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## Foreign Models and Aussie Rules: Executive-Legislative Relations in Australia

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When Alexis de Toqueville went to the United States in the 1830s to study prisons there was little in the way of models or empirical research about democratic institutions in America with which he could formulate generalizations about the dual impact of equality and individualism. He developed his book *Democracy in America* virtually from scratch. And it eventually proved not only a great book but an influential one.

In somewhat the same vein, when David Butler came to Australia two decades ago he opined that there was a dearth of information about the actual workings of Australian government. Extensive groundwork needed to be done on both the institutions and processes of government. He implied in *The Canberra Model* 'that the lack of such basic information about Australia made generalization next to impossible'.<sup>1</sup>

Two decades later this is clearly *not* the case. In the last twenty years Australians have compiled an extraordinary amount of factual information about the institutions and processes of the Commonwealth and the states, including elections and parties. Of course, this explosion of new information is partially due to the fact that Australians have been rethinking the design of their institutions and processes as the country approaches its centennial.

But, alas, Australians continue to grapple with how to depict the essentials of their political system. This is evident in learned books and articles by academics, but is also noticeable in political debates about whether the country should become a republic and shed its monarchical ties.

In this regard it is perplexing for a foreigner to hear from some academics that Australia is already a republic and that what needs to be debated in this country is a move towards republicanism.<sup>2</sup> That Australia is already a self-governing state is beyond doubt. A republic, however, is generally recognized by political scientists to have an *elected* head of state, not an *unelected* one. It was somewhat amusing, therefore, to discover that one of the definitions offered by the Australian *Macquarie Dictionary* requires that the head of

<sup>1</sup> David Butler, *The Canberra Model* (Melbourne: Cheshire, 1973).

<sup>2</sup> Wayne Hudson and David Carter, eds, *The Republicanism Debate* (Kensington: New South Wales University Press, 1993).



'government' be elected, while the only definition offered by the *Oxford Dictionary* requires the supreme power of the 'state' to be held by an elected official. If we accept the Australian dictionary's definition, the country already is a republic, but if we accept Oxford's, it is not.<sup>3</sup>

With the abundance of new facts collected during the past two decades, why do arguments about the essential characteristics or essence of Australian government persist? I would contend that they do so at least in part because Australian scholars have tended to use particular foreign models to depict unique Aussie rules rather than distilling the principles from Australian governmental practice. They have used the foreign models — essentially from Britain and/or the United States — as measures or standards to be achieved with less concern for actual behaviour. When contradictions are found between the models and reality, they are viewed as flaws or mistakes or as being caused by unique Australian factors.

Part of this confusion has been caused by Australian political scientists continuing the British tradition of using the word 'model' to depict both empirical reality and normative goals, rarely separating the two meanings as is done in American behavioural research. Some Australian scholars are explicit in their use of the language of models and theories to 'justify' the institutions and processes of Australian democracy.<sup>4</sup> Other scholars attempt to justify or argue for their political reforms based on 1) the intentions of the constitutional founders at the end of the 19th century; or 2) the ideas of the great British philosophers such as John Stuart Mill; or 3) the language of scientific management, concentrating on what purport to be non-normative concepts such as efficiency and equilibrium. All three of these forms of argumentation are simply recourse to authority couched in theoretical language.

These and other similar approaches underlie most textbooks. The models employed are not simplified depictions of empirical reality but normative models of judgment values, goals, biases and even prejudice. Rather than inducing a model from how the Australian democratic system actually operates, the authors attempt to discover design or organizational principles from accepted foreign models. Of course, this is the language that politicians and their policy-making assistants use to discuss reform of institutions, and therefore it needs to be examined by scholars. However, the basic task of political science is not to replace politicians and public servants, but rather to understand the principles political activists use to mould institutions — in other words, to understand how government works in practice.

Even those writers who have formally recognized these problems by studying the intricacies of Australian history have not added greatly to the empirically-based models. The

<sup>3</sup> *The Macquarie Dictionary*, p.1444. It is precisely because Australian executive-legislative relations work the way they do that there is such serious discussion of the role of the monarchy, governors and reserve powers in Australia. There is a great possibility that democratically-elected governments can be blocked from acting in a coherent and purposive manner, especially if governments do not control their legislative bodies. All four reserve powers—appointing Prime Ministers or Premiers, dismissing Prime Ministers and Premiers, forcing or refusing dissolution of the legislature—are intimately tied to the essential nature of the system. Governors' decisions in such cases are considered inherently partisan and become politicized, but there is little doubt that all governors have discretionary powers to some degree.

<sup>4</sup> See Don Aitkin, Brian Jenks and John Warhurst, *Australian Political Institutions*, 4th edn (Melbourne: Longman Cheshire, 1989), p.1.

conclusion that Australian politics are 'unique' does not serve to characterize the country. The assertion that Australia has indigenous characteristics may or may not be correct, but we need to know how these domestic factors are or are not congruent with other 'imported' factors to describe the essential political processes and behaviour. Assertions about indigenous factors may be no more than an appeal to nationalism, a sort of 'keep off the grass' sign to restrict those who wish to understand the system by putting Australia in a comparative framework.

But what are these distinctive features? How do they mesh with the non-unique characteristics? Can we describe and explain political activity as learned practice rather than simply assume that political actors follow a set of acquired rules and norms from Britain, the United States or elsewhere? Indeed, just how does Australian democracy work in practice? In order to answer these questions we need to depict the pattern of government not by a set of external rules and forms but by studying the actual behaviour and the system of thought which is 'used' by the participants in their political activities. Of course, this language of discourse may be, and often is, conditioned by foreign ideas.

### Models of Australian Government

Several models of Australian democracy have been proposed over the years. They date from the earliest debates about the Commonwealth. Robert S. Parker has pointed out that the country's founders knew full well that there would be contradictions in a system which established a powerful Senate to represent the small states but which also adopted the principles of responsible government.<sup>5</sup> In this paper, rather than attempting the impossible task of dealing with the entire history of Australian ideas about democracy, I concentrate on recent texts and their basic approaches. Of course each of my assessments is a simplified summary of the authors' considerably more complex and subtle ideas. One point is clear — there has been a significant evolution in the models and arguments about them over the past thirty years.

