



House of Commons  
CANADA

## Legislative Committee on Bill C-20

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CC20 • NUMBER 008 • 2nd SESSION • 39th PARLIAMENT

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EVIDENCE

**Wednesday, May 14, 2008**

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**Chair**

**The Honourable Albina Guarnieri**

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• (1540)

[English]

**The Chair (Hon. Albina Guarnieri (Mississauga East—Cooksville, Lib.)):** Seeing a quorum, I'd like to welcome everyone back for our last meeting before Parliament breaks to celebrate the beginning of summer on Victoria Day. I know that today's guest will give us plenty to reflect on over the weekend.

Today we are privileged to have Dr. Roger Gibbins. He is CEO of the foundation and a former professor and author, who has the distinction of being awarded the Alberta Lieutenant Governor's award for excellence in public administration. After all, excellence is something this committee is striving for.

Without further ado, Mr. Gibbins, you have the floor.

**Mr. Roger Gibbins (President and Chief Executive Officer, Canada West Foundation):** Thank you very much.

I want to apologize for the absence of my colleague, Robert Roach, who was going to be here. He took ill from some weekend travelling in Winnipeg, so I'll be here by myself.

I'm pleased to have this opportunity. Senate reform has been an interest of mine since about 1973. It's been a longstanding interest of the Canada West Foundation, which I am associated with right now. I want to stress that this is not a Canada West Foundation position. As an organization we do not have a formal position on either the bill or Senate reform itself.

I also want to stress by way of preamble that I am a political scientist by training, not a constitutional lawyer. That doesn't mean I don't have constitutional opinions, but they are based more on political instincts than legal training.

My notes will be available to the committee once translation has been completed, perhaps by the end of the week. I will speak to them fairly briefly at this point, and of course will be happy to answer any questions.

Let me set the stage for my remarks by emphasizing the importance of context for Bill C-20. The context that's important to me is the Government of Canada's commitment to pursuing comprehensive Senate reform. It's only within that context that Bill C-20 makes sense, and I'll come back to this in the bulk of my comments.

In the written draft I go through the case for Senate reform in a general sense. I won't repeat the details of that, because these arguments will be well known to the committee. I'll just mention the three points that are highlighted. One is the need for more effective

regional representation. The second is to have a counterweight to majority governments in the House of Commons. Parliamentary government tends to concentrate power, and the Senate provides at least the possibility of a counterweight, in a sense.

The third argument is really a democratic argument. The language I would use is that of environmentalism: that the Canadian Senate is not sustainable for the long run. I would stress that although my original interest in this topic came from failures in regional representation, to my mind now the most compelling argument for Senate reform is for democratic renewal. I think the arguments for regional representation are still important, but they're not as compelling to me as the need for democratic renewal.

Although the power of the arguments for Senate reform has grown over time, we've made no progress in reforming a 19th century institution so it can better take on the challenges of the 21st century. We are spinning our wheels while the world changes around us.

In thinking about this, it seems to me we're faced with two options. We can wait until the Senate implodes in some crisis of democratic legitimacy, some major conflict with the House of Commons; or we can try to re-engineer the Senate to bring it more into line with liberal, democratic values. To my mind at least, to do nothing only postpones the inevitable. We've passed down the status quo to our children and our grandchildren in an irresponsible fashion. The image of the Senate that comes to my mind is that of an institution cobbled together 141 years ago and now frozen in time like an insect trapped in amber.

So where does this lead me with respect to Bill C-20? My comments here are pretty straightforward. I think Bill C-20 is a reasonable step forward. It's consistent with federal states, such as Australia and the United States. It's consistent with even the most rudimentary understanding of democratic government. It's consistent with recent public opinion polling and Canadian values.

I recognize that Bill C-20 does not take us very far along the path to comprehensive Senate reform, and you're aware of the things it doesn't touch. It doesn't touch a whole bunch of things about the Senate. So it's not a final destination, it's only a small first step, but it is a first step, and it does show that incremental reform is possible.

•(1545)

For years Canadians have been told that Senate reform may be desirable, but it must be approached comprehensively rather than incrementally. We're then told that comprehensive reform requires constitutional amendment, and that constitutional amendment is impossible, and therefore Senate reform is impossible.

So we have a neat and tidy circular argument from which the perfect becomes the enemy of the good. We're told that any incremental reform, even a small step, is to be shunned in case we are pushed onto the slippery slope of constitutional reform. To my mind this has fostered a somewhat dishonest public debate, because if everyone lines up in favour of Senate reform it just divides those people who say it's really desirable but can't be done from those people who argue for incremental reform, and I'm certainly in that latter group.

Concern has been raised that Bill C-20 might turn out to be the final destination, that it might not only be the first step but the last step, and therefore the election or selection of senators could lock into place the existing regional distribution of Senate seats and the legislative powers of the Senate. I think this concern rests on the assumption that newly elected senators would be even more resistant to change than the existing senators. I don't accept that argument. I think the existing senators have set the bar for resistance extremely high, and I can't imagine any combination of elected or appointed senators who would be more resistant than the status quo.

I do admit, and I think this is a critical point, that the changes proposed by Bill C-20 would leave us with a bit of a dog's breakfast in terms of the Senate. But I see this as a virtue of the bill rather than a fatal flaw. The bill would destabilize the status quo and therefore force Canadians to come to grips with the design of a modernized and democratic upper house. The process has to start somewhere, and Bill C-20 sets out a reasonable starting point. I do believe the modest changes today make it more likely that we'll be able to generate the political will to confront more substantive changes tomorrow. If we begin chipping away at the status quo, we can set in motion the political dynamics that will enable us to carry the process forward.

I recognize that Bill C-20 pushes the envelope of constitutionality, although the constitutional constraints are at best unknown in the context of a living-tree Constitution. We know the Constitution is unfolding over time. We know the courts are not bound by the black letter of the law. We saw this in the way in which courts have progressively expanded the Charter of Rights and Freedoms. In any event, I stress I'm not a constitutional lawyer, but perhaps because of that I'm unwilling to dump the whole issue of Senate reform into the lap of courts, who, in my view, are not well equipped to deal with what is ultimately a political question. The democratization of parliamentary institutions and the design of an effective regional representation are not fundamentally legal questions; they are political questions.

In a similar fashion, some would argue we should not proceed without first securing provincial support. However, I'm reluctant to concede that the design of national parliamentary institutions should rest with provincial governments. I do not believe the federation should be decentralized to the point where provincial governments

can, in their own interests, pre-empt the democratic reform of national parliamentary institutions. Nor do I believe the potential opposition in provincial governments to Senate reform necessarily reflects the desire of provincial populations, and it's those provincial populations we want to represent.

I'll just draw your attention to a useful analogy to the Charter of Rights and Freedoms. Many of the provincial governments were initially resistant to the Charter of Rights and Freedoms. The Government of Canada proceeded, and it turned out the provincial populations were overwhelmingly in support of this and the provincial governments caved.

•(1550)

If Bill C-20 gets the ball rolling with respect to Senate reform, what might the next steps be?

I'll end with this set of points. We are confronting a major problem. We don't have an acceptable model of what a comprehensively reformed Senate might look like. We simply don't have something we can pull off the shelves.

My organization has been associated with the triple-E model. I think the triple-E model is increasingly shopworn, and I think it now lacks relevance to the country we are becoming.

It's not a surprise to me that we don't have an acceptable or consensual model of what a reformed Senate might look like. We've devoted so much of our intellectual energy to blocking Senate reform that we've had very little left over to think through what a reformed Senate might look like.

If we're able to move forward, we have to figure out an appropriate form of election. If we don't get the election format right, we can dig ourselves into very serious trouble. We need a formula for regional representation that captures the complexity of this country and figures out how to deal with a very unequal distribution of population across provinces. We have to figure out how to work the sparsely populated northern territories into a reformed Senate.

We have to think through how we can have non-territorial representation in the Senate—how we can have an electoral system that ensures, for example, that the aboriginal population of Saskatchewan, the Acadians in New Brunswick, or the Liberals in Alberta are represented in some way within the Senate.

We haven't worked out what the impact of a reformed Senate might be on the House of Commons. I think Senate reform would set in motion some fairly fundamental reforms within the House of Commons, including a move to finally have full representation by population within the House of Commons.

