

# **Beyond Triple-E and Abolition:**

## **A Radically Democratic Third Option for Senate Reform**

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There is no doubt that many Canadians, including both citizens and politicians, are ready for action on Senate reform. According to a July 2011 Angus Reid survey, over 70 per cent of Canadians support Senate reform of some sort, including 34 per cent in favour of abolishing the Senate altogether.<sup>1</sup> Meanwhile, after appointing 46 senators over the past five years,<sup>2</sup> Prime Minister Stephen Harper's majority government is finally ready for action on Senate reform. Unwilling to risk a divisive constitutional debate, Harper's *Senate Reform Act* will forever remain a poor cousin of the "Triple-E"—equal, elected and effective—Senate. But it has nonetheless set the stage for a dramatic showdown between two alternatives on Senate reform: election or abolition.

While the idea of an elected Senate dates back to the Confederation debates, the Triple-E proposal can be traced to a 1981 report by the Canada West Foundation entitled *Regional Representation*.<sup>3</sup> The idea subsequently entered popular discourse as a plank in Reform Party's platform during the 1988 federal election; however, aside from the failed 1992 Charlottetown Accord, legislative action to establish a Triple-E Senate seemed unlikely until Harper's Conservative Party won a minority government in 2006. Initial Conservative efforts to establish 8-year term limits (beginning with Bill S-4 in 2006) and "consultative elections" (beginning with Bill C-43 in 2006) were left to die on the order paper, but the current majority government should not have the same difficulties. While debate remains about the constitutionality of such legislation, which tries to modify important characteristics of the Senate without seeking the

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<sup>1</sup> Angus Reid, *Seven-in-Ten Canadians Want to Directly Elect Their Senators* (Vancouver, July 2011), [http://www.angus-reid.com/wp-content/uploads/2011/07/2011.07.12\\_Senate\\_CAN.pdf](http://www.angus-reid.com/wp-content/uploads/2011/07/2011.07.12_Senate_CAN.pdf).

<sup>2</sup> See: Parliament of Canada, 'Appointments to the Senate by Prime Minister', *Appointments to the Senate by Prime Minister*, June 25, 2011, [http://www.parl.gc.ca/parlinfo/compilations/senate/Senate\\_NominationByPM.aspx](http://www.parl.gc.ca/parlinfo/compilations/senate/Senate_NominationByPM.aspx). Harper has actually appointed 48 senators in total, but two of these, Burt Brown and Betty Unger, were drawn from Alberta's list of elected 'senators-in-waiting.'

<sup>3</sup> Peter McCormick, Ernest Manning, and Gordon Gibson, *Regional Representation: The Canadian Partnership: A Task Force* (Calgary: Canada West Foundation, 1981).

consent of the provinces,<sup>4</sup> the more significant issue is the overall value of an elective proposal. Historically the major argument against an elected Senate has been that having two elected chambers would lead to “deadlock” because both would be seen as having equal democracy legitimacy.<sup>5</sup> Taking a very different approach, the premise of the following paper is that the problem with any proposals for an elected Senate not the possibility of deadlock, but rather fundamental assumption that instituting elections will enhance Canadian democracy.

If an elected Senate will not enhance Canadian democracy, the clear alternative seems to be to abolish it. Indeed, this has been the position of various left-wing movements in Canada starting as early as the 1920s.<sup>6</sup> The 1933 founding statement of the Cooperative Commonwealth Federation (CCF), the predecessor of the New Democratic Party (NDP), called the Senate a “bulwark of capitalist interests” that provided a “standing obstacle to all progressive legislation.” The NDP’s first statement, the 1961 New Party Declaration, reaffirms the CCF’s call to abolish the Senate, and the party remains committed to this position today. While the rhetoric is considerably toned down, the basic rationale continues to be the undemocratic nature of an appointed body, combined with the need to improve the functioning of democracy within the House of Commons rather than fragment it by introducing a second elected chamber.<sup>7</sup>

It is certainly true that an elected Senate would be an advance on the current arrangement, where the Prime Minister fills the Senate with loyal party supporters and strategists who were

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<sup>4</sup> For an overview of the constitutional issues with the recent Senate reform bills, see: John Whyte, ‘Senate Reform: What Does the Constitution Say?’, in *The Democratic Dilemma: Reforming the Canadian Senate*, ed. Jennifer Smith (Montréal: McGill-Queen’s University Press, 2009), 97–109.

<sup>5</sup> See e.g.: John A. Macdonald, ‘Legislative Assembly, Monday, February 6, 1865’, in *Parliamentary Debates on the Subject of the Confederation of the British North American Provinces* (Quebec: Hunter, Rose, 1865), 36–37; George Brown, ‘Legislative Assembly, Wednesday, February 8, 1865’, in *Parliamentary Debates on the Subject of the Confederation of the British North American Provinces* (Quebec: Hunter, Rose, 1865), 88–89.

<sup>6</sup> Robert MacKay, *The Unreformed Senate of Canada*, Rev. ed. (Toronto: McClelland and Stewart, 1963), 175–176.

<sup>7</sup> Cooperative Commonwealth Federation, ‘Regina Manifesto’, 1933, sec. 9; Alan Whitehorn, *Canadian Socialism: Essays on the CCF-NDP* (Toronto: Oxford University Press, 1992), 41–42, 58; New Democratic Party of Canada, ‘Giving Your Family a Break: Practical First Steps’ (Election Platform, 2011), 23.

unable to make it into the House of Commons on their own. The problem is that an elected Senate would merely mean repeating the stale debates of House of Commons in another, slightly more regionally-based, venue. While abolition may be ultimately be the way to go, it is worth further investigating, debating and even trying alternatives before hastily throwing away the entire institution. To this end, this paper will advocate a third option, and one that I argue is actually the *most democratic* proposal to reform the Senate: turning the Senate into a Citizens' Assembly akin to the ones temporarily set up in British Columbia in 2004 and Ontario in 2006-2007 to study electoral reform. The *Citizens' Senate* proposal is not only viable, but would insert the voice of the common person into politics, reinvigorating political debate and providing an effective counterweight to the extreme party discipline and hollow rhetoric that leaves so many citizens disenchanted with the professional politicians in the House of Commons.

