

The 1998

SENATE VOTE

MONDAY OCTOBER 19



Alberta's Road to Senate Reform

WHY A SENATE, WHY SENATE REFORM, AND WHY A SENATE ELECTION?

INTRODUCTION

For over 25 years, Canada West Foundation has played an active role in identifying how Canada's system of governance can be improved for the benefit of *all* Canadians. For many, the key to any such improvement is a renewal of Canada's governing institutions and political practices – such as limiting strict party discipline in the House of Commons, broader review of appointments to the Supreme Court and Bank of Canada, and increased proportionality in the electoral system. While changes to these institutions and practices are both desirable and necessary, recent developments show that the Canadian Senate remains the official poster child of institutional reform. Shoddy Senatorial attendance, quickly and quietly approved pay raises, numerous patronage appointments, and serious allegations and confirmation of wrongdoing have mixed up a powerful cocktail of reasons for Senate reform.

Canadians from coast to coast have responded to 1998's sorry Senate saga in numerous ways: some have suggested administrative tinkering to penalize truant Senators; some have clamoured for the Senate to be abolished; others have renewed their call for comprehensive reform. But most Canadians have simply resorted to wringing their hands and resigning themselves to righteous indignation, because they see no alternative to the status quo. But there is an alternative to get the ball rolling on Senate reform, and Albertans will soon have opportunity to put it into effect. In June of 1998, the Alberta government dropped the writ for Alberta's second Senatorial election. Because there is no vacancy in the Senate for Alberta right now, the plan is to elect two special "stand-by" Senators who will be available for appointment when a seat opens in the future.

But how can two "stand-by" Senators contribute to Senate reform? Why is Senate reform even necessary? For that matter, why does Canada even need a Senate? Since a key mandate of the Canada West Foundation is to act as a catalyst for informed debate on issues of public policy, the Foundation has produced this informative research report to help answer these questions. In this report, the Foundation explores the origins of the Canadian Senate. The report goes on to explore the concept of federalism, why Canada needs a Senate, why it is in desperate need of reform, and how the upcoming election fits with this larger goal.

Canada West Foundation is a non-profit and non-partisan research institute located in Calgary, Alberta. This document is the second in a series of reports released by the Foundation for Alberta's upcoming Senate election. The purpose of this series is to inform Albertans and other Canadians about the Senate, its need for reform, and how electing Senators at the provincial level can advance Senate reform. This report was written by Canada West Research Associate Dr. Peter McCormick and CWF Research Analyst Casey Vander Ploeg. Because of the independence given the authors in writing this report, the opinions and recommendations expressed within are those of the authors only, and do not necessarily reflect the opinions of the Canada West Foundation Council, its members, or donors. Permission is hereby given by the copyright owners for any and all reproduction of this report in its entirety for non-profit and educational purposes.

CANADA WEST FOUNDATION

#550, 630 - 3rd Avenue S.W.

Calgary, AB

T2P 4L4

TEL: (403) 264-9535

FAX: (403) 269-4776

WEB SITE: www.cwf.ca

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WHY REFORM THE CANADIAN SENATE?

This is, to put it mildly, not the catchiest of questions and it does leave a great deal to be desired as an opening conversation gambit. For one thing, Canadians have been talking about the Senate for a long time. Not only was it a key discussion point at Confederation, the Senate has taken up a lot of discussion ever since. What has all the talk accomplished? The only thing we have to show is that Senators now serve until age 75 and not for life as stipulated by the original 1867 Constitution. Obviously, this glacier is not moving very fast.

Secondly, the Prime Minister and his government are clearly reluctant to talk about the idea of reforming the Senate and any constitutional change at all. Perhaps the time, the energy, and the arguments for a renewed Senate are better deployed elsewhere where the chances of success are better.

Thirdly, this is not a time when politicians are particularly popular or when Canadians' expectations from government action or government policy are very high. Many Canadians would cheerfully agree that the only good number of politicians is a smaller number than we have now! Since abolishing the Senate would put at least 100 politicians out of business, this option is gaining popularity in some circles.

Thirdly, the question of "why reform the Senate?" begs another very important question. It assumes that we have some idea about *why* we have a Senate in the first place, and why we need to reform it, preserve it, or abolish it. An awareness of what a well-conceived Senate *could* do is an important part of deciding what our Senate *should* do. Before we get started, we need to answer some basic questions.

SENATES: WHERE DID THEY COME FROM?

This question is deceptively simple, but it is one that not many of us can easily answer. *Indeed, where did Senates come from?* Senates go back a long time in history. Ancient Rome provides us with one of the earliest examples of a "Senate" and Canada's modern Senate has roots that go back to the history and development of parliamentary democracy itself.¹

Throughout most of the western democratic world, the notion of democracy is most visible and finds its deepest expression through those institutions and governmental assemblies comprised of elected officials. These popularly elected institutions – whether they are called "parliaments", "legislatures" or "congresses" are an essential institutional feature of modern democracy. But such governmental assemblies did not suddenly arrive on the scene of history. Rather, they emerged from a protracted democratic revolution that started as early as the 17th century, and progressed slowly throughout the 18th, 19th, and 20th centuries. This long and oftentimes violent struggle started with the idea that monarchical rule – authority and sovereignty vested in a single King or Queen – needed to be balanced with some form of "rule by the people." This struggle for democracy is arguably not complete, but it has relegated the traditional monarch to a ceremonial position and shifted the locus of governmental sovereignty to directly elected institutions which are *representative of* and *accountable to* the people who elect them.

Most democratic countries today employ one of two types of "parliaments" or "congresses" – either *unicameral* or *bicameral*. A unicameral "parliament" is comprised of a single set of members sitting together in one "chamber" and making governmental decisions as one body. Jurisdictions that are unicameral include New Zealand, Denmark, Israel, and all Canadian provincial legislatures. Bicameral parliaments are split into two different sets of members, each sitting as a separate body or "chamber" and each with different roles, responsibilities, and bases of representation. Many democratic countries today are bicameral. Examples include the Canadian federal parliament with its *House of Commons* and *Senate*, the Swiss parliament with its *National Council* and *Council of States*, and the *House of Representatives* and *Senate* in both Australia and the United States.

