

# Bound to Fail? Electoral System Reform in Canada

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This millennium's first decade witnessed numerous attempts, in Ottawa and in no less than five provinces, including the largest three, to modify Canada's electoral system so as to make it proportional. Political parties promised to explore the issue and sometimes to take action. Royal commissions, government bodies or citizens' assemblies were empowered to hold public hearings and to elaborate detailed proposals, and no less than four provincial referendums were held, including two in a single province. Some provinces tried to be in the vanguard of open and deliberative democracy by imagining original procedures to engage citizens in order to increase the likelihood of success. Many political scientists were involved in one way or the other in these processes.

However attractive they were, all these reform processes have come to nothing so far. Whether the proposed systems were elaborated by governments (Quebec), by semi-independent government agencies (Ottawa), by royal commissions (New Brunswick, Prince Edward Island) or citizens' assemblies (British Columbia and Ontario), whether MMP or STV was proposed, none was able to overcome the reluctance of politicians or to carry with the public at-large. So far, the judiciary has refused to throw its weight behind the reformers in what judges see as a political debate that is not the courts' business. In early 2012, the single-member plurality system, despite all the criticisms that were levelled against its practical working, seems likely to remain one of the essential features of Canada's system of government for some time.

In this paper, I will try to throw some light on the causes of these failures. Many PR activists tend to assume that the case for proportional representation is self-evident, that only the selfishness of elected legislators and established parties can explain why they failed, and will continue to fight on until their efforts be crowned with success. However, some aspects of the experience of the last decade hardly square with it. For example, incumbent politicians were at the origin of most of these reform processes. With the possible exception of the Law Commission of Canada, nobody else but them created or empowered various bodies to explore the issue and provided them with plenty of resources to make their case and disseminate their views among the public. Some even went as far as allowing referendums to be held on the issue. So why did all attempts end up in failure?

I do not deny that the reluctance of politicians played an essential role, or that self-interest largely inspired the decisions they made. However, I suggest that many other explanations should be explored as well. Among these: the weakness of the groups that worked for a change and their tendency to squabble among themselves on the merits of the various competing formulas, the flaws of the proposed alternatives, the lack of interest among the public for this debate, and the cautiousness of courts on the issue.

The key position of legislators in the reform process

Once you have settled on what you believe is the best possible formula, you must find legislators to pass it into law. There are two possible scenarios for electoral system reform. Under a « top down » scenario, the ruling elites, which most often means the party in power in our system, take the initiative and use their privileged position to ram a new formula through the legislative channels, with little or no popular involvement. Should this approach prove impossible, many advocate strenuously a « bottom up » approach, whereby reformers at the grass-roots successfully mobilize the electorate in favour of proportional representation, so that at some point ruling elites are obliged to accept reluctantly the introduction of a new system.

The history of electoral reform in the world offers scores of examples of the first approach, but precious few successful examples of the second one. One can cite the introduction of PR in Switzerland following World War I by way of a constitutional initiative that won the ensuing referendum on its third try. Irish voters were able to ensure, twice (1959, 1966), the rejection of a constitutional amendment that would have substituted first-past-the-post for STV, but this is an example of a veto power rather than of the introduction of a new system. Following a referendum that repealed some key provisions of the existing election law for the Senate, Italian voters were able to force their politicians to accept the introduction of first-past-the-post for the election of most legislators in 1992, and New Zealand voters successfully imposed MMP to reluctant legislators the following year. Both moves took place in a context where the whole political elite was, for different reasons, thoroughly discredited.

The Canadian constitutional framework per se creates few obstacles, as the electoral system is not entrenched in the constitution, and no supermajority is explicitly required for such a change. No constitutional provision demands that the same formula be used for federal as well as provincial elections, and each province remains free to adopt its own preferred formula. Indeed, there were a few decades when the voters in some Canadian provinces elected their provincial and federal legislators under different rules.

All electoral system changes actually brought so far in Canadian history have followed the elitist (« top down ») approach. The government of the day, usually on the basis of earlier commitments, introduced a bill to that effect in the legislature and secured its passage. This is the way the Single Transferable Vote (STV), for the election of members from Winnipeg in the Manitoba Legislative Assembly (1920), and four years later the alternative vote (AV) for electing rural members of the same body, were adopted. Alberta followed the same process in 1924 for introducing a mixed system (STV in Calgary and Edmonton, coupled with AV in rural districts). British Columbia substituted AV for first-past-the-post in 1951, also by way of ordinary legislation, though this rather opportunistic innovation does not appear to have been based on an earlier formal commitment. And all three provinces in turn undid these reforms the same way in the 1950s. An attempt to legislate for Ontario the Alberta mix failed in 1923, due to the determined parliamentary obstruction by the opposition Conservatives, which defeated what was in fact a last-minute improvised move decided by a premier who was prone to breakdowns and bound to be defeated at the ensuing election.

