

*Douglas J. Amy*

This is Exhibit G to the affidavit of  
Douglas Amy, Sworn before me this  
day of April, 2001

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Notary Public

Commonwealth of Massachusetts  
Hamshire, S.S. Date 4/13/01  
Then personally appeared the above named  
DOUGLAS J. AMY  
and acknowledged the foregoing instrument  
to be his free act and deed, before me,  
Margaret A. Notary Public

*[Signature]*

MY COMMISSION EXPIRES  
JANUARY 17, 2008

# equity | & community

the charter,  
interest advocacy and  
representation

Edited by F. Leslie Seidle

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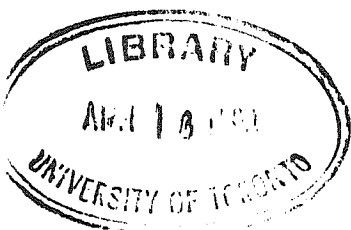
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## contents

iii

Foreword

v

\* Introduction

(1) 1

Patrice Garant

Le recours à la Charte canadienne pour contester  
les choix politiques devant les tribunaux au Québec,  
1987-1992

(2) 31

Janet Hiebert

Debating Policy: The Effects of Rights Talk

(2) 61

\* Will Kymlicka

Group Representation in Canadian Politics

(4) 91

Christopher P. Manfredi

Constitutional Rights and Interest Advocacy:  
Litigating Educational Reform in Canada and the  
United States

(2) 119

Leslie A. Pal

Advocacy Organizations and Legislative Politics:  
The Effect of the Charter of Rights and Freedoms on  
Interest Group Lobbying of Federal Legislation, 1989-91

(2) 159

Kent Roach

The Role of Litigation and the Charter in  
Interest Advocacy

(2) 189

F. Leslie Seidle

Interest Advocacy through Parliamentary  
Channels: Representation and Accommodation

(2) 226

Notes on Contributors

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 will kymlicka
 

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 Group Representation  
in Canadian Politics
 

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Many Canadians believe the political process is "unrepresentative," in the sense that it fails to reflect the diversity of the population. This was illustrated most vividly during the constitutional negotiations leading up to the Meech Lake and Charlottetown Accords, in which the fundamental terms of Canadian political life were negotiated by 11 middle-class, able-bodied white men.<sup>1</sup> A more representative process, it was said, would have included women, members of ethnic and racial minorities and people who are poor or disabled.

The constitutional negotiations were perhaps an extreme case, but the underrepresentation of women, visible minorities and other groups is a much more general phenomenon. Women constitute more than 50 percent of the population, but just 13 percent of federal MPs — that is, women have only one-quarter of the seats they would have based on their demographic weight (what the Royal Commission on Electoral Reform called "proportional electoral representation"). Visible minorities constitute six percent of the population, but only two percent of federal MPs, or one-third of their proportional electoral representation. Aboriginal people constitute 3.5 percent of the population, but only one percent of federal MPs, or less than one-third of their proportional electoral representation. People with disabilities and the economically disadvantaged are also significantly underrepresented.<sup>2</sup>

One way to reform the process is to make political parties more inclusive, by reducing the barriers that inhibit women, ethnic minorities or the poor

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## Group Representation in Canadian Politics

Many Canadians believe the political process is "unrepresentative," in the sense that it fails to reflect the diversity of the population. This was illustrated most vividly during the constitutional negotiations leading up to the Meech Lake and Charlottetown Accords, in which the fundamental terms of Canadian political life were negotiated by 11 middle-class, able-bodied white men.<sup>1</sup> A more representative process, it was said, would have included women, members of ethnic and racial minorities and people who are poor or disabled.

The constitutional negotiations were perhaps an extreme case, but the underrepresentation of women, visible minorities and other groups is a much more general phenomenon. Women constitute more than 50 percent of the population, but just 13 percent of federal MPs — that is, women have only one-quarter of the seats they would have based on their demographic weight (what the Royal Commission on Electoral Reform called "proportional electoral representation"). Visible minorities constitute six percent of the population, but only two percent of federal MPs, or one-third of their proportional electoral representation. Aboriginal people constitute 3.5 percent of the population, but only one percent of federal MPs, or less than one-third of their proportional electoral representation. People with disabilities and the economically disadvantaged are also significantly underrepresented.<sup>2</sup>

One way to reform the process is to make political parties more inclusive, by reducing the barriers that inhibit women, ethnic minorities or the poor

from becoming party candidates or party leaders. This route was the focus of the recent Royal Commission on Electoral Reform, which studied options such as: caps on nomination campaign expenses; public funding of nomination campaign expenses, either directly or through tax deductions for campaign contributions; the establishing of formal search committees within each party to help identify and nominate potential candidates from disadvantaged groups; financial incentives to parties that nominate or elect members of disadvantaged groups; and so on.<sup>3</sup>

Another way to reform the process is to adopt some form of proportional representation, which has led in other countries to the nomination of greater numbers of women and minority candidates. As Lisa Young notes,<sup>4</sup> in our current system of single-member, first-past-the-post elections, the local riding association for each party can nominate one candidate only. Nomination campaigns, therefore, are zero-sum — selecting a woman (or a member of a visible minority) means rejecting a man (or a white). Proportional representation, by contrast, allows for and encourages “ticket-balancing” — that is, making sure that the party list includes men and women, whites and members of visible minorities. Moreover, proportional representation makes underrepresentation in the nomination process more visible and hence renders the process more accountable. Under the current system, if nine of 10 local constituencies choose a white male, this seems like the unintended result of 10 independent decisions, none of which was necessarily intentionally discriminatory or exclusionary. But if a party puts forward a list of 10 people for election under proportional representation with only one woman or member of a visible minority, its decision not to field a more representative slate of candidates is clearly evident. For these and other reasons, it is likely that proportional representation would lead to a more representative House of Commons than the single-member, first-past-the-post system.

Reforming the nomination process and/or adopting proportional representation could increase the likelihood that the members of disadvantaged groups get elected, but would not guarantee such an outcome. However, there is increasing interest in the more radical idea that a certain number of seats in the House of Commons, Senate or provincial legislatures should be reserved for the members of disadvantaged or marginalized groups. During the debate over the Charlottetown Accord, a number of recommendations for guaranteed representation were made. For example, the National Action Committee on the Status of Women (NAC) recommended that 50 percent of Senate seats should be reserved for women, and that proportional representation of ethnic minorities also be guaranteed; the *Association canadienne-française de l'Alberta*

recommended that at least one of the six senators proposed to be elected from each province should represent the official language minority of that province; and various government commissions have advocated Aboriginal-only seats in either the House of Commons or the Senate.<sup>5</sup>

This sort of demand is not unique to Canada. Proposals to guarantee seats for women, blacks and other groups have been made in the United States and in Britain, and indeed such forms of representation already exist in some other countries.

In this chapter, I will explore the idea of such “group representation.” My aim is not to defend or criticize any particular proposal but rather to clarify the underlying rationale for group representation, to identify the issues it raises and to consider how it relates to various features of the existing system of representative democracy in Canada.

### What's New about Group Representation?

Some believe that group representation is a radical departure from our existing conception of representative democracy, one that threatens to undermine cherished liberal democratic norms of individual rights and responsible citizenship. Others believe that group representation is the logical extension of existing principles and mechanisms of representation, and is consistent with the broader features of Canadian political culture, which aims to balance individual and collective rights.

There is a certain amount of truth in both views. On the one hand, group representation is a radical departure from our existing system of single-member, geographically defined constituencies. And it does pose a profound challenge to our traditional notion of representation; if adopted, group representation could have dramatic implications for Canadian politics. I will discuss some of these in the next section.

But it is also true that group representation has continuities with certain long-standing features of political life in Canada. The Canadian political system has never focussed entirely on the rights of individuals. It has also recognized the extent to which the interests and identities of individuals are tied to membership in certain groups and hence the necessity of accommodating group differences. Canada has a tradition of accommodating both individual and community rights — reflected in the provisions of the Charter regarding multiculturalism, Aboriginal rights and minority language rights.<sup>6</sup> Like group representation, each of these policies involves giving explicit political recognition to particular groups in Canadian society, although not in the context of the electoral process.

