
A Reformed Senate as a Check on Prime Ministerial Power

by Evan Sotiropoulos

One problem of Canadian parliamentary democracy is the concentration of power in the hands of the Prime Minister and the ascendancy of the Prime Ministers Office over Parliament. This article looks at some of the reasons for the weakness of the House of Commons vis à vis the Prime Minister. It then looks at the Senate and the place a reformed Senate may have in acting as a counterweight to a system that has been transformed from executive centred to prime ministerial dominated.

In a representative democracy, individuals are elected to “represent” the views of the citizenry and, in theory, meet in a common place to actually *debate* public policy. Although the practice of politics is commonly divorced from the theory, the current rift between the two should concern all Canadians. It should be noted that as national elections become increasingly leader-centric, most candidates at the local level pin their political aspirations on the performance of their party with the hope of punching their ticket to Parliament. Therefore, when those green seats are distributed in Ottawa, the occupants are expected – following former Prime Minister Brian Mulroney’s theory – to ‘sing from the same hymn book.’ The British practice shows “a secular decline in party line voting ... over the past two decades,” with even the Conservative majority government of the 1980s experiencing legislative defeat on several occasions¹. In contrast, the presence of strong party discipline in Canada has many negative consequences including reducing the responsiveness from elected officials². Since dissension is discouraged and individuals looking to advance their political career usually form a cohesive team, the centre can exert its considerable influence over backbench members. Customarily, cabinet solidarity and party discipline are integral parts of a Westminster-style parliamentary

democracy, but should these traditions serve to restrict debate and circumvent the duty of an elected representative to question certain conclusions and even partake in the decision making process?

A matter of consternation among MPs is the fact that “the rules on what constitutes a government defeat are vague and hence flexible ... [since] an important matter remains subject to dispute”³.

Liberal Party regimes – including the three under Chrétien – would regularly muzzle backbenchers by declaring various non-money bills matters of confidence. The crack of the party whip was exemplified during the emotional debate to limit compensation to Hepatitis C victims. With the politics of the issue on their side, the Reform Party moved a motion obliging the government to pay damages to all sufferers; in an extraordinary move, Chrétien declared the motion to be one of confidence despite the wording of the motion that omitted expressing non-confidence in the government⁴. Furthermore, as his time in office came to an end, the Prime Minister indicated the omnibus package to amend the *Canada Elections Act* would be considered a matter of confidence – another extreme use of the party whip. Despite attempts to institutionalize a three-line whip modeled on the British example, Paul Martin ordered many in his caucus to support the party line on moral issues such as the vote on same-sex marriage. His short tenure as PM did little to transform a system reliant on access to the political centre or “Who do you know in the PMO?”

In a parliamentary system, maintaining the confidence of the House is a fundamental requirement of the governing party. Given that MPs typically vote as their party

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dictates, this cornerstone of Canadian democracy is constantly reinforced. For the government, steadfast support by its MPs allows for an executive to rule with little threat. For the opposition, a disciplined caucus allows for a unified and consistent alternative to be presented to the public. The question is this: can party discipline be relaxed while still allowing a prime minister to effectively govern and simultaneously respecting the notion of responsible government? The British practice “shows that party discipline can be weakened ... without deviating in any serious way from the principles of responsible parliamentary government.”⁵ With minimal clout, government backbenchers resort to simply influencing the decision making process since their only real threat – voting against the government – is silenced by excessive party discipline; this in turn reduces their ability to keep a watchful eye on the executive. Frustrated with their inability to affect policy, many members of Parliament simply treat the House of Commons as a short stopover in a long career.

