



Unit 12: Federalism v Westminster Year 9 - C & C Strand: Laws & Citizens

Topic 9.2: Federalism v Westminster

## The Senate and control over money bills

### Raising and spending money – who has the power?

All governments need money to operate. They need it not only to function (eg to pay the salaries of public servants, rent on their office buildings and for the necessary equipment and supplies), but they also need large amounts of money to provide services to the people, to implement policies, to provide social welfare support to individuals, to make grants to companies and organisations for particular purposes, and to enforce the law.

This means that they need to:

1. raise money, which they primarily do through imposing taxes, fees and penalties;
2. store money, which they do by placing it in a Consolidated Revenue Fund;
3. appropriate money, which means authorising its withdrawal from the Consolidated Revenue Fund and earmarking it for expenditure for a particular purpose; and
4. spend the money.

Under the doctrine of responsible government, the executive government is responsible to Parliament. One way of enforcing that responsibility is by constraining the government's power to raise and spend money. It needs Parliament to do this.

The only way that the government can impose a tax is by getting Parliament to legislate to do so. The government has no power on its own to impose a tax. Once any kind of revenue is received by the Commonwealth government, section 81 of the Commonwealth Constitution requires that it be placed in the Consolidated Revenue Fund.

This stops government departments from hiding money that they receive in separate accounts and later spending it as they like without parliamentary authority. Section 81 says that 'All revenue or moneys raised or received by the Executive Government of the Commonwealth' must go into one Consolidated Revenue Fund, and it can only be paid out of that fund if it is 'appropriated for the purposes of the Commonwealth'. Section 83 then says that this can only be done by an appropriation enacted by Parliament.

The upshot is that all the money received by the government goes into one account and only Parliament can let it out of that account to be spent by the government. In addition, when the money is not being used for the ordinary functioning of the government (eg salaries, rent, equipment, etc), the High Court said in the *Pape case* that additional legislation, beyond the appropriation, is required to authorise spending of this public money on particular programs. Again, this puts the power into the hands of Parliament – which the government does not much like.

### Upper Houses, money bills and the clash between responsible government and federalism

One of the requirements of responsible government is that the government is responsible to the lower House. It needs to command the confidence of the lower House to remain in office. The lower House, comprising the representatives of 'the people', has also historically been regarded as having a greater role in relation to money matters. This is because in the United Kingdom, from where the principle of responsible government is derived, the upper House, the 'House of Lords', was originally comprised of unelected Lords, most of whom inherited their positions.

In 1678 the lower House, the 'House of Commons', claimed that bills concerning supply to the government should begin in the House of Commons and not be altered by the House of Lords. As the Lords had no democratic mandate at all, they were generally reluctant to interfere with money bills, and the functioning of the system relied upon this lack of a mandate. (Later, after the House of Lords did block the government's budget in 1909, its power to veto money bills was removed by the *Parliament Act 1911* (UK).)

When the Commonwealth Constitution was being drafted, it needed to accommodate a combination of responsible government and federalism. In Canada, this was done by having an appointed upper House, without a democratic mandate. The framers of the Commonwealth Constitution, however, preferred the United States model, with a Senate that was to be a "States' House", with equal representation of the States.

Under the 1891 draft Commonwealth Constitution, the State representatives to the Senate were to be chosen indirectly, by each State Parliament (as was done at the time in the United States until 1913). But this did not suit democrats, who argued that Senators must be directly chosen by the people. This change was agreed at the 1897-8 Constitutional Convention. But if the Senate was directly elected, that would give it a democratic mandate, up-ending the British system of responsible government which was based upon the upper House having no mandate.

There was also an argument about the status and role of the Houses. Some argued that a democratically elected Senate would be a worthy body that should have full power over money bills, as befits its status which would be higher than that of an appointed House. George Reid, on the other hand, argued at the 1897 Constitutional Convention that taxation is paid by the people, and it should therefore be the representatives of the people who decide on the taxes imposed and how the proceeds of them are spent. He said that this was not just an Australian principle, but an old principle of the British Constitution which 'took a long time and a great many battles to establish in the old country'. It was his view that the lower House must therefore retain control over money bills.

In addition to this problem, the States with smaller populations wanted a powerful Senate because they saw it as better protecting their interests, given that the number of their representatives in the House of Representatives would be swamped by the far greater number of Members from States with large populations.

They therefore insisted that the Senate should have full power to veto or amend 'money bills' (ie those bills dealing with taxation or the appropriation of money).

