

**THE EFFECTS OF ELECTORAL MECHANICS:
THE PURVIEW OF PREFERENTIAL VOTING FOR
DEMOCRATIC REGENERATION IN PUERTO RICO**

ARTICLE

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INTRODUCTION

THIS ARTICLE ADDRESSES THE EFFECTS OF ELECTORAL SYSTEMS ON THE DEMOCRATIC process of forming government in Puerto Rico’s context. In light of the mechanics of major electoral systems and their outcomes, we analyze how the current plurality rule scheme has produced a two-party system and we propose an alternative model -preferential vote or instant-runoff vote (I.R.V.)- to enable wider participation as well as to enhance the dynamics of public debate. While acknowledging that election reform is rare once a system has

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been established, we seek to circumvent resistance by avoiding a zero-sum analysis to reform, incorporating the winning political actors under the current system by presenting how a preferential vote scheme can also benefit them. In order to explore the elements necessary to trigger a reform, we analyze how Australia and New Zealand, two advanced democratic countries, shifted from one election system to another and the reasons for reform as well as its consequences. If Puerto Rico is to pursue reform, proponents must understand the stakes of those winning under the current system and coin a platform capable of enhancing the democratic process by creating new spaces for debate and political representation while incorporating those who fear reform will lead them towards a path of power dilution and fragmentation.

I. ELECTORAL SYSTEMS: WHEN FORM EQUALS SUBSTANCE

“Electoral systems matter.”¹ Every democratic institution depends on legal regulations capable of ensuring fair play at the moment of collective decision-making.² However, much more is at hand: while democracy depends on the rule of law to ensure fairness in the electoral process,³ the actual process itself represents a value judgment regarding what type of system a given polity desires. As a result, policy-makers must envision the type of political society they want to mold before selecting a particular system. Scholars express that “[electoral systems] are a crucial link in the chain connecting preferences of citizens to the policy choices made by governments.”⁴ Michael Gallagher defines electoral systems as:

[T]he set of rules that structure how votes are cast at elections for a representative assembly and how these votes are then converted into seats in that assembly. Given a set of votes, an electoral system determines the composition of the parliament (or assembly, council, and so on as the case may be).⁵

Thus, the process of voting can take different forms. Any particular variation has the potential to affect the results and thus the type of government that will be constituted. Electoral systems matter in various ways:

They may make a big difference to the shape of the party system, to the nature of government (coalition or single-party), to the kind of choices facing voters at

¹ Michael Gallagher & Paul Mitchell, *Introduction to Electoral Systems*, in *THE POLITICS OF ELECTORAL SYSTEMS* 3, 3 (Michael Gallagher & Paul Mitchell eds., 2005).

² *See id.*; *see also* SAMUEL ISSACHAROFF ET AL., *THE LAW OF DEMOCRACY* (3rd ed. 2007); AREND LIJPHART, *PATTERNS OF DEMOCRACY: GOVERNMENT FORMS AND PERFORMANCE IN THIRTY-SIX COUNTRIES* (1st ed. 1999).

³ *See* Efrén Rivera Ramos, *El Estado de Derecho: Aproximación al concepto*, 81 *REV. JUR. UPR* 113 (2012).

⁴ Gallagher & Mitchell, *supra* note 1.

⁵ *Id.*

elections, to the ability of voters to hold their representative(s) personally accountable, to the behavior of parliamentarians, to the degree to which a parliament contains people from all walks of life and backgrounds, to the extent of democracy and cohesion within political parties, and, of course, to the quality of government, and hence to the quality of life of the citizens ruled by the government.⁶

Nonetheless, electoral models are rarely the focus of attention in the realm of the social sciences or the law. It is imperative to look closely to their implications because their importance should not be underestimated when analyzing the political scenario of any given country.⁷

