
Electing Senators by the Single Transferable Vote

by Aaron Hynes

Calls for the democratization of the Canadian Senate began before the ink was dry on the British North America Act, and have intensified as Canada's democratic standards have evolved. In recent decades, a multitude of commissions and committees have recommended every conceivable means of selecting Senators. The current federal government has introduced legislation "to provide for consultations with electors on their preferences for appointments to the Senate," and to limit Senator's terms of office to eight years. This article examines some recent proposals and suggests that the best means of selecting Senators would be by election using the Single Transferable Vote.

The Fathers of Confederation described two essential roles for the Senate, neither of which would be served by a unicameral parliament. First, the Senate is intended as a forum in which distinct regional sentiments and interests may bear upon the direction of the whole federation. Virtually every system of federal government includes a bicameral legislature, one of the two houses being dedicated to regional representation.

The Senate's second constitutional role, which is highly pertinent to the process for selecting Senators, is to provide, in Sir John A. Macdonald's oft-quoted words, "sober second thought in legislation" – a check against the political impulses of the majority in the House of Commons.

By giving a voice to political minorities, the Senate is also meant to counterbalance the dominance of the political majority that dominates the lower house. It currently fails in this role because the current Senate lacks the authority and legitimacy to right the balance of power within parliament.

Senator Lowell Murray has argued,

Over the years, the conventions have grown up under which we normally defer to the elected House. We rarely defeat a legislative measure

except in certain extreme circumstances. Even when we amend a bill, if the House of Commons insists several times on rejecting our amendment, normally we take the position that, at the end of the day, the House of Commons prevails... an elected Senate would be bound by none of those conventions.¹

However, the Senate was clearly not intended to meekly defer to the House of Commons. Sir John A. Macdonald declared,

There would no use of an Upper House, if it did not exercise, when it thought proper, the right of opposing or amending or postponing the legislation of the Lower House. It would be of no value whatever were it a mere chamber for registering the decrees of the Lower House.²

Canada's Parliament was designed to include a Senate with real authority, but that authority has been lost as the Senate has fallen increasingly short of advancing democratic standards. Therefore, Canada's Senate is today criticized as an impediment to democracy if it attempts to check the elected House of Commons, and as useless when it merely defers to the lower house. As Senator Carl Goldenberg lamented,

If we enact legislation speedily, we are called rubber stamps. If we exercise the constitutional authority which the Senate possesses under the *British North America Act*, we are told that we are doing something that we have no right to do.³

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Making the Senate an Elected Chamber

The solution to this dilemma is as evident as it is difficult for some to accept: the Senate must conform to modern democratic standards. Only when legitimized by elections will the Senate revive its moribund authority to check the House of Commons. This has been recognized in several major studies:

The 1984 Molgat-Cosgrove report called for an elected Senate to “ensure that Senators have more political authority.”⁴

In 1985, Alberta’s Select Committee asserted that only an elected Senate “would enjoy legitimacy and would be able to exercise fully the significant political and legislative powers necessary to make a valuable contribution to the Canadian Parliament.”⁵

That same year, the Macdonald Commission stated simply, “We join those who have argued that the Senate should be an elected body.”⁶

The Beaudoin-Dobbie report of 1992 concluded: “If we wish to establish a strong and effective institution ..., that institution needs to have the legitimacy which comes from having been chosen directly by the people.”⁷

Yet, arguments against electing Senators persist. It is said that one purpose or another of the Senate would be ill served if its members were elected. Such arguments fail to contemplate the full range of electoral systems, and in particular the advantages of the single transferable vote (STV).

The Single Transferable Vote

The STV system is ideally suited for the election of legislative bodies with multiple-member constituencies – such as the Canadian Senate, in which each province has between four and twenty-four Senators.

From the voter’s perspective, the single transferable vote is simple. The ballot lists the candidates in any order. A candidate may be independent or nominated by a party. The voter simply numbers as many or as few candidates as they wish in order of preference.

The counting process is rather arcane, but only its salient characteristics and outcomes are pertinent here. The quota of ballots a candidate requires in order to be elected is the lowest number that can be reached or exceeded by no more than the required number of candidates. For example, if there are 100 voters and four seats to be filled, then the quota is twenty-one. This quota can be calculated as the number of votes, divided by one more than the number to be elected, plus one.

