

PARADIGMS LOST: GERMAN FEDERAL AND ELECTORAL SOLUTIONS TO CANADA'S CONSTITUTIONAL PROBLEMS

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INTRODUCTION

No leader, no man whatever his dedication to his country and his party may be, can ever march forth, facing the foe, if he is afraid that there is someone behind him who is interfering directly or indirectly.¹

Diefenbaker would hate this article, for its purpose is to do exactly what "Dief the Chief" feared and loathed — to interfere.

One of the difficulties Canadians have with proposals for reforming the political system is an inability to visualize how different Canada would be if such proposals became law. I intend to address this problem by presenting electoral and Senate reform proposals based upon the bicameral parliament of the Federal Republic of Germany and utilizing statistics from the Diefenbaker years, a period which I have an academic interest in.

"Designing electoral systems," Irvine observes, "has become a cottage industry."² The same could be said of Senate reform proposals. Both have been held up as panaceas, but the former would be easier to achieve because it lies within the purview of Parliament (although it would require broad party and public support).³ Senate reform, requiring amendment of the constitution, is more difficult, as the failure of the Meech Lake and Charlottetown Accords indicate.

To many readers I may appear to be deaf to Livingston's admonition that it is impossible for some to make an analytical distinction between the instrumentalities of federalism and the federal nature of the society they were designed to preserve and protect.⁴

However, please remember that this essay is intended to be illustrative, not prescriptive.

A CANADIAN BUNDESTAG?

The German lower house — the *Bundestag* — is one of the most equitably elected representative chambers. Germany's hybrid post-Second World War electoral law combines features of the British Westminster model and European PR (proportional representation).⁵ However, in adapting this mode of selecting governments to the Canadian context, two assumptions have been made.

First, I have assumed a House of Commons with 530 MPs, a degree of representation similar to more populous G-7 democracies. Support for such remodelling would be hard to achieve, especially in times of economic recession, fiscal restraint, and public cynicism. But one should recall the words of Sir John A. Macdonald: "I was perhaps singular in opinion, but I thought it would be well to commence with a larger representation in the lower branch."⁶

To avoid depersonalizing the relationship between electors and elected, half of the MPs are elected under the simple plurality system, in 265 single member constituencies. The candidate who receives a relative, rather than an absolute, majority — "first-past-the-post" — wins.⁷ Therefore, the actual 1957-1965 election outcomes presented in Table One were taken to be the results for only one-half of the House of Commons.

Under-representation of the parties is corrected by adding another 265 MPs elected by PR. This topping-up ensures that representation corresponds to

the parties' proportions of the popular vote.⁸ Thus a voter would cast two ballots, one for a candidate to represent the constituency, and a second for a party from whose list of candidates are elected MPs to represent the province. However, it is the second ballot which determines party strengths for the entire House of Commons, rather than for only half the membership.⁹

It is at this point that we come to my second assumption: that voters' recorded loyalties extend to this second ballot. Thus a vote for a party's candidate in the 1957-1965 elections is taken to indicate a second vote for that party nationally. Ticket-splitting is uncommon among the two main German parties, but it is an option whereby a voter can support one party's candidate locally and a different party nationally.¹⁰ Thus the results presented in Table Two are indicative, not definitive.

The total number of second votes cast for all parties are added to produce an aggregate national vote, which is divided by the number of seats available plus one to produce a quota — the number of votes needed to win a seat. This quota is then divided into the national vote total for each party to determine the minimum number of seats each is entitled to. Any remaining seats are allocated through the highest average system, *i.e.*, the first leftover seat is allotted to the party with the highest national total, that party's total being divided by two. This process continues until all remaining seats are distributed.¹¹ In order to avoid a fractionalization of the party system, a party must poll five percent of the national popular vote or win three constituencies before being eligible for the proportional allocation of seats.¹² Thus this electoral system favours parties that gain widespread or concentrated support. The five percent/three constituency hurdle is a handicap on fringe or extremist parties, not on regional protest movements.¹³

The aforementioned process is repeated for each party separately in order to allocate their seats to each province. The national vote total for a party is divided by the total number of seats it is entitled to plus one to produce another quota. This quota is divided into that party's provincial vote totals to determine the minimum number of seats each province is entitled to. The first leftover seat is allotted to the province with the highest provincial vote total, that total being divided by two, and the process continues until all the party's remaining seats are assigned.¹⁴

