

Still Not Equal? Visible Minority Vote Dilution in Canada

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Abstract: This article takes the long-standing fact of deviations from the principle of representation by population in Canada as the starting point and asks whether the consequence is the dilution of visible minority votes. It calculates voting power for visible minorities in comparison to voters who are not visible minorities for the 2004 federal electoral map using 2006 Census data and for provincial electoral districts in British Columbia, Alberta, Ontario and Quebec. We conclude that vote dilution exists and is concentrated in the ridings with the largest proportions of visible minorities. Visible minority vote dilution carries special significance in light of demographic, policy and constitutional considerations. The article concludes by offering some suggestions for how the electoral boundary commissions that set the contours of ridings can address visible minority vote dilution, as well as possible legislative amendments.

Keywords: voters, visible minorities, vote dilution

Résumé: Cet article considère au départ le fait avéré de longue date de l'écart, au Canada, de représentation des diverses populations, et se demande s'il entraîne pour conséquence la dilution du vote des minorités visibles. Il calcule le pouvoir électoral des minorités visibles, en comparaison à celui des électeurs qui n'appartiennent pas à de telles minorités, pour l'élection fédérale de 2004, en utilisant les données du recensement de 2006 pour les circonscriptions de Colombie Britannique, d'Alberta, d'Ontario et du Québec. Nous concluons que la dilution de ce vote existe et est concentrée dans les circonscriptions à plus grande proportion de minorités visibles. La dilution du vote des minorités visibles prend une signifiante particulière en regard de considérations démographiques, politiques et constitutionnelles. L'article conclut en proposant des moyens par lesquels les circonscriptions électorales pourraient être tracées de manière à enrayer cette dilution du vote des minorités visibles. Il suggère aussi de possibles amendements législatifs.

Mots-clés: voteurs, minorités visibles, dilution du vote

Introduction

Canada's electoral districts deviate significantly from the principle of representation by population (Ward, 1949; Courtney, 2001), so much so that Canada is an outlier internationally (Sancton, 2010; see Samuels and Snyder, 2001 for earlier data). This has been a matter of enduring political and legal controversy (Carty, 1985; Courtney, 1988; 2001; Courtney *et al.*, 1994; Eagles and Carty, 1999; Evans, 2005; Jenkins, 1998; Johnson, 1994; Roach, 1991; Sancton, 1990; Williams, 2005). Deviations from representation by population have traditionally favoured rural voters and the less populous provinces (Ward, 1949; Courtney, 2001). Demographic trends add a new dimension to this old debate because Canada is becoming more diverse due to immigration by visible minorities, particularly into the largest urban areas in the country - Greater Toronto, Montréal and Vancouver. Deviations from representation by population decrease the value of votes in exactly those urban areas of the country where visible minority immigrants are settling.

The recent debate surrounding the *Fair Representation Act*, (2011) which expanded the size of the House of Commons, focused on the formula for distributing seats to the provinces and inequalities in the number of seats apportioned to each province. The debate in Parliament on the *Fair Representation Act* engaged with the question of visible minority vote dilution by touching on the under-representation of the provinces with the highest number of visible minorities (see the debate in the House, *Hansard*, 2011). The legislation and the debate surrounding it, however, did not address the inequalities between voters *within* provinces, with a few exceptions (see Vongdouangchanh, 2011; Mendelsohn and Choudhry, 2011).

Boundary commissions drawing lines within provinces are permitted to deviate by up to 25% above or below the average riding population in the province, or even more in undefined exceptional circumstances (*Electoral Boundaries Readjustment Act* (EBRA), 1985, s. 15). The *Fair Representation Act* only dealt with one side of the coin of representation by population in federal ridings – inter-provincial, but not intra-provincial disparities.

In this article, we ask if the voting power of visible minorities is being diluted, taking into account both inter- and intra-provincial causes. Visible minority vote dilution has attracted minimal scholarly and policy attention. The scholarship on visible minorities and elections has been primarily concerned with other questions, such as visible minority candidacies and their likelihood of being elected (Bird, 2011; Black, 2002; Black, 2008; Black, 2009; Black and Erickson, 2006; Black and Hicks, 2006; Simard *et al.*, 1991; Stasiulis and Abu-Laban, 1991; Tossutti and Najem, 2003), or the voting behaviour of visible minorities including their partisan political preferences (Bilodeau and Kanji, 2010; Blais, 2005; White *et al.*, 2006). There is also a gap in the democratic reform literature, which has been largely focused on the merits of electoral systems (see Milner, 2004; Pilon, 2007; and Seidle, 2002 from among many), including the likelihood of electing visible minorities under alternatives to the single member plurality system (for example, see Law Commission, 2002: 16). Consideration of the impact of deviations from representation by population on visible minorities has been largely absent.

An earlier article (Pal and Choudhry, 2007) measured voting power in urban and rural federal electoral districts (FEDs) established by the 1996 Representation Order (R.O.) on the basis of the 1996 and 2001 censuses, and concluded that urban

and visible minority votes are diluted in Canada. Vote dilution was concentrated in the largest urban areas of Alberta, British Columbia and Ontario. The 2004 R.O. replaced the 1996 R.O. and remained in place until 2013. The next federal election will be held under the map proclaimed through the 2013 R.O. (EBRA, 1985, s. 25).

This article measures visible minority representation in FEDs based on the 2004 federal electoral map and the 2006 census using a related but different methodology from the earlier article. The previous study looked at urban and rural voters, as well as urban visible minorities as a sub-category. This study measures the voting power of visible minorities and non-visible minorities as a whole, apart from urban or rural residence.ⁱⁱ We leave analysis of the 2013 electoral map for another day when data on visible minority populations in the new ridings is available.

We seek to answer five main questions that arise out of our earlier article and the recent Parliamentary debate on electoral boundaries. The first three relate to the existence and level of vote dilution and the last two to the implications of our findings:

- 1) Does the under-representation of certain ridings affect visible minorities unequally and lead to visible minority vote dilution in FEDs;
- 2) If there is a disproportionate impact on visible minorities, is the unequal treatment concentrated in specific ridings or types of ridings;
- 3) Is there a comparable level of vote dilution in provincial electoral districts (PEDs) in provinces with high levels of visible minorities;
- 4) Does visible minority vote dilution violate the *Canadian Charter of Rights and Freedoms* (the Charter); and

- 5) Can vote dilution be remedied within the current system for designing electoral boundaries by commission?