There are two major electoral systems across the globe: the majoritarian system (hereinafter “MS”) and the proportional representation system (hereinafter PR). Both of these are but categories of myriad schemes and structures. Before embarking in an analysis of the virtues and shortcomings of these systems, it is important to emphasize that to take any of them at face value would negate our intention of discussing how electoral reforms come to be and why countries embrace particular configurations over others. For example, some have preferred the PR model because they tend to give underrepresented groups, such as regional or ethnic groups, their longed access to power.⁸ Others have opted for a strong presidential, single-member district system to form solid and stable governments⁹ capable of receiving a clear mandate from the electorate.¹⁰ Such choices depend -or should rely- on the diverse array of characteristics that define the political life of a given country.¹¹ The electoral system choice must thus conform to certain needs and scenarios. Nonetheless, they often obey the interests of the ruling party.¹² As a result, the pros and cons of every system cannot be

⁶ *Id.* at 4.

⁷ *Id.* at 21. If electoral systems affect the shape of a country’s party system, then, almost by definition, they will affect the process of government formation. In some countries a coalition government is nearly inevitable, while in others it is virtually unknown. At some elections voters have a good idea of what kind of government their vote is making (marginally) more likely; at others, voters know only that their vote is helping a particular party, with little idea of whether that party might end up in government and, if it does, who its coalition partners might be.

⁸ There is wide consensus on the fact that proportional representation allows for ethnic, regional or religious minorities to obtain a representative voice at the assembly. The same cannot be said of MS, which tends to produce a two-party system, unless minorities appear on the ballot of major parties. More will be said regarding the distinctions between the MS and proportional representation later on.

⁹ See Robert Elgie, *France: Stacking the Deck*, in *THE POLITICS OF ELECTORAL SYSTEMS* 119 (Michael Gallagher & Paul Mitchell eds., 2005); see also Gerard Alexander, *France: Reform-mongering Between Majority Runoff and Proportionality*, in *HANDBOOK OF ELECTORAL SYSTEM CHOICE* 209 (Josep M. Colomer ed., 2004).

¹⁰ Thomas Gschwend, *District Magnitude and the Comparative Study of Strategic Voting*, in *THE COMPARATIVE STUDY OF ELECTORAL SYSTEMS* 289, 305 (Hans-Dieter Klingemann ed., 2009).

¹¹ See PIPPA NORRIS, *ELECTORAL ENGINEERING: VOTING RULES AND POLITICAL BEHAVIOR* (2004).

¹² Gallagher & Mitchell, *supra* note 1, at 4.

valued on a vacuum.¹³ Electoral systems, in order to be effective, must respond to a polity's given social, economic, and political configurations.¹⁴ To the extent policy-makers and academics study and realize the implications of selecting a system over another, the representative democratic structure will be better suited for that particular polity.

How are governments constituted? Substance, which in this context means the final political institutionalization of the people's will as expressed at the ballot, does not occur in a vacuum. Whether the vote at hand is for presidential, legislative, judiciary elections or referenda, that decision will be weighted differently depending on how voters are allowed to translate their desires into the legal frameworks of democracy. As the form in which the electoral process takes place (i.e., ballot design, voting requirements, the campaign finance laws and regulations, the political franchise threshold required to parties, among others) intrinsically defines how popular expression will translate into political mandates and parliamentary configurations, it becomes imperative to recognize how form and substance are not separate dimensions to the election dynamic. On the contrary, form is tantamount to substance to the extent that the rules of the election game yield very concrete configurations that would be unimaginable under a different set of structures. As a result, rulers and legislators often select the legal structures of their democracy with an implied goal in mind.¹⁵ Form equals substance in this particular context because the method of election is one of the most crucial factors in the chain of representative democracy¹⁶ and altering the ballot structure may produce, at the very minimum, voter confusion. More often than not, the underlying purpose behind a change in an election system or structure might be to resist what may look like an unavoidable shift in power.¹⁷ A dysfunctional ballot in a single district can pollute an entire national election, especially if it is a close one. Such was the case of the *butterfly* ballot phenomenon in Palm Beach, Florida during the 2000 United States Presidential Election.¹⁸ If policy-makers genuinely believe in boasting exemplary electoral processes, the ballot structure must be clear enough for voters to express their will in a simple and commonsensical fashion. Nevertheless, it is adequate to stress that there are much more elements than ballots in conducting a fair and democratic election.

