IN SEARCH OF A COMPENSATORY MIXED ELECTORAL SYSTEM FOR QUÉBEC

WORKING
Document

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INTRODUCTION

In July 2003, the Minister for the Reform of Democratic Institutions, Jacques P. Dupuis, mandated me to investigate the possible forms of a compensatory mixed electoral system that would be adapted to Québec's special conditions.

From the start, it was agreed that the mandate would focus on the proposal I had made in a text written in August 2002 with my colleague André Blais. This document came out in autumn 2003 as a chapter in a book published in homage to Professor Vincent Lemieux by his former students and colleagues.[1] It was itself one of the outcomes of almost two years of research by us on German electoral systems and their New Zealand, Scottish, and Welsh derivatives as well as reflections on the form that this model could take in Québec. The reflection we began in that chapter is brought to fruition in the present report.

This type of electoral system is called a "compensatory mixed" one. Before exploring the ins and outs of its workings, we should first fully understand what it means. This will require clarifying some of our terminology.

WHAT IS A MIXED ELECTORAL SYSTEM?

This expression may be understood in two ways. A system may be called "mixed" because of its *results* or because of *how it operates.* In the first case, a mixed system means one that produces intermediate results between proportional representation (PR) and a first-past-the-post system. For example, the current PR systems in Spain and Greece often give most of the seats to a party that gets much less than 50% of the popular vote.[2] We prefer a rather different meaning: **a system is said to be mixed if its operation combines PR with the first-past-the-post system.** Such combinations may produce intermediate results (as with the current Japanese system) or proportional ones (as with the German one).

Thus defined, mixed electoral systems currently exist at different levels in thirty or so countries on all continents, including six G8 members. This is a new trend. Before 1990, excluding the German model, mixed systems often seemed to be shady schemes—at times exotic and rather ephemeral. The winds of change of the 1990s have caused us to review this judgement and also to draw attention to the different combined approaches.

In an article published in 1999, we indicated several types of combination.[3] There is said to be *coexistence* when different electoral systems are used in different parts of a country's territory. The standard example is the French Senate, which currently has PR in departments with 4 or more seats, and a double ballot system in departments with 1, 2, or 3 seats.[4] Such an approach existed in Manitoba and Alberta from the 1920s to the 1950s. It raises serious ethical problems, the temptation being great for unscrupulous lawmakers to keep the first-past-the-post system where their party does well and to introduce PR where their party does poorly.

The two most widespread combined approaches are *superimposition* and *correction* (or compensation). In both cases, the first-past-the-post system, most often in the single-member form, governs the election of members over the whole territory. Above this initial level of representation is a second group of members who also represent the whole territory but are elected by PR in necessarily larger constituencies. The key difference is that in the first case one level of representation is superimposed on the other and seats are distributed on the two levels *independently* of each other, which is why some authors call it a "parallel" system. This is so in Japan, where 300 members of the House of Representatives are elected by a plurality of votes in 300 constituencies. Above them are 180 members elected by PR in eleven of the country's prefectures. Under such conditions, possible distortions on the first level will only be slightly reduced by seats on the second level.

The other approach, called the corrective or compensatory one, has been incarnated by Germany for over 50 years, by New Zealand since 1996, and by Scotland and Wales since 1999. In such a system, the second group of MPs is distributed so as to correct the first-past-the-post distortions. The overall result is more proportional for parties in the running.[5]

1. Louis MASSICOTTE and André BLAIS, "La réforme électorale: profil d'un mode de scrutin mixte approprié au Québec", in Jean Crête (ed.), *Hommage à Vincent Lemieux. La science politique au Québec. Le dernier des maîtres fondateurs,* Québec City, Les Presses de l'Université Laval, 2003, pp. 247-269.

2. In the Greek elections of March 2004, for example, the New Democracy Party won 55% of the seats with 45% of the popular vote.

3. Louis MASSICOTTE and André BLAIS, "Mixed Electoral Systems: A Conceptual and Empirical Survey", *Electoral Studies,* vol. 18, no. 3, 1999, pp. 341-366.

4. These figures are from the reform adopted in 2003. From 1958 to 2000, PR applied only in departments with 5 or more seats. In 2000, the threshold for application of PR fell to 3.

5. This system, called *personalized PR* in its country of origin, is called a "mixed member proportional system" (MMP) in New Zealand. The British speak of an "additional member system of proportional representation" (AMS) or more familiarly "topping-up."

TABLE 1
HYPOTHETICAL EXAMPLE OF 100 SEATS DISTRIBUTED WITHOUT COMPENSATION

Party	Popular vote %	Constituencies won (first-past-the-post)	List seats (proportional)	Total
Party A	44	65	+ 44	= 109
Party B	40	34	+ 40	= 74
Party C	10	1	+ 10	= 11
Party D	6	0	+ 6	= 6
TOTAL	**100**	**100**	**+ 100**	**= 200**

TABLEAU 2
HYPOTHETICAL EXAMPLE OF 100 SEATS DISTRIBUTED WITH COMPENSATION

Party	Popular vote %	Constituencies won (first-past-the-post)	Compensatory seats	Total
Party A	44	65	+ 23	= 88
Party B	40	34	+ 46	= 80
Party C	10	1	+ 19	= 20
Party D	6	0	+ 12	= 12
TOTAL	**100**	**100**	**+ 100**	**= 200**

Tables 1 and 2 will help explain the difference between the two approaches and its importance. In both scenarios, Party A gets 44% of the popular vote. A non-compensatory distribution gives it 54.5% of the seats versus 44% with compensatory distribution.

Why opt for a compensatory mixed system? It is certainly not the only conceivable solution. In our opinion, however, it is the one most likely to remedy the current system's flaws while being suitable to conditions prevailing in Québec.

Some have proposed keeping the current single-member constituencies and holding a second ballot when no candidate has won an absolute majority of the popular vote. Québec would thus align itself with France, where this electoral system is deeply rooted in its national history and traditions. This option would scarcely upset current voting habits. To us, however, it would not at all reduce the distortions so often criticized and may even accentuate them.

Regional PR is another possibility. It was advanced by Professor Vincent Lemieux in 1971. Under this option, single-member constituencies would disappear and be replaced by regional constituencies with typically 4 or 5 seats distributed by PR. The relatively few seats to be distributed within each region as well as the use to this end of the D'Hondt technique would give the strongest parties a bonus number of seats above and beyond what PR would produce.

This approach has had several successive variants. There was Lemieux's initial proposal: 112 MNAs elected in 26 regional constituencies, using the D'Hondt technique. In 1979, a version appeared in Minister Burns' green paper: 121 MNAs elected in 28 constituencies, using the Imperiali technique. In 1983, a version was advanced by the Secrétariat à la réforme électorale: 122 MNAs and 22 constituencies, using the D'Hondt technique. "Proportional territorial representation," proposed by the Commission de la représentation électorale (CRE) in its 1984 report, involved a total of 125 or 127 MNAs, elected in 22 or 24 regional constituencies, using the D'Hondt technique. In 2003, the model was resurrected by the Béland Committee: 21 regional constituencies and 125 MNAs, with no technique of seat distribution specified. The Union des forces progressistes (UFP) proposes to combine a regional electoral subdivision with a 20-seat adjustment (out of 125) for distribution at the provincial level.[6]

6. Paul CLICHE, *Pour qu'enfin chaque vote compte : le scrutin proportionnel afin que la composition de l'Assemblée nationale respecte la volonté populaire,* November 2003, p. 12.

This specific approach is not, and has never been, part of the platforms of the parties currently represented in the Québec National Assembly. Despite the insistent campaign of promotion for it by the Secrétariat à la réforme électorale during the 1980s, it has not won over the public, and even less so the MNAs. In fact, it has run into a stubborn reality of Québec politics: in a vast territory with a dispersed population, the single-member constituency is still the best way to preserve a closer link between elected representatives and voters. In any case, this is what the overwhelming majority of MNAs believe, and attempts to bypass or discredit them have ended in a series of failures. Interestingly, in recent years some countries have moved from regional PR to personalized PR in order to create a more concrete tie between the public and its representatives.[7]

Approaches using superimposition would reduce distortions very little, unless significantly more members are elected by PR than by the first-past-the-post system. As for the single transferable vote system used in Ireland, Québeckers would not be the first to reject it because of its complexity. Despite ardent promotion of this system in the British Commonwealth, it has managed to get adopted for a lengthy time only in Australia (for election of senators), in Ireland, and on the island of Malta.[8] Its rather erratic performance in Malta—three times in less than twenty years a party won fewer seats than the other *with over 50% of the popular vote*—has required the addition of a safety mechanism to ensure that most of the seats go to the party with most of the popular vote.

To us, the most promising way ahead seems to be a German-type electoral system (compensatory mixed) that maintains single-member constituency representation within an overall proportional framework. Of all the mixed approaches, it is the one that has worked the longest in a large democratic country and has been imitated in societies that use the same parliamentary system as Québec's.

THE BASIC MODEL

The starting point for our thoughts on this question was the above-mentioned chapter. We then tried to adapt the compensatory model to Québec conditions. The proposed system called for:

1) an assembly with 125 seats;
2) a ratio of 60/40 between constituency seats (75) and compensatory seats (50);
3) election of 75 constituency MNAs by the first-past-the-post system;
4) distribution of compensatory seats at the regional level rather than at the provincial level;
5) imposition of a 5% threshold on all valid votes cast throughout Québec for distribution of compensatory seats. This threshold would not be waived even if the party had managed to win one or more constituency seats;
6) two votes for each voter: the first one would go to a constituency candidate, the second one to a political party;
7) distribution of list seats through the method used in Scotland, to avoid creating excess seats;
8) assignment of compensatory seats to each party on the basis of lists prepared by the political parties and in the order established by each party;
9) double candidacy, with constituency candidates getting priority on lists presented by their respective parties;
10) replacement, between general elections, of constituency MNAs through by-elections and list MNAs by the next ones on the list.

The first part of our report asks a simple question: What can be learned from the most credible experiences of other countries in this field? Compensatory mixed systems have existed for German federal elections since 1949, in New Zealand since 1996, and in Scotland and Wales since 1999. Thirteen of Germany's sixteen Länder have had such a system since 1947 in certain cases. Existing legislation is an interesting source of inspiration that shows the variety of possible arrangements.

6. Paul CLICHE, *Pour qu'enfin chaque vote compte : le scrutin proportionnel afin que la composition de l'Assemblée nationale respecte la volonté populaire,* novembre 2003, p. 12.
7. C'est le cas du Venezuela et de la Bolivie.
8. Sur ces expériences, voir Shaun BOWLER et Bernard GROFMAN (dir.), *Elections in Australia, Ireland and Malta under the Single Transferable Vote. Reflections on an Embedded Institution,* Ann Arbor, The University of Michigan Press, 2000.

For example:

- What is the total number of seats?
- What is the ratio between constituency seats and compensatory seats?
- How are the compensatory seats distributed?
- At what territorial level are the compensatory seats distributed?
- Are there representation thresholds that exclude parties from compensatory seat distribution if they fail to reach a pre-determined number of votes?
- What does the law say if a party wins more constituencies than the total number of seats it is entitled to?
- Is it possible to be a candidate both in a constituency and on a party list?
- To which individuals and in what way are assigned each party's compensatory seats?
- What electoral system is used for the election of constituency members?
- How many votes does a voter have?
- Can a voter indicate preferences for candidates on the list?

We wanted, however, to go further and examine election results under this system, and thus better anticipate the impact of different institutional peculiarities. With this information, we could answer more specific questions:

- Are excess seats a very rare phenomenon? Do they significantly increase the size of parliament? What are the factors that help produce them?
- What use is made in practice of the possibility that the same person can run in a constituency while being on a list?
- If preferences can be expressed for candidates on a list, what impact does this really have?
- Do thresholds in practice exclude a significant proportion of the electorate?
- If a voter has two votes, how great would be the phenomenon of "split voting" between one party's candidate and another party's list?
- What impacts does the system have on the political class? Are the functions of government reserved for list members? Is it easier for women to get into parliament?
- What is the probability that an MP will switch from one category to the other (constituency/list) during his or her career?
- If defeated constituency candidates can get elected anyway, through party lists, will renewal of the political class be hindered?

The answers to these questions will not lead to a completely certain prediction of how such a system will work in Québec. Too many variables are involved. At least some interesting insights will be gained, however, and when they are similar from one country to the next the margin of uncertainty will shrink appreciably.

The second part of our report deals with a program to simulate, for Québec, different regional subdivisions, methods, and computation techniques. The 1998 and 2003 election results have been simulated with these different scenarios.

Finally, the third part brings together our conclusions and recommendations on the modalities to be chosen.

FIRST PART
What we can learn from the experiences of other countries

The compensatory mixed system does not exist only in some people's minds. In fact, it has the advantage of having been tried in several countries. Thus, much can be gained by closely examining these experiences.

The first part has twelve chapters divided into three sections: seat distribution among political parties (chapters 1 to 5); voter choice (chapters 6 and 7); and selection and replacement of elected members (chapters 8 to 12).

SECTION I

SEAT DISTRIBUTION

In a compensatory mixed system, seat distribution is a complex equation with many variables. Should a **minimum threshold** be imposed for access to Parliament? How many seats will be filled by the first-past-the-post system and how many will serve to compensate parties penalized by this system? In other words, a **ratio** must be chosen between the two categories. For distribution of compensatory seats, the many aspects are far from trifling details. Will compensation be **over the entire territory or within regions** that are necessarily smaller? In the latter case, will the regions be large and few or **small and many**? Which **computation technique**, in combination with which **method**, will be used to distribute seats? Should we calmly accept the possibility that a party will win **excess seats** and that the final number of members will significantly exceed expectations?

All of these questions are often closely intertwined. Take, for example, the question of excess seats (*Überhang*). Their incidence will depend partly on the magnitude of first-past-the-post distortions and partly on the exact choices made by lawmakers. They will occur more often and in correspondingly greater numbers if the ratio of constituency seats to list seats favours the former, if compensation is done within many small regions, and if the German computation technique is used rather than the Scottish one.

Chapter 1
What Ratio Is Best between the Two Types of Seats?

Notwithstanding the example of the German Bundestag, a compensatory mixed system does not absolutely require an *equal* number of direct seats and list seats (50/50 ratio). The former may outnumber the latter, sometimes significantly so. The principle of compensation is very effective in reducing first-past-the-post distortions, as long as these distortions are not too large.

Currently, a 50/50 ratio, or one very close to 50/50, is used for elections to the Bundestag and in eight Länder,[9] but elsewhere list seats account for a smaller proportion: 43% in Scotland, 42% in New Zealand and Baden-Württemberg, 40% in Berlin and Schleswig-Holstein (also for the Bundestag in 1949), 35% in Lower Saxony, 33% in Wales, and even 25% (29% as of the next election, slated for 2005) in the most populated of the Länder, North Rhine-Westphalia.[10]

Nowhere is there a compensatory mixed system where list seats are supposed to outnumber constituency seats, although in practice creation of excess seats, entirely from party lists, may have this effect. The explanation is probably the following: because the very aim of personalized PR is to ensure that a sizeable number of members escape the anonymity of lists, the proportion of constituency seats is set at least at half the total, and even higher.

This initial ratio has seldom changed significantly over the ensuing years. Even where the overall number of seats has often fallen or risen, as in Berlin, the existing ratio has been preserved. The case of the Bundestag, where the ratio fell from 60/40 to 50/50 in 1953, has remained exceptional. No government has taken the political risk of reducing the total number of members by exclusively cutting back on the number of list seats, largely held by opposition members. In New Zealand, constituency seats rose from 65 in 1996 to 67 in 1999 and to 69 in 2002, through redistributions, whereas the overall seat total held steady at 120 with list seats being proportionately reduced. Yet the difference is not very great.

The Länder with proportionately the fewest list seats are also the ones where personalized PR was first introduced: North Rhine-Westphalia and Lower Saxony (1947), Schleswig-Holstein (1951), and Baden-Württemberg (1952). Was there a fear, during the occupation, of having too many parties? In the eight systems set up in Germany since 1953, a 50/50 ratio has been chosen everywhere, except in West Berlin (1958).

CONSEQUENCES OF THESE CHOICES

If the chosen ratio is biased more to constituencies, correction of distortions will potentially be less complete. When the distortions are small or medium in size, they may be eliminated through the addition of compensatory seats accounting for only 40% of the total or even less. The further one goes below this 40% level, the likelier the number of compensatory seats will prove insufficient to correct distortions. For complete compensation and elimination of distortions, there have to be enough compensatory seats.

One cannot confidently set a threshold below which the distortions will become intolerable. Let us just say that ratios of 75/25, 80/20, or 85/15 will probably leave significant distortions.

The chosen ratio will reflect to some degree the existence or non-existence of regional subdivisions. If compensation is over the entire territory, i.e., the compensatory seats are not tied to a specific region, lawmakers have much leeway in setting the ratio. In contrast, compensation on a regional basis will narrow the range of possible ratios. If the compensation regions are too small, the leeway is dramatically narrowed. This may be seen in Table 3, with a 125-seat assembly.

9. The number of constituencies is identical to the number of list seats for Bundestag elections and in Brandenburg, Hesse, Saxony, and Thuringia. It is slightly higher in Bavaria (92/88), Mecklenburg-West Pomerania (36/35), and Rhineland-Palatinate (51/50) and very slightly lower in Saxony-Anhalt (49/50).
10. The variation is considerable in other existing compensatory systems. The ratio is 50/50 in Bolivia and Venezuela, 60/40 in Mexico (75/25 before 1986), 67/33 in Lesotho and 75/25 in Italy for each of the two houses.

Table 3

POSSIBLE RATIOS IN A 125-SEAT ASSEMBLY, BY EXISTENCE AND NATURE OF REGIONAL SUBDIVISIONS

Territory-wide compensation	Regional compensation		
(M = 125)*	5 regions (M = 25)	10 regions (M = 13)	26 regions (M = 5)
63/62	13/12	7/6	3/2
64/61	14/11	8/5	4/1
65/60	15/10	9/4	
66/59	16/9	10/3	
67/58	17/8	11/2	
68/57	18/7	12/1	
69/56	19/6		
70/55	20/5		
71/54	21/4		
72/53	22/3		
73/52	23/2		
74/51	24/1		
75/50			
76/49			
77/48			
78/47			
79/46			
80/45			
81/44			
82/43			
83/42			
84/41			
85/40			
86/39			
87/38			
88/37			
[...]			
123/2			
124/1			
62 possible ratios	12 possible ratios	6 possible ratios	2 possible ratios

*(M: mean number of seats per region)

Another important implication in choosing a ratio: **The lower the proportion of compensatory seats, the higher the likelihood that the strongest party in the constituencies will get excess seats (*Überhang*), and that the total number of seats will therefore exceed the expected number** (for a more complete explanation on this point, see further, page 30).

This is clearly shown by examination of the 133 elections that used personalized PR in Germany from 1947 to September 2004. Wherever constituency seats and list seats are equal or fairly equal in number, *Überhang* approximately occurred *only one out of four times.* In contrast, wherever list seats accounted in principle for 40%, 35%, or 25% of the total, the same phenomenon generally occurred *more than half the time*. The relative importance of list seats is not the only factor leading to the appearance of excess seats, but it is a powerful one.

The *Überhang* problem may be aggravated if, to re-establish complete proportionality, it is deemed necessary to compensate the other parties. In the Länder (but not at the federal level), the law now stipulates that if a party has *Überhang* the other parties will receive compensatory additional seats (called *Ausgleich*), these also being list seats, to re-establish the overall proportionality of the result. Even if the list seats are in principle only 25% of the total, the situation is manageable because *Ausgleich* will be created to compensate for any *Überhang* that may arise. *Überhang* and *Ausgleich* are both list seats, so their creation alters the statutory ratio between the two categories. In Berlin, where such seats have been created in all elections since 1958, except one, the statutory ratio has always remained 60/40 but what may be called the "mean empirical ratio" was more like 54/46, i.e., the list seats in practice significantly exceeded the legal proportion (46% instead of 40%). In 1995, an extreme case, list seats reached 56% of the total instead of the statutory 40%.

Finally, the more the ratio is biased to constituencies, the less likely the strongest party will receive compensatory seats. This reasoning is confirmed by Germany's experience. Wherever compensatory seats accounted for 40% or less of the parliamentary total, a third of the federal and state elections we examined (22 out of 68) gave no compensatory seat to the strongest party. With a 50/50 ratio, this happened only one out of eight times (8 out of 65).

Chapter 2
At What Level Are Compensatory Seats Distributed?

POSSIBLE OPTIONS

Compensatory seats may be assigned to the entire territory. The parties present national lists and the elected representatives are not officially tied to any regional subdivision. This can be called "territory-wide compensation."

The compensation may also be at the level of regions of varying size (regional compensation).

To combine the advantages of the two previous approaches, one may distribute compensatory seats nation-wide and then redistribute each party's seats among the regions.

Finally, one may distribute seats nation-wide and offer the parties the choice of assigning these seats at the level of a national list or at the level of smaller regions.

TERRITORY-WIDE COMPENSATION

Territory-wide compensation is the simplest and most elegant approach. Each party's share of the popular vote is used to calculate the number of seats it should receive. This number is compared with the total number of constituency seats it actually wins. The second number is subtracted from the first to give the number of compensatory seats the party is entitled to. Members elected in this way are chosen from a list and are not tied to any territorial subdivision. They are simply "list members."

Under a system of territory-wide compensation, nothing requires the parties to prepare regionally balanced lists. In practice, this requirement is dictated by political common sense. A list monopolized by big-city or capital-city candidates may stir up controversy during the campaign. If the overwhelming majority of constituency candidates also appear on the party list, and are given priority, there is at least no risk of one region monopolizing the list. The only leeway left for those who wish to ignore regional balance in list preparation would be through a systematic bias for some geographic areas over others in the order of candidates. Candidates from certain regions would be systematically relegated to the bottom of the list.

According to the information available, this does not happen in Germany. First, constituency candidates are given priority on party lists. This guarantees all regions of the territory a presence on the list. Second, when party leaders prepare draft lists for submission to nomination meetings, they take regional balance into account in the list order of candidates and unofficially consult their regional bodies to this end well before the nomination meeting, for fear of provoking an angry outcry at the meeting over the draft list and dividing the party on the eve of the election.

New Zealand and most Länder[11] have opted for territory-wide compensation. The choice is a bit surprising in the case of New Zealand, where geography seems to dictate, at first sight, separate lists for each of the country's two islands. It appears to be less so in many Länder, which are relatively small entities with some of the highest population densities on the continent.

REGIONAL COMPENSATION

Territory-wide compensation produces list members with no clear territorial base. One may deplore this outcome and prefer that list members be rooted in more concrete and smaller territories. The solution would be to consolidate single-member constituencies into a certain number of regions and calculate the compensation solely within each region. Two electoral subdivisions would be superimposed on each other: one for local constituencies, which are small and numerous; and another for regions, which are bigger and less numerous, each region entirely encompassing a certain number of local constituencies.

This is the solution used in the Länder of Bavaria and Baden-Württemberg, Scotland, Wales, Bolivia, and Venezuela. It was used in the first two Bundestag elections (1949 and 1953). Because the arrangements are sometimes complex, we feel that further discussion is needed on this point.

a) Bavaria

Bavaria is divided for electoral purposes into seven regional constituencies called *Wahlkreise*, whose boundaries correspond to its seven administrative regions (*Regierungsbezirke*). The first-level single-member constituencies, called *Stimmkreise*, are each wholly contained within one of the seven larger regions with no straddling of regional boundaries. Since the 2003 election, the Bavarian parliament has had 180 members. A little over half (92) are elected in *Stimmkreis*e, whereas the 88 others are distributed among the seven *Wahlkreise*. These regional units have unequal populations and their total number of seats ranges from 17 in Lower Bavaria to 57 in Upper Bavaria with a mean of 25.7. In each of them, the number of constituency seats equals or is one more than the number of list seats.

11. This case includes nine Länder: Lower Saxony, Brandenburg, Hesse, Mecklenburg-West Pomerania, North Rhine-Westphalia, Saxony, Saxony-Anhalt, Schleswig-Holstein, and Thuringia.

b) Baden-Württemberg

Baden-Württemberg is a large southern state next to Bavaria. It too has had a double electoral subdivision for election of its 120 members. At the local level, there are 70 single-member constituencies called this time, as elsewhere in Germany, *Wahlkreise*. These local units are grouped into four regional entities corresponding to administrative regions (*Regierungsbezirke*): Stuttgart, Karlsruhe, Freiburg, and Tübingen. These entities are unequally populated, their electorates ranging in 2001 from 1.2 million to 2.6 million. Unlike Bavaria, the total number of seats in each entity is not predetermined by law. It is determined on election night by voter turnout and may therefore vary from one election to the next. So each region has a different ratio of constituency seats (determined before the election from the total population) to compensatory seats (determined on election night from the results). In 2001, in the regions of Stuttgart and Tübingen, voter turnout was higher than average and the ratio between the two types of seats was respectively 26/26 and 11/10. In the other two regions, which were penalized by a lower voter turnout, it was 19/13 and 14/10. The compensatory seats are distributed within each region rather than Land-wide. In each region, compensatory seats go to defeated constituency candidates who have the highest *number of votes* (and not percentage of votes) in relation to the other defeated candidates of the same party in the region. Designation of members for compensatory seats takes no account of the administrative region of the constituency they represent. Such an member is not one of the representatives "of the Tübingen region." Instead, he or she holds a second mandate (*Zweitmandat*) in a local constituency. All four regions are strictly units for computation and distribution. They are not territories for representation.

c) Scotland

The Scottish system is closer to the Bavarian one. In a 129-seat parliament, 73 single-member constituencies are grouped into eight regions, each with seven regional members.

The single-member constituencies that elect most members of the Scottish Parliament are almost wholly identical to the ones that elect Scottish members to the Parliament of Westminster. Their regional distribution does reflect population, but imperfectly so. The use of an existing electoral subdivision speeded up introduction of the new system. The Parliament of Westminster passed the bill in November 1998 and an election was held under the new statute in May 1999.

The regional boundaries wholly correspond to those of the eight constituencies previously used in 1996 for election of Scottish members to the European Parliament ("Euro constituencies"). The number of regional seats is set by law and is not altered by unequal voter turnouts. Equality of representation among regions at this level does not reflect demographic reality.[12]

On average, each Scottish region has a total of 16.1 seats (constituency seats plus regional seats). Seats are distributed solely within each region. Official terminology distinguishes between "constituency members" and "regional members."

d) Wales

The National Assembly for Wales has 60 seats. At the local level, there are 40 single-member constituencies called "assembly constituencies," which themselves are grouped into five "assembly electoral regions," each having 4 list seats. The regional boundaries wholly correspond to those of the constituencies previously used since 1994 to elect Welsh members to the European Parliament. Here again, there are major interregional population differences that poorly fit the statutory equality of representation.[13] Nonetheless, constituency seat distribution among the regions better matches the electoral population base than in Scotland: 7 seats only for South Wales West, the least populated region, 9 for Wales North, the most populated one, and 8 for each of the others.

On average, each Welsh region has a total of 12 seats. The seats are distributed solely within each region. Official terminology distinguishes between "assembly members for assembly constituencies" and "assembly members for an assembly electoral region." Everyone, however, bears the title of "assembly member" (AM).

12. In 1999, there were only 326,553 voters in the Highland & Islands region. In the others, the electorate ranged from 498,466 to 551,733 (*The Daily Telegraph*, May 8, 1999, p. 13). There clearly seems to have been a deliberate effort to overrepresent northern Scotland, which is less densely populated, by giving it at this level an artificial equality of representation. These inequalities persisted in the 2003 election. The Highlands & Islands region then had 322,874 voters (4,000 fewer than in the previous election). The other regions ranged from 483,002 to 541,191.
13. The numbers of voters ranged in 1999 from 393,758 (South Wales West) to 478,252 (Wales North).

e) Bolivia

In Bolivia, a German compensatory system has existed since 1996 for elections to the Chamber of Deputies. List seats are assigned on a regional basis. The country is divided for this purpose into 9 territorial entities called *circunscripciones plurinominales*. Their boundaries correspond to department boundaries, and the total number of seats per entity, set by law, ranges from 5 to 31. Each multi-member constituency includes a set number of *circunscripciones uninominales* whose boundaries stay within department boundaries. List seats are assigned solely within each department.

f) Venezuela

The same principle is followed in Venezuela to elect members to the National Assembly. In this federation, the federated entities serve as multi-member constituencies. There are 23 of them, i.e., the 22 states and the single federal district. Each federated entity is divided into *circunscripciones electorales* that cannot spill over into the territory of another federated entity. In Venezuela as in Bolivia, the number of seats per multi-member constituency is set by law and does not vary with actual voter turnout.[14]

g) 1949 and 1953 Bundestag elections

During the first German federal election, in 1949, a relatively simple procedure was followed, similar to the one used in Bavaria, Scotland, and Wales. The 240 constituency seats (*Wahlkreise*) and the 160 list seats were grouped into the 11 Länder of that time, which served as second-level constituencies. Within each Land, the ratio of constituency seats to list seats was always close to the federal ratio of 60/40. Seats were distributed solely within each Land and no computation at the national level was added to the exercise.

The same procedure was followed in the 1953 election, except for an adjustment to bring the number of list seats up to the number of constituency seats. This 50/50 ratio was also reproduced within each of the Länder. The number of Länder had meanwhile fallen from 11 to 9, with the merger of the three southwestern Länder to form the new Land of Baden-Württemberg.

TERRITORY-WIDE COMPENSATION FOLLOWED BY REGIONAL REDISTRIBUTION OF PARTY SEATS

a) Bundestag elections (current system)

Had the above technique been kept, the detailed workings of the German system would be much simpler to explain, and to understand. Lawmakers, however, chose in 1956 to bring in a new, significantly more complicated technique of distribution, to strengthen the proportionality of the final outcome, and this technique is still in effect. The aim was to reconcile two contradictory goals: reduce distortions to a minimum while filling list seats from separate party lists in each Land and not from national party lists. Perhaps it was feared that the party headquarters would impose their star candidates on Land organizations. As well, the country's federal nature made national lists difficult to use.

The system introduced by the 1956 statute, and still in effect, calls for **two successive distributions**. Seats are first distributed among the parties at the national level, on the basis of the total number of valid second votes cast for each party that has reached a 5% threshold. Then, for each party, there is a redistribution among its Land lists of the seats it received at the national level, based on the number of valid second votes for the party in each Land. In the first distribution, each party competes with the others for a share of the seats assigned at the national level. In the second, the Länder compete for their share of the seats assigned to each party.15

This procedure ensures a scrupulously proportional distribution of seats among the parties, while enabling them to present a separate list in each Land.

This effort to square the circle has many advantages over proportionality. It not only reduces distortions to a minimum through a single national constituency but also adjusts for inequalities in voter turnout among the Länder. Distribution of single-member constituencies among the Länder remains the same from one election to the next unless there has been a general redistribution, as in 1965, 1980, and 2002. But the number of list seats given each Land, and therefore each Land's total number of seats, may vary from one election to the next. If voter turnout is below the national average, if the number of spoiled ballots is above average, and if the number of votes for parties excluded by the 5% threshold is above average, the Land will receive fewer list seats than constituency seats. This has been the case with the eastern Länder since 1990.

14. Compensatory seats in the Italian Senate are also assigned regionally.
15. The two successive distributions have always been done using the same technique, i.e., the D'Hondt technique until 1985 and subsequently the Largest Remainder technique (called in Germany the "Hare-Niemeyer technique").

Table 4

DISTRIBUTION OF CONSTITUENCY SEATS AND LIST SEATS AMONG THE LÄNDER *BEFORE* TAKING *ÜBERHANG* INTO CONSIDERATION — 2002 BUNDESTAG ELECTION

Land	Constituency seats	List seats assigned	Effective ratio
Western Länder			
Schleswig-Holstein	11	11	50/50
Hamburg	6	6	50/50 *
Lower Saxony	29	34	46/53
Bremen	2	2	50/50
North Rhine-Westphalia	64	70	48/52
Hesse	21	23	48/52
Rhineland-Palatinate	15	15	50/50
Bavaria	44	51	46/54
Baden-Württemberg	37	39	49/51
Sarreland	4	5	44/56
Eastern Länder			
Mecklenburg-West Pomerania	7	3	70/30
Brandenburg	10	6	62/38
Saxony-Anhalt	10	6	62/38 *
Berlin	12	11	52/48
Saxony	17	11	61/39 *
Thuringia	10	6	62/38 *
TOTAL	**299**	**299**	**50/50**

* The asterisk indicates that some *Überhang* appeared in addition to those in the table. There were 1 each in Hamburg, Thuringia, and Saxony and 2 in Saxony-Anhalt, for a total of 5. The total number of seats was thus 603 instead of the statutory 598.

The advantage is that voter turnout is rewarded, through the equalization of list seat distribution. Conversely, the disadvantage is that Länder with low turnouts are penalized in their representation. Furthermore, the total number of seats that each Land will eventually receive becomes unpredictable. The 50/50 ratio between constituencies and list seats holds true at the national level but not within each Land, as may be seen in Table 4 for the 2002 election. When some Länder deviate from equality between the two seat categories, to the detriment of list seats, the likelihood increases that the strongest party will win excess seats (*Überhang*). If constituency seat distortion is especially strong, there will not be enough list seats to compensate and *Überhang* will appear.

To provide a more complete overview, we will briefly describe two other cases: Mexico and Italy.

b) Mexico

When compensatory seats were created in Mexico in 1963, they were initially distributed at the national level. Since 1977, when their number rose to 100 (200 since 1986), the list seats received by each party at the national level have been redistributed at the regional level. Instead of keeping for this purpose the boundaries of the 32 federated entities (the 31 states, plus the federal district of Mexico City), it was decided to group these entities into five larger ones called "multi-member constituencies" (*circunscripciones plurinominales*), which in turn are subdivided into single-member districts (*distritos electorales uninominales*). Multi-member constituencies have no names, only Roman numerals (from I to V), and their boundaries correspond to no palpable sociological reality. Each multi-member constituency covers a set number of states. For example, the Vth encompasses the very populated states of Guerrero, Mexico, and Michoacan, whereas the Ist encompasses eight less populated ones. In 2003, each of them had an electorate (valid ballots plus invalid ones) ranging from 4.5 to 6.3 million.[16]

16. In 2000, the range was 6.7 to 7.9 million (voter turnout was higher, as may be expected in a presidential election year).

In assigning list seats, Mexico follows the current federal German method. First, at the national level, list seats are distributed among the parties. Second, for each party, the list seats it has received are distributed among its five regional lists on the basis of its score in each region.[17]

c) Italy (Chamber of Deputies)

Italy has also regionalized its compensatory seats. In the Chamber of Deputies, 475 seats are filled by the first-past-the post system and 155 by regional compensation. There are 27 regional districts (*circoscrizioni*). One, the small region of Val d'Aosta, has a single seat filled by a simple plurality of votes, but the 26 other regional districts are subdivided into single-member constituencies called *collegi*. In each regional district, the ratio between *collegi* and list seats is 3 to 1. Except for Val d'Aosta, each regional district has 3 to 34 *collegi* and 1 to 11 list seats. List seats are first assigned to parties at the national level. The list seats received by each party are then redistributed among the different regions.

TERRITORY-WIDE COMPENSATION, FOLLOWED OR NOT, AS THE PARTIES CHOOSE, BY REDISTRIBUTION AT THE REGIONAL LEVEL

Contradictory pressures by political parties may sometimes lead to statistical acrobatics. Two Länder allow parties to present either one list for the whole territory or several regional lists. The seats are distributed among the parties first for the whole territory. Then the parties *that so wish* carry out a second distribution among their regional lists. If a party wishes to tie its list members to small land areas, it can do so without jeopardizing another party's right to present a national list.

a) Rhineland-Palatinate

Rhineland-Palatinate has 101 seats (51 constituency seats and 50 list seats) and four regional constituencies called *Bezirke*. These regions are *ad hoc* electoral districts whose boundaries do not perfectly correspond to the three *Regierungsbezirke* into which the Land is divided for administrative purposes. They have no names and are designated by numbers. Each of them in turn encompasses 12 to 14 single-member constituencies. In the last election (2001), the Social Democratic Party (SPD) and the Greens each chose to present only one Land list and not to redistribute their compensatory seats subsequently among the *Bezirke*, as was done by the Christian Democratic Union (CDU) and the Free Democratic Party (FDP). Thus, the *Bezirke* are represented separately only by those parties that wish to present a list at that level.

b) City of Berlin

The same basic system exists in Berlin. The main difference lies in the number of regional subdivisions, which is definitely higher. Since the 2001 reform, Berlin has had 12 districts called *Bezirke*. The City Assembly has 130 seats. Delineation of the 78 single-member constituencies respects district boundaries. For list seat distribution, the parties are free to present either a single list for the whole Land of Berlin, as was done in 2001 by the Social Democratic Party (PDS) and the Greens, or a separate list for each district, as was done by the SPD, the CDU, and the FDP. The list seats received by the party are then redistributed among these district lists.

The existence of 12 *Bezirke* in a 130-seat assembly means that on average a little over 10 seats will go to each district.[18]

In this regard, the choices of the main parties may vary from one election to the next. In 1995, only the CDU and the SPD presented *Bezirke* lists in Berlin. All of the other parties submitted a Land list. In 1999, the PDS and the FDP imitated the two main parties and presented *Bezirke* lists. In 2001, the PDS went back to its previous practice. In Rhineland-Palatinate, the Greens presented lists in each *Bezirke* in 1991 and 1996 but preferred a Land list in 2001.

