

Modernizing the Senate: Moving from a House of Political Parties to a House of Review?

Submission to the Special Committee
on Senate Modernization, April 13,
2016

Dr. Paul G. Thomas
Professor Emeritus
Political Studies
University of Manitoba
Paul.Thomas@umanitoba.ca
204-488-7636

I Introduction

Modernization is a nice sounding positive word. In the business world, modernization refers to the adoption of the latest management and decision –making approaches, the hiring of people with just the right knowledge and skills to meet contemporary and future challenges, the use of state of the art of technology and a focus of planning and the measurement of results. Often there is talk of firms relying upon best practices, which implies there is one best way to run a business.

There is no one best way to run a political institution like the Senate. Modernizing the Senate will involve internal disagreements over the desired aims, best means and the anticipated outcomes of improvements. Moreover, unlike a private firm that is relatively autonomous, the Senate operates interdependently with other parts of the political system so it is open to external pressures and actions by other political institutions and actors. In short, the Senate modernization process will be difficult and uncertain, involving both foreseen and unforeseen consequences. This statement represents the integrating theme of the discussion to follow.

By way of further introduction I want to make eight statements that provide a foundation for my advice on the future of the Senate.

First, the Senate is a distinctive and essential component of the Canadian constitutional order. It is not a token or archaic part of the constitutional order.

Second, with some limited exceptions, the Senate is the co-equal of the House of Commons. Its role is not to compete with

the House of Commons but to complement the role of the popularly elected lower chamber.

Third, the Senate cannot and should not forsake its constitutional duties of reviewing and approving legislation, including financial bills that give rise to taxing and spending by governments.

Fourth, the Senate should continue to play a representational role on behalf of regional societies, not on behalf of provincial governments that have other channels of representation to the national government.

Fifth, the Senate has claimed for itself a role in protecting and promoting the rights of minorities of various kinds within Canadian society. Its claims in this regard have not been matched sufficiently by attention and actions on issues affecting minorities.

Sixth, some of the best work of the Senate has been done through its committees conducting inquiries in anticipation of legislation or in reviewing the impacts of past legislation and policies.

Seventh, no one could reasonably claim that the Senate has always performed these functions well, let alone perfectly. However, not all of the shortcomings of the institution can be blamed on the Senate and its members. Governments of all partisan stripes have at times taken the Senate for granted, treated the Senate stage of the parliamentary process as a nuisance requirement and/or interfered with the independence of the institution.

Eighth, the tendency in commentaries on the Senate is to treat it as a unified, homogenous institution whereas in fact it is a

diverse body of 105 members representing different regions, social backgrounds, political philosophies, policy concerns, talents and understandings of and commitments to the job of being a Senator. In addition, the Senate has its own internal structures, procedures, parliamentary practices, leadership roles, traditions and organizational culture. Recently heightened partisanship has become so dominant that this internal diversity has been somewhat overwhelmed.

With these eight points in mind let me turn first to a perspective on modernization and then to some more concrete recommendations on the future of the Senate.

II Reform/Effectiveness vs. Modernization/Efficiency?

Two fairly recent court rulings have recognized that the Senate is a fundamental part of the constitutional architecture of Canada. The courts have also insisted that the institution cannot be changed in any fundamental way without a constitutional amendment involving either unanimous consent of the provinces or seven provinces representing fifty percent of the national population. This means that changes to the institution will have to take place in a non-constitutional, evolutionary manner rather than through the equivalent of a constitutional “big-bang” transformation.

Acceptance of these constitutional limitations can be seen in a subtle shift in the language being used to describe the process for improving the performance and reputation of the Senate. Whereas before we used to talk about “reform” of the Senate, now we are talking about “modernization” of the institution. This shift in terminology is important.

Put simply, Senate “reform” was mainly concerned with making the Senate more “effective” by granting it authority and legitimacy to play a stronger role in lawmaking, to provide greater representation of regional concerns and to provide a check on prime ministerial power and enhanced scrutiny of executive actions. For reformers the main question being asked was: How can the Senate be made more legitimate and powerful?

In contrast, “modernization” implies that the main concern is with making the Senate more “efficient” in performing its duties within the parliamentary process of handling bills and providing advice to governments. Modernization focuses on the internal structures, rules, procedures and schedules of the Senate that have not been changed sufficiently to reflect the increased volume and complexity of the business it faces. The main question now being asked is: How do we identify modern best practices for the Senate?

