

Since I am a liberal with both a small "l" and a capital "L", I have, as you will have guessed, a marked tendency to support reform rather than abolition.

First of all, I would like to review the proposals to abolish the Senate. Let us look first at Bill C-60 on constitutional reform introduced in June 1978. The main proposals contained in this bill concern the designation of members of a new house, the House of the Federation. This bill also considered the legislative powers of this new house and the powers concerning certain federal appointments.

Then came the report of the Task Force on Canadian Unity which contained proposals inspired by the Bundesrat of the Federal Republic of Germany in relation to a new chamber which would have been called the Council of the Federation. These proposals also provided for the method of appointment of the members of this house, its legislative powers, the ratification of certain treaties, the proclamation of a state of emergency and the approval of certain federal appointments. There were major differences on these points between Bill C-60 and the recommendations of the Task Force on Canadian Unity.

It should be noted that replacing the present Senate by a Chamber of the Provinces was also recommended by the Advisory Committee of Ontario on Confederation, the Committee on the Constitution of the Canadian Bar Association, as well as in a working paper prepared by the Progressive Conservative Party of Canada when it formed the official opposition before the 31st Parliament.

On the other hand, we must take into account the opinion expressed by Mr. Edward McWhinny, Head of the Department of Political Sciences at Simon Fraser University, when he appeared before the Special Joint Committee of the Senate and the House of Commons on the Constitution on September 26, 1978. He recommended a very cautious approach to the proposals inspired by the Bundesrat of the Federal Republic of Germany. He explained that the Bundesrat is not, in fact, a legislative body, nor is it a second house according to a recent decision of the German Constitutional Court.

Mr. McWhinny emphasized that it is essential to understand the political party system of Western Germany if we want to understand the workings of any given institution of that country where the government is formed by a national consensus and which must call on coalition governments almost constantly. Consequently, always, according to this distinguished Canadian, there is a risk of exaggerating the role of the Bundesrat as concerns the development of executive policies if we underestimate the important factor of changing coalitions and coalition governments.

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More recently, in January 1980, the Constitutional Commission of the Quebec Liberal Party published a report entitled "A New Canadian Federation". The authors state that the Canadian Senate is, in their opinion, no longer adapted to the needs of modern federalism. They propose that it be abolished

and that the central Parliament now consist of only one chamber. They also suggest the creation of an intergovernmental agency of the federation which they call "Federal Council". This designation aims at stating clearly that this body would be a special intergovernmental institution and not a legislative assembly controlled by the central government, since the central government would not have a delegate entitled to vote within the Federal Council. However, it could send representatives to this council to express its opinions.

The authors recognize that the mechanisms suggested are new. They maintain however that these are basically in agreement with the proposals of the Pepin-Robarts report, the Government of British Columbia, the Advisory Committee of Ontario on Confederation, the Canada West Foundation and the Committee on the Constitution of the Canadian Bar Association.

It is clear that the German Bundesrat was used as a model by the authors of the Liberal document. But it is practically impossible to foresee how the Canadian constitutional system would react to the introduction of that Federal Council, an institution that is absolutely foreign to our British parliamentary system. In that respect, honourable senators, it is interesting to read the article by Jose Woerling published by the newspaper *Le Devoir* on January 16, 1980 under the heading "The Federal Council, a long shot".

Moreover, with the establishment of the dual committee, the authors of the Liberal document are proposing a very substantial addition to the German model, thereby introducing an unknown quantity, the influence of which on the performance of the total system is difficult to forecast. One important criticism that could be levelled at the Liberal constitutional document is that it does not specify what would happen in a case where the Federal Council would refuse to ratify. In view of the two-thirds majority required within the council in certain matters, which include the federal emergency powers and the power to spend, we can imagine that ratification refusals would be numerous. This in my view is a shady area, and is of major consequence since the Federal Council is the cornerstone of that proposal for a renewed Canadian federation. My major criticism is this: That proposal would abolish an institution that has proved itself and wants to modernize from within and by itself.

On this subject of abolishing the Senate, we must remember that the then Justice Minister Lang accepted one of the recommendations made by the Special Joint Committee on the Constitution, of November 23, 1978, which suggested that the matter of the bill's constitutionality should be referred to the Supreme Court of Canada.

The honourable judges pondered over two very specific questions, of which the first is as follows, and I quote:

Does the Parliament of Canada have the legislative authority to abrogate sections 21 to 36 of the British North American Act, 1867, as amended, and to amend the other sections of that act in which mention is made of the Upper House or the Senate, in such a way as to delete all