Ontario and Quebec benefit most under this method, which could cause the Western and Atlantic provinces to resist such an electoral system. Furthermore, the representation to which a province is entitled is not fixed according to population. It is a function of a province's share of the popular vote and is, therefore, in direct proportion to votes cast. A province with a lower voter turnout *vis-a-vis* other provinces would suffer a reduction in the number of seats to which it is entitled. Since voting equals power, a province would have a great incentive to get its citizenry out to vote.¹⁵

The number of constituency seats a party won in a province would then be subtracted from the number of seats to which the party is entitled to in order to give the number of MPs elected from the party list.¹⁶ Furthermore, should a party win more constituencies than the total number of seats to which it is entitled, no MPs would be elected from the list and that fortunate party is allowed to retain the extra seats.¹⁷ As indicated in Table Two, the size of the House of Commons would vary because of these additional seats.¹⁸ In Germany this is a rare occurrence, but in Canada it might be a regular event which might also contribute to the slight over-representation of the two old parties.¹⁹

Proponents argue that it would be easier for parties to build local campaign organizations and attract qualified candidates under this proposed electoral system.²⁰ Veteran parliamentarians and rookie candidates who ran in constituencies need not worry about defeat if their names were also placed high enough on their party's list. Women, Aboriginal Canadians, and people of diverse ethnic backgrounds could be guaranteed election in a similar manner. Should an MP resign or die, a by-election is unnecessary: the next eligible person on the party list of that province becomes the new MP, regardless of whether the former MP was a constituency or list MP.²¹

"Canadians," Cassidy states, "see a mismatch between how they vote and how they are represented in Parliament."²² As Irvine notes, the existing electoral system results in a weak relationship between votes cast and seats won, leading to an over-representation of the winner and under-representation of the runners-up which grows sharper as a party's support grows thinner.²³ Cairns adds that this forces parties to skew their efforts and policies toward areas of

TABLE 1 — National Distribution of Popular Vote and House of Commons' Seats Among The Parties, 1957-1965 General Elections

		'1957								1962			1963				1965
	% ¹	Seats	% ²	%	Seats	%	%	%	Seats	%	%	%	Seats	%	%	%	Seats
PC	38.9	112	42.3	53.7	208	78.5		37.3	116	43.8	32.8		95	35.9	32.4		97
Liberal	40.9	105	39.6	33.7	49	18.5		37.2	100	37.7	41.7		129	48.7	40.2		131
CCF/NDP	10.7	25	9.6	9.5	8	3.0		13.5	19	7.2	13.2		17	6.4	17.9		21
Social Credit	6.6	19	7.2	2.6	-	-		11.6	30	11.3	11.9		24	9.1	3.7		5
Others	2.8	4 ³	1.6	0.5	-	-		0.4	-	-	0.4		-	-	5.8		11 ⁴

1. Percentage of popular vote won by party nationally.
2. Percentage of total House of Commons' seats won by party.
3. Independents.
4. 2 Independents and 9 seats won by the *Creditistes*, who polled 4.7% of the popular vote, winning 3.4% of House of Commons' seats.

SOURCE:

Chief Electoral Officer, *Twenty-Third General Election of 1957* (Ottawa: Queen's Printer and Controller of Stationery, 1958), viii; Chief Electoral Officer, *Twenty-Fourth General Election of 1958* (Ottawa: Queen's Printer and Controller of Stationery, 1959), viii; Chief Electoral Officer, *Twenty-Fifth General Election of 1962* (Ottawa: Queen's Printer and Controller of Stationery, 1963), viii; Chief Electoral Officer, *Twenty-Sixth General Election of 1963* (Ottawa: Queen's Printer and Controller of Stationery, 1964), xx; Chief Electoral Officer, *Twenty-Seventh General Election of 1965* (Ottawa: Queen's Printer and Controller of Stationery, 1966), xx; and Peter Regenstein, *The Diefenbaker Interlude: Parties and Voting in Canada. An Interpretation* (Toronto: Longman's Canada Limited, 1965), 31-166 *passim*. See also Frank Feigert, *Canada Votes, 1935-1988* (Durham, N.C.: Duke University Press, 1989).

