

Majority-Preferential Two-Round Electoral
Formula:
A Balanced Value-Driven Model for Canada

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Thesis submitted to the
Faculty of Graduate and Postdoctoral Studies
In Partial Fulfillment of the Requirements
For the (LL.D.) Doctor of Laws.

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Abbreviations

AV: Alternative Vote

BQ: Bloc Québécois

FPTP: First Past The Post

MMP: Mixed-Member Proportional

MP: Member of Parliament

NDP: New Democratic Party

PR: Proportional Representation

SMD: Single-Member District

STV: Single Transferable Vote

Acknowledgments

I would like to extend my sincere thanks to my research supervisor, Professor Benoît Pelletier. His insightful tips, knowledge, experience, and persistent encouragements made this project possible. His confidence on me, cheerful and forthcoming nature, and flexibility provided me with the psychological energy needed for a lengthy research project.

I will be always indebted to my parents who planted the seed of passion for academic activities in me and provided me with constant help and support throughout my studies. I also thank my friends in Ottawa whom I have regarded as my family away from home and thanks to whom my doctoral studies have not been an isolating period. In particular, I thank my tech-savvy friend, Payam Sadeghi who has patiently taken care of my IT needs while I was writing this thesis.

I am also thankful to Professors and staff in the Graduate Studies in Law Section for their support, flexibility, and availability.

Abstract

This research is an enquiry to find an electoral formula that conforms to Canadian constitutional values. Three core values that are pertinent to the issue of electoral systems are identified: democracy, diversity, and efficiency. Each of these core values is divided into different aspects. These aspects will form the backbone of the evaluation of different electoral systems in this work.

I will begin with an evaluation of the plurality model of elections, which is currently used in Canada. I will demonstrate that many of the attributes of the current system are not in tune with Canadian constitutional values, in particular with the progressive interpretation that the Supreme Court of Canada has given to the right to vote as enshrined in Section 3 of the *Canadian Charter of Rights and Freedoms*. Although the interpretation of the right to vote will be the main thrust of the constitutional scrutiny in this work, attention will also be given to other pertinent rights such as equality rights, minority rights, and the freedom of expression and the multicultural heritage of Canada.

In the next stage, I will examine provincial electoral reform initiatives that were initiated in five Canadian provinces. All of these initiatives - three of which were put to referenda and eventually defeated - proposed adopting a variant of proportional representation. Accordingly, I will evaluate proportional systems according to the intended values. I will conclude that these systems have problems of their own and they also cannot strike a fine balance between competing values.

In the final stage, I will make a new proposal for elections to the Canadian Parliament. First, I will demonstrate that majority systems are better candidates to attain the envisioned values.

Then I will introduce a new variant of the majority model, which I call a majority-preferential two-round variant. I will demonstrate that this new variant will outperform the other variants in the attainment of values if adopted for elections to the House of Commons. Finally, I will argue that the combination of a House of Commons elected through the majority-preferential formula and a proportionally elected Senate will result in a more balanced approach to the relevant constitutional values.

Introduction

Canada's current plurality electoral system¹ poses serious challenges and shortcomings. Governments are not backed by a majority of voters, vote-splitting and coordination failures result in distancing the election results from the aggregate preferences of voters, small and new parties face huge challenges, diversity of political opinion is stifled, the rate of female and minority representation remains low, regionalist politics are intensified, democratic change faces serious hurdles, political participation rate is low, a large number of votes are wasted, the system does not contribute to moderation, and the list goes on.

In this work, I intend to demonstrate that many of the attributes of the current system are not in tune with Canadian constitutional values, in particular with the progressive interpretation that the Supreme Court of Canada has given to the right to vote as enshrined in Section 3 of the *Canadian Charter of Rights and Freedoms*.² In the interpretation by the Court, the meaning of the right to vote has evolved into “the right to effective representation”³, then to “the right to play a meaningful role in the selection of elected representatives”⁴, and then to “the right to play a meaningful role in the electoral process”⁵. Through an examination of the consequences of electoral systems, this work will demonstrate that the current electoral system interferes with the right of Canadian citizens to vote as

¹ In the plurality or first-past-the-post model of elections, the candidate who gets the most number of votes is

² *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982* being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

³ *Reference re Prov. Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158.

⁴ *Haig v. Canada (Chief Electoral Officer)*, [1993] 2 S.C.R. 995.

⁵ *Figueroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912, 2003 SCC 37.

interpreted by the Supreme Court. In particular, it will be demonstrated that the hassles and hurdles that the current system put on the enjoyment of “the right to play a meaningful role in electoral process” are quite similar to restrictions that were treated as unconstitutional in *Figueroa v. Canada*⁶. Although the interpretation of the right to vote will be the main thrust of the constitutional scrutiny in this work, attention will also be paid to other pertinent rights such, equality rights, minority rights, and the freedom of expression, and the multicultural heritage of Canada. As a result, it will be demonstrated that the choice of an electoral system is not only a political decision, but it also involves constitutional values.

A detailed examination of Canada’s current electoral system will result in demonstrating that it conflicts with Canadian constitutional values. This conclusion necessitates examining other alternatives to find out which solution can approach our desired goals. A comprehensive examination of all electoral systems is beyond the scope of this work. Instead, I will focus on two main families of electoral systems. First, proportional systems will be examined.⁷ Electoral studies literature tends to see a duality between plurality models on the one hand and proportional models on the other hand. Most of the reform proposals in Canada have involved a modality of proportional representation. Most importantly, five provincial level reform initiatives involved a variant of proportional representation. Despite their merits, strong opposition to a reform involving proportional representation exists. Perhaps this opposition was influential in the defeat of three provincial

⁶ *Figueroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912, 2003 SCC 37.

⁷ Proportional Representation (PR) is a model of elections where the percentage of seats allocated to each party in the assembly, more or less, corresponds to the percentage of the votes that party has received. There are different mechanisms by which this result can be achieved. For instance, in pure list PR, political parties present the list of their candidates in each district. People vote for the party and each party is allocated a certain number of seats in accordance with its percentage of votes. If Party A, is to get 3 seats, the three candidates on top of its list are elected. In mixed-member proportional model (MMP), a certain number of candidates are elected from single member districts according to the plurality formula; then, another group of candidates are elected from party lists in order to fill the gap between the percentage of the votes and the percentage of seats of each party. For a more in-depth introduction to proportional systems please refer to Chapters Five and Six.

referendums on electoral reform. Political opportunism apart, this opposition partly stems from the problematic aspects of proportional systems. For instance, proportional systems are said to have a negative effect on political stability. My examination of proportional systems confirms that these systems have serious problematic aspects and cannot guarantee the protection of all of our desired values and goals. While they perform better than the plurality model in some respects, they have problems of their own.

This prompts me to suggest a new system, which, as I will demonstrate, does a better job protecting, promoting, and balancing Canadian constitutional values. This new proposal rests within the “majority” family of electoral systems.⁸ I will evaluate the majority model and will present my new variant.

Research Questions and Hypotheses

This research has two interrelated main questions: (1) Does the current electoral system in Canada, promote the Canadian constitutional values? (2) If the answer to the first question is negative, can we find an alternative model that can promote those values? What is that model? The hypothetical answer to the first question is no. In this research I will identify the values that are at stake in the choice of an electoral system and will try to show that, on balance, the current system does not promote those values. The hypothetical answer to the second question is yes. In this work I will identify a new alternative and will try to

⁸ Majority electoral systems are those which are designed to elect the representatives with an absolute majority (more than 50%) of votes. The simplest example is a two-round system where if no candidate receives 50% of the votes in the first round, the two most voted candidates proceed to the second round. Since there are only two candidates in the second round, the winner will necessarily have the majority of votes. For a more substantial introduction to different variants of the majority formula please refer to Chapter Seven. In Chapter Eight I have introduced and suggested a new variant of majority formula.

show that compared to the main alternatives this new scheme will do a better job in promoting the values at stake.

A Matter of Constitutional Law, Note on Methodology

The study of electoral systems is generally regarded as resting within the domain of political science. This is perhaps not expected to be the subject of a dissertation for a Faculty of Law. However, it is an interdisciplinary subject that involves law, political science, political philosophy, economics and other social sciences. Constitutional law is defined as “the law prescribing the exercise of power by the organs of a State.”⁹ Constitution is defined as “the set of fundamental principles that together describe the organizational framework of the state and the nature, the scope of, and the limitations on the exercise of state authority.”¹⁰ Electoral law determines how the organs of states are constituted and who gets to sit in those organs. As such, it is clearly within the orbit of constitutional law. An electoral system is instituted through law. It is a legal institution and should be a subject of study by lawyers.

Another reason why this study involves constitutional questions is that, as demonstrated throughout this research, electoral systems and their consequences have effects on constitutional values and constitutionally protected rights. Our search for a desired electoral system will be guided by these constitutional values and principles.

Finally, this research has a comparative law dimension. Throughout this work, electoral laws from different jurisdictions and their consequences are studied and compared.

⁹ Peter W. Hogg, *Constitutional Law of Canada*, Student Edition (Toronto: Carswell, 2012) at 1-1.

¹⁰ Patrick Monahan, *Constitutional Law* (Toronto: Irwin Law, 2006) at 3.

This research has an interdisciplinary dimension as well. Legal research can rarely be done in a vacuum and without regard for social settings and context. Legal scholars and judges who are called upon to decide hard cases have to resort to findings from the social sciences.

Here, I feel the urge to express my gratitude to my research supervisor, Professor Benoît Pelletier. I have had fruitful discussions with Professor Pelletier on this regard and he has helped me strike a balance between legal content and political science discussions in this research.

In this research, I have taken a constitutionalist and formalist approach. The validity of constitutional norms has been presupposed. I have chosen to concentrate on formal legal arguments, court decisions and relevant social science data. I have chosen not to engage in a detailed historical scrutiny.¹¹ However, I should concede that, this format has its limitations. For instance, the situation of First Nations is not reviewed in depth here. There are many remaining questions that should be dealt with in other researches.

In this research, I have made extensive use of political science data in the field of electoral studies. I have acted like a judge who has been called upon to decide on the constitutionality of different electoral systems and who has had to resort to expert opinions from political scientists. I have been involved in a content analysis of data and opinion provided by prominent scholars in this field. Occasionally, I have needed to directly compile data. Namely, I have compiled data from recent election results in Canada and Australia. Whenever necessary, I have put the findings in the context of the Canadian Constitution by citing the Supreme Court of Canada's decisions in constitutional cases. In addition to reviewing the electoral studies literature and evaluating pertinent arguments, some new

¹¹ Except when reviewing the history of recent provincial electoral reform initiatives in Chapter Six.

arguments are made throughout this work. This research attempts to make a contribution to the existing literature by putting the arguments in a Canadian context and in particular by getting involved in an interdisciplinary investigation by invoking Canadian constitutional values. While the majority of the existing literature revolves around the plurality-PR duality, this research attempts to break away from this duality by demonstrating that majority systems occupy an efficient midpoint where competing values are respected in a balanced approach. An innovative new variant of majority systems, which I have named the majority-preferential variant, is introduced and proposed in this research. Original arguments are made to demonstrate that this new variant scores highly in the value assessment chart. It is further argued that the proposed formula for the elections to the House of Commons combined with a proportional formula for elections to the Senate can reach more desirable results.

Plan

In Part One of this research, the legal and constitutional framework of elections in Canada will be reviewed. The first section of Chapter One will review judicial decisions pertinent to voting. Decisions that have defined the *Charter* right to vote and the freedom of political expression and other relevant decisions by the Supreme Court of Canada will be briefly reviewed. These decisions will be the backdrop of our constitutional evaluation throughout this work. In the second section of the first chapter, Canadian federal legislation about the voting process will be reviewed. In Chapter Two, the overriding constitutional values that are influential in the choice of an electoral system will be identified and reviewed. Democracy,

diversity, and efficiency are the three overriding core values and each has different manifestations in electoral process.

For identifying these values I have taken a constitutionalist approach. In a diverse and complex society it is very difficult to identify a set of values as the shared aspirations of the members of society. Conflicting views and interests are too many to be ignored. I have proceeded on the assumption that the Constitution is a document containing the shared values of the society. Of course this assumption is vulnerable to attacks from its opponents. But I do not have the space here to defend the theory of constitutionalism. This is an ongoing and unsettled debate. I will proceed on an assumption shared by many constitutional scholars that constitutions contain the shared values of a society. As a conjecture, I believe in democratic systems, constitutions are more likely than not to contain the shared values of the majority of the society. I view constitutions as contracts that have been signed behind the John Rawlsian veil of ignorance.¹² Constitution is a statement of a minimum set of shared values agreed upon by people before they know whether they will benefit from them or not. Since Constitutions are written before actual conflicts arise, they are closer to justice. This is why constitutional values can trump majority decisions made in the Parliament. A constitution contains the shared values of the majority of a society; however, the majority will not necessarily be happy with the application of these values to specific cases.

In order to identify the relevant values, most of all, I have turned my attention to the *Canadian Charter of Rights and Freedoms*, and the Supreme Court of Canada decisions on constitutional issues. As secondary and supporting resources, commentary by scholars has also been considered. However, not all of the constitutional values have direct implications

¹² John Rawls, *A theory of Justice* (Cambridge, Mass.: Belknap Press of Harvard University Press, 1971) at 12, 19, 136-142.

on the choice of an electoral system. The leading case of *Secession of Quebec* is exceptionally illuminating in this regard. In this case, the Supreme Court of Canada has identified four organizing principles in the Constitution of Canada, namely, democracy, minority rights, federalism, and constitutionalism and the rule of law.¹³ Democracy stands out as a value which is obviously implicated by the choice of an electoral system. Democratic rights are enshrined in the Charter. Section One of Chapter Two introduces the concept of democracy and explains how this is a value at stake in the choice of an electoral system. By resorting to some of the prominent decisions of the Supreme Court the concept of minority rights has been broadened and substituted with the broader value of diversity. Section Two of Chapter Two introduces this value and its implications on the choice of an electoral system. Federalism has some marginal implications on electoral law: that the constitutional provincial balance in the Parliament should be respected. This principle will not be reviewed in this work because its connections to our topic are only marginal. Constitutionalism and the rule of law are not directly connected to the issue of electoral systems either. Efficiency, the third value that is examined in this work, is an underlying concept that is usually taken for granted but is not usually talked about. In Section Three of Chapter Two, I will explain that Supreme Court decisions on Section 1 of the Charter reveal that the Constitution of Canada is attentive to the urgency and necessity of efficiency. In my opinion, this elevates the concept of efficiency to a constitutional value.

In my analysis, none of the three aforementioned values can trump the other. All three are necessary. We can't choose an utterly undemocratic electoral system. In the same fashion, we can't choose a model that is so inefficient that it is doomed to fail. Anything in between, needs an art of balancing the competing values. The Supreme Court of Canada

¹³ *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217 para 49 et suite.

decisions on Section 1 of the charter exhibit an astute balancing between different competing values. The same measure of balance and proportionality will be adhered to in this work in regards to competing values.

The implications of these three values are reviewed according to the following criteria or categories:

1. Democracy:
 - 1-1. Proportionality
 - 1-2. Aggregation of preferences
 - 1-3. Direct election of government and mandate
 - 1-4. Democratic change
 - 1-5. Strategic voting and wasted votes
 - 1-6. Power of central parties
 - 1-7. Turnout
2. Diversity
 - 2-1. Political diversity
 - 2-2. Representation of racial, ethnic, and religious minorities and women
 - 2-3. Geographical diversity
3. Efficiency
 - 3-1. Stability
 - 3-2. Moderation
 - 3-3. Accountability
 - 3-4. Regionalism
 - 3-5. Simplicity
 - 3-6. Miscellaneous issues

This categorization provides a framework that is followed in Chapters Three to Seven to evaluate different electoral systems. These categories are not clear-cut compartments. Each notion has implications on others, which results in a certain degree of overlap in the review. For instance, if the plurality model stifles political diversity (2-1), it is partly because voters face strategic pressures under this system (1-5). The criterion of proportionality (1-1) is reviewed as a contender, but it is concluded that proportionality is not a value per se; it is instead because it is conducive to other values such as political and social diversity that it is regarded as important. As a result, an ideal model is allowed to respect the values of political

and social diversity through other devices. I do not purport that the aforementioned list of value-driven requisites of electoral systems is exhaustive. I have simply chosen the characteristics that I have judged to be the most important. However this list contains the most of the criteria examined in electoral studies literature. I have used two filters in choosing the criteria that will be studied in this work: First, only those issues which are related to one of the three underlying values are studied. Second, only characteristics that are pertinent to the Canadian polity are included. For instance, conduciveness to conflict management is cited as a positive characteristic of an electoral system.¹⁴ However, this criterion is most pertinent to new and fragile democracies and not to an established democracy like Canada.

Parts Two, Three, and Four of this work are each devoted to the evaluation of a large family of electoral systems: plurality, proportional, and majority systems, respectively. This structure, however, has some complications. It can entail overlapping discussions and repetition. For instance, most of the arguments made against the plurality model are similar to those made for proportional models and vice versa. Despite this complication, I have decided to stick to this structure for two reasons. First, I want to confront the myth about the duality of plurality-proportional systems. I would like to demonstrate that there is no binary zero-one relationship between these two families. Each family has its own subcategories and there are systems that do not belong to either family. Therefore, a more nuanced evaluation of each system is needed. Second, I intend to demonstrate that majority systems that do not belong to either of the two axes of the plurality-proportional duality score better than both with respect to most values and occupy an efficient position to provide a balanced regard to

¹⁴ See for instance: Andrew Reynolds, Ben Reilly & Andrew Ellis, eds., *Electoral system design: the new international IDEA handbook*, (Sweden: Trydells Tryckeri AB, 2005) at 6.

all related values. As I regard the evaluation of majority systems as the apex of this research, I wanted to reserve it for the final part of the work.

In Part Two, the plurality model of elections, which is currently used in Canada, is evaluated. Chapter Three embarks on a general assessment of plurality systems. Chapter Four puts the discussions in the Canadian context by examining the Canadian experience in the application of the system and by assessing the conformity of the system to constitutional norms and principles. The Supreme Court of Canada is frequently cited in this chapter and it is demonstrated that the current electoral system does not live up to the Charter values as interpreted by the Supreme Court of Canada.

Having demonstrated the failures of the current system, I turn to evaluating alternative proposals. The most serious attempts at reforming the electoral system in Canada were five provincial initiatives, three of which were put to referendum and defeated. Since all of the provincial initiatives suggested a change to proportional representation, Chapter Five is devoted to a general assessment of proportional systems. In Chapter Six, the five provincial proposals are briefly reviewed and closer attention is paid to the peculiarities of mixed-member proportional (MMP) and single transferable vote (STV) variants of proportional representation. It will emerge that proportional models have their own problems.

The final part, Part Four, is committed to the introduction of my proposed reform. Since my proposed system sits within the “majority” family of electoral systems, in Chapter Seven the three main variants of the majority model are evaluated. It will be demonstrated that the majority model is more successful than the other two main families in respecting identified values. In Chapter Eight, the three main variants of the majority model are compared to decide which variant is the best candidate for a reform in Canada. However, it

will emerge that each variant has its own merits and limitations. Therefore, in Section Two a new variant is invented and introduced that combines the merits of the three older variants. Section Three of Chapter Eight is an annex to this work in which the issue of electoral reform for election to the Canadian Senate is considered. The addition of a proportional Senate (with more limited powers) to a lower chamber elected through the proposed variant of the majority model will enhance the electoral system.

In the conclusion of this work, I attempt to quantify the evaluation made through this research by drawing a value-based chart and demonstrating that the new proposal scores higher than other systems that are evaluated in this work with regards to satisfying the value-driven goals of an electoral system.

Part One: The Current Legal Framework of Elections in Canada and the Values at Stake

In this first part, the current electoral situation in Canada will be reviewed. Chapter One, provides an overview of the legal framework of elections in Canada. To put the matter in context, here, in addition to the issue of the electoral system in its proper definition, some general aspects of voting and elections in Canada will be reviewed. In Chapter Two, current Canadian values, which should be used as a torch in the choice of an electoral system for Canada, will be discussed.

Chapter One: The Current Legal Framework of Elections in Canada

Section 1: Voting in the Canadian Charter of Rights and Freedoms

Sections 3 to 5 of the Canadian Charter of Rights and Freedoms confirm the democratic rights of Canadians. Section 3 contains the right to vote and to be elected to a legislative body and reads as follows:

3. 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.¹⁵

This section of the Charter has attracted a large volume of judicial commentary, which will be discussed throughout this work. Section 4 of the Charter regards the maximum duration of each legislature and Section 5 sets the minimum number of sittings of the legislature in each year. They read as follows:

¹⁵ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982* being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

Maximum duration of legislative bodies

4. (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs of a general election of its members.

Continuation in special circumstances

(2) In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

Annual sitting of legislative bodies

5. There shall be a sitting of Parliament and of each legislature at least once every twelve months.¹⁶

These two sections of the Charter have not been the subject of judicial interpretation. In addition to the sections of the Canadian Charter of Rights and Freedoms that define democratic rights, other sections have serious implications on the voting process. Section 2 of the Charter defines fundamental freedoms. Subsection 2(b) concerns the freedom of expression. It reads as follows:

2. Everyone has the following fundamental freedoms:

...

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;¹⁷

¹⁶ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982* being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

¹⁷ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982* being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

Supreme Court decisions on this part, as far as they concern political expression, have impacted the electoral process in Canada.

Section 15 of the Charter concerns equality rights. This section can also have important implications on the electoral process, especially the choice of electoral system. Section 15 (1) reads as follows:

15. (1) Every individual is equal before and under the law and has the right to 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.¹⁸

As will be discussed in Section 1 of Chapter Two of this Part, the concept of democracy in Canada and almost all western democracies implies equality. We do not live in a democracy unless all citizens are treated as equals. Democratic rights also have to pass a test of equality. The right of all citizens to vote should be equal. This will be one of the main guidelines that will be used when evaluating a desired electoral system.

Section 2: Federal Election Law

The main body of laws regulating federal elections in Canada is contained in the *Canada Elections Act 2000*¹⁹ and its subsequent amendments. However, other acts such as the

¹⁸ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982* being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

¹⁹ *Canada Elections Act*, SC 2000, c 9.

*Electoral Boundaries Readjustment Act*²⁰, the *Parliament of Canada Act*²¹, the *Criminal Code*²², Income Tax Acts, etc. also contain some provisions regarding federal elections in Canada. This section contains a quick overview of the legal framework of federal elections in Canada.

Subsection 1: The right to vote

While the right to vote is enshrined in Section 3 of the Canadian Charter of Rights and freedoms, The *Canada Elections Act* explains and qualifies this right. Today, almost all adult Canadian citizens are qualified to vote in federal elections. A quick glance at the history of the franchise in Canada illustrates how far the right to vote has evolved in Canada. “At the time of confederation, the right to vote was severely limited: only white men could vote, and even they had to satisfy certain property qualifications.”²³

Section 3 of the *Canada Elections Act* requires only two qualifications for voting in a Canadian federal election. The act states:

Persons qualified as electors

3. Every person who is a Canadian citizen and is 18 years of age or older on polling day is qualified as an elector.²⁴

²⁰ *Electoral Boundaries Readjustment Act*, RSC 1985, c E-3.

²¹ *Parliament of Canada Act*, RSC 1985, c P-1.

²² *Criminal Code*, RSC 1985, c C-46.

²³ James R. Robertson, *The Canadian Electoral System* (Ottawa: Library of Parliament, Parliamentary Information and Research Center, 2004) at 1-2.

²⁴ *Canada Elections Act*, SC 2000, c 9.

However, in addition to legal age and Canadian citizenship, a third practical qualification can be inferred from section 6 of the Act:

6. Subject to this Act, every person who is qualified as an elector is entitled to have his or her name included in the list of electors for the polling division in which he or she is ordinarily resident and to vote at the polling station for that polling division.²⁵

This section dictates that in each polling division, only those who are a resident of that division can vote. Since every voter ultimately has to vote in one of the polling divisions (ridings) in Canada, the right to vote has been restricted to residents of Canada. However, special provisions have been made to re-enfranchise some groups who may not have an ordinary residency in Canada. Section 11 of the Act states:

11. Any of the following persons may vote in accordance with Part 11:

- (a) a Canadian Forces elector;
- (b) an elector who is an employee in the federal public administration or the public service of a province and who is posted outside Canada;
- (c) a Canadian citizen who is employed by an international organization of which Canada is a member and to which Canada contributes and who is posted outside Canada;
- (d) a person who has been absent from Canada for less than five consecutive years and who intends to return to Canada as a resident;
- (e) an incarcerated elector within the meaning of that Part; and
- (f) any other elector in Canada who wishes to vote in accordance with that Part.²⁶

²⁵ *Canada Elections Act*, SC 2000, c 9.

²⁶ *Canada Elections Act*, SC 2000, c 9.

The Canada Elections Act contains special provisions to grant the voting right to the four aforementioned categories. Additionally, section 8 of the Act contains provisions for enfranchising homeless people who may not have an ordinary place of residence.

Section 4 of the Act exceptionally disenfranchises some people. These include the chief electoral officer and the assistant chief electoral officer. Formerly, Section 4 (c) of *Canada Elections Act* denied the right to vote to “[e]very person who is imprisoned in a correctional institution serving a sentence of two years or more.” However, as mentioned previously, in the case of *Sauvé v. Canada*²⁷ the Supreme Court of Canada found this provision to be an unjustified infringement on the basic right to vote enshrined in section 3 of the Canadian Charter of Rights and Freedoms and therefore struck down this section.

Subsection 2: Elections Canada and the Chief Electoral Officer

Elections Canada, or the office of the chief electoral officer, is an independent agency that is responsible for conducting federal elections in Canada. “The mission of Elections Canada is to address the needs of electors and parliamentarians innovatively, effectively and professionally, through a fair and open process that is accessible to all Canadians. The Chief Electoral Officer articulates the vision of his Office and communicates.”²⁸ Section 16 of the Canada Elections Act sets out the powers and duties of the chief electoral official as follows:

²⁷ *Sauvé v. Canada (Chief Electoral Officer)*, 2002 SCC 68, [2002] 3 S.C.R. 519.

²⁸ “The Electoral System of Canada” *Elections Canada* (2007), online: elections Canada <http://www.elections.ca/gen/canelecsys_e.pdf> at 13.

Powers and duties of Chief Electoral Officer

16. The Chief Electoral Officer shall

- (a) exercise general direction and supervision over the conduct of elections;
- (b) ensure that all election officers act with fairness and impartiality and in compliance with this Act;
- (c) issue to election officers the instructions that the Chief Electoral Officer considers necessary for the administration of this Act; and
- (d) exercise the powers and perform the duties and functions that are necessary for the administration of this Act.²⁹

Based on various provisions of the Canada Elections Act and other laws, the functions of Elections Canada are summarized as follows:

- making sure that all voters have access to the electoral process through public education and information programs, as well as accessible physical facilities
 - maintaining the National Register of Electors
 - providing legal, technical, financial and administrative support to the independent commissions that periodically readjust electoral district boundaries
 - registering political parties and their electoral district associations, party leadership contestants and third parties
 - administering the legislated controls on the financing sources and election expenses of candidates, nomination contestants (those competing for endorsement as a party's candidate in an electoral district), party leadership contestants, registered parties, registered electoral district associations and third parties engaged in election advertising; and examining and disclosing their financial reports
 - authorizing the payment of allowances to registered parties, and reimbursing the election expenses of candidates and parties according to formulas set out in the *Canada Elections Act*

²⁹ *Canada Elections Act*, SC 2000, c 9.

- appointing and training returning officers, and ensuring that they provide competent and efficient services in administering the electoral process in each electoral district
- appointing the Commissioner of Canada Elections, who is tasked with enforcing electoral legislation
- appointing the Broadcasting Arbitrator, who is tasked with allocating broadcasting time among registered political parties during general elections³⁰

To ensure that the conduct of elections is not manipulated by partisan policies and actions, fine tuning the independence of Elections Canada is very important. To achieve that goal, the *Canada Elections Act* (s.13) places Elections Canada outside of the shadow of the executive branch by making it an agency that reports directly to the parliament. Section 13 of the Act contains provisions about the appointment of the chief electoral official and the end of his term:

Appointment of Chief Electoral Officer

13. (1) There shall be a Chief Electoral Officer who shall be appointed by resolution of the House of Commons to hold office during good behaviour. He or she may be removed for cause by the Governor General on address of the Senate and House of Commons.

Term of office

(2) The Chief Electoral Officer ceases to hold office on reaching 65 years of age.³¹

³⁰ “The Electoral System of Canada” *Elections Canada* (2007), online: elections Canada <http://www.elections.ca/gen/canelecsys_e.pdf> at 13-14.

³¹ *Canada Elections Act*, SC 2000, c 9.

The position of the Assistant Chief Electoral Official is provided in Section 19 of the act. According to the same section, other staff and clerks may help the Chief Electoral Official in conducting elections.

In each constituency, an Official called the “returning officer,” who is appointed by the government, oversees the conduct of elections.³²

Subsection 3: Electoral procedure

The election period begins with the issue of the writ of election by the chief electoral officer. Section 57 of the Canada Elections Act sets out the procedure:

57. (1) The Governor in Council shall issue a proclamation in order for a general election to be held.

By-election — order

(1.1) The Governor in Council shall make an order in order for a by-election to be held.

Contents

(1.2) The proclamation or order shall

(a) direct the Chief Electoral Officer to issue a writ to the returning officer for each electoral district to which the proclamation or order applies;

(b) fix the date of issue of the writ; and

(c) fix the date for voting at the election, which date must be at least 36 days after the issue of the writ...³³

³² James R. Robertson, *The Canadian Electoral System* (Ottawa: Library of Parliament, Parliamentary Information and Research Center, 2004) at 4.

³³ *Canada Elections Act*, SC 2000, c 9.

Since every voter is entitled to vote only in the polling division where he or she ordinarily resides, there needs to be a list of electors in each riding. Section 44 et suiv. of the Act contain rules regarding the enumeration of the electors in each district. The procedure of the enumeration has changed considerably. “Until recently, ... [the returning officer] would have been responsible for compiling the voters list from scratch. Voters used to be enumerated (that is, counted) at the start of each general election campaign. Two-person teams went door-to-door, recording and registering all of the eligible voters at each residential address. The enumerators were chosen by the incumbent MP and the second place party in the previous election. Enumeration consumed considerable time and money, although it did have advantages... In 1996 the Canada Elections Act was amended to provide for the creation of the National Register of Electors. A final door-to-door enumeration took place in April 1997 to lay the foundation for a permanent list, which would be updated continuously. New voters would be added when they turned 18 or received Canadian citizenship; voters who died or left the country permanently would be deleted; changes of address would be obtained from the Canada Revenue Agency and provincial motor licensing bureaus.”³⁴

Unregistered electors can still register at a polling station. Over 6 percent of voters did so in the 2008 Federal Elections.³⁵ While Election Canada’s mission is limited to federal elections, in order to avoid duplications, section 55 of the act provides the provincial electoral agencies with the opportunity to benefit from the federal list of electors

³⁴ Heather MacIvor, “Canada’s Election Law: Less Than Meets the Eye?” In Heather MacIvor, ed., *Election* (Toronto: Emond Montgomery Publications Limited, 2010) at 65-66.

³⁵ Heather MacIvor, “Canada’s Election Law: Less Than Meets the Eye?” In Heather MacIvor, ed., *Election* (Toronto: Emond Montgomery Publications Limited, 2010) at 66.

Section 56.1 (2) of the *Canada Elections Act*, which was introduced by the Harper government, provides that:

Subject to subsection (1), each general election must be held on the third Monday of October in the fourth calendar year following polling day for the last general election, with the first general election after this section comes into force being held on Monday, October 19, 2009.³⁶

By introducing this section, the Conservative government wanted to fix the election dates and put an end to a tradition by the incumbent governments of playing with the date of the election to their benefit. Since there was no provision in the law regarding a fixed date for elections (except the maximum of 5 years between two general elections), the governing party could choose the date it thought best for the party based on opinion polls and other indicators. However, despite this provision the Harper government did exactly what its predecessors had done, by calling for elections one year earlier in 2008. Section 56.1 (1) states “Nothing in this section affects the powers of the Governor General, including the power to dissolve Parliament at the Governor General’s discretion.”³⁷ Formally, it was the Governor General who dissolved the Parliament; therefore, it can be argued that the law was not broken. However, scholars believe that “Prime Minister Harper violated the **spirit** of his own law by asking the Governor General to dissolve Parliament less than three years after the 2006 election.”³⁸

³⁶ *Canada Elections Act*, SC 2000, c 9.

³⁷ *Canada Elections Act*, SC 2000, c 9.

³⁸ Heather Maclvor, “Canada’s Election Law: Less Than Meets the Eye?” In Heather Maclvor, ed., *Election* (Toronto: Emond Montgomery Publications Limited, 2010) at 65. (Emphasis added.)

According to sections 63 and 64 of the Act, an election will be held only if there is more than one candidate in a given polling division. Otherwise, the single candidate will be declared elected.

Since Canada has five different time zones, sections 128 to 131 of the *Canada Elections Act* regulates the hours of voting in each of these zones. These hours do not coincide with each other exactly, and since publicizing the results of closed polls can influence voter behavior in polling divisions where polls are still open, section 329 of the Act states:

No person shall transmit the result or purported result of the vote in an electoral district to the public in another electoral district before the close of all of the polling stations in that other electoral district.³⁹

Because elections are held on working days in Canada, sections 132 to 134 of the Act contain provisions which guarantee that an employee will be able to vote. According to these rules, employers are obliged to grant three consecutive paid work hours off to employees who wish to vote on election day.

Since some voters may not be able to vote on an election day, part 10 of the Canada Elections Act (sections 169 to 176) provides for advance voting procedures, according to which voters can cast their votes on certain, limited days before the elections and in certain limited stations. The results of advance voting are not to be announced sooner than the election day results.

³⁹ *Canada Elections Act*, SC 2000, c 9.

There are detailed rules in the *Canada Elections Act* regarding the vote count and reporting of results, which minimize the prospect of fraud or irregularities. Some of these rules are cited below:

Counting the votes

283. (1) Immediately after the close of a polling station, the deputy returning officer shall count the votes in the presence of the poll clerk and any candidates or their representatives who are present or, if no candidates or representatives are present, in the presence of at least two electors.⁴⁰

284. (1) In examining the ballots, the deputy returning officer shall reject one

- (a) that has not been supplied by him or her;
- (b) that has not been marked in a circle at the right of the candidates' names;
- (c) that is void by virtue of section 76;
- (d) that has been marked in more than one circle at the right of the candidates' names; or
- (e) on which there is any writing or mark by which the elector could be identified.⁴¹

300. (1) If the difference between the number of votes cast for the candidate with the most votes and the number cast for any other candidate is less than 1/1000 of the votes cast, the returning officer shall make a request to a judge for a recount within four days after the results are validated.⁴²

⁴⁰ *Canada Elections Act*, SC 2000, c 9.

⁴¹ *Canada Elections Act*, SC 2000, c 9.

⁴² *Canada Elections Act*, SC 2000, c 9.

Subsection 4: Rules regulating the competitors

Almost every person who is entitled to vote can also be a candidate in a federal election. Section 65 of *Canada Elections Act* makes some exceptions. Election officers cannot be a candidate. Those who occupy certain positions cannot nominate themselves in the elections for the House of Commons. They include: a member of the legislature of a province, the Council of the Northwest Territories or the Legislative Assembly of Yukon or Nunavut; a sheriff, clerk of the peace or county Crown Attorney in any of the provinces, and a judge appointed by the Governor in Council other than a citizenship judge appointed under the *Citizenship Act*. Imprisoned persons cannot become candidates either. According to Section 65 (i) a person who was a candidate in a previous election and has failed to observe certain obligations regarding that candidacy is also barred from being a candidate. Disentitlement from being a candidate to the House of Commons can be a punishment for disobeying different provisions of the Canada Elections Act.

The Act defines certain rights and obligations for the candidates. Section 80 of the Act guarantees that an employee to whom Part III of the *Canada Labour Code*⁴³ applies receives enough leave of absence to campaign. Section 81 facilitates advertising and canvassing with electors in certain types of private buildings and section 81.1 facilitates advertising and campaigning in certain types of public places.

Sections 82 to 88 of the Act, which define the obligations of candidates, are designed to ensure that a candidate's operation is financially sound and healthy and provide for the appointment of an agent and an auditor for a candidate.

⁴³ *Canada Labour Code*, RSC 1985, c L-2.

In Canadian democracy, political parties play a significant role. Although theoretically voters cast their votes for individuals, in reality a party brand plays the most important role in the choice of an individual. Usually no more than a few independent candidates are elected to the House of Commons. Accordingly, the Canada Elections Act has a set of rules regarding the role of political parties in the federal elections. According to section 117 of the Act, party affiliations are mentioned in the ballot paper:

117. (1) Ballots shall contain the names of candidates, arranged alphabetically, taken from their nomination papers.

Name of party

(2) The name, in the form referred to in paragraph 366(2)(b), of the political party that has endorsed the candidate shall be listed on the ballot under the name of the candidate if

(a) the candidate's nomination paper includes it;

(b) the condition described in paragraph 67(4)(c) is met; and

(c) no later than 48 hours after the close of nominations, the party is a registered party.

(d) [Repealed, 2004, c. 24, s. 2]

Designation of candidate as independent

(3) The word "independent" shall be listed on the ballot under the name of the candidate who has requested it in accordance with subparagraph 66(1)(a)(v) and may not be so listed in any other case. ...⁴⁴

This rule was introduced in 1970 upon the realization of the role that parties play in modern elections.⁴⁵ According to section 67 (4)(c), a document signed by the person in the party responsible for confirming a candidate's endorsement by the party should be filed with the returning officer.

⁴⁴ *Canada Elections Act*, S.C. 2000, c 9.

⁴⁵ James R. Robertson, *The Canadian Electoral System* (Ottawa: Library of Parliament, Parliamentary Information and Research Center, 2004) at 9.

Sections 366 to 403.44 of the Act regulate the registration and deregistration of political parties and their respective riding associations. The conditions for registering the parties are quite simple and almost any group with minimum political support can become a registered political party. Among these conditions is that the party has an appointed leader, chief agent and auditor and at least 250 members who have signed the request of registration. In addition to these conditions, the party should actually compete in the elections to be considered a registered party. Section 370 of the Act states:

370. (1) An eligible party becomes a registered party if it has at least one candidate whose nomination has been confirmed for an election and its application to become registered was made at least 60 days before the issue of the writ or writs for that election and has not been withdrawn⁴⁶

Additionally, regarding the deregistration of the parties, section 385 of the Act states:

385. The Chief Electoral Officer shall, effective on the expiration in a general election of the period for the confirmation of nominations under subsection 71(1), deregister a registered party that, at that time, has not endorsed a candidate in that general election.⁴⁷

Registration gives a political party several prerogatives which include the possibility of issuing tax receipts, reimbursement of some campaign expenses, access to voters lists, and entitlement to advertisement air time.⁴⁸

The *Canada Elections Act* contains several provisions regulating political advertisement and dividing advertisement airtime among the parties and the candidates. Sections 319 to 348

⁴⁶ *Canada Elections Act*, SC 2000, c 9.

⁴⁷ *Canada Elections Act*, SC 2000, c 9.

⁴⁸ James R. Robertson, *The Canadian Electoral System* (Ottawa: Library of Parliament, Parliamentary Information and Research Center, 2004) at 10.

of the Act regulate political advertising by candidates and parties during the campaign. These rules provide a fair division of free and paid airtime for each political party and candidate. Additionally, third party advertisement is also regulated in part 17 of the Act and certain limits have been applied to ensure that one person or group does not have an undue influence on the course of an election. For instance, section 350 states:

350. (1) A third party shall not incur election advertising expenses of a total amount of more than \$150,000 during an election period in relation to a general election.

Spending limit — electoral district

(2) Not more than \$3,000 of the total amount referred to in subsection (1) shall be incurred to promote or oppose the election of one or more candidates in a given electoral district, including by

(a) naming them;

(b) showing their likenesses;

(c) identifying them by their respective political affiliations; or

(d) taking a position on an issue with which they are particularly associated. ...⁴⁹

Along with the *Canada Elections Act*, the 1974 *Election Expenses Act* contains detailed rules concerning election-related expenses by parties and candidates. The purpose and the spirit of these rules can be summarized in three items:

1. These rules set limits on political spending by the parties, the candidates and the donors to ensure that political choice will not be unduly influenced by money.

2. They regulate how public funding is distributed among political parties. The main factor is the level of support that a party has.

⁴⁹ *Canada Elections Act*, SC 2000, c 9.

3. They include rules that are designed to avoid corruption in the handling of an election budget by the parties and the candidates.

Subsection 5: The electoral system

The electoral system used in federal elections in Canada is the first-past-the-post, or more accurately, the single member plurality system. As Canada was a dependency of the United Kingdom and the single member plurality system was used in the UK, it was naturally adopted for Canadian Elections. Dennis Pilon gives some insight regarding the reasons this system is used in Canada:

So why does Canada use the plurality system? Why do most other western countries use something else? Some say that institutions like voting systems mirror the broad cultures in which they are used, that the Anglo-American democracies are “adversarial” and thus favour the all or nothing approach of plurality while European countries are allegedly more consensual and thus favour the more inclusive, cooperative style of PR. Others suggest that these institutions emerged and remain in place somehow through the consent of the governed. But such explanations quickly falter when confronted with the actual historical record of the origins of western voting systems and their reform. In Canada, as elsewhere, voting systems emerged from struggles over power, not principle, while their reform was often fuelled by considerations of partisan advantage.⁵⁰

The *Canada Elections Act* does not mention the terms first-past-the-post or single member plurality voting system anywhere. Indeed, this act just marginally touches upon the issue of

⁵⁰ Dennis Pilon, “Understanding Electoral Systems” in Heather MacIvor, ed., *Election*, (Toronto: Emond Montgomery Publications Limited, 2010) at 47-48. Also, see the same reference for a brief history of voting system reform in Canada at 48-49.

the voting system and treats it as though the current system is the most natural thing, or even the only option. From different provisions of the *Canada Elections Act* and also the *Electoral Boundaries Readjustment Act*, we find that we deal with single member constituencies in Canadian federal elections when choosing members of the House of Commons. An elector is only allowed to vote for one candidate. According to sections 269 and 279 of the *Canada Elections Act*, if the names of more than one candidate are marked on a ballot paper, it will be rejected. Section 313 of the *Canada Elections Act* specifies what happens, upon the return of the writ, when a candidate is declared the winner in each of the constituencies:

313. (1) The returning officer, without delay after the sixth day that follows the completion of the validation of results or, if there is a recount, without delay after receiving the certificate referred to in section 308, shall declare elected the candidate who obtained the largest number of votes by completing the return of the writ in the prescribed form on the back of the writ.

Equality of votes

(2) If there is an equality of votes between the candidates with the largest number of votes, the returning officer shall indicate that on the return of the writ.⁵¹

Therefore, Canadian federal elections are characterized by a plurality system. No special majority or percentage of votes is needed in order for a candidate to be declared the winner. In other words, regardless of the number and the percentage of the votes a candidate receives, he will win an election as long as he receives at least one vote more than his rivals. Interestingly, according to section 29 of the *Parliament of Canada Act* and sections 40 and 318 of the *Canada Elections Act*, the only occasion in which a second round of voting will happen is on the rare occasion when two (or more) leading candidates receive exactly the

⁵¹ *Canada Elections Act*, SC 2000, c 9.

same number of votes. However, if the wording of the law is considered closely, it is apparent that even in this instance this is not a two round election system, unlike in majority voting systems such as France. Section 29 of the Parliament of Canada Act reads as follows:

29. (1) A warrant may issue to the Chief Electoral Officer for the issue of a writ for the election of a member of the House of Commons to fill any vacancy that, after a general election and before the first session of Parliament thereafter, occurs by reason of the death of, or the acceptance of an office by, any member of the House.

Deemed vacancy

(1.1) A warrant may be issued to the Chief Electoral Officer for the issue of a writ for the election of a member of the House of Commons to fill any vacancy that is deemed to occur where a report sent under paragraph 318(a) of the *Canada Elections Act* is received stating that no candidate was declared elected in the electoral district because of the equality of votes.

Deemed by-election

(1.2) An election held in the circumstances set out in subsection (1.1) is deemed to be a by-election.⁵²

In two-round majority systems, when the needed majority (usually 50%) is not obtained by any candidate, only two or more leading candidates are qualified to compete in the second round of the elections. In fact, elections to Parliament are not complete until the results of the elections in constituencies where a second round of voting will take place are declared. This is unlike what happens in Canada. The equality of votes situation in Canada is treated as a vacancy in the House of Commons (as in a case when an elected candidate dies), therefore, the new Parliament will still start its session. After a while, a by-election will be held in the

⁵² *Parliament of Canada Act*, RSC 1985, c P-1.

affected constituency in which any eligible person, including all of the candidates in the previous election, can stand as a candidate.

Section 3: The Supreme Court of Canada case law

Throughout this work various decisions by Canadian courts, in particular the Supreme Court of Canada, are cited. This section is not aimed at providing a through and exhaustive catalogue of the decisions cited. It rather provides a snapshot of the most relevant decisions by the Supreme Court of Canada which have important implications on the choice of an electoral system. The text of the *Charter* cannot be complete without the interpretive decisions of the Supreme Court of Canada and an introduction to the current legal framework of the elections in Canada will not be complete without including some landmark decisions that have shaped the content of the right to vote in Canada. This introductory section is just an appetizer before the main course. These decisions will be cited again throughout this work and their implication on different contexts will be discussed.

1. Vote Parity versus effective representation.

Saskatchewan's *Electoral Boundaries Commission Act* introduced two limits that the commission had to observe when drawing electoral boundaries: the number of urban and rural ridings was pre-determined and urban ridings had to coincide with municipal boundaries. It was argued that, as a result, there were more frequent and significant deviations from the voter population quota in Saskatchewan provincial ridings. In *Reference*

*re Prov. Electoral Boundaries (Sask.)*⁵³ The Supreme Court of Canada was to rule whether as a result of these deviations, s. 3 of the Canadian Charter of Rights and Freedoms was infringed.

The majority opinion was articulated by then Puisne Justice McLachlin. Here, she tackles the question as to whether, in Canadian democracy and according to s. 3 absolute vote parity is required. She states that unlike in the United States, Canadian democracy is a representative democracy and it is efficient representation that matters, not absolute vote parity. Relative voter parity is itself a factor in efficient representation but not the only factor. Other factors such as geography, demography, communities and minority groups with special interests should also be taken into account in order to achieve more efficient representation. Accordingly, when drawing the electoral boundaries, authorities should balance all of the requirements of efficient representation. For instance, disregarding the factor of geography, absolute vote parity will probably deprive sparsely-populated northern regions from having their own ridings, and as a result northern communities, which have special needs and interests, will not be effectively represented. However, McLachlin concedes that reasonable voter parity should be respected as far as it is possible and as far as other important factors do not justify a deviation:

Notwithstanding the fact that the value of a citizen's vote should not be unduly diluted, it is a practical fact that effective representation often cannot be achieved without taking into account countervailing factors.

First, absolute parity is impossible. It is impossible to draw boundary lines which guarantee exactly the same number of voters in each district. Voters

⁵³ *Reference re Prov. Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158.

die, voters move. Even with the aid of frequent censuses, voter parity is impossible.

Secondly, such relative parity as may be possible of achievement may prove undesirable because it has the effect of detracting from the primary goal of effective representation. Factors like geography, community history, community interests and minority representation may need to be taken into account to ensure that our legislative assemblies effectively represent the diversity of our social mosaic. These are but examples of considerations which may justify departure from absolute voter parity in the pursuit of more effective representation; the list is not closed.⁵⁴

The court goes on to examine whether deviations from voter parity by the commission are justified according to the aforementioned criteria, and is satisfied that they are. However, it is still unclear how much deviation from the voter parity can be tolerated. Here, it was disputed that fixing the number of urban and rural ridings was to the detriment of urban voters and thus amounted to gerrymandering by the ruling party. While in some ridings a deviation of up to 25% from the average riding population was observed, the court found the voter parity of urban and rural voters within reasonable limits on a provincial scale:

The actual allocation of seats between urban and rural areas is very close to the population distribution between those areas. The rural areas have 53.0 percent of the seats and 50.4 percent of the population. Urban areas have 43.9 percent of the seats and 47.6 percent of the population. The rural areas are, therefore, somewhat over-represented, and the urban areas somewhat under-represented, but these deviations are relatively small.⁵⁵

⁵⁴ Reference re Prov. Electoral Boundaries (Sask.), [1991] 2 S.C.R. 158 at 184.

⁵⁵ Reference re Prov. Electoral Boundaries (Sask.), [1991] 2 S.C.R. 158, at 192.

It is not clear to what extent such a deviation from voter parity should be tolerated, but as different factors have to be balanced in achieving efficient representation, it is clear that voter parity cannot be discarded all together.

This ruling has important impacts on the choice of an electoral system for Canada and the electoral reform debate. First, it is demonstrated that the one-person-one-vote principle is not contained in the Canadian Constitution; therefore, it cannot be an important merit of a given electoral system. Secondly, the Supreme Court of Canada has given great importance to the fair and efficient representation of geographic regions, minorities and special interest groups. Therefore, an electoral system whose application is to the detriment of these factors is not desirable. For instance, a system of proportional representation with no local ridings or with large ridings will infringe upon the spirit of the Canadian constitution. Since relative voter equality sometimes contravenes other maxims such as pluralism (as demonstrated by the effective representation of minorities, sparsely populated areas, special interest groups, etc.) and all these are important and cannot be discarded, the choice of an electoral system that balances these sometimes contravening values is desirable.

2. Inmates not precluded from the right to vote

Section 51 (e) of *Canada Elections Act*, 1985⁵⁶ denied the right to vote to “[e]very person who is imprisoned in a correctional institution serving a sentence of two years or more.” The Supreme Court of Canada in *Sauvé v. Canada*⁵⁷ was to decide whether this section infringed

⁵⁶ *Canada Elections Act*, R.S.C. 1985, c. E-2, s. This section was reproduced in section 4 (c) of 2000 act and the court’s ruling applied to this section as well.

⁵⁷ *Sauvé v. Canada (Chief Electoral Officer)*, [2002] 3 S.C.R. 519.

s. 3 of the Charter. The Court found that section 51 (e) infringes the right to vote enshrined in s. 3 of the Charter and there was no justification to allow this infringement under s. 1 of the Charter. McLachlin per Majority stated that the right to vote is a fundamental right and any deviation from this universal right should be neatly justified. She found no justification or any correctional merit in depriving a group of inmates from voting in elections. McLachlin found that government's vague and symbolic objectives cannot justify limiting the right to vote. This decision is an indication of importance of the right to vote in Canada and its inclusiveness.

This ruling demonstrates how every single vote counts in Canadian democracy. Therefore, one can infer that an electoral system that diminishes the phenomenon of “wasted votes” is more on par with Canadian constitutional values. However, as stated in Section 1.1, this should be balanced against other values.

3. Broader and purposive interpretation of s. 3

In *Figueroa v. Canada*⁵⁸ the Supreme Court of Canada made an important pronouncement on the scope of s. 3 and the right to vote in the Canadian constitution. The *Canada Elections Act* had introduced a threshold of 50 candidates for federal political parties. The small parties, which failed to reach this threshold, would face important limitations, including fiscal limitation. Furthermore, names of candidates wouldn't be accompanied by their party affiliation. Figueroa, the leader of the Communist Party of Canada, challenged the constitutionality of this provision, claiming that it infringes s. 3 of the Charter. The Supreme Court held that this provision is unconstitutional. It was stated that s. 3 should be construed

⁵⁸ *Figueroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912.

broadly and purposively. The purpose of this section is effective representation, which includes the representation of different opinions and groups, small as they may be. Imposing restrictions on smaller parties bars smaller groups from efficient representation. Furthermore, the Court held that the right to vote should not be construed as restricted to electing a government. Every citizen has the right to meaningful participation in the election process. Each candidate and political party uses the opportunity provided in the election to present ideas and influence the public debate, and regardless of who wins the election, each citizen uses the ballot to express his own opinion and support groups and ideas. Undue restrictions on smaller political parties would diminish meaningful participation in the political process. The court also found that these restrictions cannot be justified under s. 1 of the Charter.

This ruling emphasizes the importance of pluralism in the Canadian constitution and therefore has important implications on the choice of electoral system. Not all electoral systems provide the public with the same amount of opportunity to participate in a meaningful political process and not all of them are equal in accommodating smaller groups and marginal ideas. This is perhaps the most important decision related to the subject of this work. It will be discussed in depths in Chapter Four and throughout the thesis.

4. Third party spending limits do not infringe the right to vote

The *Canada Election Act 2002* had some limiting measures on third party political advertisement expenditures. Most importantly, it limited third party expenditures to \$150000 nationally and to \$3000 in a single riding and banned third party advertisements on polling day. Stephen Harper, then leader of the National Citizens Coalition, challenged the

constitutionality of these limits in *Harper v. Canada*⁵⁹. One of the bases for the challenge was the purported infringement of the right to vote under s. 3 of the Charter. The Supreme Court of Canada held that these limits not only do not infringe the right to vote, but protect it. By preventing inundation by the flow of advertisement promoting only one or some views and by insuring that the election process is not abused by the power of money, these provisions help citizens have meaningful participation in the electoral process:

Under s. 3, the right of meaningful participation in the electoral process is not limited to the selection of elected representatives and includes a citizen's right to exercise his or her vote in an informed manner. In the absence of spending limits, it is possible for the affluent or a number of persons pooling their resources and acting in concert to dominate the political discourse, depriving their opponents of a reasonable opportunity to speak and be heard, and undermining the voter's ability to be adequately informed of all views. Equality in the political discourse is thus necessary for meaningful participation in the electoral process and ultimately enhances the right to vote. This right, therefore, does not guarantee unimpeded and unlimited electoral debate or expression. Spending limits, however, must be carefully tailored to ensure that candidates, political parties and third parties are able to convey their information to the voter; if overly restrictive, they may undermine the informational component of the right to vote. Here, s. 350 does not interfere with the right of each citizen to play a meaningful role in the electoral process.⁶⁰

This ruling demonstrated that the court attaches some importance to a level playing ground for political parties and views in the election process. As a result, one can infer that an

⁵⁹ *Harper v. Canada (Attorney General)*, [2004] 1 S.C.R. 827.

⁶⁰ *Harper v. Canada (Attorney General)*, [2004] 1 S.C.R. 827.

electoral system that provides a more level playing ground for political parties is more in par with Canadian constitutional values.

5. *Haig v. Canada*

In 26 October 1992 the government of Canada conducted a referendum in all of Canada except Quebec. On the same date Quebec held a separate referendum on the same subject but according to their provincial referendum legislation. National and Quebec referendum legislation had some differences. For instance, according to Quebec legislation a person had to be domiciled for at least 6 months in Quebec in order to be eligible to vote in an election, whereas the national legislation required residency on the day the referendum was held only. Graham Haig moved from Ontario to Quebec in August 1992, therefore he was disqualified to vote in any of the elections. This situation eventually gave rise to the *Haig v. Canada*⁶¹ case. In its decision, the Supreme Court of Canada tackled several issues, one of which was whether as a result of Haig's deprivation from voting in either of the two referenda the right to vote, which is enshrined in s. 3 of Canadian Charter of Rights and Freedoms, was infringed. The court decided that Haig's rights under s. 3 are not infringed because the unambiguous wording of this section limits its scope to the selection of members of legislative bodies, or in other words, to representation, whereas no such selection is involved in a referendum. A referendum has a consultative role and governments are not obliged to hold a referendum. If they chose to do so, they are not bound by the results:

⁶¹ *Haig v. Canada (Chief Electoral Officer)*, [1993] 2 S.C.R. 995.

Section 3 of the *Charter* does not guarantee Canadians a constitutional right to vote in a referendum. The wording of s. 3 is clear and unambiguous and guarantees only the right to vote in elections of representatives of the federal and the provincial legislative assemblies. The purpose of s. 3 is to grant every citizen of this country the right to play a meaningful role in the selection of elected representatives. Since a referendum is in no way such a selection -- a referendum is basically a consultative process --, the Canadian citizens cannot claim a constitutional right to vote in a referendum under s. 3. The appellant's s. 3 *Charter* rights were therefore not infringed.⁶²

This ruling is not directly related to the electoral systems debate. The issue of electoral systems is about elections of multi-member bodies (in our case, federal and provincial legislatures). Exclusion of referenda from s. 3 of the Canadian Charter of Rights and Freedoms will not affect the choice of an electoral system in Canada. However, this decision is of some help in understanding the scope of democratic rights in Canada.

Here, another reason Haig provided for the infringement of his Charter rights was that his freedom of expression was compromised by his exclusion from voting in the referendum. The Court held that s. 2 (b) of the Charter does not impose a positive obligation on the government to provide the means for expression, namely via referenda:

In the context of the 1992 federal referendum, freedom of expression did not include a constitutional right for all Canadians to be provided with a specific means of expression. Though a referendum is undoubtedly a platform for expression, s. 2(b) of the *Charter* does not impose upon a government any positive obligation to consult its citizens through the particular mechanism of a referendum, nor does it confer upon all citizens the right to express their opinions in a referendum. In another context, however, s. 2(b) could impose a positive governmental action. A

⁶² Haig v. Canada (Chief Electoral Officer), [1993] 2 S.C.R. 995, at 998.

referendum as a platform of expression is a matter of legislative policy and not of constitutional law. While s. 2(b) does not include the right to any particular means of expression, where a government chooses to provide one, it must do so in a fashion that is consistent with the Constitution. Here, the federal government did not violate s. 2(b) either in holding its referendum or in holding it in less than all provinces and territories. The appellant was unable to vote simply because, on the enumeration date, he was not ordinarily resident in a province where the federal referendum was held, a limitation which does not infringe the appellant's freedom of expression as guaranteed in the *Charter*.⁶³

In this decision, the nature and the scope of freedom of expression is demarcated by excluding the positive duty of the government. This is consistent with the fact that in the Canadian Constitution the government does not have to hold referendums. This ruling has no direct effect on the electoral reform discussion. It might be argued that this decision repudiates the claims by small party supporters regarding their right to equal opportunity in expressing their views during the electoral process. However, other decisions of the Court have defined the Section 3 right to vote as the right to play a meaningful role in the electoral process. This implies that every group should be able to use elections as a platform for delivering its message. In my opinion, this puts a positive obligation on the government to pave the way for all opinions to be expressed in elections. This obligation includes the choice of an appropriate electoral system. While referendums fall under the general system freedom of expression (where there is no positive obligation on the government), elections are governed by Section 3 of Charter.

⁶³ Haig v. Canada (Chief Electoral Officer), [1993] 2 S.C.R. 995, at 999.

6. Measured spending limits on third party expenditures a justified infringement of s. 2(b)

This issue was touched upon in two Supreme Court cases: *Libman v. Quebec*⁶⁴ and *Harper v. Canada*⁶⁵.

Quebec legislation banned third party expenditures in Quebec referendums. The court decided that while this ban was aimed at providing a level playing field and upholding the integrity of the voting process by avoiding the power of money, completely ruling out third party expenditures was too limiting to be considered a justified limit to the freedom of expression under s. 1. The court suggested that the Quebec legislature should instead introduce measured spending limits.

Here, one of the reasons Harper considered the third party spending limits to be unconstitutional was that they limit freedom of expression. The court held that while these limitations infringe the freedom of expression as articulated in s. 2 (b) of the Charter, this infringement could be justified under s. 1 of the same text:

The harm that Parliament seeks to address in this case is electoral unfairness. Given the difficulties in measuring this harm, at the stage of the justification analysis a reasoned apprehension that the absence of third party election advertising limits will lead to electoral unfairness is sufficient. Furthermore, on balance, the contextual factors favour a deferential approach to Parliament in determining whether such limits are demonstrably justified in a free and democratic society. While the right to political expression lies at the core of the guarantee of free expression and warrants a high degree of constitutional protection, there is nevertheless a danger that political advertising may

⁶⁴ *Libman v. Quebec (Attorney General)*, [1997] 3 S.C.R. 569.

⁶⁵ *Harper v. Canada (Attorney General)*, [2004] 1 S.C.R. 827.

manipulate or oppress the voter. Parliament had to balance the rights and privileges of all the participants in the electoral process. ...⁶⁶

These decisions further emphasize the egalitarian aspect of elections in Canada.

7. The *Secession of Quebec*⁶⁷ reference

This prominent decision is primarily the Supreme Court of Canada's opinion regarding the legality of a unilateral secession of Quebec from Canada. However, in addition to important rulings regarding self-determination and secession, this decision contains outstanding excerpts on defining Canadian democracy and is perhaps the one decision by the Supreme Court in which the word "democracy" is most used. An excerpt from this ruling describes that in Canada something broader than the rule by majority is meant by the word democracy:

The Court must be guided by the values and principles essential to a free and democratic society which I believe to embody, to name but a few, respect for the inherent dignity of the human person, commitment to social justice and equality, accommodation of a wide variety of beliefs, respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals and groups in society.⁶⁸

⁶⁶ *Harper v. Canada (Attorney General)*, [2004] 1 S.C.R. 827, at 829.

⁶⁷ *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217.

⁶⁸ *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, para. 66.

8. The *Oakes* test

Section 1 of the *Canadian Charter of Rights and Freedoms* allows reasonable limitations on the exercise of the rights and values confirmed in the Charter if these limitations can be justified in a free and democratic society. *R. v. Oakes*⁶⁹ is a landmark decision of the Supreme Court that establishes the framework of section 1 limitations. The framework designed by this ruling is famously called the *Oakes test* and is applied in numerous subsequent decisions by the Court. Having a commanding knowledge of the *Oakes test* is helpful in electoral system reform debate in Canada because electoral systems are tools for achieving values and their choice is a matter of balancing competing values. The *Oakes test* determines how far the constitutional values should be respected and which limitations can be reasonably put on them.

The Court presents a two-step test in determining whether an infringement of a Charter right can be saved under section 1:

To establish that a limit is reasonable and demonstrably justified in a free and democratic society, two central criteria must be satisfied. First, the objective, which the measures responsible for a limit on a *Charter* right or freedom are designed to serve, must be "of sufficient importance to warrant overriding a constitutionally protected right or freedom": *R. v. Big M Drug Mart Ltd.*, *supra*, at p. 352. The standard must be high in order to ensure that objectives which are trivial or discordant with the principles integral to a free and democratic society do not gain s. 1 protection. It is necessary, at a minimum, that an objective relate to concerns which are pressing and substantial in a free and democratic society before it can be characterized as sufficiently important.

⁶⁹ *R. v. Oakes*, [1986] 1 S.C.R. 103.

Second, once a sufficiently significant objective is recognized, then the party invoking s. 1 must show that the means chosen are reasonable and demonstrably justified.⁷⁰

The second step itself involves three tests:

First, the measures adopted must be carefully designed to achieve the objective in question. They must not be arbitrary, unfair or based on irrational considerations. In short, they must be rationally connected to the objective. Second, the means, even if rationally connected to the objective in this first sense, should impair ‘as little as possible’ the right or freedom in question: *R. v. Big M Drug Mart Ltd.*, *supra*, at p. 352. Third, there must be a proportionality between the effects of the measures which are responsible for limiting the *Charter* right or freedom, and the objective which has been identified as of ‘sufficient importance’.⁷¹

⁷⁰ *R. v. Oakes*, [1986] 1 S.C.R. 103, paras. 69-70.

⁷¹ *R. v. Oakes*, [1986] 1 S.C.R. 103, para. 70.

Chapter Two: The Values at Stake

Section One: Democracy

Subsection 1: Definition

Democracy is one of the core values of Canada. Constitutionally, democratic rights are protected under sections 3 to 5 of the *Canadian Charter of Rights and Freedoms*. Additionally, section 1 of the Charter defines Canadian society as democratic by ruling that the limits on the guarantee of the rights and freedoms should be justified in a democratic society:

The *Canadian Charter of rights and freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and **democratic** society.⁷² (Emphasis added)

⁷² *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982* being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

Upon exploring the basic values of a society that can influence and be influenced by the choice of an electoral system, democracy will undoubtedly be the leading value to consider. Democracy is the *raison d'être* of elections. Elections are designed to make democracy work. Therefore, conformity with democratic values should be a great asset for an electoral system.

What is democracy? Literally, it comes from two Greek words *demos* (people) and *kratos* (rule or power) and roughly translates to “rule by the people”. Apart from this literal meaning, there is no agreement among scholars about what is meant by democracy and what exactly is contained in this concept. As Larry Diamond states, “Defining *democracy* is a bit like interpreting Talmud (or any religious text): ask a room of ten rabbis (or political scientists) for the meaning and you are likely to get at least eleven different answers.”⁷³

Definitions of democracy tend to be categorized into narrow, or thin, definitions and thick, or broad, definitions. The most famously quoted advocate of a minimalist definition of democracy is Joseph Schumpeter. For Schumpeter, democracy simply is a system “for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the peoples vote.”⁷⁴ In restricting the requisites of a democracy, Schumpeter even goes as far as challenging the literal meaning of democracy, which is the rule by people:

The classical theory [of democracy] ... attributed to the electorate an altogether unrealistic degree of initiative which practically amounted to ignoring leadership.

⁷³ Larry Diamond, *The Spirit of Democracy*, (New York: Times Books/ Henry Holt and Company, 2009) at 21.

⁷⁴ Joseph Schumpeter, *Capitalism Socialism and democracy*, 2d ed. (New York: Harper, 1947) quoted in Larry Diamond, *Developing Democracy: Towards Consolidation*, (Baltimore: John Hopkins University Press, 1999) reprinted in Robert A. Dahl, Ian Shapiro & Jose Antonio Cheibub, eds, *The Democracy Sourcebook*, (Cambridge: The MIT Press, 2003) at 31.

But collectives act almost exclusively by accepting leadership – that is the dominant mechanism of practically any collective action which is more than a reflex ... our theory is of course no more definite than is the concept of leadership. This concept presents similar difficulties as the concept of competition in the economic sphere, with which it may usefully be compared ... in political life there is always some competition, though perhaps only as a potential one, for the allegiance of the people. To simplify matters, we have restricted the kind of competition for leadership which is to define democracy to free competition for a free vote. ... According to the view we have taken, democracy does not mean and cannot mean that the people actually rule in any obvious sense of the term “people” and “rule”. Democracy means only that the people have the opportunity of accepting or refusing the men who are to rule them.⁷⁵

Schumpeter’s minimal definition does not conform to what we usually consider as a democracy. It is worth mentioning here that, as highlighted by Dahl, another categorization of the definitions of democracy involves categories of normative and descriptive definitions:

One way [to define democracy] ... is to specify a set of goals to be maximized; democracy can then be defined in terms of the specific governmental processes necessary to maximize these goals ... A second way – this might be called the descriptive method – is to consider as a single class of phenomena all those nation states and social organizations that are commonly called democratic by political scientists and ... discover first the necessary and sufficient conditions they have in common and second, the necessary and sufficient conditions for social organizations possessing these characteristics.⁷⁶

⁷⁵ Joseph Schumpeter, *Capitalism Socialism and Democracy*, (London: George Allen & Unwin, 1976) at 268-70. Cited in Jean Grugel, *Democratization*, (New York: Palgrave Macmillan, 2002) at 19.

⁷⁶ Cited in Jean Grugel, *Democratization*, (New York: Palgrave Macmillan, 2002), at 18.

Defining democracy descriptively, and basing it on the state of affairs in some countries, has logical shortcomings that will be discussed shortly. However, since normative requisites of democracy tend to be more than descriptive characteristics of contemporary democracies, and conceding that there may be no consensus on what those normative requisites are, it can be assumed that actual characteristics that are also normatively desirable constitute the minimum threshold that any definition of democracy should conform to. Any definition that fails to do so fails the test of exclusiveness. Schumpeter's definition rests in this group. As highlighted by Larry Diamond, this definition will include countries that are not genuinely democratic. Quoting Terry Karl and Philippe Schmitter, Diamond makes his point by illustrating two kinds of states that hold regular elections, yet are not what we expect a democracy to be:

Such Schumpeterian conceptions (common among Western foreign policy makers as well) risk committing what Terry Karl calls the "fallacy of electoralism." This flawed conception of democracy privileges elections over other dimensions of democracy and ignores the degree to which multiparty elections (even if they are competitive and uncertain in outcome) may exclude significant portions of the population from contesting for power or advancing and defending their interests, or may leave significant arenas of decision making beyond the control of elected officials. Philippe Schmitter and Terry Karl remind us that, "however central to democracy, elections occur intermittently and only allow citizens to choose between the highly aggregated alternatives offered by political parties, which can, especially in the early stages of a democratic transition, proliferate in a bewildering variety."⁷⁷

⁷⁷ Larry Diamond, *Developing Democracy: Towards Consolidation*, (Baltimore: John Hopkins University Press, 1999) reprinted in Robert A. Dahl & Ian Shapiro & Jose Antonio Cheibub, eds, *The Democracy Sourcebook*, (Cambridge: The MIT Press, 2003) at 32-33.

The former Apartheid regime of South Africa was an example of a country in which regular elections were held, but a part of the population (the black majority) were denied the right to vote. In some monarchies or theocracies regular presidential and parliamentary elections are held, but even if we assume those elections are conducted freely and fairly, important issues are out of the province of elected officials. Clearly, such states fail to qualify as democracies.

Another problem with this minimalist definition is that if the choice of people is restricted to elections and election season and the will of people is absent in decision making by rulers, democracy can be a void concept. A democratic and participatory culture is needed for a country to be democratic. Additionally, if we take the representative concept of democracy, people are not electing leaders: they are designating representatives who will act on their behalf. Officials are elected based on their views. People vote for candidates whose views are closest to their own. This is the prevalent political psychology in democracies such as Canada. That is why when an elected MP crosses the floor, electors feel betrayed. The definition Beetham gives is closer to this understanding of democracy:

[democracy is] a mode of decision making about collectively binding rules and policies over which the people exercise control, and the most democratic arrangement [is] that where all members of the collectivity enjoy effective equal rights to take part in such decision-making directly – one, that is to say, which realises to the greatest conceivable degree the principles of popular control and equality in its exercise.⁷⁸

⁷⁸ D. Beetham, “Liberal Democracy and the Limits of Democratization” (1992) 40 *Political Studies*. Cited in: Jean Grugel, *Democratization*, (New York: Palgrave Macmillan, 2002), at 12.

Adam Przeworski defends Schumpeter's conception of democracy and Popper's minimalist contention that democracy is only when citizens can get rid of governments without bloodshed. Taking aim at thick definitions of democracy, he suggests:

Perusing innumerable definitions, one discovers that democracy has become an altar on which everyone hangs his or her favourite *ex voto*. Almost all normatively desirable aspects of political, and sometimes even of social and economic, life are credited as intrinsic to democracy: representation, accountability, equality, participation, justice, dignity, rationality, security, freedom, ... the list goes on. We are repeatedly told that "unless democracy is x or generates x, ..." The ellipsis is rarely spelled out, but it insinuates either that a system in which governments are elected is not worthy of being called "democracy" unless x is fulfilled or that democracy in minimal sense will not endure unless x is satisfied. The first claim is normative, even if it often hides as a definition. The second is empirical. ...⁷⁹

However, some of the concepts Przeworski tries to sever from the definition of democracy will not be compatible even with the minimalist definition he himself accepts, or it will at least make democracy void of normative value if defined in that way. For instance, if people are to decide who rules them, how are people defined? Shouldn't we adhere to the principle of equality to include everybody in the definition? If only, say, 10 percent of people have the right to vote, can we still hold that the people choose the rulers? Doesn't equality dictate that everyone's vote should count equally? Is it a democracy if my vote weighs ten times more

⁷⁹ Adam Przeworski, "Minimalist Conception of Democracy: A Defense" in Ian Shapiro & Casiano Hacker-Cordon, eds. *Democracy's Value*, (Cambridge: Cambridge University Press, 1999). Reprinted in: Robert A. Dahl & Ian Shapiro & Jose Antonio Cheibub, eds, *The Democracy Sourcebook*, (Cambridge: The MIT Press, 2003) at 12.

than yours? Or, in absence of free speech and without access to information, have people really spoken their mind by voting for x? Have they really decided? The list goes on.

