

**The Historical Traditions of the Australian Senate:
the Upper House we Had to Have.**

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Declaration

This work contains no material which has been accepted for the award of any other degree or diploma in any university or other tertiary institution and, to the best of my knowledge and belief, contains no material previously published or written by another person, except where due reference has been made in the text.

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Abstract

This thesis examines the *raison d'être* of the Australian Senate, the upper house of the Australian bicameral parliament, established in 1901. It explores the literature that might have influenced its establishment and structure, and the attitudes, ideals, experience and expectations of the men (and they were all men) who initiated its existence and designed its structure during the Federation Conventions of the 1890s. It goes on to study whether similar western and British influenced institutions were seen as models by the designers of the Senate, followed by an examination of its architecture, décor, and procedures, to determine the major influences at work on these aspects of the institution.

The study was undertaken in view of the paucity of studies of the history and role of the Senate in relation to its powerful influence on the Government of Australia. Its structure can allow a minority of Senators to subvert or obstruct key measures passed by the lower house and is a serious issue for Governments in considering legislation. Answers are sought to the questions of how and why it was conceived and created and what role it was expected to play. The study does not extend beyond 1901 when the Senate was established except to examine the Provisional Parliament House, opened in 1927, which realised the vision of the Convention delegates who determined that the Senate was the house we had to have.

The research approach began with an exhaustive study of the Records of the Federal Conventions of the 1890s, where the Constitution of Australia was drawn up, along with contemporary writings and modern comment on such institutions. A study of the men who designed the Senate was carried out, augmented with field visits to the Australian State Parliaments. Research was also conducted into upper houses identified by the delegates to the Australian Federal Conventions, to consider their influence on the design of the Senate.

The conclusion is that the Senate was deliberately structured to emulate the then existing British system as far as possible; it was to be an august house of review and a bastion against democracy, or at least a check on hasty legislation. The delegates showed no desire to extinguish ties with Great Britain and their vision of

an upper house was modelled directly on the House of Lords. The vast majority of delegates had cut their teeth in colonial upper houses, which were themselves closely modelled on the Lords. To not establish a Senate would have been to turn their backs on themselves. The Senate then, is not a hybrid of Washington and Westminster: the influence of the United States was limited to the composition of the Senate and its name and mediated through the filter of its British heritage. The example of other legislatures was unimportant except where it solved problems previously experienced in the Colonial Councils and which might have otherwise occurred in the Senate. The Senate was the upper house we had to have; it was a decision that was taken before the delegates even met.

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Abbreviations

AGPS	Australian Government Publishing Service
BNA	British North America Act
CPD	Commonwealth Parliamentary Debates
CRS	Congress Research Service
NAA	National Archives of Australia
NLA	National Library of Australia

Names of delegates to all Conventions

Name of Delegate	Colony	Conventions attended
Abbott, The Honorable Joseph Palmer, M.P.	NSW	1891, 1897-8
Atkinson, The Honorable Sir Harry Albert, M.L.C.	NZ	1891
Baker, Richard Chaffey, M.L.C.	SA	1891, 1897-98
Barton, The Honorable Edmund, M.L.C.	NSW	1891, 1897-98
Berry, Graham	Vic	1897-98
Bird, Bolton Stafford, M.H.A.	Tas	1890, 1891
Braddon, Edward	Tas	1897-98
Bray, Sir John Cox, M.P.	SA	1891
Briggs, Henry, M.L.C.	WA	1897-98 (Sydney, Melbourne)
Brown, Nicholas John, M.H.A.	Tas	1891, 1897-98
Brunker, James	NSW	1897-98
Burgess, William Henry, M.H.A	Tas	1891
Carruthers, Joseph	NSW	1897-98
Clark, Andrew Inglis, M.H.A.	Tas	1890, 1891
Clarke, Matthew	Tas	1897-98
Cockburn, Dr. John Alexander, M.P.	SA	1890, 1891, 1897-98
Crowder, Frederick	WA	1897-98 (Sydney, Melbourne)
Cuthbert, Henry, M.L.C.	Vic	1891
Deakin, Alfred, M.P.	Vic	1890, 1891, 1897-98
Dibbs, George Richard, M.P.	NSW	1891
Dobson, Henry	Tas	1897-98
Donaldson, John, M.P.	NZ	1891
Douglas, Adye, M.L.C.	Tas	1891, 1897-98
Downer, Sir John William, M.P.	SA	1891, 1897-98
Forrest, John, M.P.	WA	1891, 1897-98
Forrest, Alexander, M.P.	WA	1891
Fitzgerald, Nicholas, M.L.C.	Vic	1891
Fraser, Simon	Vic	1897-98
Fysh, Philip Oakley, M.L.C.	Tas	1891, 1897-98
Gillies, Duncan, M.P.	Vic	1890, 1891
Glynn, Patrick	SA	1897-98
Gordon, John Hannah, M.L.C.	SA	1891, 1897-98
Grant, Charles	Tas	1897-98

Names of delegates to all Conventions

Name of Delegate	Colony	Conventions attended
Grey, Sir George	NZ	1891
Griffith, Sir Samuel Walker, M.P.	Qld	1890, 1891
Hackett, John Winthrop, M.L.C.	WA	1891, 1897-98
Hall, John	NZ	1890, 1891
Hassell, Albert	WA	1897-98
Henning, Andrew	WA	1897-98 (Sydney, Melbourne)
Henry, John	Tas	1897-98
Higgins, Henry	Vic	1897-98
Holder, Frederick	SA	1897-98
Howe, James	SA	1897-98
Isaacs, Isaac	Vic	1897-98
James, Walter	WA	1897-98
Jennings, Sir Patrick Alfred, M.L.C.	NSW	1891
Kingston, Charles Cameron, M.P.	SA	1891, 1897-98
Lewis, Neil	Tas	1897-98
Lee-Steere, Sir James George, M.P.	WA	1890, 1891, 1897-98
Leake, George	WA	1897-98
Loton, William Thorley, M.P.	WA	1891, 1897-98 (Adelaide)
Lyne, William	NSW	1897-98
Macrossan, John Murtagh, M.P.	Qld.	1890 * Decease reported 31st March, 1891
McIlwraith, Sir Thomas, M.P.	Qld	1891
McMillan, William, M.P.	NSW	1890, 1891, 1897-98
Macdonald-Paterson, Thomas, M.L.C.	Qld	1891
Marmion, William Edward, M.P.	WA	1891
Moore, William, M.L.C.	Tas	1891, 1897-98
Munro, James, M.P.	Vic	1891
O'Connor, Richard	NSW	1897-98
Parkes, Sir Henry, M.P.	NSW	1891
Peacock, Alexander	Vic	1897-98
Piesse, Frederick	WA	1897-98 (Adelaide)
Playford, Thomas, M.P.	SA	1890, 1891
Quick, John	Vic	1897-98
Reid, George	NSW	1897-98

Names of delegates to all Conventions

Name of Delegate	Colony	Conventions attended
Russell, William Russell, M.H.R.	NZ	1890, 1891
Rutledge, Arthur, M.P.	Qld	1891
Shiels, William, M.P.	Vic	1891, Acting from 2nd to 9th March, during absence of Mr. Wrixon Vic.
Sholl, Robert	WA	1897-98 (Adelaide)
Smith, William Collard, M.P.	Vic	1891
Solomon, Vaiben	SA	1897-98
Suttor, William Henry, M.L.C.	NSW	1891
Symon, Josiah	SA	1897-98
Taylor, John	WA	1897-98 (Adelaide)
Thynne, Andrew Joseph, M.L.C.	Qld	1891
Trenwith, William	Vic	1897-98
Turner, George	Vic	1897-98
Venn, Harry	WA	1897-98 (Sydney, Melbourne)
Walker, James	NSW	1897-98
Wise, Bernhard Ringrose	NSW	1897-98
Wright, John Arthur, M.L.C.	WA	1891
Wrixon, Henry John, M.P.	Vic	1891
Zeal, William	Vic	1897-98

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Introduction

Why does Australia have a Senate?

It passes the wit of man to construct an effective Second Chamber. Goldwin Smith. In J.A. Marriott, *Second Chambers: an inductive study in Political Science*, Oxford, 1927. p.1.

Why is there a silence on the creation of the Australian Senate? Did it emerge fully fledged from the minds of the Convention delegates and was there ever really any choice? In 1889 Henry Parkes (1815–1896), a flamboyant New South Wales politician, declared that Australia's Federal Parliament would comprise 'a Parliament of two Houses, a House of Commons and a Senate'. Delivered in rural Tenterfield, New South Wales, it was the speech which is credited with precipitating the events that led to Australian Federation in 1901. The speech made a clear assumption of the establishment of a Senate.¹ Parkes' prediction was duly fulfilled in the Australian Constitution that came into effect in 1901, five years after his death, which stipulated that: 'the legislative powers of a Commonwealth of Australia shall be vested in a Federal Parliament which shall consist of 'the Queen, a Senate and a House of Representatives'.²

Unlike the other two component parts of the proposed Parliament, a Senate was neither strictly necessary nor strictly modelled on the British Constitution. This is what makes it the most interesting. If it was not necessary why was it established? The focus of this thesis is how a Senate, an upper house, came to be an established and powerful player in Australia's Parliament. The Monarch was necessary as Australia did not intend to secede from the British Empire (as it was

¹ Ken Halliday, *Parkes Federation Call to the People*, (Observatory Hill: NSW National Trust of Australia, 1999), p.23.

² Australian Constitution, Chapter 1, Part 1, Section 1.

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then) which meant that the consent of the Monarch was required to lawfully federate the separate colonies: a House of Representatives, an elected Chamber, was essential as the keystone of democracy representing the people—the taxpayers, but where was the need for a Senate? This is not so clear. There is a silence in the historiography on the inclusion of a Senate in the legislature: it is looked upon as a given and studied mostly in its role rather than its gestation.

Of course there were many factors—local and international, economic, social and political—which led to Federation and, along with it, the creation of a Senate. It could be argued that Federation was simply a compromise, a pragmatic solution that fitted the exigencies of the situation at the turn of the century. Similarly, there was understandably the sheer difficulty of getting people to imagine, still less agree on, some alternative. This is not a study of those factors except to the extent that they affected the views and actions of the Convention delegates who crafted the draft Constitution submitted to the putative nation in a referendum. The pressure to reach agreement was underpinned by a potent mix of ideas, emotional attachments, and previous experience, evident in a close study of the delegates. They are the subject of this thesis.

Beginning with Parkes' speech, the assumption that there should be two Houses in an Australian Parliament is apparent throughout the subsequent serious moves towards Federation. Samuel Griffith, a Queensland politician and delegate to the 1890 Conference and the 1891 Convention, followed Parkes, saying: 'there should be two Houses of Legislature, in one of which the several colonies should have equal representation, the other being chosen by the electors of the Colonies in proportion to population'.³ He persisted in his opinion in comments he made later in a critique of the 1897 draft bill, though some doubts seem to have arisen:

The principle that there should be two Houses of Legislature, one directly and equally representing the States, while the other directly represents the people of the whole Commonwealth, in proportion to population, may, apparently, be

³ John M. Williams, *The Australian Constitution: A Documentary History*, (Melbourne: Melbourne University Press, 2005), p.37, from Griffith's *Suggested Instructions to the Constitutional Committee in 1891*, paragraph 2.

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taken to be generally accepted as the only basis upon which Federation is at present possible.⁴

The 'may', 'apparently', and 'generally accepted', reveal some reservations in Griffith's mind and possibly reflect the recently articulated sentiments of the emerging Labour party. The Labour party consistently opposed the establishment of a Senate because it considered equal representation of the States, whatever their population, was undemocratic. The party's opposition could also be attributed to the view that the upper houses of the Colonies, where members were either nominated for life or elected on a property qualification, were seriously undemocratic.

Edmund Barton, also a New South Wales politician and Convention delegate, echoed Parkes, and Griffith at his most confident, in his opening speech to the 1897 Convention in Adelaide, declaring: 'this Convention approves of the framing of a Federal Constitution which shall establish ... a Parliament, to consist of two Houses, namely, a States Assembly or Senate, and a National Assembly or House of Representatives'. He at least had no doubts: he followed this up in the same speech with this unqualified message:

I take it there is no one here who will for one moment imagine that any form of government by a Parliament consisting of one House, could be designated a Federation.⁵

No one challenged him. In fact 'Federation' simply means a union of States without any requirement for a second house, which Garran considered was not absolutely essential to the system of Federation.⁶

The absence of any real dissent among the delegates clearly demonstrates that the concept of a two house legislature was so firmly embedded in the Australian psyche (or at least that represented at the Convention) that, though questions

⁴ *Ibid.*, p.617.

⁵ *OR*, 23 March 1897, p.21. References to Official Records listed below are referred to in the footnotes as *OR*, with date and page numbers to facilitate finding the reference in both the electronic and published versions of the records.

⁶ Robert Randolph Garran, *The Coming Commonwealth, an Australian Handbook of Federal Government*, (Sydney, London: Angus & Robertson, Simpkin, Marshall, 1897), p.30.

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remained as to the role and structure of an upper house, its inclusion was never questioned and the proposal for two houses for the federal government went unchallenged.

The first major step towards federation was an Australasian Federation Conference held in Melbourne in February 1890. It was the first of the series of Convention debates in which the final shape of Australia's Federal Government was hammered out. At the Conference the unquestioned assumption of two houses was immediately apparent. In a speech, by Thomas Playford of South Australia, the major models of a States' House were drawn from both the negative and positive examples of Canada and the United States:

We do not require a great Dominion Parliament, such as exists in Canada, relegating, as it does, all local Legislatures into mere parish vestries. We require something in the shape of the Government of the United States, where clearly defined powers are given to the Senate and the House of Representatives, and where all other powers not specified are left to be exercised by the local States and constituencies.⁷

This is not to say there were no dissenting voices, but mostly they came from non-participants, with, as noted, the nascent Labour party the most vocal. In the 1897 Convention election New South Wales Labour candidates campaigned on a policy which included opposition to an upper house, but none was elected. Other resistance came from those who remembered the difficulties with Colonial Councils, some of whose members were nominated for life and difficult to dislodge.⁸ A small minority in the Assembly of Victoria made a vigorous attack on the concept of a Senate and its powers during the consideration of the 1891 Draft Bill. It was even moved by one member of the Legislative Assembly, Sir Bryan O'Loghlen (1828-1905), that the provision for an upper chamber be struck out. The motion was defeated.⁹ In the Convention debates themselves there is only slight evidence of anti-Senate sentiment. For example Henry Higgins as late as 1897, commented mildly:

⁷ OR, 6-14 February 1890, p.18.

⁸ New South Wales and Queensland Councillors were nominated for life.

⁹ Victorian Parliamentary Debates, vol.66, quoted in E.M. Hunt, *American Precedents in Australian Federation*, (New York: Columbia University Press; London P. S. King, Ltd., 1930), p.100.

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I was exceedingly amused at the debates in South Australia on this subject. We found member after member saying that he saw no need for a second house at all. Member after member said, 'What is the use of a Senate, it is not wanted.'¹⁰

And Josiah Symon, in the same discussion on what should be the name for the Upper Chamber, said:

if it is to be a second chamber in any sense of the term at all, one would think ... there ought to be some different character about it in some way or other so as to differentiate it from the other chamber, otherwise what on earth is the good of having it?¹¹

To which Higgins, clearly an opponent of the idea interjected, not so mildly: 'Just so; what is the good?' A survey of the newspapers of the day shows that the debates were dutifully reported and opinions of the role and structure of the Senate freely aired, but there was little comment on the actual establishment of an upper house. One paper, the *Worker*, did make a forceful attack on the idea¹² and at a meeting on Federation held in Adelaide in 1897 it was reported that the speaker was interrupted by a lone voice shouting 'What is the use of a Senate?' No one else took up the cry and the meeting proceeded peacefully.¹³ These few weak dissenting voices were drowned out by the stronger voices in support of Federation and an overwhelming conviction that there would be two houses in the new Parliament.

It is clear that Australia's Constitution framers, the delegates to the Federation Conventions in the 1890s, looked to two major models for their ideas: the Westminster, or British, system and the Constitution of the United States. The first choice was the British system of responsible government with the executive power vested in the lower house—the system upon which the legislatures of all the Australian Colonies were based. It was not an entirely satisfactory model as membership of the Upper House, the House of Lords, was hereditary and based on class and privilege, not applicable to the Australian situation. As such it was

¹⁰ OR, 9 September 1897, p.261. Records of the debates in the South Australian Parliament on this subject suggest Higgins may have been exaggerating. Debates in the SA Legislative Council and Assembly, June – August 1897.

¹¹ OR, 10 September 1897, p.300.

¹² *Worker*, Sydney, 20 February 1897.

¹³ *South Australian Register*, 5 February 1897.

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inappropriate as a model for a 'modern' democracy such as Australia which had no hereditary aristocracy 'born to rule'. Australia's Colonial Parliaments, all of them bicameral legislatures from the 1850s and modelled exclusively on the British system, were also major models for the Federal vision even though it is clear that not all colonies were happy with their upper houses, especially Victoria, which had an elected upper house, albeit with a prohibitive property qualification, and which had proved to be obstructive.¹⁴ The solution was found in the United States' model and was to structure the upper house as a States' house, its members elected by the States (erstwhile Colonies) to protect their interests.

These models were all of Anglo-Saxon origin and culture—akin to Australia—and all had upper houses. This made the establishment of an Australian upper house acceptable and even compelling, but based as much on sentiment and tradition as political logic. As Patterson and Mughan have argued:

It is a tribute to the hidden power of tradition and inertia in the governing of human beings that fundamentals of institutional design are rarely laid open to full appraisal.¹⁵

The decision was justified by supporters on the grounds that a 'States' House' was necessary to represent the interests of the separate States as a counterpoint to the interests of the population at large which would mean the legislature would be dominated by the larger or more populous states. The upper house was also envisioned as a house of review, which would calm the unbridled passions and irrational legislation which might result from a democratically elected lower house. As Ged Martin put it 'It was generally agreed that British colonies should have British-style bicameral Legislatures, in which the upper chamber would restrain the popular enthusiasms ... of the lower'.¹⁶ It was a dearly held fantasy that an upper house would somehow be a more intelligent, reasonable and judicious assembly

¹⁴ See L.F. Crisp, *Australian National Government*, (Hawthorn, Victoria: Longman, 1965), p.325.

¹⁵ Samuel C. Patterson and Anthony Mughan, 'Senates and the Theory of Bicameralism' in Samuel C. Patterson and Anthony Mughan, *Senates: Bicameralism in the Contemporary World*, eds. (Columbus: Ohio State University Press, 1999), p.9.

¹⁶ Ged Martin, *Bunyip Aristocracy*, (Sydney: Croom Helm, 1986), p.39.

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than a lower house, in spite of clear evidence to the contrary. Ged Martin has aptly summarized the situation in Canada:

The nominated upper houses of other colonies inspired little respect or confidence. Appointed for life legislative councillors were likely to confuse the checking of gusts of popular passion with the imposition of rejected ideas.¹⁷

The Federation Conventions were held in Sydney, Melbourne and Adelaide, beginning in 1890 with a Conference in Melbourne which drew up the procedures for a formal Convention. The first of these was held in Sydney in 1891 and the last went on for three sessions in Adelaide and Sydney in 1897, and Melbourne in 1898. The debates at the Conference of 1890 and the Convention in 1891 differed in structure from the Convention of 1897-8, a difference which affected the final result brought about in the Convention of 1897-8. The Conference of 1890 was more exploratory though with serious intent and did achieve some notable results, chief of which was the draft constitution drawn up by Andrew Inglis Clark, a Convention delegate from Tasmania, in 1891. This formed the foundation of the *Commonwealth of Australia Bill* submitted to the Colonies in 1891 for their consideration. Though allowed to lapse at that stage, it became the basis of the final version.

The major difference between the three meetings was that the delegates to the 1890 Conference and the 1891 Convention were appointed by the parliaments of the six Australian Colonies, plus two appointed by the legislature of New Zealand. Delegates to the Conventions of 1897-8 on the other hand were elected by the people, except those from Western Australia. The elections of delegates to the 1897-8 Convention were conducted in accordance with Enabling Acts passed in each Colony, which were all substantially the same as that passed by the Parliament of New South Wales as the *Australasian Federation Enabling Act 1895*. The Act was described as 'An Act to enable New South Wales to take part in the framing, acceptance, and enactment of a federal Constitution for Australasia'. New Zealand did not participate in the last Convention, deciding not join a Federation,

¹⁷ Ibid., p.42.

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and Queensland failed to pass the enabling legislation, though retaining an interest in the proceedings.¹⁸

The hiatus from 1891 occurred for several reasons but was due mainly to the failure of the New South Wales Parliament to proceed and the other parliaments were equally irresolute. Despite this inaction the Federation issue was not allowed to die but was kept alive and in the public eye by organisations and individuals outside the parliaments, and some politicians. These influences led to a Conference of Premiers in 1895 which agreed to a series of steps conceived by John Quick, a Victorian lawyer and Convention delegate, to convene another Federal Convention to consider and frame a constitution.¹⁹ The steps proposed the election of delegates to a new Convention tasked to frame a constitution that would be presented to the people of each Colony at a referendum and, if approved, presented to the Imperial Parliament to enact the required legislation to bring it into being. These programmed stages, spurred on by the failure of the earlier attempt at Federation, were the key to keeping the final Convention on course and bringing about a successful conclusion.

Running to over 6,000 pages, the proceedings of the Conventions were faithfully recorded and published in the *Records of the Australasian Federal Conventions* of the 1890s. Produced in the *Hansard* tradition using reporters from the Colonial parliaments, every word spoken by the delegates was recorded for posterity. Complete with comprehensive indexes, lists of delegates and careful dating, the Records provide an accurate account of the proceedings and are a fascinating window onto the past. It is revealing to discover the foresight of some of the delegates and how they anticipated problems that might arise. For example: the party system, not then fully realized; whether the Governor-General should be elected; and universal suffrage; were all discussed, the latter topic of special interest to the South Australian delegates where women had been enfranchised in

¹⁸ Frank R. McGrath, *The Framers of the Australian Constitution and Their Intentions*, (Sydney: Frank McGrath, 2003), p.70.

¹⁹ J.A. La Nauze, *The Making of the Australian Constitution*, (Melbourne: Melbourne University Press, 1972), pp.88-90.

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1894. Adult suffrage was eventually accepted for the Australian Parliament in 1902.

In seeking the genesis of the Australian Senate, or Upper House, one is naturally drawn to a study of the debates of the Federal Conventions. It was in the course of these deliberations that the final version of the Australian Constitution was drawn up and the decision that the Australian Federal legislature was to be a bicameral parliament was accepted. The records constitute the main primary source of this thesis and cast a revealing light onto the characters, aspirations and expectations of the delegates charged with this critical task.

Ostensibly, a study of these lengthy debates would reveal the source of the delegates' ideas and their basic attitudes on the concept of Federation, as well as the structure of a Federal legislature. To some extent they do, but the major issue of whether or not to have two houses of Parliament received little attention from the delegates. The vision of bicameralism was present and dominant from the preliminary skirmishes and appears in every document related to Federation. There were lengthy and occasionally acrimonious debates about the role of an upper house and the extent of its powers in relation to the lower house, especially regarding financial affairs, but there is no evidence in the records to suggest that the actual institution of a Senate was ever seriously disputed. This may have had something to do with the fact that the debates were formal affairs with most of the major speeches prepared in advance. The result is a degree of repetition and few surprises in their arguments as the delegates single-mindedly pursued their respective goals. Their ideas had already been worked out and in many cases already presented to and accepted by their respective Parliaments. It is also possible that informal discussions may have taken place where agreements about some issues were made before the formal debates. So the historian must dig deeper for the true source of the preconceptions of the delegates in regard to the institution of an upper house and this is one of the aims of this thesis.

The theories of critical junctures and path dependence form the theoretical framework of this thesis. Drawn from social science these theories help to explain

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the ready acceptance of a Senate by Australia and the dependence on the major models of Britain and the United States for its structure and role. Ruth Berins Collier and David Collier have defined a critical juncture as a 'period of significant change' and argued that in some cases what is presumed to be a free choice of action appears in fact to be deeply embedded in antecedent conditions that define and delimit agency. They further argue that during a critical juncture actors make contingent choices and these set a trajectory that is difficult to reverse.²⁰ The critical juncture, or 'period of significant change' underpinning this thesis is the period between 1890 and 1900 when the Constitutional Conventions worked out and established a federal Government for Australia. The antecedent conditions which defined and delimited the choices of the Convention delegates were found in the existing Australian Colonial governments and the Westminster system. The United States' Constitution was also an important model but it must be remembered that it too had its roots in the British system and, as we shall see, shared many of its procedures and practices.

The critical juncture theory is extended in this case by reference to 'path dependence', a theory originally applied to technological change, which holds that certain technologies can achieve an initial advantage over alternative technologies and prevail in the long run, even if the alternatives might have been more efficient. This argument can be precisely applied to politics because, like technology, politics involves elements of chance and choice but once a path is taken it becomes 'locked in' and strategies are adjusted to accord with the prevailing or pre-existing system.²¹ The concept of increasing returns as applied to technology is a feature of path dependence and explained by Paul Pierson, an American Professor of Political Science, as the probability of further steps along the same path increases with each move down that path because the costs of exit rise. In one major article Pierson argued that increasing returns mean that once a country has started down

²⁰ Ruth Berins Collier and David Collier, *Shaping the Political Arena*, (Princeton, New Jersey: Princeton University Press, 1991), pp.27, 29.

²¹ Kathleen Thelen, 'Historical Institutionalism in Comparative Politics', *Annual Review of Political Science*, June 1999, p.385.

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a track the costs of reversal are very high.²² He also argues that the strong status quo bias associated with most political institutions often make path dependent effects particularly intense in politics.²³ The path taken by the Colonial Parliaments was a powerful influence on the decisions taken in the structuring of the Australian Senate to continue along the same path; an attitude strengthened by the weight of the legacy of British tradition inherited by the decision makers. In politics the added factors of inertia and tradition often bring about a climate of resistance to change in a process once it has been adopted and established, because the policy makers 'are constrained in what they can conceive of by these embedded cultural constraints'.²⁴

These theories do not fully explain the reluctance of the delegates to bring in new ideas but they are relevant to the issue, especially the Colliers' argument that antecedent conditions define and delimit choice. Some historians writing about Federation have also recognised an unseen and unexplained power, something other than logic, influencing the delegates. For example, Geoffrey Bolton referred to 'subliminal influences in the shaping of an Australian nation'.²⁵ Tradition and inertia, which Patterson and Mughan called the 'hidden power', are other influences cited by historians to explain the resistance to new ideas by the Convention delegates.²⁶

Historians and political scientists have failed to give the decision to establish a Senate any systematic attention, relying instead on passing references and casual remarks. Years before the concept was spelled out J.A. Marriott, an English writer, leading constitutional scholar and a member of Parliament, alluded to the path dependence phenomenon in a disparaging phrase describing the Senate as a

²² Paul Pierson, 'Increasing Returns, Path Dependence, and the Study of Politics', *The American Social Science Review*, June 2000, p.252.

²³ *Ibid.*, p.261.

²⁴ Kathleen Thelen, 'Historical Institutionalism in Comparative Politics', pp.369-404.

²⁵ Geoffrey Bolton, *Edmund Barton: The One Man for the Job*, (St. Leonards, Australia: Allen & Unwin, 2000), p.16.

²⁶ Patterson and Mughan, eds., *Senates: Bicameralism in the Contemporary World*.

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'constitutional fetish',²⁷ and Galligan and Warden saw it as 'probably inevitable'²⁸ in the same way as Scott Bennett concluded that it was 'accepted automatically'.²⁹

Perhaps it can also be explained by the words of Karl Marx:

men make their own history, but they do not make it just as they please; they do not make it under circumstances chosen by themselves, but under circumstances directly encountered, given and transmitted from the past. The tradition of all the dead generations weighs like a night-mare on the brain of the living.³⁰

This thesis will argue that the establishment and structure of the Australian Senate was the result of a path dependent attitude on the part of the delegates and their Colonial parliaments. It was 'accidental' in the sense that it was not actually planned but based, with few deviations, on the preconceived model omnipresent in speeches, authorities and historical antecedents, and that the Conventions merely tinkered with the structure to shape the new upper house. It was a decision taken with the heart as much as with the head.

The undebated assumption that there would be an upper house in the Australian Parliament is reflected in the silence on the part of historians and political scientists on the subject and has led to the gap in the literature on the history of the Australian Constitution. As the issue was not debated and there are no records of suggestions of any alternative and only minor resistance, historians, like the delegates to the Constitutional Conventions, have accepted a Senate without question. Rarely rating a separate title, even in its modern incarnation, it has been taken for granted as a natural and necessary phenomenon. One major exception is *Platypus and Parliament* by Stanley Bach.³¹ Bach, an American Constitutional historian, focused on the current differences between the United States Senate and the Australian Senate, and gave only a brief summary of the historical

²⁷ J.A. Marriott, *Second Chambers - an Inductive Study in Political Science*, New, revised and part rewritten, (Oxford: Clarendon, 1927), p.5.

²⁸ Brian Galligan and James Warden, 'The Design of the Senate', in *The Convention Debates 1891 - 1898*, ed. Gregory Craven, (Sydney: Legal Books Ltd, 1986), p.91.

²⁹ Bennett, *The Making of the Commonwealth*, p.112.

³⁰ Karl Marx, *The Eighteenth Brumaire of Louis Bonaparte: With Explanatory Notes*, (New York: New York, International Publishers, 1964), p.15.

³¹ Stanley Bach, *Platypus and Parliament: The Australian Senate in Theory and Practice*, (Canberra: Department of the Senate, 2003).

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contexts. Nevertheless, its very appearance serves to underline the dearth of material focusing solely on the Australian Senate and its historical antecedents.

A review of the literature on the Australian Senate shows that the silence was deafening. The review includes some of the many specialised works on Australia's constitutional history, a selection of political science writings on the subject of bicameralism in general and in Australia in particular, and finally some general histories to ascertain what the student of history might learn from them about the origins of the Senate. Few of the works focus directly on the Senate, which usually appears as part of a wider study and then often as a *fait accompli*. Some concentrate on its role and responsibilities but offer no examination of the decisions which led to its existence. The selected specialised works, the Constitutional histories and political scientists are categorised into two groups: those which ignore or dismiss the question of why a Senate; and those which choose to address the question.

Of those historians who chose to play down the question, Quick and Garran set the pace in their magisterial work *The Annotated Constitution of the Australian Commonwealth*. The question of whether there should be an upper house was tersely addressed in their essay on bicameralism, to be quickly disposed of in the following extract:

Apart from the philosophical and practical arguments in favour of a two-chambered legislature as against a single-chambered legislature, a political union on the federal plan could not have been accomplished without the constitution of two Houses to represent the composite elements of the union.³²

Quick and Garran do not provide the aforesaid philosophical and practical arguments but refer to other writers who advance the arguments that a single house leads to despotism, is inclined to adopt hasty and one-sided views, or is 'inclined to radicalism or even anarchy'.³³ This was a popular view expressed colourfully by William Russell, a delegate from New Zealand, in the Convention of

³² John Quick and Robert Garran, *The Annotated Constitution of the Australian Commonwealth*, 1995 ed., (Sydney: Legal Books 1901), p.386.

³³ *Ibid.*, p.387.

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1891, as the 'cyclonic effects of popular gusts of passion' and Alfred Deakin added a remark about the 'spectacle of a democracy carried hither and thither by violent impulses to opposite points of the compass within short periods of time' which might eventuate without a more sober upper house to exercise restraint.³⁴ This view was not unique to Deakin or Russell but was an unhappily pessimistic, though widely held, view that democratically elected people's representatives need some restraining influence to prevent national disaster.

In a separate section on the Senate, Quick and Garran relied heavily on the experience and commentaries on the United States Constitution by such people as Joseph Story and Roger Foster, though these were based on a United States Senate appointed by the State legislatures, rather than the manhood suffrage eventually proposed for the Australian Parliament.³⁵ Clearly, writing in 1901, the year of Australian Federation, Quick and Garran were relying on the past and especially on the model of the United States, rather than closely considering the question or admitting of any alternative. For example, they dismissed the failure of the ten Labour candidates in New South Wales to be elected as delegates to the 1897 Federal Convention, as due to their 'impossible programme', a programme that called for a legislature of only one chamber.³⁶ Yet there was a substantial vote for one of these candidates (J.S.T. McGowen). In Victoria, as early as 1891, an Assembly member (Sir Bryan O'Loughlen) argued for a unicameral Parliament and in 1897 one Labour politician, William Arthur Trenwith, was elected to the Convention.³⁷

Quick and Garran relied heavily on the major argument that the provision of a Senate was a necessary concession to the smaller states to secure their support for Federation. This argument is frequently presented and rarely questioned. Yet the example of Queensland, not represented at the 1897 Convention but which

³⁴ *OR*, 5 March 1891, pp.64, 75.

³⁵ Joseph Story, *Commentaries on the Constitution of the United States*, ed. Melville M. Bigelow, Fifth ed., vol. I, (Boston: Little, Brown and Company, 1891); Roger Foster, *Commentaries on the Constitution of the United States*, (Boston: Boston Books, 1896).

³⁶ Quick and Garran, *The Annotated Constitution of the Australian Commonwealth*, p.163.

³⁷ *Victorian Parliamentary Debates*, vol. 61, 1891, p.884 et seq.

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quickly became a partner when Federation became a reality, suggests this was not necessarily the case. Western Australia was also reluctant on financial grounds but was persuaded to join at the very last moment by Joseph Chamberlain, then British Colonial Secretary.³⁸ Whether they would have joined the Federation if a Senate had not been included in the Constitution is a matter for conjecture but other examples were to hand: for example in the United States and Canada smaller states had applied to join already successful Federations. While there is no evidence that the smaller colonies would have joined without an upper house that would act as a state-based counter-weight to a lower house where representation was based on population, Andrew Inglis Clark for one, argued that a Federation of Victoria, New South Wales, Queensland and Tasmania would be a very good thing as a beginning, pointing out that in Canada there were originally only four colonies, others joining at different dates.³⁹ Quick and Garran's further comments on a Senate focused in detail on the powers, responsibilities and representation in the House, but without any further questioning of the need for such a body.

A decade after Quick and Garran, Bernhard Ringrose Wise, a New South Wales barrister who had been a delegate to the 1897 Convention, did not address the topic at all in his work *The Making of the Australian Commonwealth 1889-1900*, apparently taking it for granted, as did other Convention delegates, that the Senate or upper house in the tradition of a Westminster Parliament was 'a matter of course'. He quoted Parkes as saying that the scheme of the Federal Government 'it is assumed' would follow closely upon Canada's example with a Governor-General and a 'Parliament consisting of a Senate and a House of Commons'.⁴⁰ In his book he preferred to focus on the 'Compromise of 1891' which gave the States equal representation in the Senate in exchange for equal power over legislation except for financial matters. Like Quick and Garran, he dismissed the Labour policy of unicameralism as an 'impractical programme of one Chamber'.⁴¹ This dismissiveness reflects a general attitude among delegates to the intrusion of the

³⁸ La Nauze, *The Making of the Australian Constitution*, p. 260.

³⁹ OR, 11 February 1890, p.29.

⁴⁰ Bernhard Ringrose Wise, *The Making of the Australian Commonwealth, 1889-1900*, (London: Longmans, Green, and Co., 1913), p.12.

⁴¹ *Ibid.*, p.219.

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working classes, or masses, into the political process, a fear of what J.S. Mill called 'uncontrolled democracy'.⁴²

The first foreign commentator to discuss the Australian Government was Erling M. Hunt, an American historian writing in the 1930s. He also saw the provision of a Senate or second house in the Australian Parliament as a given. He referred to Parkes writing before the Melbourne Conference that 'parliament would consist of a senate and a house of commons' and says that this was accepted by federal leaders in 1890 and remained a major plank in the Constitution. 'This' he said 'was accepted as a matter of course in both federal conventions'.⁴³

Hunt did discuss opposition to the proposal but said it was 'rare and weak', as indeed it was in the Convention debates. He also went a little further and discussed opposition to a federal Senate in the Colonial Parliaments and press, citing the motion in the Assembly in Victoria in 1891. He records that in 1897 there was opposition in the Victorian and New South Wales Assemblies, and in the South Australian Assembly two Labour members were of the same opinion. Hunt dismisses these instances as isolated and ineffective but they can now be seen as the emerging power of the ordinary citizen and of the Labour party.⁴⁴ The Labour party was still in its infancy in the 1890s but already a strong and lusty infant, nourished perhaps by the memory of the events in Britain where the Great Reform Act of 1832 had resulted in fairer representation in the House of Commons and considerably weakened the House of Lords.

Writing at about the same time as Hunt, Ernest Scott, an eminent Australian historian and academic, contributed a lengthy and comprehensive article in *The Cambridge History of the British Empire*, where he treated the bicameral solution more as a question of the Senate's role rather than its existence.⁴⁵ He called it the

⁴² John Stuart Mill, *On Liberty and Other Essays*, ed. John Gray, (Oxford: Oxford University Press, 1991), p.384.

⁴³ Hunt, *American Precedents in Australian Federation*, pp.100-101.

⁴⁴ Ibid. It is not true to suggest that the ordinary citizen was opposed to bicameralism.

⁴⁵ Ernest Scott, 'The Federation Movement and the Founding of the Commonwealth', in *The Cambridge History of the British Empire* (Cambridge: Cambridge University Press, 1933), pp.428-453.

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'fundamental problem of the federal system: how to reconcile the principles of government by the will of a majority of the people, and government by the will of a majority of the States'.⁴⁶ The solution to this was, he said, a two-chambered legislature as found in the systems of Switzerland and America. Interestingly he commented:

This expedient also had the merit of affording a rational basis for a second chamber in the bicameral system postulated by British tradition and Australian experience.⁴⁷

The words 'expedient' 'rational' and 'tradition' suggest that not only practical factors were at work here, but also a subliminal imperative that insisted on a bicameral legislature and that the example of America, which had implemented the system in the 18th century as a 'compromise' to persuade the smaller States to join the union, was enough to justify the establishment of a similar upper house in Australia.

The Senate merited a separate chapter in the 1949 work of L. F. Crisp, *The Parliamentary Government of the Commonwealth of Australia*. A revised edition was published in 1965 titled *Australian National Government* but the chapter on the Senate was not much changed from the earlier edition.⁴⁸

Crisp did not examine the reasons behind the establishment of the Senate in the chapter, though he gave close attention to the Convention debates and arguments about its powers and role and elaborated on the perception of a 'fear of the masses' as a factor in support for Federation generally. He saw the industrial strikes of 1890–1 as strengthening this fear and quoted a New South Wales conservative politician, Bruce Smith, as describing the Labour party as 'ignorant of history, of economics and sociology' and arguing that: 'This growth upon our body

⁴⁶ Ibid., p.434.

⁴⁷ Ibid.

⁴⁸ It is the later edition which is referred to here.

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politic can now be removed for all time by the proposed union of the Colonies'.⁴⁹ His prediction turned out to be wildly inaccurate.

Crisp based his comments on the fact that both Griffith and Clark, who were instrumental in drawing up the draft Constitution, were heavily influenced, along with many others, by the United States example, and concentrated on the pressure for a 'strong' Senate, rather than any discussion on the need for one.⁵⁰ He argued that the demand for a 'strong' Senate came from financial and conservative interests, implying perhaps, though he has not articulated this point, that this was the case for having a Senate at all. These interests, he claimed, saw Federation as a potential bastion against socialism and hoped to shape the States' House in the image of their colonial upper houses by providing that it be indirectly elected by the State Parliaments where in any joint sitting propertied interests could almost certainly carry the day. The idea of popular direct election of the Senate was of concern in this case 'for not even America had gone that far at that time'.⁵¹

J.A. La Nauze, whose *The Making of the Australian Constitution* is a seminal study of Australia's Constitutional history, is another historian who maintains the silence. His is an authoritative history of the steps that led to the making of the Australian Constitution from 1890 onwards, covering the progress of the convention debates and the characters of individual delegates. It is comprehensive in its coverage, masterly in its assessments and written in a clear and accessible style. The first mention of the Senate is a quotation without comment from the 1891 resolutions that Parliament should consist of a 'Senate and a House of Representatives'.⁵² La Nauze points out that the first drafts of a Federal Constitution were prepared by Inglis Clark of Tasmania and Charles Cameron Kingston of South Australia for the 1891 Conference. Both of these men were strongly influenced by the American model and La Nauze observed that there were few original points in either of the drafts, implying that their idea of a Senate came from that source.⁵³ La Nauze went

⁴⁹ Crisp, *Australian National Government*, pp.16-17.

⁵⁰ *Ibid.*, p.18.

⁵¹ *Ibid.*, p.19.

⁵² La Nauze, *The Making of the Australian Constitution*, p.37.

⁵³ *Ibid.*, p.24.

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on to address in detail the problems of how the division of powers and responsibilities of the two houses should be carried out. There was never any question in his study of whether anyone felt there was a need or role for an upper house. He is among the great majority of historians who, along with the Convention delegates themselves, considered the provision of an upper house to be beyond question.

John Hirst is another. He also sees the fundamentals of the Australian Constitution as mainly borrowed from the American example and 'readily agreed to'. This of course included a Senate.⁵⁴ Hirst discusses the problems of marrying the Westminster system of 'responsible' Government with the American system of a separate executive, and the decision to make the Senate an elected house, as opposed to the then American system of a Senate nominated by State legislatures. Some saw the idea of an upper house elected on a democratic franchise as almost a contradiction in terms, and Hirst quotes Henry Dobson as being 'flabbergasted at this proposal being carried through the Convention without resistance'. The argument that won the day however was that 'Since these electorates had returned to the Convention delegates of such high quality, the system was to be continued'.⁵⁵

These issues are important but the fundamental issue of why it was thought, or assumed, that an upper house was necessary again did not concern Hirst. He did examine the question of 'Why does the crown feature so prominently at the very heart of the new Government?' because there was some argument in the debates suggesting that the constitution should make it clear that the executive power of the monarch was to be wielded by the ministers not the Monarch. Eventually the point was settled that the Ministers would be 'the Queen's Ministers of state for the Commonwealth'.⁵⁶

⁵⁴ J.B. Hirst, *The Sentimental Nation: The Making of the Australian Commonwealth*, (Oxford: Oxford University Press, 2000), p.101.

⁵⁵ *Ibid.*, p.160.

⁵⁶ *Ibid.*, p.31.

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A more recent writer, Frank R. McGrath, a New South Wales lawyer, has attempted to unravel the intentions of the Constitution framers. This was not an easy task as the delegates themselves were not always clear on their intentions, torn as they were between a desire, for the most part, for a federated Australia, and a strong self-interest to protect the rights of their individual States. McGrath's work clearly explained the various serious issues facing the delegates. He considered that the Senate was one of the most important issues before the Conventions and in his discussion has covered the usual responsibilities suggested for an upper house: the supervisory process of an upper chamber as a check on 'hasty and ill-considered legislation or a brutal majority', and the implications of the word 'upper', but he has not addressed the reasoning behind the creation of a Senate.⁵⁷ He is one of the majority who see the inclusion of an upper chamber as inevitable. So, to him, the original intentions of the framers of the Constitution were to have a Senate as an active and important part of the Australian legislature: a House of Review and a check on the lower house.

There was a clear desire to create an effective check on radical action by the representatives of a bare majority of the Australia-wide electorate.⁵⁸

Stanley Bach, as already mentioned, is an American Constitutional historian and his work focused on the differences between the United States Senate and the Australian Senate, with only a brief discussion of the historical context. His is a significant addition to the literature on the Senate but his only comment on bicameralism is 'however, the agreement among the Australian states in the 1890s required the creation of a bicameral Parliament'.⁵⁹

Those then are the principal constitutional historians who have seen the creation of a Senate as predestined, but others have considered the question in more detail. The earliest of these is Robert Randolph Garran in *The Coming Commonwealth*, published in 1897. Garran, who later co-authored with John Quick *The Annotated Constitution of the Australian Commonwealth* discussed above, was a lawyer and

⁵⁷ McGrath, *The Framers of the Australian Constitution and Their Intentions*, p.45.

⁵⁸ *Ibid.*, p.62.

⁵⁹ Bach, *Platypus and Parliament: The Australian Senate in Theory and Practice*, p.14.

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active supporter of Federation. He wrote this work to summarise and explain Federation to his readers—Australians considering Federation. In it he discussed the system of two legislative chambers as a feature frequently associated with Federation though, interestingly, ‘perhaps not essential to it’. The existence of two chambers in England instead of perhaps three or four, he suggested, quoting E.A. Freeman, author of an authoritative work on Federation, was more or less an historical ‘accident’ but has a special fitness in a Federation in order to provide separate representation for the States.⁶⁰ The system was, Garran claimed, profoundly influenced by the American Union. Later he observed that the proposed Federal Parliament ‘undoubtedly will consist of the Queen and two representative Houses’ and:

There will probably be no difficulty in deciding in favour of a two-chambered legislature, seeing that two Chambers are the rule throughout the British possessions, and that in a Federation there is a special reason for a Second Chamber to represent the States.⁶¹

Though Garran did not see a Senate as inevitable but as ‘more or less an historical accident’, in a clear example of path dependence he did accept the two major rationalisations for a second chamber: first we must have one because of the British example and second because, like the United States example, it would provide representation for the member states. Moreover, Garran recognised that notwithstanding the revolution, the United States system also owed much to the British path. The reasons he gives are not completely convincing but Garran’s work itself illustrates how profound and irresistible were the main influences and pressures at work on the founders of the Constitution: history and expedience.

Scott Bennett is one of the few commentators to identify the silence on the creation of a Senate:

⁶⁰ Garran, *The Coming Commonwealth*, pp.30-32; E.A. Freeman, *History of Federal Government in Greece and Italy*, ed. J. B. Bury, (London: Macmillan, 1893), Freeman’s work is discussed in a later chapter.

⁶¹ Garran, *The Coming Commonwealth, an Australian Handbook of Federal Government*, p.126.

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One constitutional issue over which there was little debate in the Conventions was the provision that the national parliament was to be bicameral.⁶²

He did not address the question in any detail but argued that the idea of a bicameral parliament stemmed from the experience of the delegates in their own colonies and the influential examples of the United States and Canada, suggesting that the concept 'seemed to have been accepted automatically'.⁶³

Bennett does acknowledge that Labour party candidates for the 1897 Convention campaigned on a policy opposed to an upper house. He points out that, as only one (William Trenwith) was elected and he did not voice that opposition in the debates, it was not heard. Bennett also cites the *Worker's* opinion which argued strongly, if not always coherently, against an upper house, demonstrating that there was an alternative point of view.⁶⁴ After this brief discussion Bennett moved on to the major issues of the powers of the putative Senate: equal representation and financial powers. He did not cite the debates in the Colonial parliaments, of which those in New South Wales were the most cogently argued by the Labour party which actually proposed an amendment that would have eliminated the Senate. An interesting aspect of this debate was the emphasis on the inevitability of a second house in that the speakers against a Senate almost invariably commented that they knew this amendment would be negated but they felt it must be said.⁶⁵

Another modern historian who questioned the bicameral solution, albeit unpublished, is Jennifer Hutchison. Hutchison examined whether the Senate fulfilled the expectations of its founders in the period from 1901 to 1975; expectations which she said 'even at that time were somewhat naive and over-optimistic'.⁶⁶ She discussed the 'ready acceptance of bicameralism' and concluded that 'Bicameralism was accepted because of British, American and local Colonial

⁶² Bennett, *The Making of the Commonwealth*, p.112.

⁶³ Ibid.

⁶⁴ Ibid., p.131.

⁶⁵ New South Wales Debates, 8 July 1897, pp.1787-1810.

⁶⁶ Jennifer Margaret Hutchison, 'The Australian Senate 1901-1972' (Unpublished PhD thesis, Australian National University, 1976), p.1.

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practice and Federalism was a scarcely questioned model'.⁶⁷ Hutchison recognised the gap in the historiography and, to substantiate her conclusion, analysed the legacy of the Westminster system where, with other political scientists, she found that bicameralism can be interpreted as an 'accident of history'.

Hutchison also outlined some of the theoretical arguments for a second chamber: as a balance between the executive and the legislature; restraint on the 'unbridled power of a single chamber'; and a revising role or check on the sometimes hasty decisions of a first chamber. She points out that bicameralism had been adopted by a number of European countries perhaps 'merely as an incidental aspect of a system these countries desired to emulate'. She extrapolates that this was possibly because of Britain's 'record of stability in government concurrent with adaptation to and absorption of demands for alleviating the political power of the aristocracy' which 'was admired throughout Europe'. She argues that bicameralism in the British colonies has been attributed to 'mere imitation of the mother country' and quotes Marriott's phrase that bicameralism was a 'constitutional fetish'.⁶⁸

Brian Galligan and James Warden did not dismiss or ignore the question of bicameralism in their erudite discussion of 'The design of the Senate' but they did not treat it in depth. They merely reported that 'all agreed that there was to be a Senate' and 'because of their political socialisation in English and Australian parliamentary traditions, the founders, who were colonial parliamentarians, took legislative bicameralism for granted' and 'that it was probably inevitable'.⁶⁹ The authors also cited the influence of the American example, and, unusually, mentioned some opposition, if in a roundabout way:⁷⁰

the views of Deakin and his radical nationalist colleagues implied the abolition of both federalism and the Senate. The claims that federalism is an anachronism and the Senate is undemocratic have enjoyed widespread

⁶⁷ Ibid., p.59.

⁶⁸ Ibid., p.25.

⁶⁹ Galligan and Warden, 'The Design of the Senate', pp.89-111.

⁷⁰ Ibid., p.91.

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support in Australia because they appeal to the populist democratic sentiments of our Westminster parliamentary tradition.⁷¹

Barton would have strongly disagreed with this assessment: As he put it: 'I take it there is no one here who will for one moment imagine that any form of government by a Parliament consisting of one House, could be designated a Federation'.⁷² Galligan and Warden were writing in 1986 and did not address the question of whether or not a senate was necessary.

In strong contrast to most historians, at least one student of political institutions has actually questioned the need for a Senate in Australia. Marriott questioned why what he called 'the civilised world' preferred bicameralism and why Australia, among other colonial polities chose that system:

But no one can suppose that any pressure in favour of traditional forms would have been brought to bear upon the democratic communities in Australasia and South Africa, had they preferred to strike out a new path for themselves. But with unbroken unanimity they have adhered to the old. Again we must ask: Why?⁷³

Marriott cited the familiar arguments in support of second chambers: a 'counterpoise to democratic fervour'; the safety which lies in 'sober second thoughts'; and the value of delay; but he said these familiar arguments no longer seem valid. He went on to suggest that the 'only satisfactory appeal ... is the appeal to history; the only safe guide, that of experience' and suggested that perhaps 'the world has set up a constitutional fetish'. Have the newer democracies such as Australia simply followed 'sheep-like a misguided leader; or that institutions have been unintelligently imitated without sufficient regard to conditioning circumstances?' or is it that under very different conditions bicameralism is a natural, not artificial growth?⁷⁴

Marriott sought answers in history by discussing the origins of second chambers and how they evolved from representing the various divisions in English society

⁷¹ Ibid., p.101.

⁷² OR, 23 March 1897, p.21. Ibid., p.102.

⁷³ Marriott, *Second Chambers - an Inductive Study in Political Science*, p.2.

⁷⁴ Ibid., p.3.

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from the 13th century, when the model Parliament summoned by Edward I in 1295 represented this principle. By the middle of the 14th century it had evolved into a 'Commons' House of Parliament and a House of Lords in which form it more or less endured until the 20th century.⁷⁵ This is an interesting discussion and relevant to Australia as the Australian Senate can be traced back to these early parliamentary structures. This is clear in the frequent references to the British House of Lords as a role model for an Australian upper house in the Convention debates.

Marriott also addressed the friction which had frequently occurred between the two Legislative Chambers in the Australian Colonies and of which the Convention delegates, practising politicians for the most part, were well aware. He considered it remarkable that 'in the long discussions which preceded the consummation of the Federal Commonwealth no proposal for the erection of a unicameral legislature ever obtained any serious or influential support'.⁷⁶ This comment supports his argument that it was history and experience, or even what he calls a 'constitutional fetish' that persuaded the constitution makers to establish a Senate and underpinned the more practical arguments for State representation or a House of Review.⁷⁷ With this evocative phrase Marriott forcibly expressed the reasoning behind the theory of path dependence. Had the term 'path dependence' been available he would surely have been tempted to use it to explain the 'subliminal' behaviour of the legislators.

Path dependence or other indications of subconscious, maybe even irrational, behaviour do not enter the arguments of English writer and politician H.B. Lees-Smith, a Liberal MP who had joined the Labour Party and in 1931 was, briefly, a Cabinet Minister. Lees-Smith saw second chambers as a 'clumsy and complicated addition to the structure of Government'. Expounding on the virtues and vices of second chambers he is most interesting in addressing the question 'Are the Dangers of Single Chambers Serious?' Lees-Smith challenged the idea that a

⁷⁵ Ibid., pp.5-6.

⁷⁶ Ibid., p.112.

⁷⁷ Ibid.

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second chamber can restrain any hasty actions of a democratically elected house: 'This view takes no account of the potent influences of the general election that is to come' he argued. In this he has followed and quoted from Walter Bagehot who suggested famously that a 'steady opposition to a formed public opinion is hardly possible in our House of Commons, so incessant is the national attention to politics, and so keen the fear in the mind of each member—that he may lose his valued seat'.⁷⁸ Lees-Smith's section on the Australian legislature is historically thorough but made no further comment on why a Senate was included in the structure of the Federal Parliament although his views on second chambers as 'clumsy and complicated' were quite clear.

More recent publications include Helen Irving's collection of essays entitled *To Constitute a Nation*. Here there are no suggestions that a Senate was unnecessary and of the several entries on the subject none question the need for an upper house. Irving's work mainly addressed the issues of equal representation of the States and the attitude that this was regarded as undemocratic but necessary to persuade the smaller States to join the federation.⁷⁹

George Tsebelis and Jeannette Money attempt to unravel the complexities of bicameralism with a view to identifying the effect of bicameral legislatures on political outcomes. In the section titled 'Bicameralism in historical perspective' they examined the historical background and experiences of several legislatures. Their discussion reinforces the view that the English model from the 14th century was the primary example, though underpinned by the ancient Greek theory of mixed government.⁸⁰ They have also ranged further to discuss the evolution of bicameral legislatures from earlier unicameral legislatures in 18th and 19th century Europe, such as Germany, Switzerland and the Netherlands. They touched upon modern federal systems and, though highly theoretical, their discussions have relevance to

⁷⁸ H B Lees-Smith, *Second Chambers in Theory and Practice*, (London: George Allen & Unwin Ltd, 1923), pp.38-39.

⁷⁹ *Ibid.*, p.147.

⁸⁰ George Tsebelis and Jeanette Money, *Bi-Cameralism*, (Cambridge: Cambridge University Press, 1997), pp.15, 21.

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the Australian situation in delineating the effects of bicameralism on political programmes, though without an answer to the question ‘Why a Senate?’

Political scientists Samuel C. Patterson and Anthony Mughan, in a wide-ranging discussion of bicameralism, discuss the development of European parliaments that included ‘second chambers’ or ‘upper houses’ suggesting that this is an indication of the pre-eminence and survival of aristocracy. Even though ‘senates have long outlived their original purposes and justification’, they argued, ‘they have, in one way or another, been transformed into modern, viable Parliamentary institutions’.⁸¹ Like Meg Russell (*Reforming the House of Lords*, 2000) they noted that in ‘the English-language literature there is very little about parliaments that has focused on upper houses’.⁸²

Instead of ‘path dependence’ Patterson and Mughan use the phrase ‘hidden power’ but it too suggests that a powerful layer of sentiment can overcome pragmatism in institutional decisions. This is revealed most clearly in the continuity of tradition, ceremonial and symbolism in the procedures of the Senate and which can be traced back to the House of Lords. This aspect will be explored in a later chapter.

Though Patterson and Mughan’s discussion focused on the American experience it does have relevance to the Australian situation. For example they claimed that the division of the American National Legislature into two bodies was little debated in 1787 and has been taken for granted ever since; a scenario repeated in Australia.⁸³ The major justification for the United States was that it would conciliate the small States by giving them the same representation as the larger States—that is, two Senators each. This aspect did not translate well into Australia because with only six states, two Senators each would not have provided enough members for a functional House. The solution in the Constitution was to provide for six senators from each State.

⁸¹ Patterson and Mughan, eds., *Senates: Bicameralism in the Contemporary World*, p.ix.

⁸² Ibid., p.x. Meg Russell, *Reforming the House of Lords: Lessons from Overseas*, (Oxford: Oxford University Press, 2000), p.44.

⁸³ Patterson and Mughan, eds., *Senates: Bicameralism in the Contemporary World*, p.9.

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Patterson and Mughan delved into the origins of bicameralism as a representational basis for social classes and discussed the house of review theory as a restraint on the lower house which might be 'liable to err ... from fickleness and passion' against which a second chamber would provide 'a necessary defence'.⁸⁴ Along with theoretical discussions, Patterson and Mughan's book includes essays by contributors on various bicameral legislatures. Australian political scientist, John Uhr, contributed the Australian article entitled: 'Generating Divided Government: The Australian Senate'. Uhr's contribution does not discuss the reasons for a Senate but concentrated on its role as a house of review and a platform for minority voices, especially after the introduction of proportional representation: another silence.⁸⁵ Political scientists showed more interest in the question of whether an upper house is necessary, but their conclusions suggest that the strongest motivating factors are history and tradition. Unsurprisingly path dependence is a theory developed by political scientists.

Alastair Davidson, an Australian political scientist, again does not question the establishment of a Senate in his book *The Invisible State*, only recognising that it was preordained at the 1890 Conference which approved the establishment of a Parliament to 'consist of a Senate and a House of Representatives'. He discusses some of the convention debates about the Senate and argues that it was envisaged in the beginning that it would not be representative of the monied interests, but of the people, in contrast to the Colonial upper houses. His major discourse including the Senate, is on the thorny issue of relations between the houses and the solution to deadlocks, but he makes no comments on whether the institution was really necessary.⁸⁶

Moving on from political scientists, I reviewed ten general histories of Australia published between 1916 and 2004 to ascertain what the general reader might learn

⁸⁴ Ibid., p.14.

⁸⁵ John Uhr, 'Generating Divided Government: The Australian Senate', in *Senates in the Contemporary World*, ed. Samuel C. Patterson and Anthony Mughan, (Columbus: Ohio State University Press, 1999), pp.93-119.

⁸⁶ Alastair Davidson, *The Invisible State: The Formation of the Australian State 1788 - 1901*, (Cambridge: Cambridge University Press, 2002), pp. 231–234.

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about the origins of the Senate from these works. As general histories, often covering a broad time span and wide range of topics, they cannot be expected to discuss Parliamentary issues in detail. Nevertheless, it is at least curious that the structure of Parliament receives so little attention and the Senate even less.

Those who skirt the issue include: W. K. Hancock⁸⁷; B.K. de Garis in F. K. Crowley's book of essays;⁸⁸ and C.M.H. Clark.⁸⁹ *The Oxford Companion to Australian History* does not include a discussion of Parliament.⁹⁰

Historians who did include some discussion of Parliament provide meagre detail. An exception is Ernest Scott who provided a quite expansive paragraph on the subject of Parliament and the structure of the Senate, without questioning the need for it.⁹¹ Discussion of Parliament by other historians included R.A. Gollan in 1955, who considered federation and some aspects of the structure and powers of the Senate,⁹² and John Molony, who provided a discussion on federation with a brief summary of the structure of the Senate,⁹³ while Stuart Macintyre confined his discussion to the differences in representation of the two houses.⁹⁴ Frank Welsh, in the last work in this selection, accepted the establishment of the Senate without question or comment.⁹⁵ All of these are excellent works on the broad issues of Australian history but the student would need to go elsewhere to read about Parliament and the Senate.

This survey of the literature on the Australian Senate and its origins suggests that attitudes to it range from acceptance to apathy. The brief attention from historians suggests that many appear to have accepted the Constitution makers' decision in

⁸⁷ W.K. Hancock, *Australia*, (London: Ernest Benn Limited, 1930).

⁸⁸ B.K. de Garis, '1890-1900' in Frank Crowley, *A New History of Australia*, (Melbourne: William Heinemann, 1974), pp.216-59.

⁸⁹ C.M.H. Clark, *A History of Australia*, vol. V (Melbourne: Melbourne University Press, 1981).

⁹⁰ *The Oxford Companion to Australian History*, ed. Graeme Davison, et al., (Melbourne: Oxford University Press, 1998).

⁹¹ Ernest Scott, *A Short History of Australia*, (Melbourne: Oxford University Press, 1936).

⁹² R.A. Gollan, 'Nationalism, the Labour Movement and the Commonwealth', in *Australia: A Social and Political History*, ed. Gordon Greenwood (Sydney: Angus and Robertson, 1955).

⁹³ John Molony, *The Penguin History of Australia*, (Ringwood: Penguin, 1987), pp.185-189.

⁹⁴ Stuart Macintyre, *A Concise History of Australia*, (Cambridge: Cambridge University Press, 1999), p.138.

⁹⁵ Frank Welsh, *Great Southern Land: A New History of Australia*, (London: Allen Lane, 2004).

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this regard in the same frame of mind—as a matter of course—as the delegates to the Conventions, leading to an odd silence on the establishment of this significant third arm of the Australian legislature. The inescapable conclusion is that the initial motivation was based upon tradition, the colonial experience of the Constitution's authors, and inertia, or the heart ruling the head, if they ever actively considered it at all. The decision was justified by constructing it as a States' House and a house of review, but these factors followed the initial decision to create a second chamber.

What this brief survey shows is that few historians or political scientists have thoughtfully addressed the question 'Why a Senate?' Only Garran considered it in any detail and his conclusion that it was 'more or less an historical accident' is surely wrong.⁹⁶ It was an 'accident' that was bound to happen.

If we turn to works which discuss the architecture, ritual, practices and procedures of Australia's six parliaments, again we find little work of analysis. The main works in this genre are from the English canon and are mostly quite recent. They are interesting for the light they shed on Australia's parliamentary practices, which contain some of the clearest evidence of path dependence. The main sources of these publications are the Parliaments themselves, usually in the form of publicity pamphlets or commissioned books. Although they address the architecture, ritual and procedures they are usually brief and selective, revealing another silence or gap in the historiography. Primary sources on the topics are scarce and fragmentary and only occasionally appear in official sources such as Parliamentary debates. Administrative files on the subject are scattered and elusive if they can be traced at all. Some questions remain unanswered except in general terms. Records of the acquisition of a Black Rod in Tasmania's Parliament, for example, can not be traced despite extensive searching by the Parliamentary historian.⁹⁷

This aim of this thesis is to ask why Australia has a Senate. Why? Because no-one else has. Scholars, historians and political scientists have not asked this question

⁹⁶ Garran, *The Coming Commonwealth, an Australian Handbook of Federal Government*, pp.30-32.

⁹⁷ Personal communication with Terry Newman, Parliamentary Historian, Parliament of Tasmania, 27 May, 2008.

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and although they have struggled over its role, structure and activities, they have been silent on the reasons for its establishment in the first place. This thesis will look beyond the current literature and examine the major players in the debates for clues as to where their ideas came from and why a Senate was accepted so readily.

The thesis seeks to answer the question by approaching it from two distinct but complementary directions: first a study of the intellectual forces found in the Convention Debates to identify the attitudes, hopes and aspirations of those making the decisions on Australia's Parliament; followed by fieldwork in the State and Federal parliaments to observe the working of practices, rituals and symbols at first hand. The methodology undertaken for the thesis was to begin with a study of the records of the debates of the Conventions of the 1890s which drafted Australia's Constitution. Running to several thousand pages these five volumes, which George Reid enumerated as 'one volume of moderate size ... one volume of 1,110 pages' and 'two volumes of 2,544 pages', formed the basis of the exhaustive research into the various influences on the delegates in their deliberations on the establishment of the Senate.⁹⁸ Australian State Parliaments and the Federal Parliament supported this primary study, which sought detailed, local knowledge and primary information on the processes involved in establishing and maintaining the separate upper houses in their traditional role, as well as the attitudes and experiences of parliamentarians. An added feature of the research was to personally observe the procedures, rituals and ceremonies of the State Parliaments as legacies of Westminster and to examine how and if these had been adapted by the Australian Senate. Was this another example of path dependence?

The thesis is structured in eight chapters, the Introduction setting out the context of the question, the gap in the research, a theoretical framework, a review of the literature, the aims of the project and a description of the methodology. This is followed by chapters analysing the comments of the delegates in the debates to seek, in turn, which constitutional authorities they were familiar with and possibly

⁹⁸ The Right Honourable Sir George Houston Reid, *My Reminiscences*, (London: Cassell and Company Ltd., 1917), p.163.

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influenced by, their visions of an ideal senate and an ideal senator, followed by three chapters on the influence of the models the delegates looked to in structuring the second chamber. These included the major models of Westminster, Canada, Washington and the Colonial Parliaments, extending to aspects of other Constitutions discussed by the delegates. The final section deals with how Parliamentary buildings, internal architecture, procedures, rituals and ceremonies reflect the heritage of Westminster.

I will argue that the decision to adopt a Senate was taken with both head and heart. The heads assumed that a second chamber was needed to placate the putative States or to restrain a fledgling democracy. The hearts yearned for a second chamber for historical and sentimental reasons that sometimes conflicted with the 'head' and are best understood as an effect of what social scientists call path dependence. Australia ultimately has a Senate largely for the same reason that the carpets and seats in the chamber are red.

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On Whose Authority?

Federation is not a question of textbooks. Henry Higgins, *OR*, 10 September 1897, p.346.

Higgins' impatient remark takes us to the heart of a question not previously explored in any detail by students of Federation: how important were learned authorities in shaping the system that was ultimately adopted? Ironically, the erudite and urbane Victorian lawyer regularly invoked learned authority in his contributions to debate, as did many of his colleagues. Who were these authorities and in what context were they introduced? The chapter which follows will systematically explore the citation of learned authority by the delegates; first it will identify and discuss the authorities cited and their works and then explore the influence of those referred to by various delegates, with a special focus on how their reading might have influenced their attitudes to the future structure and expected role of the Senate. I will argue that although some authorities were very influential they were not decisive in shaping the Australian Federation and in particular the Senate. Rather, learned authority was used to buttress existing viewpoints, it did not create them, and on at least one important issue the same authority was cited in support of opposite sides of the same argument. The chapter will also examine reasons for the increased use of authorities as the 1890s wore on. By authorities I refer to recognised writers, historians, and political scientists who published works relating to federations and constitutions up to 1898, and which could have been read by the delegates.

Some delegates demonstrated, even occasionally showed off, a thorough knowledge and understanding of the literature on federations, but it is possible that others read very little. Australian Constitutional historian J.A. La Nauze argued that

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'only a minority could be justly described as well-informed'.¹ It can be assumed that most of the delegates would have been familiar with a manual by Richard Chaffey Baker which was distributed to the delegates before the first Convention in 1891.² The work was published in May 1891, after the first Convention, to satisfy the many requests for copies Baker received from interested parties and so would also have been available to delegates to the 1897–98 Convention. Baker was a lawyer and politician who served in South Australia's Parliament from 1868 to 1901, in both the Legislative Assembly and the Legislative Council, and was President of the Council from 1893. He attended both the Conventions but not the 1890 Conference, and was elected Chairman of Committees in 1897–98. In 1901 he became the first President of the Australian Senate. His was an important contribution to the work of drawing up Australia's Constitution.

In his manual Baker described the American, Canadian, Swiss and South African Constitutions for the information of the delegates which provided them with a summary of the basic principles of Federation in a readily accessible form. In 1897 he published a further work, a pamphlet on various forms of executive government, for the benefit of delegates wishing to unravel the thorny problems of the topic— one close to Baker's heart.³ He also provided a list of other authorities for the further edification of the delegates. Baker's guide is a valuable insight into who were regarded as authorities at the time of the Conventions. Although not all the writers he recommended were referred to in the debates, enough of them were to conclude that many took Baker's advice seriously.

La Nauze suggested that the delegates might also have read other 'elementary text books' including Robert Garran's *The Coming Commonwealth*.⁴ Garran's work

¹ J.A. La Nauze, *The Making of the Australian Constitution*, (Melbourne: Melbourne University Press, 1972), pp.272-3.

² Richard Chaffey Baker, *A Manual of Reference to Authorities for the Use of the Members of the Australasian Convention Which Will Assemble at Sydney on March 2, 1891*, (Adelaide: W.K.Thomas & Co., 1891). The schedule of books recommended by Baker are listed at Appendix 1.

³ Richard Chaffey Baker, *The Executive in a Federation*, (Adelaide: C.E. Bristow, Government Printer, North Terrace, 1897).