Elements such as voter legal requirements -age, residence, and, literacy, among others-¹⁹ as well as the socioeconomic, racial, religious or ethnic composi-

¹³ *Id.*

¹⁴ Josep M. Colomer, *The Strategy and History of Electoral System Choice*, in HANDBOOK OF ELECTORAL SYSTEM CHOICE 3 (Josep M. Colomer ed., 2004).

¹⁵ ROBERT A. DAHL, ON DEMOCRACY 7 (1998); Colomer, *supra* note 14, at 4.

¹⁶ Gallagher & Mitchell, *supra* note 1.

¹⁷ See NORRIS, *supra* note 11, at 13.

¹⁸ DANIEL HAYS LOWENSTEIN *ET AL.*, ELECTION LAW 268-70 (5th ed. 2012).

¹⁹ See *id.* at 26-39.

tion of districts,²⁰ be them single or multi-member ones,²¹ have the repercussion of leaning the system in favor of a particular political movement at a given time. The electoral machinery articulated by the Democratic Party in the Deep South states of the United States during the first half of the twentieth-century is a prime example of how those in control of the polity managed to exclude a significant segment of society from the electoral franchise.²² The way in which Southern Democrats abused the election laws as a way to disenfranchise large African-American populations is exemplified with the employment of a *grandfather clause*,²³ the process of coining advantageous electoral districts known as *gerrymandering*,²⁴ as well as the imposition of a burdensome poll tax.²⁵ The legality of such practices, notwithstanding the electoral system chosen, denigrates the purity sought by the process. Factors such as these must be taken into consideration when analyzing how an electoral system responds to specific actors. Nonetheless, polity members do not necessarily have to rely on such morally dishonest practices to influence an election as other elements, such as campaign funding laws, external pressures from powerful players in the international community, and the ever growing phenomena of a public debate characterized by the interaction between politics and entertainment, may also provoke certain unintended results. Consequently, the chosen system may not always serve as a safeguard for the democratic process.

Electoral systems *per se* have the potential of leaving an open field to different political actors. Most of them are condemned to produce specific trends. Therefore, if democracy is the goal, there is no perfect electoral structure,²⁶ but more suitable ones and less desirable ones.²⁷ For example, returning to the main election systems, a MS scheme is said to produce bipartisanship²⁸ while PR is credited with a multiparty scenario.²⁹ Between PR and MS stands the mixed member system,³⁰ which encompasses some sort of balance between the other two.³¹ Choosing a system is the basis for future contingent electoral regulation;

20 See *id.* at 243-80.

21 For a discussion of single-member districts and multi-member districts, see Gallagher & Mitchell, *supra* note 1, at 5-17.

22 See *Nixon v. Herndon*, 273 U.S. 536 (1927).

23 See GLENN FELDMAN, *THE DISFRANCHISEMENT MYTH: POOR WHITES AND SUFFRAGE RESTRICTION IN ALABAMA* 136-140 (2004).

24 LOWENSTEIN *ET AL.*, *supra* note 18, at 109-10.

25 *Id.* at 31.

26 See DAHL, *supra* note 3, at 31.

27 See MAURICE DUVERGER, *LOS PARTIDOS POLÍTICOS* (Julieta Campos & Enrique González Pedrero trans., Fondo de Cultura Económica 20th ed. 2006) (1951).

