Chapter Six

The Virtues of Upper Houses*

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Introduction: The growth of executive government

Lord Hailsham identified over three decades ago the growth of executive power and the development of what he called an "elective dictatorship" when he observed:

> "Until recently the powers of government within Parliament were largely controlled either by the Opposition or by its own backbenchers. It is now largely in the hands of the government machine, so that the government controls the Parliament, and not Parliament the government. Until recently, debate and argument dominated the parliamentary scene. Now it is the whips and party caucus. More and more, debate is becoming a ritual dance, sometimes interspersed with catcalls ... we live under an elective dictatorship, absolute in theory, if hitherto tolerable in practice".[1]

This "elective dictatorship" is manifested in the way Premiers and Prime Ministers, through a more centralised and "politicised" bureaucracy, control more and more aspects of government than in the past. The expansion of politically appointed ministerial staff, now numbering in their hundreds at the federal level, further enhances executive government control. Reinforced by tight party discipline in most Westminster democracies, but especially so in Australia, parliamentary oversight and the very notions of responsible government have been undermined or at least severely compromised. Parliamentary sitting times, especially at the State level in Australia, remain low, and question times of limited value given the perceived partisanship of the Speaker and the range of processes in place.

One explanation for the emergence of "elective dictatorships" includes the increasing focus on government leaders, and the almost endless election campaigns, that are now a feature of modern democracies. Consequently, executive government has become more anxious to control the political agenda and the institutions of government, to minimise mistakes and to maximise political outcomes. The expansion of Departments of Premier and Prime Minister that now so dominate the management of governments reflects the executive's mania for control. Today, leaders do not just want to have their finger on the pulse, but are eager to control the flow of all government business. Such centralising trends, while evident in other Westminster democracies, have been practised with greater enthusiasm in Australia, as measured by size, roles, powers and resources now devoted to these central agencies.

The issue of executive government dominance is a concern not just because of the issue of accountability, but also because this growth has been accompanied by an increase in government intervention in society. At a time when government is seeking to intrude into more and more areas of life, the ability for review and oversight, especially through Parliament, has declined.

Of course, concern about executive government control over Parliament is not new in Australia or elsewhere. LF Crisp concluded in the 1960s that in Australia the situation of executive government dominance was worse than Westminster systems elsewhere:

"Among British Parliaments around the world the Australian has perhaps suffered a more substantial eclipse than most ... Today great and far reaching decisions for the welfare and security of every day citizens are taken and applied every day by the executive ... The initiative and the power of decisions are with the government ... most decisions of consequence are effectively made elsewhere – in the Prime Minister's suite, or in Cabinet, in caucus rooms or in party executives and conferences; in the departments ... the commissions and ... boards; in the interest group executive meetings and ... major banks, businesses and industrial concerns".[2]

Donald Horne, in his famous book *The Lucky Country*, released during the 1960s, concluded that "in Australia, Parliaments are now mainly of ritualistic significance".[3] Subsequent assessments supported these negative views. Professor Reid's numerous studies stressed the limitations of backbenchers in shaping legislation, or in Parliament exercising oversight of the executive.[4] Parliament had been "undermined by the executive".[5] Reid argued that although Australia's parliamentary processes and institutions had adopted "almost a complete panoply of Westminster-type ceremony, furnishings and Parliamentary dress,"[6] these were used as a "cloak of legitimacy" by executive governments intent on "suppressive actions" over parliament.[7]

And it was not just academics who were concerned about this decline. Frank Green, Clerk of the House of Representatives warned during the 1950s of the "tyranny of Cabinet".[8] So too has Harry Evans, Clerk of the Senate (1988-2009), who complained about the growth of executive power and the need for a bicameral system to restrain this trend.[9]

In the United Kingdom there were numerous complaints about the decline of Parliament. Such concerns became more prevalent during the 1960s, when Britain's evident economic decline raised doubts about many of its institutions, including Parliament and the civil service. In 1964 there was even a special publication questioning the value of British parliamentary institutions.[10] Anthony Sampson's surveys of modern Britain during the 1970s traced the limitations, if not the complete decline of the House of Commons.[11] Sampson's more recent assessments suggested that under the Blair Labour Government "Parliament was still counting for less".[12]

