

Proportional Representation for Canada?

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I. INTRODUCTION

OUR CURRENT SYSTEM FOR CHOOSING our legislatures is fundamentally defective. The percentage of votes a party gets is often vastly different from the percentage of seats that party claims, post-election. A party with a large share of the popular vote can end up winning few seats in the legislature, or none at all. Another party can win less than forty percent of the vote and wind up with a massive legislative majority.

Almost all democracies, apart from Canada, now incorporate some element of proportional representation (“PR”)¹ into their systems. A system is fully consistent with PR principles if a party that wins X percentage of the popular vote also wins X percentage of the seats.

This article proposes a remedy. It aims to be easy to understand, simple in its operation, and politically sellable. The objective is to keep the best aspects of the current system while introducing a reasonable dimension of proportionality.

The proposal here—let us call it the “20% Solution”—would be for Canada to adopt a hybrid electoral system. We should keep constituency representatives, but set aside a relatively modest number of legislative seats, say 20 percent in addition to ordinary seats, to be used in a manner that promotes the principles of proportional representation.

The formula for selecting these PR members would be compensatory. A party that wins far less than its fair proportion of seats through the first-past-the-post system would be entitled to some of these extra seats.

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¹ Proportionate representation (“PR”), is an electoral system where each party elects a number of representatives proportional to the number of votes cast for it. For example, if party X receives 62 percent of all votes cast, under a system of PR, they would occupy 62 percent of the seats in the legislature.

The proposal just made is broadly consistent, albeit somewhat simpler, with the reforms proposed in the 1998 Jenkins Report², a report on reforming the “mother Parliament”, that of the United Kingdom. The principle of allocating PR seats on a compensatory basis is already in use in a variety of countries, including New Zealand and Germany.

The suggested proposal keeps in place a salutary aspect of our current system: that each riding should have a member who is familiar with local concerns and responsible to a local electorate. The “20% Solution” would not require Canadians to embrace a radically new system. Instead, it proceeds by limited modification to deliver a result that is fairer to minority parties and the voters they represent.

The proposal would not require a massive bloating of the size of legislatures, with all the attendant expense and dilution of the voice of individual members. It could be implemented without increasing the size of legislatures at all. The number of current ridings could be reduced slightly at the same time as the compensatory seats are created. Even if the PR seats were instead added to the current number of seats, the overall size of the legislature would not increase radically.³

II. CREATING A MORE JUST ELECTORAL SYSTEM:

VARIABLES TO CONSIDER

IT CAN BE ADMITTED AT THE OUTSET that there is no such thing as the uncontroversially best electoral system. Even in a two party race, there are many reasonable options compatible with democratic principles.

How often should the vote be held? Installing governments in power for only a short time maximizes their sensitivity to voter preference. Allowing longer terms of office gives a government a chance to adopt some unpopular measures in the hope that their virtue will become manifest in time, or at least appreciated in the context of the government’s overall record.

Should representation be based on the number of geographical areas a candidate wins (*i.e.*, the electoral college system in the United States) or strictly

² U.K., H.C., Secretary of State for the Home Department, *The Report of the Independent Commission on the Voting System* Vols. I, II (1998) (Chairman: Lord Jenkins of Hillhead) [hereinafter *Independent Commission*] online: The Stationary Office <<http://www.official-documents.co.uk/documentcm40/40>> (date accessed: 1 September 2001).

³ Currently, there are 301 seats in the House of Commons. A 20 percent increase in seats would represent an additional 60 seats. The number of members at the federal level is arguably too large already; here especially it would be desirable to actually maintain the current size, rather than adding extra seats. That is, there could be a 301 seat House, of which 60 seats are PR.

on the basis of head counting, on a system-wide basis? The former encourages a candidate to adopt a profile and program that has broad geographical appeal. The latter may be seen as more fairly reflecting the political equality of every citizen.

Should voters cast only one ballot, or should they be able to vote separately for the head of government and for a local constituency representative? Israel recently adopted a system whereby voters ballot separately for the Prime Minister and for representation in the Knesset.

It can be expensive and tedious, for both the candidates and electorate, to conduct an exercise with several rounds. But there are advantages to elections with more than one round. In some one-round systems, the winner may receive 30 percent of the vote but be detested by a majority of the electorate. Vote splitting among other candidates can turn a pariah into a champion.

Party leaderships in Canada are often determined through successive rounds of balloting until a majority winner emerges. After each round, the last-placed candidate is dropped from further consideration. The multi-round system means that the ultimate winner is, at the very least, not the most widely detested candidate in the field. The ultimate winner also tends to look more legitimate, because he or she has won a majority of votes on at least one ballot—the final one.

Some commentators have characterized elections as competitive events, where parties compete in the marketplace of ideas. Losers are chided to re-design or re-package themselves, or their party, into a sellable commodity. This naïve response misses the mathematical conundrum of multi-candidate political races.

Once there are more than two candidates up for balloting, the problem of crafting a system becomes much more difficult. It was recognized by the French politician, Condorcet, two centuries ago, that in a three-way race there might be no such thing as an uncontroversial winner.⁴ Candidate A might lose in a direct contest with B and in a direct contest with C, yet win when all three are on a ballot together. The result of an election may depend on the order in which two-way contests are staged, *i.e.*, whether there is a system of electoral primaries before the final showdown is held.

In Canada, many constituency races of late have included at least four viable candidates. A candidate can win at the local level with about a quarter of the overall vote, and her party can win a national majority government with even less of the vote. In a four-party race, a party can win office with 25 percent plus

⁴ The fact that no system can guarantee a true representation of all voters' preferences was proven mathematically, in the 1950s by Nobel Prize winner, Kenneth Arrow. The proof of his "impossibility-theorem" was published in his 1951 book, *Social Choice and Individual Values*, online: Villanova University <http://www.csc.vill_edu/faculty/bartlow/html/mat1220/arrowthm.html> (date accessed: 15 September 2001).

one vote, in 50 percent plus one of the constituencies. In other words, less than 13 percent of the vote can theoretically produce a majority government. In the Canadian system, majority status give governments a vice-grip hold on the agenda it wants, regardless of what the opposition thinks or says.

