
Toward a Rational Redistribution of Seats in Canada's Senate

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The current division of seats in the Senate of Canada provides neither representation-by-population nor provincial equality, nor any compromise between the two. It is based on no consistent formula or principle. It is an incoherent hodge-podge of obsolete nineteenth-century regionalism and later exceptions and adjustments. This paper proposes three fundamental principles that might assist future leaders in rethinking seat distribution. First, the obsolete regionalism that formed the basis of the current distribution of Senate seats ought to be abandoned and seats distributed on a strictly provincial basis; second, the distribution of seats ought to give some weight to the equal franchise of each province as a member of the Canadian federation; and third, to the extent that the number of seats held by each province is based on a variable (such as population), the constitution should entrench a formula responsive to that variable instead of a fixed allocation, to reduce the necessity of future constitutional amendments.

At present, there are 105 regular seats in the Senate. One province has four seats, five provinces have six each, two have ten each, two have 24 each, and the territories have one each. These various levels of representation are purely arbitrary, and not connected to population, geographic size, cultural distinctiveness or any other factor. The Prime Minister may appoint either four or eight extra Senators to pass contentious legislation. None of those extra Senators may come from Newfoundland and Labrador or any of the territories. Many Senators represent entire provinces, but many others choose a specific area within the province as their 'senatorial designation.' Only Quebec has permanently delineated senatorial districts. None of those districts are in Quebec's north, so that region is formally without any representation in the Senate.

No wonder Peter McCormick, Chair of the Department of Political Science at the University of Lethbridge, told a Special Senate Committee on Senate Reform, "When I teach first-year students about the distribution of seats in the Canadian Senate, they laugh."¹

Another political scientist, David E. Smith, has called the distribution of Senate seats, "a maze of compromises, deals and agreements."²

Tension between rep-by-pop and federalism

Whenever the prospect of rationalizing the distribution of seats in Canada's Senate is raised, politicians naturally argue for whatever formula will bring their own provinces more seats. Those in more populous provinces are inclined to favour a system approximating representation-by-population, while critics in less populous provinces are more favourably disposed toward equal representation of all provinces. As populations have shifted, so too have provincial perspectives on the distribution of Senate seats.

The case for representation-by-population is simple. In a perfect democracy, it is argued, each citizen should have equal influence over the decisions of the nation. However, in the context of a federation this argument is not only simple, but simplistic. It fails utterly to comprehend the essence of a federation.

In a democracy, each citizen surrenders some measure of personal freedom in consenting to be bound by the decisions of an elected legislature. In return, each citizen is guaranteed an equal franchise – equal rights and freedoms before and under the law, including an equal vote.

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This democratic social contract among citizens is paralleled by a federal union of states or provinces. Each member of a federation surrenders an equal measure of self-determination, and remains equally sovereign within a jurisdiction identical to those of the other members. Therefore, just as true democracy entitles each citizen to an equal franchise, so too it can be argued that a true federation entitles every member province to an equal franchise.

At the very least, a truly federal parliament must be so designed as to prevent it from being commandeered into the service of one or two populous provinces. It would be entirely illegitimate to allow all federal matters, including issues like equalization and inter-provincial trade, to be decided by a parliament in which two adjacent provinces can combine to control a majority of the seats in both houses, which would be the case were representation-by-population introduced in the Senate. Such a parliament would not be a federal parliament at all.

The fact that Ontario has 90 times as many people as Prince Edward Island does not derogate from this fundamental federal principle. Indeed, nearly every federal parliament has an upper house that gives equal representation to member states or provinces regardless of their populations. In the U.S.A., California has 30 times the population of Rhode Island. In Australia, New South Wales has 40 times the population of the Northern Territory. In Brazil, Sao Paulo has 115 times the population of Roraima. Yet these federations, plus Switzerland, South Africa and others, give equal representation to member provinces or states in the upper houses of their federal parliaments.

