Senate reform is in the works. Prime Minister Harper has introduced Bill C-20, the Senate Appointment Consultations Act. If this Bill passes, we could be voting for senators in the very near future. A House of Commons committee is now studying the Bill, and asking for submissions from experts and the provinces. Senate reform holds significant implications for the future of Canada, and the consequences for the federal division of powers and parliamentary procedure are being examined in great detail. The very constitutionality of Bill C-20 is in dispute.

In any case, nobody is asking another important question: what does Senate reform mean for women?

The question is worth asking because the Senate is the House where proportionally more women sit than any other legislative body – national or provincial – in the country. Women have benefited by the traditional method by which prime ministers appoint at their own discretion. As far back as the early 1990s, Prime Minister Mulroney appointed six women to the Senate. Prime Minister Chrétien came very close to achieving gender parity in Senate appointments during his time in office; 21 women and 23 men. Prime Minister Martin appointed a total of 17 senators, of whom six were women. As a result, currently, 30 of the 87 sitting senators are women, or 34 per cent. This proportion is higher than in any other legislative body in the country. Senate reform is about to change the way senators are appointed, and this will affect the numbers of women in the House.

Louise Carbert

L’auteur s’intéresse aux conséquences de la réforme du Sénat sur les femmes. Présentement, 30 des 87 sénateurs sont des femmes, c.-à-d. 34 pourcent. Le pourcentage de femmes qui siègent au Sénat est plus élevé que dans tout autre corps législatif. Suite au projet de loi C-20, la tendance se maintiendra-t-elle? La réponse à cette question réside dans le mécanisme électoral du projet de loi. Prenant en considération quatre éléments de la proposition, premièrement, le vote préférentiel, deuxièmement, le financement des campagnes, troisièmement, la liste de candidats; et quatrièmement, l’importance de la circonscription, elle affirme que plus la liste de candidats pouvant être élus dans une circonscription est longue, toute part égale, plus une femme a de chances d’être élue.
senators are women – 34 percent. By comparison, 21 percent of parliamentarians in the House of Commons are female. Apparently, appointments are more effective than elections; discretion is preferable to democracy.

There is, in fact, a constitutional basis for the pattern of greater diversity of representation produced by the traditional appointments process. From the outset, a principal purpose of the upper house was to represent the religious and linguistic rights of English minorities in Quebec, and French minorities in the rest of Canada, and thus protect minority rights from the tyranny of the majority in the House of Commons. Since Confederation, the category to be protected has expanded from linguistic English and French minorities to include visible minorities, aboriginal peoples, and women. In this sense, according to Serge Joyal, the Senate has come to operate as a legislative adjunct to the *Charter of Rights and Freedoms*, in the sense that it positively contributes to the preservation of minority rights and interests in the legislative process (2005, 277). An admirable function for the Senate, but one that is rarely articulated, and defended even more rarely. Senator Claudette Tardif is an exception in her willingness to defend this function of the Senate as a reason not to proceed with elections. (In addition to her outstanding personal abilities, Senator Tardif was appointed to represent the historic French communities of Alberta.) Speaking at a panel on Senate reform, she warned:

> Let us never forget that, despite good intentions, it is difficult for a majority always to ensure that the voice of minorities is heard. The Senate must keep its role of ensuring a representation of minorities across the country, as it has done since Confederation. (2006)

The same argument was made, peripherally, on a few occasions during proceedings of the Legislative Committee on Bill-C20.

There is, therefore, the semblance of an emerging convention to make appointments that correspond to the designated equity groups. But it is a convention that rests on the opinion of one, namely the prime minister. And some prime ministers such as Jean Chrétien felt the obligation more keenly than others. Suppose that Prime Minister Harper were persuaded (or directed by the Supreme Court) to proceed with appointments without waiting for elections; would he feel obliged to appoint senators from the designated equity groups? He would probably take care to appoint official-language minorities (Acadians and FranSaskois), but would he appoint women at the same rate as Chrétien? But, supposing that Prime Minister Harper did not observe this emerging convention in appointments: who, outside the parliamentary press gallery, would notice, and who, other than disgruntled party insiders passed over for senate appointments, would care?

