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Power: Relations Between the Parliament and the Executive



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Power: Relations Between the Parliament and the Executive

The Vision in Hindsight: Parliament and the Constitution: Paper No. 12

Vision in Hindsight

Vision in Hindsight is a Department of the Parliamentary Library (DPL) project for the Centenary of Federation.

The Vision in Hindsight: Parliament and the Constitution will be a collection of essays each of which tells the story of how Parliament has fashioned and reworked the intentions of those who crafted the Constitution. The unifying theme is the importance of identifying Parliament's central role in the development of the Constitution. In the first stage, essays are being commissioned and will be published, as IRS Research Papers, of which this paper is the twelfth.

Stage two will involve the selection of eight to ten of the papers for inclusion in the final volume, to be launched in conjunction with a seminar, in November 2001.

A Steering Committee comprising Professor Geoffrey Lindell (Chair), the Hon. Peter Durack, the Hon. John Bannon and Dr John Uhr assists DPL with the management of the project.



Centenary of Federation 1901-2001

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Major Issues

The relationship between the Executive and the Parliament is the buckle which joins a system of government. It determines the character of national politics, the role of key public institutions, and the balance between government and the broader political system. In Australia, the reluctance of our founders to make explicit the relationship between Ministers and the Parliament has allowed disciplined political parties to thrive and has facilitated Executive dominance. Power has become skewed in the Executive's favour, replacing the Parliament as the primary forum for decision making with the party room. The folly at the heart of the founders' blueprint for the Australian system of government was the presumption that 'responsible government' would exist despite warnings of impending party consolidation. Today's system of party, rather than parliamentary, government is the result of gaps left in the Commonwealth Constitution.

This paper explores the implications of this folly for the Commonwealth Constitution. The argument of the paper follows the conventional wisdom: that the Executive dominates and controls the Parliament as a consequence of a disciplined two-party system.

The founders debated at length theoretical and operational concerns such as the composition of the Executive, alternative federal models, the election of Ministers, and, importantly, notions of responsible government. Yet because they failed to heed warnings that parliamentary government would become party government, the founders relied on untenable transplanted conventions about accountability through independent parliamentary votes and the compulsion that Ministers must be, or become within three months, a member of either House. The founders hoped conventions would reconcile the hybrid British and American model of Australian government. This paper explores how this decision was taken, and the consequences which emerged after the first decade of Federation.

Since 1910 there have been occasional flickers of hope for a revival of Parliament as a more significant part of the political system, often centring on the role of the Senate or a growing scope for committee input. We examine these trends and current proposals for reform, but remain pessimistic the overall balance will much change. While the Commonwealth Constitution remains ambiguous about the role of the Executive, and the Executive controls the means for reform, the architecture of 1901 will remain.

Though aware of the risk of 'party government', the constitutional founders underestimated the extent to which parties and, by extension the Executive, would dominate the Commonwealth Parliament. Though considered at the Convention debates, delegates

nonetheless crafted constitutional arrangements that made traditional responsible government (however shadowy the definition) reliant on independent votes, moving coalitions of interests, and on a Senate as the defender of state, rather than party, interests. For those seeking to establish responsible government in Australia, these were not wise assumptions for the coming century.

The fusion of the non-Labor parties and the emergence of a disciplined and increasingly successful Labor Party at the end of the Parliament's first decade set the pattern for a century of two-party parliamentary politics. By facilitating Executive dominance, the rise of political parties profoundly undermined the notions of responsible government upon which the Parliament was designed.

The consistent winner of the 'trinitarian struggle' between the Executive, House of Representatives and the Senate has been the Executive. The Senate's changed role after it became elected by proportional representation from 1949 created some hope for increased scrutiny as the result of minor party representation. While the character of the Senate, the scrutiny of Question Time, and the probing of parliamentary committees constrain the power of government, the Parliament has, however, remained a forum dominated by Ministers of state.

Though party loyalty within the electorate is declining, the persistence of single member constituencies and preferential voting ensure parties will remain in control of Parliament. Perhaps the future will see more independent members elected, but the pattern set by 1910 seems likely to persist for some time. The ideal of a chamber which is a forum for discussion followed by the casting of votes free from party discipline remains fanciful. While party discipline has not been absolute, and members have on occasion crossed the floor, government defeats in the House, as seen in 1941, remain the exception rather than the rule. While parties control the Executive, and the Executive the Parliament, real reform without fundamental constitutional change is not possible.

We find the founders at fault for constructing a folly. The Constitutional Convention records show a strong shared belief in responsible government. Yet the presumption was not made explicit, thus allowing Executive dominance to evolve. The founders left a vacuum at the centre of their Constitution, and Ministers have filled a space which might otherwise belong to the Parliament. Legislative power was to be vested in 'a Federal Parliament, which shall consist of the Queen, a Senate, and a House of Representatives', but in practice control over the Parliament's agenda, its legislative program, order of business and even frequency of meeting are all in the hands of Ministers.

The founders did not benefit from the certainty granted by hindsight. The Conventions show widespread agreement that responsible government was the preferred model for Australian democracy. By responsible government, delegates had in mind ministerial accountability to the Parliament. Yet in deciding not to spell out the requirement for responsible government, or the mechanisms to sustain it, the constitutional authors bowed before the difficulty of the task. The decision to be silent on the requirements of

ministerial accountability set a pattern of Executive dominance that continues today and will almost certainly characterise the second century of the Australian Commonwealth Parliament.

Introduction

Historian Barbara Tuchman once drew a fascinating distinction between a mistake and a folly.¹ We all make mistakes from time to time—a foolish choice reached either through ignorance or failure to think through the consequence of our decision. Mistakes often become clear only in hindsight. Folly, however, is something altogether richer. A folly has three key characteristics. The policy decision must have been considered counterproductive in its own time. A feasible alternative course of action must have been available. And the folly must be product of a group of people, and persist beyond the political lifetime of its authors. Tuchman defines folly as the 'pursuit of policy contrary to self-interest.'²

At the heart of the Commonwealth Constitution sits such a folly. The Constitution establishes a basic framework for national government in Australia. It is the product of a decade of debate, as men of ability and talent argued about how to design a system of government which drew on the best characteristics of British, Canadian and American systems. Australia's constitutional founders met in Adelaide, Sydney and Melbourne to discuss and debate the federation of Australia's colonies.³ Central to this constitutional dialogue was the question of how the Executive might relate to the legislature. Should it be separate and independent as in the United States, or fused with the Parliament as in Westminster? And if, as proved the case, Constitution authors chose the British option, how would this to be reconciled with a bi-cameral, federal structure drawn from American practice?

The relationship between the Executive and the Parliament is the buckle which joins the Australian system of government. It determines the character of national politics, the role of key public institutions, and the balance between government on the one hand and the broader political system on the other. For Prime Minister Malcolm Fraser, commenting in 1977:

the principle of responsibility—to the electorate and the Parliament—is a vital one which must be maintained and strengthened because it is the basis of popular control over the direction of Government and the destiny of the nation. To the extent that it is eroded, the people themselves are weakened. If the people cannot call to account the makers of Government policy, they ultimately have no way of controlling public policy, or the impact of that policy on their own lives. For the Government to be truly accountable to the people and Parliament, the electoral and Parliamentary machinery must of course work effectively and democratically.⁴

The Australian constitutional founders knew this, and debated the topic at length. But at decision time, and despite contemporary warnings, the founders avoided a specific formulation. As the constitutional scholar Michael Crommelin has argued, they deliberately left the detail of the Parliament-Executive relationship flexible, rather than make a choice between competing visions of the relationship.⁵ The non-committal provisions included in the Constitution neither resolved the debate between contending models nor codified the respective roles of Ministers and Parliament. Stating only that ministers must be, or must become within three months, a member of either House, the founders left the core relationship to historical evolution. This decision created an unhelpful ambiguity and, over time, allowed circumstances rather than intention to dictate the relationship between the Executive and the Parliament.