In Canada, representation-by-population is appropriate for the House of Commons. Each voter should be equally represented in the legislative body from which the government is drawn and to which the government is responsible. However, the federal principle demands that representation-by-population in the Lower House be balanced by giving less populous provinces greater weight in the Upper House. Preventing the subjugation of the smallest provinces to the largest is the *raison d'être* of the Senate. In the words of David E. Smith, "representation by population in the upper house as well as the lower... would strike at the very roots of the Confederation compromise."³

However, despite the strong arguments for strict provincial equality in Canada's Senate, it will almost certainly never be agreed upon. Therefore, some compromise is required. As Senator Donald Oliver has stated,

An effective Senate must distribute a sufficient number of seats to the under-populated regions to inspire confidence that their representatives could ensure the protection of their interests, while at the same time providing the populous regions with a plausible share – sufficient, at least, to be accepted at the intergovernmental bargaining table.⁴

The Compromise of Regional Equality

The Fathers of Confederation struck this balance through the principle of regional equality. George Étienne Cartier explained the initial distribution of Senate seats this way:

It might be thought that Nova Scotia and New Brunswick got more than their share in the originally adopted distribution, but it must be recollected that they had been independent provinces, and the count of heads must not always be permitted to out-weigh every other consideration.⁵

The Maritime Provinces invoked the same rationale in 1913, in a joint memorandum laying out their concerns about the potential impact of Canada's westward territorial expansion on the balance of representation in the federal parliament:

Representation by population, while accepted as a guiding principle in fixing the representation of each province in the Dominion parliament, was intended to be made subservient to the right of each colony to adequate representation in view of its surrender of a large measure of self-government. A self-governing colony was something more than the number of its inhabitants.⁶

The Fathers of Confederation chose equal representation of regions as a way to bridge the gap between equal representation of citizens and that of provinces – between democratic principles and federal principles, the same polar forces that divide perspectives on the allocation of Senate seats today. Regional equality gave Lower Canada (Quebec) as well as the Maritimes greater representation in the Senate than mere population would suggest, but stopped short of equality for every province. This compromise was vital in closing the Confederation deal. In the words of George Brown, "On no other condition could we have advanced a step."⁷

The Need for a New Compromise

Some compromise between provincial equality and representation-by-population remains vital to the success of the Canadian federation. However, it is clear that regional equality is no longer a viable foundation for that crucial compromise. At the time of Confederation, it was easy to view Canada as comprised of distinct regions, each with its own distinct political culture, social mores, economic structure and

geographic circumstances. However, a century and a half of national evolution has rendered the nineteenth-century regional conception of Canada obsolete.

Coastal British Columbia, with its abundant marine resources and trade and immigration links to the Pacific Rim, has little in common economically, culturally or geographically with Saskatchewan. Energy-rich Alberta, the least taxed and least indebted jurisdiction in Canada, with a predominantly individualist and libertarian political culture, has little in common with Manitoba. Yet, for the purpose of determining representation in the upper house of the federal parliament, these four provinces are treated as a cohesive entity – ‘the West’.

It has always been recognized that Newfoundland and Labrador does not fit into the original regional model of Canada. Its physical isolation, sparse population and primary-resource-driven economy set it apart even from the Maritimes, and its virtually undiluted Anglo-Irish roots make it culturally and linguistically unique. It was also the only province to have been an independent country before joining confederation. Yet, due to its small population, it was not deemed to merit a full regional allocation of twenty-four Senate seats, so it received a seemingly arbitrary six seats, and is not treated as a part of any of Canada’s four traditional regions.

Ontario and Quebec are already acknowledged as regions unto themselves, and little need be said about the reasons for that status.

Indeed, every province in Canada can argue that its own character and circumstances merit an independent share of the seats in the Senate, rather than a share that depends on some archaic regional grouping of provinces.

As Smith has written, “In the eyes of each province, their Senators – or better still, their number of Senators—belongs to them.”⁸

As a corollary to that statement, in the eyes of each province only their number of Senators belongs to them. It is no assurance to British Columbians that ‘the West’ has as many Senate seats as Ontario, Quebec or the Maritimes. It is only important that British Columbia has a mere quarter of Quebec’s seat count, and that this differential is purely arbitrary rather than being driven by any calculation or principle.

It is instructive that the many and diverse proposals advanced in recent decades for the reallocation of Senate seats unanimously focus on provincial allocations, with no regard whatsoever for regional balance. This implies a consensus that the allocation of seats by region ought to be abandoned – that the nineteenth-century conception of Canada as a federation of re-

gions ought to give way to a more accurate and modern view of Canada as a federation of provinces. No one defends the principle of regional equality anymore because there is simply no rationale for it.

Toward an Adaptive Allocation of Seats

The many proposals for reallocating Senate seats among the provinces and territories also share another trait. They suffer from the same fatal flaw as the original dispensation of seats. By assigning fixed numbers of seats based on variable conditions like population, they contain the seeds of their own obsolescence and guarantee the necessity for further constitutional amendments in the future.

