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# *Time to Move Beyond Electoral Reform Proposals*

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by W. Scott Thurlow

*Sir Winston Churchill once opined that “democracy is the worst form of Government, except for all the others.” A similar statement could be made about the current Canadian electoral system – known as single member plurality (SMP) or first past the post (FPTP). There are lots of critics of the current system, but when alternatives are proposed, they often create far greater problems than they purport to solve. At the very least, the problems created by the current system are more manageable and acceptable than those which could be created by alternatives. This paper is not so much a defence of the current model (warts and all) as it is an argument for an abeyance on electoral reform proposals which would create a brand new set of problems and possibly exacerbate Canada’s regional differences.*

The inevitable debate associated with proportional representation (PR) almost always degenerates into creating an exceptions based model to address a particular Canadian reality. It may seem trite to argue that the ‘devil is in the details’ but in this particular case, it is true. It is very easy to castigate any proposal because it marginalizes a specific group. In fact, every single criticism of the current FPTP system advanced by advocates of PR can be spun around to be levied against them. Ultimately, there will always be a voter whose voice is not represented. Changing the system just changes that voice.

Proponents of reform argue that the system creates disproportionate results. The percentage of votes cast for a party are not tied to their total share of the seats won and their representation. There is no denying that this is true. There have been some egregious examples of this in British Columbia and Prince Edward Island. In Quebec, there have been instances where a party that receives fewer votes forms a majority government

because of how those votes were allocated. In every sense of the word, it seems unfair.

It is, however, completely irrelevant. Our system allocates votes based on a given territory, and there is nothing in our history or constitution that calls for a collectivist approach to how votes are counted. The current system is designed to elect 308 MPs – and it accomplishes this goal handily. Barring a vacancy, there are exactly zero Canadians who do not have an MP they can turn to for assistance or hold directly accountable at the polls. Under a reformed PR/transfer system, this statement becomes significantly harder to make.

From the outset, we have to be clear on the justification for electoral reform – there has to be a problem that needs to be solved. ‘Needs/plan’ analysis of the current situation leads me to two conclusions. First, the governments of British Columbia, Ontario and Prince Edward Island have all flirted with the idea of reforming their electoral systems though none of them would take the bold action of proposing it in the legislature. The proposals failed to be ratified by their respective electorates, and as such, political leaders in those jurisdictions could avoid the debate by letting the people decide. The need for reform was in part

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*W. Scott Thurlow is Vice-President of Temple Scott Associates Inc., a Public Relations and Government Relations firm ([www.tsa.ca](http://www.tsa.ca)).*

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satiated by these plebiscites, but ultimately the need which gave rise to the call for reform continues to exist.

The plan, however, is where everything starts to fall apart. The problem with the current system can be neatly summarized in three points: the current system wastes votes, victorious governments are formed without a clear majority of supporters and larger parties are over-rewarded based on their vote allocation.

### **The Proposals**

It is admittedly difficult to argue against a concept in the abstract, because for every assumption that is made, an exception could be proposed to the system. In my opinion, it is very dangerous to have any system which is designed with exceptions built into it. Under the status quo, every single MP is elected in the same way. They campaign in a demarcated area against other individuals who are seeking the same office. While some ridings are bigger than others, no MP is immune from defeat. No MP can hide behind a party list from his/her constituents.

As such, rather than focusing on any one proportional system, I think it is important to look at the features of proportional systems and clearly explain that each different system will have different flaws and assets. A transferable vote system will allow for voters to rank candidates, a purely proportional list based system will presumably translate a national/regional voice into the closest mirror image of that vote in the legislature, while allowing for regional differences.

So, what is the problem? More than anything else, we very rarely ever see popularity broken down past a large territorial benchmark. In other words, we see polling data as national, or provincial, indicia of popularity and expect the results of an election to mirror the data, 19 times out of 20. We have ourselves created the myth of collective votes in our seemingly incessant need to know just how popular our leaders are. I am fairly confident that Gilles Duceppe could care less what his national polling numbers are, as he is routinely outpolled by the Green Party, who have yet to elect an MP to the House of Commons.

No debate has been had about our right to vote and what that right is supposed to represent. In fact, all debates have focused on the short comings of the current system, and how it is not representative. Without putting too fine a point on it, that is not a reason for reform. For reform to occur there has to be a pressing reason to initiate a substantive change to the electoral system. That pressing reason may in fact be to put an end to the perpetual political uncertainty in Ottawa,

but alas, making the system more susceptible to additional fracture will only make that problem worse.

