

Conflict and Confusion in Drawing Constituency Boundaries: The Case of Alberta*

KEITH ARCHER

*Department of Political Science
The University of Calgary*

Cet article examine l'environnement institutionnel changeant à l'intérieur duquel la redistribution des frontières électorales a lieu au Canada. Le dernier exercice de redistribution réalisé en Alberta est utilisé pour illustrer certaines difficultés qui sont apparues ou auxquelles on peut s'attendre avec le régime de redistribution actuel. En 1992, la commission des frontières électorales de l'Alberta est devenue la première à être incapable de soumettre un rapport final ralliant la majorité des commissaires. Les commissaires avaient des conceptions différentes quant aux principes de représentation qui devaient être retenus allant du principe de l'égalité des voteurs à celui de la représentation des communautés d'intérêt. Ces divergences ont empêché tout consensus. L'article examine les raisons qui ont engendré ce genre de difficultés et discute des façons de les éviter à l'avenir.

This article examines the changing institutional environment within which electoral redistribution takes place in Canada. The recent redistribution exercise in Alberta is used to illustrate some of the difficulties that have emerged, and that may be expected to continue under the current electoral redistribution regime. The Alberta electoral boundaries commission in 1992 became the first such commission to be unable to submit a final report with the support of a majority of commissioners. Different conceptions among commissioners of their role in advancing the principles of voter equality versus other representational principles, such as the representation of communities of interest, made it impossible to arrive at consensus. The article examines the reasons for this difficulty, and discusses how it might be avoided elsewhere.

Introduction

The redrawing of electoral boundaries is a recurrent and highly contentious issue in Canadian politics. Electoral redistribution is made more controversial because of the growth in the number of institutional actors involved in electoral map-making. Redistribution can illustrate the fragmentation of power that can arise in Canada's executive-dominated political system. The power to draw electoral boundaries, held by parliament and/or the

legislatures at Confederation, was shared with electoral boundary commissions through statute in the 1960s, and with the courts, through the Charter of Rights and Freedoms in 1982. As a consequence, the principle of voter equality has become more important in the redistribution process (Courtney, 1988; but compare Sancton, 1990).

This article examines the changing institutional environment within which electoral redistribution takes place in Canada. The recent redistribution exercise in Al-

berta is used to illustrate some of the difficulties that have emerged, and that may be expected to continue under the current electoral redistribution regime. The Alberta electoral boundaries commission in 1992 became the first such commission to be unable to submit a final report with the support of a majority of commissioners. Different conceptions among commissioners of their role in advancing the principles of voter equality versus other representational principles, such as the representation of communities of interest, made it impossible to arrive at consensus. The commission faced the difficult task of reconciling the requirement of voter equality (as interpreted recently by the courts) with conflicting requirements in the enabling legislation. In contrast to the view recently articulated by the Royal Commission on Electoral Reform and Party Financing (the Lortie Commission) that the principles of voter equality and community of interest are not irreconcilable (Canada, 1991:144–53), the Alberta case suggests that legislators can confound these two principles to an extent that makes them opposite and contrasting poles on the representational continuum. The Alberta case also illustrates the power that has been retained by some legislatures in drawing electoral boundaries, making the task of boundaries commissions far more complex than otherwise might be the case.

Electoral Boundary Commissions and the Movement Toward Voter Equality

Prior to 1964, the redistribution of electoral boundaries was conducted solely by parliament and the provincial legislatures (Ward, 1949; 1963; Qualter, 1970). Because of the recurrent difficulties which arose each time parliament redistributed its seats, particularly difficulties with partisan gerrymandering (Carty, 1985; Dixon, 1969; 1982), the federal government and most provinces have opted to use non-partisan or bipartisan commissions for drawing elec-

toral boundaries (Carty, 1985). The legislation governing federal electoral boundaries is the *Electoral Boundaries Readjustment Act, 1964*. This legislation provided for the creation of a boundary commission for each province and also set the maximum deviation limit at 25 per cent above or below the average size of constituencies within each province (Qualter, 1967). The *Representation Act, 1985* allowed the commissions to depart from the 25 per cent deviation rule by any amount that they saw fit, if in the view of the Commission the deviation was warranted by 'extra-ordinary' circumstances (Courtney, 1988).

There is some dispute over the degree to which electoral boundary commissions have created electoral districts more equal in size than those created by legislatures acting without the advice of commissions. The polar positions in this debate are held by John Courtney and Andrew Sancton. Courtney maintains that electoral boundary commissions have reduced considerably the inequality in populations of legislative districts within provinces, and that the principle of equality was applied more vigorously in 1987 than at any time in the past (Courtney, 1988:680–1). Furthermore, he suggests that an emphasis on one person-one vote may emerge 'as the distinguishing representational principle to evolve from the work of the commissions' (Courtney, 1985:157). Sancton has challenged Courtney's view, arguing that federal electoral boundary commissions in 1987 were as likely as not to produce electoral boundaries that were more unequal in size than those which they were replacing. (Sancton, 1990:453–5) Furthermore, he suggested that the trend toward greater inequality in constituency populations would continue. (*Ibid.*, 456). Before examining the recent controversy over electoral districting in Alberta, let us examine the trends in electoral districting over time that form the substance of the debate between Courtney and Sancton.

Figure 1 shows the degree of inequality in federal constituency populations for each

province from 1933 to 1987. Constituency inequality is measured by the Gini index, which ranges from 0 (complete equality) to 1 (complete inequality).¹ Several important facts emerge from Figure 1. First, there was considerable variation in the amount of constituency inequality before the redistribution of 1966. The constituency population of some provinces, such as Saskatchewan, Alberta and Newfoundland were characterized by substantial equality even during the period in which districting was done mainly by legislatures. In contrast, the populations in constituencies of other provinces, such as New Brunswick, Ontario, British Columbia, Quebec and Manitoba, were more unequal.

Second, Figure 1 illustrates a significant movement toward uniformly greater equality in 1966. Recall that the 1966 redistribution was the first to use electoral boundaries commissions, and the first to mandate a maximum deviation of plus or minus 25 per cent from the provincial average. Since the average Gini index following 1966 fell well below .10, it is obvious that the electoral boundaries commissions relied on the principle of voter equality to a far greater extent than had parliament in the preceding period. Third, Figure 1 indicates that the period since 1966 has seen an increase in the dispersion of the data. That is, since 1966 there has been greater variation between provinces in the amount of constituency inequality. Most provinces have experienced very little aggregate change in the amount of inequality of their constituency populations, some such as Newfoundland and New Brunswick have seen their constituency inequality increase and others, such as Saskatchewan, Manitoba and Prince Edward Island have experienced a substantial decrease in inequality.

