

A New Electoral System for New Brunswick

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Concerns about the state of democracy in Canada have become a common refrain over the past two decades. The greatest point of contention has been the electoral system. The first-past-the-post system (FPTP) used throughout the country has come under sustained criticism for its tendency to skew the vote-seat relationship in favour of larger parties and to produce majority governments lacking majority support in the population.

For a variety of reasons, trying to change electoral systems in Canada, whether at the federal or provincial level, has proven to be a formidable task. For nearly two decades now, there has been a flurry of promising activity on this front, as governments across the country have appointed various bodies to deliberate on the issue and to make recommendations for change. Virtually all have called for some form of proportional representation (PR) to replace FPTP. Yet to date none of these recommendations has come to pass; Canada remains a country, one of the few in the world, still using FPTP for essentially all legislative elections.

New Brunswick first looked at the issue in 2004, when Premier Bernard Lord established the Commission on Legislative Democracy. This eight-person body took a wide-ranging look at various aspects of our democratic institutions, and in the end recommended that a mixed-member proportional system be adopted for provincial elections. The premier announced that a referendum on the matter would be held in conjunction with the municipal elections of 2008, but the plan was shelved when the Liberals took power in the 2006 provincial election.

Other recommendations to consider various forms of PR have come from different bodies, including the British Columbia Citizens Assembly (2004), the Ontario Citizens Assembly (2007), the PEI Electoral Reform Commission (2003), and the PEI Special Committee on Democratic Renewal (2016). All of these recommendations were subject to approval by referendum, and while in two cases they did surpass the 50 per cent mark, this was deemed in both instances to be insufficient by the powers that be (in BC in 2005 due to a 60 per cent support threshold set by the government, and in PEI in 2016 due to low voter turnout).

The past twenty-four months have seen two further efforts to push electoral reform over the hump at the federal and provincial levels. Fredericton MP Matt DeCoursey was a member of the Special Committee on Electoral Reform that was established by the Trudeau government to make good on the prime minister's unequivocal campaign promise that 2015 would be the last election contested under FPTP. The committee undertook a broad consultation process, travelling across the country in the fall of 2016 and hearing widespread support for a switch to proportional representation from the many Canadians who came forward to state their views. The main report of the committee, backed by a majority of committee members, reflected this public sentiment and called for such a system to be developed and implemented. The Liberal members of the committee, however, wrote a supplemental report, in which they expressed concern that the recommendations in the main report were too "rushed" and "radical." It was clear that the government had gotten cold feet and would not be pursuing any kind of electoral reform. Whether the Liberals will pay a price at the next federal election for their broken promise remains to be seen.

At the provincial level, the recent Electoral Commission received much less attention and scrutiny than the federal reform effort. In November 2016, the Gallant government announced the formation of a five-person commission to investigate and make recommendations on a series of issues relating to democratic practice in New Brunswick. After a three-month period of deliberation, the commission's recommendation was that New Brunswick should adopt the system of voting known as preferential balloting where voters are able to rank candidates in order of preference; the government responded by announcing that this would be put to a referendum vote during the municipal elections of 2020. The commission also acknowledged strong support for PR in the province and recommended in its report that "consideration be given to some form of Proportional Representation during the process of considering the redistribution of electoral boundaries" (19). The government accepted this recommendation also.

For most who have been advocating for electoral reform in the province, this set of outcomes, coming on the heels of the federal electoral reform fiasco, was deeply disappointing. Preferential balloting is not PR; it is a system much more closely aligned in its logic and outcomes with the current FPTP system. And if it does come into effect, it will be far too easy for the government to say that the issue has been addressed and the file is now closed. Promises to revisit the matter and to consider PR down the road are unlikely to be fulfilled.

Still, none of this is carved in stone. There remains time and opportunity for further debate before matters proceed any further, particularly with a provincial election coming in the fall of 2018. In this essay, I provide some background on the Electoral Commission and assess its analysis and recommendations concerning the electoral system. Interspersed throughout is my own perspective and commentary. I make no secret of my views as a supporter of PR who has shared in the frustration that many have felt with the continuing saga of failed reform efforts across Canada and with governments who often seem intent on evading reforms that may be detrimental to their own electoral interests.

The Electoral Commission in New Brunswick

The process used to appoint individuals to serve on the NB Electoral Commission was quite unusual and unlike any used in other electoral reform initiatives across Canada over the past fifteen years. It started with the government putting out an open call in September 2016 for all interested persons in the province to come forward to express their willingness to serve on the commission. This presumably was designed to lend the initiative a grassroots flavour, as a seat on the commission was in theory open to any New Brunswicker interested in serving. It bore some similarity to the method used to identify potential members of the citizen assemblies in BC and Ontario, except that in those cases, names were drawn at random from the provinces' voter registration lists, rather than individuals having to put themselves forward. This is an important difference, as it meant that many people who likely would never have considered applying for a position on a government commission found themselves receiving letters in the mail inviting them to be considered for a seat in the citizens' assembly of BC or Ontario.

The degree to which the open call in New Brunswick succeeded in bringing forth applicants from different walks of life is difficult to say. No public information was released on the number of applicants, nor was any information made available about the social and demographic profile of those who applied.¹ Nor, for that matter, was any indication given as to whether the government

might have actively solicited applications from individuals it felt were particularly suited to the task of serving on the commission.