None of these measures was preceded or followed by a consultative or binding referendum, or had been advocated by a royal commission. Ontario is seemingly the only jurisdiction where the issue was considered by a committee of the legislature before being acted upon. There is nothing in the official record that suggests that ruling parties agreed that such procedures were indispensable, or that at a minimum they had to secure the consent of the opposition in order to have their way. The measure for implementing or repealing the various changes was passed with the consent of the opposition in about half instances, but there are as many precedents for passing such measures against the will of opposition parties.

Another lesson of earlier reform attempts is that for all that has been written and said about the autocratic nature of governance in Canadian parliamentary settings, no party leader can expect to be automatically followed by his or her supporters in the legislature on an issue of this nature, as exemplified by the fact that Premier René Lévesque was unable to overcome the opposition within his own cabinet and caucus with regards to the adoption of PR in Quebec in the early 1980s. For elected legislators, an electoral system change is an issue of immediate concern on which they feel free to speak their mind freely.

How do legislators feel about PR?

That so many countries actually changed their electoral systems, many times in some cases, belies the oft-quoted simplistic view that legislators will never change the rules that brought them in their position in the first place. The record shows that incumbent legislators may see some advantage in altering the rules of the game. Many reformers have built discourses that aim at convincing them that they have an interest in doing so. However, there is no guarantee that their arguments will be accepted.

a) Many criticisms levelled against FPTP leave legislators indifferent

Reformers have established conclusively, for example, that the first-past-the-post system (FPTP) at times entails dire consequences for incumbent legislators and established parties, not just for small parties that try taking off. They pointed out that in the past (and possibly in the future) parties have been shut out entirely (as the New Brunswick Progressive Conservatives were in 1987) or almost (as the federal PCs were in 1993) from the legislature. Larger parties were also warned, based on numerous earlier but not so distant examples, that they might lose power while securing more votes than their main opponents. In the case of Quebec, there is strong evidence for the existence of a bias against the Liberal party dating back to 1939, when English-speaking voters started to vote en masse for the least nationalist of the two competing parties. Such an anti-Liberal bias can be identified for all elections held since then, with the exception of 1989 and 2007, and typically had the effect of moderating Liberal victories, aggravating Liberal defeats, and sometimes transforming Liberal successes in the popular vote into defeats in the legislature, as in 1944, 1966 and 1998.

Another kind of argument put forward by reformers at the federal level, in order to convince larger parties that they had interest in supporting PR, was the corrosive effects of regional electoral polarization on national unity. First put forward by Alan Cairns in 1965, this line of argument holds that regional cleavages are aggravated by the workings of the first-past-the-post system, which rewards nationally oriented parties in their strongholds but also reduces them to oblivion in regions where they are weaker. Such parties gradually become indifferent to the needs of regions that are absent from the governing party caucus and cabinet, which in turn leads to the adoption of policies that aggravate the alienation of these regions from the Canadian mainstream. In this perspective, PR would result into more regionally balanced caucuses and cabinets, and possibly foster a stronger identification with the central government in all regions.

These three lines of argument can be labelled respectively the lopsided majorities, the wrong winner and the regional alienation arguments. Judging from the reaction of incumbent legislators, they have not been particularly successful. The reason is that each of them can be countered in some way or the other.

True, a major party can at times be reduced to tiny numbers in the legislature, but the record offers plenty of examples of the same party coming back to power a few years later. New Brunswick Conservatives were wiped out in 1987, but came back in office in 1999 for two terms. Despite being reduced to six seats out of 110 in the Québec National assembly in 1973, the Parti Québécois was able to mount a very effective opposition and was swept in office barely three years later. Twice in its history (1983-4 and 2002), the Parti Québécois was pressed to adopt PR at a time when the party was seriously threatened with electoral oblivion. In each case, the party was standing in the 20% range in opinion polls while the deadline for holding the election was close. In the 1980s, despite heavy forcing by the premier and his aides, cabinet ministers and backbenchers resisted the move, arguing that PR, by fractionalising party representation in the Assembly, would hamper the chances of the party to realise sovereignty in the future. In 2002, with similar dire prospects in sight, it does not seem that changing the system immediately was ever considered. Opponents had a point: in 1994, the party came back in office and came very close to winning a referendum.

