

Jennifer Smith – Introduction

In the Introduction, the author begins by setting the context of the Harper government's Senate reform proposals. She draws the line connecting the Reform Party's proposal of a Triple-E Senate (equal, elected, effective), offered up nearly twenty years ago, to the proposals before us today. She describes briefly the government's proposals to shorten the term of senators and to elect them. Then she reviews each of the articles in the collection, highlighting the key points that their authors make. She concludes by establishing the lessons that readers can take from the collection, chief among them an appreciation of the complexity of Senate reform.

Chapter 2: David Smith – “The Senate of Canada and the Conundrum of Reform”

In this chapter, the author looks at the conundrum of Senate Reform. He reminds the reader that the Senate – like the House of Lords – was conceived as a legislative body, one chamber of a bicameral Parliament, not a Bundesrat-like assembly of bureaucrats, or an advisory body of provincially selected politicians. Supreme legislative authority was to reside in two chambers. He stresses that the answer to the conundrum of Senate reform lies in understanding that agreement on the structure of the Senate was the principle on which the Confederation accord rested.

Chapter 3: Janet Ajzenstat – “Harmonizing Regional Representation with Parliamentary Government: The Original Plan”

The Fathers of Confederation designed the Parliament of Canada, including the Senate, to deliberate on political matters that would affect equally every person in the nation without exception. Matters affecting particular groups, especially matters connected with religion and county of origin, were to be left to the provinces. Though today there are reasons to reform the

Senate, we should avoid introduction of novel measures like corporate representation that would erode the Senate's powers as an inclusive and equalitarian deliberative body.

Chapter 4: Ronald Watts—“Federal Second Chambers Compared”

In this chapter, the author offers a comparative analysis of second chambers in a wide range of federations. He focuses on four main aspects: (1), the relation of bicameralism to federalism; (2) a comparative outline of the methods of appointment, composition, powers and roles of federal second legislative chambers; (3) the impact of political parties on the operation of federal second chambers; and (4) whether federal second chambers constrain or enhance democratic processes. Despite the variety among federations, the checks and balances provided by federal second chambers have often enhanced “consensus” democracy and contributed to the vitality and recognition of the distinct *demoi* in their various constituent units.

Chapter 5: Nadia Verrelli – “Harper’s Senate Reform: An Example of Open Federalism?”

This chapter compares the current efforts of Prime Minister Harper to reform the Senate with those of Prime Minister Trudeau in 1978. It argues that although Harper attempts to separate himself from previous prime ministers by championing the idea of open federalism, both his and Trudeau’s methods are examples of a “closed” federalism, both excluding the provinces from having any role in helping to reform the Senate. The paper suggests that in addition to considering the constitutional element of Harper’s proposal, we must also take into account the federalism factor – specifically the role of the provinces in the federation.

Chapter 6: Ron Watts – “Bill C-20: Faulty Procedure and Inadequate Solution (Testimony before the Legislative Committee on Bill C-20, House of Commons, 7 May 2008)”

This chapter considers the constitutionality of bill C-20. The author draws attention to two concerns about the bill in its present form: first, *legislative procedure*, and second, the *lack of context* in

terms of the relation of the proposed election process to the character, functions and role of the Senate within Parliament. He argues that while full reform is urgent for the welfare of Canada as a federation, reforming the Senate will require a constitutional amendment. Bill C-20 does not go far enough. Further, it is risky and dangerous in so far as it does not take into account its likely impact upon the relative role and powers of the Senate if only the method of selection is altered.

Chapter 7: Don Desseraud – “Whither 91.1? The Constitutionality of Bill C-19: An Act to Limit Senate Tenure”

Proposed changes to the Senate are more properly conducted under the amending formula, specifically subsection 38(1) which requires the consent of Parliament and at least 7 provinces with an aggregate population of 50 percent or more of the provincial total. In arguing this, the author looks at the scope of s44 of the Constitution, the requirement imposed on the federal government by s42, and the consequences of Senate reform for the governmental system. To avoid a constitutional amendment can be seen as a violation of the constitutional principle that governments must not attempt to do indirectly what they cannot do directly.

Chapter 8: Andrew Heard – “Constitutional Doubts about Bill C-20 and Senatorial Elections”

This paper reviews the constitutional provisions that govern Senate appointments and the different processes for altering them. The Supreme Court’s decision in the *Upper House Reference* is examined in order to reveal the potential challenges it poses to Bill C-20. Next, the debate over the continued applicability of this decision is analyzed, with specific attention to whether the subsequent enactment of s.44 of the *Constitution Act, 1982* has rendered it moot. With this in mind, the paper concludes by investigating whether the consultative nature of

elections under Bill C-20 is enough to save the bill, or whether they do indeed constitute real elections that could doom the bill.

Chapter 9: John Whyte – “Senate Reform: What Does the Constitution Say?”

