“Fixing the (Democratic) Deficits:
The Introduction of Bicameralism in Ontario”

By

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Discussant: Graham White
Abstract
This paper will apply the tenets of bicameralism to Ontario as part of a solution to various democratic deficits that exist within the province. Current debate on the merits of bicameralism tends to be negatively and narrowly focused on reference to the Canadian Senate, as if the presently constituted Canadian Senate is the only possible model for bicameralism. This paper is not advocating the reintroduction of Ontario’s nineteenth-century Legislative Council, but rather the creation of a thoroughly modern upper chamber to address 21st-Century and beyond Ontarian democracy. When one takes a global view, the argument for bicameralism is both cogent and relevant to the Ontario political context, that is, a province comprised of a massive territorial area with uneven population distribution and disparate socio-economic and cultural/ regional interests. An elected upper chamber that gives voice to these and other communities within the greater polity will benefit all Ontarians: with the opportunity to review and improve legislative measures originating in the Legislative Assembly through “sober second thought”; a guaranteed representation of constitutionally-important minorities, such as the province’s francophone and indigenous populations, as well as that of gender and regional interests, will act as a check and balance against the tyranny of the majority as well as a broker among these competing interests; a means to mitigate the further centralization of power in the Premier’s office; and finally, with the existence of such a chamber, the opportunity to adhere more rigorously to the principal of representation by population in the Legislative Assembly itself will finally be possible, thus broadening and deepening parliamentary democracy in the province by strengthening the consent of the governed.

The methodology used to determine whether deficits exist include semi-structured interviews with Members of Provincial Parliament from different regions of the province; analysing data from Statistics Canada for population and demographics and comparing the data to an analysis of the composition of the Ontario Legislative Assembly; and referencing the Legislative Councils found in 5 of the 6 Australian constituent-states as a comparative case study. This proposal for a modern Legislative Council based on a different electoral selection method than the First-Past-the-Post method currently used for the Legislative Assembly, contributes to the political science literature on Ontario Politics, on different forms of representation and democratic deficits.

Introduction
Much has been written about representation in democracies and how to achieve a more accurate reflection of the expressed wishes of the electorate. Most of the literature focuses on proportional representation and adopting a mixed member plurality system. What is not explored in-depth is the adoption of bicameralism at the provincial level in Canada to address issues of representation and democratic legitimacy. At the sub-national level, Australia is the only western parliamentary democracy that has regional upper houses, styled “Legislative Councils”. Upper Canada, Quebec, Manitoba and the Atlantic provinces all had upper chambers, also titled Legislative Councils. Upper Canada abolished its Legislative Council upon Confederation, while Quebec was the last province to do away with the institution in 1968. Australia, however, chose to build these bicameral legislative institutions at both the federal and state level upon their federation in 1900, with only one of the six states, Queensland, having subsequently eliminated their Legislative Council. Not only do these upper chambers exist in Australia, but they play a vital role in the legislative process. Moreover, the Australian
states, for the most part, are very large political geographic units with uneven regional distribution of sparse populations and competing socio-economic and cultural interests, very much resembling Ontario.

The amelioration of the lack of representativeness in governing institutions can be addressed through bicameralism. Democratic deficits are not a new concept in political science. After consulting various sources, the following definition of democratic deficit from Peter Aucoin and Lori Turnbull is the one this paper will use: “[...] the gap between what Canadians expect of their political institutions in terms of democratic governance and what they perceive as reality.” Due to restricted capacity to access resources to operationalize this definition of democratic deficit in Ontario, there are limitations to the methodology and conclusions of this paper. The broader idea of discrepancy between expectations and reality is how the conclusions were able to be drawn from the data that was accessible. To examine how a modern Ontario legislative council can improve the condition of ever growing regional, gender, francophone and Aboriginal democratic deficits requires a process: firstly, a thorough discussion of the foundation of bicameralism; secondly, the methodology used to determine whether or not the aforementioned democratic deficits exist in Ontario will be described along with a description of the observed conclusions; thirdly, Australia’s legislative council system will be investigated to demonstrate which aspects may or may not be applicable to Ontario; finally, the proposed composition and role of a new legislative council for Ontario.

Bicameralism is a relevant debate in Canada due to the current issues facing the Senate. Public opinion demonstrates that Canadians favour Senate reform or abolition rather than maintaining the institution as is. The attempt to model the Canadian Senate after the House of Lords was inherently flawed given the lack of a Canadian aristocracy to fill the upper chamber. However, today, even the United Kingdom is wrestling with reform of the House of Lords to make the institution more representative and less archaic. This paper recognizes the popular distaste for the federal upper chamber; therefore the new legislative council of Ontario should be an upper chamber that is designed for the twenty first century.

**On Bicameralism**

Bicameralism is a popular institutional design in democracies around the world. Many newer democracies have adopted this model over unicameral legislatures, thus demonstrating the perceived advantages of this system. The typical strengths of bicameralism include: acting as a system of checks and balances on the tyranny of the majority and power centralization; acting as a break on government intervention and the expansion of the welfare state; strengthening the quality of legislation; accommodating minority interests and addressing regional representational issues. The disadvantages associated with this model are: decision-making gridlock, that is, slowing down the legislative process.

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5 Vatter, Adrian. (2005); Shell, David. (2001); Stone, Bruce (2003)
and thereby delaying the capacity of legislators to react quickly to changing environments\textsuperscript{6}; and having a status quo bias towards new legislative initiatives\textsuperscript{7}. This section will demonstrate that the advantages of a bicameral system are such as to advocate for the adoption of this model at the provincial level in Ontario.