I'm happy to discuss this at length, because you're the only group I can discuss it at length with. I believe that if we can get it right, we can create a Senate that will be a truly national legislature, reflecting not only regional diversity but also diversity within provincial communities. If we get the design details wrong, however, we could make a bad situation worse.

Some argue that we should stop until we have everything figured out, but past experience shows that Canadians will not even begin to tackle these critical design questions until the Senate reform train leaves the station. If we do not build on the momentum that Bill C-20 will create, nothing will happen. There must be a stimulus to creative thought, and this is what Bill C-20 provides.

To conclude, some would argue that we should be cautious, that we should wait for the premiers to fall into line or wait for the courts to chart a path forward. However, we have been cautious, excessively cautious, for generations, and nothing has happened. Nothing has happened for 141 years.

In quoting from the bill, I would argue that the Parliament of Canada has a primary responsibility to ensure "that Canada's representative institutions, including the Senate, continue to evolve in accordance with the principles of modern democracy and the expectations of Canadians". The abdication of this responsibility by Parliament will inflict serious damage on the very fabric of democratic political life in Canada.

Thank you. I'd be happy to respond to any questions you might have.

• (1555)

**The Chair:** Thank you, Mr. Gibbins.

I'd like to make members aware that you were good enough to rearrange your schedule to accommodate us today.

Madame Folco.

[*Translation*]

**Ms. Raymonde Folco (Laval—Les Îles, Lib.):** Thank you, Madam Chair, and thank you, Mr. Gibbins.

There are several elements of Bill C-20 that not only bother me, but that for which I do not have an answer. There are also elements that do not seem to be dealt with in the Bill.

First of all, I have realized that in the Bill as tabled there does not seem to be a clause or a provision protecting minority groups, for example, francophones in Canada or anglophones in Quebec or other minority groups such as aboriginal peoples. There is nothing that applies to them. It seems to me that in this day and age, here in Canada in the 21<sup>st</sup> century, constitutional protection — although this is not tied to the Constitution —, legislative protection, in the structure of these groups, should be taken into account in a major, if not fundamental, manner. I would therefore like to hear your views on this with regard to voter consultation.

Secondly, I have a question that I have already asked, but to which I have yet to receive an answer. I imagine myself in the shoes of a candidate in an election — I will not use Quebec as an example, because the situation there is somewhat different — in Ontario, for example, where there is an important urban base, but also a broad

rural base. It seems to me that if I were a candidate in a rural area, my chances of being elected would be rather slim because I would have to cover a very large territory in order to garner the same number of votes I might be able to attract in an urban area of just a few kilometres in length. It therefore seems to me that this voting structure for senators, as proposed in Bill C-20, would give a very distinct advantage to persons from urban communities and, therefore, persons from rural communities would be somewhat like the minorities I have just mentioned.

Would you have an answer to these questions? It is not exactly the same question, but nearly.

[*English*]

**Mr. Roger Gibbins:** They are, as you point out, very similar questions or related questions. To my mind, the answer goes back to how we design an effective electoral system for the Senate.

Let me start with the case of Ontario, which is an interesting one.

The proposal recommends a single transferable ballot. If we think of Ontario as being a single constituency with 24 senators running for election at the same, all on the same ballot, it seems to me that we lose the opportunity to build in the chance for different forms of minority representation.

Let me step back just a bit.

The Australian Senate uses a similar kind of ballot. One of the interesting things in Australia is it means that you can win a seat in the Senate with about 6% to 7% of the popular vote if you're running in a particular state. That's actually opened up the opportunity for a variety of minority group representations within the Senate that cannot occur within the lower house in Australia, where it's basically like our House—a slightly different ballot.

**Ms. Raymonde Folco:** Like the aboriginals in the Northwest Territories, for example?

**Mr. Roger Gibbins:** Yes.

So you can actually have minority group representation within the Senate through an electoral system that's well designed.

I'm sorry, I'm backing around your question a bit, but my fear is that we could have an electoral system that would replicate the representational problems within the House of Commons. Right?

Take my own province, for example. We have approximately 29 seats, all occupied by Conservatives at the present time. There's been a lot of diversity within the province, but it doesn't get reflected within the House of Commons. The diversity within Toronto doesn't get reflected within the House of Commons.

We know how to design systems poorly. We have a pretty good example of one in terms of the House of Commons, at least in terms of exacerbating some of the regional tensions within the country. It pits us against one another more than we would like. I think we can do better within the Senate. We can come up with electoral systems that work.

•(1600)

**Ms. Raymonde Folco:** If I have time, I would like to ask what you would propose. Do you have anything to propose in order to avoid this kind of problem?

Because what we've heard so far is the Prime Minister say "I think we need more women", or "I think we need more senior citizens", or we need more of this group or that group, and then he goes ahead and names these people. And of course that's not where we're going with Bill C-20.

**Mr. Roger Gibbins:** Your question goes to the heart of the matter in terms of minority representation. Do we build that in through an appointed mechanism, or do we build it in through an electoral system that increases the possibility of minority representation without guaranteeing it? In other words, do you have an electoral system and say we hope this works, as opposed to an appointed system, which, incidentally, doesn't necessarily work? Right? It depends on the Prime Minister of the day and what the Prime Minister happens to see as important.

My own thought on this—and I'm only speaking from a minority position as an Albertan, which is not really a very good minority position—is that over the long run, a robust democratic system that offers strong opportunities for minority group representation is better than a system that relies upon appointed representation at the will of the government of the day. But again, I'm not really in a position to make that assessment.

**Ms. Raymonde Folco:** Thank you very much.

**The Chair:** Thank you very much.

Monsieur Paquette.

[*Translation*]

**Mr. Pierre Paquette (Joliette, BQ):** Thank you, Madam Chair.

You mentioned, and rightly so, that there have been several attempts at Senate reform in Canada's history and that, each time, these attempts failed because no agreement as to the model could be achieved.

In my view, the healthiest approach in this regard would be to undertake a round of negotiations between the provinces and the federal government in order to come to some agreement rather than attempting to accomplish this, as the government is suggesting, through an act, through a change that is not substantial but the aim of which — and you mentioned it and I really appreciated your choice of words — is to destabilize the present structure, the status quo.

You, who at the very outset went on record in favour of Senate reform based upon the need to democratize this institution, are you not uncomfortable with the fact that the Conservative government, by tabling Bill C-20, is seeking to destabilize the provinces, to snap its fingers at the provinces and to do indirectly what it cannot do directly? The same is also true in the case of Bill C-19; you are aware that the National Assembly of Quebec unanimously adopted a motion opposing this Bill.

Do you view this as being healthy for democracy?

[*English*]

**Mr. Roger Gibbins:** I have a couple of responses, and they may seem a bit intemperate, but I don't mean them to be.

The first point is that I don't equate democracy with inter-governmentalism. I don't think agreements among governments are the only way to go forward in a democratic society.

Second, I do think that from time to time governments have an opportunity and even an obligation to destabilize the status quo. I'm thinking a little bit of Barack Obama's campaign in the U.S., which is all about change. No one in the U.S. primaries is saying "My message is that nothing will change, unless maybe we can bring all the state governments together, and if the states agree, then I'll do something". You'd be dead in the water if that were your platform within the United States.

So my view is that in the long term, the consent of the provinces will be required, because of the eventual requirement for constitutional change. To me, that's unavoidable. But how do you even start that conversation? How do you even bring people to the table?

Well, you need something to create that action. If this government or any government simply said we've got an appointed house and it's not working very well, it's an increasingly partisan operation, but if people ever get around to coming together and talking about it, then we'll sit down at the table with the rest of you, I think that's... Again, I don't want to seem intemperate here, but I see that as an abdication of responsibility from the Government of Canada.

So I don't see this as a way of getting around the provinces. It's a way of kick-starting that conversation, because you can only get around the provinces to a very limited degree, and then you run into that requirement down the road for provincial consent. That's an unavoidable constitutional necessity. That's the way the country has been structured. That's fair enough. But you get there by beginning that conversation first.

Maybe it craters in the long run, but I still think you have to begin that conversation.

That's all.

•(1605)

[*Translation*]

**Mr. Pierre Paquette:** We must remember that, indeed, this will to do indirectly what cannot be done directly has, among other things, led to the repatriation of the Constitution in 1982, which brought about a constitutional crisis we are not yet out of: Quebec has still not signed the 1982 Constitution. In my opinion, it would have been preferable, at the time, for Mr. Trudeau's government to take the time to listen to Quebec's demands rather than forcing things as it did.

