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ELECTION

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CHAPTER 5

Constituency Boundaries in Canada

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Introduction

In Canadian federal elections, political candidates fight over electoral constituencies (which the *Canada Elections Act* calls *electoral districts*, and which are popularly known as *ridings* or *seats*) created by independent electoral boundary commissions. The relative lack of political and legal debate surrounding the process of boundary delimitation is belied by the importance of ridings to our democracy. Indeed, ridings are the basic institutional building block of democracy in Canada (Courtney 2001, 4). They enable local representation and citizen engagement. Votes are not aggregated across Canada as a whole, but at the riding level, and it is the seat count—not the share of the popular vote—that is the principal basis on which a party is entitled to form a government that enjoys the confidence of the House of Commons. Ridings are central to ensuring that our system of electing members of Parliament (MPs) to govern on our behalf in the House of Commons meets the set of values that are embodied in the term *representative democracy*.

In Canada, independent, non-partisan bodies known as *electoral boundary commissions* delimit electoral boundaries for federal ridings. They have been lauded for admirably breaking with earlier, discredited practices for drawing electoral districts (Courtney 2001, 11, 35–56). Based on the Australian model, their introduction in 1964 was an improvement over the partisan excesses and blatant self-interest that characterized the earlier era in which electoral boundaries were drawn by elected politicians themselves. Elected politicians grouped voters into ridings not for the benefit of the people or to further any goal of democratic fairness, but to maximize

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the governing party's chances of re-election—a practice known as “gerrymandering” (Carty 1985; Courtney 2001, 11; Burke 1999).

A quick comparison with the United States, where boundaries are still drawn by legislatures, reveals the benefits of the Canadian/Australian model. In a recent infamous episode, the Democratic Party's state legislators in Texas fled across the border to prevent the Republican majority in the state legislature from conducting a vote that would see riding boundaries redrawn to enhance the Republican's electoral performance in congressional elections. The American approach is characterized by a high degree of partisan rancour and controversy.

While a marked improvement over the nakedly partisan process of the past, the current Canadian system for drawing electoral boundaries remains a work-in-progress. It has drawn significant criticism in recent years. As the basic building block of representative democracy in Canada, the criteria that should be used to design electoral districts—and the effects those districts have on voters and on the actual performance of government—raise fundamental issues that strike at the heart of democratic government. Should the number of persons living in each federal riding (the standard measure of riding size) be uniform across Canada, or vary by province or region? Should legislation constrain the power of electoral boundary commissions to tailor riding boundaries to local circumstances, or should they be given broad discretion? What values should be applied in determining where boundaries should be drawn? Does the relative number and size of urban or rural ridings matter? Should electoral districts be drawn to maximize the voting power of minority groups? We will touch on all of these questions in the course of this chapter.

Boundary Drawing in Canada

The History of Boundary Drawing in Canada

Prior to 1964, boundary drawing in Canada was subject to few rules and was handled by legislatures, and was therefore vulnerable to self-dealing and naked partisanship. While legislators occasionally made bargains across party lines, in general the approach of the governing party was to draw districts strictly in its self-interest.

Canada's federal electoral districts were redrawn nine times between 1872 and 1952. As John Courtney writes, “Without exception each was carefully managed by the government of the day” (Courtney 2001, 20). The defining practice associated with these years was the “gerrymander”—a term with a colourful provenance. The governor of Massachusetts in 1812 was named Eldbridge Gerry. He approved into law legislation that redesigned the state's electoral map to his own partisan advantage. One of the most shocking creations of that legislation was a district in a shape that resembled a salamander, which appeared to have been drawn with regard neither for the affinities of the people of the district nor for the communities in which they lived. Rather, the district simply put voters together who were likely to vote for the candidate favoured by the governor. In recognition of Governor Gerry's blatant partisanship *and the strange shape of the district, the practice of drawing boundaries to deliberately*

manipulate electoral results by placing voters with a tendency to vote for a particular party in one district is now known as “gerrymandering.”

Some Canadian politicians, including our first prime minister, John A. Macdonald, were noted gerrymanderers. Prime Minister Macdonald’s Conservative Party practised gerrymandering with increasing relish during its years in power (Ward 1963, 27). Gerrymandering, however, was a regrettable practice by governments of all political stripes until 1964 (Carty 1985; Ward 1963). These early years of Canadian redistricting also introduced and foreshadowed some of the perennial debates in Canadian representative democracy.

In 1964, Parliament passed legislation that made a clean break from the practices of the past. Based on the Australian model, Canada moved away decisively from legislative districting, shifting that power to newly created, non-partisan electoral boundary commissions, which operated independently and at arm’s length from political control (Carty 1985; Courtney 2001, 57–66). The so-called Australian model remains, in essence, the approach that we have today.

The Senate Floor Rule and the Grandfather Clause: Deviation from Representation by Population

Pursuant to a piece of federal legislation, the *Electoral Boundaries Readjustment Act* (the EBRA; discussed at length in “Boundary Drawing Today: The *Electoral Boundaries Readjustment Act*” below), these non-partisan, independent electoral boundary commissions now decide where to place the boundaries between ridings in a particular province, subject to the consultation mechanisms outlined in the legislation. The EBRA relates to the readjustment of electoral boundaries *within* a province. A distinct set of constitutional rules, however, governs the prior issue of the number of seats assigned to each province. The redistribution of ridings *across* provinces occurs after every decennial census.