As we have seen with the Canadian Senate, upper chambers can be redundant, ineffective and full of partisan patronage. To avoid these negative characteristics, Arend Lijphart created the theory of ‘strong bicameralism’\textsuperscript{8}. This theory has three components: the differential constitutional powers of the two chambers; the democratic legitimacy of the second chamber (whether or not it is elected); and the incongruent composition of both chambers\textsuperscript{9}. The first aspect of strong bicameralism reflects the differentiating powers allocated to both chambers. For example, taxation and appropriation bills are not allowed to originate in the upper house.\textsuperscript{10} As Bruce Stone states, the differences in powers are important because this reflects “[...]the fact that upper houses were designed primarily, though not exclusively, to play a reactive rather than an initiating role with regard to the creation of governments as well as the launching of most legislation.”\textsuperscript{11} The second component refers to the perceived legitimacy of the upper chamber by the public. When the upper chamber is nominated by the executive of the lower house (as it is federally in Canada and was the case of Queensland, Australia), the government has the opportunity to fill vacancies with party supporters. Having an elected upper house enhances legitimacy, stability and long term influence on legislation.\textsuperscript{12} The final point is operationalized through the election of both chambers through two different electoral mechanisms\textsuperscript{13} which can be designed to over-represent certain minorities in the upper chamber. Incongruence is also achieved through a variance in the term length for the representatives. With strong bicameralism, it is difficult to have partisan majorities in the lower house replicated in the upper chamber. This avoids the negative perception of unnecessary duplication as seen with the Senate. The test of strong bicameralism is not satisfied with the current Senate in Canada, which may be a reason for why there is strong distaste for the institution. The new Legislative Council of Ontario should incorporate this theory to be able to be a relevant, effective institution that positively contributes to the legislative process in the province.

A trend that Donald Savoie has written extensively about is the power concentration in the Prime Minister’s office\textsuperscript{14}. This is seen to negatively impact the ability of elected members to represent their constituents. Extrapolation is needed to determine that the same patterns are occurring at the provincial level in Premiers’ offices across the country. Strong bicameralism is a means to avoid further centralization of power in the Prime Minister’s office, or in the case of Ontario, in the Premier’s office. David Shell believes that power in political institutions should not be concentrated in a single individual or office. Instead there should be a “[...] mixture of sources which contribute to the authority exercised by government.”\textsuperscript{15}

\begin{thebibliography}{9}
\bibitem{7} ibid
\bibitem{9} ibid
\bibitem{10} ibid, p. 270
\bibitem{11} ibid, p. 270-271
\bibitem{12} ibid, p. 271
\bibitem{13} ibid, p. 269
\bibitem{14} \textit{Governing from the Centre} (1999) and \textit{Power:Where is it?} (2010)
\end{thebibliography}
power with the use of the *Federalist Papers* in which Paper 62 is quoted: “First, a second chamber was necessary as a constitutional safeguard because those who administer government may ‘forget their obligations to their constituents and prove unfaithful to their important trust.’”\(^{16}\) With the presence of bicameralism in Ontario, there would be another check on the power of the executive. Bicameralism allows for proposed legislation to be sent back to the lower house for amendment and improvement if the upper house determines that the bill in question does not benefit the entire province or is obviously flawed. The members of the upper chamber can take a longer term perspective in terms of the impacts of the legislation in question where in the lower house their focus tends to be short term, that is, the electoral-cycle and how to win the next election. With strong bicameralism the Premier’s office would be held more accountable for decisions and actions.

Meg Russell has written on the reform that is taking place in the British House of Lords. With the developments in the House of Lords, she argues that the potential for pluralistic and consensual policy making between the two houses has increased.\(^ {17}\) The government must now work with the Lords to ensure that the legislation will not see many delays in debate in the upper chamber. In this manner, there is a level of persuasion and negotiation occurring behind the scenes between both houses to anticipate the response from the Lords.\(^ {18}\) This would strengthen the quality of the legislation being introduced in the lower house since they must consider how it will be studied in the upper house and how it may be amended.

There are some disadvantages with bicameralism; however these can be counteracted with the different ways the second chamber is composed. Adrian Vatter presents a well-argued antithesis to the adoption of bicameralism. He states that bicameralism does not act as a barrier to executive dominance, does not promote stability, nor does it improve the quality of democracy or economic performance of the state.\(^ {19}\) One of the advantages of bicameralism that he does highlight is that it can act as a “[...] significant brake on government intervention and on the expansion of the welfare state.”\(^ {20}\) This can be an advantage when states and provinces are facing massive deficits. With the amounts of debt that the province is carrying, the expansion of government intervention and the welfare state is currently unsustainable. A bicameral legislature could slow this expansion and force governments to use their budgets and legislation in a more innovative, cost effective and responsible manner. The flip side to this point is that bicameral legislatures can become unable to “[...] react to the quickly changing economic and social conditions [...]”\(^ {21}\). The issues Vatter raises are more prominent when the second chamber is composed of patronage appointments or when the majority party in the two chambers are different, which can result in gridlock.

While there may be disadvantages with the adoption of bicameralism, the literature demonstrates that there are ways to mitigate their impact on the legislative process. The improved legislation created by having a second chamber reviewing it before royal assent as well as the ability to be more inclusionary overshadow the negative aspects discussed.

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16 Ibid, p. 10
18 Ibid, P.880
20 Ibid
21 Ibid,p. 195
Methodology and Findings

To determine if there is in fact a representational democratic deficit based on gender, Aboriginal2223 and francophone axes, a comparison between Statistics Canada data on these populations and an analysis of the past six Parliaments at the Ontario Legislature was conducted24. A democratic deficit was determined to exist if there was a significant difference between the two percentages. No specific percentage was given to determine what ‘significant’ meant since the difference in numbers of those three groups does not provide for a standard one-size-fits-all definition.