In practice, provincial and federal governments in Canada can and do win legislative majorities with around 40 percent of the popular vote. At the same time, parties can win twenty per cent of the vote, and wind up with a tiny fraction of the legislative assembly.⁵

Parties that can pile up pluralities⁶ in particular geographical areas are rewarded; those that seek to appeal to Canadians across the country can find that they have much support and almost no seats in Parliament.

Historically, important minorities in specific geographic areas have been grossly under-represented. The Liberal party often wins a large share of the vote in Western Canada, but few seats. The Progressive Conservative party has often suffered the same frustration in the province of Quebec.⁷

A system with some PR elements would by no means solve all that ails the Canadian political system. The current system of cabinet government, party discipline, and an upper house that lacks credibility, means a party with majority support can wield almost absolute power for up to five years.

The governing party is controlled by the prime minister, who doles out ministerial positions and can reward or punish backbenchers in various ways. The ability of opposition members of the House of Commons to act as a check on the governing party is sometimes risible. The opposition may ask probing questions. But, the governing party can, and sometimes does, respond by ignoring the actual query, by repeating their substantive message of the day or by offering a scripted quip. The opposition party can try to stall legislation by procedural

⁵ For example, in P.E.I.'s 2000 general election, only one member of the opposition was elected to the P.E.I. legislature, in spite of opposing parties receiving 42 percent of the popular vote. On 27 April 2001, a committee of the P.E.I. legislature tabled a report recommending that P.E.I. study the use of PR. Online: Fair Vote Canada, Newsletter 9 May 2001 <<http://www.fairvotecanada.org/fairvote/eng/pubs/enter.shtml>> (date accessed: 5 September 2001).

⁶ A plurality refers to the largest number of votes, regardless of whether it is a majority. In Canada, election rules specify that a candidate can win an election even if they only receive a plurality. Other electoral systems demand candidates achieve a simple majority before they are declared elected.

⁷ See Appendix 1 for clarification of the percentage of popular vote, by region. The "Existing Distribution" column shows votes cast and seats won, by province, for all federal elections since 1968.

means, but the majority party has many weapons, such as cloture⁸, to put an end to such manoeuvres.

Even with a move to a hybrid-PR electoral system, parliamentary reform remains desirable. Under the system proposed here, majority governments would still frequently be elected, and the possibility of near-total dominance by the first minister and a few close colleagues would remain. It would be desirable to loosen party discipline and provide a greater role for legislative committees on policy formation. The Senate could be reformed so that it is elected, provides some extra representation for smaller provinces, and can be moderately effective in influencing Bills.

The executive branch is where true power resides in our system. Although PR does not guarantee that opposing parties will be offered cabinet appointments, it can create the possibility, particularly if minority governments seek coalition-style governance.

To the extent that PR produces more minority and narrow-majority governments—and history suggests that it does—governments become less arrogant and more accountable. A minority government cannot secure passage of a bill without having one or another opposition party support it. It must also be afraid of losing a non-confidence vote or being ousted from office in the next election. A government with a narrow majority will take opposition parties more seriously because of the prospect of being reduced to minority or opposition status in the next election.

A system with some PR elements would still have value in situations where the governing party has a fairly secure majority. The governing party would have more representation in weaker areas. The Liberal Party of Canada, even while wielding a sizeable majority at the national level, has often been short of elected politicians from Western Canada. The governing party's benches would be strengthened by voices that are similarly under-heard in our first-past-the-post system.

More broadly representative opposition members may effectively influence public policy. A larger talent pool, and a more representative one, may produce criticism that is better informed and more searching. It may also enhance the credibility of one or more opposition party as a government-in-waiting.

III. DYSFUNCTIONAL ASPECTS OF OUR CURRENT SYSTEM

THE UNFAIRNESS OF OUR CURRENT SYSTEM has produced many specific problems.

⁸ Cloture is the procedure used in deliberative assemblies to close debate. It is generally affected by moving the previous question, as per Roberts Rules of Order §§ 20, 58a.

Voter turn out is low. Why should people bother to show up and vote if they are among the majority of voters whose ballot does not produce any effective result? If you vote in a riding, and your candidate loses, your vote has no positive impact. If you vote in a riding and your candidate wins, but joins the ranks of the impotent opposition, what have you accomplished?

Regional blocs have emerged. The Alliance has a base in Western Canada; the Bloc Quebecois exists in Quebec. It is not necessarily objectionable that some regionally-oriented parties have emerged. It is deplorable, however, that right now there is only one caucus, that of the Liberals, that is enriched by members from all regions of Canada. The first-past-the-post system tends to preclude a party from becoming genuinely national; a party can win 20 percent or 30 percent of the vote in a province and still wind up with no representation at all.

Elections Canada's own documents show consistent inequity in representation results over the years and yet, no reasonable justification or alternative process options are offered by political leaders.⁹ Many commentators agree the time for change from single-member-plurality/first-past-the-post ("SMP/FPP")¹⁰ has come and that some form of proportional representation should be a part of any new system adopted in Canada.

Dr. Heather MacIvor was commissioned by Elections Canada to write a paper comparing our SMP/FPP system to other electoral models. She summarizes "representative democracy" as it exists today in Canada:

It faces serious problems: declining voter turnout, increasing voter discontent with the representative institutions; the under-representation of women and minorities in the House of Commons; distorted and often capricious election results; growing regional divisiveness, now expressing itself in five Parliamentary blocs representing the different regions of Canada; and for the foreseeable future, one-party dominance with no alternative national government.¹¹

Dr. MacIvor acknowledges that these electoral problems are not borne of a single cause but, along with most critics of our current system, agrees that our SMP/FPP system is a contributing factor.

