# *Lessons from Australia in Canadian Senate Reform*

**by Howard Cody**

*Senate reform has proved a recurring issue in Canadian federalism, including the recent ill-fated Charlottetown constitutional accord. This article contends that most issues related to Senate reform in Canada have been addressed in Australia. Even those which have not can be better understood through an examination of Australian experience. The paper is based in part on interviews with sixteen Australian Senators in May and June 1994. All sixteen had been elected from Australia's four "outer" states (Queensland, South Australia, Western Australia, and Tasmania). These states, like "outer" Canada, are heavily outnumbered in their majoritarian lower house by their two dominant neighbours (New South Wales and Victoria). Unlike their Canadian counterparts, they enjoy equal representation in a powerful upper house.*

Australians elect their Senate on a proportional-preferential ballot. Voting is compulsory. Each state has twelve Senators, half of whom are elected at large from their state with the entire House of Representatives (which also is preferential but with single-member constituencies). Senators serve six year terms, but all Senate terms end if there is a double dissolution of Parliament. The Senate ballot features party boxes at the top, with party lists. The party rank-orders each of its candidates. Voters must choose between ticking one party box and the much more arduous rank-ordering of the candidates in order of preference. Because some 95% of Australian voters tick the party box, party executives in each of the states enjoy great power to determine who serves in the upper chamber. By the same token, Senators realize that their system makes them relatively anonymous figures in their states, and they know that they will almost assuredly secure re-election if they can satisfy state party officials with their performance in Canberra. In other words, state party executives and not the electorate effectively make up Australian Senators' "constituencies".

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## Issues for an Elected Senate

Party lists permits the Senate to respect gender and ideological balance and to accommodate a variety of backgrounds and careers. Although Australia's Senate shows markedly more balance than the House of Representatives only in regard to gender, the system does facilitate whichever representational arrangements each party chooses. Parties, led by the governing Australian Labor Party (ALP), are moving gingerly from the present 23% female Senate membership towards relatively equal male-female Senate representation (but probably not through rigid quotas) by early in the next decade. Should Canada adopt a party-list Senate, relatively equal gender representation probably would prevail from the outset.[1] Whether provincial parties would construct party lists respecting other diversities is less certain, but language minorities, ethnic groups, and intraparty ideological factions might also command sufficient strength to ensure inclusion on some party lists in some provinces.

Another possible advantage of Australia's proportional system is that Senators can be elected from parties which sometimes cannot secure House seats remotely proportional to their support in a province such as Tasmanian Labor, Alberta Liberals, Quebec Tories, Atlantic New Democrats, and most recently, Ontario Reformers. Senators from these parties can enhance the Senate's legitimacy and reduce regionally-based alienation amongst their parties' supporters. Moreover, proportional representation might persuade national parties to take into account all provinces' interests, to recognize the need to elect Senators in each province, and to consider the views of all of their Senators. When one recalls the difficulties of the Trudeau-era Liberals in the West, and the serious regional tensions which these difficulties generated, one can readily understand why Canadians might consider proportional representation for a reformed Senate.

As all Australian parties attempt to secure seats in the House of Representatives, no party wishes to be perceived as regional in orientation or desires its Senators to be seen as divided on state lines. All parties, at both the Commonwealth and state levels, recognize that national party policies must attract support in New South Wales and Victoria. Besides, all parties in Westminster systems must show reasonable cohesion at all times, lest they convey the damaging impression that their leader cannot control his or her caucus. To date no Australian party has exploited equal state representation in the Senate to establish itself exclusively in the Senate or in one or more small states. Small state Senators of the same party neither logroll with each other on behalf of their states' distinctive concerns, nor do they join forces against party caucus members from large states to press small state interests. Logrolling or other cooperation across party lines to advance a state's concerns in meetings with ministers is reserved for special situations, like ensuring Commonwealth subsidization of Tasmania's ferry service.

Canada is not Australia. Canadians surely would demand more participation in the selection of Senate candidates than Australians do, and regionally-based parties likely would occupy many Canadian Senate seats under any electoral system. Even so, an Australian-style upper chamber electoral system probably would induce Canadian provincial parties to acknowledge the national character of issues before Parliament and develop more of a national perspective than they now display, at least in their Senate-related responsibilities. If Canada elected Senators at large on a party list proportional ballot, with or without a preferential component, certain Australian features would apply there. Some Senators would share the party affiliation of relatively few residents of their province. Most Senators almost certainly would reflect the perspectives of their party's activists, who are more ideological than the general population. Provincial parties might divide into ideological factions, each one jealous of "its" inclusion or ranking on the Senate ballot.

