

*The Case for Electoral Reform:
A Mixed Member Proportional System for Canada*

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6 October 2016

Summary:

In this brief, I urge Parliament to replace our current Single-Member Plurality (SMP) system chiefly because of its tendency to distort the voting intentions of citizens in federal elections and, in particular, to magnify regional differences in the country. I recommend that SMP be replaced by a system of proportional representation, preferably a Mixed Member Proportional system (MMP) similar to that used in New Zealand and the Federal Republic of Germany.

I contend that Parliament has the constitutional authority to enact an MMP system under Section 44 of the Constitution Act 1982; as such, it does not require the formal approval of the provinces. Finally, I argue that a national referendum on replacing the current SMP voting system is neither necessary nor desirable. However, to lend it political legitimacy, the adoption of a new electoral system should only be undertaken with the support of MPs from two or more parties that together won over 50% of the votes cast in the last federal election.

Introduction

Canada's single-member plurality (SMP) electoral system is fatally flawed. It distorts the true will of Canadian voters, it magnifies regional differences in the country, and it vests excessive political power in the hands of manufactured majority governments, typically elected on a plurality of 40% or less of the popular vote. The adoption of a voting system based on proportional representation would not only address these problems but also improve the quality of democratic government and politics in general. By allocating seats to parties in proportion to their share of the popular vote, the make-up of Parliament would more accurately reflect the views, and the diversity, of the Canadian people than is now the case, both in national and regional terms. That, in turn, would provide stronger incentives to citizens to vote sincerely rather than strategically in general elections, confident that by supporting a third or fourth place party their ballot would not be cast in vain. At the same time the advent of proportional representation would provide incentives to parties to modify their behavior, both in Parliament and in the country. Among other things the necessity for a major party to find coalition partners,

or for a minority government to enlist the support of opposition parties, would foster a more conciliatory and collaborative relationship among parties. That in turn would enhance the role of Parliament, improve the quality of public policy, and elevate the tone of political debate.

The Baleful Effects of SMP

The dysfunctional effects of Canada's SMP voting system have been well documented. The system's chief defect is to distort the voting intentions of Canadians by producing parliamentary representation that is grossly disproportionate. Indeed, SMP can be said to be a system of disproportionate misrepresentation! At the constituency level, the candidate with the largest plurality usually wins less than 50% of the votes cast. Yet under the logic of winner-takes-all, he or she becomes the sole representative of all electors in the riding. On a national basis, a single party usually wins a majority of seats on the basis of a minority of votes cast. *It is a profoundly anti-democratic feature of our electoral system that it almost always fails to award seats to parties and candidates in proportion to their actual share of the popular vote.*

An important consequence of the lack of proportionality in SMP elections is that the value of votes cast for different parties is highly unequal. Thus, in the 2015 Federal election, it took an average of 78,000 votes to elect an NDP MP but only 37,000 votes to elect a Liberal.¹ Meanwhile, it took more than 600,000 votes to elect the only Green MP. Given the winner-take-all nature of SMP elections, and the arbitrary effect of geography, electors who vote for unsuccessful candidates effectively waste their votes in the sense that their votes have no impact on the final allocation of seats to parties. It can also be said that votes cast for a winning candidate are wasted to the extent that they are surplus to requirements. These features of SMP undoubtedly contribute to decreased turnout at the polls by supporters of parties having no hope

¹ These figures are arrived at by dividing the total number of votes won by a party in all ridings nationally by the number of seats it actually won.

of winning a particular seat. Alternatively, they encourage some voters to vote strategically for a candidate who is not their first choice if s/he is judged to have a better chance of defeating an even less desirable alternative.

One of the most compelling arguments against the continued use of SMP in federal elections is its tendency to exacerbate regionalism in Canada by exaggerating the strengths or weaknesses of parties in different parts of the country. In the 1997 Federal election, the Liberals won 98% of the seats in Ontario on the basis of only 49% of the popular vote. In the same election Reform won 74% of the federal seats in BC on the basis of only 43% of the vote. This pattern was repeated in the 2015 federal election, in which the Liberals won approximately 60% of the popular vote in Atlantic Canada, for which they were awarded 100% of the seats. By giving rise to regionally unbalanced national party caucuses, SMP creates the false impression that voters in a given province or region support a single political party *en masse*. Over time, the repeated failure of a party to win seats in particular regions may cost it further support if it becomes less inclined to campaign energetically in those areas. Lacking elected representation in certain regions, the party may become less sensitive to their political interests and demands.

Another undesirable feature of SMP is its tendency to under-represent women and visible minorities in Parliament and provincial legislatures. While a variety of measures have been proposed to improve the representation of such groups, the experience of other liberal democracies suggests that the electoral system is a major determinant of the degree of diversity in the membership of national parliaments.²

² Lisa Young, *Electoral Systems and Representative Legislatures: Consideration of Alternative Electoral Systems*. Ottawa: Canadian Advisory Council on the Status of Women, 1994. p.12.

