

IMPORTING MMP TO THE U.S.: POSSIBILITIES AND CHOICES

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Since its adoption by New Zealand more than two decades ago, mixed-member proportional (MMP) has become a favorite of both academics and reformers. In surveys, a majority of election-systems experts rank it as their top choice. In Britain, MMP was chosen for new legislatures in Scotland, Wales, and London. Except in British Columbia, where STV was preferred, Canadian reformers have turned to variants of MMP as their preferred option for (thus far unsuccessful) reform attempts at both provincial and federal levels. It is natural, therefore, for reformers in the U.S. to look to MMP as a "best of both worlds" alternative to single-member plurality (SMP) elections.

Nevertheless, even if one believes (as I do) that MMP can perform very well in some settings, we all know that no electoral system is universally "best" for all purposes and contexts. Moreover, for some applications, a voting method that might be desirable in principle may be constitutionally or politically infeasible. MMP also has innumerable variants, depending on choices about design features, and desiderata that are true of the German and New Zealand models may not be delivered by a less pure version. Finally, because it is crucial for reformers to avoid divisions over which reform option to promote, it should be valuable to outline in advance, as much as possible, the U.S. settings for which MMP can be considered and those for which some other alternative--most likely STV--seems better suited.

The paper is divided into three sections. The first lists basic requirements of any MMP system, and notes their implications for the feasibility and desirability of MMP in various U.S. contexts. The second points to design choices that must be

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made in devising a particular version of MMP, and then looks at their effects on goals that different variants will or will not deliver. I will pay particular attention to concerns that inspire this workshop--polarization, deadlock, and non-median outcomes. The final section looks at the applicability of MMP in comparison to alternative reforms for three levels of American government--Congress, state legislatures, and local councils.

I. Basic Requirements of MMP

1. *Partisan ballot.* Because list seats are assigned to parties, MMP requires a partisan ballot. That rules the system out of consideration for the state legislature in Nebraska and a large number of local legislative bodies across the U.S.--unless they switch to partisan elections in order to use MMP.

2. *Multi-member districts:* Like all PR methods now in use, MMP requires multi-member districts, either regionally or system-wide, in addition to the single-member constituencies that it retains. That rules out the use of MMP (and STV also) for the U.S. House of Representatives, unless Congress repeals the 1967 statute that requires states to use only SMDs.

3. *Expansion of the size of the legislature and/or the size of SMDs.* Where MMP is adopted to replace SMP for an existing legislature, the need to make room for list seats requires either an expansion in the overall number of legislators or a reduction in the number of SMDs (and consequently an increase in their area and population), or some combination of both. Thus when New Zealand adopted MMP, the number of MPs rose from 99 to 120, while the number of SMDs shrank from 99 to 65 (it has since risen to 70). This inexorable logic produces a political dilemma for reformers: voters do not like the idea of more legislators,² but politicians already elected from constituencies do not want to play musical chairs in the next election.

Michel Balinski (2008) has devised a variant of MMP designed to avoid both the second and third requirements--an ingenious plan that he calls "Fair Majority Voting" (FMV). Writing with the U.S. House in mind, Balinski proposes that states continue to choose Members of Congress using SMDs. As at present, each elector would cast only one vote, for the district candidate he or she prefers. However, votes for each party's candidates in districts would also be summed over the whole state, and a PR formula would be applied to those totals. If a party wins more members from districts that the proportional allocation would give it, then one or more of its district winners will be replaced by candidates who lost in districts, until all parties have won the number of seats to which they are entitled under the

² Note the anti-reform slogan in New Zealand, "MMP = More MPs," and also, in Ontario, the deliciously named Fewer Politicians Act.

formula.³ Using this method, each party will win its fair share of seats statewide and each district will have one and only one representative; but there is no increase in the overall size of the delegation and no use of party lists or multi-member constituencies (except implicitly!). FMV promises to deliver many (though not all) of the goals that reformers seek to achieve with standard versions of MMP. Nevertheless, one obvious drawback probably makes FMV a political non-starter: The method can work only by denying seats to some district winners and replacing them with candidates who lost the election.

II. Design Decisions and Their Effects on Reformers' Goals

MMP is not one electoral systems, but instead constitutes a family of voting arrangements. The specification of a particular proposal within the MMP family depends on numerous design decisions. Those decisions in combination will affect to what extent a given MMP plan will deliver various virtues that reformers tend to associate with MMP.

