

Senate Reform: An Incremental Option

Although constitutional barriers to major Senate reform make the task appear daunting, significant change can be achieved through deliberate evolution which is shaped by consistent objectives. In this article the author identifies an incoherence about the defining purpose of the Senate as a central reason for the failure of past reform initiatives. Outlining the incremental reform option, he suggests practical steps, notably introducing a “job description” and particular qualifications required of Senate appointees. This could improve both appointments and accountability, and also support future nomination committees or other mechanisms.

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Canada is once again experiencing a cycle of media attention to alleged Senate scandals and opinion polls showing wide support for change. Unless public emotion about the Senate can be connected to practical solutions and action, however, history suggests that today’s intensity will merely be the prelude to tomorrow’s fatigue and collective indifference. This article explores an approach to reform that does not rely upon constitutional change and could thus be initiated immediately. The Senate today is a very different institution from the Upper House created in 1867 and will continue to evolve, either by default or as a result of deliberate effort. If its evolution is shaped by consistent objectives, significant reform of the Senate can be accomplished incrementally.

The Underlying Problem

Dissatisfaction with the status quo Senate is widely shared among Canadians, but disagreement about what specifically needs to be done dates back at least to 1874, when a reform proposal was inconclusively debated in the House of Commons. A distinctively Canadian Senate reform cottage industry produced a wide range of detailed proposals during the 1970’s, 1980’s and early 1990’s. In retrospect, however, the ephemeral character of the interest these proposals generated is perhaps their most striking feature. Why have none

among the reformed appointed, abolition, Bundesrat-model or variations on elected Upper Houses, however ingeniously stocked with double-majority voting procedures and other novelties, translated persistent dissatisfaction with the Senate into durable public support for a specific reform? An answer to this question is needed to avoid further cycles of infatuation and disillusionment.

The multitude of reform proposals developed over the years are conspicuously laconic about the purpose of the Senate and precisely how proposed reforms would contribute, and how much. Starting in the 1980s, proposals typically made passing mention of the need for better “regional representation,” and moved directly to discussion of processes and mechanisms. Furthermore, they frequently avoided clear renunciation of any of the competing roles and aspirations most commonly associated with the Senate over the years: non-partisanship and independence, elected legitimacy and political responsiveness, regional representation, long-term committee studies and sober second thought, and the representation of an expanding range of ethnic, linguistic and demographic minorities.¹

Incoherence about the defining purpose of the Senate may well be the central explanation of why reform advocates have not yet achieved success. Without a specific connection to a central institutional purpose, recommended institutional mechanisms and processes may capture momentary public and political attention but are unlikely to mobilize sustained support. A clear statement providing a plausible purpose for the Senate within the contemporary institutional universe,

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and clearly explaining how proposed reform would improve the Senate's performance, may now be the most important precondition for consensus and progress.

The Incremental Reform Option

Incremental change starts from the recognition that Canada already has a Senate. Accumulated experience is therefore available as a basis for identifying Senate activities that are useful and could be improved. This offers an alternative to the labyrinthine intergovernmental processes associated with constitutional change and to the often speculative proposals that have provided their substance. While the progress offered by incrementalism may be modest, it would be immediate and easily demonstrable to sceptics. Incrementalism thus addresses resistance to change and public distrust – perennial challenges of constitutional politics – by lowering the stakes and allowing unexpected problems to be identified early, before they are codified or constitutionalized. It also provides an alternative to reliance upon abstract argument or the attraction of novel institutional remedies – neither of which has worked in Canada – as a basis for the resolution of diverging views among Senate abolitionists, proponents of the status quo, and sectarian groups of reformers who often disagree fervently with one another. By focusing on improvements to the existing appointed Senate, it would also respond to the concerns about unilateral alterations to the “architecture” of the Constitution expressed in the April 2014 Decision of the Supreme Court of Canada.²

The missing ingredient needed to turn incremental change into Senate reform is a consistent direction, building on activities of demonstrated usefulness and reflecting a vision of the role appropriate to an appointed second chamber in the 21st century. Substantial policy studies by Senate committees are an obvious candidate for this approach. They are widely recognized as a valuable, if somewhat intermittent, contribution by the Senate to national debate and policy development. Also, Senate studies of government legislation are often praised as less partisan and more rigorous than the legislative work of the House, and sometimes result in better legislation. These activities provide a contemporary version of the sober second thought function. They illustrate the evolution of the Senate, no longer relying on the ownership of significant property that the Fathers of Confederation viewed as a key qualification for a senator's work. However, modern sober second thought activities

continue to enable the Senate to complement the work of the House of Commons instead of merely repeating it without elected legitimacy.