⁴ La Nauze, *The Making of the Australian Constitution*, p.273; Robert Randolph Garran, *The Coming Commonwealth, an Australian Handbook of Federal Government*, (Sydney, London: Angus & Robertson, Simpkin, Marshall, 1897).

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was not published until 1897 and so was not available to the earlier meetings of 1890 and 1891. Alfred Deakin, a delegate from Victoria and a future Prime Minister of Australia, described it as ‘one of the most lucid and well digested political handbooks which we possess on this important subject’.⁵ The delegates’ readings naturally enough covered all the issues associated with federation, including the questions of bicameralism and upper houses. As discussed in the previous chapter, the decision to establish a bicameral Parliament for Australia had been accepted without question before the Conventions even began, so it was not then an issue, though occasional remarks from delegates suggest that it was not forgotten.

Apart from Baker’s manual, which was a useful introduction and probably a spur to the delegates to read about the theories of federalism, the principal published authority was without doubt James Bryce. His name crops up frequently in the debates, usually in relation to his magnum opus *The American Commonwealth*.⁶ According to Edwin Blackmore, Clerk to the 1897–8 Convention,⁷ Bryce’s work lay on ‘the Table’ throughout those proceedings.⁸ *The American Commonwealth* was first published in 1888 and was the earliest work to comprehensively address the institutions of the United States. It is a work of extraordinary brilliance and was published at a very opportune time for the Australian Federation Conventions. A distinguished British historian and statesman, Bryce published works on history and biography, as well as a study of South Africa after a visit to that country in 1897. Born in Belfast and with strong Scottish links, he was also an MP and cabinet minister, facts which, by the mid 1890s, would have given his views greater weight than those of many scholars. That Bryce was extensively read by many delegates is clear from the number of times he was quoted in the debates. He was even quoted before the 1890 Conference when Parkes referred to him on the subject of the government’s dependence on the will of the lower house, which meant that ‘no great scheme’ was possible because of the brief rule of

⁵ OR, 30 March 1897, p.288.

⁶ James Bryce, *The American Commonwealth*, 1st ed., Three vols., (London: Macmillan, 1888).

⁷ Edwin Gordon Blackmore, Clerk of the Legislative Council and of the Parliament of South Australia and later the first Clerk of the Federal Senate.

⁸ La Nauze, *The Making of the Australian Constitution*, p.273.

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governments under the parliamentary system. Parkes then compared it with the United States 'that unequalled system' in which the congress had no control over the executive, the president.⁹ Already in 1889 the comparative merits of the two systems were being considered and the opinion of Bryce taken seriously.

His name first appeared during the 1890 Conference where *The American Commonwealth* was given this glowing testimonial by Deakin:

In that monumental work by Mr. Bryce, *The American Commonwealth*, are summed up, in the most perspicuous and able manner, almost all the lessons which the political student could hope to call from an exhaustive, impartial, and truly critical examination of the institutions of that country with which we are so closely allied. As a text-book for the philosophic study of constitutional questions it takes its place in the very first rank.¹⁰

This was not all Deakin said about Bryce's work. He went on to expound from Bryce various facets of the American Constitution of 1787. His discussion revealed that he was thoroughly versed in Bryce's work and admired it greatly. He also demonstrated his admiration and knowledge of the Constitution of the United States. Only Deakin quoted from Bryce in 1890, but undoubtedly many of the delegates went home and read the work, for it was referred to often in the subsequent Conventions. The inclusion of Bryce in Baker's list would also have encouraged study of his work.

For a more general approach to the history of federalism, Edward Augustus Freeman was the main authority for those described by La Nauze as 'the more literate' delegates, especially Josiah Symon and Patrick Glynn who both quoted from him extensively.¹¹ Freeman (1823–1892) was an English historian and a prolific writer. He was appointed Regius Professor of Modern History at Oxford in 1884. His first book was a *History of Architecture* (1849), and he went on to publish on a wide range of historical and political matters in reviews, books and articles.¹²

⁹ A.W. Martin, *Henry Parkes: A Biography*, (Melbourne: Melbourne University Press, 1980), p.381.

¹⁰ OR, 10 February 1890, p.25.

¹¹ E.A. Freeman, *History of Federal Government in Greece and Italy*, ed. J. B. Bury, (London: Macmillan, 1893); La Nauze, *The Making of the Australian Constitution*, p.273.

¹² Margaret Drabble, ed., *The Oxford Companion to English Literature*, (Oxford: Oxford University Press, 1985).

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His best known work was his five volume *History of the Norman Conquest* (1867-79), his longest completed book, which was read by at least one delegate, Andrew Inglis Clark of Tasmania. Clark considered Freeman to be 'the English author who has studied the most closely, and written the most exhaustively on federal government'.¹³ Another of Freeman's works, *The Growth of the English Constitution*, was referred to by Isaac Isaacs and it is quite likely that other works of his were known and read by the delegates.¹⁴

Bryce had been a student of Freeman's and wrote a not entirely uncritical appreciation of him and his work for the *English Historical Review* in 1892.¹⁵ Latterly Freeman's work is not held in high regard. According to the *Oxford Companion to English Literature* he was handicapped by an 'uncontrollable prolixity' and that the 'selectivity of his sources and his eccentric handling of them meant that his work was already being superseded when he died in 1892'.¹⁶ Nevertheless his opinions and conclusions on the principles of Federation were taken very seriously by the delegates to the 1897-8 Convention.

Goldwin Smith (1823-1910) was another favourite authority among the delegates, his name cropping up to support a variety of speakers and arguments. He was included in Baker's list with reference to a journal article 'The Canadian Constitution' in 1887.¹⁷ First mentioned in 1890 by Deakin he was referred to again in 1891 by Edmund Barton, Baker, John Alexander Cockburn, again by Baker, Cockburn and Simon Fraser, in 1897, and in 1898 by Isaacs and Glynn.¹⁸ There is a preponderance here of South Australian delegates which indicates the influence of Baker's advice on their readings. A pattern can also be seen to emerge of delegates, after hearing the names of certain authorities and seeing them recommended in Baker's manual, taking the logical course of reading the works for

¹³ OR, 11 February 1890, p.35; 11 March 1891, p.243.

¹⁴ Ibid., 26 March 1897, p.180.

¹⁵ James Bryce, 'Edward Augustus Freeman', *The English Historical Review* VII, July 1892.

¹⁶ Drabble, *Oxford Companion to English Literature*, p.368.

¹⁷ Goldwin Smith, 'The Canadian Constitution', *Contemporary Review*, July 1887.

¹⁸ OR, Deakin, 13 February 1890, pp.96, 98; Barton, 6 March 1891, p.92; Cockburn, 3 April 1891, p.712, 16 September 1897, p.878; Baker, 6 March 1891, p.110, 23 March 1897, p.29; Fraser, 24 March 1897, p.80; Isaacs, 9 February 1898, pp.719, 758, 10 March 1898, p.2183; Glynn, 11 February 1898, p.854.

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themselves. In this the different pattern of electing delegates to the Conventions, and the break between 1891 and 1897, may have played a part in encouraging the delegates to read recognised works on federation, giving them time to study the subject more closely as well as considering the possibility of being elected as a delegate.

It was Deakin again who gave the lead on Goldwin Smith as only he mentioned him in 1890, though he did not mention him at subsequent meetings. A British historian, Goldwin Smith's reputation rested mainly on his book *Canada and the Canadian Question* (1891).¹⁹ This came after the article recommended by Baker but was probably a useful reference for the delegates who viewed Canada as an example of a successful Federation of separate British colonies and looked to the Canadian experience for models and danger signals. Smith's opinions of the Canadian federation were not flattering, especially his unfavourable views on the idea of a nominated Senate.²⁰ The Canadian Senate was nominated and, in Smith's opinion, did not work well.²¹ Not everyone admired his work, Fraser advising the Convention that Goldwin Smith was 'thoroughly disrated in that part of the world' [Canada].²²

An interesting and seemingly restless character, Goldwin Smith was a prolific writer, expounding his controversial views on democracy, imperialism, and studies in social science and literature, and it is likely that other works of his were familiar to the delegates, *The United States: an Outline of Political History* (1893), for example. Also a professor of modern history at Oxford he later left England for the United States where he held the professorship of English and Constitutional history at Cornell University until 1871, when he moved to Toronto, where he remained for the rest of his life. Goldwin Smith's history has lost much of its credibility because of his extreme racist views, especially his anti-Semitism. As Hugh Tulloch, an

¹⁹ Goldwin Smith, *Canada and the Canadian Question*, (London: Macmillan, 1891).

²⁰ OR, Barton, 6 March 1891, p.92.

²¹ Canada's Senate is still an appointed body. Smith, *Canada and the Canadian Question*, p. 163.

²² OR, 24 March 1897, p.80.

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English historian writing in 1988, put it: 'In isolation Smith succumbed to a racial paranoia'.²³

Another authority recommended by Baker was Albert Venn Dicey (1835–1922), a Professor of Common Law at Oxford. He was a respected constitutional theorist whose work *An Introduction to the Study of the Law of the Constitution* (1885) was regarded as a seminal work and guide to the understanding of the British Constitution. His biographer, Richard Cosgrove, commented, 'The clarity of his prose made the work accessible to a wide spectrum of educated opinion'. He goes on to say that Dicey reduced the complex topic to three concepts: parliamentary sovereignty, the rule of law, and constitutional conventions (unwritten rules).²⁴ Three of Dicey's works were listed by Baker, but the one of most interest to the delegates was *An Introduction to the Study of the Law of the Constitution* (1885), sometimes referred to simply as *The Law of the Constitution*. Andrew Joseph Thynne and Cockburn quoted Dicey twice in 1891, and though neither of them name the work, Cockburn speaks of his 'admirable work on Federal Government'.²⁵ In 1897 Isaacs brought Dicey in to support his argument against equal representation in the Senate and named his source as Dicey's *The Law of the Constitution*.²⁶ In 1898 Bernhard Ringrose Wise also brought Dicey and the same work into his argument on legal matters.²⁷

Though not mentioned by other delegates it can be assumed that with Baker's recommendation and Dicey's reputation as a leading constitutional scholar of his day, his work was not unfamiliar to the delegates and must have had some influence on their thinking. Bryce, Freeman, Goldwin Smith and Dicey were colleagues and contemporaries in the Oxford milieu of their era and were familiar

²³ Hugh Tulloch, *James Bryce's American Commonwealth: the Anglo-American Background*, (Woodbridge: Royal Historical Society: the Boydell Press, 1988).

²⁴ Richard Cosgrove, 'Dicey, Albert Venn, (1835-1922)', *Oxford Dictionary of National Biography*, 2004, vol.16, p.44.

²⁵ *OR*, 10 March 1891, p.198.

²⁶ *Ibid.*, 10 September 1897, pp.212-3.

²⁷ *Ibid.*, 1 March 1898, p.1686.

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with each other's views. Bryce even dedicated his *American Commonwealth* to Dicey.²⁸

Walter Bagehot, a 19th century British economist and commentator, was another English authority referred to by the delegates, though mostly in the later stages in 1898.²⁹ His book *The English Constitution*, first published in 1867, explored the constitution of the United Kingdom and considered the contrasts between the British and American systems. Bagehot's work came to be regarded as a standard work on government and his observations on the role of the monarchy and the executive influenced interpretations well into the 20th century.³⁰ For the delegates it was Bagehot's decided views on the superiority of the British cabinet system of government over the United States Presidential system, which he considered to be flawed and inflexible, that were particularly relevant. His work provided his readers, amongst whom were Baker, Glynn, and Isaacs, with insights, information and conclusions on various aspects of constitutions and of government.

Some less frequently cited authorities were the more specialist writers John George Bourinot (1837–1902), a Canadian author, and Erskine May (1815–86), a parliamentary specialist whose views on procedure were canvassed by some delegates. Bourinot and May were writers with some points in common. Both were parliamentary officials and both wrote accounts of parliamentary procedure as they saw it in their respective institutions. Bourinot, a journalist and parliamentary reporter, was an officer of the Canadian Senate and House of Commons. He derived his authority from his experience in these positions, and in his role as Clerk of the House of Commons would have advised the Speaker and other members on parliamentary procedure. La Nauze unkindly described him as 'one of those worthy parliamentary officials who (like Blackmore in his own sphere) were content to compile rather than analyse', and his work as 'mostly ... uncritical and

²⁸ Tulloch, *James Bryce's American Commonwealth: the Anglo-American Background*, pp.37-8, 21, 26, 38-44.

²⁹ Walter Bagehot, *The English Constitution*, (London: C. A. Watts, 1964).

³⁰ Joseph Hamburger, 'Bagehot, Walter, (1826–1873)', *Oxford Dictionary of National Biography*, 2004, vol.3, pp. 218–224.

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descriptive'.³¹ Baker listed two of Bourinot's books in his manual: *Federal Government in Canada* (1887) and the *Manual of the Constitution of Canada*. But from the quotations mentioned in the debates it is clear that other works of his were read by delegates. Joseph Abbott for example described Bourinot as 'a great constitutional writer ... who is accepted as an authority on most matters relating to parliamentary law, and who is continually quoted as a constitutional authority throughout the British Empire'.³² First referred to by John William Downer in 1891, he was also quoted by Isaacs and Deakin in 1897 and Symon in 1898, usually on procedural matters.³³

May served a long period at Westminster. He rose through the ranks from assistant librarian to become Clerk of the House of Commons from 1871 to 1886. During his service he wrote several works on Constitutions but it was his *Parliamentary Practice*, first published in 1841, that would have been of most interest to the Convention delegates. His work was not listed by Baker but it had been used by the New South Wales parliament. In 1851, according to May's biographer, William McKay, the Speaker of the New South Wales Legislative Council told May that his work was indispensable to the 'colonial legislatures'.³⁴ From this it seems that other Australian legislatures used his work and that delegates with a parliamentary background would have been familiar with his writings. He did not appear in the debates until 1898 when only Baker and Barton referred to him in a discussion on the finer points of procedures relating to petitions and Bills.³⁵ May edited a further eight editions of *Parliamentary Practice* and it is still updated and in print.³⁶ Undoubtedly Bourinot and May had a strong influence on the procedures for the new Federal Parliament.

³¹ La Nauze, *The Making of the Australian Constitution*, p.274.

³² OR, 11 March 1898, p.2287.

³³ Abbott referred to an article 'The Canadian Dominion and proposed Australian Commonwealth: a Study in Comparative Politics', *Ibid.*, 1 March 1898, p.2287; Downer, referred to 'an essay on Canadian Federation', *Ibid.*, 3 April; 1891, p.715; Symon referred to a 'valuable article in the *Arena*', *Ibid.*, 31 January 1898, pp.344-5. Isaacs did not specify his source, *Ibid.*, 26 March 1897, p.175.

³⁴ William McKay, 'May, Thomas Erskine, Baron Farnborough, (1815-1886)', *Oxford Dictionary of National Biography*, 2004, vol.37. pp. 561-563.

³⁵ OR, Baker, 4 March 1898, p.1869; Barton, 8 March 1898, p.2061.

³⁶ Sir Donald Limon, ed., *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, (Butterworths, London, 1997).

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Other authorities mentioned by the delegates, though not obscure or minor in their own right, did not feature often in the debates. These included classical writers relating to ancient or older constitutions and some contemporary writers whose work only touched on the business of the debates or who were referred to infrequently. In this regard and in a fine show of erudition and a scholarly duel with Symon, Higgins managed to introduce six authorities and some classics in one speech on 10 September, 1897.³⁷ It was an impassioned speech against equal State representation in the Senate and he brought in Edmund Burke, Edward Freeman, John Bury, Montesquieu, Bishop Thirlwall and Strabo to support his argument. The debate on the controversial question of whether there should be an equal number of senators for each State had references to eight authorities by six delegates and became a battle between Symon and Higgins, who held opposite views on the question.

Burke (1729-1797) was not an obscure figure but was only twice mentioned in the debates. A statesman and an 18th century political thinker and parliamentarian he played a prominent part in all major political issues in Britain for about 30 years after 1765, when he was elected to the British House of Commons, and remains an important figure in the history of political theory. John Bagnall Bury was a classical scholar and editor of Freeman's *History of Federal Government*, to which he added some thoughts of his own, while Montesquieu was a major figure of the French Enlightenment credited with being one of the principal inventors of political science.³⁸ Bishop (Connop) Thirlwall (1797-1875) referred to once, was one of the more obscure authors cited. His claim to constitutional fame stems from his *History of Greece* (1835-1844) and a translation of Niebuhr's *History of Rome*. His brief mention and the dates of his work suggest that his influence on the delegates was probably negligible and pertained to the Grecian system of Government, a recognised antecedent for Federal Government.³⁹ Equally obscure was Strabo

³⁷ OR, 10 September 1897, p.348.

³⁸ Peter V. Conroy Jr, *Montesquieu Revisited*, ed. David O'Connell, vol.829, (New York: Twayne Publishers, 1992), cover essay.

³⁹ The Skythian Campaign, www.metrum.org/perwars/skyth.htm. Accessed 16 July 2008.

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(63BC–24AD), a Greek geographer and philosopher, whose work *Geographica* impressed Higgins with its description of the Constitution of the Lykian League.⁴⁰

Higgins had more to say on 15 September when he introduced Benjamin Franklin (1706–1790), the American constitutionalist and John Stuart Mill (1806–1873) a noted philosopher whose works are legion, but in this case his essay ‘Of a Second Chamber’ in *On Liberty* was the source of Higgins’ comments.⁴¹ His argument here is on the perceived necessity of a second chamber and he introduces his speech with the words: ‘I submit, that in no form of government are two houses necessary—I hope I shall not be taken as advocating that there should be only one house in this government’. It is difficult to interpret this remark in any other way, especially as he goes on to say ‘As Benjamin Franklin said a long time ago, the system of having two houses does bear a resemblance to trying to drag a cart with one horse in front and one horse behind, one horse pulls one way and the other horse pulls the other way’.⁴² Higgins seems to contradict himself here but underlying his comments is his opinion, never openly expressed, that an upper house was an anachronism. His biographer comments that Higgins ‘had little time for States rights’, rights which were the main justification for a Senate.⁴³ In this speech he goes as far as he ever does but as the decision for bicameralism was now irrevocable he was circuitous in his comments.

William Edward Hartpole Lecky (1838–1903) was another of the authors referred to infrequently in the debates, mostly in reference to the referendum. Lecky was an Irish historian whose major work was an eight volume *History of England in the Eighteenth Century* (1878-1890). This, says Joseph Spence, his biographer, was regarded ‘as a manual for Irish politics’.⁴⁴ Thomas Playford quoted from it as early as 1890,⁴⁵ but it was another and later one of his works, *Democracy and Liberty*

⁴⁰ OR, 10 September 1897, p.348.

⁴¹ John Stuart Mill, *On Liberty and Other Essays*, ed. John Gray, (Oxford University Press, 1991,) pp.384-392.

⁴² OR, 15 September 1897, p.790.

⁴³ John Rickard, *H.B.Higgins: The Rebel as Judge*, (Sydney: George Allen & Unwin, 1984), p.94.

⁴⁴ Joseph Spence, ‘Lecky, (William) Hartpole, (1838–1903)’, *Oxford Dictionary of National Biography*, 2004. vol.33, pp.27–32.

⁴⁵ OR, 13 February 1890, p.13.

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(1896), to which Dobson and Isaacs referred when they cited him in 1897 and 1898. In this work Lecky referred to the 'tyranny of the majority' a phrase used by Dobson, while Isaacs cited Lecky's work in reference to the idea of a referendum: 'It is to be remembered ... that the referendum is not intended as a substitute for representative government'.⁴⁶

Other authorities cited included a Canadian parliamentary writer, Alpheus Todd (1821-1884). An official in the Canadian parliament, Todd made a study of responsible parliamentary Government and focused on the role of the crown and its representative in the Colonies, the Governor-General. Under the principle of responsible government, executive responsibility resides in the Prime Minister, who is leader of the House with the greater financial powers. In turn the Prime Minister is responsible to the other Ministers who form a Cabinet, through them to the Parliament and through Parliament to the people. Todd's work *Parliamentary Government in the Colonies*, was recommended by Baker and referred to in discussions on the constitutional role of the Governor-General and the Crown in the Australian Constitution as well as consideration of some military issues.

Judge Joseph Story, an American lawyer, whose work *Commentaries on the Constitution* was recommended by Baker, was an authority used more frequently by the delegates. Symon, when introducing him into the debates, prefaced a quotation from him with this accolade: 'Mr. Justice Story ... probably one of the greatest constitutional writers who ever lived in the United States or any other country, and an authority whose value will not be questioned'.⁴⁷ Story's work was the basis of a lively discussion between Symon, Wise and Barton on equal representation and the existence of the Senate, on 10 September 1897. Wise quoted from Story in this way:

... he points out two grounds for the existence of the senate, and emphasises a double reason for its existence in connection with our proposal. The senate is not merely a state house-it is something more; it is also a revising chamber ... which we determine shall be free from the faults, ... of

⁴⁶ Ibid., Dobson, 15 September 1897, p.637; Isaacs, 10 March 1898, p.2184.

⁴⁷ Ibid., 10 September 1897, p.294.

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the revising chambers of the separate colonies, by being more in touch with popular sentiment.

To which Higgins riposted: 'Why is a state house particularly fit to be a revising chamber?'⁴⁸ As has been shown Higgins doubted the need for an upper house and he then brought the verbal jousting to a close with the remark that heads this chapter: that 'Federation is not a question of text books'. This he immediately followed up with a remarkable speech citing a plethora of textbooks, perhaps to demonstrate that he, at least, was as well read as anyone else.⁴⁹

An American academic and political scientist, John William Burgess (1844–1931) was drawn on by some delegates, including Baker, Symon, Isaacs and Glynn. His works were not in Baker's list but his *Political Science and Constitutional Law* and *Sovereignty and Liberty* were both mentioned by name. Glynn and Isaacs were familiar with his works and quoted him to support their arguments on Constitutional amendments. Burgess was the author of several works on constitutional and political subjects, and was a respected authority in these matters.⁵⁰

Dobson, in an anecdotal and rather obscure argument about democracy, brought in Ralph Waldo Emerson (1803-1882) and Thomas Carlyle (1795-1881). His remarks had little to do with the works of either of these writers but revealed that Dobson himself was hostile to the idea of democracy.⁵¹ Words of wisdom were also drawn from United States politicians; Woodrow Wilson's work *Congressional Government* for example.⁵²

This summary of authorities referred to by the delegates shows that at least some of them had read widely on the subject of federation, most often in relation to the American experience. Baker's manual was probably well perused and his list of recommendations would have provided a valuable guide to the other delegates. Isaacs, Higgins, and Glynn were the most frequent users of quotations and their

⁴⁸ Ibid., p.326.

⁴⁹ Ibid., p.346.

⁵⁰ Ibid., 9 February 1898, p.719.

⁵¹ Ibid., 23 February 1898, p.1404.

⁵² Wilson was an American politician and lawyer who went on to become, in 1912, the 27th President of the United States.

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range of authors was wide. Baker and Deakin also used quotations frequently and joined in discussions on the views of various authorities to validate their arguments or to confound those of other delegates.

There is evidence in the records that the quoting of authorities was not always well received. Downer, for example, mocked Higgins and his reliance on James Bryce: 'I have the greatest respect for Mr. Higgins, and I humbly follow Mr. Bryce when Mr. Bryce happens to agree with my own views'. This comment conveys a hostile attitude on the part of Downer to the use of authorities by delegates to make a point. He may have considered that the delegates should be more independent in their views rather than 'humbly' following the dictates of 'authorities' such as Bryce, however well regarded. He followed this up later in a tart response to an interjection from Barton when he said 'I am simply dealing in a spirit of humility with Mr. Higgins and his authority, Mr. Bryce'.⁵³ Clearly Downer was not impressed with Bryce.

Higgins, a frequent user of quotations, was also the least tolerant of others' use of authorities. His cantankerous remark about text books came during an argument with Symons which seemed to be about who could demonstrate a more learned approach.⁵⁴ The exchange ended with this closing remark from Higgins: 'there has been no attempt to justify this equal representation, except by reading from text writers a sort of loose statement as to the American system as matters of fact'.⁵⁵ Clearly Higgins was also becoming impatient with the constant parading of authorities, though he himself quoted frequently even ostentatiously from several sources, but perhaps he could perceive that opinion was mostly against him on this point. Symon, also a frequent user of quotations, provided another illustration of impatience with authorities and expressed the feelings of some delegates on the matter when he prefaced a speech with: 'I do not propose to deal with the matter academically for more than one single moment' and then, after making his point

⁵³ *OR*, 29 March 1897, p.209.

⁵⁴ *Ibid.*, 10 September 1897, p.349.

⁵⁵ *Ibid.*

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'this is the only academical quotation with which I shall trouble hon. members'.⁵⁶ There were others who showed a reluctance to quote from authorities and apologised to delegates for doing so. Wise, for example, when he quoted from Story prefaced his speech with: 'I am very unwilling indeed to quote authorities, but so many authorities have been already quoted that I cannot help referring to a quotation from Mr. Justice Story'.⁵⁷

Authorities seem to have been used to bolster the views of the speakers with credibility as well as a perception of learning, but adverse comments about quotations reflected a disinclination on the part of some of the assembled delegates to accept such counsel and a sense that authorities had been overused. Wise's professed unwillingness to cite authorities suggested a degree of self-sufficiency in his mind and the minds of other delegates who considered that Federation was a test of self-reliance and independence and resented the foisting of the views of outsiders into the debates. Wise and others may also have found some of the quotations superfluous, or irrelevant, or time wasting, especially, for example, in the extended exchange between Symon and Higgins.

The next section will examine the topics and arguments delegates drew from their reading and how they may have been influenced by them, with a focus on the question of an upper house. There were four major issues on which authorities were called upon to support opposing arguments in the debates involving the Senate and its role: the methods of electing senators; equal representation of the States; the power of the Senate in regard to money bills; and whether the Cabinet system of responsible government or the American system of divorcing the Ministry from the legislature was the most appropriate.

The first authority to consider is Richard Baker, the only Australian authority referred to by the delegates, apart from the brief mention of Garran. The works cited were the manual he provided for the instruction of the delegates in 1891 and

⁵⁶ Ibid., p.291-2.

⁵⁷ Ibid., p.326.

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the later manual on the executive in a Federation. James Munro acknowledged Baker's contribution early in the 1891 Convention:

We have come here to frame a constitution, and the instructions that were given to us, I am happy to say, are very clearly laid down by the hon. member, Mr. Baker, in the book which he was good enough to distribute amongst us.⁵⁸

In 1897 Bernhard Wise described it as a 'book to which frequent reference has been made'.⁵⁹ Higgins called upon his views most frequently, quoting him on three occasions in 1897, all from the pamphlet. He was particularly taken by Baker's idea of dual citizenship:

in a pamphlet issued by Sir Richard Baker, ... he points out that the essence of Federation is that a citizen has got two citizenships—he is a citizen of the Federation for federal purposes, and a citizen of the State for State purposes.⁶⁰

Deakin also used Baker's concept of dual citizenship and repeated a quotation, used by Higgins only a few days earlier, to support the view that you cannot have responsible Government in a federation:

There must be a dual citizenship. In a Federation the people are citizens of two different nationalities, if I may so express myself. They are citizens of the States and also of the Federation. Both the States and the Federal Governments act directly on them. In the particular form of union, which in contradistinction to Federation is called Confederation, the government of the central body acts upon the States as States, and not upon the individual citizens of the States as citizens of the central Government.⁶¹

The quotations were used in the discussion on whether the two houses should have equal powers or that the power to initiate and amend money bills should be the sole prerogative of the lower house, the basis of responsible government. It was Baker's strongly held view that responsible Government, or the Cabinet system, was incompatible with Federation:

⁵⁸ Ibid., 5 March 1891, p.46.

⁵⁹ Ibid., 1 March 1898, p.1687.

⁶⁰ Ibid., 24 March 1897, p.97.

⁶¹ Ibid., 30 March 1897, p.286.

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I do not say that we cannot form a workable government with the executive form of cabinet; but I do say that you cannot form a workable federal government, that the machine will not work in the manner intended—at all events, it will not work in the manner I intend, it will not work in the manner the people in the smaller states intend—it will result in an amalgamation instead of a federation.⁶²

Although he pursued his ideal energetically, Baker signally failed to persuade the Conventions to abandon the principle of a traditional Cabinet system on the Westminster model, a system then in place in all Australian Colonial Parliaments. Nevertheless, Baker would have had a strong personal influence on the thinking of the delegates as a respected parliamentarian; he was elected Chairman of Committees in the 1897–8 Convention. He made his views well known during the debates and through his publications, but tradition and sentiment underpinned by the effect of path dependency, won the day, together with a perception that two houses with equal powers could lead to serious conflict. The familiar and comfortable system of responsible Government as practised in Westminster and the colonial parliaments was adopted for the federal sphere.

Although Baker was influential, it was Bryce who was most frequently quoted and referred to during the debates. His name was invoked on no less than 45 occasions, mostly in 1897, and by many delegates. Of course many references were only slight and not necessarily quotations or citations of his work in support of an opinion. Nevertheless, these figures suggest that he was widely read, even by those who made no reference to his work, and it can be speculated that the actual references would reflect only some of the ideas the delegates drew from him. One delegate commented 'I dare say hon[ourable] gentlemen have nearly all of them very carefully read the admirable work of Mr. Bryce'.⁶³ Deakin referred to Bryce most frequently and, as mentioned earlier, it was he who strongly recommended Bryce's *The American Commonwealth* to the delegates at the 1890 Conference.⁶⁴

⁶² Ibid., 17 September 1897, p.785.

⁶³ Ibid., Rutledge, 9 March 1891, p.147.

⁶⁴ Ibid., 10 February 1890, p.25.

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Deakin also held a long correspondence with Bryce on aspects of Australia's Federation.⁶⁵

Bryce's work on the American Constitution was used as an authority and guide for the framing of a new Australian Constitution in the Australian Convention debates. This illustrates the close links between the three countries and their governance and clearly demonstrates the evolution of the Australian Constitution from the two major models of the United States and the British. It is apparent from the first comment on Bryce by Deakin that he was greatly admired and respected as a scholar. His work is a comprehensive coverage of all aspects of the United States Constitution and La Nauze has gone so far as to suggest that because of the influence of Bryce's work on the ideas of the delegates, he could be counted as one of the 'fathers' of the Australian Constitution.⁶⁶

To indicate the progress in thinking from the early days of the 1890 Conference to the final days of the 1898 Convention, the use of authorities in the separate meetings will now be addressed in chronological order. Only three authorities were cited in 1890: Bryce, Freeman and Goldwin Smith. These references were probably a spur to delegates at the later Conventions to study other works on federation. As discussed in the Introduction, the 1890 Conference was set up to consider how to proceed to Federation and it recommended the subsequent formal convention of 1891. Discussion at the conference was on a more general level than subsequently and although delegates aired their views on various aspects of the Federation proposal, they were there mainly to map out the way forward.

Deakin first quoted Bryce early in 1890, recommending Bryce's work to the other delegates and then extolling the United States system as described by Bryce. Quoting extensively he commended the 'sovereign authority' and complete independence of the United States Federal Government from the State Governments and discussed the merits of referendums and General Elections. In this he drew attention to the Canadian and Swiss systems with the conclusion,

⁶⁵ Papers of Alfred Deakin, NLA, MS 1540. Also available in NLA Digital Collections website. 'Manuscripts, NLA'.

⁶⁶ J.A. La Nauze, 'Who Are the Fathers?' *Historical Studies*, Vol.13, No.51, October, (1968).

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drawn from Goldwin Smith, the Canadian constitutional writer, that the Canadian Government was deficient in not having the benefit of a referendum provision in their Constitution. The idea of a referendum was drawn from the Swiss and Canadian experiences substantiated by Bryce and Smith to support the view that it should be included in the Australian Constitution.⁶⁷

Clark brought Freeman into the discussion to suggest there was a sentimental strand in the Federation proposal. 'After all, sentiment is the basis of more than one-half of human life'. This remark was based on an article by Freeman discussing the practical and the sentimental in politics.⁶⁸ Clark used this argument to support his own view that Australia should not adopt the Westminster system of responsible government but adopt the American system of divorcing the executive from the legislature in these words: 'that what had been in the early stages of every political question derided and ridiculed as its sentimental aspect afterwards proved to be its real practical aspect'.⁶⁹ Here he saw the adoption of the American system as the 'sentimental' proposal but which would ultimately be found to be the 'practical' system. The discussion of the 'sentimental' against the 'practical' aspects is another view of the emotional and path dependence influences bearing on the delegates' decisions, though argued in a more complex and cerebral manner.

The 1890 Conference closed with agreement on a series of Resolutions to be considered by the forthcoming Convention which opened in 1891. It began with a preliminary discussion on the principles of Federation and gave the delegates a chance to air their views on a multitude of issues before settling down to seriously consider the Resolutions. In the preliminary discussions Baker made an extraordinary speech calling on such authorities as Woodrow Wilson, Bagehot and Bryce to support his fervent argument against a Westminster style responsible government. 'I think I shall show that all powers shall be concentrated in one branch of the legislature, in which the majority, and the majority only, shall rule'.⁷⁰ But the main authorities referred to in 1891 were: Bryce(6) Goldwin Smith(3),

⁶⁷ OR, 13 February 1890, pp.25, 26, 95, 96, 98.

⁶⁸ E.A. Freeman, 'Sentimental and Practical Politics', *Princeton Review* 1, 1879. pp.312-344.

⁶⁹ OR, 11 February 1890, p.35.

⁷⁰ Ibid., 1 April 1891, p.543.

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Dicey(3), Freeman(1), Bagehot(1) and Bourinot(1). Bryce was the dominant authority and was quoted by Deakin, Rutledge, James Lee-Steere, Nicholas Brown, and Charles Kingston, on various topics, including the powers of the proposed two houses, the method of selecting Senators, and how to deal with possible deadlocks. Deakin used him to support his views on the powers of the proposed upper house compared with the American reality, saying 'If we endow them with an absolute veto, we must mean them to exercise it'.⁷¹ Deakin and Baker both cited him to support opposite views on the question of equal powers for the two houses and Lee-Steere used Bryce to support the same argument, quoting him as saying there had never been any serious deadlock between the houses in the United States: 'How are the rights of the smaller colonies to be safely guarded unless the senate we are about to establish is to have rights co-ordinate with those of the lower house?'⁷² Co-ordinate was the term used to describe equal powers of the two houses.⁷³ Rutledge made a thoughtful speech using Bryce's words on the difference between European upper houses and the United States Senate. In particular he drew the comparison that European upper houses were divided on the lines of wealth and power, while the proposed Australian upper house should be more in the shape of the American Senate.⁷⁴ This did not add much to the discussion except to demonstrate that Rutledge had read Bryce and suggested he supported an American model of federation.

Bryce had written extensively and comprehensively on the issue of equal powers, which focused mainly on whether the Senate should have the power to initiate, amend or reject money bills. This was a major topic and hurdle for the Conventions and was argued fiercely, the smaller States calling for equal powers for both houses, and the larger states resisting and calling for a more powerful lower house. This issue also impinged on the issue of a cabinet system of Government—the system eventually adopted.

⁷¹ Ibid., 5 March 1891, p.78.

⁷² Ibid., 1 April 1891, pp.543-4.

⁷³ *Oxford English Dictionary* says: 1. Of the same order; equal in rank, degree, or importance (*with*); opposed to *subordinate*

⁷⁴ OR, 9 March 1891, p.147.

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Bryce's views on upper houses were canvassed again by Deakin on the method of selecting senators. Opinion was divided over whether nomination or election was the best method. As several of the Colonies appointed their upper houses there was strong support for the nomination principle in 1891. Barton, a supporter of the election of senators, drew Goldwin Smith into the discussion. Smith had called nomination a 'barefaced proposal' and Barton warned the Convention that:

If you resolve to accept the Constitution of the United States Senate for our federal constitution you will find it to be an almost absolute necessity of the case that all your second chambers in your individual states shall be elective.⁷⁵

His argument, somewhat difficult to follow, suggests that under the nomination principle senators would be chosen by State Councillors, some themselves nominated. This, he thought, would make it necessary to have elective upper houses in the States to avoid too much power going into the hands of an unelected minority. Brown introduced Bryce in a discussion of responsible government as understood in the Australian colonies and about which there was considerable conflict:

the institution of responsible government, notwithstanding the carping, and sneering, and adverse criticisms to which it has been subjected from time to time has, on the whole, worked fairly well.⁷⁶

Thynne brought in Dicey to support his views on Federation and focused on the necessity for an 'immutable Constitution ... or at any rate one that could only be changed by some authority above and beyond the ordinary legislative bodies'. This was an early argument, not here clearly articulated, for a referendum. He also quoted Dicey to argue that the laws of the states should be subordinate to the laws of the Commonwealth.⁷⁷ Baker supported this argument by quoting Goldwin Smith and suggesting that the Canadian system of a central Government with more power than the States, or in Canada's case the Provinces, was disruptive and should not be adopted:

⁷⁵ Ibid., 6 March 1891, p.92.

⁷⁶ Ibid., 10 March 1891, p.210.

⁷⁷ Ibid., 6 March 1891, pp.105-6.

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each province of the Dominion of Canada is constantly trying to get the better of its neighbours, trying to obtain more from the federal government; and I am afraid that the authors of the Canadian federation, in mixing up federal finance with provincial finance have laid the seeds of the dissolution of that union.⁷⁸

It was left to Clark to introduce the other big gun among the authorities, Freeman, who only appeared once in 1891. Clark invoked Freeman to suggest that to structure a sound Federation they must 'depart from the beaten track'. This was in response to an argument from Duncan Gillies who recommended following the path of experience.⁷⁹ The 'path of experience' is precisely how the modern concept of path dependence is used in a social science context. Elements of a strong path dependency influence are evident here when Gillies was confronted with the sustained, if ultimately unsuccessful, resistance by Clark. The major arguments using Bryce's work in 1891 were on the questions of the relative powers of the two houses, how to deal with deadlocks and the method of the selection of senators. Bryce favoured the election principle, not then in practice in the United States, and his authority was used by Kingston to support this view: '... bad candidates will have less chance with the party at large and the people than they now have ...'⁸⁰ The Canadian example was also cited by Downer quoting from Bourinot and introducing the question of conventions, and their place in government. Conventions, or unwritten rules, were at the heart of the Westminster tradition.⁸¹

As in 1890 the major points of conflict in 1891 emerged as: equality of representation in the Senate; responsible Government; election of senators; and the relative powers of the two houses. These issues were contentious throughout the conventions and were eventually settled only in 1898 when the final version of the Constitution Bill was produced. It can be seen that the authorities, particularly Bryce, were very influential in shaping the ideas of the delegates in these matters, both those who quoted them and those who listened to the arguments. The

⁷⁸ Ibid., p.110.

⁷⁹ Ibid., 11 March 1891, p.231.

⁸⁰ Ibid., 2 April 1891, p.596.

⁸¹ Ibid., 3 April 1891, p.715.

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quotations from the Canadian writers illustrate that the Canadian influence and example were well considered, though not usually in a positive light.

As noted the delegates to the 1897 Convention were elected by the Colonies on a manhood suffrage, not nominated by the Parliaments as in the previous meetings, though many of the same delegates attended. They were now more prone to quote from authorities, presumably having done their homework. Isaac Isaacs was perhaps the best read of the delegates and one of the ablest and best informed members of the convention but his pedantic excesses irritated colleagues especially Barton, the Convention leader.⁸² Among other works Isaacs had read all five volumes of Elliot's *Debates on the United States Conventions* which would have given him a sound basis for his opinions on the United States Constitution.⁸³ The delegates were also more conscious of their responsibility now they were in the final stages of the process of drafting a Constitution. Growing attendant publicity reflected the increasing gravity of their discussions and they turned to recognised authorities to strengthen the case for their decisions. The propensity to quote learned authorities at this stage sprang from a need to provide guidance to their colleagues and the public and add legitimacy to their arguments. It was a demonstration of erudition and scholarship which gave their comments added authority. The last Convention was a long drawn out affair, spread over three sessions. Queensland failed to send delegates to this Convention due to difficulties with its Parliament, but Samuel Griffith, the Queensland Attorney-General, kept in touch with the proceedings. Griffith had been a key player in the drawing up of the Bill of 1891 and E.M. Hunt, an American historian writing in the 1930s, describes him as 'one of the leading authorities on the American Constitution'.⁸⁴

⁸² Geoffrey Sawer, *The Australian Constitution*, (Canberra: Australian Government Publishing Service), 1975), p.22.

⁸³ Zelman Cowen, *Isaac Isaacs*, (Melbourne: Oxford University Press, 1967), p.56; Jonathon Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution as Recommended by the General Convention at Philadelphia in 1787*, 5 vols., (New York: Burt Franklin, 1787).

⁸⁴ E.M. Hunt, *American Precedents in Australian Federation*, (New York: Columbia University Press; London P. S. King, Ltd., 1930), p.19.

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Twenty-one authorities were quoted in the 1897–8 Convention. Their comments were not all in reference to the Senate, and here I will focus only on arguments concerning the structure and role of the proposed upper house. Again most of the debates were concerned with the four great questions: equality of representation in the Senate; election of Senators; the relative powers of the two houses; and responsible Government, plus the provision for deadlocks, a difficult and complex problem which occupied many days of debate.

Bryce again dominated the references, being cited 23 times and by 11 delegates.⁸⁵ The other most frequently quoted writer was Freeman with 15 mentions. The work of these two writers and the guidance of Baker's manual provided a framework for the debates on the decisions facing the delegates. The less frequently quoted writers also added more food for thought and strength to their arguments, though some delegates found the introduction of authorities to be a tiresome and unnecessary intrusion. The views of Bryce and Freeman on the election of senators and equal representation were adopted but Baker's passionate support for the American model was not enough to convince the delegates. It is ironic that for all the guidance his readings must have provided to the delegates, his opinions did not prevail.

In 1897 Bryce's authority was called upon on a range of issues which reflects the thoroughness of his work. Higgins brought him in first in a long speech in the general discussion before the Convention got down to the real business of considering the Clauses of the Draft Bill in detail. He quoted Bryce on the election of senators, the powers of the central Government, responsible Government and the question of the equal number of senators for each state.⁸⁶ Downer also brought in Bryce on the election of senators, arguing with Higgins' interpretation and said he had come to 'an absolutely different conclusion' from Higgins. Downer had earlier expressed his dislike of placing too much reliance on the words of learned authorities and seemed to particularly resent the reliance on Bryce. It also comes

⁸⁵ The delegates were: Higgins, Downer, Fysh, Deakin, Glynn, Barton, Kingston, Dobson, Isaacs, Symon, and Forrest.

⁸⁶ *OR*, 25 March 1897, pp.98-101.

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down to a matter of interpretation and his claim that he had come to an 'absolutely different conclusion' to Higgins, demonstrated the danger in attributing too much influence to learned authorities. In the end the decisions had to be made on the facts and the circumstances. Downer did admit that he had changed his views over time and now, in 1897, supported the election of senators against nomination so the debates and discussions had some influence on the voting patterns in the divisions.⁸⁷ Kingston also cited Bryce on the issue of the election of senators and apprised the Convention that he had been in correspondence with Bryce on the topic. He had, he said, sent Bryce a copy of the draft Bill, asking for comments upon it. He reported that Bryce had replied favourably saying he was pleased 'to express his most delighted approval'.⁸⁸ This conflicts with Bryce's comments in a letter he wrote to Barton in 1900 when the delegates were in London to negotiate the passing of the Bill and in which he described it as a 'very scanty, fragmentary, and imperfect sketch of a Federal Constitution'.⁸⁹

The issue of responsible government saw Bryce again brought in to support arguments. Fysh, in a speech supporting the concept, referred to Bryce and said he had come to the conclusion that if responsible government had been the case in England at the time of the American Conventions then the Americans probably would have adopted it.⁹⁰ Deakin contributed an unusual remedy for disputed legislation, drawn, he said, from both Bryce and Bourinot. He proposed that there should be a provision for legislation passed by both Houses to be open to challenge by the Senate representatives of any State and the opinion of the Supreme Court sought; the operation of the legislation to be suspended until a decision was made. 'Oh that would never do' interjected an unidentified Hon. Member at this suggestion, which, unsurprisingly, did not get anywhere.⁹¹ The issue of deadlocks, together with equal powers for both houses were raised by Glynn and Dobson, and the reading of Bryce convinced them and Deakin that the

⁸⁷ Ibid., 29 March 1897, p.209.

⁸⁸ Bryce, quoted by Kingston, *OR*, 10 September 1897, p.288.

⁸⁹ Cited in Geoffrey Bolton, *Edmund Barton: The One Man for the Job*, (St. Leonards, Australia: Allen & Unwin, 2000), pp.209-10.

⁹⁰ *OR*, 29 March 1897, p.243

⁹¹ Ibid., 14 April 1897, p.582.

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powers of the houses should be co-ordinate.⁹² This was also Clark's firmly held view, but they were in the minority.

Higgins was strongly against equal representation in the Senate and argued, citing Bryce, that equal representation had been 'futile' in its objectives because there had never been any difference of interests between the larger and smaller states in the United States. Glynn also used Bryce on the same point to refute Higgins' argument and support the case for equal representation.⁹³ This echoes the debates of 1891 when Deakin and Baker both cited Bryce to support opposite views on the question of equal powers for the two houses, and Lee-Steere used Bryce to argue for equal representation quoting him as saying there had never been any serious deadlock between the houses in the United States. To put this into perspective Bryce's words were 'There had never, in point of fact, been any division of interests or consequent contest between the great States and the small ones'.⁹⁴ Yet in the September Convention Isaacs quoted Bryce as saying that frequent collisions did happen in the US, though 'no great block occurs'.⁹⁵ This is an indication that interpretation has a significant bearing on the use of authorities to support or counter arguments.

Bryce's wisdom was brought in on other issues as well as the Senate's role, the debate on taking grievances to the Privy Council for example, on 31 January 1898. Glynn also quoted him on the question of the Senate's power to amend money bills, and to argue against co-ordinate powers. He suggested that it had been known for the lower houses of some parliaments to send doubtful but popular bills to the upper house in the hope that the upper house would amend and return them. These comments were made in the argument about responsible government and the fear that co-ordinate powers would bring about deadlocks. Glynn quoted

⁹² Ibid., 15 September 1897, pp.584, 637.

⁹³ Ibid., 15 April 1897, pp.646, 665.

⁹⁴ Bryce, *The American Commonwealth*, p.129.

⁹⁵ OR, 16 September 1897, p.663.

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Bryce as saying 'you cannot possibly have co-ordinate powers wherever there is responsibility'.⁹⁶

During a discussion on money bills Dobson again showed off his scholarship quoting from several authorities, 'I am told, ... by Bryce, by Lecky [*sic*], by Sedgwick, and every writer that I have read, that democracy is on its trial'. He used these writers to support his opposition to any provisions against deadlocks and quoted McMillan as saying that the only check on the 'tyranny' of the lower house is the second chamber, and that manhood suffrage may be the 'basis of a tyranny'.⁹⁷ Dobson firmly believed that democracy would lead to the 'tyranny' of the majority and the end of law and order. As two of these authors were rarely quoted and Dobson's views were notoriously conservative, cautious and resistant to change, the influence of this speech was probably not very great.

The respect and familiarity and even affection with which Bryce was regarded is revealed in an amusing exchange when Forrest, rather pompously, began a speech on the relative powers of the State and Federal Governments. George Reid interrupted saying: 'Is that in Bryce?'

Forrest: No these are words which I used myself.

Reid: They sound exactly like Bryce.

Forrest: The words are my own.

Reid: Bryce's book was not published then, but the style is the same.

Holder: Perhaps Mr. Bryce copied Sir John Forrest.⁹⁸

Some of the restlessness of the delegates can be seen in this light-hearted exchange. They were now in the sixth month, spread over a year, of their deliberations, and with the end clearly in sight, more lengthy, repetitive arguments and personal parading of pomposity, could not be readily tolerated.

⁹⁶ Ibid., 14 September 1897, p.536.

⁹⁷ Ibid., 15 September 1897, p.637.

⁹⁸ Ibid., 1 March 1898, p.1703

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These were the more significant references to Bryce's work in the 1897–8 debates. It can be seen how much he was relied upon for clarification and understanding of many aspects of federalism and especially so in regard to the Senate.

The other major authority on whom the delegates relied heavily was Freeman. In 1897 he was quoted or referred to many times, principally by Glynn, Isaacs, Symon, Cockburn, and Fysh. He entered the 1897 debate, introduced by Glynn, in the general discussion before the debate proper began. Glynn was discussing the Constitution of Canada, which he described as 'more of the old and gradually becoming obsolete form of monarchical government' whereas Australia would be a 'crowned republic'.⁹⁹ Freeman reappeared when Isaacs quoted him in praise of the English Constitution, which had grown from 'original principles'.¹⁰⁰ Here we can see not only Freeman's influence but also the influence of Canada's experience, British tradition, the conflict between tradition and innovation, and the sentimental and the practical.

Glynn reintroduced Freeman to support the provision for equal numbers of senators for each State, a principle valiantly but vainly fought against by Higgins. Glynn quoted Freeman and his description of ancient Greek States which followed this principle.¹⁰¹ Symon followed him with a series of quotations from Freeman to support the concept of equal representation, refuting Higgins' vociferous and passionate arguments for proportional representation and observed: 'that principle of state equality was established centuries before the United States Constitution was ever dreamt of'.¹⁰²

Symon's speech led him into a lively discussion on ancient civilisations including the Achean Assembly, an early example of federation. This provoked Higgins to interject testily 'It was merely a league' to which Symon riposted saying that Higgins did not know what he was talking about and that 'we are all capable of

⁹⁹ Ibid., 24 March 1897, p.73.

¹⁰⁰ Ibid., 26 March 1897, p.180.

¹⁰¹ Ibid., 15 April 1897, p.663-4.

¹⁰² Ibid., 10 September 1897, p.292.

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enlightenment'.¹⁰³ A lively debate ensued with Symon pontificating upon ancient Greek civilisations and Higgins, Carruthers and Deakin interjecting witty remarks about 'a flood of democracy'. Symon continued on his Freeman theme on equal representation and brought in Story's work on the United States Constitution to further strengthen his arguments, the gist of which was that the United States Constitution was an excellent model.¹⁰⁴ Isaacs entered the lists with Freeman on the same day and issue, in support of equal representation in the Senate. It is clear that Freeman's work on early Greek constitutions was extensively used to support the case in the Conventions for equal representation in the Senate.

Other authorities cited in the 1897–8 Convention, mostly on issues other than the structure and role of the Senate, were Dicey and Lecky, already mentioned, Bourinot mainly in relation to legal matters and the right of appeal to the Privy Council. Isaacs did bring Bourinot in to emphasise that the 'want of a cabinet system was one of the disadvantages of the United States Government', an argument for responsible government which impinged on the powers of the Senate. Sidgwick was also referred to in this speech as finding a co-ordinate second chamber an alien element in Parliamentary Government.¹⁰⁵ Sidgwick did not appear frequently being cited only by Isaacs, a very well read delegate. He was quoted on how to deal with deadlocks, as in favour of referendums, perceiving the upper house as check on the lower House, and supporting the concept of federation. Dicey appeared more frequently, quoted by Isaacs, Cockburn and Wise, in relation to interpretation of the Constitution and the relative powers of the Federal and State governments. Bagehot made a brief appearance when Wise quoted him on referendums saying:

I am urging ... that to call in the electorate as a whole to determine that kind of dispute ... is undesirable, ... and I will adopt the words of Bagehot, who says that to do so would be to submit to the government: 'Of immoderate persons far from the scene of action'.¹⁰⁶

¹⁰³ Ibid., p.294-5.

¹⁰⁴ Ibid., 10 September 1897, p.294-5.

¹⁰⁵ Ibid., 26 March 1897, p.175.

¹⁰⁶ Ibid., 10 March 1898, p.2195.

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Bagehot clearly feared the tyranny of the majority.¹⁰⁷

Story was another legal authority also called upon to substantiate arguments about equal representation in the Senate. His authority was sought on the necessity to constitute the Parliament as two houses, one representing the people and one the States. In this debate he was quoted frequently along with other authorities and it was here that Higgins was driven to his acerbic comment that 'Federation is not a matter of textbooks'.¹⁰⁸

The debate on the role of the Senate was heated and several authorities made a brief appearance: Burke, Lecky, Mill, Franklin, Burgess, Emerson, Carlyle, and May. The points raised included the power to amend money bills for the Senate, the question of whether referendums should be incorporated in the Constitution, the problem of deadlock provisions, the role of the Senate as a check on the lower house, and Constitutional amendments. May appeared in March 1898 cited by Baker and Barton on points of procedure. Todd made a late appearance entering the discussion on 10 March 1898 introduced by Deakin. He was quoted on the role of the Governor-General in military matters, and the question of whether the right of appeal to the British Privy Council should be abolished.

It can be clearly seen that the learned authorities were important though not all-important, in shaping the system that was ultimately adopted. Their most valuable contribution was to provide a platform and starting point for debate on complex issues, such as the basic conflict of whether to follow the United States example or the Westminster system of Government. Many delegates had studied the subject of federalism carefully from the authorities and, using their past parliamentary experience and by taking part in the debates, were able to draw their own conclusions from their readings. The most vociferous were for the most part well read on the relevant issues and had formulated their ideas from a variety of sources, strongly supported by recognised writers on the several aspects of federalism. The role of learned authorities, though resented by some delegates,

¹⁰⁷ For discussion of Bagehot see Norman St John-Stevan, *Walter Bagehot*, (London: Longmans, Green, 1963); Harry R. Sullivan, *Walter Bagehot*, (Boston: Twayne Publishers, 1975).

¹⁰⁸ *OR*, 10 September 1897, p.348.

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was a useful tool to justify or counter arguments and interpretation was a significant factor in the use of these works. By 1897–8 attitudes and opinions had matured and though the authorities were respected they were not necessarily influential in changing or creating viewpoints. The authorities helped to provide a framework for the debates and their views became more important as the issues came to a head. The increasing use of authorities is instructive, revealing a contradiction between Federation as an expression of independence and the reliance on learned authorities to validate opinions and decisions. This is no cause for criticism. In doing so they were not unlike the men who devised the Constitution of the United States or those who wrote the *Declaration of the Rights of Man and of the Citizen* for France.¹⁰⁹ They too had relied on models such as those from classical Greek and Roman examples and consulted learned authorities such as Montesquieu and Aristotle.

¹⁰⁹ *Declaration of the Rights of Man – 1789*, Approved by the National Assembly of France, August 26 1789, Yale Law School, The Avalon Project, http://avalon.law.yale.edu/18th_century/rightsof.asp. Accessed 28 November 2008.

Chapter 3

In Their Own Image: did the delegates to the Conventions see themselves as models of an ideal senator?

*the most august assembly.*¹ Henry Parkes 1891.

This telling phrase by Henry Parkes and typical of his lofty rhetoric was his proud view of the delegates, which of course included himself, assembled for the 1891 National Australasian Convention in Sydney. Parkes, a distinguished New South Wales politician and a recognised leader of the cause of Federation, thought highly of his colleagues, and the whole paragraph containing the quotation above is included here as an indication of the sort of men Parkes saw as members of the 1891 Convention:

The memorable Convention met in Sydney on March 2, 1891. I call it 'memorable' because it was beyond all dispute **the most august assembly** which Australia had ever seen, and because the majority of its members were men who yielded to none of their compatriots in their fitness to do the work which had to be done. If we apply the democratic rule, and apply it strictly, these men had all risen to positions of eminence in their respective countries—some to the highest positions—by their own merits and force of character, without any of the aids of fortune; and their number included all the Prime Ministers of Australia, and nine others, including Sir George Grey, Duncan Gillies, and Sir Thomas Mcllwraith, who had held the office of Prime Minister in former Governments. They had been elected by all the Parliaments of the colonies, and, therefore, in a constitutional sense, they represented all the people of Australia.² (my emphasis)

Parkes' words provide a participant's view of the delegates as fitting representatives of the Australian people and within it can be discerned a vision of the character of a future Senator from a leading observer. Some of the delegates in

¹ Henry Parkes, *Fifty Years in the Making of Australian History*, (London: Longman and Green, 1892), Chap. XIII. p.366.

² *Ibid.* Emphasis added.

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1891 were indeed 'august' in the literal sense of the word. Nine had been knighted, including such Federation luminaries as Samuel Griffith, then Premier of Queensland, Parkes himself, and both the New Zealand delegates, Harry Albert Atkinson and George Grey. There were other opinions on the character of the assembly of 1891 that were not so glowing: Brisbane's *Courier* for example reported that it was 'a Convention necessarily including so many second-rate politicians'.³ Both Parkes and the *Courier* had a point. It was a mixed bag of first and second rate politicians, but not as mixed as all that given that only one delegate, James Walker, a banker, had never served as a politician before becoming a delegate to the 1897 Convention. His activities as a member of the Australasian Federal League of New South Wales and his lucid financial analysis of federation at the Bathurst Convention in November 1896, were factors in his election as a delegate.⁴

Parkes' stress on the memorable aspect of the 1891 Convention was due, he claimed, to the character of the delegates. The Convention was indeed memorable, as was the later Convention of 1897–8, but more because of its achievements than its participants. In fact, the Conventions and their participants are only vaguely remembered by the citizens of Australia. There are no glorious commemoration ceremonies, only a few monuments to their achievements, such as the plaque on the outside wall of South Australia's parliament to commemorate the meeting there in 1897, and in 2001 only a low-key centenary celebration of Federation. This is ironic in view of this remark of John Alexander Cockburn:

If, ... we patiently address ourselves to our task, then I think not only will our work endure, and our names be handed down with respect to the third and the fourth generations, but millions yet unborn will be taught to revere for all time the names of those who, in this year 1897, were assembled in this National Convention.⁵

³ *Brisbane Courier* quoted in *SMH* 20 March 1891.

⁴ Brian Galligan and James Warden, 'The Design of the Senate', in *The Convention Debates 1891 - 1898*, ed. Gregory Craven, (Sydney: Legal Books Ltd, 1986), p.91.

Kathleen Dermody, 'Walker, James Thomas, (1841-1923)', in *The Biographical Dictionary of the Australian Senate*, v.1. 1901-1929, (Melbourne, Melbourne University Press), p.35. Geoffrey Bolton, *Edmund Barton: the One Man for the Job*, (St. Leonards, Australia: Allen & Unwin, 2000), p.140.

⁵ *OR*, 30 March 1897, p.349.

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That the delegates were all industrious, successful citizens who had achieved 'eminence' by their own efforts was true. None had inherited great wealth or position. Many were or had been elected leaders in their Colonies and had achieved recognition and status in their community. In this respect Parkes considered they fairly represented all the people of Australia. But did they? He based his judgement on the fact that the selected delegates were particularly fit to do the work because of their achievement of eminence. Most of them had achieved this through politics and, as he pointed out, several had been Prime Ministers. In this respect he could have been pleading his own case, as a man who had risen to prominence and a senior position in Government from a humble background. Parkes' achievements were very real and he was proud of them and the men he commended were those whose achievements matched his own. His view supports the main argument of this chapter: that the Convention delegates saw the future 'ideal senators' as men just like themselves, men fashioned 'in their own image'.

Other writers have commented on the characteristics of the Convention delegates, notably Geoffrey McDonald.⁶ McDonald's is an extensive and detailed collective biography of the eighty-four Australian delegates to both the 1891 and the 1897–8 Conventions. It is a work of prosopography—defined by Lawrence Stone as 'an investigation of the common background characteristics of a historical group ... by means of a collective study of their lives'.⁷ McDonald's conclusion was that they were 'active, enterprising, and colourful men who ambitiously strove after power'. Hunt, in another prosopographic discussion of the delegates, summed up saying that 'many were excellently qualified for their role, and if others were not, the sum of individual experience was impressive'.⁸ Other historians were not so impressed. John Rickard described the delegates as 'by and large, the old established political leaders of their colonies' who saw themselves as there to safeguard the interests of their colonies rather than to stimulate new visions of Australia or find new

⁶ G. McDonald, 'The Eighty Founding Fathers' *Queensland Historical Review*, 1968, pp.38-51.

⁷ Lawrence Stone, 'Prosopography', *Daedalus* 100, Winter 1971,

⁸ E.M. Hunt, *American Precedents in Australian Federation*, (New York: Columbia University Press; London P. S. King, Ltd., 1930), p.16.

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leaders to express them.⁹ Crisp argued 'it was for the most part the big men of the established political and economic order, the men of property or their trusted allies, who moulded the federal Constitution Bill' and La Nauze found that in 1891 some of the delegates knew little more about federalism than that it was a system of government, but added that this had improved by 1897.¹⁰ Newspaper comment was not flattering either: historian Frank Crowley found that some reporters said there was a danger that the proceedings would 'perish of much talking' and added that perhaps this was to be expected from such a gathering of 'politicians who had this once-in-a-lifetime opportunity to display their ... principles, while also eloquently proclaiming their genuine desire to bring to an end colonial provincialism'. He quoted newspapers as saying 'modesty was in short supply; vanity in abundance'.¹¹ The conclusion from these writers was that it was men of influence and prosperity who drafted the Constitution but that they were not particularly clever or well-informed. They were all experienced in Australian political life and this, together with the interests of their own colonies always in mind, were the major influences on their decisions.

It was true that all the delegates had achieved distinction and personal prosperity by their own efforts. It was also true they had no monopoly on this achievement. Many distinguished and successful people from different backgrounds, who might have had the 'fitness to do the work which had to be done', were not present at the Conventions. Those missing included women, church representatives, the working class and even one of the Colonies—Queensland, which failed to send delegates to the 1897–8 Convention which actually drafted the final Constitution. Had Queensland been represented the Convention is likely to have voted to restore powers to the Senate fully equal in every respect to those of the House of

⁹ John Rickard, *H.B. Higgins: The Rebel as Judge*, (Sydney: George Allen & Unwin, 1984), p.92.

¹⁰ L.F. Crisp, *Australian National Government*, (Hawthorn, Victoria: Longman, 1965), p.14. J.A. La Nauze, *The Making of the Australian Constitution*, (Melbourne: Melbourne University Press, 1972), p.272.

¹¹ F.K. Crowley, *Big John Forrest: 1847–1918: A Founding Father of the Commonwealth of Australia* (Perth, University of Western Australia Press, 2000), p.173.

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Representatives, and it is doubtful whether the south eastern colonies would have accepted a federal Constitution of this kind.¹²

The fact that there were no female delegates reflected the attitudes and conventions of the era when women had yet to break down the many prejudices and barriers against them taking part in public life. South Australia had given women the vote in 1894 and one brave soul, writer and social activist, Catherine Helen Spence, at the advanced age of 72 years, stood for election to the 1897 Convention as a delegate for South Australia. She received 7,282 votes and came twenty-second out of thirty-three candidates.¹³ Her failure to be elected reflects the attitudes of the times rather than her undoubted abilities. The closest women came to taking part in the Conventions was to be allowed to observe the delegates at a banquet for 900 male guests in the Centennial Hall in Sydney on 14 March 1891, preceding the Convention. One reporter patronisingly commented: 'The galleries were crowded with ladies, who apparently took great interest in the proceedings'.¹⁴

Apart from the gender exclusion and Queensland's absence in 1897–8, another section of society conspicuous by its absence was the Church. The Christian Church in the 1890s was a potent force in society as is evident in the 41 petitions to the 1897–8 Convention requesting recognition of the Christian religion in the Constitution.¹⁵ It was duly recognised in the Preamble with the words 'humbly relying on the blessings of Almighty God', introduced by Patrick McMahon Glynn, an Irish born barrister and one of only two Catholics at the Convention.¹⁶ The decision to open proceedings in Parliament with a prayer and the inclusion of God in the oath of allegiance are other acknowledgements of the religious or spiritual basis of Australian society but there was no official religious representation in the Conventions themselves. Catholic Archbishop Moran of Sydney did stand for

¹² Space prevents a full exploration of these issues in a thesis focused on the Conventions.

¹³ Susan Magarey, *Unbridling the Tongues of Women*, (Marrickville, NSW: Hale & Iremonger, 1985), p.162.

¹⁴ *Adelaide Observer*, 23 March 1891.

¹⁵ The majority of the petitions were from Protestant churches such as Methodist, Presbyterian, Congregational, with only one from a Roman Catholic Church, that of South Australia, *OR*, 'Index to Subjects', Adelaide 1897.

¹⁶ *OR*, 2 March 1898, p.1732.

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election to the 1897 Convention, much to the horror of some Protestant citizens who feared sectarian conflict, but he failed to gain a place, much to the relief of said citizens.¹⁷ Stafford Bird of Tasmania had been a dissenting minister before he became a politician and Deakin said of him that he was 'as sound and sober in thought as he was solemnly impressive in appearance and manner'.¹⁸ The delegates were secular statesmen, and though most professed a religion, mainly the Protestant Christian faith, they were not officers of their churches.¹⁹

The other major distortion lay in the uneven socio-economic representation of society. The delegates were necessarily drawn from the more affluent and educated citizens because only those with sufficient finances and leisure could meet the demands of taking part in the proceedings. This meant the exclusion not only of the working class and smaller business men but also of more prosperous citizens who could not afford to dedicate the time and effort necessary to attend the Conventions. From today's point of view the absence of the Labour party is a glaring exclusion, but Labour was still in its formative years in the 1890s. Although Labour candidates stood for election, especially in New South Wales where the party fielded ten candidates, only one Labour man, William Trenwith from Victoria, was elected and his views were more liberal than socialist. In spite of these exclusions Bernhard Wise considered the representation at the 1891 Convention to be an 'accurate' reflection of public opinion even though it was 'not truly representative'.²⁰ The decision that the delegates to the 1897 Convention should be elected by manhood suffrage with each State as one electorate, was the major inclusive factor in 1897, allowing most of the adult male members of Australian society a voice, but even this failed to change the social composition of the delegates to any significant degree. Though fifty-five per cent of the eligible voters

¹⁷ G. McDonald, 'The Eighty Founding Fathers', p.49.

¹⁸ Alfred Deakin, *'and Be One People' with an Introduction by Stuart Macintyre*, (Melbourne: Melbourne University Press, 1995), p.32.

¹⁹ For a comprehensive discussion of religion and the Conventions see Richard Ely, *Unto God and Caesar: religious beliefs in the emerging Commonwealth*, (Melbourne, Melbourne University Press, 1976).

²⁰ Bernhard Ringrose Wise, *The Making of the Australian Commonwealth, 1889-1900*, (London: Longmans, Green, and Co., 1913), p.135.

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turned out, Davidson has argued that the 'popular mandate ... returned the old guard of 1891' to the 1897 Convention.²¹

The major and unchallenged decision to establish a bicameral parliament had already been taken when the Conventions met, and came about in large part because the political socialisation of the founders in English and Australian parliamentary traditions ensured they 'took legislative bicameralism for granted'.²² John Rickard also saw political socialisation as the basis for the undebated decision. In his biography of Henry Higgins of Victoria, he argued that Higgins was typical of his colleagues who 'had very fixed notions ... which were the product of each colony's history'. For Stuart Macintyre, the 'new nation was at the mercy of its progenitors'.²³

The bicameral system adopted under these influences includes as a central feature an 'upper' house and is found in many legislatures. American political scientists, Loewenberg and Patterson, in their book *Comparing Legislatures*, noted that the need for an upper house 'originated in the essentially pre-democratic view that the representation of the nation required both an upper and lower house, in the class-conscious sense of "upper" and "lower"'.²⁴ In the concept of the proposed Senate as a house of review can be discerned the 'class-conscious' sense of the 'upper house' as noted by these authors, and the shadow of the British House of Lords in its ancient role as a representative of the aristocracy or ruling classes. In Australia it was envisaged at the Convention debates that the upper house would be a repository of dignity, justice and wisdom with members directly chosen, in the Constitution Bill of 1891, by the 'Houses of Parliament of the several states' and though this was changed in 1898 to the decision to elect senators by manhood suffrage, the perception of an 'upper' house as a superior body persisted.²⁵ In the

²¹ Alastair Davidson, *The Invisible State: The Formation of the Australian State 1788 - 1901*, (Cambridge: Cambridge University Press, 2002), p.233.

²² Galligan and Warden, 'The Design of the Senate', p.91.

²³ John Rickard, *H.B. Higgins: The Rebel as Judge*, p.92; Deakin, *'and Be One People' with an Introduction by Stuart Macintyre*, p.xx.

²⁴ G. Loewenberg and S. C. Patterson, *Comparing Legislatures*, (Boston: Little and Brown, 1979), p.121.

²⁵ Draft Constitution Bill 1891, Part II, The Senate, Section 9, p.946, OR, 2 March 1891.

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1891 decision remained the shadow of aristocratic domination of Government, or of a privileged class, and it is reminiscent of the idea of creating a colonial aristocracy that had been canvassed in New South Wales in the 1850s (and in Canada in the 18th century) but which was never popular or practical. Nevertheless some of the traditions and perceptions of an upper house can be found in the notion that part of its role was to moderate or monitor the decisions, perceived as possibly rash, of the lower house.