To cite the most recent example, Senators Murray and Austin have proposed an increase in the number of seats for British Columbia and Alberta, and the designation of the former as a fifth region. They argue that population growth in these two provinces has shifted the delicate balance upon which Confederation was founded too far away from representation-by-population. However, their proposal is based on a current snapshot of population distribution, and would not endure future population shifts (not to mention the extreme unlikelihood that such a constitutional amendment would meet the approval of any province not directly benefiting from it).

The best way to resolve the distribution of Senate seats once and for all is to entrench in the Constitution an adaptive formula, rather than a fixed number of seats for each province. To the extent that the number of Senate seats allocated to each province is based on a static condition, such as the equal franchise of every province as a member of the federation, it should contain a static element, in the form of a guaranteed minimum. However, to the extent that seat allocations are based on a variable condition, such as population distribution, the Constitution should enable seat allocations to vary as that condition varies.

Taken together, these principles suggest a formula that distributes the majority of seats through a guaranteed minimum per province, with the remainder allocated according to each province’s share of the national population.

Such a formula for allocating Senate seats would be most effective if the Senate were previously or simultaneously made elective, for several reasons.

Requiring Senators to face elections would create regular opportunities for the number of seats per province to be adjusted according to population shifts. Prior to each election, the number of Senators to be elected in each province could be adjusted according to the most recent census.

Under the right election method, such as the single transferable vote, all incumbents and an unlimited number of challengers could still run even if the number of seats were reduced, so no incumbent would be forced to step down in order to adjust the number of seats.⁹

Making the Senate elective would also eliminate the Prime Minister's power to appoint up to eight extra Senators to break a deadlock. These eight seats could then be added permanently to the usual 105, bringing the total to 113 seats, making it possible for most provinces to add to their current seat totals under any new distribution formula.

Finally, making the Senate elective would make any proposed reallocation more attractive even to those provinces that stand to lose seats. For example, Nova Scotia currently has roughly three per cent of Canada's population, and the same share of the seats in the House of Commons. Although it has almost ten per cent of the seats in the Senate, this does little to increase Nova Scotia's real influence in the federal parliament because the unelected Senate lacks the legitimacy to seriously contend with the elected House of Commons and influence legislative outcomes. It would be far better for Nova Scotia to have eight or nine per cent of the seats in an elected Senate than ten per cent of seats in a Senate that is largely marginalized because it lacks democratic legitimacy.

A Possible Formula

A simple example illustrates how the principles described above might be incorporated into a practical formula for the distribution of Senate seats.

Given a Senate with 113 seats, allowing each territory to retain one seat would leave 110 seats to be distributed among the provinces.

Distributing sixty of those 110 seats equally among the provinces would establish a guaranteed minimum of six seats per province. This is the same number of seats currently held by half the provinces – Newfoundland and Labrador, British Columbia, Alberta, Saskatchewan and Manitoba – and two more than Prince Edward Island's present allotment.

Distributing the remaining fifty seats according to each province's share of the total federal population would mean each province's seat total could be calculated as $6 + p\% \times 50$, where p is the province's percentage share of Canada's population. For example, British Columbia would currently receive $6 + 13.2\% \times$

$50 = 13$ seats. The results for all provinces are shown in Table 1.

Under this formula seven provinces containing seventy-two per cent of Canada's population would gain seats. The threshold of support for such a constitutional amendment prescribed by Section 38(1) of the *Constitution Act (1982)* – seven provinces with half the country's population – would therefore be comfortably surpassed with the support of only those provinces that would gain seats.

It is interesting to note that the constitutional amending formula that must be satisfied in order to change the distribution of Senate seats provides a precedent for the application of all the principles proposed here for the distribution of Senate seats itself: it recognizes the equality of provinces in a federation (by allowing any four provinces regardless of population to defeat an amendment); it recognizes the importance of population in democratic representation (by allowing any combination of provinces containing a majority of Canadians to defeat an amendment); and it accommodates shifts in the relative populations of the provinces.

Political challenges

As Prime Minister Harper has acknowledged, "The issue of the representation of each province is perhaps the most difficult issue in the debate about Senate reform."¹⁰

It is not my intent to deny or over-simplify the political challenges inherent in reallocating Senate seats. Reducing the proportion or absolute number of Senate seats belonging to any province is likely to be contentious, and most Prime Ministers would be very reluctant to suggest it. This is especially true of reducing Quebec's share of seats.

