

Dialogues

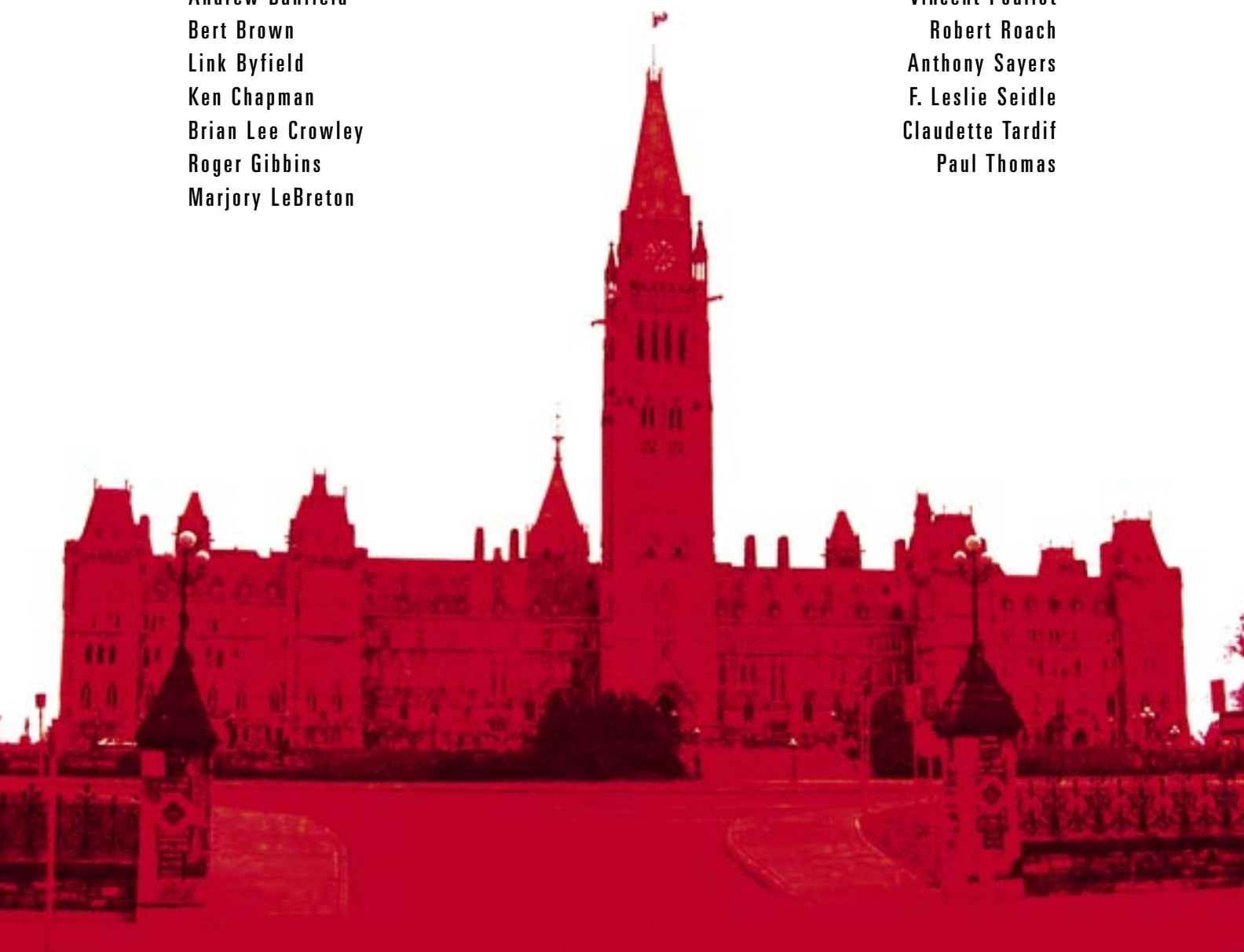
a canada west foundation publication

summer 2006

Senate Reform

Janet Ajzenstat
Andrew Banfield
Bert Brown
Link Byfield
Ken Chapman
Brian Lee Crowley
Roger Gibbins
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A dynamic and prosperous West in a strong Canada.

Our Mission

A leading source of strategic insight, conducting and communicating non-partisan economic and public policy research of importance to the four western provinces, the territories, and all Canadians.

In 1970, the **One Prairie Province? A Question for Canada** Conference was held in Lethbridge, Alberta. Sponsored by the University of Lethbridge and the *Lethbridge Herald*, the conference received considerable attention from concerned citizens and community leaders. The consensus at the time was that research on the West (including British Columbia and the Canadian North) should be expanded by a new organization.

To fill this need, the Canada West Foundation was established under letters patent on December 31, 1970. The first Canada West Council was elected in June 1973.

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Senate Reform



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a note from the editor

robert roach, director of research
canada west foundation

if it IS broke, fix it: getting Canadians involved in Senate reform

Welcome to the summer edition of the Canada West Foundation's **Dialogues Magazine**. The theme of this issue is Senate reform. Public opinion polls repeatedly demonstrate Canadians' long-standing dissatisfaction with the current Senate and the senatorial term limit outlined in Bill S-4 has slipped Senate reform back onto the federal agenda.

This edition pulls together a wide variety of views on Senate reform from academics, activists, and Senators. The goal is to spark and inform debate about Canada's "red chamber." Indeed, while the contributors to this magazine have valuable things to say, the real goal is to get Canadians discussing Senate reform.

For many, the topic seems extremely far removed from the challenges and joys of everyday life—and it is. But, as this edition of **Dialogues** demonstrates, the discussion of how to fix the much-maligned Senate of Canada stands at the centre of how we govern ourselves. As we send men and women to places like Afghanistan to fight against terrorism in the name of liberal democracy, we owe it to them to make sure that Canada is a shining example of what liberal democracy is all about. I applaud the contributors to this edition of **Dialogues** for volunteering their ideas on the Senate. I also wish to thank Canada West Foundation Policy Analyst Kari Roberts and Intern David Schow for helping to pull together this edition of **Dialogues**.

The Senate of Canada as it is currently constructed needs to change. Its members, regardless of whether some Senators do a good job, are unelected symbols of patronage. More importantly, the current Senate fails to represent adequately the interests of minorities and regional diversity at the national level—two extremely important functions of a national legislature in a liberal democracy like Canada. The House of Commons is simply not able to perform these roles on its own. Hence the need for a new and improved Senate.

So why is it that so many people groan audibly when the subject of Senate reform comes up? Is it the tendency of the debate to get bogged down in technical details that, while critically important, causes sleeping pill sales to drop? Is it because Senate reform stirs up the stink of failure that clings to recent attempts at revamping the Constitution (Meech Lake and Charlottetown)? Is it because Senate reform is seen as the responsibility of governments and, in turn, as mired forever in the swamp of intergovernmental relations rather than as something that the public has a role in addressing?

Or is it because changing the Senate threatens to upset the status quo? A reformed Senate means less power in the hands of the prime minister (kudos to Stephen Harper for getting the Senate reform ball rolling by proposing term limits) and it promises to change the established legislative process in a variety of foreseen and unforeseen ways. Premiers will have to compete for national influence with



Senators from their province, and those who deem patronage to be essential to party politics know that reform spells the end of one of the best political appointments in Ottawa.

There are also those who see a reformed Senate as threatening the efficiency of the federal government as a new army of elected officials invade Parliament and slow down the passing of legislation.

Despite this, we need to recognize that, while it can be boring, difficult, and threatening to the status quo, the benefits of fixing the Senate are worth it. Perhaps the best way to do this is to take the debate out of the hands of politicians and policy wonks (like myself) and hand it over to the people that the Senate serves: Canadians. Senate reform should not be decided by the prime minister, premiers, journalists or political scientists, but by the citizens of Canada.

A model for doing this already exists and has been field tested on a provincial level: the BC Citizens' Assembly for Electoral Reform (www.citizensassembly.bc.ca). Despite the fact that the

proportional electoral system proposed by the Assembly did not win the day in a subsequent provincial referendum, the process by which the proposal was formulated provides a method for coming up with a new model for the Senate.

The BC Citizens' Assembly pulled together 160 randomly selected British Columbians and gave them a mandate to look at how votes cast in provincial elections translate into seats in the provincial legislature. Members of the Assembly took their task very seriously, listened to input from experts, debated the options, and came up with a concrete proposal for change. Why not do the same for the issue of Senate reform? How Canadians are governed is not something that should be decided by those who govern, but by the governed themselves.

The proposed Citizens' Assembly for Senate Reform would have a big task to perform, but it need not be as daunting as some would make it seem. Deciding what roles the Senate should play, and how to construct it so that it can do so, are far from insurmountable problems as long as the Assembly is given the independence to make its own decisions free from political control.

For this to work, we must acknowledge the elephant in the room: a new and improved Senate will result in a less “efficient” Parliament. There will be more debate, more squabbles, more posturing, in short, more politics. But there will also be better representation of the diversity that defines Canada, a check on the power of the prime minister, and a new outlet for Canada’s liberal democratic spirit.

A new Senate means a new way of doing things for federal and provincial politicians. Introducing a new Senate after almost a century and a half is an experiment that will have both positive and negative results. Time will be needed for conventions to be developed and for the two houses of Parliament (I would drop the anachronistic class labels of Upper and Lower) to figure out how to make the new version of Parliament work.

If it is going to cause all this trouble, why bother? Why not get rid of the thing as many suggest? We have muddled through in good Canadian fashion for this long, why not continue to do so?

First, we owe it to ourselves to abandon the depressingly low standard of “muddling through.” Second, we owe it to a world in which liberal democracy is often on shaky ground to set an example for those fighting for it. Is this really the best we can do in a world in which billions are denied the freedom and opportunities we have? Are we so jaded about how our government works that we can’t be bothered to roll up our sleeves and fix a fundamentally flawed, but critically important, institution?

Simplifying things a bit, there are two core principles that make liberal democracy attractive as a form of government: the democratic process and the protection of minorities from that same process.

We elect people to represent us and to lead us—they are not born to it, they are not chosen by our betters, and they do not take power by force. The Senate has an important role to play (more on this below) and it simply cannot play it without the legitimacy that comes from the democratic process. Senators must be chosen by the people of Canada. Process matters in a democracy, indeed it is fundamental and trumps the paternalism that says a prime minister can select better people than Canadians can elect.

The role that the Senate should play is to provide a counterweight to the “will of the majority” that holds sway in the House of Commons. The Senate, in other words, can help represent the diversity of Canada in ways that the House of Commons, based as it is on representation by population and majority rule, cannot. One, but only one, manifestation of this is the need for regional representation at the centre that is part of the structure of Parliament rather than the luck of the draw after an election. In a country as large and diverse as Canada, you need a mechanism at the centre that ensures input from all its parts, regardless of whether or not they have the most people and MPs.

Other elements of Canada’s diversity that a reformed Senate could do a better job representing include women and Aboriginals—two groups that are chronically underrepresented in the House of Commons. A reformed Senate also holds out the promise of electoral reform (it has long been suggested that the Senate adopt a proportional system of election while the House of Commons retains its first-past-the-post system) and of reducing the alarming amount of power concentrated in the hands of the prime minister and Cabinet.

The current concentration of power yields relatively efficient governments. But we have gone too far and allowed too much power to be concentrated in the hands of too few. In other words, we need a balance between administrative efficiency and the messy politics of representative government, and we have tilted too far in favour of administrative efficiency. If it is done right, Senate reform can help us restore this balance.

