

# *A Reformed But Not Elected Senate*

*Peter Bosa*

**T**here have been many debates on Senate reform recently, and from those debates have emerged just as many different proposals for reform. It is now time to sort out the various proposals in order to distinguish clearly between practical, implementable reform and lofty theory. It is important that this subject be debated thoroughly for it is the only way we might arrive at a consensus as to what kind of reform this institution should undergo.

There already is a consensus, within this chamber and outside of it, that the Senate ought not to remain as it is. However, before embarking on any proposal for Senate reform, it might be worthwhile to consider the legislative structures of Canada and compare them with legislative structures of other countries.

Canada is a country which has applied the British parliamentary system to a federal state. Australia has done likewise, but Australia has an elected Senate, as has the United States. Our Senate is an appointed one. If we look at the parliamentary systems of the democracies of the world, we discover that no two countries have exactly the same legislative institutions. Each country has developed institutions that reflect the character and aspirations of its people. Parliamentary institutions are best suited when they are home grown and have evolved to meet a country's needs.

When it gained independence Nigeria adopted *holus-bolus* the British parliamentary system. It did not work, and Nigeria had to relinquish that system of government and adopt one which reflected more closely the experience and needs of its people. It is not difficult to discover why it did not work. England has 700 years of parliamentary tradition. Such a system cannot be transplanted overnight to another country without the cultural base and traditions which make it operative. Similarly, importing the Australian system of an elected second chamber into Canada, as proposed by some Canadians could well have a disruptive effect on our parliamentary institutions because it is not a natural evolution of our parliamentary system.

The Government of British Columbia proposed a West German type of upper house in Canada. The membership of the Bundesrat in West Germany is made up of provincial representatives headed by provincial cabinet ministers. The provinces or *länder*, as they are referred to in the Federal West German Constitution, are organized in an entirely different way, and a Bundes-

rat type of upper house could not be adopted in Canada. If adopted it would become, as Senator Forsey pointed out in 1978, a "house of obstruction". In discussion parliamentary reform of the upper house, it is well to anticipate the impact that it will have on the rest of the parliamentary system; otherwise it is like changing the course of a major river or flooding a major valley without taking into account the impact that such a change will have on the environment.

## **Purpose of the Senate**

Let us look at what the purpose of the Senate is and at what the main areas of criticism of this institution are. The Fathers of Confederation envisioned a Senate as a chamber where regional interests would be articulated, where legislation would be refined, and where minorities would be protected. The reference to minorities at that time was to linguistic minorities — English and French — but not ethnic minorities, as the expression has come to mean in the more recent past.