If so few people are prepared to make a strong, public case against elections in order to make the case for an appointed Senate as the chamber of women and visible minorities, it suggests a basic problem with that convention. Not even the designated equity groups being represented in the Senate are satisfied. When has a spokesperson for any equity group pointed with pride to their higher levels of representation in the Senate? Were the likes of Joyal and Tardif to launch an
advertising campaign along these lines, one can just imagine the response of conservative bloggers, ridiculing the Senate as the “House of Tokens.” What sort of legislature is this that it cannot be publicly defended?

If few people are willing to defend the convention to appoint senators on an equity basis in order to represent women and vulnerable minorities in Parliament, and if the penalties for ignoring that convention are light, it is a fragile convention indeed. In a liberal democracy, there is a stronger, implicit, and default convention to select the members of any legislature on the basis of popular consultations with the people. Democracy is, *prima facie*, more compelling than executive discretion.

Apparently, therefore, we are caught on the horns of a dilemma – torn between a goal to achieve the diversity in representation, and a preference for the democratic process. It is entirely possible – indeed likely – that the implementation of elections would yield Canada even fewer women in the Senate than we have now. If we have democratic elections for nomination to the Senate, will we end up nominating the same sort of politicians – male politicians – we’ve always been electing in the House of Commons? The devil is the details, and much of the answer lies in the exact electoral machinery proposed in Bill-C20.

There are four operational elements contained in Bill C-20 that hold important implications for women’s representation. The first element is the preferential vote; the second is campaign finance; the third is the panel of nominees; and the fourth element is district magnitude. With the four elements combined, elections to the Senate can be characterized as proportional representation (PR), but this particular combination is unique.1

While the Australian Senate comes close, there is simply no other electoral system in the world like that proposed in Bill C-20. As a result of its singularity, considerable care is required in order to disentangle the elements of PR electoral

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1 The closest parallel is the Australian Senate. It consists of 76 senators, twelve from each of the six states and two from each of the territories. At twelve members, the Australian districts are of the same order of magnitude as provincial electoral districts in the Western and Maritime Senate regions of Canada. The Australian districts are only half as large as Ontario and Quebec districts. The results from the Australian Senate are encouraging; the proportion of women elected to the upper house has always exceeded those elected to the lower house, in a pattern that is parallel to that of Canada. Moreover, the proportion of women elected to Australia’s upper house has ranged in the mid-to-high 30 percent range, and thus exceeded the proportion of women appointed to Canada’s upper house (Maddison and Partridge 2007, 57-61). Malta and Ireland are the only other countries to use STV in combination with multi-member districts, and their legislatures elect few numbers of women. The experience of these small, ethnically homogenous, and traditionally Roman Catholic countries is not easily comparable to Canada or to Australia, but does make the point that STV does not, automatically, translate into diversity of representational outcomes (Hirczy 1995).
systems that are said (in the political science literature) to promote women’s election to public office, some of which are present in Bill C-20, and some of which are not. How votes are counted (by preferential ballots) and campaign finance regulations do not amount to proportional representation; the panel of nominees and district magnitude do. Furthermore, the role that political parties will play in Senate elections is a major factor in women’s election, but that is not pre-determined by Bill C-20, and their role will likely vary considerably from province to province and from party to party. This paper considers each of these four key elements in turn to assess their implications for electing women. It concludes that there just might be a chance to achieve equity in Senate representation through a democratic process.