The issue is that these trends have become more overt and persistent. Prime Ministers and Premiers have become more adroit at control, and less willing to pretend otherwise. Exacerbating these trends has been the takeover of the personnel of Parliament as executive government has expanded. It is hard for Parliament to exercise control or oversight of executive government if a large proportion of its members work for the government. Across both federal and State governments in Australia nearly one in five parliamentarians now hold such posts. Executive government has hijacked the personnel of the legislature, thus reducing its capacity to oversight executive actions while also reducing the effective operation of the separation of powers between the executive and legislature. Table 1 highlights the growing proportion of parliamentary members now serving in executive government positions.

Table 1: Proportion of Parliament serving in executive government roles as Ministers or parliamentary secretaries (per cent)

	1910	1990	2007
C'wth	9	13.3	18.5
NSW	6.9	12.3	21.5
Vic	11.1	15.2	27.3
Qld	6.9	20.2	32.6
WA	8.7	23.1	25.3
SA	6.6	18.8	24.6
Tas	9.4	20.4	25.0
ACT	-	23.5	29.4
NT	-	36.0	44.0

Responses to the executive challenge

External review mechanisms: One response to the expansion of executive government has been to seek redress of this imbalance through the creation of new extra-parliamentary institutions that would supplement existing bodies, such as Auditors-General to scrutinise executive government actions and decsions. Hence, there has been a growth in administrative law and freedom of information legislation, and new institutions of review such as ombudsmen (in various areas) and anti-discrimination agencies. More recent suggestions include a Bill of Rights.

In addition to these external mechanisms, other developments in Australia spawned the growth of another very special type of external review mechanism. These were the anti-corruption bodies established in several jurisdictions to oversight executive government that were the result of the spate of corruption inquiries and Royal Commissions that occurred across Australia during the 1980s. These bodies included the Independent Commission Against Corruption (New South Wales); the Anti-Corruption Commission (now the Corruption and Crime Commission) in Western Australia; and the Queensland Criminal Justice Commission (now the Crime and Misconduct Commission).

The Queensland Government's recent response to concerns about ministerial probity, lobbying and relations between former Ministers and staff to the government of the day, reflected this prescription of enhancing existing external review mechanisms.[13]

While such external review bodies offer some benefits, there are serious flaws with these new and traditional external mechanisms of review as a means of addressing executive government dominance.

One problem is that executive government controls both the resources and appointments to these bodies. While there are sensitivities concerning any overt manipulation or "stacking" of such bodies, there are numerous examples where executive government has sought, often with success, to reduce the resources and powers of these bodies, or to make appointments with those more amendable to the government's viewpoint.

Another limitation is that these bodies usually depend on executive government itself taking the initiative to ensure that their proposals are properly implemented.

The fate of several State Auditors-General, and changes to their legislation that reduced their ambit of investigations, highlighted the vulnerability of such external review bodies when faced with determined executive government opposition. Even the aforementioned anti-corruption bodies have not always done well. Queensland's Criminal Justice Commission, established as a result of the 1989 Fitzgerald Royal Commission, had a harrowing time under successive Labor and Coalition governments when some of its inquiries adversely impinged on executive government activities.