For example, Dr Cockburn from South Australia argued that any restrictions on the Senate's powers in relation to money bills would strike 'at the very root of the principle of federation, because the principle of federation is that there should be Houses with coordinate powers – one to represent the population, and the other to represent the States'. Sir John Forrest, the Premier of Western Australia, argued that unless the Senate had the power to amend tax bills 'we may as well hand ourselves over, body and soul, to those colonies with larger populations.'

The representatives of the more populous States, on the other hand, saw this as dangerous and anti-democratic, as it would allow representatives of the minority (in States with small populations) to overturn the will of the majority.

An additional complication arose from the fact that the Senate was intended to be an ongoing House, which would not be dissolved. Half its members would be up for election every three years, and the date for the change-over of members would be fixed. If the Senate had power to veto money bills, it could therefore force the government to a general election, without itself facing the same risk of losing seats. It was argued that this would completely undermine the system of responsible government, by effectively requiring a government to be responsible to the upper House as well.

At the 1897 Constitutional Convention in Adelaide, Henry Bournes Higgins argued:

"No man can serve two masters. You cannot have responsible government that is responsible to two Houses, and – to go one step further – you cannot have responsible government unless to that House which has the power of the purse."

Alfred Deakin had made a similar point back at the 1891 Convention when he said that if you establish two Houses with equal power, and place responsible government in one of those Houses, 'you will simply provoke internecine conflict on a more colossal scale than anything which has ever been witnessed in a constitutionally governed country'. John Hackett argued that either responsible government will kill federation, or federation will kill responsible government.

Not everyone agreed. George Leake, for example, argued that if both Houses had equal power and knew the other could veto its acts, they would be more willing to accommodate the views of each other. But the framers of the Constitution were men of practical political experience, who had lived through conflicts between the Houses and were conscious of the problems they would be creating.

Richard O'Connor, who was later to be one of the first Justices of the High Court, warned in 1897 that giving equal power to the two Houses would amount to a threat to responsible government. He imagined a situation in which the government had a majority in the House of Representatives, but not in the Senate. He said:

"If you place the power in the Senate of throwing out a measure or of amending it, and therefore moulding it, you cannot say the moulding of the measure is in the hands of one House. It is in the hands of the House which can show itself the strongest... When you put that in the hands of a House not subject to dissolution, which has a fixed existence, I say you are putting in the hands of the Second Chamber the power of dislocating the government of the country and of absolutely stopping the machinery of responsible government. It is for that reason you cannot give coequal powers to these two Houses."

## The compromise

The dispute over the Senate's powers with respect to money bills in the Constitutional Convention in Adelaide 1897 was so fraught that it looked like it would end any agreement to federate. Late one evening, as the crucial vote loomed, Barton suffered from a 'providential catarrh' (as Quick and Garran described it). In other words, he faked a coughing attack to cause the Convention to adjourn for the night, so that there could be lobbying overnight and cooler heads could prevail in the morning. Barton's coughs saved federation.

In the morning a compromise was reached. The Senate would not be able to amend directly any bill that imposed a tax or an annual budget bill, but could request amendments. If the House rejected those requests, then the Senate could still refuse to pass the bill, but it would have to take full responsibility for such action, especially if it was an annual budget bill. The framers accepted that the Senate was fully entitled to reject money bills. George Reid noted that this would be an 'absolute right' and that the Senate would be 'perfectly entitled to use it'.

Money bills could only be initiated in the lower House (section 53). This meant that a hostile Senate could not seize the financial initiative by creating its own money bills. Section 53 also prevented the Senate from amending a proposed law 'so as to increase any proposed charge or burden on the people'. It also made clear that apart from these minor limitations on the powers of the Senate, the 'Senate shall have equal power with the House of Representatives in respect of all proposed laws'. This meant that the Senate has to pass a bill before it can be given royal assent and become a law.

In recognition that section 53 would limit the Senate's powers in relation to money bills, the framers included sections 54 and 55 of the Constitution to prevent the House of Representatives from abusing its greater power by 'tacking' other content onto money bills. Section 56 of the Constitution reinforced the Government's initiative in relation to appropriations by saying that before a vote could be taken on an appropriation bill, the Governor-General must first recommend the purpose of the appropriation. As the Governor-General can only be advised by responsible ministers of the government, this impedes the passage of an appropriation bill against the will of the government, even when it is a minority government which controls neither House.