TABLE 2 — National Distribution Of Popular Vote And House of Commons' Seats Among The Parties Under Hypothetical Electoral System, 1957-1965 General Elections.¹

		1957			1958			1962			1963			1965	
	% ²	Seats	% ³	%	Seats	%	%	Seats	%	%	Seats	%	%	Seats	%
PC	38.9	212	39.8	53.7	293	55.1	37.3	204	38.1	32.8	177	33.2	32.4	180	33.5
Liberal	40.9	222	41.7	33.7	185	34.8	37.2	199	37.2	41.7	224	42.0	40.2	216	40.2
CCF/NDP	10.7	58	10.9	9.5	54	10.2	13.5	71	13.3	13.2	69	13.0	17.9	96	17.9
Social Credit	6.6	37	6.9	2.6	-	-	11.6	61	11.4	11.9	63	11.8	3.7	19	3.6
Others	-	4 ⁴	0.8	-	-	-	-	-	-	-	-	-	5.8 ⁵	26	4.8
Total Number of Seats		533			532			535			533			537	

1. Including extra MPs as set forth in footnote 19.
2. Percentage of popular vote won by party nationally.
3. Percentage of total House of Commons' seats won by party under proposed model.
4. Independents.
5. 2 Independents and 24 seats won by the *Creditistes*, who polled 4.7% of the popular vote, winning 4.5% of House of Commons' seats.

potential strength where they can make the electoral system work to their advantage, thus "exacerbate[ing] the very cleavages it is credited with healing ... the party system is not simply a reflection of sectionalism ... sectionalism is also a reflection of the party system."²⁴

Table Two demonstrates that the proposed electoral system would result in greater fairness in the national, regional, and provincial distribution of seats among the parties because their share of seats would be approximately equal to their share of the national (and provincial) popular vote. The inequity of a party being completely shut out of a region or winning all of a province's seats would cease. No significant regional, cultural, or linguistic segment would have reason to feel frozen out of the caucus of the governing party. The forces of Western and Atlantic political alienation and Quebec separatism might well be dampened due to significant regional input into the decision-making process.²⁵ A nationally representative caucus might even act as a counterweight to the zero-sum games played out through First Ministers' Conferences and federal-provincial diplomacy.²⁶

As Courtney points out, with so many MPs there would be an increase in the operating costs of the House of Commons, a reduction in speaking time for MPs, and a strain on the physical limits of the Parliament buildings. But leaders would have a larger pool from which to choose their front benches, parliamentary assistants, and committee members. A Westminster-style committee structure with enhanced membership and expanded investigatory and agenda-setting powers might arise. Furthermore, unless a leader desired a backbench revolt, they could not take their MPs' for granted. Tight party discipline might loosen, with MPs able to dissent publicly without fear of penalty.²⁷

However, academics such as Courtney and Lovink challenge the efficacy of electoral reform, believing advocates "exaggerate the significance of the electoral system for party policy ... overstate its nationally divisive consequences, and understate its contribution to the effective functioning of the parliamentary form of government."²⁸ Because every second ballot counts, campaigns could become all-or-nothing ideological exercises in mudslinging and scaremongering. An optimal electoral strategy might be to abandon campaigning where returns would be limited in favour of redeploying resources to areas which promise to return large numbers of constituency and list MPs. And a nationally

representative caucus may not ensure that the cabinet would not ignore the regions in favour of their own set of priorities, interests, and biases.²⁹

Canada, it is argued, is a difficult country to govern. Nationally representative majority governments, therefore, are essential. But the existing electoral system produced six minority governments out of sixteen since 1945, or 37.5 per cent, and the 1993 election, though resulting in a majority government, also produced a fragmented House of Commons which may not be able to maintain Canada as a viable and coherent political and economic unit. Minority or coalition governments should neither be labelled aberrations nor equated with inefficient, unstable, or indecisive government. As in Germany, the proposed electoral system may produce a cooperative coalition government rather than confrontational partisan government because PR tends to militate against fluctuations in party strength. Canada would develop a different conception of responsible government and brokerage politics; it would not become Weimar Germany, Fourth Republic France, or present-day Italy.³⁰

Electoral reform is not, as Courtney accuses and Irvine denies, a conspiracy to transform the Liberals-CCF/NDP into a natural governing coalition. Governments such as St. Laurent's in 1957, which received more votes but fewer seats than Diefenbaker's Conservatives, still chose to turn over power. The Liberal party was not forced to, but they chose to because they perceived themselves to be defeated.³¹ The proposed electoral system might function better had, using our historical example, the Liberals and CCF/NDP switched places and Social Credit vanished from the federal scene earlier. On the other hand, perhaps Social Credit would have survived as a rightist party whereupon, along with the leftist CCF/NDP, either could have played the role of kingmaker. One can even envisage an expanded role for the Governor-General under such circumstances.³² However, a fixed election term may be an option worth considering, with early dissolution only when a coalition disintegrates and no party has the support to form a new government.³³

Perhaps in 1957 St. Laurent could have prolonged Liberal rule by forming a government with the support of the CCF, either by adopting part of the CCF's platform or by co-opting CCF MPs as cabinet members. Diefenbaker's 1958 electoral victory — the largest in Canadian history — would have resulted in a less massive majority government which he might not have squandered. In 1962, due to the closeness of

the election in terms of popular vote, either one of the old parties might have succeeded in forming the government with third party allies. Diefenbaker might have prevented Pearson from defeating his government in a 1963 non-confidence motion by working with Social Credit. CCF/NDP leader Douglas or Social Credit leader Thompson may even have served as Deputy Prime Minister.

