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Voter Equality and Other Canadian Values: Finding the Balance

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VOTER EQUALITY AND OTHER CANADIAN VALUES

FINDING THE BALANCE

Matthew Mendelsohn & Sujit Choudhry





APPLIED PUBLIC POLICY RESEARCH
INFORMED BY ONTARIO'S REALITY

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The Mowat Centre undertakes collaborative applied policy research and engages in public dialogue on Canada's most important national issues, and proposes innovative, research-driven public policy recommendations, informed by Ontario's reality.

We believe a prosperous, equitable and dynamic Canada requires strong provinces, including a strong Ontario, and strong cities.

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Voter Equality and Other Canadian Values: Finding the Right Balance
By Matthew Mendelsohn, Sujit Choudhry
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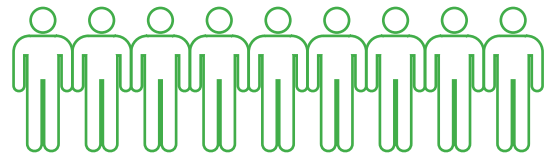
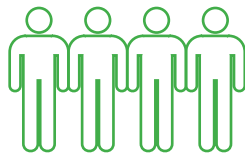
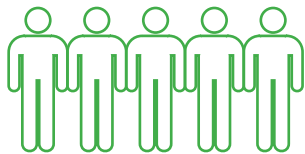
Summary of Recommendations

Reasons for Deviation & Proposals for Reform

ISSUE	DESCRIPTION	MOWAT PROPOSAL	RATIONALE
The "Senate Floor"	<p>Guarantees each province as many MPs as it has senators.</p> <p>Exclusively benefits the four Atlantic provinces.</p>	It is not recommended that the federal government eliminate this clause.	<p>Atlantic provinces are unlikely to ever consent to the constitutional amendment required to address this issue.</p> <p>Impact of the Senate Floor will be diminished through an increase in the overall size of the House of Commons.</p>
The "Grandfather Clause"	<p>Ensures that no province has fewer MPs than it was entitled to in the House of Commons as of 1986.</p> <p>Principal beneficiaries are Manitoba, Saskatchewan, and Quebec.</p> <p>Nova Scotia and Newfoundland and Labrador also benefit modestly.</p>	At the present time, the additional over-representation given to Canadians in the five provinces that benefit from the Grandfather Clause is an acceptable compromise and need not be amended.	<p>Canada's House of Commons bears the burden of representing regional interests because of the lack of democratic legitimacy enjoyed by the Senate.</p> <p>It is possible to go a significant way in addressing the concerns of Alberta, Ontario and British Columbia without disturbing this arrangement.</p>
Population growth in AB, BC, & ON, coupled with an artificial cap on size of the House of Commons (HOC)	<p>The size of the HOC is artificially capped, preventing population growth in BC, AB, and ON from being reflected in additional seats.</p> <p>Under-representation of Canadians in AB, BC, and ON will continue unless this issue is addressed directly.</p>	<p>The federal government should allow the size of the HOC to increase to accommodate population growth, a main principle in Bill C-12.</p> <p>A permanent electoral quotient should be set at one MP for every 108,000 residents.</p>	<p>Representation by population cannot be realized without allowing the number of seats in the House of Commons to rise and fall with the ebb and flow of population distribution in Canada.</p> <p>This would bring us closer to Canada's historical commitments, internationally accepted norms, and democratic principles.</p>
Treating Ontario differently than Alberta and BC	<p>Bill C-22 singled out Ontario for limits to future growth in its representation in the House of Commons.</p> <p>Population growth and resulting under-representation of Canadians would have been addressed more comprehensively for Canadians in Alberta and British Columbia than those for Ontario.</p>	The federal government should treat Canadians in Canada's three fastest growing provinces identically.	<p>The Canadians in these three provinces are equally disadvantaged and should be addressed in an equitable manner, not by introducing new inequalities.</p> <p>Attempts to discriminate among Canadians in these provinces will politicize the boundary making process and exacerbate inter-regional tensions.</p>

Reasons for Deviation & Proposals for Reform (continued)

ISSUE	DESCRIPTION	MOWAT PROPOSAL	RATIONALE
<p>Deviations of +/- 25 per cent in the size of constituencies within provinces</p>	<p>The <i>Electoral Boundaries Readjustment Act</i> permits ridings to vary +/- 25% from the provincial average.</p> <p>Boundaries commissions have historically tended to over-represent rural areas.</p> <p>Suburban ridings are now significantly under-represented.</p>	<p>The federal government should legislate deviations of no more than 5 or 10%, with a small number of exceptions defined in legislation. This is already the emerging model in Canadian provinces.</p>	<p>The principle of representation by population demands reform of the rules governing the distribution of seats across provinces, as well as the rules governing the drawing of boundaries within provinces.</p>
<p>Quebec's unique status in the federation</p>	<p>Quebec is Canada's only province with a French-speaking majority.</p> <p>It has been recognized as having a unique place, including recognition of the Québécois as constituting a nation within Canada.</p> <p>Previous electoral reform proposals would have inadvertently reduced Quebec's representation in the House of Commons below its share of the population.</p>	<p>Proposed legislation should include a commitment that the number of seats in Quebec should equal its share of the Canadian population.</p> <p>After all calculations and apportionments, additional seats should be added to Quebec until it attains a share of seats equivalent to its share of the Canadian population.</p> <p>This should only be implemented if the size of the House is allowed to grow along with the Canadian population.</p>	<p>Given Quebec's unique status in the federation, asking Quebecers to be under-represented because of the over-representation of Canadians in Atlantic Canada, Manitoba and Saskatchewan is unfair.</p> <p>Ensuring adequate representation of Quebecers must also be viewed as an important Canadian value and a principle that must inform decisions on representation.</p>



