

**SENATE REFORM:
MOVING TOWARDS THE SLIPPERY SLOPE**

by

ROGER GIBBINS

**Institute of
Intergovernmental Relations
Queen's University
Kingston, Ontario**

**Discussion Paper No. 16
Copyright 1983**

CONTENTS

PREFACE	i
ACKNOWLEDGEMENTS	iii
1 INTRODUCTION	1
2 WHY SENATE REFORM?	3
Objectives of Senate Reform	8
3 THE DESIGN OF A NEW SENATE	9
An Elected Senate	9
Mode of Election	12
Distribution of Senate Seats	17
4 THE POWERS OF A NEW SENATE	25
Special Powers of a Reformed Senate	25
General Powers: The House-Senate Relationship	27
5 PROSPECTS FOR REFORM	35
Potential Losers	35
Potential Winners	41
6 CONCLUSIONS	45
NOTES	49

PREFACE

Despite the advances embodied in the Constitution Act of 1982, many of the issues which animated the constitutional debate over the last decade remain to be addressed. High on this unfinished agenda is the reform of the institutions of the central government to ensure that they reflect the aspirations and interests of all of the diverse regions that make up this country. Over recent years, various strategies to achieve this goal have been advanced, most notably changes in the electoral system and reform of the Senate. In 1979 the Institute published an analysis of the first of these options, *Does Canada Need a New Electoral System?* by William Irvine. Now in this Discussion Paper, Roger Gibbins takes up the second option, examining the contribution that an elected Senate might make to both the sensitivity and the legitimacy of the federal government.

Roger Gibbins teaches in the Department of Political Science at the University of Calgary. A leading student of the politics of regionalism, he is the author of *Prairie Politics and Society and Regionalism: Territorial Politics in Canada*.

Institute Papers are designed to provide an opportunity for informed comment on important issues in federalism and intergovernmental relations. The views expressed are those of the individual author.

Keith G. Banting
Associate Director
July 1983

ACKNOWLEDGEMENTS

I would like to thank the following individuals whose comments helped iron out a somewhat wrinkled first draft: Keith Banting and Richard Simeon (Institute of Intergovernmental Relations, Queen's University), John Courtney, David Smith and Duff Spafford (University of Saskatchewan), Joyce Feinberg (Ontario's Ministry of Intergovernmental Affairs), Leslie Seidle (Federal-Provincial Relations Office), and John Woods (University of Calgary). Their kind assistance should in no way be taken as an endorsement of the views expressed in this paper.

Roger Gibbins
Associate Professor of Political Science
University of Calgary

1 INTRODUCTION

"The failure of our existing institutions is so extensive that the answer is not to be found in fine tuning existing institutions. Effective regional representation requires major institutional reform."¹

Once again, the perennial issue of Senate reform is in the air. Newspaper columnists have taken up the cause. Provincial governments are shaking the dust from reform proposals created originally in the heady days of constitutional experimentation during the late 1970's. Pollsters are beginning to test the public pulse. In the West, Senate reform is being embraced by many as a response to the 1980 general election which left the West virtually without elected representation in the national government. In the Spring of 1983 a Special Joint Committee of Parliament began a series of hearings on Senate reform, with the intention of reporting by December 1983. It is, then, an opportune time to lay the Senate reform cards on the table, and to study the odds of a successful outcome.

This essay draws upon a growing Senate reform literature² to address a number of objectives. The first is to review briefly the rationale for Senate reform. A second and more important objective is to examine the institutional design issues which the advocates of Senate reform must confront, and from which the opponents of reform draw their most damaging ammunition. The third objective is to examine the prospects for Senate

reform in the light of both the host of complex design problems which tend to sap one's enthusiasm for reform, and the losses that Senate reform is likely to inflict upon existing actors within the Canadian political process.

Two major themes pervade the essay. First, Senate reform is neither a simple quick-fix nor a panacea. The reform proposed in the pages that follow would radically alter the institutional structure of the Canadian political system. Indeed, it might well represent the beginning of a slippery slope leading to a fully congressional system of government. Senate reform should therefore be approached warily, for although the existing Senate may be relatively innocuous, the same would certainly not be true of a reformed and "born-again" Senate.

The second theme is the intimidating nature of the obstacles confronting any serious attempt to reform the Senate. The inevitable design issues, which are examined in sections 3 and 4 of the essay, are extremely complex, posing major dilemmas on every side. As the discussion moves from one dilemma to the next, the general tone of the text may suggest a rather deep-seated opposition on the author's part to Senate reform. In fact, I am convinced that Senate reform provides the best means of addressing the fundamental flaws within the Canadian political order. But the design problems may tend to sap the enthusiasm of many and they will certainly provide ample ammunition for the probable opponents of a more powerful Senate, who are examined in section 5. The prospects for successful reform thus remain problematic, and the final section of the essay searches for a scenario which might overcome the formidable obstacles.

2 WHY SENATE REFORM?

The case for Senate reform raises two major issues. The first and least germane to the present analysis incorporates a wide-ranging critique of the existing Senate. Over the years, attacks on the Senate have assailed the appointment process, the quality of Senate appointments, the class and corporate bias of Senate appointments, the age of Senators, the lack of substantive Senate impact on the legislative process, the numerous vacancies allowed to exist within Senate ranks³ and the severe constraints that party discipline imposes upon the representational roles of the Senate. It is not my intention to address this critique. I am content to rest with the classic indictment of Dawson and Ward: "It would be idle to deny that the Senate has not fulfilled the hopes of its founders, and it is well also to remember that the hopes of its founders were not excessively high."⁴ The importance of the critique is that it makes the Senate an easy target for those seeking to address problems within the political system quite removed from the Senate's performance per se.

A second reason for reform reflects the growing desire of many provincial governments to have some formalized presence within the national legislative process. The Canadian practice of executive federalism and, in particular, the First Ministers' conferences, have brought provincial governments into ongoing contact with the national

political process. This contact is of great importance to provincial governments since actions taken by Ottawa even within its own constitutional domain can have a major and often adverse impact on provincial programs. Not surprisingly, then, some formal role for provincial governments has been sought in Ottawa, some role that would go beyond episodic First Ministers' conferences and which would not be dependent upon the federal government's willingness to engage in intergovernmental consultations. A reformed Senate whose members would be appointed by provincial governments is seen as one vehicle through which such a role could be realized.⁵

The present system of appointment by the federal government, it is argued, makes no sense for an institution that is meant to reflect regional concerns and interests. A provincially-appointed upper house, on the other hand, would give provincial governments direct leverage on the national legislative process and an effective listening post in Ottawa. It might also serve to moderate the intense intergovernmental conflict which has become so characteristic of the Canadian federal system. In some meaningful way, provincial governments would become embedded within the national legislative process and could thus ensure that the national government and its public policies were more in tune with regional interests, or at least in tune with the interests of regional governments.

While the interests of provincial governments in Senate reform must be acknowledged, a provincially controlled Senate should be rejected. Admittedly, intergovernmental conflict poses a serious, ongoing problem for the Canadian federal system. However, to embed such conflict within the national legislative process through a provincially-appointed upper house is a cure worse than the disease. Intergovernmental disputes, after all, are disputes between governments and should properly be handled in a forum in which both federal and provincial governments are direct participants. To handle such disputes within the national legislative process would be a mistake.

A much more compelling argument for Senate reform comes from accumulating evidence that political institutions in Canada lack the

capacity to handle, and indeed may help create, the regional stress that afflicts Canadian politics, and that the cure lies in recasting the Senate as a more effective national institution rather than as an institution that seeks to bridge the two levels of the federal system.

Over the past several decades there have been two major sources of strain within the Canadian federal system. The first, and the one with the deepest historical and social roots, flows from the nationalist movement in Quebec. Here the primary strain has to do with conflict over the appropriate relationship between the province of Quebec and the national government and, secondarily, with the place of the French language and culture both within and without Quebec. The representation of francophone interests within the institutions of the federal government has been less at issue given the national dominance of the Liberal party and the power of Quebec politicians within that party. At times, reform of the upper house has been advocated as a means of protecting Quebec's position within Canada (the Beige paper) or of protecting the position of the French language and culture within the Canadian society (the federal government's Bill C-60 in 1978). As we will see, however, Senate reform provides little leverage on the central problem of Quebec's relationship with the broader Canadian society and, in many respects, poses a threat to Quebec's interests.

The second source of strain has come from regional conflict, predominantly centred in western Canada but far from unknown in the Atlantic provinces. While the sources of regional conflict are too numerous and complex to be analyzed here, the inability of the political process to moderate and contain regional conflict must be addressed for it forms the most compelling argument for Senate reform.⁶

Evidence of the political system's poor performance with respect to regional conflict is readily available. Most striking has been the deterioration of the party system as a vehicle of national integration. While the party organizations have remained national in principle they have been shattered as national electoral organizations. The Progressive

Conservative party clings by its fingertips, and little more, to Quebec, while the Liberal party has been all but eradicated in the West. The NDP remains weak east of the Ottawa valley and has seen its parliamentary representation drawn more and more from the West. The collapse of truly national parties, however, is not the only evidence. One can also point to intensifying intergovernmental conflict, the growth of western alienation and the emergence of a small but significant western separatist movement, the lack of career mobility from provincial to federal politics, and the long-term exclusion of specific regions and provinces from elected representation in the national government. With the brief exception of the 1979 Joe Clark government, for example, Alberta has not enjoyed an elected member on the government side of the House since 1972.