Despite the redistribution and readjustment of electoral boundaries in the 2004 R.O., we find that the 2004 federal map dilutes visible minority votes overall and that the ridings with small proportions of visible minorities have greater voting power than those with large proportions of visible minorities. Our findings likely understate the problem of visible minority under-representation, as continued immigration between 2006 and 2011 can reasonably be assumed to have increased the populations of ridings with large numbers of visible minorities relative to those ridings with fewer visible minorities. We also find that visible minority vote dilution exists at similar levels for PEDs in the four most populous provinces. We conclude that visible minority vote dilution raises serious constitutional issues, but that electoral boundary commissions and relatively straightforward amendments to federal legislation could go a great length in remedying the problem.

One distinction is important to make before we continue. The concept of equal representation for visible minority individuals is distinct from the concept of mirror representation. Mirror representation assumes that social diversity should be reflected more or less proportionately in the personal characteristics of legislators (Kymlicka, 1995; Phillips, 1991). With visible minorities forming 19 per cent of the Canadian population according to the 2011 National Household Survey, the concept of mirror representation would dictate that visible minorities are under-represented unless 19 per cent of those elected to the House of Commons are from that group. We make no claims in this paper about the necessity of mirror representation for racial

minorities. Voter equality instead refers to the weight of the vote given differences in the size of electoral district populations, without regard to the choice of representative made by voters.

Methodology

Electoral boundary commissions determine riding populations with reference to total population, rather than eligible voters. We use total population here so that our results will be generated with the same unit of analysis as that used by the commissions. The R.O. of 2004 proclaimed the current electoral map in Canada in force, using 2001 census data. We applied 2006 census data rather than the 2001 data used by the boundary commissions. We did so because to apply the 2001 census would ignore the demographic changes that occurred after 2001. We determined the visible minority variable according to the Statistics Canada definition, which in turn relies on the definition in the *Employment Equity Act*. Visible minorities are defined in s. 3 of the Act as “persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in colour.” The following groups are defined as visible minorities in the regulations: “Chinese, South Asians, Blacks, Arabs, West Asians, Filipinos, Southeast Asians, Latin Americans, Japanese, Koreans, and other visible minority groups, such as Pacific Islanders.” Aboriginal peoples are excluded from the definition.ⁱⁱⁱ The term “non-visible minorities” as used in the article denotes all individuals who are not visible minorities.

To calculate voting power for visible minorities and non-visible minorities, we first produced the national electoral quotient, which is the average number of individuals per district. We then calculated the voting power of each riding. We divided the national electoral quotient by the total

population in each particular district to reach this number. We multiplied each district’s voting power measure by the visible minority population of the riding. We summed these results for all visible minorities to create a measure for the effective number of visible minorities. We divided the effective number of visible minority voters by the actual number of visible minorities in Canada. This produced the average voting power for a visible minority individual. The process was repeated for non-visible minorities. Under conditions of perfect voter equality, each district would have the same population, and the worth of every individual vote would be “1”. The same method was followed for PEDs, except the provincial quotient was used.

Other formulas have been applied to calculate vote dilution in the literature. Canadian districts have been analyzed frequently using the Gini index, which is a measure of inequality (Archer 1993; Blake 2001; Carty 1985; Courtney, 2001; Sancton 1990). Samuels and Snyder’s international analysis applies a modified Loosemore-Hanby index (2001: 654-55), which calculates a riding’s vote share compared to its seat share. We use the formula detailed above because it provides a useful calculation by which to measure the impact of differential riding populations on sub-groups such as visible minorities.

Results for Federal Electoral Districts

Does the under-representation of certain ridings affect visible minorities unequally and lead to visible minority vote dilution?

We find that the 2004 federal electoral map dilutes visible minority votes in comparison to the votes of those who do not have visible minority status, which we label “non-visible minority voters.” The average visible minority individual in Canada has a voting

power of 0.89 and is therefore under-represented. The average non-visible minority individual has a voting power of 1.02, or marginally above voter equality. The difference between visible minority and non-visible minority representation,

however, is 14.6 per cent. The traditional variance in riding populations in Canada results in visible minority vote dilution under the electoral map introduced in 2004.

Table 1: Visible Minority and Non-Visible Minority Voting Power for FEDs

Vis Min Voting Power	Non-Vis Min Voting Power	% Difference
0.89	1.02	14.6

Table 2: Voting Power by Percentage of Visible Minorities per Riding

% Vis Min	Low Proportion of Vis Mins				High Proportion of Vis Mins			
	1% or less	3% or less	5% or less	10% or less	15% or more	20% or more	25% or more	30% or more
Voting Power	1.37	1.24	1.21	1.19	0.90	0.90	0.89	0.88
# of Ridings	66	123	154	187	101	80	68	53

Chart 1: Percentage Visible Minority Population by Categories (y) by Voting Power (x)

