

The Incompatibility of the Triple-E Senate Reforms in Canada

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Abstract

As Canadian institutions have been shaped and informed by many influences out-side of Canada's borders, one must ask: Can imported ideas of reform to Canada's Senate, such as the Triple E Senate reform representing having an equal, elected, and effective Senate, be compatible within a Canadian setting? One will find that the ideas of reform in the Triple-E Senate are American imports that cannot be applied to Canada's ideological landscape of political culture and systems. With an equal Senate, it does not consider that certain provinces within Canada are treated differently due to French representation being integral to Canada and its institutions. Furthermore, the elected Senate impedes Canada's cultural and political understanding of the Senate as an institution recognized for its independence and providing sober second thought. Lastly, an effective Senate fails to recognize that Canada's institutional system already gives the Senate powers equivalent to the House of Commons. When examining the arguments for having a Triple-E Senate, it becomes apparent that Triple-E Senate reforms are the embodiment of American political culture and systems that happen to be incompatible with Canada's political cultures and systems. It discounts the reality of the issues that will arise from the expectation that such reforms will seamlessly fit in Canada, and thus, one must respond accordingly and reject Triple-E Senate reforms.

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1 Introduction

When examining the Canadian ideological landscape, one will find that Canadian institutions seen today have been shaped and informed by many influences from Canada's heritage and those geographically closest to the country. From Canada's inception, early traditions passed down from the United Kingdom to Canada historically indicated the United Kingdom's influence as Canadian institutions would become replicas of what the United Kingdom originally held as its own (Bridgman 2020). Nevertheless, through the years, the United States, due to its proximity to Canada and its global presence, gradually brought new understandings to be incorporated into the governing of Canadian institutions. The imported influences from other countries on Canada's institutions can be exemplified by examining the United Kingdom's Westminster system; it is replicated through Canada's parliamentary system, with both the executive and legislative branches being affected (Docherty 2002). Also, on this premise and when examining the codified Canadian constitution, it becomes apparent that American influences have also helped shape the landscape of the judicial branch of government (Bridgman 2020). Some entities, Canadian conservatives and regional areas such as western Canada, have advocated for more American influences to be integrated into Canada's institutions, particularly a request to reform the Canadian government's legislative branch (Lusztig 1995).

The institution that has received such requests for Americanized reform is the Canadian Senate, which historically has yet to receive much change through its existence as a central Canadian institution (*ibid.*). The purpose of the Canadian Senate revolves around its enumerated powers, which include the ability to conduct "investigations, revision of legislation, representation of regions and special interests, and protection of individual rights" (Franks 1988). Those who advocate for Senate change admit to wanting to address integrity, legitimacy, and democratic deficiencies seen within the operation and formation of the Senate, and a term to encapsulate such changes is the Triple-E Senate (Dodek 2015). The Triple-E Senate establishes the reforms the Canadian Senate should go through, creating an equal, elected, and effective Senate in line with how the U.S. Senate currently operates (Lusztig 1995). As some of Canada's institutions have moved completely away from mirroring the United Kingdom's institutions, there are limitations to how many more institutions can be influenced away from such a system due to the political landscape that is particular to Canada. The ideas of reform in the Triple-E Senate are American imports that cannot be applied to Canada's ideological landscape of political culture and systems. The reasoning behind why the Triple-E Senate should not be implemented in Canada is that its advocacy for an equal Senate does not account for the regionalism found in Canada's political culture; the Triple-E Senate proposal for an elected Senate fails to account for Canada's historical culture in its institutions compared to the United States. Lastly, the Triple-E Senate reform suggestion of having an effective Senate does not account for the delegation of certain responsibilities assigned to Canada's institutional systems.

2 An Equal Senate: What Is It?

To completely understand why an equal Senate in the Triple-E Senate reform is incompatible with the Canadian political landscape, one first must understand what the reform defines as an equal Senate. The Triple-E Senate would be unable to embody its stated goal within the Canadian political landscape because the word ‘equal’ implies it should be grafted into the Canadian system, but it ignores Canada’s regional political culture. The definition of equal Senate from the term Triple-E Senate is concerned with the representation of the provinces within the Canadian Senate (Burton and Patten 2015). In particular, this would imply that if the equal Senate were to be upheld, depending on what is needed with the number of senators allotted to sit in the Senate, “each province would be represented by the same number of senators” regardless of population while completely disregarding Canada’s linguistic demographics (Hogg 1993).