The statistics from recent elections show flagrant anomalies. Following the November 2000 federal election, the Liberals won a majority of the seats in the

⁹ See Electoral Law & Policy, Past Elections, and Publications, online: Elections Canada <<http://www.elections.ca/home.asp?textonly=false>> (date accessed: 19 July 2001).

¹⁰ The current electoral system in Canada: the country is divided into single-member constituencies; the voters choose one of the candidates on the ballot. The candidate with more votes than any other wins the seat, hence the phrase "first-past-the-post."

¹¹ Dr. H. MacIvor, "Proportional and Semi-Proportional Electoral Systems: Their Potential Effects on Canadian Politics" (Presented to the Advisory Committee of Registered Political Parties, Elections Canada, Ottawa, Ontario 23 April 1999) at 2.

House of Commons (57 percent) with a minority of the popular vote (40.8 percent). They now hold unchallenged and, for the most part, unaccountable power for the next four years or so.¹² Based on a purely proportional model, the Commons seat allocation would currently be:

Liberals 123	(instead of 173)
Alliance 77	(instead of 66)
Conservatives 37	(instead of 12)
NDP 26	(instead of 13)
Others 6	(instead of 0) ¹³

In 1997, it was much the same scenario. The Liberals secured only 38 percent of the popular vote. This gave them the smallest mandate in Canadian history for a majority government.¹⁴ This election result also resulted in a single province (Ontario) dominating the governing party caucus. Ontario Liberals accounted for 65 percent of the caucus.

The steady decline in voter turnout continued its downward spiral during the 2000 federal election. The number of eligible voters who have come out to cast ballots has consistently dropped over the last four elections: 75 percent in 1988, 69.6 percent in 1993, 67 percent in 1997, and most recently 62.8 percent in 2000.¹⁵

On the provincial front, Lucien Bouchard became premier of Quebec with an overwhelming legislative majority, even though in reality the Parti Quebecois received fewer votes than the Liberals. "In Ontario, Mike Harris continues to enjoy a majority government despite the fact that 56 percent of Ontario voters cast ballots *against* him last year."¹⁶

When one analyses the "threshold of election," the number of valid votes required to elect a member to the House of Commons, the scope of the problem is revealed. In reference to the 2000 federal election, the parties' votes-per-seat-won ratios were vastly different:

Liberal	30 184 votes/seat won
Progressive Conservative	130 582 votes/seat won
NDP	84 134 votes/ seat won

¹² J. Rebeck and W. Robinson, "We vote to scrap the system" *The Globe and Mail* (29 November 2000) online: Fair Vote Canada <<http://www.fairvotecanada.org/fairvote/eng/pubs/docs/wevote.html>> (date accessed: 5 September 2001).

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*

The distortions created by our current system are also evident when examining regional representation generated by the last federal election. For example, the Canadian Alliance received about 1.9 million votes across the four Western provinces for 64 of their 66 seats. The Liberals received about 950 000 votes in the four Western provinces but elected only one-fifth as many seats.

Possibly the most striking example of the distortions Canada's first-past-the-post electoral system can create happened in Ontario:

Alliance	1 051 209 votes—2 seats won
Liberal	2 292 075 votes—100 seats won.

Alliance received about one million votes in Ontario in the 2000 federal election for which they received only two seats. In contrast, the Liberals secured 100 seats with about 2.3 million votes.

The current system does have the virtue of ensuring that every riding has an elected member who should be familiar with local conditions and aspirations, and who is accountable to a local electorate. But that relationship can also be part of a hybrid system in which some members are chosen in a manner that promotes proportional representation. Members, elected to PR seats, could concentrate on broader policy issues, as they would not be distracted by local responsibilities.

The current system does tend to produce majority governments. Under the kind of hybrid system proposed—20 percent of seats chosen on the basis of PR—majority governments would still emerge fairly often.¹⁷ There would be more minority governments, and more majority governments whose margin of majority is thin. That would be a positive development. The majority governments we have are almost always false majorities; they are often not backed up by anything even approaching a majority of the popular vote. Governments with comfortable majorities are able, and too often willing, to push through proposals without taking into account other views.

IV. MOTIVATION FOR CHANGE?

IT CAN SAFELY BE ASSUMED that few majority winners under the current system will wish to change the system that brought them to power.¹⁸ For current power-holders, reform will generally be seen as a threat. But one successful innovation

¹⁷ Statistically, over the last ten federal elections, two minority governments were elected. With the addition of 20 percent extra PR seats, calculated using the "Jenkins Formula," four of the remaining eight elections would have still resulted in a majority government.

¹⁸ Recently, on 29 March 2001, NDP electoral reform critic, Lorne Nystrom, introduced a private members Bill in the House of Commons calling for proportional representation.

anywhere in Canada might make it more difficult for governments in the rest of Canada to resist change.

Provincial and federal leaders in Canada are in constant competition over who “really” represents the people. If some provincial governments introduce PR, they could claim greater legitimacy in this respect than the leaders of an unreformed federal system. Parliament might have to adopt some form of PR in order to re-establish the balance.

One source of hope is the campaign promise of the newly elected government in British Columbia. It has promised to establish a task force to look at PR. Perhaps it feels it can afford to be magnanimous. With such a large majority, it is likely to be re-elected several times, regardless of whether some PR seats are added to the legislature. The leaders of a large majority may actually wish the opposition held a larger share of the seats. They may realize it is counterproductive not to hear a fair representation of their critics. Thoughtful criticism can improve performance, and ultimately, prospects for re-election. The near invisibility and inaudibility of elected critics does not obviate the fact that the electorate may be dissatisfied.