My impression is that we are witnessing the same type of operation, although, I must admit, at a lesser scale. This process will not lead to positive outcomes.

I will perhaps put to you a more pointed question. A good many constitutionalists have told us that the discussion surrounding the constitutionality of Bill C-20 is a concern. Some are of the view that this would require reopening the Constitution.

Do you not believe that the federal government should have the wisdom to place this bill before the Supreme Court before parliamentarians are called upon to vote on it?

[*English*]

**Mr. Roger Gibbins:** My own view is that I would prefer to have the courts respond to the actions of Parliament rather than to turn the situation over to the courts as the starting point.

To my mind, there may be a case that a reference would make sense, but it is an opportunity to delay, it's an opportunity to pass the responsibility, if you want, over to the courts. I'm not a constitutional lawyer, but perhaps because of that I'm not particularly enamoured with acting only through the courts when I think we're looking at a more fundamentally political question, in my limited mind.

[*Translation*]

**Mr. Pierre Paquette:** I have another very precise question. When I joined the Committee, I had no pretensions whatsoever with regard to the Constitution and I have no specific information in this regard. What is the present position of the governments of the Western provinces with regard to Bill C-20? What are the positions of British Columbia, Manitoba, Saskatchewan and Alberta?

[*English*]

**Mr. Roger Gibbins:** My understanding—and I don't speak with a great deal of insight—is the western provincial governments have not yet waded into this.

If you want to get a general sense of the political landscape in western Canada, I would describe it in the following terms: a commitment by provincial governments to move ahead of Senate reform, but not with a whole lot of enthusiasm. At the public level, there is very strong public support, but this is not a top-of-the-mind issue, so it's not something people are marching in the streets about. It's not an acute issue. If you put it to the test, if you poll people, if you ask people, you find very strong support, but it's not something people are talking about in the bars on the weekend. It doesn't have that high saliency at the present time.

My sense of the landscape is that this specific bill, Bill C-20, has not yet sunk into regional discussion within the west. That would be my sense, anyway.

•(1610)

**The Chair:** Thank you, Mr. Gibbins.

Mr. Angus.

**Mr. Charlie Angus (Timmins—James Bay, NDP):** Thank you, Madam Chair.

I found your presentation fascinating. I agree that democratic renewal is a fundamental issue that needs to be tackled by the Parliament of Canada. We have certain entrenched interests here who will say, "Why now? We have other more important things to debate. Why are we wasting our time on democratic reform?" Yet since I've been in the House of Commons we've debated sled dogs in the Arctic, contact lenses, and all manner of things—except democratic reform.

The question is how to get there. To paraphrase Chesterton, the only thing worse than being squire-ridden is being crony-ridden. We

have an institution that is an anachronism. It is an embarrassment that in the 21st century we can't find a way to deal with something that was broken 141 years ago. Some have asked whether these attempts to transform this change-resistant institution—incrementally or, as some might say, by stealth—will simply result in another failure added to the many we've already had.

The New Democratic Party believes that this institution has outlived its usefulness. We believe we should put the question to the Canadian people. Allow the Canadian people a voice on whether or not they think there is even a role for the Senate.

We are concerned about leaving it to the premiers. Do the premiers speak for each of us individually, or do they also speak for their own vested interests? If we put the question to the Canadian people, and if we came forward with a majority who said this was an anachronistic institution, it would be difficult for the premiers to say they would not engage in a discussion of democratic renewal. Whether or not the Senate will be fundamentally changed or abolished, allowing the Canadian people a voice would provide the momentum to cut this Gordian knot of vested interests.

I'd like your comments on whether you think this would be an appropriate way to go.

**Mr. Roger Gibbins:** I'm fundamentally a democrat, and I like the idea of involving the population on major questions of constitutional reform. We did it with Charlottetown. To my mind, it was a good thing. We didn't do it with the Charter of Rights and Freedoms, but polling data convinced some of the western premiers who were opposed to the charter to cave in.

But how do you bring people into this? Where do you bring in the popular vote? I would argue that it's premature. My reading of the public opinion polls is that people would say two things: one, democratic reform makes sense; and two, you're asking us to buy a pig in a poke, because we don't know where we're going. A probable response by the Canadian public would be that they like the idea generally but would want to see the details. We're not at that point yet. We haven't done the design work.

To my mind, the advantage of incrementalism is that it gets us going. The disadvantage to incrementalism is that we're not sure where we are going. In my view, to put the vote to Canadians without having some clear alternatives would be a mistake at this point.

**Mr. Charlie Angus:** From the New Democratic viewpoint, it's a clear and fair question: do you believe you need the Senate or not? The provinces play a role that was not even imagined before. Most of the day-to-day interactions with the Canadian public is provided through the provincial legislatures. With the Charter of Rights and Freedoms, the courts are interpreting many of our laws. The Senate, sitting there with conflict-of-interest guidelines you can drive a Mack truck through, sometimes makes you wonder if there's anybody in there.

It is a fair question to put to the Canadian people, given the fact that we already have what amounts to four levels of government. Don't you think this is a conversation the Canadian people are ready to engage in?

• (1615)

**Mr. Roger Gibbins:** Let me back into a response by speaking from a very narrow Alberta perspective, but I think it goes to what you're saying.

There are two facts of life about politics in Alberta. One is that we have a tremendous concentration of power because there is no check to the majority government of the day. And we've had a majority government of the day since 1971, the same party, so there's no check on that. I worry then, in an analogous situation, about the House of Commons. It's hard to remember back to majority governments, but this may happen again. Our political system doesn't create very effective checks on majority governments. We have the courts, we have provincial governments, and I don't rule that out. But within Parliament those checks are not very great.

But to me, the more compelling reason that comes out of the Alberta experience is that we have electoral systems at the federal level and at the provincial level that fail in any way to capture the diversity of the population. We have a single party, federally and provincially, with different parties winning an overwhelming majority of the seats, even though the population is much more diverse—in a partisan sense, in an urban-rural sense, or whatever it is. The electoral system we have for the House of Commons tends to exaggerate the homogeneity. It projects a single Alberta personality onto the political stage, whereas the province is much more complex.

One of the reasons I support Senate reform is that if we can get it right, we can have an electoral system that reflects, through its elected representatives in the Senate, the diversity of the province. If we have an electoral system for the Senate that produces, say, ten Senators, and ten of them are always Conservatives, then we've simply replicated the representational flaws that exist within the House of Commons.

That's why I keep going back in my own mind to saying we have to get the electoral system right, or we'll dig ourselves into a hole on this.

**Mr. Charlie Angus:** I have a final question, if I may be indulged for a second.

**The Chair:** Sure.

**Mr. Charlie Angus:** I was fascinated by your comment that you felt the triple-E Senate idea has become a little too worn. Can you elaborate on why you believe that?

**Mr. Roger Gibbins:** The first of the three Es of the triple-E Senate is that it's elected, which I agree with, but the triple-E model never actually specified how the election would take place, and that's why it's incomplete. It's an effective Senate, which is again somewhat undefined, but it's also an equal Senate. I'm not convinced that equal provincial representation is appropriate given the tremendous variation among provincial populations in Canada. You don't want a Senate that replicates representation by population in the House of Commons, but to me, to go as far from that as the triple-E model would suggest is not acceptable.

I think we're looking for some kind of blended model. That's fine; that's appropriate. And that can be sold in the west.

**The Chair:** Thank you.

Mr. Reid.

**Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC):** Thank you, Madam Chair.

Thank you, Dr. Gibbins, for being here with us today.

I had a couple of things to go through. I wanted to ask you about the single transferable vote electoral system in particular, but before I get there I just wanted to make a comment, and you're free to comment on my comment after I'm done.

I'm really drawing a bit on Mr. Angus's observation about having a referendum on abolishing the Senate. This goes back to the discussions that have been suggested elsewhere, that we ought to engage in having.... I don't think we ought to engage in this kind of constitutional process of going to the provinces, because in Canada we don't have the option of dealing with our constitutional amendments by referendum.