Even within the electoral system, there are various measures that have clear affinities with the idea of group representation. For example, group representation can be seen as an extension of the long-standing practice of drawing the boundaries of local constituencies to correspond with "communities of interest." While constituencies in Canada are supposed to be of roughly equal size, they are not intended to be random collections of equal numbers of citizens. Rather, constituency boundaries are drawn to the degree possible such that people within the constituency share certain interests — economic, ethnic, religious, environmental, historical or other — which then are represented in Parliament. The practice of promoting the representation of communities of interest is widely accepted, and indeed is required by law under the Electoral Boundaries Readjustment Act (1964) and the Representation Act (1985). The practice was recently affirmed by the Royal Commission on Electoral Reform:

When a community of interest is dispersed across two or more constituencies, its voters' capacity to promote their collective interest is diminished accordingly. Their incentive to participate is likewise reduced because the outcome has a lesser relevance to their community of interest. When this occurs, especially if it could have been avoided, the legitimacy of the electoral system is undermined.<sup>7</sup>

In this passage, the Commission has in mind territorially concentrated communities of interest, and of course boundary-drawing techniques only work for such groups. But the Commission's argument in this passage would seem to apply equally to non-territorial communities of interest. If special measures are needed to ensure the representation of communities that are dispersed across two constituencies, why not take action to ensure the representation of communities of interest that are dispersed across the entire country, such as women, the disabled, visible minorities or the poor?<sup>8</sup> Why isn't this also justified by the Commission's goals of representation, efficacy and legitimacy?<sup>9</sup>

The commitment to representing communities of interest shows that politics in Canada has never been based on a purely individualistic conception of the franchise or of representation. On the individualistic view, all that matters is that individuals have an equal vote within equal constituencies. This is all that is required to meet the principle that each individual has an equal right to vote, and how these boundaries are drawn should be a matter of indifference so long as constituencies are of equal size. But this ignores

the reality that Canadians vote as members of communities of interest and wish to be represented on this basis. As the Royal Commission put it,

neither the franchise nor representation is merely an individualistic phenomenon; both also take expression through collective or community functions. The individualistic perspective is based upon a partial and incomplete understanding of the electoral process and representation. In advancing the ideal of equally weighted votes, it does promote a critical constitutional right. But in ignoring the community dimension, this perspective is unrealistic at best; at worst it ignores the legitimate claims of minority groups.<sup>10</sup>

Indeed, even the United States, often viewed as the epitome of an individualistic polity, accepts the need to deviate from a strictly individualized franchise in order to represent communities of interest. And, in both the US and Canada, the underlying logic of these practices can be extended to defend the principle of (non-territorial) group representation.<sup>11</sup>

Similarly, demands for group representation by disadvantaged groups can be seen as an extension of long-standing demands for increased Senate representation of disadvantaged regions. Many people in Atlantic Canada and the West have sought to transform the Senate into a forum for increased regional representation at the federal level. They have demanded an American-style "Triple-E Senate," in which each province would elect an equal number of Senators regardless of population size. This is intended to ensure effective representation for smaller provinces that might be neglected in the House of Commons, where the majority of Members of Parliament come from the two most populated provinces of Central Canada.

Some Canadians have begun to believe that if disadvantaged or marginalized regions need special representation, then surely so do disadvantaged or marginalized groups such as women or the poor. Historical evidence suggests that these groups, even more than smaller provinces, are likely to be underrepresented in Parliament and ignored in political decision making. While groups such as the NAC did not oppose the idea of increased Senate representation for smaller provinces, they argued that similar measures are needed to ensure increased Senate representation for disadvantaged and marginalized groups, particularly women and visible minorities.<sup>12</sup>

Some long-time proponents of increased regional representation resented this attempt to broaden the Senate reform debate to include group representation. Indeed, the NAC and other proponents of group representation were



accused of "hijacking" the Calgary constitutional conference on Senate reform in January 1992 and displacing the intended topic of debate — namely, how to improve regional representation.<sup>13</sup> But it is questionable whether the two topics can be treated separately, or whether the proponents of regional representation are not compelled, by the logic of their arguments, to accept group representation.

The argument for increased regional representation assumes that significant economic and cultural diversity among Canada's regions gives rise to different and sometimes conflicting interests; that the interests of smaller or poorer regions might not be effectively represented under a pure system of majority rule; and that majority rule is only legitimate "in a set of governmental structures that ensure adequate sensitivity to the concerns of minorities."<sup>14</sup> But each of these claims can also be made for non-territorial groups: the diverse conditions and experiences of men and women, whites and blacks, able-bodied and the disabled, rich and poor engender different and sometimes conflicting interests; the interests of smaller or poorer groups might not be represented under a system of majority rule. So why not develop a set of representational structures that will ensure adequate sensitivity to the interests of these minorities?<sup>15</sup>

There are, then, important aspects of political life in Canada that lend some support to the idea of group representation. This suggests that the demands for group representation that surfaced during the most recent round of constitutional reform should not be dismissed as momentary aberrations. In the end, of course, proposals to guarantee Senate representation for women or other social groups were not included in the Charlottetown Accord, and focus was placed instead on increased regional representation. The one exception was a proposal for guaranteed Aboriginal seats. However, the Accord allowed each province to decide how its Senators would be elected, and three of the 10 provincial premiers immediately said that they would pass provincial legislation requiring that 50 percent of the Senate seats from their province be reserved for women (Ontario, Nova Scotia and British Columbia). While the Accord was defeated, it seems likely that any future proposal for Senate reform will have to address the issue of group representation as well as regional representation.

### Why Group Representation?

The belief that the existing political system is "unrepresentative" is commonly held, but the notion of representation underlying it is rarely explored in depth.

After all, while the 11 white men who negotiated the recent constitutional packages were not *demographically* representative of the population at large, they were the *elected* representatives of that population, and often received widespread electoral support from minority and disadvantaged groups. The claim that minority groups were not represented in the negotiations, therefore, seems to presuppose that people can only be fully "represented" by someone who shares their gender, class, ethnicity, language and so on. Indeed, this claim is explicitly made by Beverley Baines, who objects to the assumption that "men can and/or should represent the interests of women."<sup>16</sup>

This is sometimes called the idea of "mirror representation" — i.e., the legislature is said to be representative of the general public if it mirrors the ethnic, gender or class characteristics of that public.<sup>17</sup> Or, put another way, a group of citizens is represented in a legislature if at least one of the members of the assembly is the same sort of person as the citizens.<sup>18</sup> This contrasts with the more familiar idea in democratic theory that defines representation in terms of the procedure by which office-holders are elected, rather than their personal attributes. On this traditional view, a group of citizens is represented in the legislature if they participated in the election of one or more members of the assembly, even if the elected members are very different from the voters in their personal characteristics.

Why are the personal characteristics of representatives so important? There is surprisingly little written about the competing conceptions of representation that underlie recent proposals for electoral reform and regional or group representation.<sup>19</sup> However, there are a number of reasons why personal characteristics might be important.

Some commentators argue that people must share certain experiences or characteristics in order to truly understand each other's needs and interests. On this view, a man simply cannot know what is in the interests of a woman: "no amount of thought or sympathy, no matter how careful or honest, can jump the barriers of experience."<sup>20</sup>

Another argument says that even if men can understand the interests of women, they cannot be trusted to promote these interests. For example, Christine Boyle argues that because the experiences of men differ from those of women in terms of income, discrimination, legal rights and child-care, "it seems reasonable to conclude that it is impossible for men to represent women." The reason is not necessarily that men don't understand women's interests, but rather that "at some point members of one group feel that someone belonging to another group has such a conflict of interest that representation is impossible, or at least unlikely."<sup>21</sup>

There is undoubtedly some truth to both these arguments — there are limits to the extent to which we can put ourselves in other people's shoes, even if we sincerely try to do so, as well as limits to the extent to which most people sincerely try to do so. Nonetheless, taken as a general and complete theory of representation, the idea of mirror representation suffers from a number of infirmities. (I will consider later the more plausible idea that a degree of mirror representation may be justified in certain specific contexts, rather than as a general theory of representation.)

First, the idea that the legislature should mirror the general population, taken to its logical conclusion, leads away from electoral politics entirely and toward selection of representatives by lottery or random sampling. As Hanna Pitkin notes, "selection by lot, or a controlled random sample, would be best calculated to produce the microcosm of the whole body of the people."<sup>22</sup> And indeed some theorists have proposed this,<sup>23</sup> although most people, including most proponents of group representation, would see this as abandoning the democratic principle that representatives should be authorized by, and accountable to, the public. As I discuss further below, it remains unclear how defenders of group representation would resolve the conflict between mirror representation and democratic accountability.