This argument will be made in four main parts. Using the works of Hannah Arendt and Jacques Rancière among others, the first two parts will make the theoretical case for a *Citizens' Senate* by examining the democratic merits of the principle of selection through lottery. The third part will use the experience of the Ontario Citizens' Assembly on Electoral Reform to add a more concrete and practical demonstration of a lottery-based notion of democracy. Finally, the paper will conclude by considering how a *Citizens' Senate* would fit into the various discussions of the purpose and powers of a reformed Senate. It should be noted that the question of regional representation will for the most part be given the short shrift in this paper—while this is a significant reason why Senate reform is so strongly advocated in the West, the main purpose of this paper is to challenge the tendency to equate an elected Senate with increased democracy. A Citizens' Senate could easily be adjusted to fulfill the function of regional representation, as the

conclusion will note; however, it is beyond the scope of this paper to make an argument as to whether this function should be prioritized.

### **The Lottery System: More Democratic than Election?**

What makes a Citizens' Assembly fundamentally different than Canada's current parliamentary institutions is that representatives are chosen through a lottery system (i.e. at random) rather than through election (House of Commons) or appointment (Senate). While in contemporary parlance it is counter-intuitive to suggest that random selection is more democratic than election, there are good reasons for this conclusion. In fact, the lottery principle held an important place in the first democracy, that of Ancient Athens, precisely to protect against the aristocratic, *undemocratic* tendencies of election.

Of course, one cannot expect to win many contemporary arguments by appealing to a society that existed almost 2500 years ago and had a litany of significant problems including slavery and the exclusion of women from citizenship. More commonly, Ancient Athens is rejected as a point of comparison because its small size allowed a relatively direct democracy, which, it is argued, is simply not possible in today's massive representative democracies. But, as Bernard Manin rightly argues in *The Principles of Representative Government*, this last argument is unfounded. The original design of today's systems of representative government had nothing to do with the size of society; rather, the forms of elected representation we see today were designed so that wealthy aristocrats could *filter* the voice of the people and *restrain* democracy, as is clear in writings by people like US Founding Father James Madison.<sup>8</sup>

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<sup>8</sup> Bernard Manin, *The Principles of Representative Government* (New York: Cambridge University Press, 1997), 2, 8-9. On the oligarchic nature of election, see also: Jacques Rancière, *Hatred of Democracy*, trans. Steve Corcoran (London: Verso, 2006), 53.

At the same time, Ancient Athenian democracy was not entirely direct—it gave representatives who were selected by lot many important political responsibilities. The main body of Athenian democracy was the Assembly, an institution of direct democracy that consisted of all Athenian citizens. But the Council of 500, a body chosen by lot, carried out what would now be considered the executive functions of the Assembly, including agenda preparation and the implementation of its decisions. The fact that selection by lot played such an important role in Athenian democracy is not surprising given the views of the time. In *The Politics*, Aristotle does not even feel the need to explain why lot is more democratic than election, as this is common knowledge: arguing for a mixture of the two regimes, he simply states that “it is held to be democratic for officials to be chosen by lot, and oligarchic by election.”<sup>9</sup>

Why would this statement, which is so counter-intuitive today, be common knowledge in democratic Athens? Drawing from a variety of sources, Manin aptly lays out the three main reasons why the Greeks associated democracy with selection by lot. First of all, because they believed that humans were inherently “political animals” (as Aristotle put it), the Greeks had a very comprehensive definition of political participation as *ruling and being ruled in turn*. Since election inherently favours those who are well-known and popular, selection by lot is the best way to ensure *all* citizens rotate between ruling and being ruled. Second, they saw democracy as opposed to professionalism—they accepted that expertise was important in some circumstances, but argued that its necessity should be proven and its role restricted to protect the power of the *demos*. While professional politicians could use oratorical skills, for example, to improve their electoral chances, lot ensured that non-professionals would be well-represented. Finally, as

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<sup>9</sup> Aristotle, *Politics* (Indianapolis, IN: Hackett Publishing, 1998), Bk. IV, chap. 9, 1294 b5–10.

opposed to the modern idea of an equal right to run for office, selection by lot met a more substantive definition of political equality as the equal “possibility of exercising power.”<sup>10</sup>

Now, the first and third reasons—the inherently political nature of humans and the equal possibility of exercising power—may not be all that convincing in today’s liberal democratic society, where political participation is often equated with voting every four or five years and freedom includes the right to be apathetic. But, the second reason, the distrust of professionalism, is as strong today as it was in Ancient Greece. From Toronto Mayor Rob Ford to former US President George Bush, a number of successful politicians are best known for their straight-talking or ‘folksy’ character. Indeed, during Canadian election campaigns, it is a cardinal sin for a party leader to be captured sipping a latte rather than a Tim Horton’s coffee, as the latter suggests one is ‘of the people’ rather than a part of the disconnected intellectual elite.<sup>11</sup> Of course, these are just photo opportunities, which say nothing about how in touch the leaders actually are with day-to-day life. But if there is any value to idea that political representation should try to reflect the diverse backgrounds and experiences of the Canadian people, basing a chamber of Parliament on selection by lot would seem to be the best way to go.

It is impossible for any select group to perfectly mirror the population at large. Selection by lot, however, would guarantee greater diversity because it is not distorted by factors such as the considerable funds needed to wage a political campaign or favouritism within political party hierarchies. To take just one example, think about gender parity. In the aftermath of the 2011 Canadian federal election, 25 per cent of Members of Parliament (76 of 308) are women, a

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<sup>10</sup> Manin, *The Principles of Representative Government*, 28–41.

<sup>11</sup> Susan Delacourt, ‘Is the U.S. Tea Party Seeping into Tim Horton’s Territory, Canada?’, *Toronto Star*, September 10, 2010, IN1.

historical high.<sup>12</sup> By contrast, a random selection procedure would tend to choose around 50 per cent women because women comprise around 50 per cent of the Canadian population (though of course there is a greater chance of aberrations with a small sample size). More importantly, though, a lottery system would necessarily select a diverse range of women who have had different experiences with and thus different insights to offer on the nature of the Canadian government's policies and programs.