Moreover, such external bodies, dubbed the "fifth" wheel of modern government, do not sit well with Westminster government and its underlying assumptions of responsible government and the winner takes all approach to holding all the levers of power after an election. In Queensland, with its unicameral legislature, such traits are even exacerbated, so that disputes between the Criminal Justice Commission and executive government and the relevant parliamentary committee responsible for its oversight declined into a simple contest of party politics.[14]
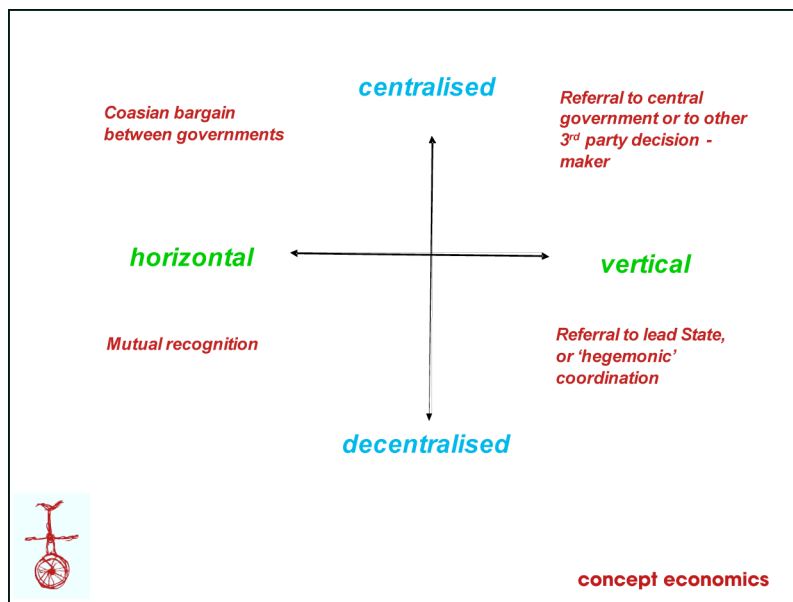
Sadly, this was where the much praised Fitzgerald Royal Commission[15] missed the mark. Although it suggested that corruption could only flourish where there was poor governance, its prescriptions did not get to the heart of the matter – executive dominance over Parliament. Regardless of the range of worthwhile reforms that have been introduced into Queensland's Parliament, public service and the establishment of many new external review mechanisms, Queensland's unicameral Parliament is too easily dominated by the party that forms the government, so that change only occurs if executive government concurs.

The other limitation of these external review bodies is that they are non-elected, and thus lack a certain degree of democratic legitimacy. Even when connected to Parliament through formal reporting requirements, the governing party ensures that their impacts can be severely limited.

So, addressing executive dominance must focus on where the problem lies, and where democratic practice meets institutional structures – namely Parliament. There can be no counterweight to executive government dominance by extra-parliamentary bodies alone, unless accompanied by improved parliamentary oversight and restraint of executive government to ensure that such bodies can operate freely and effectively.

The case for Upper Houses: Thus, the other suggestion to improve executive government accountability is to develop a viable bicameral parliamentary system, with Upper Houses appropriately structured to act as a countervailing influence on executive government exuberance, stupidity and arrogance. Parliamentary review has a legitimacy that no external body can achieve.

Bicameralism has long been a feature of western liberal democracies. As S E Finer observed, one of the key checks on executive government in liberal democracies, along with separation of powers and in some instances a federal system, has been "the division of the legislature into upper and lower houses".[16] The exact configuration of this division has varied from jurisdiction to jurisdiction. The House of Lords in the United Kingdom can delay, but not stop legislation from the House of

Delegation to centre	Hegemonic coordination (lead State)	Territorial bargaining	Mutual recognition
Most effective when spill-overs are very large and widespread but complex side-payments are needed	Can reduce transactions cost (e.g. avoid duplication of analysis)	Most effective when small number of roughly balanced units with 2-way spill-overs	Allows consumers and producers to vote with their feet
Outcomes highly dependent on decision-rule and can be inferior to no harmonisation	Bias arising from restricted range of interests taken into account	Invites hold-ups and hold-outs, and induces strategic voting with inefficient outcomes	Can create high transactions costs from multiple overlapping rules and concerns about race to the bottom

concept economics

Commons. Upper Houses in Europe have a range of different powers. In the United States, the Senate has considerable powers, and is seen as the most important part of the legislature in providing a check on executive government. In Australia, the Senate has almost co-equal powers with the House of Representatives, except concerning the ability to initiate budget proposals.

Within Westminster democracies there are different arrangements for Upper Houses in terms of their powers, mode of election and their roles. The Australian Senate has been elected since its inception, while the Canadian Senate, like the House of Lords despite recent so called "reforms", is still an appointed body.[17] And of course, across Canadian provinces, Upper Houses have been abolished,[18] while in Australia only one State (Queensland) has taken this action. Furthermore, within a single national jurisdiction like Australia there were and are considerable differences in Upper Houses, both across the States and between the States and the Commonwealth.[19]

Issues concerning Upper Houses: Arguments for improved bicameralism and reinvigorated Upper Houses can be classified into four main areas, reflecting the fundamental functions which modern representative assemblies are generally expected to perform.[20]

The first of these concerns democratic representation. Modern elected assemblies, whatever their design, powers and jurisdiction, are expected to be representative. Thus, when it comes to debate about whether Parliaments ought to be unicameral or bicameral, the argument often turns on disputed views about what representative democracy means, why it is a good thing and how it is best put into practice. Upper Houses offer the opportunities to provide representation that goes beyond the simple single-member and single-party constituency. Upper Houses can be constituted so as to represent regional interests, and to avoid the problems of malapportionment when such principles are applied in Lower Houses, that too often become entangled with governments seeking to retain power rather than to seek wider representation.