Second, the claim that men cannot understand the needs and interests of women, or that whites cannot understand the needs of blacks, can quickly become an excuse for white men not to try to understand or represent the needs of others. And indeed this is precisely what critics say has happened in New Zealand, where the Maori have been guaranteed certain seats in Parliament. The non-Maori have interpreted this as absolving them of any responsibility of taking an interest in Maori affairs.<sup>24</sup>

Third, the claim that men cannot understand the interests of women cuts both ways — i.e., it implies that women cannot understand and therefore represent men. Of course, many men may believe this, as exemplified by the common complaint that "my wife just doesn't understand me."<sup>25</sup> But the unattractive implication is that men were right historically to resist representation by women, and, more generally, that people can only speak for their own group. Some proponents of group representation are willing to accept this result. According to Baines, "if the truth be known, women [are not] particularly interested in representing men."<sup>26</sup> Yet most proponents of group representation do not favour "the kind of politics in which people were elected only to speak for their own group identity or interests."<sup>27</sup>

These objections do not prove, in themselves, that the members of one group can understand and therefore represent the interests of the members

of other groups who have significantly different experiences or characteristics. But the argument that the members of one group cannot understand the interests of other groups, if accepted, is difficult to contain. For it surely applies within groups as well as between them. Each group has sub-groups, with their own distinctive experiences and characteristics. If men cannot represent women, can white women represent women of colour? And within the category of women of colour, can Asian women represent African-Caribbean women?<sup>28</sup> Can middle-class heterosexual able-bodied Asian women represent poor, disabled or lesbian Asian women? Taken to its conclusion, the principle of mirror representation seems to undermine the very possibility of representation itself. If "no amount of thought or sympathy, no matter how careful or honest, can jump the barriers of experience,"<sup>29</sup> then how can anyone represent anyone else?

These difficulties suggest that the idea of mirror representation should be avoided as a general theory of representation. There undoubtedly are limits to the extent to which people are able and willing to "jump the barriers of experience." But the solution is not to accept those limitations. Rather, we should fight against them, in order to create a political culture in which people are more able and more willing to put themselves in other people's shoes, and truly understand (and therefore become able to represent) the needs and interests of others. This is no easy task: it may require changes to our education system and to the media portrayal of various groups; it may require, as well, a reform of the political process, to make it more a system of "deliberative democracy." Even then, there would be no guarantee that the members of one group would understand the needs of another.<sup>30</sup> But to renounce the possibility of cross-group representation is to renounce the possibility of a society in which citizens are committed to addressing each other's needs and sharing each other's fate.

In fact, very few proponents of group representation would endorse the idea of mirror representation as a general theory of representation. Instead, group representation is defended on more contextual grounds, as an appropriate mechanism for representing certain groups under certain conditions. In the Canadian debate, these contextual arguments for group representation fall into two major camps: systemic discrimination and self-government.

Group representation rights are often defended as a response to some systemic disadvantage or barrier in the political process that makes it impossible for the group's views and interests to be effectively represented.<sup>31</sup> For example, Iris Young, writing about the US, argues that special representation rights should be extended to "oppressed groups" because:

In a society where some groups are privileged while others are oppressed, insisting that as citizens persons should leave behind their particular affiliations and experiences to adopt a general point of view serves only to reinforce the privilege; for the perspective and interests of the privileged will tend to dominate this unified public, marginalizing or silencing those of other groups.<sup>12</sup>

According to Young, oppressed groups are at a disadvantage in the political process, and "the solution lies at least in part in providing institutionalized means for the explicit recognition and representation of oppressed groups."<sup>13</sup> These measures would include public funds for advocacy groups, guaranteed representation in political bodies and veto rights over specific policies that affect a group directly.

The point here is not that the legislature should mirror society, but rather that the historical domination of some groups by other groups has left a trail of barriers and prejudices that makes it difficult for historically disadvantaged groups to participate effectively in the political process. A version of this argument for the group representation of women in Canada was made by Boyle in 1983. She argued that the 65 years of experience since women obtained the vote have shown that "the inclusion of women into a system that was developed by men for use by men" does not provide adequate representation of women's interests.<sup>14</sup> Because the system was "developed by men for use by men," women are at a disadvantage in being able to participate (e.g., due to their family responsibilities), and in getting their perspectives taken seriously (e.g., due to sexist prejudice and stereotypes). Guaranteed seats for women would lead to real "power sharing" between men and women. This, in turn, would lead to various systemic reforms so that, one day, we would be able to say that the system was developed by both men and women for use by both men and women.

Insofar as these representation rights are considered a response to oppression or systemic disadvantage, they are most plausibly seen as a temporary measure on the way to a society where the need for special representation no longer exists — a form of political "affirmative action." Society should seek to remove the oppression and disadvantage, thereby eliminating the need for these special rights.

This is one reason why many Canadians who favoured group representation were nonetheless reluctant to entrench constitutionally any requirement for the guaranteed representation of social groups, since this would make it difficult to remove the guarantee once the oppression was eliminated.

Of course, as with any other affirmative action program, there are important questions about whether the program would actually work, whether there are viable alternatives that are less controversial, and whether it is possible to target those people who are truly disadvantaged, without being unfairly under-inclusive or over-inclusive. These issues are familiar from the debates over affirmative action in the economy and academy, and the Supreme Court has already begun to address them in the context of interpreting section 15(2) of the Charter Of Rights and Freedoms. According to the Court's interpretation of section 15(2), equality guarantees must be seen as providing special protection to disadvantaged groups. The experience of affirmative action programs in other spheres suggests that there are very few general answers to these sorts of questions — everything depends on the specifics of the actual program being proposed.<sup>15</sup>

However, the issue of special representation rights for groups is complicated in Canada, because special representation is sometimes defended not on grounds of overcoming systemic discrimination but as a corollary of the right to self-government. By "self-government rights," I mean the demands by Aboriginal peoples and the *Québécois* to govern themselves in certain key matters, allowing them to ensure the full and free development of their cultures and the best interests of their people. This requires the devolution of powers from the central government to local bands or the province of Quebec, respectively.

My use of the term "self-government," while familiar in the Aboriginal context, may seem unusual in the *Québécois* context, where demands have usually been phrased in terms of "distinct society," "special status," "asymmetric federalism" or "sovereignty-association." But the demands of the two groups share an important feature — namely, they rest at least in part on the sense that the *Québécois* and Aboriginal peoples are distinct "nations" or "peoples" whose existence pre-dates that of the Canadian state.<sup>16</sup> Both groups see themselves as constituting nations in the sociological sense of being historical communities, more or less institutionally complete, with their own language and culture, and occupying a given homeland or territory. (Of course, they do not always exclusively occupy this territory — the *Québécois* share Quebec with anglophones; the Inuit share Nunavut with non-Aboriginal people.) According to international law, such nations or peoples have the right to self-determination, which may take the form of an independent state, but may also take the form of voluntary federation with a larger state if the group so chooses. When choosing to enter into such a federation, the community relinquishes some of its powers to the larger state,

but reserves others to itself, including the powers necessary to ensure the development of its culture.

I am using the term "self-government rights" to designate this package of beliefs and desires — i.e., the sense of being a nation, on its historical territory, which has exercised its self-determination by entering a larger state through some form of federation or treaty, and which sees certain rights and powers as flowing both from its status as a founding people and from the terms of federation. Aboriginal peoples and the *Québécois* are not simply demanding a general decentralization of power to promote administrative efficiency or local democracy. Rather, they are demanding recognition as distinct peoples, and as founding partners in the Canadian state, with the right to govern themselves and their land in certain areas of jurisdiction. This package of beliefs and desires is found, I think, among both Aboriginal people and the *Québécois* today, and underlies many *Québécois* demands, including those framed in the language of "distinct society" or "sovereignty-association."<sup>37</sup>