A century on, it is clear the Executive has come to dominate the Commonwealth Parliament. This is the result of a development that postdates the Constitution, the rise of disciplined modern political parties. With party majorities secure, at least in the House of Representatives, the Parliament is made subordinate to the party-room of the governing Executive. This has led to familiar criticisms of Parliament as a 'rubber stamp' for the wishes of the Executive or as an 'elective dictatorship'. Critics of the dominance of the Executive, particularly in the House of Representatives, argue that Parliament has ceased to be a body of review and scrutiny, with its usefulness in decline.⁶

This successful colonisation of power by political parties was made possible by the folly of an ambiguous Constitution. Because party discipline has been so strong in Australia, the party able to garner a majority of seats in the House of Representatives can legislate and govern with few restrictions on its activities. While important developments such as the expansion of the committee system and the loss of major party control of the Senate have made some inroads on the imbalance, Australia's parliamentary system remains essentially bi-polar, with a winner-takes-all approach.

In the Federation debates, most speakers drew on a traditional British language of ministerial responsibility and accountability. They appeared to expect an important role for the Parliament in holding the Executive to account. But the founders failed to codify that role or to provide the Parliament with accountability mechanisms outside simple majority rule (for example, by insisting on an independent speaker, committees chaired by non-government Members, individual election of Ministers or confirmation of senior public service and statutory appointments by Parliament). If the intention was British-style responsible government, as the historical record suggests, then the folly at the centre of the Constitution disappointed such hopes.

Not all voices in the Federation debate supported a Westminster-style system for Australian national government. From the outset, the founders considered non-British institutions to draw together the separate Australian colonies but, at the same time, preserve some of their autonomy. So the relationship between the government drawn from a majority of the Lower House, and the influence of a state-based Senate was always part of the Federation debate. So too was the influence of political parties. Alfred Deakin, for

example, accurately predicted that a new Senate would be dominated by party rather than state interests. Nonetheless, the founders hoped conventions would arise to square the circle, to reconcile the incoherent blend of British responsible government with American federalism.

This paper explores the implications of the Commonwealth Constitution for the relationship between the Executive and the Parliament. The argument of the paper follows the conventional wisdom of Australian political commentary: that the Executive dominates the Parliament due to its control over information and procedure. This dominance has arisen as a consequence of a disciplined two-party system. Because they failed to heed warnings that parliamentary government would become party government, the founders relied on untenable transplanted conventions about accountability through independent parliamentary votes. We explore how this decision was taken, and the consequences of the party system which emerged within a decade of Federation. Since 1910 there have been occasional flickers of hope for a revival of Parliament as a more significant part of the political system, often centred on the role of the Senate. We examine these trends and current proposals for reform, but remain pessimistic the overall balance will much change. While the Commonwealth Constitution remains ambiguous about the role of the Executive, and the Executive controls the means for reform, the architecture of 1901 endures.

The Founders' Vision

While the origins of the Australian Federation have received much needed elaboration in recent publications, it is useful to sketch the course of Federation as it touched upon the relationship between Parliament and the Executive.⁷ The push for union can be traced to the middle of the nineteenth century, when some sections of colonial opinion began advocating common defence and fiscal policies. In 1846 NSW Governor Fitzroy suggested a central authority for the colonies, an idea supported, briefly, by British Colonial Secretary Earl Grey. While enthusiasm for a union ebbed and flowed throughout the second half of the century, in 1883 a Federal Council was established to discuss matters of common interest to the colonies. It was not a promising start. The Council held no executive or revenue powers, and New South Wales did not take part. Yet it was NSW Premier Sir Henry Parkes who revived the push for federation in 1889 with a speech at Tenterfield calling for, among other things, 'a parliament of two Houses, a house of commons and a senate, which would legislate on all great subjects'.⁸

Following the Tenterfield speech, a conference held in Melbourne in 1890 was attended by representatives from the seven Australian colonies and New Zealand. Parkes moved a motion, seconded by Victorian MLA Alfred Deakin:

that, in the opinion of this Conference, the best interests and the present and future prosperity of the Australian Colonies will be promoted by an early union under the

Crown, ... under one legislative and executive Government, on principles just to the several Colonies.⁹

A federal Constitution was then drafted by delegates, in particular Queensland Premier Samuel Griffith,¹⁰ at the Sydney Convention in 1891 and submitted to the colonies for consideration. Enthusiasm for the draft was modest, however, particularly after Parkes lost office in NSW and so could not lead the movement. Momentum returned when the Australian Natives' Association organised a conference in 1893 for those favouring federation. The Corowa meeting devised a new process for choosing delegates to draft a federal Constitution for submission to the people. Conventions followed in Adelaide, Sydney and Melbourne in 1897 and 1898, before the Constitution was passed in the colonies (with the exception of Western Australia) during 1898 and 1899. The legislation was enacted in Britain in 1900, with the Commonwealth officially proclaimed on 1 January 1901.¹¹

A succession of Federation Conventions provided an important opportunity to work through system design issues for the proposed Commonwealth. Principal topics included the composition of the Executive, the difficulties of reconciling responsible government with federalism, and early warnings about the effect of party government.

The composition of the Executive was among the least contentious matters to arise throughout the Convention debates. As Michael Crommelin has also argued, at:

no stage was it seriously contested that the executive should comprise the Queen, a Governor-General, a Federal Executive Council, Ministers and Departments.¹²

Republicanism and the direct election of the Governor-General were very briefly considered but quickly rejected. The draft Bill coming out of the 1891 Convention read:

for the administration of the executive government of the commonwealth, the Governor-General may, from time to time, appoint officers to administer such departments of state of the commonwealth as the Governor-General in council may from time to time establish, and such officers shall hold office during the pleasure of the Governor-General, and shall be capable of being chosen and of sitting as members of either house of parliament.¹³

This was altered at subsequent Conventions and reflected in the 1897 Bill, when delegates decided (though not unanimously) that Ministers *must* sit in one of the Houses, or be elected to sit within three months. This compulsion for Ministers to be parliamentarians, found in s. 64 of the Constitution, effectively fused the legislative and Executive arms of government. Edmund Barton best sums up the rationale for the insistence that Ministers also be parliamentarians. Introducing the provision, he argued:

if the honourable member is in doubt that the system of government under which the machinery of this Bill will operate will be responsible government as we understand it,

that doubt will be altogether removed by the requirement of the presence of Ministers in Parliament.¹⁴

His proposal led to some of the more passionate debates involving wider notions of responsible government or ministerial responsibility, and federalism.

The concept 'responsible government' is contentious, and is addressed in detail elsewhere in this series. For our purposes, a quote from Henry Parkes provides a useful explanation of his conditions for responsible government. In the words of Parkes, the Executive's 'term of office shall depend upon their possessing the confidence of the house of representatives, expressed by the support of the majority'.¹⁵ Thus Ministers hold office at the pleasure of the Lower House, and must answer to Parliament for their actions. This traditional British notion of responsible government finds its underpinnings in early conservative political philosophers such as Edmund Burke, later liberal thinkers including J. S. Mill, and the legal commentaries of A. V. Dicey.¹⁶ Not all commentators were as sanguine; Walter Bagehot dismissed the House of Commons as an 'electoral chamber; it is the assembly which chooses our president'.¹⁷ Nonetheless, for Parkes and his Australian colleagues, responsible government required Ministers to sit in Parliament where their actions could be scrutinised by their peers.

There was less agreement on how to reconcile responsible government with federalism. In Britain the House of Lords did not pose the same problem, since it had no independent electoral base, and powers of review which were rarely exercised. (When a few years later the Lords did assert their authority, the peers were defeated and their powers circumscribed in the consequent constitutional crisis). The proposed Australian Constitution, however, included a Senate with significant, perhaps even equal, power to the Lower House. In theory, such a Senate could find itself in dispute with both the Executive and the House of Representatives. Who then should prevail? The draft Constitution allowed double dissolutions to resolve major disputes, but how would the ordinary day-to-day business of the Executive be transacted? This problem exercised minds across a number of Federation Conventions. It found expression in broad questions about the compatibility of two Houses, and practical issues such as where Ministers would reside. Indeed one contemporary commentator, Brian Galligan, has argued that the major issue of the Convention debates was the incompatibility of responsible government and a bicameral legislature.¹⁸

Delegates appeared to agree that responsible government required responsibility of Ministers to one House,¹⁹ following the example of the British House of Commons. Yet the proposed system created two Houses, with Ministers in each, and allowed both to modify legislation advanced by the Executive. A government with a majority in the Lower House could thus find its program rejected by the Senate. Sir John Hackett, describing the dilemma, commented famously 'either responsible government will kill federation, or federation in the form in which we shall, I hope, be prepared to accept it, will kill responsible government'.²⁰ Sir Richard Baker also favoured a powerful Senate, while Deakin preferred responsible government at the expense of the Senate. He argued the

Convention should 'place within the popular house, with all the authority attached to those who directly represent the people, responsible Ministers, who are to hold their seats only so long as they can justify their actions to that chamber'.²¹ In 1891 a third group, led by Parkes and Barton, championed co-existence. According to Galligan, this group recognised that responsible government was required 'because familiarity and history had sanctified it, and federal bicameralism because small states demanded it as a condition of federation'. Further, co-existence could work as the result of the 'traditional good sense that was part of the British culture inherited by the Australian colonies'.²² Subsequent debates were to deal with the more technical aspects of the relationship, including, for example, provision for the breaking of deadlocks.