There are some obvious objections to selection by lot, as should be apparent in emphasis on diversity above. Emphasizing diversity means that you will get people from all walks of life—of all social backgrounds, of all levels of 'intelligence', of all levels of dedication. However, the belief that *most* Canadian people are too incompetent or too lazy to learn, debate and deliberate on political matters suggests that there is little hope for the society to begin with. More importantly, the case for democracy, the rule of the many, is based not on the abilities of each individual but on those of many people *together*. Aristotle rightly recognized this in what remains the most fundamental defence of democracy (even though Aristotle was not a democrat): "For the many, who are not as individuals excellent [humans], nevertheless can, when they have come together, be better than the few best people, not individually but collectively... For being many, each of them can have some part of virtue and practical wisdom, and when they come together, the multitude is just like a single human being, with many feet, hands, and senses, and so too for their character traits and wisdom."<sup>13</sup>

While the people are allowed to use their collective judgement to elect representatives today, there are two main problems with this notion that democracy equals periodic elections. First of all, the act of voting is an isolated, individual act that does not require collective debate.

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<sup>12</sup> See: Parliament of Canada, 'Women - Federal Political Representation: 1867 to Present', January 10, 2012, <http://www.parl.gc.ca/Parlinfo/compilations/parliament/WomenRepresentation.aspx>.

<sup>13</sup> Aristotle, *Politics*, Bk. III, chap. 11, 1281 a40–b10.

As influential 20<sup>th</sup> century political theorist Hannah Arendt quipped, “the booth in which we deposit our ballots in unquestionably too small [for all of us to come together and determine our fate].”<sup>14</sup> Second and more obviously, there is no way to ensure the voice of the people is heard between elections. Elected representatives will always be torn by competing pressures such as towing the party line, and have every interest in devoting the often considerable financial resource and connections at their disposal to ensure they *appear* to be upright and in touch with their constituency regardless of what they actually believe and how they actually behave in, for example, the back-room negotiations where much of modern politics takes place. An elected Senate would merely replicate these problems, which have already contributed to significant voter apathy in recent federal and provincial elections. In fact, it is not surprising voter participation rates have steadily declined in that the last half of the 20<sup>th</sup> century, the period in which professionalism and image came to dominate politics to an unprecedented degree.<sup>15</sup> Federally, voter participation dropped from a high of 79.4 per cent in 1958 to a historic low of 58.8 per cent in 2008, and has generally hovered around 60 per cent for the past decade.<sup>16</sup>

Since the Citizens’ Assembly model is based on selection by lot, it would not directly affect voter turnout; however, turning the Senate into a Citizens’ Assembly has the potential to affect broader knowledge about and interest in political matters by offering a space where the nature of political debate is fundamentally different. Debate would no longer be the predictable and predetermined back-and-forth exchanges where the opposition constantly calls for

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<sup>14</sup> Hannah Arendt, ‘Thoughts on Politics and Revolution: A Commentary’, in *Crises of the Republic* (New York: Harcourt Brace Jovanovich, 1972), 232.

<sup>15</sup> The reason for this is a combination of advances in communications technologies and associated institutional developments. The former are fairly well-known; the latter include the dramatic expansion of image-oriented fields like public relations and advertising. See, e.g., Dennis Wilcox and Glen Cameron, *Public Relations: Strategies and Tactics*, 8th ed. (New York: Pearson Education, 2008), 59–64.

<sup>16</sup> Elections Canada, ‘Voter Turnout at Federal Elections and Referendums’, January 16, 2012, <http://www.elections.ca/content.aspx?section=ele&dir=turn&document=index&lang=e>.

resignations and the government responds with continual efforts at damage control. Rather, debate would be based on collectively exploring in real time the merits and pitfalls of different approaches to political issues. At the very least, then, a Citizens' Senate would be an effective complement to the professionalized, partisan politics of the elected House of Commons, just as the lottery system was used as a complement to the Athenian institutions of direct democracy. There are good reasons to think, however, that a Citizens' Senate could eventually take on a much more prominent role in Canadian politics, gradually coming to outshine the House of Commons. To see why, this paper will first look more deeply into the theoretical case for the lottery system, and then it will proceed to examine one of Canada's previous Citizens' Assemblies.

### **The Theoretical Case for Selection by Lot: "Democratic Reason" and Equality**

Beyond its widespread acceptance in Ancient Athenian democracy, the case for adopting the principle of selection by lottery for the Senate can be broken down into two main arguments, one more practical and the other more ethical in nature. The practical argument is aptly captured in works by Jon Elster and Hélène Landemore, and especially in the notion of "democratic reason" developed by the latter. While the ethical argument could be derived from a variety of radical democratic theorists, Jacques Rancière's idea of the "equality of intelligence" will be discussed here as a particularly forceful defence of the need to recognize the capacities of the people (alternatively, 'the many' or 'the *demos*').

The practical argument for the lottery system can be seen in the earlier quote from Aristotle, which asserts that the merit of democracy is that the many collectively possess more wisdom than a few of the best individuals. The resulting questions are: Why are the many

collectively wiser than the few best? And why does this claim make the lottery system preferable? In response to the first question, Landemore develops the term “democratic reason” to refer to the type of reason at work when the public’s “collective intelligence” is concentrated on an issue. She argues that “democratic reason” is quite likely to produce better decisions than a select group of ‘experts’ or even of the most intelligent individuals because the public collectively possess “cognitive diversity,” a vast range of different perspectives on and interpretations of the world. In particular, the important trait of a large group is that its members use different “predictive models” to understand the world, which is not necessarily the same thing as having, for example, different ideological viewpoints, values or ethnic backgrounds.<sup>17</sup> To put it more broadly, though, the basic idea is that more sides of an issue are explored as the diversity of a group increases, and therefore more complex and innovative solutions can be developed.