Section 51 of the *Constitution Act, 1867* contains the current basic formula for redistribution, which is relatively simple and has been in place since 1985. Parliament has a base number of 282 ridings. One is assigned to each territory—Yukon, the Northwest Territories, and Nunavut. The remaining 279 ridings are distributed on the basis of the population of each province as calculated in the decennial census. The total population of the ten provinces is divided by 279 to arrive at the electoral quotient, which is used to determine how many seats each province will receive. The national electoral quotient is currently 107,200. What this means is that, on the basis of population alone, British Columbia, with a population of 3.9 million, is entitled to 36 seats. If this were the only step in calculating the number of ridings assigned to each province, electoral boundary redistribution would be straightforward.

However, two additional rules make redistribution more complex and controversial. First, the “Senate floor” rule (section 51A of the *Constitution Act, 1867*) prevents any province from having fewer MPs than it has senators. It was adopted by Parliament in the *Constitution Act, 1915*. The Senate floor rule freezes representation by province in the House of Commons at a “floor” below which the less-populous provinces

cannot fall. For instance, Prince Edward Island would be entitled to one seat under representation by population, since it has a total population close to the national quotient of 107,200. Because PEI had four senators in 1915, however, it may never have fewer than four MPs. The Senate floor rule can only be altered in accordance with the amending formula in section 41(b) of the *Constitution Act, 1982*. Pursuant to section 41(b), any change to the Senate floor rule requires provincial unanimity, which is unlikely to occur on a heated political issue such as representation in the House of Commons. This rule benefits the Atlantic provinces, which have more senators than they would MPs under representation by population.

Second, the "grandfather clause" (section 51(1) of the *Constitution Act, 1982*) ensures that no province has fewer MPs than it had in 1986. This provision was added by the *Representation Act, 1985*, which was introduced by the Progressive Conservative government of Brian Mulroney. The grandfather clause provides another "floor" below which representation in a province cannot fall. This clause benefits the provinces of Saskatchewan, Manitoba, Quebec, Nova Scotia, and Newfoundland and Labrador. All five had a higher proportionate share of the national population in 1986 than they do now.

All provinces benefit from the special rules that govern the distribution of seats except for Ontario, Alberta, and British Columbia. The seven provinces that do benefit receive more seats in the House of Commons than their populations would otherwise dictate, as a deliberate decision of public policy. The result is that the ridings in those provinces have much smaller average populations than the ridings in the faster growing provinces of Ontario, Alberta, and British Columbia. The implication is that the votes cast by individual voters in these three provinces have less weight than those cast in the other seven provinces. The Senate floor rule and the grandfather clause reflect political compromises that were made at particular times in Canadian political history. One could argue that they are anachronistic and that they unduly dilute the principle of representation by population in the House of Commons. The other side of the argument is that they ensure regional representation. The Senate was originally designed to represent the regions in the federal legislative process. However, the Senate has lacked political legitimacy, both because its members are appointed rather than elected, and because it dramatically underrepresents the Western provinces. Therefore, the pressure for regional representation in Parliament has been directed at the rules governing the composition of the House of Commons. Are the Senate floor rule and the grandfather clause still appropriate or desirable? Should representation in the House be shaped in part by the need for regional representation? Should the reform of the rules governing representation in the House necessarily be linked to reforms that would inject democratic legitimacy into, and improve the regional representativeness of, the Senate? These remain live issues that Canada will need to confront in the next few decades.

Canadian Charter of Rights and Freedoms

The *Canadian Charter of Rights and Freedoms* sets out the additional constitutional rules that apply to drawing electoral boundaries. Once the number of seats has been

assigned to each province (through the redistribution process outlined above), the electoral boundary commissions are empowered to design the electoral map.

At the federal level, the EBRA and decisions taken by electoral boundary commissions acting under the EBRA are subject to the Charter. In other words, the distribution of ridings within provinces must comply with the Charter. By contrast, the question of whether the allocation of ridings across provinces is subject to the Charter is much more complex. While the grandfather clause is likely subject to the Charter, the Senate floor rule is not. At the provincial level, the allocation of ridings must comply with the Charter as well.

The two relevant provisions of the Charter are section 3, which guarantees the right to vote, and section 15, which enshrines equality rights. Section 3 of the Charter states:

Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

The relatively simple guarantees in section 3—that everyone has the right to vote and to serve in the House of Commons and provincial legislatures—belie their potential complexity. In particular, the Supreme Court has held that the “right to vote” guarantees much more than the simple right to cast a ballot in a federal or provincial election. The Supreme Court has interpreted the “right to vote” as guaranteeing federal prisoners the right to vote (*Sauvé v. Canada (Chief Electoral Officer)* 2002) and also the right of small political parties to access state subsidies proportionate to those received by large or established parties (*Figueroa v. Canada (Attorney General)* 2003). The case law on section 3 is covered in depth in Chapter 4 of this book by Heather MacIvor (see also Manfredi and Rush 2007).