VOTER EQUALITY & OTHER CANADIAN VALUES

FINDING THE BALANCE

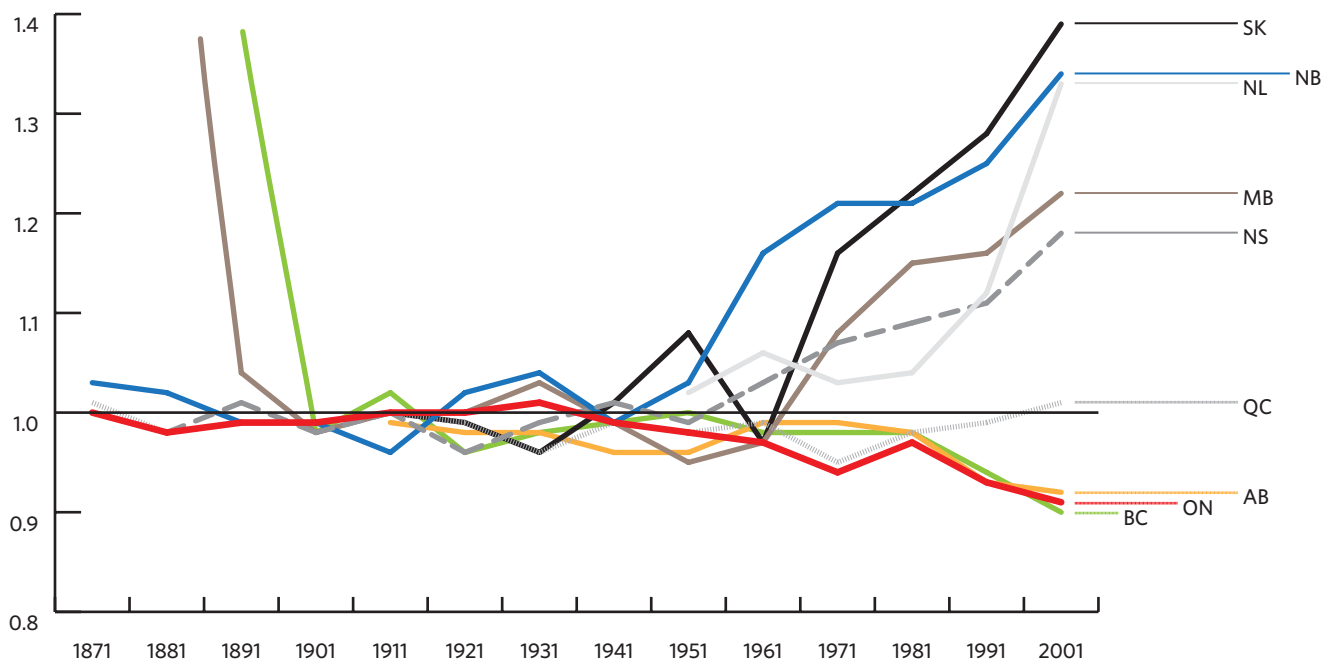
Matthew Mendelsohn & Sujit Choudhry

REPRESENTATION BY POPULATION (rep-by-pop) was one of the principal forces behind the creation of Canada and is a key pillar of democracy. The principle that all votes have equal weight reflects the democratic norm that all citizens should have an equal say in who will be elected, who will raise issues in Parliament and who will have the right to use the legitimate power of the state to make decisions on our behalf.

Although some deviations from the norm of voter equality are acceptable, they should be grounded in principles that are widely accepted and viewed as legitimate.

Canada’s federal electoral districts deviate from the rep-by-pop principle more than they ever have in our history (see Figure 1). This is the result of Canada’s increasingly outdated rules and practices governing the distribution of seats in the House of Commons and our demographic changes. This problem is getting worse and, unless there is fundamental reform, will continue to do so in the future.

Figure 1 Relative Weight of a Single Vote by Province*



Source: Sancton, 2010.

* PEI and Territories are not included in this table because of their extreme deviations; based on 2001 census data.

