



July 10, 1980

PERSONAL

The Right Honourable Pierre E. Trudeau  
Prime Minister  
House of Commons  
Ottawa.

*Dear Pierre,*

In our short talk on Tuesday you mentioned the interest being shown in the British Columbia proposal for a new Senate. I told you that in their report on a new constitution for Canada, the Canadian Bar Association made a similar proposal.

The Ontario section of the Association asked me for my views and I thought you would be interested in the following extract from my reply:

I find it strange that the West German Bundesrat should suddenly emerge as the model for an institutional solution to federal-provincial problems in Canada. The proposal fails to take account of the special features which differentiate West German federalism from our own. Moreover, it does not reflect practical experience in the operation of Canadian federalism.

The German system is "executive-legislative federalism". Legislation is almost exclusively the domain of the central government but the administration and execution of the laws, both federal and state, are the responsibility of the Laender, i.e., the states. The bulk of the civil servants in the Republic are officials not of the central government, which employs about 300,000, but of the Laender with more than 1,400,000. The composition of the Bundesrat, whose members are ministers of the Laender governments acting on instructions of those governments, reflects this horizontal division of powers, which, of course, differs basically from the vertical division in Canada

and most other federations. The Bundesrat also reflects the constitutional history of German federations with states which for a long time were almost independent principalities. Bavaria, for example, had its own King until 1918. Considering the basic differences between West German federalism and its history and those of Canada, I cannot see a Bundesrat type of Upper House fitting into our parliamentary system. With the provincial executive power in a position to curb the federal legislative process, our system would be unworkable.

The Report sees the reconstituted Upper House as "an ongoing federal-provincial conference" for "co-ordination of policy on a continuing basis" in place of the Federal-Provincial Conferences of First Ministers and ministers. I am afraid that this is based on simplistic reasoning. It is politically unrealistic to expect provincial premiers to abdicate their role in federal-provincial matters in favour of their nominees in the Upper House. Nor should they. Negotiations and agreements on such matters are properly the role of the governments responsible to their respective legislative bodies and electorates. The Federal-Provincial Conferences of Prime Ministers and ministers meet the requirements of popular election, regional representation, and understanding of the issues involved. It is significant that even in West Germany, with the Bundesrat as constituted, there are frequent conferences between the central and state governments corresponding to our Federal-Provincial Conferences. The belief that problems would be solved more easily and confrontation avoided by a transfer of the functions of such conferences in Canada to a public forum composed exclusively of nominees of the provincial governments with federal "spokesmen" who have no vote, is completely unrealistic. Experience teaches that negotiation in a public forum between politicians elected at different levels does not lessen confrontation but promotes it.

The powers and functions recommended for the new Upper House would give a direct voice in federal decision-making to the provincial governments. Considering that the Constitution sets up a federal system in which different roles are assigned to the federal and provincial

governments respectively, it would mean a radical change in the system if the governments elected to deal with matters within provincial jurisdiction are empowered by their exclusive control of the Upper House to intervene in and obstruct the exercise of its constitutional jurisdiction by the federal government. The effect can only be to weaken the federal government by making it difficult for it to act in the national interest, which it is elected to do. I doubt that this is in the best interests of Canada."

As I told you, I would welcome the opportunity to serve again as an adviser to you during the complicated negotiations now under way, that is, if you feel that I can be of assistance.

*As always,*  
Carl