Introduction

In 1956, J.R. Odgers, then Clerk-Assistant of the Senate and later to become Clerk of the Senate and author of what now is *Odgers' Australian Senate Practice*, submitted his report to the President of the Senate on his study tour of Washington, DC, and the United States Senate.[1] Odgers' description and analysis of the Senate have withstood the passage of time remarkably well, reflecting both the stability of the American Senate and Odgers' ability to absorb and assess all that he read, heard, and saw.

In the conclusion to his report, Odgers asked: "What can the Australian Senate learn from the United States Senate which will add to its usefulness and prestige?"[2] His answer was "a standing committee system" to enable the Senate to better review the Government's proposed legislation as well as its administration of the laws already enacted. Some years later, the Senate accepted his recommendation and began the development of what has become one of the Commonwealth Senate's most distinctive and valuable features.

This report, written almost 50 years later, presents a new comparison of the Australian and American Senates. It differs from Odgers' report in two key respects. First, it is written by an American on the basis of his professional familiarity with the American Senate and an extended study tour of Canberra and the Australian Senate. Second, it proposes only to compare and contrast, not to ask what either body can learn from the other; that question is left for readers to answer for themselves.

The comparison that follows is selective and is organized under five primary headings: (1) composition, including membership and terms of office; (2) elections, especially Senators' relations with their political parties; (3) constitutional powers, including the Senate's role in enacting financial legislation; (4) legislative procedures, including opportunities for debate and amendment; and (5) organization, especially the authorities and activities of committees.

Composition

When the Australian Constitution was being written in the 1890s, its authors naturally sought guidance by looking to the unwritten constitutional arrangements in Great Britain and the experiences of the six colonies that would comprise the new federation. However, none of these models provided helpful precedent for designing the federal elements of the new constitution. For this purpose, the authors looked to existing federal systems in Canada, Germany, Switzerland, and especially the United States. Not surprisingly, therefore, there are important similarities in the constitutional designs of the Australian and American Senates, especially concerning Senate membership and Senators' terms of office.

Membership

With respect to membership, both constitutions provided, at least initially, for equal representation of each State in their Senates. Article I, Section 3 of the US Constitution begins by providing that "[t]he Senate of the United States shall be composed of two Senators from each State…." This equality of representation applied to the original 13 States and to each of the 37

other States that subsequently were admitted to the Union. Furthermore, the equal representation of the States is protected by Article V, which lays out procedures for amending the Constitution. That article concludes with the proviso that "no State without its Consent, shall be deprived of its equal Suffrage in the Senate."

Section 7 of the Australian Constitution also provides for equal representation of the six original States. In two respects, however, it creates flexibility that is not found in the US Constitution. First, section 7 provides for six Senators from each of the six States, but it also allows for this number to be changed by law, so long as each original State continues to have at least six Senators. On two occasions, in 1949 and 1983, the number of Senators per State was increased by law, first to ten and then to the current number of 12. Since 1789, the membership of the US Senate also has increased, from 26 to 100, but only as a consequence of increases in the number of States. Since 1900, the membership of the Australian Senate has increased from 36 to 72, but without any increase in the number of States.

Second, the Australian Constitution refers explicitly to the possibility of new States being added to the Commonwealth, and with unequal representation in the Senate. In allowing for the number of Senators per State to be changed by law, Section 7 adds two provisos: "that equal representation of the several Original States shall be maintained and that no Original State shall have less than six senators." By implication, a State other than an original State may, by law, be allocated a different number of Senate seats and that number may be less than six. In the United States, any inequality of State representation in the Senate would require a constitutional amendment, and no such proposal ever has been seriously entertained.

There is another relevant difference in how the two constitutions govern the membership of their respective Senates. Section 122 of the Australian Constitution empowers the Parliament to enact laws allowing territories to be represented in either or both houses of the Parliament. On the basis of this authority, a 1975 law granted two Senate seats each to the Northern Territory and the Australian Capital Territory. In the United States, by contrast, only States are allowed representation in the Senate. Therefore, neither the District of Columbia nor any other territory associated with the United States (for example, Puerto Rico, Guam, American Samoa, and the US Virgin Islands) can be represented in the Senate. For years, many residents of the District of Columbia have advocated statehood for the District, adopting the pre-Revolutionary War slogan of "No Taxation Without Representation," referring to the lack of representation for the District in the Senate.

The equal representation of the States in both Senates is no accident, of course. The composition of the US Senate was at the heart of what often is called the "grand compromise" of the American Constitution. Delegates to the Constitutional Convention from the more populous States favored allocation of legislative seats on the basis of population only, so that States such as New York and Pennsylvania would have greater voting power than would sparsely populated States. The latter States, naturally enough, favored equal legislative representation for all States, regardless of population. The now-familiar compromise was to apportion seats in the House of Representatives according to population and to assign the same number of seats in the Senate to each State. That same compromise was embodied more than a century later in the Australian Constitution.

The US Constitution provided for only two Senators per State. That immediately produced a Senate with as many as 26 Senators, which sufficed for a body that was envisioned by many to be a council of advisors to the President as well as one-half of the national legislature. With only six States in the Australian Commonwealth, only two Senators per State would not have constituted the critical mass necessary for an effective legislative body, which is what the Senate was expected to be (if only, in the view of many, as a "House of the States" or a "House of Review").

As the population of Australia has increased, so too has the number of Senators per State, but not necessarily as a result of any widespread preference for a larger Senate. Instead, the two increases in the numbers of Senators per State have been dictated by what usually is called the Constitution's "nexus" provision. In providing for the direct election of the members of the House of Representatives, section 24 of the Constitution goes on to state that "the number of such members shall be, as nearly as practicable, twice the number of the senators." Increases in Australia's population led to calls for the two increases that have taken place in the membership of the House, and each of those increases necessitated a corresponding and constitutionally-mandated increase in the membership of the Senate.

There is no such linkage between the memberships of the US Senate and House of Representatives. The size of the House was increased by law from time to time, until it reached its current membership of 435 following the 1910 decennial census. Each increase in the membership of the House was unrelated to increases in the membership of the Senate, except that each new State that was admitted to the Union received two seats in the Senate and at least one seat in the House (depending on the population of the new State). [3]

Because of the "nexus" provision, the Australian House of Representatives is roughly twice the size of the Australian Senate. By contrast, the American House of Representatives is more than four times the size of the American Senate. The relatively small size of the Senate in Washington has enabled it to operate under a system of procedure that is more flexible and much more accommodating to individual and minority rights than is provided by the standing orders of the House of Representatives. The most dramatic and important differences are those affecting the length of individual speeches and collective debate. The large size of the House has required the imposition of relatively stringent debate limitations, either by the standing orders themselves or by motions authorized by the standing orders. On the other hand (and as discussed below), the Senate imposes few effective limitations on debate, either by its standing orders or by motions approved by majority vote.