The diversity of the applicant pool was largely immaterial anyway, since the New Brunswick process diverged entirely from the citizens' assembly model at the next stage in the selection process. At this point, the government, rather than picking names at random from among the list of interested individuals, simply chose its preferred appointees from among those who had applied. The end result was a body of five that had the typical profile of most hand-picked government commissions. It included two individuals with extensive involvement in political affairs and public policy: career civil servant and former deputy minister, Carolyn MacKay, and former MLA and Speaker of the Legislature, Bev Harris. It also included another two members with a wealth of educational and professional experience in public affairs—Jason Alcorn, senior legal counsel at a crown corporation, the Financial and Consumer Services Commission, and Constantine Passaris, professor of economics at the University of New Brunswick. The only appointee with more limited experience was Gaétane Johnson, an eighteen-year-old student at the Université de Moncton, though rather atypically for someone so young, she was also an elected councillor for the village of Rogersville.

If any “average” New Brunswickers did put their names forward for consideration—the type of individuals who were selected to participate in the BC and Ontario Citizen Assemblies—they were completely passed over at the second stage of the selection process. Yet despite this, the commission took to describing itself in different venues as a “mini-citizens’ assembly,” presumably in an effort to burnish its representational credentials.²

At the same time, it would have been challenging for the commission to carry out its work in the allotted time frame had it actually included individuals with limited education about politics or experience in public affairs. In the citizen assembly process in BC and Ontario, considerable time was devoted at the outset to an educational phase, where assembly participants were taught about different electoral systems and the underlying democratic values they embodied. This was followed by extensive discussion and deliberation at meetings held over several months; the assembly process as a whole took a year in BC, nine months in Ontario. Given the three-month time frame for the NB Electoral Commission to complete its work, it is hard to see how any significant educational component could have been included if the commission had involved individuals with little prior background in public affairs.

The tightly compressed schedule had other effects on the process and outcome as well. The public outreach undertaken by the commission was quite limited. It held six meetings with stakeholders and interest groups, most of these at the council chambers of the Legislative Assembly in Fredericton. At the end of each session, there was a half-hour “open-mic” session where members of the public could offer input to the process. There was just a single town hall, also in Fredericton, toward the end of January as the commission neared the end of its three-month mandate. While members of the public could make written submissions and quite a number did, the opportunities for direct engagement and interaction with the commission were very limited.

By contrast, the earlier New Brunswick Commission on Legislative Democracy (CLD), over the course of its twelve-month mandate in 2004, held fourteen public hearings throughout the province, eleven “community leader” roundtables, and four forums dedicated to democracy issues pertinent to specific groups (women, youth, and francophone communities). The CLD was also able to provide its

own discussion papers (three in all), prepared under the guidance of a dedicated research director. The Electoral Commission, on the other hand, relied on a single background paper prepared by the government (“Strengthening New Brunswick’s Democracy”), which steered discussion toward the government’s preferred outcome on key issues, most notably preferential balloting.³

The final reports produced by the two commissions also differed substantially in depth and detail. The CLD produced a final report of 227 pages, with twenty-three pages focused on the electoral system.⁴ The Electoral Commission’s report of March 2017, “Towards a More Inclusive Democracy,” was forty-nine pages in all, with the section on electoral systems comprising seven pages. Four of those seven pages were taken up with background discussion of prior reform efforts in Canada and other provinces, with just three pages dedicated to analyzing the current FPTP system, preferential balloting, and proportional representation.

There is no obvious reason why the time frame set for the commission’s work needed to be so short, and it surely hampered the commission’s ability to raise its profile, to properly canvas the views of New Brunswickers throughout the province, and to develop a more extended analysis and consideration of the numerous substantive issues in its remit, including different electoral systems. Yet none of this prevented it from making a clear and precise recommendation: New Brunswick should adopt the preferential balloting system, with any consideration of PR to be pushed further down the road.

It is hard to see how the commission could have formed the impression that preferential balloting was the reform option favoured by New Brunswickers, even given its limited outreach efforts. At the town hall meeting in Fredericton in late January 2017, twenty-one individuals stood up to offer their views to the commission on the various issues under consideration. Speakers focused on various issues (the voting age was a popular topic), but only two made no mention of the electoral system. In four further cases, it was unclear which system the speaker preferred. Of the remaining fifteen, thirteen spoke clearly in favour of proportional representation, many citing the specific system developed by the CLD back in 2004. Only one person spoke in favour of the current FPTP system and only one advocated preferential balloting.⁵

The clear preponderance of support for PR at the Fredericton town hall was mirrored in the written submissions to the commission. Of the eighty-seven submissions that spoke to the electoral system, 80 (92 per cent) were in favour of PR. Three favoured the current FPTP system, while another three indicated support for preferential balloting, though two of these indicated this should be considered as one possible option alongside PR.⁶ This matched the pattern seen across Canada when the federal Special Committee on Electoral Reform criss-crossed the country to canvas the views of Canadians on the topic: 80 per cent of members of the public and 88 per cent of expert witnesses before the committee spoke in favour of PR (Fair Vote Canada 2017).