This distinction or dichotomy between reform/effectiveness and modernization/efficiency is simplified, but it highlights the tension in executive-legislative relations that is central to the debate over the future of the Senate.

Structural and procedural modernization of the Senate should not be focused simply on making the parliamentary process more convenient and less demanding for governments. Nor should it be represented as a fundamental reform process that will drastically change the balance (or what many would informed commentators would describe as the drastic imbalance) in executive-legislative relations.

Given the court rulings an expansion of the formal powers of the Senate is not feasible in constitutional terms. Nor is it

feasible in political terms because no government, regardless of its partisan identity, will want to create a powerful Senate that will become a roadblock in the parliamentary process and a source of embarrassing scrutiny of problems within government.

The good news is that the Senate does not need to increase its formal powers in order to have a more meaningful role in the national policy process. Rather, it simply needs to use its existing powers more effectively and creatively.

The distribution of authority and the dynamics of power within the cabinet –parliamentary system mean that the Senate must rely less on formal “power” and more on informal “influence” to increase its contribution to the parliamentary and governing processes. Prime Ministers and governments will have to encourage and support a Senate that seeks to play a constructive role and not regard the institution as an obstacle to be bypassed or a nuisance to be tolerated.

For the Senate to achieve greater influence will also require a new shared institutional identity and purpose, creative and politically skillful leadership, a more constructive, less partisan culture, modernized structures and procedures, adequate funding and staff and sound, professional administration.

IV Modernization in Theory and Practice

It is helpful to think about modernization of the Senate by drawing upon the vast literature on change within other organizations. Let me add immediately that modernization of the Senate is different from managing change within private firms or public organizations like government departments.

Change within all organizations involves politics by which I mean finding agreement on the primary purposes of the organization, the challenges it faces and the best ways to meet those challenges. In the case of the Senate these requirements are complicated by the fact that the institution is deeply immersed in politics in ways that other organizations are not. The tasks of the Senate are primarily political in nature. It operates as part of a wider political system. It is exposed non-stop to external political pressures and outside scrutiny. Internally there will always be political disagreements and partisanship of varying degrees of intensity.

In the past outside pressures from governments and inside divisions along party lines have prevented the Senate from developing a strong independent institutional identity. These fundamental conditions have also meant that there was not strong leadership group worried about the “health” of the institution and there was a weak collective commitment to maintaining its status and reputation within the political system.

The Senate is entering a transition phase with the final destination uncertain at this point. Because of “politics,” change within the Senate will never take place in completely planned and rational manner, which is true to a lesser extent of the change process within all organizations. Nevertheless, general approaches to managing change can offer guidance in terms of what is required to achieve modernization of the Senate. The main components usually identified with successful change are: leadership, involvement of members, planning, structural and process improvements, communications, cultural change, conflict management and effective/efficient implementation.

V Organizing to Modernize

Legislatures are most successful at strengthening themselves as institutions when leaders and members cooperate across party lines and search for agreement on what improvements are desirable and feasible. Senators will be more accepting of changes if they have played a role in their development and adoption. The first step is for the Senate to plan and organize for undertaking modernization. This committee and other work being done within the institution represent that first step. During any change process there will setbacks and lulls in activity and at those points leaders and members who serve as “champions” of the process become crucial to maintaining momentum.

While the government will have an interest in how the Senate organizes itself and conducts its business it should allow Senators to decide these matters independently. More than adopting a “hands off” approach the government should provide support to the goal of a modernized Senate that is autonomous and capable of playing a constructive role in the parliamentary and wider political processes.

VI Clarifying the Mandate and Mission of a Modernized Senate

One of the early steps in planning for change within organizations is to clarify the mandate and mission of the organization. The mandate refers to the formal legal purpose of the organization, which in the case of the Senate would be its formal authority within the constitutional order. As mentioned above, this is a given and cannot be easily changed. In contrast the mission of an organization is how it sees itself both now and in the future. This informal sense of purpose can be a

source of identity, cohesion and commitment for its members. Probably a mission statement for the Senate is inappropriate but there would be value in developing a stronger sense of identity and shared purpose than exist presently.