As discussed earlier, and as highlighted by Dahl, some tend to define democracy descriptively or empirically by studying the actual systems known as democracy. As Victor Davis Hanson puts it, “Democracy is like pornography... we know it when we see it”⁸⁰ Even if useful in the social sciences or international relations, democracy defined as such fails to imply any value worthy of striving for. There is no reason why a system should be desirable only because it exists. Furthermore, in our study, this kind of definition will lead to a fallacy. Here, democracy is presented as one of the fundamental values of Canada. Adhering to such a definition would be along the lines of stating that one of the core values of Canada is being like Canada.

Realising that even the most respected democracies in the world may lack some of the normative characteristics of a desired democracy, Dahl has suggested using the term “polyarchy”. He has counted several attributes for a polyarchal society, which include:

- the election of government officials.
- free and fair elections.
- an inclusive suffrage.
- the right of all citizens to run for public office.
- freedom of expression.
- citizens have a right to source of information other than official ones.
- associational autonomy and the right to form independent associations or organizations, including political parties and interest groups.⁸¹

⁸⁰ Quoted in: Stephen Brooks, *Canadian Democracy*, 6th ed. (Toronto: Oxford University Press, 2009), at 13.

⁸¹ Jean Grugel, *Democratization*, (New York: Palgrave Macmillan, 2002), at 19.

While Dahl's characterization is not that of a normatively described democracy, it still has more content than Schumpeter's minimalist definition. However, if a thin definition cannot satisfy us, which more substantial definition of democracy should we adopt? There are so many definitions that it seems impossible to choose the best one. The definition suggested by Stephen Brooks in *Canadian Democracy* is a simple one:

Democracy is a political system based on the formal political equality of all citizens, in which there is a realistic possibility that voters can replace the government, and in which certain basic rights and freedoms are protected.⁸²

However, this definition involves a clever evasion. Other than a reference to equality, it does not clarify which basic rights and freedoms should be protected in order for a political system to be recognized as a democracy. The establishment of the list can be arbitrary and contentious and its full examination will distract us from the main topic. I will contend with quoting the decent list that Larry Diamond suggests:

- Substantial individual freedom of belief, opinion, discussion, speech, publication, broadcast, assembly, demonstration, petition, and (why not) the Internet.
- Freedom of ethnic, religious, racial, and other minority groups (as well as historically excluded majorities) to practice their religion and culture and to participate equally in political and social life.
- The right of all adult citizens to vote and to run for office (if they meet certain minimum age and competency requirements).
- Genuine openness and competition in the electoral arena, enabling any group that adheres to constitutional principles to form a party and contest for office.

⁸² Stephen Brooks, *Canadian Democracy*, 6th ed. (Toronto: Oxford University Press, 2009), at 22.

- Legal equality of all citizens under a rule of law, in which the laws are “clear, publicly known, universal, stable, and nonretroactive.”
- An independent judiciary to neutrally and consistently apply the law and protect individual and group rights.
- Thus, due process of law and freedom of individuals from torture, terror, and unjustified detention, exile, or interference in their personal lives – by the state or nonstate actors.
- Institutional checks on the power of elected officials, by an independent legislature, court system, and other autonomous agencies.
- Real pluralism in sources of information and forms of organization independent of the state; and thus a vibrant “civil society.”
- Control over the military and state security apparatus by civilians who are ultimately accountable to the people through elections.⁸³

Searching for an affirmation of the place of democracy in its broad definition in the constitutional framework of Canada, we can find several indications in the Supreme Court of Canada decisions. Among these decisions, the Reference on the *Secession of Quebec* is the most important and one which solidifies the Court’s opinions on the issue of democracy. Paragraphs 61 to 69 of this decision study the role of democracy as one of the founding principles of Canada. Paragraph 64 of this decision, which contains a reference to the previous *Oakes* decision, gives us a clue that the broader sense of democracy is enshrined in the Canadian constitution:

Democracy is not simply concerned with the process of government. On the contrary, as suggested in *Switzman v. Elbling, supra*, at p. 306, democracy is fundamentally connected to substantive goals, most importantly, the promotion

⁸³ Larry Diamond, *The Spirit of Democracy*, (New York: Times Books/ Henry Holt and Company, 2009) at 22.

of self-government. Democracy accommodates cultural and group identities: *Reference re Provincial Electoral Boundaries*, at p. 188. Put another way, a sovereign people exercises its right to self-government through the democratic process. In considering the scope and purpose of the *Charter*, the Court in *R. v. Oakes*, [1986] 1 S.C.R. 103, articulated some of the values inherent in the notion of democracy (at p. 136):

‘The Court must be guided by the values and principles essential to a free and democratic society which I believe to embody, to name but a few, respect for the inherent dignity of the human person, commitment to social justice and equality, accommodation of a wide variety of beliefs, respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals and groups in society.’⁸⁴

Subsection 2: Democracy and the choice of electoral system

Of the attributes of democracy discussed in the previous subsection, not all are directly related to and influence the choice of electoral system. For instance, the fact that a certain degree of freedom of press is needed in a democracy does not affect our choice of electoral system. This is a value that is not obviously promoted or degraded by the choice of a particular electoral system. The same can be said of judicial autonomy. Here, we study some of the most important pertinent characteristics.

⁸⁴ *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, para. 66.

1. Rule by Majority

This is the most obvious attribute of a democratic system. When democracy is translated as the rule of the people, we are aware that more often than not, people are divided in their opinion on different issues and in their preferences in a choice of leader. When we have to choose between the preferences of two groups and there is no middle ground, the principle of equality dictates that the same weight should be given to the preference of each individual and therefore the preferences of the larger group will weigh the most. Thus, the phrase “rule of people” is meant to be “rule by the majority of people”.

What is exactly meant by majority? If we have more than two groups, is a special percentage of people needed to constitute the majority, or is just a plurality enough and in any circumstance the largest group will rule?

Suppose 30 people have to decide what they should do during a weekend. Of the 3 options, 9 people vote for dining at a Chinese restaurant, 10 for dining at a Japanese restaurant and 11 for watching a movie. Should the third choice be adopted? In other words, if a united minority rules a divided majority, can we still say that the state is ruled by the people? What if under a different scenario, the three choices were dining, playing soccer and watching a movie? What if with certain compromises (such as watching a shorter movie), we can adopt 2 of the 3 choices?

As illustrated in these examples, our understanding of this part of the value of democracy can have serious implications on the choice of an electoral system. These are the questions that will be tackled in the following parts of this work.

2. Minority rights

James Bovard was famously quoted as saying “Democracy must be something more than two wolves and a sheep voting on what to have for dinner.”⁸⁵ As reviewed in subsection 1, democracy requires the protection of certain rights and freedoms, which cannot be alienated by the rule of majority. In other words, the power of the majority and the state should have certain limitations; otherwise, our purported democracy could turn into the tyranny of the majority. This was something that some of the earliest thinkers of democracy were wary of:

Toqueville warned about the tyranny of the majority, that the multitude might show little concern for the rights and interests of minorities and see little wrong in imposing their force of superior numbers on those whose values and behaviour are different from those of the majority. Most people agree that majoritarianism needs to be tempered by protections for individual and group rights. That is why constitutions like Canada’s include express guarantees for rights and freedoms.⁸⁶

One of the attributes Larry Diamond sees necessary for a democracy is:

Cultural, ethnic, religious, and other minority groups (as well as historically disadvantaged majorities) are not prohibited (legally or in practice) from expressing their interests in the political process or from speaking their language or practicing their culture”⁸⁷

⁸⁵ James Bovard, *Lost Rights: The Destruction of American Liberty*, (New York: Palgrave Macmillan, 1995).

⁸⁶ Stephen Brooks, *Canadian Democracy*, 6th ed. (Toronto: Oxford University Press, 2009), at 21.

⁸⁷ Larry Diamond, *Developing Democracy: Towards Consolidation*, (Baltimore: John Hopkins University Press, 1999) reprinted in Robert A. Dahl & Ian Shapiro & Jose Antonio Cheibub, eds, *The Democracy Sourcebook*, (Cambridge: The MIT Press, 2003) at 35.

Indeed, when the disadvantaged minority constitutes an identity group of some permanence, the need for those guarantees is more urgent.

Returning to the issue of electoral systems, should fair representation be regarded as a right that should be guaranteed for the minority? An affirmative answer would bar us from choosing an electoral system in which the winner takes all. Is it democratic if an electoral system bars a substantive minority from entering parliament and other decision making bodies and influencing the debates and talking part in possible coalitions?

Under a single member constituency first-past-the-post system, minorities who are almost evenly distributed in the country (e.g. environmentalists or black Americans) may be denied representation proportional to their numbers. On the flip side, some argue that the current Canadian system protects the interests of some minority groups such as French Canadians.⁸⁸ Of course, this can only be said about minorities who have a regional concentration. These are some of the issues that will be tackled in this work.

In Order to highlight the importance of the minority rights in the Constitution of Canada, it is worth mentioning that in the its landmark decision on *Secession of Quebec*, the Supreme Court of Canada, has recognized the protection of minorities as one of the four organizing principles of the Constitution of Canada:

Although Canada's record of upholding the rights of minorities is not a spotless one, that goal is one towards which Canadians have been striving since Confederation, and the process has not been without successes. The principle of protecting minority rights continues to exercise influence in the operation and interpretation of our Constitution.⁸⁹

⁸⁸ Stephen Brooks, *Canadian Democracy*, 6th ed. (Toronto: Oxford University Press, 2009), at 14.

⁸⁹ *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217 para. 81.

The issue of accommodating minorities and smaller groups as it concerns the electoral process is not unprecedented in the Canadian constitutional debate. In *Figueroa v. Canada*⁹⁰ a requirement of the *Canada Elections Act* whereby political parties had to nominate at least 50 candidates in a federal election to be considered a registered party was challenged. Having a registered party status had several financial and political benefits. The Supreme Court of Canada found this requirement unconstitutional because it disfavoured smaller parties. The court qualified the right to vote as containing the **right to play a meaningful role in the electoral process**. In other words, according to the court, the implications of democracy and the right to vote are not limited to casting a vote and the electoral process doesn't have the formation of a government as its sole purpose. It provides an opportunity for political debate. By discouraging the formation of newer and smaller parties, the aforementioned requirement works to the detriment of those who would potentially support such parties. However, as Peter Hogg mentions,⁹¹ compared to the existing first past the post system, the above-mentioned requirement has a minor role in discouraging the formation of smaller and newer parties. Hogg suggests that sticking to the reasoning of the court in this decision would make a constitutional challenge to the current plurality system successful:

The first-past-the-post electoral system denies a seat in the House of Commons to any party that fails to secure a plurality in an electoral district, and this has the effect of exaggerating the large parties' share of seats. Around 40 percent of the popular vote is usually more than enough to secure a majority in the House of Commons. This electoral system encourages the formation of broadly based

⁹⁰ *Figueroa v. Canada*, [2003] 1. S.C.R. 912.

⁹¹ Peter W. Hogg, *Constitutional Law of Canada*, Student Edition (Toronto: Carswell, 2009) at 45-8.

parties that seek to accommodate a variety of interests within party. Proportional representation, on the other hand, provides seats in the representative assembly to all parties who achieve a stipulated proportion of the vote, even if they do not achieve a plurality in any electoral districts. Proportional representation encourages the formation of small parties, makes it rare for any party to achieve a majority, and therefore usually leads to coalition governments. Canada (including the provinces and territories) has a long political tradition of first-past-the-post electoral systems, with their corollaries of broadly based parties and frequent majority governments. Yet in *Figueroa*, the general thrust of the two opinions, especially the majority opinion of Iacobucci J., and some of the dicta in both opinions, could be interpreted as inviting a constitutional challenge to the first-past-the-post system!⁹²

In *Figueroa*, LeBel J., writing for the dissenting minority, argues for upholding the 50-candidate requirement, reasoning that it is more compatible with the current first-past-the-post system and the tradition of Canadian democracy, which favours stable majority governments and large and centrist parties.⁹³ Iacobucci, who wrote for the majority, responds that while this is true, the existing arrangement should not be elevated to the status of constitutional values. The requirement should be removed because it violates the right to effective representation and the right to play a meaningful role in the electoral process as interpreted by the Court.⁹⁴ However, while from statements like this the unconstitutionality of the current electoral system should follow, the court stops short of giving any such indication. To the contrary, Iacobucci contends that the choice of an electoral system is a political decision and is not for the court to get involved with.⁹⁵

⁹² Peter W. Hogg, *Constitutional Law of Canada*, Student Edition (Toronto: Carswell, 2009) at 45-8.

⁹³ *Figueroa v. Canada* [2003] 1. S.C.R. 912, paras. 154-160.

⁹⁴ *Figueroa v. Canada* [2003] 1. S.C.R. 912, para. 37.

⁹⁵ *Figueroa v. Canada* [2003] 1. S.C.R. 912, para. 81.

However, even if we suppose that the choice of an electoral system will not be the subject of court review, one should contend that the constitutional values recognized in *Figueroa*, which shed light on what is meant by democracy in the Canadian constitution, have implications on the modalities of the electoral system and will affect the choice of electoral model. How these values compete with others will be considered later in this work.

3. Equality

As described in subsection 1, equality is an almost consensual component of democracy. Most definitions of democracy contain a reference to equality. It has been stressed that without equality, democracy would be a void concept. On a historical outlook, looking back at the French Revolution, we find that democracy and equality were born as twins:

The onset of the French Revolution meant, according to Edmund Burke, that a perverted form of equality would infect France: ‘The levelers, therefore, only change and pervert the natural order of things.’ The revolutionaries wanted to abolish political distinctions among people; political and social privilege would no longer be a birthright if these levelers had their way. In horror, Burke exclaimed that on ‘this scheme of things, a king is but a man, a queen is but a woman; a woman is but an animal and an animal not of the highest order.’ The onset of democracy and the decline of the aristocratic era horrified Burke because it promised to level the differences among people.⁹⁶

David Held thus stresses the centrality of equality:

⁹⁶ Jeff Spinner-Halev, “Difference and Diversity in an Egalitarian Democracy” (1995) 3 *The Journal of Political Philosophy*. 259.

Persons should enjoy equal rights and, accordingly, equal obligations in the specification of the political framework which generates and limits the opportunities available to them; that is, they should be free and equal in the processes of deliberation about the conditions of their own lives and in the determination of these conditions, so long as they do not deploy this framework to negate the rights of others.⁹⁷

The application of this principle in democracy “calls for a bill of rights that goes beyond the right to cast a vote to include equal opportunity for participation and for discovering individual preferences as well as citizens’ final control of the political agenda”⁹⁸.

The following definition of democracy by Barry highlights the importance of equality in assessing democracy:

By a democratic procedure I mean a method of determining the content of laws (and other legally binding decisions) such that the preferences of citizens have some formal connection with the outcome in which each counts equally.⁹⁹

Returning to David Held’s idea of equality in participation opportunities and equal opportunity for discovering individual preferences, does this indicate an equal right to representation? If it does, is an electoral system that - even if it adheres to the rule of majority - denies equal representation in parliament to some groups less democratic? If people should have equal opportunities in expressing their preferences, does an electoral

⁹⁷ David Held, *Models of Democracy*, 3rd ed. (Cambridge: Polity, 2006), at 264. Cited in Georg Sorenson, *Democracy and Democratization*, 3d ed. (Boulder: Westview, 2008), at 11.

⁹⁸ Georg Sorenson, *Democracy and Democratization*, 3d ed. (Boulder: Westview, 2008), at 11.

⁹⁹ Cited in James Bohman & William Rehg, *Deliberative democracy: essays on reason and politics*, (MIT Press, 1997), at. 280.

system that forces some political parties to merge into other parties - with which they have some policy differences - deviate from democracy by impairing individuals' opportunities to express themselves by voting for a party that more closely represents their ideas? The same question could be asked regarding the problem of strategic voting. Furthermore, if the right to equality involves having equal voting power, does the fact that under some electoral systems some votes are more sensitive while others are characterised as wasted votes constitute a deviation from democracy? What if an electoral system gives some small parties (and therefore their supporters) a great role in decision making that is not proportionate to their size? Is equality and democracy disturbed? These sorts of questions will be tackled in parts 2 to 4 of this work.

While the application of the principle of equality in an electoral context may seem like it should require some sort of parity in the voter to representative ratio, the Supreme Court of Canada has rejected the requirement of an exact parity. In *Re Prov. Electoral Boundaries (Sask.)*¹⁰⁰ the issue before the Court was whether a readjustment of provincial electoral boundaries in Saskatchewan, in which rural districts were less populated than urban ones, infringed the constitution. The Court responded in negative, stating that section 3 of the Charter required an "effective representation" rather than an absolute voter number parity in different districts. While voter parity is also important, it can be to some extent disregarded to allow more effective representation. Less populated areas may have less populous electoral districts, otherwise they may risk not being heard in the parliament and the government. Other factors such as natural or man-made boundaries may also justify a divergence from voter parity to guarantee more effective representation.

¹⁰⁰ *Re Prov. Electoral Boundaries (Sask.)* [1991] 2. S.C.R. 158.

I suggest this should not lead to concluding that equality plays no role in Canadian democracy. Rather than negating equality, this qualifies it. Based on this decision, emphasis should be on “equal effective representation” rather than on an equal voter to elected official ratio.

Thus, the Supreme Court of Canada has qualified the right to vote as a right that involves **the right to effective representation**. As discussed above, another qualification was **the right to play a meaningful role in the electoral process**. This other qualification also has implications on the “equality” component of democracy. In *Harper v. Canada (Attorney General)*¹⁰¹ the Court was to rule on the constitutionality of certain rules of *the Canada Elections Act* that impose limitations on election advertising expenditures. The Court found the provisions constitutional, reasoning that an opportunity for equality in the political debate is needed otherwise a more wealthy side will inundate citizens with advertising and will deprive them of playing a meaningful role in the electoral process.

As a concluding note to this section, we can attest that while there is no consensus on the exact definition of democracy, compared to thin definitions that only emphasize the rule by majority of ballots, a broad and more sophisticated definition of the term is not only theoretically more acceptable but it is also favoured by judicial commentary in Canada.

It was suggested that of the numerous attributes of democracy, three, namely rule by majority, respect to minority rights and equality, have implications on the choice of electoral system. While reviewing these three attributes, we observed that in Canada, judicial interpretation has added at least two important qualifications to the right to vote, which

¹⁰¹ *Harper v. Canada (Attorney General)*, [2004] 1 S.C.R. 827.

should be considered in the choice of an electoral system for Canada. These qualifications are the right to effective representation and the right to play a meaningful role in the electoral process.

It is not deniable that different electoral systems have different implications on the above-mentioned set of values associated with democracy. However, as will be discussed later, the current first-past-the-post system has little to compete with other systems in this regard. Nevertheless, it may promote other values, such as political stability and efficiency. The electoral systems that strike the best balance between these competing values will be revealed later in this work.

Section Two: Diversity

The value of diversity is closely related to the issue of minority rights. As discussed in the previous section, respect for minority rights is one of the requisites of a liberal democracy. As a result, the value of diversity can be said to be a subsidiary of the value of democracy. However, for two reasons I have decided to discuss “diversity” under a separate heading. The first reason is that because of societal factors, the value of diversity and minority rights have noticeable importance in Canada. This concept raises peculiar and complicated issues regarding the choice of electoral system and therefore it deserves to be discussed separately from more general issues related to the value of democracy or democratic expression. The second reason is that the inherent value of diversity is not reducible to the issue of minority rights. Apart from which rights minorities have to the

protection of their interests, diversity has an inherent value because it makes the world more beautiful and because it makes life in a society more rewarding because of the plenitude of options it provides citizens. Diversity is not just a valuable notion for minorities; it benefits society as a whole. As Canadian philosopher and theorist of multiculturalism Will Kymlicka has said,

A third defense of group-differentiated rights for national minorities appeals to the value of cultural diversity. ... [L]iberals extol the virtue of having a diversity of lifestyles within a culture, so presumably they also endorse the additional diversity which comes from having two or more cultures in the same country. Surely intercultural diversity contributes to the richness of people's lives, as well as intracultural diversity

This argument is attractive to many people because it avoids relying solely on the interests of group members, and instead focuses on how the larger society also benefits from group-differentiated rights. As Richard Falk puts it, 'societal diversity enhances the quality of life, by enriching our experience, expanding cultural resources'. Hence protecting minority cultures 'is increasingly recognized to be an expression of overall enlightened self-interest'.... Cultural diversity is said to be valuable, both in the quasi-aesthetic sense that it creates a more interesting world, and because other cultures contain alternative models of social organization that may be useful in adapting to new circumstances.¹⁰²

Kymlicka efficiently summarizes the reasons why belonging to cultural groups is immensely important for group members:

¹⁰² Will Kymlicka, *Multicultural Citizenship: a Liberal Theory of Minority Rights* (Oxford: Clarendon, 1995) at 121. With the prominence of the issue of diversity in Canadian society in mind, it is not a surprise that Will Kymlicka, one of the most prominent theorists of cultural diversity in the world, hails from Canada. In this part of his books, he continues to criticize the aforementioned concepts regarding the value of diversity as a basis for multiculturalism. These arguments do not concern our discussion because I am not trying to say that the aesthetic and utilitarian aspects of diversity are the sole basis for multiculturalism. What I am trying to show is that the value of diversity is that respect to minority rights is not the only reason why diversity is valuable.

Margalit and Raz argue that membership in a societal culture (what they call a ‘pervasive culture’) is crucial to people's well-being for two reasons. The first reason is the one I have discussed above—namely, that cultural membership provides meaningful options, in the sense that ‘familiarity with a culture determines the boundaries of the imaginable’. Hence if a culture is decaying or discriminated against, ‘the options and opportunities open to its members will shrink, become less attractive, and their pursuit less likely to be successful’ ... Hence cultural identity provides an ‘anchor for [people's] self-identification and the safety of effortless secure belonging’. But this in turn means that people's self-respect is bound up with the esteem in which their national group is held. If a culture is not generally respected, then the dignity and self-respect of its members will also be threatened¹⁰³

The importance of group membership is another factor that yields to the value of diversity. Here, Kymlicka's focus is on multiculturalism and cultural membership, but similar arguments can be made about other identifications. For example, gender and sexual orientation are closely related to a person's self-identification. It is therefore important for people to be able to preserve these aspects of their identity and protect their interests in this respect. People can also identify themselves with their political ideologies. Preservation of political diversity is also important because it adds to the pool of ideas that people can choose from and that may benefit society in changing circumstances. The existence of different political viewpoints also helps citizens and societies reinvigorate and ameliorate their political stances through the give and take process of deliberative democracy.

¹⁰³ Will Kymlicka, *Multicultural Citizenship: a Liberal Theory of Minority Rights* (Oxford: Clarendon, 1995) at 89.

The relevance of the value of diversity in Canadian society is evident. Kymlicka borrows the term “deep diversity” from Charles Taylor to describe the situation in Canada.¹⁰⁴ We have a diversity of diversities in Canada: new immigrants versus old immigrants, First Nations versus settlers, French Canadians versus English Canadians, west versus east, etc. How is one supposed to construct a national identity in such a country?

A society founded on ‘deep diversity’ is unlikely to stay together unless people value deep diversity itself, and want to live in a country with diverse forms of cultural and political membership. Even this is not always sufficient. For example, a sovereign Quebec would still be a very culturally diverse country, with immigrants from around the world, as well as a historically settled Anglophone community, and various indigenous peoples, including the Cree, Mohawk, and Inuit. Secession rarely if ever creates homogeneous nation-states, it simply rearranges the pattern and size of groups. For citizens to want to keep a multination state together, therefore, they must value, not just ‘deep diversity’ in general, but also the particular ethnic groups and national cultures with whom they currently share the country.¹⁰⁵

In short, “deep diversity” is a defining feature of Canada. If Canada shares many liberal-democratic values with other liberal democracies on an equal footing, this is the one value wherein Canada can claim to be a major shareholder.

If we value diversity, we should support policies that help various communities which contribute to the diversity of the country survive. There is a wide range of policies that can support diversity, including affirmative action policies and rights to self-government.

¹⁰⁴ Will Kymlicka, *Multicultural Citizenship: a Liberal Theory of Minority Rights* (Oxford: Clarendon, 1995) at 189-191.

¹⁰⁵ Will Kymlicka, *Multicultural Citizenship: a Liberal Theory of Minority Rights* (Oxford: Clarendon, 1995) at 191.

However, the one policy that is related to our discussion is ensuring a voice for different groups through electoral arrangements. This is the bonding element that makes diversity one of the three core values that are discussed in this research. As will be discussed at length throughout this work, different electoral systems have different impacts on how women, social and political minorities, and local communities are represented in legislatures and to what degree their interests are considered in the political arena. The value of diversity is closely related to the issue of electoral systems and should be a guideline in the design of electoral arrangements.

In the remainder of this section, I will cite Canadian constitutional documents, scholarly opinions and Supreme Court decisions to explain that the value of diversity is deeply embedded in the Canadian Constitution. Justice Iacobucci begins the judgment of the court in *Syndicat northcrest v. Amselem* by affirming the importance of respect to minorities in a constitutional democracy:

An important feature of our constitutional democracy is respect for minorities, which includes, of course, religious minorities.... Indeed, respect for and tolerance of the rights and practices of religious minorities is one of the hallmarks of an enlightened democracy.¹⁰⁶

In another decision, this time in the context of sexual orientation minorities, Justice Iacobucci again affirms the place of minority rights in the Canadian Constitution and the role that the courts play in protecting them:

¹⁰⁶ *Syndicat northcrest v. Amselem*, [2004] 2 S.C.R. 551 at para. 1.

As I have already discussed, the concept of democracy means more than majority rule In my view, a democracy requires that legislators take into account the interests of majorities and minorities alike, all of whom will be affected by the decisions they make. Where the interests of a minority have been denied consideration, especially where that group has historically been the target of prejudice and discrimination, I believe that judicial intervention is warranted to correct a democratic process that has acted improperly.¹⁰⁷

In the landmark decision of the Supreme Court of Canada on the *Secession of Quebec*¹⁰⁸ the protection of minorities was designated as one of the four organizing principles of Canadian Constitution along with federalism, democracy and constitutionalism and the rule of law. Courts have used the protection of minorities as a constitutional principle in their judicial review to strike down unconstitutional decisions and legislation. For instance, in *Lalonde v. Ontario*¹⁰⁹ the Ontario Divisional Court quashes a decision by a health commission because it disregarded the interests of the Franco-Ontarian minority in dealing with a Francophone hospital. The court found that “the Commission failed to comply with one of the fundamental organizing principles underlying the Constitution, namely that of the ‘protection of minorities’”¹¹⁰ Interestingly, of the four organizing principles, federalism is also connected with the value of diversity. According to the Supreme Court, federalism is “the political mechanism by which diversity could be reconciled with unity.”¹¹¹

Section 27 of the *Canadian Charter of Rights and Freedoms* is devoted to multiculturalism in the interpretation of the Charter:

¹⁰⁷ *Vriend v. Alberta*, [1998] 1 S.C.R. 493 at para. 176.

¹⁰⁸ *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217.

¹⁰⁹ *Lalonde v. Ontario (Commission de restructuration des services de santé)* (1999) 181 D.L.R. (4th) 263 (Ont. Div. Ct.) cited in David J. Mullan, *Administrative Law* (Toronto: Irwin Law, 2001) at 129.

¹¹⁰ *Lalonde v. Ontario (Commission de restructuration des services de santé)* (1999) 181 D.L.R. (4th) 263 (Ont. Div. Ct.) cited in David J. Mullan, *Administrative Law* (Toronto: Irwin Law, 2001) at 129.

¹¹¹ *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217 at 244.

27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.¹¹²

Although, this section is an interpretive provision only, it also implicitly recognizes that the Canadian society has a multicultural heritage by definition. Multiculturalism in Canada is also acknowledged in a legislative document, *Canadian Multiculturalism Act*.¹¹³

The Supreme Court of Canada has confirmed the importance of multiculturalism in its decisions. In cases such as *R. v. Keegstra*¹¹⁴ or *R. v. Zundel*¹¹⁵ that concern hate speech, the Supreme Court Justices demonstrate that they are ready to limit core values such as freedom of speech in order to preserve the multicultural aspect of Canada. In *Keegstra*, Chief Justice Dickson opines that “the international commitment to eradicate hate propaganda and, most importantly, the special role given equality and multiculturalism in the Canadian Constitution necessitate a departure from the view, reasonably prevalent in America at present, that the suppression of hate propaganda is incompatible with the guarantee of free expression.”¹¹⁶ Similarly, in *Adler v. Ontario*¹¹⁷ the Court finds that the encouragement of a multicultural society is such a pressing issue that justifies infringing the right to equality enshrined in Section 15 of Charter. In the opening paragraph of *Bruker v. Marcovitz*, Abella underscores the importance of diversity, pluralism, and multiculturalism in Canada:

¹¹² *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982* being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

¹¹³ *Canadian Multiculturalism Act* (R.S.C., 1985, c. 24 (4th Supp.))

¹¹⁴ *R. v. Keegstra*, [1990] 3 S.C.R. 697.

¹¹⁵ *R. v. Zundel*, [1992] 2 S.C.R. 731.

¹¹⁶ *R. v. Keegstra*, [1990] 3 S.C.R. 697 at 743.

¹¹⁷ *Adler v. Ontario*, [1996] 3 S.C.R. 609.

Canada rightly prides itself on its evolutionary tolerance for diversity and pluralism. This journey has included a growing appreciation for multiculturalism, including the recognition that ethnic, religious or cultural differences will be acknowledged and respected. Endorsed in legal instruments ranging from the statutory protections found in human rights codes to their constitutional enshrinement in the *Canadian Charter of Rights and Freedoms*, the right to integrate into Canada's mainstream based on and notwithstanding these differences has become a defining part of our national character.¹¹⁸

The Canadian Constitution departs from an extremely individualist conception of rights and has a certain tendency towards recognition of group or collective rights.¹¹⁹ In *Oakes*, Chief Justice Dickson names “respect for cultural and group identity” as one of the underlying values in the Canadian Constitution.¹²⁰ A publication published by the Government of Canada regarding Canadian identity underlines the importance of group rights in the Canadian setting:

In the Canadian experience, it has not been enough to protect only universal individual rights. Here, the Constitution and ordinary laws also protect other rights accorded to individuals as members of certain communities. This accommodation of both types of rights makes our constitution unique and reflects the Canadian value of equality that accommodates difference. The fact that community rights exist alongside individual rights goes to the very heart of what Canada is all about.¹²¹

¹¹⁸ *Bruker v. Marcovitz*, [2007] 3 S.C.R. 607, para 1.

¹¹⁹ Provision regarding language rights and aboriginal rights in *the Canadian Charter of Rights and Freedoms* attest this assertion.

¹²⁰ *R. v. Oakes*, [1986] 1 S.C.R. 103 at 136, para 64.

¹²¹ Government of Canada, *Shaping Canada's Future Together: Proposals* (Ottawa: Supply and Services, 1992) at 3 cited in Will Kymlicka, *Multicultural Citizenship: a Liberal Theory of Minority Rights* (Oxford: Clarendon, 1995) at 26-27.

Recognition of group rights has repercussions in the electoral area. The application of this issue in electoral reform, namely recognition of group representation, has been considered in Canada. As a report by a royal commission on electoral reform confirms:

[N]either the franchise nor representation is merely an individualistic phenomenon; both also take expression through collective or community functions. The individualistic perspective is based upon a partial and incomplete understanding of the electoral process and representation. In advancing the ideal of equally weighted votes, it does promote a critical constitutional right. But in ignoring the community dimension, this perspective is unrealistic at best; at worst it ignores the legitimate claims of minority groups.¹²²

Throughout this research, the way different electoral systems promote or suppress diversity, especially in the Canadian context, will be examined in detail.

Section Three: Efficiency

The requirement of efficiency is so evident that it has often been taken for granted and is rarely discussed in scholarly constitutional discussions or judicial decisions. However, efficiency is an underlying value in the Canadian Constitution, or in any working constitution.

What is meant by efficiency here is a belief in a balanced approach to values that guarantees the sustainability of the constitutional system. Values are not pursued in an

¹²² The Royal Commission on Electoral Reform and Financing, *Reforming Electoral Democracy: Final Report*, vols. i and ii (Ottawa: Supply and Services, 1991) at 152-153 cited in: Will Kymlicka, *Multicultural Citizenship: a Liberal Theory of Minority Rights* (Oxford: Clarendon, 1995) at 136-137.

idealistic vacuum. Human endeavors are constrained by material realities. Attention to feasibility in the design of a value system is so important that this realism should be considered as a value in itself. The pursuit of values cannot be done in a self-defeating manner. The opening section of the *Canadian Charter of Rights and Freedoms* is telling in this regard:

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.¹²³

Rights and freedoms in Canada are not absolute dogmas. They have their limitations. Charter litigation and Supreme Court decisions involving Section 1 of the Charter confirm that these limitations are often concerned with feasibility, sustainability, or balancing competing values. The term “efficiency” is a catch-all word for these concerns. In the Supreme Court of Canada’s landmark decision in *Oakes*¹²⁴ the proportionality test is introduced for deciding whether a limit on rights can be justified. According to the *Oakes* test, courts examine how efficient a legislative scheme is in advancing the legislative goals while also respecting basic rights and freedoms. Of course, these limits should “be demonstrably justified in a free and democratic society”. Democracy cannot be set aside to preserve efficiency. The goal is to have efficient democratic rule, not only efficient rule. The Supreme Court’s decision in *Montréal (City) v. 2952-1366 Québec Inc* serves as an illustration of how the extent of rights should be interpreted in a manner that they do not undermine efficient governance. Here, the Court pronounced:

¹²³ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982* being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

¹²⁴ *R. v. Oakes*, [1986] 1 S.C.R. 103.

Many government functions, from cabinet meetings to minor clerical functions, require privacy. To extend a right of free expression to such venues might well undermine democracy and efficient governance.¹²⁵

In the context of elections, the Supreme Court of Canada in its recent *Opitz v. Wrzesnewskyj* decision has named efficiency among the values pursued by the *Canada Election Act*:

Central to the issue before us is how willing a court should be to reject a vote because of statutory non-compliance. Although there are safeguards in place to prevent abuse, the Act accepts some uncertainty in the conduct of elections, since in theory, more onerous and accurate methods of identification and record-keeping could be adopted. The balance struck by the Act reflects the fact that our electoral system must balance several interrelated and sometimes conflicting values. Those values include certainty, accuracy, fairness, accessibility, voter anonymity, promptness, finality, legitimacy, efficiency and cost. But the central value is the Charter-protected right to vote.¹²⁶

It should be noted that here, once again efficiency is weighted against other values such as legitimacy. One cannot adopt an authoritarian or undemocratic system because it is presumably more efficient.

By way of example, it is useful to examine one of the cases where the Supreme Court of Canada found an infringement of a Charter right to be justified under Section 1 of the

¹²⁵ *Montréal (City) v. 2952-1366 Québec Inc.*, [2005] 3 S.C.R. 141 at para. 76.

¹²⁶ *Opitz v. Wrzesnewskyj*, [2012] 3 S.C.R. 76, para. 44.

Charter. In *Alberta v. Hutterian Brethren of Wilson Colony*,¹²⁷ Alberta introduced mandatory photographing for drivers' licenses. Members of Hutterian Brethren, an insular cult, were exempted from having their photographs taken for their licenses prior to that. They sincerely believed that the Second Commandment barred them from having their photos taken because this amounted to making an idol. They purported that the self-sufficiency of their community (which was also mandatory according to their religious convictions) depended on having some members of their community driving and doing trade with the outside world. They claimed the new licensing scheme infringed their religious liberties under Section 2(b) of the Charter because it forced them to abandon at least one of their religious duties. The majority of the Court agreed that the mandatory photographing scheme infringes Section 2(b) but concluded that this infringement was justified under Section 1. The Court noted that the efficiency of the governmental scheme which was aimed at preventing identity theft would be compromised without this infringement. It seems clear that "efficient government" was the concern that allowed the Court to set aside a Charter value. The Court's preoccupation with the idea of efficiency is evident.¹²⁸

I believe efficient government is a concern that is often taken into account in constitutional designs and is weighted against other values. For instance, on the issue of when governments should relinquish power, the most democratic answer seems to be as soon as they lose their popularity. Nevertheless, in most democratic countries, after elections, governments often have a 3-5 years time frame during which they can pursue their program. A drop in popularity in polls does not translate to an immediate fall of the government. It is conceded that, if governments were to fall too quickly and according to the fluctuations of

¹²⁷ *Alberta v. Hutterian Brethren of Wilson Colony*, [2009] 2 S.C.R. 567.

¹²⁸ *Alberta v. Hutterian Brethren of Wilson Colony*, [2009] 2 S.C.R. 567. The words "efficient", "efficiency" or "efficacy" or mentioned in paragraphs 11, 24, 57, 138, and 195.

the opinion polls, the resulting political and economic instability would compromise the efficiency of government.

It is worthwhile to have a cursory look at what economists and thinkers mean by the word “efficiency” and decide which definition is helpful for our analysis.

The famous “Pareto efficiency” or “Pareto improvement” involves a change that increases the size of a pie (e.g. National wealth, overall satisfaction in society), without making anybody worse off.¹²⁹ However, as Friedman points out¹³⁰ this is an unhelpful definition for judging legal rules. In a complex society, it is very difficult to find a legal change that is not detrimental to some. In the field of our discussion, no matter how bad an electoral system is, it is always beneficial to some people. Reforming an electoral system will always leave some people worse off. Therefore what Friedman suggests by pursuing Marshall’s definition is that an efficient improvement only involves increasing the size of the pie.¹³¹ This conception is also still problematic for our analysis. This approach ignores the question of justice; it is preoccupied with enlarging the size of the pie and disregards how the pie is divided.

I Believe, the thinking of the political philosopher, John Rawls will be more helpful in explaining the dynamics between efficiency and other values here. Rawls presents a formulation that looks like a modified version of Pareto’s. According to John Rawls, a change will be an acceptable efficient improvement if (along with increasing the overall size

¹²⁹ Vilfredo Pareto, *Manual of Political Economy* (New York: Kelly, 1971). For a short introduction to Pareto efficiency see: Russell Hardin, “Efficiency” in Robert E. Goodin, Philip Pettit & Thomas Pogge, eds. *A Companion to Contemporary Political Philosophy*, 2nd ed. (Malden, MA: Blackwell Publishing, 2007) at 565-8.

¹³⁰ David D. Friedman, *Law's order: What economics has to do with law and why it matters* (Princeton: Princeton University Press, 2001) at 24-25.

¹³¹ David D. Friedman, *Law's order: What economics has to do with law and why it matters* (Princeton: Princeton University Press, 2001) at 18-27.

of the pie) it is beneficial to the less advantaged people.¹³² In my opinion, efficiency is a value in par with the other values, because the survival and sustainability of the other values depends on it. In this sense, on the final analysis, efficiency is not in conflict with other values, it rather assists those values. It ensures we will have more of those values in the long run. For instance, measures that are introduced to safeguard political and economic stability may seem to curtail the value of democracy; however, a politically and economically unstable environment is not conducive to the value of democracy in the long run. Instability can undermine democracy. Again the line of thinking by John Rawls is illuminating here. We can substitute, other values such as democracy and diversity with liberty in the following excerpt from Rawls:

... liberty can be restricted only for the case of liberty. There are two cases:

(a) a less extensive liberty must strengthen the total system of liberty shared by all;

(b) a less than equal liberty must be acceptable to those with the lesser liberty.¹³³

Therefore, for practical reasons, out of a concern for efficient government, some limitation might be put on other values, because on the long run this enhances those values.

¹³² John Rawls, *A theory of Justice* (Cambridge, Mass.: Belknap Press of Harvard University Press, 1971) in particular the final formulation of his principles at 298-302.

¹³³ John Rawls, *A theory of Justice* (Cambridge, Mass.: Belknap Press of Harvard University Press, 1971) at 301. The desired dynamics between efficiency and justice that is defined by Rawls at pp. 3-4. Is also illuminating: "... laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust. ... an injustice is tolerable only when it is necessary to avoid an even greater injustice."

Measures that restrict the possibility a change in the government for a certain period of time produce stable situations which help the democratic polity flourish and thus guarantee the survival of democratic values. Some people might object to these measures, because they don't see them in their immediate interests. When party A is in power, partisan supporters of party B might like to have a government change as soon as polls indicate that party B will win an election. Here, we might need to resort to the Rawlsian concept of veil of ignorance.¹³⁴ Behind a veil of ignorance, people will accept to forgo part of their powers (for instance by limiting elections to once in a few years) in exchange for the benefits of stability and efficient government.

This conception of the value of efficiency is different from what some economists might have in mind. Under this conception (which I think is in accordance with the interpretation of the Supreme Court of Canada on Section 1 of the *Charter*) the fact that a measure will slightly improve the economic standing of Canada is not sufficient to curtail a basic value such as democracy. However, a limit on basic values and rights will be justified when not doing so brings a dangerous instability or rupture in the functions of the government. There doesn't seem to be a clear formula to draw the line. Any decision will involve an act of balancing by decision makers such as judges and to some degree might depend on the convictions and perceptions of the decision makers. For instance, in the case of *Hutterian Brethren*¹³⁵ a majority of the Supreme Court felt the concern about the efficiency of a government program was so important that justified infringing a Charter right. However, a strong minority of the Court decided otherwise.

¹³⁴ John Rawls, *A theory of Justice* (Cambridge, Mass.: Belknap Press of Harvard University Press, 1971) at 12, 19, 136-142.

¹³⁵ *Alberta v. Hutterian Brethren of Wilson Colony*, [2009] 2 S.C.R. 567.

Throughout this thesis, five main criteria for assessing electoral systems are examined under the topic of efficiency. Here I will shortly discuss their implications on the concept of efficiency:

Stability: Political instability is detrimental to efficient government. It involves a degree of indecision and instability in policies. It prevents governments from having enough time to implement their programs. In severe cases such instability may bring economic deterioration and chaos. In political gridlocks a great degree of the energy of political actors is wasted in infightings. A constitutional design that is less likely to lead to this inefficiency is advantageous to the health and survival of political order.

Moderation: Extremist parties are more likely to make dangerous and costly decisions and the policies that they implement are less likely to be durable. Since they are far from the political center, their policies are not favorable to a majority of electors and they are less likely to survive in long term. If extremist parties gain an influential role in politics they will bring destabilizing policies. Centrist parties are better consensus builders and better positioned to bring incremental but durable change. Therefore, electoral systems which are favorable to centrist parties do a better job in promoting efficiency than those that are kind to extremist parties.

I should emphasize that I use the words moderate and extremist in a politically neutral fashion. Whether a party is described as moderate or extremist depends on its location in the political spectrum. Not all extremist parties have bad ideas although it is more risky to embrace them than old and tried centrist parties. Some of the extremist parties might have avant-garde positions. Some of the positions that are viewed as extreme today might be

regarded as centrist tomorrow. Therefore all parties should have the chance to present their ideas and help bring social change. The issue is that some electoral systems tend to increase the influence of extremist parties which for the reasons explained above is detrimental to efficiency of the government; while in other electoral systems extremist parties have more proportionate influence. They are free to promulgate their ideas, gain political experience, moderate their view over time, or may be, drive the center of political spectrum towards themselves.

Accountability: Clarity of responsibility improves the efficiency in any organization. Just as a company can improve its performance by identifying and rewarding those employees who are doing a good job and punishing those who do a poor one, in the political scene, people improve the performance of political institutions by rewarding successful political actors and throwing out the rascals. This results in more efficient governments and sustains the democratic system. In order to do so, voters should know which political actors are responsible for each policy and outcome. Some electoral systems do a better job in clarifying responsibility and making political actors accountable to voters.

Regionalism: If politicians are preoccupied with petty local issues and sacrifice the national interest for small regional gains, the efficiency of the central government will be compromised. This is not to suggest that any regional demand is illegitimate but what is famously known as the pork-and-barrel politics is to be separated from legitimate local demands. Additionally, some electoral systems tend to be favorable to regional-interest parties and thus undermine national unity and efficient and comprehensive national policy making.

Simplicity: When electoral systems are simple, elections are run more efficiently and with fewer costs. They also impose fewer burdens on voters which in turn may lead to a higher degree of political involvement.

Part Two: Evaluation of the Current Situation

In this part of the work, Canada's current electoral system will be evaluated. This evaluation will be based on the three core values related to the selection of a desired electoral system that were introduced in Chapter Two. This part contains Chapters Three and Four. Chapter Three will be a general evaluation of the plurality system, detached from Canadian experience. Chapter Four will provide an application of this evaluation to the Canadian case. Social, political and legal data, including excerpts from Supreme Court decisions and survey data, will be used in the fourth chapter.

Chapter Three: A General Value-Based Assessment of the Plurality System

Introduction

We begin our evaluation of electoral systems with the plurality formula, which is the formula currently used in Canada. We should establish that a reform is needed before proceeding to evaluate new options. A plurality electoral system has a basic and simple formula and does not demonstrate much variation, unlike the other two families studied in this work.¹³⁶ A paradigm example is the one used in most plurality systems: the political territory of a jurisdiction is divided into small districts and only one member of a legislative body will be chosen from each district. In each district, the candidate who gets more votes (at least one more vote) than any one of his rivals will be elected. The winner does not need to receive any special percentage of votes. This means that in extreme cases in which there are a large number of candidates and electoral support is somewhat evenly spread among them, a candidate may win by a very low percentage (say, 10%) of the votes.

Perhaps the only variation would be if more than one member is elected from some or all districts, in which case other variables such as whether voters can select their candidates from different parties or have to vote *en bloc* will appear. However, we will focus on our paradigm example, which is used in most instances including in Canada.

¹³⁶ For an introduction to the plurality systems see for instance: David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 13-43.

Section One: Democratic Expression

Subsection 1: Is proportionality needed in a democratic system?

In the electoral systems debate, proportionality refers to the relationship between a party's share of votes and its share of seats. If the two are close, it can be characterized as a proportional system; if not, the system is a disproportional one. A plurality rule electoral system is a disproportional system¹³⁷. This seems so obvious that it hardly needs an empirical analysis. Yet, a considerable volume of scholarly work has been devoted to the examination of this fact, only some of which will be mentioned here.

Taagepera and Shugart¹³⁸ have allocated a chapter of their work to designing an index of deviation from proportionality and analysing related electoral data from the most recent national elections of the lower house of parliament as of 1985 in democratic countries in the world. Unsurprisingly, most of the countries that used a plurality system showed a markedly larger deviation from proportionality. For instance, Canada demonstrated this with 24.9%, India 31.8%, New Zealand¹³⁹ 19%, South Africa 22.3% and the United Kingdom 23.4%. This compares with lower deviations in countries that used a proportional formula. For

¹³⁷ Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 40.

¹³⁸ Rein Taagepera & Matthew Soberg Shugart, *Seats and Votes: the Effects and Determinants of Electoral Systems* (New Haven and London: Yale University Press, 1989) at 103-111.

¹³⁹ New Zealand was still using the plurality formula back then.

instance, this included Austria with 4.3%, West Germany 0.8%, Italy 4.5%, Netherlands 2.8% and Sweden 2%.¹⁴⁰

A simple example can illustrate why the plurality formula yields disproportional results. Suppose four parties are competing for 100 seats in a legislative body. Party A has 40% of the votes, Party B 35%, C 15% and D 10%. According to the plurality formula, in each of the 100 constituencies the candidate who gets more votes than his rivals will be elected. If each party's voters are evenly distributed in 100 ridings, in each riding Party A's candidate will be elected with 40% of the votes. This will lead to very disproportional results. Party A with 40% of the votes will get 100% of the seats and parties B, C and D with a combined vote share of 60% will get 0% of the seats. In the real world, this extreme case is unlikely to happen because each party has greater appeal in some regions than others and its support is not evenly distributed. Still, it would be very difficult for Parties C and D to surpass their stronger rivals and win a seat in any constituency. Most of the seats will be contested between Parties A and B with party A winning most of them. Nevertheless, the results would be far from proportional.

A disproportional allocation of seats quite often, though not necessarily, favours bigger parties at the expense of smaller ones, the aforementioned example being a simple illustration of the usual case. Taagepera and Shugart¹⁴¹ illustrate this fact through graphs. In their graph axis, X stands for the percentage of vote of the parties and axis Y is the percentage of seats to the percentage of votes ratio. A Y value of 1 denotes a proportional

¹⁴⁰ The only exception in the plurality camp where deviation from proportionality was relatively low was the United States, with 6.7%. This can be explained by the total dominance of the two main parties in the United States.

¹⁴¹ Rein Taagepera & Matthew Soberg Shugart, *Seats and Votes: the Effects and Determinants of Electoral Systems* (New Haven and London: Yale University Press, 1989) at 69-72.

condition where a party's share of votes matches its share of seats. Plurality systems show a late rise profile in this graph, which means that a party's share of seats will be less than its share of votes until it garners a considerable share of votes (usually around 35%).

Earlier, Douglas Rae, using a somewhat different measurement for deviation, had reached the same conclusion and formulated the obvious fact in the following proposition:

DIFFERENTIAL PROPOSITION FOUR: *Proportional representation formulae tend to allocate seats more proportionally than do majority and plurality formulae.*¹⁴²

It is established that plurality systems are disproportional, but is disproportionality undemocratic? Some provide an affirmative answer to this question. Most famously, John Stuart Mill has attacked disproportional representation as false democracy:

Mill summarizes this in the title to chapter 7 of *Considerations on Representative government*: 'Of True and False Democracy; Representation of All, and Representation of Majority Only' He has no doubt that representation 'of the majority only' is 'false,' not 'true,' democracy. Disproportionate representation is presumed to imply a failure in democracy itself.¹⁴³

¹⁴² Douglas W. Rae, *The Political Consequences of Electoral Laws* (New Haven and London: Yale University Press, 1967) at 96.

¹⁴³ Bingham Powell, *Elections as Instruments of Democracy: Majoritarian and Proportional Visions* (New Haven and London: Yale University Press, 2000) at 13.

Before going too far and eliminating dozens of countries from a map of the democratic world, note that there have been two distinct notions of democratic representation: the microcosm and principal-agent conceptions.¹⁴⁴ The former has been adhered to by proponents of proportional representation and the latter by fans of the majoritarian vision of representation. Neither of these two concepts can be ruled out as normatively wrong and undemocratic; however, I lean towards the latter due to its practical implications. According to the microcosm conception, an elective body, or more precisely the parliament, should mirror society as a whole in its ideological, racial, economic and societal composition. Anybody should find his or her lookalike in the parliament as far as possible. According to the principal-agent conception, MPs are elected to decide on matters of public interest on behalf of constituents. They are not a maquette of society designed for exposition; rather, they are agents who should act and decide while holding the best interests of the constituents in mind. Therefore, those who adhere to the former concept are preoccupied with the composition of the body in question while those who adhere to the principal-agent model mind its decisions. “In extreme synthesis, it can be said that with the majoritarian systems it is the aim of governing which prevails, while with the proportional ones it is the aim of representing.”¹⁴⁵ But how come parliaments have been meant to represent people? A historical outlook may hint at the old-fashionedness of the microcosm model:

¹⁴⁴ A brief discussion of these two conceptions can be found at: David M. Farrell, *Comparing Electoral Systems* (Hertfordshire: Prentice Hall/Harvester Wheatsheaf, 1997) at 6-7; Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 18, and Ferdinand A. Hermens, “Representation and Proportional Representation” in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 15-16.

¹⁴⁵ Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 18.

... the term representation, as used in everyday language, presupposes three factors: The people to be represented, the representative, and those before whom representation takes place....

In the beginning of parliamentary assemblies the three factors existed. The prince, the addressee of representation, asked local units of the country's 'estates' to send 'representatives' to a common meeting place. He wanted new taxes, or support in an impending war, or both. The representatives had been charged by their constituents ... to give the required consent only after the prince had listened to their 'wishes and grievances' and promised redress. The prince, of course, had both the initiative and the final say. In exercising his prerogatives he fulfilled a vital function: he assured unity and continuity in the country's affairs.

When the decisive step toward establishing a democracy was taken the independent princely executive ceased to exist. It had to be replaced; the task was to form an effective government. This meant that the time was past in which a mere representation of parts would do. There had to be enough unity in a parliament to form and support a government. Logic demanded that the voters themselves be confronted with the clear request to group themselves in such a way that there would be a majority capable of governing and an opposition capable of controlling and eventually replacing it. The old predemocratic and passive type of representation had to be replaced by one that was both democratic and dynamic.¹⁴⁶

Nowadays in parliamentary systems, governing through the responsible government is one of the main functions of the parliament. In democratic countries, parliaments are not a bridge between people and autocrats anymore. Parliaments are not just a place for the expression of opinion. It is on this basis that the majoritarian view gains ground. What is the purpose of

¹⁴⁶ Ferdinand A. Hermens, "Representation and Proportional Representation" in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 15-16.

creating a miniature of society, with all of its divisions, in parliament? After all, only one way to govern can be chosen and there is usually only one direction that policy can go. In the words of Maurice Duverger, “Voters should not choose their doubles who must resemble them as closely as possible. They should choose governments with the capacity to make decisions.”¹⁴⁷ If one deems the majoritarian vision of representation in parliamentary systems a false democracy, the same should be said of all presidential systems in which the president cannot reflect the diversity of a whole country in his person. As with presidential systems, a majoritarian parliamentary system is designed to meet the necessity of coherence in governing and decision making.

As a side note, it should be added that even in a proportional system, while every party more or less gets a proportional share of parliamentary seats, proportional presence in the executive and governing body is not granted. Again a majority will gain power and a minority will be left out of the circle of power. That a majority will prevail over a minority is a necessity in democratic design. The deference between a proportional and majoritarian vision lies in how this majority is obtained.¹⁴⁸

This does not suggest that the need for a working government is the only issue at stake. Symbolic office holding by minority groups and the promotion of diversity, which will be discussed later, are not unimportant. Additionally, elections and parliaments are important forums for political expression. However, these and other similar issues should be dealt with

¹⁴⁷ Maurice Duverger, “Which Is the Best Electoral System?” in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 32.

¹⁴⁸ I concede that leaving some portion of the society as a permanent minority with no shot at gaining or influencing power should be an issue of concern. However, there are some other constitutional designs – other than a proportional lower house- which can somehow solve this problem; some of which will be mentioned throughout this work.

in a way in which they will not interfere with the duty of governing, which is the most important duty of the parliament.

Nor is it suggested that a working government is desirable regardless of its democratic credentials. However, I adhere to the view that majoritarian vision is not undemocratic only because of its deviance from proportionality and regardless of whether a given electoral system achieves the goals sought by a proportional formula of the distribution of seats through other methods.¹⁴⁹ Disproportionality does not necessarily make a plurality electoral system undemocratic, just as presidential systems are not undemocratic. However, the plurality system should still pass some more tests before one can say it is devoid of democratic faults.

As we will discuss, proportional representation promotes the value of diversity by facilitating minority office holding and diversifying the members of parliament. We regard diversity as one of the core values at stake in this discussion. Therefore, it seems right to ask how I reconcile my position on the microcosm and principal-agent debate with the value we adhere to diversity. The answer is the proportionality of a parliament is only a means for promoting the goal of diversity. It is not an end in itself. As we will discuss, even without a proportional lower house, there are other routes through which the value of diversity can be promoted. Also, proportionality between political parties is not the only way through which minority office holding can be guaranteed. As will be discussed other electoral devices, or more radically social policies can promote minority office holding.

¹⁴⁹ This point will be made clear throughout this work. Just to give a general image; For instance underrepresentation of ethnic groups can be overcome with designating special seats for them. The underrepresentation of women may be solved by imposing quotas on the number women candidates of parties or political minorities (small parties) can be given some say without jeopardizing the government formation and stability.

Subsection 2: Aggregation of preferences

Having opted for the agency conception of representation, the question as to who should be the agent should still be answered. Democratic theory requires some kind of selection based on voter preferences. Can a person with as few as 20% of the votes be elected as the agent? Isn't there a democratic fault if more people than not preferred not to see a person as their representative, and yet she still gets elected? What if it can be shown that the electorate as a whole preferred another candidate to the one chosen?

I believe, the more elected officials reflect the aggregate preferences of the constituents, the more democracy there will be. The plurality formula's failure in reflecting the best preferences of voters is more often than acceptable. A simple example can demonstrate how this failure happens. Suppose three candidates, A, B, and C are contesting a seat. C is from the right wing, while A and B are both from the left wing. C gets 40% of the votes, B 35%, and A 25%. Under the plurality formula, C would be declared the winner, while it is clear that if there were a chance for aggregating the preferences of the voters the results would be different. Supporters of both A and B would prefer A and B to C. With the emergence of prominent third parties in countries such as Canada and the UK, this example has become a paradigm of frustration with the plurality formula. More than half a century ago, George van den Bergh was puzzled with this "English" arrangement of plurality systems. He came up with an explanation:

England is insular. It has manners and customs which differ in many respects from those of other countries. ... There is hardly any international custom without England differing from it ... It is a strange experience –for us- when someone with 35 votes is elected chairman, while two opponents get 25 and 30 votes respectively. But an English man, Generally speaking, does not see anything uncommon in this. The first-past-the-post system has struck root there. Does this expression perhaps denote that the system is bound up with the sporting spirit so inherent in this great nation? For a horse which is first to pass the winning post it is, indeed, a matter of indifference whether it has left one or many horses behind. It is the idol of the people—the many ‘also ran’ only enhances its glory. Thus, the average Englishman considers the chairman with his 35 votes a smart fellow: he has left two opponents behind him, the one at a distance of 5, the other at a distance of 10 votes!¹⁵⁰

The analogy with a horse race makes the plurality system appear fair for the candidates. After all, isn't the plurality winner the smartest of all of the candidates? In a multi-candidate race under the plurality formula, every candidate has to combat on two fronts, first against the candidates within her own ideological or policy camp, in which case she should emerge well ahead of the candidates who resemble her in platform and thus make them irrelevant and prevent a vote-split in her own camp. If we were to add a right wing Candidate D with virtually 0% of the votes to our example above, we could say Candidate C had been quite successful on this front. On the second front, she should combat with the other camps. At the end, the combination of results from both fronts would determine the winner. After all,

¹⁵⁰ George van den Bergh, *Unity in Diversity: A Systematic critical Analysis of All Electoral Systems* (London: B.T. Batsford, 1956) at 40, cited in: Douglas W. Rae, *The Political Consequences of Electoral Laws* (New Haven and London: Yale University Press, 1967) at 26-27.

wasn't C the smartest of all of the candidates because she was able to secure the biggest niche of votes for herself?

The problem is that in a horse race, alongside contesters there are passive spectators who have not contributed to the success or failure of the contestants. In an election, there are the electorate who have voted and whose right to representation is at stake. Why should a coordination failure from the two majority camp candidates result in a displacement of the will of the minority over the will of the majority? An electoral system should be fair to electors, not to candidates.

This brings us to what has been hinted at in the title of this subsection: electoral systems should be responsive or sensitive to the aggregate preferences of voters. If we see this responsiveness as a matter of degree, it can be achieved in two steps or two criteria: first, the requirement for the winner to garner an absolute majority of the casted votes, and second, picking the Condorcet winner. The first criterion is a minimalist requirement, while the second is a perfectionist one. The plurality system scores low on both criteria.

With regards to the first criterion, only when a government has an absolute majority (more than half) of the votes can it claim that more people than not want it in power. When no party receives a majority of votes it is essential “for the leading party to admit that it has not got a mandate for everything it wants to do”¹⁵¹. When no party alone commands an absolute majority of the electorate, there are ways in which a governing majority can be formed. For instance, one way is a formal coalition between two or more parties. Another way is a tacit

¹⁵¹ Enid Lakeman, “The Case for Proportional Representation” in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 47.

coalition where, in a run-off election, losing camps throw their support behind one of the leading candidates.

Recalling the discussion of agent-principal or majoritarian vision, it should be added that gaining the majority has a normative significance in this vision:

In the use of elections to control ... powerful policymakers, it is the citizen majority that should, normatively, prevail over a minority who supports the opposition. It is the domination of the majority that gives such a vision its status as a democracy. In Tocqueville's words, 'The very essence of democratic government consists in the absolute sovereignty of the majority'.... Hence, the term *majoritarian* to refer to this vision.¹⁵²

The plurality electoral system is not designed to pick up the majority winner. Therefore, it is lacking normatively according to the same majoritarian vision it purports to adhere to. Returning to our example, can we safely say that Candidate C is a majority winner when candidates A and B, with a combined vote of 60%, had very similar positions?

Interestingly, the plurality formula not only often fails to pick up the majority winner, in some extreme cases it even fails to pick up the winner of the plurality of votes. For instance, this has happened in two of the 18 post WWII elections in UK.¹⁵³ In 1951, the Labour Party won a plurality of votes but this translated to a majority of seats for Conservatives. Consequently, the Conservative Party ruled for four years and even managed to secure two

¹⁵² Bingham Powell, *Elections as Instruments of Democracy: Majoritarian and Proportional Visions* (New Haven and London: Yale University Press, 2000) at 5.

¹⁵³ Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 42-43.

re-elections. In February 1974, the Conservatives won a plurality of votes but Labour was handed a plurality of seats. This time, Labour ruled for only 8 months before it secured a re-election because it came short of winning a majority of seats.

The reason why this happens is because, according to game theory, if a party has a plurality of votes, the best way to distribute these votes is an even distribution in all constituencies. Or if it already knows how the votes of its rivals are distributed, the best way would be to distribute its votes in such a way that in each constituency its votes exceed the votes of its closest rival by just a bit. If a party's votes are overly concentrated in some districts, it will lose more seats than expected and may even come second to a rival in overall seat count while mastering the vote count.

Some may justify these distortions in a plurality system, where a party rules as though it enjoys the majority support despite the fact it often lacks it and sometimes even lacks plurality support because of the need for a working and stable government. Without discussing whether other formulae can yield a working government here, it should be mentioned that the lengths we can go to secure a stable government are not unlimited if we are loyal to democratic governance, otherwise a dictatorial government would be normatively commendable. In Enid Lakeman's words, a plurality formula is chancy, if not autocratic. However, it is not democratic:

Is a working majority for one party so desirable as to justify giving one party a majority of seats if only a minority of the electorate has voted for it? If so, Mussolini's law awarding two-thirds of the seats to the party with the most votes is logical. It is not logical to rely, for so important a matter, on a system that may

give such result by chance. The British system is extremely chancy. It did, in 1945, give nearly two-thirds of the seats to the party with the most votes (forty-eight percent), but six years later turned that same party out of office, although its support had slightly increased and exceeded, by some two hundred thousand votes, that of the next largest party.¹⁵⁴

An electoral system that ensures that the winner has an absolute majority of the votes is considerably more considerate toward the preferences of voters than a plurality system. However, even here, it is not guaranteed that the candidate closest to the aggregate preferences of the voters will be chosen. The more perfectionist criterion is picking a Condorcet winner.¹⁵⁵ Donald Horowitz has cited the victory of a Condorcet winner as one of the six goals of electoral systems.¹⁵⁶ The idea was developed by the Marquis de Condorcet, the 18th century French mathematician.¹⁵⁷ According to this criterion, in a fair election with multiple candidates, the winner should be the one that is preferred to all other candidates by a majority of voters. So we should compare all candidates in pairs and the one who beats all others in a one to one contest should be the winner. Voters will see any other result as unfair because if A is the Condorcet winner and B is declared the winner, it can be shown that in a two man contest between A and B, A would win. The plurality formula does a poor job picking the Condorcet winner when there are more than 2 serious contestants. This is the

¹⁵⁴ Enid Lakeman, "the Case for Proportional Representation" in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 42.

¹⁵⁵ For a discussion of Condorcet winners, see for instance: Michael Dummett, *Principles of Electoral Reform* (New York: Oxford University Press, 1997) at 47-57; Peter C. Fishburn, "Social Choice and Plurality like Electoral Systems" in Bernard Grofman & Arend Lijphart, eds. *Electoral Laws and Their Political Consequences* (New York: Agathon Press, 1986) at 199-200; Donald L. Horowitz "A Primer for Decision Makers" in Larry Diamond & Marc F. Plattner, eds. *Electoral Systems and Democracy* (Baltimore: The John Hopkins University Press, 2006) at 6.

¹⁵⁶ Donald L. Horowitz "A Primer for Decision Makers" in Larry Diamond & Marc F. Plattner, eds. *Electoral Systems and Democracy* (Baltimore: The John Hopkins University Press, 2006) at 6.

¹⁵⁷ Michael Dummett, *Principles of Electoral Reform* (New York: Oxford University Press, 1997) at 47-8.

common scenario in which a Condorcet winner loses under a plurality vote, as per the example made at the beginning of this subsection. This situation is known as “split opposition”¹⁵⁸. Candidate C wins the plurality contest while he would lose in pairwise contests against both A and B. The idea of a Condorcet winner is more elaborate than the idea of a majority winner. Both A and B will win a majority against C, but only one of them will be the Condorcet winner.

Perhaps none of the currently popular electoral systems can guarantee a Condorcet winner being picked, and the formulae the logician Michael Dummett suggests are too mathematical and sophisticated to be suitable for national scale elections.¹⁵⁹ However, we should accept that picking the Condorcet winner is a matter of degree. While the plurality formula does a poor job of picking the Condorcet winner,¹⁶⁰ a majority run-off system does a much better job and I put it as a conjecture that the alternative vote system used in Australia very rarely picks a non-Condorcet winner.

One of the side-effects of this failure of the plurality model is the issue of manipulative or sabotaging candidates. If we return to our example, if C and B were the only candidates in the race, this would naturally result in a B victory. Having anticipated that, C may reach an agreement with A and bring him to the race so that A and B will split their vote and C will be

¹⁵⁸ Michael Dummett, *Principles of Electoral Reform* (New York: Oxford University Press, 1997) at 50.

¹⁵⁹ Dummett even theoretically shows that in some occasions there may be no Condorcet winner (i.e. no one would win all pairwise contests) and suggests some supplementary provisions for picking the winner. I believe this theoretical situation rarely happens in real world politics. See: Michael Dummett, *Principles of Electoral Reform* (New York: Oxford University Press, 1997) at 47-88.

¹⁶⁰ Against this statement, one may resort to the idea of strategic voting in defending a plurality formula’s ability to pick the Condorcet winner. In our example, supporters of A will strategically vote for B to prevent C’s election. The problem is first for reasons explored in this work; strategic voting happens only partially in the real world. Not every voter will quit candidate A and quite often the amount of strategic voting is not enough to prevent a non-Condorcet winner’s victory. Second, as we will discuss, strategic voting is a democratic failure as a suppression of political expression and the need to resort to it in order to bring a Condorcet winner victory is unfortunate.

the victor. Perhaps this scenario is more likely to happen in a fragile democracy. In a developed democracy with coherent and recognizable parties, the revelation of such a deal will result in public outrage and voter apathy towards A and C's respective parties. However, this possibility should not be ruled out altogether.

Subsection 3: Direct election of government and mandate

Another criterion for the assessment of the democratic performance of an electoral system is how directly expressive the desires of electors are when determining which people are going to form the government and what their mandate will be. A plurality system, because of its tendency toward reducing the political scene into a two-way race, is said to score high on this criterion.¹⁶¹ In countries such as the UK “[t]he voters know that the party with the most seats forms the next government, unlike the situation common in the rest of western Europe where governments are formed as a result of agreements struck between party leaders in smoke-filled rooms after the election. The ‘result’ i.e. the determination of who forms the government, is both more democratic and fair.”¹⁶² This prerogative of a plurality system is often contrasted with proportional systems in which several parties gain seats in the parliament, none with a majority, and after votes are counted it is far from certain who will be in the government. Maurice Duverger puts it this way:

¹⁶¹ Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 43.

¹⁶² David M. Farrell, *Comparing Electoral Systems* (Hertfordshire: Prentice Hall/Harvester Wheatsheaf, 1997) at 13.

By dispersing the voters among numerous independent parties, PR prevents the citizens from expressing a clear choice for a governmental team. It transfers this choice to party leaders. For instance, after legislative elections in Italy, Belgium, the Netherlands, and Denmark, several types of majority are possible, most of them fragile and divided. Which one is preferred by the citizens? It is impossible to know this. Only the new deputies can choose between the different potential combinations, with the freedom to make a different choice later without reference to the voters.

PR properly expresses the citizen's diverse preferences, but it does not allow them to choose a concrete set of policies and a team to execute them. In contrast with this representation of opinions, what may be called the representation of wills enables the voters to choose those who will lead them during the entire life of the legislature. The citizens cannot govern themselves, but the delegation of power may be reduced to one step (citizens-government) instead of being stretched to two steps (citizens-deputies-government) in which the second step becomes predominant. ... The old distinction between active and passive citizens may be legitimately invoked here.¹⁶³

More important than who will govern, in a plurality model people can decide how they will be governed. Parties present their platform in an election and by giving a particular party a clear victory people are giving them mandates¹⁶⁴ based on their platform. The determination of a government program is not a result of random compromises in coalition negotiations, but will be made on election day. The party with the most votes will be responsible to act on his promises.

¹⁶³ Maurice Duverger, "Which Is the Best Electoral System?" in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 32-33.

¹⁶⁴ For a lengthy discussion about mandate and its place in the majoritarian vision, see: Bingham Powell, *Elections as Instruments of Democracy: Majoritarian and Proportional Visions* (New Haven and London: Yale University Press, 2000) at 69-88.

However, the limitations discussed in the previous subsection will be transmitted here. If the governing party has garnered only around a third of the votes, can we really say people have elected the government on election day? Is it the people who have chosen the government or is it the electoral system that through some mechanical effects has manufactured the governing party? Can we speak of the “will” of the people in determining the government mandate? Does one third of people mean people? Is that mandate really chosen?

Additionally, policy compromises in coalition negotiations are despised; nonetheless, compromises happen in plurality elections as well. The difference is that in coalitions, compromises happen in inter-party negotiations, while here they happen within a party. No large party can assemble all of the policy issues that all of its voters like. What some people like, others will dislike. Compromises have to be made. However, one should concede that compromises made before elections are normatively preferable to post-election compromises, as they are more democratic. Not everybody agrees with this judgment. Some clearly prefer post-election reflections:

Elections are clumsy instruments. The intersection of party offerings, citizen choices, and election rules is complex. Many kinds of distortions may intervene between citizen preference and electoral victory. The heated rhetoric of election campaigns may make it difficult to locate the true majority position. Thus, using elections as a one-stage device for concentrating political power is hazardous....

It is safer to elect a legislature of representatives and let these representatives bargain to find the most preferred policy.¹⁶⁵

While this might be helpful about minute details and specialized areas of policy or issues that were not under the spotlight during the campaign, this logic does not work in respect to important and heated policy issues that voters had a clear view of during the election campaign. Possessing such a view is a sign of paternalism. In conclusion, one should accept a plurality system's prerogatives here, while not forgetting its limitations.

Subsection 4: Democratic change

Another criterion for measuring the democratic performance of an electoral system is the extent to which it allows democratic change, i.e. change in governors and change in dominant parties. It is essential for a working democracy that voters can throw out rulers as easily as possible. In my opinion, any system that provides a disincentive towards bringing on new faces in politics serves as a deterrent to free democratic expression. Besides, adequately frequent change will make the democratic system more efficient. Stagnation will bring about corruption and it is unfortunate if an electoral system facilitates this.

The plurality electoral system, with its overly strong inclination towards *bipartisme*, has a “strong disincentive to the emergence of a major new party even when the electorate is

¹⁶⁵ Bingham Powell, *Elections as Instruments of Democracy: Majoritarian and Proportional Visions* (New Haven and London: Yale University Press, 2000) at 6.

dissatisfied with both parties in a two-party system.”¹⁶⁶ This is so when the new party is ideologically close to one of the two main parties or has some policy similarities with it. The system provides a strong disincentive to those who want to form this new party. They know that either voters will disregard them because of the system’s emphasis on two parties and their efforts will be in vain, or if they have partial success, they will end up splitting the vote with the party closer to them and against all of their intentions they will bring their ideological foe into power. Therefore, under the plurality formula, if traditional supporters of a party are dissatisfied with it because of poor performance or stagnation in power, they have few options. Either they have to continue to vote for the party, or abstain from voting and lose influence, or they have to vote for the other party whose policy stances they dislike. They do not have the option of turning to new faces in their own camp.

