

SENATE REFORM:
MOVING TOWARDS THE SLIPPERY SLOPE

by

ROGER GIBBINS

Institute of

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Roger Gibbins
Associate Professor of Political Science
University of Calgary

1 INTRODUCTION

"The failure of our existing institutions is so extensive that the answer is not to be found in fine tuning existing institutions. Effective regional representation requires major institutonal reform."¹

Once again, the perennial issue of Senate reform is in the air. Newspaper columnists have taken up the cause. Provincial governments are shaking the

~~... from reform proposals created originally in the heady days of~~

reform in the light of both the host of complex design problems which tend to sap one's enthusiasm for reform, and the losses that Senate reform is likely to inflict upon existing actors within the Canadian political process.

Two major themes pervade the essay. First, Senate reform is neither a simple quick-fix nor a panacea. The reform proposed in the pages that follow would radically alter the institutional structure of the Canadian political system. Indeed, it might well represent the beginning of a slippery slope leading to a fully congressional system of government. Senate reform should therefore be approached warily, for although the existing Senate may be relatively innocuous, the same would certainly not

be the case if a reformed and "bipartisan" Senate

2 WHY SENATE REFORM?

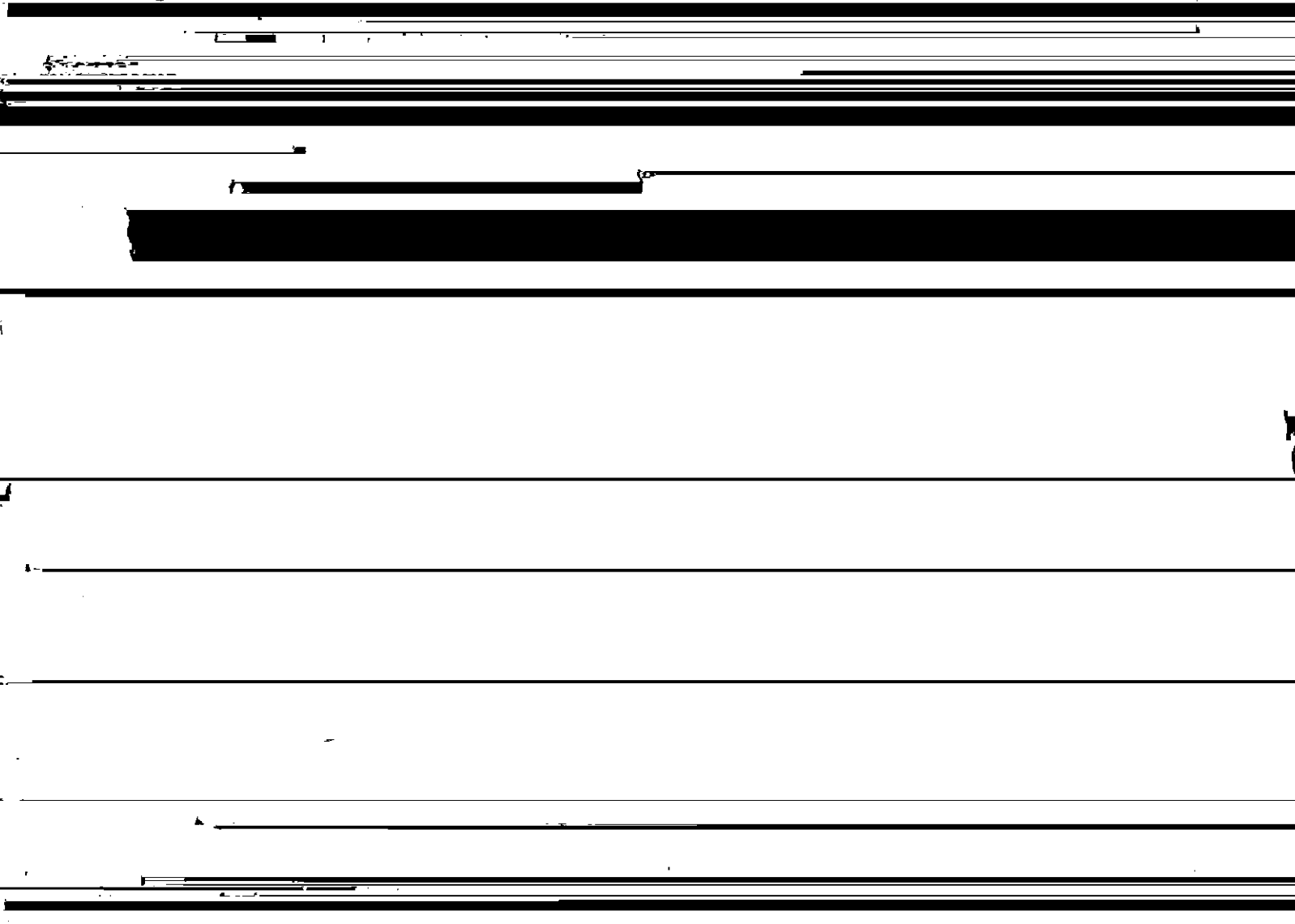
The case for Senate reform raises two major issues. The first and least