The Supreme Court of Canada decision of most relevance to this chapter is *Reference re Prov. Electoral Boundaries (Sask.)* (1991), also known as the *Carter* decision. In *Carter*, the Court upheld a disputed provincial electoral map in Saskatchewan that deviated from the principle of representation by population quite dramatically in order to overrepresent rural ridings. A majority of the Court, in a decision written by now-Chief Justice Beverly McLachlin, upheld the electoral map as constitutional. Though *Carter* involved riding boundaries set for a provincial legislative assembly, it has been interpreted as being equally applicable to federal boundaries. The majority decision stated that population equality is the guiding principle in determining boundaries, but that deviations are permissible under section 3 of the Charter if they are made to ensure more “effective representation” for a particular group, such as rural voters. Indeed, a recent decision of the Federal Court of Canada has even gone so far as to conclude that a commission’s decision to adhere to voter equality was unreasonable because the effective representation for a linguistic minority group was not adequately reflected in the electoral map (*Raiche v. Canada (Attorney General)* 2004).

However, by deeming the wide variance from population equality in the Saskatchewan electoral map to be constitutional, the Supreme Court severely weakened the

principle of population equality. Though the *Carter* decision was issued in 1991; it remains the leading case for determining what electoral maps are permissible under section 3 of the Charter. Population equality is a principle more honoured in the breach than the observance in Canada. At the federal level, the courts, Parliament, and the Constitution all operate together to depart from the principle of population equality in the following ways: (1) the wide variance from population equality permitted by the *Carter* decision; (2) the statutory discretion for electoral boundary commissions to deviate by up to 25 percent above or below population equality in a province, and beyond that in special circumstances; and (3) the special rules governing the distribution of ridings across provinces that result in some provinces having a much larger average riding population.

The equality rights guarantee in section 15 of the Charter is the second provision of the Charter, along with section 3, that limits the decisions of electoral boundary commissions. Section 15(1) states:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

This provision prohibits discrimination on the basis of one of the grounds "enumerated" in section 15 (*race, national or ethnic origin, etc.*) or grounds "analogous" to the enumerated grounds, such as sexual orientation. For example, if the government were to refuse to hire an individual on the basis of her religion, that would violate section 15.

In voting rights cases, individuals or groups alleging that section 3 has been violated will often also argue that the same government conduct violates section 15. For instance, in *Carter* it was claimed that the overrepresentation of rural voters in the province discriminated against urban voters who were correspondingly underrepresented. The Court's majority did not accept this argument. However, section 15 will continue to be relevant in electoral boundary cases where there is a plausible argument that differences in riding size have the effect of disadvantaging one group of voters identified by one or more enumerated or analogous grounds in section 15, and that this disadvantage amounts to discrimination. Racial or religious minority voters, for example, who are often geographically concentrated within particular ridings, may be able to argue that the electoral map violates section 15 if those ridings tend to be larger than average.

Boundary Drawing Today: The Electoral Boundaries Readjustment Act

Within these constitutional constraints, the current federal electoral boundary process is governed primarily by the *Electoral Boundaries Readjustment Act* (EBRA). The EBRA creates electoral boundary commissions that are independent and non-partisan to draw the electoral maps for federal elections. The legislation provides for detailed rules

on the times when electoral boundary commissions are constituted, the membership of the commissions, and the consultations that commissions must engage in. These are obviously important issues, but the EBRA's specificity on these issues contrasts with the very broad and often undefined language that it uses to actually describe the purposes and role of the commissions, including the factors that govern the manner in which commissions draw specific riding boundaries. The result is that commissions have enormous flexibility and are subject to minimal statutory constraints (see Levy 2008).

The EBRA creates one electoral boundary commission per province, which means that there are ten in total. Since each territory has only one riding whose boundaries coincide with the territorial boundaries, no commission is required in any of the territories. The commissions are constituted after each decennial census conducted by Statistics Canada. With each census, the commissions have the most up-to-date statistics on how many people live in each riding and, most important, the change in population from the previous boundary readjustment. Ridings in a fast-growing city, such as Mississauga, Ontario, can grow dramatically from one census to the next. In 1996, the riding of Mississauga West had a population of just over 99,000. According to the 2001 Census, the riding's population was over 150,000.

Each electoral boundary commission is composed of three members. The chair is selected by the chief justice of the province from among the judges of the provincial Court of Appeal or from another level of court within the province. The other two members are selected by the Speaker of the House of Commons; the only caveats are that these two members must be residents of the province and may not be MPs, senators, or members of a provincial legislative assembly.

The mechanisms for appointing members to an electoral boundary commission are potentially controversial. First, the role of the chief justice of a province in appointing a judge to serve as chair of the commission deviates in two respects from the general constitutional separation of powers between the executive and legislative branches of government and the judiciary. The chief justice's power of appointment inserts the senior-most members of the judiciary into a process that previously lay at the heart of Parliament's prerogatives. Moreover, judges chair the electoral boundary commissions. Presumably, both features were designed to insulate the process of electoral redistricting from partisanship by shifting important decisions to the judiciary, the most non-partisan and independent branch of government. Further, having a judge serve as chair was likely designed to bring a degree of impartiality to the deliberations of the commissions. However, given the inherently political nature of boundary delimitation, the judiciary has been thrust into a "political thicket" (*Colegrove v. Green* 1946, at 556, per Frankfurter J).