The role of the upper house as a house of review and a repository of wisdom was a concept firmly held by many delegates. John Forrest, Premier of Western Australia, articulated the perception of superiority in 1891: 'It seems to me that the senate ... will be an august and experienced body'.²⁶ The word 'august', was also used by Parkes, and is a clear sign of the ideas of the desired nobility of the upper house. The word 'experienced' suggests maturity, an appropriate quality for a Senator. Forrest did not say how this was to be achieved, but he was a supporter of a nominated Senate and like Parkes may have envisaged himself and men of his calibre as being role models for the new Senators. The decision that Senators should be elected by adult male suffrage was made early in the 1897-8 Convention and must have diluted this expectation.

The vision of Senators being 'dignified' and 'august' and qualified to make fair and wise decisions on policies is a strange attitude of politicians, all of whom had experienced upper chambers and their obstructive and delaying tactics on policies with which they disagreed. Victoria had suffered much in this respect and Graham Berry, a one-time Premier, bitterly commented:

but how frequently do we know Governments and majorities that have been obliged to resist the action of the Second Chamber and are then faced with the difficulties of a deadlock and the inconvenience of a penal dissolution?²⁷

The reference to a 'second' rather than an 'upper' chamber speaks volumes. Berry spoke from experience. He could foresee the possibility of a federal version of Victoria's Black Wednesday of January 1878, when the Council stubbornly refused

²⁶ *OR*, Forrest, 6 April 1891, p.732.

²⁷ *Ibid.*, 15 April 1897, p.658.

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supply for a finance bill and, as Premier, he had retaliated by dismissing 200 civil servants on economic grounds.²⁸ The opposing view came from John Forrest, a delegate from Western Australia, a smaller state, which feared the domination of the larger states in Parliament. He argued strongly for a powerful Senate, able to reject and amend all proposed legislation except the annual appropriation bill. This included taxation, loans, customs and excise.²⁹ This struck fear into the eastern politicians many of whom had 'fought pitched constitutional battles' with their upper houses over money bills. Why then did this naïve expectation of justice and wisdom in a federal upper chamber arise and why was it so steadfastly held by men who had experienced the difficulties an upper chamber could cause? Was it simply a matter of path dependence and tradition or did the delegates honestly envisage a Senate peopled by eminent and successful men such as themselves who could impartially employ these qualities from the depths of their knowledge and experience? There is some evidence that this was a 'subliminal' thought in the minds of the delegates. The thought emanated from the mouth of one of the delegates, Sir John Forrest (WA):

I think the chief reason why this plan [election] has commended itself to many hon. members has been the result of the election of members of this Convention. They cannot but think that a system which worked so well and so wisely in returning such, able, true, and patriotic members to this Convention as they themselves are must be an excellent plan and one likely to work well in the future. I am quite prepared to admit that it has worked exceedingly well during the first election.³⁰

Were the delegates of such excellent quality as Forrest thought in 1897 and Parkes in 1891? To answer this question this chapter will take a closer look at the delegates as individuals. La Nauze said of the Conventions that 'there is much yet to be recovered from the debates about the types, the assumptions and the abilities of the men who represented the public and parliamentary life of Australia'

²⁸ Paul de Serville, *Pounds and Pedigrees: the Upper Class in Victoria 1850-80*, (Oxford: Oxford University Press, 1991), p.116.

²⁹ Crowley, *Big John Forrest: 1847 - 1918: A Founding Father of the Commonwealth of Australia*, p.176,

³⁰ OR, Forrest, 13 September 1897, p.361.

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in the Conventions.³¹ Anthropologist Clifford Geertz also thought we could learn a lot about personality by looking at 'how people present themselves to themselves and to one another'.³² On this basis a study of the backgrounds of the delegates' lives has been undertaken to paint a picture of the kind of men who felt themselves so admirably qualified to participate in the drafting of a Constitution for a federal Australia. This will be followed by a selection of quotations taken from the convention debates to learn how the delegates 'presented themselves' to each other and to establish their mental images of future senators. Will they, like Parkes and Forrest, betray their vision of men like themselves as 'ideal senators'?

The delegates from 1890 to 1897–8 were drawn from each of the six existing Australian colonies plus three from New Zealand. Eighty-four men in all took part, some taking part in all the federation meetings. The difference in the method of election to the two Conventions, almost a decade apart, did affect the composition of the meetings, though not by as much as one might expect. Over a period of almost ten years a significant number of delegates, about 20%, attended both the Conventions and one or two were also at the 1890 Conference. The repeat appearance of so many delegates demonstrates that they were drawn from a small pool and supports the contention of Earl Grey, (British Colonial Secretary, 1846–1852) who recommended a one-chamber parliament for colonial governments on the grounds that there were not enough men who had both the wealth and the ability to be members of a parliament of two houses. He said that bicameralism: 'in a community not numerous enough to furnish more than a few persons qualified for such duties, is to substitute two comparatively ineffective bodies for one of a superior character'.³³ Here a British Cabinet Minister revealed that he was less attached to the bicameral system than the colonial politicians. By the 1890s and on a national rather than a Colonial basis, this situation was improving in Australia but

³¹ La Nauze, *The Making of the Australian Constitution*, p.29.

³² C.Geertz, 'On the Nature of Anthropological Understanding', *American Scientist*, 63, 1 1975, p.48. Quoted in Paul A Pickering, 'The Class of 96: A Biographical Analysis of the New Government Members of the Australian House of Representatives', *Australian Journal of Politics & History* 1998, p.95.

³³ Earl Henry George Grey, *The Colonial Policy of Lord John Russell's Administration*, 2 vols., (London: R. Bentley, 1853), p.97.

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the argument still had validity, especially for a national body that would require an increase in the number of members required overall. Marriott held similar views to Earl Grey and wrote in 1927:

The truth is that representative government is apt to be successful only when there is a considerable leisured class upon which the Legislature and Executive can draw. Such a class is the product of centuries of civilisation. The Australian Commonwealth is less than thirty years old.³⁴

It was considerations like this that only those of the leisured class could afford to be active politicians that eventually led to the payment of salaries to members, a long standing part of the British radical programme and designed to encourage those of lesser means to stand for parliament. By 1897 what Marriott described as the 'advancing tide of democracy'³⁵ was gathering strength and the nomination principle had been discarded for the Senate in favour of elections by adult male suffrage.

To undertake a broad survey of all eighty-four delegates to both Conventions would be to repeat much of McDonald's detailed analysis, as well as the work of La Nauze and Hunt. Therefore the detailed prosopography for this study has been limited to the delegation from Victoria in 1897–8.³⁶ I have selected this delegation because it was a typical delegation which had experienced many obstacles and bitterness in dealing with its Council or upper house and because the last Convention was the one that drew up the final version of the Constitution.

The Council the Victorian delegates knew was an elected house but with a prohibitive property requirement and it had proved a difficult and stubborn partner. Geoffrey Serle found that until at least 1890 the Victorian Legislative Council was:

largely composed of the old-fashioned squatter type ... The typical Councillor was a long-established and wealthy resident, ... a member of

³⁴ J.A. Marriott, *Second Chambers - an Inductive Study in Political Science*, (Oxford: Clarendon, 1927), p.117.

³⁵ *Ibid.*, p.v.

³⁶ All information on individual delegates was taken from their entry in the *Australian Dictionary of Biography*, unless otherwise noted.

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the Melbourne Club, of good family background rather than a self-made man.³⁷

The same description could be applied to the upper houses of each colony in 1890 and is in stark contrast to Parkes' view of the Convention delegates as 'self-made' men 'without any of the aids of fortune'.

The situation led to the uneasy relationship between the two Victorian chambers and also affected other Colonies, so the experience was typical and may have played a part in the decision to have an elected Senate, an idea fiercely resisted in 1891, but accepted without debate in 1897–8. All the Victorian delegates were, or had been, politicians and would have been aware of the nature of the relationship between the two houses of Parliament and the role played by the Legislative Council. These factors would have been very much in their minds as they discussed the structure of a federal upper house.

A systematic analysis of the backgrounds and biographical characteristics of the Victorian delegates has been carried out to reveal common experiences and traits, to examine to what extent the backgrounds of these delegates reflect what they saw as an 'ideal senator', and if the typical Victorian delegate could be seen as a model of his ideal Senator.

A biographical analysis of the Victorian delegation to the Federation Convention in 1897-8 shows many things but the most noteworthy is the similarities in life experience, education and age in the data. Nationality and heritage especially were major areas of conformity: five were born in Australia; of the others, three were born in England, one in Ireland and one in Canada. They were all of British heritage, though one, Isaacs, also had a Jewish heritage but had been culturally assimilated into the British way of life by his Jewish parents. They had left their native Poland in the 1840s to settle in London and later migrated to Victoria where they retained their adopted culture.

³⁷ Geoffrey Serle, 'The Victorian Legislative Council, 1856-1950', *Historical Studies: Australia and New Zealand*, 1954, p.192.

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Table 1. Members of the Victorian Delegation to the 1897-8 Convention

Name	Honours	Title	House
Sir Graham Berry	K.C.M.G.	Speaker	Legislative Assembly
The Honorable Alfred Deakin		Member	Legislative Assembly
The Honorable Simon Fraser		Member	Legislative Council
Henry Bournes Higgins		Member	Legislative Assembly
The Honorable Isaac Alfred Isaacs		Attorney-General	Legislative Assembly
The Honorable Alexander James Peacock		Chief Secretary	Legislative Assembly
John Quick		Member	Legislative Assembly
William Arthur Trenwith		Member	Legislative Assembly
The Honorable Sir George Turner	K.C.M.G.	Premier	Legislative Assembly
The Honorable Sir William Austin Zeal	K.C.M.G.	President	Legislative Council

The Victorian delegation can be compared with the Convention delegates as a whole in this respect. In the 1891 Convention only 16 of the 46 members were born in Australia; of the 50 delegates to the 1897 Convention 26 were Australian born 23 were born in the British Isles and one (Fraser) in Canada.³⁸

The marked increase in the number of delegates born in Australia is a sign of the changing demographic profile of Australia as native born began to outnumber British born. Of the delegates born in other parts of Empire the length of time they had been in Australia varied greatly from Parkes, a New South Wales delegate, born in England in 1815, arrived in 1839, to Higgins born in Ireland in 1851, arrived in 1870. The strong British presence in the Conventions is a reminder of the overwhelming Britishness of 19th century Australia. To these delegates the British Parliament was an ancient and honourable institution with strong and binding traditions, and it was their loyalty to these traditions that explains why the British

³⁸ La Nauze, *The Making of the Australian Constitution*, p.104.

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bicameral system was accepted by the delegates as a sound model for the new Australian legislature.

Table 2. Early Life experiences of delegates from Victoria

Name	Age 1897	Where born	Parents	Education	Religion	Early Occupation
Berry, Graham	75	England	Tradesman	Elementary	Anglican	Storekeeper Tradesman Politician
Deakin, Alfred	41	Australia	Clerk, Shopkeeper	Grammar Melbourne Uni	Anglican	Teacher
Fraser, Simon	65	Canada	Farmer	Elementary	Anglican	Business
Higgins, Henry	46	Ireland	Minister Church of Ireland	Elementary Melbourne Uni	Anglican	Teacher Lawyer
Isaacs, Isaac	42	Australia	Tailor	Elementary Melbourne Uni	Jewish	Teacher Lawyer
Peacock, Andrew	36	Australia	Draper	Elementary	Anglican	Mining,politics
Quick, John	45	England	Farmer	Matriculation Melbourne Uni	Methodist	Casual work Lawyer
Trenwith, William	51	Australia	Convicts	Home Self Taught	Atheist	Bootmaker Trade unionist
Turner, George	46	Australia	Cabinet Maker	Matriculation Melbourne Uni	Anglican	Clerk Lawyer
Zeal, William	49	England	Wine Merchant	Private Schools Diploma in eng/surveying	Anglican	Surveyor

Age was not so uniform. The average age of the Victorian delegates in 1897 was 49 years and, though mostly in their forties and fifties, they ranged from 36 (Peacock) to 75 (Berry). This compares with the Conventions overall where the median age was fifty and the oldest delegates, both Tasmanians, were Adye Douglas, 82 in 1897, and William Moore, 80. Walter James, 34, was the youngest.³⁹

Religion was another consistency in the delegation. Eight of the delegates followed versions of the Protestant Christian faiths, such as the Church of England and Methodism. The two exceptions were Isaacs, who retained his Jewish religion, but only Trenwith was an atheist. That there were no Catholics among the Victorian delegates reflects the general ethos of Australia at that time when Catholics, a

³⁹ Ibid.

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large minority group, were still regarded with some mistrust, this despite the fact that Victoria had had two Catholic Premiers, Gavan Duffy and John O'Shanassy. There were only two Roman Catholics in the whole Convention: Patrick McMahon Glynn and Richard Edward O'Connor.⁴⁰

The consistency of the Victorian delegation is also apparent in their social status at birth: none of them were born to wealth and only Trenwith had been born into poverty. They were mostly the sons of moderately successful tradesmen, though Higgins was the son of a clergyman in the Church of Ireland and Zeal's father, a wine merchant, was quite prosperous. Ambitious parents helped some succeed; others made it by personal ambition and abilities, such as Trenwith whose parents had both been convicts in Tasmania. His father had been a bootmaker, a trade which Trenwith also took up when he left home at about the age of thirteen. He soon became involved in the Launceston Working Man's Club where he learned self-reliance and independence, as well as boxing, debating and self-education. At the Convention he represented the working class in the archetypical role of the radical shoemaker, as discussed in Hobsbawm's article on the strength of the radical and intellectual activities often found in the trade. Hobsbawm found shoemakers had a reputation as the 'ideologists of the common people' and, as a trade, had in the 19th century a reputation for radicalism.⁴¹

This analysis matches what McDonald tells us about the delegates generally. They were not born into wealth or prestige either but, like the Victorians, were not poor or under-privileged. They were the sons of ministers of religion, military officers, minor public servants, farmers and labourers and some were from pastoral or political families.⁴² Parkes' words quoted earlier about the quality of the delegates to the 1891 Convention were equally true of those of the 1897-8 Convention.

⁴⁰ Alfred Deakin, *The Federal Story: The Inner History of the Federal Cause, 1880-1900*, ed. with an Introduction by J.A. La Nauze, (Parkville, Victoria: Melbourne University Press, 1963), p.63.

⁴¹ Eric Hobsbawm and Joan W. Scott, 'Political Shoemakers', in *Worlds of Labour: Further Studies in the History of Labour*, (London: Weidenfield & Nicholson, 1984), p.104.

⁴² McDonald, 'The Eighty Founding Fathers', p.38.

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The unremarkable family backgrounds of the delegates meant that, for most, formal schooling ended at the elementary level, though Trenwith was taught by his mother and later self-educated and Deakin attended Melbourne Grammar School and later graduated in law from Melbourne University. Zeal acquired a professional qualification as a surveyor and engineer in England before migrating to Australia. Several pursued higher education later in life and four qualified as lawyers: Turner, Quick, Isaacs, and Higgins. With the already qualified lawyer Deakin, this meant there were five lawyers representing Victoria at the Convention: a proportion which carried throughout the whole Convention, where out of a total of fifty delegates, twenty-five were lawyers. Davidson has argued that the Constitution Bill was drafted by lawyers 'the same men who had run the colonial states for fifty years' and these statistics generally support his argument.⁴³

Before entering politics most of the delegation had been employed in lower middle-class occupations, except for Trenwith who worked in his trade until elected as the member for Richmond in 1889 at the age of fifty-one. He had been deeply involved in trade unionism in the 1880s, which prepared him for the demands of political office. The early occupations of the remainder of the Victorian delegation ranged from Trenwith, the bootmaker and trade union official, to entrepreneur Fraser, storekeeper Berry and mining business official Peacock. Higgins, the son of a clergyman, worked as a clerk in Ireland before emigrating to Melbourne with his family in 1870, where he qualified as a teacher. In later life all the delegates were successful self-made men, having achieved either wealth or status or both through successful business enterprises or public office. Simon Fraser became wealthy from construction, grazing and banking activities and Graham Berry, from humble beginnings, had served in Parliament for several periods over forty years before the Convention and had risen to Ministerial level and the Premiership at various times in his long career.⁴⁴

⁴³ Davidson, *The Invisible State*, p.231.

⁴⁴ All information on individual delegates was taken from their entry in the *Australian Dictionary of Biography Online Edition*, unless otherwise noted.

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The employment pattern of the larger group of delegates is more difficult to analyse in detail but it compares with the Victorian delegation. McDonald found that many were professionals and forty-nine were engaged in various industries such as pastoralism, commerce, mining, finance, agriculture, manufacturing and other forms of business. He concluded that they were capitalists and part of a capitalist milieu of investment, trade, production and company administration. He found them enterprising and acquisitive profit seekers. This bears out Crisp's argument that the delegates were the 'big men of property or their trusted allies'.⁴⁵ It is possible that the delegates' business interests encouraged them to look beyond the horizons of one colony. A growing realisation of the connections between the colonies was characteristic of that generation.

The pattern of employment of the Victorian delegates had changed from mostly lower-middle class occupations by the time of the 1897 Convention and the occupation of nine of them was as a member of parliament. Seven were members of the Legislative Assembly, including the Premier (Turner), the Speaker (Berry), and the Attorney General (Isaacs); two were Councillors including the President (Zeal). The odd man out in this category was John Quick who, though not a current member of Parliament, had been a member of the Assembly from 1880 to 1889. He had been active in the preconvention years working towards federation and it was he who devised the successful programme for bringing Federation into reality. Altogether, the delegates had an average Parliamentary experience of thirteen years ranging from a low of three (Higgins) to a high of forty (Berry). Two, Zeal and Turner, had also served as municipal councillors. Given this strong representation of the politically active at the Convention it is easy to understand how past political practice became a powerful factor in the attitudes of the delegates. In terms of political experience the Victorian delegation was comparable to the delegates as a whole, where all except one were, or had been, active in Australian politics and would have been familiar with governmental procedures.⁴⁶ As already noted only

⁴⁵ Crisp, *Australian National Government*, p. 14.

⁴⁶ Hunt, *American Precedents in Australian Federation*, p.16.

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James Thomas Walker had not been a Member of Parliament⁴⁷ and according to La Nauze, contributed little to the debates. He had been a bank manager and had written and lectured on federal finance and might have expected to be on the finance committee where his real expertise lay, but he was placed on the judiciary committee and perhaps this contributed to his silence.⁴⁸ He did distinguish himself however by conferring the name 'Senate' on the upper house. The decision had been to name the upper house the States' Assembly' when Walker interjected saying 'In place of States Assembly I propose that we should call it 'Senate'. This was carried 27 votes to 21.⁴⁹

Ideologically the delegates in this study were Protectionists. In Victoria, as John Rickard has noted, 'to oppose protection ... was, particularly for a liberal, political folly'.⁵⁰ Higgins and Deakin were both liberals and supported, or at least did not actively oppose, protectionism as in Victoria the two were compatible. With this in mind seven of the delegates were declared protectionists including Deakin who had changed his views, having been influenced by David Syme of the *Melbourne Age*.⁵¹ Exceptions were Berry, a radical whose agenda for reform was more ambitious than the Liberals and who was vehemently opposed to the conservative ideology and obstructionism of members of the Legislative Council; Trenwith, the Labour man, and Fraser who was 'anti-socialist'. There were no organised political parties in the 1890s except the emerging Labour Party and politicians were described according to their expressed views by such terms as radical, socialist, liberal, and conservative, in addition to Free Trade and Protectionist. John Rickard has argued that in the 1890s 'in both colonies [Victoria and New South Wales] there seemed to be a large political majority in favour of 'liberal' policies.'⁵² None of the historians writing on the Victorian delegates specifically addressed the ideology of the delegates except in such blanket terms. Crisp, for example, discussed the

⁴⁷ Galligan and Warden, 'The Design of the Senate', p. 91, n.6.

⁴⁸ La Nauze, *The Making of the Australian Constitution*, pp.101, 120-122.

⁴⁹ *OR*, 13 April 1897, p. 481.

⁵⁰ John Rickard, 'Higgins, Henry Bournes (1851-1929)' in *Australian Dictionary of Biography*, online edition, 2006. Melbourne University Press. <http://www.adb.online.anu.edu.au/adbonline.htm>.

⁵¹ R. Norris, 'Deakin, Alfred (1856-1919)', in *Ibid*.

⁵² John Rickard, *Class and Politics, New South Wales, Victoria and the Early Commonwealth*, (Canberra. Australian National University Press, 1976), p.83.

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ideology of the delegates in relation to their views on States' Rights in the debates and mentions liberals, conservatives and occasionally democrats.⁵³ The terms are imprecise especially as delegates changed their views on such things as whether or not senators should be elected.⁵⁴ The general view of the delegates' ideologies as a whole, as expressed by historians, is that they were a mostly conservative group but there was a leavening of more liberal thinkers such as Deakin, Baker, and Higgins. To some extent this supports the perception—actually fiction—that the members of the colonies' Upper Houses were free from the taint of party affiliation.

Table 3. Later life experience of delegates from Victoria up to 1897

Name	Occupation before politics	Years in politics	Club member etc.	Home Property	Marital Status/children
Berry, Graham	Early Politician	40 years	No		M. m.1, 11 ch. m.2, 7 ch.
Deakin, Alfred	Lawyer	8	No Social Gentry Register University Debating Club ANA*	South Yarra	M. 3d
Fraser, Simon	Entrepreneur	12	Australian Club	Toorak Mansion Property in Qld. NSW. Vic.	M. 3s.1d.
Higgins, Henry	Lawyer	3	University Debating Club	Mansion in Malvern	M. 1s.
Isaacs, Isaac	Lawyer	5	Freemason ANA*	Country House Mt.Macedon	M. 2d.
Peacock, Andrew	Mining Politics	8	Freemason ANA*	Unmarried	
Quick, John	Lawyer	9	Yorick Club Freemason ANA*	Quarry Hill	M. 1d.
Trenwith, William	Trade union official	5	No		M.(1896) 3s. 1d.
Turner, George	Lawyer	8 Councillor	No ANA*	St. Kilda	M. 1s. 1d.
Zeal, William	Surveyor politician	19 Councillor	No	Toorak	S.

* ANA *Australian Natives Association*

The ideology of the delegates would have been influenced by their life experiences and by the time of the conventions they were all experienced politicians who had been involved in public affairs for most of their adult lives and had achieved a

⁵³ Crisp, *Australian National Government*, pp.14-17.

⁵⁴ For the study of the Victorian delegates I have followed the assessments in the *Australian Dictionary of Biography* as the most consistent classification of their ideologies.

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moderate social status and comfortable level of prosperity. Some were to rise higher and three were to become senators in the first federal Parliament, as were seven Convention delegates from other States. Except for Simon Fraser, who owned properties in Queensland and New South Wales as well as Victoria, the Victorian delegates were not wealthy men but all had achieved a level of financial independence and a place in their society. They lived in modest, middle class Melbourne suburbs, except for Higgins who had built a mansion in Malvern, Isaacs who had a country house at Mount Macedon, and Fraser who 'resided genteely in his villa at Toorak'.⁵⁵ Peacock married after the Convention and only Zeal remained unmarried. The eight who married became the fathers of between one and four children. Berry had the largest family of eleven children by his first wife (eight survived him) and seven by his second wife. Peacock had no children.

The delegates were active participants in Melbourne society, though not at an elite level. The late 19th century was the era of Clubs for Gentlemen but these either had not attracted many of the delegates or they may have failed to be admitted. For example, none belonged to the elite Melbourne Club, the most exclusive in town with membership strictly limited according to rules supposedly based on a man's character and occupation. Simon Fraser belonged to the Australian Club, a less exclusive establishment set up as an alternative to the Melbourne Club, and in a different part of town, and John Quick was a member of the Yorick, a club for men 'sympathetic with Literature, Art or Science'.⁵⁶ Three of the delegates were Freemasons, (Isaacs, Peacock, and Quick) and Deakin, though not a clubman, was listed in the Social Gentry Register. Delegates were active in other areas—both Deakin and Higgins had been members of the Melbourne University Debating Club and five were members of the Australian Natives Association (ANA) which was a key supporter of the Federation movement. Initially the ANA was open only to those born in Australia, but John Quick was allowed to join in an honorary capacity and worked to promote support for Federation among other members. Such activities exposed them to society in general and added to a public profile

⁵⁵ McDonald, 'The Eighty Founding Fathers', p.47.

⁵⁶ Serville, *Pounds and Pedigrees*, pp. 360, 366.

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beyond their political careers. By contrast, Victoria's upper house was regarded as 'pastoralist-dominated' and a gross plutocracy. It was viewed as the legislative arm of the Melbourne Club and more than a third of men elected to the Upper House were members.⁵⁷

If the delegates did not qualify or were not interested in joining the more elite established clubs this may have been because they were already and automatically, members of an exclusive club as members of Parliament. It was a club which, as well as facilities such as a library, dining room and meeting rooms other than the Chambers, bestowed a sound social standing, a level of companionship within a circle of friends, colleagues and acquaintances and entry to the highest levels of society such as functions at Government House. The entertainments provided at the Convention for the pleasure of the delegates are an indication of their status in society. In Sydney in 1897, a heavy social programme included 'a public conversazione, a banquet, a night at the theatre to see *The French Maid*, a moonlight harbour excursion, a government house ball, a tattoo, several garden parties and at-homes, an excursion along the Hawkesbury River and another to attend the Newcastle Centenary Celebrations'. This was an exhausting but pleasurable itinerary which was wittily criticised by one reporter as 'Federation by Festivity'.⁵⁸ An added celebration was the sudden marriage on 11 September 1897 of one of the delegates, Patrick McMahon Glynn, who escorted his new bride to the Government House Ball. He had written to her proposing marriage during a sitting of the Convention and they were married within the week. The Melbourne *Argus* christened him 'An ardent Federationist' for his romantic deed, while the *Bulletin* felt that he had brightened the Convention with his 'meteor like rush into matrimony'.⁵⁹ The social round would have been beneficial as well as pleasurable to the delegates, introducing them to the delegates from other colonies and the elites of the land, and broadening their appreciation of the concept of a federated Australia.

⁵⁷ Ibid., pp.93, 96, 90.

⁵⁸ Crowley, *Big John Forrest: 1847–1918: A Founding Father of the Commonwealth of Australia*, pp.190-191.

⁵⁹ Gerald O'Collins, *Patrick McMahon Glynn: A Founder of the Australian Commonwealth*, (Melbourne: Melbourne University Press, 1965), pp.128-9.

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Other opportunities for broadening the mind for the delegates came with travel. Those born overseas and who had spent some years of their youth in other countries (Berry in England, Fraser in Canada, and Higgins in Ireland) had international experience but extended travel itself was not a frequent activity and what there was was mostly official rather than voluntary and mainly to England. Berry was in England on Government business in 1878 and again as Agent-General in London from 1886 until 1891. Turner, with other Premiers attended the celebrations in London for Queen Victoria's jubilee in 1897—mid-Convention—and Fraser represented Victoria at the Ottawa Conference in 1894. Fraser had also toured Europe and America in 1883 and, in 1886 Higgins took an extensive honeymoon trip which included India, Egypt, France, England, Scotland and Ireland. While in London he arranged to be called to the Bar 'consuming the requisite eighteen dinners at the Inner Temple'.⁶⁰ The most extensive travel by one of the Victorian delegates was undertaken by Deakin who visited America in 1884-5, where he was deeply impressed with what he learned. He visited the West coast to study irrigation and also took the opportunity to visit the East coast. There is no evidence that he ever visited Washington or Congress but he was impressed enough with Bryce's work *The American Commonwealth* to strongly recommend it to the delegates at the 1890 Conference as 'a text-book for the philosophic study of constitutional questions'.⁶¹ The extensive diary of his travels in the United States reveals his admiration for the American way and he clearly drew some of his ideas on Federation from his visit to the United States as well as from Bryce.⁶² Further travel came in 1887 when he went to London to attend the Colonial Conference where he 'attracted favourable attention'.⁶³

The Victorian delegates' experience of travel was typical of those of the Convention as a whole for whom travel was also restricted mainly to Europe and Britain, whether privately or to study, to tour, on commercial business or

⁶⁰ Rickard, *H.B. Higgins: The Rebel as Judge*, p.66.

⁶¹ OR, 10 February 1890, p.25.

⁶² J.A. La Nauze, *Alfred Deakin*, (Oxford: Oxford University Press, 1962), pp.166-8.

⁶³ Hunt, *American Precedents in Australian Federation*, pp.20-21. Deakin had also visited Ceylon and India in 1890 to study irrigation. See J.A. La Nauze, *Alfred Deakin: A biography*, (Melbourne, Melbourne University Press, 1965), Vol.1. p.133.

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sometimes to represent their Colony on Government business or at conferences. Some of the delegates from other Colonies, such as John Cockburn, decided to spend their declining years there.⁶⁴ Exposure to the United States federal system was not as frequent as to the British system but Andrew Inglis Clark, Tasmanian Attorney-General, and member of the 1891 Convention, like Deakin, travelled to America and greatly admired the federal system.⁶⁵ From these travel experiences, especially to Britain, came a deepening influence of British culture on the minds of the delegates which added further strength to the force of path dependence. It was here, to invoke Marx's words again, that they encountered the 'tradition of all the dead generations'.⁶⁶

This biographical analysis of Victorian delegates' backgrounds, experience and education shows that they were middle-class, middle-aged and, for the most part established men of influence, position and achievement. Typically they were Protestant and married with children. Among them were also men of experience, energy and deep convictions, such as Higgins and Deakin while others were less active. Berry, now an ageing politician whose fire was fading, was mostly silent as was Peacock, whose comparative youth and inexperience suggest a lack of confidence in such an 'august' company, though he was famous for his 'bizarre' and loud laughter.⁶⁷ The more open minded among them were not radicals or extremists but were liberals, moderates: men like Henry Higgins and Alfred Deakin, and in the wider field of the Conventions as a whole Inglis Clark, Richard Baker and Henry Parkes.

Does this examination show that in biographical terms the subset of ten Victorian Convention delegates embodied the characteristics of the kind of man they envisaged as an ideal senator: of strong British connections; Christian and Protestant; industrious; respectable; a worthy, middle-aged, middle-class, prosperous family man with a significant stake in society? Though not born wealthy

⁶⁴ McDonald, 'The Eighty Founding Fathers', p.40.

⁶⁵ Crisp, *Australian National Government*, p. 18.

⁶⁶ Karl Marx, *The Eighteenth Brumaire of Louis Bonaparte: with explanatory notes*, (New York: New York, International Publishers, 1964), p.15.

⁶⁷ La Nauze, *The Making of the Australian Constitution*, pp.102, 151.

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nor of society's elite, they had achieved a quasi-elite status through their own energy, diligence and talent. From unprivileged family, educational and employment backgrounds, they had become successful and esteemed politicians of moderate liberal or conservative views, with sound social connections with one another, their families, their society at large and their political colleagues. Comparing them with the total membership of the Conventions they were typical of the representation. They were a meritocracy and quite a different breed to the squattocracy described by Serle as members of Victoria's Legislative Council in 1890. The Council had been dominated by gentlemen and members of polite society from its inception in 1855–6 and in the early days many Councillors were members of the Melbourne Club. This dominance was reduced by the latter part of the century but criticisms continued as the conservative Legislative Council, elected on a franchise of wealth and composed mainly of rich men, blocked the wishes of the democratic Assembly.⁶⁸

To dig a little deeper, I have studied speeches from all the Conventions, beginning in 1891, to gain some insight into the delegates' views on the 'ideal senator'. The first indications of the perceptions of an ideal Senate in the 1891 Convention came from Henry Parkes in his introductory remarks in the first discussion of the structure of the legislature. He described his idea of the Senate in these words:

What I mean is an upper chamber, call it what you may, which shall have within itself the only conservatism possible in a democracy—the conservatism of maturity of judgment, of distinction of service, of length of experience, and weight of character.⁶⁹

This could fairly be said to describe the Convention delegates, at least in their own estimation, and is evidence of Parkes' idea of a superior body of men. Coming from the chairman himself, it was quite likely to influence the views of some delegates. Parkes was followed by John Gordon who commented, with no evidence at all, that 'The senate will probably be the better house of the two!'⁷⁰ He

⁶⁸ Serville, *Pounds and Pedigrees*, p.143.

⁶⁹ OR, 4 March 1891, p.26.

⁷⁰ Ibid., 4 March 1891, p.37.

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did not indicate why this should be so but it illustrates that he, at least, had internalised the notion of a house of superior character.

An indication of the influence of Parkes' words came later in the debate when Edmund Barton reiterated his prescription:

the President told us that in the senate we seek to create as lofty, as dignified, an upper chamber as we can, and we seek to create it as nearly on the British model as we can.⁷¹

John Macrossan then expressed the hope that men would aspire to becoming senators as he considered they did in the United States: 'owing to the power and dignity which our senate will possess'. Here the ubiquitous idea of power and dignity being important requisites for the Senate is clearly expressed and Macrossan continued in this vein with the remark that the Senate would possess superior influence 'by its superior ability, being the elected of men who are themselves elected for their ability by the different states'.⁷² So the notion of superiority was added to the qualities of an upper house and clearly connected to the principle of nomination by the state parliaments. John Downer also had little doubt about the sort of body the Senate should be: 'the senate should be a house of high dignity and of great authority'.⁷³ The erudite William McMillan expressed another view that saw the Senate as 'attracting the best men of Australasia within its four walls' and it would not be 'of the pettifogging character that it would interfere with every jot and tittle connected with expenditure'.⁷⁴

That the Senate would naturally attract men of superior ability was a recurring theme. As Stafford Bird enunciated: 'If we acknowledge that those who are to be members of the senate are men of good standing, men of good judgment, if we are going to have men of this class, why hesitate to give them the power claimed for them by some to deal with bills of all kinds?'⁷⁵ John Forrest was in no doubt about the qualities of the ideal Senate: 'I believe that they will be, if anything, a superior

⁷¹ Ibid., 17 March 1891, p.411.

⁷² Ibid., 17 March 1891, p.436.

⁷³ Ibid., 18 March 1891, p.472.

⁷⁴ Ibid., 3 April 1891, p.718.

⁷⁵ Ibid., 6 April 1891, p.728.

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body, thoroughly representative, wise, and patriotic,' and added what a superior body we intend to create'.⁷⁶ George Dibbs, speaking in support of a nominated Senate said 'I do not know a more refined process by which you could make a more perfect, and independent, and probably intelligent senate than that'.⁷⁷ He went on to say that he would vote for nomination because it would produce the 'best men ... a body of men whose weight, whose experience, and whose intelligence will be felt throughout the country; a senate which ... will command the full confidence and respect of the people'.⁷⁸

The superior house envisaged by the delegates would in their view be inhabited by elite individuals. In 1891 it was foreseen that senators would be 'men of character and position'; they would have 'maturity of judgement, of distinction of service, of length of experience, and weight of character'.⁷⁹ Capable and eminent men would aspire to be senators, owing to the power and dignity of the Senate which would be a superior body. Senators would be the 'best men ... whose weight, experience and intelligence would be felt throughout the country. They would be men of good standing and good judgment'.⁸⁰

These fulsome comments were made when, with an implicit or subliminal desire to restrain democracy, the delegates had agreed that the States' legislatures would be responsible for the selection and nomination of Senators. By 1897 things had changed and democratic principles had gained strength enough for the idea of direct election of the Senators by the people of each State to be accepted. The resolutions put before the 1897 Convention included an uncompromising clause which stated explicitly that 'The senator's [*sic*] shall be directly chosen by the people of the state as one electorate'.⁸¹ This did not silence those who saw the upper house as an elite institution, but it provided a new context for the rhetoric.

⁷⁶ *ibid.*, 6 April 1891, p.732.

⁷⁷ *ibid.*, 6 April 1891, p.753.

⁷⁸ *ibid.*, 6 April 1891, p.755.

⁷⁹ *ibid.*, 2 March 1891, p.26.

⁸⁰ *ibid.*, 7 April 1891, p.755.

⁸¹ *ibid.*, 13 September 1897, p.361. The Resolution was debated and passed in September 1897.

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Early in the 1897 Convention Richard Baker impatiently attacked the pervasive notion of the superiority of the proposed Senate and those who saw it as an elite institution, even an imitation of the House of Lords. 'I cannot help thinking' he quipped:

that it is extremely difficult for some people to get out of their heads the idea that the Senate is a kind of glorified Upper House; they cannot appreciate the fact that the Senate represents the people as fully as the House of Representatives.⁸²

Baker had a point. He was passionate in his opposition to 'responsible government', the model favoured by most delegates and eventually adopted. He wanted the Senate to be constructed on similar principles to the United States' body and argued his case with fervour and conviction, but could not dent the stubborn desire for a 'dignified' upper house. In many ways he was the exception that proves the rule.

Though the comments about the superiority of the Senate were less emphatic in 1897, Downer still saw the Senate as 'lordly' as well as 'important and dignified'.⁸³ McMillan, waxing eloquent as was his wont, saw the Senate as a 'great moderating assembly', envisaging an assembly of judgement, wisdom and patriotism, a chamber of character, where moderation would rule and the members, men with experience and wisdom, would be 'touched with the glory of the upper house'.⁸⁴ Glory is a strong and colourful word in this context, conjuring up visions of grandeur and magnificence, hardly democratic virtues. McMillan seems rather confused in his vision of the Senate. What he seems to be saying is that by becoming Senators those elected would be imbued with the required virtues of experience and wisdom simply by association. He combines this thought with an articulation of the house of review concept: 'a moderating assembly', a view further underscored by O'Connor who saw the Senate as a 'steadying and controlling influence'.⁸⁵ In the speeches extolling the hoped for qualities of an upper house

⁸² Ibid., 23 March 1897, p.30.

⁸³ Ibid., 29 March 1897, p.209.

⁸⁴ Ibid., 8 September 1897, p.219.

⁸⁵ Ibid., 24 March 1897, p.56.

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and its members, the recurrence of many of the words explains to some extent how it was envisioned by the majority of the delegates, excluding Baker who had severely rebuked the delegates about the idea of a 'glorified upper house' early in 1897.⁸⁶ For most delegates the Senate would be an elite and gracious institution inhabited by wise, experienced politicians, men of remarkable qualities, dispensing wisdom and justice which would 'temper the possible democratic excesses of the lower chamber'.⁸⁷ In the delegates' language of representation can be detected a Burkean understanding of parliamentary representation. Edmund Burke, a leading Whig parliamentarian, in 1774 famously expressed the notion of representation as 'Your representative owes you not his industry only, but his judgement and he betrays instead of serving you, if he sacrifices it to your opinion'.⁸⁸

While in 1891 delegates thought that the nomination principle would safeguard the choice of Senators and ensure they would have the desired qualities and characteristics, in 1897, with the decision for direct election of Senators, there was no such guarantee and there was less discussion of this aspect in that Convention. Was this because the delegates considered there would be less control on the type of men selected to serve than there would have been with the nomination principle? Perhaps, but the fact that the delegates to the 1897 Convention had been elected on the same principle now proposed for the Senators was probably equally influential. Though the change had been accepted without demur, John Forrest was not convinced. He still thought that nomination would be best and 'more likely to yield good results than the plan proposed in this bill'. In the same speech, however, he described the 1897 delegates as 'able, true and patriotic' and commended the idea of election for senators as an 'excellent plan', which quite contradicted his earlier thought.⁸⁹ It was an ironic comment as his own Colony had

⁸⁶ Ibid., 23 March 1897, p.30.

⁸⁷ Ged Martin, *Bunyip Aristocracy*, (Sydney: Croom Helm, 1986), p.41. It is interesting to note the exalted expectations of delegates about the membership of the Senate were not reflected in the actual results of the 1901 Federal elections when eight Labour members held the balance of power.

⁸⁸ Paul A. Pickering and Alex Tyrrell, *The Peoples' Bread: a history of the Corn Law League*, (London and New York, Leicester University Press, 2000), pp.179-180.

⁸⁹ OR, Forrest, 13 September 1897, p.361.

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not elected its delegates, they had been selected by the parliament, but he may have been in the process of changing his mind.

Able, true and patriotic is a pleasing description of the Convention delegates. Ability they had demonstrated in their careers, and true implies trust in and loyalty to colleagues and country. Patriotic, a word Forrest and other delegates used frequently and ambiguously, is usually taken to mean love of one's country—the new Australia in this context. Here I suggest Forrest also envisaged a continued loyalty to Britain, the country and culture which he and the Convention embraced as their own and had voted to retain in the Parliament they were constructing. Forrest also issued a dire and prescient warning in the same speech, saying that direct election would mean: 'instead of having the voice of the people represented ... you will have a host of cliques and rings voting by ticket from one end of the country to the other'.⁹⁰ This was a forecast of the emergence of political parties and their future dominance over both houses of parliament even the Senate, the States' House.

Without undertaking an exhaustive content analysis, a study of the words most frequently used by the delegates to describe the ideal Senate and Senator reinforces the idea that the Senate was foreseen as a noble and stately institution: words such as: maturity, dignity, authority, and judgement occur often. Barton wanted 'as dignified an upper chamber as we can';⁹¹ Macrossan saw 'a strong and powerful senate which will have dignity and authority' and 'a superior body' with 'men of maturity of judgement, distinction, service, length of experience, and with capable and eminent men'.⁹² Downer also saw 'a house of high dignity' ... 'knowing its importance and its dignity'; and with 'superior ability and influence'.⁹³ Downer's 'lordly',⁹⁴ though said

⁹⁰ Ibid., 13 September 1897, p.362.

⁹¹ Ibid., 17 March 1891, p.411.

⁹² Ibid., 17 March 1891, p.436.

⁹³ Ibid., 18 March 1891, p.472.

⁹⁴ Ibid., 29 March 1897, p.209.

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with more than a hint of sarcasm, and McMillan's 'glory'⁹⁵ directly evoke a vision of splendour and betray a subliminal notion of an upper class in the upper house. Wisdom and character also made frequent appearances, complemented by O'Connor who foresaw a 'steadying, controlling and moderating influence'.⁹⁶ Important, strong and powerful were other favourites and Dibbs' contribution was a Senate 'perfect, independent and probably intelligent' even if he sounded a little uncertain about the last attribute.⁹⁷ Weight appeared occasionally as well as experience and intelligence. Baker saw the senators as men of 'character and position'⁹⁸ and Bird added 'men of good standing, of good judgement'.⁹⁹

'Dignity' was a great favourite evoking a vision of personal as well as institutional formality, decorum and courtesy, as would be fitting in a house of such excellence. The use of the word further emphasises the vision in the delegates' minds of an elite house in a class distinction sense and one superior to the 'lower' House of Representatives. This was a lofty vision, yet the remarkable aspect of these aims is that no-one suggested how they could ensure such a splendid result. Perhaps McMillan's argument had influenced them: that simply being elected as Senators would imbue the elected with the necessary qualities, touching them with the 'glory' of the upper house, or perhaps they were unable to discard the idea of nomination even though election had been agreed upon. It is possible that the lack of debate on the topic of election had caused some delegates to forget the change of method of appointing Senators, though the fact that the most eloquent descriptions of superiority were made in 1891 suggests that not all of them had.

Though the biographical data suggest that the delegates were all very similar men, some were more prominent and active than others. Leaders such as Henry

⁹⁵ Ibid., 8 September 1897, p.219.

⁹⁶ Ibid., 24 March 1897, p.56.

⁹⁷ Ibid., 6 April 1891, p.753.

⁹⁸ Ibid., 1 April 1891, p.544.

⁹⁹ Ibid., 6 April 1891, p.728.

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Parkes, Alfred Deakin and Edmund Barton were all experienced politicians and major influences on the direction of the Conventions. Staunch conservatives such as John Forrest and Henry Dobson expressed their views strongly but were not supported in the divisions. Andrew Clark and Richard Baker, supported by Deakin, spoke out strongly against responsible government but they failed to convince the Conventions. Higgins, in his vehement opposition to equal State representation in the Senate, presented the views of the major colonies, but the fear that less powerful colonies would not then join the Federation persuaded even some who agreed with him to vote for equal representation. The views of the more vocal delegates were the most evident but not necessarily the most important or influential. The less obvious delegates, those who said little, were equally important because their votes carried the decisions. James Lee Steere and William Loton for example, were almost silent but they voted loyally along with their leader, John Forrest, along conservative lines.¹⁰⁰ Their enthusiasm for Federation was, like their leader's, at best lukewarm.

Though the delegates had arrived at the Convention from different routes they had by then achieved similar positions in society and could now be seen as something of a homogenous group. This resulted in complementary opinions and values which enabled compromise on difficult decisions, such as the dilemma over equal representation for the States in the Senate. They were confident that the decisions they made in regard to an upper house were correct and would ensure its stability and its 'dignity' by the election of good, sound citizens—such as themselves—to the Senate.

The delegates' ideas of a Senate arose from their own service in the colonial parliaments and their grounding in British culture. They held on to these ideals with tenacity because they believed that their model of an upper house was not only appropriate but necessary and would strengthen and safeguard the Federation by providing a higher authority on all legislation. From their speeches in the debates

¹⁰⁰ Deakin, *The Federal Story: The Inner History of the Federal Cause, 1880-1900*, p.60.

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and from their biographical backgrounds, it may be concluded that the delegates' vision of future Senators was very much in their own image.

Chapter 4

'The Wisest, the Safest, the Best'¹: Colonial Upper Houses as models

Henry Parkes expressed this heartfelt sentiment about the bicameral style of legislature as existed in Britain, in a speech to the New South Wales Parliament in 1873. It was a sentiment that prevailed when the meetings of the Federal Conventions took place in the Legislative Assembly Chambers of the various Australian Colonies in the 1890s.² As the Convention delegates, in the stiff, dark suits and top hats of the era, assembled to debate a new constitution for Australia, a stately accoutrement of power confronted them: at the head of the Chamber a Speaker's Chair, often ornately fashioned and on a plinth or platform, would face the delegates, seated in green leather armchairs or benches arranged in a horse-shoe pattern. Though not as elaborate as the Legislative Council Chambers, the Assembly Chambers were formally laid out and furnished with heavy, ornate furniture and fittings that breathed power, dignity and authority.³ The trappings of Australian lower houses were also reminders of their predecessor and model, the House of Commons in Britain, and were designed to reflect the furnishings of that Chamber. To add to the solemnity of the proceedings the rules of debate in the Conventions were managed by staff of the Colonial Assemblies and followed the pattern of the standing orders of the lower houses, themselves based upon the procedures of the House of Commons. In these surroundings and with these formalities it is easy to imagine tradition and history weighing heavily on the

¹ Henry Parkes, *Speeches*, (Melbourne: George Robertson, 1876), p.356.

² Sydney, 1891, Legislative Assembly Chamber; Adelaide, 1897, House of Assembly Chamber; Sydney, 1897, Legislative Assembly Chamber; Melbourne, 1898, Legislative Assembly Chamber.

³ The plans of the various chambers differ in detail but present a similar layout and arrangements.

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shoulders of the delegates. Powerful encompassing forces, reminders of past glories and intimations of future triumphs, would constrain choices.

This chapter will explore the historical development of the colonial Constitutions and their upper houses to discover what influence they had on the decisions of the delegates in regard to the Australian Senate. All but one of the delegates were familiar with the model of Government in their home Colony and would naturally have been deeply influenced by their experiences and the historical traditions found there, in tandem with a strong sense of their British national heritage and perception of the British Parliament. To what extent did their vision of an ideal parliament draw upon these factors?

Five Australian Colonies achieved responsible self-government in the 1850s: New South Wales, Victoria, Tasmania and South Australia in 1856, and Queensland from its first establishment as an independent Colony in 1859. Western Australia, settled later, achieved independence in 1890. Self-government in all of the Colonies except Queensland was preceded by a gradual evolution from autocratic rule by a Governor, first to representative institutions without a responsible executive and later to full independence and 'responsible government'.⁴

The history of the New South Wales parliament is necessarily longer than that of the other Colonies as it was the first Colony on the continent, but as it was the model and trailblazer for the rest of Australia its early history is included as part of the histories of the other Colonies. The first form of Government in Australia was in New South Wales and began, as noted above, with autocratic rule by a Governor who was answerable to Britain. The Governor's rule was absolute until 1823, when a five-member legislature was established by Britain as an advisory Council to the Governor (then Sir Thomas Brisbane) and its members were senior officers responsible to him. The Council had no law-making powers and the Governor was not bound to follow their advice. Only the Governor could initiate a Bill and he could override the Council even if it disagreed with his proposal, but legislation that was

⁴ J.A. Marriott, *Second Chambers - an Inductive Study in Political Science*, (Oxford: Clarendon Press, 1910), p.152.

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'repugnant to the laws of England' was prohibited.⁵ This Council was the first legislative body in Australia and passed its first Act on 25 August 1824.

Membership was increased to seven members in 1825 and included John Macarthur, a wealthy and influential pioneer sheepman who had 'boasted that he was responsible for the recall of several Governors' and who represented the landed interests; thus the wealthy free settlers first gained a foothold in the government of the Colony.⁶ In 1829 the Council was again increased, this time to fifteen members and the Governor's powers were reduced. Transportation of convicts to the colony ended in 1840 and in 1842 the British Government passed New South Wales' first Constitution Act.

The Act provided for a unicameral legislature of thirty-six members, twelve of whom were nominated by the Crown and appointed by the Governor, himself a member, and the remaining twenty-four were elected by a male franchise based on property qualifications. The Governor now had no immediate control of the Council and in 1843, the introduction of a Speaker meant he ceased even to be a member.⁷ The body was still known as the Legislative Council. By 1851 membership had increased to 54, of whom 18 were nominated and 36 elected by male franchise, again based on property qualifications, and its powers were increased to include legislative authority and financial powers.⁸ The Council continued in various forms as a unicameral, partly elected and partly nominated body until the granting of responsible government in 1856 when, as will be discussed later, it was succeeded by a traditional bicameral legislature.

The Australian self-government process got seriously under way in 1850 when the Imperial Parliament in Britain passed 'An Act for the better Government of Her Majesty's Australian Colonies'. This Act provided for self-government by

⁵ A.C.V. Melbourne, *Early Constitutional Development in Australia*, ed. R.B. Joyce, (St. Lucia: University of Queensland Press, 1963), pp.98-103.

⁶ *Ibid.*, p.113. John Hirst, *Australia's Democracy: a short history*, (Crows Nest, Australia: Allen & Unwin, 2002), p.12.

⁷ Gareth Griffith and Sharath Srinivasan, 'State Upper Houses in Australia', (Sydney: New South Wales Parliamentary Library, 2001), p.27.

⁸ Barbara Page, 'The Legislative Council of New South Wales: Past Present and Future', (Sydney: Parliament of New South Wales, 1990), p.1.

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unicameral Legislative Councils in South Australia (which had never been part of New South Wales), Van Diemen's Land (later Tasmania, separated from New South Wales in 1825) and Victoria, separated from New South Wales under this Act. Each Council was to comprise two-thirds elected and one-third nominee members, the total number to be determined by the Governors and existing Councils. The Act also authorised the setting up of bicameral parliamentary systems in those colonies to establish: 'instead of the Legislative Council, a Council and a House of Representatives, or *other separate Legislative Houses*' (my emphasis). It also gave authority to each of them to draft a Constitution to provide a framework for responsible government. The phrase 'or other separate Legislative Houses' suggests that a certain latitude was present in the possible structure of the proposed parliaments.⁹

The passing of the Act was followed in December 1852 by the Colonial Secretary in Britain (Sir John Pakington, and in the following year, his successor the Duke of Newcastle) writing to the Governors of New South Wales, Victoria and South Australia encouraging them to draft constitutions under Act of the 1850.¹⁰ Pakington *suggested* these constitutions provide for bicameral legislatures with elected Lower Houses, (in effect responsible government) though he did not specify either election or nomination for the upper houses. He knew the British Government would have the final say.

Bicameralism, as provided for the colonies, was undoubtedly due to an instinctive notion, in both Britain and Australia, that it was the best model, or, as Henry Parkes put it 'the wisest, the safest, the best'.¹¹ The idea was further strengthened by deference to the British Government, whose approval was necessary for the legal validity of the independence of the colonies. For example, instructions from London in a Despatch from the Colonial Secretary to the New South Wales Governor (Sir

⁹ An Act for the Better Government of Her Majesty's Australian Colonies, 1850, Section XXXII.

¹⁰ Anna Munyard, 'Making a Polity' in Dean Jaensch, ed, *The Flinders History of South Australia: Political History*, (Adelaide: Wakefield Press, 1986), p.68.

¹¹ Parkes, *Speeches*, p.356.

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Charles FitzRoy) in 1853, contained an extract from a *Report from the Select Committee on the New Constitution*, (1853) which directed that:

Her Majesty's Principal Secretary of State for the Colonies has recorded it as his opinion, speaking of course, on behalf of the Imperial Government, that it is the conviction of Parliament, that, in regard to all points affecting internal Government in the Colonies having local representation, the general principles common to Great Britain and her Colonies *must* be applied. (my emphasis)¹²

On this basis the NSW Legislative Council was given the task of drafting a constitution to provide for responsible government. The resulting Constitution provided for a bicameral parliament with an elected lower house, the Legislative Assembly, and a nominated upper house, the Legislative Council. For the Council a minimum of 21 members, nominated by the Governor was specified but, crucially, no upper limit; in fact 32 members took their seats at the first sitting.¹³ The first members of the new Council were appointed for five years. Five years later members were to be appointed for life. There were no specific property qualifications for appointment, the only condition being that members had to be at least twenty-one years of age and male, but those selected to serve as Councillors tended to be prominent, wealthy and older citizens with conservative views.¹⁴ The powers of the two houses were to be equal except that only the Assembly could originate money bills but there was no prohibition on the Council amending or rejecting them. All Bills had to be passed by both Houses before they could be sent to the Governor for assent.¹⁵ In these matters the drafters of the Federal Constitution showed little imagination in their work, emulating almost to the letter the Constitution of the oldest Colony, except that the Federal upper house would not have the power of amending money bills.

¹² 'Report of the Select Committee on the Changes in Administration under the new Constitution Act of 1853; Despatch from Lord John Russell', in *Documents relating to Constitution of Responsible Government in New South Wales*, p.11. Held in Archives of New South Wales, Parliament House, Sydney.

¹³ Griffith and Sharath Srinivasan, 'State Upper Houses in Australia', p.27.

¹⁴ Parliament of New South Wales, 'History of the New South Wales Legislative Council', (Sydney: Parliament of New South Wales, nod.) p.4.

¹⁵ Constitution of New South Wales, 1855, Section 1, p.407.

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Nomination of the upper house, or Council, was agreed to even though the Select Committee found the instructions from the Duke of Newcastle, then Colonial Secretary, to 'admit of some latitude of discretion on this most important subject'. However it found no reason to depart from the 'Declaration and Remonstrance of 5th December, 1851' drawn up by the colonists and agreed to by Sir John Pakington, Colonial Secretary, on 15 December 1852, and which included provision for a nominated Legislative Council:

They desire to have a form of Government based on the analogies of the British Constitution. They have no wish to sow the seeds of a future democracy. But the object they have in view is ... placing a safe, revising, deliberative, and conservative element between the Lower House and Her Majesty's Representative in this Colony, they do not feel inclined to hazard the experiment of an Upper House based on a general Elective Franchise. They are less disposed to make the experiment as such a Franchise, if once created, will be difficult to be recalled.¹⁶

It was also in this report that the creation of a colonial version of the aristocracy was seriously canvassed:

That Act authorises the Crown, whenever it thinks proper to confer any hereditary title of rank, or dignity, to annex thereto an hereditary right of being summoned to the Legislative Council.¹⁷

Here was clearly laid down the *raison d'être* in the minds of the legislators for an upper house: to buffer the colony from the presumed hasty, or ill-considered, legislation that might be passed by an elected lower house, and it was this fear that persuaded the Councillors to decide that the members of the new Legislative Council be nominated. An elected upper house would give too much influence to popular power, and 'a society which accepted that men naturally fitted for the Legislative Council should be offered a place in it would be safe from democracy.'¹⁸ This principle, suggested but not imposed by the Imperial Government, lies at the heart of all Australian Colonial Upper Houses and was

¹⁶ Report of the Select Committee on the Changes in Administration under the new Constitution Act of 1853.

¹⁷ Ibid.

¹⁸ J.B. Hirst, *The Strange Birth of Colonial Democracy: New South Wales 1848-1884*, (Sydney: Allen and Unwin, 1988), p.36.

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clung to, in spite of changing views on democracy since 1832, upon the establishment of the Federal Senate in 1901.

The new Constitution for New South Wales was passed by the British Parliament in 1855. The idea of a hereditary right to sit in the Council, though seriously considered, was eventually rejected and the new Parliament first sat on 22 May 1856.¹⁹ The record of the Legislative Council of New South Wales is one of discord and conflict with the Legislative Assembly. On several occasions it defeated measures brought forward by the Government, and attempts to reconstruct, or abolish it, began in 1860 when the Council defeated Premier William Forster's bill to reconstruct the upper house.²⁰ The issue came to a head in 1861 when the Council refused to pass Robertson's Land Bill, an important legislative measure. This brought about the tactic of 'swamping the House' by Premier Charles Cowper. The tactic was to request the Governor to appoint new councillors in order to allow the legislation to pass. In this instance twenty-three new appointments were made. The Governor, John Young, received a stern rebuke from the Colonial Office for consenting to this measure, with the instruction that, in future, disputed legislation should not be allowed to pass by these means.²¹ In spite of this admonition the strategy was used subsequently and the number of Councillors tended upward. By 1861 good sense began to prevail as Councillors came to realise that conservative, resistant to change, obstructive behaviour was not in the best interests of good government. Fears that unreasonable hostility could lead to its abolition, also probably persuaded the Council to gradually become less controversial and accept that the elected House was supreme in money matters. Reform of the Council itself, however, was consistently rejected and by 1900 eight attempts at reconstituting the Council had failed.²²

¹⁹ Griffith and Sharath Srinivasan, 'State Upper Houses in Australia', p.27.

²⁰ Lynn Lovelock, 'A History of Controversy over the role and functions of the Legislative Council', *The Parliamentarian*, Issue 2, New South Wales, 2005, p.48.

²¹ J.A. Marriott, *Second Chambers - an Inductive Study in Political Science*, New, revised and part rewritten ed. (Oxford: Clarendon Press, 1927), p.156.

²² 'The Council Under Threat', in *Role and History of NSW Legislative Council*, 1999, p.5.
www.parliament.nsw.gov.au. Accessed 11 December, 2008.

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As noted above, in early Australian examples, Councils modelled on the British House of Lords toyed with the idea of establishing an aristocracy, as provided for in the Act of 1851. Canada had already set the example with a serious proposal to do this in 1791. John Graves Simcoe (the first Lieutenant Governor of Upper Canada from 1791-1796) believed that the province should be made 'as nearly as may be a perfect image and transcript of the British Government and Constitution'.²³ The idea was ridiculed in Britain by Charles James Fox, a prominent Whig politician, as 'a kind of second-rate, half-hearted House of Lords in the wild woodland'.²⁴ The provision remained in the Constitution despite such derision but was probably the reason it was never implemented. This scenario was repeated in New South Wales in 1853 and equally ridiculed as a 'Bunyip Aristocracy'. The full accounts of these colonial aristocratic aspirations are to be found in Martin's comprehensive history, *The Bunyip Aristocracy*.²⁵ Here it serves to illustrate the reliance some colonial legislators placed upon British heritage and imperial rule in establishing their versions of an upper house.

The instructions from the Colonial Office provide an eloquent illustration of the way the Imperial government viewed the development of self-government in its Australian Colonies. It also explains why the Colonies followed the British example. It was not only a matter of copying the mother country but recognition of the need to gain British approval for the new constitutions, all grounded in an instinctive feeling of the superiority of the system. The question is: would Britain have accepted a unicameral legislature for New South Wales if a serious proposal had been made? As a serious alternative was never proposed it is a question for conjecture, but the answer for the colonies is perhaps not, but for the Federal House, perhaps.

Victoria is the smallest of the mainland Australian states in land area but one of the most populous, as it was at the time of the Federal Conventions. It was also a

²³ Ged Martin, *Bunyip Aristocracy*, (Sydney: Croom Helm, 1986), p.27.

²⁴ W.R. Wilson, *Historical Narratives of Early Canada*, 2004.

<http://www.uppercanadahistory.ca/pp/pp1.html>. Accessed 17 June 2008.

²⁵ Martin, *Bunyip Aristocracy*.

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wealthy and fertile colony and regarded as one of the strongest states. It began in the 1830s when illegal squatters began to move into the area which was originally part of New South Wales.²⁶ The district was then governed from Sydney and in 1836 was officially recognised as the Port Phillip District. By 1835 a community had been founded and a small but steady stream of settlers moved into the district and the settlement gradually grew into the city of Melbourne. The colony was not settled under official auspices but owed its origin to immigrants from Van Diemen's Land, where good land was becoming scarce and 'every Tasmanian (*sic*) knew that attractive land lay on the other side of the Bass Strait'.²⁷ Many enterprising pastoralists from Van Diemen's Land flouted the 'law which placed the northern mainland out of bounds' and settled there.²⁸ A Superintendent, Charles La Trobe, was appointed in 1839 as the Crown's principle representative in the district, responsible to the Governor of New South Wales. The Port Phillip pioneers soon found that administration from faraway Sydney was unsatisfactory and, feeling they could better manage their own affairs began to call for independence. In response, in 1843, the district was given representation of six members in the Legislative Council of New South Wales. This also proved unsatisfactory as the Council consistently favoured New South Wales in its decisions and, in terms of time and money, the distance was too great an obstacle for the local Council representatives. As the district continued its development, calls for independence grew stronger. This eventually came with the Proclamation of the Imperial Act on 13 January 1850 'for the better Government of Her Majesty's Australian Colonies' which permitted the creation of three self governing colonies: Van Diemen's Land, South Australia and Victoria.²⁹

As a result of this Act Victoria was separated from New South Wales on 1 July 1851, and proceeded to enact its provisions, which called first for the establishment

²⁶ A detailed account of early settlement can be found in A.G.L. Shaw, *A History of the Port Phillip District: Victoria Before Separation*, (Melbourne, Melbourne University Press, 1996), pp.32–43.

²⁷ Geoffrey Blainey, *A History of Victoria*, (Cambridge: Cambridge University Press, 2006), p.17.

²⁸ Geoffrey Serle, *The Golden Age*, (Melbourne: Melbourne University Press, 1963), p.1.

²⁹ The name of Van Diemen's Land was changed to Tasmania in 1855; see Terry Newman, *Becoming Tasmania: renaming Van Diemen's Land*, (Hobart, Parliament of Tasmania, 2005), p.137.

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of a Legislative Council. Writs for the election of the first Legislative Council of Victoria were issued on 1 July 1851 and polling took place on 11 and 18 September 1851. As laid down in the Act the first Victorian Legislative Council was a part elected and part nominated body, which first met on 11 November 1851. There were thirty members: twenty elected on a stringent property franchise and the remainder appointed by the Lieutenant Governor, Charles La Trobe.³⁰ The Council remained as a unicameral legislature until 1856 and was responsible for drafting a new Constitution to provide the framework for responsible government. The Constitution was drafted by a 'Constitution Commission of the Legislative Council' set up after Colonial Secretary of State, John Pakington, had indicated by despatch on 15 December 1852 that 'it would not be inappropriate for the Council to develop a Constitution'.³¹

One of the principal issues for the Select Committee of the Legislative Council, set up in 1853, was what form the upper house should take. There were three possibilities: a fully nominated Council as in New South Wales, a part elected, part nominated Council as in Victoria since 1851, or a fully elected house in keeping with the strengthening democratic attitudes. These were becoming more evident since the disruptions on the Victorian goldfields in 1854, though they were balanced by many who believed property ownership was a necessary prerequisite for moral and political leadership.³² The Select Committee recommended that: 'The upper house was to consist of the educated, wealth (*sic*) and more especially the settled interests of the country—that portion of the community naturally indisposed to rash and hasty measures'.³³ In the event the Council was a compromise. It was to be an elected body, but on stringent membership and voter eligibility criteria to

³⁰ R.D. Lumb, *The Constitutions of the Australian States*, (St. Lucia: University of Queensland Press, 1972), p.25.

³¹ Raymond Wright, *A People's Counsel: A History of the Parliament of Victoria 1856–1990*, (Melbourne: Oxford University Press, 1992), p.15.

³² R. Wright, 'The Legislative Council: Retain, Reform or Abolish', (Melbourne: Victorian Parliamentary Library, 1984),

³³ Geoffrey Serle, 'The Victorian Legislative Council, 1856–1950', *Historical Studies: Australia and New Zealand*, 1954, p.186.

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ensure members were prosperous and responsible citizens who would act as a sobering influence on the popularly elected and less responsible Lower House.³⁴

In this election, held in the spring of 1856, Victoria blazed a trail in introducing the secret ballot—a world-first—and providing for a fully elected upper house. With these exceptions the Constitution was in traditional form, structured on traditional lines. It laid down that there were to be two houses, as in the ‘mother country’: a lower house, the Legislative Assembly and an upper house, the Legislative Council. The Legislative Council was assigned two major responsibilities in the Constitution as recommended by the Select Committee: to protect the interests of the propertied, the wealthy and the educated and act as a house of review and a restraint on the inevitably more ‘radical’ Assembly.³⁵

Membership for the new Council was set at thirty, five for each of the six Provinces; members were to be male and aged over 30 years; their full term of office was ten years, or twice that of the members of the Assembly. Six members were to retire every two years to be replaced with new members, which meant that the house was indissoluble; they were not paid and property qualifications were stringent for both electors and members. The Select Committee of 1853 recommended that ‘a high freehold qualification should be required ... to ensure ... that it may consist of men who may reasonably be expected to possess education, intelligence and leisure to devote to public affairs’.³⁶ Its powers were equal with the Assembly except it could not originate money bills, though, unusually, the power to reject money bills was formalised.³⁷ There was no procedure for the resolution of deadlocks. It was considered normal parliamentary processes would deal with these. All Bills had to be passed by both houses before they could be presented to the Governor for assent and there were provisions for alterations to the Constitution, which had to be passed by an absolute majority in both houses.

³⁴ *The Legislative Council: Retain, Reform or Abolish?* Victorian Parliamentary Paper, 84/1.

³⁵ *Ibid.*, p.2.

³⁶ Serle, ‘The Victorian Legislative Council, 1856–1950’, p.186.

³⁷ Constitution of Victoria, 1855, Section LVI.

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The restrictive qualifications, the deliberate decision not to provide any deadlock mechanisms, and the fact that it was to be 'indissoluble' reinforced the definition and public image of the Council as a powerful force for conservatism. Only in the restriction on money bills were its powers limited. The first elected bicameral Parliament of Victoria assembled on 25 November 1856, just six months after the first sitting of the New South Wales Parliament on 22 May 1856.³⁸

The Council took full advantage of its powers and the 1860s and 1870s saw numerous clashes between the two houses. From the outset Bills were either rejected outright or passed by the Council only after significant compromises had been extracted from the Assembly. Education, land, mining, protection, direct taxation, payment of members were just some of the legislative issues rejected, delayed or emasculated by the Council. Supply was rejected in 1865-7, and 1877, and deadlocks became a feature of Victorian Parliamentary practice.³⁹ Under these pressures Government became unstable and changed hands twenty-nine times between 1856 and 1901.⁴⁰ This then, was the parliamentary background that the Victorian delegates took with them to the Federal Conventions.

South Australia was not a breakaway from New South Wales but was established in 1834 as a free colony under the South Australia Act. The Act included a promise of representative Government when the population reached 50,000. From the beginning South Australian colonists were committed to democracy and representative government and had a strong sense of being different from the other colonies because they had never accepted convicts. When they came to draft their first constitution in the 1850s they could have been influenced by their difference and history, but the end result was not so very different from the other colonies.⁴¹

³⁸ Wright, *A People's Counsel: A History of the Parliament of Victoria 1856–1990*, pp.110-111.

³⁹ Retain, Reform or Abolish, p.2.

⁴⁰ Parliament of Victoria, *Historical Overview*, Parliament of Victoria, <http://www.parliament.vic.gov.au/hist.html>. Accessed 5 August 2008.

⁴¹ Lumb, *The Constitutions of the Australian States*, p.29.

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The first settlers arrived in South Australia in 1836 and the first Government was established under Governor Hindmarsh, appointed by the British Government. The new settlers had no official voice in how they were governed and, as in other Colonies, the Governor ruled with the assistance of an appointed Executive Council. In 1851 the Imperial Act of 1850 authorised South Australia, as in New South Wales and Victoria, to form a partly elected, partly nominated, legislative council for the Colony and to draw up a constitution providing for a bicameral system and responsible government, subject to British government approval.⁴² The Council was established in 1851. It comprised twenty-four members, eight of whom were nominated by the Crown and sixteen returned by the electors of sixteen electoral districts, who had to meet a property qualification. This hybrid Council of appointed and elected Members continued as the unicameral Legislature of South Australia until the inauguration of responsible Government in 1857.

