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which had been adopted in the United Province of Canada in 1856. The

the Provinces or Federal Council composed of persons appointed by and acting under the instructions of their respective provincial governments. This alternative which featured prominently in the constitutional debate of the late 1970s and into the first year or two of the next decade was

dealt with?

- is it inevitable that an elected Senate will be a body in which provincial and regional interests will be subordinated to those of political parties?

- how might an elected Canadian Senate be expected to affect the respective legitimacies of the federal and provincial governments and the relations between these two orders of government?

- how well could an elected Senate be expected to play the house of review role?

Apart from these broad considerations, specific matters of institutional design would be involved in the establishment of an elected Canadian Senate:

- the powers of the Senate;

- procedures for the resolution of conflicts between the Senate and the House of Commons;

consent is unlikely. However, the proposal for Senate reform might well be included as part of a more comprehensive constitutional package which would include items favourable to the provinces and other involved actors. And

Senate reform is more likely than otherwise because almost no one appears to be willing to defend the Senate as it now exists.

alone;

political party as the former incumbents. Although the intent and effect

it thinks fit, make any of such omissions or amendments, with or without modification.

and appropriation bills may thus not originate in the Senate, the Senate may not amend tax laws or laws appropriating moneys for "the

government" and the Senate may not increase

dissolution can take only after an interval of three months in which the

government and should be eliminated.

supply would end

national majorities in the interests of the States, particularly the smaller ones. Despite this, Australians were able until the constitutional crisis of 1975 to make a tolerable reconciliation between elective bicameralism and responsible government.

Representatives. At the ensuing general election the Liberal/Country Party forces won majorities in both the House of Representatives and the Senate.

case after consideration as well as by the Liberal party extra-parliamentary organization; in each case the decision was announced not by any Senator but by the Liberal leader in the [House of] Representatives. In other words, the practical reality is that the Senate is an instrument in the hands of parties in the parliament as a whole.[9]

groupings will accept the same position, the Australian Democrats who now

supply.

Whitlam wrote in his book published in 1979, "I was determined to uphold the ancient and fundamental principle that it is the lower House which must control the supply of money to the elected government, to the ministers who

Senate had refused assent to some 21 bills of the Whitlam government which

section 57 have been met when the Prime Minister advises a double dissolution. In 1983 Prime Minister Fraser requested a double dissolution and it appears that the Governor-General refused this advice until Fraser had provided further evidence that the government's legislation held up by the Senate was critical.[12]

The interpretation of the 1975 crisis by members of the ALP and its intellectual supporters combines constitutional argument with political

credentials:

process is repeated until one candidate has received a majority

A.D. and independent first choice ballots won

N.S.W.	8.5	47.0
Victoria	11.9	46.3
Queensland	7.9	38.2
South Australia	11.9	43.9
Western Australia	6.9	48.8
Tasmania	17.1	30.3

Despite the fundamental disagreements among observers of the

[redacted]

preserved and no one to my knowledge has suggested a United States kind of

over the appointed elements of the executive.

2. The confidence chamber of Parliament exercises effective control over the prime minister and his ministerial colleagues.

more extreme supporters bound, to carry out every proposal in its election manifesto."[16] He suggests that in such circumstances "... it is prudent to return to the theory of the separation of powers, adopted by the

American fathers in conscious imitation of what they believed to be the original British practice" and on the basis recommends a battery of very

A rigid adherence to legislative supremacy implies a weak second

alternative chosen by the Special Joint Committee of the Parliament of

unmetable. Under those relatively few circumstances where the government

terms of the incompatibility of such reform with responsible government.[22]

major issue of the campaign is the government's record and the government

effect a resolution of the conflict between the majorities controlling the two chambers of Parliament.

An elected Canadian Senate with only the very restricted powers as recommended by the Joint Committee is unlikely to be an effective protector

Secondly, Senator Michael Pitfield in his presentation to the Joint Committee on Senate Reform on October 18, 1983 provided that a Senate veto

the power and assertiveness to protect regional interests effectively will

no corresponding constraints. One might reasonably then reject the establishment of such an institution for this reason but not because it contradicted the principles and operations of responsible government.

meet one of the goals of reform."[28] To this end the Committee proposed that Senators be elected from single-member constituencies on the general grounds that PR enhances the influences of party and that Senators be elected for long - nine-year - and non-renewable terms. The scheme for an elected Senate contained in **Regional Representation** by Peter McCormick, Ernest C. Manning and Gordon Gibson shows a similar distrust of partisan

opposite his or her preferred candidates' names up to the number of Senators to be elected. In that year a system of preferential voting was introduced in which voters ranked the candidates. The electoral arrangements in effect up to 1948 resulted in a situation in which very

large Senate majorities coinciding with those in the House of Representatives were returned. Although this was hardly typical, the results in the last half-Senate elections under the old method in 1946 was Labor with 33 of the 36 Senate seats.[31]

The 1982 **Parliamentary Handbook** gives an account of the electoral system for the Senate:

> The Commonwealth Electoral Officer ascertains the total number of voted first preference votes given for each candidate and the

Table 4:1

N.S.W.	2
Victoria	3
Queensland	4
South Australia	3
West Australia	4
Tasmania	1
Northern Territory	0
Australian Capital Territory	0

There was no State in which the fifth person elected did not attain the quota.