Landemore identifies “inclusive deliberation” and majority rule as the two crucial mechanisms through which democratic reason works. With regard to the former, it is obvious that hearing more voices during deliberation means that a more relevant perspectives and knowledge can be brought forward, providing a stronger basis with which to judge the validity of arguments or solutions. The problem, however, is that inclusive deliberation on its own suggests gatherings that are unworkably large and the concept thus evokes the fear of endless debate. For this reason, Landemore’s appeal to majority rule as a second crucial part of the people’s “epistemic competence” is particularly interesting. Examining a number of different theories

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<sup>17</sup> Hélène Landemore, ‘Democratic Reason: The Mechanisms of Collective Intelligence in Politics’, in *Collective Wisdom: Principles and Mechanisms*, ed. Hélène Landemore and Jon Elster (Cambridge, UK: Cambridge University Press, Forthcoming, 2012). While this book is not yet available, an earlier draft of Landemore’s chapter was presented at a 2008 conference and can be found on-line. See: Hélène Landemore, ‘Democratic Reason: The Mechanisms of Collective Intelligence in Politics’ (presented at the International Workshop on ‘Collective Wisdom: Principles and Mechanisms’, Collège de France, Paris, 2008), <http://ssrn.com/abstract=1845709>.

about the epistemic value of majority rule including the Condorcet Jury Theorem (CJT), she concludes overall that majority rule acts as an aggregating mechanism that compensates for some of the errors in the thinking of individual group members—in the aggregate, many errors will cancel each other out. To take just the idealized CJT, Landemore points out that if each person has a 51 per cent chance of being correct on a yes/no question, a group of 10,000 is statistically guaranteed to be right almost 100 per cent of the time.<sup>18</sup>

No doubt this is an idealized scenario that requires participants to be independent and truthful, but it aptly illustrates the power of numbers, especially because it does not even take into account the educative processes of debate and deliberation. Once the positive attributes of cognitive diversity are also taken into account (as Landemore claims is done by Lu Hong and Scott Page’s alternative model of group intelligence<sup>19</sup>), a strong argument can be made for an assembly that is sizable and maximally diverse yet not so large as to make deliberation impossible. While Landemore assumes that this mix can be successfully achieved through election, Manin’s comments about its aristocratic properties should give reason for pause. Indeed, as was suggested earlier, assemblies selected through lottery will by nature tend to be more reflective of the diversity of a given society than elected ones. A section on the rationality of randomization in Elster’s *Solomonic Judgements* reinforces this claim. In particular, he endorses a process of “stratified randomization,” where the lottery process is adapted to guarantee that the random outcome will closely mirror the composition of the population for specified dimensions. For instance, if gender equality is deemed important, a simple method to prevent small sample size aberrations is to pre-sort all candidates as male/female and then choose

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<sup>18</sup> Landemore, ‘Democratic Reason: The Mechanisms of Collective Intelligence in Politics’.

<sup>19</sup> Ibid.. See also: Lu Hong and Scott Page, ‘The Micro-Foundations of Collective Wisdom’, in *Collective Wisdom: Principles and Mechanisms*, ed. Hélène Landemore and Jon Elster (Cambridge, UK: Cambridge University Press, Forthcoming, 2012).

equal numbers of each. Only if this is done, Elster argues, will the full benefits of the lottery system be attained—stratified randomization will ensure roughly equal representation on a number of historically significant dimensions no matter what the size of the assembly, while not taking away from other merits of random selection such as the equal chance of being selected.<sup>20</sup> When considering the Senate, an institution originally designed to be a place of *regional* representation, the importance of stratified randomization becomes quite clear, as the conclusion will explain.

While it may seem odd to associate democracy with intelligent decision-making, it is certainly not odd to extol the ethical virtues of democracy. However, as Cornelius Castoriadis argues, too often democracy is reduced merely to the existence of a *procedure*—the election—instead of seeing it in a more holistic way as an entire *regime*. The problem with a procedural conception is that it disregards fundamental considerations such as the spirit, abilities, resources and knowledge of the people who carry out the procedure, a problem that is demonstrated in extreme form in the ‘elections’ that occur under repressive conditions in dictatorships.<sup>21</sup> As a regime, by contrast, democracy requires not only democratic procedures, but also a people with democratic dispositions. What this means is that the people must be willing and able to engage in a constant questioning of existing institutions, ideas and norms—if the *demos* is not disposed to continually reflect on and potentially revise its views of political matters, it means that, rather than the rule of the people, an object or principle that is *external* to the *demos* is *ruling over it*.<sup>22</sup>

It is only when democracy is conceived as a regime that the full potential of the ethical argument for the lottery system can be seen. For the fundamental principle of democracy as a

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<sup>20</sup> Jon Elster, *Solomonic Judgements: Studies in the Limitations of Rationality* (Cambridge, UK: Cambridge University Press, 1989), 95–96, 113–115.

<sup>21</sup> Cornelius Castoriadis, ‘Democracy as Procedure and Democracy as Regime’, *Constellations* 4, no. 1 (2002): 6–11.

<sup>22</sup> *Ibid.*, 4.

regime is equality, a point rightly emphasized by Rancière in a discussion of Athenian democracy: “The people are nothing more than the undifferentiated mass of those who have no positive qualification—no wealth, no virtue—but who are nonetheless acknowledged to enjoy the same freedom as those who do.”<sup>23</sup> Whereas aristocracy is the rule of those of noble birth and oligarchy the rule of the wealthy, the distinguishing characteristic of democracy is sheer numbers, the rule of the many, who equally lack a claim to rule—they are “of no position” and have “no part.” As Rancière continues, this seeming lack of a claim to rule in fact disguises what the *demos* does add to the community: contention or disagreement.<sup>24</sup> The many use their plurality of voices to express approval or disapproval to the existing order, always in different ways and for different reasons. Because no two people are identical—they have different experiences and experience the same thing in different ways—the outcome of democratic encounters is always unpredictable and in some way new.<sup>25</sup> But such encounters cannot occur unless a certain form of equality between all members of the *demos* is assumed.

The required form of equality is what Rancière calls, following 19<sup>th</sup> century French pedagogue Joseph Jacotot, the “equality of intelligences.” Considering the massive differences that exist in individual educational achievement, this may appear to be a radical statement, and indeed it is. At the most fundamental level, Rancière uses this phrase to challenge the assumption that the world is divided into knowing and ignorant minds, or inferior and superior intelligences—it is this very assumption, he argues, that sets a limit on the capacity of people to learn new things. Thus the only way to truly realize each person’s potential is to instead operate

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<sup>23</sup> Jacques Rancière, *Disagreement: Politics and Philosophy*, trans. Julie Rose (Minneapolis, MN: University of Minnesota Press, 1999), 8.