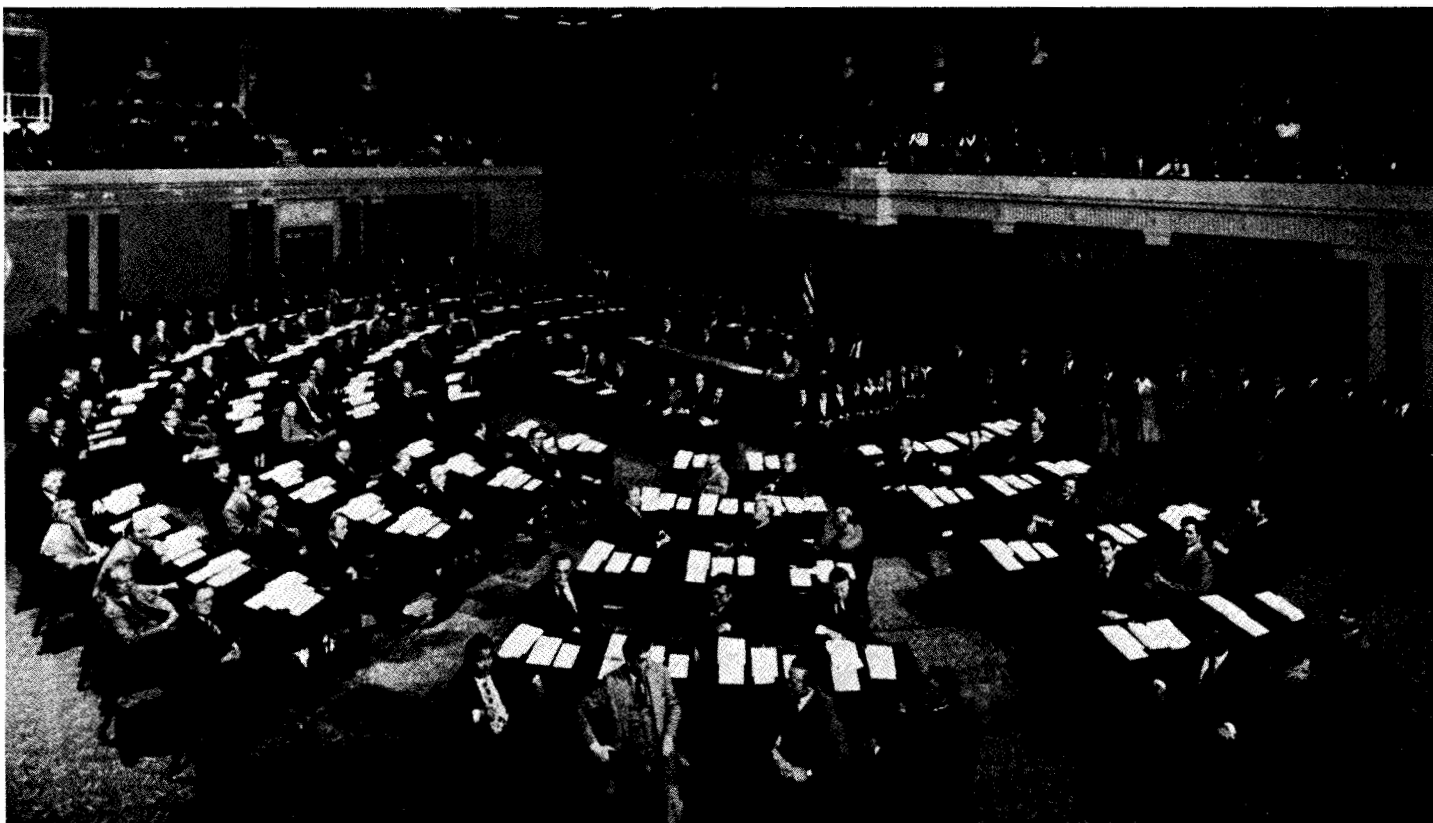
The Senate has performed very well in the refinement of legislation, which is the most important function of the Senate at present. Any proposal to reform the Senate must take this into consideration. Refining legislation requires experience which can only be gained through some form of continuity in dealing with various forms of legislative proposals. The Senate went beyond its original mandate in recent past by undertaking the task of investigating important public issues. Recent examples of such issues are problems such as poverty, unemployment, inflation, aging, land use, science policy, Indian affairs, trade relations with the United States and so forth. The Senate standing committees, in addition to doing other very important work, have also introduced an innovative approach in the pre-study of bills.

## **The Major Criticism of the Senate**

The perception remains that the Senate does not speak for the regions. Let me share with you my personal experience as a senator from Ontario. I have been a member of this chamber for over five years, and during that time there has never been a meeting of the Ontario senators where regional issues have been discussed. There is no caucus of Ontario senators, nor is there a mechanism for interfacing with the Government of Ontario. Neither government members nor members of the opposition have ever been in touch with me to ask for my assistance in order to advance the interests of the province. Any intervention that I have ever

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*The Hon. Peter Bosa was appointed to the Senate in 1977. This article is an abridged version of his speech to the Senate on May 12, 1982.*



In the American Senate every state, regardless of population is entitled to two senators. (United States International Communication Agency)

made in the Senate on a regional interest has been on an *ad hoc* basis and personally inspired, as opposed to a collective approach by Ontario senators. It may be that senators from other regions have consultations with their respective colleagues and their legislature, although, from private conversation, I doubt very much that is the case.

So we must ask ourselves: Does the Senate fulfill its role? Based on my personal experience, the answer must be a qualified one at best, because the belief that the Senate does not speak for the regions is, in my experience, a valid one. Other areas of criticism directed at the Senate are its absolute veto power and the manner in which its membership is selected. Appointment is considered to be undemocratic. This is further aggravated by the mistaken notion that many of the appointments to the Senate are made from a roster of defeated politicians, party fund raisers and cabinet ministers who have outlived their usefulness in cabinet. Such a notion implies that anyone in those categories is not fit to serve. In fact, we have only to look around this chamber to appreciate how unfair that notion is.