Even when “a new issue arises in a plurality system, creation of a new party is quite difficult even if it has potentially wide support, as was the case for the Labour party in the United Kingdom or New Zealand around 1900”¹⁶⁷. Voters will have a hard time turning to a new party that advocates a new issue in a plurality system. So, one may suggest that the plurality formula even brings about social and political stagnation in a society. It is not suggested that an electoral system has infinite power here and can crush any social force, but at least it has some disincentives and may delay a necessary change.

To summarize, the plurality formula first of all facilitates the continued dominance of two main parties. This can hinder change and may create a corrupt party oligarchy. Second, in more extreme cases this formula may favour one party, that of the incumbents. Incumbents

¹⁶⁶ Arend Lijphart & Bernard Grofman, “Choosing an Electoral System” in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 8.

¹⁶⁷ Rein Taagepera & Matthew Soberg Shugart, *Seats and Votes: the Effects and Determinants of Electoral Systems* (New Haven and London: Yale University Press, 1989) at 98.

have more means and more motivation to concentrate the vote. While a divided opposition is not an uncommon phenomenon in such a situation, incumbents will continue to rule even if they come short of securing a majority of votes. This inclination towards incumbents is detrimental to democratic change.

After all that has been said about the disincentives of plurality system against democratic change, it is surprising to know that one author, Douglas Rae, has argued for the openness of the plurality system towards change.¹⁶⁸ His argument stems from what he formulates in the following proposition:

DIFFERENTIAL PROPOSITION EIGHT: Plurality and majority formula tend to magnify changes in the popular support of parties when seats are allocated...¹⁶⁹

Rae argues that under a plurality system when a party wins by a small shift of votes its number of seats increases dramatically. Therefore, this system magnifies the change. I doubt that this fact adds anything to the democratic credentials of the plurality system. First of all, this only happens when the ranking of the first and the second parties in the number of votes reverses. Part of the reason this change is exaggerated is because the new governing party was oppressed by the system when it was the second party. Secondly, when a party is going to win, it is not that important or desirable for it to win by a landslide. On the contrary, the fact that under the plurality formula the loser often has to suffer a shellacking is unfortunate.

¹⁶⁸ Douglas W. Rae, *The Political Consequences of Electoral Laws* (New Haven and London: Yale University Press, 1967) at 100-103.

¹⁶⁹ Douglas W. Rae, *The Political Consequences of Electoral Laws* (New Haven and London: Yale University Press, 1967) at 101.

The more competitive the opposition remains, the better. Additionally, Rae himself concedes¹⁷⁰ that whatever the dynamics are between the two main parties, the plurality system is a conservative force against other challengers.

Subsection 5: Strategic voting and wasted votes

Strategic voting happens when a voter deems his favourite candidate or party to have little chance of winning and thinks that voting for that candidate or party would waste his vote and have no effect on the outcome of the election. Therefore, he would vote for a viable candidate or party that is not his first choice but is still preferable to other options. This way, he may have an impact on the outcome and may prevent the most detestable option from winning. Obviously, this is a common occurrence in plurality systems where usually at most two candidates are viable. Indeed, it plays a great role in creating stable two-party conditions that are often associated with the plurality system. As such, strategic voting is often associated with the plurality system. As early as 1869, Henry Droop noted:

As success depends upon obtaining a majority¹⁷¹ of the aggregate votes of all the electors, an election is usually reduced to a contest between the two most popular candidates.... Even if other candidates go to the poll, the electors usually find out

¹⁷⁰ Douglas W. Rae, *The Political Consequences of Electoral Laws* (New Haven and London: Yale University Press, 1967) at 103.

¹⁷¹ Simple majority or plurality is intended here.

that their votes will be thrown away, unless given in favour of one or other of the parties between whom the election really lies¹⁷²

Much has been said about strategic voting, its effects, when it happens and its limitations.¹⁷³ These are not what concern us in this subsection. Here, we want to show that strategic voting is one of the democratic failures of the plurality system. For that purpose, it suffices to show that considerable amount of strategic voting happens under this system. Theoretically, it is evident that such a design will encourage strategic voting. Because “[a] system that debars a voter even from expressing all his preferences ... gives the most potent of all incentives for [strategic voting]... That is why tactical voting plays so large a role in elections under the ‘First Past the Post’ system.”¹⁷⁴ Empirical evidence confirms this. Cox cites¹⁷⁵ data from UK elections (where the largest literature on strategic voting exists). The percentage of strategic voters is high, sometimes in the double digits. The percentage of those who would consider voting strategically is even higher, reaching as high as 41% in one study.¹⁷⁶ While conventional wisdom considers strategic voting as a peculiarity of plurality systems, one study¹⁷⁷ purports that strategic voting is only slightly higher in plurality systems compared to proportional systems. However, one should add a qualitative sensitivity to this

¹⁷² Quoted in: Gary W. Cox, *Making Votes Count: Strategic Coordination in the World Electoral Systems* (Cambridge: Cambridge University Press, 1997) at 13.

¹⁷³ For instance see: Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 103-108; and Gary W. Cox, *Making Votes Count: Strategic Coordination in the World Electoral Systems* (Cambridge: Cambridge University Press, 1997). The latter book is generally concerned with strategic voting and coordination. Chapter 4 examines strategic voting in single-member single ballot systems.

¹⁷⁴ Michael Dummett, *Principles of Electoral Reform* (New York: Oxford University Press, 1997) at 13.

¹⁷⁵ : Gary W. Cox, *Making Votes Count: Strategic Coordination in the World Electoral Systems* (Cambridge: Cambridge University Press, 1997) at 83.

¹⁷⁶ Gary W. Cox, *Making Votes Count: Strategic Coordination in the World Electoral Systems* (Cambridge: Cambridge University Press, 1997) at 84.

¹⁷⁷ Sara B. Hobolt & Jeffrey A. Karp, “Voters and Coalition Governments” (2010) 29 *Electoral Studies* 299 at 303.

measurement. While there are some incentives for voting strategically in a proportional system, the number of parties in that system is much higher than the plurality system. Therefore, a vote for the second preference involves a small compromise with regards to desired policies and principles, while in a plurality system the compromise is usually significant. If one wants to add those parties which hypothetically would compete in a given plurality system but the disincentives of the system have either prevented their creation or made them irrelevant, the ratio of strategic voting would be much higher in the plurality system.

Strategic pressure is to be despised because it suppresses democratic expression. A voter whose preferred candidate or party is not among the frontrunners and votes strategically is deprived of expressing his support for that party or candidate. Apart from its symbolic importance, this expression may serve other causes, too. Elections are not just about winning office. They are also forums for winning hearts and minds. An election is a democratic process that plays a great role in the democratic circulation of ideas. People want to show that they are a voice in society. People may want to vote for a progressive cause, hoping that little by little it will find its place in society, even if it is a minority voice now. Political groups want to show their weight and rational calculations for strategic voting prevent this. Sometimes there are even material considerations for voting for a smaller party. In countries where parties receive public funding based on their number of votes, voting strategically will deprive smaller parties from important resources they could use to promote their cause.

One way of describing this situation is by reference to oppressed preferences.¹⁷⁸ In an election with multiple candidates, usually each voter prefers one of the candidates to all others. A voter may prefer Candidate A, but this is not a complete picture of how she feels towards all candidates. She may prefer candidate B to C and C to D. In a plurality system, a voter either only expresses her first preference by voting according to her heart and, thus, by suppressing her other preferences, risks ending up with the worst result. Or, if she votes strategically, she will suppress her first and most important preference.

Apart from the suppression of democratic expression, another shortcoming of strategic voting is that it is useless unless voters know exactly who the frontrunners are.¹⁷⁹ Therefore, this burdens voters with the duty of finding out how others will vote. Now, those who know this will benefit from it, those who do not may waste their votes while “[i]t is no part of democracy to reward those well informed about other voters’ intentions and to penalize those ill informed about them; the wishes and opinions of the latter are of equal significance with those of the former.”¹⁸⁰ While opinion polls may be helpful, they are not completely reliable and often their database is not large enough to predict riding results. The other problem is that a combination of strategic voting and polling reports hampers the efforts of challengers who want to make the best of campaign time and become a favourite.

I should clarify that I regard the decision to vote strategically a wise decision. A voter who votes strategically weights all of her options and tries to bring about the best result that is possible in the circumstances. What I regard as a defect is an electoral design which tends to corner the voters into a situation where they have to vote strategically. For the reasons

¹⁷⁸ In this paragraph, I was inspired by Michael Dummett, *Principles of Electoral Reform* (New York: Oxford University Press, 1997) at 10-13.

¹⁷⁹ Michael Dummett, *Principles of Electoral Reform* (New York: Oxford University Press, 1997) at 15-16.

¹⁸⁰ Michael Dummett, *Principles of Electoral Reform* (New York: Oxford University Press, 1997) at 16.

discussed here and in the corresponding subsections of the following chapters, I regard strategic pressure as detrimental to free democratic expression.

The phenomenon of wasted votes is the other face of strategic voting. Supporters of smaller parties should either vote strategically or waste their votes and have no effective voice in the outcome. However, sometimes a broader sense is intended by the expression. According to this broader sense, all of those who have voted for a losing candidate and even some of those who have voted for a winning candidate have wasted their votes because these votes have not been translated into seats:

Those in constituencies where their candidate wins, waste that fraction of the total vote for the candidate ... that is in *excess* of the total needed to win the seat. Those in constituencies where their candidate loses *waste* all of their vote – it is irrelevant to the final outcome of the election (in terms of the allocation of the seats). In any constituency, the number of *effective* votes may be relatively small. For each party, the proportion of its votes that are effective is crucial to electoral success...¹⁸¹

In another paper¹⁸², political geographers Taylor, Gudgin and Johnston demonstrate that when a party concentrates its votes in some districts, it will lose more seats.

This poses problems as far as democracy is concerned. The first problem is that it is the number of effective votes, not the total number of votes that determines the winner. This is in

¹⁸¹ R. J. Johnston, "Seats, Votes, Redistricting, and the Allocation of Power in Electoral Systems" in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 63.

¹⁸² Peter Taylor, Graham Gudgin & R. J. Johnston, "The Geography of Representation: A Review of Recent Findings" in Bernard Grofman & Arend Lijphart, eds. *Electoral Laws and Their Political Consequences* (New York: Agathon Press, 1986) at 183-192.

opposition to the idea of equality. Secondly, when some parties have an overconcentration of votes in some ridings, those ridings will produce safe seats. None of the parties will have much incentive to appeal to the residents of that riding. The winning party knows it can safely win that seat anyways, and the losing party knows it is too hard to win that seat. Both will concentrate on marginal districts. Meanwhile, the sitting MP will face no challenge to his seat, which may lead to corruption and insensitivity towards voters. This is a theoretical speculation about the corruptibility of politicians who represent safe seats; however there are some experimental data that confirm this theory. For instance, Rundquist et al point out that a voter will knowingly vote for a corrupt candidate “he decides that a corrupt candidate who is closer to his own preferences on other issues is preferable to a “clean” candidate who is not.”¹⁸³ They conducted an experiment which involved a mock election. In their experiment up to 42% of the voters were ready to vote for an obviously corrupt candidate whose political positions were closer to theirs.¹⁸⁴ According to another study on USA elections, Representatives lose their votes by an average of only 10 percentage points when they face corruption allegations. Also, according to studies, ‘alternative’ is an important factor on whether corrupt politicians lose their seats.¹⁸⁵ Based on these findings, politicians who represent safe seats have fewer incentives to avoid corrupt or suspicious behaviour because they know there are enough people who will vote for them regardless of wrongdoing

¹⁸³ Barry S. Rundquist, Gerald S. Strom & John G. Peters, “Corrupt Politicians and Their Electoral Support: Some Experimental Observations” (1977) 71 *The American Political Science Review* 954 at 956.

¹⁸⁴ Barry S. Rundquist, Gerald S. Strom & John G. Peters, “Corrupt Politicians and Their Electoral Support: Some Experimental Observations” (1977) 71 *The American Political Science Review* 954 at 957 et suiv.

¹⁸⁵ Cited in: Andreas Bågenholm, “Throwing the rascals out? The electoral effects of corruption allegations and corruption scandals in Europe 1981–2011” (2013) 60 *Crime, Law and Social Change* 595 at 597.

allegations. The limitations that the plurality model puts on the existence of an acceptable alternative also have a negative effect on this regard.

Subsection 6: Power of Central parties

Parties are useful tools that organize opinions into political will and bring about political change. Perhaps democracy as we know it would not exist without parties. Dalton and his colleagues cite prominent theorists and scholars who attest to central role of parties in democracies:

It is a well-established position of party theorists that these entities have played a crucial role in the establishment and proper functioning of democracy. James Bryce, for instance, was unequivocal in his view that “parties are inevitable: no free country has been without them; and no one has shown how representative government could work without them”. In Max Weber’s terms, political parties are “the children of democracy, of mass franchise, of the necessity to woo and organize the masses.” According to LaPalombara and Weiner they are “the creature[s] of modern and modernizing political systems.” In Schattschneider’s most memorable refrain, “modern democracy is unthinkable save in terms of the parties.”¹⁸⁶

¹⁸⁶ Russell J. Dalton, David M. Farrell & Ian McAllister, *Political Parties and Democratic Linkage: How Parties Organize Democracy* (Oxford: Oxford University Press, 2011) at 1.

In the same vein, the Royal Commission on electoral Reform and Party Financing, describes parties as “primary political organizations”, attests to their central role in the Canadian democracy and makes recommendation for reforming laws to strengthen the position of parties in Canada.¹⁸⁷ The following summary from Dalton *et al* attests to the paramount role of parties in the electoral process:

- **Campaign linkage:** parties recruit candidates and set the parameters of the electoral process;
- **Participatory linkage:** parties activate citizens during elections and mobilize them to vote;
- **Ideological linkage:** parties inform voters about policy choices in elections and voters strongly base their voting preferences on these policy alternatives;
- **Representative linkage:** elections achieve a good congruence between citizen policy preferences and the policies of the parties represented in parliament and the government; and
- **Policy linkage:** parties deliver on the policies they advocated in the election.¹⁸⁸

Then perhaps electoral systems that enhance the party cohesion and discipline should be preferable. Then again, perhaps party discipline and the fact that representatives have to respect their party ideology and mandate is not a bad thing. But how far can this go? Can party leaders treat MPs like employees? Wouldn't this amount to party dictatorship and perhaps a consolidation of power by a party oligarchy, suppression of opinions and

¹⁸⁷ The Royal Commission on Electoral Reform and Party Financing, *Reforming Electoral Democracy: Final Report*, vol. i (Ottawa: Supply and Services, 1991) at 207-320.

¹⁸⁸ Russell J. Dalton, David M. Farrell & Ian McAllister, *Political Parties and Democratic Linkage: How Parties Organize Democracy* (Oxford: Oxford University Press, 2011) at 7.

prevention of progress? It may. Furthermore, a MP should not be forced to vote against her conscience in matters of importance that were not a part of the mandate she was elected upon. Too much concentration of power in a central party apparatus may yield undemocratic results. It may force an MP to act in ways she knows are not in the best interests of her constituents. Therefore, a balance should be struck between organized party power and the possibility of personal initiative. Accordingly, in this regard, the best electoral system would be the one that can strike such a balance. Neither the party discipline nor personal initiative should be sacrificed. There should be an efficient midpoint that balances the power party elites against grassroots.

Systems that allow voters to express their preferences for a person and not only a party have the advantage in that they give more flexibility to voters and they give more autonomy to candidates versus parties. It has been said that plurality system benefits from this advantage.¹⁸⁹ However, this is not the whole picture. On the one hand, it seems that district based elections will give candidates some autonomy versus the party apparatus. But Maurice Duverger¹⁹⁰ reminds us that these systems' strong pressure towards *bipartisme* will give the upper hand to the party oligarchy. This can be explained by the fact that in this system, voters will not take new third challengers seriously. The disgruntled MP will have little chance of re-election if she runs independently or forms a new party. Crossing the floor to the other major party is not an attractive option because it is usually positioned on the other end of the ideological spectrum. She should not anger the party bosses.

¹⁸⁹ R. J. Johnston, "Seats, Votes, Redistricting, and the Allocation of Power in Electoral Systems" in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 64.

¹⁹⁰ Maurice Duverger, *Political Parties: Their Organization and Activity in the Modern State* (Cambridge: Methuen & Co Ltd, 1976), at 152. The issue is also touched upon at 183, 196 & 198.

Too much freedom would lead to anarchy and would render the party system ineffective. MPs who are too independent would become easier targets for lobby influence and corruption. Furthermore, it may not be democratic if party members can vote in contradiction to the mandate that voters have given to their party. It is not fair when the party label has helped an MP get elected and he acts too independently. However, too much of pressure and control is not ideal either. In matters of importance, an MP should have the opportunity to break ties with the party (or threaten to do so) and turn to the electorate for the final judgment in the following elections. Strong pressure towards vote concentration under the plurality formula makes this too risky to do.

Subsection 7: Turnout

Turnout in elections is an indicator of democratic performance in each country. High turnout shows that people are loyal to democratic ideals, believe in the democratic performance of the system, believe their votes have an effect and overall have a positive perception about political players. If it could be demonstrated that electoral systems would have an effect on the turnout, its impact could be an indicator of its democratic performance.

“Many analyses have found a relationship between plurality and low turnout”¹⁹¹. But Baldini and Pappalardo challenge this: “[T]hough most studies stress that ... [PR systems] are largely ahead of majoritarian countries ... our own database points to a null match: if observations are updated to 2007, and if two hugely deviant cases are excluded, average

¹⁹¹ Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 40.

post-war turnout attains 81.8 per cent in majoritarian systems, as against 82.4 per cent in PR sub-set”¹⁹²

However, my reading of the data¹⁹³ confirms conventional wisdom. To catch up with recent trends, I have restricted my data to 1995 and onwards. I have also restricted my survey to the 21 advanced democracies that Baldini and Pappalardo have identified. Like Baldini and Pappalardo, I am excluding the deviant cases of the U.S. and Switzerland. The U.S. has a presidential system, which reduces parliamentary elections to the status of secondary elections, hence lower turnout, although the U.S. even has relatively low turnouts for presidential elections. Either way, its inclusion would exaggerate our results. Switzerland has strong decentralism, which makes national elections less important. Also, unfortunately, we will have to exclude the only two systems in the set that use a kind of a majority formula: Australia because it has compulsory turnout, and France, which has a semi-presidential system in which presidential elections proceed the parliamentary elections by a few months and little enthusiasm remains for the latter. This leaves us with 17 countries and the comparison will only be between plurality and proportional systems, with only 2 plurality systems, Canada and the UK.

¹⁹² Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 175.

¹⁹³ Data is obtained from: *International IDEA*, Online: < <http://www.idea.int/vt/>>. Turnout data for 2010 general elections in UK is retrieved from: *UK Political Info* Online: < <http://www.ukpolitical.info/Turnout45.htm>>. Whenever IDEA data was missing alternative source has been mentioned in footnotes.

Table 3-1. Turnout in plurality elections 1995-2010

Country	Turnout percentage (year)					Average
Canada	67.00 (1997)	61.18(2000)	60.91(2004)	64.94(2006)	59.52(2008) ¹⁹⁴	62.71
UK	71.46(1997)	59.38(2001)	61.36(2005)	65.1(2010)		64.32
Total average						63.52

Table 3-2. Turnout in proportional elections 1995-2010

Country	Turnout percentage (year)					Average
Austria	85.98(1995)	80.42(1999)	84.27(2002)	74.22(2006)	81.71(2008)	81.32
Belgium	91.15(1995)	90.58(1999)	91.63(2003)	91.08(2007)	89.22(2010) ¹⁹⁵	90.73
Denmark	85.95(1998)	87.15(2001)	84.54(2005)	86.59(2007)		86.06
Finland	68.58(1995)	65.27(1999)	66.71(2003)	65.02(2007)		66.40
Germany	82.20(1998)	79.08(2002)	77.65(2005)	70.78(2009) ¹⁹⁶		77.43
Greece	76.34(1996)	74.97(2000)	76.62(2004)	74.14(2007)	70.92(2009) ¹⁹⁷	74.60
Japan	59.00(1996)	60.62(2000)	59.80(2003)	67.46(2005)	69.28(2009) ¹⁹⁸	63.23
Ireland	66.08(1997)	62.57(2002)	67.03(2007)			65.23
Italy	82.91(1996)	81.44(2001)	83.62(2006)	80.54(2008)		82.13
Netherlands	73.23(1998)	79.06(2002)	80.04(2003)	80.35(2006)	75.40(2010) ¹⁹⁹	77.62
New Zealand	88.28(1996)	84.77(1999)	76.98(2002)	80.29(2005)	79.46(2008)	81.96

¹⁹⁴ *UK Political Info*, Online: < <http://www.ukpolitical.info/Turnout45.htm>>.

¹⁹⁵ *Election Guide*, Online: < <http://www.electionguide.org/voter-turnout.php>>.

¹⁹⁶ *Election Guide*, Online: < <http://www.electionguide.org/voter-turnout.php>>.

¹⁹⁷ *Election Guide*, Online: < <http://www.electionguide.org/voter-turnout.php>>.

¹⁹⁸ "Voter turnout hits record 69% in Japan's lower house election" *China Economic net* (31 August 2009), Online: <http://en.ce.cn/World/Asia-Pacific/200908/31/t20090831_19907985.shtml>.

¹⁹⁹ *Election Guide*, Online: < <http://www.electionguide.org/voter-turnout.php>>.

Norway	78.33(1997)	75.48(2001)	77.44(2001)	76.4(2009) ²⁰⁰		76.91
Portugal	66.30(1995)	61.05(1999)	62.84(2002)	64.26(2005)	59.74 (2009)	62.84
Spain	78.06 (1996)	68.71 (2000)	75.66(2004)	75.32(2008)		74.44
Sweden	81.39(1998)	80.11(2002)	81.99(2006)	84.63(2010) ²⁰¹		82.03
Total average						76.20

The results illustrate an average of 63.52% for plurality systems compared with a much higher average of 76.2% for proportional systems. Of course, this is far from firm empirical evidence especially because the number of countries in our plurality subset is too small and in the proportional systems we have very variable data, some even approaching the plurality average. Any attempt at expanding the database to developing democracies would be questionable. For instance, India as a plurality system has a very low turnout compared with Turkey, which has a proportional electoral system and yields high turnouts. Unlike Turkey, the former Communist countries of Eastern Europe, which mostly use a proportional system, demonstrate low turnout, comparable to India.

Perhaps other factors play a greater role in setting the turnout ratio, but we have theoretical reasons that hint that the plurality formula can also play a role in decreasing the turnout. For instance, the issue of wasted or ineffective votes has just been discussed. Predicting that their vote will not be effective might discourage some from voting. The fact that voters may feel the electoral system is broken or unfair may be another reason.

²⁰⁰ *Statistics Norway*, Online: < <http://www.regjeringen.no/krd/html/valg2009/bs5.html>>.

²⁰¹ *Valresultat*, Online: < <http://www.val.se/val/val2010/slutresultat/R/rike/index.html>>.

The limitations that the plurality formula imposes on voters may provide other reasons. One of these limitations concerns the number of choices available to voters. Plurality suppresses this number. Under a multi-party system, each voter can find at least one party she likes. This increases the enthusiasm for participation. An electoral campaign looks more colourful and tempting. Another limitation of the formula that Fishburn considers is the limitation in expressing all preferences: “[V]oter participation might increase in some elections if they were conducted by approval voting rather than by plurality owing to the greater opportunity to show one’s preferences on the approval-voting ballot.”²⁰²

To summarize, the claim that the plurality system discourages voter turnout seems plausible, and this scores negatively on this system’s democratic credit chart.

Section Two: Diversity

Subsection 1: Political diversity

It has been discussed that the plurality formula creates disproportional results. We can elaborate that this disproportionality is at the expense of smaller groups and consequently political diversity. Based on electoral data, Rae has already formulated this in a number of his propositions. More precisely, his differential propositions one and five address this issue:

²⁰² Peter C. Fishburn, “Social Choice and Plurality like Electoral Systems” in Bernard Grofman & Arend Lijphart, eds. *Electoral Laws and Their Political Consequences* (New York: Agathon Press, 1986) at 198.

DIFFERENTIAL PROPOSITION ONE: *The relative advantage of strong elective parties over weak ones found in all electoral systems tends to be greater under plurality or majority formulae than under proportional representation formulae.*²⁰³

DIFFERENTIAL PROPOSITION FIVE: *Plurality and majority formulae tend to deny representation to larger numbers of small parties than proportional representation formulae.*²⁰⁴

Lijphart explains the mechanism of the latter proposition in these words:

All majoritarian systems, make it difficult for small parties to gain representation (unless they are geographically concentrated), because they need to win majorities or pluralities of the vote in electoral districts. For this reason, all majoritarian systems tend to systematically favour the larger parties, to produce disproportional election outcomes, and to discourage multipartism.²⁰⁵

This property of plurality systems has been normatively criticized for denying minorities' access to representation.²⁰⁶ While according to the majoritarian vision, which we opted for, government is regarded as a wholesome institution that can't be rewarded to only

²⁰³ Douglas W. Rae, *The Political Consequences of Electoral Laws* (New Haven and London: Yale University Press, 1967) at 88.

²⁰⁴ Douglas W. Rae, *The Political Consequences of Electoral Laws* (New Haven and London: Yale University Press, 1967) at 97.

²⁰⁵ Arend Lijphart, *Electoral Systems and Party Systems: A Study of Twenty-Seven Democracies 1945-1990* (Oxford: Oxford University Press, 1994) at 20.

²⁰⁶ Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 19.

one team, I hold that disregarding the diversity of ideas in a society and suppressing them is not acceptable. Diversity is a value. For reasons that were discussed in Section Two of Chapter Two, I am of the opinion that a pluralistic society is normatively superior. The free circulation of ideas and political opinions is not only good for individuals and helps them realise more of their potential and gain more happiness, it is also good for society as a whole. This is because the more ideas that are put forth in a society, the more chances there will be for progress in society, and the more probability there is for exploring unknown territories, the higher the odds will be of finding new solutions through the clash of existing ideas, and the better the likelihood of changing for better. Ideas that seem avant-garde today may become mainstream tomorrow; so, they should have a chance to be put forth in a politically organized manner. Furthermore, suppressing the political expression of a group in a society and depriving them of any political influence is not only morally despicable because it is an affront to their recognition as full and equal members of society, it can also bring about undesirable social and political consequences. This may lead to social antagonism and detachment.

A plurality electoral system does not stop at creating stable governments by excluding smaller parties from participation in government formation. It goes as far as barring smaller political groups from getting organized in the form of political parties. It deprives them of participating in the electoral process, which is the cherry on top of a democratic system. Even if against all odds they were to endeavour to contest the elections as a minority, they would still end up being left out with no tangible political influence in the direction of the country.

Ferdinand Hermens does not agree with this last point. To the contrary, he argues that minorities have a due influence under a plurality system such as the United States: “The reason is that government by majority is government by persuasion. Members of a variety of ethnic, religious, economic, and other groups must be brought together. The result is civic education of the most effective kind. Members of minority groups, by cooperating, learn first of all to tolerate and then to appreciate each other. Their leaders must pursue policies acceptable to all.”²⁰⁷ As evidenced by the use of the word “majority”, it seems Hermens has confused the plurality and majority formulae. Under the plurality formulae, all the winning party has to do is secure the largest niche of votes. It does not need to go to any lengths to secure a majority. Under this scheme, two scenarios are common for political minorities with a substantially distinct identity. Either they do not organize into an elective party and end up voting for one of the main parties with no substantial means of securing any concessions from them, or they form a party and contest the election, suffer substantial desertions as a result of strategic voting, fail to elect any MPs, and get left out with little influence.

Peter Taylor²⁰⁸ has defended the fairness of the plurality model in the UK by resorting to what he calls proportional tenure. He is suggesting that while the British system might not result in a proportional allocation of seats in each election, viewed historically, the time that Conservative and Labour Parties have been in power is somewhat proportional to the support they have among Britons. Adding up the time that each of the two main parties had governed in the UK, he argues that the system has produced a proportional tenure that might not have happened in other systems. There are three problems with this assertion. First, Taylor only

²⁰⁷ Ferdinand A. Hermens, “Representation and Proportional Representation” in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 18.

²⁰⁸ Peter J. Taylor, “The Case for Proportional Tenure: A Defense of the British Electoral System” in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 53-58.

takes the two bigger parties into consideration. He fails to see the unfairness suffered by Liberal Democrats who sometimes have polled close to the other two parties. Secondly, under this model, a party that enjoys having a united camp also enjoys getting lion's share of the tenure. In Britain, if we accept that the Labour and the Lib-Dems have a somewhat shared voter base (which is evidenced by the strategic voting between the supporters of the two parties), then tenure has not been proportional. Thirdly, Taylor's explanation fails to consider that utility varies over time. Here, it is assumed that the detriment suffered by a group of voters can be compensated for when they receive the "cherry" at a future time. It is supposed the random abnormalities this system creates can be cancelled out over time. Meanwhile, these abnormalities may add up and turn the system into an abnormal one.

The suppression of diversity has often been associated with the winner-takes-all model and for that reason supporters of proportional representation have criticized the majoritarian vision for failing to account for minorities. Powell summarizes this criticism:

In a democracy the preferences of all citizens, not just an electoral majority, should be taken into account in the making of policies. Even if they represent the citizen majority position on all the issues, a majority of representatives should not ride roughshod over the preferences (especially if intense) of the minority. The best guarantee that the majority will take account of minority preferences is to give the minority some valuable policy-making power (by consensual policy making rules, regional governments, checks and balances across institutions, and so on). As John Stuart Mill argues, 'Human beings are only secure from evil at the hand of others in proportion as they have the power of being, and are, self-protecting'.... If one accepts its assumptions, this argument requires a different

democratic connection, a different standard of democratic performance, from that of the majoritarian or concentrated power vision.²⁰⁹

While the view that minorities should have some degree of influence attracts sympathy, and the threat of a dictatorship of the majority is a real one, one should not go as far as putting the stability of a working government at risk. Instability and inefficiency may even bring an end to the very existence of the diverse society one so cherishes. Diversity and stability are both values that should not come one at the expense of the other. There should be a way to balance these two values. One way of balancing this is having a wholesome picture of diversity that is not restricted to the lower chamber of parliament upon which the very fate of the government depends in parliamentary systems. In the final part of this work, I will explain how the majority formula recognises political diversity in a society-wide scale while out of necessity restricts it in the (lower house of) parliament. The plurality formula not only forbids small parliamentary parties, it even fails to tolerate small electoral parties. Thus, political minorities are deprived of the chance to project their distinct identity by forming political parties. Under a majority formula, smaller elected parties can peacefully exist and participate in the electoral process without fear of spoiling effects. Having demonstrated their weight, they can form formal or informal alliances with bigger parties that need their support for the run-off and thus exhort some influence. Additionally, other constitutional designs may help them gain more influence. For instance, a proportional formula can be used in the upper house, which does not designate the government. If constitutional design gives some say to the upper house they can influence the government

²⁰⁹ Bingham Powell, *Elections as Instruments of Democracy: Majoritarian and Proportional Visions* (New Haven and London: Yale University Press, 2000) at 6.

without going as far as toppling it. New political trends can use the upper house as a lab and build up their strengths there before being competitive in the lower house. All of these schemes will be discussed in more detail in Part Four.

Subsection 2: Social Diversity

Under-representation of ethno-religious groups pose special difficulties that are not necessarily analogous to that of political minorities. Ethno-religious minorities have the status of permanent minorities while political positions of societies and individuals can change. Furthermore, ethnic and racial affiliations are not a matter of choice and are more influential than political affiliations or ideals in shaping the identity of individuals. Ethno-religious representation is also important because members of ethno-religious minority groups should have equal access to positions of importance. These minorities often have a compromised status in society. The ideal of equality dictates that they should have equal access to holding public office. Membership of the Parliament is an important political position that should be open to each individual without discrimination based on race, ethnicity, religion, gender, sexual orientation and other similar grounds. Beyond the significance that it has to the person holding it, minority office holding also has a symbolic importance for all other members of a permanent minority group. It can boost the morale of disadvantaged groups. As explained by Michael Preston in case of black Americans:

[S]ymbolic representation is not only desirable but necessary for black Americans. Because of past historical conditions, blacks need role models in government; they need representatives that they believe will represent their interests; they need to know that good leadership (or Bad) is not dominated by one race or group. Most important, blacks must become more self-reliant. Self-reliance is a basic ingredient of political influence. To be self-reliant is to believe in oneself, and to seek others who can be influenced to act in one's behalf²¹⁰

Do electoral systems influence the representation of ethno-religious groups? Horowitz cites minority office holding as one of the six goals of electoral systems.²¹¹ Thus, if we can demonstrate that an electoral system under-represents these groups, it has failed this goal. It has been observed that plurality systems do just that.²¹² Dynamics of single-member district competitions have been proposed as the reason.²¹³ In single member districts, each party has just one shot at choosing a candidate and it will seem as though nominating a member of a minority group will decrease the chances of victory, while larger districts (especially, but not necessarily, if a party list proportional formula is used) encourage the nomination of minorities. This is so because parties will try to extend their appeal by choosing multiple candidates from various groups.

²¹⁰ M.B. Preston, "Black Elected Officials and Public Policy: Symbolic or Substantive Representation?" (1978) 7 *Policy Studies Journal* 196 at 198 quoted in Richard L. Engstrom & Michael D. McDonald, "The Effects of At-Large Versus District Elections on Racial Representation in U.S. Municipalities" in Bernard Grofman & Arend Lijphart, eds. *Electoral Laws and Their Political Consequences* (New York: Agathon Press, 1986) at 224.

²¹¹ Donald L. Horowitz "A Primer for Decision Makers" in Larry Diamond & Marc F. Plattner, eds. *Electoral Systems and Democracy* (Baltimore: The John Hopkins University Press, 2006) at 7.

²¹² Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 20.

²¹³ Enid Lakeman, "the Case for Proportional Representation" in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 50.

These problems are solvable within the single-district plurality formula. One solution is using non-geographic districts, where some districts are reserved for members of an ethnic or religious group.²¹⁴ Both voters and candidates belong to that ethno-religious group in this case. Another solution, used in Lebanon, is when districts are geographically divided but in some districts only members of one sect can be candidates while members of all sects can vote.²¹⁵ Affirmative gerrymandering, which is used in the U.S. to increase the chance of victory for black candidates, is another method.²¹⁶ Another method can be the imposition of quotas on parties whereupon parties have to nominate a determined percentage of their candidates from special groups.

Some believe that the methods used in majoritarian systems to ensure minority representation have the disadvantage of discriminating against some groups.²¹⁷ It is left to the legislatures to choose which minority group constitutes a distinct identity group that should be specially treated and which group does not. Meanwhile, minority representation in proportional systems does not pose such a problem and any group can organize into a minority party and gain access to representation. I do not agree with this point. First of all, such ethnic representation in proportional systems has its own problems, which will be discussed in Part Three. Secondly, special provisions for the representation of an ethno-religious group should be an exceptional measure where the natural state of affairs fails to

²¹⁴ Arend Lijphart, "Proportionality by Non-PR Methods: Ethnic Representation in Belgium, Cyprus, Lebanon, New Zealand, and Zimbabwe" in Bernard Grofman & Arend Lijphart, eds. *Electoral Laws and Their Political Consequences* (New York: Agathon Press, 1986) at 116-118.

²¹⁵ Arend Lijphart, "Proportionality by Non-PR Methods: Ethnic Representation in Belgium, Cyprus, Lebanon, New Zealand, and Zimbabwe" in Bernard Grofman & Arend Lijphart, eds. *Electoral Laws and Their Political Consequences* (New York: Agathon Press, 1986) at 118-120.

²¹⁶ Arend Lijphart, *Electoral Systems and Party Systems: A Study of Twenty-Seven Democracies 1945-1990* (Oxford: Oxford University Press, 1994) at 140.

²¹⁷ Arend Lijphart, "Proportionality by Non-PR Methods: Ethnic Representation in Belgium, Cyprus, Lebanon, New Zealand, and Zimbabwe" in Bernard Grofman & Arend Lijphart, eds. *Electoral Laws and Their Political Consequences* (New York: Agathon Press, 1986) at 120-121.

guarantee it. Public policy should encourage social cohesion, where members of all identity groups are able to get elected in a normal contest without their membership to an identity group being an issue. Therefore, we have to trust the judgement by a democratic government in deciding which group needs protection for securing representation. In conclusion, one should concede that in the end it is the dynamics of ethnic relations of each individual society that will determine which solution works best for them.

Representation of women presents issues similar to ethno-religious representation, except numerically women do not constitute a minority. Some electoral systems tend to have a negative impact on minority representation, but it would be bizarre for an electoral system to negatively affect the representation of majorities. However, data shows plurality systems have a reverse relationship with female representation.²¹⁸ Baldini and Pappalardo²¹⁹ suggest that factors other than the electoral system could play a role. Who would suggest that an electoral formula has brought about the large number of female politicians in Scandinavia or the Netherlands? This is partially true; societal factors play a role here. However, an electoral system does not have a neutral effect, either. A study²²⁰ of the experience in New Zealand demonstrated that after the plurality system was changed into a mixed-member proportional model, the percentage of women MPs increased dramatically. The fact that most of the changes were brought about by the amount of women among the lists of candidates clearly illustrates the effect of electoral arrangements.

²¹⁸ Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 20; M.A. Griffith-Traversy, ed. *Democracy, Parliament and Electoral Systems* (London; Sterling Va : Commonwealth Parliamentary Association in association with Pluto Press, 2002) at 92.

²¹⁹ Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 175-176.

²²⁰ M.A. Griffith-Traversy, ed. *Democracy, Parliament and Electoral Systems* (London ; Sterling Va: Commonwealth Parliamentary Association in association with Pluto Press, 2002) at 95-96.

While women are not numerical minorities, they constitute a historically disadvantaged group that have still inherited lots of inhibitions against entering into the political scene. This may explain why women fare worse under a plurality system. Parties may find it risky to nominate women in single-member districts, fearing that they might not fare well. The confrontational nature of single-member competitions may also be a bar against women. Whatever the causes may be, the same methods that were mentioned for ethno-religious representation might alleviate the effects in single-member district elections.

Subsection 3: Geographical Diversity

Geographical diversity is the one kind of diversity that plurality systems, or more precisely single-member district systems, protect well. Consequently, any other kind of diversity: ethnic, religious, lingual, political, etc. which has a fair amount of geographic concentration will benefit from this system. The division of a country into small constituencies ensures that every corner of the country has a voice in the parliament.

This arrangement is especially important if a country has underdeveloped areas.²²¹ Nation-wide riding elections then will tend to concentrate MPs in developed areas and large urban centers where the elite usually reside. Consequently, rural and underdeveloped areas may not have an effective voice in the parliament and their concerns might remain unheard.

Dividing the country into small geographic districts is also an efficient way to ensure that access to parliamentarians is evenly distributed among the population. The local offices of

²²¹ David M. Farrell, *Comparing Electoral Systems* (Hertfordshire: Prentice Hall/Harvester Wheatsheaf, 1997) at 13.

MPs make it easier for citizens to connect with their representatives. These close contacts will increase the personal accountability of parliamentarians.

However, several objections have been raised about the limitations of the benefits of geographic representation and about its conflicts with other desired aspects of the electoral and political system. Farrell summarizes these objections:

The question remains, how significant a factor is constituency representation? For instance, to what extent can one argue that Sir Russell Johnston had a proper mandate to represent his constituency, when only 19 percent of the electorate voted for him? Similar questions can be raised about those 40 percent of MPs elected in 1992 [in UK] without an overall majority of support in their constituency. Furthermore, what significance has constituency representation in a parliamentary party system which discourages independent action; where MPs are whipped into the voting lobbies? There is not exactly great scope for individual constituency representation in the legislative when MPs are expected to toe the party line. ...

... there is a question mark over the representation of those voters who backed a losing candidate.... Finally, there is the issue of whether, in fact, constituency representation is compatible with stable government. Almost by definition a good constituency MP (particularly if from the governing party) is not necessarily a good team player in parliament...²²²

While these objections may shed some light on the limitations of geographic representation, its significance in a large and geographically diverse country such as Canada

²²² David M. Farrell, *Comparing Electoral Systems* (Hertfordshire: Prentice Hall/Harvester Wheatsheaf, 1997) at 28-29.

cannot be ruled out altogether. Ultimately, the electorate's expectations and perceptions will decide on this issue. A study of German voters implies their personal connectedness with representatives is not significant: "Almost 60 per cent of German voters are not even able to name one candidate."²²³ In the next Chapter, we will attempt to examine this question in Canada.

Section Three: Efficiency

Subsection 1: Stability

The plurality electoral system is often credited for bringing about more stability. The logical formula involves three steps: 1. The plurality model brings the number of competitive political parties down to two → 2. Two party systems will often bring about single party majority governments, which are more durable than coalition or minority governments → 3. Durable governments will cause political and economical stability.

Maurice Duverger was one of the first authors who attended to the first step mentioned above. The association between the plurality model and two-party system is often called *Duverger's Law*. The following is a passage from Duverger's writing from about 60 years ago that gave birth to *Duverger's Law*:

²²³ Cited in: Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 86.

... *the simple-majority single-ballot system favours the two-party system*. Of all the hypotheses that have been defined in this book, this approaches the most nearly perhaps to a true sociological law. An almost complete correlation is observable between the simple-majority single-ballot system and the two-party system: dualist countries use the simple-majority vote and simple-majority vote countries are dualist. The exceptions are very rare and can generally be explained as the result of special conditions.²²⁴

Duverger goes on to explain that the move towards *bipartisme* and the elimination of third parties is a result of the workings of two factors, the mechanical factor and the psychological factor.²²⁵ The mechanical factor happens first: as we have already discussed, in a plurality system parties with a smaller share of votes mechanically receive an even smaller share of seats. This puts pressure on third parties and diminishes their influence. The psychological factor works through strategic voting. Once voters have identified which parties are small, they realize they will waste their vote by voting for them. Therefore, they desert those parties in favour of the least-unfavourable of the two main parties.

A corollary effect of the **single-member** plurality system recognized by Duverger is the encouragement of cohesiveness and stability inside parties. This in turn helps maintain a stable two-party system. When only one member is to be chosen from each district, internal party fractions will have to agree on one candidate. This encourages fusion.²²⁶

²²⁴ Maurice Duverger, *Political Parties: Their Organization and Activity in the Modern State* (Cambridge: Methuen & Co Ltd, 1976), at 217.

²²⁵ Maurice Duverger, *Political Parties: Their Organization and Activity in the Modern State* (Cambridge: Methuen & Co Ltd, 1976), at 224-26.

²²⁶ Maurice Duverger, *Political Parties: Their Organization and Activity in the Modern State* (Cambridge: Methuen & Co Ltd, 1976), at 14.

Duverger's Law has faced its share of criticism.²²⁷ Many have pointed to counter-examples in which the law has not worked. More systematically, some have belittled the role institutions can have in shaping the political scene. The criticism is that Duverger places too much weight on institutions while it is the social factors, or more precisely the number of social cleavages, that determine the number of parties. Some argue that the number of parties that are dictated by social cleavages is the cause, not the effect, of electoral systems. As real world examples demonstrate, Duverger has perhaps ignored social factors.

I believe the two sides of the debate are pointing out two different parts of the real picture. Duverger's Law should not be interpreted as excluding the influence of social factors. As evidenced by history, no electoral system has yielded the same exact results in two countries or in two different times. On the other hand, as different data analyses demonstrate, electoral systems have some influence in shaping the political scene as well, and they should not be erased from the picture. Cox argues for a reconciliation of the institutionalist and sociological perspectives:

First, to assert that social structure matters to the formation and competition of parties – which no one denies, when the point is stated in such a broad fashion – does not imply that electoral structures do not matter. To make this latter point, one has to adopt a rather extreme mono-causalist perspective according to which the underlying cleavage structure of a society is so much more important than the details of electoral law that basically the same party system would arise regardless of the electoral system employed... . Does anyone believe that the

²²⁷ For a summary of these criticism see for instance: Gary W. Cox, *Making Votes Count: Strategic Coordination in the World Electoral Systems* (Cambridge: Cambridge University Press, 1997) at 14-19; Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 99-108.

United States would remain a two-party system, even if it adopted the Israeli electoral system?

Second, to assert that electoral structure affects party competition in important and systematic ways does not imply that social structure is irrelevant. It might appear that this is exactly what *Duverger's Law* does imply ... but in fact that overstates Duverger's proposition and the institutionalist development of it, where there has been an increasing appreciation of the interaction effects between social and electoral structure.²²⁸

Being aware of competing factors, Sartori reformulates *Duverger's Law* and its corollary hypotheses in two tendency laws:

Tendency law 1: Plurality formulas facilitate (are facilitating conditions of) a two party-party format and, conversely, obstruct (are an obstructing condition of) multipartyism.

Tendency law 2: PR formulas facilitate multipartyism and are, conversely, hardly conducive to two-partyism.²²⁹

Duverger himself concedes - or rather reminds - that his laws are not absolute laws, but just tendency laws, which exert pressure in a particular direction when interacting with other factors.²³⁰

So, after arguing for the plurality system because it favours stability, have we established the first step? Not without some serious limitations. The stabilizing effect can only be relied

²²⁸ Gary W. Cox, *Making Votes Count: Strategic Coordination in the World Electoral Systems* (Cambridge: Cambridge University Press, 1997) at 19-20.

²²⁹ Giovanni Sartori, "The Influence of electoral Systems: Faulty Laws or Faulty Method?" in Bernard Grofman & Arend Lijphart, eds. *Electoral Laws and Their Political Consequences* (New York: Agathon Press, 1986) at 64.

²³⁰ Maurice Duverger, "Duverger's Law: Forty Years Later" in Bernard Grofman & Arend Lijphart, eds. *Electoral Laws and Their Political Consequences* (New York: Agathon Press, 1986) at 69-84.

on when institutional and social factors work in the same direction. If they are going in opposite directions, the result will be abnormalities and more harmful instability. Even Duverger, the formulator of the law and a big fan of two-party systems, does not recommend the plurality formula for every country:

In West Germany and Austria, the adoption of plurality voting would certainly be a very good reform, protecting the two-party system from the whims of the small Liberal party and from the hazards that can always arise from extremist movements like today's Greens. In France, the adoption of plurality instead of the two-ballot system would undoubtedly be pernicious, because the plurality method does not work well when there are more than two large parties; the risk would be that it would yield anomalous results, such as Great Britain experienced from 1920 to 1935, and that France would not be able to get out of this situation as rapidly, for want of a dualist tradition.²³¹

Apart from the influence of the social factors, there are other limitations to *Duverger's Law*. One is the existence of locally strong parties.²³² The plurality formula can pressure the system towards bipartisanship only if the support for any one party is more or less evenly distributed nationally. If there are regional parties or several national parties with different regional strongholds, the result will be far from a two party system. With this limitation in mind, Rae has thus reformulated *Duverger's Law*:

²³¹ Maurice Duverger, "Which Is the Best Electoral System?" in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 37.

²³² See for instance: Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 109.

DIFFERENTIAL PROPOSITION THREE: *Plurality formulae are always associated with two-party competition except where strong local minority parties exist ...*²³³

A regional concentration of party strengths works to the detriment of the mechanical factor of *Duverger's Law*. The psychological factor also faces some limitations, which in turn limit the two-party effects of a plurality system. For instance, political actors (voters and competitors) may not have a clear expectation of the party strengths, or winning present elections may not be their only concern. They may be ready to concede an electoral defeat in hope of building their strength in future elections or to show their social strength and relevance.²³⁴

We went to great lengths to establish the first step of the formula: plurality systems bring about two-partyism. We had to concede to some serious limitations. As will be discussed in Chapter 4, these limitations are largely applicable to the Canadian case. However, having accepted this first proposition in its limited form, let us turn to the second step. Do two-party systems correlate with durable governments? They do, as a data analysis by Taagepera and Shugart²³⁵ demonstrates. As they have formulated there is an inverse relationship between the number of parliamentary parties and cabinet durability. Interestingly, it is neither the number of elective parties nor the number of parties in the governing coalition that count, but rather the number of parliamentary parties. Parties that are shot out of the parliament are in no position to threaten the government's survival and, on the other hand, parliamentary

²³³ Douglas W. Rae, *The Political Consequences of Electoral Laws* (New Haven and London: Yale University Press, 1967) at 95.

²³⁴ See also: Gary W. Cox, *Making Votes Count: Strategic Coordination in the World Electoral Systems* (Cambridge: Cambridge University Press, 1997) at 170-71.

²³⁵ Rein Taagepera & Matthew Soberg Shugart, *Seats and Votes: the Effects and Determinants of Electoral Systems* (New Haven and London: Yale University Press, 1989) at 99-103.

parties influence the chance of a government's survival even if they are not in the governing coalition. The greater the number of parties in parliament, the more the number of likely coalitions and the more incentives for toppling the government or the chances of inter-party conflicts there will be.

Now we turn to the third step. Do durable governments bring about political and economical stability? The conventional wisdom is that they do. “[D]urable governments are thought to be desirable because they promote policy consistency and responsibility and, even more importantly, may avoid the instability that can result during interregna or from the creation of fragile, unpredictable coalitions.”²³⁶

Some have challenged this conventional wisdom. Lijphart claims that “majoritarian parliamentary systems do not have a better record with regard to either macroeconomic management (the stimulation of economic growth and the control of inflation and unemployment) or the maintenance of public order and peace than multi-party parliamentary systems.”²³⁷

Enid Lakeman also points out two issues related to the plurality system that may bring about instability.²³⁸ First, since the plurality system tends to bring about “radically different” results in subsequent elections, the temptation to call for new elections is greater and therefore the life of the parliament may be cut short. The other issue is policy stability, which should be more important than government stability. Since in plurality systems the power alternates between two adversarial parties, while a party may enjoy a stable tenure in power

²³⁶ Donald L. Horowitz “A Primer for Decision Makers” in Larry Diamond & Marc F. Plattner, eds. *Electoral Systems and Democracy* (Baltimore: The John Hopkins University Press, 2006) at 6.

²³⁷ Arend Lijphart, *Electoral Systems and Party Systems: A Study of Twenty-Seven Democracies 1945-1990* (Oxford: Oxford University Press, 1994) at 144.

²³⁸ Enid Lakeman, “the Case for Proportional Representation” in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 47-48.

during the life of the parliament, when it loses power, the country is at risk of abrupt policy reversal.

I am reluctant to accept Lijphart's wholesale rejection of a relationship between government durability and stability or performance. While a true examination of the issue requires immense interdisciplinary research that is beyond the scope of this work, one only needs to follow the news to discover the inverse effect of governmental instability on stock markets and the fact that short-lived governments will have little chance of implementing cohesive policies. It is virtually common sense. Therefore, I will adhere to conventional wisdom for now.

However, Lakeman's particular objections are difficult to deny. The problem with policy instability is partly due to the fact that the plurality system does not fare well in maintaining moderation. This issue will be discussed next.

Subsection 2: Moderation

Moderation in politics is associated with efficiency because extremist behavior generates more conflicts and unwanted tensions in the political scene. Additionally, moderate behavior is closer to collective wisdom, while extremism diverts from it and involves taking more risks. Additionally, when governing people are closer to the political center, they will be reluctant to engage in controversial policies and therefore the risk of abrupt policy reversals will be diminished. Taking a conciliatory rather than divisive course of action keeps social upheaval and antagonism at bay.

It has been suggested²³⁹ the plurality model encourages conciliation because, unlike PR models, parties have to maintain a broad appeal in order to receive electoral success. This discourages extremism and forces political parties to take moderate positions in order to appeal to a large part of the electorate beyond their core support base. I believe this property of the plurality model should not be exaggerated. As we have already noted, in the plurality model, all the winners should do is to secure the biggest niche of the electorate.²⁴⁰ There is no requirement as to how big this niche should be; it only needs to be bigger than what was secured by any other parties. If there is a divided electorate, the winner may not be close to the center. Additionally, the single ballot format of the plurality model provides few incentives for parties to appeal to the supporters of other parties. Horowitz concurs on this: “In a four-way contest under the plurality rule, a party can win with as little as 26 or 30 or 35 percent of the vote; and, in recurrent three-way and four-way races, it may secure 40 or 50 percent of the seats on the strength of a much smaller percentage of the total vote. Such a party need not broaden out its support unduly, and it need not compromise with other social groups, in order to win the election.”²⁴¹

As a big fan of the plurality model, Duverger²⁴² concedes that this model is not favourable to center parties. As evidenced by the history of countries such as the UK, center parties find themselves squeezed between more extremist parties who are often more successful in securing a loyal niche of the electorate. However, he considers this phenomenon as a positive development because he does not believe in centrism. “For the center is nothing more than

²³⁹ See for instance: Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 40.

²⁴⁰ Donald L. Horowitz “A Primer for Decision Makers” in Larry Diamond & Marc F. Plattner, eds. *Electoral Systems and Democracy* (Baltimore: The John Hopkins University Press, 2006) at 11.

²⁴¹ Donald L. Horowitz “A Primer for Decision Makers” in Larry Diamond & Marc F. Plattner, eds. *Electoral Systems and Democracy* (Baltimore: The John Hopkins University Press, 2006) at 11.

²⁴² Maurice Duverger, *Political Parties: Their Organization and Activity in the Modern State* (Cambridge: Methuen & Co Ltd, 1976), at 214.

the artificial grouping of the right wing of the Left and the left wing of the Right. The fate of the center is to be torn asunder, buffeted and annihilated: torn asunder when one of its halves votes Right and the other Left, buffeted when it votes as a group first Right then Left, annihilated when it abstains from voting.”²⁴³ I do not share Duverger’s value judgment on centrism. I believe centrism is a pragmatic balancing of competing aspirations and a belief in a prudent and moderate course of action. For reasons stated at top of this subsection, centrism generates more efficiency and therefore the fate of centrist parties in plurality voting systems is unfortunate.

Fox explains this phenomenon is a result of coordination failures (i.e. failures in strategic voting and strategic entry/withdrawal):

If non-Duvergerian results crop up at various levels, however, then a strong electoral system [namely plurality system] can perform quite erratically. If the center fails to coordinate properly, relatively extreme candidates can win in the constituencies, and a party composed of such extremists can pull national policy fairly far from the national median.²⁴⁴

Apart from political centrism and conciliation, another face of moderation is conciliation between ethnic and religious groups. Horowitz²⁴⁵ cites interethnic and interreligious conciliation as one of the six goals of electoral systems. If instead of pitting ethnic groups against each other, an electoral system brings them together, national unity will be preserved. Avoiding ethnic conflicts brings about more efficiency in the management of the state. Once

²⁴³ Maurice Duverger, *Political Parties: Their Organization and Activity in the Modern State* (Cambridge: Methuen & Co Ltd, 1976), at 215.

²⁴⁴ Gary W. Cox, *Making Votes Count: Strategic Coordination in the World Electoral Systems* (Cambridge: Cambridge University Press, 1997) at 237.

²⁴⁵ Donald L. Horowitz “A Primer for Decision Makers” in Larry Diamond & Marc F. Plattner, eds. *Electoral Systems and Democracy* (Baltimore: The John Hopkins University Press, 2006) at 6-7.

again, a case may be made for the plurality system: since winners have to secure a large chunk of votes, relying on one particular ethnic group will often not be enough and parties will try to appeal to as many ethnic groups as possible. The same objections follow here: in a divided contest, the biggest chunk of the electorate may not be that big after all and parties may comfortably ignore some social groups. As will be discussed in Chapter 7, a majority formula scores much better in this regard.

Another reason why the plurality model may stray from the path of moderation is its highly adversarial nature.²⁴⁶ While some electoral systems encourage conciliation and coordination between contestants, the plurality model pits them against each other as much as possible. By reducing the field of competitors to two viable options, the plurality model puts these two in an extremely opposing position where all they have to do is to attack each other and make themselves look as different from their opponent as possible. The adversarial mood of the Westminster model of parliaments is proverbial. Here, the choice is between two opposing groups, which are separated from each other as neatly as possible. In such an adversarial atmosphere, the rhetoric may very well overtake logic and prevent the parties from reaching out towards compromises.

Subsection 3: Accountability

In the context of electoral studies, what is meant by accountability is that elected officials see the consequences of what they do in office in the following elections and through their votes, voters have a chance to reward or punish them for what they have done. The plurality

²⁴⁶ On this aspect see also: Enid Lakeman, “the Case for Proportional Representation” in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 48-49.

system, or more generally systems that create big parties that can govern alone, are said to set a better scene for holding elected officials accountable.²⁴⁷ This is because in order to do so “[a] first condition is that citizens must know who is responsible for making policy.”²⁴⁸ “Clarity of responsibility is greatest when a single unified political party controls both the national legislative and chief executive. If control of these critical policymaking points is dispersed among various parties or among individuals not firmly connected by political parties, then it will be much harder for citizens to determine who should bear the responsibility for policy success or failure and to use their electoral resources effectively as instruments for reward or retribution.”²⁴⁹ When a single party is governing, citizens do not have to engage in intensive political research to know exactly who is responsible for each piece of government performance. One party is always responsible. This clarity of responsibility gets blurry when the power is shared through coalitions or other arrangements. Each party will blame the failures on its partners and attribute the successes to itself.

The issue of accountability is not limited to the time of tenure on power and goes back to election platform. Duverger explains the different attitude of parties towards making responsible promises as the difference in the political psychology of bigger and smaller parties.²⁵⁰ Since smaller parties know that they either will not be in power or at least will not govern alone, they feel free to engage in demagogy and make unreasonable or extreme promises. If they find themselves as coalition partners, they will always have the option of attributing the underachievements to their partners or to the need to make policy

²⁴⁷ Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 43.

²⁴⁸ Bingham Powell, *Elections as Instruments of Democracy: Majoritarian and Proportional Visions* (New Haven and London: Yale University Press, 2000) at 51.

²⁴⁹ Bingham Powell, *Elections as Instruments of Democracy: Majoritarian and Proportional Visions* (New Haven and London: Yale University Press, 2000) at 52.

²⁵⁰ Maurice Duverger, *Political Parties: Their Organization and Activity in the Modern State* (Cambridge: Methuen & Co Ltd, 1976), at 284-85.

compromises in forging coalitions. Big parties know that they will shoulder the responsibility of government alone, so are cautious about making promises.

Powell²⁵¹ notes that another aspect of the plurality (or more generally majoritarian) model that it is compatible with the idea of accountability is the total change of government. When governors lose a considerable amount of votes they are totally replaced, whereas in coalition governments when the coalition has lost an election some of the partners may still stay in power.

Apart from parties as a whole, the issue of accountability can be raised in regards to MPs as well. As representatives of citizens, MPs have certain functions that are distinct from party identity. Additionally, MPs have a certain degree of freedom of action, for which they should be held accountable. Not all members of a given party score the same regarding their parliamentary activities. The plurality model scores well on holding MPs personally accountable. Single member constituency elections give voters a chance to personally reward or punish an MP.

Subsection 4: Regionalism

A tendency towards creating regional parties can be a negative point for an electoral system. If regional parties have a strong presence in the parliament, it will be paralyzed with skirmishes between parties that each will want to secure a more than fair share of privileges for their respective regions, and each will drag national policy towards regional concerns with little regard to national interests. Regional parties have few incentives to make

²⁵¹ Bingham Powell, *Elections as Instruments of Democracy: Majoritarian and Proportional Visions* (New Haven and London: Yale University Press, 2000) at 48-49.

compromises and broaden their support because all they should do is keep the regional electorate happy without regard to other voters. They are usually a drag on efficient governance and in extreme cases may fuel regionalism at the expense of national identity and even threaten the existence of the state.

The plurality formula provides a favorable environment for regionalism because “[i]n order to get access to representation, in countries that adopt single-member-plurality (SMP) a party needs a strong territorial concentration. The latter can give a plurality of votes inside a district to a candidate whose party at the national level does not reach 2 per cent of the votes.”²⁵²

It may be argued that when strong regional identities exist, regional parties will appear in any electoral system. For instance, even if we have a list PR system with a single nationwide constituency, if the residents of region X constitute 10 percent of the national population they can form a party that advocates their regional interests and obtain 10 percent of the parliamentary seats. My response is that while other electoral systems do not suppress regional identities (It may even be undemocratic if they do), they do not encourage it, either. They are neutral. The plurality model encourages regionalism and fosters regional identities even when they are weak. There are at least two reasons why it does so:

The first reason is because the plurality formula can have an exaggerating effect on the seat share of regional parties. Generally, in a plurality model, parties that get a smaller share of the votes receive an even smaller share of the seats. This is not so when it comes to regional parties.²⁵³ They may even get a larger share of the seats than their share of the votes.

²⁵² Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 39.

²⁵³ Taagepera and Shugart’s middle valley profile can be a demonstration of this. In a graph where X axis is the percentage of votes of each party and Y axis is its seat share to vote share ratio, a mapping of Canadian election

Presuming that at least two national parties compete with a regional party in a given region, national parties split their vote and the regional party becomes successful in securing most of the seats of the region, even if it does not enjoy the majority support in the region.

The second reason is because in the plurality system, regionalism is somehow the rule of the game for new parties. When the field is dominated with two main parties, it will be very difficult for a third national party to challenge the old guard. A famous example “refers to 1983 elections [in UK]. With 25.4 per cent of the votes, the Alliance (a merger between the Liberal party and the right-wing split of the Labour party, the Social Democratic Party), only scored 3.5 per cent of the seats. This astonishing underrepresentation was due to the lack of a territorial concentration of the new-born party....”²⁵⁴ A similar situation exists in Canada, where the Green party, with nearly 10% national support, has failed to secure seats because of its national appeal and lack of regional concentration.²⁵⁵ Accordingly, under the plurality model, successful new challengers are those with a regional bent. That was how the western-based Reform Party of Canada was successful as a new challenger and finally replaced the federal Progressive Conservative Party.

It should be mentioned that the regionalist effects of the plurality model are not limited to the creation of distinctly regional parties. Under this system, even national parties often

data shows a middle valley profile which means medium sized parties are worse off than small parties when it comes to their seat to vote ratio. This is so because little party data in Canada belongs to regional parties: Rein Taagepera & Matthew Soberg Shugart, *Seats and Votes: the Effects and Determinants of Electoral Systems* (New Haven and London: Yale University Press, 1989) at 73-74.

²⁵⁴ Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 43.

²⁵⁵ With the exception of one seat one by its leader in 2011 election.

develop regional strongholds or home regions.²⁵⁶ This situation is hardly conducive to pursuing sound national policy.

Subsection 5: Simplicity

One of the positive points attributed to the plurality model is that it is very simple.²⁵⁷ The rules are very straightforward: the voter has to write the name of just one candidate. Votes are counted quickly and in each constituency the candidate with the most number of votes is elected. It is argued that this simplicity is conducive to accountability. Voters easily know how and who to punish and reward. They do not get confused. It is also more democratic. Citizens can plainly see how the electoral system works.

While one might concede that the plurality model is simpler than most other systems, the importance of this simplicity is perhaps exaggerated. “Indeed, it is hard to find any evidence of higher levels of voter confusion in other countries. For instance, there are no perceptible differences in the number of spoiled or invalid votes.”²⁵⁸ Perhaps it is difficult for some voters to understand concepts such as Droop’s quota, largest remainder or highest average, but they can nonetheless soundly vote for their preferred candidates.

Perhaps, when it comes to the issue of voter convenience, the focus of attention should shift to the problem of coordination failures. By obliging many voters to vote strategically, the plurality model faces them with difficulty rather than simplicity. Voters go to great pains

²⁵⁶ Andrew Reynolds, Ben Reilly & Andrew Ellis, eds., *Electoral system design: the new international IDEA handbook*, (Sweden: Trydells Tryckeri AB, 2005) at 43, cited in: Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 40.

²⁵⁷ See for instance: Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 39-40; David M. Farrell, *Comparing Electoral Systems* (Hertfordshire: Prentice Hall/Harvester Wheatsheaf, 1997) at 13.

²⁵⁸ David M. Farrell, *Comparing Electoral Systems* (Hertfordshire: Prentice Hall/Harvester Wheatsheaf, 1997) at 26.

to understand how they should vote strategically and they need to gather reliable information rather than voting for their preferred candidate.

Subsection 6: Miscellaneous issues

Under this subsection, I have grouped efficiency-related issues that have not fit in elsewhere.

As Hermens²⁵⁹ reminds, one of the difficulties faced in plurality systems is the probability of very weak opposition in the chamber. In order for a democratic system to work properly and efficiently, the government should be checked by an efficient opposition. Since the plurality model exaggerates the results, the winner may take most of the seats, leaving few left for the opposition. The more the support of the parties is evenly distributed across constituencies, the greater the chance of a much diminished parliamentary opposition. In order for the opposition to work efficiently and check the government properly, it should have enough MPs to constitute a strong shadow cabinet and parliamentary critiques team. The solution Hermens provides for this is the provision of supplementary seats for the opposition. Since usually parties have different levels of support in different regions, the problem of a very weak opposition is not a recurrent one; however, the possibility of this should not be ruled out altogether.

²⁵⁹ Ferdinand A. Hermens, "Representation and Proportional Representation" in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 29.

Another problem, which is again mentioned by Hermens,²⁶⁰ is that in the plurality model, national leaders are at the mercy of the population of a particular constituency. A nationally popular leader may fail to enter the parliament because he is not liked by his constituents.

²⁶⁰ Ferdinand A. Hermens, "Representation and Proportional Representation" in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 29.

Chapter Four: The Need for Reform in Canada

Introduction

Based on the framework developed in the previous chapter, here we will embark on a case study of Canadian Elections. We will follow the same pattern of sections and subsections in this chapter and will endeavour to find how far the criticism and the appraisal directed towards the plurality voting systems in general are true in Canada. In each subsection, attention will be paid to electoral data in Canada, opinion polls, political news and commentary, and most importantly, pertinent rulings by the Supreme Court of Canada will be discussed.

Section One: Democratic Expression

Subsection 1: Proportionality

Loyal to the theoretical approach taken in the respective subsection in Chapter Three, here we are not suggesting that proportionality of seat to vote percentage is a normative must in democratic systems per se. Therefore, arguments about fairness will be discussed in the next

subsection because we have accepted that a disproportionate system can still have a claim on fairness if it is responsive to the aggregate preferences of the voters. On the other hand, an almost inevitable consequence of disproportionate electoral models is the denial of representation to some political ideas and groups and suppression of political diversity. Since we are of the opinion that diversity is a Canadian value in itself and regardless of whether or not it is contained in the notion of democracy, this aspect of disproportionality will be discussed under the rubric of political diversity later on. Accordingly, here we restrict ourselves to demonstrating the disproportionality of election results in Canada without making any normative judgment about it.

The percentages of votes and seats of major Canadian federal parties are shown in Table 4-1.

Table 4-1. Percentage of votes and seats of major Canadian parties in 2006, 2008, 2011 federal elections

2006 Federal elections

Party Name	Vote %	Seat %
Conservative Party	36.3	40.3
Liberal Party	30.2	33.4
New Democratic Party	17.5	9.4
Bloc Quebecois	10.5	16.6
Green Party	4.5	0

2008 Federal elections

Party Name	Vote %	Seat %
Conservative Party	37.6	46.4
Liberal Party	26.7	25
New Democratic Party	18.2	12
Bloc Quebecois	10	15.9
Green Party	6.8	0

2011 Federal elections

Party Name	Vote %	Seat %
Conservative Party	39.6	54.2
Liberal Party	18.9	11
New Democratic Party	30.6	33.1
Bloc Quebecois	6	1.3
Green Party	3.9	0.3 ²⁶¹

Using a common disproportionality index,²⁶² which is the summation of the differences between the seat and vote percentage of all parties divided by two, we find the following values for each of the three previous general elections:

2006 Federal Election disproportionality value: 12.95

2008 Federal Election disproportionality value: 14.7

2011: Federal Election disproportionality value: 16.65

²⁶¹ Canadian elections results in this chapter are retrieved or calculated based on raw data retrieved online: *Elections Canada* <<http://enr.elections.ca>>.

²⁶² See: Rein Taagepera & Matthew Soberg Shugart, *Seats and Votes: the Effects and Determinants of Electoral Systems* (New Haven and London: Yale University Press, 1989) at 104-105.

These numbers indicate a relatively high measure of disproportionality, although it is not out of the normal range for plurality systems. As demonstrated, disproportionality has increased in each election. Besides the Green party, with its single digit support that barely manages to win any seat, in 2006 and 2008 the NDP, the party that came in third place, was the main party affected by this. It then switched places with the Liberals in 2011. In 2006 and 2011, the second place party managed to obtain more than 30% of the votes, so each was a beneficiary of disproportionate results, although to a much lesser degree than the first party. In 2008, the second place party's vote was lower so it too took the heat. The disproportionate advantage for the first place party was the most significant in the 2011 elections because at that time it got a higher percentage of votes. While the gap between the parties in first and second place was smaller than in 2008, a regional breakdown of votes might have helped the Conservative party secure a majority. Voter-rich Ontario was especially crucial, where the Liberals and NDPs managed to evenly split the vote, giving the Conservatives a 19% lead. While in terms of national votes the Bloc Quebecois was the fourth place party, in 2006 and 2008 it received a considerable, disproportionate gain of seats. This was because its support was concentrated in (or rather restricted to) Quebec and won the most number of votes in Quebec. In 2011, the Bloc lost just over one third of its votes but 92% of its seats. This is a common characteristic of the plurality voting model, which tends to provide all or nothing results.

Subsection 2: Aggregation of preferences

As discussed in Chapter Three, the attainment of the majority of votes by the winning candidate and picking the Condorcet winner are the two indicators of an electoral system's responsiveness to the mean aggregate preferences of the voters. We observed that, unlike proportionality, responsiveness to aggregate preferences of voters is a necessary item in the choice of an electoral system, even if we adhere to a decision-making agent concept of the parliament and not a microcosm concept.

To begin with the first measure, which is the attainment of the majority of votes by the winning candidates, I have compiled electoral data from three recent Canadian federal elections in Table 4-2. I have divided the winners into three categories. First are those who have actually received a majority vote (winning with over 50% of the riding's vote). Second, those who, while failing to receive the majority of votes, have garnered more than 40% of the total vote in the riding and who could have a good chance of winning a two-way race. Third are those who have won with less than 40% of the votes and whose chances of winning a majority were doubtful.

Table 4-2. Percentage of votes garnered by MPs in three recent Canadian federal elections

2006 federal elections

Party name	winners with over 50% vote	Winners with 40-50% vote	Winners with under 40% vote
Conservative	55	58	11
Liberal	37	45	21
NDP	6	14	9
BQ	25	21	5

Others	0	0	1
Total	123	138	47

2008 Federal elections

Party name	winners with over 50% vote	Winners with 40-50% vote	Winners with under 40% vote
Conservative	80	52	11
Liberal	17	49	11
NDP	7	23	7
BQ	13	25	11
Others	1	0	1
Total	118	149	41

2011 Federal elections

Party name	winners with over 50% vote	Winners with 40-50% vote	Winners with under 40% vote
Conservative	107	48	11
Liberal	2	18	14
NDP	36	52	15
BQ	0	0	4
Others	0	1	0
Total	145	119	44

As described in the table above, in the last three federal elections in Canada, only between just over a third and under a half of MPs won the majority of the votes in their

constituencies. Stronger numbers for the governing conservatives translated to more MPs with majority support in the 2011 elections. However, this table alone does not show the full political picture of the elections. Some details are revealing. For instance, in 2011 most of the NDP candidates who won with a low percentage were from Quebec, where a two-way race would not decrease their chances of winning because BQ voters tend to favour NDP over other federalist parties and federalists prefer NDP over BQ. On the other hand, many of the close Conservative wins were in the Greater Toronto Area (GTA), where vote splitting between Liberals and NDP favoured Conservatives.

