



THE AUSTRALIAN SENATE AND
RESPONSIBLE GOVERNMENT

by

Senator George Brandis

BA(Hons.), LLB (Hons.)(*Qld.*), BCL (*Oxon.*)

The University of New South Wales Law School

Gilbert + Tobin Centre of Public Law

2005 Constitutional Law Conference

Sydney

Friday 18 February 2005

THE AUSTRALIAN SENATE AND RESPONSIBLE GOVERNMENT

by

Senator George Brandis¹

The year before last, a visiting American scholar, Stanley Bach, published a new study of the role and workings of the Australian Senate.² With a foreigner's eye for the peculiarities of his host country, Dr Bach likened our Senate to something else uniquely Australian: the platypus. He thought that, like the platypus, our Senate combined familiar characteristics and features in unusual and surprising configurations.

It is often said that the founding fathers created, in the Senate, the most powerful upper house in the Empire, although until the passage of the *Parliament Act* of 1911, that statement was not correct in relation to the House of Lords, where

¹ I acknowledge the assistance in the preparation of this paper of the Clerk of the Senate, Harry Evans, from whose long experience I have benefited but who does not necessarily share the views expressed herein. The principal sources of historical and electoral information are Sawyer, *Australian Federal Politics and Law 1901-1929* and *Australian Federal Politics and Law 1929-1949* (Melbourne University Press: 1956 & 1963); *Commonwealth Parliamentary Handbook* (29th ed.: 2002) and *Odgers' Australian Senate Practice* (11th ed. 2004).

² Stanley Bach, *Platypus and Parliament: The Australian Senate in Theory and Practice* (Canberra: Department of the Senate, 2003).

governments had been formed as late as 1900 (although they depended, of course, upon the support of a majority in the House of Commons), and where Lord Salisbury sat as Prime Minister until his retirement in 1902. Nevertheless, the Australian Senate was the most powerful of all of the colonial and dominion upper houses. Indeed, since roughly 1/3 of the executive government is drawn from its members, it is in that sense more influential than the American Senate, whose powers in relation to the executive government – notably over treaties and appointments – are of course unknown to our system, but whose members do not form an element of the executive government itself.

Yet notwithstanding its constitutional powers, for much of its now 104-year history, the Senate was not generally held to be a very important part of the parliamentary system. Or, to put the point differently, the constitutional settlement whereby the concerns of the smaller colonies were allayed by the creation of a "States' house" with near to co-equal powers with the House of Representatives, was more nominal than real. The Senate was not so much a platypus as a dead duck.

However it is sometimes forgotten that in the first few years after federation, the Senate enjoyed significant political authority and independence from the government of the day. That was due to several factors: the political instability in the House of Representatives (there were 5 changes of government in the 5 years between the fall of Deakin's first government in April 1904 and the formation of the Fusion Ministry in May 1909, none of which occurred at general elections); the relative lightness of party discipline in the early Parliaments; and the presence in the Senate of so many of the founders who had authored the compromise and well knew that they had intended to create in the Senate a powerful and independent chamber. No fewer than 10 of the participants in one or more of the 1891 and 1897-98 Constitutional Conventions were among the early Senators.³ In the words of Harry Evans, writing of "the importance in the early Senate of the founders":

They were aware of the debate at [the constitutional] conventions about the purpose of the Senate and the role which was selected for it by the decisions of the conventions, and they had a keen appreciation of the various intentions embodied in the details of the Constitution itself. ... All of the founder-Senators elected in 1901 were supporters of a strong Senate. To be more precise, they were supporters of the constitutional settlement whereby the Senate gave equal representation to the people of each State and possessed a virtual equality of powers with the House of Representatives ... In their work

³ Senators Richard Baker, John Downer, Thomas Playford, Richard O'Connor, James Walker, Josiah Symon, Simon Fraser, William Zeal, Henry Dobson and William Trenwith.

as senators they all, according to their own lights, attempted to follow this constitutional prescription.⁴

But the influence of the founding fathers waned quickly: by 1913 all of them were gone, and none of the most influential - Sir Richard Baker, Sir John Dower and Sir Richard O'Connor – served after 1906.