<sup>24</sup> *Ibid.*, 9–10. The people’s lack of a claim to rule is what Rancière calls the ‘scandal’ of democracy. See: Rancière, *Hatred of Democracy*, 40–41.

<sup>25</sup> This conception of democratic practice is embodied in Rancière’s notions of ‘subjectivization’ and ‘emancipation’. See: Rancière, *Disagreement*, 35–39; Jacques Rancière, ‘Politics, Identification, and Subjectivization’, *October* 61 (Summer 1992): 59–60.

under the presupposition that all intelligences are equal.<sup>26</sup> The importance of this presupposition to a democratic politics is apparent when one considers the core political action: speech.<sup>27</sup> Rancière often describes the equality of intelligences in terms of speech, as the “equality of speaking beings.” It is through speech that political demands are articulated, though they can only have impact, Rancière rightly notes, when “equality...mobilizes an *obligation* to hear.”<sup>28</sup> Unless this obligation is accepted, the voice in question is reduced to a mere animal voice, which is denied the “privileges of the logos,” or reasoned speech. The result is an ordering of beings based on their supposed capacities: “[one] speech is understood as discourse and another as *noise*.” Thus Rancière argues that the core of politics is a “fundamental conflict, never conducted as such, over the relationship between the capacity of the speaking being who is without qualification and political capacity.”<sup>29</sup> The demos, those who possess no claim to rule beyond sheer numbers, must constantly fight to have the “noises” they make understood as speech.

In the end, the practical and ethical arguments for a lottery system coincide to some extent. As Elster puts it, “since all claims to natural superiority are inherently arguable, people must be assigned equal political rights or equal political chances.”<sup>30</sup> While critics of democracy, from Plato onwards, suggest that the result of such equality is some form of ‘mob rule,’ it is quite clear in practice that the result is far from the pejorative connotation that is associated with this phrase. Indeed, the next section will take a brief look at Ontario’s recent use of the Citizens’ Assembly model to show how the lottery system deepens democracy by enhancing political

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<sup>26</sup> Jacques Rancière, *The Ignorant Schoolmaster: Five Lessons in Intellectual Emancipation*, trans. Kristin Ross (Stanford, CA: Stanford University Press, 1991), 39–40, 46.

<sup>27</sup> As Aristotle asserts, ‘a human being is by nature a political animal’ due to the possession of speech, which is an ability for reasoned discourse that is distinct to humans. Other animals possess at most a ‘voice’. See: Aristotle, *Politics*, Bk. I, chap. 2, 1253 a3–18 .

<sup>28</sup> Jacques Rancière, *On the Shores of Politics*, trans. Liz Heron, Radical Thinkers (London: Verso, 2007), 96. Original emphasis.

<sup>29</sup> Rancière, *Disagreement*, 21–23, 29. Emphasis added.

<sup>30</sup> Elster, *Solomonic Judgements*, 120–121.

debate, while also giving a sense of how the Citizens' Assembly model would work if applied to the Senate.

### **The Citizens' Assembly Model**

Ontario's 2006-07 Citizens' Assembly on Electoral Reform (OCAER) was comprised of a chairperson appointed by the provincial government and one citizen from each of Ontario's 103 electoral districts. The 103 citizens were chosen at random, drawn by Elections Ontario from its registered voters list. No person was forced to participate in OCAER—rather, Elections Ontario sent a round of invitations, and then randomly selected again from those who accepted. In sum, all registered Ontario voters had an equal possibility of participating, even if they did not necessarily have an equal desire to do so. At the same time, the process was designed to ensure that the composition of the assembly very closely mirrored the gender, age, ethnicity, and class demographics of the province—the citizen-representatives were in every way ordinary Ontarians.<sup>31</sup>

The assembly existed for a period of about 8 months, and this time can be further divided into three main phases: learning, consultation and deliberation. First of all, the citizen-representatives were instructed of their particular mandate, which in this case was to evaluate the current and alternative electoral systems for Ontario according to the five criteria of legitimacy, fairness of representation, voter choice, party effectiveness and stability. Through individual study, group discussions, simulations, video presentations and guest lectures, they were introduced to the technical mechanics, benefits and drawbacks of each electoral system. They

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<sup>31</sup> Ontario Citizens' Assembly on Electoral Reform, *One Ballot, Two Votes: A New Way to Vote in Ontario: Recommendation of the Ontario Citizens' Assembly on Electoral Reform* (Toronto: Queen's Printer for Ontario, May 15, 2007), 16; Ontario Citizens' Assembly Secretariat, *Democracy At Work: The Ontario Citizens' Assembly on Electoral Reform: A Record of Ontario's First Citizens' Assembly Process* (Toronto: Queen's Printer for Ontario, May 2007), 42–48.

were then sent out listen to and debate with other Ontarians on the issue. Finally, assembly members reconvened to turn these discussions into priority objectives, which suggested a more in depth look at two alternative electoral systems, Mixed-Member Proportional (MMP) and Single Transferable Vote (STV). For each of these systems, a practicable model for Ontario was developed. After vigorously debating the models, the two systems were put in a head-to-head vote, and the winner was pitted against the status quo Single Member Plurality system. In the end, OCAER members opted for MMP, which defeated STV by a 75 to 25 margin and then defeated the status quo 86 to 16.<sup>32</sup>

Of course, it is not the result but the process that is of interest here. The Citizens' Assembly process was clearly quite intense, designed to ensure that the final decision was the product of deep thought and dialogue. Even if a member had the same position at the end of the process as they did at the beginning, what was important is that they reflected and reconsidered their original biases and opinions. The Citizens' Assembly process was, in short, intended to be the antithesis of public opinion polls, which simply tell the public what they already think. In fact, the problem with "public opinion" is much deeper than this, as Hannah Arendt rightly recognized. According to Arendt, "public opinion" falsely homogenizes a wide range of opinions into a single one, rendering the entire idea of "opinion" meaningless in the process. In her words, "opinions are formed in a process of open discussion and public debate, and where no opportunity for the forming of opinion exists, there may be moods—moods of the masses and moods of individuals, the latter no less fickle and unreliable than the former—but no opinion."<sup>33</sup> Whereas public opinion polls capture what Arendt calls "moods," a static and overly tidy picture

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<sup>32</sup> Ontario Citizens' Assembly on Electoral Reform, *One Ballot, Two Votes*, 4, 18–19.

