

10-1-1983

## Home Rule for Women: Power-Sharing Between Men and Women

Christine Boyle

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



Part of the [Civil Rights and Discrimination Commons](#)



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

---

### Recommended Citation

Christine Boyle, "Home Rule for Women: Power-Sharing Between Men and Women", Comment, (1982-1983) 7:3 DLJ 790.

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

---

Christine Boyle\*

Home Rule for Women:  
Power-Sharing Between Men  
and Women

---

I. *Introduction*

This paper is about the Canadian electoral system and the need for reform of its constituent units. Canadian politics have been remarkable for the comparative lack of interest that has been displayed in this aspect of the system, an aspect that is of great importance in any democratic society. In 1949, a speaker at the annual meeting of the Canadian Political Science Association in Halifax summed up the situation as follows:

The basic units of representation . . . the constituencies, are thus conceived in the darkness of a legislative committee, and born to blush unseen on an electoral map which is not readily available to the public. That our constituencies are a remarkable hodge-podge is hardly surprising, for the only principle that has been consistently applied to them is the elementary one that no part of the country should be left outside an electoral district, and that was violated once.<sup>1</sup>

This summation is as accurate today as it was when it was made, and yet this writer can detect little urgency that our electoral system be re-examined.<sup>2</sup> This is surprising in view of the practical connection between the drawing of electoral boundaries and the power of each individual's vote, and in view of the fact that even a cursory look at the Canadian political scene would lead one to suspect that not all interests are being represented. It is submitted that we cannot long postpone confrontation of the fact that Canada, and, indeed, all nations, are composed of two sexual groups which have different traditions and interests. This fact must be acknowledged in our political structure if we are to end our complacent acceptance of political decision-making by a minority.

---

\*Professor of Law, Dalhousie University.

1. Ward, *The Basis of Representation in the House of Commons* (1949) 15 Can. J. of Econ. and Pol. Sci. 477, at 490.

2. But see, for example, Irvine, "Does Canada Need a New Electoral System?" (Kingston: Queen's Studies on the Future of the Canadian Communities, 1979). For a recent outline of Canadian electoral law, see Boyer, *Political Rights*, (Toronto: Butterworths, 1981).

It may well happen that a central constitutional issue in the twenty-first century, both here and elsewhere, will be the relationship between men and women. It is now roughly sixty-five years since women obtained the vote in Canada.<sup>3</sup> As a result, we have enough experience on which to base an assessment of whether or not the inclusion of women in a system that was developed by men for use by men is a suitable method by which to represent the interests of everyone.

In this paper, the argument is presented that there remain certain groups, the paradigm being women, who are de facto unenfranchised, and that, for this reason, it is necessary to embark on a reassessment of our current electoral system. One possible legal setting for such a reassessment can be found in the Canadian Charter of Rights<sup>4</sup> if one combines sections 3 and 15(1). Section 3 states that "every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein." Section 15(1) states that "every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination, and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."<sup>5</sup> Thus, it is submitted that ensuring every Canadian the right to vote does not merely confer on each the right to cast a ballot in a physical sense. Rather, in combination with the right to equal benefit of the law, it grants the right to cast a vote which has the chance of being equally as effective as any other vote, that is, an equal chance of electing a person who will represent the interests of the voter; it grants the right to political equality. In this context, I suggest that political equality does not mean that we all have a right to have our interests represented (for that would, in effect, yield direct democracy), but that our votes suffer no *special*

---

3. See Cleverdon, *The Woman Suffrage Movement in Canada* (2nd. ed., Toronto: University of Toronto Press, 1974). It is interesting, and supportive of the argument presented in this paper, that in Nova Scotia, women arguably regained the vote in 1918 as they had been expressly disqualified in 1851. See *Revised Statutes of Nova Scotia*, 1851, Supplement, at 59.

4. Canadian Charter of Rights and Freedoms, Canada Act, 1982 (U.K.).

5. Section 15 is, of course, subject to section 32(2), which requires a three-year delay.

weakness by reason of our sex, colour, religion, etc.<sup>6</sup> In assessing whether each citizen is equal in a political sense, we must take into account all actual barriers (as opposed to only legal ones). This point will be developed more fully later, but a simple example may be useful by way of introduction. Assume that the Canadian voting rule holds that all Canadians must gather in Bethlemin, Ontario, in order to vote. Theoretically, all have the same right, but, in practice, all are not equal in their ability to exercise that right. The poor cannot afford to travel long distances, and the ill and elderly may find it impossible to travel at all. Parents may not be able to arrange for their young children to be cared for while they travel to vote. It is obvious that the closer one is to Bethlehem, the more one *actually* has the right to vote.