The consolidation of the non-Labor side of politics after the fusion in 1909, with the consequent regularization of voting patterns in the House of Representatives and comparative political stability; combined with the disappearance from the Senate of the founding fathers, the gradual rigidification of party discipline, and an electoral system which usually guaranteed the government of the day a large Senate majority, soon changed the Senate's character. Although its members did retain a somewhat more independent spirit than the members of the House of Representatives – in some cases bordering on a curmudgeonly eccentricity – for most of the half-century after fusion the Senate hardly represented a balancing force in the political system.

⁴ *Biographical Dictionary of the Australian Senate Vol. 1 1901-1929* (Melbourne University Press: 2000) pp. 1-2.

This was, in turn, reflected in the quality of the Senators. By the time he wrote his famous study of comparative government, *Modern Democracies*, in 1921, James Bryce's judgement on the quality of the Senate – and of the Senators – was an unflattering one. Far from the founding Senators whose strong sense of independence had characterised the first decade, Lord Bryce wrote, in a famous passage:

All the expectations and aims wherewith the Senate was created have been falsified by the event. It has not protected State interests ... Neither has it become the home of sages, for the best political talent of the nation flows to the House of Representatives ... Not having any special functions, such as that of control of appointments and of foreign policy which gives authority to the American Senate, its Australian copy has proved a mere replica, and an inferior replica, of the House.⁵

And so it remained, pretty much, for more than half a century.

Writing in 1961, the journalist Alan Reid expressed an even more disobliging view:

... into the red-hued, softly opulent comfort of the Senate chamber with its deep, cushioned desks, gently yielding carpet and soporific atmosphere have gone across the years an extraordinary mixture of human personality. Through the chamber have passed alcoholics, adventurers, seedy individuals whose early history disappears into a rather murky past, Labor men who drive in chauffeur-driven limousines and whose rise to wealth was bewilderingly sudden, non-Labor men with a much more attentive eye to the thickness of their wallets than to the national welfare, eccentrics, just plain "weirdies" and a much higher percentage of the superannuated party hacks and the "good time Charleys" than the House of Representatives can boast.⁶

⁵ James Bryce, *Modern Democracies* (London: Macmillan, 1921) Vol. II, p. 204.

⁶ Alan Reid, "How to be a Senator", *The Bulletin*, January 18 1961, p. 12.

But it was during those years that the seeds were planted which would, in more recent times, lead to a re-evaluation of the Senate's role, a reassertion of its constitutional powers, and a consequent rise in its public esteem. That increase in public esteem for the Senate in our day is reflected in the fact that, when the government published a discussion paper in 2003 which proposed options for diminishing the Senate's power,⁷ it received so little support that the proposal was dropped.⁸ A public opinion poll published as recently as this week revealed that only 39% of people were happy that the government had won a majority in the Senate, although 45.1% of electors had in fact cast a first preference vote for the coalition at the 2004 Senate election.⁹ 47% thought it would be better if the Senate were not controlled by the government of the day; almost a quarter of coalition voters shared that view.¹⁰

⁷ *Resolving Deadlocks: A Discussion Paper on Section 57 of the Australian Constitution* (Canberra: AGPS, 2003).

⁸ During questioning before a Senate Estimates Committee last year, it was revealed that an extensive (and expensive) program of community consultation to generate interest in Senate "reform" had attracted derisory interest: only 237 people attended 8 forums in each of the capital cities – and many of them were the officials responsible for organising the forums! See Senate Finance & Public Administration Estimates Committee *Hansard* 16 February 2004, pp. 45ff.

⁹ AEC figures: <http://vtr.aec.gov.au/SenateStateResultsByGroup-12246-NAT.htm>

¹⁰ "Poll backs abortion laws, but Senate control a worry", *The Age*, 16 February 2005, p. 1.