The regional representation role routinely ascribed to the Senate is a less convincing contender for significant incremental enhancement. In the absence of elected status, the residency qualification is less and less credible as a basis for effective regional representation in a geographically mobile society. Furthermore, deference to the elected House must now be seen as an inevitable characteristic of any appointed legislative body in a democratic age. This limits the capacity of any appointed Senate to meet modern expectations for regional protection (e.g. Alberta's quest for a capacity to prevent national energy initiatives akin to those of the 1980s). In its modern sense, regional representation has become a form of advocacy reflecting the highly-politicized arena of federal-provincial relations and the central role of provincial governments. It is now disconnected from the sober second thought role envisioned by the Fathers of Confederation and potentially in tension with it.

Similarly, the role of representing demographic minorities sometimes attributed to the Senate is unconvincing as a central purpose. The Senate is becoming less and less distinctive, as changing conditions in the House of Commons ridings are reflected in a growing presence of women, visible minorities and aboriginal peoples as MPs. The work of a policy and legislative review chamber does not preclude contributions to regional or demographic representation. A Senate composed of people with consistently strong policy skills might well prove to be a more effective champion of regional and minority rights and interests than a body formally dedicated to politicized regional advocacy or symbolic minority representation. However, these activities need to be disavowed as central to the purpose of a modernized appointed Senate, or significant considerations in selecting senators. Competing institutional objectives may be politically appealing but the resulting incoherence is a major contributor to the shortcomings of the existing Senate.

Practical Steps

The issue of Senate appointments, where the need for reform appears to be most urgent, illustrates how incremental Senate reform could work. Consistent appointment of strongly qualified people is the key to effectiveness for any form of appointed Senate. A defining institutional purpose, focusing on policy



studies and legislative review by committees, would broadly indicate what is needed from individual senators. It would also provide the basis for a Senate “job description” stating relatively specific competencies that could provide further guidance.

Many of the senators who have contributed centrally in the existing Senate display a competency profile that could be applied to appointment decisions systematically. Typically these senators combine specialized knowledge and interests relating to public policy, demonstrated achievement and political and/or governmental experience. In many cases, these competencies reflect experience as legislators (federal or provincial), chiefs of staff or other senior party ‘back-roomers,’ policy advocates or commentators, or senior public service executives. While a wide combination of individual qualifications could meet requirements, a senators’ job description spelling out responsibilities and related competencies would provide a relatively specific basis for selecting senators in place of the open-ended discretion exercised by prime ministers since 1867. Its consistent use as a basis for selecting senators would also contribute to meaningful accountability concerning appointment decisions.

Purpose-based selection criteria would, furthermore, provide a needed starting point for process reforms,

such as formalized appointment consultations (all-party, provincial or otherwise). Unless such reforms reflect clarity about what is needed from senators, appointment committees or similar mechanisms are more likely to perpetuate incoherence than improve the Senate.

Canadians now face an abundance of evidence that something needs to be done about the Senate. Incremental improvement could begin the process of reform. Canada needs to establish a constructive and progressive status quo, enhancing the legitimacy of the Senate and its contribution to effective governance. The alternative is passive acceptance of continuing decline.

Notes

- 1 For a detailed analysis supporting this argument, see Jack Stilborn, “Forty Years of Not Reforming the Senate – Taking Stock,” in Serge Joyal, (ed.), *Protecting Canadian Democracy: The Senate You Never Knew*, Canadian Centre for Management Development and McGill-Queen’s University Press: Montreal and Kingston, 2003, pp. 31-66.
- 2 Supreme Court of Canada Reference, Re: Senate Reform, 2014 SCC 32, [53]: <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13614/index.do>.