The Temporary Member

The high turnover among MPs prevents the development of institutional memory – a natural prerequisite to properly oversee and, where necessary, curb the actions of government. Many argue that “amateurism – the preponderance of short, interstitial careers – has, among other things, robbed the House of Commons of a cadre of dedicated and experienced MPs capable of challenging the power of cabinet”⁶ Today, most people do not elect specialists but instead, send generalists to Ottawa without the proper skill set and experience to fulfill the duties of a parliamentarian. This claim is further substantiated by the perceived role MPs have over government decision making: in a survey produced by Public Policy Forum, October 2000, over 500 senior government officials ranked Members of the House of Commons second to last in their ability to influence policy.⁷ Norman Ward argued decades ago that “most members of Parliament, far from being legislators who enact laws with the competence born of experience, are mere transients.”⁸

The critical election of 1993 and the corresponding composition of the thirty-fifth Parliament serve to highlight the problem of the temporary member. After the collapse of the federal Progressive Conservative (PC) Party, Jean Chrétien and his Cabinet had almost all the meaningful experience in the House. The executive – including parliamentarian heavyweights like Herb Gray and Lloyd Axworthy – averaged eight years of federal service or two full terms, whereas opposition members had barely over a year experience under their belts⁹. Simply put, “the net result of this gap in experience was that

new members were simply unable to keep the government accountable”. The complex organization of government and the many subtleties of life in the House, necessitate the need for long serving members able to competently hold the government to account. Canada’s 39th Parliament is packed with neophyte politicians: currently, more than one in five members has served less than two years, while approximately half of all MPs have served around three years.

In Britain, since most members who enter Parliament never sit in cabinet, MPs there – instead of setting their sights on the ministry – become effective committee members and vigorous constituency representatives. The political reality on the other side of the Atlantic allows elected officials to hone their watchdog skills over many years. The inexperienced Canadian Member of Parliament, unable to remove the shackles of party discipline, must deal with another obstacle in keeping the government to account – the multifarious engagements of the federal government.

Too Much to Catch

In the middle of the twentieth century, the federal ministry consisted of about twenty individuals; in recent times, Messers Mulroney, Chrétien and Martin have led ministries double that size. The growth in the number of cabinet posts has meant a corresponding increase in the federal bureaucracy. Furthermore, excluding public debt charges, program expenses for the federal government totalled more than \$175 billion in the 2005-2006 fiscal year. The broadening of government responsibilities has meant the ordinary MP is mismatched in curbing the influence of a pervasive PMO. Although “there was a time when the Commons did make effective use of the estimates process to review government plans in detail and to establish guidelines to hold the government accountable”¹⁰ this is no longer the case.

Given that “elections are rarely won or lost on questions of management”¹¹ the political context in Canada does not cultivate an environment where assessing the Estimates is a top priority for elected officials. Since the opposition is constantly looking for embarrassing miscalculations (e.g. the gun registry fiasco) or administrative errors (e.g. the sensationalized HRDC grants and contributions “boondoggle”) there is limited political upside in properly reviewing tedious spending estimates.

The inexperience of most MPs coupled with numerous other commitments associated with public life, suggests the House of Commons will continually be unable to check the concentration of power in Canadian politics. While the media, courts and Officers of Parliament like the Auditor General play a part in checking the execu-

tive, they each lack a legitimate political foundation. Regrettably – as has been shown above – those officials who enjoy a political foundation are unable to make proper use of it. Robert Stanfield, a former Leader of the Official Opposition and Premier of Nova Scotia, wrote “that parliamentary control of government is not effective and it is difficult to see how it can be made effective because of the vast scope of government activities”¹². An elected Senate would complement an “unprecedented” Supreme Court of Canada ruling. In *Canada (House of Commons) v. Vaid*, “the court stated that the core function of Parliament is ‘to keep the government to account’”¹³. One would be hard pressed to imagine only one chamber – itself not operating at potential capacity – able to fulfill this mandate. This is manifested for example by politically insecure MPs investing little time becoming well-versed on national issues and instead, tackling public policy in parochial terms¹⁴. As a result, the Senate should be reformed and given a clear mandate in Parliament.

