5 The Senate of Canada

Renewed life to an original intent

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Setting

Originally, Canada was a colony of France; after 1763 and the Treaty of Paris, it was a colony of the United Kingdom, within whose borders lived two European peoples and a large indigenous population. Those demographic realities are important to remember in any study of a senate in Canada – whether in the past or today. Equally important to remember is that, only a decade after the Conquest, the majority of North America's English population formed their own separate country, the United States. In 2017, on the occasion of Canada's 150th birthday and referring to the Conquest, the *New York Times* described modern Canada as coming 'pre-broken' (Marche 2017). Here, the author of the article maintained, was why there is even today a strong disposition in the country to accommodate difference.

Canada is a federation, created in 1867 and today comprising ten provinces and three territories. Of the ten provinces, only five have ever had unelected legislative councils (in addition to people's assemblies) either when they were colonies before 1867 or as provinces thereafter. All but two provinces abolished these bodies before 1900 – the last was Quebec, in 1968 (Kitchin 1974).

Canada is a constitutional monarchy whose sovereign is the sovereign of the United Kingdom. Nonetheless, the Canadian Crown is a separate entity from the Crown in the United Kingdom. Indeed, an amendment to the constitution of Canada 'in relation to [. . .] the office of the Queen, the governor general and the lieutenant governor of a province [who represents the Queen in the province]' requires unanimous consent of both houses of the Canadian Parliament and the peoples' assembly of each of the country's ten provinces (*Constitution Act, 1982*).

The Crown is inextricably linked to Canada. For instance, senators are not elected but rather appointed by the Crown on the advice of the prime minister. Recently, this provision allowed for a total transformation in the existing system: the present prime minister has delegated the selection of nominees to an independent advisory panel. It is those nominees whom he now recommends to the governor general for appointment. No law or constitutional amendment was used to achieve this end (since the prime minister holds a monopoly on advice to the Crown), although this change has arguably produced the greatest transformation

in the composition and working of Canada's parliamentary institutions since 1867. Rather, it was the presence of the Crown and the provision for the Crown's appointment of senators (on advice) which made it possible.

Canada has a written constitution, the *Constitution Act, 1867*, but the terms of that document refer almost exclusively to matters of federalism. While the Act provides for an elected chamber, the House of Commons, understandings about parliamentary government as they relate to that House – for example, 'open discussion, freedom of association, and vigorously contested elections' (what might be called the British Tradition) – are left unspecified and depend upon constitutional custom and convention, many of which are older than Canada itself (Sharman 1990). As an important aside, it need be said that Canadians are tolerant of constitutional ambiguity. In fact, it is due to this disposition that the country's political institutions work better in practice than in theory (Smith 2017).

The 1867 Act also provides for the non-elected Senate, and it is essential to be clear as to its cardinal characteristics – (1) appointment by the Crown (at one time for life, but since 1965 until age 75) and (2) a fixed number of senators (twenty-four) for each of the four regions, two comprising single provinces and two comprising either three or four provinces each. Additional senators have been added – six to Newfoundland and Labrador when it entered as a province in 1949 and later one each to the three northern territories – for a total 105 senators. In terms of numbers, the Senate plays a sanctuary role for the less populous provinces, a role recognised through a constitutional amendment in 1915 which guarantees that no province will have fewer members of Parliament than it has senators (*Constitution Act, 1915*). Unlike the House of Lords in Great Britain, there is no possibility of adding additional members, except for a temporary expansion limited to a maximum of eight (*Constitution Act, 1867*, p. 26), and this has happened only once, in 1990, when the government was determined to see a controversial tax measure passed. Note, therefore, that the Senate, more than the House of Commons, is purpose-built; for that reason, it, more than any other institution, provides the basis for a 'theory' of Canada's federation (senatorial regions, it could be argued, constitute a rare institutional affirmation of federalism). It might be for this reason that, historically, reforms to the Senate have usually proposed as their rationale an improvement to the federal system. Notwithstanding the provision of s.23 of the *Constitution Act, 1867*, which requires that appointees (men, until 1930) hold real property worth at least 4,000 dollars in the province for which they are appointed, it is important to emphasise that the object of this requirement was to help guarantee that appointees would be more financially (and thus, politically) independent than members of the House of Commons. Admittedly, this provision also protected the interests of property holders more generally. Nonetheless, the Senate has never been an elitist body whose composition is determined by divisions of birth or class. Therefore, recent changes in the selection process signal no change in social, as opposed to partisan political, values. In Canada, deference has invariably been paid to electoral power, that is to votes rather than to social status.

