that the Governor-General

would be a distinguished Englishman and on one level, Section 58 can be seen as a device to ensure that the new Australian Parliament did not pass laws harmful to British interests. However, given British attitudes of the time, there was doubtless a view that good government in the new nation could only benefit from the steadying hand of someone of worldly experience sitting one removed from the Parliament with a power to intervene. The 'White Australia Policy' and the power of the new Parliament to make laws in respect of race would have also been a concern of the British at the time.

The British are no longer involved in the operation of government in Australia and the Governor-General is now seen as having quite limited powers. However, the black print oversight provisions of the Constitution providing for an activist Governor-General still remain.

While we have incorporated important institutional structures from the Americans, the dominant influence has been British. We have Ministers of State drawn from the Parliament firmly tying the executive to the legislature. And like the UK, we also developed a powerful Public Service. This was particularly the case after the Second World War. Government in Australia has also been bound by convention, although the role of convention has always been an ambiguous one in Australia and much weaker than in the UK.

Because of the power and standing of the Public Service, Australia built up an effective system of government based around due process and the Cabinet. It was at its most effective during World War Two and in the post-war years. These were the good years for Australia, when commodity prices were high and when much of the world was still recovering from the destruction of the war, or preoccupied with the Cold War. This was the time of the 'seven dwarves', as the key departmental Secretaries of the time were known, and the rapid expansion of Canberra and federal influence.

During this period Australia once again embarked on a large immigration program which brought a growing number of people of differing racial and cultural backgrounds to our country. Within a generation, Australia had abandoned its 'White Australia Policy' and dramatically changed the size and composition of its population. The country has therefore become very much larger, more diverse and more complex. That this was done with relative calm is a credit to our institutions and our political structures. But this period is now well and truly over, and the intriguing question is how our system of government has coped with the more turbulent years that date from the oil price shocks in the 1970s and our growing diversity and complexity.

The decline of the Public Service

I started work at the Commonwealth Treasury at the end of 1971 as a junior economist fresh out of university. Fred Wheeler was just starting his career at the Treasury, McMahon was Prime Minister, and it was the dying years of the Coalition Government. John Gorton had just lost his job as Prime Minister, in part due to a perceived tendency to 'shoot from the hip' and ignore due process.

At the time, I was struck by the dignity of the Treasury and the power it wielded. I was also struck by the supreme confidence that high Treasury officials had about their role.

One of my earliest jobs was to read the morning newspapers and draw important stories to the attention of Bill Cole. Bill Cole, at the time, was responsible for macroeconomic policy and headed up the General Financial & Economic Policy Division, which in those days covered budget policy, monetary policy, structural policy and taxation policy. I quite enjoyed my morning task as I got to talk to Cole about the issues of the day. I remember drawing his attention to newspaper articles dealing with the growing concerns about foreign investment. I was somewhat surprised by the sympathy that Bill Cole expressed to the articles, but more intrigued by his pensive remark that, ‘Yes, they needed to do something about foreign investment.’

A number of weeks later, the McMahon Government announced that they would be introducing legislation to monitor and review foreign takeovers of Australian companies to ensure that they were in the best interests of Australia. This was a little surprising as it had been McMahon as Treasurer who had argued against the more nationalist tendencies of John Gorton.

So was born the *Companies (Foreign Takeovers) Act 1972*. It led to a new Division of Treasury, the Foreign Investment Review Board, the extracting of rent from foreign mining companies, the scrutiny of all foreign acquisitions and new businesses above a certain size, controls on real estate, and structure to the special controls on foreign ownership of media, airlines and banks. I surmised that what had changed had been Treasury advice. Knowing the people, it seemed unlikely that such a major shift in policy could have occurred over the strong objections of the department. Presumably Fred Wheeler, with his commitment to ‘proper processes’, preferred to have foreign investment handled in a structured way within Treasury than left to the mercy of others. I could not have asked for a clearer example of how, at that time, the national policy agenda, as well as the implementation of policy, was very much in the hands of senior Canberra public servants rather than ministers and their staff.

However, change was afoot. It was not just John Gorton who was irritated by the controlling influence of the Public Service and the Treasury in particular. Gough Whitlam, elected at the end of 1972, was determined to implement his own agenda and for the first time ministers were provided with staff whose prime responsibility was to provide policy advice and to help ministers develop and implement policy.

The important ministerial staff were in the Prime Minister’s Office, the most famous being Peter Wilenski and Jim Spigelman. Professor Fred Gruen was also a consultant to the Whitlam Government. Fred Gruen was a family friend and we used to have sandwiches in the park out the front of the Treasury, which perplexed my Treasury colleagues.

Fred Wheeler served the new government loyally within parameters he believed best served the public interest. He endeavoured to protect his minister and struggled to achieve sensible outcomes during a very chaotic period, when Cabinet processes were erratic and the Treasury was treated with suspicion and largely ignored. The economic statistics for 1974–75 tell the story: public sector outlays grew by 37 per cent as a result of the 1974 Cairns Budget; average weekly earnings grew by 25 per cent, while the Consumer Price Index rose by 17 per cent. The dislocation to the Budget and the economy was immense.

Fred Wheeler is perhaps best known for his remarks at his farewell speech in 1978 where, among other things, he has become known for saying that ‘all politicians are bastards.’ At the time, I thought that this comment was unfair. As I have come to know better since, Fred Wheeler’s comment did not do justice to the many politicians who at great personal cost give a lifetime of service for very little recognition. However, Fred Wheeler’s comment did reflect the ethos of the high period of Public Service life in Canberra.

I never had the conversation with Fred Wheeler but I have always assumed that he would have said that politicians can act nobly but only after they have exhausted all available alternatives. Fred would have seen his role as enabling politicians to behave well. He assumed that politicians would push until they find limits. Without limits, I am sure he believed, politicians will behave badly and in the end damage themselves as well as the country. To Fred Wheeler it was the role of the Public Service to short-circuit this process and find acceptable ways to create limits that would be in the best interests of the politician and the country.

Bill Hayden became Treasurer before the 1975 Budget. Fred Wheeler, consummate stage manager of anything involving the minister, included me in one of the early discussions on budget policy. I was a relatively junior official in the monetary policy section at the time but I was about to go to the London School of Economics to do post graduate study and Fred Wheeler thought I might be helpful with the new Treasurer.

Bill Hayden appeared to immediately appreciate that involving the Treasury would not only help stabilise the Whitlam Government but would also make it easier to achieve the government’s policy goals. Unlike his immediate predecessors, Bill Hayden saw the Treasury as an important resource to use. The next Labor Treasurer, Paul Keating, came to the same conclusion but even more so.

After the defeat of the Whitlam Government at the end of 1975, things did not go back to the pre-Whitlam processes. On the contrary, ministerial staff and the policy role of ministers and the Prime Minister in particular became even more important. Suspicion of high public servants hardened.

A bi-partisan consensus was developing that the policy agenda should belong to ministers; that ministers should be equipped to develop policy proposals and they should no longer be hostage to a lack of information, or to powerful public servants dictating what was and what was not acceptable. This process was accelerated further by the behaviour of one particular public servant, John Stone, who became Secretary to the Treasury after Fred Wheeler retired in 1978. Stone always saw great significance in the fact that he was Secretary to the Treasury, not the Treasurer. John Stone saw himself as an important player on the national stage, but had none of Fred Wheeler’s reassuring style with ministers.

Malcolm Fraser, as Prime Minister, appeared to be no instinctive supporter of Stone and had already expressed his displeasure at Treasury by splitting the department in 1976. The appointment of John Stone looks out of keeping with the times. However from today’s perspective it is easy to overlook Stone’s influence, particularly his influence with the media. I remember attending post-Budget functions in Parliament House during the Fraser years when government backbenchers would drop by with the explicit intention of asking Treasury officials ‘what did Stone think of the Budget?’ They assumed, and they

were right to assume, that tomorrow's headlines would be heavily influenced by Stone's view. This was not a healthy state of affairs. Nor was it stable.

Ministers from both sides have made it their mission to make sure that Canberra does not see the likes of another John Stone. This process continues to this day through John Howard who was Treasurer during the Fraser years. I am sure that the history of the Public Service and processes in Canberra would have been quite different if Bill Cole had made it to the Secretary's job in Treasury rather than John Stone.

Gough Whitlam started the process of providing ministers with staff. Malcolm Fraser validated this process but went one further. Fraser saw executive authority as residing very much with the Prime Minister and not with ministers. He reserved the right to second guess his colleagues, over-ride their decisions and dictate the direction of policy for the whole government. So was created the Prime Minister's Office and an adviser structure that could oversee every area of government.

Malcolm Fraser put his imprint on the new Parliament House and his legacy is still very much with us. Ministers and their staff are not in their departments, they are in the Executive Wing of Parliament House. Ministerial Offices—with the exception of the office of the Deputy Prime Minister, which was designed for the Leader of the National Party—are relatively small with limited staff space. The Prime Minister's Office is large with considerable space for staff. All successive prime ministers have been comfortable with the Fraser arrangements and the Prime Minister's Office is now at the centre of government in this country. Visually impaired people call it the Oval Office.

During the Hawke–Keating years from 1983–1996, the Public Service continued to be reformed. There was increased focus on 'letting the managers manage', performance assessment and making the Public Service more efficient and accountable and more responsive to the needs of government and its customers. Early on, John Dawkins as Finance Minister removed the permanency of departmental Secretaries which lined Secretaries to departments, and gave ministers an involvement in the administration of their departments. Bob Hawke and Mike Codd amalgamated departments, and Secretaries found themselves answerable to multiple ministers. Towards the end of the period, Secretaries lost tenure and were put on rolling contracts as part of a pay settlement. Losing tenure and a subsequent move in the Howard years to put Secretaries onto fixed term contracts, appears to have had the biggest impact on behaviour, reducing the willingness of Secretaries to speak up even within the confines of the Public Service itself.

The Public Service was given a key role during the Hawke–Keating years, but it was different from the role it played during the Wheeler years. The Public Service was expected to work with the government but in a way that was productive and harmonious for both sides. During this period, departmental Secretaries continued to be people of standing who commanded respect not only with the Cabinet but also with the Parliament and the community.

The growing power of the Prime Minister and his Office brought more influence to the Secretary of the Department of the Prime Minister and Cabinet. Mike Codd under Bob Hawke, and Mike Keating under Paul Keating, had a major impact on the way processes in Canberra worked and the standing that was given to public servants. Both Mike Codd

and Mike Keating were professional high-calibre Commonwealth public servants and would have been recognisable to their equivalents in the British Civil Service. When Paul Keating lost office in 1996, the new Prime Minister, John Howard, replaced Mike Keating with Max Moore-Wilton. Max Moore-Wilton was a state public servant and is someone altogether different from the Codd-Mike Keating types.

Looking back on my experience with the Public Service, it is clear that prime ministers, and to an extent treasurers, set the tone. Chifley created the career of Nugget Coombs and the post World War Two elite in Canberra because he liked being surrounded by clever people who could do things. Chifley was also doubtful about the capabilities of some of his Cabinet colleagues.

Menzies inherited Chifley's Public Service and he too was comfortable surrounded by talented people. Menzies too was doubtful about the quality of his Cabinet. To Menzies it was preferable to have power in Canberra tied up in the hands of a senior cadre of talented high officials answerable to him, than to have it dissipated through a collection of ministers for whom he had only modest regard. Indirectly, Menzies therefore created Fred Wheeler's generation of public servants.

Hawke empowered Mike Codd because, unlike Whitlam, Hawke wanted to run a government firmly wedded to due process. Paul Keating empowered Mike Keating because he wanted to run a somewhat more activist agenda but he too was wedded to due process. The only senior public servant who was not validated by a Prime Minister was John Stone. Max Moore-Wilton has been empowered by the current Prime Minister to make sure that we never see another John Stone.

Paul Keating actually liked public servants and respected their commitment to good policy and the national interest. He always had the highest regard for what he called the 'official family' and was keen that they be allowed to do their jobs. As he said in 1991 in his Higgins Memorial Address to the Economics Society:

Lying behind the talents of individual Cabinet ministers is an overall philosophic belief that the expertise of the Public Service needs to be explicitly and deliberately brought to bear on policy matters.

... the critical point is that from the very beginning this Government has been very concerned about due process. And due process has meant that the Government has valued official advice and made sure that the institutions that provide it are strong and effective.

It is why this Government has always believed in a career Public Service, capable of giving independent advice. It is why the Government has not sought to shield itself from critical advice by appointing 'friendly voices' to key positions.

As many Governments have found to their cost ... it is fatal to good government if ministers do not listen to, or are not served by, a strong Public Service.

But Paul Keating was also a firm believer in the constructive role of politicians. Unlike a number of earlier prime ministers, Keating saw an important role for his Cabinet colleagues. Again quoting from his Higgins Memorial Address:

While many decry the role that politicians play, only politicians can make major changes to the way a country conducts its business ...

In the end, politicians have to have the foresight to see the need for change and the courage and strength to carry it through.

And the issues are now so complex and the areas requiring change so wide that it is far beyond any individual political figure to control the whole process.

This is why a strong and practical Cabinet is absolutely essential for Australia at present and will be so for years to come.

A Cabinet made up of lightweight figures confused about policy priorities and equipped with little more than rhetoric and ideology would produce a disastrous outcome for the nation.¹

To be effective, Cabinet ministers had to have staff as well as the support of a strong department. Through the Hawke–Keating years the role of ministerial staff and the Prime Minister’s Office, in particular, continued to grow. The Prime Minister’s staff had particular standing because of their role in directing and coordinating the staff of other ministers and in coordinating ministers themselves. John Howard therefore inherited a powerful structure of ministerial staff and a Public Service that saw itself as having independent standing.

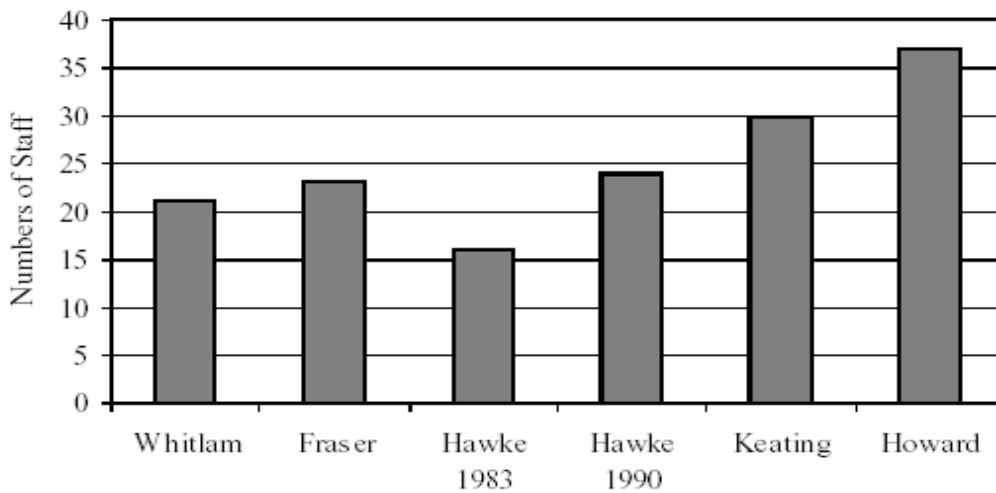
Howard has maintained the practice of most of the Hawke–Keating years of having a strong Treasurer with a good working relationship with his department. This has been something of a balance to the power of the Prime Minister and the Prime Minister’s Office. However, prime ministers do not always welcome strong treasurers and such arrangements need not be stable.

Staff numbers in the Prime Minister’s Office have continued to grow and Howard, like each Prime Minister before him, has operated with a larger staff than his predecessor. The numbers are set out in the following table taken from a research paper published by the Parliamentary Library.²

¹ Paul Keating, ‘The Challenge of public policy in Australia’, inaugural Higgins Memorial Lecture, 15 May 1991. Published in the *Canberra Bulletin of Public Administration*, no. 65, July 1991: 16–20.

² ‘Accountability of ministerial staff?’ prepared by Dr Ian Holland, *Research Paper* 19, 2001–02.

Staff in the Prime Minister's Office



Neither Hawke nor Keating saw departments as extensions of the ministerial offices. The behaviour of staff was also constrained by the belief that they were personal appointments of the minister. As such, they were viewed as being inextricably linked to the minister. The working assumption was if a staffer was informed of something, then it was taken that the minister had been informed. In the years that I was responsible for Keating's office, both as Treasurer and Prime Minister, we worked absolutely to this principle and as far as I am aware, this was the principle that guided the other offices. During my time in the Prime Minister's Office, we would have brought into line any office that operated on a different principle.

Knowing that they carried the minister's reputation in their hands was a powerful discipline on staff and on ministers. It was a particularly powerful discipline on staff in the Prime Minister's Office because of their key role. With Hawke–Keating, it was hard for ministers to use staff as a way of avoiding scrutiny. It was also difficult to use them as a convenient buffer during times of trouble.

John Howard however has changed the balance of the Hawke–Keating years. Ministerial staff and the Prime Minister's Office continue to grow in influence but because of the 'Children Overboard' incident, staff now can be viewed as leading an existence separate from that of their minister. Informing a staffer is no longer the same as informing a minister. We have entered a world where staff can carry much of the authority of the minister but can be disowned if necessary.

Ministers have to account for their actions to the Parliament at Question Time. By long standing arrangement, ministerial staff do not appear before Parliamentary Committees. It would appear that the Prime Minister and his ministers now have a new power. They have staff who can act on their behalf, who can be disowned if necessary and who are not accountable to the Parliament. This is a dangerous development.

As well, the independence and potential balancing role of the Public Service has declined. This was brought into stark relief in the case of the 'Children Overboard' incident. Fred Wheeler would not have been surprised by the behaviour of ministers and their staff. He would have seen them as only acting to type. What would have shocked Wheeler would have been the behaviour of the Public Service.

As Stone used to say: 'Never underestimate the power of the written word.' If Stone felt that his minister needed to know something, he would have had a red lined minute on the minister's desk with copies to the minister assisting the next morning. Fred Wheeler would have rung; Bernie Fraser would have rung; Mike Keating would have rung and ministers would have accepted that they had every reason to ring.

It is not that the Public Service has become political; it has become acquiescent. As it is told around Canberra:

In the old days if the Secretary did not get on with the minister the minister moved. Then it became if the Secretary did not get on with the minister, the Secretary moved. Now if the Secretary does not get on with the minister, the Secretary gets sacked.

Unfortunately these 3 sentences, and what they signify, sum up the past 30 years all too accurately.

How do we make the system more balanced?

1. *We should return to the Hawke–Keating practices with respect to ministerial staff. If staff continue to lead an existence separate from their minister, then staff should appear before parliamentary committees.*

Under current arrangements, a potentially large part of ministerial influence and behaviour is beyond scrutiny. This is a new development with very bad long-term implications. From personal experience, I know the power that ministerial staff possess, particularly key staff in the Prime Minister's Office. Under the Hawke–Keating arrangements, such power had to be exercised in a way that ministers could publicly acknowledge. Under current arrangements, ministerial staff can do things that ministers would find hard to justify, and this will inevitably lead to abuses. As ministers explore the full limits of their new discretion, we can be sure that these abuses will be major.

It is not fanciful to believe that we are taking the first steps down a path that leads to Haldeman and Ehrlichman, plausible deniability and the Nixon White House. If staff are separate from their minister, then the legitimate argument that staff are accountable to the minister and the minister is accountable to the Parliament loses its force. In such a situation the Senate, in its dealings with the government, is entitled to take whatever action it thinks most effective and which will bring ministerial staff back into a structure of accountability.

2. *Tenure should be returned to Secretaries*

Committees of Secretaries resolve opposing views within the Public Service. It is hard for Secretaries to speak their minds when they are on fixed term contracts and the person chairing the meeting is responsible for the terms of that contract.

3. *The expertise and standing of the Public Service should be rebuilt*

The characteristics of the Public Service are determined by the Prime Minister of the day. It will be hard to rebuild the Public Service, but with the right person in charge of the Department of the Prime Minister and Cabinet, it can be done. We should not return to the years of John Stone or Fred Wheeler but we do need to attract talented people of standing who wish to work in a cooperative and mutually satisfying way with government.

This will require positive support for Secretaries and their careers.

Much government activity is now outsourced and there are growing doubts about the ability of departments and staff to properly assess and evaluate outsourced programs now that in-house expertise has gone. The Public Service needs to have a capacity to provide expert advice on the full range of activities for which their ministers are responsible.

4. *Where the capacity of the Public Service to scrutinise and evaluate programs is deteriorating, we should acknowledge the legitimate role of the Parliament to perform the task.*

When people have confidence that government programs have been put together after a strenuous process of review and evaluation backed by an expert Public Service, then it is understandable to see the committee system of the Parliament as a burden. When this confidence disappears, program evaluation by the Parliament becomes an important and necessary task.

We have built into our system of government a High Court and a Senate modelled on their US counterparts. The original motive was to protect state interests but, as in the US, the effect has been to institutionalise a dispersal of power and create a chamber with strong review powers. Given the way in which executive power has evolved in this country and the growing complexity and diversity of our nation, these institutions should now be seen as assets.

Public Servants often find dealing with ministers and their staff stressful. However, it would appear that there is something particularly chilling about having to face a committee of the Parliament knowing that your behaviour in regard to some matter could be judged inadequate. Faced with a potentially difficult situation with a minister or their staff, the possibility of scrutiny by the Parliament can strengthen the resolve of even the most acquiescent public servant.

5. *Make the Governor-General or an Australian head of state responsible for good government*

It has become clear that, apart from the Senate and the High Court, balance is not 'hard wired' into our system. The checks and balances on executive power are to an important extent self-imposed and dependent on the Prime Minister of the day. The power of the Prime Minister and the Prime Minister's Office has been growing for the past 25 years, a trend that shows every sign of continuing. This means that the scope for the Prime Minister to have a major impact on how our system works has also been growing.

There is a tendency in our system for people to explore the limits of convention and due process. This means that, unlike the British, who appear to work well with ambiguity, we appear to be more like the Americans and require explicit structures. It is possible that we

can make our current arrangements work better. We may be able to reinvigorate our Public Service and bring ministerial staff back into a structure of accountability. However it is also possible that things may continue to deteriorate and a consensus may develop that we can do better. If that were to happen, we would need to look to some structural change. However, it is hard to create new institutions or modify existing ones.

Given that the nation has recently explored the question of an Australian head of state, a consensus could develop that the Governor-General or an Australian head of state could use the black-print oversight powers of our Constitution, previously reserved for the British, to take a more active interest in good government. There would appear to be scope for Secretaries to hold their positions at the pleasure of the Governor-General or an Australian head of state and that could help invigorate the Public Service. If this were to happen it would require legislation. Likewise ministers could hold their positions at the pleasure of the Governor-General or an Australian head of state. Such a change could make ministers more interested in good government. The dormant black-print provisions of the Constitution already provide for this but they could be activated.

All these measures would involve some check on the power of the Prime Minister. The important point is that because of the recent debate on an Australian head of state or President, our system is potentially still evolving. There is therefore scope for the debate to move on and include the notion that an Australian President should have some responsibility for good government. If such a debate were to develop, we might find prime ministers taking an increased interest in making our existing structures work better.



Question — Regarding your recommendation that Parliament oversees the effectiveness of programs, we have already had examples of Chris Barrie and Jane Halton simply toughing it out in front of Senate committees. It seems that all we are doing is encouraging a tougher breed of public servant.

Don Russell — They were pretty tough in the past, I can tell you that. I think it is still very sobering for senior public servants to have to front parliamentary committees. It is quite an unnerving experience to do this publicly. A lot of public servants have their reputations and their careers to consider. So why are they doing this? It's because they believe they are doing worthwhile things. An inability to account for yourself in front of Parliament can actually do very damaging things to your reputation. You can find that, after spending 20 or 30 years working on something you are proud of and building a reputation, that one incident where you can't account for how you behaved—which is examined under the spotlight of not only the Parliament's attention but also the attention of the media and your colleagues—can have a diabolical effect on your reputation.

So, sure, they may develop techniques for handling senators—although my experience is that senators very quickly develop quite a dramatic ability to put civil servants on the spot. I'm not sure how the setup here works, but looking at this committee room, which seems to be modelled on the US Senate, the witnesses always sit down below the level of the senators, who sit on high and look down on the witnesses. And the witnesses normally sit on ordinary chairs, and the senators always have their bodies partly of fully hidden. It

is a very unnerving situation. And the more it happens and the more the nation believes that what is happening in the parliamentary committee is important, the more the public servants who come to be scrutinised by it will feel that they have to deal with it in an honest manner—because at the end of the day, the reputation of a public servant is important to them, and they basically can only look after that.

Question — In your suggestions for reform, you didn't refer at all to the role of the Auditor-General. Would you care to comment on that?

Don Russell — The Auditor-General is one of the bodies that I didn't cover here. You could consider having that body accountable to the Governor-General or a head of state, in the same sense, presumably, that you would have all sorts of relationships with the government of the day, but it would just give an extra degree of independence if their position was protected in some way by the Governor-General. It would be very similar to departmental secretaries. That would be a natural body to give an oversight role.

Question — If we don't rein in the power of the PM's office and their staff, what avenue do ordinary people have to address the excesses, apart from trying to take those staffers to the High Court?

Don Russell — I think this is very much a case where the peoples' representatives are the agents. This is something that has to be dealt with within the parliament, and therefore people, and the electorate at large, have to recognise that there is a problem, and that this is an issue—that the power of the Prime Minister and the Prime Minister's Office is something that we should think about, and think about whether it is properly balanced. In the past it has been balanced by an independent Public Service, and that balance seemed to work quite well. But if the power of an independent Public Service starts to dissipate, then you are left with what I would see as a structural problem. But I think the agents have to be the peoples' representatives and the people themselves have to come to the conclusion that this is a problem that needs to be addressed.

Question — I agreed with about 90 per cent of what you said. One question from the other 10 per cent relates to your suggestion of an enhanced role for the Governor-General. I'm concerned about the question of how the Governor-General would be selected. If he has the role you're suggesting, he's going to have much more power and I would have thought that the role would then become politicised. How would you see that being handled?

Don Russell — Once we start thinking about that sort of structure we come into a very complex set of issues. The starting point is really two-fold. One, to acknowledge that there is a problem, and that the system could operate more effectively. And if we get to that point, then we need to think of how we might handle that problem in a structural sense. And if we feel that the Governor-General or the head of state could have a role in good government—that the head of state would be more than just a figurehead—that's the next step. If you pass both of those steps then I think we're into a very complicated debate with the Parliament and the people as to what that actually entails, because we've been through the republic debate already, which raised lots of issues. Those two propositions have to be established first before we start to talk about what we really want in terms of the nature of the head of state or the Governor-General.

Question — Can you go that route without going all the way to an American-style system? Although there may be something to be said for that.

Don Russell — No, I think we are actually quite blessed. The American system has gone too far in the other direction. They have put in place so many checks and balances that the system is geared to the status quo. In American that doesn't matter so much, because it is so big, the system just somehow adjusts. They don't really care or need an effective government. I don't think we have that luxury, we always have to have an effective executive and an effective government in this country, because we don't have the luxury of just letting things evolve. There are very clear benefits for a country of our size having an effective government that can do things. So heading towards a totally American system would be a mistake for this country. We actually have the benefits of the parliamentary system and the benefits of the review processes of the US system. So we may well be able to craft something particularly useful for this country, taking advantage of what we've got and building into our system a flexibility and an accountability that other systems don't have.

The New Zealanders have a unicameral system—or they used to have a unicameral system, with first-past-the-post voting. That was a winner-take-all system of the highest order, and it exhausted them, and now that they have locked themselves into proportional voting they have locked themselves into a status quo system which I think will not serve them well. Whereas, because we have always had some balance in our system, and because we have preferential voting, we may well be able to craft something that keeps the flexibility of having some dispersion of power while keeping core effective government at the same time.

Question — I am a supporter of your views on the head of state issue. You've covered that fairly well, and I assume you wouldn't see as a good idea the present system where the Prime Minister appoints the head of state?

Don Russell — That would have drawbacks. We could evolve a convention where he may still appoint the Governor-General. This is leaping down the track a long way, and there are all sorts of alternatives that we could use if we were going to use that position as being responsible for good government. It's not inconceivable to have the Prime Minister appoint a person, as long as the tradition and the expectation is that the Governor-General will exercise these powers, because even though, under the current arrangement, the Prime Minister can dismiss Governors-General, it is a big thing to do. Prime ministers really don't want to dismiss Governors-General just because they are becoming difficult. It does look bad.



Australian Bicameralism: Potential and Performance in State Upper Houses*

Bruce Stone

Bicameralism is a highly distinctive feature of Australian democracy. While most democracies have bicameral parliaments, Australia is one of only two examples (with Germany) of 'strong bicameralism' among parliamentary democracies, and of these, the only one whose national upper house is filled by direct election.¹ But the Australian Senate is only the most visible and celebrated manifestation of an Australian tradition of strong bicameralism. It is too often overlooked that the institutions of national government devised in the Constitutional Conventions of the 1890s were not built from scratch but were powerfully shaped by Australian colonial constitutionalism, within which strong elective upper houses were a prominent feature.² As a federation, Australia's national institutions of governance include parliaments in the six states as well as the federal

* This paper was presented as a lecture in the Department of the Senate Occasional Lecture Series at Parliament House on 8 November 2002. The paper was given before the Australian Labor Party won a comfortable majority in the Legislative Council of Victoria in November 2002, and implemented extensive reforms to that chamber. For a discussion of the reforms, see Brian Costar, 'Accountability or representation? Victorian bicameralism', also in this issue.

¹ Arend Lijphart, *Patterns of Democracy*, New Haven, Yale University Press, 1999, p. 212. Lijphart's term 'strong bicameralism' refers to a situation where an upper house is not only constitutionally powerful but also has the political capacity (legitimacy and partisan independence) to operate as a strong check on the lower house.

² Campbell Sharman, 'Australia as a compound republic', *Australian Journal of Political Science*, vol. 25, no. 1, 1990, pp.1-5. In the late 1890s elective upper houses existed in Victoria, South Australia, Tasmania and Western Australia. Those in New South Wales and Queensland, like that in New Zealand, were nominee chambers.

parliament in Canberra. In all but one of these cases³, the parliaments are also strongly bicameral. Among federations, only the United States of America has a similar degree of commitment to bicameralism.

My contention is that the five state Legislative Councils are an important, if little examined, part of the general story of a growing contribution of upper houses to democratic governance in Australia. In the first part of this lecture I will briefly delineate the value of an upper house in settings like those of the Australian states. A major aim of the lecture, taken up in the second part, is to show that the role of the Councils within the political systems of the states has changed significantly over the past half-century. I will argue that the Councils have evolved a greater potential to enhance parliamentary democracy. If so, this prompts us to ask whether their potential is being realised? Are state upper houses actually embracing new possibilities and equipping themselves with the means to perform new tasks or to perform old tasks better? And what sorts of legislative outputs are they producing? In the final part of the lecture I will attempt to answer these questions about performance. Through the lecture I will attempt to elucidate not only shared trends across jurisdictions, but also key differences between jurisdictions.

The value of bicameralism

Unlike the Senate, the state upper houses demonstrate the existence of strong bicameralism in the absence of a federal justification for a strong upper house. Among the world's democracies, there is a strong correlation between the strength of bicameralism and the degree of federalism and governmental decentralisation.⁴ This well-known relationship feeds a widespread perception that strong bicameralism is out of place in settings, like those of the Australian states, where there is no requirement for an upper house to represent the components of a federation. But a number of the most compelling justifications for bicameralism apply as well to such settings as they do to federal parliaments. These can be summarised under four headings: redundancy, delay, separation of powers, and consensus government. I will say a few words about each.

1. **Redundancy** Probably the most widely accepted argument for bicameralism is the idea that, with activities such as law-making, which have serious consequences, or where certainty is demanded and false starts undesirable, it is valuable to have a means of eliminating error before its effects are experienced. A 'second look', through a different set of eyes, at legislation before it is passed is the equivalent in law-making to the deliberate over-engineering of machinery where failure of a mechanism carries the risk of unacceptable consequences, such as harm to persons or loss of vital information.
2. **Delay** The existence of an upper house can improve the legislative process by allowing time for the discursive formation of public opinion. While interest groups may be involved in discussion with government in the pre-legislative phase of policy development, debate in the wider public often begins only when legislation is introduced into parliament. As well as assisting the formation and articulation of public opinion negatively, by lengthening or stalling the legislative process, upper house review can contribute positively, by informing the debate and providing means for public opinion to be brought to bear on the legislative process.

³ The Queensland Legislative Council was abolished in 1922.

⁴ Lijphart, *Patterns of Democracy*, op. cit., pp. 213–215.

3. **Separation of Powers** In parliamentary democracies, legislatures are typically controlled by disciplined parties, with party leaders determining the composition of the executive. In such systems, there is a well-documented tendency for the legislature to become a tool of the executive—a tendency that has been particularly pronounced in parliaments using majority electoral formulae. Upper houses do not determine the composition of the executive and their control by the executive of the day is not therefore a requisite for continued office-holding by that executive. For this reason, they have a greater prospect of autonomy vis-a-vis the executive than do lower houses. Thus an upper house with substantial power may be almost a necessary condition for significant separation of legislative and executive power—that is, for there to be strong and independent parliamentary functions of review of the executive’s legislative proposals and scrutiny of executive action.⁵
4. **Consensus Democracy** Arend Lijphart’s notion of consensus democracy, which he contrasts with government by simple majority, refers to design features in representative institutions that make the processes of government as inclusive of the diversity of electoral opinion as possible. Upper houses can make a large contribution to this goal where they are constitutionally powerful, have democratic legitimacy, are not controlled by the party in government, represent electoral opinion differently to the lower house, and empower the various groups comprising the membership of the chamber.⁶

I will have cause to return to these justifications for bicameralism later in the lecture.

The transformation of the state upper houses

The story of the state upper houses in recent decades has partly paralleled that of the Senate; indeed, the example of the Senate has been a major influence on developments in state upper houses. However, unlike the Senate but like many upper houses around the world, state upper houses originated as conservative checks on the zeal of popularly elected lower houses. As a result, they possessed certain undemocratic features, which they retained in some measure far into the twentieth century. This has meant that the history of the state upper houses has followed a somewhat different path to that of the Senate. The key imperative for the state upper houses in the twentieth century has been to justify themselves democratically, whereas the main issue for the Senate, at least for the first half-century of its existence, was its effectiveness. The challenge of finding a role *within*, rather than as a check upon, a system of democratic government is one that a number of upper houses internationally have failed to meet.⁷ The five surviving state

⁵ It is not, however, a sufficient condition: the mere existence of an upper house, even one well clothed with powers, does not guarantee the realisation of this potential. As Lijphart has argued, the achievement of strong bicameralism will tend to depend also upon the democratic legitimacy of the upper house and whether or not its electoral system and other design features produce incongruence in the composition of the two chambers. Arend Lijphart, *Democracies*, New Haven, Yale University Press, 1984, pp. 95–99. On the relevance of the idea of the separation of powers to parliamentary reform in general, see Harry Evans ‘Parliamentary Reform: New Directions and Possibilities for Reform of Parliamentary Processes’, *Papers on Parliament* no. 14, February 1992, pp. 47–60.

⁶ *Ibid.*

⁷ Lawrence D. Longley and David M. Olsen (eds), *Two into one: the politics and processes of national legislative cameral change*. Boulder, Colorado, Westview Press, 1991.

upper houses, in contrast, have been successful in making that transition. Let us now look at what was entailed in their journey to the present.

Through the first half of the twentieth century, the Legislative Councils experienced a gradual extension of the suffrage and a weakening or removal of special qualifications for members. The New South Wales Legislative Council adopted parliamentary election in 1933. But the state upper houses' basic role—to check the will of the lower house majority—continued to be widely and reasonably understood in traditional terms as the restraint of democracy or its 'excesses'.