To begin with, the current bill proposes to conduct elections using a preferential voting system. Preferential voting is familiar to Canadians from the standard run-off method that is used to elect party leaders at leadership conventions and to select election candidates during nominations at the riding association level. When a run-off vote is conducted at a single time, on a single ballot, it is referred to as alternative vote (AV) for a single-member district; when it is conducted for a multi-member district, it is referred to as single-transferable vote (STV). STV sets a quota or benchmark for getting elected, selects the candidates who meet that quota on the first round of counting, re-allocates that candidates’ surplus votes to second-choice candidates to see if any candidates meet the quota, and repeats the process until enough candidates meet the quota to be elected. Counting ranked choices on the ballot thus accomplishes, in one round of voting, what takes several iterations in a run-off election.2

The appeal of STV is its proportionality of result. The electoral outcome is nearly perfectly proportional to the choices expressed by voters on the ballot. This makes the Conservatives’ proposal a version of proportional representation, but it is not like other versions of PR around the world, which use a party-list system. STV allows voters to break away from the restrictions of having to choose a party, and only one party. The connection between candidate and party is broken on the ballot, and this break is STV’s defining feature. In fact, the Conservative government appears to have decided on STV for just this purpose: to structure

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2 The legislative summary for Bill C-20 explains how the single-transferable vote will operate (Michel Bédard, Law and Government Division, 13 December 2007). Bill C-20 proposes to use the standard Droop formula where the benchmark quota to get elected is set as (total number of votes cast / seats contested + 1) +1. On the first round, any candidate who meets the quota is immediately elected. On the second round, the winner(s)’ votes are allocated to other candidates based on the voters’ second-choice on the ballot. Any candidate who now meets the quota is elected. It may proceed to a third round if there are more seats to be filled. If no candidate meets the quota, the candidate with the fewest votes is eliminated and their votes are transferred to the other candidates based on the voters’ second-choice on the ballot.
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Senate elections as contests among individual candidates instead of opposing teams of political parties.

The ballot itself is part of the same agenda to put individual candidates ahead of political parties. The parties will not control the order of nominees on the ballot and they will not be permitted to group their candidates together on the ballot. From these conditions, it is inferred that a candidate’s party affiliation will appear on the ballot, alongside his or her name.

In addition to using STV to structure people’s choice at the ballot box, the government is relying on campaign finance regulation to break the connection between candidates and political parties. The government’s stated goal is to preserve the traditional independent nature of the Senate as a house of legislative review. It may also want to avoid the results of Senate elections in Alberta, where voters cast ballots for the Conservative slate of candidates, and thus reproduced, in the Senate, the same pattern of regional blocs as in the House of Commons.  

To accomplish this goal of moving parties to the periphery, Bill C-20 applies the Canada Elections Act to Senate consultations. Contributions to individual candidates to the Senate will be regulated in the same way as contributions to candidates to the House of Commons. Only individual persons may make contributions to Senate nominees, to a maximum of $1100 per year. Unions and corporations are not eligible to donate. Crucially, political parties are to be considered “third party” to senate consultation campaigns. As a “third-party,” they could not transfer money to candidates, and they would be severely restricted in how much advertising they could do on behalf of candidates. Under the Canada Elections Act, a third party is limited to a total of $150,000 on election advertising, and no more than $3,000 in advertising on any one candidate. Restrictions on advertising are mitigated by allowing parties and candidates to share office space and staff during campaigns. According to the government, restricting how much money parties can spend in senate campaigns will have the effect of directing citizens to vote for the individual candidate, rather than the party.

As a result, the government expects senators to be able to withstand party discipline inside and outside caucus, but we just don’t know how effective these campaign finance rules will be in restricting the role of political parties. I expect

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3 Roger Gibbons expects a reduced role for party selection and financing of candidates to increase diversity of representation in the Senate. Judging from the Alberta experience of Senate elections, party lists herd voters into voting for the dominant regional party, and thus reproduce in the Senate the same pattern of regional bloc voting that characterizes elections to the House of Commons.

that party activity will vary considerably by region and party. A party flush with
cash, like the current Conservative Party, could be expected to direct members to
donate money to specific Senate races in other parts of the country where it does
not expect to win seats in the House of Commons. Prairie Liberals might decide
to keep their donations inside the province, focused on their own provincial Sen-
ate campaign, instead of sending their money off to the central party organization
or to their own lost-cause candidates for the House of Commons. Each party will
strategize where to spend its funds most effectively, and it is possible that some
Senate consultations will be lavishly funded and elaborately advertised.