We recognized that winning a majority of the votes is the minimum requirement for responsiveness to the aggregate preferences of the voters. We treated the picking of the Condorcet winner as a more advanced indicator of the responsiveness of an electoral system to the aggregate preferences of the voters. Under the current plurality system, if a candidate wins a majority of the votes, quite often (though not necessarily) she can be presumed to be the Condorcet winner as well. If no candidate wins a majority of the votes, another factor that might indicate whether the Condorcet winner was picked up is the second (and third, fourth, etc.) preference of the voters.

According to an EKOS poll,²⁶³ the second preferences of voters in 2011 federal elections were distributed as the following table:

²⁶³ “Hold on to your Hats! Campaign 41 Drawing to a Heart Stopping Conclusion” *Ekos Politics* (1 May 2011), Online: EKOS Politics < http://www.ekospolitics.com/wp-content/uploads/full_report_may_1_2011.pdf>.

Table 4-3. Second choice preferences of Canadian voters in the 2011 federal elections

Second choice party	Second choice overall %	First Choice					
		CPC	NDP	LPC	GPC	BQ	Other
CPC	9.0	--	15.3	13.2	16.2	6.7	14.5
NDP	23.2	22.9	--	53.9	33.0	48.7	11.0
LPC	19.1	17.7	37.0	--	17.0	11.5	8.3
GPC	12.9	9.0	20.5	13.0	--	9.8	16.4
BQ	4.4	0.7	8.9	2.9	5.9	--	13.6
Other	2.1	2.5	1.8	0.8	2.7	1.9	--
No second choice	29.4	47.2	16.6	16.3	25.0	21.4	36.2

The problem with EKOS poll numbers is that the third and subsequent choices are not included, so it cannot accurately predict the outcome of a two-way race. In order to do that, I have adjusted the numbers for a simplified three-party model in Table 4-4. In this model, only New Democratic, Liberal and Conservative parties are included. In the adjusted approximate numbers, attention has been paid to the overall direction of the preferences. For instance, the majority of the Liberal voters who name the Green party as their second choice have been presumed to prefer the NDP over the Conservative party.

Table 4-4. A simplified three party model of second preferences of the voters in 2011 Canadian federal elections

Second choice	First choice break down		
	CPC	NDP	LPC
CPC	--	20%	17%
NDP	27%	--	65%
LPC	20%	55%	--
No second choice	53%	25%	18%

Now we can look at some specific ridings to see whether the 2011 elections results were responsive to the aggregate preferences of the voters. An interesting result happened in the Bramalea_Gore_Malton riding. The results of the 2008 and 2011 federal elections in this riding are presented in Table 4-5.

Table 4-5. 2008 & 2011 federal elections results in Bramalea_Gore_Malton riding

Party	2008		2011	
	votes	%	votes	%
Liberal	22,272	45.05	16,402	29.40
Conservative	18,353	37.12	19,907	34.44
NDP	5,945	12.02	19,368	33.51
Green	2,559	5.16	1,748	3.02
Marxist-Leninist	309	0.62	371	0.64

Interestingly, in 2011 the Conservative party, while it underperformed compared to 2008 in terms of percentage of votes and just marginally increased its number of votes, managed to snatch the seat from Liberals. A marginal increase in the amount of Conservative voters

would not be enough to give them the seat. But enough Liberal voters left the Liberal party for the NDP to give the lead to the Conservatives, while not enough of them converted to NDP to give it the leader. The Liberals and NDP managed to split their votes evenly. There was a similar trend in many other Ontario ridings. In other words, at least in Ontario, the so called “Orange crush”²⁶⁴ was more beneficial to the Conservatives than the NDP itself. Now, let us see what would happen in this riding if the electoral system was responsive to the aggregate preferences of the voters or, in other words, if the voters had a chance to express their second preferences. Let us say Liberal voters would be the king makers in a second round battle between the NDP and the Conservative Party of Canada. According to our model in Table 4-4, around 65% of those who voted liberal would have voted for the NDP in the second round. 17% would have voted for the Conservative Party and 18% would have abstained from voting in the second round. The results of the second round would have been like this:

CPC: 22695

NDP: 30029

Thus, the NDP would have won by a large margin. For the sake of simplicity, small party voters (notably Greens) were kept out of the computation here, or, in other words, they were presumed to abstain in the second round. In any case, their inclusion would reinforce our conclusion, because Green party voters overwhelmingly prefer NDP over the Conservative party. There may also be other objections to the exactness of this prediction, but in any case this is almost the closest we can get to reality.

²⁶⁴ In reference to a sudden and surprising rise in NDP support in the final stages of the 2011 federal elections campaign, see for instance: Bethany Lindsay, “Orange crush' defines campaign” *CTV NEWS* (19 May 2011), online: CTV NEWS British Columbia
<http://www.ctvbc.ctv.ca/servlet/an/local/CTVNews/20110502/bc_ndp_orange_wave_110502/20110502?hub=BritishColumbiaHome>.

As we can observe, the current plurality system at least in *Bramalea_Gore_Malton* in 2011, picked a winner that was far from the aggregate preferences of the voters. This does not appear “fair.”

Fairness is such an essential part of social values that it barely needs any constitutional emphasis by the Supreme Court of Canada. Especially when it comes to the political process and more specifically elections, one can hardly imagine dispensing with the requirements of fairness. Still, the Supreme Court of Canada has occasionally touched upon the idea of fairness in the electoral process.

In *Libman v. Quebec*²⁶⁵ and *Harper v. Canada*²⁶⁶ some spending limitations on election and referendum campaigning were challenged. These limitations were purported to infringe the freedom of expression. One of the main lines of reasoning by the Supreme Court of Canada in rebuking these challenges in both cases was based on the idea of fairness. It was held that these limitations were needed in order to ensure a fair electoral system where money cannot buy all and the expression of one side is not muffled by an inundating advertisement by the wealthy side. It was important to ensure that all parties enjoy a level playing ground in elections and the electoral process is not unfairly tipped to one side due to unequal financial opportunities.

Fairness was regarded as such an important factor that it could justify a limitation on the freedom of expression. Now what if the source of unfairness is not the unequal financial abilities but the design of an electoral system? What if the formula in which winners are picked treats the competing parties unfairly and unequally? Can such an electoral system be regarded as constitutionally mandated if such a big stress ought to be put on fairness? In

²⁶⁵ *Libman v. Quebec (Attorney General)*, [1997] 3 S.C.R. 569

²⁶⁶ *Harper v. Canada (Attorney General)*, [2004] 1 S.C.R. 827, 2004 SCC 33

Libman one of the reasons why spending limitations on third parties (i.e. those who were not part of or were not affiliated with the two Yes and No campaigns in the referendum) were held as justifiable was because third party campaigning would eventually benefit from either the Yes or No campaign. Now, suppose there is a referendum with three options and the most voted-on option will be adopted. Suppose the question is whether the city of Ottawa should spend money to build a large arena. The options are: a) it should not spend the money b) the city should allocate \$200 million for the project c) the city should allocate \$300 million for the project.

As can be noted, options *b* and *c* are very similar. Now, suppose 40% of Ottawa citizens vote for option *a*, and options *b* and *c* each get 30% support and accordingly option *a* is adopted. Any common sense will regard the results as unfair. While the majority of citizens support building a new arena, a minor disagreement on the spending limits will result in opting not to build an Arena. The same is true about the plurality model of elections, in which more than two major parties compete. The unfairness is evident.

The Supreme Court of Canada has touched the issue of fairness in electoral process on some other occasions, too. On the issue of the free flow of information, the Court states:

At a higher level of generality, the purpose of providing more accurate information to Canadian voters is that they are more capable of making a free and informed choice, which engenders a freer and fairer election process.²⁶⁷

A restriction on the free flow of information restricts the free choice of the voters and so does a defect in the design of the electoral system.

²⁶⁷ Thomson Newspapers Co. v. Canada (Attorney General), [1998] 1 S.C.R. 877 at para 98.

In *R. v. Bryan*²⁶⁸ a provision of Canada's electoral legislation that prohibits the transmission of election results before polls are closed in all districts was challenged as being an infringement on the freedom of expression. The Court rebuked this challenge because it viewed the purpose of restriction the attainment of fairness in the electoral process. It was unfair if some voters would know the results of elections in other ridings before voting while others could not. The Court stated: "the subjective perceptions of Canadian voters that the electoral system is fair is a vital element in the value of the system."²⁶⁹

While the objective fairness of the system is evidently of great importance, the Court finds value in a situation in which the subjective perception of the voters also sees the electoral system as a fair one. Regarding the issue of the electoral formulae, while the supporters of the parties or policies that gain an overdue influence under the current voting system are psychologically inclined to view the electoral system as a fair one, the affected voters will perceive the system as an unfair one.

In conclusion, in a constitutional value system in which fairness has such a central position, an electoral system that is not specifically famous for yielding fair results seems to be prone to constitutional challenges.

Subsection 3: Direct election of government and mandate

Thus far, Canada has never had a coalition government at the federal level and only rarely has the party with the most number of votes been unable to form the government. Therefore,

²⁶⁸ *R. v. Bryan*, [2007] 1 S.C.R. 527, 2007 SCC 12.

²⁶⁹ *R. v. Bryan*, [2007] 1 S.C.R. 527, 2007 SCC 12 at para 25.

the designation of the government has not depended on backroom deals between party leaders. Almost always on election night voters will know who will form the government. As a result of this historical precedent, this aspect of the electoral process occupies an important position in the psychology of Canadian voters. Voters will feel betrayed if the most voted-for party fails to form the government. Delegating the power of government selection to party heads is perceived as undemocratic and an obstacle to the political expression of ordinary citizens. Political players have been aware of this social psychology phenomenon and have acted accordingly. In the 2011 federal election campaign, Conservatives attacked their opponents by accusing them of trying to grab the power through a coalition, as though the word “coalition” was as bad as a “coup d’état”. On the other hand, while the Liberal party’s chances of governing alone looked very slim, Liberal leader Michael Ignatieff insisted that he would not form a coalition government.²⁷⁰ As he hinted in an interview with Peter Mansbridge, the clarification of this mandate played a central role in this position. He wanted the liberal voters to know that they were voting for a Liberal mandate and he would govern according to the mandate. A coalition scenario would cloud over the clarity of the mandate. For instance, Liberal voters might have ended up with parts of a NDP platform. This was of special concern to the Liberal leader because this could have caused the right flank of his voters to slip away. As polls made it evident that Ignatieff would not get the mandate he wanted, his assurances were of no use in guarding his right flank. Election results showed a bump for the Conservatives and a weaker than expected performance for the Liberals. Some

²⁷⁰ See for instance: “Ignatieff swears off coalition” *CBC News* (26 March 2011), online: CBC News: < <http://www.cbc.ca/news/politics/canadavotes2011/story/2011/03/26/cv-kickoff-libs.html>>; Linda Diebel, “Still no coalition — but Ignatieff lays out scenario for forming a government” *Toronto Star* (10 April 2011), Online: thestar.com < <http://www.thestar.com/news/canada/politics/article/977345--still-no-coalition-but-ignatieff-lays-out-scenario-for-forming-a-government>>.

commentators²⁷¹ attributed this to the desertion of blue liberals to Conservatives out of a fear of the rising NDP.

Soon after the 2008 federal elections, an attempt by opposition parties to replace the minority Conservative government with a Liberal-NDP coalition supported by the BQ was not warmly welcomed by the public and this was part of the reason that the deal did not materialize.²⁷²

While the plurality formula is perceived as a better means of designating a clearly mandated government (particularly in comparison with proportional models), because it usually avoids the need for forming a coalition government, this effect has been exaggerated by the media and social psychology, which is in turn formed by historical precedent. First of all, the party that received the most votes cannot really claim that it had been given a mandate if it had not received at least 50% of the votes. This begs the question. Secondly, as we will see in the next chapter, some of the systems that use a proportional model have found some solutions to clarify the mandate and the designation of the government. Thirdly, in a society with more than one cleavage such as Canada, voters should get used to the idea that they cannot get everything they want on election night. A compromise with other voters is often necessary.

²⁷¹ For instance: Frank Graves, "A BRIEF POST MORTEM ON POLLING ELECTION 41" *Ekos Politics* (3 May 2011), online: Ekos Politics < <http://www.ekospolitics.com/index.php/2011/05/a-brief-post-mortem-on-polling-election-41-may-3-2011/>>.

²⁷² See for instance: "Future of coalition, Dion's leadership uncertain" *CBC News* (5 December 2008), online: CBC News: < <http://www.cbc.ca/news/canada/story/2008/12/05/coalition-parties.html>>.

Subsection 4: Democratic change

To some extent, Canada follows the General trend of plurality electoral systems in being very resistant to change. Federal politics have been dominated by a few parties. Formation successful third parties have been difficult. However, perhaps because of its geographic diversity, Canada has seen more political parties than most plurality systems. Despite this, to date, no party other than Canadian Liberal Party and Canadian Conservative Party (or its predecessors) has formed the federal government in Canada. Duration of governments has also been long.

Subsection 5: Strategic voting and wasted votes

Canada is a prime example of a country in which the issue of strategic voting has been a prominent concern in electoral politics. For a while, Progressive Conservative and Reform/Alliance parties had been splitting the right leaning vote. During the last decade, the problem of vote splitting on the left side of the political spectrum has had an exasperating dimension. Federalist voters (and sometimes even candidates) in Quebec have felt the urge to vote strategically ever since the sovereigntist Bloc Quebecois Party gained significance. Therefore, in recent Canadian history, a sizable part of the electorate has felt the urge to vote strategically in order to make a greater impact on election results.

During the 2008 electoral campaign, a group of environmentally conscious voters created the “Vote for Environment” website. This website urged voters to concentrate their vote on one of the environment-friendly candidates in each riding in order to prevent a victory by a candidate who was perceived to be less environment-friendly. The latter candidate was

almost always a Conservative. The relative success of this website in getting some interest led to the launch of the “Project Democracy”²⁷³ website in the 2011 electoral campaign. This website, which targeted a larger portion of electorates, used the same methodology as its predecessor. Electoral districts were divided into safe and competitive ridings. Safe ridings were those where based on past election results and recent polling, one party enjoyed a comfortable margin over others and no realistic amount of strategic voting would change the results. In safe ridings, the website did not make any suggestions and left voters to vote with their hearts. In competitive ridings, one of the progressive candidates was identified as the best poised to defeat a Conservative rival and voters were asked to vote strategically for that candidate. The success of this website in promoting its cause has been partial at best. In an analysis²⁷⁴, Project Democracy concedes that had more voters voted strategically instead of a Conservative majority the 2011 elections would have resulted in a Conservative minority or an NDP-Liberal majority coalition.

While the number of strategic voters in Canada is not as great as it would be if all voters were rational, result-oriented actors and if the formation of the government was the only result that mattered to them, still a large number of Canadians vote strategically.²⁷⁵

The existence and the importance of strategic voting have even been acknowledged in Supreme Court of Canada decisions. In *Thomson Newspapers Co. v. Canada*²⁷⁶, a decision revolving around the limitations posed on the publication of opinion poll results prior to elections, Gonthier, writing for the minority, states:

²⁷³ <http://www.projectdemocracy.ca/>

²⁷⁴ “Project Democracy: 2011 Electoral Analysis – Part 1” Project Democracy (31 May 2011), online: <<http://www.projectdemocracy.ca/project-democracy-2011-electoral-analysis-%E2%80%93-part-1>>.

²⁷⁵ For instance see second preference expressions of voters in: “Hold on to your Hats! Campaign 41 Drawing to a Heart Stopping Conclusion” *Ekos Politics* (1 May 2011), Online: EKOS Politics <http://www.ekospolitics.com/wp-content/uploads/full_report_may_1_2011.pdf>.

²⁷⁶ *Thomson Newspapers Co. v. Canada (Attorney General)*, [1998] 1 S.C.R. 877.

... For instance, strategic voters, who may want to vote for their second-choice candidate in order to avoid the election of a leading candidate, rely on polls. Thus, while suppressing polls simply because they may be used by voters is not permissible, regulating polls may be.²⁷⁷

The phenomenon of strategic voting has also been mentioned and acknowledged in the majority opinion of the same decision:

Canadian voters must be presumed to have a certain degree of maturity and intelligence. They have the right to consider the results of polls as part of a strategic exercise of their vote.²⁷⁸

In Chapter Three, it was discussed that strategic voting is a common feature of plurality voting systems. There, we had a lengthy discussion about the various defects of strategic voting. This chapter will be limited to the aspects of strategic voting that have legal and constitutional significance in Canada, in particular according to the Supreme Court of Canada decisions. I will also investigate whether this feature of the plurality model of voting is in accord with Canadian constitutional values.

Two related problematic aspects of strategic voting are its insufficiency and its inaccuracy. In a plurality voting system, strategic voting is a tool by which voters rectify the voting system and bring the election results closer to their aggregate preferences. However, as discussed earlier, not all voters vote strategically and therefore strategic voting is often not “sufficient” to rectify the system. The other problem is strategic voting is not always based

²⁷⁷ *Thomson Newspapers Co. v. Canada (Attorney General)*, [1998] 1 S.C.R. 877, para. 22.

²⁷⁸ *Thomson Newspapers Co. v. Canada (Attorney General)*, [1998] 1 S.C.R. 877, para. 101.

on accurate information and therefore it might lead to inaccurate results. This aspect of strategic voting has been brought to the attention of the Supreme Court in *Thomson Newspapers Co. v. Canada*. Gonthier, writing for the minority, states:

At the end of an election campaign, opinion poll results have the potential to irreparably mislead voters, particularly strategic voters, because of the purportedly scientific, reliable nature of most opinion poll results.²⁷⁹

Since strategic voting is an insufficient and inaccurate tool, it may not prevent erratic electoral results: results that are often attributed to “coordination failures” in electoral studies literature. Consequently, in this regard, the electoral systems that have a mechanical method of being responsive to the aggregate preferences of voters and producing rational results are preferred to systems that in this matter rely on strategic voting and coordination by political actors.

Thus, we conclude that the technical or mechanical failures associated with the plurality model’s reliance on strategic voting may result in the failure of this model to bring about democratic results.

Having examined these important technical problems, now we turn to other equally important value-based problems of strategic voting. More specifically, we will examine whether strategic voting demeans the democratic rights enshrined in the Charter as interpreted by the Supreme Court of Canada.

On various occasions, the Supreme Court of Canada has interpreted and identified the content of the right to vote enshrined in Section 3 of the Charter. In *Reference re Prov.*

²⁷⁹ *Thomson Newspapers Co. v. Canada (Attorney General)*, [1998] 1 S.C.R. 877, para. 60.

*Electoral Boundaries (Sask.)*²⁸⁰ McLachlin has interpreted the right to vote as “the right to effective representation”:

... [T]he purpose of the right to vote enshrined in s. 3 of the *Charter* is not equality of 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 ...²⁸¹

In *Haig v. Canada*, Justice L'Heureux-Dubé further expanded the meaning of the right to vote:

The purpose of s. 3 of the *Charter* is, then, to grant every citizen of this country the right to play a meaningful role in the selection of elected representatives who, in turn, will be responsible for making decisions embodied in legislation for which they will be accountable to their electorate.²⁸²

*Figueroa v. Canada*²⁸³ adds more clarification to what is meant by the “right to play a meaningful role in the selection of elected representatives”. Here, the Court acknowledges the reality of elections as multi-purpose political processes whose only function is not limited to the selection of the immediate next parliaments and governments. Therefore, the content of the right to vote is not limited to the right to have one's say on who will form the next government, but it involves the right to play a meaningful role in the electoral process.

²⁸⁰ *Reference re Prov. Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158.

²⁸¹ *Reference re Prov. Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158.

²⁸² *Haig v. Canada (Chief Electoral Officer)*, [1993] 2 S.C.R. 995 at 1031.

²⁸³ *Figueroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912, 2003 SCC 37.

While strategic voting is not directly examined in *Figueroa*, this case serves as a torchlight in investigating the role of strategic voting in elections. In *Figueroa*, the constitutionality of a few of the provisions of the *Canada Elections Act* was put into question. These provisions put some restrictions on small parties that failed to nominate at least 50 candidates in general federal elections. Specifically, three benefits that were denied to these small parties and their candidates were at issue at this appeal: “the right of a political party to issue tax receipts for donations received outside the election period, the right of a candidate to transfer unspent election funds to the party (rather than remitting them to the government), and the right of a party’s candidates to list their party affiliation on the ballot papers.”²⁸⁴ These provisions were found to play a deterrent role on the formation and activity of small parties and they were declared unconstitutional. Below, part of the reasons why these provisions were found unconstitutional will be mentioned and I will argue that the same problems are raised to a greater degree by strategic voting.

The main reason why the aforementioned provisions were found to be unconstitutional was their negative impact on multipartism. Multipartism promotes certain values. It promotes the free flow of information and opinions and its suppression quells the right of all citizens to play a meaningful role in the electoral process by restricting their choices and their access to information. Elections should be considered like a free market in which competition and diversity should be encouraged rather than suppressed. In the Court’s own words:

As this Court frequently has acknowledged, the free flow of diverse opinions and ideas is of fundamental importance in a free and democratic society. In *R. v. Keegstra*, [1990] 3 S.C.R. 697, at pp. 763-64, Dickson C.J. described the

²⁸⁴ *Figueroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912, 2003 SCC 37, para. 4.

connection between the free flow of diverse opinions and ideas and the values essential to a free and democratic society in the following terms:

‘The connection between freedom of expression and the political process is perhaps the linchpin of the s. 2(b) guarantee, and the nature of this connection is largely derived from the Canadian commitment to democracy. Freedom of expression is a crucial aspect of the democratic commitment, not merely because it permits the best policies to be chosen from among a wide array of proffered options, but additionally because it helps to ensure that participation in the political process is open to all persons. Such open participation must involve to a substantial degree the notion that all persons are equally deserving of respect and dignity. The state therefore cannot act to hinder or condemn a political view without to some extent harming the openness of Canadian democracy and its associated tenet of equality for all.’

Put simply, full political debate ensures that ours is an open society with the benefit of a broad range of ideas and opinions ... This, in turn, ensures not only that policy makers are aware of a broad range of options, but also that the determination of social policy is sensitive to the needs and interests of a broad range of citizens.²⁸⁵

In *Figueroa*, the court, having in mind that the right to vote involves a right to play a meaningful role in the electoral process, emphasizes that the role of parties is not limited to the formation of governments. One of their main roles is the organization of opinions and participation in public debates. The court views the promulgation of ideas during the electoral process to be a value. It is not only the large parties that promulgate ideas and engage in debate. The more parties that are involved, the more ideas there will be shared. Therefore, a restriction on the activities of small parties is an affront to this value. I find it appropriate to reproduce Iacobucci’s main line of reasoning here:

²⁸⁵ *Figueroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912, 2003 SCC 37, para. 28.

... It is my conclusion that the ability of a political party to make a valuable contribution to the electoral process is not dependent upon its capacity to offer the electorate a genuine “government option”. Rather, political parties enhance the meaningfulness of individual participation in the electoral process for reasons that transcend their capacity (or lack thereof) to participate in the governance of the country subsequent to an election. Irrespective of their capacity to influence the outcome of an election, political parties act as both a vehicle and outlet for the meaningful participation of individual citizens in the electoral process.

With respect to the ability of a political party to act as an effective vehicle for the meaningful participation of individual citizens in the electoral process, it is important to note that political parties have a much greater capacity than any one citizen to participate in the open debate that the electoral process engenders. By doing so in a representative capacity, on behalf of their members and supporters, political parties act as a vehicle for the participation of individual citizens in the political life of the country. Political parties ensure that the ideas and opinions of their members and supporters are effectively represented in the open debate occasioned by the electoral process and presented to the electorate as a viable option. If those ideas and opinions are not subsequently adopted by the government of the day, it is not because they have not been considered, but, rather, because they have received insufficient public support.

Importantly, it is not only large political parties that are able to fulfil this function. It likely is true that a large party will be able to play a larger role in the open discourse of the electoral process, but it does not thereby follow that the capacity of a political party to represent the ideas and opinions of its members and supporters in the electoral process is dependent upon its capacity to offer the electorate a “government option”. Large or small, all political parties are capable of introducing unique interests and concerns into the political discourse. Consequently, all political parties, whether large or small, are capable of acting as a vehicle for the participation of individual citizens in the public discourse that animates the determination of social policy.²⁸⁶

²⁸⁶ *Figueroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912, 2003 SCC 37, paras. 39-41.

Iacobucci, writing for the majority, finds that the three aforementioned restrictions threaten the existence of smaller parties and while those parties might not be able to form a government, these restrictions still interfere with a citizen's democratic rights under Section 3 because the content of these rights are not limited to choosing a government. These restrictions interfere with the right of a citizen to play a meaningful role in the electoral process. There are reasons why one might choose to vote for a minor party, even if they lack the chance of forming a government in the near future. For instance:

In respect of their ability to act as an effective outlet for the meaningful participation of individual citizens in the electoral process, the participation of political parties in the electoral process also provides individuals with the opportunity to express an opinion on governmental policy and the proper functioning of public institutions. A vote for a candidate nominated by a particular party is an expression of support for the platform or policy perspectives that the party endorses. The participation of political parties thereby enhances the capacity of individual citizens to express an opinion as to the type of country that they would like Canada to be through the exercise of the right to vote.²⁸⁷

In *Figueroa* the Court found the three provisions at issue to be unconstitutional because of restrictions they imposed on smaller parties. Now, the question that should be asked is whether those three restrictions in question are the only restrictions that smaller parties face? The answer is negative. Interestingly, currently the most important threat to the viability of small (and even medium sized) parties is strategic voting, which is necessitated by the

²⁸⁷ *Figueroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912, 2003 SCC 37, para. 43.

current electoral system. Indeed, strategic voting in a plurality voting system is used as a tool to ensure a two-party system. A voter may still be able to vote for a third party, but she will have serious reservations about doing so. Different components of one's right to play a meaningful role in an electoral process come head to head under a plurality voting scheme. A small party supporter has to either vote strategically and sacrifice some aspects of playing a meaningful role in an election (such as the expression of support for an opinion) or vote according to her preferences and compromise her role in influencing the immediate results of the election (the composition of the parliament).

It seems plausible now to suggest that the Supreme Court of Canada can strike down the plurality voting system by referencing the *Figueroa* Case and using the same line of reasoning since the current electoral system imposes restrictions on smaller parties that are far greater in scope than those imposed by the impugned legislation in *Figueroa*. This conclusion requires close scrutiny by the court. Among other questions, the court should answer how far it can go in making a level playing ground for all political parties. If a case is brought before the court challenging the plurality model, a possible ground for distinguishing it from *Figueroa* would be the fact that in *Figueroa*, the impugned legislations were directly aimed at restricting the smaller parties while the restrictions faced by smaller parties due to strategic voting are an indirect effect of the current electoral system. It may be claimed that the adoption of the current electoral model is not directly aimed at restricting the smaller parties. This reasoning does not sound acceptable: Even if historically, restricting the smaller parties was not the aim of those who instituted the current system, keeping smaller and newer challengers at bay may have been one of the main reasons why this system has been left unchanged despite various attempts to replace it. Additionally, it is not clear why

the motives of legislators should play a greater role than the actual consequences of the legislation in the judgment of the court?

In *Figueroa*, the Court keeps repeating that the choice of an electoral system is a political choice and not one in which the Court should be involved:

... I do not mean to suggest that Parliament must choose an electoral system that the Court believes will result in “good” or “better” governance. The *Charter* aside, the choice among electoral processes is, as LeBel J. states, a political one – and not one in which the Court should involve itself. But if Parliament interferes with the right of each citizen to play a meaningful role in that process, it must be able to point to a pressing and substantial objective that it seeks to advance. ...²⁸⁸

This wholesale rejection of the possibility of the judicial review of the electoral system is objectionable. What if it can be demonstrated that a certain type of electoral system interferes with a Charter right? For instance, what if an electoral system “interferes with the right of each citizen to play a meaningful role” in the electoral process? The importance of this right has been emphasized by the Court in the same quoted paragraph. While some may view an attempt by the Supreme Court at replacing the electoral system as an outrageous judicial activism, if it is established that the current model infringes the section 3 rights of some voters and candidates, as the impugned legislation in *Figueroa* did, a judicial challenge may be the most realistic way of rectifying this because smaller parties and their supporters often lack the numerical strength for changing this through parliament or referendum. Indeed, in another decision, *Iacobucci*, the same judge who wrote the majority opinion in *Figueroa*, confirms that: “Where the interests of a minority have been denied

²⁸⁸ *Figueroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912, 2003 SCC 37, para. 81.

consideration..., I believe that judicial intervention is warranted to correct a democratic process that has acted improperly.”²⁸⁹ The current issue is a clearly a denial of minority interests and charter values. Even in *Figueroa*, Iacobucci qualifies his positions by the phrase “The *Charter* aside”.²⁹⁰ Therefore, even if the Courts are not able to propose a specific electoral system, if it is demonstrated that a particular system infringes upon charter values, they should be able to strike it down and ask the parliament to adopt a compatible system from a range of other options.

I keep the question as to whether the current electoral system can be successfully challenged in courts an open one; however, it is safe to say that it is inferred from the court’s reasoning in *Figueroa* that it sees multipartyism (and not a two-party system) as a valuable model on par with the Constitution of Canada. Therefore, an electoral system that promotes the emergence and the viability of multiple parties is more in accord with Canadian constitutional values than the current model, in which third parties are destined to perish.

The phenomenon of wasted votes is closely related to strategic voting. Supporters of smaller parties under the plurality model should either vote strategically for a more viable option or risk wasting their votes; i.e., cast a vote that will have little impact on the outcome of elections. While here we concentrate on this kind of wasted vote, this phenomenon is not confined to small party votes. Under the current system of voting, even many of the main party voters may find themselves in a frustrating situation in which they feel their vote is not as effective as other votes. In safe ridings where the leading party enjoys a comfortable lead, many of the votes are

²⁸⁹ *Vriend v. Alberta*, [1998] 1 S.C.R. 493 at para. 176.

²⁹⁰ *Figueroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912, 2003 SCC 37, para. 81.

wasted: i.e. they are not needed for securing a seat, while the outcome of an election usually hinges on a few swing ridings.

Some writers such as Dennis Pilon define wasted votes in a slightly different way. By characterizing any vote for a losing candidate as a wasted vote, Pilon considers 49% percent of votes casted between 1980 and 2006 in Canada as wasted votes:

In fact, every Canadian federal and provincial election results in millions of wasted votes. Between 1980 and 2006 an average of 49% of the total votes cast were wasted. All parties are affected: the percentage of wasted votes ranges from 26% for the Bloc, to 43% for the Liberals, to a staggering 80% for the NDP, and fully 100% for the Greens.... Of course if we shift from party performance to the election results as a whole, we can see that wasted votes are not just a problem for the smaller parties. In the 2004 federal election, Liberal and Conservative supporters actually cast 70% of the total wasted votes in election, amounting to nearly four million votes.... This is because there are vast regions of the country where neither party can capitalize on their electoral support – think the Liberals in the west and Conservatives in Quebec and Canada’s major cities. In most cases it matters less what you vote for than where you vote for it. In the 2004 federal election 178,507 Conservative votes in Saskatchewan elected 14 MPs while nearly twice as many Conservative votes in Quebec elected no one.... It is hard not to see these latter Conservative votes as anything but ‘wasted’²⁹¹ .

The phenomenon of wasted votes (regardless of its definition and categories) where not all votes weigh the same, casts a doubt over the principle of equality of voting power. The idea of exact mathematical equality of voting power was rejected by the Supreme Court of Canada in

²⁹¹ Dennis Pilon, *The Politics of Voting: Reforming Canada’s Electoral System* (Toronto : Emond Montgomery Publications, 2007) at 33.

Reference re Prov. Electoral Boundaries (Sask.). In this decision, Cory J., writing the dissenting opinion, refuses to ignore the importance of the equality in elections:

It is said that the current map reflects such a minor infringement that it is not worth considering. I cannot accept that argument as correct for two reasons. First, the right to vote is fundamental to a democracy. If the right to vote is to be of true significance to the individual voter, each person's vote should, subject only to reasonable variations for geographic and community interests, be as nearly as possible equal to the vote of any other voter residing in any other constituency. Any significant diminution of the right to relative equality of voting power can only lead to voter frustration and to a lack of confidence in the electoral process.²⁹²

The source of this voter frustration due to inequality in the voting power is not necessarily confined to the unequal number of voters in different constituencies. It may very well stem from the phenomenon of wasted votes. While this passage is taken from a dissenting view, it should be borne in mind that the Court, in this decision, did not rule a wholesale rejection of the equality of voting power; rather, while acknowledging the importance of this equality, the Court stated that it should be balanced against other important factors that as a whole ensure effective representation. Furthermore, it can be inferred from the Court's decision that while mathematical equality is not intended in the section 3 right to vote, **equal** effective representation is. Could we say that ineffective or wasted votes infringe upon this principle? Do all voters enjoy the same amount of the right to effective representation when the votes do not weigh the same? Are those who have casted a wasted vote really been effectively represented? It is doubtful.

²⁹² *Reference re Prov. Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158.

Subsection 6: Power of central parties

The pros and cons of different balancing positions between party authority and MP autonomy were briefly discussed in Chapter Three. Canada does not demonstrate any peculiarity on this issue, which should be discussed here, and the Supreme Court has not touched on the issue, either. Suffice it to say that it seems the long history of the plurality voting model has had its impact on establishing rigid party lines and nowadays little importance is attached to MP autonomy by the general public. "...despite their negative responses about parties, voters continue to identify parties as the key players in politics and the key factor in their voting decisions. In other words, they vote to be represented by parties. When faced with a choice between choosing a local candidate or their most preferred party, just 5% of survey respondents were prepared to choose the local candidate...."²⁹³

Subsection 7: Turnout

As mentioned in Chapter Three, Canada has a low turnout rate compared to most western democracies. Societal factors and political culture might have had an influence on this fact. However, as a conjecture, for reasons stated in Chapter Three, electoral system is deemed to contribute to low turnout in Canada. Empirical research is needed in order to determine the influence of different factors on low turnout in Canada.

²⁹³ Dennis Pilon, *The Politics of Voting: Reforming Canada's Electoral System* (Toronto : Emond Montgomery Publications, 2007) at 38-39.

debate in 2011,²⁹⁷ apparently because the party had failed to elect an MP in the previous elections.

As mentioned earlier, the Supreme Court of Canada on various occasions and particularly in *Figueroa* has emphasized the value of political diversity and multipartyism.²⁹⁸ The current electoral system betrays this value and fails to recognize and celebrate political diversity. The mechanism by which political diversity is suppressed under the plurality model is strategic voting. Accordingly, *Figueroa*, and its implications on the legitimacy of the current electoral system were discussed under strategic voting. The two issues overlap. Strategic voting interferes with the right of citizens to play a meaningful role in electoral process and one of the aspects or results of this interference is the suppression of political diversity. The evaluation of the impact of Supreme Court decisions on the issue of strategic voting was made in the previous section. I am not going to reproduce that discussion here. However, I will review a few more excerpts from Supreme Court decisions which confirm the value of political diversity or multipartyism. Some excerpts from the Supreme Court of Canada's decision in *re Prov. Electoral Boundaries (Sask.)* further expose this problematic aspect of the current voting model. MacLachlin, writing for the majority, states:

It is my conclusion that the purpose of the right to vote enshrined in s. 3 of the Charter is not equality of 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

²⁹⁷ "Elizabeth May shut out of TV debates" *Toronto Star* (30 March 2011), online: <<http://www.thestar.com/news/canada/politics/article/965459--elizabeth-may-shut-out-of-tv-debates>>.

²⁹⁸ See Chapter Four, Section 1, Subsection 5. The *Figueroa* case was mostly discussed under the topic of strategic voting. Strategic voting is the tool by which this harm is done. The suppression of political diversity is one of the end results. Strategic voting also limits democracy by limiting a citizen's right to play a meaningful role in the electoral process as discussed earlier. To avoid repetition, *Figueroa* decision is not fully explored in this subsection.

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; as noted in *Dixon v. B.C. (A.G.)*, [1989] 4 W.W.R. 393, at p. 413, elected representatives function in two roles -- legislative and what has been termed the 'ombudsman role'.²⁹⁹

Here, the court stresses the importance of representation and having a voice as an element in the definition of the right to vote. Is an electoral system that denies representation to large political groups and seriously impairs their ability to have a voice constitutional? Another excerpt from this decision casts more doubt on this:

What are the conditions of effective representation? The first is relative parity of voting power. 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 legislative power of the citizen whose vote is diluted will be reduced, as may be access to and assistance from his or her representative. The result will be uneven and unfair representation.³⁰⁰

Here, the court emphasizes the importance of relative parity of voting power with reference to the number of electors in each constituency. When the average population of ridings is just over one hundred thousand people, we can't accept having a constituency with over 200,000 people. Residents of such a constituency will have inadequate representation in the Court's opinion: only one MP instead of two. Now, doesn't this argument also hold true for groups of people with a given political orientation who have inadequate representation as

²⁹⁹ *Reference re Prov. Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158.

³⁰⁰ *Reference re Prov. Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158.

a result of the mechanism of the electoral system? What about nearly 1 million Green voters who were denied a single MP? Were they really represented?

Subsection 2: Social diversity

Women are under-represented in the Canadian Parliament. Minorities are not fully represented either. While the 2011 federal election brought a slight improvement in the representation of women, bringing it to 24.7% ³⁰¹ (and this was mainly due to the NDP tripling its seat count), the percentage of women elected in the 2000, 2004, 2006 and 2008 federal elections was 20.6%, 21.1%, 20.8% and 22.1% respectively.³⁰² The plurality model of voting has meant that only those ethno-religious group which have a heavy concentration in some ridings have had a partial success in securing a fair amount of representation in the House of Commons. As Dennis Pilon states:

Canada is a diverse country made up of women and men; French, English and Aboriginals; many faiths; people from a variety of ethnic and racial backgrounds; different sexualities; and so on. To look at our legislatures, however, one might think Canada was a country primarily of rich, professional men, with a much smaller subgroup of professional women and only a smattering of diversity in other terms. Yet women make up more than 50% of Canada's population while visible minorities comprise 15% of the total. Despite this, women have held an average of just 20% of seats in Canadian legislatures over the past decade.... Levels of visible minority representation have increased in terms the total

³⁰¹ "Women in National Parliaments" *Inter-Parliamentary Union*, online: Inter-Parliamentary Union <<http://www.ipu.org/wmn-e/classif.htm>>.

³⁰² Julie Cool, "Women in Parliament" *Parliament of Canada* (14 July 2010), online: Parliament of Canada <<http://www.parl.gc.ca/content/lop/researchpublications/prb0562-e.htm>>.

proportion of federal MPs – up to 7% in the 2004 election – but do not match the increasing proportion of visible-minority citizens across the country³⁰³

Pilon is quick to suggest the role of the plurality model of voting in this shortcoming:

Plurality cannot effectively represent diversity because its basic logic involves a winner-take-all competition between parties. As there can only be one winner, political parties of all stripes tend to select candidates in a conservative manner, choosing a candidate that they feel will appeal to the most people and alienate the fewest. Historically in Canada, such candidates have typically been white males, with some recent exceptions wherever a non-white minority group forms a majority of population in a particular riding. Yet this is only half the story. Inside the party, the race to gain a party nomination is also winner-take-all... The result of this logic is a situation where the overwhelming majority of candidates, particularly in the parties' 'winnable ridings,' end up being affluent white males.... Thus the choice that voters can make in seeking to represent diversity are necessarily limited from the start.³⁰⁴

The current plurality model of voting, rather than having an automated mechanism of ensuring diversity in representation, relies on the good will of political actors. In a country that endorses a public policy of multiculturalism and diversity is considered to be a value, this uniformizing aspect of the electoral system is problematic. In various decisions by the Supreme Court of Canada, multiculturalism has been treated as a Canadian value and a guiding principle. To cite one example, the Court's majority opinion in *Bruker v. Marcovitz* begins with this paragraph:

³⁰³ Dennis Pilon, *The Politics of Voting: Reforming Canada's Electoral System* (Toronto : Emond Montgomery Publications, 2007) at 39.

³⁰⁴ Dennis Pilon, *The Politics of Voting: Reforming Canada's Electoral System* (Toronto : Emond Montgomery Publications, 2007) at 40.

Canada rightly prides itself on its evolutionary tolerance for diversity and pluralism. This journey has included a growing appreciation for multiculturalism, including the recognition that ethnic, religious or cultural differences will be acknowledged and respected. Endorsed in legal instruments ranging from the statutory protections found in human rights codes to their constitutional enshrinement in the Canadian Charter of Rights and Freedoms, the right to integrate into Canada's mainstream based on and notwithstanding these differences has become a defining part of our national character.³⁰⁵

In *R. v. Oakes*³⁰⁶ the Supreme Court considered respect to cultural and group identity as one of the factors that should be present in a free and democratic society and that should be used as one of the torchlights in the application of Section 1 of the *Charter*. In *Reference re Prov. Electoral Boundaries (Sask.)*, which was discussed earlier, the court considers minority representation one of the important factors that can justify a deviation from voter population parity when drawing constituency boundaries:

... such relative parity as may be possible of achievement may prove undesirable because it has the effect of detracting from the primary goal of effective representation. Factors like geography, community history, community interests and minority representation may need to be taken into account to ensure that our legislative assemblies effectively represent the diversity of our social mosaic. These are but examples of considerations which may justify departure from absolute voter parity in the pursuit of more effective representation...³⁰⁷
[emphasis added]

³⁰⁵ *Bruker v. Marcovitz*, 2007 SCC 54, [2007] 3 S.C.R. 607

³⁰⁶ *R. v. Oakes*, [1986] 1 S.C.R. 103 at 136.

³⁰⁷ *Reference re Prov. Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158.

Thus, the Supreme Court considers the representation of diversity to be a guiding value that electoral policies and regulations should be tailored to fit into. However, what the Court suggests here is insufficient in ensuring diversity in representation. Electoral boundary tailoring may be helpful in representing minorities that have some sort of geographic concentration, but it will not help those who are scattered around the country. This might be considered to be a con for the plurality model of voting.

Subsection 3: Geographical diversity

Canada is a vast country with an astounding geographic diversity and therefore, quite naturally, populations in different regions of the country have developed distinct group identities and regional interests. In such a country, the acknowledgment and accommodation of this geographic diversity is of great importance to the choice of an electoral system.

The importance of respect to geographical identities in an electoral context has been emphasized by Supreme Court justices on a number of occasions. In *Reference re Prov. Electoral Boundaries (Sask.)* Cory (dissenting) emphasizes the importance of geographical representation by counting it as a consideration that can justify deviations from voter parity:

It is argued, quite correctly, that our Canadian background is different from that of our American neighbour. It is said that we have never insisted upon precise equality of voting power, but instead have traditionally placed greater emphasis on the representation of community interests and given wider recognition to geographic considerations. I agree with these submissions. In Canada we have recognized that the vast, sparsely settled regions in the north must be adequately represented even where their population is less than half of that of a constituency

in the south. To recognize this is to recognize the reality of Canada and Canadian geography. At the same time, in the rest of Canada there has been a conscious and continuing move towards greater equality among constituencies.³⁰⁸

LeBel's concurring opinion in *Figuroa* summarizes Canada's commitment to geographic diversity in a few paragraphs. It has to be recited in its entirety:

163 On the basis of Canadian history, existing political institutions and certain statements of this Court, I would conclude that one component of effective representation is the interest of citizens in being represented as members of regionally or territorially defined communities. This argument may appear hard to reconcile with my position that aggregation of interests and alliance building between distinct communities is also a value that plays a part in defining Canadian democracy. I view this difficulty as an example of the complex and even somewhat paradoxical nature of the concept of meaningful participation, which represents a compromise between competing objectives. Regionally or geographically defined representation can also conflict with the value of individual participation on an equal footing, as is the case when some votes are given more weight than others so as to ensure that numerically smaller regions have an audible voice.

164 Perhaps the most significant manifestation of the importance of political representation of regional interests in Canada is our federalist system. Federalism was adopted at Confederation in spite of the push by some politicians for "legislative union" — a single central government elected by a nationwide majority. The proponents of legislative union eventually accepted that neither Lower Canada nor the Maritime provinces would accept such an arrangement, in which the power of greater population might overwhelm and eradicate their distinct communities. During the Confederation Debates in Parliament, Sir John A. Macdonald stated that "any proposition which involved

³⁰⁸ *Reference re Prov. Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158.

the absorption of the individuality of Lower Canada . . . would not be received with favor by her people” and in the Maritime provinces, although they shared a language and a system of law with Upper Canada, “there was as great a disinclination . . . to lose their individuality, as separate political organizations” (Speech of John A. Macdonald on Monday, February 6, 1865, cited in the *Parliamentary Debates on the subject of the Confederation* (1865), at p. 29).

165 Macdonald and the other Fathers of Confederation recognized that the very possibility of union depended on a compromise between rule by a national majority and preserving the “individuality” of the separate political communities that made up the new nation. Federalism was seen not just as a pragmatic solution but as necessary to ensure fairness to the various regional communities. In the *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217 (“*Secession Reference*”), at para. 43, this Court described the division of powers between federal and provincial levels of government as “a legal recognition of the diversity that existed among the initial members of Confederation”, which “manifested a concern to accommodate that diversity within a single nation”.

166 Another institution which embodies this principle of regional representation is the Senate, where seats are allocated between four regions of the country. And even in the House of Commons, regional interests play a part in the allocation of seats. The “Senator[ial] clause” (s. 51A), added in 1915 to the representation formula in the *Constitution Act, 1867*, ensures that no province will have fewer seats in the House of Commons than it has in the Senate (at the time this change had the effect of guaranteeing that Prince Edward Island would have four seats although its population would have given it only three under the old rules).

167 These features of Canada’s history and political institutions indicate that fair democratic representation in this country includes representation of the distinctive interests of regional groups. I find support for this conclusion in some of this Court’s statements on the relationship between federalism and democracy, particularly in the *Secession Reference, supra*. The Court portrayed the underlying principles of the Constitution, including

federalism and democracy, as existing in symbiosis: “[n]o single principle can be defined in isolation from the others, nor does any one principle trump or exclude the operation of any other” (para. 49). This suggests that federalism, with its concern for preserving the distinctive interests of regional groups, helps to define Canadian democracy.

168 In the *Charter* era, it has been suggested that the importance of regionalism and federalism has been attenuated by the affirmation of the sovereign worth of the individual and by the protection of minority communities defined by shared characteristics such as gender and race (see A. C. Cairns, “The Charter and the Constitution Act, 1982”, in R. S. Blair and J. T. McLeod, eds., *The Canadian Political Tradition: Basic Readings* (2nd ed. 1993), 62). Nevertheless, federalism and regional representation remain important concepts in defining the nature of political rights in this country. The nature of the individual and democratic rights enshrined in the *Charter* cannot be understood without awareness of this aspect of the political culture in which those rights are rooted. As J.-F. Gaudreault-DesBiens observes (“La Charte canadienne des droits et libertés et le fédéralisme: quelques remarques sur les vingt premières années d’une relation ambiguë”, [2003] *R. du B.* 271, at p. 297), [translation] “Federalism plays a direct role in shaping the particular brand of democracy that exists in Canada. Its presence is in some sense encoded in the very idea of democracy referred to in s. 1 [and, I would add, by the democratic rights in s. 3] of the *Charter*.”

169 These observations suggest that one of the components of the right to meaningful participation is the right to have one’s voice heard as a member of the regional community to which one belongs. The constitutional guarantee of effective representation includes a right to a certain degree of recognition of the individual voter’s interests as a Manitoban, or a Maritimer, or a Quebecker, and it suggests a floor of relative equality between the different provinces and regions of the country which cannot be completely cancelled out by a nationwide numerical majority. This aspect of effective representation is far from being an absolute right, and its weight should not be overstated at the risk

of trumping core concerns such as fairness as between individual voters. But it is one of the values to be taken into account in defining meaningful representation and determining whether government action offends s. 3.³⁰⁹

The current single member electoral system, with its relatively small districts, has the flexibility to adapt to regional divisions and in a country like Canada where this matters, should be considered an advantage of the current system. However, the current system is not completely immune from criticism on the issue of representing the geographic diversity of the country. As the report by the Royal Commission on Electoral Reform and Party Financing recognized in its final report a peculiar shortcoming of the current system is that the regions and provinces of Canada are not proportionately represented in the caucuses of political parties. Under the current system, it is quite possible for a party to receive a considerable percentage of votes in a given province but fail to win any seats there. As a result some of the provinces might get completely excluded from the cabinet.³¹⁰

Section Three: Efficiency

Subsection 1: Stability

Stability has been one of the main arguments made for the plurality model of voting. It is not fully certain how unstable Canada would be had it adapted another method of voting, but Canada's history works to the credit of the current model in this regard. Canada has had a

³⁰⁹ *Figueroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912, 2003 SCC 37, paras. 163-69.

³¹⁰ The Royal Commission on Electoral Reform and Party Financing, *Reforming Electoral Democracy: Final Report*, vol. i (Ottawa: Supply and Services, 1991) at 19-21.

history of stable governments. Even its occasional periods of minority government were not embroiled by political instability by comparative politics standards. Canada has also had a relatively stable party system. While some realignments, divisions and mergers have happened, Canada has still had stable national parties with solid bases of support.

In *Figueroa*, LeBel J., who wrote the concurring opinion, emphasizes the importance of a cohesive party system and suggests this is a value that is rooted in the history of Canada and its institutions.³¹¹ LeBel goes on to suggest that the FPTP system used in Canada is an indication that aggregation of political will is a value in Canada that should be protected.³¹² LeBel concedes that the current model of voting has a limiting effect on the choice of citizens but finds it a necessary limitation to preserve the cohesiveness of parties:

Nomination of 50 candidates demonstrates two things about a party (as the Lortie Commission observed): a high level of commitment to electoral competition, and breadth of appeal. The rule therefore favours established parties with a broad basis of support. A system which benefits such parties has its drawbacks, in that it limits citizens' opportunities to support smaller parties whose platforms may correspond closely to their own particular political agendas. On the other hand, it furthers a value which plays a part in defining effective representation in Canada, the aggregation of political will and the promotion of cohesiveness over factionalism.³¹³

³¹¹ “The requirement of nominating 50 candidates tends to benefit parties with a broad appeal, thus encouraging cohesiveness and the aggregation of political will. The importance of these values, deeply rooted as they are in Canadian political culture, is evidenced by their place in our history and existing institutions.” *Figueroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912, 2003 SCC 37, para. 98.

³¹² *Figueroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912, 2003 SCC 37, paras. 151-161.

³¹³ *Figueroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912, 2003 SCC 37, para. 151.

However, the majority of the Court rejects LeBel's tacit suggestion that aspects of the current electoral system should be elevated to a constitutional status and used as a balancing tool against a citizens' right to play a meaningful role in the electoral process:

... although certain aspects of our current electoral system encourage the aggregation of political preferences, I do not believe that this aspect of the current electoral system is to be elevated to constitutional status. In his reasons, LeBel J. argues that first-past-the-post elections favour mainstream parties that have aggregated political preferences on a national basis. This might, indeed, be true. But the fact that our current electoral system reflects certain political values does not mean that those values are embedded in the *Charter*, or that it is appropriate to balance those values against the right of each citizen to play a meaningful role in the electoral process.... This suggests that the purpose of s. 3 is not to protect the values or objectives that might be embedded in our current electoral system, but, rather, to protect the right of each citizen to play a meaningful role in the electoral process, whatever that process might be.³¹⁴

In short, LeBel and Iacobucci (writing for the majority) disagree about the contents of effective representation. While Iacobucci emphasizes the individualistic values by defining the content of the section 3 as the right of a citizen to play a meaningful role in the electoral process, LeBel sees aggregation of political will as a component of effective representation. The majority of the Court has mandated Iacobucci's opinion. Iacobucci also refutes the idea that the legislator can resort to certain measures to ensure the selection of a certain class of candidates and finds it constitutionally problematic:

³¹⁴ *Figueroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912, 2003 SCC 37, para. 37.

Articulating the objective of the legislation in this manner is extremely problematic. In order to advance this objective, the legislation must interfere with the right of individual citizens to play a meaningful role in the electoral process to such an extent that it increases the likelihood that candidates nominated by national parties will be elected, thereby decreasing the likelihood that candidates nominated by regional or marginal parties will be elected. As noted above, in *Oakes, supra*, Dickson C.J. concluded that the objective of the impugned legislation must not be “discordant” with the principles integral to a free and democratic society. Legislation enacted for the express purpose of decreasing the likelihood that a certain class of candidates will be elected is not only discordant with the principles integral to a free and democratic society, but, rather, is the antithesis of those principles. Consequently, it is difficult to accept that the objective of ensuring that the electoral process results in a particular outcome is sufficiently pressing and substantial to warrant the violation of a *Charter* right.³¹⁵

While Iacobucci prefers “to leave the question of whether majority building is a pressing and substantial objective unanswered”³¹⁶ he remains suspicious about the merits of single party majority governments:

There also are difficulties associated with the government’s submission that a majority government that has aggregated preferences on a national scale is the only form of viable government in our system of democracy. Between 1882 and 1983 there were nine minority governments in the British Parliament. In Canada, there have been eight minority federal governments and a number of provincial minority governments. The Attorney General of Canada has presented no evidence that demonstrates that such governments are less democratic than

³¹⁵ *Figueroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912, 2003 SCC 37, para. 37, para. 80.

³¹⁶ *Figueroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912, 2003 SCC 37, para. 37, para. 83.

majority governments, or that they provided less effective governance than majority governments.³¹⁷

I will conclude that while democratic rights and the right of a citizen to play a meaningful role in the electoral process – as defined in *Figuroa* – have a constitutional status in Canada, the concern for having very stable governments does not. Such a concern can only cancel out other values when not doing so will create such inefficiency in the government that it will put the existence of the democratic system in jeopardy. A mere arbitrary attempt at creating more durable, coherent governments at the expense of democratic rights cannot be constitutionally mandated.

Another objection can be made to LeBel's reasoning. It is assumed that the stabilizing aspect of the plurality model of voting is achieved through the aggregation of political will. LeBel admires this system because he considers this aggregation a value. However, as we have discussed previously, the results that plurality systems yield are not necessarily representative of the mean aggregate will of the voters.

Subsection 2: Moderation

The performance of the Canadian electoral system shows a mixed result regarding the promotion of moderation. On the one hand, Canada has not witnessed the rise of extremist parties and small parties have not had the opportunity to spell disproportionate influence over the Canadian politics. Additionally, one can argue that for a long period the power has alternated between two centrist parties (Liberal and Progressive Conservative) in Canada.

³¹⁷ *Figuroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912, 2003 SCC 37, para. 37, para. 82.

However, on the other hand the recent history of Canada was not as kind to the centrist parties. The bias of the plurality model against centrist parties is evidenced in Canadian history by the way Progressive Conservative Party was sidelined and finally absorbed by the Reform/Alliance Party to its right and by the way in which the Liberal Party was squeezed in the center in the 2011 federal election.

Subsection 3: Accountability

The Canadian electoral system follows the general trend of plurality systems in this regard. Canada has always been governed by one-party governments. Therefore, the governing party has been able to take credit for what it has done and has been blamed for its missteps.

It appears that the electoral scene in Canada has allowed the voters to punish the governments when they really want to. A drop in Liberal vote after the sponsorship scandal and poor by-election performance by the Conservative Party of Canada after the 2013 Senate scandal and by the Liberal Party of Ontario following gas plants scandal can be cited as examples. However, I concede, I have not found data that could precisely pinpoint the role of these scandals in the electoral support fluctuations. In any event, Canada does not seem to be an exception to the rule that during one-party governments, detection of political responsibility is easier for the public.

Subsection 4: Regionalism

Canada clearly exhibits the regionalist tendencies of the plurality system. Responding to John Courtney, Dennis Pilon observes that the current voting model has contributed to regionalism instead of pan-Canadianism:

John Courtney's faith in the ability of plurality to foster pan-Canadian parties can ... be challenged by the clear breakdown of pan-Canadianism throughout Canadian history, particularly since 1960s. The obverse of pan-Canadianism is the regional politics that the plurality system facilitates with its overrepresentation of geographically concentrated political movements. A decade before Courtney's observations, Alan Cairns had already pointed out that exaggerated regionalism was the much more typical result of our voting system than pan-Canadianism.... Since then, the regionalizing tendencies of our voting system have been only too apparent, particularly in the 1980 election, which witnessed a majority Liberal government gain no seats in the West despite considerable voting support, and the 1993 federal election, which translated diverse views across the country into regionalized blocs of support for one party or another³¹⁸

Another way through which the plurality model exaggerates regional tendencies is the wrong or exaggerated message that election results gives to the media and the public. Again, in Pilon's words:

The 1993 federal election may rank as the nadir of party representation under plurality in Canada. ... The results in terms of seats won appeared stark. Though

³¹⁸ Dennis Pilon, *The Politics of Voting: Reforming Canada's Electoral System* (Toronto : Emond Montgomery Publications, 2007) at 32.

the Liberals gained a majority of seats, the country appeared balkanized along regional and French/anti-French lines. The election results seemed to suggest that westerners were for a largely anti-Quebec Reform party, that Quebecers were for the separatist Bloc Québécois, that Ontarians were entirely for the Liberals, and that only a few locals stood by the NDP or PCs. Yet a closer look at the actual voting results supports a very different interpretation. ... [A] glance at the regional popular vote for the different parties demonstrates that a majority of westerners actually supported parties with more moderate views on Quebec, that a majority of Quebecers voted for parties keen on staying in Canada, and that nearly half of Ontarians voted for parties other than the Liberals.³¹⁹

The wrong message that the election gives fosters regionalist tendencies in national parties. Little by little, each party will concentrate its resources on regions where it thinks it can win seats and will begin to advocate only the interests of those regions.

Subsection 5: Simplicity

Like all other plurality systems, the Canadian system sounds simple. Voters have gotten used to it and do not seem to have serious difficulties with understanding the system. Again, the complicating issue in this system is the problem of strategic voting and coordination failures. Voters have to decide how to increase the effectiveness of their votes. They need to have exact information about the chances of candidates. As has been observed, “Project Democracy” was not sufficiently successful in coordinating progressive and environmentally conscious voters.

³¹⁹ Dennis Pilon, *The Politics of Voting: Reforming Canada's Electoral System* (Toronto : Emond Montgomery Publications, 2007) at 36-37.

Subsection 6: Miscellaneous issues

As discussed in Chapter Three, weak oppositions are disadvantageous for a democracy. Canada, like other plurality systems, has previously faced this problem. In the 1993 federal election, governing Progressive Conservatives were reduced to two seats and the regional and separatist party, Bloc Québécois, was elevated to the official opposition status.³²⁰ In the 2001 provincial elections in British Columbia, governing New Democrats were reduced to two seats out of 79 despite winning more 21% of the votes. BC Liberals won all of the remaining 77 seats.³²¹

The Canadian system has also resulted in prominent leaders losing their seats. For instance, Michael Ignatieff, leader of the opposition, lost his seat in the 2011 federal election.³²² The same thing happened to Jean Charest, Premier of Quebec, in the 2012 provincial election in Quebec, while his party trailed the separatist Parti Québécois by less than one percentage point.³²³

³²⁰ Dennis Pilon, *The Politics of Voting: Reforming Canada's Electoral System* (Toronto : Emond Montgomery Publications, 2007) at 37.

³²¹ *Electoral History of British Columbia, Supplement, 1987-2001* (Victoria: Legislative Library, 2002), online: Elections BC <<http://www.elections.bc.ca/docs/rpt/1987-2001-ElectionHistory.pdf>> at 37.

³²² “Ignatieff loses Etobicoke-Lakeshore seat as Liberals crushed” *Toronto Star* (3 May 2011), online: The Star: <http://www.thestar.com/news/canada/2011/05/03/ignatieff_loses_etobicokelakeshore_seat_as_liberals_crushed.html>.

³²³ “Premier Jean Charest loses home riding of Sherbrooke” *CBC News* (4 September 2012), online: CBC News: <<http://www.cbc.ca/news/canada/quebecvotes2012/story/2012/09/04/quebecvotes-charest-liberals-results.html>>.

Part Three: Evaluation of the Proposed Reforms

Introduction

In Part Two, it was observed that the current plurality (FPTP) electoral system cannot fully respond to pertinent Canadian values. In Part Three, the reforms that have been previously proposed in Canadian provinces will be examined. Since all of the proposed reforms have exemplified a variety of proportional representation (PR), in Chapter Five we will embark on a value-based assessment of proportional representation in general. Proportional representation has a plethora of varieties and modalities with subtle but important variations, each with its own special issues. An exhaustive review of all modalities and their proper merits and demerits is beyond the capacity of this work. Therefore, in Chapter Five we will mainly concentrate on a prototype of proportional representation in which the jurisdiction is divided into large constituencies with an average of more than 10 MPs to be elected from each constituency. The number of MPs to be elected from each political party will be proportional to the number of votes the party list or its candidates have received in a given constituency. This prototype in of itself contains a number of varieties: For instance, the criteria for choosing winning candidates within a party list may be different. Whenever our discussion veers away from our prototype, it will be expressed.

In Chapter Six, the reform proposals that have been proposed in Canadian provinces will be introduced and discussed in more detail. For instance, the mixed member proportional system that has been proposed and put into a referendum in Ontario may have avoided some of the difficulties that our prototype presents, but at the same time it may have had its own difficulties. We will examine how far the value based merits and demerits of our prototype

are applicable to the specific proposed modalities of proportional representation and will discuss the special issues that they present.

Chapter Five: A general Value-Based Assessment of Proportional Representation

Section One: Democratic Expression

Subsection 1: Proportionality

In Chapter Three, we discussed the two main conceptions of representation: microcosm conception and principal-agent conception. I am not going to reproduce the discussion here. It suffices to note that only according to the microcosm conception a very proportional system of representation is a normative must. As mentioned, the principal-agent approach to representation cannot be completely ruled out as undemocratic and normatively wrong. To the contrary, I found this approach more appealing due to its practical consequences and also due to the fact that it recognizes that governing (forming a government) is the most crucial task of parliaments in the parliamentary systems.

However, as we have discussed, the proportionality of representation serves some values. For instance, we have discussed the importance of symbolic office holding by minorities, or more generally, we have discussed that a proportional representation promotes the values of diversity in society. I also acknowledge that government formation is not the only task of the parliament. Proportional representation can facilitate other tasks such as the ombudsman role

of the parliament. If a given system deviates from proportionality, it should demonstrate that it protects these values and performs these functions through other devices or designs. Consequently, examining the proportionality of an electoral system is not completely useless. Proportional Representation (PR) formulae, as the name indicates, are meant to produce proportional results. A lot of scholarly work has been done comparing the PR and plurality/majoritarian models and have shown that PR models produce essentially more proportional results. Some of these researches were reviewed in Chapter Three. I am not going to repeat those findings, such as Duverger's laws or Rae's propositions, here. It suffices to summarize that "[d]epending on the specific design of the PR system, there may be a slight or more-marked departure from pure proportionality in the election results. But on the whole, PR election results tend to match votes with seats in a transparent, reliable, and mirror-like fashion. Countless academic proportionality indexes measure the gap between votes and seats for parties under different electoral systems, with consistent findings: PR systems deliver proportional results"³²⁴.

While compared with majoritarian systems PR systems produce much more proportional results, different varieties of PR systems differ on their degree of proportionality. Numerous researches have been done comparing the degree of proportionality in different PR systems.³²⁵ Some of the researchers have tried to show the proportional performance of different varieties through empirical data. However, I believe the proportionality of different models of PR can best be demonstrated through mathematical modeling. The elements influencing the degree of proportionality are numerous and include the seat designation

³²⁴ Dennis Pilon, *The Politics of Voting: Reforming Canada's Electoral System* (Toronto : Emond Montgomery Publications, 2007) at 50.

³²⁵ For a summary see for instance: David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 153-159; For examples of proportionality indexes see: Dennis Pilon, *The Politics of Voting: Reforming Canada's Electoral System* (Toronto : Emond Montgomery Publications, 2007) at 57.

formula, district magnitude, assembly size, number of competing parties and their relative strengths and so on. Real world experiences barely provide a controlled environment for assessing the influence of each of these elements. The degree of proportionality of various PR models involves technical details that I do not want to get bogged down in. For the sake of brevity, I will contain myself to two extreme examples, The Netherlands and Spain, to demonstrate the range of diversity.

The Netherlands has one of the most proportional electoral systems in the world. It closely resembles our described prototype. Here, the percentage of the seats each party gets is very close to the percentage of votes it garners. Part of the reason is the large district magnitude. All of the candidates compete in a single nationwide district. Furthermore, there is no legal threshold for securing representation and since 150 candidates are to get elected into the assembly, any party with at least 0.067 of the votes can get at least one seat in parliament.³²⁶

As Ruby Andeweg describes:

The Dutch electoral system is no exception to Rae's assertion that 'Like the Sheriff of Nottingham, electoral systems are apt to steal from the poor and give to the rich' ... but the distortion of proportional representation in favour of bigger parties is limited, as a comparison of the percentages of the vote and the percentages of the seats ... the largest deviation from perfect proportionality in that year [2003] was 0.8 per cent for the conservative Liberal VVD. In the 2003 elections that serve as the main example in this chapter, Gallagher's least squares (LSq) index of disproportionality was 1.19 (including all participating parties). For the eleven Dutch parliamentary elections between 1956 and 1989, Lijphart calculated the LSq index to average 1.32 These figures are quite low and, compared to other countries, the disproportionality of the Dutch electoral system

³²⁶ It is even possible that a party with less than 0.067 of the votes get a seat in the parliament as a result of reminder seats designation.

is less than almost anywhere else, or—in the technical language of Taagepera and Shugart ... ‘for the huge magnitude of the Netherlands’ countrywide district, the calculated curve is practically indistinguishable from the ideal PR line’. What little disproportionality exists is accounted for entirely by the allocation of remainder seats.³²⁷

At the other end of the spectrum, we have the Spanish system. “When compared to the Netherlands, Spanish PR shows how different results can be caused by a different combination of the components of the system”³²⁸. Data compiled by Baldini and Pappalardo³²⁹ show that the seat and vote disparity in Spanish elections is considerable and even reached 13% in 1979. In that year, UCD got 48% of the seats with only 35% of the votes. In the recent 2011 elections, Popular Party got 45% of the votes and 186 seats.³³⁰ This amounts to more than 53% of the seats in the 350 seat assembly. As can be observed, Spanish politics resemble plurality systems: despite a nominally proportional formula, considerable disproportionalities exist; the scene is dominated by two large parties; and single party majority governments are not rare. In Spain’s case, the most important factor in producing these results is the small district magnitude; 350 seats are divided between 52 districts with an average of 6.73 MPs per district. Only five districts elect more than 10 MPs.³³¹ However, let us not be distracted by such exceptional cases. PR systems generally produce markedly more proportional results than plurality systems. At this stage we do not

³²⁷ Ruby B. Andeweg, “The Netherlands: The Sanctity of Proportionality” in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 499-500.

³²⁸ Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 69.

³²⁹ Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 68.

³³⁰ Al Goodman, “Conservative Rajoy set to lead Spain after defeating ruling party” *CNN* (20 November 2011), online: < <http://www.cnn.com/2011/11/20/world/europe/spain-election/index.html>>

³³¹ See table 4.4 in Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 68.

need to discuss the details of different varieties of PR models and ascertain their exact degree of proportionality.

Subsection 2: Aggregation of preferences

Earlier we identified two indications that illustrate that a particular electoral system is responsive to the aggregate preferences of the voters: first the requirement for the winner to garner an absolute majority of the casted votes (minimal requirement) and second, picking the Condorcet winner (maximal requirement). We observed that the plurality voting model often fails in both criteria.

A literal reading of these criteria would suggest that PR models also fail in both criteria. Elected MPs in PR systems often do not garner a majority of the votes in their constituency. Usually, each represents a minority of voters. Most of them are not a Condorcet winner, either. However, proponents of PR would suggest that if instead of examining those who get elected we focus on the decisions made by the elected officials, we would find that those decisions enjoy the support of the majority of people. Since PR parliaments tend to be a microcosm of society, a particular decision taken by the majority of MPs would enjoy the support of the majority of people as well. As Dennis Pilon puts it:

[M]ajority decisions – the hallmark of democratic decision making- have little legitimacy of those making them do not accurately represent the voting public. Only proportional voting really addresses this concern. This is because, unlike the winner-take-all approaches of plurality and majority voting, the PR approach to representation is to make every vote count. This means maximizing the ability of individual voters to affect the outcome, representing the cumulative voting

results for parties accurately, and eliminating the artificial barriers to achieving better representation of our social diversity. Because PR more accurately reflects what people say with their votes, it can lay greater claim to creating a genuinely ‘representative’ democracy.³³²

While it seems reasonable to accept that PR models do not do worse than any other voting system in making majority decisions, they may fail to make the Condorcet winner decisions. Let us focus on the parliament’s most crucial decision, which is the designation of the government. Since several parties usually exist in PR parliaments, government formation requires negotiations between parties regarding which parties will form the governing coalition. It is not guaranteed that the outcome (e.g. a coalition of parties A and B) will be the Condorcet winner. People might prefer another result (e.g. a coalition of parties B and C). Since the lion’s share of the parliament’s agenda is dictated by the governing coalition, the problem will also transcend to other decisions. We might go one step further and say that contrary to what Pilon claims, the government formation and agenda might not even enjoy the majority support among the populace. This is a result of the indirect nature of government formation in PR systems, which will be discussed in the next subsection. When a single party gains the majority of seats by the majority support of the populace, it already has its mandate from the majority and will be held accountable if it diverts from its agenda. Furthermore, in that situation, the government often has the cohesion and the discipline to stick to its mandate. It is not that straightforward in coalition governments.

³³² Dennis Pilon, *The Politics of Voting: Reforming Canada’s Electoral System* (Toronto : Emond Montgomery Publications, 2007) at 53-54.

Subsection 3: Direct election of government and mandate

One of the criticisms levelled at PR systems is that in these systems governments are not designated by the direct choice of people. Government formation often has two steps. First, people elect MPs from several parties to the parliament. Then, party elites enter into negotiations and try to strike a deal and make a coalition that enjoys the support of the majority of MPs. It is not clear that what party leaders decide in “smoke filled rooms” is what people expect. The problem may also exist in other electoral systems; for instance, the 2010 coalition deal in the UK was not free of controversy. However, PR systems are more prone to fragmented parliaments and here coalition governments are the norm, not the exception. This may be a part of a broader problem in representative democracies: how could one guarantee that representatives/agents will act loyal to their principals? However, as mentioned earlier, majority-winning parties have more discipline in introducing and sticking to their mandate. Their mandate is clear and they have little pretext for escaping from it. If they do, they will most certainly be punished in subsequent polls. When several parties make a governing coalition, it is not clear which agenda or which parts of each agenda have been mandated.

Some authors have downplayed the problem.³³³ They say that in countries where the PR model has been used for a sizeable time, people would know about the likely coalitions. A pattern will emerge. Even if it is so, in this situation, it is still unclear which parts of the agendas of coalition partners have been mandated. It is also not clear how often these patterns emerge and how reliable they are. Another solution is the formation of pre-election

³³³ For instance see: David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 217.

coalitions. According to this solution, parties will make coalition pledges before elections and commit to a shared agenda. People who vote for any of the coalition partners know beforehand which coalition government they are voting for. Norway is an example of such an arrangement. There is a big center-right coalition and a big center-left coalition (which includes the Green party) and some non-affiliated parties. This resembles majoritarian systems, with two main parties and some smaller parties. Single parties in each big-tent coalition are like internal factions of big parties. The difference is people are voting for the factions.