The resulting hazy outline provided for in the constitutional wording reflected the impossibility of finding agreement between these contending schools, or of reconciling their proposals. Before agreeing not to agree, however, constitutional delegates explored alternative institutional structures and relationships of power. A modified version of the Swiss model was proposed by South Australians Richard Baker and Sir William Downer but was not widely supported and quickly negated.²³ This model allowed for the election of ministries for a set period, to counteract the detrimental effect of party on the operation of responsible government. The Baker-Downer model attracted support from the editor of *The Age*. The Melbourne newspaper argued in favour of an elected ministry in 1891, which it contended would result in:

no striking at ministers through their policy; no rejecting of good measures in order to bring about a change in government ... There would be no secrecy, no screening of colleagues; the public would know, in every instance, who was to blame for the mismanagement; the delinquent alone would be liable to censure or punishment, and the administration of affairs would pass into the hands of efficient and capable men.²⁴

From his seat in the South Australian Parliament in 1891, Cockburn agreed:

the best men would be chosen from the whole House instead of from only one side. Collective responsibility would go, but there would be more bills from private members, and the individual responsibility of each minister for his department would be increased.²⁵

The issue of ministerial responsibility was linked closely with the question of relative power for the two Houses. Reid's amendment to disallow the Senate power to amend tax bills was thought to have the effect of placing the majority of Ministers in the Lower House, subject to other political and electoral considerations. Given financial powers, the Lower House was seen as the more likely home for Ministers, though the imperatives of geographic representation ensured some Ministers sat in the Upper House.

Ultimately, no agreement could be found on the vexed issue of responsible government versus federalism. The founders chose to leave the verdict to history. They agreed Ministers would be drawn from the legislature, and wrote this into the Constitution. Delegates were more circumspect about the other elements of responsible government.

Despite some support for the inclusion of the term 'responsible government' in the Constitution, the majority of delegates sought a more flexible form of words. In 1891, for example, Griffith defeated a suggestion that Ministers be called 'responsible ministers.' In 1897 Barton supported the notion of responsible government but contended that the term 'his responsible advisers' be omitted from the draft Bill because the task at hand was to construct a system that would last for centuries, thus endorsing the flexible approach.²⁶ Griffith argued that 'it was unnecessary, and undesirable, to say that their term of office should depend on their retaining the confidence of the legislature'.²⁷ So rather than resolve the relationship between responsible government and federalism, he urged delegates to adopt 'a constitution so elastic as to allow of any necessary development that may take place'.²⁸

The Constitutional Conventions thus bequeathed a minimal Constitution. Underlying principles are implied, at best. Responsible government must be assumed from the compulsion for Ministers to sit in either House (s. 64). Other sections relating to the Parliament and the Executive outline only the broad structure of government and legislative power (s. 1), the location of Executive power (s. 61) and provisions for a Federal Executive Council (s. 62).²⁹ According to one constitutional expert, 'chapter II intended to mask rather than prescribe the workings of the Executive'.³⁰ With the rise of disciplined parties, the Executive became the beneficiary of the reluctance by Australia's constitutional founders to make explicit relationships of scrutiny and responsibility.

Many things were said at the Conventions, some prophetic, most forgotten. But since one test of folly is that the decision must be considered counterproductive in its own time, it is worth noting that many influential voices anticipated the rise of parties and the risk for the proposed Constitution. Deakin and others argued that responsible government would be replaced by party government as the Parliament evolved. Further, suggested some, the role of political parties could prevent the Senate operating as a States' House. Speaking in Sydney in 1891, Deakin argued that:

we shall never find in the future federation certain states ranked against certain other states, or that party lines will be drawn between certain states which happen to be the more populous ... this appears to me a wholly mistaken reading of the situation. What is absolutely certain is that, as soon as this federation is formed, parties will begin to declare themselves in every state. Every state will be divided. Our form of government is not susceptible of continuous or successful working without parties.³¹

Sir Patrick Jennings of New South Wales and John Macrossan of Queensland also foresaw the predominance of party considerations in voting, with the latter commenting in Sydney in 1891:

we have been arguing all through as if party government would cease immediately we adopt the new constitution. Now, I really do not see how this is to be brought about ... Parties have always existed, and will continue to exist where free men give expression to their opinions.³²

Though aware of the risk of 'party government', the founders underestimated the extent to which parties and, by extension the Executive, would dominate the Commonwealth Parliament. The formation and maintenance of disciplined Labor and non-Labor parties was to be the primary influence on the operation of both Houses. Though considered at the Convention debates, delegates nonetheless crafted constitutional arrangements that made traditional responsible government (however shadowy the definition) reliant on moving coalitions of interests, and on a Senate as the defender of state, rather than party, interests. For those seeking to establish responsible government in Australia, these were not wise assumptions. This folly, the product of founders who ignored warnings from their colleagues and the press, was to survive the twentieth century and endure into the next. Tuchman's prerequisites for policy contrary to self-interest have been filled.

The Formative Years 1901–1910

The turn of the century saw the Earl of Hopetoun, Australia's first Governor-General, call former NSW Premier William Lyne to form the first federal ministry. When Lyne was unable to do so, Edmund Barton obliged, with Deakin as his Deputy and Attorney General.³³ The next decade proved crucial to the development of the Australian political system generally, and to the Parliament-Executive relationship specifically. As another recent commentator argues, 'over the period 1901–9 the foundations of contemporary Australian political institutions, policies and attitudes were laid. These were consolidated and given durable reach through the two-party regime established in 1909.'³⁴

When the first federal Parliament opened in the temporary national capital, Melbourne, on 9 May 1901, legislators turned their attention to replacement of various state customs and excise regulations with uniform provisions. The *Audit Act*, *State Laws and Records Recognition Act*, *Service and Execution of Process Act*, *Royal Commissions Act* and *Commonwealth Public Service Act* followed, and were all passed before 1902. The *Commonwealth Franchise Act* of 1902 established uniform voting rules.³⁵ The first decade of the Parliament was broadly dedicated to these electoral and fiscal matters, and to enduring policy directions such as White Australia, arbitration and industrial relations, and 'New Protection'.³⁶ The gag, an important instrument for Executive control of the Parliament, was first introduced in 1905. The move was significant, because while the period 1901–9 saw various combinations of ministries and Prime Ministers, it was the moment when an emerging party discipline substantially circumscribed the role of Parliament.

The formation and maintenance of Australia's strict two-party system is the determining factor in the relationship between the Executive and the Parliament. Australian political parties began at the state level, and various protectionist and free trade groupings were formed in the federal Parliament from these state organisations. In the first decade of the new Parliament the parties gradually became more stable, replacing the factional system of moving coalitions based on state interests with ideology-based parties. By April 1910 Deakin had united the two anti-Labor parties under the title 'Liberal' while Labor had won

a clear majority in a federal election. Australia thus arrived at the two-party system which still dominates national politics. In this the Commonwealth followed a similar consolidation of party forces in Britain and Germany some twenty years earlier, in the years before the Federation Conventions.³⁷

Alfred Deakin's letters to the *Morning Post* offer an insight into the strategies and actions of parties in the pre-fusion period.³⁸ He reports that Labor, Free Trade and Liberal-Protectionists dominated the first Parliament after the March 1901 elections (see Table 1, below, for a summary of subsequent election results during the period 1901–1909), with Labor generally supporting Barton's Protectionist group. Between 1903 and 1904 a stalemate developed between the three major parties, each with the same number of representatives. In a 1904 speech to Parliament, Deakin described the situation as like a game of cricket with 'three elevens'. Two years later Deakin commented that:

we have therefore three parties and three leaders instead of two. As a consequence we must suffer from political confusion, unrest, and uncertainty, while no one of them is strong enough to control Parliament independently.³⁹

Uncertainty led to frequent changes of government, with parties changing allegiances to reflect policy positions and personal relationships. As Table 2 demonstrates, the first decade of Federation saw regular transfer of government and the prime ministership. Such movement indicates the degree of instability created by a Parliament without clear majorities and full parliamentary terms in which to make and implement policy. Table 2 further illustrates the frequency of changes in government and reasons for their demise.