Despite the apparent anti-party bias of the PR-STV system, the Australian parties have gone a very long distance in establishing party dominance over the process by which members of the Senate are chosen. The

Australia to 32.8 per cent in Tasmania, the Liberal/National Party grouping

The aim of all PR systems is to facilitate the choosing of an assembly

non on the slogan "Keep the Pastards Honest!"

national elections. Despite the complexity of this exercise, only 9.8 per

Facing the necessity of making this large number of choices, most voters

In the centuries of the Australian Constitution the representatives

of the smaller States were successful in bringing about the creation of a Senate with equal State representation. Yet most recent students of

representation may sensitize its operations to State concerns

The available evidence suggests that the Senate is not a primary

None felt that the statement ... was reasonable: five found it 'exaggerated' and nineteen found it 'absurd'. On the question of the source of most parliamentary pressure on issues which safeguard and promote State interests, no Ministers felt that it

The Senate as a Protector of the Rights of the Small States

To the extent that the Senate is an influential participant in the Australian political process, the equality of State representation in that body gives the population of the small States a significant advantage. Sharman has presented significant evidence to the effect that the Senate is — and is perceived by the people of the smaller jurisdiction to be —

Canadian political parties - a movement towards the organizational

that the results of adopting either of these systems would not be very

Until recently, and to some extent even today, bicameralism in nations operating within the framework of liberal constitutionalism was sustained and defended as a device to moderate the pressures of popular democracy. Various procedures in the composition of the second chamber have here and there been created to this general anti-majoritarian end - hereditary membership, appointment for either life or relatively long terms, indirect election, the special protection of ethnic and other minorities and so on. In federal constitutions there is invariably an over-representation of the smaller states and provinces in the second chamber as a protection for those jurisdictions and their people against the majoritarian dimension

committee may thus be summarized: (1) a more leisurely and thorough examination of bills which would of necessity be dealt with more hastily by the House of Commons: (2) the initiation of relatively uncontroversial bills in order to economize the time of the lower house; (3) "interposition of so much delay (and no more) in the passing of a Bill into

> legislation, to prescribe that certain matters must be sent to investigative committees, that on others interested bodies must be given time to submit opinions, that special majorities be required for certain types of decision, etc. A system of rules and procedures might be created within a single chamber which would guarantee a closer review of legislation than any second chamber has ever provided.[50]

Yet the Australian House of Representatives has been ineffective as a house of review. The committee system is relatively underdeveloped and is not like that of the Canadian House of Commons organized along the functional lines of government activity. Party discipline is very strict and the intensity of partisan conflict very high. The House is in session for an

appropriation bills to a secretary they never had before ... It also had a series of select committees inquiring into highly

regulations made under statutory authority must be laid before parliament within fifteen sitting days after such regulation is made and that either House may disallow the measure within a further fifteen day period. The general principle under which the Committee scrutinizes delegated legislation is to ensure:

a) that it is in accord with the statute;

b) [illegible]

d) inappropriately delegating legislative power; or

e) insufficiently subjecting the exercise of legislative power to parliamentary scrutiny.

Although the Committee does not recommend to the Senate whether the provisions it highlights be amended or rejected, a number of amendments have been made to bills as a result of its scrutiny

The house-on-rollers view assumes that these

The difficulty according to Evans' analysis is that Australians have attempted to combine the strict party discipline of the "de facto unicameralism" of Britain with the separation of powers formula of American

Supporters of an elected Canadian Senate have been almost

These conclusions can be drawn about the role of the Australian Senate related to the Commonwealth-State balance:

First, because of the equal representation of the States in the Senate the smaller States have been advantaged in their capacity to influence the workings of the national government. Campbell Sharman has demonstrated how

governments. All the schemes for a new kind of Senate provide for some over-representation of the smaller provinces in terms of their respective populations, although only the McCormick-Manning-Gibson study recommends equal provincial representation. If, as suggested by this study and by the Report of the Joint Committee on Senate Reform, Senators acted in a relatively non-partisan way, the present influence of Western Liberal

political skill.[60] To the extent that many Canadians are alienated from the federal government and believe it is hostile or indifferent to their interests one should reasonably expect little from the establishment of an elected Senate alone in restoring [illegible]

political institutions. An assertive Senate with adequate powers to obstruct federal governments sustained by majorities in the House of Commons - and there is no case for a weak Senate - would give regional interests some protection they do not now have. To be specific, an elected Senate might well have prevented the NEP from being put in effect or at least would have caused certain changes to be made to conform with Western interests. Yet this kind of obstruction might well have resulted in a consequent decline in Ottawa's legitimacy among residents of regions which benefitted from NEP.

In the short run at least an elected Senate might have a provincializing effect. [illegible]

NOTES

22. See generally Robert MacGregor Dawson, **The Civil Service of Canada**, London: Oxford University Press, 1929.

23. The results of a symposium on these proposals are contained in Alan Cumming Thom and Anne Lynch, eds. **Fixed Term Parliaments**, Hobart, University of Tasmania, 1982, (mimeo).

24. Robert Stanfield, "The Role of National Parties", 50 **Options**, (No. 4, July/August 1984), p. 9.

25. op. cit.

36. Odgers, op. cit., pp. 5-14.

37. p. 9.

38. Campbell Sharman, "The Australian Senate as a States House", 2 Politics, November 1977, pp. 64-75.

39. p. 73.

55. p. 7.

56. op. cit.

57. Any systematic account of the development of the modern Australian Greats would give prominent place to the career of J.R. Odgers who

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