

The Upper House Question

South Australian Bicameralism in Comparative
Perspective

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Abstract

This thesis presents an examination of bicameralism as it operates in Australia. The specific focus is the parliament of South Australia, where the existence of the Legislative Council recently came under threat. Prior to the 2006 State election, the Premier of South Australia, Mike Rann, announced that, concurrent with the 2010 State election, a referendum would be held at which the people of South Australia would be able to decide the future of the Legislative Council. They were to be presented with three options: the retention of the Legislative Council with no changes made; a reduction in the size of the Legislative Council from 22 members to 16, and a reduction in the term length served by members from eight years to four years; and finally, the abolition of the Legislative Council (the stated preferred position of Rann). The Government backed away from this commitment in 2009, instead seeking only the reform of the Legislative Council, as outlined in the second option above. At the time of writing, the Bill to enable the referendum has been defeated in the Legislative Council, and so the referendum was not held concurrent with the 2010 election. Rann has indicated that he will not back away from Legislative Council reform though, and so this remains a live issue.

The thesis considers the nature of Westminster-style bicameralism, as is practiced in South Australia, by canvassing its development in South Australia, as well as in several other parliaments, namely: the parliament of the United Kingdom, in which this form of bicameralism originated; the parliament of Canada; the parliament of New Zealand; and the other Australian parliaments. By examining these parliaments lessons about the development and nature of Westminster-style bicameralism are drawn. The methods of composition of upper houses are examined. It is concluded that the most effective upper houses are filled by a different method than their respective lower houses. It is also concluded that the most effective upper houses are those that enjoy the popular legitimacy conferred by election, which helps them to justify their scrutiny of the government of the day. The position of upper houses as 'houses of review' is detailed, with upper houses serving to fill a void left by the iron-clad executive dominance of lower houses, leaving them unable to fulfil their traditionally theorised roles as guardians of responsible government. Upper houses do not ensure responsibility in the way that was theorised for lower houses, that is they do not as a rule possess the legitimate power to formally sanction a government. Instead, by scrutinising government activity and legislation, they provide accountability, by exposing errors, corruption and malfeasance.

Finally, in light of the preceding studies, the thesis returns to the Legislative Council of South Australia, concluding that the Legislative Council is a valuable part of the South Australian parliamentary system, but one that could benefit from some suggested reforms.

Declaration

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..... 18/12/2009
Jordan Bastoni

The following conference paper appears in slightly modified form as Chapter Eleven of this thesis:

Bastoni J. 2009. 'The South Australian Legislative Council into the Future: an analysis of potential reforms.' *Refereed conference paper presented at the 2009 Australasian Political Studies Association conference*. Copyright resides with the author.

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