

Parliamentary Reform in Canada: The Significance of Senate Reform

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In this paper, I will argue that the Canadian Parliamentary system has become significantly less democratic over time and therefore requires reform. Specifically, I will focus on the Senate and the ways in which the institution has had a negative impact on the state of Canadian democracy. Through an analysis of how Senators are selected, the make up of the Senate, and the institution's role in Canadian governance, I come to the conclusion that Canadians must demand reform if they are to maintain a strong, healthy democracy that serves their interests. Mainly, I support a Triple E Senatorial system since it gets at the root of the problem by decentralizing federal power and giving it to the provinces and Canadian people. I also include a brief discussion of Justin Trudeau's plan for the Senate which proposes more immediate reform and does not require constitutional revision. Rather than demanding abolition or tolerating the status quo, taking these steps towards reform will ensure that Canadian interests are the government's top priority. Through reform, Canadians would have more effective "sober second thought" and a democracy that works for the people, not the party in power.

In Canada, our parliamentary system of government is often seen as the epitome of democracy but the extent to which it remains true to democratic values (such as accountability, representation, citizen engagement, transparency, etc.) is often in question. The decisions made at the federal level of government have significant effects on the individual interests of each region of Canada which means engagement in federal issues on the part of individuals and provincial or territorial governments is incredibly important. To ensure the unique needs of each part of the country are being heard and met, parliamentary composition and proceedings must be scrutinized. As our democratic system matures, there are bound to be institutional changes and it is up to Canadians to push for changes that do not take away from the democratic nature of the country.

In this investigation I will argue that the federal parliamentary system in Canada requires reform because it has deviated from the participatory and representative aspects of democratic governance. The system is increasingly cutting Canadians out of the parliamentary process and is, as a result, producing a

more centralized, undemocratic federal government. To establish a system that is more aligned with the democratic values of Canadians, we must focus on reforming the organization and make-up of the Senate. Much of the debate around Senate reform in Canada stems from the democratic values of electoral participation and maintenance of a decentralized system that accounts for provincial interests.¹ From these values, “three main issues arise: the Senatorial selection process, the number and distribution of Senate seats, and the role and powers of the Senate as a whole, specifically its relationship to the House of Commons.”² In this investigation, I will discuss the problems these issues bring to the Senate in order to support the argument that Canada ought to transition towards a Tripe E Senate or at least consider Justin Trudeau’s proposals to reduce partisanship within the Senate.

It is immensely important to consider the Senate when evaluating our parliamentary system since the institution has numerous roles and responsibilities when it comes to policy and legislature. It is the major parliamentary body responsible for providing a “sober second thought” to issues at the federal level. During the bill-to-law process, Senators go over proposals made by those in the House of Commons and provide their input on how the bill ought to be amended. Essentially, they are responsible for questioning, improving, and delaying legislation to make sure mistakes are avoided. Since the appointed Senate has this large degree of influence on the outcome of legislation, “it represents a major, unrealized opportunity to address the democratic deficit in Canada’s central policy-making institutions.”³

First of all, the selection of Senators is in the hands of the Prime Minister as he or she is the one who appoints them. This partisan influence on the Senate sparks debate over whether appointment by the party leader in power is truly a democratic practice. If the Prime Minister is selecting Senators, it is highly unlikely that he or she will appoint individuals who do not favour the party. In the past, there have been several attempts to address this issue and one that is worth considering is the Meech Lake Accord brought forward by Brian Mulroney in 1987. Meech Lake suggested a type of Senate reform aimed at making the institution less partisan and more representative of provincial interests. The selection process suggested by the accord would give provincial Premiers the power to recommend Senators. Each province would produce a list of Senatorial candidates and the Prime Minister would be required to appoint Senators from those lists.⁴ This method of appointment clearly allows provinces to have a say in the Senate and as a result a say in parliamentary legislation. It is a clear example of movement towards decentralization of federalism because each province is able to indirectly appoint Senators who would look out for their province’s specific interests and issues that affect them. By doing this, Canadians in their respective provinces would be better represented in the Senate and would as a result have a greater, meaningful impact on federal legislation.

¹ Michael Burton and Steve Patten, “A Time for Boldness? Exploring the Space for Senate Reform,” *Constitutional Forum* 24, no. 2 (2015): 1, accessed November 10, 2015, <http://login.ezproxy.library.ualberta.ca/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=agh&AN=108331942&site=eds-live&scope=site>.