But, where did this notion of bicameralism come from? Isn't one group of elected officials enough to carry out government business? Why is it that some countries have only one group of officials and others need two? To some degree, bicameralism and Senates are a "hangover" from the struggle for democracy that took place many centuries ago. Kings and Queens could not survive based on a simple, despotic, and arbitrary exercise of their authority – they needed the political support of others to legitimize their right to govern. This role fell to a relatively small number

1. Information in this section was derived from a discussion of second chambers found in the *Blackwell Encyclopedia of Political Science*; Bogdanor, Vernon, ed.; Blackwell Publishers, 108 Cowley Road, Oxford, United Kingdom; 1991.

of nobles, aristocrats, and land owners who were “plugged” into the monarchical form of government, who “attended court”, who had the ear of the ruling King or Queen, and who governed smaller portions of the country themselves.

When popularly elected parliaments emerged on the scene, they not only challenged the authority of monarchs, they also threatened the influence of those who carried favour within the royal court. Expanding democracy meant that monarchs would become increasingly isolated and irrelevant, but only if the powerful minority interests of wealth could be convinced to support and legitimize a new governing institution instead of the authority of the ruling King or Queen.

Bicameralism provided a way to preserve aristocratic interests. By creating a separate, second “chamber” (sometimes called an upper house and a precursor to our modern Senate) these minority interests could still affect government by influencing laws coming from the more democratic chamber (or lower house). A good example of this history on bicameralism can be found by looking at Britain. The first chamber in the British Parliament is called the *House of Commons*. This part of parliament represents the “common” people and is elected by the “common” people. Britain’s second chamber still carries the name of its unique history – the *House of Lords*.

As democracy flourished, it became more and more difficult to justify a special type of representation based on the minority interests of aristocracy and wealth. This did not, however, spell the end of bicameralism and second chambers. Rather, bicameralism evolved to serve a different role. Today’s Senates are a primary mechanism of one of the great developments in the history of modern democracy—*federalism*.

CANADA: A FEDERAL COUNTRY

Canada was created as a federal country. As such, Canada has two *constitutionally* recognized and autonomous orders of government – a federal or national government and a number of provincial governments. Federalism is a political system for communities that want to have it both ways – with national majorities deciding some matters and regional, provincial, or more local majorities having their own way on other matters. *In short, federalism means that political sovereignty and authority are not solely vested within one government or parliament, but rather, are shared by two different and autonomous spheres of government.*

BUT WHY FEDERALISM?

There are *two* important reasons for choosing federalism as a way of organizing national political life. These two reasons are not insignificant. They are of such serious concern that accommodating them is more important than avoiding the significant pitfalls that federalism presents. While a unitary system has only one government, federalism implies numerous governments, leading to duplication, higher costs of government administration, and unavoidable frictions between the two orders of government. So, why federalism?

1. CULTURAL AND ECONOMIC DIVERSITY

Much has been said about Canada’s diversity. Our *cultural* diversity grows from the fact that people from many different countries now make their homes in Canada. But the mix of these different peoples varies very much from one part of the country to another. The examples are obvious – from the French-speaking majority in Quebec to the Eastern Europeans on the prairies, to the Asian-Canadians on the west coast. In addition, Canada is also *economically* diverse. Different parts of the country tend to earn their living in different ways and seek their way in different markets – from the industrial heartland of the centre, to the energy and agriculture of the prairies, to the coal and lumber of the west coast, and the fisheries of the east coast.

Both types of diversity lead to the same pressing question: How can such a diverse group of people come together as a single nation with singular policies on all issues? The answer is federalism. While Canadians can unite on a single national policy on many issues, there are many other matters for which the uniqueness of smaller provincial communities is needed to shape the laws and direct the policies. Federalism allows for this.

2. UNEQUAL POPULATIONS

The second reason for federalism is that the population of Canada is distributed unequally across the various provinces. On the surface, this may not seem like an important consideration, but as any Maritimer or Western Canadian will attest, their definition of “majority rule” in Canada means that whenever the voters of Ontario and Quebec get together on something, they usually have their way. If a majority in Ontario and Quebec decide to vote for Party A, that party is sure to form the government in Ottawa. This will occur even though no one in the rest of the country votes for Party A. It’s a simple equation of mathematics. Federalism allows both smaller and larger provinces to opt out of the larger national government and decide some issues and priorities on their own.

FEDERALISM: IS IT REALLY NECESSARY?

If *diversity* and population *inequities* are the two primary considerations that tip the balance in favour of federalism over a unitary system, it is important to determine the degree to which each exists before one can argue conclusively that federalism is absolutely necessary. In other words, how badly does Canada need federalism? The diversity speaks for itself – most Canadians know that Canada is culturally and economically diverse. Multiculturalism is a defining feature of Canada. We have two official languages. Economically, no one province looks much like the others. But what about population inequities?

Figure 1 shows graphically the population distribution among the ten provinces in Canada. Most Canadians – in fact almost two-thirds of Canadians – live in the two provinces of Ontario and Quebec. This is underscored even further by the fact that almost 40% of Canadians live in one province (Ontario) alone. Only 38% of Canadians live in the remaining eight provinces.

Without federalism, without a division of powers between two levels of government, and without a bicameral federal parliament, Ontario and Quebec would certainly “rule the roost.” Canada would be a creature of Canadians living in Ontario and Quebec only, with those in Ontario being the senior partner, and those in Quebec the junior partner.

But even more telling is the fact that Canada has the most unequal population distribution of any federal country anywhere in the world.