Terms of Office

In the United States as in Australia, Senators are elected to six-year terms. In the United States, these terms are fixed. There is no constitutional mechanism in the US Constitution that is comparable to the double dissolution procedures in section 57 of Australia's Constitution. This difference also applies to the other chamber. Unlike the Australian House of Representatives, the US House of Representatives cannot be dissolved before the expiration of the two-year terms for which its members are elected.

In both nations, Senators' terms are staggered so that each Senate can be described as a "continuing body," except when the Australian Senate is elected after a double dissolution. In the US, the terms of one-third of the Senators expire every two years, whereas in Australia, the terms of one-half of the Senators expire every three years. This difference corresponds to the differing lengths of the terms to which Representatives are elected. With US Representatives elected to fixed two-year terms, one-third of the Senate seats can be filled at the same time as each House election. With Australian Representatives elected to terms that cannot exceed three years, one-half of Australia's Senate seats usually are filled at elections that coincide with elections for the House of Representatives.

One significant difference relates to when the terms of newly elected or re-elected Senators begin.[4] In the United States, elections for the Presidency, the House of Representatives, and the Senate all occur on the same day, fixed by law, in early November of even-numbered years. The Senators chosen at each election take their seats as soon as two months later: at noon on 3 January of the following year. However, Congress can, and usually does, fix a date later in January for the new Congress to convene and for newly-elected and re-elected Senators to take the oath of office and begin their service.

In Australia, by contrast, the date of each Senate election is not fixed by law. Instead, it usually has been fixed by the Governor-General, upon advice of the Government, to coincide with an election for the House of Representatives. However, a newly-elected or re-elected Senator does not begin his or her new six-year term until 1 July after the election.[5] This means that there can be a much longer interval in Canberra than in Washington between the date of a Senate election and the date on which the results of that election are reflected in the composition and membership of the Senate.

If an Australian Senator dies or resigns, thereby creating a casual vacancy, the parliament of the Senator's State normally elects a replacement. Except in Queensland, which has a unicameral parliament, the two houses of the State parliament sit and vote together to elect the State's new Senator.[6] In the United States, by contrast, the governor of the State appoints a successor to fill the State's vacant seat in the Senate until the next regularly-scheduled biennial election. At that time, a Senator is elected for the remaining two or four years of the Senate term, or to begin a new term if the vacancy occurs during the last two years of a Senator's term. For example, if a Senator is elected in 2004 and dies during 2005, the governor of his or her State will appoint a successor to serve until 2006 when someone will be elected to serve until 2010, when the deceased Senator's term would have ended.

As important as how a successor is chosen is the party to which that successor may belong. Australia amended its Constitution in 1977 to provide that, when a casual vacancy occurs in the Senate, the person chosen to fill the vacancy shall be of the same political party as the Senator whose death or resignation caused the vacancy. According to *Odgers' Australian Senate Practice*, "[t]he purpose of this provision is to maintain the integrity of the proportional method of voting introduced in 1948…."[7] Underlying the 1977 amendment was the belief that, since the introduction in 1948 of proportional representation for Senate elections, Australians have voted in those elections primarily for one party or another, not for individual candidates. The

amendment sought to preserve the results of the most recent Senate elections by preventing the party balance in the Senate from being changed as a result of a casual vacancy.[8]

The practice in the United States is considerably different. When a Senator leaves office for whatever reason, the governor of that Senator's State is free to appoint as replacement whomever he or she chooses.[9] It is understood and expected that the governor will appoint someone of the governor's own party (or perhaps someone who is not a registered member of either major party), even if the effect is to replace a Democrat in the Senate with a Republican, or conversely. The presumption in the United States is that a Senate seat belongs to the person elected to fill it, not to that person's party. So when a Senator vacates his or her seat, the Senator's party retains no claim to it.

When George W. Bush was inaugurated as President in January 2001, there were 50 Republican and 50 Democratic Senators. The President's party had a majority in the Senate only because the Vice President, who is the President of the Senate, could cast tie-breaking votes in favor of the positions of the President and the Republican party. This situation constrained the newly-elected President in selecting the members of his Cabinet and other senior officials such as ambassadors and federal judges. The President could not choose a Republican Senator to fill any such position if that Senator represented a State with a Democratic governor. If the President made such an appointment, the Democratic governor was certain to appoint a Democrat to fill the Senate vacancy; so, as a consequence, the President would lose control of the Senate, which he could not afford to do.

No one would have argued seriously that a Democratic governor would have been under any obligation to appoint a Republican to fill the vacated seat of a Republican Senator. The reason lies in how US Senators are elected and the part that political parties play in the election process.

Elections

Since the founding of the Commonwealth in 1900, Australians have elected their Senators. Section 7 of the Constitution states that the Senators from each State "shall be directly chosen by the people" of that State. In the United States, on the other hand, American voters did not begin to choose their Senators by direct election until the 17th amendment to the Constitution was ratified in 1913. Until then, Senators were elected by their State legislatures.

It should be remembered that when the US Constitution was written in 1787, the goal of its authors was not to maximize direct popular control of government. They provided that only the House of Representatives was to be elected directly by the people. The President was to be chosen by an Electoral College, which was originally envisioned as a selection of wise and experienced statesmen in each State who would know and be able to evaluate the talents of prospective presidents. Federal judges, including justices of the Supreme Court, were, and are, nominated by the President and confirmed by majority vote of the Senate to serve for indefinite terms. They are not elected and cannot be removed from office by popular vote.

Most important for our purposes, many authors of the American Constitution thought that the Senate would and should be a check on popular passions and excesses as represented by

members of the House of Representatives who are elected every two years and, for that reason, always have been expected to be particularly sensitive and responsive to public opinion. In a 1984 speech in the Senate, Senator Robert Byrd quoted two of the Constitution's authors:[10]

> The people immediately should have as little to do as may be about the government. They lack information and are constantly liable to be misled. (Roger Sherman)
>
> The evils we experience flow from an excess of democracy. The people do not lack virtue, but are the dupes of pretended patriots. (Elbridge Gerry)

These sentiments were not representative of those of all the Constitution's authors. However, they do illustrate how much difference a century made. When the authors of the Australian Constitution provided for direct popular election of Senators, they were fully aware of the alternative possibility of having Senators elected by the State parliaments. They also were undoubtedly aware of the growing support in the United States for the constitutional amendment that the Congress proposed in 1909 and that a sufficient number of States ratified four years later.