In two rounds on interviewing within the Australian Senate I discovered there existed among Senators from all parties a shared purpose and a sense of separate, independent institutional status. The fact the Australian Senate is elected and often lacks a government majority are the main contributing factors to the development of this identity, purpose and behavioural norm of independence. However the leaders within the Australian Senate, both Senators and senior administrators, have actively cultivated a sense of difference from the House of Representatives and adopted a pro-active, protective approach to defending the Senate's status as co-equal part of Parliament.

Probably a formally adopted mission statement for the Senate is inappropriate. Such an informal underlying sense of purpose tends to emerge more organically over time. As discussed below, changing the identity and culture of an institution like the Senate will not take place easily and overnight. It will take action on a number of fronts, committed leadership and patience.

VII Should the Senate Be Seen as a House of Review?

It is a perennial cliché to describe the Senate as a “chamber of sober second thought”. This reflects the original understanding that the appointed Senate would serve to check the excesses of the elected House of Commons that would succumb at times to the excesses of public opinion. This elitist notion no longer fits with 21st century democracy. For many people the Senate is an

illegitimate, constitutional anachronism because it is appointed, not elected. Election and popular support is not the only source of legitimacy, but one of the aims of the modernization process is to improve the image and reputation of the Senate.

To prompt a conversation on a new sense of purpose and identity for the Senate I am proposing the concept of a “house of review.” This is a somewhat vague notion that I will try to clarify, first, in relation to the Senate’s lawmaking function and then in relation to its scrutiny function.

VIII Reviewing Legislation

Due to the complexity of the issues lawmaking has become mainly an executive function. Parliaments pass laws in very general terms and leave it to ministers and bureaucrats to fill in the details through regulations based on delegated legislative authority.

The pre-parliamentary stage of lawmaking often involves consultations with stakeholders, discussions and negotiations among departments, “ Charter proofing” by the Justice department and reviews by cabinet committees. Most bills begin their parliamentary life in the House of Commons and after second reading are referred to a standing committee where ministers, officials and expert witnesses are usually heard The present government has promised to strengthen the committee stage of the examination of bills. If they follow through on this commitment, it has implications for the Senate’s role in the legislative process.

The concept of a house of review recognizes that appointed Senators are naturally reluctant to challenge bills that are sponsored by governments with an electoral mandate and bills that have already been approved by a majority in the elected House of Commons. Party solidarity and party discipline have also contributed to a lack of challenges to government legislation. If the government honours its commitment to respect the independence of the Senate, partisanship will become less of a constraint on the Senate's contribution to lawmaking. Still Senators must recognize that by the time the Senate receives most bills they have undergone extensive discussions in other forums. This does not mean that bills are never flawed or dangerous, but just that the room for creativity at that stage in the parliamentary process is very limited.

The house of review concept implies that the Senate will use its powers to monitor and restrain governments, not to stage confrontations, except in rare cases. It cedes the initiative to the executive. It involves the Senate spending less time on the wisdom of proposed legislation and more time on its workability. By workability I mean how well proposed legislation will achieve the government objectives and how bills might be amended to enable the achievement of those objectives more efficiently, effectively and fairly.

It is impossible to state in advance with precision how frequently the Senate should seek to defeat, modify or delay legislation in ways that would challenge the prerogative of the government to have its business considered in a timely manner and would second guess the judgment of a majority in the elected House of Commons. The frequency of potential confrontations will depend greatly on the types of bills presented by governments, the extent to which a particular bills is entangled in controversy, whether it was passed in the

House of Commons by the majority party alone, perhaps under time allocation, and by the intensity of criticism by organizations and individuals outside of Parliament. Although it is difficult, almost impossible to document, we should not ignore the indirect influence that Parliament, including the Senate, exerts when ministers and their advisers anticipated reactions strong negative reactions to draft legislation. The rule of anticipated reactions no doubt leads ministers to hold back or to modify bills before they are introduced.

In general, the Senate should avoid head on confrontations with the government and the House of Commons. The potential defeat or significant amendment of bills can be a source of leverage, but should be used only in exceptional cases. Instead the Senate should consciously develop a number of less confrontational, low-key, subtle, less immediate and more indirect ways to influence the policy thinking contained in bills.

Rather than seek to defeat or to amend bills in any fundamental way, the Senate can play useful role by delaying the passage of bills that are deemed dangerous or unsound in some way. A central function of a house of review is to educate the public, especially those segments of the public who will be directly affected, about legislation being processed by Parliament. Delaying controversial measures until the interested public is aware of the issues and has time to express an opinion can provide a counterbalance to majority rule in the Commons where party loyalty/discipline and the application of time allocation rules can enable the governing party to act before public opinion has time to crystallize.

