



A Short Path to Revitalized Federalism

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Foreword

Canada's Provincial and Territorial Premiers agreed in July 2003 to create a new Council of the Federation to better manage their relations and ultimately to build a more constructive and cooperative relationship with the federal government. The Council's first meeting takes place October 24, 2003 in Quebec hosted by Premier Jean Charest.

This initiative holds some significant promise of establishing a renewed basis for more extensive collaboration among governments in Canada, but many details have yet to be worked out and several

The thesis of this paper is that an elected Senate is an urgent need, too important to remain undone because federal and provincial politicians cannot agree on the constitutional amendment required for full reform. There is another way. If the Prime Minister really wants to reduce Canada's democratic deficit, he should forgo his patronage power to make Senate appointments. Legislation could provide for federally-organized elections to fill Senate vacancies. The nature of the Senate would be changed quite quickly if the legislation authorized early pensions for present appointees who create vacancies by retiring before – say, up to ten years before – the mandatory age 75.

Senate reform has been long needed, but it is given urgency by the recent decision of provincial and territorial Premiers to establish their "Council of the Federation", billed to "revitalize the Canadian federation and build a new era of constructive and cooperative federalism".

That grand purpose requires not one reform but at least two. There is need, certainly, to secure better collaboration among the provincial governments and between them and the federal government. The Premiers' Council will no doubt help in the first respect. But in relation to national affairs it is, in itself, an assertion of power without responsibility. Federalism will be weakened, not strengthened, unless the Council is soon accompanied by a method of ensuring that effective representation of Canada's diversities is brought to bear within the internal working of the federal government.

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may secure some patronage goodies for their areas. They will not remove the well-based perception that, in the making of major policies, the viewpoints that count are those of the centre, of Ottawa with Toronto and Montreal.

There is, however, a clear way to revitalize federalism by making federal politics more representative. That will be done to only very minor extent by the changes within the House of Commons that Mr. Martin talks about. MPs will, and should, continue to come to Ottawa as party people, to sustain or oppose the government of the day. Democratic federalism calls for additional representation. It means that Canadians should be able to elect also people who go to Ottawa primarily as spokespersons for all the people of their communities, able to inject regional viewpoints directly into the consideration of national policies. Democratic federalism requires, in short, an effective Senate. It means replacing appointment by election.

The present Senate is indefensible. In public opinion the question is whether it should be reformed or abolished. The pretext for doing neither is the requirement for a constitutional amendment, and on that politicians are, since the Charlottetown referendum, gun-shy.

It is true that, without such an amendment, the Senate cannot be abolished, nor can it be immediately and comprehensively reformed. But it can, within a few years, operate as an elected assembly. Mr. Martin has only to give up this patronage power.

The constitution provides that the Prime Minister, in effect, fills a vacant Senate seat by appointing – subject to minimal qualifications such as being 30 years old – whoever he wants. How he should make his choice is not defined. To legislate on that is entirely within the competence of Parliament. A simple provision would require that the person “summoned” to the Senate be the successful candidate in an election arranged for the purpose.

There is precedent. Alberta once embarrassed Ottawa by staging, with municipal elections, a vote on who Albertans would like to fill a Senate vacancy. That was, of course, a deliberate

invasion of federal jurisdiction; the Senate is a place in the Parliament of Canada. But the democratic point was well made. Federal legislation should replace patronage by election.

The most effective way – giving, in the current jargon, maximum transparency – would be an Act of Parliament instituting Senate Day, for elections to all seats that had become vacant over a previous twelve-month period. Fo