The following nine explicit models are commonly cited in the recent literature:

1. Westminster Responsible Government. In 1965, L.F. Crisp argued in *Australian National Government* that the country is governed by a British-style Parliamentary system plus a few features such as states, federalism, etc. But he concluded that it is the British responsible government concept which is indispensable for understanding the working constitution.<sup>6</sup>

2. Westminster Variant. In 1973, David Butler, in *The Canberra Model*, concluded that Australia is basically a variant on Westminster democracy, with elements from other systems. But Dr. Butler did not elaborate on these factors as checks on the government, nor did he attempt to determine how Australia actually functions in view of these 'bits and pieces'.<sup>7</sup>

<sup>5</sup> R.S. Parker, 'Political Projections and Partisan Perspectives', *Politics* (May 1976), APSA reprint, no.16; and Brian Galligan 'The Founders' Design and Intentions Regarding Responsible Government in Australia', in Patrick Weller and Dean Jaensch, eds, *Responsible Government in Australia* (Richmond: Drummond, 1980).

<sup>6</sup> L.F. Crisp, *Australian National Government* (Melbourne: Longman Cheshire, 1965).

<sup>7</sup> Butler, op. cit.



3. Responsible Government and Federal Bicameral Legislature. In 1980 both Brian Galligan and Robert Parker determined that the founders knew that they were putting together two theoretically incompatible types of structures. Although the founders disputed whether the structures could be made to work together in practice, they compromised.<sup>8</sup>

4. Washminster. The same year, E. Thompson said Australia should not be analyzed as a variant of the British Responsible Government Model. Instead, it should be depicted as a special arrangement which unsuccessfully combines aspects of Westminster and Washington to create a new entity.<sup>9</sup>

5. Uneasy Constitutional Equilibrium. In 1983, G. Winterton, in *Parliament, the Executive and the Governor-General*, said that Australian government embodies four constitutional principles — representative government, federalism, the separation of powers and responsible government under the Crown, and that these four principles work together in an uneasy way.<sup>10</sup>

6. Responsible Party Government plus Division of Power. In 1985, G. Lucy professed in *The Australian Form of Government* that the federal division of powers weakens party government. Australian government emerges from a struggle between the two forces of responsible party government and federalism.<sup>11</sup>

7. Conflict of Principles: Checks versus Authority. In 1985, G. Maddox in *Australian Democracy in Theory and Practice* seems to prefer 'party' government, but he gives considerable weight to the importance of the constitution checking and dividing authority in the country.<sup>12</sup>

8. Conflict of Principles: Liberalism versus Democracy. In 1988, H.V. Emy and O.E. Hughes in *Australian Politics: Realities in Conflict* stress the role of values and say that Australian government is the result of a conflict between liberalism with its checks on government on one hand and democracy with its principle of majority rule on the other.<sup>13</sup>

9. Compound. In 1990, C. Sharman argues in 'Australia as a Compound Republic' that Australia is a compound system because 'Governmental power is dispersed among a number of rival agencies, agreement among which is necessary for authoritative action ... It is the British parliamentary tradition that is the problem'.<sup>14</sup>

<sup>8</sup> *Responsible Government in Australia*.

<sup>9</sup> E. Thompson, 'The 'Washminster' Mutation', in *Responsible Government in Australia*.

<sup>10</sup> G. Winterton, *Parliament, the Executive and the Governor General* (Melbourne: Melbourne University Press, 1983).

<sup>11</sup> R. Lucy, *The Australian Form of Government* (Melbourne: Macmillan, 1985).

<sup>12</sup> G. Maddox, *Australian Democracy in Theory and Practice* (Melbourne: Longman Cheshire, 1985).

<sup>13</sup> H.V. Emy and O.E. Hughes, *Australian Politics: Realities in Conflict* (Melbourne: Macmillan, 1988).

<sup>14</sup> C. Sharman, 'Australia as a Compound Republic', *Politics*, vol. 25 (1), (1990), pp.1-5.

TABLE 1. MODELS OF AUSTRALIAN GOVERNMENT

### I. Explicit

Westminster Responsible Government	Crisp 1965
Westminster variant	Butler 1973
Responsible Government and Federal Bicameral Legislature (theoretically incompatible, but practically necessary)	
Washminster	Galligan; Parker 1980
Uneasy Constitutional Equilibrium	Thompson 1980
Responsible Party Government plus Division of Power	Winterton 1982
Conflict of Principles: Checks v. Authority	Lucy 1985
Conflict of Principles: Liberalism v. Democracy	Maddox 1985
Compound: Dispersal of Power, Political Tradition and Constitutional Rules	Emy & Hughes 1988
	Sharman 1990

### II. Implicit

The models of Australian governments used in many texts are implicit; this is the case in Aitkin, Jinks & Warhurst, 1989, as well as Jaensch & Teichmann, 1987, Smith & Watson, 1989, Stewart & Ward, 1990, and many others.

### Assessment of the Models

There are many reasons why academics should assess this important literature to establish the validity of the models. On close scrutiny, some of the arguments have a beginning, a muddle and an end, being characterized by definitional tangles and tautological difficulties.<sup>15</sup> Two reasons for review therefore predominate:

1. Educational — if the facts of modern Australian politics do not fit with the models, then students who are forced to absorb them may become unduly cynical of all political science. Less importantly, foreigners may place Australian government in the wrong comparative framework.

2. Reform — satisfactory change is possible only when it follows from accurate description, explanation and evaluation of the governmental system. This means that the models and basic facts about Australian democracy should accord as much as possible.

Five basic problems of analysis are affected by the confusion in models of Australian democracy adopted by the above-mentioned texts.

First, the models in many of the texts make the classic error of referring to the Senate as house of the federation — as if it somehow represents the states or at least state interests and does not play a major role in the process of government itself by affecting the choice of the government, ministers, government stability and/or its legislation and policies. But, from the beginning, the Australian Senate (like the Canadian Senate) has been a body whose base is regional, but whose behaviour has been conditioned by party considerations. Even in

<sup>15</sup> Australians have made similar charges. See Richard Lucy, 'The Problems of Sharmanism', unpublished paper delivered at the APSA Conference, Hobart, 1990, and H.K. Colebatch, 'Theory and Analysis of Australian Politics', *AJPS* (1992), Vol. 27, pp.1-11.



the first Commonwealth Senate, all members saw themselves as party supporters rather than representatives of the states, with 17 Free Traders, 11 Protectionists and 8 Labor supporters. The Senate has not taken an exclusively regional or state view. The Australian Commonwealth clearly has a powerful upper house and its significance is denigrated by calling it a 'house of the federation'.