At-large Canadian Senators might prove nearly as anonymous as their Australian counterparts, although broadly inclusive nomination procedures and relaxed party discipline could lessen many Senators' anonymity considerably. Proportionally elected Canadian Senators might perform little casework and maintain minimal direct contact or relationship with the public as individuals. In theory, this would free them for other time-consuming duties, especially committee work.

> ***If Canadians could accept a division of labour which prevails to some extent in Canada's existing Parliament, Senate specialization on committee work would afford MPs more time to service their constituents.***

Canadians who desire Senate reform might seriously consider an arrangement of this nature. Thanks to casework and other constituency obligations, Canadian and Australian MPs have little time for committee work. This is not unusual in either country, or in Britain for that matter, especially outside metropolitan areas. Interviews with MPs in all three countries suggest that many MPs maintain more interest in, and more aptitude for, constituency service than for committee responsibilities. In 1993 a New Brunswick MP lamented, with evident frustration, that only one- third of Canada's MPs are "committee people". One must not hold MPs wholly responsible for this situation. Many MPs lose their enthusiasm for committee exertions when whips order them to vote a certain way on committees and governments routinely ignore committee reports and recommendations.

Finally on proportional representation, Australian experience strongly suggests that it is the Senate's electoral system and legislative power, more than equal state representation, which account for the Senate's credibility, leverage, and distinctive reputation. Thanks to proportional representation, it is rare for any party to command a majority of Senate seats. Third parties (currently the Australian Democrats and the Greens) hold the Senate balance of power when the ALP and Liberal/National coalition (the official opposition) cannot come to terms on legislation. On certain bills the

government negotiates accommodations with the Liberals, while on others third parties are involved. The results of these negotiations are assessed below; the point here is that the proportional arrangement is essential to maximize the likelihood that the Senate will operate as an independent-minded body and not as an "echo" of the House.

> ***Many Australians maintain that their Parliament became genuinely bicameral only in 1949, when proportional representation for the Senate took effect.***

The Senate's unique electoral system ensures that the upper house looks very different from the Representatives, and guarantees that it enjoys a distinctive reputation in the minds of Australians as a champion of small parties and as a check on ill-considered executive policies, as well as a chamber for the small states.

**Powers of the Senate**

Australia's Senate enjoys legislative powers nearly equal to the House of Representatives except that it cannot initiate or amend money bills. In theory, the Senate can kill any legislation, but a prolonged deadlock between the two Houses can permit the government to request a double dissolution (forcing all Senators to face election along with all MPs) followed by a joint sitting on the disputed legislation. As Australia's constitutionally-imposed "nexus" mandates a 2:1 House-Senate ratio, and as proportional representation results in an almost evenly divided Senate with no party enjoying a majority, a joint sitting almost always favours the House of Representatives. Thus, it is usually in the Senate's interests to negotiate a compromise with the government on bills where the chambers disagree. The Senate generally does so, but often only after protracted and occasionally acrimonious semi-public bargaining. The government also has a strong incentive to avoid a double dissolution, as the proportional representation quota system assures that the Senate will accommodate more third party members when the full Senate is elected at the same time than in the usual half-Senate election. Australian Senators insist that their dispute settlement procedure avoids the gridlock, pork barrelling, and logrolling of the United States Congress; but Australia's government bills often require more time, and undergo more revisions, than their Canadian counterparts.

Australia's Senators assert that their chamber performs eight useful functions, none of which can be carried out satisfactorily by the House of Representatives. As Senators describe them, these services are:

- Scrutiny: The Senate conducts independent scrutiny of the executive to impose accountability and to detect misconduct and expose corruption.
- Review: The Senate takes a second look at legislation, and offers a chance to improve government bills with amendments.[2]
- Legitimacy: The Senate helps residents of small states to feel adequately represented in their national institutions.
- Power: The Senate gives small states some protection from domination by the two large states.
- Innovation: The Senate serves as a source of new ideas, usually through third parties. Major parties eventually co-opt these ideas, sometimes reluctantly in negotiations on amendments to government bills.
- Political philosophy: Bicameralism supplies checks and balances, which are *prima facie* desirable.
- Pluralism: The Senate gives representation to small parties, which shows respect for society's increasing pluralism.
- Time management: The Senate gives its members time for committee work, for travel throughout the country consulting with Australians through committee hearings, and for dealing with civil servants, all without the distractions of constituency responsibilities and the need to campaign continuously for re-election.