Bicameralism and the Canadian Senate

The influence of Britain, coupled with the cleavages in Canadian society paved the way for a second chamber to provide uniform regional representation. The bicameral system employed in Canada is found in every other federal state given that every practicing federation has some type of upper house. Notwithstanding this generalization, the Senate of Canada is unusual as it does not recognize specific units (read: provinces/territories) but instead, divides the country into regions.

Although politically an inferior institution compared to the House of Commons, the Senate did retain a certain degree of relevance in the past.

The most important cabinet positions – including the prime-ministership – have been occupied by senators on occasion; in Macdonald’s first cabinet, five out of thirteen ministers sat in the Senate. In 1983 the Trudeau administration charged a special Senate committee with reviewing the contentious legislation establishing the Canadian Security Intelligence Service. Furthermore, under the direction of Allan MacEachen, the Liberal-dominated Senate frustrated the new Conservative government in 1984-5 when it refused to pass a large borrowing bill until the spending estimates were properly tabled in Parliament. Although the bill was eventually given royal assent, the Senate nonetheless exercised its constitutional authority to independently review legislation originating in the House. As the Senate’s legitimacy has been eroded in the 21st Century, there has been a corresponding decrease in its relevance. For example, when the Liberal-dominated Senate recently threatened to obstruct the passage of Jim Flaherty’s second budget as Conservative finance minister, Liberal leader Stéphane Dion in-

structed his colleagues in the Senate to actually expedite passage of the budget.

Although the upper house regularly recommends technical improvements to bills, it is unable to veto misguided legislation from an unflinching House since the Senate operates in a political vacuum and habitually defers to the elected chamber. The benefit of a sober second thought was a motivating factor in establishing a bicameral system in Canada. The authors of *The Federalist Papers* for example argued in favour of a Senate, consistent with the Madisonian notion of checks and balances. For example, the U.S. Senate can advise and must consent to certain government appointments, including Cabinet positions and the judges of the Supreme Court. In addition, the Senate must approve international treaties which allow senators the ability to control certain actions of the executive.

It is unlikely prominent opponents of second chambers in the eighteenth and nineteenth century could have foreseen the present policy issues that challenge governments today. An assorted array of subject matters including intellectual property rights, terrorist concerns, environmental protection and global free trade for example call for a second “house-of-review” composed of independent minded and experienced members.

This will ensure that complex policy issues are thoroughly examined and engineered to provide optimal benefits for society. Before examining the role an elected Senate would have in pressuring the government to change legislation, it is necessary to review its role as protector of regional (i.e. provincial) interests.

Senate as Provincial Protector

One of the two main functions of an upper chamber is to represent the various territories of a federation, thereby protecting minority communities. An examination of the Canadian context reveals the Senate’s glaring inability to carry out this role. Since “the provinces have not regarded and do not regard the Senate as an important channel through which provincial powers are pressed”¹⁵ future debates about reforming the second chamber should not revolve around regional representation. A plethora of formal and informal mechanisms currently exist within the federation which provide provincial governments with adequate avenues with which to resolve disputes. The enterprising attempts of Newfoundland and Labrador Premier Danny Williams to extract additional economic concessions from Ottawa highlights this point. For instance, Williams bullied former Prime Minister Martin – including removing Canadian flags from provincial buildings – until a deal was made to protect the province’s offshore royalties against future equalization clawbacks. The Premier, who repre-

sents a constituency of only a small fraction (1.5%) of the Canadian population, continues to be a thorn in the side of the current occupant of 24 Sussex Drive. The ability of Williams to extract money from Ottawa demonstrates the political leverage available to provincial politicians in their disputes with the federal government, even without an accommodating second chamber.

Therefore, given that the current antiquated Senate has rarely championed provincial rights, an elected Senate should be no different.

As mentioned above, the decentralized system of Canadian federalism shields provinces from undue injustice.

The equalization formula, provincial economic clout resulting from increased production and sale of natural resources, provincial representation in the federal cabinet, regular First Ministers' Conferences and federal-provincial ministerial conferences coupled with the December 2003 creation of the Council of the Federation (along with regional alliances like the Western Premiers' Conference and the Council of Atlantic Premiers) are arrangements which serve to safeguard provincial interests.

