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The Senate of Canada and its Undemocratic Aspects

Stephanie L. Hastick¹ 

¹Department of Politics, Faculty of Graduate Studies, York University, Canada. E-mail: slhastick@gmail.com

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Abstract

This work will examine the Senate of Canada and its undemocratic features by utilizing a list of democratic criteria. Robert A. Dahl's *On Democracy* provides a basis for the need for Canada's political institutions to undergo an evaluation of how well the Canadian Senate fares when examined alongside the minimum amount of democracy needed in political institutions within large-scale democracies. The research questions will be: can the Senate of Canada, as a governmental institution in Canada, be considered democratic or undemocratic? If undemocratic, what reform should the Canadian Senate accept to become a more democratic institution? Upon examination of the Canadian Senate and its democracy, it stands that the Senate continues to violate democratic criteria, ultimately making it undemocratic. This will be proven through the following points: the Canadian Senate's structure formation is undemocratic as it violates the democratic expectations of having free, fair and frequent elections, having elected officials, obtaining voting equality, and allowing for control over the agenda to exist. Also, the Canadian Senate's requirements for senators are undemocratic through its prevention of associational autonomy, inclusion of adults, and disallowing inclusive citizenship. Lastly, this work will find that the Senate's interactions with those part of the Canadian populace take on undemocratic aspects as it fails to facilitate effective participation and enlightened understanding. For Canada to progress toward democratic ideals, it must come to terms with its undemocratic institutions and move towards making significant reforms to counteract its undemocratic aspects.

Keywords: *Canada, Senate of Canada, Democracy, Robert A. Dahl, Upper houses*

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1. Introduction

In terms of governing systems, Canada has chosen for itself to be "linked to that of a broader Western "liberal democracy" as Canada embraces democracy as a nation-state (Mauduit and Tunnicliffe, 2021: 3). It is necessary to understand that democracy is a type of self-rule where it is rule by the people, while also being "a distant and retreating horizon, something we must continue to reach toward yet fail to grasp" that being the democratic

* Corresponding author: Stephanie L. Hastick, Department of Politics, Faculty of Graduate Studies, York University, Canada. E-mail: slhastick@gmail.com

ideal (Taylor, 2020: 13). This shows that democracy and its ideals are ever evolving where more people and political institutions can be included and accept further projections of democracy (Taylor, 2020: 13). Regardless, it is up to Canada and its people to comprehend the criteria of democracy to ensure that Canada's political institutions meet its standards. The minimum standards expected from Canada's political institutions is that "it would need to possess certain political arrangements, practices, or institutions that would go a long way, even if not all the way, toward meeting ideal democratic criteria" as without these standards, political institutions would indulge in being undemocratic (Dahl, 2015b: 83). That said, while other political institutions continue to experience consistent reform, on the other hand, when reflecting on the history and current state of the Canadian Senate, it seems to remain undemocratic as it has not experienced much reform in terms of its policies, practices and standards (Docherty, 2002: 27). Still, one of Canada's political institutions that is considered to be "one of the last unreformed chambers in Westminster-based parliamentary democracies" is the Senate of Canada when compared to other senates from around the world (Docherty, 2002: 27). The Senate of Canada is "Canada's only legislative second chamber" while legislating alongside the House of Commons (Smith, 2003a: 3). The Canadian Senate's senators are meant to "serve as a house of legislative review and represent regional interests in the national policy process," which shows how the Senate and its senators hold significant institutional power (Thomas, 2014: 189). Canada's first Prime Minister, John A. McDonald, wanted Canada to "replicate the British system of "King, Lords, and Commons," which led to the result of Canada having "ministers of the Crown; the Senate was the "aristocratic" house; and the Commons, the "democratic" house" (Ajzenstat, 2003: 4-5). Since the House of Lords and the Senate are analogous as they originated from the internalization that the upper house politicians be "chosen from the wealthier class" and were chosen to protect those interests from the people (Ajzenstat, 2003: 4-5). Thus, the Senate of Canada was designed to disallow the standard of rule by the people, thus discouraging overall democracy (Taylor, 2020: 13). Therefore, upon examination of the Canadian Senate and its democracy, it stands that the Senate continues to violate democratic criteria, ultimately making it undemocratic. The following will be proven with each point that the Canadian Senate's structure formation is undemocratic, its requirements for senators in the Canadian Senate are undemocratic, and the Senate's interactions with those part of the Canadian populace take on undemocratic aspects.