28 See *id.* at 233; ISSACHAROFF *ET AL.*, *supra* note 2, at 1129-30.

29 See DUVERGER, *supra* note 27.

30 Gallagher & Mitchell, *supra* note 1, at 5-13.

31 The German electoral system serves as a paradigmatic example of a mixed member system.

therefore, form deserves equal emphasis as substance. To offer a concrete historical example, some scholars argue that were it not for PR, the Italian Communist Party would have never been able to fare as well as it did during the 1940s and 1950s.³²

Even though electoral systems are so critical to political life -capable both of ostracizing third parties and granting them the power to form government-, once a system is selected, reform is hardly promoted.³³ Given the fact that they rarely change once they are chosen, it is important to analyze which factors trigger reform. Most structures originate with the enactment of new constitutional orders.³⁴ Many of them take place following political ruptures, such as revolutions and the formation of newly independent nation-states.³⁵ Others, less significant in number, result from legislative reform proposals.³⁶ None of these are frequently observed. So far, social movements resulting in political revolutions are hard to coalesce, at least in the spectrum of stable democratic regimes. On the contrary, the vast majority of democratic countries experience power alternation on a relatively regular basis. While few would expect political forces to use their time ruling to enforce reforms focused on enhancing democratic practices, many would expect power shifts to be accompanied by changes aimed at preserving political power.³⁷ There is no doubt that reform responds to a diverse array of criteria: whether an election system is based on a statutory text or as part of the constitutional framework, whether hesitant major parties unite against smaller ones advocating change in order to avoid power dilution,³⁸ whether the country relies on continuous pressure or recommendations from outside actors,³⁹ or whether no single political movement is able to surmount legal thresholds to enact change,⁴⁰ are just a few examples of the ways in which reform can take place. Each particular electoral cosmogony must be analyzed on a case-by-case basis, as there may be no historical or political sequences observable in polities that respond to different characteristics, notwithstanding incidental or historical similarities.

³² For an account of the Italian electoral system experience, see Diego Gambetta & Steven Warner, *Italy: Lofty Ambitions and Unintended Consequences*, in HANDBOOK OF ELECTORAL SYSTEM CHOICE 237 (Josep M. Colomer ed., 2004).

³³ See Pippa Norris, *The Politics of Electoral Reform in Britain*, 16 INT'L POL. SCI. REV. 65 (1995).

³⁴ See Colomer, *supra* note 14.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ Such is the case of the British scenario, where the Conservative Party and the Labour Party persist on maintaining single-member district plurality in order to avoid losing power to the Liberal Democratic Party. See Patrick Dunleavy & Helen Margetts, *Mixed Electoral Systems in Britain and the Jenkins Commission on Electoral Reform*, 1 BRIT. J. POL. & INT'L REL. 12 (1999).

³⁹ This was the particular situation of Chile under Pinochet's rule. The Reagan administration pressed General Pinochet into adopting a constitution after eight years of martial law.

⁴⁰ Dunleavy & Margetts, *supra* note 38.

What motivates reform? Why are viable efforts for reform scarce nowadays? Is it because of an implied impasse among competing forces? Is it strictly motivated by partisan interests? If so, are those goals accomplished by the new rules? Is it possible in order to design a more democratic society in which different political groups gain representation while ensuring efficient and stable governments? After all, those in power choose electoral systems, and academics cannot but study them and make critical suggestions.

II. MAJOR ELECTORAL SYSTEMS

The electoral system of Puerto Rico has rarely been the subject of study or commentary.⁴¹ When confronted with the task of analyzing the Island's bipartisan regime, most scholars have focused on studying the strong divergence between the parties in reference to Puerto Rico's political relationship with the United States, the socioeconomic context in which particular elections take place, the effects of clientelism practices by those in power, or the effects of Washington's support towards a particular candidacy. In fact, there is very little discussion on how electoral systems could change the political composition of government. The only exception has been Puerto Rico Independence Party's (PIP, for its Spanish acronym) recurrent complaint on the lack of proportionality in our system and their advocacy for PR as a substitute to the country's MS.⁴² Before proceeding with an analysis of Puerto Rico, it is important to delineate the major electoral structures in the world as well as to understand that all voting methods should be seen as packages of potential advantages and disadvantages, knowing that there is no perfect system.⁴³

A. The Majoritarian System

As mentioned above, there are currently two major models dominating the spectrum of electoral systems. These models are not monolithic and, as a result, have been implemented with a diversity of variations in different polities. MS, which declares the candidate with the most votes (plurality) or a majority of the votes (majority) as the winner, dominated much of the modern democratic world during the nineteenth and twentieth-century. PR, which aligns percentage of votes to percentage of seats, began to gain strength during the twentieth-century in continental Europe as well as other countries, which transitioned into a democratic scheme after colonial emancipation or political revolutions.