An important point to stress here is that Senate reform is not about finding a way to represent provincial governments at the national level and, thereby, reducing provincial autonomy and centralizing Canadian politics and government. Provinces and the federal government each have their own areas of jurisdiction and there are mechanisms (which may also need reform) for the two orders of government to address the issues that arise between them. A new Senate would continue to address areas of federal jurisdiction and it need not venture into areas of provincial jurisdiction (that these have become muddled is not a reason to abandon Senate reform).

A reformed Senate is about representing people from different parts of the country, not addressing provincial government issues within the national government or imposing federal control in provincial areas. The trick is to design an institution such that the reverse does not happen. It is about making the centre better, not increasing its power.

These are not radical ideas, but basic tenets of liberal democratic theory. If the proposed Citizens’ Assembly could come to agreement on these big picture elements, it could then get down to the dirty work of hammering out the details.

It would then be up to Canadians and those we choose to represent us to pick up the gauntlet thrown down by the Assembly. The lesson to draw from BC is that an Assembly can work as a bottom-up democratic process. This is true even if the proposal put forward by the hypothetical Citizens’ Assembly for Senate Reform is ultimately rejected (as happened in BC). In a democracy, process and debate matter. To date, the discussions among politicians and wonks have not been successful. It is time to go back to the source.

Comments and questions can be directed to Robert Roach
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Origins of the Canadian Senate Janet Ajzenstat

The Canadian Senate has two functions. It “exercises the power of the check” on Cabinet and the House of Commons. And it represents the country’s regions in the national legislature. Let’s think first about the representation of regions.

The Fathers’ idea of representation resembles Edmund Burke’s. Members of Parliament and Senators speak for a particular territory (a riding, or in the case of Senators, a region) and also for the country as a whole. The obligation to speak for both region and nation undoubtedly poses difficulties. But it would be wrong to see this aspect of parliamentary representation as a weakness. It is the feature that enables MPs and Senators to bring local interests into Parliament’s formal deliberations.

It’s sometimes said that the provincial premiers have been more successful than the Senate in representing the regions and provinces. But the premiers do not articulate their demands in an arena in which they are required to speak for the whole as well as the parts. Their prominence as provincial spokesmen should not lead us to overlook the Senate’s crucial contribution.

Now consider “the power of the check.” The Senate should delay or obstruct legislation when it appears that the Cabinet is attempting to use its majority in the Commons to silence political dissent and suppress minorities. John Stuart Mill puts the case: “A majority in a single assembly, when it has assumed a permanent character—when composed of the same persons habitually acting together, and always assured of victory in their own House—easily becomes despotic and overweening, if released from the necessity of considering whether its acts will be concurred in by another constituted authority.” Without the second chamber, politicians in power find it easier to pass themselves off as the only legitimate voice of “the people” and the nation. Dissent is ignored. Autocracy blooms in the guise of populist democracy.

It’s sometimes suggested that Canada’s founders rejected democracy altogether. Wrong. The system of checks and balances described in the 1867 Act is supremely a formula for liberal democracy. No party, clique, faction, no would-be oligarch or popular demagogue governs unchallenged. Here’s the argument in John A. Macdonald’s words: “We will enjoy here that which is the great test of constitutional freedom—we will have the rights of the minority respected. In all countries the rights of the majority take care of themselves, but it is only in countries like England, enjoying constitutional liberty, and safe from the tyranny of a single despot, or of an unbridled democracy, that the rights of minorities are regarded.” He is speaking in support of the Confederation resolution in the Parliament of the old Province of Canada; the year is 1865. By “the minority,” he does not mean ethnic or religious groups as some commentators have supposed. (He discusses ethnic minorities elsewhere in the Confederation debates.) “The minority” refers to the opposition parties.

To reiterate: the great benefit of a constitution like ours is that it protects opposition in the legislature, and by extension, in the nation as a whole. It thus fosters inclusive deliberation on law and policy. From 1867, the Canadian constitution has secured the free contestation of parties for office, equal liberty, and individual rights.

No doubt Parliament sometimes falls short. It remains a fact that the parliamentary system with bicameralism at its heart is history’s greatest political invention. It is still today our best hope for peace, order, and good government. In a longer paper I would show how attempts over the years to “improve” the parliamentary formula at the federal and provincial levels have mangled the rules of parliamentary deliberation, hampered effective expression of dissent, and eroded individual rights.

We come to the issue of reform. If Canadians learned one thing from the Charlottetown Accord debacle it’s that mega-constitutional reform is fun only to a point. Then the knives come out and the crying starts. Michael Ignatieff, for one, recommends “reinvigoration” of institutions rather than constitutional reform. “Reinvigoration means simply that our institutions need to do the job they were designed to do. We need to understand what they are there for, trust in them, and make them work.” I agree. We might think of undoing pernicious reforms that were introduced in the name of efficiency, or as means to crush dissent. (We might re-establish second chambers at the provincial level as a way of restraining the vaulting ambitions of premiers. A pipe dream, I know.)

Election of Senators is perhaps the one innovation we should consider. Many people want it and have wanted it more or less patiently for a long time. But we should not introduce this reform in the name of democracy. Canada is already a democracy. A second elective house will not make us more democratic. We especially do not want a second chamber that detracts from the importance of what is and should ever remain the first house, the House of Commons. The Senate's role is not to do again what the Commons has already done. As the chamber of sober second thought it must be able to "exercise the power of the check," that is, to resist tyranny of the majority. Election of Senators for a nine-year, non-renewable term might be enough to facilitate Senatorial independence.

• • • **Readings**

Janet Ajzenstat, Paul Romney, Ian Gentles, and William D. Gairdner, eds., *Canada's Founding Debates* (2003).

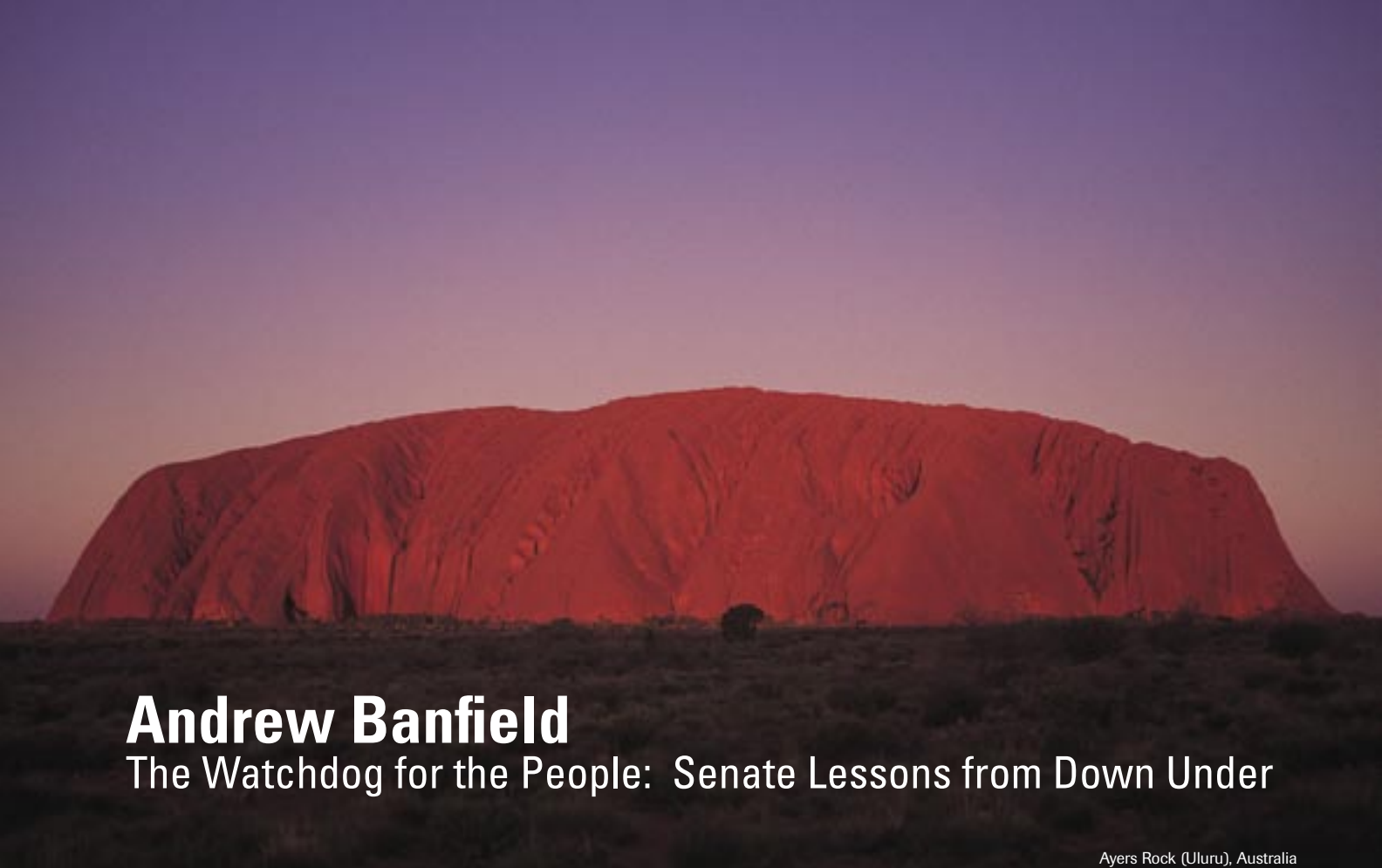
Michael Ignatieff, *The Lesser Evil, Political Ethics in an Age of Terror* (2004).

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The Senate, Parliament Hill, Ottawa



Andrew Banfield

The Watchdog for the People: Senate Lessons from Down Under

Ayers Rock (Uluru), Australia

"The constant aim," wrote James Madison, "is to divide and arrange the several offices [of government] in such a manner that each may be a check on the other."¹ A Senate, it is said, "provide[s] protection against a government, with a disciplined majority...[from] introducing extreme measures for which it does not have broad community support."² Unfortunately it seems that Canadians have forgotten the value in this advice, and once again we are left wondering what to do with our much-maligned institution.

A potential solution to our Senate conundrum lies in our own Commonwealth family; and a look to our antipodean cousins is in order. In many respects, Canada and Australia are quite similar: both former British colonies, each marries Westminster-style government and American federalism, while utilizing judicial oversight of legislation. Despite great similarities, there is one important difference that Canada did not get—and Australia developed—a legitimate Senate.

It has been suggested that the "Australian Senate serves as the watchdog for the people."³ In what follows, I discuss important institutional changes adopted by the Australian Senate, leading it to become this watchdog. More importantly, I show that this process developed over a period of time, and that there is no "overnight cure" for what ails the Canadian Senate.

The Senates in Canada and Australia were given "co-ordinate

powers" with the lower house. That is, both houses share legislative power except the ability to introduce tax and spending bills, which is the exclusive domain of the lower house. Canada's Senate, lacking democratic legitimacy, is often (save rare occasions) reluctant to exercise this power. Australia's Senate is not.

Until 1949, however, the Australian Senate was doing a fine job of imitating its older more established Canadian cousin. By electing Senators via first-past-the-post (until 1919) and then preferential voting (until 1948), the Senate fell into a pattern of an elected "rubber stamp" for the lower house. The upper and lower chambers were controlled by the same party and the Senate was failing to provide any legislative scrutiny.

