Senate Envy: Why Western Canada Wants What Australia Has[*]

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Introduction

I came to Australia to do what political scientists do: to study and to report. I came to study how you Australians have successfully wedded an American-style Senate to a Westminster-style Parliament. To help pay the freight, I am also lecturing at various universities on how the Charter of Rights has impacted and changed the way Canada is governed. My old friend and ANU Professor John Uhr has informed me that this is a much too rational and superficial view of my mission. According to John, what I am really doing in Australia is better described as a form of political psycho-therapy: I have come to cure Australians of your rights-envy, and in turn be cured by you of my Senate-envy—thus the topic of today's lecture.

Comparative constitutionalism can be tricky business, and sometimes even nasty. During Australia's founding debates in the 1890s, Sir Edmund Barton disparaged the Canadian constitution as a 'mongrel' brand of federalism.

Sir Edmund was not simply being contentious. He had a point. He was referring to the highly unbalanced nature of Canadian federalism, resulting from the central government's powers of disallowance and reservation, which allowed Ottawa to unilaterally set aside any provincial statutes that it found objectionable. This

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arrangement violated the first principle of true federalism: that neither level of government can unilaterally invade or change the jurisdiction of the other. Sir Edmund was right: based on the original constitutional design, Canada's was a 'mongrel' brand of federalism.

What concerns us today is that this theoretical imbalance was quickly remedied by practice. Within a generation, the legitimacy of these federal powers had been successfully challenged and undermined by a coalition of provincial premiers with strong public support. A convention of non-use developed, effectively neutralising these powers and restoring balance to Canadian federalism.

The original constitutional design neither fit nor reflected the deeply decentralised nature of Canadian society. The constitutional blueprint did not accord with the building-blocks of Canadian society. There was an absence of symmetry between theory and practice, and, as usual, practice won. According to legal theory, constitutions shape society. In practice, society also shapes the constitution.

The contemporary Senate reform movement in Canada can best be understood as a response to an analogous gap between state and society; between an aging political superstructure and its evolving economic and social foundation. The analytical framework that I am proposing can be summarised in the following three propositions:

1. That in all democracies, there must be a modicum of symmetry between *de jure* power and *de facto* power; a proximate balance between the formal distribution of power in the state and the real world distribution of power in the society that state seeks to govern.

2. That in Canada, this balance has been lost, because of an institutional status quo that historically has privileged Central Canada (Ontario and Quebec) and that has failed to adapt to a rapidly evolving political-economy in which significant new *de facto* power has flowed to the two western-most provinces, British Columbia and Alberta.

3. That the Senate reform movement is one symptom of the political friction between the *de jure* constitution and the *de facto* constitution, between the old state and the new society.

If this sounds too abstract, let me illustrate it with a more familiar example from the United States. Since World War II, there has been a significant flow of both people and capital out of the 'rust-belt' states of the north-east into the 'sunbelt' states of the south and south-west. The political reflection of economic shift is found in the fact that the last five presidents have come from Texas, California or a southern state.

To apply this theory to Canada, I begin with an overview of the oligarchic origins and design of the Canadian Senate and its subsequent democratic demise. I then briefly sketch the economic and demographic decline of Quebec and the corresponding ascendancy of British Columbia and Alberta; and then compare this to the continuing political dominance of Quebec in national politics.

The Rise and Fall of the Canadian Senate: an Overview

Like the Australian Constitution, the British North America Act sought to wed a British-style Westminster government with an American-style federal system. The BNA Act spells out a division of powers between the central government in Ottawa and the provincial governments. At the federal level, the Canadian founders created a bicameral legislature with both a House of Commons and a Senate, with 'responsible government' grounded in the popularly elected lower chamber. Notwithstanding the latter, the Senate was given the identical powers of the lower house, save the power to introduce tax and spending bills.

Here, the similarities with the Australian Constitution end. Spurning the republican model of the Americans in favour of imitating the British House of Lords, the Canadian Senate was to be appointed, not elected. Canadian senators were given tenure of office for life. The principle of provincial equality was also rejected, in favour of what is now called regional equality. Ontario and Quebec, the two most populous provinces, were allotted 24 senators each, while the three original Maritime provinces—New Brunswick (10), Nova Scotia (10) and tiny Prince Edward Island (4) were given 24 to divide amongst themselves. This model was later extended to the Western territories as they gained the status of province. Today the four Western provinces also have 24 senators—six per province. Newfoundland, the latecomer, was allotted four senators when it joined Confederation in 1949.

Basing the selection of senators on executive appointment rather than popular election proved to be the fatal flaw in the design of the Senate. The rising tide of democracy quickly discredited the idea of a non-elected and thus unaccountable upper-house exercising a veto power over the House of Commons. A constitutional convention developed that the Senate should not use its powers to obstruct government legislation, a convention that was effectively reinforced by the partisan use of the appointment power. Notwithstanding some eminent individual members, the Senate became discredited as little more than a patronage pit for the government of the day. Today the Senate may be candidly described as at best an irrelevancy, at worst a national embarrassment.[1] Significantly, there is almost as much sentiment for abolishing the Senate as for reforming it. Senate abolition is an official policy of the centre-left New Democratic Party (NDP).

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[1] Contemporary Senate appointments are the sole prerogative of the Prime Minister and he uses them to promote his and his party's political interests. The primary function of contemporary Senate appointments is to reward party fundraisers. To this end, Mr. Chretien has adopted the dual strategies of leaving Senate vacancies open for months at a time to 'encourage' competition amongst Liberal bag-men and to appoint persons already approaching the mandatory retirement age of 75, thus increasing the opportunities for additional appointments—and still more fundraising. Senate appointments are also used for short-term partisan strategy—to reward loyal MPs and to create timely by-elections. Since January 2002, Mr. Chretien has 'promoted' three MPs from safe Liberal ridings—Ron Duhamel, George Baker, and Raymond Lavigne—to the Senate. He has done this in order to buffer the effects of a likely Canadian Alliance (CA) victory in the Calgary Southwest by-election, triggered by the February 1 retirement of Preston Manning, founder of the CA and Reform parties. Any negative publicity created by a CA victory in Calgary could be counterspun by the guaranteed Liberal wins in the other three ridings. (See 'PM surprises veteran MPs with Senate appointments,' *Ottawa Citizen*, March 27, 2002, A5.)