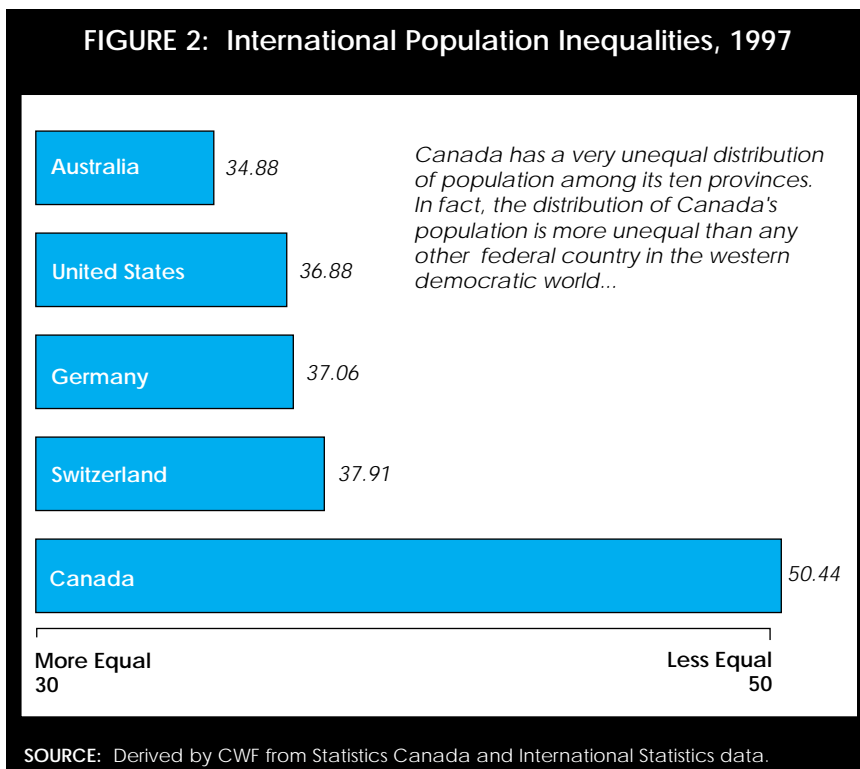
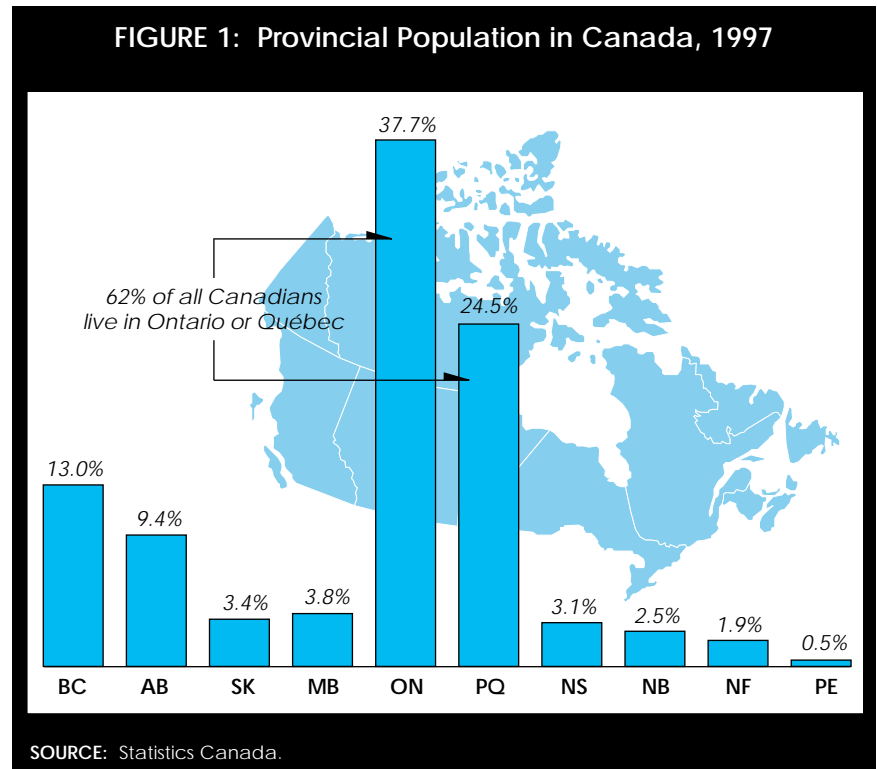
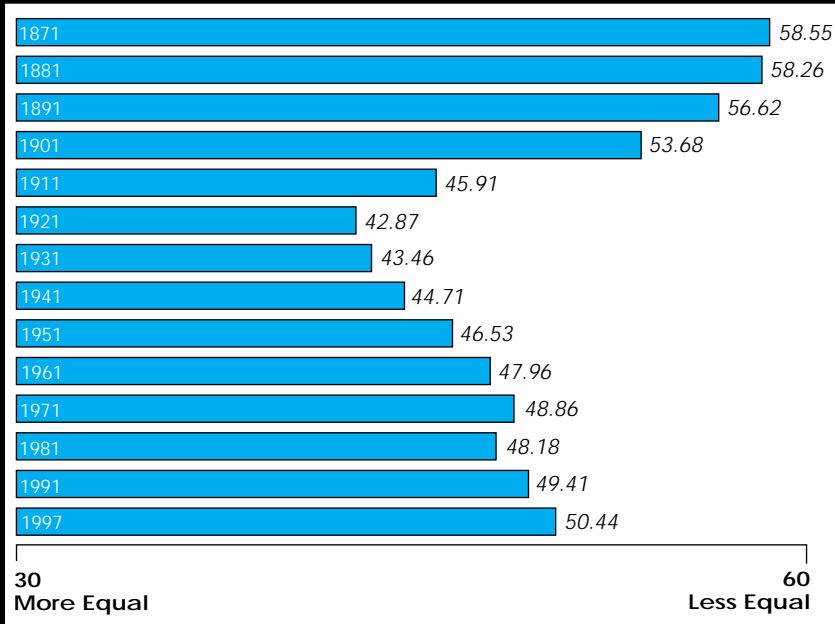


Figure 2 compares population inequalities across different federal countries by using an index from zero to one hundred. (The index is based on a calculation of average deviation.) A score of zero means the population is perfectly distributed (each province or state within the country has an equal number of citizens). On the other end of the scale, a score of 100 means the population is perfectly unequal (one state or province contains all of the country’s citizens).

The central theme of *Figure 2* is that Canada boasts the unique privilege of having a larger percentage of its total population living in a smaller percentage of its provincial units than any other comparable federal country. In other words, Canada’s distribution of population is very unequal – perhaps the most unequal of any federal country in the world. In short, if there is any one country that needs a well functioning federalism, that country is Canada.

FIGURE 3: Population Inequalities in Canada, 1997



SOURCE: Derived by CWF from Statistics Canada data.

A prevailing sentiment in some quarters of Canada is that our population inequities are slowly evening out, particularly with the recent population shifts to Western Canada. But the myths about growth in the West notwithstanding, Canada’s population remains highly centralized (*Figure 3*). In 1871, Canada’s population inequality index stood at about 59. With a score of 50 in 1997, not much has changed since Confederation.