Design Decisions and Big-Party MMP

The best-known and most powerful design feature is *district magnitude* (M) for the allocation of compensatory seats. If list seats are assigned based on system-wide votes, as in New Zealand, then M is simply *the size of the legislature* (120 in NZ). However, if compensatory or top-up seats are *allocated locally* in numerous separate regions, according to vote totals in clusters of SMDs, then M can be quite small even though the overall size of the legislature is large.⁴ (Examples include the Jenkins AV+ plan for the UK and the Quebec National Assembly's draft bill of 2004.) As political scientists have understood for some time now, M is the most important factor affecting the degree of proportionality a system can achieve, taking into account deviations between vote shares and seat shares for all parties. Thus, where M is low, either because the legislative body is small or because compensatory seats are assigned in small districts, then only a rough approximation of proportionality

³ When exactly two parties compete, each party selects its candidates in order of the percentages of the district vote each received.

⁴ Local *allocation to parties* of compensatory seats must be distinguished from requirements that parties must meeting geographic requirements when *assigning those seats to individuals*. For example, FairVote's "Districts Plus" plan for Michigan's House of Representatives would require that parties' "accountability seats" be assigned to candidates in local accountability districts; but the overall number of accountability seats allocated to each party would depend on their statewide votes, so $M = 110$, the total number of seats in the chamber. I am grateful to Rob Richie for calling this plan to my attention. For details, see <http://www.fairvote.org/reforms/fair-voting-proportional-representation/districts-plus/>

will be achieved for large parties; and small parties will be excluded altogether, because their votes fall below the effective threshold for representation.

A second factor that affects the degree of proportionality possible in an MMP system is *the percentage of compensatory seats* in relation to the overall size of the legislature. If too small a percentage of seats is reserved for list members, then there may not be enough compensatory seats to offset excessive constituency victories by one or more big parties, even if the size of the legislature is large. Consequently, the model MMP systems have high proportions of compensatory seats--50% for the Bundestag in Germany, 42% currently in New Zealand (the Royal Commission had wanted 50%), and 44% for the London Council (which has an overall legislative size of 25).

Distortions caused by too few compensatory seats can be offset by allowing the total size of the legislature to expand temporarily, through provisions for *overhang* or *adjustment seats*. Overhang supplies only a partial corrective--it allows parties to keep excessive district seats they have won while not decreasing the number of list seats awarded to other parties. Thus the expansion of the legislature is likely to be slight. Both Germany and New Zealand allow for overhang seats. Adjustment increases the number of list seats, sometimes substantially, in order to maintain overall proportionality despite an overhang. Germany recently instituted provisions for adjustment seats in the Bundestag.⁵

The design features reviewed thus far affect the fineness of proportionality attainable by all parties, both large and small, although the impact of disproportionality will usually be more severe on small parties. There are three additional design decisions that have little effect on the proportionality of seat shares assigned to large parties, but do strongly affect the chances of minor parties. These are whether citizens cast one vote or two, explicit thresholds, and the PR formula.

Although the usual MMP models give each elector two votes--one for an individual constituency representative and one for a party, MMP is also possible with just one vote. In this version, constituency votes also count for parties, and determine overall seat allocations when aggregated across SMDs. Balinski's Fair Majority Voting is a one-vote MMP system, as was the original MMP in West Germany. Although there need be no mechanical disadvantage for small parties in one-vote MMP, there will probably be a strong psychological bias against them. Despite the best efforts of small parties to convince supporters that votes cast for their local candidates will affect compensatory seats, less sophisticated voters are likely not to see past the hopelessness of the local contest, and thus may cast tactical

⁵ The motive was to prevent possible non-monotonicity in MMP elections--a very interesting development in light of the on-going controversy over the possibility of non-monotonicity in IRV and STV. For analyses in English of the problem and responses to it, see Birkmeier et al. 2012 and Pukelsheim 2014, chs. 2, 12, and 13.

votes, as often happens under SMP. In addition, to maximize its vote under single-vote MMP, a party must run candidates in every constituency, which may be beyond the capabilities of small parties.

To prevent supposedly excessive proliferation of parties and especially to nip extremist parties in the bud, Germany after World War II pioneered the use of explicit thresholds--a minimum percentage of the party vote (or aggregated district vote in the single-vote case) that a party must receive in order to share in the allocation of compensatory seats. Both Germany and New Zealand use a 5% threshold.⁶ Obviously, thresholds have no direct effect on the relative fortunes of large parties,⁷ but they create a strategic-voting dilemma for supporters of small parties that are below or close to the cutoff and, as intended, can screen out some small parties altogether.