2. The Undemocratic Nature of the Canadian Senate's Structuring

By examining the configuration of the Canadian Senate as a political institution, it can be seen that some aspects of the Senate dismiss democratic criteria. It is expected that within large-scale democracies, political institutions need to have "Free, fair, and frequent elections" where "Elected officials are chosen in frequent and fairly conducted elections" as representatives represent the people within a particular jurisdiction (Dahl, 2015b: 85-86). This also enables "Elected officials" to ensure their "Control over government decisions about policy is constitutionally vested" by being voted in to facilitate democracy (Dahl, 2015b: 85-86). Also, when people vote, democracy is supposed to provide the opportunity for "Voting equality" where "the decision about policy will finally be made, every member must have an equal and effective opportunity to vote, and all votes must be counted as equal;" otherwise it demonstrates that a political institution is undemocratic (Dahl, 2015a: 37-38). All these criteria mentioned above are important because they provide a perspective of how the Canadian Senate refuses to allow democracy to flourish as a political institution. This is demonstrated by how the Canadian Senate operates as the selection of the senators comes from a process that "by convention, is made on the advice of the Prime Minister" of Canada, who gets to choose the Senate nominees unilaterally (Carver, 2013: 1). Then, what follows after is the Governor General of Canada confirms these recommendations made by the Prime Minister, which leads to "a newly appointed senator" in the Canadian Senate (Carver, 2013: 1). This is wrong as there is the approval of undemocratic means found within the structuring of the Senate as nowhere in this process is public input allowed, violating having elections, having elected representatives, and equal voting because of the appointment process (Ajzenstat, 2003: 14-16). Another democratic criteria that is supposed to appear in democracies is the ability to exercise final "Control over the agenda," as the Canadian populace must "have the exclusive opportunity to decide how and if they choose, what matters are to be placed on the agenda" as without it is a failure to be democratic (Dahl, 2015a: 37-38). This is an issue because the Senate is unelected, and each senator has certain enumerated powers, particularly with the ability to revise legislation and interfere with the execution of the legislation by those who are elected

officials like members of Parliament in the House of Commons (Thomas, 2014: 189). This means that representatives who are supposed to represent the people are obstructed from executing the will of the people by unelected and appointed senators who lack democratic legitimacy (Dodek, 2015a: 39). However, it could be that elected officials and representatives, like the Prime Minister of Canada, are simply acting on behalf of the large Canadian population by choosing the senators, as eligible Canadian voters are not forced to engage in frequent direct democracy (Dahl, 2015b: 91). Direct votes are not held on every single motion or bill that passes through Parliament, as the Canadian populace has consented to the Prime Minister making these decisions through the Prime Minister's political party having a majority of more seats compared to other political parties in the House of Commons legislature (Brodie, 2018: 5-7). A counterargument against this would be the fact that a recent incremental reform has been implemented in the Canadian Senate, where there is now an Independent Advisory Board that selects the senators as a way to facilitate a nonpartisan appointment process, removing the Prime Minister's advice with the Independent Advisory Board's advice (Turnbull, 2017: 181-183). This means there is more extraction from the majority opinions by replacing the Prime Minister's advice. The Canadian Senate is supposed to represent the provinces, so it should be up to the Canadian populace to decide what representatives they would like; otherwise, that approach would continuously be undemocratic (Smith, 2003b: 61). This also impedes the ability of the Canadian populace to hold individual senators accountable, as when senators become 75 years old, only then can senators be forced out of the Senate (Franks, 1988: 665). This exemplifies how the Senate has an integrity deficiency that renders it unaccountable to scandals or public disapprovals from the provinces and territories they are supposed to represent (Dodek, 2015a: 39). A suggested next step for reform to solve these undemocratic aspects prevalent in the Canadian political institution of the Senate is to replace the appointment system with an electoral system where Canadian senators would need to participate in elections to keep their seats in the Senate (Dodek, 2015b: 636-637). This would add more integrity and accountability to the Senate process. However, one can argue that the Canadian Senate is meant to protect minority rights and that having an elected Senate allows for the tyranny of the majority to proceed, which might take away the rights of individual minorities and collective minority groups (Ajzenstat, 2003: 3-4). This is merely an argument for Canada's Charter of Rights and Freedoms to ensure that everyone has unalienable rights, through removing sections of the Constitution, like section 33, called the notwithstanding clause, which allows Canadian governments to bypass court decisions and limit people's rights (Lawlor and Crandall, 2023: 4). The Canadian Senate and other Canadian political institutions should not be dependent on violating democratic criteria in order to prevent the violation of the rights of minorities and minority groups by the majority.