There are, I think, four landmarks in the transformation of the Senate from its constitutionally marginalized position during much of the twentieth century into the much more robust and respected institution it is today.

Proportional Representation

The first, and in the long term the most consequential of those landmark events, was the alteration of the method of voting for the Senate by the Chifley Government. In 1948 Arthur Calwell, fearing the government's defeat at the general election of the following year, persuaded Chifley to change the system by which Senators were elected from the ordinary franchise to the proportional system. Calwell's model, which was based upon the method of election used for the Irish Senate, was adopted in spite of some dissent in Caucus.¹¹

Although, because of section 7 of the *Constitution*, the Senators are chosen by the people of each State "voting as one

¹¹ Patrick Weller, ed. *Caucus Minutes Vol. 3 1932-1949* (Melbourne University Press, 1975) pp 439 & 442; Calwell, *Be Just and Fear Not* (Adelaide: Rigby, 1978) pp. 266-7; Colm Kiernan, *Calwell: A Personal and Political Biography* (Melbourne: Nelson, 1978) pp. 149-50; Daly, *From Curtin to Kerr* (Melbourne: Sun Books, 1977) pp. 51-2; Souter, *Acts of Parliament* (Melbourne University Press: 1988) pp. 395-6; and Reid, *op. cit.*, p. 13. Both Kiernan and Reid emphasise the importance of the Irish model in shaping Calwell's mind; see in particular Kiernan's account of the interesting role of the Irish Ambassador, who was an intimate of Calwell's, in influencing his thinking.

electorate," until 1949 the same method of balloting was used for Senate elections as for elections for the House of Representatives. The result was a "winner-takes-all" system, in which the party which won a plurality of votes won all or almost all of the seats in the State. This produced ludicrous distortions - for instance, after the 1919 election, there were 35 non-Labor Senators and only 1 Labor Senator, while at the time of the 1949 election, there were 33 Labor Senators and 3 non-Labor Senators.¹²

Although the adoption of the new voting system at the half-Senate election in 1949 was not enough to overwhelm the Labor majority (since almost all of the Senators elected in 1946, for six-year terms commencing on 1 July 1947, were Labor), after the double dissolution election of 1951 the Menzies Government commanded a Senate majority. But, due to the proportional system, it was not the overwhelming majority which governments had previously enjoyed.

It is interesting to notice that the Labor Opposition did not hesitate to use its Senate majority in the Parliament elected in 1949 to block a number of the Menzies Government's key

¹² Odgers, *op. cit.* p. 26

legislative measures – including the *Commonwealth Banking Act*, hence the 1951 double dissolution.¹³

It is also interesting to notice that at the time, a "deadlock" between the House of Representatives and the Senate on a key bill – not just a money bill – had the flavour of a political if not a constitutional crisis. There had only been one double dissolution before, in 1914, and there was nothing automatic about invoking the double dissolution procedure. When Menzies went to the Governor-General, Sir William McKell, there was no expectation that a double dissolution would necessarily be granted – and indeed it was held against McKell by some in the Labor Party that he had acceded to Menzies' request.¹⁴

¹³ Unlike the 1914 double dissolution, the ground of the 1951 dissolution was not the rejection of a bill, but the "failure to pass" it by referring the bill to a Senate committee. The uncertainty about the meaning of that expression in s. 57 of the *Constitution* was one of the reasons why McKell's decision to grant the dissolution was controversial; Evatt had advised Chifley that reference to a Senate committee would not satisfy the requirements of s. 57.