Finally, section 57 provides a mechanism for dealing with disagreements between the Houses. If a bill is passed in the House of Representatives but rejected, or fails to pass, in the Senate, and after three months the same outcome is repeated, a special dissolution of both Houses (known as a double dissolution) can occur.

If, after the election, the same bill is again passed by the House of Representatives and again rejected, or fails to be passed, by the Senate, then a joint sitting can be held, at which an absolute majority of the total number of members of both Houses prevails. As the House of Representatives is twice the size of the Senate, this dilutes the Senate's power in a joint sitting, making a government victory likely.

Because it is a very drawn out process, however, it is no use in dealing with a dispute over money bills. If the Senate blocks supply, preventing the government from functioning, a resolution of the dispute is needed quickly, and the section 57 double dissolution process is inadequate to achieve that.

## How would the compromise be enforced?

The framers of the Constitution debated whether the money bill provisions should be enforced by the courts, or should remain a matter for the internal operations of the two Houses. Some of the framers were very concerned about the prospect of a court striking down the validity of money bills which had come into force. This could lead to financial and economic chaos, particularly if the law had been in place for a long time.

In the end, sections 53, 54 and 56 were left to be dealt with by internal parliamentary procedure, without the involvement of the courts. This was indicated in the text of the provisions by referring to 'proposed laws'.

In contrast, section 55, which dealt with 'laws' was able to be enforced by the courts, which could decide whether or not a resulting 'law' was valid. Some of the framers of the Constitution were worried by this. Mr Holder from South Australia said that a federal Treasurer would not be able to sleep at night with section 55 hanging over him like a nightmare. Edmund Barton replied: 'We do not want to pass a Constitution as a cure for insomnia'.

The courts also later decided that they could decide on the validity of laws passed under the section 57 deadlock procedure.



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## The Senate, supply and the Whitlam dismissal (Student resource)

### Upper Houses blocking supply

Governments need money to function. To get it, Parliament must first pass a statute, such as a tax law, to raise the money. The money then goes into a special fund, called the Consolidated Revenue Fund. The only way of getting it out of that fund, so it can be spent by the government, is for Parliament to pass another kind of statute, known as an 'appropriation' (and sometimes called 'supply'). Tax bills and appropriation bills are together known as 'money bills'.

A government needs to be able to pass money bills through Parliament to survive. Normally, under the system of responsible government, the government will control a majority of votes in the lower House. So it can almost always get money bills passed by that House. If it is defeated on a money bill in the lower House, the government must resign or go to an election.

The trouble arises with upper Houses. In Australia, the Government often does not have a majority in the upper House. What if the upper House rejects a money bill or defers passing it so that the government runs out of money? Does the Government have to resign or go to an election? Under the system of responsible government, the Government is only required to 'command the confidence' (i.e. have majority support) of the lower House, not the upper House. But if the upper House can cut off the supply of money to the Government, it can force it to an election, making it the more powerful House.

In some places (eg the United Kingdom and New South Wales) this is dealt with by limiting the powers of the upper House so that it cannot block supply to the government. But when the Commonwealth Constitution was negotiated in the 1890s, the smaller States did not want the powers of the Senate to be limited in this way. In the end, a compromise was struck – the Senate could not originate or amend money bills, but it could reject them and request the other House to amend them.

*The Australian Senate  
Source: Wiki Commons*







*Former Prime Minister, Gough Whitlam, was dismissed by the Governor-General on November 11, 1975  
Source: Wiki Commons*

This did not remove the risk of the Senate forcing the Government to an election by rejecting a money bill, or refusing to pass it until a general election was called.

## **The deferral of supply in 1975**

In October 1975, after a series of government scandals, the Coalition Opposition in the Senate sought to pressure the Whitlam Labor Government by deferring the passage of supply until the Government agreed to hold a general election for the lower House. The Prime Minister, Gough Whitlam, announced that he would not seek a general election or resign. He argued that control over money was a matter for the lower House, and that by convention the Senate should not block supply. The Leader of the Opposition, Malcolm Fraser, disagreed, saying that the Constitution gives the Senate the power to reject supply and that this is a tool it is entitled to use to make the government accountable to the people at the ballot box.

Each side had previously argued the opposite side of the argument. This was because there was an inherent constitutional truth on each side. Responsible government meant that the government was only responsible to the lower House, and did not need majority support in the Senate. Yet a government that cannot secure supply cannot govern. Federalism gave the directly elected Senate a democratic mandate and it had full power to reject money bills. But while the Senate had the power to block supply, the real question was whether the Senate should restrain its own exercise of power, to ensure political and economic stability.