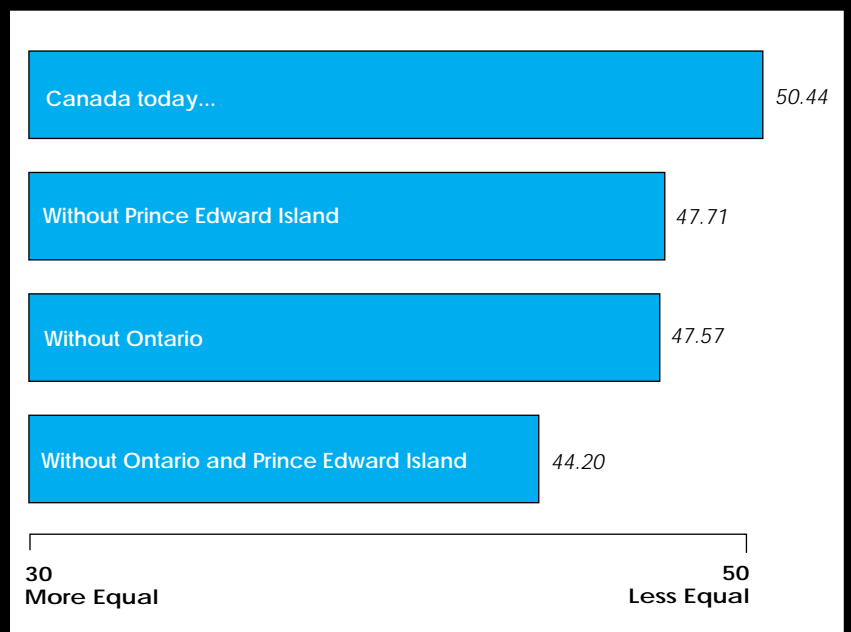
The only period of significant improvement occurred during the time when the West was being rapidly settled – from about 1900 to 1920. But the impact of settlement in the West only served to even out the inequalities in the short term. Since then, population inequality has been on an upward track. While Canada has not always had such an unequal distribution of population among its provinces, at no point have the inequalities approached a level closer to that of other federal countries.

While it is important to appreciate the *large* population inequalities in Canada, it is even more important to appreciate the singular fact that Canada’s population inequality is also *pervasive*. Some Canadians believe that our population inequality is the direct product of combining one extremely large province of 11 million people (Ontario) with one really small province of about 134,000 people (Prince Edward Island). In fact, this is not the case. *Figure 4* performs a series of “thought experiments” with the Canadian population. What happens when we make Prince Edward Island disappear? What if we make Ontario disappear? What if we take them both out of the equation? Do Canada’s population inequalities disappear also?

What we find is that mathematically speaking, none of these various scenarios make much difference at all. Even if the two population extremes of Ontario and Prince Edward Island are removed, Canada still has the most unequal population distribution of any federal country.

In short, federalism is critical for Canada. First, it is the means by which cultural and economic diversity can be managed within the framework of unity. Without federalism, the centrifugal forces of regional cultural diversity and naked economic self interest would overcome the centripetal forces of any sense of common purpose. Second, federalism provides the mechanism which compensates for unequal population distributions. It prevents one or two large provinces from dominating government in the country by allowing regional minorities to conduct some of their own affairs.

FIGURE 4: Population Inequalities in Canada, 1997



SOURCE: Derived by CWF from Statistics Canada data.

THE TWO INSTRUMENTS OF FEDERALISM

To achieve its objectives, federalism typically employs two separate and distinct mechanisms. The first and central device is the *division of powers* – the practice of creating to distinct orders of government, and then assigning specific powers to each.

1. THE DIVISION OF POWERS

Canada's Constitution assigns a list of powers to the national government, and on these matters there will be a single set of policies for the entire country directed by a national majority. The Constitution also assigns specific powers to provincial governments, and on these matters there will be different sets of policies directed by majorities within the various provincial communities. For example, the *national* government in Ottawa deals with foreign relations, defence, and telecommunications, while the *provinces* deal with more local matters such as education, health care, roads, and VLTs.

The division of powers maintains federalism by allowing smaller communities to survive and thrive within a larger society dominated by other, larger communities. The division of powers lets local majorities that do not coincide with national majorities have their way on important matters of concern to them.

If the lines between the two orders of government are drawn adroitly enough, a great deal of political conflict can be avoided. In Canada, the great historical example is education. At the time of Confederation, the greatest conciliators and negotiators in history would have been hard-pressed to come up with a *national* system of education that would have satisfied both the Catholic francophones and the Protestant anglophones. The solution then, was to assign education to *provincial* authority, allowing the Catholic francophones to set up a system that suited them in Quebec, and Protestant anglophones to decide on the educational systems of the other provinces. Both communities could have their way within their own territories, and neither needed to impose their way on the other. Not all actual or potential political problems can be resolved in this fashion, but the “two-government” device certainly offers the chance for a satisfactory resolution.

While the division of responsibilities between the two levels of government lies at the core of federalism, it is not enough to strike the complete balance needed between national community and provincial communities. It is

debatable whether or not the “division of powers” ever was enough. It is also debatable whether the division of powers at one time could carry the entire weight of federalism, but can no longer do so in the modern age of “positive government.” Either way, something more is needed.

First, the straight lines of jurisdictional allocations fit poorly with the lumpiness of “real life.” If the federal government has jurisdiction over interest rates, and the provincial government has jurisdiction over municipal governments, which one can regulate municipal bond rates? If Ottawa has jurisdiction over trade and commerce, and the Government of Alberta has jurisdiction over property rights, which government legislates with regard to a normal commercial transaction involving property? If Ottawa has jurisdiction over fisheries and Victoria over the forests, what happens when the work of lumbering inevitably impacts the streams where the fish are found? Obviously, the division of powers alone in today's complex world cannot carry the burden of what federalism is supposed to achieve.

Second, some issues today are of such great importance and come in such interlocked lumps that they simply overwhelm the division of powers. We can think of them as “list-busters.” An obvious example today is the environment. In federal hands, control over environmental policy could very well pre-empt provincial control over the development of its natural resources, over much of its local business regulation, over its transportation systems, over its local property zoning, and even urban development. And, it can even impact municipal government policy dealing with such niceties as sewers and garbage collection. Another example is culture. In provincial hands, control over culture could very well pre-empt national control over radio and television broadcasting, official bilingualism, and even “intellectual” property rights.