Much like the current Canadian experience, critics called for the abolition of the Senate in favour of a one-chamber Parliament. Senate defenders maintained there was usefulness in bicameralism, and the 1929 Royal Commission on the Constitution agreed.⁴ The Commission suggested that the Senate could become a useful chamber if elected by proportional representation, and in 1948 proportional representation single-transferable vote (PRSTV) was introduced. As a result of the electoral change, opposition parties were finally able to gain a share of seats closer to their vote total.

The adoption of the PRSTV system has meant that for much of

the last 60 years governments formed in the lower house have not controlled the Senate. An unforeseen benefit of adopting PRSTV has been the growth of minor parties and independents competing for Senate seats. As a corollary of this competition, minor parties have been able to hold the balance of power in the Senate.

Because an opposition majority generally controls the Senate, greater scrutiny is given to government legislation. Governments are under pressure to compromise on the Senators' suggested changes in order to obtain passage of their legislation. By contrast, Senators are under neither pressure nor obligation, to pass any legislation should the government balk at the attempted compromise.

This scrutiny function and compromise pressure was further refined by the development of the Senate's committee structure. The current committee system dates to the early 1970s and began with a modest eight committees.

The system now spans the entire panoply of policy responsibilities, and is further charged with the capacity to appoint select committees to investigate pressing issues. The most visible is the Scrutiny of Bills committee, which examines all proposed legislation for infractions against civil liberties.

Critics insist that introducing too much power and democratic legitimacy in the Canadian Senate would create a legislative deadlock often seen in the US. Additionally, some abolitionists question the wisdom of having the government of the day responsible to two competing chambers. Are these justifiable concerns? Perhaps. But the Australian experience demonstrates that a legitimate Senate can be an essential part of Westminster-style system of government.

The Constitutional authority is already vested in the Canadian Senate to perform this legislative and scrutiny role. The structure of a committee system is in place. The only thing missing from the equation is the infusion of democratic legitimacy. How Canadians choose to make this infusion is open for discussion. The critical point is that it is made.

The process of Senate reform may not be pleasant, or easy; you can almost hear the complaints from all of the usual suspects. Yet, the Australian experience demonstrates that after a long period of perceived illegitimacy, a Senate can be turned into a more effective and legitimate house of review. This is perhaps the most valuable lesson that Canada's Senate reformers can learn from Australia.

• • • Notes

1. Alexander Hamilton, James Madison and John Jay, *The Federalist Papers* (New York: Bantam Dell, 2003): 316.
2. Harry Evans, ed., *Odgers' Australian Senate Practice*, 11th edition (Canberra: Department of the Senate, 2004): 11.
3. Senate, *Debates*, May 26, 1988, 2963.
4. Report of the Royal Commission on the Constitution, *Parliamentary Papers*, 1929-30-31, volume II, part 1, (Canberra: Commonwealth of Australia): 46.

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CANADA WEST FOUNDATION

INTERN PROGRAM

Since 1985, 66 individuals have participated in the Canada West Foundation's Student Internship Program. The program is open to students attending a western Canadian post-secondary institution or recent graduates of a western Canadian post-secondary institution. The program has three main goals:

- 1) provide students and recent graduates with an enriching experience that will serve them well as they pursue their careers;
- 2) enhance the Canada West Foundation's capacity to conduct research and improve public policy by tapping the ideas and energy of talented young people; and
- 3) increase understanding of western Canada among the next generation of community leaders and decision-makers.

Canada West Foundation Interns (from top, left to right): Katherine Harmsworth, Shannon Orr, Melissa Clements, Peter Todosichuk, Sophie Sapergia, Carolyn Holbrow, David Schow, Paul Willetts, Leanne Hosfield

Senator Marjory LeBreton

Moving Toward a 21st Century Senate

While Canadians recognize that the Senate plays a valuable role in reviewing legislation, studying important policy issues, and representing regional interests in the federation, most Canadians also agree that basic, fundamental principles which underlie our democratic institutions, including accountability, legitimacy and effective representation, must be addressed.

The key question is—have our democratic institutions intended to embody those principles, and most notably the Senate, evolved in step with expectations of Canadians in the 21st Century?

Despite lengthy debates and various attempts at reform, the Senate has remained essentially unchanged since its first sitting on November 16, 1867. Many would argue that our 19th Century Senate has not kept pace with the 21st Century expectations of Canadians about their political institutions.

Public opinion polls over the last two decades have told us that Canadians wish to see changes to the Senate, and efforts at reform formed part of broader constitutional initiatives in the 1980s and 1990s. Both the Meech Lake Accord and the Charlottetown Accord proposed significant changes to the Senate, but because these Accords also focused on major, comprehensive constitutional reform in many other areas, Senate reform, while a key aspect of each proposal, failed because it was inextricably intertwined with the much larger package.

When the Meech and Charlottetown agreements failed, the hopes for Senate reform, despite its merits and broad support, were dashed. As Prime Minister Harper has observed, the “all or nothing” approach of previous governments resulted in nothing. This is precisely the reason that Canada’s new government has

taken a fundamentally different route: we are pursuing a staged approach that will provide practical, incremental, sensible reforms which will build a foundation for more fundamental future reform.

In the Speech from the Throne to open the 39th Parliament, the government committed to “explore means to ensure that the Senate better reflects both the democratic values of Canadians and the needs of Canada’s regions.” The Prime Minister also said publicly that he will strive to implement the government’s commitment to establish a national process for choosing elected Senators prior to the next general election.



As a first step, the government introduced legislation (Bill S-4) to limit the tenure of Senate appointments to eight years, rather than the current provisions whereby appointees can retain office until age 75. Length of tenure is a key concern of Canadians and indeed terms of up to a possible 45 years are inconsistent with their view of what Canada’s

democratic institutions should look like. These concerns are not new: the 1981 report of the Canada West Foundation Task Force on Regional Representation recommended renewable terms, limited to the life of two Parliamentary terms. In 1989, the Molgat-Cosgrove report advocated a nine-year non-renewable term, and concluded that this measure could be implemented by the Parliament of Canada on its own initiative.

Changing the tenure of Senators to eight years will enhance the legitimacy of the Senate and, accordingly, enhance its role in providing sober second thought in the federal legislative process. A longer tenure than that in the House of Commons reinforces the independence of the Senate and will provide sufficient time for a Senator to gain experience and put his or her expertise

to good use. Despite the claims of some, I see absolutely no danger that the Senate would be bereft of experience under this proposal. In fact, eight year terms will provide a renewal of ideas and perspectives on a more regular basis.

The proposal to set the length of tenure at eight years does not change the method of appointment, the powers of the Senate, or the distribution of seats, which are known as “essential characteristics of the Senate.” Altering essential characteristics requires the use of the more demanding amending formula contained in section 42 of the Constitution Act, 1867, which requires the support of the provinces. It is clear that Bill S-4, an Act to limit tenure, can be enacted by the Parliament of Canada alone, as was done in 1965 when life tenure for senators was changed to the present mandatory retirement at age 75.

Comprehensive change that will make the Senate an effective, independent, and democratically elected body that equitably

represents all regions will require the consent of at least seven provinces representing 50% of the population because these moves would alter “essential characteristics” of the Senate. This will take more time.

Therefore, in proposing a Senate tenure of eight years, the government has taken a significant first step toward ensuring that this important democratic institution evolves in step with the expectations of Canadians. It is a step that stands on its own as laudable and reasonable. Even if this was as far as we were able to proceed in the short-term, this measure, in and of itself, represents a significant improvement to the status quo, and will provide a solid foundation for further reforms.

Marjory LeBreton is Leader of the Government in the Senate. She was appointed to the Senate by Prime Minister Mulroney in 1993.

CANADA WEST FOUNDATION

The NEXT West Project

Wayne Gretzky's scoring success has been attributed to his ability to skate to where the puck was going to be rather than to where it was. This captures the challenge for public policy: to figure out where the world is going to be so that the right policies are in place at the right time. The Canada West Foundation's NEXT West Project is engaging a wide variety of western Canadians to generate and debate the public policy strategies best able to promote economic prosperity and quality of life in the region over the long-term.

Is Harper Serious About Senate Reform? Dead Serious

Link Byfield



So few words, so much potential.

Bill S-4, introduced on 30 May 2006, consists of three brief sections. If passed, it will cut the maximum tenure of future Senators from 45 years down to eight.

As with anything connected to Senate reform, the public greeted news of S-4 with a wide yawn, while the politically-attuned dutifully sounded the alarm, and at least went through the motions of a fire drill.

We heard the standard dire warning that any Senate reform will hopelessly weaken the national government.

Nothing in this area of life ever seems to change.

And yet, I believe this time it *is* changing.

Hardly anyone addressed the most obvious question of all, namely this: if, as the Harper government claims, Bill S-4 represents the first shot in the long-awaited fight for a reformed Senate, *why start with—of all things—term limits?*

Isn't it a bit like invading the United States by way of Alaska?

For this to be more than window-dressing, fiddling, grandstanding and ad-hocery, argued numerous skeptics, it would have to start with a big constitutional powwow with the premiers—at a place like, say, Meech Lake.

Bad idea. Serious Senate reformers realized long ago—some time between the death of the Meech Lake Accord and the death of the Charlottetown Accord—that the total-package

approach to Senate reform will always stall and default to the status quo.

The only way to generate actual change is for one party—the national government—to change one factor over which it has control, and thereby set off an unpredictable chain reaction which will require other factors—such as Senate powers, representation, method of election, etc.—to be confronted and dealt with as they emerge.

Okay, but if Harper is serious, why not amend the federal elections act, and start electing?

Because, explained Gordon Gibson of Vancouver in the *Globe and Mail*, unless senatorial tenure is first limited, we would end up in a nightmare—senators elected at age 30 or 40, who are, in reality, responsible to no one, and free to push their weight around until hell freezes over. The main strength of democracy lies not in elections, but in a regular requirement for re-election.

Alberta's Senate election process attempts to solve this problem by declaring the elected term to be six years; whereafter the elected nominee, if appointed, is honour-bound to retire or seek re-election.

While not an ideal answer, it was the best Alberta could do within the limits of its constitutional power. Only Parliament may amend the constitutional rights of Parliament, one of which stipulates that Senators may stay on the payroll until age 75. To change that, Bill S-4 amends the constitution.

It's this seemingly oblique but methodical approach that convinces me Harper means business. Whether he can succeed is, of course, unknown. Numerous political hazards and constitutional hurdles stand in the way. But it seems clear he's serious.

The next step will be to fill all future vacancies with elected candidates, while leaving the incumbents in place. Yet even election, which ought to be fairly simple, is beset with problems, both practical and conceptual.

The conceptual problem is this: how can Senators represent provincial interests in Parliament (the sole purpose assigned to them by the constitution) if they are controlled by national party leaders and caucuses in the House of Commons?

Surely, if the Senate is to represent provinces, its members should answer politically to provincial leaders, and be chosen in provincial elections.

Indeed, article 14 of the pre-Confederation Quebec resolutions (echoed in the subsequent London resolutions) stipulated that federal Senators would be selected by provincial governments and reflect, as closely as possible, the strength of provincial parties in the legislative councils of the provinces.

A good many people who ought to know better are dismayed at the thought of provinces having any decisive say in Parliament, even though almost everything Parliament does affects provincial powers and responsibilities, directly or indirectly. "We'll have legislative gridlock!" the centralists cry out in dread. "Nothing will get done. Parliament will be paralyzed. Responsible government will become impossible."

The idea of a national government actually having to negotiate instead of steamroll gun licensing, climate treaties, medicare rules and child care intrusions—all of which trample over provincial rights, interests, and responsibilities with hobnailed boots—seems somehow grotesque to people for whom "federalism" and "centralism" mean the same thing.