⁴¹ See Héctor Luis Acevedo, *Cinco principios de Derecho Electoral producto de la experiencia*, 39 REV. DER. PR 1 (2000).

⁴² See José Julián Álvarez González, *La Legislatura y la Representación Proporcional de los Partidos de Minoría: Un sistema de representación proporcional para Puerto Rico*, in INFORME DE LA COMISIÓN ESPECIAL PARA LA REVISIÓN DEL PROCESO ELECTORAL DE PUERTO RICO 71 (1982).

⁴³ ISSACHAROFF ET AL., *supra* note 2, at 1129.

The MS is frequently associated with the United Kingdom because of the country's adherence to plurality rule.⁴⁴ Many of the nation-states that gained independence from the United Kingdom also adopted majoritarian institutions from the very beginning.⁴⁵ The United States, Canada, Australia, and New Zealand began their first national elections using plurality vote. It is also used for some elections in India, Bangladesh, the Philippines, Zambia, Nepal, Mexico, and Thailand.⁴⁶ Also known as *first-past-the-post* (F.P.T.P.), plurality declares winner the candidate that receives the most votes in a given district. This is why scholars sometimes refer to this system as a *winner takes all*. In the scenario of a multi-member district, the election goes to those candidates who finish in the first available positions.⁴⁷ Under such a system, a candidate can get elected with any kind of percentage of the votes, depending on how many candidates run. To give an extreme example, if ten candidates run for the same seat, the person who gets the most votes wins even if managed to capture fifteen percent of the vote. As a result, that person wins the election and represents the totality or one hundred percent of that district, producing disproportional results between the votes and seats when in parliament. For instance, in the United Kingdom, "the Labour party won an absolute parliamentary majority of 319 out of 635 seats with only 39.3 percent of the vote in the October 1974 elections, whereas the Liberals won only 13 seats with 18.6 percent of the vote—almost half the Labour vote."⁴⁸

The MS can be subdivided into plurality and majority formulas. Majoritarian mechanisms have been created in order to avoid plurality winners. Two main examples are the second-ballot, or runoff system, and the preferential voting system, which are designed to produce majorities and avoid having a candidate elected with less than half of the valid votes. The second-ballot scheme provides that if no candidate receives an absolute majority in the first round, a second election will be held between the candidates who received the most votes. Said election will result in one of the two candidates garnering more than half of the votes.⁴⁹ These schemes are widely used around the world. Depending on the country, rules tend to vary as to just how well candidates must fare in the first election in order to make to the second round.⁵⁰ In any case, the winner of the second election will prevail with a majority of the votes. The system is used in

⁴⁴ See Paul Mitchell, *The United Kingdom: Plurality Rule Under Siege*, in *THE POLITICS OF ELECTORAL SYSTEMS* 157 (Michael Gallagher & Paul Mitchell eds., 2009).

⁴⁵ Allen Hicken, *Asia and the Pacific: General Overview*, in *HANDBOOK OF ELECTORAL SYSTEM CHOICE* 453 (Josep M. Colomer ed., 2004).

⁴⁶ *Id.* at 453-54. Historically, the tendency has been to move away from this system and towards systems of PR. Thus, New Zealand replaced its *first-past-the-post* (F.P.T.P.) system, and none of the newly emerging democracies in the 1970s in Mediterranean Europe (Greece, Portugal, Spain) or those in Eastern and Central Europe or the former Soviet Union in the 1980s and 1990s adopted it.

⁴⁷ ISSACHAROFF *ET AL.*, *supra* note 2, at 1132.

⁴⁸ LIJPHART, *supra* note 2, at 15.

⁴⁹ ISSACHAROFF *ET AL.*, *supra* note 2, at 1132.

