

HOW DOES YOUR VOTE COUNT? ELECTORAL REFORM IN A FEDERAL PARLIAMENT

BRIEF TO THE SPECIAL COMMITTEE ON ELECTORAL REFORM

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Dear committee members,

I'm honoured that you have invited briefs from members of the general public, and hopeful that they will be given due consideration. I write as an Ottawa resident who has recently completed a degree in political science at Carleton University, with a concentration in Canadian politics. Although I am no expert in the mathematics and science of electoral systems, I wish to comment on a few matters of principle and process before discussing a related issue that I have researched academically and independently, but that I believe has been bypassed by many committee witnesses. Regardless of the committee's preferred system for converting votes into seats, the Constitution guarantees each province "proportionate representation" in the House of Commons. It is crucial that this guarantee be respected in designing a new electoral system for Canada.

SUMMARY OF RECOMMENDATIONS

- 1. Although I express no definite conclusions about the future of the Canadian electoral system, I argue that the current system rests on a shaky theoretical footing.**
- 2. The committee should recommend that the government appoint an apolitical citizen assembly to choose an electoral system for Canada; the government should thereafter present a bill implementing this choice to Parliament.**
- 3. In light of constitutional considerations, any proportional electoral system whereby some or all members are elected nationwide must be rejected.**
- 4. Regardless of the ultimate choice of electoral system, the "principle of proportionate representation of the provinces" in the House of Commons, which is enshrined in the Constitution, should be reinvigorated by expanding the House by roughly 60 members and abolishing the "grandfather clause" that has frozen some provinces' parliamentary representation in the 1980s.**

WHAT'S THE BEST ELECTORAL SYSTEM? WHO SHOULD GET TO DECIDE?

As a preliminary matter, I should outline my personal views on the general topic of electoral reform. The first-past-the-post system has provided Canada with 149 years of stable governments, but in the modern context of a multi-party parliamentary democracy with strong regional cleavages and a volatile political party system, its disadvantages are clear. It too often underrepresents emerging and minor parties; it too often deprives major parties of a regionally representative caucus; and, by primarily producing majority governments, it emboldens those governments to behave arrogantly.

Furthermore, the fundamental premise of the system—that MPs are elected on their own behalf, unmoored from any larger, nationwide election campaign—simply does not reflect how Canadians

have understood the voting process for many decades. After every election, some voters claim they voted for their preferred party's leader, despite not living in that leader's home riding. This is a troubling sign of the state of civic literacy in Canada, but it reveals an important truth about modern government. We no longer inhabit a nineteenth-century universe where citizens look to their individual MPs to secure them a patronage job from the government or a railway station for their hometown. Canadians should expect their legislatures to reasonably reflect the range of public opinion in the country, given that their primary interest in politics flows from the weighty decisions the House makes as a collective body. There should be an approximate proportionality between the nationwide vote count and the membership of the House of Commons, and the fact that each MP elected under first-past-the-post has prevailed in their local riding is no excuse.

But this is just my personal opinion, and those who advocate retention of our current arrangement have made cogent arguments in its favour. The resolution of this dispute reduces to a set of trade-offs; like any political institution, people of goodwill want the electoral system to accomplish a variety of goals depending on personal preference. Nevertheless, I oppose any suggestion that the question be put to a referendum for several reasons. After studying the issue a fair bit, I remain unable to choose definitively among the multitude of options designed over the years by political scientists, mathematicians, and economists (although, at the moment, I am quite partial to the “rural-urban proportional” model recently published on Fair Vote Canada's website¹). The extensive efforts required to fully grasp the significance of all the potential options are beyond what should be expected of any reasonably busy voter. And how would the referendum ballot be designed? Would one system be pre-selected by the government? That would raise concerns that the governing party is being politically self-serving. But if the ballot lists numerous options, what electoral system would be used to determine the winner (assuming none of them gets 50% support)?