True also, a party can lose an election while winning more votes than their opponents. But apart from the fact that such oddities (sharper words might be used) have the effect of increasing support for first-past-the-post within the *other* (and ruling) party, this kind of outcome is relatively infrequent, rarely occurring more than once in a generation. Both parties may experience such misfortunes in the long term, as happened to the British Labour party in 1951 and to the British Conservatives in February 1974. These parties later won a majority.

From the perspective of a PR supporter, a “wrong winner” election may be seen as a perverse outcome, a logical absurdity where the operation of the principle of plurality within each individual district is defeated in the country as a whole. Yet, there is little evidence that such occurrences ever had the effect of destroying the commitment of incumbent legislators to first-past-the-post, and even less of driving the population in the

streets (except in Malta in 1981, within the framework of a proportional system)). Even after experiencing this disadvantage twice in a row over three years, the New Zealand Labour party did not go willingly beyond creating a Royal Commission on the electoral system, and MMP had to be imposed to both major parties by a grass roots campaign capitalizing on voters' disgust with both of them. Throughout the 1990s and 2000s, the British Conservatives hardly complained about the enormous bias working against them, and were in the vanguard of the movement for keeping first-past-the-post at the 2011 referendum. One hardly escapes the impression that the losers of a wrong winner election are far less infuriated by such outcomes than electoral reformers themselves. Such outcomes unquestionably lead some people within the party to ponder, to suggest that PR would be an improvement, and even to launch carefully monitored reform processes. In British Columbia and Quebec, wrong winner elections (in 1996 and 1998 respectively) most likely sparked reform processes.

Biases in the working of the plurality system may be found shocking insofar as they create a serious handicap for some parties. They usually can be traced to two kinds of causes, sometimes working simultaneously. It may be that the electoral districts are quite unequal in population and that one of the parties tends to win in the larger districts, which means that the effectiveness of their vote is diminished. Quebec Liberals suffered from this handicap from the 1940s to the 1972 electoral reform. If so, many will object that the bias can be eliminated merely by altering legislative boundaries so that each has more or less the same population, and that the adoption of a wholesale new electoral system is not necessary. Quebec Liberals came to this conclusion in the early 1970s. Saskatchewan New Democrats, following the 1986 wrong winner election, came back to office in 1991 and redistributed ridings. The British Conservatives also seem to have come to this conclusion following their victory in 2011.

The second source of bias in a plurality system is the tendency for a party to win enormous majorities in some districts, thus wasting votes that may be needed elsewhere. This may occur even in fairly apportioned legislatures. Unless extra seats are created (as in Malta), or electoral boundaries redrawn so that each party's vote is spread in a normal way (as in South Australia), nothing else than the introduction of a more proportional system can eliminate the bias. But this view overlooks that biases, while hampering a party's chances of winning elections, are not a bad thing at all for some of its legislators, those who are returned with large pluralities and stand a better chance of surviving the vagaries of electoral politics. Quebec Anglophone voters see nothing bad in being a strong majority in some districts where the winner is more likely to be one of their own. Their dispersion in other districts might well have the effect of diluting their electoral power as a linguistic minority.

Wrong winner elections may have the effect of temporarily shaking the commitment of some legislators to the plurality rule, leading to calls for reform, but at this very moment they are unable to press successfully for a change. Should they later reach office, it is likely they will overcome their past misgivings and appreciate that only a plurality system gave them the advantages they now enjoy.

The argument that PR would result into more regionally balanced party caucuses looks fine, except that it has to be accepted by existing caucuses that *are* regionally unbalanced. The deck is stacked against electoral reformers in this kind of arena. PR would indeed increase the number of legislators returned from regions where the party is weak, but it would also, unavoidably, have the effect of decreasing dramatically the number of legislators returned from regions where the party is strong. Following the 1980 election, Trudeau Liberals held only two seats west of Ontario with about 20% of the vote, but 74 out of the 75 Quebec seats, based on 68% of the vote. Few Quebec MPs appear to have been willing to sacrifice their own career prospects for the sake of increasing their party's representation in the West. Within a regionally unbalanced caucus, by definition, those who stand to benefit from PR are few in number, or absent. One can easily imagine the same reaction from Liberal MPs from Ontario when Chrétien was in office.