Table 1: Female, Francophone, and Aboriginal representation in the Ontario Legislative Assembly, 1990-2013

<table>
<thead>
<tr>
<th>Parliament Session</th>
<th>Female Representation</th>
<th>Francophone Representation25</th>
<th>Aboriginal Representation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990-1995</td>
<td>27/135 or 20%</td>
<td>5/135 or 3.7%</td>
<td>1/135 or 0.7%</td>
</tr>
<tr>
<td>1995-1999</td>
<td>18/135 or 13%</td>
<td>2/135 or 1.4%</td>
<td>1/135</td>
</tr>
<tr>
<td>1999-2003</td>
<td>18/108 or 16.7%</td>
<td>3/108 or 2.8%</td>
<td>1/108 or 0.9%</td>
</tr>
<tr>
<td>2003-2007</td>
<td>27/113 or 23.9026</td>
<td>2/113 or 1.80%</td>
<td>1/108</td>
</tr>
<tr>
<td>2007-2011</td>
<td>29/113 or 25.7%</td>
<td>4/113 or 3.50%</td>
<td>1/108</td>
</tr>
<tr>
<td>2011-2013</td>
<td>29/109 or 26.6%</td>
<td>3/109 or 2.8%</td>
<td>1/109 or 0.9%</td>
</tr>
</tbody>
</table>

22 The definition of Aboriginal this paper uses for the model created includes Status, Non-Status, Metis, Inuit, and those who self-identify and have family heritage. For the data presented from Statistics Canada, the definition provided from the Census was used to be able to easily compare across different Census years.


24 From 1990-2013, this provided the chance to examine representation over a long period of time and also encompassed the three different parties in power.

25 Francophone and Aboriginal representation data is based off of second hand knowledge since the Legislative Assembly does not specifically track these figures although they have tried.

26 By-elections in this session skew the numbers of MPPs.
<table>
<thead>
<tr>
<th>Census Year</th>
<th>Female Population (18 yrs+ unless otherwise noted)</th>
<th>Francophone Population</th>
<th>Aboriginal Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991</td>
<td>N/A</td>
<td>5.4%(^{29})</td>
<td>243,550/10,084,885(^{40}) or 2.42%</td>
</tr>
<tr>
<td>1996</td>
<td>4,417,825/8,539,330 or 51.74%(^{31})</td>
<td>479,285/10,642,790 or 4.5%(^{32})</td>
<td>141,525/10,642,790 or 1.33%(^{33})</td>
</tr>
<tr>
<td>2001</td>
<td>4,517,130/8,708,240 or 51.87%(^{35})</td>
<td>493,630/11,410,045 or 4.33%(^{36})</td>
<td>188,315/11,410,045 or 1.65%</td>
</tr>
<tr>
<td>2006</td>
<td>5,152,635/9,949,480 or 51.79%(^{38})</td>
<td>488,815/12,160,000 or 4.02%(^{39})</td>
<td>242,495/12,028,900(^{40}) Or 2.02%</td>
</tr>
</tbody>
</table>

\(^{27}\) Using data from the Mother Tongue sections of the census.
\(^{28}\) An academically valid source that conclusively stated the number was unable to be found.
\(^{30}\) Ibid
\(^{34}\) 2001 census data is used for both the 1999-2003 and 2003-2007 Parliaments
As suggested by the above tables, there is a serious discrepancy between the population and the representation in the Legislative Assembly. Female representation has been getting marginally better with each election since 1995; however there is currently a 25.34 percent difference between the number of female MPPs and the number of females of voting age in Ontario. There has not been a Member of Provincial Parliament in the time frame examined that has a significant percentage of Aboriginal heritage. While many Aboriginal issues are dealt with by the Federal government, the provincial government has an increasingly large role to play in service delivery for those living off reserve, natural resource management, health care, etc.. There has not been an indigenous MPP in the Legislature since at least 1990, but through consultation with the Ministry of Aboriginal Affairs and MPPs, Aboriginal issues have a means to be addressed (the contemporary land claim agreement with the Algonquin’s is an example). The francophone population representation in the Legislative Assembly of Ontario generally fluctuates, but sees fairly equitable representation for their overall numbers in the population. While there have been symbolic initiatives put forward in recent years to satisfy the francophone population, substantive issue of access and equality are still issues that need to be addressed. With the analysis provided, it is easy to recognise that representational democratic deficits do exist in Ontario.

This paper uses bicameralism in Ontario to address these democratic deficits to achieve statistical, substantive and symbolic representation. This is not to say that Members of Provincial Parliament cannot advocate on different issues on behalf of their constituents, because if they do not, they risk their re-election. However, the power of party discipline exercised by the Whip has mitigated the individual MPP’s freedom to advocate on behalf of constituents in those situations in which doing so contradicts party policy. Moreover, there is an advantage to having greater numbers of these diverse populations involved in the decision-making process because they can better inform legislation regarding their specific issues. When disadvantaged groups see themselves reflected in governing institutions, they are more likely to feel like they belong in the process. Including diversity into the Legislature has positive spin-off effects for the entire political system.