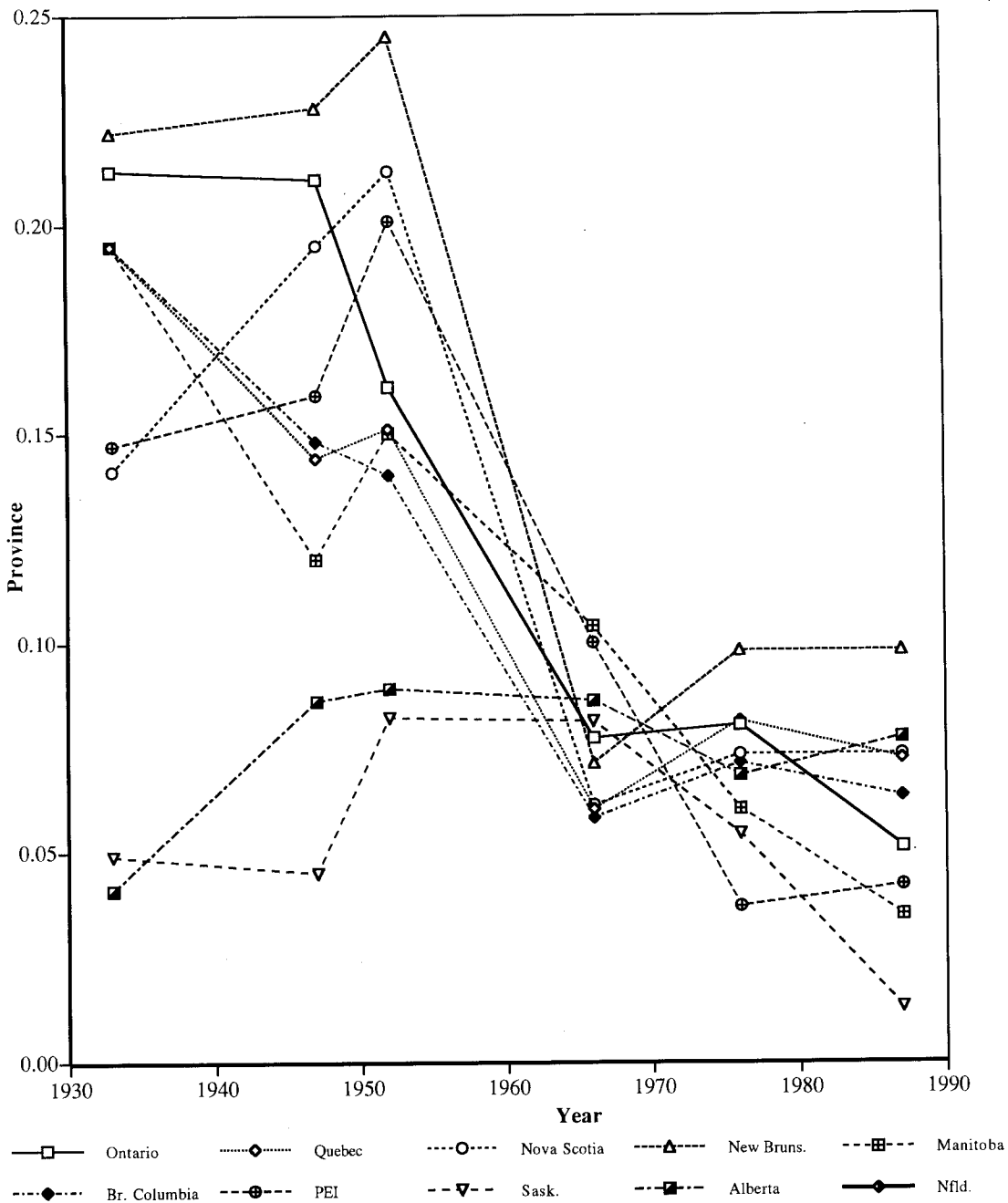
Figure 1 clarifies the dispute between Courtney and Sancton. The introduction of electoral boundaries commissions prior to the 1966 redistribution significantly reduced inequality in constituency populations. However, there has not been a further systematic reduction in inequality

since 1966. Some provinces have become more equal, some have stayed about the same, and two (Newfoundland and New Brunswick) have become less equal. The provision of the *Representation Act, 1985* allowing commissions to exceed the plus or minus 25 per cent deviation limit led to much greater inequality in Newfoundland, but its effect elsewhere has been very modest. Sancton speculates that this provision of the Act will be used in the future to further erode the principle of equality of constituency populations. Recent decisions by the courts affirm the possibility of greater constituency inequality in the future, although they say nothing of its probability.

The Courts and Electoral Distribution

Until recently the drawing of constituency boundaries was an issue of which the courts took little notice (see, for example, Courtney, MacKinnon and Smith, 1992). That situation changed with the adoption of the Charter of Rights and Freedoms in 1982. Section 3 of the Charter guarantees the right to vote in elections to the House of Commons and the provincial legislatures, and section 15 guarantees equality to all citizens. The meaning of the Charter-guaranteed right to vote has been elaborated in several recent court decisions, the effect of which has been to ensure that legislatures and electoral boundaries commissions have considerable latitude in applying the principle of equality to electoral boundaries (Knopff and Morton, 1992:332-73).

Each of the cases arose from disputes over provincial electoral boundaries, the first of which (the Dixon case) involved British Columbia. At the time of the challenge, the degree of inequality in British Columbia's electoral boundaries was indicated by a Gini score of .157, which was significantly higher than the Gini scores at the federal level after the 1966 redistribution, but below the pre-1966 level of inequality.



Source: Courtney (1985), 167; Sancton (1990), 453.

Figure 1 Gini scores of federal constituencies by province, 1933-1987

It also compared reasonably well with the level of inequality in constituency size at the provincial level, where the trends toward greater equality were not as con-

sistent or systematic as at the federal level (Knopff and Morton, 1992; see also figure 2). In addition, almost one in three constituencies was beyond the 25 per cent devia-

tion limit that was applied to federal constituencies after 1964, although this limit did not apply to the provinces.

In interpreting the Charter's guarantee of voter equality, Justice McLachlin of the British Columbia Supreme Court (now of the Supreme Court of Canada) recognized that 'representation by population is one of the most fundamental of democratic rights ... (and that) ... equality of voting power is fundamental to representation by population' (Dixon, 286). However, while voter equality was the most important factor in drawing electoral boundaries, McLachlin maintained that absolute or near-absolute equality was not required, arguing instead that section 3 of the Charter required 'relative equality of voting power' subject to other factors that can contribute to 'better government' (*Ibid.*, 294). Although Justice McLachlin was reluctant to set the limit of what was to constitute 'relative equality,' the fact that one third of British Columbia's boundaries exceeded 25 per cent deviation was deemed unacceptable and the province's electoral boundaries were declared invalid.