The explanation for the system's inability to handle regional conflict goes well beyond the performance of individual leaders or parties, and beyond specific national programs. While in many cases policy decisions may exacerbate regional conflict, as was the case with the National Energy Program, the character of such programs should be seen as symptoms rather than as the problem itself. It goes to the heart of the Canadian parliamentary process, to the House of Commons. Constrained by the rigid party discipline necessary in a confidence chamber, an adversarial format, largely ineffectual parliamentary committees, norms of Cabinet solidarity and secrecy, and an electoral system that exaggerates regional differences in partisan support, the House is unable to provide an effective outlet for regional interests and concerns. Trapped within parliamentary institutions, national politicians inadvertently or unavoidably fan the flames of regional conflict. Regional electorates fail to see their interests reflected in national institutions and policies; western Canadians in particular have come to see their provincial governments as their only effective conduit into the national political process. This exclusive reliance on provincial governments for regional representation intensifies intergovernmental tension which in turn intensifies regional conflict. Not only is region pitted against region, but powerful provincial governments have entered the fray armed with massive bureaucracies and broad electoral support.

Simply put, the argument is that Canadian parliamentary institutions fail to reflect the federal realities of the Canadian political system and society, and that as a consequence those institutions tend to exacerbate regional conflict. Rather than helping to draw the country together, parliamentary institutions drive it apart. In so doing they fail to provide Canadians with the government they desire or deserve.

As parliamentary institutions lie at the root of the problem, Senate reform is a potential solution. Given that the Senate was originally designed as a forum for regional representation and that similar institutions have been used to positive effect in other federal systems, it should be no surprise that Senate reform is emerging as a popular solution to our institutional malaise. It should be stressed, though, that the importance one attaches to Senate reform depends upon the seriousness one attaches to existing levels of regional conflict. If regional conflict is seen as episodic or inevitable, or if one believes that regional conflict will abate with a change in the national government or a change in national leaders, then the need for Senate reform becomes less pressing. Indeed, unless one sees regional conflict as a serious concern which threatens the survival of the country or at the very least erodes the vitality and effectiveness of the national government, the costs of Senate reform will outweigh any benefits that might be obtained. If, on the other hand, one sees regional conflict as both a serious and growing problem, then Senate reform offers a promising institutional response.

Given that regional conflict has been most pronounced in the West, it is easy to see Senate reform as being designed largely if not exclusively for western interests. To argue, however, that basic national institutions should be designed in response to the interests of a single region is not an argument that can be sustained, no matter how important, alienated or obstreperous that region may be. Thus in the discussion that follows the reader should be cautious lest the interests of the West are placed above the interests of the nation.

Objectives of Senate Reform

The objectives of Senate reform cluster around a single core, that of enhancing the quality of regional representation within national political institutions by national politicians. This could be achieved, it is proposed, through a reformed Senate that would build the federal principle into the national government and thereby provide a more effective regional check on the majoritarian impulse of the House. More specifically, the following reform objectives can be delineated:

- to foster the effectiveness of territorial checks and balances within the national legislative process;
- to improve the political legitimacy and authority of the national government in disaffected regions of the country;
- to enhance the visibility of regional representation in Ottawa;
- to enhance the regional sensitivities of federal Crown corporations and regulatory agencies;
- to promote the mobility of provincial politicians into national politics;
- to reduce the intensity of intergovernmental conflict by replacing provincial governments with the Senate as the primary vehicle of regional representation within the national political process;
- to sharpen the distinction between the regional interests of regional electorates and the governmental interests of provincial governments.

The last objective addresses the entanglement of regional and intergovernmental conflict in Canada. Frequently when provincial governments pursue interests that are best deemed governmental rather than regional per se, the result nevertheless is heightened regional conflict within the national political system. Citizens believe, or are lead by their provincial governments to believe, that a conflict between Ottawa and their provincial government is an attack on their regional interests as citizens. In fact the welfare of citizens may not be at issue at all. There is thus an interest in creating conduits of regional representation that are independent of provincial governments and apart from the arena of intergovernmental affairs.

3 THE DESIGN OF A NEW SENATE

If the objectives outlined in Section 2 are to be reached, the existing Senate will have to be radically altered; such objectives are beyond the grasp of institutional tinkering. Yet specific design details of a new Senate reveal just how difficult the task of institutional reform can be, and how great the impact may be on the Canadian political order. Given the complexity of the task, the following discussion should be viewed as a guideline rather than a detailed blueprint.

An Elected Senate

In theory, a number of options are open for Senate reform:

- Senators could continue to be appointed by the federal government.
- Senators could be appointed by provincial governments; they could then serve as representatives of their provincial governments in something akin to a ministerial or ambassadorial role, or they could serve as free agents in the manner of existing federally-appointed Senators.
- Senators could be appointed on the basis of party standings in the House of Commons and provincial legislatures; Bill C-60, for example, proposed that members to the new House of Federation be chosen in proportion to party standings in the

House and provincial legislatures, with half of the members coming from each level of the federal system.

- Senators could be chosen through direct popular election.

Any effective reform rests upon the last option.⁷ While the other options might be easier to attain, they would not provide a Senate to meet the reform objectives already outlined.

Continued appointment by the federal government is the most readily dismissed option as it would preclude any substantive reform. Appointment by the central government cannot create credible regional spokesmen; Senators would inevitably be seen as representatives of the federal government rather than as effective regional representatives to that government. If federal appointment is not abandoned at the outset, effective Senate reform is doomed.

The second option, that of transferring the power to appoint from the federal government to the provincial governments, should be attractive only to provincial governments. It would not meet the objective of providing more effective regional representation by national politicians serving in national institutions.⁸ Instead, the present system in which provincial governments claim to be the only legitimate regional representatives would be institutionalized, particularly if senators were explicit delegates of their provincial governments as in the Alberta and British Columbia reform proposals. The legitimacy of the national government as a truly national government would be further eroded. The pervasive intergovernmental conflict that is so characteristic of Canadian politics today would be carried into the heart of the national legislative process, for to hope that provincial government representation within the upper house would lessen intergovernmental conflict is a fool's game.

As a constituent part of the national legislative process, the Senate is not an appropriate arena for intergovernmental relations. It is, in essence, part of the national government, or at least part of the legislative process through which the national government carries out its

constitutional responsibilities, rather than a half-way house between the national and provincial governments. To build the provincial governments into the national legislative process would severely distort the principle and practice of federalism in Canada. It is also clear that the federal government would only accept a system of provincial appointment if the new Senate were to be a relatively emasculated institution; Ottawa would not accept a situation in which the national legislative process was held hostage to provincial governments through their Senate appointees. Finally, there is no reason to assume that the Senate would be elevated in the public's eyes if federal party hacks, warhorses and bagmen were replaced by provincial party hacks, warhorses and bagmen. Nor is there any reason to assume that the quality of provincial appointments would be any different from the quality of federal appointments to date.

If Senators were selected according to party standings in the House of Commons and provincial legislatures, the result could well be a partisan shambles. For example, McCormick and his colleagues estimate that if the Bill C-60 reforms had been in place in 1978, thirty different political party organizations would have been represented in the Senate. This would have included four from the house and twenty-six from the ten provincial arenas, although many of the latter would have shared a common party label if little else.⁹ If provincial election results were used to determine Senate representation the composition of the Senate would be very unstable given that ten provincial elections could be expected to take place between national elections. Most importantly, however, indirect election would weaken Senators' mandate as regional representatives. They would not be elected directly by the people, and thus would not be in a position to challenge the regional positions adopted by provincial governments or premiers.

In this age, if not in 1867, institutional legitimacy flows from the electoral process. If the regional legitimacy of the federal government is to be increased, if Ottawa is to be seen as a truly national government by electorates across the country, this enhanced legitimacy can best be achieved through the direct popular election of regional representatives.

It cannot be achieved by federal appointees, no matter how craftily selected, nor by provincial sharpshooters posted to Ottawa in order to watch over the interests of their provincial governments. If the majoritarian impulse of the House of Commons is to be restrained, it can only be done through another elected institution. Senate reform based on some modified system of appointment would be easier to achieve but is not worth even the reduced effort.

Mode of Election

The format of Senate elections raises a host of design problems that cannot be completely resolved prior to the protracted intergovernmental negotiations that will precede Senate reform. It is possible, however, to suggest six principles to guide such negotiations.

The first principle is that Senate elections should coincide with those held to elect the House of Commons. This would imply that the senatorial term would not be fixed but rather would be tied to the government's term of office, a term that could be cut short by defeat in the House. It also rejects two other possibilities: Senate elections held at a different time from those for the House, and Senate elections held in conjunction with provincial rather than national elections. The first possibility can be rejected for pragmatic reasons; the public is unlikely to support a third round of elections added to existing federal and provincial elections, not to mention municipal elections. The second possibility cannot be rejected out of hand, although rejected it must be.