Third, the lines dividing national government powers from provincial government powers are drawn by the Constitution and interpreted and enforced by the courts, particularly the Supreme Court. But the Supreme Court was not itself established by the Constitution – it was created by ordinary federal legislation, without provincial input. It was also created in such a way that Supreme Court judges are appointed unilaterally by the federal government, again without any provincial input. For decades, the trend in Supreme Court interpretation has been gradually to expand the scope of national government powers, a trend that shows no signs of reversing itself. With such a one-sided referee of jurisdictional disputes, the division of powers alone is not enough to maintain a properly functioning federalism.

Fourth, even if the lines could be clearly drawn and neutrally enforced, it would still be the case that national government action in its own legitimate policy areas often impacts heavily on the provinces, and sometimes more so on some provinces than others. For example, national management of the fisheries has led to a tremendous amount of conflict over the state of the Newfoundland economy and the BC salmon fishery. Albertans still smart whenever the words “National Energy Program” are uttered, and today they worry about a national environmentally-directed “carbon tax.” In addition, the Constitution also permits the national government to stretch the dividing lines of the division of powers by disallowing constitutionally valid provincial legislation, and using devices such as the “spending power” to take action in areas of provincial jurisdiction.

Obviously, the division of powers alone is insufficient to maintain federalism today. As a result, most federal systems also have a second line of defence for smaller provinces – that is to say – a Senate.

2. THE ROLE OF A SENATE

In federal states, the lower house (whether it is called the House of Commons as in Canada, or the House of Representatives as in Australia and the United States) is based on “representation by population” which necessarily means that very large provinces like Ontario and Quebec elect many more members than smaller provinces like Saskatchewan and New Brunswick. In this chamber then, the national majority will prevail. In this chamber, the national majority will support governments and pass legislation that reflects its vision of the country.

For 119 years of Canada’s 131 year history, the Prime Minister has come from either Ontario or Quebec. Is this an accident? Is this a weird twist? Is it mere coincidence? No. The overwhelming size of Ontario and Quebec means that their aspirations will necessarily dominate in the House of Commons, and rightly so. Albertans do not need to be reminded how often this has meant that most or even all of their Members of Parliament sit on the opposition benches rather than within the government caucus and cabinet. But majority rule is an important component of what democracy is all about, and this is what it looks like in practice.

But a federal country like Canada is more than just Ontario and Quebec, and this where the Senate has a critical role to play. Whether the upper house is called a Senate, a House of Provinces, or a Council of States, this is the body that injects the federal principle into the national parliament.

If the House of Commons is the body where democracy resides, then the Senate is the body in which federalism resides. In the House of Commons, Canadians are represented equally based on population – one person, one vote. In the Senate, Canadians are represented based on where they live. In other words, Senates are designed to deliberately over-represent citizens living in smaller provinces. This is done either by giving every province the same number of representatives (as in Australia and the United States) or by a “sliding scale” that favours smaller units (as in Germany). This federal arrangement balances the dominance of larger provinces in the lower house with the interests of regional minorities living elsewhere.

Senates help maintain federalism by ensuring that all national policies are subjected to a double-majority – that policies are agreeable to a majority of citizens in the country (which could mean only Ontario and Quebec) and a majority of citizens in a majority of the provinces. This ensures that “national” policies are truly “national” because they have support across the country, including the local interests who find themselves in a perpetual minority. A properly functioning Senate ensures that a numerical majority dominating the lower chamber cannot simply push ahead with policies that lack support elsewhere in the country. If it does, it will find itself in difficulties with the Senate.

There is an obvious objection to this arrangement, which frequently reverberates quite loudly in the whole Senate reform debate. Strictly speaking, it does not seem very “democratic” for the representatives of smaller provinces to be able to “gang up” on the representatives of the larger provinces and block the will of the majority and their policies. But several considerations blunt the force of this objection.

First, while over-representation of provincial interests might not be strictly “*democratic*” it is very “*federal*.” Canada’s system of government claims to be both federal and democratic, so the over-representation of smaller provinces is not at all undemocratic – it is simply federal.

Second, the presence of a House of Commons and a Senate does not necessarily imply that both are equal in power and strength. In fact, the lower chamber tends to be the stronger of the two. In a parliamentary system like Canada’s, the government rests on maintaining the confidence of the House of Commons and not the Senate. The democratic Commons does have precedence over the federal Senate.

Third, and most important, it is misleading to think

about politics in terms of the dramatic headline-grabbing moments of confrontation and deadlock. The point of politics is much more the everyday give-and-take of compromise and bargaining, where nobody gets everything and everybody gets something – how much depending on a variety of factors. A federally-representative Senate can often give the smaller provinces some of the bargaining chips that they lack in a strict “rep by pop” lower House. The point is not, of course, to give them a casual veto over national policy, but rather to give them at least a fighting chance to ensure that “national” policy is something more than the imposition of a narrowly-based majority.

For these reasons, federal systems typically have a bicameral national legislature that includes some type of Senate. Senates, along with the division of powers, uphold the principle of federalism. The twin action of these two mechanisms allows smaller states or provinces the capacity to decide some matters for themselves, and they also provide a federal balance to the majoritarian democracy of a strict “rep by pop” parliament. This is an important part of striking that critical, practical, and flexible balance between national majorities and provincial majorities. It is the essential federal compromise between national forces and local forces.

THE STATE OF FEDERALISM IN CANADA

If Sir John A. Macdonald were to visit Canada in the 1990s, he might have some serious concerns about what 130 years have done to the federal-provincial division of powers, but he would probably feel at ease with the institutions and processes of the national parliament – they remain some of the most centralized in the western world.

This observation flies in the face of federal politicians who constantly tell Canadians that their country is already the most decentralized federal system in the world, and more decentralization (i.e., a reformed Senate) would cause the country to crumble into its constituent parts. This is a half truth. The reality is that Canada’s political practices and national institutions are highly centralized. In fact, they are so one-dimensional in nature that it is a misleading courtesy to use the term “federal” to describe Canada. Objective assessment shows that Canada has not a federal system of government, but a pseudo-federal one.