Of course, there are also profound differences between the claims of the *Québécois* and Aboriginal peoples. The main mechanism for recognizing the *Québécois* claim to self-government is the system of federalism. Under the federal division of powers, Quebec already has extensive jurisdiction over issues that are crucial to the survival of its culture, including control over education, language and culture, as well as significant powers in the field of immigration. The other nine provinces also have jurisdiction in these matters, but there is no question that the major impetus behind the existing division of powers, and indeed behind the entire federal system, was the need to accommodate the *Québécois*. At the time of Confederation, many English-Canadian leaders, including Sir John A. MacDonald, were in favour of a unitary state, like England, and agreed to a federal system primarily to accommodate French Canadians.<sup>38</sup> Similarly, while the Charlottetown Accord would have granted further powers to all 10 provinces, the demand for this change came mainly from Quebec. Most English Canadians have no desire for greater decentralization, and indeed this is one reason why the Charlottetown Accord was defeated in the national referendum. One of the basic questions facing Canada, therefore, is whether Canadians can find an acceptable form of "asymmetrical federalism" that grants Quebec powers not given to other provinces.<sup>39</sup>

Aboriginal self-government has been primarily tied to the system of Indian reservations and the devolution of power from the federal government to the band councils which govern each reservation. Aboriginal bands have been acquiring increasing control over health, education, policing,

criminal justice and resource development. In the future, it is widely expected that they will become a constitutionally recognized third order of government within the federal system, with a set of powers that is carved out of both federal and provincial jurisdictions, as was proposed in the Charlottetown Accord.<sup>40</sup> However, the administrative difficulties are forbidding. Indian bands differ enormously in the sorts of powers they desire and are capable of exercising. Moreover, they are territorially located within the provinces, and must therefore coordinate their self-government with provincial agencies. Another basic question, therefore, is whether Canadians can find a form of federalism flexible enough to accommodate a third order of government that lacks the symmetry and territorial contiguity of traditional federal units.

Self-government, then, sets limits, perhaps asymmetrically, on the authority of the central government over a province (Quebec), territory (Nunavut), or Aboriginal reservation. Moreover, this is done neither as a temporary measure nor as a remedy for a form of oppression that we might (and ought to) someday eliminate. On the contrary, the right of self-government is often described as "inherent," and thus permanent (which is one reason why the *Québécois* and Aboriginal peoples seek to have recognition entrenched at the constitutional level).

I do not have the space to examine fully the idea of self-government, although it seems clear to me that demands for self-government, like demands for group representation, are with us to stay. The question here is the relationship between self-government and guaranteed representation. This is a complicated question, which injects a new dynamic into the more familiar debate over group representation as a remedy for discrimination.

On the one hand, insofar as self-government reduces the jurisdiction of the federal government over Quebec, or over Aboriginal reserves, self-government seems to entail that the group should have *reduced* influence (at least on certain issues) at the federal level. For instance, if self-government for the *Québécois* leads to the asymmetrical transfer of powers from Ottawa to Quebec, so that the federal government would be passing laws that would not apply to Quebec, it seems only fair that Quebec MPs not have a vote on such legislation (particularly if they could cast the deciding vote). It would seem unfair for Quebec MPs to decide federal legislation on immigration, for example, if the legislation does not apply to Quebec. The same would be true of Aboriginal MPs elected by specially created Aboriginal districts voting on legislation from which Aboriginal people would be exempt.

According to the Beaudoin-Dobbie report, "guaranteed aboriginal representation in the Canadian Senate will be a logical extension of aboriginal

self-government."<sup>41</sup> However, this is arguably a mistake, insofar as the result of Aboriginal self-government is that some of the legislation passed by the Senate will not apply to Aboriginal communities, whose representatives should therefore have less influence over the determination of that legislation.

On the other hand, the right to self-government in certain areas does seem to entail the right to guaranteed representation on any bodies that can intrude in those areas. Hence it would seem to be a corollary of self-government that Quebec and Aboriginal peoples be guaranteed representation on any body that can interpret or modify their powers of self-government (e.g., the Supreme Court),<sup>42</sup> or that can make decisions in areas of concurrent or conflicting jurisdiction (e.g., the proposed House of the Federation or the annual conference of First Ministers.) To oversimplify, then, self-government entails guaranteed representation on *intergovernmental* bodies, which negotiate, interpret and modify the division of powers, but entails reduced representation on *federal* bodies, which legislate in areas of purely federal jurisdiction.<sup>43</sup>

It is a mistake, therefore, to argue (as Beverley Baines has done) that women be guaranteed representation in the House of Commons on the grounds that women have the same rights of self-government as Aboriginal peoples:

Even though various feminist scholars have argued very persuasively that we have our own culture, our own language, and our own legal perspectives, we have never been seriously considered as candidates for self-government, nor even for a distinct society. One has to wonder why our claims are rendered so invisible when those of others are gaining increasing respect and strength.<sup>44</sup>

Even if women were seen as having rights of self-government (which is not the case under the usual understanding of self-government, which applies to "peoples" or "nations"), the claim of self-government implies reduced, not increased, representation in the House of Commons. The right to self-government is a right against the authority of the federal government, not a right to share in the exercise of that authority. It is for this reason that many Indians who claim self-government oppose guaranteed seats in the House. On this view, guaranteed representation in the Commons might give the central government the sense that they rightfully can govern Indian communities.

Of course, Aboriginal people may also claim group representation in the federal legislature on the grounds of systemic disadvantage. Claims of inherent self-government do not preclude claims based on temporary disadvantage. However, it is important to know which claim is being made, since

they apply with different force to different governmental bodies, over different time-frames, and to different sub-groups within Aboriginal communities.<sup>45</sup> Since the claims of self-government are seen as inherent and permanent, so too are the guarantees of representation that follow from self-government. This is perhaps why Canadians seem more willing to accept constitutional entrenchment of group representation for Aboriginal people than for women.

## Evaluating Group Representation

I have tried to show that the idea of group representation cannot be dismissed. It has important continuities with existing practices of representation in Canada, and while the general idea of mirror representation is untenable, there are two contextual arguments that can justify certain limited forms of group representation under certain circumstances — namely, overcoming systemic disadvantage and securing self-government. These arguments provide grounds for thinking that group representation can play an important, if limited, role within the system of representative democracy in Canada.

However, any proposal for group-based representation must answer a number of difficult questions. In this final section of the paper, I simply want to flag some of these questions, to indicate the sorts of issues that need to be addressed when developing or evaluating any specific proposal for group representation.

Which groups should be represented?

How do we decide which groups, if any, should be entitled to group-based representation? Many critics of group representation take this to be an unanswerable question, or rather respond that any answer to it will be arbitrary and unprincipled.<sup>46</sup> But the arguments above suggest that there are ways of drawing principled distinctions between various groups. Groups have a claim to representation if they meet one of two criteria: (i) their members are subject to systemic disadvantage in the political process; or (ii) their members have a legitimate claim to self-government.

Of these two criteria, self-government is clearly the easier to apply. In Canada, only Aboriginal peoples and the *Québécois* are seen as having rights of self-government.<sup>47</sup> The criteria of systemic disadvantage are more complicated. Many groups claim to be disadvantaged in some respect, even though they may be privileged in others, and it is not clear how one measures overall levels of disadvantage.

According to Iris Young, "[o]nce we are clear that the principle of group representation refers only to oppressed social groups, then the fear of an unworkable proliferation of group representation should dissipate."<sup>48</sup> However, her list of "oppressed groups" in the United States would seem to include 80 percent of the population. She says that "in the United States today, at least the following groups are oppressed...: women, blacks, Native Americans, Chicanos, Puerto Ricans and other Spanish-speaking Americans, Asian Americans, gay men, lesbians, working-class people, poor people, old people, and mentally and physically disabled people."<sup>49</sup> In short, everyone but relatively well-off, relatively young, able-bodied, heterosexual white males.

Even then, it is hard to see how this criterion would avoid an "unworkable proliferation," since each of these groups has sub-groups that might claim their own rights. In Britain, the category of "black" people obscures deep divisions between the Asian and Afro-Caribbean communities, each of which in turn can be broken down into finer distinctions among a wide variety of ethnic groups. As Anne Phillips notes, given the almost endless capacity for fragmentation: "What in this context then counts as 'adequate' ethnic representation?"<sup>50</sup>

Yet as Young notes, many political parties and trade unions have allowed for special group representation without entering an escalating spiral of increasing (and increasingly divisive) demands.<sup>51</sup> And, as I noted earlier, we already have some experience with the issue of group representation in the context of affirmative action programs.<sup>52</sup> As well, the Supreme Court is engaged in the task of developing criteria for identifying historically disadvantaged groups in its interpretation of section 15(2).<sup>53</sup> The problem of determining whose rights need to be safeguarded is formidable — and certainly none of the proposals for group representation to date have addressed it in a satisfactory way — but it is not unique to issues of political representation, and it may not be avoidable in a country with Canada's political and legal commitment to redressing injustice.