Australian academic and press observers frequently contend that their Senate performs its first two functions (scrutiny and review) quite well, largely through its committee system. Indeed, they often claim that these functions are so important that the Senate's existence is justified from its performance in these areas alone. This verdict probably stems from a major component of Australia's political mentality which resembles the United States more than Canada. Australians' nineteenth century Whig-Liberal principles assume that politics is a corrupting activity, and argue that people in power must be monitored and checked as closely as possible. Many Australians consider Commonwealth and state upper chambers appropriate and even necessary to keep governments relatively honest. They concur with Walter Bagehot's pronouncement that "the most dangerous of all sinister interests is that of the executive government", and they endorse Bagehot's warning against the "formidable sinister influence" of a single dominant assembly. In other words, strong bicameralism is essential.[3] These Australians deem the perceived

rampant corruption in Queensland, the only unicameral state, as proof of the need for scrutinizing upper houses.

### The Role of the Party

Australians also often argue that tight party discipline hinders the Senate's performance of all eight functions, especially those which endeavour to protect the small states. Party discipline prevents small state Senators from exploiting their two-to-one numerical superiority. Instead, it is the opposition parties which take advantage of the Senate's formidable powers to pursue their own agendas. For this reason, Australia's political observers often disparagingly classify the Senate as a "party house" rather than the intended "states house".

Interviews suggest that this verdict is somewhat exaggerated. However, it is fully understandable, given the close control which state party elites maintain over candidate selection and ranking on the ballot, the tight discipline which Australian parties impose on their Senators, and the acquiescence with which Senators accept this discipline. Senators rarely "cross the floor" on a formal vote for any reason. They often speak out against or try to change party policy in party rooms (caucus), and sometimes (although much less often) in public. Senators' dissent usually serves interests associated with their state parties or their state party factions. Only on rare occasions will Senators publicly dissent on "conscience" issues like the Vietnam and Persian Gulf wars.

Australian interstate disputes, and regional alienation in the form of small states' resentment of large states' domination, command less attention than in Canada. The Senate deserves some credit for this fact. However, these problems do persist and Australians take them seriously. State party interests infrequently conflict directly, but they naturally vary from state to state, especially in the business-oriented Liberal party and its rural-based coalition partner, the Nationals. For example, mining in Western Australia, wine in South Australia, sugar in Queensland, and sheep farming and timber interests in Tasmania, all make claims on their state's Senators. Sometimes small state Senators claim to have influenced their party's policies on important issues, especially Liberals (as on aboriginal land claims). This occurs infrequently, usually inconspicuously, and more often in opposition than in government. In the ALP, which enforces a Leninist "democratic centralism" on its MPs' and Senators' recorded votes, small state Senators exercise limited and all but invisible policy making leverage in their caucus.

In Australia, government ministries always include several Senators. Australian experience suggests that Senators should be excluded from the cabinet. There would be several advantages to this practice. It would make the Senate less likely to replicate the Commons' partisan and adversarial atmosphere, unlike Australia where the Senate features the "same debates, same speeches, same Question Time" as the Representatives. Canada's government and opposition based in the Commons would be more likely to offer Senators a degree of independence if the Senate were separated from the cabinet. Most Senators would not aspire to a cabinet post as their career goal. Instead, they would have to content themselves with seeking the best positions available in the Senate, like the committee chairs. The most ambitious Senators would perceive committee chairs as desirable power centres which provide checks to and scrutiny over the executive as well as legislative initiative and review.

A new Canadian Senate might become a major player in Ottawa through its committees. Senate committees would require relatively loose party discipline for collegial operation and public credibility, and chairs could be rotated amongst the parties. (Australia implemented rotation of Senate committee chairs in August 1994.) These features would clearly differentiate the Senate from the Commons in the perceptions of the media and the public as well as the cabinet.

The committee system of a new Canadian Senate is crucial. Because strong party discipline makes it tempting — and politically advisable — to follow party policy and whips' instructions, Australian Senators often do not study issues closely or work hard in committees. In a new Canadian Senate, Senators may need an incentive to develop expertise in some field and to work diligently and collegially in their committee assignments. If Senators are freed from close party control and heavy constituency obligations, and if they perceive that their committee activity is rewarded with real influence over policy, they are likelier to commit themselves to committee work. Ideally, "committee people" will be attracted to a Senate career, as now apparently happens with certain Australian Senators.