#### b) Legislators are unwilling to share power with other parties

Incumbent legislators will not necessarily be moved by arguments based on the sometimes erratic working of the plurality system, and even less by the handicap it creates for small parties. Whenever they look at the alternatives, be it PR or some mixed system, they easily appreciate that they all imply the end of single party majority government as we know it. The plurality system does not guarantee that the winning party will have a majority, but increases markedly the likelihood of such outcomes. The alternative formulas, on the other hand, make it highly likely that no party will have a majority on its own, that in the future they will have to share the spoils of office in one way or another. My hypothesis is that politicians dislike this prospect : they are running for the gold medal, not for silver or bronze.

In theory, a minority Parliament (which means a Parliament with no majority for any party) can lead to two different government formulas. Either one of the parties will form a minority administration, or a multi-party coalition government will be negotiated. In practice, "minority government" in Canadian political parlance has become almost synonymous with a "minority Parliament", as if the former were the only possible outcome. True, there have been coalitions in Ontario (1919-1923), in Manitoba under Bracken, in British Columbia (1941-1951), and more recently in Saskatchewan (1999-2003). Such coalitions usually lasted for full legislative terms, yet the perception remains widespread, based on the experience of carefully selected countries, that they are by nature unstable and short-lived. These two epithets more nicely fit with the actual experience of minority governments in Canada. Yet the latter, from the point of view of politicians, have the enormous advantage of eliminating the obligation to share the spoils of office formally and in a lasting way. Minority governments oblige ruling parties to compromise on the substance of policies for the time being, but allow them to keep control of the administration, to call an election whenever they wish, and to appoint their supporters in key positions, until the electorate grants them the majority they hope for.

The evolution of Jean Charest's stand on electoral system reform is revealing. Following the 1998 wrong winner election, he expressed sympathy for PR, and even initiated a reform process when he won office five years later. There is every evidence that he

quickly changed his mind. Barely four months after having announced his intention to change the system, he decided that the change would not come into force before the next election. During the 2007 election campaign, he warned voters that a minority government would have the effect of weakening Quebec within the Canadian federation. Though he subsequently made a success of such an administration and belied his own warning, he called an election in 2008, pointing out repeatedly to voters that a car was more safely run by a single pair of hands.

Of course, politicians from smaller parties do not necessarily share this view. Their chances of getting represented would be increased by the existence of a PR system. However, many of them experience a change of heart the closer they come to power. The Parti Québécois is a fine example. Following the 1970 election, René Lévesque repeatedly called for a new electoral system, but this position was toned down once the party became three years later the official opposition. Once in office, the party twice refused (1979, 1984) to implement this change. Similarly, the Action Démocratique du Québec (ADQ) pressed for electoral system change in the late 1990s, but this disappeared from their agenda once polls suggested, in 2002, that they were breaking through. Upon becoming the official opposition in 2007, the party showed no interest at all for electoral system reform.

c) For Canadian legislators, constituency duties are all-important

Plurality systems do more than increasing the likelihood of a majority government. They date back to an era where political parties hardly existed, and are based on a logic of representation that is mainly territorial rather than partisan. Legislators are bound to specific territorial units, the ridings where they won. They feel they have a duty to serve all their constituents, irrespective of party leanings. Political scientists and media people are ill-prepared to appreciate this, because they tend to focus on the political theatre of the legislature. The reality is that most MPs play a modest role in devising policies, that their legislative role is modest, and that they are painfully aware of this. On the other hand, constituency duties prevail on their agenda. There is much truth in Bill Blaikie's rebuttal to Trudeau's famous dictum that MPs are nobodies whenever they left the Hill: Members, he said, are nobodies *on* the Hill, but once in their ridings, they become really important people. One might suspect that MPs frustrated with their impotence with regards to the conduct of the affairs of the nation find a worthwhile compensation in interacting with constituents.

PR *per se* does not eliminate constituency duties. But both PR and MMP would significantly affect the way constituency duties would be fulfilled. The two main types of PR systems, STV and list systems, cannot operate with single-member districts and both necessitate the creation of much larger districts with a minimum of three or four seats that will be filled by members belonging to different parties. There is no guarantee that all areas of each district will have their own representative. Each member will lose the privilege of being the sole representative of a specific area, and will have to share the spotlight with colleagues who are also competitors. This may entail some advantage from the point of view of voters, but legislators feel they will be losing their representational

monopoly, not to mention the competition of their party colleagues for the best positions on the list or the individual preferences of voters.

The German electoral system, also known as MMP, apparently solves this problem by providing for both single-member constituencies and list seats distributed so that each party gets its exact proportion of the seats at stake. It is highly revealing that in Canada, this is the kind of mix that has been put forward most often. This kind of approach has not fared very well with legislators. Part of the explanation is that many supporters of MMP do not fully understand the nature of the model.