The adjustment of provincial electoral boundaries in Saskatchewan provided a further opportunity for judicial interpretation of the meaning of the right to voter equality, with decisions coming from both the Saskatchewan Court of Appeal (*Reference re Provincial Electoral Boundaries*, 1991) and the Supreme Court of Canada (*Carter*, 1991). The most controversial aspects of Saskatchewan's *Electoral Boundaries Commission Act* were the division of the province into urban, rural and northern regions, with the legislature setting the number of seats for the urban and rural regions, and increasing the acceptable deviation from 15 to 25 per cent (Canada. Royal Commission on Electoral Reform and Party Financing, 1991:145-7). The provincial government was accused of political gerrymandering because the allocation of seats to rural areas (where the governing Conservatives traditionally were stronger) exceeded their proportion of the popula-

tion, whereas seats in urban areas were less than their population percentage.

The Saskatchewan Court of Appeal went further than the British Columbia Supreme Court by requiring 'relative or substantial equality of voting power' (Reference, 1991:41). The inclusion of the adjective 'substantial' implied a more rigorous standard than the one used in British Columbia. It also resulted in the Court of Appeal interpreting the division of the province into urban and rural areas as arbitrary and in violation of the Charter, even though all but two northern constituencies fell within the plus or minus 25 per cent deviation limit (Knopff and Morton, 1992:351-4).

The decision of the Court of Appeal was overturned by the Supreme Court of Canada in *Carter v. Saskatchewan*, with Justice McLachlin writing the majority opinion. The Court argued that the Charter-guaranteed right to vote provides a guarantee of effective representation, and not equality of voting power per se. The first condition of effective representation is 'relative parity of voting power' (*Carter*, 1991:10). However, as emphasized recently by the Lortie Commission, the *Carter* decision also accepted the 25 per cent deviation limit as a reasonable measure of the relative parity of voting power (Canada. Royal Commission on Electoral Reform and Party Financing, 1991:148). The courts have thus validated the 25 per cent deviation limit as generally acceptable under the Charter, affirmed the primacy of relative voter equality as the first principle of electoral districting, and also justified the representation of communities of interest in the legislature, even when doing so requires deviating from the principle of voter equality. In reflecting on these developments, the Lortie Commission has recommended reducing the deviation limit from 25 to 15 per cent and eliminating the 'exceptional circumstances' justification for variations over or under this limit (*Ibid.*, 155-6). However, to date these recommendations have not been taken up by parliament. Both the general

trends in electoral districting and recent court decisions set the context for the dispute over electoral boundaries in Alberta.

Voter Inequality in the Provinces

The provinces differ on a number of dimensions relating to redistributions, including such things as when they are conducted, by whom, and in what ways (Carty, 1985). The inter-provincial variation which is most germane for understanding the Alberta case is the variation in the standards and criteria which are used in drawing constituencies. The 10 provinces have established 10 separate and unique regimes of standards and criteria of apportionment. Some have established classes of constituencies with unequal representation, and many provinces establish tolerance limits, but allow them to be over-ridden for a host of 'special circumstances'. Some establish more stringent tolerance levels than others. For example, Manitoba has a 10 per cent deviation limit on all but two northern constituencies. Saskatchewan has a deviation limit of 25 per cent for all but two northern constituencies, which can be as much as 50 per cent below average. Similarly, Alberta has a general 25 per cent deviation limit, although four multi-municipality constituencies can be as much as 50 per cent below average (Knopff and Morton, 1992:336).

The provinces exhibit substantial variation in the degree of voter inequality. Figure 2 shows the magnitude of voter inequality at the provincial level between 1944 and 1987 as measured by the Gini index. Until the period of reforms ushered in during the mid- to late 1960s, most provinces had very high levels of voter inequality. The level of inequality was particularly marked in British Columbia and Quebec, both of which experienced prolonged periods in which inequality exceeded .3 on the index. Most provinces, at most times, had a lesser but substantial level of inequality (between .2 and .3 on the Gini index). As in federal ridings, Alberta experienced lower

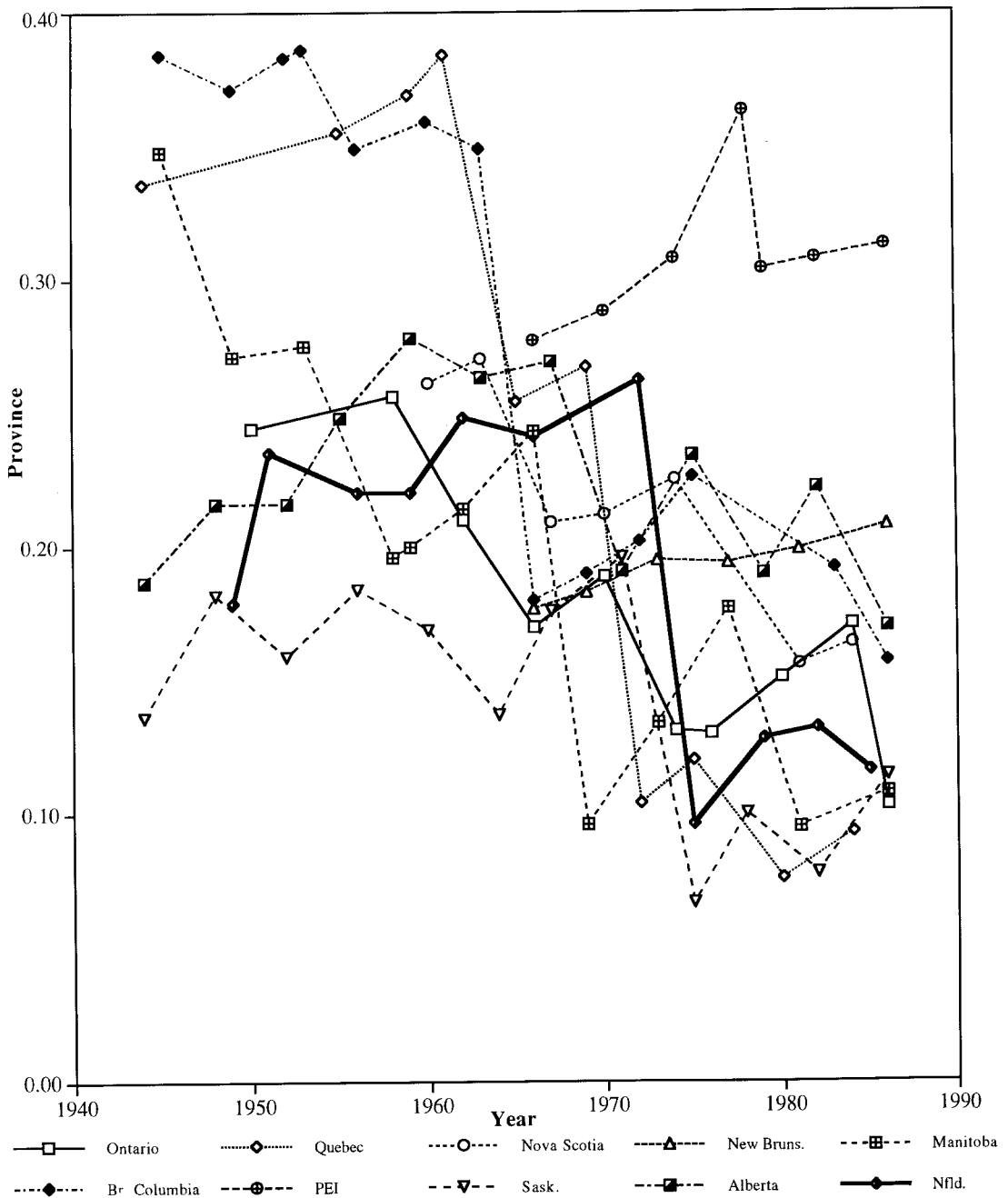
levels of inequality relative to most other provinces during the pre-reform period, but still had a level of inequality substantially greater than 0.