Even more important, the Senate and its committees will prove effective *only* if they possess the power to make the government pay them respect and attention. The Australian interviews made it absolutely clear that Australia's Senate could perform none of its eight functions satisfactorily if it lacked credible legislative power. As a long-serving Tasmanian Senator put it, the government cooperates with Senate scrutiny activities, and extends consideration to Senate-initiated legislation and amendments, only because it knows that the Senate can scuttle its bills. Besides, unless a new Canadian Senate conspicuously exercises credible legislative

power, a Senate career, and Senate committees and their chairs, will hold no attraction for ambitious and talented Canadians.

Because the cabinet represents the locus of federal policy making in Canada, disqualifying Senators from the cabinet would represent a major concession on the part of Senate reform proponents. However, if this rule could facilitate a relatively nonpartisan and collegial atmosphere, it might permit the Senate to exercise additional powers. For example, if Senators could operate in a nonpartisan manner, the new chamber could be assigned ratification functions which might enhance the perceived legitimacy of national institutions. Specifically, Canada's Senate could be authorized to ratify appointments to key federal boards, commissions, and corporations (the Wheat Board, the CRTC, and the CBC come to mind, amongst others), and perhaps even Federal and Supreme Court appointments. The Australian Senate enjoys no ratification powers; with its partisan nature this is just as well.

**Representation Issues**

Canada's Triple E Senate proponents have presented equal representation per province as a crucial symbol of the notion that all ten of Canada's provinces enjoy an equal constitutional status. As Canada's constitution and many federal-provincial programmes treat the provinces differently, this argument for provincial equality lacks credibility. Moreover, absolute provincial equality is not necessary for the Senate to fulfil the objectives which the Canada West Foundation has identified: "The purpose of the Senate is to offset the majoritarian implications of the House of Commons, to offer the residents of the smaller provinces some assurance that they cannot be casually sacrificed to the narrower interests of the larger provinces."[4] Even a formula providing modified representation by population would supply "outer" Canada with a large majority of Senators.

Triple E proponents might acknowledge that their country's long-entrenched majoritarian and unicameral mentality, which has been relatively untouched by Bagehot-style Liberalism and pervades the provinces as well as Ottawa, undermines the principle of equal provincial representation and complicates efforts to secure a powerful elected Senate. The Charlottetown Senate experience suggests that Ontario and Quebec will permit equal provincial representation only at the expense of real legislative power for an upper house. When they were informed of the Charlottetown Senate's powers, Australian Senators doubted that smaller provinces could derive much benefit from this chamber. Some indicated that they would consider a career in the Charlottetown Senate a waste of time, and that they would instead offer for the lower house in such a Parliament. When asked whether they considered their Senate's legislative power or its equal representation more important for their states, nearly all respondents concluded that only credible legislative power was indispensable. They added, however, that the small states do require a majority of Senate seats in order to derive much benefit from the chamber.

Australia's Senate operates officially as a "states" house in representational terms, but current political realities compel Canada's upper house to chart a somewhat different course. For example, a new Canadian Senate could accommodate several aboriginal members elected from specially devised constituencies. Public pressure likely would induce the parties less formally to accommodate "Charter" groups as well, especially if a proportional electoral system is adopted. A "double majority" provision for French language and culture (as in the Charlottetown Senate) could be included. Australia's nearly unique preferential component confers excessive power on party elites and possibly would prove too exotic and confusing for use in Canada.

Many Australians acknowledge that state party executives presently exert too much control over the selection of Senators, and that Australian voters exercise too little — indeed virtually no — independent judgment in discriminating amongst individual Senate candidates. If Canadians did choose to adopt a preferential ballot, the equally exotic and confusing Tasmanian House of Assembly's Hare-Clark arrangement, in which there is no party box and the parties offer voters no advice on how to rank-order their selections, would be preferable to the system used for the Australian Senate. A nexus similar to Australia's 2:1 House-Senate ratio deserves strong support in Canada, whether or not there is a provision for a joint sitting of the two chambers, particularly if there is no equality of provincial representation in the Senate. Only if the Senate is relatively large compared to the present 295 member Commons (at least 100 Senators, and 150 would be better) could there be enough Senators from each province to represent adequately the province's smaller parties, thereby building a reputation for Senate legitimacy and manifesting a clear differentiation from the Commons.

