

A New Senate for a More Democratic Canada

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THE WEST IN CANADA PROJECT

Canada is a wonderfully diverse country with its people spread across the second largest nation-state in the world. There are many things that tie us together as Canadians, but there is no doubt that each part of the country is unique and brings a different set of characteristics and perspectives to the national table. Understanding and integrating this diversity is a challenge as big as Canada itself.

Western Canada—British Columbia, Alberta, Saskatchewan, and Manitoba—forms one of many distinct regions within Canada. The West is no more homogenous than any other region or sub-region, but there is an abundance of features that tie the four western provinces together in special ways. Shedding light on this region, communicating its frustrations and aspirations to the national community, seeking ways to build on the common ground found in the West, weaving the region into the national whole, and highlighting public policy innovation in the West are the goals of the West in Canada Project. The project, like Canada West Foundation, is based on the idea that strong and prosperous regions make for a strong and prosperous Canada.

For more information about the West in Canada Project, please contact Robert Roach (roach@cwf.ca).

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EXECUTIVE SUMMARY

The March 3, 2010 Throne Speech indicates that Prime Minister Stephen Harper’s Conservative Government “remains committed to Senate reform.” The current Senate reform debate has, however, become too tactical, and as a consequence, Canadians have lost sight of *why* a reformed Senate makes sense, and what roles and purposes it might fill. Without a compelling case for Senate reform in principle, it will be very difficult to mobilize public support for more specific reforms such as term limits and provincial Senate elections, and the eventual reopening of the Constitution that full Senate reform will require. There needs to be an explanation of why reform is important and how it links to concerns about Canadian democracy.

Discussions of term limits and modifying the appointment process, while important steps toward full Senate reform, do not capture the public imagination. Canadians need a clear vision of the destination that lies beyond these initial steps. Unfortunately, referencing models and arguments from the 1980s and 1990s will not suffice.

To help address this shortfall, this brief discussion paper outlines four arguments why Canadians should care about Senate reform. These arguments are rooted in what a new and improved Senate can do to enhance Canadian democracy.

Representing Diversity – First, a reformed Senate could be used to overcome the chronic inability of the House of Commons to reflect the diversity of the Canadian people. Women, visible minorities, Aboriginals, small political parties and other minority groups are too often poorly represented in the House of Commons. This does not mean that Members of Parliament do not care about these groups, but it is a serious problem when the country’s national legislative body does not reflect the diversity of the population it represents. Here there is an opportunity to introduce proportional representation at the federal level. This would not be a cure for every representational weakness, but it would go a long way toward making a reformed Senate a more diverse, and therefore more representative, body within Parliament.

Improving Policy – Second, a reformed Senate could help ensure that federal policy is based on a wider variety of input with a premium placed on compromise and consensus among diverse perspectives. Admittedly, this makes for a slower, more complex and generally messier legislative process, but that is characteristic of a healthy democracy at work.

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Balancing Power – Third, a reformed Senate could serve as a check on the concentration of power in the hands of the Prime Minister and the central agencies that report to his office.

Strengthening Federalism – Fourth, there is the longstanding need to use the Senate to better capture, express and institutionalize Canada’s territorial and linguistic diversity.

Not everyone will agree with these arguments while others will suggest alternative reasons for reforming the Senate. Our goal is to help initiate a broad public debate about the ultimate ends of Senate reform and how we want ourselves to be governed.

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1. INTRODUCTION

The federal Throne Speech delivered on March 3, 2010, notes that Canada is “a country founded on democracy” and, in this context, states that the Government “remains committed to Senate reform.”¹

Democracy² is, however, a slow, messy, combative and often inefficient form of government. Listening to and incorporating multiple opinions and priorities is a complex process that requires time and compromise. As a result, democracy can rub up against the desire for governments that “get things done.”

Although the current Senate has the constitutional power to block the will of the House of Commons, it lacks the democratic legitimacy to do so on a regular basis because it is an unelected body. When the Senate does not exercise its constitutional powers it is seen as a waste of money and institutional space or, at best, a refuge for patronage appointments. When it does act, it is seen to be driven by partisan considerations as Senate appointees from past governments confront the elected government of the day. It is no wonder that Canadians are confused, frustrated and even angry.