It is important to note that not all historically disadvantaged groups are in favour of the group representation strategy. Many ethnocultural groups prefer to work within existing political parties to make them more inclusive, rather than try to get guaranteed seats in legislation. Indeed, Orest Kruhlak claims that "[n]o representative from any reputable organization in any [ethnic] community of which I am aware has demanded...that his or her group be given seats in the House of Commons, or that the Senate be structured to represent Canada's ethnic diversity."<sup>54</sup> The option of refusing group representation must, of course, be available to each group. The additional visibility that comes with group representation carries risks as well as benefits, and

each community should be free to evaluate these considerations in light of its own circumstances.

How many seats should a group have?

If certain groups do need group-based representation, how many seats should they have? There are two common answers to this question that are often conflated. However, they should be kept distinct, since they lead in different directions.

One view is that a group should be represented in proportion to its numbers in the population at large. For example, the NAC proposed that women be guaranteed 50 percent of Senate seats, roughly equivalent to their proportional electoral representation (women formed 50.7 percent of the population in the 1991 census). The second view is that there should be a threshold number of representatives, sufficient to ensure that the group's views and interests are effectively expressed.

The first view follows naturally from a commitment to the general principle of mirror representation. However, as we have seen, most proponents of group representation wish to avoid the principle of mirror representation. Once we drop the idea of mirror representation in general, there seem to be no grounds for demanding exactly proportional representation in preference to a threshold level of representation.

For example, Phillips rejects the underlying premise of mirror representation that one has to be a member of a particular group in order to understand or represent that group's interests. But she goes on to say that "in querying the notion that only the members of particular disadvantaged groups can understand or represent their interests [one] might usefully turn this question round and ask whether such understanding or representation is possible without the presence of *any* members of the disadvantaged groups?"<sup>55</sup> Phillips's argument is that, without a threshold number of seats, disadvantaged groups will not be able to ensure that their interests are understood, and hence represented, by others.

Applying this criterion of a threshold number of seats may lead to quite different results from those obtained under the criterion of proportional electoral representation. In the case of women, the threshold number of seats necessary to present effectively women's views is arguably less than the number that would be set by proportional electoral representation. The president of the NAC defended the guarantee of 50 percent of Senate seats for women on the grounds that this would ensure women a "place at the table"<sup>56</sup> — i.e., she demanded proportional representation, but defended it in terms



of the need for threshold representation. However, why does having a place at the table require having 50 percent of the places at the table?

In other cases, however, the threshold number of seats necessary for effective representation may be greater than the proportional number of seats. Evidence suggests that if there are only one or two members from a marginalized or disadvantaged group in a legislative assembly or on a committee, they are likely to be excluded, and their voices ignored.<sup>57</sup> Yet proportional representation for some disadvantaged groups, such as Aboriginal people or visible minorities, will only amount to such token representation. The number of seats necessary for effective presentation of their views, therefore, may exceed the number of seats required under proportional electoral representation. Given these possible divergences between the two goals of threshold and mirror representation, proponents of group representation must decide which is truly important.<sup>58</sup>

How are group representatives held accountable?

What mechanisms of accountability can be put in place to ensure that the MPs or Senators who hold reserved seats in fact serve the interests of the groups they are supposed to represent? How do we ensure that "representatives" are in fact accountable to the group?

Here again we need to distinguish between two very different answers. Recent proposals for guaranteed Aboriginal representation, based on the Maori model in New Zealand, involve instituting a separate electoral list for Aboriginal people, so that some MPs or Senators are elected solely by Aboriginal voters.<sup>59</sup> This model of group representation does not try to specify the characteristics of the candidate — indeed, it would be possible, however unlikely, that Aboriginal voters would elect a white MP. What matters, on this model, is not *who* is elected, but *how* they are elected — i.e., they are elected by, and hence accountable to, Aboriginal people.<sup>60</sup>

In most proposals for group representation, however, there are no separate electoral lists. Most proposals focus entirely on the characteristics of the candidates, rather than on the characteristics of the electorate. For example, the NAC proposal required that 50 percent of Senators be women, but that they be chosen by the general electorate, which contains as many men as women. And while the NAC proposal would guarantee a proportional number of seats for visible minorities, these Senators would also be chosen by the general electorate, which is predominantly white.

Therefore, this model of group representation means having MPs or Senators who belong to one's group, even though they are not elected by

one's group. But it is unclear in what sense this is a form of *representation*: there are no mechanisms in this model for establishing what each group wants, or for ensuring that the "representatives" of the group act on the basis of what the group wants. The representative is not accountable to the group, and so may simply ignore its views. Indeed, given that the group's "representatives" are chosen by the general electorate, it might be unwise of them to act in ways that upset members of the dominant groups. As Phillips puts it: "Accountability is always the other side of representation, and, in the absence of procedures for establishing what any group wants or thinks, we cannot usefully talk of their political representation."<sup>61</sup> In the absence of accountability, it might be more appropriate to talk of group consultation than of group representation.

This suggests that there is an asymmetry between the problem of exclusion and the solution of inclusion. In other words, it may be reasonable to conclude that a group that falls far short of its proportional electoral representation is therefore "underrepresented," particularly if the group has been subject, historically, to discrimination or disadvantage. But it does not follow that reversing this exclusion through guaranteed seats ensures that the group's interests or needs or perspectives are then "represented." The idea that the presence of women Senators would *by itself* ensure the representation of women's interests, even in the absence of any electoral accountability, only makes sense if one thought that there was "some fundamental unity between women, some essential set of experiences and interests that can be represented by any of the sex."<sup>62</sup> But this is implausible and indeed "unacceptable to any independent-minded citizen."<sup>63</sup>

So here again we have conflicting models, based on conflicting ideals. The Aboriginal model guarantees that some representatives are solely accountable to Aboriginal voters, although it does not guarantee that the representatives are themselves Aboriginal — i.e., it does not guarantee that the representative "mirrors" the electorate. The NAC model guarantees that representatives mirror important groups in the electorate, but it does not guarantee that the representatives are accountable to the group they mirror. Of course, many proponents of guaranteed representation for women firmly believe in the need for accountability and would like to find some way of making sure that women representatives are accountable to women. But, to date, the ideals of mirror representation and democratic accountability have not yet been adequately integrated.<sup>64</sup>

One final question about group representation needs to be mentioned. Many critics of group representation believe that institutionalizing group differences, and ascribing political salience to them, would have serious

implications for Canadian unity. They believe it will encourage a "politics of grievance," or a "mosaic madness," and inhibit the development of a shared sense of citizenship and national purpose. Critics have stated that group representation will be a source of disunity which could lead to the dissolution of the country, or, less drastically, to a reduced willingness to make the mutual sacrifices and accommodations necessary for a functioning democracy.

This issue can be phrased in terms of competing ideals of citizenship. Group representation is one example of what Iris Young calls "differentiated citizenship."<sup>65</sup> Under a scheme of differentiated citizenship, members of certain groups would be incorporated into the political community, not only as individuals, but also through the group, and their rights would depend, in part, on their group membership.

Many liberals regard the idea of group-differentiated citizenship not only as divisive, but as a contradiction in terms. For them, citizenship is, by definition, a matter of treating people as individuals with equal rights under the law. This is what distinguishes democratic citizenship from feudal and other pre-modern views that determined people's political status by their religious, ethnic or class membership. Hence "the organization of society on the basis of rights or claims that derive from group membership is sharply opposed to the concept of society based on citizenship."<sup>66</sup>

The idea that differentiated citizenship is a contradiction in terms seems overstated. As Bhikhu Parekh notes, virtually every modern democracy recognizes some form of differentiated citizenship. Citizenship today "is a much more differentiated and far less homogeneous concept than has been presupposed by political theorists."<sup>67</sup>

However, liberal critics of differentiated citizenship worry that if groups are encouraged by the very terms of citizenship to turn inward and focus on their "difference" (whether racial, ethnic, religious, sexual etc), then as Nathan Glazer put it in the American context, "the hope of a larger fraternity of all Americans will have to be abandoned."<sup>68</sup> Citizenship cannot perform its vital integrative function if it is group-differentiated — it ceases to be "a device to cultivate a sense of community and a common sense of purpose."<sup>69</sup> Nothing will bind the various groups in society together and prevent the spread of mutual mistrust or conflict.