controversial is the wide-spread criticism of

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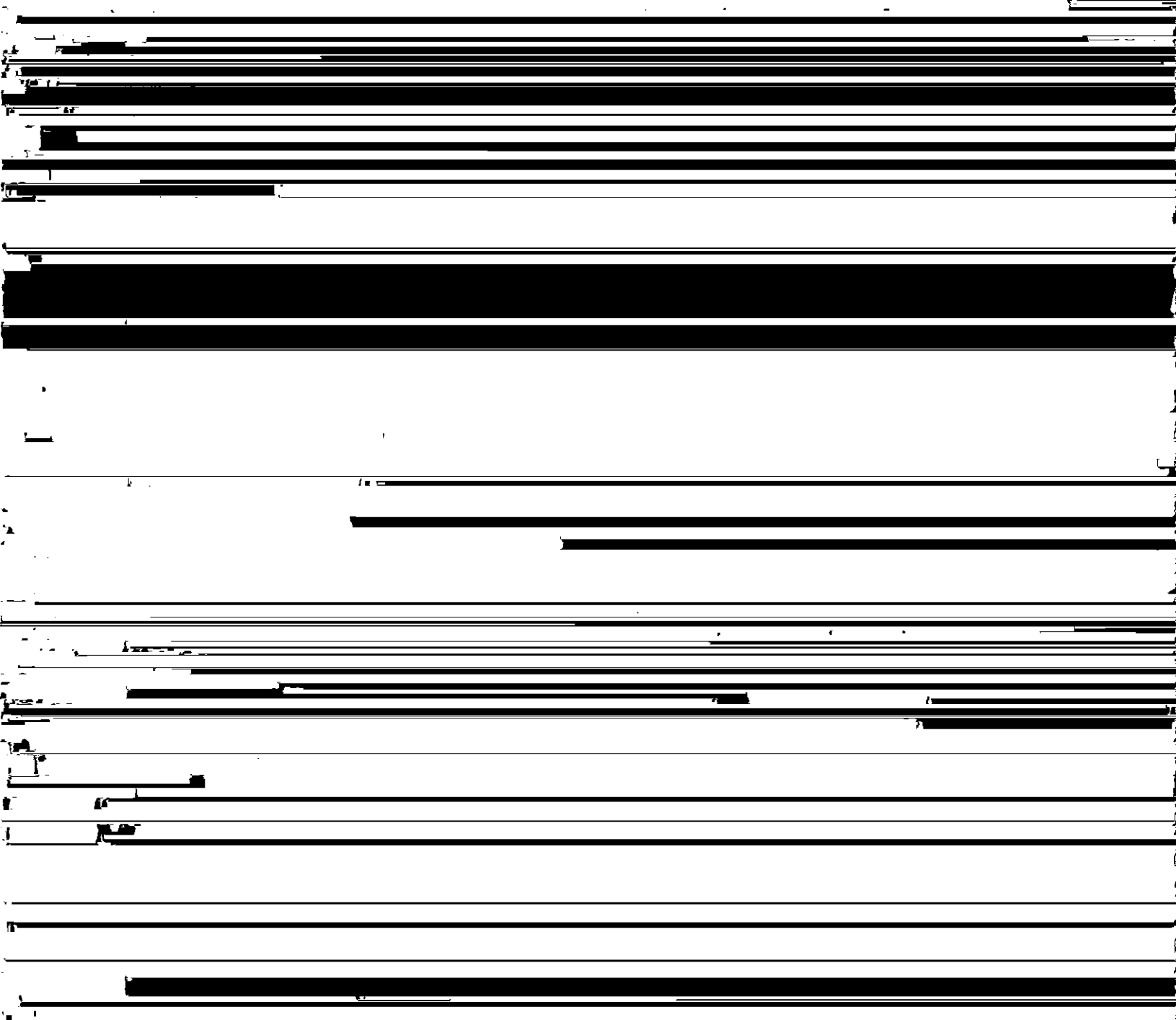
political process. This contact is of great importance to provincial governments since actions taken by Ottawa even within its own constitutional domain can have a major and often adverse impact on provincial programs. Not surprisingly, then, some formal role for provincial governments has been sought in Ottawa, some role that would go beyond episodic First Ministers' conferences and which would not be dependent upon the federal government's willingness to engage in intergovernmental consultations. A reformed Senate whose members would be appointed by provincial governments is seen as one vehicle through which such a role could be realized.⁵

The present system of appointment by the federal government, it is argued, makes no sense for an institution that is meant to reflect regional concerns and interests. A provincially-appointed upper house, on



capacity to handle, and indeed may help create, the regional stress that afflicts Canadian politics, and that the cure lies in recasting the Senate as a more effective national institution rather than as an institution that seeks to bridge the two levels of the federal system.

Over the past several decades there have been two major sources of strain within the Canadian federal system. The first, and the one with the deepest historical and social roots, flows from the nationalist movement



Conservative party clings by its fingertips, and little more, to Quebec, while the Liberal party has been all but eradicated in the West. The NDP remains weak east of the Ottawa valley and has seen its parliamentary representation drawn more and more from the West. The collapse of truly national parties, however, is not the only evidence. One can also point to intensifying intergovernmental conflict, the growth of western alienation and the emergence of a small but significant western separatist movement, the lack of career mobility from provincial to federal politics, and the long-term exclusion of specific regions and provinces from elected

Simply put the argument is that Canadian parliamentary institutions

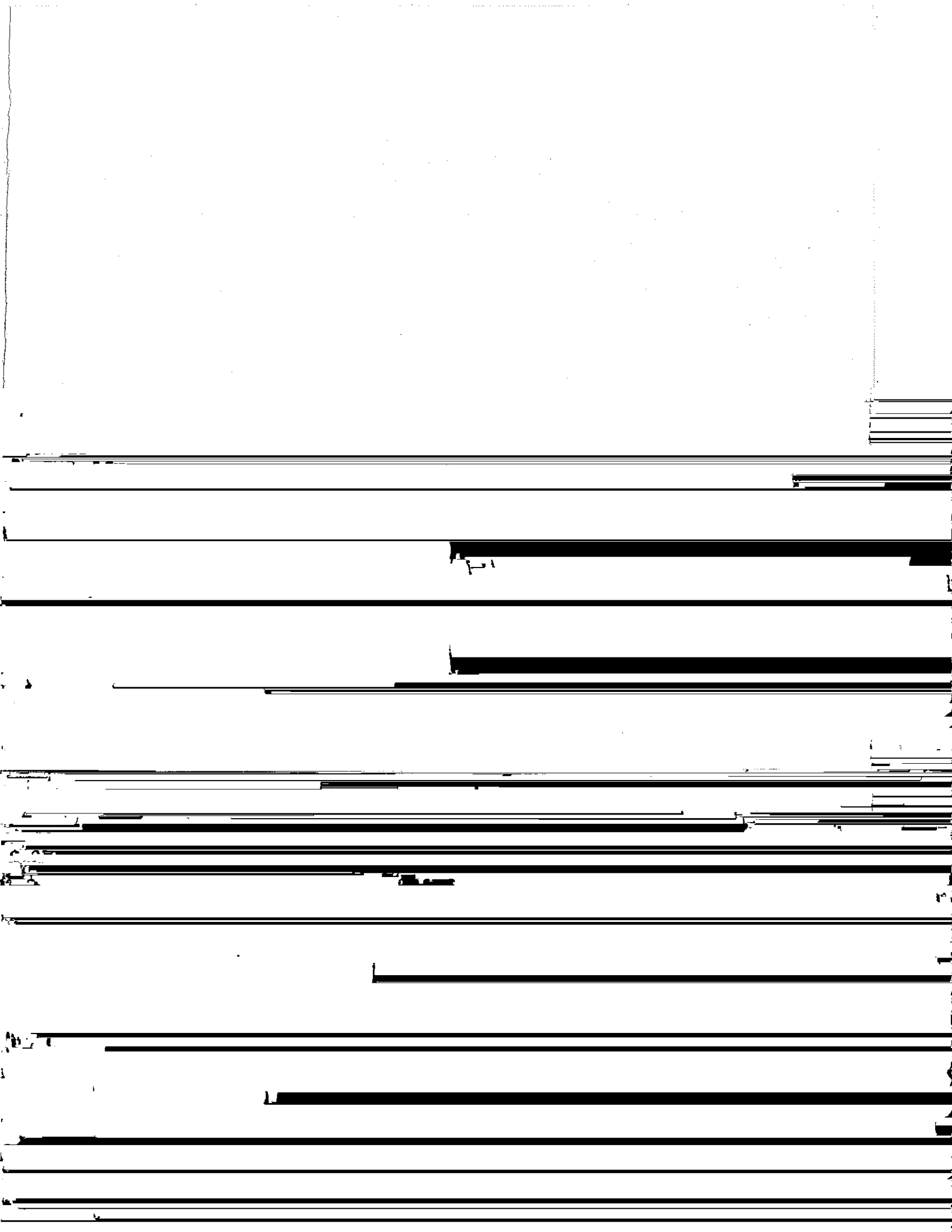
fail to reflect the federal realities of the Canadian political system and