Once the United States began electing its Senators, they always have been elected by plurality vote—that is, by what sometimes is called the "first past the post" system in which the Senate candidate who receives the most votes is elected, even if that candidate receives only a bare plurality, not a majority, of the votes cast. By contrast, Australia instituted proportional representation (PR) for electing its Senators, beginning with the election of 1949. There is no constitutional bar against the United States doing the same. However, PR has never been used for State or national legislative elections and, more generally, is unfamiliar in American political practice.

This difference in the mode of election is extraordinarily important for the political dynamics within the Australian and American Senates. In Australia, the parties select their Senate candidates in each State, and most voters endorse a party's preferences among Senate candidates in their State by voting "above the line." In the case of a half-Senate election in which three Senators are chosen, the candidate of the Liberal or Australian Labor Party who is listed first among that party's candidates is almost certain to be elected; the candidate who is listed third is almost certain to be defeated. A minor party candidate who is not listed first among his or her party's candidates is very unlikely to be elected. With the exception of an occasional Independent candidate or a Senator who is able to develop a strong individual reputation and personal following, the efforts that individual candidates make to promote their election matter little when compared with the importance of how much support their party enjoys within the electorate. In short, Australian Senators owe their election primarily to their parties, and they know they will owe their re-election or defeat to their parties.

Once elected to the Senate, therefore, Australian Senators are, with rare exceptions, loyal supporters of their parties, especially during public debates and on votes decided by divisions. A review of divisions in the Senate between 1996 and 2001 revealed no instances of major party Senators voting against their party colleagues. (There were a few occasions on which the Senators of a minor party did not all vote together.) The only exceptions were the small number of free or "conscience" votes on which party leaders did not try to enforce a party position. The

individual ALP or Coalition Senator may influence party policy through the work of party committees, the debates in his or her party room, or the Senator's direct contact with party leaders. Once the policy of a major party has been decided, however, Senators of that party are expected to support it in the Senate.

The contrast with the American Senate is clear and dramatic. To a considerable degree, US Senators are independent political entrepreneurs. They are largely responsible for their own political success or failure. Most of them are loyal party members most of the time, but their first concern is for their constituents who elected them and who will decide whether to re-elect them.

Political parties in the United States do not select their candidates for election to the Senate. Senate candidates of the major parties (who are the only ones with any realistic chance of winning) are chosen in primary elections by each party's members in each State. Although elections are controlled by State laws in the United States, the outlines of the electoral process are relatively standard. By meeting a petition requirement that is not very onerous, a party member can have his or her name placed on the Democratic or Republican Party primary ballot. On a day set by State law, voters in the State who have registered as members of one party or the other vote to select their party's candidate for the Senate.

In most States, a voter becomes a member of one party or the other, for purposes of qualifying to vote in a primary election, by declaring his or her party allegiance to State or local government officials who then list the voter among those eligible to participate. There is no formal membership process nor is there any requirement to pay party dues, and a voter usually can change his or her party membership simply by notifying the appropriate government official. In some States, a voter can wait until the day of the primary election to decide which party's election in which to participate.

Since this system was instituted in the late 19th Century, most party officials have discovered that they are unlikely to be very successful in influencing the outcomes of these primary elections. Knowing this, they usually do not try, or at least try very hard. Furthermore, most State and local party officials are more concerned with who will represent their party in elections to State and local office than in elections for the US Senate. The selection of Senate candidates is left largely in the hands of the party's supporters in each State. A Senator's most direct obligation, therefore, is to those self-identified party members in his or her State who selected the Senator in the primary election and who will be asked to renominate the Senator in six years against opponents from within his or her own party.

Once nominated, a major party candidate receives some valuable strategic, policy, and financial support from his or her national party organization and perhaps from some individual national political leaders. However, it is largely the candidate's own responsibility to develop a campaign plan, choose the issues to emphasize, decide on the positions on those issues that are most likely to appeal to the State's voters, hire a campaign staff and devise a campaign schedule, and, what is perhaps most important, raise the large amounts of money—often amounting to millions of dollars—that now are necessary to run an effective senatorial campaign in most States.

Candidates who survive this process arrive in Washington as newly-minted Senators with a sense of loyalty to the party whose nomination they secured, with which they may have been affiliated for many years, and with which they agree on most issues of national policy. On the other hand, they also appreciate that they achieved election primarily through their own efforts and not because of any efforts or endorsements of party leaders. Consequently, Senators' first loyalty is to their primary election supporters, their second loyalty is to their general election supporters, and their third loyalty is to other primary and general election voters who might be persuaded to support them when they run for re-election in six years' time.

It has been said that members of the US Senate (and the House of Representatives) have three goals: to get re-elected, to make what they think is good public policy, and to gain influence within the Congress and, therefore, in the larger Washington community. Achieving the first goal, however, is a prerequisite for achieving the other two. Belonging to a political party that is popular at home is a very valuable asset, but it is one over which individual Senators have little control. What they can try to control is the personal reputation they enjoy with their constituents.

It would be too simple to conclude that US Senators are concerned only with their States and that they are interested only in their own re-election. It is fair to say, however, that most American Senators need to be more concerned than Australian Senators with the immediate interests and needs of their States and much less concerned with supporting the positions of their party leaders. An American Senator who fails to support a position that enjoys widespread and intense support among his or her State's voters puts the Senator's political future at serious risk. An Australian Senator who fails to support the position of his or her party on a matter that is important to the party's leaders puts his or her political future at equivalent risk. The difference lies in the much greater part that Australian parties play in selecting and reselecting candidates for the Senate.

Most US Senators of each major party vote together most of the time. However, they do so voluntarily, not because they are in any sense required to do so by their congressional party leaders or by the President, if he happens to be a member of their party. Democratic Senators usually vote together and Republican Senators also usually vote together because they choose to do so, because they agree with each other, and because it is more comfortable for most of them to be team members instead of mavericks. However, when they disagree with a policy position that prevails within their party, for reasons of either constituency preferences or personal convictions, all Senators are prepared to vote against most of their party colleagues. Furthermore, their decision to vote against the prevailing party position usually is accepted by their party leaders and colleagues as a reflection of reasoned self-interest as well as the primary responsibility of Senators to the people who sent them to Washington in the first place.

On contentious and divisive issues, most Senate Republicans will vote against most Senate Democrats. But a minority of Republicans will vote with the majority of Democrats and a minority of Democrats will vote with the majority of Republicans. When the Senate is narrowly divided between the two parties, as it usually has been in recent decades, the number of Senators who "cross the aisle" in each direction often will determine the outcome of a vote.