⁵⁰ *Id.*

several Latin American countries,⁵¹ although it is well known for its use in the presidential elections in the French Fifth Republic.⁵²

Josep M. Colomer explains that “electoral systems based on the majority principle, which tend to produce a single, absolute winner and subsequent absolute losers, must be considered a more risky choice than those based . . . on proportional representation, a principle forged to create multiple partial winners and much fewer losers than majority rule.”⁵³ These consequences indicate that electoral systems are not only simple causal agents; they are ultimately profound political issues often neglected from the public debate.⁵⁴ Since the MS renders absolute winners, powerful political parties will prefer it to PR. For them, PR represents political fragmentation and the need to forge alliances or coalitions with other political actors. While such stronger parties certainly benefit from achieving electoral success without a majority of the votes, as is the case of the plurality regime in place in most of the Anglo-Saxon world, is it fair for the voters of a given country to see a head of state elected while a majority of the votes have been cast for other candidates?

The plurality system might produce a majority winner if the candidate who receives the most votes manages to win over half of the votes scrutinized. In the absence of a majority-producing mechanism, such as a runoff election, chances are the winner will prevail with less than fifty percent of the votes. Such was the case of Felipe Calderón in Mexico’s 2006 Presidential Election. Right-of-center Calderón prevailed over his left-leaning contender, Andrés Manuel López Obrador, by less than one percent of the votes.⁵⁵ Calderón, however, was elected President with only 35.89% of the votes. This means that 64.11% of the Mexican voters did not vote for him. In other words, Calderón only had to receive over a third of the votes in order to become president. This is a clear example of how the plurality scheme rewards the candidate who simply receives the most votes, whether these are 1 or 100,000 votes. Due to paradoxical scenarios such as this one, many countries have adopted runoff systems, such as the second ballot or the preferential system. This way, politicians averse to PR can please reform-seekers without having to adopt it.

51 See HERBERT KITSCHOLT *ET AL.*, *LATIN AMERICAN PARTY SYSTEMS* (2010).

52 See Elgie, *supra* note 9; Alexander, *supra* note 9.

53 Colomer, *supra* note 14, at 10.

54 Gallagher & Mitchell, *supra* note 1, at 5.

55 *Elección de Presidente de los Estados Unidos Mexicanos: Cómputos Distritales de las Elecciones Federales de 2006*, INSTITUTO ELECTORAL FEDERAL, <http://www.ife.org.mx/documentos/Estadisticas2006/presidente/nac.html> (last visited on Feb. 27, 2016).

TABLE 1. MEXICO 2006 PRESIDENTIAL ELECTIONS⁵⁶

Candidates	Political Parties	Votes	Percent
Felipe Calderón	National Action Party	15,000,284	35.89%
Andrés M. López Obrador	Coalition for the Good of All	14,756,350	35.31%
Roberto Madrazo	Alliance for Mexico	9,301,441	22.26%
Patricia Mercado	Social Democratic Party	1,128,850	2.70%
Roberto Campa	New Alliance	401,804	0.96%
Write-In		297,989	0.71%
Blank / Invalid		904,604	2.16%
Total		41,791,322	100.0%

As mentioned before, under the second ballot system, if no candidate receives an absolute majority in the first round, a second round of elections is held. Rules vary as to how well candidates have to fare in the first round to make it to the second ballot; in some elections, only the top two pass to the second round. The aim of this system is to make more likely that the elected candidate will have an actual majority of the votes cast in the second round, thus avoiding plurality-elected candidates.⁵⁷ Although France would appear to be the paradigm of this system,⁵⁸ many different polities across the globe have experimented with it. Contrary to popular belief, it has been used many times in the United States but only at the municipal or primary level.⁵⁹

B. Proportional Representation

The principal alternative to majoritarian systems is proportional representation.⁶⁰ Robert A. Dahl explains that:

Among the older democracies the most common electoral system is one deliberately designed to produce a close correspondence between the proportion of the total votes cast for a party in elections and the proportion of seats the party gains in the legislature. . . . An arrangement like this is usually known as a system of *proportion representation*, or PR.⁶¹

⁵⁶ *Id.*

⁵⁷ ISSACHAROFF *ET AL.*, *supra* note 2.

