

The Perils of Comparison: Addendum to "Electoral Democracy in the Provinces"

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Democracy is a highly cherished value in Canada. Understandably, attempts to measure the quality of democracy invite debate about the definition of democracy and the standards used to assess it. In my contribution to the *Strengthening Canadian Democracy* series, I offered a comparison of the provinces on five dimensions of electoral democracy: equality of representation, the right to vote, the right to be a candidate, party and election finance, and the outcome of elections.¹ Any effort, in a relatively short space, to summarize similarities and differences among the provinces is bound to be selective. A corollary is that those with detailed knowledge of a particular province or region may object to what has been left out or given insufficient attention. Moreover, a ranking exercise, such as the one I used in my study, tends to focus the reader's attention on cases at one extreme or the other. Nova Scotia, in particular, has been singled out for unflattering attention.² This addendum is intended to clarify certain aspects of my argument and to correct some errors that, regrettably, affected my treatment of the province.

In my study Nova Scotia was ranked lowest among the 10 provinces on the equality of the electoral map, restrictions on the right to vote, and female repre-

sentation in the legislature. It tied for lowest score on the right to be a candidate, and limits on political contributions, although it ranked in the middle on other measures of party and election finance.

Unfortunately, the province's rankings on contribution limits and candidacy restrictions contain errors. The rank on political contributions was based on my reading of the Nova Scotia *Elections Act*. The Act contains election finance provisions covering party and candidate spending limits, reimbursement provisions and reporting requirements, but makes no mention of limits on contributions to parties or candidates. However, I have since learned that the *Members and Public Employees Disclosure Act* prohibits anonymous contributions and requires disclosure of any contributions exceeding \$50. With this correction, Nova Scotia would move up to join Prince Edward Island, Manitoba, Saskatchewan, and British Columbia, all of which have less stringent requirements than Alberta and New Brunswick. Quebec has the strictest regulations of all.³

Restrictions on the right to be a candidate are also not as extensive in Nova Scotia as I originally supposed.⁴ The *House of Assembly Act* prohibits the candidacy of provincial employees unless they resign from the public service before seeking a nomination. However, the *Civil Service Act* contradicts this. It contains generous leave of absence provisions for all public employees except those who are "politically restricted", i.e., those employed in a managerial or confidential capacity. An adjustment of Nova Scotia's ranking taking this into account would place Nova Scotia closer to a middle group containing Newfoundland, New Brunswick, and Manitoba but still behind Prince Edward Island, Quebec, Saskatchewan, Alberta and British Columbia.

These adjustments still leave Nova Scotia with more low scores than any other province, but that was never my central point. In my conclusion I pointed out that the quality of democracy in many

respects has improved in all provinces, especially in procedures for drawing electoral boundaries and election finance laws. Moreover, as noted in the original article, the ranking of provinces differs depending on what dimension of electoral democracy is considered. Finally, an ordinal ranking procedure was used to compare provinces on restrictions on the right to vote and be a candidate and on stringency of election finance laws. In other words, they were ranked against each other based on a qualitative assessment, and not against some objective mathematical standard with precise distances between scores.

Moreover, most jurisdictions, including Nova Scotia, continue to make improvements to election law. On April 12, 2001 the province's Minister of Justice introduced amendments to the *Elections Act* that would replace proxy voting with a mail ballot and restore the right to vote to election officials, federally appointed judges, inmates serving sentences of less than two years, and those legally confined to mental institutions. If approved, these changes will move Nova Scotia from last place, in terms of restrictions on the right to vote, to a position closer to the middle.

My study has also been criticized for its treatment of electoral boundary procedures in Nova Scotia and for the low rank assigned to Nova Scotia's electoral map. As noted in the original article, the current Nova Scotia electoral map was generated ad hoc in the sense that the initiative to redraw electoral district boundaries was taken by the government of the day, spurred on, in part, by concern for the constitutionality of existing boundaries,⁵ rather than being triggered by a statute specifying a timetable for redistributions. Since then the province's *House of Assembly Act* has been amended to require redistribution every ten years (beginning March 2002). In fact, this was one of the recommendations of the 1992 Electoral Boundaries Commission that produced the current map. However, unlike similar statutes in

other jurisdictions, the Nova Scotia Act does not specify any criteria for boundary drawing, such as justifications for departures from equality of district populations, or a percentage limit on departures from equality.⁶

As explained in my article, the classification of Nova Scotia's electoral map as the most unequal in Canada was based on a mathematical measure of inequality, the gini index. The index is accepted by scholarly and legal opinion as a standard test of malapportionment, or the departure from the standard of one person-one vote. As noted, the Nova Scotia Electoral Boundaries Commission produced a much more equal map than the one that preceded it. The gini index dropped from 0.155 to 0.089. However, in accordance with terms of reference given by a Select Committee of the Nova Scotia legislature, the Commission produced a map containing five electoral districts (ten percent of the total) with populations substantially lower than the -25 percent standard used in federal (and several provincial) redistributions. Three of them (Argyle, Clare, and Richmond with deviations of -45.1, -43.9 and -34.7, respectively) contain concentrations of Acadians, one (Preston with a deviation of -49.7) has a significant Black minority, and one (Victoria with a deviation of -48.0) was considered to justify having a lower population because of geographical considerations.⁷ As noted in my article, the Supreme Court of Canada has ruled that substantial departures from voter parity can be justified in order to achieve "effective representation." Whether deviations as extreme as those in Nova Scotia (as well as in British Columbia and Quebec) are justifiable is a matter of opinion. There are no established principles for determining which groups justify special consideration or how much inequality is legitimate.⁸

The provinces offer a fascinating laboratory for the study of democracy. Although they share a heritage of parliamentary government and are bound by the *Charter of Rights and Freedoms*, they are free

to experiment with arrangements for redrawing constituency boundaries, criteria for the right to vote and be a candidate, and the rules governing parties and election campaigns. Inter-provincial variation has shrunk considerably since the entrenchment of the Charter in 1982. Canadians will continue to debate, in both judicial and political arenas, the differences that remain. An assessment of differences among provinces, and the justification for them, will be a key feature of this debate.

Notes

- 1 "Electoral Democracy in the Provinces," *Choices*, Vol. 7, no. 2 (March 2001).
- 2 See John Ibbitson, "Some voters are more equal than others," *Globe and Mail*, March 30, 2001.
- 3 Recent amendments to party finance legislation now give Manitoba rules comparable to those in Quebec.
- 4 I wish to thank Janet Willwerth for pointing out these errors.
- 5 See Jennifer Smith and Ronald G. Landes, "Entitlement versus Variance Models in the Determination of Canadian Electoral Boundaries," *International Journal of Canadian Studies*, no. 17 (Spring 1998), p. 22.
- 6 There is one minor exception. As discussed in my original article, Nova Scotia remains committed to adding an additional seat in the House of Assembly for a representative of the Mi'kma. The *House of Assembly Act* contains provision for at least annual meetings of the premier, leader of the opposition and the leader of a "recognized party" with Mi'kma representatives to discuss how to implement this commitment.
- 7 See Smith and Landes, "Entitlement versus Variance Models" for a detailed account.
- 8 See David Johnson, "Canadian Electoral Boundaries and the Courts: Practices, Principles and Problems," *McGill Law Journal*, Vol. 39 (1994), pp. 224-47.

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