According to Cassidy, "[t]he three basic criteria by which electoral systems can be evaluated are fairness, effective representation and effective government."³⁴ A Canadian version of the German electoral system would certainly meet the first two criteria, and in all likelihood would satisfy the third.

A CANADIAN *BUNDES*RAT?

All federal legislatures have second chambers, but the Germans possess one of the strongest upper houses — the *Bundesrat* — and have gone farther than Canada in entrenching the federal principle in their national institutions.³⁵ Senate reform proposals based upon the *Bundesrat* were popular in government and academic discourse until the early 1980s when the concept of the Triple-E Senate arose.³⁶ But at least one political scientist has consistently advocated a German-style "House of the Provinces" or "Council of the Federation," writing that "[t]he best way to reform the Senate would be to give it to the provinces. Let their elected governments appoint and control the Senators."³⁷

Because the German *land* (or state) governments are elected in the same manner as the federal government (except that there is no five percent/three constituency hurdle), the German electoral system could be applied to the provincial election results during the Diefenbaker years. However, determining the governing coalitions would be an exercise in futility, and for this simulation knowledge of the party in power in each province is essential.

A number of methods concerning the distribution of Senate seats among the provinces have been envisaged in Canada, from regional to equal to "rep by pop." Table Three illustrates three variants. The first is as it was during the Diefenbaker years. The second gives each province the same number of Senators. The third parallels the *Bundesrat* itself, where membership is graded roughly according to a *land's* population — three to six members for sixteen *lander* for a total of sixty-nine. Because of Section

51A, I have chosen a range of four to eight Senators for a total membership of sixty-one.³⁸

The public perceives the appointed Senate as an undemocratic, a reward given to people for services rendered to the two old parties. The Red Chamber has failed to function as a chamber of regional representation, of "sober second thought," and as a countervail to executive power.³⁹ In the proposed Senate, and in a manner analogous to the pre-1913 US Senate, Senators would be representatives or ministers of the cabinets of the provincial governments. Senators from each province would vote in a bloc as instructed by their governments and a province's delegation could be recalled to deliver an accounting to their government and legislature. Senators would serve only as long as their party retained power and their premier chose to send them to Ottawa. Senate committees would exist, but Senators would not be able to serve in the federal cabinet. Premiers would even be entitled to sit in the Senate if they chose to lead their own delegations.⁴⁰

Thus, to return to our historical example, Diefenbaker would not only have faced the Liberal Opposition across the aisle, but Premiers Bennett, Manning, Douglas, Duplessis, Smallwood, and — ominously — Stanfield *et al.* could have been down the hall. However, instead of a Liberal-dominated appointed Senate, in 1959 Diefenbaker would have dealt with 14 Social Credit, 6 CCF, 8 *Union Nationale*, 5 Liberal, and 28 Conservative Senators — a Senate which might have been more amenable to Tory rather than Grit philosophy. One has to acknowledge that such a Senate would ensure that the provinces would not be ignored by the federal government.

Such institutional reforms would make sense only if they were accompanied by constitutional reforms related to the powers of the Senate and the allocation of responsibility between the federal and provincial governments. For example, Supreme Court Justices, the Governor of the Bank of Canada, and other patronage appointees could be confirmed by both chambers through an on-the-record vote or a secret ballot.⁴¹ The Speaker of the Senate could be elected or the post could rotate annually between the provinces as it does in Germany.⁴²

Table 3. Distribution Of Senate Seats Among The Provinces Under Hypothetical Senate Models, 1957-1963.

