

In order to amend "the powers of the Senate" and "the method of selecting Senators", Section 42 of the Constitutional Act, 1982 provides that the basic formula must be used, which requires concurrence by the Federal Government and seven provinces representing 50 per cent of the overall population.

For a less comprehensive reform of the Senate, Section 44 of the Constitutional Act, 1982 may be used. Section 44 repeats in part Section 91.1 of the Constitutional Act, 1867, as amended in 1949; section 91.1 has now been repealed. In this case, the Parliament of Canada may legislate unilaterally.

If Meech Lake is ratified, the unanimity rule stated in Section 41 will apply to amendments that change the powers of the Senate and the method of selecting Senators.

But contrary to some views, Meech Lake, according to Professor Meekison, could facilitate Senate reform. The 1987 Constitutional Agreement provides for a yearly first ministers' constitutional conference. The agreement specifies the subject matter of those conferences; Senate reform is given priority under the Meech Lake Agreement once the agreements are ratified. As long as Senate reform is not accomplished, that matter will come up from year to year on the constitutional conference's agenda. A degree of reform one day will have to come out of those negotiations.

Under the Meech Lake Accord, provinces submit lists of candidates which are used by the Prime Minister of Canada to make Senate appointments. So there must be cooperation between the two governments. It is a double veto. This solution is provisional. There already is a reform in the Meech Lake Accord since it provides for the participation of provinces in Senate appointments. It is a step in the right direction.

Over the last few years, many reforms have been proposed regarding the Senate, its composition, its role, its powers, its constitution. If there is a consensus in Canada, it is on the need for Senate reform, and not on the miracle solution.

Up until now, only one federal political party, the New Democratic Party, has proposed the abolition of the Senate. Some journalists, some intellectuals and some leaders have also put forward such a solution.

The arguments in favour of abolishing the Senate are the following: a) The Senate does not play an essential role; b) The regions of Canada are already represented in the central Parliament by the federal Cabinet. We do not need a Senate; we are already overgoverned with eleven first ministers.

The arguments in favour of maintaining the Senate seem much stronger to me: a) The Senate is an integral part of the 1867 compromise; b) We must give less populated provinces a stronger voice than the one they have in the House of Commons; c) The Senate plays a very useful legislative role; d) Finally, there are very few countries, and especially federations, which do not have an upper house to represent the regions.

Several formulas have been proposed: 1) a Senate with a suspensive veto as they have in the House of Lords in England since 1911; 2) a Senate where provinces take part in Senate

appointments as is provided for in the Meech Lake Accord; 3) a Senate composed of legislative counsels with suspensive veto only, legislative counsels who would play the role defined, for example, in the Goldenberg Report, which is very interesting.

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The province of Alberta has proposed the Triple E Senate formula, calling for an elected, equal, and efficient Senate. Most Upper Houses are elected. Moreover, in several federations (for instance, in the United States and Australia), federate States have equal representation in the Senate. So, as we see, Alberta can back up its reform proposal.

Together, Ontario and Quebec, which represent more than 60 per cent of the Canadian population, already control almost half of the Senate. So they would have a hard time accepting equality. But are we talking here about absolute equality? Relative equality? Readjustment? We will have to study that issue.

Election of senators is an argument of great weight. However, we don't know how the House of Commons will greet such a rival. We also have to discuss such issues as a confidence vote held in the Senate and the powers an elected Senate would have. We should remember that if the Senate is elected, we would have to review its powers. A lot of proposals have been studied. We have to take into account the constitutional crisis which occurred in Australia in 1975.

An elected Senate should not simply be a replica of the House of Commons. If so, it would only duplicate the House of Commons and eventually jeopardize our whole system of responsible government. In a recent article in the *Ottawa Citizen*, former Justice Estey of the Supreme Court of Canada argued that there should not be a second elected House in a British parliamentary system. But I for one do not reject the idea of an election. It is one of many possible solutions. There are several forms of elections for the Senate. It could be one-round ballot for a single candidate, proportionnal representation, indirect elections or, election by an electoral college.

We must not forget, however, that an elected Senate would only add to an already high level of partisanship. Canada is already "overgoverned" with its eleven prime ministers. So, if the Senate is elected, we will have to ensure a new balance between our federal institutions as well as between our federal and provincial institutions. Such a reform cannot be brought about without seriously considering its implications.

Alberta just elected a candidate to the Senate. The province adopted a bill in order to do so. The Prime Minister of Canada is not obliged under the law to nominate the elected candidate. He can do so, but he does not have to. As long as the Constitution is not amended in due form, the Prime Minister alone is responsible for the selection. If he does choose to nominate an elected candidate, such a nomination would be valid. Last December, we had a big debate on the matter. Legal specialists discussed the validity of the Alberta Act. They declared it *ultra vires* and advised the Federal Government accordingly. This is what senator Murray, the Minister