Senate reform, however, has enjoyed much more political support. 'Triple E' Senate reform—elected, equal, and effective—was a founding principle of the upstart Reform Party, which has dominated federal elections in the four Western provinces since 1993, and has formed the Official Opposition in the last two parliaments.[2] At various times, some variant of Senate reform has enjoyed the active support of the premiers of all four Western provinces. In 1992 it was briefly endorsed by all ten premiers and the Prime Minister as part of a package of constitutional amendments known as the Charlottetown Accord.

Senate reform is one of the oldest and most enduring issues—or perhaps, non-issues—of Canadian political history. My focus today will be the contemporary Senate reform movement, which dates from the mid-1970s and has been driven almost exclusively by Western Canadians and their political leaders. This Western basis reflects a conviction of regional grievance; a strong sense that the institutional status quo is permanently stacked against Western Canadian interests and that Senate reform along the lines of 'Triple E' is the best way to remedy this imbalance.

Economic and Demographic Change versus Political Status Quo

The contemporary Senate reform movement in Canada can be understood as a response to a widening gap between the institutions of the state and society they seek to govern; between an aging political superstructure and its evolving economic and social foundation.

Since the end of World War II, Quebec's proportion of Canada's population has declined by 20 percent (from 30% to 24%), while British Columbia's share has increased 57 percent (from 8.3% to 13%) and Alberta's by 50 percent (from 6.6% to 10%). More revealing, at the end of the War, Quebec's population was double the combined populations of British Columbia and Alberta. In 2001, they were virtually equal. (about 7.4 versus 7.1 million, or 24% versus 23% of Canada's population).

Over a shorter time period, Quebec's economic decline has been even steeper. From 1961 to 2001—just forty years—Quebec's percent of Canada's GDP has dropped by 20 percent (from 26.1% to 21%), while British Columbia's has grown by 22 percent (from 10% to 12.2%) and Alberta's an astonishing 51 percent (from 7.9% to 11.9%). In 1961, Quebec's share of Canada's GDP (26.1%) was 44 percent *more* than the *combined* share of British Columbia and Alberta (17.9%). By 2000, Quebec's share of the GDP (21%) had shrunk to 13 percent *less* than the combined share of British Columbia and Alberta (24.1%).

This dramatic transfer of economic and demographic power from Central Canada to the two western-most provinces has not been matched with a corresponding transfer of political power. In fact, almost the opposite has happened.

Since Pierre Trudeau burst onto the federal political scene in 1968, nine of the ten elections have been won by a party led by a Quebecker. The only non-Quebec Prime Minister elected during this period, the hapless Joe Clark from Alberta, lasted less

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2   The Canadian Alliance Party, founded in 2000 as the successor party to Reform, maintained Senate reform as one of its premier policies but is less explicit about the 'equal' part of Triple E.

than six months. With the exception of the two Mulroney governments during the 1980s, our Quebec prime ministers have governed with little to no electoral support in the West. In the six elections following Trudeau's respectable showing of 40 percent in 1968, the Liberals won an average of less than 8 percent of the seats west of the Ontario-Manitoba border. During this 21-year stretch in six elections, Alberta did not elect a single Liberal MP, while Saskatchewan elected only four.

While Western Canada has been an electoral wasteland for the Liberals during this 34 year run, voter-rich Central Canada has been a political bonanza.[3] In the ten elections won by the Liberals since 1963, the Liberals have elected an average of 114 MPs just from Ontario and Quebec, more than two-thirds of the 152 seats needed to form a majority government. From the 1968 through to the 1980 elections, this Central Canadian electoral juggernaut was centred in Quebec, where the Liberals elected an average of 62 (83%) of Quebec's 75 MPs. The Liberals lost their electoral stranglehold on Quebec to the Mulroney Tories in the 1980s and then to the separatists Bloq Quebecois during the 1990s, but it did not matter. Ontario replaced Quebec as the electoral cornerstone of Liberal majority governments. In the three federal elections since 1993, the Liberals have taken all but one or two of Ontario's 103 seats.[4]

The results have been predictable. On a personal level, many Western Canadians have come to feel deeply alienated from a political system in which the results of the election are already decided by Eastern and Central Canada before they even cast their votes. On a policy level, the West's lack of representation in government caucuses and cabinets has resulted in public policies that are indifferent, if not hostile, to Western interests and values.

The most egregious of these policies was Pierre Trudeau's 'National Energy Policy' (NEP) introduced during the energy crises of the mid-seventies and early eighties. The NEP imposed a variety of measures to reduce the cost of energy to Canadian consumers—concentrated principally in Ontario and Quebec—at great expense to the oil and gas industry—then concentrated mainly in Western Canada. Estimates of the cost of the NEP to Alberta's GDP alone range from 140 to 195 billion dollars over a ten year (1974–1984) period. Other federal policies that have negatively impacted the West include:

- The Canadian Wheat Board, through which Ottawa compels grain growers from Manitoba west to market all their wheat and barley through the federal Wheat Board. No such restrictions apply to farmers from Ontario eastwards.

- Equalisation Grants, through which federal tax revenues are transferred from the three 'have' provinces (Ontario, British

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[3]   A contributing factor is the over-representation of Quebec. Despite near population parity with Quebec (7.1 vs 7.4 million), British Columbia and Alberta have only 60 MPs compared to Quebec's constitutionally guaranteed number of 75. Indeed, until the 1980 election, Quebec was allotted more MPs than the four Western provinces combined.