However, an elected Senate would bring its own challenges to efficient governments as elected Senators would have the legitimacy and, to a degree, the mandate to tackle the government of the day. Thus Canadians with a thirst for efficient government may cast a wary eye on Senate reform, fearing its potential to seriously gum up the works of Parliament.

Concern about the efficiency of the federal government is just one of the many barriers to Senate reform. In order to overcome these barriers, Canadians need a vision of what a new and improved Senate could do. We have to shift the terms of debate from the problems of Senate reform to its democratic potential. The current focus on tactical issues such as term limits and the appointment process is not likely to capture the imagination of Canadians.

1 http://www.speech.gc.ca/grfx/docs/sft-ddt-2010_e.pdf

2 We use “democracy” in this paper as shorthand for the more complex concept of “liberal democracy.” In a liberal democracy, there is rule of the people, but not rule of the mob. The difference is that the rights of minorities are protected from the potentially overzealous will of the majority. The people still rule, but they cannot run roughshod over the fundamental rights of minorities just because they outnumber them. We should also note that we are usually referring to representative democracy rather than direct democracy.

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This brief discussion paper addresses this challenge by presenting four reasons why Senate reform is worth the effort. The goal is to inspire and inform a debate about the ultimate destination of Senate reform.

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2. A NEW SENATE FOR CANADA

Representing Diversity

In the past, the lead argument in favour of Senate reform was the need for improved and entrenched *regional* representation at the federal level.³ This is, in fact, the stance that the Canada West Foundation has taken since it first suggested electing Senators back in the early 1980s. However, while the regional rationale remains key and is discussed below, there is an opportunity to use a new and improved Senate to better represent the Canadian people in general, including but reaching beyond their territorial attachments and interests.

Canada has a wonderfully diverse population but this fact is simply not reflected in the composition of Parliament. If aliens landed in Canada and were taken to the House of Commons, they might assume that we are mostly male and white, and supporters of one of only four political parties. However, about 20% of Canada's population falls into the visible minority or Aboriginal category, yet only 8% of current MPs are non-white. Only 22% of MPs are female. Because of the way that ridings are constructed, urbanites are also underrepresented.⁴ While not all social institutions need to accurately reflect the composition of the Canadian population, Parliament should be held to a different and higher standard because it is the body that *represents* Canadians.

There are many reasons why Parliament is not an accurate reflection of the Canadian population, but this does not change the fact that it falls short on this critical measure. And while we should not by any means give up on improving the representativeness of the House of Commons, Senate reform provides an opportunity to address this longstanding weakness of our national Parliament.

Of course, any old reforms will not ensure better representation. More thought has to be given to how to ensure that an elected Senate does not simply reproduce the same distortions found in the House of Commons

3 See Peter McCormick, Ernest Manning and Gordon Gibson, *Regional Representation: The Canadian Partnership*, Canada West Foundation, 1981.

4 <http://www.magazine.utoronto.ca/leading-edge/sujit-choudry-michael-pal-canada-proportional-representation-debate/>

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(e.g., all Conservative Senators from Alberta despite diversity within the Alberta electorate), which is what would happen if we simply slap the first-past-the-post system used to elect the House onto a reformed Senate. Electing Senators through some form of proportional representation should be a key element of Senate reform.⁵ A properly designed proportional representation system would provide greater opportunities for smaller parties, women, minorities and other groups to win Senate seats.

The first-past-the-post (a.k.a. single member plurality) system would continue to be used to elect MPs to the House of Commons, thus preserving the benefits of the old system while introducing the benefits of proportional representation through Senate reform. The adoption of proportional representation would bring Canada in line with most other advanced democracies (even Great Britain—the Mother of Parliaments—is considering changing to a proportional representation voting system).⁶

Improving Policy

A second reason to reform the Senate lies in the value of increased debate about, and input into, the legislation that governs Canadians and drives national public policy. This involves replacing sober second thought provided by appointees charged with keeping an eye on the elected House of Commons with elected Senators charged with evaluating legislation from the hopefully wide range of perspectives represented in the Upper House.