This fear is reflected in the report of the Spicer Commission. In describing the results of its public consultations, the report concluded that:

[T]ruly the most arresting thing of all, emerging from what participants told us, is this: a tension between their search for unity and the claims

of various groups and collectivities is perceived as posing great threats to their sense of being a country.<sup>70</sup>

This is a serious concern. In evaluating it, however, we need to keep in mind the distinction between the two grounds for special representation — systemic disadvantage and self-government. Generally speaking, the demand for representation rights by disadvantaged groups is a demand for *inclusion*. Groups that feel excluded want to be included in the larger society, and the explicit recognition and accommodation of their group identity and interests is intended to facilitate this. As we have seen, this sort of special representation can be viewed as an extension of the long-standing practice of defining geographic constituencies in such a way as to ensure representation of "communities of interest." This is not seen as a threat to national unity — on the contrary, it is rightly seen as promoting civic participation and political legitimacy.<sup>71</sup> Why then should guaranteed representation for non-territorial communities of interest be seen as a threat to unity, rather than as evidence of a desire for integration?<sup>72</sup>

Claims based on self-government, by contrast, do raise deep problems for the integrative function of citizenship. Whereas demands for representation by disadvantaged groups take the larger political community for granted, and seek greater inclusion within it, demands for self-government reflect a desire to weaken the bonds with the larger community, and indeed question that larger community's very nature, authority and permanence. If democracy is the rule of the people, self-government raises the question of who "the people" really are. Aboriginal peoples and the *Québécois* claim that they are distinct peoples, with inherent rights of self-determination that were not relinquished by their (initially involuntary) federation into a larger country. They may view their own political community as primary, and the value and authority of the larger federation as derivative.

Self-government rights, therefore, divide the people into separate "peoples," each with its own historic rights, territories and powers of self-government. As recent events in Canada have shown, attempts to accommodate the demand for self-government have endangered national unity. Of course, the historical record in Canada also shows that attempts to suppress the demand for Aboriginal or *Québécois* self-government have been equally dangerous.

Indeed, as I noted earlier, I think we have no choice but to try to accommodate these demands. It is no longer possible (if it ever was) to eliminate the sense of distinct identity which underlies these demands. Federal and provincial governments in Canada have, at times, used all the tools at their disposal, from bans on tribal customs to residential schools for children, to destroy the



sense of separate identity among Aboriginal people. Yet, despite centuries of legal discrimination, social prejudice or plain indifference, Aboriginal peoples have maintained their sense of being distinct. Similarly, Lord Durham's proposal to assimilate the French-Canadians proved futile. Since claims to self-government are here to stay, we have no choice but to try to accommodate them, and to find a form of social unity that is consistent with them.

But while claims of self-government raise deep problems for the integrative function of citizenship, it seems to me that the particular aspect of self-government we are considering here — guaranteed representation at the federal or intergovernmental level — clearly serves a unifying function. The existence of such group representation helps reduce the threat of self-government, by reconnecting the self-governing community to the larger federation. It is a form of connection which remains, and which can be drawn upon, when other connections are being weakened. This is true, I think, of Quebec's representation on the Supreme Court, and of proposals for Aboriginal representation in the Senate.

## Conclusion

Any proposal for group representation must answer a number of difficult questions relating to the identification of truly disadvantaged groups and the need for mechanisms to make their "representatives" accountable. While the debate in Canada has barely begun to address these questions, they need to be examined seriously: demands for group representation will not go away. In defending their proposals, proponents of group representation appeal to some of the most basic practices and principles of Canadian representative democracy. Some forms of group representation may be able to play an important if limited role within the Canadian political system.

Of course, issues of representation cannot be reduced to the composition of the legislature. Representation in the House of Common or Senate needs to be situated within the context of other mechanisms for representing the views or interests of a group, such as legal challenges to unfavourable legislation in the courts and interest group advocacy. Any assessment of the need for group representation must take these alternative routes to representation into account.

But many of the difficulties that affect women, visible minorities and other disadvantaged groups in the electoral process also affect their access to these alternative mechanisms of representation. Moreover, Parliament has a special symbolic role in representing the citizens of the country. Citizens who

do not see themselves reflected in Parliament may become alienated from the political process and question its legitimacy.<sup>7</sup> If not the only route to representation, legislative representation is a uniquely important one, and the desire to be represented adequately in elected institutions must be taken seriously.

## Notes

1. There were Aboriginal representatives at many of the crucial negotiations leading up to the Charlottetown Accord, although they were left out of other important sessions. Also, representatives of various women's groups were included in some delegations, but again only for some sessions.

2. Indeed, "middle-class status is a virtual prerequisite for candidacy for major office," according to Raymond Wolfinger, as quoted in Royal Commission on Electoral Reform and Party Financing, *Reforming Electoral Democracy: Final Report*, Vol. 1 (Ottawa: Supply and Services, 1991), p. 102. The statistics are from the same volume, pp. 93-96 and 192, and based on the 1986 census.

3. These options are discussed in *Reforming Electoral Democracy*, Vol. 1, pp. 93-121, and in the research volumes which accompanied the Commission's report. See, in particular, the articles by Janine Brodie and Lynda Erickson in Kathy Megyery (ed.), *Women in Canadian Politics: Toward Equity in Representation*, Vol. 6 of the research studies of the Royal Commission on Electoral Reform and Party Financing (Toronto: Dundurn Press, 1991); and the articles by Daiva Stasiulis and Yasmeen Abu-Laban, and Carole Simard in Kathy Megyery (ed.), *Ethno-cultural Groups and Visible Minorities in Canadian Politics: The Question of Access*, Vol. 7 of the same series. Of course, some members of disadvantaged groups face barriers not only in seeking nomination or election but simply in voting. Options for improving voter registration include the use of non-official languages on ballots, employing enumerators who speak non-official languages, permanent voter lists, increased voter education and use of alternative media for publicizing the election.

4. For an excellent discussion of the impact of proportional representation on women's representation, from which the points in this paragraph are drawn, see Lisa Young, "Electoral Systems and Representative Legislatures: Consideration of Alternative Electoral Systems," paper prepared for the Canadian Advisory Council on the Status of Women (Ottawa, November 1992, mimeo).

5. Regarding the House of Commons, see *Reforming Electoral Democracy*, Vol. 1, pp. 169-92; for the Senate, see Canada, *Report of the Special Joint Committee on a Renewed Canada* (Ottawa: Supply and Services, 1992), pp. 32, 52.

6. The British North America Act of 1867 (now the Constitution Act, 1867) also included provisions regarding denominational schools. I discuss the relationship between group representation and other forms of collective rights in "Three Forms of Group-Differentiated Citizenship in Canada" (paper prepared for the Conference for the Study of Political Thought, conference on "Democracy and Difference," Yale University, April 1993).

7. *Reforming Electoral Democracy*, Vol. 1, p. 149.

8. See Beverley Baines, "'Consider Sir... On What Does Your Constitution Rest?': Representational and Institutional Reform," *Conversations Among Friends: Proceedings of an Interdisciplinary Conference on Women and Constitutional Reform* (Edmonton: Centre for Constitutional Studies, University of Alberta, 1992). At p. 56, Baines argues that the principle of ensuring representation for communities of interest should extend to women.

9. The Commission does support the principle of group representation in the case of Aboriginal people, but not for other groups. Its reasoning here is obscure. According to the Commission:

[T]he direct representation of Aboriginal peoples would not constitute a legal precedent for extending such a right to ethno-cultural communities. Only the Aboriginal peoples would have a historical and constitutional basis for a claim to direct representation. Only the Aboriginal peoples have a pressing political claim to such representation. Only Aboriginal peoples can make the claim that they are the First Peoples with an unbroken and continuous link to the land." (*Reforming Electoral Democracy*, Vol. 1, p. 183)

But this confuses necessary and sufficient conditions. The fact that other groups cannot make the same sorts of claims as Aboriginal people does not show that they cannot make other, equally strong, sorts of claims for group

representation. In particular, they can (and do) claim that they are communities of interest and that (as the Commission itself forcefully argues) representing communities of interest is a legitimate aim of an electoral system. It is unclear why the Commission rejected this claim. The Commission recognizes that not all communities of interest are geographically concentrated, that such dispersed interests cannot be accommodated when electoral boundaries are drawn on a territorial basis and that geographical representation therefore has "obvious limitations." (*Reforming Electoral Democracy*, Vol. 1, p. 172). Yet it never considers ways to overcome these limitations through some scheme of group representation for non-territorial communities of interest. Instead, it simply insists that, with the single exception of Aboriginal people, the "continuation of the Canadian system of single-member constituencies defined in a geographic manner... [is] the best way to achieve the desired equality and efficacy of the vote within the Canadian system of representative parliamentary government generally." (*Reforming Electoral Democracy*, Vol. 1, p. 182).

