Is Proportional Representation On the Way?

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Would proportional representation be a better way of electing legislatures? This old idea, which dates back to John Stuart Mill and Nicolas de Condorcet, has been gaining ground among underlined political scientists, commentators, and good-government groups. Protect Democracy and Unite America have released a report making the case for using proportional representation to elect the U.S. House of Representatives.

That would be new for the U.S., which almost uniformly follows the winner-take-all norm that still typifies electoral practice in countries like Great Britain, Canada, France, and India. Most European countries, as well as Japan, employ some version of proportional representation, often as part of "mixed" systems that retain some winner-take-all elements.

As someone who's been friendly toward electoral reform in general but skeptical about proportional representation, the report didn't fully counter all my misgivings. The biggest lesson was that proportional systems vary drastically in their mechanics, and these variations—on seemingly dull numerical details like size of districts and thresholds for representation—can make a big, systematic difference in outcomes such as stability and party structure. There are many varieties of proportional representation, but the idea behind them all is to elect members of a legislative body in some rough proportion to the different bodies of voter opinion. Proponents say that would better reflect overall public sentiment while enabling minority views to be heard, and might curb polarization by, for example, opening the way to cooperation between a center-left and a center-right grouping.

A representative assembly should arguably be representative—"in miniature, an exact portrait of the people at large," in the words of John Adams. Yet as the report points out, winner-take-all leaves badly underrepresented the views of voter groups not strong enough to constitute a local majority. Republicans cast a third of the vote in Massachusetts but elect none of the state's congressional delegation, while the reverse is true for Democrats in Oklahoma. A passionate minority may win representation under

winner-take-all when it is sectionally based, as with the Scottish National Party in Britain and Bloc Québécois in Canada, but will often be out of luck if spread more evenly around the country as a whole. In general, winner-take-all punishes smaller parties. Our very term for them, "third" parties, reflects our two-party norm.

Imbalances between votes cast and seats held under winner-take-all often manifest at the national aggregate level as well. In Canada's 2015 election, the Liberal Party won less than 40 percent of the popular vote, which nonetheless handed leader Justin Trudeau a large parliamentary majority. Under proportional representation, Trudeau would have had to negotiate with one or more other parties to form a coalition.

Some current American political ills may be traced in part to winner-take-all. The incentives for gerrymandering, for example, are at a peak under that rule; there's much less point to it under proportional representation since shifting around the other side's voters is less likely to keep them from electing *someone*.

Proportional representation tends to generate a multiparty system rather than a two-party one. There are some real pluses to this: A two-party system jams you into common barracks with a crowd of people you don't actually have much in common with, as opposed to letting you affiliate with a group more closely matching your own preferences. If you consider yourself a classical liberal, you may be aware that many parties with generally pro-market, socially liberal positions can be found in Europe, including the Free Democrats (Germany), VVD (the Netherlands), Centre and Liberals (Sweden), and Centre and Reform (Estonia). Especially across northern Europe, these parties are often part of governing coalitions and some are even the leading party. What's not to like about that?

At the same time, critics have long warned that multiparty coalition governments can be unstable and indecisive. It may take weeks or even months after an election to organize a government (to be fair, it also took quite a while this winter for Kevin McCarthy to nail down his job as House speaker). Governments can collapse if they lose the support of a junior partner, which can in turn put them at the mercy of small parties demanding unreasonable or unpopular concessions. Take Israel, a small country with dozens of parties. About 15 are currently represented in the Knesset, the national legislature; no party has enjoyed a majority there since the country's founding in 1948.

If you want a functional national legislature in the U.S., you are naturally going to worry about the risk of its being sidelined by coalition instability problems. You could argue that such problems have been present under our winner-take-all system for a while now, with no need for proportional representation to add to the fun. You might also point out that despite its reputation for chaotic legislative governance, Israel as a country has acted resolutely and on short notice in the clutch. Or you could argue that the whole problem is

overrated: Given that legislatures almost everywhere tend to overspend, overposture, and overlegislate, might some friction, delay, and random motion be a good thing?

Whichever tack you take, any debate over national-level proportional representation must grapple with the lingering folk wisdom—fair or not, and up-to-date or not—that the U.S., Britain, and Canada have governments that act resolutely, while European Union governments dither, and that our strong two-party system is a big part of the reason.