A statistically satisfactory survey of Ontario’s population was not able to be conducted to determine regional aspirations within the Ontario Legislative Assembly. Instead, twenty-six semi-structured interviews were conducted with current Members of Provincial Parliament from across the province to evaluate their perceptions and expectations of the system to be able to determine if...
regional democratic deficits exist. Regional democratic deficits are defined as the regions’ ability to influence policy outcomes and the provincial government’s investment of financial resources. The MPPs interviewed were told their answers would remain confidential, thereby increasing the likelihood that their true opinions were given. The MPPs were asked the following three questions:

1. Please name your region of Ontario and what constituencies belong to this region.
2. Does your region have above average, average, or below average influence on the outcomes of legislation and policy at Queen’s Park compared to other regions. Please explain.
3. Do you think your region gets above average, average, or below average provincial funding and resources compared to other Ontario regions? Please explain.

One would suspect that the answers from MPPs would break down along partisan lines. While some did, there were a variety of answers from members of all parties. Regions of the province that one would expect would perceive to be getting fewer investments and have less influence did acknowledge that they do in fact get their fair share compared to the rest of the province.

Out of twenty-six interviews conducted, eleven were with Liberal MPPs (42% of interviews conducted; 22% of the Liberal caucus); eleven were with Progressive Conservatives (42% of interviews conducted; 31% of the PC caucus), and four were with the NDP (15% of interviews conducted; 22% of the NDP caucus). The participants came from all around the province representing almost every area except for London, Ottawa and the Niagara Region. Interview requests were sent out to all MPPs except for the Party leaders.

While there are different regional funds set up to foster growth and development in different regions of Ontario, there are perceived deficits in government investment. The interviews with the MPPs found that there is a discrepancy in what they think their region should be getting and what they think they are actually receiving. The biggest discrepancies were found in Eastern and Northern Ontario. Specific constituencies in other regions may perceive themselves as having less than average influence on policy outcomes and provincial investments, but the region as whole in which these constituencies are found tend to have an average perception.

The Members of Provincial Parliament interviewed from the Greater Toronto Hamilton Region (GTHA) did acknowledge that their region gets average or above average influence on policy and provincial financial investments. From this region twelve interviews were conducted, four of which came from Toronto proper. The MPPs from this region say that it receives more because of demographic weight and not necessarily because of the party in power. Given the population centred in this area, there is a level of efficiency in providing services, infrastructure, etc., that makes spending per capita less than other areas of the province. For example, due to its sparse population over a vast territory, providing the same level of services in the North is inherently going to cost more.

Economies of scale play a major role in the ability of the GTHA to receive programs, funding and to wield influence. In Toronto proper there are 23 constituencies, with 48 in the GTHA, which means that this region holds clout in the legislature and the policy making process. Even though the general sentiment from those interviewed from this region is that they get their fair share in resources, the

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47 Party leaders were not sent the questionnaire since it was determined that they would not have the time to respond.
48 For the purposes of this paper the GTHA excludes the ridings of Niagara West Glenbrook, Welland, Niagara Falls, and St. Catharines. MPP’s interviewed referred to this area as the Niagara region. Although the riding of Niagara West Glenbrook has a part of Hamilton in its boundaries, many consider it to be part of the Niagara peninsula.
Opinions from the MPPs on specific policy issues are quite heterogeneous. Due to the demographics and development of different constituencies, some feel like they do not get the same level of funding for certain programmes or feel disadvantaged since they do not have certain health care, university, infrastructure, etc., projects coming into their area. From the interviews with these MPPs it is clear that while there is an acknowledgement that the GTHA has significant influence and receives a great amount of resources, it is seen as justified because of the population weight of the region.

Northern Ontario faces its own unique challenges due to the fact that it has about seven percent of the province’s population but occupies eighty-nine percent of the landmass. Of the eleven ridings considered to be in Northern Ontario by Elections Ontario, five of the MPPs were interviewed. There was a general sentiment that alienation from the decision making process is a real issue the North. Toronto-centric decision-making is perceived to negatively impact the North but satisfies urban stakeholders. Again, this is a group of interviewees that do not hold a homogeneous opinion. One northern MPP identified that their constituency as “no better and no worse” than other areas of the province. Meanwhile others believe that the North has less influence but receives an average amount of funding per capita. There are also opinions that are on the extreme, ranging from where the North is extremely disadvantaged and forgotten about, to the North having great influence (including its own cabinet committee) and receiving above average funding. Compiling the median answer for the responses from this region would indicate that the North has below average influence on policy outcomes and receives average funding from the government.

From Eastern Ontario, two interviews were completed with elected members from the area. The MPPs interviewed from Eastern Ontario feel as if the rest of the province tends to ignore them. One of the MPPs interviewed from this region proposed that maybe the region does not see as much attention as the rest of the province because it is the oldest part of the province and has done well in the past. The interviews revealed that Eastern Ontario prefers when Ottawa is considered its own region for provincial funding and programmes purposes since it significantly skews the region’s statistics upwards, that is, when Ottawa is included the region as a whole appears better off than what is actually the case. While there is an Eastern Ontario Development Fund to help local businesses, there is the sentiment that besides the hubs of Kingston and Ottawa, the region is underfunded in Healthcare dollars and other services. The conclusions that are to be drawn for this region of the province are limited since only two interviews were conducted with MPPs from the area. It is difficult to extrapolate for the entire region but there is a perceived democratic deficit in Eastern Ontario given their limited ability to influence policy and funding programmes and services at Queen’s Park.

Western/South Western Ontario MPPs have varying perspectives on their influence on policy and the amount of investment their region receives. Some MPPs from mainly rural ridings say that they do not receive their fair share of funding, however have been able to effectively influence decision makers to help to address the needs of their constituents. More attention has been focused on this region since the 2008 recession with the creation of the South Western Ontario Development Fund and the bailout of the Auto/manufacturing sector. The responses indicate that there is a general sentiment that

49 Interview with a Northern MPP on April 24, 2013
51 Interview with a Northern MPP on April 18, 2013
52 Interview conducted April 22, 2013
53 Interview conducted May 1, 2013
Western and South Western Ontario have an average amount of influence on policy outcomes. The MPPs interviewed are divided on whether or not the region receives average or below average funding.