Second, many of the models tend to undervalue the great significance of the 1949 change in rules for electing the Senate and thus do not give adequate attention to the role of minor parties, such as the Democratic Labor Party, Australian Democrats, Greens and a variety of Independents as forces in governance. Governments have repeatedly been forced to negotiate with such minor parties over important legislation, including even budgetary issues. Of course, analyses of the complex divisions and factions within the major political parties have always been part of the discussion of Australian democracy, but such arguments could be accommodated inside the prevalent models — where inter-party fights could always have made or toppled governments.

Third, the analyses tend to underestimate the role of state governments and particularly their upper houses in Australian politics — many even leave the role of state politics out of their characterizations of what constitutes Australian democracy. They concentrate instead on executive federalism and its workings, especially in regard to the Commonwealth finances and institutions such as the High Court. Relations between the centre and periphery are stressed rather than government and politics *in* the states.

Fourth, most of the texts contrast one foreign model with another, as, for example, does the Westminster model represent Australian democracy or a combination of Westminster and Washington? Or they state the principles of Australian politics as dichotomized opposites, as in the debate between Lucy and Sharman about the importance of party government. Many authors writing about Australian government even seem to dislike political parties, finding them sordid or a negation of democracy.<sup>16</sup>

Fifth, and quite important in my opinion, many of the most recent authors adopt an implicit United States model when they separate the legislature from the executive rather than seeing the government as *in* the House or *in* the legislative assembly. They tend to locate the Cabinet with the bureaucracy rather than with Parliament, thus strengthening the role of bureaucrats versus the politicians in their analysis. There is also a tendency for many of these authors to change their form of analysis from one subject to the next in order to dismiss the role of legislative bodies. This is often accomplished by the use of an organic fallacy.<sup>17</sup> When parliamentary influence is discussed, it is in the form of 'Parliament does not', while when party importance is discussed, it is in terms of 'the members of the parties may'. In the first case there is an assumption that the institution of parliament acts as an undivided whole, while in the second case parties are disaggregated to the members. If the same approach were taken to legislatures as to parties both would magically assume the same importance.

In conclusion, it seems fairly clear that many discussions of how government works in Australia do not highlight the states enough, while recent efforts to explain away the role of legislatures may also be misplaced. The central institutions and the executive are simply

<sup>16</sup> The Clerk of the Senate, Harry Evans, stated this attitude succinctly when he declared that 'party government is the Australian disease', *The Bulletin*, 12 Oct. 1993, p.15.

<sup>17</sup> See Randal G. Stewart and Ian Ward, *Politics One*, (Melbourne: Macmillan, 1992), p.80.

assumed to be the most important institutions in the depiction of Australian democracy. Currently, writers seem to downplay the role of the 'parliamentary government'. Lucy, Stewart and Ward, for example, distinguish between 'parliamentary government' and 'responsible party government' on the basis that it is the majority party, not the legislature, which makes and unmakes governments. Of course, this is true when a single party or a known coalition of parties controls both the lower and upper houses, or where only one house is held by a majority from one party or by a specified and relatively permanent coalition such as the Liberals and Nationalists. But how often is that the case in Australia? Not as often as the models would lead us to believe.

### Typologizing Government Stability and Blockage

There are nine governments and 15 legislative bodies in Australia. Contrary to the usual contentions in the texts cited above, there are many ways that these 15 Australian legislative bodies are involved in the crucial political processes of forming governments, removing governments, initiating, amending and blocking legislation and forcing elections. I shall refer to these activities as 'legislative powers'. Instead of merely following the precepts of the models, we need to test empirically whether these legislative powers are important or not. Because of party discipline, and on the assumption that parties do not fragment, or that stable party coalitions such as the present Liberal/National compromise do not fall apart, we can line up a theoretical governability spectrum as follows:

1. Most stable government — when one party has an absolute majority in both houses. (Highest)
2. Stable government — when one party has a majority in the lower house but lacks a majority in the upper house. However, the parties holding the balance of power in the upper house are not motivated to upset the government. (High)
3. Unstable government — when the government holds a majority in the lower house but is confronted in the Senate or upper house by a hostile opposition which controls a majority. (Low)
4. Highly Unstable — when the government lacks a clear majority in both houses and must rest on the support of opposition parties or independents. (Very Low)

### Executive-Legislative Relations in Australia

One way to test the soundness of the models used to depict Australian democracy is to explore their fit with executive-legislative relations in the Commonwealth and in the states. In other words, one can determine whether the models fit with empirical situations or whether they are mere fanciful figments of someone's imagination.

Legislatures come in many varieties, but they can be reduced for elementary comparison to two basic types — presidential and parliamentary. However, this simple dichotomy based on constitutional strictures does not provide an adequate description without the additional consideration of how the party system aligns itself with the two institutional designs. What is vital — but is not always mentioned — is that two types of politics exist in concert with these constitutional imperatives and party realities.

Legislative politics tend to be dominated either by 'party' or 'coalition' politics. The political system of the United States is presidential and coalitional in its legislative politics. It is also fairly ramshackle — no one knows what will come out of its legislative-executive process. This is also the case in many smaller European democracies. Historically, the



systems of Canada, Britain, Australia and New Zealand have usually experienced parliamentary governments with strong majority parties. Of course, if we raise our horizons to include all 190 extant states we find a galaxy of different types of legislative-executive arrangements.

To complete our discussion of the Australian system we need to apply the earlier-mentioned typology of executive-legislative relations to cases in the Commonwealth and the states in order to determine if the stability typology can be used to predict early election calls, changes in legislation or similar parliamentary output — in other words, to assess the degree of governability. There are two caveats. First, the idea of using the date of election calls will no longer work as it once would have because Tasmania, New South Wales and the ACT all now have fixed, scheduled dates for elections. Secondly, a diachronic (over time) comparison would also be useful, but for practical purposes this paper will examine only the present reality in the 15 legislative bodies or, in other words, the nine executive-legislative situations. It is the patterns of consequences based on the executive-legislative party nexus that make the electoral systems so important to contemporary Australian politics.