This infinite regress of potential objections suggests that electoral reform is an issue tailor-made for representative democracy. Given the sheer diversity of potential electoral systems, I would suggest that—unless this committee can reach a very broad consensus on a new electoral system—a citizen assembly be struck to examine any and all alternatives to the status quo. This body would be strictly politically neutral (avoiding concerns about partisan politicking) and its recommendations would be binding on the government. Subject to my comments below about provincial representation, there is no serious constitutional argument that anybody besides Parliament need consent to this new system. Still, the practicalities of preparing for a general election make the government's commitment to a new system by 2019 infeasible if a citizen assembly is struck. Thus, the target date for implementation of electoral reform should be 2023.

THE CONSTITUTIONAL CONSTRAINT

Our *Constitution Acts* of 1867 and 1982 provide that the House of Commons is to be selected through a first-past-the-post electoral system, but the federal government is explicitly permitted to amend aspects of the Constitution relating solely to the House of Commons without securing provincial consent. However, since 1867, each province has been constitutionally entitled to a “proportionate” share of seats in the House; and since 1915, no province may have fewer MPs than it has senators. Accordingly, federal legislation impinging on “the principle of proportionate

¹ <http://www.fairvote.ca/ruralurbanproportional/>

representation of the provinces in the House of Commons prescribed by the Constitution of Canada” must secure the assent of no fewer than seven provinces representing half the Canadian population². Likewise, any federal attempt to abolish “the right of a province to a number of members in the House of Commons not less than the number of Senators by which the province [was] entitled to be represented [in 1982]” cannot become law without unanimous provincial consent³. The purpose of these twin constitutional constraints is plain: the federal government cannot, on its own, derogate from the larger provinces’ right to a fair share of House seats, nor can it force smaller provinces below the representational floor set in 1915.

Taken together, I think it plain that these two clauses rule out any electoral system in which any MPs are elected “nationally.” Israel’s electoral system, in which all legislators are elected proportionally from nationwide lists, would plainly be impermissible. So, too, would a mixed-member proportional (MMP) system with some members chosen from local ridings and some “top-up” MPs elected from a federal list. If the guarantee of proportionate provincial representation means anything, it is that each MP must represent one province—the presence in the Commons Chamber of even one purportedly “national” member would prevent an accurate calculation of the “proportion” of MPs from Alberta or New Brunswick. Such a system would require broad provincial consent that could not reasonably be found.

Thankfully, I am aware of no serious proposal for nationwide party lists. But in structuring a new electoral system for Canada, the committee should bear in mind that, as presently constituted, the composition of the House of Commons stretches the phrase “proportionate representation of the provinces” almost to its breaking point. If the committee proposes to reallocate seats among provinces, the balance should not tip any further away from representation by population lest serious constitutional concerns arise.

In 1867, constituencies were apportioned proportionally among provinces based solely on population.⁴ But this state of affairs did not last. Riding sizes became increasingly unequal among provinces due to the admission of new provinces to the Dominion, the political desire to prevent slower-growing provinces from losing their federal political voice, and the practical fact that governments like having at least one cabinet minister from each province (and thus want a reasonable number of seats available to win in each one). In 1915, having seen its share of the national population drop, Prince Edward Island was spared any further losses in seats by the adoption of the aforementioned senatorial floor. Subsequently, other measures have been created to protect the electoral weight of smaller provinces in the House; currently, there is a grandfather clause ensuring that no province will lose the seat allocation it received after the 1981 census. Instead, the size of the House expands gradually every ten years to provide fast-growing provinces like Alberta some recognition of their expanded share of the nation’s population. Even so, in 2011, the average riding in Alberta had 107,213 residents and the mean Ontario constituency had 106,213; meanwhile, ridings in Saskatchewan had on average 73,813 people and PEI’s four districts had only

² *Constitution Acts, 1867-1982*, s. 42(1)(a)

³ *Constitution Acts, 1867-1982*, s. 41(b)

⁴ The narrative in this paragraph largely paraphrases Courtney, John C. 2001. *Commissioned Ridings: Designing Canada’s Electoral Districts*. Montreal & Kingston: McGill-Queen’s University Press. Page 29.