Moreover, the character of voter inequality is changing. For decades, citizens in Alberta, Ontario, British Columbia, and urban centres have suffered from declining voting power. But in the face of massive immigration, the dilution of some Canadians' votes and the amplification of others increasingly disadvantages Canadians from non-European backgrounds who are more likely to live in ridings with the largest populations (see Table 1). Under-represented Canadians are increasingly suburban, Ontarian and new Canadian.

Table 1 Characteristics of Canada's 15 Most Populous Ridings*

RIDING	POPULATION	% VISIBLE MINORITY	PROVINCE	TYPE OF RIDING (Predominantly urban, suburban, or rural)
Canadian Average	102,639	16%	--	--
Brampton West	170,420	53.7%	Ontario	Suburban
Oak Ridges - Markham	169,645	41.3%	Ontario	Suburban
Vaughan	154,215	25.4%	Ontario	Suburban
Bramalea - Gore - Malton	152,700	64%	Ontario	Suburban
Halton	151,940	19%	Ontario	Suburban
Mississauga - Erindale	143,360	51.7%	Ontario	Suburban
Peace River	138,009	2.6%	Alberta	Rural
Mississauga - Brampton South	136,470	60%	Ontario	Suburban
Whitby - Oshawa	135,890	14.9%	Ontario	Suburban
Nepean - Carleton	133,250	17.4%	Ontario	Suburban
Calgary West	132,155	17%	Alberta	Suburban
Thornhill	131,970	33.3%	Ontario	Suburban
Brampton - Springdale	131,795	56.2%	Ontario	Suburban
Scarborough - Rouge River	130,980	89.4%	Ontario	Suburban
Calgary - Nose Hill	130,945	34.9%	Alberta	Suburban

Source: Statistics Canada, <http://www12.statcan.ca/census-recensement/2006/dp-pd/prof/92-595/p2c.cfm?TPL=INDX&LANG=E>

* Figures based on 2006 census data.

Canada has championed liberal democracy and federalism on the international stage, holding itself out as a model for other countries to emulate, but increasingly is itself an international outlier. As illustrated in Table 2, when a comparative analysis was undertaken using 2001 Census data, Canada's federal ridings vary in size more than those in comparable industrialized federations. The standard deviation in weighted vote in Canada is more than double its nearest peer federation.

Like Canada, these federations must design their electoral systems to accommodate rural interests and regional minorities. But we are at the point where our deviation from a basic foundational principle of democratic legitimacy can no longer be viewed as reasonable.

Table 2 Standard Deviation in Weighted Vote by Province

JURISDICTION	# OF SEATS	AVERAGE CONSTITUENCY POPULATION	NATIONAL POPULATION	STANDARD DEVIATION*
Canada	308	97,426	30,007,094	.28
Germany	323	254,845	82,314,906	.11
Switzerland	200	36,020	7,204,055	.08
Australia	150	132,353	19,852,969	.08
United States	435	646,952	281,424,177	.04

Source: Mendelsohn, 2010 – Canadian data from 2001 Census.

* Standard deviation shows how much variation or “dispersion” there is from the average. In this case, a low standard deviation indicates that the data points (i.e. population of ridings) tend to be very close to the average (riding population). A high standard deviation indicates that the data are spread out over a large range of values (i.e. there is considerable variation in the population of ridings).

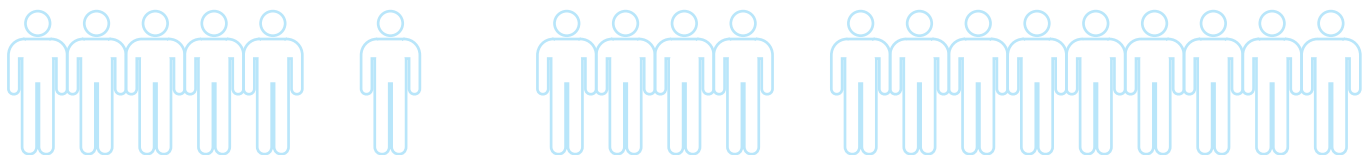
Canada’s electoral system has always reflected a compromise between rep-by-pop and the need to ensure representation for small regions and minority communities. But any sense of balance has been lost. Indeed, Canada’s federal electoral districts are increasingly at odds with some of our most basic constitutional commitments.

This *Mowat Note* identifies the constitutional, legislative and policy reasons why Canada so dramatically deviates from the principle of voter equality. It then explains if and how each of these factors can or should be addressed at present. It concludes with a proposed framework for a compromise piece of legislation that would deal with many, but not all, of the issues that produce such a skewed electoral map.

The compromise proposal attempts to balance four objectives:

1. fairer representation to Canadians in the quickly growing provinces of Ontario, Alberta, and BC;
2. more equitable representation for newer Canadians concentrated in the suburbs of Toronto, Vancouver, and Calgary/Edmonton;
3. the protection of representation in smaller provinces with slower population growth; and
4. the protection and recognition of Quebec’s unique place within the federation.

All four of these considerations are important. Canada’s electoral system has always reflected a compromise, and the proposal sketched out here embodies a compromise suitable for the 21st century.