Public opinion at large also tilts in favour of PR. A Canada-wide poll in 2013, for example, found that 70 per cent were either “strongly” or “somewhat” in support of a proportional system in which the “total number of seats held by each party in Parliament would be roughly equivalent to their percentage of the national popular vote” (Fair Vote Canada 2013). In another Canadian survey in 2016, 60 per cent of those wanting to see change to the electoral system preferred either mixed-member proportional (37 per cent) or pure PR (23 per cent) compared to just 20 per cent who favoured preferential balloting (Environics Institute 12). New Brunswick surveys on electoral reform are lacking,

but if the opinions expressed by concerned citizens to the NB Electoral Commission are any indication, it is likely that PR support in this province would align, at least roughly, with these Canada-wide results.

Perhaps the commissioners, in recommending preferential balloting, felt their hands were tied by the restrictive mandate issued by the government and that some reform was better than nothing. There were mixed signals on this front. The mandate said simply that the commission was to “to investigate means to improve participation in democracy, such as preferential balloting and online voting”—clearly indicating the government’s preference for one particular electoral system, but not expressly excluding PR. In the commission’s report, the section on PR began with the proviso that it “was not within the mandate of the commission to explore a proportional system” (19), but it then went on to explore a proportional system in as much depth and detail as it did preferential balloting, to declaim on its merits, and to make recommendations about its potential consideration at a later date. It does appear as though the commission felt it within its rights to talk about PR and to make a strong statement in favour of this system if commissioners believed this was the appropriate recommendation.

So it would seem—and this is certainly how the report reads—that the commission arrived at its own independent conclusion, based on its reading of the evidence and arguments, that preferential balloting was a better system for New Brunswick at the current time rather than any PR-based model. Yet why it felt it should decide for itself rather than reflecting the views of concerned New Brunswickers on the issue remains something of a mystery. It may be connected to the misplaced notion that the commission was a kind of “mini-citizens’ assembly” and could therefore rightly see itself as embodying the voice and will of the people. But it was not a citizens’ assembly, mini- or otherwise—it was an appointed government commission. This kind of body, while having some scope for independent deliberation and recommendation, also has a significant duty to absorb and reflect the public attitudes that emerge from its consultations and to pay heed to other relevant markers of public opinion. At the very least, it should not have produced recommendations starkly at odds with opinions expressed by the interested public. In doing precisely this, the commission took a highly paternalistic approach to one of its key mandate items, telling New Brunswickers which electoral system was best for them rather than listening to the views of concerned citizens on this important issue.

Different Electoral Systems

To better understand the disappointment that greeted the recommendation of preferential balloting, as well as the substantial support for PR that exists in Canada and in New Brunswick, it is necessary to take a closer look at electoral systems. What are the major concerns with the current FPTP system? And what are the features of PR that make it better suited to addressing those concerns than the preferential balloting system recommended by the Electoral Commission?

First-Past-The-Post

Concerns about FPTP tend to remain muted when there are just two political parties actively contesting elections—a situation that describes much of the earlier political history of both Canada and New Brunswick. With just two parties presenting a slate of candidates, the winning candidate in each riding has to win more than 50 per cent of the local vote in order to be elected. And this majority outcome usually carries over to the overall result, as the winning party ordinarily will win more than 50 per cent of the total vote.

The final result in a two-party system is unlikely to be perfectly proportional, as the party forming the government will often receive a higher percentage of seats than votes. But at least the party taking power will normally have won a majority of the votes. Moreover, in a two-party system, it is not clear that there is any real alternative to single-party majority government. The only other choice would be a coalition government involving every single elected member, leaving no official opposition to counter and check the government.

This point underscores that historically the FPTP system made a certain amount of sense. But times have changed, and two-party democracy is no longer the norm in Canada. New parties have arisen to challenge the traditionally dominant two. And when there are more than two political parties competing in FPTP elections, concerns about disproportionality become more acute. With the vote split more than two ways in each riding, the winning candidate often has substantially less than 50 per cent of the local vote; and the party that wins the election often does so with less than a majority of the overall vote. Yet, often it will still secure a majority of the seats and hold all the effective power in our parliamentary system of government where full executive authority rests with a government that can command the support of a majority of elected members. This qualitative discrepancy—that a minority of the vote translates into a majority of the seats and 100 per cent of the power—is one key concern critics have about FPTP.

Occasionally, the winning party is not even the leading vote-getter in the election, finishing in second place, yet still managing to secure the most seats (sometimes called a “wrong winner” outcome). This occurred in New Brunswick in 2010 when the Liberals narrowly lost the popular vote to the PCs, yet formed a majority government nonetheless; the PCs pulled off the same trick in 1974.

The perspectives of the losing parties on this state of affairs will vary, depending on their relative standing and future prospects. The second-place party typically receives a decent number of seats, often a share roughly proportional to its vote; moreover, it looks forward to the next election when it might benefit from FPTP and be able to win a majority government of its own. Therefore, few complaints about the electoral system are usually heard from the official opposition. Smaller parties, on the other hand, are often heavily penalized in their seat count and have less chance, in the short-term at least, of being able to turn the system to their advantage. Some parties remain trapped in this situation election after election. While they might be tempted to put water in their wine in order to become more electorally viable, most are not willing to abandon their principles, and they continue to fight for what they can under the FPTP system.