In accordance with the suggestions in the despatch from Pakington in 1852, and as occurred in New South Wales and Victoria, a Select Committee of the Council was established which recommended the formation of a bicameral legislature. Both houses were to be elective and electors for the Council had to satisfy property qualifications.⁴³ In 1855–56 the Legislative Council passed the Constitution Bill, which was proclaimed on 24 October 1856 by the Governor, Sir Richard Graves-MacDonnell. The form of the new Parliament was the traditional structure of two houses: a lower house, the Legislative Assembly and an upper house, the Legislative Council. The bicameral Parliament of South Australia first met on Wednesday, 22 April 1857, just five months after the new Victorian Parliament and less than a year after the New South Wales Parliament.

The first Legislative Council in 1857 was elected by the whole colony voting as one district and there were eighteen members. As in Victoria voting was by secret ballot. Councillors were to be male and aged over 30 years, their term of office was twelve years with six members retiring every four years, to be replaced by newly

⁴² Ibid., p.31.

⁴³ Munyard 'Making a Polity' in Jaensch, *The Flinders History of South Australia: Political History*, p.67.

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elected members and it was to be indissoluble;⁴⁴ Members of the Council were not paid; the Council's powers were equal to those of the Assembly except it could not originate money bills; all Bills had to pass both Houses before being presented to the Governor for Assent and there were no provisions for the resolution of deadlocks. There was no ruling on the subject of amendment or rejection of money bills, which quickly became a bone of contention.⁴⁵

The male franchise of the Council was based on a property qualification which was lower than for the Victorian upper house, making for a wider franchise in the colony though still limiting it to the more prosperous and leisured members of society. This was in effect, as Griffith and Srinivasan have argued: 'the price to be paid for the support of conservative opinion which saw the Council as protecting the rights of property, and especially rural property, against possible incursions by those who had little'.⁴⁶

The imbalance of powers caused a dispute on the first day of the new Parliament when the Council amended a money bill as it would an ordinary bill. The Assembly contended that the Council had no right to amend money bills but could only pass or reject them. The dispute was partly resolved by a 'compact' in 1857, which was adopted by resolutions of both houses.⁴⁷ The compact defined those Bills (all money Bills) that the Council could not amend in the ordinary way but allowed the Council to 'suggest' amendments in such Bills except Appropriation Bills. This did not stop the bickering and as Dean Jaensch commented:

every session of parliament after 1857 was replete with disagreements between the houses, conferences of managers and the application of a veto by the Legislative Council.⁴⁸

Just as in Victoria, the South Australian government was chronically unstable and there were forty different ministries between 1857 and 1893.⁴⁹ Like their Victorian

⁴⁴ Constitution of South Australia, Section 2.

⁴⁵ *Ibid.*, Section 1.

⁴⁶ Griffith and Sharath Srinivasan, 'State Upper Houses in Australia', p.9.

⁴⁷ P.A. Howell, 'Constitutional and political development, 1857–1890'; in Jaensch, *The Flinders History of South Australia: Political History*, p.164.

⁴⁸ Cited in Griffith and Sharath Srinivasan, 'State Upper Houses in Australia', p.9.

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and New South Wales counterparts the South Australian delegates also failed to take lessons from their experiences.

By 1881 the continuous dissension between the houses forced some changes in the Council: membership was increased from eighteen to twenty-four and the previous single, whole-State electorate was divided into four six-member districts.⁵⁰ More importantly, also in 1881, the first provision in Australia for dealing with deadlocks, either by a double dissolution of the Parliament or by the creation of two new members for each of the new districts of the Legislative Council, was added to the Constitution. It was as Griffith and Srinivasan have commented a 'convoluted mechanism' which other observers saw as being there to preserve the power of the upper house.⁵¹ R.L. Reid, an Australian political scientist, thought that 'any Government would shrink from involving itself in the protracted "deadlock" clauses of the constitution, particularly in view of the fact that at the end of the process it might be no better off than before'.⁵² The mechanism has never been used but remains in force in substantially the same form to this day, under Section 41 of the 'Constitution Act 1934'.⁵³

Changes after 1881 came in 1887 when Parliament passed an Act to give all Members of Parliament a salary of £200 a year, which opened up Parliament and political life to ordinary wage earners, and in 1894 the South Australian Parliament granted women with the necessary qualifications the right to vote for both Houses of Parliament.⁵⁴

⁴⁹ Howell, 'Constitutional and political development, 1857–1890'; pp.92, 108.

⁵⁰ Griffith and Sharath Srinivasan, 'State Upper Houses in Australia', p.9.

⁵¹ R.L. Reid, 'The Government of South Australia', in *The Government of Australian States*, ed. S.R. Davis (London: Longmans, 1960), pp.373-4.

⁵² S.R. Davis, ed., *The Government of Australian States* (London: Longmans, 1960), pp.373-4.

⁵³ Griffith and Sharath Srinivasan 'State Upper Houses in Australia', p.9. Jaensch has argued 'The constitutional amendment ensured the dominance of the Council ... It is not surprising that the proposal was considered useless, and not surprising that the provisions were never initiated in the colonial period and have never been carried through since then'. Jaensch, *The Flinders History of South Australia: Political History*, p.372.

⁵⁴ John Quick and Robert Garran, *The Annotated Constitution of the Australian Commonwealth*, 1995 ed. (Sydney: Legal Books 1901), pp.64–7.

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South Australian delegates came to the 1897 Convention from a Parliament where the Council or upper house had twenty-four members elected by four districts with six members each who were paid £200 a year. Voting was by secret ballot. Councillors were required to be male and aged over 30 years, their minimum term of office was six years and half the members retired every three years, or at each election. By this means, as in other Colonies, the Council was to be indissoluble. The Council's powers were equal with the House of Assembly except it could not initiate or amend money bills, but it could send suggestions for amendments to such bills.⁵⁵ This procedure was unique to South Australia and was to be adopted for the Federal Constitution. It is possible that the idea was drawn from Section 28 of the Act which allowed the Governor to transmit a message to the Council or the Assembly 'suggesting' amendments to a Bill presented to him for assent. This also appears in the Victorian Act in Section 36, but does not appear to have ever been used. Winthrop Hackett mentioned it at the 1891 Convention, so it was not unknown. Though he commented that 'under most of our constitutions, he [the Governor] can communicate—I do not say as to money bills, but as to other legislation—by message any amendment he thinks it desirable to make in a bill after it has passed both houses' the provision does not appear in any other Constitution.⁵⁶ As in other Constitutions, all Bills had to be passed by both houses before they could be presented to the Governor for Assent but, again unique to South Australia, there was a complicated procedure to break deadlocks that, for all practical purposes, was unworkable.

Tasmania is Australia's second oldest settlement. It was established in September 1803 as Van Diemen's Land and, until 1812, was divided into two counties administered from Sydney. In 1812 Colonel Thomas Daley was appointed first Lieutenant Governor of the whole Colony and on 3 December 1825 the island became a Colony in its own right. A Warrant constituting a single chamber parliament, a Legislative Council, was proclaimed at Hobart by Governor Darling of

⁵⁵ A full account of the adoption of the suggestions procedure is to be found in Boyle Travers Finniss, *The Constitutional History of South Australia: During Twenty-One Years*, (Adelaide, London: Rigby, Simpkin, Marshall & Co, 1886), Chapter XIII.

⁵⁶ OR, 6 April 1891, p.742.

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New South Wales. At the same time he proclaimed the Island's administrative independence from New South Wales.⁵⁷

From 1825 the Colony was governed by a Lieutenant Governor, Colonel Sir George Arthur, and a Legislative Council of six members. In 1828 the Council was increased to fifteen: eight official nominees and six people's nominees with the Governor presiding. In March 1848 the Governor, Sir William Denison, suggested to English authorities that the Colony ought to have two representative Chambers. He did so because he felt that:

There is an essentially democratic spirit which actuates the large mass of the community and it is with a view to check that spirit, of preventing it coming into operation, that I would suggest the formation of an Upper Chamber.⁵⁸

As Griffith says, this was a view firmly grounded in the class model of bicameralism and echoed the views of other Colonies in their desire for an upper house, though an underlying reason was to give the House a more permanent nature and to reflect a high property franchise.⁵⁹ Townsley considered it was also 'to guard against hasty and inconsiderate legislation by securing due deliberation previous to the final adoption of any legislative measure'. Governor Denison's proposal however, was rejected by the Colonial office as an 'untried form of constitution'.⁶⁰

As in other colonies, in response to the Imperial Act of 1850, the Council was increased again in 1851 to twenty-four members and its composition changed to a partly elected and partly nominated membership: sixteen elected by restricted property franchise and eight nominated by the Governor, who now ceased to be a member.⁶¹ In furtherance of other provisions of this Act, in 1854 a select committee of the Legislative Council presented a report and a draft constitution that recommended the creation of a bicameral Parliament. There were very serious

⁵⁷ Carrel Inglis Clark, *The Parliament of Tasmania: An Historical Sketch*, (Tasmania: H.H. Pimblett, Government Printer, 1947), p.7.

⁵⁸ W.A. Townsley, *Struggle for Self-government in Tasmania 1842-1856*, (Hobart: L.G. Shea, Government Printer, Tasmania, 1951), p.134.

⁵⁹ Griffith and Sharath Srinivasan, 'State Upper Houses in Australia', p.13.

⁶⁰ Townsley, *The Struggle for Self-Government in Tasmania: 1842-1856*, p.144.

⁶¹ Clark, *The Parliament of Tasmania: An Historical Sketch*, p.10.

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discussions in the Committee's report, including a prolix and protracted explanation of why the Committee had not considered the establishment of a peerage. The usual compelling reasons were put forward and embellished with the comment that 'all proposals for a Colonial Peerage ... have been met with derision'. This led to the decision to establish an elected upper chamber.⁶² This time the Imperial Government did not demur. The Act received Royal Assent on May 1, 1855, the island was renamed Tasmania in the same year and responsible government was established in 1856. The new bicameral Parliament met for the first time on 2 December 1856.⁶³

The new Legislative Council of Tasmania had fifteen members elected from single-member divisions and the number was increased from fifteen to nineteen by 1898. The franchise for the Council was manhood suffrage at the age of twenty-one with a property qualification requiring a 'freehold estate of the annual value of fifty pounds sterling money'.⁶⁴ Members of the Council had to be thirty years of age, the term of office was nine years with five members retiring every three years and five new members elected. The Council could not be dissolved. The powers of the two houses were equal except that only the Assembly could originate money Bills, a provision that, as in other Constitutions, soon caused dissent.

According to Griffith, the Council's relationship with the Assembly was a stormy one. One month after the opening of the first parliament in December 1856, a disagreement over money bills led to a 'Managers' Conference' to define the powers and duties of both houses with respect to the problem of supply. The Conference failed. The problems did not go away and in 1899 the Government prepared a case for the Privy Council in London on relative powers, but leave to

⁶² Ibid., p.32.

⁶³ Peter Bennison, 'Parliament of Tasmania: A Brief Historical Overview: On the Occasion of the Sesquicentenary of Bicameral Parliament and Responsible Government, 2 December 2006', (Hobart: Parliament of Tasmania, 2006), p.1. Terry Newman, *Becoming Tasmania*, p.137.

⁶⁴ Constitution of Tasmania, Section VI.

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have the case heard was refused.⁶⁵ This then was the situation in Tasmania when it sent delegates to the Federal Conventions.

Queensland was the only colony to have a parliament from its inception—on separation from New South Wales on 6 June 1859. The New South Wales Constitution Act 1855 had provided the legal framework to establish representative government in Queensland from the time the new Colony was created in 1859.

Queensland's capital city of Brisbane was established in 1825 as a penal settlement for more difficult convicts. It officially closed in 1839 and the land prepared for sale to permanent settlers.⁶⁶ As the economy grew and the population expanded, a separate sense of identity emerged and the people began to recognise the importance of Brisbane as a port and urban centre. The physical remoteness of the colony from the centre of government in New South Wales caused dissatisfaction with the administration and calls for self-government arose. In 1851 a public meeting was held to urge separation from New South Wales and petitions in favour of separation from the parent colony were signed and forwarded to the Imperial Government. However it was not until 1859 that separation was granted.⁶⁷

Queensland's Parliament was established under an Imperial Order-in-Council in 1859, prescribing the 'establishment of a legislature therein ... as nearly resembling the form of Government and legislature which should be at that time established in New South Wales' and including provision for an upper house, a Legislative Council and a lower house, a Legislative Assembly.⁶⁸

The new Legislative Council was to comprise 'at least five' male nominees, of twenty-one years of age, appointed by the Governor of New South Wales, Sir William Denison. They were to serve for five years and subsequent appointments were to be made for 'the term of their natural lives'. There was no upper limit on the

⁶⁵ Griffith and Sharath Srinivasan, 'State Upper Houses in Australia', p.13.

⁶⁶ Quick and Garran, *The Annotated Constitution of the Australian Commonwealth*, p.72.

⁶⁷ *Ibid.*, p.73.

⁶⁸ Order in Council empowering the Governor of Queensland to make laws, and to provide for the Administration of Justice in the said Colony, 6 June 1859.

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number of Councillors and Governor Denison appointed eleven members on 1 May 1860. Later that month the number was increased to fifteen. The powers of the two houses were to be equal except that all Bills appropriating public revenue, or imposing tax or impost, were to originate in the Assembly. All Acts had to be passed by both Houses before they could be presented to the Governor for Assent.⁶⁹ First elections were held in 1860 and the Queensland Parliament first met on 22 May of that year.⁷⁰

The initial concern of the first Governor, Sir George Bowen, and the first Premier, Robert Herbert, was finding an adequate number of suitable candidates for the Council, 'for all the more active and influential politicians, desire seats in the Lower House'. Nor was the Governor convinced the nominee system was the best, although he thought that the Council 'will prove an obstacle to any too hasty legislation', thus echoing the view that the democratically elected lower house needed a restraining influence.⁷¹

During the election campaign for the first Assembly, some politicians argued against an upper house. One of them saw it as 'positively obstructive, and because the best men would choose to sit in the lower chamber it would become a refuge for the politically destitute'.⁷² Calls for the abolition of the Council arose as early as 1861 and the *Moreton Bay Courier* joined this call, saying the Council was 'a contemptible instrument of bad government and causes much unnecessary expense'.⁷³

The Order-in-Council was an unsatisfactory document with somewhat vague provisions and in 1867 a 'Bill to Consolidate the Laws relating to the Constitution of the Colony of Queensland' was passed to clarify the powers of the Legislature. The Act did not greatly affect the powers of the Council: the power to originate money

⁶⁹ Justin Harding, 'A Tale of Two Chambers: Bicameralism in Queensland 1860-85', *Journal of the Royal Historical Society of Queensland*, May 2000, p.48.

⁷⁰ Charles Arrowsmith Bernays, *Queensland Politics During Sixty (1859–1919) Years*, (Brisbane: Queensland Government Printer, 1920?), p.7.

⁷¹ Harding, 'A Tale of Two Chambers', p.248.

⁷² *Guardian* (Ipswich), 28 April 1860.

⁷³ *Moreton Bay Courier*, 19 May 1861.

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bills remained the prerogative of the Assembly and there was still silence on whether it could amend money Bills, so the difficulties continued until 1885; Councillors were still nominated for life and no limit was placed on their number. The number fluctuated as Premiers manipulated their ability to appoint new members and by 1864 there were twenty-three Councillors compared with twenty-six MLAs. There were calls for the Council to be elected but, as Harding commented, 'It would be a strange Government ... which voluntarily surrendered the possession of the ultimate sanction'. He also pointed out that events in Victoria in the 1860s and 1870s gave vivid demonstrations of the power an indissoluble and elected Chamber could wield.⁷⁴

Despite the Bill to Consolidate the Laws relating to the Constitution of the Colony of Queensland, difficulties, which had begun early, continued over the issue of whether the Legislative Council had the right to amend money bills. As in other constitutions, both the Order-in-Council and the 'Consolidation' Bill had been silent on this issue and in 1885 the question was referred to the Privy Council in London. The gist of the wordy and pedantic request was: whether the Constitution Act of 1867 conferred on the Legislative Council powers co-ordinate with those of the Legislative Assembly in the amendment of all Bills, including money Bills; and whether the claims of the Legislative Assembly as set forth in their message of 12 November, were well founded? In an amazingly succinct response to the Queensland Parliament the Privy Council replied 'the first of these questions should be answered in the negative and the second question in the affirmative'. In other words the Legislative Council did not have that right.⁷⁵

This then was the structure of the Queensland Council when the delegates attended the Federation Conference in 1890 and the Convention of 1891. Queensland failed to send delegates to the 1897–8 Convention, reflecting the inherent instability of its Governments. There was some participation in that

⁷⁴ Harding, 'A Tale of Two Chambers', p.251.

⁷⁵ A full account and the full text of these proceedings can be found in Bernays, *Queensland Politics During Sixty (1859 - 1919) Years*, pp.248-254. Harding, 'A Tale of Two Chambers', p.265. The Privy Council in London is a senior judicial body and for many years the highest court of appeal for Australian legal cases.

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convention however, in the person of Samuel Griffith, now Chief Justice of Queensland. He was consulted during the Adelaide proceedings and wrote to some delegates advising them to insist on the Senate's right to amend money bills. Baker also sent him some reports and added 'We miss you very much'. Griffith read all the public reports from Adelaide and wrote a criticism of the draft constitution in May 1897, distributing copies to the Queensland parliament and to members of the convention.⁷⁶

The colony of Western Australia evolved from a concern in Sydney in 1826 that the French were showing interest in unoccupied parts of the Australian continent. In response to this concern Governor Darling sent Major Lockyer with a detachment of soldiers and convicts to occupy King George Sound with a view to taking possession of the western part of the continent. Accordingly, Captain James Stirling in HMS *Success* surveyed the coast from King George Sound to the Swan River and recommended it as suitable for settlement and the formation of a colony. On 1 June 1829, he arrived at Swan River in the *Parmelia* with 800 intending settlers. This is the date from which the colonial history of Western Australia commenced.⁷⁷ The constitutional origin of the colony is contained in the Imperial Act of 1829 and the first legislative body was a Legislative Council that first met on 7 February 1832, presided over by Stirling, who had been made Governor of the Colony. Stirling nominated four other members to assist him, though he was the final arbiter of legislation.⁷⁸

The Western Australian economy was slow to develop and it was thought that the transportation of convicts to the colony could stimulate the economy by building roads and other public works. Accordingly, at the request of the Western Australian Colonial Administration, the first 75 convicts arrived in 1850. Their arrival delayed responsible government as the Imperial authorities would not approve a partly

⁷⁶ Roger B. Joyce, *Samuel Walker Griffith*, (St Lucia: University of Queensland Press, 1984), pp.204-5.

⁷⁷ Quick and Garran, *The Annotated Constitution of the Australian Commonwealth*, p.67.

⁷⁸ Griffith and Sharath Srinivasan, 'State Upper Houses in Australia', p.23.

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elected Council because the convict system required the British Government to provide the bulk of expenses for the Colony. Transportation ceased in 1868.⁷⁹

Western Australia was not mentioned in the Australian Constitutions Act of 1850 but from 1870 to 1890 a system of representative Government was developed in the same way as had occurred in other Colonies. In 1870 Government was by a Legislative Council of twelve elected members and six nominated by the Governor.⁸⁰ In 1889 the British Parliament enacted a Constitution passed by the Legislative Council of Western Australia. The Bill had to be referred to Britain for Royal Assent before it became operative because Western Australia had not been included in the 1850 Act. Delays in Britain prevented it from becoming law until 15 August 1890 and it came into operation on 21 October of that year.⁸¹ Under the Constitution the Parliament's powers and functions were to be similar to the other colonies: 'To this legislature it was proposed to give powers and functions similar to those of the eastern Colonies'.⁸²

The new Constitution provided for a traditional bicameral Parliament. The upper house, the Legislative Council, was nominated by the Governor and comprised fifteen (male) members of at least twenty-one years of age. A property qualification applied to both houses.⁸³ In 1893, when the Colony's population reached 60,000, and in accordance with the provisions of the 1890 Act, the Council became an elected body of twenty-one members with three members from each of seven provinces and there were restrictive voting qualifications.⁸⁴ The full term of office was six years and, as was the practice in other Colonies, members were to retire in rotation—in Western Australia seven every two years. The powers of the two houses were equal except that only the Assembly could initiate money bills. All bills had to pass both Houses before they could be presented to the Governor for Assent and there were no deadlock provisions. There were further reforms in 1899

⁷⁹ Brian de Garis, 'Western Australia', in Helen Irving ed., *The Centenary Companion to Australian Federation*, (Cambridge: Cambridge University Press, 1999, p.286.

⁸⁰ *Ibid.*, n.93.

⁸¹ NAA, *Documenting a Democracy*, www.foundingdocs.gov.au. Accessed 5 September 2006.

⁸² Quick and Garran, *The Annotated Constitution of the Australian Commonwealth*, p.70.

⁸³ Constitution of Western Australia, Section 6, p.5.

⁸⁴ Lumb, *The Constitutions of the Australian States*, p.40.

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but as these were not in place during the Conventions they will not be discussed here except to note that women were given the vote in 1899, soon after the matter was discussed at the 1897 Convention.

These then were the Constitutions and upper houses with which the Convention delegates were familiar. That all upper houses or Legislative Councils had very similar structures was not surprising because they were all based upon the lines of the British Constitution and advice from Britain. What then were the experiences of the delegates of these structures and how, if at all, did they affect their decisions on the Federal Senate? Did they consider them to be a sound basis or model for the Federal Senate or did they seek to change the structure to avoid some of the problems of the colonial upper houses? To examine this I will turn to comments made by delegates to the Conventions about their Legislative Councils, to find how much they were influenced by their experiences in their Colonies. Special note has been made of those delegates who were, or had been, Councillors or Upper House members and those who were Assembly members, by adding MLC or MLA to their references. This is to establish what, if any, differences existed in their attitudes to the idea of an upper house in the Federal legislature.

There is plenty of evidence of conflict in the Colonial Parliaments from 1856. In all of them the main bone of contention was the imbalance of power in regard to money bills. Samuel Griffith (MLA), a proponent of equal powers for both houses, commented in 1891 that the controversy over this imbalance was a fuss over nothing:

There is no doubt that this idea of money bills is a fetish peculiar to Australia. It is a fetish which is not worshipped in any other part of the world; it is not worshipped even in the United Kingdom.⁸⁵

The use of the words 'worshipped' and 'fetish' suggest strong feelings on the part of Griffith, yet the superior power of the lower house in regard to finances was a traditional feature of responsible government. It applied in all British colonies, including Queensland, as well as in the United Kingdom, though the British custom

⁸⁵ *OR*, 17 March 1891, p.428.

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was not enshrined in a Constitution but operated as a convention. Griffith's remark, coming from so eminent a personage, a QC, MLA and former Queensland Premier (1883–1888), serves to illustrate how the British Upper House and its customs were venerated, even if not always understood. Interestingly the major clash over the budget between the Houses of Parliament in Britain was still over two decades in the future.

All the Australian colonial constitutions provided that only the lower house could originate money bills, but, except for Victoria where there was a provision for the upper house to reject money bills, they did not legislate against amendments or rejections; yet all Bills had to pass both houses before they could be sent to the Governor for Assent. This was interpreted by the Councils as giving them the power of rejection or amendment of money bills—a power used liberally in some but not all Colonies. The Legislatures, as has been shown, tried to deal with this problem in various ways. The South Australian Parliament made a 'compact' that the Council would not amend money bills but might send 'suggestions' for amendments to the Assembly; the Queensland Council appealed to the Privy Council in London to rule that it did have the power, but the appeal was refused; the Tasmanian Parliament tried a managers' conference but it failed.⁸⁶

La Nauze recognised there was serious conflict in Victoria where the power of rejection was legitimised and commented that the Victorian Parliament had a 'history of bitter experience of clashes between their Assembly and Council'.⁸⁷ Arthur Berriedale Keith, a Colonial Office official from 1901 to 1914, and constitutional law scholar, also used the word bitter about Victoria when he argued that the conflicts there 'have been the most prolonged and ... with the most bitterness'.⁸⁸ Lyne (MLA) also used the word in 1897 about the New South Wales Parliament:

⁸⁶ Griffith and Sharath Srinivasan, 'State Upper Houses in Australia', p.13.

⁸⁷ J.A. La Nauze, *The Making of the Australian Constitution*, (Melbourne: Melbourne University Press, 1972), p.43.

⁸⁸ Arthur Berriedale Keith, *Responsible Government in the Dominions*, (London: Stevens and Sons Limited, 1909), p.107.

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What is the use of the machinery created in the first instance when the work of the house of representatives can be blocked: by the upper chamber? We have had bitter experience of that in this colony on more than one occasion. The work done after arduous labour by the Legislative Assembly has been absolutely vetoed by the Legislative Council. Will the hon. and learned member, Mr Barton, tell us that if work is done in the house of representatives which the senate has the power of vetoing, the senate will not exercise that power?⁸⁹

Lyne's comments present the argument succinctly and he was echoed several times by other delegates. The question of money bills was the most fiercely argued and the acrimony engendered by the question is a testimony to the difficulties the delegates had faced in the colonial parliaments on the same question. The sole power of originating such bills was conceded, reluctantly by some Convention delegates, to the lower house of the Federal Parliament so the most bitter arguments were centred upon whether the Senate could amend or reject them. In this respect the South Australian Parliament's solution of giving the upper house the option of sending 'suggestions' for changes to these bills was seriously considered and eventually adopted. For the Federal Parliament amendments by the Senate to money bills were to be expressly prohibited by the Constitution but the 'messages' procedure was adopted and formalised as 'requesting by message' any amendment; outright rejection was not prohibited.⁹⁰

The idea of suggestions was first raised in 1891 by Edmund Barton (MLA) who seemed to think that the practice was also used in Tasmania, though I can find no evidence of this. Thomas Playford (MLA) and William McMillan (MLA) were at odds on the issue in 1891. Playford claimed that the idea had 'worked for years' in South Australia⁹¹ while McMillan ridiculed it and emphasised that though it might be a 'practice', it had never been enacted.⁹² 'It was' he said 'the most clumsy, the most undignified, and the most humiliating procedure that could ever be enacted'. Bolton Stafford Bird (MLA) added to the argument saying that in Tasmania the upper house had considerable power in dealing with money bills but 'no great evil' had

⁸⁹ OR, 10 September 1897, p.354.

⁹⁰ Australian Constitution, Section 53.

⁹¹ OR, 6 April 1891, p.719.

⁹² Ibid.

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ever come of the upper house amending such bills and he thought 'it exceedingly strange' that the delegates were unwilling to give the Senate more power in this regard.⁹³ This suggests that in many cases (and parliaments) common sense prevailed, and though in Tasmania amendments were not formally prohibited, the attempted recourse to the Privy Council in 1899 suggests that perhaps all was not as harmonious as Bird implied.

The argument about suggestions arose because the Constitutional Committee of the 1891 Convention had included the practice in its draft constitution. Playford, a member of the Committee, defended the idea saying 'suggestions have been respectfully treated and considered by the lower house ... after having been quietly and intelligently debated'.⁹⁴ Winthrop Hackett (MLC) thought the idea 'given in the South Australian Constitution and exercised in Tasmania' a good one and it had been adopted in Western Australia.⁹⁵ Hackett was scarcely accurate about either colony as it was not actually part of South Australia's Constitution, as was forcibly pointed out by McMillan, nor was it a recognised procedure in Tasmania, and I have not been able to find any evidence of the procedure being invoked in the Western Australian Parliament.

A sour note was struck in the debate on suggestions when Richard Baker (MLC) contradicted his fellow South Australian, Thomas Playford (MLA), saying that the Council 'never does make suggestions with respect to tariff or appropriation bills'.⁹⁶ This turned into a 'yes/no' argument between a Councillor and an MLA. Another South Australian, Charles Kingston (MLA), cut in on this argument saying suggestions had been made by the Council about loan bills. Baker would not have it, and commented bitterly if 'ignoring suggestions is treating them respectfully, he is quite right'. This acerbic comment is perhaps more revealing than it sounds as it suggests that the system did not work to everyone's satisfaction. The argument continued with John Bray (MLA) breaking in and saying he had a record of the

⁹³ Ibid., p.728.

⁹⁴ Ibid., p.735.

⁹⁵ Ibid.

⁹⁶ Ibid., 6 April 1891, pp.719-734.

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Council making suggestions about a tariff bill, twenty-five in all and all being accepted.

The argument about money bills was carried on into the 1897 Convention when Edward Braddon (MHA) claimed that the Tasmanian Council had the right to amend money bills. In this he was correct in that the Tasmanian Constitution did not expressly prohibit amendments. He argued that the Senate should also have this right, as the Senate, which would be a fully elected body, could not be compared to the Councils.⁹⁷

Were the delegates overly influenced by their colonial experiences in the argument on suggestions? The result, that the Senate was not given the power of amending money bills, only the power of rejection with the concession that it could send 'suggestions' for amendments to the lower house, indicates that they were certainly influenced but, after all the arguments, could only agree on a weak compromise to deal with the problem. The situation in the Colonies was that the Councils were only prevented from initiating money bills. That the power of amendment or rejection was not prohibited by most colonial Constitutions gave rise to the bitterness of the conflicts in the Colonial parliaments. The delegates were probably aware of the effect of the British 1832 Reform Act, which had forced the House of Lords to cede its power of amendment or rejection of money bills, even though this was never formally 'enacted'.⁹⁸ It was not until 1911 that the superiority of the House of Commons over the House of Lords in Britain was formally recognised but that superiority had been informally recognised since the passing of the Reform Act of 1832.⁹⁹ As McMillan correctly asserted, the power of 'suggestion' was never in the South Australian Constitution, but the 'compact' arrangement in that Colony had the same effect. The question of amendment or rejection of money bills by the upper house had also been bitterly contested in Tasmania and Queensland, and

⁹⁷ Ibid., 24 March 1897, p.63.

⁹⁸ J.A. Marriott, *English Political Institutions: An Introductory Study*, (Oxford: Clarendon Press, 1910), p.163.

⁹⁹ Michael Rush, 'The House of Lords, the Political Context', in Paul Carmichael and Brice Dickson, eds. *The House of Lords: Its Parliamentary and Judicial Roles* (Oxford: Hart Publishing, 1999), p.7.

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was one which a managers' conference (Tasmania) and an appeal to the Privy Council (Queensland) had failed to settle.

The conflicting merits of a nominated Senate and an elected Senate were fought out in the 1891 Convention. The conclusion was a decision for a nominated Senate—democracy still being seen as a threat. The idea of nomination did not please everyone and George Dibbs (MLA) perhaps expressed it best:

I for a long time have believed in the existence of a nominee upper house. To-day I do not. To-day I believe in an elective upper house, and looking at our Colony—for that one's own colony is the place where we get the most experience—and seeing the appointments made from time to time by ministers in power of men utterly unfit to be senators or legislators, I think the time has arrived when that power should be taken out of the hands of ministers, and in some form left in the hands of the people.¹⁰⁰

His experience was probably similar to that of other delegates, with the result that in 1897 the decision was made that the federal upper house should be elected, or it may have been the entry of the Labour party into politics that changed their thinking. In the 1897 Convention the matter was resolved without any further debate, though Josiah Symon still expressed reservations saying that he thought election by the State Legislatures in some respects would 'be a very good thing'.¹⁰¹ The rejection of a nominated Senate and property qualifications for electors, and even the lower age qualification for the federal Senate, set at over 21 years, are all clear indications of the advance of democratic thinking, coupled with the experiences of the delegates in dealing with the difficulties caused by restrictive requirements on electors or parliamentarians, mainly property and age qualifications, which limited the pool of candidates for election and resulted often in a concentration of prominent, wealthy and conservative citizens in the Legislatures.

The other major issue that gave rise to serious debate based upon colonial experiences was whether women should be enfranchised for the Federal Parliament. South Australia led in this regard, having given its women the vote in

¹⁰⁰ *OR*, 6 April 1891, p.752.

¹⁰¹ *Ibid.*, 25 March 1897, pp.136-7.

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1894.¹⁰² Since then the enfranchisement of women had been debated in most Australian parliaments and at the 1897 Convention some delegates quoted examples in support of or against the issue, but though it had been debated or even considered, only in the South Australian Parliament had the idea got past the intransigent Council Members.

Henry Higgins of Victoria claimed to be a 'strong advocate' of 'womanhood suffrage' but not yet and not for the Federation.¹⁰³ This, claimed George Turner (MLA) 'would shut women out'. The main arguments were pragmatic: that the states where women's enfranchisement had already been rejected would not accept federation if women were to be given the federal vote, while South Australia, whose women had the vote, countered with the threat that South Australia would not join the Federation unless women were enfranchised for the new Parliament. The most cogent argument for women's enfranchisement came from Frederick Holder (MLA) who said:

Suppose we adopt a Federal Constitution, which practically provides for manhood suffrage, can we expect to get the votes of those women in the first referendum to disfranchise themselves?¹⁰⁴

Women in South Australia had voted for delegates to the 1897 Convention and would be qualified to vote for the proposed Constitution. Perhaps some delegates had forgotten this.

In the event a practical solution was reached: for Federation electors would be the same as they were for each of the more numerous houses of the States, that is the lower houses, 'until Parliament otherwise provides'. This at least left the door open for women's enfranchisement on a Federal level by the new Parliament. In 1902 women were eventually given the right to vote in Federal elections. The States

¹⁰² Audrey Oldfield, *Woman Suffrage in Australia: A Gift or a Struggle?* (Cambridge: Cambridge University Press, 1992) p.39.

¹⁰³ *OR*, 25 March 1897, p.104.

¹⁰⁴ *Ibid.*, 26 March 1897, p.150.

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followed with NSW in 1902, Tasmania in 1903, Queensland in 1904, and finally Victoria in 1908.¹⁰⁵ Western Australia had enfranchised its women in 1899.

The delegates did not specifically introduce their own legislatures into the debates very frequently, nor were there noticeable differences in the attitudes of members of the upper and lower houses except in the exchange on how suggestions were handled in South Australia's Parliament. This is probably because the parliaments were all so similar and so familiar. The long discussion on 'suggestions' where South Australia had broken the mould, was the most fiercely argued in relation to colonial comparisons. The 'suggestions' idea was the only one that was adopted from one colony's approach to the problems of disputes over money bills. As deadlock provisions were not in place in most colonies—and where they were they were difficult to use—the provision of a procedure for dealing with deadlocks was one of the few major points of difference between the structure of the Legislative Councils and the proposed Federal Senate. The fact that, as we have seen, many delegates were all too familiar with the difficulties caused by intractable upper houses but still prescribed a bicameral Parliament for the putative nation, is worth lingering over. On one level it is an unambiguous example of the heart ruling the head. Clearly the force of tradition was too strong to resist. The theory of path dependence allows us to consider this force in more analytical terms. In this chapter it can be seen that the delegates constructed a constitution that reflected their experiences and heritage with only slight deviations from the path set out in their own legislatures, and even from medieval times. Departures from the beaten path, for example manhood election of Senators, are as much due to the strengthening forces of democracy in British based legislatures as to the enlightened debate in the Conventions. Colonial Parliaments represented a path dependence from which it was difficult to stray, regardless of their acknowledged problems. Moreover, for all their faults, upper houses were a powerful bulwark for those who were haunted by the prospect of majority rule. Having said that, this chapter shows that some delegates were not acutely familiar with their own

¹⁰⁵ Helen Irving, ed., *The Centenary Companion to Australian Federation*, p.375.

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Parliaments and practices and in their occasional references to them they often got it wrong. Their less than perfect knowledge did not deter them from embracing the precedents and in the structure of the future Senate they replicated the difficulties of the Colonial Constitutions. This suggests that the most potent motivating force in their decisions to create a Senate in the image of the Colonial Houses was more emotional than intellectual.

The result was that overall the configuration of the new Parliament and its upper house, after months of debate, was to be in the same pattern as the old. In this the Federation Conventions can be seen as a 'critical juncture framework' as outlined by Ruth and David Collier.¹⁰⁶ From their British heritage to their modern colonial experiences the delegates were emotionally driven to conform to the traditional format with only a few departures from the 'norm'.

This chapter has shown that the six Australian colonial upper houses were strong precedents for the structure of the Federal upper house. They were immediate and familiar models, but the historical traditions which added substance to the views of the delegates can be traced back even further, to the ancient world and later Britain and Europe. Many delegates were aware of the wider world and brought their experiences into their thinking on the structure of a future Senate. These influences will be elaborated upon in the following chapter, which will look at the role other and older models in Europe played in defining the structure of the Australian Senate.

¹⁰⁶ Ruth Berins Collier and David Collier, *Shaping the Political Arena*, (Princeton, New Jersey: Princeton University Press, 1991), p.29.

Chapter 5

The Lamp of Experience

Historians old and new have, implicitly and explicitly, suggested that ‘models’ were influential in shaping the Australian Constitution, particularly in relation to the Senate. Some invoke ancient Rome and Greece; most refer to the United States’ Senate and the British House of Lords; others suggest that the Australian colonial parliaments were the primary models. Here, for example, is what the seminal Australian constitutional historians Quick and Garran (1901) said on the topic of the Australian Constitution:

[It] ... is an adaptation of the principles of British and colonial government to the federal system. Its language and ideas are drawn, partly from the model of all modern governments, the British Constitution itself; partly from the colonial Constitutions based on the British model; partly from the federal Constitution of the United States of America; and partly from the semi-federal Constitution of the Dominion of Canada; the Constitution of the Commonwealth, therefore, is not an isolated document. It has been built on traditional foundations. Its roots penetrate deep into the past.¹

This is the conclusion in a nutshell. However, it is only a conclusion; the authors do not specify the reasoning behind the statement.

La Nauze concentrated on the structure of the Constitution as a whole, but drew on Inglis Clark’s draft of 1891 to emphasise the United States Senate as the major model for the Australian Senate. ‘For the composition of his Senate Clark followed the American model’.² In contrast to Quick & Garran, La Nauze made no reference to ancient regimes or to the British House of Lords. Erling M. Hunt, an American

¹ John Quick and Robert Garran, *The Annotated Constitution of the Australian Commonwealth*, 1995 ed. (Sydney: Legal Books 1901), p.vii.

² J.A. La Nauze, *The Making of the Australian Constitution*, (Melbourne: Melbourne University Press, 1972), pp.25-27.

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commentator, clearly saw the United States as the major model for the Australian Senate. This much is evident from the title of his book, though he does not see the Senate as a 'slavish copy' of the American model. He tells us that Canada, Switzerland, the German Empire, and Norway were also referred to in relation to certain issues such as the referendum, the composition of the Senate, and deadlock provisions.³

These are examples of the general position of historians on the subject of precedents for the Australian Senate; but it is not the whole story. In fact, there has not been a systematic discussion of upper house models explored by the delegates themselves before they made their decisions on the structure of the Senate. The obvious models, the Australian colonial upper houses, have been discussed in the previous chapter. The following two chapters ask: what other models were discussed in the Convention debates and what issues were they introduced in relation to? I will argue that the Senate was not just a 'Washminster' hybrid; it drew on various models from the ancient and modern worlds. This chapter will examine models from the ancient world and modern Britain and Europe.

Separate chambers date from ancient times and the original purpose was to allow representation of different groups of interests and classes. They were a device to allow sections of society, other than the elite or nobility, a voice in government. The privilege was still limited to the more prosperous and powerful citizens but the device of separate chambers contributed to a more acceptable and therefore more stable government. Ancient Greek philosophers, including Aristotle, advocated such a 'mixed' government and it has influenced parliamentary philosophy on a global scale and for many centuries. The ancient Greek and Roman examples were a strong influence on the evolution of modern federations and Meg Russell, in her discussion of the origins of second chambers, notes that the 'existence of multi-chamber parliaments may be traced back to ancient Greece and Rome'. She

³ E.M. Hunt, *American Precedents in Australian Federation*, (New York: Columbia University Press; London P.S. King, Ltd., 1930), pp.15-16.

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saw the Athenian people's chamber, which comprised representatives from each of the ten tribes, as a precursor of modern federal chambers or Senates.⁴ In their study of bicameralism Tsebelis and Money argued 'there is considerable continuity from ancient Greece to the 18th century ... the two legislative bodies represented different classes or groups of citizens'.⁵ Bicameralism then, was a pre-democratic principle in that the upper chamber represented the powerful and wealthy of society, while the lower chamber represented the less patrician citizens, though still those with some status and wealth. As Loewenberg and Patterson put it the division of the legislature into both 'an upper and a lower house was originally a class conscious sense of "upper and lower"'.⁶ John Stuart Mill also had something to say about second chambers, for and against, and ascribed the genesis of the idea to the Romans:

The same reason which induced the Romans to have two consuls makes it desirable there should be two chambers: that neither of them may be exposed to the corrupting influence of undivided power, even for the space of a single year.⁷

Consuls were the chief magistrates of Ancient Rome, at first both were patricians then, from 367 BC, one was required to be a plebeian.⁸ Mill also expressed great admiration for the Roman Senate:

Of all principles on which a wisely conservative body, destined to moderate and regulate democratic ascendancy, could possibly be constructed, the best seems to be that exemplified in the Roman Senate, itself the most consistently prudent and sagacious body that ever administered public affairs.⁹

Mill wrote this in 1861, after the crisis of the Great Reform Act in Britain in 1832, which, he argued, had undermined the power of the House of Lords.

⁴ Meg Russell, *Reforming the House of Lords: Lessons from Overseas*, (Oxford: Oxford University Press, 2000), p.20.

⁵ George Tsebelis and Jeanette Money, *Bi-Cameralism*, (Cambridge: Cambridge University Press, 1997), p.13.

⁶ G. Loewenberg and S.C. Patterson, *Comparing Legislatures*, (Boston: Little, Brown, 1979), p.121.

⁷ John Stuart Mill, *On Liberty and Other Essays*, ed. John Gray, (Oxford University Press, 1991), p.385.

⁸ Nathaniel Harris, *History of Ancient Rome*, 2003 ed. (London: Chancellor Press, 2000), p.9.

⁹ Mill, *On Liberty and Other Essays*, p.388.

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I will argue that the concept of an 'upper' house as a patrician institution still lingered in the minds of the Convention delegates despite their declared democratic principles. As we have seen, in many respects the delegates were creatures of habit and their experience and education unconsciously caused them to regard second chambers as 'upper' houses and institutions of greater distinction than lower houses. This disposition, I suggest, influenced the decision to establish an upper house in the first place and then to regard it as the superior body.

There is little overt evidence that the Convention delegates were influenced by ancient examples, though most of them were either well educated or well read. Edmund Barton, for example, enjoyed a classical education at Sydney University and so had a strong grounding in the Greek and Roman classics. Geoffrey Bolton argued in his biography of Barton that the 'same Greek and Roman precedent would become one of the subliminal influences in the shaping of an Australian nation'.¹⁰ Barton was not alone among the delegates in having received a classical education and other delegates would have been familiar with these early precedents. Bolton's use of the word 'subliminal' is relevant in relation to Greek and Roman influences on the delegates, because there is only minimal mention of them in the Convention debates. The only evidence of the influence of antiquity came in a spirited exchange on the issue of equal representation of the States in the Senate, on 10 September 1897. On that day the ancient Greek legislatures of about the third century B.C., the Lykian League and the Achaean Assembly were drawn into the discussion by Josiah Symon and Henry Higgins. As has been shown, Higgins was a vociferous opponent of equal representation of the States in the Senate, and Symon was an equally vociferous supporter of the concept. It is evident from their passionate duel that both felt that history was on their side. Here though, the interest is in their learned comments on these ancient Greek federations. Symon, in a long speech, compared the ancient Achaean League to the modern constitution of the United States, citing it as an example of a successful federation which gave equal representation to each member city and claimed that

¹⁰ Geoffrey Bolton, *Edmund Barton: The One Man for the Job*, (St. Leonards, Australia: Allen & Unwin, 2000), p.16.

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that was the example the United States had followed. Higgins riposted with another ancient example to support his view that equal representation is undemocratic by citing the Lykian League, whose cities were represented by members according to their population. One source suggests it was actually the Lykian League on which the United States Constitution was modelled.¹¹ The question of equal representation in the Senate was a bitterly fought out verbal battle and was in many ways an echo of the United States Convention debates, where the same issue attracted passionate argument. In America the resolution or compromise, known as the 'Connecticut Compromise' was to agree to equal representation of the States in the Senate in order to persuade the smaller states to accept federation. The Australians accepted this view after lively debates, and followed suit.

A more visible relationship to antiquity is in the name the Senate for the upper house. The name came to Australia indirectly from the Roman Empire via the United States. It is an ancient word which, literally, means 'council of old men'. The word is also used in other contexts, mostly academic, to describe various authoritative bodies, particularly in some major British universities. The history of the word is a complex and tortuous tale but historians Patterson and Mughan, as well as Russell, tell us that the majority of second chambers of today take the name from the famous council of elders of ancient Rome which held sway during the second century BC.¹² Roger Foster in his *Commentaries on the Constitution of the United States* points out that the Americans themselves simply borrowed the name: 'the United States took the name from the body which ruled ancient Rome, the Roman Senate. ... This was a body of warriors with whom the king or Chieftain

¹¹ *OR*, 10 September 1897, pp.292, 348. *New York Times*, 19 September 2005, 'Lycian League Parliament Building Identified'.

¹² Samuel C. Patterson and Anthony Mughan, eds., *Senates: Bicameralism in the Contemporary World* (Columbus: Ohio State University Press, 1999), Russell, *Reforming the House of Lords: Lessons from Overseas*, p.19.

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held his councils of war'.¹³ The United States and Australian Senates more closely resemble the Roman Tribunate as legislative bodies rather than warriors.¹⁴

The comments of the delegates suggest that it was the historicity of the name that was the major influence in the naming of the Australian upper house. It overcame all other suggestions made in earnest deliberations to give the house a name that would properly reflect its declared purpose of representing the interests of the separate states: 'States Assembly' or 'Council of States'. In the early Convention debates 'Senate' was used frequently but not solely to describe the proposed upper house but, in the 1897 Convention, the Constitutional Committee charged with the duty of selecting a name for the upper house, decided upon 'States Assembly'.

As delegates used different names at different times this led to some confusion until James Walker interjected, as noted in Chapter 3, suggesting it should be called the Senate because 'It is much simpler, and we all know what it means'. This did not please Edmund Barton whose Constitutional Committee had chosen the name 'States Assembly'. He, not surprisingly, protested vigorously but in vain at the amendment, which was quickly passed.¹⁵ The amendment was strongly supported by George Reid who said the word 'commends itself to an English community far more than this Frenchified title', which was a sly reference to the name of the French Parliament: the 'Estates General'. Reid and Barton were political opponents in the NSW Parliament and this could be an indication of Reid's hostility to Barton as much as support for the new name.¹⁶

Walker's amendment made perfect sense to most of the delegates and can be seen as more evidence of a 'subliminal' influence, or the heart ruling the head. Another 'subliminal' influence could have been that the name 'States Assembly'

¹³ Roger Foster, *Commentaries on the constitution of the United States, historical and juridical: with observations upon the ordinary provisions of state constitutions and a comparison with the constitutions of other countries*, p.459.

¹⁴ Quick and Garran, *The Annotated Constitution of the Australian Commonwealth*, p. 415. Quick & Garran draw from Roger Foster.

¹⁵ OR, 13 April 1897, p. 481.

¹⁶ Ibid.

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has no poetic resonance and would bring a tedious problem with apostrophes, though the compilers of the records of the debates conveniently ignored this grammatical aspect. La Nauze later wryly observed that the change saved the country from the perpetual irony of a second chamber with a meaningless name, for the Senate very quickly abandoned its States' focus to become, like the House of Representatives, a house dominated by political parties.¹⁷

The other ancient model, though not as venerable as the Greek and Roman examples, was the British House of Lords. This was the institution with which the delegates were familiar from their own traditions and heritage. The House of Lords was a major model for many modern upper houses. It was not a very practical model, dating as it did from the Middle Ages and based upon out-of-date principles, foremost of which was that its members were there on a mainly hereditary basis, which was unacceptable in the Australia of the 1890s. This did not deter the Convention delegates, who were staunchly British and, though they accepted that the hereditary principle was impractical for Australia, still saw the institution as a model in other ways: as an integral part of an Australian bicameral parliament; as a house of review, or check on the lower house; and in its procedures, ceremonies and rituals, many of which were incorporated into the procedures of the Australian Senate and modelled on the example of the Colonial Legislative Councils.

The House of Lords emerged in Britain in the 14th century and is one of the earliest examples of an upper chamber in the modern world. It has been highly influential in the development of bicameralism across the globe, not just in British societies. Bicameralism and the concept of an upper and lower house evolved in Britain as a result of a split in the Great Council, an assembly of the chief landholders of the kingdom, ecclesiastical and lay, which met to advise the king and agree on taxation.¹⁸ The Council, the 'most venerable of all British institutions reaching back beyond the Norman Conquest and beyond King Alfred, into the shadowy regions of Teutonic antiquity' had previously expanded its membership

¹⁷ La Nauze, *The Making of the Australian Constitution*, p.141.

¹⁸ A. Lawrence Lowell, *The Government of England*, vol.1. The MacMillan Company, 1921, p.394.

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from feudal lords to include Burgesses representing local communities.¹⁹ When these different 'estates' began to meet separately, this marked the emergence of an upper chamber comprising the aristocracy and bishops, sitting in their own right, and a lower chamber representing counties or boroughs, and called the Commons.²⁰

By the end of the 19th century, when Australia was considering a new Constitution, the composition of the House of Lords included all of the 'peers of the realm', by whatever title, and the English Bishops (4). Other members included Irish peers (28) and Scottish representative peers (16), appointed on various principles. The Crown, or the 'ministry of the day', had unlimited power to create hereditary peerages.²¹ In 1830 the number of peers was 401; by 1899 the number had increased to 591, and the House was the largest second chamber in the world. Only 'peers of the realm' were members of the House by virtue of descent and were summoned to Parliament by a writ of summons from the Sovereign, though they did not all attend.²² The composition of the Lords was clearly not a suitable model for the Australian situation but other factors influenced those delegates who saw it as a model for Australia, the most important being its powers in relation to the lower House of Commons.

The division of powers between the houses is a critical factor in the smooth functioning of a legislature as a whole and the powers of the House of Lords were an important consideration for the delegates in designing their upper house. The House of Lords had a two-fold role in the British Parliament in that its powers were both judicial and legislative. Judicial authority was rejected as a role for the Australian Senate; instead a separate judiciary was established along the lines of the United States Constitution, another important model to be considered in the

¹⁹ James Bryce, 'Conference on the Reform of the Second Chamber: Letter from Viscount Bryce to the Prime Minister', (London: His Majesty's Stationery Office: 1918; Reprinted for the Legislative Assembly of New South Wales 1929), p.5. para. 18.

²⁰ Russell, *Reforming the House of Lords: Lessons from Overseas*, p.20.

²¹ Lowell, *The House of Lords*, vol.1., p.395.

²² J.A. Marriott, *Second Chambers - an Inductive Study in Political Science*, New, revised and part rewritten ed. (Oxford: Clarendon, 1927), p.55.

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next chapter. The legislative role of the Lords in the 1890s was however a clear model for the delegates and was used to both support and undermine arguments about the Senate's powers in relation to the lower house. In this role at this time the Lords had co-ordinate authority over legislation together with the Sovereign and the House of Commons, except that the imposition of taxation was the sole prerogative of the Commons. In this the Lords' powers were limited, not by statute but by convention and precedent, which in Britain were as binding as statutes. Apart from this limitation both Houses could originate, amend or reject any Bill, and before any legislation could become an Act it must have the concurrence of both Houses and the Crown.²³

The Great Reform Act of 1832, which sought to modernise what was a corrupt and unjust voting system for the House of Commons, weakened the Lords. It did not affect the Lords' powers directly but its difficult passage and the circumstances leading up to it considerably lowered its status. The Bill took eighteen months to go through Parliament because successive versions were rejected by the upper house and its final passage was preceded by serious public unrest amounting almost to civil war. After two parliamentary dissolutions, the Whig leader, Earl Grey, was returned to power as Prime Minister. To enable the Bill to pass the House of Lords, Grey requested the King (William IV) to create 50 or more peers to achieve a majority in favour of the Bill. This was not an unprecedented manoeuvre: in 1711 Queen Anne had created twelve new Tory peers to secure a majority in favour of peace with France, so the threat was real.²⁴ In the event the threat itself was sufficient, the Tory leader, the Duke of Wellington, allowed the Bill to pass by instructing the Tory Lords not to oppose it any longer. The Lords passed the Bill in 1832 without the King having to agree to this tactic. According to Bagehot, 'It is the sole claim of the Duke of Wellington to the name of a statesman that he presided over this change'.²⁵

²³ Ibid.

²⁴ Eric Edgar Hewitt, *Upper Houses*, (Melbourne: Viridia Books, 1996), pp.60-61.

²⁵ Walter Bagehot, *The English Constitution*, (London: C. A. Watts, 1964), p.128.

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This calendar of events and the passions it aroused seriously damaged the status of the House of Lords in the public mind and subsequently the threat of creating more peers was always a silent factor when the rejection of Bills from the House of Commons was considered. Not only did the passing of the Bill make the Commons a more representative institution but the public anger that had accompanied and forced the change brought recognition of the emerging strength of the democratic element in society and in Government. What it did *not* do was to greatly increase the numbers in the Commons or bring about a golden age of democracy. Although the corrupt voting system had been rationalised and a fairer distribution of electorates enacted, the actual process did not change: a property qualification remained on the suffrage, excluding the vast majority of people who owned little and it was still necessary to meet a stringent property qualification to stand for election, which meant that participation in Government on any level remained limited to the wealthy and the aristocracy. It was not until further reform acts, in 1867 and 1884, that voting rights were gradually extended further to include those lower down the class ladder.²⁶ Australia's Colonies were well ahead of the Mother country in this regard. The Australian delegates would have taken these factors into account in their deliberations on the powers of the Senate. Earlier John Stuart Mill had offered an apposite comment: 'So soon as conventional rank and individual riches no longer overawe the democracy, a House of Lords becomes insignificant'.²⁷

A study of the comments of the delegates during the Conventions reveals a dichotomy in their views of the House of Lords. They were at once admiring, even deferential, but also critical and disparaging. Disparaging comments came early in the 1891 Convention when Samuel Griffith, in his introductory speech declared that the powers of the Lords 'have become considerably diminished, and are now principally those of a checking and a useful revising body'.²⁸ That there was a

²⁶Eric Hobsbawm, *Industry and Empire: An Economic History of Britain since 1750*, (London: Weidenfield & Nicholson, 1968), p.102.

²⁷ Mill, *On Liberty and Other Essays*, p.21.

²⁸ OR, 4 March 1891, p.31. It is notable that the delegates to the Conventions, although generally thought to be sympathetic to the concept that Ireland might have the same degree of autonomy as

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dilemma at the heart of the discussions involving the British upper chamber is evident: there was a desire to emulate the Lords but a problem in that it did not fit the Australian situation. This was best expressed in an admiring remark by Alfred Deakin in 1891, who asserted:

I believe that we cannot have a better ideal for our second chamber than the House of Lords as its functions are now interpreted; at the same time I will confess to honourable members that in defining its exact position we might possibly have some difficulty.²⁹

This was in the early days of the 1891 Convention and it is possible Deakin, as a supporter of the US model and opposed to the British concept of responsible government, hoped that the role and powers of the Senate might eventually differ in important respects from those of the Lords. Henry Parkes had no qualms in expressing deference combined with admiration of the Lords. In the early days of the 1891 Convention he declared:

there is in England an upper chamber infinitely superior to any of the same character of which we know anywhere else ... the House of Peers ... holds a body of men at this day who have no superiors on the face of the earth as a governing body.³⁰

Parkes continued his fulsome praise of the Lords, saying that Australia should take what he called 'the lamp of experience held out by England and by no other country'. He also considered that the upper chamber of the 'old land' was 'more illustrious' as well as of great ability, learning and service to the state. He emphasised the superiority of the Lords over the United States Senate when he referred to the 'Charles Sumner' incident with these words: 'in the House of Lords no peer, no illustrious statesman was ever stealthily approached with an intention to beat out his brains'.³¹ This was a reference to an ugly episode in the bitter conflict over slavery in the United States, when a congressman from South Carolina beat anti-slavery activist Senator Charles Sumner unconscious in his seat

the Australian colonies or Canada enjoy, did not comment on the rejection of Home Rule for Ireland in 1886 and 1893.

²⁹ Ibid., 5 March 1891, p.74.

³⁰ Ibid., 16 March 1891, p.447.

³¹ Ibid.

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for his views. Sumner was seriously injured and took three years to recover.³² Parkes was implying that United States Senators were inferior in quality to the members of the House of Lords and his reference to this dreadful incident suggests that he was not impressed with the United States model of a Senate.

The main point of contention in the debates, and one in which references to the Lords were frequent, was the division of power between the houses over money Bills. As discussed above, by the 1890s this power was limited for the Lords by Convention, but some delegates, mainly from the smaller states, sought completely equal powers for the Senate, including over money Bills. In this regard Griffith denied the validity of the Lords as a model for the Senate: 'The House of Lords is a very peculiar institution—it is peculiar in its constitution and in its history; and there is every reason in the world why it should not interfere with the taxation of the people.'³³ Members of the House of Lords, unlike members of the proposed Australian Senate, were not elected by the people, or taxpayers, and in Griffith's view should not interfere in money matters.

The idea that there should be any financial limitation on the powers of the Senate brought angry responses from delegates. John Macrossan of Queensland seemed to think that the idea of copying the Lords in this respect was an indication of 'obsequiousness' and carrying out an 'aristocratic idea'. He saw the House of Lords as 'having no real power whatsoever' and accused the delegates from Victoria and South Australia as wanting the Senate to be a 'counterpart of the House of Lords'. He suggested, disparagingly, that the Lords was a 'feeble' institution and should not be the template for the Senate in relation to money bills, and persisted in the notion that the smaller states wanted a counterpart to the Lords. Macrossan concluded with the statement: 'We are here to preserve our state rights. We are not here to make a senate which shall be a counterpart of the

³² *Biographical Directory of the United States Congress*:
http://www.senate.gov/artandhistory/history/common/generic/Featured_Bio_Sumner.htm. Accessed 5 August 2008.

³³ *OR*, 17 March 1891, p.428.

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House of Lords'.³⁴ This comment is ironic in that the final shape of the Senate was to be very much a counterpart or duplicate of the House of Lords in its role as an upper house, except in its composition. It is ironic that those who sought greater power for the upper house were seeking a house more like the Lords of old which was more than the equal of the Commons.

William McMillan also referred to the Lords while speaking on the powers of the proposed Senate in 1891. He considered that the new upper chamber would not be 'a nominee chamber, not an upper chamber like the House of Lords'. It is true that the Senate was to be an elected chamber, but, as noted above, in its legislative role the final shape of the Senate was to be a close copy of the Lords.³⁵ McMillan may also have hoped for a radical reform of the traditional structure and powers of the Australian upper house. He had occasionally let drop remarks that suggested he was not wholly in favour of a Senate at all. Thomas Playford spoke in support of the concept of responsible government, which he argued, was never achieved in England until 'the co-equal power was taken from the House of Lords'.³⁶ Playford maintained that the concept of responsible government combined with two absolutely co-equal houses would not work. This argument is at the heart of what Galligan calls the 'hybrid synthesis' of the Australian Constitution, which gave executive power to the lower house, but gave the upper house, equal in all other respects, no power in respect of money bills except absolute rejection.³⁷ Baker recognised a danger here describing, in graphic terms, how this would make the Senate:

Like a fort which has only one big gun, and that big gun so powerful and so uncertain in its effect that they hardly dare to let it off, because it may burst and injure those who occupy the fort and possibly blow it to pieces. This big gun is the power of refusing to grant supplies and so thus cause the stoppage of all the functions of government.³⁸

³⁴ Ibid., p.433.

³⁵ Ibid., 3 April 1891, p.719.

³⁶ Ibid., 6 April 1891, p. 734.

³⁷ Brian Galligan, *A Federal Republic*, (Cambridge: Cambridge University Press, 1995), p.86.

³⁸ OR, 17 September 1897, p.785.

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George Dibbs had the final and in this instance, derogatory, word on the Lords in 1891. He considered that the British Constitution was 'a worn out theory' as regards the Lords and he claimed that in England there was an attempt being made to reform it which he hoped 'may succeed'. Dibbs was speaking here in support of the United States model for 'a powerful Senate' and he supported equal powers combined with responsible government, a combination that many, including Deakin and Playford, saw as unworkable.³⁹ The powers of the Lords over finances were not finally removed until 1911.

After an interval of six years, the 1897 Convention met to resume the task, uncompleted in 1891, of drafting a constitution for the Australian Commonwealth. The example of the Lords and Great Britain remained a consideration, if not cited quite so often. William Lyne suggested that the Constitution should provide against any secession, such as had occurred in the United States and should be as flexible as the British Constitution.⁴⁰ George Reid suggested deviating from the 'strict lines' of the British Constitution to give the Senate the power to reject money bills, though not to amend them:

I admit that we must here deviate from the British Constitution and give the Senate powers which have ceased practically to belong to the House of Lords for a long period.⁴¹

Reid saw the question as one of 'great moment' to the smaller states, that they have some power over money bills, and professed support for their concern, a support which he expressed again in his next speech.⁴² Glynn rather vaguely added the thought that the power of the Lords could not be justified in Australia because it would be 'inconsistent with the principle of popular supremacy' and that 'the Lords must give way to the Commons'. He thought that this was what would happen here and to him, as a supporter of co-ordinate powers, this would not be a good thing.⁴³ Glynn, as with some other delegates, seemed a little vague on the

³⁹ Ibid., 6 April 1891, p.752.

⁴⁰ Ibid., 6 March 1897, pp.161-2.

⁴¹ Ibid., 30 March 1897, p.275-6.

⁴² Ibid., p.276.

⁴³ Ibid., 9 September 1897, p.277.

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actual powers of the House of Lords and a veil of ignorance distorted the debates on the topic.

That there was some uncertainty of how the structure of the proposed Constitution should proceed was evident in the vacillation of Richard Baker. In 1891 he was initially a firm supporter of the 'British form of Constitutional Government'. He changed his views early and became a strong advocate for the adoption of the United States system, justifying his change of heart because he had 'looked at the Lords from the point of view of a possible imperial Federation', and concluded with some relish and little relevance, that if this was to come about then the 'House of Lords would undoubtedly have to be swept away'. In this speech Baker was referring to an idea that all members of the then British Empire might federate under a central Government, an idea which did not have much support from anywhere. In his speech Baker pointed to the example of South Australia, his home colony, saying that its Legislative Council, or upper house, 'must always be looked upon as holding a position somewhat analogous to the House of Lords', but that would not necessarily work in the Senate. The upper house, the Legislative Council, in South Australia had equal powers with the lower house except for the initiation of money bills, but as Baker was a determined opponent of the concept of responsible government he wanted a Senate more closely modelled on the United States example. From this position he went on to attack the supporters of responsible government as being 'imbued with its excellence because they themselves have succeeded and occupied such prominent positions under that form of constitution'.⁴⁴ Baker is articulating here the main theme of the theory of path dependence which explains the forces that result in the clinging to old ways, in spite of difficulties encountered in the past.⁴⁵

It was possible for delegates to draw diametrically opposed conclusions from the same set of circumstances. Hackett made it clear that there was uncertainty, or

⁴⁴ Ibid., 18 March 1891, pp.466.

⁴⁵ Paul Pierson, 'Increasing Returns, Path Dependence, and the Study of Politics', *The American Social Science Review*, June 2000.

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perhaps more open minds, concerning what shape the Senate should take and he made a valid point during a discussion on its powers in regard to money bills:

I cannot shut my eyes to the fact that we are now entering upon an unknown sea. We are creating a constitution of which almost everything is undefined. We have little in the past to argue from, we have absolutely nothing in the future but the purest efforts of imagination and it may be that it would be best for that constitution to run on the lines which have been established in England and the colonies for so many years.⁴⁶

Hackett was defending his change of mind from supporting full powers of amendment of money bills for the Senate into opposition to that concept. In doing so he showed great insight into the opportunities for creating a constitution of originality and imagination. He also pinpointed the greatest obstacle to that achievement, the reliance on the past in the form of the constitutions of the Colonies and Great Britain, another clear example of the lure of the existing path.

The end result was that the powers finally allocated to the Senate in the Constitution were almost identical to those of the House of Lords at that time: the powers of the two Houses of Parliament would be equal in all respects except for money bills. In Australia this was embodied in the written Constitution, whereas for the Lords it was enshrined in convention. In the case of serial rejection of bills the power of the Senate was to be tempered with the possibility of the dissolution of Parliament; in the Lords it was tempered with the threat of the creation of more peers to enable a bill to pass. The threat to the Lords was much more immediate than the threat of dissolution of the Australian Parliament, an act which, as finally designed, requires time and consideration before it becomes possible. The building up of the safeguard against disagreement was a painful and arduous debate and the outcome is unique. But there is little doubt that the need to have some method of reining in an obstinate upper house was recognised by the delegates from both the British experience and their own.

The topic of possible disagreement between the two houses led to the major debate in which models were cited. This was an issue which affected both houses

⁴⁶ OR, 14 September 1897, pp. 551-6.

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and is included because it precipitated a core provision in the Constitution closely related to the eventual powers of the Senate. The issue arose from the bicameral system and the proposed imbalance in powers of the two houses. It was a vexed question and took five days of intensive debate (15 to 21 September 1897) to resolve. George Reid recalled in his memoir that it was a most 'troublesome' debate on an issue which created numerous difficulties.⁴⁷ During the debate many models were referred to and each section was bitterly contested. The major model was the House of Lords and, as noted earlier, perhaps this was due to, as Geoffrey Bolton put it, a 'subliminal' desire, amounting almost to a need, to emulate the British system, combined with the knowledge of the difficult circumstances of the passing of the Reform Act of 1832.⁴⁸

The clause under discussion was a new clause—57(a)—to manage the issue of possible deadlocks between the Houses. The Assembly of New South Wales had put the Clause forward during the April until September suspension of the 1897 Convention, after the draft Constitution had been circulated to the States for comment. This much-disputed question led to complex and tedious arguments and a variety of solutions. One of the problems was that a number of members did not think any provision for the solving of deadlocks was necessary and were especially opposed to the idea that a referendum might be the solution. Simon Fraser put his point of view forcefully:

We are not dealing with the House of Lords, who represent only a section of the people ... when we have a senate resting on the bedrock of manhood suffrage, the senate representing the whole manhood, and in some colonies the whole womanhood also, of the country— cannot conceive a case where there would be a necessity for mechanical means to get rid of deadlocks.⁴⁹

A vote on 15 September 1897 finally decided, by 30 votes to 15, that a provision of this sort was necessary.⁵⁰ This in itself presented another problem: that there were no exact models on the breaking of deadlocks to follow. Of the Australian Colonies

⁴⁷ The Right Honourable Sir George Houston Reid, *My Reminiscences*, (London: Cassell and Company Ltd., 1917), p.160.

⁴⁸ Bolton, *Edmund Barton: The One Man for the Job*, p.16.

⁴⁹ OR, 15 September 1897, p.566.

⁵⁰ Ibid., 16 September 1897, p.708.

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only in South Australia had provision been made, but it was clumsy, probably unworkable and had never been used.⁵¹

In attempts to resolve the predicament delegates sought examples from other countries, several in a negative way. Frederick Holder cited both the Lords and his home state of South Australia in his speech on the matter. He explained that in South Australia the Governor was empowered to issue writs for an additional number of members of the Legislative Council to enable disputed legislation to be passed, (though he failed to mention that it had never been used) an idea parallel to what could be done in the Lords and in New South Wales. Isaac Isaacs pointed out that it had been done in Canada, and Deakin added that it had also been done in New Zealand: Queen Anne certainly started something in 1711. Holder saw that what he called a 'safety valve' was necessary, but the examples he cited were simply not practical for the Senate.⁵²

That the example of the House of Lords was foremost in the minds of many delegates was evident in the number of references to it, even though its solution to such a situation was clearly inappropriate for the Australian Senate whose membership was fixed. Joseph Abbott saw no reason for a 'safety valve' as in his opinion the Lords 'had never failed to give way to public opinion'. This suggests either that Abbott thought that the Reform Act of 1832 was ancient history or that he was not aware of that crisis, another indication of the shortage of accurate historical knowledge among the delegates. From this shaky premise he concluded that the Senate would not challenge the lower house on serious questions, a conclusion he was not alone in holding. He was ambivalent about solutions to the deadlock crisis but was prepared to listen to suggestions.⁵³

George Reid seemed to have mixed feelings about the Lords, introducing the British example with the observation: 'If we are to proceed on the lines of the

⁵¹ Dean Jaensch, ed. *The Flinders History of South Australia: Political History*. (Adelaide: Wakefield Press, 1986), p.372.