This perception of their role was underpinned by a set of inherited design characteristics.⁸ The suffrage for the elective chambers continued to be restricted due to property or other special qualifications for electors. Plural voting continued in Western Australia. Voting in the upper house was voluntary in Western Australia and South Australia, while all lower houses had adopted compulsory voting. These characteristics meant that electorates were substantially smaller and wealthier than those for lower houses. The terms of Legislative Councillors were staggered, in some cases quite elaborately,⁹ and much longer than for the lower houses. All popularly elected Legislative Councils had electoral cycles independent of those of the lower houses. Rural electors were over-represented in the elective chambers; and on the mainland, where zoning was also a feature of electoral systems for lower houses, the degree of over-representation was greater for upper houses. Given the property franchise, this meant a substantial over-representation of the interests of rural property owners.

The most salient manifestation of these design principles, particularly the restricted suffrage and malapportionment, was gross under-representation of the Labor Party in the directly elected Councils.¹⁰ But a more fundamental reason for the weakening legitimacy of the Councils in this environment was that their design as non-party houses sat uneasily with the growing dominance of state politics by disciplined parties. Their independent and elongated electoral cycles and the long terms of their members were designed to focus the attention of electors and candidates on the distinctive role of the upper house, to disconnect elections from the intensely partisan contests for government which characterised lower house elections, to weaken members' loyalty to a party once elected and to promote in them a spirit of independence with regard to lower house majorities. The desired result was members who would see themselves not as supporters of one or other of the contestants for government, but as independent scrutinisers of legislation and executive action, standing above the partisan contest for office. As late as the 1950s and 1960s, this image of the upper house retained influence among conservative members of the Councils, especially the Liberals among them who were philosophically opposed to strong partisanship in general. But the image had never been endorsed by the Labor Party. Thoroughly majoritarian in temper and viewing its members of parliament as pledged party delegates, Labor had never embraced either the role of an independent upper house

⁸ This paragraph and the next draw upon information about the Councils provided in S.R. Davis (ed.), *The Government of the Australian States*, Melbourne, Longmans, 1960.

⁹ In Western Australia a third of the Council was replaced every two years and in Tasmania three seats were contested every year and four in the sixth year of the cycle.

¹⁰ In New South Wales, parliamentary election from 1933 meant that partisan balance in the Council tended to reflect, with a delay, the position in the Assembly. Thus, Labor held a majority of seats in the Council between 1949 and 1958 (R.S. Parker, *The Government of New South Wales*, St Lucia, Qld, University of Queensland Press, 1978, p. 214).

or the idea that members had legislative duties independent of service to the party. From the perspective of Labor members of parliament, the reluctant partisanship of upper house conservatives was disingenuous, a smoke screen to cover unjustified over-representation and their routinely partisan behaviour in savaging Labor legislation.

So, as the twentieth century wore on, the traditional model of the state upper house was increasingly strained by strengthening democratic norms and, even more so, by the pervasive influence of disciplined parties on both the practice and the interpretive norms of Australian state politics. Disciplined partisanship had made serious inroads into most upper houses and threatened to strengthen its hold; partisan imbalances in representation were already a long-standing grievance; and restrictions on the suffrage were out of keeping with contemporary democratic norms.

The pattern of change: 1950–2002

Nineteen-fifty was a watershed in the history of the Legislative Councils. The Victorian Legislative Council Reform Act of that year introduced universal suffrage for the first time for an Australian state upper house, heading a series of major electoral changes around Australia over the following half century. As already noted, these developments built upon, or completed, a long history of gradual adaptation by the elective Councils to the norms of democratic politics. Their design as elective bodies made gradual democratisation both possible and probably inevitable. In the case of the New South Wales Legislative Council, with its nominee origins, democratic development was more problematic; the alternative path of abolition was, as illustrated by events elsewhere, equally possible. The key evolutionary events for the New South Wales Council were constitutional entrenchment and the shift to an elective base—albeit a parliamentary rather than a popular one—in the early 1930s. The former change shifted the balance of incentives in favour of survival, by making abolition constitutionally much more difficult and by strengthening its legitimacy; the latter change made further democratic change likely. But while developments from 1950 were evolutionary in nature, their effects on bodies whose rationale, ethos and public image had been bound up with the idea of restraining the democratic component of the legislature, were, I will argue, transformative.

The main changes affecting the Councils had to do with their electoral systems. They were democratisation, harmonisation of electoral cycles, and adoption of proportional representation. These changes were doubly significant in strengthening the Councils. Democratisation enhanced the legitimacy, and hence the authority, of the Councils. Just as importantly, harmonisation of electoral cycles and adoption of proportional representation recast the Councils' faulty mechanisms for producing differently composed chambers. This was important because, in an environment of disciplined parties, the ability of an upper house to exert influence depends heavily on its lack of dominance by the party or parties controlling the lower house.

I will comment on each of the elements of electoral system change I have identified. Democratisation, in the Australian context, may be taken to refer to several developments, in addition to the fundamental one of the introduction of universal suffrage. Compulsory enrolment and voting, which operate to enlarge the effective voter base, should be

included because this has been the norm for state lower houses since 1942.¹¹ Equal apportionment of electorates together with regular redistributions—or achievement of the same effect by establishing a single, state-wide constituency as part of a shift to proportional representation—has more recently also become a benchmark for democratic practice in Australia and is thus a necessary criterion for evaluating upper house electoral systems. Finally, an important signifier of the democratisation of state upper houses, which in several cases were controlled throughout their existence by the conservative parties, is the breaking of this pattern of one-sided dominance. With a couple of qualifications, the five Legislative Councils achieved these benchmarks of democratisation during the second half of the twentieth century.

The next component of electoral system change I referred to was a shift in all states except Tasmania to the holding of upper and lower house elections at the same time. South Australia, Victoria and New South Wales have additionally abolished fixed terms for members of Council by tying the term of the Council to that of the Assembly. Western Australia has maintained fixed terms for Legislative Councillors but assisted the harmonisation of electoral cycles by reducing the complexity of the rotation of Councillors from a third every two years (before 1963) to a half every three years (to 1986), before doing away with rotation altogether. Thus Tasmania is the only state to have retained both fixed terms for Legislative Councillors and a system of rotation, with annual elections over six years, which ensures elections for the two houses are normally held at different times. The importance of the move to conjoint elections is that election of Councillors becomes an adjunct to the contest for government in the lower house and is inevitably strongly influenced by the intense partisanship which characterises lower house elections. Conjoint elections seem to have finally tipped the balance decisively in favour of fully partisan upper houses on the lower house model.¹²

The final major change was the adoption of proportional representation (PR) for upper house elections in South Australia (1973), New South Wales (1978) and Western Australia (1987). Proportional representation has arguably had two main effects. First, it has more than likely reinforced the growth of partisanship. While the forms of PR have varied in their details between states and within states over time, they have almost always given electors a ticket voting option. This has given those voting systems, which have generally been PR-STV (single transferable vote) in form, much of the character of PR-list systems. Over time, the voting systems have largely converged on that utilised by the Senate since 1984.¹³ As Studlar and McAllister have shown for the Senate, such an electoral system tends to produce members of parliament with strongly partisan perceptions of their representational roles.¹⁴

¹¹ Adopted by Queensland in 1915, Victoria in 1926, New South Wales and Tasmania in 1928, Western Australia in 1936 and South Australia in 1942 (I. McAllister et al. *Australian Political Facts*, Melbourne, Longman Cheshire, 1990, p. 60).

¹² Note the observation of Victorian MLC James Guest: 'I had come to believe very strongly that conjoint elections were, and are so far, the biggest single factor in swamping the Council with party politics and rigid party control ...' 'Upper houses—Victorian present and future', in G.S. Reid (ed.), *The Role of Upper Houses Today*, Hobart, University of Tasmania, 1983, p. 64.

¹³ Electoral Council of Australia, *Proportional Representation Voting Systems of Australia's Parliaments*, Melbourne, 1999.

¹⁴ Donley T. Studlar and Ian McAllister, 'Constituency activity and representational roles among Australian legislators', *Journal of Politics*, vol. 58, no. 1, 1996, p. 76.

The other consequence of the shift to proportional representation has been the emergence of minor party representation as a permanent feature of the Councils concerned.¹⁵ Minor party representation played a key role in overturning the permanent hold that the conservative parties had previously exerted over the Councils in Western Australia and South Australia. As I have suggested, this development has been important in enhancing the democratic legitimacy of those Councils. Further, proportional representation has given minor parties the balance of power continuously in all three chambers—since the elections of 1979 in South Australia,¹⁶ 1988 in New South Wales and 1996 in Western Australia.

Proportional representation in the upper house, combined with the alternative vote with single member constituencies in lower houses, is now the major means of producing different partisan majorities in upper and lower houses in the states where it has been adopted. In Western Australia, where rotation of Councillors was abandoned with the adoption of proportional representation in 1987, it is the only such means apart from a small contribution produced by the greater degree of malapportionment in the electoral system of the Council than in that of the Assembly. It is also an undeniably democratic instrument and one which is efficacious, in the context of modern party politics, in enhancing upper house autonomy and enabling a strong upper house check on both conservative and Labor governments.

The Legislative Councils in 2002

The process of democratisation of the state upper houses is now almost complete. There are two exceptions. In Western Australia the Council's electoral system remains heavily malapportioned, albeit within a state context of generalised malapportionment. Secondly, the conservative parties continue their virtually unbroken hold on the Victorian Legislative Council. Given the pattern of alternation in government of Liberal/National and Labor over the past two decades in Victoria, this detracts to an extent from the legitimacy as well as the effectiveness of the Council.

With democratisation has come a new model of bicameralism. The design of state upper houses no longer casts them as conservative checks on the 'people's houses'. They are instead key elements within a more complex, and arguably superior, system of democracy. In all cases except the Victorian, their electoral systems differ from those in their companion lower houses and ensure the representation of different interests or bodies of electoral opinion. In the case of the three upper houses using PR, the range of opinion represented is also broader than that represented in the lower houses, a fact that further enhances their democratic legitimacy. Thus constituted, these upper houses play a major role in making the legislative process more inclusive, in line with the consensus democracy justification of bicameralism. Further, where they are designed to reliably achieve a different partisan balance from that of the lower house (that is, again, outside of Victoria), the contemporary Councils are a fully democratic means of ensuring due deliberation in the legislative process—or, in the terms employed earlier, ensuring

¹⁵ The different electoral systems are more or less friendly to minor parties—with quotas varying from 4.55 per cent in New South Wales, to 8.33 per cent in South Australia, to 12.5 per cent and 16.7 per cent in Western Australia—but the two longest established PR systems have become friendlier over time with the removal before the 1982 South Australian election of the threshold of half a quota and the change in New South Wales before the 1995 election from a 15 to a 21 seat constituency.

¹⁶ A minor party also held the balance of power in South Australia following the 1975 election, but in 1977 the Liberal Party regained its majority.

appropriate redundancy and delay. In these circumstances, the Councils, by enhancing the separation of powers, can also raise the level of justification required by parliament for the actions of executive government.

Different starting points and different patterns of change have resulted in the existence of three distinct types of state upper house in Australia at the beginning of the twenty-first century. The Tasmanian Legislative Council, long the only true embodiment of the old ideal of a non-party chamber, has maintained that model¹⁷ and the elaborate rotation of Councillors and independent electoral cycle that help to sustain it. The Western Australian, South Australian and New South Wales Councils conform in general to the second type, the model for which was the Australian Senate following its adoption of proportional representation in 1948. There is a developing Australian mainland norm that parliamentary systems should comprise a ‘house of government’ whose electoral system over-represents major parties and frequently manufactures partisan majorities, and a ‘house of review’ whose electoral system ensures more diverse representation and that lack of a governing party majority necessary for autonomy and a sustained capacity to exert influence. The Victorian Council represents the third type. It has been democratised but its legitimacy is weakened by its continuing domination by one side of the partisan competition for government. However, as the only mechanism now for producing incongruence in composition between the two chambers is rotation of Councillors, there would seem to be no obstacle to a resurgent Labor Party gaining control of the chamber over an extended period in government. Nevertheless, a bicameral legislature promising periods of governing party dominance of its upper house interspersed with opposition dominance appears to be a sub-optimal design.

Procedural development and performance

How, if at all, has the enhanced democratic significance of the state upper houses affected their operation? Is potential being translated into performance? In this part of the lecture I will discuss links between the institutional architecture of the upper houses and innovation and effectiveness in their procedures. The first step is to determine what sorts of procedural changes constitute development or improvement in an upper house. My approach is to draw general criteria for procedural development from the set of justifications for bicameralism set out earlier.

1. **Redundancy/second look** This role will clearly be better performed the more detailed the ‘second look’ and the more informed about legislation and its likely effects are those doing the looking. These ends can be furthered by procedures or practices ensuring that more bills are examined in detail, encouraging the growth of specialised knowledge among legislators and facilitating feedback from those in the community affected by legislative changes.
2. **Delay** The adoption and enhancement of procedures which involve effective public hearings, leading to the creation of well publicised parliamentary reports appeal as means of adding value to this role.

¹⁷ See R.K. Chapman, ‘The Legislative Council’ in *The Tasmanian Yearbook* no. 17, 1983, p. 73.

3. **Separation of Powers** The associated criterion of procedural development is the extent to which parliamentary procedures strengthen the autonomy, or capacity for independent influence, of the upper house.
4. **Consensus Democracy** Procedural development, related to this justification, occurs where procedures are modified to broaden, deepen and render more certain the participation of parliamentary groupings, especially the smaller ones.

These, then, are the sorts of procedural changes I have been looking for in recent research on the state upper houses. I have also attempted to determine how effectively these chambers are utilizing traditional procedures in the performance of their basic functions of review of legislation and scrutiny of government.

Explaining procedural development: hypotheses

The hypothesis that has guided this research is that the differences I have described between the five Legislative Councils, which structure relationships between upper and lower houses in distinctive ways, should have an impact on procedural development and legislative outputs. The Victorian Council, with its virtually unrelieved non-Labor party majorities, has normally possessed significant autonomy only during periods of Labor government, when there is a tendency for it to become an agent of the opposition. With reasonably frequent alternation of the major parties in government, and hence regular periods of low autonomy, the Victorian Council would seem to have lacked a stimulus to differentiate its role strongly from that of the lower house. One might expect to find a relatively low level of procedural innovation and a lack of procedures institutionalising a significant degree of autonomy for the upper house vis-à-vis the lower house. In the three Councils that have adopted PR, the boost to autonomy provided by the absence of major party majorities as well as the pressure to incorporate the interests of new, minor party actors would seem to be likely stimuli for procedural innovation. Finally, the Tasmanian Council might be expected to have procedures which reflect its autonomy vis-à-vis the lower house, but the likely effect of its independent membership on procedural development seems, *a priori*, uncertain.

Another potential influence on procedural development is size. Australian state parliaments are small and their upper houses especially small. This limits their resources of talent and their capacity to develop an elaborate internal division of labour in organising their tasks. Further, state upper houses differ in size, with the largest (Victoria, 44) nearly three times the size of the smallest (Tasmania, 15), and considerable differences among the others (South Australia 22, Western Australia 34, New South Wales 42). A second hypothesis, then, was that these variations might be expected to create procedural differences, especially with regard to committee system design and effectiveness.

Procedural development in state upper houses: the state of play

What do we find when we examine the current procedures of the state upper houses? In general, the chambers compare favourably with lower houses in the performance of their core functions of legislative review and scrutiny of government. Moreover, there is evidence of procedural development, differing in extent between jurisdictions. But there is naturally room for debate about the quality of the job being done, depending on the yardsticks one adopts for judgement.

With regard to legislative review, the Councils, unlike the lower houses, make considerable use of the committee of the whole, the traditional forum for detailed examination and revision of legislation. Further, the propensity to utilize this mechanism corresponds, with variations between jurisdictions, with a substantial amount of legislative revision. On the other hand, most state upper houses are yet to embrace any form of regular referral of legislation to committees. Thus, their development lags that of the Senate, which has sent legislation to its policy-related committees on a regular basis since the mid 1990s and to its Scrutiny of Bills Committee, to ensure their conformity with basic principles of administrative law, since 1982.

The main exception is the Western Australian Legislative Council. Over the past few years, this chamber has adopted a convention that all significant legislation should go to a standing committee. The Western Australian Council has not followed the Senate in referring legislation to policy-related committees. Instead, it has a specialist Legislation Committee, somewhat similar to the Senate's Scrutiny of Bills Committee, charged with examining principally the non-policy aspects of legislation. Legislation is referred to this committee unless one of the two policy-related committees (Public Administration and Finance, Environment and Public Affairs) is more relevant due to the subject matter of the bill and the form of inquiry desired. Legislation is referred after the second reading debate. The Western Australian Council also has a Uniform Legislation and General Purposes Committee, dealing *inter alia* with legislation that imposes an inter-governmental agreement or a uniform scheme or uniform laws throughout Australia. Relevant bills are automatically referred to this committee after the first reading.

The procedures of the Western Australian Council's standing committees also seem to be a more effective means of linking parliament and public in discussion of legislation—that is, developing the role I have referred to as *delay*—than parliamentary procedures in use elsewhere. Committee inquiries in that Council typically involve public hearings where legislation is a matter of community interest. Moreover, the production of a formal report, available in hard copy as well as electronically on the internet, assists communication with the public, both directly and indirectly via media reports.

The function of scrutiny of government, or administration, is traditionally pursued through parliamentary questions, with follow-through to urgency debates and parliamentary inquiries if necessary. The evolution of state upper houses through the twentieth century, in most cases strengthening their party-house character and linking the fortunes of their members more tightly to the partisan contest in the lower house, has in some ways made them more likely to develop procedures for scrutiny along the lines of lower houses. Question time, for instance, seems to have evolved quite rapidly from a marginal or non-existent practice in upper houses to a prominent one.¹⁸

Nevertheless, the environment in which scrutiny occurs in upper houses remains significantly different to that of lower houses. The upper houses contain proportionately fewer ministers and shadow ministers, they lack the dominating figures of the premier and opposition leader, and they often contain a number of cross-bench members. As a result, they are usually not platforms for set piece confrontation between rival front benches to anything like the extent of the lower houses. This is reflected in forums for

¹⁸ The clearest case is the Tasmanian Council, which had no question time until the late 1990s.

questions without notice in some Councils (particularly those of Western Australia and New South Wales) that are probably the most effective in Australia, in terms of numbers of questions asked and answered. The Western Australian, New South Wales and Victorian Councils are also making heavy use of questions on notice.

Questions remain a major means of acquiring information about, and highlighting deficiencies in, the operation of government. But in modern parliaments a growing contribution to the performance of this function has been made by parliamentary inquiries, undertaken through systems of permanent, or 'standing', committees. It is by now uncontroversial to say that the strength of a parliamentary chamber's committee system is a good indicator of its capacity to scrutinise government.

The development of standing committees is undoubtedly the procedural change of greatest significance in the state upper houses in recent times.¹⁹ Committee systems began to emerge in the 1980s and developed a good deal, albeit unevenly across jurisdictions, through the 1990s and the first years of the new century. One category of committees performs a range of specific scrutiny functions. State upper houses have been particularly active in developing committees to scrutinise delegated legislation, budgetary estimates and semi-autonomous bodies. The other, larger category of permanent committees comprises committees with a broad investigative function related to either policy or portfolio areas.

All upper house have developed committee systems, but there are substantial differences between jurisdictions. The number of committees in each system and the level of activity, in terms of completed inquiries, tend to vary with the size of the house. Partisan balance, important for the independence of the committee vis-a-vis the government, tends to reflect the composition of the chambers, as does the ability of committees to control their own programs of inquiry. The Victorian, Tasmanian and South Australian Councils rely heavily on joint committees, which tend to be controlled by the majority party in the lower house. Most upper houses have modest but apparently satisfactory staff resources to deploy on committees. These have generally grown with the committee systems over recent years. The exception is the Tasmanian Council, which operates largely without staff for committee work. The Councils also differ in the extent to which their permanent committees have succeeded in eliminating the need for upper houses to set up ad hoc select committees. The most recent evidence seems to suggest that the spirit of inquiry in the Western Australia Council and, to a considerable extent, in the New South Wales Council is accommodated by the committee system. In Victoria, South Australia and Tasmania, on the other hand, the constraints imposed by joint committees seem to be producing an ongoing demand for ad hoc committees under the control of the upper house.²⁰

Turning, finally, to the way in which chambers manage their business, a certain amount of procedural change seems to have resulted from the challenge of growing diversity in the Councils that have adopted PR. The cross-bench share of the total membership of the

¹⁹ I am not interested here in their formal origins: some have statutory backing, some are based in standing orders, and a few have more tenuous status. My comments refer to all committees, other than those dealing with matters internal to parliament or select committees established to undertake a particular inquiry.

²⁰ In the Victorian case, the demand is largely confined to periods when the partisan majorities are different in the two houses.

Western Australian, South Australian and New South Wales Councils in 2002 is 24, 27 and 31 per cent. The new partisan groupings bring with them distinctive policy interests and a different orientation to parliament, since they cannot envisage being participants in government and, for the same reason, cannot view themselves as part of an opposition either. Accommodating a substantial cross-bench becomes a greater challenge for a chamber the larger the number of groups involved. In the Western Australian Council there are currently two cross-bench groups, in South Australia there are four, and in New South Wales there are nine. In Victoria, where a majority electoral system has limited the number of partisan groupings, dialogue between the leaders of the government and opposition continues to be viewed by all involved as satisfactory for coping with competing organisational demands. But it is not surprising that changes in the number, weight and kind of groupings have resulted in pressures to adapt business arrangements in the three Councils utilising PR.

But approaches to the problem have differed. The South Australian Council has taken an informal approach. Business continues to be managed by the whips of the major parties, though there is consultation with, and an effort to accommodate, the cross-bench. It may be that, as with the Tasmanian Council whose arrangements are similarly informal, the South Australian Council's small size encourages informality. The Western Australian Council, in contrast, has formalised the influence of its minor parties by including them in a Business Management Committee established in 1998.²¹ In the New South Wales Council, the notable procedural change in this area has been the introduction in mid-1999 of a new rule, establishing a form of lottery, for managing private members business. This formalised equal opportunity for the cross-bench as a whole, allowing more private members business to be dealt with, and also provided a neutral means of allocating opportunities to the various groups on the cross-benches.²²

Inter-jurisdictional differences and their explanation

Interestingly, the five chambers exhibit considerable differences in performance and levels of procedural development. The Tasmanian Council's modest innovations seem consistent with expectations based on its size and the long-term stability of its electoral arrangements. It continues to play an important role in the area of legislative review. However, its investigative committees, relatively limited in extent as might be expected of a very small chamber, suffer from inadequate staff resources. The South Australian Council is active as a chamber of legislative review. But it has a relatively slight record of procedural innovation across the board, which conflicts with my hypothesis about chambers greatly affected by electoral system change. Its committee arrangements share similarities with the Tasmanian Council, but staff support is much better. The Victorian Council has a changeable impact, waxing or waning in effectiveness with changes in the partisan composition of the government. Its procedures, and its not inconsiderable procedural innovations, reflect a chamber dominated by the government-opposition

²¹ The Committee comprises 'the Leader of the House with the Leader of the Opposition and such other Members as the Leader of the House may invite' (Standing Order 125A, adopted June 1998). The deliberately broad phrasing allows flexibility to cope with changes over time in the composition of the cross-bench.

²² The rule establishes a category of 'Items in the Order of Precedence', comprising 12 items selected randomly from three groups of members putting forward notices of motion. An opposition member's name is drawn first, followed by a cross-bench member, followed by a governing party member. Private members' legislation is incorporated in the draw along with other notices of motion. The rule imposes time limits on members' contributions to these debates.

dialectic and unable to develop sufficient autonomy over the long-term vis-à-vis the lower house to permit a strong upper house contribution to scrutiny of government through the committee system. Committee system development in the Victorian Council—as in the Tasmanian and South Australian Councils—is weakened by the predominance of joint committees, which operate, in effect, to undermine bicameralism.

In comparison with the other three cases, the Western Australian and New South Wales Councils seem to represent a higher level of procedural development and performance. The New South Wales Council is comparatively active in the revision of legislation, and has the most extensive and well-resourced machinery for the scrutiny of government. The Western Australian Council has been by far the most innovative in the development of machinery for legislative review. Its arrangements for parliamentary questions, with and without notice, are notably productive. While its committee procedures for scrutiny of government have been developed along different lines to the other Councils, they seem at least as well designed and as effective for the scrutiny of administration (as distinct from policy analysis and development)²³ as any. Both the New South Wales and Western Australian Councils have developed committee systems that enhance the autonomy of these chambers. Both have innovated procedurally in response to the influx of minor parties, produced by the shift to PR.

My hypotheses seem to have substantial explanatory power. The hypothesis about PR, or composition of the chamber, explains the position of the New South Wales and Western Australian Councils at the head of the field, but not that of the South Australian Council in the second group. But the second hypothesis, about size, seems to make sense of the South Australian case and of certain similarities between the Tasmanian and South Australian Councils. The findings for the Victorian Council seem also to accord with the first hypothesis.

Both PR and size appear to be necessary rather than sufficient for procedural development. Moreover, the case of the South Australian Council would seem to indicate that of the two factors considered, size is more fundamental than the composition of the chamber, in the sense that there would seem to be a size beneath which it is extremely difficult for a chamber to equip itself with, and operate, the machinery of a modern house of review and scrutiny. It is a concern, therefore, that there have been pressures in recent times, unfortunately successful in the Tasmanian case, to reduce the size of the two smallest Councils.²⁴

Regarding the first hypothesis, a comment about the nature of the relationship between the composition of the chamber and procedural development and effectiveness might be useful. PR has had two effects: it has, firstly, given minor parties the balance of power in upper houses and, secondly, it has prevented major parties, especially governing parties, from dominating the houses. Which of these two consequences of PR is the more important? There is a case to be made for the first effect. A minor party holding the

²³ Committee systems in Australian parliaments tend to be strongly oriented to the activity of policy development, arguably at some cost to their performance of the more important parliamentary function of scrutiny of administration.

²⁴ See Harry Evans' discussion of the issue of size and his argument that the Tasmanian Parliament, following its contraction in 1998, is too small to sustain both a parliamentary executive and effectiveness in review of legislation and scrutiny of the executive. 'Constitutional safeguards, bicameralism, small jurisdictions and Tasmania,' *Legislative Studies*, vol. 13, no. 2, 1999, pp. 1–6.

balance of power in an upper house over a period of years might be thought to be an especially efficacious promoter of change designed to strengthen the autonomy and effectiveness of the chamber. The reasoning is that such a party, lacking a realistic expectation of representation in the lower house or participation in government, has an interest in creating as influential an upper house as possible as a vehicle for its ambition.²⁵

But there seems to be no evidence from any state jurisdiction to suggest that minor parties holding the balance of power have pushed an agenda of procedural reforms designed to strengthen the capacity of an upper house. Rather it appears that minor party representatives, like their major party colleagues most of the time, are preoccupied with particularistic concerns. Those developments of greatest importance to the core functions of upper houses, such as legislation committees and scrutiny committees of various kinds, seem to be more a product of the absence of governing party majorities than of the presence of minor party balance of power holders. This absence seems to change the political calculus for the major parties: it provides opportunities for opposition parties and may perhaps also weaken the compulsion of governing party representatives to control the agenda of the house.²⁶ Minor parties are important because, where they are established in a balance of power role, they make the absence of a governing party majority a permanent feature of the house. Similarly, they make it less likely that the procedures of the house will be utilized merely to facilitate a cross-house opposition strategy of confrontation with the government. In such an environment, not only is desirable procedural development more likely, but existing procedures are also likely to have a great deal more potency in the service of the core functions of upper houses.

Conclusion

My conclusions can be stated briefly. Strong upper houses are an important and distinctive part of Australia's constitutional heritage. The Senate is only the most visible and celebrated expression of Australian bicameralism, albeit a vital one that has influenced a good deal of the change I have outlined today. The state upper houses, whose contributions to our system of government often continue to be insufficiently understood and appreciated, have undergone a long and largely successful process of evolution to be valuable contemporary supports for parliamentary democracy in their jurisdictions. That evolution continues. Finally, the structures, procedures and outputs of the several Australian cases differ and the study of these differences can yield insights into the conditions for an effective upper house.



Question — I would be interested in your comments on the matter of ministers in upper houses. We do have the interesting example of Tasmania, being a house of Independents, where there is not a suite of ministers as there are in most of the other houses. Do you

²⁵ Campbell Sharman has made this suggestion in relation to the Australian Democrats and the Senate, in 'The representation of small parties and Independents,' *Papers on Parliament* no. 34, December 1999, pp. 149–158.

²⁶ For example, the New South Wales Council's general purpose standing committees, the most significant procedural innovation in the recent history of the New South Wales Parliament, was an Opposition initiative, albeit supported by cross-bench and independent members (Gareth Griffith and Sharath Srinivasan, *State Upper Houses in Australia*, NSW Parliamentary Library Research Service, p. 106).

have any comment on what you have looked at, as to the desirability or otherwise, and the effects, of having ministers in upper houses?

Bruce Stone — Eliminating ministers is close to the top of just about everybody's list of desirable reforms for upper houses. Tasmania has one minister. Most of the other houses seem to have between two and five. Certainly in Western Australia, the Commission on Government argued a few years ago that it would like to see the WA Council go down to something like one minister to represent the government. I think that matters less where the upper houses are large. If you at look, say, South Australia, with 22 members and up to four or five ministers at times, then I think you've got a situation where the flow of talent to the ministry eats very significantly into the resources available to the upper house. It probably matters less in New South Wales and Victoria.

So yes, I think it is probably a desirable change in that it helps to differentiate for all concerned the roles of the two chambers. I don't think it is absolutely vital, but probably desirable. And the strength of that desirability increases as you get down to smaller houses like Tasmania and South Australia—and Western Australia is only a dozen members larger.

Question — The one state of course that doesn't figure in your paper is Queensland, because it doesn't have an upper house. I wonder if you'd care to comment on the implications of a unicameral legislature in terms of the quality and nature of accountability of government. And do you have any data or other evidence that suggests the level of awareness, understanding or interest in upper houses in the other states? I'm prompted to ask this, because as a volunteer guide at Old Parliament House, I'm constantly struck by the number of people who come into the Senate chamber there, and say: 'Is this chamber elected, and who elects it, and what does it do?', despite the higher visibility of that chamber in recent years. How typical is this of the electorate in general?

Bruce Stone — I guess it's unlikely the visitors are all Queenslanders. Unfortunately, we do have a good deal of evidence that our fellow citizens are not as well informed about our system of government as would be desirable. They know quite a lot about some bits of it, usually the bits that involve them—having to vote and how to vote and that sort of thing—but not about other things. Queensland, of course, did have an upper house until 1922. It had a nominee chamber, not an elective one, as did New South Wales, and those chambers were always vulnerable to abolition. Governments can stack them, as they did in Queensland and as they attempted to do in New South Wales, and then use the numbers that they had planted in there as a means of getting rid of the upper house. So yes, Queensland once did have a desirable parliamentary structure, but it chose to abandon that in 1922.

It is sometimes said—and I think it is a bit glib—that there would have been no Fitzgerald Royal Commission, and none of the excesses of the Bjelke-Petersen regime if there had been an upper house. I think that is too easy. I come from a state which generated some celebrated scandals in the 1980s, collectively known as 'WA Inc', perpetrated not necessarily with the connivance of the upper house, but *despite* the existence of the upper house. On the other hand, the upper house in Western Australia, unlike the case in Queensland, contributed to the pressure that led to the calling of the Western Australian Royal Commission—which in turn led to a further enquiry by the Commission on Government. The result was a detailed examination and discussion of our processes of

government in Western Australia over a period of half a decade or more. And those enquiries have made quite a difference to the political culture in Western Australia. There's now a good deal more respect for parliamentary processes and, indeed, upper houses.

When I go to Tasmania, Victoria and New South Wales, I can't believe the outworn clichés about upper houses I occasionally read in the newspapers—cheap journalism at its worst. You never see that in Western Australia now. There is now in the media a good deal of respect for the role an upper house. So, I wouldn't want to draw a watertight connection between upper houses and good government. They are perhaps a necessary but not a sufficient condition for the elimination of abuses in government. That's probably it in a nutshell.

Question — I want to correct your statement that, over time, Labor will presumably win a majority in the Victorian Legislative Council. In fact, it is set up in a way that makes it almost impossible for Labor to win a majority, because they have so many wasted votes in those seats in northern and western Melbourne that the votes in the rest of Melbourne and Victoria are spread too thinly for them to get a majority. They would need to win 55 per cent of the two-party vote at two consecutive elections to win a majority.

Also, you referred to the legitimacy of the Victorian Legislative Council being clouded by the fact that it was always under conservative parties' domination. Can you explain what you mean by legitimacy in that context? Also, in which ways has it not been as innovative as other upper houses?

It seems to me that one of the flaws that upper houses still have at state and federal level is this quite undemocratic system of a 'double turn', so that people are elected for six or eight year terms—and that's a very long time to be unanswerable to the electorate. This is particularly so when combined with their ability to change parties from virtually the moment they are elected, as Richard Jones did in the NSW Legislative Council for example, and we've had three senators desert their parties in the last six years, and a fourth one is waiting to hop. Can you comment on the implications of that and how that could be reformed?

And, if the upper house is a house of review, why don't they have twice as many members as the house of government?

Bruce Stone — On the last question, yes, it seems to me quite reasonable. I remember being told in the United States—which also has a very strong bicameral culture—that one of the western states decided to become unicameral, and they abolished the lower house, rather than the upper house, which I thought was very sensible of them.

Your first point was an information point—people have tried to explain to me why the ALP will never get a majority and I haven't quite cottoned on yet, I obviously need to look more closely at this. Presumably this depends on the appeal of the Labor Party in these areas you are talking about. The Labor Party did quite well in rural Victoria last time, rather than metropolitan Victoria. And the major parties' support bases seem to be more fluid than they were. I suppose what I am saying is that the apportionment process, at least, seems to me to be clean and, if it happens that the Labor Party can't muster

majorities, then that has to do with its appeal from area to area and that's something for the Labor Party to address.

Your second question concerned legitimacy in Victoria. My points about the Victorian upper house are not *only* about legitimacy. But I think that if you have basically a permanent, conservative majority in an upper house while you have alternation—Labor to Coalition, Coalition to Labor—in your lower house, people start asking 'What's going on?' One of the major components of your political system, the Labor Party, is permanently disaffected. It seems to me that they will certainly regard the process as illegitimate and I think that's unfortunate. An atmosphere of illegitimacy is created when people believe that the system, for whatever reason, is rigged so that only one side in the partisan contest for government is ever likely to control the upper house.

It is also undesirable for oppositions to control the upper house, and I think Victoria illustrates that, as well. The upper house then becomes the official platform for the opposition, a sort of 'government in exile' and a means by which they can harry and embarrass and thwart the government to promote their own electoral prospects. The most desirable setup for an upper house is where there is neither government nor opposition majorities, and that's the genius of proportional representation as it is working in Western Australia, South Australia and New South Wales, depriving the government *and* the opposition of majorities in the upper houses.

So it's not only a question of legitimacy, it's also a question of effectiveness, and I will link that to your point about innovation. Where you have an upper house dominated—as I believe is the case, though I might be exaggerating a little bit, in Victoria—by the government-opposition dialectic, then you are unlikely to get innovation. The government, when it has a majority, wants an upper house that is as weak as possible. It had no incentive in the Kennett years, when it controlled both houses, to create a stronger, more vigilant upper house at all. And when the opposition has control, it has all the means that it needs to harry the government. So you're likely in those circumstances not to get as much desirable innovation as you would where neither the government nor the opposition has a majority.

On the other hand, I wouldn't want to say that there is no innovation in Victoria. There is in fact a good deal of procedural innovation in the Victorian upper house, but I believe this overlay of the government-opposition dialectic tends to undermine the effectiveness of those procedures.