Canadians continue to vote for a person to represent us. We do not vote for a party – though the people we vote for use a political party as a standard to identify their philosophical views. Undoubtedly, there are political scientists who would dismiss this idea based on their study of polling data. I would posit that a series of questions asked during a poll is not the same as the internal question asked by an elector at the ballot box.

### **What are our Rights?**

Critics of the current system note that FPTP disenfranchises some Canadians to the point that it could constitute a violation of their *Charter* rights. The *Charter of Rights and Freedoms* is very clear – each Canadian has the right to vote in an election for the members of the House of Commons and to be qualified for membership therein.<sup>1</sup> Courts have expanded that right to guarantee an informed vote by broadening the definition of political parties under the *Canada Elections Act*. The right to vote, however, belongs to an individual. They have this right, and can choose to exercise it. There is no substantive right associated with the exercise of the democratic franchise above and beyond an individual's ability to attend at a polling station and cast their vote for their preferred candidate.

Attempts to use the courts to attack the current electoral system have fallen flat because, quite simply, there is no collective right to vote, which would be the only constitutional basis for demanding electoral reform. The argument is that because a person casts a vote which does not contribute to electing a candidate, that they are somehow disenfranchised – and that they are not being represented. I would argue that while your preferred candidate did not win, there is no doubt that your vote was counted and that you continue to be represented – just not by someone you wanted.

More to the point, there is also no constitutional right to have votes counted in a certain way, and if anything, there is a constitutional convention to maintain a system which is "...in the British tradition." That is not an argument in favour of preserving a tradition for its own sake, but understanding that the constitutional view of our electoral system is currently based on tradition is important for context.

The idea that the system creates a disincentive to participate, effectively negating the empowerment that is associated with the exercise of section three rights, is a more compelling point. A voter in a riding dominated by party X is so unlikely to make a difference with

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their vote, that they decide not to participate, and as such, their right to participate is compromised. Again, the right to vote is what is protected, not the right to win. Every elector makes the decision to participate, and if they elect to not participate, that is their right. The choice to not participate in the very narrow aspect of political life – the vote – is but one choice an elector can make. The system does not prevent them from canvassing for a candidate or party, nor does it prohibit making a contribution to a candidate or party. The only wasted vote is one that is not cast.

### **What does an Electoral System have to do?**

Elections are about translating the voice of people through the exercise of their franchise in order to establish a government. Underlying this purpose, are two assumptions about elections. The first is that there has to be a threshold to ascertain the victor. The second is that in the absence of a perfect mathematical allocation of votes there are always going to be some votes which are not counted, as defined by proponents of a PR model.

There is no electoral reform proposal which will cure that second problem, unless representative democracy is completely abrogated. The first assumption, however, is what justifies PR proposals in the minds of the disenfranchised and it is the way that the map is drawn which will ultimately decide whose votes are not counted. Right now, we have 308 individual maps which produce one winner every time an election is held. Advocates for change, however, want the size of those maps increased, and presumably have multiple MPs for each district. The bigger the population of the district, the smaller the percentage of votes required to elect an MP.

In any confederation, retaining provincial autonomy in a national institution is important. The US system is replete with structural disadvantages to the most populous states – but it is seen as a necessary evil to ensure that individual states feel that they are treated fairly. Similar concessions are a key aspect of the composition of the House of Commons.

Any proposed form of PR simply changes the problem to be solved. The smallest provinces and territories would either have to sacrifice their provincial identities as they are lumped into larger regions, or they would have to sacrifice some element of proportionality lauded by PR proponents. Why should a supporter of the Green Party in Prince Edward Island be denied the rights to an MP while the same percentage of the vote would garner seats in most other provinces? We could argue forever about what

the thresholds for representation are – but we have to admit that no matter what that threshold is, someone is going to be discriminated against. For the time being, we are willing to accept that there are some ridings in Ontario that have more people in them than all three Northern territories combined. It is an imbalance we tolerate for the betterment of the federation.

Far more significant, is that any mixed system will create two types of MPs – those who are directly accountable to a constituency and those who are accountable to a party machinery to keep their name high on a party party list. Currently, with 308 constituency MPs, elected officials are run off their feet as they try to meet the demands of the constituents who elected them MPs. Expanding ridings to give constituency MPs even more transactional work to do will only make parliamentarians less effective while seemingly more representative. Creating multi-member constituencies will only create conflict internally when a constituent is trying to find someone to help them get his or her passport approved.