[4]   In the 1993 federal election, the Liberals won 98 of Ontario's 99 seats; in 1997, 101 of 103; in 2000, 100 of 103.

Columbia, Alberta) to the seven 'have not' provinces (and two territories) in order to provide parity in health, education and welfare services. In 1999, the last year for which data is available, the net outflow of equalisation payments cost every man, woman and child in Alberta an average of $2 800.

- Official bilingualism, a policy initiated by the Trudeau Liberals but accelerated during the Conservative Mulroney governments of the Eighties, requiring proficiency in both French and English as a prerequisite for employment in the Ottawa civil service, especially at the higher levels. This policy has made the federal bureaucracy in Ottawa off-limits to the ninety-five percent of Westerners who do not speak French.

Implicit in these policies was a 'divide and conquer' electoral strategy. The West is resource rich but voter-poor, while Central Canada is voter-rich but resource poor. As long as they could confiscate new resource revenues from Western Canada to buy votes in Central and Eastern Canada, the Liberals virtually owned the House of Commons. [5] Growing numbers of Westerners despaired of this situation, especially after their high hopes for less Quebec-centric policies under the Tory government of Prime Minister Brian Mulroney (1984–1992) were shattered. To many in the West, it appeared that the weaker Quebec became economically, the stronger it became politically. Under the institutional status quo—a Parliament dominated by the House of Commons; a Commons dominated by the Prime Minister; and a Prime Ministership dominated by Quebeckers—there was no electoral incentive to accommodate or respect Western interests and opinions. Indeed, the electoral incentives were precisely the opposite. It was out of this gloomy scenario that renewed interest in Senate reform was born.

Of course, if these economic policies had benefited Canada as a whole even as they harmed British Columbia and Alberta, then Western anger could be mostly discounted as sour grapes. In fact, there is considerable evidence to the contrary. During this same 30 year time period, Canada became one of the most heavily taxed and heavily indebted countries among the industrial democracies, with corresponding declines in productivity gains and the value of its currency. This has triggered a damaging out-migration of medical doctors (averaging one thousand a year during the 1990s) and

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[5] This strategy was most explicit in the NEP, but still re-surfaces. In the 2000 federal election, our Liberal PM, Mr. Chretien, campaigning in Eastern Canada, remarked, 'I like to do politics with people from the East. Joe Clark and Stockwell Day are from Alberta. They are a different type.' When his audience chuckled, he added: 'I'm joking.' When they laughed more, he added: 'I'm serious,' drawing an even bigger laugh.

other mobile 'human capital,' mainly to the United States. [6] The case can and has been made that Ottawa's fiscal and economic policies have harmed the rest of Canada even more than Alberta and British Columbia.

The Contemporary Senate Reform Movement

The contemporary Senate reform movement in Canada dates from the mid-1970s, and was initially led by British Columbia. Throughout the this decade, Prime Minister Trudeau was relentlessly advancing constitutional changes of his own—mainly a charter of rights. British Columbia Premier Bill Bennett seized this opportunity to introduce Senate reform into the mix of constitutional projects under consideration. British Columbia's preferred model of Senate reform was the German Bundesrat—some form of a 'House of the Provinces'—in which the senators would be chosen by provincial governments and thus act as delegates to the central government in Ottawa. The Bennett initiative was widely discussed but never got off the ground, since it did not fit into Trudeau's priorities. However, it did succeed in putting Senate reform on Canada's constitutional agenda, a necessary first step.

In the 1980s, the initiative for Senate reform passed to Alberta. Premier Peter Lougheed, fresh from battling Pierre Trudeau over the NEP, created a provincial task force to study the idea of Senate reform. In its final report, the Alberta Task Force rejected the German model in favour of the Australian and US models—senators directly elected by the people and an equal number of senators for each province. The Alberta Task Force had virtually no profile outside of Alberta, but within the province its influence was immense. For many Albertans, Senate reform became the Holy Grail of political salvation—a belief that would soon play a crucial role in national politics as a new generation of Albertans charged onto the national political stage.

In 1987, there were two seminal events in the evolution of the Senate reform movement. The first was the Meech Lake Accord. The second was the founding of the new Reform Party. At the time, the former completely overshadowed the latter. In the end, it was the Reform Party that proved more enduring.

Meech was a package of constitutional amendments introduced by the Mulroney Government. Its purpose was to reconcile Quebec to the constitutional changes pushed through by Trudeau in 1982 but never accepted by Quebec. One amendment

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[6] Since 1968, the year Pierre Trudeau was first elected Prime Minister, the value of the Canadian dollar has shrunk from over US$1 to US$0.62. This decline is linked to Canada's failure to keep pace in terms of economic productivity and capital investment. These in turn are explained by Canada's relatively higher tax rates and government debt. Canada's tax burden in 2000 was 44.3% of GDP, which is 40% higher than the US, our principal trading partner, and ranks Canada the third highest taxed country in the G7. Canada's public expenditures in 2000 were 40.9% of GDP, or 39% higher than the US. Canada's net debt in 2000 was 66% of GDP, the second highest in the G7 and 54% higher than the US (43%) and 36% higher than the G7 average (48.5%). The US is the most relevant comparison, as it receives 85% of Canada's exports and accounts for 40% of our GDP. Successive federal governments have achieved these dubious distinctions while spending almost nothing on defence compared to our trading partners. As a percentage of GDP, Canada spends (1.03%) one-third of what the US spends (3%) and is the second lowest in the G7—only Japan spends less. Within NATO, Canada spends less on defence than the other 18 members except Iceland and Luxembourg, the former having no army and Luxembourg having only 800 soldiers. If Canada had been making 'normal' expenditures on defence, our debt and tax conditions would be even worse.

gave all provinces—and thus Quebec—a veto over any future constitutional change. This prospect elicited strong opposition in Alberta because of the belief that Quebec would use this veto to block any future Senate reform.