THE CONSTITUTIONAL COMMITMENT

SECTION 52 of the *Constitution Act, 1867* requires that distributions of seats in the House of Commons to provinces respect the principle of rep-by-pop. Since 1982, amendments to this provision require the consent of seven provinces accounting for at least 50% of the population, reflecting its role in protecting regions and minorities. *The Charter* strengthened the constitutional status of rep-by-pop, through s. 3's guarantee of an equal right to vote for every citizen, and s. 15's prohibition of discrimination.

However, in the *Carter* decision (*Reference Re: Provincial Electoral Boundaries, Saskatchewan*, 1991) the Supreme Court signaled that the *Charter* imposed little discipline on variations in riding size. But the growing gap between Canada's current federal electoral boundaries and rep-by-pop makes it likely that the Supreme Court will be forced to revisit *Carter* and confront the weaknesses in its reasoning.

The Supreme Court's rejection in *Carter* of the argument that the right to vote implies the right to a vote of equal worth rests on a weak legal foundation and must now also confront the new argument that the current system of electoral boundaries has the effect of treating Canadians unequally on the basis of race and ethnicity. Moreover, the deviations are significantly larger today than they were at the time of the *Carter* decision.

The courts are a last resort to be called upon if the political process fails to rise to the challenge before it. We are optimistic that Canada can avoid the spectre of a long and difficult legal fight if we act proactively to reaffirm our historic commitment to rep-by-pop and modernize the system for drawing electoral boundaries to reflect new demographic realities.

Indeed, the federal government has signaled its intention to introduce new legislation to adjust Canada's electoral boundaries. This is welcome news. The challenge will be to get the details right. We examine six issues that affect our adherence to rep-by-pop and outline our compromise proposal below.

WHY THE DEVIATIONS FROM REP-BY-POP?



THE EXISTENCE OF THE “SENATE FLOOR”

DESCRIPTION

The Senate Floor (s. 51A of the *Constitution Act, 1867*) guarantees each province as many MPs as it has senators. This provision was added in 1915 to protect the representation of Canadians in the Maritimes, which were facing relative population decline.

Today, the provision exclusively benefits the four Atlantic provinces. In addition to the 21 MPs to which they are entitled on the basis of rep-by-pop, the Atlantic provinces receive an additional 9 under the Senate Floor.

RECOMMENDATION

The federal government should not pursue a constitutional amendment to eliminate the Senate floor.

Eliminating the Senate Floor requires a constitutional amendment with unanimous federal and provincial agreement. Since the Atlantic provinces are unlikely to ever consent to such a constitutional change, it is not recommended that the federal government pursue such an initiative. In practice, the retention of the Senate Floor will continue to guarantee the over-representation of Canada's four Atlantic provinces for the indefinite future, although its impact will be diminished through an increase in the overall size of the House of Commons.

THE EXISTENCE OF THE “GRANDFATHER CLAUSE”

DESCRIPTION

The Grandfather Clause (s. 51(2) of the *Constitution Act, 1867*) was added in 1985. It ensures that no province has fewer MPs than it was entitled to in the House of Commons as of 1986. Similar to the Senate floor, the Grandfather Clause was adopted to protect the House of Commons representation of provinces in relative population decline. The principal beneficiaries of the Grandfather Clause are Manitoba and Saskatchewan (which together receive an additional 9 seats, going from 19 to 28 MPs) and Quebec (which receives an additional 7 seats, taking its House of Commons complement from 68 to 75 MPs). In addition, Nova Scotia and Newfoundland and Labrador each gain an additional MP from the Grandfather Clause.

RECOMMENDATION

The Grandfather Clause should not be amended or eliminated at this time.

It has been suggested that the federal government eliminate the Grandfather Clause, which is much easier to amend than the Senate Floor. Since the Grandfather Clause was added through a normal Act of Parliament adopted by a simple majority, it could be repealed in the same way. In other federations (e.g. the United States, Germany, Switzerland, and Australia), regions can lose seats when their population growth fails to keep up.

However, unlike the lower chambers of other federal legislatures, Canada's House of Commons bears the burden of representing regional interests because of the lack of democratic legitimacy enjoyed by the Senate. Moreover, it is possible to go a significant way to addressing the concerns of Alberta, Ontario, and British Columbia without disturbing this arrangement. At the present time, the additional over-representation given to Canadians in the five provinces that benefit from the Grandfather Clause is an acceptable compromise and need not be amended.

