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## A Single-Chamber Australian Parliament?\*

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This lecture was originally due to be given five months ago but it had to be postponed because I was unable to travel down from Brisbane. In the meantime we have experienced the referendum on the republic. The results of that referendum, together with the associated public opinion polls which help to explain what influenced the Australian people to reject the proposal, persuade me that I should continue to place in the public arena the proposals for an elected executive presidency that I put forward two years ago in my book, *Coming of Age*,<sup>1</sup> and to argue that they be given serious consideration when the time comes for different and better models for an Australian republic to be developed and debated by the people. That will not happen in the immediate future. The next debate about the republic will be the one we should have had last year—about whether we want to have a republic (of any kind at all) rather than maintain the present monarchical form of statehood. Once that is resolved—and that could happen relatively quickly if the polls are any guide—then we could get down to the detail of what kind of republic the Australian people want. It will be important next time that choices are available and that the voters are not alienated from the process as many of them thought they were last year.

In *Coming of Age*, I described the faults in the present system and then proposed my various solutions. It was not written as the manifesto for a political movement. Rather it presents the views I have developed about the way I believe our political system should change, some of which I first wrote about in 1976, in *Elect the Governor-*

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<sup>1</sup> University of Queensland Press, St. Lucia, 1998.

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*General!*<sup>2</sup> In that book I noted the huge range of powers that the Constitution gives to the Governor-General. In practice these are mostly exercised by the government of the day, but a literal reading of the Constitution would allow the Governor-General to govern the country in much the same way (and with the same kind of powers) as an American president. The *conventions* of responsible government, however, mean that governmental power is exercised by the party controlling the House of Representatives. I suggested in that book published in 1976 that, if the Governor-General were *elected*, the conventions could be scrapped and we could have a government headed by a Governor-General elected by the whole nation, instead of a prime minister chosen by the majority party in the House of Representatives. All this could be done without changing a word of the Constitution. We could change our system of government, but not of course change from monarchy to a republic. That was not my primary concern.

The aim of writing *Coming of Age* was to open a debate about the way we are governed and explore some of the ways in which we might improve the system. It examined a large number of issues—whether we should have presidential or prime ministerial government, the role of parliament, the power of the federal government vis-a-vis the states, whether we should have a Bill of Rights to guarantee personal, political and other freedoms and to limit the powers of governments and parliaments, the place of the judges in the system, the electoral systems we use, people power and how we might get better politicians. It presented no single agenda, but many possibilities. It also dealt with the issue of the republic, which in my view is a desirable but not necessary precondition for improving the real part of the governance system. In practical terms, changes will occur either simultaneously with a change to the republic, or subsequent to it.

Let me outline the bare bones of a system of government I believe would serve Australia better than our present system, and then present the arguments relevant to one of the more controversial aspects of it—namely, a single-chamber Australian federal parliament.

- First, there should be a president elected by the national electorate, who would be head of government as well as head of state—in other words, a president whose role and powers would be similar to those of the American President.
- Second, the president would be free to choose people from outside the parliament as ministers, though the system would probably operate best with the inclusion of a few ministers chosen from the leadership of the president's party in the parliament.
- Third, the parliament would be reduced to a single chamber, with an electoral system a mix of the two systems used for the present two houses.
- Fourth, both the president and the parliament would be elected on the same day, for the same fixed term.

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<sup>2</sup> Nelson, Melbourne, 1976.

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- Fifth, the states should remain, but their independence should be enhanced through increased taxing powers. I suggested they should have access to sales taxes, but to some extent the advent of the Goods and Services Tax prospectively changes the situation and should increase the financial viability of the states.
  - Sixth, we should have a Bill of Rights, initially at state level, then federally.
  - Seventh, our rights should be protected by an independent judiciary.

This then is the context of the proposal for a single-chamber Australian parliament. This is not the system of responsible government of the kind to which we are accustomed in Australia, but a system where there is an executive president in charge of the government, and a parliament whose primary responsibility is to consider legislation. The government would be *accountable* to the parliament however, and in a manner which I believe would be more effective than our present system of keeping the public informed of the government's activities.

But why the need for change? Does the system we have at present really need to be fixed? The argument that follows is an edited version of the chapter on 'Making Parliament Work' in *Coming of Age*. I will raise some issues that were not dealt with in the book about the relationship between governments and parliament under the present system and under the system I would prefer.

Australian parliaments are not working adequately. The problem is not necessarily caused by their members, though the failings of some of those elected to parliament does contribute to the poor performance of the parliament. The real problem is structural. Parliaments are largely incapable of doing what they are supposed to do. They are not able to work in the way that representative democratic parliaments are intended to operate. The way they function is quite different from the way they did a century ago. They remain essentially nineteenth century institutions which did not change sufficiently to meet the quite different political circumstances of the twentieth century, and have little prospect of meeting the demands of the twenty-first century.

