

Ch 1

Limiting Power in a Democracy

What is the SoP?

Separation of Powers: a principle by which govt powers are divided into separate + independent arms (executive, legislature, judiciary) to limit, divide + check the powers of government and prevent arbitrary oppressive govt by providing a system of checks + balances for each arm

- ↳ created by 18th C French philosopher, **Montesquieu**
- ↳ in theory, each arm should be **independent and unable to direct another**
- ↳ in reality, **no absolute separation of Powers exists** eg. in Australia dominant executives decide the legislative agenda - but judiciary **MUST** be independent

Describe the roles + function of the 3 arms of govt.

① Legislature

- Have power to **make/amend/repeal/debate statute law**
- **Elected by and represents the people**
- Exercises **parliamentary sovereignty**: principle that parliament is the ultimate power, is subject to no authority other than the people
 - ↳ statutes override delegated + common law
 - ↳ parliament only subject to **constitution and to judiciary** if declares statutes to be ultra vires.

② Executive

- Have power to **administer/carry out law**
- **Elected by the people**
- Exercises **coercive powers of state granted + limited by law**

③ Judiciary

- Have power to **interpret constitutional/statute/common law**
- Role to **resolve legal disputes, apply + interpret laws, and create civil remedies/criminal sanctions**

What is constitutionalism?

Constitutionalism: the belief that govt powers should be limited + subject to the RoL, and powers must be set out in a constitution to prevent a body holding absolute power

- ↳ **constitution:** set of fundamental laws outlining how a nation is to be governed and how power is to be exercised
- ↳ **limits govt powers to those in the constitution, provides a basis to challenge govt actions in court** → protection.

What is a constitution?

What are the roles of a constitution?

Roles of constitutions:

- **Geographically distribute power:** unitary system/federalism
- **Create institutions of govt and define powers:** parliament, exec
- **Specify processes + procedures** eg. relationships btw arms
- **State relationship btw govt and citizens** ie. citizen rights
- **Contain a mechanism for their own alteration.**

SOP

- **Legislature:** debate, amend, repeal, make statute laws. **Elected by the people to represent them. Parliamentary sovereignty: ultimate authority.**
- **Executive:** administer/carry out law, elected by the people, exercises coercive powers of the state. **granted + limited by law.**
- **Judiciary:** interpret law, resolve legal disputes, apply/interpret law, create remedies/sanctions

Constitutionalism: powers subject to RoL and set out in constitution (written or unwritten) to prevent a body holding absolute power

Roles of constitutions:

- **Geographically distribute**
- **Create/define institutions of power**
- **Define functions of arms/interaction**
- **State relationship btw state + ppl**
- **Mechanism of alteration**

Separation of Powers in Australia

Australia

- Representative democracy
- Constitutional monarchy (monarch acts on advice of an elected parliament)
- Federation
- Westminster System of Responsible Parliamentary Govt.

Constitution Chapters:

- ① Legislative Power → proportional, preferential
- Bicameral: HoR, Senate + Queen (no active role) s1
 - ↳ Queen + Governor General = Head of State
 - ↳ houses have identical powers, except Senate cannot initiate or amend money bills (s53)
 - Federal nation: powers of govt divided between a central govt and six state govts
 - ↳ limits federal sovereignty by specifying areas where federal govt can make law i.e. specific powers are enumerated → called heads of power
 - ↳ if govt makes law outside heads of power, may be challenged in High Court - contrasts British system where almost no restrictions on sovereignty and law-making power
 - Allows parliament power to create own rules regarding procedure → called Standing Orders.

Discuss the checks + balances on the legislative arm of govt in Australia

Discuss the constitutional and conventional role of the formal, political and administrative executive.

Describe judicial power, its components and limits.