The STV system requires multiple vote counts. First the ballots are sorted according to the first preference indicated on each. Any candidate who is indicated as the first preference on at least a full quota of ballots is deemed elected. Any surplus ballots a candidate receives beyond the quota are redistributed among the remaining candidates according to the next preference indicated on each ballot. If no candidate reaches the quota, then the candidate with the fewest ballots is eliminated, and all their ballots are redistributed among the remaining candidates according to each voter’s next preference. This process continues until the required number of candidates has been elected.

In addition to ensuring that every ballot influences the final composition of the elected group, STV possesses other considerable virtues. First, it yields a proportional result, so minority interests have a strong potential to elect representatives. Second, voters are not constrained by party lists. They may choose any combination of candidates in any order. Thus, STV elects candidates from a greater diversity of parties and encourages the election of independents. These outcomes make STV the ideal system by which to elect an effective Canadian Senate.

Differential Representation – The Essence of Effective Bicameralism

Differently composed chambers are inarguably the essence of effective bicameralism. Robert MacKay noted that the elected upper houses in Prince Edward Island and the Province of Canada prior to Confederation were ineffectual because they “tended to be a second edition of the assembly (lower house).”⁸ However, these pre-confederation experiments in electing upper houses employed the same first-past-the-post (FPTP) method of election that was used to elect lower houses, as no other electoral system was well known to the Fathers of Confederation.

Two elected houses with the same constituents may embody equally democratic yet very different manifestations of the public will. The surest way to achieve this is by implementing different electoral methods, suited to the different functions of the two chambers.⁹ The Senate’s function of defending political minorities against the tyranny of the majority strongly recommends a system of proportional representation (PR) by STV.

A Truer Way to Represent Minorities

The 1972 Molgat-McGuigan report suggested an elected Senate would be less able to represent Canada’s diversity than our current appointed one, since representatives of minorities could be deliberately

appointed to the Senate, whereas they would be unlikely to be elected.¹⁰

The same concern was evident in the deliberations of the Special Senate Committee on Senate Reform during the first session of the 39th Parliament. Senator Jim Munson commented,

The founders of Confederation gave the Senate a significant role in protecting minorities... In an elected Senate, I do have concerns and worries about people who have been appointed to the Senate and what chance they would ever get to become a senator in an elected environment.¹¹

Senator Elizabeth Hubley echoed,

At present, the Prime Minister has a great deal of power in his ability to shape the Senate to respond to the needs of Canadians who, for whatever reason, perhaps because of their lower numbers, are not able to gain representation through our electoral process.¹²

By “our electoral process” Senator Hubley clearly meant the FPTP method, as this is the only electoral process currently in operation in Canada.

The purpose of the Senate as envisioned by the Fathers of Confederation is to speak for the diverse minorities who are essentially disenfranchised by the FPTP method by which members of the lower house, and hence the government, are chosen. Naturally, a Senate elected by the same method would not serve this purpose.

This is not a criticism of the method by which members of the House of Commons are elected. On the contrary, it is the role of the Lower House to produce stable governments through clear electoral outcomes, and the FPTP electoral system serves that purpose effectively, by creating legislative majorities from popular pluralities. It is nevertheless desirable for a legislative body elected in this way to be held in check by a second house that is more proportionally representative of the diverse perspectives of electors.

It is inarguably vital to democracy in Canada that linguistic, ethnic and religious minorities be effectively represented in our Parliament, to the extent that their interests, values or opinions diverge from those of the majority. However, there are far better ways to achieve this than by allowing the Prime Minister to appoint Senators. Senators appointed under the current system are chosen first and foremost because their views conform to those of the governing party and Prime Minister, and not because their views are peculiar to any minority groups to which they may belong. Thus, when a Prime Minister does appoint a member of a minority group to the Senate, it is at best “accidental,”

to borrow the term used by Senator Maria Chaput,¹³ and at worst tokenism. Simply appointing more Liberal or Conservative Senators who happen to belong to ethnic, linguistic or religious minority groups does not ensure the representation of diverse interests, values and ideas.

In an adversarial two-party Senate, party interests trump minority interests. Senator Charlie Watt, an ardent advocate of more effective minority representation, especially for aboriginal Canadians, has expressed frustration over this problem:

I have tried to look at a way not only to increase our [aboriginal Canadians'] voice but also to be heard within... the House of Commons and also within the Senate. At times, it is difficult to get your message across, especially because you are dealing with partisan instruments. Whatever issues you might have, they become swallowed by political matters...¹⁴

As long as the Senate remains polarized between two competing parties, Senator Watt's aboriginal interests will remain subordinate to his party's interests.