Well, for what it's worth the prime minister has said he is not "dogmatic" on this very important question, and can see some merit in both sides of the argument. I suspect he is open to creative compromise.

But here he bumps up against the practical reality that few, if any, provincial premiers want the Senate to outclass them as the senior spokesmen and ostensible guardians of provincial interests—this despite the fairly consistent experience of the past half-century that premiers are constitutionally incapable of guarding anything Ottawa has set its mind on taking. All the same, to preserve themselves in the grand delusion they wield federal clout, they shun electing Senators.

Maybe they will wake up when Harper presents them this fall with his firm resolve to start letting Canadians choose their own parliamentarians, including new Senators, in the next federal election. Maybe once they are about to be outshone by elected Senators anyway, and national-party Senators at that, they will suddenly recognize the need for provincial control of the election process and of the Upper House. Let's hope so.

High praise may be premature, but Harper so far has shown signs of more federal vision than any national leader since Wilfrid Laurier.

As an economist, Harper understands that Canada will not survive 21st Century global competition if it clings to the bloated, top-down, constitutionally incoherent 20th Century federalism of Pearson and Trudeau.

And as a Class of '93 Reform Party original, Harper knows—as westerners have known for decades—that if federal democracy is to be restored and reinvigorated, it starts with fixing the Senate.

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The Retreat from Meaningful Senate Reform

Senator Grant Mitchell

The recent proposal by the Conservative government to limit Senators to eight year, renewable terms reflects a significant retreat from its original and forcefully stated position on Senate reform.

There are two fundamental objectives for Senate Reform from the West's perspective and, to his credit, the Prime Minister captured them in his election platform: (1) to make the Senate more democratic by electing Senators; and (2) to make it better able to redress regional imbalance by reallocating seats.

Interestingly, as important as these two Senate reform objectives are to westerners, limiting Senators' terms to eight years contributes nothing to either of them. This, of course, begs an obvious question: why would the prime minister, who clearly understands the West's interests in Senate reform, and who promised accordingly, end up at this relatively minor change that misses the mark on those Senate reforms critical to the West?

It is not a surprise. Electing Senators and reallocating seats involve a particularly difficult form of constitutional change, the kind requiring the approval of at least seven provinces constituting 50% of the Canadian population.

And, many provinces do not agree. Why would the Atlantic provinces give up their seat advantage? Currently, they have 30 Senate seats while the West, Ontario and Quebec each have 24.

Why would most premiers want a Senate that, being elected, would be much more inclined to exercise its considerable power in representing regional interests, thereby reducing the power and influence of the provinces? Consider the US experience where the single most powerful political institution is the Senate and the states are seen to be considerably weaker than our provinces.

On his way from strong election promises to the far less significant term limit proposal, the prime minister did talk of some form of non-constitutional, ad hoc election process, like the Alberta experiment with provincially sponsored elections. However, without unanimous provincial agreement to hold elections, the process would be seriously flawed and, once again, there is not unanimous agreement to do this. Federally sponsored elections, even if just to "advise" the prime minister, raise serious constitutional questions.

The Senate can veto virtually all legislation that is passed by the House of Commons, certain constitutional amendments being the exception. These powers are used only occasionally because unelected Senators are reluctant to overturn legislation passed by the elected House. If Senators were elected, this inhibition would be lifted and the Senate could grind government to a halt. Before we start electing, we need to determine a procedure for breaking impasses between the two houses.

Simply electing the Senate will do nothing to redress regional imbalance, and might exacerbate it. Under the current 30 versus 24 seat allocation, elected Senators exercising their power in a determined fashion would mean more influence for the Atlantic provinces, not for the West. Alberta actually has greater representation in the House of Commons than in the Senate: 9.1% of Commons seats compared to 5.7% of Senate seats. Moreover, Nova Scotia and New Brunswick each have 10 seats compared to the six allocated to each Western province.

That leaves the most recent proposal of limiting Senators' terms to eight years. (The historic average term has been between 11 and 12 years). While it does not address the two most significant Senate reform objectives, limiting terms is not without consequence.

In fact, longer terms have been critical to the effectiveness of the Senate. First, they allow Senators to acquire institutional memory important to their ability to provide "sober second thought." There are many examples of the Senate assisting to improve legislation and to avoid critical legislative flaws that were missed by the Commons.

Second, longer terms allow Senators to develop issues that may not be of interest to members of the Commons who face elections every four years or even sooner. While the latter, therefore, tend to focus on issues of immediate electoral consequence (i.e., votes), Senators have taken up causes of less intense political interest, but of great importance to less influential Canadians (prime examples include the work of Senators Joyce Fairbairn on literacy, Sharon Carstairs on palliative care, and Michael Kirby on mental health). Of special current relevance is the work of Senator Lucie Pepin in developing resource centers that provide support for families of military personnel deployed abroad.

Why would the prime minister be reduced to term limits in his quest for Senate reform? Term limits might just require the easier form of constitutional change involving the approval of only Parliament, although that is controversial. Whether or not he achieves this, he can at least say that he tried, and seek some political cover for not delivering on his more important promises.

While that may be good politics, it ultimately does not advance the cause of meaningful Senate reform. Instead, the Prime Minister should remain consistent in his quest for Senate elections and seat reallocation. He should engage in the debate directly with the provinces to see what leadership he can provide in getting them to agree, rather than tinkering at the edges.

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A Reformed Senate: To What End?

F. Leslie Seidle

The country has embarked on Senate reform. Or has it? If adopted, the constitutional amendment introduced in May 2006 (Bill S-4) will reduce future Senators' terms to eight years. However, Prime Minister Stephen Harper has promised no further Senate appointments until a process for electing nominees has been put in place. Some argue that such a process would require the agreement of a majority of the provinces representing at least 50% of the country's population. Harper says this can be done by Parliament alone—as with Bill S-4—but has not yet indicated when legislation would come forward. It is thus possible that the term limit would have no real effect for some time.

The Harper government, to its credit, has drawn lessons from previous attempts at constitutional reform. Comprehensive Senate reform would, as it claims, be very difficult to achieve in present circumstances. According to Marjory LeBreton, Leader of the Government in the Senate, "this government has taken a fundamentally different approach to reform, a staged approach that would begin the process of reform and thereby provide a foundation for more fundamental reform in the future."¹

Taken on its own, few would quarrel with the first element of this staged approach. While it is unacceptable that the members of the second chamber of our national parliament are appointed on the recommendation of one person, the prime minister, it is also unacceptable that some Senators may occupy their seats for half a lifetime (Senators must be at least 30 years old on appointment, so it is possible for someone to hold a Senate seat for 45 years).

One columnist has suggested that Harper wants to "destabilize" the Senate: if a significant proportion of seats came to be filled by persons who had won Senate "elections" under the process Harper has promised, the potentially awkward situation of a Senate that was half reformed, and half not, could facilitate comprehensive reform.² This may be no more than clever speculation, but it raises an important question: what will be the purpose(s) of the fully or partly reformed Senate that could result from the staged approach?



The preamble to Bill S-4 provides one possible hint. It concludes with the following clause: "And whereas Parliament wishes to maintain the essential characteristics of the Senate within Canada's parliamentary democracy as a chamber of independent, sober second thought." This suggests that legislative review is to remain an important function of the Senate. Although this is hardly contentious, it brings up the question of the Senate's powers. Should the Senate continue to have powers that, except for constitutional amendments, are virtually equal to those of the House of Commons?³ This would be the case if reducing the Senate's powers were not part of the "staged approach" or if fundamental reform were not subsequently achieved.

This one example serves to underline a basic point: the elements of Senate reform, however enacted, are intertwined. Moreover, defining those elements—such as the Senate's powers or the seat distribution—cannot properly be done without agreeing on the roles, in addition to legislative review, of the reformed Senate.

In the late 1970s, there were a number of proposals to turn the Senate into a "house of the provinces." Drawing on the model of the German second chamber, the Bundesrat, Senators would be appointed by provincial governments. This would allow provincial governments to influence federal legislation and make it more sensitive to regional interests.⁴

In the mid-1980s, the winds shifted. In its 1984 report, the Special Joint Committee on Senate Reform concluded that direct election would best achieve its primary objective—to strengthen the Senate's capacity to fill its role of regional representation.⁵ Not long after, the Triple-E model added equal provincial representation and effective powers to the election principle.

The regional representation objective reflected in part the view that it was unsatisfactory to have national governments with little or no elected representation from certain regions—as occurred following the 1979 and 1980 elections. Since 1993, the party in power has had MPs from all or most provinces, and the argument about entire regions being shut out of national decision-making has been muted. Is the "regional representation" objective that underpinned successive reform proposals, including the 1992 Charlottetown accord, still as pressing? We do not really know.

The clock has ticked on since 1992, and some of our expectations about representation in legislative institutions have evolved. There is, for example, a growing concern about the picture of Canadian society that elected bodies project. On certain counts, we are not doing very well. For example, only 21% of the MPs elected in the 2006 election were women. Aboriginal people, whose voices need to be heard more widely, are also under-represented in the House of Commons.

This leads to another question about the reformed Senate. Should one of its fundamental purposes be to represent key aspects of Canadian diversity in addition to regional interests? If so, this would have an impact on decisions about elements of reform. For example, it might point to the value of using proportional representation in order to favour the election

of women (although the type of electoral system and party nomination decisions are key additional factors). It might also point to the possibility of having some Senate seats reserved for Aboriginal representatives.⁶ However, we do not know whether provincial governments and Canadians would support this "reflection of diversity" mission for a reformed Senate.

The time has come for a new national debate on Senate reform. Fundamental changes to our second chamber must not reflect only the positions of governments. We need to draw on the views of a broad range of interveners, including researchers, democratic reform activists and citizens. First principles—notably the roles of a reformed Senate—need to be identified. Why not start a national debate sooner rather than later so that it can help guide the Harper government as it plans further steps in its staged approach? Who knows, it might even accelerate the adoption of a constitutional amendment to establish a fully elected Senate.