Fundamental changes need to be made to allow Australian parliaments to do what they are supposed to do. Forty years of tinkering with minor reforms have failed to give the parliaments a relevant role. The real problem is that executive governments have come to completely dominate the lower houses of parliament. That problem cannot be overcome unless the executive is moved out of parliament almost altogether. What is needed is a system which restores the classical idea of the separation of powers—with the roles of government and of parliament performed by different institutions. If that is done, major surgery can be performed on the federal parliament also, amalgamating the existing two houses into a more effective body concerned primarily with making law—operating more like the Senate than the House of Representatives.

The present parliamentary institutions in Australia are proving more and more inadequate to meet the heavy demands which our system of parliamentary democracy puts on them. In theory, the functions required to be performed by parliament include legislating, scrutinising the government and holding ministers and the administration

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responsible for their actions, determining who should be in the government, providing a political stage and allowing the people to keep in touch with parliament, and keeping parliament in touch with the people. But not even parliament's most ardent defenders would claim that modern parliaments achieve all or even most of these aims. Defenders of parliaments have been forced to redefine what parliaments are expected to do and to lower expectations about what they can achieve.

The pressures on modern parliaments are enormous, particularly the pressures imposed by the volume of legislation which they have to consider. In 1901, the year the Commonwealth came into being, parliament passed only seventeen laws. In its first ten years, it averaged about 23 laws a year. During that same period the House of Representatives normally sat for more than 90 days each year. Parliament first passed more than 100 acts in a single year in 1952. By then it was sitting less frequently—74 days in that year. By the mid-1990s, legislative pressures had further intensified, but parliament—or more precisely, the House of Representatives—had barely responded to that pressure. In 1901, parliament passed a law every sixteen or seventeen days it sat. By 1946 it was passing a law for each day it sat. Now the House of Representatives spends two to three hours on average for each bill it considers. That time includes the introductory and explanatory speech by the minister responsible for the bill or his or her minister assisting, plus the considered reply by the Opposition's shadow minister, together with two or three other speeches. No one pretends that the House of Representatives is fulfilling any serious role as a legislator with this approach. It is true that the averages quoted above are slightly deceptive. Because of constitutional requirements to separate various kinds of money bills, legislation to accomplish a single policy end sometimes has to be considered by way of four or five separate bills, which will be debated together. The same considerations, however, applied to the way legislation was considered by the parliament in the past.

The House in the mid-1990s made two responses in acknowledgment of the fact that it rarely pays any significant attention to the legislation it passes. First, it decided to refer some legislation to its specialist committees. Second, it created a new committee of the whole House (the Main Committee), sitting in a separate room, to consider designated bills, from first reading to report stage, before formal adoption by the House. The main reason for adopting this procedure was to reduce the number of bills on which discussion was limited by use of the guillotine. In effect, the House of Representatives was able to increase the time it spent on legislation by creating a second chamber, which meets at the same time that the House is sitting and which normally deals only with non-contentious but very detailed legislation.

The only way in which it can seriously be argued that parliament as a whole is effective as a legislator is to accept that the responsibility for legislation has been transferred almost entirely to the Senate. These days the Senate sits longer and devotes more time to legislation than the House, and because the government does not control proceedings, the Senate considers more amendments from senators representing the Opposition and minor parties, and indeed passes some of those amendments. The Senate's ability to be an effective legislator is a consequence of the government not having a majority in that chamber. That is a result of the fact that the Senate is elected by a different system from that used for the House of Representatives, and that many voters choose to vote for different parties in the Senate from those which they vote for in the House.

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Since the mid-1960s, first through the actions of ‘rebel’ Liberal senators (at a time when there was a Liberal-Country party government), then through the votes of the Democratic Labor Party (DLP) senators, then other independents, and more recently the Australian Democrat and Green senators, the Senate has been mostly outside the control of the government of the day—be it Liberal or Labor. The only exception was during the time when Malcolm Fraser was Prime Minister in the second half of the 1970s. Since the 1960s, senators have professed an interest in their responsibilities as legislators which is markedly different from that adopted by their predecessors. Previously, their scrutiny of legislation was political, in the sense that it was aimed at quite specific matters of policy. However, from the 1970s, the Senate has asserted that it is in control of the whole legislative process. It has made it clear that it is prepared to amend any piece of legislation which does not suit the philosophical bent of its majority. Perhaps its most significant action was to pass a resolution which laid down a timetable for its consideration of proposed laws—it told the House of Representatives that unless it received bills by particular dates, it would not even consider those bills in the current sittings of the Senate. That was the moment when the House of Representatives—that is, the government—finally lost control of the legislative process in the federal parliament.

The Senate had earlier taken over parliament’s function of subjecting the government’s financial proposals to detailed scrutiny. In 1969–70, the Senate agreed to an amalgam of proposals by its Clerk, Jim Odgers, the Opposition Leader, Lionel Murphy QC, the Leader of the Government in the Senate, Ken Anderson, and the DLP Leader, Vince Gair, for the establishment of a series of policy and estimates committees. As they developed, these committees subjected the government’s budget and other appropriation measures to the most intense examination ever. The budget debate in the House of Representatives was merely an excuse for a wide-ranging political debate in which MPs could ride various hobbyhorses—unnoticed by the public at large. The Senate process allows a serious examination of the details of the government’s expenditure, though it does not prevent grandstanding by senators who want to target individual public servants. Yet despite the House’s privileged constitutional position in financial legislation, it has conceded to the Senate the primary legislative role even in this area. It is not unreasonable to describe the House as a rubber stamp for the financial and all other legislation proposed by the government, and the Senate as the only part of the parliament which acts as an independent check on the government.