This idea appears to be an import from the United States as its Senate consists of “two senators from each state” with the intention of ensuring the US states had sovereignty in the Constitution and protecting small states from larger US states so that allows the states to be equal to each other even though the states’ populations could differentiate significantly (Binder and Smith 1997). The current distribution of Canadian Senate seats is divided as the west being British Columbia, Alberta, Saskatchewan, and Manitoba where they are allotted six seats each, but Ontario and Quebec, seen as individual regions, get 24 each, the Maritime region of New Brunswick, and Nova Scotia each have 10 seats, Newfoundland and Labrador have six seats, Prince Edward Island has four, and the territories of Nunavut, Northwest Territories and the Yukon all get one Senate seat (Hicks and Blais 2008). It is clear with the seat distribution of Canada’s Senate that the different regions of Canada are not equal, as Quebec is merely one province, and western provinces with large populations, such as British Columbia or Alberta themselves, only have six senators to represent them each, while the singular province of Quebec gets 24 seats (Watts 2003). One could question this distribution and propose the possibility that the adoption of the Triple-E Senate reform would allow for an equal number of senators to be represented in Canada’s Senate. However, this kind of thinking needs to address the reality that Canada has a specific political culture with different expectations from the United States, particularly as it pertains to discussions about language; this consideration is not given such importance within the United States of America’s own political culture.

In the Canadian political culture, two founding identities are particular to Canada as a country as well as its institutions, which are both English and French, and the decision to recognize both of these as the official languages of Canada was codified within the Canadian Charter of Rights and Freedoms (Fortier 1994). At first, it seems that the official languages are merely referencing a historical past, but rather it is for the protection of francophone Quebecers where institutions today ensure the longevity and strong representation of French throughout many of Canada’s “economic, social, and political institutions” (ibid.). If Canada were to apply an equal Senate, it would leave the possibility of Quebec not being represented and, ultimately, francophones not being properly represented within the Canadian Senate. Further, Quebec has twice attempted referendum procedures to secede from Canada to form

its own sovereign country, so the changing of Quebec's Senate representation could trigger a third referendum (Seymour 2000). This could be very disruptive to the Canadian tapestry of the country's political culture because it can be extrapolated that it would be very unpopular, even to the point where it could lead to the succession of Quebec from Canada.

Practically, it would not be politically feasible for any federal political party to assert such a policy because there are likely two results that would occur. First, there would be provinces that would prefer the status quo since they already have a significant amount of representation above any other provinces or territories and would prefer maintaining the current allotted amount of Senate seats rather than allowing for equal Senate seats for each province and territory. Second, the federal politicians who propose this might have to deal with the reality that some provinces and territories could push for raising their Senate seat numbers regardless of any amount they already had. The only region that would be likely to engage in this deal would be territories such as the Yukon, Northwest Territories, and Nunavut since they are given very few seats in the Canadian Senate, but their power to be major players is limited due to the fact that Canada's constitution does not have a provision for territorial participation in amendments (Albert 2015). Even if there was a reality in which it did not cause the breakup of the country, it should still be recognized as unfair since it would strip away the representation of the large francophone population that resides in Quebec because such meaningful representation would be diluted as the other territories and provinces are places where French is not as prominent. From these discussions that have been put forward thus far, representation is important especially for the francophone community in Canada as it should be interpreted that the agreeance with having an equal Senate is also an agreeance with diminishing French in Canada and that would not stand in a constitutionally bilingual country (Fortier 1994). So, the conclusion that should be followed is dismissing the policy proposal for shrinking the number of senators that Canada has or raising the numbers so that every province and territory has an equal number of senators. An equal Senate is not the only reform suggested by the Triple-E Senate that first seems applicable in Canada, but without understanding Canada's political institutions, it could have severe consequences.

3 Considering the Prospect of Elections

Due to Canada's historical past and understanding of the Senate, applying the Triple-E Senate in terms of having an elected Senate would devolve the meaning placed on the Senate, particularly in Canada, and would not assimilate well with Canada's historical institutional culture. The second Triple-E Senate reform to discuss is an elected Senate where elections are held for senators in order for them to have a seat in Canada's Senate (Burton and Patten 2015). This means when this idea is applied to Canada for having an elected Senate, what would occur is similar to the House of Commons, where the prospective members of parliament need to run and campaign for elected office during an election; senators would be subjected to the same standards (Marland and Giasson 2020). This is an American idea because the United States in 1912 adopted the 17th Amendment, which allowed senators to be elected by voters rather than appointed by state legislatures (Cornell Law School 2023).