Background

In Anglo-American political systems great weight is given to precedent, a feature that contributes to the sense of constitutional ambiguity noted earlier, since precedent is subject to interpretation. Thus, initial outcomes may be strongly self-reinforcing and hard to reverse; another way of making this point is to say that ‘forsaken alternatives become increasingly unreachable with the passage of time’. This, Paul Pierson (2004), the American political scientist and author, has argued, is an example of the effect of time on politics. Two examples may be cited to illustrate this generalisation. First, the fixed number of members per region in the Senate had its origin in the fixed numbers assigned to the Legislative Council (that is, the Colonial Senate) in the period of United Canada that preceded confederation. A fixed number of members also helped protect the Francophone and Roman Catholic population, which was in relative decline, or threatened decline, as English immigration increased. A second example would be that political obstruction by the Senate has always been and remains rare. For this reason the original structure continues to entrench itself. Except for the governments of Pierre Trudeau in 1980 and Stephen Harper a quarter-century later, there has never been an attempt made by *a government* to change the structure of the Senate. Such Senate reform proposals as there have been, for instance to make the chamber elected, effective and equal (in terms of numbers per province), were non-public in origin, coming from interest groups, in this particular case the Canada West Foundation, Alberta. Third, political parties in Parliament who oppose federal government trade and economic policies have their roots in western Canada, beginning in the period of the First World War; the Canada West Foundation was associated with the populist but conservative Reform Party, which originated in Alberta in the last decade of the twentieth century.

Again, in Pierson’s (2004, p. 13) words, ‘The fact that something happens slowly, however, does not make it unimportant’ – witness the emerging awareness of bicameralism as a feature of Canada’s Parliament today, in large part because of the Supreme Court’s 2014 opinion and the government’s appointment of an independent advisory committee to select potential nominees. Canadian experience and especially the ever-shifting makeup of its population in consequence of immigration from Asia, Europe and South America have shaped the Senate over time. One might say that as Canada changes, so too must the Senate. As will be argued later, demographic and sociocultural change and a decline in traditional party allegiances among voters are combining to make the Senate today a platform for the voice of democracy as much as it has historically been an instrument of federalism. It could be said that bicameralism is as vital to the realisation of the constitutional objective set down in 1867 in the preamble to s.91 of the *Constitution Act* – ‘the Peace, Order, and good Government of Canada’ – as the division of powers is to maintaining the federation. Indeed, in 2018, there is no question but that the role of the Senate in Canada’s bicameral Parliament, and more particularly its relationship to the House of Commons, where under the principle of responsible government the government must command the support of a majority of elected MPs, is recognised to be of paramount importance.

It is not possible to speak of Canada's Senate without speaking of the House of Lords and the United States Senate (at that time), two non-elected chambers which the Fathers of Confederation (the name given Canada's founding fathers) knew well but rejected, with long-term consequences for the politics of the federation. Even today, critics of the Senate will sometimes refer to the chamber as Canada's 'House of Lords,' though there never was any factual basis for the analogy. Canada is a federation, the United Kingdom is not, and more than that, the creation of the Senate was an absolute condition made by the colonies that later became the provinces of Quebec, New Brunswick and Nova Scotia for entering into the Confederation. From their perspective, it was one important way of achieving a balance alongside Ontario's much larger population than that of the combined eastern provinces. In the words of a pre-eminent 'Father,' George Brown, 'On no other condition would we have advanced a step' (*Parliamentary Debates* 1951, p. 88). That said, the Westminster model, of which Canada was the first self-governing colony in the Empire to emulate, exercised a very strong influence on colonial and later Canadians. One reason often overlooked is the paramountcy of the Crown, which at the time of Canada's creation was identified with Queen Victoria, then at the zenith of her reign, having become Empress of India a decade earlier. Crown, Senate and Commons on the western side of the Atlantic could (and were) easily, if mistakenly, interpreted as mirror images of Crown, Lords and Commons on the eastern side.