The subject of this paper can, therefore, be loosely classified as that of political rights under the constitution and, more precisely, as the creation of a structure which encourages the representation of diverse groups and interests. Although the focus is on the representation of women, my assumption is that an adequate analysis of that issue would provide the basis on which to assess the representation of other distinctive groups. The title appealed to me because of its overtones of Irishness<sup>7</sup> and political independence, and because of its reference to a concept which has been and still is central to the lives of many women, that of the home. By way of further introduction, I would like to make the somewhat self-serving claim that the representation of women is not a subject which could legitimately be regarded as one of narrow focus. An underlying assumption of my thesis is that the analysis of political rights, constitutions, or *anything* which confines its scope to male reality is

---

6. I realize that I am on shaky ground with a concept of this nature. I suppose that, if pushed, I would try to define it by saying that it means a system in which the chances of electing people who will ensure that all interests are taken into account in decision-making are maximized. If the system leaves *and continues to leave* certain interests unrepresented, then we do not have political equality. This is very nearly asserting a test of *outcomes* to judge a *process*, and that may well be worth exploring. For example, I find attractive the operational definition of political equality adopted in Mansbridge's *Living with Conflict: Representation in the Theory of Adversary Democracy* (1981), 91 *Ethics*, 466, at 472. It is "that system which in practice meets . . . criteria from universal suffrage through proportional group representation and power sharing, judged by the overarching standard of proportional outcomes . . ."

7. This seems appropriate in this context, given the various forms that colonialism takes, as well as the fact that the Irish have a system of proportional representation. See O'Leary, *Irish Elections* (New York: St. Martin's Press, 1979).

of necessity narrow and not in the mainstream of human experience. Hence, discussion of a topic such as this will tend to render existing analyses of representation more universal, and is, therefore, not peripheral. Adequate analysis of any subject should take place in the context of the full range of human reality and should not be artificially limited by the world-view of one sex, as has been largely the case in the past. Therefore, I ask the reader to see this not as the bump on the log of existing thought on representation, but as an attempt to start pushing the log underneath an existing bump.<sup>8</sup>

## II. *Why Is There a Need for Change?*

A starting point for the demonstration that reform is necessary can be found in the vast literature on election systems in general. This paper will not cover that already well-trodden ground again, but will merely use the arguments for proportional representation as a stepping stone to more neglected issues. The claim is made,

---

8. I am indebted for inspiration on this approach to Lorene Clark and her significant essay entitled "Politics and the Law: The Theory and Practice of the Ideology of Male Supremacy", in Weisstub, ed., *Law and Policy* (Toronto: Butterworths, 1976). She states at 35 and 36 that:

[I]t is my belief, and that of other feminist scholars in this and related fields, that one assumption that has not yet reached the light of day is that of sexual inequality and the superiority of the male sex. It now seems to me certain that politics, the theory on which it is based, and the practice and practices arising out of it, including of course law and legal theory, articulates an ideology of male supremacy. Politics is the ideology of male supremacy, or, one might say, the ideology of male supremacy is the conceptual meta- or super-structure which is assumed at the foundation of political and legal theory.

I have attempted to apply this idea to my thinking about the exercise of political rights, that is, the idea that the practices arising out of the political theory on which our present electoral system is based articulate an ideology of male supremacy.

It may be suggested that if we simply attempt to utilize language that is non-sexist, theories that have hitherto been stated in terms that relate only to men can be broadened to include women, that we simply need to remember to say "he or she" in order to render a theoretical structure valid or useful for all humanity, but this is to ignore important differences between the sexes. Just as we have to re-examine philosophical and political theories which treat women as invisible (for example, in Marxist philosophy women don't appear until they emerge as workers and members of a class), so do we have to re-examine our constitutional and political structure and ask ourselves the simple question: is it suitable for everyone? Or, is it even suitable for most people? In other words, it is vital to confront the narrow sexist orientation of legal and political theorists to date. See also, Rich, "Toward a Woman-Centered University", in Howe, ed., *Women and Power to Change* at 15 *et seq.*, and Rifkin, "Toward a Theory of Law and Patriarchy", (1980) 3 *Harvard Women's Law Journal*, 83.

therefore, that our present form of liberal democracy does not in fact ensure the representation of individuals, even in a majoritarian sense. Decisions are made in stages, so that voters who have “lost” at one level may not be represented, and the ultimate result may be rule by a minority. This is the practically inevitable result of dividing a political unit up into geographical constituencies.

Perhaps a simple illustration would be useful. Weale<sup>9</sup> provides a telling example through the case of two constituencies, each of which has three voters. Each constituency is unanimous and opposed to the views of the other; Constituency One favours X and Constituency Two favours Y. Now, if one voter in Constituency Two changes her mind, there will be a majority in favour of X. This ought to decide the issue, but in our system the situation would remain deadlocked. Weale’s conclusion is that a weakening of individualism is “necessary to accommodate the practical demands of geographical constituencies. . .”<sup>10</sup> Deadlock remains because the views of the voter who has changed her mind count for nothing because she is a minority member of her constituency, even though her views would be decisive if combined with those of voters from the other constituencies. Similarly, her views are insignificant in the common situation, in which the majority of voters in each constituency favours Y; that is, only one person in each constituency favours X. Thus, view X is totally unrepresented. I understand this, in simple terms, to be the situation which spawned proposals to introduce electoral systems based on proportional representation.<sup>11</sup> I simply state my claim that, irrespective of any other electoral reform, the case has been made against the existing “first-past-the-post” system and for some form of proportional representation.