CONSEQUENCES OF THESE CHOICES

There are at least three relevant implications.

a) Magnitude of distortions

Territory-wide compensation minimizes the differences between the popular vote for the parties and the number of seats they win. It therefore increases the chances for small parties of being represented in parliament. The whole territory forms a single constituency for computation—the surest way to minimize distortions. It then becomes very secondary whether one uses the D'Hondt technique, the Sainte-Laguë technique, or the Largest Remainder technique.

The level of distortion also tends to be low when territory-wide compensation is followed by regional redistribution of the seats.

17. As in Germany, each region's number of seats changes with voter turnout. In 1994, for example, it ranged from 36 to 43, whereas in 1991 and 2000 each region received exactly 40 seats.
18. Before the 2001 reform, the city had 23 *Bezirke* and the Assembly 130 members, i.e., an average of 5.7 seats in each district. Under these conditions, there were very many *Überhang*. The recent merger of several *Bezirke* has reduced the number of *Überhang*.

If, however, compensation is at the regional level, the distortions are a little larger, being essentially to the benefit of the strongest parties and to the detriment of the weakest ones. All studies in this field have come to the same classic finding: distortions increase as the mean number of seats per constituency (or "district magnitude") decreases. There will be more distortions if the compensation is regional rather than territory-wide, and even more if the regions are numerous and small.

b) Incidence of excess seats

Distribution of compensatory seats within regions, or subsequent redistribution of them to regions, raises the likelihood of excess seats (*Überhang*), whereas territory-wide compensation tends to produce such seats less often. The more regional entities there are, the likelier that some will overrepresent a party. This may be seen in the results of the German elections we examined. In 40% of these elections, excess seats were produced. The rate was only 28% where compensation was territory-wide and the territory not regionally divided. It was 55% in regionally subdivided parliaments.

Table 5
NUMBER OF REGIONAL SUBDIVISIONS IN THE MAIN REGIONALLY SUBDIVIDED PARLIAMENTS

Parliament	Election	Total number		Mean number of seats per subdivision
		of seats*	of subdivisions	
Bundestag	1949	400	11	36,4
	1953	484	9	53,8
	1957-1961	494	10	49,4
	1965-1987	496	10	49,6
	1990-1998	656	16	41,0
	2002-	598	16	37,4
Baden-Württemberg	1952	120	3	40,0
	1956-	120	4	30,0
Bavaria	1950-1998	204	7	29,1
	2003-	180	7	25,7
Berlin	1958	133	12	11,1
	1963-1967	134	12	11,2
	1971-1975	133	12	11,1
	1979-1981	125	12	10,4
	1985-1989	119	12	9,9
	1990	200	23	8,7
	1995	150	23	6,5
	1999	130	23	5,7
	2001	130	12	10,8
Rhineland-Palatinate	1991-	101	4	25,3
Scotland	1999-	129	8	16,1
Wales	1999-	60	5	12,0

* Constituency seats *plus* list seats, not including excess seats.

If we now examine more closely only those parliaments with regional subdivisions, another significant contrast emerges between Berlin, where the mean number of seats per district was always less than 12, and the others (elections for the Bundestag, Bavaria, Baden-Württemberg, and Rhineland-Palatinate), where this number was 12 or more. In the latter group, *Überhang* were produced 44% of the time versus 92% of the time in Berlin. The smaller the number of seats to be distributed in each region, the higher the likelihood of excess seats.

This impression holds up in specific cases. In German federal elections, there has never been party overrepresentation at the national level. All *Überhang* since 1949 have resulted from overrepresentation in Länder. Also, excess seats tend to appear in small Länder, almost never in big ones.[19] Had seats been distributed at the national level from 1949 on, and had there been no second redistributions among Land lists after 1956, excess seats would have remained to date an entirely theoretical and largely ignored possibility.

This is also confirmed by a simulation using post-1958 Land of Berlin election results, where *Überhang* have occurred chronically. In Berlin, as mentioned above, party list seats may be redistributed at the district level as a way to foster closer ties between voters and their representatives. We have simulated seat distribution for each election on the assumption of citywide compensation, *without subsequent redistribution at the district level*. The result is very informative. With division into districts, *Überhang* occurred in every election, except one, and their total number for the whole period was 100. Territory-wide compensation with no subsequent redistribution among districts would have produced four times fewer (27), and eight elections (instead of one) would have produced none.

c) Control of lists

Finally, in Germany it is felt that national lists give party leaders too much clout in choosing list candidates, to the point that they often impose their favourites. Fair representation of the different parts of the country is thus not guaranteed to the same degree. For federal elections, the idea of a national list has never been accepted, the preference being to use separate lists within each party for each Land. Such lists are believed to strengthen decision-making at the regional level.

19. From 1949 to 2002, the Sarreland and the former Baden each had 1, Bremen 3, Hamburg 4, Schleswig-Holstein 10, and the eastern Länder (all of them small) a total of 35. Among the more populated Länder, there were only 3 in Baden-Württemberg and none elsewhere.

Chapter 3
Distribution of Compensatory Seats

The essence of a compensatory mixed system is to ensure that the distortions generated by the election of a certain number of members in single-member constituencies will be corrected by distribution of extra seats. Such a system works on the same principle as the Canadian system of fiscal equalization. Parties that have won many constituencies will receive few or no compensatory seats, which will essentially go to parties penalized by the constituency results.

METHODS TO ACHIEVE A COMPENSATORY EFFECT

There are three methods to achieve a compensatory effect: the German method, the Scottish method, and the loser and surplus method.

a) German method

The German method is by far the most widespread one. It fictitiously distributes the *totality* of the seats in Parliament to each party on the basis of popular vote and subtracts from this result the number of constituency seats actually won by each party. As long as the number of compensatory seats is high enough, the overall outcome for each party is proportional to its share of the popular vote.

One of the consequences of this computation technique is the possibility that a party may win more constituency seats than the seat total based on its share of the popular vote. In principle, there should be enough compensatory seats to correct all of the first-past-the-post distortions. In practice, there are not always enough. This is the *Überhang* phenomenon we have already described. When a party wins one or more excess constituency seats, there is a concomitant increase in the total number of list seats. Indeed, each party's number of list seats is calculated by subtracting the number of constituencies it won from an overall seat quota based on its share of the popular vote. If a party exceeds this quota, subtraction will yield a zero amount. Inevitably, this subtraction leads to the other parties receiving more list seats than were to be distributed initially, and the difference will equal the number of excess seats won by the strongest party.

Table 6 illustrates this situation with an example. There are 100 constituency seats and 100 compensatory seats, for a total of 200 seats. Three parties are running.

In our example, Party A has benefited from an optimal geographic distribution of its constituency vote and has swept all constituency seats in the face of two divided opposition parties. So it has won 3 seats more than the 97 it was entitled to. Because it is unrealistic to take these seats away from the party by "unelecting" 3 of its members (and which ones?), they are left alone, but the total number of list seats is increased by the same amount. This solution still gives the leading party a small majority bonus. The impact, however, is cut in half by a concomitant increase in list seats assigned to the other parties: 3 out of 203 seats instead of 3 out of 200.

This method is used at the federal level in Germany, in all Länder with personalized PR, and in New Zealand.

b) Scottish method

It may seem undesirable that overrepresentation of one party should produce a larger assembly than expected. Scotland and Wales have found a simple technique to avoid such an increase, but at the cost of a less proportional result. PR is calculated within each region by the Largest Remainder technique, but in a way that from the beginning takes account of the constituency seats already

Table 6

HYPOTHETICAL EXAMPLE ILLUSTRATING HOW EXCESS SEATS MAY ARISE

Party	Number of seats awarded by PR	Constituency seats won	Difference	Final distribution
Party A	97	100	0	100
Party B	60	0	60	60
Party C	43	0	43	43
TOTAL	**200**	**100**	**103**	**203**

won by each party. Each party's number of votes is divided by the number of constituency seats it took plus one, and the regional seats are distributed up to their legal limit (7 in each region). There is thus no increase in the legal size of the Assembly. In practice, this technique allows a party to keep the excess seat(s) it won at the expense of the other parties. So the majority bonus may be slightly accentuated for the strongest party in a region.

c) Loser and surplus method

This technique is more complex than the previous ones. For each political party, it adds up the votes for defeated constituency candidates and the winning margin votes for elected constituency candidates (i.e., the difference between the votes for the winner and the votes for the runner-up), with one vote subtracted in each case.[20] A total is thus obtained for each party. This becomes the base figure for any of the usual techniques of proportional distribution.

For example, this is how 50 compensatory seats would have been distributed using this method in the 2003 Québec election (Table 7).

The postulate underlying this method is simple. In a first-past-the-post system, certain votes may be considered "wasted." They include of course the votes for the defeated candidates of all parties, but also include the winning margins (less one) of elected candidates. The method is to consolidate these wasted votes into a single base figure. Given where these votes come from, *this base figure is a biased sample of the total vote:* the parties that have elected few or no candidates are overrepresented. In our example, the Québec Liberal Party (QLP) accounts for only 40% of this figure, whereas it received 46% of the vote. The Parti québécois (PQ) also accounts for a proportion (31%) smaller than its popular vote (33%). The Action démocratique du Québec (ADQ) accounts for 25% (versus 18% of the popular vote) and the Union des forces progressistes (UFP) for 1.5%, or a bit more than its popular vote (1%). Using these base figures, only twenty or so seats would be distributed to the QLP out of 50 list seats. There is thus a compensatory effect, but one clearly less pronounced than with the German and Scottish methods.

This approach existed in some Länder from 1946 to 1957. It was, however, dropped wherever it had been used because of the excessive distortions.[21] It was forgotten, only to be resurrected in the early 1990s in Hungary (1990) and Italy (1992) where, except for some minor innovations, it has produced comparable effects in normal circumstances.

Table 7

DISTRIBUTION OF 50 COMPENSATORY SEATS USING THE LOSER AND SURPLUS METHOD — 2003 QUÉBEC ELECTION

Party *	Winning margins of elected candidates, less one vote	Votes for defeated candidates	Total (base of computation)	Distribution of compensatory seats (D'Hondt technique)
QLP	574,808	+ 486,444	= 1,061,252	21
PQ	127,073	+ 689,400	= 816,473	16
ADQ	12,941	+ 643,114	= 656,055	13
UFP	-	40,422	40,422	0
Other**	-	58,174	58,174	-
TOTAL	714,822	+ 1,917,554	= 2,632,376	50

* QLP: [Québec Liberal Party]; PQ: [Parti québécois]; ADQ: [Action démocratique du Québec]; UFP: [Union des forces progressistes].

** None of the parties in this line received enough votes to win a seat.

20. To be elected in a constituency, it is enough to have a winning margin of one vote, and anything more may be considered a "wasted" vote.
21. See Louis MASSICOTTE, "To Create or to Copy? Electoral Systems in the German Länder", *German Politics*, vol. 12, no. 1, 2003, pp. 1-22

COMPUTATION TECHNIQUES

Whatever method is chosen among the three ones above, the seats will be distributed among the parties using one of the traditional computation techniques. Three options are available: the Largest Average technique (D'Hondt), the Sainte-Laguë technique, and the Largest Remainder technique. On this point, political science offers some conclusive findings.[22]

It matters little which technique is chosen if seat distribution is calculated for a large number of seats in a single region. There has long been recognition of the key importance of the mean number of seats per region or district ("district magnitude")—a factor much more important than the distribution technique.

When applied to smaller regional entities, however, these techniques may produce somewhat different results. The D'Hondt technique will benefit the strongest parties, whereas the Sainte-Laguë and Largest Remainder techniques will produce a more proportional distribution despite the existence of regions. The Largest Remainder technique tends to benefit the weakest parties, all the more so if there are many regions.

In Germany, the D'Hondt technique was initially the most popular one. It was used at the federal level until 1985 when it was replaced with the Largest Remainder technique, which the Germans call the "Hare-Niemeyer technique."

In Länder with personalized PR, the D'Hondt technique was originally used most often, but there too it has over the years given way to the Hare-Niemeyer technique. The former currently survives in four Länder[23] whereas the latter is used everywhere else.

New Zealand has opted for the Sainte-Laguë technique.

Finally, the method used in Scotland and Wales is a modification of the D'Hondt technique.[24]

22. See André BLAIS and Louis MASSICOTTE, "Electoral Systems", in Lawrence Leduc, Richard G. Niemi, and Pippa Norris (ed.), *Comparing Democracies 2. New Challenges in the Study of Elections and Voting*, London, Sage Publications, 2002, pp. 40-69.
23. Baden-Württemberg, Lower Saxony, Saxony, and Schleswig-Holstein.
24. In this document, we have thought up versions of the Scottish method that use the Sainte-Laguë and Largest Remainder techniques. See page 112 and Appendix VI.

Chapter 4
Problem of Excess Seats

As we explained in Chapter 3, the German method involves first distributing all seats (constituency seats and added list seats) in proportion to the popular vote. The result of this computation is compared with the constituency seat distribution. Each party then receives a number of list seats corresponding to the difference between the total number of seats it is entitled to and the number of seats it directly won.

In principle, no party should win more direct seats than the total number of seats it is entitled to. This situation, however, may happen in theory and does in practice. In Germany, such seats are called *Überhangmandate* (excess seats). In New Zealand, they are called "overhang seats." The rule in Germany and New Zealand is that the overrepresented party gets to keep the seats, with the side effect of assigning the other parties an equivalent number of list seats solely for the life of the Parliament. The total number of elected members is therefore raised.[25]

INCIDENCE OF EXCESS SEATS

Überhang are not a rarity. In Germany, 11 of the 15 federal elections since 1949 have produced them, as did 42 of the 118 elections under personalized PR in the Länder from 1947 to September 2004.

None of the three elections to date under the MMP system in New Zealand has produced excess seats.

Finally, both of the two elections in Scotland and Wales since 1999 have led to regions with party overrepresentation. The total number of seats did not rise, however, given the existing legal framework. The extent of the phenomenon is summarized in Table 8.

MAGNITUDE OF INCREASE DUE TO EXCESS SEATS

Überhang, especially if their appearance leads to a concomitant creation of *Ausgleich* seats, may sometimes greatly increase the total number of seats. Table 9 illustrates this reality for elections to the Bundestag and to the Länder parliaments.

Überhang were once very few in number at the German federal level (5 in 1961, 3 in 1953 and 1957, 2 in 1949 and 1983, 1 in 1980 and 1987, out of a total of less than 500 seats). Their numbers have risen sharply since incorporation of the eastern Länder: 6 in 1990, 16 in 1994, 13 in 1998 (out of around 660) and 5 in 2002 (out of 603). The increase in Bundestag representation due to excess seats has been on average less than 1% and has never exceeded 2.4%.

In contrast, in the Länder the increase has been clearly more pronounced because current legislation not only allows parties to retain their excess seats but also provides for creation of extra compensatory seats (*Ausgleich*) to re-establish the overall proportionality of the result. The total number of seats thus rose from 201 to 237 in North Rhine-Westphalia (1990) and from 120 to 155 in Baden-Württemberg in 1996 (a 29% increase). In Berlin, creation of such seats has become routine: 56 in 1995 with an expansion of the City Assembly from 150 to 206 (a record 37% increase).

Table 8

NUMBER OF EXCESS REGIONAL SEATS IN SCOTLAND AND WALES — 1999 AND 2003 ELECTIONS

Parliament	Election	Number of excess regional seats	Total number of seats	%
Scotland	1999	8	129	6,2
	2003	9	129	7,0
Wales	1999	4	60	6,7
	2003	3	60	5,0

25. Creation of excess seats was challenged before the Federal Constitutional Court in 1997, but to no avail. See Michel FROMONT, "République fédérale d'Allemagne: la jurisprudence constitutionnelle en 1996 et 1997", *Revue du droit public*, no. 2, March-April 1999, pp. 528-531.

Table 9

MAGNITUDE OF INCREASE IN PARLIAMENTARY REPRESENTATION DUE TO *ÜBERHANG* AT THE FEDERAL LEVEL AND DUE TO *ÜBERHANG* AND *AUSGLEICH* IN THE LÄNDER, 1947 TO 2004

Increase over statutory size of representation %	Parlement										
	Federal elections	Baden-Württemberg	Lower Saxony	North Rhine-Westphalia	Schleswig-Holstein	Berlin	Saxon-Anhalt	Thuringia	Saxony	Brandenburg	Total
00.0-05.0	11	5	2	-	-	3	-	1	1	1	24
05.1-10.0	-	2	3	3	-	3	1	-	-	-	12
10.1-15.0	-	-	1	2	-	1	-	-	-	-	4
15.1-20.0	-	-	1	1	2	1	2	-	-	-	7
20.1-25.0	-	1	-	-	-	2	-	-	-	-	3
25.1-30.0	-	1	-	-	-	1	-	-	-	-	2
30.1-35.0	-	-	-	-	-	-	-	-	-	-	0
35,1-40,0	-	-	-	-	-	1	-	-	-	-	1
40.1 or more	-	-	-	-	-	-	-	-	-	-	0
Number of cases	11	9	7	6	2	12	3	1	1	1	53
Mean rate of increase	0.8	8.6	7.9	11.9	18.7	13.9	13.9	0.8	3.3	0.8	8.8*
Lowest rate	0.2	0.8	1.3	7.5	18.7	2.2	8.2	0.8	3.3	0.8	0.2
Highest rate	2.4	29.2	18.1	17.9	18.7	37.3	17.2	0.8	3.3	0.8	37.3

* This percentage is weighted by the number of cases in each parliament. It is not the statistical mean of the preceding numbers on this line.

WHY DO EXCESS SEATS OCCUR?

Excess seats are treated by the literature as a minor problem and to date have not been dealt with by a coherent general theory. After an extensive review of German elections, we found three main conditions that generate such seats. Only one of them, the first, lies beyond the purview of lawmakers. The other two are amenable to legislative action and choices made at this level will increase or decrease the likelihood of excess seats:

1. The likelihood of *Überhang* will increase with an increasing spread (or distortion) between the percentage of the vote for the strongest party in an election and the percentage of *constituency* seats it wins. If a party wins all of the constituency seats with only 40% of the popular vote, there will almost certainly be excess seats. The greater the distortions, the less the chance there will be enough compensatory seats to correct them and party overrepresentation will become inevitable. This factor is situational, essentially unpredictable, and not amenable to legislative solution. This is not so for the next two factors;
2. The likelihood of *Überhang* will increase with an increasing ratio of constituency seats to list seats. In more precise terms, the likelihood is higher if list seats account for 25, 33, or 40% of the total than if they account for half or more. The fewer compensatory seats there are, the likelier compensation will be incomplete. Table 10, based on the 133 German elections we reviewed, bears out a point we mentioned above: the empirical likelihood of *Überhang* is 25% if the ratio is 50/50 and 54% if the ratio is biased to constituency seats;
3. The likelihood of *Überhang* will increase if the compensation process is regionally subdivided, even more so if there are few seats, on average, in each regional subdivision. As may be seen in Table 11, the likelihood is 28% if there are no territorial subdivisions versus 55% if there are. In the latter case, the likelihood reaches 44% if the regional subdivisions have on average 12 seats or more, versus 92% if they have 11 or less.

Table 10

ELECTIONS PRODUCING EXCESS SEATS BY CONSTITUENCY SEAT / LIST SEAT RATIO

Elections by constituency seat / list seat ratio	Number of elections producing excess seats	%
50/50 ratio (Federal elections [since 1953] plus 8 Länder)	16 out of 65	**24.6**
Ratio other than 50/50 (Federal election [1949] plus 5 Länder)	37 out of 68	**54.4**
INCLUDING: 60/40 (Federal election [1949] plus 3 Länder)	24 out of 40	60.0
65/35 (1 Land)	7 out of 15	46.7
75/25 (1 Land)	6 out of 13	46.2
TOTAL	53 out of 133	39.8

Table 11

ELECTIONS PRODUCING EXCESS SEATS BY EXISTENCE OF REGIONAL SUBDIVISIONS IN PARLIAMENT

Parliament with or without regional subdivisions	Number of elections producing excess seats	%
Parliaments without regional subdivisions	21 out of 75	**28.0**
Parliaments with regional subdivisions (federal elections, Bavaria, Berlin, Baden-Württemberg, Rhineland-Palatinate):	32 out of 58	**55.2**
INCLUDING:		
Parliaments where the mean number of seats in each regional subdivision is:		
12 or more	20 out of 45	**44.4**
11 or less (Berlin)	12 out of 13	**92.3**
TOTAL	53 out of 133	39.8

Table 12

ELECTIONS PRODUCING EXCESS SEATS BY CONSTITUENCY SEAT / LIST SEAT RATIO AND EXISTENCE OF REGIONAL SUBDIVISIONS

Parliaments by constituency seat / list seat ratio	Elections producing excess seats					
	Without regional subdivisions		With regional subdivisions		All elections	
50/50 (federal elections [since 1953] plus 8 Länder)	6 out of 34	17.6%	10 sur 31	32.3 %	16 out of 65	24.6%
60/40 (federal election [1949] plus 3 Länder)	2 out of 13	15.4%	22 sur 27	81.5 %	24 out of 40	60.0%
65/35 (1 Land)	7 out of 15	46.7%	-		7 out of 15	46.7%
75/25 (1 Land)	6 out of 13	46.2%	-		6 out of 13	46.2%
TOTAL	**21 out of 75**	**28.0%**	**32 out of 58**	**55.2 %**	**53 out of 133**	**39.8%**

HOW CAN THE *ÜBERHANG* PROBLEM BE SOLVED?

Current legislation in jurisdictions with compensatory mixed systems does not address this occurrence in the same way. Three solutions exist.

One solution is used for Bundestag elections (but not for Länder elections) and in New Zealand. If a party wins one or more excess constituency seats, the total number of list seats is increased accordingly. The party that wins an excess seat is thus given a slight seat bonus.

To a strict proportionalist, this solution is unsatisfactory because it somewhat penalizes the weakest parties. Consequently, if a party wins excess seats in a Land parliament election, all Länder now provide for the creation of **extra compensatory seats**, called *Ausgleichsmandate*, for the benefit of the other parties. The majority bonus of the *Überhang* is completely cancelled and perfect proportionality is re-established. The approaches may vary, but the principle is that an almost equal number of compensatory seats (from lists of course) will be assigned to the other parties.

Both of these solutions may cause the number of seats to vary from one election to the next. *Überhang* and, if applicable, *Ausgleich* are created only for the life of the Parliament and disappear in the next election, unless the same circumstances that led to their creation come together again. This takes us to the third solution, which exists in Scotland and Wales: if a party wins more constituency seats than the total number of seats it ought to receive, it gets to keep them but the number of list seats assigned to the other parties *is reduced by the same amount*. This solution maintains total parliamentary representation at the statutory level, while decreasing the proportionality of the result since the majority bonus is deducted from the representation of the weakest parties.

A metaphor can illustrate the contrast between the Scottish method and the two previous ones. Suppose a house is built for five tenants. A sixth person comes and has to be lodged as well. To take in the new tenant, we can expand the house by adding new temporary quarters (German method) or we can skip the expansion and evict an existing tenant to make way for the new one (pretty much what the Scottish method implies).

The Scottish solution avoids upsetting the regional balance when list seats are assigned by region. If *Überhang* and *Ausgleich* are assigned to one region but not to the others, this region will have a higher share of the total. There is so to speak a distortion bonus: a region with many distortions is likelier to receive excess seats.

Clearly, **the Scottish method does not prevent party overrepresentation in and of itself.** It simply prevents party overrepresentation from altering total parliamentary representation, while penalizing the other parties.

Chapter 5
Thresholds

Having learned from their experience with the Weimar Republic, the Germans appear to have been among the first to impose an explicit statutory threshold to limit the fragmenting of parliamentary representation. The situation of the postwar era and the pressures of the occupying powers led certain Länder in the British zone to require a minimum number of votes before a party could receive any list seats. This technique was used as early as the first Bundestag election in 1949. It has since spread to all Länder. A figure of 5% of all valid ballots has become over the years the standard everywhere.[26]

The historical evolution of the thresholds has been rather complex. If we speak only of the Bundestag elections, the threshold in 1949 was 5% of the vote in a Land and was waived for parties that managed to win one constituency seat. In 1953, 5% of the vote was required, but this time *throughout the whole country*. Since 1956, the bar has been 5% of the vote at the national level and is waived for parties winning 3 constituency seats (instead of one). As an exception, and only in the 1990 election following reunification, a party only had to get 5% of the vote either within the territory of the former German Federal Republic (GFR) or within the territory of the former German Democratic Republic (GDR), to take part in list seat distribution within that territory.[27]

Thresholds may stray from the proportionalist ideal but they are fairly common in the real world of PR. A recent survey shows that, out of 29 democratic countries using PR for election by list, no fewer than 19 impose some kind of threshold (either national or regional) on seat distribution. Turkey sets the highest bar (10%), followed by Poland (7%). In contrast, Israel sets a 1.5% threshold and the Netherlands only 0.67%.[28] For its part, New Zealand has opted for a 5% threshold at the national level, whereas no statutory threshold exists in Scotland or Wales, where the division of the territory into regions limits the chances of small parties anyway.

A party can clear or not clear the threshold by the tiniest of margins. In North Rhine-Westphalia, the Greens exceeded the threshold by only 4,500 votes in 1990; in 1980, the FDP fell short by only 1,701 votes out of over 9 million cast. Some near misses must have been heartbreaking for the excluded parties. In 1992, the Greens missed clearing the threshold in Schleswig-Holstein by only 381 votes.

The effects of a threshold are unpredictable. It is impossible to guess how the vote will break down in future elections. The expected scenario is that the main victims of a threshold will be very small parties winning less than 2% of all seats. This is what has happened in Germany and New Zealand, where the total number of votes for parties excluded from parliament has rarely been very high, as may be seen in Table 13.

Table 13

PERCENTAGE TOTAL OF ALL VOTES FOR PARTIES EXCLUDED FROM PARLIAMENT

Elections	% Mean	% Maximum	% Minimum	Number of elections
Bundestag elections (1949-2002)	3.7	8.0	0.4	15
Schleswig-Holstein (1947-2000)	5.6	12.8	1.0	14
North Rhine-Westphalia (1947-2000)	3.9	8.7	0.3	13
Rhineland-Palatinate (1947-2001)	4.3	10.1	0.0	14
Lower Saxony (1959-2003)	4.9	11.9	0.4	12
Hesse (1946-2003)	3.2	5.1	0.0	16
Baden-Württemberg (1952-2001)	3.4	7.3	0.5	13
Bavaria (1946-2003)	7.1	12.7	1.3	15
Berlin (1946-2001)	5.0	12.2	0.0	17
Mecklenburg-West Pomerania (1990-2002)	11.6	13.5	10.1	4
Brandenburg (1990-2004)	8.7	14.6	5.6	4
Saxony (1990-2004)	7.5	10.2	5.1	4
Saxony-Anhalt (1990-2002)	7.3	9.6	4.2	4
Thuringia (1990-2004)	10.8	16.4	6.3	3
New Zealand (1996-2002)	6.1	7.5	6.0	3

26. Lower Saxony was the last of the western Länder to adopt such a threshold, in 1959.
27. The West German Greens did not join up with their eastern counterparts in 1990, much to their regret. Only the latter managed to clear the 5% bar in their territory and receive seats.
28. André BLAIS and Louis MASSICOTTE, *op. cit.*, pp. 51-53.

There are interesting variations: 3.7 points on average in federal elections; 3.2 points in Hesse, but 11.6 in Mecklenburg. A historic maximum of 16.4 points was recorded in Thuringia. In New Zealand, the mean is 6.1 points.

Transposed into other societies, the same rule has proven to be formidable in some cases, so much so as to call into question the proportionality of the system. Votes for parties excluded from Parliament because of the 5% threshold came to around 20% of the total vote in the 1990 Czechoslovak election and reached the staggering rate of 49.5% in the 1995 Russian election. In Turkey, the 10% threshold excluded in 2002 all but two parties from Parliament, the leading party receiving 65.6% of the seats with only 34.2% of the vote.

Rarely is a threshold enthusiastically approved by the parties it penalizes. Big parties favour them to preserve their advantage, and many citizens and analysts accept them because they fear the party fragmentation that would make Parliament ungovernable. Thresholds do not necessarily keep out parties deemed "extremist" by their opponents, such as Germany's National Democratic Party (NPD) in the 2004 election in Saxony. They may exclude moderate but weak parties: the FDP slid several times under the 5% bar in regional elections. Finally, thresholds are not necessarily a death sentence for any party that they temporarily deprive of representation. The Greens (at least in the western Länder) were excluded from the Bundestag in 1990, but they returned four years later and have taken part since 1998 in the ruling coalition.[29]

Under Germany's federal electoral law, the 5% threshold is waived for a party that wins at least 3 direct seats (out of a total of 299). This loophole benefited the PDS during the 1990s, but not in 2002 (only 2 constituencies won). For its part, New Zealand also waives the threshold for any party that manages to elect one constituency member, a provision that benefited the New Zealand First Party in 1999 and the Progressive Coalition in 2002. This approach exists in four Länder.[30] It encourages election pacts between ideologically similar big and little parties. If a small party evades the 5% cut-off by winning one constituency seat, a big party may choose not to run a candidate in a constituency and invite its supporters to back a small party's local candidate, thus ensuring victory for that candidate and list seats for his or her party. Such bartering was common during the 1950s between the CDU and the Deutsche Partei (DP). This kind of pact, however, has ambiguous consequences for the small party. It gets into Parliament, but at the risk of being held hostage by the big party until the next general election. This practice paved the way for the absorption of the DP by the CDU in 1960.

Any threshold may be challenged in court by the small parties it affects, and the outcome of potential legal actions is uncertain. In Schleswig-Holstein, a 7.5% threshold adopted in 1951 was declared unconstitutional by the Federal Constitutional Court the next year[31] on the grounds that such a high exclusion level would prevent any distinct representation of the Danish minority. The local parliament decided soon after to return to the 5% threshold, while later specifying that this threshold would not apply to the party representing the Danish minority. This legal ruling may be related to the fact that Bavaria, which originally imposed a 10% threshold at the regional level, backed off in 1973 and opted for a 5% threshold applicable to the whole Land. In Germany, 5% thresholds in municipal elections have been struck down by the courts over the last few years.

29. The experience of the Länder is even more revealing. The FDP was eliminated at one time or another from the parliaments of all Länder, except Baden-Württemberg, but in October 2004 it was represented in ten of them.
30. The four Länder are: Berlin, Brandenburg, Saxony, and Schleswig-Holstein. The 5% threshold is waived for a party that wins one constituency (2 constituencies in Saxony).
31. Donald P. KOMMERS, *The Constitutional Jurisprudence of the Federal Republic of Germany*, Durham, Duke University Press, 1989, p. 186.

SECTION II

VOTER CHOICE

In this part, we will look at the proposed approach from the voters' standpoint. The central issue is: what type(s) of choice will voters be asked to express on their ballots? Two questions must be addressed and we will begin with the most important one.

First, should voters have **one vote or two**? More precisely, should the voter have one vote, to be cast for a constituency candidate, and later counted as a vote for the candidate's political party when the time comes to distribute compensatory seats? Or, for this second purpose, should the voter be able not only to vote for a constituency candidate but also to cast a separate vote for a political party?

If the second option is chosen, should the vote for a political party let or not let the voter express one or more **preferences** for certain candidates on the list? This would alter the list order of candidates, thus increasing the chances of some to get elected and decreasing the chances of others.

At present, there are no empirical precedents in Québec to predict the impacts of these two approaches. Consequently, in this area we must rely exclusively on experiences in other countries.

These two questions are dealt with successively in the following chapters.

Chapter 6
One Vote or Two?

A compensatory mixed system may operate with one vote, which is cast for a constituency candidate and is also considered to be cast for the candidate's party. One author uses the expression "fused vote" for this double use of a constituency vote.[32] Compensatory seats are simply distributed on the basis of the total share of votes for each party's candidates.

It is also possible to give each voter two votes: the first is cast for one of the constituency candidates; the second, for a party list. The first vote is used to choose among the constituency candidates, whereas the second is used to determine the overall distribution of seats among the parties.[33] A voter may, for example, support the party of his or her choice without having to endorse an individual who seems unsatisfactory as an appropriate constituency representative.

RESPECTIVE IMPORTANCE OF THE TWO VOTES

When a voter has two votes, the constituency vote has an effect only in the territory it is cast in.[34] The national total of constituency votes for a party's candidates is at most an interesting statistic. Parliamentary handbooks often omit it and indicate party popularity only by the proportion of party votes for the parties, this being a very defendable choice if there is not enough space. By the same token, the number of party votes in a constituency is at this level at most an interesting statistic. Constituency candidates may, for example, measure their personal popularity (or unpopularity) by comparing the two figures. The contrast between the two statistical series within the same constituency is sometimes cited by analysts as proof of a politician's popularity or renown.[35]

STRUCTURE OF THE BALLOT

The one-vote ballot, where the vote goes only to a candidate, if we follow the one used in North Rhine-Westphalia, has three columns: the first column lists the name of each party's candidate in the constituency; the second column gives the name of the candidate's party and the first three names on that party's list; and the third column has a circle that the voter marks to indicate his or her choice.

When a voter has two votes, they are as a rule physically cast on the same ballot paper. In the left-hand column are listed the candidates running in the constituency (one vote). In the right-hand column appear the competing parties (one vote). For this reason, the constituency vote is called the "first vote" and the party vote the "second vote." Parties and candidates are listed in a predetermined order, and the two columns place side by side the name of the party's constituency candidate on the left and the first names on the same party's list on the right. At the federal level and in five Länder (Lower Saxony, Mecklenburg-West Pomerania, Rhineland-Palatinate, Schleswig-Holstein, and Thuringia), the left-hand column is printed in black and the right-hand column in blue or green. This may (erroneously) suggest that the party vote is less important. The visual presentation of the federal ballot has been altered since 1953 to indicate more clearly where the choices must be marked.[36]

New Zealand has opted for two votes on a single ballot, but the two are inversely positioned. The parties are listed in the left-hand column to stress the greater importance of the party vote.

Bavaria, Berlin, and Scotland use two separate ballots.

32. Giovanni CAPOCCIA, "The Political Consequences of Electoral Laws: The West German System at Fifty", *West European Politics*, vol. 25, no. 3, 2002, p. 173.
33. Bavaria is an exception. List seats are assigned to parties on the basis of totals (*Gesamtstimmen*) calculated for each party from the total of votes for its constituency candidates and votes for its list candidates (so, for each party, its first and second votes are lumped together). This peculiarity exists because in Bavaria the second vote is cast not for a party but for an individual on a party list (see Chapter 7).
34. This is not the case in Bavaria, where votes for a constituency candidate, added to preferential voting for the same individual in other constituencies, help determine the order of election of candidates on the list of the same party.
35. In 1957, Dr. Carlo Schmid was elected in the constituency of Mannheim by a winning margin of 3,000, whereas in the second vote the opposing party led by 4,700 votes. This example is taken from Alfred GROSSER, *L'Allemagne de notre temps 1945-1970,* Paris, Fayard, 1970, p. 251. For more recent examples, see Rudolf HRBEK, "Le système électoral de la République fédérale d'Allemagne", *Pouvoirs*, no. 32, 1985, pp. 79-80.
36. The ballot used in 1953 is reproduced in the article by James K. POLLOCK, "The West German Electoral Law of 1953", *American Political Science Review*, vol. 49, no. 1, 1955, p. 108. The ballot used today constitutes Appendix 26 of the federal electoral regulations (*Bundeswahlordnung*): see DER BUNDESWAHLLEITER, *Rechtsgrundlagen für die Wahl zum 15. Deutschen Bundestag*, February 2002, p. 203.

TERMINOLOGY

Official terminology for the two votes varies from one place to the next, an indication of the lack of consensus on the best term. For the Bundestag elections, people use the expressions "first vote" (*Erststimme*) for the constituency vote and "second vote" (*Zweitstimme*) for the list vote. This terminology is criticized. Some say it implicitly (and inaccurately) designates the constituency vote as the more important of the two. But it is the terminology used in the Länder of Berlin, Lower Saxony, Brandenburg, Mecklenburg-West Pomerania, and Schleswig-Holstein. This has the advantage of reducing the risk of confusion among voters in a federal country. In three Länder (Hesse, Rhineland-Palatinate and Thuringia), the two are respectively called "constituency vote" (*Wahlkreisstimme*) and "Land vote" (*Landesstimme*). Saxony prefers the terms "direct vote" (*Direktstimme*) and "list vote" (*Listenstimme*), whereas Saxony-Anhalt uses "person vote" (*Personenstimme*) and "party vote" (*Parteienstimme*). There is no simple terminology in Bavaria, where the law speaks of "vote for the election of a constituency member" (*Stimme für die Wahl eines Stimmkreisabgeordneten*) and "vote for the election of a regional electoral constituency member" (Stimme für die Wahl eines Wahlkreisabgeordneten). Explicit but cumbersome, these terms are replaced in standard official vocabulary by *Erststimme* and *Zweitstimme* (as at the federal level) or by "local constituency vote" (*Stimmkreisstimme*) and "regional electoral constituency vote" (*Wahlkreisstimme*).

The same terminological uncertainty prevails in English-speaking societies that have adopted the German model. In New Zealand, the expression "electorate vote" is used for the constituency vote (in that country, constituencies are called "electorates"), and the expression "party vote" for list vote. In Scotland and Wales, the constituency vote is "constituency vote" whereas the list vote is called "regional vote" in Scotland and "electoral region vote" in Wales.[37]

POPULARITY OF THE TWO OPTIONS

The overwhelming majority of existing compensatory mixed systems now have two votes. The exceptions are the two largest Länder of the Federal Republic of Germany: North Rhine-Westphalia and Baden-Württemberg.[38]

Changes over time indicate a clear trend toward two votes. The personalized PR systems initially used in Germany had only one constituency vote. Such was the case in the first parliamentary elections of North Rhine-Westphalia and Lower Saxony in 1947 as well as the 1949 Bundestag election. When personalized PR was successively introduced in Schleswig-Holstein (1951), Hesse (1954), and West Berlin (1958), the law provided for only one constituency vote.