Second, the role of the Speaker of the House of Commons in appointing the two other members is a potential source of controversy. Though the Speaker occupies a non-partisan role within the House, she remains an elected MP with a party affiliation, a particular constituency to represent, and a self-interest in having the boundary commission in her province establish the boundaries of her riding in a way that is most favourable to her re-election. By having the Speaker appoint the majority of the

members of each commission, some vestiges of political control over electoral boundaries potentially remain from the earlier system of partisan gerrymandering and could conceivably be abused.

Third, the EBRA does not set any criteria for the qualifications of the two commission members other than the chair, beyond the residency requirement and the prohibition on federal and provincial politicians. This absence of any statutory criteria raises issues about the commissioners and the criteria used by the Speaker to appoint them. For example, should the commission be as representative as possible of the population of the province? Should there be minority representation along the lines of race, religion, ethnicity, or other demographic criteria? Should the commissioners be chosen solely on the basis of expertise? If so, who possesses the greatest expertise? Is it lawyers, geographers, academics, or informed citizens? (Courtney 2001, 94–121). *These potential sources of controversy are present whenever an electoral boundary commission is constituted under the EBRA.*

Once the individual commissioners have been appointed in each province, the commissions must then begin the task of redrawing the electoral map. The commissions draw boundaries on the basis of total population, not simply the number of eligible voters. In other words, people who are not eligible to vote because they are below the age of 18 and/or non-citizens are counted for the purposes of drawing electoral boundaries. The idea behind using total population rather than voters is that an MP represents all who reside within his or her district, not simply those of voting age. Many urban MPs spend a great deal of their time helping individuals who are ineligible to vote, such as permanent residents who must wait three years before they can apply for citizenship with its attendant voting rights.

Sections 15(1) and 15(2) of the EBRA dictate what commissions can do. Section 15 imposes few constraints and confers enormous discretion on commissions to make decisions within the purposes of the Act. The guiding principle for commissions is that the “population of each electoral district in the province ... shall ... as close as reasonably possible, correspond to the electoral quota for the province” (section 15(1)(a)). What this means is that boundary commissions are obliged to place considerable emphasis on making sure that ridings in a province must, as much as is “reasonably possible,” have the same population. This is the principle of voter equality or representation by population. *The idea is that an individual voter in a riding with 25,000 people has far greater influence or voting power to affect an election than a voter in a riding with 100,000 people. On the basis of the principle of voter equality, each voter should have approximately the same voting power, and thus each riding should have approximately the same overall population.*

This principle of voter equality contained in section 15(1)(a), however, is not the only principle that the Act stipulates should guide the drawing of electoral boundaries. Section 15(1)(b) tempers the principle of voter equality by obliging commissions to consider “community of interest,” “community of identity,” or the “historical pattern of an electoral district in the province.” Therefore, individual equality is limited by community concerns.

Section 15(2) makes even more explicit the potential grounds for commissions to depart from individual voter equality. Commissions are enabled to depart from the principle of voter equality in order to respect "community of interest," "community of identity," or "the historical pattern" of a riding. The section then provides for a further exception. In departing from voter equality, commissions should strive not to exceed a deviation of 25 percent above or 25 percent below the average population of a riding in the province, except in "extraordinary circumstances." What qualifies as an "extraordinary circumstance" is not defined in the Act and has never been defined by the courts with any precision. As a result, boundary commissions operate essentially with minimal statutory constraints.

The EBRA obliges electoral boundary commissions to engage in extensive consultations with the public and with Parliament. Any MP is entitled to make representations to the commission. The commissions file their preliminary reports with the Speaker, who directs them to the House of Commons Standing Committee that deals with electoral boundaries. If an objection is filed to a preliminary report, MPs on the Standing Committee may question the map-makers and may propose alternative maps, which usually favour the political interests of the MPs who are involved. Along with appointment of the majority of members by the Speaker, this is the other remnant of parliamentarians' traditional role of drawing electoral boundaries themselves.

It is also worth noting that although the activities of electoral boundary commissions are theoretically independent once their members have been appointed, the federal government retains significant control over the process as a whole. The commissions are creatures of federal statute. Parliament always retains the ability to pass new legislation that can cease, suspend, or delay an ongoing electoral boundary readjustment. Parliament has done so many times in the past when MPs fretted over the political impact of a proposed or likely boundary readjustment (Jenkins 1998).

Federal Versus Provincial Processes

While this chapter focuses on federal electoral boundaries, it is worth noting that the processes for setting provincial electoral boundaries vary from province to province. Some provinces apply direct political control over the boundary process (for example, Prince Edward Island). Others apply the model of independent commissions (Courtney 2001, 183–195). Still others piggyback on the federal process of seat redistribution and readjustment; they structure provincial legislative assemblies with the same number of seats as the province has in the federal House of Commons, and rely on the same boundaries (for example, Ontario has done this recently, though with some amendments).

The sheer variety of approaches that are taken by governments across Canada to the issue of drawing electoral maps underscores that federalism is a significant feature of boundary drawing. Not only is there a commission for each province for federal electoral maps, with all commissions operating independent of one another within the minimal constraints of the EBRA, but for provincial electoral maps there is an even greater range. How Prince Edward Island chooses to design its provincial boundaries

has no bearing at all on how British Columbia chooses to do so, or on how the federal ridings are designed for any province. Federalism in Canada permits this broad range of approaches.