We can add that on top of our formal constitutional amendment system, but we are very different from the Australians, the Swiss, as they amend their constitution. What happens in Australia, for example, is they have a requirement that you get the majority of voters in a majority of states voting in favour of a constitutional amendment, but the amendment is proposed in Parliament, voted on in Parliament, and the state premiers have no role.

In a very similar situation in Switzerland, and in the United States as well, you don't find a situation in which you engage in horse-trading—we'll give you your Senate changes if you'll give us a distinct society. Then once we get into that, we get the ever-expanding collection of different proposals from different groups that demand to be brought in until eventually you create a great cancerous growth like the Charlottetown Accord, which included absolutely everything, and ultimately was unfinished by the time it went off to the voters and mercifully was defeated in that informal referendum we had. That's the great fear: that you start with Senate reform and end up effectively going through some kind of Meech Lake, Charlottetown-type process.

My argument effectively is it's a very good reason to avoid trying to use the seven and fifty formula at all costs. Anyway, that was my observation.

With regard to the electoral system, the proposal here is for a single transferrable vote system. It bears a great deal of resemblance to the one in Australia. It's a little bit different. There's no party-list voting option; you have to vote for individual candidates. But it seems to me that this—and I guess I'm asking if you agree with me—achieves the goal of permitting minority representation that is absent from our first-past-the-post system.



As someone who was elected in Ontario as a Canadian Alliance candidate in 2000, I had the experience of being one of two members of my party to be elected under our first-past-the-post system out of the 103 seats in Ontario. My party won 25% of the vote. The Liberals won 50% of the vote, only twice as much, but were rewarded with 100 seats. This goes to the heart of the problem with first past the post.

There's been much talk of the need for electoral reform in the lower house. It seems to me this system achieves that to some degree in the upper house, particularly in large provinces like Ontario and Quebec, less well in a smaller province like P.E.I., with only four senators. Nevertheless, it seems to me to be a real move toward getting a variety of representatives from different parts of the political spectrum, different parts of society, for those larger provinces.

The question I had in this vein is because we are talking in this committee of looking at potential amendments to the proposed legislation, should any effort be made to try to ensure that the elections have as many senators elected at the same time as possible, or should they be staggered in some way, as they are, for example, in the U.S. and Australia?

• (1620)

**Mr. Roger Gibbins:** The single transferrable vote system, and indeed most forms of proportional representation, if we were to go that way, work least well.... Pardon me. The smaller the constituency, the worse they work. If you have a single transferrable vote and you're only electing one member, you get basically the same outcome—not exactly, but similar.

One of the things that's unclear in Bill C-20, at least in my reading, is that it doesn't define what the appropriate collection of constituencies would be for the Senate election. It doesn't define, because we can't define it at this point, what the number of elected senators should be and whether they should be at one time or another. We're going to have a phase-in period where none of this is going to work terribly well.

The basic point is that if you want to ensure diversity of representation in the Senate and that we don't replicate the kinds of regional blocks we get in the House of Commons, then you need a reasonable number of people elected at the same time in the same constituency. Getting there in an incremental fashion is not straightforward. I don't think the electoral system proposed in Bill C-20 will work flawlessly from the get-go. It won't. But I think it will create the opportunity to begin to get this right.

I also want to note—and this really goes back to the question on a referendum—that our Constitution does not require that major constitutional changes be put to the people. It simply requires the consent of the provinces—either all, or seven. However, my guess is that the Charlottetown referendum has set more of a constitutional precedent than we realize. In fact now that we've put one major constitutional package before the people, I suspect that in the future, no matter what the constitutional change might be, if it's major and if it's significant, governments will be compelled to go back to some sort of popular consent. I think we've made a decision in the Charlottetown referendum that we will not go back on; I don't think we can go back on it.

• (1625)

**Mr. Scott Reid:** Well, certainly the thought has occurred to me that rather than going to the premiers first and trying to cut a deal and then submitting it to the people, as was done in Charlottetown, you could do it the other way around. Simply design something, take it to the people, and if it's popular and supported by the electorate in a province, it becomes very difficult for a premier to say we nevertheless stand against this.

You can certainly campaign against it during that referendum, but once the people have spoken, it becomes very hard to work against what they've said. I suspect if that was done, we might move to the effective adoption of a convention that is similar to the Australians', that the vote of the majority in a province—or a state in their case—is what really counts.

**Mr. Roger Gibbins:** I hesitate to use the example of the Charter of Rights, because, as has been pointed out previously, this is not necessarily.... I mean, how we got to the Constitution in 1982 is not uniformly seen as a good way of proceeding. But it is interesting that a couple of the western premiers—I don't know about the others—did not want to see a constitutionally entrenched charter of rights because they thought it would take away from parliamentary supremacy. It was a reasonable argument, and they were not in favour.

The federal government did extensive public opinion polling, which showed that Canadians, by a margin of about 90 to one, or now 90 to 5, were in favour of an entrenched charter of rights. Then they went to the provincial governments and said "Okay, we can go to the people on this in some way. If you want to take us on in the court of public opinion, we have the evidence that you will lose badly. So let's sit down and talk this through."

How the public weighs in is important. But I will go back to a point I made earlier. If you want to bring the public into play on this, the sharper the alternatives or the models you're able to provide people, the better the public voice becomes. If you ask an inarticulate question, you get an inarticulate public response. That's why I would not rush getting into this.

**Hon. Hedy Fry (Vancouver Centre, Lib.):** It's called the Clarity Act

**Mr. Roger Gibbins:** Yes, it is in some respects.

**The Chair:** Thank you, Mr. Gibbins.

We'll hear from Madam Fry now.

**Hon. Hedy Fry:** Thank you very much.

Mr. Gibbins, I think sometimes some of the things we're talking about here may or may not be appropriate. I don't know if you are aware that the only way the Prime Minister could set up these elections without actually contravening the Constitution would be to do what he did, which was to suggest that after the elections he would use the list, from which he would draw appointments. In other words, he might or might not and would not necessarily. In fact he could not be bound by the elections, because he would immediately violate the Constitution.

So at the end of the day, we're talking here about semantics or something that is meaningless, because if you're going to have elections—which you're going to proceed to ignore, and which are going to cost an enormous amount of money in the first place—and then you may or may not listen to them, first and foremost you've subverted democracy. Secondly, you have created a set-up by stealth, as I think my NDP colleague said, in which you are trying to get an answer to something. You're involving Elections Canada. You are doing all of these things, and yet you're not going to listen to what the people say.

So that's the first question I have, because for me that is at the heart of what bothers me about this bill. It is a stealthy move. It is a move that, as one of our witnesses said, cannot be made legally, so you're trying to do it by the back door. That's the first thing.

Second is the fact that by doing this, the Prime Minister has actually ignored and disrespected the provinces to the extent that he has not seen fit to sit down first and discuss with them some things that are of fundamental importance, when provinces have weighed in on them and said personally how they feel about them. That is again something that doesn't sit well with the idea of trying to get good input, of trying to get something done here that will work, of making sure that even if not everyone is onside, we've made sure that we have at least done the respectful thing by talking to the people who are involved.

So the idea that you can ensure diversity through an electoral system when in truth you are not really looking at an election is a moot point.

But having said all that, I'm back to the diversity issue. You said that an election is a better way to achieve diversity than are appointments, and you said that it depends on the Prime Minister. Would it not be a wiser thing to suggest that in fact you amend in some way the way you elect the Senate, not by changing the Constitution but by suggesting that the Prime Minister must make a list of appointments that reflect the diversity of Canada—linguistic, regional, or whatever—and be bound by that so that you look at the kind of formula for that? Then as Canada changes, that formula shifts with it, so you make sure the appointments are done.

I know that Mr. Chrétien, when he appointed, did something we've never been able to do through elections: he managed to get almost 50% of the Senate to be women. And he has aboriginal people who were never in the Senate before. And he has visible minority groups who were not in the Senate before, and linguistic groups who were not in the Senate before.

I think you could do it by appointment if you really wanted to. So I want to put that to you.

First and foremost is the question of when is an election an election when it's not an election? Second is the point about the disrespect for the provinces. And third is the point about seeking diversity through appointment.

• (1630)

**Mr. Roger Gibbins:** Those are good questions.

The Prime Minister at the present time takes advice from who knows where when he makes appointments. We have no idea who advises him. We have no idea if he accepts or rejects the advice. It's an entirely internal process in the head of the Prime Minister. We look at the results. We applaud some and condemn others, and we have no idea what the process is.