1) If we look at the division of powers, we see that Ottawa has indeed assumed much control over many provincial activities within areas of clear provincial responsibility through things like the federal spending power. While measures like the provincial share of total public employees,

or the provincial share of total government expenditure might seem to indicate that Canada is highly decentralized and quite federal, the other side of the coin is how easily Ottawa could punish Alberta for imposing facility fees for some medical treatments and British Columbia for imposing a three-month waiting period for social assistance.

2) Canada’s national political institutions also show us a Canada that is far and away a very centralized federation. Today’s Senate is virtually impotent because of its appointed nature and its subsequent lack of democratic legitimacy. The only real power in Ottawa resides with the House of Commons. Compounding this highly centralized structure is the power exercised by the Prime Minister himself. For all intents and purposes, he appoints the cabinet, he appoints the Supreme Court, he appoints the Governors of the Bank of Canada, *and* he appoints the Senate.

The paradox formed by the juxtaposition of this centralization-decentralization debate lies at the heart of many of the political problems and frustrations that Canadians have been wrestling with for more than three decades. In other words, federalism in Canada is in trouble, both with regards to the division of powers and national institutions like the Senate. And, the problem is aggravated by the increasing concentration of power in the hands of the Prime Minister.

SENATE REFORM: PART OF THE ANSWER?

Canada has one of the the most concentrated and unequal populations of any federal country in the world. Canada also has significant regional, cultural, and economic diversities. Canada also has a very active national government, one that has grown more active with time, and which is led under the strong executive authority of the Prime Minister. In a nutshell, this is the argument for Senate reform. In a federal country, it is just not enough to represent citizens in the national policy process on the basis of population. Citizens must also be represented in that national decision-making process based on the province in which they reside. An effective national Senate is one way of accomplishing this.

PROBLEMS WITH THE SENATE

Certainly, the Senate has been much in the news lately, first because of the controversy over shoddy attendance and the criminal conviction of one of its members, but also because of controversy over pay raises and million dollar tunnels. These passing embarrassments aside, there are four *major* structural problems with the existing Canadian Senate:

1) *The allocation of seats in the Senate fails to reflect the*

federal principle: Senate representation today is based upon equal representation for “Senate regions,” of which there are four – Ontario, Quebec, the Maritime provinces and the Western provinces. Each of these “regions” has 24 seats, with the Western seats being divided equally between the four Western provinces, and the Maritime seats being divided unequally – ten each for New Brunswick and Nova Scotia, and four for Prince Edward Island. Over and above these 96 seats, Newfoundland has six Senators, and the two territories have one each (*Figure 5*).

The current allocation of seats in the Senate makes no sense at all. With the current formula, provinces like Ontario and Quebec are “regions” yet other provinces must combine to form their own “regions.” This has created two different classes of provinces as far as the Senate is concerned. As bad as that sounds, it also means that almost half of Canada’s Senators come from the very same provinces who dominate the House of Commons. This defeats the very purpose of our Senate – it cannot provide effective regional balance because it simply echoes the inequalities of the Commons. This misallocation of Senate seats also leads to some very strange situations where provinces like British Columbia (Canada’s third largest province) has fewer Senators than provinces like New Brunswick (Canada’s third smallest province).

In short, Canadians are not being represented properly

in the national parliament. With regards to the “democratic” chamber (the House of Commons) some citizens like those in British Columbia, Alberta, and Ontario do not have enough representatives. Indeed, Ontario should have ten more seats (almost 10% more) in the Commons based on strict representation by population. Most important, federal representation in the Senate is virtually non-existent, as the two largest provinces have almost as many Senators as the other eight provinces combined.

2) Senators are also appointed for very long terms, rather than elected for short terms that guarantee accountability: Because Senators are appointed until age 75 and they never have to face the sanction of re-election, they also do not need to answer to the people of the province they “represent.” In fact, it is only recently that the Senate even decided to keep track of whether some of its members even show up for the Parliamentary sessions. To be fair, many Senators do take their responsibilities seriously, and they do work very hard. This is highly commendable given the fact that the current Senate is such a perfect invitation to irresponsibility and inactivity.

3) Appointments to the Senate are made by the Prime Minister – by the very government that the Senate in most countries exists to check and limit: The provinces have absolutely no say whatever in the naming of the Senators who “represent” them. Except for a brief interval before the

FIGURE 5: Some Statistics on Canada’s Population and its Political Institutions

	Population		House of Commons Seats			Senate Seats		
	(000's)	%	Actual #	Ideal #	Surplus (Deficit)	Actual #	Triple-E Ideal	Surplus (Deficit)
British Columbia	3,933	13.0%	34 (11.3%)	39 (13.0%)	(5)	6 (5.8%)	10 (9.6%)	(4)
Alberta	2,847	9.4%	26 (8.6%)	28 (9.3%)	(2)	6 (5.8%)	10 (9.6%)	(4)
Saskatchewan	1,024	3.4%	14 (4.7%)	10 (3.3%)	4	6 (5.8%)	10 (9.6%)	(4)
Manitoba	1,145	3.8%	14 (4.7%)	11 (3.7%)	3	6 (5.8%)	10 (9.6%)	(4)
Ontario	11,408	37.7%	103 (34.2%)	113 (37.5%)	(10)	24 (23.1%)	10 (9.6%)	14
Québec	7,420	24.5%	75 (24.9%)	74 (24.6%)	1	24 (23.1%)	10 (9.6%)	14
Nova Scotia	948	3.1%	11 (3.7%)	9 (3.0%)	2	10 (9.6%)	10 (9.6%)	--
New Brunswick	762	2.5%	10 (3.3%)	7 (2.3%)	3	10 (9.6%)	10 (9.6%)	--
Newfoundland	564	1.9%	7 (2.3%)	6 (2.0%)	1	6 (5.8%)	10 (9.6%)	(4)
PEI	137	0.5%	4 (1.3%)	2 (0.7%)	2	4 (3.8%)	10 (9.6%)	(6)
Northwest Territory	68	0.2%	2 (0.7%)	1 (0.3%)	1	1 (1.0%)	2 (2.0%)	(1)
Yukon Territory	32	0.1%	1 (0.3%)	1 (0.3%)	--	1 (1.0%)	2 (2.0%)	(1)
TOTALS	30,288	100%	301 (100%)	301 (100%)	--	104 (100%)	104 (100%)	--

SOURCE: Derived by Canada West Foundation from Statistics Canada population data (1997) and the 1998 Canadian World Almanac.

failure of the Meech Lake Accord, provincial governments do not make nominations to the federal government. Nor do provincial voters have any choice or veto of their Senators through a direct popular vote.