society, and that as a consequence those institutions tend to exacerbate regional conflict. Rather than helping to draw the country together, parliamentary institutions drive it apart. In so doing they fail to provide Canadians with the government they desire or deserve.

As parliamentary institutions lie at the root of the problem, Senate reform is a potential solution. Given that the Senate was originally

Objectives of Senate Reform

The objectives of Senate reform cluster around a single core, that of enhancing the quality of regional representation within national political institutions by national politicians. This could be achieved, it is proposed, through a reformed Senate that would build the federal principle



House and provincial legislatures, with half of the members coming from each level of the federal system.

- Senators could be chosen through direct popular election.

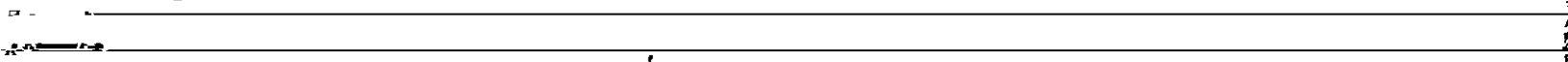
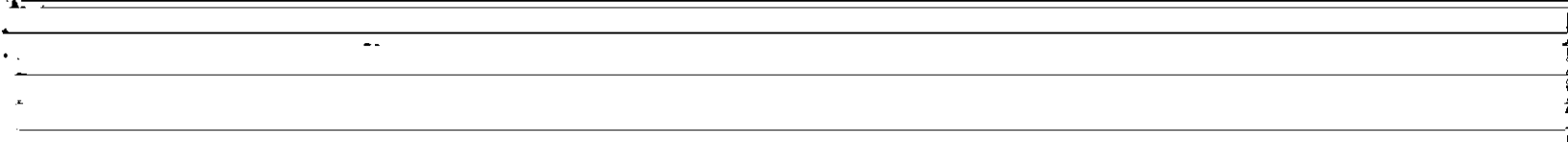
Any effective reform rests upon the last option.⁷ While the other options might be easier to attain, they would not provide a Senate to meet the reform objectives already outlined.

Continued appointment by the federal government is the most readily dismissed option as it would preclude any substantive reform. Appointment by the central government cannot create credible regional spokesmen; Senators would inevitably be seen as representatives of the federal government rather than as effective regional representatives to that government. If federal appointment is not abandoned at the outset, effective Senate reform is doomed.

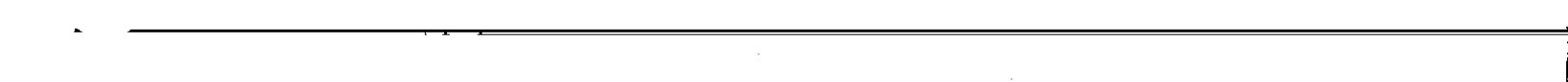
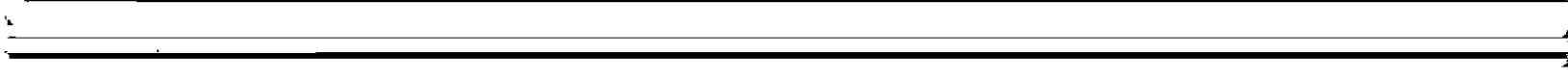
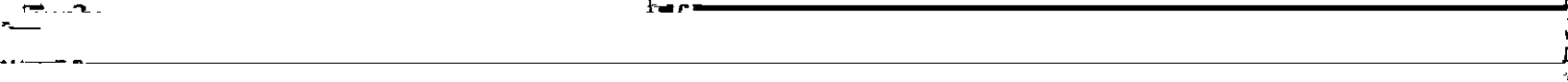
The second option, that of transferring the power to appoint from the

constitutional responsibilities, rather than a half-way house between the

... ..



...



strengthen the institutional independence of the Senate from the House. Here, of course, one should not overstate the potential impact of institutional design on political behaviour; party discipline was alive and well in the House of Commons long before party labels appeared on the