MMP is a mixed system insofar as it combines constituency members elected by plurality with party list seats. However, an examination of how the system works in Germany reveals that in practice, the goal of exact party representation prevails by far over the needs of constituency representation.

First, as is well known, the way list seats are distributed is dictated by the proportion of votes cast for each party. Second, whenever the number of constituency seats won by a party happens to exceed the total number of list seats it is entitled to, an equal number of list seats (called *Überhang* seats) are specially created for other parties in order to partially offset the disproportionality so created. In land elections (though not in federal elections), *Überhang* seats have the effect of triggering the creation of a second set of supplementary seats, called *Ausgleich* seats, so that the overall distribution of seats faithfully reflects the popular vote. Third, since the early 1950s, vacancies in constituency seats are no longer, filled through a by-election, as the logic of constituency representation would require. Rather, they are filled the same way as list seats are, i.e. by picking the next unelected candidate on the party list. This means that the representation of the constituency will be assigned, for the remainder of the legislative term, to a person who did not stand in the constituency and cannot claim any specific mandate from the voters thereof. Again, the requirements of party representation prevail over the need of constituency representation.

The main encroachment to our standard model of constituency representation lies elsewhere. Over the years, dual candidacies have become standard. The vast majority of constituency candidates also stand on the party list, which means that list members are almost always defeated constituency candidates. At first sight, this looks optimal from the point of view of constituency representation, because almost all members, whether constituency or list, have a connection with a specific constituency. However, there is no guarantee that the total number of members a constituency ends up with will reflect the size of its population. Even if all constituencies have about the same number of voters, some end up with two, three, four or even five members (depending on the total number of parties that gain representation in the legislature) while a few have a single one.

There is no evidence that this is seen as a problem in Germany. What matters indeed is that each party ends up with the right number of seats, not that each constituency be served by an equal number of members. Except in the land of Baden-Württemberg, the constituency connection of list members is not acknowledged in parliamentary guides,

though some land legislatures publish list of constituency and land list legislators operating in each constituency. In practice, both the constituency winner and some of the candidates he or she defeated have constituency offices. In practice, according to studies, they fulfill mostly the same kind of work, with constituency surgeries taking only a bit more of the time of constituency members. Such coexistence is accepted as part and parcel of the system and has not led to conflicts. One of the reasons is that in Germany, as in continental Europe, the prevailing doctrine of representation emphasizes that each legislator represents the nation as a whole, not a specific constituency. It follows that no legislator can claim any kind of representational monopoly over a specific territory. There is no *esprit de corps* among constituency members, and whether a member has won a constituency or been returned through a party list does not matter much in practice when it comes to get seats in cabinet or where to sit on the floor of the legislature.

The difficulty of transplanting this informal arrangement, however successful in its country of origin, in another setting where constituency representation is all-important, is illustrated by the actual operation of MMP (under the label AMS – Additional Member System) in Scotland and Wales since 1997. List members there are known as “regional members” because they also represent a specific, wider, territory, though not in proportion to the votes cast therein. The D’Hondt formula in regions operates so as to preclude the emergence of overhang seats. Constituency seats are filled through by-elections. And dual candidacies, while frequent, are ill accepted by incumbent constituency legislators. Wales went as far as securing a ban on them in 2006, while the Scottish Labour party has reduced their numbers. More revealingly, the constituency activities of regional members have been loudly criticised as “poaching” and restricted. The record so far suggests that the chances of regional members of being appointed to executive positions are much lower in both Scotland and Wales. The latter went as far as seating almost all regional members in the back benches following the 2011 election. In other words, list members in practice have become kind of second class members.

Proposals for introducing MMP in Canada have not been too specific on how both constituency and list members would interact in practice. Dual candidacies could be seen as a feature that would work to the advantage of incumbents by allowing some defeated constituency members to remain in the legislature thanks to the party list. It could also be defended as a feature that would prevent list members from becoming legislators with few contacts at the grass roots. However, the idea was not well received in New Brunswick and Prince Edward Island. In Quebec, the government rejected the idea of obliging candidates on a party list to stand in a constituency as well, and later rejected the very idea of dual candidacies. Legislators could not accept to share the representation of “their” ridings with candidates they had defeated. There was in their view a real danger that in a riding won by an opposition party, the list member would in practice be the “real” member, the one voters would turn to in order to do business with. In a riding won by the government party, the opposition member elected through the list would behave like a competitor and would be better equipped to do this thanks to his or her riding allowance.