- ② Executive Power
- Includes Queen, GG, PM, Cabinet, outer ministry
 - ↳ formal/constitutional executive: Queen and GG, executes passage of law - s61
 - ↳ little mention of political executive (government)
 - Cabinet: PM and senior ministers.
 - Outer ministry: junior + assistant ministers.
 - ↳ political exec must be elected MPs and must hold the confidence of the parliament → Westminster System
 - ↳ administrative executive: public service, depts, agencies etc appointed by Public Service Act 1999

- ③ Judicial Power
- Judicial power: power to adjudicate + make binding decisions apply + interpret laws in cases
 - Court hierarchy determines jurisdiction where the law speaks
 - ↳ High Court: Federal jurisdiction. Similar to US → final court of appeal, constitutional court, strictly independent
 - Power limited → constitution defines original + appellate jurisdiction

① Legislative Ch 1

- Bicameral: HoR Sen Queen, Head of State vs Head of Govt. Identical power ex. s53: Senate no \$ Bills.
- Federal: exclusive (s52) concurrent (s51) + residual sovereignty divided: heads of power, can challenge in HC
- Standing Orders
- Executive dominance

② Executive Ch 2

- Formal executive: Queen / GG, pass law s61
- Political exec little mention: must be elected, hold confidence of parliament
- Administrative: public service + depts created by Public Service Act 1999.
- Executive dom (Res govt)

③ Judicial Ch 3

- Power to adjudicate + make binding decisions, apply + interpret laws
- Court hierarchy
 - ↳ appeals
 - ↳ precedents
 - ↳ delegation of caseload
- HC: s71 = highest constitutional court, independent
- Defines original + appellate jurisdiction
- Appointed by GG in council

Separation of Powers in the USA

United States

- Representative democracy
- Republic
- Federation - strongest federation in the world.
- Executive presidential system.

Constitution Articles

① Legislative Power

- vested in Congress: bicameral elected parliament
 - ↳ equal power but Senate no money bills
- federal system: federal govt and 50 state govts.
- lawmaking powers specified + enumerated
- Bicameralism - used as model for Australia
 - ↳ HOR peoples' house - electorates
 - ↳ Senate states' house - 2 per state

② Executive Power

- President is Head of state: directly elected by people
- Executive presidency separate from legislature
 - ↳ separate presidential elections every 4 years
- President and vice president elected, appoint a Cabinet of Secretaries who head depts and agencies, appointed by + accountable to the president - not MPs

③ Judicial Power

- Supreme Court + other inferior courts Created by Congress
- Separate + independent of other 2 arms of govt.
- Supreme Court can interpret Constitution and veto laws that it deems unconstitutional
 - ↳ adjudicates matters regarding presidential power
 - ↳ final court of appeal

Describe the limits on legislative power in the US.

Discuss the formation and checks/balances on the executive.

Describe the system of judicial power in the US

US Separation of Powers

- US Congress made Bill authorising families of 9/11 victims to sue Saudi Arabian Government (2016)
- President vetoed
- Congress overrode presidential veto with 2/3 of houses.
- Became law

- ### ① Legislative Ch 1
- Bicameral Congress, Senate no \$ Bills
 - Federal System: federal and 50 state govts.
 - Powers enumerated, specified + divided.
 - Independent of exec, may form different partisan majority - potential to impeach

- ### ② Executive Ch 2
- Executive Presidential System: elected pres separate from congress elections every 4yrs.
 - Pres Head of state directly elected
 - Pres/VP choose + appoint an unelected Cabinet of Secretaries

- ### ③ Judiciary Ch 3
- Supreme Court + other courts created by Congress
 - Separate/Independent
 - Supreme Court hears/interprets Constitution. Can veto unconstitutional laws. Final court of appeal.
 - Appointed by exec, confirmed by legislature

Checks + Balances in Australia + USA

Describe what is meant by accountability.

Accountability: being responsible for one's conduct, decisions or actions. An essential feature of responsible parliamentary government.
 ↳ requires powers to be distributed somewhat evenly between three arms of government
 ↳ more prominent in the US than Australia

Evaluate the extent to which Australian + US system of govt provides adequate checks on power regarding the appointment of judges.

CASE STUDY: appointment of judges to High/Supreme Court

- USA:
 ↳ judges nominated by president (executive)
 ↳ must be confirmed by Senate (legislature)
 ↳ involves both other arms of govt, prevents exec from holding too much power in judiciary

- Australia:
 ↳ appointment based on British model
 ↳ Attorney General (chief law officer, executive) appoints judges without requiring parliamentary approval → advises the AG
 ↳ large amount of executive power over judiciary
 ↳ only parliament can remove a judge

Evaluate the extent to which Australian + US system provide adequate checks on power of exec + legislature.