Nor is the specific formula described above the only conceivable compromise between provincial equality and representation-by-population. The total number of seats in the Senate may be increased in order to lessen the decline in the absolute seat count of any province. The guaranteed minimum number of seats per province and the proportion of seats allocated according to population may also be adjusted. However, whatever formula is used, it must balance in some systematic way the duelling principles of representation-by-population and provincial equality, as these are the only two principles that have any validity as determinants of representation in a democratic federal parliament.

Unfortunately, for Nova Scotia, New Brunswick and Quebec any mathematical compromise between these two principles must result in a decline from their

Table 1

Province/Territory	Current Seats	Population Share (2009)	Guaranteed Number of Seats	Extra Seats Based on Population	Total Seats Under Sample Formula	Change
British Columbia	6	13.2%	6	7	13	+7
Alberta	6	10.9%	6	5	11	+5
Saskatchewan	6	3.1%	6	2	8	+2
Manitoba	6	3.6%	6	2	8	+2
Ontario	24	38.7%	6	19	25	+1
Québec	24	23.2%	6	12	18	-6
New Brunswick	10	2.2%	6	1	7	-3
Nova Scotia	10	2.8%	6	1	7	-3
Prince Edward Island	4	0.4%	6	0	6	+2
Newfoundland and Labrador	6	1.5%	6	1	7	+1
Nunavut	1	0.001%	1	0	1	-
Northwest Territories	1	0.001%	1	0	1	-
Yukon Territory	1	0.001%	1	0	1	-
Totals	105	100%	63	50	113	+8

current seat totals. Nova Scotia and New Brunswick currently have as many seats as they would receive under a completely equal distribution, and roughly four times as many as they would receive under representation-by-population; Quebec has the exact number of seats it would receive under representation-by-population, and nearly two-and-a-half times as many as it would receive under an equal distribution.

Although provincial unanimity on any redistribution of Senate seats may be politically desirable, it is not constitutionally required and is probably not attainable. While complaints from those with vested interests in the status quo, and all options for satisfying them, must be considered rigorously and in good faith, such complaints must not be allowed to permanently block a rational and principled modernization of the Senate.

Conclusion

Representation-by-population and provincial equality are the only two principles that can legitimately bear upon representation in a legislature that is both democratic and federal in nature. A new mechanism for balancing those principles has become necessary in order to restore coherence and fairness in the distribution of seats in Canada's Senate; the 19th century conception of a Canada comprised of four distinct and equal regions is simply defunct, and cannot be salvaged by any amount of fiddling.

This new mechanism should give smaller provinces enough seats to defend their interests, give populous provinces enough seats to secure the requisite level of approval at the intergovernmental bargaining table,

and automatically accommodate future population shifts without perpetually inflating the total number of seats. A simple formula incorporating a guaranteed minimum number of seats with the remainder distributed by population could meet all these criteria while also complementing other necessary reforms such as making the Senate elective.

Notes

1. Special Senate Committee on Senate Reform, *Evidence*, September 20, 2006.
2. David E. Smith, *The Senate of Canada and the Conundrum of Reform*, Saskatchewan Institute of Public Policy, (a paper prepared for presentation at The Federal Idea, A Conference in Honour of Ronald L. Watts, October 18-20, 2007, Queen's University, Kingston, Ontario), p. 19.
3. *Ibid.*, p. 8.
4. Address to Bridgewater State College, Boston, February 27, 2007.
5. House of Commons *Debates*, April 3, 1868, p. 455.
6. Memorandum on Representation of the Maritime Provinces, 1913. Cited in Smith, p. 9.
7. Legislative Assembly debates, February 8th, 1865. Cited in *Canada's Founding Debates*, Janet Aijzenstat, Paul Romney, Ian Gentles and William Gairdner (Eds.), Toronto, Stoddart Publishing, 1999, p. 286.
8. David Smith, *op. cit.*, p. 20.
9. For more on the advantages of the single transferable vote as a means of electing Senators in Canada, see Aaron Hynes, "Electing Senators by the Single Transferable Vote", *Canadian Parliamentary Review*, Vol. 33 no. 1, Spring 2010, pp 40 – 45.
10. Special Senate Committee on Senate Reform, *Evidence*, September 7, 2006.