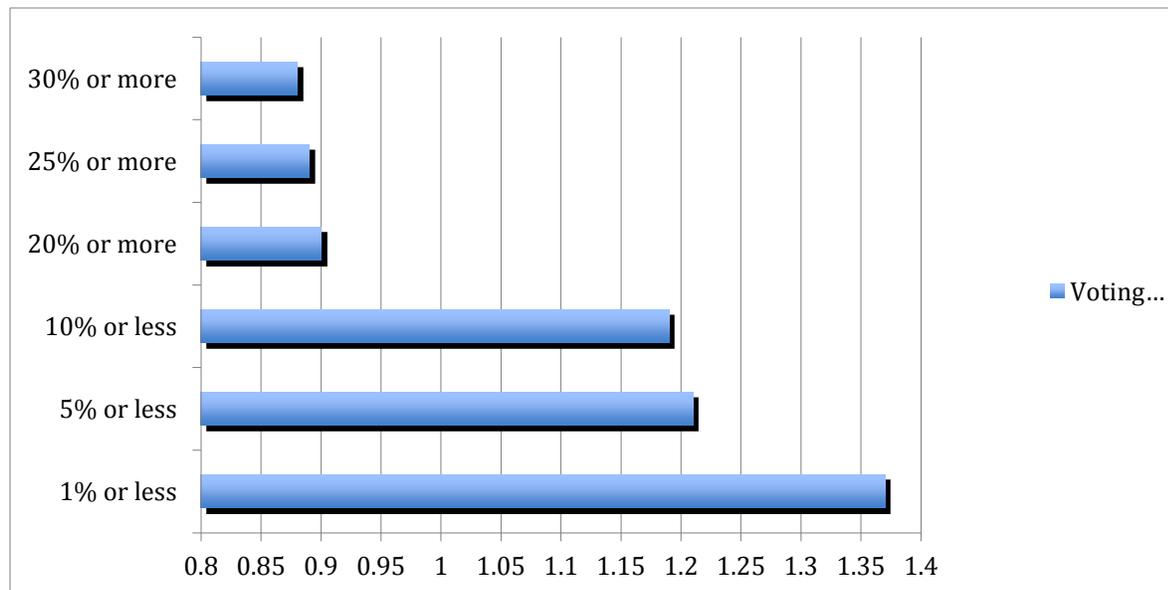


Table 3: The 15 Most Populous Ridings with Percentage Visible Minority, 2004 R.O.

Riding	Riding Population	% Vis Min
Brampton West (ON)	170,420	53.7%
Oak Ridges-Markham (ON)	169,645	41.3%
Vaughan (ON)	154,215	25.4%
Bramalea-Gore-Malton (ON)	152,700	64%
Halton (ON)	151,940	19%
Mississauga-Erindale (ON)	143,360	51.7%
Peace River (AB)	138,009	2.6%
Mississauga-Brampton South (ON)	136,470	60%
Whitby-Oshawa (ON)	135,890	14.9%
Nepean-Carleton (ON)	133,250	17.4%
Calgary West (AB)	132,155	17%
Thornhill (ON)	131,970	33.3%
Brampton-Springdale (ON)	131,795	56.2%
Scarborough-Rouge River (ON)	130,980	89.4%
Calgary-Nose Hill (AB)	130,945	34.9%

Source: Mendelson and Choudhry, 2011. Data from Statistics Canada, 2006 Census, <http://www12.statcan.ca/census-recensement/2006/dp-pd/prof/92-595/p2c.cfm?TPL=INDX&LANG=E>

Is the unequal treatment of visible minorities concentrated in specific ridings?

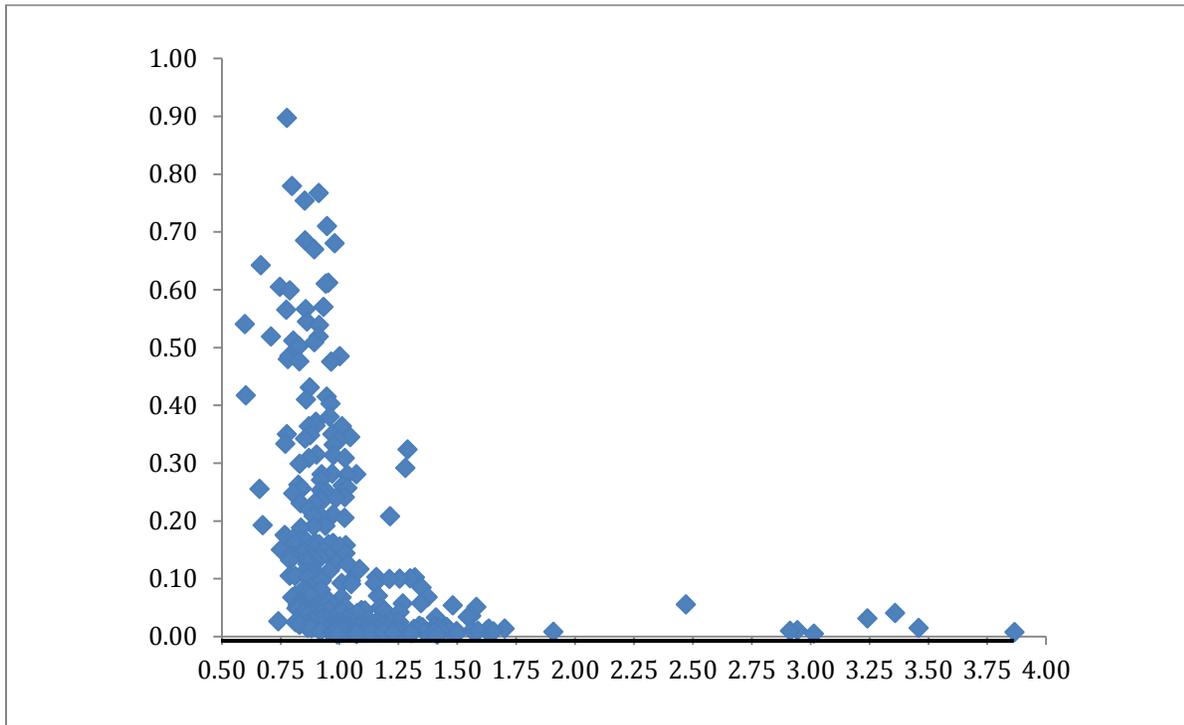
The overall vote dilution numbers conceal the differences between those federal ridings with relatively high and low proportions of visible minorities. Visible minorities made up 16% of Canada's population overall according to the 2006 census and 19% of the population as counted by the 2011 National Household Survey (Statistics Canada, 2011). Generally, the greater the percentage of the riding population made up of visible minorities, the lower the voting power. The least diverse ridings in the country in terms of visible minority status are dramatically over-

represented in comparison to the most diverse. We define a low proportion of visible minorities as 1, 3, 5 or 10 per cent or less of the riding population and a high proportion as 15, 20, 25 or 30 per cent or more of the riding population. The ridings with a visible minority population of 1 per cent or less have an average voting power of 1.37 (Table 2; Chart 1). There are 66 out of 308 ridings that fall into this category. To expand the category to catch a larger number of ridings, the 154 ridings with 5 per cent or less visible minorities have a voting power of 1.21. By contrast, the ridings with a visible minority population of 20 per cent or more have much lower voting strength.