3. The Undemocratic Aspects of Canadian Senator Requirements

To become a Canadian senator in the Canadian Senate, one must go through particular processes informed by exclusionary practices that are undemocratic when examined alongside democratic criteria. It can be identified that the senators fail to have "Associational autonomy" as part of the political institution of the Canadian Senate, which means senators do not "have a right to form relatively independent associations or organizations, including independent political parties" as it is supposed to be a requirement for large-scale democracies like Canada (Dahl, 2015b: 85-86). An example of "Associational autonomy" being negated is when the Liberal Party of Canada leader Justin Trudeau "permanently expelled all 32 Liberal Senators from his parliamentary caucus" in 2014 (Caplan *et al.*, 2023: 1-2). However, one can argue in favour of the expulsions of ex-Liberal senators as they were granted the opportunity to form other political parties like the Independent Senators Group and the Progressive Senate Group in the Senate (Bridgman, 2020: 1010). While also advocating for the right of political parties to remove any members that the political party wants in order to signify the association's independence. A rebuttal to these arguments is that, in the first place, this process allows one person, the political party leader, to remove many other members of the association unilaterally as "Canada has the most rigid party discipline of any liberal democracy," with no allowance for deviation from the political party leader (Marland, 2020: 4-5). So, members of Parliament cannot act on their own accord to disagree as they, too, can be removed from political parties. Also, political parties should be dedicated to the public sphere and include the public, where everyone should have the right to participate. All people who are part of the Canadian populace, including Canadian senators, should be able to join or leave of their own accord to facilitate public associations functioning democratically. However, senators are currently forced to follow the party leader's

whims, which interferes with the responsibility to have “Associational autonomy” for members of the association to act and engage independently as part of these formations. A suggested solution is having low party discipline where it is up to the actual senator if they want to leave a party and choose to be independent or associate with another political party, or it is respected that a senator wants to continue their work alongside their current political party (Colomer, 2005: 263). This would facilitate a more democratic atmosphere and practice by upholding “Associational autonomy” through having “low party discipline like the United States” as a change for Canadian political party culture (Colomer, 2005: 263). Another democratic criteria that should be found in democracies is the “Inclusion of adults,” which means “adult permanent residents should have the full rights of citizens,” but certain segments of the Canadian population are not given similar opportunities that other Canadian citizens have (Dahl, 2015a: 37-38). It is also necessary to connect this with the fact that political institutions like the Senate that are part of large-scale democracies like Canada need to have “Inclusive citizenship” where “No adult permanently residing in the country and subject to its laws can be denied the rights that are available to others;” otherwise, it is undemocratic not to do so (Dahl, 2015b: 85-86). A clear example of these democratic criteria being violated is the qualifications needed to be a part of the Canadian Senate, one must be at least a 30-year-old Canadian citizen with a minimum of \$4,000 in property (Remillard and Turner, 2003: 114). Canada should take on reforms such as recognizing that the voting age in Canada is 18 years old, so under this notion, 18-year-old Canadian citizens should be eligible to become senators; otherwise, it simply denies them the full capacity to participate in Canadian society (Stockemer and Rocher, 2016: 43). Furthermore, those who do not have \$4,000 worth of property are excluded from becoming senators, denying them the right to the same opportunities as those who do have \$4,000 worth of property, as this echoes back to the original intentions of the Senate (Ajzenstat, 2003: 4-5). So, becoming a senator should not depend on the person’s means as this should not even be a consideration put into the requirements of becoming a Canadian senator (Remillard and Turner, 2003: 114).