Following the reforms of the 1960s, the amount of voter inequality at the provincial level declined precipitously, although it still lags well behind the federal level (compare with Figure 1). By the late 1970s and early 1980s, only Prince Edward Island, which underwent its last redistribution in 1962, hovered at an inequality score of .3 or more. However, Alberta did not experience the same trend as most other provinces. Its record of voter inequality went from among the best in the country in the pre-reform period (although it deteriorated in the 1960s), to one of the worst by the late 1980s.

The Case of Alberta

Odd as it might appear at first, Alberta is a 'deviant case' among the provinces on the issue of electoral distributions because of the relative *stability* of its distortions. This is not to suggest that Alberta's electoral districts are not malapportioned. They are. Instead, it suggests that Alberta did not experience the level of inequality found in other provinces before the 1960s. It also suggests that Alberta has not experienced the same trend toward greater democratization and equality as has occurred in most other provinces. The key to understanding this paradox rests in an appreciation of the timing of the growth of Alberta's major cities, and of the response of the government to rapid urbanization.

Alberta was able to avoid the more extreme levels of malapportionment in its early history because of its relative lateness in urbanizing. In 1921, the two major urban centres, Calgary and Edmonton, had a combined total of just one-fifth (20.8%) of Alberta's population, with the remainder being mainly rural. At that time the two major cities together held 10 of 61 legislative seats, or 16.4 per cent. Thus, the major cities were underrepresented even despite their small size. On the other hand, their



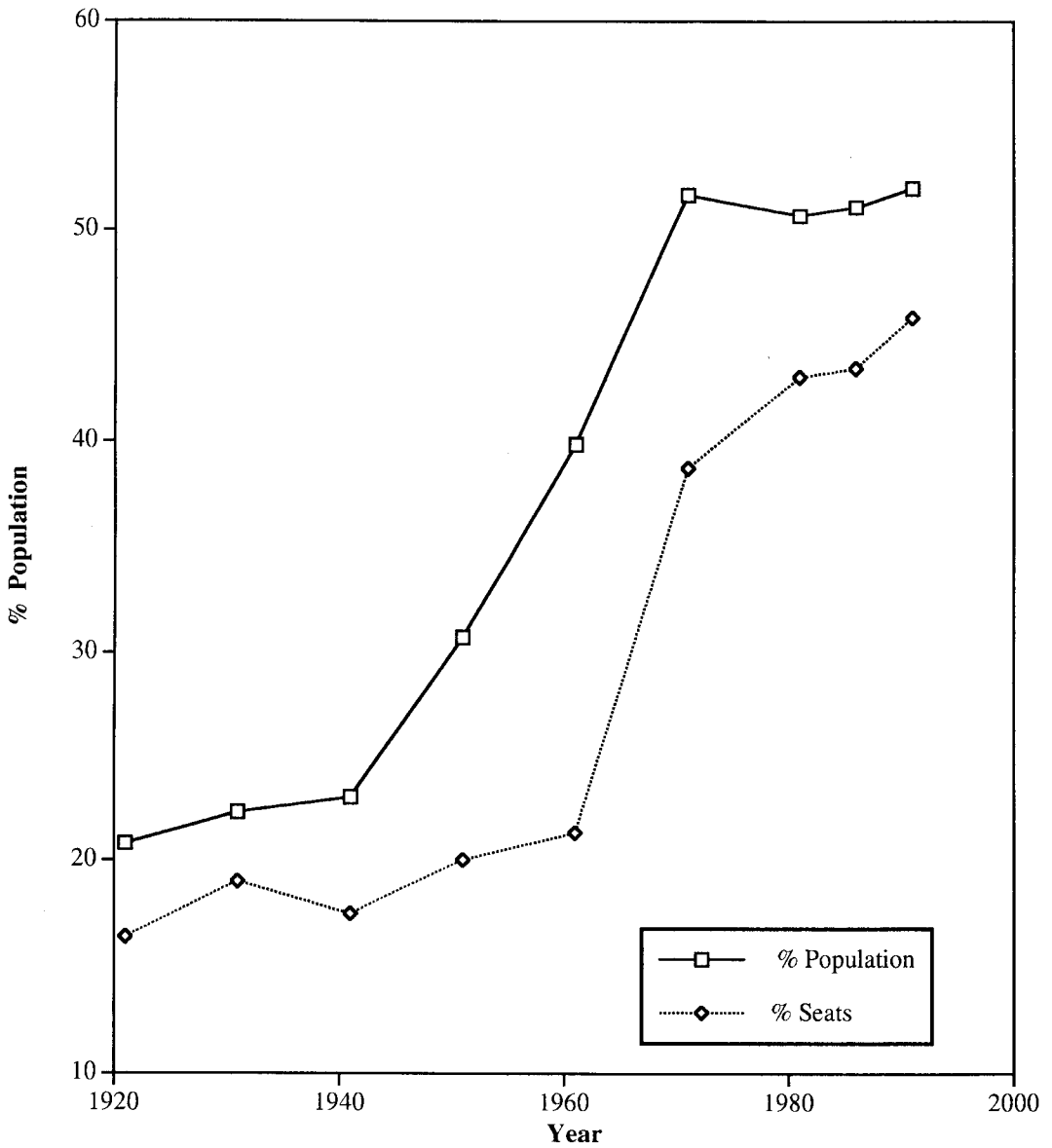
Source: Pasis (1990), 252.