This state of affairs has several important consequences. First, party leaders, including the President and congressional party leaders, cannot impose positions on Senators of their party. They must lead by persuasion, and especially by persuading a Senator that what the leaders want him or her to do is what that Senator should want to do for reasons of individual conviction or political self-interest. Second, the same party leaders do not try to press all the Senators of their party to support the same position if the leaders accept that doing so would damage some of their Senators' prospects for re-election. A sensible leader prefers to lose a Senator's vote today rather than risk having that Senator (and the leader's party) lose that seat during the next six-year term and, quite possibly, thereafter.

Third, American Senators cannot afford to rely exclusively or even primarily on their party leaders for guidance on what positions to take and how to vote. Each Senator always must ask whether significant numbers of his or her constituents care about a pending issue or forthcoming vote (or if they will care if and when they learn about it). That assessment may not control how the Senator votes, but it always must be an important element in his or her legislative calculations. That is one important reason why each Senator has a staff of legislative assistants and access to a much larger staff of policy experts in the Congressional Research Service, the US Congress's equivalent to the Information and Research Services of the Department of the Parliamentary Library in Canberra. An American Senator wants the resources to make an independent policy judgment with the benefit of advice from staff who will look at each policy choice and each vote from that Senator's unique perspective, and ask how it will affect the Senator's State and his or her political future.

Fourth, American Senators invest heavily in publicizing themselves in their States, securing federal funds for visible projects in the State, especially visible construction projects, and in acting as *de facto* ombudsmen for their constituents. To assist them in these efforts, Senators have staff who specialize in securing positive media coverage, obtaining at least their fair share of funds for State projects, and attempting to assist individual constituents with problems they are having with federal departments and agencies. By these means, Senators attempt to develop a strong base of personal popularity which can cushion them at re-election time against any decline in the popularity of their political party. In some States in which one party is dominant, Senators and Senate candidates will associate themselves visibly with their party. More often than not, however, Senators and Senate candidates seek support as individuals, hoping thereby to appeal to the growing percentage of voters who do not vote habitually for the candidates of one party or the other.

Constitutional Powers

There was little disagreement among the authors of Australia's Constitution that the Senate they were creating should have legislative powers roughly equal to those of the Australian House of Representatives and roughly similar to those of the American Senate. The major issue to be resolved, and one that consumed much of their time and thought, was what part, if any, the Australian Senate should have in the enactment of financial legislation.

Financial Legislation

The decisions they ultimately reached were embodied in section 53 of the Constitution. In brief, they decided that all spending and tax bills shall originate in the House of Representatives and that the Senate may not amend any tax bill or any bill "appropriating revenue or moneys for the ordinary annual services of the Government." However, they also provided that the Senate can request that the House make amendments to any bill that the Senate cannot amend directly.[11] They also made it clear that, otherwise, "the Senate shall have equal power with the House of Representatives in respect of all proposed laws."

However, there remained unresolved questions about what powers the Senate enjoys with regard to money bills and how it should exercise the powers it does have. During the first years the new constitution was in force, the Senate insisted on recognition that spending and tax bills were the responsibility of both houses. Of greater practical importance, the Senate also insisted that its constitutional authority to request that the House agree to certain specific amendments also carries with it the right of the Senate to press its requests for amendments that the House is reluctant or unwilling to make.

Some commentators have concluded that section 53 grants primacy to the House of Representatives in enacting financial legislation. Others have argued that, to the contrary, there is only a technical, procedural difference between the power of the Senate to amend most bills and its power to request House amendments to money bills. Underlying the latter position is the fact that no bill can become law unless the two houses have reached agreement with regard to any amendment the Senate has made or requested. On this question of principle and constitutional interpretation, the two chambers have agreed to disagree. What has mattered more in practice is the Senate's evident power to bring the operations of the Government to a halt by refusing to act on essential appropriations bills. It was the Senate's unwillingness to pass needed supply bills that led to the most important constitutional crisis in the history of the Commonwealth, the crisis that culminated in the Governor-General's dismissal in 1975 of the ALP Government of Prime Minister Whitlam, even though his Government still enjoyed the confidence of the House of Representatives.

The authors of the US Constitution also recognized the special importance of financial legislation. They gave the Senate exactly the same legislative powers as the House of Representatives, with one exception. Article I, Section 7, commonly known as the "Origination Clause," states that "[a]ll Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills." On its face, this provision seems to correspond with one element of section 53 but not with another. Like the Australian Senate, the American Senate cannot originate a bill "for raising revenue." But unlike the Australian Senate, the Senate is free to amend any such bill to the same extent it can amend any other bill.

Two questions have arisen concerning the meaning and implementation of the Origination Clause. First, what is a bill for raising revenue; and second, what kinds of amendments can the Senate make to such a bill? The answers to these questions reveal that not much of an advantage accrues to the House by virtue of the Origination Clause.

With regard to the first question, the House of Representatives has interpreted this clause to apply to all tax bills, regardless of whether they increase (raise) revenue by imposing new taxes or increasing existing taxes, or whether they actually have the effect of reducing the tax receipts flowing into the Government. Furthermore, the House has argued that the Origination Clause also applies to bills for spending the Government's tax receipts—in other words, that both spending and tax bills must pass the House before the Senate can pass them.

The Senate never has accepted the House's position in principle, but it has acceded to it in practice. From time to time, the Senate has initiated special appropriation bills—bills providing funds for a single purpose—but it has acquiesced in the House's insistence that it must be the first to pass all tax bills and all of the regular annual appropriation bills that fund the US equivalent of the "ordinary annual services of the Government." If the Senate passes a bill of its own that includes a significant tax or spending provision, or if it passes such an amendment to a House bill that is not a money bill, the House is likely to agree to a resolution announcing that the Senate has infringed on the constitutional prerogatives of the House and directing that the offending Senate bill or amendment be returned to it.

The American Senate has been willing to accede to the House on this matter because it has come to mean little in practice. The reason lies in the Senate's constitutional authority to amend any money bill in any way it chooses. Just as the Australian House of Representatives somehow must reach agreement with the Senate regarding any amendment to a money bill that the Senate requests, so too the American House of Representatives must reach agreement with the Senate regarding any Senate amendments to a money bill.

The sequence in which the two chambers of the American Congress act on these bills might make a more significant difference if the form in which the House of Representatives passes a tax or spending bill somehow limits the kinds of amendments to that bill that the Senate can consider and adopt. For example, if the House were to pass a bill making one minor change in an excise tax, it might be thought that the Senate could not amend that bill by proposing a major overhaul of the national income tax system. However, that is precisely what can happen in Washington because of the amendments that Senators can offer to bills during plenary sessions.