Regarding the double term—that was part of the original design of most of these houses, that they would have staggered elections. There were also designed so that elections for the upper house didn't coincide with elections for the lower house. These were intended as means by which the upper house would develop a unique function—so that, when electors went to vote, if elections were held at a different time than for the lower house, they were focussed on the upper house and what the upper house's role was, and what sorts of people they should be electing to the upper house. Staggered terms were to ensure part of this idea that the political feeling in the community at any one time shouldn't enable the partisan majority being swept to office in the lower house to also gain a majority in the upper house. So they were part of the design principles intended to underpin autonomy for upper houses. Of course Western Australia has done away with staggered terms—now every four years in Western Australia the whole Legislative

Council is up for election and the only means in Western Australia for ensuring different partisan majorities in the two houses is proportional representation in the upper house. And that's a possible way of designing things.

I don't think that people deserting or abandoning the parties for which they were elected is a huge problem in Australia. Sometimes I think they have good cause to abandon those parties. In other places where this practice is rife and where corruption is involved—and I'm talking about outside Australia—steps have been taken to prevent people from deserting their parties. I don't think we need that in Australia, not at present anyway.

Question — How do you go about the creation of new states? The Constitution quite clearly envisages that there would be a process for this, and that federalism would be a continuing thing, rather than being static, as it seems to have turned out to be. I remember the New England New State Movement in New South Wales, and recently we've had the situation in the Northern Territory. We don't seem to be very good at getting new states up and going. How do we cope with that?

Bruce Stone — This is slightly off my topic. I'd note, to make a connection with my topic, that neither the ACT nor the Northern Territory parliaments have upper houses, and I think the design of political institutions in the Northern Territory has been quite poor. In the ACT you at least partly overcome the problem of not having an upper house by having your unicameral chamber elected by proportional representation. I think that's a minimum. If you don't have an upper house in a parliamentary system, I think you need to have proportional representation for your lower house. This is what the New Zealanders have now done, of course.

I wouldn't mind seeing a few new states, but I don't see any prospect of that coming about in the near future—except for the case of the Northern Territory when it gains a sufficient number of people. People have speculated at times in Western Australia about hiving off bits of the north and perhaps linking them with other parts of northern Australia. Yes, I'd be happy to see a few more states, but clearly it's not on anyone's agenda at the moment.

Question — Regarding your point about proportional representation and the consequence in upper houses that you prefer—that neither the government nor the opposition be in control—I wonder whether you could elaborate on the potential for either the government or the opposition in the upper house using special interest groups or minor parties to get the same effect of having a preponderance. And the likelihood that special interest groups may in fact have a 'less than properly proportional' influence on policy.

Bruce Stone — I'm not sure I'd call them 'special interest' groups—they are elected members of parties represented in upper houses. And, yes, party alliances do form. These need to be negotiated between the parties, and of course this is a continuing process—usually driven by the government in the lower house trying to stitch together coalitions in the upper house in order to get its legislation through. But I think it is part of the genius of the system that, through those negotiations, the minor party representatives are enabled, to an extent, to look after the interests of the people who elect them—though of course they have to compromise, as does the government.

This brings me to the second part of your question. It is a frequent allegation directed toward minor parties that they exert a disproportionate influence. Again, I wouldn't want to deny that it can be very handy to be strategically located between two blocs, both bidding for your support. No question, that is an advantageous position to be in. But that's what you tend to get where you have 20-odd per cent of people supporting minor parties and the rest supporting two big blocs. If the electorate were more fragmented, then the alliances would be more complex, so in some ways it's an artefact of the distribution of political support in the system. Minor parties don't get any more representation than their vote entitles them to, it's just that they have been fortunate—in the case of the Senate and in some of the state upper houses—to be nicely located between two major blocs which gives them an advantage in the negotiating process. This situation is partly a product of proportional representation and partly of other components of our electoral arrangements, especially for mainland lower houses, which favour the consolidation of two major party blocs. But I see the consequences for our system of government as largely positive and certainly not as questioning, or qualifying, the democratic character of our parliaments.



A Delicate Balance: the Accidental Genius of Australian Politics*

Stanley Bach

When it was suggested that I offer some reflections today on the Commonwealth Parliament as I have begun to learn about it, I was happy to agree. As my time in Canberra begins to approach an end, today's program gives me an opportunity and incentive to sort through some of my impressions and to step back from the trees to look at the forest. Inescapably, my interpretations and evaluations of the Australian political system are reflected through the prism of my experiences in Washington, especially as those experiences have shaped my understandings of how political institutions work and what motivates politicians. Let us stipulate that.

I shall begin by foreshadowing my general conclusion. In much of what I have read about Australian government and politics, the Senate is depicted, either explicitly or implicitly, as a problem. Sometimes the Senate is portrayed as a conceptual problem—as an institution that does not quite fit into Australia's intended constitutional design. Often it is presented as posing a continuing practical problem for the government of the day, especially when the Senate interferes with the government's ability to fulfil its self-proclaimed electoral mandate by enacting its legislative program. My perspective is a contrary one. For me, the Senate is not the problem, it is the solution—or, perhaps I should say, the Senate is the potential solution for a problem that already is serious, but could become much more serious. Now let me try to explain what I mean.

* The basis for this paper was a lecture presented in the Department of the Senate Occasional Lecture Series at Parliament House on 28 February 2003. The lecture has been revised and expanded for publication in *Papers on Parliament*.

For more than 30 years, I earned my salary by worrying about the United States Congress, which was, I assure you, a full-time job. And for more than 20 years, my office in Washington was in the James Madison building. Madison, as many of you may know, often has been proclaimed as the ‘father’ of the United States Constitution. He also was one of the authors of *The Federalist Papers* which, to my mind, remain the most compelling example of practical political theory since Machiavelli, and unquestionably a compelling piece of political advocacy, which was their essential purpose.

In the 51st of those essays, Madison offered a rationale for the US Constitution and, in the process, revealed a posture toward power and the powerful that continues to resonate in American political thought. It is an attitude that many Americans continue to share, even if they would not phrase it so felicitously. Here is how Madison begins his defence of the separation of powers as we know it in America:

But what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

Those ‘auxiliary precautions’ take the form of a set of checks and balances imbedded in a system of separation of powers. I fear that phrase, the separation of powers, is being claimed, and distorted, by defenders of such different constitutional systems that it is in danger of losing any real meaning. So let me make clear that I use it in the sense that was explicated in a classic of American political science, *Presidential Power* by Richard Neustadt,¹ which was published at just about the time John Kennedy was elected President. Neustadt’s book probably is best known today for two insights. One is his understanding of presidential power, which was roughly this: that the power of the President is the power to persuade others that what he wants them to do is what they should want to do in their own interests—in other words, that the most persuasive way for anyone, not just the President, to elicit the support of others is to shape their own sense of their own self-interest. You will notice that this conception is entirely compatible with Madison’s doubts about the essentially altruistic nature of humanity.

More to the point is Neustadt’s other insight, which is that the American political system is *not* one in which each of the different authorities of government is neatly and clearly assigned to one of the different institutions of government: the legislative power to the Congress, the executive power to the President, and the adjudicative power to the courts. Instead, as Neustadt explained, the American regime is characterised by a separation of institutions that share the authority of government. The core of legislative authority is assigned to the Congress, but it is shared with the President, primarily through his enormously potent veto power. The core of executive authority is assigned to the President, but it is shared with the Congress that must approve the organisation, procedures, and most senior personnel of the executive departments, just as executive

¹ New York, John Wiley & Sons, 1960.

authority also is shared with the courts that have the authority to invalidate executive actions that are inconsistent with the law or the supreme law of the land, the Constitution. And adjudicative authority is centred in the courts, but it also is shared with the President who chooses all federal judges, and with the Congress which must approve those choices and which, through legislation that is subject to the President's veto, controls the organisation, resources, and budgets of the courts, even the Supreme Court. It is in this complex sharing of government authority that are to be found the checks and balances that provide many of the 'auxiliary precautions' to which Madison referred.²

But Madison then extends his argument in a way that, from today's perspective, is striking for both its lack of prescience and its lack of application to the Commonwealth Parliament today. First he explains that the protection of individual rights ultimately lies in the competition for power that the Constitution creates between institutions that share the legislative, executive, or judicial authority. Those who serve in any one of these institutions have an incentive to preserve its institutional power not for reasons of abstract principle, but in order to protect their own influence—so that 'the private interest of every individual may be a sentinel over the public rights.' Then he continues:

But it is not possible to give to each department an equal power of self-defence. In republican government, the legislative authority necessarily predominates. The remedy for this inconveniency [legislative dominance, that is] is to divide the legislature into different branches; and to render them, by different modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will admit.

Here, then, is a theoretical rationale for the Senate of the United States, and, if you choose, for the Commonwealth Senate as well: to protect against the uncontrolled exercise of power by a naturally predominant legislature. And here also is a world-class example of one of a skilled politician's most valuable traits—the ability to transform a necessity into a virtue, to discover a principled reason for doing what self-interest and necessity dictate. We will never know if Madison would have found such compelling

² The concept of checks and balances is distinguishable from beliefs about the appropriate range and scale of governmental activity. Some authors of the Constitution certainly preferred the most limited government, and especially the most limited central government, that was practical. However, I believe that Geoffrey Sawer was partly mistaken in asserting that ' "checks and balances" is an eighteenth-century American notion based on a suspicion of all government, and a desire to ensure that governments performed the minimum of functions.' (*Federation Under Strain; Australia 1972-1975*. Melbourne, Melbourne University Press, 1977, p. 139, emphasis added) The challenge to modern democratic life, as Sawer recognised, is posed by the widespread belief that twenty-first century governments need to be much more powerful, and have a far broader reach, than eighteenth century governments. This does not mean, however, that the notion of 'checks and balances' has become outmoded. To the contrary, they are more essential than ever before. Sawer (p. 140) argued that a modern democratic government 'committed to economic management and a multitude of other welfare services ... is not possible if the initiatives of a government based on a House of Representatives majority are to be constantly "checked" by a hostile majority in the Senate, as the American Founders expected their two Houses of Congress and President, elected separately and at different intervals, to "check" each other so that laws would be few and administrative activity negligible.' (emphasis again added) It is true that checks and balances sometimes can slow the wheels of government and certainly can require governments to make compromises that are distasteful to them. It also is true that the reach of the Australian central government may be greater than that of the American. Still, I doubt that any observer of American society would contend that the checks and balances built into the US Constitution prevented an extraordinary expansion of federal powers and activities during the twentieth century.

virtues in bicameralism if he were not selling to the state ratification conventions the ‘Grand Compromise’ that made agreement on the US Constitution possible.

This Madisonian fear of power and suspicion of the powerful—the idea that Lord Acton may have been on to something when he posited that power tends to corrupt, though not necessarily in terms of dollars and cents—seem to me to be eminently sensible. They justify a system of government that can entail costs of government delays, sometimes inaction, and even occasionally deadlock. These costs can be high but, considering the alternative, they are well worth paying. The same emphasis on the risks created by government power also highlights the dangers of what, during our current era of post-Soviet democratization, sometimes has been called plebiscitary democracy: a system in which a government is chosen through reasonably free and fair elections, but then is able to govern without effective constraints until the next election.

This is why talk of presidential emergency powers that are justified as being inherent in the Constitution, and not grounded in statutory grants of power, tends to make many Americans nervous. And it is why I doubt that Americans ever would be very comfortable with the concept of ‘reserve powers’. Furthermore, ‘conventions’ are not a staple of American political discourse, unless we are referring to the quadrennial presidential nominating extravaganzas. The American political system, as well as its legal system, places great weight on there being knowable rules of law to govern and thereby constrain the authority of power-holders, even democratically-elected power-holders. So speak not to me of reserve powers unless you can tell me what they are. And speak not to me of unwritten conventions that stand on equal footing with the black letter of the constitution. A constitution that fails even to acknowledge some of the core institutions and relationships of government would be a source of dismay and concern, not a source of pride.

I recently read an essay about the ‘troubles’ of 1975 in which two distinguished Australian academics denigrated their Constitution as a mere ‘selection of legal rules’.³ They contended that there was no ‘qualitative distinction between written and unwritten constitutions’, and argued that to give precedence to the Constitution when it conflicted with unwritten convention would be ‘to deny a democratic foundation to Australian politics.’⁴ It is difficult to conceive of such a statement being made in the United States by analysts of comparable repute. To give the greatest weight to a convention, defined as ‘a rule of behaviour accepted by those involved in public life’ and a ‘tradition of past conduct which experience has shown to work,’ as the authors were prepared to do, strikes me as being breathtaking in its complacency.

The notion that ‘we really can’t define our conventions of parliamentary governance well enough to commit them to paper, but never mind, we all can recognise a convention when we see one, and we all know what they are’ presumes and depends on a degree of political consensus that is truly enviable. There may have been just such a consensus in the Australia of 1900, and maybe it remains today. In multicultural Australia of the twenty-first century, however, it may require an extraordinary effort, and quite possibly a futile

³ Jeffrey Archer and Graham Maddox, ‘The 1975 Constitutional Crisis in Australia,’ *Journal of Commonwealth and Comparative Politics*, vol. 14, 1976, pp. 141–157.

⁴ In similar fashion, a New Zealand government publication even listed, as the first of the major elements of the Westminster model, that ‘important parts of the constitution remain unwritten.’ New Zealand Electoral Commission. (1996) *Voting Under MM*, GP Publications.

effort, to maintain that consensus—a universally shared understanding of what the essential customs and practices of political life are and a universally shared agreement to accept as them as binding.

Millions of people, especially in post-Communist nations, are struggling to create for their own benefit and protection what they often call ‘rule-of-law societies’. So it is both ironic and paradoxical that Australia has flourished for more than a century, with only one truly painful hiccup in 1975, under a political regime governed by rules that have not been codified and, for that reason, perhaps cannot be enforced. If Australia ever decides to become a republic, that will require that the Constitution be amended. I understand that opening a constitution to amendment is the political equivalent of opening Pandora’s Box and that there is a wise and natural reluctance to make amendments that are not absolutely necessary. The litany of constitutional amendments defeated in Australian referenda demonstrates what seems to be an instinctive constitutional conservatism on the part of the Australian people, or a profound cynicism about the motives of Australian politicians.⁵

I am unpersuaded by the argument that the conventions (and reserve powers, for that matter) that are thought to be so central to responsible government are simply too complex, subtle, and nuanced to be codified. Ward reports that other parliamentary democracies have succeeded in doing so quite well, especially if the task is limited to incorporating into the Constitution those now-unwritten rules that are truly essential.⁶ So if I may be permitted this recommendation, I think it would be more in keeping with what I have come to know and admire about Australians if the Commonwealth Constitution were amended so that, in more respects, it means what it says and says what it means.

Perhaps there is an underlying difference in the American and Australian political cultures as well as in our respective approaches to constitutional law. Perhaps Australians have a more positive view of government and a more optimistic view of human nature, so that there is less concern here than in Washington with the question of ‘who guards the guardians.’ Ian McAllister of the Australian National University wrote several years ago that, in Australia, ‘the state exists primarily in order to resolve problems and disputes, not to preserve individual liberty,’ and he quoted W.K. Hancock in 1930 to the effect that ‘Australians have come to look upon the state as a vast public utility, whose duty it is to

⁵ It also demonstrates the difficulty of the requirements for amending the Constitution.

⁶ Alan J. Ward in ‘Trapped in a constitution: the Australian Republic debate’, *Australian Journal of Political Science*, vol. 35, no. 1, 2000, p. 21, argues that some of the Australian attempts to codify conventions foundered because too many practices of government were included on the lists of conventions to be codified. He reports, for example, that one such effort included among the conventions to be codified the practices that ‘the Governor-General [is] to appoint a Prime Minister he judges to have the support of a majority in the lower house,’ and that he is ‘to consult the outgoing Prime Minister about a successor.’ Surely such common-sense practices do not require or deserve constitutional standing. All that matters ultimately is whether a new Prime Minister and government enjoy the confidence of a majority in the House of Representatives. The process of forming that new government is expedited and simplified, of course, if the Governor-General has the good sense to consult with those who best understand the mind of the House and then selects the obvious candidate, but it hardly is necessary to transform such obvious practices into constitutional requirements. If the Governor-General should fail, for whatever reason, to appoint the House’s choice for a new Prime Minister, a majority in the House would have little difficulty in securing the House’s consideration and adoption of a resolution expressing its will to the Governor-General. That is just what the House did in the first hours after Whitlam’s dismissal in 1975 when the House voted to express its lack of confidence in the caretaker Fraser Government and called upon the Governor-General to ask Whitlam to form a new government.

provide the greatest happiness for the greatest number.’⁷ This view is consistent with the first point that Lord Bryce thought to make almost a century earlier when comparing the new Commonwealth Constitution with its American counterpart:

When that instrument [the U.S. Constitution] was enacted, the keenest suspicion and jealousy was felt of the action of the government to be established under it. It was feared that Congress might become an illiberal oligarchy and the President a new George the Third. Accordingly great pains were taken to debar Congress from doing anything which could infringe the primordial human rights of the citizen The English, however, have completely forgotten these old suspicions, which, when they did exist, attached to the Crown and not to the Legislature. So when Englishmen in Canada or Australia enact new Constitutions, they take no heed of such matters, and make their legislature as like the omnipotent Parliament of Britain as they can ... Parliament was for so long a time the protector of Englishmen against an arbitrary Executive that they did not form the habit of taking precautions against the abuse of the powers of the Legislature; and their struggles for a fuller freedom took the form of making Parliament a more truly popular and representative body, not that of restricting its authority.⁸

This benign attitude persisted. La Nauze recounted that Sir Owen Dixon, one of Australia’s pre-eminent jurists and Chief Justice of the High Court during 1952–1964, once was asked to explain to an American audience why Australia’s Constitution lacked the protections of individual rights offered by the Bill of Rights and the Fourteenth Amendment. Dixon responded:

Why, asked the Australian democrats [and authors of the Constitution], should doubt be thrown on the wisdom and safety of entrusting to the chosen representatives of the people sitting either in the Federal Parliament or in the State Parliaments all legislative power, substantially without fetter or restrictions?⁹

The same attitude was reflected years later in Menzies’ statement, made after leaving office, that ‘the rights of individuals in Australia are as adequately protected as they are in any other country in the world’ because of ‘our inheritance of British institutions and the principles of Common Law.’ Menzies was quoted to this effect by Brian Galligan so it is worth taking account of Galligan’s rejoinder:

Menzies’ defence of the Australian system was seriously flawed in a number of respects. The independence of parliament, particularly the House of Representatives, had been undermined by disciplined political parties so that the prime minister and his senior ministers controlled the house and not vice versa. Whether a minister resigned depended on retaining the prime

⁷ Ian McAllister, ‘Political culture and national identity’ in Brian Galligan et al (eds), *New developments in Australian politics*, Melbourne, Macmillan Education Australia, 1997, p. 9.

⁸ James Bryce, *Constitutions*. London, Oxford University Press, 1905, pp. 298–299.

⁹ J.A. La Nauze, *The Making of the Australian Constitution*, Melbourne, Melbourne University Press, 1972, p. 227.

minister's and not parliament's confidence, provided the prime minister retained control of his ruling party. The growth of 'big government' served by large bureaucracies meant that government had become more pervasive with many policy decisions being taken in the executive branch outside parliamentary scrutiny. In other words, parliament was no longer a sufficient check on prime ministerial and ministerial conduct nor an adequate means of protecting rights, despite Menzies' claims.¹⁰

The formation of the Commonwealth may have been guided by a sunnier attitude toward government and governors than is to be found in the writings of Madison or other theorists of American government (or in the views of Lord Acton, for that matter). In fact, if we are to take Menzies' boast as indicative, that sunnier attitude persisted for decades. I wonder, however, if that attitude is equally widespread today. I also wonder whether Americans have ever been quite so suspicious of government and Australians quite so trusting as Madison and Menzies would lead us to expect. I would guess that the average American, if she exists, has more sympathy with the view of government as problem-solver and utility-enhancer than a reading of Madison might have us predict, just as I suspect that many Australians are more sceptical and suspicious of how governmental powers are exercised, and for whose benefit, than the 'public utility' imagery would imply.

You might think I was being coy if, at this point, I asked rhetorically what all of this implies about the Commonwealth Constitution and the Australian polity. The implications I am about to draw should not be too difficult to predict. But since I already referred in passing to Lord Acton, let me allow my argument to be introduced by Lord Hailsham, who was Lord Chancellor of the United Kingdom when he became famous, or infamous, for describing the British political system as an 'elective dictatorship.' As Harry Evans,¹¹ among others, has pointed out, what he actually had in mind is not what often has been attributed to him. It is the doctrine of parliamentary sovereignty that gives rise to elective dictatorship.

The point is not that all other nations have what is called a written constitution in the literal sense. After all, much of our own is in writing and much more could be reduced to writing if we wished without making any appreciable change. No, the point is that the powers of our own Parliament are absolute and unlimited. In this we are almost alone. All other free nations impose limitations on their representative assemblies. We impose none on ours.¹²

Not incidentally, he understands parliamentary sovereignty to be a defining characteristic of the 'Westminster model' of democratic government. Referring to this doctrine of parliamentary sovereignty, he concludes that

¹⁰ Brian Galligan, 'The constitutional system' in Galligan et. al (eds), *New developments in Australian Politics*, Melbourne, Macmillan Education Australia, 1997, p. 27.

¹¹ In 'Australia and the "Westminster System."' *The Table*, vol. 50, 1982.

¹² Lord Hailsham, *Elective Dictatorship*, London, British Broadcasting Corporation, 1976.

There is nothing quite like it, even among nations to whom we have given independence. They believe of course that they have inherited the so-called Westminster model. In fact, the Westminster model is something which we have seldom or never exported, and, if we had tried to do so, I doubt whether any nation would have been prepared to accept it.

On this basis alone, we could dismiss contentions that the Commonwealth political system comports with this model, but we know that what most people have in mind when they speak of the 'Westminster model' is whatever they think 'responsible government' means.

What is important for our purposes here is what had come to worry the good Lord Chancellor because, after all, parliamentary sovereignty was not exactly a recent innovation. He later wrote that:

human nature being what it is, every human being and every human institution will tend to abuse its legitimate powers unless these are controlled by checks and balances, in which the holders of office are not merely encouraged but compelled to take account of interests and views which differ from their own It is the absence of balance and effective checks which has destroyed established regimes by bloody revolution, which has overthrown democracies which have proved ineffective or aggressive. It was this which corrupted political societies hitherto distinguished for their success.

And this from the Lord Chancellor of the United Kingdom, who reigned but did not rule over the British Senate (perhaps his name at birth was James Madison, Jr):

the sovereignty of Parliament has increasingly become, in practice, the sovereignty of the Commons, and the sovereignty of the Commons has increasingly become the sovereignty of the government, which, in addition to its influence in Parliament, controls the party whips, the party machine, and the civil service. This means that what has always been an elective dictatorship in theory, but one in which the component parts operated in practice to control one another, has become a machine in which one of those parts has come to exercise a predominant influence over the rest.

He elaborates:

Until fairly recently influence was fairly evenly balanced between government and Opposition, and between front and back benches. Today the centre of gravity has moved decisively towards the government side of the House, and on that side to the members of the government itself. The opposition is gradually being reduced to insignificance, and the government majority, where power resides, is itself becoming a tool in the hands of the Cabinet.¹³

¹³ Lord Hailsham, 'The role of an upper chamber in a modern parliamentary democracy', *The Parliamentarian*, October 1982.

In other words, the combined growth of government and party has produced an *elective* dictatorship (his phrase) that can be exercised by an *elected* dictatorship (my phrase). The potential for elective dictatorship has existed for as long as parliamentary sovereignty; it has been transformed into a more real threat to democratic governance by the emergence of strong political parties that, once elected, are not subject to effective checks and balances. And of course, Lord Hailsham was referring to Great Britain, where party discipline is not nearly as strict as it is in Australia.¹⁴

Principles are sometimes used to determine compromises. But this is rare. The whole point of a compromise is that two or more parties have principled reasons for their stances and modify them for no other reason than the desirability of an agreed conclusion. The (conflicting) principles are what provide the *need* for compromise rather than the compromise itself.¹⁵ (emphasis in original)

By this reasoning, the absence of a unifying theory of Australian government should not be shocking. What is more interesting, and perhaps more surprising, is the inference that Sharman identifies: that ‘Australian government is thus portrayed as an imperfect structure, a mongrel, defective and without coherent justification.’¹⁶ I have just acknowledged that I am among those who think the Commonwealth Constitution, in its marriage of federalism and responsibility, is conceptually incoherent. But even if the document might make Montesquieu wince, that does not necessarily mean that, for the practical purposes of democratic governance, it is imperfect or defective—‘a mongrel.’ Indeed, the refutation is inherent in the very terms of the claim. I put the matter to a professional veterinarian who later became a political scientist, and who confirmed my impression that ‘mongrels’ often are more vigorous and healthier than their pure-bred cousins. In fact, veterinarians recognise the concept of ‘hybrid vigour,’ especially in first generation hybrids. I rest my case for Australia.

That often denigrated system may be serving Australia better now, since the emergence of seemingly permanent non-government Senate majorities, than ever before, and certainly better than before the advent of proportional representation. Since Federation, we have seen democracies rise and fall in many parts of the world, and fail to take root at all in others. Now we are witnessing many nations confronting the discovery that democracy depends on both the words of their constitutions and the values of their leaders. Under these circumstances, the people of Australia should not under-value what they and their

¹⁴ See Evans, *op. cit.*

¹⁵ C.J.G. Sampford, ‘Reconciling responsible government and federalism’, in M.P. Ellinghaus et al. (eds), *The Emergence of Australian Law*, Sydney, Law Book company, 1989, p. 359.

¹⁶ Campbell Sharman, ‘Australia as a compound republic,’ *Politics*, vol. 25, no.1, 1990.

chosen leaders have built, even if their construction looks less like the Old Parliament House with its modest stateliness, and more like the new Federation Square in Melbourne with its unusual and confusing design.¹⁷

The House of Representatives remains the site of responsible government and the Senate is becoming more and more the site of accountable government. It is the Senate, with its non-government majority, that is the only potential source of adequate checks and balances. Responsibility and accountability both are to be valued, and they and the two houses of Parliament can co-exist, even though their coexistence may never be truly comfortable and without its tensions.

For me, the genius of the Australian political system lies in the way in which it can combine the virtues of parliamentary government with the means to control its vices—how it is capable of combining responsible government with accountable government. As I have said, it is possible for this combination of responsibility and accountability, centred in the House and Senate respectively, to emerge from an institutional structure that, at its heart, is theoretically contradictory. The Australian polity does not readily lend itself to labels and capsule characterizations—‘a parliamentary system,’ ‘the Westminster model,’ ‘the Washminster mutation’, and so on. I prefer my emblem for the Parliament: the platypus.¹⁸ It may be unusual, it may be implausible, it may be unique, but it works.

I refer to the accidental genius of the Australian political system because I do not believe that it really was intended to work this way. I doubt if the distinction I have drawn between responsibility and accountability would have resonated well at the constitutional conventions. Instead, I suspect that most of the Constitution’s authors would have argued that it is precisely by holding governments responsible that Parliament holds them accountable. I also have no difficulty accepting the judgements of scholars that the last thing on the mind of the Chifley Government in 1948 was almost to guarantee that future governments would not have ‘the numbers’ in the Senate. Finally, I doubt very much that most of those who inhabit any one of the three parts into which Parliament House is divided would fully accept my characterisation and appraisal.

This accidental genius also remains an uncertain genius because the Senate has yet to develop fully the capacities and, more important, the sense of itself that it will need if it is to provide the accountability that once was expected to accompany the relationship of formal responsibility between the lower house and the government. The Senate rightly prides itself on a more deliberative legislative process and a more energetic committee system than is to be found in the House of Representatives or, for that matter, in perhaps

¹⁷ I have been told that many Australians admire the US Constitution more than they appreciate their own, and that they may be better able to identify the drafters who met in Philadelphia than those who divided their time among Adelaide, Melbourne, and Sydney. It is undoubtedly true that, for many Americans, their Constitution has been elevated to the status of a sacred though secular text, but one that very few have read since their early school days. In the midst of the 1975 crisis, Gareth Evans wrote in *The Australian* (29 October 1975: 11) that ‘The Australian Constitution is not a blood-stirring document. Unlike its United States counterpart, it has never been much recited in schoolrooms or bar-rooms.’ I suppose he was mistaking the Constitution for the Declaration of Independence (the preamble of which I did have to recite as a schoolboy decades ago), but even in that case, I would be truly amazed—and equally disappointed—to learn that such bar-rooms actually exist.

¹⁸ For an elaboration on my comparison of the Australian parliamentary system to a platypus, see my book *Platypus and Parliament: the Australian Senate in Theory and Practice*, Canberra, Department of the Senate, 2003.

any other upper chamber that is part of what otherwise is a parliamentary regime. But my argument suggests that the Senate should begin asking not whether its glass is half-full, but whether it remains half-empty, and whether it has further to go before it is willing and able to enforce the degree of accountability that my conception of democratic governance requires.

My goal is not to transform the Australian Senate into the United States Senate, nor to move the Commonwealth toward a US-style presidential/congressional system. On the contrary, my interest is in strengthening the capacity of the Parliament so that it is better able to fulfil its part of the bargain of parliamentary government. Ward has written that ‘the potential for conflict between a government responsible to the lower house and a powerful, federal upper house ... has been ... resolved in favour of the government. The threat to responsible government by an American-style Senate has not materialised.’¹⁹ I disagree on all counts. First, I disagree that the ‘potential for conflict’ has been ‘resolved’—or at least I hope that the Senate will prove him wrong in the years to come. Second, I disagree that conflict between the Senate and the House (and government) is a ‘threat to responsible government.’ To the contrary, as I have argued, an assertive Senate is necessary to prevent ‘responsible government’ from remaining or becoming little more than an empty formalism. And third, I disagree with his implication that the alternatives are an ineffectual Senate and an ‘American-style Senate.’ There is a middle ground, but finding and maintaining it may prove to be the greatest challenge of all.

I have entitled this lecture ‘a delicate balance’. By this I mean three things. First, I mean that the Australian political system is an unusual and probably unique combination of elements that do not fit together comfortably. So the balance among those elements is not necessarily a sturdy one. Second, I mean that those elements can combine to create a functioning political system that avoids some of the deficiencies of more ‘pure’ versions of both parliamentary and presidential regimes by balancing elements of one against elements of the other. But third, making the system work to its potential requires a degree of self-restraint and a tolerance for institutional complications and political inconveniences that do not come naturally and easily to impatient politicians whose instinctive interests are in maximizing their power and in subordinating concerns with government institutions and procedures to their desire to get things done—now.

Although I have come to admire the Australian regime, I doubt that I would recommend it to anyone else, precisely because of the delicate balance that it entails. Australians have made it work in Australia, however, and I now join in the benign arrogance of the Constitution’s authors by believing that Australians can make it work still better in the future. But that is most likely to happen if there is a clear understanding—so long as it is my understanding, of course—of what constitutes the problem and what constitutes the potential solution.

A long postscript: some modest and immodest proposals

I came to Canberra to learn more about parliamentary government, and I have. As an American, though, it was only natural that I also paid attention to the aspects of Australia’s political system that most resemble my own, and I was not inclined to dismiss them lightly as awkward encumbrances that interfere with the smooth sailing of the parliamentary ship of state. I promised myself that I would judge the Parliament on its

¹⁹ Ward, *op. cit.*, p. 119.

own terms, not by comparison with the Congress, which it is not and has no desire to be. Yet once I came to understand that the Senate can provide for the kinds of checks and balances that I value between the Parliament and the government, I began to think about how to make things better. We Americans do love to tinker.

The Senate has been described as the second-most powerful upper chamber in the world, and so far as I know, that is a fair assessment. The Senate's advocates are proud of their institution, as they should be, especially because their natural standards of comparison are other political systems that fall on the parliamentary side of the great democratic divide between Westminster and Washington. By this standard, the Senate's glass is half-full. Although there still may be textbooks that treat the Senate as an after-thought, any government that lacks the numbers and any public servant who appears at estimates hearings must give the Senate the attention, if not the respect, it deserves. It is said that when Prime Minister Whitlam returned from having been dismissed, he gathered his parliamentary advisors around him but, in a sin of commission or omission, failed to include the Labor Party's leaders in the Senate. I doubt that any prime minister would make such a mistake today.

If the House of Representatives is best thought of as the House of Responsibility and the Senate as the House of Accountability, then I think it also fair to say that the House is better designed and equipped to fulfil its function than is the Senate. This is not surprising because the constitutional position and functions of the Senate remain open to debate, its role continues to evolve, and I suspect that there remains some ambivalence even on the part of some of those who on the Senate side of Parliament House about how and when it is appropriate for the Senate to 'interfere' with the government's right to govern. Still, if we ask not how the Senate compares with other upper houses in the Westminster world, but whether it is as fully prepared and equipped as it might be as the House of Accountability, then I would have to say that the Senate's glass is half-empty.

So I found myself wondering how to fill that glass closer to the brim. But the more thought I gave to that problem, the more I came to appreciate the difficulties with the solutions that came to mind. This is a problem I've encountered before. The longer I had been in and around the Congress, the more I came to revel in the complexities of the status quo, and the more I saw all the reasons why proposed reforms, however well-intended, would not work because they failed to take account of all the nuances and all the complications that only the insider sophisticate—like me!—could truly appreciate.

I certainly do not consider myself a parliamentary insider or sophisticate, but I am becoming more sensitive to some of the difficulties of change. For example, I would be tempted to increase the size of the House. One effect would be to increase the number of government backbenchers who have no immediate prospects for ministerial office and who, therefore, might look for fulfilment and advancement to their work in the House itself. Another effect, thanks to the constitutional nexus, would be to increase the number of Senators available for service on committees. But how confidently could we predict the effect of such a change on the representation of minor parties in the Senate? Could we do better than the Labor Government did in 1948? Is it enough to say that there would be a smaller quota? Where would we find office space and seating in the chambers for

additional members? If committees became more active, as I would like them to be, would additional committee rooms be needed and, if so, where could they be built? Would more active committees become more partisan and, therefore, less willing to rely entirely on the professional assistance now provided by the central Committee Office? And so on.

The reforms of today have a very bad habit of becoming the problems of tomorrow. So I think we need to approach proposals for parliamentary reform with care and caution, making the best efforts we can to anticipate and evaluate their ripple effects. Today I will share with you only four proposals.

First, though I find the tenor of Question Time to be distasteful, I recognise its value as a forum, however flawed, for accountability. If Question Time is to be an opportunity for the Opposition to challenge the government's policies and actions, and to test its ministers' knowledge, skills, and footwork, then let it be so. I suggest transporting Dorothy Dix to someplace from which she will not return. I do not believe that her presence in the House or Senate serves any useful purpose, especially since the government has other ample opportunities to make statements in explanation or defence of its policies.

Second, I commend to you the strict rules of the American Congress that no Member in debate shall question the integrity, the honesty, or the motives of another Member. Better yet, I commend to both the Senate and the House of Representatives the benefits that would flow from enforcing the rules to this effect that they already have. If a Member or Senator has evidence that a colleague has acted illegally, unethically, or in a manner that brings discredit to the House or Senate, let that evidence be submitted in writing to a bipartisan committee for study and report. Otherwise, let no elected denizens of Parliament House ever again complain about the low public standing of politicians in Australia. Instead, let them recall the words of that great American cartoon philosopher, Pogo, who said that 'We have met the enemy, and he is us.'

Third, I suggest transferring the authority to oversee the activities of government departments from the Senate's legislation committees to their sister reference committees. The Senate has pairs of committees on various realms of government activity; legislation committees have government chairs whilst reference committees have non-government chairs. I can appreciate why any government would be reluctant to put into the hands of a non-government Senator the casting vote on a committee that can be charged with reviewing government bills. I also can appreciate why any government would want to restrict the authority of reference committees that have non-government chairs and casting votes.