The other obvious example of which the architects of Confederation were aware but whose details they refused to copy was that of the United States Senate. The United States was a large federation, as Canada needed to be if the British North American colonies were to be united. Yet the structure of the Senate of the U.S. Congress, as set down in 1787, found little favour north of the forty-ninth parallel. The selection by provincial legislatures of delegates from among their numbers to sit at the centre, as was done by state legislatures in the United States until the ratification of the Seventeenth Amendment in 1913, violated the common sense of Parliament as the supreme legislative power (as in the United Kingdom) and the belief British North Americans held that the creation of a national parliament of *two* chambers marked an important step towards constitutional maturity. According to J. C. Bourinot (1837–1902), journalist and later clerk first of the Senate and then of the Commons, one justification for an upper chamber was this desire for national status in Canada's dealings with other countries, particularly with the United States. At least until the middle of the twentieth century, when New Zealand (1950), Denmark (1953) and Sweden (1970) moved from bicameral to unicameral legislatures, a two-house parliament was considered one of the signs of national maturity. By contrast, in 1895, Bourinot (1895, pp. 19–20) wrote:

Unicameral bodies fall into three or four main groups: the parliaments of minor states of southeastern Europe, Servia, Bulgaria and Greece; the congresses of the states of Central America, Nicaragua excepted, compose another group; the *Landtags* of the Austrian crown lands are one-chambered, and so are nearly all of the diets of the minor German states, excepting those of the free cities.

The ambitions of Canadian politicians for national autonomy aimed higher than that, if only because they were embarking on a unique enterprise – the creation of what in time would be referred to as a bilingual and bicultural federation of continental scale.

The architects of the Canadian federation may have rejected some of the details of the American precursor, but they retained the principle of a distribution of powers between two levels of jurisdiction. Where the difference lay in Canada was in the presence of a common Crown at both levels of jurisdiction. In one sense, Canada is a monarchy because there is neither now nor at any time previous republican sentiment of any strength. The exception to that generalisation might be in Lower Canada in the 1830s, before the grant by Great Britain of the principle of responsible government and before in consequence the French-speaking majority could make its voice heard. But once that principle was acknowledged after the rebellions of 1837, particularly in what is today Quebec, no organised movement of any influence to introduce republican institutions reappeared, despite both the fact that Canada lay to the north of an undefended border with one of the largest and most vigorous republics in the world and the intermingling of the agrarian populations of the two countries (Coats & MacLean 1943; Hansen 1940). That Canada should have developed its parliamentary and federal institutions with so little influence from its powerful neighbour is a subject that deserves more investigation than it has received (Smith 1999). One factor that has been given insufficient attention in this regard is the anti-republican or, perhaps more accurately, pro-clerical sentiment evident in Quebec for decades after the French Revolution. During the American War of Independence, troops supporting the revolutionary cause, which included the separation of church and state, invaded Quebec, they were not welcome in Montreal and other communities for this reason as much as – or more than – their belligerent behaviour.

Canadians do not think of boundaries with other countries, because except for the United States, there are no boundaries. In that respect, Canada might be seen as an island bounded in three directions by oceans and to the south by the United States. And much of the landmass of Canada, particularly the vast area that embraces Hudson Bay, is occupied by the pre-Cambrian (or Laurentian) Shield, comprising rock, lakes and trees. The population of this part of the country is mainly indigenous. Indeed, the vast majority of the country's non-indigenous population lives within three hundred miles of the US border. Canada remains, as it has for centuries since the arrival of European settlers, a country characterised by east-west linear activity, be it in the form of railways, highways, television broadcasting, economic and recreational organisations and much more. This is how bureaucracy, political parties and the cabinet are organised. More to the point of this essay, this is how the Senate is organised: northern senators from Nunavut, the North-West Territories and Yukon were appointed only in 1975. All of which is to say that as imposing as geography is on Canadian life (Canadians live in five different time zones), it tends not to be given the close attention it warrants when the subject is politics, either as an organisation or as an activity.