The Senate's standing orders do not include any general requirement that amendments to bills be germane to those bills. This means that while the Senate is considering any tax bill that the House has passed, no matter how narrow or insignificant that bill may be, Senators may offer amendments to it to make totally unrelated changes in federal tax programs or amendments on subjects that have absolutely nothing to do with taxation. As a result, the House's insistence on originating all tax bills does not give it any control over the subjects that tax legislation addresses. Furthermore, if the Senate wants to initiate some major change in tax programs, it usually has available some minor tax bill that the House already has passed and that the Senate can use as a "vehicle" to carry its unrelated tax initiative.

With regard to appropriation bills, the impact of the Origination Clause is equally limited in practice. For many years, the Senate would not begin work on one of the thirteen annual appropriation bills (through which the Congress enacts most discretionary appropriations each year) until the House already had passed the bill. Largely for this reason, the House of

Representatives and its Committee on Appropriations did much more to shape the content of the appropriation bills than did the Senate or its Appropriations Committee. The role of the Senate sometimes was described as a "court of appeals" to which federal departments and agencies could appeal to restore spending that the House had cut from their budget requests.

That pattern recently has changed, in part because the imposition of the congressional budget process, beginning in 1975, has limited the discretion of the appropriations committees in both houses. Today it is not unusual for the Senate to debate, amend, and pass its version of an appropriation bill before the House passes its version of the same bill and sends it to the Senate. The Senate manages to remain in technical compliance with the Origination Clause by refraining from sending its appropriation bill to the House after having passed it. Instead, the Senate holds its bill until it receives the corresponding House bill. [12] Then the Senate amends the House bill by replacing its text with the text of the bill that the Senate already has passed. Finally, the Senate passes the House bill with that single amendment which embodies the Senate's position regarding the bill.

As a result, when the two houses reach agreement on the final version of the bill, their compromise is embodied in a bill that originated in the House even though the Senate had acted first on its bill on the same subject.[13] In this way, the Congress satisfies the requirement of the Origination Clause, though very narrowly construed, without limiting the Senate's freedom of action.

In summary, the American Constitution, like the Australian Constitution, imposes a restriction on the legislative authority of the Senate regarding financial legislation that does not apply to other bills. However, the practical consequences of this restriction have been minimized by practical arrangements that both chambers have accepted, albeit reluctantly.

Treaties and Nominations

There are two other, non-legislative, respects in which the constitutional powers of the American Senate differ from those of the American House of Representatives. These differences have no parallel in the Australian Constitution. First, the US Senate must give its advice and consent, by a two-thirds vote, before the President can ratify a treaty. Second, the Senate must confirm, by majority vote, the President's nominations of persons to become US ambassadors and federal judges and to fill senior, non-career positions within the executive departments and agencies.

The role of the Senate in authorizing the ratification of treaties has its roots in the original concept of the Senate as an advisory council to the President as well as a legislative body. In fact, President Washington once came to the Senate chamber with the expectation that the Senate would give its advice and consent regarding a proposed treaty while he was present. That approach proved unacceptable to both the President and the Senate. Instead, the Senate came to review, debate, and propose amendments to treaties by procedures that are fundamentally similar to its procedures for acting on legislation. However, the influence over US international relations that the Senate's role in treaty-making would seem to give it has been undermined by the President's frequent reliance on executive agreements instead of treaties. Furthermore, the House of Representatives is not excluded from influencing matters that are the subjects of

treaties because many treaties require the appropriation of funds or the enactment of implementing legislation that requires the approval of both chambers.

Neither house of the Australian Parliament plays any corresponding part in the approval of treaties on behalf of the Commonwealth. There would be no obvious bar, in theory or practice, to a constitutional requirement or a non-statutory convention that somehow involves the Parliament in making treaties. However, there is no evident reason why the Australian Senate should be involved in this process more than the House of Representatives.

The Senate's power to confirm the nomination of senior executive branch officials, including department secretaries (ministers) and ambassadors, is one of the checks and balances that characterizes the system by which the independently-elected legislative and executive branches of the American national government share powers. Just as the President's veto power allows him to share in the legislative power that is vested primarily in the Congress, the Senate's confirmation power is one of the ways in which the Congress shares in the execution of the laws, a responsibility that is centered primarily in the Presidency. The Congress usually has acquiesced in the President's choices of executive branch personnel, even when the President's party has not held a majority of seats in the Senate. However, there have been several recent occasions on which the Senate has failed even to vote on presidential nominees.[14]

The selection of federal judges, by presidential nomination and Senatorial confirmation, demonstrates the inter-locking relationships created by the American regime of checks and balances. In recent years, the Senate has engaged in more critical scrutiny of judicial nominees than nominees to executive branch positions. Among the reasons are the indefinite tenure of federal judges and congressional recognition of the impact of judicial decisions, especially by appellate judges and Supreme Court justices, on national policy. In 2002 and 2003, the President and his allies in the Senate engaged in a difficult effort to secure confirmation of several judicial nominees over sustained opposition by minority party Senators. These contests have been important in their own right, but also as indications of the problems that may arise in obtaining Senate approval of jurists nominated to replace Justices retiring from the Supreme Court that, on some controversial issues, is rather closely divided.

Requiring approval of ministers or senior ministerial officials by the Australian Senate would be regarded by many as inconsistent with the principles of responsible government by which ministers are supposed to be responsible, individually and collectively, to the House of Representatives. However, that argument is much less likely to be raised against proposals to give one or both chambers of the Parliament a role in approving the selection of judges who now are appointed by the Government without any parliamentary involvement.

Legislative Procedures

One of the most striking differences between the Australian and American Senates is in their procedures for conducting legislative business in plenary sessions. The procedures of each body are exceedingly complex, but several characteristics of the Australian Senate's standing orders stand out sharply in comparison with those of the American Senate.

First, the Government controls most of the Australian Senate's time even though it does not control a majority of the Senate's votes. Second, the daily, weekly, and even annual schedules of the Senate are fixed or are set far in advance.[15] Third, the Senate's standing orders control the length of time that matters are considered by (1) imposing a 20-minute maximum on individual speeches, (2) allowing the Senate, by majority vote, to end a debate that is in progress (but not while a Senator is speaking), and (3) enabling the Senate, again by majority vote, to impose a time limit, known as a guillotine, on each of the remaining stage of a bill's consideration.

The corresponding procedures of the American Senate are radically different. First, the President's party does not automatically determine and control how the time of the Senate in plenary session is allocated, even when his party controls a majority of seats in the Senate. Second, it often is difficult to predict what the Senate will do during the next hour, much less during the next day or week. Predictions of the annual schedule are just that: predictions. And third, there are few effective time limits on how long each Senator speaks or how long the Senate debates a bill, amendment, or other matter that it is considering. In general, a debatable question may not be put to a vote in accordance with the Senate's rules of procedure so long as any Senator is speaking or so long as any Senator wishes to speak.