## **The dismissal of the Whitlam Government**

As the crisis dragged on, the prospect of the Government running out of money became real. Some Government programs began to exhaust their funds in early November, and the Government would cease to be able to pay public servants by the end of November. It tried to reach an arrangement with the banks to support public servants over this period through loans, but the banks were reluctant to participate.

On 11 November 1975, the Governor-General, Sir John Kerr, exercising a reserve power, dismissed the Whitlam Government and appointed the Opposition Leader, Malcolm Fraser, to form a caretaker government on the condition that he obtain supply. As the Senate had only deferred but not rejected supply, the Bill was still in the Senate awaiting debate and was quickly passed. Whitlam had not told his Labor Senators of his dismissal, so they passed supply, not realising that they were fulfilling a condition on the appointment of the Fraser Government.

Later that afternoon, the House of Representatives voted no confidence in Fraser's Government. According to convention, the Fraser Government either had to resign or secure an election. Fraser was granted a 'double dissolution' election, which meant that both Houses were dissolved and re-elected in their entirety at the election (unlike the ordinary situation where only half the Senate is elected every three years).

This was important because it meant the Senate had not forced the House of Representatives to an election without itself also being dissolved and facing an election. Fraser's Coalition won the election with a landslide victory.

The appropriateness of the Whitlam dismissal remains contested to this day. Many aspects are disputed, such as the timing of the Governor-General's action, the appropriateness of his action in consulting the Chief Justice, whether he should have given Whitlam a warning before acting and whether he should have reinstated Whitlam after the vote of no confidence in the Fraser Government was passed by the House of Representatives. But putting those disputes aside for present purposes, the dismissal of the Whitlam Government also showed the difficulty of attempting to blend a system of responsible government with a federal system.

The structural flaw of having a government responsible to a lower House but giving a veto power over money bills to the upper House was not resolved by the framers of the Constitution. Their compromise was to place limitations on the power of the Senate to originate or amend money bills – but not on the power to reject them.

They also created a double dissolution mechanism to deal with disputes between the Houses, but it was too drawn out to be effective in disputes about money bills, which were more urgent in nature.

In the end, the framers of the Constitution relied upon the good sense and discretion of the Senate not to use its powers to reject money bills for the political purpose of forcing a government to an election to which the Senate would not be subject. This has largely worked. The exception was 1975, when matters were pushed to their extremes (although the double dissolution election ensured the Senate was politically accountable for its actions).

The political and social trauma caused by the dismissal of the Whitlam Government has made politicians reluctant to use the same tactics again. So while the flaw in the Constitution continues to exist, it also continues to be managed by the exercise of good sense and discretion, rather than by constitutional amendments that would limit the Senate's powers.





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## The Senate, supply and the Whitlam dismissal (Teacher resource)

### Upper Houses blocking supply

Governments need money to function. Access to that money is controlled by Parliament. Due to the system of responsible government, a government will almost always control a majority of votes in the lower House. Defeat on a money bill in the lower House is evidence of a loss of confidence, meaning that the government must either persuade the Governor-General to grant an election or resign. But responsible government does not require the government to control a majority of votes in the upper House. In the United Kingdom the upper House, the House of Lords, was primarily comprised of hereditary Lords, who had no democratic mandate and were generally reluctant to overturn the mandate of a government elected by the people.

In the Australian colonies, the same reluctance did not necessarily apply. In some cases (eg New South Wales) the upper House was comprised of people appointed for life by the Governor on the advice of the Premier. If a government could not get its legislation passed by the upper House, sometimes it asked the Governor to 'swamp' the upper House by making large numbers of appointments of its own supporters. As the upper House became larger and larger, Governors became more reluctant to 'swamp' it, leading to conflicts between the Governor and the Premier.

In other colonies (eg Victoria), the upper House was elected, but on a limited franchise confined to the rich and property owners. Regardless of whether the upper House was elected or appointed, it tended to be conservative in nature and to oppose reforms by progressive or Labor governments, which is why the Labor Party long had a policy of abolishing upper Houses.

Even before federation, there were clashes between the Houses in colonial Parliaments over money bills. Some of the most bitter occurred in Victoria, where the elected upper House, the Legislative Council, could not be swamped.