The 80 ridings with 20 per cent or more visible minorities have a voting power of 0.90, and the 53 ridings with more than 30 per cent visible minorities have a measure of 0.88. There is a 56 per cent difference in voting power between the ridings with 1 per cent or less visible minorities and the ridings

with at least 30 per cent visible minorities. As an illustration, the 15 most populous ridings, where voting power is the lowest among all FEDs, have large numbers of visible minorities (Mendelsohn and Choudhry, 2011) (Table 3; Chart 2).

Chart 2: Proportion Visible Minority Population per Riding (y) by Riding Voting Power (x), with National Visible Minority Population (16%) as a Reference (2006 Census)



Results for Provincial Electoral Districts

Is visible minority vote dilution present in Provincial Electoral Districts?

The preceding analysis assessed voting power in FEDs. Similar results can be found in PEDs. PEDs do not suffer from inter-provincial vote dilution, but significant variances remain between regions within each province. PEDs are determined according to different rules and processes than FEDs (Blake 2001), yet the dilution of visible minority votes also occurs in PEDs as it does in FEDs.

We looked at PEDs in Quebec, Ontario, Alberta and British Columbia, which are the most populous provinces and those with the greatest number of visible minorities, to measure whether visible minority vote dilution extends to PEDs. We focus on these four provinces because measuring visible minority vote dilution in the other provinces and the territories is less relevant given their smaller populations of visible minorities. In analyzing PEDs in the four provinces, we paired 2006 census data with the most recent electoral boundary information made available to us by

Statistics Canada and the provincial election commissions: Quebec (2001, 125 districts), Alberta (2010, 83 districts), BC (2009, 79 districts) and Ontario (2007, 107 districts). Since we obtained our data, BC has subsequently adopted an electoral map of 85 districts. Blake (2001: 10) and Courtney (2001: 194-5) both found a trend toward voter equality in PEDs in the 1990's (with the exception of Quebec), echoing the earlier tentative conclusion of Carty (1985: 285).

We find that the votes of visible minorities in provincial elections are diluted in comparison to those of non-visible minority voters, with a low in Quebec of visible minority voting power at 0.89 and a high in Ontario of 0.94 (Table 5). The movement toward greater population equality in PEDs overall has therefore not yet gone far enough to remedy the specific problem of visible minority vote dilution.

As with FEDs, the least diverse PEDs have larger voting power than the most diverse ones. In Quebec, Ontario, Alberta and British Columbia, districts with small numbers of visible minorities have significantly higher voting power than those with higher proportions of visible minorities (Table 6). The dilution of visible minority votes in the most diverse electoral districts is

a phenomenon at both the federal and provincial levels.

Implications of Visible Minority Vote Dilution

Does visible minority vote dilution violate the right to vote or equality rights in the Charter?

Our analysis has established that in the aggregate, the votes of visible minorities are worth less than those of non-visible minorities. This section investigates the constitutional implications of these findings and, specifically, whether visible minority vote dilution violates the Charter. The demographics of visible minority immigration and integration make this an important question. Visible minorities are rapidly growing as a proportion of the population, nearly entirely concentrated in urban areas, and there is evidence that they are disadvantaged compared to other Canadians. In our opinion, there is a strong legal argument that the dilution of visible minority votes is unconstitutional as either a violation of the right to vote in s. 3 or as adverse effects discrimination contrary to s. 15 of the Charter.

Table 5: Visible Minority and Non-Visible Minority Voting Power for PEDs

Province	Vis Min Voting Power	Non-Vis Min Voting Power
QC	0.89	1.01
ON	0.94	1.02
AB	0.93	1.01
BC	0.92	1.03

Table 6: Voting Power by Percentage of Visible Minorities per Riding for PEDs

% Vis Min	QC	ON	AB	BC
<i>Low Vis Min</i>				
1% or less	1.30	1.49	N/A	N/A
# of ridings	46	3	0	0
3% or less	1.17	1.21	1.17	1.34
# of ridings	73	27	25	11
5% or less	1.15	1.17	1.09	1.22
# of ridings	80	36	34	23
10% or less	1.13	1.13	1.10	1.18
# of ridings	88	46	43	38
<i>High Vis Min</i>				
15% or more	0.90	0.93	0.94	0.91
# of ridings	26	50	28	33
20% or more	0.88	0.94	0.92	0.91
# of ridings	18	41	21	31
25% or more	0.87	0.92	0.91	0.91
# of ridings	13	35	13	27
30% or more	0.83	0.91	0.92	0.90
# of ridings	9	31	10	23

Visible minority vote dilution raises serious questions about the constitutionality of the electoral map given the Charter’s protections. One potential hurdle is the Supreme Court of Canada’s jurisprudence, as the Court has declined to exercise strict oversight of electoral maps. In *Reference re Provincial Electoral Boundaries (Saskatchewan)* (1991) (known as “*Carter*”), the Court held that the right to vote guaranteed in the Charter (s. 3) protects only the right to “effective representation,” not representation by population, and permits significant deviations from voter equality if they lead to the more effective representation of the population as a whole. The Court held that the more effective representation of rural voters justified the dilution of urban votes in the disputed

Saskatchewan provincial electoral map before it.

The Court also held that relative voter parity was the primary, but not the only, factor to consider: “[R]elative parity...may prove undesirable because it has the effect of detracting from the primary goal of effective representation. Factors like geography, community history, community interests and minority representation may need to be taken into account...” (*Carter*, 1991: p. 186). The Court appears to have been motivated by historical and pragmatic concerns. Strict voter parity was not guaranteed by s. 3 according to the Court because Canada had inherited the British tradition of permitting deviations, in contrast to the American one person, one vote principle. The Court was also concerned with the impact of a voter parity rule on

rural voters, who would lose influence, and the practicality of such a rule when remote, sparsely populated, and over-represented ridings already covered huge geographic expanses.

We have criticized *Carter* for failing to justify its interpretation of the Charter as permitting significant deviations from voter equality (Pal and Choudhry, 2007). In a parallel fashion, other commentators have argued that *Carter's* doctrine of effective representation is inconsistent with the rationale underpinning s. 3 (Studniberg, 2008). Yet others have criticized *Carter* for failing to acknowledge the partisan nature of the electoral map in that case, which overrepresented rural areas in Saskatchewan to the benefit of the sitting government that depended on a rural electoral base (Bredt and Kremer, 2004; Dawood, 2012; Pal 2011: 299-300). Some commissions in the 1990's used *Carter* as justification to limit the worst excesses of intra-provincial rural overrepresentation, but others ignored it or used it only selectively (Courtney, 2001: 177-81). *Carter's* lasting impact has been the validation of significant deviations from voter parity and a near abdication of constitutional oversight of the design of electoral districts.