The trend to a double vote began in Bavaria in 1949. There was a wish to give voters the possibility not only of electing a constituency MP, but also of expressing a preference for one of the list candidates of the party they were voting for. Bavaria still remains today alone in providing such a preference.

These concerns were absent from the minds of federal lawmakers when the second vote was introduced in 1953 for Bundestag elections, since no individual preference is possible. The reasons behind this innovation are not very clear. According to a German author, the introduction of the second vote had a lot to do with a common practice during the 1950s (now abandoned) in early West German elections, i.e., the formation of local alliances between the CDU and certain small rightwing parties.[39]

Subsequently, the second vote spread into different Länder that initially made no provision for it. It was successively adopted in West Berlin (1979), Lower Saxony (1988), Hesse (1991), and Schleswig-Holstein (2000). In Rhineland-Palatinate (1991), as in New Zealand, Scotland, and Wales, the second vote was adopted from the outset.[40]

37. In Mexico, the two votes are distinguished by the entity they are cast for, i.e., either the political party (*votos emitidos en favor de uno partido politico*) or the candidate (*votos emitidos en favor de uno candidato*). Bolivia has a special terminology because the party vote counts twice: once to calculate the number of seats assigned to the party and once for the presidential candidate fielded by the party. For this reason, the party vote is called *voto acumulativo*, whereas the vote for a constituency MP is called *voto selectivo*.
38. Curiously, Italian voters have one vote for election of senators and two when voting for members of the Chamber of Deputies, although the systems used for the two houses are the same type.
39. Eckhard JESSE, "The West German Electoral System: The Case for Reform, 1949-1987", West European Politics, vol. 16, 1987, p. 445. For more details on the alliances formed in 1953, see James K. POLLOCK, *loc. cit.*, note 36, pp. 115-119.
40. This has also been the case in Venezuela and Bolivia. In Mexico, the second vote was introduced only in 1977.

A FEW EMPIRICAL GENERALIZATIONS

Keep in mind, then, that the second vote exists in the overwhelming majority of cases. What more can we learn from the experiences of other countries in this area?

First, **the existence of a second vote simplifies the task of small political parties.** If seats are distributed on the basis of votes for constituency candidates, the parties are compelled to run candidates in *all* constituencies if they wish to make the most of their potential vote. This requirement is usually no problem for the big parties. For the small ones, and especially for the very small parties, it may prove difficult to recruit enough candidates, even symbolic ones, especially if candidacy requires a deposit or many signatures. If, however, a voter can cast a second vote for a list, a small party may present a list with only several names, and field only very few or no constituency candidates, since they really have no chance of getting elected at that level. Each voter, wherever he or she lives, may support that party through the list vote, which becomes the most important vote. One can even argue that it is much more rational under such conditions for a very small party to present only a list and to boycott individual constituency races.[41]

The second vote is therefore a windfall for small parties because it enables them to make the most of their vote at less cost. This factor helped contribute to its introduction in the Länder from the 1970s on. In each case, the ruling party had to make this concession to the small party that was its coalition partner at the time.

Second, **it is difficult to anticipate the number of voters who will split their allegiances and to predict the future impacts on the relative strengths of the different parties.** It is theoretically possible that almost all voters will vote both for a party candidate and for the list presented by the same party. It is also possible that a high number of voters will support a party list while voting for a constituency candidate affiliated with a different party ("split voting"). In the latter scenario, the divided allegiances of many voters may tend to cancel each other out and consequently produce only small differences between party standings for the first and second votes. Or the two standings may differ significantly.

In light of experiences of other countries on this point, **all of these scenarios are plausible**. Initially, relatively minor differences were observed between the distribution of the first and second votes in German federal elections beginning in 1953, and it was worth wondering whether the second vote was truly indispensable. Starting in the 1970s, however, voters began to split their allegiances in larger numbers. In federal elections, ballots marked for a party other than that of the candidate ("split ballots") reached about 20% of the total in 1998 and 22% in 2002.[42]

In societies where personalized PR has been subsequently introduced, voters seem to have taken a liking to split voting much more quickly. In the first elections in Scotland and Wales (1999), the corresponding figures were respectively 21% and 19%. In 2003, 28% of the Scots and 17% of the Welsh had divided allegiances. In New Zealand, the phenomenon has reached exceptional proportions, with 37% casting split ballots in the 1996 election, 35% in 1999, and 39% in 2002.[43]

The steady rise of split voting in postwar Germany and its immediate popularity in societies where this possibility has been later offered to voters probably results from the decline of party fervour, in particular among younger generations.

As mentioned above, conflicting allegiances, even if held by many voters, tend to cancel each other out. So the net spread between the two standings of one party is usually not very great. Seldom does it exceed 4 percentage points, and the 9.6 point spread between the two standings of New Zealand's National Party in the 2002 election is quite exceptional.

41. Such was the choice for example of the Scottish Greens in 2003, of the oldline Italian Communists in 2001, and the far right DVU in the Land of Saxony-Anhalt in 1998.
42. See the chart in Richard HILMER and Nicolas SCHLEYER, "Stimmensplitting bei der Bundestagswahl 1998", in Jan Van Deth, Hans Ratlinger, and Edeltraud Roller, *Die Republik auf dem Weg zur Normalität? Wahlverhalten und politische Einstellungen nach acht Jahren Einheit*, Opladen, Leske & Budrich, 2000, p. 174. For 2002, our personal computations were made on the basis of the official election report. Interestingly, the propensity to split allegiances increases with educational level and decreases with age.
43. R.J. JOHNSTON and C.J. PATTIE, "Campaigning and Split-ticket Voting in New Electoral Systems: The First MMP Elections in New Zealand, Scotland and Wales", *Electoral Studies*, vol. 21, 2002, pp. 583-600; Jack VOWLES, "What Happened at the 1999 Election?", in Jack Vowles et al, *Proportional Representation on Trial. The 1999 New Zealand General Election and the Fate of MMP*, Auckland, Auckland University Press, 2002; pp. 83-98; NEW ZEALAND ELECTORAL OFFICE, table available on the Web: www.electionresults.govt.nz/splitvotes/SummaryofVotesSplitting.html (June 9, 2004).

Third, when a voter has two votes, **the big parties are generally better at winning first votes than second ones, and the reverse is true for the small parties**. This trend is aptly illustrated by two relatively recent German Land elections (February 2003). In Lower Saxony, the CDU won 48.3% of party votes (second votes) and 52.2% of constituency votes (first votes).[44] In Hesse, the CDU won 48.8% of list votes and 52.0% of constituency votes. The reverse is true for small parties. In Lower Saxony, for example, the FDP won 8.1% of party votes versus 4.4% of constituency votes.

Table 14 confirms this reality. We reviewed 61 federal and Land elections in Germany (except for Bavaria), New Zealand, Scotland, and Wales and we compared, wherever the voters had two votes, the overall performance of the big parties in winning constituency votes and party votes in each election. *In 80% of the cases, the big parties had a better standing for the constituencies than for the list.* The exceptions to this trend are localized (19 out of 25 are from eastern Länder), but even among those cases the first vote usually favours big parties more than does the second vote.[45] Another finding is that the spreads tend to increase over time. In the 2002 German federal election, the spread between the first and second votes was 2.6 percentage points for the CDU/CSU and 3.4 points for the SPD, whereas in 1957 the corresponding figures were respectively 0.1 and 0.2 points.

Table 14

COMPARISON OF CONSTITUENCY VOTES AND LIST VOTES FOR BIG PARTIES WHEN THE VOTER HAS TWO VOTES

Elections	Constituency votes			Number of cases
	> Party votes	< Party votes	Equal	
Bundestag (1953-2002)	**36**	1	5	42
Western Länder (1979-2003)	**41**	3	0	44
Eastern Länder (1990-2002)	**40**	19	1	60
New Zealand (1996-2002)	**6**	0	0	6
Scotland (1999-2003)	**8**	0	0	8
Wales (1999-2003)	**6**	2	0	8
TOTAL	**137**	25	6	168
%	*81.5*	*14.9*	*3.6*	*100.0*

44. Because the first figure is the one that counts for seat distribution, the party just missed getting a majority in the Landtag.

45. In Bavaria, the CSU still does a bit better in winning second votes than first votes, whereas the reverse is still true for the SPD. The second vote in Bavaria has a different meaning, since it is cast for a specific candidate on a list, and not for the list as a whole. Even if we add the Bavarian data, the relative advantage of big parties in winning constituency votes clearly remains.

Table 15

REJECTED BALLOTS AS A PERCENTAGE OF ALL VOTES CAST IN THE LAST GERMAN FEDERAL AND LAND ELECTIONS

Elections where the voter has only one vote		Elections where the voter has two votes		
Personalized PR		Personalized PR	Rejection %	
			1st vote	2nd vote
Baden-Württemberg (2001)	1.00	Federal election (2002)	1.50	1.20
		Lower Saxony (2003)	1.50	1.30
North Rhine-Westphalia (2000)	1.00	Bavaria (2003)	1.20	1.90
		Berlin (2001)	2.00	1.30
Classic PR		Brandenburg (2004)	2.90	2.10
		Hesse (2003)	3.00	2.30
Bremen (2003)	1.20	Mecklenburg-West Pomerania (2002)	2.80	2.40
		Rhineland-Palatinate (2001)	3.30	2.50
Hamburg (2004)	0.80	Saxony (2004)	3.10	1.80
		Saxony-Anhalt (2002)	2.80	2.50
Sarreland (2004)	2.50	Schleswig-Holstein (2000)	2.30	1.40
		Thuringia (2004)	5.10	4.10
Mean	**1.30 %**	**Moyenne**	**2.62**	**2.07**

This spread arises largely because small parties usually do not field candidates in all constituencies, or even field none at this level. If the voters had only one vote, we cannot say with any certainty that the votes would have been distributed in the same way as the proportion of constituency votes actually cast for each party. The small parties would have simply fielded candidates in more constituencies and probably achieved a performance similar to the one they achieved with the list vote.

Fourth, **the existence of a second vote is associated with higher levels of rejected ballots**. For example, voters might erroneously cast their two votes for different constituency candidates, or for two different party lists. In such cases, the ballot would be rejected. Experience suggests that this fear is not totally unfounded. The double vote clearly tends to produce a higher rate of rejected ballots than does the single vote.

To see this relationship, we can first look at Table 15, which gives the percentage of rejected ballots in the last German federal and Land elections.

This table suggests that the rate of rejected ballots roughly doubles when the voter has two votes. The analysis, however, should be pursued further. It might be that voters in some territories have a greater propensity to cast rejected ballots than voters in other territories. In fact, in federal elections, invalid votes tend to be more frequent in the eastern Länder than elsewhere. Fortunately, we can control this factor by comparing, where possible, for a given territory, the rate of rejected ballots in federal elections since 1953 (in which the voter has two votes) with the corresponding rate for Land elections in Länder where the voter at the time had only one vote. As may be seen in Table 16, **the rejected ballot rates are systematically higher with two votes than with only one**. For example, in the Land of Lower Saxony, the mean rate of rejected ballots from 1954 to 1986 in Land elections (single vote) was only 0.9% versus 1.9% (first votes) and 1.8% (second votes) in federal elections from 1953 to 1987.

Table 16

COMPARISON OF REJECTED BALLOT RATES BY ONE-VOTE BALLOT (LAND ELECTIONS) AND TWO-VOTE BALLOT (FEDERAL ELECTIONS)

Land	Mean of Land elections (one vote)		Mean of federal elections (two votes)		
	Years	Rejection %	Years	Rejection %	
				1st vote	2nd vote
Schleswig-Holstein	1954-1996	0.90	1953-1994	1.60	1.69
Hesse	1954-1987	1.26	1953-1987	2.15	2.29
Lower Saxony	1955-1986	0.94	1953-1987	1.94	1.79
Rhineland-Palatinate	1955-1987	1.59	1953-1987	2.53	2.24
North Rhine-Westphalia	1954-2000	1.01	1953-2002	1.73	1.48
Baden-Württemberg	1952-2001	1.56	1953-2002	2.10	2.10
Bremen	1955-2003	0.96	1953-2002	1.51	1.64
Hamburg	1953-2004	1.15	1953-2002	1.28	1.14
Sarreland	1955-2004	2.03	1957-2002	2.91	2.85

Table 17

COMPARISON OF RATES OF REJECTED BALLOTS

Land	Mean of the five elections preceding introduction of the second vote		Mean of subsequent elections (two votes)		
	Years	Rejection %	Years	Rejection %	
				1st vote	2nd vote
Schleswig-Holstein	1983-1996	0.70	2000	2.33	1.37
Berlin	1958-1975	1.18	1979-2001	2.36	1.47
Hesse	1974-1987	0.92	1991-2003	2.47	2.00
Lower Saxony	1970-1986	0.68	1990-2003	1.68	1.35
Rhineland-Palatinate	1971-1987	1.16	1991-2001	2.97	2.23

The third possible control would be to compare, for the same territory, rejected ballot rates *before* and *after* introduction of the second vote. In federal elections, voters had only one ballot in 1949 and rejected ballots accounted for 3.1% of the total. With two votes, the corresponding rate in 1953 was 3.4% (constituency vote) and 3.3% (list vote). The same comparison is possible for Land elections in the following Länder: Schleswig-Holstein, Berlin, Hesse, Lower Saxony, Rhineland-Palatinate. Table 17 compares the mean rates of rejected ballots in the *five* elections preceding introduction of the second vote and the mean rates subsequently. The rates almost doubled after introduction of the second vote.

This trend does not seem to be peculiar to Germany. In New Zealand, the mean rejected ballot rate was 0.53% in the last five elections with a pure first-past-the-post system and, of course, only one vote per voter. In the three elections since introduction of the MMP system, the rate climbed to 0.59% for party votes and to 1.34% for constituency votes. The same pattern appears for rejected ballots in Scotland and Wales.[46]

46. Scotland had a rejected ballot rate of 0.29% in the 2001 election for the Parliament of Westminster (only one vote) versus 0.39% in the 1999 Scottish election and 0.82% in the 2003 election. In Wales, the corresponding figures were 0.56% (Westminster, 2001) and 1.37% (2003 Welsh election). See *Changed Voting Changed Politics. Lessons of Britain's Experience of PR since 1997. Final Report of the Independent Commission to Review Britain's Experience of PR Voting Systems*, London, The Constitution Unit, April 2003, p. 46.

Fifth, **the two votes open the door to votes being swapped between parties**. For example, the small parties give up constituency votes in "exchange" for party votes from their bigger partners. They are thus able to clear the 5% bar and take part in list seat distribution. If a big party trails slightly behind its main rival in the polls, while planning to ally itself after the election with a like-minded small party, the big party stands to gain if the small one gets at least 5% of the second votes and sits in Parliament. When such a prospect seems uncertain, the big party's supporters may be tempted to cast their second vote for the small party, and enough of them will likely be sophisticated enough to calibrate their choices to this end. After all, it is better to have a 3-party parliament and be the dominant partner in a winning coalition than to have a 2-party parliament and sit in the opposition! Such a computation explains why, beginning in the 1970s, some voters supported the SPD in their constituencies and cast their second vote for the FDP.[47] After a reversal of parliamentary alliances in 1982, some CDU/CSU supporters did likewise. The same behaviour has been recently observed among SPD voters, to the benefit of the Greens. Such a sharing of allegiances lets voters indicate the future government coalitions they prefer.

One of the authors to investigate this question in Germany has severely criticized such practices and has advocated going back to a single vote.[48] If we judge by the number of Länder that have introduced a second vote since then, he has gone largely unheard.

Sixth, **the existence of a second vote may profoundly disturb the normal operation of a compensatory system**. This system takes for granted that the political players will play fair, by fielding constituency candidates and party lists under the same label. If a party is entitled to a total of 50 seats and has won 10 constituency seats, the difference between the two figures will be its number of list seats (40). If, however, the same party runs under two different labels, this subtraction cannot be done correctly and the logic of compensation is totally distorted.

Unknown in Germany so far, this tactic was used in the 2001 Italian election. Voters have two votes for the election to the Chamber of Deputies. One is cast for a candidate in a local constituency (*collegio*) and the other for a party list in a larger region (*circoscrizione*). List seats are assigned on the basis of the second vote, *minus the winning margins of elected collegi members*. The list votes are thus corrected by the local constituency votes. This technique, called scorporo, reduces the share of the party with the most single-member seats. It thus creates a compensatory effect.

This system was shrewdly exploited by Silvio Berlusconi's party, which fielded most of its *collegi* candidates under a label different from the one ("Forza Italia") of its list candidates. The name chosen for this purpose was "Abolizione Scorporo." The Left used the same subterfuge to limit the damage. Under these conditions, the list votes for Forza Italia were *not* subtracted from the winning margins of its elected *collegi* members (since they had gone to "another" party). They were given more weight than they ought to have under the law and the party thus received a number of list seats almost proportional to its percentage of list votes. The compensatory effect of the list seats was almost entirely eliminated and these seats were distributed in a non-compensatory manner, contrary to the normal operation of the system.

Even though it has never been used, this manœuvre does appear to be possible in Germany when the voter has two votes. It seems to be impossible if the voter has only one constituency vote, as seen in the results of the Italian Senate election held at the same time. Because the Senate seats are distributed on the basis of constituency votes, it becomes counterproductive and disastrous to hide constituency candidates behind false labels.

47. See Geoffrey K. ROBERTS, "The 'Second-Vote' Campaign Strategy of the West German Free Democratic Party", *European Journal of Political Research*, vol. 16, 1988, pp. 317-337.
48. Eckhard JESSE, *loc. cit.*, note 39, pp. 444-446.

Chapter 7
Should Voters Be Allowed to Indicate Preferences among List Candidates?

The question in the title of this chapter is relevant only if two conditions are met. Voters must have two votes and compensatory seats must be distributed on the basis of lists presented by political parties. If the seats are instead assigned to the highest-scoring defeated constituency candidates, there is no list and *a fortiori* no individual preferences can be expressed for candidates on the list.

If party lists are used, two approaches become possible. List members may be given seats in the order they appear on the party list. This is called the "closed list" procedure. Whoever decides the list order of candidates largely decides who will be the elected members. This system does not let the voter change the list order of candidates, and a dissatisfied voter has no other choice than to cast his or her vote for another party or not vote at all.

Some have looked for a procedure whereby voters can change the list order by expressing one or more preferences for list candidates of the party they support. This is *preferential voting*, not to be confused with Australia's alternative vote system. If, when preparing their lists of candidates, party authorities grossly ignore voters' wishes, the voters have a way to change the order of candidates and increase the chances of success for those further down the list. The same possibility is offered voters by *panachage*, whereby a voter can redistribute names from several party lists into a list with names in his or her order of choice.

In compensatory systems, the closed list is used almost everywhere and has always been dominant in the past. Bavaria is the only jurisdiction where voters, in addition to electing a constituency candidate, can express an individual preference for one of the list candidates.

To this end, two separate ballots are printed for each constituency. The first one, for election of the constituency member, contains only the names of local candidates. The second one is much bigger (about the size of an unfolded newspaper) and names each of the list candidates fielded by the different parties within the region.[49] In a big region, the second ballot may contain very many names (since the names of all party candidates must be listed) and may be as large as one might imagine. In the region of Upper Bavaria in 2003, where about forty list seats were up for grabs, the second ballot had 469 names!

When marking the name of one of the list candidates on the second ballot, the voter expresses a wish not only to see this vote count in seat distribution for the candidate's party, but also to see that candidate get elected rather than others if the list has enough electoral support. A further refinement: the second ballot in a constituency omits the names of party candidates who are running for that constituency (the second ballot will therefore be different for each constituency within the same region). Because the voters can choose only a list candidate who is not running for their constituency, preferential voting becomes a measure of the candidate's renown or popularity outside his or her constituency. To enable each constituency candidate to make the most of potential electoral support, the law requires that all constituency candidates of the same party must also be on that party's list. The party may also include the names of other candidates on its list.

Seat distribution among the parties is calculated for each party from the total (*Gesamtstimme*) of all first and second votes. The same principle is followed to measure the personal popularity of candidates on the same list. For each candidate, one adds up the individual votes received as constituency candidates and the preferential votes received in the other constituencies of the same region. The list may also include the names of other candidates from the same region. The result is a new order of candidates that may differ from the one determined by the party. With this new order, the list seats assigned to a party may go to one individual rather than to another.

This system gives a candidate an incentive to run on both levels, i.e., in a constituency and on a list. Personal votes received in his or her own constituency will be added to the more random ones he or she will receive elsewhere in the region. Candidates who are only on a list will be at a disadvantage from the outset.

49. When the closed list system is used, there is no need to reproduce the complete list of each party's candidates on the ballot. It is enough to give the name of the party (as in New Zealand) and assume that the voters are familiar with the complete list. Alternately, as with the German practice, the ballot may present, in the space provided for each party, only the first five names on the list (in Lower Saxony and Saxony-Anhalt, only three names are given and in Berlin only two).

To our knowledge, there is no detailed study on the impact of individual preferences on Bavarian elections. We have, however, analyzed detailed results of the last two elections (1998 and 2003) and found that the voters take very seriously the possibility available to them of changing the list order of candidates—demoting less popular individuals and promoting others who were initially low on the list.[50] In 1998, the individual preferences of voters helped elect poorly positioned candidates in no fewer than 20 cases (out of 100 elected list members), a far from negligible result. In 2003, the impact of preferences seems to have been even greater. By our computations, they led to the defeat of 25 advantageously positioned candidates to the benefit of 25 others who were less so, out of a smaller total of 88 elected list members.

Figure 1 illustrates the impact of preferences in the region of Upper Bavaria (Munich and environs) in 1998. It looks like a game of snakes and ladders. On the left are the candidates in the order that the two main parties (CSU and SPD) placed them on their respective lists. On the right is the final order determined by voter preferences. Lines illustrate the impact of preferences for each candidate. For example, in the SPD, a candidate plummeted from 7th to 31st place, whereas another climbed from 16th to 2nd. The changes are even more impressive among CSU candidates, although this partly reflects the CSU's practice (in Upper Bavaria only) of imposing a personalized ranking only for the first 13 positions and letting the vagaries of the alphabet (from Bayerstofer to Zimmermann) determine the next 35. Still, it is worth noting Minister Ursula Männle's spectacular fall from the 3rd place assigned by her party to the 42nd decided by the voters' individual preferences. This ensured her defeat.

50. Our research confirms a brief passage in a study of the Bavarian political system by Peter JAMES, *The Politics of Bavaria. An Exception to the Rule*, Aldershot, Avebury, 1995, p. 80: "Many voters avail themselves of this opportunity […] An examination of what happens in practice reveals that the order of the candidates on party lists is frequently altered by the voters."

Figure 1

CHANGES IN THE ORDER OF EACH CANDIDATE ON CSU AND SPD LISTS AFTER PREFERENTIAL VOTING — REGION OF UPPER BAVARIA — 1998 ELECTION

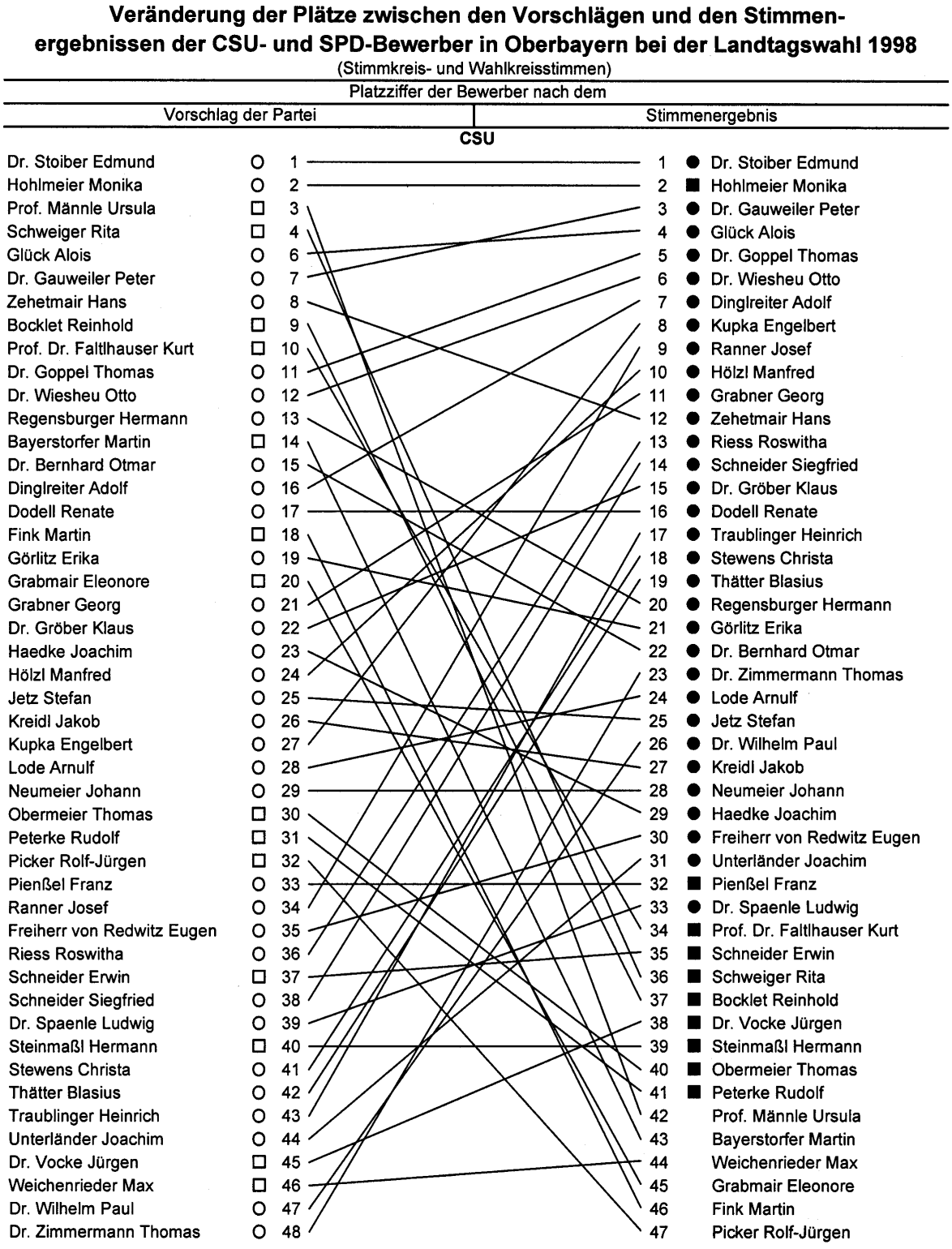
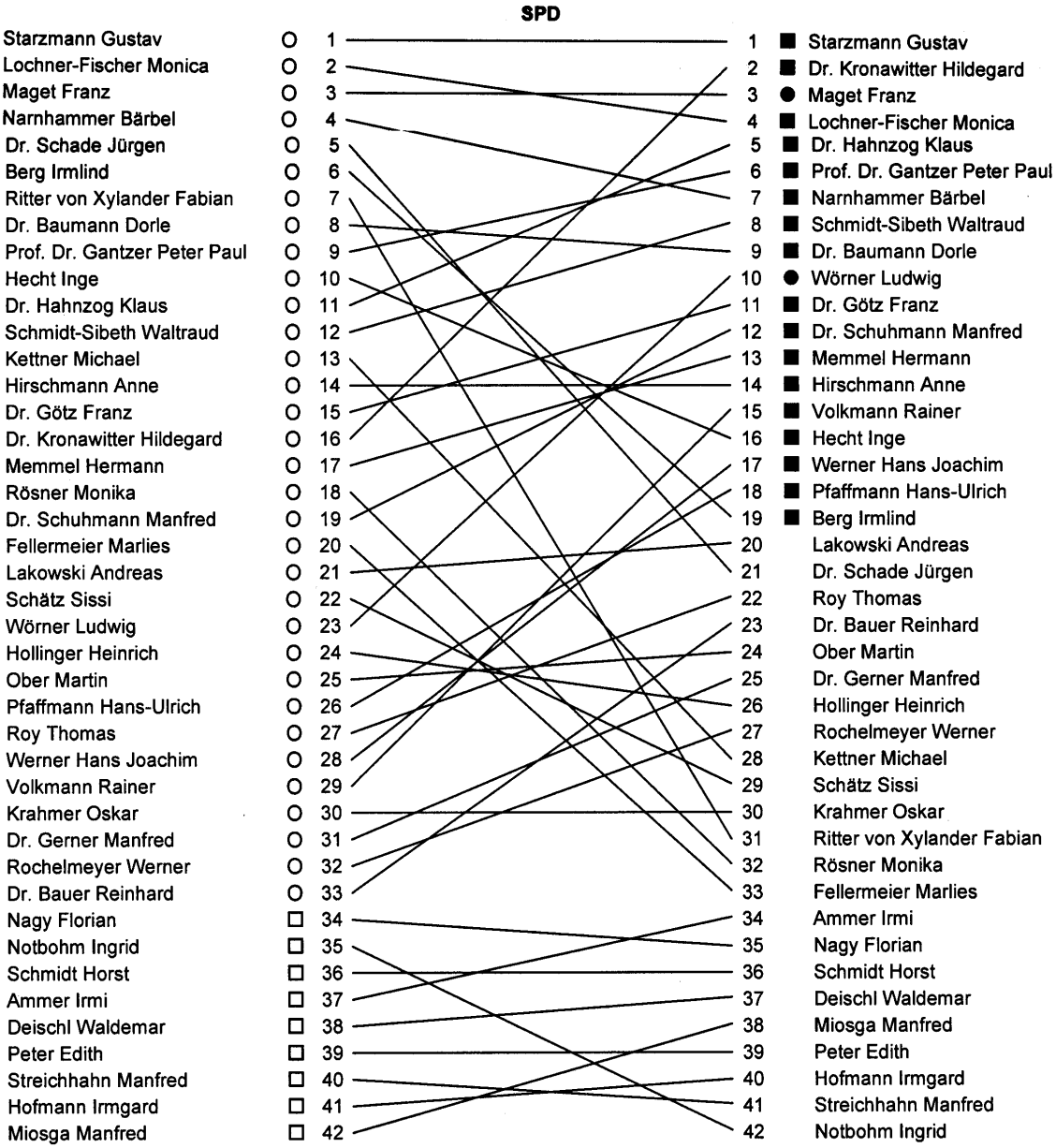


Figure 1

CHANGES IN THE ORDER OF EACH CANDIDATE ON CSU AND SPD LISTS AFTER PREFERENTIAL VOTING— REGION OF UPPER BAVARIA— 1998 ELECTION (CONT'D)



Source: http://www.statistik.bayern.de/lw/a-z/anhang.html

It is also worth noting that star party candidates tend to get a huge number of individual preferences. In 2003, for example, Minister-President Stoiber won a total of 752,493 votes, 54,068 of which came from his local constituency (*Stimmkreis* #110) and 698,425 from the other constituencies of the region of Upper Bavaria. This figure is almost ten times higher than the preferences cast for the CSU candidate who came in second (85,079) in the same region. The same happened with the SPD leader and candidate in the same region, Franz Maget (229,585 votes versus 49,369 for the SPD candidate, who came in second), and with most party list frontrunners in the different regions. These candidates were key to election success.

As a result of preferences, electoral rivalry between parties has a new level of competition between candidates of the same party within each region. A less popular incumbent may be turfed out of office to the benefit of another incumbent of the same party. This happened in Middle Franconia where Schuster, an SPD incumbent, outscored his colleague Hufer in 2003. The preference system tends to favour incumbents, who have the advantage of being known: 9 incumbents were demoted and 13 promoted. Of course, candidates may not appreciate the situation of double competition they are placed in and prefer that the party clarify the question *before* the electoral race begins.

In 1998, the individual preference system led to the defeat of 12 women to the benefit of the same number of men. In 2003, female candidates also suffered, but to a lesser degree. Although 8 women were among the 25 demoted candidates, 4 were among the promoted ones: in total, this system reduced the number of women elected to the Landtag by 4, versus 12 in 1998. The parties favour female candidates more than voters do, but the latter have the last word.

The impact of the preference system on Bavarian elections is greater than in many countries where voters are offered this possibility.[51] A possible explanation is that voters under the Bavarian system do not cast an overall vote for a party list *plus* one or more individual preferences, but rather a single vote for an individual on the list. The incentive to express an individual preference is at a maximum. If no preference is expressed, there is no vote for a party.

In a compensatory system where double candidacies are widely practised, the impact of preferences is offset by other factors. Many list candidates are excluded on election night because they have been elected in constituencies. The individual preferences they may receive have only a moral value. This was the case for the huge number of preferences cast for a leading personality like Minister-President Stoiber, who won his own constituency by a landslide anyway.

BALANCE SHEET

The possibility for voters of changing the list order of candidates is attractive in itself. It prevents parties from grossly manipulating list preparation and gives voters a sense of being the only ones who decide. It notably allows voters to punish incumbents who have performed inadequately. The Bavarian experience shows that voters take the possibility offered them very seriously, especially if they live in large urban centres, and that the preference system has a major impact on which list candidates get elected. The Bavarian voting procedure is nonetheless complex, though it does not seem to have delayed the proclamation of winning candidates in 2003.

51. See on this point Richard S. KATZ, "Intraparty Preference Voting", in Bernard Grofman and Arend Lijphart (ed.), *Electoral Laws and Their Political Consequences*, New York, Agathon Press, 1986, pp. 85-103, and Michael MARSH, "The Voters Decide? Preferential Voting in European List Systems", *European Journal of Political Research*, vol. 13, 1985, pp. 365-378.

SECTION III

DESIGNATING AND REPLACING ELECTED MEMBERS

PR proponents are above all concerned with ensuring a mathematically correct representation for each party. Thus, they sometimes tend to forget that the election is not only about assigning "seats" to parties but also about designating flesh and blood individuals for these seats. In our electoral reform report, we wish to look at the way people will be designated for compensatory party seats and the way these members will coexist with constituency members.

In our opinion, this question is important to Québec's citizens, who are accustomed to voting (at least formally) for individuals and being able to meet them during their term of office. It is also important, perhaps even more so, to current MNAs, who worry about now seeing MNAs elected by other means at their sides. A major fear expressed by politicians is that formally or informally there will be two classes of MNAs differentiated not only by their mode of election, but also by the nature of their work, by their respective prestige, by their career opportunities, and even by their pay.

Countries that have adopted compensatory mixed systems have managed to avoid this pitfall, and the oft-heard assertion that there exist in Germany and elsewhere "two classes of elected members" constantly at war has no serious basis in fact. Our analysis of experiences in other countries has convinced us that those who feel it has a basis are unfamiliar with the general practice of double candidacy. To be more precise, because the overwhelming majority of members elected to compensatory seats have also run at the same time in constituencies, and retain official ties during their terms of office with these constituencies, coexistence between differently elected members raises less of a problem.

Chapter 8
Two Classes of Elected Members?

THE ACCUSATION

All of the systems examined in this report have members elected in constituencies and members elected in larger entities. The key objection to such systems is that they would have the undesirable effect of creating two "classes" of elected members.

Beyond this catchword, the arguments are often contradictory. For some, list members will become a privileged caste. They will be high-profile technocrats, effortlessly elected by just being on a list, exempt from all constituency work, cut off from reality, and free to attend to more noble tasks or attend to nothing at all. They will become a pool of potential ministers and will monopolize positions of influence. At the bottom of the ladder will be the constituency members, specializing in the role of mediator or ombudsman, settling joyfully or joylessly a multitude of voter grievances, and doing their job so well that they will be deemed unfit for ministerial duties. A Canadian federal MP has even suggested that list members should sit not on the floor of the House but in a raised balcony from which they could look down on the rank and file of constituency members…

Just as assuredly, others predict exactly the opposite: constituency members will be perceived as the only "true" members notably because of the regular contact they have with their voters. List members will be second-class members, cut off from reality, recruited from a closed circle of favourites by the party leader, who alone will determine their presence on the list. They will be given the respect due to people who have not fought like the others. Their role will just be to add one more aye or nay whenever a vote is called.

WHAT HAPPENS IN REALITY?

In neither case is the nightmare scenario ever supported with empirical proof. It seems that a categorical tone of voice frees the originator from any effort of verification. No one seems to envision another scenario, which could be put in these words: the distinction among members based on mode of election will be very secondary to the many distinctions based on party membership, individual calibre, or assigned parliamentary duties; and this will not interfere with the way Parliament operates, nor will it affect the career prospects of these members. They will substantially do the same work.

If we go by the experience of countries with a compensatory mixed system, this scenario is most likely to be the right one. The literature on mixed systems seldom refers to the existence of parliamentary "castes" or of list members being snubbed by "real" members or conversely snubbing their lowly colleagues from "stagnant pools." Instead, it often and explicitly stresses an absence of problems due to coexistence of differently elected members from different territorial levels.