A second, somewhat less confrontational means of Senate influence would be more regular use of pre-study of the subject matter of bills before they are come over from the House of

Commons. Once ministers and the bureaucracy have formulated bills, and once the Commons passes them, minds are less easily changed, in part because reputations are at stake.

Another practice would involve the attachment of “observations” to reports on bills, especially those bills that are controversial.

A third device might be the inclusion in bills of timetables for the review of legislation after enough time has passed to determine how well it is working in practice. Providing for such reviews in statutes could institutionalize the principle that the Senate plays a role of checking whether the bills passed by Parliament are working as intended in an efficient, effective and fair manner.

These mechanisms for contributing to lawmaking are connected in practice to the Senate’s function of providing scrutiny of the actions and inactions of the executive.

IX Scrutiny of the Executive

Given the need to respect the government’s mandate and the will of the Commons and the limits of its legislative capacity, the Senate should put less emphasis on reviewing current bills and seeking to change them and more emphasis on systematic scrutiny of how past legislation is meeting its policy goals and the efficiency with which those policies are being executed within the bureaucracy.

Reviewing the implementation and impacts of legislation is difficult, unglamorous work that will not generate much

publicity. It requires access to specialized forms of knowledge and skills at interpreting evidence that is seldom unambiguous in terms of indicating the extent to which policies are working as intended by Parliament when it passed bills. In all legislatures that I have studied the capacity and commitment to scrutiny and evaluation is not a strong feature of the institutional culture. Of course when partisanship dominates the culture of a legislature, the governing party will not welcome its members poking and prying around to discover what policies don't work or what administrative inefficiencies exist.

There are, therefore two basic requirements for an enhanced scrutiny role for the Senate.

The first is an understanding and acceptance of the demands of oversight on the part of more Senators than presently see that as part of their job.

The second requirement is willingness by governments to allow for independent inquiries by Senators, especially through a strengthened committee system, and to pay serious attention to Senate reports arising from review of bills and policy studies.

Most government policies today are not brand new but rather represent responses to shortcomings or problems arising from past policies. A house of review would help ministers and the bureaucracy to identify what policies are no longer relevant or are not working as intended.

There is an implicit political bargain at the heart of this shift in orientation. The Senate would agree not to push its powers beyond a certain point and would pass most legislation in an

expeditious manner. In return the government would accept that Senate inquiries could identify problems with past policies in ways that were mainly constructive and non-threatening in political terms. In other words the political bargain underlying a clarified role for the Senate would balance efficiency and effectiveness.

X Changing the Institutional Culture

Would-be Senate modernizers usually think first about changing the structures and rules of the institution. This is understandable because the “infrastructure” of the Senate is a part of the parliamentary process over which they have control. Moreover adoption of visible reforms provides tangible evidence that Senators are committed to modernizing the institution. Unfortunately for modernizers there are limits to what can be accomplished in terms of changed behaviour through structural and procedural reforms alone. For greater and enduring impact such reforms must be accompanied by cultural change, a longer, more uncertain and less visible source of modernization.

Some wise person once observed that cultural change more resembles gardening than it does engineering. The seeds of change need to be planted and nurtured over time before they come to fruition. Modifying a culture of any organization is not like moving dials on the machinery of its operations.

Culture is elusive. It consists of the submerged values, beliefs and norms of behavior within an organization. Some people describe culture as the identity and personality of the organization. Others sum up culture by the phrase: “how we do things around here, ” a reference to the informal, unwritten rules of the game that operate within all organizations.

It is not easy to change culture in a planned and deliberate manner. However, there are a number of means available to change the Senate culture:

- Changes to the method of appointment and the types of people appointed;
- Provision of orientation to new Senators on the role of the Senate and ongoing discussions of the values and ethics that should guide their behavior;
- Different methods for the selection of leaders in various Senate roles and the styles of leadership followed by them;
- Changes to the structures and processes for handling Senate business;
- Modifying the agenda setting process and content of Senate business;
- Providing the incentives and recognition (more symbolic than material) for Senators who demonstrate commitment and contributions to the functioning of the institution;
- Providing the necessary resources for the Senate, its committees and individual Senators to do their jobs;
- The adoption of a code of conduct that sets forth the principles and values of the institution;
- Demonstrating commitment to those principles and values by how the Senate responds to events that bring them into question;
- The strategic use of communications and publicity to promote an internal shared sense of purpose and a positive external image of the Senate as a transparent results oriented institution.