However, this in itself would not be enough to ensure political equality. More radical change merits consideration on the basis of the point alluded to earlier, namely, that we must examine the realities of the franchise. Empirical evidence, therefore, underlines the argument for more radical reform, in combination with the

---

9. “Representation, Individualism, and Collectivism”, (1981) 91 (No. 3) *Ethics*, 457.

10. *Ibid.*, at 461.

11. See, for example, the Task Force on Canadian Unity, *A Future Together*, at 104 *et seq.*, where a limited degree of proportional representation is proposed for the House of Commons.

acceptance of certain values.<sup>12</sup> It may be helpful at this point to state the relevant factual and political assertions.

First, men and women differ in a variety of ways which can be roughly classified as natural and man-made, the latter category tending to obscure and hamper empirical study of the former. Men and women are different biologically, primarily in their contributions to reproduction, but most of the remaining differences are probably artificial. For example, the legal history of women differs substantially from that of men, as does their working and economic history. Their ways of expressing themselves artistically seem to be different and have been treated differently, and women live in a world in which words that are commonly used hide their existence.<sup>13</sup> Most significantly in this context, women have a different political history. At least some men have had a long tradition of political activity, and those who don't can study politics in which people with an important resemblance to them (namely, gender) have played a significant role. Women, on the other hand, have no such equivalent tradition. In fact, their tradition is marked by the absence of political role models and by opposition to their efforts at emancipation.<sup>14</sup> An analogy can be drawn with countries where two or more significantly different groups exist, as they do in Northern Ireland, Lebanon, Guyana, certain countries in Africa (such as Zimbabwe), and, indeed, in Canada itself. A study of electoral systems throughout the world shows us that in such situations, there can be no complacent assumption that a first-past-the-post system, with constituencies based on geography and numbers, will inspire the confidence of the electorate.<sup>15</sup>

---

12. What I mean by this can be illustrated. We can prove empirically that women are poorer than men on the whole. Yet that in itself is not significant. To become significant, it needs to be combined with the belief that it is not a good thing.

13. Katz, *Her and His: Language of Equal Value*, A Report of the Status of Women Committee of the Nova Scotia Confederation of University Faculty Associations on Sexist Language and the University, with Guidelines, 1981.

14. See, generally, Cleverdon, *supra*, n. 3.

15. For some examples and analysis, see the chapter on Communal Representation in the leading work by MacKenzie, *Free Elections* (London: George Allen and Unwin Ltd., 1957). He cites the Government of India Act of 1935 as establishing ten separate electorates. He defines, at 32, a system of communal representation as "one which gives first place to non-territorial considerations in forming constituencies; it links together voters from the whole country on the basis of characteristics other than that of attachment to a particular locality." I think it is fair to say that he is very negative about the whole idea, feeling that it would be impractical in operation even if it was necessitated by political realities.

At the risk of stating the obvious, it is important to point out that we do not *perceive* men and women as being different in the same way that we accept the differences between Catholics and Protestants, Hindus and Moslems, and black and white people. And yet, if we do not permit their familiarity to obscure them, the differences are dramatic.

Imagine a country in which all or most of the women, but not the men, lived in one geographical area — for example, Ontario. One can then examine the laws applying to and the economic position of “Ontarians” from a neutral standpoint. It will be found that the position of Ontarians is not good in Canadian society. They have been systematically discriminated against throughout their history; for example, their property was taken from them without compensation, they had no rights to their children, enfranchisement was ridiculed and bitterly opposed, and they still rarely sit in Parliament or on the bench. They are subjected to assault and sexual abuse by non-Ontarians, and they largely work at menial tasks for which they are paid much less than non-Ontarians, or nothing. In addition, they are depicted ever more widely by various media as being less than human, as objects for the sexual gratification of non-Ontarians. One has only to attempt such an account to realize that there exist two fundamentally different groups in Canada (and, of course, elsewhere). It is submitted that an electoral system which does not reflect any confrontation of that fact is inadequate.<sup>16</sup>

Second, our present political system is not satisfactory to women in the sense that, to put the best possible construction on the very low rate of participation by women in public life, they have voted with their feet. It is ironic that one argument put forward for denying women the vote<sup>17</sup> was that they would not use it, and a variation of that argument might now be that women are not interested in political activity. That fact, if true, is in itself deeply disturbing. If it is true that women as a group do not choose to

---

16. “Those who claim to represent profoundly divided nations or families, which like lunatics have no settled judgment to represent, are rightly regarded with skepticism.” Rogowski, “Representation in Political Theory and Law” (1981), 91 *Ethics*, 395 at 398. He gives the example of the Stormont Parliament in Northern Ireland. A claim by the Protestant Government to represent Northern Ireland would be unlikely to be taken seriously. He put it in another way, at 395: “To require equally powerful representation . . . of a system of single-member, plurality districts in a society of predictable political, racial and ethnic [and, I would add, sexual] divisions is . . . to demand that the circle be squared.”