CASE STUDY: relationship between legislature/executive

- USA:
 ↳ completely separate + independent
 ↳ separate elections for President and congress

- Australia:
 ↳ executive + legislature fused together
 ↳ chosen at same election
 ↳ ministers appointed from elected legislature
 ↳ fewer checks on executive power - will always carry confidence of lower house because forms a majority there

Appointing judges

- | | |
|---|---|
| <p>USA:
 - Appt by exec confirmed by legis.
 - Both arms of govt = prevent excessive power in 1 arm</p> | <p>AUS:
 - Appt by exec only: AG in control
 - Removed by parliament for proven misconduct
 - Exec influence over judiciary</p> |
|---|---|

GOVT ARMS

- | | |
|--|---|
| <p>USA:
 - Completely independent
 - Separate elections
 - Exec can't be part of legis</p> | <p>AUS:
 - Fused
 - Exec drawn from legis.
 - Same election
 - Exec dominance</p> |
|--|---|

Ch 2

Power in the Parliament

Describe the four functions of parliament.

- Functions of the Commonwealth Parliament:
- ① **Representative**: represents people of the nation
 - ② **Legislative**: makes statute law, financial and non-financial
 - ③ **Responsibility**: holds govt executive to account
 - ④ **Debate**: provides main forum for discussion of issues
- Power flows between functions, functions overlap in everyday parliamentary operation.
 - Powers either enumerated in Constitution or governed by constitutional convention.

Washminster Hybrid → Britain + America.

Describe the American features in Australia

- American features
- **Vertical division of powers** - federalism
 - ↳ **exclusive**: Commonwealth only
 - s52 of the Constitution - says any other sections which detail exclusive powers, are exclusive.
 - eg. s90 exclusive power over customs + excises.
 - some **concurrent powers made exclusive**
 - eg. s51(vi) defence power is concurrent, but s114 prevents states from having armies and s119 requires Commonwealth to protect states.
 - ↳ **concurrent**: Commonwealth and state.
 - s51 of the Constitution
 - s109: if a Commonwealth and State law conflict, the Cwth law will prevail to extent of inconsistency
 - ↳ **residual**: states only
 - Chapter 5
 - s106 preserves state constitutions
 - s107 preserves state powers that aren't exclusive now
 - s108 preserves state laws.

Outline:

- s52
- s90
- s51(vi), 114, 119
- s51
- s109
- s106
- s107
- s108
- s7
- s53

How was the Senate affected by the 1975 crisis?

- Senate 'states house'
 - ↳ created by section 7 of the Constitution
 - ↳ equal representation for each original state
 - ↳ democratically elected, unlike aristocratic hereditary House of Lords
 - ↳ malapportionment - violates 'one vote one value'
 - ↳ s53 prohibits from making/amending money Bills, so no 'river govt' can form in Senate
 - controversial: houses should have **coequal power**
 - affected by **Whitlam dismissal (1975)** when Senate wouldn't pass govt's money bills - now Senate can **'negotiate' money bills** with HoR prior to their introduction to the Senate

- Functions
- Representation
 - Legislation
 - Debate
 - Responsibility

- American Features
- **Federal division of powers**
 - Exclusive s52 eg. Communication, s90 customs/excises
 - Concurrent s51 eg. education, marriage, s109 conflict
 - Residual - rest to states only
 - 107 preserve state powers that aren't exclusive
 - 108 preserve state laws
 - 106 preserve state constitution
 - **Senate states house**
 - s7 creates s53 can't initiate (but can amend) money Bills. Elected, unlike hereditary House of Lords. Malapportionment

Describe the British features in Australia.

British features.

- Responsible parliamentary government: by convention
 - ↳ party with majority in lower house forms govt, must resign if don't hold a majority.
 - ↳ PM is leader of majority party and member of lower house
 - ↳ PM selects ministers from either house to carry out executive function (cabinet)
 - ↳ individual ministers accountable to parliament for own actions and actions of their public servants
 - ↳ if ministers have a successful censure motion passed against them, they must resign.
- Constitutional monarchy: form of govt in which a monarch can only act on advice of an elected parliament.
 - ↳ s1 of Constitution establishes parliament made up of Queen, House of Reps, and Senate
- Lower house - House of Representatives
 - ↳ modelled on British House of Commons: based on responsible govt, thus HoR has responsibility function that US doesn't have (as exec/president is separate to Congress/legislature)
 - ↳ s24 of Constitution creates HoR
 - peoples' house, with representation proportional to number of people in each state
 - democratically elected by the people
 - nexus clause: HoR twice size of senate (nexus = knot in Latin → ties size of houses together)
 - no original state can have less than 5 members. eg. Tasmania, with population of 515,000, should have 3 members but has 5

Explain the 4 features of s24.