One of the paper's most valuable features is its summary of political science literature on how the arithmetic of proportional representation systems—on size of assembly, size of district, and qualification threshold—helps determine the equilibrium number of parties. At one end of the continuum you have Israel, in which all members of the 120-seat Knesset are elected from a single nationwide electoral district, and low thresholds for qualifying for representation have encouraged tiny parties to proliferate. On the other hand, some countries draw modestly sized multimember districts—perhaps of two, three, or four seats—combined with rules that a party won't get represented unless it can surpass a certain threshold of the local vote. These details make the difference between a system with dozens of parties and a system that settles in at four or five.

A side note: Some of the decisiveness issues found at the national level may be less severe at the state level, which is a reason to hope for any American experiments with proportional representation to start in state legislative chambers. One of the classic insights about bicameralism is that it can help when the two rival chambers are somewhat different in manner of selection—in size of district or length of term, for example. This can be hard to pull off in the design of state legislatures, but having one chamber elected by proportional representation and the other by winner-take-all is the kind of idea that might be worth trying.

However, a national version of proportional representation presents another problem: potentially weakening local representation. At present, each member of the House of Representatives represents an average of 760,000 residents, well past the point at which personal contact with more than a small sampling of constituents becomes impossible. By its nature, proportional representation requires that single-member districts be replaced with multimember ones. If the districts average three representatives each, and the House remains at 438 members, that would leave each House member representing 2.3 million people.

One option would be to expand the size of the House, an idea drawing a lot of interest lately. (The number once grew with the nation's population, but has been frozen since 1913 at 435.) If you tripled the body's size to 1,305 members, you could set up (on average) three-member districts each the size of a current district. But there are obviously many other considerations to weigh both for and against the idea of expanding the House, and that debate is not one to resolve here.

Proportional representation advocates might respond that even if districts do get more populous, more voters in practice will feel that they've got a representative who's "theirs," as all those Massachusetts Republicans and Oklahoma Democrats finally get their day in the sun. The question still remains of whether voters would prefer someone more truly local to their community versus someone who thinks more as they do.

Related to this is a potential attraction of proportional representation in bringing more functionality, as well as representativeness, to the legislative body. From 1870 to 1980, Illinois used a system called cumulative voting, which has some proportional features, <u>to elect the lower house of its legislature</u>. The body tended to include a couple of Republicans from Chicago along with some Democrats elected from rural areas. Aside from helping make their party caucuses more rounded, these members apparently added real value as a source of wisdom in committee work, since there might otherwise be a shortage of Republicans who understood transit operations or Democrats with a close feel for small-town needs.

With all that said: Is proportional representation constitutional?

If a given state wants to adopt proportional representation for its House races, there is no constitutional impediment to that. There is, however, an impediment in federal law, because Congress has a statute requiring the use of single-member districts. For House proportionality to get off the ground, Congress would have to revisit this ban. To complicate matters, multimember districting in combination with winner-take-all has often been considered suspect under the Voting Rights Act, making it unlikely that Congress will simply lift the restriction without attempting some more complicated form of regulation.

Merits aside, instituting House proportional representation in a given state is likely to run against the political interests of the dominant party there. Why, Massachusetts Democrats might say, should we hand over three of our nine seats to Republicans when there's no guarantee states like Oklahoma will follow our lead?

Perhaps in recognition of this likely impasse, the paper proposes a prescriptive approach in which new legislation would require, not merely invite, states to adopt some sort of proportional representation. (It does propose giving them some leeway as to how.) The Constitution is distinctive in how it handles the administration of congressional elections: Article I, Section 4 recognizes states' first-line responsibility in that task but then grants Congress a backup power to prescribe the manner of its elections by law. In practice, that power to override state choices in favor of uniform federal rules has been used sparingly, in line with Hamilton's comments in *Federalist* No. 59 about how the document reserves to the national legislature "a right to interpose [in the administration of its own elections] whenever extraordinary circumstances might render that interposition necessary to its safety."

Have such extraordinary circumstances now reached the point where a change of system is necessary to the safety of the institution? I suppose the answer depends in part on the extent to which you regard Congress as a broken and dysfunctional institution. As of September, per Gallup, only 23 percent of the public approved of Congress' performance, while 75 percent disapproved.

If congressional leaders want to stave off public demand for far-reaching reforms like proportional representation, they ought to start behaving in a way that better inspires public confidence.

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