Visible minorities face particular barriers in Canadian society that mean their diminished voting power is especially problematic. They endure a more difficult time gaining access to the labour market and achieving income parity relative to other workers (see Picot and Sweetman, 2005 for data). The Labour Force Survey from Statistics Canada found that among the working age population, the overall unemployment rate in Canada was 6.9 per cent, while for recent immigrants in the country for 5 years or less (the vast majority of whom are visible minorities) it was 14.7 per cent (Statistics Canada, 2010). The unemployment rate of recent immigrants

from Asia is higher than the general number for visible minorities, at 15.1 per cent unemployment, while accessing the labour market is a particularly acute problem for recent immigrants from Africa at 21.2 per cent unemployment. Even as immigrants are in the country longer, their unemployment rates remain above the Canadian average and that of the Canadian-born (Statistics Canada, 2010). The unemployment rate for recent and longer-term immigrants is higher than the average for the Canadian-born despite the fact that recent immigrants are more likely to have a university degree.

Forty-three per cent of recent immigrant households in a study of large urban areas had low incomes, nearly three times the rate of non-immigrant households (FCM, 2011). The study found that immigrants, and especially recent immigrants, were under-represented in higher earning occupations and over-represented in lower earning ones (FCM, 2011: 22). Discrimination also likely persists against visible minorities, even if there are disputes regarding perceived levels of differential treatment (Statistics Canada, 2003; Reitz and Banerjee, 2006).

Given this data, the policy implications of visible minority vote dilution are potentially troubling. Though further research is needed to assess whether there is a connection between vote dilution and policy outcomes, we should worry whether governments will discount the interests of this under-represented set of voters and be less responsive to their concerns than they would otherwise be under conditions of voter parity. As visible minorities are under-represented, candidates and political parties may have less incentive to generate policies to appeal to visible minorities than they would otherwise.

While we believe that voter equality is desirable as a matter of principle, and that the Court therefore erred in holding that s. 3

requires only effective representation, the *Carter* decision remains the binding interpretation of the right to vote. Despite this ruling, the Charter may still provide avenues by which to move toward greater voter equality through both s. 3 and s. 15.

There is a good argument that visible minority vote dilution violates s. 3, even as understood by the Court in *Carter* as allowing deviations from voter parity. The Court in *Carter* held that deviations from voter parity are permitted only if they enhance the effective representation of an aggregation of voters. Visible minority vote dilution violates s. 3, in our opinion, because it means that this minority group receives less effective representation.

Changing demographics have altered the constitutional consequences of vote dilution. The impact of over-representing rural voters, which the Court permitted in *Carter*, does not simply fall on urban voters. *Carter* arose from disputed Saskatchewan electoral boundaries in the late 1980's and early 1990's. The demographics of the country in 2014 are very different from what was before the court in 1991. Visible minority immigration drives nearly all population growth, the proportion of visible minorities and the foreign-born are increasing, and the vast majority of visible minority immigrants settle in the largest urban areas (Kerr and Mellon, 2010; Statistics Canada, 2007; 2008), which are traditionally under-represented.

The Supreme Court in *Carter* largely dismissed inequality of voting power as a problem as long as it led to the more effective representation of a specific aggregation of voters, which in practice means rural voters. That logic is problematic, however, if the tradeoff is not between aiding a disadvantaged rural minority at the expense of a relatively prosperous urban majority, but between one disadvantaged aggregation of voters and

another. The effect of urban vote dilution is to further disadvantage already vulnerable visible minorities by discounting their political power at the ballot box. Discounting the voting power of visible minorities reduces their electoral influence and subsequently diminishes the incentives of those in political power to defend their interests. Despite permitting variances, the logic of *Carter* could still support a claim that the electoral map harms the effective representation of visible minorities and, hence, violates s. 3.

Visible minority vote dilution may also violate the equality rights guaranteed by s. 15 of the Charter. The existing approach to representation has a discriminatory effect on visible minorities and urban voters. Discrimination can be either direct or indirect. Legislation that assigned each visible minority one vote, but two or three to each other voter, would be unconstitutional as direct discrimination. Where government action is facially neutral, but has a discrete and negative impact, this is indirect discrimination. The current system is facially neutral with regard to visible minorities, as neither legislation, nor the relevant constitutional rules, nor political institutions single them out for mistreatment. While visible minorities are not the victims of direct discrimination in the representation system, they are indirectly discriminated against as federal and provincial electoral boundaries have a differential, negative impact on them.

The decisions of boundary commissions single out urban voters, but location of residence is not a prohibited ground of discrimination under the Charter. Section 15 protects against discrimination on one of the grounds enumerated in the text of the provision or that the courts have found to be analogous to those listed. Place of residence is neither listed in s. 15 as a ground of discrimination, nor considered an

analogous ground, and is therefore not protected by the Charter (see *Corbière v. Canada*, 1999 at paras. 15, 62). There are benefits to this interpretation of s. 15. Governments can implement a program in one area of the country, but not others, without running afoul of s. 15. If s. 15 prevented discrimination on the basis of place of residence, then government programs would be in danger of violating s. 15 for spending money, for example, in one region or province rather than across the country. This also means, however, that s. 15 does not bar discrimination against urban voters in allocating electoral districts.

Despite this gap in constitutional protection for urban voters, s. 15 does not permit indirect discrimination against visible minorities in the allocation of riding boundaries. The existing approach has discriminatory effects on a sub-set of urban voters, as it systematically discounts visible minority votes. The effects of the electoral map or the decisions of the boundary commissions result in adverse effects discrimination against a vulnerable minority protected by s. 15. Visible minorities are a disadvantaged minority that is negatively and disproportionately affected by the electoral map, which is sufficient to raise serious doubts about the constitutionality of the current boundaries. A distribution of seats that systematically disadvantages a particular “discrete and insular minority” (US Supreme Court, *US v. Carolene Products*, 1938: per Justice Stone, footnote 4) should be considered suspect in a constitutional democracy, even if it does so indirectly.