4. The Undemocratic Relationship Between Canadian Citizens and the Senate of Canada

The relationship between the Canadian Senate and the Canadian populace is essential, so it is necessary to analyze how they interact. One will find undemocratically that the Canadian populace is not given many routes for their input to be valued by the Canadian Senate as a political institution. The undemocratic aspects in which the Canadian populace is dismissed is through the disallowance for “Effective participation” as democracy is supposed to give the opportunity “Before a policy is adopted by the association, all the members must have equal and effective opportunities for making their views known to the other members as to what the policy should be,” which the Senate struggles with upholding (Dahl, 2015a: 37-38). This is exemplified by the fact that the Canadian Senate is supposed to represent the different regions of Canada as “24 seats each are allocated to the Maritimes, Quebec, Ontario and the West,” with the three territories having one seat each and Newfoundland and Labrador not considered part of the Maritimes region has six senators as what was projected for 2014 (Hicks and Blais, 2008: 11). The Canadian Senate is supposed to represent the provincial and territorial regions; however, senators do not have constituency offices where people can voice their opinions (Smith, 2003b: 61). Constituency offices offer a space where “constituents may offer criticisms of government policy or opinions about law currently under debate,” and guidance is even provided to constituents within the politician’s purview according to their level of government representation (Hofstetter and Stokoe, 2018: 552-553). Not having a constituency office for each senator creates a level of distance between the Senate and those part of the Canadian populace. This institution does not allow rule by the people to occur and denies people the ability to effectively participate through constituency offices (Taylor, 2020: 13). A suggested reform would be for Canadian senators to have constituency offices concerned with particular provinces or territories to restore and strengthen “Effective participation” for those living in particular regions across Canada. However, one can argue against having constituency offices as “Effective participation” would not be effective if this reform were implemented because some provinces have extremely large populations (Hicks and Blais, 2008: 15). This could be solved by creating regional jurisdictions of representation similar to that of members of Parliament in order to facilitate better, more “Effective participation” (Ajzenstat, 2003: 17-18). This means allowing for more senators to be nominated, which will allow for more representation, particularly to certain regions, with the possibility of creating ridings with one member of Parliament and one senator (Ajzenstat, 2003: 17-18). Another violation of the Canadian Senate’s interactions with the Canadian populace that can be

considered undemocratic is not having the ability to gain “Enlightened understanding” (Dahl, 2015a: 37-38). The Canadian Senate violates that “Within reasonable limits as to time, each member must have equal and effective opportunities for learning about the relevant alternative policies and their likely consequences” for those participating in Canadian society (Dahl, 2015a: 37-38). Regardless, one could ask how the Senate can be violating the ability to gain “Enlightened understanding” when its prerogative is to facilitate sober second thought, defined as the protection from Canada having partisan and “rash judgements by an unchecked” House of Commons (Watts, 2003: 68-69). This allows time for examining the legislation and allows for debate within the actual Senate chambers to be brought forward (Docherty, 2002: 28). However, when analyzing sober second thought, it fails in its execution, which means it does not benefit the Canadian populace as it was designed to (Docherty, 2002: 28). This is exhibited by the Independent Senators Group, consisting of a large number of expelled Liberal senators, which shows that there is “no evidence that the ISG senators behave differently than the Liberals” in the House of Commons (VandenBeukel *et al.*, 2021: 842-843). There is a consistency of partisan politics in Canada on both sides of the aisle as the “loyalty score of Conservative senators was over 96%” as Conservative senators have routinely voted the same as Conservative members of Parliament’s positions in the House of Commons (VandenBeukel *et al.*, 2021: 842-843). This shows that the Canadian Senate does not offer real alternatives but rather follows whatever the House of Commons wants, as it does not provide any alternative policies to counteract the House of Commons. This means that the Senate and the senators provide a “very weak check on the Commons” as the institution offers no real debate on the consequences of the legislation provided as it never leaves the boundaries of only providing a moderate review of legislation (Penner, 2022: 305-306). The suggested reforms are a combination of previously discussed points where senators should exhibit flexible independence through low-party discipline, which should be fused with the ability of eligible Canadian voters in specific regions to hold senators accountable through elections.