In the winter of 1994, only four of the nine governments hold a majority in their required legislative chambers. These four governments, Victoria, Western Australia, Queensland and Northern Territory, therefore have the 'highest' degree of stability or 'governability'. The governments are relatively stable: they can fulfil electoral commitments, initiate legislation and expect it to be completed on schedule. This is not the case in the remainder of the cases where government negotiation with minor parties and/or independents is necessary in the lower, upper or both houses. In the majority of cases, therefore, 'legislative politics' may predominate over the executive.

TABLE 2. AUSTRALIAN GOVERNABILITY TYPOLOGY

Winter 1994

Highest	High	Low	Very Low
Victoria	Tasmania	Commonwealth	NSW
Western Australia		South Australia	ACT
Queensland			
NT			

More subtle distinctions can be made. The Independents in the Tasmanian Legislative Council show little inclination to influence Mr Groom's government in any particular direction or to try to replace it, so it is placed in the 'high' stability category.<sup>18</sup> The

<sup>18</sup> Tasmania is certainly a special case. The 19 members of the Legislative Council are elected for six-year terms in single-member constituencies, with an election for three each of the

Commonwealth and South Australia, where negotiation is required with the upper houses, are placed in the 'low' stability category, and the 'lowest' of all is found in the ACT and New South Wales where the government does not have a steady majority in either of the required houses.

To examine what the degree of stability means in terms of governability — the strength of the governments to get things accomplished — we shall examine three situations: the Commonwealth and South Australia with 'low' stability, and New South Wales with the 'lowest' form of stability. These three situations are not aberrations, despite arguments to the contrary found in the above-mentioned texts. A large number of Australian governments have had to operate without minority control in the required houses for considerable periods of time.<sup>19</sup> Legislative Council. See Bennett, pp. 64–70.

#### Commonwealth Parliament (Low Stability) — Rule by Compromise?

Until recently, Commonwealth governments found executive-legislative relations fairly easy to manage. Apart from the infamous Kerr/Whitlam case the Senate did not use its full power to block government legislation from 1901 to 1975. Starting with the now-defunct Democratic Labor Party, but particularly since the Democrats (formed in 1977) began to hold the balance of power in the Senate, all governments have had to play a game of consensual policy-making. During the past decade Commonwealth governments have had to rely on the votes of minor parties to pass legislation and/or block opposition proposals. Of the 1,850 bills which have been passed by Parliament in the last decade about 20% were amended in the Senate.<sup>20</sup> The traditional majoritarian style simply has not worked, and the

first five years and four in the sixth year. This system provides adequate opportunity for the upper house to reject government legislation, amend budgets, and force elections without more than three of its members having to face an election. The Groom government has announced that it would like to have a referendum changing the Constitution so that there could be a double dissolution in the same manner that the Constitution provides for in the Commonwealth Parliament. The Labor Party prefers a single chamber, as in Queensland.

<sup>19</sup> In *Affairs of State*, Scott Bennett provides a large number of historical examples. For example, in 1992, governments in NSW, SA and Tas. had to rely on the support of independents in the legislature. Earlier, the 1989 Tasmanian election gave the Gray Liberal government 17 seats in the lower house, the ALP 13, and 5 Green Independents, but the Governor would not appoint Labor's Field until he spoke to the Greens to be certain that a Field government would obtain their continued support. Obtaining a majority in both state houses is particularly difficult for the Labor Party. Only in NSW has the ALP ever gained control of the Legislative Council. See Bennett, pp.64–70.

<sup>20</sup> John Uhr, 'Redesigning Representation: Making Sense of the Senate', Unpublished paper, Conference on Consensual Policy Making and Multi-Party Politics, Australian National University, Canberra, 25–26 November, 1993, p.9; 'Instituting Republicanism: Parliamentary Vices, Republican Virtues?', *AJPS* (1993), vol. 28, pp.27–37; 'Prime Ministers and Parliament: Patterns of Control', in Patrick Weller, ed., *Menzies to Keating* (Melbourne: Melbourne University Press, 1992), pp.81–108; 'Parliamentary Measures: Evaluating Parliament's Policy Role', in Ian Marsh, ed., *Governing in the 1990s* (Melbourne: Longman Cheshire, 1993), pp.346–75. For overviews see D. Jaensch, *Getting our Houses in Order—Australia's Parliament: How it Works and the Need For Reform*



1993 election, with more minor parties elected to the Senate, has forced an expanded consensual style. Hard negotiations between governments and minor parties, followed by compromise, has become the normal and expected behaviour. The style has become somewhat more like that found in the relations among cabinets and parties in consociational systems such as the Netherlands, Austria or Switzerland than that found in the United Kingdom, Canada or even the United States.<sup>21</sup>

The 1993 election ushered in an era of multi-party government in Australia by giving the minor parties — the Democrats as well as the two Western Australia Greens and Senator Harradine — the balance of power in the Senate. These results have provided the possibility of clashes over the powers of Parliament versus the powers of the executive. Moreover, there is likely to be a hostile Senate majority against the government in the future. Kim Beazley, the Minister in charge of Government Business, agreed: 'The nature of our system of election to the Senate is such that no government is ever going to control it'.<sup>22</sup>

Mass public opinion also plays a role in executive-legislative relations. On the general question of the advantage of having the federal government control both houses of Parliament, the Australian public is clearly divided, but with a slight majority against one-party authority. On questions relating to specific legislation it tends to favour strong minor parties by a larger margin.

*The Australian Election Study, 1993* asked the question, 'Which do you think is better: when the Federal Government has a majority in *both* the House of Representatives *and* the Senate, OR when the Federal Government in the House of Representatives *does not* control the Senate?' The response showed that 40.8% thought it was better when the government had a majority in both houses, 44.8% when it did not. In short, a majority of Australians are opposed to strong executive control of both houses of Parliament. However, more people (19.7%) expressed strong support for government control, and fewer (only 9.2%) were strongly against government control of both houses. When these numbers are correlated with party identification, a strong statistical relation between commitment to parties and attitudes about this question clearly demonstrates that Labor supporters prefer government control of both houses, while Opposition (Liberal/National) supporters tend to be against the proposition and minor parties' supporters are very much against it.<sup>23</sup>

On more precise questions about amending legislation the public is less divided and party affiliation is less significant. For example, one poll showed that 74% of Australians

(Ringwood, Victoria: Penguin, 1986); (Melbourne: Melbourne University Press, 1988); G. Reid and M. Forrest, *Australia's Commonwealth Parliament 1901-1988* (Melbourne: University of Melbourne Press, 1989).