The ongoing presence of smaller parties contradicts one of the supposed laws of political science, Duverger's law, which holds that under FPTP anything other than a two-party system is unstable and unlikely to last. It is true that some smaller parties have a short existence and in retrospect can be seen as temporary protest parties—the Confederation of Regions party is one prominent New Brunswick example. Yet in most FPTP jurisdictions, there are examples of smaller political parties with significant staying power. The United Kingdom, home of FPTP, has seen a proliferation of smaller parties since the 1960s, and currently has six different parties represented in its parliament (with the Conservatives holding a majority government). At the federal level, the Liberal and Conservatives have shared the electoral arena for many years with the NDP, Greens, and Bloc Québécois. At the provincial level, the NDP, Greens, and People's Alliance have likewise come to occupy a sizable part of the electoral turf. The supporters of these parties may be frustrated by the electoral system, but they are not willing to accept that there is only room for two viable parties as Duverger's law anticipates.

As smaller parties have become more numerous in FPTP systems and have taken a greater share of the vote over time, the larger parties, including the winning party, have seen their vote share erode. At the federal level, the last two majority governments—the Conservatives in 2011 and the Liberals in 2015—were formed with less than 40 per cent of the national vote, a historically uncommon event. Prior to that were three minority governments under Paul Martin and Stephen Harper, with “winning” vote shares in the mid-30 range. New Brunswick has been moving down this same road, as smaller parties upped their total to just over 20 per cent of the vote in the 2014 elections, while the party forming majority government, the Liberals, won with a relatively low vote count (42 per cent).

Yet for some these kinds of outcomes are more praiseworthy than lamentable. As our politics becomes more fragmented at the level of party politics, and as the divisions within society seem to proliferate, it is an entirely good thing, some would argue, that our electoral system produces single-party majority governments that are able to govern in a stable and effective manner.

Whether it is better for the sake of stability to suppress a growing diversity of views, rather than giving them proper expression and finding new ways to negotiate, compromise, and move forward, is an arguable proposition. But more than this, it is not even clear that FPTP actually delivers on its supposed dividend of stable and effective government. An important counter-argument is that the single-party majority governments common under FPTP are often hampered by the weak electoral mandate represented by their vote share; they find it more difficult to act decisively because they lack a “true majority” mandate (Warren). The problem has been exacerbated as their base of support has become more slender over time. When popular support falls to around 40 per cent, it means that for every two citizens who voted for the government, three voted against. Furthermore, with turnout rates on the decline, a 40 per cent vote share can represent just 25 per cent or less of all eligible voters. As governments with these diminished mandates try to move forward, they face a populace that has become more restless and volatile, more likely to react when governments try to strike out in new directions with which they do not agree. In this context, governments elected under FPTP often act with a surprising amount of caution and trepidation, considering the power they have at their disposal.

We can see some evidence of these dynamics in certain actions—and inactions—of New Brunswick governments in recent years. On numerous controversial issues, governments have acted with hesitation and uncertainty; examples from recent years include French immersion and forestry policy. The current Gallant government likes to talk about gaining “social licence” for key decisions, but this often seems to be just another way of saying we don’t have a strong electoral mandate, so we will investigate and consult—and prevaricate and delay—until we see if we can rally sufficient support for a particular course of action. While governments will choose to present this approach as an indication of their openness and flexibility, it often seems more a marker of indecisiveness born of a weak electoral mandate.

At the same time, there are other examples where it is far from clear that majority governments under FPTP feel hamstrung by their lack of majority support among voters. Single-party majority governments will use their power to act firmly and decisively—sometimes to the point of making rash decisions clearly lacking popular support. A prime example in the New Brunswick case is the attempt to sell NB Power to Hydro Quebec, a decision arrived at behind the scenes that took many MLAs on the government side by surprise, not to mention New Brunswickers at large, when it was unveiled in late October 2009. Similarly, at the federal level, Stephen Harper consistently pushed policies forcefully in the face of widespread public opposition, particular during his majority tenure from 2011 to 2015.

What we see from governments under FPTP, then, is a mixed and inconsistent pattern. Sometimes governments (or their leaders) pursue a preferred agenda, enjoying the lack of checks and restraint in the political system. Other times, they dither. It seems to depend very much on the particular leader and on the specific issue at hand. But it is not clear that this checkered pattern of forceful and timid action represents effective governance. It stands in contrast to situations where governing parties do have true majority support and can move ahead on challenging agendas with greater fortitude and conviction. The Equal Opportunity Program, for example, was rolled out under Premier Louis Robichaud in the 1960s on the basis of vote shares above 50 per cent in the elections of 1963 and 1967. Could he have done the same with just 40 per cent of the popular vote at his back, or would he have felt the need to cautiously seek out “social licence” from various quarters in the province to pursue these important reforms?

This reasoning suggests that it may be helpful to think separately about the qualities of stable and effective governance, qualities that are often bundled together as one (the Electoral Commission, for example, cites “stable and effective government” as one relevant criterion for its assessment of electoral systems [17]). Single-party majority governments are undeniably *stable*, typically serving out their full terms in office with no danger of losing power and no prospect of a “destabilizing” early election. But they are not necessarily *effective* in terms of their capacity to meet governance challenges involving difficult and contentious issues on which the citizenry may be divided. If we are looking for a more steady and sure hand on the tiller, then governments that enjoy true majority support in the population are more likely to provide it: with over 50 per cent support they feel empowered to act on important issues, yet they also encompass a broader array of perspectives and voices in their decision-making processes, which keeps precipitate actions in check. These are the kinds of governments that other electoral systems, in particular those based on proportional representation, can help deliver.