I think it is inconceivable—and I can't underscore that more—that a Prime Minister would hold or cause elections to be held and then reject that advice. As a convention, this sinks so quickly into the Canadian set of expectations that the Prime Minister would be bound. One of the constitutional arguments made about this is that the Prime Minister would be bound. You can't have it both ways. The Prime Minister is either bound by an electoral process or not. I think for better or worse, the Prime Minister would be bound in this way.

So the prospect of an election—and I'll use that term advisedly—being held and then the Prime Minister ignoring the result of that to me is remote at the outset, and rapidly becomes inconceivable as the convention sets in. That doesn't concern me.

The back-door argument is certainly more troubling—about why the provinces are not being pulled into this at the outset. I guess there are two responses I would make to that.

If the Senate was functioning well and we did not run what I consider to be a very real risk of confrontation between an elected House and an appointed Senate because we have such partisan imbalances in the two, then I would say let's be as slow-moving about this as we want.

I don't think it is working well at the present time. The way to bring the provinces to the table is to start the process in some way. This is again where I think Bill C-20 catches your interest. If you tell the provincial governments we're not going to do anything on our own initiative and we're going to wait until they sort of rally around and come up with something, nothing is going to happen.

• (1635)

**Hon. Hedy Fry:** But it's a piece of legislation, not a policy idea. Policy ideas I throw away.

**The Chair:** Madam Fry, your time has expired, but I do want to give Mr. Gibbins the opportunity to answer your questions.

**Mr. Roger Gibbins:** The third question has to do with minority representation in the Senate. I'm not a very good minority representative in any way, except for this sort of odd Alberta side of things.

Having minority representation in an appointed, discredited, and in many ways dysfunctional chamber is not that big a win. I think the bigger win is to have an effective chamber that's democratically elected and designed in a way that we can build in the kinds of minority representation we think are important to reflect in Canada. Build in minority representation—this is why I like the elected way of doing it—that recognizes that our definition of the appropriate groups and interests that should be represented will fluctuate. They will change and differ somewhat over time, but we want an institution that can accommodate that.

I just don't think being appointed to the Senate is the gold star. We can do better than that.

**The Chair:** Thank you, Mr. Gibbins.

Mr. Preston.

**Mr. Joe Preston (Elgin—Middlesex—London, CPC):** First of all, Dr. Gibbins, I thank you for being here. I've gone through a couple of meetings with constitutional experts, and it's a breath of fresh air to hear someone attacking this from a different side, a more popular side.

I have to agree with some of what you've said, and I'll try to bring it together into a question. You've certainly said there's strong public support for what Bill C-20 is trying to do. If I can quote you, you may have been incorrect that it's not talked about in the bars on the weekend. Maybe we attend different bars.

**Mr. Roger Gibbins:** Sure do.

**Mr. Joe Preston:** Across this country, if you bring up Senate reform, you're certain to get an opinion. Whether it's in a bar or in a church basement or wherever you might be, you're going to get a strong opinion. In my time in this place, I've never got the opinion, "Gee, I like what we have". I think that's pretty safe to say.

You've already stated that change is what needs to happen, that it's the start down the road to the change, that the public demand is there and the people are certainly saying that what we have isn't right.

You were just asked some questions about appointments and that being the method to maybe get the best representation in the place. Well, I'll tell you, sir, that the largest complaint I hear is that people are appointed to the place. That may be what Bill C-20 really does—one of the best pieces is trying to fix that.

The public demand is there. You said we must start the change, even a little bit. We've got to start down the way, and then we might have the provinces stand up and take notice and see that the change is happening and they'd like to be part of it. I like the thought process of doing that.

I'm not certain that the public demand is from the premiers. That's not what I'm hearing. I'm hearing the public demand on the street. So I agree with you that starting the change is maybe the best way to go.

Maybe I'll stop there and ask you where we are, but I also loved your thought that our two choices are to wait for the implosion to absolutely happen of what we have or to actually start down the road of change and get going, and that change itself will bring on further change.

I'll leave that and let you speak to what I've said.

**Mr. Roger Gibbins:** I have two quick responses.

I've been involved in public opinion polling on Senate issues for a lifetime, it seems, and one thing is emphatically clear: the status quo enjoys virtually no public support. We're down to numbers about the same as for people who believe Elvis is still alive, who have talked to aliens in the last month, and so on. We're down in the single digits, 7% or 8%.

**Mr. Joe Preston:** Okay. We can't stay where we are.

**Mr. Roger Gibbins:** There is no support.

What's also clear is that if people are forced at this point to choose between reform and abolition, there are important differences across the country and important partisan differences. New Democrats tend to support abolition, Quebecers tend to support abolition more than reform, and western Canadians support reform more. So there are differences, and it's not a clear-cut call which way Canadians would go. I think part of the reason it's not clear-cut is that the options themselves are not well understood by people.

The second point has to do with the role of the premiers in this. One of the difficult things about Senate reform is that everyone who counts, everyone who has to agree, loses. An elected Senate would in some way affect the status of MPs, right? You would not be the only elected body. There would be senators, and in fact in some ways they would represent larger constituencies; there'd be fewer of them; they might seem to be more powerful. So MPs lose. The existing senators lose. The premiers lose because there are now competitors, in terms of speaking for Alberta, speaking for Saskatchewan. And the Prime Minister loses because—

• (1640)

**Mr. Joe Preston:** But who wins?

**Mr. Roger Gibbins:** The people.

**Mr. Joe Preston:** Certainly. Isn't that what this is for?

**Mr. Roger Gibbins:** I feel as if I set you up, as the straight man here.

**Mr. Joe Preston:** Thank you very much.

For our next act, we'll... No, I'm sorry.

**Mr. Roger Gibbins:** But it does make the process difficult to move unless you can shake it up in some way, because those people who have levers are not all that enthusiastic about it. Even if—even if—in their heart of hearts they think this is the right way to go, it's still hard to whip up a great deal of enthusiasm for something that's going to chip away at your own power and influence at the end of the day. Fair enough, you know.

**The Chair:** Thank you.

We'll move on to Madame Picard.

[Translation]

You have the floor.

**Ms. Pauline Picard (Drummond, BQ):** Welcome, Mr. Gibbins.

I am in favour of the abolition of the Senate. I do not believe in a second chamber. I believe that the House of Commons is capable of taking charge of its own responsibilities.

You stated earlier that Bill C-20 was a small step in the right direction. You however see in it elements that to your mind are inconceivable. You stated that after the holding of an election for senators, the Prime Minister could decide to snap his fingers at democracy and appoint someone else. This, to your mind, is inconceivable. You say that we are attempting to do something through the back door. Most constitutional lawyers have told us exactly the same thing. You also underscored the fact that the provinces would not be consulted. In the end, with Bill C-20, no one would be consulted; legislation devised for Lord knows what would simply be imposed. Furthermore, it will be very difficult to enforce.

What is that small step on the road to reform that Bill C-20 offers and that you mentioned earlier?

[*English*]

**Mr. Roger Gibbins:** The small step is that the Prime Minister will now, under Bill C-20, accept advice from the people of the provinces rather than from his own conscience, advisers, or whatever. To my mind, that's a very fundamental change.

The difficulty, and I think an area where this committee may well have an important role to play, is getting through a transition period. As I mentioned, I can think of electoral systems that would work very well for a lot of the concerns that have been expressed in this room, but in the short term it will be incomplete and messy.

Quebec, incidentally, poses a particular problem, and probably not in a bad way, because Senate constituencies are specifically defined in the Constitution, whereas they are not for the other provinces. Within Alberta you could have an election for all six Alberta senators at once, but it's not clear to me how this would take place within Quebec, with constitutionally defined senatorial districts. So for Quebec there is some hard work to be done.

Bill C-20 also provides an important olive branch to the provinces, in that it proposes, if I read it correctly, that the elections would be held either at the same time as a federal election or at the same time as a provincial election. There are supporters of the triple-E movement in my province who are very adamant that the elections should be held at the same time as provincial elections. Personally, I think that's the wrong way to go, but I can see us moving forward where we retain some of that distinction, where some of the elections are held nationally and some are held provincially.

As we work through how to make this sensible and sellable within Quebec, there are a series of design issues that I think offer some flexibility.