17. See Cleverdon, *supra*, n. 3.



participate in the political system, other than as voters, then that is *in itself* a sufficient reason to contemplate reform. To take any other attitude is surely to contemplate with complacency the alienation of the majority of the population from the political process. This writer concludes that a strategy of assimilation has been proved unsuccessful, possibly because most men and women never really wanted it to work. Therefore, it may well be time to consider a strategy of separation.<sup>18</sup> In fact, we are already seeing signs of that in the recent constitutional lobbying.

Third, the present system is simply not successful at ensuring the representation of the interests of women. An examination of the facts of Canadian life provides the clearest demonstration that the interests of men and women are diverse, partly because they have been made to be so. Even a superficial survey of the literature shows that, as a group, women are poorer than men.<sup>19</sup> They are discriminated against in employment<sup>20</sup> and with respect to pensions,<sup>21</sup> as well as in the areas of fundamental rights and freedoms,<sup>22</sup> child care, and the whole issue of domestic work and child-rearing. Given this, it seems reasonable to conclude that it is impossible for men to represent women. This might not always be

---

18. See Freedman, "Separatism as Strategy: Female Institution Building and American Feminism" 1870-1930 (1979) 5 *Feminist Studies*, 512. She concludes, at 513, that at "certain historical periods, the creation of a public female sphere might be the only viable political strategy for women."

19. See *Women and Poverty*, National Council of Welfare, 1979. This report, which does not include Indian women, shows that one out of six Canadian women are poor, as compared to one in nine Canadian men.

20. See, for example, Dale, "Women and Jobs: The Impact of Federal Government Employment Strategies on Women", Canadian Advisory Council on the Status of Women, Ottawa, 1980.

21. See, for example, *Retirement Without Tears*, Report of the Special Senate Committee on Retirement Age Policies, Ottawa, 1979.

22. See Baines, "Women, Human Rights and the Constitution", in Doerr and Carrier, eds., *Women and the Constitution*, Canadian Advisory Council on the Status of Women, 1981. For a sense of how time stands still, see Wollstonecraft, *Vindication of the Rights of Women*, Penguin Books, 1792. For an overview of all of these areas, see Carrier, "Women's Rights and 'National Interests'", in *Women and the Constitution*, *supra*.

the case and it might not be universal, but I believe it to be so substantially true as to render reform necessary.<sup>23</sup>

Finally, the relative lack of influence that women suffer at the present time is related to the fact that individuals can find it difficult to relate to the state, as individual interests must often be mediated through group or corporate attachments.<sup>24</sup> This puts a premium on political organization, which will be more or less suitable for different types of people.<sup>25</sup> For example, those who have a tradition of political organization and some familiarity with the exercise of power have an obvious advantage. Marone and Marmor<sup>26</sup> discuss this in the context of what they call "unbalanced political arenas".<sup>27</sup> Organizational ability will vary with a number of factors, such as ease and cost, the lack of concentration of benefits and people, the diffusivity of issues, and a lack of experience and resources.

In summary, then, the argument for the system to be reformed, in an attempt to promote the representation of women, is as follows:

1. Our present system is defective because the first-past-the-post system, with constituencies based on geography, leaves many people, probably the majority, unrepresented.
2. Our present system is also defective in that men do not represent women.
3. Even if we moved to a system of proportional representation, this would not mean that representatives of women would be

---

23. Perhaps a more effective way of making the same point would be to suggest that asking men to represent women is like asking Upper Canadians to represent Newfoundlanders. The two groups seem to have substantially different traditions and interests, and asserting that they are all Canadian would hardly alleviate the concern caused by this fact. There is no dearth of appropriate analogies. For example, it seems clear now that Northern Irish Catholics were unrepresented by Protestant members of the Stormont Parliament. See Hadden and Hillyard, *Justice in Northern Ireland, A Study in Social Confidence* (London: Cobden Trust, 1973). The authors state, at 5, that the "minority long considered the Unionist movement to be totally unresponsive to any form of reasoned argument on matters which concerned the allocation of political power . . . ." It is clear 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.

24. Hegel, *Philosophy of Right*, trans. T. M. Knox (Oxford: Clarendon Press, 1952) at 253.

25. An obvious example is that of poor people who work at caring for their children. They might find it impossible to engage in political activity.

26. "Representing Consumer Interests: The Case of American Health Planning" (1981), 91 (No. 3) *Ethics*, 431.

27. *Ibid.*, at 445, *et seq.*

elected. Some further change is necessary in order to overcome the inability and/or unwillingness of women to participate in the political structure.