*The Australian Senate*  
Source: Wiki Commons







*Former Prime Minister, Gough Whitlam, was dismissed by the Governor-General on November 11, 1975  
Source: Wiki Commons*

The Victorian Legislative Council considered it had the right to block supply. In 1877-78, for example, it deferred passing the annual appropriation bill. The Government responded by 'economising' on what became known as 'Black Wednesday', by dismissing judges of the lower courts, police magistrates, coroners, mining wardens and a large number of public servants. This caused an economic crisis with mortgages being called in, property values plummeting, forced sales and people transferring their money out of the banks.

The Premier argued that the Members of the Legislative Council had been elected because of their social position or their wealth and were not able to understand the people or say what measures should become law. The Legislative Council argued that it was its role to check the excesses of the government, in the interests of the colony. In the end a compromise was reached and supply was passed. The Premier failed in his attempt to legislate to remove the power of the Legislative Council to block supply.

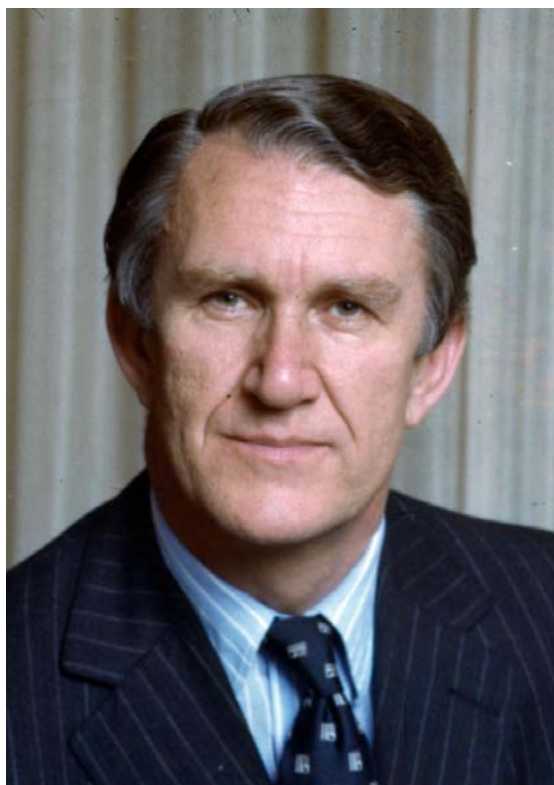
After federation, different States approached the problem in different ways. Queensland abolished its upper House in 1922. In New South Wales, the Constitution was amended in 1933 so that budget bills could be passed without the agreement of the upper House. In Victoria, however, the blocking of supply was used by both sides as a tactic to bring down governments.

For example, with supply about to run out on 31 October 1952, the Labor Party joined with some rebel Liberals in the Legislative Council to block supply to the Victorian Country Party Government of John McDonald. The Premier wrote to the Governor seeking the dissolution of Parliament. He said he still commanded the confidence of the lower House and he criticised the legitimacy of the Legislative Council blocking supply to force a change in the government.

The Governor was not prepared to let supply run out during the election campaign. He forced McDonald's resignation and instead appointed Tom Hollway, the leader of the rebel Liberals, as Premier on the condition that he achieve the passage of supply in the Legislative Council. The Labor Party had agreed to support Hollway on confidence and supply.

Hollway succeeded in getting supply passed by the Legislative Council but his government was then immediately defeated in the Legislative Assembly. Hollway then requested the dissolution of Parliament, stressing that he had achieved the condition placed on his appointment. The Governor, Sir Dallas Brooks, consulted the Chief Justice of the Victorian Supreme Court and the Chief Justice of the High Court about what to do. He then refused the dissolution to Hollway, who was forced to resign (facing dismissal if he did not). Hollway told the press that his resignation was not voluntary. McDonald was then re-commissioned as Premier on the condition that he immediately request a dissolution. He agreed, the election was held and Labor won.

This has many similarities to what happened 23 years later at the federal level when the Whitlam Government was dismissed – a government which held the confidence of the lower House was forced out by the blocking of supply in the upper House, the Governor was not prepared to let supply run out during an election campaign, a new government was commissioned on the condition that it achieve the passage of supply and a Chief Justice was consulted, (well, actually two were), on the constitutional aspects of the crisis. But in this case it was Labor doing the blocking of supply and conservative leaders who were effectively dismissed, although it was disguised as a 'resignation'.