If one were to look at the history and historical background of why there was the transition from appointed to elected in the U.S. Senate, it is because the legislative branch had allowed for political organizations and special interest groups to have the ability to purchase Senate seats (*ibid.*). The United States chose to have an elected Senate, which is unlike the way that Canada's Senate works; Canada already has legislation that prevents what occurred in the U.S. Senate to happen in its own Senate. In 2003, because of a scandal that occurred with Canadian Prime Minister Jean Chrétien, to ensure his legacy was not tarnished, his government legislated to constrain corporations and unions by putting a maximum \$1,000 limit "on contributions to local candidates, party constituency associations, or nomination contestants," which Prime Minister Stephen Harper only strengthened (Gagnon and Tanguay 2017). So, as can be seen here, Canada has corrected monetary corruption through the money allowed to circulate in its institutional processes. Also, the Canadian Constitution explicitly mentions how the Canadian Senate is similar to the United Kingdom's House of Lords, "where the Upper House is not elected," and thus in a historical manner this key document illuminates Canada's traditions and identifies the reasoning for Canada's political landscape (Sarro 2013).

If the Triple-E Senate reform of an elected Senate were to be implemented, this would ultimately transition Canada away from having the Governor General appoint senators to sit in the Canadian Senate on the advice of the Canadian prime minister (Macfarlane and Goodyear-Grant 2019). In fact, this would remove the possibility of what is innate to the Senate's role in its relationships with other institutions. If enacted, the Senate would lose its independence because senators would depend on the riding's¹ populace (to be elected / reelected), so it might hesitate to make unpopular decisions, as the senators would risk being voted out in the next election cycle. This can be anticipated because through the current setup of the Canadian Senate, once they receive their appointment, the prime minister has considerably less sway over them, particularly as some "pledge to never engage in partisan behaviour or sit in partisan caucuses within the Senate" (*ibid.*). However, with having an election, it is almost like the prime minister gets the opportunity to review an appointment after a certain amount of time with the ability to remove them on a whim, which takes away from their independence.

By demonstrating how both situations are quite similar with having frequent prime ministerial reviews of senators and having elections, it brings to the forefront that an elected Senate would have significant negative consequences and implications. This point can be expanded upon by making a comparison to the judicial branch that exists in the United States, based on the possibility of the presence of elected and appointed judges. One will find that through having an appointed judge, it allows the liberty to be "free from political co-option by special interests (or the ruling majority)" as it instills an independence that allows for litigation to be more prevalent than the other selection option of elected judges (Hanssen 1999). However, then it is to be expected that when analyzing elected judges' decisions, there is more concrete certainty to it because there is a dependence on acting within the sphere of external political entities' expectations for the most part (*ibid.*). This should

¹"Riding" refers to a political district.

raise significant issues especially in the judicial system since “the rule of law requires an independent court” as it is to be expected and also found within Canada’s own legal system (Hogg and Zwibel 2005).

So, by taking this understanding when looking at Canada’s historical past with judges and the judicial system, it follows that the intended purpose of the Senate and its relationship to the House of Commons should be respected with the ultimate goal of upholding a type of independence. In all likelihood, with the acceptance of an elected Senate, as prescribed by the Triple-E Senate reform, senators would likely need to have strong ties to political parties in Canada. It has been shown throughout Canada’s political culture that Canada has strong party discipline, which would curtail the independence of what is expected of the tradition of Canada’s Senate (Marland 2020). The institution of the Canadian Senate is described as the sober second thought, as its role is to “examine and pass legislation sent to it from the House of Commons before any bill becomes law” with the independence not to take such a partisan and radical view (Docherty 2002). The Triple-E Senate reform recommending an elected Senate also prescribes another type of reform that does not account for Canada’s political landscape, as its institutions cannot take on these Americanized reforms.

4 Considering *Effectiveness*

Lastly, the third reform suggested by the Triple-E Senate—an effective Senate—needs a clearer understanding of Canadian institutional systems’ defined responsibilities as it would only work in the American landscape in which it resides. The Triple-E Senate reform of an effective Senate can be described as the Senate will ultimately have legislative powers that are considered to be effective in their usage (Burton and Patten 2015). This is considered an American import because effective Senate powers represent an ideal that can be found quite frequently discussed in American political culture. In the United States, both the upper and lower houses have equal power, but certain responsibilities differentiate the Senate and the House of Representatives, but both have abilities to put a check and balance on presidential power (The White House 2021). In the United States, the legislative branch is the U.S. Congress, which is meant to keep the executive branch of government in check and ensure that it does not supersede its power, and that is why there is a separation between these branches of government (ibid.).