Electoral Boundaries in Practice

The 2004 Redistribution

The most recent electoral boundary redistribution occurred in 2004, and was based on the 2001 Census. It increased the size of the House of Commons from 301 to 308 MPs. The seven additional seats were redistributed to the three fastest-growing provinces—Alberta, British Columbia, and Ontario. Alberta and British Columbia received two additional seats each, while Ontario gained three. At present, the total number of seats is 28 for Alberta, 36 for British Columbia, and 106 for Ontario.

The number of ridings assigned to the other seven provinces remained the same. However, the other seven provinces all benefit from one of the special clauses—the Senate floor rule and the grandfather clause. Newfoundland and Labrador has seven seats instead of the five that its population size warrants. Prince Edward Island has four seats instead of one. Nova Scotia and New Brunswick each has an additional three seats, bringing their totals to 11 and 10, respectively. Manitoba has an extra four seats (for a total of 14 seats) and Saskatchewan an extra five (for a total of 14 seats) over what representation by population would entitle them to have. The largest beneficiary of the grandfather clause is the province of Quebec. On the basis of population alone, it would be entitled to 68 seats. Because of the grandfather clause, Quebec has an additional seven seats for a total of 75, the second-largest number of seats of any province after Ontario.

Although Alberta, British Columbia, and Ontario all gained additional seats in the 2004 redistribution, voters in those provinces continue to be disadvantaged when the interprovincial distribution of House of Commons ridings is evaluated in terms of the principle of representation by population. According to the redistribution formula, prior to the application of the Senate floor rule and the grandfather clause, a House of Commons with 279 seats for the provinces had a national quotient of 107,220 people per riding. This figure, however, is not the actual average population of a riding in Canada. The seats resulting from the special clauses must be added to the calculation. With a total population of 30,007,094 according to the 2001 Census, and 308 ridings after the special clauses are applied, the average population of a riding in Canada is 97,426. In comparison, the average population of a riding in British Columbia is 108,548. Meanwhile, the average population of a riding in Alberta is 106,243, which is larger than all provinces except for British Columbia and Ontario. By contrast, the average population of a riding in Saskatchewan and Manitoba is only 69,924 and 79,970, respectively, well below the national average. In Prince Edward Island, there are only 33,824 people per riding on average. See Table 5.1.

To be sure, voters in Alberta, British Columbia, and Ontario do benefit from their provinces' relative size and consequent political influence. Moreover, by increasing the

TABLE 5.1 Population and Riding Distribution by Province and Territory

Province or territory	Minimum number of seats in accordance with the <i>Constitution Act, 1867</i> ^a	Calculations					Electoral quotient
		Population 2001	National quotient ^b	Rounded result	Special clauses ^c	Total	
Newfoundland and Labrador ^d	7	512,930	107,220	5	2	7	73,276
Prince Edward Island	4	135,294	107,220	1	3	4	33,824
Nova Scotia	11	908,007	107,220	8	3	11	82,546
New Brunswick	10	729,498	107,220	7	3	10	72,950
Quebec	75	7,237,479	107,220	68	7	75	96,500
Ontario	95	11,410,046	107,220	106	0	106	107,642
Manitoba	14	1,119,583	107,220	10	4	14	79,970
Saskatchewan	14	978,933	107,220	9	5	14	69,924
Alberta	21	2,974,807	107,220	28	0	28	106,243
British Columbia	28	3,907,738	107,220	36	0	36	108,548
Nunavut	1	26,745	—	—	—	1	—
Northwest Territories	1	37,360	—	—	—	1	—
Yukon Territory	1	28,674	—	—	—	1	—
Total	282	30,007,094				308	

^a Assigns one seat each to Nunavut, the Northwest Territories, and the Yukon Territory (three seats).

^b Uses 279 seats and population of provinces to establish national quotient ($29,914,315 \div 279 = 107,220$).

^c Add seats to provinces pursuant to "senatorial clause" guarantee in the Constitution and "grandfather clause" (based on 33rd Parliament).

^d On December 6, 2001, the name of the province of Newfoundland was changed to Newfoundland and Labrador.

Source: Elections Canada. n.d. *Representation formula using the 2001 Census figures*.

http://www.elections.ca/scripts/fedrep/federal_e/red/appendices_e.htm.

number of seats in the fastest-growing provinces in the country, the 2004 redistribution helped alleviate inequality between voters. However, individual voters in all three provinces still suffer from vote dilution as regional considerations and representation for less-populous provinces continue to undermine the principle of representation by population.

The Urban–Rural Divide

As detailed in the numbers above, the 2004 redistribution tells the story of the relative weight of the right to vote *across* provinces. It does not illuminate relative voting power *within* each province, which is a product of the electoral boundary readjustment. After the 2004 redistribution assigned the number of seats to each province, electoral boundary commissions were forced to make difficult decisions about how to assign seats to different areas within a province, where to place particular boundaries, and whether or not to combine different population groups within a single riding.

Each commission produced a final report with its reasoning on the placement of the boundary lines. All of the provinces continued a trend identified in earlier readjustments (Pal and Choudhry 2007)—they overrepresented rural areas at the expense of urban areas. Some of this rural overrepresentation is legitimate. Ridings in the far north of Ontario and Quebec, for example, are larger than many European countries. Those ridings have smaller populations than a riding in Toronto or Montreal, because requiring them to meet the provincial average riding population would produce a riding much too large geographically for practical purposes. There are very few ridings, however, where deviations from population equality are appropriate.