*Malcolm Fraser, Leader of the Opposition in 1975 and Prime Minister following the dismissal of the Whitlam Government  
Source: National Archives of Australia*

## **The Senate and the blocking of supply**

The Senate was created to represent the States, while the House of Representatives represented the people. In practice, the Senate's voting patterns quickly became dominated by political parties, rather than State representation, but the Senate indirectly represents the States by increasing the representation of the small States in political party rooms. This gives the States with smaller populations a disproportionate influence on party policy.

As in Victoria, the same problem arose of an elected upper House being able to force the resignation of the government or the dissolution of the lower House by blocking supply.

When such controversies arise, political parties will argue one side or the other, depending on whether they are in government or opposition. Governments tend to claim that the House of Representatives has the financial prerogative and that the Senate had no right to block its budget measures, while oppositions in control of the Senate tend to argue that they have a democratic right to block any bills that they consider are not in the public interest, including money bills.

The latter view was put strongly by Labor Senator Lionel Murphy, as Leader of the Opposition in the Senate on 12 May 1967. He said:

"There is no tradition, as has been suggested, that the Senate will not use its constitutional powers, whenever it considers it necessary or desirable to do so, in the public interest. There are no limitations on the Senate in the use of its constitutional powers except the limits self imposed by discretion and reason. There is no tradition in the Australian Labor Party that we will not oppose in the Senate any tax or money Bill, or what might be described as a financial measure... We in the Senate are

democratically elected by the people of the States. If we consider it to be in the public interest that a measure be rejected, who gave us the right to refrain from doing so under some pretended notion that the Senate cannot reject a tax or money Bill?"

On 18 June 1970, Senator Murphy stated that in opposing money bills, the Opposition was pursuing a well-established tradition and that there were no limits on the Senate's use of its constitutional powers to reject financial measures, other than discretion and reason. To illustrate this tradition, he listed 169 occasions upon which Labor had opposed money bills in the Senate since 1950.



*Former Governor-General, Sir John Kerr*  
*Source: National Library of Australia*

Later that year, the Labor Opposition opposed the Gorton Coalition Government's budget. Senator Murphy stated on 26 August 1970 that his party would oppose the budget and "do whatever it can to drive this Government from office".

In the House of Representatives, the Opposition Leader, Gough Whitlam, said on 25 August 1970:

"Let me make it clear at the outset that our opposition to this Budget is no mere formality. We intend to press our opposition by all available means on all related measures in both Houses. If the motion is defeated, we will vote against the [Appropriation] Bills here and in the Senate. Our purpose is to destroy this Budget and to destroy the Government which has sponsored it."

While the Opposition tried to persuade the members of the Democratic Labor Party, who held the balance of power in the Senate, to join it in blocking supply, it failed and supply was passed. But the Opposition did manage to defeat a tax bill, which was introduced by the Commonwealth on behalf of the States (after State laws imposing the same tax had been struck down by the High Court). It was rather ironic that a power given to the Senate for the purpose of protecting the interests of the States, was used by the Senate to reject legislation intended to protect the interests of the States.

In 1974, when the Whitlam Labor Government was in office, it was the Coalition which opposed budget bills in the Senate.

The Whitlam Government requested, and was granted, a special dissolution of both Houses of Parliament (known as a 'double dissolution') in 1974. While the Opposition's tactics in the Senate had forced the Government to an election, the double dissolution meant that the full Senate went to an election too. The Whitlam Government won a majority again in the House of Representatives, but failed to win a majority in the Senate.

In 1975, when the Coalition Opposition in the Senate again sought to pressure the Whitlam Government to an election by deferring the passage of supply, Whitlam announced that this time he would not seek a general election or resign. In contrast to Senator Murphy's arguments in 1967 and 1970, Whitlam told the House of Representatives on 28 October 1975:

"The High Court of Australia has itself observed in the Engineers Case and in other cases that one of the most important of the conventions – the principle of responsible government – is interwoven in the text of the Australian Constitution. Responsible government is not spelt out specifically, explicitly in the Constitution, but everybody acknowledges that in Australia responsible government is the law of the land. The Government is responsible to the House of Representatives, not to the Senate. The Senate and the House of Representatives can have majorities which are of different political parties. The Government has a majority in the House of Representatives...."



Whitlam went on to say: "Sir Owen Dixon, a distinguished Chief Justice of the High Court, observed to similar effect..., when commenting at Harvard in 1955 on the Australian Constitution. He described the principle of responsible government in these terms: 'The principle which prevails in the United Kingdom ... requiring that the Ministry should be formed of members of the legislature and should be removable by the Crown if the Ministry loses the confidence of that House of the legislature that controls finance.'"