Distinguish btw constitutional and conventional features of the British/US system in Australia.

Responsible govt

- PM member lower house
- Govt is maj. party in HoR, resign if no maj
- PM selects cabinet ministers, resign if censured

Const. Monarchy

- s1 Queen + part.
- Head of state (monarch) acts on advice of elected parliament.

Lower House: HoR

- Responsible govt → responsibility function
- s24 created HoR proportional to size of state elected by the people
- nexus clause: senate 1/2 size
- no original state < 5 members
- eg. Tas should have 3.

Representation

Representation in Theory

- Lower house

- ↳ delegate representation: MPs are the voice of their constituents and represent their views with little concern for their own views/values/conscience.
- ↳ trustee representation: MPs make judgements about their constituents' best interests, as their constituents trust them to represent their views without continuous engagement in the community's opinions.

- Upper house

- ↳ sovereign state interest: senate created as a federal chamber to represent interests of six sovereign states within Commonwealth.

Representation in Practice:

- Models of representation:

- ↳ Partisan representation: MPs represent party's policy positions rather than their constituents'. Strong party discipline in parliament.
- ↳ Mirror representation: parliament mirrors the gender, ethnic and other socio-economic patterns of the population

- Lower house:

- ↳ voters identify + vote more for a party than an individual candidate, so align with parties which represent their values rather than a delegate/trustee
- ↳ vote by leader of a party - PM dominant political figure eg. 2007: Kevin Rudd very popular, despite many voters realising they would have to vote for their local ALP member

- Upper house:

- ↳ partisan - 1901-49, used majoritarian system - similar composition to HoR created friendly 'rubber stamp' Senate or, if opposition dominated, a hostile or obstructionist Senate
- ↳ 1949, Single Transferrable Vote system: converts % of votes received by party to proportion of Senate seats, 90% vote above the line - parties select more diverse candidates.
- ↳ Six year terms = less party discipline, eg. 2018, Tas made gender optional on birth certificates after Liberal member crossed floor
 - results in more diverse candidates - women, different races as is easier to obtain a quota eg. 7.3% MPs, 17.1% Senators are foreign-born (as opposed to 28% of Australians)
 - results in more minor/micro parties + independents eg. Greens 1 seat in HoR, but 9/76 seats in Senate.

Delegate

Trustee

Sovereign State Interest

Partisan

Mirror

Vote by:

- party
- leader

Explain difference between voting patterns in upper and lower house.

Theory

Delegate: voice of their constituents
Trustee: MPs make judgements

Sovereign State interest: federal senate to rep 6 sovereign states

Reality

- Lower House
 - Partisan Representation
 - Vote by party not by candidate/ delegate/trustee
 - Vote by leader eg. Kevin 07

Senate

- Mirror representation
- 1901-49 majoritarian: produced friendly/obstructionist Senate
- 1949 → STV: proportional representation, parties select more diverse candidates
- 6 year terms = less discipline
- More diverse parties/backgrounds

Legislating

Legislating in Theory

- Laws, in theory:

- ↳ are scrutinised by statutory process - debate, committee analysis
 - ↳ diverse input to represent diversity of Australian electorate
 - ↳ can be initiated by any MP, inc. Private Members
 - ↳ follow the statutory process, which provides scrutiny
- ### - Key stages of the statutory process

↳ 2nd Reading

- speech: informs parliament of purpose of bill
- debate: all members can speak for/against the Bill

↳ Committee Stage

- detailed non-partisan work
- HoR: Consideration in Detail
- Senate: Committee of the Whole
- Call for professional advice, community consultation
- ↳ Revision of process in the Senate for scrutiny, focus on impact of Bill on rights etc.