Many have argued, however, that the status quo is too beneficial for existing political parties in Canada to mount a direct challenge. Those with the most to gain from electoral reform are those who have no legitimate hope of ever winning seats under the current system.

There is another possible avenue for electoral reform: through judicial mandate. The Green Party of Canada, and its leader Joan Russow, are currently challenging the *Canada Elections Act*¹⁹ arguing that the system of how votes are counted, in the selection of members of Parliament, is unconstitutional.

Their suit filed in May 2001 in the Federal Court of Canada claims that the current electoral system violates the Charter of Rights. Russow cites ss. 2(1), 24(1) and 313 of the *Canada Election Act*, in particular, as denying her right to “effective representation”.²⁰ If the legislation authorizing our electoral system is found to be unconstitutional, the government will have no choice but to respond with a revised version of the electoral process which will grant more effective representation to the voters.

¹⁹ S.C. 2000, c.9.

²⁰ *Joan Russow v. The Attorney General of Canada*, factum for the applicant, filed with the Ontario Superior Court of Justice

Section 3 of the *Canadian Charter of Rights and Freedoms*²¹ guarantees the right to vote. The Supreme Court of Canada has interpreted the purpose of the right to vote as the right to “effective representation”. In the *Reference Re Provincial Electoral Boundaries (Sask.)*²² case. McLachlin, C.J.S.C., as she then was, states:

The purpose of the right to vote enshrined in s. 3 of the *Charter* is not equality in voting power per se, but the right to *effective representation*. Ours is a representative democracy. Each citizen is entitled to be represented in government. Representation comprehends the idea of having a voice in the deliberations of government as well as the idea of the right to bring one’s grievances and concerns to the attention of one’s government representative.²³ [Emphasis added]

In that case the court was faced with deviations in the number of voters registered in various urban and rural constituencies. The number of voters in the most populous riding was double that in the least populous riding. For example, an MLA from Saskatoon represented twice as many voters as the MLA from Athabasca, in the far North. This meant that a vote cast for a Liberal candidate in Saskatoon was only half as valuable as one cast in Athabasca.²⁴

In its judgment, the Court recognized that deviations could be justified where they promoted the overarching principle of guaranteeing effective representation for all Canadians. The preferential treatment of rural voters was therefore supported. The Court did state that a system which dilutes one citizen’s vote unduly as compared with another citizen’s vote runs the risk of providing inadequate representation to the citizen whose vote is diluted.

The disparity in voting power *between political parties* is analogous to the disparity of voting power between urban and rural constituencies, faced in the *Electoral Boundaries* case. In fact, electoral distortions, created by the principle of winner-takes-all, are often much larger than those at issue in Saskatchewan. For example, in the 2000 federal election a vote cast for the Progressive

²¹ *The Constitution Act, 1982*, Schedule B to Canada Act 1982 (U.K.) (hereinafter *Charter*). Section 3 of the *Charter* states: “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.”

²² *Reference Re Provincial Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158 [hereinafter *Electoral Boundaries*].

²³ *Ibid.*

²⁴ *Ibid.* at paras. 24, 27.

Conservatives was four times less valuable as a ballot marked for a Liberal candidate.²⁵

There appears to be a strong argument to this effect: the concept of having a “voice in the deliberations of government” is not fully satisfied by situations where voters do not see any reasonable proportionality between their ballots cast and the installation of elected representatives.

Although all voters in each riding are theoretically represented in the legislature, elected legislators may not be interchangeably effective at representing the views of their constituents. This is especially true when they hold divergent political philosophies

In 2001, voters’ interests are only partially represented in a geographically-driven electoral system. In fact, citizens and capital are fluid and respond quickly to shifts in regional economies. “Effective representation” today predominantly means ideological representation. Often individuals of similar political ideologies are widely dispersed throughout Canada.

Suppose that the Autumn party wins about 20 percent of the vote in a provincial election. The vote is spread quite evenly throughout the province, so no Autumn party legislators are elected anywhere. An Autumn party voter can justifiably conclude that there is no effective voice for his political views in the legislature. A local Spring Party member of the legislature might help that voter with administrative problems from time to time. But no one from his locality, and indeed no one in the legislature, will act as an effective voice of the views of the Autumn Party voter on policy issues. Autumn Party voters have every right to feel that they lack “effective representation.”

The *Canada Election Act* is also ripe for a court challenge based on section 15(1) of the *Charter*, the “Equality Rights” provision.²⁶ In the 1999 Supreme Court decision of *Law v. Canada (Minister of Employment and Immigration)*,²⁷ the Court identified the central purpose of the *Charter*’s guarantee of equal benefit and protection under the law: to prevent the violation of essential human dignity and freedom through the imposition of disadvantage, stereotyping, or *political* or social prejudice [emphasis added].²⁸

An argument could be made that the electoral status quo discriminates against minorities that are diffuse, rather than concentrated in particular

²⁵ The Conservatives received 130 583 votes for each seat in the House of Commons while the Liberals had only 30 535 votes per seat. See Appendix 1 for more details.

²⁶ Section 25(1) “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.”

²⁷ [1999] 1 S.C.R. 497.

²⁸ *Ibid.* at para 51.

geographic areas. It is easy for a group that is a major part of the demography of a riding to elect like-minded representatives. It is much more difficult to install such representatives if your group is only a small part of the electorate in any particular riding. Minorities such as Aboriginal peoples, gays or lesbians, or those with mental or physical handicaps, may find themselves in such a situation. So may minorities who have not yet been recognized as Charter protected, such as the unemployed.²⁹

Should the courts intervene, using the Charter, and insist that there must be at least some reforms in Canada in the direction of proportional representation?