Finally, there is the traditional, if technical, issue of the PR formula. As is well known, some formulas (e.g., D'Hondt) benefit larger parties, whereas others (especially the unmodified St. Lague) deliver results closer to unbiased proportionality for parties of all sizes.

Putting all these design elements together, we can identify a pattern that I will inelegantly dub "big-party MMP" (until someone comes up with a better term). In its full-blown version, big-party MMP would give electors just one vote, have low M (either because the size of the legislature is small or because compensatory seats are allocated within small regions), have a low proportion of compensatory seats (relative to M), set a high explicit threshold, include no provision for overhang or adjustment seats, and use the D'Hondt formula. An example is the Quebec Draft Bill of 2004, which included all those elements except an explicit threshold--which is of course redundant when M is small. Other plans could differ from the pattern on one or more features but still qualify as big-party MMP if the predominant effect of the design would give a substantial advantage to larger parties.

Under big-party MMP, small parties are unlikely to win legislative seats. An independent or small-party candidate with strong local support might occasionally win in a single-member electorate; and if compensatory seats are allocated regionally, a small party with geographically concentrated support might elect a candidate from its list; but in general the high thresholds (implicit or explicit) and other elements of big-party MMP will discourage small parties by setting high

⁶ After a fine-tuning review following the 2011 referendum, the New Zealand Electoral Commission recommended lowering the threshold to 4%, but the government has refused to act on that recommendation.

⁷ There are scenarios in which a threshold affects large parties indirectly. For example, if one big party's potential coalition partner crosses the threshold while its rival's potential partner falls short, then the first pair will have a better seats: votes ratio than the second.

barriers to their entry. If big-party MMP is instituted where a third party is already strong under SMP (e.g., Britain or many Canadian provinces), then big-party MMP will treat that party more fairly than SMP, resulting in more-stable competition involving three large parties, rather than just two. However, if big-party MMP is adopted where two parties are already completely dominant, as in most US jurisdictions, then the two-party system will probably continue.

Effects on Representational Fairness

The first virtue advocates see in PR is greater representational fairness--by explicit design to smaller parties and, in many countries, to minorities and women through indirect effects. Obviously (or perhaps tautologically), big-party MMP offers little help to minor parties. In addition, women and minorities are unlikely to achieve big gains in big-party MMP systems. Even in the classic MMP model, those groups will probably do less well in a pure list PR system, because so many legislators are elected from SMDs, where males and members of (local) majority groups are more likely to prevail. The gains women and minorities achieve under MMP come mainly from winning list seats. In big-party MMP, the proportion of compensatory seats may be relatively low. Even if that proportion is fairly high system-wide, allocation or assignment by regions, each of which has few seats to offer, will make it harder for parties to award many winnable places to minorities or women.⁸ Moreover, a main incentive for large parties to put minority-group members high on their lists is the threat that if they do not, minority voters will switch their votes to a small party that appeals on an ethnic basis. If the barriers to entry of such small parties are high, major parties may feel less compelled to slate as many minority candidates.⁹

The representational weaknesses of big-party MMP poses a political dilemma for reformers. In SMP systems already dominated by large parties, MMP plans that lean in the big-party direction may seem to offer better prospects of adoption through legislative enactment or referendums that major parties can influence, especially when a disadvantaged major party might help initiate a reform process.

⁸ This is a concern I have about FairVote's Districts Plus plan for Michigan. It proposes "accountability seats" equal to only 20% of the legislature. In addition, although the number of accountability seats allocated to each party would be determined on a statewide basis, there would be only one of these seats per accountability district, and those would be assigned to the winners of party primaries in each district. Since those primaries would be single-winner contests, women and minorities would probably not fare much better than they do in SMP elections.

⁹ Or they may give minorities descriptive representation while neglecting their substantive interests. The preceding logic could apply to women, but primarily female or feminist third parties are uncommon.

Nevertheless, no reform effort is likely to succeed without vigorous, persistent grassroots advocacy. A high proportion of activists in such a campaign are likely to be supporters of small parties, minority-group members, and women. Once they realize that a plan flying under the colors of PR and MMP actually offers much less improvement than they expect, the reform movement may be left without an enthusiastic base of support. The fates of AV+ in Britain and the 2004 Quebec draft bill offer cautionary examples.

Effects on Polarization, Deadlock, and Extreme Outcomes

The major purpose of this workshop is to consider whether electoral reform offers an answer to America's on-going trifecta of political dysfunction--partisan polarization, legislative deadlock when control of government is divided, and extreme (non-median) policy outcomes when one party controls the legislative process. Would MMP significantly ameliorate those problems?