⁵² *OR*, 15 September 1897, pp. 561-2.

⁵³ *Ibid.*, p. 569.

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British Constitution, we have very little to guide us'.⁵⁴ He cited the Lords and the power of public opinion again by referring to the effects of the 1832 Reform Act. Though he supported the case for a method of dealing with deadlocks he still cited the Lords and the power of public opinion, even though its unique method of resolving deadlocks could not be applied in the case of an Australian Senate. He made an impassioned and very lengthy speech on the proposal of a dissolution followed by a referendum to break deadlocks. He recognised that the British Constitution was not a model in this regard and he loyally expressed admiration for the British Constitution but was reserved about the Lords:

I feel all the prouder of our connection with the mother country when I reflect that in spite of the House of Lords there is no country in the world where public opinion in its broadest form has so much weight.⁵⁵

The 'in spite of' is a revealing phrase and his was not the only reliance on public opinion as a powerful incentive for the resolution of deadlocks.

Fraser, in an almost impenetrable speech, seemed to be defending the Lords and the Canadian Senate as well, as houses 'which could not be dissolved'. Reid responded heatedly revealing his thoughts about upper houses in Australia: 'There are houses which we know of in Australia' he said 'which have developed a spirit of arrogance and self-sufficiency quite beyond that of the House of Lords'. He went on to criticise members of upper houses as seeming to be the 'embodiment of immovable and absolute power, which I have not found anywhere in ancient history. The simple reason is that the breath of the people cannot be brought to bear upon them at a critical moment'. Reid was speaking from experience as a member of the New South Wales Legislative Assembly and its conflict with the Legislative Council, members of which were nominated for life. He was a supporter of the idea of a referendum to resolve disputes and recourse to people power was

⁵⁴ Ibid., 16 September 1897, p.649.

⁵⁵ Ibid., pp.653-4.

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at the heart of the argument of whether there should be restraints upon an upper house. He clearly thought there should be while Fraser thought otherwise.⁵⁶

The pragmatic and intelligent Isaacs also referred to the Lords and the effects of the 1832 Reform Act on its powers. He supported Reid's view that the Constitution should be 'founded' on the British model, so far as that is 'applicable' but would 'scarcely go further back than 1832'. It was not until then, he thought, that representative Government truly existed; before that, he observed, it was 'still in the womb of time'. Deadlocks, he argued, are now easily dealt with in Britain 'not because there are checks and balances, not because we have to depend on the mere good will or the moral silent force of public opinion ... but because it is recognised that in the last resort there is only one power in the nation'.⁵⁷ He was clearly referring to the power of the Prime Minister to request the Sovereign to create more Lords. He did not make any suggestion as to how to apply this in Australia.

That the Lords should be so frequently referred to in these debates suggests that most of the delegates were conscious of the effects of the 1832 Reform Act, as well as the impracticability of applying the British solution to Australia; it explains the frequent references to 'public opinion' as a possible decider and is strongly indicative of the weight of tradition which is accounted for by the theory of path dependence. The debates demonstrated that the delegates were not the best informed of scholars yet were prepared to argue from a position mostly based on a combination of emotion and past experience. Some were imbued with the vision of the qualities of the House of Lords as their rightful inheritance, even while they were committed to ideas of democracy. They wanted their Senate to be as nearly as possible a colonial House of Lords while demonstrating a democratic approach: a difficult task. Hunt saw the greater disparity in population and wealth between the larger and smaller states of Australia as leading the larger colonies to insist upon a provision for the breaking of 'deadlocks' though it is possible that the experience of

⁵⁶ Ibid.

⁵⁷ Ibid., p.660.

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the delegates in their colonial legislatures was more influential.⁵⁸ It is also possible that the rough passage of the 1832 Reform Act through the British Parliament may have had some influence on the insistence upon such a provision. The example of 1832 was a clear reminder that the British system was evolving and changing to meet new circumstances and this licensed them to tinker with it.

Despite their emotionally ingrained attachment to British tradition, clearly demonstrated in their comments on the virtues of the House of Lords, the delegates had few qualms about exploring other possible models and, on the thorny question of deadlocks, others models were diligently sought. Norway, Austro-Hungary, France, Belgium, and Switzerland were brought into the argument, as were the United States and Canada—discussed in the next chapter. Other issues also were canvassed in the light of the practices of other Constitutions in sometimes wide ranging but occasionally superficial discussions. These will now be addressed.

The Norwegian model attracted the interest of the delegates mainly for its method of dealing with deadlocks or disagreements between the Houses. Lyne mentioned Norway early in the preliminary debates of the Adelaide Convention in 1897. In considering the possibility of a deadlock he described the solution to the situation in Norway as ‘the two houses sitting together’ to debate a disputed measure and noted that ‘a measure must be carried by a two-thirds majority’. He recommended this procedure for settling deadlocks in the Australian Parliament because ‘the possibility of a crisis is then alleviated at any rate, if not absolutely prevented’.⁵⁹ This is significant because, although Lyne made his speech early in the debate of 1897, he sowed the seed of a future resolution.

The model of Norway reappeared most frequently during the protracted debates on deadlocks later in the year. James Walker introduced the subject explaining that Higgins ‘would like to hear the Norwegian system discussed, or some application

⁵⁸ Hunt, *American Precedents in Australian Federation*, p.14.

⁵⁹ OR, 26 March 1897, p.159.

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or modification of that system'.⁶⁰ Later Reid made a lengthy and erudite speech on the topic in which he referred to several other models that adopted a similar procedure though with different conditions according to their different situations. According to Reid the system was used in Sweden, Belgium, France and Austro-Hungary. He closed with the comment that 'In Norway the two houses, if they disagree over a bill, meet together'.⁶¹ Some delegates, John Downer for example, thought the idea too 'foreign' and he made his feelings very clear by forcefully criticising those who 'rush from dear old England, and ramble all over the Continent, taking precedents in the most ruthless and reckless way'. He exhorted them to 'keep to one line, and that is the British Constitution'.⁶² In Pierson's terms he was calling for delegates to stick to a well-known path and articulating the instincts of many delegates. Joseph Carruthers later added that the method was also used in Ireland: 'The proposal is that laid down in the Government of Ireland Bill, the principle that the two houses shall deliberate and vote together thereon, and shall adopt or reject the bill', though with different conditions according to individual circumstances.⁶³

It fell to Isaacs to explain thoroughly the Norwegian system for the benefit of the delegates. In Norway, he explained, the two houses were both elected at the same time and on the same basis. They then met as one body and divided themselves into two parts: 'one three-fourths of the number, the other the remaining one-fourth' as Isaacs put it. If the two houses could not agree on a Bill they then met together to vote on it and a two-thirds majority was required to carry it. Though clearly well acquainted with the Norwegian practice, Isaacs concluded his speech by claiming he found the system unsuitable for Australia because it would be undemocratic 'bringing all the advantages of equal representation into the joint deliberations of the two bodies'. By this he meant that, for him, equal representation of the States, as decided upon for the Senate, was undemocratic and to carry the imbalance into

⁶⁰ Ibid., 16 September 1897, p.688.

⁶¹ Ibid., 20 September 1897, p.842.

⁶² Ibid., p.848.

⁶³ Ibid., 21 September 1897, p.940.

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a joint sitting would give the smaller States too much power.⁶⁴ This was the prevailing view of those who opposed the idea. But the proposal also had its supporters. Among these were Patrick Glynn, George Reid, James Walker and Philip Fysh. Fysh, who supported the idea in principle, was less than enthusiastic, calling it a 'last resort' and Walker saw it as 'the most admirable system to settle those matters provided that the proportion is sufficient to safeguard the interests of the states'.⁶⁵ On the question of the suitability or otherwise of the Norwegian system of joint sittings Walker's remark opened a long and tedious discussion on the majority necessary if such a provision was introduced. After much careful mathematics and heated argument this point was settled at a three-fifths majority to pass a Bill, but this was to become redundant in the final stages of the Constitution when a simple majority was agreed upon.⁶⁶

The question on whether the procedure should be adopted was finally put in an amendment by Carruthers.⁶⁷ The amendment attracted a fiery debate with Isaacs commenting 'this proposal has been pitch-forked into this debate at the eleventh hour without the slightest pretence to analogy, without the slightest pretence to adaptability to our constitution, and I do sincerely hope that the Committee will reject it'.⁶⁸ He was to be disappointed. The amendment to include a joint sitting as part of the procedure to settle disagreements between the houses was passed 30–11.⁶⁹ It is clear that at the end of the day the majority of delegates were prepared to temper their ardour for the British Constitution with a dose of pragmatism reinforced by painful lessons learned in the parliaments of their respective Colonies.

Switzerland, as a Constitution of recent origin, was also a closely studied model for the Convention delegates. Switzerland's Constitution, established in 1848 and revised in 1874, drew heavily on the United States Constitution except for the office

⁶⁴ Ibid., p.935.

⁶⁵ Ibid., pp.934, 971.

⁶⁶ Ibid., 20 September 1897, p.895.

⁶⁷ Ibid., 21 September 1897, p.933.

⁶⁸ Ibid., p.939.

⁶⁹ Ibid., p.967.

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of President. The Swiss Parliament in 1897 was bicameral with a popularly elected National Council, the lower house, and the States' elected Council, the upper house. The powers of the two houses were equal. From the elected members of both houses of Parliament seven members were elected to form the Federal Council, which became the 'supreme executive and directorial authority of the Confederation'. Each member of the Council had equal rights and each was head of a Department, or Minister, and the Council acted in the same way as a Cabinet in a Westminster government. Important decisions were taken by a majority of the Council members. The presidency of the Council rotated annually but the President had no special powers, the role being more of a public relations responsibility.⁷⁰

The composition of the Swiss executive aroused the most interest among the delegates. Baker, an admirer of the United States system brought it to the attention of the Convention in 1891. He recommended adoption of the Swiss executive system, saying it had been in place for forty-three years and worked well.⁷¹ Deakin however, was dismissive of Baker's views saying such a system would not work in Australia where responsible government was a better option.⁷² Isaacs also dismissed the Swiss executive model, saying that if we were to have the Swiss executive perhaps we should abolish the Governor-General. He later scornfully commented that the members of the Swiss executive were 'mere heads of departments'.⁷³ A spirited debate then took place on the concept of the Swiss form of executive: John Gordon and William Trenwith expressed support for the idea, but Deakin and Isaacs were sceptical and disdainful.⁷⁴ Barton added the comment that the Swiss style of executive would do away with party government and he did not believe that the Swiss Constitution had 'proper safeguards for liberty' as did the British system.⁷⁵

⁷⁰ History of Switzerland: Federal Constitution 1848, p.5. <http://history-switzerland.geschichte-schweiz.ch/switzerland-federal-constitution-1848.html>. Accessed 20 August 2008.

⁷¹ OR, 17 March 1891, p.440.

⁷² Ibid., 30 March 1897, p.286-7.

⁷³ Ibid., 26 March 1897, p.169; 31 March, 1897, p. 380.

⁷⁴ Ibid., 30 March 1897, pp.324, 334, 286, 380.

⁷⁵ Ibid., 31 March 1897, p.381.

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The concept never got beyond debate, proving to be too extreme or too different from the British system of 'responsible government' to which most of the delegates were committed. Nor did the idea appeal as a solution to a pressing problem, as had the Norwegian concept of a joint sitting to resolve disputes. Yet the debate was enlightening in providing insight into the scope of the research and the pattern of thinking among the delegates. It did reveal just how dedicated they were on the whole to the 'British' system, again an example of the influence of their heritage.

Other aspects of the Swiss model were also discussed at the Conventions: equal powers of the two houses and equal representation in the Senate. Downer claimed that the two houses of the Swiss Parliament had equal powers, though he could not see how this could be achieved in Australia. Deakin contradicted him on this point saying that the tenure of the Swiss Council of States made it inferior to the National Council. He offered no evidence for this conclusion nor is it evident in the Swiss Constitution, so it is difficult to decide what he meant by this comment.⁷⁶

The issue of equal representations for the Swiss equivalent of the States, the Cantons, was also raised. The gradual evolution of the Swiss Constitution had influenced representation in the upper house and John Cockburn patiently explained that, in his opinion, there was equal representation: two councillors for each Canton for the major Cantons, while the smaller or half Cantons were given one each.⁷⁷ Higgins disagreed saying the Swiss did not have equal representation even though they had formed their Constitution on the model of the United States: 'Some ... cantons or half cantons return only one member, whilst other cantons return two'.⁷⁸ Downer also argued that the base principle in the Swiss Constitution was equal representation of the States, or Cantons, in the upper house: a discussion which suggests that their knowledge of the Swiss Constitution was unreliable.⁷⁹ In fact, the Swiss approach to equal representation was clearly based on the population of the Cantons but this was not what the majority of the

⁷⁶ Ibid., 29 March 1897, pp.213; 30 March, 1897, p.291.

⁷⁷ Ibid., 30 March 1897, p.342.

⁷⁸ Ibid., 15 April 1897, p.645.

⁷⁹ Ibid., 9 September 1897, p.268.

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Australian delegates wanted. They wanted completely equal representation for each individual state with no regard to populations.

Though the executive model of the Swiss Constitution was not seriously considered by the delegates, Switzerland provided another model which was eventually adopted, with modifications, for the Australian Constitution: the referendum. Referenda were an integral part of Swiss governance and attracted much attention from the delegates. In Switzerland referenda were, and still are, a feature of both provincial and national Governance.

Lyne was the first to introduce the subject. Speaking on the issue of disagreement between the houses, he explained that in the draft Australian Constitution: 'There is no power to bring the two houses together. There is no referendum ... such as the Swiss Constitution gives'. He was arguing against equal representation in the Senate, which he and others saw as undemocratic, and thought that a referendum would restore the population imbalance in cases of disagreement.⁸⁰ Trenwith indicated that he favoured the referendum 'as a means of settling disputes'.⁸¹ O'Connor said a referendum 'may be all very well in a small country like Switzerland, but would be very unsatisfactory for the complicated political questions that would arise in Australia' and that 'it is impossible to arrive at a satisfactory conclusion by the referendum'.⁸² Bernhard Wise and Patrick Glynn agreed 'that an institution which would override parliament was not British'.⁸³ Edward Braddon complained that the referendum would not do at all in the case of a deadlock between the Senate and the House of Representatives because 'it is obvious that the smaller States must go to the wall'.⁸⁴

Isaacs helpfully provided a succinct summary of the complex and frequently changing referendum situation in Switzerland in 1897 as he understood it. He explained that the Federal Constitution could be amended at any time through the

⁸⁰ Ibid., 15 April 1897, p.652.

⁸¹ Ibid., 20 March 1897, p.333.

⁸² Ibid., 24 March 1897, pp.56-57.

⁸³ Ibid., 16 September 1897, p.647.

⁸⁴ Ibid., 24 March 1897, p.65.

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normal procedures and without a referendum. When one of the Houses passed a resolution for amendment of the Federal Constitution and the other did not agree; or when 50,000 Swiss voters demanded amendment the question was in either case submitted to a vote of the Swiss people. If the majority of the Swiss citizens then pronounced in the affirmative, there would be a new election of both councils for the purpose of preparing amendments.⁸⁵ Charles Grant remained unconvinced and firmly against referendums on the basis that the Senate should be a permanent body like the Senate of Canada or the House of Lords, which he saw as 'one of the models of our Constitution'. He felt very strongly that the Senate was being defiled by the elective principle and that the referendum was even more humiliating.⁸⁶

Solomon, while supporting the idea of a dual referendum, one that included the States as well as the populace, expressed impatience at the frequent references to other Constitutions saying:

if, ... we could have arranged for an exploration party to go through all the various libraries of the colonies, and burn all the works of reference on the American, Canadian, and Swiss constitutions, we should at least have been saved some hours of very eloquent dissertation.⁸⁷

Solomon was probably expressing the views of other delegates, impatient at lengthy debates and declamatory speeches which did not always enhance the discussions but delayed decisions. He had a point, but at least the speeches do show that some delegates had been doing some reading whereas others seemed to be making it up as they went along. Solomon could also have been expressing impatience with the introduction of aspects of foreign Constitutions because, in his mind and the minds of many other delegates already determined on the British system eventually adopted, they were irrelevant and time wasting. Carruthers

⁸⁵ Ibid., 16 September 1897, p.667.

⁸⁶ Ibid., p.706.

⁸⁷ Ibid., 17 September 1897, p.747.

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thought that the referendum should be used as in 'Switzerland, to say both when a law should pass and when a law should not pass'.⁸⁸

The referendum in relation to the disagreement debate was only part of the complex series of procedures proposed for use in this situation. But after much debate and fulmination it was eventually excised from the final clause, leaving a double dissolution followed, if necessary, by a joint sitting, as solutions to the problem.⁸⁹ The excision of the referendum from the provisions for settling a disagreement between the houses was achieved by Carruthers who moved an amendment that simply omitted any reference to a referendum.⁹⁰ Kingston tried to reinstate it but his amendment failed by 30 to 11 and that of Carruthers' passed by 29 to 12.⁹¹ This suggests that the referendum as a means of settling disputes was never readily embraced by the delegates though it did reappear as the means of changing the Constitution (Section 128).

As can be seen in the debates on the Swiss Constitution, delegates were often vague on detail about other Constitutions, which weakened their arguments if challenged. Perhaps they had not spent enough time in the libraries. In this a pattern can be seen to emerge of the imprecise knowledge of other Constitutions which suggests that the delegates were not really interested in solutions beyond the Westminster system and were reluctant to adopt unfamiliar procedures. Downer was correct in his assumption that the concept of equal powers in the Senate would not be accepted for Australia, with delegates fixated on responsible government as in the British example. In this aspect Switzerland was not to be a model for Australia. In spite of the time spent debating the Swiss model, it was not seriously considered by the delegates, although it has been frequently referred to as a model for Australia. Its example was followed only in relation to the referendum and only then on the issue of constitutional change.

⁸⁸ Ibid., 20 September 1897, p.861.

⁸⁹ Australian Constitution, Section 57.

⁹⁰ OR, 20 September 1897, p.930.

⁹¹ Ibid., 21 September 1897, p.967.

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It was left to Glynn to introduce another model with some thoughts on the situation in France, thoughts which revealed that, following the pattern already observed, he was not altogether sure of his facts. Glynn supported the notion that the 'Senate could not justly be asked to act merely as a registering machine in the case of money bills'. A House of Lords he said may be required to yield in case of conflict (as an unelected institution) but the French Senate which 'sprang from universal suffrage' could not reasonably be required to efface itself.⁹² In fact the French Senate at this time was part of the Third Republic established in 1870. It was elected by mayors and councillors in departments (counties) throughout France, not by the general populace and, as was typical of upper houses of that period, was dominated by conservative and rural interests. France was not referred to again as a model.⁹³

Though the delegates referred to many and various constitutions some of their arguments are unconvincing and the unavoidable impression is that they were not seriously interested in any but the British model. Only if a procedure in another constitution offered some solution to problems they recognised from history or their experience, as in the case of Norway and the joint sitting, Switzerland and the referendum, and the United States with equal representation in the Senate (which will be examined in the following chapter), were they prepared to overcome their predilection for the British model. If any innovation or departure from the 'lamp of experience' was to be accepted it had to be fashioned to fit the Australian situation, as demonstrated by the inclusion of a joint sitting and the referendum in Australia's constitution. The passage of the 1832 Reform Act licensed them to innovate without turning their backs on their past.

⁹² *Ibid.*, p.962.

⁹³ *A Web of English History* 'European history'. <http://www.historyhome.co.uk/europe/3rd-rep.html>. Accessed 17 July 2008.

Chapter 6

A Proper Forum for Sober Second Thought: the Senates of Canada and the United States as models for the Australian Senate

The dangers of democracy brought out some extravagant language expressed forcefully by such as Alexander Hamilton of the United States, who warned of the 'impetuosity and fickleness of the popular House', and Canadian historian Alpheus Todd, who expressed the need for a 'counterpoise to democratic ascendancy' and 'a proper forum for sober second thought'.¹ This danger is a theme which runs through the entire narrative of upper houses, even though in so many cases the reality has proven that the vision is delusional, not least in the case of Canada where the nominated Senate became, in the words of Professor Stephen Leacock, a 'refuge of place hunting politicians and a reward for partisan adherence'.² The vision however, persisted, and the Constitutions of both the United States and Canada established upper houses at least partly based on this fear. These upper houses and constitutions are frequently cited by historians as models for Australia and this chapter will examine how much influence they had on the decisions of the Australian Convention delegates in the design of their Senate.

Canada and the United States were both British derived communities and occupy the same continent. Yet they differ markedly in their Constitutions. What did Australia learn from their examples and what did it copy or adopt for its own Constitution? Canada was in a very similar situation to Australia when it created its Constitution in 1864, being a British Colony, which remained as part of the British

¹ James Bryce, *The American Commonwealth*, vol.1, (London: Macmillan, 1889), p.147; J.A. Marriott, *Second Chambers: An Inductive Study in Political Science*, (Oxford: The Clarendon Press, 1910), p.4.

² J.A. Marriott, *Second Chambers - an Inductive Study in Political Science*, new, revised and part rewritten ed. (Oxford: Clarendon Press, 1927), p.98.

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Empire after it gained independence. For these reasons it was regarded in the early days as the major model for Australia. In view of these factors this chapter will treat Canada first.

The influence of the Canadian example on the delegates to the Australian Federation Conventions will be first examined by discussing Canada's history and progress towards federation. This will be followed by a discussion on the Canadian situation at the time of the Australian Conventions to compare the differences and the similarities, and then by an examination of the comments of the delegates in relation to the Canadian example.

The history of Canada differs in many respects from that of Australia as does its government. The major historical difference is that the Canadian territory was first settled by the French and there has always existed a significant French population. Nevertheless its Constitution, established in 1867, was regarded as a likely model for Australia. This is not only because it too was a British Colony, but especially because it had already successfully federated under the Crown, complete with a bicameral Parliament which included an upper house, the Senate.

Canada's British colonial history dates from 1763 and the Treaty of Paris when France formally ceded Canada to England after its defeat in the Seven Years War.³ Subsequently Canada, or Quebec as it was then known, was governed directly by Britain until 1774, when a Governor and Council, with the power to make ordinances or laws in relation to the government of the Colony, were appointed. At that time Quebec comprised several separate provinces, and representative government was acquired by them in stages: Nova Scotia, 1758, Prince Edward Island, 1773, New Brunswick, when it was created in 1784, Upper and Lower Canada (now Ontario and Quebec), 1791, and Newfoundland, 1832. In 1791, in an attempt to ease tensions between the French and English communities, the Province of Quebec was divided into the provinces of Upper Canada, with a predominantly English population, and Lower Canada, with a

³ John G. Bourinot, *Canada under British Rule, 1760 - 1900*, (Cambridge: Cambridge University Press, 1900), p.38.

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predominantly French population.⁴ Each province gained a Legislative Assembly and a Council. The Assembly of Upper Canada, which adopted English law, had sixteen elected members and the Council seven members who were nominated for life.⁵ John Graves Simcoe (the first Lieutenant Governor of Upper Canada from 1791-1796) believed that the province should be made 'as nearly as may be a perfect image and transcript of the British Government and Constitution'.⁶

It was first envisaged that the Council would evolve into a hereditary chamber on the lines of the House of Lords and provision was made in the Constitution for the King to award hereditary titles to members of the Council in order to create a kind of aristocracy—the Colony's equivalent of the House of Lords.⁷ This proved to be unworkable and unacceptable. The idea was ridiculed in the British Parliament when the new Constitution came up for debate and Charles James Fox, a prominent British Whig politician, passionately derided the idea as 'a kind of second-rate, half-hearted House of Lords in the wild woodland' which would 'stink in the nostrils of the natives';⁸ strong language. Fox saw the futility of pioneer peerages and ridiculed the idea of an appointed legislative council. He argued that in a frontier society individuals would succeed or fail on their own talents and toughness. He saw that colonial nobility, instead of attracting respect, would excite only envy and ridicule. In spite of this scorn the provision remained in the Constitution but was never implemented, becoming a dead letter.⁹ Responsible Government followed for the other Provinces between 1848 and 1855 and Confederation of all the Provinces came in 1867.

Confederation was the major milestone in the development of British constitutional practice in Canada and it was to this model that Australian Federationists looked for direction. The 'Act of Union' was drawn up at the Quebec Conference in 1864

⁴ William B. Hamilton, *The Transfer of Institutions*, (Durnam N.C., London: Duke University Commonwealth Studies Center, 1964), p.61.

⁵ Bourinot, *Canada under British Rule, 1760– 1900*, pp.91-2.

⁶ Ged Martin, *Bunyip Aristocracy*, (Sydney: Croom Helm, 1986), p.27.

⁷ Bourinot, *Canada under British Rule, 1760–1900*, p.92.

⁸ W.R. Wilson, 'Historical Narratives of Early Canada', (Parliament of Canada, 2004).

<http://www.uppercanadahistory.ca/pp/pp1.html>. Accessed 19 June 2008.

⁹ Martin, *Bunyip Aristocracy*, p.24. A similar proposal was rejected in New South Wales in 1854.

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and subsequently passed by the Imperial Parliament as the British North America Act (BNA). The Quebec Conference, whose directing spirit was Prime Minister John Macdonald, took eighteen days and passed seventy-two resolutions, in sharp contrast to the debates on the Australian Constitution, which took several months.¹⁰ The Quebec debates included lengthy discussions about the form the upper house should take, but there was never any question of whether there should, in fact, be an upper house.

At the Conference it was agreed that the Senate should represent the Provinces in proportion to population, and there were proposals that it be elected subject to age and property qualifications. However this was ruled out in favour of an appointed house, though still with a property qualification.¹¹ This was intended to create a wise and conservative house, and the 'proper forum for sober second thought' suggested by parliamentary writer Alpheus Todd. Todd saw a Second Chamber as a necessary institution in Colonies entrusted with the powers of local self-government. It would be a 'counterpoise to democratic ascendancy in the popular and most powerful assembly' and afford some protection against 'hasty and ill-considered legislation and action arising from the impulsive first thought of the Lower House'.¹² This phobia of the dangers of democracy was a recurring theme in arguments in support of a second chamber throughout the British world. It is found in comments by the delegates to the Australian Conventions and was a thought in the minds of many of them when considering the Senate and it clearly was a factor in the Canadian deliberations.

Thus the debates leading to federation and held between politicians representing governments of the future states, were influenced by both a legacy of bicameralism and also, in some measure, due to the inherent instincts of the Federationists which were firmly focused on British tradition and a perception of themselves as British. Prime Minister Macdonald, according to Bourinot, 'aimed ... to follow as

¹⁰ Bourinot, *Canada under British Rule, 1760–1900*, pp.206, 290.

¹¹ British North America Act, 1867, Section 4(23).

¹² A. Todd, *Parliamentary Govt. in the British Colonies*, p.698. Quoted in Marriott, *Second Chambers - An Inductive Study in Political Science*, p.96.

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closely as possible the fundamental principles of English Parliamentary government'.¹³ As in Australia this attitude, so clearly expressed by Macdonald, can be explained in part, by the notion of path dependency. In Canada, at the time of federation, it was to the familiar political pattern that the Federationists, all experienced practitioners, instinctively turned. Marriott has noted the Canadian deliberations were conducted under the watchful eye of the British Government, a factor that was far less important in Australia.

Canada perhaps, was hardly a free agent; English prepossessions might account for adherence to the English model, alike in 1791, in 1840, and in 1867, but it is important to note that the British Government held control over the structure of Government and the Act. The British North America Act is in fact the template of the Constitution.¹⁴

The BNA, 1867, is an Imperial Act of the British Government and it united the Canadian provinces into a single federation called the Dominion of Canada. As Marriott noted, it is the basis of the Canadian Constitution.

The precipitating factor for Canadian Federation was the American Civil War which had just concluded (1861–1865). The war filled Canadians with grave doubts about the United States Federal system and some uneasiness about the stability of their neighbour. Consequently, the American model of relatively powerful States and a less powerful central Government was rejected in favour of an exactly opposite model: the Act limited the powers of the Provinces by explicitly listing those subjects delegated to them by the Central Government and the residual issues became the responsibility of the Central Government.¹⁵ Otherwise the system of government put in place followed the same pattern as governments in the Provinces—formed with the assistance and approval of the British Colonial Office.

The evidence shows that Canadian Federationists were motivated by a strong disposition to follow the old familiar pattern as a basis for the new legislature. The result was a Constitution in a traditional and comforting mould, which had worked

¹³ Bourinot, *Canada under British Rule, 1760–1900*, p.209.

¹⁴ Marriott, *Second Chambers - an Inductive Study in Political Science*, p.2.

¹⁵ British North America Act, 1867, Section 91.

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for the Canadians in the past. The strong British influence, amounting almost to control, is evident in the preamble to the Act which explicitly states that the colonies desired 'to be federally united into one Dominion under the Crown ... with a constitution similar in principle to that of the United Kingdom.'¹⁶ In the original draft of the bill the union was actually to be called the 'Kingdom of Canada' and the amendment to the Dominion of Canada came from the imperial ministry: the phrase the 'Mother Country' seems apposite here.¹⁷ The Constitution of Canada was one of which delegates to the Australian Conventions would have been aware and, some at least, familiar with its structure, provisions, and its efficacy or otherwise in practice.

Initially there were four units or Provinces in the Canadian Federation: Ontario, Quebec, Nova Scotia, and New Brunswick.¹⁸ It was slightly different for the Senate where the Constitution specified that 'Canada shall be deemed to consist of Three Divisions: Ontario; Quebec; and the Maritime Provinces: Nova Scotia and New Brunswick.'¹⁹ Each Division returned twenty-four senators, a total of seventy-two. The Act gave the Governor authority to admit new members to the Federation by the passing of appropriate Acts by the Imperial Parliament and by 1880 all the Provinces, which comprised the whole of modern Canada except Newfoundland, had been admitted. By 1910 there were eighty-seven members of the Senate, distributed in accordance with relevant Acts.²⁰ New members were accorded representation in the Senate on an equal basis with the original Provinces in order to maintain equality of representation.²¹ The new Canadian Parliament of 1867 comprised the classic trinity of British legislatures: the Queen or Sovereign (represented by the Governor-General), the Senate and the House of Commons. In Canada even the name of the lower house was taken from Britain, though

¹⁶ Ibid.

¹⁷ Bourinot, *Canada under British Rule, 1760–1900*, p.215.

¹⁸ British North America Act, 1867, Section 5.

¹⁹ Ibid., Section 22.

²⁰ Ibid., Notes to the Constitution, No. 75.

²¹ Marriott, *Second Chambers - An Inductive Study in Political Science*, pp.141-152.

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rejected in Australia as inappropriate due to its class connotations. 'It raises a class distinction' quoth Patrick Glynn of South Australia.²²

Members of the first Canadian Senate were appointed for life by the Governor-General and there was a provision that more Senators could be added in equal proportions for the provinces on recommendation from the Queen.²³ The presiding officer of the Senate was called the Speaker and also appointed by the Governor-General. An upper limit on the number of Senators, initially seventy-eight, precluded the 'swamping' of the house in the case of disagreement. The qualifications for senators included the requirement that they must be possessed of property worth \$4,000 net in their home provinces and be at least thirty years of age. The Constitution provided for a similar limitation on the powers of the Senate as in the British upper house. The Canadian version is that the powers of the houses are equal but only the lower house can originate money bills and any Bill, including money bills, must pass both Houses before it can become law. The Central Parliament in Canada also has the unique power to veto provincial legislation if thought necessary.²⁴ This was unlikely to find favour in Australia in 1897, as was Section 56 which gives the Sovereign the power to annul any Act of the Central Government of Canada.

The major differences between the Canadian and Australian Senates are that the Senators in Australia are elected, not nominated; they each serve a term of six years and half of them retire every three years and another election is held. In contrast the Canadian Senators were nominated for life. There are no property requirements in Australia as there were in Canada in 1897, the age limit is twenty-one, not thirty, and the presiding officer is not a nominated Speaker but a Senator elected as President by the other Senators. These features of the Australian Senate owe more to the United States model than either the British or Canadian. The time factor is an important consideration here in that the Canadian model, enacted in 1867, was based on the provincial constitutions originally structured in

²² OR, 14 April 1897, p.628.

²³ British North America Act, 1867. Section 26. Since 1965 Senators must retire at the age of 75.

²⁴ Bourinot, *Canada under British Rule, 1760–1900*, p.321.

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the 18th century. By the 1890s ideas about Government had changed to more democratic and independent views.

The Canadian Senate was thus only a model for Australia at a very general level. The British model of a Monarch, an upper house and a lower house and responsible Government are features of both legislatures. Equal representation in the Senate is a similar feature, though in Canada some smaller provinces are combined for representation. There the similarities end.²⁵ The Canadian model was discussed thoroughly at the 1890 Australian Conference, and not always in positive terms. In the end it was features of the American Federal structure the delegates found to be the better model for an Australian Senate, persuaded perhaps by Inglis-Clark or, more likely, the work of James Bryce (see chapter 2).

E.R. Hunt claims that Henry Parkes was an advocate of the Canadian model in 1890, but was opposed by Griffith who 'defeated' him on the question.²⁶ In spite of Hunt's claims, Parkes, in a speech to the 1890 Conference, vehemently denied being a strong advocate of the Canadian model, claiming he had only mentioned it in correspondence with Duncan Gillies, then Premier of Victoria, in the pre-convention years:

I venture to say that I have never alluded to the Canadian Constitution in any way that would justify the inference that I have any intention, so far as I may have the power, of copying it. I only alluded to it once, and that was in my letter to Mr. Gillies, which opened the correspondence on this subject. Since then I have never alluded, except by way of illustration, to the Dominion Government, either in speech or in writing. This is what I said in my letter of October 30th, 1889:-'The scheme of Federal Government, it is assumed, would necessarily follow close upon the type of the Dominion Government of Canada'.²⁷

²⁵ Bourinot gives a comprehensive list of the differences between the two Constitutions in 1900; *Ibid.*, pp.315–326.

²⁶ Hunt claimed that Parkes desired a Canadian type federation but that this was defeated by Griffith's eloquence. E.M. Hunt, *American Precedents in Australian Federation*, (New York: Columbia University Press; London P. S. King, Ltd., 1930), p.19.

²⁷ *OR*, 13 February 1890, p.80.

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Parkes also attended the Convention of 1891, but as chairman made few contributions to the actual debate. He did not survive to attend the Convention of 1897.

Gillies followed Parkes in 1890 with the comment: 'I have no doubt in my own mind but that we shall find the Canadian Constitution is about the best basis that we can select'.²⁸ These remarks were made early in the process and support the view that Canada was initially looked upon as a likely model, but further debate made it clear that most delegates did not agree. Though the general attitude to Canada as a model for Federation was rejection, the model of the upper house was closely considered.

Griffith's major speech on the subject in 1891, while admittedly eloquent, was not especially critical of the Canadian model, though neither did he advocate it; nor did he mention Parkes' speech.²⁹ Both Deakin and Playford were much more vehement in their opposition, Deakin declaring 'I have no ambition to see a second chamber in these colonies which should be a mere replica of the Canadian Upper House, which is confessedly inadequate for the position which it occupies'.³⁰ Playford was equally hostile to the Canadian example. In his speech to the 1890 Conference he said 'I am quite certain that if we are to build up a Federation on the Canadian lines, the colony of South Australia will never agree to it'.³¹

The Draft Constitution for Australia, drawn up by Andrew Inglis Clark in 1891, demonstrates that he had considered the Canadian model carefully and was not impressed: 'I am persuaded that the people of the Australian Colonies are not prepared to accept a Senate on the model of that of the Canadian Dominion'.³² In his draft Clark rejected the idea of nomination of Senators for life, though not nomination itself, instead proposing a fixed term as in the United States, and he was possibly strongly influential in the decision of 1891.

²⁸ Ibid., p.93.

²⁹ Ibid., 4 March 1891, p.30.

³⁰ Ibid., 5 March 1891, p.74.

³¹ Ibid., 10 February 1890, p.17.

³² John M. Williams, *The Australian Constitution: A Documentary History*, (Melbourne: Melbourne University Press, 2005), p.68.

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As with Clark, the principal objection by the delegates was to the appointment of Canadian Senators for life by the Governor-General. John Macrossan said he would be 'utterly opposed to the idea'.³³ No doubt the experiences of some of the delegates with their own upper houses persuaded them to reject this course. As we have seen in 1891 the decision was to have the Senators nominated by the States' Parliaments but by the time of the 1897 Convention election of Senators by adult (male) suffrage and for a limited term, replaced this decision. Objections to the nomination system were that it was not in the spirit of federation and could easily lead to 'improper patronage'.³⁴ The property qualification and a minimum age limit for senators different to that of the electorate, were other features of the Canadian model which were rejected, but with little comment.

The ubiquitous subjects of power over money Bills, equal representation in the Senate and co-ordinate houses, were the major issues where the Canadian example was cited. Griffith was especially heated in his objection to the limitation of the Senate's power over money bills, calling the idea a 'fetish'. He fumed that 'they have the English system in Canada ... [where] the powers of the senate are naturally and properly restricted'. He was referring to the non-elected nature of both institutions as a reason for the restriction, but in his ideal Australian Senate this would not apply as the senators would be elected.³⁵ In spite of fervent resistance by the smaller states Australia eventually adopted the English and Canadian examples and restricted the power of the upper house over money bills. In Britain and Canada the only limitation on the upper house is that it cannot originate money bills; there are no special provisions for amendments or rejections.

The Canadian model was also considered on the topic of equal representation for the States in the Senate. This was a thorny topic and brought forth a comment from Higgins who argued that in Canada they did not have equal representation.³⁶

³³ *OR*, 12 February 1890, p.73.

³⁴ *Ibid.*, 24 March 1897, p.80.

³⁵ *Ibid.*, 5 March 1891, p.64.

³⁶ *Ibid.*, 25 March 1897, p.99.

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Trenwith agreed with him.³⁷ The argument was not cogent as the peculiarities of Canadian geography and history and the different pattern of settlement there played a large part in all the decisions on the issue of equal representation. Some of the inequalities of the provinces were overcome by combining smaller provinces into one entity for Senate purposes: initially Nova Scotia and New Brunswick as the Maritime Provinces, but the principle of equal representation was generally observed, though more on a population basis.³⁸

The question of admission of new states to the Australian Federation brought out more comparisons with the Canadian model, which makes provision for new states on an equal basis with original states. Canadian history was a strong factor in Canada's decision in that there was a hope that those parts of the continent not originally included in the Constitution would eventually join. Clark recognised this point in his argument that some states might not join the Australian Federation if all the conditions were not to their liking and suggested, without mentioning any limitation or conditions, that if states did not join at first they may come in later, as in Canada.³⁹ The possibility of adding new states to the Australian Constitution was less crucial than in Canada but there was a possibility that Queensland might divide into three states in the future and require equal representation on that basis. This was not a prospect that the larger states welcomed. The solution was that only original States, those that had signed the Constitution, would be entitled to all the privileges included in it, such as equal representation in the Senate and a guarantee of five seats in the lower house. This provision was unique to Australia.

The issue of equal representation led into the question of increasing the number of Senators. Holder raised the topic in the debate on deadlocks, advising that adding upper house members had occurred in South Australia 'and to a certain extent in Canada'.⁴⁰ In Canada the number of senators could be increased, by nomination, on the recommendation of the Governor-General, but only in multiples of four, to

³⁷ Ibid., 30 March 1897, pp.330, 342.

³⁸ British North America Act 1867, Section 22.

³⁹ OR, 11 February 1890, p.29.

⁴⁰ Ibid., 14 September 1897, p.562.

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ensure the continuity of equal representation. This is the key to settling deadlocks between the houses in Canada and equates to the British position. Formal provision was not made for deadlocks in the Canadian Constitution, in contrast to the unwieldy legislation put in place in Australia. The Canadian example was not considered appropriate and new Senators can only be added in Australia in equal proportions for the States and to retain the nexus between the lower house and upper house: 'the number of Senators must always be as nearly as practicable half the number of the lower house'.⁴¹ Isaac Isaacs fought vigorously against the nexus provision right through the Conventions, making an impressive speech against it in 1898 which Barton described as 'very elaborate and admirable'. Isaacs considered the provision would tie the lower house 'hand and foot to the Senate because its numbers cannot be extended as the requirements of the population demand' and as 'absolutely novel' in any constitution.⁴²

The idea of co-ordinate powers of the two houses also brought Canada into the discussion when Downer supported this concept by saying co-ordinate powers applied in Canada. He was immediately contradicted by Isaacs and hastily withdrew his assertion. Though a minor correction it does illustrate again that delegates were not always sure of their facts and were occasionally speculating. In this case Isaacs knew better, he at least seemed sure of his facts, and Downer was quick to retract, which suggests he was not.⁴³

There was mild disagreement over the name the 'Commonwealth' as compared with the name of Canada as a Dominion. Grant claimed that the 'great and general' unpopularity of the Dominion Government was due in large part to its 'unfamiliar' name. He did not like 'Commonwealth' either, pressing instead for 'United Australia'. This led to an argument about the name of the lower house and whether, like Canada, it should be known as the 'Commons'. Symon scathingly asked if they knew the meaning of the term 'commons', implying that it was not to

⁴¹ Australian Constitution, Section 7.

⁴² L.F. Crisp, *The Unrelenting Penance of Federalist Isaac Isaacs, 1897-1947*, (Canberra: L.F. Crisp, 1981), The full text of Isaac's argument is at *OR*, 3 March 1898, pp.1831-33.

⁴³ *OR*, 29 March 1897, pp.209-30.

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distinguish between the common people and those he called the 'nobs'. This brought out some humour with Reid sardonically commenting 'Nobs Mr Symon' and Barton asking if there were any Lords there to 'distinguish'?⁴⁴ An awkward comment and a sarcastic play on the words of Symon, who was something of a pedant.

The delegates learned a lot from the Canadian Constitution, though mostly in a negative sense, especially in regard to the lifetime appointment of senators. Nor did they copy the system of adding new senators, or equal representation for new states. These are important variations which can be seen both as illustrating the acceptance of advances in the concept of democracy and as a recognition of the problems that could be caused if the privilege of equal representation in the Senate was given to new States.

Turning from the Canadian model what did the delegates learn from the United States example? It is generally accepted that the Australian Senate owes a lot to the United States Senate in its structure. What influence did the United States example have on the Convention delegates? Was it another example, if by a circuitous route, of path dependence? This section will examine the influence of the United States by discussing the history of the United States and its progress towards federation, the situation there at the time of the Australian Conventions, and comparing the differences and the similarities, followed by an examination of the comments of the delegates in relation to the United States to understand their attitudes and opinions on the subject.

That the Senate of the United States was one of two major models for Australia's upper house is undeniable. Garran has shown that the British Constitution was also a model for the United States Constitution, which was, in effect, intended to be a republican version of the British Government with the Monarch replaced by an

⁴⁴ Ibid., 4 April 1897, p.628.

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elected president.⁴⁵ A clear line of descent can be traced from Britain to the United States to the Australian Constitution.

Not everyone approved of the reliance on the United States example and Vaiben Solomon expressed his displeasure forcefully:

It is all very well to compare the position we are taking up here with the position in America. ... We have had nothing else but this American Constitution from all sides of the House and to bolster up every kind of opinion, and I have come to the conclusion that the American Constitution is such a many-sided one that it can be used to back up every argument on every possible side of the federation question.⁴⁶

Solomon was no doubt enunciating the thoughts of several of the delegates and he was correct in that the model of the United States was frequently invoked in the convention debates and sometimes on opposite sides of the same question.

The United States began existence as a Federation of thirteen original English colonies in the late 18th century. They were essentially self-governing under the Crown and there were two chambers in all but two, Pennsylvania and Georgia, a pattern repeated in the 1787 Constitution.⁴⁷ The origins of the Federal Constitution were based upon conflict and rebellion against the rule of the British monarchy. The result was a staunchly republican United States, which, as a model, sits awkwardly with the equally staunch monarchical views of the Australian Convention delegates. Nevertheless, the delegates took many lessons from the United States experience, especially in the structure of the Senate. The major feature of the United States model that attracted the interest of the delegates was that it successfully combined two elements of the electorate into the legislature: the lower house on a popular vote; the Senate, or upper house, on a state vote.

The shape of the United States Constitution is derivative and the British heritage is evident in the structure of its Senate. James Madison (1751-1836), a delegate to

⁴⁵ Robert Randolph Garran, *The Coming Commonwealth, an Australian Handbook of Federal Government*, (Sydney, London: Angus & Robertson, Simpkin, Marshall, 1897), p.58.

⁴⁶ OR, 17 September 1897, p.747.

⁴⁷ Bryce, *The American Commonwealth*, p.245.

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the American Constitutional Convention in 1776 and co-author of the *Federalist Essays*, a primary source for interpretation of the United States Constitution, considered that the Senate's role was 'first to protect the people against their rulers [and] secondly to protect the people against the transient impressions into which they themselves might be led'.⁴⁸ Alexander Hamilton, another co-author of *The Federalist Essays*, saw one of the objectives of the Senate as 'To restrain the impetuosity and fickleness of the popular House, and against the effects of gusts of passion or sudden changes of opinion in the people'.⁴⁹ These early examples of the fear of the ogre of democracy were to be repeated by the Canadians and the Australians over a century later, as they structured their upper houses. While Australia drew many of its ideas for its Senate from America, the Americans drew on writers such as Montesquieu and his *L'Esprit des lois* (The Spirit of the Laws) as well as Aristotle's *Politics*, to divide their government into the executive, judicial, and legislative branches. The Constitution itself was derived from *Magna Carta*, the common law traditions of Germanic tribes and Roman legal theory. The traditions of the British House of Commons and the Athenian assembly were followed for the design of the House of Representatives and the name for their upper house, the Senate, was borrowed from Republican Rome. In a departure from the ancient and European traditions, one of America's first nations, the Algonquin, provided the word *caucus* for certain meetings.⁵⁰

The United States Senate is a component part of its Government which follows the classic tripartite structure inherited from the British Government and the original American States. The legislature, known as the Congress, consists of two bodies: a Senate and a House of Representatives. Their functions resemble those of the two-chambered British Parliament, which had, before 1787, suggested the creation of a bicameral legislature in all but three of the original thirteen States of the Confederation. This was in keeping with the Imperial authorities controlling the destinies of the Colonies by ensuring that British traditions were upheld. The third

⁴⁸ A compilation of these essays was published in 1788 and called *The Federalist*.

⁴⁹ Bryce, *The American Commonwealth*, p.147.

⁵⁰ J. McIver Weatherford, *Tribes on the Hill*, (New York: Rawson, Wade Publishers, Inc., 1981), p.6.

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component, the executive, is an elected President who was to hold office for four years.⁵¹ The President is the Chief Executive and appoints his own Ministers, who are not elected representatives. This is the most important difference between the American and the Australian Constitutions: in Australia Ministers are appointed by the Governor-General on advice from the Prime Minister and must be elected members of Parliament and Ministers are responsible to parliament: this is the essence of responsible government.

The claims of independent States, with different populations, to equal representation in the proposed central, federal government, determined the establishment and structure of the United States Senate. The arrangement, known as the 'Connecticut Compromise', was adopted at the Federal Convention (1787). The arrangement provided the several states with equal representation in the upper house together with proportional representation in the lower house, in order to balance the representation of large and small States in the Government. Without this inducement it would have been difficult to persuade the smaller states to join the federation and without this imperative there might have been no upper house in the American Government. This is why Bryce regarded 'this masterpiece of the Constitution-makers' as a 'happy accident'.⁵²

Yet the fear of a 'popular assembly' was also a major consideration in the establishment of the United States Senate, a view frequently and forcibly expressed by Alexander Hamilton at the Federal Conventions in 1787:

There are few positions more demonstrable than that there should be ... some permanent body to correct the prejudices, check the intemperate passions, and regulate the fluctuations of a popular assembly.⁵³

He reiterated his concerns later in the same speech: popular Assemblies were, he claimed, 'frequently misguided by ignorance, by sudden impulses, and the intrigues

⁵¹ Bryce, *The American Commonwealth*, p.126.

⁵² *Ibid.*

⁵³ Alexander Hamilton in Jonathon Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution as Recommended by the General Convention at Philadelphia in 1787*, 5 vols. (New York: Burt Franklin, 1787), vol.ii. p.301.

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of ambitious men, and ... some firm barrier against these operations was necessary'.⁵⁴ At the time of the Australian Federation Conventions in the 1890s, the United States Senate comprised two Senators for each State. A Senator had to be over thirty years of age, a United States citizen for nine years, and an inhabitant of the State for which he was chosen. The Vice-President of the United States, who was elected at the same time as the President, was ex officio President of the Senate. He had no vote except when a casting vote was required. Senators were originally nominated by the State legislatures and, in 1787, numbered twenty-six. By 1897 the addition of Senators from new states had increased this to seventy-six.⁵⁵ Each Senator served a term of six years and one third retired every two years at the time of the election of the House of Representatives (the mid-term elections) thus giving the Senate a perpetual existence. Bryce put it in poetical terms:

it undergoes an unceasing process of gradual change and renewal, like a lake into which streams bring fresh water to replace that which the issuing river carries out.⁵⁶

The powers of the United States Senate are threefold: legislative, executive, and judicial. The legislative powers of the Senate are the same as those of the House of Representatives except that it cannot initiate bills for raising revenue, though it may propose amendments to the Bills or reject them.⁵⁷ Otherwise its legislative function is to pass Bills along with the House of Representatives: a Bill must pass both houses and becomes an Act of Congress on the assent of the President. If the President withholds consent and returns a Bill for reconsideration, it can still become law if passed a second time by a two-thirds majority of each house.

The Senate's executive powers include approval or disapproval of the President's nominations for Federal officers, including judges, ministers of State, and ambassadors, and to approve, by a majority of two-thirds, treaties made by the President. If a treaty does not achieve this majority then it fails. The judicial

⁵⁴ Alexander Hamilton in *Ibid.*, p. 302.

⁵⁵ Bryce, *The American Commonwealth*, p.126.

⁵⁶ *Ibid.*

⁵⁷ Constitution of the United States, Section 7.1.

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function of the Senate is to sit as a court for the trial of impeachments preferred by the House of Representatives. These functions were not adopted for the Australian Senate.

That the United States was an important model for the delegates is clear from the number of times it was discussed in the debates and, though it was not always considered a good model, admiration was expressed eloquently by several delegates. Playford addressing the 1890 Conference argued:

We require something in the shape of the Government of the United States, where clearly defined powers are given to the Senate and the House of Representatives, and where all other powers not specified are left to be exercised by the local States and constituencies.⁵⁸

Macrossan also spoke warmly of the United States:

I regard the Senate of the United States as being one of the grandest representative bodies in existence. It is quite equal to, if it does not surpass, the British House of Lords.⁵⁹

The first issue to be raised—and on the first day of the 1890 Conference—in relation to the US model, was the procedures of the United States Convention in 1787 when, Playford argued, the Americans had not admitted the press to their Constitutional Convention.⁶⁰ This was an example Australia did not follow, and the press and public were admitted to all formal deliberations on the creation of the Australian Constitution, though not without dissension. Crisp tells us that George Dibbs in particular, and in accordance with his stated views on popular participation in constitutional change, fiercely opposed a formal motion by William McMillan to restrict public access to the proceedings. Dibbs argued for the admission of the press and the public because then ‘there will be no feeling that this is a secret enclave to take away the liberties of the people’.⁶¹ The discussion reveals that even before they began their deliberations proper, delegates had the United States

⁵⁸ OR, 10 February 1890, p.18.

⁵⁹ Ibid., 12 February 1890, p.73.

⁶⁰ Ibid., 6 February 1890, p.viii.

⁶¹ L.F. Crisp, *George Richard Dibbs: Premier of New South Wales, Prophet of Unification*, (Canberra: L.F. Crisp, 1980); OR, 3 March 1891, p.12.

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in mind and suggests that the Conventions themselves were modelled on the United States and Canadian precedents.

Deakin was another delegate who discussed the United States at the 1890 Conference. In a long speech he commended the American model and explained some of its features:

That Government which has been supposed by some persons to be an artificial creation and not a natural growth—the Government of the United States—is a closely-allied offshoot from the British Constitution.

Deakin recognised the legacy of the British system in the United States Government, which for the Australians gave added validity to it as a model. He then introduced the possibility of the Constitution requiring amendments and, without naming it and in a prescient moment, suggested a referendum might be the solution as in some American States:

The ablest jurists in the United States consider the great difficulty of amending their Constitution to be a serious defect; but they find no such defect in their State Constitutions, where a safety-valve [referendum] has been provided in the appeal to the people.⁶²

These comments, though generalised and included in rhetorical and formal speeches, introduced the Constitution of the United States as a serious possible model for the proposed Australian Constitution and it continued to be a major theme throughout the Conventions, the Senate attracting particular attention.

The main function of the 1890 Conference was to arrange for the 1891 Convention, and by then things had moved on. To begin with, Clark, who was the senior Tasmanian delegate to the 1890 Conference, had drafted a Constitution based on both the United States and the Canadian models but with variations to allow for the Australian situation.⁶³ All the delegates were given copies of Clark's Constitution before the opening of the Convention, more evidence that the United States model

⁶² OR, 13 February 1890, pp.97-8.

⁶³ John Reynolds, 'A. I. Clark's American Sympathies and His Influence on Australian Federation', *The Australian Law Journal*, July 1958, pp.62-75.

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was on the table from the beginning. The Convention worked on a series of predefined Resolutions which Baker refers to here:

only two words in all the resolutions which we have passed which are not identical with the American Constitution are those at the end of resolution No. 1 in the second series, because the American Senate can initiate a bill imposing taxation.⁶⁴

Baker was incorrect here as the United States Senate had never been given the power to initiate bills imposing taxation.⁶⁵ This comment, from a generally well-informed delegate, is another example of the inexactitude of many delegates' knowledge of other constitutions, coupled with an apparent willingness to make claims which could not be substantiated. This was a frequent occurrence when delegates discussed the Constitutions of other countries. Some of our 'founding fathers' it seems had feet of clay.

A number of delegates preferred the British model. Parkes, for example, indicated his preference by using the instance, as discussed in another chapter, of the tragic incident with Charles Sumner to compare the United States Senate unfavourably with the House of Lords.⁶⁶ Similarly Jennings complained that:

We cannot follow the model of the United States Constitution, because our constitution is totally different. We cannot, as a senate, perform executive functions when we have responsible government and a ministry responsible to the House of Representatives.⁶⁷

He was not the only delegate to note the discordance between responsible government as practised in the Australian Colonies and the executive model of the United States.

In addition to Clark's pre-circulated draft, the United States was brought into the 1891 debate by Baker with the comment that so many ideas came from America, including the composition of the Senate in:

⁶⁴ *OR*, 18 March 1891, p.464.

⁶⁵ Constitution of the United States, Section 7.1.

⁶⁶ *OR*, 17 March 1891, p.447.

⁶⁷ *Ibid.*, 6 April 1891, p.739.

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providing for the election of a senate composed of an equal number of members from each province, with periodical retirements, constituting a body with continuity and perpetual existence.⁶⁸

Other ideas sought from the United States included the powers to be assigned to the proposed Australian Senate, a crucial issue in the debates. In the opening discussions in 1891, James Munro, a supporter of the British system of responsible government, observed that: 'In the United States the real executive power is in the senate, because the senate can veto the appointments made by the President, and there is no responsible government'.⁶⁹ Macrossan also raised this point when supporting equal powers over money bills 'I have no fear of the senate ultimately becoming the master of the House of Representatives as it has become, to some extent, in the United States'.⁷⁰ Munro and Macrossan were referring to the powers of the United States' Senate over appointments to positions in the executive and the judiciary, but which would not apply to the Australian model of responsible Government, where those powers were to be reserved to the lower house.

Comparison with the United States was also brought in on the question of the number of Senators for each State. Baker raised the issue in 1891, as being a copy of the United States system.⁷¹ Munro sounded a caution about the proposal of eight senators for each of the seven states (he included NZ in 1891) which would mean fifty-six Senators. He suggested that might be impractical.⁷² Clark chimed in with the thought that the number of states in the commonwealth of Australia will never be anything like the number of states in America.⁷³ Abye Douglas grumbled that 'we have taken the United States as our example'. He clearly did not think this was a good thing, especially in relation to the limitation of the Senate's power over money bills.⁷⁴ The final decision in the draft Bill of 1891 provided for eight Senators for each State. This was to change by 1897. The very different situation in the United States in terms of numbers of Senators made a

⁶⁸ Ibid., 18 March 1891, p.464.

⁶⁹ Ibid., 5 March 1891, p.49.

⁷⁰ Ibid., 17 March 1891, p.436.

⁷¹ Ibid., 18 March 1891, p.464.

⁷² Ibid., 1 April 1891, p.588.

⁷³ Ibid.

⁷⁴ Ibid., 6 April 1891, p.731.

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comparison meaningless. In America each State has two senators and this has never changed or been seriously challenged. New States are also allocated two Senators.⁷⁵ Two factors influenced the delegates in applying different provisions for Australia. The first was that the larger number of States in America meant that the number of senators was always enough to form a viable chamber. In Australia, two senators from each state would not have been enough to form an effective debating group, hence the decision first for eight, and finally six, senators for each State making a house of thirty-six members.

The vexed question of whether senators should be selected by the State Legislatures or elected by the population was another subject for comparison with the United States where the senators were selected by their State parliaments. Griffith, Deakin, Cockburn and Playford SA, early expressed unfavourable views on the United States system in this matter. Griffith presented his views of the system, in a roundabout way, as open to corruption: 'It has been found in the United States that the election of members to the state parliaments may often be determined by the views held by the candidates as to the proper persons to be elected to the Senate'. Cockburn concurred, also claiming that the system distorted the elections of States' parliaments. On the other hand, the United States system did have its advocates.⁷⁶ Playford for example thought Australia could do no better than to adopt the United States form of election:

This is a point on which we can consult the experience of America, where exactly the same clause has worked for 100 years. I have never learned that they desire to alter their mode of electing senators.⁷⁷

The matter went to a vote with the result that senators be 'directly chosen by the houses of the parliament of the several states'. A strong vote in support of the method ensued with thirty-four in favour and six against.⁷⁸ This also was to change by 1897.

⁷⁵ Ibid., 26 March 1897, p.162.

⁷⁶ Ibid., 2 April 1891, p.592—598.

⁷⁷ Ibid., p.594.

⁷⁸ Ibid., p.598.

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In the Convention of 1897, the United States Senate was still regarded as a model and looked to for precedent on several issues. Some of these were major and caused considerable angst among the delegates. Included were powers of the Senate, equal representation of the States in the Senate, election of senators and how to manage deadlocks. Other issues were minor or raised little controversy and were either accepted for the Australian Senate or rejected as unsuitable. Less controversial issues were: new states, term of office; secession; constitutional changes; and the name of the Federation.

The United States example was introduced into the 1897 Convention by Isaacs who came in on the issue of Senate powers. He recalled that the United States delegates to the Philadelphian Convention debates had also argued over the distribution of powers. One party sought equal powers for both houses, the other wanted the same situation as in Britain, where the lower house was more powerful.⁷⁹ The argument Isaacs referred to took place in the United States in 1787 before the British Reform Bill of 1832 had weakened the Lords, and which, at that time, still enjoyed putative equal powers with the Commons. In the event the United States adopted a compromise which Isaacs saw as 'now a principle': the power of the United States Senate to alter or amend money bills but not originate them. Isaacs did not approve of this. Downer as a proponent of equal powers for the Senate agreed with Isaacs, arguing 'the only possible way of preventing Federation ultimately resulting in amalgamation was to have the House representing the States at least co-ordinate with the House representing the people'.⁸⁰

Solomon favoured the British model over the United States and in a clear example of what we now call path dependence, argued that 'It is far better to take the Constitution which the mother-country had adopted', a path familiar to the self-

⁷⁹ Ibid., 26 March 1897, p.176.

⁸⁰ Ibid., 29 March 1897, p.209.

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governing colonies of Australia, whereas he saw that in America the States had had governments which were 'antagonistic to one another'.⁸¹

Carruthers, Cockburn, Solomon and Higgins all raised the United States Constitution as a model with varying degrees of respect or rejection. Higgins began with the thought that the adoption of the model of the United States would be 'a step backward'.⁸² Carruthers continued with a negative comparison claiming Australia was more progressive by the institution of manhood suffrage and equal political rights. On this premise he dismissed the United States as a model for Australia because 'no such reforms have been wrung from the ruling authorities' and asked 'Why go to America and have the story told to us of the building up of the constitution there?'⁸³ Cockburn was concerned that the powers of the States 'may be gradually encroached upon and ... reduced to comparative insignificance' even with a powerful Senate as in the United States.⁸⁴ It seems the mood had changed somewhat since 1891 and the delegates were now less convinced that the United States Constitution was such a good model.

Delegates also offered historical information about the United States constitution in the general discussions. The examples were mostly in the form of warnings. Lyne for example warned that the United States Senate was not created as 'the portion of Parliamentary machinery which it afterwards became'. The originators he said were 'groping to a large extent without any guide' and in its original conception the Senate was conceived as a check upon 'the great power of the President'.⁸⁵ Baker considered that it had 'in many respects turned out differently to that which its authors contemplated' and Downer considered the United States Constitution 'by no means a perfect one'. The Americans, he said, did not know about responsible Government and based their Constitution 'largely on the writings of Montesquieu'.⁸⁶ Deakin more thoughtfully suggested that although the Senate was supposed to

⁸¹ Ibid., p.255.

⁸² Ibid., 9 September 1897, p.263.

⁸³ Ibid., p.271.

⁸⁴ Ibid., 30 March 1897, p.340.

⁸⁵ Ibid., 26 March 1897, p.157-8.

⁸⁶ Ibid., 23 March 1897, p.131; 29 March 1897, p.208.

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protect State rights the American experience indicated that that would not necessarily eventuate. States' rights, he thought, would be fought for at least as earnestly in the House of Representatives as in the Senate. The founders of the American Constitution, he said, found the event falsified their predictions and the Senate was never 'one whit in advance of the House of Representatives' in defending States' interests.⁸⁷ Gordon became impatient with these history lessons, which he did not think 'helped very much' and expostulated: 'The flowers of a hundred years have bloomed and perished on the graves of these gentlemen' and added melodramatically that the history of the American Senate: 'has not much more to do with our present position than the evolutionary struggles of our anthropoid ancestors have to do with our actions in this convention'.⁸⁸ It was left to Barton to point out that the American Constitution was an attempt to 'photograph' the English Constitution but that the ideals of responsible government had not then been reached and if the United States constitution had been made much later 'there would be much nearer approach to a responsible government in that Constitution'.⁸⁹ The British lineage of the United States Constitution is often overlooked by commentators who depict the choices as a simple binary: British or American.

Higgins, always a critic of the concept of a Senate, had an original thought about the composition of the United States Government. It was, he argued, a compromise between a confederacy and a federation: 'the English guns were at the gates and they could not afford to have any state standing out so they compromised by having two houses: the house of confederacy and the house of Federation' where the majority would rule.⁹⁰

The major issue in the comparison with the United States example was whether the Senate should have equal powers with the House of Representatives. This applied to all legislation but particularly to money bills because the upper house in

⁸⁷ Ibid., 30 March 1897, p.296.

⁸⁸ Ibid., p.324.

⁸⁹ Ibid., 31 March 1897, p.380.

⁹⁰ Ibid., 9 September 1897, p.262.

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the United States was limited in its power. This was a sticking point as it had been in America. O'Connor pointed out that the powers of the two houses in the United States were not equal. He also claimed that equal powers were 'practically impossible in any country'.⁹¹ The major argument against equal powers was that with responsible government, where the executive is part of the lower house, equal powers are not practical. Higgins considered that there was no analogy with the United States because they did not have responsible government, though the Senate did have the power to amend bills imposing taxation if not to initiate them.⁹² The different allocation of powers in the United States rendered any comparison on this score irrelevant but this did not silence the delegates on the issue and during the debate Lyne held forth on what he thought should be the role of the United States Senate in addition to its executive powers and quoted Alexander Hamilton saying it should:

Correct the democratic recklessness of the House of Representatives and the monarchical ambition of the President.

and

restrain the impetuosity and fickleness of the popular House, and against the effects of gusts of passion or sudden changes of opinion in the people.⁹³

It is not clear why Lyne felt it necessary to quote Hamilton on these unspecified and unofficial roles for the United States Senate but it does suggest that he thought they should apply to the Australian Senate. It also illustrates yet again the fear that democracy might be carried too far. Lyne continued that then: 'The propensity of a single and numerous assembly to yield to the impulse of sudden and violent passion is restrained'.⁹⁴

This imagined role of upper houses as a restraint on lower houses appears again and again in discussions. It is a role that has never been given official status but resides permanently in the minds of many observers, undoubtedly stemming from

⁹¹ Ibid., 24 March 1897, p.51.

⁹² Ibid., 25 March 1897, p.98.

⁹³ Ibid., 26 March 1897, p.158.

⁹⁴ Ibid.

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the original oligarchic ascendancy of the upper house in original legislatures, especially the British House of Lords.

Baker waxed eloquent on the United States situation saying though the Senate could not initiate Bills imposing taxation, they could initiate Bills to appropriate revenue. Again Baker was inaccurate because Section 7, Clause 1 of the Constitution stated explicitly 'All Bills for raising revenue shall originate in the House of Representatives'. This sort of error was disturbingly prevalent in the debates. He went on to argue that in many Federations very large powers were given to the Councils of State or upper houses, particularly in regard to approving or appointing executive officers and said it was these powers that preserved the rights of the States intact.⁹⁵ Downer also wanted co-ordinate powers for the two houses. The United States, he argued, while limiting power on the initiation of Taxation Bills, balanced it with stronger executive power and control of foreign affairs, which made the Senate the 'pre-eminent body'. He considered that America had copied Britain because it wanted to make its Government as 'analogous' to the British Government as possible.⁹⁶ In this Downer echoed Robert Garran's conclusion and was correct in that the United States legislature adopted many features from the British model, though whether they had 'wanted to' is debatable. It may have happened subconsciously. Downer implied in this speech that copying Britain was a good thing and should also be done in Australia; remarks which demonstrated the strength of the urge to emulate Britain, a recurring theme in the debates. Glynn also had something to say about the United States Senate, arguing that 'Every clause of the constitution, I believe, has been recast on the principle of allowing equal powers to the upper and lower houses; therefore there cannot be much danger in this boggy of the upper house'.⁹⁷ He made this comment during the debate on equal representation and sidestepped the main issue to argue in a rather imprecise speech for equal powers for the proposed Senate, the dangers of which he thought had been overstated. Trenwith saw it differently: 'the American

⁹⁵ Ibid., 23 March 1897, p.31.

⁹⁶ Ibid., 29 March 1897, p.209.

⁹⁷ Ibid., 23 March 1897, p.281.

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people sought to make a compromise between responsible government and autocratic government making their little King only able to exercise his autocratic powers for a period and associating him with the Senate in some administrative matters'.⁹⁸ Cockburn argued that the federal authority could encroach on State rights because this had occurred 'even in America' where the Senate was so powerful.⁹⁹ But in spite of much vigorous support for some increase in the powers of the Senate on the lines of the United States example, the British system of responsible government was to be continued in the Australian Constitution.

The other major issue, at least in the minds of some delegates, was equal representation in the Senate. It is clear that the principle of equal representation of the colonies in the upper house was derived from the United States Constitution as a way to arrange the composition of the upper house in Australia. On the whole it was agreed that such a provision was necessary in order to persuade the smaller colonies to accept Federation, as had been the case in the United States and recognised as the 'Connecticut Compromise'. Not everyone agreed with the principle. The most vociferous opponent of equal representation was Higgins who never ceased to oppose the idea, even when it was passed into reality. He used the United States as a model of failure on this issue and argued that the United States was not happy with the system: 'Even in America there has been discontent with this equal representation. The people of New York say, and with good reason, that with their five or six millions of people they are only returning two senators, while Nevada, with 30,000 has the same right to return two senators'.¹⁰⁰

Even some of those who supported the system were lukewarm about its advantages but used the United States compromise to support the case for its adoption. Wise said that the example of the United States had persuaded him to the view that 'equal representation in the Senate was a practical necessity'.¹⁰¹ Lyne was another delegate against the system, if not so vehemently as Higgins. As

⁹⁸ Ibid., 30 March 1897, p.334.

⁹⁹ Ibid.

¹⁰⁰ Ibid., 25 March 1897, p.101.

¹⁰¹ Ibid., p.106.