<sup>33</sup> Hannah Arendt, *On Revolution* (New York: Penguin Books, 1990), 227, 268–269.

of the current state of public thinking on an issue, the Citizens' Assembly process aims to bring diverse points of views into conversation, thereby facilitating the formation of opinions.

As this discussion of the formation of opinions makes clear, one of the features that made the Citizens' Assembly more democratic than modern parliamentary politics was the active nature of the citizens involved. In the first place, the citizen-representatives were making the actual decision about which system should be recommended to the Ontario public. In Canadian parliamentary politics, by contrast, citizens are presented with a few predetermined options selected by political party hierarchies, who use party discipline and the considerable media resources at their disposal to hammer home particular talking points about these options rather than attempting to promote a broader public debate or provoke new ideas on the issue.

This leads to the second point: party hierarchies are focused on re-electability and general organizational growth and survival, so what the public *currently* thinks about an issue is particularly important to them. Campaigns of public education are difficult, costly and very risky in political terms, so it is often easier to reverse unpopular policy positions and deal with the fallout for 'flip-flopping' than to try to convince the public of the merits of a policy. There is, no doubt, a democratic element to such reversals in position. In fact, governments commonly defend sudden policy shifts by simply saying that they are following the 'democratic will' of the majority. At the same time, however, the 'democratic will' that governments respond to is that of public opinion polls, which is much different than the education- and debate-oriented process of Citizens' Assemblies. The latter are designed to use dialogue as a means to carefully reflect on existing solutions, adapting them to creatively devise new ones. The "new" element is indeed crucial—for a society that has welcomed such rapid technological change, Canadians have been remarkably resistant to any significant changes to our political institutions. A Citizens' Senate

would offer a space for the ingenuity of the Canadian people to enter the political terrain, allowing new ideas to get a public hearing away from the political calculations and partisan bickering of Canadian party politics.

### **Re-Imagining the Senate: The Purpose and Powers of a Citizens' Senate**

The Senate was intended to be a chamber of regional representation and “sober second-thought,” as Sir John A. Macdonald put it in an 1865 speech.<sup>34</sup> Of course, we are not beholden to these two ideas, which certainly do not exhaust the potential functions of the Senate. Indeed, the later idea alone has evolved over time into two more specific functions for the “modern” Senate: the technical improvement of legislation; and the investigation of policy issues. These last two more specific functions tend to be emphasized by defenders of the current appointed Senate,<sup>35</sup> while proponents of the Triple-E or some other elective Senate tend to base their arguments on the two functions suggested by Macdonald, arguing that the democratic illegitimacy of an appointed Senate impairs its ability to second-guess the House of Commons on matters affecting specific regions. However, with the exception of the technical improvement of legislation, a Citizens' Senate could arguably carry out each of these functions in a way that contributes equally or better to the overall practice of Canadian democracy. This is primarily because a Citizens' Senate would be better able to fulfill a final function often associated with the Senate: reflecting Canadian diversity.

First of all, with regard to the question of regional representation, there is no reason that a Citizens' Senate could not be adapted to serve this function as well as the current arrangement or

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<sup>34</sup> Macdonald, ‘Legislative Assembly, Monday, February 6, 1865’, 35.

<sup>35</sup> See e.g.: C.E.S. Franks, ‘The Canadian Senate in Modern Times’, in *Protecting Canadian Democracy: The Senate You Never Knew*, ed. Serge Joyal (Montréal: McGill-Queen’s University Press, 2003), 168–171, 177–178; Paul Thomas, ‘Comparing the Law Making Roles of the Senate and the House of Commons’, in *Protecting Canadian Democracy: The Senate You Never Knew*, ed. Serge Joyal (Montréal: McGill-Queen’s University Press, 2003), 189–226.

even the Triple-E model. For example, if the desire is to have equal provincial representation in the Senate, as the Triple-E model proposes, the lottery process could easily be modified to randomly choose 10 citizens from each of the provinces plus 2 from each territory. To be sure, modifying the lottery system in this way would mean that, strictly speaking, citizens no longer have an *equal possibility* of exercising power because the odds of being chosen would be lower in a more populous province (or region).<sup>36</sup> This is not necessarily a problem, however, so long as it is recognized that opting to prioritize equal provincial representation means sacrificing some degree of ‘fairness’ in favour of, as Roger Gibbins and Robert Roach put it, “strengthening federalism.”<sup>37</sup>

While a Citizens’ Senate can be modified to address the function of regional representation, the more interesting question pertains to the function of “sober second-thought.” It is not entirely clear what this phrase means, not to mention how it is best attained (if it in fact should be). For Macdonald the phrase meant that the Senate would act as a “substantial check” on the House of Commons, acting “calmly” and independently to prevent any “hasty or ill considered legislation” from being passed. But Macdonald also went on to assert that Senators would be a group of “gentlemen” who were nonetheless “men of the people, and from the people,” and argued that an appointed Senate would help keep Canada safe from the danger of an “unbridled democracy.”<sup>38</sup> Taken together, these ideas reveal that, in its original meaning, “sober” was in many ways a euphemism for “elite,” a point that is confirmed by looking at who the first

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<sup>36</sup> In this sense the idea of pre-sorting by province is different than the idea of “stratified randomization” outlined earlier. If pre-sorting is merely designed to ensure that the outcome matches the existing composition of the population, the possibility of being selected remains the same despite stratification. For instance, if there are 100 people, 50 of which are female and 50 of which are male, the chance of being chosen remains the same no matter if we take 2 out of 100 or 1 out of 50. The scenario is different if we are selecting from provinces of very different populations.

