**David Smith, The Canadian Senate in Comparative Perspective, 2003**

**Approach**

Comparative institutionalism

**Thesis**

The Senate is usually studied on its own and not in interaction with the House. Little evidence that the election of Senators would improve Parliament as a whole, particularly given that a more assertive Senate could affect the exercise of responsible government by challenging the House.

**Key arguments**

*Theory*

* There is little study of bicameralism internationally and no comprehensive theory.
* Riker justifies bicameralism on the grounds that it minimizes the chance for tyranny and includes the UK as unicameral since Lords can only delay.
* Elsewhere justified for representation (representation of federal units in upper house vs. rep by pop in lower house) or redundancy (brake on actions of the lower house)

*Australia*

* Australian senate is equal (between the states), effective, and elected.
* Constitution also establishes the two chambers as equal to each other, meaning laws were passed by both the majority of the people and the majority of the states
* However, it’s blockage of the budget 1975has led to questions about responsible government that are yet resolved
* Constitutional drafters debated whether bicameralism and responsible government worked together – if lower house had final say on money then representation by popuplation would triumph, ruining effort to balance power through the Senate
* In an event of deadlock both chambers are dissolved and then a joint session is held
* Rise of parties has reduced extent to which Senate represents regions, but adoption of PR has allowed smaller parties representing interests of women, aboriginals, consumers, etc.
* Result is that it is less a chamber of the states than of minorities and is seen to represent non territorial interests in same way as the Charter in Canada

*United Kingdom*

* In the UK Parliament is seen as a whole with the Lords being seen as “complementary” to the Commons and required to submit to it
* Suspensive veto established by the Parliament Act, 1911 after the Lords refused to adopt the government’s 1909 budget prompting an election. Commons can override Lords’ by passing a law twice in two consecutive sessions of Parliament
* Suspensive veto moved the UK closer to unicameralism than Canada.

*United States*

* In the US unicameralism desired by some (e.g. Nebraska) to end ability of the two chambers to pass the responsibility from one to the other.
* Even though each state has an equal number of representatives, because there are so many states no state or even group of 10 states can block the national interest.
* Public debate in the US puts much more focus on the national interest than the state interest – the Senate legitimates the states, not the other way around.
* Popular election of US senate with national political parties means it no longer represents the states but the people.

*Germany*

* Bundesrat isn’t a normal Chamber of Parliament since its filled by provincial politicians who have no term and who vote as a bloc - therefore more of an institution of intergovernmental relations
* German federalism is also about administration, not jurisdiction – therefore the “clout” of the Bundesrat is in administrative expertise.
* The Bundesrat does not have direct democratic legitimacy but only that coming from the election of provincial politicians. However, it is viewed as legitimate

*History of bicameralism in Canada*

* The Legislative councils of Upper and Lower Canada aimed to restrict democracy and prevent the possibility of revolution.
* Councils had begun to be elected before Confederation, but this was puzzling since struggle for responsible government had focused on the elected lower house.
* Senate compensates smaller provinces for representation by population in the House
* Traditionally seen like the Lords but is different since the Lords has 1) an unlimited membership; 2) a suspensive veto (full veto needed in Canada due to federal concerns); 3) a hereditary element; 4) no geographic basis
* SCC ruled that the smaller provinces consented to Confederation only because the Senate represent the provinces, making it impossible for the federal government to change unilaterally.
* Senate vetoed at least four pieces of pieces of legislation in the 1990s

*Senate reform*

* Senate is evaluated in the political context of the day and for most of Canadian history that was a debate about regional and linguistic tensions
* Unfounded criticisms are used to undermine its legitimacy
* Dislike of the Senate leads people to focus on specific aspects of its structure and work (e.g. appointment process) without examining it in as a broader part of Parliament
* Election is not needed for bicamerialism - “There is much to be said against the Senate, but the fact that it is not elected is not one of them.”
* In 1978 Trudeau proposed the House of the Federation, elected indirectly by provincial assemblies.
* Then came the “Triple E” Senate proposed by the Macdonald commission, Alberta, and the Canada West Foundation.
  + Supporters have not elaborated on theories of political representation or what Senators would do
  + Believe that appointment makes Senators unaccountable and illegitimate – accepted as self-evident rather than requiring demonstration
  + Also believe that a reformed Senate would eclipse the Commons in importance and influence

*Reform questions*

* If Canada adopts Australian system it could lead to a clash of legitimacy between House and Senate, especially depending on the timing of elections between the two and different parties in control.
* How would the prerogatives of the Crown be affected (e.g. refusing a double dissolution?)
* Would an elected Senate actually reduce federal-provincial conflict?
* Focus on election ironic given public distrust for elected MPs and desire to have appointed officers of parliament review actions of MPs.

**Contribution**

A further example of the “responsible government approach” described by Malloy and its opposition to reform. Demonstrates how the US and Germany models, seen as places where the provinces are effectively represented, are not congruent with what is desired in Canada. Also shows that moving to the Australian model could lead to serious problems with the operation of responsible government.