

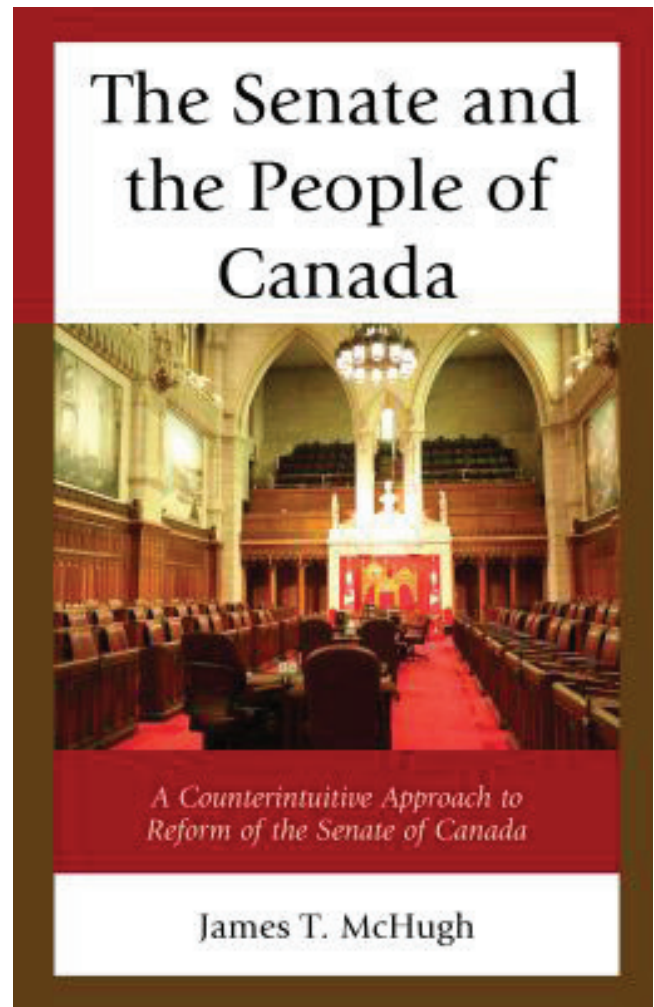
Parliamentary Bookshelf: Reviews

The Senate and the People of Canada – A Counterintuitive Approach to Reform of the Senate of Canada, James T. McHugh, Lexington Books, Lanham, Maryland, 2017, 296 p.

James McHugh's addition to the parliamentary bookshelf is extremely ambitious in scope. It undertakes to provide a comprehensive survey and assessment of historical, philosophical, methodological, constitutional, institutional and political considerations relevant to Senate reform – and that's just in Part I. In Part II, McHugh proposes a Senate closely modelled on the British House of Lords. He provides draft constitutional amendments that would accomplish this along with detailed supportive argument. Part III examines non-constitutional options and recent history, including the Trudeau reforms of 2016, and concludes by calling for reform that would enable Canada's appointed upper House to achieve its full potential.

The wide-ranging survey of potentially relevant ideas and approaches provided in Part I is necessarily limited in its elaboration of individual topics. However, McHugh deserves gratitude for the prodigious research reflected in this section. It is evident throughout the text and in 386 footnotes, most of which provide useful references to other resources. There are also a number of worthwhile extensions of the Senate reform discourse. These include information, often ignored, on the pre-Confederation colonial upper houses and assumptions subsequently embodied in the Senate. The history of the early Senate is also well documented and very informative. However, McHugh's reliance on speeches by senators invoking the 'national interest' as evidence of an institutional role as the guardian of the public interest against the ravages of self-interested occupants of the elected House may not be entirely free of selection bias.

Other elements of Part I are less successful. These include the survey of the standard canon of Western political thinkers, Plato through to Hegel (but no Marx), much of which is of little demonstrated use in thinking about Senate reform options. It relies on summary descriptions that may associate labels such as "conservative" or "communitarian" with upper chambers in general, or types of upper chamber, but



do not provide substantive arguments that could offer convincing reasons for reform choices.

