

Dalhousie Law Journal

Volume 7 | Issue 3

Article 19

10-1-1983

From Representation by Population to the Pursuit of Elegance

Peter J. T. O. Hearn

Follow this and additional works at: <https://digitalcommons.schulichlaw.dal.ca/dlj>

 Part of the [Constitutional Law Commons](#)



This work is licensed under a [Creative Commons Attribution-Noncommercial-No Derivative Works 4.0 License](#).

Recommended Citation

Peter J. T. O Hearn, "From Representation by Population to the Pursuit of Elegance", Comment, (1982-1983) 7:3 DLJ 762.

This Commentary is brought to you for free and open access by the Journals at Schulich Law Scholars. It has been accepted for inclusion in Dalhousie Law Journal by an authorized editor of Schulich Law Scholars. For more information, please contact hannah.steeves@dal.ca.

Peter J.T. O Hearn*

From Representation by
Population to the Pursuit of
Elegance

I. *The Future Format of the Constitution*

Will the Canadian people be content with the present format of our recently won constitution? I do not think so. The obstacles to any further changes are indeed formidable, but they were equally formidable in the cases of the changes that have been achieved. In those cases, a popular will was at work which was spurred by the energy of a near-coalition of aggrieved groups, but which gently forced these energies into the formation of a more moderate working consensus. It is true that the consensus is a crippled one, especially concerning Quebec, and several problems will have to be settled before we can truly say that we have a satisfactory and nation-wide constitutional understanding and before we give constitutional law-making a rest for a while.

The most important of these problems would currently appear to be: (a) the preservation of Quebec as the home of a North-American French culture; (b) the determination of the rights of the indigenous peoples of Canada; (c) the proper allocation of ownership and legislative control over the exploitation of natural resources; (d) an improved distribution of primarily legislative, as well as executive and judicial, powers in the country; and (e) enlargement of the areas wherein both federal and provincial legislation is possible. Most of what I might be permitted to say on these subjects, given the limits of judicial impartiality and propriety (in which I am a firm believer), has already been published, most of it in my text, *Peace, Order and Good Government, A New Constitution for Canada*.¹ What I wrote then, however, was incomplete with respect to the first problem, that of preserving Quebec French culture. I was skeptical about any real prospect of English-speaking Canada giving in, and I did not deal with the second problem, which was then not a live issue. Therefore, with

*Judge of the County Court, Halifax.

1. O Hearn, *Peace, Order and Good Government, A New Constitution for Canada* (Toronto: Macmillan, 1964) o.p.

respect to each of these problems, I am making a few comments of a political science or sociological, rather than a political, nature.

One of the most beautiful traditions grounded in our pre-Confederation history was the understanding between Robert Baldwin and Louis-Hippolyte LaFontaine that their parties would work for reform together and that each would respect the cultural values of both English and French Canadians,² whether they constituted a majority or a minority in the part of Canada in question. This understanding, which has a claim to the title *L'entente canadienne*, was observed quite well by the Reform Party, at least in the early days, and was to some extent accepted by the other parties.³ Unfortunately, it led to a logical but impractical aberration — the demand for the double majority. That is, it was held that the government should have the support of a majority of members from each division of the Province of Canada (Canada East and Canada West).⁴ The implementation of this demand contributed to the breakdown of stable government in Canada in the early 1860s and to the drive towards Confederation,⁵ thereby illustrating that goodwill is necessary, but is not, of itself, sufficient to establish practical equality of citizenship and human rights among members of sufficiently distinct cultural groups. Where two such groups occupy the same territory, it is the case that the more equal in number they are, the more likely it is that conflict will ensue, leading to disruption of the community.⁶ In any other case, one or the other culture will be subjected to many social, political, economic, or even juridical disabilities.

The most practical and effective counter-measure has been to yield some political autonomy to the minority culture, under the aegis of

2. While this is evident from the standard texts which discuss the lives of Baldwin and LaFontaine, I have been unable to find a clear statement of the *entente*. The closest is that given in *Canada-Québec. Synthèse Historique* (Montreal: Editions du Renouveau Pédagogique Inc., 1970) at pp. 343, 354.

3. See, for example, Archibald MacMechan, *The Winning of Popular Government (Chronicles of Canada, No. 27)* (Glasgow, Brook, Toronto, 1920) at p. 94, on the Draper Ministry of 1844-47.

4. See, for example, J.M.S. Careless, *Brown of the Globe* (Toronto: Macmillan, 1959) vol. 1, pp. 219-24.

5. *Ibid.*, pp. 310, 315. See also, Peter B. Waite, *The Life and Times of Confederation* (Toronto: U.T.P., 1962) Ch. 4; and Donald Creighton, *The Road to the Confederation* (Toronto: Macmillan, 1964) at pp. 43-4. Neither Creighton nor Waite indexes "double majority".

6. Modern instances abound: Northern Ireland, Cyprus, Israel-Palestine, Belgium. Even Switzerland, where there are good constitutional "fences" between the cantons, has problems of this kind.

which that culture can be recognized and given the practical force of a dominant culture. This is what happened with respect to Quebec at Confederation,⁷ but in that case, the rights of the English minority in Quebec were accorded a parallel protection,⁸ with one or two political vehicles to sustain them.⁹ An interesting local example is the Argyle-Clare consolidated school board, which has been set up to function predominantly in French and could become a recognized protector of Acadian cultural interests in western Nova Scotia. As is always the case, it too is being contested by the minority affected, which, in this instance, is English-speaking.

Human beings have a fundamental appetite for status, even for equal status. Members of a minority culture will suffer continual frustration of this appetite unless they are able to satisfy it within their own community. In practical terms, the minority culture's community must achieve sufficient autonomy to realize an area (not necessarily geographical or physical) of dominance for the benefit of its members. Thus, it is important to francophones outside of Quebec that French be accepted as the dominant culture in Quebec: it represents a counterbalance to the English-speaking dominance found elsewhere and a potential, albeit theoretical, base where they can, if necessary, realize their equal citizenship. Theory is more important here than practice. With respect to the rights of the indigenous peoples of Canada, claims for some measure of political autonomy are already being advanced,¹⁰ especially in the territories. This issue will not simply die where these people comprise communities of indigenes, capable and desirous of maintaining some form of their traditional way of life. This fact is greatly fortified now by the financial stake of the indigenes in natural resources, a factor that probably energized the current drive for recognition in the first place.

It promises to be a long time before these questions are settled. Meanwhile, we have the suggestions of a kind of reverse apartheid to be concerned about. Cultural separation is not necessarily bad, but it can lead to inequities in mixed societies where all are to be equal under

7. Mainly by means of the Constitution Act, 1867, ss. 92 and 93.

8. Constitution Act, 1867, ss. 93, 133, 91 (cl. 25), 72-80.

9. Eventually the Quebec Protestant and English-speaking Catholic school boards became the most important of these.

10. See, for example, press reports of a conference "Land/People/Government: Native Perspectives on the Constitution", held in Toronto on February 26, 1983, which was attended by leaders of four major Ontario natives organizations and by George Erasmus, President of the Dene Nation, the majority inhabitants of Canada's Northwest Territories.

the law, and to gross inequity where those who should be accorded the equal rights of citizens, or even of human beings, are denied those rights.