Whitlam added: "It is specified in our Constitution; it is explicit in our Constitution that the House of Representatives initiates money Bills. The House of Representatives alone can amend money Bills. The Senate can neither initiate nor amend money Bills. It can make requests which the House of Representatives may or may not heed. Money is the sinews of government. The taxpayers' control over their money through their elected representatives in the people's House is the foundation of parliamentary democracy. Under our Westminster system this control is firmly lodged in this House. Governments are made and unmade in the House of Representatives – in the people's House. The Senate cannot, does not and must never determine who the Government shall be..."

Whitlam concluded: "The Opposition in the Senate asserts that there has never been a convention that the Senate, the Upper House, should not reject the Bills for the annual services of government. This is an assertion without foundation. In the 75 years of our Federal history no opposition has ever withheld passage of these Bills, despite the fact that on some 20 occasions the government of the day did not itself have a majority in that other place. A convention has been established that the Senate, which cannot originate or amend Bills for the ordinary annual services of the government does not block them either. This is but yet another abrogation of a well established convention. It is part of a deliberate pattern on the part of the Opposition of challenging the role of conventions in the operation of our Constitution in its lust for power."

The Leader of the Opposition, Malcolm Fraser, took the opposite view in the House of Representatives on 30 October 1975. He argued that the "Constitution specifically gives to the Senate the powers and the concomitant responsibility to bring a government to the judgment of the people if in the opinion of the Senate that government will do serious or irrevocable harm to the people of Australia by remaining in office."

He pointed to section 53 of the Constitution, which does not remove the Senate's power to reject or defer the passage of money bills, and noted that High Court Justices had accepted that the Senate has the power to reject appropriation bills. He argued that the power must be "used discreetly and with the greatest of caution" and that the fact that it had not successfully been used in the past was no argument for not using it in the current circumstances. He saw the power as a tool to force a government to account to the people at the ballot box. "If the people agree, the Senate unmakes the government".

Each of the major parties was able to argue different sides of the argument at different times, because there was an inherent constitutional truth on each side. Responsible government meant that the government was only responsible to the lower House, and did not need majority support in the Senate. Yet a government that cannot secure supply cannot govern. Federalism gave the directly elected Senate a democratic mandate and it had full power to reject money bills. The issue then was not one of power, but how power should appropriately be exercised. What limits should the Senate impose on itself to support political and economic stability?

## **The dismissal of the Whitlam Government**

On 11 November 1975, the Governor-General, Sir John Kerr, dismissed the Whitlam Government and appointed the Opposition Leader, Malcolm Fraser, to form a caretaker government on the condition that he obtain supply. Supply was passed by the Senate and even though the House of Representatives voted no confidence in Fraser's Government later that afternoon, Fraser was granted the dissolution and an election was then held, which Fraser's Coalition won. This can be compared with what happened in Victoria in 1952.

The appropriateness of the Whitlam dismissal remains contested to this day. Many aspects remain disputed, such as the timing of the Governor-General's action, whether he should not have consulted the Chief Justice, whether he should have given Whitlam a warning before acting and whether he should have reinstated Whitlam after the vote of no confidence was passed in Fraser by the House of Representatives. But putting those disputes aside, the dismissal of the Whitlam Government also showed the difficulty of attempting to blend a system of responsible government with a federal system.

The point was made by James Munro in the first week of the Constitutional Convention debates of 1891. He said:

"I, for one, believe in responsible government. It is the only form of government with which we are familiar, and under which we are best able to do our business. But how can you have responsible government if you have a Governor calling in an Executive as his advisers, and if after the Executive has submitted financial measures to the House of Representatives, and shown that they are absolutely necessary for the good of the country, the Senate vetoes the measures. Where, then, does the responsibility lie? The responsibility must lie in the Senate, not in the House of Representatives, because if the Senate is to prevent the House of Representatives carrying out financial operations the result is that the Senate is supreme."

This structural flaw was never resolved by the framers of the Constitution. The most that they did was place limitations on the power of the Senate to originate or amend money bills – but not on the power to reject them – and to provide a double dissolution mechanism for disputes between the Houses, which was too drawn out to be much use in disputes about money bills.

In the end, the framers of the Constitution relied upon the good sense and discretion of the Senate not to use its powers to reject money bills for the political purpose of forcing a government to an election to which the Senate would not be subject.