The most effective way to encourage consensus-based decision-making that takes into account diverse minority perspectives is to encourage the proliferation of political parties. It is the role of parties to organize and express different sets of interests and values.

This reality strongly recommends a system of PR by STV. Proportional electoral systems are designed to ensure the representation of minority interests that are shut out by the FPTP system. The benefit of PR is amplified by the fact that supporters of minority parties are more likely to stay at home in FPTP elections because they know their candidates are unlikely to be successful.¹⁵ Moreover, the STV system in particular encourages each political party to field diverse candidates, in order to appeal to a wide cross-section of voters while minimizing competition among candidates running under the same party banner.¹⁶

Toward a Less Partisan Senate

Some commentators suppose that electing Senators would make the Senate more partisan. The claim that an elected Senate would be more beholden to partisan interests than a Senate appointed exclusively by the leaders of the two largest parties simply does not stand to reason. On the contrary, a more partisan system than the present one for selecting Senators is hardly conceivable. Senators appointed unilaterally by a party's leader will naturally consider themselves under obligation to that party, whereas those chosen by an electorate will feel a greater obligation to, or at least a greater interest in pleasing, that electorate.

Prime Ministers of ordinary tenure have consistently managed to swamp the Senate with partisans. Under Prime Minister Pierre Trudeau, the Senate was dominated by Liberals; Brian Mulroney turned it Conservative; Jean Chretien again reversed the score for the Liberals; and now Prime Minister Harper is on the verge of reinstating a Conservative majority.

This is not the fault of our Prime Ministers. Senate seats must be filled for the legislative process to continue, and no Prime Minister can be expected to appoint Senators who oppose the government's principles and agenda.

It would also be unfair to suggest the partisanship is the overriding animus of every Senator. As in every organization and profession, some are well-motivated and independent-minded, while others are ill-motivated and obsequious. The Senate is attainted by its design rather than by the individual men and women who populate it.

The role of parties in organizing and expressing political thought is both natural and vital to our parliamentary democracy. It would be nonsensical to insist that any Senator, let alone every Senator, eschew partisanship. However, we can and should ensure that the Senate as a whole is non-partisan – that no particular party can dominate its proceedings. This is best achieved by an electoral system that encourages the representation of many parties, such as STV.

Long ago, John Duncan Mackie remarked,

Is it not the case that the natural tendency of the free human mind all over the world is to form groups, apart altogether from the electoral system that may be in operation? All that PR (by STV) does is to provide simple machinery whereby any of the groups which may be strong enough to obtain one or more quotas of voters in an electoral area will be sure of obtaining electoral representation.¹⁷

In a more diverse and thus less polarized Senate, parties would be more greatly pressed to seek consensus or compromise on each issue, to ensure their own positions have some influence on the decisions of the whole Senate. This would serve the Senate's function of impartial deliberation far better than the current arrangement. As former British Columbia legislator Nick Loenen stated,

A more proportional voting system would lead to more, not less brokerage, compromise, and bridging of differences... It would provide the opportunity for all political interests to have a say...¹⁸

Political scientist Meg Russell cites the Australian Senate, which is elected by STV, as an example:

The proportionally elected Australian Senate, ...where small parties and independents tend to hold the balance of power, ...is the major site of interparty negotiation and agreement. The Australian example is a particularly clear one of how the upper house can introduce an element of consensus politics into an otherwise majoritarian system."¹⁹

Enhanced Voter Choice

The STV system would check party dominance not only in the Senate chamber but also in the voting process. In the words of David Farrell,

Of all systems it goes furthest towards removing the power of party elites to determine which of their candidates are elected. Under FPTP a voter can only vote for the one party candidate nominated. Under fixed list systems, the voter cannot even vote for candidates: the rank ordering is determined by the party elite who drew up the lists. In contrast, STV gives the voter great scope 'to choose between candidates on personal as well as party grounds, and his choice overrides that of any party organization.'²⁰ In this sense it can be judged a highly democratic system.²¹

John Duncan Mackie said,

What we have to do in the first place is to elicit the views of the people untrammelled by arbitrary arrangements made before the election by party organizers. PR (by STV) allows this to be done.²²

Election by STV also creates an incentive for incumbents to establish themselves as effective parliamentarians and representatives of their provinces, rather than as mere instruments of their parties, because every incumbent will be challenged in the next election not only by candidates from other parties, but also by other candidates from their own parties. In Ireland, where STV has been used for nearly a century, considerably more incumbents lose their seats to running mates from their own parties than to opponents from other parties.²³ Thus, the STV system places a higher value on effectiveness relative to party or ideology than other electoral systems.