This is not a guarantee that the decisions of Parliament will always be objectively better after this “second look,” but it reduces the likelihood of unfair, unbalanced or poorly designed legislation. Existing Senate committees can offer advice and tweak things, but it takes an elected body to ensure real debate and compromise. As noted above, an increase in debate, scrutiny and wrangling for changes will not increase the efficiency of the legislative process, but it just might improve the federation over the

⁵ Some have argued that appointing Senators is the best way to increase representativeness because a Prime Minister can handpick women, Aboriginals, visible minorities, urbanites, persons with disabilities, etc. However, appointing is still not the same as being chosen by the public. It is a distant second best to address representational shortfalls by appointing rather than electing the representatives. As Gibson argues: “...the manner of making appointments to the Red Chamber means that, in the end, the Senate really does not represent Canada but rather the choices of Prime Ministers from time to time” (Gordon Gibson, “Challenges in Senate Reform: Conflicts of Interest, Unintended Consequences, New Possibilities.” *Public Policy Sources*, A Fraser Institute Occasional Paper, Number 83/September 2004, page 6).

⁶ <http://www.guardian.co.uk/politics/2010/feb/10/mps-back-electoral-reform-referendum>

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long-term by better bringing federal diversity into the national legislative process.

Balancing Power

Using a reformed Senate to ensure that federal policy is sound and balanced dovetails with a third argument in favour of a new and improved second chamber: an elected Senate would act as a much-needed check on the power of the Prime Minister and the central agencies that report to him or her.⁷ Donald Savoie sounded the alarm about the concentration of power in Canadian politics in the seminal book *Governing from the Centre*. Savoie observes that “Cabinet has now joined Parliament as an institution being bypassed [by the Prime Minister, his office and central agencies].”⁸ He also notes that “In Australia the Prime Minister must contend with an elected and independently minded Senate.” Sharman goes a step further:

Australian experience demonstrates the considerable benefits in the form of increased responsiveness that flow from an institutional check on the executive dominance of the legislative process. Such a check invigorates the legislature and greatly increases the effectiveness of parliamentary scrutiny of government administration. It counters the distortions of the policy process that flow from the executive’s attempts to reduce the influence of rival views of the national interest, to smother informed debate of its policies in the legislature and to avoid the necessity of compromise once a measure has partisan endorsement. It is the effectiveness component of the Triple-E trinity that is the prize of Senate reform, an effectiveness defined in terms of responsiveness to diversity, both regional and sectional.⁹

Here again, Senate reform offers the chance to repair a crack that has formed in our democracy; in this case it is the concentration of power in the Prime Minister and the agencies he controls. In our current parliamentary reality, “the members of the government party in the House of Commons

⁷ A Nanos Research poll conducted in February 2010 found that 42% of Canadians think that the Office of the Prime Minister has too much power. See www.nanosresearch.com.

⁸ Donald J. Savoie, *Governing from the Centre: The Concentration of Power in Canadian Politics*, 1999, page 362.

⁹ Dr. Campbell Sharman, *The Australian Triple-E Senate: Lessons for Canadian Senate Reform*, Canada West Foundation, 1989, page 9.

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almost always see their duty as defending the government against the people rather than as the original, ancient British idea of defending the people against the government.”¹⁰ As a result, the House of Commons is an ineffective check on the government whereas a reformed Senate has the potential to fulfill this role.

Strengthening Federalism

The Canada West Foundation has long argued that the national Parliament needs a permanent and vital mechanism imbedded within it that can represent regional interests. The uneven regional distribution of the Canadian population, the massive size of the country and a long history of regionally biased policy all call for a stronger regional voice in Ottawa. Because second chambers are often used for just this purpose, a reformed Senate is the logical choice for providing a regional lens on federal policy. An elected Senate would ensure that effective regional representation is not at the whim of the Prime Minister of the day or a fortuitous outcome of the electoral process, but an unavoidable and deeply ingrained part of the structure of the central government.

Some have argued that provincial premiers are best equipped to represent regional interests. We do not disagree that premiers and provincial governments have an important role to play in this regard, but what is needed is regional representation *at the centre itself* in addition to that which comes in from the outside via provincial governments. Both are important.