By contrast, however, perhaps too much attention is given to time – in the sense of history – especially when the discussion has as its subject comparisons between Europe and Canada. While there is no doubt that the former may have longer settled histories (placing to one side the early habitation of indigenous populations in North America), that should not obscure the persistence of Canada's constitutional arrangements – federalism for 151 years and institutions of responsible government for an additional twenty-five years. While it is true that the franchise expanded in the post-Confederation years, aside from that there is a sense of a continuous present about its political structures – and this despite massive demographic growth (in the past fifty years the country's population has almost doubled; currently, it stands at 37 million people). A summary of the most notable changes would be rural settlement of the western part of the country in the late nineteenth and the early twentieth century, a striking rural-to-urban movement in population beginning in the latter part of the twentieth century and a significant broadening in demographic heterogeneity among immigrants in recent decades. The Crown, the House of Commons (whose members are elected under a single-member, simple plurality voting system) and the Senate, except for the very recent alteration in the manner of the selection of senators, remain as they were at the beginning. Compare that persistence with the striking constitutional changes that characterise Ireland and which are described by the authors of papers on that country in this book. Equally noteworthy is the absence in Canada of civil unrest or political strife. The one exception would be the secessionist movement in Quebec a quarter-century ago, yet that too has declined without, significantly, constitutional or institutional reforms.

The continuity of Canadian politics deserves more study than it has received. One part of the explanation lies in the fact that Canada has presented itself to the world – and to its own citizens – in company with international associations, for instance, the British Empire, the League of Nations and the United Nations. It is in those contexts that Canada and its citizens established in their own minds a strong sense of place. At the same time, it has been said that as English and French are the country's two official languages, 'Canada is well equipped to communicate with the world and to assert its presence' (*Report of the Royal Commission 1967*). This is a point too easily forgotten in an anti-colonial age: for most of her history Canada was more than a colony – she was part of 'a world-encircling empire' that included not only the Commonwealth but also the Francophonie. With regard to the Empire, she thought not about separation but about using her prestige to gain greater weight and strength within it and its Commonwealth successor (Frye 1976, p. 59). And that sense of place depended upon familiar rather than revolutionary relationships. Although Canada evolved a separate (from Great Britain) set of diplomatic ties, category of citizenship and international obligations, each nonetheless possessed a discernible common DNA: British history, institutions and political values. At the same time, from 1774 and the Quebec Act onwards, the Crown acknowledged and accommodated the Roman Catholic religion, the French language and French civil law. For these reasons, Canada, though not unique, today presents the image of a strongly international country, and there

is no doubt that the structure of the Senate, which grants equality of seats among senatorial divisions regardless of their population disparities, contributes to this bilingual and bicultural feature.

Interpretation

What I have said up to this point is pretty much standard script when talking about the constitution in Canada. If it diverges from what is usually said, it does so in the sense that it emphasises the transformation the Senate is experiencing because of the change in its appointment procedure. To repeat, where once nominees for the Senate were almost exclusively partisan in their selection, since 2015 partisanship as a criterion has virtually disappeared. As of October 2018, of the forty-three Senators appointed under the new procedure, none can be described as a visible partisan. There are three implications of this change: first, there will be a growth and strengthening in public attitudes towards bicameralism, with important consequences for public attitudes towards government generally and towards the Commons, cabinet, political parties and opposition specifically. Second, there is going to be a confounding of what the sense of the constitution is: the principle of responsible government may continue in its historic location, the House of Commons, but no longer will that, in itself, be an exhaustive explanation of Canadian government. Third, there will be re-examination of the criteria used to evaluate the quality of Canada's institutions and political processes. Neither the language nor criteria that have so long dominated political discourse in Canada are applicable to the situation of the new, emerging Senate.

