



BOOK REVIEW

**Nicholas Aroney, Scott Prasser and John Nethercote (eds),
Restraining Elective Dictatorship: The Upper House Solution?
(University of Western Australia Press, 2008)**

It is a pleasure to review this most useful and interesting book, which makes a substantial contribution to the debate about whether an Upper House of Parliament should be restored in Queensland.

Self-critical awareness is all very well, but it is probably too much to claim, as the editors do in their introductory essay, that '[a]ll too often Queensland seems to be an embodiment of world's worst practice'¹ in government. Zimbabwe might be a better candidate. Nevertheless, there is always room for improvement, and the editors at least clearly belong to the school of thought which holds that Queensland would have been better served had its nominee Upper House been democratised, as that of New South Wales was, rather than abolished outright. So does the present reviewer.

Nevertheless, the book is far from uncritical about the concept of bicameralism itself. We are informed, for example, that bicameralism 'has rightly been called "a concept in search of a theory"'² This quotation is, however, taken from a writer on the wholly nominated Canadian Senate, the existence of which is much harder to justify nowadays than that of elected Upper Houses. Whether bicameralism is a good thing or needs a theoretical justification depends to a large extent on what sort of Upper House one has. Perhaps, there is no such thing as 'bicameralism', but rather a set of related but different bicameralisms.

Another critical reflection on bicameralism to be found in this book is of some interest in Victoria: Brian Costar's review of the working of the reformed Legislative Council of Victoria, which has existed since 2006. Professor Costar states that 'early evidence is not encouraging'³ on the development of a culture of review in the Upper House. Perhaps the present moment is not the ideal time for such a thing to develop given that two parties of the left (the Australian Labor Party and the Greens) hold a majority in the Victorian Upper House, and the real test will come only when a conservative government faces a left majority upstairs (or vice versa). Nevertheless, it is too early to make any definitive pronouncements on the topic, and I am not sure I would be quite as pessimistic as Professor Costar if required, as he was by a publication deadline, to express a view now. But it must be said that in one recent case⁴ the Legislative Council has unfortunately shrunk

1 Nicholas Aroney, Scott Prasser and John Nethercote (eds), *Restraining Elective Dictatorship: The Upper House Solution?* (2008) 5.

2 Ibid 25.

3 Ibid 209.

4 See Greg Taylor, 'Parliament's Power to Require the Production of Documents – A Recent Victorian Case' (2008) 13 *Deakin Law Review* 17.



back from a necessary confrontation with the government over the extent of its powers which must one day come if it is to realise its full potential.

The book under review is divided into five parts, to which are prefaced two chapters containing the editors' introductory reflections (reference to which has already been made) and a somewhat uneven foreword written by Bill Hayden which does not do full justice to this book.

Part 1 contains three glorious essays by John Uhr, Nicholas Aroney and Geoffrey Brennan – respectively a political scientist, an academic lawyer and a philosopher of political economy – which alone make the book worthwhile. It is a great pleasure to see Geoffrey Brennan applying philosophical techniques so expertly to a practical problem; of all the essays in the book, this was my personal favourite. Nicholas Aroney also expertly demolishes the most popular arguments against bicameralism in his essay and leaves no doubt in my mind that Australian bicameralism is not a concept in search of a theory. I wanted only a political scientist to tell me something about the change – if there has been any – in Australian Upper Houses caused by the eclipse of the Australian Democrats and the rise of the Greens. Perhaps a few years have still to pass before anything sensible can be said on this topic.

Part 2 is something of a disappointment after the glories of Part 1 – the essays of the two politicians (Senator George Brandis and Senator John Hogg) do not rise to the same standard as that of the academics in Part 1, while John Nethercote's contribution is written in a vaguely patrician style which is unfortunately not always matched by the level of insight of his essay. He allows himself to say, for example, that the new s 15 (written now over 30 years ago!) illustrates '[t]he incapacity of modern constitutionalists to draft new provisions for the Constitution with the wisdom and incisiveness of the founders'.⁵ It does no such thing, not least because its drafters are now almost certainly retired or dead but also because a more complex rule obviously requires more space than a less complicated one.

Part 3 returns to the standard of Part 1 with a series of comparative essays on Upper Houses in the United Kingdom, Canada and the United States and an interesting excursus on the Upper Houses of the Canadian provinces, now all abolished. Each of these essays is interesting, well-written and informative. It is a shame that no-one could be found to write about our near neighbour New Zealand, but there is an interesting work on the former Legislative Council of New Zealand already⁶ making this omission easy to forgive. In Part 4, a useful series of essays provides comparisons with existing Upper Houses in the Australian States.

Part 5 deals with present day Queensland. There are a number of useful and interesting contributions in this part of the book also. Janet Ransley demonstrates using statistics and arguments, for example, that attempts to turn the sole House of the Queensland Parliament into a house of review have comprehensively failed.⁷

5 Aroney, Prasser and Nethercote (eds), above n 1, 110.

6 William Jackson, *The New Zealand Legislative Council: A Study of the Establishment, Failure and Abolition of an Upper House* (1972).

7 Aroney, Prasser and Nethercote (eds), above n 1, 255–8.

It is unsurprising, in our present-day world of hard politics, that this should be so, but it is useful to have more than anecdotal or intuitive evidence that this is so – Dr Ransley fills this gap.

In summary, and leaving aside all critical quibbles which in the view of the present writer are part of producing an honest assessment of any book, it is pleasing almost beyond words to see that – at a time when Australia is not undersupplied with new books, partly no doubt owing to the ‘publish or perish’ mantra – academics have been able to come up with a book of such a high standard. On the whole, it is of first-rate intellectual quality, useful and even, in many places, most interesting to read. The editors deserve praise and thanks indeed for this excellent contribution both to academic literature and to public debate on a most important topic.

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