The same is true of the House’s supposed responsibility for monitoring the executive actions of the government and its bureaucracy. Although the House of Representatives belatedly followed the lead of the Senate in creating a series of parliamentary committees, those House committees are restricted to the subject matters dictated by ministers and, with some exceptions, the reports of the committees (which are controlled by government backbenchers) cause little concern for the government. The Senate’s committees are a different matter. They are not controlled by the government, and the matters they investigate tend to be chosen by the Opposition and minor parties, rather than by the government. The matters they investigate are often politically sensitive and potentially embarrassing, both in their hearing phase and when they are reported upon.

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Another function of the parliament where its recent performance has been inadequate is that of communicating information to the public. Australia was one of the world pioneers in allowing the (radio) broadcasting of federal parliament, and in taking that step the politicians were very conscious of the need to make their work available to the public. The parliament was much slower in agreeing to allow televising of some of its proceedings, because the politicians were concerned at the way they might be portrayed. Strangely enough, despite the availability of these communication tools, including the presence of the press gallery—about 200 journalists and media representatives permanently based in Parliament House—politicians have made less and less use of parliament as a forum for providing information. Ministerial statements were once a significant method adopted by governments to announce government policies and to debate them. In the early 1970s, for example, the House heard an average 75 such statements each year, and devoted over two per cent of its total time to them. In 1993 there were only six such statements, which took one hour and 28 minutes of the House's time. In effect, ministerial statements had become irrelevant.

Probably the main reason for this is that governments see no political value in making announcements in the parliament, or in having them debated there. Parliament is rarely considered to be an appropriate place for such announcements, because what happens there (other than in question time) is mainly ignored by the media. While there are good reasons for parliament ceasing to have any significant role in the communication of government policy to the people, the fact that it no longer has this function further diminishes its significance. Governments certainly feel no obligation to inform parliament of their policies, and there is no evidence that backbenchers are concerned at this diminution of parliament's role.

Question time, which is the activity by which the success of the House of Representatives must be judged, rarely lives up to its dramatic potential. If it represents the essence of parliamentary democracy, then the institution is seriously flawed. The fact that it simply does not match the expectations which surround it has been recognised in the continuing attempts by parliamentarians to reform it.

The parliamentary game which is played in Australia—at least in lower houses—is not directed towards legislative outcomes. It is not about producing the best possible laws. It is about holding onto or winning government. The aim of the Opposition is to break down the government's hold on power. It may sometimes use parliament to try to promote its own policies, but it will normally prefer to do that outside the parliament (just as governments now do) because it will not want to provide an easy opportunity for the government to reply to its policies.

Whether there ever was a period when parliament did fulfil the functions which political scientists say that parliaments are supposed to perform does not matter. It is certainly true that there has been deterioration in parliamentary conduct in recent decades. Parliament has been passing more and more legislation and spending less and less time considering it. To some extent, the media must take responsibility for parliament's decline. Television in particular has helped trivialise the reporting of politics. Every politician tries to master the 20 or 30 second 'grab', to put in just a few sentences his or her version of the current controversy. More often than not, the news report will be about a clash or dispute or brawl. Television news does not try to

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explain or explore policy issues. The newspapers are better at analysis, but no longer bother to provide much space for the coverage of debates by politicians in parliament.

Whatever the cause, the image of politicians and the parliament has suffered grievously. None of the reform proposals which have been advocated and implemented has reversed the trend. For example, the greatly expanded committee system has certainly been beneficial. Most parliamentary committees undoubtedly do a good job. They often present thoughtful and useful reports which sensible governments are able to use. They provide a means by which interest groups outside the parliament can try to influence public opinion—though if those interest groups want to achieve significant changes in government policy they will work directly on ministers and senior public servants rather than rely on what committees might recommend.

In 1966, at the beginning of the period when the Senate was emerging as an institution which had a role independent of that of the House of Representatives and beyond the control of the government, the then Clerk of the Senate, Jim Odgers, wrote a sixteen page submission for cabinet, in which he attempted to define the role of the Senate and its relationship with the government. Mr Odgers said that the Senate must face up to and accept the fact that it is not the governing House. 'The House of Representatives is, and must always be, the policy making chamber. The worst thing that could happen to the Senate is for it to attempt to compete with the House of Representatives as a policy maker. If it did, it would, in the process of time, risk emasculation, as the House of Lords was eclipsed.' He continued by saying:

If it disagrees with policy, the Senate has the right, indeed the duty, to project its viewpoint by the process of amendment or suggestion, but it is submitted that the Senate should not—except where state interests are seriously threatened—insist upon amendments disagreed to by the policy making Chamber. The will of the House of Representatives should prevail and, if that House errs, it can safely be left to the sanction of the people at election time.