¹⁴ Vince Kelly, *A Man of the People: A Biography of Sir William McKell* (Sydney: Alpha Books, 1971) pp. 193-4; Easson (ed.), *McKell* (Sydney: Allen & Unwin 1988) pp. 165-6; Don Whittington, *The House Will Divide* (Melbourne: Lansdowne, revised ed. 1969) p. 156; Daly, *op. cit.*, p. 104. Whittington claims that as a result of his decision to grant Menzies' request, "[o]bloquy was heaped privately on the head of McKell, who was accused ... of having betrayed the party which had nurtured him for nearly half a century" and that afterwards Labor politicians refused to visit Government House or any other place where they might meet him. Daly describes the Labor Party's reaction to McKell's decision as one of "great shock and disappointment", and says that the decision was "much to Chifley's surprise". However McMullin, in the Labor Party's commissioned centenary history, gives an anecdote which puts a different slant on Chifley's reaction:

"Reg Downing, minister for Justice in the McGirr government and a crucial backroom figure in the NSW ALP, was close to Chifley and McKell personally and also to McKell geographically – his rural property near Goulburn adjoined McKell's. With rumours circulating wildly about the Governor-General's intentions, Downing happened to be working on his farm when McKell came across for a yarn and dropped what Downing interpreted as an unmistakable hint that he was inclined to comply with Menzies' request. Downing relayed

In more recent times, save for the spectacular and materially different circumstances of 1975, calling a double dissolution has seemed almost routine – an optional tactic in the Prime Ministerial armoury. Its earlier character as an exceptional event to resolve an imminent constitutional crisis has completely disappeared. So far have we come to *expect* the Senate to reject bills – even bills which may have represented core election commitments – that, even when people speak of deadlocks, they do not seem threatening or even unusual.

The Senate majority which Menzies won at the 1951 double dissolution continued until 1 July 1956 when, for the first time, two Democratic Labor Party Senators¹⁵ held the balance of power. Although the Coalition Government lacked a Senate majority for all but 3 of the remaining years of its long incumbency, it continued to enjoy effective control through its alliance with the DLP.¹⁶

this information to Chifley, who was therefore not surprised – unlike some other Labor figures – when McKell gave the Prime Minister the answer he wanted."

Ross McMullin, *The Light on the Hill: The Australian Labor Party 1891-1991* (Melbourne: Oxford University Press Australia, 1991) p. 260.

¹⁵ Senator Frank McManus (Victoria) and Senator George Cole (Tasmania). Both originally sat under the name "Australian Labor Party (Anti-Communist)"; this was renamed the Democratic Labor Party in 1957.

¹⁶ This is not to say that the DLP Senators – or indeed all government Senators - always supported government legislation. But it would be wrong to regard the Senate of the late 1950s and 1960s as a "hostile Senate", in the way that that term has come to be understood since the time of the Whitlam Government.

Nevertheless, it was an accident of history that the minor party was a supporter of the government. By the introduction of proportional representation, the seeds had been sown for greater representation, in decades to come, of minor parties opposed to the government's interests.

The Committee System

The second landmark in the reassertion of Senate power was the development of the Senate committee system. The prominence within the Parliamentary system of Senate committees is a relatively recent phenomenon, which owes its existence in its current form largely to the efforts of one man - Senator Lionel Murphy, when Leader of the Opposition in the Senate during the late 1960s and early 1970s.

Murphy's campaign for a comprehensive system of Senate Standing and Estimates Committees – which owed something both to Westminster practice and to the American Senate committee system – culminated on 11 June 1970, when the Senate voted on his motion to establish such a system. The motion was carried by just one vote when a government Senator – the Queensland Liberal dissident Ian Wood – crossed the floor, and thereby made

an almost completely unremembered, but lasting contribution to the course of Australian constitutional history.¹⁷

In fact, Senate committees are not new – the first select committee, on "Steamship Communication with Tasmania", was established in the first Parliament, while the first standing committee, on Regulations and Ordinances, has performed an important though unexciting oversight role since 1932. But the importance of the Senate's committee role can really be traced to the creation of the Standing and Estimates Committee system in 1970. I continue to be impressed at just how transparent our system of government is, that every senior public servant can, 3 times a year, for hours on end and in the public arena, be asked the most detailed questions by Senators about every aspect of the government's operations. Under the *Procedural Resolutions for the Conduct of Senate Committees* agreed to on 25 February 1988, there are no areas in connection with the expenditure or proposed expenditure of Commonwealth funds (which means, in practice, the entirety of government operations) where an officer has a discretion to withhold answers from the committee, although