In order to avert sparking another constitutional crisis, copious amounts of political capital should not be exhausted trying to make the Senate a true guardian of provincial interests. Canada's First Ministers should prevent endless wrangling and instead, support efforts to construct an effective Senate armed with the political foundation to refine bills and check prime-ministerial government. This in turn will help facilitate improved legislation and, by necessity, make the executive more sensitive to provincial needs. The paper now turns its attention to this point – the likely role of an elected Senate in a more responsive policy process.

A Senate with Sway

Implementing some degree of Senate reform and thus changing the interrelationship of the two chambers of Parliament cannot be studied without an appreciation for the traditional policy making process. A highly structured policy making process incorporates many steps and lends itself to prime-ministerial domination – particularly in the case of a majority government – leaving the Senate with a minor role to officially sanction legislation. For the reasons discussed above, most members of Parliament – who devote almost half of their working time to constituency work – are not capable of properly reviewing proposed legislation. As a former Leader of the Government in the Senate, Sharon Carstairs correctly asserts that once elected, senators will possess the same moral authority currently enjoyed by those in the lower house.

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The legitimacy acquired through popular election can be used to evaluate bills originating in the House and, more importantly, propose amendments which cannot be overlooked or criticized as the actions of unelected, unaccountable Senators.

A discussion paper published in June 1983 by then Minister of Justice Mark MacGuigan argued “the Senate’s “second look” is needed more than ever as government legislation becomes more complex and time on the floor of the House of Commons is more strictly rationed”. Nearly a quarter of a Century later, with more powerful PMO members consulting only themselves, the aforementioned observation seems more and more relevant. This can only be fully realized if Senators are elected and therefore able to exercise their broad constitutional powers.

Given that a number of reasons exist which necessitate the sudden preparation of legislation, an experienced Senate would play a valuable role checking the executive in the House of Commons. For example, after the tragic terrorist attacks of September 11, 2001, Prime Minister Chrétien rushed the *Anti-Terrorism Act* through both the House of Commons and the Senate. Patrick Monahan, dean of Osgoode Hall Law School argues that the impulsive legislation has been controversial from the beginning, and includes an inadequate definition of terrorism. After a divisive debate, the House of Commons in February voted against extending two contentious measures in the original legislation. More germane to the topic at hand is the fact that the Liberal-dominated appointed Senate produced a report urging both provisions be extended. Although the report was ignored, had an elected Senate produced such a recommendation, it is unlikely those in the upper house would have tolerated being circumvented by the House. Instead of simply deferring to the elected chamber, senators armed with the same moral authority could have pressed their case more forcefully and potentially provoked more discussion in Parliament. The federal *Accountability Act* – Bill C-2 – is another example of potentially problematic legislation hurried through Parliament. The Conservative government, eager to pass one of their election campaign priorities, did not allocate sufficient time to debate such an omnibus package.

An elected Senate however, unencumbered by time constraints or the excessive partisanship that characterizes House debates, would be capable of reviewing legislation and insisting on changes if the executive hoped to implement its political agenda.

The above discussion has stressed the need for Senate reform to fill the Parliamentary void which has granted the prime minister the flexibility to govern with inadequate controls. In the Canadian context – and for the reasons described above – it would be superfluous to have

an elected upper chamber charged with protecting either regional or provincial interests. Therefore, the section below focuses on a small number of reform suggestions which would facilitate the transition to an elected Senate capable of checking the government.

An Improved Senate – Canadian Style

Initiating significant electoral reform is a complex undertaking with potential unintended consequences. For example, Japanese electoral reform of the early 1990s did not yield the anticipated benefits, but instead, allowed the powerful Liberal Democratic Party to re-monopolize political power. The difficulty of predicting the potential impact of institutional reform – particularly regarding Canada’s antiquated Senate – is not a reasonable justification for denying the public effective parliamentarians in the upper house who can provide a crucial check on prime ministerial power. Four variables for Senate reform are examined below: an attempt has been made to balance the need for an effective legislative chamber with the dominant political traditions in Canada.