Summing up the German literature on the subject, Geoffrey K. Roberts writes, "There is practically no difference — once elected — in the status or behaviour of constituency candidates and list candidates. Constituency candidates may have certain additional engagements and duties in the constituency, but, since most list candidates have contested constituencies — and perhaps hope to do so again — they, too, will 'nurse' constituencies and undertake engagements there."[52] Alfred Grosser wrote in 1970: "There has never been any distinction between the two categories, either in Parliament or in public opinion."[53] Eckhard Jesse confirms this viewpoint: "The view that the West German system produces two 'classes' of representatives is based on an illusion. That apparent division is of no importance — especially not for the general public: voters do not usually know whether a Bundestag member was directly or indirectly elected."[54] The same author adds, "The assumption, that the two-vote system produces two kinds of MP, the constituency MP and the *Landesliste* MP, is empirically refutable. Contrary to widespread opinions, it is of absolutely no importance whether a mandate is obtained through the constituency and the *Landesliste*. Double candidatures are the rule. The voters do not perceive the difference at all. The FDP is not disadvantaged by the fact that it does not have any constituency MP."[55] To the question: "Does the mixed electoral system produce a caste system of members?", Tony Burkett replies: "This has frequently been put forward as an argument against the mixed system. There is no objective evidence to support the case. Constituency members and List members are equally well represented in Cabinets, caucus organization and party hierarchies. Not surprisingly, deputies to whom the author has made this point have, without exception, rejected it."[56] He also notes that voters tend to

52. Geoffrey K. ROBERTS, "The German Federal Republic: The Two-lane Route to Bonn", in Michael Gallagher and Michael Marsh (ed.), *Candidate Selection in Comparative Perspective. The Secret Garden of Politics*, London, Sage, 1988, p. 114.
53. Alfred GROSSER, op. cit., p. 252. Also see Anne-Marie LE GLOANNEC, *La République Fédérale d'Allemagne*, [N.p.], Éditions de Fallois, coll. Livre de poche, 1994, p. 74.
54. Eckhard JESSE, *loc. cit.*, note 39, p. 446.
55. Eckhard JESSE, "Split-voting in the Federal Republic of Germany: An Analysis of the Federal Elections from 1953 to 1987", *Electoral Studies*, vol. 7, no. 2, 1988, p. 120.

communicate just as well with constituency members as with list members, the MP's party allegiance being for the voter the main factor that determines the priority of contact. List members receive as much mail from their constituents as do constituency members.57 In total, 87% of constituency members attach a lot of importance to constituency work, but so do 72% of list members.[58] The most one can establish is that list members think less than their colleagues that their chances of re-election will depend on getting construction projects for their constituency[59] and they are a little less likely to sit on parliamentary committees, such as transport and agriculture, which deal with more local issues.[60] We have met several people who have had an opportunity to experience daily parliamentary life in Germany or observe it at close range, so we can certify that this academic literature only reflects reality.

In societies previously accustomed to electing only constituency members, the introduction of a second group of list members elected in larger territories might conceivably generate serious conflicts and lead to the system being called into question. Such has not been the case. In New Zealand, the only article on this question concludes that although list members are considered by some to be second-class members the problem has less to do with reality than with a mistaken perception.[61] Had this problem taken on serious proportions, it would have come to the notice of the members themselves. Yet a report published in 2001 by a New Zealand parliamentary committee on the operation of the MMP system does not even make any mention.[62] Scotland's experience appears to have been more laborious, some regional members tending to compete unfairly with the duly elected constituency member, and some constituency members having trouble accepting that another member has set up shop in "their" constituency. Still, several of the latter admit that the voter wins from this rivalry.[63]

For there to be "classes of elected members," list members would have to be grouped in the House of Parliament, either with the best seats or the worst ones. Next, the pay for list members should be higher or lower than their colleagues'. Finally, and above all, list members should either systematically hold the highest positions in the parliamentary and governmental hierarchy or be systematically excluded. What happens in reality?

a) Seating arrangement

Nowhere in the main parliaments using a compensatory mixed system does the seating arrangement in the house take account of the members' mode of election. In this regard, we have examined the assignment of seats in eight Länder, in New Zealand, and in Wales. Everywhere, the rule is to group together the members of the same party. Nowhere is there a tendency to group list members side by side, independently of the party they belong to. Nor is there a tendency within each party caucus to group list members together. Often, seats are assigned in alphabetical order, except for the front seats reserved for caucus chairs, this being the practice in almost all parliaments.

b) Pay

Nowhere does an MP's pay reflect the type of parliamentary mandate he or she holds. The base pay is the same everywhere.[64] Supplementary benefits are paid to some members for the special duties they perform (e.g., speakers and deputy speakers), but none are paid to members simply on the basis of their type of parliamentary mandate.

c) Career prospects

Will list members become the aristocrats of parliamentary life or, on the contrary, its outcasts? The best way to answer this question is to examine, in societies using a compensatory mixed electoral system, the type of parliamentary mandate held

56. Tony BURKETT, "The West German Deputy", in Vernon Bogdanor (ed.), *Representatives of the People? Parliamentarians and Constituents in Western Democracies*, Aldershot, Gower, 1985, p. 130.
57. *Ibid*., p. 129.
58. Wolfgang ISMAYR, *Der Deutsche Bundestag. Funktionen, Willensbildung, Reformansätze, Opladen,* Leske, and Budrich, 1992, p. 75. For a similar observation in Brandenburg, see Bastian GIEGERICH, "Was Macht ein Volksvertreter den Ganzen Tag?", in Suzanne S. Schüttemeyer et al., *Die Abgeordneten des Brandenburgischen Landtages: Alltag für die Bürger*, Potsdam, Brandenburgische Universitätsdruckerei und Verlagsgesellschaft Potsdam mbH, 1999, p. 119.
59. Thomas D. LANCASTER and W. David PATTERSON, "Comparative Pork Barrel Politics. Perceptions from the West German Bundestag", *Comparative Political Studies*, vol. 22, no. 4, 1990, pp. 458-477.
60. Thomas STRATMANN and Martin BAUR, "Plurality Rule, Proportional Representation, and the German Bundestag: How Incentives to Pork-Barrel Differ Across Electoral Systems", *American Journal of Political Science*, vol. 46, no. 3, 2002, pp. 506-514.
61. Leigh J. WARD, "'Second-class MPs'? New Zealand's Adaptation to Mixed-Member Parliamentary Representation", *Political Science*, vol. 49, no. 2, 1998, pp. 125-145.
62. NEW ZEALAND HOUSE OF REPRESENTATIVES, MMP Review Committee, *Inquiry into the Review of MMP. Report of the MMP Review Commitee*, Wellington, August 2001.
63. Thomas LUNDBERG, "Putting a Human Face on Proportional *Representation*: Early Experiences in Scotland and Wales", Representation, vol. 38, no. 4, 2002, p. 282.
64. Scotland, however, does have lower allowances for regional MPs. New Zealand will not pay list MPs constituency allowances.

by members who hold the most highly prized offices of parliament: government leader, minister, speaker, and caucus chair. Some authors have used this approach in the past.[65] We present here unpublished and more complete data, which encompass the main societies where compensatory systems exist. To our knowledge, no body of data of this size has been amassed to date.

The situation could be summed up as follows. For each prestigious duty, there are as many constituency members as list members. In general, however, **constituency members predominate**, not because they are held to be a superior class of beings, but simply because the governing party is usually the strongest one and most of its members come from constituencies, whereas the reverse is true for the other parties. Within a typical ruling coalition, the ministers from the strongest party largely represent constituencies, whereas the ministers representing the second coalition partner (e.g., the Greens in Germany) are all list members.

The house speaker, according to a tradition dating back to the 1920s, invariably goes in Germany to a member from the largest caucus, whether or not this party sits on the government side.[66] So this person too is usually a constituency member.

As for the caucus chairs, it all depends on caucus size. The caucuses of small parties are almost always chaired by list members for the simple reason that these caucuses have only this type of member. In the caucuses of bigger parties, the position is most often held by a constituency member, but may still go to a list member. Interestingly, the members of the most powerful caucus—constituency members for the most part—will at times readily give this prized position to a list member who seems to them the most competent choice.

We will now review the various offices of parliament.

HEADS OF GOVERNMENT

a) Germany

Of the 14 heads of government currently in office at the federal level and in the Länder that use a system of personalized PR, 11 are constituency members, 2 are list members, and 1 is not an member.

We succeeded in retracing the parliamentary status of all federal and Land government leaders, except for 3, ever since this type of system came into effect. Out of 72 individuals identified, 48 were constituency members, 8 were list members, and 6 were alternately list and constituency members during the period they led the government. Finally, 5 were not members and 4 others became constituency members after leading the government without sitting in Parliament. One person was successively a list member, a constituency member, and seatless in Parliament.

Of the seven federal chancellors in office since 1949, three (Adenauer, Erhardt, and Schmidt) were constituency members and two (Brandt and Schröder) were list members. Helmut Kohl was successively a list member (1982-1990) and a constituency member (1990-1998). On becoming chancellor during the life of a Parliament, Kurt Georg Kiesinger (1966-1969) had no parliamentary mandate and could not get one because of the absence of by-elections.[67]

Helmut Kohl's case is interesting. He was the Minister-President of Rhineland-Palatinate (1969-1976), and in 1973 was elected federal president of the CDU. He was a candidate for the chancellor's office in the 1976 election, and he ran both in the constituency of Ludwigshafen, his hometown, and as list frontrunner in the Land. Ludwigshafen was not a safe party seat and he was defeated there, but he entered the Bundestag through the list. The same scenario took place in 1980, 1983, and 1987. In 1990, in the euphoria of reunification, he succeeded in getting elected in Ludwigshafen (while still taking care to put his name on the list) and repeated this feat in 1994. In 1998, when his party lost power, he was personally defeated in his constituency but was saved by the list. Nothing indicates that his constituency setbacks in any way undermined the personal authority of the longest-lasting party leader and government leader in the history of the Federal Republic of Germany. Two Kohl biographies, including one full of details on his rise to power, make no mention of his successes or failures in this area.[68]

In the Länder, the government leader bears the title of Minister-President, except in Hamburg, Bremen, and Berlin, where he is called "burgomaster" (mayor). More than at the federal level, the constituency mandate is clearly the dominant one and the government leader seldom holds a list mandate. The ratio between the two categories at this level is 9 to 1. This tendency holds true in all Lands.

65. This is notably the case with Gerhard LOEWENBERG, *Parliament in the German Political System*, Ithaca, NY, Cornell University Press, 1967, p. 82.
66. Antoine SANTSCHY, *Le droit parlementaire en Suisse et en Allemagne,* Neuchâtel, Éditions Ides et Calendes, 1982, p. 76.
67. Kiesinger won a constituency seat at the first opportunity (1969 election) but shortly after lost the office of chancellor.
68. Jean-Paul PICAPER and Karl Hugo PRUYS, *Helmut Kohl*, Paris, Arthème Fayard, 1996; Henrik BERING, *Helmut Kohl*, Washington, Regnery Publishing, 1996.

When held by an elected member, a list mandate is sometimes a conscious and deliberate choice, the member not having run in any constituency. This was the case, for example, with Björn Engholm in Schleswig-Holstein (1988 and 1992 elections) and Kurt Biedenkopf in Saxony (1990, 1994, and 1999 elections).

Sometimes, it is more a last resort imposed by circumstance. For Hans Filbinger in Baden-Württemberg (1972), it resulted from an unexpected defeat in his constituency at the hands of his former Minister of Justice. The same scenario happened to Hans Eichel in Hesse (1995) and to Klaus Wowereit in Berlin (2001). In such cases, the government leader's authority does not seem to have suffered.

There are also exceptional cases where the government leader does not sit in the Landtag. This is permitted in all Länder except North Rhine-Westphalia, where the Landtag must elect the Minister-President from among its own members. In some cases, the future leader was not an election candidate and was asked to lead the government after the victory (case of Georg August Zinn in Hesse in 1950 and Walter Bartram in Schleswig-Holstein the same year),[69] or he was careless enough to run only on the list and was not elected (such as Wolfgang Böhmer in Saxony-Anhalt in 2002). The most common scenario is to seek a parliamentary mandate at the first opportunity, which comes at the next general election.

b) New Zealand, Scotland, and Wales

In jurisdictions of British heritage that have adopted a compensatory mixed system, the predominance of constituency members among government leaders is almost total. In New Zealand, this has been the case with Jim Bolger (1996-1997), Jenny Shipley (1997-1999), and Helen Clark (since 1999). In Scotland, the three government leaders ("first minister") in office since 1999 (Donald Dewar, 1999 to 2000; Henry McLeish, 2000 to 2001; and Jack McConnell since 2001) represented constituencies. In Wales, the first government leader ("first secretary"), Alun Michael, held a regional seat, but his successor Rodhri Morgan (since 2000) represents a Cardiff constituency.

MINISTERS

a) Germany

We examined the composition of federal German cabinets since 1949 and equivalent data for the following Länder: North Rhine-Westphalia and Lower Saxony (since 1947), Bavaria (since 1950), Baden-Württemberg (since 1952), Hesse (since 1954), Schleswig-Holstein (since 1947), and Saxony (since 1990). These are the only governments for which we could establish the parliamentary status of ministers. For Berlin and the other eastern Länder, we have only more fragmentary data that point in the same direction.

69. This was also the case with Friedrich Wilhelm Lübke in Schleswig-Holstein in 1951, Kurt Georg Kiesinger in Baden-Württemberg in 1958, Holger Börner in Hesse in 1976, Hans-Jochen Vogel in West Berlin in 1981, Werner Münch in Saxony-Anhalt in 1991, Berndt Seite in Mecklenburg-West Pomerania, Bernhard Vogel in Thuringia in 1992, and Matthias Platzeck in Brandenburg in 2002.

Table 18

PARLIAMENTARY STATUS OF MINISTERS IN OFFICE AT THE FEDERAL LEVEL AND IN THE LÄNDER

Parliament	Constituency members	List members	Not in Parliament	Members elected by indirect voting*	Total
Federal government (1949-2003)	**222**	134	42	16	414
North Rhine-Westphalia (1947-2003)	**102**	58	53	-	213
Lower Saxony (1947-2003)	**143**	54	50	-	247
Hesse (1954-2003)	**58**	48	26	-	132
Baden-Württemberg (1952-2003)	**110**	23	49	-	182
Schleswig-Holstein (1947-2003)	**101**	22	66	-	189
Bavaria (1950-2003)	**222**	64	38	-	324
Saxony (1990-2003)	**23**	5	22	-	50
TOTAL	**981**	408	346	16	1,751

* From 1949 to 1990, West Berlin members in the Bundestag were designated by the City Assembly of West Berlin. For a few months in 1990, the Bundestag included members designated by the parliament of the German Democratic Republic shortly before reunification.

Everywhere, generally speaking, there are fewer list members than constituency members in Cabinet. In total, the ratio is 10 to 4 for constituency members.

At certain times, the reverse is true. For example, when Kohl formed his first Cabinet in autumn 1982, his party had a minority in the Bundestag and most of his ministers were, like himself, list members. After his triumph in the 1983 election, most ministers in the new Kohl Cabinet came from constituencies because several ministers who previously held list seats had now won constituency seats.

On the qualitative level, examination of the list of portfolios held by list members suggests that no portfolio is inaccessible to them *a priori*. Over the long term, virtually all portfolios, including the most crucial ones, have been held at one time or another by a list member.

Ministers from the strongest parties clearly tend to come from constituencies, whereas the overwhelming majority of their colleagues from small parties are list members. At the federal level, for example, from 1949 to 2002, 19 of the 129 CDU/CSU or SPD ministers were list members versus 27 of their 35 FDP or Green colleagues.

A recent trend has led to a higher number of non-parliamentarians sitting in Cabinet, pending their running for and winning a parliamentary mandate in the next election. Sometimes, a member appointed to Cabinet chooses to resign from Parliament in order to be better able to handle the portfolio. The manœuvre is not risk-free. If dismissed from office, the ex-minister cannot regain his or her parliamentary seat before the next election.

b) New Zealand, Scotland, and Wales

In New Zealand, there were initially many list members in Cabinet: 9 out of 26 under Bolger (1996) and 9 out of 24 under Shipley (1997). This proportion declined with the advent of Helen Clark in 1999 (8 out of 26) and especially since her re-election (only 2 out of 28 in 2003).

The predominance of constituency members is even greater in Scotland. They held 18 of the 20 Cabinet seats during the first parliament (1999-2003) and 16 of the 18 Cabinet seats after the 2003 election.

In Wales, the number of constituency members has constantly been 8 out of 9 ministers since 1999.

HOUSE SPEAKERS

a) Germany

Currently, the speakers of all German parliaments represent constituencies, except for the speaker of the Berlin City Assembly who is a list member, having been defeated in the constituency he ran in.

This situation is nothing exceptional. Out of 82 speakers in office since the 1940s whose parliamentary status is known to us, 64 were constituency members, 11 were list members, and 7 were both while speaker (Table 19). Moderate in the Bundestag, the predominance of constituency members is overwhelming in the Länder. More in-depth research has found that list members are often defeated in the constituencies they run in.

Table 19
SPEAKERS OF GERMAN PARLIAMENTS

Parliament	Constituency members	List members	Successively constituency members members	Total
Bundestag (1949-)	6	3	2	11
Bavaria (1950-)	6	1	0	7
Baden-Württemberg (1952-)	7	0	1	8
Schleswig-Holstein (1954-)	7	0	1	8
North Rhine-Westphalia (1947-)	8	1	0	9
Lower Saxony (1947-)	9	2	0	11
Hesse (1954-)	7	1	1	9
Rhineland-Palatinate (1991-)	-	-	1	1
Berlin (1975-)*	4	2	1	7
Saxony (1990-)	1	-	-	1
Saxony-Anhalt (1990-)	3	0	0	3
Brandenburg (1990-)	1	-	-	1
Mecklenburg-West Pomerania (1990-)	2	1	0	3
Thuringia (1990-)	3	0	0	3
TOTAL	**64**	**11**	**7**	**82**

* Data not available for the 1958-1975 period in Berlin.

b) New Zealand, Scotland, and Wales

The current speaker of the House of Representatives of New Zealand, Jonathan Hunt, in office since 1999, is a list member. His predecessor Douglas Kidd (1996-1999) was a constituency member.

The first speaker ("presiding officer") of the Scottish Parliament, Sir David Steel (1999-2003), held a regional seat. His successor George Reid (since 2003) represents a constituency.

Finally, in Wales, the speaker's office has been held since 1999 by Lord Elis-Thomas, a constituency member.

CAUCUS CHAIRS IN GERMANY

Members elected under a party banner in Germany join a caucus (*Fraktion*). The CDU and the CSU have chosen from 1949 onward to form a common caucus. There are also separate caucuses for the SPD, the FDP, and the Greens. In the 2002 election, the PDS elected only two members, not enough to form a caucus.

The caucus chair holds an important position. This is notably the case when the party is in opposition. The chair is then a high-ranking member, often the party leader if sitting in Parliament. When the party is in power, the caucus chair is also an important player who may become the speaker, a Cabinet member, or even the government leader's successor.

In September 2004, in German parliaments with personalized PR there were 52 caucus chairs: 19 were constituency members; 33 were list members. As may be expected, the 8 FDP chairs, the 9 Green chairs, and the only DVU chair were all list members. In contrast, the SPD had 7 constituency members and 6 list members, and the CDU (or in Bavaria the CSU) had 10 constituency members and 4 list members. The PDS presents a contrasting picture: it is a minority party but is strongly established in the eastern Länder, where it has taken several constituencies. It has 2 constituency members and 4 list members among its caucus chairs.

Historical data are harder to obtain but point in the same direction. In the Bundestag since 1949, CDU/CSU caucus chairs have included 6 constituency members, 2 list members, and 1 elected member from Berlin. The 11 SPD caucus chairs have included 5 constituency members, 5 list members, and another who was first a Berlin member and then a list member. It is worth recalling that the SPD has more often sat in the opposition than has the CDU/CSU. When a caucus is in the opposition and is predominantly made up of list members, its chair is naturally a list member like Karl Carstens and Helmut Kohl (CDU/CSU) or Helmut Schmidt and Rudolf Scharping (SPD). Interestingly, the current SPD caucus chair in the Bundestag, Franz Müntefering, is a list MP in a caucus where this category is a minority.

The above data strongly support the prevailing consensus in the literature: the existence of two types of parliamentary mandates within the same parliament does not produce two unequal castes, and the distinctions based on this criterion are far from having the crucial importance that some give it. As we will see in the following chapters, this reality has a lot to do with the way the compensatory seats are filled.

Chapter 9
How Will Compensatory Seats Be Filled?

Once the number of seats for each party has been determined, people must be chosen to fill the compensatory seats. Two options are available. One may choose these members from lists of candidates submitted by each party before the vote. Or one may do away with the lists and assign the compensatory seats to those of each party's defeated candidates who have scored the highest in their respective constituencies. These scores are ranked either by *number of votes* or by *percentage* of all votes.

SHOULD DEFEATED CONSTITUENCY CANDIDATES BE RECYCLED?

The approach of recycling defeated constituency candidates has been used in the Land of Baden-Württemberg since 1956. The first-place candidate in a constituency receives a "direct mandate" (*Direktmandat*). Within four regional divisions, each party receives a determined number of compensatory seats. The seats are then assigned to the defeated candidates who had the highest *number of votes* in the region (and not the highest percentage of votes). Such a member receives a "second mandate" (*Zweitmandat*) for the constituency he or she ran in. There may be several "second mandates" in the same constituency, which go to candidates of different parties.

In such a system, double candidacy is implicitly required. A compensatory seat is possible only if an individual has been a constituency candidate. The approach does have an element of rigidity. The tie between someone with a compensatory mandate and his or her constituency is formalized by that person's title and appears in the parliamentary yearbook. Constituency cards are even printed with the names of the member or members who represent it. It is impossible to choose to work in an adjacent constituency.

The approach has its advantages. Party leaders cannot control the assignment of compensatory seats. No list is used. At most, they can step in to make sure their favourites get nominated in safe constituencies. To receive a compensatory seat, it is indispensable to run for a direct mandate in a constituency. Compensatory seats will thus be held by individuals who have local roots. As well, by assigning more votes to some candidates than to others of the same party, the party's regional voters themselves have prepared an eligibility list, as it were, and they have done so more democratically than the party's leaders or even its grassroots organizers would have.

From the standpoint of parties and their leaders, the approach has the disadvantage of letting the happenstance of electoral subdivisions decide which candidates are most likely to get elected through compensation. For a prospective star candidate, failure at a party's constituency nomination meeting is final (unless he or she finds another constituency).

This approach has found virtually no imitators anywhere else.[70] The coalition that took office in Baden-Württemberg after the 2001 election even proposed to scrap it and use lists, as is the practice everywhere else (the proposal has not yet been carried out). The system does sometimes lead to strange outcomes when several parties are entitled to "second mandates." A single constituency may end up with two, three, or even four "second mandates" because its voting population and voter turnout are higher than elsewhere. A less populated adjacent constituency may get none. From one election to the next, the same constituency may have one member, then three, then two.[71] A perception of unequal territorial representation may become widespread, although such has not happened in practice.[72]

The approach may also seem capricious when one examines each candidate's personal standings. Many big party candidates will be passed over despite more than honourable individual performances, whereas many small party candidates will get elected because they outscored the other defeated candidates *of their party*, while scoring less than many defeated candidates *of the big parties*. In 2001, for example, a Green candidate was elected with a personal score of 21.0% (constituency #47) and an FDP candidate got a *Zweitmandat* with 23.1% of the votes (constituency #22). The highest of these two scores was exceeded by at least thirty CDU or SPD candidates who got no seats, despite getting up to 38% of the vote (CDU, constituency #28).

70. The only other cases we know of are the Italian Senate (which uses the percentage of valid votes, and not the actual number of valid votes) and Denmark under the law used for the 1918 election. See Frederick ZEUTHEN, "P.R. under the New Danish Constitution", Representation, no. 32, 1915, p. 95.

71. Constituency #9 (Nürtingen) had a total of 2 MPs after the 1992 election, rising to 5 in 1996 and falling to 4 in 2001. Constituency #44 (Enz) had a total of 5 after the 1992 and 1996 elections, falling to 2 in 2001. Such cases are not at all exceptional.

72. E-mail from Dr. Udo Kempf, of Pädagogische Hochschule Freiburg, to the author on April 11, 2002.

SHOULD COMPENSATORY SEATS BE ASSIGNED TO CANDIDATES ON A LIST?

As we have shown, assignment of compensatory seats to candidates on a list is the procedure in almost all other compensatory systems in existence. Before the election, each party must submit a list of people for its share of the compensatory seats. The party leaders give the list to the electoral authorities, just as the candidate gives the nomination papers to the constituency's returning officer. The number of names does not have to equal the number of compensatory seats to be assigned, so a small party with no illusions about its chances of success can submit a list with half a dozen names. It is also possible to submit a list with more names than list seats to be filled. This precaution is not superfluous for big parties since the list will later be used to replace any member whose seat has become vacant.[73]

The list of candidates and their list order are determined by the party, which prepares the list in line with its view of democracy within its own ranks. Most lawmakers in the world leave it up to the parties to prepare their lists, while leaving it up to the party rank and file to prevent their leaders from manipulating lists in private and leaving it up to the voters to punish parties that have resorted to procedures that are far too autocratic. The Germans are an exception. In relation to other countries, their electoral laws tightly govern the list preparation process, notably requiring that party membership assemblies be held.

If, as in Bavaria, voters can express a preference for a candidate on the list of the party they support, the party-determined order of candidates on the list becomes less important. It is the number of personal preferences received by each individual that determines his or her ultimate position on the list and therefore his or her electoral chances.

If, like everywhere else, one uses the "closed list" procedure, the party-determined order clearly affects the electoral chances of individuals on the list. Typically, party leaders get first place. They are said to be the "list frontrunners" of their respective parties. The people who immediately follow are individuals of high to average renown.

The use of lists creates the appearance of a second path to Parliament, totally separate from that of running in a constituency. As we shall see, the reality is quite different.

73. Here is a relatively recent example of the range of possible options, taken from the February 2003 regional election in Lower Saxony. There were 55 list seats to be filled. The big parties submitted much longer lists than were strictly necessary. The SPD list had 108 names and the CDU list had 86 names. This was a wiser choice than may seem at first sight since the *Überhang* and the *Ausgleich* raised the total number of list seats to 83! The lists of the other parties were generally shorter: 39 names for the Greens, 14 for the PDS, 14 for the GRAUEN, 18 for the Republikaner, 10 for the Ecologist Democrats (ÖDP), 16 for the "Christians Faithful to the Bible" (PBC) and 29 for the Party for the Defence of the Rule of Law (Schill). The FDP stood out in this league by submitting a list with 84 names.

Chapter 10
Double Candidacy, The Key to Compensatory Systems

In this chapter, we will explain in more detail why the problem of two classes of members is not a serious one and we will outline the legal arrangements that prevent it from becoming so. Our answer lies in two simple important realities that are ignored by superficial descriptions of the German system. First, the overwhelming majority of members run as both constituency and list candidates. Second, over the long term, the vagaries of elections multiply the number of members who have belonged *to both categories* during their careers.

These two factors lessen the possibility of friction between the two groups. It would at the very least be pretty dumb to denigrate the "other" category when one has wanted to belong to it, all the more so because the statistical likelihood of eventually ending up there is not negligible. These realities temper the outbursts of members who might otherwise wish to put down the other category.

DOUBLE CANDIDACY

In a compensatory system with lists, there appear to be two paths to Parliament: individual candidacy in a constituency and candidacy on a list. Theoretically, the two paths could be exclusive, as imagined by those who raise the spectre of "two classes of elected members."

There is little to guide us here in the electoral laws, which are typically discrete on this point. They do not forbid double candidacy, i.e., a single individual being on a party list and running as a constituency candidate.[74] They all require, however, that in the event of double success the fortunate candidate must sit as a member for the constituency he or she ran in. The person's name is automatically struck from the list and the list seat goes to the next person on the list. Double candidacy is allowed but not mandatory.[75]

The electoral laws lead to several scenarios. Each party could, for example, field two perfectly separate teams of candidates (one in the constituencies and one on the list) and deliberately seek to specialize the roles. In the constituencies would be individuals with strong local roots who are exclusively destined to play a role of mediators between the Administration and their constituents. On the list would be personalities who are more national in scope and are destined for ministerial positions or, if in the opposition, the role of party critic for different portfolios. This is how many see the respective roles of the two "teams" and they see this division as either an asset or a handicap. In this scenario, the constituency members and the list members would form two separate and potentially adversarial groups.

Though conceivable and even appropriate, in a two-tiered system, such an option is inappropriate in a compensatory system, and the political parties do not exercise it. Here is the reason.

A QUESTION OF STRATEGIC CALCULATION

In a compensatory system, the more constituencies a party wins, *the fewer list seats it will receive*. It is unwise and even dangerous for a candidate to rely totally on being on a list. In the 2002 regional elections in Saxony-Anhalt, the CDU leader ran this risk at his expense. He was the list frontrunner of his party and did not run as a candidate in any constituency. His party took so many constituencies (48 out of 49!) that he was not entitled to any list seat. The outcome left him seatless while making him Minister-President of the Land.[76]

It is also unwise for a constituency candidate to forsake the safety net of being on a list. If the party is turfed out of its constituencies in the next election, he or she will lose to someone less experienced, who is elected from the list.

This is shown by the following example from the 1994 and 1998 German federal elections in the Land of Schleswig-Holstein (Table 20). Had the CDU constituency members elected in 1994 ignored the list safety net, they would have all been defeated in 1998 and the party's only members would have been newcomers elected from the list. Similarly, had the SPD list members elected in 1994 not been allowed to run also in constituencies, they would have all disappeared from Parliament. Double candidacy averted such a massacre and allowed the experienced members to stay put. Six CDU incumbents were saved by the list, whereas seven SPD list members won constituencies.

74. Mexico is alone in imposing a limit of 60 (previously 30) on the number of candidates, within each party, who can run as both constituency and list candidates (Art. 8.2 of the Mexican Electoral Code).
75. Bavaria requires constituency candidates to be on a list (but not the reverse). The system in Baden-Württemberg implicitly imposes double candidacy by assigning compensatory seats to defeated constituency candidates.
76. This disadvantage is less dramatic in Germany, where a minister does not have to hold a parliamentary mandate. Had this happened in North Rhine-Westphalia, where the constitution requires the minister-president to be a member of the Landtag, he would have been unable to hold the position.

Table 20

1994 AND 1998 GERMAN FEDERAL ELECTIONS IN THE LAND OF SCHLESWIG-HOLSTEIN

Party	Number of seats in 1994			Number of seats in 1998		
	Constituencies	List	Total	Constituencies	List	Total
CDU	9	1	10	0	9	9
SPD	2	8	10	11	0	11
FDP	0	2	2	0	2	2
Greens	0	2	2	0	2	2
TOTAL	**11**	**13**	**24**	**11**	**13**	**24**

Without double candidacy, the only way incumbent constituency members could save their skins from a prospective rout would be to make a mad dash for the list. Such a move would concede the outcome in advance and expose their party to ridicule. It could even be counterproductive. What if the panic proves unfounded and, as happens more and more often, the tide of fortune turns and provides the party with a triumphal re-election? In straight language, the "cold feet" will be left dangling from the list and the constituency seats they fled from will go to less seasoned individuals who only ran to show the flag.

It is better not to put all of one's eggs in one basket and instead try both levels, knowing full well, of course, that only the constituency mandate can be kept in the event of a double win. It remains to be seen whether this theoretical reasoning matches the reality in the field.

HOW THINGS HAPPEN IN PRACTICE

To verify how candidacies relate to each other in Germany, we looked at unpublished data. We wanted to find out how many candidates ran only at the constituency level, how many only on a list, and how many on both levels. We obtained this kind of data from electoral authorities or we calculated the data from candidate lists. Our figures encompass Bundestag and Land parliament elections with a personalized PR system, as well as elections in New Zealand, Scotland, and Wales. We focused on the latest elections, while using figures from previous elections when available to verify historic trends.

The exercise is revealing. **Double candidacy is widespread**. The best places on the list most often go to constituency candidates who have already been nominated, so much so, that the bottom of the list is swollen with individuals who want to run but have little chance of winning. The big parties usually reserve some of the top list positions for a few leading lights who do not run in constituencies, but such candidacies are a very small minority.

Let us examine, for example, the candidacies in the last Bundestag election (2002).

The first line of Table 21 shows the extent of double candidacy. A little over a third (35%) of all candidates are involved. If we now examine only big party candidates (CDU, CSU, and SPD)— the only ones who in practice have a serious chance of winning a constituency (second line)—the proportion of *Doppelkandidaturen* rises nearly to half the total (47.6%). Given the German practice of fielding far more list candidates than seats to be filled, it may be suspected that many who appear solely on the list are only token candidates with no serious chances. This is exactly what we see on the third line, i.e., the candidacy profiles of the 603 elected members. Of them, 69 took the risk of running only in constituencies and were elected. They most often represented ultra-safe constituencies (CSU in Bavaria) and could take the risk. There were also 22 who were only on a list. The immense majority (85%) were *Doppel*: they ran on both levels.

Thus, the overwhelming majority of constituency candidates fielded by the major parties had a list safety net. This is true not only for the Bundestag but also for all Länder with the same electoral system, as may be seen in Table 22.

Table 21

CANDIDACY PROFILES IN THE 2002 BUNDESTAG ELECTION

Party	Number of candidates running in/on			
	Constituency only	List only	Both	All candidates
All candidates	694 **19.6 %**	1,598 **45.1 %**	1,250 **35.3 %**	3,542 **100.0 %**
Big party candidates (CDU, CSU, SPD)	77 **7.0 %**	497 **45.4 %**	521 **47.6 %**	1,095 **100.0 %**
Elected members	69 **11.4 %**	22 **3.6 %**	512 **84.9 %**	603 **99.9 %**

Table 22

PERCENTAGE OF CONSTITUENCY CANDIDATES SIMULTANEOUSLY ON LISTS OF BIG PARTIES — LAST GERMAN ELECTIONS

Elections*	Party			
	SPD	CDU	CSU	PDS
Bundestag (2002)	97.0	83.5	40.9	-
North Rhine-Westphalia (2000)	97.4	85.4	-	-
Bavaria (2003)	100.0	-	100.0	-
Lower Saxony (2003)	77.0	85.0	-	-
Hesse (2003)	100.0	100.0	-	-
Rhineland-Palatinate (2001)	100.0	100.0	-	-
Schleswig-Holstein (2000)	100.0	91.1	-	-
Berlin (2001)	97.4	85.9	-	39.7
Brandenburg (2004)	97.7	100.0	-	68.2
Saxony (2004)	93.3	46.7	-	73.3
Saxony-Anhalt (2002)	100.0	98.0	-	65.3
Mecklenburg-West Pomerania (2002)	83.3	97.2	-	75.0
Thuringia (2004)	97.7	100.0	-	72.7
MEAN PERCENTAGE	**95.4**	**89.4**	**70.4**	**65.7**

* Data not available for Brandenburg (1999). In Baden-Württemberg, there are no lists, and double candidacy is implicit. The PDS is considered to be a big party only for the eastern Länder.

Double candidacy is also common in New Zealand. Of the 683 candidates running in the last election (2002), 160 ran only in constituencies, 90 were only on party lists, and no fewer than 433 (63%) were on party lists while running in constituencies.

In Scotland (2003), Labour Party candidates tended to spurn double candidacy and run only in constituencies, an easy choice given their domination at this level. Among the other parties, double candidacy was more frequent: 35 out of 94 among the Liberal Democrats, 65 out of 83 among the Scottish Nationalists (SNP) and 69 out of 73 among the Conservatives.

In practice, the result is that Parliament is essentially composed of members elected in constituencies and members defeated in constituencies but elected from lists. *The overwhelming majority of members have run in constituencies.* The main path to Parliament is to be first chosen by the rank and file of a constituency. A favourable position on the list is thus almost a certainty.

The figures are eloquent. In the 2002 German federal election, only 22 of the 603 elected candidates (3.6%) did not run in constituencies.[77] A similar picture emerges for each of the Länder using personalized PR. In the last elections in these 13 Länder, the corresponding figure was

77. Another interesting detail: when examined over a long span of time, Bundestag members who do not run in constituencies appear to have become a dying breed. In 1957, they made up 14% of the total versus less than 4% today.

4.5%. It was often even lower in most Länder. Bavaria's higher figure (18%) is simple to explain. The strongest party won a percentage of votes clearly over 50% and took all of the constituency seats, which make up only 50% of the total. Inevitably, it elected many of its members solely from the list.

This practice has spread to foreign countries that have adopted the system. The percentage of members who did *not* run as candidates in constituencies was only 8.5% and 3.3% respectively in the 2003 Scottish and Welsh elections and only 5.8% in the 2002 New Zealand election.

This fact has long been borne out by the academic literature,[78] and largely explains the lack of conflict between the two supposed classes of members who are elected by a German mixed system.

Typically, a list member starts out by running unsuccessfully in a constituency. To run, he or she has to become familiar with the local issues. The person tries again in the next election. If his or her party comes to power, its number of list seats will decline noticeably and the only way to get elected will likely be by running in a constituency. For this reason, such a person will remain active in the constituency during his or her term of office and give such activities almost as much effort as a "directly" elected member. Though not mentioned in parliamentary handbooks, the phenomenon is recognized in official literature for the public[79] and some parliamentary websites even explicitly indicate the constituency in which each list member works.[80]

Table 23

ELECTED CANDIDATES WHO DID NOT RUN IN CONSTITUENCIES— LAST ELECTIONS

Parliament (elections)	Elected candidates who did not run in constituencies	%
Bundestag (2002)	22 out of 603	**3.6**
LÄNDER		
Berlin (2001)	8 out of 141	5.7
Baden-Württemberg (2001)	0 out of 128	0.0
Bavaria (2003)	33 out of 180	18.3
Brandenburg (2004)	9 out of 88	10.2
Hesse (2003)	2 out of 110	1.8
Lower Saxony (2003)	0 out of 183	0.0
Mecklenburg-West Pomerania (2002)	4 out of 71	5.6
North Rhine-Westphalia (2000)	0 out of 231	0.0
Saxony (2004)	8 out of 124	6.5
Saxony-Anhalt (2002)	2 out of 115	1.7
Rhineland-Palatinate (2001)	1 out of 101	1.0
Schleswig-Holstein (2000)	1 out of 89	1.1
Thuringia (2004)	7 out of 88	8.0
TOTAL OF THE 13 LÄNDER	75 out of 1,649	**4.5**
New Zealand (2002)	7 out of 120	**5.8**
Scotland (2003)	11 out of 129	**8.5**
Wales (2003)	2 out of 60	**3.3**

78. See Gerhard LOEWENBERG, *op.cit.*, note 60, pp. 70-72; Geoffrey K. ROBERTS, "The Federal Republic of Germany", in Samuel E. Finer (ed.), *Adversary Politics and Electoral Reform*, London, Anthony Wigram, 1975, p. 221.