35,051 on average!⁵ The variance is significant both by historical and international standards and suggests that the current representational framework is arguably not “proportionate.”⁶

Unlike the senatorial floor, the grandfather clause is not specifically mentioned in the *Constitution Act* and thus can be abolished by Parliament at any time; in my view, regardless of the electoral system eventually adopted, the grandfather rule is theoretically indefensible. There is simply no justification for pretending that provinces like Newfoundland and Labrador and Saskatchewan command the same demographic weight that they did thirty-five years ago. In the federal context, it is never easy for any region of the country to yield political power to another, but the House of Commons was never intended to equally represent the regions of Canada. The provinces, wielding significant legislative powers, are more than able to speak up if they feel something’s going wrong in Ottawa. And the federal Cabinet, by convention, is regionally diverse. Having four MPs from PEI and seven from Newfoundland and Labrador provides governing parties with some assurance of having a caucus member capable of representing the province’s interests in the inner sanctum of government. But the senatorial floor already guarantees four seats to PEI and six to Newfoundland and Labrador. The grandfather clause is of little marginal value except to Manitoba and Saskatchewan, who each receive fourteen House seats and six senators. Surely there is a better way of bolstering representation for these two provinces.

My proposal would solve this issue by substantially expanding the size of the House, perhaps by 62 new seats to 400 MPs. The grandfather clause would be abolished, the senatorial clause retained, and a new rule added providing that no province can have fewer MPs than any province with a smaller population. By my calculations, using 2011 census data, this method would produce the following seat distribution:

	British Columbia	Alberta	Saskatchewan	Manitoba	Ontario	Quebec	Nova Scotia	New Brunswick	Prince Edward Island	Newfoundland and Labrador
Current distribution	42	34	14	14	121	78	11	10	4	7
Proposal	52	43	13	15	150	93	11	10	4	6

Figure 1: Distribution of MPs across provinces in a 400-member House (one seat per territory) with a senatorial floor but no grandfather clause

Thus, Alberta and other fast-growing provinces would reap the benefits of their rapid growth; smaller provinces would suffer only a slight decline in representation; and all provinces would retain a sufficient number of MPs to contribute cabinet ministers to the government. This last consideration might not be so important if Canada switches to a proportional electoral system, which would almost certainly guarantee each of the two major parties representation in each province, even if (for instance) the senatorial clause were abolished and PEI reduced to two seats.

⁵ All statistics cited herein are from the 2011 Census of Population.

⁶ For an extended and persuasive argument on this point, see Sancton, Andrew. 2010. “The Principle of Representation by Population in Canadian Federal Politics.” Toronto: Mowat Centre. <https://mowatcentre.ca/the-principle-of-representation-by-population-in-canadian-federal-politics/>

In a time of governmental restraint, this concept may not be a political bestseller, and it would require redesigning the furniture in the Commons Chamber, but there are good reasons to think that the House is currently too small. As of 2016, the government caucus has 183 members, of whom 65 (or more than one in three) are on the government’s “payroll” as ministers or parliamentary secretaries. With somewhat larger government caucuses, the promise of promotion to Cabinet for “well-behaved” backbenchers would not be quite so tempting, and government MPs might feel more freedom to speak their minds on policy issues, thus enhancing their constituents’ confidence in their MPs’ diligence, thoughtfulness, and receptivity to citizen concerns.⁷

Believe it or not, a larger House might also be more effective and efficient! In the 1980s, when the House varied between 282 and 295 MPs, the Mulroney government was forced to abandon a promising parliamentary reform—legislative committees. These bodies would have alleviated the excessive workload facing House standing committees by scrutinizing and amending all government legislation. This arrangement, which has worked very well in Britain, failed in Canada because there were simply too few MPs to sit on all the committees.⁸ It deserves another shot.

CONCLUSION

My apologies if this brief has strayed too far from the topic of electoral system reform. But, in a federal country, beneath every electoral system lies an apportionment scheme. In my judgment, it would be foolish for Canada to adopt electoral machinery geared towards vote proportionality without simultaneously considering the neglected issue of population proportionality.

⁷ Docherty, David. 1997. *Mr. Smith Goes to Ottawa: Life in the House of Commons*. Vancouver: UBC Press. Page 105.

⁸ Franks, C.E.S. 1987. *The Parliament of Canada*. Toronto: University of Toronto Press. Page 263.