Table 1: Party Representation in Parliament⁴⁰

	1901		1903		1906	
	House of Representatives	Senate	House of Representatives	Senate	House of Representatives	Senate
Labor	14	8	23	14	26	15
Protection	31	11	26	8	16	6
Free Trade ⁴¹	28	17	25	12	27	12
Others	2	0	1	2	6	3

Table 2: Government Changes 1901–10⁴²

Leader and Party	Period	Reason for demise
Barton (Protectionist)	1901–September 1903	Resignation of Barton
Deakin (Protectionist)	September 1903–November 1903	Election
Deakin (Protectionist)	December 1903–April 1904	Defeat on Conc. and Arb. Bill
Watson (Labor)	May 1904–August 1904	Defeat on Conc. and Arb. Bill
Reid/McLean (FT/Cons/Prot.)	August 1904–June 1905	Inaction on Tariffs
Deakin (Protectionist)	June 1905–November 1906	Election
Deakin (Protectionist)	December 1906–November 1908	Withdrawal of Labor Support
Fisher (Labor)	November 1908–May 1909	Fusion
Deakin (Liberal/fusion)	June 1909–February 1910	Election

In 1909 the non-Labor forces led by Deakin, Cook and Forrest negotiated an alliance that installed Deakin as leader. The new Prime Minister reported on the non-Labor fusion when he wrote:

at last the Federal political situation has crystallised. So far as Parliament is concerned the fusion of our Constitutional parties, long prayed for, continually predicted, but, up until last week, perpetually postponed, has been completed in two days. For the last four years the prospect of this union has appeared and vanished like a mirage tempting many eager pilgrims to its vain pursuit.⁴³

The merger of the non-Labor groupings in Parliament 'marked the defeat of the liberal conception of representation',⁴⁴ with parties becoming the significant actors in parliamentary activity. This dominance soon transferred to the electoral arena, with parties strengthened and resourced outside Parliament.⁴⁵ The responsibility for making and breaking governments had passed from parliamentarians to political parties and so, arguably, to the electorate.

But why did the fusion of the Free Traders and Protectionists occur? The difficulties associated with governing in an environment of shifting coalitions were one reason for the fusion of non-Labor at the end of the first decade of Parliament. Other explanations revolve around the increasing strength, discipline and success of the Labor Party. Bound by caucus decisions and using this block vote to secure concessions for its constituency, Labor developed into an electorally successful party with a strong organisational presence which could deliver disciplined members to both Houses. Reid and Forrest argue that the:

trend towards extra-parliamentary decision-making was undoubtedly started by the Labor Party with its caucus arrangements, but it was quickly emulated by its competitors.⁴⁶

Similarly, the pledge of discipline taken by Australia Labor Party (ALP) members, while not codified by their political opponents, had the effect of creating a similar climate of discipline on the other side. Further, the Parliament's attention turned to defence matters in the latter part of the decade, a policy area in which the Free Traders and Protectionists held similar views.⁴⁷ Ian Marsh contends Labor's electoral success by 1906, largely at the expense of the Protectionists, 'stiffened' the ALP's resistance to an alliance with Deakin as it became more likely that Labor could eventually govern alone. Labor Prime Minister Fisher saluted his party's 1910 victory as a culmination of 'twenty years of arduous work'.⁴⁸

The fusion of factions into disciplined political parties replaced responsible ministerial government with responsible party government.⁴⁹ At first Liberal leaders criticised Labor Members of Parliament for making decisions in their party room rather than the chamber; concern over the discipline of the Labor caucus room prompted George Reid to describe Parliament as:

not responsible to the people at all. It is responsible to an assemblage of members known as the labour caucus ... away from the light of Parliamentary scrutiny and discussion ... You are giving up the grandeur of your parliamentary system, which looks upon Ministers, not as the minions of a caucus, but as the trustees of a nation.⁵⁰

Yet the practice of party room discipline soon dominated all parliamentary procedures, Labor and non-Labor alike. The fusion of the non-Labor parties and the emergence of a disciplined and increasingly successful Labor Party at the end of the Parliament's first decade set the pattern for a century of two-party parliamentary politics.⁵¹ By facilitating Executive dominance, the rise of political parties profoundly undermined the notions of responsible government upon which the Parliament was designed.

Evolution 1910–2000

Party discipline is not immutable. Both sides have split at times, and then taken some years to rebuild their identity. But when John Howard said that in politics 'disunity is death',⁵² he was talking in the context of a two-party system. When one side fractures the other benefits. Despite changes of governments brought about by votes in the legislature in 1941 and 1975, on the whole, the power to make and break governments has not been much utilised by the Parliament. The pattern set by 1910 endures, so that any change in the exchange between the legislature and the Executive occurs in the overwhelming context of party discipline. Indeed to talk of an 'evolving' relationship may be to overstate developments; despite changes to electoral laws, revised standing orders, greater Senate scrutiny, the development of more parliamentary committees and even a constitutional crisis, the substantial dominance of the Executive over Parliament remains after nearly a century.

Indeed some developments have strengthened the hand of political parties. For example, the introduction of compulsory enrolment in 1911 and compulsory voting in 1924, along with a system of public funding, contributed to the endurance of the two-party system and so to party, rather than responsible, government.⁵³ By compelling citizens to vote, the major mainstream parties stand to benefit from the larger base, and are not forced to mobilise significant numbers of voters.

On the other hand, changes to electoral laws for the Senate introduced some tension in the political equation. The option of proportional representation was considered but rejected in 1902 because it would encourage 'fads' and challenge the dominance of the three major parties.⁵⁴ Only in 1949, after extensive debate in the Parliament, did Senate elections adopt an electoral system based on proportional representation. While Labor's aim in the short-term was to retain a significant number of senators after probable defeat at the 1949 poll, Labor and the Coalition both expected the long-term continuation of major party dominance, but with more stable blocs of representation.⁵⁵ Paradoxically, the effect was to increase significantly the prospects of minor party representation in the Upper House, weakening the hold previously enjoyed by Labor and the Coalition. Since then it has been difficult for governments to take or retain control of the Senate. Since 1949 governments only controlled the Senate after the 1951, 1953, 1958 and 1977 elections, while the 1967, 1974, 1980 and subsequent polls returned Senates in which representatives from the Democratic Labor Party, the Australian Democrats or a combination of different groupings and independents have held the balance of power.⁵⁶

It can be argued that proportional representation allows the Senate to act as a check on the Executive, and so enhances the power of Parliament. This was the appeal used by Australian Democrats founder Don Chipp in promising to 'keep the bastards honest'.⁵⁷ Minority parties holding the balance of power have been able to extract major concessions from governments, or to combine with opponents to block legislation. This displeases Ministers, who point to the malapportionment of Senate elections which allows small parties from small states to wield authority beyond their numerical support. As one Australian Prime Minister memorably commented, for a frustrated Executive, Senators can appear mere 'unrepresentative swill'.⁵⁸

Yet the Executive is not entirely in the thrall of the Senate. Section 53 of the Constitution provides that the Senate can neither amend nor initiate bills appropriating monies for the ordinary annual services of government or raising taxation. (It can, of course, ventilate and press such measures through a variety of formal and informal means.) If disagreement between the Houses occurs the government can seek a double dissolution followed by a joint sitting of both chambers (s. 57). Ministers can also defer parliamentary scrutiny and avoid early disallowance by making subordinate legislation when the Parliament is not sitting. Moreover, a vast array of matters can be dealt with administratively without either primary or secondary legislation and without consulting Parliament.