79. According to an official Bundestag publication, "Members spend in their constituencies the roughly 30 weeks a year in which Parliament is not sitting. They mostly do so regardless of whether they have been directly elected in their constituencies or elected to the Bundestag as a candidate on one of the party lists. As a rule, the latter Members, too, look after constituencies, mostly the ones in which they failed to be directly elected": SPEAKER OF THE BUNDESTAG, *The German Parliament*, Stuttgart, Verlag W. Kohlhammer, 1999, p. 288.

80. This is the case for websites of the Bundestag (www.bundestag.de/mdb15/wkmap/index.html), the Landtag of North Rhine-Westphalia (www.landtag.nrw.de/WWW/index2.htm?seite=2), under "Wahlkreiskarte", and the Landtag of Lower Saxony (www.landtag-niedersachsen.de/Abgeordnete/abgeordnete.htm), under "Word-Dokument: Abgeordnete in den Wahlkreisen. " All of these sites were visited on March 19, 2004.

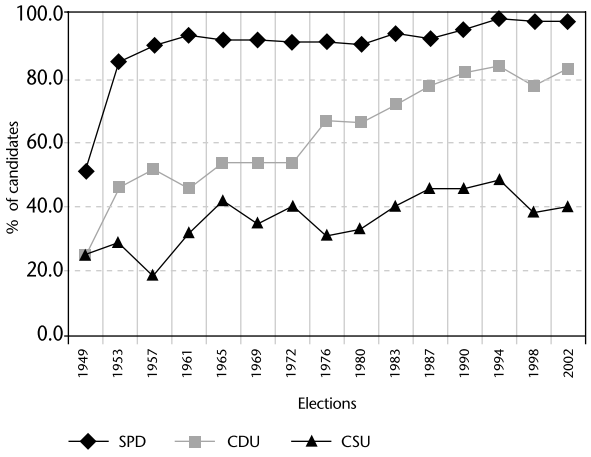
The massive presence of constituency candidates on party lists has come about without the slightest legal requirement, the law confining itself in the overwhelming majority of cases to recognizing implicitly the possibility of double candidacies and requiring, this time explicitly, renunciation of the list mandate in the event of a double win. **What the lawmaker has refused to impose, the political dynamic has made inevitable**.

The above reasoning essentially holds true for big party candidates—the ones likely to win constituencies. Even among small parties that have very little chance of winning direct seats, the most advantageous positions on lists are occupied by people who also run in constituencies. Seldom does a party, such as the Scottish Greens in 2003, the DVU in Saxony-Anhalt in 1998, or the Outdoor Recreation New Zealand Party in 2002, present only a list and forego constituency candidates, even though this choice would simplify things. This practice is more common among the very small parties for obvious reasons.

The oldest available data suggest that double candidacy was not as widespread originally as it is today. The record over time suggests that this practice resulted from lessons learned over many elections and that people realized through experience that double candidacy was clearly preferable. Chart 1 is eloquent on this point. In the first federal election (1949), only 23% of the CDU and CSU constituency candidates were also list candidates. In 2002, the rate was 83.5% for the CDU and 41% for the CSU—whose members dominate in Bavaria and are thus more likely to take risks. The SPD shows the same trend: 52% of constituency candidates were on lists in 1949, 97% in 2002. In the Land of Lower Saxony, constituency candidates with a list safety-net were a little over a quarter of the total for the two main parties in the first election (1947) versus 77% for the SPD and 85% for the CDU in the last election (2003). In North Rhine-Westphalia, 41% of SPD constituency candidates in the 1975 election also appeared on the list, versus 97% in the 2000 election. For their CDU counterparts, the corresponding figures were 53% and 85%.

Chart 1

PERCENTAGE OF CONSTITUENCY CANDIDATES ALSO ON PARTY LIST — BIG PARTY ONLY — BUNDESTAG ELECTIONS 1949 TO 2002



GOING FROM ONE CATEGORY TO THE OTHER

Conflicts among members over the different ways they get elected are even less likely to occur given that the two categories are less exclusive than may be believed. Here, we are entering a totally new area of research, no source having, to our knowledge, investigated this peculiarity of the German parliamentarian system.

We have already discussed the checkered relationship between Helmut Kohl and his constituency of Ludwigshafen. In 1990, he went from the list to the constituency and then back again eight years later. This kind of electoral career typifies only a minority of politicians but is not exceptional.

On this point, we examined the available historical records for members of the Bundestag and the legislatures of five Länder.[81] The personalized PR system has existed there for about a half-century, so we could measure its long-term effects. For each legislature, we looked at the members who had alternately held constituency and list mandates during their careers. Their number was compared with the total number of members during the same period. Table 24 sums up the results.

81. Die Mitglieder des Deutschen Bundestages 1.-13 Wahlperiode (Stand: 28.Februar 1998): This document is available on the Bundestag website, with the latest editions of the parliamentary handbook (*Volkshandbuch*) for the 14th and 15th parliaments. For the Landtag of North Rhine-Westphalia, see the consolidated list of MPs since 1947, attached to an e-mail from Olaf Wiese to the author on February 25, 2003, and the CD-ROM *Landtag Nordrhein-Westfalen 12.Wahlperiode*. For the Landtag of Bavaria, see the chief electoral officer's site, which contains a list of MPs from 1946 to 1998 ("Mitglieder des Bayerischen Landtags seit 1946"), which may be visited at: www.statistik.bayern.de/lw/mdl_abc_a.htm. For the Landtag of Lower Saxony, see the parliamentary handbook of Barbara SIMON, *Abgeordnete in Niedersachsen 1946-1994. Biographisches Handbuch*, Hannover, Herausgegeben vom Präsidenten des Niedersächsisches Landtages, 1996 and the editions of the *Volkshandbuch* for subsequent parliaments. Computations for the Landtag of Hesse were made from the lists of members at: 141.90.2.45/tabellen/icitseitegremien.htmleitseitegremien.htm and detailed election results by constituency at: 141.90.2.45/elbib/landeslistewahlergebnis.htm. For the Landtag of Baden-Württemberg, we relied on the compilation of Frank-Roland KÜHNEL, *Landtagsabgeordnete und Wahlkreise in Baden-Württemberg seit 1946*, Stuttgart, Herausgegeben vom Landtag, Baden-Württemberg, 2001. The website of the Landtag of Schleswig-Holstein has an online parliamentary handbook going back to 1946: lissh.lvn.parlanet.de/cgibin/starfinder0?pat-=samt.txt&id-=lisweb&pass-=lisweb&-OK=-OK.

Table 24

MEMBERS WHO ALTERNATELY HELD CONSTITUENCY AND LIST MANDATES IN CERTAIN GERMAN PARLIAMENTS WITH PERSONALIZED PR

Parliament	Number of members with the two types of mandate / total number of members	%
Bundestag (1949-2002)	538 out of 2,831*	19.0
Land parliaments		
Schleswig-Holstein (1947-2003)	118 out of 494	23.9
Hesse (1954-2003)	125 out of 581	21.5
Bavaria (1950-2003)	159 out of 988	16.1
Lower Saxony (1947-1998)	135 out of 965	14.0
North Rhine-Westphalia (1947-2003)	112 out of 1,326	8.4
Baden-Württemberg (1952-2001)	58 out of 703	8.3

* This number was obtained after subtracting the members for Berlin (1949-1990), who are elected under a distinct system, and the members elected to the East German Parliament shortly before reunification. These members held neither type of mandate examined in our study.

In North Rhine-Westphalia and in Baden-Württemberg, members who went from one category to the other formed 8% of the total. Elsewhere, the figures were higher: 14% in Lower Saxony, 16% in Bavaria, 21.5% in Hesse, and nearly 24% in Schleswig-Holstein. At the federal level, 19% of the 2,831 Bundestag members alternately held constituency and list seats.

Although we are examining a complex phenomenon with varying causes, it is essentially the magnitude of electoral swings that multiplies the shifts from one category to the other. The figures are lower in rather placid parliaments where major electoral upsets have been rare since the Second World War. The CDU has always been the strongest party in Baden-Württemberg, whereas North Rhine-Westphalia has had only one real change of majority party, in 1966. Wherever majorities have changed more often, with constituency sweeps in one direction or in the other, there have been more shifts from one category to the other.

For example, the 1998 federal election saw a major constituency shift. Victorious in 221 constituencies in 1994, the CDU/CSU won only 112 in 1998. Meanwhile, the SPD went from 103 to 212 direct seats. No fewer than 124 members changed category: 73 incumbent list members (all from the SPD, except 2) became constituency members, whereas 51 incumbent constituency members (all from the CDU/CSU) held their seats thanks to party lists. The change was especially pronounced in the Land of Schleswig-Holstein, where a high number of constituencies have slim winning margins: 13 of the 24 federal members elected in 1998 went from one category to the other.

In complete electoral upsets, there is even more category shifting. The 2003 election in Lower Saxony provides a good example. Constituencies won by the SPD fell from 83 to 9. Those won by the CDU rose from 17 to 91. As a result, nearly a *third* of the members elected in 2003 held a different type of mandate from the one they held previously.

These figures are impressive. They reveal a reality that sheds much light on the subject under study. When the likelihood is one out of five that a member will alternately hold both types of mandate in the course of a parliamentary career, it is to say the least unwise to deride an opposite category that one will very likely, statistically speaking, belong to some day, if one lasts long enough in Parliament.

In addition, the above figures cover all members who have sat in Parliament over a 50-year period. Parliamentary careers, however, have been very unequal in length. Many of the federal members did not stay in office for more than one term and thus, for obvious reasons, had no opportunity to change category during their careers (it is not possible to change category between two elections). If these many "one-term wonders" are excluded from the total, the numerical importance of category shifting rises considerably.

Another way to measure the extent of this practice is to consider only those members whose parliamentary careers were the longest. On this point, the thoroughness of the German compilers offers researchers the possibility of isolating Bundestag members whose careers lasted more than 10,000 days. Among these 53 champions of longevity are 16 constituency members, 10 list members, and no fewer than 27 (over *half* the total) who have been in both situations.[82]

If a defeated constituency member can remain in Parliament by being on a list and a defeated list member can become a constituency member, is there an undesirable effect of hindering parliamentary renewal and protecting incumbents from the voters' desire for change? Such does not seem to be the case. Renewal rates were quite satisfactory in the parliaments we studied, as measured by the long-term mean percentage of new members elected at each election: 28% for the Bundestag (1953-2002), 29.8% in Hesse (1954-1983), 33.1% in Baden-Württemberg (1956-2001), and 40% in North Rhine-Westphalia (1950-1970). Parliaments elected entirely by the first-past-the-post system, such as the House of Representatives in the United States, usually have a much lower rate of renewal.

ARE THERE TENSIONS WITHIN CONSTITUENCIES?

The above data strongly suggest that coexistence of constituency members and list members raises no major problem *in Parliament*. Nor does it hurt the ministerial career prospects of members. Nonetheless, the introduction of the AMS system in Scotland and Wales has revealed a problem of interaction within constituencies. Because regional members are active in constituencies, there seems to be some resentment among constituency members. Some complain of unfair competition. The Scottish Parliament, but not the Welsh Assembly, has even felt the need for a code of conduct to minimize tensions.

Such a reflex is understandable in light of the starting point of these societies: an ancient and uninterrupted tradition of single-member voting that makes a elected member the exclusive representative of a constituency. Great Britain has long been a unitary state and, unlike the Canadian federation, is unaccustomed to having two networks of members canvassing the same territory. The problem is complicated by the party tradition of the two entities where regional parliaments have been created. Scotland and Wales have long been fiefs of the Labour Party, which wins the great majority of constituencies and has comparatively few regional members. The AMS system destroys this monopoly and opens regions up to competition where there had been none before. In addition, the introduction of the system is relatively recent. Labourites have remained pre-eminent and have had no opportunity to experience the system on the other side of the fence, in the opposition, as have their German colleagues.

Because of the tensions between constituency members and regional members, a commission chaired by Lord Richard recently recommended in March 2004 the replacement of the AMS system by the single transferable vote (STV).[83] It remains to be seen what the Welsh members, and the Parliament of Westminster, which alone has the power to amend the system, will make of this recommendation. The Welsh Labour Party has rejected it.[84] Forthcoming debate on this subject may show that introduction of the STV would not eliminate competition among members within a single territory but instead institutionalize it.

Some constituency members are coping better than others with the new situation. According to one of them, the presence of regional members makes his work more demanding, but causes him to work harder for his constituents. "Good for the people, bad for the politicians," he says. One of the few academic studies on the subject reveals that 83% of the Scottish and Welsh members agree that the two types of members are equally representative of the people.[85] The author concludes that, to ensure this system is as successful as in Germany, the Scottish and Welsh Labour Party members will have to accept the increased competition resulting from the constitutional reforms brought in by their own party.[86]

82. This computation was made from the parliamentary handbook of Rudolf VIERHAUS and Ludolf HERBST, *Biographisches Handbuch der Mitglieder des Deutschen Bundestages : 1949-2002*, t. 3, Munich, Saur, 2002, p. 47 and following.
83. COMMISSION ON THE POWERS AND ELECTORAL ARRANGEMENTS OF THE NATIONAL ASSEMBLY FOR WALES, Report of the Richard Commission, Cardiff éditeur, March 31, 2004.
84. WELSH LABOUR, *Better Governance for Wales. A Welsh Labour Policy Document*, August 1994, p. 5. Our thanks go to Prof. Ken Curty who sent us this document.
85. Thomas LUNDBERG, "Electoral System Effects on the Partisan and Constituency Roles of German Legislators: Lessons for Scotland and Wales?", paper presented at the 52nd annual conference of the Political Studies Association, Aberdeen, April 2002, p. 26.
86. *Ibid.*, p. 22.

Chapter 11
Representation of Women in Parliaments

The percentage of women sitting in parliaments elected by a compensatory mixed system is high. The Bundestag elected in 2002 is 33% female (Table 25). Länder using the same system generally have a similar proportion: 31%, ranging from a low of 22% in Baden-Württemberg to a high of 41% in Brandenburg. Women make up 28% of the House of Representatives in New Zealand, 39% of the Scottish Parliament, and 50% of the Welsh National Assembly.

Most of these percentages are slightly above that of the post-2003 Québec National Assembly, with a single-member first-past-the-post system. In the 2003 election, 38 women were elected to the Assembly, i.e., 30.4% of the total.

The historical trend clearly indicates that no electoral system has a magical ability to bring women into Parliament. In the Bundestag, women never exceeded 10% of the total before the 1987 election. Their number has since climbed rapidly. The same may be said for all Land parliaments.

The available data suggest that **the existence of list seats has historically boosted the chances of female candidates.** The overwhelming majority of women who have sat in Germany's parliaments have held list seats. Even today, 62% of the women who sit in the Bundestag and 57% of those in the Länder parliaments have been elected from lists. In the Bundestag, women account for 25% of constituency members versus 40% of list members. In the Länder, women's representation is always better among list members than among constituency members. The exceptions are the Landtag of Schleswig-Holstein, where the two percentages are about equal, and the Landtag of Brandenburg and the City Assembly of Berlin, where there are somewhat more women among constituency members than among list members (35% versus 33%).

Deviating even further from this trend are Scotland and Wales, where women are proportionately more numerous among constituency members (44% and 55% respectively) than among list members (34% and 40% respectively). These data show that those who feel that the single-member first-past-the-post system keeps women out of Parliament may be overestimating this factor.

Table 25

WOMEN SITTING IN PARLIAMENTS WITH A COMPENSATORY MIXED SYSTEM BY TYPE OF MANDATE

Parliament	Women/ total	Constituency members	List members	Women %		
				Constituency	List	Total
Bundestag (2002)	198/603	75 out of 299	123 out of 304	25	40	33
Bavaria (2003)	48/180	13 out of 92	35 out of 88	14	40	27
Baden-Württemberg (2001)	28/128	13 out of 70	15 out of 58*	19	26*	22
Brandenburg (2004)	36/88	19 out of 44	17 out of 44	43	39	41
Berlin (2001)	48/141	27 out of 78	21 out of 63	35	33	34
Lower Saxony (2003)	63/183	29 out of 100	34 out of 83	29	41	34
North Rhine-Westphalia (2000)	73/231	44 out of 151	29 out of 80	29	36	32
Hesse (2003)	34/110	11 out of 55	23 out of 55	20	42	31
Rhineland-Palatinate (2001)	31/101	9 out of 51	22 out of 50	18	44	31
Mecklenburg-West Pomerania (2002)	23/71	10 out of 36	13 out of 35	28	37	32
Thuringia (2004)	28/88	10 out of 44	18 out of 44	23	41	32
Saxony (2004)	34/124	11 out of 60	23 out of 64	18	36	27
Saxony-Anhalt (2002)	37/115	9 out of 49	28 out of 66	18	42	32
Schleswig-Holstein (2000)	34/89	17 out of 45	17 out of 44	38	39	38
PARTIAL TOTAL	**517/1 649**	**222 out of 875**	**295 out of 774**			
ALL LAND PARLIAMENTS	**31.3 %**	**25.4 %**	**38.1 %**	**25**	**38**	**31**
New Zealand (2002)	34/120	18 out of 69	16 out of 51	26	31	28
Scotland (2003)	51/129	32 out of 73	19 out of 56	44	34	39
Wales (2003)	30/60	22 out of 40	8 out of 20	55	40	50

* Compensatory seats, since lists are not used.

The opinion that territory-wide compensation (as opposed to compensation within smaller regions) is an absolute prerequisite to substantial women's representation is not confirmed by experience. Parliaments with regional subdivisions are on average 35.7% female. The proportion is on average 32.6% in parliaments where compensatory seats are distributed among nation-wide or province-wide lists.

On the other hand, experience confirms that recycling of the "best" defeated constituency candidates is less favourable to women. In the only State that uses this approach, women account for only 22% of the total. As long as the parties adopt no measure to increase the number of female constituency candidates, women seem to have less chance of receiving compensatory seats if constituencies are the only source of prospective members for compensatory seats. The same pattern appears in Italy's two houses of parliament. There are fewer women (7.8%) in the Senate, where compensatory seats are filled by recycling, than in the Chamber of Deputies (9.8%), where lists are used.

Chapter 12
How Should Vacancies Be Filled between General Elections?

Inevitably, during the life of a Parliament, some seats will become vacant when a member resigns or dies or when a result is legally struck down. This raises the problem of replacement. In a proportional system, the most common technique is to choose "the next person on the list." When the electoral system is first-past-the-post (single or double ballot), the most common solution is to hold a by-election. Finally, be it a proportional or first-past-the-post system, vacancies may be filled by a substitute elected at the same time as the member.

The situation is more complex in a mixed system. In the Bundestag and in almost all Länder using personalized PR, a member elected from a party list is replaced by the next non-elected person on the list, with the telling proviso that he or she must still belong to that party, in keeping with the spirit of PR. A vacant constituency seat is also filled by the next non-elected candidate on the party list. This solution has the advantage of preserving election night party standings for the life of the Parliament and eliminating the cost of by-elections. It also helps preserve government stability if many vacancies occur among the members of a party or a coalition with a very slim parliamentary majority. Finally, replacements may be made without delay.

With this solution, however, a newly chosen minister or party leader cannot enter Parliament before the next general election. The relatively high number of seatless government leaders in Germany is largely due to the rigidity of the means of replacing members. The case of Chancellor Kiesinger is, in a certain way, a good example. After the 1965 federal election, Chancellor Erhardt continued the CDU/CSU coalition with the FDP, but the coalition fell apart in autumn 1966. It then became necessary to form a new "grand coalition," encompassing the CDU/CSU and the SPD. The leader chosen for the new government was Kurt Georg Kiesinger, who had led coalitions of this type in Baden-Württemberg. He was that Land's minister-president when elected federal chancellor and could not enter the Bundestag before the election slated for 1969. The same situation occurred with his vice-chancellor and minister for foreign affairs, Willy Brandt, who until then had been the ruling burgomaster of West Berlin and was similarly absent from the Bundestag. Over the next three years, the country's main leaders did not sit in Parliament although they were able to address the house at open sittings.

Bolivia and Venezuela use a different method that has similar advantages and disadvantages. If a constituency seat (or list seat) becomes vacant, it is filled by a substitute candidate (*suplente*) of the same party, who is "elected" at the same time as the primary candidate (*titulare*). It is doubtful whether the voters pay much attention to the substitute's identity when voting, but the system has the advantage, like the preceding one, of avoiding the costs and delays of by-elections, while preserving party standings. Among the Länder, Hesse also uses substitutes (*Ersatzbewerber*) to replace constituency members whose seats have become vacant. The substitute candidate's name appears on the ballot under the name of the primary candidate.

In the Italian Senate, where compensatory seats go to defeated constituency candidates who won the highest percentage of votes, the seat goes to the highest scorer among the party's non-elected candidates.

All of these procedures deny voters the right to send clear messages at by-elections when replacing members elected under the first-past-the-post system. This denial seems to have been deemed undesirable in New Zealand, Scotland, Wales, and Italy (for the Chamber of Deputies), where a vacant constituency seat leads to a by-election.[87] At least another good reason may be advanced for keeping by-elections: if, in the course of a Parliament, a party chooses a new leader who is seatless, only a by-election would enable him or her to get one before the next general election. The same comment holds for ministers chosen from outside Parliament.

Are such elections common? There were four in Scotland (out of 129 seats) during the life of the first Parliament (1999-2003). Only one led to a change of party: the seat of Ayr went from the Labour Party to the Conservatives in 1999.

In New Zealand, only one election of this type occurred during the first Parliament elected under MMP. It took place in 1998 and on that occasion the seat of Taranaki-King Country, which became vacant when Prime Minister Bolger left politics, remained in his party's hands by a slim margin.

87. Such was also the case in North Rhine-Westphalia under the terms of Article 38 (1) of the 1947 Electoral Law, written under the Occupation. This peculiarity was later eliminated. The English text of this law is in the following official publication: *Die Landtagswahlen in Nordrhein-Westfalen von 1947 bis 1990*, Schriften des Landtags Nordrhein-Westfalen, Band 6, Düsseldorf, Landtag Nordrhein-Westfalen, 1993, p. 135.

SECOND PART
What we can learn from simulations of the 1998 and 2003 Québec elections

Chapter 13
Methodological Considerations

It is better to begin by saying what everyone knows deep down: it is impossible to anticipate with certainty all of the consequences that will result from a new electoral system in a given country. There are just too many variables in play. What will be the future political landscape? Will new political scissions and new parties emerge? How will support for existing parties change? How will their support be spread over the territory? In the face of such unknowns, we should each humbly recognize our inability to foresee everything.

Science cannot predict everything, but at this stage of its development it can at least greatly enlighten lawmakers and the public. In his classic work,[88] Douglas Rae offers an interesting distinction between the *proximal effects* and *distal effects* of electoral systems. The former refer to the way the different systems convert votes for parties into parliamentary seats. The latter refer to the longer-term effects that an electoral system may exercise on the general pattern of political forces in a country. If you assert that the first-past-the-post system clearly leads to a 2-party system, you are alleging this electoral system has a *distal effect*, which is proven by the experience of many societies but disproved by numerous cases. Whoever prefers to stick to *proximal effects* will instead assert, for example, that a proportional electoral system where the whole country forms one constituency and where seats are distributed using the Sainte-Laguë technique, with no threshold to exclude the weakest parties, will produce a Parliament where each party gets a number of seats very close to its share of the popular vote. The language here is more technical, and the assertions much likelier to be proven by experience, if based on rigorous methods of measurement.

We will stick here to *proximal effects*. By looking at elections in societies using a compensatory mixed electoral system, we have seen that precious insights may be gained into the type of results that the different existing modes of operation may produce. It remains to be seen whether insights from foreign election analysis are transposable into the Québec landscape. The existing electoral system of one country may lead to quite different results when transposed into another. A closer look is therefore important to reduce the margin of uncertainty.

SIMULATION PROGRAM

The only way to know is through simulations based on previous election results. In our case, we wanted to see how seats would be distributed under a compensatory mixed electoral system with a constituency/compensatory seat ratio of 60/40, with compensation over the entire province or in smaller regions of varying sizes, and with the Largest Remainder technique being used as opposed to other techniques. Such an exercise should be performed on more than one election. The results should be compared with empirical findings from the experiences of other societies. If there is concordance, a step has been made toward greater certainty.

The goal of our exercise was to estimate party seat distribution in the 1998 and 2003 elections with a compensatory mixed system and a ratio of 60/40. To be more precise, we wished to see how different variables would affect party representation, the size of vote/seat distortions and, potentially, the creation of excess seats. We also wanted to see whether the different approaches would perpetuate, reduce, or eliminate the asymmetry that characterizes the way the current electoral system works. On these points, interesting insights were provided by our review of elections in other countries. We felt it necessary to verify these insights with simulations based on Québec election data.

88. Douglas W. RAE, *The Political Consequences of Electoral Laws*, 2nd ed., New Haven and London, Yale University Press, 1971, pp. 67-68.

ELECTORAL SUBDIVISION OF SINGLE-MEMBER CONSTITUENCIES (COMMON FACTOR IN ALL SIMULATIONS)

With compensatory mixed systems, simulations raise a special challenge. To us it seemed difficult to consider keeping all 125 existing constituencies, as this would require adding some 80 compensatory seats and producing a National Assembly with over 200 seats. No one seems to have conceived of such numbers, if we go by proposals in past years. We earlier suggested a total of 125 MNAs, which seems to reflect the most widespread sentiment. This would mean working with a completely new Québec electoral subdivision and a lot fewer constituencies. Fortunately, such a subdivision does exist and many have even advocated it for a new system. It is the current federal electoral subdivision, which gives Québec 75 constituencies, as described in the Representation Order published in the *Canada Gazette* in August 2003. This subdivision was drawn up using the 2001 census by an independent boundary commission that held regional hearings on a draft proposal. It came into force in the last federal election. Population inequalities among the constituencies are minimal and the subdivision is a highly egalitarian one.[89]

For some, the simple fact of using a federal subdivision may be out of the question. For others, similar federal and provincial electoral subdivisions may help citizens find their way through the voting process more easily. For us, this subdivision has the great advantage of existing and not being challenged on its fairness. In any event, it is no more open to criticism than any other hypothetical 70- or 80-constituency electoral subdivision that the CRE could have designed after one or two years of work, simply for purposes of simulation.

The Office of the Chief Electoral Officer has provided us with a transposition of the 1998 and 2003 election results into these 75 constituencies (see appendices, tables 4 and 9). It would have been useful to look at other elections than the last two for a better appreciation of the different approaches. Equivalent data, however, were unavailable for earlier years.

The outcomes obtained with the transpositions are quite interesting. For 1998, the PQ would get 47 seats, the QLP 28, and the ADQ none. For 2003, the QLP would get 47 seats, the PQ 25, and the ADQ 3. Although this subdivision accurately reflects rep. by pop., it does not eliminate the anomalous 1998 result and produces in 2003 as much distortion as the 125-constituency subdivision. Actually, these outcomes are not surprising. They dispel the illusion, still persistent among some, that the distortions in Québec elections could be eliminated by redrawing the electoral subdivision.

This transposition is invariably present in all of our simulations. For distribution of compensatory seats, we looked at several scenarios that differently combine three types of variable: regional electoral subdivisions; seat distribution methods; and computation techniques.

FIVE ELECTORAL SUBDIVISION ASSUMPTIONS

Compensation could be province-wide, with all of Québec forming one constituency to this end. The computations are then very simple. If compensation is done regionally, the basic single-member constituencies have to be grouped into regions. We made our different regional electoral subdivisions by grouping the 75 federal constituencies differently.

Should these regions be as small as possible or larger? Should they correspond to the administrative regions? For this investigation, we felt it necessary to look at four regional assumptions, in addition to province-wide compensation.

a) Electoral subdivision "A" (26 regions)

At our request and according to our instructions, the Office of the Chief Electoral Officer grouped the above 75 constituencies into regional blocs. For example, the region of Saguenay—Lac-Saint-Jean encompasses the 3 federal constituencies of Chicoutimi-Le Fjord, Jonquière-Alma, and Roberval. It was assigned 2 compensatory seats for a total of 5 seats, i.e., the region's current representation in the National Assembly. The aim was to produce as many regions as possible with 3 constituencies and 2 compensatory seats, for a total of 5 seats. In the case of 4 large outlying regions (Abitibi, Côte-Nord, Gaspésie, Bas-Saint-Laurent), it was deemed preferable to produce 3-seat regions (2 constituencies and 1 compensatory seat). A south-shore Montréal region was assigned 7 seats (4 constituencies and 3 compensatory seats). There are only a few such cases and the overwhelming majority of the regions have a 60/40

89. The minimum majority index (Dauer-Kelsay) of the new federal electoral subdivision reaches 48% (50-51% being the maximum level of equality possible) versus 44% for the current provincial subdivision. Population differences range from 74,475 to 105,678.

ratio between the two types of seat. This electoral subdivision has 26 regions, with a total of *49 compensatory seats* (instead of the 50 envisioned). When added to the *75 single-member constituencies*, these seats form *a 124-seat assembly*. With a mean number of seats per region ("district magnitude") of 4.8, this electoral subdivision produces relatively small regions, probably the smallest that may be reasonably considered. In such regions, the distortions will likely be higher, the chances of small parties making a breakthrough, slim, and the incidence of excess seats, high.

We personally prepared the three following electoral subdivisions. The initial 26 regional blocs were grouped on the basis of different principles.

b) Electoral subdivision "B" (16 regions)

The **second assumption** is to stick closer to the administrative region subdivision. Most of the regions would remain identical to electoral subdivision "A", but in some places would be clearly larger and have accordingly more seats. Île-de-Montréal would be a large 30-seat region (18 constituencies and 12 compensatory seats) and Montérégie would have 22 seats (13 constituencies and 9 compensatory seats). In contrast, Québec and Lanaudière would each have 10 (6 constituencies and 4 compensatory seats). In this electoral subdivision, population density matters more than proportionality. Where the population is dense, the regions encompass more seats. Conversely, non-metropolitan regions have fewer seats, given their more dispersed population. In total, this electoral subdivision has 16 regions. Nord du Québec has too few people to be a separate region in itself and has been joined to Abitibi. Mean number of seats per region is 7.7. This electoral subdivision has the disadvantage of producing 2-tiered PR with two classes of voters: metropolitan region residents are entitled to almost complete proportionality; non-metropolitan region residents have to settle for less. If one party dominates in metropolitan regions and the other in non-metropolitan regions, the former may be somewhat penalized in its parliamentary representation.

c) Electoral subdivision "C" (13 regions)

The **third assumption** is to group the basic regions of electoral subdivision "A" into larger blocs. Typically, the regions will have 10 seats (6 constituencies and 4 compensatory seats) instead of 5 (3 constituencies and 2 compensatory seats). The principle of uniformity is maintained, and Montréal is divided into regional constituencies with about ten seats each, like the other regions. Some regional blocs may seem unrealistic (Saguenay and Côte-Nord, Abitibi and Outaouais). In total, this electoral subdivision has 13 regions. Mean number of seats per region is 9.5. There should be less distortion, better representation of small parties, and fewer excess seats.

d) Electoral subdivision "D" (4 regions)

The **fourth assumption** has much larger regional blocs than the previous ones. There are four blocs: Île-de-Montréal, the periphery (north and south) of Montréal, Centre-du-Québec, and a vast region forming an arc around the others, from Outaouais to Gaspésie and passing through Abitibi, Saguenay, and Côte-Nord. The aim here is to get away from the administrative region subdivision and to produce districts for computation that are large enough to reduce distortions, to give small parties a reasonable chance, and to avoid creating too many excess seats.

e) Electoral subdivision "E" (province-wide compensation, no regions)

Finally, in the **fifth assumption**, there will be no division of Québec's territory into regions, and the compensation will be province-wide, with all of Québec forming one constituency to this end. There should thus be high proportionality and low distortion, fair representation of small parties, and a minimum of excess seats.

Table 26 sums up the main features of the five electoral subdivisions.

Table 26
COMPARISON OF THE FIVE ELECTORAL SUBDIVISONS

Electoral subdivision	Number of regions	Number of seats in a region*		Mean number of seats per region
		Smallest	Largest	
A	26	3 (2+1)	7 (4+3)	4.8
B	16	3 (2+1)	30 (18+12)	7.7
C	13	6 (4+2)	12 (7+5)	9.5
D	4	22 (14+8)	37 (22+15)	31.0
E	1	124 (75+49)	124 (75+49)	124.0

*The first number under this heading is the region's total number of seats. Between the following brackets are consecutively the number of constituencies and the number of compensatory seats in the region.

The five electoral subdivisions all produce a total of 124 seats: 75 constituency seats and 49 compensatory seats.

Tables 2 and 3, in the appendices, respectively detail the grouping of the 75 constituencies into 26 regions and the constituencies included in each region.

The number of votes for the main political parties in each of these regional blocs appears in the appendices in tables 5, 6, 7, and 8 (1998 election) and in tables 10, 11, 12, and 13 (2003 election).

In the appendix tables for each simulation's detailed outcomes, the regions are designated by one or more letters. In the first electoral subdivision assumption, the 26 regions are designated by a letter of the alphabet (A to Z). For example, the letter "A" corresponds to the Gaspé Peninsula region, composed of the federal constituencies of Gaspésie—Îles-de-la-Madeleine and Matapédia-Matane, to which are added one compensatory seat, for a total of 3 seats. In the 13-region assumption, region "A" is merged with adjacent region "D" (Rimouski-Témiscouata and Rivière-du-Loup—Montmagny, plus 1 compensatory seat) to form region "AD" (4 constituency seats and 2 compensatory seats). When the entire Île de Montréal forms one region, it is designated by the letters "EGHIOP," corresponding to the basic regions that make it up.

Of course, no electoral subdivision is free from criticism, and the above assumptions should not in any way prejudge any decisions that may be made later. They are working hypotheses and are prepared strictly for purposes of simulation.

SEAT DISTRIBUTION METHOD: THREE ASSUMPTIONS

The general principle of the compensatory method is to give parties extra seats to reduce first-past-the-post distortions. As we have seen, this simple principle may be achieved by several methods. We have chosen three for the simulations.

a) German regional compensation

Compensation in this case is within each region in isolation of all others. The method is to calculate for each region the distribution of *all* its seats (constituency seats and extra compensatory seats) using the popular vote in the region and then to compare this distribution with the constituency seat distribution in the transposition. If a party wins more constituency seats than the total it should have, it gets to keep the excess seat or seats and the region's number of compensatory seats is increased by that amount. This computation procedure was used in the first two Bundestag elections (1949 and 1953).

b) Province-wide compensation followed by redistribution of party seats among the regions

This very complex method has been used in Germany since 1956. First, the seats are distributed among the parties on a Québec-wide basis. Second, the seats received by each party are redistributed among the regions using the number of valid votes in each region for the party. This method results in a kind of inter-regional electoral transfer. The number of constituencies up for grabs in each region is invariable, but the number of compensatory seats for each region may differ from the number originally assigned, depending above all on the region's relative strength of voter turnout. Voter turnout above the Québec average may give a region a few more compensatory seats than initially provided, and this transfer works to the detriment of regions with below-average turnout. The total number of compensatory seats (49) does not vary, except for excess seats that may arise in some regions. Many regions will receive fewer compensatory seats because of lower voter turnout. Excess seats may appear and will have the same effect as with the previous method.

c) Scottish regional compensation

The above two methods may lead to excess seats. The number of excess seats will rise as distortions accentuate within the regions and as the regions increase in number and decrease in size. This leads to two consequences that may seem undesirable: the regional balance of representation is upset, since some regions get excess seats and others do not; and the total number of MNAs temporarily increases. The Scottish method prevents creation of excess seats or, to be more exact, keeps the excess constituency seats of big parties from indirectly increasing the total number of MNAs. It divides the number of votes for a party within a region *by the number of constituency seats already taken plus one*.[90] This computation procedure has in practice the following result: if a party wins more seats than it should have received, the excess seats *are subtracted from the seats that should have gone to the other parties*. This method penalizes the small parties and rewards the big ones.

We excluded two other methods. We saw no need for creating compensatory extra seats (*Ausgleichsmandate*), as required by current legislation in the Länder. Italy's loser and surplus method distributes compensatory seats regardless of the number of constituencies won and instead uses a vote total composed only of the votes for defeated candidates and the winning margins of elected candidates. This method seemed to us both complex in its operation and inefficient in its compensatory effect. To our knowledge, neither method has been advocated for Québec.

COMPUTATION TECHNIQUE: THREE TYPES

The distinction between "seat distribution method" and "computation technique" may seem at first obscure, but it is a necessary one. For the previous methods, there are three main computation techniques. Each one may produce slightly different outcomes, especially if there are few seats per region.

a) The D'Hondt technique

The **D'Hondt** technique (largest average) is to divide the number of votes for each party successively by 1, 2, 3, etc., and to give the seats to the parties with the highest quotients. It normally favours the strongest parties.

b) The Largest Remainder technique

The **Largest Remainder** technique (called, in Germany, the Hare-Niemeyer technique) first requires calculating a quotient: the total number of votes for eligible parties divided by the number of seats. The votes for each party are then divided by this quotient. The resulting whole number is the number of seats that go to each party. If this operation is insufficient to distribute all of the seats, the ones not distributed go to the parties that, after division by the quotient, have the largest remaining amounts, until all seats have been filled. This technique is recognized as being more proportional than the previous one, and more favourable to small parties, to the point of overrepresenting small parties in some cases.

c) The Sainte-Laguë technique

The **Sainte-Laguë** technique divides the number of votes for each party by successive odd numbers (1, 3, 5, 7, etc.), and gives the seats to the parties with the highest quotients. Although it resembles the D'Hondt technique in its operation, it produces more proportional outcomes.[91]

90. In practice, this technique produces exactly the same result as does the German method when no party has won excess seats. It may therefore be limited to regions where an excess seat has been won.