The Need for Electoral Reform

Canada needs a new electoral system. The minimum requirement of an alternative voting system should be its effectiveness in faithfully giving effect to the political choices of Canadians. In short, a new electoral system must exhibit a high degree of proportionality. How, then, do the leading alternatives measure up?

Majoritarian Systems

The two main forms of majoritarian voting systems are the two-round (or second-ballot run-off) system, as used in elections to the French National Assembly, and the Alternative Vote, used in Australia for lower house elections. As both of these systems are based on single-member districts, they fail to produce proportional election results. Indeed their record in that regard is no better than that of SMP. What is more, both systems deprive large numbers of voters of fair political representation by denying them their preferred political option and obliging them to choose a less preferred candidate or party. Indeed, most of the other shortcomings of SMP, as outlined above, are replicated by majoritarian systems. Accordingly, these alternatives to SMP fail to meet the Committee's criteria for electoral reform.

Proportional Representation

The main principle of proportional representation (PR) is that votes should be allocated to parties in proportion to their share of the popular vote. That principle gives effect to a fundamental tenet of democracy: that of political equality. Under PR, all, or nearly all, votes count in the sense that they have some bearing on the political make-up of the assembly. If adopted, PR would significantly enhance the democratic quality of elections. It would put all political parties on a level playing field and give voters a more authentically free choice at the ballot box. The current system promotes strategic voting and narrows voter choice by generating

pressures on smaller parties to merge with like-minded larger parties so as to minimize the likelihood of vote-splitting. PR, in contrast, enables citizens to vote sincerely for the party of their choice. It also promotes higher voter turnout; as political science research demonstrates, PR is one of several factors that account for higher rates of voter turnout in those countries that employ it. It is thought to do so in two ways: first, by making every vote count, PR relieves voters of the invidious choice they now face between wasting their vote, voting strategically, or not voting at all. Secondly, by making elections more competitive PR gives parties and candidates a greater incentive to solicit support in every region of the country.

PR would significantly transform politics on the floor of Parliament. In place of artificial majority governments, minority or coalition governments would become the norm, just as they are the normal and accepted outcome of elections in most of the democratic world. Minority or coalition governments would be a welcome development in Canadian politics by promoting a more thoughtful and consensual approach to the formulation of public policy as no one party would be in a position to impose its will. A bi- or multi-partisan approach is urgently needed if we are to find workable, lasting solutions to the many complex policy issues that governments must address today. In Sweden and Germany, both of which use PR, parliament plays a vital role in the legislative process.

Minority governments in Canada have proven to be responsive to major currents of public opinion while also being highly productive. It should be noted that Medicare, the Canada Pension Plan, a new Canadian flag, and the foundations of Official Bilingualism were established during the minority Parliaments of the 1960s. It is true that minority governments, at the federal level, have lasted for an average of only 20 months, compared with an average life-span of 50 months for majority governments. However, most minority governments in Canada

met their end not because the opposition parties brought them down but because the prime minister saw his chance to call an early election in the hope of winning a majority.³

If Canada were to adopt PR, minority or coalition governments could be expected to serve their full term. As no party would have a realistic chance of winning a majority, it would be irrational for the PM to call a snap election in an attempt to secure one.

Mixed Member Proportional Representation (MMP)

I favour a mixed member proportional (MMP) model similar to that used in Germany, New Zealand, Scotland, and Wales. As the name suggests, MMP combines elements of non-proportional and proportional voting systems. Voters cast two ballots: one for a constituency MP and one for a regional party list. Constituency MPs are elected from single-member districts, whether on the basis of SMP, AV, or second-ballot run-off. However, a party's final seat allocation is determined by its share of the party list ballots.

I would especially commend to the Committee the MMP model formulated by the Law Commission of Canada in its report of 2004. I would favour an open list ballot similar to that used in Sweden to give voters some choice in the selection of list candidates. I would also favour the introduction of legislation requiring political parties to conduct their internal affairs, including nomination meetings, in an open and democratic manner.

The virtue of MMP is that it preserves constituency representation while achieving a high degree of proportionality. For that reason, it is aptly said to offer the best of both worlds.