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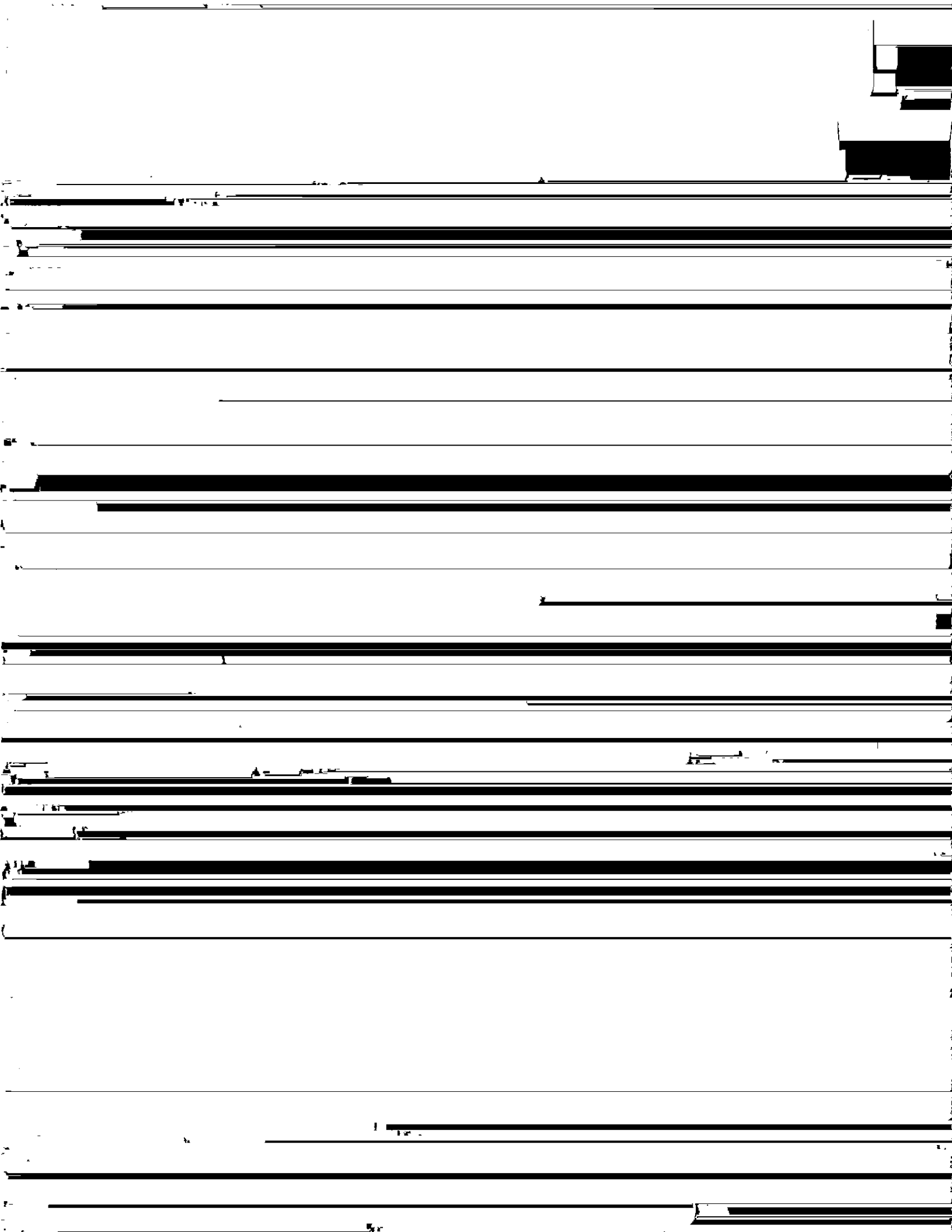
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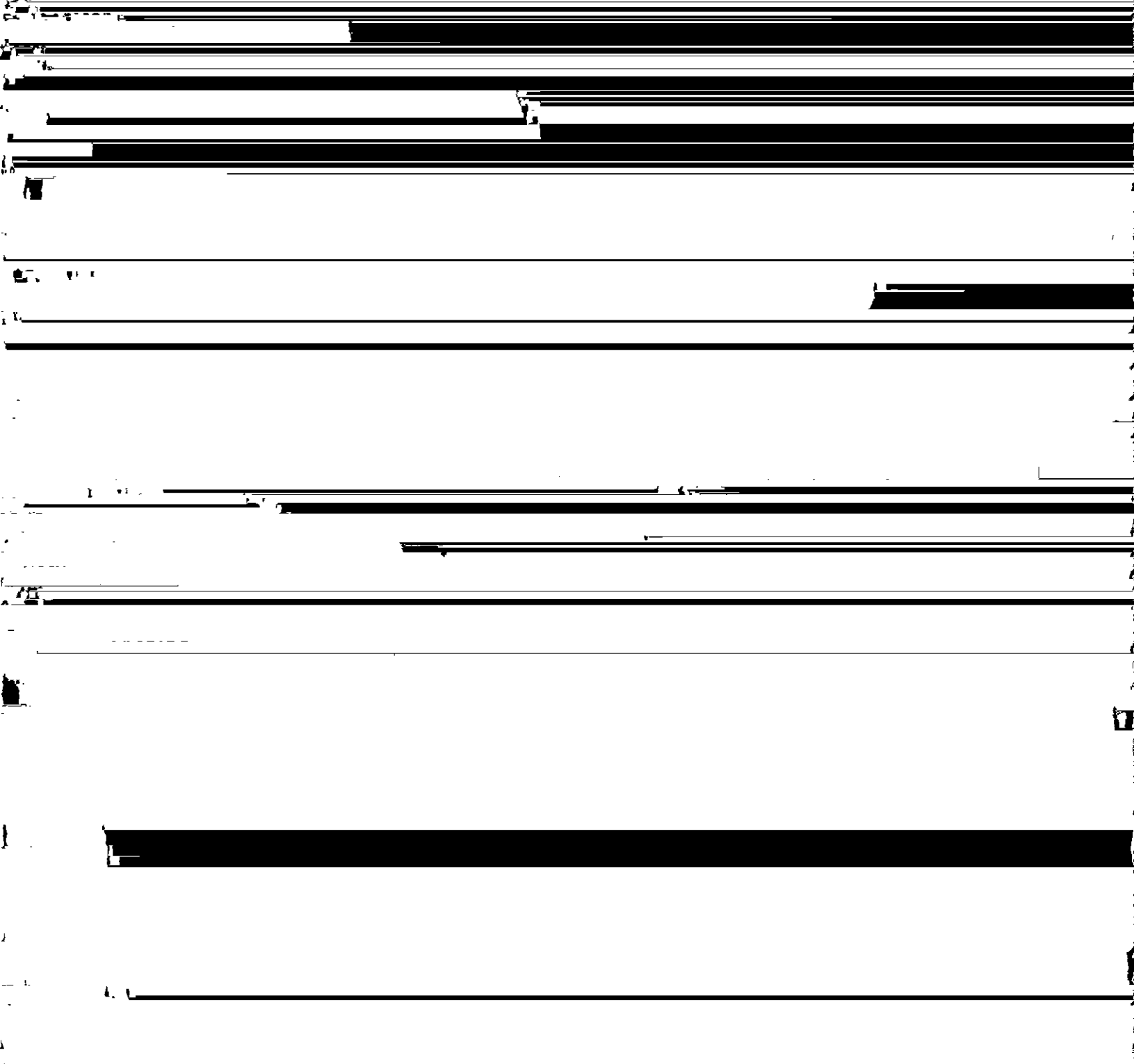
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Senate seats for the smaller provinces could be difficult. Third. PR