However, this looks like a partial solution. It is not clear how often and how much pre-election coalitions work. First of all, this scheme is a voluntary one. Several parties have voluntarily tried to move their PR electoral system towards what resembles a majoritarian model. As evidenced in other countries, there is no automated mechanism to bring parties under the tent of a coalition. Secondly, even where such pre-election coalitions exist, there is no guarantee that one of the coalitions will gain a majority of the seats in the parliament. Both (or all) coalitions might fail to secure a majority. Those parties who were left outside the big-tent coalitions, perhaps unpopular extremist or regionalist parties, might get enough votes to deny a majority to the coalitions. Under such a scenario, other parties, either partners of other coalitions or single parties, must be lured into joining into the pre-election coalition. This will involve an alteration of the agendas and formation of an unexpected coalition government.

Returning to our popular example, the Netherlands, Andeweg explains how pre-election coalitions have failed to be a solution:

In some respects, there are even disincentives to form pre-election coalitions. If they are formed, they are usually (but not exclusively) incumbent coalitions that announce their intention to continue their cooperation in government. When such a pre-election coalition then falls short of the seventy-six seats needed for a parliamentary majority, the subsequent government formation tends to be complicated and cumbersome, inevitably resulting in at least one of the pre-election coalition partners breaking its campaign promise (as happened, for example, in 1972 and 1981). Usually, the parties keep their options open and do not advertise their coalition preference during the election campaign. This further weakens the impact of the election outcome on the composition of the government. There is also no tradition that winning or losing seats in the election should affect a party's fate in coalition formation. All that elections may do is deny a majority to some coalitions, but in general they leave several alternative majority combinations to choose from.³³⁴

The issue of voter influence over government composition has been so pressing in the Netherlands that a big portion of the debate and action regarding electoral reform has revolved around it:

Originally, the problem that most concerned reformers was the tenuous link between elections and the composition of the government ... It was realized that the electoral system was not the only or even the main culprit in denying voters any direct influence over the government's composition, and most attention focused on reforms other than changes in the electoral system. Some, primarily in the PvdA, sought to reform the party system by advocating the formation of two pre-election coalitions. On the left such a pre-election coalition was formed in 1971, presenting a shadow cabinet, and again in 1972, presenting a joint manifesto, but this 'progressive' coalition came nowhere near a parliamentary

³³⁴ Ruby B. Andeweg, "The Netherlands: The Sanctity of Proportionality" in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 504.

majority. In 1972 there was also no majority for a centre-right coalition and after protracted negotiations (163 days) the ‘progressives’ were forced to accept Christian Democrats in ‘their’ government. Since that episode, reform of the party system appears to have been shelved. Others advocated reform of the constitutional system, by introducing a directly elected prime minister, a reform that was later implemented (and quickly abandoned again) in Israel. The reformist party, D66, was founded expressly to press for this reform. The idea was also attractive to the Labour Party because it would induce parties to form pre-election coalitions (as prime-ministerial candidates nominated by just a single party would stand little chance of winning an overall majority).³³⁵

Another partial solution, which was again proposed in the Netherlands, focuses on voter influence over policy instead of influence over government selection:

Since the 1970s, democratic reformers seem to have given up on the idea of establishing a direct link between electorate and government *composition*, and now focus on establishing a direct link between electorate and government *policy* through the introduction of an abrogative referendum or popular veto.³³⁶

Again, this looks like a partial solution and a costly one at that. The amount of policy that can be decided through referendum is limited, and even if one accepts that a big chunk of policy and most important decisions are decided through referendum, still, why shouldn’t voters be able to directly decide who will govern them? Furthermore, if a return to the participatory democracy of Greek city-states were possible, that would happen sooner.

³³⁵ Ruby B. Andeweg, “The Netherlands: The Sanctity of Proportionality” in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 505.

³³⁶ Ruby B. Andeweg, “The Netherlands: The Sanctity of Proportionality” in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 506.

Another solution that was proposed and temporarily implemented in Israel was the direct selection of the prime minister by the people.³³⁷ If this reform meant the independence of the executive branch from parliament, it would amount to a shift from a parliamentary to a presidential system. Then, the formation of the government would not be a function of the proportionally elected parliament and the problem would be solved. Much of the criticism levelled at the PR model is not valid under a presidential system. Indeed, as Duverger, one of the most vocal opponents of proportional representation has said, it is okay and perhaps necessary to have a PR parliament in a presidential system like that of the United States.³³⁸ Discussing the merits and demerits of presidential systems versus parliamentary ones is beyond the scope of this research. Here, we are trying to propose electoral reform within Canada's current parliamentary system. The Israeli reform did not involve a shift towards presidentialism; it was more complex. While the prime minister was directly elected by the people, he needed the support of the parliament to form his cabinet. Eventually, a governing coalition was needed. So, even if the people directly elect the prime minister, the question remains, why should voters not have enough influence over the formation of the governing coalition and its mandate? Additionally, as discussed by Rahat and Hazan³³⁹ this complex scheme lead to other unexpected problems and was abandoned after being applied in only two general elections.

In conclusion, while the problem of a lack of enough influence by the voters over the formation of the government and its mandate may not be as severe as the opponents of PR

³³⁷ Gideon Rahat & Reuven Y. Hazan, "Israel: The Politics of an Extreme Electoral System" in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 344-48.

³³⁸ Maurice Duverger, *Political Parties: Their Organization and Activity in the Modern State* (Cambridge: Methuen & Co Ltd, 1976).

³³⁹ Gideon Rahat & Reuven Y. Hazan, "Israel: The Politics of an Extreme Electoral System" in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 346-48.

try to portray and measures like pre-election coalitions might work from time to time, there have been enough instances to show that this problem is serious. The solutions discussed in this subsection were partial solutions at best.

Subsection 4: Democratic change

Change is essential for the vitality of democracy. There are two aspects of democratic change that are influenced by electoral design. The first aspect looks at the party system as a whole and is concerned with the facility with which newcomers can emerge and challenge the status quo. The second aspect concentrates on the alteration of power: how often and how easily governing parties are thrown out of the government. PR systems perform well in the first aspect and (at least partially) fail in the second one.

Compared with the plurality model, PR systems are more permitting of new parties. When a new social issue emerges, it is easier under a PR system to form a new party around this issue and challenge the old ways. Similarly, if voters are unhappy with the performance of an existing party, it is easier to rally around a new party with similar ideology. Why is this so? Part of the reason is because “PR systems are more open to multi-party competition because the threshold for election is lower and the district from which the votes are drawn is larger. Thus in PR, a new political competitor need only gain a quota of the total votes in a fairly large district rather than having to secure more votes than all others in a much smaller riding, as under plurality.”³⁴⁰

³⁴⁰ Dennis Pilon, *The Politics of Voting: Reforming Canada's Electoral System* (Toronto : Emond Montgomery Publications, 2007) at 52.

This is just a partial reason. New parties might be ready to start slowly and build their strength gradually, even if they do not secure representation immediately as they would under plurality. They might just want to use elections as platform and spread their message gradually. Then, why should they abandon their agenda if they cannot win seats? The more important reason is because in a plurality there is more psychological pressure on newer parties that might discourage them even if they are prepared to forsake the prospect of gaining seats or power in the near future. Smaller parties are regarded as spoilers in plurality models. They might split the vote and bring about undesirable results. This is not so under PR formulae. “And because PR operates in a more representative fashion, the psychological barriers to supporting a new or small party also disappear. All this adds up to a more competitive form of political contestation, effectively altering the incentives that influence how parties behave.”³⁴¹

Since it is easier for newer parties to enter the scene, there will be more political parties and therefore realignment will also be easier because “unlike plurality, where a voter unhappy with Party Left usually only has Party Right as the alternative option, a PR voter can usually find another party with views that are at least somewhat similar to those of the party he or she is presently unhappy with.”³⁴² As an example of the changing allegiances under PR, it has been demonstrated that a relatively high percentage of seats change hands in the Netherlands. This volatility has increased with recent voter apathy towards old parties:

In combination, the two features (few barriers to new parties, high degree of proportionality) result in a high sensitivity of the composition of the Second

³⁴¹ Dennis Pilon, *The Politics of Voting: Reforming Canada's Electoral System* (Toronto : Emond Montgomery Publications, 2007) at 66.

³⁴² Dennis Pilon, *The Politics of Voting: Reforming Canada's Electoral System* (Toronto : Emond Montgomery Publications, 2007) at 66.

Chamber to shifts in the electorate. On average, 12 per cent of the seats changed hands in each of the seventeen elections between 1948 and 2003, but ... there has been considerable variation. From 1948 to 1963 (the heyday of voters' loyalty to their social segment, or 'pillarization'), 5 per cent of the seats went from one party to another in an average election. The onset of depillarization pushed the average proportion of seats changing hands up to more than 11 per cent. After a curious drop in 1989, an average of more than one-fifth of the seats changed parties in subsequent elections. Note that this increase is not caused by changes in the electoral system but by higher electoral volatility.³⁴³

On the micro level, since districts are larger in PR systems, incumbency privileges for sitting MPs is lesser and this is helpful in electing new faces to the parliament. The percentage of voters who feel loyal to the current MP either because of geographic affinity or personal favours they have received is lower. Again, this example from the Netherlands is illuminating. The Netherlands has a single, extremely large district that elects 150 MPs. As Andeweg explains:

Another consequence of the absence of effective electoral districts is that there is no incumbency effect: there are no strong constituency feelings to be taken into account by the party selectorates when they decide whether or not to reselect a sitting MP. Turnover is therefore relatively high: in the seventeen elections between 1948 and 2003, on average 23 per cent of all elected MPs had not served in parliament before.... Turnover is partly accounted for by the accuracy of the electoral system in translating electoral volatility into seats changing hands, in particular when new parties enter parliament (e.g. in 2002, when a record 45 per cent of MPs were newly elected). However, the fact that the average percentage of new MPs is almost twice the average percentage of seats changing hands

³⁴³ Ruby B. Andeweg, "The Netherlands: The Sanctity of Proportionality" in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 500.

indicates that the nomination process of the parties has an effect on turnover independent from that of the electoral system's faithful translation of electoral volatility. The party nominations are probably the more important effect...³⁴⁴

What Andeweg mentions as the effect of party nominations in the election of new MPs is not unrelated to the electoral system. Since incumbency privilege is little under the system, parties have few incentives to nominate the incumbents and are more open to introducing new faces.

One would expect that the higher chance of the emergence of new parties and realignments will lead to more frequent alteration of the governing parties. Some researchers say that is not the case.³⁴⁵ One reason why this may not be the case is because perhaps, except when new social issues arise or when there is an unusual apathy towards established parties, in PR systems voters tend to stick to their old parties. I can think of two reasons for this: first, under PR, parties adjust their views to smaller pockets of the population and more closely reflect the views of that segment of the population. Therefore, voters more closely identify themselves with the party and are more reluctant to change their allegiances. For instance, in most majoritarian systems, there are two large parties that represent the left and the right. There is a large segment of center or independent voters who do not find the views of either party close enough to their own to identify themselves with it. They tend to be swayed to either the left or right. They say this center is where most elections are decided. In PR systems, independents also have their own parties and usually steadily support their party. Secondly, in majoritarian systems with single party governments, when the

³⁴⁴ Ruby B. Andeweg, "The Netherlands: The Sanctity of Proportionality" in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 503.

³⁴⁵ See for instance: Guy Lardeyret, "The Problem with PR" in Larry Diamond & Marc F. Plattner, eds. *Electoral Systems and Democracy* (Baltimore: The John Hopkins University Press, 2006) at 87; David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 218.

government performs poorly, or simply when people are not happy with the state of affairs, that single party is the only one on which to place the blame. People tend to punish it by not voting for it. In PR systems with coalition governments, it is not clear who should be blamed. People might tend to stay loyal to their parties and blame their partners. Farrell³⁴⁶ offers a third explanation: in PR systems, governments are not formed as a direct consequence of the popular vote, rather political negotiations between party elites determine which party will be in the government. As a result, a party may remain in power despite having been punished in the elections or regardless of how it fared at the polls. That is how a small party like the Free Democrats of Germany has enjoyed a long and disproportionate tenure in the governing ranks. Although some parties might manage to remain in the governing coalition even if they lose some votes, what if the governing coalition collectively loses votes? The same coalition cannot remain in power if it loses its majority. That is why data shows that while full alteration of the government is less common in PR systems than majoritarian systems, partial alteration is more common in PR systems.³⁴⁷ Therefore, much of the talk about non-alteration of power holding parties in PR systems will be levelled at partial non-alteration.

Bingham Powell³⁴⁸ has demonstrated that most PR governments include the median party, the party that stands at the middle of the political spectrum and mirrors the views of median citizens. He argues that this is a normatively commendable fact. However, this fact has problematic aspects. This perpetuates the median party's stay in power. The median party will remain a part of the government, unchecked by alterations. Perpetuation in power

³⁴⁶ David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 218.

³⁴⁷ David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 219-220.

³⁴⁸ Bingham Powell, *Elections as Instruments of Democracy: Majoritarian and Proportional Visions* (New Haven and London: Yale University Press, 2000) at 206-212.

facilitates corruption and prevents reinvigoration. The situation becomes direr if the median party is a large one and the senior partner of the coalitions. That is the case of the CDP in Italy, which had enjoyed decades of uninterrupted rule.

Subsection 5: Strategic voting and wasted votes

Discussions about strategic voting have mainly revolved around plurality systems. Some proponents of PR regard strategic voting as a flaw peculiar to plurality, the lack of which is promoted as one of the main strengths of PR systems. Dennis Pilon, a diehard proponent of PR, uses a different terminology and distinguishes between negative strategic voting, which exists in plurality systems, and positive strategic voting, which is seen in PR systems:

Some political scientists complain that trying to eliminate strategic voting is impossible – there will always be a strategic dimension to voter choice. But here, they are confusing different things. Of course, wherever there is a choice to be made there will be strategic elements to consider. The question is whether the strategic dimensions are fundamentally negative or positive. Negative strategic voting limits the choice-making process by design, regardless of the substance of the choices to be made. By contrast, positive strategic voting is about a voter weighting what they want to accomplish with how they think they can best get it. For instance, a voter in a PR system might shift his vote within the coalition of governing parties to help tip the policy balance in a certain direction. ... Though the evidence for this sort of voter behaviour is mixed, parties nonetheless have to respond to the more dynamic form of competition in PR systems Negative strategic voting is all about ‘best of the worst’ or the ‘lesser of two evils,’ where

voters feel compelled to vote for something they don't want in order to avoid getting something worse.³⁴⁹

What Mr. Pilon labels as positive strategic voting belongs to a more general language. In electoral studies, strategic voting specifically refers to abandoning one's first preference for more viable candidates or parties. Or at least this is the kind of strategic voting we are concerned with here. This falls within the definition of "negative strategic voting" in Pilon's terminology. He implies that it does not appear in PR systems. Many scholars, including Gary Cox, one of the most prominent authorities on the field, disagree. Cox has devoted a whole chapter of his seminal book to strategic voting in multi-member districts – including PR elections.³⁵⁰ Cox modifies Duverger's law as the M+1 rule according to which the sustainable number of candidates or lists in a district equals district magnitude plus one. In a three-seat constituency, strategic pressures will reduce the number of competitors to four. He writes,

In multimember districts operating under SNTV or PR, strategic voting can refer to the strategic desertion of both candidates/lists that are 'too weak' and candidates/lists that are 'too strong'. Outcome-oriented voters in multimember districts desert weak candidates/lists for the same reason that they do in single-member districts – a fear of wasting their votes They desert strong candidates/lists when those candidates/lists have one or more of the M seats sewn up but there are other seats still up for grabs; for then the voter's vote has a much greater chance of affecting the outcome if cast for one of the 'marginal'

³⁴⁹ ³⁴⁹ Dennis Pilon, *The Politics of Voting: Reforming Canada's Electoral System* (Toronto : Emond Montgomery Publications, 2007) at 69.

³⁵⁰ Gary W. Cox, *Making Votes Count: Strategic Coordination in the World Electoral Systems* (Cambridge: Cambridge University Press, 1997) at 99-122.

candidates/lists: those on the edge between winning and losing the last-allocated seat.³⁵¹

Desertion of strong lists requires a level of strategic sophistication, which is unlikely to be possessed by ordinary voters and Cox does not give clear evidence regarding its substantial existence. As for the desertion of weak candidates and lists as formulated above, Cox concedes “that strategic voting fades out in multimember districts when the district magnitude gets above five.”³⁵² Therefore, it does not concern our archetypal PR system, which has large districts. However, I conjure that the main strategic pressure in most real world PR systems comes from the legal threshold of representation. This is something understandable to ordinary voters and the relevant information is accessible to the public through opinion polls and electoral history. If in a given system a party has to secure 5% of the national vote to secure representation, outcome-oriented voters will desert parties that are unlikely to pass that bar; otherwise, they might waste their vote. Therefore, strategic voting and wasted votes appear in PR systems. However, the extent and the significance of strategic pressure here is not as intense as in plurality systems. Firstly, strategic voting in PR systems is limited to the supporters of small and marginal parties, while in plurality systems supporters of medium-size and even large parties sometimes have to vote strategically. Secondly, strategic voting in PR systems often requires small adjustments. E.g. a voter abandons a leftist party for another leftist party, while in plurality model, a voter might have to abandon a leftist party for a centrist one or a centrist party for a leftist or rightist one.

³⁵¹ Gary W. Cox, *Making Votes Count: Strategic Coordination in the World Electoral Systems* (Cambridge: Cambridge University Press, 1997) at 121.

³⁵² Gary W. Cox, *Making Votes Count: Strategic Coordination in the World Electoral Systems* (Cambridge: Cambridge University Press, 1997) at 122.

Quantitative studies³⁵³ might lead to erroneous comparisons between the levels of strategic voting in PR and plurality systems. First, because they might overlook the qualitative dimension of the strategic desertion, and second, because usually PR systems have a higher number of electoral parties and therefore voters have more chances to vote strategically. This is in contrast to plurality systems, where the number of parties has already been suppressed and voters might be voting for their second or third preference without knowing it.³⁵⁴

Thus far, we decided that strategic voting in PR systems is less problematic than in plurality systems. However, if one is to heed the *Figueroa v. Canada*³⁵⁵ decision, even this level of strategic voting is problematic. This case began with a challenge by Figueroa, the leader of the Communist Party of Canada – a marginal party with far less than 1% support. The Court found that some sections of the Canada Elections Act that restricted the activities of small parties were unconstitutional. The court stated that while small parties have no substantial chance of forming the government, the right to vote involves the right to play a meaningful role in the electoral process. Government formation is not the sole purpose of the elections. Similarly, here, the imposition of a legal threshold of representation is a restriction that bars some voters from playing a meaningful role in the electoral process by forcing them to abandon their preferred small parties due to strategic pressure. In other words, they have to choose between expressing their sincere preferences and influencing the formation of government. Perhaps, this logic cannot be applied in its extreme. Even if there is no legal threshold, there will always be effective thresholds. For instance, even if all 308 members of

³⁵³ See for instance: Sara B. Hobolt & Jeffrey A. Karp, “Voters and Coalition Governments” (2010) 29 Electoral Studies 299.

³⁵⁴ This statement might seem enigmatic. What I mean is that in system X with parties A, B and C, supporters of B might vote strategically for A or C. In an evolved system X1, party B is annihilated through strategic pressure and we only have parties A, C. It might be stated that here people are voting more sincerely for parties A or C. However, this statement is superfluous. Many voters would prefer to vote for party B if it existed.

³⁵⁵ *Figueroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912, 2003 SCC 37.

the Canadian House of Commons were elected from a nationwide constituency through the PR formula, parties with less than 1/308 of votes would not be represented and their supporters might want to vote strategically. However, if we avoid such an extreme application of this logic, a high threshold, such as the 10% threshold in Turkey, is hardly defensible on democratic grounds. In the 2002 parliamentary elections in Turkey, 45% of votes were cast for parties that failed to pass the 10% threshold and were therefore wasted. Of around 20 elective parties, only 2 managed to gain representation. None of the 3 governing parties passed the threshold.³⁵⁶ If one is to follow the spirit of *Figueroa*, even a 5% threshold is too much. Legal thresholds are electoral law provisions that are added to bring a measure of stability to PR systems and avoid the extreme fragmentation of the parliament. However, it appears that these very provisions contradict the *Figueroa* decision. In Chapters 7 and 8 we will see how a majority system can avoid this problem by separating the fate of the parliamentary parties from that of the electoral parties.

As mentioned earlier, wasted votes are the other side of the coin of strategic voting. In a plurality model if you do not vote strategically you might end up wasting your vote. Pilon summarizes why this might not happen in PR systems:

Plurality wastes more votes than PR because it decides winners on the basis of a winner-take-all formula. If a candidate wins a seat with 40% of the vote, it means that 60% of voters have come up empty handed; multiply that by all the ridings up for elections and it amounts to a lot of unrepresented voters. It also wastes votes because it breaks up the total election results into a series of mini-elections in each geographic riding. ... PR by contrast, is much more efficient with votes

³⁵⁶ Gokhan Bacik, "The parliamentary election in Turkey, November 2002" (2004) 23 *Electoral Studies* 821.

because it tallies the results for the election as a whole and awards representation on the basis of achieving a quota of total votes. In this way, a voter needn't be a part of the largest group in a specific geographic area to gain a representative. What this means is that, under PR, a vote will count regardless of where it is cast.³⁵⁷

One should agree that PR wastes fewer votes than plurality does. However, some votes are still wasted under PR systems. Namely, votes cast for parties that do not pass the threshold fail to elect a representative. In extreme cases such as in Turkey in 2002, the percentage of wasted votes in a PR system could be as high as 45%.

Subsection 6: Power of central parties

Ideally the power and influence of the central party elites should be balanced against the influence of local candidates and voters. If the central party has too much power, local interest might be neglected, proliferation of opinions within party might get curtailed and this might lead to a kind of oligarchy. On the other hand, if local candidates have too much influence and independence, the party's coherence, mandate and accountability might get undermined. Finding the optimal point of the balance is a difficult task, though. A closed list PR system, where the ranking of candidates is determined by the party, is among the party based systems which tend to give too much power to the central party. "In candidate-based systems there appears to be more emphasis on grassroots links, on the need for constituency parties and on internal party democracy. The centre is not so well resourced and is less in

³⁵⁷ Dennis Pilon, *The Politics of Voting: Reforming Canada's Electoral System* (Toronto : Emond Montgomery Publications, 2007) at 54-55.

control of the party as a whole In party-based systems, by contrast, the organization is traditionally much more top-down, with tighter controls imposed on branches and members³⁵⁸ “There are ... clear disadvantages to such a system. The lists are drawn up by the parties, and all the voter can do is select one list for their preferred party. The voter has no say over the rank order, apart, that is, from joining the party and trying to get involved in the internal candidate selection process.”³⁵⁹

Electoral designers can give more power to voters and individual candidates in PR systems, by introducing open lists, where voters can rank the party candidates or through preference voting, where voters can influence the ranking of party candidates and change the party ranking by giving a set amount of preferences for a candidate. Andeweg describes the way the power of central parties has been balanced against the power of MPs and voters in the Netherlands through the provision of preference votes. However, as we can observe, sometimes the system is tipped towards the MPs and party discipline is undermined. This demonstrates the difficulty of striking a balance:

Under the Dutch electoral system, individuals have a choice of two strategies for getting elected to parliament: they can either convince the party selectorate to give them an eligible (*verkiezbare*, i.e. high) position on the list, or they can convince party voters to give a preference vote to them rather than to any of their party's other candidates. The first strategy is more likely to be successful: preference votes have limited impact, and for voters to be able to cast a preference vote for you, you still depend on the party selectorate putting you on the list in the first place. Campaigning for preference votes does occur

³⁵⁸ David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 167.

³⁵⁹ David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 78.

occasionally, but it is at a relatively modest level (small ads in local newspapers, displaying posters, and distributing flyers). Parties sometimes recruit candidates whom they expect will attract large numbers of preference votes from people who would not normally vote for the party, but this tends to be a mixed blessing when such candidates demand a special position in return. In 1998 the CDA put the hitherto non-partisan leader of the Dutch branch of *Médecins sans Frontières* on its list to attract additional votes, but after the election, he often ignored party discipline and eventually left the CDA. In 2002, the VVD recruited a prominent anti-Islam campaigner who had received death threats while she worked for the PvdA, but after her election several conflicts occurred within the parliamentary party when she publicly took positions without consulting the parliamentary party. The party selectorates therefore do not necessarily regard the ability to attract numerous preferences as an unqualified asset in an aspiring candidate.³⁶⁰

Subsection 7: Turnout

Most studies confirm that electoral systems affect the level of turnout and that PR systems have a markedly higher level of turnout compared to plurality systems.³⁶¹ This is quite understandable. In PR systems there are more competitors and the electoral field appears more exciting. More voters are able to find a party whose stances resonate with them. In plurality systems, citizens who are dissatisfied with both of the main parties might choose to abstain from voting. A high level of turnout is an indicator of the health of a democracy; therefore, PR systems score a point against plurality systems in this regard.

³⁶⁰ Ruby B. Andeweg, “The Netherlands: The Sanctity of Proportionality” in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 502.

³⁶¹ See for instance: Arend Lijphart, “Constitutional Choice for New Democracies” Larry Diamond & Marc F. Plattner, eds. *Electoral Systems and Democracy* (Baltimore: The John Hopkins University Press, 2006) at 79; André Blais & R.K. Carty, “Does Proportional Representation Foster Voter Turnout” (1990) 18 *European Journal of Political Research* 167; André Blais & Agnieszka Dobrzynska, “Turnout in Electoral Democracies” (1998) 33 *European Journal of Political Research* 239.

Section Two: Diversity

Subsection 1: Political Diversity

Thus far, it has been made clear that PR systems foster more political parties than plurality systems. This includes both parliamentary parties and electoral parties. Obviously the existence of more parties can better accommodate the diversity of political stances in a country. Political parties are important devices for the promulgation of political views. By suppressing the number of political parties, plurality systems give little recognition to a range of different political opinions.

The role of elections is not limited to deciding who will hold or share the power. They also have a communicative role. The force, the relevance and the potential of political factions is recognized according to how they fare in elections:

[E]lection results are a form of communication. They relay among voters what they are collectively about the key political concerns of the day. This is another reason why a correct representation of such views is so important for the health of democratic dialogue and debate. Recall that plurality voting tends to distort this communication in a host of ways, presenting different parties as more or less popular than they really are both nationally and regionally.³⁶²

Therefore, PR scores against plurality by better recognizing the political diversity of a society. However, we should be reminded that this recognition comes at the expense of other values such as political stability, government cohesion and the efficiency of decision making.

³⁶² Dennis Pilon, *The Politics of Voting: Reforming Canada's Electoral System* (Toronto : Emond Montgomery Publications, 2007) at 58.

In Chapter 7, we will see how majority systems can avoid this problem by distinguishing between electoral and parliamentary parties and recognizing the diversity in the polity while controlling it in the government. Also in Chapter 8, I will discuss that a proportionally elected Senate without the authority to change the government can to some extent counter the distortive communicative effects of the election results for the lower house.

Subsection 2: Social diversity

PR parliaments not only contain more political groups, they also better reflect the social diversity of a society.³⁶³ Members of these parliaments are more diverse in their racial, religious and cultural background and there are more women in them. No wonder the PR model first emerged in countries with more social divisions.³⁶⁴ One of the main reasons why PR systems perform better than plurality systems in this regard is that the winner-take-all rule in plurality systems benefits the most advantaged people, who are usually wealthy males from the majority ethno-religious group. PR elections are held in multi-member districts; therefore, parties are able to diversify their list and include candidates from minority groups to enlarge their support base. In single member districts, nominating someone from a minority group might come at the expense of antagonizing the majority and therefore losing the elections.³⁶⁵ Even in case where old parties are slow in responding to the representational demands of minorities, under the PR formula, those minorities can organize and establish

³⁶³ Dennis Pilon, *The Politics of Voting: Reforming Canada's Electoral System* (Toronto : Emond Montgomery Publications, 2007) at 52.

³⁶⁴ Arend Lijphart, "Constitutional Choice for New Democracies" Larry Diamond & Marc F. Plattner, eds. *Electoral Systems and Democracy* (Baltimore: The John Hopkins University Press, 2006) at 75.

³⁶⁵ For a similar discussion see for instance: Dennis Pilon, *The Politics of Voting: Reforming Canada's Electoral System* (Toronto : Emond Montgomery Publications, 2007) at 58-61.

their own parties and gain a fair representation. “For instance, where ethnic minorities have formed ethnic political parties, as in Belgium and Finland, PR has enabled them to gain virtually perfect proportional representation.”³⁶⁶ In Macedonia (FYRM), the Albanian ethnic minority has established their own parties and usually at least one of these parties joins the governing coalition. I believe this possibility of power sharing had a major role in the de-escalation of ethnic conflict in Macedonia. As another example, in the course of the women’s rights movement, female Scandinavian activists had threatened to establish their own parties if the existing parties did not increase their female representation.³⁶⁷ As some writers³⁶⁸ have demonstrated, the level of the representation of women and minorities is higher in PR systems. This is regarded as a merit of the PR model.

Regarding the type of PR that better serves this purpose, a closed list PR appears to be the best type:

There are clear advantages to this system wherever a party wants to increase its proportion of female MPs (for example, by ‘zipping’, with every second candidate being a woman), or, perhaps, guarantee a minimum proportion of seats to ethnic minorities. A good example of this is provided by the first democratic election of postapartheid South Africa ... as Andrew Reynolds ... observed, these ‘national, and unalterable, candidate lists allowed parties to present

³⁶⁶ Arend Lijphart, “Constitutional Choice for New Democracies” Larry Diamond & Marc F. Plattner, eds. *Electoral Systems and Democracy* (Baltimore: The John Hopkins University Press, 2006) at 78.

³⁶⁷ Dennis Pilon, *The Politics of Voting: Reforming Canada’s Electoral System* (Toronto : Emond Montgomery Publications, 2007) at 61.

³⁶⁸ See for instance: Arend Lijphart, “Constitutional Choice for New Democracies” Larry Diamond & Marc F. Plattner, eds. *Electoral Systems and Democracy* (Baltimore: The John Hopkins University Press, 2006) at 78-79; David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 162-65.

ethnically heterogeneous groups of candidates which, it was hoped, would have cross cutting appeal'.³⁶⁹

Subsection 3: Geographical diversity

Undermining the importance of geographical diversity is seen as a negative aspect of list PR systems. Since the proportionality of results according to the levels of party support is a main objective of PR formula, most PR systems have large multimember districts. The larger the districts are, the more proportional the results will be. However, the larger the districts are, the greater that there will be a danger of insensitivity to local interests. Some regions might not get enough attention in national politics. Most MPs might come from urban areas, which are wealthier regions. This problem reaches its peak when the polity constitutes a single national district:

The problem with national-level representation is that it reduces the contact between representatives and voter. In effect there is no such thing as a constituency politician. There is a danger that the geographical location of MPs (either by birth or residence) may be concentrated in the urban, more populated areas, leaving wwhole swathes of the population 'unrepresented'.³⁷⁰

³⁶⁹ David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 78.

³⁷⁰ David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 75.

Farrell suggests that one solution to this is found in the Dutch system, which “is to have the party lists drawn up at the regional level.”³⁷¹ However, according to Andeweg’s description of the Dutch system, this has barely solved the problem:

If we return to the pooling of district lists within a party, it is clear that this practice limits geographical representation. Moreover, parties do not seem to make widespread use of the possibility to field regionally popular candidates in a particular district (and preference votes appear to be motivated more by a candidate's gender than place of residence, although the latter is mentioned on the ballot). As a result, the nineteen electoral districts primarily serve administrative purposes (the organization of the elections, the coordination of the counting procedures, etc.). Effectively, the electoral system treats the whole country as a single 150-member district.³⁷²

The following passage from Andeweg further highlights the disregard of regions and regional interests in the Netherlands:

The combination of the electoral system and the highly centralized nature of the Dutch polity generally also leads us to expect that a high saliency of party and a low saliency of the districts are the most important consequences for legislative behaviour. ... compared to the Nordic countries where the political system does emphasize geographical representation, representing one's own region is seen as least important by Dutch MPs, whereas representing one's political party is seen as most important. Party cohesion is strong in the Netherlands, to such an extent

³⁷¹ David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 75.

³⁷² Ruby B. Andeweg, “The Netherlands: The Sanctity of Proportionality” in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 498.

that parliamentary votes are recorded by party rather than by individual MP, unless a roll-call is specifically requested.³⁷³

In the previous subsection, it was discussed that PR systems are generally more favorable to minorities. However, PR sometimes works against the representation of geographically concentrated minorities. This is especially so when those minorities lack efficient political organization. Division of the country to small single member districts will ensure that those minorities constitute the majority in some districts. They lose this advantage in large districts often found in PR systems. Thwarting the representation of the Arab minority and discouraging their geographical concentration was one of the motives behind the adoption of the Israeli system, which has a single nation-wide electoral district.³⁷⁴

In a large country such as Canada, with very diverse geography, where each region has its own peculiar concerns, the preservation of geographical representation is of utmost importance. The pure list PR system scores poorly in this regard.

³⁷³ Ruby B. Andeweg, “The Netherlands: The Sanctity of Proportionality” in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 504.

³⁷⁴ Gideon Rahat & Reuven Y. Hazan, “Israel: The Politics of an Extreme Electoral System” in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 336.

Section Three: Efficiency

Subsection 1: Stability

The PR model of elections has received the greatest amount of heat from critics over its tendency to create instability. This is how one outspoken critic perceives the PR system:

[T]he coalition governments so common in PR systems often cannot survive serious disagreement over particular measures (instability); need inordinate amounts of time to build new coalitions (executive vacancy); and when they fall apart, call new elections that generally return the same people (nonalternation).³⁷⁵

As a general assumption, fragmented parliaments have been associated with instability, and as a general rule, PR systems have more parties and more fragmented parliaments. Empirical research data confirms this. “Countries with disproportional trends of less than 5 have an average of 3.79 [effective] parliamentary parties; by contrast, countries with far higher disproportionality trends (10+) average 2.21 [effective] parliamentary parties.”³⁷⁶ Of course, PR systems, as their name dictates, are quite proportional and therefore yield fragmented parliaments. Fragmented parliaments result in coalition governments because a single party seldom masters over half of the seats in parliament to govern alone. In Pilon’s words:

³⁷⁵ Guy Lardeyret, “The Problem with PR” in Larry Diamond & Marc F. Plattner, eds. *Electoral Systems and Democracy* (Baltimore: The John Hopkins University Press, 2006) at 87.

³⁷⁶ : David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 161.

PR systems tend to produce minority or coalition governments. This occurs because the systems reflect the popular vote for parties fairly accurately and no one party typically gains a majority of votes. Of course, plurality systems also seldom see a majority of voters support one party. The difference, however, is that where plurality typically gives a bonus in seats to the largest party – thus manufacturing a legislative majority government out of a minority of votes – PR systems do not exaggerate the legislative results for the largest parties to the same degree.³⁷⁷

Nonetheless, are coalition and minority governments really instable? If government duration is an indicator of the stability, they are. Empirical data shows³⁷⁸ that coalition governments in PR countries have a markedly shorter duration than one-party governments. Government duration should not be treated as the only indicator of stability. Indecision and impasse on important issues as a result of disagreement between coalition partners, and occasional threats of the unravelling of the coalition - even if it does not lead to government change - should be treated as elements that build instability. In short, the conventional wisdom is that coalitions make the task of governing more cumbersome and thus reduce the efficiency of the top decision-makers. It is difficult to quantify all of these measures of instability; therefore, we will turn to some anecdotal evidence.

As discussed by Baldini and Pappalardo, the Italian PR system “came to be perceived as one of the causes of its endemic instability: the country had more than 40 governments in the 1945-89 period. The electoral system, though far from being the only factor to blame, was ‘assumed to be instrumental in creating and maintaining the conditions for fragmentation,

³⁷⁷ Dennis Pilon, *The Politics of Voting: Reforming Canada’s Electoral System* (Toronto : Emond Montgomery Publications, 2007) at 51-52.

³⁷⁸ See for instance: David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 216.

factionalism, incapacity, instability, and irresponsibility that afflicted the Italian polity'³⁷⁹ to avoid this instability, in the latest major reforms, a “majority bonus” was introduced to Italian electoral system in which the party or the coalition with the top results is awarded enough additional seats to command a comfortable majority in the parliament. After this reform, the Italian system, while still using a PR formula, has effectively adopted the consequences of a plurality model and has sent the notion of “manufactured majorities” to new heights. While this somehow solves the problem of instability,³⁸⁰ it leads to rather distinct problems.

As mentioned by Farrell, another aspect of the Italian system that encouraged factionalism and therefore instability was it being an **open** list PR, in which preferential votes could distort the original ranking of party lists:

... in Italy the seats were allocated to those candidates with the most preference votes, so preference votes could make a difference, as it did most colorfully in the 1983 election when the porno star ‘La Ciciollina’ received a huge personal vote and was swept into parliament much to the surprise even of her own party leadership. The Italian ballot structure tended to encourage the clientelistic and factional tendencies in the political system, and in the early 1990s the electoral law was changed so that only one preference vote could be declared.³⁸¹

Belgium provides another example of highly fragmented parliaments, shaky coalition governments and lengthy and cumbersome government making negotiations that have even

³⁷⁹ Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 70.

³⁸⁰ Not completely, though: Italian parties and coalitions are highly fractionized and as Silvio Berlusconi would testify, despite the majority bonus, PMs will still feel the heat of censorship.

³⁸¹ : David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 86.

threatened the integrity of the country. In a recent case, Belgium saw a 10 month long coalition formation period over which a caretaker government was taking care of the government. Of course, one of the reasons that amplifies Belgium's predicament is its linguistic divide. Two completely distinct sets of parties compete in its Walloon and Flemish regions, thus doubling the number of parliamentary parties. Political and economic differences between the French and the Dutch speaking regions make the coalition formation even more difficult.³⁸²

To solve the problem, there are devices by which PR systems can decrease the fragmentation and introduce a measure of stability. The most common and perhaps the most effective device is the introduction of legal thresholds. The electoral system in the Netherlands is known as a very open one. However, even there some steps have been taken to introduce a measure of stability and put some limitations on small and new parties:

The electoral system affects the number and the size of the parties in the Second Chamber. Even the low legal threshold acts as a barrier. Immediately after the first elections under PR, the threshold was raised from 0.5 per cent to 0.75 per cent of the electoral quota and in the next elections the number of parties winning seats dropped from seventeen to ten (in 1933 it was further raised to equal the Hare quota). New political parties that seek representation face more barriers than just this low electoral threshold:

- party labels of new parties that resemble those of existing parties are not permitted;
- district lists of new parties must be supported by at least thirty voters in the district who have to declare their support in person at the town hall of their municipality. No such requirement exists for incumbent parties;

³⁸² See also: Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 65.

- new parties have to pay a deposit of €11,250 if they have combined their district lists (if not, the same deposit is required for each district list). The deposit is forfeited if the party obtains less than 75 per cent of the electoral quota (in 2003 nine parties lost their deposit). No deposit is required from incumbent parties (in 2003 the ‘Livable Netherlands’ party obtained only 60 per cent of the electoral quota, but as it was an incumbent party at the time, it had not paid a deposit);
- new parties do not receive state subventions whereas incumbent parties have received (modest) financial support during the preceding parliament. One form of state support (broadcasting time) does not differentiate between new and incumbent parties during the campaign: parties competing in all nineteen districts are given six blocks of three minutes on public television and a total of twenty minutes on public radio. They are also equally provided with funds to cover some of the production costs;
- new parties are allowed no more than thirty candidates on a list whereas incumbent parties may put forward thirty candidates or twice the number of seats currently held with a maximum of eighty candidates on a list;
- the lists of incumbent parties (and especially of the larger ones) are given the most prominent positions on the ballot;
- in the absence of compulsory voting, incumbent parties, which have already developed a loyal following, benefit from higher turnout of their supporters compared to new parties.³⁸³

While such regulations might bring some measure of stability into the system, that is far from the stability by majoritarian standards. The problem is far from solved.

Another problematic issue for us is that some of the legal restrictions on small parties that exist in the Dutch system might be unconstitutional in Canada according to the Supreme

³⁸³ Ruby B. Andeweg, “The Netherlands: The Sanctity of Proportionality” in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 500.

Court's decision in *Figueroa v. Canada*.³⁸⁴ While recourse to reasonable limits according to Section 1 of the Charter is imaginable, some of the Dutch limitations closely resemble those that were challenged by *Figueroa*.

Another rather extraordinary measure to bring some measure of stability to a PR system was experienced in Israel in the late 1990s.³⁸⁵ It involved the direct election of the prime minister through general elections. Presumably, the direct election of the prime minister can solve two problems: first, voters can have a direct say in the formation of the government. They can elect the chief executive and be sure that his party will be part of the government. Second, this can infuse some majoritarian effects into the system. Since there will be only two main contenders for the winner-takes-all election of the prime minister, voters will be encouraged to concentrate their parliamentary vote on two main parties as well. However, the Israeli experience was not successful and the reform was repealed after two prime-ministerial elections. The reform had a reverse effect: people were encouraged to split their prime-ministerial and their parliamentary vote since they were considering different issues in each vote. The fragmentation of the parliament increased and the main parties were weakened. Even if the Israeli attempt did not result in such a disaster, one wonders if such a measure is logical. How far can one go in infusing majoritarian effects on PR systems? Why not abolish PR altogether instead of creating conditions where the prime minister has to possibly cohabit with a hostile parliament?

Some writers have challenged the assertion that PR systems are less stable. For example, Pilon objects that detractors of PR concentrate their attack on the extreme cases like Italy and

³⁸⁴ *Figueroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912, 2003 SCC 37.

³⁸⁵ See: Gideon Rahat & Reuven Y. Hazan, "Israel: The Politics of an Extreme Electoral System" in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 345-9.

Israel and ignore the stable systems in places like Germany and Scandinavia. He believes even Italy and Israel do not fit the caricature presented by the opponents.³⁸⁶ Farrell has a more balanced tone. According to him, electoral formula has an influence on stability but this influence is not a deterministic one and some PR countries have been quite stable:

... the evidence ... suggests that while having a non-proportional electoral system helps to promote government duration (and hence at least one indicator of stability) it is quite possible for proportional systems to have the same result
.....³⁸⁷

Along the same line, Elklit describes the PR system in Denmark as a fairly stable one. However, he is quick to identify some of the external factors that have helped:

The system is very proportional in its effects, which explains why Denmark since then has had five to ten parties represented in parliament, none of them ever commanding a majority of seats. One consequence has been that over the years most governments have been coalition governments and also—particularly since the 1970s—many have been minority governments. The Danish political system is nevertheless best described as a working multiparty system partly because of elements in the political culture as it has developed over many decades, partly (maybe even mainly) because most governments have been either centre-left or centre-right, with their opposition on both sides on the traditional left–right continuum and therefore easier to deal with ...³⁸⁸ [emphasis added]

³⁸⁶ Dennis Pilon, *The Politics of Voting: Reforming Canada's Electoral System* (Toronto : Emond Montgomery Publications, 2007) at 53.

³⁸⁷ David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 63.

³⁸⁸ Jørgen Elklit, "Denmark: Simplicity Embedded in Complexity (or is it the Other Way Round)?" in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 454.

Another defence of the PR systems concentrates on the notion of policy stability. Defenders say that consensus based and coalitional nature of politics in PR systems results in the adoption of policies that are more inclusive. The system avoids the extremist policies of one-party governments that are reversed once the government falls.³⁸⁹

Pilon³⁹⁰ argues that the best measure for assessing the stability of political systems is counting the number of elections they have. He claims that elections in PR systems are not more frequent than plurality systems. Some scholars, including Lijphart³⁹¹, argue that if PR systems caused instability and inefficiency, this should be reflected in the economic health and the quality of life in polities while western democracies that use a PR system of elections have acceptable standards of living.

I will summarize by responding to some of the counter-arguments. As we have already discussed, the amount of elections cannot be the only or even the main factor in measuring stability. Coalition infighting may destabilize the government but may not always result in new elections. It may be true that opponents of PR concentrate on more unstable examples such as Italy, Belgium and Israel, but this argument goes both ways, the proponents of PR concentrate on more stable examples such as Germany and Scandinavian countries. It is difficult to quantify the effects of electoral systems on the quality of life. Relevant factors are so numerous that it is difficult to have a controlled empirical study. It sounds funny to suggest that the PR system is a relevant factor in the economic well being of citizens of some wealthy western countries. As was discussed in the case of Denmark and as will be discussed

³⁸⁹ See for instance: : David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 220; Dennis Pilon, *The Politics of Voting: Reforming Canada's Electoral System* (Toronto : Emond Montgomery Publications, 2007) at 64; Bingham Powell, *Elections as Instruments of Democracy: Majoritarian and Proportional Visions* (New Haven and London: Yale University Press, 2000) at 182-196.

³⁹⁰ Dennis Pilon, *The Politics of Voting: Reforming Canada's Electoral System* (Toronto : Emond Montgomery Publications, 2007) at 63.

³⁹¹ Arend Lijphart, "Constitutional Choice for New Democracies" Larry Diamond & Marc F. Plattner, eds. *Electoral Systems and Democracy* (Baltimore: The John Hopkins University Press, 2006) at 79-80.

about Germany in the next chapter, political culture and political environment is a decisive factor in stabilizing those polities. Their successful experience is not enough to dispel our fears about the consequences of PR. Theoretical and common sense reasons about why PR brings instability have been put forward and with the frustration of the possibility of a truly controlled empirical study we might have to concentrate on anecdotal descriptions of single-country experiences. The experience of Turkey is a good example. Turkey had a fragmented parliament in the 1990s and early 2000s. This involved ineffective coalition governments with lots of infighting, indecision and political and economical instability. Turkey did not shift to a majoritarian model of elections, however the sharp surge of the Justice and Development Party (AKP) combined with the consequences of a 10% threshold brought about a one-party government that has ruled Turkey ever since. This brought an unprecedented era of government stability and economic growth. While the one party government was not the only factor, it is difficult to ignore its contributing role. I must concede that association is not the same as causality; however, the way I have observed the recent history of Turkey, the political and economical stability would be unconceivable if the previous period of weak parties, large coalitions, and political infighting continued. As we have discussed, one-party governments are not a common phenomenon in PR systems.

One might concede that the PR model of elections does not always result in instability; however instances in which it has had such a result are enough to make us cautious. We have no reason to believe that Canada would not fall victim to such instability.

Subsection 2: Moderation

Writers have divided opinions about whether PR electoral system leads to more moderation. Some point that the necessity for coalition formation and negotiations compels political actors to compromise and moderate their views and thus inch towards a consensual model of democracy.³⁹² This is illustrated by the Danish system, as Elklit describes:

... it can also be argued that the need to compromise when negotiating the formation of government coalitions (which may be minority coalitions) and legislative coalitions thereafter develops into a healthy and constructive political consensus-seeking culture, which in the long run has been a major and welcome cause of the social and political stability that, in spite of all day-to-day problems, characterizes Denmark—and has done so for decades³⁹³

On the other hand, others³⁹⁴ point out that PR facilitates the emergence of extremist parties. Under PR formula, parties that can mobilize a portion of the population around one hot and usually divisive issue can easily enter the parliament; thus, PR heats up social divisions and instead of comprehensive and inclusive parties, one is left with single-issue divisive parties. Data confirms³⁹⁵ that the percentage of right-wing extremist parties in PR systems is markedly higher than in majoritarian systems. This became a hot issue when the

³⁹² See for instance: Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 64 citing: Arend Lijphart, "Typologies of Democratic System" (1968) 1 *Comparative Political Studies* 3.

³⁹³ Jørgen Elklit, "Denmark: Simplicity Embedded in Complexity (or is it the Other Way Round)?" in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 466.

³⁹⁴ See for instance: Guy Lardeyret, "The Problem with PR" in Larry Diamond & Marc F. Plattner, eds. *Electoral Systems and Democracy* (Baltimore: The John Hopkins University Press, 2006) at 88; David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 220-223.

³⁹⁵ David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 222.

extremist Freedom Party in Austria joined the government. It showed how the whole political system could become hostage to the vagaries of small or medium-sized extremist parties.

As for the alleged value of consensual democracy, which is brought about by coalition negotiations and power-sharing schemes under a PR system, opponents could respond that consensus is best achieved within large, big-tent parties rather than between parties.

I conclude that PR systems have mixed performance regarding the promotion of moderation. This mixed result stems from two devices through which moderation can be achieved. The first one is a power sharing and coalition making scheme, and the second is the emergence of moderate and inclusive parties. I believe that the first device is more crucial to newer and fragile democracies. In those democracies, parties might follow the interests of one faction of a society in an extreme manner, they might have not learned to inch towards the center and try to be more inclusive, if they face the prospect of losing power they might disturb the democratic game altogether. Therefore, a power-sharing scheme and increased number of veto holders are very important in those systems. However, in an established democracy where large parties have learned the rules of democratic games and have tried to widen their support base by taking moderate and centrist positions, majoritarian formulas should be a better device to bar extremist and anti-system parties and continue on a moderate course.

Subsection 3: Accountability

In order for a democratic system to perform efficiently, politicians should be held accountable. Those who have under-performed should be punished by the loss of office and those who perform well should be rewarded by re-election. This is not just a question of efficiency. The capacity of citizens “to throw the rascals out” is part of our conception of democracy. It is argued that PR governments are less accountable than majoritarian governments. To understand why it is useful, we could consider the following passage from Powell:

... if retrospective control is to play a significant part in linking what citizens want and what policymakers do, citizens must be able to cast reasoned votes based on the performance of incumbents. ... [in order to do so] A first condition is that citizens must know who is responsible for making policy. A second condition is that they must have a fair opportunity to cast a meaningful vote for or against the policymakers. Given these two conditions, they could use their votes to retain the good policymakers and send the bad ones packing.

In a dictatorship the first condition is usually satisfied and the second is not. Citizens know who is responsible for the policies, but they are not allowed to throw them out if they dislike the results. In a democracy it can be the other way around: citizens are allowed to throw somebody out, but they do not really know who is responsible for the policies. If citizens in a democracy cannot identify responsibility for policy, they cannot use elections precisely to hold policymakers retrospectively accountable for their actions. When policy responsibility is unclear, the incentive for policymakers to anticipate what citizens want and work to achieve it is also lessened. Clarity of responsibility,

then, is an important condition if elections are to serve as instruments for citizen control in a democracy.³⁹⁶

How come in some democracies citizens might have difficulty in identifying those who are responsible? What does this have to do with the PR model? The answer is that the PR model often results in a coalition or minority government. Since different parties influence policy, it is difficult for an ordinary citizen to identify who is responsible for which part of the policy, the failures and achievements, and to what degree? Additionally, the “party or parties in a minority [or a coalition] government can always claim that their best efforts were blocked by other parties, that policy failures must be shared by them. Sometimes these claims are true.”³⁹⁷ Even during the electoral campaign in PR systems, parties might pledge unrealistic and populist proposals to attract voters knowing that they can always blame the coalition partners or the need to compromise on policy stances in a coalition if they do not fulfil their electoral pledges. Farrell³⁹⁸ cites empirical studies that confirm that British parties do better than their Dutch counterparts in fulfilling electoral pledges.

One solution to this problem is the formation of pre-election coalitions. Before the elections, parties can choose their coalition partners and coordinate their agenda and thus be collectively accountable for the whole agenda. This is the norm in some countries. In Norway there are two somehow permanent coalitions of left and right parties. There are also some parties who are not part of either coalition, however, usually one of the two coalitions forms the government. However, this is a partial solution at best. First, there is nothing in the

³⁹⁶ Bingham Powell, *Elections as Instruments of Democracy: Majoritarian and Proportional Visions* (New Haven and London: Yale University Press, 2000) at 51.

³⁹⁷ Bingham Powell, *Elections as Instruments of Democracy: Majoritarian and Proportional Visions* (New Haven and London: Yale University Press, 2000) at 52.

³⁹⁸ David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 218.

electoral system that compels the parties to form a pre-election coalition. This remains a voluntary and incidental mechanism. Second, even when coalitions are made, there is no guarantee that any of the coalitions will receive a majority of the seats in the parliament; therefore, they might have to invite other parties into their fold and amend their agenda accordingly. This problem becomes more acute with the rise of the extremist and anti-system parties. The very appeal of these parties lies in their extremist views and they would not like to moderate their agenda by entering into a pre-election coalition with other parties. Third, even when pre-election coalitions are made and they manage to commend a majority of seats in the parliament, they might not agree on every policy issue. After all, if they had absolutely no disagreements, they may have merged as well. The coalition's platform might skip some divisive issues even though they are decisive in why citizens vote for each party. Fourth, even if the coalition partners have no serious disagreement over the agenda, they can always blame the shortcomings on the performance of the agenda on their coalition partners and thus dodge any responsibility. It is perhaps for these reasons that in Powell's assessment, pre-election coalition governments, while more accountable than minority governments and other forms of coalition governments, are not deemed as accountable as single-party majority governments.³⁹⁹

As Powell shows⁴⁰⁰ data regarding government changes confirm the blurriness of accountability in PR systems. A clear conception of accountability requires that when a government loses a considerable amount of support it should be replaced completely. In PR systems, this complete replacement happens only in a minority of instances. Some governing

³⁹⁹ Bingham Powell, *Elections as Instruments of Democracy: Majoritarian and Proportional Visions* (New Haven and London: Yale University Press, 2000) at 53.

⁴⁰⁰ Bingham Powell, *Elections as Instruments of Democracy: Majoritarian and Proportional Visions* (New Haven and London: Yale University Press, 2000) at 48-49.

parties remain in power while they too should have been held responsible for the failures of the government. In a democratic system the state of the economy is usually one of the main factors according to which voters decide to retain or replace a government. A study by Powell and Whitten shows that “economic conditions seemed to have less impact on voters’ assessment of governments”⁴⁰¹ in systems with coalition governments.

Apart from the collective accountability of the parties, the issue of personal accountability of MPs should not be ignored. What about the MPs who perform well or perform poorly? How are they being rewarded or punished in different systems? Our prototype system leaves little room for holding MPs accountable. With typically large districts, MPs are less visible and constituency link is weak. With closed party lists, voters have little influence in deciding which MPs should retain their seats. All they can do is either vote for a party or not. The personal element is absent. This has been shown⁴⁰² to be the case in the Netherlands with a single national district and closed lists. In Austria⁴⁰³ this concern has led to a reform that reduced the size of districts and strengthened the preference vote.

Subsection 4: Regionalism

The PR model does not completely suppress regionalist tendencies. If it did so, it would undermine its democratic credentials. However, unlike plurality, it does not inflame these

⁴⁰¹ Bingham Powell, *Elections as Instruments of Democracy: Majoritarian and Proportional Visions* (New Haven and London: Yale University Press, 2000) at 54.

⁴⁰² David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 88-89.

⁴⁰³ See for instance: Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 65.

tendencies either. We have discussed why regionalist parties have an easy ride in a plurality system. There is no need to repeat those arguments. Suffice it to say that those conditions do not exist in the PR model. In PR systems, regionalist parties get a share of seats that is roughly equal with their share of votes. Their share of seats is not inflated. Large districts and the fact that parties have incentives to compete in the entire nation discourage regionalist tendencies. That is perhaps why the Left Party in Germany, which was originally established by former members of the Communist Party of East Germany and was competitive in eastern Germany only, has now extended its support base to western Germany as well. The PR system receives a positive score in this regard.

Subsection 5: Simplicity

It is often said that simplicity is one of the advantages of the plurality model. All voters have to do is to mark the name of candidate and they know that at the end of the day the candidate with the most number of the votes will be elected from their district. This implies that all other forms of voting are more complicated. Against this background, Pilon⁴⁰⁴ finds simplicity as one virtue of PR. All the voters have to do is to mark the name of a party and at the end of the day each party will have a number of seats proportional to its number of votes. No curious case of manufactured majorities or situations in which a party with fewer votes than its rival wins more seats. Farrell⁴⁰⁵ argues that if PR systems are really complicated one

⁴⁰⁴ Dennis Pilon, *The Politics of Voting: Reforming Canada's Electoral System* (Toronto : Emond Montgomery Publications, 2007) at 50.

⁴⁰⁵ David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 223-227.

should observe a lower turnout and a higher percentage of spoiled votes in PR systems. He cites data that reject such an assumption.

There is a point that should be made regarding Farrell's argument. Citizens in PR systems are more familiar with the system due to a history of previous elections. However, this might prove problematic in the case of plurality systems that want to change into a modality of PR. I conjure that one of the reasons some recent electoral reform referenda have failed in plurality using countries is because people do not really know what the new system is like. Having said that, I hesitate to regard our prototype model of PR as a complicated one. A pure PR system with closed lists seems quite simple and straightforward. Some kinds of PR can be complicated. For instance, in Hungary, there is a mixed member majoritarian system, where district races are two-round elections. There are three tiers of seat allocations and since the numbers of district seats are not counted when allocating proportional seats, the final result is a semi-proportional system. These are just some of the complicating elements in the Hungarian system.⁴⁰⁶ Also, the formula by which preference votes influence the ranking of candidates in some PR systems is a bit complicated. These complications should be regarded as disadvantages, notably when a polity wants to adopt a PR model for the first time.

Subsection 6: Miscellaneous issues

As discussed in Chapter Three, one of the inefficiencies of the plurality model is the possibility of having very weak and inefficient opposition. The reason why this possibility is

⁴⁰⁶ Kenneth Benoit, "Hungary: Holding Back the Tiers" in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005).

inflated is the way plurality punishes second and third parties. Accordingly, opposition parties with substantial percentages of votes might end up having a tiny parliamentary group. In extreme cases, the winning party might gain a full house. This situation is not desirable because the opposition has an important checking role in democracies and the inefficiency of the opposition might undermine the system. Such a scenario does not happen in PR systems. In PR systems every party gets a number of seats proportional to its number of votes. Here, even coalition partners function as a checking and balancing force against each other.

Another problem was that in plurality systems, nationally prominent politicians might fall victim to local unpopularity. Cases in which leaders of parties failed to win their own constituency are not rare. This causes leadership crisis in parties. Such an event does not happen in PR systems. In closed list PR, members or the organs of the party determine the ranking of candidates on the list. Leaders are often given safe spots on the list. In open list PR, voters determine the ranking of candidates and a nationally popular leader will not lose her seat as a result of local unpopularity.

Chapter Six: Assessment of Canadian Provincial Reform Initiatives

In this chapter, the specific systems that were proposed in five Canadian provinces will be assessed. Section One involves a short introduction to the provincial proposals, a brief history of them and their main features. Since four of these initiatives proposed the adoption of a Mixed Member Proportional system (MMP) in Section Two, MMP systems will be more closely assessed. Attention will be paid to the experience of countries that use the MMP model (notably Germany and New Zealand), but also differing features of the Canadian initiatives will be reviewed when they raise special questions. In Section Three, the Single Transferable Vote system (STV), which was proposed in British Columbia, will be assessed in the same manner. In Sections Two and Three, we will see whether the problematic aspects that the prototype pure PR system, which was assessed in the previous chapter, exist in these two special forms of PR.

Section One: A short introduction to provincial reform initiatives

Subsection 1: Ontario

In October 2003, the Liberal premier of Ontario announced the creation of the Democratic Renewal Secretariat. An examination of the electoral system was one of the tasks of the new secretariat.⁴⁰⁷ In November 2004 it was announced that a citizens' assembly would be created to assess the current electoral system and propose possible changes.⁴⁰⁸ “The *Election Amendment Act*, 2005 received royal assent on 13 June 2005. The act includes provisions that allow Election Ontario to select volunteers for Citizen’s Assembly on Electoral Reform”⁴⁰⁹. 103 randomly selected citizens started meeting in September 2006 and in their report, which was released in May 2007, proposed changing the system into a Mixed Member Proportional (MMP) model.⁴¹⁰

A Mixed Member Proportional (MMP) system is a system in which some MPs are elected through single member local districts and others are elected from national or regional party lists. Party list seats are allocated in a way that the total number of each party’s seats reflects its share of votes. In the system proposed in Ontario, the ratio of local seats to list seats would be 70:30. 90 MPs would be elected from single member districts (SMD) and 39 from

⁴⁰⁷ Andres Barnes & James R. Robertson, *Electoral Reform Initiatives in Canadian Provinces* (Ottawa: Library of Parliament 2009) at 5, online: Parliament of Canada <<http://www.parl.gc.ca/Content/LOP/ResearchPublications/prb0417-e.pdf>>.

⁴⁰⁸ Andres Barnes & James R. Robertson, *Electoral Reform Initiatives in Canadian Provinces* (Ottawa: Library of Parliament 2009) at 6, online: Parliament of Canada <<http://www.parl.gc.ca/Content/LOP/ResearchPublications/prb0417-e.pdf>>.

⁴⁰⁹ Andres Barnes & James R. Robertson, *Electoral Reform Initiatives in Canadian Provinces* (Ottawa: Library of Parliament 2009) at 6, online: Parliament of Canada <<http://www.parl.gc.ca/Content/LOP/ResearchPublications/prb0417-e.pdf>>.

⁴¹⁰ Andres Barnes & James R. Robertson, *Electoral Reform Initiatives in Canadian Provinces* (Ottawa: Library of Parliament 2009) at 7, online: Parliament of Canada <<http://www.parl.gc.ca/Content/LOP/ResearchPublications/prb0417-e.pdf>>.

party lists. Since Ontario had 107 SMDs this would mean that electoral district would have to be enlarged a little bit. However, the total number of MPs would be increased by 22. The election formula in local districts would be a plurality. However, since we saw that plurality results in disproportional seat allocation, list seats would be used to rectify the total seat shares. Voters would have two votes on ballot: one for the local candidate and one for the party. Therefore, a voter could vote for a candidate from Party A but give his party vote to Party B. List seat allocations would be based on the party vote, however, local seat numbers of each party would be deducted from its proportional seat share before allocation of the list seats. For instance, if Party A were to get 50 seats and wins 40 local seats, 10 top candidates from its list would be elected as MPs, to bring its total number of seats to 50. Lists would be closed, which means the ranking of list candidates would be determined by parties before elections and voters could not influence the ranking on Election Day. Dual candidacy was allowed, which means a local candidate of a party could also be placed on the party's province-wide list. If a candidate were elected from a local district, his name would be skipped in the allocation of list seats. There would be a 3% threshold for the allocation of list seats. This means parties that do not receive at least 3% of the party vote could not win a list seat; however, they would retain their district seats if they managed to win any. If a vacancy occurred in local seats, a by-election would be held, but if there were a vacancy in the list seats, the next in line in the party list where the vacancy occurred would occupy her co-partisan's seat.⁴¹¹

⁴¹¹ The Ontario Citizens' Assembly on Electoral Reform, "Democracy at Work: The Ontario Citizens' Assembly on Electoral Reform" (2007) at 144 et seq, online: The Ontario Citizens' Assembly on Electoral Reform <[http://www.citizensassembly.gov.on.ca/assets/Democracy at Work - The Ontario Citizens' Assembly on Electoral Reform.pdf](http://www.citizensassembly.gov.on.ca/assets/Democracy%20at%20Work%20-%20The%20Ontario%20Citizens'%20Assembly%20on%20Electoral%20Reform.pdf)>.

“The Assembly’s MMP system requires parties to submit their lists, and the details of the process they used to create them, to Elections Ontario, a non-partisan body. Elections Ontario will publish this information widely, so voters will be able to assess whether a party created its list in a fair and transparent way. Voters will also be able to see whether a party’s list has a good balance of men and women, includes candidates from all of Ontario’s regions, and reflects the diversity of Ontario’s population.”⁴¹²

In the sample ballot proposed by the Assembly, names of the local candidate would be on the right side of the ballot in alphabetical order. On the left side of the ballot, which was devoted to the party vote, the names of the corresponding parties would appear. If a candidate did not belong to a party, to the left of his name instead of a party name the phrase “independent candidate” would be written.⁴¹³ This ranking would mean that the names of those parties that did not have a local candidate would come after the names of those that had one.

In the proposed system, the possibility of surplus/overhang seats existed. This means that if a party won more local seats than its share of votes would allow in a proportional system, it would retain those seats and the size of the assembly would not increase to restore the proportionality.⁴¹⁴ This means that if list seats were not enough to restore proportionality, the allocation of seats would somehow be disproportional.

⁴¹² The Ontario Citizens’ Assembly on Electoral Reform, “Democracy at Work: The Ontario Citizens’ Assembly on Electoral Reform” (2007) at 150, online: The Ontario Citizens’ Assembly on Electoral Reform <[http://www.citizensassembly.gov.on.ca/assets/Democracy at Work - The Ontario Citizens’ Assembly on Electoral Reform.pdf](http://www.citizensassembly.gov.on.ca/assets/Democracy%20at%20Work%20-%20The%20Ontario%20Citizens%27%20Assembly%20on%20Electoral%20Reform.pdf)>.

⁴¹³ The Ontario Citizens’ Assembly on Electoral Reform, “Democracy at Work: The Ontario Citizens’ Assembly on Electoral Reform” (2007) at 152, online: The Ontario Citizens’ Assembly on Electoral Reform <[http://www.citizensassembly.gov.on.ca/assets/Democracy at Work - The Ontario Citizens’ Assembly on Electoral Reform.pdf](http://www.citizensassembly.gov.on.ca/assets/Democracy%20at%20Work%20-%20The%20Ontario%20Citizens%27%20Assembly%20on%20Electoral%20Reform.pdf)>.

⁴¹⁴ The Ontario Citizens’ Assembly on Electoral Reform, “Democracy at Work: The Ontario Citizens’ Assembly on Electoral Reform” (2007) at 153, online: The Ontario Citizens’ Assembly on Electoral Reform <[http://www.citizensassembly.gov.on.ca/assets/Democracy at Work - The Ontario Citizens’ Assembly on Electoral Reform.pdf](http://www.citizensassembly.gov.on.ca/assets/Democracy%20at%20Work%20-%20The%20Ontario%20Citizens%27%20Assembly%20on%20Electoral%20Reform.pdf)>.

In its report, the assembly purported that its choice of the new system was guided by the following principles: legitimacy, fairness of representation, voter choice, effective parties, stable and effective government, effective parliament, stronger voter participation, accountability, simplicity and practicality.⁴¹⁵

Along with the Ontario provincial elections in 2007, a referendum was held for the adoption of the Assembly's proposed system. Only 36.9% of Ontarians voted for the new proposal and thus the referendum was defeated.⁴¹⁶

Subsection 2: Prince Edward Island

In January 2003, the government of PEI appointed a retired chief justice of PEI to examine the question of electoral system reform. The former chief justice studied different electoral systems and concluded that MMP or STV would be the best option. He added that MMP as used in Germany, New Zealand, Scotland and Wales, has a better chance of being accepted by the islanders as it retains the current single-member constituencies.⁴¹⁷

Based on a motion passed by the Legislative Assembly, an eight-member Commission on Prince Edward Island's Electoral Future was formed in February 2005. Members of the commission included a chair, a citizen from each of the province's four federal ridings, and

⁴¹⁵ The Ontario Citizens' Assembly on Electoral Reform, "One Ballot Two Vote: A New Way to Vote in Ontario" (2007) at 4-5, online: The Ontario Citizens' Assembly on Electoral Reform <http://www.citizensassembly.gov.on.ca/assets/One_Ballot_Two_Votes.pdf>.

⁴¹⁶ Andres Barnes & James R. Robertson, *Electoral Reform Initiatives in Canadian Provinces* (Ottawa: Library of Parliament 2009) at 7, online: Parliament of Canada <<http://www.parl.gc.ca/Content/LOP/ResearchPublications/prb0417-e.pdf>>

⁴¹⁷ Andres Barnes & James R. Robertson, *Electoral Reform Initiatives in Canadian Provinces* (Ottawa: Library of Parliament 2009) at 7-8, online: Parliament of Canada <<http://www.parl.gc.ca/Content/LOP/ResearchPublications/prb0417-e.pdf>>

three members chosen by the Province's three main parties.⁴¹⁸ In May 2005, the Commission released its final report in which a new MMP system was proposed.⁴¹⁹

The proposed system would have a double-vote ballot structure. The provincial assembly would retain 27 members, 17 of which would be elected by plurality formula from single member districts. In the division proposed by the report, each of the districts would have a population of around 5000 except one, which would have a mostly Acadian population of 2000 to 2500. This was precisely designed to take account of the interests of the Acadian minority. The 10 list seats would be assigned correctionally among the parties so that the seat share of each party would roughly correspond to the vote share it received in the party vote section of the ballot. Each party was required to submit a province-wide list containing the names of 10 ranked candidates. The list was a closed one, which meant the rankings would be determined by parties before the election. The commission proposed that the nomination process for the party list should be a province-wide process and be open to all party members. A 5% threshold was proposed for the allocation of list seats (which is slightly higher than the effective threshold of 3.7 %).⁴²⁰

Despite the recommendations in a plebiscite held in November 2005, around 63% of the islanders voted to retain the plurality model.⁴²¹

⁴¹⁸ Andres Barnes & James R. Robertson, *Electoral Reform Initiatives in Canadian Provinces* (Ottawa: Library of Parliament 2009) at 8-9, online: Parliament of Canada <<http://www.parl.gc.ca/Content/LOP/ResearchPublications/prb0417-e.pdf>>

⁴¹⁹ Andres Barnes & James R. Robertson, *Electoral Reform Initiatives in Canadian Provinces* (Ottawa: Library of Parliament 2009) at 9, online: Parliament of Canada <<http://www.parl.gc.ca/Content/LOP/ResearchPublications/prb0417-e.pdf>>

⁴²⁰ Commission on Prince Edward Island's Electoral Future, "Final Report" (2005) at 16-19, online: Elections Prince Edward Island < <http://www.electionspei.ca/electoralfuture/finalreport.pdf>>.

⁴²¹ Andres Barnes & James R. Robertson, *Electoral Reform Initiatives in Canadian Provinces* (Ottawa: Library of Parliament, 2009) at 9, online: Parliament of Canada <<http://www.parl.gc.ca/Content/LOP/ResearchPublications/prb0417-e.pdf>>.

Subsection 3: Quebec

Reform initiatives in Quebec have gone back and forth between the National Assembly, Chief Electoral Officer, Minister for the Reform of Democratic Institutions, Citizens' Committee, etc. Each has made their own additions and amendments, but thus far these efforts have failed to bear fruit. No legislative change has been made and no proposal has been put to a referendum. The unifying feature of the reform proposals is that, like Ontario and PEI, the proposals in Quebec suggest an MMP system. The draft bill presented by the Minister for the Reform of Democratic institutions in December 2004 differed from Ontario and PEI proposals in 2 important features. Both of these features would result in a less proportional system. The first feature was that Quebec would be divided into five-member districts. Each district would be comprised of three single-member constituencies. Of the district's five MPs, three would be elected in plurality contests in single-member constituencies and the two remaining seats would be allocated according to a compensatory formula. The small district magnitude (five) meant that proportionality would be limited. The second feature was that instead of two separate votes for local MP and party vote, there would be only one vote for the local MP and the party vote in each district would be calculated by combining the votes received by the party's candidates. This feature would also have a negative effect on proportionality, because some voters would be inclined to vote strategically for viable candidates. Thus, the total vote of small parties would decrease. This second feature was later rejected by the Citizen's committee.⁴²²

⁴²² For Quebec initiatives see: Henry Milner, "First Past the Post? Progress Report on Electoral Reform Initiatives in Canadian Provinces" (2004) 5 *Policy Matters* 1 at 24-28; Andres Barnes & James R. Robertson, *Electoral Reform Initiatives in Canadian Provinces* (Ottawa: Library of Parliament, 2009) at 10-16, online: Parliament of Canada <<http://www.parl.gc.ca/Content/LOP/ResearchPublications/prb0417-e.pdf>>; *Mouvement Democratie Nouvelle*, online: Mouvement Democratie Nouvelle <<http://www.democratie-nouvelle.qc.ca/>>.