The key to understanding what does and does not happen on the Senate floor is its lack of effective limits on debate. The President of the Senate (or whichever Senator is presiding) is required to recognize (give the call to) any Senator who seeks it when there is no Senator already speaking. The President has no discretion in the matter; he cannot decline to give the floor to a Senator who wants to speak, nor can the President be guided by any pre-arranged list of speakers without the unanimous authorization of the Senate, an authorization that rarely is sought and given.

Once Senators have been recognized to speak, they may continue for as long as they wish or as long as they are able; the record for a single speech is more than 24 hours. A Senator who is speaking may not be interrupted unless he or she violates the rules and precedents governing appropriate references in debate. When no Senator is speaking, the Senate can decide, by simple majority vote, to end a debate, but only if the Senate is prepared to reject whatever proposition it is debating. There is no corresponding motion by which the Senate can, by simple majority vote, end a debate so that the Senate can proceed to approve whatever it has been debating.

This right of extended debate gives rise to filibusters, which are the most distinctive characteristic of the American Senate's legislative procedures. It is possible to end a filibuster by using the Senate's "cloture" procedure, but this cannot be initiated until several days after a debate commences. Then, invoking cloture requires the affirmative votes of at least 60 of the 100 Senators and, even if successful, only ensures that the debate will not continue for more than an additional 30 hours. Because the majority party rarely if ever holds 60 per cent of the Senate's seats, the 60-vote requirement for cloture effectively means that a united and determined minority party can prevent cloture from being invoked and, therefore, can prevent the Senate from reaching a final vote on any proposal it is considering.

The possibility of filibusters is ever-present and pervades many aspects of the Senate's procedures. For example, the Senate can agree, by simple majority vote, to a motion that

specifies what bill it will consider next. However, that motion is debatable and, therefore, subject to a filibuster. Therefore, the Senate usually makes such decisions by unanimous consent. Any one Senator can delay or even block the Senate's consideration of a bill in plenary session by making threatening to filibuster any motion to bring that bill before the Senate. Similarly, the Senate often imposes (or tries to agree to) limits on how long individual bills and amendments are to be debated, but only through unanimous consent agreements that require the explicit or implicit concurrence of every Senator.

In general, the pervasive possibility of filibusters creates a powerful incentive for compromise and accommodation that extend across party lines. Because the minority party can unite to defeat any cloture motion, the majority party often has to choose between making concessions or facing the prospect of deadlock or defeat. Even if there is sufficient support to invoke cloture on a bill or some other proposal, there still is good reason to try to accommodate its opponents because enduring and defeating a filibuster is a time-consuming process.

The responsibility for attempting to arrange the agenda for the Senate's plenary sessions rests primarily with the Majority Leader, the elected leader of the majority party, not with the President of the Senate or any Senator who is presiding.[16] In addition to the difficulties that the prospect or fact of a filibuster poses for the Majority Leader, his task is further complicated by the fact, noted above, that the Senate's rules of procedure do not impose a general requirement that the amendments Senators offer in plenary sessions must be germane to the bills the Senate is considering. As a result, whatever floor agenda the Majority Leader has planned and negotiated is liable to being disrupted if a Senator of either party decides, for whatever reason, to offer a controversial non-germane amendment that provokes heated debate and even a filibuster. The Majority Leader usually may be able to control what bills the Senate considers on the floor, but he cannot control what issues reach the floor in the form of non-germane amendments.

Like the Australian House of Representatives, the American House of Representatives is a body that is governed by majority rule. The majority party in Washington's House of Representatives can, if it is determined and united, control what bills come to the floor (as well as what issues, because the House does impose a germaneness rule on amendments), how long each bill will be debated, and what amendments can be proposed to it. The minority party in the House, whether the Democrats or the Republicans, regularly complain that they are not allowed a fair opportunity to present and secure votes on their legislative priorities and even on their alternatives to the majority party's proposals. Often these complaints are well-founded.

The American Senate, on the other hand, is not a place where the majority rules easily or quickly. For historical reasons that have been transmuted into matters of principle and tradition, the Senate places an unusually strong emphasis on the rights and prerogatives of individual Senators, regardless of party, and, therefore, on the ability of the minority party to influence the Senate's agenda and frustrate the majority party's plans and program. One recent Majority Leader in the Senate described his job as being very much like trying to herd cats.

Organization

In the Australian Senate, the Government controls most of the time devoted in plenary sessions to considering legislation. There are regular opportunities and periods of time for non-Government Senators to raise issues and discuss proposals of their choosing, but their bills are very unlikely to come to a vote without the Government's approval or acquiescence. Individual Senators are free to introduce their own bills but they do not do so very often, perhaps because they know that any bills they introduce are very unlikely to become law. As a result, the total number of bills introduced in the Senate or received from the House each year is relatively small. Tt is a manageable task for the Government to decide which of these bills the Senate will consider in plenary session and when it will consider them.

The organization and work of the Senate's committees reflects this situation. Many observers of the Senate agree that the establishment of the current Senate system of committees has been among the most significant institutional developments in its recent history. In addition to other important committees, such as the Committee on Regulations and Ordinances and the Committee for the Scrutiny of Bills, the Senate has eight pairs of legislation and references committees, with a Government Senator chairing each legislation committee and a non-Government Senator chairing each corresponding references committee. As their name implies, the references committees undertake inquiries on matters referred to them by the Senate. Similarly, the legislation committees have been reviewing an increasing number of bills. The Senate decides which bills to refer to its legislation committees. These decisions typically are made at the recommendation of its Selection of Bills Committee, and specify deadlines for committees to act on each bill referred to them.

In some respects, the organization and functions of these committees parallel the work of the committees of the American Senate. There also are some noteworthy differences, however. The Senate in Washington combines the work that is done separately in Canberra by legislation and references committees. A single US Senate committee has responsibility for considering legislation and for inquiring into matters that concern the same subject. The decision of Australia's Parliament to create separate but parallel legislation and references committees was an imaginative compromise that resolved the issue of whether Government or non-Government Senators should have a majority of votes on each of them. In Washington, this issue does not arise because it is understood and accepted that the majority party will have a majority of seats and votes on each committee and each subcommittee.[17] The party ratio on each committee and subcommittee is a reasonably accurate reflection of the party ratio in the Senate itself.[18]

A second key difference is that the American Senate does not refer matters to its committees. The general jurisdiction of each committee is defined in the standing orders (which are supplemented by an elaborate body of precedent). Most bills that Senators introduce or that the Senate receives from the House are routinely and immediately referred to the committee with jurisdiction over each of them.[19] Furthermore, each committee is empowered to inquiry into any matter within its jurisdiction without any specific authorization by the Senate. For this purpose, the Senate gives each committee its own budget and the authority to receive testimony under oath and compel by subpoena the attendance of witnesses and the production of documents. Almost any highly publicized event or development that arguably affects US domestic or international interests is likely to be the subject of at least one Senate committee inquiry (and an entirely separate and uncoordinated inquiry by one or more House committees).