Legislating in Practice

- Parliament highly effective at legislating

- ↳ sits approx 160 days - 2013, passed 149 Bills.
 - ↳ fast: 2015, emergency amendments to asylum seeker policy to close loopholes in Migration Act that would prohibit offshore detention - passed in 2 days
- ### - Executive dominance over legislature compromises scrutiny of Bills and diversity of input. Exec may use tactics to force through legislation

- ↳ Gag: govt puts forward and passes motion to vote on Bill to prevent further debate eg. Building + Construction Industry Bill 2013 - Abbott + Turnbull govts passed quickly.

- ↳ Guillotine: restricts time of debate to a certain limit
- ↳ Floodgating Bills: govt introduces alot of Bills at once to overwhelm and rush deliberation

- ↳ govt often shuts down PMBs: 2015 Labor Marriage Equality Bill

- House of Reps - 2 pathways for Bills to increase efficiency

- ↳ Normal House procedure: complex/controversial Bills, usually govt policy - subject to gags/quillotines → less scrutiny + input
- ↳ Federation Chamber - all MPs, for uncontested Bills. less debate + scrutiny - no divisions (moving to L or R of speaker)

- Senate:

- ↳ Bills pass through Standing Committee for selection of Bills: committees refers Bills to
- ↳ less exec dominance: more long debate + scrutiny, diverse input.

- Parliament effective at legislating eg. 2013 149 Bills, 2015 emergency Migration Act amendments

- Exec dominance

- Shut down PMBs: eg. 2015 Labor Marriage Equality Bill
- Gag: vote to vote + end debate eg. BCI Bill 2013
- Guillotine: limit on debate time
- Floodgating: introduces alot of Bills - rush deliberation

- Normal HoR: govt policy, contested Bills, more thorough Federation chamber: uncontested, no divisions

- Senate: less exec dom ∴ diverse input + scrutiny

Gagging 2nd Reading Debate.

* immediate
* guillotine = time limit.

eg. Govt filibuster QT to avoid debate on Disability Commission

* Exec doesn't dominate
Senate committees - diverse input + scrutiny

HoR: Consideration in Detail
Senate: Committee of the Whole

Responsibility

Responsibility in Theory

- Westminster Conventions of Responsible Government

- ↳ Govt exists only with support of lower house - if loses a vote of no confidence, will be dismissed - collective ministerial responsibility
- ↳ individual ministerial responsibility - individual ministers may be dismissed by censure motions
- ↳ ministers answer questions during Question Time, must not mislead in response. Questions may be with or without notice. Misleading = censure
- ↳ Exec can only spend money in accordance with the law i.e. passage of the annual budget + money bills so parliament can approve govt spending
- ↳ standing + select committees have great investigative powers. made up of MHRs who investigate exec power.

Responsibility in Reality:

- Govt party holds majority in lower house. Means collective and individual ministerial responsibility is ineffective
 - ↳ majority party will never lose confidence of lower house, will retain support of the majority. i.e. executive dominance - makes responsibility function ineffective
 - ↳ no-confidence and censure motions against govt will be defeated by majority party in HoR
 - Some will pass in the Senate eg. 2015 Penny Wong passed censure motion against George Brandis in Senate, however had no conventional or legal effect in senate
- Some occasions, no party will win a majority: - rare
 - ↳ voting for small parties increased over recent decades
 - ↳ majority govt: single party or strong coalition with a clear majority, can govern by themselves
 - ↳ minority govt: no party wins a clear majority, so major parties will negotiate with smaller parties and independents to gain support needed for a majority
 - ↳ small parties + independents will promise confidence and supply: always vote with govt on money bills and no-confidence motions
 - ↳ less stable - relies on support of small parties/independents eg. 2010 Julia Gillard minority govt:
 - ↳ may be due to reduced voter confidence in major parties.
 - ↳ heightens responsibility function. eg. Kerryn Phelps crossed floor against govt in 2019. ↳ Medevac

Conventions

- Govt requires LH support (CMR)
- Ministers dismissed by censure (IMR)
- Question time: must not mislead
- Govt spends in accordance with law i.e. budget passed by parliam.
- Powerful committees.

- Exec dominance impedes responsibility. Censure/no confidence never pass HoR
- Censure in Senate eg. 2015 Penny Wong + George Brandis but no conventional/legal effect.
- Minority govt - rare due to more small parties - distrust major parties
- small parties promise supply + confidence to major party to form govt
- less stable eg. 2019 Liberal/Kerryn Phelps Medevac Bills - heightens responsibility.