Subsection 4: New Brunswick

In New Brunswick, the Commission on Legislative Democracy was established in December 2003. In its final report, the Commission proposed an MMP system similar to PEI and Ontario proposals. There were two main distinguishing features in this proposal. First, list MPs would not be elected from province-wide lists. The province would be divided to 4 regions. In each region, 9 MPs would be elected from single-member constituencies and five would be elected from party lists on a compensatory basis. The second feature was that candidates would have to choose between competing in single-member constituencies and being in party lists. Following a government change, the proposal was ignored.⁴²³

Subsection 5: British Columbia

The electoral reform initiative in British Columbia predates the initiatives made in other Canadian provinces and its Citizens' Assembly, which was constituted to deliberate on the reform, has been hailed as the first of its kind in the world and has served as a model in other Canadian provinces and elsewhere in the world.⁴²⁴ A peculiarity of the British Columbian

⁴²³ For New Brunswick's initiative see: Commission on Legislative Democracy, "Final Report and Recommendations" (2004), online: Government of New Brunswick <<http://www.gnb.ca/elections/pdf/cld/CLDFinalReport-e.pdf>>; Andres Barnes & James R. Robertson, *Electoral Reform Initiatives in Canadian Provinces* (Ottawa: Library of Parliament, 2009) at 3-5, online: Parliament of Canada <<http://www.parl.gc.ca/Content/LOP/ResearchPublications/prb0417-e.pdf>>.

⁴²⁴ See Patrick Fournier et al., *When Citizens Decide: Lessons from Citizen Assemblies on Electoral Reform* (Oxford: Oxford University Press, 2011).

initiative was that it was the only Canadian initiative that proposed a single transferable vote (STV) system⁴²⁵ instead of MMP.

The randomly elected assembly had 160 members who were selected in a manner to ensure that they reflected British Columbia's demographics in terms of gender, age and geography.⁴²⁶ Randomly selected voters also to some extent reflected the population of British Columbia in terms of place of birth (Canada or abroad), but the voluntary nature of participation meant they were slightly more educated and had a more positive attitude towards politics.⁴²⁷ The Assembly's work period lasted from January to December 2004 and eventually it proposed the STV model for British Columbia.⁴²⁸

Two Referendums were held on the Assembly's proposed reform along with the 2005 and 2009 provincial elections. The first one was defeated with 57% support (narrowly failing to garner the required 60% support) and the second one more soundly defeated with 39% support.⁴²⁹

⁴²⁵ STV is a proportional preferential voting system where voters rank order the candidates in multi-member districts. In order to be elected, a candidate must receive a certain quota of votes. The quota is calculated by dividing the number votes to $(m+1)$. m indicates district magnitude or the number of MPs elected from the district. If a candidate receives more votes than needed she will be elected and her extra votes will be transferred to lower ranked candidates. Last place candidates will also be eliminated one by one and their votes will be transferred according to the subsequent preferences of voters. For a more detailed introduction to STV see for instance: David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 119-152.

⁴²⁶ Andres Barnes & James R. Robertson, *Electoral Reform Initiatives in Canadian Provinces* (Ottawa: Library of Parliament 2009) at 1, online: Parliament of Canada <<http://www.parl.gc.ca/Content/LOP/ResearchPublications/prb0417-e.pdf>>.

⁴²⁷ Patrick Fournier et al., *When Citizens Decide: Lessons from Citizen Assemblies on Electoral Reform* (Oxford: Oxford University Press, 2011) at 51-64.

⁴²⁸ Andres Barnes & James R. Robertson, *Electoral Reform Initiatives in Canadian Provinces* (Ottawa: Library of Parliament 2009) at 1-2, online: Parliament of Canada <<http://www.parl.gc.ca/Content/LOP/ResearchPublications/prb0417-e.pdf>>.

⁴²⁹ Andres Barnes & James R. Robertson, *Electoral Reform Initiatives in Canadian Provinces* (Ottawa: Library of Parliament 2009) at 2-3, online: Parliament of Canada <<http://www.parl.gc.ca/Content/LOP/ResearchPublications/prb0417-e.pdf>>.

The Assembly purported that it chose STV because of “three over-riding values: proportionality, local representation and voter choice.”⁴³⁰ The province would have been divided into multi-member districts, each with 2 to 7 MPs who would be elected according to the STV formula.⁴³¹

Subsection 6: Why Referendums Failed?

While as we will discuss, the models introduced in the provincial referendums have their own problematic aspects, in some issues they present improvements over the current system. Therefore it is puzzling to see that voters rejected the reform proposals in referendums. Was it really because they didn’t like the new proposals or other causes influenced their decision? A resounding answer to that question requires extensive polling and interviews with people who participated in the referendums. I have not come across such extensive data and right now, years after the referendums were conducted, it is too late to attempt to obtain such data. Below, primarily based on some limited data and information that Fournier *et al*⁴³² present, I will introduce three possible reasons for the failure of the provincial referendums:

1. Entrenched interests of political groups: A dilemma in electoral reform is that, each electoral system has its own beneficiaries and quite often, those beneficiaries end up

⁴³⁰ Citizen’s Assembly on Electoral Reform, “BC-STV electoral system” (2004), online: Citizen’s Assembly on Electoral Reform < <http://www.citizensassembly.bc.ca/resources/deliberation/BCSTV-FactSheet.pdf>>.

⁴³¹ Citizen’s Assembly on Electoral Reform, “BC-STV electoral system” (2004), online: Citizen’s Assembly on Electoral Reform < <http://www.citizensassembly.bc.ca/resources/deliberation/BCSTV-FactSheet.pdf>>.

⁴³² Patrick Fournier *et al*, *When Citizens Decide: Lessons from Citizen Assemblies on Electoral Reform* (Oxford: Oxford University Press, 2011).

controlling the power or the public opinion. As a result, those beneficiaries are in a position to prevent reform. The dominant view among political scientists is “that disciplined political parties try to shape the electoral system to their advantage. The presumption is that their preferences are mainly centered on maximizing legislative seats and government power.”⁴³³ At the time of the provincial referendums, the two dominant parties in BC and Ontario had the impression that the current system is beneficial to them. Therefore they dodged the debate on electoral reform. They either took a neutral stance or opposed the reforms. More precisely Liberals and NDP in BC and Liberals in Ontario took a neutral stance and refused to endorse the new proposal and Progressive Conservatives in Ontario plainly campaigned against the new proposal.⁴³⁴ Since the new proposals had failed to catch the attention of the public, all the dominant parties had to do to ensure the new proposal will not get approved by public was to dodge the debate in the name of neutrality. When dominant parties act in such an orchestrated fashion to protect their entrenched interests, it falls on the non-partisan activists to champion the virtues of electoral reform. However, independent activists often lack the resources and the organizational support that the political parties have.

2. Public’s Lack of Information: Another possible contributing factor is that people didn’t have enough knowledge to make an informed decision. There are factors that make this a plausible possibility. First of all the role of media is criticized. The media coverage of the referendum was scant and at best was just over one article per day in the major newspapers. Most of those scant articles were not informative. While negative assessments of the proposal in news articles did not outnumber the positive assessments, the editorials

⁴³³ Patrick Fournier *et al.*, *When Citizens Decide: Lessons from Citizen Assemblies on Electoral Reform* (Oxford: Oxford University Press, 2011) at 22.

⁴³⁴ Patrick Fournier *et al.*, *When Citizens Decide: Lessons from Citizen Assemblies on Electoral Reform* (Oxford: Oxford University Press, 2011) at 139-141.

were not supportive. For instance, none of the major newspapers endorsed the Ontario proposal.⁴³⁵ Denis Pilon also criticized the public education campaign about the Ontario referendum and characterised it as an “unmitigated disaster”. According to him, “too much of Elections Ontario’s referendum education campaign focused on the mechanics of MMP and not on why voters should care about electoral reform.”⁴³⁶ Data support the position that people did not know enough about the reform proposals:

[M]any people were operating in the dark. Knowledge of the proposed alternative system and the citizen assembly was associated with support for change, but very few voters were actually informed about either. In each province, only a third asserted they knew something about STV/MMP. Besides this self-reported measure, our factual knowledge data also point to low levels of awareness about basic features and consequences of the proposed electoral systems. Information about the agenda-setter was even worse. Only a quarter of British Columbians and just 13 per cent of Ontarians said they knew ‘some’ or ‘a lot’ about the citizen assembly. And misconceptions were also rampant: for instance, in Ontario, a majority believed that assembly members had been hand-picked by the government. Given the importance of knowledge in generating enthusiasm for the proposals, the public’s lack of it severely hampered the referendums’ prospects.⁴³⁷

Data by Fournier et al demonstrate that knowledge of the alternative electoral systems and citizen assemblies had a pronounced positive effect on supporting the

⁴³⁵ For data on news coverage: Patrick Fournier *et al.*, *When Citizens Decide: Lessons from Citizen Assemblies on Electoral Reform* (Oxford: Oxford University Press, 2011) at 136-9.

⁴³⁶ Brodie Fenlon, “Referendum on electoral reform an ‘unmitigated disaster’” *Globe & Mail*, (10 October 2007).

⁴³⁷ Patrick Fournier *et al.*, *When Citizens Decide: Lessons from Citizen Assemblies on Electoral Reform* (Oxford: Oxford University Press, 2011) at 134.

proposals.⁴³⁸ A puzzling issue is that the citizen assemblies were elected randomly from the population of the provinces. Therefore, their positions are expected to reflect the position of the general population. However, while the assemblies almost unanimously voted for change, the proposed changes were resoundingly rejected by the general public. How is this possible? The answer lies in the informational gap between the assembly members and the general public. While the members of assembly were sufficiently exposed to the debate surrounding electoral reform debate, and invested a considerable amount of time self-educating on the issue, this level of knowledge and involvement was lacking in the general public.⁴³⁹ It seems inevitable to guess that when people don't have enough information about the proposed change, they prefer to stick to what they are used to as it seems to be working OK. They don't want to take the risk of venturing into the unknown. Perhaps, referendums are not the best way of deciding on electoral reform after all. The electoral reform debate is a complicated debate, and like most complicated legislative issues, needs to be debated in an informed environment.

3. People didn't like the specific reforms: The final explanation is that perhaps people actually didn't like the proposed reforms:

... it must be recognized that some design elements of the new electoral systems were unpopular, particularly in Ontario. The public there was very unhappy about party control over MMP's list seats as well as the proposed addition of more politicians. Only between 16 and 27 per cent agreed with these plans. In

⁴³⁸ Patrick Fournier *et al.*, *When Citizens Decide: Lessons from Citizen Assemblies on Electoral Reform* (Oxford: Oxford University Press, 2011) at 131-132.

⁴³⁹ Patrick Fournier *et al.*, *When Citizens Decide: Lessons from Citizen Assemblies on Electoral Reform* (Oxford: Oxford University Press, 2011) at 127-8.

British Columbia, many were preoccupied about STV's complexity and potential governmental instability...⁴⁴⁰

Unfortunately, data by Fournier et al is vague in that it doesn't determine the precise role of each of the three factors in the defeat of the referendums. However, if the unpopularity of some of the design elements of the proposed reforms was a decisive factor, this fact can be used to the advantage of my new proposal that will be introduced in the following chapters. The new proposal is an improvement over the current system but at the same time it lacks those features which were used to attack the previous reform proposals in referendums. In other words, the opponents of the reforms will lose some of their attacking points if a new referendum is held for our proposed alternative.

Section 2: Assessing the MMP system

Subsection 1: Democratic expression

1. Proportionality

The proportionality of MMP systems is not significantly different from pure list PR systems. However, there are some nuances that might decrease the proportionality. Some of these nuances have been debated about the German system, which is the most prominent and

⁴⁴⁰ Patrick Fournier *et al.*, *When Citizens Decide: Lessons from Citizen Assemblies on Electoral Reform* (Oxford: Oxford University Press, 2011) at 134.

the most longstanding MMP system.⁴⁴¹ One of these disproportionalizing features can be shared by any other PR system, which is the 5% legal threshold. The second one, however, is unique to MMP systems and concerns the surplus seats. Suppose that in one of the German landers (states) with 20 district seats and 20 list seats, a party with 40 percent of the vote wins 17 of the district seats. That party's proportional share of seats should be 16, but it is allowed to retain its surplus seat. This introduces a slight degree of disproportionality; however, occasionally it was influential in giving German governments a comfortable majority.

In the Canadian provincial proposals, there is an element that might increase the probability of surplus or overhang seats. In the German system, the ratio of list to district seats is 50:50. There is more room to rectify the disproportionality created in the district level. In the Canadian initiatives, the ratio is lower. For instance, it is 30:70 in the Ontarian proposal. This increases the likelihood of a party winning more district seats than a fully proportional allocation of seats would allow.

We have uncounted proportionality as one of the requisites of electoral systems. However, if a particular electoral system views proportionality as one of its main objectives, this situation should be regarded as a flaw.

2. Aggregation of preferences

I have not encountered any theoretical or empirical evidence that MMP systems might function differently than pure PR systems in this category. Therefore, the comments made in the corresponding subsection in the previous chapter should hold true here.

⁴⁴¹ See for instance: David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 102; Max Kaase, "Personalized Proportional Representation: The "Model" of the West German Electoral System" in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 163-4.

3. Direct election of government and mandate

In the previous chapter, we observed that one of the ways in which the problem of according a coalition government formation in PR systems to the desire of voters can be solved is through pre-election coalitions. Parties can announce their coalition partners before the elections so voters will be assured that they will not end up with a coalition they do not like. However, we saw that there are serious limitations to making pre-election coalition pledges, and such pledges are not always made, or if made, they are not always respected. It has been suggested that MMP systems contain features that encourage the formation of pre-election coalitions. It is suggested that in the German system, since small parties have little chance of winning district seats, their supporters will vote for a larger party at a district level. By choosing the party that they vote for in the districts, they hint at their favourite coalition partner. On the other hand, small parties may encourage their supporters to vote for a particular large party in the district election and thus pledge to make a coalition with that party. Additionally, a strategic practice for the supporters of larger parties is to vote for a prospective junior coalition partner in the list vote and thus help it pass the 5% threshold. It is useful for parties to announce their coalition partners and therefore help their supporters cast strategically wise votes. In Thomas Saalfeld's words:

The possibility for voters to 'split' their tickets is often seen to allow the formation of pre-election coalitions. A significant number of tactically aware voters of the smaller parties can be shown to anticipate the coalition preferences of their preferred parties' leaderships and cast their 'first' vote for the constituency candidate of the likely (larger) coalition partner. Reciprocally, some

supporters of the larger parties may use their ‘second’ (list) vote not to support their preferred party, but to vote for a smaller party—and likely coalition party of the preferred party. Such strategic ticket-splitting is possible when the main parties signal their coalition preferences relatively unambiguously and credibly before an election. The smaller parties (FDP and Greens) in particular have, therefore, deliberately run so-called ‘second-vote campaigns’ (*Zweitstimmenkampagnen*) to consolidate their vote by attracting voters from a larger party, usually the prospective coalition party.⁴⁴²

Even if the prospects of pre-election coalitions increase under this scenario, I am not convinced that this increase is enough to solve the problem of the direct designation of the governments. Saalfeld mentions⁴⁴³ that prior to the 2002 German federal elections, Social Democrats (SPD) and Greens had made it clear that they wanted to make a coalition and Christian Democrats also made it clear that they preferred a coalition with Free Democrats (FDP). The FDP, however, kept its options open. Accordingly, there was a mixed ticket-splitting pattern by FDP supporters. It is fair to suppose that the same tendencies prevailed before the 2005 election: this election resulted in a grand coalition between Christian Democrats and Social Democrats, a result few could anticipate.

Situations where unexpected coalitions form the government under MMP system are not rare. The following example from New Zealand – which converted to MMP in the 1990s – shows the insufficiency of voter control over government formation in MMP systems:

⁴⁴² Thomas Saalfeld, “Germany: Stability and Strategy in a Mixed-Member Proportional System” in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 223.

⁴⁴³ Thomas Saalfeld, “Germany: Stability and Strategy in a Mixed-Member Proportional System” in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 223-24.

[After the 1996 elections,] National [Party] turned to New Zealand First [Party]. However, this took place only after simultaneous negotiations between New Zealand First and National and Labour. National was in the strongest position, and National and New Zealand First together could form the only two-party majority coalition possible. But because New Zealand First had led many to believe it was more likely to ally with Labour, MMP was off to a very difficult beginning. 78 per cent of New Zealand voters reported to the 1999 Election Study that they preferred that parties make clear their coalition preferences before an election However, the institutional framework of New Zealand government places few constraints on coalition formation that might facilitate such accountability⁴⁴⁴

If we re-examine the German experience, we will notice that voters had limited influence on coalition formation for a long period of time. Free Democrats have been king makers, switching sides between Christian Democrats and Social Democrats. Most notoriously, in 1982 they ditched the Social Democrats to form a coalition government with Christian Democrats in the middle of the Parliamentary term. “To some people it is galling to think that a party whose vote share rarely reaches double figures could have such a hold on the reins of power.”⁴⁴⁵ It has been suggested that the 1998 elections, which brought a red-green coalition into power, was the first voter-led government change in post-war Germany.⁴⁴⁶

⁴⁴⁴ Jack Vowels, “New Zealand: The Consolidation of Reform?” in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 309.

⁴⁴⁵ David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 105.

⁴⁴⁶ David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 105.

4. Democratic Change

In the previous chapter, we mentioned that regarding the two aspects of democratic change, PR systems tend to perform well with allowing the emergence of new parties, but perform rather poorly on the alternation of governments. The same pattern holds true for MMP systems.

Regarding the openness of the system for new challengers, it has been documented that New Zealand's new MMP system opened the gate of representation for new parties that could not have performed well under the old plurality model:

The predictable effect of MMP has been to open up the electoral marketplace to more competition. Smaller parties discouraged under SMP have received payoffs under MMP in terms of seats and other parliamentary resources that now also enhance their organizational viability.⁴⁴⁷

As for the German experience, it seems that a balance has been struck between allowing the entry of new challengers and maintaining the stability of the system. As Saalfeld⁴⁴⁸ observes, some features of the system, especially the 5% threshold, have prevented new parties from immediate entry into the parliament and have maintained a comfortable space for the established parties; however, when new ideologies such as environmentalism have emerged, the system was open enough to allow new challengers such as the Green Party into Parliament.

⁴⁴⁷ Jack Vowels, "New Zealand: The Consolidation of Reform?" in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 304.

⁴⁴⁸ Thomas Saalfeld, "Germany: Stability and Strategy in a Mixed-Member Proportional System" in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 215-219.

Regarding the alteration of power, MMP does not seem to perform better than pure list PR systems. Indeed, the notorious example of the FDP's near permanent presence in government belongs to an MMP system. In the 49 year period from 1949 to 1998, the FDP was part of the governing coalition in Germany for 42 years.⁴⁴⁹

Apart from the alteration of governing parties, another aspect of the democratic renewal concerns a micro-level change of MPs. There are indications that in this regard the MMP's performance is worse than the PR's. As Saalfeld observes, incumbency benefits makes a challenge to district MPs in Germany more difficult than normal:

German ticket-splitters are more likely to give their first votes to incumbents and less likely to give them to those running against incumbents. They are more likely to give first votes to viable candidates from the party expected to be in government. And they are more likely to give them to major-party candidates when the district race is a close one.... The partisan composition of the Bundestag may be the same as it would under a simpler form of PR, but the electoral incentives of the individuals who occupy those seats are not.⁴⁵⁰

5. Strategic voting and wasted votes

In an article consigned to strategic voting in mixed-member systems, Thomas Gschwend thus outlines the phenomenon of strategic voting in MMP:

⁴⁴⁹ David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 104.

⁴⁵⁰ Thomas Saalfeld, "Germany: Stability and Strategy in a Mixed-Member Proportional System" in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 221-222.

In order to behave strategically in mixed electoral systems, voters have to anticipate the government formation process and form expectations about the success of parties and coalitions. Expectations about the viability of certain candidates, parties or coalitions come into play when voters make a decision whether to desert their most preferred choice and for whom to vote instead.⁴⁵¹

What I understand from this passage is that the same strategic considerations that exist in pure PR systems also exist in MMP systems. Therefore, the same comments that were made in the previous chapter should also hold true here. However, the existence of two - district and list - tiers in mixed systems involves new complexities in strategic behaviours. We will review some of these complexities below.

In New Zealand, the existence of two tiers has allowed the provision of two legal thresholds. If a party wants to have a share of list seats, it should either garner at least 5% of list votes or win at least one district seat. The following passage shows how these dual thresholds may have complicated consequences that warrant a more complicated strategic behaviour:

Discrepancies around the threshold may have a more immediate potential to disturb proportionality: for example, the ally of one major party could win 4.9 per cent of the party votes, but no constituency seat. Meanwhile, the ally of the other major party could win 3 per cent and, by winning a constituency seat, gain enough seats to throw a majority to a minority bloc, at least in terms of votes cast. However, threshold issues loom large in election campaigns under MMP in New Zealand, with the result that while it is far from inconceivable, the likelihood of such a situation emerging is limited by strategic voting. In other

⁴⁵¹ Thomas Gschwend, "Ticket splitting and strategic voting under mixed electoral rules: Evidence from Germany" (2007) 46 *European Journal of Political Research* 1 at 3.

words, those thinking in party bloc terms tend to give their votes to small ‘ally’ parties only if they are deemed likely to cross the threshold. Otherwise, those votes will stay with the bloc's core party, or otherwise with a more secure ally.⁴⁵²

Another complexity related to the dual thresholds in New Zealand happened in the 1999 elections. The Green party had two strategies for passing the threshold: on the one hand it encouraged left leaning voters to vote for the Green party - which would be a coalition partner for Labour - in the list vote and helped it pass the 5% threshold. On the other hand, it was concentrating lots of resources in a district race in which one of its leaders was a candidate. Eventually, it was successful in both strategies. “While the constituency effect was based on strategic voting by those with primary Labour preferences, the party vote effect appears to have been among those with Green primary preferences who had hitherto been too pessimistic about Green prospects to consider a Green vote.”⁴⁵³

As the proposed reforms in Canada did not include a district seat threshold, we need not worry about the complexities caused by dual thresholds. However, there is an aspect of mixed-member systems that seems to be pertinent: the double vote nature of the MMP elections and how the interaction between the district and list votes can influence strategic voting. Saalfeld⁴⁵⁴ - among others - argues that a considerable number of German voters vote strategically in their list vote to help a prospective coalition partner pass the 5% threshold. However, it seems the only evidence he has is the number of voters who have voted for a large party in their district vote but consigned their list vote to a small party. This does not

⁴⁵² Jack Vowels, “New Zealand: The Consolidation of Reform?” in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 301.

⁴⁵³ Jack Vowels, “New Zealand: The Consolidation of Reform?” in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 304.

⁴⁵⁴ Thomas Saalfeld, “Germany: Stability and Strategy in a Mixed-Member Proportional System” in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 222-224.

necessarily mean that they have voted strategically in their list vote. Indeed, on the balance of probabilities, the reverse should be true: Some supporters of small parties vote strategically in their district vote because they know small party candidates don't have a realistic chance of winning a plurality race. I put forth two additional reasons why this might be true: 1. Deciding to prop up a junior prospective coalition partner requires a strategic sophistication and detailed attention to political developments, which is not typical for an ordinary voter. 2. As recent German election results show, neither of the two main junior coalition partners – the Greens and FDP – have been in danger of falling below the threshold. All of these factors do not mean that strategic voting in the list vote does not happen, but imply it should not be as prevalent as Saalfeld and others think. Newer studies⁴⁵⁵ confirm that not all instances of ticket splitting involve a strategic list vote and the ratio of strategic voting in the list vote is very low.

With regards to strategic voting in the district vote, while it is prevalent, it is not as undesirable as in pure plurality systems. Firstly, supporters of small parties have expressed their first preference in their list vote and voting for a larger party in the district vote does not frustrate the expression of their preference and does not prevent them from “playing a meaningful role in the electoral process” as *Figueroa V. Canada*⁴⁵⁶ warrants. Secondly, voting strategically in the district race is not as important as in plurality systems because the final composition of the parliament is determined by the list vote. The strategic vote only has a personal significance. In the sense that if, for instance, a voter prefers Ms. X from Social Democrats to Mr. Y from Christian Democrats, she can vote for X instead of wasting her vote on Mr. Z from the Greens. However, if she likes Mr. Z so much that she wants to

⁴⁵⁵ See for instance: Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 86.

⁴⁵⁶ *Figueroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912, 2003 SCC 37.

express her preference towards him despite knowing that he will not be elected, she can vote for him without fearing that this act will have a negative impact on the political composition of the parliament.

Interestingly, Karen Cox and Leonard Schoppa demonstrate⁴⁵⁷ that Duverger's law of gravity towards a two-party model is not as strong in the district tier on MMP systems as in pure plurality systems. One of the main reasons why district races in MMP are not reduced to two-party competitions should be because strategic pressure in these races is not strong. These races are not crucial in the final outcome of the general elections.

In conclusion, I posit that while there are some complicating features in MMP system, the pressure for strategic voting here is not significantly more than in pure PR systems and it is markedly less than in pure plurality systems.

6. Power of central parties

As our previous discussions demonstrate, when it comes to the issue of the limits of the powers of the central party and candidates, the dilemma is that when power is overly concentrated in a central party, oligarchic tendencies might develop, parties might become insensitive to some of the preferences of the voters and local interests might get neglected. On the other hand, when individual candidates have too much power, party discipline might get undermined; consequently, the whole political system may be destabilized and national interests might become neglected. Shugart thus describes the way electoral systems affect this issue:

⁴⁵⁷ Karen Cox & Leonard Schoppa, "Interaction Effects in Mixed-Member Electoral Systems: Theory and Evidence from Germany, Japan, and Italy" (2002) 35 *Comparative Political Studies* 1027.

... [O]ne extreme deviation is what I shall call a *hyper-personalistic* system, in which individual legislators form personal-support networks that deliver small, clientelistic favors to voters. When elections are hyper-personalistic, the identity and entrepreneurial activities of individual candidates trumps the identity of parties in voter choice, with the result being that party political programs are not the basic stuff of the campaign. Among advanced industrial democracies, pre-reform Japan would be the clearest example. The opposite extreme is what I shall call a *hyper-centralized* system, in which party leadership so dominates over candidates that parties tend to be cut off from the policy preferences of their voters because individual members have no incentive to find out what voters want.⁴⁵⁸

Shugart purports that mixed-member electoral systems strike the right balance between these two extremes:

... purely nominal voting implies “strong candidates” because, with voters casting votes for candidates by name, individual legislators and legislative candidates tend to develop personal reputations as worthy representatives of a constituency. List voting, on the other hand, implies “strong parties”, because voters are selecting only parties and thus may not even know the identity of the candidates who will fill their preferred party's seats.

... mixed-member systems balance the two forms of representation by electing some members nominally and others from party lists. Therefore, the possibility again exists of having it both ways, with (1) constituent ties to voters in their localities via nominal representation in single-seat districts, and (2) relatively

⁴⁵⁸ Mathew Shugart, “Extreme Electoral Systems and the Appeal of the Mixed-Member Alternative” in Mathew Shugart & Martin Wattenberg, eds. *Mixed-member electoral systems: the best of both worlds?* (Oxford : Oxford University Press, 2001) at 30.

strong and cohesive nationally focused parties promoted by the election of many members from party lists.⁴⁵⁹

This is a partial solution. It resembles a compromise, where half of the MPs are elected in a manner that is characterized as hyper-personalistic by Shugart, and the other half in a manner that he calls hyper-centralized. Mixed-member systems cannot automatically qualify as balanced systems in this regard. More attention should be paid to the specifics of each system.⁴⁶⁰ Regarding the Canadian MMP proposals, when it comes to constituency candidates, one can say that those proposed systems would not fare significantly worse than other main systems. Regarding list candidates, there was no provision in the proposals indicating how general voters or local party organizations could influence the selection of candidates. The same criticisms aimed at closed-list systems can be raised here.

7. Turnout

In this criterion, MMP systems do not differ from other PR systems.

⁴⁵⁹ Mathew Shugart, "Extreme Electoral Systems and the Appeal of the Mixed-Member Alternative" in Mathew Shugart & Martin Wattenberg, eds. *Mixed-member electoral systems: the best of both worlds?* (Oxford : Oxford University Press, 2001) at 26-27.

⁴⁶⁰ Max Kaase was happy about the way the German system functions: "Taking into account the concerns democratic theorists have voiced regarding the oligarchic tendencies in parties, the electoral law has had a beneficial effect in strengthening the position of the local party organization in nominating candidates. Local parties have the right to nominate constituency candidates, and can even override vetoes by the state party organization" Max Kaase, "Personalized Proportional Representation: The "Model" of the West German Electoral System" in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 163.

Subsection 2: Diversity

1. Political diversity

There is no significant reason to believe that MMP systems deviate from pure PR systems in promoting political diversity. The mixed element of the MMP systems concerns the selection method of MPs. The overall result is proportional and therefore conducive to political diversity. There are some arguments that Germany (the prime example of MMP systems) has had fewer parties than most PR systems; however, as will be discussed under “stability,” this does not seem to be a general trait of MMP systems. There might be some interactive effects between the two tiers of elections. Bipolar competitions in constituencies might have a contaminating effect on list votes. However, this effect is not strong enough to amount to stifling small parties. Like pure PR systems, the main challenge comes from the legal threshold of representation. High thresholds exert strategic pressures on marginal parties and it is not clear how these systems can accommodate marginal parties to satisfy the criteria put down in *Figueroa*.

2. Social Diversity

Studies on Germany and New Zealand, the two prominent MMP using countries, demonstrate that like other models of PR, MMP systems are conducive to the representation of women and minorities. The following passage is a short description of the status of female representatives in Germany:

The number of female MdBs increased from 7 per cent in 1949 to nearly one-third in 2002, with the Greens (58 per cent female MdBs) and the SPD (38 per cent) leading the way. Women are still far more likely to get elected via the Land lists than in the SMDs. Nevertheless the election of 2002 demonstrated significant moves to more equality at least within the SPD (the Greens win direct seats only in exceptional circumstances). SPD constituency parties, in particular, are willing to nominate more females for winnable district races than in the past: the share of women representing SPD-won districts as direct candidates (30 per cent) was clearly below the share of party-list seats allocated to female SPD candidates (55 per cent), but still high. The CSU (with 14 per cent of elected district candidates being female) and the CDU (9 per cent), the only other two parties able to win a significant number of district races, lagged clearly behind in this respect.⁴⁶¹

There are some points that should be made about the cited passage. 1. The fact that more women are elected through lists than through constituency contests is an indication that list PR systems are more conducive to female representation than constituency based systems like plurality. 2. This can also indicate that MMP systems may lag behind pure PR systems on terms of representation of women because their constituency half is not as representative as list contests. 3. However, parties can offset this shortcoming by nominating more women in their lists (as more than half of PSD's list candidates were woman). 4. Still, there are limitations that cannot be offset in such a way. Different parties with different proportions win seats in the constituency and list tier of elections. For instance, most Christian Democrat MPs are elected in constituency elections and most of them are men, while all of the Free Democrat MPs are elected through lists. It is not clear if and why Free Democrats will

⁴⁶¹ Thomas Saalfeld, "Germany: Stability and Strategy in a Mixed-Member Proportional System" in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 220.

nominate more women to offset the female deficit in the Christian Democrat caucus. Having said all that, in a worldwide comparison, MMP systems rank well in terms of the percentage of female representatives. This percentage has increased in New Zealand, since it ditched the plurality system for MMP:

... there is a consensus that from 1996 on parliament has become more representative in descriptive terms. Women's representation is the best example, up about ten percentage points. Consistent with international evidence, party lists have been the most effective means of achieving this goal ...⁴⁶²

According to the same report the percentage of representatives from Maori and Asian minorities in New Zealand has also markedly increased since the adaptation of MMP.⁴⁶³

Ontario Citizens' Assembly was aware that the list tier can be used to ensure a degree of fairness in the representation of women and minorities. It was justly perceived that closed-lists are better for this objective. The same forces which tilt the system towards the overrepresentation of white males can to some degree influence the open lists. That is partly why the Assembly opted for closed-list model despite its other defects. It is worthwhile to cite the following passage from the Assembly's report:

With a closed list, there is a greater likelihood that members elected from the list will come from different regions of the province and will include more women and others currently under-represented in the legislature. This is because the list

⁴⁶² Jack Vowels, "New Zealand: The Consolidation of Reform?" in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 307.

⁴⁶³ Jack Vowels, "New Zealand: The Consolidation of Reform?" in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 308.

cannot be re-ordered and because parties will have an incentive to ensure that their list appeals to as many voters as possible.⁴⁶⁴

3. Regional diversity

We are already acquainted with the debate on constituency MPs versus non-local MPs. It is argued that small constituencies (typical in majoritarian elections) are more sensitive to regional diversity and local interests, while PR parliaments where electoral lists are either national or based on large regions fail to deliver constituency work. It is justly believed that MMP systems present an improvement over pure PR systems regarding regional representation. Indeed, this may be their main appeal. While proportional representation is preserved, constituency MPs ensure that constituency work is not neglected. However, a degree of compromise is involved here. First with a fixed size of assembly, constituencies have to be larger than pure SMD systems. Secondly, even if constituency MPs are sensitive towards local issues, list MPs might neglect them. The following passage confirms this assumption in New Zealand:

List MPs are not recognized by or in contact with as many citizens as constituency MPs However, constituency MPs in New Zealand traditionally provide services to their constituents, and are given more resources than list MPs to do so. Some list MPs seek to provide similar services in their local or regional communities. Others see their role as more focused on parliament.⁴⁶⁵

⁴⁶⁴ The Ontario Citizens' Assembly on Electoral Reform, "Democracy at Work: The Ontario Citizens' Assembly on Electoral Reform" (2007) at 150, online: The Ontario Citizens' Assembly on Electoral Reform <[http://www.citizensassembly.gov.on.ca/assets/Democracy at Work - The Ontario Citizens' Assembly on Electoral Reform.pdf](http://www.citizensassembly.gov.on.ca/assets/Democracy%20at%20Work%20-%20The%20Ontario%20Citizens'%20Assembly%20on%20Electoral%20Reform.pdf)>.

⁴⁶⁵ Jack Vowels, "New Zealand: The Consolidation of Reform?" in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 305.

Saalfeld⁴⁶⁶ demonstrates that there are measures that can offset the lack of local link of list candidates. In Germany a high percentage of candidates compete both on local contests and list contests. This double candidacy blurs the boundary between constituency MPs and list MPs. Additionally, many elected list MPs have also campaigned in a constituency therefore they have a kind of local link. Thus, some constituencies might end up sending two MPs to the parliament: one who is directly elected in the local contest and another who is defeated in the local contest but wins a seat through a list. Even candidates who only run as a list candidate are expected by the party and constituency candidates to engage in some degree of constituency campaigning.

Farrell,⁴⁶⁷ among others, argues that one should not be mistaken by equating the notion of constituency work in Anglo-American countries with that of Germany. By English standards there are no constituency MPs in Germany. Even directly elected MPs do not qualify, let alone list MPs. However, one should not expect the same pattern to be repeated in Canada if MMP is adopted. While Germany shifted from pure PR with no districts to MMP, the notion of constituency work is already well rooted in Canada.

Again, Ontario's citizen's assembly has argued that a closed-list version of MMP is a better means of ensuring a regional balance on party lists.⁴⁶⁸

⁴⁶⁶ Thomas Saalfeld, "Germany: Stability and Strategy in a Mixed-Member Proportional System" in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 219-220.

⁴⁶⁷ David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 105-106.

⁴⁶⁸ The Ontario Citizens' Assembly on Electoral Reform, "Democracy at Work: The Ontario Citizens' Assembly on Electoral Reform" (2007) at 150, online: The Ontario Citizens' Assembly on Electoral Reform <[http://www.citizensassembly.gov.on.ca/assets/Democracy at Work - The Ontario Citizens' Assembly on Electoral Reform.pdf](http://www.citizensassembly.gov.on.ca/assets/Democracy%20at%20Work%20-%20The%20Ontario%20Citizens'%20Assembly%20on%20Electoral%20Reform.pdf)>.

Subsection 3: Efficiency

1. Stability

As we have observed, satisfaction of some of our desired values usually comes at the expense of frustrating another value. The starkest example is the clash between the value of political diversity and the value of stability. Some systems, such as plurality, aim at ensuring a stable polity but in doing so stifle political diversity. Others, such as pure PR, are seen as conducive to political diversity but the resulting fragmentation in the parliament is generally perceived as contributing to government instability. Some scholars tend to view mixed-member systems as an ideal balancing system. Shugart and Wattenberg promote mixed-member systems as the best of two worlds. Among its virtues, they purport that mixed-member systems combine the political diversity factor with the stability factor or at least make a sound compromise between these two values.⁴⁶⁹ But at least as long as mixed-member proportional (MMP) systems are discussed, it is not clear why they should provide more stable polities than other forms of PR. After all, despite their mixed-member dimension, MMP systems are designed to be fully proportional; therefore the same degree of fragmentation seen in pure PR systems is also expected in MMP systems.

There seems to be no theoretical basis for believing that MMP systems, which have two tiers of representation, are less fragmentary than Pure PR systems.⁴⁷⁰ Interestingly, Bawn and

⁴⁶⁹ Mathew Shugart & Martin Wattenberg, eds. *Mixed-member electoral systems: the best of both worlds?* (Oxford : Oxford University Press, 2001), more specifically at Chapter 2: , Mathew Shugart, “Extreme Electoral Systems and the Appeal of the Mixed-Member Alternative”.

⁴⁷⁰ See for instance: Kathleen Bawn & Michael F. Thies, “A Comparative Theory of Electoral Incentives: Representing the Unorganized under PR, Plurality and Mixed-Member Electoral systems” (2003) 15 *Journal of Theoretical Politics* 5 at 5-7.

Thies⁴⁷¹ point out a situation in which MMP can be more fragmentary than both plurality and pure PR. That happens when some small parties who would not be represented under a plurality formula gain representation through a PR tier, while other small parties which would not pass the legal threshold and therefore remain unrepresented under pure PR might win some district seats (because they have a strong small regional base) and contribute to the fragmentation of the parliament.

With no theoretical basis for this claim, arguments tend to be anecdotal. Since Germany has dominated the studies and discussions about MMP, it turns out that the German system has been the source of this perception. Compared to most other PR systems, the German parliament is less fragmented and the turnover of governing coalitions has been fairly infrequent. However, having assumed that the electoral system has a role in this state of affairs, Saalfeld is quick to point out that it cannot be the only factor:

The electoral system is, however, only one among several factors contributing to favourable conditions for stable coalition government. There are a number of other factors such as the ‘politics of centrality’ after the experience of National Socialism and in the context of the cold war ... the rapid economic recovery after 1948, and the capacity of the two major parties, the Christian Democrats in particular, to integrate potentially extremist parties representing, for example, the interests of German refugees from eastern Europe. At any rate, by 1961, a bipolar ‘two-and-a-half-party system’ had been established with the FDP in the function of a pivotal party. Since the late 1990s, the Federal Republic has been experiencing a bipolar two-bloc system with the SPD and the Greens to the left of the political centre pitted against the CDU/CSU and FDP right of the centre

⁴⁷¹ Kathleen Bawn & Michael F. Thies, “A Comparative Theory of Electoral Incentives: Representing the Unorganized under PR, Plurality and Mixed-Member Electoral systems” (2003) 15 *Journal of Theoretical Politics* 5 at 7.

.... This bipolar pattern is generally believed to be conducive to high levels of cabinet durability⁴⁷²

Max Kaase also points out to social (or non-institutional) factors that have contributed to the stability of German politics:

The absence of major ideological, religious, language, and other cleavages, the fast integration of the one large minority group West Germany possessed after the war –the refugees- the enormous economic recovery, and the existence of impressive political actors, the most noteworthy being Konrad Adenauer, plus the clear-cut orientation towards the west, jointly made West Germany a reasonably stable and operational democratic polity of Western kind.⁴⁷³

The influence of the German experience has been so great that Bowler and Farrell argue that it is the main reason why MMP is the most popular systems with electoral studies scholars:

[W]hat may well have turned the scale for MMP over list PR is that the former is more clearly associated with effective government and accountability than the latter (which may simply reflect the tendency of the longest-standing MMP system, Germany, to have two parties in government rather than multi-party coalitions).⁴⁷⁴

⁴⁷² Thomas Saalfeld, “Germany: Stability and Strategy in a Mixed-Member Proportional System” in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 222.

⁴⁷³ Max Kaase, “Personalized Proportional Representation: The “Model” of the West German Electoral System” in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 161.

⁴⁷⁴ Shaun Bowler & David M. Farrell, “We Know Which One We Prefer but We Don’t Really Know Why: The Curious Case of Mixed Member Electoral Systems” (2006) 8 BJPIR 445 at 450; see also: David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 102.

Apart from social factors, if there is anything in the German institutions that promote stability, it is not the double-tier nature of the electoral systems. The most important institutional factor should be the relatively high 5% legal threshold of representation.⁴⁷⁵ Legal thresholds are not a unique feature of MMP systems and they are also exercised in pure list PR systems. Therefore, MMP systems cannot be credited with what thresholds do. Additionally, high thresholds leave little room for accommodating small parties and as we have discussed, in Canada this is problematic in light of *Figueroa v. Canada*.

There is also a nuance in the German system that may tip the system towards less fragmentation:

[T]he location of the different votes on the ballot paper is deliberate. The district vote is called the ‘primary vote’ (Erststimme); it is supposed to be more important than the list vote. However, as Taagepera and Shugart ... point out, this is really a ‘psychologically important nuance’, intended to create the impression that the district vote is more significant.⁴⁷⁶

Since the district vote is the first vote on the ballot paper and it is qualified as the ‘primary vote,’ voters pay more attention to this part of the ballot where strategic considerations under a plurality contest favour the larger parties and sometimes small parties do not even field a district candidate. Then, this has a spill over effect on how people vote in their secondary vote. “[S]urvey data confirm that the ranking of the two formulae is misinterpreted by many

⁴⁷⁵ See: David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 102; Max Kaase, “Personalized Proportional Representation: The “Model” of the West German Electoral System” in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 161.

⁴⁷⁶ David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 97.

voters.”⁴⁷⁷ However, it should be borne in mind that this nuance is a specialty of the German system. In the other main established democratic system that uses MMP, New Zealand, the more significant list vote is featured first.⁴⁷⁸ Furthermore, the German way of ordering of the votes was never proposed in any of the Canadian provincial reform proposals.

If we distance ourselves from the domineering German system, we will find that in the other prominent MMP system, New Zealand, fragmentation has been much greater than in Germany. The effective number of parliamentary parties nearly doubled in New Zealand immediately after MMP was adopted in the 1990s.⁴⁷⁹ As per Vowel’s description⁴⁸⁰ New Zealand cannot be regarded as a highly unstable system, but government formation and coalition discussions have not been without difficulty.

2. Moderation

In this regard, MMP systems do not differ from pure PR systems in a significant manner. However, there is one nuance. First, in the district elections there is no macro-level strategic pressure. For example, Free Democrat voters are not compelled to vote for a Christian Democrat candidate strategically. They know that even if a left wing candidate is selected in their district this will not affect the overall composition of the parliament because list tier allocation will balance the ratio of seats and votes. There can be only micro level strategic voting and this is mostly concerned with the personal appeal of the candidates. If a

⁴⁷⁷ Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 86.

⁴⁷⁸ David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 109.

⁴⁷⁹ Jack Vowels, “New Zealand: The Consolidation of Reform?” in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 302.

⁴⁸⁰ Jack Vowels, “New Zealand: The Consolidation of Reform?” in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 308-309.

Free Democrat supporter prefers the election of his district's Christian Democrat candidate to a Christian Democrat list candidate, he should vote for Christian Democrats in the district race, for the same reasons he might opt to vote for a likeable Social Democrat candidate knowing that this will not ameliorate the overall standing of Social Democrats. Therefore, a district candidate, in order to be successful, will be encouraged to woo voters from other parties (maybe even voters from the other side of the spectrum). In order to do so, she should take moderate stances. Therefore, an MMP scheme can have a moderating effect on the personal views of district candidates.

Another noteworthy issue is the role that the Free Democrat Party (FDP) has played in Germany's MMP system. We saw that FDPs long tenure in governing coalitions has been criticized as an instance of the frustration of democratic change. On the positive side, it can be argued that Free Democrats have played a moderating role in German politics. By joining their senior coalition partners from the left and right, they have brought them closer to the center. There are two reservations to this positive assessment: first, moderation should not come at the expense of frustrating democratic change. Perhaps there are other electoral systems that can manage that. Second, the role the FDP has played in Germany should not be regarded as a unique quality of MMP systems. The same scheme can happen under other PR systems.

3. Accountability

There is nothing in MMP systems that can differentiate them from pure PR systems regarding the accountability of governments. The generally negative points made about the state of accountability of governments in PR systems should also hold true in MMP systems

where coalition governments are the norm. Any difference between MMP and pure PR systems on this dimension should be about the personal accountability of the MPs. Since in a MMP system a group of MPS compete in single-member districts and are directly elected, one may expect them to feel more accountable to the voters compared to list MPs. However, Baldini and Pappalardo cite reasons why this assessment should be treated with caution:

As far as personalization is concerned, some analyses have shown that the single-district vote is not really related to important accountability links between voters and representatives. According to Survey data of the Comparative Study of Electoral Systems, almost 60 percent of German voters are not even able to name one candidate⁴⁸¹

One reason for this lack of personal accountability may be the German political culture, in which the notion of a constituency MP is not popular. An institutional reason may be the diminished importance of district races. If a candidate becomes unpopular in his district and loses the district race, the consequences for her party will not be as dire as under a plurality. At the end of the day, the list vote and not the personal votes of the candidates determines how many seats the party will have. Additionally, as has been noted, double-candidacy on both list and district is a common practice. If an MP loses her district race, she may still get elected through the list, therefore she should not be overly worried about her popularity in the district.

⁴⁸¹ Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 86.

4. Regionalism

If we recall our discussions about the role of the plurality model in promoting regionalist politics we will find that regionally concentrated parties will have an advantage in district races under the MMP model. However, since the system is proportional, at the end of the day the regionalist party's share of seats will not exceed its share of votes. Let us consider an example. In the 2008 Canadian Federal Election, the Bloc Quebecois won 49 seats (16% of seats) by under 10% of the votes under the plurality model. Suppose that Canada had an MMP system in which half of the seats were allocated through lists. Under this scheme, the BQ would win about 24-25 seats in district races.⁴⁸² 6-7 additional list seats would be allocated to the BQ to bring the total to around 31 seats, which is proportional to its vote % and 16 less than it won in 2008. However, if the ratio of district to list seats was 3:1 (which is closer to what was in Canadian provincial proposals), the BQ would win around 37 district seats and no list seats. Thus, it would end up with 6 overhang seats and would still have more seats than its fair share.

5. Simplicity

A MMP may not be a very complicated system but it is not as simple as some other models such as plurality or pure PR. As Baldini and Pappalardo put it, complication is one of the criticisms raised against mixed systems:

⁴⁸² For the sake of simplicity I disregard the fact that larger parties benefit from larger districts and since the BQ was the largest party in Quebec by doubling the population size of the districts it might have won more than 24-25 district seats. Also, I disregard the effect of the wasted votes, which would go to parties who fail to pass the threshold.

Indeed, one of the main criticisms moved against these systems is exactly that, by combining different formulae and making use of complex devices, they tend to be very complicated.⁴⁸³

One would expect this not to be an issue in a country like Germany where voters have been used to the system, but Kaase suggests otherwise:

The two-ballot element of the electoral system has been regarded as a particularly intelligent feature, because it is supposed to highlight the direct voter influence on the selection of deputies. Unfortunately, surveys have repeatedly shown that even at the height of any given campaign, less than half of the voters know the precise meaning of the two ballots ...⁴⁸⁴

When attempting to adopt a new electoral system, its understandability is of great importance. One of the reasons why people did not vote for MMP in the Ontario and PEI referendums might be because they did not completely understand it.

6. Miscellaneous issues

One of the advantages of mixed-member systems (including MMP) is that parties can ensure the election of their prominent politicians by placing them high on the list. Double candidacy allows party leaders to fight in a particular district and thus contribute to the chances of their parties through district campaigning while escaping the consequences of

⁴⁸³ Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 82-83.

⁴⁸⁴ Max Kaase, "Personalized Proportional Representation: The "Model" of the West German Electoral System" in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 163.

local campaigning upsets because they can gain a seat through list allocation even if they lose the district race (this actually happened to the German Chancellor Helmut Kohl in 1998⁴⁸⁵). In Germany, apart from the two largest parties, leaders of other parties are usually elected through lists. On the negative side, some⁴⁸⁶ have mentioned that dual-candidacy is an unpopular device: it is sometimes viewed as a tool used by parties to re-elect unpopular politicians.

There is another feature of the MMP model that makes it a desirable model for Anglo-American countries that would want to introduce proportional representation.⁴⁸⁷ Compared with pure PR, where there are no small constituencies, MMP can be built upon existing electoral institutions and customs. Its adoption does not involve abandoning single-member districts.

Section Three: Assessing the STV Systems

Subsection 1: Democratic Expression

1. Proportionality

STV is categorized as a proportional representation system. The idea of determining winning quotas and transferring surplus and eliminated votes is partly to avoid a winner-

⁴⁸⁵ David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 106.

⁴⁸⁶ See for instance: Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 93.

⁴⁸⁷ William P. Irvine, “ ‘Additional-Member’ Electoral Systems” in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 167.

takes-all situation, which would materialize in a multi-member constituency if only the first preferences of the voters were counted. Along with list PR (which includes pure list PR and MMP), STV is one of two main categories of PR systems. As an example, data from Irish elections⁴⁸⁸ show, the difference between vote and seat percentages of parties are usually not larger than a few points; although the Fianna Fail, the largest party, has occasionally benefitted from as much as 7 percentage points of disproportionality. Any disproportionality that exists here seems to be a consequence of small district magnitude. In average, STV districts have only 5 seats. Small district size is a necessity in STV elections. Large districts will result in too many candidates that have to be ranked by the voters, making the act of voting an onerous task:

When dealing with the issue of proportionality, the point of greatest significance ... is constituency size If Hare's proposal of having all of the UK as one great constituency was followed, this would produce a highly proportional result, but at what cost? Imagine the unfortunate voter having to decide between thousands of candidates on a ballot paper which would be several metres long! ... A ... recent case of this type was the now infamous 'tablecloth election' in the Australian State of New South Wales in 1999. There were 80 parties that between them fielded 264 candidates for the 21 seats that were to be filled, resulting in a ballot paper that measured one metre by 70 centimetres⁴⁸⁹

However, interestingly, elections data show that in STV systems such as Ireland we do not observe the same degree of disproportionality as we would expect of 5 seat districts under list PR formula. Under list PR, the effective threshold of representation for a five seat district

⁴⁸⁸ See David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 143.

⁴⁸⁹ See David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 142.

under list PR is 20%.⁴⁹⁰ This implies that small parties will get heavily punished while in Ireland parties with single digit supports have gained a relatively proportionate representation. The reason for this is that through preference voting smaller parties can help each other. Gallagher explains this in the case of Ireland:

Under PR-STV, the tendency of the largest party to win a seat bonus creates its own countervailing force. The transferability of votes means that it is possible, and may be strategically sensible, for supporters of smaller parties to use their votes in such a way as to help each other and thereby prevent the larger ones reaping a sizeable bonus. In Ireland, this helps to explain the relatively low level of disproportionality. At all elections since 1932 the largest party, Fianna Fáil, has been perceived to have had some kind of chance of winning an overall majority of seats, and this gives supporters of other parties an incentive to deploy their lower preference votes against it, regardless of their respective policy positions. Indeed, even supporters of parties that might see Fianna Fáil as a potential coalition partner have an incentive to do this, in order to prevent Fianna Fáil securing an overall majority and thereby rendering their own party redundant in the government formation process⁴⁹¹

A problematic issue here is that the figures of disproportionality under a STV system might be misleading when compared with list PR systems. Although Ireland has a higher disproportionality point than most list PR countries, it should be borne in mind that STV functions differently from list PR. When calculating the disproportionality figures for STV systems, only the first preferences of the voters are counted in determining vote percentages, whereas it may be the case that a bonus that a party receives in terms of seat percentage may

⁴⁹⁰ This is the percentage which ensures representation, occasionally a party with fewer votes may win a seat because for instance because it has the largest remainder under the largest remainder formula.

⁴⁹¹ Michael Gallagher, "Ireland: The Discreet Charm of PR-STV" in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 522.

be a result of its favourable position in the next preference of the voters. Basing the support of a party only on the first preference of voters is not just under this system. Gallagher points out⁴⁹² how Fianna Fail increased its bonus in the seat percentages after 1989 when it began making coalitions with other parties. This resulted in Fianna Fail candidates acquiring better positions in the preferences of voters who cast their first preference vote for other parties.

Another problem is that “STV is a quintessentially candidate-based system, which causes difficulties for measures of proportionality that are based on vote and seat shares of *parties*”⁴⁹³. For instance, with the prevalent practice of voting across party lines, a voter may vote for a candidate from Party A first, but dedicate his second and third preferences to Party B. It is difficult to treat his vote as an indication of support for Party A.

However, disproportionality of results under STV has not always been uncontroversial. A noteworthy example is that of the 1981 Maltese election. Nationalist Party won a majority of votes (50.9%) but the majority of seats were rewarded to the Labour Party, which went on to form the government. Constitutional amendments were made in 1987 and 1996 to ensure that whenever a party wins a majority of votes, or captures a plurality of votes but only two parties manage to win seats, it will be given enough additional seats to form the parliamentary majority.⁴⁹⁴

A specific problem that may disturb the proportionality of STV systems is when vacancies are filled through by-elections. There are two main methods of filling the parliamentary vacancies: some systems use the count-back method where the results of the previous

⁴⁹² Michael Gallagher, “Ireland: The Discreet Charm of PR-STV” in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 522.

⁴⁹³ David M. Farrell & Ian McAllister, “Through a Glass Darkly: Understanding the World of STV” in Shaun Bowler & Bernard Grofman, eds. *Elections in Australia, Ireland, and Malta under the Single Transferable Vote: Reflections on an Embedded Institution* (Ann Arbor: The University of Michigan Press, 2000) at 21.

⁴⁹⁴ Wolfgang Hirczy de Mino & John C. Lane, “Malta: STV in a Two-Party System” in Shaun Bowler & Bernard Grofman, eds. *Elections in Australia, Ireland, and Malta under the Single Transferable Vote: Reflections on an Embedded Institution* (Ann Arbor: The University of Michigan Press, 2000) at 186.

election in the affected district are examined again by omitting the preferences given to the vacating candidate. According to the results, another candidate is called to fill the vacancy. Other systems – including the system in Ireland and the BC proposal - fill the vacancies through by-elections. A by-election for a single seat is essentially an AV election in which large parties have an advantage. However, in the Irish case, “though this should in theory discriminate against small parties, in practice this factor is countered by the swing against large parties, especially if in government, that is characteristic of second-order elections”⁴⁹⁵.

2. Aggregation of preferences

Issues raised about this factor in the previous chapter when assessing the pure list PR model generally apply here, too. Without repeating those, we turn to some issues specific to STV.

We observed that in the 1981 Maltese election disproportionality resulted in depriving a party that had won the majority of votes from forming the government. This was a clear example of the system failing to respond to the aggregate preferences of the voters, although I have not seen any evidence that suggests such a situation can be a common occurrence under STV. A failure might also result from “the fact that the STV system, at least as used in Ireland, contains an element of chance.”⁴⁹⁶ A chancy element of the Irish system is that the surplus of votes of an elected candidate, which should be transferred to other candidates, is chosen randomly. As a simple example, if the quota needed for an election is 8 votes and candidate A gets 10 votes, 2 of his votes should be transferred to other candidates according

⁴⁹⁵ Michael Gallagher, “Ireland: The Discreet Charm of PR-STV” in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 520.

⁴⁹⁶ David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 133.

to the second preferences of voters. Those two ballots are selected randomly from among 10 ballots. In order to cancel this element of chance, some systems transfer the votes according to their fractional value. For instance, here all ten votes are transferred with a fraction value of 1/5 each. This method complicates the vote calculations. However, I do not regard this nuance as significant. When we are dealing with large numbers of votes, the chance involved decreases. However, a particularity of the transfer method seems problematic at first glance. Let us read the description of a particular stage in the vote transfers:

The process [of transferring surplus votes] becomes more complicated still when the task is to distribute the surplus votes of an elected candidate that have accrued on a count subsequent to the first count. In this case only the votes in the last parcel received are examined (that is, the votes received by the elected candidate on the count on which he or she was elected).⁴⁹⁷

In other words, suppose Candidate A from the Pear Party wins in the first count and when her surplus votes are transferred, Candidate B from the Apple Party is elected in the second count. Since the number of votes transferred from A to B was more than B needed, now some of his votes should be transferred. The votes to be transferred from B are randomly selected from only the ballots that were originally transferred from A to B. As Farrell puts it, “It is debatable whether they represent an accurate sample of the average B-supporter.”⁴⁹⁸ If all ballots are to be transferred according to their fractional value, the result might be different. However, if we look more closely, we discover that B had no votes to transfer to

⁴⁹⁷ Richard Sinnott & James McBride, “Preference Voting under PR-STV 1948–2011” in Michael Gallagher & Michael Marsh, eds. *How Ireland Voted 2011: The Full Story of Ireland’s Earthquake Election* (Basingstoke : Palgrave Macmillan, 2011) at 206.

⁴⁹⁸ David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 140.

begin with. The reason we are transferring some of his votes is because more of A's votes were transferred to him than needed. Now, we are freeing the surplus votes from A to find their place. Consequently, this scenario does not result in deviating from the aggregate preferences of the voters.

Some authors have pointed out some speculative logical deficiencies of the STV system.⁴⁹⁹ If true, these deficiencies would result in the electoral system being non-responsive to the aggregate preferences of voters. As an example, one of these defects is non-monotonicity: it is theoretically possible to envisage a situation in which a candidate loses as a result of an increase in her first-preference votes. However, it seems that these deficiencies are the results of purely theoretical and mathematical speculations, with no practical significance. "Indeed, the Chief Electoral Officer of Northern Ireland is quite categorical in his view that 'the experience of the use of STV in Northern Ireland over the past 22 years, involving a range of election types and sizes, reveals no evidence to support *in practice* the lack of monotonicity'"⁵⁰⁰.

Preferential systems (that include STV and AV) may be the most successful systems in practice in terms of picking the Condorcet winner. However, even these systems are not immune to failure in picking the Condorcet's winner:

... it is sometimes objected that the lowest candidate is not necessarily the fairest candidate to defeat. ... [a] candidate who is 'everybody's second choice' but few

⁴⁹⁹ See: Michael Dummett, *Principles of Electoral Reform* (New York: Oxford University Press, 1997) at 142-161; Steven J. Brams & Peter C. Fishburn, "Some Logical Defects of the Single Transferable Vote" in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 147-151; David David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 149-151; Michael Gallagher, "Ireland: The Discreet Charm of PR-STV" in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 516.

⁵⁰⁰ David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 151.

people's first choice might occasionally be a more readily acceptable representative of a quota of voters than a candidate who defeated him on early choices and went on to win.⁵⁰¹

This objection is not significant, either. This situation does not seem to be a frequent occurrence in practice, and in any manner, preferential voting is the most efficient practical system in picking the Condorcet winner. Eliminating the slightest chance of getting a non-Condorcet winner requires designing a very complicated and unpractical system.

3. Direct election of government and mandate

STV is a proportional system that results in coalition governments, therefore the same issues raised about the defects of PR systems in letting people directly designate a government apply here as well. Different kinds of coalition partners, which Fianna Fail has recently had (including Free Democrats, Labour and Greens) exemplify this assertion, and have been held as a sign of “promiscuity of party politics in Ireland”.⁵⁰²

However, there are some mitigating factors involved in an STV scheme that help to bring about coalitions that are acceptable to voters. There is a two-way relationship. On the one hand, the voting patterns of voters along elections include cues for parties about their preferred coalition partners. For example, if a majority of supporters of Party A, after giving their upper preferences to Party A candidates, give their following preferences to Party B candidates, it means they will see Party B as an acceptable coalition partner. On the other

⁵⁰¹ George H. Hallett, “Proportional Representation with the Single Transferable Vote: A Basic Requirement for Legislative Elections” in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 118.

⁵⁰² David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 145.

hand, as Gallagher puts it: “PR-STV provides an incentive for the parties to identify their chosen coalition allies in advance of the election, so party leaders can urge their supporters to award lower preferences to allied parties.”⁵⁰³ However, Gallagher is quick to add “this does not always happen.”⁵⁰⁴

4. Democratic Change

The performance of STV in this factor is generally in line with other PR systems:

1. As in other PR systems, a relatively low threshold of representation means the formation of new parties, and the emergence of new challengers should not be too difficult. However, the examples of Malta’s two-party system and an essentially two-party system in Tasmania, while other Australian states have had multi-party parliaments, cast some doubts over this assertion. As Wright explains, “The difficulty of establishing new parties is undoubtedly associated with the freedom of choice within parties available under the Hare-Clark system. If there is a serious attempt to set up a new party, the existing parties endorse candidates chosen to attract the votes of those who might support the new party. If such candidates are elected, they have to be accommodated within the parties”⁵⁰⁵. This means the diversity of opinions are not stifled, but rather accommodated within parties.

2. Like other PR systems, STV is prone to perpetuating the position of some parties in government as exemplified by Fianna Fail’s long tenure in Ireland. However, in the curious

⁵⁰³ Michael Gallagher, “Ireland: The Discreet Charm of PR-STV” in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 526.

⁵⁰⁴ Michael Gallagher, “Ireland: The Discreet Charm of PR-STV” in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 526.

⁵⁰⁵ J.F.H. Wright, “An Electoral Basis for Responsible Government: The Australian Experience” in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 133.

case of Malta, we have a perfect two-party system with healthy alterations of the government despite the STV system.

3. On a personal level, STV does not give a safe seat to an MP. The possibility of intra-party competition means that MPs not only have to face challengers with other ideologies and parties, they may also face a challenge from their co-partisans. “The Exercise of the freedom of choice given to voters by the systems has sometimes allowed new candidates of parties to replace senior members who have failed to retain the support of voters.”⁵⁰⁶

5. Strategic voting and wasted votes

Some authors argue that the STV model does not produce any strategic pressures because voters can rank order their preferences. They do not need to worry about the chances that their first preference has of winning because if she does not win, their other preferences will be considered.⁵⁰⁷ However, the STV model has peculiar complexities that make strategic coordination a necessity and strategic failure a likely outcome. Farrell and McAllister⁵⁰⁸ explain that political parties usually resort to two different strategies when they want to maximize their seat count in the STV system. The first strategy, which is usually used in Australia, is the “plump for one” (PFO) strategy, where all supporters are invited to make the same rank ordering. Accordingly, all of the supporters will vote for one of the party’s candidates first. This will guarantee that she will pass the quota and get elected. Her surplus

⁵⁰⁶ J.F.H. Wright, “An Electoral Basis for Responsible Government: The Australian Experience” in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 133.

⁵⁰⁷ See for instance: George H. Hallett, “Proportional Representation with the Single Transferable Vote: A Basic Requirement for Legislative Elections” in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 119-120.

⁵⁰⁸ David M. Farrell & Ian McAllister, “Through a Glass Darkly: Understanding the World of STV” in Shaun Bowler & Bernard Grofman, eds. *Elections in Australia, Ireland, and Malta under the Single Transferable Vote: Reflections on an Embedded Institution* (Ann Arbor: The University of Michigan Press, 2000) at 26-28.

votes are then transferred to her co-partisans. The other strategy, which is often used in Ireland, is the “spread the preferences” (STP) strategy. According to this strategy, different supporters are asked to make different preferences among the party’s candidates and as a result preferences are spread between all co-partisans. It is said that the second strategy works better but it involves a significant risk of strategic failure. “An inappropriate distribution of the preference vote between candidates of the same party can lead to that party losing an otherwise winnable seat.”⁵⁰⁹ This is perhaps why it is not used in Australia. “STP is a risky and complex strategy. Its success depends on the size of the party vote in the district, on the degree of solidity in vote transfers, and on the actions of the other parties in the race.”⁵¹⁰ “The basic idea is that the more equal the spread of first preferences across the different party candidates is, the greater the chance that more will be elected”⁵¹¹. An uneven spread of preferences is a serious strategic failure because there is the risk that the party’s least voted-for candidates will be eliminated in the first counts and will not benefit from the transfer of surplus votes. A likely scenario when a party’s votes are not spread efficiently is when it has a star candidate. Many supporters are likely to vote for the star candidate first and relegate other co-partisans to lower preferences. Personal campaigns of candidates can also distort the efforts of the party in spreading its votes equally.

Apart from the spread of votes, another important strategic decision that parties should make is the number of candidates they field in each district. They should accurately anticipate their support level in each district and nominate the appropriate number of

⁵⁰⁹ David M. Farrell & Ian McAllister, “Through a Glass Darkly: Understanding the World of STV” in Shaun Bowler & Bernard Grofman, eds. *Elections in Australia, Ireland, and Malta under the Single Transferable Vote: Reflections on an Embedded Institution* (Ann Arbor: The University of Michigan Press, 2000) at 27.

⁵¹⁰ David M. Farrell & Ian McAllister, “Through a Glass Darkly: Understanding the World of STV” in Shaun Bowler & Bernard Grofman, eds. *Elections in Australia, Ireland, and Malta under the Single Transferable Vote: Reflections on an Embedded Institution* (Ann Arbor: The University of Michigan Press, 2000) at 27-28.

⁵¹¹ David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 147.

candidates. If they nominate fewer candidates, they may forgo winnable seats. If they nominate more candidates, their vote might spread in an inefficient way between their candidates and their candidates might get eliminated in first counts. An example of a strategic failure of this kind happened in the 2011 Irish election when “Fianna Fáil responded, probably inadequately, to its anticipated drop in support by reducing its number of candidates from 106 to 75”.⁵¹²

One should consider any kind of strategic complication as a negative point for an electoral system, something which may frustrate the choice and the democratic expression of the voters. STV requires a delicate strategic attention on behalf of the parties and the candidates. Any failure to act strategically will affect the results.

6. Power of central parties

An advantage of the STV model over list PR models is that in STV people vote for individual candidates and not lists. This fosters more independent-minded candidates.

Also, the ability of voters under the STV model to vote for independents and across party lines is praised.⁵¹³ This gives voters more choice and makes them less dependent on decisions made by party elites.

⁵¹² Michael Gallagher, “Ireland’s Earthquake Election: Analysis of the Results” in Michael Gallagher & Michael Marsh, eds. *How Ireland Voted 2011: The Full Story of Ireland’s Earthquake Election* (Basingstoke : Palgrave Macmillan, 2011) at 140.

⁵¹³ See for instance: George H. Hallett, “Proportional Representation with the Single Transferable Vote: A Basic Requirement for Legislative Elections” in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 116-117; David M. Farrell & Ian McAllister, “Through a Glass Darkly: Understanding the World of STV” in Shaun Bowler & Bernard Grofman, eds. *Elections in Australia, Ireland, and Malta under the Single Transferable Vote: Reflections on an Embedded Institution* (Ann Arbor: The University of Michigan Press, 2000) at 17-18.

7. Turnout

Like other proportional systems, STV systems such as the one in Malta⁵¹⁴ exhibit high turnout rates. The high degree of voter choice should be associated with these results.

Subsection 2: Diversity

1. Political diversity

Since STV is a proportional system, it should be conducive to political diversity and multipartyism, like other PR systems. One factor that may limit proportionality and multipartyism in STV systems is the small district magnitude. Out of necessity, a STV district should be small, with something around five seats per district. As has been observed, the disproportionality of STV systems is not as high as list PR systems that have small district magnitudes.⁵¹⁵ The main reason for this seems to be that the flow of preferences allows small parties to help each other. They can instruct their supporters to give their second and third preferences to candidates from other small parties. They have incentives to do so. Through this mechanism, they can prevent a large party from gaining a majority in the legislature. This reduces the underrepresentation of small parties in the system.⁵¹⁶ Despite this, the STV model is not pressure-free. For instance, the PD party (Progressive Democrats),

⁵¹⁴ Wolfgang Hirzey de Mino & John C. Lane, "Malta: STV in a Two-Party System" in Shaun Bowler & Bernard Grofman, eds. *Elections in Australia, Ireland, and Malta under the Single Transferable Vote: Reflections on an Embedded Institution* (Ann Arbor: The University of Michigan Press, 2000) at 190-191.

⁵¹⁵ Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 72.

⁵¹⁶ See: Michael Gallagher, "Ireland: The Discreet Charm of PR-STV" in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 523; Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 72-73.

which was a significant small party in Ireland, decided to disband in 2008 following a drop in popularity. This was because its leaders decided that the party was no “no longer politically viable”.⁵¹⁷

2. Social diversity

The STV model is not as conducive as the closed-list PR model to the fair representation of women and minorities. Gallagher explains why Ireland has a low percentage of women legislators:

The proportion of women is relatively low (only 13 per cent in 2002). There are various reasons for this ..., and while it might be argued that, if conservative public attitudes in a predominantly Catholic country are a main cause, then PR-STV is unhelpful by giving more weight to these attitudes than, say, a closed list system would ...⁵¹⁸

A small advantage of the STV model in this regard is that minorities need not be politically organized in order to gain representation. They can choose their group members from across candidates of different parties and independent candidates and rank their preferences in a way that helps them elect one of their own.

⁵¹⁷ “Progressive Democrats to be disbanded” *Irish Republican News* (17 September 2008), online: Irish Republican News < http://republican-news.org/current/news/2008/09/progressive_democrats_to_be_di.html>.

⁵¹⁸ Michael Gallagher, “Ireland: The Discreet Charm of PR-STV” in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 526.

3. Geographical diversity

Since STV systems have small district magnitudes they are more responsive to geographical diversity than pure list PR systems. An advantage of STV is that it can obtain proportional results from small districts. Thus local representation will not be compromised to obtain proportional results.

Subsection 3: Efficiency

1. Stability

Countries that currently use the STV model of elections have a relatively low level of parliamentary fragmentation compared to other PR systems. In Ireland the “effective number of parties in parliament ... over the 1923–2002 period has averaged 3.0, which... represents a relatively low level of fragmentation.”⁵¹⁹ Malta is virtually a two-party system.⁵²⁰ However, the experience of a couple of countries is not enough to label STV as a stabilizing system. Indeed, theoretically, as Richard Katz observes, to “a greater extent than any other system, STV removes the disincentives to fragmentation. Even if a party wins no seats, its votes need not be wasted since they can be transferred to other parties.”⁵²¹

Apart from party system fragmentation, STV leads to intra-party fragmentations. There are two main reasons for this. First, because the incentives that exist for party

⁵¹⁹ Michael Gallagher, “Ireland: The Discreet Charm of PR-STV” in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 521.

⁵²⁰ See for instance: Wolfgang Hirzhey de Mino & John C. Lane, “Malta: STV in a Two-Party System” in Shaun Bowler & Bernard Grofman, eds. *Elections in Australia, Ireland, and Malta under the Single Transferable Vote: Reflections on an Embedded Institution* (Ann Arbor: The University of Michigan Press, 2000).

⁵²¹ Richard S. Katz, “The Single Transferable Vote and Proportional Representation” in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 141.

coherence in majoritarian systems are missing in STV systems. In other words the “unite or perish” logic of majoritarian systems does not work in STV systems. The other reason is because STV formula allows for rivalry between co-partisans. “Between 1951 and 1977, for example, roughly one-third of the incumbent TDs [members of the Irish lower chamber] who lost their seats were displaced by running mates from the same party”.⁵²² Indeed, “STV can foster intra-party rivalries based on family or patron-client ties.”⁵²³

Gallagher posits that suggestions about party incoherence in Ireland should be taken with a grain of salt. He explains why Irish parties are not as incoherent as Japanese ones:

However, this rivalry must be, and is, accommodated within the framework of the party Whereas under the former Japanese electoral system, the single non-transferable vote, LDP candidates could openly regard each other with animosity, under PR-STV party candidates must appeal for personal support while simultaneously behaving as a team. The reason is that when one candidate is eliminated from the count, or has a surplus distributed, it is important that as many as possible of his or her votes transfer to the party's other candidates. Thus candidates usually urge their supporters to ‘Vote No 1 for me and continue your preferences for my running mates’, and most votes, when transferred, do remain within the party fold.⁵²⁴

Another detriment that the STV model has for the party system is its facilitating role in the election of independents. “Ireland has long been famous for electing more

⁵²² David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 146.