### **Should we care about Small Parties?**

Many critics of the current system will agree that the real issue is that the system favours larger parties and prevents smaller parties from breaking through. This has certainly been the battle cry of the NDP – as they are routinely awarded fewer seats than their national vote would obtain. A proportional system would allow for a small party to build on its success and become part of the national discourse through representation, one MP at a time.

In so doing, FPTP critics dismiss what the current system does to help the smaller parties that do not win seats. In fact, it allows for a party to concentrate efforts in one riding in hopes of winning it, and from there building a critical mass and expanding as opposed to running a full slate of candidates country/province wide and expending resources that would be best allocated elsewhere. Reforming, while controlling for regional imbalance, will only really allow for the smallest parties to break through in the largest provinces.

We should take a hard look at what is wrong with the current system. It is true, there are many people whose vote does not go to a helping to elect an MP, but that does not make it ineffective or unrepresented. In fact, the per vote stipend political parties receive under the reformed *Canada Elections Act* is in part a recognition of that fact. Registered political parties qualify for public broadcast time, they can issue tax receipts like the largest parties, and they can qualify for refunds

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of their expenses. There are several examples of how the smallest parties have effectively used these tools to broaden their existing community support.

I have always been confused by the contention that the system is what keeps these smallest parties down when in the past 20 years, our political system has given birth to at least two brand new political parties (Reform Party and Bloc Quebecois) that came out of no where to win more than 50 seats respectively. Similarly, the system gave rise to the merger of two political parties to form the Conservative Party of Canada. Would these parties have united under a proportional representation system, or is it more likely that they would have remained divided in some form of uneasy coalition on issues of mutual agreement? Similarly, would a reformed system divide the Liberal Party into regional wings when the national party takes a stance on a regional issue – like the offshore oil agreements, harmonized sales taxes or tar sands development? There are mountains of evidence from PR jurisdictions that the potential for internal fracture is significant.

Of course, critics of FPTP would argue that the BQ and Reform Party were in fact a symptom of what is wrong with the current electoral system – they were able to win significantly more seats than they would have otherwise been allocated under a proportional system. The question I have for critics of the current system is why do they want to further empower the larger political parties? The current system also gives someone an opportunity to be elected as an independent. Admittedly, this still remains quite difficult, but there is no doubt that it would be harder for Bill Casey to reclaim his seat after being cast out by his party, or for Andre Arthur to overcome four major parties, to win election. The larger the riding, the harder it is to capture the required votes to obtain that seat.

In many cases, single transferable vote (STV) is even worse for creating results which are based on strategy. In a closely contested three way race – of which there were several in the 2008 general election – the third favoured candidate would probably decide the winner, thus making the second place votes of the third place candidates even more important than the first place votes of all other ballots. I reject the assumption that a transferable model is more representative because these voters still do not get their first choice – in fact, the consensus candidate is really just the candidate people hate the least. No matter what proponents of a proportional/transferable system advocate – confidence in the system is not generated by ensuring

that relatively few people get their first choice by having a system which “counts every vote.”

### **How is Representation Best Achieved?**

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Under a different system, would Parliament really be more representative? A larger constituency with competing politicians within it makes the system less accountable to the individual voter, not more, as specific MPs, once elected, would be unbeatable, or impossible to be un-elected, based on their place in the party machine. Being at the top of the list for any particular region would become that MP's goal, because being the top name guarantees re-election unless the party completely collapses.

But, let us say that 0.3246% (100% of the electorate/308 seats) of the national vote can elect an MP. Is a voter in party X from British Columbia casting a party ballot that is the same as the same voter in Quebec? Assuming 22 million eligible voters, it would take over 70,000 votes to elect a single MP. That would require almost unanimity of PEI voters to elect a federal MP.

Under the current system, we deliberately weight certain votes to ensure regional representation. Any PR based reform would compromise those existing benchmarks in one of two ways. If you believe that the current system discriminates, than STV/MMC will only change the standard for that discrimination. Whether the MMC is set at four (PEI) or 7 (Newfoundland, or a regionalized Ottawa) or 107 (Ontario) at some point there will be a new cut off. In each case, the cut off for representation will be 25%, 14.29% or .93% of the vote – and in each case, it simply shifts the bright line for representation to discriminate at a different point of popularity. On the other hand, a reformed system would disenfranchise existing regions with smaller populations as larger geographic regions are created for a new system. These problems are further exacerbated in disparately populated areas like the North. I am confident that the people of the North would not want to share their MP(s) with other provinces – and that by lumping the smallest provinces/territories in with larger ones for the sake of ensuring that all votes are represented will inevitably ensure that theirs are not. Even in larger provinces, isolated populations may not be represented when compared to the population centres.