The purpose of Odgers' submission was to try to persuade the government to allow the Senate to develop its committee system. The government, however, decided that the submission should be regarded as no more than a private expression of the Clerk's views. It decided 'that it would not receive the paper or take official cognisance of it.'

Odgers did not keep his views to himself. In *Australian Senate Practice* he stated that if there was a disagreement between the two houses on a matter where the government had a clear mandate the Senate 'may yield'. More than twenty years later, the latest edition of *Odgers' Australian Senate Practice*, edited the current Clerk, Harry Evans, adds a rider to the suggestion that the Senate may yield, with the words 'but the test is always likely to be the public interest.' The public interest is of course assessed by the Senate itself, not by the government.

The Holt government, however, refused even to consider the Odgers submission. That it took such a stance is understandable only on the basis that all Australian governments reject and resist any suggestion that they should not be able to put into law any proposal upon which they have determined. In effect, they do not accept the

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notion that the parliament (or some part of it) has a role independent of government to consider independently and fashion the laws, to question and demand answers about the way in which the government is conducting the affairs of government, and to provide a form of public accountability. They will not acknowledge the extent to which they are supposed to be accountable to the parliament, let alone surrender to the parliament the power to fulfil its theoretical responsibilities. Governments have preferred to forget that the people elect members of parliament to represent them.

Although the Australian Constitution devotes separate ‘chapters’ to the Parliament, the Executive Government and the Judiciary, very much along the lines of the United States Constitution, it does not follow the American model for a true separation of powers between those three organs of government. There was considerable debate at the Constitutional Conventions 100 years ago about what system of government the new nation should adopt, though almost all those present were committed to the system to which they were accustomed, the system of responsible government which required ministers to be members of parliament and to be responsible to the lower house of the parliament.

The Australian Constitution required that ministers should be members of parliament. This destroyed any possibility of a separation of powers between government and parliament, and, with the development of political parties, led to the control of the parliament (or at least, the lower house) by the ministers. The American Constitution prevented this from happening by providing for the election of a president in whom the executive power of the United States (i.e. the government) was vested, giving the President power to appoint the various officers of government, but specifying that members of Congress could not be appointed to any ‘civil office’ nor could holders of government office be members of Congress.

The President’s powers were limited in various ways. His appointments of members of government had to be confirmed by the Senate. His power to make treaties with other countries was even more limited, in that he had to obtain a two-thirds majority vote for them in the Senate. He could not directly introduce legislation into Congress. He could not send Congress off to an early election if it disagreed with him.

On the other hand, the President could refuse to approve legislation passed by Congress, though Congress could override any veto by a two-thirds majority in each House. Congress could also remove the President, the Vice-President, or any officer of the government from office by a process of impeachment (involving both Houses of Congress) for ‘treason, bribery or other high crimes and misdemeanours’. Otherwise the President enjoyed a full term of office (four years), irrespective of any change in the political composition of Congress.

Members of the President’s cabinet do not face questioning by either House of Congress. But they frequently have to appear before congressional committees, to explain their policies and to justify their views about appropriations for their departments, or legislation which is being considered by Congress. This is not comparable in any way to the questioning which ministers in an Australian parliament have to face when parliament is sitting. American cabinet ministers are aware in advance of the particular focus of the questioning they will face.



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The American President has no political responsibility for what Congress does. The President may not be able to get the legislation he wants through Congress, but the public will blame (or praise) Congress for what it does, not the President. Congress is elected to do a different job—to make laws. The President is elected to govern. While the President and Congress can each make the other's task difficult, the lines of responsibility are reasonably clear and distinct. And because of this separation of responsibility as well as power, the American political system has developed in a different way from the Australian system. American political parties are not as disciplined as Australian parties. Members of Congress are less dependent on their party label for election—and in most cases where the party is important, the public has a role in choosing between members of the party who want its endorsement at a coming election (through primary elections, held many months before the congressional elections).

The fact that politicians are less certain that mere endorsement of them by their parties is sufficient to secure their election, requires them to act more independently in Congress and in its committees. Their voting habits will be recorded by the media, pressure groups, their constituents and their political friends and foes, to see whether they are more liberal or conservative than their fellows, whether they support or oppose gun control, or government aid for schools or government assistance for health services, and their legislative response to bills on such issues as conservation, spending on defence projects and crime control. This makes members of Congress far more responsible, answerable and accountable to those who elected them than are Australian members of parliament who are primarily responsible only to the political parties which nominated them for election. Members of Congress actually have to think seriously about how they will vote on most issues which come before them, instead of following a party line which their party's platform or their party caucus (fellow members of parliament) have decided. Australian members and senators may have to justify their votes to their electors, from time to time, but they are expected by their electors to follow the party line, not to make independent decisions which could affect the fate of legislation. In Australia we treat our MPs as cannon fodder, as automatons who have to vote the party line, whereas Americans expect their representatives and senators to speak and vote to support those they represent.