The last point.... I'm so hesitant to use terms like "back door" or "change by stealth" and so on, because it makes it seem illegitimate in some way. Yet I look at what has been a stalemate on Senate reform, with no movement, and I think there is an opportunity for some creativity here, some imagination, some ability to sort of get this discussion going.

I've been talking about Senate reform issues for 35 years as an academic, and I would like to think that before my death there will be some modest movement. I like to think that within my children's lifetime there would be some modest movement, but I'm not sure about this. If the Senate were working well, I wouldn't care, but I don't think it is working well, and therefore I do care.

I'm sorry, that's a long answer to your question.

• (1645)

[*Translation*]

**The Chair:** Thank you, Mr. Gibbins.

Have you finished?

**Ms. Pauline Picard:** Could the recognition of the Quebec nation by the House of Commons change something? Could that provide a veto right to Quebec?

[*English*]

**Mr. Roger Gibbins:** At some point in the process the formal mechanisms of constitutional reform kick in. So the question, in my mind, is whether the veto provisions that would be important to Quebec should come in at the start of the process or somewhat further down the line.

Here, my feeling is—and it's not based on any constitutional principles—that to provide for that veto at the very front end of the process shuts down the process in a way that would not be advantageous for the country as a whole. Ultimately, if Quebec is not onside with whatever constitutional deal we come up with, we're not going to have a deal. That's part of the reality of the country. But to choke off that debate too early seems to me to be inappropriate and could provoke some ill will in other parts of the country that attach greater importance to this.

So my own sense is let the conversation unfold a bit, let these provincial positions be articulated, knowing that at some point the cost of a full constitutionality must kick in, and that provides, I think, very substantial protection for the interests of Quebec going forward.

• (1650)

**The Chair:** Thank you, Mr. Gibbins.

Mr. Moore.

**Mr. Rob Moore (Fundy Royal, CPC):** Thank you, Madam Chair, and thank you, Mr. Gibbins.

You've been around this debate for a long time. By saying that an incremental change doesn't go far enough, isn't perfect enough, is lacking in some way, and we need to wait until we can create the perfect system where everybody agrees and we're all onside and at some point in the future we have to come up with this perfect method—isn't that just another way of saying we're not going to get anything done in light of the complexities of our country and how Parliament works and how the Senate works, and intergovernmental relations? Isn't the argument that we shouldn't advance this bill because in someone's view it doesn't go far enough or it's not perfect just another way of saying let's not do anything, for the critics of the bill you hear about?

**Mr. Roger Gibbins:** Of course I can't comment on the motives of those critics, but the effect is that.

**Mr. Rob Moore:** As you've mentioned, we've had this debate for a long time, and we tend to hear the same arguments. I don't ask you to comment necessarily on their motives, but what is the effect? If we're going to hold out for some perfect system, isn't that the same effect, at the end of the day, of just being blatantly opposed to any kind of change whatsoever?

**Mr. Roger Gibbins:** The effect of holding out for the whole design before we go forward is to stop the process dead in the water. Whether that's the desired outcome or not, whether that's by design, I can't comment, but that is the effect.

So I am a believer in incremental reform. It offers us some possibilities.

**Mr. Rob Moore:** You mentioned, and I have to agree with you 100%, that it would be likely inconceivable after going through this exercise of consultation that a prime minister would ignore the results of that consultation. I think it would be politically inconceivable as well. But it's important that this be a consultation. I know we've probably had our fill of constitutional experts, but that aspect of having a consultation rather than a direct election, as you know... In Professor Hogg's view, the constitutionality of this bill hinged on that. He in fact line by line has found that this bill is constitutional in every way.

I wonder if you might have some comment on how onerous the task is, when we're faced with the task of injecting a bit of democracy into what is now an undemocratic institution, to walk through that constitutional land mine. How significant is it, do you feel, that we have the eminent constitutional scholar in Canada giving his stamp of approval as to the constitutionality of this method?

**Mr. Roger Gibbins:** I don't think the constitutional hurdles to moving on this are insurmountable in any way. I could be wrong; the courts are not entirely predictable on this.

I would go back to a point I made earlier, that the courts are constrained to a degree on this by the nature of the question they would be forced to address. The design of representative institutions is not really a comfortable territory for the courts.

If the courts were faced with a challenge in which they would be forced to either stick to the black letter of the law of something written 141 years ago and block the democratization of the Senate, or provide some latitude, I think they would provide that latitude. But I don't know. However, it seems to me it's not a foolhardy path to follow on this. It does force the issue, there's no question about that.

•(1655)

**Mr. Rob Moore:** We've talked a bit about this method of consulting with Canadians, and I agree this isn't always top of mind with people. But when you ask people, everyone seems to have an opinion as to whether the Senate should be more democratic. People have said there's some imperfection with the consultation model.

You've said that the Senate, as you see it right now, is not working well. I think you're in good company there. I think most Canadians, certainly my constituents, would agree with you, and some members have expressed concern with the consultation, with democratically

going to the people where there is a vacancy and asking them who they would like to see in the Senate.

Do you have any comment, for people who don't know, on how senators are selected right now?

**Mr. Roger Gibbins:** Of course we have no idea. We don't know what the factors are that go into that. We know that different prime ministers have used very different strategies.

Prime Minister Chrétien had an interesting strategy, which he didn't hold to exclusively, of appointing relatively old individuals to the Senate, so he had a fair bit of churn within the Senate. That's an interesting way of going.

You could appoint young senators to ensure that your party has a voice in that Senate, regardless of what happens in the House of Commons down the road. There are different ways of doing this. We don't have any calculus right now. We don't know what constrains the Prime Minister.

To make one other very quick point, I said as strongly as I could that it's inconceivable that a prime minister would not accept the advice he received from the electorate. I actually take that back. I can conceive of a situation. Let's say one province elected somebody who was blatantly racist, blatantly, in the view of the prime minister of the day, expressed views that were not acceptable within the public forum of Canada. I can see a prime minister at some point saying "That's advice I'm not going to take. I'll risk my political career on that. I think that's a value I won't accept and I'll go further down the elected list." I think that's possible, but very unlikely. To my mind, it's a remote possibility but maybe not a bad thing to keep in mind.

**The Chair:** Thank you, Mr. Gibbins.

We'll move to Mr. Angus.

**Mr. Charlie Angus:** Thank you very much.

As I said, I find this discussion fascinating. The one thing I like about this bill is that I think it's a great trial balloon, allowing us to begin a discussion. What really worries me about it is if it's an actual piece of legislation. There are so many unthought-out areas in terms of how we could actually bring this forward without it blowing up in the government's face.

Elections Canada raised serious questions. They talked about an extreme risk of failure. I think those were their exact words. There's a lack of planning in terms of how to deal with financial limits; there are no limits on what they're campaigning on. There's the issue of third-party participation in an election, with parties signing up as third parties, and potentially federal candidates signing up as third parties. There's also whether or not, if this is running in conjunction with a federal election—they didn't seem to think it would be possible to even deal with a provincial election because of so many of the complications—having certain candidates with unlimited fundraising capabilities could interfere with the legitimate election campaigns that are going on. By "legitimate" I refer to House of Commons campaigns, because this is a consultation process, and it's going to be very hard to define.

So I'm concerned that there are just so many vagaries in this bill that when we actually get it out in the field, it would be a bit of a disaster.

I want to ask your opinion, because you talked about it being problematic with Quebec because Quebec has regions defined for senatorial posts.

**Mr. Roger Gibbins:** The senatorial districts.

• (1700)

**Mr. Charlie Angus:** I think that's perhaps one of the easiest places you could bring it in. How would you bring it into Ontario, with 13 million people spread out over such a vast area? We haven't defined where those regions are. The bill doesn't set out how you would do that. I'm very concerned that we could end up with a bit of a dog's breakfast in Ontario. Whereas in Quebec, at least we would be able to say there are senatorial regions and we'll be having these elections in these regions. It's manageable.

Do you think there are technical flaws in this bill in terms of its applicability in the field?

**Mr. Roger Gibbins:** My understanding of the parliamentary process is that the committee stage provides the opportunity to make that legislation better. I think this legislation has room for improvement, particularly in terms of its application, and in particular in terms of the transition, when we still have a combination of appointed and elected senators. How do you work out what to do with Ontario? Is it better to think of it as being three or four senatorial districts rather than one? To me, having one big one with 24 is problematic.