	Existing	Equal	Proposed	Premier/Party In Power
British Columbia	6	10	7	W.A.C. Bennet, Social Credit
Alberta	6	10	7	Ernest Manning, Social Credit
Saskatchewan	6	10	6	T.C. Douglas, CCF W.S. Lloyd, NDP (1961)
Manitoba	6	10	6	Douglas Campbell, Liberal Progressive Coalition Duff Roblin, PC (1958)
Ontario	24	10	8	Leslie Frost, PC John Robarts, PC (1961)
Quebec	24	10	8	Maurice Duplessis, <i>Union Nationale</i> Paul Sauve, <i>Union Nationale</i> (1960) Antionne Barette, <i>Union Nationale</i> (1960) Jean Lesage, Liberal (1960)
Newfoundland	6	10	5	Joey Smallwood, Liberal
Nova Scotia	10	10	5	Robert Stanfield, PC
New Brunswick	10	10	5	Hugh John Fleming, PC Louis Robichaud, Liberal (1960)
Prince Edward Island	4	10	4	A.W. Matheson, Liberal Alex Campbell, PC (1959)
Total Number of Senate Seats	102	100	61	

SOURCE: Dyck Rand, *Provincial Politics In Canada* (Scarborough: Prentice-Hall Canada Inc., 1986), 74-560 *passim*.

The House of Commons would remain the locus of decision-making authority in areas of a national character, with the Senate possessing its traditional power of review and a temporary suspensive veto. Such a veto could be overridden either by the passage of time or a House of Commons majority (perhaps one greater than the Senate majority which rejected the bill). Amendment power and an absolute veto could be exercised on bills which touched on areas of direct provincial jurisdiction or the exercise of the federal emergency power. In Germany bills can be initiated by the *Bundesrat* and government bills are first submitted to it for a statement of *lander* position; in Canada it seems likely that the venue for the introduction of legislation would remain the House of Commons.⁴³

Gibbins postulates that formal and informal consultation and negotiation, both inside and outside of House of Commons and Senate committees, would either reconcile any federal-provincial disagreements or reveal if a measure would be rejected or amended in the Senate, thereby preventing its introduction. After introduction, any deadlocks that intra-parliamentary diplomacy failed to resolve could be submitted to a joint mediation committee for arbitration — a procedure with which the Germans have enjoyed success. Then the compromise solution or, failing that, the original legislation could be resubmitted for approval by a majority in each chamber. If rejected again by a Senate possessing an absolute veto, the bill might die, or the House of Commons might be able to override a Senate veto, again perhaps with a majority greater than that which prevented the initial passage of the legislation.⁴⁴ Constitutional amendments could require a simple or two-thirds majority in both chambers to pass. Or federalism could be made more asymmetrical by granting an absolute veto — a so-called double majority — to the Quebec Senate delegation on matters related to the French language and culture.⁴⁵

All of the aforementioned is purely speculative. But such a symbiotic relationship could result in a change in the way governments do business in Canada. According to Lyon, this Senate would constitute a standing federal-provincial conference. Through the operation of this Senate the federal government would benefit from an understanding of provincial point of view and the provincial governments would gain a national outlook and input to federal law and policy-making.⁴⁶

The existing constitutional separation of power might even cease to exist. In Germany, governance is concurrent and interlocking and federal law has priority over almost all provincial law. Ultimate legislative jurisdiction resides with the federal government, albeit in close collaboration with the provinces through the *Bundesrat* and the federal-state bureaucracies. The *lander* possess meagre residual legislative powers but have responsibility for the uniform implementation and administration of federal legislation which they have either participated in drafting and passing or failed to defeat. The benefit to Canada of such a reduction in the size of the federal bureaucracy would exceed the costs of the concomitant increase in federal transfer payments to the provinces to cover the increased administrative expenses.⁴⁷ However, despite the support of at least one former premier, it seems implausible that the federal and provincial governments would adopt this aspect of German federalism.⁴⁸

However, Gibbins also argues that a provincially-controlled Senate could be a "cure worse than the disease."⁴⁹ Such a restructuring would increase provincial influence and ambition in the conduct of national affairs in direct proportion to the Senate's power to amend and veto legislation. If provincial governments put their own interests ahead of those of the nation, Gibbins fears that they could become keepers rather than watchdogs. Such critics conclude that the federal government would never yield such legislative and administrative concessions.⁵⁰ As the federal government stated in 1978:

It is argued by some Canadians that the creation of a Canadian equivalent to the *Bundestag* would help bring about integration of federal and provincial political parties and make provincial government politically "responsible" for the positions they take with regard to federal positions and policies. While this could in fact happen to some degree, it is unlikely it would come close to reproducing the situation in Germany, first because of the differences ... between Canadian regions and linguistic groups, and second because there is little prospect of the provincial governments in Canada agreeing to the same kind of "division of labour" (legislation at the centre, and administration by the provinces) that is practised in Germany. If the provinces were to retain their present wide range of legislative authority,

which is wider than any of the other well-known federations ... a solid basis for separate provincial parties would remain ... In a Canadian *Bundesrat* they would confront each other on the basis of widely divergent interests, wider than in Germany.⁵¹