Debate.

Debate in Theory

- Debate helps perform other functions of parliament eg keeps members accountable, creates more effective legislation reflecting a wide range of views
- Many opportunities to debate, linked to functions:
 - ↳ representative: **Crevances, Urgency Motions, Private Members' Business, Matters of Public Importance**
 - ↳ legislative: **Second Reading Debates**
 - ↳ responsibility: **Ministerial statements, question time**
- **Parliamentary Privilege: protection from normal restrictions on speech eg. defamation**
 - ↳ creates **ultimate freedom of speech**, allows members to discuss any issue without fear.
 - ↳ regulated by **Privileges Committees (both houses)** which may **sanction an MP for abuse of privilege** eg. sanctioned senator **Bill Heffernan** after he **accused Justice Michael Kirby of using Commonwealth cars to transport male prostitutes in March 2002** Heffernan **forced to apologise, removed from position as Parliamentary Secretary to Cabinet**

Debate in Practice:

- **Restricted by executive dominance**
 - ↳ **govt can restrict debate opportunities - more Govt Business** which is allocated by a vote of the House (always wins)
 - Other opportunities eg. **Urgency Motions, Private Members' Business, are restricted**
 - ↳ **Gags and guillotines restrict debate**
 - ↳ **debate, esp. question time, taken up by adversarial contest b/w major parties to score political points**
- **House Committee debate: more cooperation, less adversarial contest because is away from media/public eye**
- **Senate debate more effective: less executive dominance more private members speak. → also in senate committees.**
- **Debate in parties: most debate occurs within parties**
 - ↳ **Labor → ALP Caucus** ↳ **Liberal → Liberal Party Room**
 - ↳ **Nationals → National Party Room** ↳ **Coalition → Joint Party Room**
 - ↳ **party meetings private, no media → more effective** **be no need for political point scoring**
 - ↳ **backbenchers may hold govt to account - responsibility** eg. **Abbott, Rudd, Gillard all removed by own party rooms**
 - ↳ **essential in deciding party policy.**

Opportunities for Debate:

- **PMBs, Crevances, 2nd reading, Question Time**

Exec dominance: gag, guillotine; standing orders to ↑ govt business and ↓ opportunities for debate eg PMBs
Debate becomes point-scoring contest

Parliamentary Privilege

- **Ultimate freedom of speech - discuss w/o fear**
- **Privileges Committee regulates eg. 2002 sanctioned senator Bill Heffernan re: comments on Justice Kirby.**

House Committee debate more cooperative - away from media eye
Senate debate more effective: less exec dom
Debate in parties
Secret Cabinet meetings: flesh out ideas
Party holds ministers accountable eg Gillard, Rudd, Abbott, Turnbull scalped by own party

Decline of Parliament Thesis

→ The failure of the Parliament to live up to its theoretically ideal functions means that it is in decline.

- Representative function declined due to:
 - ↳ political parties demands for loyalty meaning MPs act as partisans, rather than trustees or delegates
 - ↳ majoritarian electoral system produces a largely two party system that inhibits diversity
- Legislative function declined due to:
 - ↳ executive dominance in a disciplined party system, which restricts discussion and action on Private Members' Bills in parliament.
 - ↳ executive dominance that virtually guarantees the passage of Bills proposed by the govt in the HoR, and enables govt to floodgate Bills, gag or guillotine debate
- Responsibility function declined due to
 - ↳ executive dominance over the HoR which restricts accountability checks on the govt by the parliament (responsible govt)
 - ↳ ability of the executive to control parliamentary function (especially regarding the rules of Question Time) by passing Standing Orders
 - ↳ undermining of Westminster Conventions of Responsible Government (eg. IMR and CMR) by executive dominance in the lower house in regards to no-confidence and censure motions
- Debate function declined due to:
 - ↳ ability of exec to gag/guillotine debate through standing orders in the HoR.
 - ↳ majoritarian electoral system inhibits diversity of opinions present in the parliament

Australia's strong partisanship → short history, most of which was dominated by disciplined political parties
 Always used majoritarian system → executive dominance due to 'winners bonus' in the HoR.