• • • Notes

1. Simon Doyle, "Harper could create 'the most powerful Senate in the world': Joyal," *The Hill Times*, June 5, 2006.

2. Andrew Coyne, "Harper's Senate plan: destabilize the status quo," *The National Post*, June 3, 2006.

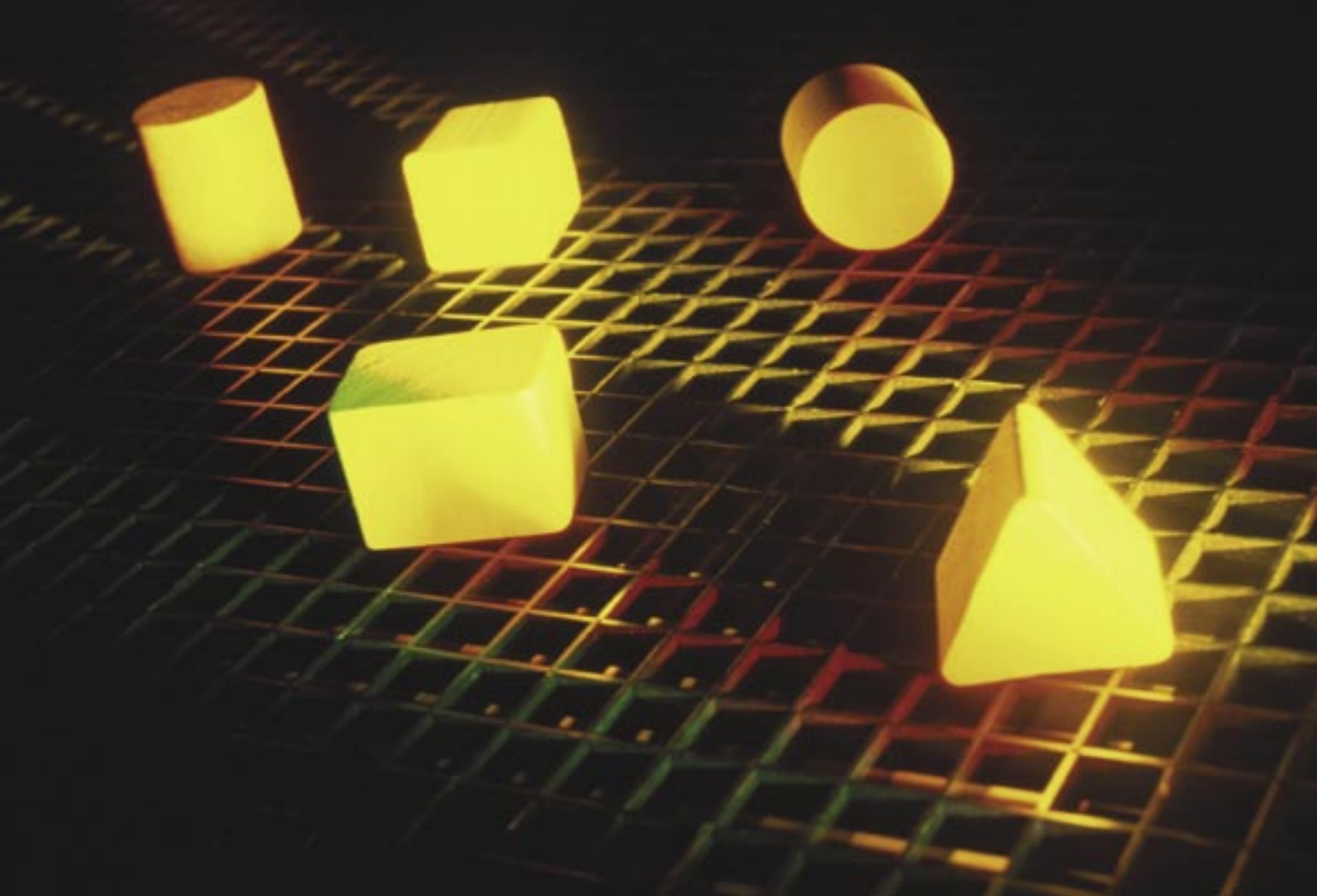
3. Money bills cannot be introduced in the Senate, and consequently the Senate cannot amend bills to increase the amounts appropriated through their provisions. However, the Senate can reject all money bills and other legislation, except constitutional amendments that require the consent of all or a majority of provinces; the Senate can only delay adoption of such amendments for up to 180 days.

4. On the evolution of models for Senate reform from the 1970s to the early 1990s, see F. Leslie Seidle, "Senate Reform and the Constitutional Agenda: Conundrum or Solution?," in J. Ajzenstat (ed.), *Canadian Constitutionalism 1791-1991* (Ottawa: Canadian Study of Parliament Group, 1992), pp. 91-122.

5. Special Joint Committee of the Senate and of the House of Commons on Senate Reform, Report (Ottawa: Queen's Printer for Canada, 1984), pp. 13, 21.

6. The 1992 Charlottetown accord included such a provision, although the number of seats was subject to future discussion.

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Canada's New Political Geometry

Brian Lee Crowley

Here is today's geometry snap quiz: how can you make two triangles plus ten equal provinces divided by western momentum equal one coherent country? A hint: if you answer "Senate reform," you must stay behind and write "constitutional change is the kiss of death" 1,000 times.

Before you begin, let's talk for a moment about the terms of the question, beginning with the two triangles.

It used to be that there was only one triangle that mattered: Montreal-Ottawa-Toronto, where the country's political, economic and population weight was concentrated.

But the last federal election consecrated the emergence of a new upstart competing triangle: Calgary-Edmonton-Vancouver. If the 20th Century belonged to Canada, as Sir Wilfrid Laurier so famously claimed, the 21st belongs to the West.

As Asia progressively joins the world economy, and America understandably frets about its own security, the Canadian West has everything the world wants. A natural resource boom of unimaginable size is washing over the region. Their vast coal, natural gas, conventional and synthetic oil, diamonds, uranium, potash and copper are the talk of the world.

Alberta now officially contains as much oil as Saudi Arabia; it has the rule of law, low taxes and a breathtaking work ethic. What are the current projections for energy related construction projects in Alberta alone over the next few decades? Perhaps as much as one

hundred billion dollars as it becomes the conduit for not only its own energy reserves, but those of Alaska and our own northern territories headed to US markets.

British Columbia will eventually add significant offshore petroleum reserves to its existing natural gas and coal. The Olympics will be there in a few years, helping to feed a construction and housing boom. Fort McMurray, capital of the oil sands, can't grow fast enough, so airstrips are springing up on the edge of town as companies fly in their workers from eastern BC.



Immigrants are following opportunity west. Globalization will force manufacturing in central Canada to become leaner and employ fewer people; workers will shift west in even greater numbers. These trends are accelerating.

The West has had more MPs than Quebec for years and the region could overtake Ontario, with parliamentary weight to match.

So what's all the fuss about Senate reform? Twenty-five years ago, a similar natural resource boom in Alberta was brought to a crashing halt by Ottawa's ham-fisted National Energy Program. The result was a firestorm of western alienation and anger. Despairing of being able to influence Liberal policies, the West rallied first to Brian Mulroney's Tories and later to the Reform Party. In addition, Alberta became a hotbed of schemes to tinker with Canada's political structure with the objective of making future NEPs impossible. The Triple-E Senate (equal, elected, effective) was the best known.

But, ironically, Senate reform putting all the provinces on an equal footing would today give extra power, not to the New West, but to the Old East, the declining power base of the Liberal Party. In a EEE Senate, for example, equalization-receiving provinces would hold a strong majority, making serious reform even less likely and creating a new parliamentary power base arguing for transfers from an increasingly wealthy West. That is the opposite of why Alberta became Senate reform's great champion.

In any case, Alberta and the West now have an ally they did

not have back in the NEP days: Washington. The Americans are thrilled to have such massive energy resources on their doorstep and would adamantly oppose any policy that might put a damper on their development.

Senate reform is chiefly in the interests of small provinces, not large ones. BC figured this out long ago, joining Ontario and Quebec in the ranks of the sceptics. Alberta is now a big province economically and demographically with growing political clout, as Calgary's Stephen Harper demonstrates. Quebec wants no part of equality with tiny provinces in a powerful elected body,



but can be wooed by respecting the federal-provincial division of powers, reining in Ottawa's recent enthusiasm for dabbling in areas of provincial jurisdiction. That suits Alberta and BC too. And we already have a perfectly respectable Canadian-grown institution whose members are elected and where provinces are equal and effective. It is called first ministers meetings.

Senate reform is a second-best strategy for people who think they can't win political power. Alberta and the West are now political winners, not losers. Moreover, if you are a government whose main power base is in the West, why take on something as politically unpopular and uncertain of success as constitutional reform when a reformed Senate would make your own life hell if you are in government in Ottawa? And if you elect Senators without amending the constitution, you leave in place the huge imbalance in numbers of Senators among the provinces, the Senate's theoretically huge legislative power, and lifetime tenure for Senators (which, *pace* Mr. Harper, it is not clear Ottawa can change without provincial consent).

That would be the worst of all possible worlds: a powerful Senate with little responsibility and no accountability, since both of those things flow, not from your first election, but your second, when you can be held to account for your use of power. Pray that Stephen Harper understands geometry.

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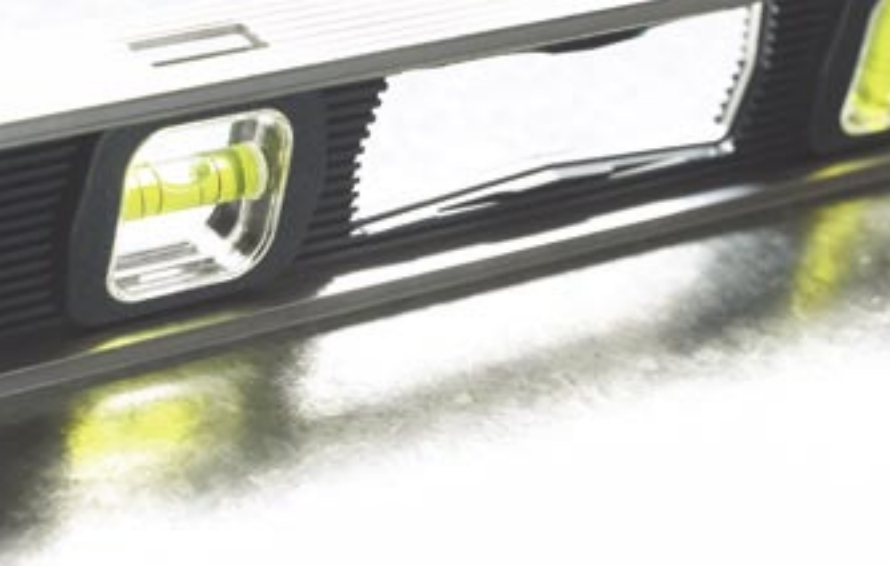
Equalize This!

Ken Chapman

I used to be an abolitionist but now I think the Senate has merit. I think we have recently been very well served by the red chamber. There are many examples, but one illustration of the good works of our Senate is reflected in *The Kirby Commission Report on Health Care Reform*. It was far superior to anything else done on the subject. The content, comprehensiveness, and the focus on concrete practical recommendations were refreshing. There are many other good examples of our Senate at work, but outlining them is not the purpose of this piece.

Instead I have been asked, “what are my expectations on the likelihood of further Senate reform?” My comments are in light of recent musings of Prime Minister Harper. While much has been forgotten about Senate Reform, it appears that all is not lost. Some prime ministerial political balloons have recently been seen floating surreptitiously just above the horizon. Term limits for Senators and ruminations around accepting Senate appointees from provincially based elections are grinding amongst the rest of the grist in the Ottawa mill these days. Harper believes he can implement his Senate reform ideas without requiring constitutional change, and I hope he is right.

We were close once to real Senate reform if you recall the days of the Charlottetown and Meech Lake Accords. They included a suite of serious Senate reforms designed to recognize the West and it just about became reality. The Reform Party of the day was apparently



more intent on ending Ottawa's political pandering to Quebec and they focused on that to help defeat the deal. Senate reform died with it. Irony ought to be a synonym for politics, especially when you consider the current Quebec-centric focus of the Conservative Harper government and the Reform/Alliance Party's historical stance toward Quebec-Canada relations.

Enough historical context! Let's talk some real political turkey around Senate reform. If Harper is serious about his ideas of term limits and the appointment of provincially elected nominees, let's help him out and give Senate reform some real traction. Federal systems are all about governing through balancing power, leveraging influence and

political squabbles over jurisdiction. Everything else is essentially "detail." I have a detail suggestion that I think can help advance Harper's Senate reform agenda. It can also clarify the federal-provincial power balance, exercise western influence through leverage and not induce any jurisdictional palpitations; because this detail is about a pure federal jurisdiction...the detail is equalization.