Only in a relatively large Senate could there be enough Senators in party caucuses and joint Commons-Senate committees to advance the interests of all provinces and of those groups with enhanced Senate representation. Finally, a comparatively large Senate is necessary for the chamber and its members to attract notice and command public and media attention. A small party Australian

Senator insisted that there must be as many Senators "rattling around" Parliament as possible, and also as many of a different party complexion from House members as possible, if the Senate can expect to make a visible contribution to the legislative process. When Australian Senators were informed that the Charlottetown accord Senate would have created a greater than 5:1 Commons-Senate ratio, they speculated that Senators in such an arrangement would find themselves "lost in the crowd" and incapable of commanding much attention and respect — especially given their weak position in a joint sitting.

**Conclusion**

Early in 1994, Australian Prime Minister Paul Keating, threatened to introduce legislation to end the Senate's proportional representation and make the Senate match the House of Representatives' partisan composition. In this way his or almost any government would exercise equally total control over both Houses. Senate investigation of government scandals and abuses of power, and Senate opposition parties' demands for concessions before they would support government legislation, clearly had exasperated the government. This development (which remains unresolved) shows that Australia's Senate has been performing its scrutiny and review responsibilities, albeit more on behalf of the opposition parties than the small states.[5] Canadians must decide for themselves whether they wish to check — and inconvenience — their own federal executive through an upper house, and if so, whose interests this chamber will serve.

If Canadians do desire strong bicameralism, Australia's experience suggests that a new Senate must prove conspicuously dissimilar to the House of Commons, with many distinctive features which might include some unique powers. The Senate's distinctiveness can include composition, method of election, roles and responsibilities, committee system, cabinet eligibility, and relationships with constituents. Canada's cabinet will treat a new Senate with respect only if the chamber enjoys credible legislative power, yet the Senate must not become a source of obstruction. In Australian terminology, Canada's Senate somehow must chart and maintain a course between undesirable extremes, the "veto" (obstruction) and the "echo" (rubber stamp). This would prove a formidable assignment. One way to avert these polarities would involve the development of a collegial relationship both inside the Senate and between Senators and cabinet ministers, the adoption of a proportional electoral system, and the imposition of a fair and decisive Commons-Senate dispute settlement mechanism.

Canadians' expectations for their Senate differ from those of Australians. Checks and balances minded Australians place highest priority on Senate scrutiny and review, which can be performed (if imperfectly, and only with proportional representation) under strict party discipline which suppresses interstate differences. Canadians assign higher priority to legitimation and responsiveness, which lend themselves less well to tightly disciplined parties which formulate their policies well insulated from public attention. Canadians might note that even members of a Triple E Senate can attract the same ridicule as their own appointed Senators. Australian experience implies that if individual Senators and smaller provinces aspire to exercise leverage and secure the public's respect, a legitimation and responsiveness-oriented Canadian Senate would require election by the people, party discipline somewhat relaxed from current practice in Australia and in Canada's House of Commons, and Senators' visible participation in policy making. Once again Canadians will need to strike a delicate balance. Possibly the present British House of Commons could serve as an exemplar in regard to party discipline. Under no circumstances should Canadian parties lose as much control as their counterparts have in the United States. If they did so, Canada's centrifugal tendencies likely would be exacerbated rather than alleviated. This would create a situation in which Canada would endure some of the least desirable features of current Canadian and United States practice at once: legislative gridlock accompanied by heightened regional tension and alienation, along with pervasive public disgust with legislative performance.