At the end of this essay, I intend to treat the topic of equal representation in Parliament of the people of Canada, or the principle of representation by population. This principle was in fairly constant collision with the principle of the equality of the two cultures, French and English, from about 1850 onwards.¹¹ The Confederation settlement was not straight representation by population, but a slight compromise.¹² The preceding remarks on the two problems mentioned are, therefore, not totally parenthetical, but are pertinent as background.

To return to my opening question, the main reason for my thinking that Canadians will not rest satisfied with the present format of our constitution is that to do so would be contrary to the legislative habits of our legislatures, courts, and legal profession, as well as to something in the Canadian temperament that seems to favour clearing away the old, from time to time, to make way for a fresh start. In order to appreciate the elements in the present situation that would spark the urge to consolidate and restore the law of the constitution, it is only necessary to look at the present format.

II. *The Present Format of the Constitution*

The Constitution Act, 1982 provides in s. 52(2) that the Constitution of Canada includes — thus there may be more — the following: “(a) The Canada Act, 1982, including this Act [that is, the Constitution Act, 1982]; (b) the Acts and orders referred to in the schedule; and (c) any amendment to any Act or order referred to in paragraph (a) or (b).” The Canada Act, 1982 might be excluded from further active participation in the Constitution as being merely the completion of the Statute of Westminster, 1931¹³ and as constituting a legislative “Good-bye and good luck!” from the Parliament of the United Kingdom. There would certainly be no need to work it into a

11. See Careless, *Brown of the Globe*, vol. 1, p. 155, etc. There are many references thereafter, as well as in the first half of vol. 2.

12. See Constitution Act, 1867, ss. 40 and 51. The following is an 1871 comparison of seats and population by percentages:

	N.S.	N.B.	Que.	Ont.	Man.	B.C.
% Seats	9.95	7.85	34	42.9	2.1	3.1
% Pop.	10.9	8	33.6	45.7	.7	1

13. Statute of Westminster, 1931, 22 Geo. V. (Imp.), Ch. 4.

consolidation of the constitutional acts. Section 3, which deals with the authority of the French version, is clear enough in *its* French version, where it applies only to Schedule A, but its English version is arguably applicable to both Schedules A and B. This is not likely to become a judicial problem — I hope.

The schedule to the Constitution Act, 1982 is entitled “Modernization of the Constitution” and contains thirty items, beginning with the Constitution Act, 1867, formerly the British North American Act, 1867. Of the thirty items, several are, or contain, repealing provisions, although many merely change short titles of acts or orders or supply them where necessary. Nevertheless, some substantial changes have been made, largely as a result of the adoption of procedures for constitutional amendment. What is important for our present purposes is that it is almost impossible to have an integrated grasp of the present law without a consolidated text, which, no doubt, will be forthcoming, probably in several versions. None will be authentic, however, in the sense that there will be no need to look at its sources. We shall have to be content to live with this until the constitutional authorities agree on a consolidated text, and that, I surmise, will take some time. This need not be painful; English lawyers have been practicing for generations with private collections of laws and are accustomed to dealing with different statutes, some of considerable antiquity, on the same subject. But, as that is not our style, I anticipate pressure for consolidation.

What to include in such a consolidation is a question of some difficulty. Should it include all of the surviving acts and orders? What about the terms of union with the various provinces? These are constitutional documents, but they primarily concern the relationships of the individual provinces with the government of Canada. In some respects, they are like enactments, bringing treaties into force. The terms of union of the original four provinces are set out in the Constitution Act, 1867 itself, which also contains the constitutions of Ontario and Quebec, to the extent that they have not since been altered by the legislatures concerned. The result is not exactly chaos; there is some very good drafting in the Canada Act, 1982 and its schedules, despite the serpent-swallowing-its-own-tail character of some provisions (for example, sections 52(2) and (3) of the Constitution Act, 1982). On the other hand, it does not exhibit the kind of order that a written constitutional law ought to have. A written constitutional law exists not only for the

information of legislatures, executives, and courts, but it is a most important political statement to the citizens themselves. It should exist in such a form that some idea of the whole can be had by the populace, it can be taught in the schools, and it will permit an intelligent lay appreciation of the main elements of constitutional government and the relationships between them. There are written constitutions that approach this character. The Constitution of the United States of America, despite the many subsequent amendments, remains a political statement of great power. Part of this power derives from the clarity and apparent simplicity with which it resolves certain problems, for example, the problem of representation (Art. 1, sec. 2, cl. 3; Amd. XIV, sec. 2; Art. 1, sec. 3, cl. 1; Amd. XVII). This solution and several others possess the quality of elegance that I will propose as an ideal for our own.

III. *The Idea of Elegance in Law*

The word and the idea of elegance come to us from the Roman world in general and especially from the Roman law. The root word is *eligere*, which means “to pick out”, “to choose”, and “to select”. By the classical period, a great appreciation of beauty and good taste had developed and *elegans* came to mean “choice”, “nice”, “fine”, “tasteful”, and “elegant”. This meaning seems to be due to the happy inspiration of Imperial Rome, and evokes the notion of revelatory power that “elegant” now conveys in law, physics, and mathematics.

The Praetors of Republican and Imperial Rome developed the content of the *jus gentium* to apply to non-Romans, and this in turn was based on the idea of the Law of Nature. This law, which underlay all human laws and of which they were an imperfect expression, was conceived to be ultimately composed of simple and harmonious elements, elements that were intelligible, discoverable, and expressible.¹⁴ The more apt the expression and the more closely and accurately it was able to disclose the underlying simplicity and harmony, the more simple and harmonious the expression itself would be and the more justly it could be described as “elegant”. The aptness or suitability of the expression is an important part of its evocative power (which is probably why 29 C.J.S. 1201 gives the primary meaning of *elegans* as “accurate”). Of equal importance,

14. This is brought out by the 10th edition of Sir Henry Maine’s *Ancient Law*, as annotated by Sir Frederick Pollock in the 1906-1916 reprints, esp. ch. 3 and 4.

however, is the need for simplicity, and this implies a certain economy of means, consonant with the ultimate simplicity of nature (a classical foundation for Ockham's razor¹⁵).