4) As a result of all the above, the Senate lacks legitimacy and credibility, and its very impressive formal powers have become largely irrelevant: The upper chamber seldom exercises any practical power whatsoever. Confrontations between the Senate and the Commons are rare, and when they do occur, they are usually a partisan raucous created by the fact that a new government faces a Senate dominated by the appointees of the old government. This can create some excitement – the free trade issue in 1988 is an example – but turnover in the membership of the Senate is rapid enough that the situation seldom lasts for very long, and at which point the upper chamber lapses into its normal acquiescence.

In short, it would be hard to imagine a more perversely designed Senate and one more ill-equipped to carry out the duties that are routine in the Senates of most federal countries. If Senators represent anybody (which seems unlikely) it is only the Prime Minister who appointed them. If Senators are accountable to anybody (which seems even less likely), it is again only to the Prime Minister. And even if Senators did somehow come to see themselves as representing province rather than party, the allocation of seats means that the provincial interests they would be most likely to defend are those of the large central provinces whose members already dominate the Commons. This is not federalism. It is not even a caricature of federalism.

RENOVATION OR DEMOLITION?

There are many who would agree with our criticisms of Canadian federalism in general and the Canadian Senate in particular, but then go on to argue that the logical response is to abolish the Senate. In terms of federal practice, the Senate we now have is much the same as having no Senate at all, except that it entrenches patronage and costs a lot of money. From time to time, it also embarrasses us. They suggest that surely we would all be better off if there was no Senate at all. Instead of the “Triple-E” Senate (Elected, Equal, Effective) they want a “Triple-A” Senate (Abolish, Abolish, Abolish).

But this would certainly leave us with a significant problem. The *clear* message from the practice of federalism in many countries over the years is that federalism works best – we could even say requires – an effective and regionally representative Senate.

In fact, Canada has already paid a very high price over

the last 30 years for the doddering anachronism that fills the upper house of Canada’s Parliament. The lack of regional representation at the centre of government has forced Canada’s Premiers to become the only defenders of their province’s interests in Canada. But because Premiers cannot vote in the national parliament, they often just end up squealing and squawking on the sidelines. This is a recipe for conflict and resentment, and only strains national unity.

If we simply abolish the Senate and put nothing in its place, Canadians will keep paying the price. Canadians will continue to witness increased friction and bickering within the federation, with little to no chance of ever seeing it end. Without the prospect of an effective Senate, it is hard to even imagine a workable and practical solution to Canada’s national unity woes. Abolition is not the answer. Abolishing the Senate altogether, just because it cannot do the job that we need it to do, is the same as burning your house down because the roof leaks. It is far better to climb up and patch the roof.

ROAD BLOCKS AND DETOURS

In a perfect world, Canadians could work their way through the analysis above and then sit down at a bargaining table to work out a new constitution that would include a better Senate, one that learned from the experiences of other federal countries by copying what has worked well and improving what has not. But in this regard it is not a perfect world. In Canada, the road to constitutional reform has been both long and rocky. Senate reform finally made it onto the constitutional agenda at the time of the Meech Lake Accord, and major Senate reform almost happened in 1992, at the time of the Charlottetown referendum. The defeat of those initiatives has put everything on hold once again.

The current Prime Minister and his government are clearly not interested in Senate reform. For one thing, the existing system works just fine for the party in power. Senate appointments are the perfect patronage plum. For another, a Liberal-dominated Senate will not cause a Liberal government any trouble, but a new reformed Senate very well might. Indeed, if a reformed Senate did not cause the government trouble once in a while, what would be the point? For another reason, Senate reform ruffles feathers in Quebec, and the Quebec issue dominates the constitutional agenda today. In other words, if we wait for Ottawa to make a move on Senate reform, we could end up waiting a long, long time. For the perfectionists, that is the end of the story. If we cannot work out a comprehensive package on Senate reform, if we cannot get all the parties to the constitutional table to create a new Senate with all the bells and whistles, then we cannot do anything – end of story.

But waiting for a time when we can do Senate reform

all at once only means more talk and no action. It means sacrificing the present opportunity to do something good for the future prospect of doing something better. In the name of a perfect process for a perfect Senate, should we throw in the towel right now and give up any chance of changing the current Senate for something even just a little bit better? These are bad tactics. The only way that Canadians will ever get major Senate reform is by pushing hard to keep the issue on the agenda. The only way to do that is to seize every available opportunity to keep people thinking about the absurdities of the current Senate and the potential for a reformed one. In other words, if you run into a road block, you take a detour.

ELECTING SENATE NOMINEES

Alberta turned off the main road and onto a detour when the provincial government called a special election for two “stand-by” Senators in June of 1998. The plan calls for Albertans to elect two special “stand-by” Senators who will be available for appointment by the Prime Minister when a Senate vacancy occurs. The thinking is if Alberta has to wait for a vacancy to occur before electing a Senator, the Prime Minister will simply go ahead and do what he has done before – quickly appoint a Senator and short-circuit any possibility for a democratic election.

Because Alberta’s Senatorial election is unlike any other election in Canadian history, many Canadians, including those who firmly support the idea of Senate reform, have expressed thoughtful and reasonable reservations about its intended purpose and probable outcome. Some have argued that the Senate election is a stunt – a gimmick with no clear purpose. Others have said that the election is unconstitutional and undemocratic since it is the Prime Minister who is legally responsible for appointing Senators. Still others point to the fact that the position open for election does not even exist, and because the Prime Minister has said he will not respect the election by appointing the winner, the whole thing is a waste of time and money. These concerns are not at all invalid, especially given the Prime Minister’s recent decision to appoint another Senator for Alberta when an unexpected vacancy occurred in the middle of the election campaign.