Unless MMP is accompanied by complementary reforms, it would not affect three important causes of distorted politics in the US: party primaries, activists, and campaign finance. If, as seems likely under big-party MMP, Democrats and Republicans retain a near-duopoly, they will continue to be pulled to the left and right, or generally away from the median voter on any dimension, by unrepresentative primary electorates, ideological activists, and the main sources of money in politics--oligarchs, special interests, and issue-oriented small donors.

MMP would, however, eliminate or substantially reduce the impact of two other causes that help undergird the unholy trinity. As long as the reform delivers nearly proportional outcomes for the two major parties--and most big-party versions of MMP would probably do that despite their unfairness to small parties--then partisan gerrymanders would no longer pay off. Incentives might remain to gerrymander in order to protect incumbents or promote minority representation, but rational politicians who understand how compensatory seats work should stop trying to rig boundaries for partisan reasons. By virtue of the same logic, but probably even more important, MMP (including big-party MMP) should reduce or eliminate the "natural gerrymandering" that results from the association between population density and Democratic voting in the most industrialized and urbanized states. (Chen and Rodden 2013) The skewing of Democratic votes into relatively few densely populated districts means that the median voter in the median district is to the right (at least on economic issues) of the median voter in the population as a whole, helping to explain the rightist policies adopted in a succession of big states that are Democratic or competitive in presidential elections.

Finally, there is a third mechanism by which MMP might pull politics back toward the center, but big-party MMP seems less likely to deliver this benefit than standard models. When barriers to minor-party success are not too high, major

parties that remain polarized invite the entry or growth of centrist third parties.¹⁰ If such parties hold the legislative balance of power, they can exert a centripetal influence on policy. Of course, low barriers to minor parties might also promote the entry of parties on the left or right (or that are extremist on some other dimension); but, as in New Zealand, such parties may have little success in achieving their policy ideals. Indeed, the exit of extremists from the major parties makes it easier for them to occupy the center-left and center-right. (Imagine how much more cooperative Republicans in the House might be if the Tea Party were really a separate party!)

An ideal pattern occurs when the legislative constellation includes two major parties plus multiple minor parties. A single third party that holds the balance of power can demand an excessive price, even if it presents itself as centrist.¹¹ The power of breakaway parties on the left and right flanks is reduced if there exist multiple alternative parties that can help a major party form legislative majorities. Since 1999 in New Zealand, both Labour and National have successfully developed a pattern in which a major party forms a minority government, turning to any of several minor parties to pass bills based on one-issue-at-a-time majorities and generally leaving parties with more extreme positions on an issue unable to achieve their demands. (Nagel 2012) That pattern could not occur under big-party MMP.¹²

¹⁰ McGann 2013 strongly emphasizes the importance of party entry for both voter choice and government accountability.

¹¹ New Zealand First, the kingmaker in NZ's first MMP parliament, deliberately staked out a center position on the main (economic) left-right dimension, but it was extremist on other dimensions that attracted much of its core support--immigration (which it opposed), corruption (NZF's leader was known for demagogic accusations), and Maori militancy (for which NZF became a vehicle). Similarly, another centrist aspirant for the linchpin role, United Future, also sought at times to offer a political home for Christian social conservatives.

¹² Even in NZ's relatively pure version of MMP, the 5% threshold would have produced many fewer minor parties were it not for two features that proved more important than originally expected: the provision that any party winning a constituency seat is entitled to list seats, even if its party vote falls below 5%, and the retention of Maori constituencies. Over six MMP elections, small parties have won seats in Parliament 31 times, an average of 5.2 per election. On only 12 of those occasions did minor parties cross the 5% threshold (2.0 per election). Four of the others won Maori seats only; six won list seats because of a constituency victory; and nine won only a constituency seat (usually because of deals with a major party).

Appropriateness of MMP for US Legislatures

I will now turn to a brief survey of US legislatures, to see where MMP is infeasible or not recommended, where only big-party MMP could be implemented, and where relatively unbiased versions of MMP might be possible.

Congress

Short of a constitutional revolution, the US Senate will remain an SMD system. Similarly, House elections must be for SMDs in the (currently) seven states that elect only one member. I would also contend that SMDs should be kept for the five states that have only two representatives.¹³ If reform seems needed for any of those elections, it must be a single-winner method. IRV appears the only realistic option for the foreseeable future.

PR is plausible for all states with $M > 2$, but all versions of PR except (perhaps) Balinski's Fair Majority Voting would require the repeal of the statute that presently mandates the use of SMDs. I shall proceed on the assumption that this obstacle will be overcome someday.