In fact, nature may not be all that simple; every new advance in physical science seems to turn up more and more depths of being. Nevertheless, scientists adhere to the intuition of the ultimate unity and simplicity of nature. Northrop Frye writes, in *The Anatomy of Criticism*, that "[w]hat distinguishes, not simply the epigram, but, profundity itself from platitude is very frequently rhetorical wit. In fact it may be doubted whether we ever really call an idea profound unless we are pleased with the wit of its expression."¹⁶ The Chicago columnist, Sydney Harris, is more vehement, saying, "If the solution to a scientific problem does not possess its own kind of beauty (what the scientists call 'elegance'), we may be sure it is wrong, or at least not the ultimate solution."¹⁷ Whatever may be the case with nature and the real world, law provides an ideal realm for the application of elegant solutions. Law invariably creates a universe of discourse and every legal system tends to become an ideology. Despite Mr. Justice Holmes' aphorism about experience, which expressed his personal approach to law, the history of legal systems has quite often been that described by Sir Henry Maine in *Ancient Law*: ". . . over the larger part of the world, the perfection of law has always been considered as consisting in adherence to the ground-plan supposed to have been worked out by the original legislator. If intellect has in such cases been exercised on jurisprudence, it has uniformly prided itself on the subtle perversity of the conclusions it could build on ancient texts, without discoverable departure from their literal tenor."¹⁸ He goes on to show how the Roman jurists escaped this fate because of their ideal of simplicity and harmony, or "elegance". The point is, however, that all legal systems generate general statements applicable to particular cases, and there will always be a gap between the real world and the idealized world embodied in the law, whether or not the developers of the system try to adhere to reality or not. Generalization, harmonization, and simplification thus suit the nature of law almost as much as they suit mathematics and physics.

15. *Essentia non sunt multiplicanda praeter necessitatem.*

16. Northrop Frye, *The Anatomy of Criticism* (Princeton U.P., paperback ed. 1971, 1973) p. 329.

17. Sydney J. Harris, in his syndicated column in the *Halifax Chronicle-Herald*, February 20, 1979.

18. *Op. cit.*, note 14, p. 83.

There are many individual instances of elegant statements in law, and quite a few of these attain their revelatory power by incorporating, through cross-reference, legal concepts from other parts of the law and applying them to the matter at hand. Section 186(2) of the Bills of Exchange Act,¹⁹ which applies bill-of-exchange terms to promissory notes, is a straightforward and unglamorous example. In the *Corpus Juris Canonici* of 1917, can. 100, s. 3 equates the legal status of corporations to that of minors.²⁰ The implications are obviously far-reaching: for example, does it impose a rule similar to that in *Ashbury Railway Carriage and Iron Co. v. Riche*,²¹ where the House of Lords held that a contract not within the objects of a memorandum-of-association company was *ultra vires* and void? Similarly, simply by employing the word “fault”, our Contributory Negligence Act²² imported into the law of negligence the admiralty rule, applicable to collisions at sea since the Maritime Conventions Act 1911,²³ which has a civil law background.

To see any beauty in incorporation by reference, it is necessary to appreciate the material incorporated, at least to the extent that the comparison of the two fields reveals something about one or other or both of them. This is part of a general theory of aesthetics. I favour a fairly absolute theory of beauty — I hold that it can be appraised according to certain standards — but beauty is in the eye of the beholder to the extent that the appreciation of a work of art depends upon an understanding of the idiom in which it was created and the relationships involved. To this end, T.S. Eliot thoughtfully annotated his poems because he chose on occasion to write in an esoteric idiom. Yet incorporation by reference is not the only form of legislative statement that has a claim to elegance. The sections of the Sale of Goods Act²⁴ which deal with conditions and warranties and with sale by sample have always struck me as a very neat and succinct codification and restatement of the law, and one that probes in some depth the nature of sale in our economy. Here again, an

19. R.S.C. 1970 c. B-5.

20. C.J.C. (1917) can. 100, § 3. *Personae morales sive collegiales sive non collegiales minoribus aequiparantur.*

21. *Ashbury Railway Carriage and Iron Co. v. Riche* (1875) L.R. 7 H.L. 653.

22. Contributory Negligence Act, S.N.S. 1926, c. 3.

23. Maritime Conventions Act, 1911, 1-2 George V (Eng.), c. 57. See K.W. Ryan, *An Introduction to the Civil Law* (Sydney: Law Book Co. of Australia, 1962) pp. 118-120.

24. Sale of Goods Act, R.S.N.S. 1967, c. 274, ss. 12 to 17: these are ss. 10 to 15 of the Sale of Goods Act, 1893, 56 and 57 Vic. (U.K.) c. 71.

exact knowledge of the meaning of the terms employed is necessary to an appreciation of the force of these provisions. This emphasizes that often it is only the expert that can appreciate the elegance of an expression or other work of art. However, there are legal devices that can be appreciated without extensive legal knowledge. One such is the *subrogé tuteur*, or supplementary guardian, whose particular function is to represent the ward whenever the ward's interests are in conflict with the guardian's; this implies an obligation of general oversight of the administration.²⁵

Is it possible to go beyond examples so as to define elegance in a formal way? It probably is not possible in any truly satisfactory sense, but certain general notions may be posited. For example, elegance is a species of beauty and beauty is one of the four transcendental attributes, so called because they apply in some sense to every being. (No doubt it takes a metaphysician to assert with a straight face that everything is to some extent beautiful, but we need not pursue that here.) Beauty is the sum of the other three transcendental attributes — unity, truth, and goodness — and it consists in the clarity with which a being's integrity (unity), proportion (goodness), and truth (intelligibility) appear. These elements of beauty are part of the notion of elegance.

A leading American mathematician of the first half of this century, George David Birkhoff, attempted a mathematical theory of aesthetics.²⁶ While the theory proposed has not been widely accepted, Birkhoff made some suggestive points. He considered the three main variables of the typical aesthetic experience to be the complexity of the object (C), the property of harmony, symmetry, or order (O), and the feeling of value or aesthetic measure (M). For these he proposed the formula $M = O/C$ (although, for reasons too long to go into here, I think a case can be made for $M = C/O$). Birkhoff points out that fixing the attention on an object requires effort and involves tension, and that the effort and tension are not pleasurable, but negative, in tone. This negative effect increases with the complexity of the object, and is resolved by the perception of order.

It is doubtful whether this analysis goes far enough. Effort is not necessarily negative in tone: it can be positive where it involves an

25. See *Code civil de la Province de Québec*, art. 267 to 271.

26. See "Mathematics of Aesthetics", in James R. Newman, ed., *The World of Mathematics* (New York: Simon & Schuster, 1956) vol. iv, 2185 (reprinted from G.D. Birkhoff, *Aesthetic Measure* (Cambridge U.P., 1933)).

exercise in mastery, such as the kind of pleasure that an expert might derive from painting, skiing, carpentry, or the drafting of laws. Those times that effort will be negative are when it encounters frustration or difficulty, without mastery. In addition, every complex object can be considered as an aggregate: it may be made up of things or ideas. Attention is paid to an aggregate for the purpose of understanding it in some sense. An expression, or a statement revealing the principle of unity of the aggregate, which shows us how to understand the relationships of the aggregate's elements (or its harmony) and which thus makes manifest the intelligibility (or the truth) of the object is elegant if it performs its function in the simplest and most economical way. The elegant expression, once grasped, gives instant satisfaction as a result of its integrity, suitability, and clarity.