The second issue concerns the capacity of modern representative assemblies to provide effective public forums for political deliberation. Here the question is whether a second chamber can improve the quality of democratic deliberation by providing an additional forum for public discussion and debate. The evidence is that where governments have very clear majorities, as they mostly do in Lower Houses to form governments, opportunities for sustained debates, and even adequate time to consider issues, are rarely provided. Upper Houses, by requiring issues to be debated further and again, can, even if government numbers prevail, provide second thoughts and some review. This has long been the argument for the House of Lords. It applies with even more force in relation to elected Upper Houses.

The third issue has to do with the specific function of legislating, and particularly with the influence which the design of legislative institutions (as either unicameral or bicameral) has on the quality of legislation produced. The idea of an Upper House as a "house of review" is especially pertinent here. Often governments, after bringing legislation to the Upper House, have had to make numerous amendments on the basis of negotiations with Oppositions and minority parties. This has made for better outcomes in terms of both good legislation and good policy. In Queensland, legislation rushed through the State's government dominated unicameral legislature has often had to be reintroduced with numerous amendments, to make up for its poor initial drafting and lack of consultation with key interest groups. This was the case with the proposed ambulance levy introduced by the Beattie Government. The original legislation had to be withdrawn because of interest group opposition. Multiple amendments to the legislation were required as flaws became evident after implementation of the policy began.[21]

Last, there is the issue of scrutiny of the executive government. In systems of parliamentary responsible government, Parliaments play a special role in ensuring that executive power is exercised by individuals who are democratically accountable. However, the problem, as many have observed about modern Westminster democracies, is how strict party discipline has enabled executive governments to dominate Parliament, secure in the support of their backbench party members and

hence protected from intrusive probing by Parliaments that they mostly control. In this context, arguments about unicameralism and bicameralism often entail questions concerning the effectiveness (or ineffectiveness) of Parliaments in performing these functions. Upper Houses, if elected on a different but democratic basis like proportional voting, have the potential to ensure a wider range of elected representatives in Parliament from a more diverse range of parties. Also, such voting systems have the potential to prevent government parties from having a majority of seats in the Upper House, and hence executive government does not have the numbers to push through its legislation unconditionally. Even when governments do have a majority in such Upper Houses, it is usually narrower than in the Lower House, thus making some compromise with other parties more publicly desirable, if not always necessary.

Previous limitations of Upper Houses: Despite the existence of Upper Houses, there was in Australia considerable lack of interest in their activities and potential roles as mechanisms to improve executive accountability until recent times. There were several reasons why Upper Houses were not seen as appropriate responses to executive government dominance.

First, there was the view that, as most Upper Houses at the State level in Australia were elected until the 1970s on limited franchises, they did not have the legitimacy to hold executive government to account. The same argument applied to the House of Lords and the Canadian Senate.

Second, there were the realities of modern political party politics. Even when Upper Houses were elected, as has been the case of the Australian Senate since its inception, there was limited interest in its activities. Political action was concentrated in the Lower House. This was where governments were chosen and where the political leaders were based. By contrast, the Senate, like many Upper Houses, was for a long time considered a political backwater, peripheral to the political process, and more a means of rewarding the party faithful than providing positions for the party capable.

Third, there was the view that Upper Houses, elected as they were on limited or different franchises from their Lower House counterparts, should not be able to restrain the Lower Houses that were deemed to be more representative of the people's will. The Labor Party in particular saw Upper Houses as a hurdle to their "reform" agendas.