Figure 2 Gini scores of provincial constituencies, 1944–1987

smallness limited the amount of electoral distortion that might arise (see Figure 3).

In general, that same trend held

throughout the economically depressed and drought-plagued 1930s and into the early 1940s. However, the relative prosper-



Source: Census of Canada. Selected Years.

Report of the Chief Electoral Officer, Selected Years.

* 1991 Population Data are from 1991 Census. 1991 Seats are based on Bill 55.

Figure 3 Combined Calgary and Edmonton population and seats as percentage of province

ity of the postwar years, which was fuelled in part by the major oil and gas discoveries in the province, began to change the demo-

graphic character of the province, and with it the magnitude of electoral distortion (see, for example, Gibbins, 1980; Richards and

Pratt, 1979; Tupper and Gibbins, 1992). For example, by 1951 three in 10 Albertans lived in Calgary or Edmonton, a proportion which ballooned to four in 10 by 1961, and to over half of all Albertans by 1971. However, as late as 1961 the two major cities still had only slightly more than 20 per cent of all legislative seats and the degree of electoral distortion was becoming inflated.

Several factors combined to indicate a need for rethinking electoral boundaries in the province. The Social Credit government of the day had its support rooted firmly in the rural areas of the province, and these areas were losing population (Finkel, 1989). In addition, the changing demographic texture of the province from agrarian to urban based on non-renewable resource extraction, the changing environment for electoral redistribution occasioned by the federal government's reforms in 1964, and the growing level of urban underrepresentation, indicated some of the directions the reforms should take. The government responded by passing the *Electoral Boundaries Commission Act, 1969 (Revised Statutes of Alberta, 1971)*. The 1969 Act had three major components. It established a bipartisan electoral commission to make recommendations to the legislative assembly on electoral boundaries. It created two classes of constituencies, urban and rural. And, it set the electoral quotient for urban constituencies at 25 per cent above the provincial average. The implementation of the Act halted the trend toward rising malapportionment in the province, but it did so by institutionalizing malapportionment at relatively high levels. Thus, electoral boundary commissions in the province have been unable to bring about a degree of voter equality consistent with that which has emerged at the federal level and in most of the provinces.

The Redistribution of 1990-92

In the fall of 1990, the Alberta government faced a changed environment with respect

to its electoral districts. Alberta had highly malapportioned legislative districts which strongly favoured rural voters. Most districts deviated from the provincial average by more than 25 per cent. The British Columbia Supreme Court (in *Dixon*) in 1989 had declared an apportionment plan with less distortion than Alberta's as unconstitutional, and proposed a 25 per cent deviation limit as reasonable. In response to the need for reapportionment, and following highly divisive debate in the legislature, the Alberta government passed *The Electoral Boundaries Commission Act, 1990 (EBC Act)* in December of that year. The legislation featured a number of important provisions: 1/ A bipartisan Electoral Boundaries Commission was responsible for drafting electoral boundaries in the province. Its five members were to include a judge, the province's chief electoral officer, two members nominated by the government and one by the opposition. The commission's recommendations were subject to the approval of the Legislative Assembly. 2/ Three types of constituencies were designated: single municipality and multi-municipality districts with a 25 per cent deviation limit, and multi-municipality districts that could be as much as 50 per cent below the average; 3/ The total number of constituencies was set at 83; 4/ The number of single municipality constituencies was set at 43. It could not be changed by the Electoral Boundaries Commission; 5/ Of the 40 multi-municipality districts, a maximum of four could deviate by 50 per cent below the average population; and 6/ the requirement that the Commission *must* consider factors other than population equality in designing electoral boundaries. The *EBC Act* specifies several such factors, including 'community of interest'.²

The most contentious part of the legislation was the replacement of the previously-designated urban and rural constituencies with the more ambiguous 'single municipality' and 'multi-municipality' constituencies. As the name implies, single municipal constituencies are to be situated entirely

within the boundaries of a municipality; multi-municipality constituencies would straddle several municipalities. The Act went further by establishing the distribution of single municipality constituencies as follows: 19 in Calgary, 17 in Edmonton, two in Lethbridge, and one each in Medicine Hat, Red Deer, St. Albert, Ft. McMurray and the County of Strathcona (including the hamlet of Sherwood Park), for a total of 43 single municipality districts.

The use of a 25 per cent maximum deviation limit in its 1990 redistricting legislation represented a considerable movement toward voter equality on the part of the Alberta government. And yet, there was the appearance that the government wished to maintain considerable, systematic voter inequality. By limiting the number of single municipality districts to 43, the government was preventing the boundaries commission from determining the number of constituencies which urban voters warranted. Although the legislature was clearly acting within its power in setting the number of urban seats (a position confirmed by the Carter decision and subsequently by the Alberta Court of Appeal (Reference re Provincial Electoral Boundaries, 1991)), in doing so it limited the ability of the electoral boundaries commission to determine the degree of voter equality which was most appropriate for the province. The amount of discretion held by the boundaries commission was made ambiguous by the creation of multi-municipality districts. In theory, one could hive off small parts of the major cities and place them in predominantly rural, multi-municipality districts. Conversely, the boundaries commission could take larger sections from the major cities and place them in predominantly urban, multi-municipality districts. Either method of creating so-called 'rurban' ridings would lead to increased voter equality. (These arguments were made in the Attorney General's Factum; and in Morton and Knopff, 1991.) However, the requirement that the boundaries commission take into account other factors, such as

sparsity and density of population, or community of interest appeared to raise serious doubts about the degree of equality that could be achieved by a boundaries commission. Despite this ambiguity, the interpretation was widely shared that the legislation was designed to be sensitive to the court-endorsed movement toward limiting inequality to a general deviation of 25 per cent, while simultaneously retaining a considerable measure of rural overrepresentation in the legislature. Whether such rural overrepresentation is good or bad is not at issue here. What is at issue is whether such a provision for rural overrepresentation stipulated by the legislature prevents electoral boundaries commissions from drawing boundaries which also remain sensitive to Charter-guaranteed equality rights.

The degree of rural overrepresentation made possible by the legislation can be seen in Tables 1 and 2. These data are hypothetical because the legislation does not specify the location of the boundaries. Focussing on the columns labelled 'maximum deviation,' note that 61.1 per cent of electors and 51.8 per cent of the legislative seats are in urban centres. Conversely, 38.9 per cent of the population (mainly rural) elect 48.2 per cent of legislators. The average urban (i.e. single municipality) electoral district has a population of 33,637, compared to 22,986 for rural ridings. The urban areas have a population 18.0 per cent above the provincial average, whereas the rural areas are 19.4 per cent below the average. A majority government can be elected on the basis of 40.7 per cent of the population. It takes 146 urban votes, on average, to equal 100 rural votes. Constituencies can be as small as 14,252 and as large as 35,630. Thus, looking at individual constituencies instead of urban and rural averages, it is possible for 250 voters in one constituency to equal 100 voters in another. In short, the legislation for drawing constituency boundaries provided for systematic inequality in the value of a vote.