¹⁷ *Journals of the Senate* 11 June 1970, pp. 189-190 (Division on motion moved by Senator Murphy: Ayes 27, Noes 26). I am indebted to the Clerk of the Senate, Harry Evans, for drawing my attention to this little-known fact.

the officer may not be asked to comment on policy.¹⁸ As well, recent years have seen the increasingly frequent use of select committees to inquire into matters of acute political controversy unrelated to legislation before the chamber. The first important use of the select committee procedure in such a fashion was the establishment in 1984 by coalition Senators, with the support of the minor parties, of the Select Committee on Allegations Concerning a Judge.¹⁹

Today, Senate committees can be the venues of high political drama – and, indeed, the inspiration of actual drama. Last year, in this city, an *avant garde* theatre troupe actually staged a well-reviewed play²⁰ based almost entirely on the transcripts of the proceedings of a Senate committee²¹ – a feat which, in years past, would have been thought simply unbelievable – about as likely as

¹⁸ *Standing Orders and other Orders of the Senate*, February 2004 ed., pp. 103-5. "Questions on policy" is conventionally interpreted widely to include advice to Ministers. As well, a number of other exceptions have developed in practice – for instance, officers of the Australian Taxation Office will not be required to comment on the private affairs of individual taxpayers, officers of the Department of Defence or the Australian Federal Police will not be required to give information about operational matters, and officers will not be required to reveal information which is the subject of a proper claim of commercial confidentiality. The extent of the capacity of the Executive Government to withhold information from the Senate or its Committees is an uncertain and controversial one: see generally Odgers, *op. cit.*, pp. 464ff. for a discussion of the topic and a sample of important rulings.

¹⁹ Ironically, Justice Lionel Murphy.

²⁰ Version one point zero, *CMI* (2004).

²¹ Select Committee on a Certain Maritime Incident (2002).

turning, say, a text book on land law into a racy novel (although even that might not be thought to be beyond the powers of Justice Callinan).

But such has been the reputation which Senate committees have earned that these days, it is common to hear calls for the establishment of "a Senate inquiry" in circumstances where, in earlier days, the demand would have been for a Royal Commission.

Change of Attitude during the Whitlam Government

The third landmark event – or series of events – which created the modern Senate was the decision of the Opposition, after the election of the Whitlam Government in 1972, to use its majority to block key legislative measures including, ultimately, the *Appropriations Bills* in 1975. Leaving to one side the still controversial issue of the blocking of the 1975 Budget, it seems strange in retrospect to reflect on the outrage – both real and confected – that the Opposition's decision to oppose in the Senate several of Whitlam's signature bills provoked. It is now commonplace for an Opposition in *de facto* control of the Senate to

oppose measures with which it disagrees, notwithstanding the Government may claim a "mandate" for them.

It amuses me how the roles have been reversed. The very people who, during the Whitlam Government, denounced the Senate as a blight on democracy, frustrating the will of the elected government, are now those who laud it as the saviour of democracy by imposing a timely and judicious check upon the elected government. The Senate – unspeakable villain of progressive opinion in the 1970s – has become its cherished darling.²²

Save in one respect which I will mention in a moment, the rhetoric has changed barely a syllable – only the sides have been swapped, with a precision so perfect as to be almost geometric. The honourable exception has been Whitlam himself who, with his characteristic integrity, has maintained a resolutely consistent critique of the use of Senate power – both when it suited his side of politics, and when it did not.

²² See, for instance, Phillip Adams, *Late Night Live* 30th November 2004, in particular the interviews with Harry Evans and the author. Adams' tone of wistful regret at the imminence of a government-controlled Senate captures exquisitely the Old Left's late-blooming love affair with the Senate.