At the same time that Brian Mulroney was trying to sell the Meech Lake Accord to the ten provinces, Preston Manning was forming the Reform Party. Manning was the son of one Alberta's longest serving premiers, and benefited immediately from the widespread respect for his father. Manning launched the Reform Party as an explicitly regional party with the slogan: 'The West wants in.' Triple E Senate Reform was one of its premier policies. Nationally Manning and his upstart party were not taken seriously, but an immediate groundswell of support in Alberta resulted in growing pressure on the new Premier of Alberta, Don Getty, to withdraw his government's support for the Meech Lake Accord.

By 1989, opposition to Meech became so widespread in Alberta that Mulroney was forced to do a deal with Getty. Getty agreed not to withdraw Alberta's consent to Meech in return for Mulroney agreeing to appoint the winner of an Alberta Senate election to the Senate. In October 1989, Alberta thus held Canada's first ever Senate election. The Reform Party nominated retired General Stan Waters, who then trounced prominent Liberal and Tory candidates in a hotly contested province-wide election.

In 1990, Mulroney upheld his end of the deal, and appointed Waters to the Senate, giving Canada its first ever elected senator and the Reform Party its second elected member of Parliament.[7] Waters immediately achieved icon status within the Reform Party, a status that only increased when he died suddenly of brain cancer the following year. Triple E Senate, already an article of faith for the growing number of Reformers, was now consecrated by Waters' untimely death.

The Waters Senate appointment was not enough to save the Meech Lake Accord, which failed to receive the unanimous consent of all ten provinces as required by the Constitution. The failure of Meech created a crisis for the Mulroney government and the country. Intended to reconcile Quebec to the new constitutional order, English Canada's apparent rejection of Meech now inflamed separatist sentiment within Quebec. In an attempt to save his reputation, his party and even his country, Prime Minister Mulroney desperately undertook yet another round of 'mega-constitutional politics.'[8] After almost a year of intensive consultations with both governments and non-governmental interests, the Mulroney government produced an even more extensive package of constitutional amendments, this one known as the Charlottetown Accord.

This time Senate reform figured prominently from the start. It was clear that the price of Western support for Quebec's constitutional demands was significant Senate reform. In a cruel twist of fate, Mulroney appointed the still hapless Joe Clark, the

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[7] Earlier that year in a federal by-election, Reform had elected its first MP, Deborah Gray, from Beaver River, Alberta.

[8] This term was coined by Peter Russell to capture the multi-level and regime-changing aspects of Canada's ill-fated attempts at constitutional renewal in the 1980s and 1990s. See Peter H. Russell, *Constitutional Odyssey*, revised ed., University of Toronto Press, 1994.

man whom he had dethroned as Tory leader in 1983, to head up government's constitutional negotiations team. And Clark almost pulled it off. In July 1992, Clark emerged from a meeting with the premiers from the nine English-speaking provinces with an agreement to a Senate reform package—known as the 'Pearson Accord'—that satisfied Western premiers and other Triple E supporters.[9] The Holy Grail seemed within reach. But it was not to be.

Mulroney was in Germany at a G7 economic summit when Clark struck his deal, and Quebec had not been present. Quebec opinion leaders quickly denounced the Pearson Accord as a betrayal of Quebec's interests, and Quebec Premier Robert Bourassa signalled his dissatisfaction to the Prime Minister upon his return. Mulroney wasted no time in informing Clark that the Pearson Accord would have to be revised to satisfy Quebec. In an about face that earned him the lasting enmity of many of his fellow Albertans, poor Joe followed Mulroney's orders by eliminating an effective veto power from the proposed Senate.[10] In the end, Western supporters of Senate reform, led by an emboldened Reform Party, voted overwhelmingly against the Charlottetown Accord, and contributed to its crushing rejection in a national referendum in October 1992.

Canadians' rejection of the Charlottetown Accord spelled the end of not only Brian Mulroney but also his party. In an election the following year, the Liberals swept to power in an election badly divided along regional lines. The once proud Tories were demolished, reduced from 166 to only two MPs. The Manning-led Reformers, who won 51 of the 86 seats in the four Western provinces, destroyed their Western wing. Their Quebec wing was crushed by the separatist Bloq Quebecois, which, led by a former Mulroney cabinet minister (Lucien Bouchard) captured 54 of Quebec's 75 MPs and formed the new official Opposition.

The new Liberal Prime Minister, Jean Chretien, surveyed the wreckage of the Tory party and announced a moratorium on constitutional politics. There would be no more Meech Lakes or Charlottetowns on his watch. Nine years and two more majority

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9   The Pearson Accord met the 'Triple E' criteria but with a 'lower case e' with respect to effective. It stipulated an equal number of senators from each province (8), popularly elected using a system of single transferable vote. However, it would take the votes of 75 percent of the senators to veto legislation passed by the House of Commons, except for natural resource tax bills (50% plus 1) and bills affecting fields of shared federal-provincial jurisdiction such as agriculture (60%). Supply bills were only subject to a suspensive veto by the Senate, and a double majority of French and English senators would be required for bills affecting the French language. For agreeing to equality of representation in the Senate, Ontario would be compensated by a stricter application of the principle of 'rep by pop' in the House—adding as many as 10 MPs to Ontario's cohort. The choice of STV clearly followed the Australian model, but unlike Australia, senators would not be permitted to serve in the cabinet.

10   'Clark re-emerges in Senate row,' by Robert Mason Lee, *The Toronto Star*, August 22, 1992. The revised final version of Senate reform in the Charlottetown Accord would have reduced the number of senators to 62 from 82 (six per province plus one each for the two territories), and allowed the Quebec senators to be selected by the Quebec government rather than directly elected. The most significant departure from the Pearson Accord was that any deadlock between the Senate and the Commons would be resolved by a joint sitting, in which presumably the 337 MPs in the Commons could swamp the 62 senators. Triple E activists and the Reform Party both claimed that this arrangement destroyed the possibility of an 'effective' Senate.

governments later, Chretien has kept his word. This constitutional moratorium has proven to be a death-knell for Senate reform, at least for the time being.