My goal, however, is not to ensure that the government is comfortable. The goal I have in mind is to increase the capacity and the activity of the Senate as the House of Accountability, even if that discomfits the government. In Washington, we have found that committees, when their chairmen and the President are of the same party, have a limited appetite at best for engaging in searching oversight into the effectiveness of government programs and the efficiency of government departments. I can only expect that to be even more true in Canberra. Committees are the best parliamentary forum for oversight that is intensive, thorough, and recurring, and certainly so in comparison with the hit-and-run collisions that occur in the chamber, especially during Question Time. If

the Senate's non-government majority wants more, and more effective, scrutiny of policy and the administration of laws, let it put the management of its oversight committees in the hands of those with the political incentives to develop their capacities.

Let me mention also that more effective oversight by Senate committees will be difficult to achieve unless the Senate reconsiders the convention that Members of the House are not obliged to respond to calls to appear before Senate committees to testify in their capacity as Ministers. A Member who is a minister has two identities. I can understand why it is thought to be inappropriate for a committee of one house to inquire into the activities of a member of the other house, in her capacity as a member of the other house. I do not understand, however, why a Member should be allowed to avoid being held accountable before a Senate committee for his activities as a minister by hiding behind his seat in the House of Representatives.

Fourth, and finally, I suggest abolishing the Selection of Bills Committee in the Senate. It is this committee that proposes to the Senate which bills should be referred to committees for study and which should not, and when committees must report on the bills that are referred to them. The existence of this committee creates two presumptions: first, that a bill is not to be referred to committee unless the Selection of Bills Committee and the Senate decide otherwise; and second, that the Selection of Bills Committee and the Senate are best able to judge how long a committee needs to complete a competent inquiry.

I would suggest reversing both presumptions. Let each bill be referred for study to the standing committee that examines every other bill on the same subject and, in the process, develops specialised expertise from which the rest of the Senate can benefit. For bills that truly are non-controversial, this requirement always can be waived by leave. Moreover, if the government thinks individual bills are too urgent to allow the luxury of a committee review, let it move in the chamber to discharge the committee from further consideration of that bill, and let the government defend its desire to exempt the bill from the regular procedure of committee evaluation. If the government thinks that a committee is not completing its work on a bill quickly enough, let it go to the Chamber and impose a reporting deadline on the committee, but do it by motion. I also would suggest that the Senate experiment with giving legislation committees the explicit authority and direction to propose specific amendments to any bill referred to it, with those amendments to receive priority attention (and perhaps protection from the operation of the guillotine) when bills are subject to amendment in Committee of the Whole.

Accountability is not something that occurs only after the fact. The government needs to be held accountable not only for what it has done, but also for what it intends to do. Strengthening the capacity of the Senate to review government legislation and recommend improvements in it is, to my mind, an essential component of effective parliamentary accountability.

I recognise that my last two proposals could have unanticipated consequences, though the best way to minimize adverse consequences is to try as best we can to anticipate them before they arise. For example, if we want committees to be more active, we need to ask if there are enough Senators to do the work, which is one reason I would consider increasing the size of the House and, therefore, the Senate. If references committees become scrutiny committees, can we somehow ensure that the Opposition does not use them simply to take pot-shots at the government and devote all their time to public

inquisitions into unsubstantiated allegations of ministerial malfeasance? Who would draft any amendments to a bill that a legislation committee wants to propose? And can the Senate's sitting schedule be adjusted to set aside more hours or days for a larger number of committee meetings?

There are probably many other questions that also require answers, but my final suggestion is that questions such as these not be used as reasons for concluding that useful changes are so impractical as to be practically impossible.

Having proposed some relatively modest reform proposals, let me offer some thoughts on a much more contentious issue: whether Australia should become a republic and, if so, what form that republic should take.

First, I tend to agree with those who believe that Australia derives no particular benefit from retaining that vestigial umbilical cord that the monarchy provides. One of my first vivid memories is watching the Queen's coronation on television. I have a certain admiration and affection for her. But if I were an Australian, I would be a republican.

Second, I instinctively prefer allowing the people to choose those who represent them; but in this case, I would prefer to have the President of Australia, if there is to be one, elected by the Parliament. I am uncomfortable with the prospect of creating a potentially competing centre of democratic legitimacy. I have seen no evidence that there is much sentiment in Australia for trading in the current political system for one that more closely resembles the French mixed system or any similar systems in which there is both a President and a Prime Minister, both directly elected and both of whom can legitimately claim to be the freely-elected choice of the people. To avoid this possibility, I would opt to have the President elected by the Parliament, perhaps by a two-thirds vote in a joint sitting of the House and Senate to ensure that the government selects someone who is not perceived in a partisan light. I would even entertain the notion of disqualifying anyone who has held elective office during the preceding five years to ensure that no prime minister is 'kicked upstairs' to the presidency.

Third, I offer the possibility of an incremental transition that would allow Australians to become comfortable with the new arrangement and assuage the unhappiness of those who oppose it, as well as allowing this transition to take place before a constitutional referendum is scheduled. Let the Parliament enact a law, tomorrow or whenever, that establishes the office of the President and let that law assign to the President ceremonial and representational responsibilities only. So long as the statutory powers of the President do not conflict with the constitutional authority of the Governor-General, I see no constitutional impediment to such a law.

I would then anticipate that the President would become increasingly visible in the public eye, playing whatever public role the Governor-General now plays, and probably a more active one than that. And I also would anticipate that the Governor-General soon would fade into obscurity, with his role reduced to satisfying the necessary constitutional formalities. Assuming that a wise government makes a popular selection for Australia's first President, I suggest that the government arrange for the President also to be named the Governor-General when the latter office next needs to be filled. The same person will wear two hats, but the British bowler will largely disappear from view, and the primary reminder of the formal constitutional connection will be the coins in Australians' pockets.

If this transition is complete before the Queen leaves the throne, that would be an appropriate time to make the formal constitutional change which, I suspect, at that point would occur without trauma. Meanwhile, this transitional period should allow Australia's best minds to concentrate on resolving all the related issues such as the meaning and future of reserve powers and whether the Constitution should continue to assign powers in ways so very much at odds with how Australia works and what the Australian people surely would accept. I have in mind, for example, the Governor-General's absolute veto over legislation, his role as Commander-in-Chief, and his ability to force the resignation of any government by refusing to recommend appropriations necessary for the continuing operations of the Public Service.

Finally, having said all this, let me suggest that we really are considering two separate questions: first, whether Australia should be a republic; and second, who should serve as its head of state. Let me redefine the latter question by asking whether it is either desirable or necessary for Australia to have a head of state who is not also the head of government. Perhaps it is not surprising that Gough Whitlam wrote in his memoir of 1975 that 'Experience has shown that a Head of State who is anything more than an ornament is a menace.'²⁰ Although Whitlam obviously was not the most detached commentator on this matter, his contention still merits consideration.

There are three primary benefits to having a separate head of state.

First, the head of state performs various time-consuming ceremonial functions and so allows the head of government to concentrate on the job of governing. If there were no Governor-General, or if there were to be no President, it would be the Prime Minister or other government ministers who would be under pressure to attend all the various civic functions and international events that require recognition in the form of the presence of a senior representative of the nation. Yet when there is a memorial service for those who died on Bali, it was thought right that the Prime Minister himself attend, and I agree. And when there is political mileage to be gained by attending an event such as one, for example, to demonstrate support for Australia's embattled farmers or those who fought the bushfires that recently savaged Canberra, the PM does not send the head of state in his place or in place of another senior minister. So we could expect that the presence of a head of state would continue to make life somewhat easier for the Prime Minister and his Cabinet; and that may be a good reason for having a head of state, but it hardly is a sufficient one.

Second, the head of state can stand as a symbol of the nation, a figure of special legitimacy who transcends the cut and thrust of the political arena. The best example, of course, is the Queen. But an Australian President would not necessarily enjoy the same respect and deference. Imagine if the President were to be elected by the Parliament with no direct public participation in the choice—which, as I have said, would be my preference. Would the person selected automatically rise in the public's estimation to become someone accepted as the spokesperson for the nation, much less an embodiment

²⁰ *The Truth of the Matter*, Ringwood, Vic., Penguin, 1979, p. 184.

of all that is best about the Australian people? That would depend very much on the personal characteristics of the person chosen; his elevation to the status of national symbol, alongside the emu and the kangaroo, certainly would not be an inevitable consequence of having been chosen by Australia's most respected class, its politicians. On the other hand, imagine that the President is elected. If it is to be a meaningful election, then there must be a choice. And if it is a meaningful choice, we can expect that at least 40 percent or more of Australians will have voted for someone else. Do we expect those Australians to accept the President as speaking for and representing them, as symbolising their nation, even though they voted against him or her?

The best way to maximise the likelihood that a President will gain wide acceptance as national spokesperson is to select someone who does not come from the world of politics. A poet, perhaps. A scientist, a community leader, or—dare I even suggest it?—a sports figure. How about the prospect of President Steve Waugh? But that brings us to the third, and perhaps the most important, supposed benefit of having a head of state—having someone to act as defender of the Constitution in exceptional cases of emergency by exercising the reserve powers, on the scope or very existence of which Australia's best and brightest so far have been unable to agree.

Here is the dilemma. Although most Australians, and most Americans for that matter, might not believe it, governance is not for amateurs. The effective exercise of political power requires a knowledge of public affairs, an instinct for understanding people and their motives and intentions, an understanding of law and history, an appreciation of the importance and nuances of public rhetoric, and, among other aptitudes, the wisdom to know when to do nothing. And so, shocking as it may seem, the people best equipped to exercise those mystical reserve powers are people who have been in the political arena. It would be rash to assume that the qualities and experiences that have made someone a great poet, scientist, or striker of googlies past deep square legs will have prepared that person to exercise great power at times of national crisis. Quite the opposite, in fact. He or she is likely to make a mess of it, despite the best of intentions.

Ah, but we say, our President will have his or her advisors to offer the benefit of their knowledge, their experience, their understanding of the complex world of governance. But who are these advisors to be? Public servants or parliamentarians, or alumni of either corps, or perhaps scholars who themselves lack any direct experience of their own? What other alternatives are there? If the President is chosen from outside the world of public affairs in order to find someone widely acceptable to the nation, is it not very likely that decisions of great national moment will be made by someone who is sadly bereft of political nous, or that they will be made, in fact but not in name, by people at his or her side whom no one elected to stand there?

Taking all this into account, I suggest that Australians think some more about the concept of responsibility—not only the responsibility of the government to the Parliament, but the responsibility of government ministers and especially the Prime Minister to the nation. The ceremonial and symbolic roles of the head of state can be performed perfectly well by the head of government. I offer you Franklin Roosevelt, John Kennedy, Ronald Reagan, and even George W. Bush, as examples. You may not respect all of them; I have not respected all of them; but what matters is that most Americans respected each of them. And in this era of televised politics, a prime minister who cannot speak as

effectively to the nation as he can speak across the dispatch boxes is unlikely to succeed at the job.

That leaves us with the issue of reserve powers—in other words, whether Australia requires a *deus ex machina* to descend from above the political stage and intervene in cases of direst emergency to resolve crises that mere mortals have created for themselves and the nation. I am inclined to answer in the negative. Perhaps I have more confidence in the good sense of politicians than most have, or maybe I have more confidence in the ability of politicians to understand what is ultimately in their own best interests. I believe that if elected politicians create a mess for themselves, as they did in 1975, they are perfectly capable of finding their way out of it, and they will do so as they continuously reassess and recalculate how they can emerge from that mess in a way that leaves them with the fewest possible stains and that maximizes their public support.

Finally, as for the need for a President or Governor-General to intervene when the government is alleged to have acted illegally or unconstitutionally, let the matter be resolved instead by the jurists on the High Court, who are almost certain to have the benefit of better training and more experience for the task. I for one would rather leave the supremacy of the rule of law to those trained for the task than put it in the hands of a President appointed or elected for entirely different reasons, even if he is a paragon of virtue and honour such as Steve Waugh.



Question — You seem to admire the introduction of proportional representation in the Senate, and you seem to think that the House of Representatives is not working quite the way it was intended to, regarding responsibility and accountability. What would you think if we introduced proportional representation into the House of Representatives elections, on, say, the lines of Tasmania or the ACT or the Senate?

Stan Bach — That's a very good question, though it is one I have a little difficulty answering, because I haven't, as an American, had personal experience of being governed under a system of proportional representation. In fact there are Americans who would consider that entirely un-American.

Some years ago President Clinton selected a law professor named Lani Guinier to occupy a position in the Justice Department. One of the reasons her nomination was eventually withdrawn was because she had had the temerity to write an article in a law review proposing proportional representation for some purposes in local elections. And I *think* it's true that President Clinton said in some context, 'Well, but that's un-American'. Now he didn't mean it in the sense of the House Un-American Activities Committee, he meant it in the sense that that's not the way we do things. So I've never had the personal experience.

It's a complicated question, though. If you try to evaluate proportional representation, it depends very much on the type of party system in which it is embedded, and the party

system that flows from it. Do you have a threshold on the number of votes that a party must receive before it qualifies for representation in an assembly? Israel has a perfect system of proportional representation: one national constituency, a minimum 1 or 2 or 3 per cent threshold (something like that), and they have a myriad of tiny parties which hamstring the formation of coalition governments. And we've seen that happen within the last few weeks, following the last Israeli election.

Someone recently said, talking about Australia, that there are probably advantages to proportional representation, just as there are advantages to single member district systems, and what may be most advantageous is not choosing one or the other, but having the two houses using different systems creating different majorities.

Question — I arrived in Canberra in January 1954 to begin a four year course at Duntroon which is comparable to West Point. You mentioned the Fulbright Fellowship and research, which triggered in my mind that both of us had been a little associated with a proposal that could be said to be slightly comparable to the American White House Fellowship Program. While you may be reluctant to comment on the work of an Australian fellowship program, which might be said to be based in part on the White House Fellowship Program, I am interested in that because when I went to America I spoke with the Executive Director there in the course of some research as a Churchill Fellow in 1973. It was interesting to hear her say to me that Mr Blair had been briefed by her on the merits of the White House Fellowship system and she had also briefed the President of Finland. She hadn't yet been asked to brief the Prime Minister of Australia.

Stan Bach — As someone who has spent his professional career in Washington on the Congressional side of that great divide of our separation of powers, I know of the White House Fellowship Program, and I know that it is very highly regarded. This is a program that brings in scholars and people from other walks of life—for example, Colin Powell was a White House Fellow. Some were brought in from elsewhere in the government and some were brought in from the private sector, to give them some practical experience of government and its operations at the highest level of policy making.

There is a similar program in Congress—well, somewhat similar—a Congressional Fellowship program, which has been functioning since 1955, which brings in scholars, journalists and officials from other departments of the executive branch, to have a year's worth of practical experience in that strange and alien world of the United States Congress. I know more about that program because I participated in it, some 30 years ago (thank you for reminding me).

I think these programs are a wonderful idea, if for no other reason that, as a trained academic, I believe they tend to bring together people from those two worlds, and inform the kind of teaching and research that is done in ways that otherwise simply wouldn't occur. And they also inspire more interest in the study of central government institutions, whether it be the office of the Prime Minister or whether it be the House of Representatives and the Senate.

I have been privileged while I've been here in Canberra not only to be a visiting fellow at the Australian National University also a fellow in the Department of the Senate. That has been a wonderful vantage point for me.

I have been impressed by two things, if I can use your question as an opportunity to elaborate, in the reading I was doing. One is the literacy of Australian political science compared to American political science. I could actually read and understand what Australian political scientists write, which is something that I can't always claim for my American colleagues. But the other thing I have been struck by is that it's a fairly small community of Australian scholars who have a particular interest in the Commonwealth Parliament. It didn't take too long for me to identify the usual suspects, when I came across the names of people who were writing the books and articles I was reading, so I would be all in favour of anything that would encourage more scholars in Australia to pay more attention to the Parliament.

Question — I think you have succeeded in giving a delicate balance between America and Australia on the matters you spoke of. I was reading this morning Michael Moore's *Stupid White Men*. It refers to the 2000 election in which George Bush was elected, and, on page 5, he says: '173 registered voters in Florida were permanently wiped off the voter rolls by Katherine Harris, the campaign director for the Bush camp. Most of those were black.' That's something that obviously couldn't happen in Australia, so my question to you as someone who has a view from Washington is, is that situation American? Or is it un-American?

Stan Bach — A provocateur! I would re-phrase the question. Before we can answer it, we have to answer a prior question, which is: Is that true or is that not true? Or, how much of the truth does that statement represent, and how much of the truth does it leave out?

There was a documentary on television within the last week or so on the 2000 election, and I don't know if it will surprise you or not, but I studiously avoided watching it. During those days I spent more than enough hours trying to follow what was going on in Florida and elsewhere, especially as it might ultimately have an effect on the counting of electoral votes by the House and Senate in Washington, which, under our Constitution, is where the actual selection of the President is made. And I continue to believe to this day that—through a not terribly implausible set of developments—then-Vice-President Gore could have elected himself President. It would have been a pyrrhic victory, but I think that, constitutionally and legally, he could have done just that. I'm not going to pass judgement—especially having forgotten so much of what I knew at the time—of who was responsible for what in Florida, or in other states during that election or in prior elections. I'm from Chicago originally. The slogan in Chicago is 'Vote Early, Vote Often'. And in the 1960 election there were allegations of course that Mayor Daley delayed reporting the final tally in Illinois until he knew exactly how desperately Jack Kennedy needed to carry the state of Illinois. I don't know if that's true or not. We Americans have a tendency to enjoy conspiracy theories about political life. There's enough in politics that is both bizarre and true, without looking for conspiracies that may not be true.

I think your question raises an interesting point, and that has to do with compulsory voting, which I have encountered here in Australia for the first time. I must admit I feel slightly uncomfortable with compelling people to exercise their civic responsibility. On the other hand, if you look at the deplorably low levels of turn-out in American elections where, if we get up to 50 per cent of eligible voters turning up at the polling place for a mid-term congressional election, we would yell hosannas to the heavens. Perhaps there is something to be said for compulsory voting—but that’s a question I’m still mulling over in my own mind. I haven’t reached a decision on that one yet.

Question — One of the most striking differences between the Australian and the American political system is the fact that nearly all public servants in Australia, in particular the middle and upper management of the Public Service, expect to retain their positions with the change in administration, or change of government. Whereas in America, my understanding is that nearly all middle and upper management positions in the Public Service—with a notable few exceptions—change when there is a change in administration. I think when George Bush Junior won, one of the big issues was that nearly 5 000 people needed to get security clearance vetting before they could start their new jobs. What effect does that difference and that characteristic of the American political system have compared to Australia and elsewhere? Does any other country follow the American system, where nearly all the middle and upper management of the Public Service change with the change of administration? And do you think that makes a more effective and efficient or more dynamic government? There must be a huge amount of tacit knowledge that would be lost with the change of government, but there would also be some benefits as well. And would it make the Public Service more accountable?

Stan Bach — I don’t dispute the number, I dispute it’s significance. You have to put that number of 5 000 in the context of the size of the executive establishment in the United States. I don’t think it’s fair to say—although I know it’s a fairly widespread perception—that with a change of administration, especially a change of party control in the White House, that there is a clean sweep of middle and upper level positions within the executive. That was what we used to call the ‘spoils system’ in the nineteenth century, but it largely disappeared with the Pendleton Act in 1880, I believe. What *is* true is that political appointments percolate further down into American departments than they do in Australia.

Here in Australia there will be a minister, there may be a second level of ministers responsible for some portion of the work of a larger ministry, perhaps. But that’s about all. In the States you will have a cabinet secretary, a deputy secretary, a series of assistant secretaries, deputy assistant secretaries and so on. That’s enough, but that’s generally as deep as it goes. So you will have the first four levels of policy making positions who are political appointees, but after that the civil service remains, and is unaffected in terms of their career status and their positions by a change in administration. That is a frequent source of concern and disappointment to a new administration that comes into power after a period of years of being in the political wilderness, because there is the assumption that the permanent government is loyal to what is now the party out of power. Not because they were political appointees, but because during all those years they were the ones who had worked their way up the bureaucratic ranks into more senior positions.

You point to a very serious problem we have, and to another one of the real comparative virtues of your system, which is the amount of time it takes to fill all of those 5 000 positions. The first year of President Bush's administration ended with a really disconcerting number and percentage of those positions remaining unfilled. The problem is much worse today than it was 20 or 30 years ago, and there are a variety of reasons contributing to it. One reason is the number of positions, another is the desire to ensure that there are no surprises in a presidential nomination that are going to come back and haunt an administration. You may recall that when Clinton took office, his first nominee for Attorney-General had to withdraw her name from consideration because she'd failed to pay social security payments for her children's nanny. Well, they had simply not asked her the right question in the right words, and she had not revealed that information. It was her fault. She knew she should have been making those payments, and she knew that she should have revealed this, because there was a very good likelihood—given the congressional committee system—that sooner or later that information would come out.

Another contributing factor is the extraordinary number of forms you have to fill out and the amount of information you have to divulge and the amount of time it takes to do that.

Yet another reason is the concern on the part of recent administrations to, as I think President Clinton said, 'Have a government that resembles America'—which means that you want to make sure that you have a diverse population of people filling these positions. So you have to make sure that the percentages of various categories of people are adequately filled.

All of this combines to make for a process which is much too slow. And one of the major concerns of political reformers in Washington today is how to expedite the presidential appointment and confirmation process.

Question — You spoke a lot about checks and balances, both in the Australian system of government and in yours. I have read—and you may be able to tell me if this is correct—that in the United States, if the President wants to declare war, he has to seek approval from Congress first?

Stan Bach — Well, it all depends. If you read the American Constitution, it says exactly that. The President is Commander-in-Chief, but the power to declare war is reserved to Congress. The last declaration of war took place on 7 December 1941. The argument is that the nature of world affairs and the pace of events—except in the case of a Pearl Harbor where there's not going to be any question about what Congress would do—has made formal declarations of war an outmoded device.

What we had in the case of the Gulf War in 1991 was a resolution passed by majority vote in both houses of Congress—the same way a declaration of war would be passed—which more or less was a grant of authority by Congress to the President to engage in war-like activities.

There's been a similar joint resolution, I believe, with regard to Iraq. The problem is that if it's not an explicit declaration of war, there can be disagreements as to what Congress intended. And in this context I refer you to the Gulf of Tonkin resolution in the mid-1960s

in which President Johnson interpreted a Congressional resolution as constituting the equivalent of a declaration of war. Many people in Congress, in retrospect—Senator Fulbright was one of those, he always said he regretted voting for the Gulf of Tonkin resolution—thought that that was not exactly what they had in mind.

Now, in a spate of legislation to control what was then called the Imperial Presidency, Congress enacted a War Powers law in 1974–75, over the veto of President Nixon, which includes the very complex scheme by which the President can commit American forces to combat or the imminent danger of combat, but then Congress has the authority to compel them to be withdrawn within a period of time. And every once in a while the President will submit a notice to Congress in accordance with this law, but he will also accompany it with a statement saying that he is not acknowledging the constitutionality of this law.

So there's been a debate over whether or not it's constitutional. It has never been tested in the courts, and one reason for that is that, by and large, members of Congress would prefer to leave the responsibility for those life and death decisions in the hands of the President.

Question — The purpose of our elected institutions is to serve the will of the people. In the five months you've been here you would have picked up the disrespect that our community has for elected members. They put politicians somewhere down there with used car salesmen and child molesters. I am interested in a comparison with the American electorate, and how it respects its elected representatives. And, in giving us that comparison, could you indicate whether that difference—if it exists—in the level of respect can be referred back to the difference in the structure of our elected Congress and Parliament.

Stan Bach — As a matter of fact I think the level of disrespect for politicians in Australia is even greater than it is in Washington. I arrived in Australia shortly before the Aussie Rules Grand Final last September, when there was a big breakfast celebration before the game and they introduced all of the participating celebrities one by one, and the Prime Minister was among them. One of the things that struck me was that he was simply one of the celebrities who were introduced. No red carpet, no hail-to-the-chief, just: 'Here's our Prime Minister, John Howard.' And then the MC said, as the Prime Minister was coming in: 'and we will play the new Australian national anthem to accompany his entrance,' and it was an old 1960's rock tune called *I Will Follow Him*—because the Prime Minister had just returned from Washington. My mouth just fell open. Even in our worst days we wouldn't have quite that level of lese-majesty.

There are those who have said that Australians have a more benign attitude toward government than Americans do. I don't know if that's true or not, but if it is, then you manage to marry together a more benign attitude toward government with at least an equal or greater cynicism about politicians. What's the cause of that? I think there is at least one aspect of American politics which ameliorates that sense of cynicism. Americans hate politicians, but they generally are OK with their own elected representatives. That's because the relationship between our members of the House and Senate are so personal that members are really working very hard all the time to ingratiate themselves with their constituency.

The proportional representation system in the Australian Senate doesn't create that kind of constituency bond, and, as I understand it, the way in which candidates for the House of Representatives are pre-selected—how you gain nomination and then re-nomination also—doesn't create that same kind of intense sense of 'this is our guy' (or 'our gal') representing us.

I think one of the differences is brought on by politicians themselves, but in different ways. Our politicians, our members of Congress, go home and they generally say, 'I am in Washington trying to protect the general interest, the national interest, against all of those evil special interests.' When in fact what they're doing of course is going to Washington trying to protect their *own* special interests against all those *other* competing special interests. Members of our Congress never take the risk of going home and saying, 'the world and the issues we are confronting are more complicated than you understanding them to be by just looking at them from Topeka, or Dallas or Bangor, Maine. They are more complicated than *I* thought they were before I arrived in Washington.'

There is a difference here, I think. I have been shocked by the way in which members of the Commonwealth Parliament vilify each other during debates. Again, my mouth has fallen open, listening to members accuse each other of all kinds of malefactions, from unethical conduct to illegal and even criminal conduct sometimes. I think that, unless and until both houses of Parliament adopt and enforce a rule saying 'though shalt not do that, thou shalt not question in public debate the integrity, the honesty or the intentions of thy colleagues,' then politicians here have only themselves to blame.

A long time ago, there was an American comic strip called *Pogo*, which had a characters who was a philosopher named Albert the Alligator. And I think it was Albert the Alligator who once said, 'We have met the enemy, and they is us.' So I think that perhaps our politicians only have themselves to blame.

Question — To get back to your original talk, did you notice the big difference that overcame the Senate when the conspiracy between Hawke and Anthony enlarged the Parliament, and each election in the Senate produced six members, not five, which made the difference and is the reason why the government can never control the Senate?

Stan Bach — Are you referring to 1984, when the size of the Senate was increased? As I recall, there were arguments made at the time that that increase in the size of the Senate could have had two different effects. One was to increase the likelihood of minor party and Independent candidates being elected because the size of the quota would be reduced. The contrary argument was that having an even number of senators elected at each half-senate election would increase the likelihood of the two major protagonists dividing those seats equally. I have to remind myself how impossible that is by Australian standards, because we have landslide elections in individual states, where a party will gain that percentage of the two-party vote.

It's interesting to explore the intentions and the motives and the expectations of politicians sometimes in making precisely those kinds of changes. Perhaps one of the most profoundly important changes was the institution of proportional representation in 1949, and I think that the intention of the Chifley Government in instituting proportional representation was not precisely to create a Senate controlled by minor party and

Independent senators. So there are frequently mixed motives and unanticipated consequences. You know, today's reform is the source of tomorrow's problems, which is one reason why reforming political institutions has to be done with great care.



Accountability or Representation? Victorian Bicameralism*

Brian Costar

Since the granting of responsible government to the then colony of Victoria in 1855 and the first meeting of the bicameral Parliament in November 1856, two, sometimes intertwined, controversies have dominated local politics. These were the desired balance between rural and metropolitan representation in the legislature and the power relationships between the Legislative Assembly and the Legislative Council. The first now seems settled with a consensus finally emerging in the early 1980s in favour of equality of enrolment across all divisions and provinces. The second has proved more intractable with the latest attempt at resolution currently before the Parliament. Almost all prior successful and failed attempts to 'reform' the upper house have involved democratising its electoral procedures to bring them into line with the Assembly's or to curb its powers over supply bills and general legislation. The latter remains central to the present reform agenda, but it is just possible that an even more important result may emerge in the form of an upper chamber committed to the advancement of more accountable government.

* This paper was presented as a lecture in the Department of the Senate Occasional Lecture Series at Parliament House on 28 March 2003. It was prepared before the raft of reforms recommended by the Constitution Commission Victoria and incorporated in the Constitution (Parliamentary Reform) Bill 2003 were introduced into the Victorian Parliament, and given the day after the bill was passed by the Legislative Council. The bill became law on 8 April 2003.

Now is not the time for lengthy historical digressions, but it is worth recalling that Victoria's Legislative Council shared the function of other nineteenth century Australian upper chambers to act as a restraint on 'radical' democratic initiatives likely to emanate from the more 'liberal' lower houses. The original structure of the Council well matched its function: a very high property qualification to sit and vote, no payment of members, indissolubility, plural voting, high malapportionment favourable to rural interests, terms not coterminous and twice as long as the Assembly's, and so on. The consequence was a powerful chamber representative of wealth and property regularly engaged in often disruptive contests with successive governments.

Certainly since its establishment, the Council has undergone significant reform, especially in regard to its electoral procedures. Yet those reforms have often been resisted and have occurred later than equivalent changes to the Assembly—universal franchise did not arrive until 1950. In fact the Council has never adopted a single electoral initiative in advance of the Assembly.

The Council's capacity to force an unwanted election on the Assembly has been constrained by the negotiated passage of the Constitution (Duration of Parliament) Bill 1984, but the power to amend or reject general legislation, in ways which are final, remains intact. The absence of a Federal section 57-type double dissolution provision denies a government the capacity to override Council obduracy. Since their 1937 insertion, sections 66 and 67 of the Victorian Constitution have provided procedures to resolve deadlocks, but they are so favourable to the Council that no Premier has been foolhardy enough to invoke them. 'Review' in the nineteenth century meant review democracy; 'review' in the twenty-first century means to hold governments accountable. This must go beyond the scrutiny of individual bills to embrace notions of sometimes restraining executive power in the interests of the citizenry and good governance. Despite many adjustments, Victorian bicameralism still retains some vestiges of political architecture from the nineteenth century which is obstructive to the full discharge of the desired review function of an upper house. The sixty-four dollar question, of course, is will the current proposals do the job?

What is proposed?

The Explanatory Memorandum for the Constitution (Parliamentary Reform) Bill 2003 states that the purpose of the bill is to reform the Parliament of Victoria based upon the recommendations made by the Constitution Commission Victoria:

- to provide for a fixed four year parliamentary term, unless the dissolution of the Assembly occurs sooner;
- to re-constitute the Council to consist of 40 members elected from 8 regions with each region returning 5 members;
- to provide for proportional representation with optional preferential voting for members of the Council;
- to provide for the filling of casual vacancies in the Council;
- to provide that the President of the Council has a deliberative, not a casting, vote;
- to recognise the principle of government mandate;
- to remove the ability of the Council to block supply (Annual Appropriation) Bills;
- to establish a dispute resolution process for deadlocked Bills; and
- to provide for the entrenchment of certain legislative provisions.

Before commenting on the likely impact of these proposals, it is necessary to explain how we have arrived at this point.

Given that before the 2002 election the Labor Party has enjoyed a clear majority in the Council for only three months in its one hundred year history, it is hardly surprising that the party has been less than enthusiastic for the Victorian version of bicameralism. Prior to the late 1970s the ALP's policy was one of abolition replaced by one of reform through proportional representation (PR) in 1981. The Cain and Kirner governments (1982–92) made no fewer than six attempts to change the Council's voting system to PR, but all foundered. Following its surprise 'victory' in September 1999 the Bracks Government moved on a promise made to the three Independent MPs and introduced a broad-ranging Constitution (Reform) Bill on 24 November 1999, but encountered difficulties when the Independents expressed reservations about removing the Council's right to block supply and the geographical size of proposed rural Provinces. The bill was formally withdrawn in June 2000 and replaced by a Constitution (Amendment) Bill, which dealt with parliamentary terms and supply and a Constitution (Proportional Representation) Bill which concentrated on electoral and related matters. Both bills were rejected in the Opposition controlled Council in October 2000.

Debate on the two bills was passionate but not of a particularly high standard, especially on the PR bill where both sides overdid it. Its proponents accorded it almost magical powers of political transformation, whereas its opponents saw chicanery around every corner and depicted PR as a road to mayhem and even tyranny. Argument flowed on the erroneous assumption that PR was being proposed for *all* the Parliament. There was scant appreciation of the *incongruence* contention that bicameralism works best when there are some dissimilarities in the functions and composition of the two chambers. Craig Ingram (Independent, Gippsland East) was one of the few who did when he argued that 'the local member really belongs in the Legislative Assembly. The role of the upper house is to act as a house of review.'¹

Other comments were less well considered:

'Reform is a euphemism for the Labor Party's ambition to completely abolish the upper house'

'PR would give small, extremist parties the opportunity to be elected to parliament'

'It is no coincidence that whenever proportional voting takes place unstable and poorly performing government takes place ... do we really want to see some flash-in-the-pan fruitcake get elected?'

'This is a political act to curry favour with the minor parties and the unions'

'To introduce proportional representation is to castrate the vote of each and every Victorian.' [Granted that this remark was made at 1.30am!]

Alas, it must be reported that rude things were said even about the Senate:

¹ *Victorian Parliamentary Debates*, Assembly, 6 September 2000, p. 66.

‘The upper house will become full of intrigue, just like the Senate is ... ’

‘In Canberra we have the loopy brigade that controls the Senate ... ’

Confronted by such opposition the government adopted another tack and established the Constitution Commission Victoria on 19 March 2001 and empowered it to make such recommendations as would ‘enable the Legislative Council to operate effectively as a genuine House of Review.’ The Commission was chaired by retired Supreme Court judge, George Hampel, assisted by former Liberal federal and state parliamentarians, Ian Macphee and Alan Hunt—the latter being a President of the Council in the 1980s. The political credentials of Macphee and Hunt did not mollify the Opposition which immediately rejected the Commission as ‘a blatant political con’ (*Australian* 20 March 2001).

Undeterred, the Commission issued a *Discussion Paper* in August 2001, conducted seminars, regional consultations and invited submissions from the public. A *Consultation Paper* containing a summary of the views received was released in December 2001 and the final report, *A House for our Future*, on 1 July 2002. The recommendations of the Commission were to form the basis of the government’s current legislation, but few predicted that it would be presented to a Parliament which, as a result of the November 2002 election, would have Labor majorities in both chambers (62 of 88 in the Assembly and 25 of 44 in the Council). The government, however, has not taken up all of the Commission’s recommendations. Those omitted were:

- The strengthening of the Council’s committee system;
- The establishment of regional committees comprising local MLCs;
- The phasing out of ministers from the Council;
- The development of a Code of Parliamentary Conduct;
- The human rights of Victoria’s citizens to be recognised as guiding principles in the Constitution.

Appraisal of proposals

1. Fixed terms

The Council and Assembly will in future expire on the Tuesday 25 days before the last Saturday in November each four year electoral cycle. But both houses may be dissolved earlier if the Assembly passes a vote of no confidence in the ‘Premier and other ministers or if the Premier, following a failure to resolve a deadlocked Bill, advises the governor to dissolve the Assembly.’ In the first instance the governor would retain the prerogative to decline a dissolution if he believed an alternative Premier could command confidence, but the second provision effectively creates a double dissolution (and joint sittings) option and has been criticised for undermining the integrity of fixed terms.

2. Council provinces

The Constitutional Commission offered four possible models of Council composition and indicated a preference for seven provinces each electing seven members. In opting for an eight by five model, the bill sets a quite high quota of 16.6 per cent which reduces the proportionality of the system. The following Table seeks (with multiple caveats and qualifications) to translate the 2002 election results into suggested new Council boundaries.