The point of all this is that the conduct of the Opposition during the Whitlam Government did change the political culture, because it marked the beginning of the changing attitude to the legitimate use of Senate power. What had been seen as an outrage came gradually to be regarded as a commonplace, as proportional representation and the rise of minor parties made government control of the Senate unusual.

After the Senate's first heroic decade, in the 63 years between the Fusion in 1909 and the election of the Whitlam Government in 1972, the government had actual or *de facto* control of the Senate for all but half a dozen years. The 3 important exceptions were when, as a result of the continuance of long-term Senators after a change of government, the composition of the Senate left a majority in the hands of the party which had lately gone into Opposition: at the time of the election of the Cook Government in 1913, the Scullin Government in 1929 and the second Menzies Government in 1949. In the first and third of those cases, the use by the Opposition of its Senate numbers resulted in the double dissolution elections of 1914 and 1951 which, as I have said, took on the character of political – if not constitutional – crises.

But in the 33 years after the election of the Whitlam Government, the government has had control of the Senate for only 5 ½ of them, during the first two Fraser Governments – and even that masks the considerable role of a substantial number of government Senators who quite commonly crossed the floor to defeat government measures – including, on at least one occasion, a budget measure.²³

The great conflicts between the executive government and the Senate during the Whitlam years thus mark the historical turning point at which a Senate hostile to the government ceased to be unusual and became the norm. The Opposition and minor parties had the power and, from the Whitlam years onward, they were emboldened to use it. The game changed during the Whitlam Government and it hasn't changed back since.

At the same time, the language changed subtly too. Whitlam always characterised his wars with the Senate as a conflict between the Senate and the House of Representatives - "the people's house", with its democratic connotations - or simply the

²³ For a useful recent discussion of the Fraser Senate dissidents, see Mike Secombe, "A pox on your house", *Sydney Morning Herald*, 10 November 2004 p. 14.

Senate versus "the people".²⁴ Today, when the Senate rejects legislation passed by the lower house, its antagonist is invariably identified not as the House of Representatives but as "the executive government", and the Senate cast in the role of the champion of Parliamentarianism against executive power. The Roundheads have become the Cavaliers, the Cavaliers the Roundheads, and hardly anyone has even noticed.

Increase in the number of Senators elected from States

The tendency to a more assertive, independent Senate, which the government did not dominate, was reinforced by the fourth – and least noticed – of the landmark events. In 1983 the Hawke Government decided to increase the size of the House of Representatives from 125 to 148. There had been no significant increase in the size of that chamber since the 1948 amendments to the *Commonwealth Electoral Act* (the same legislation which introduced proportional representation for the Senate). This measure basically reflected the growth in the size of electorates: in the 40-odd years between 1948 and 1984, the size of the electoral roll more than doubled, from 4.8 million to 9.9 million.²⁵

²⁴ The latter is the title he chose for the first chapter of his memoir of the events of 1975: Whitlam, *The Truth of the Matter* (Ringwood: Penguin, 1979) pp. 1 – 16.

Because of s. 24 of the *Constitution*, it was necessary to increase correspondingly the size of the Senate by increasing from 10 to 12 the number of Senators from each State. This was purely a consequential change. The government's only real objective was to increase the number of seats in the House of Representatives; enlarging the Senate was an unwelcome but constitutionally unavoidable by-product of that decision.

The increase in the size of the Senate meant, at a half-Senate election, changing from an odd to an even number – from 5 to 6 – the number of Senators to be elected. Now this not only had the obvious effect of reducing the amount of the quota necessary for election,²⁶ and thereby improving the chances of minor party candidates and independents; it also had a less widely predicted consequence which made it almost impossibly difficult for any party to secure a majority. When there were 5 Senators elected from each State, the odds were that the party which won the general election would win 3 out of 5, at least in most States. But when the number elected is 6, then the party

²⁵ *Commonwealth Parliamentary Handbook, op. cit.*, pp. 561, 569. These figures are based on the number of electors enrolled to vote at the constitutional referenda of May 1948 and December 1984 respectively.