Other developments have not so constrained executive government. Government largely controls the legislative agenda although the extent of its leverage is dependent on a

number of factors. Hence, Senate numbers usually require the Executive to adopt a far more accommodative approach in that Chamber than in the House of Representatives. While Standing Orders and House of Representatives procedures have changed over time, the rules governing debate have been subject to one constant—they are ultimately determined by the majority. This means, in effect, the Executive. Indeed Prime Minister Paul Keating once characterised Question Time as 'a courtesy extended to the House by the Executive Branch of the Government'.⁵⁹ Because in the House of Representatives the Executive must by definition 'have the numbers', it also has significant influence over when and how matters come before Parliament. A simple, if imperfect, test of Executive dominance is to ask who proposes legislation for parliamentary debate. From 1901 until 1982, 99 per cent of bills introduced to the Parliament came from the Executive.⁶⁰ The election of some Independent Members and more minor parties to the Senate has made a modest difference to the business of the legislature. Even so, since 1983 only four per cent of the combined sitting time of both Houses has been spent on bills proposed by private Members or the Opposition.⁶¹

G. S. Reid characterised Executive dominance of the procedures required to pass legislation as a constant theme of the century of Parliament. He wrote in 1982:

the Executive Government, and its official advisers, have been the principal beneficiaries, and sometimes the architects, of the Parliament's weaknesses in passing legislation—particularly the House of Representatives. They have helped to introduce the 'Gag' and 'Guillotine' procedures to forestall debate; they have utilised the 'floodgate technique' to encourage 'legislation by exhaustion' ... Executive Ministers and their officials have [also] benefited from the Standing Orders and Speaker's ruling providing that only Ministers of State may propose taxation measures.⁶²

These procedural techniques open to the Executive limit debate on legislation by both non-government Members and the government's own backbench. Executive control is also assisted by the relative infrequency of parliamentary sittings. Uhr and Wanna report that annual sitting days since 1983 varied between 38 and 79 days for the House of Representatives and 53 to 92 days for the Senate.⁶³

Yet Parliament is not without meaning or consequence. While procedural control by the Executive has created a forum dominated by Ministers, oppositions can use the legislature to some effect. Question Time provides a daily display of adversarial politics, and an opportunity to challenge the actions of Ministers. A sustained campaign against a vulnerable Minister can undermine credibility. While party room solidarity makes forced resignation unknown, prime ministers can prompt a decision by an embattled Minister to step down. Question Time was one forum used by the Liberal and National Parties to considerable effect against Labor Sports Minister Ros Kelly in 1994, prompting her to leave politics entirely.⁶⁴ Parliament exerted similar pressure on three Ministers—John Sharp, David Jull and Peter McGauran to resign office in the first year of the Howard government following criticism of their travel claims. It is, however, broader electoral considerations, rather than the censure of the Parliament, which determine the fate of

Ministers under attack. Despite hopeful newspaper editorials, there is no Australian tradition of ministerial resignation following parliamentary scrutiny.⁶⁵

The most famous confrontation between the Parliament and the Executive occurred when Coalition and Independent Senators combined to defer a vote on the 1975 federal Budget. Opposition Leader Malcolm Fraser announced his intention to force a general election. The Executive under Prime Minister Gough Whitlam resisted, and threatened a half-Senate election. Thus emerged a struggle threatened since Federation, between a duly elected government with a majority in the Lower House and a Senate keen to exercise the independent authority implied in the Constitution. The resulting constitutional crisis saw the Governor-General decide in favour of the Senate, dismissing the government and dissolving Parliament. Though the circumstances, motivations and justifications for the dismissal are much contested, and the Governor-General's use of the reserve powers often called into question,⁶⁶ 1975 showed that in extreme cases the Parliament can reverse Executive dominance. The price for the system, however, was high indeed.

An altogether less dramatic development in the relationship between the Executive and the Parliament has been an increased use of parliamentary committees. In 1980 Martin Indyk wrote glowingly of the effect of such committees:

as unlikely as it may seem at a time when parliament's demise is being lamented by most observers, parliament's backbenchers are busy using the committee system to revitalise their institution and thereby challenge the dominance of the executive. Put simply, they are trying to put the word 'responsible' back into Australian government.⁶⁷

There have long been committees to deal with administrative matters, but the past three decades have seen a significant expansion of committee structures and agendas. Drawing on American experience, and the temper of the times, Senators in the late 1960s began to use committees for sensitive investigations. The subsequent creation of a system of legislative and general purpose committees in the Senate was a major breakthrough. Together with what was initially a separate system of Estimates Committees, these subject specialist bodies were able to look at specific matters referred to them by the Senate.⁶⁸ The trend to a more active committee system was confirmed by a 1976 report of the Joint Committee on the Parliamentary Committee System. It recommended the abolition of existing committees and the establishment of two new systems, one for each House.⁶⁹ While the 1976 report was not implemented, committee activity grew and finally found expression in 1987 reforms. These 'revolutionised' the committee system, creating eight standing committees for the House of Representatives to oversee the actions of various government agencies.⁷⁰ While the new committees depended on the Executive for references and resources, Australian parliamentary committees have evolved into a mechanism for scrutiny of, and comment on, government action.

Yet developments in electoral laws, the role of the Senate and the evolution of committees must be balanced against the continuing dominance of party discipline. Loyalty to party has been the dominant theme of a century of national Australian politics. In the period

from 1909 to 1987, 99 per cent of Members of the House of Representatives belonged to the major parties.⁷¹ Little has changed in a decade to change this phenomenon. Despite media speculation about party dissidents and rebels, 'crossing the floor' remains rare. On only eight occasions since 1901, five of them before the fusion of the major parties, was the government defeated on the floor of the House of Representatives and forced to resign. More common is the threat voiced by MPs that they *intend* to cross the floor on a given issue, prompting a government rethink and an accommodation behind the scenes. Recent disquiet on the Liberal Party backbench over mandatory sentencing is one example, with the Executive forced to give some ground amidst media speculation over a possible split in the parliamentary party. The pattern in the Senate is more complex, given the presence of Independents and minor parties, but voting on party lines remains the norm. Occasional exceptions, such as two Tasmanian Liberal Senators who crossed the floor defending the local fruit industry in 1977, are outweighed by the standard pattern of a chamber dominated by party considerations.

So for all the significant changes, nothing has broken the mould of Executive-Parliament relations established by 1910. One despairing editorial argued that decades of:

fine tuning in federal politics have now created a system of government which has reached the ultimate position which says as far as responsibility is concerned, the bucks stops nowhere.⁷²

This conclusion—that ministerial responsibility to the Parliament has been replaced by that to the party—is widely accepted, and not challenged here. Reid and Forrest coined the evocative term 'the trinitarian struggle'⁷³ to describe interaction between the House of Representatives, the Senate and the Executive. It is a powerful description, particularly apt for moments of drama such as 1975. Yet the consistent winner of this struggle has been the Executive. While the scrutiny of Question Time, the character of the Senate, and the probing of parliamentary committees constrain the power of government, the Parliament has remained a forum dominated by Ministers of state.

Certainly this is the perception of those who work in and around Parliament. A study by Dr David Lovell found that 63.7 per cent of parliamentarians surveyed in 1992 expressed a preference for more time to be spent considering legislation.⁷⁴ A couple of years earlier, in 1989, Greg McIntosh asked Senators and Members, parliamentary officials and the media gallery about their view of the Executive-Parliament relationship. McIntosh found that 43 per cent of Senators and Members, 47 per cent of the Press Gallery and five per cent of parliamentary officials thought Parliament effectively checked the Executive. A majority of the three groups agreed that Executive dominance is the result of party discipline, though only Senators and Members thought that this discipline was needed to ensure the smooth running of Parliament. Around 75 per cent of those surveyed judged the increasing volume and complexity of legislation was fuelling Executive dominance, with the same number agreeing that the Senate has evolved into a more effective source of scrutiny. The House of Representatives was labelled largely ineffectual in checking the Executive by

80 per cent of Senators and Members, 66 per cent of officials and 39 per cent of the media representatives interviewed.⁷⁵ As McIntosh concluded:

although there has been some evidence of a limited 'parliamentary revival' in recent years, particularly in the Senate, it has not been on a large enough scale to significantly lessen Executive control of the Parliament.⁷⁶

Contemporary Expectations

When reality proves stubborn, one option is to redefine the role of various players. In the mid-nineteenth century Walter Bagehot was already narrowing expectations of parliament. Parliament makes laws, of course, but on the command of the Executive. Yet while the Executive rules, suggested Bagehot, the legislature contributes to public life through its expressive, teaching and informing roles. Now even these functions have been constrained by party discipline,⁷⁷ though they remain standard defences for the work of parliament.