This debate was also tied into the "initiative" and "resistance" debate concerning Australian politics. The suggestion was that the ALP was the party of "reform" or "initiative", while non-Labor parties were the forces of "interests" and "resistance", who used their particular dominance of Upper Houses, gained by a different electoral system, to resist ALP "reform proposals". Queensland Labor Premier E G Theodore used this argument when his government abolished the Legislative Council in 1922:

> "It is known what the Legislative Council has done in recent years in order to prevent popular measures becoming law – measures which were desired by the people. Governments have been returned with a decisive majority and a definite mandate to carry their policy into operation and have been thwarted by the Legislative Council".[22]

Similar arguments were used by Prime Minister Whitlam when the Senate failed to pass the *Supply Bills* in 1975. It is not insignificant that in Australia only Labor governments have successfully abolished an Upper House (Queensland in 1922), or sought to abolish them elsewhere, such as in 1961 in New South Wales (unsuccessfully), and as is currently the case with the Rann Labor Government of South Australia. Abolition of the Senate remained part of Federal Labor's platform until 1978.

Fourth, and related to this argument, is the view that Upper Houses are redundant. Why have another House to review legislation that has already been passed by a chamber that has been democratically elected, is the usual argument. Also embedded in this view is that having an Upper House means more politicians and thus more costs to the taxpayer.

Fifth, there are views about the nature of democracy. Critics of Upper Houses see simple majorities as all that matters. Notions of representing different interests, including regional concerns, which is the basis of representation in the Senate in both Australia and the United States, are discounted.

Recent developments in favour of Upper Houses: Several factors have caused a more positive appraisal of Upper Houses in Australia in recent years. Foremost amongst these is that Upper Houses like the Senate have become more politically important. The proportional voting system and expansion in its size have allowed the emergence of minority parties and independents that have held the balance of power at certain times. Consequently, successive governments have been required to negotiate with these minority parties, and even the Opposition, to obtain the passage of key legislation. For instance, the first Howard Coalition government, although elected with a large majority and a mandate for certain policy proposals, had to negotiate with the Australian Democrats to ensure the passage of its new industrial relations legislation.[23] The second Howard government significantly modified its original proposals for the goods and service tax (GST) following negotiations with the Australian Democrats. "Senate" politics have become much more central to the political process than previously.

Another factor is that the Australian Senate has often been the setting for parliamentary inquiries which governments would not countenance in the House of Representatives as they would be too embarrassing. Such inquiries have shed significant light on alleged government maladministration, and highlighted new policy issues that would not have occurred otherwise.[24]

Developments concerning the Upper Houses across State jurisdictions also brought renewed interest in the roles of Upper Houses, and have undermined previous criticisms about the democratic legitimacy of State Upper Houses. By the 1980s most State Upper Houses had been reformed into more democratic institutions. The old stigmas were no longer relevant. As Associate Professor Bruce Stone concluded:

> "Legislative Councils have been transformed ... They have been comprehensively democratised ... (and) other major innovations. These changes have encouraged the Legislative Councils to become increasingly active and credible in the performance of key parliamentary roles".[25]

Moreover, in jurisdictions without an Upper House, such as Queensland, there has been increasing acknowledgment that the State suffers from a democratic deficit. As noted above, although the Fitzgerald Commission prompted the establishment of an array of new external review mechanisms, it left much of this to the existing system to implement. Recent scandals enveloping the Beattie and Bligh Labor governments, concerning Ministers, former Ministers and staff and lobbying, independence of the Auditor-General, and the operations of the public hospitals system[26] and rushed legislation, have highlighted the continuing executive dominance of Parliament, the lack of accountability, and the limitations of the many new external review mechanisms that Queensland, post-Fitzgerald had established.[27] As a consequence there has been renewed interest in establishing an Upper House in Queensland.[28]

Recent activities of Legislative Councils of New South Wales, Western Australia and Tasmania that have reversed executive government decisions, opened up public debate on issues and exposed a number of major executive government induced policy problems, have also given State Upper Houses greater legitimacy.[29] The debacle in New South Wales concerning the costing and contracting arrangements associated with Sydney transport tunnel projects would not have been disclosed to the public if it were not for the activity of that State's Upper House. In South Australia the Upper House has been responsible for forcing the government to alter its laws concerning gambling.