91. Our simulations did not use the Imperiali technique, which is used in Belgian municipal elections. It divides the vote for each party by 1, 1 1/2, 2, 2 1/2, etc. (Article 56 of the Loi électorale communale belge). This technique benefits the big parties so much that it is not considered a true PR technique.

Each of the three techniques is compatible with the German method, but the Scottish method has to date been combined only with the D'Hondt technique. We have designed computation procedures (see Appendix VI) that adapt this method to the Sainte-Laguë and Largest Remainder techniques. These procedures were submitted for discussion to Prof. John Curtice, of the University of Strathclyde in Scotland, who has judged them be correct.[92]

Angelo Elias, a doctoral candidate in political science at the Université de Montréal, has done the computations under our supervision and according to our instructions. With the development of specialized software, we could quickly find out the distribution for each computation technique.[93] Computations for province-wide compensation followed by regional redistribution largely had to be done manually.[94] The same was true for computations required by the Scottish method.

IN SUMMARY

If we combine the five electoral subdivision assumptions, the three seat-distribution methods, and the three computation techniques, the result is a broad range of 42 scenarios. For the purposes of this investigation, the electoral subdivisions are designated by upper-case letters (A, B, C, D, E), the seat-distribution methods by numbers (1, 2, 3), and the computation techniques by lower-case letters (a, b, c). Each simulation is therefore labelled alphanumerically (A1a, B2c, etc.).

In the tables of appendices III and IV, each of these codes is followed by a number giving the simulation's election year: 1998 or 2003.

Our five electoral subdivision assumptions:

A) 26 regions with a mean of 4.8 seats each;

B) 16 regions, most with 3 or 5 seats each, except the following regions: Montréal (30 seats), Montérégie (22 seats), Québec and Lanaudière (10 seats each); the mean is 7.7 seats per region;

C) 13 regions with an average of 9.5 seats each;

D) 4 regions with an average of 31 seats each;

E) all of Québec forming one constituency, with no regional subdivision (province-wide compensation).

Our three seat distribution methods:

1. German regional compensation: computations are made separately within each region, as for the Bundestag in 1949 and 1953;
2. Province-wide compensation, followed by redistribution of party seats among the regions, as in Germany since 1956;
3. Scottish regional compensation.

Our three computation techniques:

b) D'Hondt technique (largest average);

c) Largest Remainder technique (Hare-Niemeyer);

d) Sainte-Laguë technique.

The scenarios are listed in Table 27.

The simulations provided us with the seat distribution that classic regional PR would have produced in each case. This information is needed for compensatory computation.

Table 27

ALPHANUMERIC CODES OF THE 42 SCENARIOS

A1a	B1a	C1a	D1a	E1a
A1b	B1b	C1b	D1b	E1b
A1c	B1c	C1c	D1c	E1c
A2a	B2a	C2a	D2a	*
A2b	B2b	C2b	D2b	*
A2c	B2c	C2c	D2c	*
A3a	B3a	C3a	D3a	E3a
A3b	B3b	C3b	D3b	E3b
A3c	B3c	C3c	D3c	E3c

*Scenarios E2a, E2b, and E2c are logically impossible. Seats received by the parties in the province-wide distribution cannot be regionally redistributed if there are no regions.

92. E-mail from Prof. Curtice to the author, November 12, 2003.

93. Our work tool was the software application on the website Wahlen in Deutschland, at: www.election.de, under "Mandate-Rechner." This application has the advantage of simultaneously distributing the seats for the three techniques.

94. The "Mandate-Rechner" has only a limited number of boxes for entering party votes. Because we had to distribute the party seats among 13, 16, or 26 regions according to our electoral subdivisions, this application was not used.

POSTULATES SHARED BY ALL SIMULATIONS

Three postulates were the basis for our investigation:

- The computations used the votes for party candidates in the two Québec elections under study. It was postulated that voters would have voted exactly the same way, independently of the local candidate's merits. No speculation was attempted on the consequences of introducing a second vote;
- A 5% province-wide threshold was applied and was not waived for any party that failed to reach this threshold but still managed to win a constituency seat. Any party with less than 5% of all valid votes throughout Québec was excluded from the computation. Of course, such a party would still retain any constituency seats it won.[95] Votes for independent candidates or candidates with no party label were also excluded from the computation;
- No projection was made on the identity of elected MNAs. It was unknown who would have run in the hypothetical constituencies, who would have been on the party lists, and in what order. We did, however, identify the "best losers" of parties that might be entitled to compensatory seats. To be more precise, within each region that received compensatory seats, we identified those constituencies among the ones lost by these parties where they scored the highest either in valid votes or in percentage of valid votes.

ANALYSIS SUMMARY

For each simulation, we produced *a detailed table* giving each region's seat distribution for constituencies and compensatory seats, as well as provincial totals. The tables appear in appendices III and IV.

Based on these tables, we prepared *summary tables* by compiling the overall outcomes for each simulation. They include the total number of seats for each party (in absolute numbers and as percentages of the total) and the resulting number of excess seats, if applicable. The tables have been integrated into the body of the text.

Using this information, we prepared tables giving the *overall distortion level* produced by each simulation. Several indices try to capture this level in a single number. We chose the index developed by Michael Gallagher.[96] We also prepared a table giving the *majority bonus* in each simulation, i.e., the difference (in percentage points) between the percentage of valid votes for the strongest party (in votes cast) and the percentage of seats for this party. The outcomes were also analyzed in terms of presence or absence of *regional monopolies*, i.e., the cases where a party managed to get all seats up for grabs in a region. We compiled the number of *excess seats* produced by each method if it could produce any. We also looked at whether a method would or would not correct *reversals of party standings*, as happened in 1998. Finally, we tried to see to what degree the different approaches worked *asymmetrically*.

95. This never happened in our simulations. It could have happened in 1989 to the benefit of the Equality Party.
96. Michael GALLAGHER, "Proportionality, Disproportionality and Electoral Systems", *Electoral Studies*, vol. 10, no. 1, 1991, pp. 33-51.

Chapter14
Simulation Outcomes

FOUR KEY FINDINGS

Our research had two lines of investigation: analysis of experiences in foreign countries (first part) and simulation of Québec elections (second part). *They produced concurrent findings.* Without causing any great surprises, our simulations nevertheless showed us the effects of the different possible approaches much more clearly:

- *Only electoral system reform will correct the anomalies of the current first-past-the-post system.* This lesson clearly emerges from transposition of the 1998 and 2003 election results into the new federal electoral subdivision. Although this subdivision accurately reflects rep. by pop., the distortions between popular vote and party seat standings remain virtually intact. The ADQ would not have won any seats in 1998 despite getting 12% of the popular vote and the PQ would have gained a comfortable parliamentary majority (47 seats) despite a lower standing in the popular vote. In 2003, each party would have got a share of the 75 seats very close to what it did get. To those who still think that simple electoral subdivision reform would suffice to solve the problems of the first-past-the-post system, our simulations provide a predictable and eloquent response;
- All of our scenarios produce *outcomes clearly more proportional* to the popular vote than does the current first-past-the-post system. The compensatory mixed system reduces distortions and may even eliminate them. The least proportional approach would give the strongest party a bonus of up to 7 percentage points in 2003 (46% of the vote and 53% of the seats). Even in this case, the distortions are noticeably less than those of the current electoral system;
- The compensatory mixed system would end the regional monopolies of the two main parties and encourage much more party diversity throughout the province. In 1998, out of 26 regions, a pure first-past-the-post system created **19 regional monopolies**: 13 for the PQ and 6 for the QLP. Only 7 regions had MNAs from different parties. In 2003, the same situation arose. Out of 26 regions, the first-past-the-post system created **17 regional monopolies**: 12 for the QLP and 5 for the PQ. There are fewer of these regional monopolies, or even none, in all of our scenarios;
- The simulations reveal that **excess seats (*Überhang*) are a serious disadvantage; in many ways more so than thought**. First, they are not accidents that occur rarely. *Excess seats arise in almost all simulations that can produce them*. Only province-wide compensation has none. Second, *many excess seats are produced*, up to 11 per election in some cases. This would increase the total membership of the National Assembly to 135. Third, excess seats *upset the regional balance* of representation by population because certain regions get some and others do not. As well, it is always the same ones that benefit. Île-de-Montréal would almost never get any, like several other regions, whereas Québec City would almost always get some. Fourth, *excess seats are more often won by one of the two main parties than by the other*. The ADQ would never have any, a factor that would accentuate its underrepresentation. Fifth, *excess seats occasionally give a plurality of seats to a party that does not have a plurality of the vote*. This anomaly appears several times in our simulations (in every case for the 1998 election).

IMPACT OF THE DIFFERENT VARIABLES

We will now analyze the impact of the three main variables: regional electoral subdivisions, seat distribution methods, and computation techniques.

a) Regional electoral subdivisions

As we expected, province-wide compensation produces a minimum of distortion and reduces the majority bonus of the big parties to the least possible. With a 5% threshold, no party other than the three now in the National Assembly manages to secure a seat in our simulations. Without such a threshold, this outcome would be possible. No simulation with province-wide compensation produces excess seats.

As soon as compensation is done within 4 large regions, majority bonuses emerge and distortions increase. These two factors are accentuated with a 13- or 16-region subdivision and are at their highest with a 26-region one. In short, excess seats appear with a 4-region subdivision and increase as the number of regions increases. Some 26-region simulations produce up to 11, bringing the membership of the National Assembly to 135.

b) Seat distribution methods

GERMAN REGIONAL COMPENSATION

This method was easy to apply. Its distortions and majority bonuses vary according to the regional electoral subdivision and the computation technique.

In our simulations, the method showed its versatility by producing distortion levels and majority bonuses of varying magnitude. Even with 26 regions, it is possible to obtain low distortion levels and a small majority bonus by using the Largest Remainder technique. If a more substantial majority bonus is desired, one need only use the D'Hondt technique with the same regional electoral subdivision (tables 28 and 29).

Table 28

OUTCOME SUMMARY—GERMAN REGIONAL COMPENSATION—1998 ELECTION

Number of regions and technique	Total	QLP	PQ	ADQ	Excess seats
26 regions					
D'Hondt technique	125	60 *48.00*	59 *47.20*	6 *4.80*	1 (PQ)
Sainte-Laguë technique	131	55 *41.98*	59 *45.04*	17 *12.98*	7 (QPL 1; PQ 6)
Largest Remainder technique	130	54 *41.54*	59 *45.38*	17 *13.08*	6 (QPL 1; PQ 5)
16 regions					
D'Hondt technique	125	58 *46.40*	59 *47.20*	8 *6.40*	1 (PQ)
Sainte-Laguë technique	131	57 *43.51*	58 *44.27*	16 *12.21*	7 (QPL 1; PQ 6)
Largest Remainder technique	131	56 *42.75*	58 *44.27*	17 *12.98*	7 (QPL 1; PQ 6)
13 regions					
D'Hondt technique	125	58 *46.40*	57 *45.60*	10 *8.00*	1 (PQ)
Sainte-Laguë technique	127	54 *42.52*	57 *44.88*	16 *12.60*	3 (PQ)
Largest Remainder technique	127	54 *42.52*	57 *44.88*	16 *12.60*	3 (PQ)
4 regions					
D'Hondt technique	125	56 *44.80*	55 *44.00*	14 *11.20*	1 (PQ)
Technique de Sainte-Laguë	125	56 *44.80*	55 *44.00*	14 *11.20*	1 (PQ)
Largest Remainder technique	125	56 *44.80*	55 *44.00*	14 *11.20*	1 (PQ)
Province-wide compensation					
D'Hondt technique	124	55 *44.35*	54 *43.55*	15 *12.10*	0
Sainte-Laguë technique	124	55 *44.35*	54 *43.55*	15 *12.10*	0
Largest Remainder technique	124	55 *44.35*	54 *43.55*	15 *12.10*	0

Table 29

OUTCOME SUMMARY—GERMAN REGIONAL COMPENSATION—2003 ELECTION

Number of regions and technique	Total	QLP	PQ	ADQ	Excess seats
26 regions					
D'Hondt technique	133	69 *51.88*	46 *34.59*	18 *13.53*	9 (QPL 5; PQ 4)
Sainte-Laguë technique	135	66 *48.89*	46 *34.07*	23 *17.04*	11 (QPL 6; PQ 5)
Largest Remainder technique	135	63 *46.67*	46 *34.07*	26 *19.26*	11 (QPL 6; PQ 5)
16 regions					
D'Hondt technique	131	65 *49.62*	45 *34.35*	21 *16.03*	7 (QPL 4; PQ 3)
Sainte-Laguë technique	131	63 *48.09*	44 *33.59*	24 *18.32*	7 (QPL 4; PQ 3)
Largest Remainder technique	131	63 *48.09*	43 *32.82*	25 *19.08*	7 \(QPL 4; PQ 3)
13 regions					
D'Hondt technique	128	66 *51.56*	44 *34.38*	18 *14.06*	4 (QPL 3; PQ 1)
Sainte-Laguë technique	129	62 *48.06*	44 *34.11*	23 *17.83*	5 (QPL 3; PQ 2)
Largest Remainder technique	129	62 *48.06*	44 *34.11*	23 *17.83*	5 (QPL 3; PQ 2)
4 regions					
D'Hondt technique	126	62 *49.21*	43 *34.13*	21 *16.67*	2 (QPL)
Sainte-Laguë technique	126	61 *48.41*	43 *34.13*	22 *17.46*	2 (QPL)
Largest Remainder technique	126	62 *49.21*	42 *33.33*	22 *17.46*	2 (QPL)
Province-wide compensation					
D'Hondt technique	124	59 *47.58*	42 *33.87*	23 *18.55*	0
Sainte-Laguë technique	124	59 *47.58*	42 *33.87*	23 *18.55*	0
Largest Remainder technique	124	59 *47.58*	42 *33.87*	23 *18.55*	0

The German method's main weakness is the high number of excess seats it tends to produce, especially if there are many regions. A total of 111 are produced by the different scenarios. Further analysis reveals the following points, which are all consistent with generalizations from analysis of German elections:

- Only province-wide compensation produces no excess seats. All of the regional electoral subdivisions produce excess seats to varying degrees;
- The number of excess seats tends to increase with the number of regions. There are 9 in all of the 4-region simulations, 21 with 13 regions, 36 with 16 regions, and 45 with 26 regions. **In other words, the more regions there are, the likelier there will be excess seats**, because distortions tend to be greater in some regions than in Québec as a whole;

Table 30

GERMAN REGIONAL COMPENSATION —NUMBER OF EXCESS SEATS PRODUCED BY DIFFERENT REGIONAL ELECTORAL SUBDIVISIONS

Number of regions	Mean number excess seats per election	Total number of seats		Rate of increase of parliamentary representation %
		Expected	Actual	
26	7.6	124	132	+ 6.5
16	6.0	124	130	+ 4.8
13	3.5	124	128	+ 2.8
4	1.5	124	126	+ 1.2
1	0.0	124	124	-

- The number of *Überhang* is clearly higher with the Sainte-Laguë (43) or Largest Remainder technique (42) than with the D'Hondt technique (26). The explanation is simple. The D'Hondt technique tends to give the strongest party more seats than the other techniques. If the D'Hondt technique gives 3 seats in a region to the strongest party, whereas the other techniques give it only 2, the party's third constituency seat in the region is an excess seat according to the Sainte-Laguë and Largest Remainder techniques but not according to the D'Hondt technique;
- The increase in the total number of MNAs produced by the appearance of excess seats is not trifling. Some scenarios produce up to 135 MNAs instead of 124. The increase can be seen in the seat distributions of Table 30;
- **Excess seats occur unequally in the different regions, and the resulting deformation of regional representation is not minor**. They virtually never appear in the region of Île-de-Montréal (only 3 out of 111) and almost always appear outside this region (108). They are produced disproportionately in Québec City (42 out of 111). They thus increase the relative weight of Québec outside Montréal. The reason is simple. In the two simulated elections, distortions were less pronounced in Île de Montréal than elsewhere in Québec and reached their highest level in Québec City;
- When regions are small (e.g., a 26-region electoral subdivision), excess seats have a maximum impact on the overall representation of the region getting them. The region gets 6 seats instead of 5, i.e., a 20% increase. Such a phenomenon will probably not go unnoticed in an adjacent region where the vote produces no excess seats;
- **Excess seats have nothing to do with the relative size of a region's population or its rate of voter turnout**. They are simply due to the degree of distortion between the distribution of valid votes and the distribution of constituency seats in each region. In other words, the higher the distortion is within a region, the likelier the region will get an excess seat. The seat gives the region a sort of distortion bonus;
- **Excess seats do not randomly affect party standings**. They more often go to the PQ (63) than to the QLP (48) and never to the ADQ. This is because the PQ has been relatively more popular outside Île-de-Montréal, especially in 1998, and because the ADQ does not manage to sweep any region. In many 1998 election simulations, excess seats give the lead in seat standings to the party that came second in the popular vote.

REGIONAL COMPENSATION WITH PARTY SEATS REDISTRIBUTED AMONG THE REGIONS

This method is the most complex one of all. It almost squares the circle. Seats are first distributed on a province-wide basis—a high degree of proportionality is thus guaranteed in principle—and then redistributed among the regions—list MNAs are thus tied more closely to a more concrete territory.

The transpositions reveal that this method produces very similar outcomes, whatever the electoral subdivision or computation technique. In simulations based on this method (12 for each election), the total number of seats received by each party varies very little. For the 1998 election, the QLP would get 55 or 56 seats, the PQ 54 to 57, and the ADQ 15 in every case (Table 31). For the 2003 election, the QLP would get 60 to 63 seats, the PQ 43 to 47, and the ADQ 23 in every case (Table 32). The reason is quite simple. The seats are first distributed province-wide, so the impact of the computation technique is minimized. The subsequent variations are largely due to the appearance of excess seats, to the benefit of certain parties, when seats are redistributed among the regions.

This method tends to produce a very low overall distortion level, lower than with German or Scottish regional compensation for the same number of regions. The strongest party's majority bonus is clearly lower than with the other two methods.

Table 31

OUTCOME SUMMARY—PROVINCE-WIDE COMPENSATION WITH REGIONAL REDISTRIBUTION—1998 ELECTION

Number of regions and technique	Total	QPL	PQ	ADQ	Excess seats
26 regions					
D'Hondt technique	127	55 *43.31*	57 *44.88*	15 *11.81*	3 (PQ)
Sainte-Laguë technique	127	55 *43.31*	57 *44.88*	15 *11.81*	3 (PQ)
Largest Remainder technique	127	55 *43.31*	57 *44.88*	15 *11.81*	3 (PQ)
16 regions					
D'Hondt technique	130	56 *43.08*	59 *45.38*	15 *11.54*	6 (QPL 1; PQ 5)
Sainte-Laguë technique	126	55 *43.65*	56 *44.44*	15 *11.90*	2 (PQ)
Largest Remainder technique	127	55 *43.31*	57 *44.88*	15 *11.81*	3 (PQ)
13 regions					
D'Hondt technique	126	55 *43.65*	56 *44.44*	15 *11.90*	2 (PQ)
Sainte-Laguë technique	126	55 *43.65*	56 *44.44*	15 *11.90*	2 (PQ)
Largest Remainder technique	126	55 *43.65*	56 *44.44*	15 *11.90*	2 (PQ)
4 regions					
D'Hondt technique	124	55 *44.35*	54 *43.55*	15 *12.10*	0
Sainte-Laguë technique	124	55 *44.35*	54 *43.55*	15 *12.10*	0
Largest Remainder technique	124	55 *44.35*	54 *43.55*	15 *12.10*	0

Table 32

OUTCOME SUMMARY—PROVINCE-WIDE COMPENSATION WITH REGIONAL REDISTRIBUTION—2003 ELECTION

Number of regions and technique	Total	QPL	PQ	ADQ	Excess seats
26 regions					
D'Hondt technique	130	62 *47.69*	45 *34.62*	23 *17.69*	6 (QPL 3; PQ 3)
Sainte-Laguë technique	132	62 *46.97*	47 *35.61*	23 *17.42*	8 (QPL 3; PQ 5)
Largest Remainder technique	132	62 *46.97*	47 *35.61*	23 *17.42*	8 (QPL 3; PQ 5)
16 regions					
D'Hondt technique	130	63 *48.46*	44 *33.85*	23 *17.69*	6 (QPL 4; PQ 2)
Sainte-Laguë technique	130	62 *47.69*	45 *34.62*	23 *17.69*	6 (QPL 3; PQ 3)
Largest Remainder technique	130	62 *47.69*	45 *34.62*	23 *17.69*	6 (QPL 3; PQ 3)
13 regions					
D'Hondt technique	128	61 *47.66*	44 *34.38*	23 *17.97*	4 (QPL 2; PQ 2)
Sainte-Laguë technique	128	61 *47.66*	44 *34.38*	23 *17.97*	4 (QPL 2; PQ 2)
Largest Remainder technique	128	61 *47.66*	44 *34.38*	23 *17.97*	4 (QPL 2; PQ 2)
4 regions					
D'Hondt technique	126	60 *47.62*	43 *34.13*	23 *18.25*	2 (QPL 1; PQ 1)
Sainte-Laguë technique	126	60 *47.62*	43 *34.13*	23 *18.25*	2 (QPL 1; PQ 1)
Largest Remainder technique	126	60 *47.62*	43 *34.13*	23 *18.25*	2 (QPL 1; PQ 1)

Like German regional compensation, this method leads to excess seats. Fewer are created (a total of 84, instead of 111), but their numbers remain significant. The highest number produced by any of our simulations is 8, for a total of 132 seats. In the 1998 election, in most cases, excess seats would give a plurality of seats to the party that came second in the popular vote. As with the previous method, there tend to be more excess seats if there are more regions. None of the three computation techniques tends to produce appreciably more excess seats than do the others.

The most problematic outcome of our simulations is the very high uncertainty with this method in the total number of seats that each region will finally get. With German regional compensation, each region can count on a fixed minimum of compensatory seats, to which may be added an excess seat. With this more complex method, it becomes much harder to predict how many seats each region will get. For the 1998 election, for example, with whatever computation technique, the number of compensatory seats (and therefore the total number of seats) would differ from the expected total in fifteen or so of the 26 regions. For the 2003 election, 16 to 20 regions would be in the same boat. In other words, **the final number of compensatory seats in each region becomes**

highly unpredictable, and the chances are two out of three that it will differ from the expected total. As predicted, the method leads to much inter-regional electoral transfer, according to each region's relative voter turnout. This is all the better for regions with high turnouts, which may hope to pick up extra seats, and all the worse for the others, which will have less representation than expected.

More detailed analysis of winners and losers in the game of inter-regional transfer shows that the losers would include the regions of Île-de-Montréal (especially its western portion), Outaouais and, to a lesser degree, Gaspésie. Their turnout is lower and they would not get any excess seats. The winners would include Mauricie, Québec, Laval, Richelieu, and Suroît. For the other regions, the net impact over the two elections would be more neutral.

The simulations also reveal that, in some cases, **a region may receive no compensatory seats** because of its relatively low turnout. The phenomenon is not produced for the 1998 election, but it arises in several 2003 election simulations and sometimes affects 2 of the 26 regions.

SCOTTISH REGIONAL COMPENSATION

The Scottish method gives outcomes of the same order as does German regional compensation. In regions with no excess seats, the two methods produce exactly the same outcome. Wherever a party is regionally overrepresented, this method settles the problem to the detriment of one of the weaker parties.[97] As we expected, distortions and majority bonus are a bit higher, but do not exceed the limits of PR. It is the price to be paid to keep excess seats from raising the total number of members and upsetting the regional balance of representation. This effect is shown by studies of Scottish and Welsh elections.

As we mentioned above, the Scottish method is a modification of the D'Hondt technique. We wished to look into all of the possible alternatives, so we designed a computation procedure that adapts the Scottish method to the Sainte-Laguë and Largest Remainder techniques. Such procedures reduce the overall distortion level. Other than that, the outcomes are rather ridiculous. In the 1998 election, some scenarios would give the second party in the popular vote 59 seats versus 50 for the first party. This predictable outcome arises because, as already noted, the Sainte-Laguë and Largest Remainder techniques tend to create many excess seats, because excess seats tend to be won more often by one party than by the others, and because the Scottish method gives the party that wins excess seats a clearer benefit.

97. To be more precise, the Scottish method hurts the runner-up party in a region if two compensatory seats are at stake, and the weakest party when one is.

Table 33

OUTCOME SUMMARY—SCOTTISH REGIONAL COMPENSATION—1998 ELECTION

Number of regions and technique	Total	QPL	PQ	ADQ
26 regions				
D'Hondt technique	124	60 *48.39*	59 *47.58*	5 *4.03*
Sainte-Laguë technique	124	50 *40.32*	59 *47.58*	15 *12.10*
Largest Remainder technique	124	50 *40.32*	59 *47.58*	15 *12.10*
16 regions				
D'Hondt technique	124	57 *45.97*	59 *47.58*	8 *6.45*
Sainte-Laguë technique	124	53 *42.74*	58 *46.77*	13 *10.48*
Largest Remainder technique	124	52 *41.94*	58 *46.77*	14 *11.29*
13 regions				
D'Hondt technique	124	57 *45.97*	57 *45.97*	10 *8.06*
Sainte-Laguë technique	124	53 *42.74*	57 *45.97*	14 *11.29*
Largest Remainder technique	124	53 *42.74*	57 *45.97*	14 *11.29*
4 regions				
D'Hondt technique	124	56 *45.16*	55 *44.35*	13 *10.48*
Sainte-Laguë technique	124	55 *44.35*	55 *44.35*	14 *11.29*
Largest Remainder technique	124	55 *44.35*	55 *44.35*	14 *11.29*
Province-wide compensation				
D'Hondt technique	124	55 *44.35*	54 *43.55*	15 *12.10*
Sainte-Laguë technique	124	55 *44.35*	54 *43.55*	15 *12.10*
Largest Remainder technique	124	55 *44.35*	54 *43.55*	15 *12.10*

Table 34

OUTCOME SUMMARY—SCOTTISH REGIONAL COMPENSATION—2003 ELECTION

Number of regions and technique	Total	QPL	PQ	ADQ
26 regions				
D'Hondt technique	124	66 *53.23*	42 *33.87*	16 *12.90*
Sainte-Laguë technique	124	62 *50.00*	41 *33.06*	21 *16.94*
Largest Remainder technique	124	59 *47.58*	41 *33.06*	24 *19.35*
16 regions				
D'Hondt technique	124	63 *50.81*	42 *33.87*	19 *15.32*
Sainte-Laguë technique	124	61 *49.19*	41 *33.06*	22 *17.74*
Largest Remainder technique	124	61 *49.19*	40 *32.26*	23 *18.55*
13 regions				
D'Hondt technique	124	65 *52.42*	43 *34.68*	16 *12.90*
Sainte-Laguë technique	124	61 *49.19*	42 *33.87*	21 *16.94*
Largest Remainder technique	124	61 *49.19*	42 *33.87*	21 *16.94*
4 regions				
D'Hondt technique	124	62 *50.00*	42 *33.87*	20 *16.13*
Sainte-Laguë technique	124	61 *49.19*	42 *33.87*	21 *16.94*
Largest Remainder technique	124	62 *50.00*	41 *33.06*	21 *16.94*
Province-wide compensation				
D'Hondt technique	124	59 *47.58*	42 *33.87*	23 *18.55*
Sainte-Laguë technique	124	59 *47.58*	42 *33.87*	23 *18.55*
Largest Remainder technique	124	59 *47.58*	42 *33.87*	23 *18.55*

REGIONAL PR

Regional PR, as envisioned by different official Québec documents since the 1970s, is not one of the approaches currently under consideration for electoral reform. Our computations, however, have provided us with the outcomes that this approach would have produced. We felt it worthwhile to go over these outcomes below.

Moderate regional PR works as indicated by the literature. Distortions and majority bonus are at a minimum with a 4-region electoral subdivision and steadily increase with an increasing number of regions. These two indices reach a level very close to that of German regional compensation, but still a little below. The difference is entirely due to excess seats. Here again, the regional electoral subdivision and the technique determine the distortion level (tables 35 and 36).

Table 35

OUTCOME SUMMARY—MODERATE REGIONAL PR—1998 ELECTION

Number of regions and technique	Total	QLP	PQ	ADQ
26 regions				
D'Hondt technique	124	60 *48.39*	58 *46.77*	6 *4.84*
Sainte-Laguë technique	124	54 *43.55*	53 *42.74*	17 *13.71*
Largest Remainder technique	124	53 *42.74*	54 *43.55*	17 *13.71*
16 regions				
D'Hondt technique	124	58 *46.77*	58 *46.77*	8 *6.45*
Sainte-Laguë technique	124	56 *45.16*	52 *41.94*	16 *12.90*
Largest Remainder technique	124	55 *44.35*	52 *41.94*	17 *13.71*
13 regions				
D'Hondt technique	124	58 *46.77*	56 *45.16*	10 *8.06*
Sainte-Laguë technique	124	54 *43.55*	54 *43.55*	16 *12.90*
Largest Remainder technique	124	54 *43.55*	54 *43.55*	16 *12.90*
4 regions				
D'Hondt technique	124	56 *45.16*	54 *43.55*	14 *11.29*
Sainte-Laguë technique	124	56 *45.16*	54 *43.55*	14 *11.29*
Largest Remainder technique	124	56 *45.16*	54 *43.55*	14 *11.29*
One province-wide compensation				
D'Hondt technique	124	55 *44.35*	54 *43.55*	15 *12.10*
Sainte-Laguë technique	124	55 *44.35*	54 *43.55*	15 *12.10*
Largest Remainder technique	124	55 *44.35*	54 *43.55*	15 *12.10*

Table 36
OUTCOME SUMMARY—MODERATE REGIONAL PR —2003 ELECTION

Number of regions and technique	Total	QLP	PQ	ADQ
26 regions				
D'Hondt technique	124	64 *51.61*	42 *33.87*	18 *14.52*
Sainte-Laguë technique	124	60 *48.39*	41 *33.06*	23 *18.55*
Largest Remainder technique	124	57 *45.97*	41 *33.06*	26 *20.97*
16 regions				
D'Hondt technique	124	61 *49.19*	42 *33.87*	21 *16.94*
Sainte-Laguë technique	124	59 *47.58*	41 *33.06*	24 *19.35*
Largest Remainder technique	124	59 *47.58*	40 *32.26*	25 *20.16*
13 regions				
D'Hondt technique	124	63 *50.81*	43 *34.68*	18 *14.52*
Sainte-Laguë technique	124	59 *47.58*	42 *33.87*	23 *18.55*
Largest Remainder technique	124	59 *47.58*	42 *33.87*	23 *18.55*
4 regions				
D'Hondt technique	124	60 *48.39*	43 *34.68*	21 *16.94*
Sainte-Laguë technique	124	59 *47.58*	43 *34.68*	22 *17.74*
Largest Remainder technique	124	60 *48.39*	42 *33.87*	22 *17.74*
One province-wide compensation				
D'Hondt technique	124	59 *47.58*	42 *33.87*	23 *18.55*
Sainte-Laguë technique	124	59 *47.58*	42 *33.87*	23 *18.55*
Largest Remainder technique	124	59 *47.58*	42 *33.87*	23 *18.55*

c) Computation techniques

Computation techniques affected distortion level exactly as we expected. Distortions and winner's bonus are at a maximum with the D'Hondt technique and fall to a clearly lower level with the Sainte-Laguë or Largest Remainder techniques.

The impact of computation techniques varies according to the regional electoral subdivision. Choosing one technique over another matters if compensation is done within regions, and all the more so with a greater number of regions. It is in a 26-region electoral subdivision that the D'Hondt technique most clearly favours the big parties, and it is also in such a case that the Largest Remainder technique most strongly boosts the weakest of the three parties in the National Assembly. Finally, as we noted above, the differences produced by using one computation technique rather than another vanish if compensation is province-wide, regardless of whether or not the compensatory seats are then redistributed among the regions.

All of this was largely expected. Our only real finding was that the D'Hondt technique decreases the number of excess seats, all things being equal, whereas the other two techniques increase them.

d) Overall distortion level and majority bonus

As we mentioned above, several indices try to capture an election's overall distortion level in a single number. Gallagher's index, the one chosen for our study, is obtained by adding up the squared difference between each party's percentage of the popular vote and its percentage of the seats. The sum is then divided by 2, and the square root of the resulting quotient is the index. Thus, 15.05 is the index for the actual 2003 Québec election results.

The highest distortion level in our simulations is 7.31 (Scottish regional compensation, 26 regions, D'Hondt technique, 2003 election). The lowest is 0.95 (province-wide compensation, 1998 election). Tables 37 to 46 give the distortion level for each simulation. The tendencies specific to each seat distribution method, each electoral subdivision, and each computation technique have been mentioned above.

Table 37

DISTORTION LEVEL—GALLAGHER'S INDEX—GERMAN REGIONAL COMPENSATION—1998 ELECTION

Number of regions	D'Hondt technique	Sainte-Laguë technique	Largest Remainder technique
26	6.65	2.14	2.51
16	5.33	1.17	1.52
13	3.92	1.78	1.78
4	1.39	1.39	1.39
Province-wide compensation	0.95	0.95	0.95

Table 38

DISTORTION LEVEL—GALLAGHER'S INDEX—GERMAN REGIONAL COMPENSATION—2003 ELECTION

Number of regions	D'Hondt technique	Sainte-Laguë technique	Largest Remainder technique
26	5.47	2.46	1.42
16	3.22	1.77	1.89
13	5.05	1.86	1.86
4	2.75	2.11	2.51
Province-wide compensation	1.55	1.55	1.55

Table 39

DISTORTION LEVEL—GALLAGHER'S INDEX—PROVINCE-WIDE COMPENSATION WITH REGIONAL REDISTRIBUTION—1998 ELECTION

Number of regions	D'Hondt technique	Sainte-Laguë technique	Largest Remainder technique
26	1.54	1.54	1.54
16	1.90	1.25	1.54
13	1.25	1.25	1.25
4	0.95	0.95	0.95

Table 40

DISTORTION LEVEL—GALLAGHER'S INDEX—PROVINCE-WIDE COMPENSATION WITH REGIONAL REDISTRIBUTION—2003 ELECTION

Number of regions	D'Hondt technique	Sainte-Laguë technique	Largest Remainder technique
26	1.84	2.11	2.11
16	2.06	1.84	1.84
13	1.71	1.71	1.71
4	1.61	1.61	1.61

Table 41

DISTORTION LEVEL—GALLAGHER'S INDEX—SCOTTISH REGIONAL COMPENSATION —1998 ELECTION

Number of regions	D'Hondt technique	Sainte-Laguë technique	Largest Remainder technique
26	7.31	4.08	4.08
16	5.36	3.02	3.06
13	3.69	2.36	2.36
4	1.89	1.37	1.37
Province-wide compensation	0.95	0.95	0.95

Table 42

DISTORTION LEVEL—GALLAGHER'S INDEX—SCOTTISH REGIONAL COMPENSATION—2003 ELECTION

Number of regions	D'Hondt technique	Sainte-Laguë technique	Largest Remainder technique
26	6.42	3.11	1.68
16	4.10	2.47	2.56
13	6.04	2.64	2.64
4	3.35	2.64	3.11
Province-wide compensation	1.55	1.55	1.55

In the 1998 and 2003 elections, the current first-past-the-post system produced a mean distortion level of **15.19**. In our corresponding simulations, the level is 1.57 with province-wide compensation followed by regional redistribution of the seats, 2.36 with German regional compensation, and 2.94 with Scottish regional compensation. Within these three simulation categories, the distortion level increases, sometimes noticeably, as the number of regions increases (charts 2 and 3).

Chart 2

VOTE/SEAT DISTORSION (GALLAGHER'S INDEX) PRODUCED BY DIFFERENT SCENARIOS — MAGNITUDE —1998 ELECTION

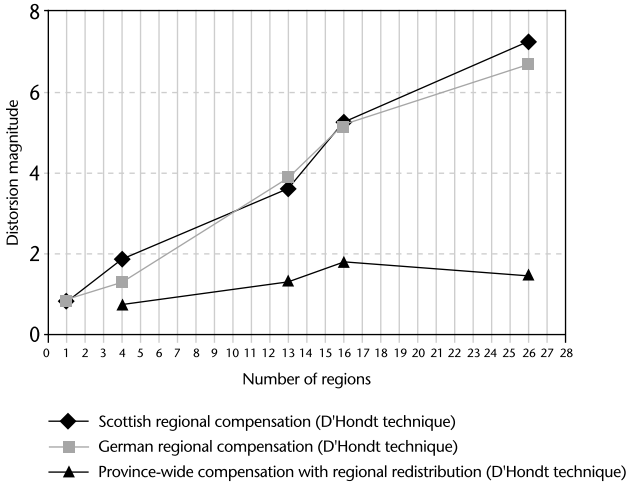
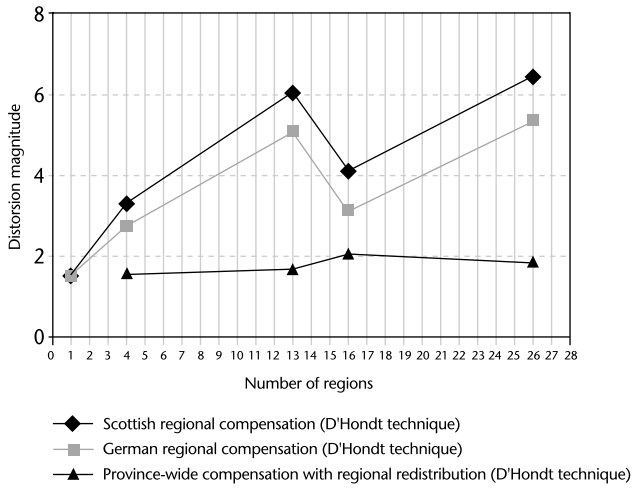


Chart 3

VOTE/SEAT (GALLAGHER'S INDEX) PRODUCED BY DIFFERENT SCENARIOS — MAGNITUDE — 2003 ELECTION



Such data can be truly appreciated only from a comparative perspective. In Table 43, we list the mean distortion level in each election from 1945 to 1996 in 36 democracies. We added the corresponding figure for Québec during the same period (the last two elections are excluded).