In the United States, ministers do not have electorates to which they are responsible at all. They do not have to spend any time acting as an ombudsman for their electors (a function Australian ministers generally delegate to one or two staff members). They are answerable to the President who appointed them, and can be removed by the President if he or she is not satisfied with their performance or their policies. In the United States some ministers will have had some congressional experience (sometimes at state level rather than federally) but this is not essential. The President is free to choose anyone in the country who he considers capable of carrying out the functions of a member of the cabinet—other than a serving member of Congress. Clearly there is a vast range of talent available. In Australia a prime minister is limited to choosing among the members and senators of the governing party. Australian ministers have to be selected from a very small pool. And it shows, in the lack of quality of many who reach ministerial rank.

The same applies to the head of government—the prime minister or the president. In Australia the prime minister must serve a parliamentary apprenticeship, and be elected

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by his parliamentary colleagues. In the United States the President need not have served in Congress at all. Nomination by his party requires him or her to win support across the country in a round of preliminary contests which tests the financial backing of the candidates as much as their policies and their characters. There is no doubt that the two systems draw on different qualities and qualifications for candidates for the most senior political office in the nation. But the issue should not just be whether the best person for the job is selected. What matters, is who does the selecting (the people generally, or a political party, or a few members of the party who are members of parliament). Also important is whether the field from which the candidates for office might come is unduly restricted, either by reason of their financial backing, or their need to dedicate many years to parliamentary service.

Both in Australia, where the government-controlled House of Representatives now rarely controls the Senate, and in the United States, where the President's party is unlikely to control both the House of Representatives and the Senate (and it may control neither), deadlocks over particular pieces of legislation are not uncommon. In both countries they are publicised as political crises. In the end some compromise is generally arrived at, after more or less political pain has been suffered by some of the political players (though less frequently by the public, as in the US budget crisis of 1996).

One significant advantage of the American system of separation of legislative and executive powers is that the legislature—Congress—is able to perform more adequately and convincingly the theoretical functions of parliament than is the Australian parliament. As a law maker it is better able to examine the laws proposed by an administration—the cabinet ministers and their civil servants—using committee hearings in both houses to get the opinions of interested parties as well as questioning those sponsoring the proposed laws. Members of Congress are more likely to vote on the merits of legislation and on amendments than they do in Australia, because party discipline is weaker and members of Congress are more likely to have to answer to their constituents for the way they voted on particular measures. At least as important is the fact that members of Congress can and do sponsor significant pieces of legislation in their own right—divorced from the policy of the President or his administration or of any party policy. In Australia, backbenchers (and the Opposition) introduce legislation only infrequently, and it is extremely rare for these private members' bills, as they are called, to pass through both Houses into law. The most notable recent example was Kevin Andrews' bill to prevent the Northern Territory (and the ACT) from making laws concerning euthanasia. Only about ten laws proposed by backbenchers have been passed by the Australian parliament, two other notable examples being the ban on tobacco advertising (1989) and the introduction of compulsory voting for federal elections (1924).

On all sides it is recognised that the Australian parliament is not performing as it should. Its role as a legislator has been essentially taken over by the cabinet. Its ability to monitor the functioning of the government has largely disappeared because of the dominance of the House of Representatives by the executive, as a result of the extremely tight discipline under which the major Australian political parties operate. It is no longer a focus for political debate. To the extent that it does perform a serious legislative role, or monitoring and questioning role, it does so through the Senate.

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Reforms which have tried to tip the balance away from government dominance of the parliament have largely failed, except in the Senate. The committee system is not allowed to work to the government's detriment in the House, and the same can be said of question time. Governments have resisted giving the Speaker any true independence.

Governments, having taken control of parliament in the twentieth century, are not willingly going to surrender their powers and increase the ability of Oppositions to upset their legislative programs or to question their actions. Governments are not going to allow proposals for parliamentary reform to reduce the power of governments over parliament, or make governments more responsible to parliaments.

The only way in which genuine reform will be achieved is through the adoption of something like the American system of separation of powers. If the proposition that governments have too much power is accepted, then it is necessary to reduce that power by making the parliament independent of the government. That cannot happen under the present system of cabinet or responsible government where the government is elected indirectly as a result of the election of the House of Representatives. Only if the government (the Prime Minister or President) is elected directly by the people would it be possible to have a separately elected parliament which was not obliged to do as it was told by the government and which could properly assess the laws which are proposed, whether by the government or by the members of the parliament.

One of the proposals for reform of the Australian parliament which has sometimes been made is to improve the performance of the Senate as a legislative chamber by removing from it all ministers. The idea is that the Senate is corrupted by containing members of the government of the day. Senators, it has been argued, would be better able to perform the legislative tasks if they were able to debate proposed laws in the absence of ministers. If people who were elected to the Senate were prevented from winning ministerial rank, the Senate would then be filled with people who wanted to be legislators, not members of the executive government. The proposal has won the approval of many supporters of the Senate, but not of most senators. They still aspire to be ministers. And governments do not want to surrender the power they have over the members of the government party in the Senate, even if they do not control the whole of the Senate.