So in the interests of Senate reform, what can this election achieve? How can it contribute to more meaningful Senate reform down the road? To explore these questions, it is best to first assess the election in light of its potential short-term impact on Canada. First, the election is clearly designed to advance the cause of Senate reform by sending the message to Ottawa that Alberta (and most Canadians for

that matter) are fed up with outdated, ineffective, unequal, and unelected representation in the Senate. Albertans have found a way to move around this national embarrassment, and the Prime Minister should give it some serious consideration. Clearly, the election is about highlighting the weaknesses and absurdities of our current Senate, and pointing the way to a Senate that would work better for all Canadians. It is about sending a message that Albertans, like a majority of Canadians, are not satisfied with the Senate status quo.

Secondly, the immediate objective is to convince the Prime Minister that he should make a democratic choice when making his next appointment to the Senate. This is not at all unconstitutional since the Prime Minister is free to take advice from anybody and everybody on who he should or should not appoint. This includes his staff, his friends, and yes, even the electorate of the province of Alberta. In the short term, the election is clearly intended to force the Prime Minister’s hand when the next Senate vacancy occurs. Will he opt to appoint a Senator of his own choosing, or will he decide that the political costs of ignoring the election are too high and appoint the winner? Only the Prime Minister himself knows. His recent decision to appoint a Senator for Alberta instead of waiting for the election suggests he could well ignore the vote, but it is one thing to ignore an election before it takes place, and quite another thing altogether to ignore the democratic mandate once it is achieved.

Focusing too clearly on these short-term objectives could well lead one to agree with the critics of the election process before giving adequate consideration to the longer term prospects of what the election could ultimately achieve. First, the election is not an open and shut event. Rather, it is another gambit in a lengthy and complicated Canadian past time called constitutional politics. If Albertans and Western Canadians are in favour of Senate reform (and recent research by this Foundation shows they are) it must be realized that coaxing agreement on wholesale Senate renewal out of a collection of firm-minded Premiers and a reluctant Prime Minister is not something that happens overnight. Rather, success at the constitutional negotiation table requires a heavy dose of rational argument combined with political pressure and smooth wheeling-and-dealing tradeoffs coupled with dramatic public gestures. The election is a dramatic initiative designed to up the stakes in the drive for meaningful Senate reform. It makes the issue tangible and brings it alive. It encourages discussion and substantive debate on Senate reform in general and elected Senators in particular.

Secondly, the Prime Minister will come under heavy

pressure to respect democracy for the simple fact that it is hard to ignore. The election presents the very real possibility of undermining the status quo Senate by destabilizing the “system.” Political change – whether constitutional or not – never occurs in a vacuum. Rather, change only takes place when the inertia is shaken off in response to a real crisis. A bold and daring move on the part of one province in the form of an election is one way to knock a chunk out of the status quo, and create the bizarre anomaly of a Senate that is 99% appointed and 1% elected. This de-stabilizes the system and leads to further efforts at bringing about change. Even if the Prime Minister decides not to appoint the winner, all is not lost. The status quo will have been rattled, and the sentiments of a spurned electorate carry some long term implications that will continue to bubble just under the surface.

Third, Alberta’s Senate election reflects the quintessential Canadian art of incrementalism. Political change never occurs in a vacuum, and neither does it proceed at break-neck speed. The mark of politics in modern society is a cautious and plodding incrementalism rather than wholesale efforts at radical and instant change. Changing things one small step at a time is the way Canada has always been governed. For example, try to nail down the precise time when Canada’s system of federalism became so troubled. At what time did the division of powers in Canada cease to be a creature of the Constitution and become more a creature of administrative agreements and other decisions radically empowering the federal government over the provincial governments? When did health care in Canada become such a nationally cherished value? The answer is that it did not occur at any one point in time. It was incremental and gradual, and the Alberta Senate election presents us with the same *modus operandi*. In other words, a piecemeal provincial initiative is precisely the way to get things moving. It could very well be a long journey, but it does start with a single step.

Fourth, the outcome of the election presents other Canadians in other provinces with a model for electing their own Senators. If Alberta is successful in having its elected Senators appointed, it will serve as a strong signal to other provinces that change is in the works. It will signal to other Canadians that if they want elected Senators, they too can do something about it. British Columbia already has a Senate election act on the books, and it will not take long for “election fever” to spread across the country. Most important, it will send a strong signal to Quebec that Canada is indeed capable of changing federalism to accommodate the aspirations of local interests.

Finally, the election sends a barely audible – but by no

means insignificant – signal to Ottawa that it needs to keep in mind the considerations of all Canadians when proceeding on issues of the Constitution and improving the Canadian federation. In 1995, almost immediately following the Quebec referendum, Ottawa made several incremental steps towards meeting some of Quebec’s historical aspirations within Canada.

A longstanding position of the Quebec government has traditionally been that it needs a veto over future constitutional change. Another longstanding position is Quebec’s insistence that the Constitution give formal recognition to the province as a “distinct society.” Another constitutional position is that Quebec needs the full range of powers to conduct its own manpower training programs. As a result of commitments made during the 1995 sovereignty referendum, the federal government passed a resolution in the House of Commons that effectively “loaned” Ottawa’s constitutional veto to the province of Quebec. In other words, Ottawa said it would refuse to agree to any constitutional change unless Quebec agreed first. Secondly, the federal government also declared in a legislative resolution that Quebec is indeed a “distinct society” and that Ottawa would take this into consideration when drafting its legislation. At the same time, the government followed through with a commitment to devolve to the provinces a significant amount of responsibility over manpower training. ***In other words, what could not be achieved for the last 30 years via constitutional negotiation and amendment was achieved at the drop of a hat based on the simple political will of the Prime Minister.***

Surprisingly enough, the same could be done with the Senate. It is a fanciful idea that is hard to think possible, but the Prime Minister, if he so decided, could tomorrow provide Canada with a full Triple-E Senate without changing even one word in the Constitution. With the same type of resolutions used to meet Quebec’s aspirations, the Prime Minister could agree only to appoint individuals to the Senate who had first won an election and also sworn a solemn oath to resign the position after a specified period. Second, he could make a decision not to appoint any more than six Senators from any one province. While this would leave PEI under-represented with only four Senators, the equality component of the Triple-E Senate ideal would be achieved in spirit if not in actual letter. Combined with an elected mandate and the legitimacy that this confers, Senate reform would be a reality. In short, anything is possible. The options for meaningful Senate reform exist. What remains to be done is to continue exploring, discussing and debating the issue, but also taking firm steps toward the final goal.