The Overblown Threat of Deadlock

Some opponents of electing Senators argue that an elected Senate might actually be too effective in checking the House of Commons, resulting in deadlock. This is the opposite of the argument discussed earlier, that an elected Senate would be insufficiently different from, and therefore unable to check, the House of Commons.

Senator Lowell Murray opined,

if we go to an elected Senate... the powers of that Senate would have to be very carefully circumscribed by constitutional amendment to ensure that the primacy of the House of Commons in our system as the confidence chamber and the more democratic chamber is maintained.²⁴

This concern is unfounded. Whether the Senate is elected or not, the House of Commons will remain both “the confidence chamber and the more democratic chamber.”

An Upper House with seats distributed on a regionally-weighted basis rather than on the basis of representation by population could never call itself a house of the people. That distinction will always belong exclusively to the elected body that gives every Canadian an equal voice. Furthermore, a Senate with members elected less often, and therefore less recently, than members of the House of Commons could not claim to be equally representative of public opinion at any given time.

Moreover, the powers of the Senate are already circumscribed in the Constitution so as to ensure the primacy of the House of Commons: only the House of Commons can preserve or remove the executive by withholding its confidence; the Senate cannot initiate bills or amendments requiring appropriation of public money; and, as Senator Murray conceded, the Constitution has “accorded a very limited role to the Senate in the constitutional amending process.”²⁵

Within these constitutionally-prescribed limits, the Senate was meant to check, rather than bow to, the will of the Commons. It was during a discussion of the potential for parliamentary deadlock that Sir John A. Macdonald commented, as cited earlier, that the upper house “would be of no value whatever” if it did not freely exercise its power to affect legislative outcomes.²⁶ It is only because it has lost its democratic legitimacy that the Senate is now expected to defer in all matters to the elected House of Commons. A Senate legitimized by elections would regain the value that Macdonald envisioned.

The Senate and the House of Commons were intended to act as interlocutors rather than adversaries. Hence the *navette* system, whereby bills originating in either house must be approved by the other, and any amendment of the bill by the second house must in turn be approved by the originating chamber. The house that has possession of a bill may also request a conference of ‘managers’ delegated by the two houses. Although rarely used, this process remains available

to resolve any intractable differences between the two houses on those few matters that truly demand immediate legislation. If all efforts at reconciliation fail, then the bill simply remains on the Order Paper until Parliament is prorogued, then dies. Thus the ultimate mechanism for resolving any deadlock between the House of Commons and the Senate is simply a default to the *status quo*.

STV presents the most effective way to avoid vexatious, partisan or ideological obstruction of government business, even while enhancing the independent deliberative function of the Senate. Because STV would lead to the proliferation of parties in the Senate, a multi-partisan consensus would be necessary to unite a majority of Senators for or against any measure. Politically-motivated obstruction of government bills in the Senate would be dramatically reduced, and any Senate opposition to government business would be more amenable to reasonable compromise.

Conclusion

The best process for selecting Senators can only be established by reference to the characteristics we wish the Senate to assume, which in turn depend on the functions we wish it to perform.

The Senate cannot effectively perform any of its functions while hobbled by illegitimacy. In the words of William Stead,

For the discharge of its (the upper house’s) duties, the first essential is the confidence of the nation, without which it cannot possess the courage to do its work. The second essential is confidence in itself: it must not feel that it is an anachronism, a mediaeval ghost lingering belated in a democratic age till some revolutionary cockcrow sends it to limbo.²⁷

The Senate as currently constituted cannot safeguard minority interests from the tyranny of the majority, or check the political impulses of a partisan House of Commons, because Senators appointed on the unilateral recommendation of the Prime Minister cannot be sufficiently independent of the Commons, the Cabinet or the major parties. The current method for composing the Senate guarantees that it will be dominated by the two major parties, rendering it polarized and adversarial, and preventing it from the kind of constructive deliberation and consensus-building that is needed to offset the majoritarian lower house.