Table 3 Seat and Population Distributions and Relative Vote Weight by Canadian Province and Territory

PROV./TERR.	POPULATION	% OF CDN POP.	# OF ACTUAL SEATS	ACTUAL % OF SEATS RECEIVED	# OF SEATS REP-BY-POP	RELATIVE VOTE WEIGHT	AVG. POP. PER CONSTIT.	PROJECTED POP. PER CONSTIT., 2021
ON	11,410,046	38.02	106	34.42	117.12	0.91	107,642	116,351
QC	7,237,479	24.11	75	24.35	74.29	1.01	96,500	109,024
BC	3,907,738	13.02	36	11.69	40.11	0.90	108,548	114,545
AB	2,974,807	9.91	28	9.09	30.53	0.92	106,243	116,421
MB	1,119,583	3.73	14	4.55	11.49	1.22	79,970	92,007
SK	978,933	3.26	14	4.55	10.05	1.39	69,924	69,814
NS	908,007	3.02	11	3.57	9.32	1.18	82,546	88,018
NB	729,498	2.43	10	3.25	7.49	1.34	72,950	76,640
NL	512,930	1.70	7	2.27	5.26	1.33	73,276	72,957
PE	135,294	0.45	4	1.30	1.39	2.88	33,824	36,525
NT	37,360	0.12	1	0.32	0.38	2.61	37,360	32,700
YT	28,674	0.09	1	0.32	0.29	3.40	28,674	51,100
NU	26,745	0.08	1	0.32	0.27	3.64	26,745	32,500
CAN	30,007,094	100.00	308	100.00	308	--	97,426	118,859

* Population figures based on the 2001 census (<http://www12.statcan.ca/english/census01/home/index.cfm>)

POPULATION GROWTH AND AN ARTIFICIAL CAP ON THE SIZE OF THE HOUSE OF COMMONS

DESCRIPTION

If the current rules governing the distribution of House of Commons seats are not amended, the under-representation of Canadians in Alberta, British Columbia, and Ontario will only get worse. The reason is the combination of an artificial cap on the growth of the House of Commons, resulting from the Representation Act, 1985, coupled with the concentration of population growth in these three provinces. Between 1980 and 2000, 83 per cent of Canada's population growth took place in those three provinces. Statistics Canada projects that this trend will continue into the foreseeable future. Table 3 documents how grievous these deviations have become—and how they are projected to grow unless action is taken.

If the overall size of the House of Commons could increase to take into account population growth in these three provinces, their under-representation would be significantly reduced. But s. 51(1)(1) of the *Constitution Act, 1867* caps the size of the House of the Commons at 279 (before the application of the Senate Floor, the Grandfather Clause, and the right of each territory to one seat). Unless the limit of 279 seats is increased, the populations of these three provinces will continue to be under-represented. Changing this artificial cap requires a simple Act of Parliament.

RECOMMENDATION

The federal government should eliminate the artificial limit on the size of the House of Commons.

The federal government should resurrect the main principles from Bill C-12, which died on the order paper in 2011. C-12 would have eliminated the artificial limit on the size of the House of Commons, and instead set an electoral quotient at one MP for every 108,000 residents. Although Bill C-12 would not have institutionalized the principle of voter equality because it would have left the Senate Floor and the Grandfather Clause untouched, it would bring us closer to Canada's historical commitments, internationally accepted norms, and democratic principles.

In order to meaningfully deal with the concerns of Ontario, Alberta, and British Columbia, the size of the House of Commons must be allowed to increase to reflect population growth. The most straightforward way to do this would be to set a permanent electoral quotient of one MP for every 108,000 people.

 **PROPOSALS TO LIMIT FUTURE GROWTH IN ONTARIO'S REPRESENTATION****DESCRIPTION**

In 2007, the issue of rep-by-pop was thrust onto the national stage when the federal government introduced Bill C-56, and then Bill C-22. Under these proposed pieces of legislation, the population growth and resulting under-representation of Canadians would have been addressed in a more comprehensive manner for Alberta and British Columbia than for Ontario. Ontario was singled out for limits to future growth in its representation in the House of Commons.

RECOMMENDATION

The federal government should treat Canadians in Canada's three fastest growing provinces identically.

Attempts to treat Canadians in Ontario differently than other Canadians were fundamentally unfair. Ontario rightly objected and the federal government eventually withdrew this legislation. Bill C-12, introduced in 2010, treated Canadians in Ontario, British Columbia and Alberta identically. The bill reflects a consensus that Canadians in those three provinces deserve equal treatment.

Any attempt in the future to discriminate among Canadians in any province will politicize the boundary making process and exacerbate inter-regional tensions.

LARGE (+/-25 PER CENT) PERMISSIBLE DEVIATIONS BETWEEN THE SIZES OF CONSTITUENCIES WITHIN PROVINCES

DESCRIPTION

The boundaries of federal electoral districts are determined through a two-part process. First, the rules in the *Constitution Act, 1867* determine each province's seat total. Second, the *Electoral Boundaries Readjustment Act* creates an Electoral Boundaries Commission for each province that must draw its electoral map. The Act permits ridings to vary +/- 25 per cent from the provincial average (and departures from this rule in undefined "exceptional circumstances"). This means that within a province, federal ridings may differ in population by a factor of 1.67, with some exceptions going beyond these variations. As a matter of practice, boundaries commissions have used their power to create constituencies of very different sizes. This intra-provincial inequality compounds inter-provincial inequality.

Historically, boundaries commissions have tended to over-represent rural areas. The rationale has been that sparsely populated areas required greater representation due to their distance from the centres of power and the difficulty that individual elected representatives have in adequately representing enormous geographic areas.