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with other representatives of the larger colonies he considered equal representation to be undemocratic and asked, rhetorically, 'What right has Tasmania to have as strong a power in the administration of New South Wales as New South Wales?'¹⁰² He considered that the United States did not 'set out with the idea of the Senate as it ultimately emerged' and he had always 'as long as I have given the matter a thought' been against equal representation in the Senate.¹⁰³ Isaacs saw the United States Constitution as an attempt to have the bicameral system and, by analogy, to be as close as possible to the British Constitution. He argued that the provision for equal representation was included as a 'provision for extraordinary emergencies' and because those (smaller) states would not come in on any other basis, opponents of the idea were forced to give way and yield to the 'Connecticut Compromise'. He implied by this speech that Australian delegates should also yield to the inevitable.¹⁰⁴ Trenwith went on to say he reluctantly supported the idea as providing a balance against the possibility of the larger states combining to oppress the smaller ones, or the smaller states under this system 'combining to infringe the rights of the larger states', but he thought both were 'improbable contingencies', a thought which rather robbed his argument of relevance.¹⁰⁵ Higgins returned to the fray with the claim that 'the system has been absolutely futile and not served its purpose'.¹⁰⁶ The issue arose again in September and Higgins again returned to his theme. He suggested that the idea was 'one of the chief causes of the civil war' in the United States.¹⁰⁷ To support his claim he provided a long drawn out analogy to do with the slave states having equal representation, which suggests that he would have clutched at any straw to establish his case. He continued his argument with the comment that 'the system was adopted under pressure in America and would not be adopted if they had to start again'.¹⁰⁸ Symon argued that equal representation was necessary and

¹⁰² Ibid., 26 March 1897, pp.157-8.

¹⁰³ Ibid., p.158.

¹⁰⁴ Ibid., 26 March 1897, p.175.

¹⁰⁵ Ibid., 30 March 1897, p.336.

¹⁰⁶ Ibid., 15 April 1897, p.647.

¹⁰⁷ Ibid., 9 September 1897, p.264.

¹⁰⁸ Ibid., 10 September 1897, p.349.

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'an essential part' of the United States system. He claimed that in all federations on 'true federal principles' there has been equal representation.¹⁰⁹

The clause providing for equal representation in the Senate was passed as read with a majority of 36 to 5.¹¹⁰ The threat of the smaller states not accepting Federation in the United States unless they had equal representation had been a real one and with the horrors of the war of independence still fresh in their memories the admission of the smaller states was seen as crucial by the United States Constitution builders. It is arguable that this was not such an imperative in the Australian case, though there was a possibility that the smaller states would not join, but the instinct to follow the United States example was strong; besides Clark had included this provision in his early draft.

The method of choosing Senators was another major issue, but while in 1891 it had provoked animated arguments, by 1897 the issue was settled. In 1891 the draft Bill proposed that Senators should be chosen by the Parliaments of each State. There had been conflict over whether Senators should be chosen in this way, or elected by the community. By 1897 the draft clauses from the Constitution committee for discussion by the delegates read 'The members for each State shall be directly chosen by the people of the State as one electorate'.¹¹¹ This suggests that arguments put forward in 1891 and in the preliminary discussions in Adelaide in April 1897 had persuaded many delegates to change their minds on this issue. However the subject was far from closed. The matter was raised by several delegates in the preliminary discussions of the 1897 Convention with reference to the American experience. Higgins opened the subject to warn against following the United States example of nomination by the States because 'they have the senators elected by the State parliaments which brings Federal politics into the arena of local parliaments ... this causes some disruption to state elections'.¹¹² Isaacs also considered nomination a bad thing: 'the history of recent years

¹⁰⁹ Ibid., p.293.

¹¹⁰ Ibid., p.355.

¹¹¹ Ibid., 15 April 1897, p.641.

¹¹² Ibid., 25 March 1897, p.102.

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discloses ... the bad working of the system'. The 'State legislatures have frequently failed ... to elect at all'. He gave alarming examples of some things that had occurred in the United States because the State legislatures had the power of nomination. This, he said, 'cannot arise in a popular election at all'.¹¹³ Fysh seemed a bit confused but he clearly supported the nomination idea. 'The Senate' he claimed, had 'stood the test of 100 years and is now elected by Congress'.¹¹⁴ He was immediately put right on this point by Isaacs and Barton, and hastily amended his speech saying he meant 'by the State legislatures as ... proposed under the Commonwealth Bill of 1891'; another egregious error on the part of a delegate.¹¹⁵ Forrest, also a supporter of nomination, pointed out that the United States Senate had been elected by the States for over 100 years.¹¹⁶ He was countered by Isaacs who said the 'feeling in favour of an election of the Senate was gaining ground in America'.¹¹⁷ Later, in September 1897, Higgins warned that the United States Senate was becoming a house to 'represent the rich men and the trusts' because in the less populous states one or two 'big silver men' can get whoever they want elected.¹¹⁸ Downer confessed he had come round to election and deviating from the American system, for the purpose of making the Senate stronger and directly representing the people.¹¹⁹ Holder thought that direct election of senators by the community was a better representation of the individual states.¹²⁰ Some of these speeches were made in the preliminary discussions in March 1897. When the Clause (Clause 10) came up for debate in September, the election issue was not further discussed, more attention being paid to the idea of each State being one electorate.¹²¹ In this matter, the example of the United States had been first adopted but discarded in 1897 in favour of senate elections.

¹¹³ Ibid., 26 March 1897, pp.176-7.

¹¹⁴ Ibid., 29 March 1897, p.244.

¹¹⁵ Ibid., p.244.

¹¹⁶ Ibid., p.248.

¹¹⁷ Ibid., p.177.

¹¹⁸ Ibid., 9 September 1897, p.265.

¹¹⁹ Ibid., 10 September 1897, p.372.

¹²⁰ Ibid., 13 September 1897, p.387.

¹²¹ Ibid., 21 September 1897, p.989.

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On other issues the comparisons with the United States Senate were not controversial. These included the admission of new States, term of office, secession, constitutional changes, name, and deadlocks. On these there was general agreement that the United States had little to offer, but the fact that they were cited reveals the extent of the dependence on the United States example. The comments of the delegates on these issues offer insights into their thinking on the United States model. For example the possibility of admitting new states was an issue in which the United States was cited but raised little comment. As with the model of Canada the possibility of adding new states to the Australian Constitution was less crucial than in the United States and the example was not followed.

The subject of the term of office for senators was also compared to the United States experience. United States Senators are elected for a term of six years with one third retiring every two years, when Congress dissolves after its two year term. In the draft Bill produced by Clark, the term of office for Australian Senators was fixed at six years with retirement of half the members every two years.¹²² This was changed to every three years to match the terms of the Colonial Parliaments. Though the principle was accepted from Clark's draft, there was little reference to the United States on this issue. The concept of the Senate having a continuous existence and Senators more security of tenure than the lower house, to enable members to focus more on the questions of the day than on re-election, was accepted without much discussion, in a way similar to the passive acceptance of the need for an upper house at all. Only Deakin referred to the United States on this point saying 'What makes the power of the United States Senate is not its executive authority, but its fixed and longer tenure of office'.¹²³ The absence of comment from the delegates on this issue suggests that the work of Clark in his draft Bill, strongly influenced by the American Constitution, convinced the delegates that this was a sound provision. It is also true that 'continuous existence' has a long history in legislatures and was the method used in Colonial Parliaments. Of course, the House of Lords had a continuous existence par excellence.

¹²² Reynolds, 'A. I. Clark's American Sympathies and His Influence on Australian Federation', p.69.

¹²³ *OR*, 30 March 1897, p.291.

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The topic of secession was introduced by Symon¹²⁴ and Lyne and they agreed that secession should be ruled out because the American experience with their Confederation showed that if secession was not prohibited it would be a weak link. 'We must frame a Constitution from which there shall be no secession ... or else the same troubles which arose in the United States ... will arise here'.¹²⁵ Symon went on to suggest that the ability to secede had been one of the main causes of the 'fratricidal war' in the United States and felt that a 'binding contract' must be made between all the colonies.¹²⁶ The subject was discussed animatedly in the preliminary discussions in Adelaide (1897) with speakers being unanimous in the opinion that there should be a clear provision in the Constitution that there should be no secession. This was accepted by the drafting committee which produced the version of the Bill to be debated. In the preamble were the words 'The people have agreed to form one indissoluble Federal Commonwealth' and these words remain in the preamble to the Constitution.¹²⁷

The issue of changes to the Constitution also invited comparisons with the United States, mostly negative. The United States Constitution provides that to effect a change either two thirds of both houses, or ... 'two thirds of the several states', shall call a convention for the purpose of proposing amendments, and amendments must be ratified by three fourths of the states. Turner, in the early days of the 1897 Convention, announced that he considered these conditions to be 'difficult to bring into operation'. He hinged this on the relative powers of the States in America and those in Australia. He assessed Australian States as having seven times the power of an American state.¹²⁸ Later Isaacs and Cockburn voiced their disapproval of the United States system. Isaacs claimed that 'In America there are loud and frequent complaints concerning the difficulty of altering the Constitution'. He added a graphic quote from an otherwise unidentified Mr Stead, that there 'exists an almost intolerable state of things there ... arising ... from the iron grasp

¹²⁴ Ibid., 25 March 1897, p.128.

¹²⁵ Ibid., 26 March 1897, p.162.

¹²⁶ Ibid., 25 March 1897, p.128.

¹²⁷ Ibid., 14 April 1897, p.620.

¹²⁸ Ibid., 24 March 1897, p.49.

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of the dead hand'.¹²⁹ Cockburn further argued that 'An amendment of the Constitution should not be made too easy, but on the other hand it should not be made too difficult. In America it is too difficult'.¹³⁰ The final result in the Australian Constitution has similarities to the United States example but has made the process more onerous rather than less. In Australia changes to the Constitution can only be brought about by an absolute majority of both houses of parliament and approved in a referendum by an absolute majority of voters and a majority of voters in a majority of States. Although the United States example was not slavishly copied it did provide a template for the Australian decision.

In the light of the American experience the name of the federation also came in for some discussion. Clause 1 of the draft constitution stated, 'this Act may be cited as 'The Constitution of the Commonwealth of Australia'. Symon strenuously objected to the term Commonwealth saying that it should simply be Australia, 'because we want the name of the country over which this constitution is to extend ... The word "Commonwealth" is not an expression of any form of Government. If it is, it is utterly inapplicable. The word "Commonwealth" is associated with "Republic"'.¹³¹ He went further and discussed the fact that the word Commonwealth had been used before in England: 'Hon. Members know that the word "Commonwealth" was adopted in England 200 years ago. It was done by Act of Parliament, which used the expression "Commonwealth" because they had beheaded their king'. Braddon helpfully added: 'They could not call it a kingdom, because they had not a king'.¹³² There was then some desultory discussion of what exactly was the name of the United States Constitution and various suggestions, or guesses were made but no one seemed to be very clear or even interested and there was little support for Symon's suggestion. In the event the Clause was accepted as read. (The name on the constitution of the United States is simply 'The United States Constitution'.)

¹²⁹ Ibid., 20 April 1897, p.1021. He was probably referring to W.T. Stead, editor of the *Pall Mall Gazette* and an extremely well known journalist of his day.

¹³⁰ Ibid., p.1022.

¹³¹ Ibid., 14 April 1897, p.617.

¹³² Ibid., p.616.

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The model of the United States on how to deal with deadlocks raised little controversy because the delegates seemed unaware of the system used in the United States to settle disagreements. The delegates were of the opinion that there was no mechanism for resolving disputes between the Houses in the United States and that most problems were resolved along party lines. However, Marriott had pointed out that in the United States any dispute is settled by a conference of members of both houses, appointed by the President of the Senate and the Speaker of the House of Representatives; its report is generally accepted by both Houses.¹³³ The Conference system has, in fact, been used by Congress since 1789 and is regarded as such an important part of the legislative process that the conferences are sometimes called the third house of Congress. The first sitting of such a conference took place in 1789, just two days after the first Congress sat.¹³⁴ The debate on this subject is the strongest indication of the gaps in the delegates' knowledge and understanding of other Constitutions, particularly one on which they based much reliance as a model. Their ignorance of the existence of the Conference system in the United States would suggest that on this issue the United States did not seem to be a relevant example, but it still appeared in the heated discussion on that topic. The lack of knowledge is made clear by Deakin and McMillan whose major point on the subject in regard to the United States was that as deadlocks did not occur in Congress it should not be deemed necessary to cater for such an eventuality in Australia. Deakin, who could see no analogy between any Australian Government and that of the United States, came straight to the point:

It seems to me that the difference between responsible government as we know it and the United States Government tells altogether in favour of the necessity of our insisting upon some solution of deadlocks.

He thought that 'a deadlock in the United States can be safely left to burn itself out' and that 'disputes between the two houses in the United States have no effect on

¹³³ Marriott, *Second Chambers - An Inductive Study in Political Science*, p.70.

¹³⁴ David R. Tarr and Ann O'Connor, eds, *Congress A to Z*, vol. 3 (Washington: Congressional Quarterly Inc., 1999), pp.3-4.

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the executive government'.¹³⁵ The debate on this issue emphasises the blissful ignorance of the details of the American system on the part of the delegates even though it might have been a useful concept. Similarly the subject of the Conferences held in the United States to settle differences between the Senate and the House of Representatives, is also mostly absent from the discussion of historians of the issue. Only Marriott mentioned it briefly but did not elaborate or give details. Another example of the gaps in the delegates' knowledge of the United States has been provided by Alex C. Castles in his essay 'Andrew Inglis Clark and the American Constitutional System'.¹³⁶ Castles explains that Clark's first draft of 1891 included a clause on the powers of the High Court and in this it varies from the United States model. This caused some confusion for Isaac Isaacs, Edmund Barton and others. Higgins thought it was in the United States Constitution, Isaacs wasn't sure and Barton contributed 'I fancy it is in some part of the American Constitution'. As Castles comments it was surprising that Barton and others had only a superficial knowledge of the American Constitution in which they were placing great confidence.

The examples and models of Canada and the United States set precedents for the designers of the Australian Constitution. From that example they mainly drew their decision that the Senate would have equal powers with the House of Representatives in all but the imposition of taxation. From the United States they adopted the system of equal representation in the Senate and the system of six year terms with half the members retiring every three years. The major factor in the design of the Senate was equal representation of the States without regard for their populations. This was taken directly from the example of the United States and the vote on this issue suggests that, in spite of passionate arguments that this was undemocratic, the example of the United States was a mindset that no amount of persuasion would shift.

¹³⁵ OR, 15 September 1897, p. 587-8.

¹³⁶ Alex C. Castles, 'Andrew Inglis Clark and the American Constitutional System', in *An Australian Democrat: The Life, Work, and Consequences of Andrew Inglis Clark*, ed. Marcus Howard and James Warden, (Hobart: Centre for Tasmanian Historical Studies, University of Tasmania, 1995), pp.15-6.

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The debates revealed some alarming defects in the delegate's knowledge of these Constitutions and a certain lack of interest, suggesting that they came to the Conventions with the deeply held conviction that British was best, and where that did not fit, then the United States Constitution, also of British descent, was substituted. The dismissal of the Canadian system was largely due to the nomination system, not the overall structure which also closely followed the British system. It is clear that the United States was an important model for the delegates in spite of major differences in their Constitutions and major gaps in the delegates' knowledge of some aspects, notably Conferences. Canada was not so influential because some of its provisions, such as the nomination of senators for life did not appeal to the Australian delegates, even though the basic structure is similar.

Again it is clear that the delegates were deeply influenced by what Bolton has called the 'subliminal' influences in their adherence to the idea of a bicameral system, most especially the British example. With this they were all familiar, both from their British heritage and through their participation in their respective colonial governments modelled on the British. Though they were willing to express their knowledge and opinion of other more modern examples, they were not really viewed seriously unless they offered a solution to a problem as did the United States system of a States House.

Chapter 7

The Inherent Sacredness of Sovereign Power¹: Parliamentary Architecture and the Australian Senate

*We shape our buildings and afterwards our buildings shape us.*² Winston Spencer Churchill, 28 October 1943.

The monumental classic structure that is Victoria's Parliament House crowns the rise of Spring Street in Melbourne with a grandeur and confidence worthy of any royal palace. The finest example of classical architecture in Australia, it was designed by a Scottish-trained architect, Peter Kerr, and stands on the slopes of Eastern Hill, the highest point of central Melbourne.³ It is an excellent example of the symbolic aspects of the power and authority of rulers that—in Clifford Geertz's terms—'epitomizes the inherent sacredness of sovereign power'. Gwenda Robb, in her Master's Thesis on Victoria's Parliament House, has claimed that 'Melbourne (and therefore her architects) saw itself as a latter-day Rome'.⁴ I would argue that in fact they saw the new Parliament building more as a latter-day Westminster Palace as so many aspects were drawn from that edifice.

This chapter will argue that the British parliament, as well as being the principal influence on the structure of the legislatures as shown in previous chapters, was also the predominant influence on the architecture, inside and out, of the Australian Parliament and the predominant influence on the buildings of other Westminster style legislatures. Even in that great republic the United States, Westminster

¹ Clifford Geertz, 'Centers, Kings, and Charisma: Reflections on the Symbolics of Power', in *Culture and Its Creators*, ed. Joseph Ben-David and Terry Nichols Clark, (Chicago & London: The University of Chicago Press, 1977), p.151.

² Quoted in Gavin Stamp, 'We Shape Our Buildings and Afterwards They Shape Us: Sir Giles Gilbert Scott and the Rebuilding of the House of Commons', in *The Houses of Parliament: History Art Architecture*, (London: Merrell, 2000), p.149.

³ Gavin Souter, *Acts Of Parliament*, (Melbourne: Melbourne University Press, 1988), p.36.

⁴ Gwenda Robb, 'The Role of Sculptural and Architectural Decoration in Parliament House, Victoria' (Unpublished Masters Thesis, Monash, 1993), p.14.

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influences are discernible in its Capitol despite the prevailing atmosphere of the time (1787) of a rejection of British tradition. I will argue that even though the architectural styles varied in execution they are variations on the theme of monumentalism beginning with the parliament building in Westminster from the 13th century. First I will examine individual parliamentary architecture to show how the traditions of monumentalism pervaded ideas for the buildings and study the origins of each building and how it was realised in its final form. This will be followed by an analysis of the internal layout and décor of the Australian Colonial upper houses and how the styles followed the dictates of the Westminster system, even when not strictly appropriate. In developing this argument it was important to pay detailed attention to the colonial parliaments where most of the delegates had cut their political teeth.⁵

The almost predestined architectural magnificence of Government buildings is a tangible manifestation of the significance of architecture in public life. Government buildings are in a direct line of descent from the royal palaces of kings and sovereigns. Monumental buildings housing national Governments, typically located at the centre of cities, are deliberately given a monumental style to exude the status and authority which they assume. Designed to elicit 'a feeling of awe, or at least respect' they both intimidate and reassure the governed with their strength, size and grandeur and are the most visible and ubiquitous symbol of the power, prestige and authority of Government.⁶ The effect of this vision can be overwhelming. Aneurin Bevan, the British Labour politician elected to the House of Commons in 1929, vividly described the effect the grandeur of the House of Commons had on him when he first entered. It was he said 'profoundly intimidating' and that his first impression was that he was in church.⁷

⁵ The research was augmented by personal observation on field trips to each Parliament except Western Australia.

⁶ *Ibid.*, p.12.

⁷ Aneurin Bevan, *In Place of Fear*, (London: William Heinemann Ltd., 1952), pp.5-7.

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People perceive greater status in impressive buildings than in other art forms because buildings are the 'more durable, stable symbols'.⁸ Alain de Botton, in his book *The Architecture of Happiness*, argues that architecture is important, both to the onlooker and the occupier, because we are 'different people in different places': those inside absorb prestige from their magnificent environment and those outside perceive power in the spectacle.⁹ Edward Shils, an American sociologist, also considered that such buildings, as well as impressing the onlooker, bestow charisma as well as prestige on their occupants and that individuals achieve charisma in relation to the active centers of the social order with which they are associated.¹⁰ Geertz sees such monumental buildings as persuading people to perceive power in the same way that sacred buildings, such as churches and temples, persuade us to look for a God. Within these impressive buildings the rites and images through which sovereign power is exerted, 'are cultural phenomena and historically constructed'.¹¹ Occupants of such buildings, affected by the atmosphere of power and dignity, tend to respond accordingly with decorum and respectful behaviour, though this is usually reinforced by strict rules of conduct. Typically, monumental government buildings exist at the political centre of any complexly organised society.¹² Consider the Government buildings of Westminster, Washington, Canberra (since 1988) and the Australian colonial parliaments; most are centrally located, all are imposing, architecturally dominant, and set in a vista which enhances their consequence. The effect of such a vision can be overwhelming.

The major model for all Australia's parliament buildings was undoubtedly the Palace of Westminster. Despite its predominantly Victorian exterior, modern Westminster is the product of nearly one thousand years of architectural development as a centre of government and a royal residence. In this respect

⁸ Robb, 'The Role of Sculptural and Architectural Decoration in Parliament House, Victoria'. Introduction.

⁹ Alain de Botton, *The Architecture of Happiness*, (London: Hamish Hamilton, 2006), p.13.

¹⁰ Quoted in Geertz, 'Centers, Kings, and Charisma: Reflections on the Symbolics of Power', p.151.

¹¹ *Ibid.*, p.152.

¹² *Ibid.*

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William Hamilton's comment on 'devotion to ancient precedent'¹³ is apt, as many features of the building are based upon what went before, and this is a pattern that is evident in all the examples studied in this chapter.¹⁴ The present building is a successor to the original Royal Palace on the site occupied by Monarchs from Henry III (1207-1272) to Henry VII (1485-1509). The original Palace of Westminster was first used by the Parliament in Henry III's reign and Henry VII allowed the Parliament occupancy of Westminster after he moved to the nearby York House (later the palace of Whitehall) in 1529.¹⁵ The building served as a Parliament until a disastrous fire in 1834 which destroyed much of the palace and completely gutted St Stephen's, a church which had been adapted to serve as the debating chamber of the House of Commons.¹⁶ Edward VI gave St Stephen's to the Commons as their first permanent Chamber and it conferred on Parliament a heritage of Royal and ecclesiastical ethos that is carried on in many other Parliament buildings, such as Capitol Hill in the United States, and Canada's ornate Gothic structure in Ottawa, and even in modern parliaments, such as Canberra's late 20th century edifice.¹⁷ After the fire, Westminster Palace was slowly rebuilt and the first sitting in the magnificent new structure took place on 30 May 1850.¹⁸ This is the majestic building which now occupies the ancient site in London.

To achieve such grandeur and size as in the new Palace takes much time in discussions, planning and actual construction, and delay is a major feature of the development of most Parliamentary buildings. The most common first step towards such an enterprise is to hold an architectural competition, a precedent set by the

¹³ William B. Hamilton, *The Transfer of Institutions*, (Durnam N.C., London: Duke University Commonwealth Studies Center, 1964), p.59.

¹⁴ David Cannadine, 'The Palace of Westminster as a Palace of Varieties', in *The Houses of Parliament: History Art Architecture*, ed., Iain Ross, p.49.

¹⁵ John Goodall, 'The Medieval Palace of Westminster', in *Ibid*, p.55. For a detailed history of the site and buildings for Westminster see Arnold Wright and Philip Smith, *Parliament, Past, Present and Future: A popular and picturesque account of a thousand years in the Palace of Westminster, the Home of the Mother of Parliaments*, (London: Hutchinson & Co., 1902.)

¹⁶ Jacqueline Riding, 'St Stephen's Chapel: From the Crown to the People', BBC History: 2005-04-02. <http://www.bbc.co.uk/history>. Accessed 12 December 2008.

¹⁷ Goodall, 'The Medieval Palace of Westminster', pp.56-62.

¹⁸ M.H. Port, *The Houses of Parliament*, (London: Yale University Press, 1976), p.146.

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United States in 1792, for the design of their Capitol. Westminster and then Ottawa, followed suit, and thus established a tradition. In Australia, Victoria, South Australia, Queensland, and Western Australia, as well as the new capital in Canberra, followed this tradition, in a clear example of path dependence in both a cultural and economic situation.

The architectural competition to design the new building for Westminster was won by architect Charles Barry. There is little doubt that his basic design was influenced by the way the old Palace had developed over the years to accommodate the activities of Parliament. There were two chambers as the major features and, with similar ancillary facilities such as libraries, it echoed the design of the old Palace. This is a pattern which has now been adopted by many modern legislatures as a basic structure for their buildings.

The conditions of the Westminster competition included a requirement that the building was to be in the Gothic or Elizabethan style.¹⁹ Of those alternatives Barry preferred Gothic, which came to be regarded as the 'national' style, but he was not entirely at ease in that medium and turned for assistance to Augustus Welby Pugin, who had decided to devote himself entirely to Gothic architecture. Historian David Cannadine has argued that Barry's instructions were to design a building that was more like a royal residence than a democratic legislature, 'instantly antique and self consciously historical, richly ornamented, and full of allusions to the national past, to which it provided a powerful physical link'.²⁰ In response to these instructions the new Palace of Westminster emerged as a perpendicular gothic extravaganza that magically fulfilled its role as a symbol of power, wealth and authority. Barry correctly calculated that the public expected a building that, in emphasising the age and dignity of the institution of Parliament, would reflect its

¹⁹ Andrea Frederickson, 'Parliament's Genius Loci: The Politics of Place after the Fire', in *The Houses of Parliament: History Art Architecture*, ed. Iain Ross, p.100.

²⁰ Cannadine, 'The Palace of Westminster as a Palace of Varieties', p.15.

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national pride. It also fulfilled Barry's architectural criteria for 'grandeur of outline' and 'richness of detail'.²¹

The rebuilding of the Palace of Westminster was guided then by the desire to imply tradition in a carefully staged architectural programme that both borrowed from and added to the historical associations of the Westminster setting and demonstrated continuity with a suitable past, perceived as the nation's Golden Age.²² In line with this philosophy the new building retained within itself the age-old symbols, rituals and traditions that had grown up over the centuries of the life of the Parliament. The Canadian Federal and Australian Colonial Parliaments, whose existence as bicameral legislatures began after the completion of the new Westminster Palace, adopted the package wholesale. Only the United States departed from the traditions in any significant way but even there evidence of British traditional procedures can be identified in several areas.

Australia has six State parliament houses and they are an assorted architectural collection, even though they have a similar staunchly British heritage and a faithful adherence to the basic concept of Westminster. This was the crucial model for Australia's colonial parliaments, in anticipation at least but, due to financial constraints, some were perforce executed on a more modest financial and architectural scale. The first Parliament in Australia was in New South Wales and when its Council was extended in 1843 a new chamber was erected to adjoin the existing chamber. In the book, *The First Parliament*, Donald Ellsmore wrote that 'The new chamber ... must have been influenced by the Gothic styling of Pugin and Barry's Houses of Parliament'.²³ Although he did not use the term this was a clear instance of path dependence at work.

As the Australian Senate is the focus of this thesis the first Australian parliament building to be dealt with in this chapter is the provisional Federal Parliament

²¹ Alexandra Wedgewood, 'The New Palace of Westminster', in *The Houses of Parliament*, ed. Iain Ross, p.116.

²² Frederickson, 'Parliament's Genius Loci: The Politics of Place after the Fire', p.99.

²³ Donald Ellsmore, 'The Colony's First Parliament House', in *Australia's First Parliament*, ed. Maisy Stapleton (Sydney: Parliament of New South Wales, 1987), p.38.

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building in Canberra, opened in 1927. It is a byzantine tale as the project was beset by problems and delays, but the underlying vision which gave it shape was in the minds of the delegates who crafted the Constitution, many of whom went on to hold the reins of power in the new nation.²⁴ A discussion of the various colonial parliament buildings, how they evolved and could have influenced the convention delegates, will follow.

Australia's Federal Parliament began its life in Victoria's Parliament House in Melbourne until a capital city with a Federal Parliament House could be established, though it was not envisaged that the occupation would last for 26 years (1901 – 1927). Senators, as members of the Federal Parliament's upper house, occupied the ornate Victorian Council chamber, surrounded by elaborate architecture and an interior decor which could not have failed to impress them. Several had also visited Britain, some in an official capacity which had brought them into close contact with the Imperial Government, and could have experienced first hand the magnificence of the House of Lords.²⁵ These encounters would surely have influenced their ideas on a design for their future chamber in the proposed Federal Parliament House in Canberra. How different from the reality that was to come in 1927 when, at last, a Federal Parliament House was opened in the new Federal Capital, Canberra. A lack of time and finance had caused the initial plan for a splendid monumental building to be reluctantly postponed and led to the decision to erect instead a provisional building. The dream was not abandoned however, but put on hold until circumstances permitted the construction of a more ambitious project to fulfill the aspirations held since the 1890s.

The new provisional building faithfully fulfilled the suggestion of the 'Report of the Federal Capital Advisory Committee' that the new building would be 'simple but decorous' and is why the first Federal parliament building was by far the most

²⁴ Eighteen delegates went on to become Members of the House of Representatives, five of whom served terms as Prime Minister, and ten became Senators, one of whom served a term as President. <http://www.aph.gov.au/library/index.htm>, Accessed 30 August 2008.

²⁵ E.M. Hunt, *American Precedents in Australian Federation*, (New York: Columbia University Press, London P. S. King, Ltd., 1930), p.16.

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modest and unpretentious parliament building in Australia.²⁶ It has since become an object of affection for its heritage and simple dignity, especially since the opening of its impressive replacement in 1988, which finally fulfilled the 'monumental' vision. Thomas Givens, then President of the Senate, made the reference to Canberra as 'The Cinderella of Australia' in 1923, in protest at the decision to erect a provisional building. His words aptly describe Canberra's first Parliament House in relation to those of the State Parliaments.²⁷ Several difficult and unfortunate circumstances and delays contributed to this unpretentious outcome. The first delay was due to the provision in the Constitution that the Capital would be in New South Wales and not less than 100 miles from Sydney, a condition imposed to appease the conflicting claims of Melbourne and Sydney to be the Federal capital. The priority then was to find a suitable site. Fulfilling this provision was by no means an easy task and was not successful until 1911. The time span is not surprising as in the early years of the 20th century travel was difficult: there were only a few train and coach services and horses were the main means of personal transport. For West Australians, and those in far north Queensland the New South Wales southern tablelands must have seemed a long way away. It is not surprising then that these citizens of the newly-federated nation took comfort in a Senate's role as a States' House. Things at last began to move when the chosen site of Canberra was finally gazetted in 1913.

The erection of the first Federal Parliament building was fraught with difficulties and the many vicissitudes and delays forced Canberra to make do with the 'Provisional' Parliament House for over 60 years. The beginning of it all was when the American architect, Walter Burley Griffin, was selected by competition in 1911 to design the projected new city. Griffin's designs included the expected grand Parliament building on a prominent site and, following a well-trodden path, a further

²⁶ The Parliament of the Commonwealth of Australia, Federal Capital Advisory Committee: Construction of Canberra: First General Report, Melbourne: 1920-21, Buildings, sections 38, 40. p.11.

²⁷ The Honorable Thomas Givens, Parliamentary Standing Committee on Public Works, Report Together with Minutes of Evidence, Appendices and Plans Relating to the Proposed Erection of Provisional Parliament House, Canberra, (Melbourne: Parliament of the Commonwealth of Australia, 1923), p.11.

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architectural competition was announced in 1913 for the design of the Parliament building. Sadly, this competition had to be cancelled and the whole project was brought to a standstill by the advent of the Great War (World War I) in 1914. The competition was withdrawn and not revived and it was not until 1921 that renewed efforts were made to establish the Parliament in Canberra.²⁸

The conditions of the competition allow us to understand the intentions of the government for their Federal Parliament building. The booklet for entrants to the competition (*Federal Parliament House Architectural Competition*) was distributed on an international scale and discussed a stage set with 'monumental Government structures sharply defined'. The requirements for the Chambers, including the Senate, were simply stated as a 'Session Chamber'—'a light and airy room, to seat initial membership of 50 with lateral tier benches and provision for ultimate expansion to seat a possible membership of 150'. It was to include a President's Dais and seating and accommodation for the ceremonial openings of parliament, when the members of the House of Representatives would be present. Right from the beginning the stage was set to follow Westminster's medieval traditions.²⁹ As bicameralism was by now well established for the Federal Parliament, which had already sat in Melbourne for thirteen years, it is not surprising that entrants to the competition were instructed to design along traditional lines, and there were no departures from the established pattern of two chambers and supporting facilities in the instructions to entrants.

By 1921, after the delays of the war years, the establishment of a proper Federal Seat of Government was becoming urgent. Yet the expense of a large permanent building when there was still a huge war debt seemed too costly and the time required to conduct an international architectural competition and then raise a monumental building, made such a project impractical. A faster, more economical

²⁸ Gay Hogan, *Parliament House Canberra, 1927, Records Relating to the Design, Construction and Opening of the Provisional Parliament House*, (Canberra: Australian Archives, 1997), pp.9–10.

²⁹ Commonwealth of Australia, 'Federal Parliament House Architectural Competition', (Albert J. Mullett, Government printer for the State of Victoria, 1914), p.9.

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solution was sought.³⁰ After much debate a recommendation by the Committee of Public Works for a provisional building was accepted and financed by Parliament in August 1923.

The Advisory Committee considered that the time was not yet ripe for the erection of the permanent monumental Parliament House at Canberra, for the reasons that it might be expected to cost anything up to two or two and a half million pounds: that the actual construction of the building would take perhaps seven years or longer, and that a former Government of the Commonwealth had made a promise to the architects of the world that when the erection of the permanent building was contemplated the design of the building would be selected as the result of a world-wide competition.³¹

With this recommendation the idea of a monumental building was put aside in favour of a more efficient, economical and timely structure. The Minister for Works and Railways (P.G. Stewart) said of the proposal, at the ceremony of the turning of the first sod: 'While its design is on simple and economic lines, it will be substantially constructed in brick and will be of a commodious and comfortable character, presenting a good appearance architecturally'.³² It was hoped that a Provisional Parliament House, as opposed to a 'temporary' building, could be constructed quite quickly and still be impressive enough to be respected as the Parliament, until more prosperous times when a traditional grand edifice could be constructed. This did not happen until 1988.

The Federal Capital Advisory Committee, formed to advise the government on the project, recommended in its first report in 1921, that the building should be 'without pretension either in scale or architectural adornment' and 'the external architecture simple but decorous'.³³ It is important to note that this decision reflected the lack of funding and was in no way intended as a departure from the Westminster tradition of 'monumentalism' which was still contemplated as a project for the future. Unpretentiousness was definitely achieved in the resulting plain but elegant, two-

³⁰ Hogan, *Parliament House Canberra, 1927*, p.10.

³¹ Parliamentary Standing Committee on Public Works, Report Together with Minutes of Evidence, Appendices and Plans Relating to the Proposed Erection of Provisional Parliament House, Canberra, p.17.

³² Hogan, *Parliament House Canberra, 1927*, p.13.

³³ Federal Capital Advisory Committee, *Construction of Canberra: First General Report*, (Melbourne: Government of the Commonwealth of Australia, 1921), p.11.

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storey white building, described as of 'stripped classical' style. It is plain and functional, with verandahs and colonnades and strong horizontal lines.³⁴

John Smith Murdoch, a Scottish architect and the first Australian Commonwealth architect, was commissioned to design the building. He was not an admirer of ornate or 'monumental' architecture as is evidenced in his dismay when the Empire Parliamentary Association presented a faithful copy of the Pugin designed House of Commons Speaker's Chair to the House of Representatives. As he expressed it:

The Westminster Chair, as I remember it, is of most elaborate Gothic canopied design, ... quite out of keeping with the simple, severe, free renaissance character of the Canberra building.³⁵

His dismay was ignored. In his formal letter of thanks to the Speaker of the House of Commons, the Australian Speaker at the time (W. A. Watt) advised that the gift had been 'most cordially received by the Members of the House of Representatives'. He also apologised for a delay in the formal acknowledgement as being due to the architect (Murdoch) who had 'expressed some misgivings as to whether a Gothic chair would be in keeping with such a plain interior as is contemplated at Canberra'. However 'we eventually succeeded in having the technical objection withdrawn'.³⁶ The ornate chair still occupies its place in the Chamber and one can understand the architect's objection. However, he was facing more powerful forces in the shape of the members of the executive of the Commonwealth Branch of the Association, as well the inexorable forces of tradition on the part of the parliamentarians and was 'persuaded' to give way.

There were protests against a provisional building and the Senate tried to reject the suggestion while, as already stated, Thomas Givens thought it would make the

³⁴ Old Parliament House website <http://www.oph.gov.au/content>. Accessed 10 April 2008.

³⁵ J.S. Murdoch to Mr Gale, Honorary Secretary, Australian Branch, Empire Parliamentary Association, 5 August 1925. NAA A1, 1923/20992, Erection of Provisional Parliament House, Canberra. Copies of many of these records are also available in the papers of Professor Gordon Stanley Reid, and the research file for his unpublished chronology of the Federal Parliament 1901-1988, NLA MS 8371.

³⁶ W.A. Watt, Speaker of the House of Commons to J.H. Whitley, Speaker of the House of Representatives, 6 October 1925. Copy in the papers of Professor Gordon Stanley Reid, folio 4.3.14, NLA MS 8371.

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'Federal Capital City the Cinderella of Australia'.³⁷ Murdoch's 'plain interior' also caused some criticism and he defended it in his evidence to the committee:

I can say that the proposed building, although called a provisional structure, will prove so comfortable that there will be no great haste exhibited by members to erect and occupy an ornate permanent building.³⁸

This explains why Australia's first Parliament was anything but 'monumental', and instead is a simple and unadorned building, though with an understated elegance and its own charm and appeal. It is now known as 'Old Parliament House', (instead of the 'Provisional Parliament House' under which label it spent its first 62 years). The building does not exude authority or power in the way of other more monumental buildings, but nevertheless, over the years it has achieved respect and affection as an icon which in itself is a subtle source of power. The vision of a monumental building for Australia was never relinquished but held on to through the Depression and the Second World War, and finally accomplished in 1988 when a splendid representation of authority and power was achieved in a New Parliament House building. Designed on a modern and less aggressive or ornamental concept of Parliamentary architecture it successfully follows the Westminster tradition by fulfilling the concept of monumentalism.

Long before the Canberra enterprise all of Australia's six Colonies had erected Parliamentary buildings, some of them ornate and monumental, others on a more modest scale. In most cases they had begun with a Council building to house the unicameral government before the advent of self-government in the 1850s and with it the adoption of the bicameral structure.

The final buildings, erected between 1856 and 1904, evolved from the early Colonial legislatures which had been accommodated in convenient places, often a room in the House of the Governor. More spacious buildings to accommodate the

³⁷ The Honorable Thomas Givens, Parliamentary Standing Committee on Public Works, 'Report Together with Minutes of Evidence, Appendices and Plans Relating to the Proposed Erection of Provisional Parliament House, Canberra ', p.11.

³⁸ *Ibid.*, p.24.

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enlarged councils followed and eventually, with self-government and bicameralism, a move was made to more suitable and sometimes purpose built premises. The two oldest Colonies, New South Wales and Tasmania, never undertook the building of a completely new House, though New South Wales aspired to on several occasions.³⁹ The time just never seemed right and, given some of the obstacles faced by other jurisdictions in their efforts to build a suitably grand edifice, this is not surprising.

The decision to build a Parliament was always momentous, involving much discussion on cost, site, and style. Once a decision was made and a site selected, Queensland, South Australia, Victoria and Western Australia, and in the 20th century the Australian Commonwealth, followed the example set by Westminster in 1835 and held architectural competitions for the design of their buildings. New South Wales also held an architectural competition in 1860 but the winning design, a predictably gothic and monumental structure, was never executed. The architectural styles differ somewhat in derivation, from the Roman grandeur of Victoria, to Western Australia's Federation Classical and Queensland's French Renaissance. These deviations do not contradict the argument that Westminster was the model for the colonial Parliament Houses. Though the architectural styles varied, the concept of architectural competitions leading to monumentalism was carried out in all except the Federal Capital, and that was more due to bad luck than to lack of aspiration. Further, all the finished buildings followed the basic Westminster plan of two debating Chambers plus supporting services, such as libraries and a central hall demonstrating clearly the influence of the British tradition.

Not all of Australia's Parliaments are of the monumental style. As noted the two oldest, in New South Wales and Tasmania, are quite modest, and again the issue was finance. New South Wales appropriated a wing from the Sydney General Hospital in 1829, and Tasmania's first Council met from 1841 in the 'Long Room' in

³⁹ New South Wales Parliamentary Library, 'Proposals to Build a New State Parliament House in Sydney, 1856-1969', in *Reference Monograph No. 3* (Sydney: New South Wales Parliament, 1970), p.6.

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Customs House in Hobart, opened in 1840. Both of these legislatures gradually extended and adapted the accommodation and it was further extended and renovated to accommodate the new bicameral structures.

The failure to build a new Parliament on the advent of self-government in New South Wales is why its Parliament building is the oldest in Australia. The building became the seat of government in 1829 and, although much extended and renovated, is still the seat of Parliament today. Tasmania has the next oldest building, which was originally the Customs House and it has been occupied by the gradually enlarging legislature since 1840 and remains the home of Tasmania's parliament. In contrast, Victoria opened a new Parliament House in 1856 (completed in 1892) and South Australia's current building dates from 5 June, 1889, when the House of Assembly first occupied its chamber. The building was not then complete having only one chamber, and the Council had to wait until 1939, fifty years later, before it was finally able to move into more spacious accommodation.

Queensland, which became a separate colony in 1859, began to build its Parliament in 1865. First occupied in 1868 it was completed in 1889.⁴⁰ Western Australia was even later as it did not achieve self-government until 1890. The Parliament building was first occupied, though not completed, in 1904, which, when compared with the others, is a surprisingly brief period of construction.

The New South Wales building is a modest, low building of colonial aspect. It was gradually adapted from its medical origins to accommodate a bicameral legislature in 1856, and has been described as 'a building consisting of the remains of an old hospital and a second-hand iron house'.⁴¹ The reference to an iron house is because, faced with a need to accommodate a two-chamber legislature at a time of an acute shortage of labour and building materials, a hasty decision was made to purchase a prefabricated iron building imported from England. The building, which

⁴⁰ Bruce Buchanan and Associates, 'The History of Parliament House, Queensland', (Brisbane: State Works Department, Queensland 1983), p.37.

⁴¹ New South Wales Parliamentary Library, 'Proposals to Build a New State Parliament House in Sydney, 1856-1969', p.7.

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has a façade cast in imitation masonry with pilasters and mouldings, was modified to serve as the Chamber of the Legislative Council and annexed to the original building. The building and the 'iron shed' are still the home of the New South Wales Parliament despite attempts to replace them with a more traditionally grand and monumental structure.

There was always a desire in New South Wales to build a more prestigious home for the Parliament because of the perceived unsuitability of the accommodation, plus an aspiration for something more in keeping with the role of the building. To this end, and following the tradition set by Westminster, an architectural competition was announced in 1860. The winning design, by Henry Lynn, proposed a grandiose scheme of neo-Gothic design, elaborate and ornamental with turrets, pointed Gothic windows and a bell tower.⁴² According to the *Sydney Morning Herald* it 'bore a general resemblance to the Doge's Palace, at Venice', a building dating from the 14th century and recognised as one of the great buildings of the world. It is described as 'Italian Gothic with a strong planar façade and on slender columns and arches'.⁴³ The monumentalism of the design is clear and its Gothic theme loyally echoed the Westminster tradition. Such a building would have been a spectacular addition to the Sydney skyline and fulfilled all the requirements of a 'monumental' Parliament. Its extravagant splendour would have also been a challenge to the Victorian edifice and a tribute to the grandiloquence of Westminster, itself a Gothic temple. However, it was not to be. There is little doubt that the enormous costs associated with such an enterprise, and a reluctance to face the equally enormous challenge of actual construction, as well as arguments about the merits of the project, denied Sydney a grand architectural and traditionally monumental Parliament building.

That is the tortuous tale as to why New South Wales does not sport a splendid and monumental Parliament building. But why doesn't Tasmania? This is because Tasmania's original historic structure is not quite as low key as that of New South

⁴² Ibid., p.13.

⁴³ The Web Site of Venice; http://www.venetia.it/m_ducale_eng.htm. Accessed 10 April 2008.

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Wales, though neither is it as grand and imposing as some other Australian parliamentary buildings. In classic Georgian style it is a pleasantly plain, stone, two-storey, convict built structure, fronted on its lower level by a colonnade, and commands a prominent site in Hobart overlooking Sullivans Cove.

There was no ambitious architectural competition to design a new Parliament House for Tasmania. Instead the building, originally Customs House and first occupied by the Legislative Council in 1841, has been adapted and extended to serve as the Parliament House until the present day. Designed by the Government architect John Lee Archer, an English trained architect with an engineering background and, due to its Customs House origins, situated close to the waters of the Derwent,⁴⁴ it is a classically plain building and its soft sandstone façade and heritage aspects are major features.⁴⁵

For both New South Wales and Tasmania the historic legacies of their buildings add an extra dimension to their value to the citizens of their States. Their history and longevity, visible in their appearance, both inside and out, palpable during ceremonial occasions and memorable from significant events in the past, is as impressive and reassuring as a grand imposing building. As English historian Emma Crewe has argued 'The visible presence of history is seen as powerful in itself' and the sociologist Pierre Bourdieu contends that 'to possess things from the past is to master time, and this mastery is social power'.⁴⁶ Heritage buildings in this way possess an intrinsic value and convey a subtle aura of power as well as of reassuring continuity.

Victoria, South Australia, Queensland and Western Australia, in contrast to New South Wales and Tasmania, all chose to go down the monumental path to erect grand, imposing structures which convey power and authority visibly and aggressively. Of all the Australian State Parliament buildings Victoria's is by far the

⁴⁴ John Chilcott, 'History of Government in Tasmania', (Hobart: nd.), p.32. Held in Parliamentary Library, Tasmania.

⁴⁵ Ibid.

⁴⁶ Emma Crewe, *Lords of Parliament*, (Manchester and New York: Manchester University Press, 2005), p.213. Pierre Bourdieu, *Distinction*, (New York and London: Routledge, 1979), pp.71-2.

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most splendid and compares well with the impressive pile of the British Parliament, (opened in 1850) in its ostentatious concepts of grandeur and strength. Work began on the building in 1856, immediately after the granting of self-government. It was also first occupied in 1856, before it was completed, which was not until 1892 following a series of the sort of delays that seem unavoidable in such grand schemes, and it lacked the finishing touch of the proposed grandiose dome.⁴⁷ Yet it is a true interpretation of the monumental style of Government architecture, huge, imposing, and self-assured.

Peter Kerr was the architect of Parliament House, Melbourne, and his design was described as a 'magnificent classic design for a building of colossal proportions'. To the observer it is all of that. The west façade fronting Spring Street, is in the Roman Doric order of architecture with an escalation of sweeping steps (41 in all) rising to the impressive and massive colonnade which is flanked by wings taking the frontage to more than 90 metres across and rising to 23 metres. The temple like approach adds an ecclesiastical aura and inspires awe, respect and admiration.⁴⁸

South Australia's present building was planned as another truly monumental structure in the Westminster tradition. Less graceful than that of Victoria its weighty solid design in light-grey marble, unambiguously proclaims strength, power and authority. A classical design, it has majestic marble columns with Corinthian capitals lining the front façade. Situated on the corner of North Terrace and King William Road in central Adelaide, the building is an outstanding city landmark and betrays its British inheritance in its commanding profile.

South Australia experienced the usual hesitations and delays in the construction of its monumental Parliament House and in some ways they were rather more dramatic than most as the State had to endure, in the centre of Adelaide, the mortifying vision of half a house for half a century. The story began in 1874 when

⁴⁷ Robb, 'The Role of Sculptural and Architectural Decoration in Parliament House, Victoria'. Introduction.

⁴⁸ Ibid., p.11. Clerk of the Parliaments, 'The Parliament of Victoria and Parliament House', (Melbourne: Parliament of Victoria, 1985), pp.18-19

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an architectural competition was held to design a general plan for the proposed new Houses of Parliament. Detailed drawings were to be provided to allow for only half of it to be built immediately.⁴⁹ This was, perhaps, the first mistake, as the half house concept was to be perpetuated into the 20th century. The winners of the competition were architects Edmund Wright and Lloyd Taylor, but their design was to be severely hindered by indecision and conflict and it was not until 1877 that work on the foundations began. It soon stopped due, again, to financial and constitutional complications and wrangles between the two houses. The exposed foundations lay there as a reproof to the legislators and an embarrassment for the citizens for six years. It was not until 1881 that work could proceed and Architect-in-Chief E.J. Woods was commissioned to supervise the construction of the West Wing. The Assembly chamber was finally completed in 1889 and formally opened on 5 June. Adelaide then had to wait until 1939 for the second chamber which was only completed because of the generosity of Sir J. Langdon Bonython, the owner of the *Adelaide Advertiser*.⁵⁰ At the time of the Federal Convention, held in the Assembly Chamber of Adelaide's Parliament in 1897, only the Assembly Chamber was completed and that was where the delegates debated. They sat in an unfinished Parliament which, nevertheless, exhibited all the signs of a Westminster style monumental building in evolution.

Queensland's Parliament House in Brisbane is unquestionably imposing, though in an attractive and unaggressive way, asserting power and authority with a gracious air. Opened on 4 August 1868, the general opinion of Queenslanders held their new Parliament House to be the 'finest building in Queensland'.⁵¹ Following tradition an Australia wide architectural competition was held in 1863 and won by Charles Tiffin, the Colonial Architect. Disputes and disagreements about the competition result meant that the winning design was never used. Instead a design of Tiffin's for another building, a 'block of buildings to be erected at the corner of

⁴⁹ Pat Stretton, *The Life and Times of Old Parliament House*, (Adelaide: Old Parliament House, 1988), p.28.

⁵⁰ *Ibid.*, p.44.

⁵¹ Parliament of Queensland, 'Parliament House, Queensland', (Brisbane: Parliament of Queensland, nd.),

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Queen and William Streets', was adapted to the needs of a Parliament. The design of this building was for a Revival Classic building in French Renaissance style and conveniently and adequately fulfills the Westminster criteria for monumentalism and architectural splendour in a Parliament building.⁵² An imposing and elegant, arcaded building, it is situated in a commanding position on the corner of George and Alice Streets, and overlooks the extensive Botanic Gardens. Characterised by solid colonnades which keep the building cool in summer, the building, begun in 1865, was first occupied in 1868 and completed in 1889.⁵³

Western Australia's Parliament building was opened in 1904 after overcoming most of the usual obstacles of cost and design. The architect, Chief Architect of Western Australia, J.H. Grainger, was selected after all seventeen responses to a public tender for the design were found to be over budget. Grainger's design was ambitious and certainly monumental, complete with the favoured dome, but fated not to be realised in full, the dome never made it.

The first stage of the building was described by the architects as 'of federation, academic, classical', style, a complex yet vague description.⁵⁴ In its final appearance it is a simple and colonnaded two-storey building with arched windows and a three bay façade, in a creamy grey and white-grey stone, which gives the building a light and pleasing presentation. There are 'entry porticoes at the north and south ends of the central colonnade with six-panel double timber doors'.⁵⁵ It stands on a 'shoulder of Mount Eliza' overlooking Hay Street, Harvest Terrace and St Georges Terrace. It was not greeted with great enthusiasm; the *Daily News* commented that the external appearance was not an imposing one, and the *Western Mail* coolly considered that 'though rather squat' it showed some admirable design in its stonework. The building has gone through many extensions

⁵² Bruce Buchanan and Associates, 'The History of Parliament House, Queensland', p.13.

⁵³ *Ibid.*, p.14.

⁵⁴ Phillip Pandal and David Black, *House to House*, (Perth: Parliament of Western Australia, 2004), p.88.

⁵⁵ *Ibid.*, p.91.

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and alterations since 1904, one of which obscured the elegant colonnaded front which became part of the dining room.⁵⁶

Except for Western Australia these buildings would have been familiar to the Convention delegates and could have influenced their concepts of a parliament building, concepts which would have been carried through the years until the time finally arrived for its construction, though circumstances were then more difficult than they could have envisaged.

After Federation many delegates went on to serve in Federal Parliament, ten of them to the Senate, in its temporary home in Melbourne's Parliament House. The grandeur of their temporary home would have impressed them, but they would also have been aware of the difficulties inherent in the construction of such a building. These difficulties would have influenced the decision to postpone the building of a monumental parliament until more prosperous times, and instead build a provisional Parliament House for Canberra. Nevertheless it is clear that a traditional monumental building for the new Federal Capital was planned from the beginning and achieved in 1988, even though the provision of a Parliament House was not a Constitutional requirement.

The Convention delegates had lengthy discussions on where the Australian capital should be sited, but they did not consider the question of a Parliament building or a parliamentary precinct. That was left for Parliament when established and a site for the capital agreed upon. As we have seen, this undertaking underwent many delays and it was not until 1911 that serious consideration was given to the issue of a new Parliament building. The Members of Parliament of the day, many of whom were former delegates, were familiar with the colonial Parliamentary buildings and probably aware of the grandeur of Westminster, they also would have had some knowledge of the building in the United States, which was older than the new Westminster Palace and, as a colonial initiative, could have been looked upon as a model of procedure and style.

⁵⁶ *Ibid.*, pp.87-94.

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Nor would it have escaped their attention that the pattern of monumentalism had been adopted across the Pacific in Canada and the United States, where both had built impressively large and ornate seats of Government. The United States Congress building, established when the cornerstone was laid on 18 September, 1793, is the older, while the magnificent Canadian edifice was completed in 1866, and is another reminder of the effect that I have referred to as path dependence and tradition, as the truly amazing Gothic design undoubtedly was inspired by Westminster.⁵⁷ The United States and Canada both established their Parliament buildings within a Parliamentary precinct, which included supporting Government buildings along with the legislative accommodation. Canada's Parliament complex is situated in Ottawa on Parliament Hill while the United States Congress is situated on Capitol Hill in Washington.

The site chosen for the Capitol was, in the words of the first architect, L'Enfant, 'a pedestal waiting for a monument'.⁵⁸ The building is the centrepiece of the complex of Congressional office and library buildings and the legislative chambers. It is an imposing sight dominating the Washington skyline and presenting an unforgettable portrait of power and sovereignty. The whole is regarded as a fine example of 19th century, neoclassical architecture, combining function with aesthetics. Greece and Rome were the inspirations for the designs to evoke the ideals of the nations' founders as they framed their new republic.⁵⁹ A huge marble-clad cast iron dome, constructed between 1855 and 1856, dominates the profile, its pure 19th century arrogance almost overwhelming the classical façade of the original building. Though lacking the ornamental abundance and unique setting of Westminster, the Capitol, with its huge white dome, quickly became an American icon.

Of the buildings under consideration this was the first to be the subject of an architectural competition, but it was not successful and instead, in 1793, a plan submitted by a Scottish trained physician Dr William Thornton was adopted. The

⁵⁷ Alan Gowans, *The Canadian Encyclopedia*, Historica Foundation of Canada, 2007, 'Parliament Buildings', p.1. <http://thecanadianencyclopedia.com>. Accessed 10 September 2007.

⁵⁸ United States Building Website 'How the Location for the Capitol Was Chosen'

http://www.aoc.gov/cc/capitol/capitol_location.cfm. Accessed June 23 2008.

⁵⁹ Ibid.

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building was eventually partly occupied in late 1800, but it was not turned over to the Commissioner of Public Buildings until 1830.⁶⁰ As with other aging buildings the Capitol has been 'built and rebuilt, added to and burned, rebuilt and extended' and modified over the years from 1793, including the replacement of the original dome, and it continues to be extended and modernised.⁶¹ Its essential three bay profile has remained intact, and it retains its familiar appearance, the huge dome conferring a confident air of continuity, authority and sovereignty.

Whimsical Gothic architecture is a phrase that has been used to describe the amazing Canadian Parliamentary complex in Ottawa. Begun in 1859 it was completed in 1866 and was the very epitome of monumentalism, with its magnificent Gothic spires 'soaring towers, flying buttresses, vaulted roofs and pointed arches'. It has been described as the finest pile of stones in Canada.⁶² Building commenced before Federation during the life of the colony of Canada, and it was immediately adopted as the Parliament of the Federation in 1867.

The complex post-dates both the new Westminster Palace in London which opened in 1850, and the United States Capitol, first occupied in 1800, buildings which could have inspired the Canadians to construct a monumental edifice to equal, or even challenge, those creations. The arrangement consists of the Parliament building and two departmental buildings, overlooking the city. From a distance it looks almost like a fairy palace and the ornate circular Library building in the style of a Gothic Cathedral Chapter House, is superb.⁶³ One commentator has

⁶⁰ Ibid.

⁶¹ J. McIver Weatherford, *Tribes on the Hill*, (New York: Rawson, Wade Publishers, Inc., 1981), pp.14-15.

⁶² Hans Tammemagi, *Parliament Hill: The Heart and Soul of Canada*, (Parliament of Canada, nd.) <http://www.ttrn.com/dchanstammemagiparliament.htm>. Accessed 2 September 2008.

⁶³ Joseph Bureau, *Handbook to the Parliamentary and Departmental Buildings, Canada*, (Ottawa: Canadian Institute for Historical Microproductions, 1867), p.11. Janet Wright, *Crown Assets: The Architecture of the Department of Public Works, 1867-1967*, (Toronto: University of Toronto Press, 1997), p.8.

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argued that the 'buildings are undoubtedly the finest example of Gothic revival in North America'.⁶⁴

Canada followed the United States example by holding a competition in 1859 for the design of the building. It was won by Messrs. Thomas Fuller and Chilion Jones. Unhappily construction was delayed soon after commencement because the site selected, Old Barrack Hill, proved to be unsuitable. There were to be further delays and the site was closed down in 1861. Construction resumed in 1863 and in 1867 the new Canadian Dominion was formed and the Federal Government took over the building.⁶⁵ Sadly the original buildings, except the library, were destroyed by fire in 1916, however in 'design and function the original buildings, were essentially similar to the present Parliament Buildings completed in 1921'.⁶⁶

Canada's magnificent building comprehensively fulfills all the requirements for a building expressing sovereign power. It is imposing, dominating, architecturally glorious and set on a magnificent site. It exudes power, splendour and authority to a great degree while also promising security. Its Gothic style follows the example of the new Palace of Westminster, as Canada was a loyal and obedient member of the British Empire, and to some extent that of the United States also, because, as well as fulfilling the traditionally monumental and imposing requirement, it has the supporting parliamentary buildings on the same site.

The buildings represent the external faces of the Parliaments and most of them in this selection have followed Westminster, certainly in the concept of monumentalism. The essential elements of grandeur, extravagance and authority have been included, even in cases where deviation and more simplicity might have been expected, such as the republic of the United States. In addition, the basic design component of two chambers supported by a library, refreshment rooms and other supporting offices is ubiquitous, confirming the tradition of the Westminster system of an upper and a lower house, and all enclosed in a grand display

⁶⁴ Chris Lund, *Stones of History. Canada's Houses of Parliament; a Photographic Essay*, (Ottawa: National Film Board of Canada, 1967), p.11.

⁶⁵ Bureau, *Handbook to the Parliamentary and Departmental Buildings, Canada*, p.11.

⁶⁶ 'The Canadian Houses of Parliament', (Ottawa: Queen's Printer, 1953).

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designed to impress. Borne on the forces of tradition, path dependence and public expectation the predilection towards monumentalism in such buildings was irresistible, however varied the final architectural creation. These influences on Australia's first Parliament were muted by the circumstances obtaining in the country at the time, but corrected in the 1980s, a more prosperous era for Australia, when a magnificent new building was constructed as originally envisaged by Walter Burley Griffin, the architect of the city of Canberra. The new building fulfils all the requirements of a Parliament: it is commanding, impressive, and architecturally significant, though in a lower key than the 19th century examples just considered. It expresses authority and confidence without arrogance, and has deliberately avoided ornamental monumentalism, as such a building would not have had the approval of the electorate.

From the buildings and external architecture let us now cross the threshold and return to the Australian Senate to consider the internal aspects of upper chambers in these buildings and how the Australian example was influenced by the historical precedents of sumptuousness, majesty and splendour, as displayed in the chamber of the House of Lords, while restrained by economic paucity, the influences of 20th century architectural styles and the ideas of its architect. Again the influence of Westminster is discernible in all the chambers examined here, and, as with the buildings, even in cases where deviation or even outright contrast might have been expected. In this section I will compare and contrast the similarities and differences of approach in the various upper houses, their dependence on the Westminster model and their relevance to Australia's Senate chamber.

The nomenclature of 'upper' house is the key to their relatively grander décor and accoutrements. The tradition, stemming from Westminster, that Councils and the Senate are 'upper chambers', regardless of the constitutional actuality, is reflected in their internal architecture, a gesture of conformity with the grandeur of the House of Lords. The major similarity is found in the seating arrangements and general layout of the chambers. In upper houses they usually follow the pattern of a Presiding Officer at the head of the Chamber with the members seated to the

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President's right and left and facing each other across a central aisle. The origin of seating arrangements, particularly the confrontational aspect, is frequently ascribed to the example of the House of Commons in Westminster. The Commons originally had no fixed chamber, but from 1376, and possibly before that, they usually sat in the Chapter House of Westminster Abbey, and, later, in the monastic refectory.⁶⁷ From 1547 the Commons occupied St Stephen's Chapel.⁶⁸ According to Jacqueline Riding, an English parliamentary historian, it is generally believed that in the Chapel, remodelled for the purpose, members sat in the medieval choir stalls which had been increased and lengthened to accommodate them. They sat facing one another on the benches along the north and south walls, and the Speaker's chair occupied the place where the altar had been. This almost accidental physical configuration is held by some historians of Parliament and former British Prime Minister Winston Churchill, to be of great constitutional significance, in that it encouraged the two-party system to develop. This, Churchill believed, was the essence of British Parliamentary democracy.⁶⁹ The rectangular shape of St Stephen's Chapel, and the resulting seating arrangements, were retained in the Commons in the new Palace of Westminster in 1850. Sketches of the Roman Senate also show this configuration suggesting that serendipity might have had less to do with it than is sometimes claimed.

This does not explain why the Lords, and upper houses in general, also adopted this basic pattern but, in fact, the Lords' Chamber traditionally divided in this way, though for different reasons. Seating in the House of Lords was and is governed by strict and arcane rules, some of which were not adopted by other Westminster Upper Houses because they are simply redundant. The main rule though, is usually adhered to, and that is the seating of members of the Government to the right of the Presiding Officer and the opposition to the left. The tradition in the Lords, which does not occur in other Parliaments, is due to the presence in the

⁶⁷ Cannadine, 'The Palace of Westminster as a Palace of Varieties', p.55.

⁶⁸ Arthur Irwin Dament, *The Speakers of the House of Commons*, (London: Lond. Lane, 1911), 41.8.41; Cannadine, 'The Palace of Westminster as a Palace of Varieties', p.62.

⁶⁹ Stamp, 'We Shape Our Buildings and Afterwards They Shape Us: Sir Giles Gilbert Scott and the Rebuilding of the House of Commons', p.149.

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Chamber of the Bishops, the Lords spiritual, which is unique to Westminster. There the 'Lords spiritual sit in order on benches to the right of the king, and the Lords temporal to his left'.⁷⁰ This is still the pattern of the House of Lords and is laid down in the Standing Orders. By convention, it is also the practice that Government members occupy seats to the right of the throne and Opposition members the seats to the left. Unaligned members sit on the cross benches facing the throne. Other seating arrangements in the Lords refer to such esoteric locations as the Steps of the Throne and where privileged persons may sit.⁷¹

Only Canada, Tasmania and New South Wales, have strictly followed the confrontational pattern of seating facing across the aisle for their upper chambers. Other Australian Colonial Councils and the Senate preferred to slightly modify this by converting the cross benches into an elongated horseshoe or U-shape. Notably, only the United States Senate rejected the Lords' layout altogether, favouring a concentric semi-circular pattern where the presiding officer sits on a raised platform at the centre. The Democratic Party members always sit to the right and the Republicans to the left of the central aisle, whichever party is in the majority.⁷²

Although the various chambers differ slightly in seating layouts, apart from the United States the basic principle originating in the House of Lords (and in the Roman Curia) has been observed, with opposing parties facing each other across a central aisle and, as in the House of Lords, cross-benches provided across the aisle facing the presiding officer, or accommodation in the semi-circular rear seats of the U-shape to allow for non-aligned members. Though the United States Senate has a semi-circular arrangement, opposing parties still sit in separate sections. Otherwise the tradition of opposing members has informed the structure and format of the seating in all subsequent chambers, including the present chambers of the Lords and the Commons.

⁷⁰ Henry S. Cobb, 'The Staging of Ceremonies in the House of Lords', in *The Houses of Parliament: History Art Architecture*, ed. Iain Ross, p.35.

⁷¹ House of Lords, 'Companion to the Standing Orders and Guide to the Proceedings of the House of Lords', (London: House of Lords, 2007), 1.32, 1.33, 1.34, 1.35; Kenneth Bradshaw and David Pring, *Parliament and Congress*, (London: Quartet Books, 1972), p.175.

⁷² James Bryce, *The American Commonwealth*, (London: Macmillan, 1888), vol.1. p.57. Bradshaw and Pring, *Parliament and Congress*, p.197.

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The U-shaped layout is peculiar to Australia. It has two straight sides on either side of the Presiding Officer in the traditional confrontational pattern, and rear seating curving around the back of the chamber and designated as cross benches.

Clement McIntyre, an Australian historian, has argued that the 'oppositional seating arrangements assume and encourage the division of members into two distinct groups that face each other'. This arrangement was justified in the design brief for the 1988 Australian Parliament—because all seats more or less face the chair, unaligned parties can be seated in a neutral position and a large Government majority can spread into opposition side of the chamber without compromising the basic oppositional character of the chamber.⁷³

A new chamber was built for the unicameral Legislative Council in New South Wales in 1856 and, on the advent of bicameralism soon after, this Chamber became the Assembly Chamber. In 1878 as the number of members of the Assembly increased additional seating was installed in the chamber as semi-circular cross-benches across the back of the chamber, forming the U-shape.⁷⁴ The Council was then accommodated in the 'big tin shed' where the seating was confrontational with cross-benches, as in the Lords. This was one of the earliest attempts to accommodate a Council Chamber after bicameralism, the others being Tasmania and Victoria where the Council Chambers also date from 1856. In Tasmania the layout is traditionally confrontational, in Victoria it was made U-shaped. Historians have signally failed to explain why the decision to adopt this layout in Victoria was made, except for the example set by New South Wales.⁷⁵ Later buildings have all adopted the U-shape as did the Provisional Parliament

⁷³ Clement Macintyre, 'Parliamentary Architecture and Political Culture', in the Australian Senate Occasional Lecture Series, (Canberra: May 2008).

⁷⁴ Carol Liston, 'The Legislature of New South Wales', in Maisy Stapleton ed., *Australia's First Parliament*, p.54.

⁷⁵ Sources consulted include Robb, 'The Role of Sculptural and Architectural Decoration in Parliament House, Victoria'. N. Chlebnikowski, 'The Historic Development of the Building of Parliament House' (B.Arch Thesis, University of Melbourne, 1971); George Jenkins, *A Short History and Description of the Parliament House, Melbourne*, (Melbourne: Royal Commission on Parliament Buildings, 1886); Raymond Wright, *A People's Counsel: A History of the Parliament of Victoria 1856-1990*, (Melbourne: Oxford University Press, 1992), Parliament of Victoria, 'Parliament House Victoria: Birth of a Building', (Parliament of Victoria, 2001). Discussions with officers of the Parliament also brought no results.

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House in 1927 though, as noted above, the Architectural Competition in 1911 called for 'lateral tier benches'.⁷⁶

(For seating arrangements in the Upper Chambers discussed see Appendix 2)

Other major features of the layout of upper house chambers concern the Presiding Officer and officials. The Presiding Officer in the Lords is the Lord Chancellor. Chosen by the Prime Minister he or she is a member of the cabinet and the Government's chief legal adviser. This is an ex-officio appointment in the same way that the Vice-President of the United States acts ex-officio as the Presiding Officer of the United States Senate.⁷⁷ The Lord Chancellor sits at the head of the chamber but below the throne on an extraordinary seat known as the 'woolsack'. This is a scarlet, square couch which gets its name from the fact that it was originally stuffed with sheep shearings to symbolise the importance of what was, in the 14th century, England's staple trade.⁷⁸ Judges and serjeants-at-law occupy four other similar but smaller woolsacks in the centre, and behind is the Clerk's Table, furnished with two dispatch boxes, from which Government and main Opposition Party front-bench spokesmen speak.⁷⁹ Facing the Throne and below the Table, are the crossbenches occupied by peers who adhere to no party. Apart from the woolsack, these traditions have been generally followed in most Parliaments and a table below the President's desk is provided for the Clerks and Chairman of Committees, with an extension down the centre from where the leaders of the parties address the members. Not all Chambers are exactly the same; the table in the South Australian Council Chamber, for example, does not have an extension and the party leaders address the Chamber from their seats on the front bench.