The interviews confirm that there are perceived deficits based on region. These deficits are seen differently across the province. Some of the MPPs interviewed from outside of the North believe that that region of the province gets as much, if not more, in provincial funding per capita than other regions. Some see this as necessary while others see it as disadvantaging their region. Another conclusion reached is that the more populated urban areas tend to be the hub of a region, which sees more provincial investment and resources than the surrounding rural constituencies. For example, the North has five city centres that are perceived to get more investment compared to the rest of the region. In the rest of the province the resource/service hub dichotomy is seen to exist as well.

In 2004 there was a snapshot study conducted by various political scientists across the country on democratic deficits in eleven different cities. Three Ontario cities (Toronto, Ottawa and Hamilton) were profiled in the Electing a Diverse Canada study edited by Caroline Andrew, John Biles, Myer Siemiatycki, and Erin Tolley. The researchers for the three different chapters used census data on the female population, ethnic minorities and immigrants to compare the percentages to that of elected representatives at the municipal, provincial and federal levels in each city. It highlights the importance of reflecting the country’s diversity in its political institutions. The conclusions from this point-in-time analysis correspond with the findings of this paper’s statistical comparison. Although this volume mainly focuses on the discrepancy between ethnic minority and immigrant populations and their visible representation at all levels in those cities, it still provides an interesting analysis proving that democratic deficits across the province and country exist.

A complex relationship exists between the electorate and their elected representatives. Elected politicians are not the only avenue for disadvantaged populations to have their voices heard, however they are an important and visible channel in the policy, legislative and decision-making processes.54 The study compiled by Andrew, Biles, Siemiatycki and Tolley proves that populations not adequately represented in our formal political institutions are finding non-electoral methods to attempt to influence policy outcomes55. It also demonstrates, as with the case of Toronto, that lacking minority representation does not mean that progressive policies will not be implemented56. This shows that policies can be implemented on behalf of the constituents the elected member represents even if that member is not from the disadvantaged group. Although this may be the case in this study, it may not always be true. The study does address the fact that there is value in seeing the diversity of the country reflected in the governing institutions to demonstrate to society that there is not one type of person able to be involved in formal politics.

Although our methodology is limited due to resources, the comparison of the statistics with the semi-structured interviews demonstrates that representational democratic deficits do exist in Ontario. The cross-Canada study co-ordinated by Andrew et al, was used to further identify that there is a

54 Andrew, Caroline, John Biles, Myer Siemiatycki, and Erin. Tolley., p. 5
discrepancy between the composition of the population and what is reflected in the governing institutions.

**Australia: A case study in Parliamentary Democracy and Legislative Councils**

Australia provides a relevant case study since it is the only parliamentary democracy that has upper houses at the sub-national level. Most other parliamentary democracies have only the federal upper house, as in Canada. Since its federation in 1900, Australia’s legislative councils have undergone various transformations, including abolition in Queensland in 1922. Australia shares many traits with Canada, such as being Commonwealth, federal, parliamentary-democratic states, with special constitutional relationships with their respective indigenous peoples, and occupying massive national territories that are relatively sparsely and unevenly populated.

There are three different types of Legislative Councils in Australia. These upper chambers are strongly bicameral according to the three pronged test developed by Arend Lijphart. Australia has found a unique purpose for its legislative councils that was not fulfilled by the State Legislative Assemblies. Over the past century the councils have had to evolve to establish a relevant role within the State parliamentary system of government rather than remaining a reactionary check on the popular will of the lower house. The constitutional powers of the upper houses are fundamentally different from their lower house counterparts: they lack the authority to introduce taxation and appropriation bills and there are provisions in different houses over the ultimate decision making power of the lower house. This means that there is a limit to the veto power of the Legislative Councils.

Over the past century the Legislative Councils have undergone a process of democratization and further legitimization. As stated, in the first half of the twentieth-century, Queensland addressed its issue of a legitimacy-deficit, that is, a membership determined by appointment, by eliminating its council. As for the remaining Australian States, once their upper houses became elected, they satisfied the incongruence factor set out by Lijphart. The institutional mechanisms to elect the legislative councillors as well as their terms of office were different and staggered from the lower house. This meant the electoral cycles varied from the lower house, which resulted in a muted partisan outcome and allowed representatives to avoid being driven by short term electoral impulses. The goal of this was to weaken the loyalty of the representatives to their party and to create more independence.

In the second half of the twentieth-century, three major reforms to Australia’s democratic practices, once again, changed the nature of the Legislative Councils: further democratization; the harmonization of the electoral cycles; and the adoption of proportional representation. Bruce Stone

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57 Although the relationship between the state and Indigenous Peoples have developed differently in both countries
59 Stone, Bruce (2002). P. 269
60 Ibid, p. 272
61 Ibid
explains that further democratization occurred through the equal apportionment of electorates, regular redistribution of seats, mandatory voting and universal suffrage\(^{62}\). These changes further enhanced the legitimacy of the councils and modified the rationale for their existence\(^{63}\).