However, regardless of the soundness of these arguments, they cannot explain the current configuration of electoral boundaries. It is now suburban ridings that are under-represented, both with respect to rural and urban ridings. Although one could make an argument that a riding in Kapuskasing needed a smaller population than one in downtown Toronto, there is no argument that can be made that a downtown riding should have a smaller population than Markham or Brampton.

These deviations and patterns exist at the provincial level as well. To address these problems, a growing number of provinces have reduced the range of acceptable deviations to below what is permitted federally, while at the same time protecting the representation of northern or exceptional ridings. Saskatchewan permits deviations of no more than 5 per cent, except for two northern ridings that are allowed to have smaller populations. Manitoba has also moved toward more equality between ridings, allowing deviations of 10 per cent, except for northern ridings, which are permitted to have deviations up to 25 per cent. New Brunswick likewise mandates deviations of no more than 10 per cent, but these can be exceeded in "exceptional circumstances." Newfoundland and Labrador require deviations of no more than 10 per cent, although the four Labrador constituencies and one riding on the southwest coast can deviate by up to 25 per cent.

RECOMMENDATION

The federal government should adopt the emerging model among Canadian provinces and legislate deviations of no more than 5 or 10 per cent, with a small number of exceptions defined in legislation.

The federal government has stated that the principle underlying an increase in the House of Commons representation of Alberta, British Columbia, and Ontario is to restore rep-by-pop. This principle demands not only the reform of the rules governing the distribution of seats across provinces, but also the rules governing the drawing

of boundaries within provinces. After all, it is not provinces that are represented in the House of Commons but individual Canadians. The emerging model in Canadian provinces—to legislate deviations of no more than 5 or 10 per cent, with a small number of exceptions defined in legislation, usually to accommodate vast northern ridings—is an attractive model that should now be adopted by the federal government.

One should likewise note that the United Kingdom is also moving to permit far smaller deviations in the size of constituencies.¹ Deviations are to be no more than +/- 5 per cent from the quotient, with three exceptions defined in legislation: Isle of Wight, Orkney and Shetland, and Na h-Eileanan an Iar.

The UK and Saskatchewan models are the most attractive because they move us closest to the principle of rep-by-pop and define exceptions very narrowly. However, given the long history in Canada of the over-representation of sparsely populated regions, a move toward allowable deviations of 10 per cent, coupled with narrowly defined exceptions for a very small number of sparse northern ridings seems like a reasonable compromise.

QUEBEC'S UNIQUE STATUS WITHIN THE FEDERATION

DESCRIPTION

Quebec has at various times claimed to have a variety of constitutional protections of its representation in the House of Commons. These claims have included an implied minimum representation of 25 per cent of the seats in the House of Commons. A similar principle was institutionalized in previous versions of s. 51(1). Between 1867 and 1946, s. 51(1) guaranteed Quebec 65 seats (approximately 26 per cent of the House of Commons in 1946), and between 1974 and 1986, the provision guaranteed Quebec 75 seats (approximately 26 per cent of the House of Commons in 1986).

A guaranteed floor of 25 per cent was explicitly put forward as part of the Charlottetown package of constitutional reforms, which was rejected both inside Quebec and across much of Canada in 1992. The guarantee of 25 per cent of Commons seats in perpetuity has been identified as the primary reason the Charlottetown Accord was defeated in Western Canada in the 1992 referendum (Johnston et al, 1996). There is certainly no explicit constitutional, legal or historical guarantee of minimum representation for Quebec and earlier guarantees were in line with Quebec's share of the population. In fact, throughout most of Canada's history, Quebec has received somewhat fewer seats than its share of the population (Figure 2). As Quebec's share of the Canadian population continues to decline, Quebec's share of seats will no doubt also continue to decline.

On the other hand, the Québécois have been recognized as a nation within Canada by the Canadian Parliament in 2006, and Quebec's unique character was recognized as part of the Calgary Declaration. Ensuring adequate representation of Quebecers must also be viewed as an important Canadian value and a principle that must inform decisions on representation. Any guarantee for Quebec would represent a significant historic victory for the province.