<sup>37</sup> Roger Gibbins and Robert Roach, *A New Senate for a More Democratic Canada* (Calgary: Canada West Foundation, 2010), 8.

<sup>38</sup> Macdonald, ‘Legislative Assembly, Monday, February 6, 1865’, 36–37, 44.

Senators were: they were a collection of politically partisan businessmen, landowners and professionals, with their wealth assured by a substantial property qualification of \$4,000.<sup>39</sup>

Inflation has made the property qualification insignificant today, but the composition of the Senate has not changed all that dramatically, save for the introduction of women. Many appointments are acts of political patronage, with Stephen Harper's choice of three losing candidates from the May 2011 election only one of many examples.<sup>40</sup> While professional or business backgrounds remain crucial, it seems that public notoriety may be becoming a more important criterion, with Harper's other recent appointments including a skier, a NHL coach, a former football player and CFL commissioner, a police chief and three journalists.<sup>41</sup> These appointments put into question the additional idea that "sober second-thought" requires technical expertise, with one of the Senate's main tasks being a careful reading of bills for errors and oversights. While this is a common argument put forward by defenders of an appointed Senate, given that not all appointees possess legal or constitutional expertise, it is not the appropriate body for such a task.

The larger question, though, is whether significant technical expertise *in some field* should be the necessary background to being a Senator. The idea would essentially be that a professional background is a symbol of certain level of educational achievement. In this view, professional expertise would essentially act as a proxy for what Macdonald described as independence, ensuring that the Senate could comprise a check on the House of Commons because its members had the knowledge, status and income to rebuff the powerful executive

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<sup>39</sup> For a brief account of the backgrounds of current and past Senators, see: Parliament of Canada, 'Senators', February 6, 2012, <http://www.parl.gc.ca/parlinfo/Lists/senators.aspx>.

<sup>40</sup> Scott Stinson, 'PM Rewards Success with Cabinet...And Failure with Senate', *National Post*, May 19, 2011, A1.

<sup>41</sup> Gloria Galloway, 'PM Seizes the Day with Stacked Senate', *Globe & Mail*, December 23, 2010, A8; Gloria Galloway, 'PM Appoints New Senators, Many with Tory Ties', *Globe & Mail*, January 7, 2012, A7.

branch.<sup>42</sup> But while professional accreditation signifies educational success, there is no necessary reason why this means that a professional possesses better judgement than non-professionals. In fact, the relatively standardized professional curricula could be interpreted as implying a narrow frame of reference, and thus a certain unwillingness to be open to new perspectives and ideas. At any rate, what matters in a democracy is the *collective ability* of the multitude, not the individual talents (or shortcomings) of each member on their own. Just as a jury has no expertise on a specific case or even the law in general when they are selected, the entire idea of a Citizens' Assembly is that they hear the different facts and perspectives, and then deliberate on the issue.

Another form of 'independence'—partisan independence—may in fact be more important to ensuring that the Senate can act as an effective check on the executive, a function that is especially important in light of what Donald Savoie aptly describes as the increasing concentration of political power in the hands of the Prime Minister and their “small group of carefully selected courtiers.”<sup>43</sup> Indeed, the reason that defenders of the appointed Senate suggest it is well-positioned to perform 'checking' functions (including technical amendments and investigation) is that the appointed Senate has acted much less along partisan lines than the elected House of Commons. As C.E.S. Franks explains, in contrast to the executive-dominated House of Commons, the Senate's “lower levels of partisanship and party discipline contribute to...a less adversarial style of debate and an approach to investigative work within committees that focuses more steadily, and productively, on substantive issues.”<sup>44</sup> Concerned about replicating the tight party discipline of the House of Commons, many proposals for an elected

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<sup>42</sup> Against the argument that the Senate was designed as a aristocratic chamber, Ajzenstat argues that the Fathers of Confederation wanted a property qualification merely to protect the 'independence' of the Senate from the executive branch. See: Janet Ajzenstat, 'Bicameralism and Canada's Founders: The Origins of the Canadian State', in *Protecting Canadian Democracy: The Senate You Never Knew*, ed. Serge Joyal (Montréal: McGill-Queen's University Press, 2003), 10–11.

<sup>43</sup> Donald Savoie, *Court Government and the Collapse of Accountability in Canada and the United Kingdom* (Toronto: University of Toronto Press, 2008), 16.

<sup>44</sup> Franks, 'The Canadian Senate in Modern Times', 171.

Senate have also taken measures to address this criticism. For instance, the 1985 Macdonald Commission and 1992 Beaudoin-Dobbie Committee both advocate proportional electoral systems so that both the Senate and the House of Commons are not likely to be controlled by the same party.<sup>45</sup> Such proposals are still subject to the charge that “deadlock” could result; however, deadlock would be much less of a concern if the Senate was *both* democratically selected *and* contributed something fundamentally different to debates about Canadian political issues. This combination is precisely what a Citizens’ Senate, unlike the current Senate or a Triple-E Senate, would provide.

Indeed, a Citizens’ Senate would provide a much more unique and democratic check on the power of the Prime Minister because it would best accomplish a final proposed function of the Senate: reflecting Canadian diversity. Defenders of the current Senate often point out that appointment allows the Prime Minister to include otherwise under-represented groups such as women, who comprise nearly 40 per cent of Senators.<sup>46</sup> It is not quite so clear that an appointed Senate is better than an elected one at reflecting Canadian diversity, however. A recent Triple-E proposal by Roger Gibbins and Robert Roach of the Canada West Foundation, for instance, advocates a proportional electoral system on the basis that, if properly designed, it “would provide greater opportunities for smaller parties, women, minorities and other groups to win Senate seats” and therefore address a “longstanding weakness of our national Parliament.”<sup>47</sup> But while it is not clear if an appointed or elected Senate would be better at reflecting diversity, what is clear is that a Citizens’ Senate based on the lottery system would be much better than either of

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<sup>45</sup> Royal Commission on the Economic Union and Development Prospects for Canada (Macdonald Commission), *Report*, vol. 3 (Ottawa: Minister of Supply and Services Canada, 1985), 89–90; Special Joint Committee of the Senate and the House of Commons (Beaudoin-Dobbie Committee), *A Renewed Canada* (Ottawa: Queen’s Printer for Canada, 1992), 45–46.