At the time of the establishment of its colonial Parliaments and of the Australian Conventions, the Lords chamber was (and still is) the very epitome of an 'upper' House with its extravagant architecture and traditions of grandeur and solemnity.

⁷⁶ Commonwealth of Australia, 'Federal Parliament House Architectural Competition', p.9.

⁷⁷ Bradshaw and Pring, *Parliament and Congress*, p.61.

⁷⁸ Sir Harry Boyne, *The Houses of Parliament*, (London: B.T. Batsford Ltd., 1981), p.38.

⁷⁹ Donald Shell, *The House of Lords*, (London: Harvester Wheatsheaf, 1992), p.100.

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As Crewe put it 'The Lords chamber is infinitely grander than that of the Commons, with a spacious, comfortable and ornate debating chamber'.⁸⁰ On entering the chamber the overwhelming impression is one of richness and colour and a wealth of fabulous and vivid mediaeval ornament. The amazing, golden, throne canopy is the glittering centrepiece and the rich, deep red upholstery, the deep blue carpet with two sword lengths picked out in red, dark carved wood furniture, panelled walls, vast paintings and rich ornamentation, enhance the dazzling effect.⁸¹

In a book read by many Convention delegates Bryce described it like this:

The English House of Lords, with its fretted roof and windows rich with the figures of departed kings, its majestic throne, its Lord Chancellor in his wig on the woolsack, its benches of lawn-sleeved bishops, its bar where the Commons throng at a great debate, is not only more gorgeous and picturesque in externals, but appeals far more powerfully to the historical imagination, for it seems to carry the middle ages down into the modern world.⁸²

Crewe was also moved to purple prose by the magnificence of the chamber:

The past is everywhere: soaring arches, the luxuriance of sculpted dead kings sprouting from the mouldings, painted historical tableaux on the walls, marble statues of deceased parliamentarians. The ceremonies seem of another era, binding the everyday to ancient splendour; and the names, titles and families of some hereditary peers are a roll call of national history.⁸³

Crewe saw the spectacle of the Lords chamber as presenting 'a seductive version of the nation's history, apparently unfolding in perfect continuity from the place in which one stands', though it also has some qualities which 'jar on the nerves': a 'public school atmosphere; elaborate architecture; and the historical

⁸⁰ Crewe, *Lords of Parliament*, p.1.

⁸¹ Boyne, *The Houses of Parliament*, p. 38. Sir Robert Cooke, *The Palace of Westminster: Houses of Parliament*, (London: Burton Skira Ltd, 1987), p.135. The blue carpet referred to by Boyne was replaced in 1984 as an exact replica of the original to Pugin's design. The two sword lengths according to Lord Cathcart (*Hansard*, 6 November, 1984) were omitted in the 1984 carpet as they were regarded as superfluous having never been needed in Lords. The two sword lengths are now only in the House of Commons. They are a red strip in front of each of the front benches and of a sufficient distance apart so that even if the two Front Benches drew their swords the tips would not touch and no harm would be done. Lord Cathcart, *Hansard*, 6 November 1984.

⁸² Bryce, *The American Commonwealth*, p.156.

⁸³ Crewe, *Lords of Parliament*, p.9.

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associations'.⁸⁴ The architects Barry and Pugin were responsible for the lavish decoration of the Lords chamber and for making it more spectacular than the Commons.⁸⁵ We should note here that many of Australia's Convention delegates had travelled to the metropolis and may well have visited Westminster, particularly Graham Berry, who had served as the Victorian Agent-General in London from 1886 until 1891. Henry Higgins too, had spent some time in London on his extended honeymoon trip in 1886, and Patrick McMahon Glynn studied law at the Middle Temple during 1878-79.⁸⁶

Following the tradition of the Lords most colonial Upper Houses are more sumptuous and grandiose than the lower houses. In Australia the most flamboyant example is in Victoria's Council Chamber, which is a symphony of gilt and scarlet, with elegant pillars, elaborate carvings and decorations. Significantly, this chamber was the home of the federal Parliament for the first 27 years of its existence, which surely reinforced the predilections of many members, including many former delegates. The opulence of Victoria's council chamber reflects the fact that the Parliament was built in an era of prosperity and confidence for the Colony, as a result of the wealth derived from the gold rush. The same cannot be said about the chamber of the Australian Federal Senate of 1927 which was constructed in an era of economic stringency and time constraints and followed the edict of the Parliament that 'The Legislative Chambers and other apartments would be embellished internally with restraint'.⁸⁷ This was because the building proposed was not designed to be the permanent parliament building; that had to be postponed until more propitious times because of a lack of funds and time. As a result it is neither grandiose nor sumptuous. However, even in its simplicity the chamber echoes its patrician heritage, with faint reminders of the grandeur associated with the House of Lords, especially in the deep, red décor of the seating

⁸⁴ Ibid., p.9.

⁸⁵ Shell, *The House of Lords*, p.100.

⁸⁶ John Rickard, *H.B.Higgins: The Rebel as Judge*, (Sydney: George Allen & Unwin, 1984), p.66; Gerald O'Collins, *Patrick McMahon Glynn: A Founder of the Australian Commonwealth*, (Melbourne: Melbourne University Press, 1965), p.15.

⁸⁷ Federal Capital Advisory Committee, 'Construction of Canberra: First General Report', (Melbourne: Government of the Commonwealth of Australia, 1920-21), p.11.

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and dark wood paneling, which combine to give it a quiet warmth and charm. Many traditions, rituals, symbols, and procedures were adopted from the Lords by Australia via the Colonial Parliaments, and they clothe the simplicity of the Chamber with an air of dignity. In 1988 the new Australian Parliament House also followed this ancient tradition, though in rather less rich shades.

In the design of the Provisional Parliament House for Australia, many ideas were considered. Some participants in the enterprise spoke from their experience of international chambers, as well as the more familiar colonial examples. Architect Murdoch claimed:

I have had opportunities of inspecting Parliament Houses in other countries of the world, notably at Westminster, Washington, Ottawa, Toronto, and I have also visited the Parliament Houses in Berlin, Paris, and Vienna.⁸⁸

He was a well travelled man and from his experiences in regard to the chamber layout, and subliminally persuaded perhaps by the power of tradition, Murdoch favoured the British model of parallel benches facing each other. Lively discussion about the layout of the seats is recorded in the 'First General Report of the Federal Capital Advisory Committee' on 18 July 1921. Percy Thomas Owen, Director-General of Works, argued for the 'horse-shoe' or U-shape, which he said 'is much the better; each member is equidistant and ... there is a much better distribution'.⁸⁹ William Watt, then Speaker of the House of Representatives, argued that 'it should be a semi-circular chamber, and not the rectangular one provided on the plan'.⁹⁰ Murdoch himself, as noted above, commented that he had seen many Parliament Houses and favoured the system used in the British Houses of Parliament because everybody can see the speaker.⁹¹ The seating layout which was finally recommended in the Report was that it be semi-circular and facing the Presiding

⁸⁸ John Smith Murdoch, Parliamentary Standing Committee on Public Works, 'Report Together with Minutes of Evidence, Appendices and Plans Relating to the Proposed Erection of Provisional Parliament House, Canberra', p.24.

⁸⁹ Percy Thomas Owen, Director-General of Works, Department of Works and Railways, in *Ibid.*, p.2.

⁹⁰ The Right Honorable William Alexander Watt, Speaker of the House of Representatives, in *Ibid.*, p.28.

⁹¹ John Smith Murdoch, *Ibid.*

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Officer who would sit in the centre of the long wall.⁹² Though this was accepted by Cabinet, in fact, the final design was for the U-shaped layout and the presiding officer in the centre of the rear or short wall.⁹³ Despite an intensive search of the relevant records it is not clear when the change, subtle though it was, was made. The only clue is in comments in *Hansard* and elsewhere that the architects had long discussions with members of Parliament and the Presiding Officers and Officials, about the layout. This could have been when the changes were made.⁹⁴ The earliest plan of the new Parliament (1923) shows the U-shape pattern in the Representatives chamber but a blank on the Senate Chamber. Later plans from 1924 all show the U-shape in both chambers. As far as I am aware the archives do not contain any plan that shows anything other than a U-shaped chamber closely resembling the Mother parliament.⁹⁵

(Historic Plans for Australia's Senate are at Appendix 3.)

The chamber, opened in 1927, following the traditional style of Australian Colonial Councils, is oblong: the presiding officer is seated at one end with members arranged in rows in an elongated U-shape. The seats to the left and right of the president face each other across the clerks' table in a straight line and then curve to the central aisle at the back of the chamber. Following the Westminster tradition Government members are seated to the right of the presiding officer and opposition members to the left, while independents and smaller parties take the cross-benches on either side of a central aisle at the apex of the U. In the centre is

⁹² Parliamentary Standing Committee on Public Works, Report Together with Minutes of Evidence, Appendices and Plans Relating to the Proposed Erection of Provisional Parliament House, Canberra', pp. xvi, xviii, 24.

⁹³ Cabinet Minutes, Monday 23 July, 1923, NAA: A2718, VOLUME I PART I. (This exact format is necessary to access the document via the NAA website.)

⁹⁴ See Senator Grant, CPD, 8 August 1923, p.2263; Federal Capital Advisory Committee, 'Construction of Canberra: Final Report', (Melbourne: The Government of the Commonwealth of Australia, 1926), 'Building Works', p.13.

⁹⁵ A comment from the Federal Parliamentary Education Office argues that the U-shape is characteristic of Australian chambers and suggests that this is because it encourages debate and participation, but it does not say where or when it originated. Parliamentary Education Office, Parliament of Australia, 'Senate Now', 11 September 2007.

http://www.peo.gov.au/students/now_senate. Accessed 11 September 2007.

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the Clerk's Table, from which Government and Opposition Party front-bench spokesmen addressed the Chamber.

The six Legislative Councils of the Australian States generally exhibit their inheritance in rich decoration, though in varying degrees of grandeur. Though all have their particular characteristics, each 19th century Council Chamber reveals a general adherence to the basic layout and décor. In addition to the use of deep red leather for the seats and carpets, there are panelled walls, carved dark timber ornamentation and, in some, columns, paintings and sculptures. Even in the New South Wales building, the sumptuous decorations have successfully disguised the basic structure, originally a prefabricated shell of corrugated iron, with grandeur and dignity.

(For illustrations of the Upper Chambers discussed see Appendix 4.)

The Chamber of the Victorian Council is particularly grand and as a rich example of the several aspects of Australia's debt to British traditions it deserves some extra consideration. It is the only Australian colonial parliament building which was embarked upon in an atmosphere of prosperity and confidence, though completed in changed economic circumstances which modified the original design but did not compromise the initial confident and optimistic tone. Easily the most ornate interior of any Parliament in Australia it loyally echoes the tradition of Westminster in exuberant style and the impact on anyone entering the chamber from any direction is tremendous.⁹⁶ The Chamber again follows the basic pattern of an oblong shape furnished in red and with galleries to accommodate the public and the press. Seating is arranged in the elongated U-shaped pattern and obeys the tradition of Government members seated to the right of the President and the Opposition to the left. Public galleries are at ground level opposite the President's Chair and also upstairs around the sides of the Chamber, and the Press Gallery is at the

⁹⁶ Robb, 'The Role of Sculptural and Architectural Decoration in Parliament House, Victoria', p.7. Plus fieldwork observations, 22-29 November, 2005.

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Chamber's west end at ground level.⁹⁷ The woodwork is dark, polished Australian cedar, ornately carved, and the deep crimson upholstery is in keeping with the Westminster tradition. A table down the centre holds reference books and lecterns from where the leaders of the parties make their speeches. More than any other Council chamber in Australia, Victoria's echoes all the grandeur of the House of Lords, lacking only the ancient connections and the hereditary and monarchical presence.

The initial powerful impact on the observer viewing the chamber is created by the spectacle of the huge Corinthian monolithic columns of Tasmanian freestone which rise from the crimson floor.⁹⁸ Modelled by sculptor J.S. Mackennal, each is a single piece of Tasmanian freestone, fluted, cream coloured and rising to gold-leaf tipped acanthus capitals.⁹⁹ The church-like ambience created by the columns is enhanced by two more columns placed at the eastern and western ends of the Chamber. Those on the eastern end stand on either side of the President's canopy in the place where an altar would stand if this was a religious temple, and enhance the reverent atmosphere.

The columns support a vaulted, coffered and enriched ceiling which for beauty of design and elaborate ornamentation stands unrivalled in Australia.¹⁰⁰ Adorned at the sides by more sculptures and bas-reliefs, the richly detailed ceiling includes a myriad minor details and numerous references to assorted symbols of Government from Westminster and antiquity.¹⁰¹ Fitted into the roof spandrels are symbolic and allegorical figures, imperial Hanoverian eagles are perched on the arches at the west and east ends, and Tudor roses fill the panels of the vaulted roof. Running along the ceiling's north and south sides are sculptures of female figures each symbolising concepts that the young Colony valued such as 'Justice', 'Mercy',

⁹⁷ K.J. Turnbull and Michael Cheshire, photographer, Parliament House, Victoria, (Melbourne: J.A. Fraser, c1976).

⁹⁸ Souter, *Acts Of Parliament*, p.37.

⁹⁹ David Saunders, *Historic Buildings of Victoria*, (Brisbane: The Jacaranda Press, 1966), p.156.

¹⁰⁰ Jenkins, *A Short History and Description of the Parliament House, Melbourne*, p.31.

¹⁰¹ Souter, *Acts Of Parliament*, p.37. Robb, 'The Role of Sculptural and Architectural Decoration in Parliament House, Victoria', p.27; Saunders, *Historic Buildings of Victoria*, p.152.

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'Wisdom', 'Victory', 'Statecraft', 'Architecture', 'Liberty', 'Fame' and the 'Horn of Plenty' or 'Prosperity'.¹⁰²

The whole spectacle is crowned by the ornate, scalloped, pillared and carved President's canopy at the eastern end of the Chamber facing the councillors. The canopy is a tribute to the Westminster cloth of estate and throne canopy.¹⁰³ Three-dimensional figures of the Royal Coat of Arms, the gilt Lion with the Royal Arms, and the silver Unicorn supporting a shield bearing the Arms of Melbourne, surmount the canopy, and a representation of the Imperial State Crown rests on top of the pediment. Behind the President's Chair is the Vice-Regal Chair used by the Governor of Victoria for the formal opening of each new Session of Parliament.¹⁰⁴ The whole spectacle is a powerful statement of the pride and devotion of the Colony to its British heritage and firm adhesion to the traditions of the Monarchy.

In New South Wales, as in other Council Chambers, the dominant colour is red. There are red carpets, red upholstery, red curtains and red wall-paper. The panelling and furniture of Australian red cedar complements the red of the furnishings and gold glistens in the fabrics and from the brass fittings and fixtures to add splendor to the scene.¹⁰⁵

The chamber is the traditional oblong with a Presidential dais in a carved recess at the head of the chamber and the Imperial Coat of Arms above. They remained in position until replaced in 2006 by the New South Wales Arms: the present ousting the past. The seating was arranged in the confrontational pattern with a table down the centre aisle and followed the rule of Government members seated to the right of the President and Opposition members to the left. Cross-benches at the West end of the chamber facing the President's dais were installed to accommodate

¹⁰² Parliament of Victoria, 'Parliament House Victoria: Birth of a Building', p.18.

¹⁰³ Robb, 'The Role of Sculptural and Architectural Decoration in Parliament House, Victoria'. p.27.

¹⁰⁴ Ibid. pp.28, 36.

¹⁰⁵ Personal fieldwork observations on visits May 2004, November 2007 and discussions with parliamentary officials; Legislative Council, 'The Chamber', p.1, <http://www.parliament.nsw.gov.au/prod/web/common.nsf/key/LCAboutChamber>. Accessed 11 October 2007.

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independents or non-affiliated Councillors. In the centre of the President's dais is an elaborate Vice-Regal chair. Four windows line the long north wall and there are galleries for the public and press on the ground floor and at the first floor level. Another gallery above the President's dais is reserved for the press on one side and Hansard reporters on the other.¹⁰⁶

The Chamber has, through its long life been bandaged, propped up, eaten by white ants, painted, and finally restored to its 1890s glory, and remains the meeting place of New South Wales Legislative Council after 150 years.¹⁰⁷ Designed in the 19th century the 'iron' chamber clearly demonstrates adherence to the Westminster example and loyalty to Britain in its presentation. The removal of the imperial coat of arms in 2006 suggests that it has taken a long time for this attachment to weaken.

The Tasmanian Legislative Council Chamber, which the Council moved into in 1856, is also magnificent, if smaller. Dominated by a high ceiling and clerestory windows, it is highly ornate and loyal to the Westminster tradition in all its grandeur. Following the standard pattern it is oblong and has red upholstery and carpets, its walls are panelled with highly polished New South Wales cedar and above the panelling the wall and the ceiling are hand stencilled in a classical design. The President sits on a dais under a cedar canopy facing the Members, who are seated on two rows of benches that face each other across the Chamber and with a centre table for the clerks. The Westminster tradition of Government Councillors sitting to the right of the president and Opposition Councillors to the left, is officially adhered to but, as a small Council with only 15 members (2008), members can choose their own seats, though generally the Leader and Deputy Leader of the Government sit to the right of the president and the longest serving members sit closer to the President.¹⁰⁸ There are no cross benches. A large portrait of Queen Victoria hangs on the southern wall opposite one entrance to the Chamber measuring 15 feet

¹⁰⁶ John D. Evans and Russell D. Grove, in Maisy Stapleton, ed., *Australia's First Parliament*. p.142.

¹⁰⁷ C.Brady, 'Celebrating 150 Years of Democracy in a Big Tin Shed', NSW Parliament, www.parliament.nsw.gov.au. Accessed 10 July 2008.

¹⁰⁸ Chilcott, 'History of Government in Tasmania', p.25.

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(457.2cm) by 8 feet (1450cm) and with a handsomely carved and gilded frame it is a striking statement of loyalty to the British crown.¹⁰⁹

There are individual seats on either side of the President's dais known as the President's Reserve. Behind them and to the President's right is the area reserved for the *Hansard* staff who record the debates. The corresponding area to the President's left is reserved for members of the press. The public gallery is at the other end of the Chamber from the President's dais and can be accessed by the public via doors to the left of the Chamber. The Tasmanian Council Chamber is small but splendid and has remained almost entirely in its original condition except for necessary maintenance.

Adelaide's Council Chamber is more modern being completed in 1939. Before that the Council continued to sit in the original Parliament built for the unicameral Legislative Council opened in 1843. When the new bicameral Parliament building was opened in 1889 only the Assembly chamber was completed and the Council had to wait until 1939 to occupy its new building. After the Assembly moved to the new building the seating in the old chamber, now the Council chamber, was rearranged in the confrontational pattern along each side of the long wall with the President at the head of the chamber.¹¹⁰ The new Council Chamber, opened in 1939, was arranged in the traditional Australian U-shape. Again there is the oblong shaped space with red furnishings and carpet. Corinthian columns, fluted and cream coloured, support the ceiling, and galleries surround the Chamber on three sides on the ground floor and on four sides on the first floor, to accommodate the public, the press and Hansard reporters.¹¹¹ A carving of the Royal Arms is carved into the door of the Chamber.¹¹²

The furniture, other than the President's chair, is of Queensland maple, and was initially upholstered in brown morocco which has a red appearance, though now it

¹⁰⁹ Fieldwork observations and discussions with parliamentary officials, 15-19 January 2008.

¹¹⁰ Stretton, *The Life and Times of Old Parliament House*, p.45.

¹¹¹ Fieldwork observations and discussions with parliamentary officials, November 2006, August 2007; G.D. Combe, *The Parliament of South Australia: An outline of its history, its proceedings and its buildings*, (Adelaide: The Parliament of South Australia 1982), p.34.

¹¹² *Ibid.*, p.35.

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is of red leather to match the red carpet. The Presidential dais is at the northern end of the chamber between two columns and accommodates the Vice-Regal chair which is also the President's chair. The absence of extravagant ornamentation conveys an atmosphere of calm and dignity and reflects the more recent date of the completion of the chamber in 1939, and the change in tastes away from elaborate ornamentation in the 20th century. Nevertheless the Chamber exhibits strong evidence of the influence of Westminster and plainly demonstrates its loyalty to the British tradition.

Queensland's Legislative Council no longer exists having been abolished in 1922. The Council chamber however remains and its Westminster heritage is evident in the original architectural features dating from 1868. It is more restrained than the Victorian chamber but an appropriately stately appearance is conveyed by its space and height and the four large windows on each side, which reach from the floor to the galleries above. The galleries extend around the room and have an equal number of windows on each side. They are particularly handsome with Colebrookdale railings. Coloured glass, imported from England, embellishes the doors leading into the Chamber, while the desk and chair of the President add gravitas to the scene from their raised dais under a separate canopy supported by four Corinthian columns. The Vice-Regal Chair was presented to the Parliament by Queen Victoria. Upholstered in red velvet it has the traditional carving of the imperial crown on the back panel. Over the chair and under the canopy, is a carved representation of the royal arms.¹¹³

The leather-seated benches for members, originally red, and the red carpet, followed the traditional colour of upper houses and the seating was arranged in the elongated U-shape with a central aisle from the entrance.¹¹⁴ The walls were originally creams, stone colours and pale green and the original furniture, including the President's desk and chair and the leather-seated benches, was made from

¹¹³ Fieldwork observations and discussions with parliamentary officials, 18-21 April, 2006. Parliament of Queensland, 'Parliament House, Queensland', (Brisbane: Parliament of Queensland, nd.)

¹¹⁴ Ibid.

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Queensland yellow wood and built by John Petrie's firm in 1870.¹¹⁵ The Queensland Legislative Council Chamber was a true descendant of the British tradition and would have been familiar to the Queensland delegates to the first Constitutional Convention in 1891.

Western Australia's upper house, dating from 1904, was a more recent construction than other Australian Council chambers but still closely followed the ancient traditions of Westminster: an oblong chamber with the seats arranged in the U-shape. An elaborate President's canopy or recess, flaunts the Imperial Coat of Arms above, and a President's chair with a carved crown, which also serves as the Vice-Regal Chair, within. In its place in front of the President's desk is the time-honored Clerk's Table. The benches and carpets are red, although the carpet is more flamboyant than usual, with the red background chequered with Western Australia's emblematic swans in black and white and Royal Crowns 'giving a most elaborate effect'. A report on the opening of the chamber in 1904 comments: 'Above the galleries the walls and ceiling are pure white and the plaster ceilings have an embossed pattern'. The galleries are of jarrah dark-stained and varnished and extend around the room.¹¹⁶ They are open to the public, except for the gallery section behind the President's chair, which is reserved for the press.

Across the Pacific things also genuflect to the Westminster heritage, in particular the Canadian Senate Chamber, which is known as the Red Chamber because of its traditional colouring. Opened in 1867 the chamber follows tradition, being oblong and with the seating arranged in parallel lines facing across the central aisle. Following the Westminster tradition, Government Senators sit to the right of the throne and other Senators to the left. There are no cross benches.¹¹⁷ Second floor galleries extend around the chamber. Tall, ceiling height arches at the north end, frame the Speaker's canopy, presenting a magnificent spectacle of crimson

¹¹⁵ Bruce Buchanan and Associates, 'The History of Parliament House, Queensland', Section.5.3.

¹¹⁶ Brian de Garis, 'Constitutional and Political Development', in *The House on the Hill*, ed. David Black, (Perth: Parliament of Western Australian, 1991), p.87.

¹¹⁷ Senate of Canada Fact Sheet, 'The Red Chamber', <http://www.parl.gc.ca/information/about/process/senate/factsheet/redchamber-ehtm>. Accessed 10 July 2008.

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and gold and conveying the reverential atmosphere of a church. Within the canopy an oak throne or vice-regal chair, upholstered in red velvet, displays a carved Royal Coat of Arms. A consort's chair and the Speaker's chair, upholstered and elaborately carved, complete the picture.¹¹⁸ A marble bust of Queen Victoria surveys the spectacle from a perch above the Thrones and below the gallery, and a mace lies on the clerk's table with its crown placed in the direction of the throne when the Chamber is in session.¹¹⁹

Though not so obvious as in the Canadian Senate, traces of the traditional Westminster symbols are even present in the United States Senate chamber, mainly the red of the seating, though the configuration deviates from the standard pattern. The seats are arranged in a semi-circle facing the presiding officer at the centre.¹²⁰ His chair is set upon a two-tiered platform dais, and around him are various officers and employees of the Senate, who have defined roles.¹²¹ Great galleries on all four sides run back over the lobbies. One is for the President of the United States, others are for the ladies, the press and the public. There is an open space behind the senators for their visitors and members of foreign legislatures. There are no windows but light enters through sky lights in the ceiling.¹²²

The buildings and Chambers in this analysis present a consistent concept of what a Parliament building and an upper chamber should convey to observers: clear statements of authority, power and awe. The influence of Westminster is clearly discernible in all of them and the influence of ancient Greece and Rome, though less apparent, are subtle reminders of the heritage of antiquity. All impart a sense of the inherent sacredness of sovereign power. The chamber of the 1927 Australian Senate is a true inheritor of the Westminster tradition filtered through the colonial Houses, even though restrained by economic stringency and the ideas of its architect. From the influences of Westminster on the internal presentation of the

¹¹⁸ *The Canadian Houses of Parliament*, 'The Senate', (Ottawa, Queens Printer 1953).

¹¹⁹ Senate of Canada Fact Sheet, 'The Red Chamber'.

¹²⁰ Bryce, *The American Commonwealth*, p.153.

¹²¹ Mildred Amer, 'Guide to Individuals Seated on the Senate Dais', Congressional Research Service, Report to Congress, 6 December 2006, pp. 98-397.

¹²² Bryce, *The American Commonwealth*, p.153.

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chambers, the next chapter will survey the symbols and procedures, also derived from Westminster and which enhance the reverent atmosphere of the Chambers, to determine how they have been adopted for use in traditional procedures and ceremonies in Australia.

Chapter 8

The Ritual is Real in Politics: Tradition, Ritual, Symbolism and Ceremony in the Australian Senate

*Politics is expressed through symbolism.*¹ David Kertzer.

In April 1901, Joseph Chamberlain, then British Colonial Secretary, wrote to the first Governor-General of Australia, Lord Hopetoun, to offer advice on the 'procedure to be followed in connexion with the opening of the first Parliament of the Commonwealth' which was to take place on 9 May 1901. In great detail Chamberlain directed that the Governor-General, on the advice of his ministers, should appoint the necessary officers of the Senate and House of Representatives, as well as Commissioners who would administer the Oath to the members of both Houses. This would ensure that when each House met for the first time there would be the means of administering the Oath and a Clerk to call someone to move the election of the President of the Senate and the Speaker of the House of Representatives. The more formal ceremony of the opening of Parliament by the Governor-General could then proceed in the traditional manner. The letter was copied to the Prime Minister of Australia, Edmund Barton. In this way the Westminster tradition was set as a precedent in the new federal Parliament.²

The correspondence indicates that it was not only buildings and interior decorations, as discussed in the previous chapter, that were adopted by Westminster-derived Parliaments, but also colourful traditions, powerful symbols, elaborate rituals and impressive ceremonies from the House of Lords, even some dating from ancient times. These adaptations further emphasise the links and

¹ David I. Kertzer, *Ritual, Politics, and Power*, (New Haven and London: Yale University Press, 1988), p.2.

² Joseph Chamberlain to Lord Hopetoun, 14 March 1901, copied to Edmund Barton, 17 April 1901, NAA: A6, 1901/999.

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continuity of patterns of ruling and government through the centuries. This chapter will examine the traditions, symbols and rituals of the Australian Senate to define their historical origins. It will argue that the most dominant traditions and symbols are derived directly from the British Monarchy via the House of Lords and some can be traced back to early Britain and antiquity.

Tradition is a many layered word, generally interpreted as a set of inherited customs or practices carried out in certain circumstances, simple ones such as birthday celebrations or funeral practices, or more elaborate and public events such as the opening of Parliament. On a theoretical level Michael Polanyi has argued that traditions can be seen as being 'transmitted to us from the past but ... are our own interpretations of the past' validating the significance of particular social situations.³ Raymond Williams defines the word in several ways including that of a general process of 'handing down' while entailing a 'strong sense of respect and duty' and that the word moves towards 'age-old' and 'ceremony, duty and respect'.⁴ These definitions can be related to the actions of Australian Parliaments in uncritically adopting many of the symbols, practices and procedures of the British system, out of a sense of respect and duty, when they do not always make sense. The British legacy can be seen most clearly in the appointment, without question, of an Usher of the Black Rod in all Australian upper houses, an office which assumed the titles and dress of its English counterpart, even though its ceremonial relevance to the Australian legislatures was minimal. The theory of path dependence is again useful here to explain the practice. As Collier and Collier have put it: 'sometimes what is presumed to have been a choice is in fact deeply embedded in antecedent conditions'.⁵

New South Wales set the pace in Australia in 1843 by consciously modelling parliamentary procedures on those of the British Parliament, relying on the

³ Michael Polanyi, *Personal Knowledge: Towards a Critical Philosophy*, (London: Routledge & Kegan Paul, 1958), p.160.

⁴ Raymond Williams, *Key Words: A Vocabulary of Culture and Society*, (London: Fontana/Croom Helm, 1976), pp.268-9.

⁵ Ruth Berins Collier and David Collier, *Shaping the Political Arena*, (Princeton, New Jersey: Princeton University Press, 1991), p.27.

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'encyclopaedic advice of May's *Parliamentary Practice*'.⁶ This work was first published in 1841 and, constantly updated, remains the bible of Parliamentary procedure throughout Australia.⁷ In addition to May's advice, and though each State and the Commonwealth adopted slightly different rules, Colonial Parliaments provided from the beginning that their procedures would be based on British practice. In fact it was usual to adopt outright 'the Rules, Forms, and Usages of the Imperial Parliament of Great Britain and Ireland' with the proviso that they could be changed, added to or otherwise altered in the course of business.⁸ The *Standing Orders*, which laid down the rules for procedures and practices for the Legislative Council of New South Wales for 1856, provided that:

In all cases not hereinafter provided for, resort shall be had to the Rules, Forms and Practice, of the Upper House of the Imperial Parliament; which shall be followed so far as they can be applied.⁹

The reliance on British parliamentary practice was continued in 1901 when the first Clerk of the Australian Parliaments, Edwin Gordon Blackmore, who drafted the *Standing Orders* for both Houses, suggested to Alfred Deakin, then Attorney-General, that the *Standing Orders* for the new Parliament should be drafted by the two Chief Clerks.¹⁰ The first standing order of the resulting draft for both Houses read 'In all cases not provided for hereinafter, or by Sessional or other Orders, resort shall be had to the rules, forms and practice, of the Commons House of the Imperial Parliament of Great Britain and Ireland in force at the time of the adoption of these Orders, which shall be followed as far as they can be applied to the proceedings of the Senate (or House)'.¹¹

The force of the past is also evident in the United States legislature in the way traditions, procedures and nomenclature, were adapted from various sources and

⁶ Carol Liston, 'The Legislature of New South Wales' in Maisy Stapleton, ed., *Australia's First Parliament* (Sydney: Parliament of New South Wales, 2002), p.62.

⁷ Erskine May, *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, ed. C. J. Boulton. Twenty-first edition, (London: Butterworths, 1989).

⁸ See the Victorian Constitution 1855, Section 34.

⁹ Standing Rules and Orders of the Legislative Council of New South Wales, 1856, Paragraph 1.

¹⁰ E.G. Blackmore to Alfred Deakin, 14 January 1901; Deakin Papers. NLA MS 1540 14/559-60.

¹¹ Blackmore to Prime Minister, Edmund Barton, 22 April 1901. NAA: A6, 1901/1090.

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blended to structure their Congress. Many paradigms were drawn from antiquity, even the word 'Congress' comes from Latin and the related words 'congregate' and 'gregarious'. J. McIver Weatherford, an American historian, argues that the continuity between modern Congress and earlier political forms is more than etymological trivia because, just as words preserve forgotten and obsolete meanings, so our political institutions preserve within themselves long-forgotten residues from our common tribal ancestry.¹²

As noted in Chapter 6, as well as the examples from antiquity the Americans also adopted ideas from Montesquieu's *De l'esprit des lois* (Spirit of the Laws) and Aristotle's *Politics*. They derived their Constitution from several sources: 'the Magna Carta, the common law traditions of Germanic tribes and Roman legal theory'.¹³ In addition, the United States' House of Representatives was based closely on traditions from the British House of Commons and the ancient Athenian Assembly, and in choosing a title for the upper house of Congress they borrowed the name of the Senate of Republican Rome.¹⁴ In the United States these examples make clear the powerful influence of the past and the seductive power of familiar forms and practices when structuring Governments, even when a rejection of much of the past is a theme in the process.

The dependence on the past is also clearly evident in the complicated rituals of legislative practices, which are often supported by symbols and based on tradition. In the Australian Senate, tradition, rituals and symbols pervade many of the procedures and ceremonies which take place in the course of business and with which they enjoy a symbiotic relationship. In most cases they can be traced back directly to the practice in the House of Lords. In that splendid, gilded Chamber and cradle of much parliamentary procedure, many elaborate ceremonies evolved, together with ritualised behaviour and rules incomprehensible to the uninitiated.¹⁵

¹² J. McIver Weatherford, *Tribes on the Hill*, (New York: Rawson, Wade Publishers, Inc., 1981), p.21.

¹³ *Ibid.*, p.6.

¹⁴ *Ibid.*

¹⁵ Emma Crewe, *Lords of Parliament*, (Manchester and New York: Manchester University Press, 2005), p.21.

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The strictures governing who may or may not enter the Chamber and when, are almost inviolable and are articulated in its *Standing Orders*, which is almost a sacred text to peers, and provided the basic model for the standing orders of Australia's parliaments. This irrefutable text is interpreted and administered by priestly clerks in wigs and gowns, who ensure compliance with the various traditions, such as bowing at certain times to those almost holy objects: the Cloth of Estate and the Mace, powerful symbols of monarchy.¹⁶ Not all of the traditions and ceremonies carried on in the Lords were adopted by Australian Parliaments but enough of them were to demonstrate a strong allegiance to the example of the Mother of Parliaments.

It is clear to any observer that, in the words of the parliamentary paper *Balancing Tradition and Progress*, 'Ritual pervades parliamentary practice'.¹⁷ American academic David Kertzer, in his work *Ritual, Politics and Power*, asked 'What is it about ritual that is so compelling?' Answering his own question he argued that it 'helps societies deal with many kinds of interpersonal conflicts that threaten to poison social life and tear the community apart'. Judicial procedures especially he found, from the simplest societies to modern nation states, are highly ritualised and the rites of the law court are not so very different from rites of the royal court. In both cases ritual works to ensure that the image of sacredness and of legitimacy is fostered, aggressive behaviour sharply contained, and lines of authority bolstered.¹⁸ Kerster argued that ritual helps us deal with the chaos of human experience and put it into a coherent framework. In the case of politics he was surprised 'by the ubiquity of political rites and perplexed that scholars had attributed so little significance to them'.¹⁹ He further argued that studies of political rites remain underdeveloped and largely ignored by the mainstream of the discipline. Yet it is clear that politics are expressed through ritual and symbolism even if few political observers have ever taken it seriously, viewing ritual as mere

¹⁶ Ibid.

¹⁷ Parliament of the Commonwealth of Australia, 'Balancing Tradition and Progress: Procedures for the Opening of Parliament', (Canberra: The Parliament of Australia, 2001), Section 3.17, p.26.

¹⁸ Kertzer, *Ritual, Politics, and Power*, p.132

¹⁹ Ibid., p.x.

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embellishment for more important or 'real' political activities. Little has been published on parliamentary ritual and that which has is mostly by the Parliaments themselves for educational purposes. Even the participants do not always find them a subject for serious discussion. That ritual is an integral part of politics, in modern societies as well as ancient, cannot be denied, and without it any political system would find it difficult to function.²⁰

Though apparently meaningless in some situations, ritual is in fact an important instrument of society, but few people are aware of its subtle yet potent effects on participants and observers. One of its most common uses, especially within an organisation, is to socialise new members to the values and expectations that make up its culture and to instill inspiration and a sense of awe. In this way ritual is a significant part of Parliamentary procedure and is also found in many establishments from schools to social clubs. In modern western societies, and more so in non-Western societies, people associate ritual with religion or the law. This becomes clear when researching the word 'ritual' in library or search catalogues where the references are dominated by the anthropological aspect. Yet in modern society the processes of politics are encompassed by elaborate rites interacting with one another and with the public.²¹

Major and minor rituals frequently interrupt parliamentary proceedings in the House of Lords. The most flamboyant and regular are the 'Introduction Ceremony' where a new peer is introduced to the Chamber and which can occur at any time, and the State opening of Parliament, which in Westminster occurs after a general election or every November when Parliament reassembles after the summer break. The 'Introduction Ceremony' is for newly created peers who must be ceremonially introduced before they take their seat.²² They are escorted into the chamber by the Garter King of Arms, Black Rod and two enrobed 'sponsors' chosen from the same rank of peers.²³ Many other rituals take place in the Lords at different times, some

²⁰ Ibid.

²¹ Ibid., p.29.

²² Donald Shell, *The House of Lords*, (London: Harvester Wheatsheaf, 1992), p.87.

²³ Crewe, *Lords of Parliament*, p.12.

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even daily. For example every sitting day begins with the Lord Chancellor's procession into the Chamber and every year the Royal Assent ceremony, transforming Bills into Acts, takes place, as well as Prorogation, which brings the parliamentary session to an end. There are others less well known, such as the Lord Chancellor's breakfast reception for the judges, which are not followed by Australian Parliaments simply because they are not relevant.²⁴ Ceremonies, symbols and rituals are not so frequent or so elaborate in Australia, Canada or the United States, nevertheless they do exist and are regarded as important in bringing dignity, authority and a sense of community and consequence to the proceedings.

The argument in favour of these time-honoured rituals is that they are important tools for ensuring the orderly conduct of business and transcend the perception of peculiar and repetitive actions. This applies especially to the ritualisation of debate—the key component of the business of the legislatures. The rituals of debate in most upper houses have a close similarity and are basically precautionary, to prevent unseemly behaviour, manage conflict and define the relationship of members to one another. They convey a principle of equality between the members, and are enshrined in the *Standing Orders* of each legislature following the practice in the Lords. Kertzer sees such rituals as 'a form of rhetoric' or 'the propagation of a message through a complex symbolic performance'.²⁵ They are emulated not only in parliaments throughout the British world but also in institutions from local councils to corporate Board rooms. E.P. Thompson called it 'the clubbability' of the English.²⁶ It goes without saying that the Conventions themselves were conducted according to these rules.

In most upper houses debates were conducted by a Presiding Officer or a deputy and they too must abide by set procedures or rituals in the process. The office in the Lords was occupied by the Lord Chancellor, an *ex officio* appointment, or, in

²⁴ Ibid., pp.204-5.

²⁵ Kertzer, *Ritual, Politics, and Power*, p.101.

²⁶ E.P Thompson, *The Making of the English Working Class*, (Harmondsworth: Penguin, 1980), p.738.

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his absence, by a Lord Speaker or Deputy Speaker.²⁷ The Speaker in the Lords did not intervene in debate or have the controlling power to maintain order as in Australian upper houses, but only announced the next amendment or called the divisions and put questions on motions submitted. Order was maintained by the members themselves obeying the *Standing Orders* and dealing as a body with unacceptable conduct.²⁸ Bills were debated by the whole House 'in committee' in the chamber and this required the Lord Speaker or deputy speaker to hand over to the Chairman of Committees (or his deputy) who sat at the Table. The Chairman of Committees was a salaried appointment made by the House itself and the holder withdrew entirely from party politics. The formality of dissolving into the Committee of the Whole mostly signified that the rules of debate were less restrictive. The Lord Chairman was Chairman of all committees of the House of Lords, unless the House directed otherwise.²⁹ There was no requirement for political impartiality on the part of the Lord Chancellor who, as a senior member of the Government, spoke and voted in the House and when the House went into Committee he moved to sit on the government front bench.³⁰ Most Australian and Canadian Parliaments and the United States Congress have similar rules and procedures though the Senators address not the whole house but the President, who also has the duty of ensuring an orderly conduct of business. In Australia this is laid down in the *Standing Orders* drawn up in 1901 and this rule was introduced in 1925.³¹ In the Lords the Lord Chancellor had the added responsibility of sitting judicially in the Law Courts as well as other important duties in relation to the administration of the judicial system, but this was only the case in the House of Lords.³²

²⁷ There have been recent changes to procedures in the House of Lords but this discussion will focus on the situation at the time of the establishment of the Australian Federal Parliament as that would have been the model for the decisions of the delegates and officials. For a discussion on the recent changes see Meg Russell, *Reforming the House of Lords, Lessons from Overseas*, (Oxford, Oxford University Press, 2000).

²⁸ Crewe, *Lords of Parliament*, p.188.

²⁹ Shell, *The House of Lords*, p.95.

³⁰ *Ibid.*, p.94.

³¹ Standing orders and other orders of the Senate, Standing Order 186(1). 'In speaking in debate a senator addresses the President, or the Chair of Committees in committee of the whole.'

http://www.aph.gov.au/Senate/pubs/standing_orders/index.htm. Accessed 4 September 2008.

³² Shell, *The House of Lords*, p.94.

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Presiding officers are managed in a different way in Australia and Canada because of the different structure of the membership of their Houses: members are either nominated or elected, but have not inherited their seats as have the peers in the Lords. Nor is the Presidency an *ex officio* appointment; the holder is a senator and in Australia is elected to the office by the other senators. The role of Chairman of Committees is filled by an elected deputy President.³³ In the Canadian Senate, an unelected house, the Presiding Officer, known as the Speaker, is appointed by the Governor-General on the advice of the Prime Minister. In all Australian jurisdictions the presiding officer controls the debate and also votes in divisions as an elected State representative.

Following the example of the Lords each upper house conducts debates in accordance with their individual *Standing Orders*. In the United States Senate these are known as the *Standing Rules* and they evolved slowly from the early days of proceedings and are not so obscure in their origins or rationale. For the Australian Senate E.G. Blackmore, (Clerk of the House of Representatives in 1901, and Clerk of the 1897 Federal Convention and the South Australian Legislative Council) drafted the standing orders for both Houses.³⁴ In 1885 he had produced the *Manual of Practice, Procedure, and Usage* for the South Australian House of Assembly, which was based upon 'the Rules, Forms, and Practice of the House of Commons'.³⁵ The Senate Journal 1901-2 records that Blackmore's draft orders should be temporarily adopted until the Senate adopted those recommended by a committee to be appointed to prepare them. Senator Symon then suggested that those of either branch of any State Parliament should be considered by the committee for temporary adoption by the Senate. This was accepted and the *Standing Orders* of the South Australian Legislative Council were adopted temporarily.³⁶ Section 50 of the Australian Constitution provides for the production

³³ J.R. Odgers, *Australian Senate Practice*, Fifth ed. (Canberra: AGPS, 1976), Chapter 5.

³⁴ Blackmore to Prime Minister, Edmund Barton, 22 April 1901, NAA, A6 1901/1090.

³⁵ Edwin Gordon Blackmore, *Manual of the Practice, Procedure, and Usage of the House of Assembly of the Province of South Australia*, (Adelaide: E. Spiller, Government Printer, North Terrace, 1885),

³⁶ *The Senate Journal*, No.9. 5, 6 June 1901. Motion 7.

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of 'Rules and Orders' for both chambers and all Australia's Colonies had also provided for them in their first bicameral Constitutions.³⁷

Some of the rules in the Lords have an obvious purpose, mostly to ensure that debate is orderly and courteous. These include forbidding peers to belittle or offend other peers: 'All personal, sharp or taxing speeches are to be forborn'.³⁸ This rule also applies in other jurisdictions though couched in different words. The *Standing Orders* in the Australian Senate state:

A Senator shall not use offensive words against either House of Parliament or of a House of a State or Territory parliament or any member of such House.³⁹

In the Lords tradition obliges members to address the whole House, never an individual, not even the presiding officer, as all peers are considered equals.⁴⁰ Other rules are more obscure and again are as much related to courtesy as to prohibition, such as the ban on walking between the Woolsack (Lord Chancellor) and the speaker, or rising when the Lord Chancellor or his deputy is on his feet. Nor may a peer speak more than once in the same debate, except the mover of a motion who has the right of reply. Other rules concern such things as always referring to other peers in the third person.⁴¹ A further refinement on this convention is that senior military members are always 'gallant', and senior legal peers always 'learned', members of the same party refer to one another as 'my noble friend' and relatives as 'my noble kinsman'. Peers making maiden speeches are expected to avoid controversy to allow the next speaker always to congratulate them, and peers are not supposed to read their speeches, described in the *Companion to the Standing Orders* as 'alien to the custom of the House and an obstacle to good debate'. However, this can be avoided by permitted use of

³⁷ NSW, 1855, Section 35; Victoria 1855, Section 34; Tasmania, 1854, Section 29; South Australia 1855-6, Section 27; Queensland 1867, Section 8; Western Australia 1890, Section 34.

³⁸ Shell, *The House of Lords*, p.89.

³⁹ Section 193 (3).

⁴⁰ Shell, *The House of Lords*, pp.88-9.

⁴¹ Crewe, *Lords of Parliament*, p.8.

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'extended notes'.⁴² Rules of debate like these are also in force in the Australian Senate though worded differently.⁴³

As has been noted the Vice-President of the United States acts as presiding officer of the Senate, an *ex officio* appointment in the same way as the Lord Chancellor is *ex officio* Speaker of the House of Lords. Unlike the Lord Chancellor he has no vote except a casting vote, if numbers are equally divided. Though he is the presiding officer, he is not a member of the Government, as is the Lord Chancellor. If he is not available the Senate chooses one of its number to be president *pro tem*. Like the Lord Chancellor the Vice-President has no authority in matters of order as such questions are held to be a matter for the Senate itself, as in the House of Lords. This is a difference from the Australian and Canadian Parliaments where the Presiding Officer is elected by the other Senators to the Presidency and controls the debate and also votes in Divisions as an elected representative of his State. When votes are equal the question passes in the negative.⁴⁴

Similar but less elaborate rules on naming apply in the United States, where a senator always addresses the Chair as 'Mr. President' and refers to other senators by their States, 'The senior senator from Ohio', 'The junior senator from Tennessee' depending on how long they have served in the Senate.⁴⁵ In Australia members address each other by name as there are more than two Senators from each State, an example of tradition giving way to practicalities. The quaint tradition or taboo which is common among the legislatures under discussion is that the other chamber must not be mentioned by name except in such a phrase as 'another body' or 'some other chamber' in the United States or 'another place' in the House of Lords and Australian and Canadian Senates.⁴⁶ This is an example of the way traditions, which do not always make a great deal of sense, are carried on from the basic model of the British parliament. The reason for the tradition is unclear, but various sources have suggested that it originated in the British

⁴² Shell, *The House of Lords*, p.89.

⁴³ Standing Orders of the Senate, Chapter 31—Conduct of Senators and rules of debate.

⁴⁴ United States Constitution, Section 23.

⁴⁵ James Bryce, *The American Commonwealth*, vol.1, (London: Macmillan, 1889), p.156.

⁴⁶ Crewe, *Lords of Parliament*, p.89.

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Parliament and arose from the ancient friction and hostility between the two Houses.⁴⁷ This is a taboo that has the effect of distorting speech patterns when a speaker is endeavouring to make a point without mentioning the main subject and can make debates even more incomprehensible to the observer.⁴⁸

The most important ritual and the most dramatic, in the Lords and all other jurisdictions, are the Votes or Divisions, when the House must vote upon a Bill or amendment. Many questions are decided upon voices but others require a formal count. The formal procedure in the Lords begins when the mover of a motion says he wants to test the opinion of the House. The Speaker puts the question to the House and collects the voices to find if the peers agree or disagree. If this does not bring a clear result the division bell is rung to summon the other peers and remove strangers from the lobbies. The question is then put and the peers vote as 'content' or 'not content', by moving to the appropriate lobby where they are counted. This procedure is the essential part of passing or rejecting legislation and the culmination of a Bill's, or amendment's, progress into legislation.⁴⁹ The procedure is copied closely in upper houses in Australia, Canada and the United States.⁵⁰ Voting practices, the actual decision-making process in upper Chambers, are almost exclusively based on the Lords' example and are a paradigm of path dependence working through time, countries and legislatures. This is also evidence that tradition can be a genuine guide to efficient practice.

In contrast, the influence of the past on the use of symbols in upper houses can be interpreted on a less practical and more intangible level. Symbols carry a history of cognitive and emotional associations which makes symbolism a very powerful tool used and recognised by many organisations to maintain their identity and

⁴⁷ Victorian Legislative Council, 'A Sitting Day in the Legislative Council', Information Sheet No. 14, Table Office, April 2005. p.4. Communication from the Assistant Clerk of the Parliamentary Archives in Westminster advised that its origin could not be established but the query would be referred to the Director of the History Trust. No further information has been forthcoming, 23 May 2008.

⁴⁸ Weatherford, *Tribes on the Hill*, pp.193-4.

⁴⁹ Shell, *The House of Lords*, p.91.

⁵⁰ David R. Tarr and Ann O'Connor, eds., *Congress A to Z*, vol.3. (Washington: Congressional Quarterly Inc., 1999), pp.444.5.

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continuity.⁵¹ Symbolism can be seen quite clearly in the military, the religious, the legal and the political spheres, but, though not exclusive to Government, Government makes the most potent use of it in its routine activities. As Kertzer argues 'The symbolic is real politics articulated in a special and often most powerful way'.⁵²

Kertzer has forensically analysed the importance of symbolism in politics in his book *Ritual, Politics, and Power* and argued that it is 'through symbolism we recognize who are the powerful and who are the weak' and through the manipulation of symbols the powerful reinforce their authority.⁵³ This seems particularly pertinent to the use of symbols in Parliaments, where they are part of the 'plethora of rituals and ceremonies, encrusted with symbols and decorated by splendid performances, that either constitute or punctuate business' in the legislative chambers, and especially in the upper houses.⁵⁴ The use of elaborate proceedings serves to intimidate, to overawe and also to exclude the observer by instilling a sense of deference and reverence.

Symbolism and ritual are natural partners and most of the symbols used in Parliaments are important components of recurring rituals. They provide the content of ritual which Kertzer has defined as 'action wrapped in a web of symbolism'. It is the nature of these symbols and the ways they are used that tell us much about the nature and influence of ritual.⁵⁵ The most prominent symbols to be found in Westminster Parliaments and which are discussed in this chapter are the Throne, the Mace and Black Rod, and the Bar of the House. There are many other minor examples but these will support my argument that the symbolism found in Westminster and echoed in other Westminster Parliaments can be traced to several motivations: history, path dependence, and an emotional attachment to the trappings of power.

⁵¹ Kertzer, *Ritual, Politics, and Power*, p.92.

⁵² *Ibid.*, p.5. n.24.

⁵³ *Ibid.*, p.5.

⁵⁴ Crewe, *Lords of Parliament*, p.184.

⁵⁵ Kertzer, *Ritual, Politics, and Power*, p.11.

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The major symbol and certainly the most spectacular in the House of Lords, is the throne. Designed by Augustus Pugin (1812-1852) for the new Palace of Westminster, opened in 1850 and for which he was one of the architects, it was based on the throne of Solomon as described in the Bible:

Moreover the king made a great throne of ivory, and overlaid it with pure gold. And there were six steps to the throne with a footstool of gold, which were fastened to the throne, and stays on each side of the sitting place, and two lions standing by the stays: and twelve lions stood there on the one side and the other upon the six steps. There was not the like made in any kingdom. (2 Chronicles 9; 17-19, King James Version).

As Riding explains, 'the Old Testament description of King Solomon's throne was of profound significance and demonstrated the biblical origins of kingship'. Solomon's Throne was not faithfully reproduced in the new Westminster Parliament but this description provided a model for it and its setting as a symbol of 'supreme authority'.⁵⁶ Both the provision and design of the British throne demonstrate the power and influence of antiquity on modern political symbols, carried through from Westminster to the several other Westminster style legislatures. The tradition of the throne in England goes back to the earliest times when one was provided for the king in Parliament. The basic characteristics of a throne were that it physically elevated the sitter above everyone assembled and had a footstool, a cushioned seat, a carpeted step or steps leading up to the seat itself, a canopy or cloth of estate and, finally, a dais placed before and/or below the seat. This ensured that the throne became the focus for royal ceremonial and protocol in the Chamber.⁵⁷

The throne in the House of Lords is a grandiose affair and, enclosed in its awesome gilded canopy, dominates the Chamber. Complete with the basic elements of a throne, as discussed above, the chair itself is closely based on the early 14th century Coronation Chair in Westminster Abbey, a sturdy, foursquare creation with a gable back surmounted by a crown. Known as St Edward's Chair,

⁵⁶ Christine Riding, 'The aura of sacred mystery', in Christine Riding and Jacqueline Riding, eds., *The Houses of Parliament: History Art and Architecture*, ed. Iain Ross (London: Merrell Publishers Limited, 2000), p.179.

⁵⁷ Ibid.

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the Coronation Chair was first used by Edward II in 1308 and all subsequent Monarchs until Queen Victoria in 1838.⁵⁸ The Pugin throne is made of gilded mahogany and embellished with glass, brass and embroidered textile and decorated with the richly embroidered Royal Arms and carved heraldic devices. A huge, glittering canopy, a solid structure of intricately carved and decorated wood, stands tall and dwarfs the throne and chairs below. Every portion of the throne, the chairs of state and the canopy are of the richest design, gilded and glowing with gold and colours. Riding describes the effect as ‘breathtaking’. Important components of the scene are the Chairs of State which are invested with decorations and motifs that declare their status; occasionally referred to as Consorts’ Chairs, they are for the use of Royal family members taking part in the ceremonies. The whole wondrous spectacle, visually amazing and spellbinding, also exudes a historical authenticity from its derivations from biblical legend and links with the past that transcend mere medievalism, and conveys an awesome sense of sovereign authority.⁵⁹

The ancient tradition of a throne has been followed in Australian Parliaments and Canada in the more modest form of a Vice-Regal chair, to be used by the Governor or Governor-General when the monarch is not present. From this chair, in the various upper houses, the speech outlining the Government’s programme is delivered to the assembled Parliament at the Opening ceremony, a procedure which echoes the speech from the Throne in the House of Lords by the Monarch at the opening of the Westminster Parliament. Though vice-regal chairs represent the ornate throne in the House of Lords they can in no way compare with that magnificent gold, crimson and velvet creation—though the Canadian version comes close. Some chairs are more magnificent than others, but all are important symbols of British heritage and embody the main characteristics of the Westminster throne as ornate designs in fine wood with Gothic style carvings and

⁵⁸ Ibid., pp.186-7.

⁵⁹ Ibid., pp.179-187.

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red velvet upholstery.⁶⁰ In Canada the chair is actually called the 'throne' and in South Australia it was known as the 'vice regal throne' before it was transferred from the old Legislative Council chamber to the new one in 1939. As well as the Vice-Regal Chair there is usually also an ornate chair for the Presiding Officer, as in the Lords, where the Presiding Officer, the Lord Chancellor, sits on the Woolsack. The Presiding Officer's Chair is also upholstered in red and of varying degrees of grandeur though on a less elaborate scale. It occupies a space immediately in front of the Vice-Regal Chair and is moved away on ceremonial occasions.

Some variations in design occur. For example South Australia's Vice-Regal Chair, which has been in use in the Legislative Council since 1855, also serves as the President's chair and is surmounted by a richly carved representation of the Imperial Coat of Arms.⁶¹ This has been in use since 1855 and is of richly carved English oak upholstered in red velvet. It had originally been the Vice-Regal throne and was transferred to the new Chamber when responsible government was introduced. In a departure from the simplicity of the modern chamber, a Gothic carving of the Royal Coat of Arms, depicting the lion and the unicorn, adorns the back of the richly carved chair, plus a central crown. The evocative symbol of the Lion and the Unicorn is also incorporated in the richly ornamental Vice-Regal Chairs of New South Wales and the Canadian Senate, while other Vice-Regal Chairs (Victoria, Queensland, Western Australia and Canberra) are adorned with a crown to denote their royal links. The Canadian 'Vice-Regal Throne', as it is known, is an ornate affair with a massive, arched tall-back surmounted by a gable, as is the Westminster throne, and features carved gothic ornaments as well as the Imperial Coat of Arms. There is a consort's chair similar to but smaller than the

⁶⁰ Even the United States Senate at one time considered the installation of a (small) throne for use by the President. The idea was never implemented but the suggestion illustrates how strong were the influences of deeply held perceptions of a governing body. Weatherford, *Tribes on the Hill*, p.169.

⁶¹ Gordon D Combe, *Responsible Government in South Australia*, (Adelaide: Parliament of South Australia, nd.), p.33. Personal observation on field work, 7 November, 2005.

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Vice-Regal Throne and a heavily carved Speaker's Chair with an upholstered buttoned tall-back and the Canadian coat of arms in a raised gold design.⁶²

The most magnificent arrangement in Australia is in Victoria where the Vice-Regal Chair and the President's chair are enclosed in an extravagant canopy which presents a microcosm of the decorative and ornamental scheme of the Council chamber as a whole, with Corinthian columns and decorative panels enriched with mouldings.⁶³ The symbols of the British Monarchy: the Royal Lion, the Crown and the Unicorn in separate sculptures surmount the canopy in splendid style. The Vice-Regal chair is of Australian cedar and its construction has been dated to 'the last quarter of the 19th century'. It is identified by its carved and coloured crown and is 'upholstered in maroon buttoned velvet', while the President's chair, also ornately carved, is upholstered in red buttoned velvet.⁶⁴ Another magnificent chair is found in Tasmania's Legislative Council and serves as both the President's Chair and the Vice-Regal Chair. Dating from 1851 it was first used by the State Governor. Made of native blackwood the design is essentially of large cabriole pattern with the front legs terminating in lions' paws and carved decorations of lions' heads at the ends of the arms. A Royal Coat of Arms surmounts the buttoned, red velvet upholstered back.⁶⁵

In New South Wales the Vice-Regal Chair, dating from 1856, was carved from red cedar. In the Louis Quatorze style it is upholstered in crimson velvet and has a crown carved into the upper back above the royal insignia to signify its royal status. Originally it was the President's chair but is now only used by the Queen or her representative, the Governor of New South Wales.⁶⁶ The President's chair sits

⁶² Special Chair, Architect's drawings, Chief Architect's Office, DPW, ca.1878; Vice-Regal Chair, Consort Throne: 1.2:1; 1.2:2. Design for chair for Speaker of the Senate, T.D.Rankin, DPW, May 1922, 1.2:3.

⁶³ Gwenda Robb, 'The Role of Sculptural and Architectural Decoration in Parliament House, Victoria' (Unpublished Masters Thesis, Monash, 1993), p.28. Also personal observations on field work, 7 November, 2005.

⁶⁴ Parliament House Furniture Survey from June 1984, Parliament of Victoria.

⁶⁵ Personal observations on field work January 2008. The Legislative Council of Tasmania, *The Legislative Council of Tasmania; an Outline of Its History and Its Proceedings*, (Hobart: Legislative Council of Tasmania, nd.), p.10.

⁶⁶ Stapleton, ed., *Australia's First Parliament*, p.133.

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directly in front of the Vice-Regal chair and in the centre of the chamber is the clerk's table, described as 'a very creditable piece of cabinet work'. All are made of red cedar and date from 1856.⁶⁷

In 1927 the Australian Senate provided similar though plainer chairs for the Governor-General and Consort, of carved wood and upholstered in an 'approved shade of red leather' designed by the architect John Smith Murdoch. The Vice-Regal Chair is appropriately surmounted by a carved crown and the consort's chair is matching but unadorned. The President's chair was presented by the Canadian Government in 1927. It is a plain but sturdy chair upholstered in red leather.⁶⁸ Thus does the Australian Senate acknowledge its British heritage.⁶⁹

After the throne the Black Rod is the most visible symbol derived from the House of Lords and adopted by Australian and Canadian upper houses. A long, slender black staff of about 1.45 metres with silver or gilt ornamentation at the head, the centre and the foot, it is used as a symbol of authority. Though there are slight variations, the Rods are all very similar, each being black and having a head ornamentation, the Cap, surmounted by a Royal symbol and Emblem and attached to the upper section of the Rod by a silver or gilded casing. As the official was originally an officer of the Order of the Garter, the oldest and highest British Order of Chivalry founded in 1348 by Edward III, a representation of the Garter and its accompanying motto 'Honi soit quit mal y pense' (Shame to him who thinks evil of it) is often incorporated in the cap symbols. The foot sometimes has a gold sovereign as in the Westminster Rod, or other ornamentation, and the central joint is decorated with oak leaves or other leaf motif, for example in Canada maple leaves have been used.⁷⁰

⁶⁷ New South Wales Parliament, 'The Architecture and Decorations of Parliament House', History Bulletin 2, 2007.

⁶⁸ Parliament House Senate Chamber, President of the Senate's chair, presented by the Canadian Government, NAA: A3560, 7644.

⁶⁹ The President of the United States Senate sits at the head of a two-tiered platform or dais and other officials are seated below in accordance with rigid rules which are almost as arcane as those of the House of Lords. (CRS Report for Congress, 6 Dec 2006).

⁷⁰ Jan Potter and Monique Grenon, 'The Usher of the Black Rod', (Senate of Canada, nd.), p.6.

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The Rod as a sign of authority and a staff of office dates back to antiquity. Among the early Greeks a long staff used by judges, priests and military leaders as a mark of their authority, was known as the sceptre. In another example a bundle of rods bound about the shaft of an axe and carried before the Consul or High Magistrate were the Roman fasces, probably Etruscan in origin, and were the insignia of official authority. The bound bundle of rods represent the strength of a united republic and the central axe symbolizes authority with might.⁷¹ In Westminster the rod symbol has been seen in various guises—black and white rods, silver sticks, maces, sceptres, or the Field Marshal's baton.⁷² The Black Rod has the same authority as a mace and the Usher of the Black Rod carries his in the course of his ceremonial duties which include as: First Usher of the Court and Kingdom; Principal Usher of the Order of the Garter; and Official of the House of Lords. In the latter capacity he is to maintain order, including the power to arrest a peer for offences noted by the House, and to serve as messenger from the Lords to the Commons. In all these capacities the officer derives his authority from the rod or staff which symbolizes that authority.⁷³ In the Lords, he is joined by the Yeoman Usher and the doorkeepers, who as well as ceremonial duties, are responsible for ensuring that respect is shown for the chamber, its peers and their symbols.⁷⁴ These, without the additional officers, are also the duties of Black Rod in Australian Parliaments, often with the added responsibility of managing many administrative matters.

The duties of the Black Rod in Australia have deviated from that of the official in the House of Lords and been adapted to Australian requirements, the holder becoming the administration officer or also holding the office of Clerk Assistant, one of the senior officials of the Chamber. In Canada there has been an Usher of

⁷¹ Office of the Clerk of the United States House of Representatives, *Time traveler 2*. A symbolic representation of the fasces was adopted by the United States and appeared on a coin from 1916 to 1945, a bronze model is featured on either side of the United States flag in the House of Representative, and representations appear on the Seal of the Senate, among other places. Office of the Clerk of the House of Representatives: *The House Chamber*, p.1.

⁷² Alan Mansfield, *Ceremonial Costume: Court, Civil and Civic Costume from 1660 to the Present Day*, (London: Adam & Charles Black, 1980), p.31.

⁷³ *Ibid.*, pp.31-2.

⁷⁴ Crewe, *Lords of Parliament*, p.194.

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the Black Rod since 1791 and that office is usually held by a person of military background, as in Westminster. In the United States the remnants of the tradition are evident in the office of a Sergeant-at-Arms in both Houses.⁷⁵ They serve as protocol and chief law enforcement officers and carry out administrative functions. The name of the officer is clearly derived from Westminster tradition, and carried further by the officer in the House of Representatives who even carries a mace.⁷⁶ An Australian Black Rod was duly appointed to the Federal Parliament of Australia on Federation in 1901. A memo from E.G.Blackmore, Clerk of the Parliaments, to the Prime Minister dated 19 April 1901 advises that an officer, George Upward, had accepted the position and it was duly gazetted on 19 July 1901 along with other Parliamentary officials for the new parliament. Upward and other officials had transferred from the Victorian Parliament to the Federal Parliament.⁷⁷ As well as the ceremonial aspect of the office, administrative duties form a major part of the duties of this officer in Federal Parliament.⁷⁸

As an Officer of the House of Lords, Black Rod appears, from the 17th century at least, to have worn contemporary clothes embellished by the addition of the staff and badge and chain of office. From the end of the 18th century he wore official court dress in the House and at Court functions and in the 1908 edition of *Dress Worn at Court* he was ordered to wear in the House a black cloth court suit. The black rod and chain of office were added to the costume when on ceremonial duties.⁷⁹ The holders of this office in Australia and Canada also originally wore court dress on ceremonial occasions, except the South Australian official who wore evening dress with wig and gown. Most have now dropped the traditional costume in favour of contemporary clothing and the office is now open to women. In Canada

⁷⁵ The spelling used for this office is either 'Sergeant' or 'Serjeant' according to each parliament's decision.

⁷⁶ Tarr, *Congress A to Z*, pp.381-2.

⁷⁷ E.G. Blackmore to the Prime Minister, Edmund Barton, 19 April 1901, NAA, A6, 1901/1000.

⁷⁸ Odgers, *Australian Senate Practice*, p.139.

⁷⁹ Mansfield, *Ceremonial Costume: Court, Civil and Civic Costume from 1660 to the Present Day*, pp.31-2.

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however the officer still wears a court type frock-coat and also carries a 'fore and aft' bicorn Admiral's hat.⁸⁰

Australia's Parliaments adopted the tradition of a Black Rod at different times, mostly at the advent of bicameralism in the 1850s. Before that, as there was only one chamber, no Black Rod was necessary for communication between the Houses and a Sergeant-at-Arms carried out the other duties until the new two-Chamber Parliaments were inaugurated. In New South Wales the Office of Black Rod was established in 1856 in accordance with the practice in Canada and Great Britain and it was adopted as the servant of the upper house as well as the President's disciplinary officer.⁸¹ A memo from the President of the Legislative Council in New South Wales in 1856 to Major Lockyer, the first Usher of the Black Rod, outlined some of the duties expected of him and made it clear that he, as Black Rod, was the senior officer in the Chamber in regard to keeping order.⁸²

South Australia did not create this office on the advent of bicameralism and, from the inauguration of a bicameral Parliament in 1856, functions usually carried out by Black Rod were discharged by the Sergeant-at-Arms in the Council, an officer more usually attached to the Assembly. In 1953 Parliament was informed that the Sovereign would personally open a number of Parliaments in the course of the Royal visit to the Commonwealth in 1954. Buckingham Palace then advised the Governor of South Australia that traditionally the Queen could not enter the Council Chamber unless escorted by such an officer, who was traditionally the Monarch's representative in Parliament.⁸³ Whereupon the office of Gentleman Usher of the Black Rod was created in the Legislative Council, later to be modified to Usher of the Black Rod.⁸⁴ This is a clear example of the strength of the Westminster

⁸⁰ Usher of the Black Rod of the Senate of Canada, 'The Usher of the Black Rod', (Senate of Canada, nd.), p.6.

⁸¹ Carol Liston, 'The Legislature of New South Wales', p.55.

⁸² Alfred Stephens, President of the Legislative Council, to Major Lockyer, Usher of the Black Rod, 25 August 1856. NSW Parliamentary Archives, No.56/7.

⁸³ Information from Trevor Blowes, Black Rod, Legislative Council of South Australia, December 2007.

⁸⁴ See Legislative Council Docket No.22 of 1953 concerning the Royal Opening of the Parliament of South Australia 1954.

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tradition in Australia's Parliaments and of the links to the British Crown, which remain a powerful influence on their procedures. In Western Australia the office of Black Rod was instituted in 1891, after the inauguration of responsible Government in 1890, and before the first sitting of the Legislative Council.⁸⁵

The Rods themselves are pure derivations of the original artefact in the House of Lords where several versions have been used over the years from about 1361. The present Rod dates from 1883, some earlier Rods having been retained by the incumbents on relinquishing the office; made from ebony it measures three and a half feet in length (106.68 cm). The cap is a gold lion holding a shield and surmounted by a gilt and crimson enameled crown bearing the initials 'E VII R' (Edward VII Rex). The Garter, in blue enamel, with the motto of the Order in gilt, surrounds the Rod, and at the centre is a gold orb embossed with oak leaves, the basic design at the top and bottom. At the bottom the gold knob is surmounted by a 1904 gold sovereign. The basic design of the Rod seems to have altered little since the 17th century and Australian Parliaments have continued the tradition with minor variations.⁸⁶

The Legislative Council of New South Wales has three Black Rods; the earliest dates from 1856 and was referred to as a 'baton' in the *Sydney Morning Herald*.⁸⁷ It is of enamelled blackwood, capped with a silver crown and a silver band embossed with a kangaroo and emu and is 1.45 metres in length. No longer used as a functional symbol, it has been retained as an item of historical importance. This is what has also become of the Queensland Rod since the abolition of its Council (upper house) in 1922. The Black Rod in current use in New South Wales dates from around 1901 and is a wooden Rod, enameled Black, with a cap of cast silver, silver bands along its length and a silver ferrule base. The carved cap is a replica of St Edward's Crown, beneath which, on either side and enclosed in sprays of wattle leaves, are two shields. One shield is inscribed with the letters

⁸⁵ Correspondence with the Parliamentary Education Officer, Parliament of Western Australia, 20 December 2007.

