



DEBATES OF THE SENATE

1st SESSION • 42nd PARLIAMENT • VOLUME 150 • NUMBER 38

THE SENATE

ROLE IN THE PROTECTION OF REGIONAL AND MINORITY
REPRESENTATION—INQUIRY—
DEBATE ADJOURNED

Speech by:

The Honourable Judith Seidman

Wednesday, May 18, 2016

THE SENATE

Wednesday, May 18, 2016

THE SENATE

ROLE IN THE PROTECTION OF REGIONAL AND MINORITY REPRESENTATION—INQUIRY— DEBATE ADJOURNED

Hon. Judith Seidman rose pursuant to notice of May 10, 2016:

That she will call the attention of the Senate to its role in the protection of regional and minority representation.

She said: Honourable senators, in 1864, our predecessors gathered in Charlottetown and Quebec to consider proposals for a union of the British North American colonies. During these conferences, the Fathers of Confederation drafted, debated and negotiated the constitutional resolutions that would lead to Confederation in 1867. Casual students of Canadian history may be surprised to learn that it was the issue of the upper chamber — the Senate — that dominated these discussions. During the Quebec conference, 6 days out of 14 were devoted to discussing the second chamber.

Our founders considered the purpose of the upper chamber to be of critical importance to the parliamentary structure they envisioned. Achieving consensus was complicated and generated substantial debate.

The result, as we know, is a Constitution which gives the Senate two distinct tasks: The first is to act as a counterbalance or check for the cabinet and Commons. Our founders recognized the importance of protecting the right to political dissent from possible attacks by a majority embodied in the House of Commons. The second is to represent the regions of Canada at the federal level.

It was the second element — regional representation — that ultimately formed the cornerstone of the agreement during the Confederation debates. The Senate was structured to counter the effect of representation by population in the lower house, which gave Quebec and Ontario significant political advantage. During debate, legislators from the Atlantic regions, and later from British Columbia, argued that their provinces would be reduced to “quasi-colonial status” under a representation-by-population system.

Senator Moore: They are always right.

Senator Seidman: The Senate and the promise of an equal, regional upper house alleviated these concerns.

It is worth repeating that regional second chambers are the norm among mature democracies, especially among federations. Of the 24 contemporary federations, only two are without regional second chambers. A primary function of the majority of second chambers is legislative review, and the number of chambers that perform reviews is on the increase. A second major role for second chambers is to represent regional interests at the federal level.

The American Senate offers an interesting comparison on this point. Each state is allowed two senators, regardless of population, giving underpopulated states an advantage. We know that the Fathers of Confederation looked to the American Senate as an example. However, they made a significant distinction: The Quebec Resolutions of 1864 allocated seats by region, not by province.

This distinction, and the concept of regional and minority representation, will be the focus of my remarks. I thank the late Senator Nolin for not only laying the groundwork in debate so far, but for encouraging us to engage in our history and, in so doing, to reflect upon the role of this place — and our place — in the Parliament of Canada.

Honourable senators, the words of George Brown illustrate the notion of the Senate as the linchpin of Confederation:

... the very essence of our compact is that the union shall be federal and not legislative. Our Lower Canada friends have agreed to ... representation by population in the Lower House, on the express condition that they shall have equality in the Upper House. On no other condition could we have advanced a step; and for my part, I am quite willing that they should have it.

The Quebec Resolutions defined three regions of the new union: Upper Canada, Lower Canada and the Maritime provinces, assigning each 24 senators. To reflect new additions to Confederation, 33 Senate seats were added for the West, Prince Edward Island, Newfoundland and Labrador, and the territories between 1867 and 1999.

The Fathers of Confederation made a conscious choice not to replicate the American Senate’s allocation of seats by state. Scholar David E. Smith explains:

For their part, the Fathers of Confederation did not envision the Senate acting as a House of the Provinces. ... appointed for life by the governor-in-council, Canadian senators were in a position to be independent of provincial governments, of the people of the provinces, and of public opinion in the country.