The second and third changes resulted in a major shift in the means of producing incongruence and have brought an increased level of partisanship into the electoral process\(^{64}\). Both upper and lower house elections are conducted at the same time. Three of the states (South Australia, Victoria and New South Wales) abolished the fixed terms for the representatives, thereby tying the term of the council to that of the Assembly.\(^{65}\) This can affect the ability to conduct longer term examinations of legislation or studies of particular interests to the committees. Institutional knowledge of issues is now compromised. Western Australia has kept the fixed term for the Council but has reduced the complexity of the member’s rotation. The original model had elections for a third of the seats every two years which shifted to electing the council every three years. This again changed in 1986 when the rotation of elections was eliminated and now there are annual elections over six years.

Disputes in Australia’s bicameral legislatures are solved in a unique way. Should there be a rejected bill by the upper chamber resulting in deadlock, the houses face a ‘double dissolution’ of both chambers of parliament which is then followed by new elections.\(^{66}\) If the new members in both houses cannot get the legislation passed then there may be a joint sitting where all members vote (where the lower house tends to be able to out-vote the upper chamber). As Meg Russell states, “This sets a very high political price for governments wishing to resolve an intractable inter-cameral dispute.”\(^{67}\) This encourages inter-cameral negotiations to avoid a costly election for both houses, and the potential of losing government for the party in power in the lower house.

To the twenty first century and beyond: A modern Legislative Council for Ontario

The new Legislative Council of Ontario will be a modern institution that is able to address the democratic deficits that are evident in this province. This section of the paper will describe the features for the prospective institution that will reflect contemporary Ontario. Election method, regions, logistics will all be discussed as well as the lessons that can be learnt from the current controversies plaguing the Canadian Senate. It is important to discuss the Canadian Senate in this context since this is the country’s only recent bicameral experience.

To be able to properly account for the discrepancy between the female, Aboriginal, and francophone populations and the elected representatives in the Legislative Assembly, the Legislative Council of Ontario should be elected. This would be conducted through an electoral college consisting of members of the Order of Ontario, francophone and Aboriginal organizations and potentially other relevant groups. The election process for the legislative council will avoid the negative aspects of the

\(^{62}\) Ibid, P.275  
\(^{63}\) Ibid  
\(^{64}\) Ibid, P. 276  
\(^{65}\) Ibid  
\(^{67}\) Ibid
patronage appointments in the federal upper house. To ensure that those elected by the electoral college are reflective of Ontario society, the Chief Electoral Officer will instruct the electoral college as to the qualifications required to be a Legislative Councillor, including the percentages needed to rectify the representational deficits in the Legislative Assembly. The electoral college will then recruit, interview and elect candidates that meet that criteria. The Lieutenant General will then formally swear in those who were elected from the electoral college. Political parties should not participate in this process, ensuring a non-partisan process. This way, the Councillors will not be responsible to parties and therefore would be truly independent legislators. This brings electoral legitimacy to the institution. Election through electoral college also avoids a costly and partisan general election. Individuals elected are not barred from having their own political affiliations but are not to attend caucus meetings of specific parties.

The electoral process for the upper chamber is not one with which Canadians are familiar. However, the Americans use the process of electoral colleges. The members of the Order of Ontario are first nominated by the citizens of Ontario, and then are determined by an Advisory Council. This council is composed of the Chief Justice of Ontario (the Chair), the Speaker of the Legislative Assembly (a neutral position), the Secretary of Cabinet, and other distinguished members of the Order of Ontario. The Lieutenant Governor is the Chancellor of the Advisory Council. This process is necessary in order to bestow the province’s highest honour on “[…] any current or former long-time resident of Ontario who has demonstrated a high level of individual excellence and achievement in any field benefiting the people of Ontario or anywhere in the world.”

Without the presence of patronage appointments or official party linkages to the upper chamber in Ontario, the Legislative Council can act as an independent chamber of sober second thought, improving the legislative process. The day-to-day proceedings of Ontario’s Legislative Council will be modelled on the non-partisan spirit of the consensus-style legislative assembly found in the Northwest Territories and Nunavut. Together the members of the Legislative Council would decide on the Speaker of the Council through secret ballot. In the North the Legislators go on to choose who which of their colleagues will fill the position of Premier and Cabinet. The Legislative Council of Ontario would avoid implementing ‘government’ and ‘opposition’ members. This protects the non-partisan nature of the chamber. This allows the members of Council to operate independently and vote for or against legislation based on their perspectives rather than toeing the party line. Members are not allowed to attend caucus meetings or to get direction on how to vote on pieces of legislation from the parties in the Legislative Assembly. It would be, in effect, a “non-whipped” forum.

From the case study and literature, it is evident that upper chambers have fewer members than the lower house. For the new Ontario Legislative Council, it is proposed to have fifty-three members. This is half of the current total of 107 Members of Provincial Parliament. Since the new Legislative Council of Ontario is mainly for legislative review, should the new electoral boundaries be accepted, the number of seats in the upper house would not increase. The province would be divided into eight regions with each region getting the following amount of seats:

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### Table 3: Regional Division of Seats for the Legislative Council

<table>
<thead>
<tr>
<th>Region</th>
<th>Amount of Seats Allocated</th>
</tr>
</thead>
<tbody>
<tr>
<td>North (Parry Sound and North)</td>
<td>North West (West of Sault Ste. Marie) – 7</td>
</tr>
<tr>
<td></td>
<td>North East (Including Sault Ste. Marie and East) - 7</td>
</tr>
<tr>
<td>Eastern</td>
<td>East of Port Hope - 6</td>
</tr>
<tr>
<td>Ottawa</td>
<td>2</td>
</tr>
<tr>
<td>Greater Toronto Hamilton Area (GTHA)</td>
<td>Toronto -3; York – 2; Hamilton – 2; Mississauga – 2; Peel – 2; Durham – 2; total 13</td>
</tr>
<tr>
<td>South West</td>
<td>West of London – 6</td>
</tr>
<tr>
<td>Central</td>
<td>6</td>
</tr>
<tr>
<td>Western</td>
<td>3</td>
</tr>
<tr>
<td>Niagara</td>
<td>3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>53</strong></td>
</tr>
</tbody>
</table>

With this regional breakdown, the Legislative Council counterbalances the influence of the population in the GTHA in the lower house. The sparsely populated but resource rich and large territory of the North is greatly over-represented with more seats than the GTHA. Allocating a greater amount of seats to regions that are composed of rural Ontario was to reflect the sentiments of the current Members of Provincial Parliament about the influence of their regions on policy outcomes at Queen’s Park.