### III. *What Further Change is Needed?*

The central issue which needs to be confronted in the future relates to the delineation of constituencies. The factor which predominated in the past has been geography, and yet it is not at all clear why it is more significant than sex, race, or economic factors. We are extremely familiar with the idea that an identifiable group has interests, traditions, and values in common, such that it forms a political entity separate from other entities. We are familiar with this idea in the form of nationalism, although we may not be at all clear as to why a group seems to form a nation. We are also familiar with it in the semi-nationalistic sense of the units of a federal state. The idea that the interests of the residents of Nova Scotia might differ from those of the residents of Ontario in such a way that the two groups should be separate for some political purposes does not sound dangerously radical to us. And yet we lump numbers of two very different groups, men and women, together for political purposes *simply* because they live in close proximity to each other. Is there not room for compromise between our present system and total separatism?

It is therefore submitted that we need to consider a move away from geographical constituencies. We must begin to address the fundamental issues relating to the question of which constituencies *ought* to be represented. It is not my purpose at this stage to suggest a fully developed feminist electoral system, but it is useful to think through some of the possibilities.

There are various ways in which we could ensure the election of women and thus promote the representation of women. They vary in radicalism and complexity, depending on what decisions are reached with respect to the compromise between competing values. One simple method which would maximize the present link between the representative and the constituency would be to retain geography as a very significant factor and create dual-member constituencies, with one man and one woman elected.<sup>28</sup> This would

28. There are some dual constituencies in Nova Scotia, discussed in the Select Committee on Electoral Boundaries, *Preliminary Report*, November 1977. The Select Committee felt that they had the benefit of enabling the election of different types of people, for example, an Acadian and an Anglo-Saxon in Yarmouth County, and a Protestant and a Catholic in Inverness.

have various drawbacks: women would be somewhat under-represented in relation to their numbers and the system would not be adaptable for other groups. In addition, I think that, since it leaves the present system largely intact, it holds out the least hope for any radical change in Canadian party politics. I would urge, instead, that we look further and examine the idea of female constituencies; in other words, it is suggested that sex should be a factor in the drawing of electoral boundaries. This could be accomplished in a number of ways, of which the following is a possibility.

Because Canada is so large, the practical difficulties of abandoning geographical constituencies completely might overwhelm the benefits of attempting to achieve political equality. However, the federal structure could be advantageously used in this context to enable geographical or regional divisions to be maintained for the limited purpose of permitting local decision-making with respect to matters of purely regional interest.<sup>29</sup> On the provincial level, two options are available. Constituencies could be redrawn to permit the separate election of both male and female representatives from each constituency. This would be done preferably through use of the system of proportional representation, so that male and female constituencies would, in effect, be overlaid upon each other. Alternatively, each province could simply become one constituency, so that any single group which was the size of an average constituency at present would be able to elect a representative.<sup>30</sup> The question of whether there would be a separate geographical element or totally self-selecting constituencies would depend on the value placed on both the convenience and the constituency attachment. The appropriate level of compromise would require a balancing of the different factors that would

---

29. It is not the purpose of this paper to examine the question of the appropriate federal/provincial division, but I would suggest that, as far as de facto unenfranchised groups are concerned, this analysis would tend to minimize the areas of purely local interest as the division prevents cooperation with members of the same groups in other provinces. Thus, it dissipates political energy.

30. Perhaps the closest analysis comes from J. S. Mill, *Considerations on Representative Government* (London: Longmans, Green & Co., 1867) in Chapter 8. There he discusses the securing of adequate representation for all shades of opinion. He argues, in essence, that people of sufficient numbers to make up a constituency should be able to elect a representative, no matter where they are situated geographically. Self-selected constituencies would be superior to geographical constituencies, since political opinions have no necessary connection to place of residence.

promote effective representation.<sup>31</sup> For example, the importance of convenience obviously becomes much greater at the federal level, and a combination of geographical and other factors, such as sex, would have to be used. Whatever system is chosen, however, it will be crucial to ensure that women's votes be counted together, so that the power of such votes is not dissipated among various political units. In this way, men would not be elected by default, as it were, and our political system would, in effect, be balancing the otherwise "unbalanced political arenas".

Being recognized as a political group is, of course, a tremendous advantage. Nova Scotia, for example, would seem to have more influence than any equivalent number of people in Canada. Likewise, Canadians have more influence on world affairs than any random group of twenty-five million people. Thus, just as provincehood and nationhood can lend influence, so the recognition of women as a group would increase their power considerably. Men and women would, in effect, be sharing power.

The idea that identifiable interest groups should be represented is, of course, not a new one. Birch, in *Representative and Responsible Government*,<sup>32</sup> asserts, with respect to the famous British Reform Act of 1932, that:

The argument that Parliamentary decisions would be biased unless the House of Commons directly represented all the interests in the nation seemed sensible and had obvious attractions for spokesmen from the expanding urban areas who felt that the existing representation of industrial and commercial interests was grossly inadequate.<sup>33</sup>

Elements of a similar analysis can be found in the literature on the aspirations associated with Quebec separatism,<sup>34</sup> and to move closer to home, W. A. MacKay, President of Dalhousie University and former Dean of the Faculty of Law, has asserted the need for recognition of different groups in our society. He states that:

[T]here are perhaps more interpretations of Confederation than

---

31. It is, of course, possible to have a mixed system, as suggested by the Task Force on Canadian Unity, *supra*, n. 11. It proposed a mixed first-past-the-post, proportional representation system.