How can visible minority vote dilution be remedied, outside of a constitutional challenge?

Vote dilution occurs when the population of electoral districts differs because votes are worth less in a riding with

a large population than in a riding with a small population. Visible minority vote dilution results from two causes: 1) the under-representation of provinces in which visible minorities disproportionately reside as a consequence of the over-representation of provinces with relatively few visible minorities; and 2) the under-representation within provinces of the urban ridings in which visible minorities disproportionately reside as a consequence of the over-representation of rural ridings with relatively few visible minorities. Reforms geared to achieving equality for visible minority voters must therefore focus on these two problems. The *Fair Representation Act* added more seats to the House of Commons in those provinces that are under-represented, thereby addressing urban vote dilution and visible minority vote dilution across provinces. It did not, however, remedy intra-provincial vote dilution, which has an impact on visible minorities.

In this section, we consider how to remedy visible minority vote dilution in FEDs focusing on intra-provincial causes. There are two main areas of reform: 1) boundary commissions interpreting “communities of interest” to include visible minorities and 2) legislative amendment of the permissible variance from voter equality. These two reforms would go a long way toward minimizing visible minority vote dilution.

The electoral boundary commissions tasked in each province with determining FEDs are the decision-making bodies potentially able to incorporate visible minority vote dilution as a consideration in their deliberations. The EBRA allows commissions to deviate by 25 per cent above or below the average district population in a province when setting riding boundaries. In undefined extraordinary circumstances, it permits even greater and unlimited deviations (EBRA, s.15 (2)). Boundary

commissions tend to design urban electoral districts with higher populations than rural ones (Courtney, 2001; Williams, 2005: 115). This continues Parliament's practice prior to the introduction of commissions in 1964 of rural overrepresentation (Ward, 1949). The impact on visible minorities is shown in Tables 3 and 4, where the most populous ridings with the least voting power have large proportions of visible minorities. Commissions should consider the impact on visible minorities of over-representing rural ridings within a province.

One potential way in which the concerns of visible minorities are relevant to the decisions of the commissions is through the concept of communities of interest. Commissions are obliged by the EBRA to consider communities of interest. Community of interest considerations generally involve the distribution of voters from a particular aggregation across ridings, to ensure a voting bloc is not "cracked" into multiple ridings or "packed" into one to diminish its influence (Stewart, 1991). The rural community of interest has often been used to justify rural over-representation. Yet *Carter* permits consideration of the impact of riding boundaries on visible minorities. *Carter* listed a variety of factors that could or must be taken into account in drawing boundaries, including "community interests and minority representation" (at p. 184). It is therefore open to commissions to consider the impact of boundary changes on visible minorities through the community of interest principle.^{iv} Given the clear costs to visible minorities brought about by rural over-representation, community of interest considerations should not be interpreted to assist only rural voters.

Legislative amendments could also assist in reducing visible minority vote dilution. Reducing the variance permitted in riding populations and the discretion granted to commissions would not directly deal with

visible minorities, but would lead to greater voter equality and indirectly, therefore, reduce visible minority vote dilution. We have argued that the acceptable variance in the EBRA should be reduced from 25% or more in extraordinary circumstances to 5 or 10 per cent (Pal and Choudhry, 2007). Saskatchewan, Manitoba, New Brunswick and Newfoundland and Labrador have all moved to variances in this range for PEDs. Tighter limits for FEDs would restrict the range between populous ridings, which tend to be diverse, and those that have smaller populations, thereby limiting the negative impact on visible minorities.

A model for reform comes from the United Kingdom coalition government's democratic reform legislation, which addresses both voter equality and the need to ensure ridings of geographically manageable size. The *Parliamentary Voting System and Constituencies Act* (2011) establishes a 5 per cent variance, reduces the size of the House of Commons from 650 to 600, and institutes mandatory redistributions every 5 years instead of the current 8 to 12 year range to ensure constituency populations are kept up to date (s. 11). A very small number of seats are deemed "preserved seats" exempt from the 5 per cent rule, with two of the three outside of Northern Ireland being islands (s. 11.6). In contrast to the EBRA, departures from the 5 per cent variance outside of the preserved seats would be allowed only in very strict circumstances. Section 11.4 provides an exemption only if a constituency exceeds 12,000 square kilometers and it is "not reasonably possible" to adhere to the 5 per cent rule.

The UK legislation largely provides a template to be emulated in Canada for FEDs. The small number of ridings truly deserving of special treatment because of geography, such as Labrador separated by water from Newfoundland, could be classified as exempt from a 5 or 10 per cent

standard. A lower permissible variance would oblige commissions to adhere more closely to representation by population, which would aid visible minority voters.

Conclusion

Canada's system of representation seeks to balance regional interests, majority rule, and minority rights. The current representational tradeoffs, however, come at the expense of some of the most vulnerable Canadians – visible minorities and recent immigrants. Deviations from voter parity in the House systematically diminish the voting power of visible minorities. The long term demographic trends of visible minority immigration, the settlement of immigrants in our largest cities, and the population growth of the largest provinces relative to the less populous ones all point in the same direction. These trends indicate that visible minority vote dilution will become an ever more prominent feature of Canadian politics if the existing system of representation remains in place. Viewed in this light, the current representational bargain is disconnected from Canada's new demographics, and should be reconsidered consistent with that old Canadian call for reform, representation by population.