Table 1: Legislative Council—possible composition(s) by proposed eight multi-member regions

| | Labor | Liberal | National | Green |
|--------------------|--------------|----------------|-----------------|--------------|
| Region 1 | | | | |
| Max no. of members | 2 | 2 | 1 | 1 |
| Min no. of members | 2 | 2 | 0 | 0 |
| Region 2 | | | | |
| Max no. of members | 2 | 2 | 0 | 1 |
| Min no. of members | 2 | 2 | 0 | 1 |
| Region 3 | | | | |
| Max no. of members | 2 | 2 | 1 | 1 |
| Min no. of members | 2 | 2 | 0 | 0 |
| Region 4 | | | | |
| Max no. of members | 2 | 2 | 0 | 1 |
| Min no. of members | 2 | 2 | 0 | 1 |
| Region 5 | | | | |
| Max no. of members | 3 | 2 | 0 | 0 |
| Min no. of members | 3 | 2 | 0 | 0 |
| Region 6 | | | | |
| Max no. of members | 2 | 2 | 2 | 0 |
| Min no. of members | 2 | 1 | 1 | 0 |
| Region 7 | | | | |
| Max no. of members | 3 | 2 | 0 | 0 |
| Min no. of members | 3 | 2 | 0 | 0 |
| Region 8 | | | | |
| Max no. of members | 4 | 1 | 0 | 1 |
| Min no. of members | 3 | 1 | 0 | 0 |
| Total | | | | |
| Max no. of members | 20 | 15 | 4 | 5 |
| Min no. of members | 19 | 14 | 1 | 2 |

Source: Greg Gardiner and Brian Costar, *Legislative Council Reform*, Victorian Parliamentary Library Research Paper, no. 2, March 2003, p. 4.

3. Proportional representation

Given that the Council's electoral system is neither gerrymandered nor malapportioned and is based on the same principles as those of the lower house, does it need changing? Yes because the present system exhibits some of the negative features of the 'block preferential' method used in the Senate between 1919 and 1946. Council Provinces are large, containing four times the enrolment of lower house seats. District 'magnitude' combined with STV enhances proportionality of outcomes, but when combined with single member alternative voting has the opposite effect because of the capacity of such a majoritarian system to waste votes. For example, at the 1999 Council election the ALP wasted 51 per cent of its primary vote to the Liberal Party's 31 per cent and despite

polling an average 44 per cent of the two-party preferred vote in 1992 and 1996 Labor held only 10 of the 44 Provinces (23 per cent). The boot was on the other foot in 2002 with the Liberal Party wasting 66 per cent of its primary Council vote to Labor's 14 per cent. The type of PR adopted is Senate-like in that it allows for above the line voting—thereby ruling out the Constitutional Commission's interest in Robson Rotation.

Below the line voting is by the optional preferential method.

4. *Casual vacancies*

The count-back method was rejected in favour of a variation of section 15 of the Australian Constitution, whereby the parties nominate replacements; but the replacement of Independent Councillors may prove controversial.

5. *Supply and deadlocks*

While there is general agreement that upper houses need reasonable strong powers, usually to amend general legislation, there is decidedly less consensus over the question of supply. The Victorian bill removes supply but not general legislative power and proposes a 'conference of party managers' solution to deadlocks with the proviso for a lower house dissolution or the holding over of the deadlocked bill until the next Parliament, when, if passed by the Assembly but not the Council within two months, a joint sitting may be convened. Would the power to block supply encourage a government to negotiate or might it corrode desired bipartisanship in the Resolution Committee and/or encourage opposition intransigence. The current electoral environment, rather than constitutional prescription, would probably determine that.

The two twentieth century occasions on which the Council employed the supply power to break governments were in 1947 and 1952. Both were, typically for the time, minority (Labor, and Country Party) administrations and the approximation of their defeats was representative of a particularly turbulent period in Victorian politics. The 1952 and 1955 elections ended (until 1999) minoritarianism and produced forty years of successive one-party governments. Thanks largely to the Democratic Labor Party (DLP), Henry Bolte reigned supreme in the Assembly, but was denied a stable majority in the Council until June 1970, where the Country Party, and for a time an Independent, held the 'balance of power'. While the upper house threatened supply twice (1964 and 1965), rejected 30 bills passed by the lower chamber and amended many others, Ray Wright is correct in his comment that: 'the Government's legislative program was not seriously disrupted by an ostensibly hostile Upper House.'²

In fact what developed over this period was a culture of 'negotiated legislation' qualitatively different from the gladiatorialism of earlier times. One should not be dewy-eyed over this Golden Age of Bicameralism since it was a product of *Realpolitik*. The cold fact was that Bolte did not have an upper house majority and was denied the threat of a double dissolution to secure one: he had to compromise if he wished his bills to pass. The Country Party, while a vigorous electoral opponent of the Liberal and country party (LCP), needed to temper its legislative aggression because of the conservatism of its constituency. Labor was similarly constrained by the debilitations of the Split and the persistence of the DLP. All the players could inflict wounds on each other, but there were

² Raymond Wright, *A People's Counsel; a History of the Parliament of Victoria 1856–1990*. Melbourne, Oxford University Press, 1992, p. 211.

powerful incentives not to kill. Interestingly, this cooperative culture persisted after 1970 and even into the early years of the Cain government. It was only after Labor began to unravel in the late 1980s that the upper house became hyper-aggressive.

The bicameral quietism of the Kennett years (1992–1999) was to be expected, given the large Liberal majorities and the non-consultative, *contra* Hamer and Thompson, demeanour of the Premier. The Council was relatively benign to the minority Bracks Government (1999–2002), save for the establishment of two select committees to probe alleged wrong doings, largely because Labor, controlling neither chamber, chose legislative caution over activism. Following the 2002 state election the ALP has secure and comfortable Assembly and Council majorities.

6. Entrenchment

Hitherto, Victoria has had the most flexible constitution in the Australian federation, amendable by the passage of bills by absolute majorities through both chambers. To this is to be added two forms of entrenchment:

1. referendum
2. a special three-fifths majority of the members of the Assembly and Council respectively

The following ‘core’ matters are entrenched by referendum:

- The requirement for a referendum;
- Regions, number of members and the quorum of the Council and to the President;
- Districts, duration of, quorum of and number of members of, the Assembly and to the Speaker;
- A session of Parliament each year;
- Appropriation Bills and the inability of the Council to block supply;
- Dispute resolution process for deadlocked bills;
- Local government as a distinct and essential tier of government;
- Continuance of the Supreme Court;
- Executive arm of government and the Executive Council;
- The Auditor-General, the Director of Public Prosecutions, the Ombudsman and the Electoral Commissioner as independent officers of the Parliament;
- Electoral Boundaries Commission functions; and
- Freedom of Information functions.

The following ‘procedural’ matters are entrenched by a special three-fifths majority:

- The requirement for a special majority;
- The Crown, including provisions relating to prorogation and dissolution;
- Constitution and powers of the Parliament;
- Eligibility requirements for members and voters; and
- The provision which enables a House to relieve a member from the consequences of alleged defaults (e.g. breach of the office of profit provisions).

The following matters are entrenched by an absolute majority:

- The requirement for an absolute majority;
- The membership of the Court, appointment of judges, reserve judges, judges’ and masters’ salaries, allowance and pensions etc; and

-
- The jurisdiction of the Supreme Court (including the requirement for section 85 statements).

Conclusion

In arguing strongly against Dunstan's attempt in 1937 to insert a double dissolution clause in the Victorian Constitution, Clifden Eager argued that: 'the upper house differed from the lower in terms of its constituency, its perspective and its experience ... [it] did not have to be wholly representative.'³ This was an accurate account of the Legislative Council, even if it proceeded from less than democratic assumptions. Yet beginning with the adoption for the Council of universal franchise in 1950, the two chambers have come to resemble each other in almost all key respects: they are elected on the same franchise and on the same constituency boundaries drawn by a single Electoral Boundaries Commission; they both employ compulsory preferential voting; they share the same polling day; they possess, save for initiating money bills, equal legislative power; they operate, for the most part, joint parliamentary committees and all 132 members, except two Assembly Independents, represent the same three political parties in both chambers. By contrast their differences are few: the 88 Assembly members are drawn from single member districts with maximum four year terms, whereas their 44 upper house colleagues are drawn two each in staggered mode from 22 provinces with maximum eight year terms; and both chambers control their own standing orders (the latter may prove critical to any future growth of a more accountability-based culture in the Legislative Council). The current legislation seeks simultaneously to increase congruence by introducing semi-fixed four year terms for both houses and to decrease it by replacing alternative voting in the Council with multi-member based single-transferable-vote PR and removing the Council's power to reject, but not to debate, appropriation bills.

Back to the sixty-four dollar question—will it work? Time will tell, as it did for the Senate from 1949 and the NSW Legislative Council from 1978. Proportional representation alone won't achieve enhanced accountability unless the members of the reformed Council take advantage of its Standing Orders and develop a genuine culture of review.



Question — You mentioned that Jeff Kennett was fighting for the introduction of proportional representation in his party room in 1987–88. And then in 1999, I think even without much consultation with his party, he was arguing the other way. Can you fill us in on the motivating factors for Jeff Kennett on each of those occasions?

Brian Costar — By 1987, leading up to the 1988 election, the government had had four or five goes at introducing PR, and each time they got defeated. Sometimes they got defeated because the proposal was tacked on to other bills, such as removing supply and

³ Wright, *op. cit.*, p.171.

other things. But the Democrats, who were then a power in the land, put out a statement that any party in the Legislative Assembly or Legislative Council which voted against PR would not receive Democrats preferences at the next election. Now, the leadership of the

Liberal Party (including, obviously, Jeff Kennett), estimated that this was a threat worth taking seriously, and their inclination was to support the second reading bill which introduced a five by nine model—that is five constituencies, nine members. Interestingly, they were going to move an amendment to introduce a NSW whole-of-state provision. Rural Liberals, of whom there were quite a number in the party room, opposed this, (a) because they didn't want PR in the upper house, and (b) because they felt they had nothing to fear from Democrat preferences. That was one of the few times that Kennett got rolled in the party room, an hour before the debate came on. He had a speech prepared, supporting the second reading, which he had to abandon and gave instead a very brief speech, to howls of Labor interjection, as you might imagine, because they had got wind of all of this.

The second time around, I think he just misjudged it. But remember, Kennett's proposition was that it was a good thing if the government had majorities in both houses of the Parliament because they could then achieve things. In my talk I only gave a few of the anti-Senate comments that the MPs were bringing out, but Kennett used to make those comments as well: 'The Senate was a bad thing because it stopped government governing.' And that's why he really dug in. But I think he miscalculated, and that he thought that two of the more conservative Independents would go with the government. He got a bit of a shock when they didn't.

Question — I'm seeking some clarification of the electoral system. You said there would be an above-the-line option as in the Senate, and there would be optional preferential, but only for below-the-line. So, are we saying that there will not be the opportunity for voters to express preferences between parties above the line? And, with below the line, is that optional preferential or partial preferential? Presumably voters will have to indicate preferences for the number of members to be elected for that seat? And how on earth was the use of party nomination rather than count-back justified?

Brian Costar — You are right, as I understand it, on the first two questions. You are not going to have cross-over opportunities above the line. But there is a provision—and there was worry about this—to allow for Independents to be grouped and appear above the line, so that they are not as disadvantaged as they might have been if they had to sit below the line. And yes, below the line you have to nominate preferences for up to five candidates.

Regarding party nomination against count-back, it should have been more controversial than it was. I know that the media was all primed up to get involved in this debate, however other events [the war in Iraq] have overtaken it in the news. There hasn't been a reference to it in the press for a month.

The argument put was that, if you were to work on count-back—and assuming that you do get non-party people there—you might get a person other than whoever was first elected. Now I know that you can develop different sorts of count-back methods that can solve that problem. It certainly has been criticised, but not extensively. Interestingly enough, it hasn't been much criticised in the parliament. But the real problem is with Independents. We will have to look in more detail at the electoral act, but it doesn't look

clear to me to how replace an Independent is going to be replaced with another Independent. Independents by their very nature are *independent*, which means they are also independent of other Independents.

There is great debate amongst the Independent members of the parliaments of Australia as to whether they should even come together at meetings. When Susan Davies ran a meeting for independents, a number wouldn't come because they didn't want to be associated with an 'Independent Party'.

I think there is unfinished business in it, and messiness around the edges. To be honest, I think the legislation is trying to do too much. It's taking up all sorts of issues that are not necessarily related to each other. Entrenchment, as you know, has not necessarily got anything to do with proportional representation, or with fixed terms.

To be fair to the Labor Party, it's a hundred years since they've had a go at it. They've finally got control of the upper house, and there may be a bit too much enthusiasm there that might be tempered later when some of this is seen as not working out as intended. To defend the party, and the government, remember that they are potentially giving away the majority that it took them 100 years to get.

The formal leader of the Liberal Party, Denis Napthine, made a public offer to the Labor Party that the Liberals would support abolition. Apparently, that that was not just someone flying a kite, but that the Opposition had put out serious suggestions to the government that they would not be averse to voting for an abolition bill, *rather than* having a constraining accountability house. So that tells you something. I hope that isn't true.

Question — I'm from the Proportional Representation Society. On the point of the count-back provision not being taken up, and the fact that the government has taken some of the material from the Constitution Commission, I think in their haste they have actually got a situation where, if a party crumbles or if there is dispute, if someone resigns or dies from the party, they would have to be replaced by an Independent, because the legislation only sees two categories—'registered political party at the last election and continuing', and 'Independent'. And we've got plenty of examples in Australian parliaments of things happening in the middle, and it is a curiosity that the replacement mechanism in the original legislation was for an Independent for those circumstances.

Brian Costar — Go to the federal area. Once section 15 of the Constitution was changed at the 1977 referendum, we got the Steele Hall and Janine Haines case. And as you know, section 15 still doesn't, by its words, achieve what it sets out to achieve unless (as Queensland at least has done) you pass standing orders which say that the replacement senator has to be the person nominated by the party of the replacement senator. This does not, of course, cope with the Steele Hall type of situation. By the time they came around to replacing the senator, when he moved to the lower house, the party that he was elected to represent, the Liberal Movement, no longer existed. I agree with you—I think that notion of locking into registered political parties and Independents is a problem.

Question — Regarding entrenchment, do you see the possibility of any ‘fear and loathing’ campaign being whipped up by various people unhappy with aspects of the entrenchment provisions—which presumably have to go to the people—and the possibility of those actually being defeated?

Brian Costar — No, the interesting thing is that it’s the standard double entrenchment provision. The entrenchment will be final when the Governor signs it. The requirement for the entrenchment does not have to go to the people. But the requirement to *un*-entrench it does have to go to the people. So it’s entrenchment by legislative action alone.

One of the things that I thought was an unintended consequence, going way back to 1931, was that the then-Queensland Government—facing electoral defeat—came up with the novel idea of extending the life of the existing Parliament. Now this was not well-received. There was an election, the government was defeated, and the Labor Party came back into power. And what did it do in about 1935? It entrenched three-year parliaments in the Constitution. Everyone forgot about that.

Now move to the early 1990s. Premier Goss and others think it is probably a good idea for Queensland to go the way of many other states and have four-year parliaments. Well, we had to have a referendum—and guess what happened to the referendum? It got defeated. As you know, opposition parties find it very difficult to resist the temptation to oppose referendums, even though they support them. That’s what happened, and it got beaten.

Now it seemed to me in 1991, that no-one had imagined in 1931 that there would be a notion that we would like to increase the life of the Parliament. This was one party trying to prevent another party getting up to mischief. But, umpteen years down the track, it’s still sitting there and when someone wants to introduce what might be seen as a bipartisan, uncontroversial change, it founders because of an entrenchment that was introduced for quite different reasons years before. As you can see, I’m no great fan of that sort of entrenchment.

Question — In 1891 in New Zealand they introduced a bill in almost identical terms to this one. The idea was to put some democracy into their Constitution. They had eight electorates, five members, proportional representation and all that stuff. The New Zealanders didn’t proceed with the bill, but 50 years later, still searching for a bit of democracy, they abolished their Council. Are you aware that in 1937 Albert Dunstan in the Victorian Parliament said that: ‘The plain fact of the matter is that in a modern democracy a legislature with two chambers of virtually co-ordinate powers is an open menace to any democratic form of government’? I know you have mentioned shifting out the right of supply. I don’t regard that as being the big issue, the government is there to govern. But what about its other legislation—is that just to be stopped?

Incidentally I don’t agree with your figure of 19 or 20—I say the highest Labor could ever get would be about 18, unless there is a provision in the proportional representation that no preferences shall go to any candidate who does not have five per cent of the primary vote—because the problem is that the major parties put their preferences down to the Pauline Hansons and all those sorts of people, and they bring them up. And often they have got very few votes. Have a look at the disgraceful show in the New South Wales

Legislative Assembly, with its six or seven parties. And in addition, this idea of one parliament tying another parliament up—are you aware of the disgraceful case of the Attorney-General against Trethowan? That was a shocking case. But you are doing the same thing here, and you are doing it in your legislation. I'm not in favour of a lot of the bills.

Brian Costar — Yes, I do remember reading about Albert Dunstan saying that. What he was trying to do was introduce a double dissolution provision, and it failed. It is quite intriguing in Victorian politics that two of the big attempts—one successful, one a failure—to change the upper house were introduced by the Country Party. One was double dissolution, which failed, and the other was universal franchise, which succeeded.

On the issue of where we are in this debate, one of the things I found in researching this was that—and I hope we exempt the current changes, but at least up *until* the current changes—the whole motivation for 'reforming' the upper house has been to reduce its powers—to make it more like the lower house on grounds of democracy, but to extensively to reduce its powers. If you reduce its powers right down, you get to the other side of the Dunstan conundrum, which is—why have it? Now what *hasn't* happened in the debate historically is conceiving of the Chamber as having a different function. And that's interesting, because it was in the brief that the government gave the Constitutional Commission, it's in the report of the Constitutional Commission, but there's not much evidence of it in the Act. And there was very little of it in the debates. The debates were either the Labor Party saying, 'this will finally democratise the Council, and bring it up to date', and the other side saying, 'this is just a Labor con to control the Council and to cut the representation of rural Victoria.' There were no arguments about how we might go forward on this. Now, we can be either optimistic or pessimistic—I'll choose at this late hour to be optimistic.

Question — With many of their powers now blunted, what is the role of upper houses in the states? Do you have any comment on the argument that the Labor Party, through these amendments, has acted against its short-term political interests?

Brian Costar — On the first question—and I'm just talking about Victoria—it's up to Victoria's upper house to determine what role it wants. It has got the standing orders—as former Council President Bruce Chamberlain always pointed out—so the Parliament will decide. It is up to them, as it was up to the Senate—it didn't happen automatically. Regarding your second question—the answer is maybe yes. But remember, Labor got that majority in the upper house by achieving the biggest landslide, not only that *it's* ever achieved, but since I think Bolte in 1967. Could Labor do it again? In other words, could they defend that upper house majority? History says no. Maybe they've made the calculation that they have four years, and after that they would probably lose it again. But isn't it interesting—if it's true—that the Liberal Party put out feelers to support abolition? And apparently it was not just a backbencher making a throw-away remark, there were serious suggestions made.

Question — Regarding abolition, you have the precedent in Queensland. Why doesn't the Labor Party in Victoria follow that achievement in getting rid of the upper house?

Brian Costar — Well, until this legislation passed they could have easily abolished it just by passing legislation through both houses. I don't support that. It may well be my jaundiced background as a former Queenslander, but we don't want to be too black-and-white about this. It's quite clear that unicameral parliaments can and do work, but it's also clear that bicameral ones can work too. It's all a question of the relationship. I think you have to split the functions. When you blur the functions, you can get into all the problems that that brings.



The Australian Public Service: Still Anonymous, Neutral and a Career Service?*

Patrick Weller

I would like to talk to you today broadly about the changes in the Public Service since I started to try and examine it some 25 years ago.

I recall the first time I proposed to Professor Gordon Reid that I look at the Public Service and the way it operates. He said, 'You won't get past the front door. They will be polite, they'll give you coffee, and they will tell you nothing.' It happened that the first meeting I had was with Sir Geoffrey Yeend. I was going to ask him about a topic and he said, 'What was it you wanted to talk about?' So I mentioned the topic I was interested in and he then talked for half an hour, answered every question I could possibly have anticipated, gave away absolutely no government secrets, and from then on, we decided that it was actually a very fruitful arena of research: trying to understand the Public Service and in particular the relations between the Public Service and ministers and that interaction between the political and the administrative arenas.

So it's on that that I want to talk today. I used in the title that sub-heading 'Anonymous, Neutral and a Career Service', which, after all, were the categories which everyone used to describe the Public Service in the 1960s. That is what the Public Service is—it's a career service, the people are anonymous, and they are non-partisan. They are neutral.

* This paper was presented as a lecture in the Department of the Senate Occasional Lecture Series at Parliament House on 30 May 2003.

I thought I'd start with a couple of comments that were made to the Royal Commission on Australian Government Administration in the 1970s, by two people who neither then nor now would ever be described as anonymous. Firstly, Sir Lennox Hewitt—Hewitt was asked by the Royal Commission about the objectives of his department. He responded:

I have not previously encountered the suggestion of objectives for a department of state. The Royal Commission will presumably not need anything more from the department than a copy of the administrative arrangements.

Sir Frederick Wheeler was asked the same question. His comment was:

The function of the Treasury is to advise and assist the Treasurer in the discharge of his responsibilities. The objectives of the Treasury are, in essence, to carry out this function as effectively and efficiently as possible.

Now—in the days of corporate plans, in the days of ‘plans on a page for each person’, to quote Allan Hawke—those views on the role of the Public Service would no longer be regarded as normal. Indeed, most people would say that the Public Service should have a far more proactive role. And it's changed dramatically, obviously.

There's an alternative view, though, of the last 20 years. And this one came from a minister. He said, ‘Basically, the last 20 years has been a battle between the elected representatives and the imperial bureaucracy. And the elected representatives won.’ He sees it as a continuing fight for influence and power between those who were elected and those who serve them.

Now which of these visions do we want to describe as ‘desirable’? A battleground in which the elected representatives have won, or a situation in which the mandarins of the time were accurate, precise and entirely unhelpful? And those are the issues I want to talk about, and in the end I want to ask questions about ways in which we can envisage a future Public Service.

Firstly, let me talk about ‘anonymous’. If you look back over the last century, the person who was picked as Australian of the Century in the bicentennial year was a public servant, Nugget Coombs. If you look back on the 1960s and the early 1970s, people would talk about ‘the Mandarins’, probably with a capital M. Sir Arthur Tange, Sir Frederick Wheeler, Sir Richard Randall—all those people who, for a long period of time, dominated. And the one above all—Sir Roland Wilson who, for 15 years, was Secretary of the Treasury. Now they were the mandarins. We remember them because they stayed there for a long time. Was it necessarily a better system for all of that? Anonymous they certainly weren't.

By contrast, if I were to get out of the hothouse of Canberra, and ask somebody to nominate the senior mandarins of today, how many of them could they name? Well, ‘Max the Axe’ might be remembered more because of the neatness of his nickname than for anything that he actually did. After that I suspect that most people would have some difficulty naming one senior public servant today. So the anonymity has been enhanced, in a sense, for a couple of reasons: one is that people don't stay there so long—the notion of public servants in position for 10 or 15 years is something which is no longer

conceivable, it's not likely to happen; the other is that the image of a very small group dominating the Public Service is equally no longer viable. To an extent, the people of the 1960s were the few graduates in a service which up to the early 1960s never actually filled its quota of graduates. They were a highly talented small group in a not very deep field of talent. I suspect today that field is more even. Or perhaps it's just that I'm getting older, and I know this group, and the previous group we looked up to with a certain degree of fear or dread when we were younger and thought that the older people must be more dominant. Perhaps if I asked the current 25-year-olds, they would say that this set of senior public servants are just as fearsome as that other lot were.

There is a difference, in that nowadays public servants will appear before Parliamentary and Senate committees with a regularity that they previously didn't. They will be expected to answer questions that the committees previously weren't expected to ask. Therefore, in terms of the Parliament, they may be more visible and much less anonymous, as some senators keep pushing to find out who, down the line, made particular decisions or wrote particular papers. In that sense, indeed, their anonymity is in decline. And that's of course a political decision.

Those of us who were around Canberra in 1975 will not forget Sir Frederick Wheeler appearing at the bar of the Senate, under instruction to advise on the 'Loans Affair', and saying, 'My name is Sir Frederick Wheeler, I'm Secretary of the Treasury, and I'm instructed to answer no further questions', or something to that effect. It's interesting today that governments make no such attempt to gag the public servants who appear before parliamentary committees (We'll come to ministerial staff later). So they are more accountable—in the sense that more people can see what they're answering—but broadly, anonymous they certainly are. And they're likely to remain so, partly because of that minister's notion of a battle with the imperial bureaucracy. It's the way that the politicians and the ministers want it to be.

Is it a career? We have a much higher turnover of senior public servants than in the past. Let me give a couple of figures: of those appointed between 1949 and 1972 as secretaries of departments, 41 per cent served for ten years or more as a secretary of a department; of those appointed during the Hawke/Keating period, 2 per cent (which actually means one person) served for ten years during that period.

Look at the age of departure as well, to give a glimpse of the rapid change. Of that first group, the average age of departure was just under 60. Of the second group, the average age of departure was just under 52. Now that suggests that, whereas one group saw the Public Service as a career in which they rose to the top at about the age of 50, and stayed there for ten or more years, it is no longer true. Whether from choice—and occasionally it *is* from choice—or from rapid termination, a higher number of people now are moving in younger and moving out younger. And the Public Service—like, incidentally, most of the politicians—is, in a sense, becoming a first career. Now that's not due to a lack of talent going into it in the first place. As a university professor I see graduate students applying for Public Service positions, and the competition is horrendously tough. It's really difficult, and often you hear of 1200 applicants, all graduates, applying for about 12 positions in a particular department's graduate intake. They are getting really good young people.

Whether they are keeping them in the Public Service is the interesting question, because there is certainly a number who do not survive the first graduate year—they find it simply too dull. There are others who regard it as a very useful training ground before moving out into the more prosperous world of the banks and other high paying private sector organisations. So there is I think a thinning of the pyramid, not just as a matter of natural hierarchy, but also in terms of the talent which is actually available.

So—a career service? Yes, still, because most of the people appointed as Secretary or to other high positions are actually internal. We have comparatively few examples of good private sector people moving into the public sector at the top levels and making a success of it—primarily because it is a really different world they have to deal in.

There is a beautiful quote from someone appearing before a committee in Britain. One of Margaret Thatcher's high flying businessmen was musing on the difference between the public and the private sectors, and why private sector people find it quite so hard to make a success in the public sector. This private sector guru of Thatcher's said:

If you are running a business in the private sector, to be successful you have to be right more often than you're wrong: if you're right 51 per cent of the time, you're just on the right side of that line; if you're right 60 per cent of the time, you're doing better; if you're right 70 per cent of the time, you're doing well; if you're right 80 per cent of the time you're doing brilliantly. However, in the public sector, if you're right 98 per cent of the time, people are not interested in the 98 per cent—they're interested in the 2 per cent of the time that you were wrong. Because the 2 per cent will be the instances that people are concerned about where things are not being done properly, or not being done the way people would like to see them being done.

Therefore, I think the difference, when we were talking about distinctions, is that a public servant cannot say: 'I will not worry about the few per cent I get wrong,' because clearly these few per cent represent very significant items that people have to concern themselves about. I think that's the fundamental difference. It's getting everything right and being caught up on the few things that go wrong that make it so difficult for somebody from the private sector to move into the public sector.

The other difficulty is simply the political environment in which they are then expected to work—the expectations of a different sort, of anticipating desires of what ministers might want.

So we still look—and I believe that continuously we will still *have* to look—for the people within the Public Service to serve the ministers as public servants, and I expect that 90 per cent of top public servants will still come from a comparatively small pool of talent. That much I think is here to stay.

The third question was the question of neutrality. Is the Public Service more or less neutral than it was before, and what are the questions about its accountability to the Parliament and to the government?

The Public Service was never, of course, neutral between government and opposition. It's never been neutral in the sense that it could serve everybody with equal verve, whether they are elected or not. It serves the government of the day. The essence of neutrality is the ability to transfer allegiance from one side to the other if the people or the Parliament so decide. And that means that it has to have a reputation which allows incoming governments to be persuaded that they will be served with equal vigour and equal dedication as was the outgoing government.

At various times on both sides of the fence people have found this concept quite difficult to take. There was one outgoing minister who was saying goodbye to his public servants, and said: 'I must say, I find it hard to think that tomorrow you will be serving so-and-so.' And a voice came from the back, saying: 'What makes you think we're going to wait until tomorrow?' Transfer, in these things ought, to be absolutely immediate.

What service should the Public Service then be giving? And are the current conditions better designed than the former?

Let me start by saying that I am not advocating the 1960s as a sudden nirvana, in which everything was being done right. I think there were severe problems in a system which required a department to be abolished in order to move its Secretary, which was sometimes the case. I think it's a severe problem when ministers become totally dependent on their departments. When I was writing a book with Michelle Grattan 20 years ago called *Can Ministers Cope?* (we left it with a question mark, because we hadn't worked out the answer by the time we'd finished), we heard the stories of public servants who got ministers to sign letters, and the letters always went to a second page because that allowed them to change the first page after the signature was on the letter. I am not sure that that is a Public Service which we necessarily think of as desirable. Too-powerful public servants who can lean on ministers are as undesirable as too-powerful ministers leaning on the Public Service. There is need for some balance.

What is needed is good advice—but what constitutes good advice? Good advice is advice which tells it as it is, which accepts the parameters within which the government is working, which acknowledges the government has a set of policies that it wants to achieve, which appreciates that some things are likely to work for ministers and some things are simply not going to work, but within those parameters is prepared to explain to the minister what the options are, what the conclusions are and what the outcomes of the potential choices might be. It is advice that takes account not just of what the minister wants to achieve, but what the government wants to achieve, and takes account of what is being done in other departmental agencies as well.

Good advice is occasionally called 'frank and fearless'—good advice is at the very least 'frank', and occasionally perhaps it is carefully organised so that you can get the message across, if people are worried about the 'fearless'.

Do current circumstances for senior officials assist or detract from those sorts of conditions? Contracts and lack of tenure are the most obvious factors that have occurred over the last ten years. We need to be careful. I have been told of many occasions in the 1950s and 1960s when ministers ran secretaries without any problems. In those days, as

somebody put it, it was a horse and rabbit pie: one horse, one rabbit. The difficulty is determining which is which. It varied from minister to senior public servant.

If excessive tenure can make senior public servants too intolerant of ministers, excessive lack of tenure can potentially make them too nervous of ministers. Neither seems to me to be a desirable situation. You need at least to get some sort of balance.

This is made worse by the events of the last couple of years in which ministerial whim at times seems to be adequate to end the career of a senior public servant. In the case of the sacking of Paul Barrett, the Secretary of Defence, by the Minister of Defence, eventually the court case depended on the answer to the question: was the decision of the government in the interests of good public administration? If the interests of good public administration needed the minister to have confidence in his secretary, then if the minister has no confidence—whether or not, the judge says, that is a warranted conclusion—that is enough to ensure the legality of the sacking of that secretary.

I think that creates concerns, obviously, for secretaries, but also for *potential* secretaries. If promotion to that position means that a person can be removed very readily just because the minister, as one person put it ‘doesn’t like the colour of your hair’, or the minister at least chooses not to work with that officer, then the costs can be highly dramatic and often fatal.

Perhaps, in government terms, the idea of getting rid of the odd secretary can be done to encourage the others, in the way that the British used to shoot admirals. (Well, they shot *one* admiral—because he was very lax, didn’t act, and they lost Minorca. He was shot on the quarterdeck of his ship.) We don’t shoot them these days, we just sack them; the result is mildly more civilised.

We need to work out the best conditions under which the two can work together. It was interesting to note, when I talked to senior public servants and secretaries a couple of years ago for a book I was writing, not one of them was scared of their minister, and not one of them didn’t have a very good working relationship with their minister. But they all knew several of their colleagues that didn’t. There is something logically inconsistent about this. It was like writing a book on Malcolm Fraser. None of the ministers were scared of Fraser, not even the one who said to me afterwards ‘You’re not going to tell him what I said, are you?’ But all of them knew that their colleagues were scared of him. Again, it doesn’t add up. It either means they have a false perception of their own relationship with their minister, or it means they were just kidding me.

There is an increasing pressure on the Public Service, not just to support the minister, but to *be seen* to support the minister. Occasionally they are expected to talk to various groups to explain government policy. As one person said to me, ‘When I talk, I like to be enthusiastic, I like to get a good message over and entertain the audience. The problem with that is that people then think you *support* the policy, when all you are doing is *explaining* the policy.’ And that is a very difficult line to walk. Sir Arthur Tange told me, ‘I try not to be passionate, because if I’m passionate I can’t serve each side.’ I’m not sure that anyone would have said that Sir Arthur was passionate, but woe betide you if you got on his wrong side. He is the only public servant I have ever been nervous about interviewing.

So you have to keep up this balancing act—a degree of distance, but also a degree of understanding of what governments will do. What has made it much, much harder in the last 20 years is that the mandarins of the 1960s had one advantage which no secretary today has—Canberra was small and isolated. Australia's informed group was comparatively limited. In the 1950s and 1960s, about 25 per cent of secretaries didn't have degrees. Now, nobody doesn't have a degree, and I'm told about 50 per cent of secretaries have post-graduate degrees.

It goes back to Duncan McLachlan, the first Public Service Commissioner, saying in an early Public Service Board Report: 'You must be very careful how you recruit your telegraph boys, because out of that group will come your future secretaries.' But he also said, of course, (and I'm almost quoting): 'They all have to be male. Women can't take the pressure when they get to senior positions. And anyway, men don't like taking orders from women. So we couldn't possibly have that.' The last two telegraph boys who became secretaries of departments—although they got degrees on the way through—retired in the 1980s. So the impact of that view goes a long way through our history.

What has changed? First, these days think tanks spread information, and provide alternative views. If anything economic comes up, the Macquarie Bank and Access Economics is on television explaining why the government has done x, y or z. In the 1960s, the Treasury wouldn't even let the Prime Minister have that sort of information. So debate was infinitely more limited, and that great fight in 1976 leading to the split of the Treasury was largely because Fraser wanted to get information and he couldn't get it out of the Treasury at the time. So, whatever the reasons given, the actual motive was to try to break that monopoly on information.

Secondly, of course, the ministers now have staff—staff which are large, aggressive and policy oriented. When they started, the staff may well have been concerned primarily with organising the minister's diary, but that's clearly no longer true. It's created a couple of fairly dramatic problems. One is that there is often somebody between the secretary or advising officer of the department, and the minister—somebody who is sitting in the minister's ear, giving second advice, somebody who is often talented and may often be a public servant on secondment, who can put an alternative view and an alternative spin. That creates a distinct problem in the way that the system is actually going to work.

It is also true that those staff are, in effect, unaccountable. There are two conventional myths that exist: one is that anything told to the staff is told to the minister, and the other is that anything requested by the staff has been requested by the minister. Neither myth currently prevails in practice. They *can't* prevail in practice, when large numbers of ministerial staff ask for information across a whole range of issues in anticipation of what the minister might like. Then they are accountable to nobody; not to the minister, because the minister cannot know, and not to the Parliament, because they are meant to be beyond the scope of Parliament.

I hope that one of the outcomes of the current Senate enquiry into the Members of Parliament Staff (MOPS) Act is that it is going to suggest a certain degree of accountability of ministerial staff. Not for the advice that they give to the ministers, but at least for what they do with the papers that come from the department and go up to the minister. What they do with the advice that is given, in terms of 'Did the minister see it, or didn't the minister see it?'—so that at least we have some idea of tracking the advice,

as used to happen in previous days when the secretary could see the minister regularly and knew just about everything the minister had. It would have been interesting to see how the secretaries of the 1960s competed with the ministerial staff, because the notion that they would simply ignore them just won't work anymore. Life has changed too much.