For those who believe that Senate reform should provide a conduit for provincial governments into the national legislative process, holding Senate elections in conjunction with provincial elections makes sense. This would ensure that Senators would not be at odds with the majority party within their province and that provincially-based parties such as the Social Credit party in British Columbia and the Parti Quebecois would be reflected in Senate delegations. The Senate would then represent citizens in their provincial rather than in their national capacity, a

philosophy that I reject. Citizens within a federal society exercise a form of dual citizenship; they function simultaneously within national and provincial electorates. Given that the Senate is an institution of the national government, it should be elected by citizens acting in their national capacity. Senate elections held in conjunction with elections for the House of Commons would drive home the Senate's identification as a national institution.

The choice here is both critical and contentious. Senators elected in conjunction with elections held for the House of Commons would be national politicians serving in a national role; only at their own discretion would Senators serve as conduits into the national legislative process for provincial governments. Such Senators could also be powerful competitors for provincial governments and their premiers in their present role of regional spokesmen within the national political process. Thus a decision to hold Senate elections in conjunction with those for the House would imply both a more autonomous national government, autonomous that is from provincial governments, and a diminished role for provincial governments and premiers in the national political process. Admittedly, senatorial candidates may well be reluctant to campaign against the expressed views of strongly entrenched provincial governments, and may find that providing a conduit for provincial governments is very much in their electoral self-interest. This is quite a different matter, however, from locking Senators into their provincial political affiliations through institutional design.

The second principle is that party labels should not appear on the Senate ballot, their absence offering a number of advantages. It would allow both nationally-registered and provincially-based party organizations to be active in senatorial campaigns. Senatorial candidates could campaign under a variety of labels. The format of the ballot itself would not preclude any organization from active participation in the campaign. The absence of party labels on the ballot may also serve to weaken party discipline in the Senate, an outcome that would enhance the partisan flexibility needed for effective regional representation and

strengthen the institutional independence of the Senate from the House. Here, of course, one should not overstate the potential impact of institutional design on political behaviour; party discipline was alive and well in the House of Commons long before party labels appeared on the ballot. Careful institutional design can facilitate, but not ensure, a weakening of party discipline.

The third principle is drawn from the recommendations of the Canada West Foundation Task Force: "Senators should be elected to a term that is to be defined as the life of two parliaments, and only one-half of the Senators of any province should be elected at any single national general election."¹⁰ Senators would thus serve a term that could extend up to ten years but which would, on average, be closer to six years. This relatively long term would be important for the quality of legislative review and may attract higher quality senatorial candidates, although it is possible that the potential of a ten-year term could handicap recruitment from the private sector. The long term could also augment the independence of the Senate from the House, increasing the stature of Senators both within the political system and in the eyes of the electorate.

The fourth principle, that representation be based on large, single-member senatorial districts, brings us to a complex design problem that defies any easy solution. It might be assumed that provincial governments would favour relatively small senatorial districts, thereby ensuring that the provincial government remained the only credible spokesman for the provincial interest as a whole. Province-wide districts which would yield potentially more potent competitors with the provincial governments would be less attractive. Conversely, the federal government, assuming that it would like to undercut the power of provincial premiers as regional spokesmen in national affairs, may well support relatively large senatorial districts. The catch, however, is that as Senators become more powerful vis-a-vis provincial governments they also become more powerful vis-a-vis MPs and the federal cabinet, something that may curtail Ottawa's enthusiasm for maximizing Senators' electoral base.

Single-member senatorial districts would preclude having Senators elected through some system of proportional representation (PR). The PR option is appealing given the gross regional imbalances that we have encountered in parliamentary parties as a consequence of a single-member, first-past-the-post electoral system. It could be used to ensure, at least for those provinces with a sufficient number of Senate seats, that senatorial delegations would not all be drawn from the same party. PR would also help even out the partisan gains and losses that would follow from Senate reform. For example, if we assume that few Liberal senatorial candidates would be elected at this time from single-member constituencies in the West, and if we also assume for the moment that Senate reform might entail increased Senate representation for the West, then Senate reform without PR could tip the national partisan scales towards the progressive Conservative party. With PR, all parties might be expected to increase their representation in traditional areas of electoral weakness while at the same time enjoying less monolithic support from areas of traditional strength.

Unfortunately, the adoption of PR for Senate elections raises more problems than it solves. In the first place, numerous proposals to date for PR-inspired changes in the Canadian electoral system have at best met with suspicion and indifference from the public, and with open hostility from MPs. Indeed, if such proposals had found a more receptive audience, if the declaration in the 1980 Throne Speech to investigate electoral reform had been pursued, the case for Senate reform would have been greatly weakened, given that electoral reform and Senate reform both provide potentially fruitful institutional responses to regional conflict. To marry PR to Senate reform could significantly undercut public and parliamentary support for the latter. Second, PR systems require a relatively large number of members per riding. If, for example, the Liberals were to be assured of electing a senatorial candidate in Alberta there would have to be at least ten Alberta Senators, given the assumption that only half of these would be up for election at any one time. This requirement need not pose a problem for the larger provinces, perhaps including British Columbia and Alberta, but the provision of ten or more

Senate seats for the smaller provinces could be difficult. Third, PR would require party labels on the ballot, a requirement that has been rejected above. Fourth, election by PR could undercut the status of the new Senators vis-a-vis MPs, the latter having experienced an electoral "trial by fire" that the Senators would have missed. (A lot would depend, of course, on the method of PR employed.) It may also mean that Senators would be seen as party representatives first and regional representatives second, thus replicating the partisan handicap that already cripples MPs as effective regional representatives, although here again we must be careful not to overestimate the degree to which institutional design can check or mitigate the play of partisan forces. On balance, it seems that the rather powerful arguments that can be made for the adoption of PR for elections to the House of Commons should not be carried over to the design of a reformed Senate. While there is a need to correct the regional imbalances that afflict the national parties, Senate reform has other fish to fry.

The fifth principle is that there should be a separate ballot for Senate elections. The outcome should not be determined by which party received the most votes in House elections within a province or senatorial district. This principle is embedded in the rejection of PR and the adoption of single-member constituencies. It would serve to enhance the public profile of Senators and thereby strengthen the impression among voters that they had a personal representative in Ottawa who could be held directly responsible for carrying the regional torch within the national capital.

A sixth principle is that sitting members of provincial legislative assemblies should be eligible to run for the Senate without first resigning their provincial seat; only if successful would the individual have to resign. This would facilitate the mobility of provincial politicians into national politics, mobility that is all but absent today. Because elections to the Senate would occur at the same time as those to the House, sitting MPs would be required to resign their seat before seeking election to the Senate.

The electoral process for a reformed Senate will not be an easy one to design, nor will any broad political consensus on its basic characteristics be easy to achieve. Unfortunately, the problems do not abate as we move to the distribution of Senate seats across the ten provinces.

Distribution of Senate Seats

Debate over the appropriate distribution of Senate seats is polarized between equal provincial representation and representation by population. The former provides representation irrespective of the size of provincial populations; and is modeled on the American Senate in which each state, from Alaska with less than 300,000 residents to California with over seventy times that population, is allocated two Senators. The latter is representation by population in which the number of seats assigned to each province would be roughly although not exactly proportionate to that province's share of the national population.

Quite apart from the prominent example of the American Senate, there are several Canadian precedents for provincial equality. The diplomatic norms adopted in First Ministers' conferences embody the notion of equality among the provincial participants; at least in their public guises, the conferences make little if any distinction among premiers based on the size of their provincial populations. The new amending formula adopted in April 1982 also recognizes the equality of provinces, although this recognition is qualified by the requirement that the seven provinces needed to approve constitutional amendments must contain at least fifty per cent of the national population. In the West provincial governments have vigorously pursued the recognition and trappings of provincial equality, and within the western Canadian population there appears to be strong initial support for equal provincial representation, support that may well stem from the American model.

In the West, then, proposals for Senate reform will start with the advocacy of equal provincial representation.¹¹ Given the general

perception that western interests are not well-protected in the representation-by-population House of Commons, western Canadians can be expected to push strongly for an upper house based on equality of territorial representation. However, while this may be an attractive opening position it will be very difficult to hold in the face of the pragmatic considerations that have guided Canadian political discourse in the past.

Of particular importance here is the insult that equal provincial representation would pose to Quebec. Quebec's position within the national political system has recently been symbolically diminished by the new amending formula in which Quebec's status is equal to that of any other province. There is no recognition in the amending formula of any special role for Quebec as the heartland of one of Canada's two founding national communities, no recognition of the fundamental duality of Canadian life. Equal provincial representation in the Senate would only compound the offense; not only would Quebec fail to receive any special recognition under such an arrangement, it would not have a presence proportionate to its population.