Some provincial rights advocates even envisage such a Senate as a Trojan Horse which would result in centralization, not decentralization. The argument proceeds as follows: Provincial elections would have national repercussions should they alter the composition of the Senate. Because control of the Senate would make the implementation of the federal government's program simpler, the party in power in Ottawa would attempt to exercise tight control over their provincial wing and would intervene in provincial elections in order to bring to power sympathetic governments. Thereafter the voting behaviour of Senators would be motivated by party discipline rather than provincial considerations.⁵²

CONCLUSION

In the final analysis, Canada is not Germany, and the problems in melding these reforms onto Canadian social conditions and political traditions may be insurmountable. As Lyon opines, it is never feasible to transplant institutions "holus bolus."⁵³ But whatever "might have been," it is a certitude that Canadian political culture and its concept of federalism would have been radically different had a Prime Minister like Diefenbaker been able to substitute the *Bundestag* and the *Bundesrat* for the British Westminster model in redesigning Canada's political structures. And, given Canada's still uncertain future, such tinkering might be worth looking into. □

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Endnotes

1. Speech to the Annual Meeting of the Progressive Conservative Party, January 4, 1964. John G. Diefenbaker, *One Canada. Memoirs of the Right Honourable John G. Diefenbaker. The tumultuous years 1962 to 1967* (Toronto: The Macmillan Company of Canada Limited, 1977) at 220.

2. William P. Irvine, "Power Requires Representation. The case for reforming the electoral system to produce more regionally balanced party caucuses" *Policy Options* 1, No. 4 (December 1980/January 1981) at 22.
3. Irvine, *supra* note 2 at 24-25.
4. William S. Livingston, *Federalism And Constitutional Change* (London: Oxford University Press, 1956) at 7-9: "The essence of federalism lies not in constitutional or institutional structure but in society itself" (at 2).
5. Alex N. Dragnich and Jorgen Rasmussen, *Major European Governments*, 6th ed. (Homewood, Ill.: The Dorsey Press, 1982) at 364 and "The New Federalists" *The Economist* (6 October 1990) 33-34.
6. John C. Courtney, "The Size of Canada's Parliament: An Assessment of the Implications of a Larger House of Commons" in Peter Aucoin, ed., *Institutional Reforms for Representative Government*, Royal Commission on the Economic Union and Development Prospects for Canada, Vol. 38 (Toronto: University of Toronto Press, 1985) citing Canada, *Parliamentary Debates on Confederation of British North American Provinces* (Ottawa: Queen's Printer and Controller of Stationery, 1951) at 39.
7. Dragnich, *supra* note 5 at 366.
8. *Ibid* at 366. For other expositions on the applicability of a mixed electoral system to Canada see William P. Irvine, *Does Canada Need A New Electoral System?* Queen's Studies on the Future of the Canadian Communities, No.1 (Kingston: Institute of Intergovernmental Relations, 1979); and Michael Cassidy, "Fairness and Stability: How a New Electoral System Would Affect Canada" *Parliamentary Government*, No. 42 (August 1992) at 3-27.
9. *Ibid.* at 366.
10. *Ibid.* at 375.
11. Andrew McLaren Carstairs, *A Short History of Electoral Systems in Western Europe* (London: George Allen & Unwin, 1980) at 19-20; Dragnich, *supra* note 5 at 366-368. This is the d'Hondt/Hagenbach Bischoff formula.
12. Dragnich, *supra* note 5 at 368-369. Independent MPs would be able to represent the constituencies which elected them.
13. Irvine, *supra* note 8 at 60. Cassidy believes that a five percent hurdle would be in violation of the Charter of Rights and Freedoms. See Cassidy, *supra* note at 8 14.
14. Carstairs, *supra* note 11 at 19-20; and see Dragnich, *supra* note 5 at 367.
15. It seems likely that Section 52 of the *British North America Act, 1867*, which states that provinces are to be represented in the House of Commons in direct

