

The Senate's present absolute veto could not be converted to a suspensive one without a constitutional amendment involving the use of the general amending procedure, because such a change would affect the Senate's powers. However, it has been suggested to us that the Senate, without diminishing its constitutional powers, could adopt a procedure for the more flexible use of its veto, a procedure that would have the effect of making it suspensive.

This procedure could work in the following way. The debate on any bill in the Senate could be adjourned to a subsequent date on the motion of any senator, provided the motion was approved in the debate that followed. Such a procedure is already allowed under the Rules of the Senate. An adjournment of the debate would give notice to the government that the Senate wanted time to negotiate changes to the legislation. If the points at issue were resolved, the bill would be brought back for completion of debate and ultimate disposition. The Senate would, of course, have to approve the bill before it could become law.

This procedure would work best if everyone, in both houses of Parliament, understood the rules: that is, the circumstances in which the procedure would be invoked, the length of the delay for different kinds of bills (if the delay is not to be decided separately for each bill), and other relevant matters. These rules could be incorporated in the existing Rules of the Senate or, with more formality, in a federal statute requiring the consent of both houses. Although a statute would not bind the Senate constitutionally, it would have the advantage of signifying that the procedure laid down was acceptable to both houses.

The use of a suspensive veto would supplement rather than displace what is called the pre-study procedure. Pre-study is a most useful arrangement whereby the Senate can begin its consideration of the subject matter of a bill before it has received third reading in the House of Commons, thereby giving the Senate legislative input without formally amending the bill and without risking confrontation. The Senate achieves this input by communicating its views to the House informally. Pre-study should be continued. Its use with regard to any particular bill could give additional time to resolve differences with the Commons, thus making unnecessary any resort to a suspensive veto. In an elected Senate of the kind we have proposed, pre-study would become even more important because the time for the Senate to dispose of a bill would be limited.

The Standing Joint Committee on Regulations and Other Statutory Instruments, in its Fourth Report to Parliament of 1980, recommended that "All subordinate legislation not subject to a statutory affirmative procedure" (that is, not actually affirmed by both Houses before it can come into effect) "be subject to being disallowed on resolution of either House and that the Executive be barred from re-making any statutory instrument so disallowed for a period of six months from its disallowance". The Standing Joint Committee believed that such a procedure, which would require legislation to put it in place, would act as a salutary check on the quantity, complexity and legal effect of regulations and other subordinate legislation.

This recommendation of the Standing Joint Committee was adopted in the Lamontagne Report on Certain Aspects of the Canadian Constitution, 1980, because the new procedure could give the Senate a powerful instrument for protecting the rights