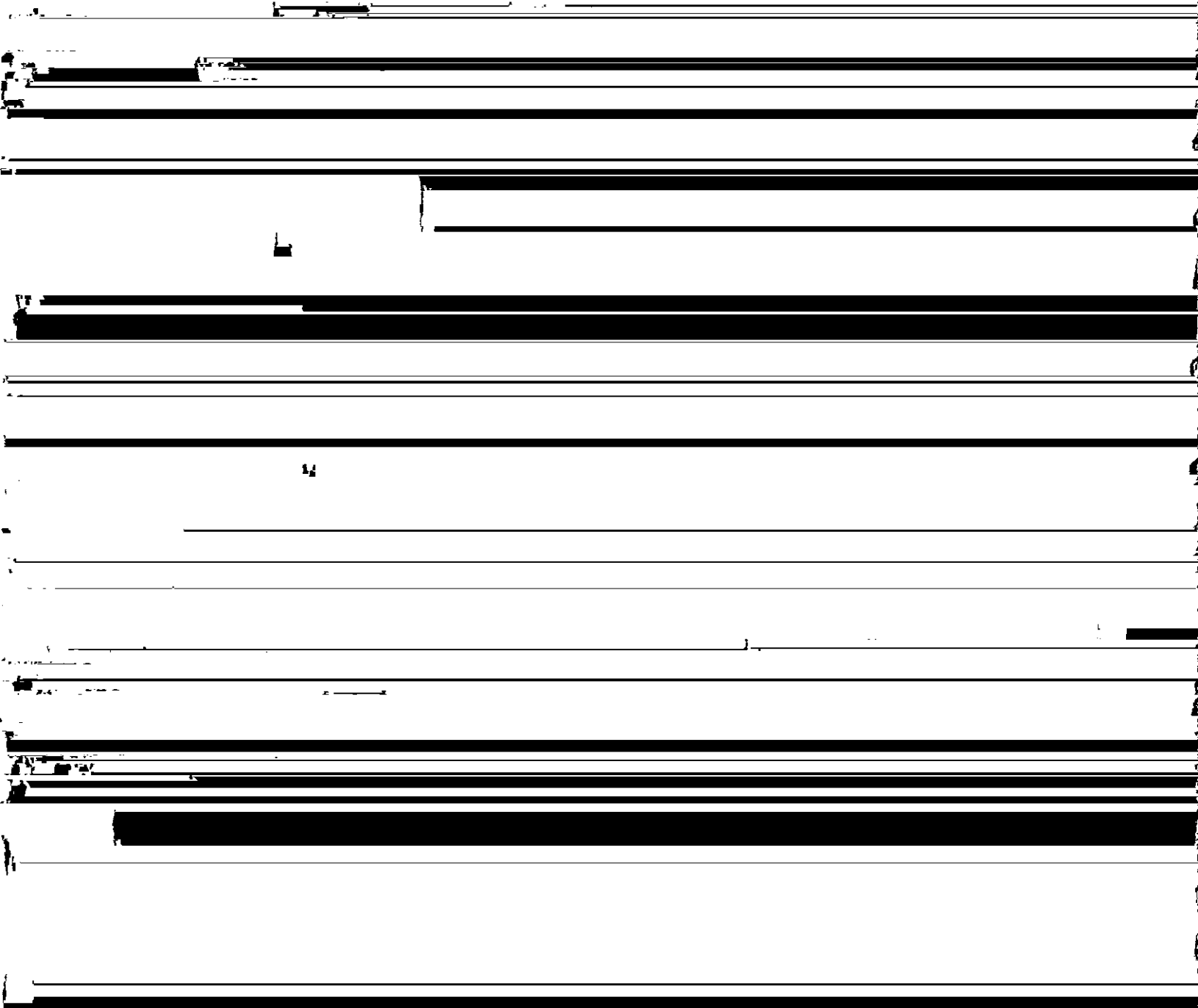


perception that western interests are not well-protected in the representation-by-population House of Commons, western Canadians can be expected to push strongly for an upper house based on equality of

... .. attractive



population spread between the largest and smallest provinces would become even greater if, in the future, provincial communities are created in the



representation in the Senate that would compensate for representation-by-population in the House, equal regional representation is unlikely to be accepted.

... that would ... with small populations the

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Once we depart from the principle of equal provincial representaton there is no convenient terminus. As Table 1 shows, reform proposals in the

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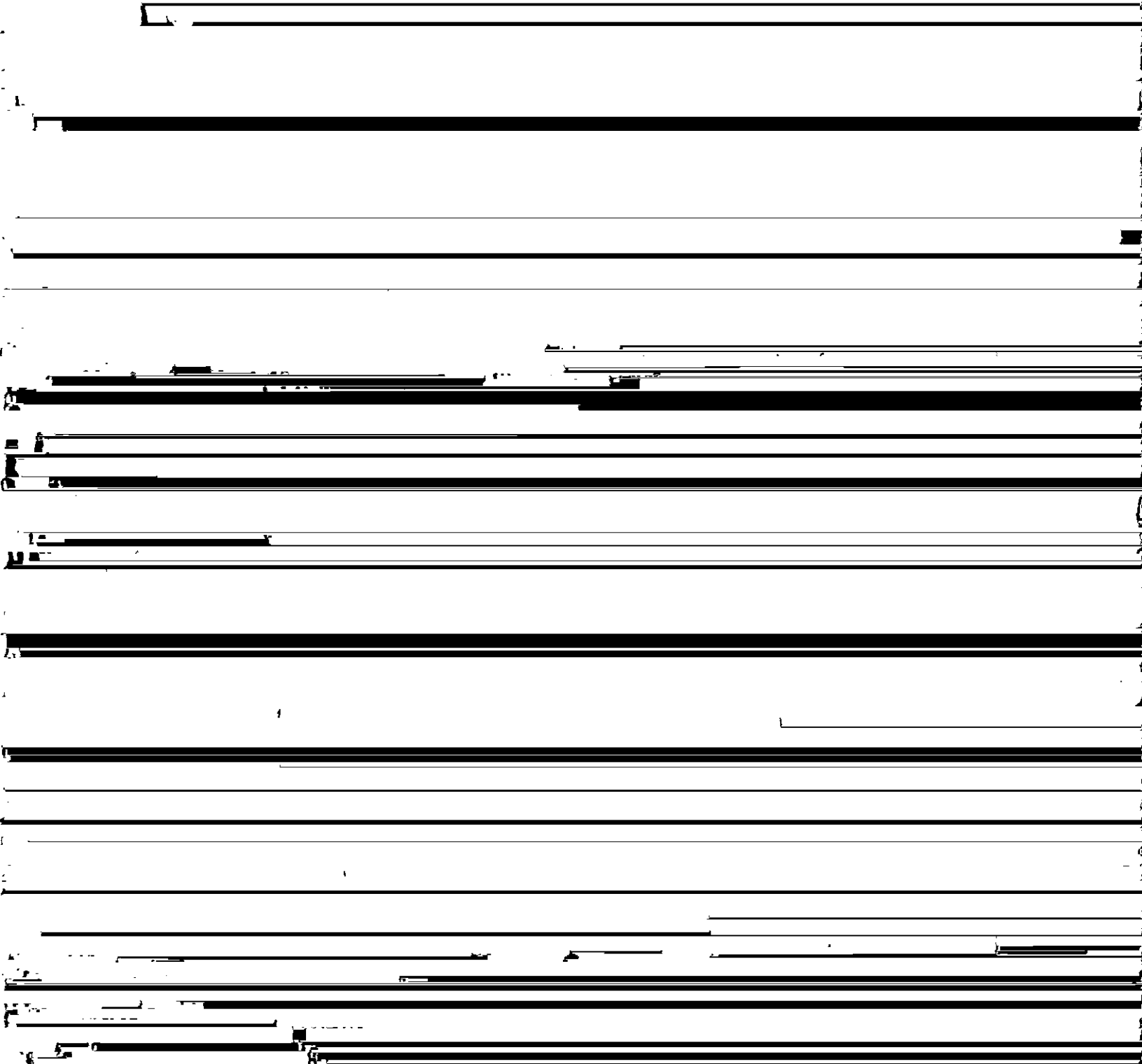
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external tradeoffs that might counterbalance the threat that Senate reform