<sup>21</sup> See Robert J. Jackson and Doreen Jackson, *Contemporary Government and Politics: Democracy and Authoritarianism* (Scarborough: Prentice Hall, 1993), chapter 6; and by the same authors, *Politics in Canada: Culture, Institutions, Behaviour and Public Policy* (Toronto: Prentice Hall, 1993), chapter 4; and more broadly, Robert J. Jackson and Michael Stein, *Issues in Comparative Politics* (New York: St. Martin's Press, 1971); and Robert J. Jackson, *Europe in Transition* (New York: Praeger, 1993).

<sup>22</sup> *The Age*, 7 September 1993.

<sup>23</sup> Data from *The Australian Election Study, 1993*. I am very grateful to Clive Bean for his assistance in analyzing this data.

believed the minor parties properly used their power to amend tax measures.<sup>24</sup> And a later poll concluded that 51% of Australians do not think that minor parties have too much power in the Senate.<sup>25</sup>

Considerable media commentary has been offered on the Keating government's lack of majority control of the Senate during the 37th Parliament (it first met on 4 May 1993, and thus expires on 3 May 1996). The role of the Democrats, Western Australia Greens and Senator Harradine has been extensive and dramatic. Since the election they have forced the government to redraft two budgets, forced Ros Kelly out as Sports Minister over the so-called 'sports rorts' affair, significantly amended Mabo and Industrial Relations legislation and reported critically on the FIRB.<sup>26</sup>

But more significant than these well-known facts has been the effect of minor parties on the process of Australian democracy and their possible importance in the future.<sup>27</sup> The government has been forced over and over again to make deals with the minor parties.<sup>28</sup> A second question posed during the 1993 budget crisis was whether the events of 1993 were similar to those of 1974-75 when Governor-General Kerr dismissed Prime Minister Whitlam. *The Canberra Times*, 4 August 1993, quoted Kim Beazley, Leader of the Government in the House, as saying, 'I think that this is the most intense, systematic usurpation of the House of Representative's role since 1975'. However, the events were not parallel to 1974-75, as the Senate never actually blocked Supply in 1993. Supply is Parliament's approval for the executive to spend money levied by revenue measures. On the

<sup>24</sup> Saulwick Poll, 31 August and 1 September 1993.

<sup>25</sup> *The Age*, 7 April 1994.

<sup>26</sup> The FIRB issue concerns whether the Senate can and should find Tony Hinton, the executive officer of the FIRB, guilty of contempt (and have him fined or jailed) for not answering questions posed by a committee when he was ordered not to testify by his minister Ralph Willis.

<sup>27</sup> For details about the minor parties and the importance of the electoral systems see 'Elim Papadakis and Clive Bean, 'Independents and Minor Parties: The Electoral System, Electoral Bases and Future Prospects', Conference on Consensual Policy Making and Multi-Party Politics, Australian National University, Canberra, 25-26 November, 1993; and Gary N. Marks and Clive S. Bean, 'Sources of Electoral Support for Minor Parties: The Case of the Australian Democrats', *Electoral Studies* (1992) 11:4, pp.311-33. Also, more generally, compare the various viewpoints on the 1993 election outcome in *AJPS*, vol. 29, 1994, a special issue edited by Clive Bean.

<sup>28</sup> During the political fiasco over the 1993 budget, commentators asked whether the conditions for section 57 of the Constitution had been met so that the government could have forced a double dissolution. Section 57 stipulates that a double dissolution is possible when the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree. If, after three months, the same thing happens again, then there can be a double dissolution unless it is during the last six months of a Parliament. One of the major calculations politicians must make before engineering a double dissolution is whether their parties will win or lose when fewer votes are required as in half Senate elections. (Only 7.7% is required for an electoral quota in a full Senate election while 14.3% is required in a half Senate election.)



other hand, budget tax measures authorize the collection of money, usually at higher rates than the previous year. Blocking taxation bills does not affect the normal functioning of government because taxes can still be collected at earlier rates.

The Senate may not amend proposed laws imposing taxation or appropriations but may refuse to pass them and return them to the House requesting amendments. A further technical question about Australia has entered an era of at least partially-negotiated budgets and the threat of political gridlock.

In 1993 the government was forced to negotiate the budget. It had to amend budget bills on the wine sales tax, the retrospective tax on accrued holiday pay, and the petrol excise. Apart from the budget bills, Senator Harradine's objections forced the government to suspend \$130 million dollars for planning aid programs for developing countries. In all, the minor parties obtained budget amendments of approximately \$500 million (Green calculation), or \$591 million (government numbers). The *Financial Review* calculated the Senate's actions as reducing revenue measures by \$1.5 billion over the four years (out of annual budget outlays of about 115 billion dollars).<sup>29</sup>

During this period, the government was also forced to agree to an unprecedented double-deadline timetable for the 1994 budget. The Greens proposed a motion which received a majority vote in the Senate, forcing the government to put forward budget material to both the House of Representatives and Senate before a specified deadline. The motion, prepared by Harry Evans, the Senate Clerk, was passed one day after the fiasco over the 1993 budget.<sup>30</sup> The deal called for the government to agree to a revised schedule for the 1994 budget. The government responded with a timetable and an agreement to consult the minor parties (see attached diagram of the pre-budget consultation process).

Later in 1993, the Greens again dictated the timetable of the parliamentary process by insisting on a double deadline for 'all' government bills. The government had to introduce legislation in the House of Representatives by 1 October and in the Senate by 29 October, failing which it would not be dealt with. Urgent legislation or Budget bills could be introduced later, but only with Senate approval. These deadlines avoided the earlier situation in which legislation met a Senate timetable but was then forced through the House of Representatives itself too rapidly.<sup>31</sup> It also meant that the Senate was dictating to the House about the House's own timetable. It was essentially the first of these events which led John Uhr to conclude in a paper published before the 1994 budget deliberations that a 'dawn' for Senate power was 'fast approaching'.<sup>32</sup> If Dr Uhr had written his article after the

<sup>29</sup> By comparison, British and Canadian budgets are never amended by opposition tactics.