Parliament has the Constitutional Authority to Reform the Voting System

If Parliament resolves to institute a new voting system, it has the authority to do so under Section 44 of the Constitution Act 1982, which states that "Parliament shall exclusively make

³ Peter Dobell, *What Could Canadians Expect from a Minority Government?* Institute for Research on Public Policy. 1:6 (November 2000), p. 9. See also Peter H. Russell, *Two Cheers for Minority Government: The Evolution of Canadian Parliamentary Democracy*. Toronto: Emond Montgomery, 2008.

laws amending the Constitution of Canada in relation to the executive government of Canada or the Senate and House of Commons.” There are two constitutional constraints on that power. The first has to do with the requirement of Section 52 of the Constitution Act 1867 that seats in the Commons be allocated in accordance with the proportionate representation of the provinces. The second limitation is the so-called Senate floor rule inscribed in Section 51A of the Constitution Act 1867; according to that provision no province shall have fewer seats in the House of Commons than the number of Senate seats to which it is entitled. Neither of these guarantees may be removed without the formal approval of provincial legislatures under Sections 41(a) or 42(1)(a) of the Constitution Act 1982. Beyond that, the Constitution is silent on the method of electing MPs.

Some scholars have cited the Supreme Court’s decision in the *Senate Reference* case of 2014 to support the claim that reform of the electoral system requires the formal approval of the provinces.⁴ I submit that that case has no bearing on the question. The Court’s ruling in that case concerned fundamental changes to the Senate, a chamber that was explicitly created to safeguard the interests of the provinces. Indeed the Senate was a crucial element of the Confederation bargain. The same cannot be said of the Commons. While the upper house of a federation is typically designed to represent the interests of the constituent provinces, the lower house is “the people’s house.” As Professor David E. Smith has written:

Through its members the House incorporates the people into the constitution; it is their voice that is heard, not that of...the premiers, or the provinces. In the face of a federalized cabinet, with portfolios allocated to provide provincial representation...this is a contentious claim. Still, it is a necessary one. To concede otherwise would be to relinquish an essential

⁴ *Reference re Senate Reform*, 2014 SCC 32. See, for example, Michael Pal, “Why Canada’s top court must weigh in on electoral reform,” *Globe and Mail*, 15 January 2016.

democratic element of the constitution. The House is a representative body, the only one that can claim to speak on behalf of all Canadians.⁵

Parliament has been conducting electoral distributions, and modifying the formulae by which such redistributions are carried out, since 1949 when it acquired the power to do so under an amendment to the British North American Act. As noted, that power is subject to several provisos, but none relates to the method of electing MPs.

It would be astonishing if the Supreme Court of Canada were to declare the SMP system to form part of Canada's "constitutional architecture." An electoral system that denies fair representation to millions of voters, institutionalizes minority rule in the form of manufactured majority governments, and deepens regional differences in the country can hardly be regarded as a necessary bulwark of parliamentary democracy. Indeed a much more compelling argument can be made that SMP violates the democratic and equality rights provisions of the Charter by denying fair representation and devaluing the votes of millions of Canadians.

Equally implausible is the claim that SMP is embedded in Canada's constitution because of the preamble of the Constitution Act 1867, which affirms that Canada has "a constitution similar in principle to that of the United Kingdom." Advocates of this view imply that Canada is bound to maintain the political institutions that were in place in the UK in 1867, despite the fact that Britain itself has adopted proportional representation for regional elections in Scotland, Wales, and Northern Ireland and for European Parliament elections. Moreover Parliament was prepared to replace the SMP system for Westminster elections in 2011 when it held a national referendum on the adoption of the Alternative Vote.

⁵ David E. Smith. *The People's House of Commons: Theories of Democracy in Contention*. Toronto: University of Toronto Press, 2007, pp.3-4.

A Referendum is Unnecessary and Undesirable

I emphatically reject the argument that Parliament may not legitimately act to reform the electoral system unless and until citizens register their support for such reform in a national referendum. That assertion proceeds from the erroneous claim that MPs lack a mandate to change the electoral system. Yet in last year's federal election, three of the four national parties that fielded full (or nearly full) slates of candidates made explicit commitments to replace the SMP system. Between them those parties—the Liberals, the NDP, and the Greens—won 63% of the popular vote and 68% of the seats in the House of Commons. That represents a stronger mandate for electoral change than most Parliaments can claim to have received on other issues of comparable or even greater import.

Nevertheless, it is important that such a significant change to the electoral process as the adoption of a new voting system should command the support of two or more parties in the House of Commons that together won at over 50% of the popular vote in the last election. A broad consensus of parliamentarians, on both sides of the House, has long been understood to be a necessary precondition to the enactment of changes to the electoral process. That understanding was breached by the former Conservative government when it used its majority to pass the Fair Elections Act in 2014 over the objections of all four opposition parties. Likewise, it would be unacceptable for the governing party to act alone to adopt its preferred electoral system in the face of opposition from all of the opposition parties. However, it is not necessary that a new electoral system have the unanimous support of MPs from all parties. Otherwise, it would be possible for one party to stymie the democratic verdict of Parliament.