Further problems come from the population spread between the smallest and largest provinces. Here the central problem has less to do with the smallness of the small provinces (while Prince Edward Island may have only .49 per cent of the national population, Alaska contains only .14 per cent of the American population and yet, like all other states, has two Senators) than with the bigness of the big provinces (while California contains 9.8 per cent of the American population, Ontario contains 36.0 per cent of the Canadian population). Ontario's position within the Canadian community is of far greater importance than that of any of the larger American states relative to the American national community; in a proportionate sense, Ontario packs roughly four times the weight of California or New York. Thus equal provincial representation in Canada seems to make less intrinsic sense than does equal state representation in the United States; it would also seem intrinsically unattractive to Ontario unless the Senate was a very innocuous institution. Further the

population spread between the largest and smallest provinces would become even greater if, in the future, provincial communities are created in the Canadian North. The Eastern Arctic, for example, contains about 17,000 residents, or roughly the population of a small southern Canadian town; equal Senate representation Ontario or Quebec would seem ludicrous to all but the most extreme advocates of provincial equality.

An alternative worthy of brief consideration is equal regional representation.¹² In essence, this is the principle of representation embodied in the 1867 British North America Act which allocated twenty-four Senate seats to each of the three original "regions" Ontario, Quebec and the Maritime provinces. Once its provincial structure was in place the West was also allocated twenty-four Senate seats, six going to each of the four western provinces. Today the West, Ontario and Quebec each have 24 Senators while the Atlantic provinces have 30 due to the late entry of Newfoundland into confederation. Equal regional representation has lead to unequal provincial representation; Ontario and Quebec have twenty-four seats each, New Brunswick and Nova Scotia have ten each, the four western provinces and Newfoundland have six each, Prince Edward Island has four, and the Yukon and Northwest Territories each have a single Senate seat. This provincial variance has not become the subject of any great controversy because regional representative within the Senate is not seen to be of any great consequence.

If, however, a reformed Senate achieves some measure of institutional significance the distribution of seats across regions and provinces will be a matter of considerable importance. Equal regional representation will prove to be even less acceptable than equal provincial representation for at least four reasons. First, equal regional representation does not depart enough from representation by population. If the West, Ontario, Quebec and the Atlantic provinces were each allocated an equal number of Senate seats, Quebec and the West would have approximately the same proportion of Senate seats as their proportion of the national population whereas the Atlantic region would gain and Ontario would lose. Given the prevalent argument in the West that there is a need for regional

representation in the Senate that would compensate for representation-by-population in the House, equal regional representation is unlikely to be accepted.

Second, British Columbia has insisted over the years that it be treated as a region apart, and Newfoundland is likely to make the same argument on the east coast. If British Columbia, Newfoundland, Ontario and Quebec are all considered as provincial regions, Alberta is unlikely to settle for anything less and the notion of regions which encompass more than one province falls apart. Third, there is little evidence that regions such as the West or Atlantic Canada are meaningful points of psychological identification for Canadians; whereas both national and provincial identifications are quite strong, identification with entities such as the West or Atlantic Canada appear to be of marginal strength and peripheral importance.¹³ Fourth, it is now a commonplace observation that regional composites are not significant institutional actors in Canadian politics; political activity is organized along national or provincial lines, but not along regional lines.¹⁴ Thus it is clear that the allocation of Senate seats must be done provincially. Even though the number of seats assigned to the West or to the Atlantic region at large will be of considerable interest, the process of allocation must be provincially based.

If equal provincial representation and equal regional representation have been rejected as principles of Senate representation, what alternatives remain? Clearly, representation-by-population must also be rejected; it would unnecessarily replicate the political representation provided through the House of Commons, it would be unacceptable in the West, and it would do nothing to build the federal principle into national political institutions. The only remaining solution is some form of weighted provincial representation based on drawing a crude distinction among large, medium and small provinces.

The principles of weighted provincial representation seem clear enough even though the specifics of such representation are murky and contentious. While provinces with large populations would generally have

more Senate seats than would provinces with small populations, the proportion of Senate seats allocated to large provinces would be less than their proportion of the national population whereas the proportion of Senate seats allocated to small provinces would be greater than their proportion of the national population. There should be no more than three tiers of provincial allocations for any attempt to draw finer distinctions than those between large, medium and small provinces could lead to a unique allocation of seats for each province, an allocation likely to be based on some approximation of representation-by-population. Weighted provincial representation also opens up the possibility of weighting by factors other than population. Thus Quebec might receive additional Senate seats in recognition of Canada's duality. As a ballpark estimate, the total number of Senate seats should not exceed 100 in order to maintain a high public profile for individual Senators and to avoid replicating, if in appearance alone, the representation provided by the House of Commons.

In theory, then, the task would be to take 100 or fewer Senate seats and allocate them across ten provinces, divided into three tiers, with the end result for each province being divisible by two so that Senate elections could be held in two waves. In practice, this may be impossible to achieve as the principle of three tiers raises what may be insurmountable problems. While it provides some recognition of Ontario and Quebec's contribution to the national population, and while it sets Alberta and British Columbia apart from the rest, it fails to recognize the considerable population differences among the remaining provinces. Establishing the population cut-points between tiers would be a very contentious matter, particularly because Saskatchewan and Manitoba hover around but on opposite sides of the 1,000,000 mark. As well, the three tier approach fails to provide any effective Senate representation for the North. Would it make sense, for example, to provide the Yukon with the same number of seats as Manitoba or Saskatchewan? Given the fact that the North at present enjoys Senate representation, and given the prospect of new provincial units in the North, no matter how remote this prospect might be, the North cannot be written out of the Senate altogether.

Once we depart from the principle of equal provincial representation there is no convenient terminus. As Table 1 shows, reform proposals in the past have varied widely in their provincial allocation of Senate seats and in the regional effects of different provincial allocations. My own modest proposal would be to have ten Senators each from Quebec and Ontario, six Senators each from British Columbia and Alberta, and four each from the remaining provinces for a total of 56. Ultimately, the matter of seat distribution will have to be left to the rough-and-tumble of federal-provincial negotiations; with luck the eleven first ministers locked in a room for an extended period of time could produce the sort of compromise that has served Canada reasonably well in the past. One can only hope that such a compromise would be politically sound no matter how inelegant or atheoretical.

In such a bargaining session, the greatest problem would be to find a formula that would satisfy Quebec. At least in theory Quebec could be brought on board through several options Quebec could be given a number of Senate seats in excess of those that would come from its population alone; Quebec Senators and/or French-speaking Senators could be given special powers within the Senate on matters touching upon language and culture; or external tradeoffs such as a veto on constitutional amendments or a redistribution of federal powers could be used. The possible utility of this last approach is suggested by the fact that recent Quebec governments have frequently found themselves at odds with Quebec's representatives within the national government. Therefore external tradeoffs may be more appealing to the Quebec government than special Senate representation which would remain beyond the control of the provincial government. Unfortunately, external tradeoffs would enormously complicate the achievement of Senate reform. Not only would political leaders have to confront all the institutional design problems relating to the new Senate but they would also have to confront issues such as the amending formula and the federal distribution of powers. This prospect must give pause to even the most ardent advocate of Senate reform. Nevertheless, if the choice is among the institutional status quo, a reformed Senate that is flawed because of the need to accommodate Quebec, or the entertainment of

TABLE 1

DISTRIBUTION OF SENATE SEATS

	TOTAL	# SENATE SEATS										% SENATE SEATS					
		NFLD	PEI	NS	NB	QUE	ONT	MAN	SASK	ALT	BC	NWT	YUK	ATL	QUE	ONT	WEST
A. Existing Senate	104	6	4	10	10	24	24	6	6	6	6	1	1	29	23	23	23
B. Bill C-60	118	8	4	10	10	24	24	8	8	10	10	1	1	27	20	20	31
C. Gerol/Richard	126	8	4	10	10	24	24	8	8	12	16	1	1	25	19	19	35
D. Biggs	120	10	10	10	10	30	10	10	10	10	10			33	25	8	33
E. Government of Alberta	60	4	2	4	4	10	10	6	4	8	8			23	17	17	43
F. Special Joint Committee	130	6	4	10	10	24	24	12	12	12	12	2	2	23	18	18	37
G. Ontario's Advisory Com.	30	2	1	2	2	6	6	2	2	3	4			23	20	20	37
H. Pepin-Robarts	60	4	2	4	4	12	12	4	4	6	8			23	20	20	37
I. Beige Paper	80	3	2	4	4	20	20	5	5	8	9			16	25	25	34
J. Senate Standing Com.	126	8	4	10	10	24	24	10	10	12	12	1	1	25	19	19	35
K. Gibbins	56	4	4	4	4	10	10	4	4	6	6			29	18	18	36

B. Bill C-60, Constitutional Amendment Bill, June 1978.

C. Basil Gerol and Michael D. Richard, "Getting Representation in Proportion", Policy Options, January/February 1983, pp. 13-16.

D. E. Donald Biggs, "A Comment on Recent Reform Proposals", Queen's Quarterly, LXXVII, 1, Spring 1970.

E. Government of Alberta, A Provincially-Appointed Senate: A New Federalism for Canada, August 1982.

F. Special Joint Committee of the Senate and House of Commons on the Constitution of Canada, Final Report, 1972.

G. "First Report of the Advisory Committee on Confederation", Ontario, April 1978.

H. "A Future Together - Observations and Recommendations", The Task Force on Canadian Unity, January 1979.

I. "A New Canadian Federation", The Constitutional Committee of the Quebec Liberal Party, 1980.

J. "Report on Certain Aspects of the Canadian Constitution", The Standing Senate Committee on Legal and Constitutional Affairs, November 1980.

external tradeoffs that might counterbalance the threat that Senate reform poses to Quebec interests, my own choice would be to entertain external tradeoffs.