Works Cited:

- Alberta. 2000. *Electoral Boundaries Commission Act*. C. E-3.
- Archer, Keith. 1993. "Conflict and Confusion in Drawing Constituency Boundaries: The Case of Alberta." *Canadian Public Policy* 19: 177-193.
- Bill C-20, The Fair Representation Act: An Act to Amend the Constitution Act, 1867, the Electoral Boundaries Readjustment Act and the Canada Elections Act*. 2011. 1st Session 41st Parliament.
- Bilodeau, Antoine and Mebs Kanji. 2010. "The New Immigrant Voter, 1965-2004: The Emergence of a New Liberal Partisan?" In *Perspectives on the Canadian Voter: Puzzles of Influence and Choice*, eds. Laura Stephenson and Cameron Anderson. Vancouver: UBC Press.
- Bird, Karen. 2011. "Patterns of Substantive Representation Among Visible Minority MPs: Evidence from Canada's House of Commons." In *The Political Representation of Immigrants and Minorities: Voters, Parties and Parliaments in Liberal Democracies*, eds. Karen Bird, Thomas Saalfeld and Andreas M. Wust. New York: Routledge.
- Black, Jerome H. 2002. "Representation in the Parliament of Canada: The Case of Ethnoracial Minorities." In *Citizens Politics: Research and Theory in Canadian Political Behaviour*, eds. Joanna Everitt and Brenda O'Neill. Don Mills, ON: Oxford University Press.
- Black, Jerome H. 2008. "The 2006 Federal Election and Visible Minority Candidates: More of the Same?" *Canadian Parliamentary Review* 31: 35-41.
- Black, Jerome H. 2009. "Ethnoracial Minorities in the 38th Parliament: Patterns of Change and Continuity." In *Electing a Diverse Canada*, eds. Caroline Andrew, John Biles, Myer Siemiatycki, and Erin Tolley. Vancouver: University of British Columbia Press.
- Black, Jerome H. and Lynda Erickson. 2006. "The Ethnoracial Origins of Candidates and Electoral Performance: Evidence from Canada." *Party Politics* 12: 541-61.
- Black, Jerome H. and Bruce Hicks. 2006. "Visible Minority Candidates in the 2004." *Canadian Parliamentary Review* 29: 26-31.
- Blais, André. 2005. "Accounting for the Success of the Liberal Party of Canada," *Canadian Journal of Political Science* 38: 821-40.
- Blake, Donald E. 2001. "Electoral Democracy in the Provinces." *IRPP Choices* 7: 1-40.
- Bredt, Christopher D. and Markus Kremer. 2004. "Section 3 of the Charter: Democratic Rights at the Supreme Court of Canada." *National Journal of Constitutional Law* 17.
- British Columbia. 1996. *Electoral Boundaries Commission Act*. RSBC C. - 107.

- Carty, R.K. 1985. "The Electoral Boundary Revolution in Canada." *American Review of Canadian Studies* 15: 273-87.
- Courtney, John C. 2001. *Commissioned Ridings: Designing Canada's Electoral Districts*. Montréal: McGill-Queen's University Press.
- Courtney, John C. 1985. "The Size of Canada's Parliament: An Assessment of the Implications of a Larger House of Commons." In *Institutional Reforms for Representative Government*, ed. Peter Aucoin, Vol. 38 of the *Research Studies for the Royal Commission on the Economic Union and Development Prospects for Canada*. Toronto: University of Toronto Press: 1-39.
- Courtney, John C. 1988. "Parliament and Representation: The Unfinished Agenda of Electoral Redistribution." *Canadian Journal of Political Science* 21: 675-690.
- Courtney, John C., Peter MacKinnon, and David Small, eds. 1994. *Drawing the Map: Equality and Efficacy of the Vote in Canadian Electoral Boundary Reform*. Toronto: Dundurn Press.
- Dawood, Yasmin. 2012. "Electoral Fairness and the Law of Democracy: A Structural Rights Approach to Judicial Review." *University of Toronto Law Journal* 62: 499-561.
- Eagles, Munroe and R.K. Carty. 1999. "MPs and Electoral Redistribution Controversies in Canada, 1993-1996." *Journal of Legislative Studies* 5: 74-95
- Electoral Boundaries Readjustment Act*. 1985. R.S., c. E-3.
- Employment Equity Act*. 1995. S.C., c. 44.
- Evans, Tom. 2005. "The Impact of Representation per Capita on the Distribution of Federal Spending and Income Taxes." *Canadian Journal of Political Science* 38: 263-85.
- Federation of Canadian Municipalities. 2011. "Immigration and Diversity in Canadian Cities and Communities."
- Hansard*, House of Commons Debate on Bill C-20, 41st Parliament, 1st Session, Number 042, Wednesday, November 2, 2011.
- Jenkins, Richard. 1998. "Untangling the Politics of Electoral Boundaries in Canada, 1993-1997." *American Review of Canadian Studies* 28: 517-38.
- Johnson, David. 1994. "Canadian Electoral Boundaries and the Courts: Practices, Principles and Problems." *McGill Law Journal* 39: 224-247.
- Kerr, Don and Hugh Mellon. 2010. "Demographic Change and Representation by Population in the Canadian House of Commons." *Canadian Studies in Population* 37: 53-75.
- Kymlicka, Will. 1995. *Multicultural Citizenship*. Oxford: Oxford University Press.
- Law Commission of Canada. 2002. "Renewing Democracy: Debating Electoral Reform in Canada." Ottawa: Government of Canada.
- Mendelsohn, Matthew and Sujit Choudhry. 2011. "Voter Equality and Other Canadian Values: Finding the Right Balance." Mowat Note, October 17. <http://www.mowatcentre.ca/research-topic-mowat.php?mowatResearchID=37>
- Milner, Henry. 2004. *Steps to Making Every Vote Count: Electoral System Reform in Canada and its Provinces*. Peterborough, ON: Broadview Press.
- Pal, Michael. 2011. "Breakdowns in the Democratic Process and the Law of Canadian Democracy." 57(2) *McGill Law Journal* 299-347.
- Pal, Michael and Sujit Choudhry. 2007. "Is Every Ballot Equal? Visible Minority Vote Dilution in Canada." *IRPP Choices* 13(1): 1-32.
- Phillips, Anne. 1991. *Engendering Democracy*. Cambridge: Polity Press.
- Picot, Garnett and Arthur Sweetman. 2005. "The Deteriorating Economic Welfare of Immigrants and Possible Causes: Update 2005." Ottawa: Statistics Canada.
- Pilon, Dennis. 2007. *The Politics of Voting: Reforming Canada's Electoral System*. Toronto: Emond Montgomery.
- Province du Québec. 2011. *Elections Act*. C. E-3.3.
- Reitz, Jeffrey and Rupa Banerjee. 2006. "Racial Inequality, Social Cohesion, and Policy Issues in Canada." In *Belonging? Diversity, Recognition*