10. *Reforming Electoral Democracy*, Vol. 1, pp. 152-53.

11. See *Reforming Electoral Democracy*, Vol. 1, pp. 149-50, and Lani Gunier, "No Two Seats: The Elusive Quest for Political Equality," *Virginia Law Review*, Vol. 77, no. 8 (1991), pp. 1413-1514.

12. Judy Rebick and Shelagh Day, "A place at the table: the new Senate needs gender equality, minority representation," *The Ottawa Citizen*, September 11, 1992, p. A11.

13. For a summary of the conference and the shift in focus generated by the demands of the NAC, see *Renewal of Canada Conferences: Compendium of Reports* (Ottawa: Privy Council Office, 1992), unpaginated.

14. For a classic presentation of this argument for improved regional representation, see Canada West Foundation, *Regional Representation: The Canadian Partnership* (Calgary: Canada West Foundation, 1981), p. 9. It is important to distinguish this argument for improved representation of regions, based on sensitivity to minority interests, from the separate argument that Senators should represent the provinces

because the upper house in a federal system represents the interests of the provincial governments. This argument has been considered and rejected in both Canada and the United States. Senators are not the delegates of the provincial governments, chosen to defend the rights and powers of provincial governments, but rather serve as people's representatives in the federal government. On the distinction between these two arguments, see *Report of the Special Joint Committee on a Renewed Canada*, pp. 41-42.

15. It is not clear why Triple-E defenders do not extend their principles to non-territorial groups. For example, the Canada West Foundation, one of the prime proponents of the Triple-E Senate, admits that non-regional cleavages can be just as important as regional ones, and that they may cut across regional boundaries. Indeed, it says that "the regionalist 'geography is destiny' has no more to recommend it than the sexist 'biology is destiny'" (Canada West Foundation, *Regional Representation*, p. 8). Why then not guarantee Senate representation for women, just as we guarantee Senate representation for Albertans?

16. Baines, "'Consider Sir,'" p. 56; see also Beverley Baines, "After Meech Lake: The Ms/Representation of Gender in Scholarly Spaces," in David Smith et al. (eds.), *After Meech Lake: Lessons for the Future* (Saskatoon: Fifth House Publishers, 1991), p. 208.

17. A.H. Birch, *Representative and Responsible Government* (Toronto: University of Toronto Press, 1964), p. 16.

18. For a detailed account of the history of this notion of representation, see Hanna Pitkin, *The Concept of Representation* (Berkeley: University of California Press, 1967), chap. 4.

19. See the discussion of these lacuna in Baines, "After Meech Lake," p. 209.

20. Anne Phillips, "Dealing with Difference: From a Politics of Ideas to a Politics of Presence," paper prepared for the Conference for the Study of Political Thought, conference on "Democracy and Difference," Yale University, April 1993, p. 7.

21. See Christine Boyle, "Home-Rule for Women: Power-Sharing Between Men and

187  
Women," *Dalhousie Law Journal*, Vol. 7 (1983), pp. 797-98.

22. Pitkin, *The Concept of Representation*, p. 73, quoting Alfred DeGrazia.

23. John Burnham, *Is Democracy Possible? The Alternative to Electoral Politics* (Berkeley: University of California Press, 1985).

24. Augie Fleras, "From Social Control towards Political Self-Determination: Maori Seats and the Politics of Separate Maori Representation in New Zealand," *Canadian Journal of Political Science*, Vol. 18, no. 3 (September 1985), p. 566; Roger Gibbins, "Electoral Reform and Canada's Aboriginal Population: an Assessment of Aboriginal Electoral Districts," in Robert A. Milen (ed.), *Aboriginal Peoples and Electoral Reform in Canada*, Vol. 9 of the research studies of the Royal Commission on Electoral Reform and Party Financing (Toronto: Dundurn Press, 1991), p. 171. For an in-depth discussion of the relevance of the Maori model for Canada, see Fleras, "Aboriginal Electoral Districts for Canada: Lessons from New Zealand," in the same volume.

25. Baines, "Consider, Sir", p. 56.

26. Baines, "Consider, Sir", p. 56.

27. Anne Phillips, "Democracy and Difference: Some Problems for Feminist Theory," *Political Quarterly*, Vol. 63, no. 1 (1992), p. 85.

28. For a detailed discussion of this problem in the British context, see Phillips, "Democracy and Difference," p. 89.

29. Phillips, "Dealing with Difference," p. 7.

30. On the idea of a deliberative democracy and its role in helping the members of a socially diverse society to understand each other, see Joshua Cohen, "Deliberation and Democratic Legitimacy," in A. Hamlin (ed.) *The Good Polity* (New York: Blackwell, 1989), pp. 18-27.

31. The Supreme Court has recognized that the principle of "one person, one vote" may not secure "effective representation" for minorities (*Reference Re Electoral Boundaries Commission Act* [1991] 81 D.L.R.(4th) 16).

32. Iris Marion Young, "Polity and Group Difference: a Critique of the Ideal of Universal Citizenship," *Ethics*, Vol. 99, no. 2 (January 1989), p. 257.

33. Young, "Polity and Group Difference," p. 259. See also Iris Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990), pp. 183-91.

34. See Boyle, "Home-Rule for Women," p. 791.

35. But see Thomas Sowell's *Preferential Policies: An International Perspective* (New York: Morrow, 1990). Sowell argues that affirmative action programs are rarely if ever beneficial, and moreover tend to generate spiralling demands and grievances.

36. Hence the "National Assembly" (Quebec) and the "Assembly of First Nations" (Aboriginal peoples). I discuss the distinction between nations and other ethnocultural groups in "Liberalism and the Politicization of Ethnicity," *Canadian Journal of Law and Jurisprudence*, Vol. 4, no. 2 (1991), pp. 239-56. On the adoption of the language of nationhood by Aboriginal people, see David Long, "Culture, Ideology and Militancy: Movement of Native Indians in Canada," in W.E. Carroll (ed.), *Organizing Dissent: Contemporary Social Movements in Theory and Practice* (Toronto: Garamond, 1992), pp. 118-34.

37. There is a certain amount of historical inaccuracy and revisionism in this picture of pre-existing "nations" choosing to federate with a larger state. The sense of being a distinct people or nation is socially constructed and has undergone historical changes in its content, boundaries and intensity. Moreover, the legal text of Confederation is not written as if it were an agreement between "founding nations." But my concern here is more with contemporary perceptions than with legal wordings or historical facts. And the sense that Aboriginal peoples and the *Québécois* are distinct peoples is, I think, a powerful factor underlying recent constitutional demands.

38. But see Robert Vipond's *Liberty and Community: Canadian Federalism and the Failure of the Constitution* (Albany: State University of New York Press, 1991), which discusses the "provincial rights" movement in English Canada.

39. A certain degree of *de facto* asymmetry in powers has been a long-standing aspect of Canadian federalism. However, many Canadians are unwilling to formally recognize this asymmetry in the Constitution. See Charles Taylor, "Shared and Divergent Values," in Ronald L. Watts and Douglas M. Brown (eds.), *Options for a New Canada* (Toronto: University of Toronto Press, 1991), pp. 53-76; and A.G. Gagnon and J. Garcea, "Quebec and the Pursuit of Special Status," in R.D. Olling and M.W. Westmacott (eds.), *Perspectives on Canadian Federalism* (Scarborough: Prentice-Hall, 1988), pp. 304-25.

40. See Frank Cassidy and Robert Bish, *Indian Government: Its Meaning in Practice* (Halifax: Institute for Research on Public Policy, 1989) for the relation of self-government to federalism.