In practice, the Senate never has forced the government to an election to which it was not also subject. Although the Senate did defer passing supply in 1974 and 1975, in both cases a double dissolution was held, with the whole of the Senate being subject to election as well as the lower House.

Since 1975 there has been a general political consensus that supply should not be blocked by the Senate – at least not unless it was justified by extreme circumstances. The political and social trauma caused by the dismissal of the Whitlam Government has made politicians reluctant to use the same tactics again. So while the flaw in the Constitution remains, it also continues to be managed by the exercise of good sense and discretion.





## Topic 9.2: Lesson/ Activities Five

The Senate, money bills and  
the dismissal of the Whitlam  
Government



AUSTRALIAN  
CONSTITUTION  
CENTRE

### Time/Lesson

- 1 hour/ 1 Lesson

### Learning Goal

To understand the difficulty of reconciling the principles of responsible government and federalism, and how this constitutional flaw contributed to the dismissal of the Whitlam Government.

### Rationale

The example of the dismissal of the Whitlam Government will help students gain a deeper understanding of the principles of responsible government and federalism and how they can conflict.

### Success Criteria

Students can explain how federalism and responsible government can conflict and understand the limits on the Senate's powers in relation to money bills.

### Teaching Reference Document

- TRD 113: The Senate and control over money bills
- TRDs 114 and 115: The Senate, supply and the Whitlam dismissal (student and teacher resources)

### Resources

Access to the internet and library resources

### Tuning In

**REVISE:** Under the principle of responsible government, the government is responsible to the lower House only. It does not require majority support in the upper House to be entitled to govern. But under the principle of federalism, the States are given equal representation in the upper House and have the power to reject money bills (i.e. bills to impose taxes or to authorise the payment of money to run the government). Governments cannot govern without money. They need money to pay the public service and fund pensions and government programs. If the Senate can block the government's access to money, it can force it to an election. But as the Senate is a continuing body, with half of it being elected every three years, it could force the House of Representatives to an election, without itself facing the people. The only time the Senate is completely dissolved is when a 'double dissolution' election is held because of a deadlock between the Houses - but the procedure for this takes a long time to complete, making it a poor measure for resolving deadlocks on money bills.

## Teacher Instruction

- **READ:** TRD 113: The Senate and control over money bills
- **ANSWER** questions when reading: What happens to money received by the Government from taxes?
  - How does parliamentary control over the expenditure of money make the Government responsible to Parliament?
  - What was the compromise over the powers given to the Senate about money bills?
  - Can the Senate block the Government's ability to get access to money to fund its operations?
  - Why did John Hackett say that either responsible government will kill federation or federation will kill responsible government?
- **READ:** TRD 114: The Senate, supply and the Whitlam dismissal
  - Why was the Governor-General concerned about the government running out of money?
  - Why was it a condition of Fraser's appointment that he get the Senate to pass supply?
  - Why was it important that the Senate was also dissolved, in a double dissolution, after the dismissal of the Whitlam Government?

## Group Independent Learning

**DEBATE:** – Imagine that the Government has proposed to change the Commonwealth Constitution to remove the Senate's power to reject supply (as happened in New South Wales in 1933 and Victoria in 2006)? Break the class into groups to argue for and against such a change. Would it be more or less 'democratic' if the Senate's power to force an election by blocking supply was removed? While the Senate no longer really operates as a "State's House", it is directly chosen by the people under a system of proportional voting that includes better representation of the views of minorities, through the election of small parties and independents. The House of Representatives, however, is less representative of minority views, but better at achieving 'one vote, one value'. What impact might limiting the Senate's power to reject money bills have on its powers to scrutinise government expenditure and policy?

## Wrapping It Up

**EXPLAIN:** The Senate retains the power to block supply, but it has never happened since 1975 because of the political trauma caused by the dismissal of the Whitlam Government. Should the Constitution be changed?

## Differentiation/Enrichment

**EXTENSION:** Using contemporary newspaper reports from Trove, accounts in published works and the summary in TRD 115 (Teacher resource), conduct research into the Victorian supply crisis of 1952 and the federal supply crisis of 1975. How were they similar and different? Did the use of the word 'resignation' in 1952, rather than dismissal, even though the effect was the same, mean that the 1952 crisis was not as controversial? Why did so many people in 1975 think that the events were 'unprecedented'?

## Assessment Strategies

Assess the answers to questions and contributions made to the debate.