² Burton and Patten, “A Time for Boldness?” 3.

³ Michael M. Atkinson and David C. Docherty, “Parliament and Political Success in Canada,” in *Canadian Politics in the 21st Century*, ed. Michael Wittington et al. (Toronto: Nelson, a division of Thomson Canada Limited, 2008), 10.

⁴ Rand Dyck and Christopher Cochrane, *Canadian Politics: Critical Approaches* (Toronto: Nelson Education Ltd., 2014, 2011), 108, 416-18.

Although the Meech Lake Accord was unsuccessful, the idea of having a less centralized appointment process came out of it and its democratic value started being more widely considered. Eventually, the Charlottetown Accord of 1992 also touched on Senate Reform and brought about the popularization of a Triple E System of Senatorial appointment. The Triple E System has three main goals when it comes to the Senate: elections, equality, and effectiveness. Under this system, each province would elect six senators via proportional representation for nine year terms. This means every province, regardless of size, receives an equal number of Senators and therefore equal representation. And finally, Senators would be more effective since they would have considerably more power to oppose the House of Commons and serve the interests of the people. For example, Senators would have the ability to stop legislature in provincial areas of jurisdiction and therefore be more effective in converting the peoples' demands into real, observable change. The Triple E method aims to give Canadians an opportunity to participate in federal governance, be more equally represented at the federal level, and basically gets rid of appointment to make the Senate a house of the provinces – evidently forcing the parliamentary system to be more true to democratic standards.

Adopting an electoral approach to the Senate is a clear example of citizen participation in federal affairs and thus the Triple E system provides a fix to the lack of citizen engagement in parliamentary issues. Along with this election portion of Triple E, the equality of provinces aspect is also significant contributor to the establishment of a more representative system. The need for an equal number of Senator seats for each province comes out of the issue of the House of Commons being dominated by individuals who advocate for the interests of Ontario and Quebec, where most of the Canadian population resides. Canadians outside of these two provinces do not receive representation to the same extent so the Senate must fill the void.⁵ By giving each province the ability to a) elect their own and b) have an equal number of Senators, we allow the system to be more democratic. Furthermore, population density is already addressed in our House of Commons. It makes sense for the Senate to give the provinces equal representation in order to avoid ignoring valid provincial concerns amidst the centrally focused House.⁶ Canadians, no matter where they live, would have access to a group of individuals in direct engagement with federal legislative procedures and decisions – this ease of access to parliamentary proceedings is a crucial element of maintaining a legitimate democracy.

One former Conservative MP, Howard McConnell argues for a Triple E Senate by referring to the success of the United States' equally elected Senate. McConnell states that, in America, giving each state an equal number of Senators means “the lower house represents the people and the upper house the states. Either principle without the other would result in a perversion of federalism, since in a legislative body organized according to population alone there would be no assurance that regional or state interests would be adequately taken into account.”⁷ According to McConnell's argument, the whole point of an upper house is to represent all of the states and value equality of representation over strengthening centralized federal power.

⁵ Howard McConnell, "The Case for a "Triple E" Senate," *Queen's Quarterly* 95, no. 3 (1988): 683, accessed November 10, 2015, <http://login.ezproxy.library.ualberta.ca/login?url=http://search.proquest.com/login.ezproxy.library.ualberta.ca/docview/1296887594?accountid=14474>.

⁶ McConnell, "The Case for a "Triple E" Senate," 687.

⁷ McConnell, "The Case for a "Triple E" Senate," 684.

Further evidence of a successful Triple E Senate can be seen in Australia where Senators' roles in legislation have been quite impactful. McConnell brings up an Australian incident where state Senators fought to have their state involved in a federal plan to use water from one of their rivers.⁸ Clearly, a Triple E system has the ability to establish a Senate where Senators actually have the power to make a difference on behalf of the people they represent. Our Senatorial system has the wrong idea and ought to value equal, effective representation for the sake of protecting as well as advocating for provincial interests. The Senate is an effective way to get provincial opinions noticed as, again, Senators can influence many policy decisions.

