REFORMING THE HOUSE OF LORDS: Lessons from Overseas

by Meg Russell, Oxford University Press, 2000, ix + 341 (incl. index),
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That the academic world is as prone to its own fads and fancies as any other profession is obvious enough. That this 'fashion conscious' approach to research and publication results in curious blind spots which can sometimes render polities, processes and institutions almost invisible to the inquiring eye is also apparent. In Australia, how many political and legal textbooks even touch on the politics and constitutions of the states? And upper houses, in Australia and elsewhere? The Australian Senate, interesting of late because it is powerful and destined seemingly to remain under minor party control, is an exception to the rule of relative academic neglect. To call upper houses invisible political institutions would be an overstatement; better to say that until recently many of them have been observed only rarely, or from a particular perspective. According to Samuel Patterson and Anthony Mughan, 'Scholarly inquiry, such as it is, has leaned more in the direction of investigating abolished upper chambers, or relations between bicameral chambers, than dissecting the upper body as an institution in its own right'.[1] The reasons vary. Not so long ago there was a prevailing view that parliament itself was a mere plaything of the executive, and in this scheme of things second chambers were consigned to the shadows. But change is the one constancy of politics and, as political agendas shift, so too do research imperatives. In 1960 the Australian Senate was a dustbin case.

Of late, the Blair Government's decision to place reform of the House of Lords on its political agenda has contributed to a modest renaissance of academic interest in upper houses. Most notable is Meg Russell's work of comparative analysis, published under the auspices of the London-based Constitution Unit. In fact, its publication almost coincided with the release in January 2000 of the Wakeham Royal Commission report on the Reform of the House of Lords.

Russell's book is intended to inform that debate. Its focus, she says, 'is the work of second chambers overseas, and what we can learn from this for the reform of the UK upper house' (p. 9). Part One places the House of Lords in an international context by presenting an overview of the theory and practice of bicameralism. Part Three, headed 'Lessons for the UK', is a practical-minded discussion of reform options. The book's core, however, is Part Two where Russell presents an analysis of upper houses in seven countries — Australia, Canada, France, Germany, Ireland, Italy and Spain. This is not a country-by-country approach but a thematic study of their composition, powers, functions and performance. Included is a detailed

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1 S.C. Patterson & A. Mughan (eds), *Senates: Bicameralism in the Contemporary World*, Ohio State University Press 1999, 21.

comparative discussion of the varying legislative roles of the selected upper houses, notably their functioning as houses of review in the amending of proposed legislation. As well, the nature and effectiveness of the committee systems in each of the seven upper houses under review is considered, a subject of key significance in the debate about the role second chambers can play in re-invigorating parliament as an effective institution of representative democracy. The Australian Senate looms large here as an instance of 'strong bicameralism' at work. So, too, does the differently constituted German Bundesrat which, as Russell shows, operates as a powerful voice of competing territorial interests under a federal system of government.

Russell's argument is that a 'strong' form of bicameralism is dependent on three overriding factors: the democratic legitimacy of the upper house, an issue which is seemingly a constantly contested matter; its constitutional powers; and its composition which, ideally, should not replicate that of the lower house. In Australia, this last requirement is largely the product of proportional representation, first introduced for Senate elections in 1949 and used now for Legislative Council elections in New South Wales, South Australia and Western Australia. Significantly, none of these upper houses are presently controlled by their respective governments.

This observation in turn points to a perennial dilemma where the reform of upper houses is concerned. As Russell explains, many governments espouse the cause of making parliament more effective, but this is 'clearly against their own interests' where reform results in powerful second chambers controlled by minor parties and independents (p. 340). Wisely, her speculations on UK reform in Part Three are informed by pragmatic considerations in which the exigencies of power are likely to prevail over principle. Still, having done the hard comparative work Russell is eager to suggest a few reform directions of her own. In particular, she is drawn to the idea of a territorial second chamber in which a future UK upper house 'might help to bind the nations and regions together under the devolution settlement' (p. 293). Russell sees the problems involved, stating that 'Many supposedly territorial upper houses act as just another collection of national politicians, insufficiently connected to devolved institutions to fulfill their intended role' (p. 284). Again, the example of the Australian Senate looms large. The evidence from overseas, she says, suggests that the key issue in creating a genuinely territorial chamber is not how members are selected, but whether mechanisms exist which 'effectively tie members of the chamber into the politics of their nation or region' (p. 309). Politically, however, the question is whether any government would risk establishing such mechanisms which, instead of acting as agents of unity, might contribute to the break-up of Britain? For its part, the Wakeham Royal Commission proposed that a minority of the members of a reformed upper house should be elected on a regional basis,[2] but no mechanism was proposed by which these members could fulfill their role of

[2] Three alternative models were suggested, under which elected members would comprise 65, 86 or 195 members in a house of around 550.

providing a link to their territorial units. Whatever the fate of the speculative part of Russell's work, the fact remains that the earlier chapters of her book have set a new standard of scholarship in this neglected area of study. A quibble is that the most powerful upper house of all — the US Senate — is not included. Perhaps it could be incorporated in the second edition, for, now that upper houses are fully visible again, the analysis presented here cries out to be revisited and updated in the not-too-distant future. ▲