⁵²³ Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 73.

⁵²⁴ Michael Gallagher, “Ireland: The Discreet Charm of PR-STV” in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 524.

Independents than the rest of Western Europe together, 4 and it excelled itself in 2011, Independents reaching a 60-year peak”.⁵²⁵

In conclusion, the STV system seems to offer a mixed picture regarding its effect on stability.

2. Moderation

An advantage of the STV system in this criterion is that, like all preferential systems, in order to be successful, candidates should try to appeal to the supporters of other candidates as well as their own core base. This can have a moderating effect on political views.

On the negative side, it has been observed that⁵²⁶ the Irish system, like other PR systems, has faced the problem of the emergence of small extremist parties.

3. Accountability

As long as STV elections produce coalition governments, which they should produce in a normal situation, the problem of accountability persists like other PR systems. STV formula does not seem to present an important peculiarity in this regard.

⁵²⁵ Michael Gallagher, “Ireland’s Earthquake Election: Analysis of the Results” in Michael Gallagher & Michael Marsh, eds. *How Ireland Voted 2011: The Full Story of Ireland’s Earthquake Election* (Basingstoke : Palgrave Macmillan, 2011) at 151.

⁵²⁶ See for instance: Richard S. Katz, “The Single Transferable Vote and Proportional Representation” in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 140.

4. Regionalism

The STV model fosters localism. Since co-partisans compete against each other in this system, political ideology or policy stances are not determinative in who wins the election. Candidates have to resort to local interests in order to gain an edge over their rivals. In Ireland, candidates carve up portions of electoral districts for themselves and concentrate their efforts there.⁵²⁷ In particular, the “pork” demanding tendencies of independent MPs who don’t have a strong policy position but rather rely on local support is troubling in Ireland.⁵²⁸ “Katz finds evidence that STV in Ireland tends to emphasize local campaigning, with intraparty rivalry, focus on district work and local concerns, and a low importance of ideology and national issues.”⁵²⁹

5. Simplicity

The STV model has some complicated features that make it difficult for some citizens to understand it. Complexity is cited as one of the reasons why BC voters rejected the referendum on adopting STV.⁵³⁰ It has been mentioned that, under the STV model, the formula for picking up the winners can be very complicated sometimes.⁵³¹ The act of voting is rather difficult in STV systems because voters have to rank in order many candidates and

⁵²⁷ David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 146.

⁵²⁸ Michael Gallagher, “Ireland: The Discreet Charm of PR-STV” in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 523.

⁵²⁹ David M. Farrell & Ian McAllister, “Through a Glass Darkly: Understanding the World of STV” in Shaun Bowler & Bernard Grofman, eds. *Elections in Australia, Ireland, and Malta under the Single Transferable Vote: Reflections on an Embedded Institution* (Ann Arbor: The University of Michigan Press, 2000) at 22.

⁵³⁰ Patrick Fournier *et al.*, *When Citizens Decide: Lessons from Citizen Assemblies on Electoral Reform* (Oxford: Oxford University Press, 2011) at 134.

⁵³¹ See some of the complicated scenarios at: David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 139-140.

should have strategic consideration about the order of their votes, which can impact the results.⁵³² Requiring the voters to express all preferences increases the number of invalid votes.⁵³³ The counting of votes is also difficult and it may take weeks before results can be declared.⁵³⁴

6. Miscellaneous issues

A special issue that may have a negative impact on a decision to adopt STV is that in only two small democratic countries STV is used for national elections. In other words, STV is untested. It is not clear which characteristics are internal to Malta and Ireland and which ones are common features of STV systems. It is also not clear whether in a large country such as Canada STV will bring about the same results as it brings about in these two small countries.⁵³⁵

⁵³² See: David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 148-149.

⁵³³ J.F.H. Wright, "An Electoral Basis for Responsible Government: The Australian Experience" in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 133.

⁵³⁴ David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 133.

⁵³⁵ See: David M. Farrell & Ian McAllister, "Through a Glass Darkly: Understanding the World of STV" in Shaun Bowler & Bernard Grofman, eds. *Elections in Australia, Ireland, and Malta under the Single Transferable Vote: Reflections on an Embedded Institution* (Ann Arbor: The University of Michigan Press, 2000) at 18; David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 152.

Part Four: Balancing the Values: A New Proposal for Electoral Reform in Canada

Introduction

As we observed in Chapter Six, in response to the shortcomings of the current Canadian electoral systems, some attempts for reform were made. In all of these attempts, reform proposals were based on a variant of the proportional representation formula. However, as we discussed, proportional models have their own problematic aspects that cannot be ignored. In this final part of the work, I will propose a new electoral system for the Parliament of Canada that I believe strikes a balance between competing values and will score higher than both the existing system and previously proposed proportional models in a value-based assessment.

Since the system that will be proposed for the more important lower chamber of the Parliament will be a variant of majority electoral systems, Chapter Seven will be devoted to a value based assessment of majority systems. Majority systems of election are those that elect or tend to elect the winning candidate(s) in each district by an absolute majority (50% +1) of the votes. I added the words “or tend to elect” because as we will observe some variants of majority systems cannot guarantee that the winner will take an absolute majority of the casted votes; however, in all of the variants of the majority model, the likelihood of electing representatives by a majority of the support is much higher than in the plurality model. The basic *raison d'être* behind the design of majority systems is the concept that a representative should have a majority support among the electorate, which means those who support her should outnumber those who do not.

A majority model of election has different variants. Our discussion in Chapter Seven will be based on the three most common variants of the model. As we will see in Chapter Eight,

my proposed system for elections to the House of Commons incorporates elements from all of these three variants; therefore, it is necessary to understand these variants.

The first variant is alternative voting (AV), or preferential voting, which is most famously used for the elections to the lower house of the Australian parliament. Under this system, voters rank their choices according to their preferences. They write 1 beside the name of their first choice, 2 beside the name of their second choice and so on. The first preferences are counted first and if a candidate receives 50% +1 of votes on the first count she is elected. If not, in the second count, the least voted-for candidate is eliminated and his votes are transferred to the second preferences of his voters. If the transferred votes help a candidate pass the 50% hurdle, she is elected; if not, the second least voted-for candidate is eliminated and each of her votes are transferred to the first available subsequent preference of the voters. This process of elimination and recount is repeated until a candidate passes the 50% hurdle.⁵³⁶

The two remaining variants both belong to the two-round (2R) family of electoral systems. The second variant is the majority-runoff or majority-majority two round system. Under this model, if a candidate receives an absolute majority (50% +1) of votes in the first round, she is elected and the election is completed. If not, the two top candidates will run again in a second round, which is usually held a week or a fortnight after the first round. Since there are only two candidates who compete in the second round, the winner necessarily gets a majority of valid votes. Therefore, an absolute majority is needed to win in both rounds, hence the name majority-majority. Currently, this variant is not used for parliamentary elections in any established democracy; however, it is used in some new or fragile democracies and it is also

⁵³⁶ The description of the AV and especially as it is applied in Australia is based on: David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 50; David M. Farrell & Ian McAllister, *The Australian Electoral System* (Sydney: University of New South Wales Press Ltd, 2006).

applied to presidential elections in the majority of presidential systems, including France. The third variant is the majority-plurality two-round system, in which an absolute majority of votes is required to win in the first round, but since there may be more than two candidates competing in the second round, a plurality of votes is enough to win in the second round. The most prominent jurisdiction that uses this variant is France. Elections for the lower house of the French Parliament are held in two rounds in single member districts.⁵³⁷ In each district, if a candidate gets an absolute majority of the votes in the first round, she is elected and the election is complete for that district. If no candidate passes the 50% hurdle, a second round is held a week later, in which candidates who received the support of at least 12.5% of registered voters can compete. Therefore, in theory up to 8 candidates might pass the threshold and run in the second round, but in practice, only in a minority of cases more than two candidates pass this hurdle and rarely more than three candidates compete in the second round. A plurality of the votes is enough to win in this round. There may be some variations within this variant. The threshold of admission to the second round might be higher or lower, or there might be no threshold at all, in which case all candidates are allowed to run again in the second round.⁵³⁸ As we can see, the majority-plurality model cannot guarantee the election of a majority winner; however, compared to the plurality model, it still increases the likelihood of picking winners by majority support. Even if no threshold is required for access

⁵³⁷ There should be no confusion about the variants that are used in France. In France, the plurality-majority variant is used for presidential elections and the plurality-plurality variant for elections to the lower house of the Parliament.

⁵³⁸ The description of two-round variants, especially the variant used in France, are based on: David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 47 et suiv; Giovanni Sartori, *Comparative constitutional engineering: an inquiry into structures, incentives, and outcomes* (New York : New York University Press, 1994) at 9 et suiv. However, here Sartori's description of the proportional two round system is vague. It seems that he is mistaken about the characteristics of the two-round voting in multi-member districts.

to the second round, strategic coordination and pressure based on the results of the first round will increase the likelihood of voters converging to elect a majority winner.

The functioning and consequences of all variants of the majority model are usually similar and this justifies bundling them together in our evaluation. In case a certain point is pertinent to a specific variant, only that case will be specified. Since France and Australia are the only established democracies that use a variant of the majority model for their lower house elections, these two countries will dominate the comparative study dimension of Chapter Seven.

At the end of our discussion in Chapter Seven, it will emerge that while majority systems are not perfect, they are better than both plurality and proportional alternatives in striking a balance between our competing values and have a better score in producing our desired effects.⁵³⁹ Chapter Eight will be devoted to fine-tuning my proposed electoral model. In Section 1 of Chapter 8, the three variants of the majority model will be compared. If we wish to adopt the majority model for elections to the House of Commons in Canada, we should know which variant works best. However, my examination brings about mixed results because each variant has its own merits and demerits and I cannot develop a clear-cut preference for one variant over the other. Therefore, in section 2 I will introduce my own variant of the majority model for elections to the House of Commons. This new variant incorporates elements from each of the examined three variants. In section 3, I will turn my attention to the issue of elections to the Canadian Senate. If we would like to democratize the second chamber, which electoral system should we choose for it? First, I will discuss why it is better to have a different electoral system for the two chambers and then I will propose a

⁵³⁹ In the final conclusion of this work, a scoreboard will be produced to summarize our evaluation of different alternatives. It will be demonstrated that according to the points made here the system that is proposed in the final part of this work scores better than the alternatives examined.

variant of proportional representation for the Senate. Many of the reasons that make proportional representation in the lower house undesirable are not applicable to the Senate. Proportional representation in the Senate can, to some degree, compensate for the non-representativeness of the House of Commons and bring the whole system to a more balanced position. A proposal for Senate elections completes my proposal for electoral reform for the elections to the Parliament of Canada and sets the stage for a final value-based scoring in the conclusion of this work, in which we will find out how my proposal scores against the main alternatives.

Chapter Seven: A Value-Based Assessment of Majority Systems

Section One: Democratic Expression

Subsection 1: Proportionality

Proportionality is not among the merits of the majority model. Along with the plurality model, the majority model belongs to the majoritarian family of electoral systems in which the basic function of the electoral system is perceived to be the production of working majorities and not proportional results. The electoral formula is not designed to give proportional share of seats to parties.

This contention is confirmed by data from two established democracies that use a majority formula for elections to their lower houses. In France, the disproportionality numbers for legislative elections of 1993, 1997 and 2002 were 25, 17.8 and 21.9 respectively.⁵⁴⁰ It has

⁵⁴⁰ Least square index, data cited from: Robert Elgie, "France: Stacking the Deck" in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 132.

been noted that the two-round system in France “produces the most disproportional results of any Western democracy”⁵⁴¹. While Australian system is not as disproportional, still it comfortably sits among disproportional systems with a disproportionality number hovering around 8 to 10.⁵⁴²

There are some explanations why a majority model can be even more disproportional than a plurality model. Firstly, a small party can occasionally win a plurality of votes in some districts but securing a majority of votes is more difficult for small parties unless they can make alliances with other parties. Secondly, in majority systems, centrist parties benefit hugely from bleeding from parties and candidates to the right and left. However, none of these explanations are applicable to the French case because the French system is a majority-plurality variant. In the second round, plurality rule applies; therefore, a small party that can potentially win a seat under a plurality system will not be deprived of it under the French system. The real explanation here is that the shares of votes in France are counted according to the first round votes, where there are no strategic pressures against small parties. Therefore, a lot of small parties run in the first round. In plurality systems such as in the U.S., the psychological effect of the electoral system has already depressed the votes of small parties and therefore the difference between the shares of votes and the shares of seats is not stark. In majority systems such as in France there are no depressing psychological effects on small parties (at least in the first round). Thus, I believe it is wrong to talk of plurality systems as being more proportional than majority systems.

⁵⁴¹ Andrew Reynolds, Ben Reilly & Andrew Ellis, *Electoral System Design: The New International IDEA Handbook* (Stockholm: International IDEA, 2005) at 53.

⁵⁴² David M. Farrell & Ian McAllister, *The Australian Electoral System* (Sydney: University of New South Wales Press Ltd, 2006) at 80; David M. Farrell & Ian McAllister, “Australia: The Alternative Vote in a Compliant Political Culture” in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 88.

In any case, majority systems do not give a proportional share of seats to small parties, however as we will discuss, they do a better job of giving them proportional influence. As we have already discussed, having a microcosm parliament is not a value per se. It has an instrumental value because it promotes other values such as political diversity and equality. We will see that the system I propose can respect these values through other instruments and without fragmenting the parliament.

Subsection 2: Aggregation of preferences

We identified two main criteria for the responsiveness of an electoral system to the aggregate preferences of the voters. The first and the minimum criterion is election by majority support, which means that supporters of the winning candidate or government should outnumber those who oppose it. Perhaps it should be self evident that a “majority” system succeeds in this test. The basic reason behind the design of this formula is to ensure the election of candidates with a majority of support. Nonetheless, are the results of majority elections really that different from plurality elections? Is it really worth the trouble of overhauling and complicating the system if basically the same people and the same parties will be elected to the parliament under the new system? The best shortcut for answering this question is an examination of the Australian election results. The French case is not a perfect match for this examination because it is only partially a majority system. The second round in France is contested according to plurality rule. Therefore, we will stick with the Australian case, which is a full-fledged majority system. Of course, we will also try to modify our findings for Canada by considering the differences the two polities have. Some authors have

cast a doubt over the significance of the Australian system having an effect over the outcome of elections. We need to re-examine the issue to determine the legitimacy of this doubt.

Various authors have played down the importance of AV in producing different results compared to plurality. Farrell and McAllister in their different works⁵⁴³ have summarized these views and examined Australian electoral data. Their own verdict goes in the same direction against the effectiveness of AV in producing different results:

what evidence is there that the use of preferential voting actually makes a difference to the result? The common perception is that AV ‘behaves in all its particulars’ like SMP (Rae 1967 : 108), that what difference it makes to the election result is ‘less...than most people suppose’ (Butler 1973 : 96). In the first large-scale analysis of trends, Joan Rydon (1956) found little evidence of preferential voting affecting the overall result; for the most part, its only effect tended to be on the distribution of seats between the National/Country and Liberal parties. There was also evidence in the 1960s of preferences from the Democratic Labor Party (DLP)—a breakaway from Labor—favouring the coalition parties (Goot 1985). Apart from these instances, preferences were seen to matter little, and certainly had hardly any bearing on the overall election result.⁵⁴⁴

Farrell and McAllister concede that over time the use of preferences have increased. This means the instances in which no candidate gets at least 50% of the first preferences and subsequent counts are needed to take note of the lower preferences have increased. This is

⁵⁴³ David M. Farrell & Ian McAllister, *The Australian Electoral System* (Sydney: University of New South Wales Press Ltd, 2006) at 81-83; David M. Farrell & Ian McAllister, “Australia: The Alternative Vote in a Compliant Political Culture” in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 89-91; David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 55.

⁵⁴⁴ David M. Farrell & Ian McAllister, “Australia: The Alternative Vote in a Compliant Political Culture” in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 89.

mostly because of an increase in the strength of smaller parties. However, they point out that the amount of instances in which these subsequent counts change the results have remained low. This means that in most cases, whoever gets the most first preferences will also win in the final count after the transfer of preferences:

Preferences may matter more in the election count (in the sense that more lower preferences are being used) ... but there is no evidence that the preferences actually make all that much difference to the final outcome. The results ... show that preferential voting tends to make only a small difference to the final outcome, and this has not been on the increase. For the most part, the proportions remain firmly in single figures, and the level of variations across the half-century is relatively minor.⁵⁴⁵

I have some points to make against Farrell and McAllister's conclusions:

1. This analysis ignores the historical fact that the undisturbed existence of more than one party on the right side of the Australian political spectrum has been made possible by the electoral system. Although National and Liberal Parties have evolved to become virtually two factions of one party and they rarely compete against each other, their predecessors were more independent and both regularly fielded candidates in many districts. If the plurality model of voting had remained in Australia, the political scene would be completely different. Either the two right wing parties would split their votes and give the Labour a big boost or

⁵⁴⁵ David M. Farrell & Ian McAllister, "Australia: The Alternative Vote in a Compliant Political Culture" in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 91.

one of them would have had to perish. The very change in the Australian electoral system that brought AV to Australia was necessitated by this fact.⁵⁴⁶

2. I have examined the data from the three most recent federal elections in Australia to test Farrell and McAllister’s contention that the impact of AV on the outcome of elections is not significant. These three elections (2004, 2007 and 2010) were not included in Farrell and McAllister’s analysis and this examination has the additional benefit of updating their analysis. The results of my calculations are summarized in Table 7-1. The first row indicates the number of single seat districts contested. The second row indicates the number of district races where more than one count was needed to pick the winner (instances where no candidate received more than 50% of the first preferences). The third row indicates the number of district races where preferences changed the final results (where the final winner was not the one who got the most number of first preferences).

Table 7-1 – The impact of lower preferences in Australian Federal Elections⁵⁴⁷

Election Date	2004	2007	2010	Sum
N of races	150	150	150	450
N of races where lower preferences were counted	61	75	85	221
N of races where lower preferences changed the result	9	9	11	29

⁵⁴⁶ For the history of electoral reform in Australia see: David M. Farrell & Ian McAllister, *The Australian Electoral System* (Sydney: University of New South Wales Press Ltd, 2006) at 21-46.

⁵⁴⁷ Source: Self-calculations based on data from Online: Australian Electoral Commission <<http://www.aec.gov.au/>> (accessed: July 2012).

As we observe, of 450 races that occurred during these three elections, in 221, or 49% of the races, more than one count was needed to determine the winner, but only in 29, or 6.44% of races, the transfer of preferences changed the final winner. This confirms the trend identified by Farrell and McAllister that the percentage of cases where AV will change the initial result remains in the single digits. However, in order to challenge the idea that this has had little impact on the overall results, we will test each election separately. Before doing so, it is worth noting that of the 29 races in which someone other than the initial frontrunner won, 26 races were won by a Labor candidate against a Liberal/National initial frontrunner. Only in three cases, in 2010, another scenario happened. In the Division of Melbourne, a Green candidate overtook the Labor frontrunner after the transfer of the preferences to become the only Green MP. In the Division of O’Conner, a WA National candidate overtook his Liberal opponent and in the Division of Denison, an independent candidate, who placed third after the first count (the only instance in the three recent elections where a third place candidate won the final count), overtook the Labor frontrunner. In all other 26 instances, a Labor candidate overtook a Liberal/National opponent after the flow of preferences; therefore, clearly a conversion to the plurality system would have had a considerable negative effect on Labor.

The composition of the Australian House of Representatives after the 2004 election was as follows: Liberal/National Coalition 87 members, Labor Party 60, independents 3. Supposing that voters would have had the same first choices, the composition of the House under a plurality formula would have been: Liberal/National 96, Labor 51, independents 3. The coalition’s 27 seat lead over Labor would have increased to 45 and Labor would have been a considerably weakened opposition. Although the government would not be different, the

potential difference in the composition of the house cannot be overlooked. The story for the 2007 and 2010 elections is more dramatic.

The composition of the Australian lower house after the 2007 election was Labor 83, Liberal/National 65, independents 2. If only the first preferences had been counted, Labor and Liberal/National would have been tied with 74 seats, with 2 seats going to the independents. Not only would Labour have lost its majority, it would most likely also have lost its chance to govern because the two independents were right leaning.

The composition of the Australian House of Representatives after the 2010 federal election was Labor 72 seats, Liberal/National Coalition 72 seats, Green Party 1, Western Australia National Party 1, independents 4. Labor and coalition were tied in their number of seats but Labor led in the two-party preferred vote and continued to govern by support from the sole Green MP and 3 independents. If the same first choices had been expressed in a plurality election, the composition of the parliament would have been Liberal/National coalition 79, Labor 66, independents 3. Labor would definitely have lost any chance at continuing to govern and a Liberal/National majority government would have taken over.

In conclusion, we can observe that AV has had a significant impact on the overall results of the three elections that we examined. In two out of the three elections, the formation of government was clearly impacted. This refutes the claim that AV has had no significant effect on the final outcome of elections. The strengthening of the Australian Green Party as the third party has played a great role in the increased effect of AV in recent elections. It is true that the number of districts where AV impacts the final winner remains small, but usually this small number is all that it takes to profoundly change the political scene.

3. Farrell mentions⁵⁴⁸ that previous research shows that the outcome of the 1961 and 1969 elections would have been very different under a plurality system. Now, we should at least add the 2007 and 2010 elections to this result. Four elections in a 50 year period should not be overlooked as being insignificant.

4. Even in cases in which AV does not have an impact on the formation of government, it still affects the relative strength of the government and its opposition. As we have observed in the case of the 2004 election, this impact can be substantial.

5. Whether or not the overall results of the elections are changed through a specific electoral scheme should not be the only concern when dealing with electoral policy. Imagine a scenario in which changes that the AV or another version of the majority model makes to the results of district races cancel out each other. For instance, suppose that in 5 districts, Labor candidates overtake a Liberal opponent after the flow of preferences, and Liberal candidates in five other districts overtake their Labor opponent after the flow of preferences. In this scenario, a conversion to plurality model would not change the overall composition of the chamber; however, the election would be unfair to electorates in those 10 districts. A majority of electors in 10 districts will end up having a representative that they do not like. In this situation, at the micro level, the electoral system is not responsive to the aggregate preferences of the voters in those 10 districts even if on the macro level the system is responsive. In those 10 districts, voters, or at least some of them, will see the election results as unfair. As we noted in Chapter 4, the Supreme Court of Canada has occasionally opined about the importance of the elections being perceived as fair.

⁵⁴⁸ David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 55.

6. Part of the reason the impact of lower preferences was previously limited in Australia lies in the political cleavage pattern of Australia. For a long time, two poles, Labour and Liberal/National, dominated the Australian political scene, with other parties remaining marginal and seasonal. As we observed, the strengthening of the Australian Green Party has resulted in the impact of the lower preferences being more pronounced. The political cleavages in Canada are more complicated and in some regions of Canada there have been up to 5 competitive parties. If a majoritarian system is adopted in Canada, the differences in terms of results will be more pronounced.

Therefore, unlike Farrell and McAllister and other authors who have been cited by them, my verdict is that AV as a variant of majority model does a considerably better job at electing candidates with majority support compared to plurality systems.

What was said about AV also applies to most of the other variants of the majority model. However, Farrell mentions a particular abnormality that may occasionally occur in two-round systems:

One of the weaknesses of the two-round system is the potential for the first-round to produce a result in which the two candidates that qualify to go through to the second round are from the same side of the political spectrum, thus denying voters from the other side of the political spectrum the right to vote for a candidate of their choice. Just such an outcome occurred in 2002, when the unpopularity of the established parties affected their support, with dire consequences for the parties of the left. The Socialist standard bearer, Lionel Jospin, managed to garner only 16.2 per cent of the votes, 0.7 percentage points less than the veteran National Front leader, Jean-Marie Le Pen. As a

consequence, the two leading candidates to go through to the second round were both from the right of the spectrum ...⁵⁴⁹

The significance of this possibility should not be exaggerated. Although the situation was dire in the single race for the presidential palace, in legislative elections, on the balance of probabilities, only in a small minority of districts such a scenario might happen and the consequences would not be so dire. Additionally, even if the 2002 French presidential election had been contested under AV rules, most likely the same person, Jacques Chirac, would have still won the election. The only difference is that the people would be spared from the shock of seeing Le Pen in the second round.

As we have observed, majority systems tend to pick the winner in each district by a majority vote. What about on the macro level? Does this system give a greater amount of seats to the party with the most number of votes? If it does not, it clearly fails to elect governments by majority support. A government that does not have a plurality of the support *a priori* does not have a majority of the support. Farrell and McAllister purport that the Australian system fails to do so in a systematic way:

AV has also produced some notably perverse results, such as the systematic bias in favour of the Liberal Party in nine elections (1949, 1955, 1958, 1963, 1975, 1977, 1980, 1996, and 2001) in which it was awarded more seats than Labor despite having won fewer votes.⁵⁵⁰

⁵⁴⁹ David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 50.

⁵⁵⁰ David M. Farrell & Ian McAllister, "Australia: The Alternative Vote in a Compliant Political Culture" in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 88; also David M. Farrell & Ian McAllister, *The Australian Electoral System* (Sydney: University of New South Wales Press Ltd, 2006) at 81; David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 58-59.

Although the Australian system has occasionally failed to reward parties with the most number of two-party preferred votes, Farrell and McAllister make a grave mistake here. In not one of the nine aforementioned elections did Labor win the two-part preferred vote, and as such the results are not perverse.⁵⁵¹ The mistake Farrell and McAllister make is that they only consider the first preferences of voters, while the whole purpose behind the design of AV is to count the subsequent preferences. To explain their mistake, note that AV is like an instant run-off system. In a run-off system, what counts in deciding whether the results are anomalous is the number of votes in the second round. Farrell and McAllister will never call the results of a two-round presidential election perverse because the candidate who won the second round was second in the first round. If the candidate who comes on top in the first round was always supposed to win the election, there was no point in running a second round. The same logic works in AV. What is important is where the parties stand in the final count. Farrell and McAllister even ignore the fact that the Liberal and National Parties are virtually two factions of the same party, and in a majority of the districts only one of the two fields a candidate. They call the results of these nine elections perverse, because Labor lost the elections, while it only received more votes than the Liberal Party but not more than Liberal/National coalition.

While the results of these nine elections were not “perverse,” there were other elections in Australia that produced anomalous results. Of the 25 federal elections in post-war Australia, in five of them (1954, 1961, 1969, 1990, 1998) the party that won the two-party preferred

⁵⁵¹ See the data in: “House of Representatives - Two Party Preferred Results 1949 – Present” *Australian Electoral Commission* (28 January 2011), online: Australian Electoral Commission <http://www.aec.gov.au/Elections/Australian_Electoral_History/House_of_Representative_1949_Present.htm>.

vote lost the election.⁵⁵² This problem is not peculiar to AV and may happen in any single-district majoritarian system including the plurality model. The reason for this is the unequal or inefficient distribution of the votes. For instance, a party wins over a lot of supporters in seats that it has already won but fails to garner enough votes in marginal districts to win new seats.

What is important to note is that in all five of the anomalous Australian cases, the incumbent party won the election. This is an incumbency benefit where some popular or influential incumbents duck the general trend of popular sentiment against their parties and thus retain their seats. As the assembly size increases, the chance of having such anomalous results decreases. I have two reasons for this. Firstly, with a higher number of districts, there will be a higher probability that the unequal distribution of the supporters of the two main parties will cancel each other out. Secondly, when the assembly size is small, the good performance of a few popular and influential incumbents is enough to give a majority of the seats to the incumbent party. In a large assembly, this scenario is less probable. The Australian House of Representatives is a smaller assembly compared to the Canadian House of Commons. In the five anomalous Australian elections, the assembly size was 121, 122, 125, 148, and 148. With an assembly size larger than 300, the scenario is less probable in Canada.

Now I move to the second and the perfectionist criterion of responsiveness to the aggregate preferences of the voters, which is picking the Condorcet winner: the candidate that the majority of voters prefer to all other rivals in a pairwise comparison. Can majority

⁵⁵² See the data in: “House of Representatives - Two Party Preferred Results 1949 – Present” *Australian Electoral Commission* (28 January 2011), online: Australian Electoral Commission <http://www.aec.gov.au/Elections/Australian_Electoral_History/House_of_Representative_1949_Present.htm>.

models elect the Condorcet winner? Some authors have expressed their doubts regarding this issue:

Fifty years of theoretical research ... has demonstrated that there is no perfect method of aggregating votes into a collective choice. The criterion of perfection is the “Condorcet winner,” that is, the option that would be preferred to all other options in a series of pairwise comparisons. ... All voting methods that reach a determinate outcome are capable, under some conditions, of picking an option other than the Condorcet winner ...⁵⁵³

Michael Dummett, a logician also consecrates a chapter of his work to showing that AV cannot guarantee electoral victory by the Condorcet winner.⁵⁵⁴ I will briefly explain why our three variants of the majority model may fail to elect the Condorcet winner. This is evident in the case of the majority-plurality model: in this variant, the winner might fail to garner the support of the majority, let alone be a Condorcet winner. In the majority-majority model, since only two top candidates of the first run go through to the second round, the Condorcet winner might be eliminated in the first round. For instance, suppose that in a one-dimensional contest there are two strong candidates at the two ends of the spectrum and a centrist candidate who has less initial support than his two main rivals. The centrist candidate gets eliminated in the first round while a majority of the electorate would prefer him to both rivals. A similar scenario can happen under AV. Suppose there is a candidate from a small party that occupies the central position in the political spectrum and therefore a majority of

⁵⁵³ Tom Flanagan, “The Alternative Vote” in Paul Howe, Richard Johnston & André Blais, eds. *Strengthening Canadian Democracy* (Montreal: IRPP, 2005) at 99.

⁵⁵⁴ Dummett, *Principles of Electoral Reform* (New York: Oxford University Press, 1997) at 89-108.

voters prefer her to all other candidates. However, in a polarized political climate, she gets few first preference votes and gets eliminated after the first count.

Despite this discussion, we should note that the fact that all electoral systems can fail in electing a Condorcet winner does not follow that all of them will fail at the same rate. Majority models (especially AV) are the closest we can get in electing the Condorcet winner among the practical electoral systems which we know.⁵⁵⁵ I have not come across data that can prove this, but this is a credible conjecture that can be put to the test through surveys in different systems. Majority systems are designed to aggregate the preferences of the voters. Someone who is elected after going through this aggregating process is more likely to be a Condorcet winner. As we will see in our discussion about moderation, majority models have a centripetal force, and candidates elected from the center are more likely to be the Condorcet winner.

Another way to explain why majority systems are more successful in aggregating the views of voters is that since these systems give a greater choice to the voters they necessarily do a better job at being responsive to the aggregate preferences of the voters. This is particularly true about AV, which is a preferential system. “According to their proponents, these systems are, first and foremost, voter-oriented. If these systems have a place, it is in their embracing of the notion of ‘voter choice’, in the sense that they provide voters with the maximum possible opportunity to decide between all the candidates on the ballot paper”⁵⁵⁶. Farrell and McAllister purport that according to data, preferential systems are associated

⁵⁵⁵ Dummett introduces some schemes but they are too complicated to be practical. As regards proportional systems, it may seem that the issue of picking a Condorcet winner is not relevant to them because they do not pick a winner but distribute the seats proportionally between all contestants. However, if we focus on the coalition government which is picked up by elite negotiations, we will concede that such a coalition is not necessarily a Condorcet winner when compared with other possible coalitions.

⁵⁵⁶ David M. Farrell & Ian McAllister, *The Australian Electoral System* (Sydney: University of New South Wales Press Ltd, 2006) at 121.

with higher voter satisfaction with democracy.⁵⁵⁷ This satisfaction might be associated with the greater choice that voters have.

While two-round variants are not as perfect as AV is in giving the maximum amount of the choice to voters, they still give a greater choice to voters than most rival systems. The voters have the chance of expressing their second preferences in the second round. A run-off system is like a short-cut preferential system, where it has been supposed that the final winner of preferred votes is usually one of the top two in the first count. This supposition is not unjustified. Of the 450 races examined in the three recent Australian elections, only in one race was the final winner ranked lower than the second after the first count.⁵⁵⁸

There is a mistaken perception about two-round systems, which is that since they limit the number of candidates in the second round, they provide fewer choices to voters. Fisichella refers to voters whose favourite candidate has been eliminated in the first round as the “orphaned electorate”⁵⁵⁹. Farrell sees a lower turnout and higher rate of invalid votes in the second round as an indicator of “voters’ dissatisfaction with the choices available.”⁵⁶⁰. These remarks are off the mark and cannot be held against the two-round systems. Although it is true that in the second round the voters have fewer choices compared to the first round, when the system is evaluated as a whole it provides greater choice to voters compared to a single-round plurality. Supporters of small parties gain a lot and lose nothing by the addition of a second round. In the first round, they are freer to vote for their first preferences compared to the plurality model because they face less strategic pressure. In addition, they

⁵⁵⁷ David M. Farrell & Ian McAllister, *The Australian Electoral System* (Sydney: University of New South Wales Press Ltd, 2006) at 155-158.

⁵⁵⁸ Two-party dominance in Australia has played a role in this situation. If other countries were to adopt AV, the number of final winners who are placed lower than second after the first count might be greater.

⁵⁵⁹ Domenico Fisichella, “The Double-Ballot System as a Weapon against Anti-System Parties” in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 185.

⁵⁶⁰ David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 61.

have the choice of expressing their second preference in the second round or abstaining from the second round.

In conclusion, all three variants of the majority model score positively for being responsive to the aggregate preferences of the voters, although AV scores a little better than the other two variants. In the landmark decision of the Supreme Court of Canada in *Figueroa*⁵⁶¹, Justice LeBel, in his minority opinion, identifies the “aggregation of political preferences” as a value rooted in Canadian history and institutions. In my opinion, he correctly identifies this value; however, he is mistaken in suggesting that the current plurality model of voting is an ideal model for preserving this value. The current model aggregates a plurality of votes only; majority systems aggregate a majority of votes. Majority model is the ideal choice for preserving this value.

Subsection 3: Direct election of government and mandate

Majority models, as evidenced by the experience of Australia and France, produce clear governing choices for the electorate. In both Australia and France, at least in recent history, there have been two main government options that people could directly designate, mandate and punish when necessary. Compared to plurality systems, majority models are more open to multipartyism and coalition governments, however mutable parties operate within a climate of necessary alliance and preference swapping. Therefore, the nature of occasional coalitions is different from the open and chaotic climate of most PR systems. In order to have electoral success, parties should express their potential coalition partners before the elections (or at least before the second round in two-round variants) so their supporters can

⁵⁶¹ *Figueroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912.

transfer their preferences in an efficient way. Or, as Bartolini observes about the French system, “the party must select its political and electoral alliances...in a way which is congruent with the second-party preference of the bulk of its electorate”⁵⁶². This has resulted in two clear left and right governing coalition options in France. In Australia, Liberal and National parties have established a stable coalition on the right side of the spectrum. They have almost always campaigned together, governed together and left office together. Conservative strategist and political scientist Tom Flanagan has commented that the Australian AV experience is a good model for Canada, which could make a coalition agreement between Reform and Progressive Conservative Parties feasible, would give them a chance to co-exist, and would provide a clear alternative to the dominant Liberal Party.⁵⁶³

In conclusion, majority systems do not prevent the electorate from having a direct influence on the designation of the government and they do not blur the mandate. They score a positive point in this criterion.

Subsection 4: Democratic change

We have identified two criteria that contribute to the dynamism of the political system. One is the possibility of the emergence of new parties and the other is the possibility of alternation of the governing parties. As our discussions in the previous chapters reveal, the two classical alternatives of plurality and proportional systems each malfunction on at least one of these two criteria. In the plurality model, setting up a new party is very difficult

⁵⁶² Cited in: Robert Elgie, “France: Stacking the Deck” in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 127.

⁵⁶³ Tom Flanagan, “The Alternative Vote” in Paul Howe, Richard Johnston & André Blais, eds. *Strengthening Canadian Democracy* (Montreal: IRPP, 2005) at 104.

because there is immense strategic pressure against new and small parties and a relative success of the new party usually works to the benefit of a party farthest to it as splits the votes with closer party. In PR systems, establishing a new party is much easier; however, as discussed before, the chances of a complete alternation between the governing parties is lower. In addition, the support level of parties might be crystallized for a long period of time.

Majority systems meet both criteria. The emergence of new parties in majority systems is easy because in the first round or the first count there is little strategic pressure against small and new parties. Voters can give their initial support to a new party and their second preference or second vote to an established party. Supporting a new party does not hold the danger of helping the enemy camp. Indeed, as Elgie points out, in the French system there are even incentives for setting up new parties:

In France new parties face few challenges: A newly formed party knows that even the threat that it may do fairly well at the first ballot means that it will have to be included in the general alliance-building process. Thus, the two-ballot system makes the cost of party fragmentation relatively low.⁵⁶⁴

In the Australian system, the emergence of the Green party and other third parties that were active in some periods of Australian history is an indication of the system's openness to new challengers.

With regards to the second criterion, the Experience of France and Australia shows that alternation has not been a serious problem. Majority systems not only fare better than PR systems in this regard but according to some commentators they even outperform plurality

⁵⁶⁴ Robert Elgie, "France: Stacking the Deck" in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 129.

systems. Years ago, Tom Flanagan commented that the adoption of AV could be a solution to the dominance of the Liberal party in Canada.⁵⁶⁵

In conclusion, of the models that we have examined, majority models are the only ones that receive a good mark on both criteria of democratic change. To enforce this point, I conclude this subsection with the following passage from Jean-Pierre Derriennic which is about AV but can apply equally as well to other versions of the majority model:

The first-past-the-post system ... gives citizens very few means to encourage or compel ... parties to change should they become inflexible or incapable of dealing with the political issues of the day. In fact, citizens who create a new party because they are dissatisfied with the party that has hitherto represented them initially increase the chances of victory of the party that is furthest from their preferences. ... This thus have an extremely deterrent effect on partisan innovation.

With a system of proportional representation, there is a danger that citizens will always be governed by the same more or less centrist parties, according to coalitions that vary slightly at each election without causing any of the parties to leave power. ... Alternative voting offers an elegant solution for this problem ...⁵⁶⁶

Subsection 5: Strategic voting and wasted votes

In the electoral studies literature, discussions about strategic voting have been mainly concerned with plurality systems. It is worthwhile to examine whether any strategic pressure exists in majority systems. Let us examine our three variants separately.

⁵⁶⁵ Tom Flanagan, "The Alternative Vote" in Paul Howe, Richard Johnston & André Blais, eds. *Strengthening Canadian Democracy* (Montreal: IRPP, 2005) at 103-105.

⁵⁶⁶ Jean-Pierre Derriennic, "Three Dimensions of Justice for Evaluating Electoral Systems" in Paul Howe, Richard Johnston & André Blais, eds. *Strengthening Canadian Democracy* (Montreal: IRPP, 2005) at 110.

We will start with the majority-majority model. Cox⁵⁶⁷ suggests different situations where there are incentives for strategic voting in run-off systems. I do not want to reproduce all of his complicated categories, but I will mention three straightforward situations in which some voters might be compelled or encouraged to vote strategically:

1. Strategic desertion of minor candidates: When none of the perceived front-runners are liked by a voter but there is a perceived third-placed candidate that she prefers to them, she might strategically desert her favourite candidate who has no chance of winning to help the third-place candidate pass the second-place candidate and go through to the second round.

2. Strategic desertion of the top two candidates: there are two main sub-types for this situation:

2-1. Some of the supporters of one of the top two candidates might vote for a third candidate because they think their own favourite candidate has little chance of winning the second round. At least for this type of strategic voting in run-off systems there is a precedent. In the 2007 presidential elections in France, some of the supporters of Socialist Segolene Royal deserted her for centrist Francois Bayrou “because they wanted F. Bayrou to run in the second ballot and defeat N. Sarkozy (as forecast by all surveys).”⁵⁶⁸

2-2. Some of the supporters of the top candidate may strategically vote for another candidate to help her get through to the second round along with their own favourite candidate because they think their candidate can easily defeat her in the second round. For instance, in the context of 2007 French election, a possible strategic action by some of the supporters of Sarkozy would be to vote for Royal to make sure that Sarkozy would not face Bayrou in the second round.

⁵⁶⁷ Gary W. Cox, *Making Votes Count: Strategic Coordination in the World Electoral Systems* (Cambridge: Cambridge University Press, 1997) at 123-138.

⁵⁶⁸ Collette Ysmal, “France” (2008) 47 *European Journal of Political Research* 976 at 981.

In the majority-plurality model, strategic pressure in the first round seems to be less than the majority-majority model. Duverger believed that in the first round there are no strategic pressures because even small parties can enter the competition without the fear of this having a perverse effect on seat distribution.⁵⁶⁹ This is particularly true about variations of majority-plurality where there is no threshold of entry for the second round. In the current French version where there is a 12.5% threshold for entering the second round, a situation of strategic voting is conceivable, where a voter abandons her first choice to help her second preference go through to the second round.

It is difficult to imagine strategic voting under AV. However, in some rare and complicated situations, voting strategically under AV may make sense because the order of elimination of the voters may affect the final outcome. An imaginary three-way contest can serve as a simple example: suppose each candidate has the following number of supporters: Left 32, Center 28, and Right 40. All of the supporters of the Left prefer Center to Right, but supporters of Center are split equally in their preferences towards Left and Right. Now, if everybody votes sincerely, Center will be eliminated after the first count and Right will be elected in the second count. However, if three of Left's supporters strategically give their first preference to Center, Left will be eliminated after the first count and Center will win in the second count.

As discussed in Chapter Four, a bulk of the potential grounds for a constitutional challenge against the current plurality system lies in the fact that strategic voting suppresses multipartyism and interferes with the rights of supporters of small parties to play a

⁵⁶⁹ Cited in: Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 116-117.

meaningful role in the electoral process as required by *Figueroa v. Canada*⁵⁷⁰. Now, if strategic pressures also exist in majority systems, can they withstand such a challenge in courts? I believe they can, because:

1. From the fact that strategic voting scenarios are imaginable in majority systems does not follow that they occur in a rate comparable to plurality system. Canadian courts will not be perfectionists. Perhaps no system can eliminate the prospect of strategic voting altogether, but this does not mean that we have to remain with the worst option, which is plurality. The electoral history of France and Australia does not suggest that a systematic pressure against the smaller parties have existed and their votes have been suppressed. Both systems are smooth multiparty systems. “Smooth” in the sense that multipartyism does not result in perverse results as it does in Canada.

2. Even in rare situations when strategic voting in majority systems can make a difference, it is not very likely to happen because as observed by Cox⁵⁷¹ too much information is needed for making a correct strategic move. “In a nutshell, under runoff rules it is more difficult for elite actors to discern when it is in their interests to foment strategic voting, and, conditional on their deciding that it is worthwhile, it is more difficult to implement the appropriate strategy.”⁵⁷² This uncertainty further decreases the possibility of strategic pressure.

I conclude that majority systems get a passing mark in this criterion. Some variants score better than others. For instance, strategic pressure in AV is less than in majority-runoff. It is worthwhile to add a comment about the nature of strategic voting in a majority-plurality variant. As mentioned, in this system, there is little strategic pressure in the first round.

⁵⁷⁰ *Figueroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912, 2003 SCC 37.

⁵⁷¹ Gary W. Cox, *Making Votes Count: Strategic Coordination in the World Electoral Systems* (Cambridge: Cambridge University Press, 1997) at 137.

⁵⁷² Gary W. Cox, *Making Votes Count: Strategic Coordination in the World Electoral Systems* (Cambridge: Cambridge University Press, 1997) at 137.

Strategic voting in the second round is not an undesirable act that muffles small parties because voters have already expressed their sincere votes in the first round and their “right to play a meaningful role in the electoral process” has not been disturbed. Indeed, in France, perceptions about the level of support of parties are based on their first round votes. This is why in Sartori’s opinion⁵⁷³, strategic voting in the second round does not amount to insincere voting but is intelligent voting because the information gathered through the results of the first round helps voters to vote intelligently in the second round.

Subsection 6: Power of central parties

Compared to plurality systems, majority systems give more clout to party candidates. I can think of two reasons for this. First, since in most cases the traditional base of the party is not large enough to win a majority of votes, candidates should try to extend their personal appeal beyond party lines to receive second preferences or second votes from the supporters of other parties. As a consequence, successful candidates tend to be stronger and able to assert themselves vis-à-vis the party bureaucracy.⁵⁷⁴ The second reason is because the party system is more open, expulsion from the party is not necessarily the end of the political life of the candidate. He could find another close party to run for or even set up his own party without fearing that strategic pressures will not allow it to survive.

The system is also more candidate-centered than list PR systems. As we have discussed, in list systems the dependence of candidates on party bureaucracy is more than their

⁵⁷³ Giovanni Sartori, *Comparative constitutional engineering : an inquiry into structures, incentives, and outcomes* (New York : New York University Press, 1994) at 63-64.

⁵⁷⁴ Farrell and McAllister’s observations about the Australian system confirm this: David M. Farrell & Ian McAllister, *The Australian Electoral System* (Sydney: University of New South Wales Press Ltd, 2006) at 113 & 151.

dependence on local voters. This does not happen in candidate-centered majority systems. Small single member districts also help the candidates acquire strong local ties and gain some degree of independence against the central party. This point is confirmed by Farrell and McAllister's observations about the difference between House of Representatives candidates and Senate candidates in Australia. The latter compete in large multi-member districts. Farrell and McAllister observe that House candidates have stronger local ties compared to Senate candidates, who have stronger ties to the party bureaucracy.⁵⁷⁵

This type of party cohesion is not as eroded as in the STV system in Ireland or the SNTV system that existed in Japan. In conclusion, majority models occupy an efficient midway position on the scale of a party versus the candidates' power balance.

Subsection 7: Turnout

We do not have controlled data for comparing the level of turnout in majority systems with other systems. This is because of the two established democracies that use a majority model for their lower house elections: in Australia, the vote is compulsory and therefore turnout is artificially increased, and France has a presidential system and therefore legislative elections have a secondary nature.

Without reliable data, we trust in the conventional wisdom that the more open and diversified the contest is, the higher the turnout will be. Majority systems are more open than plurality systems, which tend to be dominated by two parties and therefore a shift to the majority model should have a positive effect on the level of turnout. Another reason why a

⁵⁷⁵ David M. Farrell & Ian McAllister, *The Australian Electoral System* (Sydney: University of New South Wales Press Ltd, 2006) at 109-110.

higher turnout should be expected in majority systems (AV in particular) is that they give more power to the voter. The act of voting is more interesting here.

A special problem has been observed with regards to two-round systems, which is that in these systems, since the field of competition is limited in the second round, turnout becomes lower.⁵⁷⁶ The corollary of this reasoning is that at least in the first round, which offers a wide range of options, turnout should be higher than in plurality systems.

Section Two: Diversity

Subsection 1: Political Diversity

As we have observed thus far, a frustrating point in balancing the values associated with electoral system design is that the values of political diversity and political stability are difficult to reconcile. Often a system that puts too much emphasis on stability muffles the political diversity and one that promotes diversity compromises stability. The interesting magic of majority models is that they can produce stable governments without muffling the political diversity or, in other words, they manage to respect the political diversity without over-fragmenting the parliament and thus destabilizing the government formation process. This is done through a process that separates electoral parties from parliamentary parties. As we have observed, the plurality model has a suppressing effect on the number of both parliamentary parties and electoral parties. Majority systems reduce the number of parliamentary parties but do not muffle small electoral parties. Since running in the elections

⁵⁷⁶ David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 61.

does not have a spoiler effect, small parties are free to run and build up their strength over time, but it is usually only the larger parties that succeed in winning seats. Moreover, since larger parties usually need the support of smaller parties to win in the second round or in the later counts, small parties are not relegated to the status of “also ran.” They can negotiate with larger parties and swipe some concessions in exchange for their support. Thus, they can influence policy. They can make alliances with larger parties. Larger parties have to more or less respect their commitments to smaller parties because they know they will need their support in the following election; however their hands are not tied in a fragile coalition with small parties. A particular problem with PR systems is that they sometimes give a disproportionate influence to small parties. In a coalition of a large party and a small one, the small party can bring about the downfall of the government anytime by breaking away from the coalition. It may manage to get concessions well beyond its weight. The tacit coalition model of the majority systems gives a more proportionate influence to small parties.

The fact that majority systems are more conducive to political diversity than plurality models can be is evident when comparing the number of parties that compete in elections and receive relative electoral success. For instance, in the French legislative elections of 2012, 16 parties or groups managed to get more than 0.5% of votes in the first round.⁵⁷⁷

AV “enables the supporters of candidates who have little hope of being elected to influence, via their second and later preferences, the election of a major candidate.”⁵⁷⁸ If small parties manage to control the flow of preferences of their supporters, they can bargain with larger parties for policy concessions.

⁵⁷⁷ Online: Ministère de l'Intérieur < http://www.interieur.gouv.fr/sections/a_votre_service/resultats-elections/LG2012/FE.html>.

⁵⁷⁸ Andrew Reynolds, Ben Reilly & Andrew Ellis, *Electoral System Design: The New International IDEA Handbook* (Stockholm: International IDEA, 2005) at 49.

The same thing happens in two-round variants, but they also have the additional benefit that under these systems parties have a time frame of one or two weeks during which they can bargain with other parties and also communicate and deliberate with their supporters in order to coordinate their second vote. Additionally, the parties have the moral authority of their standings in the first round and bargaining is more accurately done according to the actual strengths of parties.

Of the two variants of the two-round systems, Sartori prefers the majority-plurality model here.⁵⁷⁹ The reason is that in this variant smaller parties are not barred from running in the second round and therefore if they do not manage to get some concessions they can decide to run in the second round and have a spoiler effect. Thus, this variant provides more power to smaller parties. The problem with this variant is that when lower ranking candidates are not compelled to stand down, just like any plurality contest vote splitting can happen and result in perverse results. However, the two-round system in the Third French Republic avoided this problem. This is despite the fact that it was a lax system with no threshold of entry into the second round. As Goldey and Williams describe,

[In the second round] Party politicians were expected to observe coalition discipline – at least in marginal seats – withdrawing in favour of the strongest candidate of their side, whether Right or Left. Those who failed to do so were very likely to find their supporters withdrawing their votes. The first round allowed an indication of preference, the second a repudiation of the enemy ...: ‘Choose on the first round, eliminate on the second.’⁵⁸⁰

⁵⁷⁹ David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 60.

⁵⁸⁰ David Goldey & Philip Williams, “France” in Vernon Bogdanor & David Butler, eds. *Democracy and Elections: Electoral Systems and their Political Consequences* (Cambridge: Cambridge University Press, 1983) at 66.

Moving on to contemporary France, the mechanism by which smaller parties get to play an influential role is neatly summarized by Elgie:

In short, smaller parties may feel that they have nothing to lose by contesting the first ballot. On the contrary, they may stand to gain by doing so, because if they can register a sufficiently large degree of support, then they can ensure that they are indispensable to the second-round process of alliance building⁵⁸¹

Some may suggest that even if we concede that small parties in majority systems have more influence than those in plurality systems, their influence can in no way match the role and influence they receive under proportional systems. I have reservations about this supposition. It is not always so. When gauging the influence of small parties, the number of seats in the chamber should not be the only pertinent factor. As the experience of the Communist Party of France shows, reverting to the double-ballot system helped it gain more clout despite reducing its seats. “Duverger ... points out that, by encouraging alliance between the PCF and the Socialists, ... [the two-round system] helped the communists escape the isolation they experienced under the Fourth Republic and therefore advanced their prospects of securing office.”⁵⁸² Thus, majority systems help smaller parties play a constructive role.

⁵⁸¹ Robert Elgie, “France: Stacking the Deck” in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 123; also Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 117.

⁵⁸² Alan Renwick, *The Politics of Electoral Reform: Changing the Rules of Democracy* (Cambridge: Cambridge University Press, 2010) at 100; also see: Robert Elgie, “France: Stacking the Deck” in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 125-126.

An interesting related point is that the number of electoral parties in France increased with the change of the system from PR to two-round majority system.⁵⁸³ A possible reason is that thresholds in PR systems have a suppressing effect on the number of electoral parties while no such pressure exists in majority systems.

To confirm the acknowledgment of the role of small parties in the French system, it is interesting to note that larger parties have respected their coalition agreements with smaller parties even when they have won enough seats to govern alone. “In other words, the two-ballot system has established coalition governments as the norm, even when arithmetically they have not been necessary.”⁵⁸⁴ Of course, these coalitions are not comparable to unstable coalitions in PR systems because first of all, they are necessarily made between ideologically close parties with little chance of disagreement and second, because the smaller parties know that the larger party can continue to govern even if they split from the coalition.

Electoral agreements and alliances can also help small parties in terms of seats they win. Before the French presidential and legislative elections in 2012, Socialists and Greens struck a deal according to which Socialists would reserve 60 constituencies for Greens (they would support a Green candidate instead of running their own) in exchange for Greens lending them their support in the presidential and legislative elections.⁵⁸⁵ They went on to win 18 seats but Socialists alone gained a majority of the seats in the lower house.⁵⁸⁶

⁵⁸³ Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 123.

⁵⁸⁴ Robert Elgie, “France: Stacking the Deck” in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 133.

⁵⁸⁵ “Accord avec le PS - Les Verts préfèrent les postes à la riposte”, *Le Point* (16 November 2011) online : Le Point <http://www.lepoint.fr/politique/election-presidentielle-2012/accord-avec-le-ps-les-verts-preferent-les-postes-a-la-riposte-15-11-2011-1396636_324.php>.

⁵⁸⁶ “Résultats des élections législatives: France entière”, *Le Monde* (accessed : August 2012) online : Le Monde <<http://www.lemonde.fr/resultats-elections-legislatives/>>.

I conclude that majority systems promote a kind of multiparty system. It is different from the multipartyism found in PR systems in that this is mainly an electoral multiparty system rather than a parliamentary multiparty system, but does this kind of multipartyism satisfy the exigencies of the Constitution of Canada? We have seen that the Supreme Court of Canada recognizes multipartyism as a value because:

Put simply, full political debate ensures that ours is an open society with the benefit of a broad range of ideas and opinions ... This, in turn, ensures not only that policy makers are aware of a broad range of options, but also that the determination of social policy is sensitive to the needs and interests of a broad range of citizens.⁵⁸⁷

Through different decisions of the Supreme Court of Canada, the meaning of the right to vote has evolved into “the right to effective representation”⁵⁸⁸, then to “the right to play a meaningful role in the selection of elected representatives”⁵⁸⁹, and then to “the right to play a meaningful role in the electoral process”⁵⁹⁰. In *Figueroa v. Canada*⁵⁹¹, the court finds that laws that hamper multipartyism infringe the constitution because they interfere with the right of citizens to play a meaningful role in the electoral process. Now, the question is, what if parties are free to participate in the electoral process but are not necessarily successful in winning a proportionate number of seats? Does the value of political diversity (multipartyism) as recognized by the Supreme Court involve the ability of small parties to

⁵⁸⁷ *Figueroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912, 2003 SCC 37, para. 28.

⁵⁸⁸ *Reference re Prov. Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158.

⁵⁸⁹ *Haig v. Canada (Chief Electoral Officer)*, [1993] 2 S.C.R. 995.

⁵⁹⁰ *Figueroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912, 2003 SCC 37.

⁵⁹¹ *Figueroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912, 2003 SCC 37.

enter into the parliament and potentially be part of the government? It is worthwhile to revisit some parts of the court's decision:

...It is my conclusion that the ability of a political party to make a valuable contribution to the electoral process is not dependent upon its capacity to offer the electorate a genuine "government option". Rather, political parties enhance the meaningfulness of individual participation in the electoral process for reasons that transcend their capacity (or lack thereof) to participate in the governance of the country subsequent to an election. Irrespective of their capacity to influence the outcome of an election, political parties act as both a vehicle and outlet for the meaningful participation of individual citizens in the electoral process.

...Large or small, all political parties are capable of introducing unique interests and concerns into the political discourse. Consequently, all political parties, whether large or small, are capable of acting as a vehicle for the participation of individual citizens in the public discourse that animates the determination of social policy.⁵⁹²

Apparently, here the court is not concerned about the ability of parties to be part of the government or even the parliament. The court recognizes that in the electoral process, parties play different roles that are not limited to presenting a government option. It is these other roles of the parties that the court is concerned with. A few paragraphs later, the court clarifies what sort of other roles it is talking about:

In respect of their ability to act as an effective outlet for the meaningful participation of individual citizens in the electoral process, the participation of political parties in the electoral process also provides individuals with the opportunity to express an opinion on governmental policy and the proper

⁵⁹² *Figueroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912, 2003 SCC 37, paras. 39-41.

functioning of public institutions. A vote for a candidate nominated by a particular party is an expression of support for the platform or policy perspectives that the party endorses. The participation of political parties thereby enhances the capacity of individual citizens to express an opinion as to the type of country that they would like Canada to be through the exercise of the right to vote.⁵⁹³

This is exactly the type of role that majority models beautifully let all parties play. Under the current plurality model, different functions of the elections interfere with each other. For instance, if a citizen wants to express her concern about certain environmental issues by voting for the Green Party, she compromises her role in electing a government. The design of majority systems allows all parties to provide platforms for the expression of different ideas; it lets smaller parties act as pressure groups and allows the larger parties, those with a majority-belt, to offer a government option. Different functions of the elections do not interfere with each other here.

Majority systems are conducive to political diversity but the concept of the diversity is searched for in the larger social and political scene, not necessarily inside the lower chamber of the parliament or the “government chamber”. True, parliamentary debates provide valuable platforms for promulgation of ideas but they are not the only opportunities for expressing ideas. If fragmenting parliaments results in compromising our other values, we don’t need to go to great lengths to ensure that all ideas are expressed inside the House of Commons. If smaller parties have the chance to survive, they can effectively use other tribunes to promulgate different ideas. What is more, as I will introduce in Chapter 8, I

⁵⁹³ *Figueroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912 at para. 43.

propose a proportional system for Senate elections that will bring the diversity inside the parliament but not necessarily to the lower “governing” chamber.

Subsection 2: Social Diversity

Like other single-seat district electoral systems, the variants of majority systems we are dealing with here have a negative effect on the representation of women and ethnic minorities. In France, this is evident by the small amount of women elected to the parliament and its contrast with elections to the European Parliament that are held under PR rules. As Elgie describes:

As with most majoritarian electoral systems, the two-ballot system tends to encourage most parties to select white, middle-class, male candidates. As a result, in France the level of female representation has been relatively low. During the course of the 1997–2002 legislature, the left-wing government introduced the so-called ‘parity’ reform that was designed to increase the representation of women by encouraging parties to increase the number of women selected to contest winnable seats. However, at the 2002 National Assembly level it had little effect. At the outset of the 1997 legislature, 11 per cent of all deputies were women. Immediately following the 2002 election, this figure had risen to only 12 per cent. This figure contrasts with the relatively high level of female representation in the European Parliament, elections to which are held under a system of PR and where in the 1999–2004 legislature 43 per cent of France's Members of the European Parliament (MEPs) were female. That said, the blame for the consistently low level of female representation in the National Assembly does not lie solely with the electoral system. As in other countries, a series of social norms and institutionalized practices means that the level of female representation is lower than it should be. Even so, the two-ballot system

can be counted as one of the factors that has kept the level of female representation in the National Assembly so low for such a long time.⁵⁹⁴

A similar situation exists in Australia. After the 2010 elections, 37 out of 150 or about 25% of members of the House of Representatives were women while in Senate –which is elected under STV – the rate was 30 out of 76 or just under 40%.⁵⁹⁵

David Beatty⁵⁹⁶ opines that the underrepresentation of women can be a basis for a constitutional challenge against the electoral system based on section 15 of the Charter on equality. Considering the interpretation the Supreme Court has given to section 15⁵⁹⁷, the claim seems to be credible. Discrimination based on sex is already an enumerated ground in section 15; therefore, unlike the case of supporters of minor parties, we do not have to establish whether women constitute an analogous group. Women (and ethnic minorities) constitute a historically disadvantaged group and the scope of the interest in question (the right to equal representation and equal access to office) is not of little importance. Here, the electoral law is not directly aimed at discriminating against women; rather this discrimination is an indirect result of the electoral scheme. However, I believe the distinction between the direct and indirect effects of law is an arbitrary one and the electoral law cannot be saved with such reasoning. However, as will be discussed in Chapter Eight, adoption of PR is not the only way to ensure the improvement of the social diversity of elected officials; there are measures that can be implemented within single district systems.

⁵⁹⁴ Robert Elgie, “France: Stacking the Deck” in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 131.

⁵⁹⁵ Data from: “Electoral Milestones for Women”, *Australian Electoral Commission* (updated 28 January 2011) online: Australian Electoral Commission <http://aec.gov.au/Elections/Australian_Electoral_History/milestone.htm>.

⁵⁹⁶ David Beatty, “Making Democracy Constitutional” in Paul Howe, Richard Johnston & André Blais, eds. *Strengthening Canadian Democracy* (Montreal: IRPP, 2005) at 133-134.

⁵⁹⁷ See in particular: *Andrews v. Law Society of British Columbia*, [1989] 1 SCR 143, *R. v. Kapp*, [2008] 2 S.C.R. 483, and *Withler v. Canada (Attorney General)*, [2011] 1 S.C.R. 396.

Subsection 3: Geographical diversity

Since the variants of majority systems that we discuss in this chapter all operate within small single member districts, just like the current single member plurality model they respect geographical diversity. The same positive points that are attributed to plurality systems are also attributable to majority systems; therefore, we do not need to repeat the discussion here. As it is evident from the historical descriptions by Goldey and Williams, one of the reasons the two-ballot system was preferred to PR in France was its conduciveness to localism.⁵⁹⁸ In a large country such as Canada with a very high degree of geographical diversity and different regional interests, any plausible electoral system option should be sensitive to local interests and majority systems meet this criterion.

Section Three: Efficiency

Subsection 1: Stability

Majority systems in France and Australia have been stable as plurality systems. First of all, as evidenced by the seat share of parties⁵⁹⁹ France and Australia have been virtually two-party systems throughout their recent history. What is meant by two-party here is that two

⁵⁹⁸ David Goldey & Philip Williams, "France" in Vernon Bogdanor & David Butler, eds. *Democracy and Elections: Electoral Systems and their Political Consequences* (Cambridge: Cambridge University Press, 1983) at 62-83.

⁵⁹⁹ See table at: David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 57-58.

main parties have dominated the lower houses of their parliaments; otherwise, they are both be multiparty systems in the electoral stage. Indeed, in France the number of electoral parties has increased over time, but the seat share of small parties has not seen a significant change.⁶⁰⁰ This is evidence that majority systems can accommodate a diversity of political opinions without fragmenting the parliament and thereby destabilizing the governmental system.

The French system has been more open about awarding small parties with seats than the Australian system. This is partly because of the alliance agreements between large and small parties that have already been mentioned. Therefore, there is a degree of multipartyism in the French system compared to the Australian system. Small parties have had limited access to parliament. This has certainly been helped by the large assembly size (577 seats against 150 in Australia). However, as Elgie points out⁶⁰¹, with the exception of one period of minority government (1988-1993), France has had stable majority governments, although these majority governments were often coalitions. However, as mentioned before, these coalitions were far from the fragile coalitions found in some PR systems, because first of all the inclusion of small parties in the coalition were often arithmetically unnecessary and carried out in respect to alliance agreements. Second of all, the design of the two-ballot system pushes parties into making large alliances. This alliance building process brings alliance partners closer and reduces the chances of frictions between coalition partners. These alliances are usually long standing policy-based agreements and are not similar to

⁶⁰⁰ Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 117-118.

⁶⁰¹ Robert Elgie, "France: Stacking the Deck" in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 132-133.

quick, temporary, and opportunistic coalitions that are made after each election in some PR systems:

The alliance-building imperative of the two-ballot system has had a further aspect during the Fifth Republic. It has encouraged binary competition, meaning competition between just two alliances. In short, the two-ballot system punishes stand-alone parties or groups, particularly small ones. It does so as a result of a simple mechanical effect. Unless stand-alone and small parties have a strong geographical concentration, such as the regionalist parties in France's overseas departments and territories, they will find that they are unable to win through to the second ballot, or that, if they do so, they are likely to be defeated there by candidates and parties who have been able to build wide-ranging alliances. As a result, stand-alone parties and small parties are encouraged to join such alliances, unless they see a strategic reason for not doing so.⁶⁰²

Sartori⁶⁰³ points to another aspect of the majority model that helps the formation of stable governments and is the penalization of extremist or hard-line parties. A difficulty in PR models appears when extremists or anti-system parties win a considerable proportion of seats and their inclusion in a government coalition becomes difficult to avoid. However, since these parties have different perspectives from the other mainstream coalition partners, such coalitions are usually doomed to failure. Because of the centripetal characteristics of majority systems, which will be discussed in the next subsection, extremist parties rarely win enough seats to be indispensable to the coalition building process.

⁶⁰² Robert Elgie, "France: Stacking the Deck" in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 126.

⁶⁰³ Giovanni Sartori, *Comparative constitutional engineering : an inquiry into structures, incentives, and outcomes* (New York : New York University Press, 1994) at 68-69.

To cite a dissenting opinion, it is worthwhile to note that in an article⁶⁰⁴, Sarah Birch opines that two-round systems lead to instability in the democratic system because the results of the first round remove the element of uncertainty; therefore, actors who know they will lose may resort to non-democratic measures. Firstly, this criticism, if justified, is pertinent to new and fragile democracies and not applicable to an established democracy like Canada. Secondly, I am not convinced that those who are ready to resort to violence will not do so after they receive unsatisfactory results in single-round elections.

I must confess that some recent developments such as the 2011 robo-calls scandal cast a serious doubt over my counter-argument against Birch. Established democracies, such as Canada, don't seem to be immunized against dishonest electoral manoeuvres. However, I still think that the dishonest manoeuvres that are possible in Canada are categorically different from the violent and evidently undemocratic measures that happen in fragile democracies which worry Birch. Electoral manoeuvres that happen in Canada are more discreet and more sophisticated. The perpetrators of such manoeuvres don't need a second round of elections in order to do their deeds. As we well know, in the robo-calls case, the federal judge despite sympathizing with the cause of applicant, was not able to overturn the results of elections.⁶⁰⁵

Subsection 2: Moderation

A main positive characteristic of majority models is that they award moderates. Moderate candidates are more likely to be successful under these systems. There are certain reasons for

⁶⁰⁴ Sarah Birch, "Two-Round Electoral Systems and Democracy" (2003) 36 *Comparative Political Studies* 319.

⁶⁰⁵ *McEwing v. Canada (Attorney General)*, 2013 FC 525.

this. Firstly, since the winner has to get a majority of votes, her platform should be based on broad issues that appeal a large electorate. She cannot win by focusing on special interest groups and finding a niche of enthusiastic supporters. Secondly, when no candidate receives a majority of the votes in the first round and two candidates go through to the second round, the one who is closer to the center has a better chance of winning. The extremist cannot count on cross party appeal. This encourages candidates to position themselves close to the center. The 2002 French presidential election provides a bold illustration for this point. Extreme right Le Pen and moderate right Chirac advanced to the second round. In the second round Le Pen received virtually the same amount of support as he had won in the first round. Chirac received the support of all other parties and won with more than 80% of the votes. A similar scenario happens in AV; only moderate candidates can count on cross-party support for winning in the later counts. As the following passage from Elgie shows, in the French system parties have tended to gravitate towards the center:

The final consequence of the electoral system on the party system is that it has encouraged centripetal left–right competition. As the old French political adage has it, at the first ballot voters select, whereas at the second they elect. To put it another way, at the first ballot voters choose, while at the second they eliminate. What both aphorisms capture is the notion that voters are motivated by different factors at the two ballots. At the first, they vote according to their basic party preference. At the second, their favoured party may be absent, so they may have to vote for the second-preference party. The net effect is that the two-ballot system has tended to reduce the support for extremes There is no a priori reason why a large number of voters cannot have an extreme party as their second preference, but in France since 1958 there has tended to be a fairly normal distribution (in the statistical sense) of preferences along the left–right

axis. Thus, both left-wing and right-wing alliances have tended to move towards the centre in order to maximize their electorate.⁶⁰⁶

Farrell and McAllister cite research that points to the existence of the same centripetal tendency in preferential systems such as AV.⁶⁰⁷ As Reynolds and his colleagues put it:

... it is sometimes argued that AV is the best system for promoting centrist politics, as it can compel candidates to seek not only the votes of their own supporters but also the ‘second preferences’ of others. To attract these preferences, candidates must make broadly-based appeals rather than focusing on narrower issues. The experience of AV in Australia tends to support these arguments: the major parties, for example, typically try to strike bargains with minor parties for the second preferences of their supporters prior to an election – a process known as ‘preference swapping’.⁶⁰⁸

Sartori observes that reciprocal withdrawal and support agreements between French parties resulted in their moderation: “... when parties know that they will be forced into reciprocal exchanges, they will equally be “rationally forced” into downplaying their ideological differences and thus into playing their competitive game with moderation. ... Overall, the double-ballot punishes ideological politics and rewards pragmatic politics.”⁶⁰⁹ It is for this reason that the French Communist Party preferred PR to the double-ballot system.

⁶⁰⁶ Robert Elgie, “France: Stacking the Deck” in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 128.

⁶⁰⁷ David M. Farrell & Ian McAllister, *The Australian Electoral System* (Sydney: University of New South Wales Press Ltd, 2006) at 150-151.

⁶⁰⁸ Andrew Reynolds, Ben Reilly & Andrew Ellis, *Electoral System Design: The New International IDEA Handbook* (Stockholm: International IDEA, 2005) at 49.

⁶⁰⁹ Giovanni Sartori, *Comparative constitutional engineering : an inquiry into structures, incentives, and outcomes* (New York : New York University Press, 1994) at 64-65.

PR would preserve the “ideological purity”⁶¹⁰ of the party, which was of utmost importance to it.

Goldey and Williams’ historical overview of the French system reveals that once centrist parties (such as the Radical Party, which despite its name, was located in the center of the political spectrum,) were the main beneficiaries of the system,, but sometimes later, the centrist parties weakened or disappeared. Apparently when a centrist party loses popular support, the majority electoral system cannot save it from being sidelined. However, as Goldey and Williams testify⁶¹¹ elections were still being won in the center even if not by a centrist party. While two large Left and Right alliances appeared in France, these two alliances have been subject to the centripetal force of the system.

The moderating effect of the majority model on party system is not limited to how it pushes the major parties towards the center; the way it treats minor parties is also noteworthy. As Fisichella discusses⁶¹² the pattern of disproportionality in the majority model is different from that in the plurality model. In plurality systems, all small parties are indiscriminately punished (except regional parties). In majority systems, small centrist parties are punished less than extreme parties if they are punished at all. For example, in the 2012 legislative elections in France, the Nouveau Centre party, with only 2.2% of the first round votes elected a total of 12 deputies while the extreme right National Front with 13.6%

⁶¹⁰ Alan Renwick, *The Politics of Electoral Reform: Changing the Rules of Democracy* (Cambridge: Cambridge University Press, 2010) at 100.

⁶¹¹ David Goldey & Philip Williams, “France” in Vernon Bogdanor & David Butler, eds. *Democracy and Elections: Electoral Systems and their Political Consequences* (Cambridge: Cambridge University Press, 1983) at 75.