If parliament were elected separately from the government, there would be no need for it to consist of two houses. A single house could be designed in a way which would provide for representation of the people through single member electorates, plus some form of proportional representation to give the smaller states a reasonable say in the working of the parliament. It would be possible to design a single-chamber parliament which combined aspects of the system used for electing the House of Representatives and the system for electing the Senate. This could resemble the method of election which New Zealanders, at two referendums in the mid-1990s, decided to adopt for their single-chamber parliament. Their problem, however, was that they retained a cabinet system of government where the government was required to have a majority in the parliament. If parliament has no say in the selection of the government, that being done by direct votes of the people, the fact that no party controlled a majority in the parliament would be an asset, not a liability.

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Alternatively, a proportional representation system could be adopted based on groups of (say) five of the current electorates. This would retain the notion of senators or members representing a region and having identifiable constituents.

The creation of a single-chamber parliament would reduce the conflict currently possible under the US system, where the two houses can disagree with each other as well as with the President. In Australia the two territories—the ACT and the Northern Territory—have both adopted single-chamber parliaments. Queensland abolished its upper house more than 70 years ago. Such problems of government as they have suffered have had nothing to do with the fact that they have just a single parliamentary chamber and everything to do with the fact that the government has controlled that chamber (though in the ACT no government has had a majority. That territory's problems flow from the fact that the members of the Legislative Assembly have been more concerned with forming government than with their legislative task.) Curiously only one of the American states has become unicameral—Nebraska—though its members insist on being called senators. There is a proposal in Minnesota for the abolition of one of the two houses but this seems unlikely to succeed. However all the Canadian provinces are unicameral.

There is one modification to the complete separation of powers under the American system which might be beneficial. One of the problems in the US is that there is no official 'Leader of the Opposition' to provide leadership for the main political parties opposed to the President and his party. Parliament could provide an appropriate forum for the non-government parties to air their views—as the present Australian parliament is supposed to do, but rarely succeeds in doing.

But if the Opposition has some official representation in the parliament, so too should the government. There are many European parliaments where the president is represented by a prime minister of his choosing—the prime minister not being the representative necessarily of the party which has majority control. Undoubtedly the parliament could be assisted by there being a prime minister or ministers within its ranks to represent the president's policies and present and defend his legislative program. In the Australian context, however, the use of the term prime minister could lead to a misunderstanding as to who was in political control of the government. If Australia were to have an elected president who was head of government, it would probably be less confusing to voters if only a few members of the parliament in the president's party had ministerial portfolios and responsibilities and there was no person named as 'prime minister'.

A parliament of this kind, with few of its members having ministerial responsibilities, would have no excuse for not spending most of its time sitting as a parliament, or working on committees. Instead of sitting for just 70 or 80 days a year, such a parliament could emulate the US Congress, and meet four or five days a week, for at least three-quarters of the year. Committee hearings could be scheduled at the same time that the parliament is sitting. It would be desirable for some committee hearings to take place outside Canberra, to allow people elsewhere in Australia easier access to those committees. But the aim should be to have the parliament sitting almost full-time in the national capital, performing its task as the nation's legislator and as a watchdog over the executive government.

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The model I am proposing would require the government to be answerable or accountable to the parliament, but not responsible to it. Would that matter? I think it would, but not in the negative way defenders of the present system suggest.

The notion of ‘responsible government’ is in any event something of a myth, or at least a misnomer. It is interesting to read the latest analysis of the theory of responsible government in the judgments of members of the High Court in *Egan v Willis* (1998)<sup>3</sup>, a case which concerned the power of the NSW Legislative Council to require one of its members—a minister—to produce certain government documents. The joint judgment of Justices Gaudron, Gummow and Hayne is particularly instructive. They provide (p. 451) the traditional description of responsible government as ‘the means by which the Parliament brings the Executive to account’ and they say that ‘the Executive’s primary responsibility in its prosecution of government is owed to Parliament’. They quote John Stuart Mill, writing in 1861, who spoke of the task of the legislature ‘to watch and control the government: to throw the light of publicity on its acts.’ And they endorse a remark of the Queensland Electoral and Administrative Review Commission (of which I was one of the authors) that ‘to secure accountability of government activity is the very essence of responsible government.’

Two pages later they say:

One aspect of responsible government is that Ministers may be members of either House of a bicameral legislature and liable to the scrutiny of that chamber in respect of the conduct of the executive branch of government. Another aspect of responsible government, perhaps the best known, is that the Ministry must command the support of the lower house of a bicameral legislature upon confidence motions. The circumstance that Ministers are not members of a chamber in which the fate of administration is determined in this way does not have the consequence that the first aspect of responsible government mentioned above does not apply to them. Nor is it a determinative consideration that the political party or parties, from members of which the administration has been formed ‘controls’ the lower but not the upper chamber. Rather there may be much to be said for the view that it is such a state of affairs which assists the attainment of the object of responsible government of which Mill spoke in 1861.

There are a number of points to be made about this statement.