Recent thinking takes Executive dominance as given, but like Bagehot seeks to redefine the function of the legislature. The eminent commentator Geoffrey Brennan, for example, offers three pictures of parliament. The first evokes parliament as a forum for discussion directed towards determining the public interest. The resulting deliberation over policy direction leads to a convergence of views and then legislation. Brennan's second image sees parliament as the embodiment of the vote, the committee of representatives which can translate individual preferences into collective decisions.

Neither view really goes to the function of a contemporary parliament, but Brennan's third representation outlines the role parliament plays in the wider electoral environment. As Dr Neal Blewett and others have argued, the role of parliament is more than legislative, extending to the public contest between parties for government.⁷⁸ An extension of this is the view that parliament is a 'political prize'.⁷⁹ This conception sees parliament as:

... a prize awarded to the winner of an electoral competition, and it is the process of electoral competition itself rather than the details of parliamentary procedure that is central to the whole democratic process.⁸⁰

Parliament then becomes the forum for a continuing contest between rival camps, carrying forward the partisan argument between elections. The benefits of scrutiny and accountability are important but they become secondary to the essentially political function of the legislature.

This picture of parliament has more application to the House of Representatives than the Senate, for the Upper House has a different relationship with the Executive. While a role as the states' house quickly proved idealistic, the Senate has acted on its role as a House of review.⁸¹ Proportional representation has changed the mix of players. The presence of minor parties, creating a delicate balance of power, has encouraged the Senate to use its

capacity for idiosyncratic judgement. Governments assume their majority in the House of the Representatives but can rarely take the Senate for granted.

To see the legislature primarily in political terms offends a traditional discourse of discussion, representation and legislation. Yet observation supports a more pragmatic description of Parliament. The continuing electoral campaign fought out in the legislature encourages the Executive to limit opportunities for scrutiny of its actions. Electoral considerations turn Parliament into a contest in which Members concede no ground to the opposition. Parliament is an opportunity for ministerial aspirants to prove themselves by excelling at adversarial debate, again highlighting the predominance of party considerations. The Clerk of the Senate commented in 1990 that 'the modern party is a device for ensuring that a government formed by that party is not responsible to the Parliament'.⁸² In Bagehot's terms parliament is a dignified institution, defined by its subordinate role to the Executive. The efficient part of government, the place where authority resides, is the governing party.⁸³

The dominance of the Executive is entrenched by party discipline, procedural control, a monopoly of information and advice, increasing government complexity and workload, and the scarcity of parliamentary time. Wal Fife, then Manager of Opposition in the House of Representatives, protested in 1989:

this Opposition will oppose and protest at every available opportunity at the way the Government is treating this House. It is treating it with contempt. It is nothing more than a charade. If it did not have to come here to conduct the business of the government of Australia, it would not come at all. We are sitting for fewer days each year. There is less opportunity for private members to raise matters of importance to the public. There are fewer opportunities to ask questions ... This is an absolute disgrace.⁸⁴

David Lovell has argued the pressures of responsible government, with the need to maintain a constant majority, provided an incentive to create disciplined parties. A primary requirement of responsible government became an impediment.⁸⁵ G. S. Reid adds that the power relationship in Parliament is exactly contrary to the expectations of the constitutional founders; instead of Parliament controlling the Executive, confidence has been replaced with control.⁸⁶ As Reid observed:

... a new set is growing up in political studies in which parliaments are considered weak and uninteresting institutions overshadowed by the flamboyant features of press, parties and pressure groups. Parliaments are treated as dead dogs and parliamentarians as sheep cowering before a wolf-like executive. The whole business of what goes in parliament is treated like some poor and motheaten joke.⁸⁷

The literature on the Australian Parliament generally expands on Reid's theme that party discipline has displaced parliamentary deliberation.⁸⁸ As one editorial opined:

MPs undoubtedly work hard. But how useful is the work? ... Backbench MPs have little chance of introducing or amending legislation. Debates are a foregone conclusion. The whips crack their orders and MPs toe the party line ... The real debate takes place in the party. Even here, however, there is a tendency for the executive to clamp down on independence or outspokenness.⁸⁹

The pressures placed on parties by the competitive bi-polar system in place since 1910 has made discipline necessary, and independence becomes seen as a threat to continued electoral success. Yet even a Parliament dominated by the Executive has its own strengths. It can be argued that a strong Executive leads to coherent policy directions. And, Executive dominance of the Parliament, while enduring and significant, is not absolute. Parliament has found some new ways to impose itself on the Executive, providing a glimmer of hope for parliamentary reformers.

Despite the hold on the Parliament enjoyed by the Executive, on occasion parliamentary scrutiny ensures accountability. Even the standard scrutiny of estimates hearings, parliamentary debate and questions with and without notice act as a check on excessive government zeal. When Parliament is sitting there is scope for real problems to be uncovered. Parliament provides a potent forum for embarrassing the Executive into remedial action.

An expanded committee process has been particularly significant in restoring some balance. The late James Dobie, speaking in the House of Representatives, stressed the importance of Senate Estimate Committees as a restraint on the Executive. He argues:

One cannot talk of the role of the executive within the parliamentary system without mention of the remarkable growth of Senate Estimates committees in the last decade and more ... there can be no denying that executive government is made to account for itself in a way that is not enjoyed by the House of Representatives.⁹⁰

He is backed up by the enthusiastic Martin Indyk who comments:

by eliciting information and by using it to publicise and scrutinise government activity, or to advise and criticise government on policy issues, committees have enhanced parliament.⁹¹

Committee virtues include training for parliamentarians, opportunities for the community to interact with Parliament through public hearings, regular reports on matters of public importance, and an alternative source of information on contentious issues. And it has been argued that committees, though controlled by the Executive:

have provided a real linkage between the House of Representatives and the community, and many believe that their inquiries have provided a major stimulus for the political agenda.⁹²

Even when rejected at first, committee findings tend to resurface in later policy thinking, particularly as backbench committee members advance to the Treasury benches. Examples

of committees formed for specific policy scrutiny can be found in the 39th Parliament's Senate Select Committee on The New Tax System and the Senate Select Committee on the Socio-Economic Consequences of the National Competition Policy.

Further, the trinitarian struggle provides the Senate with a particular interest in holding government to account. In recent decades the Senate majority has been shared between the Opposition and minor parties. This provides an incentive to scrutinise Executive decisions, and provides government with a need to negotiate. Legislation to create a new tax system for Australia under Prime Minister Howard, for example, depended entirely on the cooperation of the Australian Democrats in the Senate. It has always been recognised that the Australian Senate is amongst the most powerful Upper Houses in western democracies.⁹³ For Reid and Forrest:

the Senate's life, since the major parties lost their capacity to control its majority, has been a period of wholesale reconstruction of its parliamentary methods. The Executive Government has been called to face an unprecedented range of parliamentary checks upon its legislative and administrative initiatives. The changes made have promoted new assessments and evaluations of the Senate's role.⁹⁴

And further:

the Senate is plainly the Executive Government's hair shirt. Its continuing relationship with executive ministers and departmental officials adds a valuable human dynamic to the parliamentary scene, notwithstanding that most ministers of state would prefer it otherwise.⁹⁵

Like the House of Representatives, the Senate is a forum for continuing partisan politics, and its decisions must be read in that light. Unlike the Representatives, political advantage can accrue from opposing the government, which provides some measure of restraint on the Executive.

The Prospect for Reform

The burden of our argument is that Executive dominance structures the relationship between Ministers and Parliament. Though party loyalty within the electorate is declining, the persistence of single member constituencies and preferential voting ensure parties will remain in control of Parliament. A very long-term trend may see more Independent Members elected, but the pattern set by 1910 seems set to persist for some time. The ideal of a chamber which is a forum for discussion followed by the casting of votes free from party discipline remains fanciful. While parties control the Executive, and the Executive the Parliament, real reform without fundamental constitutional change is not possible. In this we concur with former Speaker Sir Billy Snedden, who argued that 'the major obstacle to reform is the ever increasing constraint of party discipline'.⁹⁶ Few executives embrace self-denying ordinances to limit their own power.