How, then, did the Fathers of Confederation come to agree on this vision of the Senate as a regional body rather than a provincial one?

We can start with the fact that Canada’s founding legislators were well-versed in the constitutional history and theoretical texts of their time. They were particularly familiar with the British parliamentary tradition, as we know. They read British newspapers and accounts of debate in British Parliament. However, they also looked carefully at the American example and understood well the benefits of their position of hindsight.

John A. Macdonald had this to say about the American system:

We are happily situated in having had the opportunity of watching its operation, seeing its working from its infancy till now. It was in the main formed on the model of the

Constitution of Great Britain, adapted to the circumstances of a new country, and was perhaps the only practicable system that could have been adopted under the circumstances existing at the time of its formation. We can now take advantage of the experience of the last seventy-eight years during which that Constitution has existed, and I am strongly in the belief that we have in a great measure avoided in this system which we propose for the adoption of the people of Canada the defects which time and events have shown to exist in the American Constitution.

One of these “defects,” as Macdonald saw it, was the fact that each state entered into the American union as a separate colony, with no connection to each other and only a cursory connection to the centre. Macdonald said:

Ever since the Union was formed the difficulty of what is called “State Rights” has existed, and this had much to do in bringing on the present unhappy war in the United States.

He was referring, of course, to the Civil War, which would end in May of that year, 1865.

John A. Macdonald saw the American Constitution as an incredible achievement, but that did not prevent him from seeing the vulnerabilities of a federation stymied by state interests. The Canadian proposal, he argued, would be less prone to conflict:

We thereby strengthen the central parliament and make the confederation one people and one government, instead of five peoples and five governments with merely a point of authority connecting us to a limited and insufficient extent.

The central Parliament would be made strong, because it would be responsible for “all the great subjects of legislation,” while the “local interests and local laws of each section are preserved intact and entrusted to the care of local bodies.”

It then comes as no surprise to learn that the Senate was not meant to be a “house of the provinces,” but rather one house of federal Parliament, occupied by members who contribute a perspective that is at once regional and national.

Macdonald — ever the champion of a united Canada — thought that this fine balance between region and federation, minority and majority, was the pinnacle of success. With the agreement of Confederation, he said:

We have . . . avoided that great source of weakness which has been the cause of the disruption of the United States. We have avoided all conflict of jurisdiction and authority

It is important to consider the effort behind these words: The Fathers of Confederation were determined to find a middle ground to ensure that diverse interests were protected within a strong central government. The House of Commons, for all its democratic legitimacy, could not, for reasons of representation by population, truly reflect the diversity of the country. Instead, the Senate was entrusted to contribute a unique perspective that considers both regional and national interests.

Honourable senators, the legitimacy of the Senate as a regional body was called into question soon after Confederation. Some have argued that the Senate would have been better equipped to

represent the regions if the provincial governments appointed senators. As we know, there is a long history of provincial representatives calling for increased influence over the selection process. Some argued that other institutions provide a stronger regional voice on the national stage, making the Senate obsolete.

In November 2013, Saskatchewan Premier Brad Wall argued that “the provinces have filled a vacuum left by a senate,” and that “the de facto balance to a federal government is the provincial governments of this country.”

Premier Wall’s interpretation of regional representation contrasts with the vision for the Senate the Fathers of Confederation had. Regions and provinces are not the same, nor do they represent the same interests. Former Quebec politician and professor, Gil Rémillard, explains:

The Fathers wanted to assign the Senate the important function ensuring that minorities, originally the Anglophone population of Quebec and Francophone minorities in other provinces, would be represented in the Senate.

In Quebec, there are 24 electoral districts and a number were chosen “for the Anglophone minority that composed them.”

Rémillard concludes:

Results enabled senators to be representative of the minorities and to speak in that capacity in the debates and proceedings of the Senate.