<sup>30</sup> Mr. Evans dismissed the argument that he initiated what the Greens would propose. 'I was a hired pen', is the way he put it (*The Age*, 4 August 1993). Aficionados of Senate procedures, especially the power to affect Budgets, may wish to compare the versions of J. Odgers, *Australian Senate Practice* when it was published by the Parliament, with those later editions when it was not.

<sup>31</sup> This 1993 version of a deadline on the government for presentation of government legislation extended the 1986 Democrat version which had made it necessary for bills to reach Senate by a specific date and which had been in place continuously from 1986 to 1991, but had not been renewed in 1992.

<sup>32</sup> John Uhr, 'Redesigning Representation', p.33.

government and opposition parties had concluded their negotiations and deal on the 1994 budget, he might perhaps have written that the 'dawn' had already arrived.

The 1994 budget deliberations were conditioned by personal political factors. The Labor government, led by Prime Minister Keating, wanted desperately to avoid a repeat of the earlier budget fiasco and John Dawkins, the outgoing Finance Minister, desired a graceful departure from public office. Even bearing in mind Mr Keating's 'unrepresentative swill' gibes at the Senate, it is clear that he did not want the 1993 budget scenario repeated in 1994.<sup>33</sup> Unlike Dawkins, Keating had no intention of leaving office and wanted a compromise despite his view that the Senate was no longer a 'state house' and had become a 'party house'.<sup>34</sup>

Aside from these and other political cheap shots the process for budget consultation developed essentially as envisaged by a working party of government and minor party representatives. They agreed to a process whereby the minor parties would be given a copy of the government's 1994-95 Fiscal Framework on 1 March, in advance of the tabling of the 10 May budget; an agreement to the timetabling of money bills to both the House and the Senate; the right of minor parties to put forward budget proposals before the introduction of the budget; and even private meetings with individual ministers on the details of departmental requests. In return for these concessions the government was assured that Senate consideration of the Bills would be complete by 30 June 1994. In other words, the Senate gave up blocking the budget in return for a stronger review process.

There is considerable disagreement about which side got the best of this deal.<sup>35</sup> The minor parties were able to examine the Fiscal Framework and propose their own ideas to

<sup>33</sup> Most government leaders in the past two years have used unsavoury words about the Senate. Senator Richardson said 'it was becoming a real problem for Australian democracy', *The Age*, February 15, 1994. Government members called the Greens the 'Gumnut Twins'. Gareth Evans said the upper house bordered on 'the totally unmanageable'. The opposition have used the same kind of language. Senator Kernot called the House of Representatives an 'echo chamber for Executive ambition'.

<sup>34</sup> In response to the Prime Minister's jibes about the Senate being unrepresentative, a paper was issued by John Nethercote, who worked for the Senate. Entitled 'Representing People, Not Merely Majorities; An Analysis of Prime Ministerial Views on the Senate', the paper called the PM's views misleading and erroneous, if not simply wrong. One shudders to think what would happen to a Canadian Senate official who issued such a paper, or to a United Kingdom Clerk who published such an argument about the British Prime Minister.

<sup>35</sup> The documents supplied to the minor parties contained both insignificant facts and future judgement calls and forecasts by the government. Has a basic constitutional norm been broken by providing minority parties with such information about the budget before it was tabled in the Commonwealth Parliament? In Canada, for example, the mere showing of a blurred page on television has caused the government to redo the budget. And on another occasion, when a journalist announced some highlights of a budget (based on a leak of a summary document), he was summoned to court. Surely there is a limit to how much governments can concede to minor parties and independents and how much information they can divulge before budget control and secrecy break down. Moreover, could the Commonwealth Senators involved in the 1994 budget deal have used the information divulged in the Fiscal Framework or in meetings for personal financial gain? The



ministers privately before the introduction of the budget in Parliament. On the other hand, the government did get the budget through on time and with fewer changes than in 1993 (about \$150 million were changed by this negotiation). As far as Senators Dee Margetts and Christabel Chamarette are concerned, however, they got 'bugger all'.<sup>36</sup> The Greens believe that they were drawn into a negotiating process in which, since there were almost no new major taxation changes or expenditures proposed, they were forced to go along by their agreement to compromise. The old laws, which still increased taxes in the 1994 year, and the new budget format, which required a reduction in the timetable to nine months, made political debate very difficult for the minor parties. As far as the Greens are concerned, one laudable goal was achieved by their deal with the government. As Senator Margetts put it: 'groups in society now believe we can affect the budget — that's what matters — they take us seriously now'.<sup>37</sup>

Most Cabinet ministers were dissatisfied with the results of the deal. They believed they gave away far too much to the minor parties. But Dawkins believed 'it couldn't be worse than last year'. As far as the new Finance minister, Ralph Willis, was concerned, he insisted that the agenda for all minor party meetings with individual ministers be booked in advance and that a 'minder' from his department attend all meetings. According to those present at the meetings the departmental 'minders' often told the ministers 'what they could and could not do'.<sup>38</sup>

#### South Australia (Low Stability) — Rule by Inaction?

The 11 December 1993 South Australia election moved that state from the 'lowest' level of stability or governability to only 'low' governability. Dean Brown is not faced with the constant threat of being toppled in the House as was Arnold's Labor government, but problems with governability continue nevertheless. Despite the Brown government's commanding lead in the House of Assembly, it requires Democrat votes in the upper house (Legislative Council) to pass legislation. Has this mattered? To some extent, yes.

During the 1993 election campaign the Coalition promised to end 'compulsory voting' in the state if it were elected. Brown introduced, and passed, the required legislation in the lower house but was stymied by the Democrats and Labor in the Legislative Council. Frustration has been high over this turn of events. The compulsory voting defeat was then followed by problems over an Industrial Relations bill which was passed only after many amendments were made by the Democrats in the Legislative Council. Many back-room deals have had to be made over other bills as well.

As one journalist summed it up, 'It is hard to believe that a new Government, with a mandate of the size the Liberals won in South Australia, cannot by cajolery or terror secure

government and the participants maintain that nothing of that magnitude happened. Because of party criticism the government also gave the Fiscal Framework document to the ALP caucus and then promptly leaked it to the press. What kind of budget-making is this? Should the rules of confidentiality adhered to by ministers under oath be required of others?

<sup>36</sup> Private interviews.

<sup>37</sup> Private interviews.