In terms of the Senate's relationship to the House of Commons, some may argue that having an elected Senate would result in more deadlock between the two chambers. "If Senators were elected they would be more accountable to the province they represent and thus feel more justified in opposing ideas put forth by the House of Commons – and this could be problematic."⁹ But this worry about political deadlock overlooks the extent to which the effectiveness of the Senate would be increased. Instead of only being able to delay legislation for a specific time period, Senators would be able to back up their claims with the support of the people and perhaps eventually have the power to reject certain legislation. By giving Senators more leverage to stress the significance of their opinions on legislation that affects their provincial area, we would be creating a more democratic system. As well, ensuring each part of Canada is entitled to have its interests heard and acted upon at the federal level is in fact a democratic value. Discussion, debate, and compromise on different perspectives in parliament is a step towards better democracy.

Recently, the Harper Conservatives tried to push for Senate Reform but the Supreme Court deemed an elected Senate to be unconstitutional. To reform the Senate, or even abolish it, we would have to amend the constitution and have provincial and territorial support. As a result of the Supreme Court's decision, Harper decided to simply give up on continuing to advance his long promised Senate Reform ideas.¹⁰ In response, even Senators have been commenting on Harper's refusal to acknowledge that there are other ways to begin reforming the Senate while building up democracy. For example, Senator Jim Cowan gives his perspective by stating that "there are ways the Senate could become more effective, without any need for constitutional amendment."¹¹ If Senators themselves are pushing for reform and realize that there are issues with the institution, it is worth looking into. As well, although the purpose of the constitution is to maintain concrete governing principles, when it isn't working for Canadian democratic values its amendment should be considered. Simply saying that it is too difficult to make amendments and therefore eliminating that as a solution is unacceptable. Linda Trimble, a political science professor at the University of Alberta, agrees with Cowan and says that "it is petulant and

⁸ McConnell, "The Case for a "Triple E" Senate," 685.

⁹ Dyck and Cochrane, *Canadian Politics*, 619.

¹⁰ Linda Trimble, "Status Quo Unacceptable; Senate Reform Possible; Abolition by Stealth Anti-Democratic," *Constitutional Forum* 24, no. 2 (2015): 33, accessed November 13, 2015,

<http://login.ezproxy.library.ualberta.ca/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=agh&AN=108331945&site=eds-live&scope=site>.

¹¹ Senator Jim Cowan, "Notes from an Insider: Some Bold Ideas on Senate Reform,"

Constitutional Forum 24, no. 2 (2015): 55-56, accessed November 13, 2015,

<http://login.ezproxy.library.ualberta.ca/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=agh&AN=108331948&site=eds-live&scope=site>.

negligent of the current government to simply throw up its hands in the wake of the Supreme Court's decision and to resist any form of democratic dialogue on Senate reform."¹²

Trimble weighs in on the situation further by suggesting that "without any immediate prospects for an elected Senate, maybe Canadians would indeed prefer a better, more representative, less partisan unelected Senate."¹³ She mentions that an alternative to be considered for the time being is transferring the power of appointment from the Prime Minister to an independent council that is not influenced by partisanship. This idea is supported by Justin Trudeau's Liberals as they have proposed a transformation to independent appointments if they are elected. The Trudeau proposal entails a voluntary surrendering of executive power over a powerful governing institution – a bold step which reflects that the party's priority is a stronger democracy rather than the pursuit of power. If constitutional amendment is not feasible at the moment, taking this small step promised by the Liberals is better than doing nothing. It would be a large move towards democratization as Senators would no longer be conflicted between remaining true to their party's wishes and those of Canadians. According to Cowan, "in some committees, Conservative senators actually have scripts from which they read an assigned part."¹⁴ The Harper government did not see the Senate as a body that would question them and ensured this by implementing party discipline within the Senate.¹⁵ This is clearly an undemocratic, manipulative practice and therefore Trimble's mention of taking away the Prime Minister's power of Senatorial appointment puts Senators on the side of Canadians instead of the government – allowing the system to be more democratic.

Both Cowan and Trimble bring us to the conclusion that Canadians must be incorporated into the Senate Reform discussion. Trimble believes that most Canadians have no idea what the Senate does and engaging Canadians in the debate would give them insight into the functioning of Parliament.¹⁶ This engagement would significantly increase the public's interest in federal politics in general as well and thus work to meet the participatory element of democracy. Informed people would be more inclined to keep an eye on the federal government and ensure they are not being left out of important federal decisions. As well, more citizen involvement in talk about the Senate could result in changes to other undemocratic aspects of Parliament.