I think the Ontario angst, the Quebec mythology, and the Maritime divine right perception about equalization ought to be tied to Senate reform. The Prime Minister could get his reforms and more by applying the principles of equalization to the need for Senate reform. If the constitutionally enshrined equalization concept is intended to assure each province has access to an acceptable "equal" level of government service, why is that logic not applied to the services of the Senate? Why isn't each province enjoying equal representation in this federal institution? How is it fair that those Canadians living in the western provinces are less entitled to receive an equal "service" from the federal Senate than Canadians living in certain other provinces? Let's apply the concept of equalization to the distribution of Senate seats and make it equal for all provinces. This is not a fiscal measure of have and have-not provinces. It is about an injustice between have and have-not provinces and their relative representation in one of our legislative institutions, the Senate.

It is an issue around providing fair treatment through an equalization of a federal service, in this case an equalized number of Senate seats for each province. Surely Canadians in the Maritimes, Quebec and Ontario, who are so focused on the fiscal equalization formula, can appreciate that logic. They undoubtedly rightly claim that equalization payments are part of being respected and treated fairly as a Canadian. Some individual Canadians, because of their relative excess of economic blessings, gladly contribute more than they get back from the federal government. They do this to assure an equal access for all Canadians to government services. It is part of our national value set.

That said, surely those Canadians whose provinces are blessed with an excess of Senate seats, like Maritimers, Ontarians and Quebecers, can apply the same logic and equalize the number of Senate seats. This would be done to assure western Canadians have equal access to the Senate. Is it too much to expect that there be an equalization of Senate seats? Shouldn't this be done with the same sense of national spirit and generosity as is fiscal equalization? It is not too much to ask. After all, equalization is enshrined as a constitutional right, but who says it only means cash transfers from the federal government and only to certain provinces based on a unilaterally imposed federal funding formula? Surely those have-province Canadians with an excess of Senate seats will be "equally" prepared to give some of this "wealth" to those have-not province Canadians who are so seriously underrepresented. This is not merely a negotiation but a reflection of our fundamental Canadian values of fairness, equality and inclusiveness.

So Canada: think about it. Why is equalization only about money transfers? Why isn't Senate reform also about sharing, respect, recognition, inclusion and fairness? Why have we constitutionally enshrined the concept of equalization? Because it is the "stuff" of what Canada is really all about. So you "rich" Canadians with your "wealth" of Senate seats, how about sending some West in the spirit of equalization? That way those of us who are struggling to be accepted and recognized as fully functioning and equal Canadians can enjoy the same level of "service" from an important federal institution, our Senate.

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Parliamentary Reform: What About Minorities?

Senator Claudette Tardif

Since the general election of January 23, 2006, and more recently with the introduction in the Senate of a bill to limit Senators' terms (Bill S-4), parliamentary reform is once again a topic of interest to Albertans and Canadians. While reports, studies and reform proposals have abounded over the years, the Senate's function as a defender and an additional voice for minorities has seldom been studied and has not always been taken into account while considering proposals for change.



Limiting Senators' terms is a first step that can be undertaken in reforming the Senate. In fact, this was done once before in 1965 when the age of retirement was changed to 75 years of age.¹ However, further limiting Senators' terms to eight years, as proposed by the Harper government, may not be long enough to ensure that the Senate remains independent. This characteristic is essential in enabling the Senate to be a chamber of "sober second thought" and to do more thoughtful, better-researched work, free from electoral considerations. Therefore, any limiting of Senators' terms should be carefully considered.

Furthermore, in studying any project of parliamentary reform, analysts, legal and constitutional experts, and political scientists must always consider the following: the Senate is a part of a set of institutions, a system, as Professor David E. Smith states in "The Improvement of the Senate by Non-Constitutional Means,"² and it also represents minorities within Canadian society.

In every debate on Senate reform, the issue of regional representation is very important and draws much attention. However, the Senate's role as the protector and the defender of minorities' interests must never be forgotten. As Janet Ajzenstat points out: "in most political systems, the rights of the majority take care of themselves."³ Therefore, the Senate must continue to serve as a defender of minorities such as women, Aboriginals, and official languages communities, even if changes to it were to occur.

Like Sir Walter Bagehot, a 19th century British constitutional expert, stated: "if we had an ideal House of Commons...it is certain we should not need a higher Chamber." David E. Smith has also written, "the Senate was designed to complement, not to compete with, the House of Commons."⁴ It is through this lens that any initiative of Senate change must be examined if we are to ensure that the Senate continues to complement the representation afforded to Canadians in the House of Commons.

The Senate increases the representation of minorities who are either poorly represented or underrepresented in the House of Commons, namely women, Aboriginal people, Francophone and Anglophone minority communities, and vulnerable groups. For example, women currently make up close to 37% of the members of the Senate,⁵ which surpasses the 20% of women currently sitting in the House of Commons. The first Aboriginal Senator was appointed in 1958. Francophone minority communities in a number of provinces, namely Ontario, New Brunswick, Nova Scotia, Manitoba and Alberta, have almost continually, with a few exceptions, been represented in the Senate. For example, Manitoba has almost consistently had a Francophone Senator since 1871. Ontario and New Brunswick have almost always had at least one, if not two Francophone Senators since 1887 and 1885 respectively. Alberta had a Francophone Senator almost consistently between 1906 and 1964, and again since 2005.⁶

Any future initiative to have Senators elected or to change the manner Senators are appointed is likely to raise obstacles similar to the ones that are faced by women, Aboriginal people, visible minorities and official language minority communities in the House of Commons. If Senators were elected in the same manner as MPs, representation of minorities of every kind—women, Aboriginal people, Francophone minority communities and others—would likely diminish. Therefore, it is possible that the Senate would deprive itself of a great diversity of expertise, viewpoints and knowledge, should the impact of Senate reform on the representation of minorities across the country be ignored. Furthermore, as a recent article in *The Hill Times* highlights: "electing Senators without tinkering with the Senate's constitutional character would also create a powerful Upper Chamber that over-represents Ontario and Quebec and under-represents the West."⁷

Therefore, the full impact of any future Senate reform proposal on both regional and minority representation must be considered and thoroughly studied. Let us never forget that, despite good intentions, it is difficult for a majority always to ensure that the voice of minorities is heard. The Senate must keep its role of ensuring a representation of minorities across the country, as it has done since Confederation.

• • • Notes

1. Serge Joyal, "Reflections on the Path to Senate Reform," *Canadian Parliamentary Review*, Vol. 22, No. 3, Autumn 1999, available at <http://www.parl.gc.ca/Infoparl/english/issue.htm?param=72&art=143> (consulted on June 25 2006).

2. David E. Smith, "The Improvement of the Senate by Non-Constitutional Means," in *Protecting Canadian Democracy: The Senate You Never Knew*, Montreal, McGill-Queen's University Press, 2003.

3. Janet Ajzenstat, "Bicameralism and Canada's Founders," in Serge Joyal (ed.), *Protecting Canadian Democracy: The Senate You Never Knew*, Montreal, McGill-Queen's University Press, 2003, p. 7.

4. David E. Smith, "The Improvement of the Senate by Non-Constitutional Mean," in Serge Joyal (ed.), *Protecting Canadian Democracy: The Senate You Never Knew*, Montreal, McGill-Queen's University Press, 2003, p. 234.

5. For historical and current information on the number of female and Aboriginal Senators, please refer to the parliamentary website at the following two addresses : <http://www.parl.gc.ca/information/about/people/Key/Aboriginal.asp?Language=E&leg=S> <http://www.parl.gc.ca/information/about/people/Key/StandingsWomen.asp?lang=E&Hist=Y&source=smsen>

6. Historical information on the representation of Francophone and Aboriginal Senators obtained from the Library of Parliament.

7. Simon Doyle, "Harper Could Create the Most Powerful Senate in the World," *The Hill Times*, No. 840, June 5, 2006, p. 37.

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A Senate That Is Like Baby's Porridge: Not Too Hot and Not Too Cold

Paul Thomas

Prescriptions for Senate reform depend greatly upon an observer's assessment of what is wrong with the current institution and its role in the wider policy process. Critics of the current Senate insist that Senators appointed largely on partisan grounds lack legitimacy and fail to act as regional spokespersons. Moreover, the national policy process is seen as too centralized and majoritarian in its operation, which leaves minority interests inadequately protected and produces weak accountability for prime ministers, cabinets, and the bureaucracy. There is some validity to these charges.

However, there is too little recognition by the most ardent triple E Senate reformers that regional interests do not go unrepresented in the national policy process. The fact is that most of this representation takes place through regional ministers and regional party caucuses, which operate in private and therefore go unnoticed by the public. An electoral system for the House of Commons that produces governments lacking in regional balance within cabinets and caucuses contributes to the perception that some regions are excluded from national decision-making, even though national parties that aspire to retain office are usually concerned to ensure regional fairness.

Factors outside of the parliamentary process, particularly the operation of the federal system involving high-profile federal-provincial disputes contribute to the image of pervasive regional conflict in national policy-making. Two comments must be made on this point. First, the Senate was never meant to represent the interests of provincial governments that have numerous other forums in which to state the case against national actions or inactions. The Senate exists to represent the needs and demands of provincial

societies in relation to national policy matters. This distinction between representing provincial societies rather than provincial governments is crucial for how we design a reformed Senate. Second, public opinion surveys over the years reveal that the number of issues that divide the country deeply along regional lines is relatively few. In summary, if the “regional problem” is less serious than most people imagine, we should not go overboard in assigning the Senate such extensive powers that will only create new problems.

Designing a reformed Senate requires a delicate balance among a series of principles and values, which is too large a topic to be fully covered here. Choosing a system to elect Senators and achieving greater equality in regional representation in the composition of the Senate are issues that present their own challenges in terms of balance. However, the greatest stumbling block to the achievement of meaningful reform is to find agreement on what powers the Senate needs to become an “effective” institution within the national policy process. Effectiveness will always be partly in the eye of the beholder. The challenge is to ensure that the reformed Senate has meaningful influence in the national policy process, but does not possess such constitutional authority that it can control the political fate of governments (i.e., become in theory and/or in practice a “confidence chamber”). Nor should a reformed senate be so powerful that it can cause paralysis in national policy-making. Like baby’s porridge in the old fable, a reformed Senate must be neither “too hot” nor “too cold,” but just right.

An elected Senate, with democratic legitimacy on its side, could challenge the existing conventions of cabinet-parliamentary government, which provide the foundation for political accountability in our system. An elected Senate need not have the power to remove governments or to block legislation in order to be effective and to make a contribution to the national legislative process. A reformed Senate needs meaningful

influence, not real power. It should complement, not compete with the House of Commons. To achieve the appropriate balance between greater responsiveness to regional and other minority concerns, while avoiding potential deadlock between the two houses of Parliament, an elected Senate should be given the following powers:

- a six-month suspensive veto on ordinary legislation;
- a two-month suspensive veto on spending, taxing, and borrowing bills;
- a requirement for a weighted majority vote when a region’s vital interest is at stake, with a procedure developed to designate such issues;
- the ratification of appointments to national institutions having a significant national impact;
- the development of mechanisms of cooperation between the two houses of Parliament; and
- the enhancement of the policy investigation role of Senate committees, both to open up the policy process and to provide elected Senators with a meaningful role.

We should not have exaggerated expectations about what an elected Senate can contribute alone to national unity, the alleviation of regional discontent, and greater accountability. A cautious approach, which recognizes the limits of institutional reform and seeks to avoid unforeseen consequences, is in the best interests of all Canadians.

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Dr. Paul G. Thomas is Duff Roblin Professor of Government, University of Manitoba.