The culture of an institution tends to be taken for granted. Foundational values come to the fore only when they are

tested by events. It is during these defining moments that leaders who embody the institutional values in their behavior become so important.

Partisanship has always been part of the institutional culture of the Senate. This is not surprising given that the essence of the role of the Senate is political. It is my impression, however, that the partisanship has increased in intensity and negativity over the past several decades.

In announcing the new appointment process Prime Minister Trudeau claimed it would ‘end partisanship’ and allow the Senate to do a better job of representing regions, reviewing legislation and conducting independent policy studies. In my view the complete elimination of partisanship will never be possible because there will always be like-minded Senators who work together to advance different philosophies of government, regional concerns and specific policy agendas.

It is not partisanship per se that is the problem, but rather how it has been practiced in recent decades. Partisanship does not have to be as strictly adversarial, narrow, negative and theatrical as it became recently. This style of partisanship reflected and reinforced interference and control by the prime minister and his office. Many Canadians are frustrated with mindless, emotional attacks on political opponents and the automatic rejection of ideas based on the source from which they come.

It is neither desirable nor possible to eliminate partisanship entirely from the functioning of the Senate. However, the new culture of the Senate should reserve partisanship for those few matters on which there are deep philosophical disagreements among different groupings. Part of the modified culture of a

more independent Senate should be selective reliance on muted partisanship that is more positive and constructive than negative and blaming in content and tone. There needs to be a greater willingness to conduct lawmaking and inquiries on the basis of sound arguments, evidence and results. Senate processes will still be political, but the quality of the politics will be higher.

XI Structures, Rules and Parliamentary Practices

This is a topic that requires more detailed, first hand knowledge than I possess so my comments will be somewhat general and brief.

The Senate is in transition. It is moving away from being an institution in which political parties provided most of the initiative, direction, organization and animation for activity needed to ensure the completion of parliamentary business. It is moving towards becoming an institution in which there are more independent Senators, more Senators who do not participate in parliamentary caucuses, less reliance upon party loyalty to guide behaviour and less pressure from a government leader in the Senate to ensure that the business of government is completed expeditiously.

This transition will require rethinking of the leadership roles, structures, rules and informal parliamentary practices of the Senate. In an independent Senate there will be less reliance upon top-down direction and control and a greater requirement for shared leadership and coordination through negotiation and voluntary collaboration. As more Senators are appointed under the new procedure that seeks to remove partisanship as a factor in their appointment, there will be a

growing insistence that members have greater input into running the Senate.

Here are some of the issues that might arise as the transition proceeds.

The new government has chosen to appoint a government representative in the Senate rather than appoint a government leader in the Senate who until the recent past was also appointed to cabinet. The new government representative is not in cabinet and will not participate in the caucus of Senate Liberals or in the Commons caucus of the Liberal party.

If no Senator was invited by the Prime Minister to join cabinet, then the appointment of a representative of government to oversee and coordinate the progress of the government's agenda in the Senate was required. Another option might have been to allow Senators who support the governing party to elect their own leader to liaise with the government, but this option would seemingly contradict the message that partisanship has ended in the Senate. Also the Prime Minister needs to have confidence in the Senator who will be responsible for moving the business of the government forward.

The leadership provided by the government representative will depend upon "soft power" in the form of influence rather than the "hard power" of control and sanctions. In the Commons parliamentary politics will remain a "team sport" whereas over time in the Senate a majority of members will enter the parliamentary arena not wearing a team uniform. Without the benefit of party solidarity produced by a lifetime of partisanship and/or participation in a national caucus process, and without the control of party discipline, the

government representative will have to rely upon communication, persuasion, negotiation, accommodation, trust and principled compromises to ensure that the Senate operates efficiently and effectively.

In the more independent Senate of the future, the Speaker will preside over the chamber and uphold the rights of all Senators. She/he should not be seen as a representative of the government. Therefore the Speaker should be elected by secret ballot of all Senators.