This is probably not a sufficient definition of elegance because any truly elegant expression has an impact that goes beyond mere quick comprehension and speaks to our intuition. But it will suffice for present purposes. I will now turn once again to the issue of representation by population.

IV. *Representation by Population*

Lord Durham, in his *Report*, proposed that parliamentary representation in the united Province of Canada be "as near as may be, in proportion to population," adding at once that:²⁷

. . . I am averse to every plan that has been proposed for giving an equal number of members to the two Provinces, in order to attain the temporary end of out-numbering the French, because I think the same object will be obtained without any violation of the principle of representation, and without any such appearance of injustice in the scheme as would set public opinion, both in England and America, strongly against it; and because, when emigration shall have increased the English population in the Upper Province, the adoption of such a principle would operate to defeat the very purpose it is intended to serve. It appears to me that any such electoral arrangement, founded on the present provincial divisions, would tend to defeat the purposes of union, and perpetuate the idea of disunion.

27. *Lord Durham's Report*, edited and abridged by Gerald M. Craig, (Toronto: McClelland & Stewart, 1963) (Carleton Library No. 1) p. 168 (p. 239 in 1902 edition).

Durham's expressed purpose for the union was to absorb the French into the English-speaking world of North America through natural processes.²⁸ He estimated the population of Upper Canada, around the year 1838, to be 400,000, while there were 150,000 English in Lower Canada and 450,000 French.²⁹ Thus, the English already had a clear majority in the proposed united province and could only continue to augment their numbers. Nevertheless, the Upper Canadians insisted on equal representation with Lower Canada in the new provincial parliament, and Canada West and Canada East were each allotted 42 members by the Union Act, 1840 (this was changed in 1854 to 65 members each).³⁰ During the 1840s, Lower Canadians held that there was a right to greater representation for Canada East, and, as late as 1849, some French-Canadian *rouges* introduced the first measure for representation by population in Parliament; however, it failed.³¹ The census of 1851 showed that Canada West exceeded Canada East in population by 60,000 (952,004 as opposed to 890,261),³² and the shoe was on the other foot. It was obvious by the mid-1850s that the population of Canada West was growing faster than that of Canada East, and George Brown brought in his first representation-by-population proposals in 1853.³³ Conservatives and *bleus* united to block all such measures.

Although the demand for representation by population represented the ideal of equality, it was really inspired by the inability to achieve a stable Canadian government from 1854 to 1864, a period in which ten or so ministries succeeded one another. The last real double majority was in 1858; thereafter, every government had only minority support in one section of the country.³⁴

As Confederation approached, it was thought that the French would be overwhelmed in a federation of the BNA provinces; nevertheless, Brown, at the Quebec Conference, insisted that representation by population was fundamental to the proposed federation. The matter first came up with respect to the legislative

28. *Ibid.* pp. 158-9 (in 1902 ed., pp. 227-8).

29. *Ibid.*

30. The Union Act, 1840, 3 and 4 Vic. (Imp.), c. 35, Para. XII.

31. See Careless, *Brown of the Globe*, vol. 1, p. 165.

32. See *Canada-Québec, Synthèse Historique*, *supra*, note 2, p. 359; *Historical Statistics of Canada*, Urquhart and Buckley, eds., (Cambridge U.P., 1965) p. 14, series A2-14.

33. See Waite, *The Life and Times of Confederation*, *supra*, note 5, p. 36.

34. See *Canada-Québec*, pp. 358-9.

council (which later became the Senate), but the discussion concerning what was to become the House of Commons brought home to the Prince Edward Island delegates, already hostile to the scheme, that their membership of 5 would be overwhelmed in a house of 194.³⁵ The fear of lost membership and lost influence, felt by the smaller provinces, thus entered Canadian politics, an element which has since been constant in the game of the redistribution of seats in the House of Commons. Of late, however, it has been of more concern to politicians than to the people of the provinces.

The initial representation was set by the Constitution Act, 1867 at 82 members for Ontario, 65 for Quebec, 19 for Nova Scotia, and 15 for New Brunswick.³⁶ This was strict representation by population. Section 51 set out the rules for fixing the provincial memberships after each decennial census, beginning in 1871. Quebec was made the basis, with the fixed number of 65 members, and the membership of the other provinces was determined by population. In the computation, a fractional remainder would not entitle the province to a member unless it exceeded one half. Thus, in 1861 the populations of Nova Scotia, New Brunswick, and Ontario were such that New Brunswick and Ontario benefitted from the fractional rule, but Nova Scotia did not. Section 52 of the act permitted the Canadian Parliament to increase the number of members, provided that the proportionate representation of the provinces was not disturbed. Presumably, this meant increasing Quebec's membership to more than 65, although this is not explicit in the text. This scheme has a certain elegance. The principle of proportionality is straightforward and easily grasped, and appeals to our sense of fairness. It manifests the relationships involved immediately and clearly. And anchoring the number of members in each province to that of Quebec's determines at once the total number of members and stabilizes it by reference to a mature and stable population.

The rules of the Constitution Act, 1867 relied on two simple bases: representation by population and Quebec's fixed membership. The fractional rule was merely a necessary clarification. There was one interesting qualification, brought forward from Quebec Resolution 21 (London Resolution 22), contained in section 51, rule 4, as follows:

35. See Creighton, *The Road to Confederation*, *supra*, note 5, pp. 155-7; Waite, *op. cit.*, pp. 94-5.

36. Constitution Act, 1867, 30-31 Vic. (Imp.), c. 3, s. 37.

On any such Re-adjustment the Number of Members for a Province shall not be reduced unless the Proportion which the Number of the Population of the Province bore to the Number of the aggregate Population of Canada at the then last preceding Re-adjustment of the Number of Members for the Province is ascertained at the then latest Census to be diminished by One Twentieth Part or upwards.

The meaning of this is not immediately clear, but it may be expressed mathematically, as follows: where P_1 , P_2 , C_1 , and C_2 represent the populations of a province and of Canada, respectively, in two successive censuses, then, if $(P_2/C_2) + (P_1/C_1) > .95$, the province is not to lose membership. Section 51, rule 4, does not state what happens if a province loses proportionality within the percent limit twice in a row but so as to exceed the limit over the two decades.