⁶¹² Domenico Fisichella, “The Double-Ballot System as a Weapon against Anti-System Parties” in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 182-186.

of first round votes elected 2 deputies only.⁶¹³ As Fisichella observes, on some occasions the double-ballot system has even resulted in the overrepresentation of a relatively small center party (as had happened to Radicals) because they can draw support from both side of the spectrum.⁶¹⁴ In contrast, the only time extremist parties got good results was when France had temporarily adopted PR in 1986.⁶¹⁵

In short, one reason extreme parties are punished under this system is that the votes of the mainstream voters are not transferable to them.⁶¹⁶ The other reason is that they are often unwilling or unable to forge alliances with other parties, while in majority systems alliance building is the road to success for small parties. Even if they occasionally manage to make an alliance, still, vote-wise it would be the moderate partner who would reap the benefits of the alliance and the extreme party would not manage to win many additional votes because:

... first, these candidates can count on support from electors of just one side, while the moderate ‘half wings’ occupy the ideal placement to receive votes from allied (and even non-allied) parties to their left and their right; second, even electors belonging to the same camp may choose to desert extremist/extreme candidates because the vote has limited ‘transferability’, and/or because a more attractive (i.e. moderate) candidate is presented by the opposite coalition; third, since the outcome extremist electors fear most is always the victory of the opposite side, they will always feel compelled to support massively even the most unattractive common moderate candidate; finally, moderates are usually less disciplined and less thoroughly organized than anti-system parties ...

⁶¹³ Data from: Online: Ministère de l'Intérieur < http://www.interieur.gouv.fr/sections/a_votre_service/resultats-elections/LG2012/FE.html>.

⁶¹⁴ Domenico Fisichella, “The Double-Ballot System as a Weapon against Anti-System Parties” in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 186.

⁶¹⁵ Giovanni Sartori, *Comparative constitutional engineering : an inquiry into structures, incentives, and outcomes* (New York : New York University Press, 1994) at 56.

⁶¹⁶ Giovanni Sartori, *Comparative constitutional engineering : an inquiry into structures, incentives, and outcomes* (New York : New York University Press, 1994) at 67.

whence arises an additional source of bias through higher rates of abstention/desertion suffered by the latter.⁶¹⁷

Apart from the fate of the party system, another moderating effect of majority systems relates to the behaviour pattern it imposes on single candidates. Since candidates need the second preferences or second votes of the supporters of their rivals, they will not bash their rivals too ruthlessly and will try to appear attractive to the supporters of the rival camps. Therefore, politics in majority systems will not be as adversarial as that of plurality systems.

Baldini and Pappalardo⁶¹⁸ try to suggest that the moderating characteristics of the majority systems exist in plurality systems as well. However this is not so; at least not to the same extent. In first-past-the-post systems, a plurality of votes is enough and going beyond one's traditional base of support is not as urgent as in majority models. In plurality systems, elections are not necessarily won at the center. A multi-party competition can tip the system to the left or the right. There are no second votes or second preferences that candidates need to try to attract.

In conclusion, moderation is a characteristic more specifically attributed to majority models among all of the models we have discussed. Majority models earn a very positive score in this regard.

⁶¹⁷ Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 127-128.

⁶¹⁸ Gianfranco Baldini & Adriano Pappalardo, *Election, Electoral Systems and Volatile Voters* (Basingstoke: Palgrave Macmillan, 2009) at 128.

Subsection 3: Accountability

As previously discussed, majority systems are either virtually two-party parliamentary systems or have a binary alliance building structure.⁶¹⁹ The result is there are clear government options and the governing parties get rewarded or punished for what they have done. The responsibility is not confused and governments are held accountable by the voters for what they have done. In France and Australia, government changes are not partial. In short, as regards accountability, majority systems have the same positive characteristics attributed to plurality systems and avoid the shortcomings of PR systems. We do not need to repeat the discussions we have had about this criteria; majority systems deserve the same appraisal that is directed towards plurality systems on this issue.

Subsection 4: Regionalism

We have discussed how the plurality model leads to regionalism. In short, when a regionalist party emerges in a region, traditional national parties split the vote and let the regional party win a plurality of votes and therefore more seats than its weight. Another reason why plurality encourages regionalism is that regional concentration is the best strategy for success for new parties. Upon observing these problems and expressing his displeasure at seeing Canadian politics divided along regional lines, Tom Flanagan proposes a shift to AV can solve this problem.⁶²⁰

⁶¹⁹ See: Robert Elgie, "France: Stacking the Deck" in Michael Gallagher & Paul Mitchell, eds. *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005) at 126-127.

⁶²⁰ Tom Flanagan, "The Alternative Vote" in Paul Howe, Richard Johnston & André Blais, eds. *Strengthening Canadian Democracy* (Montreal: IRPP, 2005) at 99-105.

Indeed these problems can to some degree be solved by a shift to AV or any other variant of the majority model. Under the majority formula, regionalist parties cannot win seats unless they really have the majority support in their respective regions. The preferences of national parties will be transferred to each other and will prevent the election of extremist regional candidates. Plus, since regional concentration is not the only solution for the survival of new and small parties, they will not be encouraged to narrow down their platforms to the interests of some regions.

A criticism that is levelled against all single-member district systems, which include our majority variants, is that under these systems a good strategy to win is to concentrate the efforts on marginal constituencies.⁶²¹ This leads to rationalistic pork barrel politics. This criticism is justified; however, the abolition of single member districts may result in a disregard to geographical diversity, which is the greater evil.

Subsection 5: Simplicity

The act of voting in a two-round system is very simple. It only involves marking down the name of a candidate. The design of the system is also very simple and understandable by most voters: whoever wins more than half of the votes will be elected. In the AV version, there may be some complications. For instance, when there are too many candidates, the requirement that all preferences should be marked can be burdensome for voters.

⁶²¹ Jean-Pierre Derriennic, “Three Dimensions of Justice for Evaluating Electoral Systems” in Paul Howe, Richard Johnston & André Blais, eds. *Strengthening Canadian Democracy* (Montreal: IRPP, 2005) at 109.

On the other hand, the fact that in two-round systems voters have to come to the polling stations twice in a short time is an additional burden and also more costly to administer.⁶²² This is an issue that should be weighed against other priorities and values when deciding which system should be adopted. This issue will be discussed in more details in Chapter Eight when comparing the merits of each variant of the majority model.

Subsection 6: Miscellaneous issues

Apart from value considerations, a reform in a plurality system that involves a shift to the majority model has a pragmatic advantage over a shift to PR. Since majority models share many of their external features with the plurality system, resistance to reform will be less substantial. It is interesting to note that many European countries, after dropping the plurality model, went through a phase of majority elections before shifting to PR.⁶²³ The same familiarity can be a factor in the successful implementation of an electoral reform. In Tom Flanagan's words:

Under AV, most things are the same as the FPTP system to which Canadians are accustomed. The ridings retain the same boundaries and are still represented by a single person, whom residents of the riding can regard as their own member of Parliament. Voters still vote for candidates representing parties rather than for

⁶²² See: Andrew Reynolds, Ben Reilly & Andrew Ellis, *Electoral System Design: The New International IDEA Handbook* (Stockholm: International IDEA, 2005) at 53 & 153-156; David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 61.

⁶²³ Domenico Fisichella, "The Double-Ballot System as a Weapon against Anti-System Parties" in Arend Lijphart & Bernard Grofman, eds. *Choosing an Electoral System* (New York: Praeger Publishers, 1984) at 184; David M. Farrell, *Electoral Systems: A Comparative Introduction*, 2nd ed. (Houndmills: Palgrave, 2011) at 46.

parties as such; no party members are appointed by and represent only party apparatus.⁶²⁴

⁶²⁴ Tom Flanagan, "The Alternative Vote" in Paul Howe, Richard Johnston & André Blais, eds. *Strengthening Canadian Democracy* (Montreal: IRPP, 2005) at 102.

Chapter Eight: Fine Tuning the Proposal

Section One: Which Variant of the Majority Model is Better?

As a result of our discussions in the previous chapter, we can conclude that the majority model does a better job of satisfying our values in a balanced manner. However, three different versions of the majority model were discussed in Chapter Seven and while they share most of their characteristics and consequences, each has its own nuances. In this section, I will probe these variants to see which one is a better model for Canada. Each variant has its own merits and demerits vis-à-vis other variants. We will briefly review them.

1. One of the main merits of the AV variant is that compared to the majority-majority model, it does a better job of aggregating the preferences of the voters. The majority-majority two-round system automatically eliminates all candidates who are ranking third and below and only lets the top two candidates compete in the second round. There is a possibility of a situation in which none of the top two candidates are attractive to the majority of voters. There may be a third candidate who is more attractive. The AV variant

has a gradual process of elimination and provides the chance for lower ranking candidates to emerge on top after the transfer of preferences. Australian election results suggest that this difference between the two versions should not be exaggerated. According to my probe into the results of the last three federal elections in Australia,⁶²⁵ of 450 races, in only one did a candidate who was ranked third at the first count manage to win in the last count. In no instance did a candidate ranking fourth or lower win the final count. However, this low rate is partly because of the dominance of two parties in Australian politics. Canada has more social cleavages and more multiparty politics; therefore, if AV were to be adopted in Canada the number of winning candidates who are not one of the top two in the first count would be slightly more than the Australian rate.

In the same vein, AV can avoid anomalous results such as in the 2002 French presidential elections, in which the left wing was left out of the race and an extreme right wing candidate advanced to the second round.

2. Another advantage of AV compared to the other variants is that elections are completed in a single day. The costs and the burden of voting twice are avoided. However, voting in two-round systems is easier and only involves marking the name of a candidate. In the federal Australian version of AV, voters are required to express their preferences for all candidates.⁶²⁶ This is a burdensome task especially when voters are required to express their preferences for minor candidates with a little chance of winning. Expressing an informed preference requires extensive research. In some cases, expressing even a lower preference for some candidates might be offensive to some voters. Why should a voter express a preference

⁶²⁵ Data from: Online: Australian Electoral Commission <<http://www.aec.gov.au/>> (accessed: July 2012).

⁶²⁶ David M. Farrell & Ian McAllister, *The Australian Electoral System* (Sydney: University of New South Wales Press Ltd, 2006) at 53.

between two candidates who are equally disliked by her, and in any case, do not have a serious chance of winning the election? On the other hand, if the expression of preferences is not mandatory, there is a risk that not enough votes will be transferred to help one of the candidates pass the 50% hurdle and the majority seeking logic of the system is put under question. A partial solution in Australia has been the how-to-vote cards distributed by parties.⁶²⁷ Australian parties distribute how-to-vote cards for each constituency and determine the ranking of preferences for all candidates. In addition to making the lives of lazy voters easier, this helps transfer the preferences of party's supporters to allied parties. However, institutionalization of this procedure may result in decreased voter control over the transfer of preferences and tip the system towards being controlled by party elites.

3. A major advantage of two-round systems is that they give time to voters to reflect.⁶²⁸ Or, in Sartori's words, here "voters can knowingly reorient their choices on the basis of the returns of the first round."⁶²⁹ In the first round, voters may only be concerned with voting sincerely for their most favorite candidate; in the second round, they have enough information to know which candidates have a chance of winning and how they can affect the outcome of elections. Sartori prefers the majority-plurality model because here voters have a freer hand in reorienting their votes and are not confined to top two candidates. Staggering the election has a merit in that it reduces the shock effect of the election results. Seeing where each candidate stands, voters can decide if this really is the election result they want.

⁶²⁷ David M. Farrell & Ian McAllister, *The Australian Electoral System* (Sydney: University of New South Wales Press Ltd, 2006) at 133.

⁶²⁸ Andrew Reynolds, Ben Reilly & Andrew Ellis, *Electoral System Design: The New International IDEA Handbook* (Stockholm: International IDEA, 2005) at 53.

⁶²⁹ Giovanni Sartori, *Comparative constitutional engineering : an inquiry into structures, incentives, and outcomes* (New York : New York University Press, 1994) at 11. See also p. 63.

The two-round system is the best electoral institution, promoting the idea of deliberative democracy as advocated by Habermas.⁶³⁰ In the interval between the two rounds, citizens have a time to deliberate on the elections and influence each other.

4. Compared to AV, the two-round system provides more influence to smaller parties. They have time to bargain with larger parties over policy. They have the results of the first round as an indication of their support and their blackmail potential. The system also gives them time to deliberate with their supporters and reorient their votes in an efficient way. In the same vein it has been observed that:

[R]unoff elections consolidate support behind the successful candidate and encourage coalition building and cross-party alliances in the final stages of the campaign, whereas the alternative vote simply translates a small lead into a more decisive majority of seats by discriminating against those at the bottom of the poll
...⁶³¹

In other words, under runoff elections, smaller parties can more successfully negotiate with the leading candidates and receive concessions in exchange for supporting them in the second round. The process of transferring the votes is more mechanical in AV systems and it can also have an adverse psychological effect: the leading candidate is declared the winner by a majority of votes. In runoff elections, it is clear that the winner was not able to garner a majority of the votes on his own and that is why a second round was necessitated in which he was at the mercy of smaller parties and their supporters.

⁶³⁰Jürgen Habermas, *Between facts and norms : contributions to a discourse theory of law and democracy*(Cambridge, Mass. : MIT Press, 1996) at 287-328. For an introduction to the idea of deliberative democracy see: Will Kymlicka, *Contemporary political philosophy : an introduction* (Oxford ; New York : Oxford University Press, 2002) at 290-292.

⁶³¹ Bruce M. Hicks & André Blais, *Restructuring the Canadian Senate through Elections* (Montreal: Institute for Research on Public Policy, 2008) at 7.

5. A particularity of the majority-plurality version compared to the majority-majority version is that as Cox and Sartori point out⁶³² in this version there is no strategic pressure in the first round. As a result, voters are freer to express their sincere votes and a more realistic picture of the support for different parties and policies emerges.

6. Another major advantage of the majority-plurality version compared to the majority-majority version is that since smaller parties do not have to withdraw from the race, they have more clout in their negotiations with major parties. Also, the options of citizens for reorienting their votes are not limited. For instance, in some situations, the vote total of the second and the third candidates might be very close to each other. In this situation an automatic elimination of the third candidate may not be wise. For instance, there may be a situation in which, although the third ranking candidate is slightly behind the second ranking candidate, she is a better consensus choice for beating the first candidates. Under the majority-plurality model, voters can reorient their votes towards such a third candidate. Also, minor parties have the option of supporting a third candidate and helping her defeat the other two.

7. However, a major disadvantage of the majority-plurality model is that it may fail to elect a candidate with majority support. The problem of vote splitting may emerge here and a failure in coordination between political actors may result in distancing the system from the aggregate preferences of the voters. When more than two candidates are allowed to compete

⁶³² Gary W. Cox, *Making Votes Count: Strategic Coordination in the World Electoral Systems* (Cambridge: Cambridge University Press, 1997) at 125.

in the second round, some candidates may refuse to withdraw from the race because they are not realistic about their winning prospects or because a successful negotiation has not been carried out. We will be thrown back to a first-past-the-post situation.

As we can observe, each variant of the majority model has its own merits and demerits and I am not able to select one as the best solution for Canada. The solution may consist of inventing a new variant.

Section Two: A New Proposal for Elections to the Canadian House of Commons

As the discussions in Section One demonstrate, adopting any of the three main variants of the majority model will help us attain some desired goals, while miss out on other goals. While no system can claim to be perfect, I intent to introduce and suggest a new variant which I believe will catch most of the merits of the aforementioned three variants while avoiding most of their disadvantages. My innovative proposal mixes some elements of the previously known variants and attempts to top their advantages. First, I will introduce the proposal and then I will explain its merits. My proposal would amend section 313 of the *Canada Elections Act* in the following way:

313. (1) The returning officer, ... shall declare elected the candidate who obtained the majority (50% +1) of votes by completing the return of the writ in the prescribed form on the back of the writ.

(2) If no candidate obtains the majority of votes, a second round of elections will be held in two weeks where the top-two candidates plus any other candidate who has obtained more than 20% of votes will be allowed to compete.

(3) If, pursuant to the criteria set out in subsection (2), only two candidates are eligible to compete in the second round, the candidate who obtains more votes than his rival in this round will be declared the winner.

(4) If pursuant to subsection (2) more than two candidates are allowed to compete in the second round, voters will have the option of rank-ordering their preferred candidates in the second round. If a candidate gets a majority of the first preferences, he will be declared elected. If no candidate gets a majority of the first preferences, the last placed candidate will be eliminated and his votes will be transferred to the second preferences of the voters. This process will continue until the combined votes of a remaining candidate surpass 50% of votes, or until all but one of the candidates are eliminated. The candidate whose combined votes amount to more than 50% of casted votes or who is the only non-eliminated candidate will be declared the winner.⁶³³

As we observe, this new variant incorporates elements from each of the three older variants. It is a runoff system. However, unlike the majority-majority variant, contestants in

⁶³³ Of course, changes to other sections of the Act will be necessary and many more detailed must be worked out. I am confining myself to essentials here.

the second round are not necessarily confined to the top two candidates. If more than two candidates receive more than 20% of the first round votes, more than two candidates will be allowed to run in the second round. Unlike the majority-plurality variant, the winning threshold in the second round is not a plurality of votes. The second round will be run under an AV formula.

Now, let us see why this new variant incorporates most of the merits of the older variants:

1. Like majority-majority and majority-plurality variants, this is a two-round system. As we have discussed, two-round systems give more clout to smaller parties in their negotiations with larger parties and their demand for concessions. The transfer of small party votes is not an automatic process. It is a prize that should be earned. Smaller parties have demonstrated their solid base and their blackmail potential in the first round and they have an almost tangible good to put on the negotiation table. They cannot be brushed away as non-important.

2. The two-round aspect of this variant gives an ample opportunity to voters to deliberate and make an informed choice. Additionally, the 20% hurdle for advancing to the second round means that the second round will not be as busy or noisy as the first round, and voters can concentrate on more serious contenders. The first round will be an opportunity to express preferences or make political statements; the second round will be the critical stage of choosing a government. Essentially, citizens will be involved in two different kind of political participation. I believe this will result in increased political participation and will give more say to citizens in politics.

3. As we have observed, a disadvantage of the majority-majority system is that it restricts the completion in the second round to the top two candidates, while there may be

occasions when a third candidate is a better choice for the majority of voters. In this new variant, competition in the second round is not necessarily restricted to the top two candidates. However, the 20% hurdle is a balanced compromise, which means the second round will not be as busy and confusing as the first round and only those with a realistic chance of winning the contest will be present there. My probe into the three most recent federal elections in Australia under AV shows that of the 450 contests, in no instance a candidate who had garnered less than 20% of first preferences ended up winning the contest.⁶³⁴

4. The majority-plurality variant also allows more than two candidates to compete in the second round. As a result, it encounters the problem of vote splitting and the possibility that the final winner might fail to garner a majority of the votes. Such a problem will not occur in the new variant, because here the winning formula in the second round is not the plurality formula, but is AV, or preferential voting. In the second round, if there are more than two candidates, voters will rank-order their choices and the AV process of elimination and the transfer means that the winner almost always will be a majority winner. The problem of vote splitting will not persist here.

5. Some critics of the preferential systems (such as AV) point out to the complexity of these systems. They purport that whatever merits these systems have in terms of voter-empowerment are exhausted by the demanding and complex nature of them.⁶³⁵ The more candidates there are in the contest, the more demanding the AV system is. Voters have to rank-order a long list of candidates and pay attention to how their rankings will affect the final result. This demanding aspect is diminished in my proposed new variant. In the first

⁶³⁴ Data from: Online: Australian Electoral Commission <<http://www.aec.gov.au/>> (accessed: July 2012).

⁶³⁵ David M. Farrell & Ian McAllister, *The Australian Electoral System* (Sydney: University of New South Wales Press Ltd, 2006) at 121.

round, voters vote for one candidate only and in the second round the number of candidates is very limited. The (20%+1) hurdle means that theoretically there could be as many as four candidates in the second round, but in practice most second round contests will have either two candidates (where there is no need for the AV method) or three. In a three-candidate contest, voters have to rank-order two candidates only. This is not a grueling task.

5. Perhaps the most obvious disadvantage of my proposed system is that like all two round systems it involves more costly elections, more lengthy campaigns, and more demands from citizens: they have to go to the polling stations a second time. However, this is a cost that I suggest citizens should be willing to take. If, in contemporary democracies, an election is a rare moment in which citizens are intensely involved in political participation, why not lengthen the moment? Why not use the two-week interval between the two rounds of voting to engage citizens in deliberative democracy and coalition building? True, no electoral system can be perfect, but for all of the advantages this system has over the others, it is worth the extra cost and effort.

Throughout this work, I have tried to inch towards a system that is more consistent with the values that have been identified from the outset. I believe a fine balance has been struck between values related to democratic expression and those related to efficiency. This proposal also addresses the value of political diversity in a balanced way and like all small constituency systems is responsive to geographic diversity. However, what should be done about social diversity? As we have observed, majority formula gives more weight to smaller parties and as long as social minorities (such as ethnicities) are politically organized, they can enjoy some of the benefits of the system. This is not so for non-politically organized

minorities. In its naked form, majority systems are not as helpful as proportional systems in representing women and minorities.

Shifting to proportional representation is not the only way to enhance the representation of women and minorities. There are other measures such as reserved seats, communal voting (where constituencies are divided along community lines and each community votes for one of its own), quotas for party nominations (which can be either set by electoral law, or voluntarily by parties), affirmative gerrymandering, and overrepresentation in regions where minorities dominate.⁶³⁶

In their substantial report, Butenschøn and Vollan⁶³⁷, study the different measures that are used for promoting the representation of social groups, such as women and ethno-religious minorities around the world. Their study can be summarized as such: The use of special districts where only members of a particular social group can be nominated for a seat. This measure has two categories. In the first category voters in the special district are not limited to those from that particular group. This method is used in India, Lebanon, Singapore, Kosovo, and for women in the Palestinian Territory. In the second category, voters are also segregated. This method is used in Croatia, New Zealand, and Fiji. In another method, political parties are required to nominate a special percentage of their candidates from special social groups or have placement requirements in the presentation of their candidate lists. This method is used for women in some countries including Bosnia and Herzegovina, Bolivia, and prior to 2008, in Nepal. While this report does not introduce countries that use the quota method for ethno-religious minorities, its use is conceivable. In

⁶³⁶ See: Andrew Reynolds, Ben Reilly & Andrew Ellis, *Electoral System Design: The New International IDEA Handbook* (Stockholm: International IDEA, 2005) at 121-124.

⁶³⁷ Nils A. Butenschøn & Kåre Vollan, *Electoral Quotas and the Challenges of Democratic Transition in Conflict-Ridden Societies* (Oslo: University of Oslo, The Norwegian Centre for Human Rights, 2011). In particular the table at 32.

another method, there is a result requirement. If a certain percentage of women or other social groups are not elected to the parliament, the strongest runner-ups from those groups replace the weakest winners. This method is used in the Palestinian Territory, Nepal, and Jordan. While, none of the countries that are mentioned in this report and use this method have single-member constituencies, its use in SMD systems is conceivable. If this method is used in SMD systems such as Canada, in case enough women or minorities are not elected to the Parliament, a runner-up woman or minority candidate who has high percentage of votes will replace the winner in her or his district. This arrangement encourages political parties to nominate as many women and minorities as they can.

The Final report by the Royal Commission on Electoral Reform and Party Financing mentions a radical proposal for the representation of woman which was made by an intervener. This proposal is similar to the scheme where ethno-religious groups are accorded special voting districts:

There is a continuing problem that will not go away and that is the small proportion of women in Parliament. I would like to suggest a very sweeping change to set things right there. The number of constituencies should be cut in half. Each constituency should elect two people, one male and the other female.⁶³⁸

However, these measures are not free of negative side-effects. As the Canadian multiculturalist philosopher Kymlicka points out⁶³⁹, communal voting and a blanket rejection of cross-group representation can strengthen the wrong belief that each group should only

⁶³⁸ The Royal Commission on Electoral Reform and Party Financing, *Reforming Electoral Democracy: Final Report*, vol. iv (Ottawa: Supply and Services, 1991) at 45.

⁶³⁹ Will Kymlicka, *Multicultural Citizenship: a Liberal Theory of Minority Rights* (Oxford: Clarendon, 1995) at 141-142.

care about its own members. Measures such as reserved seats and quotas can also perpetuate the stereotypes about discriminated groups. He suggests that, while affirmative political action is needed to boost the representation of discriminated groups, these policies should be of a temporary measure. The focus should be on ameliorating the standing of these groups so that no affirmative action will be needed. Therefore, these electoral policies should be regularly re-evaluated to find out whether they are still needed. We can conclude that, social programs that enhance the social standing of disadvantaged groups is another (radical) alternative to measures aimed at promoting the representation of women and minorities.

I keep it an open question whether these measures are currently needed in Canada or not, and if their salutary effects outweigh their harmful side effects. To answer that question, extensive empirical research should be done. However, I now turn to a rather dusty aspect of the Canadian Constitution, where reform can bring many salutary effects, including boosting the diversity in the political arena. An electoral reform in the Senate could be a compliment to our proposed system and move the legislative body closer to our identified values.

Section Three: Elections to the Canadian Senate

The main focus of this work has been on proposing a reform for elections to the more active chamber of the Parliament of Canada, the House of Commons. However, it is not wise to ignore the other chamber. According to law, the Senate and the House of Commons are equals.⁶⁴⁰

⁶⁴⁰ Peter W. Hogg, *Constitutional Law of Canada*, Student Edition (Toronto: Carswell, 2012) at 9.5(c); Patrick Monahan, *Constitutional Law* (Toronto: Irwin Law, 2006) at 83.

The only constitutional limits on the Senate's powers are that money bills must originate in the Commons and must come from the cabinet, which controls the 'royal recommendation' necessary for the introduction of such legislation. The senate may not amend these money bills to increase taxes, duties or public expenditure (though it may decrease them). And the Senate may only delay for 180 days constitutional amendments that have received the concurrence of the provinces and of the House of Commons.⁶⁴¹

While the two chambers have almost equal legislative powers, the most important difference between them is that the House of Commons is the sole chamber of confidence: the executive branch is responsible to the House of Commons only.

Despite its extensive powers, the Senate remains an appointed body. This is a serious democratic deficiency. Prime Ministers regularly stuff the Senate with appointments from within their own party. This means that a party that has been in power for a long time can continue to control the Senate, despite being severely punished in the most recent election. It also means that parties that do not form the government cannot have their own Senators. This democratic and legitimacy deficiency takes its toll on the functioning of the Senate. That is because "even where coequal constitutional powers are given to an unelected upper chamber, public legitimacy to use those powers is often lacking"⁶⁴². In Patrick Monahan's words "The Senate has failed to fulfill ... [its functions]. The main reason has to do with the democratic illegitimacy of an appointed institution overriding the wishes of the elected House of Commons"⁶⁴³, or as Professor Peter Hogg puts it:

⁶⁴¹ Bruce M. Hicks & André Blais, *Restructuring the Canadian Senate through Elections* (Montreal: Institute for Research on Public Policy, 2008) at 11.

⁶⁴² Bruce M. Hicks & André Blais, *Restructuring the Canadian Senate through Elections* (Montreal: Institute for Research on Public Policy, 2008) at 6.

⁶⁴³ Patrick Monahan, *Constitutional Law* (Toronto: Irwin Law, 2006) at 84.

Although the Constitution act, 1867 gives to the Senate the same powers as the House of Commons ..., it has to be (and usually is) accepted by opposition as well as government senators that the appointive nature of the Senate must necessarily make its role subordinate to the elective House.⁶⁴⁴

Such a picture suggests that the Senate is a crippled institution at its best and a threat to democracy at its worst. It suggests that there should be a consensus on the need to reform the Senate through the introduction of elections. This is not so. The Senate still has its traditionalist supporters. For instance, former Senator Lowell Murray suggests that the Senate, despite being appointed, does not lack legitimacy; its legitimacy lies in history and the Constitution.⁶⁴⁵ I tend to disagree. If historical and constitutional legitimacies were enough, we would still be stuck with the Magna Carta. Constitutions are reformed and evolve as societies evolve and as we acquire a better understanding of what amounts to democratic legitimacy.

Despite what traditionalists have to say, the need for democratic reform in the Senate has gained momentum. “Dozens of Royal Commissions, parliamentary hearings and governmental and non-governmental bodies have proposed wholesale changes, with most since 1990s recommending direct elections”.⁶⁴⁶ These propositions range from the much talked about Triple-E Senate proposition (an **E**lected Senate with **E**ffective powers and **E**qual representation from all provinces) which was incorporated to the defeated Charlottetown Accord⁶⁴⁷ to more recent attempts by the Harper Government which tried to

⁶⁴⁴ Peter W. Hogg, *Constitutional Law of Canada*, Student Edition (Toronto: Carswell, 2012) at 9.5(c).

⁶⁴⁵ Lowell Murray, “Which Criticisms are Founded?” in Serge Joyal, ed. *Protecting Canadian Democracy: the Senate you Never Knew* (Montreal: McGill-Queen’s University Press, 2003) at 133.

⁶⁴⁶ Bruce M. Hicks & André Blais, *Restructuring the Canadian Senate through Elections* (Montreal: Institute for Research on Public Policy, 2008) at 10.

⁶⁴⁷ See for instance: Patrick Monahan, *Constitutional Law* (Toronto: Irwin Law, 2006) at 486-487.

introduce consultative STV elections to the Senate.⁶⁴⁸ The “consultative” attribute was because Harper wanted to bypass the impossible constitutional reform process which a change to Senate elections would otherwise involve.⁶⁴⁹

Having established that Senators should be elected, we now turn to the question of the electoral system that should be used therein. One might assume that the question is already settled: the same electoral system that is recommended for the House of Commons should also be used for election to the Senate. This is not so. I believe a different electoral system should be used for second chambers. Second chambers often have different roles than first chambers. Even when they have the same constitutional powers, they are perceived to concentrate on different roles or represent different interests. To suggest otherwise would make upper chambers redundant and needless duplicates. Bicameralism cannot be justified in such a situation. Representation of sub-national units, reflection of social and political diversity, protection of minority interests, and the provision of sober, second thought and legislative review are among the roles expected from second chambers. In order to better reflect these different roles, the two chambers should be elected through different electoral arrangements. Similar electoral systems will result in the similarity of the composition of the two chambers. In such a situation any talk of differentiation in roles and functions will be unfounded:

[M]ost jurisdictions have chosen to reflect the different roles of the two houses by using different electoral systems for the upper house and the lower house. In Australia, for example, the lower house is elected by a majoritarian system (AV)

⁶⁴⁸ Bruce M. Hicks & André Blais, *Restructuring the Canadian Senate through Elections* (Montreal: Institute for Research on Public Policy, 2008) at 2 & 12.

⁶⁴⁹ Bruce M. Hicks & André Blais, *Restructuring the Canadian Senate through Elections* (Montreal: Institute for Research on Public Policy, 2008) at 2 & 12.

while the upper house, which represents various states, is elected using a proportional system (STV). This has meant that minority interests which would normally not be able to win election to the lower house still have a chance of gaining election, in the context of state representation, in the upper house.⁶⁵⁰

A similar argument about the necessity of differentiation in electoral formulas of the two chambers is made by Lijphart. He “argues that for a country to have a strong upper chamber, it must have different representation in the second chamber, similar constitutional authority to veto legislation and the public legitimacy to exercise that authority”.⁶⁵¹ However, as will soon be discussed, in order for political systems to work smoothly second chambers should not be too strong. Nevertheless, I concur with Lijphart; even having an effective second chamber with an optimum degree of strength, different representation in the second chamber is needed. The best way to provide this different representation is through a different electoral formula.

So now that we have nominated the majority-preferential two-round system for elections to the House of Commons, what kind of different formula should be proposed for senatorial elections?

As we have observed through our lengthy discussions, proportional systems have strong merits in terms of mirroring society and promoting the social and political diversity of the polity. Their main deficiencies relate to efficiency issues. That they create instability, political gridlocks and exhibit some centrifugal characteristics. In terms of democratic expression, these systems sometimes fail to provide the voters with a clear opportunity to

⁶⁵⁰ Andrew Reynolds, Ben Reilly & Andrew Ellis, *Electoral System Design: The New International IDEA Handbook* (Stockholm: International IDEA, 2005) at 138-139.

⁶⁵¹ Bruce M. Hicks & André Blais, *Restructuring the Canadian Senate through Elections* (Montreal: Institute for Research on Public Policy, 2008) at 5.

designate a government. These issues are not pressing in the case of elections to the Senate, which is not a chamber of confidence. The addition of a proportionally elected second chamber can compensate the main remaining deficiencies in the majority-preferential system: it can provide symbolic representation for minorities and bestow an important political platform for small parties without compromising political stability and efficiency. This combination will move the political system closer to our desired values.

Let us re-examine the main rationale behind majoritarian systems. In Sartori's words:

Majority or majoritarian systems do not seek a parliament that reflects the voting distributions; they seek a clear winner. Their intent is not only to elect a parliament but at the same time to elect (if only by implication) a government.⁶⁵²

Such a rationale is missing in the case of senatorial elections. In parliamentary systems, governments are usually designated by lower chambers of parliaments. Senates do not elect governments; as a result, in selecting an electoral system for the Canadian Senate, we do not need to worry about its implications on the question of who will form the executive branch and how stable the government will be. We are free to consider other values here and select an electoral system which will result in a highly representative chamber.

Here, a revealing analogy can be made with the role of parliaments in presidential systems. Duverger⁶⁵³, who is a prominent advocate of plurality systems, believes fragmented

⁶⁵² Giovanni Sartori, *Comparative Constitutional Engineering: an Inquiry into Structures, Incentives, and Outcomes* (New York : New York University Press, 1994) at 5.

⁶⁵³ Maurice Duverger, *Political Parties: Their Organization and Activity in the Modern State* (Cambridge: Methuen & Co Ltd, 1976).

parliaments are fine or even necessary in presidential systems. Tom Flanagan explains why the American system can function in spite of undisciplined parties:

[T]he American executive does not require the support of legislature to remain in power, and thus political parties do not need to be as disciplined as Canadian parties. Republicans and Democrats coming from various parts of the United States and holding divergent views on many issues can cheerfully coexist within their respective parties, because there is no need for party members to vote the same way all the time.⁶⁵⁴

Like parliaments in most presidential systems, upper chambers in most parliamentary systems do not play a prominent role in the formation and survival of executives, or at least, they do not need to play such a role. In order for the aforementioned scheme to work, we cannot have a case of strong bicameralism. As Sartori⁶⁵⁵ defines, a very strong or perfect bicameralism involves two chambers with equal powers. In a very weak bicameralism, the second chamber has very limited powers and no veto over the decisions of the second chamber. There can be many different mid-points on the spectrum of strong-to-weak bicameralism. In the case of strong bicameralism, the second chamber has the power to dismiss the government. This brings up the same old issues about stability and makes a fragmented second chamber (or the very existence of the second chamber) undesirable. An example of a strong second chamber dislodging a government was in Australia in 1975. Although the Australian Senate is not a chamber of confidence, it managed to dislodge the government through an indirect route. The Senate refused to pass the supply and thus

⁶⁵⁴ Tom Flanagan, "The Alternative Vote" in Paul Howe, Richard Johnston & André Blais, eds. *Strengthening Canadian Democracy* (Montreal: IRPP, 2005) at 101.

⁶⁵⁵ Giovanni Sartori, *Comparative Constitutional Engineering: an Inquiry into Structures, Incentives, and Outcomes* (New York : New York University Press, 1994) at 183-187.

prevented the government from carrying out its work. As a result, the Governor General controversially dismissed the Prime Minister and called for new elections. These events brought about some discussion regarding limiting the Senate's power to block the money bills.⁶⁵⁶ This is why Sartori does not favor strong bicameralism. He prefers an asymmetric bicameralism with second chambers that have essential but not excessive powers.⁶⁵⁷ I concur with him on this point. If we intend to have an effective, representative, and legitimate Senate that works smoothly within the constitutional arrangement, it should have essential legislative and review powers, but should not be able to block bills on matters that will put the survival of the government in question.

In addition to its other functions, a proportionally elected Senate will have an important symbolic role. In presidential systems, it is the legislative branch, not the government, which is supposed to be a representative mirror of society. Proportionally elected second chambers can play the role in parliamentary systems. Lower houses will be regarded as confidence chambers or governing chambers and upper houses will be perceived as representative chambers. A proportionally elected Senate will be understood to truly reflect the tendencies of society. A relatively small party that holds a significant number of seats in the Senate cannot be brushed away as insignificant, even if it has no seats in the House of Commons.

A corollary of representativeness of the Senate is the representation of minorities and discussion of minority interests which may be absent in a majoritarian House of Commons. An interesting point of reference is Australia, which has a majoritarian House of Commons

⁶⁵⁶ For these events see for instance: David E. Smith, *The Canadian Senate in Bicameral Perspective* (Toronto: University of Toronto Press, 2003) at 22-23.

⁶⁵⁷ Giovanni Sartori, *Comparative Constitutional Engineering: an Inquiry into Structures, Incentives, and Outcomes* (New York : New York University Press, 1994) at 183-188.

and a proportional Senate. Studies show that in Australia the Senate has become a forum for expressing minority interests.⁶⁵⁸ Interestingly, even in Canada, which has an unelected upper chamber, historically the Senate has been viewed as a guardian of regional and minority interests.⁶⁵⁹ Indeed, an argument that is made in favour of the unelected Senate is that the Prime Minister, through her appointments, can bestow symbolic representation on minorities that are not represented in the House of Commons.⁶⁶⁰ However, as we have discussed, proportional systems score well in terms of representing minorities. The representation of minorities is in a better and more principled way guaranteed through democratic proportional elections. Furthermore, elected minority Senators are not just symbolic officeholders. Since they are democratically elected, their legitimacy is boosted and they can play an essential role in shaping policies. They will not be regarded as parachuted political protégés.

Another attraction of PR elections for the Senate lies in the expected rationale of bicameralism as a device of checks and balances. As William Riker observes, the bicameral arrangement reduces the risk of majority tyranny.⁶⁶¹ In other words, a different majority in the upper chamber can be a check on the powers of the majority in the lower house. Riker further purports, "In a unicameral system, there is no test of whether or not an apparent (that is, parliamentary) majority is in fact a real (that is, an electoral or societal) majority."⁶⁶² The problem Riker mentions is most apparent in majoritarian systems, where often an electoral or societal plurality is translated into a parliamentary majority. However, if an upper chamber is

⁶⁵⁸ See for instance: David E. Smith, *The Canadian Senate in Bicameral Perspective* (Toronto: University of Toronto Press, 2003) at 26-29.

⁶⁵⁹ : David E. Smith, *The Canadian Senate in Bicameral Perspective* (Toronto: University of Toronto Press, 2003) at 36-38.

⁶⁶⁰ For this argument, I am indebted to my thesis supervisor, Professor Benoît Pelletier.

⁶⁶¹ William H. Riker, "The Justification of Bicameralism" (1992) 13 *International Political Science Review* 101 at 115 cited in: David E. Smith, *The Canadian Senate in Bicameral Perspective* (Toronto: University of Toronto Press, 2003) at 6-7.

⁶⁶² William H. Riker, "The Justification of Bicameralism" (1992) 13 *International Political Science Review* 101 at 115.

going to play any balancing role here, it should be elected through different electoral arrangements. If both chambers are elected through identical electoral arrangements, they will both have similar majorities. Indeed, if unlike the majoritarian lower chamber, the upper chamber is to be an indication of a real majority, it should be elected through a PR formula.

In Australia, studies⁶⁶³ show that lower house MPs have stronger ties to local voters compared to Senators who are proportionally elected in large statewide districts and who have stronger ties to party machinery. I believe each type of representative has their own distinctive roles and benefits. House members can concentrate on local voters and their issues while Senators can be guardians of the party policy and national priorities. A bicameral system with two different (majority and PR) systems can produce an optimum blend of representatives. This is an additional advantage of a PR Senate.

As we see, this arrangement can transfer the Canadian Senate from a redundant institution with doubtful legitimacy to a beneficial or even necessary ingredient in the Canadian constitutional arrangement. This can put the calls for its abolishment to rest. Hicks and Blais have observed: “[t]he alternative mechanism that an upper chamber provides for representation in diverse societies may explain the general attraction of bicameralism and its particular appeal for federal countries.”⁶⁶⁴ Canada is a diverse federal country and, accordingly, bicameralism suits Canada. However, in order to fully serve its purpose, the second chamber should be a proportional one.

⁶⁶³ See: David M. Farrell & Ian McAllister, *The Australian Electoral System* (Sydney: University of New South Wales Press Ltd, 2006) at 109-110.

⁶⁶⁴ Bruce M. Hicks & André Blais, *Restructuring the Canadian Senate through Elections* (Montreal: Institute for Research on Public Policy, 2008) at 4.

Which version of a proportional system should be adopted for the Canadian Senate? A proposition by the Harper Government was the adoption of STV.⁶⁶⁵ If, as per our proposed model, there was going to be a preferential element in the House elections, this proposition looks attractive; voters will be familiar with rank ordering the candidates as required in preferential systems. The main disadvantage of this system is that in large provinces such as Ontario and Quebec the number of positions to be filled will be too big and consequently the number of candidates will be too high. This can make rank-ordering a difficult task. The problem can be avoided by splitting Ontario and Quebec into smaller districts. As we have discussed in Part Three, each version of PR has its own merits and demerits. Selecting the most suitable PR system is not a focus of this work. I keep it an open question for future research.

Another issue is that the Canadian Senate and its composition are constitutionally entrenched. Most changes to the Senate should involve a difficult constitutional amendment process. Whether taking the challenge of a constitutional amendment process is preferable or the backdoor path the Conservative government tried to take by characterizing the Senate elections as “consultative” is wiser also remains an open question to be answered.⁶⁶⁶ Below, a brief scheme of the mechanisms of constitutional or legal amendment that can lead to an elected Senate will be glanced at.

Prior to 1982, Section 91(1) of *the Constitution Act, 1867* defined the general amendment power of the Parliament of Canada:

⁶⁶⁵ Bruce M. Hicks & André Blais, *Restructuring the Canadian Senate through Elections* (Montreal: Institute for Research on Public Policy, 2008) at 2 & 12.

⁶⁶⁶ For a detailed study of the amendment procedure of the Constitution of Canada see for instance: Benoît Pelletier, *La Modification Constitutionnelle au Canada* (Scarborough, Ont : Carswell, 1996).

The amendment from time to time of the Constitution of Canada, except as regards matters coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces, or as regards rights or privileges by this or any other Constitutional Act granted or secured to the Legislature or the Government of a province, or to any class of persons with respect to schools or as regards the use of the English or the French language or as regards the requirements that there shall be a session of the Parliament of Canada at least once each year, and that no House of Commons shall continue for more than five years from the day of the return of the Writs for choosing the House: provided, however, that a House of Commons may in time of real or apprehended war, invasion or insurrection be continued by the Parliament of Canada if such continuation is not opposed by the votes of more than one-third of the members of such House.⁶⁶⁷

In *Re: Authority of Parliament in relation to the Upper House*⁶⁶⁸, one of the constitutional questions that the Court was asked, was whether the Parliament of Canada was authorized under section 91(1) to unilaterally change the method by which senators were chosen. The Court answered this question in negative:

Sub-question (e) paragraph (iv) deals with the possible selection of all or some members of the Senate by direct election by the public. The substitution of a system of election for a system of appointment would involve a radical change in the nature of one of the component parts of Parliament. As already noted, the preamble to the Act referred to “a constitution similar in principle to that of the United Kingdom”, where the Upper House is not elected. In creating the Senate in the manner provided in the Act, it is clear that the intention was to make the Senate a thoroughly independent body which could canvass dispassionately the

⁶⁶⁷ *The Constitution Act*, 1867, 30 & 31 Vict, c 3.

⁶⁶⁸ *Re: Authority of Parliament in relation to the Upper House*, [1980] 1 S.C.R. 54.

measures of the House of Commons. This was accomplished by providing for the appointment of members of the Senate with tenure for life. To make the Senate a wholly or partially elected body would affect a fundamental feature of that body. We would answer this sub-question in the negative.⁶⁶⁹

Part V of the *Constitution Act*, 1982 introduced new amendment rules and repealed section 91(1). The new amendment rules which are relevant to our discussion are reproduced below:

38. (1) An amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by

- (a) resolutions of the Senate and House of Commons; and
- (b) resolutions of the legislative assemblies of at least two-thirds of the provinces that have, in the aggregate, according to the then latest general census, at least fifty per cent of the population of all the provinces.

...

42. (1) An amendment to the Constitution of Canada in relation to the following matters may be made only in accordance with subsection 38(1):

...

(b) the powers of the Senate and the method of selecting Senators;

...

44. Subject to sections 41 and 42, Parliament may exclusively make laws amending the Constitution of Canada in relation to the executive government of Canada or the Senate and House of Commons.⁶⁷⁰

⁶⁶⁹ *Re: Authority of Parliament in relation to the Upper House*, [1980] 1 S.C.R. 54 at 77.

⁶⁷⁰ *Constitution Act, 1982* being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11.

It is debatable whether the *Upper House* case remains an authority on our subject. On the one hand it can be argued that it has been repealed along with section 91(1) that was interpreted by this decision. The counter-argument can be that the reasoning applied to the interpretation of the old section 91(1) can also apply to the new section 44. At least, the dynamics of the relationship between sections 38, 42, and 44 can be illuminated in light of the reasoning in the *Upper House*. In any case it seems apparent that an upright change to an elected Senate should require an amendment according to the 7/50 formula (authorization by the federal parliament plus at least 7 provincial parliaments of the provinces that contain at least 50% of the population of the provinces). That is because section 42 explicitly requires this formula for amendments to “the method of selecting Senators”.⁶⁷¹ What is less obvious is whether the backdoor route that the Conservative government is trying to take by mandating consultative elections and requiring the Prime Minister to “consider” the winners of those elections before nominating Senators, still requires a 7/50 amendment formula. In a reference case, the Court of Appeal of Quebec answers this question in affirmative:

Finally, section 42 cannot be read as reflecting a consensus between the federal and provincial governments in 1982 to preserve the formalism but not the reality with respect to the matters set out therein, including the method of selecting senators. Limiting the constitutional protection afforded by section 42 to the formal power of the Governor General to name senators would appear to be not easily defensible. In that regard, what interest would the provinces have had when the *Constitution Act, 1982* was adopted to protect a juridical reality that, even then, was inconsistent with political reality?⁶⁷²

⁶⁷¹ Before the enactment of the Constitution Act, 1982, such an amendment would require authorization by all provinces according to *Re: Resolution to Amend the Constitution*, [1981] 1 SCR 753.

⁶⁷² *Projet de loi fédéral relatif au Sénat (Re)*, 2013 QCCA 1807 para 47.

The Court of Appeal of Quebec opines that the mechanism deployed by the Federal Government, in essence changes the method of selection of the Senators. The Ceremonial power of the Governor General couldn't be the provincial interest that the 1982 Constitution intended to protect. However, by the way of criticizing this reasoning, it can be asked what essential interest the provinces could have in precluding the Prime Minister from considering the results of consultative elections, before nominating Senators? In any event, this question is currently before the Supreme Court of Canada⁶⁷³, and to get a definitive authoritative answer to it, one should wait until the Supreme Court makes its decision.

What are the implications of an elected Senate on the balance of power between the House of Commons and the Upper Chamber? In order to answer that question, we should distinguish between the formal powers on the Senate and the practice based on legitimacy. On paper, the powers of the Canadian Senate are almost identical to those of the Lower House. This principle of equality has one major and two minor exceptions:

1. As discussed before, the important exception is that the executive branch is only responsible to the House of Commons. The government does not have to have the confidence of the Senate in order to continue to function.

2. The second exception stems from section 47 of the *Constitution Act, 1982*⁶⁷⁴. According to section 47, the Senate has only a suspensive veto over constitutional amendments made under sections 38, 41, 42, or 43. If six months after the House of Commons adopts an amendment, the Senate does not do so, Senate's resolution will not be required anymore.

⁶⁷³ Court File No. 35203, In the Matter of a Reference by the Governor in Council concerning reform of the Senate, as set out in Order P.C. 2013-70, dated February 1, 2013.

⁶⁷⁴ *Constitution Act, 1982* being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

3. The Third exception stems from section 53 of the *Constitution Act*, 1867 which dictates that: “Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons.”⁶⁷⁵

Therefore, with the exception of above mentioned issues, currently, The Senate has powers equal to the House of Common. However, since the Senate is not an elected body, it lacks the legitimacy the exercise its powers. It is expected that the Senate’s powers will be restored if it is elected. Therefore, an elected Senate will become one of the centers of power. If as we suggest, Senate is elected with a proportional formula, its composition will be different from the House of Commons. Specifically, from time to time, smaller parties will hold the balance of power in the Senate. As a result, from time to time, the Government will have to enter into a tacit coalition with some of the parties that are represented in the Senate in order to pass its Agenda. As discussed before, since the Government is not responsible to the Senate, a fractured Senate will not have a disastrous effect on the governmental stability. In principle, the Senate cannot ask the Government to step down. However as we observed in the case of Australia, the Senate will have some backdoor routes through which it can bring a government into its knees. More specifically, if Senate refuses to pass the budget, a political crisis will ensue and government may fall or call for new elections. As we observed, at least once, this has happened in Australia. Bill C-7 does not contemplate any solutions for a gridlock between the Senate and the House of Commons. Such gridlocks can have serious destabilizing effects. As we discussed, strong bicameralism is a problematic constitutional design. It is suggested that if the Senate is going to become an elected body and restore its powers, a mechanism for avoiding gridlocks should be anticipated. A possible solution is to reduce the powers of the Senate in some areas to a suspensive veto. Money bills are an

⁶⁷⁵ *The Constitution Act*, 1867, 30 & 31 Vict, c 3.

obvious candidate for this scheme. Unfortunately, this reform should be done according to the 7/50 formula as it touches the powers of the Senate.

Conclusion

Throughout this work, I have made an attempt to demonstrate the shortcomings of both the current plurality model of elections in Canada and previously proposed PR models. I have endeavoured to establish that the new proposal I am making will be more respectful of Canadian constitutional values. Yet, it may be possible to point out some shortcomings of this new model in an attempt to discredit it. However, as some scholars of the field have observed,

... it is arguable that no electoral system could ever be perfect This ... point has led some scholars to suggest that, instead of striving for perfection, attention might better be directed towards assessing the advantages and disadvantages of the different electoral systems currently on offer, so that instead of assessing the systems in terms of predefined axioms, the judgment should be based on the purported merits of the systems themselves⁶⁷⁶

The first task is therefore to identify intended values or goals and select an electoral system that can satisfy those values and goals. In the second stage, one should recognize that even within the orbit of a selected list of values, no electoral system can be perfect. Instead of striving for perfection, one should evaluate different options and opt for the one that has a higher relative score. In Table 9-1, five different electoral systems, namely the current

⁶⁷⁶ David M. Farrell & Ian McAllister, *The Australian Electoral System* (Sydney: University of New South Wales Press Ltd, 2006) at 10.

plurality system, three variants of PR systems that were evaluated in this work, and the new proposal made by this work, which consists of a majority-preferential model for elections to the House of Commons and a proportional formula for elections to the Senate, are compared and given scores based on the various dimensions of the three values that were examined in this work. In each cell, score (1) denotes a very weak result, score (2) denotes a weak or mixed performance, score (3) signifies a strong performance, and score (4) a very strong performance. These scores are necessarily only approximations; for instance, score (4) does not signify a perfect performance. Based on this scoring scheme, final score of the electoral systems will be between a minimum of 15 and a maximum of 60. Proportionality is not included in this comparison because, as has been discussed, it is not regarded as a value per se. However, it can be conducive to other values such as political and social diversity, which are included in the table. Issues that were touched on under the topic of “miscellaneous issues” are not included in the table because they are of secondary importance and their inclusion would complicate the comparison. Strategic voting and wasted votes were examined under a single topic in this work because they were regarded as two faces of a problem. They are each given an independent score here because each has enough importance to be scored independently and also because some electoral systems have different scores in each of these two criteria. This brings the total number of criteria that are examined in the table to fifteen. I do not purport that all of these criteria should be weighed equally. However, for the sake of simplicity, I have given equal weight to each of these fifteen criteria. I believe a more nuanced evaluation would bring similar results. In any manner, we cannot expect mathematical exactitude here. The score will in any case remain an approximation.

Table 9-1. Scoreboard of electoral systems based on 15 value-driven criteria

Criteria/Electoral system	Plurality	Pure list PR	MMP	STV	New proposal ⁶⁷⁷
Aggregation of preferences	1	2	2	3	4
Direct election of government and mandate	3	1	1	2	4
Democratic change	2	2	2	2	4
Strategic voting	1	3	3	4	4
Wasted votes	1	4	4	4	3
Power of central parties	3	1	2	3	4
Turnout	1	4	4	4	3
Political diversity	1	4	4	4	4
Social diversity	1	4	3	3	2
Geographical diversity	4	1	3	3	4
Stability	4	1	1	1	4
Moderation	2	2	2	3	4
Accountability	4	1	1	2	4
Regionalism	1	4	4	3	4
Simplicity	4	4	3	1	2
Total	33	38	39	42	54

As evidenced by the total scores of each system in Table 9-1, our new proposal more than doubles the value utility of the current plurality model if we consider that the numbers range between 15 and 60. In other words, if we decrease the final scores by 15, our model gets 39 against 18 for the plurality formula. Now, we will briefly review why each system scored as it did.

1. Aggregation of preferences: The current plurality model earns a One (1) score here because, as discussed, this system fails in both criteria about electing a majority winner and electing a Condorcet winner. It aggregates only a plurality of preferences. It only counts the first preferences of voters and disregards other preferences. Pure list PR and MMP systems exhibit a mixed result here. On, the one hand, these systems are not designed to aggregate the preferences of the voters. However, they can elect a government that enjoys

⁶⁷⁷ Our main new proposal is a majority-preferential two round system for election to the House of Commons. This proposal is evaluated in the context of a proportional election for the Senate.

majority support in a two-stage process through coalition building. Still, it is not guaranteed that the particular coalition that will be made is the Condorcet winner among all coalition options or even that it will necessarily enjoy a majority support among voters. It is the political elites who make the coalition. The STV system gets a higher mark by a notch. This is because the preferential element of the systems brings a measure of aggregation of preferences and because the STV system, compared to other PR systems, has a higher tendency to limit coalition options. The new proposal gets the full score here. The preferential element of the proposal in the second round is added to ensure the election of a Condorcet winner. An occasion in which a Condorcet winner receives fewer than 20% of the first preferences and does not go through to the second round would be very rare.

2. Direct election of government and mandate: The plurality model receives a good score here. The tendency of this system to avoid coalitions means that there is no intermediate stage in the election of the government. It does not get a full score, though. Despite the pressures that try to reduce the elections to two-party competitions in plurality systems, plurality elections are not always two-party contests. This results in governments that are elected by a minority of votes. Here, the government is not mandated by the majority of voters. PR versions receive low marks in this regard because they almost always elect coalition governments. STV scores a little better than the other two variants because, as discussed, it reduces coalition options. Our proposal gets the full mark in this criterion. Governments in majority systems are often single-party governments and even the occasional coalitions are different from random coalitions that occur in PR systems. They are pre-determined coalitions.

3. Democratic change: Plurality and all PR systems receive mixed results in this criterion. We have discussed that electoral democratic change has two aspects: first, the

facility of the emergence of new parties, and second, the total alteration of the government. The plurality model fails in this first aspect. PR models fail in the second aspect. Only majority models –including our proposal- can satisfy both aspects.

4. Strategic voting: The plurality model receives a score of One (1) in this category because strategic pressures are immense in this system. All three PR models get a good mark here; electors face considerably less strategic pressure in these systems. Yet they do not receive a full mark. As discussed, in order to prevent hyper-fragmentation, PR models usually introduce a legal threshold of entry into the parliament. Even if no legal threshold is introduced, there will be an effective threshold. Threshold puts strategic pressures on the supporters of small parties. This is very similar to the limitations that were struck down in *Figueroa v. Canada*.⁶⁷⁸ Our new proposal receives full marks here because there is little strategic pressure under this system. Even the smallest parties can contest in the first round and present their ideas. Different functions of elections are respected here as prescribed by the *Figueroa* decision.

5. Wasted votes: The plurality model gets a low mark here because a considerable portion of the casted votes are not effective under this system. All PR models get full marks here because an overwhelming majority of votes are translated into seats under these systems. Our system gets a good mark (3) here; while not all votes are translated into seats under this system, through the transfer of preferences most voters have some influence in shaping the legislature.

6. Power of central parties: The plurality model gets a good mark here because single-member districts provide the MPs in order to establish local ties and gain a degree of independence. It does not receive a full mark because the immense pressure to reduce the

⁶⁷⁸ *Figueroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912.

electoral scene to a two-party competition means that if an MP has a dispute with his party, he will have a hard time with political survival. Pure list PR gets a zero mark here because the party controls electoral lists and little room is left for an MP's autonomy. The MMP model has a mixed result. One class of MPs has local ties, while the other class does not. STV gets a good mark because the more personal character of the elections is conducive to MP autonomy. It is not given a full mark because it seems to tip too much towards MP autonomy, which may result in undermining party discipline. Our proposed system gets the full mark here. Single-member districts mean MPs have local ties and since the system is more open to multipartyism, being thrown out of a party does not spell disaster for an MP, although it can still be considered a serious setback. The prospects of party discipline are not completely compromised. A good balance is established between the central parties and local MPs.

7. Turnout: The plurality model gets a low mark here. Limited number of competitors and unfair results reduce the turnout. All PR systems get the full mark here because of more interesting multiparty competitions and the low rate of wasted votes that contribute to high turnouts. Our proposal gets a good mark, as the multiparty competition in the first round is expected to result in high turnout. However, it does not get the full mark because turnout is expected to be lower in the second round.

8. Political diversity: The plurality model scores low in this regard. This is a model that prides itself in combating multipartyism. All three variants of the PR model are conducive to multipartyism and receive a full mark here. The new proposal also receives a full mark. This is a system that encourages multiparty competitions and exchange of ideas, although it restricts the fragmentation of the House. This is a multiparty model that conforms

to the constitutional values as interpreted by the Supreme Court of Canada. The addition of a proportional Senate further enhances multipartyism in this system.

9. Social Diversity: As discussed, the plurality model is not conducive to the representation of women and minorities. It scores (1) here. List PR is the best option in this regard. As previously demonstrated, the two other versions of PR have some restrictions compared to pure list PR. They receive a good mark but not the full mark. This is one of the main weaknesses of the new proposal; it gets two points for its mixed results. While PR elections in the Senate will bring some measure of female and minority representation, the winner-take-all logic of a majority formula for the house elections has a limiting role. As discussed in Chapter Eight, there are some mechanisms through which this system can be improved in terms of female and minority representation. Since intensive empirical research is needed in order to make a decision regarding this, these measures were not included in the proposal and, for now, it does not receive a high mark in this category.

10. Geographical Diversity: Both the plurality model and our proposed electoral system are run in small single member districts, which are conducive to respecting geographical diversity. Therefore, they receive the full mark here. Pure list PR is not sensitive to geographical diversity because it has large multi-member districts. It gets a score of one (1). MMP gets a good mark because it has a class of locally elected MPs. STV is run in relatively small districts and as discussed is even sensitive to different interests of localities within each district. It also gets a good mark.

11. Stability: The plurality model gets a full mark because of its inclination towards stable single party governments. The prospect of unstable coalition governments results in low marks for pure list PR and MMP. STV gets two points because, to some degree, it limits the coalition options. The new proposal gets the full mark because it limits fragmentation in

the House or the “government chamber” and results in stable single party governments or occasional pre-determined stable coalitions.

12. Moderation: The plurality model exhibits a mixed result in this criterion. Despite its alleged prerogative in encouraging big tent parties, it can be hostile to centrist parties, encourages adversarial politics, and the winning plurality can be far from the political center. Pure list PR and MMP systems also demonstrate mixed results. While coalitions can be conducive to moderation, extremist parties can gain representation in the House. Depending on the composition of the House, these extremist parties might get to play a pivotal role in government formation. PR models encourage ideological purity in political parties. STV gets a higher mark than the other two PR models because its preferential aspect brings some degree of moderation and consensus building. However, as discussed earlier, centripetal and moderating forces are strongest in majority systems. Our proposed system gets the highest mark here because it is both a majority system and a preferential system; both of which are associated with moderating forces.

13. Accountability: The plurality model and our new proposal get the full mark here because of propensity to single-party governments where voters clearly know who is to be rewarded or punished. For the lack of the same thing, pure list PR and MMP get a low mark. STV gets two points because it can limit the coalition option to some degree.

14. Regionalism: The plurality model encourages regionalist tendencies, because gaining a plurality of votes in a region is easy for regionalist parties when national parties split the vote, because concentrating in a region is the best strategy for new parties, and because the results of elections exaggerate the regional divide of the votes. For these reasons it gets a low mark. These factors do not exist in other models; therefore they get a full score

except for STV, which has some element of encouraging localist and cliental politics. It receives three points.

15. Simplicity: The plurality and the pure list PR models are quite easy to understand. The act of voting is simple and the logic of the formula is attainable for average voters. They receive the full mark. MMP receives three points; although it is not an extraordinarily difficult system, the mixture of two different formulas might be a complicating factor. STV is a difficult system. Understanding its logic and working mechanism might be a little bit difficult for average voters. The act of voting can also be difficult; there might be a large number of candidates that voters would have to rank-order. It gets a one point. The new proposal exhibits mixed characteristics with regards to this dimension. While its logic and mechanism is easy to understand, the mixture of three different formulas: the majority in the first round, preferential in the second round, and proportional in the Senate elections might be a little confusing. The two-round aspect of voting also puts more burdens on voters. It receives two points.

I cannot claim that this clarification should be the final word in the choice of an electoral system. Different people can have different value systems. One may see one of the values at stake as a trump. However, I have tried to put the value-driven evaluation in the context of the Canadian constitution. Decisions by the Supreme Court of Canada are cited throughout this research. I have tried to resort to the living tree of the Constitution in identifying pertinent values. I have argued that a balanced approach to competing values is in its conformity with the Constitution of Canada.

Furthermore, the way different systems are scored is open to interpretation. The scoring does not yield to a mathematical exactness. One may claim that the results of the proposed system will be so disastrous in a particular aspect that its other merits fade away.

However, I believe I have made my case. This proposition can open up new dialogue that may result in better synthesis.

The Effects of the Suggested Reforms on the Canadian Party System

Throughout this research, I have discussed the effects of different electoral formulas on party systems. Here I will summarise the possible effects of the reform proposals (for both Chambers) on the Canadian party system. These suggestions are conjectures at best. A more precise prediction requires complex mathematical modelings based on extensive electoral and social data. Even a prediction based on such modelings is still a prediction and social phenomena have a certain tendency towards being unpredictable. In any event my conjectures are as follows:

1. The pressure towards merger on the current political parties will almost disappear. As long as the Canadian political parties maintain a fraction of their current public support there will be no serious discussions about merging them or shutting them down.

2. Internal disagreements inside large political parties can lead to splits. The Conservative Party of Canada splitting along the former Alliance and Progressive Conservative lines is a possibility. Under the new system PC and Alliance members can transfer their votes to each other in the second round. Therefore, a split will not be disastrous to the conservative camp. They can preserve their independence inside separate political parties.

3. The majority formula in the elections to the House of Commons will cause the political parties - in particular larger parties – to gravitate towards the center of political spectrum because that is the place which has the largest rewards.

4. In a hypothetical model where four parties (from right to left): Alliance, PC, Liberal, and NDP compete, PC and Liberals will be the main beneficiaries of the disproportionate allocation of seats in the House of Commons. That is because parties that are located in the center have a better position to win in the second round.

5. In case the major parties get plagued in scandals and their popularity drop, emergence of new parties will be more likely than currently is. With little strategic pressure, voters will be free to shop around and change their allegiance to new parties.

6. Smaller parties such as the Green Party of Canada will have a more secure footing. Appearance of new small parties will be a possibility. These small parties will rarely win a seat in the House of Commons. However, they can negotiate with the larger parties and transfer their votes to them in the second round. Additionally, from time to time, they might hold the balance of power in the Senate, a fact that gives them more clout.

7. Regionalist parties such as BQ will be weakened because they will have a small chance of winning in a two-round majority system.

Why the Current Electoral System has not changed?

An electoral system reform can be done either through a judicial intervention or through a political process. I will briefly discuss why neither of these two routes has been taken in Canada.

As regards the judicial route, the matter has not been before the Supreme Court of Canada. But in *Daoust v. Quebec*⁶⁷⁹ the matter was before Quebec Court of Appeal. Appellants challenged the constitutionality of Quebec's plurality voting systems claiming that it infringed their right to vote and their equality right. They pointed out that the current electoral system underrepresented some minorities such as English speakers in Quebec and also brought distorted results. The Court admitted that the constitutionality of a voting system can be challenged before courts: "All in all, although the choice of an electoral system is an eminently political decision, the courts may nevertheless examine the constitutionality of the *Election Act* that stipulates the system of voting or its compliance with the Charters."⁶⁸⁰ Nevertheless, the Court dismissed the appeal stating that the evidence did not support that either the right to vote or to equality was infringed. The main vein of the Court's reasoning in regards to the right to vote was that, section 3 of the Charter, as interpreted by the Supreme Court of Canada does not require absolute voter parity or does not mandate any specific result regarding the composition of the Parliament. This decision has some problematic aspects. First, the Court's reading of the evidence is troubling and it gives too much weight to the opinion of experts called by the respondent. For instance, it is stated that: "The contradictory evidence certainly does not allow for the conclusion that the current electoral system constantly creates such deviations to the extent that it is a source of a democratic deficit in terms of electoral representation."⁶⁸¹ Or:

It should be recalled here that distortions are [not] confined to the majority voting system or to any one system more than another. Other voting systems,

⁶⁷⁹ *Doust v. Quebec (Chief Electoral Officer)* 2011 QCCA 1634.

⁶⁸⁰ *Daoust v. Quebec (Chief Electoral Officer)* 2011 QCCA 1634 para 35.

⁶⁸¹ *Daoust v. Quebec (Chief Electoral Officer)* 2011 QCCA 1634 para 46.

including the proportional method, experience deviations or distortions in the results that they can produce. ... Moreover, it appears from the evidence that, even in proportional-type systems, legislative or effective thresholds are required.⁶⁸²

Most electoral systems experts will disagree with such assertions. The fact that distortions happen in any electoral system should not be a determinative assertion. The degree to which this distortions happen in different systems is radically different.

In justifying the underrepresentation of minorities, the Court cites *Ref.: Prov. Electoral Boundaries (Sask.)*⁶⁸³ to show that voter parity is not constitutionally mandated⁶⁸⁴. However, in *Ref.: Prov. Electoral Boundaries (Sask.)* other important factors such as community interests justified a deviation from parity. If anything, this ruling would mandate a deviation from parity in order to protect the minorities not to under-represent them.

Finally, in my opinion, the Quebec Court of Appeal fails to correctly consider the meaning of the right to vote in light of the *Figueroa*⁶⁸⁵ decision which translates it as the right to play a meaningful role in the electoral process. In *Figueroa*, the Supreme Court of Canada struck down certain electoral rules that had a stifling effect on small parties. According to the Supreme Court such limitations impaired the rights of the supporters of small parties to play a meaningful role in the electoral process. In *Daoust*, the Quebec Court of Appeal suggests that the right of the appellants to play a meaningful role in the electoral process was not impaired because they were able to vote for their favorite parties or be a candidate for small parties. This was considered as evidence that small parties could function

⁶⁸² *Daoust v. Quebec (Chief Electoral Officer)* 2011 QCCA 1634 para 51.

⁶⁸³ *Reference re Prov. Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158.

⁶⁸⁴ *Daoust v. Quebec (Chief Electoral Officer)* 2011 QCCA 1634 para 41.

⁶⁸⁵ *Figueroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912, 2003 SCC 37.

under the current system.⁶⁸⁶ The Court of Appeal misses the point. The same could be told to Figueroa. Indeed Figueroa was the leader of the Communist Party. The issue was not that the rules under contention did not allow for small parties to exist or did not allow voters to vote for small parties. However, those rules had a serious limiting effect on small parties. That was enough for the Supreme Court to find that the right to play a meaningful role in the electoral process was compromised. As we have discussed in this work, the plurality model of voting also has a serious stifling effect on small parties. At the end of the day this system is an existential treat to small parties. Therefore, I believe, a consistent application of *Figueroa* would turn down the current electoral system as unconstitutional.

Therefore, I believe *Daoust* decision should not stand for long and the possibility of a judicial intervention against the current electoral system is still considerable. This does not guarantee that if the matter reaches to the Supreme Court, that Court will strike down the current electoral system. The issue is too politically charged and understandably, courts will be afraid of being accused of judicial activism. Perhaps judicial intervention against the current electoral system should wait for a more progressive and a more daring Supreme Court composition.

That leaves us with the political mechanisms of electoral reform. The main obstacle in this front is the problem of entrenched interests. Electoral systems create parties that have entrenched interests on keeping the *status quo*. Larger parties and especially the winners who hold the power benefit from the plurality system and they won't like to change it. In the Federal scene, the NDP as the third party has usually been hurt by the current system. Accordingly, the party has long championed electoral reform. However, the provincial

⁶⁸⁶ *Daoust v. Quebec (Chief Electoral Officer)* 2011 QCCA 1634 para 53.

branches of NDP have governed in Ontario, Nova Scotia, Manitoba, Saskatchewan, and British Columbia but, to my knowledge, they have never taken a serious initiative to change the electoral system once they had the power to do so. Ironically, when provincial NDPs have found themselves in power, they have lost their appetite for electoral change because they have become the beneficiaries of the current system. However, electoral change is not without precedent in the world. Most European countries ditched their plurality formula in the first half of the last century. New Zealand did so in the 1990s. Perhaps an electoral reform will need principled politicians who will not give precedence to their immediate political gains. It also needs political will and mobilization by activists. As we discussed, one of the main reasons why electoral reform referendums failed in Canadian provinces was ignorance about electoral systems. Once the necessity of electoral reform occupies a center-stage in the political scene it will become a liability for the politicians and petty political gains cannot prevent it. This brings us to the issue of Senate reform. Making the Senate elected is an even greater difficulty. If as we discussed the 7/50 formula is required for making the Senate an elected body, numerous political parties and personalities will have a say in the process. It is difficult to imagine a situation, where none of them sees the reform of the Senate detrimental to their interests. However if the fury over the recent Senate scandals gets traction, opposing the reform will become politically costly. This may provide an exceptional opportunity for reform.

Suggested Areas for Future Research

There are different areas that this work has touched on in a cursory matter, but more in depth research is deserved. The following is a list of areas in which further research would be illuminating.

1. The path that is the most realistic road for Senate reform should be decided. While “consultative” elections could be a shortcut to avoid the difficult path of constitutional amendments to introduce elections for the Senate, reducing the power of the Senate to adopt relatively weak model of bicameralism, as suggested in this research, will require a constitutional amendment. An investigation in law and politics should be made to decide if this is a hurdle that might be overcome and how a political consensus could be reached in this regard.

2. The mechanism and the experience of bicameralism, in particular in countries that use different electoral formulas for their two chambers, should be researched. In this research, some arguments have been made for the adoption of a different electoral formula for the second chamber. Empirical research and comparative research in law and politics investigating the experience of such jurisdictions is needed to confirm our suggestions. In this regard, the experience of Australia as an established democracy that uses a majority formula for lower chamber elections and a proportional formula for upper chamber elections – a system that is very similar to our proposal - is highly valuable.

3. In this work, it has been suggested that the shortcomings of the current system, if viewed as a violation of Charter rights and minority rights in particular, warrant judicial intervention. However, judicial intervention is not the most desirable and may not be a realistic option for electoral reform. A reform that is carried away through regular

democratic mechanisms such as legislative initiatives or referenda will be regarded as more legitimate and will be more readily embraced by voters and political actors. Unfortunately, the defeat of three provincial referenda on electoral reform paints a bleak picture of the prospects on this path. Extensive empirical and investigative research is needed to find out why those referenda were defeated. Was it a result of an informational deficit on the part of voters? Were voters afraid of change and too accustomed to the old system? Were they defeated because larger parties wanted to defeat them? Did supporters of large parties vote against them in a self-interested and egoist manner? Or were the particularities of proposed reforms influential in their rejection? Last but not least, what is the best roadmap to electoral reform in Canada?

4. As has been discussed in Chapter Eight, different mechanisms exist that can boost female and minority representation in Canada. However, some of these mechanisms have negative side effects. There should be focused research on the workings of these mechanisms, whether they are needed in Canada, and whether their salutary consequences will outweigh their deleterious side effects.

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