The new electoral college would elect members from these regions as one of the conditions of their election as Legislative Councillors. The enacting legislation creating the legislative council will determine the matrix to be employed by the Chief Electoral Officer for achieving equal percentage totals that reflect the population in terms of the other three democratic deficits discussed in this paper. This does not mean that the upper chamber will be solely composed from representatives from these three groups, i.e. men will still be able to be selected for membership. The electoral college can elect prominent public figures that have been recognized for their efforts in one way or another. The term limits of the councillors will be tied to the length of the Parliament of the Legislative Assembly but can be renewed for a second Parliament if the Legislative Council makeup remains broadly representative of all Ontarians. This way, the Chief Electoral Officer and electoral college can be responsive to minority government situations and still accurately reflect the population in the governing institutions. With this method, there is a wide range of talent from which to choose. Also there is more assurance that you will be able to have members that represent a specific identity group. As discussed in *Elected a Diverse*
Canada, just because those running for election belong to certain disadvantaged groups does not necessarily translate into representing that group’s issues.

As David Shell writes regarding the history of bicameralism, this model enforces the idea of consultation because it includes accessing the counsel from different perspectives. With the ability to choose from the distinguished and accomplished members of the public, the election of women, francophones and Aboriginal peoples from various sectors of society (arts, science, sport, business, etc.), is not just the focus but rather electing those who advocate specifically for these groups’ issues. David Shell states: “In principle a second chamber ought to provide for the mobilisation into a legislature of people whose experience is different, decidedly different, from that which is normal for the first chamber.” This highlights the importance of including the diversity of the population that may not be reflected in the Legislative Assembly.

Through including the two constitutionally protected minorities, the new Legislative Council becomes a modern twenty-first century political institution. Ensuring that Aboriginal Peoples are represented helps the province and the country move past the paternalism of the colonial relationship. This institution promotes shared decision-making and self-governance. Provinces are enacting legislation (environment, resource development, infrastructure, etc.) that inherently affects Aboriginal peoples. This new institution formalizes an aspect of consultation but also ensures that the perspective of Aboriginal peoples is heard in the provincial parliament. Due to the pluralistic characteristics of the Ontario population, the election method for Aboriginal and Francophone members of the electoral college are not specified. There may be varying levels of willingness to participate in this new system from these groups of organizations. Therefore, those that wish to participate will enter negotiations on how many electoral college members they will nominate to participate in the election process of council members.

Melissa Cernigoy addresses in her paper the various deterrents to Aboriginal participation in the provincial legislative process. Historical exclusions and marginalization of Aboriginal peoples in Canada can help to explain non participation in the legislative bodies. Other potential reasons listed for deterrence include the party system, style of legislature, and differences in political culture. The proposed legislative council of Ontario takes these factors into consideration. Through a non-partisan process that is removed from political parties, that confrontation is eliminated. Many of the adversarial components of the current system that deter Aboriginal participation are not present in the council. By adopting the consensus model, the council members are independent and encouraged to think holistically. This council would be a thoroughly modern institution and would help move the province beyond a colonial relationship.

The formal powers of the legislative council will be limited compared to the powers given to the unelected Senate. The Westminster Parliamentary system has the ability to produce minority parliaments, therefore the issue of the House having confidence in the government and democratic accountability must be considered when creating a new legislative body. The focus of the new

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70 Shell, David. P.6
71 Ibid, p. 17
73 Ibid, P.10 and 11
institution will be the examination of legislation and improving bills through the amendment process. The legislative council will not have the authority to veto legislation like their federal counterparts. This eliminates stalemate in the legislative process. By not including the veto power, the size and length of disputes and delays between the two houses will be minimized. This process is much simpler than the dispute resolution mechanisms seen in Australia’s state upper houses. Also by not including veto power, the uncertainty of the government maintaining confidence in the lower house is eliminated. The upper house will be able to delay the passage of legislation through studying the bills and potentially making amendments, but it will never force the government to fall and trigger general elections. If a bill is not passed by the legislative council and its proposed amendments are not accepted by the legislature, then the will of the lower house will prevail in the end. This is as it must be, as the proposed legislative council would be a creature of the legislative assembly and therefore cannot overrule the constitutionally-founded popular house. The power of the legislative council will rest in its moral authority of persuasion.

The legislative council should have a committee structure to examine legislation, but also to conduct in depth studies on different issues facing the province. They will be able to address these issues with a longer-term perspective than what is seen in the lower house. The Legislative Assembly may also utilize this function of the upper house to its advantage: if the lower house is, for some reason, unable to form a select committee to review a specific issue, this task can be referred to the legislative council.

