

Scrap the Senate and Start Afresh

Bob Rae MPP

Our country's federal system is under tremendous pressure, and has been for many years. It has always been an uneasy partnership between English and French Canada and between Canadians in different regions. Today the strains on our Confederation from these sources are greater than ever.

The Canadian partnership has survived. Its survival, however, can hardly be said to be a result of good planning. It survives because we have been ingenious in devising ad hoc solutions to pressing problems and because the players in the game have generally approached the issues with goodwill. I am convinced, however, that the partnership would have thrived and not just survived if our federal institutions were more democratic and were more reflective of the diversity of the country. I am also convinced that the time for relying on "ad hocery" and goodwill is running out. The problems of institutional reform can no longer be ignored.

I want to say clearly at the outset that I disagree with the premise that it is appropriate to consider the reform of the Senate in isolation from the broader context of political and institutional reform. It makes no sense at all to me to be looking at the reform of an anachronistic and undemocratic institution like the Senate and to be considering changes that would purport to make it into a genuinely federal forum without looking as well, or I would even say instead, at the inadequacies or problems with other federal institutions which are supposed to serve all of us.

Take the House of Commons itself, for example. Our first-past-the-post system of electoral representation in the House of Commons does little to allow for the representation of regional minorities. Majority governments have existed and governed with only a plurality of support nationally and with virtually no representation from significant parts of the country. One need only look at the political map of Canada today to see the damage that this can cause.

Our parliamentary institutions were clearly modelled in 1867 on those of Britain at that time. Surely it is hardly a radical suggestion to say that the Canada of 1984 is profoundly different

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from the British unitary state of 1867. Canada's Senate was not seen at that time as in any sense representative of the federal principle. Rather it was intended, as was the nineteenth- and early twentieth-century House of Lords, as a kind of property brake on the democratic principles emerging in the House of Commons. The House of Lords, and hence in conception the Senate, existed to keep the democrats (I say "democrats" and not necessarily "New Democrats") from getting carried away. That, in concise terms is the basis of the cliché about the Senate as a source of sober second thought and the concern consistently expressed in this last century, not confined to Canada, that second chambers were necessary to protect business and commercial interests from the workings of popular government.

In its conception and in its operations, the Senate is neither regionally representative in the sense that we understand it today, nor is it democratic. In fact the Canadian Senate is an undemocratic institution working at the heart of democratic government. That fact, combined with the history of the Senate as nothing more or less than a tool of patronage in the hands of the party in power, has led our party to the conviction that the Senate should be abolished. The many resolutions passed on this subject by conventions of both the CCF and the New Democratic Party, as well as the motion that has been frequently brought forward in the House of Commons by my former colleague, Stanley Knowles, are well known.

Lord Palmerston is said to have remarked in the nineteenth century that the British Foreign Office really served as a kind of indoor relief department of the British aristocracy. The same can readily be said of the Canadian Senate, in the sense that it serves as an indoor relief department for two major political parties. As such, the Senate has no public credibility as a democratic institution.

At the same time — and this perhaps is another problem we have to address — the Senate has failed to play a role as a specifically federal institution as do popularly elected second chambers in most other federal systems of governments, such as those of Australia, West Germany, and the United States. The constitutional requirement for provincial representation merely ensures that the politically faithful in all parts of the country stand a chance of winning the big prize. The practice of appointing the occasional senator from the Official Opposition simply underlines the role that senatorships play within the patronage system.

In addition to its credibility as a democratic institution, the Senate now faces a problem with its credibility as a federal institution.

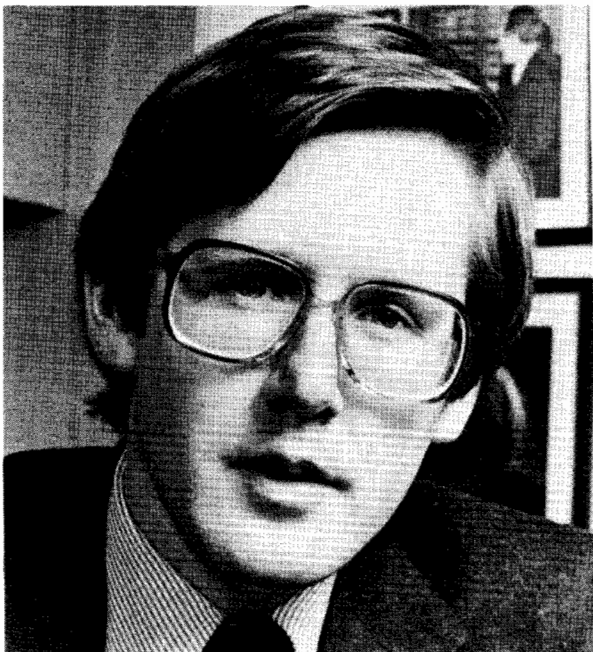
I frankly fail to see how an institution that is so discredited in the public's eyes on democratic as well as regional representational grounds can be resurrected as a serious political force in Canada, no matter how great the reform that is contemplated. My own view is that we should simply agree to scrap the Senate and then start afresh to look for Canadian solutions to the problems of our federal system.