4 THE POWERS OF A NEW SENATE

Special Powers of a Reformed Senate

At least on paper, the existing Senate is a very powerful institution within the national legislative process; its powers do not differ significantly from those of the popularly-elected House of Commons. It is thus somewhat paradoxical that most proposals for Senate reform begin with the assumption that a reformed Senate would have fewer and more limited powers than the existing Senate. It is assumed that an elected Senate possessing the same powers as the existing Senate would be too much for the Canadian political process to swallow, and thus that realistic proposals for reform must rein in Senate powers and subordinate the upper house. This is easier said than done if the Senate is elected and therefore able to claim the same democratic legitimacy as the House.

Discussions about the powers of a reformed Senate confront three issues: (1) what, if any, should be the special legislative powers exercised by the Senate alone (2) what limitations should be imposed on the powers of the Senate, and (3) what should be the relationship between the Senate and the House of Commons? The last two boil down to a single issue, the relationship between the Senate and the House, for it is the House/Senate relationship which will define the power of the Senate. While our discussion here is limited special Senate powers, there is a tension that

continues through this section and the next. The more powerful the Senate becomes, the more effective regional representation will be within the national legislative process and the more likely it is that high-calibre regional politicians will be attracted to the Senate. At the same time, as the Senate becomes more powerful the prospects for conflict with the House and legislative paralysis are increased. Senate reform also becomes more threatening to established political actors including MPs, the federal cabinet, provincial governments and provincial premiers. Thus the search is for an appropriate institutional balance, for a Senate that will be effective while not posing such a threat to the political status quo that the prospects for reform are squashed. This balance will not be an easy one to achieve.

The special powers that might be assigned to the Senate are few. It is not proposed that the Canadian Senate be given special treaty, impeachment or war-making powers such as are assigned to the Senate in the United States. Nor is it proposed that the Senate be given any special powers relating to the ratification of federal-provincial agreements. Indeed, the support of provincial governments for Senate reform may well rest upon the condition that federal-provincial agreements not be subjected to Senate approval or scrutiny. Provincial governments would quite rightly resent any suggestion that, in federal-provincial agreements, they might not be acting in their own best interests or in the best interests of their regional constituencies.

The Senate should be given the power of confirmation over senior order-in-council appointments. This power would cover appointments to the Supreme Court and to the senior position in federal regulatory agencies and crown corporations. Appointments to the federal cabinet would be included nor would deputy minister appointments or appointments within central agencies of the national government such as the Privy Council Office.

The types of appointments that would fall under the Senate's domain are at present a matter of serious contention within Canada. Special Senate

powers here might sharpen the sensitivities of appointees to regional concerns and peculiarities, and might blunt the cruder manifestations of patronage. Such powers might also weaken the demand from provincial governments for some say in federal appointments to regulatory agencies, appointments which ultimately impact upon provincial interests. However, those governments may well not be satisfied with anything less than some direct say on the appointment of Supreme Court justices. The difficulty here is that the Supreme Court is more commonly suspected of a centralist bias in intergovernmental relations than it is of a centralist bias in interregional relations. To the extent that this is the case, Senate approval of appointments to the Supreme Court could protect regional sensitivities while still facilitating a judicial erosion of provincial powers. As participants in the national government, the new Senators may well be more sensitive to interregional concerns than to the governmental concerns of provincial governments. In this respect, for example, the American Senate in recent decades has done little to prevent and much to encourage a progressive centralization of the American federal system.

The establishment of the limited special powers outlined above would not provide sufficient leverage for regional concerns within the national legislative process, nor would it be a sufficient condition to attract powerful regional spokesmen into senatorial ranks. The Senate must also possess substantial general powers.

General Powers: The House-Senate Relationship

Our discussion proceeds on the basis of two principles: first that the House should be the senior or more powerful legislative actor and, second, that the Senate should not have an unrestricted veto with respect to the legislative actions of the House. It is by holding fast to these principles that Senate reform can be stopped short of sliding into full-fledged congressionalism. Unfortunately, while these two principles enjoy broad support they are not easy to operationalize. The problems commence with an examination of the veto powers that might be exercised by a reformed Senate.

The veto powers of the Senate could be defined in a number of different ways. First, the Senate could be given a restricted veto that could only be imposed on those bills where regional concerns were particularly acute; the veto might be operative for House Legislation that entailed federal spending in provincial areas of jurisdiction but not for legislation related to national defense. Second, the Senate might be given a general but suspensive veto. In Bill C-60, for example, the federal government proposed that the new House of Federation be given a suspensive veto of 60 to 120 days, although this veto could be overridden by a two-thirds vote in the House; the 1972 Final Report of the Special Joint Committee recommended a six month suspensive veto. The veto could be imposed on any legislation passed by the House but, after a specified time had passed, the House legislation would become law without the need of Senate consent. Third, the Senate could be given an absolute legislative veto (but not a veto on constitutional amendments) such as it possesses at the present time. This option makes House-Senate legislative deadlocks inevitable although their frequency and duration would vary with the partisan composition of the two bodies. The extent to which this prospect is alarming is open to question. The authors of the Canada West Foundation task force report saw greater dangers arising elsewhere "...the spectre of a paper-thin majority having its way over strident and widespread regional opposition is not one that is compatible with the broad-based consensus essential to the stable operation of a federal country."¹⁵

Of the three options, the first two are probably unworkable and the third raises major problems. A restricted Senate veto would necessitate a formal delineation of those legislative areas in which regional concerns are significant and those in which they are not. This delineation probably could not be achieved given the pervasiveness of regional concerns. In addition, there may be many areas for which regional concerns are only episodic but of considerable import when they do arise. For example, while military defense may fall within the national domain the location of military bases and the relocation of such bases within Canada may be a matter of acute regional concern. Thus any attempt to hive off a set of issues for which regional interests should be given some special play

seems doomed; even agreement on who should delineate this new "division of powers" would be difficult to achieve. The same argument, not incidentally, could be made concerning any special Senate veto for matters of cultural or linguistic concern.

If the Senate's power to block the legislative initiatives of the House is restricted to a suspensive veto, one that is automatically overridden by the passage of time and repassage of the Bill by the House, the Senate would be emasculated as an effective national institution for the representation of regional interests. The Senate would lack the power to attract serious political talent or to rival provincial governments and premiers as regional spokesmen. The Senate must be given more than the power to delay; it must have some capacity to impose regional sensitivities on the national legislative process. While the power to delay might give the Senate significant bargaining power in some circumstances, that power is likely to be modest. In most cases, the Canadian legislative process does not move at such a clip that Senate-imposed delay would be that problematical or even noticeable.

An unrestricted, non-suspensive Senate veto would constitute the full-blown embodiment of the federal principle; legislation could not be passed without the support of both popular and territorial majorities. In a situation analogous to the American Congress, the consent of both the House and Senate would be required. The cost would be the inevitability of legislative deadlock, a cost that neither Canadian nor their political leaders may be willing to pay. Support for Senate reform will thus depend upon the provision of some mechanism through which House-Senate deadlocks can be broken, and the embodiment in such a mechanism of the ultimate legislative supremacy of the House of Commons.

Providing a mechanism through which deadlocks can be broken is not an easy task. One could adopt the American congressional model and institute a House-Senate Conference Committee within which leaders of the two legislative bodies could bargain for a legislative compromise acceptable to both chambers. This solution, however, would not recognize the ultimate

legislative supremacy of the House. An alternative solution would be to implement some form of House override for Senate vetos. If, for example, the Senate vetoed legislation passed by the House, the legislation could take effect without Senate consent if repassed in the House by a special majority.¹⁶ If the special majority required a two-thirds vote of support in the House, this would usually require legislative amendments in order to build a multiparty and multiregion House alliance. Alternatively, the legislation could be amended so as to secure Senate consent following repassage in the House by a simple majority. In either case, some degree of regional sensitivity would be required; if it was absent the legislation could not and should not pass. However, if the Senate and the House were dominated by different political parties, and if the majority party in the House comprised less than two-thirds of the MPs, deadlocks would be more problematic. It should be remembered, though, that neither MPs nor Senators would be willing to face the electoral consequences of bringing the legislative process to a complete halt. As in the "battle of the bells" and in conflicts between the American president and Congress, compromises would be found. The question that remains is whether the time-consuming compromise would result in a better legislative product than that produced by unbridled majorities in the House.

In some ways the discussion of the potential Senate veto avoids a more serious and troublesome issue, and that is the power of the Senate to amend legislation passed by the House. The veto, after all, is a very blunt tool. Its greatest utility comes from the informal power to amend that is conferred by the power to veto. Thus Senators would indicate to the House that a legislative proposal would likely be vetoed in the Senate unless it was changed in particular ways. This "nudge, nudge, wink, wink" power of amendment has the disadvantage of not being publicly visible. It is also unclear how such Senate messages would be fed into the legislative process in the House; at what point would MPs take into account the likely Senate reaction to House initiatives, and how would that potential reaction be measured and conveyed?