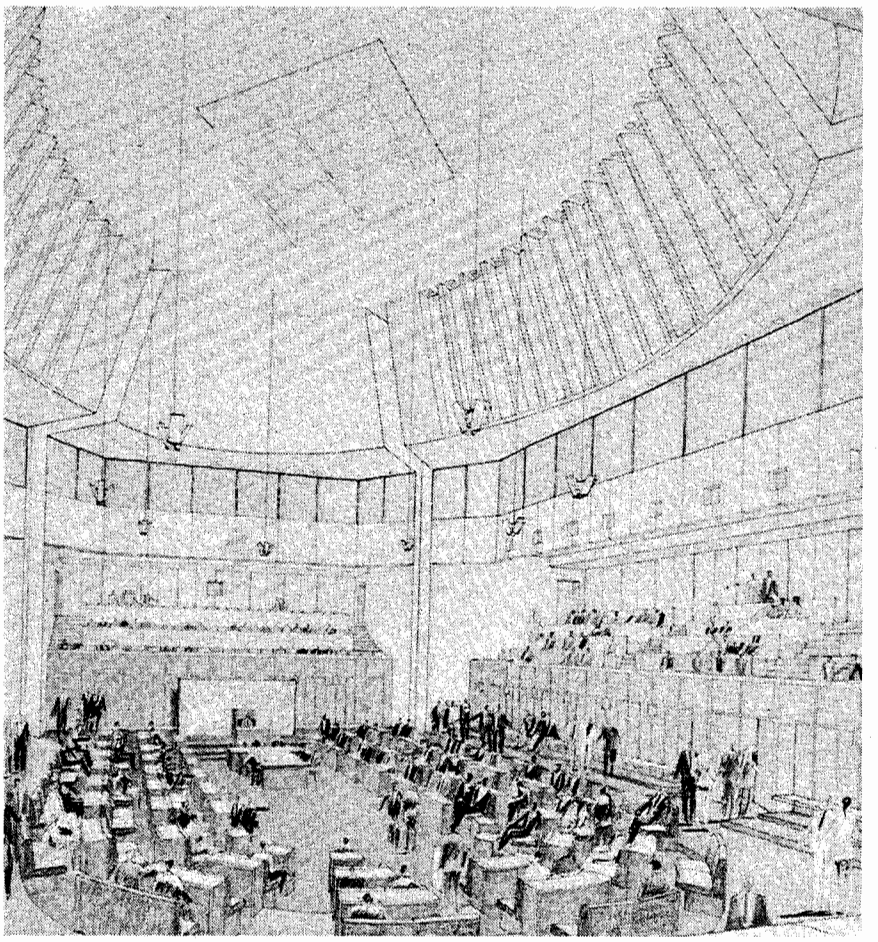
When Canadians next consider Senate reform, they will have to address the Senate's committee system. Canada's House of Commons Speaker and Standing committees currently operate much more independently than their Australian counterparts. Even so, it is unrealistic to expect a lower house in a Westminster system to serve as an effective scrutineer of an executive which controls the future careers, including the chances for a cabinet post, of the majority of most committees' members. Australians take for granted that their lower house committee system essentially acts as an extension of executive government. While this description would be unfair and inaccurate in Canada, party leaders and whips impose limits to the independence which MPs may exercise in Commons committees. These limits fall well below the levels of independence from government control presently enjoyed by Senate committees in Australia and Canada. If Canadians determine that an elected Senate's committees should carry much of the responsibility for the chamber's scrutiny, review,

legitimation, and responsiveness performance and reputation, they should consider a proportional representation chamber without cabinet ministers.

Finally, Canada's Senate might deviate substantially from Australian practice in respect to representation. Proponents of Senate reform could exploit the opportunity presented by the emergence of "Charter" Canadians to broaden the Senate appeal and construct a more persuasive argument for strong bicameralism than they can make on a regional basis alone. Reform proponents could emphasize the chamber's potential to advance the interests of politically important groups not previously associated with Senate reform, as well as the provinces and regions. Forsaking equal provincial representation would lend credibility to their initiative.

## Notes

1. Female Australian Senators and Canadian MPs, including government ministers, insist that gender balance does make a difference. They argue that relatively large female representation in Parliament makes the government direct closer attention to "women's issues" like health, welfare, education, family matters, and social services.
2. The third-party Australian Democrats can secure parliamentary sets only in the Senate, thanks to proportional representation. They claim that their negotiating strength in the Senate since 1981 has produced "well over 1000" amendments which have helped (amongst many others) mentally and chronically ill people. farmers, and victims of discrimination on grounds of age, disability, and sexual preference. Senator Sid Spindler, "Keating's Bid for absolute Power", *Age*, 14 March 1994, p. 10.
3. Note the favourable quotations from Bagehot in "The Senate and Responsible Government", *The Independent*, June 1994, p. 8 (unsigned editorial).
4. Dr. David Elton and Dr. Peter McCormick, "Representation in a Reformed Senate" (Calgary: Canada West Foundation), p. 10, no date.
5. Australia's media responded indignantly to Keating's proposals to emasculate the Senate. Opposition was strongest in the small states. In western Australia, the *West Australian* declared that the Senate provides its state with "some small protection against the power of the central government", and that a change in voting for the Senate would make Western Australia an "irrelevant part of the federation". Robert Reid, "PM Challenged to Senate 'Poll'", *West Australian*, 5 March 1994, p. 8. The media in the other small states issued similar statements.



**Australian Senate Chamber**
*(Parliament House Construction Authority)*