

Government Orders

and I think he is correct in that, but partly also, in comparison with other countries because our Constitution supplies almost nothing in the way of motor principles to guide the electoral commission.

If we look at the United States constitution there are detailed and specific provisions as to elections, as to the electoral processes, supplemented by those great amendments 13, 14 and 15, the post-civil war ones which give very clear directives that were not in the first years fully observed and a succession of amendments right up to the present day.

The third factor of course is that the United States supreme court in relationship to congress, to the legislature, and to the state legislatures which under the American constitution actually make the allocations, has developed some 100 or so cases establishing the limiting parameters of electoral distribution.

We have virtually no jurisprudence at all from our Supreme Court for two reasons. The court has viewed these as political questions beyond its technical competence and, second, we have not had that litigation orientation that is present in the United States and which explains the fact that the Americans much more than Canada have taken note of changes in electoral sociology.

Electoral laws no more than other laws are not graven on stone tablets fixed once and for all for all time. They have to change as a society evolves. If we look at the Canada of 1964, not simply in its population distribution but in terms of effective participation in the political processes by interest groups, ethnic groups and other communities it is a quite different Canada. Yet the electoral law unlike the law of the United States does not reflect this. I think this is a pity. There has been a certain vacuum or lagging in our development not merely in comparison to the United States but in relation to countries like Germany, Japan and India which to a considerable extent have tried to follow American jurisprudence.

I made a study for the Canadian Institute for the Administration of Justice which as members know is a professional group bringing together the chief justices and judges of Canada. I made an address in 1989 which is available in which I compared American, German, Japanese, Indian and other modern democratic countries and Canada. The conclusion was we badly needed updating constitutional electoral principles. We needed to restructure. I think it should have come 10 years ago. In a sense we are approaching it today.

My own feeling as an electoral commissioner was that we were guided by the past. I think one very obvious principle is that a commissioner is not a philosopher king. He or she is not

God. One has to respect the expectations of the people to whom the member is addressing his report.

We have 205 new members in this House. I would have thought that it goes beyond the prudent bounds of an electoral commission as it is presently constituted under the present law to change the ridings in a dramatic revolutionary fashion.

We assumed in 1980 to 1984 when I served that change should be incremental and that revolutionary changes should be suggested for the future for an incremental process. I worry when my Newfoundland colleagues tell me that although Newfoundland has hardly changed demographically since the last election all the seats have been redistributed. Why? What is the rationale for it?

If we look across the electoral commissions we will find that some of them have a clear philosophy.

• (1300)

It is very evident in the way the distributions occurred. Some are moved by concepts of affirmative action that one finds in United States Supreme Court jurisprudence. Others are more traditional. These are both legitimate considerations but it is a matter on which civil servants, as such, and casually appointed commissioners with the best of intentions and the best of qualifications, should not be making decisions. These are issues of constituent power that is superior even to the Constitution itself. It is time that Parliament expressed itself and established the principles.

In my seat of Vancouver Quadra, by accident or by deliberate design over 30 years we have a constituency that represents 22 different ethnic communities. It is one of the rich experiences of my life to make the acquaintance of all such groups and to build an electoral consensus, which means building an intellectual and philosophical consensus among the groups.

Under the proposed redistribution, that multiplicity of representation of communities disappears. The philosophy seems to be to produce integral constituencies. That again is an approach that can be justified philosophically, but I do not think it should be made by commissioners in the interstices of what purports to be a simple administrative inquiry and distribution according to statistics.

It needs debate in Parliament. I would like to see the structured system that I have spoken of in terms of the United States where constitutional law is not made by any one actor alone, but as Jeremy Bentham said, it is made by the constitutional company.

The greatness of the American system is that Congress, the legislature, the administrators and the courts work together and that is the objective we should be aiming at.