Many people choose to go beyond reform and argue against the very existence of the Senate, fueled by the opinion that Canada would be more democratic without it. But abolishing the whole institution would bring about much more controversial problems than switching to a system such as Triple E or even keeping the status quo. One main issue that would arise is that there would be an overload of responsibilities on the judicial branch. The Senate's role of double checking government proceedings would get backlogged into the Supreme Court and result in overall inefficiency and more mistakes. As well, no Senators would mean fewer experienced parliamentarians. Compared to MPs, Senators serve much longer terms and thus are more acquainted with legislative issues – losing this would contribute to the increase in Parliamentary errors. As a result of all this inefficiency, Canadian

¹² Trimble, "Status Quo Unacceptable," 36.

¹³ Trimble, "Status Quo Unacceptable," 35.

¹⁴ Cowan, "Notes from an Insider," 58.

¹⁵ Cowan, "Notes from an Insider," 58.

¹⁶ Trimble, "Status Quo Unacceptable," 35.

interests could be skewed and the democratic nature of our system would suffer. Furthermore, the loss of “sober second thought” would strengthen the party in power as they would no longer be hindered by Senatorial debate and delays. Cowan agrees with this point and states that “the government would...simply wait out the clock after introducing highly controversial legislation.”¹⁷ It would be significantly easier for the government to pass legislation as it would not have to pass through an interrogative institution. Plainly, we would end up with a less democratic system since the government could more easily pass legislation that goes against the interests of Canadians. The aforementioned issues would not lead to a more democratic Parliament – it would instead create a highly inefficient, centralized system.

Others may argue for simply accepting the status quo but there are clear problems with that as well, including the ongoing Senate scandal that has revealed another side of Senators. The scandal essentially involved a few Senators who wrongfully filed expense claims and used taxpayers’ money to pay for personal expenditures.¹⁸ A Senate that has lost the trust of Canadians cannot remain as it is within Parliament if we are to maintain a functioning democratic system. If individuals appointed by the federal government are stealing from citizens, how are we to trust them when it comes to advocating for our interests? Accountability is a huge aspect of democratic governance and the current Senate clearly does not feel accountable to the Canadian people and has instead pledged its allegiance to the party in power. The approach taken by the, now previous, Harper government to address all this has been to stop appointing Senators at all and hope the problem solved itself. Trimble calls this ignorance towards the Senate “abolition by stealth” and says it is extremely undemocratic as it is “designed to avoid talking about the future of the Senate.”¹⁹ By pretending the Senate is not there and refusing to build it up, the government deviates immensely from our democratic values. The approach completely refuses to acknowledge Canadians’ opinions on the Senate, showing the extent to which our Parliament has forgotten about the people’s role in democracy. It also prevents anyone from trying to increase the popularity of alternatives mentioned earlier in this investigation such as Meech Lake and Triple E. Keeping Canadians out of the Senate makes it incredibly difficult for any positive reform to occur and does not reflect a very democratic Parliamentary system.

From an analysis of past attempts at Senate reform, current problems, and future possibilities, I have established the argument that the Canadian Senate is highly undemocratic in several facets and does in fact require major reform. Over time, many ideas have been brought up for consideration including the Meech Lake Accord, Triple E System, and making non-partisan appointments. But most of these have either failed, been ignored, or simply deliberated. As well, any serious discussion or debate about the Senate has been within scholars or the government itself – there has not been very much serious talk about the issue amongst Canadians. It can thus be argued that Canadians have not adequately been able to participate in federal concerns and are consistently being cut out of the system. If the government does not take the various opinions of Canadians across the country into consideration, how can we claim to

¹⁷ Cowan, “Notes from an Insider,” 58.

¹⁸ Ian Austen, “Dispute Over Canadian Senators’ Expenses Balloons into Larger Political Scandal,” *New York Times*, Oct 25, 2013, Late Edition (East Coast), accessed November 13, 2015,

<http://login.czproxy.library.ualberta.ca/login?url=http://search.proquest.com/login.czproxy.library.ualberta.ca/docview/1444841528?accountid=14474>.

¹⁹ Trimble, “Status Quo Unacceptable,” 36.

have a representative, parliamentary democracy? Furthermore, from the examination of issues that arise from completely abolishing the Senate or accepting the status quo, it is very clear that those alternatives will not lead us towards a more democratic system – only reform can help us move forward.

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