32. Published by the University of Toronto Press, 1964.

33. *Ibid.*, at 50. One might add mildly that such spokesmen had obviously not thought through the implications of their position.

34. For example, see Trudeau, "Federalism, Nationalism and Reason", in Crepeau and MacPherson, eds., *The Future of Canadian Federalism* (Toronto: University of Toronto Press, 1965).

. . . that of a unitary state and that of a union of two peoples with distinct cultures . . . [T]here is nothing sacrosanct about equality of status for constituent units with a federation . . . After all we have never really had a federation of equals, either in the ethnic grouping of peoples in this land or among the provinces and yet our constitution . . . has thus far failed to take full account of inequalities. Neither the French fact nor the non-French fact should be ignored in our constitution. Nor should other differences be ignored . . .<sup>35</sup>

Full-blown analysis of what has been called the “mirror” theory of representation can be found in the American literature, and thorough linguistic analysis can be found in Pitkin, *The Concept of Representation*.<sup>36</sup> She states the following, by way of introduction:

Other writers require that the legislature be a “mirror” of the nation or of public opinion . . . Representative government, they tell us, means “accurate reflection” of the community, or of the general opinion of the nation, or of the variety of interests in society . . . Hence Sidney and Beatrice Webb judge the British House of Lords to be “the worst representative assembly ever created, in that it contains absolutely no members of the manual working class; none of the great class of shopkeepers, clerks and teachers; none of the half of all the citizens who are the female sex.”<sup>37</sup>

Not only is there discussion and abstract analysis of the theory in the United States, but there is also a certain amount of literature on its application. Such applications appeared both in the form of challenges in the courts to electoral systems and in the context of non-legislative bodies (either elected or non-elected), members of which are supposed to have a representative function.

To take the case law first, complex constitutional questions (which are, arguably, now relevant here) have arisen when legislatures have tried to establish voting districts along racial lines in order to increase the political power of racial minorities that have experienced discrimination. Such positive action has been regarded

---

35. *Ibid.*, at 171 and 172.

36. See the chapter entitled “‘Standing For’: Descriptive Representation”, in Pitkin, *The Concept of Representation* (University of California Press, 1967) at 60 *et seq.*

37. *Ibid.*, at 61.

as necessary because of the resultant alienation of powerless groups which have come to be deeply cynical about the political system.<sup>38</sup> In these cases, electoral statutes have been successfully challenged on the basis that they operate to dilute or cancel the voting strength of racial or political groups.<sup>39</sup> However, the position of the United States Supreme Court has been summed up as follows:

[It] recognizes the constitutional right of each individual to participate on an equal basis in the community's political process and to enjoy an undiluted vote [but] denies any constitutional right of groups to proportional political representation.<sup>40</sup>

Hence, the United States has reached the point of recognizing a right to equal access to the process, but has not recognized a constitutional right to be represented. While useful analogies with the American attempt to ensure that the voting power of blacks is not diluted can be drawn,<sup>41</sup> such an analysis does not go far enough. This is so for the following reasons:

1. No theory that certain groups ought to be represented has been accepted by the courts.
2. The constitutional issues in the United States are focussed on problems relating to communities, such as blacks and Mexican Americans, who sometimes cluster together, whereas women are spread much more evenly throughout the community.
3. The problem of non-legal barriers to political participation is not addressed.

Nevertheless, the very fact that the interests of groups are being thought about in the United States is of interest to us. Further evidence of this trend was apparent at the trial court level in the leading case of *Whitcomb v. Chavis*.<sup>42</sup> In this case, the judge found, on an empirical level, that blacks in a ghetto had distinctly different interests in terms of housing conditions, income and educational

---

38. One writer suggests that "neutral distinctions may not be effective because minority voters have come to believe that the political system will ignore their interests." Note, *Proportional Representation by Race. The Constitutionality of Benign Racial Redistricting* (1976) 74 Mich. L.R. 820 at 838.

39. For an enunciation of this test, see, for example, *Whitcomb v. Chavis* 403 U.S. 124 (1971).

40. Note, *supra*, n. 38 at 822.

41. Interestingly, the argument can go both ways, both for and against single member districts. Both systems of multi-member districts and systems of single-member constituencies can dilute the voting power of blacks. *Whitcomb v. Chavis*, *supra*, n. 39 at 156.

42. 305 F. Supp. 1364, at 1380.

levels, rates of employment and welfare assistance. Hence, they had "compelling interests in such legislative areas as urban renewal and rehabilitation, health care, employment training and opportunities, welfare . . . law enforcement, quality of education and anti-discrimination measures."<sup>43</sup>

The remainder of the American material deals with the application of the concept in certain contexts, for example, in urban politics or consumer representation. Greenstone and Peterson, in *Race and Authority in Urban Politics: Consumer Participation and the War on Poverty*,<sup>44</sup> provide an interesting example, although it is difficult to do them justice in summary. Their book discusses the Community Action Programs that were set up by the Office of Economic Opportunity in an attempt to further President Johnson's celebrated war on poverty. Since the Economic Opportunity Act required a degree of community participation,<sup>45</sup> research and analysis of that aspect is relevant to the topic of this paper.