The “great compromise” at Philadelphia in 1787 gave equal representation of states – regardless of population – and thus, allowed the union of states to emerge. More than two hundred years later, California’s 36,000,000 inhabitants enjoy the same representation in the Senate as the 515,000 residents of Wyoming. This is not a politically palatable notion in Canada: it is doubtful any Premier of Quebec would agree to identical representation in the Senate for Prince Edward Island.

In contrast to the equal Senate proposed in the Charlottetown Accord¹⁷, the suggestion below allows some symmetry to exist while simultaneously respecting population distribution in Canada. At the same time, it is important that any proposed allocation of Senate seats correct the under-representation of Western provinces. Therefore, Table 1 recommends allotting 107 seats in the upper chamber based on a four-tiered model.

The role envisioned for the Senate in this paper is predicated on the improbability that a single party could control both parliamentary chambers since it is assumed that

the current first-past-the-post method of translating votes into seats is not used in a reformed second chamber. Campbell Sharman highlights the role played by small parties and independent senators in Australia, who, holding the balance of power, improve the legislative process which “flow[s] directly from the adoption of PR”¹⁸. Consequently, this discussion will avoid recommending a specific method of election but suffice it to say, one of the many PR variants would be employed for the selection of Senators in Canada.

Given that the responsibility of the government would belong to the House of Commons only, the Senate should be given the power to amend or reject all proposed legislation, including money bills. In view of the fact that the government does not need to maintain the confidence of the upper house, the logic of party discipline disappears, leaving all votes in the Senate to be free votes. This removes one of the constraints faced by backbench MPs and provides the Senate with the necessary flexibility to check the executive. Legislative deadlocks would be resolved either by providing an override in the House of Commons with an unusual majority (e.g. two-thirds majority) or possibly a joint sitting of both chambers. Under these circumstances, the prime minister would be more mindful of the political mood and unable to simply dominate the entire policy process. At the same time, the principle of responsible government would be maintained, albeit in an environment that fosters greater collaboration.

The term of office is an important variable for a number of reasons. Since the House is characterized by high turnover among MPs, those in the upper house must have the experience and institutional memory to hold the prime minister’s ‘feet to the fire.’ As a result, it is recommended that senators be given one non-renewable eight year term, or, the life of two parliaments. Similar to the U.S. model, half of the members of the second chamber would be elected every four years at the same time as House elections which now operate on a fixed schedule. Since these are non-renewable terms, senators would not be burdened with the need for re-election and therefore could allocate a substantial amount of time to legislative review.

Table 1
Proposed Distribution of Senate Seats

Tier One	16 seats	Ontario, Quebec
Tier Two	12 seats	British Columbia, Alberta
Tier Three	8 seats	Manitoba, Saskatchewan, New Brunswick, Newfoundland and Labrador, Prince Edward Island, Nova Scotia
Tier Four	1 seat	Northwest Territories, Yukon, Nunavut

Conclusion

Public opinion polls frequently highlight the lack of interest towards traditional politics and parties. The perception of public indifference is hardened when examining the persistent decline in voter turnout. Although numerous reasons contribute to this phenomenon, many Canadians – particularly those belonging to a younger generation – feel politicians are simply out of touch with the voters. Although reform of the Senate will not remedy every problem plaguing Canadian democracy, it will undoubtedly inject an element of responsiveness that is currently missing from our elected officials in Ottawa.