However, electing Senators is merely a necessary condition, and not a sufficient one, for the proper functioning of the Senate. For the Senate to become

a truly independent and effective deliberative body, it must be elected by the proper method. Differential representation being the essence of effective bicameralism, the first-past-the-post method must be ruled out as a means of electing Senators.

STV presents a proven solution to these problems by empowering sufficiently cohesive minorities to elect Senators, enabling the proliferation of parties and viewpoints and demanding multi-partisan consensus.

Notes

1. Evidence of the Special Senate Committee on Senate Reform, September 6, 2006.
2. Janet Ajzenstat, Paul Romney, Ian Gentles and William Gairdner (Eds.), *Canada's Founding Debates*, Toronto: Stoddart Publishing Company Ltd., 1999, p. 80.
3. Debates of the Senate, *Hansard*, January 11, 1974, p. 1454.
4. Special Joint Committee of the Senate and House of Commons on Senate Reform, *Report*. Ottawa: Queen's Printer, 1984, p. 13
5. Select Special Committee on Upper House Reform, *Strengthening Canada: Reform of Canada's Senate*, Edmonton: Government of Alberta, 1985, p. 24. This report was the genesis of the "triple E" Senate concept – elected, with effective powers and equal representation for each province.
6. Royal Commission on the Economic Union and Development Prospects for Canada, *Report*. Ottawa: Queen's Printer, 1985, p. 88.
7. Special Joint Committee of the Senate and House of Commons on a Renewed Canada, *Report*. Ottawa: Queen's Printer, 1992, p. 45.
8. Robert A. MacKay, *The Unreformed Senate of Canada*, revised and reprinted, Toronto: McClelland and Stewart, 1963, p. 36.
9. Even if Senators were elected by the same method as members of the House of Commons, the membership of the two houses could differ greatly, since their constituencies, terms of office and regional dispensation of seats differ. However, using different electoral systems is by far the strongest way to ensure differential representation.
10. Report of the Special Joint Committee on the Constitution of Canada, *Molgat-McGuigan Report*, 1972, p. 35.
11. Evidence of the Special Senate Committee on Senate Reform, September 6, 2006.
12. Evidence of the Special Senate Committee on Senate Reform, September 21, 2006.
13. Evidence of the Special Senate Committee on Senate Reform, September 21, 2006.
14. Evidence of the Special Senate Committee on Senate Reform, September 6, 2006.
15. *Representing the Future*, The Report of the Councillors Commission to the Secretary of State for Communities and Local Government. London: Crown Copyright, 2007.
16. Matthew Goodwin and Robert Ford, "Yes, the BNP could win Europe", *guardian.co.uk*, Friday, February 13, 2009.
17. Mackie, John. *Proportional representation and the Irish Free State. Journal of the Statistical and Social Inquiry Society of Ireland*, Vol. XIV No. 4, Dublin: 1927, pp. 325 – 326. The PR system referred to here is obviously the single transferable vote method, as this is the only method that uses "quotas of voters", and the only system known in Ireland in Mackie's time.
18. Nick Loenen, *Finding new ways to vote, Fraser Forum*. Vancouver: Fraser Institute, 2001. p. 1.
19. Meg Russell, What are second chambers for?, *Parliamentary Affairs*, Vol. 54, London: Hansard Society for Parliamentary Government, 2001, p. 446.
20. Embedded quote is from Enid Lakeman, *How Democracies Vote*. London: Faber, 1970, p. 140
21. David M. Farrell, *Comparing Electoral Systems*. London: Prentice Hall, 1997, p. 140.
22. Mackie, p.327. In Ireland, "PR" refers to the STV method unless otherwise stated, as STV is the only form of PR practiced there, and no other form of PR was known there in Mackie's time.
23. R. Kenneth Carty, *Party and Parish Pump: Electoral Politics in Ireland*, Waterloo, Wilfrid Laurier University Press, 1981, p. 115.
24. Evidence, Special Senate Committee on Senate Reform, September 6, 2009.
25. Evidence, Special Senate Committee on Senate Reform, September 6, 2009.
26. Ajzenstat et al, *Canada's Founding Debates*, p. 80.
27. William Thomas Stead, *Peers or People?: The House of Lords Weighed in the Balance and Found Wanting*. London: T. Fisher Unwin, 1907, p. 11.