- proportion to their populations, would have to be amended to reflect the fact that this would only hold true for half of the MPs. See Department of Justice, *A Consolidation of The Constitution Acts 1867 to 1982* (Ottawa: Supply and Services Canada, 1989) at 18.
16. Dragnich, *supra* note 5 at 368. These lists could be drawn up and ranked by provincial party nominating conventions, possibly without interference from leaders and "backroom boys." However, it seems plausible that leaders would retain the power to veto the listing of any individual who was perceived to be incompatible with the parties' principles and objectives. See Dragnich, *supra* note 5 at 370; Irvine, *supra* note 2 at 26.
 17. Dragnich, *supra* note 5 at 368.
 18. The extra seats won are as follows: in 1957, two Conservative seats in PEI and one Liberal seat in Newfoundland; in 1958 one Conservative seat in both PEI and Saskatchewan; in 1962 two Conservative seats in both PEI and Saskatchewan and one in Alberta; in 1963 two Conservative seats in Saskatchewan and one Liberal seat in Newfoundland; and in 1965 two Conservative seats in PEI, four Conservative seats in Saskatchewan, and one Liberal seat in Newfoundland.
 19. In Saskatchewan, Alberta, and Newfoundland this is directly related to the parties involved sweeping or nearly sweeping all of the provincial seats in constituencies. PEI would benefit under this proposed model because it is constitutionally over-represented due to Section 51A which states that "a province shall always be entitled to a number of members in the House of Commons not less than the number of senators representing such province," and PEI has four Senators. It seems likely that this section would have to be repealed. See Department of Justice, *supra* note 15 at 18.
 20. William P. Irvine, "A Review and Evaluation of Electoral System Reform Proposals" in Peter Aucoin, ed., *Institutional Reforms for Representative Government*, Royal Commission on the Economic Union and Development Prospects for Canada, Vol. 38 (Toronto: University of Toronto Press, 1985) at 85.
 21. Dragnich, *supra* note 5 at 367-370; and Cassidy, *supra* note 8 at 16-17 and 21.
 22. Murray Campbell, "How rep by pop wins converts" *The Globe and Mail* (27 October 1993) A17.
 23. Irvine, *supra* note 2 at 20.
 24. Alan C. Cairns, "The Electoral System and the Party System in Canada, 1921-1965" in Douglas Williams, ed., *Constitution, Government, and Society In Canada: Selected Essays By Alan C. Cairns* (Toronto: McLelland & Stewart Inc., 1989) at 121 and 115; also found in Canadian Journal of Political Science I, No. 1 (March 1968) at 55-80.
 25. Irvine, *supra* note 2 at 20.
 26. *Ibid.* at 26.
 27. Courtney, *supra* note 6 at 5-32 *passim*.
 28. J.A.A. Lovink, "On Analyzing the Impact of the Electoral System on the Party System in Canada" Canadian Journal Of Political Science III, No. 4 (December 1970) at 499. See also Alan C. Cairns, "A Reply to J.A.A. Lovink" Canadian Journal of Political Science III, No. 4 (December 1970) at 517-521.
 29. John C. Courtney, "Reflections on Reforming The Canadian Electoral System" Canadian Public Administration 23, No. 3 (Fall 1980) at 439-449 *passim*. Critics point out that Quebec Conservative MPs elected in 1958 had little impact on Diefenbaker's insensitivity toward and ignorance of French-Canada.
 30. Irvine, *supra* note 2 at 24; and Cassidy, *supra* note 8 at 20-21. Experts in comparative politics note that the existing electoral system tends to produce governments which practice short-term coping rather than long-term problem solving. A 1978 study also reveals that there were only eight democracies where an inflationary-deflationary economic cycle was not in evidence, all of which had PR-based electoral systems, Germany included. See Irvine, *supra* note 20 at 100, citing Edward Tufte, *Political Control of the Economy* (Princeton, N.J.: Princeton University Press, 1978) at 12.
 31. Courtney, *supra* note 29 at 431-435; and Irvine, *supra* note 20 at 85.
 32. Irvine, *supra* note 8 at 72-75. In Germany the two main parties are the leftist Social Democratic Party and the rightist Christian Democratic Party, while the third party is the centrist Free Democratic Party.
 33. Dragnich, *supra* note 5 at 380. This has occurred only once in Germany.
 34. Cassidy, *supra* note 8 at 4.
 35. R.L. Watts, "Second Chambers in Federal Political Systems" in Ontario Advisory Committee on Confederation — Background Papers and Reports Vol. 2 (Toronto: Queen's Printer and Publisher, 1970) at 339. See also Richard Janda, *Rebalancing The Federation Through Senate Reform: Another Look At The Bundesrat* (North York: York University Centre for Public Law and Public Policy, 1992) at 7-32 *passim*.
 36. Donald V. Smiley and Ronald L. Watts, *Intrastate Federalism in Canada* Royal Commission on the Economic Development and Development Prospects of Canada, Vol. 39 (Toronto: University of Toronto Press, 1985) at 121. This formula was recommended by the Pépin-Robarts Commission, the Committee on the Constitution of the Canadian Bar Association, the Ontario Government's Advisory Commission on the Constitution, the Task Force on Canadian Unity, the