The question, then, for senior officials in dealing with ministers is: what kind of relationship can they build up? There is also the question of what services ministers want. Again, I will relate two nuggets of information, which I haven't been able to check completely, but which are interesting. A recently-retired senior public servant, talking on regional radio, *apparently* said: 'When I am asked for information, I give it. When I'm not asked, I think about it.' He thought about whether the minister actually wants to know that bit of information or not. Because there are clearly times when leading people don't want to know bad news or don't want to be able to acknowledge what happened.

I wrote a book last year on the Children Overboard affair, which was called *Don't Tell the Prime Minister*. It was based on the assumption that, during that period, the Prime Minister wasn't told of events because his staff didn't want to tell him and they anticipated that he didn't want to know, because it allowed plausible deniability to continue. There is not the slightest bit of evidence that he was told, but there is evidence that a lot of people around him knew the facts, and chose not to tell him.

The second nugget is the notion of papers coming back from ministerial staff annotated: 'not seen by the minister', when they contained advice being given by senior public servants *to* the minister. We don't know, and may never know, if that was the staff making a judgement or the minister saying 'I haven't seen that', in order to create a paper trail to suggest that the minister hadn't seen that information on that occasion. These situations are creating difficulties which no senior public servant had to deal with in the past. They are creating much greater pressure on the relationship between the two. Indeed, should public servants be asked to be courageous—as Sir Humphrey might have put it—and insist on informing the minister, or are they serving the minister by providing exactly what the minister might want at that particular time. Does it matter?

We need to trace back the notion of exactly what a Public Service in these sorts of circumstances is doing. Thirty years ago there was a royal commission in Canada, the Glassco Commission. It concluded, when talking about machinery of government (which you can equally call the operations of the Public Service):

The structure of the federal government must be responsive to public wants and aspirations, recognising the machinery of government is but a means to ends which lie outside itself ... the primary test of organisation is external and political. The internal and administrative object to make the task of Public Service manageable must be subordinate.

The Glassco Inquiry also says:

As long as the political system works, the machinery of government is the means to that end, rather than an end in itself, and there is a degree to which the public service is a means to an end, rather than end itself.

What we need to ask is what the requirements are for a Public Service to best serve a government, and to best serve the people through that government. In my view, there are certain qualities which seem to be lost, and which it might be desirable to recreate. We cannot, and would not want to, recreate the conditions of the 1960s, with an isolated government dependent on a very limited source of advice. We do though, need to worry about the decline in scepticism—scepticism used in its most positive sense, as in asking the hard questions, rather than accepting the easy directions. The ‘If that’s the way you want to go minister, is this necessarily the best way to get there?’ The ‘If you want to go to hell, then I can tell you a much better way of getting there.’ Because, in a sense, assisting the minister in his objectives by the best possible means occasionally requires challenging the objectives and the approach.

In the Children Overboard Affair, it seems to me that the Public Service failed in a lack of scepticism. It was too keen to look for the supporting evidence, and not keen enough to say, ‘Well, if there is none, then perhaps there’s something wrong with the story in the first place.’ It was too keen to say, ‘Well, minister, you were given that advice—I don’t think it’s true, but I’m not changing it’, rather than taking the hard decision to say, ‘Minister it didn’t actually happen’, and trying to live with that. It perhaps didn’t push hard enough, although pushing is difficult in a circumstance where the people you are serving are in election mode, and when you know—and they know—that they are going to be returned and your career is in their hands. It is very easy from outside to ask somebody else to be brave.

The pace of modern life means that the conditions of the 1960s cannot be re-played. We must accept the competitive advice. We must accept that the public servant is just one of several sources of advice which can be directed to the minister. We cannot say that a particular set of structures is necessary, but we can provide a set of ideas about how advice should be given. We acknowledge certain skills of the Public Service, which will be retained—continuity, expertise, experience, scepticism (I hope, in the terms I use it), managerial skills that appreciate the problems, a responsiveness to government and an accountability to ministers and, through ministers, to the Parliament.

These are indeed qualities that we would like public servants to have, they are the qualities that we look for in a public servant. Within that structure, there are a number of different ways in which to organise the advice offered. The problem is that too many of those qualities are currently under challenge, by too much competition—well, not too much competition, but too skewed a competition—from the people sitting around the minister. That group is not accountable enough, in that there are large black holes which the Parliament cannot enquire into. Let’s start with a very simple proposition: what the public pays for, it should be able to hold accountable. It pays for ministerial staff, it should be able to make them accountable.

For officials, the values in the new Public Service Act spell out what we want—merit, accountable, fair, apolitical. The question is, can we organise a machinery which allows that to be delivered, and an environment in which both sides recognise the value of those qualities?

My concern over the last 25 years is that we have lost some of the sense of value of those qualities, which seem to me to be desirable not for the benefit of the careers of public servants—although that’s obviously significant to maintain that reservoir of talent—but for the good government of a country. That requires that ministers *are* told clearly and explicitly the outcomes of potential policies, and that people work through with ministers the best way to achieve outcomes, and that ministers know when things are going wrong.

I doubt that the Public Service was ever, as some people like to claim, ‘the guardian of the public interest’. It would be wrong to pretend that it is so. But it might at least occasionally be ‘the guardian of the medium term’. There are people who would point out that in the long term every problem was last year’s solution. Everything that we’re now trying to solve was caused by decisions made earlier—even if they then went wrong. And those are the sorts of perspectives that I think our ministers need, and I’m not sure that they’re always getting them, because of the different sorts of pressures. We need to protect our Public Service. The government holds it in leasehold, not in freehold. The government, in my view, has an obligation to pass on to its successor—when one eventually comes—a Public Service that will serve an incoming government as well as an outgoing government.

The McLeod Report started by saying: ‘The Public Service is a national asset.’ I would merely endorse that, and say that we need to maintain that asset, and we need to continue to debate the best ways that it can be maintained to serve the country through the government.



Question — Do you have any suggestions on how ministerial ‘minders’ can be regulated?

Patrick Weller — What they are doing now and what they were doing when the MOPS Act was put in place, and when they started in the 1960s and 1970s, is completely different. It’s quite difficult to ask ministers to regulate their minders, because they actually serve some useful purposes. In one place, I’ve called *some* of them the ‘junkyard attack dogs’ of the political system—the people who would go out and kick heads on the minister’s behalf, and the minister will, of course, deny asking them to do it. On the other hand, like the Secret Service, they will take the bullet for the minister. We’ve had a number of minders who have acknowledged that they should have passed on information, but didn’t—and therefore, they resign. For instance in the Travel Rorts Affair, within the Prime Minister’s office two or three people left, on the grounds that this was the easiest way to defuse the situation. And a couple of the current Deputy Prime Minister’s staff have left for not passing on information.

There have been cases when people have tried to bring down guidelines for the behaviour—I think ‘training notes’ was the expression—of ministerial advisers, which aren’t quite guidelines, but are things they should or should not do. For instance, they should not ring up public servants and tell them they’re their boss, which they have done in the past.

Eventually the decision is going to be political. My view is that the Chief-of-Staff should be required to appear before the Senate to explain what happens in that office and what has happened to the papers that are in that office. That’s the minimum, because they are a group of people costing the taxpayer millions of dollars, who are otherwise not accountable. And if the minister doesn’t know, then the minister can’t claim that they are accountable for what is going on in his or her office.

We can try and spell out what is actually happening and what roles they should play, and not play. One line of thought is that every departmental Secretary sits down with the minister and works out at an early stage what the working arrangements with the ministerial staff are. In many cases, it works perfectly well—it’s the errant cases which create trouble, when they ring around departments and make demands or when they are cutting off advice which should be going to the minister, and isn’t. And eventually the solution will be ministerial will, because I don’t think our guidelines are going to actually affect the way things are run.

The advisers are a new animal in the game over the last 25 years. The current constitutional conventions barely take account of what they are doing. I hope the Senate might bring down some suggestions in its report, and then at least we can get a debate going. I think the Children Overboard inquiry illustrated quite how far some of them were prepared to go without, probably, their minister’s endorsement, and certainly in order to protect their minister against knowing things they didn’t want the minister to know.

I haven’t answered your question, because I don’t know the answer. It should be a matter of concern for everyone concerned with good government.

Question — Shortly after the Children Overboard affair, Andrew Podger was very clear in a speech he made about a year and half ago in saying that ministerial staff did *not* have any power to direct public servants. We haven’t heard very much since then about that.

Patrick Weller — Andrew is quite right, of course. The problem is, who is going to complain to who when ministerial staff misuse their position? I have heard of occasions—not in federal government, but in state government—in which a head of a department tried to sit down with a minister and say: ‘Your staff should not do this’, and that departmental secretary was found another job.

So it is comparatively difficult, when you are an Assistant Secretary in a department, and the ministerial adviser rings up and says ‘I want by 3 o’clock this afternoon all information on such and such, now get it!’ You don’t know if the directive has come from the minister, or the ministerial staffer.

Who is going to be brave enough to take on certain ministers? Sometimes you will work it out, sometimes you can't. This is about power, not good manners. It's about who is exercising the authority and the circumstances in which they do it. However much we like to say that it is not proper behaviour, it's going to be very hard to stamp it out—primarily because the political masters occasionally find it useful.

Question — You may not know how lucky you were in your first encounter with Sir Geoffrey Yeend—you could well have come away with a tray of lamingtons, having made a suitable donation to the Woden Valley Youth Choir. I don't think that that's a risk people run these days, partly because, as you said, the whole system is much busier now than it was.

I would be interested in your comment on the situation where the Opposition went to the last election with a fairly well-articulated policy on substantial changes to the way the Public Service would run and be accountable. And I'm not sure if that sort of policy is directed purely at a Canberra electorate, or whether it carries any weight in the wider Australian community. Does broad public opinion, and the way that might be reflected at the ballot, play any part in the way that the Public Service is run?

Patrick Weller — Outside Canberra? I doubt it. I think that, outside Canberra, the Public Service doesn't loom terribly large as an electoral issue. Inside Canberra, of course it does loom large, because you have a concentration of Public Service voters here, who might have some sort of impact.

I think that the target of the Opposition's policies on the Public Service are aimed primarily *at* the Public Service, who are going to be working with them if they win the next election, and therefore we are talking about the potential goodwill that might be involved. It might also be that it spells out what they anticipate doing on Day 1, and requires the officials to prepare the proper briefing notes in order to do that, as well.

But the Public Service's public image is almost non-existent—until such time as people have problems with it, and then it becomes a matter of complaint. By most accounts, most of the services delivered by the Public Service are provided much more efficiently and much more expeditiously now than they were 20 years ago. That's partly technology, partly a streamlining of the Public Service, and partly new methods.

Has this gained governments—of any sort—any bonus in terms of votes? I doubt it. People will still complain when the service they get isn't the one that they expected now, not compared to 20 years ago. So I think government is much more efficient now than it used to be, and I don't think it's changed many votes anywhere around the world, and I don't think it's likely to.

In a sense that's one issue, but the issue I'm concerned with is whether it is going to become a better service for the government and, through the government, for us. But no, it's not high-profile. It is higher in state politics, because it's more concentrated and that's the difference. Everyone is sitting there complaining, and probably voting in the same half dozen electorates.

Question — In terms of the changes in the way the Public Service has been used over the last, say, 25 years, do you think on balance that the changes have been politically motivated by the politicians in power, or more by the advisers and the roles that they have carved out for themselves while employed by these politicians?

Patrick Weller — I think it is the politicians. In a sense it is a two-stage process. A certain proportion of politicians enter government convinced that the current incumbent, who served the then-government so well, couldn't possibly serve them *as well*. My view is that there should be a period—and they tried it and it worked fairly well in 1983 actually—in which all secretaries were basically kept on over a period in which they tried to work out a *modus operandi* with their current minister. If after 6 months or 12 months that wasn't working, then the secretary was found a job somewhere else. That seemed to me quite a reasonable set of propositions.

The person who to me is the epitome of a great public servant is Mike Codd. He fell out about three times with a Prime Minister whose impression was that Mike couldn't possibly serve him, as the new Prime Minister, as well as he had served the previous one—once when he was working with Sir John Bunting in 1972, once in 1983 when he was pushed into the Industry Advisory Commission, and the third time when Hawke and Keating changed. Now Mike was a person who served the incumbent Prime Minister with great dedication and great skill over a long period of time, but the incoming people never quite felt that he could do as well for them. But he could have, and would have.

So partly it's suspicion. Then, in Opposition, they have had increasingly large staff, and they are the people who have often written the policies, they are the people the new ministers trust, and they are the small group who have been working for the previous three to five years to get ministers into that position of power, and *they* want to come in and put into effect what they've been working on. They don't want to go into the bureaucracy. They want to sit around the Prime Minister and say, 'We are now the people that count, here.' So there is a group there which has its own impetus for getting in there and getting things done in those first years of a new government. Also, with the increase in ministerial staff, so the staffers will become more and more involved—*particularly* as, more and more, being on the ministerial staff becomes a route to Parliament itself. What we have seen in the last 20 years is a 'professionalising' of politics, in that people go through universities and university student activism, they join the staff of a minister and manage work out a base in an electorate, and then go from there into Parliament. More and more often people are involved in politics, as a career, from a very early stage.

And being on ministerial staff is a great job—here are a number of highly political positions in which ministers want highly activist, committed people who are going to get in there and kick heads on their behalf. These are people who are entirely committed to the future of the political party the minister represents, rather than being public servants on secondment, although some of those officials, classically, go native and become extremely partisan. Just look at Britain and the people who worked with Margaret Thatcher. Two of the people who worked with her, Charles Powell and Bernard Ingham, were both public servants, though by the time she left no-one would have remembered that.

Ministerial staffers tend to be groups who want to exercise influence. They aren't there in order to keep the books, they aren't there to make the appointments—they are there to change policy. So they are a group of people who have grabbed the opportunity, moved into the vacuum and are now trying to exert their own influence. And it becomes a state of constant tension—whether creative or not—between the advisers, the minister and the department providing advice—and everyone else, of course, who may be trotting in on the side to assist.

I remember Sir Roland Wilson saying, 'Ministers can get advice from somewhere else, but five minutes on the run is no equivalent to being a full-time adviser.' What they have now is full-time advisers as well as the bureaucracy. And yes, they care, they want to win, they want to influence things, they've got the ear of the minister—of course they are going to try to expand their own influence. So it's a sort of push and pull exercise at the moment. It is very difficult to see it declining. I think what we want to do is discuss and perhaps regulate it.

Question — The situation now is that government heads and agency heads are able to sack people through the outsourcing situation. This has reduced the call on the government in superannuation for those people, and the whole object is to reduce expenditure and allegedly improve efficiency in the Public Service. This has brought a lot of trial and tribulation to junior public servants and has been criticised by Verona Burgess, but it can't be got at because, like the decision to go to war, the decision on outsourcing was not made by Parliament, but was made by the executive three years ago by Mr Reith and Mr Fahey. Are you satisfied with that? Because a lot of public servants are not.

Patrick Weller — Outsourcing didn't start with Reith and Fahey. You can take it back to Whitlam, if you want to, to the notion of making initially the Postal and Telecommunications Departments into government business enterprises. So I think it's bit tough to just blame this government. It's interesting though that the Public Service Act has, if anything, strengthened rather than weakened the hold of ministers over the management of the department. So there may be agency heads doing this outsourcing, but at the same time they are doing it under instruction or under government policy. I had a year in the Public Service Board once, and I'm certainly not going to defend *that* organisation as necessarily being the best one to work out whether or not people were working efficiently. It was an interesting year.

The question now is how well a government service is being delivered, since government still pays for them, on the whole. If they can be better delivered by different strategies, then so be it. I don't hold anything particularly sacred about the Commonwealth Employment Service, for instance, rather than various other workplace arrangements where some of the unemployed much prefer the current arrangement to the past one.

So what we need to ask is: what is good for the citizens? How is the service best delivered, and how are they best paid for, and how best can heads of departments manage them at the same time? Technology has changed. There is no other way that it could have been done in the 1960s given the government services that were delivered, and the government did a pretty good job in difficult circumstances. I think, since then, technology, capacity to use computers and a whole range of other things have changed so

dramatically that we don't necessarily need that sort of hierarchical delivery. So I think all governments have changed.

The interesting point is that most of the changes in management were actually driven from *inside* the Public Service, rather than from outside. Take the financial management initiatives, for example; it was not necessarily the ministers who were directing and the Public Service that were fighting—most of the time it was senior public servants looking at the ways they do things, and asking whether they could do them better.

So the complaints about too much ministerial involvement are simply not accurate. I think most of the managerial changes from 1983 onwards lie internal to the Public Service and to the managers who drove them.

Question — What are your views on the current high degree of mobility in to, out of and within the Public Service?

Patrick Weller — Actually there's a lot out of, but not much in to. What's really interesting is that people talk about mobility in and outside the Public Service. Very few have gone out and then come back in at senior levels. Mostly it's out, and then they can't afford to come back in, because in practical terms the Public Service provides—some of the time at least—quite good training. (I would exclude certain departments I know about, for different reasons.) They've got very talented people coming in, and after ten years, the banks love them—particularly from places like the Treasury. Because it saves the banks problems of training and the officers can treble their incomes when they go out. And there are not many people (though I know a few) who, having done that, are prepared to take substantial salary drops just for the entertainment of running public policy. Those department heads who run public policy, I would suspect, do it because they enjoy the challenge rather than because they enjoy the pay.

So what we have is a large number of people coming in, and a very select number coming back in again after they have spent a period in the private sector. Now on the one hand, it doesn't particularly matter if we have a more efficient private sector, on the grounds that public managers are almost certainly better, looking at the record, than many private managers—for example those at Ansett, HHH, Bond. A lot of people in the 1980s were held up as the epitome of good private sector managers, asking, 'Why isn't the public sector run like that?' Now, of course, we *know* why it wasn't run like that, and we thank God for that, because it's our money.

Nevertheless some do tend to leave the Public Service. Places like BHP's public information area have a list of names of ex-secretaries of departments, all making much larger amounts of money than they would do in their old positions.

So the Public Service is training people for the world outside, rather than the other way around. Do I think that's a good thing? I think the Public Service needs to be very careful about protecting its talent, because it is much more important that the *country* is run well than that a *company* is run well, and we need the people there with the talent, maintaining the challenge so that they are able to take the senior jobs when they become available. I suspect that is something which all public services at the moment across Australia are conscious of because of the difficulty of doing just that. So, out a lot, in seldom, and not very successfully. That's a real problem.

And within, moving people around? Yes, it used to be that people reached the position of head of the department in which they had been employed all their lives. Now I believe sufficiently in generic management to think that understanding the problem—and particularly understanding the connections—becomes more important than understanding the internal detail. There are perhaps a few exceptions, but not many. I can't imagine that even the Secretary of the Treasury would not be better off for experience outside the Treasury. That doesn't mean that secretaries of the Treasury who haven't had that outside experience aren't good, or the ones that have been outside aren't bad, but that experience across the range of government activities and understanding what governments are about seems to me ideally desirable.

An Australian Story: the Troubling Experience of Economic Reform*

Michael Pusey

Members, Senators, ladies and gentlemen, thank you for your interest in these reflections on the results of the Middle Australia Project that I have directed at the University of New South Wales for the past seven years. I should acknowledge at the outset the generous support of the Australian Research Council that has made this work possible. The central aim of the project has been to understand how we *experience* the economy and more specifically here, to learn something about middle Australia's experience of economic reform.¹

Anyone who turned forty with the new millennium will have spent all their adulthood living through what we so blithely call 'economic reform'. Everyone knows what it is. Deregulation, privatisation, labour market reform, micro-economic reform, user pays, tax reform, cutting government spending, more competition, privatisation, tax reform (the GST), welfare reform, and—the latest instalment—the creeping privatising of Medicare and of the universities.

* This paper was presented as a lecture in the Department of the Senate Occasional Lecture Series at Parliament House on 20 June 2003.

¹ A fuller working-through of the evidence from the Middle Australia Project and the arguments presented in this address can be found in my book *The Experience of Middle Australia. The Dark Side of Economic Reform*, Cambridge University Press, 2003.

Economic reform began in earnest in the early 1980s with the Campbell Report² recommendations for financial deregulation and then with the floating of the exchange rate in December of the following year. It became a mantra some four years later in May of 1986 with then Federal Treasurer, Paul Keating's warning that, without it, we would become a 'banana republic'.

Some things are agreed on all sides. One of them is that economic reform came as a take-no-prisoners top-down re-engineering of a whole national society. We were told that we had to shake off our history of 'protection' and 'institutional inertia' and make ourselves ready for competition in the new ruthless global economy. Do it, or wither as a coconut monarchy!

No one was left in any doubt about the mighty challenge facing us. But almost no one remembers that the economic reform bundle (or if you prefer 'structural adjustment', 'laissez faire', 'freeing up the markets', or 'economic rationalism'—all these terms mean the same thing) came to us out of the cold war as a 'one best way' of fighting our way out of a long post-war boom that had given more peace and plenty to ordinary people than it should have done.

In the early 1970s international business organisations were forming to bring the drifting free world capitalist nations to their senses. Something had to be done first about the so-called 'British disease', about creeping stagflation, and about the long term fall in the profit share of large corporations. In 1974 the Brookings Institution declared that the after tax profit rate for United States corporations had fallen since 1948 from just under eight per cent to just under five per cent. The long post war boom was not working so well for big corporations.

The 1975 Report to the Trilateral Commission,³ one of the new global peak business associations, turned free market economic theory into a political program that would shift the burden of coordination from 'overloaded' governments paralysed with too many 'irresponsible demands', to the markets. Thatcher and Reagan would crash through and make it happen. The markets would reduce expectations and administer the needed disciplines to the people, the unions, the professions, the media and the 'value intellectuals'. This would 'give capital a chance', beat the socks off the old Soviet empire, get rid of big government, and pull the European social democracies into line.

Malcolm Fraser prepared the way with the Campbell Report (that would later recommend financial deregulation) and with some restructuring of the federal bureaucracy—and the young dry economists were brought up into position. The hard men of Labor were waiting to show they could deliver better economic management and better outcomes for business than the old guard in the Liberal Party. In 1982 they won government and got their chance. From there on the people would have nowhere to go with the two main parties competing with each other to deliver always *more* economic reform.

² *Australian Financial System: Final Report of the Committee of Inquiry*. Chairman: J.K. Campbell. Canberra, AGPS, 1981.

³ Michel Crozier, Samuel P. Huntington and Joli Watanuki, *The Crisis of Democracy: Report on the Governability of Democracies to the Trilateral Commission*, Task Force Report no. 8, New York University Press, 1975.

After twenty years of reform?

The results have been dramatic. As the advocates for reform will hasten to say, we now have a strong economy, one that survived the Asian meltdown of 1997 unscathed. Employment is high, interests rates are low. And now it's powering on and indeed leading the developed world, with GDP increasing at somewhere near 3.5 per cent per annum. All that is true.

But if GDP is up how come Australia is down? The economy has indeed been 'restructured'. As with every other nation our national accounts keep tabs on who gets what by dividing national income into three slices: the government share; the wage and salary share; and 'gross operating surplus' or, in other words, profit share. And sure enough economic reform has kept its promise. Over the twenty years from 1980 to the turn of the millennium the total wages share has fallen from 60 per cent to 54 per cent as the profit share has risen from 17 per cent to just on 24 per cent. The government share has stayed at about the same low level⁴—it may come as a surprise to learn that by comparison with other OECD countries we have for a long time had low levels of government spending, and a *small* public sector. It never was 'bloated' as Peter Reith and John Howard used to tell us so insistently throughout the late 1980s. And, yes, as GDP has soared we find that the real unit cost of labour has fallen for twenty years and more. Indeed Professor Bob Gregory's figures tell us that in 1996 young men of between 25 and 34 years of age were already bringing home, in real terms, 75 dollars *less* per week than their fathers were twenty years earlier in 1976 (moreover they can now expect to get pushed out of a deregulated labour market at age 55). The good news is that they are going to live twenty years longer than their grandparents; the bad news is that their retirement incomes are in a black hole (in part because they depend on the whims and ethics of the big end of town).

Look a little deeper, and we see that economic reform has delivered a redistribution of income, resources and capability from the bush to the city, from the public sector to the private sector, from families to the market economy; from consumers to producers. The GST takes 10 per cent off the input costs of corporations and charges it to you the consumer; from the bottom 70 per cent of wage and salary earners to the top 10 per cent; and, the big one, from wage and salary earners to corporations. Corporations are the only big winners from economic reform as they were always meant to be.

Our experience of reform?

The Middle Australia Project is a questionnaire, interview and focus group study of 400 randomly selected Australians in five capital cities ('middle' means chosen from census collectors' districts with average household incomes above the twentieth percentile and below the ninetieth). Indexed to year 2000 prices, this represents an average household income cut off of just over \$57 500 for the top of the sample and just under \$36 500 at the floor.

⁴ My economist colleagues tell me that, for technical reasons, this is not a good measure of real the government share. Yet there is no dispute about the relatively small size of our public sector. Other measures show that Commonwealth government revenues as a percentage of GDP to have risen slightly from 23.3 in 1980 to 26.2 in 2000 (see Treasury Budget 2001–02, Appendix D, 'Historical and Net Debt Data').

The central question is, how do we *experience* the economy? And more particularly, how has middle Australia (defined in this way as just about everyone who is neither rich nor poor) experienced economic reform? ‘Experience’ here is crucial precisely because conventional studies conducted by political pollsters and market research organisations do not generally take it seriously. They prefer to examine not experience but attitudes that are nearly always measured from the top down and in terms of some external interest position. For example, political pollsters want to assess support for a leader or for some bundle of policies on health, or defence or whatever. Similarly, the market researchers are looking for a way to sell us some kind of product.

No one doubts the technical sophistication of this work. Yet one problem remains. The explanations generally treat the thoughts, feelings, intuitions, and convictions of ordinary people as behavioural and attitudinal responses to external signals and structural conditions. The external structure is given primacy and the experience is read too narrowly merely as a derivation or, worse, as an adaptive response. Needless to say this is big brother stuff. It’s also bad social science. The psychology is wrong because it bleaches out social meaning. And it’s bad sociology because cultures—especially moral cultures—are discounted and treated as nothing more than inchoate ideas and private sentiments to be read off from existing structural conditions. With this crude functionalism we miss the all-important background assumptions that ordinary people use to orient their lives and so we fail to take account of cultural inheritance, of memory, of orientations to action and risk, of coping strategies and of underlying commitments to others.

In examining the experience of economic reform we want to redress that imbalance and thus understand how the experience of reform has been interpreted and evaluated from within the lived experience of middle Australia. Let’s look first, under four points, at some of the more directly accessible aspects of the experience:

1. They know who the winners and losers are. And they seem to have a fairly clear idea of what has happened to their incomes over long periods of time. Economic reform assumes that people will not notice what is happening to their incomes providing that you move resources away from them in small bites spread broadly across large groups over a long period of time. Providing that the floor rises, huge relative losses can still be experienced as small gains. But that is not the way it is experienced. The theory must be wrong. About 90 per cent of them know that ‘people on high incomes’, ‘rich people with lots of assets’, ‘big business’, are the runaway winners from reform. Nothing surprising about that. What is more heartening is that they have not been snowed by the ideology. Huge majorities of them know that ‘people on low incomes’, ‘small business’, and ‘ordinary people generally’ are more likely to be losers rather than winners from economic reform. And they know that ‘people in the middle’ have missed out. One more thing—neo-liberal economic theory would have us believe that the market is the best way of rewarding people for effort. It follows that changes in the distribution of income reflect effort, worth, and due reward for the real contributions of the respective stakeholders to the larger economy. Strange then that in the last three years of the longest boom in living memory (one in which ordinary people get nothing, or as little as possible) a majority of middle Australians are saying that the distribution is not *fair*.

2. They worry about jobs, jobs, jobs. And they believe that the incomes and job prospects of Australians are *falling*. In the last three years of the millennium as the economy settled into boom conditions we find that the number of middle Australians who say that wage and salary earners are the *losers* from economic reform climbs some 13 percentage points to 70 per cent. And again, rather unsurprisingly, about 80 per cent of them say they are more insecure now than before reform began some 20 years ago. The dominant mood is one of anger, and it is most keenly felt by those who have fared worst, yet, significantly, it is still the majority view. Again the economic theory is wrong. It assumes that work is a 'disutility' or in other words a negative thing that we are induced to do with carrots and sticks (sticks are to be preferred because they cost less than carrots). We are angry because labour market reform is an assault on the dignity of work. People experience their own work as something more than a tradeable commodity. For them it's largely about identity, meaning, personal independence and making a contribution—and hence something that satisfies inner social needs. Intrinsic motivations matter as much or more than extrinsic rewards. The market recognises only the latter and so pays in the wrong currency.
3. It's hurting families. Over half of middle Australia believes that families are changing 'a lot'. And three quarters of those giving that answer say that for them it is the negative rather than the positive aspects of those changes 'that stand out most'—for reasons that are now excellently spelled out in Barbara Pocock's book *Work/Life Collision*.⁵ In the wake of twenty years of economic reform, they find themselves running out of coping strategies. Sending two people out into the labour market instead of one, getting more education, delaying fertility, moving in search of a better job, and then, when all of that runs out of steam, going into too much debt. It's here, as the family faces the dull compulsion of the market without the capacity to smooth their incomes over time, that middle Australia most clearly experiences the truth about economic reform—namely that it reduces quality of life. If GDP is up and the economy is steaming ahead, how come that for the first time in remembered history parents see their own adult children facing a future in which they have to settle for *less*—a world in which they are less likely to own their own home and one in which education and quality health care may cost them more than they can afford? At another level our respondents are saying that there is something fundamentally wrong with a theory that says that the goodness of a human family should be judged on its capacity to put the market before its own social needs.
4. Between two-thirds and three-quarters of middle Australia thinks that 'big business has too much power', that it is exploiting the people, and that corporations should be regulated more firmly. Middle Australians are not closet 'socialists'. Indeed, they carry within them their own very successful history of market democracy. They like business to flourish and make good profits. Yet in the situation in which economic reform has put them they *are* 'revolutionaries'. They want government to make business work for the people rather than the other way about. Most people have waited in bank queues and on the end of telephone lines for long enough to understand what economic reform means. They know that 'increasing shareholder value' means downsizing, trashing jobs, unpaid overtime and poor service. They know that 'streamlining government' means slashing the public sector, cutting the

⁵ Barbara Pocock, *Work/Life Collision*, Leichhardt, NSW, The Federation Press, 2003.

entitlements of citizenship, and forced reliance on the market for privately funded health, education, and retirement. The Middle Australia survey suggests that the ideology of economic ‘reform’ may even have had a perverse effect. Indications are that a substantial slice of middle Australia has taken the promises of reform at face value and so expected economic restructuring to make things better for them. Now that they see what reform has taken from them they blame government and, perhaps, expect it to do more, rather than less, to put things right. They have certainly not, as the reformers so hoped, given up on government and thrown in their lot with the market. Huge majorities of them think that government can do ‘quite a bit’ rather than ‘very little’ to fix a whole range of things, including reducing unemployment, improving health and social services, reducing poverty, cutting crime, creating more jobs, supporting families, reducing the gap between rich and poor, making businesses pay fair wages, and supporting communities.

These are some of the more uncontroversial findings from the Middle Australia Project. Let me now propose to you a few of the inferences that I have drawn from the findings and presented in my book.⁶

Inferences ...

1. *Economic reform is experienced as a disturbance to the moral fabric of society.*

Our middle Australia focus groups participants constantly speak of too much greed, too much dog eat dog, lost respect, too much aggression, of unreal expectations, and about the burden of having to treat strangers as competitors. In these and other related concerns about doing the right thing by others—workmates, children, partners and friends—our respondents constantly make worried and uncertain appeals to notions of duty, responsibility, rights, entitlements, and obligations to others. Their anger and resentment are a window into what they experience as the troubled ‘ethical value that we place on our own desires and on our relationship with others’.⁷ We find economic reform implicated and often directly accused of setting off what middle Australia experiences as a heaving and splitting in the moral under-structure of our (plural) value system. I read this as a revolt against the economic rationalist cum neo-classical economic push to force what our respondents call the ‘Almighty dollar’ ever more deeply into the fine grain of daily life as a solvent of knowledge, a denominator of value, and an automated code for all significant life choices. They accept that everyday consumption is about trading off one possibility against another according to your means: but not that the competing motivations of care for family members, for justice, for social recognition, for health, and for security should all be set at neutral par for the market to treat as exchangeable wants and preferences.

2. *For middle Australia economic reform is a betrayal of nation-building economic development.*

We are a secular, pragmatic, and often anti-intellectual people who for the most part eschew heady metaphysical notions of national identity. Instead we have preferred to define our collective aspirations for our future in a rather more down to earth way as economic development from which all would share. From the time of

⁶ *The Experience of Middle Australia*, op. cit.

⁷ Richard Sennett, *The Corrosion of Character*, New York, Norton 1998, p. 10.

early exploration and settlement to the Ord River (a failure) and the Snowy Mountains schemes, we had great faith that development would make things good or better. Two generations ago economic development meant industrialisation, then, for a while, as we began to lose our nerve in the Fraser years, we thought it might still mean the exportation of minerals and natural resources on a heroic scale. Then from about the time of Keating's 1986 'banana republic' warning, we hoped that economic restructuring, 'J' curves, belt-tightening, and economic efficiency—in short, economic rationalism and wholesale top-down economic reform—might still serve to point the way forward. Yet the promise of economic reform was always different. It was more something that you *had* to do in order not to go backwards, and certainly not an *idée force* that we could easily construe and share as real nation-building progress. Economic reform, especially now in its new packaging as globalisation, is going sour because it is more likely to be construed as a loss to national solidarity and even as a betrayal of the older unifying history-making promise of national economic development.

3. *Middle Australia feels powerless and worries about organised power.*

Australians know that politics involves the aggregation of interests. They know too that it is often a rough and uncertain business with results that are generally less than ideal. The trust in representative government makes all this bearable. It allows us to believe that we the people are the macro subject of political choice and our elected representatives the objects, recipients, and executors of those choices. Trust makes politics legitimate. Yet in the wake of twenty years of economic reform, and in the last three years of one of the strongest economic booms in memory, we find a hardening majority of three-quarters of our middle Australia respondents saying that governments of any party cannot be trusted 'to put the needs of the nation above their own party interests.' These responses may be construed as middle Australia's growing awareness of a shift from one model of politics to another. In their 'hearts and minds' the people believe, or want to believe, in our historically inherited bottom up notion of representative government. In their anxiety we read a threatening awareness that Canberra has succumbed to an alien—and largely American—minimalist, top down, notion of elite democracy which says that, if you can induce the people to vote for you, you then have the right to do anything you want to them. The numbers leave us in no doubt that trust in governments is falling and, further, that this is associated with the belief that big business has too much power and ought to be more firmly regulated.

4. *Middle Australia is inclined to believe that economic reform reduces quality of life.*

In the midst of one of the longest economic booms in living memory, half of our middle Australians thought that quality of life was *falling*. Despite saturating propaganda from the marketeers and the advertising industry, they also seem to know what the best international evidence has been saying about happiness and quality of life. Personal fulfilment and happiness is always a struggle and in the end a personal accomplishment. Neither government nor business can give it to us ready made. But they can certainly make it easier or harder to achieve. The evidence tells us that happiness depends first of all on psychological traits and personality characteristics that have little to do with social and economic structures.

But after that, family, friends, relationships and intimacy always come top of the list—in every developed country. Good health is very important together with purposeful tension-free leisure, personal autonomy and interesting work. The variable that always comes right down near the bottom, never accounting for much more than ten per cent of the variance, is material well-being measured as wealth and dollar income. Middle Australia understands that economic engineering turns the hierarchy upside down, puts dollars at the top and makes that the common denominator of value for all the things that matter more. If the economy is up how come Australia is down? The libertarian and utilitarian economic assumptions that more money means more choice, increased utility, improved amenity and therefore improved quality of life no longer accords with lived experience.