Under rule 4, a province did not have to lose population to lose seats. If the proportionate increase of the province's population over the decade between censuses did not exceed 95 percent of the proportionate increase in the Canadian population, the province would have lost membership. This is evident if one multiplies each side of the inequality in the above formula by C_2/C_1 , as follows: $P_2/P_1 > .95 C_2/C_1$. Prince Edward Island lost membership after the 1881-91 decade, when its increase of .17 percent failed to reach 95 percent of the Canadian increase factor which was 11.76 percent. The same situation arose in 1951, 1961, and 1971, but by then rule 4 had been replaced. Between 1891 and 1931, Prince Edward Island actually lost population in each decade, and, in the two decades between 1931 and 1951, Saskatchewan, which had previously been well above the Canadian average in gains, also lost population. In the case of each province, new devices were adopted to counteract the loss of membership. Meanwhile, between 1921 and 1941, Quebec's population increased by 41.2 percent, while Canada's increased by only 3.9 percent.³⁷ Under section 51, rule 1, which made Quebec's 65 members the basis for fixing the total number of members, the increase in Quebec's population would have resulted in a diminution of the whole number. Nova Scotia and New

37. *Historical Statistics of Canada*, *supra*, note 31. The 1961-81 increase factors are: Canada, 133.47 percent, and Quebec, 122.42 percent, which more than reverses the rates. The figures upon which my comments on population are based from here on are derived mostly from this text, from the *Canada Year Books* for 1961, 1972, and 1980-81, and from the Statistics Canada leaflet, "A Profile of Canada, the Provinces and Territories from the 1981 Census".

Brunswick, after attaining representations of 21 and 16, respectively, began to lose members steadily after 1891 (although Nova Scotia made a short-lived recovery in 1949). And Ontario, after increasing its representation to 92 members, was reduced to 82 members in 1917 and maintained the ratio of 82:65 with Quebec until after 1946.

V. *Significant Changes*

This short history of representation by population will help to explain the four significant changes that were made in the representation formula before the adoption of the amalgam method in 1974. The first change was the enactment of the Constitution Act, 1915,³⁸ which, *inter alia*, added section 51A as follows: "Notwithstanding anything in this Act a province shall always be entitled to a number of members in the House of Commons not less than the number of senators representing such province." Without this provision, the 1921 redistribution would have reduced Prince Edward Island's membership to only two members; by 1904, its original six had already been reduced to four. The next significant changes were introduced by the British North America Act, 1946,³⁹ which established the aggregate population of the provinces as the basis for computing the quotient and fixed the number of members at 254 (plus one member for the Yukon and included territories).⁴⁰ This eliminated the effect of Quebec's faster population growth and did so just before it began to drop behind the Canadian average. In addition, the act of 1946 dropped rule 4, or the one-twentieth rule, and provided a more complete rule for assigning members to fractional remainders: a member was to be assigned to each remainder, from the largest down to the smallest, until the total of 254 members were assigned. (Adding the remainders of all the provinces should give the number of members to be added.)

38. Constitution Act, 1915, 5-6 Geo. V, c. 45 (Imp.).

39. British North America Act, 1946, 9-10 Geo. VI, c. 63 (Imp.), superseded by the British North America Act, 1952, 1 Eliz. II, c. 15 (Can.); both were repealed by the Canada Act, 1892, schedule items 20 and 24 to the Constitution Act, 1982, s. 53(1).

40. This became 261 (+1) on the admission of Newfoundland as a province, in 1949: see the Newfoundland Act, 12-13 Geo. VI, c. 22 (Imp.), Sch. Term 4, and The Statute Law Amendment (Newfoundland) Act, (13 Geo. VI) St. Can. 1949, Sess. 1, c. 6, s. 52.

The act also set out, for the first time, how the membership cushion, provided for in s. 51A, was to be dealt with:

(1) divide the total population of the provinces by 254 and then divide the population of each province by the quotient: the whole number so obtained is assigned to the province;

(2) assign the remainders in order from the largest until the 254 members have all been assigned;

(3) if the number of members assigned to a province is less than the number of senators, it is assigned members equal in number to the senators, and rules 1 and 2 cease to apply to that province;

(4) reduce the total population of the provinces by the population of the province(s) excluded by rule 3 and reduce 254 by the number of members assigned to the excluded province(s). Then apply rules 1 and 2 to the reduced numbers with respect to the remaining provinces.

The final part of rule 4 will be recognized as a ‘‘loop’’; it could be invoked a second time if rule 3 produced a province or two which needed the Senate cushion. Prince Edward Island has had to rely on the Senate cushion since 1911, and New Brunswick has done so at least since 1961. Nova Scotia has also been saved on one or two occasions by a timely increase in the total membership.

The original one-twentieth provision (s.51, rule 4) need not be characterized as a real departure from representation by population, but as a means of easing a transition to a lesser membership. However, s. 51A, with rule 3 of s. 51, as enacted in 1946, must be recognized as a true modification, embodying the distinct principle of the right of a province to a *meaningful membership* in the House of Commons.

In 1951, the census indicated that Saskatchewan would be reduced to fifteen members, from twenty, in the next redistribution. The Canadian Parliament then enacted the British North America Act, 1952,⁴¹ which repealed s. 51 and substituted a new text. Rules 1 to 4, as amended, remained the same. The Northwest Territories

41. British North America Act, 1952 (1 Eliz. II), St. Can. 1952 c. 15. This was the first statute the Canadian Parliament passed to amend the Constitution Act, 1867. It was passed pursuant to the British North America (No. 2) Act, 1949, 13 Geo. VI, c. 32 (Imp.), which, with the act of 1952, was repealed by the schedule to the Canada Act, 1982, items 22 and 24. See *Canada Year Book*, 1973, pp. 111-113, for history.

were given a member distinct from the member for the Yukon, and a new rule 5 was added, as follows:

(5) On any such readjustment the number of members of any province shall not be reduced by more than fifteen per cent below the representation to which such province was entitled under rules one to four of this subsection at the last preceding readjustment of the representation of that province, and there shall be no reduction in the representation of any province as a result of which that province would have a smaller number of members than any other province that according to the results of the then last decennial census did not have a larger population; but for the purposes of any subsequent readjustment of representation under this section any increase in the number of members of the House of Commons resulting from the application of this rule shall not be included in the divisor mentioned in rules one to four of this subsection.

The immediate effect of this was to give Saskatchewan seventeen members in the 1952 readjustment.⁴² The eighty-five percent rule, while much more generous than the former rule 4, was obviously a temporary cushion of the same type and not essentially in derogation of representation by population; it merely delayed it.

Nothing in rule 5 or in the 1952 version of s. 51 stated explicitly what effect the application of the rule was to have on the total number of members, but it was evidently construed by Parliament to mean that any members saved by the eighty-five percent clause were to be added to the total number of 263, as had been fixed by the 1952 Act. This differs from the result under rule 4, and the construction of the first clause of rule 5 would presumably apply to the second clause, the effect of which is to ensure that any province with a population larger than that of Nova Scotia or New Brunswick is entitled to at least ten members.