Consider Ontario. The riding of Kenora in northern Ontario had a population of 60,500, 43 percent below the provincial average of 107,000 that was established by the 2004 redistribution (2001 Census data). Given its massive geographic size, it could be argued that making the riding any larger to encompass more people would harm the ability of an MP to represent his or her constituents. The riding of Stormont-Dundas-South Glengarry, however, is certainly not a remote, northern riding; it is situated close to the metropolitan reaches of Ottawa. It has a population of 99,000 (8.5 percent less than the provincial average) despite being adjacent to the now largely suburban riding of Nepean-Carleton, which has a population of 133,000 (2006 Census). The trend in every province is to overrepresent rural areas and to accept the corresponding urban underrepresentation as an acceptable cost. The result is a set of ridings in fast-growing urban areas with very large populations, such as ridings outside of Ottawa or Toronto.

Though the full data from the 2004 redistribution are not yet available, an analysis of the previous redistribution in 1996 on the basis of the 2001 Census demonstrates that the cost to urban voters of urban underrepresentation is high. The worth of one average vote under perfect population equality is 1. However, according to 2001 Census data, the worth of an average urban vote in Canada was only 0.96. In comparison, the average rural vote was worth 1.22. Urban voters in Ontario and Alberta were particularly disadvantaged: in Ontario, the worth of an average urban vote was only 0.91, while in Alberta, the worth of an average urban vote was 0.87 (Pal and Choudhry 2007).

Even in the seven provinces that benefit from the Senate floor rule and/or the grandfather clause, urban voters were still disadvantaged. In Quebec, for example, which gained seven seats due to the grandfather clause, urban votes were worth only 0.97 and rural votes 1.08.

It is likely that the 2004 redistribution alleviated urban vote dilution to some extent by increasing the size of the House of Commons overall, although research remains to be done. New seats were added to the fastest-growing provinces and then assigned by electoral boundary commissions within those provinces to the fastest-growing areas, typically suburban locales ringing the major cities in those provinces—Toronto, Vancouver, and the Calgary–Edmonton corridor. The redistribution only added seven seats, however, out of 301, or just over 2 percent of the total number of seats in the House of Commons. Urban vote dilution very likely continues to exist and to pose a significant challenge to the notion of voter equality.

Visible Minorities and Immigration

The underrepresentation of urban voters leads to a related phenomenon with troubling implications—the underrepresentation of visible minority voters. That the one leads to the other is a matter of long-standing demographic trends and settlement patterns.

First, Canada's population is increasingly concentrated in Ontario, British Columbia, Alberta, and Quebec, and in its major urban areas. Over 62 percent of Canadians live in British Columbia, Alberta, and Ontario. Over 80 percent of Canadians live in urban areas as defined by Statistics Canada. The two trends overlap—most persons in British Columbia, Alberta, and Ontario are concentrated in the largest metropolitan areas in those provinces—Vancouver, Calgary, Edmonton, and Greater Toronto. Overall, 64 percent of Canadians live in census metropolitan areas (CMAs). Fully 33 percent of the population lives in Toronto, Montreal, or Vancouver (Pal and Choudhry 2007; Reitz and Banerjee 2007; Statistics Canada 2001, 2003a, 2003c, 2005a, 2005b).

Second, increasing urbanization has been fuelled by immigration to Canada's largest cities. Between 1991 and 2001, Canada took in approximately 1.8 million immigrants. Over 94 percent of immigrants to Canada in the 1990s settled in CMAs. Immigration is driving population growth principally in urban areas. According to Statistics Canada projections, all population growth in Canada will be due to immigration by 2030 (Statistics Canada 2005b).

Third, these new urban immigrants are increasingly changing the face of Canadian society. Starting with the reforms to Canada's immigration laws from the 1960s onward, immigrants to Canada are now overwhelmingly visible minorities. Nearly 75 percent of immigrants between 1991 and 2000 were visible minorities. Fully 98 percent of these visible minority immigrants settled in CMAs. The vast majority of these immigrants hail from Asia and Africa rather than Europe. This settlement pattern is expected to continue into the future. Barring a dramatic decrease in the number of immigrants allowed to enter the country, or a move away from immigrants from source countries in Asia, Africa, and also Latin America, immigration will continue to transform Canadian cities.

If nearly all immigrants, the vast majority of whom are visible minorities, settle in our largest urban areas and urban voters are underrepresented in Canada, then urban underrepresentation necessarily will lead to the underrepresentation of visible minority voters.

According to the 2001 Census, the average urban visible minority vote in Canada was worth only 0.91, while the average rural vote was worth 1.22. Even within urban areas, visible minority voters were worse off than non-visible minority voters. The average urban visible minority vote (0.91) was still less than the 0.97 for non-visible minority urban voters. When the worth of an urban visible minority vote is compared with the worth of a rural vote and a non-visible minority urban vote, the numbers demonstrate that visible minority voters are not only concentrated in Canada's largest metropolitan areas but also concentrated electorally in the most populous and, hence, most underrepresented urban ridings in the country.

Why does visible minority vote dilution matter? There are three main reasons.