The first is the suggestion that ministers are only responsible to their own chamber for the conduct of the executive branch of government. This is natural enough under our present system. In the case of Mr Egan it meant that he was responsible to the Legislative Council and the Council was able to discipline him for his failure to obey its directives to produce various documents. The High Court was doubtful about the extent to which he might be punished—the various judgments give the impression that suspension for an indefinite or lengthy period, let alone expulsion, was probably not available. Of course the Legislative Council has other means of dealing with recalcitrant ministers—such as refusing to consider their legislation or delaying it—

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<sup>3</sup> 195 CLR 424

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that would be equally available for a legislature under a system where there was no minister in the House who could answer directly to the chamber for the government's sins and omissions and failure properly to account to it. The conclusion must be that the presence of ministers in a legislature is not an essential prerequisite for legislative scrutiny of the activities of government—as is clear enough from the committee activities of the US Congress.

The second point is the way the relationship between the government and the parliament has been reversed after 150 years or so of responsible government. Mill considered it was the parliament that watched and controlled the government. Now it is the political party that forms the government that controls the lower house. Far from this being a situation which, to quote Justices Gaudron, Gummow and Hayne, 'assists the attainment of the object of responsible government of which Mill spoke in 1861', by turning the notion of 'control' on its head, it destroys the fundamental idea of responsible government. The government controls the lower house, and is in *no* sense responsible to it.

Does it matter that we now have cabinet government instead of responsible government? Yes it does, because the myth persists that the parliament controls the fate of the government. Of course it does in the rare case when a government is in a minority situation and relies on the support of independents, though even then the amount of control is minimal, if recent experience in Queensland is relevant. The trouble with the myth is that it distorts the political debate and the voters' understanding of the system of government we operate in this country.

The argument that a change to a presidential system of government—with a president elected by the people—would reduce parliament's control over the government has no force in view of the High Court's analysis that it is the government that controls the lower house of parliament, and not vice versa. That conclusion accords with any modern analysis of the relationship between government and parliament under our cabinet system. In other words, a presidential system would be no different from the cabinet system in the degree of parliamentary control over the executive that would exist. The amount of parliamentary supervision under a presidential system would arguably be greater, because the parliament would more likely be a full-time body and the executive would need to co-operate with it to obtain its legislation. This would mean that parliamentary committees would be at least as effective in scrutinising the activities of government as they are now—but probably more so because they would be able to build more expertise among both legislators and staff.

The other problem with the traditional analysis of representative government is that it leads to statements such as that by the High Court in *Egan v Willis* that 'the Executive's primary responsibility in its prosecution of government is owed to Parliament.' This is a nonsensical statement or at least a circular one. As the traditional modern analysis of who controls whom demonstrates, the statement means at best that the executive's primary responsibility is to itself.

It would be a different matter if the head of government were elected by the people. Then the government's responsibility would be to the people as a whole, not to a lower house majority controlled by the government. While it is true that the government of an elected president could not be sacked by the lower house and forced to an early

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election, and the president himself or herself could not be dismissed by his or her party in parliament, that is scarcely a drawback.

The evolution of the Senate over the past 30 years has demonstrated that there is still life in one of our parliamentary institutions. But the parliament will not achieve its full potential under our present system of cabinet government. It will do so only if we do away with the myths of responsible government and do away with the chamber—the House of Representatives—that is the government’s lap-dog under our present system.

The Australian people would be better served by a government whose head they directly elect, and a parliament (preferably a single chamber) separately elected. The parliament would function primarily as a legislature, but it would also scrutinise the activities of government. We would have a real system of checks and balances of a classical kind, not a parliament that is incapable of carrying out its supposed function under our present system.



**Question** — In relation to your statement about checks and balances, why not keep both houses? Get the executive out, but keep the Senate and the House of Representatives like the American model. I don’t quite understand your rationale for going into a single deliberative body.

**David Solomon** — Basically because I believe there are enough checks and balances of government versus ‘the Parliament’, that having a further system where the two houses can be in disagreement as well adds nothing to good government or to the proper functioning of the legislature. It’s simply reducing one area of conflict, while making it possible to have more balance where it really counts—between the government and the parliament.

**Question** — The speech that you’ve just given seems to me to create confusion. You said that we could have a mixed electoral system, and then you gave New Zealand as an example of that, then you later said that, alternatively, we could have a proportional representation system. I am sure that you’re aware that the New Zealand system is not a mixed system at all, it is a proportional representation system, because the party vote determines the overall composition. Now what are you proposing? If you are proposing a mixed system it is actually quite likely that a single party would get a majority in the single house of parliament, even though it may only have say 41 per cent of the vote. I am just curious to know what you are actually proposing.

**David Solomon** — I’m not really wedded to any particular proposal. What I tried to do was to put forward three or four different suggestions. It’s the principle that matters, rather than the detail. I accept what you said about New Zealand. The difference of course is that most of the members actually represent particular electorates, and then you have a topping up system using proportional representation. As I say, I’m not particularly wedded to any system, but my personal preference is for a proportional representation system of some kind, so that different views in the electorate are properly represented in the parliament.

