

PLATYPUS AND PARLIAMENT: THE AUSTRALIAN SENATE IN THEORY AND PRACTICE

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Reviewer: Bruce Stone*

The author of this excellent study of the Australian Senate is an American expert on the US Congress who undertook the work while in Australia on a Fulbright scholarship. The project began, he says, as an attempt to explain to himself the role of the Senate in Australian government. This necessitated understanding the place of the Senate in the design of the Constitution, the factors which have reshaped the Senate over time, key events which have revealed and tested divergent assumptions about its role, and the nature and outcomes of decision making about legislation in the Senate. The result is a wide ranging examination of the Senate and the literature it has generated, set in a context of the meaning and history of the Constitution, electoral and party systems, and key debates about the way our political institutions do and should operate. With few and minor exceptions, such as a digression into the republic debate late in the book, the whole coheres and strongly illuminates its core subject. There are omissions. As the author acknowledges, the most obvious of these is an analysis of the Senate's committee system. But the book is a model study of a political institution. It is driven by an orderly, inquiring mind asking relevant questions, very well researched and documented, full of well developed and stimulating argument, and clearly and engagingly written.

So what does Bach make of the Senate? It is not surprising that someone steeped in the American tradition would be in favour of institutional checks on power and appreciate the virtues of deliberation and compromise in the legislative process. Bach is thus predisposed to see strong bicameralism as a good thing and develops a cogent argument for the modern Senate as a vital counterweight to an executive-dominated House of Representatives. But he also joins the venerable Australian tradition of agonising about whether or how 'strong bicameralism', or two parliamentary chambers of equivalent power, can be reconciled with responsible government, the idea that government is made and unmade solely by the lower house. He rejects the Barwick–Kerr view, which few have found persuasive, that responsible government should be held in Australia to mean that government is responsible to both houses of parliament. For Bach, as for a succession of commentators stretching back to the founders, there is a contradiction in the design of Australian government. But he argues that the contradiction is merely theoretical, that in practice the contradictory principles have not made government unworkable because the parties have shown restraint in the use of Senate power. Instead, he believes the combination of principles has produced the win-win outcome of strong government without a sacrifice of accountability. So Bach sees the Senate, in

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practice, as less a problem than a solution to a design weakness in 'responsible' government in a polity with a single member constituency electoral system for its lower house and disciplined parliamentary parties.

Bach's extended wrestle with the nature of the Australian model seems, however, to have produced one seriously false note. This occurs in the final chapter when he attempts to argue that Australian Commonwealth government not only departs from Westminster, or 'responsible', government, but is not a system of parliamentary government at all because Senate power makes passage of the government's legislation uncertain. (Nor does it fit other recognized categories of political system, hence Bach's notion of Australia as a constitutional 'platypus'.) This seems badly mistaken, first, because a number of other national second chambers in parliamentary systems have or have had constitutional powers comparable to the Senate's and, secondly, because it is simply not a necessary, or defining, feature of parliamentary government that an executive should be able to enact 'its legislative program, or at least the priority items of its program' as Bach contends (pp. 332–3).

The book draws heavily on existing literature as its source material, but there are two well executed chapters which analyse primary data on Senate divisions over legislation. Bach's sure feel for the legislative process, including the complex motivations which determine legislative behaviour, assists him in using the data to cast light on a range of questions about coalition formation, minor party activity and legislative outcomes in the Senate. He demonstrates that the popular image of governing and opposition parties as implacable parliamentary opponents, and the related image of the minor parties as arbiters of major party conflict in the Senate, are simplistic and misleading. Instead the majors, with interests in common as alternating occupants of government office, frequently cooperate in the Senate, while emphasizing for public consumption a small number of policy disagreements. In turn, this limits, while by no means eliminating, the parliamentary role of the minors.

The journey in *Platypus and Parliament* is as important as the destination. Among the features are a masterly review of the 1974–75 constitutional crisis; a compelling critique of the notion of an electoral mandate; and a perspicacious discussion of proposals for reforming the Senate and the political system more generally. With regard to the constitutional crisis, Bach's knowledge of budgetary politics in the US adds an interesting dimension to his critique of the Governor-General's action on 11 November. The idea, loved by governments and widely supported in the media, that victory in a general election confers a mandate on government to enact its policy platform is clearly inimical to a major legislative role for the Senate. Bach shows the mandate to be a fallacious notion and, moreover, that its advocates tend, unwisely, to judge that negotiation and compromise detract from the quality of the legislative process in a democracy. On the subject of Senate reform, Bach supports the introduction of automatic, limited appropriation as means of reducing uncertainty, opportunism and the possibility of gubernatorial intervention when a deadlock over supply arises. However, he casts doubt on a reform proposal popular

among supporters of a strong Senate, namely removal of ministers from the Senate and compensatory enhancement of the status and rewards of chairs of committees. Bach points out that this may reduce the Senate's capacity to hold government's accountable, since ministers in the House of Representatives are, by convention, not obliged to answer to the Senate. Further, he suggests that improving the remuneration of committee chairs will do nothing to make them more independent of control by party leaders, and hence will be unlikely to improve the effectiveness of committees.

As an exemplar of serious analysis of an Australian political institution at a time when there is too little such work, the book deserves a wide readership. It has much to offer university courses on Australian politics and is essential reading for anyone interested in Australian parliaments. ▲

In the Netherlands, parliament consists of the Senate and the House of Representatives. Both houses have a number of rights to allow them to perform their duties effectively. Legislation can only come into force after it has been passed by both the Senate and the House of Representatives. House of Representatives. The 150 members of the House of Representatives are directly elected by Dutch voters every four years. Freedom as discussed in "Theory and Practice" stresses the autonomous right of all individuals to conceive of happiness in their own way. Interference with another's freedom is understood as coercing the other to be happy as the former sees fit. The second discussion of social contract comes in the essay "Theory and Practice" in the context of an a priori restriction on the legitimate policies the sovereign may pursue. The sovereign must recognize the "original contract" as an idea of reason that forces the sovereign to "give his laws in such a way that they could have arisen from the united will of a whole people and to regard each subject, insofar as he wants to be a citizen, as if he has joined in voting for such a will" (8:297).