Honourable senators, as we all know, Canada is a vast country, with variations in culture, language and identity. The Fathers of Confederation recognized a fundamental need to accommodate for differences within a federation. In 1865, George Brown identified the need to recognize a “diversity of interests” by way of an upper chamber. The recognition of diversity of interests extends not only to units of the federation, the provinces, but also to differing interests within each province. Brown explained:

In maintaining the existing sectional boundaries and handing over the control of local matters to local bodies, we recognize, to a certain extent, a diversity of interests; and it is quite natural that the protection for those interests, by equality in the Upper Chamber, should be demanded by the less numerous provinces.

An example of differing interests within each province can be found in the English-speaking communities of Quebec. The largely urban English-speaking minorities, which number approximately one million, have a reduced chance at representation in provincial government. The Senate, built to protect a diversity of interests, offers the opportunity through the appointment process to provide English-speaking minority communities with representation at the federal level. The very same protection applies for the roughly one million French-speaking people in minority communities across every region of Canada.

Premiers are elected by a majority in their province and may be less able to play the role of protecting a diversity of interests. Instead, they are champions of the essential interests of their province, and they do not possess dual vision: the opportunity to consider both provincial and national interests.

Professor Janet Aizenstat identified the strength of dual vision when she explained:

... the local interest cannot be neglected, but neither can the responsibility to consider local interests in the context of the national good. Note that there is no similar dilemma for the premiers in their role as provincial champions.

Honourable senators, for those who argue that the Senate has not done its due diligence as a regional body and representative of minorities, I would remind them of a recent study conducted in 2010 by the Standing Senate Committee on Official Languages of the realities of English-speaking communities in Quebec, particularly the various aspects affecting their development and vitality. The result is a report subtitled *From Myth to Reality*, which reflects the unique social, political, economic and cultural perspective of English-speaking minorities in Quebec and offers the federal government recommendations on how best to serve one of our official minority language communities. This study is the embodiment of the representation and validation of regional minority communities at the federal level.

Our founders considered the role of the upper chamber to be of critical importance in protecting the diversity of interests.

The Hon. the Speaker: Excuse me, Senator Seidman. Your time has expired. Are you seeking leave for five more minutes?

Senator Seidman: Yes.

The Hon. the Speaker: Is it agreed, honourable senators?

Hon. Senators: Agreed.

Senator Seidman: To review their debates is to understand the complexity of their deliberations. The Senate, as envisioned by our predecessors 152 years ago, must continue to fulfill its duty as intended by the Fathers of Confederation.

Hon. Pierrette Ringuette: Would the honourable senator please answer a few questions?

Senator Seidman: Yes.

Senator Ringuette: I listened to your speech with regard to regional minorities, and you indicated the anglophone community in Quebec. How do you see the 24 senatorial ridings allocated in the Constitution for Quebec being played out with regard to the issue of minority language rights?

Senator Seidman: Thank you for the question, senator. I believe it was Professor Gil Rémillard who used that as the example of the important role of the Senate. I quote him in my speech saying that, originally, the 24 electoral districts created in Quebec had as their intent that several of those districts would represent the English-speaking minorities in Quebec. As well, of course, the various representatives from the other regions of the country would be used to represent the francophone minorities in those regions.

Senator Ringuette: Are you implying that if senators from Quebec in each of those senatorial regions have an issue if they are to represent that senatorial region, then maybe the issue is more than having \$4,000 worth of land?

Senator Seidman: Senator, I'm not sure I really understand the question as far as it concerns \$4,000 worth of land. The issue has to do with representation at the federal level, which was the whole point. The point was that representation by population and election to the House of Commons, an elected body, would not necessarily ensure that a small minority in Quebec, one million people who speak English, would be represented in the House of Commons. But there was a certain degree of assurance in creating the Senate that there was a special role to represent minorities in the Senate.