Internationally, there has been a marked revival of interest about the nature, functions and desirability of second chambers. The Blair Labour Government, in perhaps taking its cue from Hailsham, finally initiated some small first steps to democratic reform of the House of Lords, though there is still a long way to go before the House of Lords becomes anything like a democratic institution like its United States or Australian counterparts.[30] Further changes are still on the table.[31] In Canada, the Harper Government has proposed a review of the parliamentary system, with at last considering transforming the national Senate into an elected body.[32]

Conclusions

In summary, when political power is consolidated into the hands of a small number of people, Lord Acton's aphorism seems to hold true: it tends to corrupt.[33] However, appropriately constructed Upper Houses place a constraint upon the consolidation of governmental power into the hands of a small group of like-minded people – of whatever political persuasion – thereby tending to limit and divide the exercise of governmental power, with all of the constitutional and liberty-supporting consequences that this can have. John Stuart Mill put it well when he concluded that:

> "The consideration which tells most, in my judgment, in favour of two chambers … is the evil effect produced upon the mind of any holder of power, whether an individual or an assembly, by the consciousness of having only themselves to consult. It is important that no set of persons should, in great affairs, be able, even temporarily, to make their *sic volo* prevail without asking anyone else for his consent. A majority in a single assembly, when it has assumed a permanent character – when composed of the same persons habitually acting together, and always assured of victory in their own House – easily becomes despotic and overweening, if released from the necessity of considering whether its acts will be concurred in by another constituted authority. The same reason which induced the Romans to have two consuls makes it desirable there should be two Chambers: that neither of them may be exposed to the corrupting influence of undivided power, even for the space of a single year. One of the most indispensable requisites in the practical conduct of politics, especially in the management of free institutions, is conciliation: a readiness to compromise; a willingness to concede something to opponents, and to shape good measures so as to be as little offensive as possible to persons of opposite views; and of this salutary habit, the mutual give and take (as it has been called) between two Houses is a perpetual school; useful as such even now, and its utility would probably be even more felt in a more democratic constitution of the legislature".[34]

Given the increasing powers of executive government and the limitations of external review mechanisms, then Upper Houses, if appropriately constructed in terms of systems of election, size and powers can offer an effective democratic means for improving accountability and exercising restraint on executive government, and lead to improvements in the process of public policy development.

Endnotes:

*   Parts of this chapter are based on work by S Prasser, J R Nethercote, and Nicholas Aroney, *Upper Houses and the Problem of Elective Dictatorship*, in N Aroney, S Prasser and J R Nethercote (eds), *Restraining Elective Dictatorship – The Upper House Solution?,* University of Western Australia Press, Perth, 2008, pp.1-8.

1.   Lord Hailsham, *Elective Dictatorship*, *The Listener*, 21 October 1976, p. 496.

2. L F Crisp, *Australian National Government*, Longman, Melbourne, 1971, p. 267.

3. D Horne, *The Lucky Country*, Penguin, Melbourne, 1964, p. 178.

4. G S Reid, *The Changing Political Framework*, in T Van Dugteren (ed), *The Political Process: Can it Cope?*, Hodder and Stoughton, Sydney, 1978, pp. 76-78.

5. *Ibid.*, p. 78.

6. G S Reid, 1964, *Australia's Commonwealth Parliament and the Westminster Model*, *Journal of Commonwealth Political Studies*, Vol 2, No 2, p. 92.

7. G S Reid, *Parliamentary-Executive Relations: The Suppression of Politics*, in H Mayer (ed), *Australian Politics: A Third Reader*, Cheshire, Melbourne, 1971, p. 506.

8. Frank Green, *Changing Relations between Parliament and the Executive*, *Public Administration*, Vol 13, June, pp. 65-76.

9. Harry Evans, *The Problems with Parliament*, *Constitutional Centenary Foundation Newsletter*, Winter, pp.13-14.

10. A Hill and A Whichelow, *What's Wrong with Parliament?*, Penguin, Harmondsworth, 1964.

11. Anthony Sampson, *The New Anatomy of Britain*, Macmillan, London, 1973.

12. Anthony Sampson, *Who Runs this Place? The Anatomy of Britain in the 21st Century*, John Murray, London, 2004, p. 6.

13. Queensland Government, *Integrity and Accountability in Queensland*, August 2009.

14. Peter Beattie, *Parliamentary Committee and Reform*, in Andrew Hede, Scott Prasser and Mark Neylan (eds), *Keeping Them Honest: Democratic Reform in Queensland*, University of Queensland Press, St Lucia, 1992, pp. 135-148.