If the Senate is to work well as a forum for regional representation the power to amend is more important than the power to veto. In most cases

what is called for is the finetuning of national legislation so that it will more fully reflect regional interests and concerns. This finetuning is not easily achieved through the blunt tool of the veto; it is through amendment that regional sensitivity is achieved. However, if the Senate is given the power to amend legislation coming from the House we can expect that power will be used in the vast majority of cases. As a consequence legislation passed by Senate will not be identical to that passed by the House, and once again we face the dilemma of legislative deadlock. Some form of House-Senate conference committee would be essential. The bargains emerging from that committee would require the approval of simple majorities in the House and Senate. If no bargain could be reached, then the House override provision could be applied to either the original House legislation or to that legislation as amended so as to secure two-thirds support in the House. Legislation that could not clear the conference committee and could secure neither two-thirds support in the House nor simple majorities in both the House and Senate would fail. Failure would ultimately be addressed through the electoral process.

The point to be stressed here is that the powers of the Senate to veto or amend form the crux of Senate reform. An elected Senate without the power to veto or amend would be senseless; an elected Senate with such powers will become a very powerful actor within the Canadian legislative process. The creation of a Senate that is only somewhat more powerful than the existing Senate may be impossible. Once the Senate has an electoral mandate, and once it has the power to veto or amend, the imposition of effective constraints on its legislative powers will be extraordinarily difficult to achieve. Senate reform is a slippery slope at the bottom of which lies American congressional politics.

There are two other aspects of the House-Senate relationship that must be addressed. The first is whether or not a reformed Senate should have the power to defeat the government of the day and bring on a national election. Here it is proposed that the Senate should not be a confidence chamber. A defeat of government legislation on the floor of the Senate would not lead to the dissolution of Parliament and a general election unless the government of the day decided for its own reasons to pursue

that course. This proposal reflects a number of premises. First, there is an excellent chance that the partisan majorities in the Senate and House will not be the same, and this alone seems to preclude the Senate being a confidence chamber. A defeat of government legislation on the floor of the Senate would not lead to the dissolution of Parliament and a general election unless the government of the day decided for its own reasons to pursue that course. This proposal reflects a number of premises. First, there is an excellent chance that the partisan majorities in the Senate and House will not be the same, and this alone seems to preclude the Senate being a confidence chamber. Second, effective regional representation can only be achieved when parliamentarians are not tightly bound by party discipline. If the rules of the game make it next to impossible for Senators to place the interests of their region before the interests of their party then the public representation of regional interests is ruled out. (This fact of political life was recognized by the Progressives in the 1920's in their attempt to make MPs responsible to the dictates of their constituents rather than to the dictates of their party.) If the Senate was not a confidence chamber the potential would exist for weakened party discipline, although whether such potential would be realized is far from certain. Third, the ability of the Senate to finetune House legislation in the face of regional sensitivities, rather than to wage partisan warfare on the House, will be maximized under conditions where party discipline is relatively lax. Fourth, having the House as the only confidence chamber would elevate the position of the House within the legislative process and in the public's eye. This elevation seems essential given the general threat that Senate reform poses to the status and power of both the House and its members.

If the Senate is not a confidence chamber, parliamentary convention would dictate that, apart from the Government Leader in the Senate, cabinet ministers should not be drawn from the Senate. The separation of the Senate and the cabinet would maximize the freedom of Senators from party discipline, and the confinement of highly prized cabinet positions to the House would make Senate reform that much more palatable to MPs.¹⁷ This would mean, however, that prime ministers would not be able to use

cabinet appointments from the Senate to overcome regional deficiencies within their parliamentary caucus, an option exercised by Joe Clark in 1979 in order to overcome the virtual absence of Quebec MPs in the Conservative caucus and by Pierre Trudeau in 1980 to overcome the virtual absence of Liberal MPs from the West. We might expect, then, that Senate reform would lead to less regionally-balanced cabinets than we have experienced to date. This would not necessarily be a high price to pay. There is at present considerable scepticism about the value of Senate appointments to the cabinet as a means for reducing regional unrest. Albertans, for example, were not heard to breath a loud sigh of relief when Bud Olson was appointed to the cabinet to compensate for the lack of Liberal MPs from the province. Ministers from the Senate are overrated as effective regional representatives; their activity or lack of activity on behalf of their region is hidden from the electorate by cabinet norms of secrecy and collective responsibility. Given that Senate reform would lead to a shift in the focus of regional representation away from the cabinet and to the Senate and given that regional representation in the Senate would be within the public domain, a marginal weakening of private regional representation within cabinet ranks should not be a matter of serious concern.

The last proposal is that the power of legislative initiation reside with the House and, therefore, largely with the government of the day. The Senate would thus be a reactive chamber, its primary role being to provide regional checks and balances. With the government being lodged in the House alone, and with the government retaining control over the flow of legislation if not over the final content of that legislation, disruptions to the institutional status quo would be reduced.

It should be clear from this discussion of institutional design that Senate reform opens the door to major change within the Canadian political order. Initially Senate reform may appear to be a relatively simple way to inject regional sensitivity into the national legislative process and thereby strengthen the political authority of the national government; there is nothing easy about Senate reform, however.

5 PROSPECTS FOR REFORM

There is no denying that design problems pose major hurdles to Senate reform. Although no one problem appears to be insurmountable, in combination they are formidable indeed. If they are to be overcome it will require not only some very careful and creative institutional analysis but also a massive dose of political goodwill among those steering the process of Senate reform. The prospects for such goodwill and hence the prospects for the type of Senate reform discussed in this paper appear at first to be bleak.

Institutional reform is most likely to proceed when it serves the self-interest of major actors within the political system, and the call for self-sacrifice can be an important obstacle. Unfortunately, the Senate reforms proposed above work against the self-interest of virtually all major actors within the system. At least in the short run, everybody stands to lose and nobody stands to win, a situation that does little to promote the prospects for reform.

Potential Losers

The list of potential losers must begin with the provincial governments. It cannot be denied that the creation of an elected Senate would erode the political status of provincial governments within the national political

process. Over the past two decades provincial leaders have become national luminaries, bargaining with the prime minister, commenting on national policies, carrying the flag of regional interest, and wielding the sword of regional combat to their own advantage in provincial election campaigns. The claim by premiers to speak for the regional interests of their provinces within the national political process, however, would be challenged by elected Senators based in the national capital. While the federal-provincial division of powers and the importance of intergovernmental relations would not be directly affected by Senate reform, there is little doubt that on balance the provincial governments and their leaders will in a very real sense be less important in the wake of Senate reform. To that extent, winning the support of the premiers will not be easy. The potential opposition by provincial governments to Senate reform is of great importance in light of the amending formula established by the Canadian constitution, Section 42(1)(b) and 42(1)(c) which require that seven provinces representing fifty per cent of the population consent to any changes in the powers of the Senate, the method of selecting Senators, or the number of Senators to which provinces are entitled.

While all provincial governments are threatened by Senate reform, Ontario and Quebec face a particular threat as reform will entail some measure of power shift from the large to the smaller provinces. Of the two, Quebec faces the greater threat. It will be next to impossible to design a Senate that would serve both regional interests and Canada's national duality; equal territorial representation and representation based on notions of political or cultural duality do not mix. The 1978 Bill C-60 proposal tried to bridge the gap by calling for a double majority within the Senate for "measures of special linguistic significance," thus providing French-speaking Senators with a restricted veto. However, the interests of the Quebec government go well beyond such measures, and it far from clear how those interests could be protected within a reformed Senate. Protection is provided, to the extent that Quebec becomes a region like any other, but the very fact that Senate reform tends to treat Quebec as a region like the others poses a symbolic threat to the residents of Quebec.

If the provincial governments stand to lose from Senate reform it might be assumed that Ottawa stands to win. Here, however, the blinkered, zero-sum perspective that Canadians often adopt towards federal-provincial conflict does not hold. Most of the political actors within Ottawa also stand to lose. Although "Ottawa" is the potential winner in Senate reform, it is a complex victory in which the various institutional actors within the federal government pay a very substantial price.

Existing Senators will be displaced by reform. While it is likely that some of the younger Senators will seek election to the new Senate, the vast majority are unlikely to do so. They will be too old, too reluctant to once again or for the first time take up the onerous task of electoral combat, too tainted by their very appointment to the Senate in the first place. Thus self-interest may check the impulse for reform, although it should also be recognized that many Senators are among the leading advocates of Senate reform of some description. In any event, Senate resistance should not be taken too seriously. Given that the present Senate is not a major political actor, that Senators have at best a poor image in the public eye, and that the 1982 Constitution Act only gives the Senate a 180 day suspensive veto on constitutional amendments, self-interested opposition to a popularly-elected Senate will not be effective. Opposition may also be diluted by the judicial use of other patronage appointments available to the federal and provincial governments.