Eating yourself ...

For twenty years we have allowed ourselves, our society, to be re-defined from the top down, as a stubbornly resisting sludge through which we must somehow drive the economy. In this warped view of the world society reappears only as a generic externality of the economy, as a frustration to the market that must somehow be overcome, as an idiot host, or just simply as a dump for the unpriced human and social costs of operating corporations—overwork, unemployment and underemployment, degradation of the public domain, scrambled time-horizons, unsettled expectations, personal aggression, disrespect, stress related illness, depression, and the list goes on—with all of this ‘collateral damage’ amply confirmed by international comparative studies. So we should not be too surprised to find that middle Australia has been unnerved by economic reform.

People know, as Michael Leunig once said, that we are ‘joined together by more than the weather’. Their conversations with each other are saturated with moral anxiety about a lost sense of responsibility and about duties, obligations, entitlements and rights. They have a pretty good understanding that ‘putting the economy first’ means throwing real standards into the furnace as fuel for an economy on steroids. A generation ago, economic development still used to mean nation building. Now it means eating yourself, your culture and your social ties to intimates and strangers alike. Australians have always had a healthy regard for self-reliance, but that does not mean that they are willing to redefine themselves as reducible input costs of production or as strategic actors who face each other only as competitors for scarce resources—so that the big end of town can have from them always *more!*

Economic rationalism is a doctrine which says that ‘economies, markets and money offer the only reliable means of setting values on anything’ and which sets out to destroy our public and social institutions to make it so. If you were to tell our middle Australians that economic reform has ushered them into a bright new world of ‘choice and opportunity’ they would laugh you out the door. They would do the same if you told them that economic reform was something that they had chosen. Most of them recognise that they were thrown into the Anglo-American libertarian economic path to please the big end of town. With Malcolm Fraser, they now fear an all too foreseeable situation in which ‘all the good assets in Australia are owned by ten foreign corporations.’⁸

⁸ Former Prime Minister, Malcolm Fraser, speaking on ABC Classic FM, Margaret Throsby’s Guest, August 29, 2000.

For middle Australia economic reform is going sour. It is as if we already knew what the evidence has been telling us for quite a while. Societies that seek to make the economy serve the people do better, even on conventional economic indicators, than those that try to make the people serve the economy.

Against all the evidence the neo-liberal ‘hydraulic model’⁹ would have us believe that we need weak governments to have strong markets. Middle Australia knows that this is wrong. A well ordered society needs strong markets *and* strong active governments *and* strong families all working together to put the people first.

One day soon wisdom, judgement, and generosity may again prevail over ideology and lead good government in this place with what the best among the old Romans used to call *amor mundi*—care for the world and friendliness towards strangers.



Question — You’ve highlighted the needs of middle Australia. Do you ever see the possibility that economic reform might address or be reconciled with the needs of middle Australia? Can the two ever come together? How?

Michael Pusey — I think so, yes. We are a down-to-earth, pragmatic, secular people, we don’t like heady metaphysics. People know that the economy is a mechanism. Have you ever seen an economy, or smelt one or touched one? Is it furry, or salty to taste? The economy is not a material thing that is set in stone. It’s a social construction, a human artefact, that comes out of society itself. It’s a mechanism that we use for coordinating a very important part of our lives. I think people know that it is a man/woman made thing. Whatever we create we can change to better serve our purposes. They know too that it is a cloak for power and that it delivers unfair and unequal outcomes. Middle Australians want to know that it is properly supervised and subordinated to *our* human purposes—and *not* allowed to become a reason unto itself.

So the political and cultural dispositions of middle Australia are completely open to the idea of a well-regulated economy. But they are properly suspicious when economic ‘imperatives’ are invested with a bogus authority. In other words they want a well regulated social democracy in which the economy is geared to our needs.

Question — Last night on the ABC, the British PM said France hadn’t gone down this route and that France had rejected it. So what have the French people got that we haven’t got?

Michael Pusey — Go to La Garre Montparnasse, catch the rapid train, the TGV. It will take you to La Rochelle, which is about 500 kilometres away from Paris, in about two and half hours at something like 250 kilometres per hour or more. That’s infrastructure which

⁹ I borrow this inspired phrase from Professor John Braithwaite. See J. Braithwaite ‘Institutionalising Trust: Enculturating Distrust’, in V. Braithwaite and M. Levi (eds), *Trust and Governance*, New York, Russell Sage, 1998.

is paid for by the government. For that among other reasons La Rochelle now has a university and is a thriving place with virtually no poverty. So what you have in France is *un etat dirigiste*, a state that governs! Same story if you want to pollute France's rivers. The answer is *Non!* And now you've got a hugely popular 35 hour week in France. Every nation is under pressure from this neo-liberal doctrine, but those that resist it most successfully are the ones that do best.

Question — Without wishing to sound overly pedantic, in this context do you think that 'reform' is an appropriate use of the language?

Michael Pusey — Yes—for the same reason that I called economic rationalism 'economic *rationalism*'—to bring out the irony! Sometimes people say to me, 'Well, isn't economic rationalism a rather infelicitous term? Because it's irrational.' And I say, 'Well, thank you. Precisely. That's what the whole story has been about.' And ditto with economic reform—it's economic regression. But *they* call it economic reform, so let's take it on in the terms in which it is put to us by our opponents.

Question — I sense that possibly those that are questioning this so-called economic reform are falling into a bit of a trap with the language. Rather than economic rationalism it's more economic fundamentalism. It's more of a religion.

Michael Pusey — Well, yes, but its advocates try to justify it with the claim that it's rational. I didn't ever set out intentionally to paint people into a corner and leave them stuck there and shouting back at us saying that we are 'economic *irrationalists*'. But that is what they do say. Then you look back at them and point out to them, 'See, you've totalised the economy as a rational system in itself, one which stands for rationality'—that is precisely my objection, and ditto with economic reform. It's only rational to the degree that it serves our needs!

Question — You've had commentators as diverse as Clive Hamilton and the Centre for Independent Studies basically saying that people have a lot more wealth now than they ever did. You talked about how middle Australia didn't like the greed of corporations. But you also said that they were pressured into having two people to service a mortgage. Those mortgages are big, but the houses are also big. They are of a standard that our parents would never have even thought about. Are people making a choice about putting the economy first, or are they feeling that they have to get on to this economic, materialistic cycle and they can't get off? Where is their choice?

Michael Pusey — One point is that money and wealth are, as I've tried to suggest, an extremely poor indicator or measure of wellbeing. It may well be that the aggregate income of a middle Australian family is about one and a half times higher than it would have been say 25 years ago, but what matters is how people experience the economy, which is precisely the reason for doing this study in the first place.

When you ask them, you realise that they look at their kids and say: 'They're not going to get a full-time job.' They say their kids aren't going to get into the full-time labour market until they are about 27, and they are going to get pushed out when they are 55. Where's the retirement income coming from? They are going to have to service a larger mortgage. So their incomes might be nominally larger, but the demands on the income are huge and now those incomes are contingent on a whole set of circumstances which did not exist

before. That is why they often feel—if not poorer in material terms—that life is going backwards. And they are the people who know best about their own economic experience, aren't they? They must have the last word on that.

Question — I'm a disappointed leftist. I've seen the Labor Party lose its way. I've heard you talking a lot about disappointments. Do you have a program to get us out of this?

Michael Pusey — No I don't. Each of us must do what we're good at. I'll join in a conversation with you about policy, but I won't have any magic bullets or privileged knowledge about how to move forward. So if you're bewildered, you'll have to forgive me for being bewildered too. But I do know that a regulated labour market is the starting point—tough re-regulation of the labour market is where we should start.

Question — One issue this week for people caught up with economic reform was the idea that first Britain then Australia, and I'm not sure about America, were becoming great share-owning democracies. Did you get any reflections on the swings in the market, when presumably most people's gain from that was equal to the proverbial sandwich and a cup of coffee?

Michael Pusey — A lot of people in the focus groups talked about their Telstra shares and their Commonwealth Bank shares. What they said reminded me of what the figures say, which is that shareholding in Australia—quite unsurprisingly—is hugely concentrated in a very small proportion of the population. So, not surprisingly, the people with these very small, 'playschool' bundles of shares know perfectly well that it's not going to fix their retirement. It has almost a symbolic value, and in some ways it makes them keen watchers of the ups and downs of the market, and makes them even more distressed by what they see as the irrational exuberance or indeed the 'animal spirits' that are at work there—very much the latter when they're talking about CEOs and their salaries!

Question — I agree that the world seems to be locked into a struggle between an American model and a European model. But watching French and German television every morning while living and working in Europe for a few months, as opposed to being a visitor, I don't get a feeling of goodwill and friendliness to strangers. People are frightened—there is high unemployment and their kids aren't getting into the labour market at all. Our kids are, with these three and six month contracts. On almost every economic indicator, they are doing worse than North America and Australia over the last four to eight years. I think, under globalisation, there's a risk that they will perhaps be swayed to the American model too. So I see perhaps a rather dismal future, with more of an American model of short term labour contracts, more stress, more fear, less care of the world. What do you think?

Michael Pusey — I agree that everybody is under this same pressure. I would make a few points about this—first, the comparative literature on states and markets is telling us that nations make differing responses to similar pressures, with hugely differing outcomes.

Second, I would argue with you about the evidence on the European economies. What the evidence says is that the neo-liberal American-Thatcher model—and I've seen OECD papers saying this outright—performs quite badly on conventional indicators, compared with the European economies.

I take that to be a general finding. There are five models of capitalism operating in the world today. There's the Anglo-American model (which we've copied) and Dutch and German corporatism—or partnership capitalism—which is by far the most successful model. I think studies now show that it delivers the best outcomes for its citizens. There's the Nordic model—which, even after a lot of restructuring, works better than ours (this of course depends on criteria). Then there's the special Japanese case, the 'Asian Tigers', and the Mediterranean economies.

But in every case, you come back to measuring the amount of well-being that is delivered by three lots of institutions together—state and governments on one side of the triangle, economies and markets on another, and families on the third side. The success story comes from those nations—and it's a qualified success always—that have tried to reconcile those three things, to make them work together, in synergy, in the face of international pressures to adopt the American model.

Question — Obviously middle Australia isn't homogeneous, so in your sample, did you detect any major discrepancies between those from rural and regional Australia and those in cities? I ask this question specifically because I think there are many who would argue that there is a lot of evidence to suggest that the current rationalism more adversely affected rural areas with all sorts of massive social implications and impacts which have been much harder felt than in the cities.

Michael Pusey — For reasons of cost it was simply impossible to conduct interviews in rural areas. A sample of 400 is a middle-range sample. You can't do really smart whizz-bang inferential statistics from a study that size — which means that those comparisons would not have been valid even if we had included a 'representative' number of respondents. This study gives you statistics that are indicative only. So: first, there were no rural people in the study; and second, again for statistical reasons, I was not able to make statistically reliable distinctions between the five capital cities in which these interviews and questionnaires were carried out.

That said, are there visible differences in the sample in the attitudes of middle Australians? As you so rightly say, it is most assuredly *not* homogeneous, so yes, there are very marked differences.

There are four groups that are detailed in the book. It would take too long to go into detail now. But there was one chalk and cheese difference between two of the groups.

One group I've called the 'battler-Hansonites'. They come from the western suburbs of Sydney, they live in fibro houses, and they are people that had secure jobs in the old industrial sector. Now they are hurting, because they have lost those jobs. They are now courier drivers, or delivery workers. Among the couples there are typically two of them working irregular hours, they've got huge mortgages, the mobile phone goes off in the middle of the night—'turn it off and you die', said one of the respondents who had a trucking business and two other businesses and was going backwards. These people are red raw and they're angry. The Hanson vote was formally 8.6 per cent, but the Hanson factor is about 15 per cent.

At the other end are the most politically unrepresented group in Australian society. They're probably an economically privileged group, but they're politically unrepresented in today's political climate. I've called them 'the improvers', and there are a lot of them—people that work for the public sector, have been members of unions, listen to the ABC, read the quality press, have university degrees, and most importantly, have *concepts of society*. It's strange and distressing, but I don't think more than about 35 to 40 per cent really ever use the word 'society' in their own homes, or ever think much about what it is.

So there's a chalk and cheese difference between angry, reactive 'battler-Hansonites' and the 'improvers' who are in a rage over economic reform, who want strong government, who don't mind paying their taxes, but who feel pitifully unheard and unrepresented. Both groups are angry about economic reform. But the focus is different.

Question — Would you comment on the foreign ownership issue and how that is likely to be the cramp the style of any more progressive government that we might get. For example, the almost total export of our large mining houses in just the last decade?

Michael Pusey — The honest answer is, I don't know much about this. Yet I see nations like Sweden and Denmark that are smaller than ours, and that have been unprotected by large economic organisations like the EEC. They have protected their economic interests *and* done well in the global economy. Both at the same time. I think they owe much of their success to the fact that their elites are nationalists first and capitalists second. They still feel bound by a sense of responsibility to the nation and its people. They accept certain limits because they remember the war. And they carry an ancient memory of class war and of terrible social strife. So they have a sense of justice and proportion. In contrast here I think it was Hugh Stretton who once said that Australia's business elites were bereft of moral and intellectual quality. I think they certainly have high IQs now and that they are tough and pretty smart. But they don't live in the same cultural world as European business elites, who have a longer history and a much greater sense of obligation and political responsibility to their fellow citizens.

Question — Is there any response yet to your findings from the politicians? There is a sense of disconnection in that politicians don't use public services, they send their children to private schools, and use private hospitals. So they are quite separate from the kind of things you are describing.

Michael Pusey — I have a feeling that the two major parties don't really want to know about it. I remember the Old Parliament House, and I remember one day when I went to visit Brian Howe I had to stand in the queue for the toilet with about 30 people. I love this new building, but it is a bit like a spaceship and people are hunkered down in their own little capsules here. So they are isolated from the 'great unwashed'. In this environment you are massively dependant on opinion polling, for precisely the reasons that you intimate. The sense of connection with ordinary people is missing. It's missing from debates about high policy. When I see the top opinion writers in the quality press—Paul Kelly and people like that—writing about 'ordinary' Australians, I suddenly think: 'Have you *ever* sat in a focus group in western Sydney, and do you *really* know what is going on?' Many politicians probably do, because their constituents confront them with this, but the whole policy apparatus abstracts policy questions into this stratosphere of discussions that go on over our heads without reference to the lived experience of a nation. I think that is very much the root of the problem.



Vigour, Rigour and Charisma: the Remarkable Pompey Elliott, Soldier and Senator*

Ross McMullin

Pompey Elliott was a remarkable character, a household name. Shortly after his return from the First World War he was elected to the Senate and remained there until his death. He contested two federal elections, in 1919 and 1925. Each time he was the first senator elected in Victoria. He was so famous during the 1920s that any Victorian schoolboy surnamed Elliott was liable to be nicknamed Pompey.

His remarkable reputation, which enabled him to top the Senate poll in 1919, was of course built during the tumultuous preceding years when he commanded the 7th Battalion at Gallipoli and the 15th Brigade at the Western Front. Pompey was a charismatic, controversial and outstandingly successful military leader. He was Australia's most famous fighting general, revered by his men and better known outside his own formation than any other Australian commander.

My aim today is to give you a glimpse of what was so special about him.

Imagine a big, hefty, fleshy bloke, 36 years of age in mid-1914, married with two kids. A solicitor, conscientious about his legal firm, but passionately interested in soldiering. Someone who was a fierce disciplinarian, who openly declared that he subjected his men to more rigorous and demanding training than any other battalion endured. Someone who

* This paper was presented as a lecture in the Department of the Senate Occasional Lecture Series at Parliament House on 11 October 2002.

frequently roared at officers and men under his command because they weren't doing what he thought they ought to be doing. Someone who was frank, forthright, controversial, often in trouble with his superiors because he called a spade a bloody shovel.

And someone who, despite the best efforts of his wife and his staff, tended to look untidy, sloppy, dishevelled—the sort of commander who would be criticising the standard of some unfortunate private's buttons on parade while blissfully unaware that he had forgotten to hook up his own braces that were hanging down incongruously. Stylish dress was never a Pompey priority. At one stage when he was on leave in London, some military policemen concluded that there was no way such a scruffily dressed man could really be a brigadier, and he was arrested for impersonating an officer.

All this does not seem to be a promising basis for immense popularity. How, then, did he acquire such a revered reputation as a leader?

There are three key factors, it seems to me; the three Cs—courage, character, and capacity.

Taking the last one first, his capacity. Pompey was a brilliant tactician as well as a fierce fighter. For any private soldier, it's important to have faith in your superior's competence. If you are putting your life on the line, you obviously want to feel that you are being competently led while you are doing it. Pompey's men had that faith, which stemmed from the way he treated his responsibilities with passionate seriousness—they knew that he knew his stuff.

As for courage, Pompey was remarkably brave. He was Australia's most famous fighting general. He placed himself in perilous situations so often that his survival was one of the minor miracles of the war. His reputation for extraordinary courage was established early at Gallipoli, notably when he was notified that Turks had captured an Australian-held tunnel and he immediately went forward himself to investigate the situation and had a celebrated duel with a Turk in the tunnel. From that time on, it was an article of faith among his men that Pompey would never send anyone anywhere he was not prepared to go himself.

The second of those three Cs that had so much to do with the exceptional esteem, even reverence, that so many of his men regarded him with, was character. I mean character in both senses. His men knew that he would say what he thought about proposed operations, that if he thought his superiors had given his men an ill-conceived task that was an exercise in futility, he had the character to say so, he would object vehemently. And in the other sense of the word Pompey *was* a great character, a real character. Stories about him grew and grew, amusing his men and disconcerting his superiors.

Numerous commanders tried to be exacting disciplinarians during the Great War, and ended up being despised as callous, vindictive martinets. But there was nothing austere or aloof about Pompey. He was a larger-than-life character, full of exuberance and vitality, with idiosyncrasies that appealed to his men and boosted their anecdotal repertoire. In physique and demeanour he was the epitome of a fighting leader. His face often gave the impression that he was ready to wage war at a moment's notice, and he had that notorious

habit of roaring indiscriminately at privates or company commanders if he felt they were performing inadequately.

The best known Pompey anecdote, which became the most famous AIF story of all, was the story of Pompey's hat. Pompey preferred the felt hat to be worn in the 7th Battalion, being unimpressed with alternatives like caps or the British-style pith-helmet. During one parade in Egypt he said so; and, even though felt hats were in short supply and hard to get, he went so far as to threaten that any 7th Battalion man without a felt hat at next parade would find himself cleaning sanitary pans. After that parade Pompey went off to lunch at the officers' mess, and put his hat underneath his chair as usual, but when at the end of the meal he reached underneath to retrieve it he was perturbed to discover it was no longer there. A series of searches undertaken at his instigation failed to locate the missing hat. Various versions of what happened have circulated in the years since. In my view the most likely explanation is that someone reached in under the edge of the officers' mess marquee, grabbed the hat, and then either buried it in the desert sand or handed it to a mate in another battalion. All Pompey could find in the way of a replacement at short notice was one that was too small and had an odd pinkish colour. At the next parade there was considerable suppressed merriment in the ranks when he struggled to retain his dignity wearing this peculiar ill-fitting substitute.

In due course Pompey came to appreciate the funny side of the hat story, but the incident that amused him most during the AIF's period in Egypt occurred when his battalion was marching near Cairo. The battalion happened to pass a group of hawkers and their tethered donkeys just as one of those animals, a male, was showing interest in a nearby female of the species. This male donkey's interest was conspicuous, very conspicuous indeed. The passing soldiers reacted to this spectacle with ribald laughter, which annoyed the owner of the amorously inclined donkey. He darted over to it and gave one of its ears a savage twist, whereupon the donkey's desire deflated quickly. Shortly afterwards the battalion's leading company, headed by its captain marching along in fine style with the senior sergeant just behind him, encountered a horse-drawn carriage containing two attractive women. One of them bowed and smiled to the captain, who gave an enthusiastic salute in return. Instantly a voice from the ranks was heard: 'Twist his ear, sergeant.'

Part of Pompey Elliott's distinctiveness was the mystique he created around his big black horse, Darkie. During inspections Darkie consistently seemed to demonstrate an astounding ability to detect even infinitesimal irregularities. He would draw the colonel's attention to unshavenness, unsteadiness or improper attire by stopping, throwing back his ears, and stretching out his neck. In fact it was Pompey, an accomplished horseman, who was directing his well-trained horse by subtly nudging Darkie's neck. He would then pretend that Darkie had spotted the irregularity. During my research I spoke to men who had served under Pompey and were still convinced that his horse had extraordinary powers.

Even before the Gallipoli landing, then, Pompey was establishing himself as one of the characters of the AIF. It was the combination of his wholeheartedness, his absolute dedication to duty, coupled with his tempestuous personality, that generated these anecdotes. And there was another ingredient too—his loyalty, his profound regard and commitment to the officers and men he led, the kind of devotion manifested in the way he spent his time on leave visiting hospitals to see those of his men who had been wounded, and how he never stopped trying to think of ways his men could be better looked after in

or out of the trenches. Most of them came to realise that he had a genuine and profound regard for them despite his gruff, volatile exterior.

For example, J.D. Schroder was directed to report with his section to Pompey in Egypt. In Schroder's own words this is what happened:

[After journeying across the desert we] arrived at 3am in the morning, and naturally did not turn out for physical jerks that day. I was awakened from a very deep sleep by a roar which resembled that of a bull at large thirsting for gore. Standing in the doorway of the bell tent was a huge figure, riding breeches on, no leggings, boots unlaced, a flannel shirt with one brace over the shoulder and one dangling down the side. Not wishing to be outdone in the roaring line, I did a little myself, with the result that within five minutes I was sojourning in the guard-tent and my section was at physical jerks ... I was released later in the day ... and I realised that the tales of Pompey's exploits and discipline ... had not been overrated.

Despite such an inauspicious start to Lieutenant Schroder's relationship with his new commander, Schroder was later to write this assessment of Pompey: 'in my estimation no greater soldier or gentleman ever lived.' Schroder went right through the Western Front, survived the war, and lived a long, fulfilling life after it, so that's a big statement—'in my estimation no greater soldier or gentleman ever lived.'

After the Gallipoli evacuation, Pompey was promoted to command the 15th Brigade. He took that formation to the Western Front in mid-1916, and remained its commander for the rest of the war. Many of the best Pompey stories occurred while he was a brigadier, like the time he was wounded when well forward talking to the commander of a tank. He was positioned well forward, but the position of his wound was well behind—in his left buttock. It was uncomfortably sore but not a serious wound, and he was contemptuous of suggestions that he should be evacuated to the rear for treatment. He did allow his own rear to be attended to as long as it did not interfere with his direction of the fight. The upshot was an unforgettable spectacle—the brigadier perched on a prominent mound, surveying the battlefield intently and dictating messages uninhibitedly, with his trousers round his ankles and underlings fussing over his behind. Onlookers were appreciatively amused by this further confirmation of his wholehearted commitment; there were also ribald remarks about the massive magnitude of his posterior. According to one of his colonels, seeing 'Pompey with his tailboard down having his wound dressed' was one of the sights of the war.

Later in 1918, irrepressible as ever, he became frustrated that his men were not pursuing the Germans across the Somme vigorously enough, and went forward to invigorate his battalion commanders. But they were satisfied that all that could be done was being done. With a contemptuous snort, Pompey said 'Damn it, I'll take them over myself', and proceeded to hazard his way—under fire—across a damaged bridge that was no certainty to support his hefty frame. Sure enough, he eventually fell in with a spectacular splash. Signallers amused themselves spreading the diverting message far and wide that 'Pompey's fallen in the Somme' with such gusto that the entire Fifth Division communications were blocked. Once again there was a memorable sequel—the arresting sight of Pompey clad only in a shirt while his other clothes were drying, strutting about uninhibitedly, directing developments and dictating messages. Quite a character.

After Pompey's promotion to the command of the 15th Brigade, he had just arrived at the Western Front when he experienced the catastrophe, the calamity, of Fromelles. In this disaster 5 533 Australians became casualties in one night. That is, in one night the Australian casualty toll was equivalent to the *combined* Australian casualties in the *whole* of the Boer War, the Korean War and Vietnam War *put together*. Astounding, isn't it? And about 1 800 of these Fromelles casualties were sustained in Pompey Elliott's brigade.

Pompey, as I've said, had only been at the Western Front five minutes when this hare-brained operation was foisted on him by his superiors. To his immense credit, he realised despite his inexperience of Western Front conditions that it was doomed to fail, and he tried to prevent it from proceeding. He even went so far as to get hold of a visiting staff officer from the Commander-in-Chief's headquarters, taking this officer forward and *showing* him why it was certain to fail. Having successfully persuaded this officer, Pompey urged him to go back to his chief, Sir Douglas Haig, and tell him. But whatever that staff officer did made no difference. The attack was not cancelled. Disaster loomed with a terrible inevitability.

This is what Lieutenant Schroder wrote about Pompey at Fromelles:

Pompey got tired of sitting in advanced brigade headquarters, and took me up the line with him. What had been ordinary sandbagged trenches were now heaps of debris, and it was impossible to walk far without falling over dead men. Although the Hun had a barrage down and there must have been dozens of [enemy] machine guns operating [as well], Pompey never thought of ducking, but went from battalion to company headquarters and so on right along the line. A word for a wounded man here, a pat of approbation to a bleary-eyed digger there, he missed nobody. He never spoke a word all the way back to advanced brigade [headquarters] but went straight inside, put his head in his hands, and sobbed his heart out.

In two other big Western Front battles, Polygon Wood and Villers-Bretonneux, the outcome was very different, and no-one was more instrumental in turning looming defeat into stunning victory, in both battles, than General Pompey Elliott. In these battles he was also distressed by the casualties in his brigade, but at least—unlike the fatuous folly of Fromelles—Polygon Wood and Villers-Bretonneux were important battles that he and his brigade ensured were victories when they looked for a while like anything but. And his outstanding leadership and tactical flair were crucial in each battle. Pompey was an outstanding tactician. Villers-Bretonneux was described by General Monash and others as the most brilliant feat that had been accomplished by soldiers from Australia or anywhere else.

Part of what makes Pompey a superb subject for a biographer is that he was such a vibrant character, and he expressed himself so vividly. He is irresistibly quotable. Take Lone Pine at Gallipoli for example. Pompey and his 7th Battalion were in the thick of it at Lone Pine, where the Turks attacked repeatedly. Amid savage fighting there were heavy casualties. No fewer than four of Pompey's men won the VC at Lone Pine, one after Pompey sent him to a vulnerable spot, where numerous others had been hit, with these heartfelt words: 'Goodbye Symons, I don't expect to see you again, but we must not lose

that post.’ Symons and his men retained control of that post, Symons was awarded the VC, and Pompey did see him again because Symons survived Lone Pine, unlike many others in Pompey’s battalion.

Afterwards Pompey described what it was like to be at Lone Pine in a private letter to a friend:

The weather was hot and the flies pestilential. When anyone speaks to you of the glory of war, picture to yourself a narrow line of trenches two and sometimes three deep with bodies (and think too of your best friends, for that is what these boys become by long association with you) mangled and torn beyond description by the bombs, and bloated and blackened by decay and crawling with maggots. Live amongst this for days This is war and such is glory—whatever the novelists may say.

In tackling Pompey’s biography I have always had multiple aims in mind. My main objective has been to tell the previously untold story of Pompey Elliott’s life as comprehensively, accurately and vividly as I could. But at the same time I also wanted to use Pompey’s story as a vehicle for telling the bigger collective story of how the Great War devastated Australia. And the story of Pompey, by virtue of his exceptional vibrancy, quotability and highs and lows, is a marvellous vehicle for telling the national story. There is a great deal of fresh material in the book about the impact on Australia of its participation in the Great War, including—and very much including—the aftermath period in the 1920s when Pompey was in the Senate.

And as far as Pompey himself is concerned, this is a whole-of-life study. I wanted to provide a well-rounded, comprehensive picture of him. Sometimes you come across unbalanced military biographies, where, if it concerned a World War I identity, you would typically find his ancestors, birth, upbringing, education, employment, marriage, parenting, militia involvement—half his life or more—covered in a brisk first chapter that takes the reader up to 1914 and then the war breaks out, the military sources open up, and you have chapter two covering six weeks training at Broadmeadows. That was the kind of unbalanced biography I wanted to avoid. In the book there is plenty of interesting material on him before 1914 as well as after 1918, when Pompey went into Parliament and fought the war all over again in the Senate in characteristically cantankerous and forthright fashion, and was right up there with Monash and Jacka VC as the three most famous AIF household names during the 1920s.

Another priority was that I wanted to write a book about Pompey that appealed to, or would be of interest to, the general reader, not just to military history buffs. I wanted to make the accounts of battles and other specialised stuff accessible to non-specialists, to make it flow smoothly for the general reader. Feedback about this aspect has been very pleasing.

And another facet I wanted to ensure there was appropriate coverage of was Pompey as a parent. His two children, Violet and Neil, were born in 1911 and 1912, so they were still toddlers when he went away to war. The remarkable letters Pompey wrote to his children underlined how unfortunate it was for them that he was not around for the next five years that were such crucial formative years for them. He had a marvellous talent for communicating with children, as shown by this letter I’m about to read, which he sent

from the Western Front at the end of 1916 to Neil, who was then four years of age. In it he describes Western Front developments including the unveiling of the latest military novelty, the tank, and refers to himself as 'Dida', which his young children called him. Surely no commander in any combatant nation in this war regularly described military developments like this:

Since I wrote to you before we got a lot of big waggons like traction engines and put guns in them and ran them 'bumpety bump' up against the old Kaiser's wall and knocked a great big hole in it and caught thousands and thousands of the Kaiser's naughty soldier men and we killed a lot of them and more we put in jail so they couldn't be naughty any more, but then it started to rain and rain and snow and hail and the ground got all boggy and the waggons got stuck in the mud and the old Kaiser has such heaps and heaps of soldiers that he sent up a lot more and thinned them out where the wall wasn't broken and started to build another big wall to stop us going any further ... it is very very cold here and the Jack Frost here is not a nice Jack Frost who just pinches your fingers so you can run to a fire to warm them but a great big bitey Jack Frost and he pinches the toes and fingers of some of Dida's poor soldiers so terribly that he pinches them right off. Isn't that terrible ... And the naughty old Kaiser burnt down every little house all round here and Dida's soldiers have to sleep out in the mud or dig holes in the ground like rabbits to sleep in. And all the trees are blown to pieces by the big guns and there is no wood to make fires and Dida's soldiers have to make fires of coal and the waggons are all stuck in the mud so Dida's soldiers have to carry it through all the mud and everything they eat and wear has to be carried too. And Dida's soldiers get so dreadfully tired they can hardly work or walk at all. Isn't that old Kaiser a naughty old man to cause all this trouble. Now goodbye dear little laddie. Give dear old mum a kiss and tell her Dida's coming home soon and that you will grow up soon and you won't let any old Kaiser come near her ...

So much for the Western Front as bedtime story.

There's another remarkable letter that Pompey wrote to young Neil after the battle of Polygon Wood in 1917. Pompey was wrung out after this battle. Two of his relatives had been killed, he had received devastating news from home about his solicitors' practice, and he told his wife Kate he didn't feel like writing even to her. But he was sufficiently perturbed by something Kate had mentioned in a recent letter to scrawl this hasty note to Neil:

My dear little laddie, Mum has been telling me that you were so sorry for being naughty that you wished you were a little girl like [Violet]. But if you ever changed to a little girl Dida and Mum would not have any little boy at all. And Mum and Dida would be dreadfully sad if they had no dear wee mischiefy thing like our laddie. Dear little chap, Mum and Dida love you so much that they don't mind very much when you are naughty. Of course Mum has to [scold] you because if she didn't you wouldn't know what was naughty and wrong to do ... Dida was sad when he heard that the little lad wanted to be changed to a girl. He loves his little laddie so much that he was sorry the poor little chap was not happy. So don't you worry a bit old chap. You just

try your best to be good and if you forget sometimes and Mum has to spank you, just be a soldier and try not to cry very much and you will know that Mum and Dida love you just the same even when they spank you. Spanking isn't so bad if you feel quite sure that dear old Mum loves you just the same. Dear little laddie, I wish I was with you now to take you up on my knee and comfort you and tell you Mum and Dida will always love you. You must be very good and loving now to dear Lyn and dear little Jacquelyn because dear Uncle Geordie their Dida was killed by the beastly old Kaiser's soldiers ... You must love and help dear old Mum and Belle and Nana very much too and cheer them such a lot. If you love them a lot that will cheer them.

A word on the *Australian Official History*. The quality of Charles Bean's epic *Official History of Australia in the War of 1914–18* has tended to inhibit reappraisal of the battles he chronicled in his innovative, painstakingly researched and unprecedentedly detailed volumes. Such was the excellence of his *History* that later writers have, in the main, concluded that re-examining Bean's interpretation of what occurred was not only difficult and time-consuming but also ultimately unnecessary. But I felt that kind of approach would have been inappropriate for a book on Pompey Elliott. Pompey was involved in so many controversies and had such forthright views about what happened and what should feature in the historical record that I felt that a biographer of Elliott would not be doing the task properly if he accepted Bean's findings with minimal scrutiny as given and proceeded from there. So what I did, and this was a big task, was to immerse myself in as many as possible of the vast array of sources that Bean used, together with, of course, other sources emerging more recently that were not available to him. Interesting reinterpretations have resulted.

I remain a firm admirer of Bean's idealism, his priorities and objectives as a historian, and the sustained quality of his work. However, I've ended up disagreeing with Bean on a number of issues. In fact, I don't know of any First World War biography or book of military history that has done more to overturn the accepted versions of events as handed down by Bean.

Pompey characteristically justified his actions in all these controversies with verve and conviction. Naturally I've quoted him freely in the book. What Pompey wrote in his wartime diaries and letters, and in his extensive postwar correspondence, and in various articles, and in his submissions to Bean for the *Official History*, and what he said in postwar lectures and in Parliament—all this in aggregate represents a more significant contribution to the history of the AIF than the writings of any of his contemporaries except Bean. Pompey is not only notable as a soldier and commander, but as a recorder and interpreter of the history of Australia in the Great War.

Pompey Elliott's political career had its genesis in the determination of Nationalist Party strategists, who were concerned about the volatility and disruptive tendencies of returned soldiers, to endorse a high-profile AIF commander on their Senate ticket in each state for the 1919 election. Pompey was an obvious recruit to approach. He had appropriately conservative political attitudes. His extraordinary popularity among returned soldiers and their families was underlined by the rapturous receptions he was given at welcome home functions.

Pompey was flattered to be asked, but wary. He was confident he could make a worthwhile contribution in Parliament, but the way the party system required politicians to commit themselves in advance to numerous detailed policies was abhorrent to him. As he declared to one of his officers, 'if any one wants me to stand for Parliament, they must have sufficient confidence in me as an honest man to trust me to run straight without binding me or attempting to bind me body and soul.'

The Nationalist strategists were not deterred. He did create awkward moments for them during his political career with his frankness and maverick tendencies, which were intermittently evident on issues of concern to him such as defence policy and government policy relating to Canberra. But these difficulties were outweighed, as far as Nationalist powerbrokers were concerned, by the electoral advantages accruing from his remarkable popularity. He was in Parliament for over a decade and his party was in government for almost all that time, and he displayed legal skills and drafting flair in creatively amending bills before the Senate, but it's unlikely that he was ever seen as ministerial material because of his forthrightness and independent instincts.

At one stage Elliott was single-handedly responsible for a change in government policy. One memorable day he was hurrying across King's Hall when he happened to slip on the highly-polished jarrah floor. His burly frame executed a dramatic tumble, reputedly rocking the Parliament House foundations, and accomplished such a spectacular slide on his back that he ended up entering the Senate chamber in arrestingly horizontal style, feet first. This amusing incident led to a less zealous polishing regime, and a less costly one, which resulted in a distinctive newspaper headline trumpeting that 'Pompey Elliott's Slip May Save Australia Money'.