5. Conclusion

Through the examination of the Canadian Senate, there are many instances where the Canadian Senate functions undemocratically by not providing a certain standard of democracy, thus rendering the Senate in its totality undemocratic. This was proven through the Canadian Senate structure’s failure to maintain the democratic criteria of “Free, fair, and frequent elections” and having “Elected officials” (Dahl, 2015b: 85-86). This also requires the inclusion of “Voting equality,” as these issues are paramount to uncovering the undemocratic practices found in the Canadian Senate’s structure (Dahl, 2015a: 37-38). This stems from the Senate having an appointment process rather than embracing senators to be elected through elections, as the selection of these representatives does not include the Canadian public being close to their selection processes (Carver, 2013: 1). This appointment process also leads to the consideration of another piece of democratic criteria, that is, the ability to exercise final “Control over the agenda” that the Canadian Senate does not currently embody (Dahl, 2015a: 37-38). It becomes the realization that the necessary step for the Canadian Senate is to have Canadian senators participate in elections to be part of the Canadian Senate (Dodek, 2015b: 636-637). The Canadian Senate also shows it is undemocratic through its requirements for Canadian senators. This was shown through the disallowance of senators to have “Associational autonomy” (Dahl, 2015b: 85-86). The political party culture of Canada is defined by rigid party discipline, which prevents Canadian senators from freely associating with any political party and thus denies senators their autonomy (Marland, 2020: 4-5). Another issue that appears with Canadian senator requirements is the “Inclusion of adults,” which is an expectation in a democracy, but this is missing in the senator selection process (Dahl, 2015a: 37-38). This also includes the fact that political institutions must also have “Inclusive citizenship.” This is noticeable with the senator’s requirements, which are that one needs to be 30 years old and have \$4,000 worth of property (Remillard and Turner, 2003: 114). This outright dismisses anyone who does not fall into these categories. Instead, one should only be 18 years old to be eligible (Stockemer and Rocher, 2016: 43). Lastly, the non-existent interactions between the Canadian Senate and the general Canadian public must be addressed. This is brought to the forefront because the Canadian Senate has poor “Effective participation” opportunities (Dahl, 2015a: 37-38). For example, the Canadian Senate does not have constituency offices across Canada, making it difficult for the Canadian public to interact with senators as there should be the creation of Senate constituency offices made available (Smith, 2003b: 61). Also, another democratic criteria that fails to be reached is that the Senate interferes with the ability to gain “Enlightened understanding,” which is supposed to be

found in democracies (Dahl, 2015a: 37-38). The role that the Senate is supposed to play is not true in practice, as partisanship keeps the Senate away from disagreements with the House of Commons (VandenBeukel *et al.*, 2021: 842-843). Also, the Senate is stuck in the role of being moderate reviewers rather than creating alternative policies and discussing legislative consequences (Penner, 2022: 305-306). Using the other reforms previously mentioned will solve the problem of the ability to gain “Enlightened understanding” (Dahl, 2015a: 37-38). The Canadian Senate must uphold central democratic criteria that are required for political institutions in democracies, as reforms can assist in the movement forward toward democratic ideals that will, in turn, undo the Canadian Senate’s undemocratic aspects.

Conflicts of Interest

The author has no competing interests to declare.

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