Proportional Representation

Proportional representation (PR) systems address many of the major shortcomings of FPTP. This is why they have been the reform option chosen by essentially every commission, citizens’ assembly, independent agency, and legislative committee that has deliberated on the matter in Canada over the past two decades; and it is why the Electoral Commission’s “maybe, down the road” nod to PR is not a satisfactory response to current demands and concerns.

The most obvious and immediate benefit is that proportional systems produce a fairer electoral outcome in that votes and seats are much more closely aligned. Forty per cent of the vote under PR secures (more or less) 40 per cent of the seats; 15 per cent secures 15 per cent. To advocates this seems an inherently more fair and democratic system.

From this proportional outcome, it follows that the governments emerging out of PR elections must one way or another reflect the majority of voters, another important democratic principle. But this is not simply a pleasing democratic ideal; it also empowers such governments to act with authority and conviction based on the mandate they have received from the people.

One widely cited study of governmental effectiveness, conducted by leading political scientist Arend Lijphart, examines governance practices and policy outcomes in thirty-six democracies from Europe, North America, and other parts of the world that have been continuously democratic since at least 1989. Lijphart finds that what he calls “consensus governments”—where PR is a key feature

conducive to this form of government—produce better policy outcomes than the kind of “majoritarian governments” associated with FPTP. These outcomes include reducing unemployment, controlling inflation, and controlling corruption; overall, consensus democracies have a superior record on sixteen of seventeen governance indicators (Lijphart 268).

Another commonly cited benefit of PR is that it facilitates enhanced representation for women and under-represented minority groups in elected bodies. In countries that use this system, the percentage of women elected is higher on average by about nine percentage points (Lijphart 281). PR thus improves representation in a second way, not only affording each party a fair share of seats in the legislature, but also allowing a proportionate place for key groups within society. This too can lend government decision-making greater legitimacy.

A further positive effect often connected to PR is higher voter turnout. PR is not a panacea for the turnout problem that has surfaced in New Brunswick and others parts of Canada over the past number of years, and by itself is unlikely to boost turnout by more than a few percentage points. But in conjunction with other changes, such as improved civics education for young people, it could have a significant impact in improving participation levels.

There are several variants of PR to choose from, some of which seem better suited to New Brunswick than others. In the simplest model—one that has not received any serious consideration in any Canadian jurisdiction—the entire country or province would be considered one single electoral constituency. Voters would tick off their preferred party in the polling booth and seats would be awarded to candidates from party lists provided in advance of the election. Under this system, voters would lose their local MLA and instead be represented solely on a party basis by a group of MLAs from various parts of the province.

The loss of the local MLA (or MP) is seen as a major drawback by many in the Canadian context, which is why a different PR system, mixed-member proportional (MMP), has been very popular with advocates of reform. The system was first implemented in post-war Germany and has been used there ever since. Other countries that use the system include New Zealand, which in 1996 adopted it after a long process of public debate and deliberation, and Scotland and Wales, which have both used the system for elections to their regional assemblies for nearly twenty years now.

A key feature of MMP is that it retains local constituency representatives in the legislature. Voters are given a ballot with two choices to make, one for their local MLA and one for their party of choice, with the latter votes determining the overall distribution of seats in the legislature. This is achieved by awarding additional seats to representatives taken from lists provided by the parties. It was this MMP system that the Commission on Legislative Democracy endorsed in 2004, outlining a model that would have included thirty-six local MLAs across the province, with an additional twenty MLAs to be elected from party lists from within four different regions of the province (i.e., five additional “list MLAs” per region).

One concern critics have is that it is considerably less likely that any party will receive a majority mandate under PR than under FPTP. This electoral outcome entails more complex legislative dynamics involving either minority governments, or, following the example of most PR countries, coalition government. To avoid an excessively fractured legislature and unwieldy coalitions (involving four or five parties), provisions can be introduced to reduce the number of very small parties able to gain seats.

The simplest method is a general vote threshold that parties must achieve to gain any representation in the legislature. Most Canadian bodies have recommended this kind of provision; in New Brunswick, the Commission on Legislative Democracy suggested a 5 per cent threshold.

This is the same number that has been effective in keeping the number of parties at a manageable level in other places such as Germany and New Zealand, and that has made it possible to form workable and effective coalitions. Occasionally, a particular election outcome can produce multiple coalition possibilities, which can lead to difficulties forming a government and protracted coalition negotiations. Both Germany and New Zealand have experienced this situation in recent election cycles. More often, however, the election produces a decisive outcome that makes it easy to identify the most plausible coalition partners, and a government is formed in short order.

The Liberal government, in the discussion paper provided to the Electoral Commission, left little doubt about its view on PR, describing the MMP system proposed by the Commission on Legislative Democracy in 2004 as a “revolutionary recommendation” (15). The Electoral Commission echoed this language, writing that “referenda have shown across Canada...[that] voters are not ready to make a revolutionary leap directly to proportional representation” (19). Yet neither offered any justification for this dubious characterization. It is surely a misleading description of a system that is used in a majority of the world’s democracies, including some of the most stable and well governed. Advocates for PR are not revolutionaries; they are engaged and concerned citizens who believe PR represents a necessary and overdue modernization of our democratic system to accommodate a society with multiple political parties reflecting diverse interests and ideals.

Preferential Balloting

The preferential voting system recommended by the Electoral Commission is much less commonly used in countries around the world than the PR model. At present it is employed in only Australia and Papua New Guinea for national legislative elections. A similar system, two-round voting, is used in a handful of other countries, such as France. The same systems are more common globally for presidential elections (elections in which there can be only a single victor, which precludes the use of PR).