Elliott lost no time in living up to his pre-election assertions about his political independence. In July 1920, in only his second Senate speech, he called on the government to 'revise drastically' some of its proposals to overhaul public service administration. Elliott's independent approach became even more evident when he vigorously denounced the government's proposed expenditure on Canberra. Amid testy exchanges with Nationalist colleagues, Pompey denied that he had given any commitment, implicit or explicit, during the election campaign in favour of expenditure on Canberra, and declared that 'I feel so strongly upon this matter that I have no desire to sit behind the Ministry if they are going to incur this expenditure. I would rather form a party of my own.' Elliott did not carry out this threat, but did rapidly establish a reputation for outspokenness in Parliament.

He dramatically reinforced it the following year. In 1918 he had been intensely aggrieved when overlooked for promotion to one of three vacancies for divisional command straight after his Villers-Bretonneux triumph. The acute sense of grievance never left him, and was aggravated in 1921 when the postwar militia force was established and he was again passed over for a divisional vacancy.

Pompey responded by venting his spleen in a series of extraordinary Senate speeches. He repeatedly had other senators, who included several fellow generals, on the edge of their seats as he lifted the lid on numerous controversial anecdotes about his wartime experiences, and made remarkable allegations about AIF individuals and incidents. After yet another astounding Pompey outburst, a Labor senator observed that 'whoever is engaged in writing up the history of the war should be supplied with a special desk in this

chamber and should be given a special invitation to be in regular attendance in the Senate, because matters of the greatest interest to them may crop up here at any time.’

A number of these exposés concerned events during March and April 1918, when the British and their allies were facing their biggest crisis of the whole war. In March 1918 the Germans launched an immense offensive that drove the British back no less than 40 miles. There was widespread genuine concern that after years of fierce fighting, awful hardships and frightful casualties, Britain and its allies might well lose the war.

Now I know it’s easy for us, and particularly for someone like me who has never been shot at—so far as I know, that is—to sound judgmental about exhausted men who had every reason to be frightened, and of course there were a lot of individual British soldiers who did resist tenaciously even if their unit collectively was unable to, and there were some British units who did resist tenaciously as units. But if we focus on the situation encountered by the Australians, like Pompey’s brigade, who were rushed to the rescue, what they found was much of the British retreating in disarray, and the pitiful sight of French civilians whose homes had been in the path of the German advance in terrified retreat as well, struggling along with whatever possessions they could gather or carry in the sudden crisis, typically elderly or women (because the French men were away in the army), often with a crying child clinging to mother’s skirts. And the situation is transformed by the arrival of the Australians like Pompey and his men, confident, unflustered by the dismay all around them, ready to do the business and stop the Germans. All these dismayed soldiers and civilians going one way, and a smaller number of Australians, undeterred, defiant, outwardly relaxed yet inwardly fiercely determined, going the other way towards the enemy.

Far too many Australians today know nothing at all about this. And they should know, they should know, because here we have some of the great moments of our history. Many of these retreating civilians recognise the Australian uniform, and they become exultant. They start raving about ‘*les Australiens merveilleux*’ [‘the marvellous Australians’], and many of them actually turn around and go back to their homes because they are so confident the AIF will stop the Germans. Some of the finest national declarations in Australia’s entire history are to be found here, like the reassuring words of some of these diggers to the distraught French women: ‘*Fini retreat madame, beaucoup Australiens ici*’ [‘No more retreat madame, many Australians here’]. That’s got to be one of the all-time great national statements, surely: ‘*Fini retreat madame, beaucoup Australiens ici.*’ It has also been recorded that at this critical time an ecstatic old Frenchman says ‘*Pas necessaire maintenant—vous les tiendrez, vous les tiendrez,*’ and a nearby digger asks someone for a translation. When this digger is told that the Frenchman was saying ‘No need to leave now, you’ll hold them, you’ll hold them’, the digger says ‘Well, we’ll just have to make sure the old bloke isn’t disappointed.’

At this critical time Pompey wrote that:

The AIF have hitherto accomplished nothing to be compared in importance with the work they have in hand just now.

I was never so proud of being an Australian as I am today ... The gallant bearing and joyous spirit of the men at the prospect of a fight thrills you through and through. You simply cannot despair or be downhearted.

Whatever the odds against, you can feel their spirits rising the more the danger seems to threaten. It is glorious indeed to be with them.

In the book I say that what the Australian soldiers did in 1918—both in this period I'm describing, when they were prominent in the defence against the German onslaught, and also later that year, when they spearheaded the offensive that brought eventual victory—what the Australian soldiers did in 1918 prompts the conclusion that Australians were influencing the destiny of the world in 1918 more than Australians had ever done before and perhaps more than Australians have ever done since.

Pompey was well aware at the time that what was happening in March and April 1918 was the climax of the whole conflict, and he was tremendously fired up as his brigade was rushed here and there to fortify vulnerable sectors in the British defence. When he found that some undisciplined soldiers were concentrating less on resisting the oncoming Germans than on hopping into the grog left in the suddenly deserted estaminets and chateaux, he took characteristically assertive action. After a British officer was caught in the act, Pompey arranged for a notice to be issued declaring that the next officer caught looting would be summarily and publicly hanged, and his body would be left swinging as a deterrent. He knew this order might well be illegal, but desperate situations require desperate remedies.

There certainly was no more trouble with looting. As Pompey (who was a solicitor in civilian life) observed afterwards, 'no-one seemed inclined to make of themselves a test case under the circumstances.'

During this phase of desperate defence his men had to march all night to the village of Hedauville. He was assured they would find it vacated for them to occupy. When Pompey arrived with his men, tired and wet after marching all night, he called at the Hedauville chateau at 9.30am. As he told the Senate in 1921:

I found the chateau literally packed with [British] officers, all of whom were still in bed. ... [The] staff officer who appeared to be in command ... was still in a very undressed state, stated that he had no orders whatever about leaving, and until he did so he could not move ... By this officer not being ready to move out, [my] men were forced to halt in the fields, sodden with rain falling at the time, and await his convenience. Not wishing to appear the least unreasonable, I told him ... I would try to get a building for headquarters, and leave [my] men outside until midday, whilst he was getting orders.

Pompey then went on to tell the Senate that during the intervening hours he sent his intelligence officer out to try and make contact with the British division this detachment belonged to. This officer reported back to General Elliott that when he inquired about the detachment ensconced at Hedauville he was given unprintable replies about its performance. Pompey responded decisively. As he told the Senate,

I then sent for the [British] staff captain, and asked him had he received any orders yet. He replied that he had not. I asked why he had not telephoned or gone to [a nearby village] to find out. He replied that he had no telephone. I told him that I had a telephone he could use, and then, being irritated by his

listless manner and want of interest, and by the fact that my men were being drenched to wait his convenience, I told him that I had formed a most unfavourable opinion from what I had heard of his division, and that his own want of energy and initiative were strong confirmation of what I had heard, and that unless he got orders and moved his men out of the village immediately, I would assume command and march them out of the village, if necessary, under arrest.

This assertiveness had the desired effect. Before long, this British detachment had moved out of Hedauville. As Pompey and his men were settling in, however, the situation changed dramatically once more. They were directed to move immediately to another vulnerable sector in the British defence about 20 miles away, and had to march all night again.

Pompey recalled this memorable night in a Senate speech in 1923:

I ... have seen them triumph in battles, and have greeted them beaten, but never disgraced, returning from a stricken field—they were proud moments; but I have never been prouder than when ... we marched, at night, 26 miles. ... When I arrived at General ... Monash's headquarters ... his staff officer said 'They will never get here'. But at the appointed hour the whole brigade marched in intact, in close and beautiful order ...

Now back to what Pompey was revealing in 1921:

Honourable senators will hardly believe the sequel, but this is what happened. Three weeks later General Hobbs [who was Pompey's immediate superior] called to see me. He said 'I want to speak to you privately', and took me out into the garden. He then said to me, 'General, I have instructions to tell you that ... you will receive no further promotion [because] of your conduct to [British] officers.' When he said that, I turned away rather dumbfounded, and he [patted] me on the back and said 'I have got to tell you that, but by God you were right.' It turned out that this staff officer [at Hedauville] was the son of a Duke, [and complained about] my conduct, and you see the result.

To appreciate what a bombshell this kind of speech was, you need to bear in mind the strict censorship that applied during the war period. These were extraordinary revelations, and there were a lot more of them with Pompey on the warpath fighting the war all over again in the Senate.

He was indeed a remarkable soldier and a remarkable senator.



Question — On the question of the divisional command, there were three generals who were promoted. They were Glasgow, Rosenthal and Gellibrand. Which one of those should not have been promoted, or should Pompey have promoted in lieu of?

Ross McMullin — My view is that it was inappropriate to rule Pompey out. If he had not been ruled out by his superiors for perceived errors of judgement (and I stress ‘perceived’), like the one we just concluded with, then he should have been well in the running and I would have thought probably ahead of each of those three, on his record.

Question — Before coming along today, I had a quick dip into Les Carlyon’s book on Gallipoli and I was very disappointed to see so few references to Pompey Elliott in that book. Do you have any comments on that?

Ross McMullin — I was disappointed too. But bear in mind, my book wasn’t out when Les was producing his book. He is planning to do a book on the Western Front. So hopefully due to the fact that my book is now published, Pompey might get a better run in his next book.

Question — What led to your interest in this remarkable man? How did you find out about him and what led you to this wonderful journey that you have made into his life?

Ross McMullin — Basically, I was struck, when I first came across his remarkable letters, by the notion that there was a terrific story there. I first came across the letters in 1979 when I spent a year working here in Canberra as a post-graduate student. I found out about all these interesting people, Will Dyson—who ended up being the subject of my first book—Monash, Glasgow, and Pompey. I thought then that there was potentially a pretty good story there, and I felt that somewhere down the track I might end up telling it. As well, as I mentioned in the talk, it’s always been a two-pronged thing, the combination of the fantastic story around what happened to Pompey and how he expresses himself, and also the life and times. He’s a great vehicle for having a look at the wider issue of how World War I devastated Australia. Those two parts of the story have loomed large all the way through.

Question — I think you have made it clear how the British regarded him, but how did Monash relate to him? Did he protect him, as a mentor, could he save him from himself? One wonders if there was any notion of political support that could have helped him at that time.

Ross McMullin — The 1918 appointments, which Pompey had a great sense of grievance about, were made without consulting Monash. Birdwood and Brudenell White were still running the AIF at the time that those appointments were made. Pompey, at that time, felt strongly that he would have had a much better go under Monash. He admired Monash greatly, and felt that the fact that the AIF did better than ever in the second half of 1918 after Monash took over was no coincidence. That was in contrast to the previous regime, which he felt had given him a raw deal.

In relation to the 1921 appointments, Senator Pearce, then minister for Defence, told Pompey in Parliament that he was wrong to claim that Monash had not been consulted. Pearce added that he could produce Monash’s recommendations with Monash’s signature underneath. That has been in *Hansard* for decades. But in the Monash papers at the

National Library I found a letter Monash wrote in 1921, complaining that the consultation he had been given about the 1921 appointments was token, and that really no notice had been taken of what he had said whatsoever.

If Monash had had sole say in the 1921 appointment would he have picked Pompey? I don't know. Pompey would have been convinced that, if that state of affairs had prevailed, Monash *would* have picked him. Maybe he would have.

Question — You made reference in your address to the strong feeling that Pompey had in Europe that a battle was futile and it shouldn't have proceeded. Presumably he had similar feelings at Gallipoli. Is there any evidence that he made similar recommendations there because of the huge loss of life, and was also ignored?

Ross McMullin — I think it was what happened at Fromelles that made him more energised about putting vigorous protests in, as and when he felt they were appropriate—and he felt that quite a few times. Before that, he definitely strongly felt that the Gallipoli landing itself was incredibly dangerous and he wasn't too keen on the strategy. But he was only a battalion commander and was not high enough to be making waves about having a Gallipoli landing or not. The absolutely idiotic, insane attack at Krithia a fortnight after the landing on 8 May 1915, when Elliott's brigade was moved down south temporarily to Helles where the British landed, to participate in this shocking exercise, he missed, by virtue of being wounded in the landing. He got a bullet in the foot on 25 April 1915 and he was away until June, so he missed the 8 May attack. He would have had strong views about that. There is another instance at Gallipoli. Pompey and his battalion were transferred to Lone Pine. The initial idea for them at the August offensive was to undertake an attack at Johnston's Jolly, which Pompey thought was really very, very stupid, and he was relieved when they were pulled away from there. He would have expressed his views about the proposed attack on Johnston's Jolly. I don't know that he did so as vehemently as he did at the Western Front ones post-Fromelles. He felt that what was initially planned for his 7th Battalion in the August offensive—the operation at Johnston's Jolly—was equivalently futile as what happened at the Nek.

Question — Do you think that Pompey's death came about because of his personality and his frustrations? Could you speak about the causes that led to him suiciding?

Ross McMullin — Pompey Elliott suicided in 1931. He was still a senator at the time. How did that come to happen? I think it could be said that by 1931 he had demonstrated that he had an obsessive personality and that he was prone to great troughs of depression—and, of course, during the war he had plenty to be depressed about. A psychiatrist professor told me that this sort of thing can run in families—profound depression leading to suicide. Pompey's elder sister suicided in Ballarat in 1894, Pompey's niece was to later suicide in the 1960s. As to why it happened in 1931 rather than at some other time, I think there are four possible factors.

The first is what he called his 'supersession grievance', being superseded both in 1918 and 1921 by those other generals. He felt that profoundly, and was still troubled by it greatly in the 1920s. A chapter title in my book comes from a letter that he wrote, in which he said that 'the injustice has actually coloured all my post-war life.' He really felt that acutely.

Second, it was the time of the Great Depression, the great economic depression. For someone of his political views, it was as if the entire system was on the brink of imminent collapse. He died in March, and he was the third prominent Melbourne solicitor to suicide in 1931. The great upset, distress and turmoil of that time led to him feeling deluded even about his own personal finances. He was quite financially secure, but he didn't feel it.

Third of the four triggers was post-traumatic stress syndrome, as of course we call it today, though we didn't then. Pompey obviously had encountered terrible sights and horrors through being a front line commander and from being so prominently in the front line, even as a general. But this was not the only kind of thing that cropped up in his nightmares and flashbacks during the 1920s. There had also been times when he had to order subordinates to do particular tasks. Even though, when he had these flashbacks and went over it afterwards, he remained convinced that someone had to do them at the time and it was appropriate tactically, and that he had to, as a general, order someone to do them, he still terribly regretted the outcome of those instances where, of course, some of the men didn't come back.

The fourth trigger was that he'd had a severe bang on the head in a horse riding accident a few months before he died. As his relatives were piecing together the sequence of events afterwards, and trying to make sense of it all, they thought that that incident was perhaps more serious than they had thought at the time. Those four factors together influenced his suicide.



Papers on Parliament

- 1 Peter O’Keeffe, *Spoilt for a Ha’p’worth of Tar. How Bureaucratic Law-making can Undermine the Ideals of Civil Liberty*, April 1988
- 2 Anne Lynch, *Legislation by Proclamation—Parliamentary Nightmare, Bureaucratic Dream*

John Vander Wyk, *The Discharge of Senators from Attendance on the Senate upon a Dissolution of the House of Representatives*, July 1988
- 3 Peter O’Keeffe, *Deregulation, Merits Review and the Withering of Parliamentary Sovereignty*, December 1988
- 4 Brian Galligan, *No Bill of Rights for Australia*, July 1989
- 5 Jenny Hutchison, *The Big Picture on the Small Screen*, November 1989
- 6 *Senate Estimates Scrutiny of Government Finance and Expenditure. What’s it for, does it work and at what cost?* March 1990
Papers presented at a Parliamentary Workshop, October 1989
- 7 *Unchaining the Watch-Dogs*, Parliament House, Canberra, March 1990
 - John Taylor, ‘The Auditor-General—Ally of the People, the Parliament and the Executive’
 - Dennis Pearce, ‘The Commonwealth Ombudsman: Present Operation and Future Developments’
 - Cheryl Saunders, ‘The Role of the Administrative Review Council’
- 8 Chandran Kukathas, *Democracy, Parliament and Responsible Government*, with additional observations by David Lovell and William Maley, June 1990
- 9 A.W. Martin, *Parkes and the 1890 Conference*, July 1990
- 10 Peter Bayne, *Tribunals in the System of Government*, July 1990
- 11 Ian Marsh, *The Committee System of the UK House of Commons: Recent Developments and their Implications for Australia*, March 1991
- 12 *Senate Committees and Responsible Government*
Proceedings of the Conference to mark the twentieth anniversary of Senate Legislative and General Purpose Standing Committees and Senate Estimates Committees, 3 October 1990, September 1991
- 13 *One People, One Destiny—Papers given at a series of Senate Occasional Lectures to commemorate the centenary of the National Australasian Convention 1891*, November 1991

-
- The Rt Hon. Sir Zelman Cowen, “‘Is it not time?’ The National Australasian Convention of 1891—a milestone on the road to federation’
 - Professor Geoffrey Bolton, ‘Samuel Griffith: the Great Provincial’
 - Professor W.G. McMinn, ‘Politics or Statesmanship? George Reid and the Failure of the 1891 Federation Movement’
 - Professor Leslie Zines, ‘What the Courts have done to Australian Federalism’
 - Mr John McMillan, ‘Constitutional Reform in Australia’
 - The Hon. Frank Neasey, ‘Andrew Inglis Clark and Australian Federation’
- 14 *Parliamentary Perspectives 1991*, February 1992
- Harry Evans, ‘Parliamentary Reform: New Directions and Possibilities for Reform of Parliamentary Processes’
 - John Black, Michael Macklin and Chris Puplick, ‘How Parliament Works in Practice’
 - John Button, ‘The Role of the Leader of the Government in the Senate’
 - Hugh Collins, ‘Political Literacy: Educating for Democracy’
 - Senate Procedural Digest 1991
- 15 Stephen Argument, *Parliamentary Scrutiny of Quasi-legislation*, May 1992
- 16 *Two Historical Views of Parliaments: Ireland and Russia*, June 1992
- Harry Rigby, ‘Russia’s Parliaments’
 - Professor Oliver MacDonagh, ‘Parnell and the Art of Politics’
- 17 *Trust the Women: Women in Parliament*, September 1992
- Senator Patricia Giles, ‘Women in the Federal Parliament’
 - Dr Marian Sawyer, ‘Housekeeping the State: Women and Parliamentary Politics in Australia’
 - The Hon. Susan Ryan, AO, ‘Fishes on Bicycles’
 - Janine Haines, ‘Suffrage to Sufferance: 100 Years of Women in Parliament’
 - The Hon. Dame Margaret Guilfoyle, DBE, ‘The Senate: Proportionately Representative but Disproportionately Male’
- 18 *Parliaments: Achievements and Challenges*, December 1992
- Bill Blick, ‘Accountability, the Parliament and the Executive’
 - Harry Evans, ‘Parliament: An Unreformable Institution’
 - Senator Bruce Childs, ‘The Truth About Parliamentary Committees’
 - Brian Galligan, ‘Parliamentary Responsible Government and the Protection of Rights’
 - Senator The Hon. Terry Aulich, ‘Parliament’s Last Stand’
 - Senator The Hon. Peter Durack, ‘Parliament and People’
 - Senate Procedural Digest 1992
- 19 *Constitution, Section 53: Financial Legislation and the Houses of Commonwealth Parliament*, May 1993
- ‘Amendments and Requests: Disagreements Between the Houses’, Clerk of the Senate
 - ‘Amendments and Requests: A Background Paper’, Office of the Clerk of the House of Representatives

-
- 'The Senate: Amendment of Taxation and Appropriation Legislation', Clerk of the Senate
 - 'Supply', Clerk of the Senate
- 20 *The Future of Parliaments and Their Libraries: A Review Article* by Russell Cope, October 1993
(Includes Parliamentary Bibliography)
- 21 *Parliament and the Constitution: Some Issues of Interest*, December 1993
- Ian Temby QC, 'Safeguarding Integrity in Government'
 - Professor Geoffrey de Q Walker, 'Constitutional Change in the 1990s: Moves for Direct Democracy'
 - Professor Thomas J. Courchene, 'Aboriginal Self-Government in Canada'
 - Professor Roger Wettenhall, 'Corporatised Bodies Old and New: Is Parliament Missing Out?'
 - Professor Brian de Garis, 'How Popular was the Popular Federation Movement?'
 - Dr Greg Craven, 'The Founding Fathers: Constitutional Kings or Colonial Knaves?'
- 22 *Views of Parliamentary Democracy*, February 1994
- Ferdinand Mount, 'Parliament and the Governance of Modern Nations'
 - Kathy Martin Sullivan MP, 'Women in Parliament—Yes! But What's It Really Like?'
 - Professor Michael Crommelin, 'Mabo—The Decision and the Debate'
 - Professor Geoffrey Brennan, 'Australian Parliamentary Democracy: One Cheer for the Status Quo'
- 23 *Parliaments and Constitutions Under Scrutiny*, September 1994
- Derek Drinkwater, '“Catspaw of the Minister?” Membership of the Joint Parliamentary Committee on Foreign Affairs, 1952–1967'
 - Professor Ulrich Klöti, 'Reform Trends in Swiss Government'
 - Kathleen Burns, 'A Stranger in Paradise? A Foreign Correspondent's View of the Parliamentary Press Gallery'
 - Professor Kathleen Mahoney, 'A Charter of Rights: the Canadian Experience'
 - Fred Chaney, 'Parliament: Our Great Expectations'
 - Professor James Walter, 'What Has Happened To Political Ideas?'
- 24 *Essays on Republicanism: small r republicanism*, by Harry Evans, September 1994
- 'A Note on the Meaning of “Republic”'
 - 'Republicanism, Continued: A brief rejoinder to Graham Maddox'
 - 'Republicanism and the Australian Constitution'
 - 'Introduction: the Agenda of the True Republicans'
 - 'Keeping the Australian Republic'
 - 'Essentials of Republican Legislatures: Distributed Majorities and Legislative Control'
 - 'Australia's Real Republican Heritage'
- 25 *Constitutions, Rights and Democracy: Past, Present and Future*, June 1995

-
- Professor Peter Russell, ‘Constitutional Odyssey: Can Canada Become a Sovereign People?’
 - Professor Henry J. Steiner, ‘Cultural Relativism and the Attitude of Certain Asian Countries towards the Universality of Human Rights’
 - Senator Cheryl Kernot, ‘For Parliament or Party: Whose Democracy is it, Anyway?’
 - Dr James Warden, ‘Parliament, Democracy and Political Identity in Australia’
 - Dr Helen Irving, ‘Who are the Founding Mothers? The Role of Women in Australian Federation’
- 26 *Republicanism, Responsible Government and Human Rights*, August 1995
- The Hon. Justice Michael Kirby, AC, CMG, ‘Human Rights—the International Dimension’
 - Senator Baden Teague, ‘An Australian Head of State: the Contemporary Debate’
 - Harry Evans, ‘Electing a President: the elite versus the public’
 - David Hamer, DSC, ‘Can Responsible Government Survive in Australia?’
 - John Taylor, ‘Parliament and the Auditor-General’
 - Dr Suri Ratnapala, ‘Westminster Democracy and the Separation of Powers: Can they Co-exist?’
 - Peter C. Grundy, ‘Prima Facie Native Title’
- 27 *Reinventing Political Institutions*, March 1996
- Professor Beryl A. Radin, ‘Reinventing Government in the United States: What is Happening with the National Performance Review?’
 - Professor Neville Meaney, ‘The Commonwealth and the Republic: an Historical Perspective’
 - Senator the Hon. Margaret Reynolds, ‘Women, Pre-selection and Merit: Who Decides?’
 - Pru Goward, ‘The Medium, not the Messenger’
 - Sir David Smith, ‘An Australian Head of State: an Historical and Contemporary Perspective’
 - Senator the Hon. Michael Beahan, ‘Majorities and Minorities: Evolutionary Trends in the Australian Senate’
 - Professor Howard Cody, ‘Australia’s Senate and Senate Reform in Canada’
- 28 *Poets, Presidents, People and Parliament: Republicanism and other issues*, November 1996
- Harry Evans, ‘The Australian Head of State: Putting Republicanism into the Republic’
 - George Winterton and David Flint, ‘The Election of an Australian President’
 - Les A. Murray, AO, ‘And Let’s Always Call It the Commonwealth: One Poet’s View of the Republic’
 - K.S. Inglis, ‘Parliamentary Speech’
 - Gwyneth Singleton, ‘Independents in a Multi-Party System: the Experience of the Australian Senate’
 - Jack Waterford, ‘Ministerial Responsibility for Personal Staff’
 - Derek Drinkwater, ‘Rupert Loof: Clerk of the Senate and Man of Many Parts’
- 29 *Parliaments in Evolution: Constitutional Reform in the 1990s*, March 1997

-
- David Butler, 'Ministerial Accountability: Lessons of the Scott Report'
 - Marilyn Lake, 'Women's Changing Conception of Political Power'
 - Deryck Schreuder, 'Reshaping the Body Politic—the South African Experience'
 - Campbell Sharman, 'Defining Executive Power: Constitutional Reform for Grown-Ups'
 - John Uhr, 'Keeping Government Honest: Preconditions of Parliamentary Effectiveness'
- 30 *The Constitution Makers*, November 1997
- The Hon. John Bannon, 'Towards Federation: the Role of the Smaller Colonies'
 - Professor Stuart Macintyre, 'A Federal Commonwealth, an Australian Citizenship'
 - Professor Geoffrey Bolton, 'The Art of Consensus: Edmund Barton and the 1897 Federal Convention'
 - Dr Mark McKenna, 'Sir Richard Chaffey Baker—the Senate's First Republican'
 - Professor Greg Craven, 'The High Court and the Founders: an Unfaithful Servant'
 - Dr Kathleen Dermody, 'The 1897 Federal Convention Election: a Success or Failure?'
 - Derek Drinkwater, 'Federation Through the Eyes of a South Australian Model Parliament'
- 31 *Papers on Parliament No. 31*, June 1998
- Dr Anne Summers, 'The Media and Parliament: Image-making and Image-breaking',
 - Hugh Mackay, 'Three Generations: the Changing Values and Political Outlook of Australians'
 - Professor Marian Sawer, 'Mirrors, Mouthpieces, Mandates and Men of Judgement: Concepts of Representation in the Australian Federal Parliament'
 - Harry Evans, 'Bad King John and the Australian Constitution: Commemorating the 700th Anniversary of the 1297 Issue of Magna Carta'
 - Dr Henry Reynolds, 'Aborigines and the 1967 Referendum: Thirty Years On'
 - Richard Broinowski, 'Robert Arthur Broinowski: Clerk of the Senate, Poet, Environmentalist, Broadcaster'
 - Kelly Paxman, 'Referral of Bills to Senate Committees: an Evaluation'
 - Juliet Edeson, 'Powers of Presidents in Republics'
- 32 *The People's Conventions: Corowa (1893) and Bathurst (1896)*, December 1998
- Corowa**
- Stuart Macintyre, 'Corowa and the Voice of the People'
 - Helen Irving, 'When Quick Met Garran: the Corowa Plan'
 - David Headon, 'Loading the Gun: Corowa's Role in the Federation Debate'
 - Jeff Brownrigg, '“Melba's Puddin’”: Corowa, Mulwala and Our Cultural Past'
 - James Warden, 'From Little Things Big Things Grow: Thresholds of Citizenship (1893–1993)'

- Paul Keating, 'The Prime Minister's Centenary Dinner Speech, Corowa, 31 July 1993'

Bathurst

- John Bannon, 'Return Tickets at Single Fares: the Bathurst Convention as a Representative National Gathering'
- Stuart Macintyre, 'The Idea of the People'
- John Hirst, 'Federation and the People: a Response to Stuart Macintyre'
- David Headon, 'Resurrecting the Federal Ideal: Mr Astley goes to Bathurst'
- A.E. Cahill, 'Cardinal Moran, Bathurst and the Achievement of Federation'
- Tessa Milne, 'Barton at Bathurst: "Front Stage/Backstage"'
- Mark McKenna, 'John Napoleon Norton and the 1896 Bathurst Convention'
- Robin McLachlan, 'A Foreign Agent Unmasked: Colonel Bell at Bathurst'
- Kevin Livingston, 'Joseph Cook's Contribution'
- Jeff Brownrigg, ' "The Sentiment of Nationality": Bathurst and Popular Support for Federation'

33 *The Senate and Good Government, and Other Lectures in the Senate Occasional Lecture Series, 1998, May 1999*

- Clem Lloyd, 'The Influence of Parliamentary Location and Space on Australia's Political News Media'
- Philippa Smith, 'Red Tape and the Ombudsman'
- Elizabeth Evatt, 'Meeting Universal Human Rights Standards: the Australian Experience'
- Hilary Charlesworth, 'Globalisation, the Law and Australian Sovereignty: Dangerous Liaisons'
- Chandran Kukathas, 'Tolerating the Intolerable'
- David Headon, 'Republicanism, Politicians, and People's Conventions—Goulburn 1854 to Canberra 1998'
- Scott Reid, 'Curbing Judicial Activism: the High Court, the People and a Bill of Rights'
- Martin Krygier, 'Fear, Hope, Politics and Law'
- Campbell Sharman, 'The Senate and Good Government'
- R.L. Cope, 'Biographical Dictionaries of Parliamentarians: Considerations and Examples'

34 *Representation and Institutional Change: 50 Years of Proportional Representation in the Senate, December 1999*

- Marion Sawer, 'Overview: Institutional Design and the Role of the Senate'
- John Uhr, 'Why We Chose Proportional Representation'
- Elaine Thompson, 'The Senate and Representative Democracy'
- Arend Lijphart, 'Australian Democracy: Modifying Majoritarianism?'
- Harry Evans, 'Accountability Versus Government Control: the Effect of Proportional Representation'
- Murray Goot, 'Can the Senate Claim a Mandate?'
- Marian Sawer, 'Dilemmas of Representation'
- Helen Coonan, 'Survival of the Fittest: Future Directions of the Senate'
- Andrew Bartlett, 'A Squeeze on the Balance of Power: Using Senate "Reform" to Dilute Democracy'
- John Faulkner, 'A Labor Perspective on Senate Reform'
- Fred Chaney, 'Should Parliament be Abolished?'

-
- Dee Margetts, 'The Contribution of The Greens (WA) to the Australian Senate'
 - Campbell Sharman, 'The Representation of Small Parties and Independents'
 - Paul Bongiorno, Michelle Grattan and Melissa Langerman, 'Reporting the Senate: Three Perspectives'
 - Peter Sekules and Frances Sullivan, 'Lobbying the Senate: Two Perspectives'
 - Anne Lynch, 'Personalities versus Structure: the Fragmentation of the Senate Committee System'
 - Ian Marsh, 'Opening Up the Policy Process'
 - Kate Lundy, 'Cyberdemocracy and the Future of the Australian Senate'
 - Geoffrey Brennan, 'The Senate and Proportional Representation: Some Concluding Observations'
- 35 *Australia and Parliamentary Orthodoxy, and Other Lectures in the Senate Occasional Lecture Series, 1999, June 2000*
- Howard Wilson, 'Ethics and Government: the Canadian Experience'
 - Geoffrey de Q. Walker, 'Rediscovering the Advantages of Federalism'
 - Ian Marsh, 'The Senate, Policy-Making and Community Consultation'
 - Alan J. Ward, 'Australia and Parliamentary Orthodoxy'
 - Meredith Burgmann, 'Constructing Legislative Codes of Conduct'
 - John Uhr, 'Making Sense of the Referendum'
 - Rodney Tiffen, 'The Scandals We Deserve?'
 - Kay Walsh, 'Survey of Literature on the First Parliament'
- 36 *Parliament and the Public Interest. Lectures in the Senate Occasional Lecture Series, 2000, June 2001*
- David Solomon, 'A Single-Chamber Australian Parliament?'
 - George Williams, 'Legislating for a Bill of Rights Now'
 - Tony Harris, 'Auditors-General: Policies and Politics'
 - Richard Mulgan, 'Public Servants and the Public Interest'
 - Ken Coghill, 'Ministers in Office: Preparation and Performance'
 - John Kalokerinos, 'Who May Sit? An Examination of the Parliamentary Disqualification Provisions of the Commonwealth Constitution'
- 37 *For Peace, Order, and Good Government: the Centenary of the Parliament of the Commonwealth of Australia, November 2001*
- Margaret Reid and Gavin Souter, Speeches from the Launch of the Senate Exhibition *For Peace, Order, and Good Government*, 29 March 2001
 - James G. Drake: An Address
 - John Hirst, 'Federation: Destiny and Identity'
 - Geoffrey Blainey, 'The Centenary of Australia's Federation: What Should We Celebrate?'
 - Helen Irving, 'One Hundred Years of (Almost) Solitude: the Evolution of Australian Citizenship'
 - Marian Simms, '1901: the Forgotten Election'
 - Marian Sawer, 'Inventing the Nation Through the Ballot Box'

-
- Russell L. Cope, 'Housing a Legislature: When Architecture and Politics Meet'
- 38 *Parliament and Public Opinion. Lectures in the Senate Occasional Lecture Series 2000–2001*, April 2002
- Jeremy Rabkin, 'National Sovereignty in a Globalising World'
 - Murray Goot, 'Distrustful, Disenchanted and Disengaged? Polled Opinion on Politics, Politicians and the Parties: an Historical Perspective'
 - David Zussman, 'Confidence in Public Institutions: Restoring Pride to Politics'
 - Phillip Knightley, 'What is Australia? Perception versus Reality'
 - Ian McAllister, 'Civic Education and Political Knowledge in Australia'
 - Sir Alastair Goodlad, 'Political Structure and Constitutional Reform in the United Kingdom'
 - Donley T. Studlar, 'Reflections on the Election Fiasco in the United States'
 - Judith Brett, 'Parliament, Meetings and Civil Society'
- 39 *Senate Envy and Other Lectures in the Senate Occasional Lecture Series, 2001–2002*, December 2002
- Julianne Schultz, 'Two Cultures: Parliament and the Media'
 - Ted Morton, 'Senate Envy: Why Western Canada Wants What Australia Has'
 - Patrick Bishop, 'Democratic Equivocations: Who Wants What, When and How?'
 - Campbell Sharman, 'Politics at the Margin: Independents and the Australian Political System'
 - Patrick Barrett, 'Auditing in a Changing Governance Environment'
 - Gary Johns, 'Government and Civil Society: Which is Virtuous?'
 - Lord Irvine of Lairg, 'The Spirit of Magna Carta Continues to Resonate in Modern Law'

Senate Briefs

- 1 *Electing Australia's Senators*
- 2 *The Opening of Parliament*
- 3 *Women in the Senate*
- 4 *Senate Committees*
- 5 *Consideration of Estimates*
- 6 *The President of the Senate*
- 7 *Disagreement Between the Houses*
- 8 *The Senate and Legislation*
- 9 *Origins of the Senate*
- 10 *Role of the Senate*
- 11 *Parliamentary Privilege*
- 12 *Questions*
- 13 *Rights and Responsibilities of Witnesses before Senate Committees*
- 14 *Ministers in the Senate*

Copies of *Senate Briefs* are available from the following address:

Research Section
Procedure Office
Department of the Senate
Parliament House
CANBERRA ACT 2600
Telephone: (02) 6277 3074

Senate Briefs are available on line at

www.aph.gov.au/senate/pubs/briefs/index.htm

To order copies of *Papers on Parliament*

On publication, new issues of *Papers on Parliament* are sent free of charge to subscribers on our mailing list. If you wish to be included on that mailing list, please contact the Research Section of the Department of the Senate, at:

Research Section
Procedure Office
Department of the Senate
Parliament House
CANBERRA ACT 2600

Telephone: (02) 6277 3074

Email: research.sen@aph.gov.au

Printed copies of previous issues of *Papers on Parliament* may be provided on request if they are available. Past issues are available on line at

www.aph.gov.au/senate/pubs/pops/index.htm