Six elections, from 1953 to 1965, were based on the 1952 Act and the subsequent readjustment. During this period, the mechanics of allotting members to the provinces and drawing electoral-district boundaries were the responsibility of the Representation Commissioner and ten provincial electoral commissioners.⁴³ The results of the 1961 Census had quite an impact. While Ontario, British Columbia, and Alberta gained a total of six members, Quebec, Nova Scotia, and Manitoba each lost one, and Saskatchewan lost

42. See Representation Act, 1952, (1 Eliz. II), St. Can. 1952, c. 48, s. 1.

43. By the Representation Commissioner Act, St. Can. 1963, c. 40, and the Electoral Boundaries Readjustment Act, St. Can. 1964-5, c. 31.

four.⁴⁴ New Brunswick had to rely on s. 51A to keep its ten members and Nova Scotia was saved from losing two members by the eighty-five percent rule. The readjustment was delayed until after the 1965 election by the late implementation of the new mechanisms and by proceedings in Parliament. Nevertheless, in 1961, the readjustments came into force without change and governed three elections. Another readjustment was required by the results of the 1971 Census, and involved the gain of three members by each of Ontario and British Columbia, but a loss of two members by Quebec and one by each of Nova Scotia, Manitoba, Saskatchewan, and Newfoundland. Nova Scotia was saved a further loss by s. 51A, as was Saskatchewan by rule 5.

During the 50s and 60s, it had become perfectly clear that members of the House of Commons were finding the elimination of provincial seats repugnant, if not due to motives of provincial pride and dignity, then at least due to distaste for the possible elimination of their own seats. Finding another seat becomes even more difficult if the provincial membership consists mainly of people from the member's own party, as tends to be the case. In late 1971, the government introduced a bill to change the rules and raise the membership to 269. It was reintroduced in February 1972, but was not proceeded with. Then, in March, Premier Ed Schreyer of Manitoba protested to Prime Minister Trudeau that the "floor guarantees" of representation for the Maritime provinces were disproportionate and in conflict with the principle of representation by population. Mr. Schreyer also made alternative proposals, and discussion continued. But when the final reports were received from the electoral boundaries commission in July 1973, the House of Commons accepted a government proposal to suspend readjustment until January 1, 1975.⁴⁵

The Liberal government of the day was a minority one and relied on New Democrat support. The Honourable Allan MacEachen, President of the Privy Council, held discussions with the other parties in 1971, but no consensus was reached. On January 11, 1974, "the system of readjusting representation in the House of

44. The wording of rule 5 is explicit that the 85 percent ratio applies not to the membership allotted by a previous application of the rule, but to the membership the province was then entitled to under rules 1 to 4. Under the 1951 readjustment, Saskatchewan was allotted 17 members, but was entitled, under rules 1 to 4, to 15 members. $13/15$ is within the 85 percent limit, that is, 86.6 percent.

45. Electoral Boundaries Readjustment Suspension Act, St. Can. 1973-74, c. 23.

Commons, including the method of determining the number of Members of each province established by Section 51 of the British North America Act' was referred to the Standing Committee on Privileges and Elections.⁴⁶

VI. *The Amalgam Method*

On February 20, 1974, Mr. MacEachen presented a paper to the Standing Committee on Privileges and Elections which outlined the background of the problem and stressed that representation by population had never been the only principle involved in the distribution of seats. Meaningful representation of provinces and territories also had to be considered, as well as the size of the average constituency population and the future effects of choosing any system. Five different methods of distributing seats were outlined by Mr. MacEachen, but he and the government favoured the amalgam method, the system eventually adopted by the Representation Act, 1974.⁴⁷ The amalgam method is described in Mr. MacEachen's statement as follows:

The "Amalgam Method" seeks to incorporate the following objectives:

- (a) the principle that no province shall lose seats as a result of Redistribution and that the small provinces should continue to have equitable representation;
- (b) the need for better representation by population among the provinces;
- (c) continuation of Quebec as a pivotal element in Redistribution.

The provinces are divided into small, medium and large and the rules are as follows:

- (i) *Small Provinces*
Includes provinces having less than 1.5 million population: Newfoundland, Prince Edward Island, Nova Scotia, New Brunswick, Manitoba, and Saskatchewan.

46. As cited at p. 1 of *Redistribution 1974, "Approach and Perspectives"*, a paper presented by the Honourable Allan J. MacEachen, President of the Privy Council and Leader of the Government in the House of Commons, to the Standing Committee on Privileges and Elections, dated February 20, 1974. See *Proceedings of the Committee*, No. 27, Feb. 20, 1974.

47. Representation Act, 1974, St. Can. 1974-75-76, c. 13, assented to December 20, 1974. The general election of July 8, 1974 was thus conducted under the former rules.

Whenever there is an increase in the population of a small province its total number of seats is determined by dividing its population by the average constituency population of the small provinces in the previous Redistribution.

(ii) *Medium Provinces*

Includes provinces having between 1.5 million and 2.5 million population: Alberta and British Columbia for the present Redistribution and Alberta only subsequently. A population increase results in one additional seat for every two the province would have received if it had been treated as the small province with the largest average constituency population.

(iii) *Large Provinces*

Includes the provinces having more than 2.5 million population: Quebec and Ontario; after 1981 British Columbia will be in this category. The Province of Quebec is attributed 75 seats now and an additional 4 seats at each following decennial census. The other provinces are attributed a number of seats based on the average constituency population of the Province of Quebec.

In making any calculation to arrive at a proper attribution of seats, the remainder after any division is disregarded.

Any province which, because of Redistribution, would have a lesser number of seats than another province with less population is attributed the same number of seats as that province.

Considering the objectives to be attained, the amalgam method was undoubtedly better than any of the other four discussed, which included the 1952 rules. The reestablishment of Quebec with a fixed but escalating membership eliminated the need to fix the overall membership. Since 1961, however, Quebec's population growth has tended to lag behind the Canadian average — in the 1971-81 decade, it was only 6.8 percent as compared to Canada's 12.9 percent — and this means that the total number of members will increase beyond what was projected in 1974; that is, there will be a 16.3 percent increase for Quebec as opposed to a 13.6 percent increase for Canada as a whole.⁴⁸ The four-member decennial increase for Quebec can always be interrupted, of course, but it indicates a reliance on a continuation of the present conditions, a reliance that is at odds with Canadian constitutional history. Our constitution-makers have always been shortsighted about figures, an outstanding early example being the

48. Derived from 1981 and 1971 census figures (see, *supra*, note 36). See also Appendix VII to Mr. MacEachen's statement (*supra*, note 45).

federal subsidy replacing provincial revenue, introduced in the original British North America Act, 1967, s. 118.

The amalgam plan was a carefully crafted and astute political settlement and, as such, seems to have satisfied the members of the House of Commons. As a constitutional settlement, the main objection is that it obscures, rather than clarifies. Even in the simplified form in which it is set out in Mr. MacEachen's statement, it is hard to tell what the real differences in the three classes of representation by population are likely to be.⁴⁹ The language of the Representation Act, 1974, s. 2, is much more difficult to grasp. One firm sign that the text needs editing is that the French text of every paragraph is shorter, and sometimes considerably shorter, than the English text. While it is granted that there has been an improvement in the use of French idiom and *tourneures* in drafting federal laws of late, this contrast between English and French texts is still at odds with the usual result. The English text actually contains a definition of "penultimate decennial census", which the French has the gumption to omit (the English text probably includes it to avoid any confusion arising from the fifth-year censuses).