Table 1

Legislative Seat Distribution in Alberta under the Electoral Boundaries Commission Act, 1990 and the Interim Report of the Electoral Boundaries Commission

Municipality	Pop ⁿ 1986 census	Legislative seats	EBC Act, 1990		EB Commission Interim Report	
			Maximum deviation Pop ⁿ single municipalities	Pop ⁿ multi-municipalities	Pop ⁿ single municipalities	Pop ⁿ multi-municipalities
Calgary	636,105	19	636,105	0	590,241	45,864
Edmonton	573,980	17	573,980	0	532,726	41,254
Lethbridge	58,840	2	58,840	0	58,840	0
Red Deer	54,425	1	35,630	18,795	29,552	24,873
Sherwood Park (County of Strathcona)	49,800	1	35,630	14,170	33,547	16,252
Medicine Hat	41,805	1	35,630	6,175	27,798	14,007
St. Albert	36,710	1	35,630	1,080	32,140	4,570
Ft. McMurray	34,950	1	34,950	0	34,950	0
Other	879,210	40	0	879,210	0	879,211
Total	2,365,825	83	1,446,395	919,430	1,339,794	1,026,031

Table 2

Comparison of effect of legislative seat distribution under the Electoral Boundaries Commission Act, 1990 and the Interim Report of the Electoral Boundaries Commission

	<i>EBC Act, 1990</i> Maximum deviation	EB Commission Interim Report
(a) total population (1986 census)	2,365,825	2,365,825
(b) population in single municipality districts	1,446,395	1,339,794
(c) % of total pop ⁿ in single municipality districts	61.1%	56.6%
(d) % of seats in single municipality districts	51.8%	51.8%
(e) average population in single municipality districts	33,637	31,158
(f) population deviation of single municipality districts from provincial average	+ 18.0%	+ 9.3%
(g) population required to elect a majority of seats	40.7%	45.6%
(h) ratio of average single municipality vote to multi-municipality vote	1.46	1.21
(i) range in constituency size	14,252-35,630	20,274-35,052
(j) ratio of largest to smallest constituencies	2.5:1	1.7:1

The Interim Report of the Electoral Boundaries Commission of Alberta

The Electoral Boundaries Commission was created in January 1991 with the mandate to 'make proposals to the Legislative Assembly as to the area, boundaries and names of the electoral boundaries of Alberta' in a manner consistent with the provisions of the *Electoral Boundaries Commission Act*. The Commission submitted its interim report in December 1991, with four members endorsing the report and one, a Conservative government nominee, opposed. A key feature of the Commission's report, and the one on which the Commission itself was divided, was the relative weight to be accorded the principles of voter equality and the representation of 'communities of interest,' especially rural communities. The majority on the Commission respected the view of the Supreme Court in Carter that strict numerical equality was

not a necessary feature of 'fair and effective representation'. However, it also accepted the view articulated by the federal electoral boundaries commission for Saskatchewan in 1987 that the conflicting demands over the representation of territory and population can best be reconciled by 'accepting a respectable measure of population equality as the most suitable standard by which to construct the constituencies' (quoted in Courtney, 1988:684).

As noted, the difficulty posed for the boundaries commission in moving toward greater population equality was the provision of the Act setting a total of 83 districts, 43 of which were single municipality districts. To the extent that the Commission respected municipal boundaries, the resulting electoral districts would have substantial voter inequality. In a decision that surprised most observers, the Commission chose to create several 'rurban' ridings that were predominantly urban Calgary or Ed-

monton ridings, but which also contained rural areas and fell within the multi-municipality category. Thus, large sections of Calgary and Edmonton suburbs were split from the city ridings and placed in multi-municipality ridings along with the surrounding rural areas.

The effect of that decision on the boundaries commission's Interim Report appear in the columns labelled 'Interim Report' in Tables 1 and 2. The most significant change was in reducing the populations of Calgary and Edmonton that are included within the prescribed single municipality districts. Approximately 46,000 Calgarians and 41,000 Edmontonians were placed in multi-municipality districts. Less pronounced changes occurred in several of the cities assigned one electoral district. The overall effect is that the population within single municipality districts decreased from 61.1 to 56.6 per cent, placing these districts 9.3 per cent above the average. The multi-municipality districts, with 43.4 per cent of the population, average 10 per cent below the provincial mean. Thus, whereas the percentage of single municipality versus multi-municipality seats remained the same, the degree of voter inequality decreased. The percentage of the provincial population needed to elect a majority government increased to 45.6 per cent, and on average 121 single municipality votes were needed to equal 100 multi-municipality votes. Likewise, both the range and the ratio of constituency size declined sharply.

The *Electoral Boundaries Commission Act* required the commission to hold public hearings after releasing its interim report and prior to submitting its final report to the legislature (*Electoral Boundaries Commission Act*, section 7). Public hearings were held during February and March and the final report submitted in May 1992. Through its final report, the commission gained the dubious distinction of being the first electoral boundaries commission to file only minority reports (Alberta. Electoral Boundaries Commission 1991-92b: 13). The commission chair continued to

support and to recommend the adoption of the commission's interim report, but he was alone in doing so. The two commission members nominated by the government submitted a joint report in which they proposed boundaries for 83 constituencies without using 'rurban' ridings (*Ibid.*:17). The commissioner nominated by the opposition withdrew her support for the interim report because of the opposition to the 'rurban' ridings which arose during the public hearings. Without the use of rurban ridings to decrease the inequality provided for in the legislation, Commissioner McBean argued that it was not possible to both follow the legislation and comply with the Charter (*Ibid.*:76). This same conclusion was reached, although through somewhat different means, by the fifth commissioner, the chief electoral officer (*Ibid.*:88-91). Thus, the commission was unable to propose electoral boundaries to the legislature. Instead, there was minority support within the commission for two separate sets of electoral boundaries, and minority support for a change in the legislation on which new electoral boundaries should be based. After nearly two years of effort, the electoral boundaries commission had accomplished nothing.

The failure of the boundaries commissioners to agree on the principles of representation led to their failure to agree on how to draw the constituency boundaries. This failure placed the Alberta government in a quandry. When the commission filed its final report in May 1992, less than two years remained in the government's mandate. As well, by the early 1990s, over 30 per cent of the constituencies in Alberta were more than 25 per cent above or below the average constituency size. Therefore, it was uncertain whether an election fought on the old constituencies would survive a Charter challenge in the courts.