4 THE POWERS OF A NEW SENATE

continues through this section and the next. The more powerful the Senate

powers here might sharpen the sensitivities of appointees to regional concerns and peculiarities, and might blunt the cruder manifestations of patronage. Such powers might also weaken the demand from provincial governments for some say in federal appointments to regulatory agencies, appointments which ultimately impact upon provincial interests. However, those governments may well not be satisfied with anything less than some say in the appointment of Supreme Court justices. The difficulty



The veto powers of the Senate could be defined in a number of different ways. First, the Senate could be given a restricted veto that could only

legislative supremacy of the House. An alternative solution would be to implement some form of House override for Senate vetos. If, for example, the Senate vetoed legislation passed by the House, the legislation could take effect without Senate consent if repassed in the House by a special majority.¹⁶ If the special majority required a two-thirds vote of support in the House, this would usually require legislative amendments in order to build a multiparty and multiregion House alliance. Alternatively, the legislation could be amended so as to secure Senate consent following repassage in the House by a simple majority. In either case, some degree of regional sensitivity would be required; if it was absent the legislation could not and should not pass. However, if the Senate and the House were dominated by different political parties, and if the majority party in the House comprised less than two-thirds of the MPs, deadlocks

what is called for is the finetuning of national legislation so that it will more fully reflect regional interests and concerns. This finetuning is not easily achieved through the blunt tool of the veto; it is through amendment that regional sensitivity is achieved. However, if the Senate

that course. This proposal reflects a number of premises. First, there is an excellent chance that the partisan majorities in the Senate and House will not be the same, and this alone seems to preclude the Senate being a confidence chamber. A defeat of government legislation on the floor of the Senate would not lead to the dissolution of Parliament and a general election unless the government of the day decided for its own reasons to pursue that course. This proposal reflects a number of premises. First, there is an excellent chance that the partisan majorities in the Senate and House will not be the same, and this alone seems to preclude the Senate being a confidence chamber. Second, effective regional representation can only be achieved when parliamentarians are not tightly bound by party discipline. If the rules of the game make it next to



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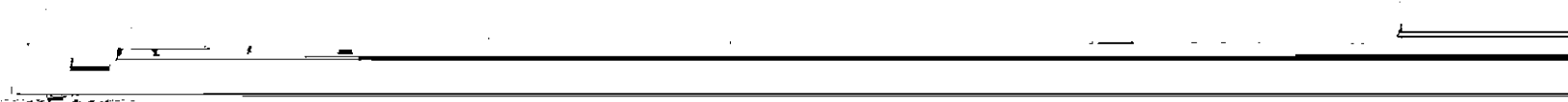






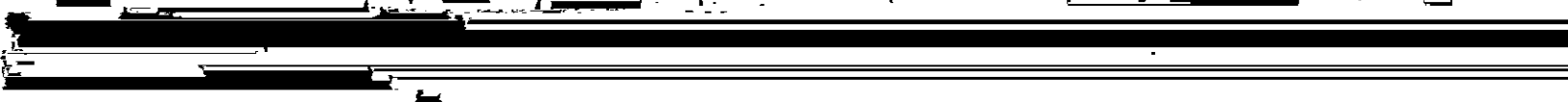
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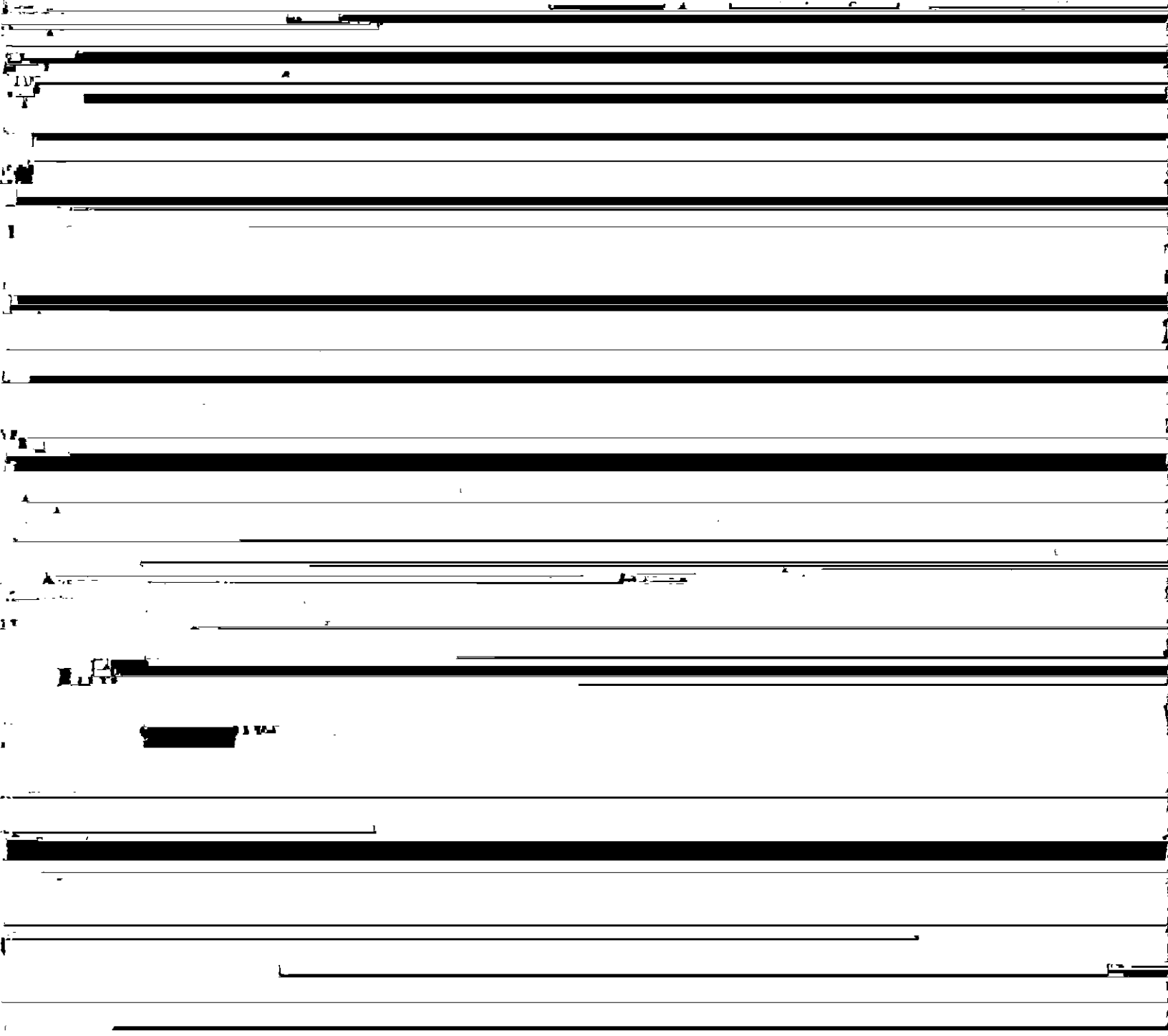
process. Over the past two decades provincial leaders have become national luminaries, bargaining with the prime minister, commenting on national policies, carrying the flag of regional interest, and wielding the sword of regional combat to their own advantage in provincial election campaigns. The claim by premiers to speak for the regional interests of their provinces within the national political process, however, would be challenged by elected Senators based in the national capital. While the federal-provincial division of powers and the importance of