In addition, while provincial geographic units are fundamentally important, there are other regional containers that could find a home in a reformed Senate including cities, rural areas, Aboriginal communities and the northern territories. If the point is to ensure that minority interests are not overwhelmed by demographic majorities, there is no prima facie reason why only provinces should be represented in the Senate. And this, of course, takes us back to Canada’s founding federal principles in which territorial representation was also a proxy for linguistic and religious representation. The federal ideal in Canada has never been defined by territory alone.

10 Gibson, Gordon, “Challenges in Senate Reform: Conflicts of Interest, Unintended Consequences, New Possibilities.” *Public Policy Sources*, A Fraser Institute Occasional Paper, Number 83/September 2004, page 5.

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3. TO ABOLISH OR NOT TO ABOLISH?

Senators are appointed by the Prime Minister on a patronage basis. Even if some appointments are made for reasons that transcend partisanship and patronage, they are still appointments and this means that the Senate is an unelected body at odds with our most rudimentary understanding of democracy. In a representative democracy, those in control of the legislative process are elected. They do not play this role because they were born into it, because they purchased their way into it, because they took it by force or because an elected official appoints them to the role. They are chosen by the people.

Pointing out that the Senate does valuable committee work is not a sufficient reason to overlook its unelected nature. Many Canadians like the idea of “sober second thought,” but having this done by an unelected body does not sit right.¹¹ As a result, the Senate has lost whatever legitimacy it may have had in a less democratic age even though its constitutional power to block the will of the House of Commons remains intact.

If the Senate is an anachronistic affront to democratic values, why not just abolish it? There are other outlets for patronage, committee work could be handled by a reformed House of Commons bolstered by external expertise, and premiers can defend provincial interests, so why go through all the trouble of reforming the Senate? Clearly, patronage and committee work are not good enough arguments to keep the Senate around.

Things are less clear, however, when it comes to the other questions. Is more democracy worth it? As we have noted, more democracy will make government *less* efficient. A reformed Senate would make national politics more complex, not less. It will lead to better policy, but not always. In addition, it will take time for a new system to settle into a stable pattern of interaction between the House of Commons and a new Senate. It will be a bumpy ride. As Sharman points out:

The argument over the legitimacy of the Senate’s role is an example of the problems of harmonizing an executive dominated view of the governmental process that derives from the British parliamentary

¹¹ A Harris-Decima survey conducted in January 2010 found that 59% of Canadians want the Senate to be elected and 27% want it abolished. If this is not a clear message coming from the public that something should be done about the Senate, we are not sure what is. <http://www.theglobeandmail.com/news/politics/majority-backs-senate-reform-poll-finds/article1460516/>

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tradition, with the rival view of the governmental process that puts values on the division of power, the representation of diversity and the importance of compromise, consensus and responsiveness.¹²

If efficiency is your priority, abolishment makes sense (keeping in mind that the constitutional barriers to abolition are at least as high as the constitutional barriers to reform). We believe, however, that better representation of Canadians, more consensual policy outcomes, a check on the power of the Prime Minister and executive agencies, and structural representation of Canada's federal diversity within Parliament justify the loss of efficiency and the effort required to fully reform the Senate. While abolishing the Senate seems like a logical and easy option, there are strong countervailing arguments for keeping it around and taking the trouble to reform it.

Despite this, the forces lined up against Senate reform are numerous. There are those who feel that even one extra politician in Ottawa is one too many. There are those who fear that having two elected houses of Parliament will result in deadlock or, at best, painfully slow decision-making. There are those who cite the constitutional fatigue left over from Meech Lake and Charlottetown as a reason to avoid anything having to do with the constitution. There are those who would rather see provincial premiers continue to be Ottawa's regional conscience. There are those who feel that decentralization will deal with regional issues much better than more direction from Ottawa via an elected Senate. There are those who fear incremental Senate reform because it will create a Frankensenate (i.e., a second elected body without a clear mandate and very few legal restrictions on its power) that could engender a major constitutional crisis. Even Gordon Gibson, one of the original architects of Senate reform, has expressed reservations. Gibson's change of heart is rooted in a concern over unintended consequences such as "a major impetus to centralization and big government."¹³

Our task in this short paper is not to take on these critics, but rather to put the *positive* reasons for reform back on the table and to promote a public debate that is not smothered at the outset by the pessimism that has come to characterize the discussion of Senate reform in Canada.