With a greater aura of impartiality and legitimacy an elected Speaker should be granted more authority to promote and protect the interests of the institution, its independence and the parliamentary rights of its members. To reinforce the principle that the Speaker serves the institution, he/she should chair and be guided by a committee on Senate Affairs consisting of the government representative in the Senate, the leader of any organized caucuses in the Senate and a representative of each of the four regional groupings of Senators.

An example of the Speaker protecting the independence of the Senate would involve his role in preparing and defending the budget and staffing of the institution to present to government. An example of upholding members' rights would be giving the Speaker authority to split omnibus bills and refer different sections to the appropriate committee for legislative review. The Committee on Senate Affairs should also perform the role of populating the Senate committee system, a task that was previously performed by the party whips.

XII Committees as the Main Working Units of a House of Review

Among Senators and the small number of outside defenders of the Senate, its committees have occupied pride of place, especially for the work they have done on policy studies. There is greater continuity on Senate committees compared to Commons committees. Working together on topics allows for more in depth knowledge to be acquired and for shared understandings and trust to be developed among committee members. This leads Senators to relate more to the evidence before them and as a result there is less ritualistic partisanship involved in the hearings and reports of the committees. Unlike outside task forces and commissions members of Senate committees stick around to lobby for their recommendations.

As part of a plan for a more independent Senate, committees should be granted greater freedom to run their own affairs. There should be a selection committee with the Speaker as chair that would be responsible for the appointment and removal of Senators from committees. Committees should hold elections of the chair and deputy chair by secret ballot.

As part of the house of review function, Senate committees should adopt an opportunity seeking mentality that consists of identifying policy topics on which the government will be looking for advice in the intermediate future. In this way the Senate committees can contribute to the agenda of policy ideas that are circulating within government. Early involvement in this way maximizes the opportunity for influence.

In some cases the committees can serve as a kind of “policy incubator” of fledgling policy ideas that are struggling to gain life. When reports from Senate committees are not the basis for immediate government action, the tendency is to dismiss committee process as busy work for Senators who otherwise would not have enough to do. This ignores the educational

value of Senate reports and the longer- term contribution that they sometimes make to policy development.

Probably the weakest aspect of the parliamentary process on the House Commons side is the Supply process involving the review and approval of the spending estimates. Over the years there have been many proposals to reform the Supply process, most recently from a special Commons committee appointed in 2012 to consider the topic. There are multiple reasons for the lack of serious scrutiny of spending by the Commons committees that will not be examined here.

On the Senate side, some constructive hearings and useful reports has been produced by the Standing Committee on National Finances when it has examined broad fiscal policies of governments and has conducted fairly in-depth reviews of particular departments and/or policies. There are limits, of course to what a single committee can accomplish in terms of scrutiny of spending and performance of hundreds of departments and agencies.

The other standing committees of the Senate should not attempt to conduct detailed reviews of the annual spending estimates. It would be inappropriate for an appointed upper house to attempt to change spending plans that are matters of confidence in the elected lower house. Moreover, there is something artificial about annual spending reviews because much of such spending is statutory in nature (it cannot be changed without amending the legislation that requires it) or there are political reasons for continuing it. Instead therefore Senate committees should seek to achieve longer- term influence over the conduct and results of spending by conducting performance reviews of departments and

programs. Such reviews would be included in the cycle of committee work planned over a number of years.

There is no shortage of performance information available to support such performance reviews. In addition to the three – part Estimates, there are: reports on Plans and Priorities, Departmental Performance Reports, Strategic and Business plans, Management Accountability Framework reports, reports from the Auditor General and the Parliamentary Budget Officer, in-house and external evaluations conducted by departments, think tank reports and this list could be lengthened.

All of these information sources were intended to support internal management accountability and to improve performance, but tabling them in Parliament was also meant to support external accountability by ministers and senior public servants. The depressing news is that very limited attention is paid to such accountability reports in either Commons or Senate committees.

There are many reasons for neglect of these accountability reports that cannot be examined here. Realistically, a Senate with 105 members and fewer than 20 committees could never provide comprehensive, in-depth review of performance issues involved with a \$280 billion dollar budget spread out over hundreds of departments/agencies. The approach to scrutiny would necessarily be selective involving targeted reviews over the cycle of several years.