In 1998, Preston Manning, now leader of the official opposition, and Ralph Klein, the Premier of Alberta, tried to pry open the constitutional door by organising a second Senate election in Alberta. The strategy was to elect two 'senators-in-waiting' and then prevail upon Prime Minister Chretien to show his respect for democracy by appointing them as Senate vacancies occurred amongst Alberta's six Senate seats. The precedent was the Waters appointment from 1990, and it was hoped that Alberta's anticipated success in electing its senators would lead other provinces hold their own Senate elections and then demand equal treatment from Ottawa. According to this scenario, once a sufficient number of elected-senators had been appointed to the Senate and proved their superiority over the patronage-senators, public support would build for a constitutional amendment to formalise and to complete the Senate reform process. The theory was to begin with incremental, non-constitutional reform and to defer any formal constitutional amendments until the practice had become familiar and popular.

Whatever the virtues of this theory, in practice it has not worked. While seven candidates—of which I was one—contested the two Reform Party nominations, the Liberals and the Tories despaired of winning either seat and refused to put forward candidates. In the province-wide election in October, the two Reform candidates, Bert Brown (333 000 votes) and myself (274 000 votes) easily outdistanced the two independent candidates (149 000 and 136 000 votes), who in fact were the third and fourth place finishers in the Reform Party's nomination elections. Faced with such a limited choice of candidates, somewhere between 16 and 30 percent of the voters (who voted in the civic elections held concurrently) protested by boycotting the Senate election.

The Chretien government have done all they could to undermine the Alberta Senate election. At the outset they declared that the Senate election was unauthorised and even unconstitutional. When an Alberta Senate vacancy unexpectedly occurred in the midst of the election, Mr. Chretien tried to snuff out renewed public interest by quickly filling it with an appointment. After the election, the Liberals seized upon the lower voter turn out to further stigmatise the process and to justify ignoring the results.

More recently, the Liberal line of attack has been that 'piece-meal' reform on the Alberta model is counterproductive, because it would risk entrenching the current unequal distribution of senators. Senate reform, say the Liberals, must be an all or nothing undertaking. Given their moratorium on constitutional issues, this means nothing. Even this line of argument is disingenuous, as Mr. Chretien was quick to make some unilateral constitutional concessions to Quebec following the Separatists'

near victory—less than one percent—in the 1995 Quebec Referendum.[11] The real reason behind Prime Minister Chretien's distaste for Senate reform is the same as Mulroney's a decade earlier: the fear of antagonising Quebec and rekindling separatist sentiment. As it has so often in the past, the national unity/Quebec separatist card has trumped other issues of national importance.

Since the election, there has been one Senate opening from Alberta, and Prime Minister Chretien ignored a public plea from the Premier of Alberta and appointed a popular jazz musician to the open seat. There is a second retirement due at the end of this year. There is no reason to think the Prime Minister's appointment will be any different—other than that a shortage of famous jazz musicians may force him to resort to a former ice hockey star—something he has done before.

Prospects for reform

What then is the prospect for Senate reform in Canada? I see three possibilities.

The first hinges on the fortunes of the Canadian Alliance, the successor party to the Reform Party. The Alliance was formed in 2000 in an effort to re-unite the Tories and the Reform and thus end the vote-splitting on the right that was guaranteeing Liberals re-election. Senate Reform remains a central plank in the Alliance policy book, although the equality principle was softened to make the Senate project more palatable to Ontario and Quebec, the two most populous provinces. The election of an Alliance majority government would kick-start the Senate reform process.

An Alliance breakthrough, however, does not seem imminent. In the 2000 election, only about half the Tory voters switched to the Alliance, thus continuing the vote-splitting that gave the Liberals over 40 plurality victories in Ontario alone. The Alliance has since been plagued by party infighting and defections over the issue of leadership. In March 2002 the Alliance chose a new leader, but it remains to be seen whether the Alliance (with or without the Tories) can recover to seriously challenge the Liberals in the next election.

An Alliance majority government could only be formed by carrying at least half of Ontario's 103 parliamentary seats. This means that the Alliance would have to successfully market Senate reform to the provincial electorate with the most to lose from a re-invigorated upper chamber. To sell Senate reform in Ontario, the CA will have to advertise the 'good government' dimension of an elected and effective Senate, rather than the 'House of the provinces' dimension. Here is the point at which the achievements of the Australian Senate, with its scrutiny of government bills and powers of investigation, would become especially relevant to the Canadian debate.

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[11] The Liberal Government passed a statute that purports to 'loan' the federal government's constitutional veto power to each of five designated 'regions'—Atlantic Canada, Quebec, Ontario, the Prairies and British Columbia. Under this 'law,' Ottawa will refuse its consent to any constitutional amendment that does not have the support of each province and region (majority of governments comprising the region). This was the Liberals' indirect way of 'restoring' Quebec's constitutional veto power, an eleventh hour promise made by Chretien to avoid defeat in the 1995 Quebec Referendum.

A second parallel with Australia comes into play here. In Australia, the ascendancy of your Senate has been greatly aided by the support of left-of-centre, non-economic interests such as the Greens and the Democrats. In Canada, the analogous coalition of interests is much less supportive of Senate reform, because they are achieving so many of their policy goals through litigation under the Charter of Rights. Just as the success of your Senate (to articulate minority concerns) is often used to make the case against the need for a bill of rights for Australia, so in Canada the Left's success under the Charter of Rights has dampened their interest in Senate reform.