For the purposes of computation, the provinces are classified in various ways: (a) Quebec; (b) large provinces, meaning those with populations greater than 2.5 million; (c) provinces with populations of less than 2.5 million and not less than 1.5 million; (d) intermediate provinces, that is, those in class (c) which have an increased population since the decennial census before last; (e) provinces with populations of less than 1.5 million; and (f) small provinces, that is, those in class (e) which have an increased population since the census before last. This multiplication of classes appears to have evolved in order to meet the drafting needs of rule 5(1)(b), which provides that where a class (c) or class (e) province does not have a population increase between the latest decennial census and the one before last, it retains the membership assigned to it on the readjustment following the decennial census before last. This, however, is subject to rules 5(2) and (3), as well as to rule 6(2). In view of rule 5(2)(b), which

49. In the post-1971 readjustment, Quebec's electoral quotient was 80,370 and the small-province electoral quotient was 64,557. The Quebec figure was based on Quebec's 1971 population, however, while the small-province figure was derived from 1961 populations; thus, direct comparison is misleading. The current (post-1981) figures are: Quebec, 81,499; small provinces, 66,196. The Quebec/small-provinces ratios are: post-1971, 1.24, and post-1981, 1.23. This has the virtues of consistency and stability.

protects a province from loss of membership, rule 5(1)(b) hardly seems worth having for the purpose of preventing any possible increase in membership.

Two important electoral quotients are contained in the rules. The first, the electoral quotient of Quebec, is the result obtained by dividing the population of Quebec (Q), according to the most recent decennial census (C), by the number of members to be assigned to it under rule 1 in the readjustment following that census. That number is 75 plus 4 additional members in each of (n) readjustments after the post-1971 readjustment. The Quebec electoral quotient (q_Q) not only determines the membership of the large provinces (see rule 2, subject to rules 5(2) and (3)), but is also the largest electoral quotient that may be employed in the calculations (see rule 5(3)(a)). For those who find formulas helpful, this can be expressed as follows: $q_Q = Q(C_1)/(75 + 4n)$, where the terms have the meanings noted above. The second important electoral quotient, the small-province quotient (q_S), is determined by dividing the sum of the populations of those provinces, other than Quebec, that have less than 1.5 million inhabitants — that is $\Sigma(S_1, S_2, S_3 \dots)$ — at the penultimate decennial census (C_0), by the sum of the members assigned to those provinces — $\Sigma m(S_1, S_2, S_3 \dots)$ — at the readjustment following that census (C_0). This translates into the following formula:

$$q_S = \frac{\Sigma(S_1, S_2, S_3 \dots)(C_0)}{\Sigma m(S_1, S_2, S_3 \dots)(C_0)}$$

The membership to which a small province is entitled (subject to rules 5(2) and (3)) is ascertained by dividing the population of the province by the small-province quotient (see rule 3) as follows:

$$mS_x = (C_0)/q_S$$

where S_x signifies the (population of the) province in question.

There is an ambiguity in the meaning of “population” in Rule 3(b). In rule 6(1), it is stated that “population means, except *where otherwise specified [sauf indication contraire]*, the population determined according to the results of the then most recent decennial census (emphasis added).” The results of the post-1971 readjustment indicate that the representation of each small province was determined by dividing its 1961 population by the small-province quotient based on the 1961 populations and post-1961 membership. Thus, the agencies involved, including Parliament,

construed “population” in the same sense as in rule 3(a) and, hence, as referring to the figures of the penultimate census.⁵⁰ This is rather odd because it bases the prima facie membership of the small provinces on figures that are at least ten years out-of-date. The effect of the Senate-floor provision (s. 51A) is, in general, to increase the small-province representation, because the s. 51A increases (three for Prince Edward Island and one for New Brunswick, at present) are in addition to the membership determined by the previous small-province quotient. As already noted, rules 5(2)(b) and (1)(b) prevent any loss of representation, and rule 5(2)(a), which gives a province a right to representation at least equal to that of any province having a lesser population, may cause an occasional increase. Rule 5(3) may also cause an occasional increase by applying the electoral quotient of the province. Thus, the figures for small-province representation can only go up. On the other hand, the readjustment authority has allocated the membership for the post-1981 readjustment by dividing the 1981 population of each small province by a quotient derived from 1971 population figures and post-1971 membership.

50. The following table exhibits the pertinent figures (only columns 2 and 7 match the facts):

Assignment of Small-Province Representation Using Different “Populations”

	1.	2.	3.	4.	5.	6.	7.
	1961 pop		1971 pop		1981 pop		
	1961 pop	1961 SPQ	1971 pop	1961 SPQ	1971 SPQ	1981 pop	1971 SPQ
Newfoundland	457,853	7.09	522,104	8.09	7.89	567,681	8.58
Prince Edward Island	104,629	*1.62	111,641	*1.73	*1.69	122,506	*1.85
Nova Scotia	737,007	11.42	788,960	12.22	11.92	847,442	12.8
New Brunswick	597,936	*9.26	634,557	*9.83	*9.59	696,403	10.52
Manitoba	921,686	14.28	988,247	15.31	14.93	1,026,241	15.5
Saskatchewan	925,181	14.33	926,242	14.35	**13.99	968,313	14.63
Total	3,744,292		3,971,751			4,228,586	
Members	/58	60	/60	63	60		63
Small-province quotient	64,557		66,196				

Rule 6(2)(a) requires fractional remainders to be disregarded.

* The Senate floor (s. 51A) brings P.E.I. up to 4 members and N.B. up to 10.

** Saskatchewan must have 14 members because that is its present membership: see rule 5(2)(b).

The small-province quotient is used in a modified form in rule 4 to determine the representation of the intermediate provinces. That is, the figures of the latest decennial census are used, rather than those of the penultimate one. This is symbolized as follows:

$$q_s (C_1) = \frac{\Sigma(S_1, S_2, S_3 \dots) (C_1)}{\Sigma m(S_1, S_2, S_3 \dots) (C_1)}$$

The symbolic representation of rule 4 is a bit more of a challenge:

$$\frac{m(I_x) (C_1) = (I_x/q_s (C_1) + m(I_x) (C_0))}{2}$$

where “ I_x ” signifies the (population of the) intermediate province in question and the other signs have those meanings already given.

This discussion is probably sufficient to demonstrate the ingenuity and comprehensiveness of the present s. 51, as well as its complexity, ambiguity, and obscurity. Is there any possibility of simplifying, in the interests of constitutional clarity and elegance, what appears to be a satisfactory political solution? There are complications. Section 51A is now entrenched in the constitution by the Constitution Act, 1982, s. 41(b), and requires the unanimous consent of the provinces to any amendment. It is probably too cherished a privilege to be tampered with. Representation by population is also protected by the Constitution Act, 1982, s. 42(1)(a) and (2). Subsection (1)(a) reads as follows:

(1) An amendment to the Constitution of Canada in relation to the following matters may be made only in accordance with subsection 38(1):

(a) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada;

Subsection (2) provides that the opting-out provisions of s. 38 do not apply, and subsection 38(1) establishes the simplest method of amendment: resolutions of the Senate and House of Commons and of the legislative assemblies of at least two-thirds of the provinces, having in the aggregate fifty percent of the population of all the provinces.