The first two elements of Bill C-20 – STV and restricted campaign finance –
could plausibly achieve the government’s stated goal of putting the individual
candidate front and centre. How would women candidates fare with a diminished
role for political parties? Would they be stranded or liberated? Are there women
who could get elected, on their own, without (much) party support? Certainly,
women who already have a high profile in the media, such as local television
personalities, former lieutenant governors, university administrators, party leaders,
or defeated cabinet ministers would be credible contenders. Elizabeth May,
leader of the Green Party, could make a more credible run for Senate than for the
House of Commons. In Nova Scotia, defeated Progressive Conservative cabinet
minister Jane Purves is a credible candidate for Senate. As a Conservative in the
NDP bastion of Halifax, Purves stands little chance of being elected as member
either provincially or federally, but people would campaign for her, personally,
without wanting to commit to joining the Conservative Party or even be seen to be
supporting the Conservative Party. The same goes for Saskatchewan’s Janice
MacKinnon who was finance minister in Roy Romanow’s New Democrat govern-
ment of the early 1990s. MacKinnon no longer has a party to call home, and she
could not plausibly be elected to either the House of Commons or the provincial
legislature. But MacKinnon has such stature and personal appeal across party
lines and beyond the party establishment to voters at large that she could walk to
victory by the single-transferable vote. Similarly, in Ontario, former Deputy Prime
Minister Sheila Copps would be a shoe-in for election because her profile is
province-wide and her support includes both Liberals and New Democrats. The
same is true of Anne MacLellan, former Liberal cabinet minister from Alberta,
whose personal stature could mobilize people to campaign on a non-partisan ba-
sis. The outstanding question is: Are there sufficient numbers of high-profile
women who could compete for Senate elections and come out of a preferential
ballot near the top? Just how many other people, specifically how many alpha
males, would they have to defeat to qualify for a seat in a rank-ordered competi-
tion? It depends on how many seats are available.

Herein lies the third relevant feature of Bill-C20. The government is proposing
a system by which each province submits a list of nominees from which the prime
minister selects individuals for appointment to the Senate. The text of Bill-C20
takes great care to refer to “consultations” (as opposed to elections) in order to
avoid constitutional challenge. The purpose of consulting widely and democrati-
cally with the entire adult citizen population is to produce a list of nominees who
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The political science literature on electoral systems shows that larger electoral districts tend to produce more diversity in representation. The more seats there are to be elected, and the more candidates elected, the more likely it is that the composition of the legislature will reflect the diversity of the electorate. This is because in larger districts, candidates from more diverse backgrounds have a better chance of winning.

The degree of proportionality depends on the size of the electoral district. District magnitude is the fourth element of Bill C-20 to hold important implications for the question of women’s presence in the Senate. A solid body of political science literature establishes that the larger the size of the district, the more candidates there are to be elected, and the more candidates elected, the more likely there is to be diversity in representation. It bears repeating the obvious point that there is no mutually exclusive trade-off between women’s representation and the representation of visible minorities because gender is combined with ethnicity and race in each individual, and so individual candidates – male and female – can embody more than one cleavage in their person simultaneously. The more seats

5 Under cross-examination in committee, Minister Van Loan and Privy Council Officials agreed that the PM is not bound constitutionally to appoint senators from the list. Roger Gibbons envisaged a situation where the prime minister might reject certain nominees – racists, white supremacists – altogether, or a situation where the prime minister might ignore the rank-ordered results in order to preferentially recommend an Acadian nominee over another higher-ranked nominee.

6 The ballot cannot feasibly include the names of enough candidates to produce a full list of nominees, enough to replace all senators at one fell swoop. Imagine the ballot for all of Ontario’s 24 Senate seats; with even only three major parties contesting 24 seats, the ballot would contain 72 names. Perhaps the government is proposing to add only two or three extra names at a time.
being contested in an electoral district requires parties to present a longer list of candidates, and thus to go deeper down into their pool of potential candidates. As more candidacies become available, the more balanced or diverse the list becomes in terms of the type of people or the faction within the party being represented by that candidate (Matland 2002, 103).