²⁶ From 16.7% to 14.3%.

winning the plurality at the general election is very unlikely to win more than 3 out of 6. Since, under section 23 of the *Constitution*, the President of the Senate has a deliberative but not a casting vote²⁷ and any question on which the votes are equal is resolved in the negative, that meant that after 1984, as it was thought to be almost impossible for the government party to win at best more than half of the seats in the chamber, it was equally next to impossible for the government of the day ever to win control of the chamber. The optimal result was thought to be, at best, control of 50% of the seats, which was not enough.²⁸

And so, for the 20 years after the 1984 expansion of the size of the Senate, a political climate developed in which there was no expectation that the government of the day would ever control the Senate again. That belief, accompanied by the growing popularity and political sophistication of minor parties and independents, shaped the Senate's new role as a chamber which operated quite independently of the wishes of the government, and felt no

²⁷ This is, curiously, different from the position in the House of Representatives, where by s. 40 of the *Constitution* the Speaker has a casting vote but not a deliberative vote.

²⁸ This outcome, although not widely anticipated at the time, was however predicted by some non-government Senators. When the *Representation Bill* was debated in the Senate on 18th November 1983, the Liberal Senators Alan Missen, Noel Crichton-Brown, Baden Teague and John Watson all made this point. But Senator Robert Ray, speaking for the government in support of the Bill, said "...to make the bald statement that no party can win a majority when there are 12 senators from each State is absolute nonsense." Senate *Hansard* 18 November 1983, p. 2830.

hesitancy about doing so. In my view, it was the expectation, common to all sides of politics, that the government of the day would never control the Senate which, more than anything else, encouraged the Senate's greater assertiveness over the last two decades. It redefined its role from being merely a house of review to a position of co-equal legislative authority to the House of Representatives which resembled much more closely than anything earlier the founders' conception of what the Senate ought to be. Ironically, that profoundly important change was brought about by a largely unpredicted accident of electoral arithmetic.

Conclusion

We all know that everything changed on 9 October last year in Queensland when the coalition parties, conducting separate campaigns and attracting different preference flows, for the first time won 4 out of the 6 seats, and control of the Senate from July 1. It was an outcome that nobody – *nobody* – expected.

The question on everyone's mind is, naturally, what effect that will have on the Senate. Assuming party discipline, it means that legislation passed by the House of Representatives will not be blocked by the Senate, that such legislation will not be amended

against the government's wishes, and that select committees will not be established which are dangerous to the government's interests.

But I do not share the rather desperate view that it means the end of the Senate as we know it. In particular, the Standing and Estimates Committees, by far the most potent if not always the most spectacular mechanisms of oversight of the executive government, will continue in their present form – and it is sometimes forgotten that in most cases, those committees already have a government majority and a government chairman. I expect to see Senator Faulkner and Senator Ray working their magic for many years to come.

But leaving the role of committees aside, nor do I think that the Senate will revert to its earlier, constitutionally marginalized role. The change to the institutional culture has gone too far. The Prime Minister has promised restraint.²⁹ Senators – or at least those who are any good – are too wilful. The Australian people

²⁹ Transcript of the Prime Minister's Address to Party Room, 18 October 2004; transcript of the Prime Minister's doorstep interview, Sydney, 28 October 2004; transcript of the Prime Minister's address to Liberal Party NSW Division, Blacktown, 11 December 2004, all issued by Prime Minister's Press Office and accessible at www.pm.gov.au; Jason Koutsoukis & Tim Colebatch, "PM says Senate power won't go to his head" *The Age*, 29 October 2004, p. 6; Steve Lewis, "'Reckless' reforms not on: Howard", *The Australian*, 12 October 2004, p. 5.

have shown that they like the idea of a strong Senate with a clear sense of its independent constitutional role. And conservatives in particular, with their longer sense of history, will I hope be wise enough to see beyond the current period of coalition government to the day when a strong and independent Senate will once again be important to the protection of the political values and interests which matter most to them.