There is a difference between saying a system could be better and concluding that it is so bad that it is unconstitutional. The latter requires a court to conclude that an arrangement is so defective that it is beyond the legitimate range of options for a democracy, and cannot be upheld under s. 1 of the *Charter* as justified in a free and democratic society.

Courts in Canada are reluctant to intervene in the electoral system—they should be. The choice of voting systems is a complex one; many practical and value judgments are involved. If the Court ultimately rules the current electoral laws are of no force or effect, because the status quo falls so drastically short of giving an effective voice to so many voters, change will be mandated. It will be left to Parliament or provincial assemblies to work out the details; the Court will confine itself to declaring that the status quo is unacceptable.

V. PROPORTIONAL REPRESENTATION ON THE WORLD STAGE

MOST POPULATED DEMOCRATIC COUNTRIES have chosen proportional representation for at least part of their parliamentary electoral system. France uses a modified version of first-past-the-post to elect members to their National Assembly. Candidates compete in 577 electoral districts. If no candidate receives more than 50 percent of votes cast, a run-off election is held, usually consisting of the top two or three candidates. In this second round of voting, the candidate with the most votes wins.

²⁹ The Supreme Court of Canada has adopted a catch phrase from United States case law; it has spoken of the vulnerability of “discrete and insular minorities.” Actually, in our system, a discrete and insular minority may have electoral advantages. The existence of areas in which one’s group forms a majority of the electorate means that officials will certainly be elected who espouse the interests of that group. The fact that a minority is discrete—easily identified—makes it easier to organize the group and for politicians to address its concerns. The most vulnerable groups in our system are often those who are spread out throughout the country, with few areas of heavy concentration, and who are not easily identified by themselves or others. Such groups might include gays and lesbians, the unemployed, or persons with disabilities. See B. Ackerman, “Beyond Carolene Products” (1985) 98 Harv. L. Rev. 713.

France also uses a second round when electing the president, if no candidate secures 50 percent of the votes on the initial ballot. The top two candidates meet in a run-off election, two weeks after the initial balloting process.³⁰ The president always has the support of at least half of the second-round voters.

The United States uses first-past-the-post to elect various federal officials, including congressmen, senators and presidents. But, the distortions that are produced are greatly mitigated by several factors.

First, contests are usually between two parties. When there is a third-party candidate, anomalous results do occur. Ralph Nader tipped the balance in favour of George W. Bush in the 2000 Presidential Election. Bush ended up winning with less popular vote than Gore; he would have certainly lost if Nader voters had to choose between Bush and Gore only. Secondly, power is distributed among the presidency, the House of Representatives and the Senate. A party that loses the presidency may still have a majority in one or the other of the deliberative chambers.

New Zealand has radically departed from the system Canada uses. It now elects about half of its members through proportional representation voting. The reforms were implemented nearly a decade ago. Prior to this, New Zealand was very similar to Canada in its political traditions.

The government held a national referendum in 1993 asking voters whether they should retain their Canadian-style system (SMP/FPP) or change to a mixed-member proportional (“MMP”) electoral system. “MMP won the referendum by 53.9 percent to 46.1 percent despite a multi-million dollar campaign against it.”³¹

Under the newly adopted system each person has two ballots, one for a local constituent and one for a party. The New Zealand version of PR gives each party seats in the House of Commons proportional to their share of the vote. Each citizen still has his or her own constituency MP. The constituency MPs are voted in by the first-past-the-post system. The percentage of seats due to a party is determined by the results of the second ballot. Once the elected constituencies are counted, the party’s seats are “topped-up” using supplied party lists to give them the correct percentage.

There is a floor of five percent popular support before a party receives any seats. The idea is to keep extremist parties out of the legislative assembly. In New Zealand, the ability of parties to place candidates on their list has resulted in an increase in the number of women and ethnic minorities who serve in the assembly. In New Zealand’s first MMP election, in 1996, a record number of

³⁰ Online: Gallaudet University, Washington DC <<http://facstaff.gallaudet.edu/david.penna/France.html>>.

³¹ Online: Electoral Reform Coalition <<http://www.mmp.org.nz/mmpfpp.html>> at 1.

Maori MPs (15) were elected, a number roughly proportional to Maoris' percentage of the population.³²

One criticism of the New Zealand system is that it has increased the size of the legislative assembly, from 90 to 120 seats. Another comment against the New Zealand reform, and sometimes held against PR systems generally, is that MMP electoral systems can give a relatively small party a disproportionate voice – especially if it participates in a coalition government. There are several factors, however, that can lessen this potential distortion. The leading party can try to rule by minority government, rather than forming a lasting coalition.

Canadian provincial legislatures occasionally have functioned this way after recording a minority government election result. As each new measure is brought to the legislative assembly, the minority government can assemble sufficient support for it from different quarters.

If a coalition government is formed, voters can recognize the situations in which the “tail is wagging the dog.” Specifically, in situations where the junior partner is obtaining disproportionate influence. The electorate may then punish both partners at the next election.

VI. ROAD TO REFORM IN THE UNITED KINGDOM

IN THE UNITED KINGDOM, a report to Parliament, delivered in 1999, recommended the introduction of some element of proportionate representation into the “mother of all Parliaments”.³³

Following the 2001 U.K. national election, calls for reform began again when Labour secured a massive majority in Parliament, elected by less than one in four electors. The turnout, at 59 percent, was the lowest since the 1918 election.³⁴ The Electoral Reform Society of the United Kingdom predicted, correctly, that safe seats would remain largely in the hands of their previous holders and that lower voter turnouts would occur in these ridings. No incentive existed for voters not supporting the strongest party to vote. A majority government took hold with the Labour party winning 63 percent of the seats with just 42 percent of the popular vote. The Conservatives won 25 percent of the seats on 33 percent of the votes, the Liberal Democrats 8 percent of the seats (19 percent of the

³² T. Arseneau “The representation of Women and Aboriginal Peoples under PR: Lessons learned from New Zealand” *Policy Options* (November 1997) at 11.