It is often overlooked that at the time and in the places where MMP was introduced, there were no incumbent legislators elected in single-member districts, and in some cases there were no incumbents at all when the decision was made. MMP was legislated for the first time (1947) in the German *länder* of North Rhine Westphalia and Lower Saxony, by legislators appointed by the British occupation authorities, with no popular mandate nor any territorial connection. The Parliamentary Council, which two years later opted for MMP for German federal elections, was a body composed of delegates from the land legislatures. The Scottish and Welsh AMS systems were legislated *ex nihilo* in London with input from the Scottish Constitutional Convention, a body that included few incumbent politicians. Incumbent legislators who later introduced PR in Bavaria, Berlin, Rhineland-Palatinate, had themselves been elected under list PR, not under first-past-the-post. MMP was introduced in the five eastern *Länder* in 1990 by a vote of the PR-elected *Volkskammer*. New Zealand appears to be the only country where supporters of MMP were facing legislators elected in single-member districts.

In all Canadian jurisdictions where it was proposed, MMP had to be adapted to existing legislative bodies with well defined territorial frameworks. Introducing MMP created the following dilemma. Either you kept existing ridings unchanged, which meant that the size of the legislature would be increased between 50% and 100%, which would most likely be unpalatable to the public. Or the number of ridings would be substantially reduced to make way for list seats in order to keep the size of the legislature constant. This meant that ridings many rural legislators already find them too large would be substantially enlarged. In Quebec, the challenge was to convince 125 legislators to reduce the number of ridings to about 77. Anybody who witnessed the bitter fight that was aroused a few years later by the proposed elimination of *three* rural ridings can appreciate that MMP was a tall order indeed.

The cautious attitude taken by legislators

The above suggests that there were plenty of considerations that might lead incumbent legislators to reject any reform of the electoral system. Yet, in most of the jurisdictions where such proposals were made, members were very adept at hiding such views, which were openly voiced only later in the legislature. They were aware that outright criticism of PR would be dismissed as self-interested. It is plausible that the New Zealand experience induced Canadian legislators to avoid the issue to become a “politicians vs. the people” debate.

The reluctance of legislators to adopt PR found an open expression in the framework imposed to citizens’ assemblies in both British Columbia and Ontario, and notably in the provision that required that the new system be approved at a referendum by 60% of voters, with a majority in 60% of the ridings. This proved fatal to STV in the former (57%), and by 2009 support for STV had slipped to 39%. Legislators generally refrained from campaigning against STV or MMP at referendums, though some former politicians took a more active stance. In Quebec, legislators sitting on the Special Commission on Electoral Reform avoided arguing with proponents of PR, and while endorsing MMP in theory in their report, they grounded their rejection of the government model on the lack

of agreement among the specifics of the system, though there is every evidence that their objections actually struck at the very heart of the model. Federal MPs were more candid, and debate on the model put forward by the Law Commission of Canada did not go beyond hearing the members thereof in committee.

#### The absence of the popular initiative in Canada

Supporters of PR have historically taken advantage of the instruments of direct democracy to overcome the preferences of established political elites. The examples of Switzerland, Ireland, Italy and New Zealand have already been cited. In Hamburg, electoral reformers were helped in recent years by constitutional provisions that allowed their proposals to come to a vote with binding effect on legislators.

Though consultative non-binding referendums have been relatively common in Canada, popular initiative is not. An earlier attempt in Manitoba was found unconstitutional by the Judicial Committee of the British Privy Council in 1919. The law passed in Saskatchewan in the early 1990s has not been used so far. British Columbia adopted a law to the same effect in 1994, but the petition requirements are very demanding, and a successful referendum does not result into more than the tabling of the measure in the Legislative Assembly.

It follows that referendums on electoral reform can in most settings be held only if elected legislators first agree that the measure be put to the voters. They did in Ontario and British Columbia, on specific terms set in advance, while in Prince Edward Island the premier stated during the campaign that he would feel bound to respect a PR victory only if this option was supported by 60%. In Quebec and New Brunswick, no referendum was held.

#### The weakness of the groups supporting proportional representation

The rise of groups advocating proportional representation is arguably the distinctive feature of the most recent wave of electoral system reform in Canada. In 1984, when it became obvious in Quebec that PR would not be adopted by legislators, a movement called COALIPROP (Coalition pour la proportionnelle) was created. In recent years, two social movements emerged in Canada. One was Fair Vote Canada, created in August 2000. The other was the Mouvement pour une Démocratie Nouvelle, set up in May 2001. In 2002, women rights activists in Quebec created the Collectif Féminisme et Démocratie. The latter claims 400 members. These groups maintain websites that circulate news and information material. They also lobby decision-makers.