Faced with the need to redistribute, the government had several options. Perhaps the simplest approach was to appoint a new set of commissioners who would continue to be guided by the *EBC Act* of 1990.

However, the depth of controversy within the first commission did not inspire confidence in a second bipartisan commission reaching a consensus. Alternatively, the government could change key provisions in the *EBC Act* as some commissioners recommended, such as the provision which set in advance the number of urban (i.e. single municipality) constituencies. That is to say, the government could set the total number of constituencies, and then allow the electoral boundaries commission to determine how many constituencies would be urban and rural. This is the approach used in drawing federal constituency boundaries. This approach implies a willingness on the part of the government to give up some of its power to the boundaries commission. The Alberta government was unwilling to do so.

Instead, it chose a third and more controversial option of moving the process of redistribution back into the legislature. The government created a select special committee on electoral boundaries in July with a mandate to draw electoral boundaries based on the *EBC Act* of 1990 and report to the legislature by November 15, 1992 (Alberta, Select Special Committee, 1992). The seven member committee was comprised of four government and three opposition members. Perhaps predictably, both opposition parties boycotted the committee. Thus, the new constituencies proposed to the legislature were drawn by four government members.

The committee's recommendations were embodied in Bill 55, which was brought before a special session of the legislature in January and February, 1993.³ Bill 55 contains a number of controversial provisions, and was passed only after the government invoked closure on debate. It abandons the use of 'rurban' ridings, which had been used to increase the equality of constituency populations. The average constituency population in Calgary based on Bill 55 is 15.4 per cent above the provincial average. All 20 Calgary constituencies are above the provincial average. The average con-

stituency population in Edmonton is 11.3 per cent above the provincial average. Seventeen of the 18 Edmonton constituencies have a population above average. The Gini index of inequality increased from .070 under the Interim Report of the Electoral Boundaries Commission to .094 under Bill 55. This legislation is an example of the type of political gerrymandering which led to the shifting of the redistribution process from legislatures to commissions in the 1960s.

Conclusion

The redrawing of electoral boundaries continues to generate conflict and division in Canada. This is probably inevitable because of the inherently political nature of electoral redistribution. In a first-past-the-post constituency electoral system, where a minority of votes typically produces a majority of legislative seats, the placement of constituency boundaries can have a profound effect on the size of the government and opposition parties in the legislature, and also on which party forms the government. In almost every jurisdiction, the responsibility for drawing electoral boundaries is shared between the legislature and electoral boundary commissions. As often occurs in politics, the interests of legislators and boundary commissioners differ according to the institutional positions they occupy. The ensuing political conflict is a manifestation of the differing incentives that confront actors in different institutional settings.

For the legislator, redistribution affects his or her role as both ombudsman for the constituents, and a member of the governing or opposition parties. To fulfil the ombudsman role, legislators have a preference for constituencies that are relatively small geographically and that are relatively homogeneous. As a member of a political party, legislators prefer constituencies which are drawn to maximize their party's legislative seats. Parties with stronger support in rural areas typically argue for rural

over-representation based on the larger geographical size of rural districts, whereas parties with stronger urban support typically argue for voter equality. Recently, there also have been increased calls for more specific group representation in legislatures, although these proposals have generally originated outside the legislature. Added to these trends and incentives has been a significant change in the role of the courts in the redistricting process. Without adopting a position of judicial activism, the courts nonetheless have begun to set parameters around the meaning of 'fair and effective representation'. Legislatures, as institutions based on partisan conflict, have strong incentives to manipulate the composition of the legislative assembly to their partisan advantage, but in doing so they must also remain sensitive to court decisions and public opinion. It was from this environment and incentive structure that the Alberta government passed the *Electoral Boundaries Commission Act*, 1990. While respecting the upper limits of legitimate (i.e. court sanctioned) inequality, the legislation facilitated rural overrepresentation.

Electoral boundaries commissions operate with a different set of incentives. The partisan composition of the legislature is not relevant to them. Their task is to draw electoral boundaries which facilitate effective representation within the context of the enabling legislation from which they were created. It is extremely difficult for commissions to assess the merits of particular claims for 'special consideration'. The most consistent, defensible and straightforward response to those making competing demands for special consideration is to invoke the principle of voter equality, which also fits well with the principle of effective representation. Such an approach also helps electoral boundary commissions in arguing that their approach is fair and non-partisan. In contrast to Sancton's view that the federal *Representation Act, 1985* provides a strong justification for boundary commissions to violate the principle of

equality in responding to specific group demands, the Alberta case illustrates how resilient commissions have become to such claims, even when they are supported by the legislation setting the terms of redistribution.

The different incentives that face legislatures and boundaries commissions ensure that that the two groups typically would produce different sets of electoral maps. Indeed, it was the very partisan nature of redistricting by legislatures that led to the creation of boundary commissions in the 1960s, and to their subsequent adoption in almost every province. Although legislatures have created commissions to reduce political gerrymandering, they usually have retained final control and responsibility for defining and implementing redistricting plans. Tensions between legislatures and boundary commissions are heightened when, as in the recent Alberta case, boundary commissions are guided by ambiguous legislation and by differing interpretations of the place of equality in the representational process. In the past, conflict between the boundaries commission and the Alberta government was minimized because the use of urban and rural constituencies gave very little discretion to the commission to exercise its natural inclination toward voter equality. The government's recent legislation provided an opportunity for the commission to weigh competing representational principles, and the inclination toward equality came to the fore, at least among a majority on the commission in its Interim Report. However, the consensus on the commission fell apart because of public opposition to the use of 'rurban' ridings to achieve greater equality. The government's decision subsequently to strike a legislative committee to draw constituency boundaries is a significant step backwards in efforts to reduce the partisan impact in the redistribution process. It also should serve as a reminder to other provinces of the need to reduce, not enhance, the role of legislators in electoral redistribution.

One way to avoid the regressive step of returning to the legislature for redistricting is to follow the sensible recommendations of the Lortie commission both federally and provincially. The commission's recommendation of a plus or minus 15 per cent deviation limit, with no recourse to 'exceptional cases,' gives appropriate emphasis to voter equality while also providing boundary commissions with sufficient latitude to remain sensitive to communities of interest. Furthermore, although it may be useful for the legislature to set the total number of legislative seats, it is counterproductive for them to assign large numbers of those seats to urban or rural (or single municipality versus multi-municipality) areas. Partisan gerrymandering can best be avoided by leaving the details of redistribution to nonpartisan or bipartisan boundary commissions. This is one area of political life best governed by minimizing the involvement of the legislature.

