

Senate Should not be a Carbon Copy of the House

Senator Daniel Lang

I do not think that the timing of this government initiative for reform of the Senate is well taken. The Canadian public have been subjected to advocacy, and I would think not from the people as a whole, but advocacy for constitutional reform that has emanated from the top, from academics, from associations and foundations. Particularly since Bill C-60, in 1978, the public has been saturated with academic concerns or parliamentary concerns about reform. I do not think the public really understands them or has little concern with them. I am sorry that today, at this particular time, the government is pushing this area of constitutional revision. The public today, I am satisfied, have far deeper and more real and personal concerns in the area of our economy, our employment factors and other areas with which I am sure you are all familiar.

Should we try to amend our Constitution to accommodate what in my opinion are political failures, of our parties to obtain adequate representation on the one hand in the west and on the other hand in Quebec? A constitution is not designed to accommodate political failures. This imbalance may very well be a temporary aberration and a more geographically balanced Parliament may appear, as after the 1958 general election, and may even do so very shortly.

In constitutional reform I think it is important to seek what is attainable. I suggest that the thrust of the government paper is not likely attainable.¹ I would urge us to be realistic and to seek only what may be politically practical, obtainable and desirable. I have been in the red chamber for 20 years and that is a long time. When I was appointed, you could honestly say that I was a Liberal partisan appointee. I had worked in party organizations, I had never been a member of a provincial legislature, I had never been a member of the House of Commons. Today, although I am a Liberal with a capital "L", I do not sit with the other Liberal members but with a group of independently minded senators, who believe that our tenure was intended to ensure just that independent quality of mind and who also know that the Senate is not, nor should it ever become, a confidence chamber.

We recognize the limitations implicit in our appointed status, but we do not acknowledge that that should impose upon us an unquestioning obedience along partisan lines. Apart from that observation, I cannot speak for the other members of our group,

known as the Dandurand Group. We never have a consensus, and of course we have no Whip.

In the late 1960s or early 1970s, there was a change of environment in the Senate, which prompted the formation of a study by the Rules Committee of the Senate under the chairmanship of Senator Molson. Although this inquiry was primarily directed to updating our rules and procedures, in fact what happened was that it became an inquiry into the internal mechanisms of the institution itself. . . .

In summary, we found that we were losing our ability to be *maître chez nous*. Specifically, in the first instance, was the question of the choice of the Speaker of the Senate, which was a prerogative appointment and not one of our own — that involves no reflection on the personality of any of the speakers we have had. We also learned that, buried in omnibus bills concerned with reorganization, we had lost the power to appoint our clerk, our black rod, and I think the deputy clerk. These had become order-in-council appointments.

The other thing that became so significantly obvious was the fact that legislation by statutory instruments was increasing at an alarming rate and in proportion to the escalation in the size of the bureaucracy. Through both delegated legislation and the appointive powers, the executive was increasing its control over the Senate and Parliament generally and in so doing was increasing its freedom from responsibility to Parliament.

The thrust of our report at that time was to enhance the role of the Senate as a check and a rein on the executive. To do that, would require that it assume a far more independent, quasi-judicial stance without a partisan bias. The House of Commons, being a House of confidence, requires a high degree of party discipline, and senators by and large cannot be expected to play this role.

The other thing that was apparent at the time was the failure of the Senate to act as an independent body. It was largely caused by the fact that the leader of the government in the Senate is in a conflict of interest position. He is a Cabinet minister and leader of the government in the Senate, and he is attempting to serve two masters.

When this conflict occurs — fortunately, it does not occur too often — the Senate is the body whose interests are subjugated; and to a great extent, this accounts for diminution of the role of the Senate over the past 10 or 15 years.

¹ Senator Daniel Lang of Toronto has been a Member of the Senate since 1964. He appeared before the Special Joint Committee on Senate Reform on September 27, 1983.

I am one who assumed, because of my tenure, I did not necessarily have to obey a leader; and when I differed with the government on fundamental issues, I spoke so. Why should other senators feel differently? I think you must ask them that question.

In my opinion, the members of the Senate party majority should choose their own leader, and he should not be a Cabinet minister. Of course, there must be a representation from the government in the Senate who is a Cabinet minister, and I would assume, one without portfolio.

Over the past few years, I would say since about the early 1970s, the Senate has become a more partisan institution. That fact has detracted from its role as a chamber of sober second thought. I am afraid this phenomenon may become more apparent in our committees and may detract from their ability to deal effectively with the revision of government legislation and bills. Over the past few years, I have been very distressed to see the lack of effect or the diminution in the role of the Senate as a part of our parliamentary system.

The government's green paper, relies very heavily on the Australian model of an elected upper chamber. I have taken some trouble over the summer months to familiarize myself with that system. I have come to the conclusion that the elected Australian Senate, with its proportionately representational component, will not work in our Canadian party system.