A second possibility depends on the outcome of the next provincial election in Quebec. If the separatist Parti Quebecois is re-elected, then the prospects remain nil. The Separatists have zero interest in Senate reform or any other constitutional reforms. They want to leave Canada, not reform it. If the Quebec Liberal Party defeats the Separatists—and the polls indicate they should—the Liberal Party leader has already signalled that he intends to re-open the constitutional file with Ottawa. It was a previous Quebec Liberal Premier, Robert Bourassa, who negotiated the failed Meech and Charlottetown Accords, and the Quebec Liberal Party still regards those demands as unmet.

While the Prime Minister is able to ignore demands for constitutional reform from the West with relative impunity, the same is not true for Quebec. But Quebec's constitutional agenda cannot be dealt with bilaterally. The kinds of changes sought would require the consent of at least six other provinces. This of course opens the door for Western Premiers to re-introduce the Senate reform issue on a *quid pro quo* basis—just as Alberta did in 1989 in the midst of the Meech Lake process.

Whether a new generation of political leaders would be more successful than their predecessors at combining these diverse interests remains to be seen. Quebec and Alberta, otherwise the two most dissimilar provinces in Canada, share a dislike of Ottawa. Quebec's solution is to reduce the influence of Ottawa in Quebec. Alberta's solution is to increase the influence of Alberta in Ottawa—through a Triple E Senate. Squaring this circle is no easy task, although the leader of the Alliance Party, Stephen Harper, has in the past indicated his preference for Quebec-style 'policy fire-walls' to protect Alberta from predatory central government policies.

The third and final possibility rests with a more assertive approach by one or more Western premiers. As noted above, Ottawa cannot afford to ignore Quebec's constitutional initiatives because the perceived costs are too high—the threat of secession. No Western Canadian political leader has yet had the stomach—or the public support—for this kind of high stakes political poker. This could change, especially if the Canadian Alliance fails to make an electoral breakthrough in Ontario and becomes a dispirited regional rump party.

Conclusion

Let me conclude with an anecdote. On Tuesday, my wife and I took the public tour of Parliament House. When we were in the House of Representatives, our guide was giving a brief explanation of how laws are made. She explained that most bills are prepared and introduced by the Government. She then noted that the Government does not have much trouble getting its bills through the House of Representatives,

because it always has a guaranteed majority. Then she added, 'Fortunately, there is still the Senate ...' and went on to explain how the Government does not have an automatic majority and its bills are subject to much sharper scrutiny.

'Fortunately' indeed! I have benefited greatly from observing your Senate at work over the past month. The recent Senate committee investigations into the 'children overboard' affair and the Treasury's 'debt swapping' losses have re-confirmed my belief in the virtues of vigorous bicameralism. My enthusiasm comes not because I necessarily believe the Opposition's allegations against the Government—I realise there is plenty of partisan self-interest on both sides of these issues—but precisely because your Senate creates an effective forum for partisan challenge and reply.

The founders of the United States, Australia and yes, even Canada, saw the merit of bicameralism as a means of institutionalising good government by 'making ambition check ambition.'[12] They had no illusions about the effects of ambition amongst the political class, and nor should we. Again, in the words of James Madison:

> It may be a reflection of human nature that such devices should be necessary to control the abuses of government. But what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary.

Now as then, governments will misuse or abuse their powers, and then do all they can to hide their misdeeds from the voters. Unfortunately we in Canada have forgotten this insight and lost the advantages that flow from a vigorous bicameral parliament.

So what does Australia have that Western Canadians want? This month—after two weeks of minus-20 degree temperatures—most would be happy to have your sunshine. But weather aside, my stay in Canberra has only confirmed that what Western Canada—indeed all of Canada—needs is an Australian-style Senate. My Senate envy, rather than being cured, has only been inflamed.

Question — Do you mind me suggesting that what you're really admiring is not the Australian Senate, but multi-party politics? What you really dislike is majority government, and for that reason, the title of your talk—interesting though it was and interesting though your talk was—is basically wrong. That is, it is not our American-style Senate that you admire, it is our multi-party politics that you admire.

Ted Morton — I agree that the method of election—the single transferable vote in the Senate—is the key to creating the Senate as an effective check on the House of Representatives. I am quite familiar with Campbell Sharman's diagram that shows

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12   *Federalist* No. 51: 'by giving to those who administer each department the necessary constitutional means and personal motives to resist the encroachment of the others. The interests of the man must be connected with constitutional rights of the place.'

seats in the Senate and that, until 1949, the majority and minority graphs are far away from the middle. There are huge majorities for the winning side and almost nothing for the losing side. And then the minute you changed your electoral system, they converged in the middle and you end up with something other than majority government. So, I do agree with you. When I used the term 'wedding an American-style Senate to a parliamentary system', I did not mean that you had done exactly what the Americans did. But there is no question that the Canadian founders were extremely literate and well-informed about the US Constitution and the workings of the US system through Bryce's book, and that they were much more inspired by the role of the Senate than by anything in the House of Lords, which was unfortunately a sort of working model for the Canadian founders.

Question — You stated that your members are appointed for life. Are there incidences where they have been dismissed?

Ted Morton — Mandatory retirement at age 75 was introduced in 1960, so it is sort of like judges—appointment for life until mandatory retirement. I do not think there has actually ever been a senator removed. There have been several instances where senators resigned prior to what *would* have been their removal. In fact—this will sound familiar—just within the last 18 months there have been two senators who were convicted of abuse of office. In both cases the abuse was 'influence peddling', or selling their votes for money. They went through the whole appeals process and then ran out of appeals. They've done the crime and they're paying time, but they resigned rather than got thrown out.

There was one other incident that came to light in the 1990s, where a senator—while collecting his salary of $100 000 per year when you include benefits—was basically living full-time in Mexico at the beach. He had only shown up in the Senate chamber I think 11 times in the previous four years, which met the minimum requirement for picking up his cheque. So that is why I said that at times our Senate is a national embarrassment.