Table 43

MEAN DISTORTION LEVELS IN EACH ELECTION IN QUÉBEC AND IN 36 DEMOCRATIC COUNTRIES—ELECTIONS FROM 1945 TO 1996

Country	Mean distortion level	Electoral system*
The Netherlands	1.30	PR
Israel	1.65	PR
Denmark	1.83	PR
Sweden	2.09	PR
Malta	2.36	STV
Austria	2.47	PR
Germany	2.52	CMS
Switzerland	2.53	PR
Finland	2.93	PR
Columbia	2.96	PR
Belgium	3.24	PR
Italy	3.25	PR
Luxembourg	3.26	PR
Ireland	3.45	STV
Portugal	4.04	PR
Costa Rica	4.13	PR
Iceland	4.25	PR
Venezuela	4.28	PR
France (1945-1956 and 1986 elections)	4.86	PR
United States	4.90	Plur.
Norway	4.93	PR
Japan	5.03	FPP
Greece	8.08	PR
Spain	8.15	PR
Australia	9.26	AV
Papua New Guinea	10.06	FPP
United Kingdom	10.33	FPP
New Zealand	11.11	FPP
India	11.38	FPP
Canada	11.72	FPP
Botswana	11.74	FPP
Trinidad	13.66	FPP
France (1958-1981 and 1988-1993 elections)	14.87	2-ballot run-off
Bahamas	15.47	FPP
Barbados	15.75	FPP
Mauritius	16.43	FPP
Jamaica	17.75	FPP
Québec**	18.74	FPP

*PR: proportional representation; STV: single transferable vote; SNTV: single non-transferable vote; AV: alternative vote; FPP: first-past-the-post (single ballot plurality); 2-ballot run-off: double ballot run-off; CMS: compensatory mixed system.

**For Québec. computations were made by Angelo Elias. excluding the 1998 and 2003 elections. to correspond to the period covered by the table.

Source: Arend LIJPHART. *Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries*. New Haven and London. Yale University Press, 1999, pp. 160 and 162. Data for France have been broken down by electoral system: PR or double ballot run-off.

Finally, we calculated the majority bonus of the first party in the popular vote. This bonus was obtained by calculating the spread between this party's percentage of the popular vote and its percentage of the seats (tables 44 to 49, charts 4 and 5).

Table 44

MAJORITY BONUS OF THE STRONGEST PARTY (% OF VOTES)—GERMAN REGIONAL COMPENSATION—1998 ELECTION

Number of regions	D'Hondt technique	Sainte-Laguë technique	Largest Remainder technique
26	4.45	- 1.57	- 2.01
16	2.85	- 0.04	- 0.80
13	2.85	- 1.03	- 1.03
4	1.25	1.25	1.25
Province-wide compensation	0.80	0.80	0.80

Table 45

MAJORITY BONUS OF THE STRONGEST PARTY (% OF VOTES)—GERMAN REGIONAL COMPENSATION—2003 ELECTION

Number of regions	D'Hondt technique	Sainte-Laguë technique	Largest Remainder technique
26	5.89	2.90	0.68
16	3.63	2.10	2.10
13	5.57	2.07	2.07
4	3.22	2.42	3.22
Province-wide compensation	1.59	1.59	1.59

Table 46

MAJORITY BONUS OF THE STRONGEST PARTY (% OF VOTES)—PROVINCE-WIDE COMPENSATION WITH REGIONAL REDISTRIBUTION—1998 ELECTION

Number of regions	D'Hondt technique	Sainte-Laguë technique	Largest Remainder technique
26	- 0.24	- 0.24	- 0.24
16	- 0.47	0.10	- 0.24
13	0.10	0.10	0.10
4	0.80	0.80	0.80

Table 47

MAJORITY BONUS OF THE STRONGEST PARTY (% OF VOTES)—PROVINCE-WIDE COMPENSATION WITH REGIONAL REDISTRIBUTION—2003 ELECTION

Number of regions	D'Hondt technique	Sainte-Laguë technique	Largest Remainder technique
26	1.70	0.98	0.98
16	2.47	1.70	1.70
13	1.67	1.67	1.67
4	1.63	1.63	1.63

Table 48

MAJORITY BONUS OF THE STRONGEST PARTY (% OF VOTES)—SCOTTISH REGIONAL COMPENSATION—1998 ELECTION

Number of regions	D'Hondt technique	Sainte-Laguë technique	Largest Remainder technique
26	4.84	- 3.23	- 3.23
16	2.42	- 0.81	- 1.61
13	2.42	- 0.81	- 0.81
4	1.61	0.80	0.80
Province-wide compensation	0.80	0.80	0.80

Table 49

MAJORITY BONUS OF THE STRONGEST PARTY (% OF VOTES)—SCOTTISH REGIONAL COMPENSATION—2003 ELECTION

Number of regions	D'Hondt technique	Sainte-Laguë technique	Largest Remainder technique
26	7.24	4.01	1.59
16	4.82	3.20	3.20
13	6.43	3.20	3.20
4	4.55	3.20	4.01
Province-wide compensation	1.59	1.59	1.59

Chart 4

MAJORITY BONUS OF STRONGEST PARTY (% OF VOTE) PRODUCED BY DIFFERENT SCENARIOS—MAGNITUDE —1998 ELECTION

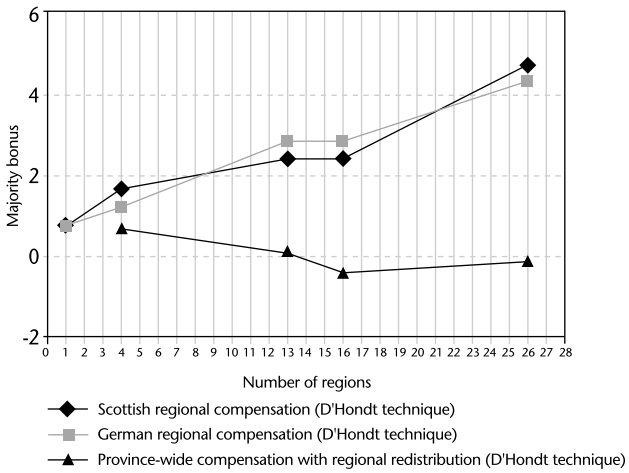
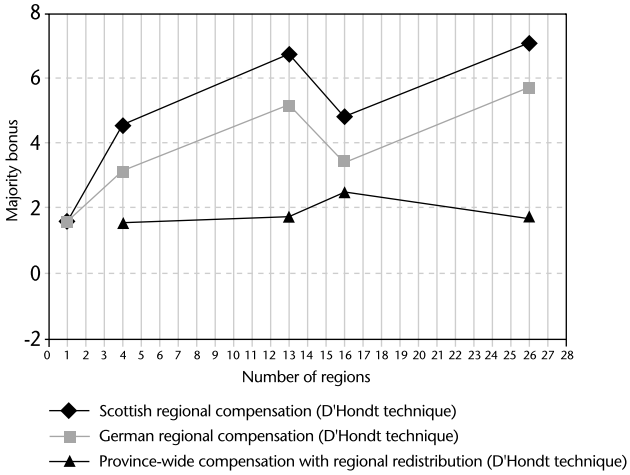


Chart 5

MAJORITY BONUS OF STRONGEST PARTY (% OF VOTE) PRODUCED BY DIFFERENT SCENARIOS—MAGNITUDE —2003 ELECTION



In the 2003 election, the winner's majority bonus was 14.81 percentage points. The highest majority bonus ever produced by our simulations is 7.24 points (Scottish regional compensation, 26 regions, D'Hondt technique, 2003 election), and the lowest is – 0.47 ("negative" bonus produced by province-wide compensation with regional redistribution of seats, 16 regions, D'Hondt technique, 1998 election).

e) Propensity of different approaches to reverse party standings

One normative yardstick for the different electoral systems is their ability to produce party standings that are the same in Parliament and in the popular vote. Reversals of party standings may be perceived as an undesirable anomaly. They are not uncommon with the first-past-the-post system and may conceivably occur with a PR system.

None of our 2003 election simulations produces reversals of party standings. In the 1998 election, however, the two main parties were separated by a relatively narrow spread in the popular vote and the first-past-the-post system produced an outcome that many of us remember. To what extent would we see this reversal of the two main parties in our different scenarios for that year?

For the 1998 election, each of the three computation techniques would produce reversed standings in a large proportion of the scenarios: 7 out of 15 with German regional compensation; 7 out of 15 likewise with Scottish regional compensation; and 9 out of 12 with province-wide compensation followed by regional redistribution of the seats.

Our simulations indicate that in general the Sainte-Laguë (9 times out of 14) and Largest Remainder (likewise 9 times out of 14) techniques more often lead to reversed standings than does the D'Hondt technique (5 times out of 14). If we look at the electoral subdivision, no reversal of party standings appears with province-wide compensation or a 4-region subdivision. A 13-region subdivision reverses them 7 times out of 9, a 26-region subdivision, 7 times out of 9, and a 16-region subdivision, 9 times out of 9 (tables 50 to 52). The last case confirms the hypothesis that such a regional subdivision would be prone to deformed voting results.

Table 50

NUMBER OF REVERSED PARTY STANDINGS WITH THE DIFFERENT APPROACHES—GERMAN REGIONAL COMPENSATION —1998 ELECTION SIMULATIONS

Technique and electoral subdivision	Number of reversed party standings
D'Hondt technique	1 times out of 5
Sainte-Laguë technique	3 times out of 5
Largest Remainder technique	3 times out of 5
26 regions	2 times out of 3
16 regions	3 times out of 3
13 regions	2 times out of 3
4 regions	None out of 3
Province-wide compensation	None out of 3
All scenarios	7 times out of 15

Table 51

NUMBER OF REVERSED PARTY STANDINGS WITH THE DIFFERENT APPROACHES—PROVINCE-WIDE COMPENSATION FOLLOWED BY REGIONAL REDISTRIBUTION OF PARTY SEATS—1998 ELECTION SIMULATIONS

Technique and electoral subdivision	Number of reversed party standings
D'Hondt technique	3 times out of 4
Sainte-Laguë technique	3 times out of 4
Largest Remainder technique	3 times out of 4
26 regions	3 times out of 3
16 regions	3 times out of 3
13 regions	3 times out of 3
4 regions	None out of 3
Province-wide compensation	
All scenarios	9 times out of 12

Table 52

NUMBER OF REVERSED PARTY STANDINGS WITH THE DIFFERENT APPROACHES—SCOTTISH REGIONAL COMPENSATION —1998 ELECTION SIMULATIONS

Technique and electoral subdivision	Number of reversed party standings
D'Hondt technique	1 times out of 5
Sainte-Laguë technique	3 times out of 5
Largest Remainder technique	3 times out of 5
26 regions	2 times out of 3
16 regions	3 times out of 3
13 regions	2 times out of 3
4 regions	None out of 3
Province-wide compensation	None out of 3
All scenarios	7 times out of 15

Regional PR reverses standings only in one scenario: when the seats are distributed in 26 regions by the Largest Remainder technique. We may therefore deduce that excess seats cause most of the reversals that occur in compensatory systems.

f) To what degree do the different approaches work symmetrically?

- The issue

Another yardstick for the different electoral systems is the symmetry of their operation. In an election, Party "X" receives 40% of the vote, 3 points more than Party "Y", and this score wins it 45% of the seats. In the next election, the tables are turned and Party "Y" receives 40% of the vote, 3 points more than its rival. If it too *should* win 45% of the seats, the system is said to work symmetrically. If not, and if such differences occur continually, the electoral system may be said to work *asymmetrically*.

Such is the case with Québec's first-past-the-post system, if we go by the results of the last three elections. In 1994, a margin of 13,000 votes over the QLP in the entire province gave the PQ 77 seats out of 125, for a 30-seat edge. This result is apparently normal, the strongest party getting more than its fair share of seats. In 1998, however, the QLP led the PQ in the popular vote (by 27,000 votes) and yet won 28 seats *fewer* than did the PQ.

We will now compare the 1998 and 2003 elections. In each case, the winning party won 76 of the 125 seats. To win them, the QLP needed a 13-point lead in the popular vote. The PQ won just as many in 1998, but with a difference of half a point in the popular vote—half a point *behind* its rival.

One of the reproaches against the first-past-the-post system in Québec is that it treats the two main parties differently when they perform equally well in the popular vote. In neutral language, the system works asymmetrically, and this asymmetry is pronounced. In more polemical language, it is systematically biased toward one of the two big parties and against the other.

- Our method

It is not easy to measure asymmetry. Only rarely, as in the last three Québec elections, does chance produce exactly reversed election results that highlight the system's asymmetry for those who wish to see.

This avenue of research has led to many academic papers since the 1950s.[98] Of all the approaches investigated, the one developed by David Butler and his associates has proven to be the most productive one and is today used in many countries. This method had the quasi-blessing of officialdom in the 1998 Jenkins Committee proceedings. It involves making projections from previous election results.

The starting point for such an approach is the result of a given election (called here the "reference election") for each constituency, with the number of votes for each party being translated into percentages of all valid votes. To find the resulting seat distribution if 1 point of the popular vote shifts (in relation to the reference election) from Party "X" to Party "Y", we uniformly distribute this shift in each constituency by reducing Party X's percentage of the vote by one point and increasing Party Y's by the same. We can now see the number of constituencies that would change their party allegiance in relation to the reference election.

Butler and Curtice have used two indices to measure degree of asymmetry. First, in an election projection, they give the two big parties the same share of the popular vote and use the spread between each party's number of seats as an index. Based on the 2003 election result, if we assume that the two parties *both* receive 39.6% of the vote and that the ADQ stays at 18.2%, the PQ would win 67 seats, the QLP 50, and the ADQ 8. The spread between the two parties is therefore **17 seats**.

The second index is to project the percentage of the vote that the two big parties need *to win equal numbers of seats.* Based on the 2003 election result, a uniform shift of 3.71 points from the QLP to the PQ is enough to give them the same number of seats (60), the 5 others going to the ADQ. At this stage, the QLP would receive 42.28% of the vote and the PQ 36.95%, with the ADQ staying at 18.18%. The spread between the two main parties is **5.33 percentage points**. Out of 3.8 million valid votes, that amounts to about 200,000 votes.

When applied to Québec's 1998 election results, this method shows that the QLP would have needed a margin of 300,000 votes over the PQ (7.5% of the total vote) just to win an equal number of seats. This type of spread has been a constant of the Québec electoral landscape since 1944, and it always runs in the same direction.[99]

To what degree can the same reproach be made against the other electoral approaches tested in our simulations? Based on the 2003 election results, we applied the same technique of uniform shifts to a representative sample of approaches:

1) a single-member first-past-the-post system in the 125 constituencies of the 2003 election;
2) a single-member first-past-the-post system in the 75 constituencies of the 2004 federal election;
3) Scottish regional compensation in the 26 proposed regions with seat distribution using the D'Hondt technique (scenario A3a 03);
4) German regional compensation in the 26 proposed regions with seat distribution using the D'Hondt technique (scenario A1a 03);
5) moderate PR in the 26 proposed regions with seat distribution using the D'Hondt technique (outcomes calculated from scenario A1a 03); and
6) province-wide compensation using the D'Hondt technique (scenario E1a 03).

98. The concept of asymmetry or bias has been investigated in many papers. See on this point John CURTICE, "The Electoral System: Biased to Blair?", *Parliamentary Affairs*, vol. 54, 2001, pp. 803-814; Ron JOHNSTON, et al., "Anatomy of a Labour Landslide: The Constituency System and the 1997 General Election", *Parliamentary Affairs*, vol. 51, 1998, pp. 131-148; John CURTICE and Michael STEED, "The Results Analysed", in David Butler and Dennis Kavanagh, *The British General Election of 1997,* Houndmills, Macmillan, 1997, pp. 295-325; Simon JACKMAN, "Measuring Electoral Bias: Australia, 1949-93", British Journal of Political Science, vol. 24, 1994, pp. 319-357. See also the JENKINS COMMISSION report, *Make Votes Count. The Report of the Independent Commission on the Voting System,* 1998, t. 1, para. 40 43. See also in JENKINS COMMISSION, op. cit., t. 2, "*Report of Group of Academics Chaired by Professor David Butler, Nuffield College, Oxford University*, August 7, 1998", pp. 4-7. Also see the many older sources cited in Louis MASSICOTTE, "Éclipse et retour du gerrymander linguistique québécois", in Alain-G. Gagnon and Alain Noël (ed.), *L'Espace québécois,* Montréal, Québec/Amérique, 1995, pp. 227-244.

99. Louis MASSICOTTE and André BERNARD, *Le scrutin au Québec. Un miroir déformant*, Montréal, Hurtubise HMH, 1985, pp. 219-241; Louis MASSICOTTE, *loc. cit.*, note 97, pp. 227-244; Louis MASSICOTTE, "Un mode de scrutin à revoir", *Relations*, no. 678, July-August 2002, pp. 32-35; Louis MASSICOTTE and André BLAIS, "Dernières élections : le QLP aurait eu besoin de 300 000 votes de plus", *La Presse*, January 7, 1999, p. B3.

The essence of the technique is to estimate, assuming uniform shifts of votes, the number of seats that each of the two big parties would win for the same percentage of the vote. In these projections, the ADQ vote (18%) is always held constant, both in overall volume and in geographical distribution, whereas the vote for each of the two big parties is modified, one party's gain becoming the other's loss. We start with the 2003 popular vote standings of 46%-33%-18%, and then adjust them to project the effects of a 1-point shift (45-34-18), a 2-point shift (44-35-18), and so on until the ratio between the two big parties is exactly reversed from that of the 2003 election (33-46-18). Detailed results are in Appendix V.

Tables 53 to 58 give the projection outcomes. Each of these tables reads as follows. With the same percentage of the vote (e.g., 33%), the QLP can expect X percent of the seats (e.g., 21.6%) and the PQ Y percent of the seats (e.g., 36.0%). The fourth column gives the size of the seat percentage spread that the same percentage of the vote assigns each party.

- Findings

Unsurprisingly, the first lesson that emerges is the highly pronounced asymmetry produced by the first-past-the-post system. For any percentage of the vote, the QLP would *always* win fewer seats than would the PQ with an identical percentage of the vote. For example, with the current 125 constituencies, 46% of the vote for the QLP (versus 33% for the PQ) would give it 76 of the 125 seats (i.e., 60.80% of the total), whereas 46% of the vote *for the PQ* (versus 33% for the QLP) would give the PQ 94 of the 125 seats (75.20% of the total). The spread between the two seat percentages (60.80 and 75.20) here is 14.40 points. For all of the possible scenarios, the mean size of the spread is 16.06 percentage points.

Table 53

PERCENTAGE OF SEATS WON BY THE QLP AND THE PQ BY CERTAIN PERCENTAGES OF THE VOTE—FIRST-PAST-THE-POST SYSTEM (125 CONSTITUENCIES)

Votes %	QLP seats %	PQ seats %	Spread
33	21.6	36.0	14.40
34	23.2	40.0	16.80
35	24.8	45.6	20.80
36	29.6	47.2	17.60
37	30.4	49.6	19.20
38	36.0	50.4	14.40
39	39.2	53.6	14.40
40	41.6	54.4	12.80
41	43.2	57.6	14.40
42	46.4	63.2	16.80
43	49.6	64.0	14.40
44	51.2	69.6	18.40
45	56.8	72.8	16.00
46	60.8	75.2	14.40
Mean spread			**16.06**

Table 54

PERCENTAGE OF SEATS WON BY THE QLP AND THE PQ BY CERTAIN PERCENTAGES OF THE VOTE—FIRST-PAST-THE-POST SYSTEM (75 CONSTITUENCIES)

Votes %	QLP seats %	PQ seats %	Spread
33	22.67	33.33	10.66
34	22.67	37.33	14.66
35	26.67	38.67	12.00
36	28.00	42.67	14.67
37	30.67	46.67	16.00
38	32.00	48.00	16.00
39	37.33	50.67	13.34
40	45.33	58.67	13.34
41	48.00	61.33	13.33
42	49.33	64.00	14.67
43	53.33	68.00	14.67
44	57.33	69.33	12.00
45	58.67	73.33	14.66
46	62.67	73.33	10.66
Mean spread			**13.62**

The spread is a little less pronounced if we use the 75 federal constituencies of the 2002 election. It then stands at 13.62 percentage points.

Table 55

PERCENTAGE OF SEATS WON BY THE QLP AND THE PQ BY CERTAIN PERCENTAGES OF THE VOTE—SCOTTISH REGIONAL COMPENSATION (D'HONDT TECHNIQUE)

Votes %	QLP seats %	PQ seats %	Spread
33	30.06	33.87	3.81
34	33.87	36.29	2.42
35	35.48	37.10	1.62
36	37.10	38.71	1.61
37	37.90	40.32	2.42
38	37.90	41.94	4.04
39	41.13	43.55	2.42
40	44.35	46.77	2.42
41	45.97	49.19	3.22
42	47.58	50.00	2.42
43	49.19	50.81	1.62
44	50.810	52.42	1.61
45	51.610	53.23	1.62
46	53.230	54.03	0.80
Mean spread			**2.29**

Such spreads are greatly reduced with Scottish regional compensation, falling on average to 2.29 percentage points. In all cases simulated, this approach gives the most seats to the party with the most votes.

Table 56

PERCENTAGE OF SEATS WON BY THE QLP AND THE PQ BY CERTAIN PERCENTAGES OF THE VOTE—GERMAN REGIONAL COMPENSATION (D'HONDT TECHNIQUE)

Votes %	QLP seats %	PQ seats %	Spread
33	33.33	34.59	1.26
34	34.65	36.09	1.44
35	36.22	36.57	0.35
36	37.30	37.40	0.10
37	38.89	39.37	0.48
38	39.84	40.63	0.79
39	41.73	42.86	1.13
40	44.44	45.67	1.23
41	46.88	47.66	0.78
42	48.03	49.21	1.18
43	48.85	50.00	1.15
44	50.00	51.18	1.18
45	50.38	51.97	1.59
46	51.88	53.17	1.29
Mean spread			**1.00**

The mean spread is reduced a little more with German regional compensation, falling to 1.00.

Table 57

PERCENTAGE OF SEATS WON BY THE QLP AND THE PQ BY CERTAIN PERCENTAGES OF THE VOTE—REGIONAL PR (D'HONDT TECHNIQUE)

Votes %	QLP seats %	PQ seats %	Spread
33	33.87	33.87	0.00
34	35.48	34.68	-0.80
35	37.10	34.68	-2.42
36	37.90	35.48	-2.42
37	39.52	38.71	-0.81
38	41.13	39.52	-1.61
39	41.94	42.74	0.80
40	44.35	45.16	0.81
41	47.58	45.97	-1.61
42	48.39	48.39	0.00
43	50.00	49.19	-0.81
44	50.81	50.00	-0.81
45	50.81	50.81	0.00
46	51.61	52.42	0.81
Mean spread			**-0.63**

The spread is still lower with moderate regional PR (-0.63 point) and almost zero with province-wide compensation (0.23 point). In the latter case, the system works so symmetrically that the same percentage of the vote gives both parties exactly the same number of seats no fewer than 10 times out of 14.

Table 58

PERCENTAGE OF SEATS WON BY THE QLP AND THE PQ BY CERTAIN PERCENTAGES OF THE VOTE—PROVINCE-WIDE COMPENSATION (D'HONDT TECHNIQUE)

Votes %	QLP seats %	PQ seats %	Spread
33	33,87	33.87	0.00
34	34.68	35.48	0.80
35	36.29	36.29	0.00
36	37.10	37.10	0.00
37	37.90	37.90	0.00
38	38.71	39.52	0.81
39	40.32	40.32	0.00
40	41.13	41.13	0.00
41	41.94	42.74	0.80
42	43.55	43.55	0.00
43	44.35	44.35	0.00
44	45.16	45.16	0.00
45	45.97	46.77	0.80
46	47.58	47.58	0.00
Mean spread			**0.23**

The direction of the spreads is almost always biased to the PQ. With equal percentages of the vote, the PQ tends to win more seats than does the QLP. This is true for all approaches, albeit with substantial differences of degree. The only exception is regional PR, where the mean spread (-0.63 point) favours the QLP.

These outcomes were predictable. Province-wide compensation has a very high "district magnitude" and necessarily produces a very proportional result. It is therefore largely symmetrical in its effects. Moderate regional PR produces a less proportional result but operates fairly symmetrically. The two regional compensation systems operate in a slightly more asymmetrical manner (and more biased to the PQ) essentially because of excess seats, which more often go to the PQ than to the QLP. The Scottish compensation method is more asymmetrical than the German one because of the seat distribution technique: a party that wins an excess seat in a region gets to keep it without losing this advantage through the creation of a new list seat for the other party.

Table 59 and Chart 6 show the mean spreads between the standings of the two big parties. The spread is considerable under the first-past-the-post system with either the current 125 constituencies or the 75 federal constituencies. It declines markedly with the regional compensation systems and to almost nothing with the other approaches.

Table 59

DEGREE OF ASYMMETRY PRODUCED BY EACH OF THE SIX APPROACHES—2003 ELECTION

Electoral system	With an equal % of the vote,		Mean size of spread between standings of the two parties
	Identical standings	Different standings	%
First-past-the-post, 125 constituencies	0 out of 14	14 out of 14*	16.06
First-past-the-post, 75 constituencies	0 out of 14	14 out of 14*	13.62
Scottish regional compensation, 26 regions, D'Hondt technique	0 out of 14	14 out of 14*	2.29
German regional compensation, 26 regions, D'Hondt technique	0 out of 14	14 out of 14*	1.00
Regional PR, 26 regions, D'Hondt technique	3 out of 14	11 out of 14	-0.63
Province-wide compensation, D'Hondt technique	10 out of 14	4 out of 14	0.23

* The spreads always favour the same party.
Note: The mean spreads (right-hand column) always favour the PQ, except with moderate regional PR, where the mean spread favours the QLP.

Charts 7 to 12 show the spread between the two big parties under each electoral system. For a series of vote percentages from 33 to 46%, we can see the seat percentages that each of the two parties would get. If the electoral system works symmetrically, the two curves should coincide or, at least, be very close. If, on the contrary, the two curves are separated by a constant spread that always favours the same party, we may conclude that the system works asymmetrically and constantly treats one of the two parties better than the other, even with the same popular vote.

Chart 6

DEGREE OF ASYMMETRY PRODUCED BY APPROACHES —MEAN SPREAD BETWEEN THE TWO PARTIES IN THEIR SEAT STANDINGS, WITH AN EQUAL PERCENTAGE OF VOTE

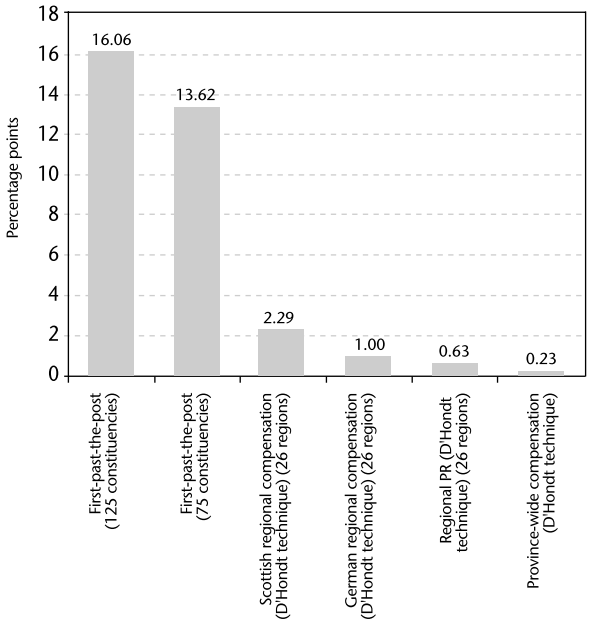


Chart 7

PERCENTAGE OF SEATS WON BY THE TWO MAIN PARTIES WITH SAME PERCENTAGE OF THE VOTE—FIRST-PAST-THE-POST —125 CONSTITUENCIES—2003 ELECTION

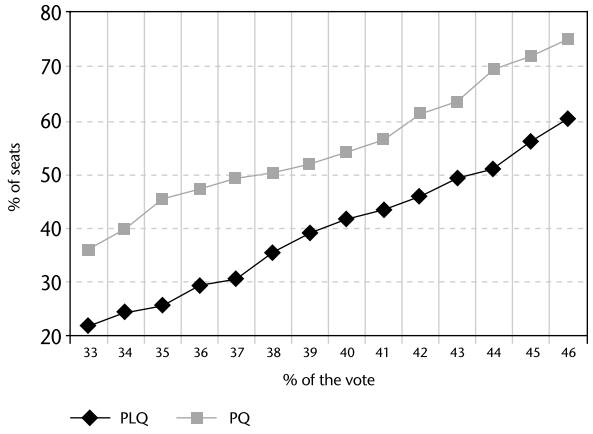


Chart 8

PERCENTAGE OF SEATS WON BY THE TWO MAIN PARTIES WITH SAME PERCENTAGE OF THE VOTE—FIRST-PAST-THE-POST —75 CONSTITUENCIES—2003 ELECTION

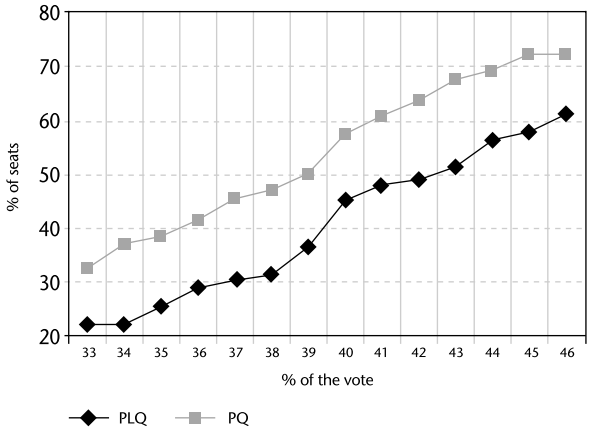


Chart 9

PERCENTAGE OF SEATS WON BY THE TWO MAIN PARTIES WITH SAME PERCENTAGE OF THE VOTE—SCOTTISH REGIONAL COMPENSATION (D'HONDT TECHNIQUE) 26 REGIONS —2003 ELECTION

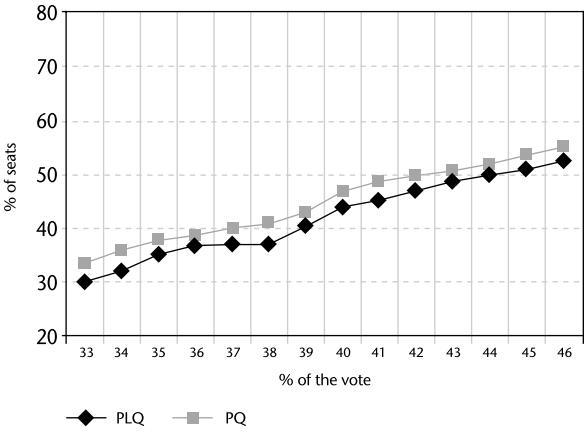
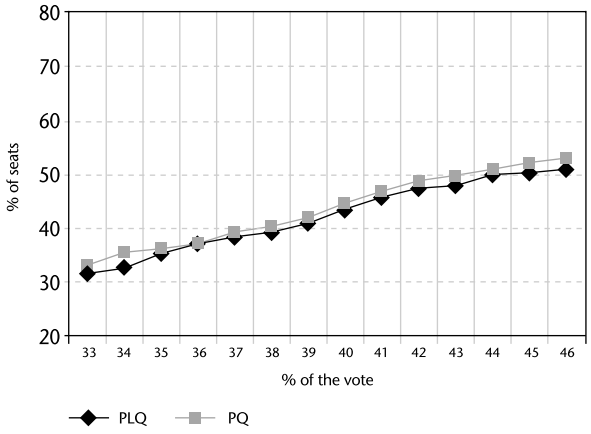


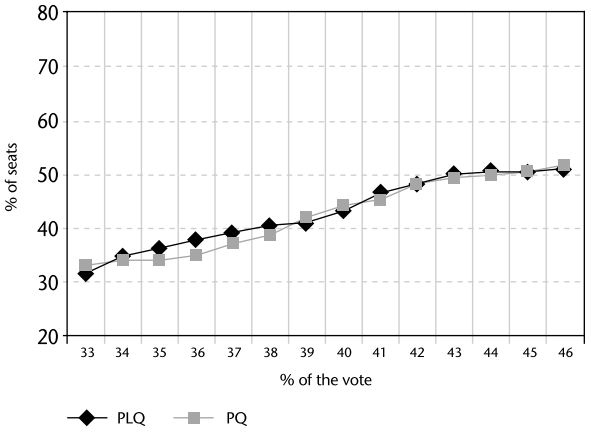
Chart 10

PERCENTAGE OF SEATS WON BY THE TWO MAIN PARTIES WITH SAME PERCENTAGE OF THE VOTE—GERMAN REGIONAL COMPENSATION (D'HONDT TECHNIQUE) 26 REGIONS —2003 ELECTION



Graphique 11

PERCENTAGE OF SEATS WON BY THE TWO MAIN PARTIES WITH SAME PERCENTAGE OF THE VOTE—REGIONAL PR (D'HONDT TECHNIQUE) 26 REGIONS—2003 ELECTION



Graphique 12

PERCENTAGE OF SEATS WON BY THE TWO MAIN PARTIES WITH SAME PERCENTAGE OF THE VOTE—PROVINCE-WIDE COMPENSATION (D'HONDT TECHNIQUE)—2003 ELECTION

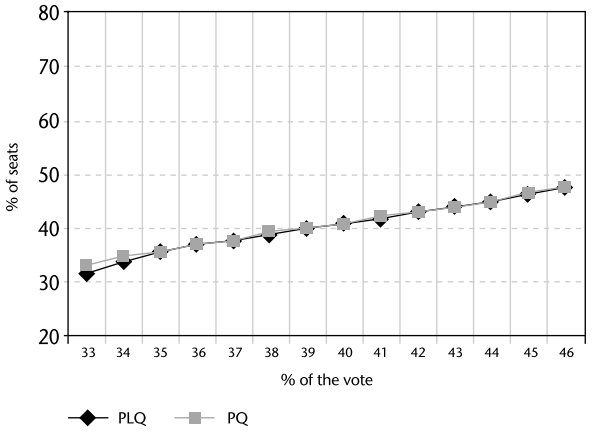


Table 60

PERCENTAGE OF VALID VOTES FORPARTIES OTHER THAN THE THREE MAIN ONES—1998 AND 2003 ELECTIONS

Party	1998 election %	2003 election %
Union des forces progressistes	-	1.06
Parti de la démocratie socialiste	0.59	-
Québec Green Party	-	0.44
Equality Party	0.31	0.11
Bloc pot	0.24	0.60
Natural Law Party	0.13	-
Parti de la démocratie chrétienne	-	0.08
Parti marxiste-léniniste	0.07	0.07
Parti innovateur	0.06	-
Parti communiste	0.05	-

g) Fate of small parties

The performance of small parties in the 1998 and 2003 elections is detailed in Table 60.

These figures probably somewhat underestimate the real support for these parties. None of them ran candidates in all constituencies and they also might have had more votes under PR. People are free to speculate as they wish on this point. For our analysis, we have to take the figures as they are.

If we impose a 5% threshold on all of Québec for purposes of simulation, we completely eliminate the chances of all parties that failed to reach this bar in the 1998 or 2003 elections. Consequently, none of the very small parties would win any seats in our simulations.

We pondered the mechanical conditions that would let these parties elect MNAs. Clearly, it is indispensable to **remove the threshold** because it unavoidably blocks their way. Even a threshold as low as 2% would be fatal to each of these parties.

Yet **the absence of any threshold does not necessarily mean that the small parties would be automatically represented in the National Assembly.** The strongest of them, the Union des forces progressistes (UFP) in the 2003 election, would remain unrepresented with either the 26-region electoral subdivision or the 13-region one, even if the Largest Remainder technique were used. This party would manage to win one seat with either 16 regions or 4 regions, because both electoral subdivisions have a single regional constituency

for all of Île-de-Montréal, where most UFP votes come from. Even in these cases, the use of the D'Hondt technique would be enough to deprive the UFP of this seat.

For the 1998 election, none of the four regionally subdivided electoral subdivisions would let any of these parties get elected.

The ideal scenario for the very small parties is province-wide compensation, with or without regional redistribution of party seats, given the number of votes they actually had. In this case, the UFP would receive one seat in 2003, regardless of the computation technique, and the Bloc pot would receive one too, if the Largest Remainder technique were used. In the 1998 election, the Parti de la démocratie socialiste would receive one seat, if the Largest Remainder or Sainte-Laguë technique were used.

h) Choosing MNAs for compensatory seats, using the method of recycling the best defeated candidates

The simulations did not tell us who would hold the compensatory party seats, only how many there would be. If these seats are assigned from lists, it is completely impossible to guess who will be elected because list composition is unknown. If, however, these seats go to the "best defeated candidates," it is at least possible to find out, using our simulations, which constituencies would get such seats.