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Canada's Promise Vincent Pouliot

Concerned Canadians have sought Senate reform almost since Canada became a nation because they know, instinctively maybe, that the proper representation of our provincial interests in the Senate would provide a check to the irresponsible exercise of power by our federal government.

The following will show that we do not need to reform the Constitution Act to ensure the provinces are fairly represented in the Senate. We need only apply, with integrity, British constitutional principles to the letter of the law. To implement, in practice, the rule of law established by our constitution, requires only an understanding of the British constitution adopted and adapted for the Government of Canada, the political will to restore the accountability of our federal executive to the people through Parliament, and the administration of justice.

The right to a constitutional government belongs to the people according to British doctrine because man is recognised to be perfectly free to order his actions and dispose of his person and possessions without asking leave, or depending on the will of any other person.¹ To ensure respect for this most fundamental principle of justice, constitutional principles were developed and applied in the operation of the British monarchy to guarantee that the exercise of power by the executive branch of government is authorised by the people.

Because Canada is a federation of provinces, the peoples' political will regarding how they wish to govern themselves is divided. In general, according to sections 91 and 92 of our constitution, if this political will concerns purely local issues, the provinces are vested with the exclusive jurisdiction to govern the matter; otherwise, the matter falls under federal jurisdiction.

The Supreme Court of Canada explains, in the reference concerning the secession of Quebec, that its role is not to delimit the jurisdictions of the federal and provincial governments. Rather, it is to ensure the integrity of the constitutional framework within which our democratically elected leaders can lawfully conciliate the unity and the diversity of Canada.²

Section 22 of our constitution establishes the number of Senators "who shall represent" each province in the Parliament of Canada. This section provides for the participation of the provinces in the legislative process of our federal government so that they may lawfully represent and protect their local and regional interests within the Canadian federation.³

Because the Senators represent the provinces in this legislative process, it follows that when the Senators approve a law, in theory and legally, they approve it on behalf of the provinces. Thus, the provinces approve that our federal government has the jurisdiction to regulate every matter touched by the law, as well as approving the manner, the extent of this regulation and the taxation required to enforce its observance throughout Canada with no further regard for their own purely local interests.

Section 32 requires that the Governor General of Canada fill the

vacancies that occur in the Senate by persons who are "fit" [to represent the provinces as per section 22]. Section 12 explains that the "Powers, Authorities, and Functions" of the Governor General are vested in, or exercisable by her, with the advice and/or consent of those persons "as the case requires."⁴ I submit this means that the Governor General must exercise the powers, authorities and functions of her office as required by the full and honest application of British constitutional principles to the case.

But the practice whereby section 32 is applied is clearly unconstitutional and contrary to the common law rules according to which the constitution of Canada must be interpreted. To whom does it belong to appoint and mandate a provincial representative with a power of attorney? This right obviously belongs to the province whose rights are being discussed and determined by the act of her representative. Under common law rules, it certainly does not belong to the Prime Minister of the Government of Canada to select provincial representatives in the Senate.

Under the British constitutional model of government, the question is formulated rather as follows: Who is authorised to advise the Governor General of the wishes and interests of the provinces regarding the appointment of their constitutional representatives to the Senate?

The Supreme Court's reference decision establishes the foundation for an appeal to the courts to demand that the intent of Confederation be respected in the implementation of the Constitution Act.⁵ As regards the representative character of the Senate, this intent is expressed in the 14th of the Resolutions of Quebec (1864). It states that the Senators shall be appointed "so that all [provincial] political parties may as nearly as possible be fairly represented."

True to the constitutional principle of our government, this would enable the provincial parties to select and confide the authority vested in them by provincial election to delegates in the Senate so that they may represent the local policy their constituents support, as well as protect their freedom (i.e., their exclusive jurisdiction) to implement those policies in their provincial government. Nothing prevents the parties from demanding that their choice of representative sign an undated resignation to guarantee he or she honour this confidence, and thus, the authority to act on their behalf and on behalf of their constituents.

Implementing the scheme of Confederation would constitute a Parliament wherein the political will of Canadians would be fully represented. Regarding Canada's general government, their federal political parties would represent their political will in the House of Commons. Regarding their local government, their political will would be represented in the Senate by the proportional representation of their provincial political parties.

Section 18 of the Constitution Act states that the powers and privileges of both the Senate and the House of Commons stem

from the House of Commons of Great Britain. An Act sanctioned on 22 May 1868,⁶ still in force today, confirms that both the Senate and the House of Commons possess the same powers and privileges (except for the power to initiate money bills). Both Houses would therefore be equally entitled to delegate a leader with the authority and the responsibility to advise the Governor-in-Council of the wishes and interests of their constituents.

The Constitution Act was thus designed to enable the authority to rise from the people to the Governor General so she may uphold the legitimate exercise of power by the state. In the appointment of senators, for example, the Governor-in-Council would turn to the Leader of the Senate, duly authorised to advise her of the wishes of the provinces. So too, it would enable the Governor General to facilitate the conciliation of the unity and the diversity of Canada to ensure that federal law is constructed with regard for those purely local matters that Canadians want governed diversely by the provinces in accordance with the intent of Confederation.⁷

This constitutional framework is explicitly confirmed to ensure the legitimacy of the rule of law by section 91, which states: "It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and the House of Commons, to make laws for the peace, order and good government of Canada..."

Our constitution thus calls for a Cabinet led by two first ministers, each possessed of the equal authority to advise the Governor General of the wishes and interests of the people. This should come as no surprise as the Constitution Act was meant to perfect and extend the federal system of responsible government existing in the Province of Canada at the time of Confederation, which was characterized by this double leadership.⁸

To bring the Canadian public an understanding of the political process, which necessarily and naturally arises from this constitutional framework such that it will be cherished and upheld, greater knowledge of the constitutional evolution of the Province of Canada is required.

• • • Notes

1. John Locke, *Essay Concerning the True Original, Extent and End of Civil Government*.

2 Reference concerning the secession of Quebec, [1998] 2 SCR par. 101.

3 Reference concerning the Upper House, [1980] 1 SCR 54 p. 68.

4 Though sec. 12 states that the Governor General may act alone, the outcome of the constitutional crisis created by New Brunswick's Common Schools Act was, in the words of Alpheus Todd, that: "In all acts of government, the ministers of the Crown are required to assume, on behalf of and with the consent of the sovereign, the burden of personal power, and thereby relieve the Crown of all personal responsibility. Even in his choice of a first minister... that choice is practically influenced by the necessity

for its being confirmed by the approbation of Parliament: so that, in a constitutional point of view, so universal is this principle that "there is not a moment in the king's life, from his accession to his demise, during which there is not someone responsible to Parliament for his public conduct" (Alpheus Todd, *Parliamentary Government in the Colonies*, pp. 16-17).

5. Reference concerning the secession of Quebec, [1998] 2 SCR par. 38-41.

6. An Act to define the privileges, immunities, and powers of the Senate and House of Commons sanctioned 22 May 1868, section 1, which states: "Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

The Senate and the House of Commons respectively, and the Members thereof respectively, shall hold, enjoy and exercise such and the like privileges, immunities and powers as, at the time of the passing of the British North America Act 1867, were held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof, so far as the same are consistent with and not repugnant to the said Act."

7. The Senate would be "a means of protecting sectional and provincial interests"* "against the combination of majorities in the House of Commons"*** "to establish a central government in which these Provinces should be represented, entrusted with exclusive authority only in affairs in which they had a common interest."****

* Re: Authority of the Parliament in relation to the Upper House, [1980] 1 SCR 54 p. 68.

** Ibid. p. 66 quoting John A. Macdonald, Debates on Confederation, 1865 p.38.

*** Reference concerning the secession of Quebec, [1998] 2 SCR p. 217, par. 58 quoting Re: the Initiative and Referendum Act, [1919] A.C. 935 (P.C.), at p. 942.

8. During the Debates on the Confederation of the Provinces of British North America, John A. Macdonald states: "In the constitution it is proposed to continue the system of Responsible Government, which has existed in the province since 1841..." (p. 33). "Nominally there was a legislative union in Canada, yet as a matter of fact, since the union of 1841 it was a federal union: in matters affecting Upper Canada solely, members from that section exercised the right to exclusive legislation, while the members from Lower Canada legislated in matters affecting their own section" (p. 30).

Vincent Pouliot is a Quebec lawyer and was Intervener in Re: the Secession of Quebec. For further information please visit www.responsiblegovernment.ca.

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Rethinking the Canadian Parliament

Anthony M. Sayers

There is little doubt that a well-constituted, elected Senate would do much to enhance the character of Canadian democracy. It would allow for the expression of regional interests in Ottawa, improve the oversight of legislation and the Executive by Parliament, and encourage the development of a national party system and fully national political parties. Taken together, these changes would strengthen the operation and legitimacy of Parliament and act as an antidote to widespread cynicism as to the character of democracy and politics in this country.

Despite the appeal of Senate reform, it faces many hurdles, particularly if we are to hold out hope that change will result in a final institutional form that strengthens all that is good about parliamentary government. In the meantime, if full ranging Senate reform remains out of reach, there are other ways of achieving the positive outcomes associated with an elected upper house. Moreover, some of the possible changes may be worth thinking about just because, irrespective of Senate reform, they strengthen important features of government—such as responsiveness, transparency, effectiveness and accountability—and might help to rescue Parliament in the eyes of voters.

Bringing regional interests more effectively to Ottawa would provide an alternative means of dealing with interprovincial tensions and open-up what remains a closed policy-making process dominated by executive bargaining. The selection of Senators by provincial governments might enhance the representation of regional interests in Parliament while providing an open forum in which regional issues could be discussed and agreements negotiated. As in Germany, it may be worthwhile considering whether provincial officials (including premiers) might be given the opportunity to sit in such a chamber. There are other existing mechanisms—such as the Council of the Federation and first ministers' meetings—whose rules could be formalized in a manner that improved both regional representation and democracy.

Reviving the legislative role of Parliament would do much to remind voters of its central role in democracy. New Zealand's unicameral (though once bicameral) Parliament is a good example of how a legislature may work to improve the scrutiny of legislation and act as a counterweight to executive power. There, powerful parliamentary committees discuss and modify legislation before the final vote in the House. As well as offering an opportunity for Parliament to question and influence the executive when ministers appear before committees, it has encouraged MPs to build specialized knowledge in some areas of policy, improving the quality of legislation.

A search across legislatures around the world suggests that this is just one of a range of mechanisms that might improve the workings of Parliament. Strengthening the power of Officers of Parliament, such as the Auditor General, is another means of guaranteeing better oversight of the operation of Parliament and the actions of the Executive. The suggestion to adopt fixed parliamentary terms is one means of limiting executive power. Alternatively, allowing Parliament to vote on the date of elections, as they do in at least one Commonwealth Parliament, might provide backbenchers—even those in the governing party—with a critical role and a means of influencing executive behaviour.

The lack of a truly national party system and of fully national political parties may be the most critical failure of Canadian politics. While a well designed, elected Senate would encourage their development and strengthen representation generally, these outcomes might be achieved in other ways. Modifying the electoral system of the House of Commons to include some degree of proportionality would, if properly managed, encourage major parties to root their organizations more firmly in all parts of the country and allow for the representation of formerly excluded interests and ideas. Again, the German and New Zealand (as well as Scottish) models that blend traditional single member plurality constituencies with PR systems are instructive in this regard. Even regional interests might be better accommodated under a system that used provinces or regions as a basis for constituencies.