The issue of patronage, incidentally, raises a hidden cost of Senate reform. If one argues, as I would, that a significant degree of patronage is essential for a well-functioning democracy, then the loss of Senate appointments as patronage rewards may weaken the party structures that are so necessary for responsible government. Patronage appointments could be extended elsewhere, perhaps within the public service, diplomatic service and regulatory boards and agencies, although there would be a significant public cost in so doing. It may also be difficult to do so given the proposed Senate powers relating to senior order-in-council appointments. Thus, to the extent that patronage is a necessary evil within the

democratic political system, the loss of an appointed Senate will pose some disruption to the smooth functioning of party organizations. The number of Senate vacancies that exist at present and the relatively small drop in the federal patronage bucket that infrequent Senate appointments constitute both suggest that the disruption will be of tolerable magnitude.

A more serious obstacle to Senate reform is posed by the threat it poses to MPs and the House of Commons. Backbench and opposition MPs lack significant leverage on the legislative process. Constrained by party discipline, sitting on parliamentary committees that are similarly constrained and understaffed, lacking the staff resources to penetrate the bureaucratic shield that envelopes the government, many MPs feel that their role in the legislative process has been crippled. Even as regional representatives, their role has become secondary to that of provincial governments and premiers. While Prime Minister Trudeau's description of MPs as a bunch of nobodies once they left the Hill was somewhat of an exaggeration, it was uncomfortably close to the mark.

Senate reform will further diminish the stature of the MP. The role of regional representative, already preempted in large part by provincial governments, will be assumed by the new Senators. The broader electoral base of Senators, the relative security of the Senate term, and the higher public profile that comes from belonging to a smaller legislative chamber could all work to elevate the position of the Senator in the parliamentary pecking order. (The acid test would be to compare the proportion of MPs seeking election to the Senate with the proportion of Senators seeking election to the House.) Opposition MPs will be particularly affected because the Senate will diffuse the nature of opposition to the government. Will the real opposition be centred on the Leader of Her Majesty's Official Opposition, or will it reside in the Senate? If the Senate is dominated by a different party than that forming the government, will not the Senate leader take on many of the trappings and much of the power of the present opposition leader? In general, then, Senate reform poses a threat to all MPs who are not cabinet ministers, and a particular

threat to opposition MPs. The value and significance of the Canadian MP, already the subject of considerable debate, will be further challenged.

The federal cabinet will also be exposed to the corrosive impact of Senate reform for its grip on the legislative process will be significantly weakened. Gone will be the days when the cabinet could be reasonably sure that what went into the legislative pipeline came out the other end virtually unchanged and reasonably quickly. Power will have to be shared with the new Senate, and shared power is very uncharacteristic of Canadian cabinet government. Furthermore, Ottawa's power to bargain with provincial governments will be reduced because the federal cabinet will no longer be assured that it will be able to deliver on any deal worked out with the provinces. If this problem is not overcome, perhaps by excluding federal-provincial agreements from the need for Senate consent, then the provincial governments will also find their input into the national government weakened.

If the potential opposition of Senators, MPs and the federal cabinet is not sufficient to daunt the proponents of Senate reform, it should also be mentioned that reform will generate substantial opposition within the national party organizations. Given that Senate reform poses a threat to Quebec, at least at the symbolic level, one can anticipate opposition from the Quebec Liberal caucus, a not insignificant actor in national politics. As for the Progressive Conservative party, the promotion of Senate reform weakens that party's claim that what is needed to overcome regional dissension in Canada is simply a change in government; that with the formation of a Progressive Conservative national government built upon strong representation from the western and eastern peripheries, regional alienation would cease to be a problem. It is also worth noting that some of the strongest champions of Canadian parliamentary institutions and traditions have been found within the ranks of the Progressive Conservative party. John Diefenbaker and Joe Clark are but two examples. The threat to such institutions posed by Senate reform, coupled with the fact that Senate reform seems designed to address chronic and in large part self-inflicted Liberal weaknesses in the West, increases the likelihood of Progressive Conservative opposition.

If the Progressive Conservative party saw Senate reform as a major threat to Canadian parliamentary institutions, and if the party decided to go to the people in a spirited defense of those institutions, it could strike a responsive public chord. In a country where so few things distinguish us from the American colossus to the south, Canadians have attached a great deal of importance to our distinctive and British-based political system. The advocates of Senate reform therefore face a difficult strategic choice. They can try to minimize the extent to which reform will shift Canadian politics towards congressionalism and thereby try to deny opponents the anti-American club. In making such a case, a fair measure of deceit might be necessary. Alternatively, they can acknowledge the shift and support it with a vigorous defense of the American system's ability to handle the kind of territorial conflict that bedevils Canada. This second alternative would be an extremely difficult case to make. Ultimately, the choice of strategies may be forced upon the advocates of reform by the position adopted by the federal Conservatives.

It appears, then, that the opponents of Senate reform are both numerous and powerful, and that the prospects for reform are bleak. In a letter to the *Globe and Mail* (March 26, 1983), Senator Eugene Forsey summarized the situation in his usual blunt fashion:

The reformers want a Senate with "muscle, teeth, claws"...They want a real tiger. The House of Commons won't accept a real tiger. It won't put up with a rival, whether elected by the people or appointed by the provincial Governments; and it would be like pulling teeth to get seven provinces to accept any reformed Senate except one appointed by themselves and endowed with very large powers. Most proposals for reform would give the West a substantially larger proportion of total Senate seats. But five provinces (Quebec and the Atlantic) would never accept more than a very small increase, which the West would sneeze at. In short, anything the House of Commons would pass, the provincial Legislatures would spew out of their mouths; anything the Legislatures would pass, the House of Commons wouldn't look at.

I would argue, however, that the situation is not hopeless for there are also those who stand to gain from Senate reform, even though their ranks may be less impressive.

Potential Winners

Those Canadians who support a federal system in which the national government would be a stronger and more decisive actor should also support Senate reform for it would bring in its wake a revitalization and strengthening of the national government. The irony here is that Ottawa stands to benefit from Senate reform even though the existing Senators, MPs and cabinet all stand to lose. Ottawa has been weakened in recent years not through a constitutional shift of powers to the provinces but rather by its loss of political legitimacy and authority. Because Ottawa is not seen as a truly national government by many Canadians, it has trouble acting as such. It has been hemmed in and harassed on all sides by provincial governments who cloak their governmental ambitions in regional conflict. Ottawa, provincial electorates are told, is not to be trusted because it is not "your government;" it has been "captured by regional interests that are opposed to your own," and the "national interest" is little more than the regional interest of central Canada writ large. Senate reform, by enhancing regional representation within Ottawa, somewhat paradoxically offers the national government a chance to break free from regional constraints. Thus Ottawa's role within the Canadian federal system would be strengthened by Senate reform even though power within Ottawa would be shared among a larger number of institutional actors.

It is here that we encounter the zero-sum federalism game and it is a game in which provincial governments will be the clear losers. Yet those governments do not face an easy task in trying to mobilize opposition to Senate reform. Particularly in the West, where concern over effective regional representation in the national political process is both chronic and acute, proposals for an elected Senate would be difficult to attack. In so doing, provincial governments could be seen to be acting in their own institutional self-interest rather than in the regional interests of their provincial electorates. Thus while provincial governments may covertly oppose the type of Senate reform proposed in this paper, overt opposition will not be easy. The same situation applies to the potential

opposition from Senators, MPs and the federal cabinet; overt opposition may be seen to be self-interested rather than based on the best interests of the country at large. Given that the principles of Senate reform may be difficult to attack, such opponents would be well advised to concentrate their fire on the myriad problems of institutional design. Certainly they would have plenty of material with which to work.

Other opponents could be defanged by a well-orchestrated campaign for Senate reform. For example, while Ontario's stature within the Canadian political process may appear to be diminished in a Senate based on equality or near equality of regional representation, the desire to strengthen Ottawa's role within the Canadian federal system seems to be in line with Ontario's general constitutional objectives over the past few years. For some MPs, provincial politicians, and existing Senators, reform could open up significant opportunities for career mobility. Opposition from Quebec could be offset by external tradeoffs, perhaps involving a veto on constitutional change or a modest and Quebec-specific redistribution of federal powers. MPs might see the reduction of party discipline in the Senate as the opening wedge for a similar reduction in the House, and thus for a more efficacious role for MPs. Indeed, House reform leading to greater independence for MPs may be essential to offset the potential loss of status to the newly elected Senators, although here again we encounter the slippery slope of parliamentary reform leading to full-blown congressionalism, an independent executive and fixed terms of office. Senate reform would give the Liberal party an attractive campaign issue in the West although whether the potential electoral gains would be sufficient to appease opposition from the Quebec caucus is open to question.

In an electorate grown weary with constant intergovernmental and regional conflict, Senate reform may well find a receptive audience particularly if the threat of Americanization can be blunted. In an October 1981 survey of 1939 randomly-selected national respondents, the Canada West Foundation found that 31 per cent felt that the Senate should be reformed, 30 per cent that it should be left as is, 20 per cent that it

should be abolished and 19 per cent had no opinion.¹⁸ Although this is less than a compelling public mandate for Senate reform, the finding that only 30 per cent of Canadian support the existing Senate does give proponents of reform something with which to work. It is also interesting to note that while support for Senate reform was not regionally concentrated it was disproportionately strong among traditional movers and shakers within the political system; 39 per cent of the upper income respondents, 45 per cent of those with university educations, and 54 per cent of those with professional or managerial occupations opted for Senate reform. All respondents were also asked the following question:

Suppose the Canadian Senate were to be reformed. Should all its members be appointed by the federal government, should all be appointed by the provincial governments, should some be appointed by the federal government and some by the provincial governments, or should all be elected by the people?