The more seats available in a district, the less women candidates are disadvantaged. It begins at the nomination stage, inside the political party, when a woman who aspires to be the party’s candidate must compete directly against all other ambitious men. In a direct, head-to-head competition, a woman candidate must defeat the most powerful male politician in the same party, and then she must go on to defeat the most powerful man in her district. Her chances are better if she can campaign alongside the most powerful man in her party, as a member on the same team, and then they can go on together to compete against teams from other parties.

Furthermore, when there are multiple seats up for election, there is an implicit obligation for political parties to design a slate that appeals to a wide variety of voters. No party wants to risk the penalty of ignoring any identifiable group in putting together a list, and the result is a mirror of a country’s population in miniature. A balanced ticket is also a way to satisfy different factions inside the party, and thereby guarantee internal peace; a dream package combining United States presidential candidates Barack Obama and Hillary Clinton together could be achieved under PR, without one having to defeat the other. As a result, in electoral systems using proportional representation, the slate of candidates presented to voters becomes part of the election campaign, and part of the internal power struggles and compromises inside the party. This sort of contestation, conducted in public, thus forces the central party leadership to be accountable for gaps and absences.

By contrast, in single-member districts, there are always compelling reasons for not nominating a woman as the candidate of choice in any particular electoral district. The premium on local grassroots democracy means that the party leadership does not have to take responsibility for what the final roster of candidates looks like; the final roster is the unplanned and unpredictable result of the democratic process.7

But is the standard contrast between proportional multi-member elections and plurality, single-member elections to the point here? Almost all that we know about women getting elected to multi-member districts is based on elections dominated by political parties – which Bill C-20 consultations deliberately are not. In

7There are solid, countervailing strengths to the single-member, first-past-the-post electoral system that outweigh the goal of greater diversity. Local grassroots democracy at the level of the electoral district has its own value, regardless of who is elected, and the search for proportionality should not jeopardize the integrity of the electoral district and the role of the elected member in that district.
the standard model of proportional representation, each citizen has only one vote to cast, and so votes for the party. A carefully designed slate balanced by gender and race is, in fact, a product of the lack of democracy in a top-down process controlled by central party executives. By contrast, Bill C-20 is proposing a package that shifts control away from party executives and gives it back to the voters with a preferential ballot.

Hence some, but not all, the standard arguments in the literature about PR’s ability to elect greater numbers of women are relevant. Under Bill C-20, the party will have the final say in determining who runs under its name in a Senate consultation, and it will produce a slate of candidates, just as in standard PR elections. Unlike PR elections, however, the party cannot depend on its party brand or its party leader to carry the vote for Senate candidates. The fate of the government in the House of Commons is not at stake, and so even loyal party supporters have the opportunity to defect (that is, to choose a Senate candidate from another party) without jeopardizing the outcome of the main race. Therein lies the discipline of putting together an appealing list of candidates to appeal to different segments of the voting public. Who the candidates are as individual people, and who they represent in their physical person and in their personal history of skills, loyalties, and affiliations, moves to the front and centre of Senate consultations.

In the end, with a reduced role for political parties, we are, in effect, pulling out the single argument of district magnitude from the PR package and relying on it to elect more women candidates. By implication, it follows that electoral districts should be as large as constitutionally possible.

In Canada, the Constitution determines district magnitude. The electoral district is the province, and the logic outlined here leads to the conclusion that getting more women nominated to the Senate means defending the province as the electoral district. The distribution of seats corresponds to the logic of four distinct regions at Confederation. Each region – Ontario, Quebec, Maritimes, and the West is guaranteed twenty-four senate seats. Could the senatorial region be the electoral district? Quebec8 and Ontario are regions unto themselves, but could the Maritimes and the West each be an electoral district? With twenty-four seats in contention, there is ample opportunity to organize creative candidacies and plan electoral strategies accordingly. Once elected, senators could represent a province, and could be appointed as Senate vacancies arise in their province, but why couldn’t election campaigns be organized and the ballots counted by region?