The thrust of the efforts of these groups is to challenge the dominant position of elected legislators and their monopoly over the decision-making process. They are fond of deliberative forums, which provide them with opportunities to air their views. A good example is Quebec's Special Commission on Electoral Reform that sat in 2005-2006. In derogation to standard practice, the Commission included not only legislators from all parties, but also a citizens' committee of 8, chosen by lot from among some 15,000

citizens who applied for appointment. One of the happy few was a defeated candidate of the Union des Forces Populaires (UFP), a left-wing party that had obtained 1% of the vote at the previous election. Supporters of PR were able to dominate the proceedings during the hearings held by the Commission in the various regions of the province. Their views found approval among the citizens' committee, which devised an alternative proposal to the government's model. However, legislators were clearly unimpressed by this show of strength. PR activists got a polite hearing and were met with minimal objections. However, legislators did not agree with the model put forward by them, and merely buried the government's model in April 2006. Clearly, the apparent consensus that had emerged from the public's representations was not reflected in the Commission's report. Who really was in charge became even clearer at the end of 2006, when the Minister's proposals for an amended government model were rejected by the government caucus, which led to the shelving of the issue as far as the legislature was concerned. Though local media paid much attention to the sittings of the Commission in their respective regions, provincial media largely ignored them. The hearings had allowed politicians to gauge the strength of PR supporters, and to realize how weak it really was.

The ensuing election, held in March 2007, resulted into a minority government facing two strong opposition parties. Yet, there was not a hint that this new context would result in electoral system change. Indeed, one of the comments heard was that as each party had obtained a number of seats roughly corresponding to its share of the votes, PR was superfluous!

PR supporters retaliated with an electronic petition inviting legislators to act quickly on the issue. The petition drew about 20,000 signatures. This figure was far below the 300,000 votes cast for small parties at the previous election. By way of comparison, a petition calling for the immediate holding of a referendum on sovereignty had drawn more than 800,000 in 1992, and another petition for the resignation of Premier Charest in 2010 attracted at least 200,000 (both were ignored).

### Public Indifference

This leads us to another reason for failure: the absence of mobilization on the issue within the electorate. There is no doubt about the existence of a constituency of committed people genuinely supporting proportional representation, who are willing to invest time and money in persuading others that this is the way to go. Many are involved in small parties, like the Greens or Québec Solidaire. However, they have not been able so far to position PR very high on the political agenda of the country, as they have been, for example, in New Zealand.

The oft-quoted understatement that PR is not the kind of issue that leads to fistfights in buses finds empirical confirmation in Canada. Referendums on PR held simultaneously with general elections attracted decent turnouts, as could be expected when the future of the province is at stake, but not more than 30% showed up at the polls at the only referendum that was conducted between two general elections, in Prince Edward Island (2005). In the referendums conducted simultaneously with a general election in Ontario

and British Columbia, the electoral reform debate was overshadowed by the electoral campaign.

Despite ample evidence that politicians are discredited, Canadian supporters of PR have been unable so far to impress in the public mind the idea that a change in the electoral system would go a long way in improving the way politics is waged. PR activists were able to convince New Zealanders that the first-past-the-post system and the “electoral dictatorship” it fostered was responsible for the economic policy changes that angered the population in the 1980s, while in Italy critics of PR successfully carried through the opposite message, namely that PR lied at the root of the country’s ills. Canadian reformers have not been as successful.

People can be mobilised on electoral reform issues, but not necessarily in favour of PR. In Quebec, the electoral boundaries reform proposed by the Commission de la représentation in 2008 created quite a stir in the regions that were bound to lose seats. Opponents were able to hold up the boundary revision for three years. Ad hoc local groups, supported by the Fédération Québécoise des Municipalités, developed a very effective discourse on the preservation of smaller regions’ political clout, and at times seemingly came close to prevail. The movement for PR pales in comparison.

#### Disagreements among reformers

PR is based on a simple idea that anyone can understand: each party should be represented in proportion to its votes. Yet, as we know, the modalities of PR are exceedingly complex. Selecting a PR formula involves making choices as to the size of electoral districts, the formula to be used, the existence of distinct tiers of representation, the use of closed or open lists, and the imposition of electoral thresholds. This means that a multiplicity of options are available that address different concerns. For those who value proportionality at the expense of every other consideration, a nationwide constituency without any threshold is the best of all possible worlds. Those who support PR as a way to increase women’s representation often come to prefer closed party “zipped” lists. Others prefer to emphasize the possibility for voters to ignore party dictates and to freely choose among candidates within the same party list or even among candidates from all parties. Mixed systems simply compound the problem, as the variety of hybrids between PR and plurality is infinite.