- and *Shared Citizenship in Canada*, eds. Thomas J. Courchene, Keith Banting, and Wanda Wuttunee. Montréal: IRPP.
- Roach, Kent. 1991. "One Person, One Vote? Canadian Constitutional Standards for Electoral Distribution and Districting." In *Drawing the Map: Equality and Efficacy of the Vote in Canadian Electoral Boundary Reform*, eds. John C. Courtney, Peter MacKinnon, and David Small. Toronto: Dundurn Press.
- Samuels, David and Richard Snyder. 2001. "The Value of a Vote: Malapportionment in Comparative Perspective." *British Journal of Political Science* 31: 651-671.
- 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.
- Sancton, Andrew. 2010. "The Principle of Representation by Population in Canadian Federal Politics." Toronto: Mowat Centre for Policy Innovation.
- Seidle, F. Leslie. 2002. "Electoral System Reform in Canada: Objectives, Advocacy, and Implications for Governance." Ottawa: Canadian Policy Research Networks.
- Simard, Carole with the assistance of Sylvie Bélanger, Nathalie Lavoie, Anne-Lise Polo and Serge Turmel. 1991. "Visible Minorities and the Canadian Political System." In *Ethnocultural Groups and Visible Minorities in Canadian Politics: The Question of Access*, ed. Kathy Megyery. Toronto: Dundurn: 161-261.
- Stasiulis, Daiva K. and Yasmeen Abu-Laban, "The House the parties Built: (Re)Constructing Ethnic Representation in Canadian Politics." 1991. In *Ethnocultural Groups and Visible Minorities in Canadian Politics: The Question of Access*, ed. Kathy Megyery. Toronto: Dundurn: 3-99.
- Statistics Canada. 2003. "Ethnic Diversity Survey: Portrait of a Multicultural Society." Ottawa: Minister of Industry.
- Statistics Canada. Alain Bélanger and Éric Caron Malenfant. 2005. "Population Projections of Visible Minority Groups, Canada, Provinces and Regions 2001-2017." Ottawa: Minister of Industry.
- Statistics Canada. Tina Chui, Kelly Tran and H el ene Maheux. 2007. "Immigration in Canada: A Portrait of the Foreign-born Population, 2006 Census." Ottawa: Minister of Industry.
- Statistics Canada. 2008. "Canada's Ethnocultural Mosaic, 2006 Census." Ottawa: Minister of Industry.
- Statistics Canada. 2010. "Labour Force Survey." Ottawa: Minister of Industry.
- Statistics Canada. 2011. "National Household Survey: Data Tables – Visible Minority". Ottawa: Minister of Industry. Available at: <http://www12.statcan.gc.ca/nhs-enm/2011/dp-pd/dt-td/Rp-eng.cfm?LANG=E&APATH=3&DETAIL=0&DI M=0&FL=A&FREE=0&GC=0&GID=0&GK=0 &GRP=0&PID=105395&PRID=0&PTYPE=105 277&S=0&SHOWALL=0&SUB=0&Temporal=2 013&THEME=95&VID=0&VNAMEE=&VNA MEF=>. Last accessed: July 29, 2013.
- Stewart, Alan. "Community of Interest in Redistricting." In *Drawing the Map: Equality and Efficacy of the Vote in Canadian Electoral Boundary Reform*, eds. John C. Courtney, Peter MacKinnon, and David Small. Toronto: Dundurn Press.
- Studniberg, Brian. 2008. "Politics Masquerading as Principles: Representation by Population in Canada." *Queen's Law Journal* 34: 611-668.
- Supreme Court of Canada. *Corbi ere v. Canada*, [1999] 2 S.C.R. 203.
- Supreme Court of Canada. *Reference re Provincial Electoral Boundaries (Saskatchewan)*, [1991] 2 S.C.R. 158.
- Tossutti, S. Livianna and Tom Pierre Najem. 2003. "Minorities and Elections in Canada's Fourth Party System: Macro and Micro Constraints on Opportunities." *Canadian Ethnic Studies* 34: 85-112.
- United Kingdom. 2011. *Parliamentary Voting Systems and Constituencies Act*. c.1.
- United States Supreme Court. 1938. *United States v. Carolene Products Company* 334 U.S. 144.

Vongdouangchanh, Bea. 2011. "New House Seats Bill Fails to address Urban-Rural Divide, Say Experts." *The Hill-Times*, November 28.

Ward, Norman. 1949. "The Basis of Representation in the House of Commons." *The Canadian Journal of Economics and Political Science* 15: 477-494.

White, Stephen, Neil Nevitte, Andre Blais, Joanna Everitt, Patrick Fournier, and Elisabeth Gidengil. 2006. "Making up for Lost Time: Immigrant Voter Turnout in Canada." *Electoral Insight* 8. Ottawa: Elections Canada.

Williams, Russell Allan. 2005. "Canada's System of Representation in Crisis: The '279 Formula' and Federal Electoral Redistributions." *American Review of Canadian Studies* 35: 99-134.

of interest. The impact of Aboriginal votes on election results can be diminished if a geographic concentration of Aboriginal voters, such as on a reserve, is split into multiple ridings. Considering Aboriginal peoples as forming communities of interest would encourage boundary commissions to avoid "cracking" reserves and thereby preserve Aboriginal influence in a given district.

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ⁱⁱ A distinction can be drawn between urban and suburban ridings. As this article investigates visible minority and non-visible minority vote dilution, we do not expand on the possible differences between urban and suburban vote dilution. Mendelsohn and Choudhry (2011) found that vote dilution is concentrated in suburbs. For ease of use, we use the term "urban ridings" rather than "urban and suburban" throughout this article, though we do not draw conclusions about urban versus suburban voting power.

ⁱⁱⁱ As Aboriginal peoples do not count as visible minorities under the *Employment Equity Act* definition, they are beyond the scope of this article. The impact of deviations from voter parity on Aboriginal peoples, however, merits further study. The over-representation of remote, Northern areas with Aboriginal populations might indicate that this group is over-represented as well. On the other hand, the urban Aboriginal population is growing, so urban vote dilution might translate into Aboriginal under-representation. The accuracy of these hypotheses, their magnitude, and the aggregate effect on Aboriginal representation should be investigated further.

^{iv} Aboriginal peoples could benefit, like visible minorities, from being considered as communities