I would not in any way want to suggest that this bill is perfect. Speaking as an individual Canadian, I would be delighted if the work of this committee resulted in a better piece of legislation. I would be bitterly disappointed if the outcome were that the committee simply throw up its hands and say they're not going to go there because it's too tough. I don't think it is too tough.

But I don't think this bill as it stands answers all the questions that are quite legitimate for you to pose.

**Mr. Charlie Angus:** Certainly a stumbling block for the New Democratic Party on this, setting aside for a moment our position on bringing it to the Canadian people, is the term "may". The Prime Minister "may" call these consultations and he "may" accept the results. The difference between an oligarchy and democracy is the word "will". He will be bound. I recognize that you're saying it would be almost inconceivable that he wouldn't feel bound, but he or she is not necessarily bound even to hold the consultation. It's part of a toolbox of choice.

I think if we're going to talk about legitimacy moving forward we have to put those words in there, even if they do face a constitutional challenge. It seems to me it leaves it open to—you didn't like the word—stealth, but I think stealth is the back door. Unless we're willing to say that this is a process that the people will have a say in to bring to the Prime Minister, then the overall legitimacy of a consultation process that may or may not happen or may or may not be accepted is not credible in the 21st century in a western democracy.

**Mr. Roger Gibbins:** My response is that the use of words like "may" as opposed to "should" reflects the box we're in right now. When we finally have a full-blown model we can take to the Canadian people, I hope that the "mays" will have become "musts".

I'm talking about the stage when we are modifying the Constitution. That's the stage when we can get the language right. We can't get the language right now, because we're caught in this messiness. I would suggest to you and the party that we have the opportunity to get the language right. It needn't be done entirely at this point, because it's tough to get through this.

**Mr. Charlie Angus:** I wanted to ask whether or not the Prime Minister would be bound to accept a candidate. It struck me when I was reading the legislation that, if you do not have limits on financing—how it's done and the role of third parties—you could have an activist group decide that they were going to have a vote-in campaign for a person. Greenpeace or Right to Life could decide it. They could get all their members to chip in money. They could ask \$100 or \$500 from their massive organizations to get this person in, because the person has similar political views.

It would be fairly easy to raise enough money to be heard across a vast region. You could end up getting your right-to-life or anti-sealing candidate elected. Technically, it's democratic. But a system should be set up with financial limits so that people within a particular region, or within a particular group, are able to compete fairly. Do you see that there's a backdoor problem here with third-party intervention and the ability to raise unlimited funds?

• (1705)

**Mr. Roger Gibbins:** To me it's pretty clear where we want to go on this. We want the same norms and conventions that apply to electoral financing in the House of Commons to apply in the Senate. It doesn't seem to be overly difficult to figure out how to get there.

The catch is that, since Bill C-20 would allow the election of senators in conjunction with provincial elections, it's not clear whether the federal financing legislation would apply. The provinces are not wildly out of line with federal legislation on this, but this is one of the soft points. If we rely on provincial elections, we're getting beyond the ability of Parliament to set election financing. That's why I think that in the long term provincial elections are a bad alternative.

But this committee would do well to tighten up what may be financial loopholes in the existing legislation. If they're closed, so much the better.

**The Chair:** Mr. Gourde.

[Translation]

**Mr. Jacques Gourde (Lotbinière—Chutes-de-la-Chaudière, CPC):** Thank you, Madam Chair.

I want to also thank our witness for the great work he has presented.

I just have two short questions. You said that in this process of reforming the Senate the consent of provinces is required. At what step in the process should we consult the provinces?

[English]

**Mr. Roger Gibbins:** We can go a long way in moving towards an elected Senate without having the formal consent of the provinces. We can go a fair distance, as Bill C-20 does. However, on the distribution of the Senate seats, we need the consent of the provinces. There are hard constitutional constraints on what can be done without the consent of the provinces.

This is the trump card the provinces play. To use a baseball analogy, you can get to first base by yourself, but you can't get to second without bringing the provinces in. So the question is, when do you bring the provinces in? I think you bring them in after you have the process going. People could well differ on that assessment.

[Translation]

**Mr. Jacques Gourde:** In your view, should we look at all the Senate models that exist elsewhere in the world? Is there a model somewhere that seems better than others? Do you have any suggestions for us?

[English]

**Mr. Roger Gibbins:** My own view on this is that the Australian Senate experience provides some very good experience in terms of an election format.

To my mind, the American model does not provide a very good model, first of all because of its very faithful adherence to equal representation per state. I don't think that works in Canada. And second, because the Americans only have one senator being elected at one time, you don't have the opportunity to be more creative in terms of the electoral process.

So I think the Australian example is pretty compelling to me in terms of how to make an electoral process work and produce a Senate that is vibrant but doesn't sap the strength of the national government.

The qualification there—and it's an important qualification—is that the states have a much lower profile in Australian life than the provinces do in Canada, and we have to accommodate ourselves to the reality of the Canadian situation.

So there's no perfect model out there, but there is learning we could do.

• (1710)

[Translation]

**Mr. Jacques Gourde:** Thank you very much.

[English]

**The Chair:** Mr. Hubbard.

**Hon. Charles Hubbard (Miramichi, Lib.):** Thank you.

I've listened with interest, but just to recap, you strongly believe in an elected Senate. And you don't agree there should be divisions in terms of a province, that each senator from a province would represent the entire province and not a certain part of the province.

You seem to indicate the Senate elections could become a problem for members of Parliament because the senator might become more important than the member of Parliament.

You seem to think we should make incremental changes to the Senate. The Americans have two senators for each state, and whether the state be California or Alaska, great differences in terms of democratic process. Each has two members in the Senate of the United States, yet I don't hear a lot of complaints from the United States in terms of that type of representation. A senator in the States is very important.

With candidates for your own province of Alberta—we'll say we need three senators from Alberta—should people wanting to become senators be endorsed by their political parties? Should there be three candidates from the Conservative Party and three candidates from some other party and so forth, or should they all run simply as people of the people? Is there a necessity for a definition of who the candidates are? Should the Prime Minister or the leader of the opposition identify who his candidates are on the ballot as it goes to the people of Alberta?

Would you comment on that?

**Mr. Roger Gibbins:** That's a difficult question. Let me begin with the one I think is the most important—I'm not suggesting the others are not important—and that's figuring out what the appropriate size of the senatorial districts would be.

My concern with districts that are represented by a single senator is it doesn't provide a lot of opportunity for an electoral system to break up some of these large blocks.

To take an example, if Alberta had six Senate districts, each one electing one senator, we would get this uniform partisan representation from Alberta we have in the House of Commons.

If you have three districts or three senators per district, under the electoral system that is being proposed here, you would guarantee those three elected senators would not all be from the same party, unless Alberta was so overwhelmingly in public sentiment in that direction, which we're not.

So getting the size of the constituency right is very important, and that's what we haven't shaped up, as I read it, in Bill C-20.

**Hon. Charles Hubbard:** Should the candidates be endorsed by a party? When the people of Alberta go to vote, should they know that candidate X is represented by the Conservative Party and endorsed by the Prime Minister?

**Mr. Roger Gibbins:** It's all but impossible to keep parties out of an electoral process. We know that. If we go back to the history of the House of Commons, before the early 1960s, if I'm correct, party labels did not appear on ballots. Then we eventually went to the point of having party labels on the ballot because we recognized that partisanship is such an important cue for voters.

**Hon. Charles Hubbard:** I'm not asking what was, but what you would suggest. You are here to make suggestions to the committee. Would you suggest that the candidate should be identified by parties or as independents?

**Mr. Roger Gibbins:** I would be quite happy with a ballot that listed individuals and, if necessary, occupation, but did not give party labels on the ballot.

•(1715)

**Hon. Charles Hubbard:** If there were three vacancies in Alberta, and we'll say that you have a dozen very good candidates from small centres, as Mr. Angus talks about—some from Calgary, some from Edmonton, some from Cold Lake or Innisfail—what opportunity would people from small places have to get elected? Would candidate Joe from Innisfail be able to raise \$1 million to campaign in the province of Alberta to become a senator to represent all the good people of Innisfail or Cold Lake?