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**Question** — You seem very focused on a comparison with the American system, and you haven't really considered other systems. I put it to you that perhaps you don't need to go to an elected separate executive. You could, for example, move to the system they have in Sweden, where proportional representation ensures a wider range of parties and essentially ensures there is no government majority. The prime minister, even though elected by parliament, is not a member of parliament, and therefore can undertake his duties and leave the parliament free. But you don't have the situation where the president—or the prime minister in the case of Sweden—ends up in opposition to the parliament.

**David Solomon** — The reason that I chose the American model is because it is the model that's best understood in Australia. In fact, it's probably understood better by most people than our own system. There have been several interesting surveys which have shown that many people actually have a better knowledge of the American system than they do of the Australian system. Many of them believe that aspects of the American system—such as, for example, a Bill of Rights—are part of our system. I suppose I am attracted to the American system anyway, but I think it would be very useful to have a system which can easily be understood by most people.

**Question** — We could do well in this country to put more study into it than we do, notwithstanding that we claim we know a lot about the American system. However, I was struck by a consideration that you did not mention which distinguishes our political system from the political systems of all of the democracies—we have compulsory voting, they don't. I wonder if you would care to comment on compulsory voting, which is a corrupting influence and has never been adopted by most countries. Those which did adopt it have had the good sense, in almost every instance, to get rid of it in the last 30 years because they've realised its corrupting effect. Do you see your unicameral body being elected by a corrupt electoral system—namely compulsory voting?

**David Solomon** — I'm in favour of compulsory voting. I don't think it is corrupting, I think the reverse is true. It removes one of the possible corruptions of a political system, namely the way in which a party can persuade voters to go to the polls, either by particular promises or by outright corruption. We will have to disagree on that.

**Question** — One of your premises was that party discipline and control is excessive. I just want to question whether changing the structures and going to the American model is going to change that in a social sense? When you and I go back to Brisbane we will see a unicameral government with an elected chieftain, namely the Brisbane City Council, where party control is still pretty much absolute.

**David Solomon** — The elected Lord Mayor of Brisbane controls the Labor majority in his party. Of course you can have a system under our election in Queensland where the mayor will not have control. I agree that we're not going to have a change of party discipline in the short term—I think it is something that would develop. I'm quite appalled by the present system and am prepared to look at almost any change that would reduce the amount of party discipline that there is at the moment.



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**Question** — You said you were attracted to the American model, and that's been quite clear. I have to say that I'm not, really. You didn't mention some of the negative implications in some of the things you've talked about. I agree there's more separation of power and that members of Congress act more independently from their parties, but I'm not convinced that that's necessarily a better system. They have parliamentary inertia, not just checks and balances, and the transparency of how some members of Congress vote is not at all clear. Even though you questioned the value of the small group of parliamentarians from which we get to choose our ministers, I think I'd rather have them to choose from than the current group of American presidential candidates, for example. So I'm not convinced that the benefits that you've outlined really work in practice.

**David Solomon** — I can't really say any more. I think that we would be better off if we did have more of a choice of ministers, if the person heading the government had more control, and more choice of ministers, and if we the people had more choice as to who was to be our prime minister. I'm not convinced that sitting in the House of Representatives for twenty years trains a person to be a good prime minister. It trains him to be a good parliamentarian, but that does not necessarily carry with it the qualities needed to run a department and to run a cabinet and to run the government.

**Question** — I have read *Coming of Age* and I enjoyed it a lot, but I am one of thousands who see the party system as the root cause of our problems with governments. When I use the term 'integration' or 'self-interest' I am describing a party. Because of that, I believe that one day we will be able to have politics without parties.

**David Solomon** — I'm not that optimistic.

**Question** — Do you agree that it is more than a matter of structure; that it's a matter of culture as well? Would you see any significant transitional problems because of embedded culture?

**David Solomon** — I agree culture is important, and it's because of that that I think the American system would in fact be fairly easy to change to. There is a consciousness out there among anyone who watches television or goes to the movies of the way the American system works, and I think it would be relatively easy for the Australian people to adopt that system.

**Question** — Given the requirements of the Constitution—a majority of electors in a majority of states—what chance do you see of any constitutional change being accepted which would lead to the development of a unitary system in the federal parliament, given the attitude of the smaller states towards a constitutional change which would perhaps reduce their influence?

**David Solomon** — I'm an optimist. I believe that change is possible. I accept that the smaller states could be galvanised into voting against change because they thought their interests might be hurt. But within a relatively short time Queensland is not going to regard itself as a small state, and I think Tasmania will be about the only place that will be resisting on the grounds that they thought they could lose some power.

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**Question** — I recall during your speech you made mention of maybe grouping together electorates to form a proportional system. Is this proposing de-federalisation and the institution of regionalism in Australia, and do you see that as a desirable model in a unicameral parliament?

**David Solomon** — Frankly, no. I think that in terms of culture and so on—and we have a state system which works fairly well—I can't see any changes being made to that, and I don't think they're desirable either.