Question — I grew up in British Columbia, and I remember a time in the 1960s and early 1970s when the question was: 'What is the point of the Senate? It is a waste of time.' I know you have given the justification for reform of the Senate, but what is the argument for abolition of the Senate, because it just seems to be irrelevant? It is entirely different from the Australian Senate and there are a variety of reasons why it should be gone. It is just a House of Lords in disguise. British Columbia and Alberta—as with most Canadian provinces—have unicameral parliaments. If Alberta is so keen on a Senate, why didn't they re-introduce bicameral parliament? You talked about British Columbia and Alberta, which have two entirely different political cultures. I wondered if there is the same sort of support for Senate reform in British Columbia?

Ted Morton — British Columbia and Alberta are very different politically. British Columbia has just come off a decade-long run of governments formed by the New Democratic Party (NDP), which is the social democratic left-of-centre party. The NDP in Alberta typically gets one or two seats and less than 10 percent of the popular vote. So that alone shows the difference in political culture between the two. At the

federal level however, British Columbia went even more strongly for the Canadian Alliance Party in the last election than Alberta did. For the first time in four decades, a single political party—the Canadian Alliance Party, the successor party to reform—took over 50 percent of the popular votes out of British Columbia. So in terms of national politics and their reference towards Senate reform—which is a key issue there—I would say that in terms of public opinion British Columbia and Alberta share that objective.

I think there are two answers to your question about the reasons why Albertans and westerners don't have bicameralism, if they are so enthusiastic about it. One is that we're naturally cheap, and we don't want to pay for another house. I think most people in British Columbia and Alberta really don't like the politicians they have already, and the idea of having yet another house full of them—that they would have to pay and support—doesn't have any sort of immediate appeal. On a more serious level (but perhaps also facetious) is that all politicians are hypocrites, almost by definition. And while the leaders of the provincial parties, at least in Alberta, always talk about the virtues and merits of bicameralism and an elected Senate, they are not quite so enthusiastic about it at home in Alberta, because that, of course, would mean that they (particularly the Premier) would become less powerful. So they tend to think bicameralism and an elected Senate is a great idea for Ottawa, but they don't want to spend the money and they would just as soon let the Premier continue to be King of Alberta. Provincial premiers are not really like kings; they are more like princes. They really are the cock of the walk and king of the roost and all of that, so the appeal of Senate reform at home at the provincial level is not quite as strong.

Regarding abolition of the Senate, the NDP has Senate abolition as their policy at the national level. And if you ask the man or woman on the street: 'Do you want Senate reform?' you will get 60 to 80 percent support. If you ask: 'Do you want to abolish the Senate?' you will get about 50 to 60 percent support. Public opinion is sort of fluid. Everyone knows they don't like what they have, and if you prompt them with a question about abolition there will be support for that, and if you prompt them with a question about reform, a slightly higher percentage will buy into that.

The reason I prefer Senate reform over Senate abolition is in part because of what I have observed both in the workings of the US Congress and in the Australian Parliament—that effective bicameralism provides better government. And, again, I go back particularly to the powers of committees. The two small examples that I have witnessed in the past month here are the ability of the Senate to force the government ministers to testify, and to table documents. Governments don't like to do that, and it doesn't matter if they are governments to the left or to the right. Governments are going to have scandals and screw-ups and abuses, and they want to do everything they can to prevent the public, the voters, from learning of that. A vigorous bicameral system such as you have and such as the Americans have is a way of forcing the door open and letting the light of in on what government wants to keep private and secret for very self-interested reasons. I don't mean to criticise the Liberal Government here, I think this is inherent in all governments.

Question — As a fellow Canadian, it was nice to see our country explained so clearly. Lest you all leave here thinking that Alberta—as a result of its exclusion from

the centre of power—is in dire straits, it is probably the most successful province in Canada, notwithstanding the constraints on its representation. Its economy is far and away the strongest in the country and people generally live fairly good lives there. That is not an argument against Senate reform, but it has not been a total dead end for the people there.

Effective bicameralism might be a means to prevent the necessity for the use of the Charter of Rights. And I think you are right in saying that governments, while not necessarily victimising the people, are able to go forward with their agenda without any checks. Do you see the push for Senate reform militating against the Charter movement?

Ted Morton — The Charter of Rights really just means the court, because the High Court—or our Supreme Court—ends up being the institution that exercises the power created by a charter or a bill of rights.

One of the arguments against a bill of rights for Australia is that it is not needed because the Senate is already doing a great job of checking the Government. This is true particularly amongst the parties or the non-economic interests on the left—the environmentalists, feminists, gay rights movements, peace movements. These types of interests have done alright in the Senate. So maybe even the enthusiasm of the social left in Australia has been dampened by the fact that they are enjoying some success in having their interests articulated and even defended successfully in the Senate.

Unfortunately, in my view, the opposite has happened in Canada. Most of the enthusiasm for Senate reform comes from Senate right and further right interests. And what I call centre left and left interest (some of you may know the term 'post-materialist')—feminists, gay rights, environmental movement—have done so well under the Charter of Rights by bringing interest group litigation and winning cases under the Charter through the Supreme Court that they have basically lost interest in the Senate reform project. Understandably so. Why would they want a Senate when they are doing pretty well in terms of policy change through litigation under the Charter in the Supreme Court? So the reverse dynamics seem to have occurred in Canada and the US.

Question — I've watched with a degree of amazement the Canadian political system vote out a party from 167 seats to two. That was unprecedented in my reading of political literature in modern times. Was the factor that caused the demise of that party constitutional reform, or was it the fact that they implemented a GST and that it was done very poorly? My understanding of the facts was that the government introduced GST, and broke the nexus between offering income tax cuts and bringing in the GST at the same time. They brought in the income taxes in advance, and people got used to them and quite resented it. They didn't abolish provincial taxes. People really resented that and it was considered a botched policy.