<sup>38</sup> Private interviews.

a single vote for legislation it really cares about from a small party already suffering frayed public esteem over matters involving use of campaign funds'.<sup>39</sup>

#### New South Wales (Very Low Stability) — Rule by Faction?

The New South Wales administration has the lowest degree of stability or governability in the country (apart from the case of ACT, which has only one legislative body). The NSW government does not control a majority in either legislative body and has been forced to negotiate and make compromises on practically every issue. Premier Fahey has to rely on the Call to Australia party in the Legislative Council, and in the lower house he needs the support of four Independents and one dismissed minister (who refuses to enter the chamber when Fahey is present) in order to pass legislation in the Legislative Assembly.

A few examples of 'very low' governability in NSW should make this point clear. Governments have been destroyed and the careers of ministers ruined. Premier Nick Greiner (Fahey's predecessor) was forced to resign by the Independents who threatened to bring down the government because he and Tim Moore (who was also forced to resign) offered a prime civil service job to former Liberal MP Terry Metherell. The opposition also caused Tony Packard to resign — rather than face expulsion — because of his conviction on a Listening Devices Act case. Aside from these and other resignations forced on the government, there have had to be innumerable changes to legislation and process in state politics.

Three independents — John Hatton, Clover Moore and Peter Macdonald — forced the NSW government to accept a 'Charter of Reform' which moved considerable power to the backbenchers. The preamble to the humbling agreement reads 'The NSW government having considered the submission from the independent members accepts that over 135 years since the advent of responsible government in NSW in 1856, the balance of power between the Parliament and the executive government has shifted unduly in favour of the executive government'.<sup>40</sup> In return for this 'package' the Independents agreed not to support 'no confidence' motions (except in cases of gross maladministration or corruption) and to guarantee Supply. On all other matters they were free to vote as they liked.

The Charter of Reform provided:

1. A fixed four-year term between elections. This means that the premier cannot dissolve the legislature on his own and that the next election will automatically fall in March 1995.
2. The standing orders were amended to allow ordinary MPs to participate in the administration. A Management Board of MPs was set up to take administrative power from government and parliamentary bureaucrats.
3. Freedom of information legislation was expanded.
4. Parliamentary committee approval is now required for nominees for Auditor General, ICAC Commissioner, Ombudsman and Director of Public Prosecutions.
5. There has been an increase in parliamentary committees and their powers.
6. Question time has been reformed.
7. The Speaker is now elected by secret ballot (with a required two-thirds vote).
8. More resources have been supplied for MPs and the library.

<sup>39</sup> *Australian*, 3 February 1994.

<sup>40</sup> *Sydney Morning Herald*, 5 March 1994.



9. There has been an expansion in the powers of the Auditor General and the Ombudsman.

In the Legislative Assembly the party strength was still so close in the winter of 1994 that the Speaker often had to vacate his chair and vote with the government; a procedure which would not be acceptable in Westminster or Ottawa. The amount of passed legislation has been reduced to about three-quarters of that in the last Parliament. In the upper house Rev. Fred Nile and his wife Elaine, with their Call to Australia party, effectively hold the balance of power. While they failed to stop legislation against the vilification of homosexuals in the Anti-Discrimination Act, their defeat is instructive. Until the introduction of the Anti-Discrimination bill they acted on a case-by-case basis concerning decisions about whether or not to support the government. However, during the discussion over the Anti-Discrimination bill they threatened to systematically join Labor and the Democrats against the government. The bill only passed because backbenchers on the opposition side said they would vote with the government to stop the Niles' action.

The situation is so unstable that one journalist told a story of a senior bureaucrat storming out of the legislative assembly saying 'There must be an election. This is an impossible situation'. The opposition and independents had amended her piece of legislation without consulting her.<sup>41</sup> Of course, the overwrought bureaucrat was wrong. The point is that Mr. Fahey can neither get legislation through the two houses nor can he call an election. The fixed-term law requires that the election will take place on 25 March 1995 regardless of what Mr. Fahey might prefer.<sup>42</sup>

The deal with the independents consists of two parts: a) the Constitution (fixed-term parliaments) Special Provisions Act 1991, no. 70, which determines the date of the next election, and b) a Constitution Bill on the same issue which must be put to the voters in a referendum during the next election.<sup>43</sup> The deal states that the only way there can be an earlier election is if there is a vote of no confidence in the premier and no successor for the premier can be found. This rule (called 'baton change') prevents a premier from calling an election to obtain public support for his or her policies. This is not an idle threat. In June 1992 the opposition and independents demanded that Premier Greiner be removed or they would 'pass the baton' to the Labor leader. He quit and Mr Fahey became premier. In such a hung parliament Fahey cannot go to the electorate, while the independents can wring concessions out of the government. If the independents do not like what they get, they can turn 'the baton' over to the opposition leader.

### Conclusions

The cases cited above show that executive-legislative relations in Australia differ considerably from the foreign models used to depict Australian democracy. Neither Westminster responsible government nor American checks and balances explain what is happening in more than half of the executive-legislature situations in the country. No consistent set of rules imported from abroad depicts the rich complexity of how Australian democracy works in practice.

<sup>41</sup> *Sydney Morning Herald*, 22 January 1994.

<sup>42</sup> *Financial Review*, 21 January 1994.

<sup>43</sup> The ACT (1988) and the Tasmanian House of Assembly (1992) have fixed elections every three and four years respectively.

The impact of party politics and electoral systems in Australia means that the constitutional rules which describe much of the politics in countries like Britain and the United States fail in Australia. The only principle which seems to hold continually across time and consistently across all situations is what has been called Australian utilitarianism or pragmatism which is characterized by politicians asking only two questions: will it work, and have we got the numbers? Australian politicians respond to precisely the circumstance in which they find themselves, and that means they must adjust to the fact that quite often the government does not control a majority in one of the two houses of their legislature and must compromise with minor parties. I am not, of course, the first to mention this idea.<sup>44</sup> As an editorial in the *Sydney Morning Herald* put it, in Australia 'the numbers rule politics'.<sup>45</sup> As no offside is called in this game of politics I have dubbed the model 'Australian Rules', but the name is not as important as the reality.

Rather than using British or American models of democracy, something might perhaps be learned from comparing Australian democracy with that found in consociational democracies. A comprehensive comparison would not be helpful (as Australian social structures do not show consociational tendencies), however the relations between cabinets and legislatures in countries such as the Netherlands, Switzerland and Australia are instructive. Studies of European minority governments and coalition politics in smaller democracies illustrate that short-run governments tend to hold together in many ways that are also common in Australia.