Our method was to rank each party's defeated candidates in decreasing order, either by number of votes or by percentage of valid votes, and to declare the best positioned candidates "elected," up to the number of compensatory seats each party is entitled to.

We applied this method province-wide and for each of the 26 regions. The candidates were ranked in decreasing order by number of votes and by percentage of votes.[100]

When applied province-wide, the simulation revealed two problems. First, *distribution of compensatory seats favours certain constituencies more than others*. This outcome is inevitable with 75 constituencies and only 49 compensatory seats. It is to be expected that many constituencies would have *no compensatory seats*. This is the case with 35 constituencies for both the 1998 and 2003 elections. Curiously, but a predictable outcome when more than two parties are running, several constituencies would get *two compensatory seats* and thus have three MNAs. These compensatory seats go to the best losers of each of the two parties, and such candidates run in the same constituencies. In total, 9 constituencies would manage this hat trick in both 1998 and 2003. In both years, 31 constituencies would each receive one compensatory seat. In other words, some constituencies would each get three seats and many others only one.

Second, *the method seriously penalizes certain regions and unduly rewards others*, often the same winners and losers each time. The major disadvantage is the treatment this method gives Île-de-Montréal. This region would receive only 3 of the 49 compensatory seats in 1998. In 2003, it would get none despite its large population. The Outaouais region would receive no compensatory seats in either 1998 or 2003. Conversely, some regions would hit the jackpot, so to speak. This is especially true for the Québec City region. In 1998 and 2003, the region's six constituencies would receive one compensatory seat each, and three (1998) or two (2003) would get two each. The same is true for the three Mauricie constituencies, which both times would pull off not only double seaters, but even in some cases triple seaters. **It appears that the approach greatly rewards regions where races are close, to the detriment of regions that massively support the same party: losers score the highest in closely fought regions**. For this reason, not only Ouest de Montréal and Outaouais, but also in 1998 Saguenay—Lac-Saint-Jean and Côte-Nord, would come up empty-handed in the distribution of compensatory seats. In the race for compensatory seats, the advantage goes to constituencies where the vote is divided up fairly equally among the parties. The disadvantage goes to constituencies that massively support one party.

100. The scenario chosen for this purpose was the Scottish method. The German method would have produced similar results.

These distortions seem serious to us. Unless used only within regions, the method of recycling defeated candidates leads to a massive and erratic transfer of seats based not on population but on the closeness of electoral wins. It is understandable that Baden-Württemberg, a Land with strong local attachments, prudently chose to recycle defeated candidates within the bounds of four regional entities to prevent compensatory seats from ending up entirely in one region.[101]

When applied to a 26-region electoral subdivision, in the 1998 and 2003 elections, the recycling method produces no serious regional distortions. Each region receives an appropriate number of compensatory seats.

The problem of triple seaters still arises, but less so. Only three constituencies would have triple seats in 1998, and five in 2003. The overwhelming majority of constituencies would have 1 or 2 seats.

There arises a new problem, however. When computation is done within a small region (3 constituencies and 2 compensatory seats), a party may be entitled to 4 or even 5 seats, yet its three constituency candidates have already been elected. The party has no best loser to recycle, simply because it has no losers at all! The phenomenon occurs in regions that tend to give the same party massive support.

Who will get the compensatory seat? In this case, electoral law in Baden-Württemberg assigns the seat to the constituency where the recipient party scored the highest in the region. Thus, the party receives not only a direct mandate but also a second mandate. The seat goes to a substitute candidate designated before the election at the same time as the primary candidate, in the event of such an outcome. Since the introduction of this provision in 1956, such an outcome has occurred only five times, always in the region of Tübingen, which very strongly backs the CDU. Specifically, it has occurred in the constituency of Biberach in three of the five cases.

The "Biberach problem" is marginal in Baden-Württemberg (fewer than half a dozen cases in 45 years). **In Québec, however, it would be endemic**. In 1998, it would have occurred in no fewer than 7 of the 26 regions and involved 8 MNAs (2 MNAs within the same region). These cases are in the regions of Île-de-Montréal, Outaouais, and Saguenay—Lac-Saint-Jean. In 2003, this problem would have occurred in five regions and involved 6 seats.

This simulation has been informative. It leads to the conclusion that the method of recycling the best defeated candidates produces anomalies, whatever the regional framework. If this approach is used with small and numerous regions, a "standby list" will clearly be needed for the problem we just pointed out.

101. This Land resulted from the merger in 1952 of the Länder of Baden, Württemberg-Baden, and Württemberg-Hohenzollern, following a referendum in which most Baden voters came out against the proposed merger.

THIRD PART
Conclusion and recommendations

Our review of existing compensatory systems and our simulations based on recent Québec elections reveal a wide variety of options and a broad range of possible electoral outcomes. The ultimate aim of our investigation was not simply to present a diverse panorama but also to inform political decision-making. Our report would therefore be incomplete if it offered no specific recommendations. Before going into the details of our conclusions and recommendations, we wish to recall the advantages that would result from introducing a compensatory mixed system.

ADVANTAGES OF A COMPENSATORY MIXED ELECTORAL SYSTEM

Such a system would have the advantage of reducing distortions, i.e., it would bring each party's percentage of the seats closer to its percentage of the popular vote. This would make representation more equitable for small and medium parties and could open Parliament's doors to new parties with significant popular support. There would be much more political and party pluralism not only in the National Assembly but also in the regions, and it would become exceptional for a party to monopolize representation of a specific region. Unlike the current electoral system, a compensatory system would work much more symmetrically and equitably. A reversal of standings for the main parties would be much less possible, and a party would very unlikely get an absolute majority of the seats without even having a plurality of the popular vote. These goals would be reached without eliminating what many consider a keystone of the current electoral system: the existence of single-member constituencies that provide closer ties to the electorate.

BASIC ARCHITECTURE OF THE SYSTEM

We used a model with a total of 125 MNAs. We saw no reason to increase this number. It is already the highest for a Canadian provincial legislature and exceeds Ontario's by 22 for a smaller electorate of four million. Nor is there much demand for a higher total.

A 60/40 ratio seems best. Any ratio more favourable to compensatory seats means fewer and larger constituencies. If we opt for a 50/50 ratio, the number of constituencies would have to fall to 62 or 63 to maintain our target total of 125 MNAs. Or this total would have to rise to 150 (75+75). Or the current number of seats would have to be doubled (125+125).

Any ratio more favourable to constituencies would greatly increase excess seats, especially if the compensation were done within small regions. The more such seats there are, the more one must accept either large increases in the total number of MNAs (Germany's solution) or an increase in distortions.

A 60/40 ratio means around 75 constituency seats and around 50 compensatory seats. If the number of 75 is kept, we could use the federal electoral subdivision to elect constituency MNAs, while not having to follow the boundaries of future federal electoral subdivisions. The ultimate decision will evidently be a political one. In this decision, one of the possibly relevant factors is that use of the federal subdivision will greatly speed up introduction of the new system. When British lawmakers opted for the single-member constituencies currently in force at Westminster for election of constituency members to the new Welsh and Scottish parliaments, it became possible for the two bills, which received royal assent respectively on July 31 and November 19, 1998, to govern elections as early as May 1999. If the idea is rather to make a new electoral subdivision, we will have to follow the current process, which means CRE involvement and public hearings. It is less sure that the system will come into force in time for the next election.

ELECTION OF CONSTITUENCY MNAs

Under the new system, the constituency MNAs will be the most numerous ones. The question now is whether they should continue to be elected through the first-past-the-post system or whether we should take advantage of electoral reform to replace the existing approach with one that would guarantee (or at least make more probable) election of MNAs with an absolute majority of the vote.

All of the compensatory mixed systems we examined have the constituency members elected by a plurality of the vote. In theory, however, these members could be elected by a double ballot or by the Australian alternative vote. The Jenkins Commission in Great Britain (1998) proposed the latter option with the stated aim of encouraging, at this level, party alliances that may prefigure future governing coalitions. This possibility was not investigated in the previous chapters for the simple reason that it exists nowhere in the compensatory systems we examined. But it deserves to be looked into.

If a double ballot is chosen, we must decide on the figures to be used in computing the overall seat distribution, which will determine each party's final number of seats.

If the *first ballot constituency results* are used as the basis for computation, the outcome will be a necessarily more fragmented parliament. Parties will show up for the first ballot in dispersed formation with an eye to concluding more advantageous alliances for the second. Small parties will have a two-fold advantage. On top of being entitled to an overall seat distribution in proportion to their first ballot vote, they will also have the privilege of tipping the second ballot result one way or the other in single-member constituencies.

There is another basis for computation: not the second ballot results (there will be no second ballot in a certain number of constituencies because an absolute majority was reached in the first), but rather the results of what French political scientists call the "decisive ballot," i.e., the total of valid votes in all constituencies from *the ballot, either the first or the second, that decided the election*. In practice, the basis for computation is a pooling of first ballot results in constituencies where a second ballot was unnecessary with second ballot results in all others.

If the decisive ballot results are used, small parties will be decimated in the final PR computation. These parties run the risk of being absent on the second ballot. They will be absent for legal reasons, through the application of thresholds that either exclude the weakest candidates or reserve second ballot access for the two leading candidates. Independently of the existence of such thresholds, the political dynamic of the second ballot usually leads the weakest candidates, seeing their impossibility of getting elected, to negotiate their withdrawal before the first ballot or between the two ballots to the benefit of the strongest candidates. The votes they received on the first ballot will go to other parties on the second (or will not be cast at all) and will not enter into the PR computation, except for votes cast in areas where the election was decided on the first ballot. With this type of arrangement, small parties would be massively penalized, their vote being greatly underestimated in the basis for computation.

This problem of harmonization can be resolved only if neither the first ballot results nor the decisive ballot results form the basis for computation. Instead, we should turn to the *results of a separate additional vote that is cast (at the first ballot) for a political party.*[102] It is plausible that a vote cast under these conditions will be substantially like the constituency vote cast at the same time and that the basis for computation will be just as fragmented. This solution appears to be about as advantageous for small parties as the first solution.

The same dilemma arises with the alternative vote. Should we use the distribution of first preferences, as counted on election night, or the final distribution after the preferences are transferred? The Jenkins Commission, which recommended using the alternative vote to elect constituency members in a compensatory system, resolved the problem by proposing that voters vote separately for a constituency candidate and for a political party. The second vote would be used to distribute the compensatory seats.

The fundamental question here may be: why bother? Clearly, additional complications arise when the first-past-the-post system is replaced with the double ballot or the alternative vote. Less clear is the advantage of introducing either approach. There is no gain in more PR, since the second vote will determine the overall seat distribution. If the election has a second ballot, there will be a longer electoral campaign, higher election and electoral expenses, and much interparty bargaining, if not outright wheeling and dealing, between the two ballots.

As well, the double ballot and the alternative vote do not reduce the distortions. They may even worsen them. Voters may use the second ballot or their second preferences to reduce the majority that appeared with the first ballot or, conversely, to increase this majority. Both systems are unknown in Québec and the second one, given the voting procedure it involves, would alone require a campaign to educate the public.

Québeckers have been accustomed to a single ballot since the origins of the Québec Parliament in 1792. People reproach it much more for distorting party representation than for electing MNAs with less than an absolute majority of the vote. Nothing indicates that voters feel an MNA is less legitimate for having been elected with less than half the votes. It may even be wondered how many voters know this detail about their own MNAs! The introduction of compensatory seats will in itself greatly upset people's habits, but we believe that such innovation is worth the trouble. Can the same be said for the double ballot or the alternative vote?

102. This question will be dealt with separately further on.

Nor should we entertain any illusions about the capacity of the double ballot or the alternative vote to elect a candidate with a majority of the vote. The double ballot guarantees such a result only if the second ballot pits two candidates against each other. If more than two candidates are running, the winner may be elected by only a plurality of the vote. The alternative vote does ensure that the winner will get majority backing, but it does so in a way that may seem artificial, by taking the first preferences for the winner and adding *post facto* secondary preferences from voters whose first preferences went to eliminated candidates.

One member of the Jenkins Commission formally dissented on the advisability of replacing the first-past-the-post system with the alternative vote to elect constituency members. He noted the lack of enthusiasm for this approach among the intervenors and denounced it as an unnecessary complication.[103] We share this opinion.

DISTRIBUTION OF COMPENSATORY SEATS

Evidently, the focus of our efforts was the distribution of compensatory seats. We tried out five electoral subdivisions, three seat distribution methods, and three computation techniques, for a total of 42 scenarios.

Some of the scenarios can be ruled out for obvious reasons. Among the seat distribution methods, this is the case for example with province-wide compensation followed by redistribution of party seats among the regions, in other words the method currently used in Germany. It is probably the finest of all methods, readjusting each region's total representation to its relative voter turnout from one election to the next. It is probably suited to a society where the dominant mentality is strongly proportionalist and where the desire for a mathematically exact result trumps all other considerations.

We doubt this is the case in the Québec of 2004. The public will have to learn how to use the method and its very complexity will make such learning difficult. Our simulations show it would leave political players and citizens completely in the dark until election night over something as simple as how many compensatory seats each region will get. According to our simulations, the chances are at least two out of three that this number will differ from the expected total. A region may end up with no compensatory seats, a sure recipe for profound irritation among the region's residents.

German regional compensation avoids this shortcoming to some degree because it assigns each regional entity, at least initially, a fixed number of compensatory seats. Like the previous approach, however, it raises the possibility of excess seats. **Our investigation has convinced us that the *Überhang* are the Achilles' heel of the German system**. The total number of elected members becomes unpredictable. It rises and falls from one election to the next as happenstance dictates. Even in Germany, where PR is woven into the social fabric, this phenomenon has led to negative comments and an appeal to the Federal Constitutional Court. The temptation becomes great for the excess members to preserve their positions by pressing for a permanent increase in parliamentary representation. In several of our 1998 election simulations, excess seats gave the runner-up party in the popular vote a plurality of the seats, this being in fact one of the anomalies that need correcting.

Above all, these seats upset the regional balance of representation. Our simulations show that all of the regional electoral subdivisions under study produce excess seats, that excess seats arise in some regions but not in others, and that some major regions almost never get any whereas others regularly get them. Opponents will surely seek to discredit electoral reform by pointing out these anomalies. In the worst-case scenario, this peculiarity exposes the system to lawsuits for equitable territorial representation. A region gets an excess seat not because of its above-average turnout or excess population, but strictly because of its extreme level of distortion. We doubt this justification will be adequate for residents of regions that lose the excess seat lottery, or for the judges who may be asked to rule on this point.

The Scottish method appears to us the best of the three. With this approach, a party may win more constituencies in a region than it is entitled to, in which case the total number of seats remains unchanged, at the risk of reducing the representation of the other parties. It is therefore less proportional than the previous approaches. Our simulations clearly indicate that this shortcoming has a minor impact. In the 2003 Québec election, with a 26-region electoral subdivision, the Scottish

103. See Chapter 9 of the report, "Note of Reservation by Lord Alexander."

method (with the D'Hondt technique) would have given the strongest party 53% of the seats, without changing the total size of the National Assembly. The German method (with the same technique) would have given the same party 52%, at the cost of adding 9 excess seats. We are convinced this one percentage point difference will cause much less grumbling than the unexpected addition of nine MNAs, who to cap it off will be granted to some regions and not to others.

TERRITORIAL FRAMEWORK FOR COMPENSATION AND THRESHOLDS

In choosing the territorial framework for compensation, we must contend with two opposing principles of representation.

Priority to the territorial dimension: 26 regions

Some give priority to territory. For them, it is essential that the list MNAs be elected in relatively homogeneous and identifiable territorial entities. Among the assumptions we considered, this view quite naturally leads to the assumption of dividing the province into 26 regions. Indeed, Québec has the peculiarity of not only being immense, but also of having 17 administrative regions that at present greatly differ in population. Most of these regions are lightly populated and could claim no more than 5 seats and sometimes less if established as constituencies. What is a region in Québec? One immediately thinks of Saguenay—Lac-Saint-Jean, Côte-Nord, Outaouais, Abitibi, Gaspésie, Bas-Saint-Laurent, Mauricie, and so on. None of them could claim more than 5 seats. Only in the Montréal region would the regional entities encompass large numbers of seats. Even there, on Île-de-Montréal, one need not be a scholar to point out a certain diversity of language use, socioeconomic level, and way of life. Dividing the province into about twenty similarly sized regions seems to us a good way to reflect this reality.

One should think carefully before adopting the current administrative region subdivision for electoral purposes. This option would create a sort of two-tiered PR. Montréalers would be entitled to pure PR, whereas the residents of outlying regions would have to make do with more mitigated PR.

A 26-region electoral subdivision is a more satisfactory choice from a territorial standpoint. Such was the conclusion of earlier PR proponents in their time, whose successive proposals almost always envisioned this type of territorial division.

Priority to mathematical exactness: province-wide compensation

Choosing an electoral subdivision with twenty or so regions means that some distortions will persist in the parliamentary representation of parties. The strongest parties will be overrepresented and the very small ones will have more trouble getting any representation. For the latter, the priority given to the territorial dimension undercuts a competing principle: **mathematically exact representation**, i.e., more or less total proportionality.

For some people, this dimension trumps any other consideration, and our simulations clearly indicate the appropriate solution. Compensation would have to be province-wide, with all of Québec forming just one constituency for purposes of computation. Choosing one computation technique over another matters relatively little in such a vast geographic framework. At this point, the German method emerges as a possibility. Our simulations suggest that such a framework is unlikely to create excess seats, and those that do arise will not lead to one region being favoured over the others.

This approach is not absurd. It reflects a strictly proportionalist value system and exists in New Zealand and in most Länder. It comes with explicit thresholds, always set at 5% of the total of all votes, which may be waived for parties that manage to win one or more constituencies. Such thresholds are basically arbitrary. The convergence of so many societies around the 5% figure suggests a certain transnational consensus, but countries with lower thresholds are not hard to find and some have none at all. From a strictly proportionalist standpoint, such thresholds are unjustifiable, and the ideal is clearly that there should be none.

With province-wide compensation, list MNAs do not legally represent any specific territorial subdivision. In reality, they will come from territories known to one and all. Should we conclude that list seats will in practice be monopolized by the most populated regions or that political parties will ignore regional balance when preparing their lists? The experience of other countries suggests that such in fact is not the case. Preparation of party lists involves a long process of prior consultation with local party authorities, to ensure that all portions of the territory are equitably represented not only in being on the list but also in being fairly positioned on the list. No party will wish to "cut corners" in this area, for fear of seeing the list made a point of public controversy or

challenged by a legal appeal. Everything suggests that the parties will have enough foresight, in a society as regionalized as Québec's, to take the necessary precautions.

It remains to be seen whether these arguments will convince the residents of small outlying regions, which are more likely to lose out in the give and take of province-wide bargaining. Such regions would certainly be better off with a regional electoral subdivision that explicitly guarantees them at least one compensatory seat.

Should priority be given to the territorial dimension or to mathematically exact representation? To us, the debate is a purely political one. An expert may clarify it on technical grounds, but not necessarily settle it. We would prefer to have both options submitted to the government and to the public for discussion and decision making.

We will not, however, hide our personal opinion as citizens on this subject. As we told the members of the Committee on Institutions in November 2002, we are not doctrinaire proportionalists. In the current situation, we feel it preferable to opt for an electoral subdivision with small regions, at the risk of bending the principle of proportionality. A 26-region subdivision seems to us the most satisfactory model to go with. Province-wide compensation would reduce the distortions almost to zero, but we think this solution will seem undesirable to most Québec citizens. Deep down, they are accustomed to linking an MNA to an identifiable territory. They want more electoral justice but not to the point of allowing an infinite proliferation of political parties.

ONE VOTE OR TWO?

Whatever the territorial framework ultimately chosen for compensation, another question needs to be asked. Should compensation be based on an explicit second vote for a political party or, more simply, on the total votes for all candidates of each political party?

This is a secondary question, we feel. Whether the voter has a second vote does not affect the essence of the proposed system, whose two key elements are, in our opinion, the compensatory nature of the system (list seats go first to parties penalized by the first-past-the-post system) and a number of list seats making up at least 40% of the total.

As we indicated above, it is completely uncertain how Québec voters will use this possibility. Previously marginal in Germany, "split voting" is now practised by over 20% of voters. The percentage is even as high as 35 to 39% in New Zealand.

The advantages of a second vote are obvious. Voters have an extra means to show either their enthusiasm for the local candidate of a party they do not support or their disinterest in the local candidate of the party they do support. Small parties find the going easier and can tap into their full vote potential at less cost. This has led them almost everywhere to pressure their coalition partners into introducing the second vote. Their ease in getting this wish granted suggests that the resulting change is not very great.

Nonetheless, three considerations argue for one vote. It is the simplest option from the voter's standpoint and the one that least upsets acquired habits. It produces fewer rejected ballots. The great majority of voters will certainly understand the respective importance of the two votes available to them, but Germany's experience and New Zealand's clearly suggest the existence, even after 50 years in the first case, of a fringe of voters who understand less well. Finally, and above all, Italy's experience shows that the second vote opens the way to a manœuvre that would destroy the very essence of the compensatory system and turn it into a superimposed or parallel system no longer having much to do with PR.

The last consideration carries a lot of weight for us. Those who demand a second vote must suggest mechanisms that will absolutely exclude this type of abuse. No one has offered me any. It would be a real catastrophe if the first experience with this system in Québec were distorted by such a manoeuvre.

To be safe, lawmakers could stipulate that the first election under the new system be based on the vote for constituency candidates. It was in this form that personalized PR was initially introduced almost everywhere in Germany. This choice does minor damage to very small parties. A party like the Natural Law Party has already fielded a team of 102 candidates in the past, so it should not be impossible for very small parties to exploit their full vote potential by running the necessary number of candidates, now reduced to 75.

DESIGNATING MNAs FOR COMPENSATORY SEATS

To select MNAs for compensatory seats, we feel the only possible options are either to recycle the best defeated constituency candidates or to use a closed list. As we mentioned in the first part of our report, recycling currently exists only in Baden-Württemberg and for election of Italian senators, and there is talk of eliminating it in the first case. Everywhere else, lists are used and, except in Bavaria, the candidates are elected in the order they appear on the list.

What we might call the "wisdom of the nations" seems to have clearly ruled in favour of lists. Our simulations support such a choice. Recycling of the best defeated candidates is at first sight a seductive option but it leads to anomalies that are easy to point out. If compensation is done province-wide, some regions will get no compensatory seats because the method leads to erratic electoral transfers, based not on population but on how close the victories are. The Montréal region would be the leading victim of such a choice. This problem is eliminated if compensation is within separate regions, although some regions would not have enough defeated candidates. What if, for example, a party is entitled to 4 of a region's 5 seats while having won the 3 constituencies up for grabs in the region?

For some, lists have the potential disadvantage of having a predetermined order, which helps those at the top of the list and hinders those further down. But it does have serious advantages. First, it ensures more security for party leaders, who are invariably at the top of the list but not necessarily blessed with the safest seats. A party that so desires can use a list to prioritize certain types of candidacy, e.g., by giving women higher positions on the list than their own constituency votes would merit them. Baden-Württemberg's experience suggests that the recycling approach is less conducive to women entering Parliament.

For us, recycling has another disadvantage. It creates the appearance of a visible exclusive tie between the MNA holding the compensatory seat and a specific constituency. The MNA can work only in that constituency, having been assigned a compensatory party seat on the strength of his or her performance there. It is the constituency that provides the mandate. A perception may arise, then, that some constituencies have one MNA and others have two or even three. At least in appearance, some constituencies are clearly better represented than others. In a society steeped in territorial representation, such a situation will often be noticed.

A list MNA is tied to a region as a whole, and this person's choice to work in a specific constituency is unofficial in nature. Nothing requires a list MNA to serve only the constituency where he or she was defeated. Nothing stops him or her from going to an adjacent constituency. The system is consequently less vulnerable to criticisms, or lawsuits, based on inequality of representation.

EXPRESSING PREFERENCES FOR ONE OR MORE INDIVIDUALS ON A PARTY LIST

Our description of the way the existing preferential system works in Bavaria shows its extreme complexity. It therefore seems inadvisable to us to consider such refinements in Québec when party lists are first tried out. Once people have become accustomed to them, however, introduction of preferential voting for list candidates could be an appreciable improvement.

DOUBLE CANDIDACY

For the proper operation of a compensatory system, we feel that constituency MNAs and list MNAs must not form two classes of elected members in permanent conflict. It is quite legitimate that current MNAs do not wish to see the creation of a class of parliamentarians who will be completely cut off from local election campaigns, free from all constituency work, and groomed as candidates for ministerial portfolios.

Our analysis of compensatory systems where they have existed the longest shows that this fear is unfounded, providing that certain precautions are taken. We propose to make mandatory what will likely happen anyway, namely that **the most advantageous places on each party's lists should go to the party's constituency candidates in the region**. Their names would be followed on the list by those of other candidates. With these added names, the party could still fill all seats it is entitled to, even when all of its constituency candidates have been elected. Vacant list seats could also be filled if and when such vacancies arise.

Such an arrangement would retain what many feel to be the most attractive feature of the recycling system described above. It would **guarantee that the great majority of MNAs, whatever their status, will have stood the test of constituency races**. There would be no perception that some MNAs have cut their teeth on local campaigning whereas others have not. In short, the great majority of MNAs would be compelled to fight local election campaigns. This would encourage each list MNA to preserve a certain link with a constituency.

In the new daily parliamentary life that may emerge with electoral reform, we hope the greatest care will be taken to prevent any widening of the gap between constituency MNAs and list MNAs. For both pay and allowances, the principle of the legal equality of all MNAs should prevail wherever possible. We even suggest avoiding such terms as "regional MNA," which suggest that the MNA represents something "superior" to a constituency. The expression "list MNA" would avoid this type of misunderstanding.

THE PROCESS OF ESTABLISHING LISTS

Should the law precisely regulate the process of establishing regional or provincial lists? Lists are a cause for concern. It is feared that party leaders will prepare them behind closed doors. It is also feared that list MNAs may get bumped down the list, at the next election, in reprisal for failing to toe the party line. So, according to some, the law must ensure that lists are prepared democratically.

Current Québec legislation imposes few constraints on constituency candidacies. The only requirements are a nomination paper backed by 100 signatures and, for the candidate of an authorized party, the presentation of a letter from the party leader recognizing the nominee as the party's official candidate. There is no requirement to hold a convention in due form. Such things are considered to come under the internal management of parties. If a party does without any democratic formality in choosing its candidates, the voters will make it pay the price.

The same logic could apply to list preparation. We could trust the parties and the voters to avoid such abuse. In any event, if party authorities give the Chief Electoral Officer a candidate list that has been established without any democratic procedure, this fact would alone become a potential issue during the election campaign, on top of causing internal strife. We should also note that party leaders would have less leeway if the list candidates were chosen from among the constituency candidates. Only the order of candidates on the list could be altered.

Germany is an exception in imposing a list-candidate selection procedure on all parties. It requires holding either a party membership meeting in the Land or a convention of delegates who are elected by all party members through a secret ballot. The first option tends in practice to be chosen by the small parties and the second option by the big parties, which cannot easily convene their large memberships to a general meeting.

In either case, everyone present is entitled to nominate a candidate. The candidates must have the possibility of presenting themselves personally and setting forth their platform. The vote must be secret. The law leaves the rest up to party by-laws.

According to the information we have been able to obtain, the members or delegates meet, in practice, to approve a draft list already prepared by the party leadership. The draft list itself is the outcome of a long consultation process where efforts are made to ensure equitable representation of the different party factions and where local authorities are asked beforehand about the reactions the list may meet with among the membership. For example, in a religiously mixed party like the CDU, care is taken to represent Catholics and Protestants equitably, whereas the Greens stress gender equality. A separate vote is taken for each position on the list.

Québec avoids meddling in the internal workings of political parties and, in this, only imitates the overwhelming majority of democratic countries. Indeed, how could a procedure be found to the satisfaction of all parties that are running? Some would willingly accept a procedure that allows the leader alone to pick certain candidates. Others would think it indispensable to have a convention of delegates elected by the party membership. For still others, the decent democratic minimum would require all party members to rule on the composition of the list, through a mail-in ballot. How could one manage to satisfy so many different views in a legal statute?

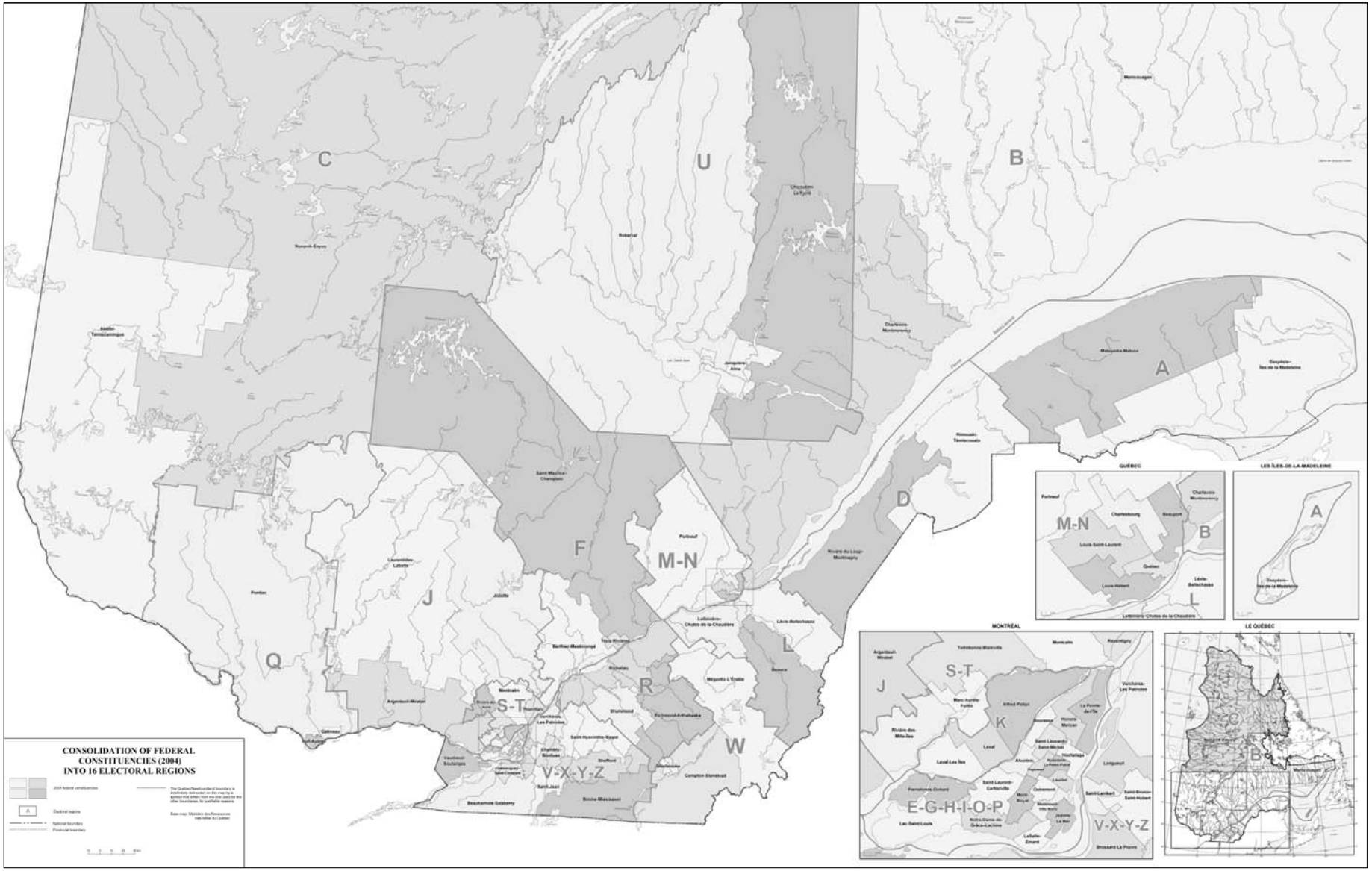
REPLACING MNAs

To replace list MNAs who die or retire, one should pick the highest non-elected candidate on the list, as long as he or she still belongs to the party. Parties should be asked to field enough list candidates for all possible situations. If the list has nobody eligible to fill the seat, the vacancy will remain.

What if a constituency seat becomes vacant? In this situation, we lean toward the by-election option. If this system excessively weakens the government of the day, we feel the next best option is the technique of the constituency substitute, who is designated at the same time as the official party candidate. Finally, we do not recommend the German practice of using the next person on the list to fill all vacancies, including those left by constituency members. In such cases, the replacement will likely have no tie with the constituency that fate will assign.

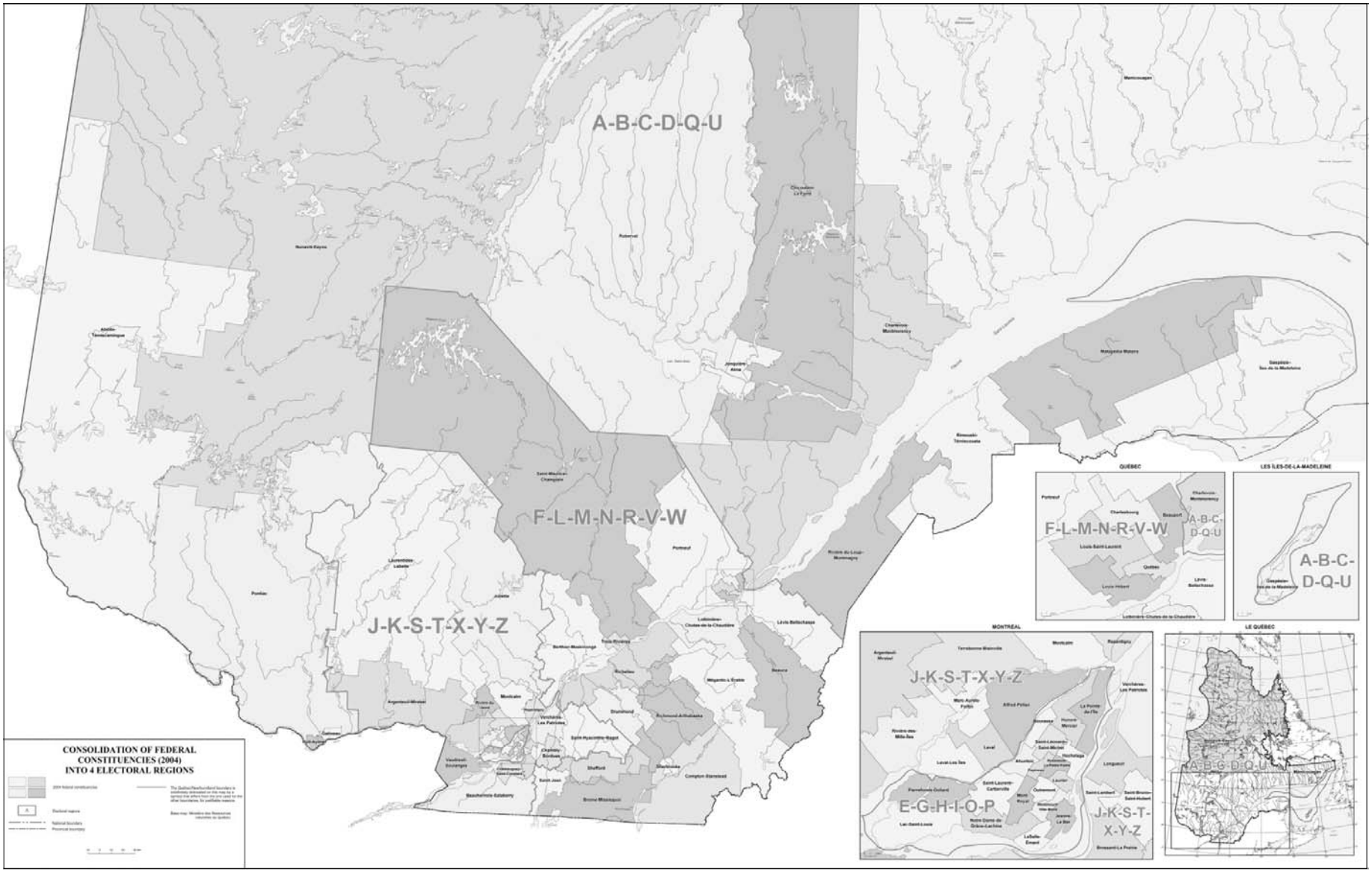
ELECTORAL SUBDIVISION "A" (26 REGIONS)

ELECTORAL SUBDIVISION "B" (16 REGIONS)



ELECTORAL SUBDIVISION "C" (13 REGIONS)

ELECTORAL SUBDIVISION "D" (4 REGIONS)



ELECTORAL SUBDIVISION "E" (PROVINCE-WIDE COMPENSATION, NO REGIONS)

For information, please contact your elected Member:

- by postal mail:

  Hôtel du Parlement
  Québec (Québec) G1A 1A4

- by e-mail by consulting the address list for the elected Members on the National Assembly's Web site at: http://www.assnat.qc.ca

You can also contact the Government House Leader and the Minister for the Reform of Democratic Institutions:

- by postal mail:

  Office of the Government House Leader
  Minister of the Reform
  of Democratic Institutions
  Édifice Pamphile-Le May
  1045, rue des Parlementaires, bureau 1.39
  Québec (Québec) G1A 1A4

- by e-mail:
  ministre.srid@mce.gouv.qc.ca

You can also consult the Web site of the Secrétariat à la réforme des institutions démocratiques at:
www.institutions-democratiques.gouv.qc.ca