



## Parliamentary Book Shelf

**Protecting Canadian Democracy: The Senate You Never Knew** by Senator Serge Joyal, Canadian Centre for Management Development, McGill-Queen's University Press, Montreal and Kingston, 2003, 371 p.

**The Canadian Senate in Bicameral Perspective**, David E. Smith, University of Toronto Press, Toronto, Buffalo, London, 2003, 263 p.

Discussion of Senate reform has quelled somewhat since the days of the Meech Lake Accord and after that the Reform Party cry for a "Triple E" upper chamber. But it has never been completely set on the back burner of democratic discussion in Canada. There is little question that like votes for licenced restaurants in dry areas, there will always be a strong undercurrent of support for change when it comes to the Senate of Canada.

This is fine and indeed part of a vibrant democratic debate. But advocates of reform should bear in mind that well intentioned change might produce ill conceived consequences. This is no less true of the Senate than it is of any other state institution.

Interested observers of reform are therefore well served with the recent publication of two important and timely volumes on the Senate of Canada. One, a single authored monograph by University of Saskatchewan's David Smith, looks at the Senate in comparative perspective. The other, an edited volume by Senator Serge Joyal, blends academic analysis with the views of practitioners of the upper chamber themselves. Both should be required reading for anyone with a serious interest in Senate reform. A careful reading of both volumes should act as a check on the momentary passion of reformers. There is

nothing wrong with reform, but let's make sure we now what we are changing and why.

This is the second in what one hopes is a trilogy of Smith's studies of parliament. After completing his examination of the crown, and the republican option, Smith has now turned his attention to the Senate. The book, *The Canadian Senate in Comparative Perspective*, is broad in scope, and its primary aim is neither to unduly criticize nor support the Senate, but rather to help us understand this understudied legislature, and how it is still capable of "defining Canada's all embracing identity" (p. 20).

Smith begins his analysis by first explaining why second chambers are not a research area unto themselves, in the manner of most other political institutions. The largest problem is the lack of uniformity of upper houses. Many jurisdictions have eliminated second chambers, (including five Canadian provinces, and New Zealand among others) and other nations have never had them. Further, second chambers have vastly different purposes, functions, powers, and methods of selection. Of course, the same could be said for all legislative assemblies, even in unicameral states. But the range within Westminster parliaments is far greater in upper chambers than lower ones.

Beyond the most obvious differences in selection methods, there lies the actual powers of upper chambers. We often compare the Canadian Senate to the House of Lords, as they appear to share many common features. But Smith reminds us of important differences. The Lords, until recently, was much larger than the Commons, a distinct feature among upper bodies. It is also a less powerful body than the Canadian Senate. By contrast, the method of selection of Australian Senators gives it a greater public legitimacy, than its appointed Canadian counterpart. And while proponents of Senate reform in Canada might eye down under with envy, it would be remiss to think that the Australian upper house, designed to be co-equal with the lower assembly, enjoys nation wide support at home.

Second chambers all too often are examined only when looking at representative government as a whole. Small wonder then that it is difficult to build a theory of second chambers. "Bicameralism, as a theory, lacks independence" (p. 15) and critics often condemn upper chambers for failing to provide a type of representation they were never designed to fulfill. As a result, Canadians quickly criticize their Senate for not providing equal representation of the provinces. Yet unlike the US and Australian Senates, Canada's

red chamber was never based on the representation of sub-national units, let alone their equal representation. The Canadian Senate was to be representative of Canada's regions, not provinces. At the same time, such constitutional provisions as the Senatorial floor do provide a critical mass of representation for smaller provinces (most notably but historically not only Prince Edward Island) but in the Commons, not the Senate.

This theme is perhaps the greatest contribution of *The Senate in Comparative Perspective*. Beyond the wealth of research and comparative analysis (and this should not be overlooked), Smith hammers home the central feature of upper chambers. Citizens should not look to bicameralism as a method for efficient government. Bicameralism is a check on quick action. In Smith's words it "rests on obstruction, rather than empower, it restrains government" (p. 176). The Canadian Senate, like the US Senate and the House of Lords was meant to be a restraining body. Quick government is not necessarily good government. Understanding this is a good reminder that we cannot change the Senate of Canada without impacting on other aspects of Canadian democracy, be they federalism, the Commons, or the courts. It would also threaten the good, and often under-reported work that the present Senate performs.