In making its case for preferential balloting, the Electoral Commission suggested that “the alternative vote is an increasingly popular proposal for electoral reform, largely due to Australia’s success with it” (18). There is limited truth to this statement. Within the United States, there has been interest among reform groups in the system, and in 2016 it was approved by referendum in Maine for use in future elections in the state (implementation has been delayed due to a court challenge). The system was also considered in the United Kingdom when a national referendum on preferential balloting—or rather the “alternative vote system,” as it is more formally known—was held in May 2011. Like Canada, there has been a substantial grassroots movement in favour of PR in the UK, so many were not pleased with this choice; Nick Clegg, former leader of the party (the Liberal Democrats) that has long advocated for PR, had earlier described the alternative vote system as a “miserable little compromise.” Many British voters apparently agreed, as the referendum failed by a vote of 68 per cent to 32 per cent.

In the Canadian context, to describe preferential balloting as “an increasingly popular proposal for electoral reform” is dubious. There has been no public movement in favour of preferential balloting,

certainly nothing akin to the grassroots movements that have organized on behalf of PR, such as Fair Vote Canada. No inquiry has discovered significant support for the system and none, other than the NB Electoral Commission, has recommended it.

Instead, preferential voting has emerged more as a defensive ploy in the context of ongoing calls for PR from citizens and formal bodies alike. Supporters of the current FPTP system, including those closely connected to the major parties, see it as a way of offering some modest change that will appease those pressing for reform, but will not fundamentally alter the party system or the likelihood of single-party majority governments. Under preferential voting, the electoral map would remain unchanged with just single-member ridings across the province. The only difference would be that voters would have the opportunity to rank the candidates in their riding in order of preference. In the first stage of the vote-counting process, first-place preferences for the candidates in each riding would be tallied. Any candidate receiving 50 per cent or more of the vote at this stage would be declared elected. In ridings where this was not the case, the last-place candidate would be eliminated and his or her votes would be redistributed to the other candidates based on the second-choice preferences expressed on those ballots. Any candidate attaining 50 per cent of the vote at the second round would be declared elected, but if none reached this threshold, the same vote redistribution process would take place again. The process would continue until a candidate with 50 per cent support emerged or all voting preferences had been exhausted (at which point, the leading candidate would be declared elected).

Among the benefits noted by the Electoral Commission in favour of this reform is that preferential ballots “give more choices to voters” (18) as they are free to rank as many or as few candidates as they like. Their votes can also be seen as carrying greater weight, since voters’ ballot choices can influence the election outcome even if their first-choice candidate is not elected. This means that, unlike FPTP, voters who support smaller parties do not have to make a choice between voting for their favourite party and voting strategically for their preferred party among those that have a realistic chance of winning the riding. They can instead vote with their heart with their first preference, while using latter preferences to make more strategic voting decisions.

The commission failed to mention in its analysis that the system is highly favourable to large parties who remain the ones most likely to win enough votes to emerge victorious in most ridings. Smaller parties may receive a good deal of support across the province, but these votes are unlikely to translate into seats in the legislature. The preferential system is also thought to be especially beneficial for a larger party that is centrist in its political orientation, as it can win second-place support from voters to both its left and right. Some feel this is a key reason why the Liberal party, at both the provincial and federal levels, has decided this is a reform worth considering.

Nonetheless, while the larger parties would continue to dominate in terms of seats won, they would become more dependent on the support of smaller parties’ voters to win elections; and therefore, as the commission further noted, this would create incentives for candidates and parties to “use moderation” (18) with their opponents in the hopes of securing the second-preference support of their voters. Greater cooperation and civility between parties could be anticipated, which would improve the general political atmosphere in the province.

At the same time, since it is widely understood that under preferential balloting the election remains a largely winner-take-all contest between the two largest parties vying for a majority government, those two parties are unlikely to try to appeal to one another’s voter base.⁷ In Australia, the

major parties explicitly direct their supporters to put their lead opponent last on the ballot. They see each other as inveterate rivals as much as our Canadian parties do and engage in the typical negative campaigning that we see in the Canadian context and other FPTP jurisdictions (Young).

A further benefit of preferential balloting identified by the commission was that it would address concerns about the lack of a majority mandate for candidates elected under FPTP. The commission wrote, “Elected candidates...would have to received [sic] at least 50 per cent of the constituency votes” (18). While it is certainly true that more candidates would reach the 50 per cent mark under this system, it is not accurate to suggest that all candidates would achieve a “true majority” mandate. The commission made it clear that it favoured giving New Brunswick voters the option of ranking as many or as few candidates as they wished, unlike Australia where voters are required to rank all the candidates on the ballot. In the absence of compulsory ranking, substantial numbers of voters would continue to mark their ballot with a simple X beside the name of their preferred candidate. Such ballots, of course, would not get transferred in the vote-counting process, and therefore some candidates would continue to get elected with only a plurality, not a majority, of the constituency vote.