Not only are Canadians confronting a form of parliamentary institutions different from what they have witnessed before but they are also limited in their response to the change by being constrained to interpret events using concepts and a political vocabulary retrieved from the past. Where, for instance, in a chamber without parties is 'the opposition'? It should be said that what is happening in Canada has its critics – but from a comparatively narrow perspective, that of non-elected senators challenging the principle of responsible government, which rests on control of the popularly elected House of Commons. See, for example, newspaper articles by Andrew Coyne (2008), 'Supreme Court Ensures Our Widely Reviled Patronage House (The Senate) Will Stay Forever' and 'Exactly Why Do We Need a Senate?', and by Konrad Yakabuski (2018), 'Senators Should be Elected – or Eliminated'. That this opinion should be so prominent despite the fact that the Fathers of Confederation could hardly have been more explicit in their rejection of an upper elected chamber, specifically on the grounds that a legislative body so constituted would rival the House of Commons, requires close study. The Supreme Court itself observed in 1980 that 'a primary purpose of the creation of the Senate [. . .] was to afford protection to the various sectional interests in Canada in relation to the *enactment* of legislation (emphasis added)'. In 2014, the Court once again said much the same thing in its discussion of the Senate as 'a complementary chamber of sober second thought' (*Reference re Legislative Authority* [1980]; *Reference re Senate Reform* 2014; cf. Harder 2018).

Where is there a crisis or difficulty when the Senate seems poised (1) to play a far more public role in the political life of the country than ever before and at the same time (2) to be acquiring new-found legitimacy in the eyes of Canadian citizens? Yet the more I thought about the question, the more I came to see that there may indeed be an emerging crisis – arising not from lack of legitimacy but, paradoxically, from the *onset* of legitimacy itself! More than that, this unprecedented challenge carries with it a concomitant query: what does a reinvigorated Senate say about the Crown in Canada? For the subjects are related, although the Canadian public has historically identified the appointed House as a partisan political body. Even those who understand that senators are appointed by the Crown (that is, by the governor general) see this as form without substance. Yet the Senate and the Crown are two parts of the three-part Parliament and, unlike the House of Commons, they share some important similarities, the most important among which is their role as deferential bodies – the Senate to the Commons and the governor general to the government drawn from the Commons. If the Senate, to its critics, is trespassing on the terrain of the Commons as the historic home of responsibility, there is at the present time, although less publicly discussed, concern in other quarters about clarifying, even codifying, the conventions of constitutional monarchy as they relate to the Crown's reserve power (Evatt & Forsey 1990; Forsey 1968; Twomey 2018).

Thus, while in their relationship to government and the Commons the Crown and the Senate may share a convention of restraint, both stand as potential limitations on the exercise of popular power. More than that, the Senate depends upon the Crown for its legitimacy, as the Fathers of Confederation intended when they rejected every proposal that the Senate should be elected, a rationale the Supreme Court of Canada confirmed in its advisory opinion in 2014: 'Introducing a process of consultative elections', said the Court, 'would change our constitution's architecture, by endowing Senators with a popular mandate which is inconsistent with the Senate's fundamental nature and role as a complementary chamber of sober second thought' (*Reference re Senate Reform* 2014, p. 708).

Public attitudes towards the Crown in Canada tend to be narrow, usually associating it with monarchy and more specifically the person of the sovereign. The small minority of Canadians who object to the Crown do so because of its form – that of being British – and not because they advocate a transformation to a republic. Canadians see but do not understand the Crown: one might label this an '*external* approach to things (relying on the evidence of the *eye* rather than the more emotional organs of sense)' (Allen 1958). Yet Canada's relationship to the Crown has contributed strongly to the development of the country's autonomy in its dealings with other countries and with the United Kingdom. The story of Canadian treaties, diplomatic representation abroad or separate Canadian citizenship is founded on a concept of a separate Canadian identity rooted in a distinct Canadian Crown. Similarly, the Crown and the Senate are more intimate in their relationship – recall that senators are creatures of the Crown's representative – than is generally acknowledged. In light of the existing constitutional arrangement, it is necessary to ask, what would happen to the Senate if the Crown were