Does that create a Parliament that is representative? I think it makes a Parliament that caters to large population centres at the peril of isolated voters who may already feel isolated. PR advocates would respond by saying that there are many specific exceptions that can be made to solve these specific problems. Doing

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so would definitely create a different class of MP, a far greater problem than the one it purports to solve.

### **Conclusion – What problems can be solved?**

We have seen provincial referenda in several jurisdictions fail, and in some cases by considerable margins. It is my view that asking the same question until you get an answer you like is not the best way to achieve sound public policy. Perhaps ironically, in each instance, the failing proposition could very well have elected an MP based on the percentage of the initiative received if the 'riding' was small enough.

So, why did these reform initiatives fail? There is ample anecdotal evidence that it was not important to most people. Perhaps Canadians are very comfortable with their current system for no other reason than they profess to understand it. Put another way, a complicated reform proposal that creates multiple MPs for a single riding will be extremely confusing. Most institutional reforms lead to fairly massive confusion amongst the least literate members of society – further adding to their disenfranchisement. FPTP contributes to a guaranteed sense of empowerment and a more efficacious society because electors know how to elect someone and how to throw them out. The current system is, admittedly, very easy to understand.

In the run-up to the December 2008 constitutional crisis, the man/woman on the street said "I did not vote for this," and in effect, they were right. They did not vote for a coalition government, they voted for an MP and instilled their confidence into that person to represent them. In fact, there is a significant misunderstanding by ordinary Canadians and politicians alike on the consensus on what existing democratic norms mean.<sup>2</sup> This is admittedly bad for democracy. Reforming the electoral system may actually contribute to a massive wave of voter education on what they are voting for. That is not, however, a reason to change the current system – it is a case for better explaining what the system means.

Critics of PR systems are usually quick to point out that it will lead to perpetual minority governments. Nowadays, that does not seem to be a fair criticism as minority governments seem to have a habit of forming themselves in Ottawa using the current system. Without sounding like an apologist for the 2008 constitutional crisis in Canada, coalition governments have existed for generations in other countries because their systems required that their political culture would adapt over time to create this *ad hoc* stability. The problem is the

'never-ending' of political instability in Ottawa that the current system is creating. Changing to a PR model would not solve that, to be sure.

If there is a proposed reform that could contribute to greater stability in Ottawa, it would be to divorce the administration of government from the day to day operations of the House of Commons. This reform could happen by either having a set term for any nominated Prime Minister, a separate direct election for Prime Minister, or a redefinition of 'maintaining the confidence of the House' to assume that by winning an election, a Prime Minister is deemed to have the confidence of the House for a set period of time.

The issue is no longer about the electoral system, but about establishing a workable separation of powers – something that has never been more than a *pro forma* feature of Canada's government institutions. In the same way that Ministers are accountable to parliamentary committees, a Prime Minister can still be accountable to the House of Commons in many ways, including Question Period, without having constant confidence of the House of Commons.

Fixed election dates can also be part of the solution, assuming that they are respected. Similarly, an elected Senate which is based on a proportional vote would be a vast improvement to the current model for selecting Senators if, as a condition precedent, we can agree that regional representativeness is a prominent feature which should be featured above others in at least one aspect of government.

Any or all of these proposals would have a greater direct impact on effectiveness of the legislature when compared to a simple shuffling of how individual MPs are elected. If anything, a move to a PR system would necessitate a wholesale renewal of these other institutions, which in and of itself could be worth the initial shock that moving away from a FPTP model. It is not, however, the change of the electoral system which will galvanize public opinion to fashion that review, but a concerted groundswell by the people for reform.

### **Notes**

- 1 [http://laws.justice.gc.ca/en/charter/1.html#anchorboga:l\\_I-gb:s\\_3](http://laws.justice.gc.ca/en/charter/1.html#anchorboga:l_I-gb:s_3)
- 2 Peter Russell and Lorne Sossin. *Parliamentary Democracy in Crisis*, University of Toronto Press, p. 148.