

Compromise to get a
Compromise

Discussion Of Senate
Reform



A Simple Question

“Can the Canadian Confederation survive forever if there is no EEE?”

In other words, “Can we survive indefinitely if the provinces do not have equal representation at the federal level?”



Philadelphia
May to
September
1787

- The Constitutional Convention of the 13 founding States has come to be known as the “Miracle at Philadelphia” such was the gravity and level of achievement that came from it.
- Had it failed there would be no United States of America today.

The purpose of a Senate

James Madison:

"The use of the Senate is to consist in its proceeding with more coolness, with more system and with more wisdom, than the popular branch."

Typical features of a Senate

- The intent of a senate almost without exception is to be a more “sober” body than the house. Usually longer terms between election or appointment.
- Usually fewer members – viewed as a more senior, wiser body that isn’t as vulnerable to swings in public opinion and political mandates.

Further...

- An additional goal in some countries is to provide/recognize the equality of status of the legislative bodies that are **one level below** – In other words - the provinces or states
- Thus a putting in a check on the more heavily populated provinces or states - the 'confederating units' as it were.
- Bicameral – two "houses" – with roughly Equal Powers in other words, Equally "Effective"

How the states
would be
represented
was THE issue
of the
Philadelphia
convention...

- From the outset it dwarfed all other issues.
- James Wilson in June spoke on behalf of the smaller states that **all would be lost if the states were not represented equally.**
- What is now the greatest, most powerful nation on earth would likely not have held together for the past 230 years if the issue had not been resolved.

The smaller
states were
concerned
about one
thing...

- The tyranny of the majority...
- That the large states would control the federal government for their benefit and not for the benefit of all states...
- The smaller states refused to sacrifice their sovereignty to the federation if they did not have fair – equal - representation at the federal level.

The Great Compromise...

- After months of argument the larger states agreed to let all states have equal representation:

The **Connecticut Compromise** (also known as the **Great Compromise of 1787** or **Sherman Compromise**) was an agreement that large and small states reached during the Constitutional Convention of 1787 that in part defined the legislative structure and representation that each state would have under the United States Constitution. It retained the bicameral legislature as proposed by Roger Sherman, along with proportional representation of the states in the lower house, but required the upper house to be weighted equally among the states. Each state would have two representatives in the upper house.

In The US continued...

- Senate representation was explicitly protected in Article Five of the United States Constitution:
“...no state, without its consent, shall be deprived of its equal suffrage in the Senate.”

Originally senators were appointed by state governments – changed to **Elected in 1913** with the 17th amendment to the Constitution.

So for 107
years the
United States
have had a:

- Triple “E” Senate that is:

Equal

Elected

And

Effective

Another point of note:

- The US Constitution is a timeless document. It references specific states **precisely zero times**.
- It could be literally be applied to any country.
- It ***does have one flaw*** – more on that later.



In Canada...:

Provinces have legal equality in the constitution **everywhere** except in the senate

- The Senate already has the powers on paper – it is Equal.
- Doesn't flex them because they are **appointed** – not elected – have no real mandate (aka - franchise)
- Numerous examples of where the large provinces have abused or taken advantage of smaller provinces.

We NEED Triple E

- Because it protects the small provinces and minority provinces from the tyranny of the majority.
- There can be no realistic assumption that this Confederation will last indefinitely unless it is addressed.
- So why wait?

But That's not
going to
happen...

- Need 7 provinces with more than 50% of the population AND the cooperation of the federal government
- EEE makes sense, But larger provinces won't go along with it because... math. They perceive it as a surrender of power.
- And the math is getting worse – bigger provinces are getting bigger and small are getting smaller relatively speaking.

The
Constitution is
unfair because
of its specific
geographical
references...

- And it is unfair that **geographic realities that existed 80-100 years ago that aren't the reality today** handicap the senate. BC and Alberta have fewer senate seats (6 each) than Nova Scotia or New Brunswick (10 each)
- Geographical references abound – for example, the Canadian constitution 1867 and 1982 references Quebec 150 times.
- **Geography changes.** A successful, timeless constitution must allow adaptation to those changes to happen without requiring amendment. *(and that is also a flaw in the US constitution)*

The larger Provinces have a point...

- THE primary reason why we have reached an impasse on senate reform is that the requirement of 7/50 cannot be met without **one of the two** largest provinces signing on.
- The argument they make is that the smaller provinces are too small in relation to the larger ones...

Fun with
numbers...

- Let's look at the merits of their argument...