intergovernmental relations would not be directly affected by Senate reform, there is little doubt that on balance the provincial governments

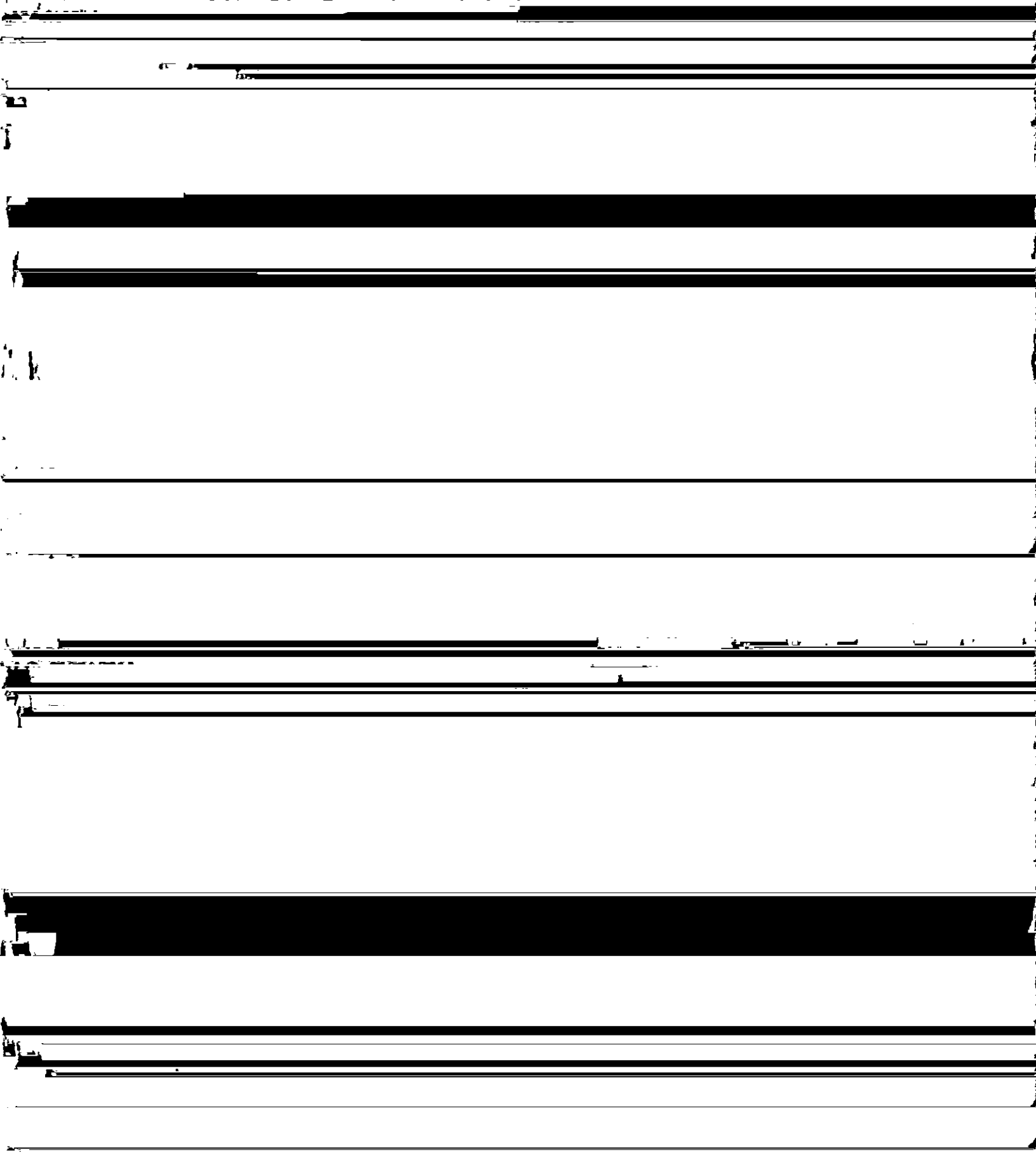


If the provincial governments stand to lose from Senate reform it might be assumed that Ottawa stands to win. Here, however, the blinkered, zero-sum perspective that Canadians often adopt towards federal-provincial conflict does not hold. Most of the political actors within Ottawa also



democratic political system, the loss of an appointed Senate will pose some disruption to the smooth functioning of party organizations. The





If the Progressive Conservative party saw Senate reform as a major threat to Canadian parliamentary institutions, and if the party decided to go to the people in a spirited defense of those institutions, it could state a resolute public stand in a country where so few things

opposition from Senators, MPs and the federal cabinet; overt opposition may be seen to be self-interested rather than based on the best interests of the country at large. Given that the principles of Senate reform may be difficult to attack, such opponents would be well advised to concentrate their fire on the myriad problems of institutional design. Certainly they would have plenty of material with which to work.