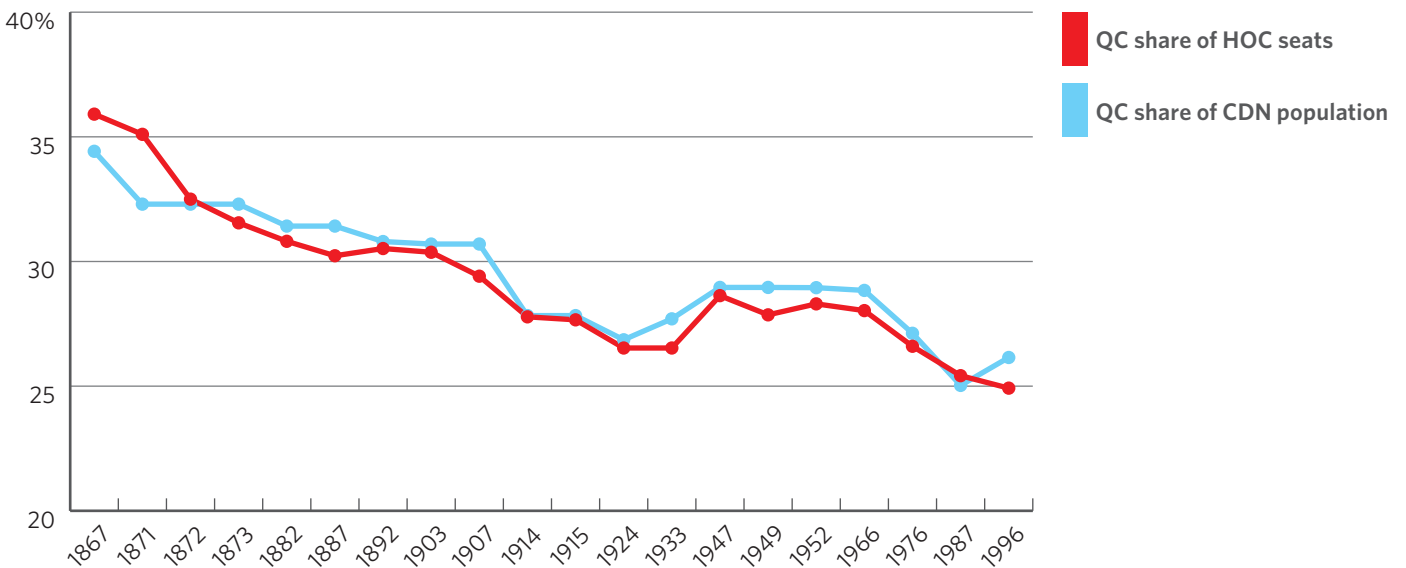
1. <http://consultation.boundarycommissionforengland.independent.gov.uk/news/initial-proposals-for-new-parliamentary-constituency-boundaries-published/>

RECOMMENDATION

The federal government should ensure that Quebec’s share of seats is equal to its share of the population.

Bill C-12, which would have brought the representation of Canadians in BC, Alberta and Ontario up to the level of that in Quebec, had the inadvertent effect of reducing Quebec’s representation in the House of Commons below its share of the population. It is estimated that under Bill C-12, Quebec would have been entitled to 22 per cent of the seats, despite having 23 per cent of the population. This is because of the significant over-representation of Canadians in the four Atlantic provinces, Manitoba and Saskatchewan. So long as Canadians in these six provinces remain over-represented, others will need to fall below their rep-by-pop share of seats. Given Quebec’s unique place within the federation, efforts should be made to ensure that addressing the legitimate concerns of Alberta, British Columbia, and Ontario do not produce an electoral map that sees Quebec with fewer seats than its share of the population would warrant.

Figure 2 Percentage of Commons Seats Entitled to QC vs. QC Share of Canadian Population, 1867 - 1996



Sources: Elections Canada, 2004; Basavarajappa et al, 1983.

Proposed legislation should include a clear commitment that the number of seats in Quebec should equal its share of the Canadian population. In practice this would mean that once all calculations and apportionment has been undertaken, additional seats would be added to Quebec (if necessary) until it attains a share of seats equivalent to its share of the Canadian population.

This new commitment to Quebec would see Canadians in Ontario, Alberta, and British Columbia carry the full burden for the over-representation of smaller provinces and so should come with three caveats. First, it should be understood as an operationalization of the principle that the Québécois constitute a nation within Canada, a rationale which

is limited to that province. Second, this new guarantee should only be implemented if the size of the House is allowed to grow along with the Canadian population. If there are artificial limits placed on the size of the House, any guarantee for Quebec (such as the Grandfather Clause at present) means that, over time, Canadians in Ontario, Alberta, and British Columbia would again become significantly under-represented. And third, this commitment to rep-by-pop for Quebec is not a guarantee of a minimum number of seats; if Quebec's share of the Canadian population continues to decline, Quebec could lose seats in the future, so long as its share of seats continues to equal its share of the population.

MOVING FORWARD

The proposal outlined above represents a fair compromise between rep-by-pop and other important Canadian values. We propose reviving the two key elements of Bill C-12: protecting the seats of six smaller provinces by leaving untouched the Senate Floor and Grandfather Clause, and moving closer to rep-by-pop by eliminating the existing cap on the growth of the House of Commons and thus adding seats in Ontario, Alberta, and British Columbia to reflect their growing populations.

Our proposed solution adds two additional elements to reflect other Canadian values. First, it ensures that Quebec's share of seats never falls below its share of the Canadian population, in recognition of Quebec's unique place within Canada. Second, it recognizes the new reality of Canada: that it is Canadians of multi-ethnic backgrounds living around our largest cities, particularly the GTA, who are under-represented, injecting a new dimension of inequality into our federal electoral arrangements. We must learn from what provinces like Saskatchewan and Manitoba are doing at the provincial level, and what the UK is doing internationally, and reduce the permissible deviations between the size of ridings within provinces.