³³ *Independent Commission*, *supra* note 2.

³⁴ Electoral Reform Society, News Release “Election 2001 – A Failure of the System” (8 June 2001), online: <<http://www.electoral-reform.org.uk/sep/publications/presspercent20releases/electionanalysis.htm>> (date accessed: 16 June 2001).

votes) and other parties 4 percent of the seats (7 percent of the votes).³⁵ The results were similar in the U.K.'s 1997 election.

According to the Electoral Reform Society, the Labour Party failed to meet a promise to hold a referendum on the present SMP/FPP system after the 1997 election. The Labour government renewed its promise to review the existing electoral system for members of the House of Commons and they commissioned a report on the issue. The *Report of the Independent Commission on the Voting System* (Jenkins Report) was delivered on October 29, 1999. It advises some movement toward PR.

The Jenkins Report proposes that voters continue to choose a local riding MP. These MPs would continue to compose 80 to 85 percent of the House of Commons. The Report suggests riding members should be selected by having the voters rank candidates in order of preference.³⁶ A candidate might be *second* in first-place votes, but win the riding by amassing a large share of second place votes.

The Jenkins Report recommends a two part balloting system. The first part has been described above; the second part of the proposal involves the methodology of choosing PR members. Voters would indicate their preference for the PR seats for their region of the country. The second ballot would display parties, and individual candidates within that party. A voter could vote for either a party or an individual candidate. The formula for electing PR seats would take into account how many ordinary seats a party wins in a particular region. A party that wins only 20 percent of the vote for the ordinary seats might be first in line to receive a PR seat.

Of the thirty-six liberal democracies with at least two million people, only three remain—Canada, Jamaica and the US—that do not use a form of PR to elect an important representative body. Unless Canada acts, it will be in very lonely company.³⁷

³⁵ *Ibid.*

³⁶ This is known as an Alternative Vote (“AV”) electoral system. If no candidate gets over 50 percent of the vote the bottom candidate is eliminated and her votes are redistributed based on the second choice marked on those ballots. This process continues until one candidate has over 50 percent of the vote. This system is not without its detractors. Lord Alexander, dissenting from the Jenkins Report, UK, 1998, found the approach wholly illogical: “why should . . . only those who support the lower placed and less popular candidates get a second bite of the cherry?” as cited in *Policy Options* Vol. 22, No. 06 (July/August, 2001) at 44.

³⁷ H. Milner, “The Case for Proportional Representation” *Policy Options* (November 1997) at 9. Technically, the U.K. already uses PR to elect an important representative body, as it elects representatives to the European Union on a PR basis.

VI. THE “20% SOLUTION” AND ITS POTENTIAL BENEFITS

THE “20% SOLUTION”

Retain the current number of seats in our elected assemblies;

For 80 percent of the seats, continue to elect members of the usual first-past-the post basis, to serve as constituency members;

Elect 20 percent of our assemblies in a way that better reflects the principle of proportional representation;

Constituencies in the provinces would be grouped into regions;

At the federal level, the region would be a province. For each region, the system would compare the number of members elected by the first-past-the-post system with the number that arise from strict proportional representation.

Parties would be allotted PR seats in a region in a way that partially remedies the imbalance;

All parties would, before the election, provide ranked lists of who should obtain the PR seats if and when they become available;

No one could serve in a legislative assembly more than once in a career on the basis of a party list. No incumbent member could serve her next term in a PR seat.

No person could serve in cabinet unless they have been elected using the ordinary method

The “20% Solution” would keep local riding members as 80 percent of the legislative assemblies or of the federal House of Commons. Local riding members would continue to be elected using the first-past-the-post system. Canada already has an excessively large federal Parliament—there are 301 members of the House of Commons and 106 Senators representing 30 million people. That is about ten times the U.S. ratio of legislators to population.

The “20% Solution” would not adopt Jenkins Report proposal that voters rank candidates in order of preference. The addition of a 20 percent PR element to legislative assemblies would by itself require Canadians to accept and familiarize themselves with a major reform. Introducing ranked preference voting would slow down the actual balloting process, as voters cogitate over their third or fourth preference. With ranked preference systems, voters might be confused and vexed by the strategic possibilities of preference voting. Suppose I love candidate A, tolerate B and loathe C. A and B appear to be the candidates most likely to win. Do I give C my second place ballot in order to maximize A’s chances

of winning against B? Or do I rank B second, just to make sure that the loathsome C does not unexpectedly triumph?

The “20% Solution” would also refrain from adopting the Jenkins Report proposal that every ballot have two parts—one in which the voter selects a local candidate, another in which the voter can express a party preference.

The second ballot feature does have important virtues. Voters can add nuance in expressing their preferences. I might like a party, but dislike its local candidate. I might split my vote—vote for a local MP of one party stripe, and for a regional MP of another stripe—in order to signal my preference for a minority government. With the Jenkins proposal, I can with my second ballot indicate a preference for one PR member from my favourite party, rather than another. The party bosses cannot simply dictate their preferences as to which candidates will serve as PR members.

But the second ballot feature has some disadvantages. It is complicated. It may be hard to explain to many voters. Some may be puzzled and confused as to why a party can win the most votes in the second part of the ballot, and still elect the least number of extra members.

The proposal here, then, is for voters to make only one choice: for a riding representative. PR seats will be given based on the number of votes it takes to secure each seat in a region (votes per seat). The “Jenkins Formula” would be used to determine how many PR seats a party receives for a particular region.³⁸

A straight calculation of seats to each party’s percentage of vote secured would lessen regional representation of the governing party. But, it would take considerably more seats to bring in the same amount of proportionality. Under the “Jenkins Formula,” you can add considerably fewer seats to achieve more proportional votes-per-seat elected.