As has been shown above, most members of Parliament are unable to vigorously represent their constituents and instead, dutifully follow the directives of party leaders. Excessive party discipline, high turnover in the House of Commons and the complex activities of government suggest backbench MPs cannot effectively carry out their responsibilities as parliamentarians. This in turn intensifies the concentration of power in Canadian politics and allows the prime minister to dominate the policy process. An elected Senate composed of self-regulating members able to devote sufficient time to reviewing legislation will improve the policy process and enhance political responsibilities for the results. Since the second chamber has never fulfilled the role of regional delegate, an elected upper house should not diverge from this practice. Instead, the Canadian Senate should imitate the Australian upper house as a place where bills are effectively scrutinized and amended.

Furthermore, an elected second chamber in Canada – again, similar to the Australian experience – will not simply be a nuisance neglected by the executive, but an almost equal partner that must be considered in policy formation. The time has long since passed for a serious discussion at highest political levels to construct a capable Senate that plays an important role curbing the power of the prime minister.

Notes

1. Gaines, Brian J., and Geoffrey Garrett. "The Calculus of Dissent: Party Discipline in the British Labour Government, 1974-1979" in *Political Behaviour*. Vol. 15, No. 2, June 1993, p. 114.
2. Page, Christopher. *The Roles of Public Opinion Research in Canadian Government*. Toronto: University of Toronto Press, 2006.
3. Thomas, Paul G. "Parliamentary Reform Through Political Parties" in Courtney, John, ed. *The Canadian House of Commons*. Calgary: University of Calgary Press, 1985, p. 48.
4. Docherty, David C. *Mr. Smith Goes to Ottawa: Life in the House of Commons*. Vancouver: UBC Press, 1997.
5. Franks, C.E.S. *The Parliament of Canada*. Toronto: University of Toronto Press, 1987.
6. Atkinson, Michael M., and David C. Docherty. "Moving Right Along: The Roots of Amateurism in the Canadian House of Commons" in *Canadian Journal of Political Science*. Vol. 25, No. 2, June 1992, p. 295.
7. Savoie, Donald J. *Governing from the Centre: The Concentration of Power in Canadian Politics*. Toronto: University of Toronto Press, 1999, p. 231.
8. Ward, Norman. *The Canadian House of Commons Representation*. Toronto, University of Toronto Press, 1950, p. 137.
9. Docherty, David. "Could the Rebels Find a Cause: House of Commons Reform in the Chrétien Era" in Harder, Lois, and Steve Patten, eds. *The Chrétien Legacy: Politics and Public Policy in Canada*. Kingston: McGill-Queen's University Press, 2006.
10. Savoie, Donald J. *Breaking the Bargain: Public Servants, Ministers, and Parliament*. Toronto: University of Toronto Press, 2003, p. 233.
11. Borins, Sandford. "The New Public Management is here to stay" in *Canadian Public Administration*. Vol. 38, No. 1, Spring 1995, p. 127.
12. Stanfield, Robert L. "The Present State of the Legislative Process in Canada: Myths and Realities" in Neilson, William A.W., and James C. MacPherson, eds. *The Legislative Process in Canada: The Need for Reform*. Toronto, Butterworth & Co., 1978, p. 46.
13. Smith, David E. *The People's House of Commons: Theories of Democracy in Contention* Toronto: University of Toronto Press, 2007, p. 120
14. Lovink, J.A.A. "Is Canadian Politics Too Competitive?" in *Canadian Journal of Political Science*. Vol. 6, No. 3, September 1973.
15. Smiley, Donald V., and Ronald L. Watts. *Intrastate Federalism in Canada*. Toronto, University of Toronto Press, 1985, p. 120.
16. Interview with Sharon Carstairs, May 31, 2007.
17. In response to the proposed equal Senate, Quebec Premier Robert Bourassa "produced a provision to guarantee Quebec at least 25 percent of the seats in the House of Commons in perpetuity ..." (See Robert Vipond, "Seeing Canada Through the Referendum: Still a House Divided" in *Publius*, Vol 23, no. 3 Summer 1993, p. 46.
18. Sharman, Campbell. "The Representation of Small Parties and Independents in the Senate" in *Australian Journal of Political Science*. Vol. 34, No. 3, November 1999, p. 355.