A sense of how many voters would continue to vote with a simple X can be derived from Canada’s own electoral history. In the first half of the twentieth century, three of Canada’s western provinces used preferential balloting for provincial elections for various periods of time, encompassing seventeen elections in all. University of Lethbridge professor Harold Jansen has studied this electoral history in detail and reports that the number of voters choosing just one candidate ranged from just under 30 per cent to nearly 70 per cent across these seventeen elections—roughly 50 per cent on average (Jansen 664). If anything, this figure tended to increase rather than decrease over time, despite voters presumably becoming more familiar with the preferential system. So it seems quite clear that many voters are apt to treat preferential voting as if it were FPTP.

All of this is to say that while there are some potential positive effects of preferential balloting, it is not clear how far those would actually be realized in practice. Moreover, there are a number of important and unambiguous downsides to preferential balloting, mainly in the form of those things it fails to deliver. There is, in the first place, no reason to expect the system to bring any improvement in the under-representation of women and other groups, such as Aboriginals, within the New Brunswick legislature, since nomination procedures will remain unchanged. Australia’s electoral record certainly offers no reason to be optimistic on this point. While 3 per cent of the Australian population identify as Aboriginal, there have been just three individuals of Indigenous descent elected to the House of Representatives in the country’s entire history (Gobbett). Meanwhile, the percentage of women in the lower house is currently 29 per cent, which is slightly more than Canada (26 per cent) and slightly less than another FPTP country, the UK (32 per cent). All three lag substantially behind many of the European countries that use PR, where female representation falls in the 35–45 per cent range.⁸

Preferential balloting also suffers from a severe lack of proportionality in election outcomes, even worse than FPTP. For example, the leading small party in Australia for a number of years was the Australian Democrat party, which took an average of 6 per cent of first-preference votes over eleven elections from 1977 to 2004, yet never won a single seat in the House of Representatives (Gauja). Now the Green party is the leading small party, gaining 10.2 per cent of first preferences in the 2016 election—good enough for a single seat in the 150-seat lower house.

Of course, one of the pressure valves in Australian politics is its upper house, the Senate, which is elected by PR. In this body, smaller parties do gain representation commensurate with their vote shares. In 2016, for example, the Greens took nine seats in this seventy-five-seat body. It is through this institution that smaller parties gain influence in the political system, since the Australian Senate, unlike its Canadian counterpart, plays a significant role in the legislative process. This is a vital point that cannot be overlooked in considering the Australian system; if Australians seem content with preferential balloting for their lower house and its strong bias in favour of the larger parties, it is partly due to the more equitable representation achieved in their upper house (Gauja). In New Brunswick, of course, there is no such body, and therefore smaller parties reflecting the diversity of social and political viewpoints in the province will continue to be excluded from legislative life if preferential balloting is adopted.

Other problems would also persist under preferential balloting. Concerns about parties forming majority governments with less than a majority of the vote will remain. Just as candidates will not necessarily have to win 50 per cent of the vote to be elected due to the absence of compulsory ranking, so too the winning party will not necessarily win an outright majority of the popular vote. Furthermore, the party that gains the greatest number of preferences will not necessarily win the election—the “wrong winner” phenomenon can occur under preferential balloting just as it can under FPTP if the winning party wins its seats by relatively narrow margins, while its leading rival wins its seats by larger margins.

So, many of the problems of FPTP would remain under preferential balloting and many of the principal benefits associated with PR would not be achieved. In the final analysis, it would constitute a minor reform that would not alter the key political dynamics that have been the principal cause for concern about how elections function in this province.

Finding a Compromise

There is no escaping that preferential balloting has now been put on the agenda in New Brunswick as a possible reform option. Yet there are compelling reasons to think that PR is a preferable—and preferred—choice. At this stage, it would be helpful to try to find some kind of compromise to move matters forward.

One way the two options could be brought together is through a blended electoral system. Preferential voting could be worked into a MMP system, simply by using this method rather than FPTP to elect MLAs to represent local ridings (while retaining, of course, the second party vote to determine seat allocations and overall proportionality in the legislature). Most PR proponents would not object to this modification of the MMP model. In this way, advocates of PR and preferential balloting could both find something of value in a new electoral system.

A model of this very type was proposed by the Independent Commission on the Voting System (or Jenkins Commission) in the United Kingdom in 1998. It was named the Alternative Vote Plus system, where the plus referred to additional members of parliament to be elected from party lists in order to inject greater proportionality into election results. If we are looking for a system that could satisfy many in New Brunswick, this is a model worth considering.

If it not possible to arrive at this kind of compromise, then it only seems fair to let New Brunswickers themselves decide which system they like best. And so a second option for moving ahead is to restructure the proposed 2020 referendum to include a PR option on the ballot, alongside

preferential balloting and the current FPTP system. The logical choice is the mixed-member system supported by the Commission on Legislative Democracy and widely backed by many advocates of electoral reform in Canada and in New Brunswick.

There is a simple mechanism for offering voters multiple options on a referendum ballot; that mechanism is (ironically enough) preferential voting. Luckily, the Liberal government has already voiced its support for this method of deciding referendum-style questions. In a press release of 9 November 2016 announcing the establishment of the Electoral Commission, Victor Boudreau, then deputy house leader, was quoted as saying that the preferential ballot was a system “worthy of consideration” because “Prince Edward Island [had] voted for electoral reform using the preferential ballot” just two days earlier. Of course, Boudreau was directing the commission toward recommending this system for use in elections in the province; he was presumably not thinking about a future NB referendum. But it is certainly telling that he would recognize the value of preferential voting for letting citizens in our neighbouring province make a decision about their preferred electoral system.