Greenstone and Peterson discuss the justification for community participation in terms of "political poverty", as follows:

The poor . . . lack such political resources as stable financing, social prestige and easy access to decision-makers. Generally, they were known for low voter turnout . . . and for the relative ease with which their vote could be "controlled" by strong party organizations. Most important, the poor had few autonomous organizations which could articulate their collective demands and recognize their electoral influence . . . In sum, poverty had a *political* as well as an economic dimension.<sup>46</sup>

In other words, the "poor" were treated as a separate constituency in an attempt to redress their lack of power. One can readily think of bodies, both elected and non-elected, to which separate constituencies send representatives, presumably in order to ensure that vital interests are not ignored. This is a fairly common practice on tribunals and boards, such as labour relations boards,<sup>47</sup> and is an

---

43. *Ibid.*

44. University of Chicago Press, 1973, ch. 6.

45. U.S. Congress, *An Act to Mobilize the Human and Financial Resources of the Nation to Combat Poverty in the United States*, Public Law 88-452, 88th Cong., 2nd Sess., 1964, at 9. See also Cahn and Cahn, *The War on Poverty: A Civilian Perspective* (1964), 73 Yale L.J. 1317.

46. *Supra*, n. 44, at 4.

47. Weiler, *The Administrative Tribunal: A View From the Inside* (1976), 26 University of Toronto L.J. 193.



obvious possibility when one thinks, for example, of a process for the appointment of judges.<sup>48</sup>

#### IV. *Some Possible Problems*

A system of separate male and female constituencies might attract the criticism that it has the potential of producing the election of dogmatic and doctrinaire members who would not join in the normal political process of negotiation and compromise. Several responses can be made to this. First, the present appearance of consensus, if such exists, occurs at the cost of simply ignoring significant interests in our society. There is no reason to suppose that the advocates of these interests would be any less willing to compromise than present representatives. What might be achieved is what could more accurately be called compromise. Second, the argument is not based on the assumption that all women share the same views, never mind holding them in a doctrinaire fashion. Rather, I assume that women, like men, have a wide range of political views. The interests that women share have arisen because sexual differences have historically been treated by men as being highly significant. Surely the political process would work very much as it does now, with a high premium being placed on the ability to be effective and to work with other groups in order to achieve this. Does anyone now suggest that unions should be discarded because they engage in confrontation? To the contrary, unions are necessary because certain groups need to be confronted in order to create a balance of power. Of course, it would be better if different interests could be balanced without confrontation, but the process normally leads to compromise.

A related criticism might hold that if our interests are so profoundly divided that representation of particular groups has to be guaranteed in the Constitution, then such representation will increase sexual and other forms of animosity. My response to this point is simply that I hope that maximizing the chances of

---

48. "In February, 1977, President Carter set up a Commission to recommend candidates for appointment to the United States Courts of Appeal . . . Each panel . . . 'shall include members of both sexes, members of minority groups and approximately equal numbers of lawyers and non-lawyers.' " See Deschenes, "On the Selection of Judges," in his book of essays entitled *The Sword and the Scales* (Toronto: Butterworths, 1979) at 209.

representation of all groups would decrease animosity, since it would provide a channel for the effective removal of grievances.<sup>49</sup>

### V. *The Identification of Constituencies*

If it is accepted that it is unsatisfactory to leave significant interests unrepresented in our legislative bodies, then the main issue that arises is the problem of identifying interests that are relevant. The issue that has to be confronted is stated concisely by Marone and Marmor in the consumer context:

Establishing representative institutions requires fundamental choices. Decisions must be made about the selection of representatives, what those representatives should be like, and the expectations that should govern their behaviour. Whom to represent — the constituencies — is a central puzzle where geographic representation is abandoned.<sup>50</sup>

In any society, the response to this “central puzzle” will reflect its commitment to certain basic values (which is why I think the choice is appropriately stated in a constitution). In addition, it will indicate what a particular society wants to achieve through its laws — for example, sexual equality, the eradication of poverty, and respect for minority rights.

While it is helpful to have an issue clearly stated, an answer to this puzzle is not readily forthcoming, a problem which constitutes a major stumbling block for writers in this area.<sup>51</sup> I have suggested a general test of de facto unenfranchisement, but that merely provides another way of presenting the same question. The crucial step is that of identifying factors which could legitimately lead to a conclusion that one could label using that terminology.

The assumption on which the concept is based is that a vote per se does not successfully enfranchise. Successful enfranchisement entails that one be able to exercise the right to vote in a system and a

---

49. It is argued thus, in Note, *Compensatory Racial Reapportionment* (1972) 25 Stanford L.R. 84, that “benign segregation” on racial lines would help focus attention on minority problems, make the legislature more responsive, and thus decrease racial animosity.