¹² Campbell Sharman, *The Australian Triple-E Senate: Lessons for Canadian Senate Reform*, Canada West Foundation, 1989, page 9.

¹³ Gordon Gibson, "Challenges in Senate Reform: Conflicts of Interest, Unintended Consequences, New Possibilities." *Public Policy Sources*, A Fraser Institute Occasional Paper, Number 83/September 2004, page 3.

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The Devil is in the Details

Perhaps the greatest enemy of change is the focus on the mechanics of reform and the design of a new Senate rather than the *benefits* of a new Senate. How many Senators will there be from each province? How will you get Quebec and the other provinces to agree? Is it constitutional for the Prime Minister to appoint elected Senators? Should term limits be 4, 6, 8, 12 or some other number of years? These and similar questions are critically important, but outside of a few hardcore wonks (we include ourselves here) and constitutional lawyers, these questions do not excite citizens; Canadians need to see and discuss the big picture.

We need, therefore, to generate debate about the future of our democratic institutions and how Senate reform fits into this. Once we have hashed this out, *then* we can roll up our sleeves and figure out the details. To date, we have tended to reverse the order and the result has been glazed eyes.

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4. CONCLUSION

The easiest thing to do in Canadian politics is to dismiss Senate reform as impossible. “You can’t do it piecemeal because that will cause political chaos and wholesale reform requires the support of the provinces, which you won’t get, so give up.”

Frankly, we love Canada too much, and believe that improving how we govern ourselves is too important to fall into this kind of pessimistic thinking. Reform is possible if Canadians demand it and our leaders fight for it.

We believe that better representation of Canada’s diverse population, increased input into federal policy from a broader range of perspectives, greater emphasis on debate and consensus, stronger checks on the power of the executive, and the institutionalization of federal representation within Parliament provide Canadians with a set of goals that make the hassle and risks of Senate reform worthwhile.

We argue that there is an elegant symmetry to having the Lower House based on representation by population using the first-past-the-post method of voting while the Upper House is based on the representation of territorial units and minorities using the proportional representation voting method. Making a Parliament of this sort work will not be easy, but the potential benefits are worth the effort. It is through a reformed Senate that we can better reconcile the democratic and federal principles that shape Canadian political life.

We have for the most part sidestepped discussing the design of a new Senate in favour of focusing on the end goals of Senate reform. This is not because the questions related to design such as how many Senators there would be from each province, how to include the northern territories and exactly what form of proportional representation should be used are unimportant, but because they put the cart before the horse. The first step is to debate the rationale for reform, then to address the design challenges.

About Canada West Foundation

Canada West Foundation is the only think tank dedicated to being the objective, nonpartisan voice for issues of vital concern to western Canadians. Through our research and commentary, we contribute to better government decisions and a stronger Canadian economy.

The West is in. And Canada West Foundation helped put it there. Over the past 40 years, our research and commentary has improved government policy and decision making. Today, the West has been a part of the national agenda and has been at the forefront of the most important debates that have shaped our country.

We give the people of British Columbia, Alberta, Saskatchewan and Manitoba a voice. A voice for their dreams, interests and frustrations. As westerners, we understand the people and the places of the West. We know our history and how it influences our future. Whether it is the economy, environment, education, healthcare, taxes, energy, social services, urban issues, provincial-federal relations or any other policy area of importance to the West, we have researched it, commented on it, stimulated debate about it and recommended practical options for improving the policy response. Democracy lives.

Canada West Foundation is known and respected for its independence. No one tells us what to say, even though we are engaged by all levels of government, all types of companies, associations and philanthropic foundations. As a registered Canadian charitable organization (#11882 8698 RR 0001), donations ensure our research is available and free, so everyone can benefit.

Our credentials are impressive. We have the policy and economic experts you need. Our Board of Directors represent the who's who of the four western provinces. Our list of projects is long. We're just like the West. Absolutely essential. Absolutely part of Canada's success.

More information can be found at www.cwf.ca.



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