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8 Quebec is exceptional because, constitutionally, its 24 senators are appointed to represent 24 regional divisions in the province, corresponding to historic linguistic boundaries. In the rest of Canada, senators have the option to declare a self-selected division, which can be a particular street or neighbourhood. Since senators have no constituency work, there is no reason why Quebec senators appointed to a division could not purchase property in that district in order to become a resident.
If not the Senate region, the province must be the electoral district in order to maximize the crucial element of district magnitude. The more candidates there are to be elected, the lower the electoral quotient required. It becomes feasible to organize a very specialized campaign to elect a woman candidate who is Acadian, who is aboriginal, or who is indigenous African. An individual candidate may not have a province-wide profile outside a particular linguistic, ethnic, or ideological community, but a candidate can be nominated using a campaign that mobilizes intensive support among an identifiable population.

To be sure, such a campaign would take some organizational effort, but it can be done. Such is the nature of democracy; it takes skill and work. The political parties and other organizations should welcome any project that gets people to work on a campaign. Senate elections that are organized around individual candidates could be the spark to re-invigorate democracy. In fact, the central party executive in Ottawa might welcome an opportunity to bypass local party strongmen at the grassroots in the regions; party elites might want to support their own favoured candidates who are more diverse than the sort of candidate than could be elected to the House of Commons through the regular nomination route. For instance, Senate elections would be just the opportunity for Stephane Dion to get his aboriginal candidate of choice Joan Beatty into caucus, without having to take on David Orchard, the Métis Nation of Saskatchewan, and the Liberal Party riding executive.

Personally, as an active member of Equal Voice Canada, I look forward to organizing a campaign for all three of Nova Scotia’s next three Senate appointments to be women. Across Canada, there are women who are experienced parliamentarians who have enormous talent and knowledge to contribute, but whose prospects of being elected are low. Women like Anne MacLellan, Sheila Copps, Janice MacKinnon or Jane Purves are accomplished, capable individuals and the country is diminished by their absence from the centre of power and influence.

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9 Matland cites the 1971 example of municipal elections in Norway where campaigners mounted a campaign to have women vote only for women candidates, and strike out men’s names. As a result, women became the majority of councillors in several large cities in a single election, but that strategy has its hazards, because there was, as a result of what became known as the “women’s coup,” a long-term backlash as men took up a habit of striking out women candidates’ names (2002, 99).

10 In Irish elections using STV, “Each candidate must build up a personal following within the electorate and within the local party, and consequently he has a power base which is not dependent upon the goodwill of the local party officers” (Gallagher 1980, 501).

11 Stephane Dion designated former NDP cabinet minister Joan Beatty as the Liberal candidate for Desnethé–Missinippi–Churchill River in a 2008 by-election. His decision to designate Beatty without holding a nomination meeting antagonized David Orchard (and others) who had already declared his intention to seek the Liberal Party nomination. Conservative candidate Rob Clarke defeated her.
Furthermore, if our senators are to be effective parliamentarians, they should receive the legitimacy conferred by democratic elections. We all benefit from the appointment of strong, effective leadership in the Senate, and we may not get the leadership that Canada deserves without more democracy. The trick is to achieve strong effective leadership that looks like Canada in all its diversity, including that half of its population who are women.

But we need to ask: If we have democratic elections to the Senate, will we end up electing the same sort of politicians – male politicians – we’ve always been electing, ever since 1758? How can we get the sort of capable, effective leadership that the provinces need in the Senate? And, in particular, how can we best get more women into the Senate?

Fifteen years ago, a colleague remarked to me that it was typically and traditionally Canadian for the Canadian women’s movement to celebrate Person’s Day on 18 October each year. Instead of celebrating suffrage, we celebrate the date on which, in 1929, the Judicial Committee of the Privy Council decided that women were indeed, legally and constitutionally, “persons” and thereby entitled to receive a Senate appointment. In what other country, my colleague quipped, would feminists celebrate the date on which women became eligible to receive a patronage appointment? The remark still rankles.

REFERENCES