Canada's Population in 1951

| | 1951 | % of Total |
|---------------------------|------------|------------|
| Prince Edward Island | 98,429 | 0.70% |
| Newfoundland and Labrador | 361,416 | 2.58% |
| New Brunswick | 515,697 | 3.68% |
| Nova Scotia | 642,584 | 4.59% |
| Manitoba | 776,541 | 5.54% |
| Saskatchewan | 831,728 | 5.94% |
| Alberta | 939,501 | 6.71% |
| British Columbia | 1,165,210 | 8.32% |
| Quebec | 4,055,681 | 28.95% |
| Ontario | 4,597,542 | 32.82% |
| Canada | 14,009,429 | |

Canada's Population more recently...

| | 2016 | 2011 | % Change |
|---------------------------|------------|------------|----------|
| Prince Edward Island | 142,907 | 140,204 | 1.93% |
| Newfoundland and Labrador | 519,716 | 514,536 | 1.01% |
| New Brunswick | 747,101 | 751,171 | -0.54% |
| Nova Scotia | 923,598 | 921,727 | 0.20% |
| Saskatchewan | 1,098,352 | 1,033,381 | 6.29% |
| Manitoba | 1,278,365 | 1,208,268 | 5.80% |
| Alberta | 4,067,175 | 3,645,257 | 11.57% |
| British Columbia | 4,648,055 | 4,400,057 | 5.64% |
| Quebec | 8,164,361 | 7,903,001 | 3.31% |
| Ontario | 13,448,494 | 12,851,821 | 4.64% |
| Canada | 35,151,728 | 33,476,688 | 5.00% |

Provincial Share of Population...

| | 2016 | 2011 | % Change |
|---------------------------|---------|---------|----------|
| Prince Edward Island | 0.41% | 0.42% | -2.93% |
| Newfoundland and Labrador | 1.48% | 1.54% | -3.81% |
| New Brunswick | 2.13% | 2.24% | -5.28% |
| Nova Scotia | 2.63% | 2.75% | -4.57% |
| Saskatchewan | 3.12% | 3.09% | 1.22% |
| Manitoba | 3.64% | 3.61% | 0.76% |
| Alberta | 11.57% | 10.89% | 6.26% |
| British Columbia | 13.22% | 13.14% | 0.60% |
| Quebec | 23.23% | 23.61% | -1.62% |
| Ontario | 38.26% | 38.39% | -0.34% |
| Canada | 100.00% | 100.00% | |

The Current Composition of the Senate

| | # of Seats | 2016 Pop'n | Pop'n per Seat |
|---------------------------|------------|-------------------|----------------|
| Yukon | 1 | 35,874 | 35,874 |
| Nunavut | 1 | 35,944 | 35,944 |
| Northwest Territories | 1 | 41,786 | 41,786 |
| Prince Edward Island | 4 | 142,907 | 35,727 |
| Newfoundland and Labrador | 6 | 519,716 | 86,619 |
| New Brunswick | 10 | 747,101 | 74,710 |
| Nova Scotia | 10 | 923,598 | 92,360 |
| Saskatchewan | 6 | 1,098,352 | 183,059 |
| Manitoba | 6 | 1,278,365 | 213,061 |
| Alberta | 6 | 4,067,175 | 677,863 |
| British Columbia | 6 | 4,648,055 | 774,676 |
| Quebec | 24 | 8,164,361 | 340,182 |
| Ontario | 24 | 13,448,494 | 560,354 |
| Canada | 105 | 35,151,728 | 334,778 |

The Composition of the Senate – If we had EEE today *

| | # of Seats | 2016 Pop'n | Pop'n per Seat |
|---------------------------|------------|------------|----------------|
| Yukon | 1 | 35,874 | 35,874 |
| Nunavut | 1 | 35,944 | 35,944 |
| Northwest Territories | 1 | 41,786 | 41,786 |
| Prince Edward Island | 10 | 142,907 | 14,291 |
| Newfoundland and Labrador | 10 | 519,716 | 51,972 |
| New Brunswick | 10 | 747,101 | 74,710 |
| Nova Scotia | 10 | 923,598 | 92,360 |
| Saskatchewan | 10 | 1,098,352 | 109,835 |
| Manitoba | 10 | 1,278,365 | 127,837 |
| Alberta | 10 | 4,067,175 | 406,718 |
| British Columbia | 10 | 4,648,055 | 464,806 |
| Quebec | 10 | 8,164,361 | 816,436 |
| Ontario | 10 | 13,448,494 | 1,344,849 |
| Canada | 103 | 35,151,728 | 341,279 |

* (assuming 10 per province as was discussed during the time of Meech.