In reflecting on whether PR should be added to a future referendum ballot, it is worth recalling the results of that PEI referendum. Voters on the island were given a choice among five different electoral systems, which included FPTP, MMP, and preferential balloting, along with two somewhat idiosyncratic systems: FPTP plus leaders, which would have allowed unelected leaders to take a seat in the legislature if their party received 10 per cent of the vote province-wide; and another PR system known as dual-member proportional. At the first round of vote counting, FPTP was the front-runner, as 31.2 per cent of voters indicated the current system as their first choice. MMP was close behind, with 29.0 per cent of the vote, while dual-member PR won 21.5 per cent. Meanwhile, preferential balloting trailed far behind, in fourth place, with 10.6 per cent of the vote. In other words, at the outset, nearly three times as many voters chose MMP as preferential balloting, and five times as many chose one of the two PR-based systems. As votes were redistributed at subsequent rounds of counting in accordance with second (and sometimes third) preferences, support shifted decisively toward MMP, particularly when the dual-member model dropped away after the third round of counting. In the final round, MMP secured the support of 52.4 per cent of voters, compared to 42.8 per cent for FPTP (4.7 per cent of votes were excluded as they did not indicate preferences this far down the ballot).⁹ It was a decisive victory and clear indication that PR is a much more popular reform option than preferential balloting.

It is fair to assume that opinion in New Brunswick on electoral systems would not be vastly different from PEI. We share many of the same political sensibilities and traditions; we have common concerns about democracy, including disproportional electoral outcomes. It would therefore be highly paternalistic, indeed an affront to democracy, to limit New Brunswickers’ choice to FPTP and preferential balloting in a future referendum.

In order to accommodate a multi-option referendum, it will be necessary to make an amendment to the New Brunswick Referendum Act, which currently states that all referendum questions in the province must be ones that can be answered yes or no. This obviously does not allow for a ranked ballot question. It also would be important to clarify the meaning of the turnout provision in that same act. The *Referendum Act* states that if 50 per cent turnout is achieved, the result of the referendum is binding on the government. There is a significant chance, based on prior experience in PEI, but also in other cases like the UK referendum of 2011, that turnout will fall below 50 per cent. It is important to clarify that the *Act* does not state, and should not be interpreted to mean, that the result *cannot* be binding if turnout is below 50 per cent—it says only that it *must* be binding if turnout exceeds 50 per cent.

As we look toward the fall 2018 election, the parties should be called upon to take positions on these issues by spelling out what a referendum on a new electoral system would look like under their authority. I would hope to see both the larger parties, the Liberals and Progressive Conservatives, recognize the value in letting New Brunswickers decide for themselves between multiple electoral reform options through a fair and balanced referendum process — in other words, that they will line up behind democracy rather than focusing on their own electoral self-interest by stacking the deck in favour of maintaining the status quo or something close to it.

Final Thoughts

While there is good reason to criticize the Electoral Commission's contribution to the electoral system debate in New Brunswick, it should be acknowledged that the report contained a number of other significant recommendations. Many of these seemed much more consistent with the evidence of good democratic practice from other jurisdictions, as well as with public sensibilities and preferences in the province. These include a recommendation to lower the voting age to sixteen (which the government has said will also be subject to a referendum vote in 2020), along with enhanced emphasis on civics education in New Brunswick schools. Both are sound ideas to help engender higher levels of political engagement among young people in the province. It was further recommended that permanent residents be allowed to vote in municipal and provincial elections and that electoral financing rules be tightened by lowering the annual contribution cap from the current \$6,000 and phasing out contributions from corporations and trade unions. These too are sensible ideas that are consistent with the evolution of democracy in other jurisdictions. More on some of these measures can be found in the papers that follow.

Yet none of this obviates the major defects in the commission's analysis of our electoral system options. New Brunswickers must make their voices heard on this issue before we are ushered down a tightly circumscribed path that may not reflect our true democratic aspirations and values.

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Endnotes

¹ The author did learn from the Executive Council Office that "more than" thirty-five individuals put their names forward for consideration and that commissioners were selected to reflect the cultural, linguistic, regional, gender, and age diversity of the province.

² The phrase was used by commissioner Jason Alcorn during his welcoming remarks at the Fredericton town hall in January. See also Passaris.

³ Interestingly, authorship of this paper, released in September 2016, was attributed to the "Commission on Electoral Reform," even though the commissioners were not named for another two months.

⁴ The CLD report is still available through the website of Elections New Brunswick.

⁵ An audio recording of the town hall is available through the Commission webpage under the Citizen Engagement and Consultations section of the NB government website.

⁶ This information is taken from a total of 98 written submissions provided to the author by the Executive Council Office. Of these, eleven did not address the electoral system. A handful of those in support of PR did mention that preferential balloting could be used as part of a PR system (more on this possibility below). The government apparently plans to make all the written submissions publicly available at some point in the future.

⁷ One of the two major parties in Australia is formally a coalition, the Liberal-National coalition. However, because of the very high level of coordination between the two coalition partners in both elections and governing for the past century, most observers consider Australia to effectively have just two major parties (Labour being the other).

⁸ Figures are from the website of the Inter-Parliamentary Union. It should be noted that the commission did address this issue in a different way, proposing the use of temporary financial incentives to political parties to encourage them to nominate more female candidates.

⁹ These detailed results can be found on the website of Elections PEI.