When McIntosh asked parliamentary actors about possible improvements to Parliament they expressed preferences for a more independent Speaker's role, an extension of Question Time, additional research and support staff for Senators and Members and more time for bills from private members.⁹⁷ Such measures, many argued, would help address the imbalance between the Parliament and the Executive. John Uhr offers a similar list of possible reforms, and adds the use of proportional representation for Lower House elections, larger parliaments, more time for deliberation, a focus on legislation and scrutiny, and more scope for the examination of spending.⁹⁸ Neal Blewett, a Minister in the Hawke and Keating Governments, suggests not allowing Ministers to be drawn from the Upper House would take ministerial ambitions from the equation and so allow the Senate greater independence.⁹⁹

But for reform proposals such as these to become reality, there must be incentive for the Executive, as the body ultimately responsible for implementation. This is unlikely as the only actors with the power to reform are those whose influence would be curtailed. Periodic changes to the relationship are the result of external drivers such as zealous committees or unforeseen crises, rather than a product of executive action. Only the powerful role of the Senate, and the work of parliamentary committees remain as significant structural checks on the power of Ministers.

Assessing The Vision

It is possible to read the relationship between the Executive and the Parliament in contrary ways. On the one hand, those who wrote the Australian Constitution emphasised the need for flexibility and development. Arguably the founders would be happy with developments over the past century. After all, the basic institutions have survived, the Commonwealth remains a parliamentary democracy, and the apparently incoherent principles of responsible government and federalism have found a rough equilibrium. The 'co-existence' championed by Parkes and Barton has prevailed, even through the crisis of 1975.

This paper and, it must be said, most constitutional commentators, suggests an alternative view. Here the founders are held at fault for constructing a folly. All of Tuchman's prerequisites—warnings of counterproductivity at the time, feasible alternative course of action, and group responsibility and persistence beyond that group's political lifetime—are evident in the founders' decision to stay silent on the nature of the Executive's relations with the Parliament.

The Constitutional Convention records show a strong shared belief in responsible government. Yet, pursuing a policy contrary to self interest, the presumption was not made explicit, and the lacunae allowed Executive domination. The founders left a vacuum at the centre of their Constitution, and Ministers have filled a space which might otherwise belong to the Parliament. Legislative power was to be vested in 'a Federal Parliament, which shall consist of the Queen, a Senate, and a House of Representatives' (s. 1 of the

Constitution), but in practice control over the Parliament's agenda, its legislative program, order of business and even frequency of meeting are all in the hands of ministers. As Reid suggests somewhat dramatically, 'the villain is the executive, the victim the House of Representatives, and the potential saviour, the Senate'.¹⁰⁰

Could the founders have made different choices? We cannot demand of a constitutional delegate the certainty granted by hindsight, though there were warnings aplenty of impending party and Executive domination. The Conventions show widespread agreement that responsible government was the preferred model for Australian democracy. By responsible government, delegates had in mind ministerial accountability to the Parliament. In deciding not to spell out the requirement for responsible government, the constitutional authors bowed before the difficulty of codifying convention and tradition. In the words of Professor Greg Craven, they understood that:

our constitutional system depends for its efficacy upon a pervasive constitutional psychology that is the product of centuries, and cannot be reduced to writing.¹⁰¹

So the founders gambled instead that established practice in colonial parliaments would transfer without impediment to the national legislature. It proved a poor choice, but understandable in the circumstances. Only some understood that independent voting by moving coalitions of interest, the familiar nineteenth century pattern of parliamentary behaviour, was already under threat. Organised political parties were a fact at the time of the Constitutional Conventions, but they did not yet impose a full measure of party room discipline. Delegates in the 1890s could not anticipate the world of 1910.¹⁰² As Alfred Deakin later conceded, with the rise of political parties '... responsibility on the British model has ceased to exist'.¹⁰³

Yet the decision to be silent on the requirements of ministerial accountability set a pattern of Executive dominance which continues. In the trinitarian struggle, significant advantages are held by Ministers. Their power is not absolute, but it is less constrained than the founders might expect. Parliament has become the forum for partisan struggle rather than a place of review and reckoning. This contrasts with other parliamentary systems in which a proportional voting system produces a wider spread of party representation, and so the need to build and maintain coalition. It contrasts even with the original British model, in which frequent sitting days, and some tradition of conscience voting, ensure more thorough scrutiny of government action. The Australian pattern of strong government by an Executive which can be confident of its House of Representatives majority is the product of a constitutional folly entrenched by the voting system. We gain much in stability and policy coherence through Executive dominance, but lose the vitality and the innovation possible when Parliament is a more equal player.

Endnotes

1. Barbara W. Tuchman, *The March of Folly: from Troy to Vietnam*, Abacus, London, 1984, pp. 4–5.
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3. see Sir Daryl Dawson, 'The Founders' Vision' in Gregory Craven, ed., *Australian Federation: Towards the Second Century*, Melbourne University Press, Melbourne, 1992.
4. in Sir Billy M. Snedden, 'Ministers in Parliament—A Speaker's Eye View' in Patrick Weller and Dean Jaensch, eds, *Responsible Government in Australia*, Drummond, Melbourne, 1980, p. 78.
5. Michael Crommelin, 'The Executive' in Gregory Craven, ed., *The Convention Debates 1891–1898: Commentaries, Indices and Guide*, Legal Books, Sydney, 1986.
6. see Neal Blewett, 'Parliamentary Reform: Challenges for the House of Representatives', *Australian Quarterly*, vol. 65, no. 3, pp. 1–14, 1993; Geoffrey Brennan, 'Australian Parliamentary Democracy: One Cheer for the Status Quo' in Department of the Senate, *Views of Parliamentary Democracy*, Papers on Parliament number 22, Canberra, 1994; G. S. Reid, 'Parliamentary-Executive Relations: The Suppression of Politics' in Henry Mayer, ed., *Australian Politics: a Second Reader*, Cheshire, Melbourne, 1970.
7. see Sir Daryl Dawson, *op. cit.* for a more complete account. See also Helen Irving, *To Constitute a Nation: a cultural history of Australia's Constitution*, Cambridge University Press, Cambridge, 1999.
8. in Sir Daryl Dawson, *op. cit.*, p. 8.
9. *ibid.*, p. 9.
10. After significant work by Andrew Inglis Clark, according to Peter Botsman, who chronicles Inglis Clark's role in Federation in some detail in Peter Botsman, *The Great Constitutional Swindle: A Citizen's View of the Australian Constitution*, Pluto Press, Sydney, 2000.
11. Stuart MacIntyre, 'Introduction' in Alfred Deakin, *'And Be One People: Alfred Deakin's Federal Story*, Melbourne University Press, Melbourne, 1995, pp. xv–xvi.
12. Michael Crommelin, *op. cit.*, p. 127.
13. Official report of the National Australasian Convention debates, Sydney, 2 March to 9 April, 1891, Govt. Printer, Sydney, 1891, p. 765.
14. Official report of the National Australasian Convention debates, Adelaide, March 22 to May 5, 1897, Govt. Printer, Adelaide 1897, pp. 443–4.
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16. see John Uhr, 'Doctrines of Responsible Government' in *Deliberative Democracy in Australia: The Changing Place of Parliament*, Cambridge University Press, Melbourne, 1998, for a discussion of the contributions made by these men to the Australian constitutional tradition.