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In Canada, as you all know, power within our political parties stems from the top and permeates downward, commencing with the election of our national leaders by convention. Such power then flows down to the national executive committees of our parties, and is diluted until it finally comes to rest in the local riding organizations. In Australia, as I understand it, the converse is true: power flows upward from local party branches very much like our Canadian legion branches, upward to state and federal councils. There are no constituency organizations. These councils determine who is to go on the ballots and in what order, thereby almost pre-determining what members and their respective parties will be elected.

In a real sense the Australian system, as I understand it, is democratic in its nature, and through its grass roots democracy determines who will become elected members of their upper chamber. I am sorry to admit that our party organizations, based as they are on constituencies and divided into provincial organizations and federal groupings, have only the power that is granted to them by the controlling groups at the top of the structure.

While it is true that the Australian Senate is powerful because it is elected, it is elected in such a fashion that the government is frequently in the minority. It is a very very complex system. This would not only be the case in Australia, but also the case of the various formulae that are delineated in the green paper. You must not forget that in Australia there is compulsory voting and the electors are required to extend their preferences through every candidate on the ballot paper. There may be 30 or more. I do not really think one could impose that sort of a system on the Canadian electorate with any real hope of success. This has to be generated over many many years of training.

In Australia the party machines are very, very powerful, and they control their leaders. Leaders do not control the party mechanism. If we try to transpose that model to Canada, we would in effect have a prime ministerial choice of senators, by putting their position on the ballot paper, one, two, three, four, because the numerical order would in fact determine their election. If you were beyond three, you would be a token candidate. This would give the provincial prime ministers an opportunity to do the same thing. So really what we would come up with is a patronage system that was partly the prime ministerial prerogative and partly the provincial prime ministerial prerogative.

The other thing that makes the system as advocated in the green paper unworkable is that we have in Canada two party organizations. We have them at the provincial level and at the federal level. In Australia that is not the case. They have one party organization, no matter how many various parties they have, that functions at both the state level and at the commonwealth level; it dictates who will be on the ballot and in what order. The party machines run the elections, and during an election most of the electorate do not realize who they are voting for, or do not even know the names, and the candidates just fill in time during the election waiting for the predetermined result.

Finally I would like to make a few observations on the green paper. I think that the authors of this paper intend to make a proportional, representative, elected Senate into a regional talkshop of limited jurisdiction. You find the use of the word "region" or

"regional" running throughout the paper; I think it appears over 10 times in the preface alone.

What is the government trying to do? I would surmise that firstly it is attempting to re-establish the two major parties as nationally representative by overcoming the imbalances respectively in Quebec and the west. Should we really be attempting constitutional change to correct an aberration in the electoral process and the political failures of the Liberal and Conservative parties? If, for instance, we go to an elected chamber, it would be impossible to reverse that condition and the only next step would be to abolish a second chamber altogether.

In my humble opinion, this document is unrealistic. Its obvious bias is in favour of an elected Senate but implicit in that is the fact that it could be restrained by incorporating limitations within a constitutional framework. I do not believe that is possible. Not only that, but it suggests that a constitutional provision could be provided that the government be only obliged to resign when it lacks a majority in the House of Commons. Watch that phrase when you come to it, because that would strip away the reserve powers of the Crown and reduce the Governor General to a figure-head or a rubber stamp. You cannot codify limitations on an elected Senate by a suspensive veto or otherwise. Ultimately, we are going to be faced with a deadlock between the two houses. However, the

government says and this paper suggests that the government need not resign unless it lacks majority in the House of Commons. What happens under those circumstances, particularly if the reserve powers of the Crown are stripped away as is suggested by that paper?

I do not wish to deal at any length on the more subsidiary reservations I have about the paper. I think it is rather naive in many of its assumptions. They talk about a public demand for Senate reform. Well, if you go out and ask people in the street if they would prefer an elected Senate, of course they would say yes. Why would they not? Would those people be asked at the same time: Elected by whom, or proposed by party machines? These are unrealistic statements put into that paper. I do not think an elected Senate would in any way modify the partisan characteristics of a second chamber. In fact, I think it would enhance the partisan characteristics and make it a mere carbon copy of the House of Commons.

I would hope that we could give more serious consideration to the Goldenberg-Lamontagne report of November 1980.² It is practicable. It is realistic. It is one that I think is attainable from a constitutional point of view. It is something that would help to reform our red chamber in a real way without overreaching and failing altogether.

Notes

¹See the discussion paper "Reform of the Senate" presented to the Special Joint Committee on Senate Reform by the Honourable Mark MacGuigan, June 16, 1983.

²See Report of the Sub-Committee on Certain Aspects of the Constitution, document presented to the Senate by the Standing Committee on Legal and Constitutional Affairs, November 26, 1980.



The Joint Committee on Senate Reform visited all ten provinces, the Yukon and Northwest Territories, to listen to witnesses and receive submissions from a wide variety of groups and individuals. (John Terry)