A severe lifetime limit on the number of times a person can serve in a legislative assembly as a PR member is suggested. These members of the House of Commons should be confined to serving a maximum of one term of office, as a list member. After serving a term, PR members of the House of Commons would be expected to find a constituency to represent. The business of having to deal with the unglamorous problems of ordinary people is one that every leader benefits from. Door-to-door campaigning may be daunting for many people, but it is can be a useful reality check.

³⁸ The Jenkins Formula takes the total votes for a party in a region (i.e. province) and divides the number of votes by the number of seats received plus one. Adding one avoids the possibility of dividing by zero when a party has received no seats in a given area. The resulting votes per seat ratios for each party are compared and the party with the most votes per seat is given the first PR seat. If additional PR seats are to be given the factors are re-calculated using the *new* votes per seat ratio and again, the party with the largest ratio is given the next seat. **The Jenkins Formula is: votes/seats elected + 1 = votes per seat ratio.**

The influence of the “party list” would be further reduced by the constraint that a member who is currently in the legislature by virtue of party designation could not hold a cabinet post. These conditions, together, would alleviate the free-ride perception of any potential party-list candidate.

There are benefits to the modest use of party lists proposed by the “20% solution”. Individuals new to politics can be brought in for a term of service as a member of the legislature. If they are interested in continuing, they will have a track record on which to campaign for re-election through the traditional process. A list of candidates is a statement of how the party sees itself and whom it represents. Failure to present a balanced party list might be politically damaging.

An electoral reform solution is sellable only if it is compatible within Canada’s existing legal framework. The legal implications for this proposed electoral reform are comparatively minor. On a provincial level, the power to amend the electoral system already exists under s. 45 of the *Constitution Act, 1982*. This proposal would not involve a profound constitutional upheaval by the introduction of political institutions foreign to and incompatible with the Canadian system. As this proposal does not seek to change the number of seats the present formula advocates, nor the formula of provincial seat allocation, the Constitution would not need amendment.³⁹

For an electoral change of this scope, it would be important to place the proposal before voters, as a whole, by way of a national referendum. The cycle of self-interest, an impediment to electoral reform, must be broken. A referendum on PR would allow Canadians to assert the democratic principle of the supremacy of the electorate. It is time for legitimate options to be discussed, debated, and ultimately voted on.

The proposed reform is more limited in scope than such efforts as New Zealand’s. Canadians may be more inclined to attempt a modest experience than a radical one. If the proposal here works successfully, consideration could be given to expanding the role of the PR principle in our election system.

And finally, the proposal would adopt a principle (proportional representation) that is in use in most democracies, and a method of implementing it (PR seats) that has wide use. Practical experience elsewhere could guide Canadians in adapting their current system.

³⁹ There would be a need to amend the *Canada Elections Act* and the *Electoral Boundaries Readjustment Act*, which define the workings of the first-past-the-post system and the alignment of boundaries, respectively.

What follows is a snapshot list of the key benefits the proposal offers over the existing electoral system:

The Benefits of the “20% Solution”

Increasing the fairness of results. Those who vote for parties that are greatly underrepresented on the first-past-the-post basis would achieve some real representation for their views in the legislature;

More parties would have elected members from all regions of a province in a provincial assembly, or all parts of Canada in the House of Commons. No longer would parties be practically shut out of regions where their support is substantial;

Most members of the legislature would continue to serve as constituency members. They would be knowledgeable about local concerns, and able to help citizens of all political stripes with administrative difficulties;

There would be fewer situations in which a party with modest support (perhaps forty per cent or less in the polls) could acquire a large legislative majority. If an assembly has only 20 percent PR seats, there will continue to be a fair number of majority governments. But those majorities will often be slimmer. The voice of a larger opposition and the fear of losing power at the next election will tend to make a government more honest and more attentive to a wide variety of opinions;

There would be a few more minority governments, but practical experience suggests that the latter often govern well;

There would be higher voter interest and turn out. Fewer voters would feel that their ballot is “wasted.” A vote for a party that loses locally can still help elect a PR member.

VII. HOW THE PROPOSAL WOULD HAVE AFFECTED PREVIOUS ELECTION RESULTS

I HAVE CONDUCTED A REVIEW of how the proposed system would have affected the outcomes of the previous ten elections to the House of Commons (Appendix 1).⁴⁰

⁴⁰ A basic assumption regarding voting habits was made in order to create the statistical analyses. The assumption was that ballots would have been cast in the same manner, which is probably not entirely correct.

Over the last 32 years, Canada's political landscape has shifted to include between three and five electable alternatives. The sample size was chosen to cover the pre and post emergence of two political parties, specifically the Bloc Québécois, the Reform/Alliance.

What is fundamentally important to note is that improvements in the votes-per-seat ratios are made regardless of the number of parties in the race.⁴¹ Also, the proposed system effectively improves proportional representation for various sizes of Parliament.⁴² This is critical because it proves that a reduction in the overall number of constituency seats, to accommodate a small portion of PR seats, would not skew the election results.⁴³

The charts in Appendix 1 show additions of PR seats in increments. The salient result is just how effective the extra PR seats are at improving seat/vote ratios, even at small numbers. Likewise, once 25 percent extra PR seats are added, the benefit of adding more PR seats becomes small.⁴⁴

The following chart shows how different percentages of additional PR seats would have affected the outcome of the 2000 federal election. As the numbers show, it would have taken the addition of 30 percent extra PR seats to shift the Liberal government into minority status.