to be abolished? The two parts of Parliament could hardly be more closely linked. More than that, the complementary role that the Supreme Court of Canada, in 2014, saw the Senate's role in the legislative process – that of completing the process, so to speak, and providing 'a "check" on the excesses of a winner-take-all majority rule' (by which MPs are elected) – is a scrutinising function the Crown depends upon before it grants royal assent to bills (Harder 2018, p. 11). Thus, if the Crown's place elevates the Senate, it may equally be said that the Senate's role as a chamber of sober second thought is vital to maintaining the integrity of the legislative process, of which the Crown is the acknowledged guardian. That does not mean that the opinion of the Senate necessarily determines the outcome of a question. What is more likely to happen, in light of the primacy of the principle of responsible government, is the position advanced by Senator Tony Dean during the vigorous debate in 2018 on legislation to legalise cannabis: 'This is an election-platform commitment, it is a major government bill. I think, at the end of the day, the Senate [must] recognise the primacy of the elected body' (LeBlanc 2018).

The achievement of universal male suffrage had no effect on the Senate both because federalism was the key consideration at its creation and because it was never understood to be primarily a societal bulwark. In fact, the Senate has been an important forum for minorities underrepresented in the Commons: women, indigenous peoples and French Canadians in provinces where they are not an electoral majority (cf. Cardinal, this volume). In one respect, the Senate might be considered static, since its numbers never change; by contrast, the House of Commons increases in size as a result of the Canadian formula for electoral redistribution. Indeed, in the last century the Commons has increased in numbers almost by the size, in number, of the Senate. In 2018, the Fathers of Confederation would recognise the Senate they designed but not the House of Commons, whose membership far exceeds its original number. Therefore, small provinces value their representation in the appointed Senate. Another factor in explaining growing public interest in and sympathy for an unelected chamber is the growing unpopularity of partisan politics and of party discipline in particular, as manifested in the work of the House of Commons. One reason for this development is a heightened belief in the need for real and perceived fairness, with a resulting transformation in the sense of what rules should look like. In the words of Australian scholar Judith Brett (2001), 'For those experienced with the modern informal meeting and its consensual style of reaching a decision, parliamentary procedure is no longer seen as enabling but as precluding cooperative action'. A reciprocal relationship appears to be emerging between senators and the public, one that is essentially different from that which happens between MP, as representative, and constituent, as represented.

Paradoxically, the Senate itself is being redefined as a new democratic instrument at the same time as the Commons, particularly the government in the Commons, is being forced, as a result of the Senate's activities, to address criticism of its activities more than ever before. Although the committee work of the Senate is regularly lauded by media, academics and the public, the scope of that activity and the sense of citizen access to its proceedings deserve closer study than may

be given here. Indicative of its volume, however, are data in the annual *Senate Report on Activities* for the period between both 2008 and 2009 and 2012 and 2013, which reveal that over 2,300 committee meetings have taken place with more than 6,000 witnesses in attendance, which produced roughly 500 committee reports (Senate of Canada s.d.).

As evidence of the dynamic of bicameralism, the primacy of one chamber appears to be in potential decline while the other appears to be on the rise. Thus, while critics of a non-partisan Senate might profess to see it imperilling the principle of responsible government, defenders of the new order might claim that it is saving democracy. If there is substance to those positions, here is where today's 'crisis' of Canada's Senate may reside, for it is challenging assumptions of governing that predate the Confederation. At this point, it is worth recalling that Canada has never had legislation such as the *Parliament Act, 1911* of the United Kingdom, which reduced the House of Lords' power in the passage of legislation to that of a suspensive veto, which is to say that the Lords may delay but cannot defeat legislation. With that result, said American political scientist William Riker (1992), the Parliament at Westminster had become, in constitutional reality, 'a unicameral legislature'. That Canadians have never been induced to follow the example of 'the mother country' in this regard may be interpreted in different ways, but in the present context, it confirms widespread support for the original Senate and its powers, as set down in the *Constitution Act, 1867*.