An elected Senate was the clear favourite; 61 per cent chose elected by the people, 20 per cent chose joint federal/provincial appointments, 4 per cent chose federal appointment alone and 3 per cent chose provincial appointment alone.

As Gordon Robertson has pointed out, while the people of Canada ought to be in favour of Senate reform "...they are unlikely to be given a balanced presentation of its merits and they would not be attending the constitutional conference."¹⁹ Public opinion per se seldom mobilizes the political process; it provides at best a resource that can be exploited, harnessed or directed by political actors. The question, then, is under what conditions can the potential public support for Senate reform be mobilized when most traditional agents of political mobilization are opposed to reform? If a well-orchestrated campaign is needed, who will wave the baton?

6 CONCLUSIONS

This paper rests upon the assumption that Senate reform is worthy of pursuit because the national interest can best be served through the more effective representation of regional interests within national institutions by popularly-elected national politicians. As we have seen, however, Senate reform confronts some horrendous problems of institutional design and faces substantial opposition from strongly entrenched institutional partisan actors. In conclusion, then, what can be said about the prospects for an elected Senate?

Senate reform would bring in its wake major changes to the norms, practices and institutions of the Canadian political system. It is not a quick fix, but rather has the potential to unravel much of what is valuable and distinctive about the Canadian political system. In light of this, Senate reform can only be supported if regional conflict is seen to pose a serious threat to the political system, and if alternative remedies cannot be found.

While I am convinced that regional conflict does pose such a threat, this threat will have to be demonstrated repeatedly in the years ahead; regional conflict is both a lubricant and a necessary condition for Senate reform. Assuming that the seriousness of regional conflict can be

demonstrated, and assuming that future events do not wipe regional conflict from the Canadian political agenda, one must then discount alternative solutions to intensifying regional conflict. One must show, for example, that new party leaders, a change in the national government, the creation of new regional parties, reform of the electoral system, or reform of parliamentary practice in the House would be either insufficient to abate regional conflict or more costly in the long run. Space does not allow me to pursue these issues here, but they must be grappled with by the proponents of Senate reform. To argue that Senate reform is a solution to regional conflict is only the first step; it must also be the best solution.

The case for Senate reform, therefore, is not an easy one to make. Moreover, the prospects for reform are uncertain given the multitudinous and resourceful opponents that can be anticipated. Who, for instance, will initiate reform? Will the new Senate-House committee provide sufficient impetus, or will it direct interest in reform away from popular election into one of many possible cul-de-sacs? I suspect that the prospects for effective reform will remain remote unless regional conflict grows even more intense, and here we come to the most likely and perhaps sole scenario for the achievement of the Senate reform proposed in this paper.

In 1984 or 1985 Canadians will go to the polls in a national election. If at that time the Progressive Conservatives win, Senate reform will be stalled until sufficient time passes to demonstrate that a change in government does not provide a sufficient response to regional conflict. Assuming that western alienation and, at the extreme, the threat of western separatism provide the most compelling reasons for Senate reform, a Conservative win would dampen the need for reform by providing a national government in which elected western Canadian politicians would play a prominent and influential role. True, Quebec may find itself excluded from such a government but, as has been argued above, a strong push for Senate reform is very unlikely to come from Quebec.

If the Liberals win, on the other hand, regional conflict could reach an explosive pitch, especially if the win would be coupled with little if any

electoral support for the Liberals in the West, an assumption that seems to hold at least under present conditions. In this scenario, Senate reform could be advanced as the solution to the continued exclusion of the West from the national government. Given the intense regional conflict and alienation that would likely stem from a Liberal victory, opposition to Senate reform would be difficult to mobilize. Particularly if the notion of Senate reform had received broad public debate prior to the election, the political crisis produced by the election results could be readily harnessed to the promotion of Senate reform.

There is a disturbing element of national brinkmanship in this scenario; Canada must be lead to the verge of regional dismemberment before Senate reform is possible. Given the scope of institutional change that would flow from Senate reform, the design problems that would be encountered, and the entrenched opposition that now exists, this may be the only alternative for those who advocate Senate reform. This is not to say, of course, that one should hope for a repeat of the 1980 election, knowing that a Progressive conservative win or the resurrection of the Liberal party as a truly national electoral organization will kill the prospects of Senate reform. Yet we must be prepared for a repeat of the 1980 election for its potential effects could be calamitous. If for no other reason, Senate reform warrants ongoing and serious deliberation.

NOTES.

1. **Regional Representation: The Canadian Partnership, A Task Force Report** Prepared by Peter McCormick, Ernest C. Manning and Gordon Gibson, Canada West Foundation, Calgary, Alberta, September 1981, p. 105.
2. For an early and still insightful work on Senate reform, see R.A. MacKay, *The Unreformed Senate of Canada*, Oxford University Press, 1926, reprinted in a revised edition by McClelland and Stewart in 1963. For more recent works and proposals, see the Report of the Special Joint Committee of the Senate and the House of Commons on the Constitution of Canada, Ottawa, 1972; "First Report of the Advisory Committee on Confederation," Ontario, April, 1978; "Reform of the Canadian Senate," British Columbia's Constitutional Proposals, September, 1978; "A Future Together - Observations and Recommendations," The Task Force on National Unity, January, 1979; "A New Canadian Federation" (Beige Paper), The Constitutional Committee of the Quebec Liberal Party, 1980; Report on Certain Aspects of the Canadian Constitution, The Standing Senate Committee on Legal and Constitutional Affairs, November, 1980; Peter McCormick et al., *The Canadian Partnership; "A Provincially-Appointed Senate A New Federalism for Canada,"* Alberta Government Discussion Paper on Strengthening Western Representation in National Institutions, August 1982; William J. Yurko, M.P., "Renewed Federalism: Structural Reform of the Canadian Senate," December 1982; Basil Gerol and Michael D. Richard, "Getting Representation in Proportion," Policy Options, Vol. 4, No. 1 (January/February 1983), pp. 13-16.
3. Following the appointment of Michael Pitfield, there were still 16 vacancies in the 104 seat Senate, including one New Brunswick vacancy that has existed for nine years. Lawrie Joslin, "Time Ripe for Senate Reform," Calgary Herald, December 24, 1982, p. A6.

4. R. MacGregor Dawson and Norman Ward, *The Government of Canada*, 4th Edition, Toronto, University of Toronto Press, 1963, p. 323.
5. See "First Report of the Advisory Committee on Confederation," British Columbia's "Reform of the Canadian Senate," the Pepin-Robarts recommendations in *A Future Together*, and Alberta's "A Provincially-Appointed Senate." See also an early Canada West Foundation report, *Alternatives Towards the Development of an Effective Federal System for Canada*, May 1978, and E. Donald Biggs, "A Comment on Recent Reform Proposals," *Queen's Quarterly*, LXXVII, 1, Spring 1970.
6. For a more detailed discussion, see Gibbins, *Regionalism Territorial Politics in Canada and the United States*, Toronto, Butterworths, 1982; McCormick et al., *Regional Representation*; and Richard Simeon, "Regionalism and Canadian Political Institutions," *Queen's Quarterly*, 82, (Winter 1975) 499-511.
7. For a detailed argument for direct popular election, see McCormick et al., *Regional Representation*. See also E. McWhinney, "If We Keep A Senate, It Should Be Elected," *Policy Options*, Vol. 1, No. 3 (September/October 1980), pp. 32-5.
8. While it is possible that provincial appointees could take on a national colouration over time, this seems unlikely given their roots within provincial party systems or provincial governments. A more likely outcome is that provincial appointees would feel chronically adrift in the national capital, and would seek anchorage through a reaffirmation of provincial roots.
9. McCormick et al., *Regional Representation*, p. 97.
10. McCormick et al., *Regional Representation*, p. 113.
11. The Canada West Foundation task force report recommends equal provincial representation, with each province receiving between six and ten Senate seats. The proposal is based in part on the models provided by the upper houses in Australia, Switzerland and the United States, and is potentially extended to new provinces formed in the Canadian North. See McCormick et al., *Regional Representation*, pp. 109-111.
12. Yurko proposes a regionally-based Senate in part to overcome the problem that would be posed by the creation of new provinces in the North. See "Renewed Federalism," pp. 121-138.
13. See Gibbins, *Regionalism*, pp. 175-180.
14. See Gibbins, *Prairie Politics and Society Regionalism in Decline*, Toronto, Butterworths, 1980, chapter six.
15. McCormick et al., *Regional Representation*, p. 125.

16. Conversely, a special majority in the Senate could be required to defeat legislative proposals from the House. See Gerol and Richard, "Getting Representation in Proportion," p. 16. This provision would seriously undercut regional protection within the Senate.
17. McCormick et al., *Regional Representation*, p. 127.
18. Canada West Foundation, *Opinion Update*, Report No. 11, January 4, 1982.
19. Gordon Robertson, "The Renewal of Federalism," *Policy Options*, Vol. 3, No. 6 (November/December 1982), p. 30.