Senate Reform

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Let's put the federal reference to the Supreme Court in context. The federal government is not asking the Court to determine what can be done by formal amendment to the Constitution Act. The government is asking what can be done without resort to a formal amendment. The most important outcome of the reference will not be to determine what is covered by the 7:50 formula and what is covered by the unanimity formula. The most important outcome will be to determine what can be done by the House and Senate acting on their own. The Chretien government's veto legislation only matters - legally or politically - if the federal government does something that requires a formal amendment. And the combination of the formal amendment rules, plus the regional veto act, plus the requirements for referendums means the federal government will massively favour acting on whatever can be done by the House and Senate alone.

There is one thing the federal government has the uncontestable right to do on its own as far as reforming the Senate is concerned, and that's to stop appointing Senators. If the current government were to run for re-election on the promise of a moratorium on Senate appointments, the other parties would be pressured to do the same. There are six vacancies in the Senate right now. There will likely be five retirements in 2014 - three government and two opposition senators. In 2015, another retirement, on the government benches. In 2016, a further four retirements, two on the government side and two on the opposition side. By the end of 2016, there could be sixteen vacancies in the Upper House. The only feasible route to abolishing the Senate is this one - a moratorium on appointments. It will take decades, but it's the best route forward for abolitionists.

The second slightly more contestable thing the federal government can do is to have the House and Senate shorten the tenure of Senators. In 2006, the Hays Committee basically agreed that this was within the constitutional competence of Parliament. Unfortunately, after that report was issued, Sen. Hays retired and the federal agenda was overtaken by, first, the credit crunch and then the global financial crisis.

A third thing, which is slightly more contestable again, is to ask Parliament to pass advisory election legislation. I cannot see an advisory election being constitutionally suspect. If advisory elections, which do not bind anyone, are unconstitutional, then the regional veto act is plainly unconstitutional.

If we took these steps, where would we end up? Well, first of all, we would have defeated the defeatist and reactionary argument that we cannot do anything to reform the Senate unless we do everything. And to do everything means doing Meech and Charlottetown all over again. Shortening the tenure of senators and providing for advisory elections, on their own, would be an improvement over the status quo.

There would then be pressures to change the powers of the Senate and the distribution of seats in the Senate. Alberta, BC and Ontario have little to fear from this. Under the new redistribution rules for the House of Commons, they will all be represented in proportion to their population. If the Maritimes are overweighted in the Senate, that's not indefensible any longer.

Changing the powers and composition of the Senate would require a formal constitutional amendment, and take us into Meech and Charlottetown-like mega constitutional, executive federalism again. But with the important difference that we would already be on the road to an elected Senate. An elected Senate would not be the quid pro quo for recognizing that les quebecois form a nation within a united Canada.

The only way to start the process is to take the first and second steps.