It is difficult to see how a mature federal system can really function without institutions that are both democratic and reflect the regional nature of the country. Canada must surely stand alone as a federal system without such institutions. It is clear that the absence of momentum for real reform is a sign of the sickness in our federal system.

The current deadlock on the question of changing and reforming federal institutions must be broken. No doubt it will be difficult for parties that have long grown accustomed to the luxury of patronage to discipline themselves and to engage in real reform. Similarly, it is not hard to see that since most of the members of the governing elites of the Liberal and Conservative Parties are potential recipients of the bonanza of a cash-for-life Senate appointment, they will find it difficult to become driving forces behind reform.

So I start from the premise that the Senate should be abolished. It serves neither federalism nor democracy. The question then becomes: what reforms and what new institutions are needed to strengthen the Canadian federal-provincial partnership? I must confess that I see serious shortcomings in some of the proposals currently on the table.

The proposals that have been advanced by several provincial governments for a provincially delegated and strengthened Senate have, I believe, the potential to create real problems. The major problem, as I see it, is that these proposals would give provinces direct power over areas that have been specifically



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granted to the national government by the BNA Act. It is hard to imagine any provincial legislature agreeing to the presence of a federally appointed body deciding upon areas of provincial jurisdiction. I have a similar difficulty with the idea of making the second chamber a body simply made up of delegates from provincial governments or, indeed, from provincial legislatures.

My own preference in approach would be to look at the institutions that have developed on an ad hoc basis to deal with regional problems, most notably the federal-provincial conference. I have two reasons for making this suggestion: first, I am enough of a common law lawyer to think there must be some inherent legitimacy in the Canadian context to an institution which has grown up on its own as a solution to a problem. Second, I think it is unrealistic to expect that a body such as the Senate would ever be able to replace federal-provincial bargaining as a way of solving problems in Canadian federalism.

There is a reluctance to reform the Senate, not only on the part of the older parties and the federal government, but also from provincial governments. If you give enhanced powers to a senate that is supposed, in some sense, to be representative of the provinces at the federal level, that in itself would, I think, give as much cause for concern to the premiers and to provincial legislatures as it would to the House of Commons and to national governments. So if reform is ever to get off the ground, it has to start with a realistic appraisal of the problem: regional and interprovincial tensions which the Senate can not even begin to touch or understand, and a lack of other federal institutions with both national and provincial credibility.

We need a fresh look at the way the Canadian political system and Canadian federalism operate. I do not think we should be limiting options for change to the Senate or, for that matter, to any aspect of the Canadian political structure. I think the Senate is frankly irrelevant and anachronistic and I think that view is shared by the majority of the Canadian public.

The other suggestion that has been made . . . and I have heard it made by many senators, Senator Frith and Senator Roblin most recently in my memory . . . is that the Senate should be popularly elected. The dilemma one gets into there is whether we, at this point in our history, really either need or want a fully constituted second chamber that would be a direct rival to the House of Commons in terms of its potential power and its possible make-up. That is something one can discuss. I suppose one could look at limiting the ability of that institution to act as a kind of veto power on the federal House of Commons, but if one did that the question would then be, well, what kind of possible role can it really serve if it is simply going to be a sounding board for ideas and not have any real power? I know that many senators have expressed to me, and I think expressed publicly, their frustration that they do not have the kind of role in the system that they would like to be able to play and, to give credibility to the institution, it is important to be popularly elected.

In my view, that is true. The only way you are ever going to give any credibility to a second institution is to have it popularly elected, and I think the idea of provincial nomination is an unhappy half-way house. I will remind you that the American Senate was appointed by state legislatures until 1913. It was reformed in 1913

precisely because people felt, first, that the process was in some senses as much liable to abuse as any other kind of appointment system by a legislature one can think of, abuse in terms of the power of majorities. Second, it did not have the credibility and degree and depth of support as an institution that it needed to have. That experience led the Americans to move, in 1913, to the amendment that led to popular representation and popular election.

Popular election is one reform that has superficial credibility. The problem that I have with it is, what potential impact is that going to have on the ability of national governments to govern? What kinds of powers do we give to that body? What kinds of powers of veto? If you do not give it substantial powers to initiate legislation, then what are you doing it for in the first place? I

question whether it is really possible to put that on the agenda, given the views held by provincial governments and federal governments for some time.

I come back to my main thrust: it seems to me that Senate reform may well be a nonstarter, even if you cast aside my own views with respect to abolition. I think it will be extremely difficult to achieve a national consensus on genuine reform. Perhaps we should be looking in a more practical way at the potential for reform of an administrative kind, such as expanding the role of a federal-provincial secretariat, and other more practical solutions. I happen to believe that is the area where change is going to come and not in the area of a major, new, resurrected role for the Canadian Senate.



A group of students from the University of Ottawa was one of the 117 witnesses to appear before the committee. Professor Jean-Pierre Gaboury (fourth from the right) discusses their presentation with Paul Béllisle (one of the Committee Clerks). (Tom Littlemore)