⁸⁶ Maurice Bond and David Beamish, *The Gentleman Usher of the Black Rod*, (London: HMSO, 1976), p.15.

⁸⁷ *Sydney Morning Herald*, 23 May 1856.

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'L.C.' (Legislative Council) and the other bears an early unofficial Australian Coat of Arms. About 5.6cm from the base is a silver ornamented band within which the words 'Legislative Council' are engraved. A third Black Rod was presented to the Council in 1974 to commemorate the first meeting of the Council in 1824.⁸⁸

South Australia's Rod is 1.5 metres long, of polished ebonite and surmounted by the Crown. It has the Royal Arms in gold on one side and the State emblem (the piping shrike) on the other. On the occasion of the royal visit in 1954 the Black Rod was borrowed from New South Wales and was then used as a model for the new South Australian Black Rod which was delivered to the Council on 3 June 1954.⁸⁹

Tasmania's Rod is shorter than others at 75cm, otherwise it follows the standard pattern, though more closely relating to the Westminster Rod than other Australian examples. Made of ebony, it has a carved gold lion holding the motto of the Order of the Garter and the base is stamped with the Imperial Coat of Arms. The origin of Tasmania's Rod has never been established, despite extensive searches in the Archives Office of Tasmania and the archives of the Parliamentary Library in Hobart, but it is believed to date from the inauguration of the bicameral parliament in 1856.⁹⁰ The Canadian version also closely follows the Westminster example. One metre in length, it is of turned ebony capped by a gold lion sitting upon a golden orb holding a shield and surmounted by a crown with the Royal cipher, over which is the garter bearing the motto of the order. In the middle is a gilded silver orb embossed with maple leaves and repeated at the base, and a 1904 gold sovereign embellishes the 'knocking end'. Presented to Canada by the then British Prime Minister David Lloyd George, in 1918 it was to replace the original which was lost in the parliamentary fire of 1916. It cannot be substantiated that the original Black Rod was of exactly the same design as the new one as no documents or photographs of the original can be found, possibly also destroyed in

⁸⁸ Stapleton, ed., *Australia's First Parliament*, p.131.

⁸⁹ Information from Jan Davis, Clerk of the Legislative Council of South Australian Parliament, 3 June 2008.

⁹⁰ Tasmanian Parliamentary Library Background, 'Legislative Council Chamber' in *The Legislative Council of Tasmania; an Outline of Its History and Its Proceedings*, November 2006, p.12. Information from Terry Newman, Tasmanian Parliamentary Historian, June 2008.

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the fire.⁹¹ The artefact of the Western Australian Parliament departs further from tradition than any of the others. Specially designed for Western Australia by the Crown Jeweller it was presented to the Council to mark the visit of the monarch in 1954. Essentially the same as other Black Rods except it is surmounted by a golden swan and is without any Royal insignia or reference to the Order of the Garter. The lack of Royal insignia on Western Australia's Rod is in contrast to the Parliament of South Australia which acquired its artefact at about the same time. South Australia closely followed the Westminster tradition in design, copying the Rod of New South Wales, while Western Australia departed from tradition to incorporate the state rather than the royal emblem at its head. This contrast suggests some distancing from the legacy of the British tradition and may reflect the passage of time and some weakening of the links with the Monarch. Before the acquisition of the new Rod in 1954 the officer in Western Australia's parliament used a snooker or pool cue, painted black, for his ceremonial duty at the opening of parliament ceremony—an ingenious and economical solution to an unusual problem, and a determination to continue with the traditional ceremony in spite of the lack of the major symbol.⁹²

Until 1951 Victoria was also without a Black Rod, although the office was established at the time of bicameralism. In 1951 a rod of wood and plaster was made and used but was too fragile for its ceremonial role of knocking three times on the door of the Legislative Assembly to summon the members to the opening of Parliament ceremony. Without a suitable implement the dignified Usher of the Black Rod had perforce to turn around to kick the door three times with the heel of his shoe; a different less ingenious approach to the problem than that of Western Australia. Dignity and tradition were restored and upheld when the present Black Rod was presented to Parliament to celebrate its centenary in 1952, which meant that Victoria was properly equipped for the Queen's visit in 1954.⁹³ The new

⁹¹ Potter and Grenon, 'The Usher of the Black Rod', p.6. Correspondence from France Belisle, Archivist of the Senate of Canada, 16 May 2008.

⁹² Communication from Chris Hunt, Usher of the Black Rod, Western Australian Parliament, 13 May 2008.

⁹³ Unknown, 'Presentation of the Black Rod', *Industrial Victoria*, September 1952, p.340.

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Victorian Rod followed the standard pattern of the artifact. Made of fiddleback blackwood it is 1.3 metres long, and the head, foot and central joint are fashioned from sterling silver and gilded. It is capped by the Royal Coat of Arms and the coat of arms of Victoria in bas-relief, surmounted by a Royal Crown and attached to the upper section of the Rod by a fluted necking. The middle and base features of the Rod bear deep ornamental mouldings based on acanthus leaf designs and is tipped with an 1872 silver florin.⁹⁴ Victoria closely followed the traditional design, again in contrast to Western Australia, which acquired its Rod two years later in 1954.

The Black Rod in the Australian Federal Parliament was made especially for the Provisional Parliament building in Canberra, opened in 1927, and, as in South Australia, the design was based on the artefact used in New South Wales. Originally made of timber it was remade of ebony for the opening of the current ('New') Parliament House in 1988. Headed by a silver crown above the Australian coat of arms it is 1.37 metres long and is in three sections with plain silver bands at the centre and another about two thirds down engraved with the words 'Canberra 9th May 1927'. The bottom of the rod has a silver cap.⁹⁵

The various approaches to dealing with the tradition of the Black Rod illustrate the point of the unquestioning adoption of Westminster traditions for Australian Parliaments. The lack of such an officer in South Australia until requested by the Palace, and the improvisations of Victoria and Western Australia when there was no implement for the officer to perform the ceremonial duties, clearly demonstrate the strength of the forces of tradition and path dependence.

The mace is another ubiquitous and medieval symbol which lingers as part of the theatre of Westminster parliaments and also in the United States' lower house. It has similar antecedents to the Black Rod as both are descendants of the tradition of staffs as symbols of authority. A mace is usually found in the lower houses of

⁹⁴ Raymond Wright, *A People's Counsel: A History of the Parliament of Victoria 1856-1990*, (Melbourne: Oxford University Press, 1992), p.187.

⁹⁵ Communication from Andrea Griffiths, Usher of the Black Rod, The Senate, Parliament of Australia, 16 November 2007.

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Australia where it is a dramatic symbol of Royal Authority and representing the authority delegated to the House of Commons by the Monarch in the past. It lies on the Table in front of the Speaker of the lower house when Members are in debate and when the house dissolves into the Committee of the Whole House it is placed under the table in accordance with House of Commons practice. It is carried in and out of the chamber by the Serjeant-at-Arms in a procession at the beginning and end of each day and must be in position before the debate can proceed. This procedure also applies in the House of Lords, which has two Maces because the Lord Chancellor is both Speaker and Lord Chancellor. The Lords' Mace is carried in a procession into the Chamber by the Yeoman Usher (of the Black Rod, deputy to the Gentleman Usher of the Black Rod), placed on the Woolsack behind the Lord Chancellor and remains there during the debate.⁹⁶

A mace is a staff with a massive metal head directly derived from a primitive war club originally designed to pierce armour and was a weapon allowed to medieval clerics who were forbidden to shed blood by the sword. It became ornate and richly decorated as it came into ceremonial use.⁹⁷ The tradition of a mace in the upper house is only otherwise observed in Canada where it is placed on the table in the Senate when the chamber is in session. It lies on the table with its crown placed in the direction of the throne (chair). Made of brass and gold, the 1.6 metre long mace dates from the mid-19th century and is carried into the Chamber during the Speaker's Parade which starts and ends each sitting of the Senate—another example of continuing the traditions of the House of Lords but one that has not been followed by the Australian Parliaments, where the mace is a symbol only in the lower houses.⁹⁸

The Black Rod and the mace are both visible and important icons in the proceedings of Parliaments. A third icon, the Bar of the House, is less obvious or ornamental, though that in the House of Lords is quite large and ornate. It is at the entry into the Chamber opposite the Throne and is a potent symbol of exclusion

⁹⁶ Crewe, *Lords of Parliament*, p.186.

⁹⁷ Clerk of the Senate of Canada, 'The Senate Mace', (Unpublished: c.1966.).

⁹⁸ *Ibid.*

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and privilege. It serves to define where the Upper Chamber begins and beyond which only Members and Clerks can pass. It is also to this Bar that witnesses and persons ordered into custody for breach of privilege are brought and where counsel stand when pleading before the House. The exclusion aspect of the Bar is most evident at the ceremony of the Opening of Parliament when members of the House of Commons are summoned to the Lords Chamber to hear the speech from the throne.⁹⁹ They are not permitted beyond the Bar, but have to jostle uncomfortably together in the small space to face the monarch to listen to the speech from the throne.

All Westminster Parliaments follow this tradition, though in a more modest style and in the different upper chambers the Bar is either a low door or gate. In the case of the House of Lords it is a panelled construction about three feet (91.44cm) high, nine feet (2.74m) wide and three (91.44cm) deep with posts at each corner and an enclosed space for the Speaker when attending the opening of Parliament ceremony. It is decorated with symbols, the monogram V.R. (Victoria Regina) and small figures of the lion and the unicorn holding shields surmount the two inner posts.¹⁰⁰ Behind it is a metal rail which can be opened to allow the MPs to assemble closer to the Bar on ceremonial occasions.¹⁰¹

This symbol is present in all Australian upper chambers and Canada, and is a direct derivation from the House of Lords, though none are so grand, and in several Councils it is represented by a brass rail which can be closed or retracted, as in the House of Commons. This is true of South Australia and Tasmania. In New South Wales it is a brass gate, in Queensland it no longer exists, though a photograph of the Chamber circa 1869 shows that there was a bar, although it is not clear what it was made of, how it worked, or what shape it was.¹⁰² In the

⁹⁹ Crewe, *Lords of Parliament*, p.211.

¹⁰⁰ Sir Robert Cooke, *The Palace of Westminster: Houses of Parliament*, (London: Burton Skira Ltd, 1987), p.144. Arnold Wright and Philip Smith, *Parliament Past and Present, a popular and picturesque account of a thousand years in the Palace of Westminster, the home of the mother of Parliaments*, (London, Hutchinson & Co., 1902), p.244.

¹⁰¹ Information from the House of Lords Information Office, 20 November, 2007. Crewe, *Lords of Parliament*, p.211.

¹⁰² Correspondence from Joanna Fear, Research librarian, Queensland Parliament, 10 May 2008.

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Canadian Senate it is a brass railing just inside the main entrance and across two passages on either side of the Clerks' Table. A wooden barrier covers the central section. In Victoria it is an elaborately carved gate rather than a rail but 'there is a place where a rail, may be placed, if required'.¹⁰³ In Western Australia it is a brass bar some 8cm in diameter which can be withdrawn into the wooden balustrade at the entrance to the chamber.¹⁰⁴ The Bar of the Australian Senate in the 1927 Provisional Parliament House, is composed of two simply carved, waist high doors of blackbean and blackwood, across the central entrance of the Chamber opposite the President's chair. The Report which describes the Bar also mentions that they will be placed in 'a similar position to those in the present senate'.¹⁰⁵ At that time the Senate sat in the Victorian Council Chamber and this remark demonstrates again the dependence on past practice in the design of Legislative chambers.

The Bar is most prominent at the remarkable and historic ceremony of the Opening of Parliament held in all Westminster Parliaments. This is a tradition which shows the disjunction between the 'Commons political primacy and ceremonial inferiority', and is no longer really a valid procedure, yet it endures, sustained by the strength of tradition and supported by elaborate and spectacular ritual and symbolism.¹⁰⁶ In this ceremony the members of the lower house are invited to the upper house chamber to hear the Governor deliver the speech from the Vice-Regal Chair which announces the Government's programme. The House of Lords' practice of keeping the lower house members outside the Bar is not followed in all Australian Parliaments or the Canadian Senate, which underlines the anachronistic nature of the procedure. For reasons of comfort and space, except for Tasmania and Victoria, members of the lower houses are invited into the chamber to hear the speech from the Governor, and in the Federal Parliament they have always been

¹⁰³ Clerk of the Parliaments, *The Parliament of Victoria and Parliament House*, (Melbourne: Parliament of Victoria, 1985), p.21.

¹⁰⁴ Correspondence from the Parliamentary Education Office, Parliament of Western Australia, 20 December 2007.

¹⁰⁵ Federal Capital Advisory Committee, 'Construction of Canberra, First General Report', (Melbourne: The Parliament of the Commonwealth of Australia, 1921), p.4.

¹⁰⁶ Crewe, pp.211-12.

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accommodated in the Chamber to hear the speech from the Governor-General.¹⁰⁷ In Tasmania's Parliament they are accommodated behind the Bar on specially provided seats and in Victoria they assemble at the Bar of the House, or other vantage points at the side of the chamber, but are not allowed to enter the floor of the House. There are exceptions to this rule in Victoria, and the Speaker, Premier, Deputy Premier and Leader of the Opposition and Deputy Leader of the Opposition parties are assigned seats on the floor of the House, a departure from traditional practice in favour of preserving the dignity of senior members of the lower house.¹⁰⁸ In Western Australia members of the House of Representatives enter the Council chamber via the withdrawn bar to stand behind the back row of Council seats. In South Australia they enter the chamber and take seats at the rear while Councillors sit at the front.¹⁰⁹

Ceremony is a traditional aspect that plays an important part in the proceedings of all upper houses and again the major example, indeed the progenitor, of many of the ceremonies that occur in Australian Parliaments can be traced back to Westminster. Yet ceremony is sometimes dismissed as being of little consequence. Goldwin Smith, the Canadian historian, saw the Canadian Senate as surrounded with 'derisive state' and that the ceremonious environment was 'merely the trappings of impotence'.¹¹⁰ Others regard ceremonies as integral to the parliamentary institution but consider that they need to be inspiring and dignified as well as honest and meaningful to participants and observers.¹¹¹ There is also a strong emotional component in ceremony in that impressive ceremonies can move an observer in ways that rational discussion cannot. In this way the most public and regular ceremony, as well as the most impressive, in the House of Lords is,

¹⁰⁷ Correspondence from Andrea Griffiths, Usher of the Black Rod, Parliament of Australia, 3 December 2007.

¹⁰⁸ Information from John Breukel, Senior Reference Librarian, Parliament of Victoria, 19 November 2007.

¹⁰⁹ Communication from the Chris Hunt, Usher of the Black Rod, Parliament of Western Australia, 20 December 2007, and Trevor Blowes, Black Rod, Parliament of South Australia, 19 November, 2007.

¹¹⁰ J.A. Marriott, *Second Chambers—an Inductive Study in Political Science*, (Oxford: Clarendon, 1910), pp.142-3.

¹¹¹ Parliament of Australia, 'Balancing Tradition and Progress: Procedures for the Opening of Parliament', Section 3.44, p.33.

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again, the opening of Parliament ceremony, held when the Monarch from her throne, opens a new Parliament in the Lords Chamber. Such a glorious spectacle moves observers to feel awe and respect for the participants and, through them, for the institution, as well as inspiring loyalty to the system. The British Parliament opening ceremony takes place in London annually in November, or at the opening of a new parliament after an election. Australian and Canadian Parliaments also faithfully stage this ceremony, though in modified style and usually only at the inauguration of a new Parliament. Nor is it such a public spectacle as in Westminster—Governors and the Governor-General arrive at Parliament in limousines and then disappear into the building where the ceremony is carried out before invited guests.¹¹²

The spectacular and awesome ceremony is imbued with ritual and symbols. In London it begins with a royal procession and the Monarch's royal progress through the streets of London in her golden coach. Enscathed on her throne the Monarch then sends Black Rod to the Commons to fetch the Members of Parliament. This is followed by the ritual of the Serjeant-at-Arms slamming the door of the Commons in Black Rod's face, who then knocks three times with his Rod to demand entrance and request the members' attendance on the Monarch in the Lords. The hostile reception by the Commons is intended to indicate its independence from the Crown and that never again will a monarch so overreach his authority as Charles I did in 1642, precipitating civil war by riding to Parliament to arrest five MPs.¹¹³ After responding to the summons and arriving at the Lords' Chamber, the MPs have to crowd together with the Speaker in the centre, in the small space between the entrance and the bar, at the opposite end of the Chamber from the Monarch to listen to the speech from the throne outlining the Government's programme.¹¹⁴ Crewe has colourfully described the opening ceremony in the Lords as a glittering occasion: 'The State opening of Parliament in London, when the monarch, who has iconic status in the Chamber, gathers her Lords about her and sheds stardust of

¹¹² This elaborate ceremony has no place in the United States Congress due to the different relationships between their two houses and the different structure of their legislatures.

¹¹³ Crewe, *Lords of Parliament*, p.211.

¹¹⁴ *Ibid.*

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almost superhuman status over them' and within the Lords' Chamber spectacle dominates the proceedings.¹¹⁵

The opening ceremony began almost accidentally with the acquisition of York Palace (later Whitehall Palace) by the king, which gave him a new and more convenient residence only a few hundred yards from the Palace of Westminster. When Parliament opened in 1536, the King and the Lords rode from York Palace to the Palace of Westminster and Parliament was opened in the then White Chamber, or House of Lords, instead of in the Painted Chamber as before. The origin of the current Westminster ceremony and the role of Black Rod originated in the early 17th century when the Usher of the Black Rod summoned the House of Commons to attend the sovereign in the House of Lords. This was a period of conflict and civil war between the Commons and the King and it became tradition to close the door of the Commons Chamber in the face of Black Rod who then used his Rod to knock on the door three times for admission. This ritual is re-enacted at every Opening of Parliament in Britain and in Australia and as a reminder of the authority and independence of Parliament from the sovereign.¹¹⁶ The ritual opening of Parliament, emulating the custom of the British Houses of Parliament, began in Australia in New South Wales in 1856 with the establishment of the bicameral legislature and the tradition has been followed by all the colonial parliaments since.¹¹⁷

Thus began, with occasional deviations, the regular practice of opening parliament in the upper house (or House of Lords), which continues to the present day and is copied by the Australian Parliaments and the Canadian Parliament with tradition being the only justification for such an elaborate ceremony. Here is a clear case of the adoption of tradition as in path dependence though based upon a genuine legacy from the Westminster institution.¹¹⁸

¹¹⁵ Ibid., p.22.

¹¹⁶ Liston, 'The Legislature of New South Wales,' p.55.

¹¹⁷ Ibid.

¹¹⁸ Henry S. Cobb, 'The Staging of Ceremonies in the House of Lords', in *The Houses of Parliament: History Art Architecture*, 2000), p.35.

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The opening of the first Australian Commonwealth Parliament was a challenge for the officials and Parliamentarians and, as discussed above, advice was provided to the Governor-General, Lord Hopetoun by Joseph Chamberlain and passed on to the Prime Minister. The letter reveals that it was planned to follow tradition in this matter in Federal Parliament as in the colonial legislatures. At this stage there was also much agitation over whether the Prince of Wales could open the first Parliament in 1901, as the Constitution clearly stated that this was the prerogative of the Governor-General. The problem was overcome by the Prince making a welcome speech and the Governor-General opening Parliament.¹¹⁹

Further advice on procedure was also sought in 1903 by Blackmore, the Clerk of the Senate, from the Clerk of the Parliaments in Westminster (H.J.L. Graham). In a long and detailed reply Graham advised of daily procedure in the Lords' Chamber as carried out in the Westminster Parliament.¹²⁰ The correspondence is clear evidence of the derivative nature of parliamentary ceremony in Australia, ceremony which, according to a paper by the House of Representatives, brings to members a sense of a new beginning, unified purpose, commitment to their electors and to their role, and a connection with the institution of Parliament, its long history and the struggle to achieve democracy.¹²¹

A further important example of the derivation of practice, demonstrating how ritual can become a major element of the business and proceedings of an ancient and continuing institution, is the number of officials who carry out the administrative duties required for Parliaments to function smoothly. The major players in the drama of upper houses are, of course, the members, elected or appointed, but they are supported by an army of administrators and officials, many of whose offices date back to medieval times and the traditions of the Lords, as shown in the case of the Black Rod. Some of these traditional offices are undertaken by elected members of the House while others are professional appointments. Among the

¹¹⁹ Hopetoun to Barton, February 1901. Barton Papers, NLA ms-ms51-1-761-s1.

¹²⁰ H.J.L. Graham to E.G. Blackmore, 28 July 1903, NAA, A6, 1901/1090

¹²¹ Parliament of Australia, 'Balancing Tradition and Progress: Procedures for the Opening of Parliament', p.26.

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official roles carried out by members of Australian and Canadian Parliaments, which includes the President and the Deputy President, is that of the party 'whips' an office which is an exact derivation of the tradition in the House of Lords. The term 'whip' derives from the foxhunting tradition of having a whipper-in for the fox hounds to prevent them from straying off on their own business and aptly describes the main duty of the parliamentary party whips, who are appointed by their party and, as well as managing other business in the Chamber, keep track of the party members to ensure that they are present for the all important business of voting in divisions.¹²²

The most important professional officials of the House are the Clerks, also derived from the practice in the Lords. Not all of the officials in the House of Lords were adopted by the Australian Parliaments but, as Reid and Forrest explain, 'Only one or two of the more esoteric positions failed to make the journey, presumably on the grounds of economy and size' but enough of them were to prove the point that path dependence was a strong factor in their adoption.¹²³ In the Lords the Clerk of the House is also the Clerk of the Parliaments and there is a Deputy Clerk and a number of Assistant Clerks with varying responsibilities. Clerks service select committees, ensure that formal records are kept and prepare the order papers for each day's business.¹²⁴ The practice is followed almost exactly in the Australian, Canadian and United States Senates. The Melbourne *Argus* reported in 1901 that George Jenkins, Clerk of the House, and E.G.Blackmore, Clerk of the Senate, had discussions with the Prime Minister, Edmund Barton concerning the officers required for both houses of the new Federal Parliament and 'settled the issue'.¹²⁵

This is not an exhaustive account of the support staff and there are other apparently minor appointments, such as 'Doorkeepers' which have evolved into significant officials. 'Doorkeepers' were first appointed to supervise who came in

¹²² Kenneth Bradshaw and David Pring, *Parliament and Congress*, (London: Quartet Books, 1972), p.30. Party whips also feature in the United States Senate.

¹²³ G.S. Reid and Martyn Forrest, *Australia's First Commonwealth Parliament*, (Melbourne: Melbourne University Press, 1989), p.399.

¹²⁴ Shell, *The House of Lords*, p.97. Weatherford, *Tribes on the Hill*, p.222.

¹²⁵ *Argus*, 15 April 1901.

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and left the chamber and to guard the Chamber doors when a division was called. In the Lords they wear white ties and tailcoats and a large gold badge for identification. This office has not been adopted in Australian Councils or the Senate but it has been adopted in the United States Congress.

A final example of the strength of tradition is in the name of the formal record, which in the Lords is known as *Hansard* because it was initially printed by Thomas Curson Hansard from 1809. The name has remained even though the production was taken over by Parliament in 1909. The clinging to the name by later Australian and Canadian Parliaments prolongs the tradition for no logical reason and, though the name is different in the United States, the tradition of keeping a record is adhered to in the *Congressional Record*. Though this is, at first glance, a practical procedure rather than just another ritual, Weatherford saw it not as an account of the decision-making process but an account of the ritual process.¹²⁶

This summary of the principal symbols, rituals and ceremonies included in Australia's parliamentary practices is an attempt to trace their origins and purposes. It is clear from the foregoing that the influence of Westminster has been powerful and almost inescapable, even when impractical. The examples chosen show clearly the legacy of Westminster in the Parliaments of Australia, Canada and the United States. The phenomenon is not unique to Legislatures and can be found in other organisations which have existed for many years. What is different is the transfer of symbols, rituals and ceremonies, almost unchanged, across continents and cultures and even centuries. Even though Westminster-style parliaments all legitimately claim an inheritance from Great Britain, it is notable that many of the adoptions are all but meaningless in their new location, except that they add theatre and importance and a display of authority. They can be traced to many factors: tradition; the Westminster legacy; the desire to belong to a greater whole; and the fact they are part of a tradition long established. The most powerful influence that emerged from close scrutiny was the emotional reward derived from

¹²⁶ Weatherford, *Tribes on the Hill*, p.200.

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replicating age-old icons and customs that establish continuity and maintain reassuring links with the past.

Conclusion: The Upper House we Had to Have

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*The tradition of all the dead generations weighs like a nightmare on the brain of the living.*¹ Karl Marx.

Why does Australia have a Senate? This thesis has argued that the heart ruled, in part, the head. The men who created the Senate had a deep attachment to Britain and its institutions and many were seduced by the historical authority of the House of Lords. They could see themselves sitting on its red leather benches. Moreover the overwhelming number of delegates had cut their political teeth in bicameral colonial parliaments. To depart from this basic model would be to turn their backs on themselves. At the same time they felt able to adjust the structure of the system to some degree by the example of the mother of parliaments itself. The frequent reference to the Reform Act of 1832 underscores their belief that the British Constitution was organic.

In addition, many delegates, cautious and conservative as they were, were unnerved by the prospect of untrammelled democracy. An upper house was frequently seen as a protection against the masses and necessary to restrain the impulsive democratically elected lower house by acting as a 'counterpoise to democratic fervour' and to 'limit potential excesses of first chambers'.²

There were other influences, of course, many of them practical and stemming from the delegates' own parliamentary experience. The passionate debate that led to the provision of a method of dealing with deadlocks between the Houses, for

¹ Karl Marx, *The Eighteenth Brumaire of Louis Bonaparte: with explanatory notes*, (New York: New York, International Publishers, 1964), p.15.

² J.A. Marriott, *Second Chambers - an Inductive Study in Political Science* (Oxford: Clarendon Press, 1910), p.3. Donald Shell, *The House of Lords*, (London: Harvester Wheatsheaf, 1992), pp.1-2.

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example, clearly revealed the delegates' experience of such conflict in their Colonial Parliaments, where it had sometimes threatened the stability of Government. The method finally arrived at was a cumbersome process, daunting in its final solution of a dissolution of both houses followed by a general election. The possibility of conflict was recognised by the delegates and demonstrates the inherent instability of bicameralism which is strongly influenced by the composition of the upper house. The decision to have an elected Senate for Australia grew out of this possibility, in that upper houses elected on other than a democratic basis can be perceived as inequitable.

Another finding refutes the assumption held by many that the Australian Government is a hybrid of the Washington and Westminster systems, a so-called Washminster hybrid. In fact the findings of this thesis show that the Australian Federal Government is in many respects a true descendant of Westminster, except for the non-hereditary nature of the composition of its upper house. This becomes clearer on observing the buildings, the chambers, the rituals, practices and procedures of the Australian Senate and their direct derivation from Westminster, even when not really practical or necessary—though the argument that ritual and procedure are necessary to promote respect and confidence, is a valid one.

That the existence of the Senate was not determined at the Federation Conventions of 1891 and 1897-8 is another finding. Despite many weeks of debate on a new Constitution for the Australian Commonwealth by the 84 delegates, the fact is that bicameralism was set in stone from the beginning, even before the beginning, as foreshadowed by Parkes in his speech in 1889.³ The final establishment of a bicameral system, which included a Senate, followed almost exactly the pattern of the Australian Colonies and the Government of Great Britain. The major departure was of course in the membership of the Senate. In this the delegates looked to the model of the United States and justified the establishment of an upper house, or Senate, as a States' House, where each State had equal

³ Ken Halliday, *Parkes Federation Call to the People*, (Observatory Hill, New South Wales: National Trust of Australia, 1999), p.23.

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representation. This solved both the questions of the role of an upper house and its membership and made up for the impossibility of exactly replicating the House of Lords.

Though the research shows many delegates read quite widely, some more than others, it was clear that any views opposed to the establishment of an upper house were not taken seriously. This was most clearly demonstrated by the dismissal of the efforts of the New South Wales Labour Party to send delegates to the 1898 Convention and the absence of any opposition to a Senate expressed at the Conventions. Some delegates did express misgivings, such as Henry Higgins of Victoria, but his comments were mild and infrequent and drew no response. The minds of the delegates were set upon the establishment of an upper house as part of the bicameral system. This was decided quite without any direction, or even suggestion, by the British Government, or that the Constitution needed the approval of that body, as is clear from the absence of any comments on that aspect in the debates. Approval was sought and obtained from Britain on the final version of the Constitution and the celebrations of the delegates in London at the acceptance of the Constitution by the British Government, clearly demonstrated their respect and a certain deference in their attitude to Westminster.⁴ Though they sought independence and self-government they were not prepared to 'cut the painter': that is sever all ties with Britain and the Empire.⁵ The newly formed, independent, self-governing nation of Australia was not to be allowed to let go of the British connection, not because the British insisted, but because the decision-makers did. An insistence on retaining ties with Britain is a view expressed by many influential convention delegates including Higgins, Deakin, Turner and Peacock.⁶

Their attitude was in stark contrast to the views becoming popular in Sydney in the 1890s and expressed by the popular *Bulletin* magazine, whose motto was

⁴ J.A. La Nauze, *Alfred Deakin*, (Oxford: Oxford, 1962), vol.1, p. 190.

⁵ This is boating reference to a rope attached to the bow of a small boat for tying it to a ship, quay, etc. meaning do not cut the connection to the mother ship.

⁶ G. McDonald, 'The Political and Social Ideology of the Australian Founding Fathers' (Unpublished PhD Thesis, University of Queensland, 1967), p.40.

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'Australia for the Australians'. Edited by journalist J.F. Archibald, who hoped for a self-reliant, even independent Australia, the magazine was widely read and admired.⁷ For many reasons however, continuing membership of the empire was not inconsistent with large measures of self-reliance and independence.

A lack of confidence was also apparent in the debates when the delegates referred frequently to the opinions of recognised writers and thinkers to support their arguments. These selected ideas and views were underpinned by the life experiences of the delegates who were, for the most part, successful, prosperous and educated citizens. Their readings gave them food for thought and a framework for debate. Though the evidence shows that the authorities were not greatly influential in changing attitudes or opinions, they were used to validate and support their arguments. The reliance on authorities as a crutch for their beliefs demonstrated a conflict in the delegates' ideas between the need for the support of authorities in their decisions and their earnest endeavours to create an independent nation. At the same time we have seen numerous instances where the delegates were simply wrong on the details of the models they introduced into the debate. Clearly politicians are not always great students of politics.

Many had had experience of government in their Colonies and they respected and admired Britain, which they regarded as their homeland, and the British system of Government. This was reinforced by the fact that the six Australian colonies had adopted the bicameral system on achieving self-government, some even using the appointment method for members of their upper houses, or Legislative Councils. The appointment method stemmed from the view, held in the very early days, that it could lead to a colonial nobility.⁸ This idea clearly demonstrates the strength of the inclination towards doing things as they had always been done, even if demonstrably impractical and anachronistic, as shown in the continuing performance of the mediaeval ceremony of the Opening of Parliament with its underlying theme of defying the Monarch. The concept of path dependence, as

⁷ Ibid., p.42. Sylvia Lawson, *The Archibald Paradox: A Strange Case of Authorship*, (Ringwood, Victoria: Penguin Books, 1983).

⁸ See: Ged Martin, *Bunyip Aristocracy*, (Sydney: Croom Helm, 1986).

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developed in political science, helps explain this phenomenon, the powerful urge to imitate the past, and which cannot be denied. The delegates were haunted not only by their forebears but by their own experience.

The strongest precedents for the delegates' decisions were the six Australian colonial houses, because nearly all the delegates had been members of their Colony's legislature. These had been closely modelled on the Westminster system which itself goes back to the Middle Ages and some of the historical traditions go back even to ancient times. In addition to the influence of the colonial parliaments, other constitutions were drawn into the debates; the referendum, used to settle Constitutional change, was drawn from Switzerland which used them extensively, the joint sitting, used to settle disputes between the houses, came from Norway and the major one of a Senate as a States' House where the states were equally represented, from the United States. Though other constitutions were discussed in the debates, some at length, delegates' knowledge of them including the major models of the House of Lords and the United States was not always sound. This did not deter them from suggesting them as models or dismissing them as having nothing to offer.

Though other models were hotly debated, in fact little was adopted from them, except where they offered a solution to a problem not answered by the Westminster model, as shown above. The major problem was with deadlocks and arose from the bitter experiences of the lower house delegates in their Colonial Parliaments where the upper house had refused to pass legislation. This led to a long and acrimonious debate of the subject. Some delegates objected to any system to deal with deadlocks on the grounds that they did not have them in Westminster or Washington, an indication of the imperfect knowledge of the delegates. In Westminster at that time the solution, a drastic one, was to appoint more members of the upper house, a strategy which had been used in some colonial parliaments, while in the United States there was a system of holding Conferences between the houses which had become a very important part of Congressional business.

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The weight of tradition is most clearly evident in the adoption of many of the procedures and practices by the Australian Senate which are a direct derivation from the House of Lords. What is more surprising is the lack of records on this aspect. The introduction of many of the procedures, symbols, and appointments were made by experienced officials, most of whom came from the Colonial parliaments. The writing of the *Standing Orders* for the Senate by the Clerk of the Parliaments E.G. Blackmore, is an illustration of this. The politicians relied on their senior officials to manage the more mundane aspects of parliamentary procedure, hence the scarcity of discussion on these things in official records such as *Hansard*. The ceremonial and architectural aspects of the parliaments, where the delegates had served their political apprenticeships, are the strongest and most visible indication of the influence of the Westminster traditions that pervade the upper houses of Australia, including the Senate. From the grandeur of the buildings, to the shape and seating layout of the Chambers, the red colouring, the ranking of officials and members, Westminster was the model in almost every detail. The extension of the confrontational layout to an elongated U-shaped pattern, which has become the norm for Australia, was but a minor variation on a time-honoured theme.

Marx was correct to point to the importance of tradition in conditioning the 'brain' of the living but he was wrong to describe it as a nightmare. The men, and they were all men, who created the Senate, did so willingly and enthusiastically. Although many of delegates subsequently sought election to the House of Representatives the majority saw themselves as ideal candidates for places on the red leather benches of an august House of review, a bastion against democracy or at least a check on hasty legislation, wise guardians of a British future for their new nation.

Appendices

Appendix 1

Schedule of Books recommended by Richard Baker

Author		Title	City	Publisher
Adams and Cunningham	1887	Swiss Confederation	London	MacMillan & Co.
Bagehot	1877	The English Constitution	London	H.S.King & Co.
Bluntschli	1885	Theory of State Federal Government in Canada	Oxford	Clarendon Press
Bourinot	1887	Federal Government in Canada	Baltimore	Massey
Bourinot	1888	Manual of the Constitution of Canada	Montreal	Dawson Bros.
Bryce	1889	The American Commonwealth	London	MacMillan & Co.
Creswell	1890	History of the Dominion Of Canada	Oxford	Clarendon Press
De Tocqueville	1887	Democracy in America	London	Longman, Green & Co.
Dicey	1886	England's case against Home Rule	London	J.Murray
Dicey	1887	The Law of the Constitution	London	MacMillan
Dicey	April 1890	The Referendum	London	Contemporary Review
Forsayth	1869	Cases and opinions on Constitutional Law	London	Stevens & Haynes
Freeman	July 1890	The Referendum	London	Universal Review
Gavan Duffy	Feb., 1890	The Road to Australian Federation	London	Contemporary Review
Goldwin Smith	July 1887	The Canadian Constitution	London	Contemporary Review
Hamilton Madison and Jay	1875	The Federalist Papers (This edition contains an epitome of the discussions of the Philadelphia Convention)	Philadel- phia	J.B.Lippincott & Co.
Freeman		On Presidential Government	Not specified	Not specified
Hansard (Canadian)	1865	British North American Debates	Quebec	Hunter, Rose, & Co.

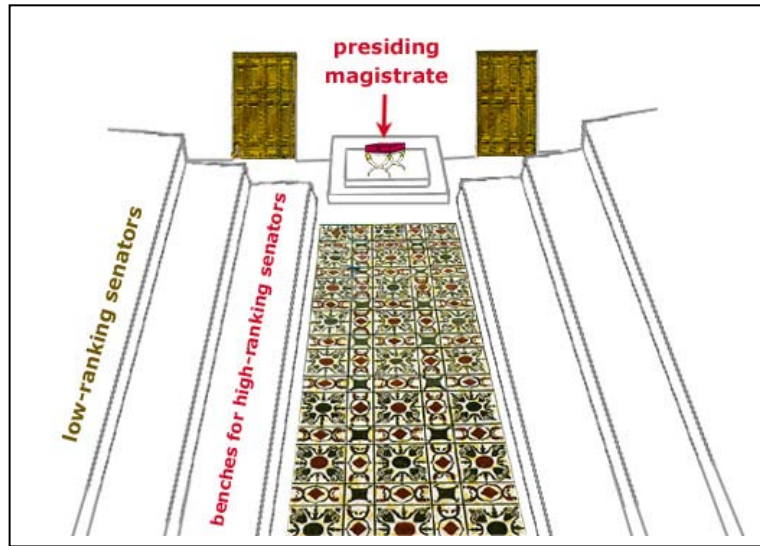
Appendix 1

Schedule of Books recommended by Richard Baker

Author		Title	City	Publisher
Kent	1858	Commentaries on American Law	Boston	Little, Brown & Co.
Lowell	Feb. 1888	English and American Federation	London	Fortnightly Review
Monro	1889	Constitution of Canada	Cambridge	University Press
Montesquieu		Esprit de Lois	Not specified	Not specified
Parkin	1890	Five Lectures on the Constitution of Canada	Adelaide	Register Newspaper
Story	1854	On the American Constitution	New York	Harper Bros.
Tarring	1887	Laws relating to the Colonies	London	Stevens & Haynes
Todd	1880	Parliamentary Government in the Colonies	London	Longman, Green & Co.
Webster	1879	Speeches	London	Sampson, Low & Co.

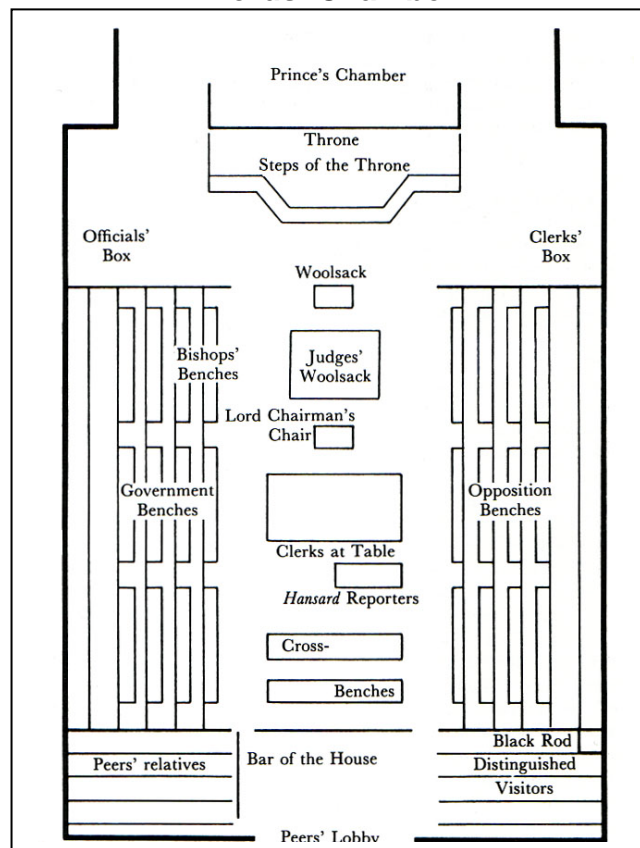
Seating Arrangements in Upper Chambers

Roman Curia



From: www.vroma.org/~bmcmanus/curiaplan.jpg. Accessed 12 December 2008.

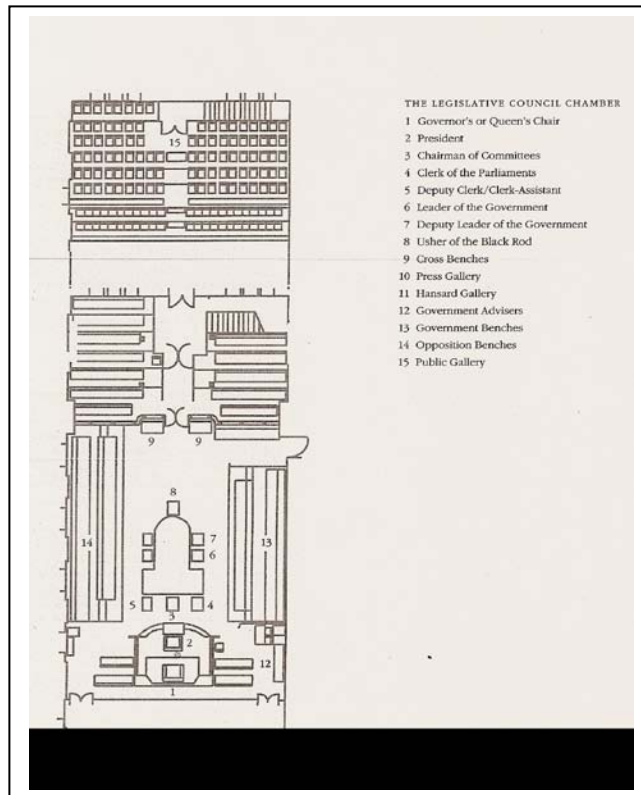
Lords' Chamber



From: Donald Shell, *The House of Lords*, p.85.

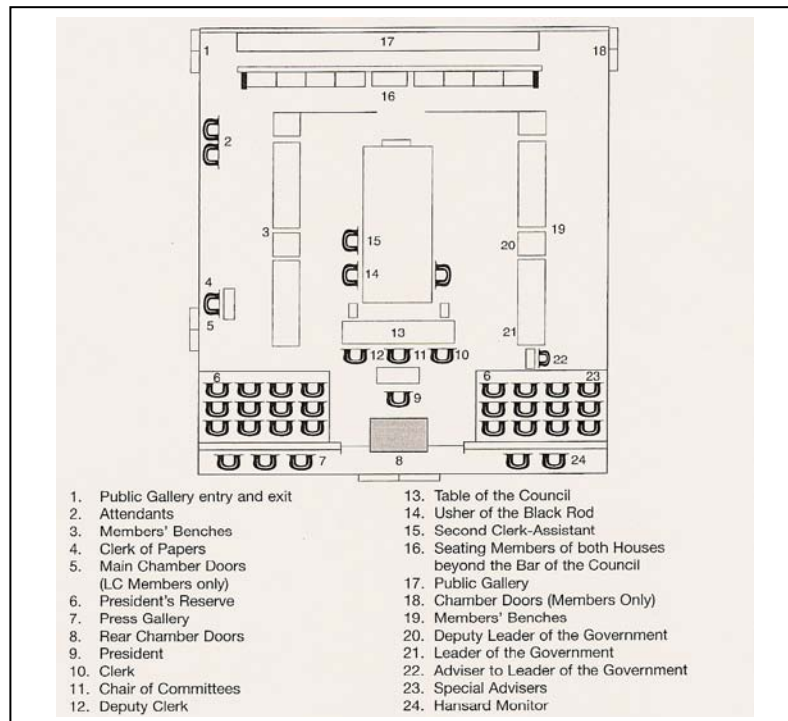
Seating Arrangements in Upper Chambers

New South Wales



From: Maisy Stapleton, *Australia's First Parliament*. p.142.

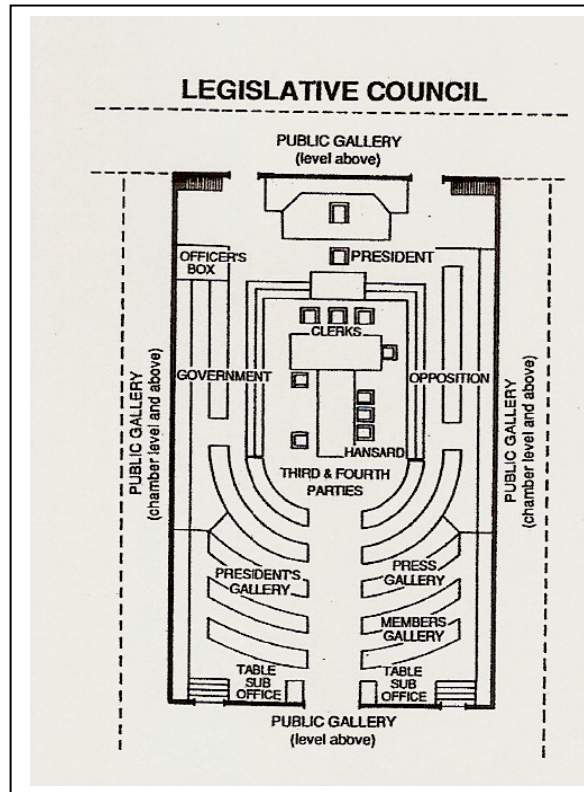
Tasmania



From: *The Legislative Council of Tasmania: an outline of its history and proceedings*. p.3.

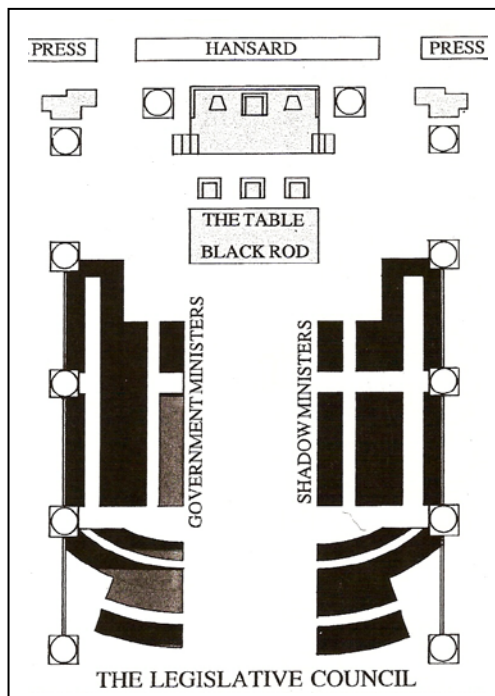
Seating Arrangements in Upper Chambers

Victoria



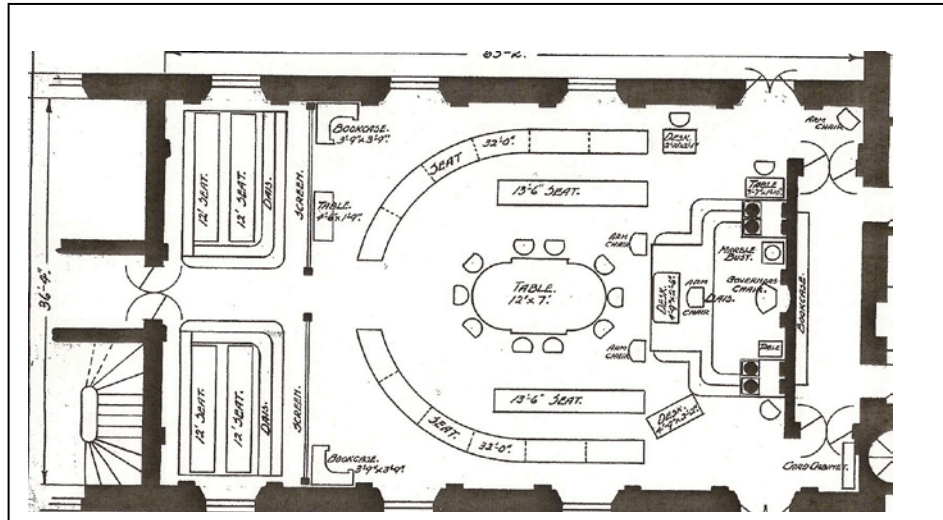
From: *Parliament House*, Vol.2. Public Works Dept. 1981.

South Australia



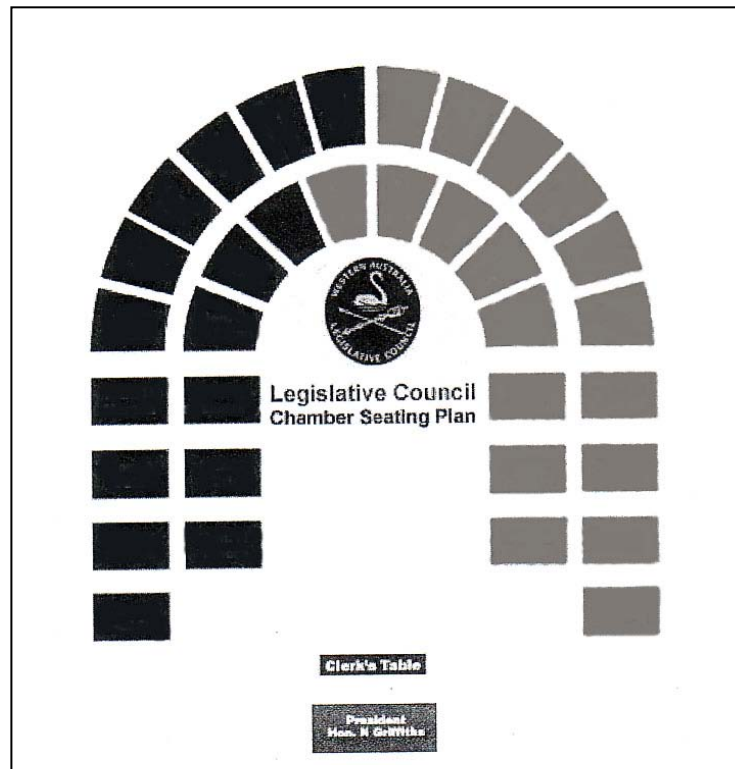
Seating Arrangements in Upper Chambers

From the pamphlet 'The Parliament of South Australia'.
Queensland



From: Queensland State Archives, Parliament House, Legislative Chamber and Gallery, 1923, Item 588535.

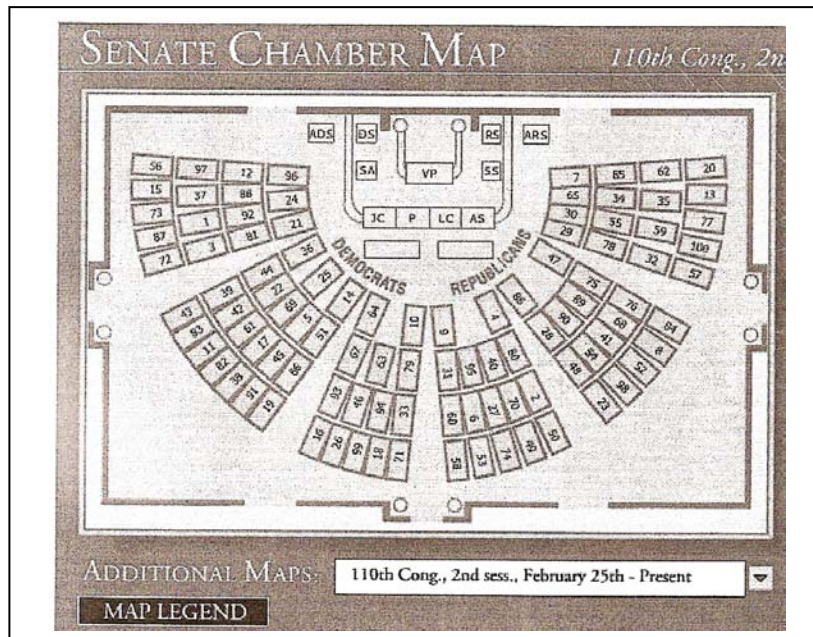
Western Australia



From: http://www.parliament.wa.gov.au/plans/council/les_council.htm. Accessed 12 December 2008.

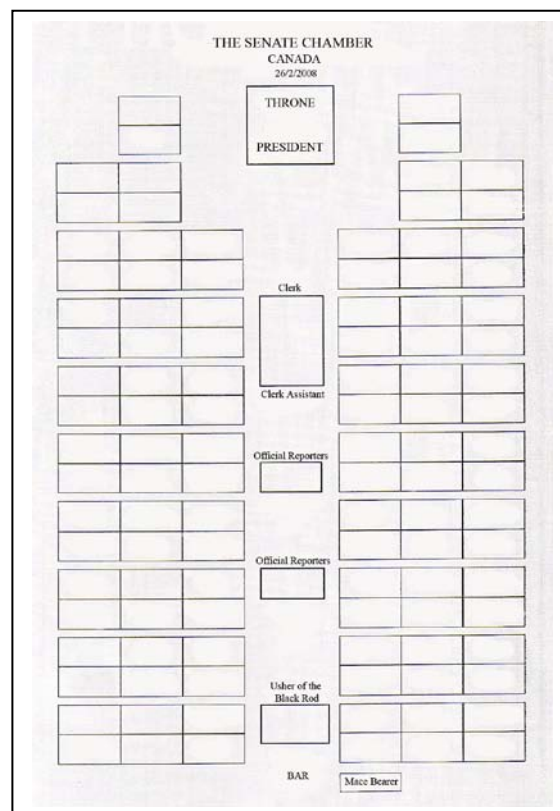
Seating Arrangements in Upper Chambers

United States



From: <http://www.senate.gov/artandhistory/art/special/Desks/chambermap.cfm>. Accessed 23 April 2008.

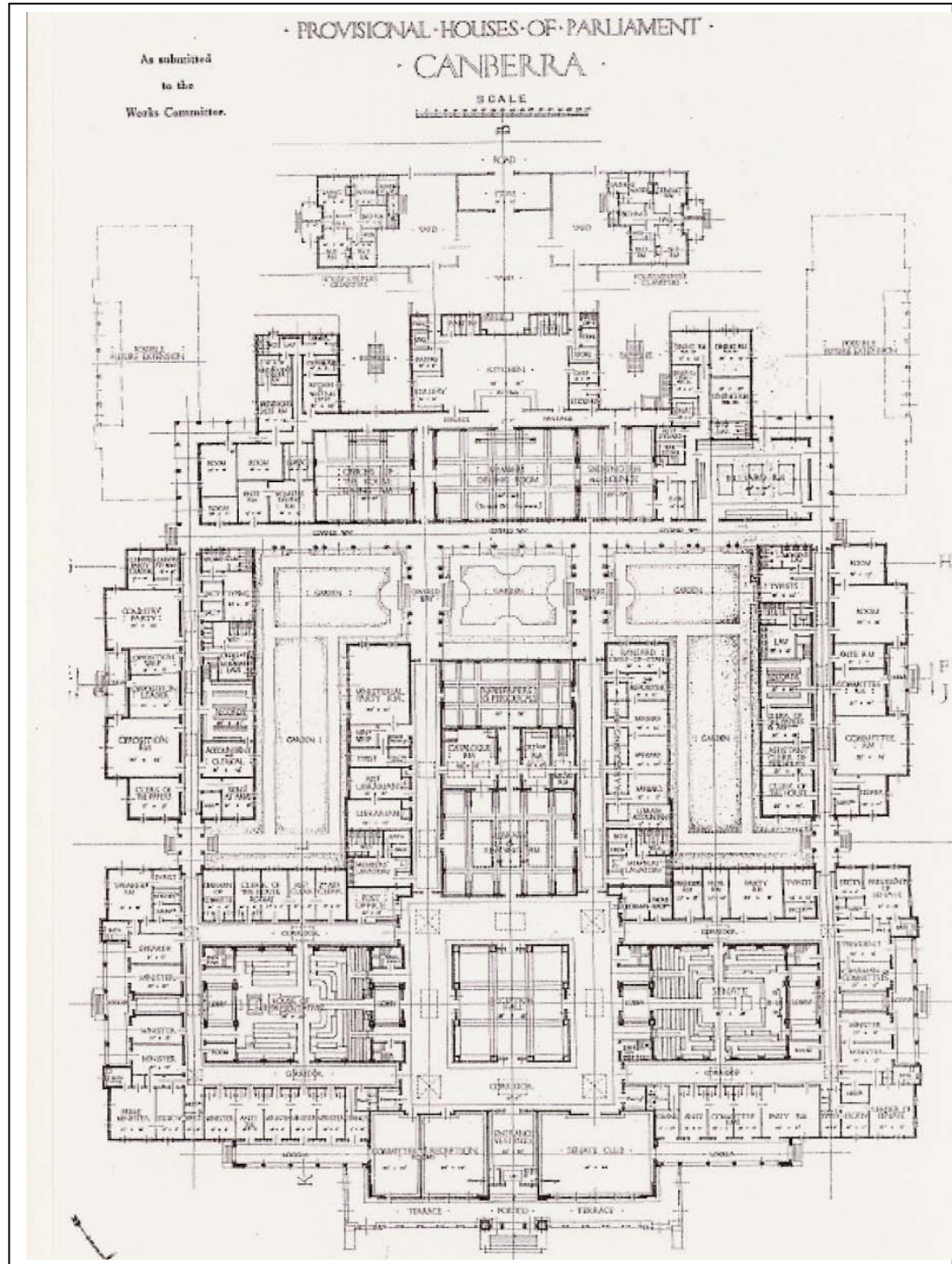
Canada



Plan received from France Belisle, Canadian Senate Archivist, 16 April, 2008.

Architectural Plans of Australia's Provisional Parliament House showing proposed seating layouts

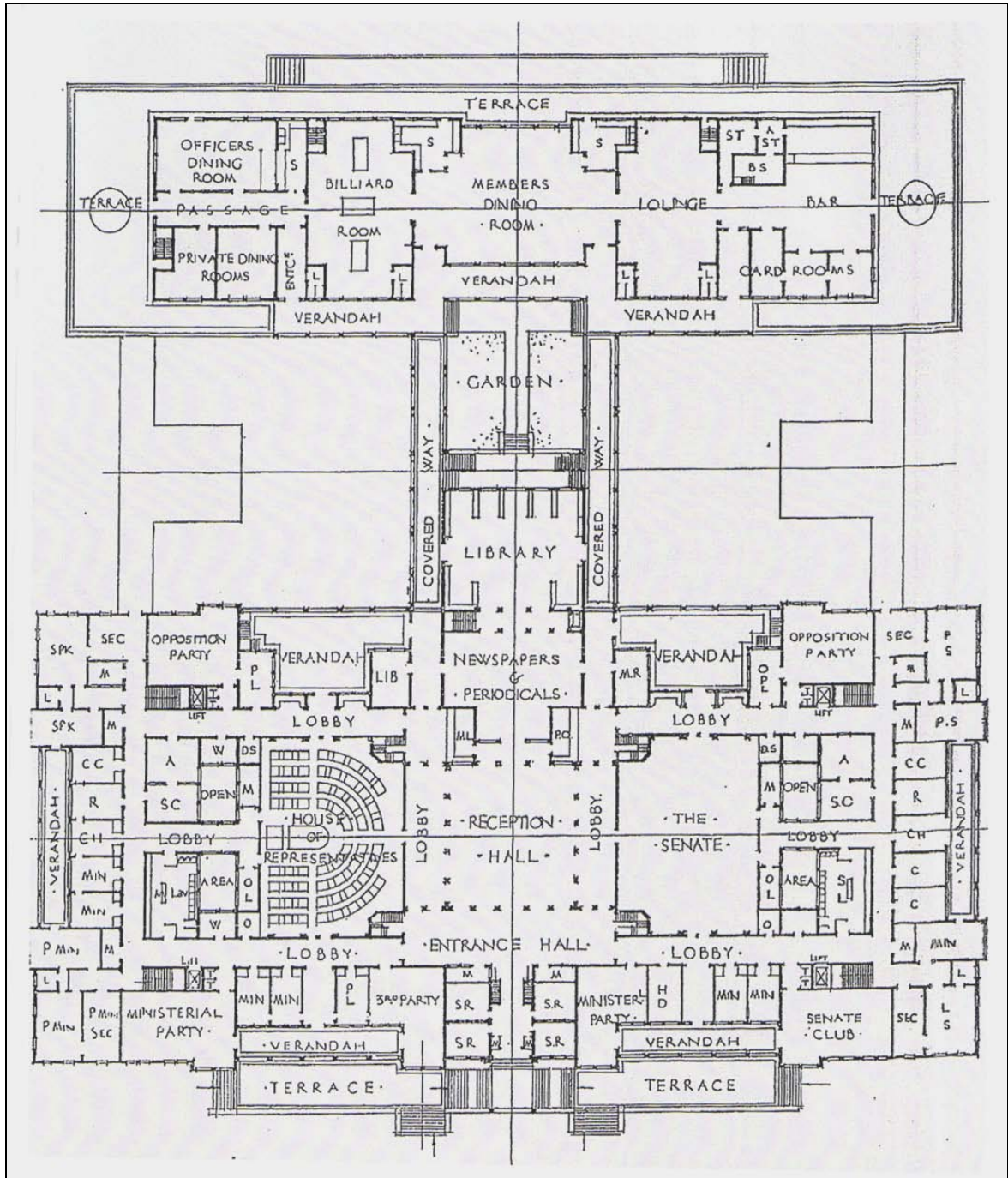
Plan of Provisional Parliament House showing Senate with U-shaped seating layout. Senate is shown lower right.



From: Provisional Houses of Parliament: architectural plan September 1922. Parliamentary Standing Committee on Public Works, Report 1923.

Architectural Plans of Australia's Provisional Parliament House showing proposed seating layouts

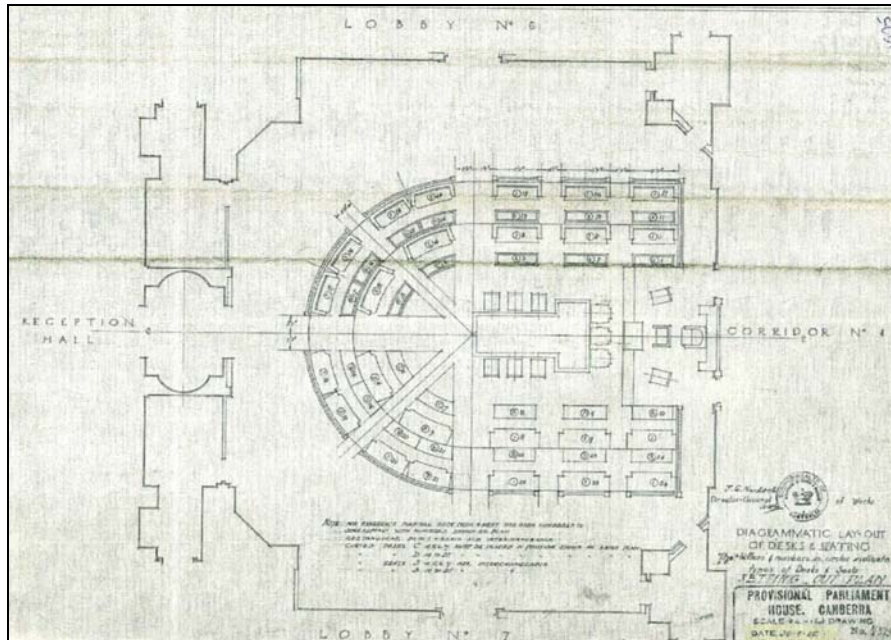
Ground Floor Plan of Parliament House, 1923, showing a blank Senate floor.



From: NAA A2541 P302/2 1925-29

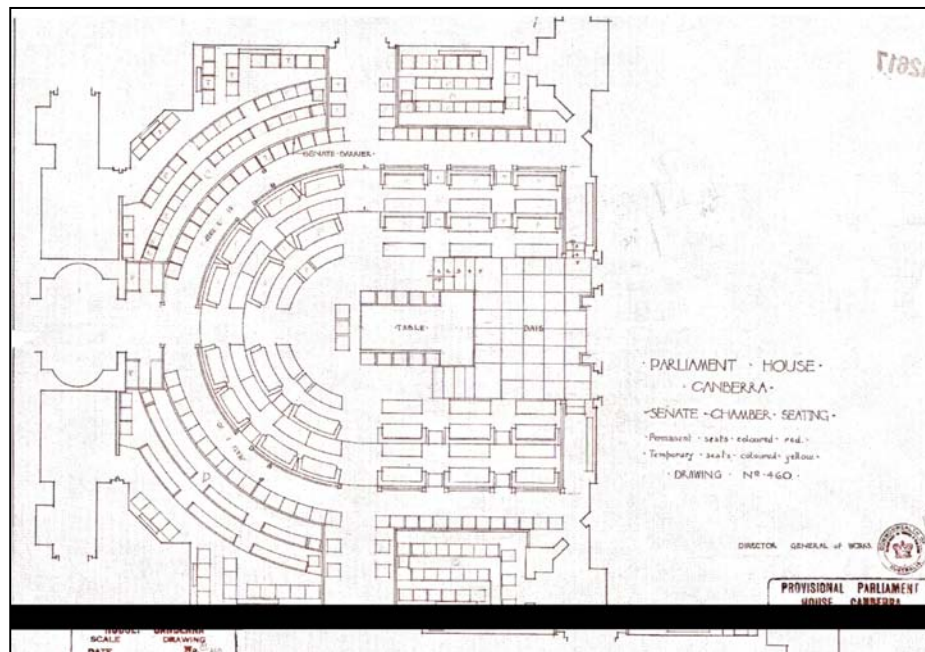
Architectural Plans of Australia's Provisional Parliament House showing proposed seating layouts

Plan of Senate layout 1925 showing the horse-shoe shape



From: NAA 76/1266 1925

Plan of Senate layout 1926 showing the U-shaped layout which was adopted



From: NAA A2617/1 SECTION 76/1672.

The Chambers of Upper Houses

The House of Lords



From: House of Lords website
http://www.explore.parliament.uk/cms/ResourceImages/Lords_Chamber.jpg. Accessed 17 October 2008.

The Chambers of Upper Houses

New South Wales Legislative Council Chamber



From: Courtesy of New South Wales Parliament.

Tasmanian Legislative Council Chamber



From: Tasmanian Parliamentary Library
<http://www.parliament.tas.gov.au/tpl/Backg/LCCHamber.htm>. Accessed 17 October 2008.

The Chambers of Upper Houses

Victorian Legislative Council Chamber



From: Michael Cheshire, *Parliament House, Victoria*. Pamphlet.

South Australian Legislative Council Chamber



From: G.D.Combe, *The Parliament of South Australia*, 1982.

The Chambers of Upper Houses

Queensland Legislative Council Chamber



From: Parliament House Queensland pamphlet.

The Legislative Council Chamber of Western Australia



From: Courtesy of the Western Australian Parliament.

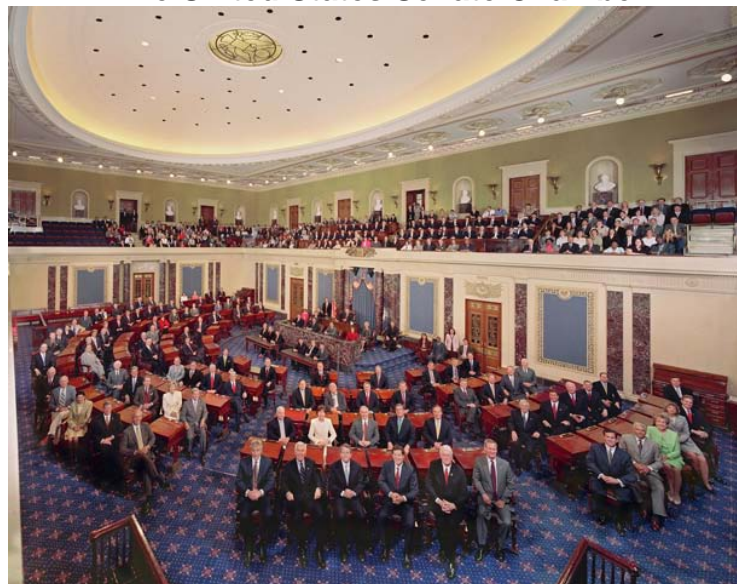
The Chambers of Upper Houses

The Canadian Senate Chamber



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From the Library of the Parliament of Canada.

The United States Senate Chamber



From: United States Website
senate.gov/artandhistory/history/common/image/108th_Congress.htm
Accessed 27 July 2008

The Chambers of Upper Houses

**The Senate Chamber of Australia's
Provisional Parliament House**



From: Picasaweb.google.com. Accessed 11 August 2008.

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