By virtue of the Constitution Act, 1981, s. 52(2) and schedule item 28, the Constitution Act, 1974, which enacts the present Constitution Act, 1867, s. 51, is included in the Constitution of Canada. Does this mean that any substantial change to s. 51 requires a constitutional amendment?

The amalgam plan is a partially successful attempt to combine the principles of proportional representation and significant provincial representation. In addition to its complexity, it suffers by being tied to arithmetical bases: the numbers 1.5 million and 2.5 million are fundamental to the scheme. While they are meaningful numbers today because of the actual spread of population, in a few decades they may make little sense. That has been the Canadian experience as a result of tying a constitution settlement, meant to be long-term, to exact figures.

A distinction that some may find invidious and demeaning is the division into small, intermediate, and large provinces. Again, this is the result of an arithmetical approach and the need to calculate three distinct electoral quotients instead of devising one algebraic formula that would incorporate both of the protected principles. In this respect, the amalgam plan resembles the graduated income tax imposed by the Income Tax Act, in that it is made up of a series of steps, rather than a smooth curve. Just as a constant tax rate can be turned into an evenly graduated tax by a tax allowance,⁵¹ so a basic membership for every province, coupled with additional membership proportionate to population, would result in an evenly graduated system of proportional representation.

VII. *The Three-Plus Plan*

Is this the better way? Let us examine a sample approach — call it the “three-plus plan” — to see whether what are essentially the same purposes can be achieved by a simpler, clearer, more comprehensible scheme.

The following are the main elements of the three-plus plan:

Rule 1. Three members are assigned to each province.

Rule 2. In the readjustment following the decennial census of the year 1971, Quebec would be assigned seventy-two additional members and, in each subsequent readjustment, a number of further additional members proportional to the increase if any in the population of Quebec between the last decennial census and the decennial census before last, such further additional members not to exceed four on any readjustment.

51. For example, the tax rate on net income is 30 percent for everyone, but everyone is entitled to a tax allowance of \$2,000. A, with an income of \$20,000, pays \$4,000 tax, an effective rate of 20 percent. B, with an income of \$40,000, pays \$10,000 tax, an effective rate of 25 percent. C, with an income of \$80,000, pays \$22,000, an effective rate of 27.5 percent.

Rule 3. Each province would be assigned a number of additional members calculated by dividing the population of the province by the quotient resulting from dividing the population of Quebec by the number of members assigned to Quebec under Rule 2.

To be fair, this should be reduced to symbols for comparison with the earlier formulas, as follows: $mP_x = P_x \div (Q/(72+n))+3$, where "n" refers to the further additional members provided for in rule 2.

Rules 1 to 3 of the three-plus plan are designed to replace rules 1 to 5(1) of the amalgam method, and rule 5(3) would be circular and meaningless. Rule 5(2)(a) is basically a complement to the Constitution Act, 1867, s. 51A, and would have to be retained as such. Rule 5(2)(b) is not a necessary or desirable part of the three-plus plan, but is probably politically unchangeable unless Canada experiences a radical increase in the number of provinces. Most of rule 6(1) of the amalgam method would be omitted in the three-plus plan, but the definition of "population" should be retained in order to avoid repetition of the phrase "determined according to the results of the then most recent decennial census." Finally, rule 6(2) of the amalgam method should be retained, especially clause (a), which directs that remainders less than one in the calculation of the number of members be disregarded.

A comparison of the actual readjustments following the 1961, 1971, and 1981 censuses with the calculated results of using the three-plus plan reveals that the divergences are not great, but the additions provided for under the latter are, as expected, more equitable in the case of the small and intermediate provinces.⁵² The increases in total membership, in comparison with those under the amalgam method (post-1971 and 1981), are not large enough to be

52. The figures are as follows:

Readjustment after	1961		1971		1981	
	Actual 3 +		Actual 3 +		Actual 3 +	
Newfoundland	7	9	7	9	8	9
P.E.I.	4	4	4	4	4	4
Nova Scotia	11	13	11	12	12	13
New Brunswick	10	11	10	10	10	11
Quebec	74	75	75	75	79	79
Ontario	88	88	95	95	105	104
Manitoba	13	15	14	14	15	15
Saskatchewan	13	15	14	14	14	14
Alberta	19	21	21	22	27	29
British Columbia	23	25	28	29	33	35
Totals	262	276	279	284	307	311

of concern. Indeed, Professor John Courtney of the Department of Economics and Political Science of the University of Saskatchewan has put forward some interesting arguments for doubling the size of the House to meet the workload.⁵³ The influence of size on the character and conduct of groups is a topic too vast to go into here, but my impression is that the larger the group, the more nearly a nonentity the individual member becomes. The Canadian public seems to be happy with the order of magnitude of the present House of Commons.

Representation by population does not need any justification; it is entrenched in our political history. The guarantee of a meaningful representation in the House of Commons is also a recurring note in our history, but there are some who hold that it requires justification, at least where it is clearly visible, as it would be under the three-plus plan. That justification is the need to counter the fears of being “swallowed up” that inspired Prince Edward Island and Newfoundland to reject confederation when it was first proposed. The justification is the recognition of the principle since the enactment of section 51A (the Senate floor) in 1915, as well as in the 1952 revision of section 51 and in the amalgam method of 1974. The principle is now part of our constitutional heritage and the only question is how best to secure it. The three-plus plan is, of course, only one of many possible ways of dealing with the question. It seems to have the virtues of simplicity and clarity that are needed in a constitutional statement. Whether it is politically viable is, of course, another question entirely.

* * *

The following chart compares the results of the amalgam method and the three-plus plan. The horizontal lines represent the results of the amalgam method, while the vertical curve connects the points representing the results of the three-plus plan. Both scales of the chart are logarithmic and are in the ratio of 1/.508. The chart illustrates how close the results of the two methods are, but it also shows that the three-plus plan yields a smoother curve. A logarithmic graph is needed to accommodate the differences in the

53. See *Proceedings of the Standing Committee on Privileges and Elections*, House of Commons, 32nd Parl., 1st. Sess., No. 20, April 6, 1982. I wish to acknowledge Professor Courtney's kindness in providing this material and also in directing me to the origin of the expression “amalgam method”, which I had completely forgotten since 1974!

populations involved. Pure representation by population would be represented on such a graph by a straight line, extending from the right end of the Quebec line to the point on the vertical axis representing the Quebec electoral quotient of 81,498.

House of Commons Representation:
Post-1981 Readjustment