First, visible minority vote dilution raises serious constitutional questions. Since the right to vote is guaranteed equally to all citizens under section 3 of the Charter, legislation and electoral maps that give rise to visible minority vote dilution may run afoul of the Charter. Differential treatment of voters may be regarded by courts as constitutionally suspect. This unequal treatment raises the prospect of a court challenge by disadvantaged voters against an electoral map or the laws that have been interpreted by boundary commissions as permitting visible minority underrepresentation. For example, *Raiche* was launched to aid francophone voters, a minority in the province of New Brunswick as a whole, who wanted to ensure that a riding in the north of the province that traditionally had a francophone majority would still have one after the 2004 readjustment.

Second, visible minority immigrants are facing greater hurdles than before to become integrated into Canadian society. It now takes longer for immigrants to catch up to Canadian average income levels than it did for earlier generations of immigrants to Canada (Reitz and Banerjee 2007; Statistics Canada 2003b). On the assumption underlying our democratic system that politicians respond to the concerns voters express at the ballot box, one could conclude that the problems facing visible minorities are less likely to receive the policy attention that they would otherwise if their votes were worth the same on average as the votes of other Canadians.

Third, visible minority vote dilution challenges the basic legitimacy of Canada's democratic institutions. When an identifiable minority group of citizens is systematically underrepresented by the electoral process, there are potentially damaging consequences for the ability of Parliament to govern on behalf of all Canadians. The proper balance between immigration, multiculturalism, and integration is a topic of heated debate in Canada at the moment (Courchene 2006). Concerns about the impact of visible minority vote dilution are all the more salient given this background.

Put another way, if Canada is to integrate its new visible minority immigrants, it should do so on terms that are scrupulously fair, and our democratic institutions must be perceived as serving all citizens. These institutions must represent the interests of the newest members of our political community on a basis of equality.

Reform

A Constitutional Challenge?

We have detailed how the electoral boundary system works in Canada and outlined some of its major flaws. The natural question to ask is, How can these flaws, notably urban and visible minority vote dilution and regional inequities, be addressed?

One potential approach to reform is constitutional amendment. Constitutional amendments could enhance voter equality by modifying the rules that govern the distribution of seats across provinces. However, they are an extremely remote possibility considering the failure of governments to achieve constitutional amendments during negotiations over the Meech Lake and Charlottetown Accords. It is unlikely that any government will want to wade back into the morass of a constitutional debate with all of its competing interest groups, provincial demands, and political pitfalls. A change to the Senate floor rule, in particular, would require unanimous consent among the provinces. The four provinces that benefit from the clause would be disinclined to provide their consent. Reform driven by constitutional negotiations between the federal government and the provinces, therefore, is unlikely in the near term. By contrast, a change to the grandfather clause could occur through ordinary legislation—the process that was used to adopt the *Representation Act, 1985* in the first place. We address the likelihood of this possibility in the next section, “Political Reform?”

However, constitutional reform can be driven in ways other than constitutional amendments. The courts have the ability to strike down legislation, such as the *Representation Act, 1985* and the EBRA, or decisions of government institutions, such as electoral boundary commissions, that do not conform with the Charter or other parts of the Constitution. Litigation could be initiated by citizens who would argue that the *Representation Act, 1985*, the EBRA, or an electoral map in a province does not pass constitutional muster. The most likely provisions on which to base a constitutional challenge would be section 3 of the Charter, which guarantees the right to vote, and section 15 of the Charter, which guarantees equality rights.

The court process is lengthy, and any result would be uncertain. Courts are also bound by precedent—they must follow earlier case law. Given that the *Carter* decision was written by now-Chief Justice McLachlin, it is not clear that a McLachlin-led Supreme Court would overrule one of her earlier, seminal decisions if presented with an electoral boundaries case today. In *Carter*, the Chief Justice wrote for the majority that large variations from voter equality were justifiable under the Charter. A successful constitutional argument would likely have to rely on new evidence that rural overrepresentation comes at an unacceptably high cost for visible minority voters and is, therefore, unconstitutional. In other words, the Supreme Court might conceivably be open to revisiting *Carter* if presented with convincing evidence of changed factual circumstances.

Political Reform?

Although constitutional reform other than through the courts is a fleeting prospect, political reform of the rules governing electoral boundaries and the distribution of seats across provinces appears possible, through the legislative process. Prime Minister

Stephen Harper's government proposed Bill C-22 on November 14, 2007, which would have added seats to Alberta, British Columbia, and Ontario in the next redistribution to alleviate the underrepresentation of voters in those provinces. Bill C-22 was similar to an earlier version, Bill C-56, which was introduced in May 2007 but never passed. The newest version of the legislation would have increased the size of the House of Commons, keeping the number of seats assigned to the less-populous provinces constant, while increasing the number of seats assigned to the most-populous provinces.

There was one fatal flaw in this legislation—while voters in British Columbia and Alberta would effectively reach voter parity, Ontario's voters alone would have remained underrepresented. Bill C-22 would have added seven seats to British Columbia and five to Alberta, but only ten to Ontario, far short of the 21 that would be required to reach voter equality in the province. Predictably, once the ramifications of the Conservative legislation were understood, there was a political backlash. Premier Dalton McGuinty protested at what he saw as discrimination against Ontario. Suspicions were raised given the Conservatives' attempt to increase the number of ridings in areas of the country where they had relative strength—British Columbia and Alberta—while denying added representation to equally underrepresented voters in Ontario, where they had less prospect of winning seats at the time.