<sup>46</sup> Lowell Murray, ‘Which Criticisms Are Founded?’, in *Protecting Canadian Democracy: The Senate You Never Knew*, ed. Serge Joyal (Montréal: McGill-Queen’s University Press, 2003), 147; Franks, ‘The Canadian Senate in Modern Times’, 151.

<sup>47</sup> Gibbins and Roach, *A New Senate for a More Democratic Canada*, 5.

these options—it would as a general rule select ordinary Canadians rather than those endorsed by political parties or with sufficient resources to run a political campaign. And this is before additional protection for designated populations such as women is guaranteed through “stratified randomization.”

Oddly, the rationale for turning the Senate into a Citizens’ Assembly is succinctly summarized by a *Globe & Mail* editorial suggesting that some of Harper’s recent Senate appointments are aiming in part to diversify the Senate. In particular, it lauds the appointment of an illiterate because “such [different] experiences can be good contributions to Parliament, too.”<sup>48</sup> Diverse experiences are indeed good contributions. Why should the Senate continue to be a chamber of professionals, either elected or appointed? It makes sense that the Senate would be better able to reflect on what particular changes or policies would mean to Canadians of *all* backgrounds if the Senate itself was more diverse. To quote Arendt once again, “I form an opinion by considering a given issue from different viewpoints, by making present to my mind standpoints of those who are absent.”<sup>49</sup> The best way to ensure such different experiences and viewpoints could be brought forward in the Senate is to base it on selection by lot, turning it into a Citizens’ Assembly.

After the results of the 2011 federal election, Senate reform is not likely at the top of the agenda of those concerned with deepening Canadian democracy. It is true that the 2011 election yet again inflated popular support of less than 40 per cent of voters into a majority Conservative government, underscoring the importance of electoral reform. But the idea of turning the Senate into a Citizens’ Assembly deserves strong consideration as well. Not only would it drastically change the nature of political debate in Canada, it is perhaps right now a more achievable goal

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<sup>48</sup> “Partisans and Sober Second Thought,” *Globe & Mail* (29 August 2009), A14.

<sup>49</sup> Hannah Arendt, ‘Truth and Politics’, in *Between Past and Future: Eight Exercises in Political Thought* (New York: Penguin Books, 1977), 241.

than electoral reform—while the two most recent provincial referenda on electoral reform (BC in 2009, Ontario in 2007) were soundly defeated, over 70 per cent of Canadians support Senate reform of some sort, as was suggested at the outset.

If the alternatives are the status quo patronage system or Harper’s ‘Triple-E Lite,’ abolition of the Senate is certainly the way to go. But a Citizens’ Assembly is a fairly low risk third option—the Senate can always be abolished entirely if the results of the Citizens’ Senate experiment are unsatisfactory. Much like nearly every proposal for Senate reform in the past 30 years, the powers given to a Citizens’ Senate need not be very extensive, at least at first. Elected Senate proposals generally seek to lessen the potential for deadlock by substantially reducing the Senate’s very considerable powers, which are currently equivalent to the House of Commons’ powers except with regard to money bills. The idea is to replace them with much more limited powers such as suspensive vetoes while preserving the House of Commons’ supremacy on money matters through legislative overrides. For instance, the Macdonald Commission proposal gives the Senate a six-month suspensive veto on “all ordinary legislation,” claiming this period is enough to “consider fully the regional viewpoint,” “give pause” to the executive and allow the general “public airing of issues.”<sup>50</sup> If, as suggested here, the main way a Citizens’ Senate would act as a check on the executive is by introducing new perspectives into the public debate, powers along the lines of the Macdonald Commission proposal would certainly be a good place to start.

It is still premature, though, to offer a detailed proposal for the powers of a Citizens’ Senate. While a concrete proposal will have to ultimately be worked out, Gibbins and Roach are right to suggest that at this point it is more important to focus on and discuss the broader vision of Canadian politics that Senate reform fits into. In their words, “perhaps the greatest enemy of

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<sup>50</sup> Royal Commission on the Economic Union and Development Prospects for Canada (Macdonald Commission), *Report*, 3:91–92.

change is the focus on the mechanics of reform and the design of a new Senate rather than the *benefits* of a new Senate.”<sup>51</sup> Contrary to Gibbins and Roach, however, this paper has made the case that a Citizens’ Senate would be more beneficial and, in particular, more *democratic* than a Triple-E Senate. Indeed, it is possible that the public would eventually come to perceive the Citizens’ Senate as having more legitimacy than the House of Commons. After all, modern politicians are not particularly well-regarded, as recent studies by both the Manning Centre for Building Democracy and Samara Canada clearly confirm. In the former’s annual 2012 “Barometer Poll,” 77 per cent of Canadians reported either “somewhat unfavourable” or “very unfavourable” general views of politicians, with 58 per cent proceeding to describe politicians as “UNprincipled” and 69 per cent as “DIShonest.”<sup>52</sup> Meanwhile, Samara Canada’s qualitative study of democracy in Canada reported that focus groups of the politically disengaged repeatedly expressed an admiration of democratic ideals, yet also a profound disdain for politicians and the actual machinery of Canadian politics.<sup>53</sup> It is easy to see, then, why the idea of turning the Senate into a Citizens’ Assembly is at least worth consideration. Just ask yourself this simple question: who would you trust more, 12 politicians or a jury of your peers? If your answer is the latter, it is worthwhile to at least start thinking about what a Citizens’ Senate might look like.

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<sup>51</sup> Gibbins and Roach, *A New Senate for a More Democratic Canada*, 11. Original emphasis.

<sup>52</sup> Manning Centre for Building Democracy, *Manning Centre Barometer 2012*, February 24, 2012, 18, <http://manningcentre.ca/2012-manning-centre-barometer-poll-2/>.

<sup>53</sup> Heather Bastedo et al., *The Real Outsiders: Politically Disengaged Views on Politics and Democracy*, December 7, 2011, 6–8, <http://www.samaracanada.com/what-we-do/democracy/the-real-outsiders>.

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