Second chambers perform a range of critical functions, only some of which have been noted here. The negative impact of the currently enfeebled Senate on the quality of Canadian democracy should be of concern to all citizens. That being said, if modifying the Senate proves to be impossible, or if in the short run we wish to improve the operation of Parliament as a goal in itself, it is worth considering what makes for a good legislature. Abolitionists in particular should find some appeal in this approach: a properly functioning House of Commons, with some accommodation made for regional interests, would make it possible seriously to consider doing away with the Senate.

Recent legislation aimed at controlling the impact of money on elections and some aspects of the Accountability Act are laudable attempts to limit undue influence as well as some of the excesses of executive power. But missing from all of this has been any sustained attempt to revive directly the role of Parliament. While sensible Senate reform could help achieve this, we should not be blinded by this to the value of rethinking the role of the Canadian Parliament. Changes to Commons committees, the role of Officers of Parliament, electoral systems and to some of the other myriad rules and institutions of Parliament might well strengthen it in fact, and in the eyes of voters, and are worth pursuing in their own right.

Dr. Anthony Sayers is Associate Professor of Political Science at the University of Calgary.



ESSAY CONTEST

Is voting important? Why or why not?

\$5,000 cash prize for the winning essay
Best essays will be published in Dialogues

The 2006 Canada West Foundation Essay Contest is open to students under the age of 35 and attending a post-secondary institution in British Columbia, Alberta, Saskatchewan, or Manitoba as of December 1, 2006.

Essays must be **750 to 1,000 words** in length.

Essays should answer the question "**Is voting important?**" and explain why the author does or does not think this is the case.

Essays should be submitted to the Canada West Foundation **via email** by **December 1, 2006**.

Please provide your full name, address, phone number, and the name of your post-secondary institution at the beginning of your essay.

Please paste your essay into the body of the email message (attached files will not be accepted).

Essays should be emailed to:
Robert Roach, Canada West Foundation Director of Research
roach@cwf.ca

NOTE: The winner will be required to show proof of age and post-secondary enrollment.

An Open Letter to Canada's Premiers

Bert Brown

In 2004, Premier Binns of Prince Edward Island and Premier Lord of New Brunswick voiced a desire to elect Senators in their provinces, if there were some assurance the winners would be appointed. They now have that assurance from Prime Minister Harper; he first discussed the issue during the recent election campaign, again during his first national press conference, and he included democratization of the Senate in the Throne Speech. His determination now gives the Premiers of Canada an historic opportunity to reform a Senate desired by many Canadians since Confederation.

Senate reform has never been an issue that caused Canadians to march in the streets, but its voter support has never failed to grow. During the period of late May and early June 2005, the Alberta Senate Reform Task Force found near unanimous support for the election of all future members of the Canadian Senate. A 2004 CTV poll asked Canadians, "Do you want to elect your future Senators, yes or no?" Over 8 in 10 (83.6%) said yes. Immediately after the federal election, an Environics poll done for the CBC found 71% of Canadians want to elect future provincial Senators.

As of June 9, 2006, there are eight vacancies in the Senate: one in Newfoundland and Labrador, one in New Brunswick, one in Quebec, one in Prince Edward Island, two in Nova Scotia, and two in Ontario. There will be an additional vacancy in Quebec when Senator Plamondon turns 75 in September 2006.

If a provincial government with an open seat were to hold a Senate election, it could have an elected "Senator-in-waiting" (as Alberta does) in place for Stephen Harper to appoint. Elections by the provinces with vacancies have the potential to bring democratic choice to the Senate without triggering a constitutional amendment or threatening the position of existing Senators.

Recognizing Mr. Harper's pledge to appoint only elected Senators, the Triple E Senate Committee sees an opportunity to achieve slow motion Senate reform. With eight current vacancies and one pending, there is an opportunity to appoint nine elected Senators in 2006.

Also, because of section 26 of the Constitution Act 1867, the prime minister can also appoint two extraordinary Senators per region, for a total of eight. Stephen Harper could appoint nine elected Senators to fill the existing vacancies plus eight more extraordinary elected Senators as per section 26. This would mean that there could be 17 elected members in the Senate within the year if enough provinces held Senate elections.

The keys to meaningful Senate reform are to have future members of the Upper House elected by the people of the province they will serve and to give them independence from the House of Commons by having them elected by provincial

political parties or elected as independents. Senators elected in this fashion can become a voice, a vote, and, when they possess a majority opinion, a veto on unpopular legislation that can be dropped or amended to reflect the majority in both houses.

This brings up some questions as to how to elect the eight extraordinary Senators. In the Atlantic region, there are differences in population numbers between New Brunswick and Nova Scotia with more, and Newfoundland and Prince Edward Island with less. The election of two Senators would be fair by declaring the winner to be the person receiving the largest percentage of eligible votes in the four Atlantic provinces and appointing only one elected winner from any one province. The second largest percentage from a different province and the other two winners would be Senators-in-waiting.

The same formula would work in the West where BC has such a huge population when compared with Saskatchewan and Manitoba. These are all steps that can be taken within provincial Senate election acts based on the Alberta model or created as original legislation at the time of adoption.

Slow motion Senate reform will not upset the operation of the current Senate or its members, many of whom Canadians respect. Elections to fill retirement vacancies will not cause disruption of the Senate. Slow motion Senate reform would give the Premiers time to come to a consensus on a stand alone constitutional amendment to deal with the desire of some provinces for more equality in the provincial representation of the Senate, and it would contribute to the renewal of the partnership between the federal government and the provinces.

If Canada's Premiers look beyond their mandates and act, they will see a future where the elected Senate will reverse the past concentration of power in Ottawa. The Premiers alone can act to make us a great democracy.

Bert Brown is an Alberta Senator-Elect and Chairman of the Canadian Committee for a Triple E Senate.



When Pigs Fly?

dr. roger gibbins
president and ceo
canada west foundation

Above my desk at the Canada West Foundation hangs a carved wooden pig, with wings. I refer to it, not always affectionately, as my Senate reform pig, as in “the Canadian Senate will be reformed when pigs can fly.”

Yet despite the pessimism embedded in my winged mascot, I’ve felt a faint flutter of optimism in recent months. Maybe, just maybe, we can finally see not the end of the Senate reform tunnel, but at least the beginning.

The explanation for this flutter calls for a brief discussion of my personal odyssey on the road to Senate reform, an odyssey that began in the early 1980s when I was struck at how frequently the governing party of the day failed to reflect regional realities, how the electoral system worked to magnify rather than bridge regional cleavages, and how the stature of provincial premiers was exaggerated because they so often served as the only effective regional spokesmen on the national stage. (Thank goodness I was not the kind of child who was interested in Senate reform!)

Parliamentary institutions struck me as increasingly dysfunctional, a conclusion that was reinforced by some comparative work I was doing at the University of Calgary on regional representation in Canada and the United States. Although many aspects of the American system held little appeal, I was struck by how effectively the US Senate brought state interests and aspirations into the very heart of the national political process. At a time when Prime Minister Pierre Trudeau was treating western Canadian interests

with a mixture of indifference and disdain, it was difficult not to see the US Senate as a beacon of light.

It was also around this time that I began speaking to audiences outside Canada, and to young Canadians, about the Senate. I found it was easy to get laughs by describing the Canadian Senate to incredulous audiences, but I would have been much happier speaking from a position of pride rather than from a position of embarrassment.

In short, I became a believer in Senate reform, convinced that it was at least a partial cure for chronic regional discontent, that it could both provide more effective regional representation and strengthen the legitimacy of the national government.

Not coincidentally, this was also the time when the Canada West Foundation began to map out the triple E Senate reform model—elected, equal and effective—and began to serve as an informal publicist for Senate reform. Although I was not directly involved with the Canada West Foundation at the time, there was clearly a meeting of minds with the triple E architects, including David Elton, Gordon Gibson and Peter McCormick, who characterized the existing Senate as “wasted institutional space.” Like them, I championed “the West wants in” and felt that the pathway to national influence for the West led through a reformed Senate.

Today, I am still a believer, although my thinking has changed somewhat. Whereas in the past I placed greatest emphasis, indeed almost sole emphasis, on the need



for more effective regional representation within the national legislature, today I tend to give equal weight to the need to address the concentration of power that is increasingly characteristic of Canadian parliamentary democracy.

Here I would not argue that absolute power has corrupted absolutely in the Canadian experience, but there is a concern that we concentrate too much power in too few hands. The fact that the prime minister controls the country's legislative agenda (at least during majority governments), appoints ambassadors, Senators and judges to the Supreme Court, and runs the administrative branch of the government seems excessive no matter what the virtues of the incumbent might be.

I would also argue that an elected Senate would strengthen our capacity to provide better representation, and not just for provincial communities. The elected Australian Senate, for example, shows that if we could get the electoral system right—an admittedly big if—then the Senate could provide, for example, representation for the Greens who, to this point, lack representation in the House of Commons.

But why my newfound optimism that Senate reform might now be possible? In part the flutter of optimism comes from the fact that Stephen Harper has adopted an incremental approach to Senate reform, one that should provide some momentum without locking us into a final destination. Previous prime ministers professed support for Senate reform, but then argued that piecemeal reform won't



work, that everything must be done at once, that it is impossible to do everything at once, and therefore any attempt to do anything should be abandoned. Given the false choice between all or nothing, they chose nothing, albeit nothing dogged up in rhetorical support for Senate reform in principle.

The political situation has also changed in Quebec. Until recently, Quebecers were seen as adamant opponents of Senate reform, and we believed far too readily that Quebecers would support the antiquated status quo rather than democratic reform. Now, with a moderated national unity landscape, I believe that there is an opportunity to open the conversation with Quebec, likely within the context of Harper's open federalism.

In addition, over the past decade we have seen a growing Canadian interest in electoral reform, an interest that has made little headway with respect to either the House of Commons or provincial legislatures. Perhaps, then, there is an opportunity to redirect this intellectual energy into the design of an elected Senate, one that might serve as a model for other reforms to come.

I also believe there is a stronger democratic impulse in Canada these days, that Canadians are uneasy with a Senate that fails to reflect even the most rudimentary democratic principles. We like to portray ourselves on the world stage as leaders in democratic governance, but this portrait conflicts with the awkward reality of the Canadian Senate.

Finally, I am not convinced that Canadians at large are as terrified of constitutional change as are political elites. Political leaders commonly make the argument that voters will opt for the status quo, no matter how at odds it might be from democratic principles, than risk the troubled waters of constitutional reform. I suspect, however, and public opinion research by the Canada West Foundation confirms, that our leaders are selling us short. Admittedly, Canadians are not out marching in the streets and demanding Senate reform, but neither do they believe that just because we failed in the past to reform the constitution we should throw in the towel and cling instead to a badly outdated set of parliamentary institutions.

Given all of these factors, this may be the chance to get it right. I'm not sure what the right model might be, but I am convinced the present model is the wrong one for a mature democratic society at the leading edge of the 21st century. And, I am more than willing to roll up my sleeves in the search for the right model.

Sometime before I retire, before I fold my tents and silently steal away, I would like to stand before a foreign audience, or for that matter a grade 5 class in Canada, and speak with pride about the Canadian Senate, talking about a truly democratic institution designed for the challenges of the 21st century rather than an anachronistic institution designed, and poorly designed, for the 19th.

So, my carved pig is now perched on the edge of my desk, ready to stretch his wooden wings. My heart is with him, and all of my academic experience, all of my lived experience in western Canada, all of my faith in a vibrant Canadian democracy quietly chants "fly, pig, fly!"

A STRONG WEST IN A STRONG CANADA



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