The twelve states that elect 3, 4, or 5 members are too small for MMP, but instead fall within STV's sweet spot for district magnitude. To be sure, Balinski uses Connecticut ($M = 5$) as his running example of how an FMV election might work, but STV seems more politically palatable than a method that would unseat a district winner.¹⁴ The fourteen middle-sized states with 6-10 representatives could support MMP with 2-3 compensatory seats each, but such a system in those environments would clearly fit the big-party MMP model. States in this range are well suited to STV with two districts. Still, it would be worthwhile to consider systematically the comparative virtues and drawbacks of STV and big-party MMP for electoral units of this magnitude.

Such a comparison becomes even more desirable for the eight large states with House delegations of 11-18 members. If compensatory seats were assigned on a statewide basis at this range of magnitude, minor parties would have a reasonable chance of success, provided that other design elements do not lean too much in the big-party direction. STV with 3-4 districts would also be an option; but the smaller size of SMDs under MMP compared with STV districts might make MMP a more attractive reform in some of these states. Finally, the four mega-states, with House delegations of 27 (New York and Florida), 36 (Texas) and 53 (California) are all suitable candidates for a reasonably unbiased MMP system.

¹³ In those states, any PR formula would usually produce a split delegation, resulting in little inter-party competition.

¹⁴ Unless someone alertly notices the parallel to STV's electing a candidate who receives fewer first preferences than a defeated opponent.

Given that MMP could not be implemented for the House in all states, how much difference would it make if it were implemented in the large and mega-states for which it is best suited? Those states combined elect 60% of the House, so the effect could be substantial, especially as most of the states subject to demographic "unintentional gerrymandering" are included in these groups.

State Legislatures

State legislatures offer the most suitable setting in the US for implementation of MMP. Except for Nebraska, they are all elected on a partisan basis. In most states, both chambers are large enough for MMP, but lower chambers especially fall in the size range that could permit realization of the virtues associated with MMP in Germany and New Zealand.

The dilemma of size, noted above on page 2, will be a major political challenge for advocates of MMP in the states. If a chamber is expanded to accommodate compensatory seats without reducing the size of SMDs, then public sentiment against spending more money on politicians will be aroused. On the other hand, if the tradeoff is resolved by minimizing the number of compensatory seats, then the result will be big-party MMP in a setting where a better model might have been possible.

There is a possible way out of this dilemma: unicameralism. No argument from constitutional structure or democratic theory can justify bicameral legislatures at the state level. In fact, bicameralism is another source of political deadlock in the states, sometimes even when the same party controls both chambers. Agitation for the consolidation of chambers already exists, albeit at a low and muted level. If the implementation of MMP were linked to abolition of the upper chamber as a package deal, then some of the proceeds from abolition could be used to expand modestly the size of the remaining chamber, while sacrificing the rest to appease the public's desire for economy and fewer politicians.

In view of well-known arguments in comparative politics against the combination of PR with presidentialism, one might wonder whether MMP (or any form of PR) would be a good idea in American states, all of which have independently elected governors. That potential tension between governors chosen in winner-take-all contests and legislators chosen by MMP or STV might be lessened if IRV were adopted for gubernatorial elections. The obvious affinity is between IRV and STV, because both use ranked-choice (preferential) voting. Nevertheless, IRV and MMP might also prove complementary, because agreements with minor parties to pass legislation might mirror commitments by minor parties to recommend second-preference votes for a major-party gubernatorial candidate.

Local Councils

A great many local bodies in the US are elected on a non-partisan basis. In addition, many of them are too small for MMP elections. For both reasons, STV will usually be the preferred option for reformers at the local level. Nevertheless, exceptions can exist. One close to home for me is the City of Philadelphia, which elects ten members of City Council from SMDs and seven at large. In a bow to the minority party, at-large members are elected by a semi-proportional method, the limited vote, with voters limited to five choices. (Parties also are limited to five nominations.) In an overwhelmingly Democratic city, the five Republican nominees compete against each other rather than against Democrats. Successful Republicans are often those who can appeal to Democratic voters or cut deals with Democratic ward leaders--potentially making them too loyal an opposition.¹⁵ Thus MMP might be an improvement for Philadelphia, and it would not be subject to the usual size dilemma, because the existing at-large seats could readily be converted to become list seats. Perhaps others more familiar with local governments across the US can point to similar opportunities.

¹⁵ Actually the situation is more pluralistic, because the Democrats are fractious.

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