Although perhaps not an inundation, there is more media coverage of the Senate today and the tone and analysis of that examination is far more probing than previously. Such attention is to be preferred to the suffocation of business in the House of Commons by party discipline. More than that, there is an educative value to be gained from the controversy that may arise between the two houses: government is forced in its response to criticism from senators to take a position, with the result that the process of governing is becoming more public than ever before. Compare that outcome to the findings of a study about constrictive party discipline based on interviews with MPs in 2004 and in 2011, conducted by the Samara Centre for Democracy (Curry 2018). Today, even when government refuses to compromise, it is still more accountable than before because it has to explain – publicly – its decision again (and again) (Wherry 2018). One of the great benefits to accrue from the appearance of truly functioning bicameralism is a more informed citizenry. A significant consequence of the arrival of a more critical Senate (and with it energised bicameralism) is that the primacy of the House of Commons – in truth, government dominance of the Commons (and Parliament) – is being reduced.

It is difficult in 2018 to make an absolute judgment as to whether this development is good or bad for the future of Canadian politics. Certainly, it is possible to find critics: Ian Brodie (2018, pp. 11–12), Prime Minister Stephen Harper's (2006–2015) former chief of staff, has written that 'a Senate without partisans is a dangerous innovation'. On the other hand, Hugh Segal (2018) – Principal of Massey College, University of Toronto, a former Conservative senator (2005–2014) and former chief of staff to another Conservative prime minister, Brian

Mulroney – has argued that ‘we can’t return to a Senate ruled by partisan politics’. Perspective is required to make an informed judgment on this matter, and that requires time. In the interval and equally central to the discussion, are two additional questions: ‘why, after almost a century and a half of stability, is this happening?’ and ‘why now?’ First, there has been more than a decade of talk – but no action – by Conservatives on Senate reform, particularly to make the body elected. When the government of Stephen Harper finally acquiesced to pressure from within and outside Parliament to seek an advisory opinion from the Supreme Court of Canada as to whether his government’s proposal to introduce a system of indirect election of senators (that is, elected within each province) was constitutional, the Court responded in 2014 that such a change would constitute a fundamental alteration to the terms of Confederation and therefore require amending the formula of the constitution – after which, talk of Senate reform abated. In reality, as we have seen, it was replaced by action on the part of the opposition Liberal party, first as opposition and then, after 2015, as government.

It would be an exaggeration to say, in light of this brief history, that political parties are in decline. Still, it would be a mistake to assume that recent and rather dramatic changes in parliamentary practice have not promoted the reputation of the Senate among those Canadians who express cynicism about political parties, because parties often seem unable to achieve what people want. The Senate was designed to provide balance in an otherwise unbalanced federation, which is one reason the Court in its opinion described it as a ‘foundational political institution’. Now, freed of the partisan chains that linked them for a century and a half to the House of Commons and which denied their playing the compensatory role the architects of the constitution intended, senators are poised to undertake a new role as an ally of the people. Whether this is a crisis for the Senate may be open to debate, but that there will be contradictory understandings about the role of the non-partisan Senate in the future is unquestionable.

Conclusion

Historically, the reputation of the Senate of Canada among Canadians has not been particularly favourable. It was viewed as a partisan preserve whose members were scarcely less disciplined by party whips than were members of the House of Commons. Yet it is rather difficult to accept that negative assessment, if only because without the Senate of Canada there would have been no Canada and because for more than a century and a half it has brought a balance to opinion in Parliament that the Commons, whose composition has been based on elections, often felt free to ignore. If there is one undisputed characteristic of Canada, it is that the country is stable; if there is one institution more than any other that contributes to that condition, it is the Senate. What kind of marks can be given to the initiative now underway – where senators are accountable to no one but themselves? While the period under review may be short, there is no question that the Senate today is improving legislation, yet at the same time it is not thwarting government. Rather than limiting popular power, the Senate is promoting it.

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