50. *Representing Consumer Interests: The Case of American Health Planning* (1981) 91 (No. 3) *Ethics* 431, at 434.

51. *Ibid.*, at 437. “Mirror views provide few guidelines for selecting which social characteristics merit representation.” Weale, *Representation, Individualism, and Collectivism* (1981) 91 (No. 3) *Ethics*, 457, at 464. “Clearly an important problem in a collectivist theory of representation is determining which groups are to be represented.”

setting which are not weighted, in a discriminatory way, against the possibility of the vote being effective in electing a representative who will protect one's interests. The interests of a group which is de facto unenfranchised will inevitably be subordinated to the interests of other groups. At the very best, such a group will be infantilised and dependent on the good will of the enfranchised. What factors, then, go to a determination of de facto unenfranchisement? It is suggested that at least a start can be made in the direction of resolving this issue.

Analogies may be drawn with factors which seem to make sense when we are thinking about the boundaries of a state. As I have suggested earlier, there may be a compromise between complete separatism and complete submission into political units, dominated (for whatever reason) by another group. We know that it is impossible to come up with a logical answer to questions about national boundaries and there seem to be some that we can only observe, rather than rationally defend. These are natural boundaries, such as rivers and mountains, linguistic differences, differences in history, and direct communication from the Holy Ghost.<sup>52</sup> In fact, there may be a variety of reasons why a fragile national consensus exists:

The formation of such a consensus is a mysterious process which takes in many elements, such as language, communication, association, geographical proximity, tribal origins, common interests and history, external pressures, and even foreign intervention, none of which, however, is a determinant by itself. A consensus can be said to exist when no group within the nation feels that the vital interests and particular characteristics could be better preserved by withdrawing from the nation than by remaining within.<sup>53</sup>

One can easily apply this concept to Northern Ireland, which provides a useful example as two distinct groups live there and a simple redrawing of state boundaries would not satisfy either. Given an assumption of the continuation of the state (a big assumption with respect to Northern Ireland, but an obvious one with respect to states, in general, in which men and women both live), some constitutional method has to be found by which respect for the element of sexual diversity can be displayed.

---

52. Trudeau, *supra*, n. 34, at 19 and 20.

53. *Ibid.*, at 22.

With respect to women, while it can be established, as I hope I have already done, that a distinct group exists, a test of whether the group “feels” that it would be better off if it separated from the larger group is not appropriate, given the reality of the way men and women share their lives and, no doubt, will continue to. I would suggest, instead, that we attempt to work with some kind of objective test. Such a test would determine whether or not the vital interests and characteristics of the group would be better preserved by a system which *ensured* the presence of some of its members in legislative bodies. The alternative would be for the more powerful group simply to exploit the fact that separatism, in its traditional form, is not a viable option for the less powerful group. An objective test takes us back to the empirical results of our existing system. With those results in mind, and with some assistance from American electoral law,<sup>54</sup> it seems possible to suggest some factors which are relevant to a determination of *de facto* disenfranchisement:

1. a history of social, economic, and political discrimination against the affected group;
2. a consistent inability and/or unwillingness of members of the group to gain election;
3. evidence of sexual voting — that is, men voting for male candidates because of their sex — and of political organization along sexual lines;
4. sexist campaign tactics;
5. minimal chances of influencing elections.

Although these factors are phrased in terms of sexual differences, it is suggested that they could be adapted for use by other groups. However, this is not to reject the argument that the male/female distinction is fundamental and that the position of women is, in many respects, unique. No other group enjoys the distinction of being a disadvantaged majority. Thus, evidence pointing to the exclusion and alienation of such a group has a very special significance in the context of electoral reform.

## VI. *Conclusion*

In summary, it is argued that some form of separate representation of women should be considered for inclusion in our electoral system. This argument is based on the factual evidence that men

---

54. *White v. Regester* 412 U.S. 755 (1973).

have been unable or unwilling to represent the interests of women, and that women seem unable or unwilling to participate in the political system as it is presently constituted. As long as members of one group are obliged by another group to have a relatively narrow range of choices — that is, to have less power to *do* — then it can be argued that their distinctive separateness, *inherent in their disadvantaged status*, must be recognized and addressed in our system if we want to make any significant changes. Therefore, it is proposed that a form of benign segregation is worthwhile considering, at least on a temporary basis, in order to ensure representation of women by women and, I hope, in the interests of women.<sup>55</sup>

---

55. It is not just the results of mirror representation that justify it. The process itself may have advantages. Weale, *supra*, n. 51, at 464, argues that people “may well value the knowledge that someone who shares a prominent characteristic with them (for example, race, sex or age) participates in the making of certain decisions.” At the very least, the fact that a representative shares some basic characteristic is “knowable”. This is an advantage, since in our present system, it is often difficult to know if a decision is against one’s interest or not.