A third difference is that US Senate committees control their own agendas, and their agenda decisions often decide the fate of the bills referred to them. When a bill is referred to a Senate committee in Washington, there is no procedure for setting a deadline by which the committee must act on it.[20] Each committee usually decides which bills it will consider, the order in which it will consider them, and if and when it will take final action to report a particular bill back to the full Senate for further action. These agenda-setting decisions usually are made by each committee's chairman; this is perhaps the single most important power or prerogative that a Senate committee chairman enjoys.

During 1999-2000, there were 3,898 bills and resolutions that Senators proposed or that the House passed and sent to the Senate for its concurrence. Of this total, the Senate passed 1,245, or 31.9 per cent. The corresponding figures for 2001-2002 were 948 bills and resolutions passed, or 25.1 per cent of the total of 3,770 that the Senate could have passed. Although the US legislative process is too complicated to allow for single explanations of almost anything, it is fair to say that the vast majority of the 70-75 per cent of bills and resolutions that the Senate did not pass died at the end of each two-year Congress because the committees to which they were referred failed to recommend them for passage.[21]

As these data suggest, one of the primary responsibilities of Senate committees in Washington is to act as a screening or filtering device—to sort through the hundreds or thousands of bills and resolutions that are referred to each committee every two years, and to recommend the relatively small percentage of proposals that the committees believe the Senate should debate and pass. In turn, this power that the Senate gives its committees reflects at least two factors. One is the fact that the majority party holds a majority of seats on each committee and selects its chairman. Usually, therefore, the committees do not thwart the preferences of the majority party's leaders on the most important issues. The other factor is that neither the Senate's standing orders nor its conventions dictate that any bill advocated by the President should, for that reason alone, receive priority consideration in committee or on the Senate floor. The President's major legislative initiatives are very likely to reach the Senate floor, but the Senate's committees are instrumental in determining when that happens.

There is one major limitation on committee power in the Senate that does not affect committees in the American House of Representatives. As already noted, there is no general requirement in the Senate that each amendment that a Senator proposes on the Senate floor must be germane to the bill the Senate is considering. The frequency with which Senators take advantage of their right to offer non-germane floor amendments has the effect of undermining committee power. Assume that a Senator introduces a bill, the bill is referred to the appropriate committee, and the committee fails to act on it. For all intents and purposes, the bill is doomed. There is almost nothing that the bill's sponsor can do to prevent the bill from dying in the committee's files when the Senate adjourns at the end of the two-year Congress. However, the proponents of the bill need not be too concerned or disappointed, because any one of them can propose the text of the bill as a non-germane floor amendment to almost any other bill that the Senate does consider. In short, Senate committees can exercise a veto over what *bills* the Senate will consider, but not over the *issues* that will reach the Senate floor in the form of non-germane amendments.

Finally, two other points should be noted about the legislative powers of American Senate committees. First, most of its committees have the authority to write their own bills, instead of only acting on bills that are referred to them after being introduced by individual Senators or passed by the House. It is not at all unusual for a Senate committee to hold hearings on an issue, or on several bills that address the same issue, and then for the committee to propose to the Senate a bill that emerges from the committee's deliberations. Not surprisingly, these "original" committee bills, as they are known, usually reflect the conception of the committee chairman and they always reflect the preferences of the committee's majority.

Second, the committee meetings at which a committee decides what legislation, if any, to propose to the Senate are called "markups" because they are devoted to deliberations within the committee on how to mark up (that is, how to amend) the legislative proposal that is before the committee. A Senate committee cannot actually amend the text of a bill; only the Senate itself, acting in a plenary session, has the authority to do that. However, Senate committees can and do propose amendments for the Senate to consider. Any amendment that receives a majority of votes in a committee meeting to mark up a bill then receives priority consideration when the Senate begins considering the bill on the floor. Often, in fact, a committee proposes a single amendment to a bill that proposes to replace the entire substantive text of the bill.

A Senator may remain on the same committee for most or all of his or her Senate career, especially if the committee is a particularly powerful one, such as the Committee on Appropriations or the Committee on Finance, or if it is particularly important for the economy of the Senator's State, as committees such as the Committee on Agriculture, Nutrition, and Forestry or the Committee on Energy and Natural Resources may be. Consequently, the division of labor that a committee system offers is complemented by a considerable degree of specialization and expertise that enhances a committee's knowledge and, therefore, its influence inside the Senate and in its relations with the executive departments and agencies.

For this reason, the legislative recommendations that a Senate committee makes usually will be received with considerable deference by Senators who do not serve on the committee. Committee-endorsed amendments to bills are likely to win on the Senate floor. As a result, the final versions of bills that the Senate passes often are more a reflection of amendments initiated in committee than the original proposals made by the Senators introducing the bills or the executive offices in which the ideas for them may have originated. Also, when the Senate and the House of Representatives have passed their own different versions of the same bill, the Senate relies primarily on the members of its committee that had studied and reported the bill to negotiate with the House on the Senate's behalf. Those negotiations produce the final text of the bill that then is sent to the President for his signature or veto.

Conclusion

As this very selective comparison has demonstrated, there are many specific differences as well as similarities between the Australian and American Senates. From a broader perspective, however, the two chambers have the potential to play—and often do play—much the same role in their political systems: to act as a brake and a check on the executive (the Government in Australia and the President in the United States).

As this was being written in mid-2003, Prime Minister Howard proposed amending Australia's Constitution to provide for joint sittings of the Senate and the House of Representatives to resolve their legislative disagreements without there first being a double dissolution and an election for both houses. The effect of this proposal would be to strengthen the hand of the Government *vis-à-vis* the Senate because, if the two houses are closely divided, a small Government majority in the House would prevail over a small non-Government majority in the Senate when the two chambers meet and vote together in a joint sitting.

At just about the same time, the Majority Leader of the US Senate, Senator Bill Frist, proposed to amend the Senate's rule for invoking cloture in a way that would make it progressively easier to end a filibuster, the longer the filibuster continued. The effect of this proposal would to strengthen the hand of the President's party whenever it holds a majority of seats in the Senate by enabling the Senate eventually to invoke cloture by a simple majority vote, not by the present requirement for a three-fifths vote of all the Senators.