A related issue is health and future of the public service a crucial national institution which is crucial to the effective functioning of government, contributes to social and economic progress of the country and supports Canada's role in the

world. The government of the day has primary responsibility for strength and quality of the public service. Within government the Public Service Commission oversees the progress of the public service, but it has lost status and influence over several decades. It has a distinctive status as not really a central agency, not a line department and not officer (agent) of Parliament. It lacks a “parliamentary home” to which it reports on a regular basis; the closest such forum is the Government Operations committee of the Commons.

Also worth considering is the potential value of a Joint Standing of the House of Commons and Senate, or a Standing Committee of the Senate, on the Public Service. It could take testimony from the Clerk of the Privy Council whose role includes serving as head of the public service. It could review reports from the Prime Minister’s Advisory Committee on the Public Service if that committee is retained. It could review the annual report of the Public Service Commission. It could talk to officials from the Treasury Board Secretariat, the central agency that represents the employer for purposes of collective bargaining and deals with personnel issues like classification. The proposed committee could also deal with reports from such officers of Parliament as the Information Commissioner and the Public Sector Integrity Commissioner.

In recent years Senators have debated different ways to give greater practical and symbolic expression to the role of the Senate as a voice of the regions. In the past this voice has been diminished partisanship. There have been examples of attention to regional concerns in the standing committees either by reason of their subject matter (E.g., Agriculture and the West) or the focus of their inquiries (E.g. employment insurance and the Atlantic region). To varying degrees Senators have participated in the regional and national

caucuses of their parties. In 2014 Liberal Senator Terry Mercer proposed all-party regional caucuses to identify and potentially cooperate on regional concerns across party lines. This was after the Liberals in the Senate had been dropped from their party's national caucus. Senators identified with the Conservative Party of Canada still are members of their party's national caucus so they may not accept the premise of the Mercer proposal that cooperation across party lines is desirable or feasible.

If the aim of the Liberal government's Senate reform plan is to end partisanship by dropping its former Senators from caucus and through a new appointment process, the idea of regional party caucuses may have less relevance in the Senate of the future. Another possible way to give greater expression to the Senate's regional role would be a Standing Committee on Regional Affairs. With a larger membership than other Senate committees, the Regional Affairs committee would operate through four subcommittees (Atlantic, Quebec, Ontario and the West). The sub-committees would elect their own chairs. In a given time period only one or two subcommittees might be conducting studies on matters of regional concern.

XII Conclusions

No institution can plan and change its governance arrangements in a completely rational and predictable manner. This is particularly true of a political body like the Senate that operates as part of a wider political system. There is a need for modernization of the Senate, but there are bound to be disagreements over the aims and means of the process.

The modernization process is taking the Senate into uncharted territory and the ultimate outcome is uncertain. There are likely to be both foreseen and unforeseen consequences arising from the process-along the lines of the old saying that every solution creates its own problems. Modernization will not, and cannot be a one-time activity.

The main argument presented in this submission is that constitutional constraints and the distribution of political power within the Canadian parliamentary process mean there are distinct limits to how much the influence and reputation of the Senate can be improved through internal reforms alone. Modernization should not be “oversold” in terms of fulfilling the multiple aims of Senate reformers from previous decades- aims such as strengthening the regional voice, curbing prime ministerial power and stopping unpopular legislation.

Realism suggests that modernization should involve a balance that makes the Senate slightly more efficient and slightly more effective. An implicit political bargain is at the heart of the modernization agenda described in the submission.

The first half of the bargain involves an acceptance by the Senate that it lacks the technical capacity and time to provide detailed review of all bills, and for political reasons will not want to second guess the judgment of a majority of elected MPs in the House of Commons. The Senate should accept the right of the government to have a timely review (not necessarily approval) of its legislation. Beyond a certain point it should not push its power to delay, modify or defeat bills already passed by the House of Commons.

The second half of the bargain involves an acceptance by the government that the Senate, particularly its committees, will

be granted more freedom and support to conduct inquiries into policy and performance matters that are not the subject of current legislation. It will further agree to give serious attention to the advice and recommendations that flow from the Senate and its committees.

The bargain implies that over time the Senate will become less a house of political parties and more a house of review. It will spend less time and resources reviewing current legislation and more effort will be spent on investigating how past legislation is working in practice and whether policies and programs are being administered efficiently, effectively and fairly. By focusing on the medium and long range sources of policy the Senate will increase its opportunities for influence through more indirect, subtle ways than futile showdowns with governments.

In a number of ways, the Senate needs to take control of its internal affairs and ensure that Senators have a sense of ownership of the institution.