Furthermore, much of Part I is poorly edited. Virtually every mention of the theme of the book, and there are many, is embellished with a reminder that it is "counterintuitive," and repetition abounds elsewhere (compare p. 119 and 128 for example). Discussion is too often jargon-heavy or vacuous, or both. For example, a survey of methodological approaches informs the reader (p. 109) that traditional Senate reform has been "...driven by a formal-legal analysis, also known as the "old" institutionalism...[which is] positivist in nature, relying upon empirical observation and description of the institutional structures and the formal rules...[but that] Senate reform appears to fit, more specifically, into a structuralist model that has had more success

...despite being associated with that “traditional” formal-legal approach...that has been, largely, set aside by scholars.” Robert MacGregor Dawson materializes in the middle of this paragraph and is given a mixed review before receiving the verdict that his “historical institutional” approach results in “exaggerations of certain political features, such as the dominance of the central government within the federal system and the contribution of the Senate toward the overall governmental process.”

Part II is a detailed clause-by-clause presentation and justification of McHugh’s proposed amendments or, in his terms, “specific, hypothetical, and idealized proposal.” (p. 11) It is written more clearly than Part I and provides a wealth of information and analysis related primarily to the British House of Lords but also ranging more widely. The detailed analysis of the suspensive veto provided in chapter 6 may be of special interest to Canadian reformers. It includes an examination of the successive amendments to the British *Parliament Act* that have shaped the suspensive veto as well as data on its impacts on the performance of the House of Lords. Useful comparative analysis of the British and Australian upper chambers is also provided.

Other elements of McHugh’s proposal, also based on the House of Lords, go further. Unlimited membership, with compensation based on individual performance, is proposed as a way of increasing inclusiveness and opening the Senate to specialized expertise. However, the need for provincial agreement to the removal of provincial seat quotas implicit in unlimited membership is acknowledged to be the “elephant in the room” for this proposal. A lengthy exploration of intrastate federalism options yields only the modest insight that “...providing provincial governments with direct appointments to the Senate appears to be a politically necessary aspect of this reform.” (p. 168)

McHugh also proposes an appointments process modelled more closely on that of the House of Lords, including a requirement that no more than 50 per cent of the senators appointed during any 4-year period may be representatives or members of any single political party. He argues that this would provide strengthened support for non-partisanship, in comparison to the process initiated by the Trudeau government in 2016. Additional elements of the appointments procedure include the automatic appointment of a lengthy list of former officials, ranging from former Governors General to former human rights commissioners. Double majority voting on official languages matters is added

to the proposed model, and discussion of adaptations going beyond the British upper house draws on a wide-ranging examination of Canadian constitutional history, experiments with advisory elections, recent scandals and potential remedies, implications of the Supreme Court decisions and the place of evolving convention as a complement to formal change.

Although more limited in Part II, clarity issues are not entirely absent. For example, a table entitled “Effectiveness of Upper Houses Influence without Confidence Conditional Logit Analysis of Government Formation,” (p. 129) that compares four undefined bicameralism “models” according to 20 variables is inserted into a discussion of suspensive vetoes without any (nearby) reference or explanation.

Given the scope of the book, only an ingrate would respond with concerns about omissions. However, the leap from purported theory to the draft amendment language and frequently quite specific considerations of Part II could be strengthened in some cases by more in the middle. Canadian proposals for a reformed appointed Senate, for example, are briefly acknowledged; but this universe provides a range of permutations and combinations involving House of Commons legislative overrides, Senate vetoes, special majority requirements and restrictions of some or all of these to designated classes of legislation. Critical attention to pros and cons of these options would make McHugh’s proposed suspensive veto model more convincing.

This book – especially Parts II and III – will find an appreciative audience in Canada’s ample population of Senate reform junkies and constitutional scholars. Political science students might be directed to Part I as well, for use as a very comprehensive compilation of background information and references. Although the Trudeau government’s initiatives appear to have muted public interest in an elected Senate at least for now, they have yet to be accepted by the opposition parties and could thus prove to be ephemeral. This would make McHugh’s preoccupation with problems raised by variants of the Triple ‘E’ Senate proposals more apposite than it appears to be today. More immediately, if the ultimate result of the Trudeau changes is to make the Senate more assertive without increasing its legitimacy, McHugh’s approach to Senate reform could well prove to be prescient.

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