MMP, a system that results into proportional outcomes while keeping single-member constituencies, has become the most popular option as far as reformers are concerned. Yet, the debate on the modalities has been quite intense among them. Whether compensatory seats should be distributed provincewide or within smaller regions, whether voters should have two votes instead of one, whether candidates should be allowed to run both in a constituency and on a list, or whether lists should be open or closed, led to lively debates. MMP was unable to carry the day in British Columbia, where the prevalence of party bashing attitudes led reformers to endorse instead STV as a “citizen-oriented” rather than “party-oriented” system.

The objectives of PR supporters vary across the political spectrum. A common argument for PR used to be that it would reduce regional tensions and mitigate regional polarization, thus helping to preserve the Canadian federation. Not all those who made this claim were prepared, however, to support a system that would lead to multi-party coalitions in most instances, because this might defeat their ultimate purpose by fatally weakening the central government. Supporters of smaller parties feel so such dilemmas, but they are by definition in the minority.

While criticism of the existing system is widespread, agreement on the preferred alternative is hard to reach. This was akin to the failure of the republican movement in Australia, where some supporters of a directly elected president chose to side in 1999 with monarchists in order to ensure the rejection of a proposal for replacing the monarchy with a president elected by both houses of Parliament. The keenest criticisms of one PR system often come from the supporters of another PR system. This unavoidable kind of disagreement tends to foster the status quo.

The cautious attitude taken by the courts

In a research paper published in 2001, I raised the possibility that activists might try to have the plurality system declared unconstitutional by the courts, which could pave the way to the adoption of a more proportional formula. A decision of the Supreme Court of British Columbia in 1989 had created the new concept of “equality of voting power”. Though “equality of voting power” had been applied in relation not to the electoral system but to electoral boundaries, and had later been watered down to “effective representation” by the Supreme Court of Canada in a subsequent case dealing also with electoral boundaries, one might imagine the same reasoning being later applied to the representation of parties in the legislature.

How this argument might fare in court was tested twice in Quebec recently at the initiative of the Association pour la Revendication des Droits Démocratiques. The four plaintiffs, Brian Gibb (a former ADQ and Green party candidate), François Soucy, Pierre Véronneau (a former Green party candidate) and Patrick Daoust (a former Green party candidate), argued that the plurality system hampered the right of electors to effective representation, and discriminated against the English-speaking community of Montreal. They successfully fought against a motion for dismissal that had been submitted by the Québec government (*Gibb vs. Québec (Procureur Général)* [2005] Québec Superior Court, 18 November 2005. The substance of the case was decided much later. In *Gibb vs. Québec (Procureur Général)* [2009] QCCS 1699, 26 February 2009, the Cour du Québec sided with the provincial government and accepted the view that reforming the electoral system was an essentially political question on which no tribunal should intervene, as the Supreme Court of Canada had decided in the *Figueroa* case dealing with the registration of federal political parties. Judicial precedents dealing with electoral boundaries were distinguished on the ground that what mattered was the right to participate to the electoral process, not its impact on the outcome of the election. No evidence of discrimination against Quebec Anglophones was found. Two years later, this decision was confirmed by the Cour d’appel du Québec in *Daoust vs. Québec (Directeur général des élections)*

[2011] J.Q. no 12526, 13 September 2011. Such decisions make it unlikely that reformers might win PR through the support of the judiciary.

### Conclusion

Are the efforts to replace the plurality system in Canada by some form of proportional representation bound to fail? Any categorical statement to that effect would be imprudent. After all, in the early 1980s, few would have expected MMP to be later adopted in New Zealand, and to be re-endorsed convincingly by 58% of the voters as it was in November 2011. Reform proposals that attracted support in the 30% range at referendums will not vanish overnight from public debate.

It must be acknowledged, however, that the obstacles are formidable. All attempts to convince larger parties that a change is desirable have come to little. Among legislators, attachment to first-past-the-post remains very strong, leading them to accept its outcomes even when they stand at the wrong end of the polls. Those who genuinely support PR remain for now confined to the fringes. As Eugene Forsey once put it, those who could adopt PR are unwilling to do so, while those who want it are unable to do it.