The proponents of both proposals evidently were reacting to the ability of their respective Senates to delay or block legislation advocated by the President or by the Prime Minister and his Cabinet. In Canberra, the Senate with its non-Government majority can delay or defeat Government legislation, or can amend it (or request amendments) in ways that compel the Government to choose between making distasteful compromises or abandoning its legislation altogether. In Washington, the Senate with its rules permitting filibusters can delay legislation that the President has proposed, or block it from coming to a final vote, or compel the majority party to make significant legislative concessions as the price to be paid for allowing the bill to pass.

The constitutions of both nations require their Senates to approve bills before they are enacted into law. In Australia, the problems that the Senate causes the Government derive also from the use of proportional representation for electing Senators, a mode of election that regularly produces non-Government majorities. In America, the problems that the Senate causes the President derive also from the Senate's own internal standing orders and the latitude they give to each Senator and, therefore, to the minority party in the Senate. In each nation, the leader of its executive government can complain that it is the Senate that prevents the Australian Government or the American President from giving the people the new legislation that was promised during the most recent election campaign.

From this perspective, the Australian and American Senates, and the ways in which they now fit into their respective political systems, raise the same fundamental question, notwithstanding all the differences between the two chambers. Should representative governments be majoritarian, enabling the will of the majority, as expressed in the selection of the executive government, to prevail without much delay? Or is it appropriate and desirable for representative institutions to encourage or even require the party that controls the executive government to reach some accommodation or compromise with the opposing party, especially on the most contentious and divisive legislation? The proposals for changing the powers or procedures of the Senate that have been put forth—and that no doubt will continue to be made—in each capital need to be assessed with these questions clearly in mind.

Endnotes

[1] The Parliament of the Commonwealth of Australia. *United States Senate: Report by J.R. Odgers, Clerk-Assistant of the Australian Senate*, Government of the Commonwealth of Australia, 1956.

[2] Ibid., p. 17.

[3]The membership of the House was increased temporarily to 437 after Alaska and Hawaii became States in 1959, but the number reverted to 435 with the reapportionment of House seats following the 1960 census.

[4] If there is controversy over the outcome of a US Senate election, it is the Senate itself that ultimately decides who won and who lost. Article I, Section 4 of the Constitution states in part that "[e]ach house shall be the Judge of the Elections, Returns, and Qualifications of its own members…." In Australia, election disputes are referred to the High Court sitting as the Court of Disputed Returns.

[5] When an election follows a double dissolution, the terms of the Senators elected or re-elected are considered to have begun on 1 July preceding the election.

[6] Section 15 provides that, "if the Parliament of the State is not in session when the vacancy is notified, the Governor of the State, with the advice of the Executive Council thereof, may appoint a person to hold the place until the expiration of fourteen days from the beginning of the next session of the Parliament of the State or the expiration of the term, whichever first happens."

[7] Harry Evans (ed.), *Odgers' Australian Senate Practice* (Tenth Edition), Department of the Senate, Commonwealth of Australia, 2001, p. 16.

[8] In 1975, two casual vacancies had been filled by Senators who did not support the same party in the Senate as the Senators they replaced.

[9] In the United States, a vacancy in the Senate can occur because of death, resignation, or expulsion. Article I, Section 5 of the Constitution authorizes each house of Congress to "punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member." The Australian Senate originally could expel Senators but relinquished this power in 1987. (See Evans, op. cit., pp. 54-55).

[10] Reprinted in Robert C. Byrd, Jr., *The Senate, 1789-1989: Addresses on the History of the United States Senate* (Volume 1), US Government Printing Office, 1988, p. 389.

[11] Sections 53-55 also contain provisions to ensure that these restrictions on the powers of the Senate are interpreted and applied narrowly.

[12] Unlike the Australian Parliament, each chamber of the American Congress numbers its bills sequentially, in the order in which they are introduced during each two-year Congress. So, for example, the first bill introduced in the Senate in each odd-numbered year is designated S.1; the first bill introduced in the House of Representatives is numbered H.R. 1. The process described here results in each appropriation bill being sent to the President as a bill carrying a House of Representatives designation and number. No federal court has been inclined to look behind that fact to determine whether more of the content of the bill originated in the House of Representatives or the Senate.

[13] The differences between the House and Senate positions on such significant bills usually are resolved through negotiations conducted in a conference committee—that is, a temporary joint committee that is appointed for the purpose and that consists largely or exclusively of members of the House and Senate committees that originally had studied and reported the bill in question. In numerical terms, the US Congress uses conference committees less often than the exchange of amendments between the two chambers, which is the only procedure that the Australian Parliament uses. However, conference committees have proven to be a more effective and efficient mechanism for reaching bicameral agreement on large and contentious bills on which the two American congressional chambers have serious differences.

[14] President Clinton was obliged to withdraw several nominees to become Attorney General, for example, and the Senate never even debated his nominee to serve as US ambassador to Mexico.

[15] See, for example, the annual sitting schedule for 2003 that is available on the Senate's website at http://www.aph.gov.au/Senate/work/sitting2003.pdf, and the Senate's weekly routine of business that is found at http://www.aph.gov.au/Senate/work/routineofbus.pdf.

[16] The Vice President, in his capacity as President of the Senate, need not be, and often has not been, a member of the majority party in the Senate.

[17] The one exception is the ethics committee which has the same number of members from each of the two parties to demonstrate that any Senate inquiries into the conduct of its members, officials, and staff should be conducted on a strictly non-partisan basis.

[18] Also unlike the Australian Senate, the American Senate authorizes each committee to hire its own professional and clerical staff. In fact, committees generally have two staffs: one hired by and accountable to the committee chair and, through him or her, responsive to the needs and preferences of the committee's majority party members; and a comparable staff to assist the committee's minority party members. The two halves of a committee's staff may or may not work in harmony, depending on the degree to which partisanship affects the committee's work. For example, the Committee on Health, Education, Labor, and Pensions tends to divide along party lines more often than the Committee on Veterans' Affairs.

[19] The Senate's rules do contain a procedure by which a Senator can prevent a specific bill from being referred to any committee. This procedure is invoked only on infrequent occasions when a Senator is convinced that the committee to which a bill would be referred is very unlikely to act on it.

[20] In principle, this might be done by the Senate adopting a resolution for the purpose, but such a resolution would have to survive at least two filibusters if Senators, such as Senators on the committee in question, strongly opposed it.

[21] The Senate considers quite a few minor, non-controversial bills each year that have not been reported by a committee. In some cases, Senators agree that there is no need to refer a bill to a committee and subject the bill to the potentially time-consuming process of committee consideration. In other cases, a committee agrees that the Senate should consider a bill that was referred to that committee even before the committee has reported it back to the Senate. In any such case, the Senate agrees to consider the bill by unanimous consent.