17. Walter Bagehot, *The English Constitution*, Cornell University Press, Ithaca, 1963 [1867], p. 150.
18. Brian Galligan, 'The Founders' Design and Intentions Regarding Responsible Government' in Patrick Weller and Dean Jaensch, eds, *Responsible Government in Australia*, Drummond, Melbourne, 1980.
19. see Michael Crommelin, op. cit., p. 141.
20. Official report of the National Australasian Convention debates, Sydney, 2 March to 9 April, 1891, op. cit., p. 280.
21. ibid., p. 383.
22. Brian Galligan, op. cit., p. 3.
23. The Swiss model allows for an elective ministry in which ministers remain in their position for the entire period between elections, thus removing the party political manoeuvrings that can create instability and bring down governments. See G. S. Reid and Martyn Forrest, *Australia's Commonwealth Parliament 1901–1988: Ten Perspectives*, Melbourne University Press, Melbourne, 1989, p. 306. Refer: Australasian Federal Convention Debates, Sydney, 17 September 1897, pp. 782-793.
24. ibid., p. 307.
25. ibid., p. 308.
26. Michael Crommelin, op. cit., p. 138.
27. ibid., p. 137.
28. Official report of the National Australasian Convention debates, Sydney, 2 March to 9 April, 1891, op. cit., p. 37.
29. see G. S. Reid 'Parliamentary-Executive Relations: The Suppression of Politics', op. cit., p. 500, or Brian Galligan, op. cit., p. 1 for a more thorough listing of the sections of the Constitution that relate to the Parliament-Executive relationship.
30. Michael Crommelin, op. cit., p. 147.
31. Official report of the National Australasian Convention debates, Sydney, 2 March to 9 April, 1891, op. cit., p. 335.
32. ibid., p. 434.
33. Alfred Deakin, *Federated Australia: Selections From Letters to the Morning Post 1900–1910*, edited and with an introduction by J. A. La Nauze, Melbourne University Press, Melbourne, 1968, p. 1.
34. Ian Marsh, *Beyond the Two Party System: Political Representation, Economic Competitiveness and Australian Politics*, Cambridge University Press, Melbourne, 1995, p. 17.
35. F. R. Beasley, 'The Parliament of the Commonwealth' in Else-Mitchell, ed., *Essays on the Australian Constitution*, The Law Book Company of Australasia, Sydney, 1961, pp. 50–1.

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39. ibid., p. 187.
40. adapted from Department of the Parliamentary Library, *Party Representations in the Parliament*, <http://www.aph.gov.au/library/pubs/rn/1997-98/98rn39.htm>, accessed July 2000, pp. 1–2.
41. known as 'Anti-Socialists' in the 1906 poll.
42. Table taken from Ian Marsh, op. cit., p. 275.
43. Alfred Deakin, op. cit., pp. 257–8.
44. Ian Marsh, op. cit., p. 277.
45. Don Aitkin, 'Stability and Change' in *Stability and change in Australian politics*, Australian National University Press, Canberra, 1982, pp. 14–15.
46. G. S. Reid and Martyn Forrest, op. cit., p. 22.
47. Ian Marsh, op. cit., p. 299.
48. In Ross McMullin, *The Light on the Hill: the Australian Labor Party 1891–1991*, Oxford University Press, Melbourne, 1991, p. 71.
49. John Uhr and John Wanna, 'The Future Roles of Parliament' in Michael Keating and Patrick Weller, eds, *The Future of Governance: Institutions*, Allen and Unwin, Sydney, forthcoming, p. 2.
50. G. S. Reid and Martyn Forrest, op. cit., p. 23.
51. While the system has accommodated the entrance of minor parties such as the Australian Democrats and the Democratic Labor Party, the authors see the Australian system as essentially bi-polar, with the Country and then National Party forming part of the non-Labor Coalition with the Liberal Party of Australia.
52. Then Opposition leader John Howard made this comment at a press conference given 17 July 1987 on his retention of the leadership after the 1987 election.
53. see G. S. Reid and Martyn Forrest, op. cit., pp. 19–21 for a discussion of the effects of electoral law on the two-party system.
54. ibid., pp. 15–16.
55. John Uhr, 'Rules for Representation: Parliament and the Design of the Australian Electoral System', Department of the Parliamentary Library, *Research Paper no. 29*, 1999–2000.
56. Ken Turner, 'Parliament' in Rodney Smith, ed., *Politics in Australia*, Allen and Unwin, Sydney, 1993, p. 97. From 1993 to 1999 the balance of power was shared by the Australian Democrats, the Greens and Independents. From July 1999, the Australian Democrats have held that position alone.

57. Chipp made this comment in the lead up to the 1980 federal election. It was reported in *The Australian*, 23 September 1980, p. 1.
58. Paul Keating made this famous remark during Question Time in the House of Representatives, *Debates*, 4 November 1992, , p. 2549.
59. in Neal Blewett, op. cit., p. 7.
60. G. S. Reid, 'The Parliament in Theory and Practice' in Michael James, ed., *The Constitutional Challenge: Essays on the Australian Constitution, Constitutionalism and Parliamentary Practice*, Centre for Independent Studies, Sydney, 1982, p. 47.
61. John Uhr and John Wanna, op. cit., p. 7.
62. G. S. Reid, 'The Parliament in Theory and Practice', op. cit., p. 50, and see also Sir Billy M. Snedden, op. cit., pp. 73–4. The guillotine procedure, introduced in 1918, is employed by the governing party(ies) to limit the time allowed for debate. The gag is the procedure involved in the closure of debate. These terms are explained in more detail in *House of Representatives practice*, L.M. Barlin, ed., 3rd ed., AGPS, Canberra, 1997, pp. 416–17 and 490–2.
63. John Uhr and John Wanna, op. cit., p. 6.
64. see John Uhr, *Deliberative Democracy in Australia: The Changing Place of Parliament*, Cambridge University Press, Melbourne, 1998, pp. 152–8 for a comprehensive analysis of the Kelly case. For an interesting study of the history of ministerial resignations see Margaret Healy, *That's It—I'm Leaving: Travel Tales from Capital Hill: Ministerial Resignations and Dismissals 1901–2000*, Department of the Parliamentary Library, *Chronology*, forthcoming, 2000–01.
65. see Glyn Davis, John Wanna, John Warhurst and Patrick Weller, *Public Policy In Australia* (2nd Edition), Allen and Unwin, Sydney, 1993, p. 79–81.
66. see, for example, Dean Jaensch, 'Parliament and Responsible Government' in *Getting Our Houses in Order*, Penguin, Melbourne, 1986, pp. 119–22.
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69. *ibid.*, p. 94.
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74. David Lovell, 'The sausage makers? Parliamentarians as legislators, Department of the Parliamentary Library, *Political Studies Fellow Monograph no. 1*, 1994, p. 45.

75. Greg McIntosh, 'Rounding Up the Flock? Executive Dominance and the New Parliament House', Department of the Parliamentary Library, *APSA—Parliamentary Fellow Monograph*, Canberra, 1989, pp. 3–4.
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81. Gwynneth Singleton, Don Aitkin, Brian Jinks and John Warhurst, *Australian Political Institutions*, Longman, Melbourne, 1997, pp. 120–2.
82. in Chandran Kukathas, 'Democracy, Parliament and Responsible Government' in Department of the Senate, *Democracy, Parliament and Responsible Government*, Papers on Parliament Number 8, Canberra, 1990, pp. 6–7.
83. Walter Bagehot, *op. cit.*, p. 61.
84. *Debates*, 21 December 1989, p. 3350.
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87. in Neal Blewett, *op. cit.*, p. 2.
88. For example Chandran Kukathas, *op. cit.*
89. in Ken Turner, *op. cit.*, p. 84.
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91. Martin Indyk, *op. cit.*, p. 98.
92. Neal Blewett, *op. cit.*, p. 9.
93. Commonwealth of Australia, *Executive Government*, Report of the Advisory Committee to the Constitutional Commission, Canberra, 1987, p. 19.
94. G. S. Reid and Martyn Forrest, *op. cit.*, p. 477.
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96. Sir Billy Snedden, *op. cit.*, p. 83.
97. Greg McIntosh, *op. cit.*, p. 4.
98. John Uhr, 'Keeping Government Honest: Preconditions of Parliamentary Effectiveness' in Department of the Senate, *Parliaments in Evolution: Constitutional Reform in the 1990s*, Papers on Parliament Number 29, Canberra, 1997.
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101. Greg Craven, 'Modelling McGarvie', *Quadrant*, July–August 2000, p. 112.
102. Delegates reading then contemporary literature about the future of Parliament in Britain would have encountered predictions that the significance of Parliament would decline in conjunction with the rise of political parties in the work of Maine (1885), and that of Ostrogorski, Low and Lowell (1892–1908). These are described in J. R. Archer, 'The Theory of Responsible Government in Britain and Australia' in Patrick Weller and Dean Jaensch, eds, *Responsible Government in Australia*, Drummond Publishing, Melbourne, 1980.
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