Prime Minister Harper has decided that the apparent formal barriers to constitutional changes relating to the Senate should not stand in the way of highly significant reforms that he claims will enhance both the Canadian Parliament and Canadian democracy. He has not adopted the political strongman's tactic of using deep, and popular, political imperatives to override the constitution, but has carefully fashioned reforms that he believes just avoid the restrictions on unilateral federal authority to reform the Constitution. This strategy is based in fine textual distinctions which, however, may run roughshod over basic constitutional purposes. This paper examines this constitutional law relevant to this debate and suggests that the Prime Minister has miscalculated the constitutional constraints that apply to Senate reform proposals with respect to elections and Senate term limits.

Chapter 10: Stephen Michael MacLean – “Anticipating the Consequences of Bill C-20”

Bill C-20 – Senate Appointment Consultations Act – as well as bill C-19, are detrimental to the Senate. Focusing on bill C-20, the author points out the disadvantages of the bill including; an “elected” Senate would duplicate, not complement (as the current Senate does) the House of Commons; the bill is an affront to the intentions of the Fathers of Confederation; the consultation process is ambiguous. He concludes by stating that the current Senate is still “fit for purpose.”

Chapter 11: Andrew Heard – “Assessing Senate Reform thru Bill-19: The Effects of Limited Terms for Senators”

This chapter examines the most important aspects of the Senate's composition and roles in the Canadian political system. Particular attention is paid to the Senate's role of providing 'sober, second thought' and whether short-term senators – relative, that is, to the present average term – might be less effective in this regard. This paper undertakes an empirical analysis of senatorial behaviour. Finally, the potential effects of Bill C-19 are also examined in detail in three contexts: the replacement of the mandatory retirement age for new, fixed-term senators; the possible effects that seniority practices of the Senate may have; and whether short-term senators act less independently than others with longer terms.

Chapter 12: Vincent Pouliot – “The Constitutionality of Bill C-20”

The author suggests we should support Bill C-20 to reform our Senate as it offers us the means to lawfully conciliate the diversity of our provincial interests within the government of our federation. He shows how our constitution provides the Senate with the same representative nature as the House of Commons to enable this conciliation and how Bill C-20 fails to ensure this representation. Finally, he proposes amendments to the Bill correcting this defect.

Chapter 13: Peter Aucoin – “Bill C-20's Populist Model of Campaign Finance for Senate Elections: The First Step Away from Canada's Egalitarian Regime?”

Bill C-20 marks a complete change from the campaign-finance regime that Canadians have developed to govern federal elections. The current regime injects fairness into the competition by restricting the amount of money candidates and political parties spend in a campaign, and by providing access to public funds. Bill C-20 does neither. It allows candidates to spend as much as they can afford. Meanwhile, the proposed Senate regime maintains strict

limits on campaign contributions. Under Bill C-20, candidates for election to the House of Commons can stand for Senate election. Should elections to the two houses coincide, the Senate regime will diminish the effectiveness of the spending limits still in effect for Commons elections.

Chapter 14: Louise Carbert – “Senate Reform: What Does Bill C-20 Mean for Women?”

The author looks at the implications of Senate reform on women. Currently, 30 of the 87 sitting Senators are women. Proportionally, more women sit in the Senate than any other legislative body. Will bill C-20 continue this trend or will it hinder it? The answer lies in the electoral machinery of the bill. Considering four elements of the proposal, first, the preferential vote; second, campaign finance; third, the panel of nominees; and fourth, district magnitude, she argues that the longer the list of nominees to be elected from a district then, all else being equal, the better chance for a women to be elected.

Chapter 15: Tom Kent – “Senate Reform as a Risk to Take, Urgently”

The Senate reforms proposed by the Harper government are risky but desirable. The existing Senate is functionally unable to contribute to a robust federal government, but thorough reform would be no more likely to command the necessary provincial agreement than would a constitutional amendment to abolish the Senate. The chamber's electoral illegitimacy has created room for provincial premiers to assume a large role in national affairs. Since it is not their brief for premiers to think nationally, provincial interests tend to dominate federal-provincial relations at the expense of nation-wide concerns. In the absence of even the limited reform possible by federal legislation alone, provincial power will continue to grow and increasingly dilute the national interest. The longer this situation continues, the harder it will be to change.

Chapter 16: Hugh Segal – “Senate Reform and Democratic Legitimacy: Beyond Stasis”

In this paper, the author makes the case for Senate reform in light of the perceived lack of democratic legitimacy of the status quo. Given that Canadians have never conferred electoral legitimacy on the notion of an unelected upper chamber, Prime Minister Harper's efforts through Bill C-20 to consult the public on Senate vacancies and to shorten terms through Bill C-19 are a positive sign of reform. While there has been a long history of institutional resistance to reform, public input into whether the Senate should even exist in its current form remains necessary. This paper argues that there are other democratic and constitutionally-sound methods of gathering such input.

Chapter 17: Lorna Mardsen – “Thoughts on Senate Reform”

Reformers must maintain the existing role of the Senate as a check on the government of the day, a body capable of getting the government to rethink the more doubtful provisions of its proposed bills. Thus far, the Senate has managed to exercise sober second thought largely because of lengthy terms of many senators allow them to master their role as parliamentarians, including the craft of drafting good legislation. Election need not diminish this service if the term of office is long enough. Finally, the author cautions that an elected Senate is likely to introduce a level of political competition between senators and premiers that Canadians might not understand or appreciate.