**Mr. Roger Gibbins:** There is no question that in large-scale elections, which would be the case within the Senate, it will be relatively difficult for people from small communities to be elected. I think that's true. I'm not sure the person from Cold Lake is necessarily better positioned to be appointed to the Senate than other people from Calgary or Edmonton, in terms of the calculus of the Prime Minister. There's no guarantee in that. We just don't know.

**The Chair:** This will be your last question.

**Hon. Charles Hubbard:** If you look at the past, such has been the case. We have people from the north, people representing first nations, women who came to the Senate. Women generally had difficulty getting elected in this country.

Now, I know your position; you're certainly showing it to us. But somehow we have to come up with an in-between, where we make sure that people are represented as people, and that every person in this country and every group in this country—first nations, for example.... In your own province of Alberta, a great number of the Blood, for example, have 10,000 people living in some of their communities. How would they get elected in Alberta? I don't think we've ever had in Saskatchewan a changing demographic group.

Somehow, whatever this bill results in, Madam Chair, I hope it can reflect what's best for all peoples of the country and not have certain people dominating because of the particular demographic group they represent.

Thank you.

**Mr. Roger Gibbins:** I'll be very quick. I realize we have a time limit.

You have to keep in mind that representation in the Senate is complementary to representation through the House of Commons, so what we want to think about is what happens through the two houses. To think of the Senate in isolation and not put it beside how the House of Commons works, and what are the strengths and weaknesses of the House of Commons system, would be a mistake.

**The Chair:** Thank you, Mr. Gibbins.

It's back to Mr. Reid.

**Mr. Scott Reid:** Mr. Gibbins, one of the things that came up earlier that actually surprised me was a discussion about the size of the districts. I had simply made the assumption that the district is simply the province. I was basing this on subclause 12.(1) of the bill, which says:

On issuing a proclamation referred to in section 57 of the Canada Elections Act for the holding of a general election, the Governor in Council may order the consultation of the electors of one or more provinces in relation to the appointment of senators to represent those provinces.

Maybe that's not all that clear. Would it be preferable, in your mind, if we actually went out and stated in an additional provision of the bill that the Senate districts shall be coterminous with provinces?

**Mr. Roger Gibbins:** I think it's an issue that has to be sorted out, and perhaps sorted out more explicitly. You have to ask yourself if the province is the appropriate container. The hard test case on this becomes Ontario. You have to think that maybe we'd be better off if we could take that province and carve it up in some way.

I think that's a discussion that should be held.

**Mr. Scott Reid:** I'm an Ontario member myself, and in the very first question you were asked today, Madame Folco spoke very eloquently about her concern that rural Ontario would be left out, given the demographic weight of Toronto.

I'll make the obvious assertion that if we're trying to seek one vote, one value, equal weighting of votes, you can't slice Ontario up into districts—be it two, three, four, or five—without underweighting the rural areas, because there are fewer people there. I say this as the representative of a rural Ontario municipality. The largest town in my constituency has fewer than 10,000 people, and we're spread over an area the size of the state of Connecticut. So while I'm very conscious of the concerns of rural people, believe me, I can't figure out how you overcome that basic fact.

What does strike me is that as you get smaller and smaller districts—if you go into four districts for Ontario instead of one large district—you start losing the value of that proportionality. That is to say, people could get elected based on the fact that they appeal to a community within the province. Obviously in some cases they might be people who appeal to rural voters. In other cases it might be someone whose appeal is based on the fact that they represent some other minority, say Franco-Ontarians, aboriginal interests, or whatever the case might be. As is the case in Australia, it might be the people who represent the environmental movement. The Green Party has been quite successful in the Australian Senate, although it's frozen out entirely from their lower house.

I guess I've really given you more of a comment than a question, but I'll leave it to you to respond.

•(1720)

**Mr. Roger Gibbins:** My understanding of how this electoral system would work is that if you had a preferential ballot and all 24 Ontario senators were elected at once, you would be assured of election if you received just over 3% of the popular vote. That's a very low threshold, so it wouldn't squeeze out the small communities.

Small communities would get into more trouble if you increased that threshold by having a smaller number of senators elected. It's like the issue of representation by population and proportional representation systems. Where do you want to set the threshold? Do you want it so you can get elected to the Ontario Senate with 3% of the vote? Or do you want a threshold to be somewhat higher?

It depends on your definition of democracy. Do you want those thresholds to be radically different across the country, where you can be elected as an aboriginal candidate in Ontario with 3% of the vote, but in Saskatchewan it takes 12% or 14% of the vote?



These are the design details that I think are hinted at in Bill C-20 but are not fully explained. To my mind, they're important decisions to be addressed. They're not incidental.

**The Chair:** Thank you, Mr. Gibbins.

Madame Folco, you have the last round of five minutes.

**Ms. Raymonde Folco:** There are two things, Mr. Gibbins. First, you said earlier that we have to start the process, and as we go along we'll get the process to be better and better. I agree with that, but if I look at what we're doing here as a legislative committee, we are starting the process. In fact, the bill we have in front of us is that first step toward reforming the process. But our task as members of the legislature is to look at that bill and make the process already better at this level. That is why we're looking at the details of the bill. I can see that what we're doing falls in step with the kind of thinking you've been exposing to us, in terms of *les grandes lignes*, if you like. In our thinking, we have to take into consideration all the questions that have been asked here today and on the other days.

We've talked a lot about how you become a senator. But once you have become a senator, once that new Senate is elected, or whatever is done, and all the senators are sitting in that new red room, what is their relationship to the House of Commons? How do you avoid having two groups with the same amount of power jostling one another? What powers do you give to one that you don't give to the other? One necessarily has to supersede the other, it seems to me. One has to take precedence over the other, otherwise you're at a deadlock. It's one of the problems the United States have in their legislature.

Seeing that there's nothing in Bill C-20 to give us an indication of where the Conservative government wants to go in that, do you have some ideas on the relationship between that new Senate and the House of Commons?

• (1725)

**Mr. Roger Gibbins:** At the present time the Senate of Canada has an absolute veto on all forms of legislation, except constitutional amendments designed to change the Senate.

**Ms. Raymonde Folco:** But because of respect for the House of Commons they have never exercised it—or at least not in my lifetime, let's put it that way.

**Mr. Roger Gibbins:** They've come close.

**Ms. Raymonde Folco:** Yes.

**Mr. Roger Gibbins:** They came very close on the free trade legislation, the GST, and others.

In the back of my mind is the danger of us getting into that confrontation with the existing Senate, because we have such different partisan distributions in the two houses. So I think there are some real risks.

If I were king for a day, I would like to have a House of Commons elected on the basis of representation by population, and get rid of some of the distortions we have right now as we try to accommodate regional representation within the House. It gets awkward. I would like to have a tie-breaking mechanism that gives additional weight to the House of Commons, because I think it reflects the most crystal-clear expression of the democratic will of the people. You want to get that right.

It requires a change from the status quo. People assume now that the Senate doesn't have power and legitimacy. It doesn't have legitimacy, but it does have power. I'd like to strengthen the legitimacy of the Senate but constrain its power. I think that can be done. There are mechanisms for doing so. I don't shy away entirely from the notion of deadlocks, confrontations, and so on, because democratic government tends to be messy. It's not clear-cut, but we have to sort those things out.

I come back to the responsibilities of this committee, as I see them. The questions that have been asked today that I have confronted seem to be extraordinarily important and thoughtful ones. These are not trivial matters that have been raised by people. I would hate to see the discussions shut down at this point by the committee, rather than pushing us—Canadians, the government of the day, whoever—to begin addressing those questions in a thoughtful fashion.

How you do that as a matter of parliamentary procedure is something I don't know. But rather than slamming on the brakes, I would prefer to raise those hard questions and try to think through a mechanism by which they can be answered. Because they are important questions, and Canadians would feel you were negligent in your own responsibilities if you went ahead pell-mell, without raising those questions and thinking through a mechanism by which we might be able to answer them. All those answers won't be found in Bill C-20 itself.

**The Chair:** That will have to be the last word.

I'd like to thank Mr. Gibbins for his insights. I know that committee members will go into overdrive to digest your input. Thank you ever so much for coming.

We'll see you in two weeks. Thank you.

The meeting is adjourned.





**Published under the authority of the Speaker of the House of Commons**

**Publié en conformité de l'autorité du Président de la Chambre des communes**

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