Senator Roblin has argued that "responsible government in Canada will be strengthened if the membership of the Senate is constituted by election rather than by appointment." I am sure it will be. This institution would regain its credibility in the public mind, and I fully support any reform that will enhance the prestige and credibility of the upper house. It is my opinion that an elected

Senate would be highly regarded by Canadians as a whole. It is also my belief that an elected Senate would want definite powers and clout. The power and clout now reside in the other place, and any reform along this line would depend entirely on how much power the government and the House of Commons are willing to relinquish.

How independent would an elected Senate be? It would seem to be unrealistic to assume non-involvement of national political parties in Senate elections. The likely result would be that Senate races in any one region would duplicate the results in House of Commons constituencies. Elected senators would have to conform to party platforms and caucus discipline. The elected senators would feel precisely the same pressures to dampen expressions of regional dissent as members of Parliament do now through cabinet solidarity and the pressures of political party discipline.

If we had an elected Senate, the question would certainly be asked, "Who speaks for Canada — the House of Commons or the Senate?" Even if the demarcation lines of power were clearly defined, do we really think that we could speak on behalf of the regions and overshadow the premiers?

The provincial conferences that commenced in the 1880's have evolved into full-fledged debating and decision-making forums in the last 25 years. The premiers play a most prominent role at these conferences. It is unrealistic to believe that they would

relinquish that role to an elected Senate. In addition, there would be great resistance to an elected Senate by the House of Commons and by the provincial legislatures. I do not believe anyone wants an elected Senate at present, other than those who theorize that an elected chamber would strengthen the institution in the eyes of the public.

## Reform but not election

I started out as an advocate of an elected Senate and on one occasion shortly after my appointment, I spoke about it in this chamber. In retrospect, I can say that I was motivated by the belief that an elected Senate would carry out its mandate more credibly. As I have gained more insight into the workings of Parliament, I have become sincerely convinced that a modified, reformed Senate would complement our parliamentary institution more effectively. An elected Senate is not a practical evolution of the institution in our system of government at this time.

A second chamber differently constituted could be given powers that would directly affect the provinces. There are numerous agreements between the central government and the provinces covering a whole range of topics which are rarely debated in this chamber. The implementation and control of these agreements is not under the direct supervision of any one body.

It would seem that the best forum for in-depth analysis of the agreements may well be a reformed Senate. One reform that could be instituted swiftly to put the Senate on a new path would be to change the tenure of office. The present retirement age of senators is 75 years, apart from the dwindling number who were appointed for life. The provision for a retirement age of 75 should be changed to a fixed term of perhaps 10 years, with the option of reappointment for further five-year terms. This recommendation is contained in Senator Lamontagne's report entitled "Certain aspects of the

Canadian Constitution". In order to retain the expertise and experience in the Senate, this transition should take place by attrition.

The method of selection by appointment has fallen into disrepute, but judges are appointed by governments and the courts are respected and held in high esteem by society. The consultative method employed in appointing judges should be used for the appointment of senators. Consultation between the central and provincial governments could be broadened. This may result in a less politically partisan Senate and a Senate which the provinces, because of their input in the appointing process, may feel more comfortable consulting on regional issues.

If the Senate is to remain the chamber of sober second thought, then the absolute veto should be relinquished and replaced by suspensive veto. The Senate has a tremendous amount of power over legislation at the present time — that is, the power to defeat legislation. However, its lack of legitimacy because of its selection method makes it almost impossible for the Senate to exercise this power. A change to a suspensive veto would allow the Senate to take a more active part in the criticism of legislation, to the point of delaying approval in order either to give the House of Commons time to reflect on its proposals or to allow time for public opinion to crystallize around the proposals.

The institution of these changes, which have been advocated by constitutional experts both within this institution of Parliament and in the academic field, would give the Senate a new image, and it would enable Senators to carry out more effectively the important work that is expected of them. Canadians are basically small "c" conservatives. It is my perception that they are reluctant to institute radical changes in their parliamentary institutions. I believe they would prefer and would support a moderate approach to the reform of the Senate such as the one I have proposed.



In the German Federal Republic states are entitled to three, four or five votes in the Bundesrat. Members are not elected directly but chosen by the state governments.