1. Commitments to relations — there is an explicit, comprehensive contract among parties that extends over a period of time. In Australia, the Liberal/National coalition is the prime contemporary example. But the deals among government and minor parties over the 1994 budget in the Commonwealth and over governmental reform in New South Wales were also cases of explicit, short-term commitments to relations.

2. Commitment to outcomes and behaviour — there are no formal agreements but all bills, confidence motions and censure options are negotiated between the government and minor parties. Such outcome commitments exist in the relations between the government and minority parties in all four 'low governability' systems in Australia, namely in the Commonwealth, NSW, South Australia, the ACT, and to a lesser extent, Tasmania.

The point is clear that governments in Australia are often in the position of needing to compromise with opposition parties in exactly the same way as occurs in consociational politics in some small European democracies. Today they are more often in that position than in a position analogous to that found in British or Canadian majority-based governments. Minor parties in Australia may have the luxury of opposing hard decisions and the advantage of favouring only the easy ones. Governing parties need to find a position which works, that is, they must be pragmatic, making compromises with the smaller parties, while avoiding ideas which would lead to the adoption of unrealistic, populist positions. This can cause difficulties with backbenchers on the government side. Over time, negotiation with minor parties tends to erode the function of government backbenchers and caucus in determining government legislation. In all the cases we have discussed, the minor

<sup>44</sup> For a broader interpretation of Australian utilitarianism see H. Collins, 'Political Ideology in Australia', in *Australia: The Daedalus Symposium*, ed. by S.R. Graubard (Angus & Robertson, 1985).

<sup>45</sup> 4 August 1993.



parties, rather than government caucuses, became the focal point for interest groups; their pressure tactics received most of the press commentary and most of the credit for changes in government legislation. There is little doubt about the government's view of this. After one exasperating deal, Prime Minister Keating once more raised the issue of changing the electoral system for the Senate — from PR in each whole state to a majoritarian system in individual constituencies. According to Senator Kernot, Keating told her, 'We can get rid of you lot, that little tin pot show you run over there'.<sup>46</sup>

These arguments and facts indicate that any discussion of Australian democracy must highlight executive-legislative relations, in particular how a multi-party system in the lower and/or upper houses can thwart or limit government authority. In all democratic countries power ebbs and flows through the nexus of executive-legislative relations and their interaction with the party system. This is why titles such as Imperial Presidency, Chancellor Democracy and Prime Ministerial Government are given to constitutional systems by political scientists.

Too often the literature on parliamentary systems discusses executive-legislative relations as if power were a teeter-totter. Since the executive has gained power from the monarchy, and controls the bureaucracy, the legislature has lost power. This zero-sum reasoning is questionable. In parliamentary systems the executive is *in* the legislature. If, in our analyses, we align the cabinet with the bureaucrats the legislature seems weak; if we assign it to the legislature, this body appears stronger.

Should Australia, in these terms, not be characterized so as to highlight the initiating and blocking power of legislatures and the multi-party system? Is it not closer to some regimes in Western Europe than it is to the usual alternating majority party system of Britain? It could perhaps be dubbed 'Euro-Washminster,' but the complex nature of the relations among the constitutional system, upper houses, electoral systems and party systems leads me to think that a new name, such as 'Aussie Rules', would be more useful for describing the facts of Australian democracy. Certainly none of the models mentioned earlier consider all the variables which tend to characterize the system.

It is also possible to conjecture that Australia may be on a trajectory further away from the British model of government. As Australia has become a multicultural society, is it evolving to a more consociational type? We should recall that studies of comparative federalism have led to the hypothesis that when societal pluralism is low, a unitary majoritarian model will suffice; as pluralism increases, some form of consociationalism seems to work better. Should Australian scholars acknowledge a new reality and adjust their models of Australian democracy to one of 'Aussie Rules'?

If we are not going to think through these empirical questions, then we might as well remain with de Tocqueville's idea that a country's democracy can be depicted by only two concepts: equality (which in Australia has been equated with majoritarian, party democracy), and individualism (which has been equated with federalism and checks on majoritarianism). In other words, the models used to depict Australia would have made little advance over those articulated over a century and a half ago in examinations of the United States and, earlier yet, in the United Kingdom.

<sup>46</sup> *Australian*, 4 March 1994.

## Comments

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This paper raises some important questions about the way that we model political processes, and the relationship between these models and the action. Jackson argues that in analysing political activity in Australia, Australian political scientists have reached for inappropriate foreign models, and consequently have produced flawed and unhelpful analyses. Their accounts have privileged the executive over the legislature, the lower house over the upper, and the federal government over the states. In Jackson's view, they have failed to take into account the increasing likelihood that the government will not have a parliamentary majority, and what this implies both for governments and for parliaments, and it is to this question that his paper is particularly addressed.

This is a valuable contribution to the analysis of Australian politics, but it needs to be further developed in several important respects. The first is in what sense legislative-executive relations represent a 'problem', either for Jackson or for the analyses which he is criticising. The second is what we learn from this analysis about the nature of models of the political process, and the way that they are applied both in analysis and in the political process itself.

### The legislature-executive relationship as a problem

Jackson begins his analysis by identifying and assessing nine distinct models which have been applied in the analysis of Australian politics? It is not clear how much these do constitute separate models — for example, are the perspectives of (for instance) Parker, Galligan, Winterton and Maddox mutually inconsistent and therefore identifiable as distinct models? And when Jackson speaks of 'confusion in [the] models of Australian democracy' used in these texts (p.9), it is not clear whether he is arguing that the models are confused in themselves (and whether this applies to all the models or only some), or that there is confusion because there are so many models.

Turning to the central concern in Jackson's paper — the relationship between the legislature and the executive — it is not always clear in what way this is a problem, either in Jackson's own analysis or in the analyses which he criticises. There seems to be a 'structural argument that there is a contradiction between the idea of the cabinet being responsible to parliament and the existence of two houses of parliament? And there seems to be a 'situational' argument that the Westminster model does not apply where the government does not have a majority in both houses (as is the case in five of the nine governments in Australia).

In respect of the 'structural' argument, he cites Parker and Galligan as arguing that 'the founders knew that they were putting together two theoretically incompatible types of structures' (p.7). It seems ironic that a bicameral legislature should be seen as incompatible