Combined Population of:

| | 1951 | | 2016 | |
|-------------------------|------------|--------|------------|--------|
| Five Smallest Provinces | 2,394,667 | 17.09% | 3,361,019 | 10.04% |
| Five Largest Provinces | 11,589,662 | 82.73% | 30,008,404 | 89.64% |

| | 1951 | | 2016 | |
|------------------------|------------|--------|------------|--------|
| Six Smallest Provinces | 3,226,395 | 23.03% | 4,710,039 | 13.40% |
| Four Largest Provinces | 10,783,034 | 76.97% | 30,328,085 | 86.28% |

Combined Population of:

| | 2010 | | 2019 | |
|-----------------------------|-------------|--------|-------------|--------|
| Twenty-five Smallest States | 54,197,113 | 17.59% | 58,380,124 | 17.82% |
| Twenty-five Largest States | 228,184,597 | 82.41% | 242,184,597 | 82.18% |

| | 2010 | | 2019 | |
|------------------------|-------------|--------|-------------|--------|
| Thirty Smallest States | 79,850,542 | 25.91% | 85,410,198 | 26.07% |
| Twenty Largest States | 253,947,269 | 82.41% | 269,214,671 | 73.93% |

Compromise to get a Compromise

- If we are to make progress on Senate reform, we need to examine **what it means/is required for a province to be a province.**
- It seems logical that changes in geography and population be allowed to cause the evolution of provinces.

In other words

- Our Constitution should have rules as to what constitutes a province..
- **Rules** - that remove provincial status if a province's population falls below a set level,
- **And rules** that allows the creation of new provinces from within a province if the new province would have a population greater than set percentage of the national total.

A proposed Compromise...

- A Province should have at least 1% of the Total Population
- If a province falls below that level it would become a territory and see its senator count reduced to that of a territory,
- Or, if desired, that province could unite with a bordering/neighbouring province.

Because there
is also the
“Tyranny of
the Majority”
within a
province

- In some provinces the large population centres are running roughshod over the interests of other parts of that province.
- E.G. – Northern Ontario vs Southern/the GTA; the south shore of Quebec vs the GMA; Interior California vs the Coast; Upstate New York vs NYC.
(It is notable that the US constitution does not allow a new state to be created from another without the permission of that state.)



And that
begets
another
Compromise...

- A Province should be divisible if it is large enough.
- The new halves would both have to have at least 5% of the total Canadian population.
- And the segment that wishes to create a new province **does not require the assent of the original province.**
- In other words, the tyranny is defeated.

A pathway for territories to become a province

- A Territory would have a minimum of one senator. And have an additional senator for every 0.5% of the national population to a maximum of 5.
- Once above 1% of the population, the territory can ask to be granted provincial status if 70% of the provinces with at least 50% of the national population agrees.
- At 5% of the total population a territory cannot be refused provincial status if it wishes to become one.

Neither of
these ideas is
without
precedent in
Canada

- Initially the provinces of Alberta and Saskatchewan were to be just one province - “Buffalo”
- The Northwest Territories have been divided into Nunavut and The Northwest Territories

With Moderation...

- Need to be able to have a system/rule book on
 - when a province ceases to be a province and
 - when a province can be created/calved from another province
- Requires a majority vote of the region to happen.
- Populations need to be above (or below) the level for 20 years for the change to happen.
- Process needs to be initiated ten years before the vote? Five years?

Some suggested rules...

- How the senators are selected is up to the provinces – can elect or appoint or a blend of both. (Territorial senators would be elected under the supervision of the federal government)
- Six senators per province
- Six-year term
- 3 term limit. (18 years)
- 2 elected/appointed every two years.
- Minimum age to be a senator – 36 (2 times the age of majority)

The Composition of the Senate – Sixty years from now...

| | | Likely/Possible | Maximum |
|---------------------------|----------------|-----------------|------------|
| Territories | | 3 | 3 |
| Prince Edward Island | 0.21% | 1 | 1 |
| Newfoundland and Labrador | 0.76% | 1 | 1 |
| New Brunswick | 1.10% | 6 | 6 |
| Nova Scotia | 1.34% | 6 | 6 |
| Saskatchewan | 1.57% | 6 | 6 |
| Manitoba | 1.99% | 6 | 6 |
| Alberta | 17.82% | 12 | 18 |
| British Columbia | 18.77% | 12 | 18 |
| Quebec | 16.63% | 18 | 18 |
| Ontario | 39.81% | 30 | 42 |
| Canada | 100.00% | 101 | 125 |

The Quebec Issue

Should the country forever be fixed with a federal arrangement tilted in favour of one province?

- The recognition that the Quebecois nation is a founding part of Confederation should be in the preamble – not the body – of the constitution
- Becomes less and less relevant as Canada's demographic changes both outside of and within Quebec
- And many Quebecois live and have lived in Ontario and elsewhere in Canada since before Confederation. The province of Quebec is not the precise boundary of the Quebecois nation

The Quebec Issue continued...

- And what of the Acadians – are they not a part of the French fact at Confederation
- Permanently enshrining Quebec as being greater than all others FOR ALL TIME simply will not stand the test of time.
- Just as assuming the current provincial borders should always and forever remain fixed - to remain the same for longer than the pyramids

So to return to the Beginning

- Can the Canadian confederation survive forever if there is no EEE?
- If the answer is “no”,
- Then let’s get to work on crafting a compromise that achieves that.