41. *Report of the Special Joint Committee*, p. 52. The Joint Committee's reasoning on Senate representation is very unclear. On the one hand, it defends Aboriginal representation on the grounds that self-government will make Aboriginal communities a sub-unit of the federal system, and "since the purpose of the Senate involves representation of the populations of Canada's sub-units, (provinces and territories) it may then be simply a matter of consistency to represent aboriginal peoples" (p. 52). But it elsewhere denies that Senate representation is a matter of representing federal sub-units as such (p. 42). Instead it says that the Senate's major role is to enhance the representation of people in the smaller regions, *on the grounds that they are ineffectively represented within the House*. It "recognized the existence of increasingly bitter resentments in Western and Atlantic Canada over the perceived unresponsiveness of successive governments to the needs of people and communities outside central Canada... Many Canadians in the West and in the Atlantic provinces have a sense that their needs and concerns routinely lose out in decision-making within the central government," and regional representation is intended to address this "sense of injustice" (p. 41). This argument for regional representation has nothing to do with the fact that people in Western Canada belong to federal sub-units. Indeed, the argument stemming from "unresponsiveness" and the need to alleviate a "sense of justice" would apply to women, ethnic minorities and other groups that are not federal sub-units.

42. This representation may take the form of a permanent seat on the Court, or a seat only when those issues which directly affect it are being heard. This is the model used by the International Court of Justice, which allows each country that is party to a particular dispute to nominate one member to the Court when that case is being heard.

43. Part of the oversimplification is that while Aboriginal self-government involves transferring powers from the federal government to Aboriginal communities, which then become exempt from federal legislation, there is also a distinctive trust relationship between Aboriginal peoples and the federal government which gives the federal government *more* authority over Aboriginal peoples than it has over other Canadians. Because of section 91(4) of the Constitution Act, 1867, which gives the federal government exclusive power to legislate in matters relating to Indians and Indian lands, the federal government provides certain services to Aboriginal people that other Canadians receive from provincial governments. This is an argument in favour of increased Aboriginal representation in Parliament, which helps serve to counterbalance the tendency of Aboriginal self-government to reduce the necessity of Aboriginal representation in Parliament (see the discussion of this in *Reforming Electoral Democracy*, Vol. 1, pp. 181-82). This shows the extent to which arguments for group representation in Canada are very contextual, rather than flowing from any general theory of mirror representation.

44. Baines, quoted in Jeffrey Simpson, "Playing the politics of exclusion is a dangerous game," *The Globe and Mail*, October 9, 1991, p. A16.

45. Claims based on disadvantage would apply equally to urban, non-status Indians, who may have no meaningful self-government powers, whereas claims based on self-government would apply most clearly to status Indians on reserves. See the discussion in Gibbins, "Electoral Reform and Canada's Aboriginal Population," pp. 181-82. Gibbins argues that off-reserve Aboriginal people should be represented in the House of Commons through Aboriginal electoral districts, whereas Aboriginal people on self-governing reserves should be primarily represented in Ottawa by

19c  
 having delegates of their tribal governments sit on intergovernmental bodies.

46. See, for example, Nathan Glazer, *Ethnic Dilemmas: 1964-1982* (Cambridge, Mass.: Harvard University Press, 1983), pp. 227-29.

47. I discuss the distinction between these two groups and other ethnocultural groups in "Liberalism and the Politicization of Ethnicity," pp. 239-56.

48. Young, *Justice and the Politics of Difference*, p. 187.

49. Young, "Polity and Group Difference," p. 261.

50. Phillips, "Democracy and Difference," p. 89.

51. Young, "Polity and Group Difference," pp. 187-89.

52. For example, civil service employment equity programs identify four categories of disadvantaged people — women, Aboriginal people, visible minorities and people with disabilities.

53. Indeed, both Baines and Boyle argue that guaranteed representation for women is not only consistent with the Charter, but indeed required by it. They argue that a combination of section 3 (right to vote), section 15(1) (equal benefit of the law) and section 15(2) (affirmative action remedies) generates a legal entitlement to electoral mechanisms which ensure that women are equally represented (Boyle, "Home Rule for Women," p. 791; Baines, "Consider Sir," p. 56).

54. Kruhlak, "Multiculturalism: Myth versus Reality" (unpublished paper prepared for the Institute for Research on Public Policy, 1992, p. 16). However, the Canadian Ethnocultural Council has "long advocated that a tradition, written or unwritten, be established to ensure some minority presence" on the Supreme Court; see Canadian Ethnocultural Council, "A Dream Deferred: Collective Equality for Canada's Ethnocultural Communities," in Michael Behiels (ed.), *The Meech Lake Primer: Conflicting Views of the 1987 Constitutional Accord* (Ottawa: University of Ottawa Press, 1989), p. 342. For in-depth discussions of the strategies for including ethnocultural and visible minority groups, see the essays collected in Megyery

(ed.), *Ethno-cultural Groups and Visible Minorities in Canadian Politics*.

55. Phillips, "Dealing with Difference," p. 34, note 9.

56. Rebeck and Day, "A place at the table."

57. Gunier, "No Two Seats," pp. 1434-37.

58. A related question is whether group representatives (however many there are) should have special powers (such as a veto) in areas directly affecting their group. This seems most plausible, and indeed almost essential, for group representation based on claims of self-government. Since the justification of group representation in this case is to protect powers of self-government from federal intrusion, a veto in areas of concurrent or conflicting jurisdiction seems a logical mechanism. Whether group representation based on systemic disadvantage leads to special veto powers (e.g., veto powers for women Senators over decisions regarding reproductive rights, as Iris Young suggests) is more complicated, and would depend on the nature of the disadvantage.

59. For a particularly comprehensive discussion of one model, see *Reforming Electoral Democracy*, Vol. 1, pp. 170-85.

60. This is similar to the practice, discussed earlier, of drawing constituency boundaries so that they largely coincide with a "community of interest." It is safe to assume that these communities use their electoral strength to elect "one of their own." But they can, and sometimes do, elect someone who is not a member of their group. This does not undermine the value of accommodating communities of interest, because the justification for this practice is not to secure mirror representation (which could be done by a lottery or random sample) but rather to promote the representation of the group's interests, by making an MP accountable to the community. Some defenders of "affirmative gerrymandering" in the US, used to create ridings with a black or Hispanic majority, insist that the justification for this is not the mirror view: "affirmative gerrymandering is, in my view, misconceived if it is seen as a mechanism to guarantee that blacks will be represented by blacks, Hispanics by Hispanics, and whites by whites; rather, the proper use of affirmative gerrymandering is to guarantee that important groups in the population will not be

substantially impaired in their ability to elect representatives of their choice" (Bernard Grofman, "Should Representatives Be Typical of their Constituents?", in B. Grofman et al. (eds.), *Representation and Redistricting Issues* (Lexington Mass.: D.C. Heath and Co., 1982), p. 98.)

61. Phillips, "Democracy and Difference," pp. 86-88.

62. Phillips, "Political Inclusion," pp. 14-15.

63. Jennifer Smith, "Representation and Constitutional Reform in Canada," in Smith et al. (eds.), *After Meech Lake*, p. 76.

64. For various proposals on how to improve the accountability of governments to an empowered citizenry, particularly to social movements, see the essays in Gregory Albo, David Langille and Leo Panitch (eds.), *A Different Kind of State? Popular Power and Democratic Administration* (Toronto: Oxford University Press, 1993).

65. Young, "Polity and Group Difference," p. 258.

66. John Porter, *The Measure of Canadian Society* (Ottawa: Carleton University Press, 1987), p. 128.

67. Bhikhu Parekh, "The Rushdie Affair: Research Agenda for Political Philosophy," *Political Studies*, Vol. 38, no. 4 (1990), p. 702.

68. Glazer, *Ethnic Dilemmas*, p. 227.

69. Derek Heater, *Citizenship: the Civic Ideal in World History, Politics and Education* (London: Longman, 1990), p. 295. For similar concerns in the Canadian context, see Alan Cairns, "The Fragmentation of Canadian Citizenship," in William Kaplan (ed.), *Belonging: The Meaning and Future of Canadian Citizenship* (Montreal and Kingston: McGill-Queen's University Press, 1993), pp. 181-220.

70. Citizen's Forum on Canada's Future, *Report to the People and Government of Canada* (Ottawa: Supply and Services, 1991), p. 114.

71. *Reforming Electoral Democracy*, Vol. 1, p. 149.

72. Some people worry that, even if individual citizens retain a sense of common commitment, the system of group representation will produce MPs who are doctrinaire and unwilling to engage in the normal process of compromise

for the greater good. But the basis for this worry is unclear. As Boyle notes: "Surely the political process would work very much as it does now, with a high premium being placed on ability to be effective and to work with other groups in order to achieve this" (Boyle, "Home Rule for Women," p. 805).

73. *Reforming Electoral Democracy*, Vol. 1, p. 93.