Britain weaker partisanship → longer history, parties have only been present for a short time, weak upper house → members crossing the floor/voting by conscience is generally tolerated.

Representative
 - Partisans, not delegates or trustees
 - majoritarian, 2 party system = lack of diversity

Legislative
 - Exec dominance restricts discussion + diversity
 - Govt Bills guaranteed pass in HoR

Responsibility
 - Exec dominance restricts checks.
 - Controlling function eg. QT
 - no-confidence/censure motions

Debate
 - Gag/guillotine
 - majoritarian = less diversity

is the Decline of Parliament thesis applicable to Australia ie. does the federal parliament deliver good government?
↳ despite strong executive dominance.

- Good govt is accountable

- ↳ strong Senate (coequal power) to check power of executive - usually a hung house.
- ↳ HoR may still question Ministers - must answer truthfully
- ↳ committees less adversarial - cooperation
- ↳ HoR still capable of debate + highlighting issues.
- ↳ executive doesn't usually control Senate - must negotiate with other parties, more diverse so govt accountable to diverse viewpoints.
- ↳ Senate must approve of govt policy. eg. 2014 Senate refused to pass some parts of 2014 budget to hold Abbott govt accountable to election promises

- Good govt is transparent

- ↳ cabinet scrutinised by opposition committees etc
- ↳ Senate committees hold biannual Senate estimates hearings into political + public exec affairs.

- Good govt follows the Rule of Law.

- ↳ executive powers defined + restricted by Constitution (s81) and High Court cases eg. Williams v Commonwealth 2012
- ↳ executive subject to the law eg. Plaintiff v Minister for Immigration + Citizenship → Gillard govt's Malaysian solution for asylum seekers was deemed unlawful - Minister hadn't complied with restraints of Migration Act 1958

- Good govt is responsive

- ↳ short term (3yrs) → must be responsive to the people
- ↳ non-govt MPs can pass on questions from voters to Ministers/executive in debates/Question Time
- ↳ diverse Senate - exec accountable to hung senate and its diverse community views
- ↳ minority govt more responsive - must act on demands of small parties + independents eg. Gillard govt made deal to incorporate Carbon Tax with Greens in 2010, to gain support of only Greens MHR Adam Bandt. eg. Gillard govt receptive to Independent Andrew Wilton when he proposed gambling restrictions in Tasmania

Accountable

- Coequal power of hung senate
- Question Time
- Committees
- To pass Senate, must negotiate with other parties

Transparent

- Committees: Opposition, Senate estimates

Rule of Law

- Exec powers defined/limited by Constitution and HC
- Subject to law

Responsive

- Short terms 3yrs
- Non-govt MPs ask questions from voters
- diverse Senate reflects community views.
- Minority govt

- Good govt is equitable and inclusive
 - ↳ powerful diverse Senate - executive-sponsored Bills must pass diverse views to enter law
 - ↳ Parliamentary Joint Committee on Human Rights scrutinises Bills for human rights compliance. May call for expert/community input.
- Good govt is effective and efficient
 - ↳ majority govts more stable, less likely to fall due to no-confidence vote - no govt has fallen to a no confidence vote however 8 have retired bc couldn't pass significant legislation
 - ↳ majoritarian system produces strong mandate for govt to legislate through its agenda. Means more effective legislation, gives democratic weight to negotiations.
 - ↳ rarely to have the senate completely reject govt Bills, usually just amend them.

is the Decline of Parliament Thesis applicable?

ARGUMENTS IN FAVOUR

- Executive dominance is a defining and limiting feature of parliamentary government.
- None of the theoretical functions of parliament operate properly in reality
- Commonwealth parliament doesn't live up to its Westminster parliamentary ideals either historically or contemporarily, when compared to the British parliament

ARGUMENTS AGAINST

- Senate is a powerful, independent panel, diverse chamber to represent community views and hold the govt to account.
- The Commonwealth Parliament generally upholds principles of good government.
- Commonwealth Parliament is unique, combining elements of Westminster and other systems - thus, must be judged on its own terms, not against an 'ideal' parliament.

Equitable + Inclusive
 - Powerful diverse Senate must approve
 - Parliamentary Joint Committee on Human Rights.

Effective + efficient
 - Majority govts stable: no-conf has never passed
 - Majoritarian system
 - Rare for Senate to reject outright