In December 2008, Prime Minister Harper and Premier McGuinty appeared to reach an agreement on the need to add more seats to Ontario as well. At the time of writing, no new legislation to this effect has yet been proposed or passed. Room for political compromise on additional seats for British Columbia, Alberta, and Ontario does appear to exist. Legislative change remains a viable option for reform.

It is worth noting that Bill C-22 would have only reformed the distribution of ridings across provinces, and would not have addressed the drawing of riding boundaries within provinces and, hence, the distribution of ridings between rural and urban areas. Thus, Bill C-22 would have left the problem of voter inequality between ridings within provinces unaddressed, as electoral boundary commissions would retain the ability to deviate from voter parity by 25 percent or potentially by an unlimited amount in undefined special circumstances. Amendments to the EBRA would be required to reform boundary readjustment.

A New Electoral System?

Another option for reform that has received great consideration at the provincial level is a change in electoral systems. Different electoral systems could alleviate some of the problems that we have identified. Referendums on electoral reform were recently held in British Columbia (2005 and 2009) and Ontario (2007). The proposals stemmed from recommendations of bodies known as Citizens' Assemblies. The Citizens' Assemblies consisted of randomly selected citizens, representing ridings in the province, who were chosen to be educated about and to deliberate on their preferred electoral system for the province over the course of several months. As democratic experiments go, the Citizens' Assemblies were innovative models designed to consider the status quo and reform options. It was presumed that randomly selected citizens have less

self-interest in choosing an electoral system than politicians. It was also presumed that the general population of voters in a referendum on the electoral system would recognize the greater legitimacy of the choice of system recommended by the assembly.

In British Columbia, the Citizens' Assembly recommended a voting system called the single transferable vote (STV). STV would have done away with our traditional conception of one MP per riding, by introducing much larger ridings that would have multiple MPs to represent their constituents. In Ontario, the Citizens' Assembly recommended a mixed-member proportional (MMP) voting system, which was a hybrid between the first-past-the-post system used in Canada and more proportional systems such as those used in Italy or Israel. The Ontario Citizens' Assembly would have maintained the current system, but then added seats to be assigned proportionally based on the number of votes received by each political party. Such an approach is used in Germany and New Zealand.

Both STV and MMP would have retained geographic-based ridings to some extent. Boundaries would then have to be drawn between them, raising the issue of voter equality. Under STV, voter parity is much more likely. Under MMP, however, the seats elected on the first-past-the-post system would potentially lead to voter inequality. Given the small number of additional proportionally assigned seats that would be grafted onto the current system, voter inequality would remain potentially problematic in the absence of other reforms to ensure boundaries are drawn fairly.

Whatever the technical merits of STV or MMP, voters in British Columbia and Ontario rejected these options. In British Columbia, the referendum held in conjunction with the provincial election in May 2009 was actually the second referendum proposing electoral reform. In the first in 2005, a majority of voters opted for reform, but not in sufficient numbers to meet the super-majority threshold of 60 percent plus a majority in a certain number of ridings set by the British Columbia government. In 2007, in Ontario's first referendum in 83 years, voters were asked to choose between the MMP option and the first-past-the-post system already in use. The super-majority threshold set by the provincial government required 60 percent of the popular vote with a majority favouring change in at least 64 ridings for MMP to be passed. In the end, the debate regarding whether a super-majority requirement was appropriate was moot, as over 63 percent of voters opted for the status quo. Majority support for change existed in only a small number of ridings in Toronto. The lack of success by electoral reform advocates at the provincial level does not foreclose the possibility of a referendum at the federal level on a new electoral system.

Conclusion

While electoral boundaries have traditionally been only intermittently prominent in Canadian political discourse, the redistribution and readjustment of electoral boundaries should increasingly become a key issue of political, academic, and legal debate given their substantial impact on Canadian democracy. Although the history of drawing electoral boundaries in Canada has been at times ignominious, the process of

drawing boundaries has never been peripheral to the effective performance of democratic institutions. The Canadian approach, which uses independent, non-partisan electoral boundary commissions in each province, has professionalized the process and largely taken partisanship out of the equation, although some remnants of the old system remain in place. Electoral maps have a profound impact on who wins elections, whose votes count for how much, and how Canadian democracy is built. Electoral boundaries are a fundamental building block of Canada's democratic architecture.

In the future, the increasing urbanization and diversity of Canada will pose a serious challenge to the legitimacy of these institutions, in the absence of some kind of reform. The underrepresentation of urban and visible minority votes is likely to lead to constitutional challenges in the courts or legislative reform in the political arena.

DISCUSSION QUESTIONS

1. What is the proper balance between representation by population and regional representation in the House of Commons? Consider the role of the Senate and the role of provincial governments.
2. Are the courts the preferred forum to achieve constitutional change, or is it better for democratically-elected MPs to make changes to legislation?
3. What are the consequences for Canada of urban underrepresentation and visible minority underrepresentation?
4. Do elected representatives have too much or too little influence in the drawing of electoral boundaries?
5. Why have there been so few court challenges to electoral maps in Canada in comparison with the United States?

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