Notes

- * This article benefited from the comments of Rainer Knopff and the journal's anonymous referees. Able research assistance was provided by Lori Hausegger.
- 1 The Gini index has become the standard measure for computing the degree of inequality in constituency populations. It is given by the formula:

$$\text{Gini} = \frac{n + 1 - 2 \frac{\sum si}{\sum xi}}{n-1}$$
 where: n = number of constituencies;
 $\sum si$ = ($\sum s_1 + \sum s_2 + \sum s_3 + \dots + \sum s_83$);
 $\sum xi$ = total population.
 For a discussion of the Gini index, see Alker and Russett (1964:207-18); and Pasis (1972:433-6). Readers may get a better intuitive understanding of the Gini index by considering the following. The Alberta legislature has 83 seats. Assume that 41 constituencies have a population 5% below average, 41 are 5% above and 1 has a population equal to the mean. This distribution produces a Gini index of .025. Similar distributions of plus or minus 10%, 15%, 20% and 25% produce Gini scores were .051, .076, .101, and .126, respectively.
- 2 Section 16 of the *Electoral Boundaries Commission Act* makes it mandatory for the Commission to take into account the following: (a) The Canadian Charter of Rights and Freedoms; (b)

sparsity and density of population; (c) common community interests and community organizations, including those of Indian Reserves and Métis settlements; (d) the number of municipalities and other local authorities; (e) geographical features, including existing road systems; and (f) the desirability of understandable and clear boundaries.

- 3 Minor revisions of a housekeeping nature to Bill 55 were made in Bill 57, introduced in another special session of the legislature that began April 22, 1993. Bill 57, which did not alter the degree of constituency inequality that was produced under Bill 55, was under debate in the legislature at the time his article went to press.

References

- Alberta. Attorney General (1991) *Factum*. In the Court of Appeal of Alberta. In the Matter of Section 27 of the Judicature Act. R.S.A. 1980, c.J-1; And in the Matter of a Reference by the Lieutenant Governor in Council to the Court of Appeal of Alberta Hearing and Consideration of the Questions Set Out in Order in Council O.C. 91/91 in Respect of the Electoral Boundaries Commission Act, S.A. 1990, c.E-4.01.
- Alberta. Electoral Boundaries Commission (1991-92a) *Interim Report* (Edmonton).
 — (1991-92b) *Final Report* (Edmonton).
- Alberta. Electoral Boundaries Reference (1991) In the Matter of Section 27 of the Judicature Act. R.S.A. 1980, c.J-1; And in the Matter of a Reference by the Lieutenant Governor in Council to the Court of Appeal of Alberta Hearing and Consideration of the Questions Set Out in Order in Council O.C. 91/91 in Respect of the Electoral Boundaries Commission Act, S.A. 1990, c.E-4.01.
- Alberta. Select Special Committee on Electoral Boundaries (November, 1992). Report (Edmonton).
- Alker, H. Jr. and B. Russett (1964) 'On Measuring Inequality,' *Behavioral Science*, 9:207-18.
- Canada. Royal Commission on Electoral Reform and Party Financing (1991) *Final Report, Volume 1: Reforming Electoral Democracy* (Ottawa).
- Carter v. Saskatchewan (Attorney General). (1991) See Reference re Provincial Electoral Boundaries.
- Carty, R.K. (1985) 'The Electoral Boundary Revolution in Canada,' *American Review of Canadian Studies*, 15:273-87.

- Courtney, John C. (1985) "'Theories Masquerading as Principles": Canadian Electoral Boundary Commissions and the Australian Model.' In John C. Courtney (ed.), *The Canadian House of Commons: Essays in Honour of Norman Ward* (Calgary: University of Calgary Press).
- (1988) 'Parliament and Representation: The Unfinished Agenda of Electoral Redistributions,' *Canadian Journal of Political Science*, 21:675–90.
- , Peter MacKinnon and David E. Smith (eds.) (1992) *Drawing Boundaries: Legislatures, Courts and Electoral Values* (Saskatoon: Fifth House).
- Dixon v. British Columbia (Attorney General)* (1989) 35 B.C.L.R. (2d) 273 (B.C.S.C.).
- Dixon, Robert G. (1969) 'Legislative Apportionment and the Search for the Holy Grail,' *Supreme Court Review*.
- (1982) 'Fair Criteria and Procedures for Establishing Legislative Districts.' In Bernard Grofman, Arend Lijphart, Robert B. McKay and Howard A. Scarrow (eds.), *Representation and Redistricting Issues* (Lexington, MA: Heath).
- Finkel, Alvin (1989) *The Social Credit Phenomenon in Alberta* (Toronto: University of Toronto Press).
- Gibbins, Roger (1980) *Prairie Politics and Society: Regionalism in Decline* (Toronto: Butterworths).
- Knopff, Rainer and F.L. Morton (1992) *Charter Politics* (Scarborough: Nelson).
- Morton, F.L. and Rainer Knopff (1991) 'The Right to Vote, Electoral Distribution and Boundary Adjustment in Alberta.' University of Calgary: Research Unit for Socio-Legal Studies.
- Pasis, Harvey E. (1972) 'The Inequality of Distribution in the Canadian Provincial Assemblies,' *Canadian Journal of Political Science*, 5:433–6.
- (1990) 'Electoral Distribution in the Canadian Provincial Legislatures.' In J. Paul Johnston and Harvey E. Pasis (eds.), *Representation and Electoral Systems: Canadian Perspectives* (Scarborough: Prentice-Hall).
- Qualter, Terrence (1967) 'Representation by Population: A Comparative Study,' *Canadian Journal of Economics and Political Science*, 33:246–68.
- (1970) *The Election Process in Canada* (Toronto: McGraw-Hill).
- Reference re Provincial Electoral Boundaries*, [1991] 3 W.W.R. 593 (Sask. C.A.); reversed (*sub nom. Reference re Electoral Boundaries Commission Act*, ss. 14, 20 (Sask)) (1991) 81 D.L.R. (4th) 16 (S.C.C.)
- Richards, John and Larry Pratt (1979) *Prairie Capitalism: Power and Influence in the New West* (Toronto: McClelland and Stewart).
- Sancton, Andrew (1990) 'Eroding Representation-by-Population in the Canadian House of Commons: The Representation Act, 1985,' *Canadian Journal of Political Science*, 23:441–57.
- Tupper, Allan and Roger Gibbins (eds.) (1992) *The Government and Politics of Alberta* (Edmonton: University of Alberta Press).
- Ward, Norman (1949) 'The Basis of Representation in the House of Commons,' *Canadian Journal of Economics and Political Science* 15:477–94.
- (1963) *The Canadian House of Commons: Representation* 2nd ed. (Toronto: University of Toronto Press).