It is an American ideal that both the Senate and the House of Representatives are effective enough to ensure that other branches of government are contained in their actions; should this ideal apply also in the context of Canada? The answer is no; as per the makeup of Canada’s parliamentary system, there are no divisions of power separating the branches. An example of this is that in Canada, the prime minister is part of the executive and the legislative branch, which means they contribute to “the rule making and rule enacting” (Balasubramanian 2017). So accepting the American effective Senate would not be plausible because in the Canadian parliamentary system, a politician has the ability to serve in both branches of government. Also, within Canada, it differentiates from the American system as the role of the Senate and the powers given to the Senate are the same as the House of

Commons, so it would be redundant to have equivalent powers (Thomas 2003). If Canada were to incorporate what is expected from a Triple-E Senate reform of having an effective Canadian Senate, the result would be not only gridlock which the United States of America deals with in their own effective Senate (Gerhardt 2013). The allowance of an effective Senate in Canada would enable the mechanism of motions of no confidence to take place not only in the House of Commons, but it would be a power bestowed upon the Canadian Senate as well (House of Commons Canada 2023). This now allows the opportunity for more motions of no confidence to occur and the more frequently that motions of no confidence are able to take place; it then could be deduced it will invite the opportunity for general elections to happen (*ibid.*). With the possibility of increasing the frequency of unsuccessful motions of no confidence it presents the possibility that success could be found at some point when allowing the Senate to be an effective Senate. The only way to mitigate the effective Senate's possible volatility is that the government of the day now has to be wary that both the House of Commons and the Senate have the power to topple the government, so then there must be the maintaining of party discipline and ensuring that the government of the day maintains enough confidence in both the House of Commons and Senate by winning majorities or placating the opposition. The current reality that Canada contends with—as it is only the House of Commons who has this power—is that from 2004 to 2024 there have been nine motions of no confidence (two of which were successful), and the introduction of an effective Senate would not only be disruptive to Canada's representatives but also eligible voters (Snow 2024). One will find that within Canadian culture, when an election is called outside the regular election cycle, there is the tendency of Canadians to disapprove, as one can see from Canada's 2021 federal election, which Canadians saw as unnecessary and did not significantly change the makeup of the seats in the House of Commons (Nickel 2021). It might be initially viewed that this is merely low stakes when looking at the statistics of the motions of no confidence within a 10 year span, but it does create an argument for the maintenance of stable governments and an effective Senate would only work against such a goal and contribute to the possibility of instability within Canadian parliament.

5 Conclusion

Throughout the examination of the potential Triple-E Senate reform that could in the future be adopted by the Canadian Senate, I argue that such reforms are an American import, and one that should not be applied in the Canadian political landscape. The Triple-E Senate would fail because it focuses on American understandings and tries to force them into Canadian contexts. The first recommendation of the Triple-E Senate is an equal Senate, and one can find that with the U.S. Senate, each state has two senators to protect states' rights against other government levels intruding and viewing those states as all equal (Binder and Smith 1997). So a reduction in Quebec seats from 24 seats or the leveling out of an equal amount of seats in the Canadian Senate for Quebec would likely cause the province of Quebec to want independence and secede from Canada (Watts 2003). The second recommendation of the elected Senate from the Triple-E Senate comes from the United States trying to deal with the corruption found within its institutions by amending the constitution with the 17th Amendment (Cornell Law School 2023). So if the elected Senate reform were to be applied,

the Canadian Senate would lose its ability to be a chamber that maintains its independence of being the sober second thought entrenched in Canada's institutional culture, something which I feel is present in the United States only to a clearly lesser degree (Docherty 2002). Finally, the effective Senate that can be found in the suggestions made by Triple-E Senate reforms is American because of how the Senate and the House of Representatives powers differentiate in the legislative branch but mainly tasked with countering the executive branch (The White House 2021). So, if the Triple-E Senate reform were to be applied because of how the parliamentary system works, the reform would ultimately contribute to instability through increasing the possibility of elections because of motions of no confidence if the Senate in Canada were allowed to be effective and were equally powerful as the House of Commons (House of Commons Canada 2023). This is why not all institutions in Canada can go under reforms that are American imports, as suggested by the Triple-E Senate reforms to address deficits in the Senate (Dodek 2015). It is vital to understand the Canadian political landscape before suggesting reforms that have originated outside of Canada.

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