15. The Queensland Fitzgerald *Commission of Inquiry into Police Misconduct* was established in 1987 to investigate police corruption, but also made wide ranging recommendations on Queensland's system of government.

16. Samuel Finer, *Comparative Government*, Penguin, Harmondsworth, 1974, p. 72.

17. Paul G Thomas, *An upper house with snow on the roof and frozen in time: The case of the Canadian Senate*, in N Aroney, S Prasser and J R Nethercote (eds), *op. cit.*, pp.130-141.

18. David Docherty, *Upper Houses in the Canadian Provinces*, in N Aroney, S Prasser and J R Nethercote (eds), *op. cit.*, pp. 142-159.

19. Bruce Stone, *State Legislative Councils – Designing for Accountability*, in N Aroney, S Prasser and J R Nethercote (eds), *op. cit.*, pp. 175-195.

20. Compare John Uhr and John Wanna, *The Future Roles of Parliament*, in Michael Keating, John Wanna and Patrick Weller (eds), *Institutions on the Edge? Capacity for Governance* (2000), pp. 12-17.

21. S Prasser, *Aligning "good" policy with "good" politics*, in HK Colebatch (ed*), Beyond the Policy Cycle: The Policy Process in Australia,* Allen and Unwin, Sydney, 2006, pp. 266-292.

22. E G Theodore, MP, *Queensland Parliamentary Debates*, Legislative Assembly, 25 October 1921, Vol 138, pp. 1772-7.

23. Gwynneth Singleton, *Industrial Relations: Pragmatic Change*, in Scott Prasser and Graeme Starr (eds), *Policy and Change: The Howard Mandate*, Hale and Iremonger, Sydney, pp.192-208.

24. See J Uhr, 2005, *How Democratic is Parliament? A Case Study in Auditing the Performance of Parliaments*, in *Democratic Audit of Australia,* http://democratic.audit.anu.edu.au/, ANU, Canberra, June 2005.

25. Bruce Stone, *State Legislative Councils – Designing for Accountability*, in N Aroney, S Prasser and J R Nethercote (eds), *op. cit.*, pp. 175-195.

26. G Davies (chair), Report, *Queensland Public Hospitals Commission of Inquiry*, Queensland Government Printer, Brisbane, 2005, found misuse of freedom of information laws by both Labor and non-Labor governments, and excessive secrecy, lack of ministerial accountability and politicisation of the public service.

27. Nicholas Aroney and Scott Prasser, *Submission to the Queensland Integrity and Accountability Green Paper*, University of Queensland and Australian Catholic University, September, 2009.

28. The Liberal National Party at its 2009 conference called for a review to establish an Upper House. See *Changing a Culture*, editorial in *The Australian*, 18 July 2009.

29. Important recent studies of the performance and design of Australian State Upper Houses include B Stone, *Bicameralism and Democracy: The Transformation of Australian State Upper Houses*, in *Australian Journal of Political Science*, Vol 37, 2002, p. 267; B Stone, *Changing Roles, Changing Rules: Procedural Development and Difference in Australian State Upper Houses*, in *Australian Journal of Political Science*, Vol 40, No 1, 2005, p. 33.

30. See M Russell, *Is the House of Lords Already Reformed?*, in *The Political Quarterly*, Vol 74, No 3, 2003, p. 311.

31. See HM Government, *The House of Lords: Reform*, 2007.

32. See Bill S-4 (Senate of Canada), First Reading, 30 May 2006; Bill C-43 (House of Commons of Canada), First Reading, 13 December 2006.

33. Lord Acton, Letter to Bishop Mandell Creighton, 1887 (see F Engel De Janösi, *The Correspondence between Lord Acton and Bishop Creighton* (1940), 6 (3) *Cambridge Historical Journal*, 307.

34. John Stuart Mill, *Considerations on Representative Government*, Everyman Edition, London, pp. 325-6.