This paper does not explore the route of adopting proportional representation because it is a topic in political science that is already addressed in a thorough manner. Ontario has recently experienced the electoral reform debate in 2007, when there was a referendum to determine if a Mixed Member Proportional representational model would be adopted. The results of the referendum heavily favoured the First Past the Post system with over 60 percent favouring the status quo. Since proportional representation has already been put to the people of Ontario without success, this paper proposes a new solution to the representational democratic deficits. Some view the real democratic deficit as the weakness of the legislature and the centralization of power. This proposal would strengthen the legislature and combat power centralization. While the lower house would reign supreme on the final decisions, anything coming out of the Premier’s Office would face a second round of scrutiny. The time needed for legislation to go through the legislative council will allow for more time for the media and the public to process and debate the effects of the bills. The likelihood of this substantial institutional change being adopted is quite insignificant, the debate and issues this topic raises contribute to the field of political science.

With the current controversy surrounding the Senate, several proposals have surfaced to reform the federal upper house. These ideas can be translated to the Ontario context to determine how the legislative council should be composed. Gregory Sorbara recently put forward an op-ed in the Toronto Star with his ideas for Senate Reform, which aligns with the plan this paper puts forward. Instead of the Chief Electoral Officer and the Order of Ontario, Sorbara states that the Governor General should select appointees from the Order of Canada to fill the vacancies left by retiring Senators, thereby


75 This idea was originally proposed in a personal conversation with Peter Russell.
delinking the Prime Minister from the process. This system would eliminate the patronage appointments that ultimately make the upper house an objectionable institution. As he says the Senate would become an “[…] Upper House of sober — and truly independent — second thought […]”\textsuperscript{76}. While still not elected, this would bring a level of reform that has the ability to rectify the current negative connotations associated with the upper chamber.

In the literature there are strong advocates for both elected and appointed (with conditions) upper houses. Prior to forming government, Prime Minister Stephen Harper strongly advocated for an elected Senate and has since referred the issue of Senate reform to the Supreme Court\textsuperscript{77}. Michael Lusztig advocates for a Triple –E Senate (elected, effective and equal), which had broad appeal in Western Canada. The basis of this proposal is to adequately safeguard regional interests in the national political institutions.\textsuperscript{78}The argument for an elected Senate is based on the idea that the “[…] appointment of senators by the federal government seriously compromises the chamber’s mandate to represent the regions or provinces.”\textsuperscript{79} The appointment process from the party in power leads the Senators to succumb to the will of the party to which they belong, rather than truly representing regional interests.\textsuperscript{80}The idea of a Triple-E Senate is important to consider for a new Legislative Council of Ontario. The ‘elected’ part of the proposal satisfies the legitimacy test of strong bicameralism.

As the country has recently experienced, there is an issue with funding upper chambers. Some sort of stipend would have to be given to the members of the legislative council. The stipend would be enough so that the chamber does not end up with membership entirely from a specific socio-economic class and of a certain age group. There would be no pension for the members since there is none for the MPPs. The selected officials would have to have the staffing resources to be able to function and do their duties as legislative councillors. There may be spinoff costs in terms of the need for more committee and table clerks, as well as legislative researchers. Space for offices and a chamber are issues that need to be addressed but are beyond the scope of this paper at this time. There are financial costs to this proposal; however they are justified since it is difficult to quantify the value of increased diversity in representation and the other positive outcomes associated with bicameralism.

As per Lijphart’s model of strong bicameralism, the new Legislative Council of Ontario should satisfy the three pronged test criteria. The first test is based on differentiating constitutional powers between the two chambers. This is satisfied with the Ontario case\textsuperscript{81} because the upper chamber is limited in the way it can act as compared to the lower house. The legislative council also passes the second test of electoral legitimacy. By being an elected institution, the public perceives that there is more legitimacy to bestow upon this institution compared to a body that is appointed. The third and final test of strong bicameralism involves the mechanisms to create the incongruent composition of both houses. The Legislative Assembly is composed of elected representatives from 107 constituencies using the first past the post system. This is in contrast to the upper house which is divided into eight regions with 53 seats in total and selected through an electoral college governed by the Chief Electoral Officer. With the new legislative council passing these three tests, it will be a strongly bicameral institution.

\textsuperscript{76} Sorbara, Gregory. (2013)
\textsuperscript{77} It was previously referred in 1980
\textsuperscript{79} Ibid, p. 42
\textsuperscript{80} Ibid, p. 43
\textsuperscript{81} Even though the Legislative Council will not be entrenched in the constitution.
Conclusion

Ontario is not the only province dealing with democratic deficits; it is an issue the entire country must address. This paper proposes the re-introduction of a legislative council in Ontario to compensate for regional, gender, Aboriginal and francophone representational deficiencies in the Legislative Assembly. This paper is not advocating the reintroduction of Ontario’s nineteenth-century Legislative Council, but rather the creation of a thoroughly modern upper chamber to address 21st-Century and beyond Ontarian democracy. The creation of this new institution was informed by bicameral theory and a case study of the legislative councils present in five of six Australian states. Through semi structured interviews with 26 Members of Provincial Parliament and a comparison of statistics, it was determined that democratic deficits do exist in Ontario. This paper contributes to the recent discussion of the role of bicameralism in Canadian politics. Strongly bicameral parliaments around the world prove that the upper house can greatly improve and benefit the legislative process. Moreover, by having regional and other sectional interests represented in an effective upper house, strong bicameralism will also allow for the lower house to be constituted far more closely to the democratic ideal of Representation by Population, as opposed to the current situation in which this principal is greatly mitigated by trying to reconcile two contradictory objectives (“Rep by Pop” and “Rep by Community”) within a single house. The Province of Ontario, should it choose to enact such a fundamental reform of its parliament, will not just broaden and deepen Ontario democracy, but inevitably that of all of Canada.

Bibliography


—. *Age & Sex (2001 Census)*. Not provided.