In Australia there was a degree of interest and alarm when that happened because we had a government trying to bring in tax reform. It seemed to me that that was the overwhelming factor that destroyed the government, not constitutional reform.

Ted Morton — You are absolutely right, the GST was brought in by the Mulroney government in its second mandate in the late 1980s. In that first Senate election in Alberta in 1989, the mantra of Stan Waters' (the general who won and was appointed) campaign was 'Axe the Tax'. The Atlanta Braves' fans are quite obnoxious and at Braves games they have a tomahawk in their hands—and at the 'Axe the Tax' rallies in the 1989 Alberta Senate election everybody was imitating the Braves fans with their tomahawks. So the GST was a political landmine for the Tories and no doubt contributed significantly to their destruction in the 1993 election.

But I would venture to say that it is at best equal to, not greater than, the extreme dismay and even disgust at these two huge exercises, first Meech Lake then Charlottetown, which just preoccupied everything that happened in national politics for almost twelve months. Huge amounts of money were spent. However, of even more concern than the money was the amount of time taken and the preoccupation with the agenda, with absolutely nothing coming out of it. Most importantly—and again, this is a Canadian idiosyncrasy—the Mulroney coalition was anchored in two provinces, Quebec and Alberta. And after the failure of Meech and Charlottetown Quebec split off into the separatist camp, and in fact the leader of the Separatist party when it went national was a former cabinet minister of Mulroney's, Mr Bouchard. So it was actually a Tory cabinet minister that led the breakaway in Quebec and took 56 of the 75 seats there, and then in the west, Manning and the reformers swept out. In Alberta, for example, all 26 seats in both Mulroney elections went to the Tories and in 1993, the Reform, I think, took 22 of those 26 seats.

Question — The then-Opposition promised that if they were elected they would abolish the GST—which, of course, they didn't. But when you came to vote in that election you had one party saying they'd abolish it and one saying they would keep it. But in terms of constitutional reform I didn't think that it was necessarily such a clear division on what to vote on.

Ted Morton — I think there would be regional differences again. Perhaps in Ontario the constitutional issues were less important. In Quebec, however, they were very important. In electoral politics and in the media, everything gets simplified and becomes kind of like a comic strip. Symbolically, the defeat of Charlottetown was seen and portrayed in the Quebec media as English Canada basically spitting on them—in fact, there was an incident where some English rights group burnt a Quebec flag, and the video footage of them burning the Quebec *fleur-de-lis* was shown again and again on Quebec television during this period.

Again, in the west, there was a lot of disgust and anger about the GST, but there was an equal amount of concern about the constitutional issue. Not only had it failed, but, if you look at all these policies that are either targeted at the west or have a disparate impact on the west, there was a growing despair that it just couldn't be changed by winning government because, in fact, the west had been part of the Mulroney coalition. The Mulroney coalition that governed from 1984 to 1993 had lots of western MPs and in the end, westerners though that it didn't make any difference whether government was the liberals or the conservatives—they were always going to play second fiddle to Quebec. I'm not saying that was right or wrong, just that that was the sentiment that fuelled this huge and continuing abandonment of the federal

Tories—they had already abandoned federal liberals in support for this reform and now the Canadian Alliance Party in the west.

Question — In describing the method of electing this new Senate that you are postulating, you referred from time to time to the 'single transferable vote'. Is that correct, or are you advocating a proportional representation system comparable to what Australia has had since 1949? And does that include electing the Senate in two different batches so that it is a continuing house? Would you have a provision for a double dissolution similar to Australia? Have you studied whether, given the pattern of voting across Canada, if you were to adopt our system of constituting the Senate, you would in fact end up with a Senate like Australia? And, on your way home, are you going to New Zealand to tell them about your views on the Australian Parliament and suggest that they perhaps took the wrong course when they reformed their House of Representatives?

Ted Morton — I'll beg off completely on the New Zealand question.

On the electoral system itself, my understanding is that the Australian Senate is elected on a single transferable vote basis, which is a form of proportional representation—although there are, of course, many forms.

I don't have any strong views on double dissolution. I suppose you need a tiebreaker if there is a deadlock, but I haven't given that serious thought.

The model that was proposed initially in July 1982 was for eight senators from each province, and it was to be on a rotating basis of four and four, similar to here, and using the system of single transferable vote. If that system were applied, would Canadian society then produce some splinter or minor parties of the left and the right? I have no doubt that they would. Certainly the Green movement in Canada, particularly in British Columbia, is very strong. Heck, the Marijuana Party in BC is pretty strong. They got three percent of the vote in the last provincial election. Like I said, British Columbia is very different from Alberta.

Again, on the right, from the Rocky Mountains right to the Canadian shield (which is basically the Ontario border) is all grain farming, just hundreds and hundreds of miles of grain. The farmers there can't stand the Liberals, and they became disillusioned with the Tories. But I know the Reform caucus, and there's discontent there that we're not strong enough on farm issues either. So I could very easily see something like your National Party having seats in a reformed Senate. I think there is the diversity of interest in Canada that would give rise to some minor parties that could successfully compete in an Australian-style Senate.

Question — You might get an elected Senate, but at the same time you might not get a Senate that you would like. You might have a situation similar to the one we have in Australia where Tasmania has the same representation as New South Wales, or as in the United States, where Rhode Island has the same representation as California. What are you going to do to ensure that you don't have anomalies like that? And what are you going to do to ensure you won't get gridlock between the Senate and the House of Representatives, which gives rise to situations such as we have at present in

Australia, where the Senate can frustrate the elected power in the House of Representatives?

Ted Morton — I think I've made it clear that I think it's great that there's a second chamber that does frustrate and put pressure on the government that controls the other house. I know that during the last series of Labor governments, there was a great deal of unhappiness with and attacks on the Senate, but based on what I've observed in the four weeks I've been here, Labor is pretty happy in the Senate right now. I think enthusiasm for the Senate seems to ebb and flow, depending upon the situation in the other house.