- Governments of Alberta and British Columbia, and the Constitutional Committee of the Quebec Liberal Party. However, the Special Joint Committee on Senate Reform and the Macdonald Commission explicitly rejected the *Bundesrat* solution as inappropriate and irrelevant. See also Janda, *supra* note 35 at 2-3, fn. 6, 7, and 21-32 *passim*.
37. Peyton Lyon, "For A Useful Senate" *The Ottawa Citizen* (7 July 1991) B1. For an earlier argument see Peyton Lyon, "A New Idea for Senate Reform" *Canadian Commentator* 6, No.7 (July-August 1962) at 24-25.
 38. "The New Federalists" *The Economist* (6 October 1990) 33-34. The Yukon and the NorthWest Territories did not have senate seats during the Diefenbaker years.
 39. R. M. Burns, "Second Chambers: German Experience and Canadian Needs" in J. Peter Meekison, ed., *Canadian Federalism: Myth or Reality?* (Toronto: Methuen Publications, 1977) at 189-190; and also in *Canadian Public Administration* 18, No.4 (Winter 1975) at 541-568; and Watts, *supra* note 35 at 317.
 40. Dragnich, *supra* note 5 at 381-391 *passim*. For another more detailed and thoughtful exposition on how a Canadian *Bundesrat* might look and act see Janda, *supra* note 35 at 33-84 *passim*.
 41. Rainer-Olaf Schultze, *Models of Federalism and Canada's Political Crisis*, paper presented at the All European Canadian Studies Conference, "Canada on the Threshold of the 21st Century" The Hague, (October 24-27, 1990) D-8900 University of Augsburg, Augsburg, Federal Republic of Germany, 5. Another possible list of powers of a reformed Senate is contained in the defeated 1992 Charlottetown Accord. See *Consensus Report on the Constitution* (28 August 1992) at 4-7 and Draft Legal Text (9 October 1992) at 3-12.
 42. Dragnich, *supra* note 5 at 385-386.
 43. Burns, *supra* note 39 at 195-211 *passim*; and Watts, *supra* note 35 at 339-341. A common proposal is that if the Senate defeats a bill by (say), two-thirds, it should require a two-thirds majority in the House to override that vote. Otherwise a simple majority would suffice.
 44. Roger Gibbins, *Senate Reform: Moving Towards the Slippery Slope* Institute Discussion Paper, No. 16 (Kingston: Institute of Intergovernmental Relations Queen's University, 1983) at 30-31; and Dragnich, *supra* note 5 at 389.
 45. Schultze, *supra* note 41 at 5.
 46. Watts, *supra* note 35 at 354.
 47. Burns, *supra* note 39 at 194-199 *passim*.
 48. Knowlton Nash, *Visions Of Canada: Searching For Our Future* (Toronto: McClelland and Stewart, 1991) at 35.
 36. During an interview with former Saskatchewan NDP Premier Allan Blakeney, Nash asked what level of decentralization there should be in Canada. Blakeney replied: "I would think that we could move to a model where more administration was done by provincial and municipal governments, for example, the German model, where most major issues are decided by the German federal parliament, but the programs are delivered by the provincial *lander* governments. I'd like to see a bit more of that. But in terms of significant transfer of legislative jurisdiction to the provinces, I don't see any particular need for it, and no particular benefit for Canadians from it."
 49. Gibbins, *supra* note 44 at 4.
 50. Burns, *supra* note 39 at 205-211 *passim*. This view is encapsulated by Gordon Robertson, a former federal mandarin, who characterized provincial advocacy of the *Bundesrat* model as "What's ours is our own, what's yours is ours." Janda, *supra* note 35 at 29, footnote 64, citing Gordon Robertson, "The Role of Interministerial Conferences in the Decision-Making Process" in Richard Simeon, ed., *Confrontation and Collaboration: Intergovernmental Relations in Canada Today* (Toronto: Institute of Public Administration in Canada, 1979) at 82.
 51. Janda, *supra* note 35 at 19, citing *The Constitutional Amendment Bill* (Ottawa: Ministry of Supply and Services, 1978) at 6.
 52. Louis Massicotte and Francoise Coulombe, *Senate Reform. Background Paper For Parliamentarians* BP96B (Ottawa: Political and Social Division, Research Branch, Library of Parliament, 1984) at 15-17; and Watts, *supra* note 35 at 340.
 53. Lyon, *supra* note 37 at B1.

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