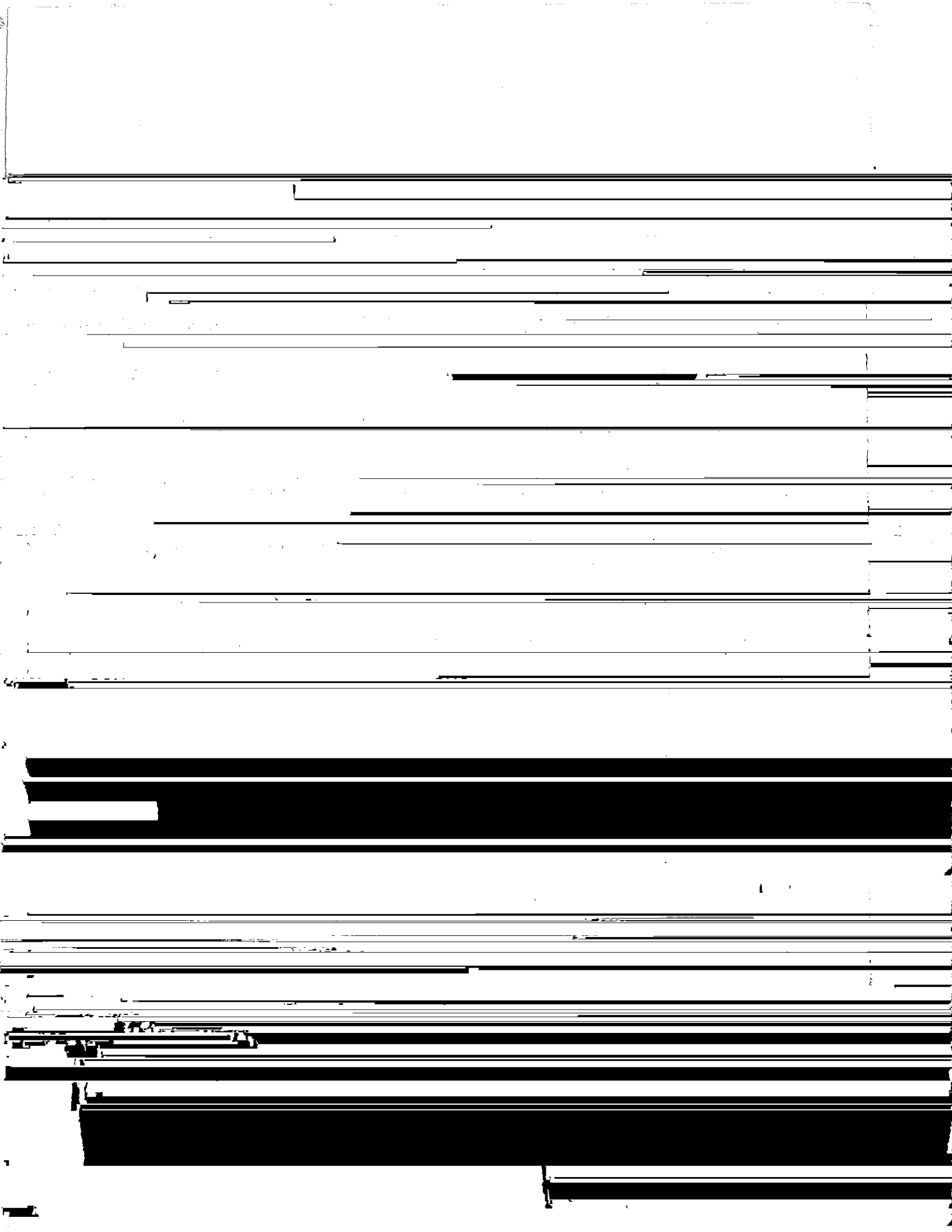
Other opponents could be defanged by a well-orchestrated campaign for Senate reform. For example, while Ontario's stature within the Canadian political process may appear to be diminished in a Senate based on equality or near equality of regional representation, the desire to

should be abolished and 19 per cent had no opinion.¹⁸ Although this is less than a compelling public mandate for Senate reform, the finding that



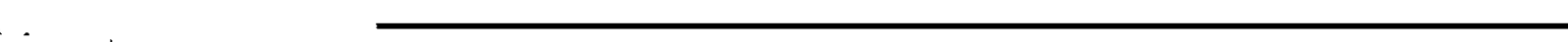
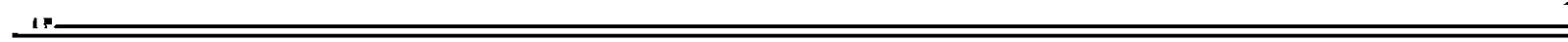




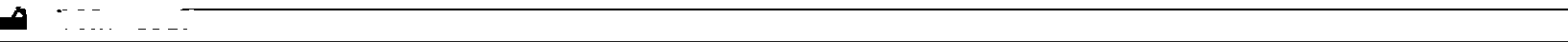
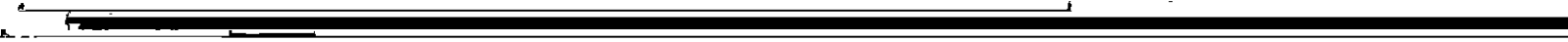

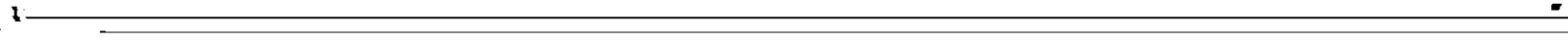

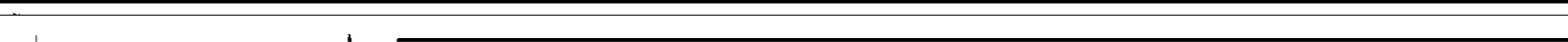


20 per cent of Canadians support the existing Senate does give

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demonstrated, and assuming that future events do not wipe regional conflict from the Canadian political agenda, one must then discount alternative solutions to intensifying regional conflict. One must show, ~~for example, that new political leaders, a change in the national government~~



electoral support for the Liberals in the West, an assumption that seems

at least under present conditions. In this scenario, Senate reform

4. R. MacGregor Dawson and Norman Ward, *The Government of Canada*, 4th Edition, Toronto, University of Toronto Press, 1963, p. 323.

5. See "First Report of the Advisory Committee on Confederation".

16. Conversely, a special majority in the Senate could be required to defeat legislative proposals from the House. See Gerol and Richard, "Getting Representation in Proportion." p. 16. This provision would