Taken together, these four elements balance a variety of important Canadian values and principles. The proposals sketched out in the summary of recommendations are intended to realize the promise of voter equality (both between provinces and between individuals), but in a very Canadian way. They move Canada closer to the principle of rep-by-pop and put Canada more in line with our own constitutional history and international practice. But they do so by balancing other principles: the protection of the representation of Canadians in Canada's six smaller provinces and three territories, and the recognition of Quebec's unique place within Canada.

Canadians in quickly growing parts of Canada do not sacrifice their democratic rights simply because they settle in Brampton or Markham. But likewise, Canada always works best when its regions—in this case, Atlantic Canada and Manitoba/Saskatchewan—feel they have a voice in important national decisions; when rural, northern and small town Canadians have a strong voice in the national capital; and when Quebec's legitimate interests in the federation is understood, recognized and accommodated. The proposals in the summary of recommendations table strike this balance. MC

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REFERENCES

- Basavarajappa, K.G., and B. Ram. 1983. "Section A: Population and Migration." In *Historical Statistics of Canada*, 2nd ed. Ottawa: Statistics Canada. At <http://www.statcan.gc.ca/pub/11-516-x/sectiona/4147436-eng.htm#1> (accessed 17 October 2011).
- Canada. Department of Justice. 1982. *Canadian Charter of Rights and Freedoms*, Constitutional Documents section. At <http://laws.justice.gc.ca/eng/Charter/> (accessed 17 October 2011).
- Canada. Department of Justice. 1982. *Constitution Acts, 1867 to 1982*, Constitutional Documents section. At http://laws.justice.gc.ca/eng/Const/Const_index.html (accessed 17 October 2011).
- Canada. Department of Justice. 1986. *Representation Act, 1985* (S.C. 1986, c. 8), Consolidated Acts section. At <http://laws-lois.justice.gc.ca/eng/acts/R-5.6/> (accessed 17 October 2011).
- Canada. Department of Justice. 2005. *Electoral Boundaries Readjustment Act* (R.S.C., 1985, c. E-3), Consolidated Acts section. At <http://laws.justice.gc.ca/eng/acts/E-3/> (accessed 17 October 2011).
- Canada. Elections Canada. 2004. *Representation in the House of Commons of Canada*, Federal Representation 2004 section of website. At http://www.elections.ca/scripts/fedrep/federal_e/red/representation_e.htm (accessed 17 October 2011).
- Canada. Parliament of Canada. 2007. *Bill C-22: An Act to amend the Constitution Act, 1867 (Democratic representation)*, Parliamentary Information and Research Service section. At http://www.parl.gc.ca/About/Parliament/LegislativeSummaries/bills_ls.asp?Language=E&ls=c22&source=library_prb&Parl=39&Ses=2 (accessed 17 October 2011).
- Canada. Parliament of Canada. 2007. *Bill C-56: An Act to amend the Constitution Act, 1867 (Democratic representation)* (LS-561E), Parliamentary Information and Research Service section. At http://www.parl.gc.ca/About/Parliament/LegislativeSummaries/Bills_ls.asp?ls=c56&Parl=39&Ses=1 (accessed 17 October 2011).
- Canada. Parliament of Canada. 2010. *Legislative Summary of Bill C-12: An Act to amend the Constitution Act, 1867 (Democratic representation)*, Parliamentary Information and Research Service section. At http://www.parl.gc.ca/About/Parliament/LegislativeSummaries/bills_ls.asp?lang=F&ls=c12&Parl=40&Ses=3&source=library_prb (accessed 17 October 2011).
- Canada. Statistics Canada. 2008. *Federal Electoral District (FED) Profile*, 2006 Census, Census section. At <http://www12.statcan.ca/census-recensement/2006/dp-pd/prof/92-595/p2c.cfm?TPL=INDX&LANG=E> (accessed 17 October 2011).
- Canadian Legal Information Institute. 1991. *Reference re Prov. Electoral Boundaries (Sask.)*, [1991] 2 SCR 158. At <http://canlii.ca/s/pcxi> (accessed 17 October 2011).
- Johnston, R., A. Blais, E. Gidengil, and N. Nevitte. 1996. *The Challenge of Direct Democracy: The 1992 Canadian Referendum*. Montreal: McGill-Queen's University Press.
- Mendelsohn, M. 2010. *Some are More Equal than Others: Canadian Political Representation in Comparative Context*. Toronto: Mowat Centre for Policy Innovation. At <http://www.mowat-centre.ca/pdfs/mowatResearch/10.pdf> (accessed 17 October 2011).
- Sancton, A. 2010. *The Principle of Representation by Population in Canadian Federal Politics*. Toronto: Mowat Centre for Policy Innovation. At <http://www.mowatcentre.ca/pdfs/mowatResearch/11.pdf> (accessed 17 October 2011).

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