⁴¹ The votes/seat ratios, calculated in Appendix 1, are a direct reflection of how close the percentage of popular vote is to the number of seats elected. As an example, the 1980 federal election saw Ontario elect members of three political parties as follows: Liberals 52 seats (31 614 votes/seat), PC 38 seats (36 421 votes/seat), NDP 5 seats (87 423 votes/seat). With the addition of 20 percent PR seats, all party's votes/seat ratios were within 8.6 percent of each other, a vast improvement of the 36 percent *actual* spread. In the 2000 federal election, Quebec's six parties saw a 45 percent differential in votes/seat. With the addition of 20 percent PR seats, that differential was reduced to 7 percent. As one can observe, a three or six party race benefits roughly equally from the addition of PR seats.

⁴² If one looks at the results from the 1968 electoral race, there were a total of 264 seats in the House of Commons. Over the last three decades, 37 seats have been added. An addition of 20% PR seats for a House of 264 members is as effective as the same addition for a House of 301 members. Ontario, in 1968, had 88 seats in the House of Commons. This number rose to 103 by 2001. The addition of 20 percent PR seats in 1968 would have improved the votes/seat ratio from an actual spread, between parties, of 35 percent to a reasonable difference of 6 percent. The closer the spread, the more proportional the results are.

⁴³ Certainly, the idea of proportional representation is more palatable to sitting members of the Legislature through the addition of seats.

⁴⁴ One could graph how added PR seats improve the proportionality of election results. The result would appear like a steep curve: a sharp incline, eventually levelling off as the percentage of PR seats came close to 100 percent.

NUMBER OF SEATS EACH PARTY WOULD HAVE WON BASED
ON ADDING PR SEATS IN 5% INCREMENTS

	Party seats won	5% PR	10%	PR 15%	PR 20%	PR 25%	PR 30% PR
Liberals	172	173	178	178	182	190	192*
P.C.	12	19	22	25	29	33	34
N.D.P.	13	14	18	19	21	25	25
Alliance	66	72	77	83	87	88	94
Bloc	38	38	38	38	38	38	40
Others	0	1	2	2	3	4	4

* minority government status.

Many majority governments would continue to be elected, with the inclusion of 20 percent PR seats. As previously noted, of the last ten federal elections, where eight majority governments were elected, only four of these elections would have resulted in a change to a minority government. Statistically, more than 50 percent extra PR seats would need to be added before it would be difficult to elect majority governments.

Similarly successful results can be found by applying additional PR seats to Manitoba's last nine election results. The adjusted composition of the legislative assembly in Manitoba can be found at Appendix 2.⁴⁵ Manitoba operates with 57 elected members. Because the number of seats is comparatively smaller, the analysis was done by adding PR seats in increments of 10 percent. Manitoba was divided into six different regions. For each additional 10 percent, each of the six regions gained an extra seat.

The Manitoba statistical analysis points to three key findings:

- 1) The number of candidates elected by third parties increases quickly (even at 10% PR seats),
- 2) The addition of even 10 percent PR seats drastically improves the votes per seat parity between parties. Mirroring the federal analysis, the maximum efficiency of additional PR seats is reached at about 20 percent,
- 3) Majority government status is more a factor in how close the seat count is to begin with rather than a function of adding more PR seats.

⁴⁵ Since 1969 opposition parties have had to get on average 2.4 times as many votes for each seats they received. Appendix 2 shows the results if Manitoba is divided into six regions (three in Winnipeg and three in the rest of Manitoba) and 12 PR seats are added. Of the seven majority governments since 1969, only three would remain.

VIII. CONCLUSION

THE PRINCIPLE OF PROPORTIONAL REPRESENTATION has been proposed in the past at both provincial and federal levels.

When the federal government launched the Charlottetown Accord round of constitutional talks, it proposed that the Canadian Senate might be elected, rather than appointed, and elected in accordance with PR principles.⁴⁶

In Manitoba, for a brief period in the mid 1950s, members of the Legislative Assembly elected to represent Winnipeg won seats on the basis of PR. Voters elected members for the city of Winnipeg by ranking candidates in order of preference.⁴⁷ Also in this province, a 1977 report of the Law Reform Commission of Manitoba recommended introducing major elements of proportional representation into the provincial system.

More recently, P.E.I. has started discussions on implementing some form of PR into their provincial electoral system. B.C. is close behind, determined to review PR as a method of achieving more effective representation for the B.C. electorate. The issue now is: what are the rest of the provinces prepared to do, and what will be the federal response to provincial electoral reforms?

The proposal outlined offers both effective representation and significant security, by minimizing the changes required. “The 20% Solution” would allow parties to flourish that have national appeal, but suffer from being too regionally dispersed. Existing parties would not need to seek makeshift solutions such as limiting the number of ridings they post candidates in, in order to stop vote-splitting. Existing parties would be able to add exceptional leaders to their teams, through PR membership, who would not otherwise join the political process.

Canadians should be demanding change. There is a strong case for the courts to join in that insistence. Canada is now one of the few remaining democracies that does not use an element of PR in selecting at least one of its deliberative chambers. The countries most comparable to us in their legislative traditions—including Australia, New Zealand, and the United Kingdom—have already adopted PR in some form, or appear poised to do so. We can design distinctly Canadian forms of PR that preserve what is best in our tradition and respond to our current political needs. The “20% Solution” shows it is possible to improve the fairness of our electoral system without changing its core principle of geographical, constituency representation. It is long overdue that we do so.

⁴⁶ B. Schwartz, *Opting In: Improving the 1992 Federal Constitutional Proposal* (Hull, Que.: Voyageur Publ., 1992).

⁴⁷ Manitoba, “Report of the Chief Electoral Officer Pursuant to Section 142(2) of *The Elections Act* on the Thirty-Seventh Provincial General Election September 21, 1999” *Statement of Votes for the 37th Provincial General Election* at 204.