It is this latter theme that is central to much of the Joyal volume. Provocatively titled, *Protecting Canadian Democracy*: the Senate you never knew, is a less critical, but no less important look at the Senate. It is largely a work of academics, though two members of the red chamber, Senators Murray and Joyal, contribute a chapter each (as well, Professor Gil Remillard, a former provincial Justice Minister who

has a chapter straddles both lines). The practice of including practising politicians in a book on their own chamber is a nice addition. True, it might lend itself to more of an apology for existing faults, than a objective analysis of legislative pro's and con's. However, too often we academics think that politicians should learn from us, but not the other way around. Professors can be equally guilty, thinking our ivory tower shields us from the sometimes unsightly, but reality of the nitty gritty of politics. This volume does not make either mistake, and should serve as a model for other examinations of other institutions.

Like the Smith volume, the contributors to *Protecting Canadian Democracy* see value in the institutions of Westminster governments. Janet Ajzenstat, in her historical look at the origins, purposes and development concludes that there can be no better form of government "for the modern world than parliamentary liberal democracy."

This may be a little strong for advocates of large scale institutional change. But as many of the other authors to this volume point out, the present Senate does much valuable work. As C.E.S. Franks points out in his chapter, Senate committees have engaged in detailed and exhaustive studies of everything from Fisheries, to Foreign Affairs to Finance. As Franks' points out, the "high calibre" of these reports are too often neglected by the media and Senate critics.

Beyond investigative work, the Senate also engages in constructive debate on legislation, as discussed in both Paul Thomas' and David Smith's chapters. And unhurried by its independence from the Government of the day, the Senate can take its time not just to reflect on the merits of Bills, but to actually hear from Canadians. Take for example *The*

*Clarity Act*. Smith correctly points out that the Commons spent far less time on public debate of this critical legislation than did the upper house where, witnesses to the Senate Special Committee had "an average of an hour and a half" to present their case to Senators (p. 242). Lowell Murray argues that continuity of membership on committees and greater levels of legislative experience provides the Senate with a high level of institutional memory. This is a necessary buffer against the occasional tidal waves of turnover that the House encounters (as occurred in 1984 and again in 1993).

That is not to argue that the Senate should remain as is. Talk of reform will not, and should not, die down. Jack Stilborn highlights the attempts at remaking the Senate over the past forty years. For undergraduates unfamiliar with recent attempts at institutional reform, this chapter does a solid job of revisiting the major reform proposals and demonstrating that, though failed, they remain as strong foundations for future discussions of Senate reform. Stilborn recognizes the recent silence on the question of Senate reform in Canada. It is his hope that if discussion of reform is renewed, it does not ignore the breadth of previous proposals that have pre-dated the failures of Meech Lake and Charlottetown. David Smith argues that non-constitutional reform of the Senate could easily avoid the types of failures that mega-constitutional attempts faced.

At this stage in Canada's political evolution, non-constitutional change holds the most hope for success. Part of this could be done just by more a more thoughtful approach to appointing Senators. Murray, Franks and others are correct in suggesting that Senatorial success are too often overshadowed by failures. And in many cases, the

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failures are not even of the Senates doing. Appointment to age seventy-five might strike many Canadians as too generous, but more troubling is a Prime Minister who appoints individuals at well over the age of seventy. Despite their best intentions, these Senators will never develop the understanding of Senate to every serve effectively, let alone build up the institutional memory that Senator Murray sees as important. Further, there is nothing stopping Prime Ministers from appointing more independent Senators or Senators who represent parties in opposition to the government. Long periods of one

party dominance in the House due to the vagaries of the electoral system does not have to be mirrored in the other chamber.

Of course, these and other changes will not satisfy those Canadians who seek larger structural changes. One imagines that anything short of abolition or Triple E would fail to meet with their approval. The Senate may not be in strong public favour, and it is fair game for criticism. But it must be done with an understanding of the role and functions it was designed to provide.

This is where these two volumes are most valuable. One does not have to agree with everything in these books, or for that matter with everything the Senate does or does not do, to understand the crucial point these authors are making. In some fashion, the work of the Senate must be done. It is there to act as a roadblock to hasty action, and to represent interests that the Commons does not.

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