⁵⁸ See Elgie, *supra* note 9; Alexander, *supra* note 9.

⁵⁹ ISSACHAROFF *ET AL.*, *supra* note 2.

⁶⁰ For a discussion of the virtues of PR, see LIJPHART, *supra* note 2.

⁶¹ DAHL, *supra* note 3, at 131 (emphasis added).

The main idea behind PR is “that [political] parties should end up with a number of seats roughly proportional to the number of votes they receive.”⁶² It aspires to balance and correlate the number of votes a party receives with the number of seats it gets in the assembly. The system is based on parties, who present lists of candidates in each district.⁶³ Some jurisdictions have closed-lists while others work with open-lists.⁶⁴ The former means that the voter cannot choose a particular candidate he or she prefers and subsequently must vote for the party rather than for the candidate. The latter allows the voter to choose a candidate among those presented in the party list.

Unlike MS, the design of PR tends to rely on larger districts. Smaller districts tend to distort the effects sought by the system.⁶⁵ Some of them can be as big as the entire national territory. Such is the case of Israel and the Netherlands.⁶⁶ While this system offers a more representative elected body, its critics argue that it tends to produce unstable governments, as major parties rely on coalitions with smaller third parties in order to rule.⁶⁷ Such alliances depend on myriad negotiations among ideologically diverse parties. If a pressing issue puts an end to the alliance, the government might stumble and new elections have to be called. As a result, the policy-making process suffers since long-term projects are almost impossible to accomplish. Even so, many countries have moved from MS to PR, marking a trend during the second half of the twentieth-century.⁶⁸

Some countries, however, have adopted mixed-member systems in order to soothe the shortcomings of majoritarian and proportional systems. It enables voters to elect a certain number of candidates under majority or plurality rule and another set of candidates under some type of PR. Today, the German model is seen as the paradigm of this alternative. While the country is divided into single-member districts, a percentage of the seats are designated for candidates elected under a PR. On the other hand, after the electoral reform in Italy in the early 1990s, Italians began electing seventy-five percent of its members of parliament through plurality rule and the other twenty-five percent through party list voting.⁶⁹ Although the proportion may vary, most countries dedicate a larger percentage of the seats to single-member districts. Mixed-member systems al-

62 ISSACHAROFF *ET AL.*, *supra* note 2, at 1134.

63 DAHL, *supra* note 3.

64 ISSACHAROFF *ET AL.*, *supra* note 2, 1134-35.

65 See EQUIPO PIEDRAS DE PAPEL, ARAGÓN ES NUESTRO OHIO: ASÍ VOTAN LOS ESPAÑOLES (2015) (discussing the negative effects of smaller districts in producing proportional results between votes and seats).

66 See Rudy B. Andeweg, *The Netherlands: The Sanctity of Proportionality*, in *THE POLITICS OF ELECTORAL SYSTEMS* 491 (Michael Gallagher & Paul Mitchell eds., 2005).

67 Mitchell, *supra* note 44, at 179.

68 Colomer, *supra* note 14, at 46-47. For more information on proportional representation, please refer to the work of Arend Lijphart.

69 See Gambetta & Warner, *supra* note 32.

lows smaller parties the possibility of gaining seats in parliament without putting the entire assembly at risk of governing coalitions, although these can occur depending on the election results. In the case of Puerto Rico, the House of Representatives has a percentage of seats designated for single-member district and eleven seats designated for candidates elected pursuant to a list fashioned after the PR. These eleven candidates in each house of the Puerto Rico Legislature are known as *at large* senators and representatives. The Senate provides for sixteen two-member district seats and eleven seats of the list.

C. Preferential Voting

i. The Promise of a More Democratic Majoritarian Model

Although the preferential model was invented in the 1870s by W.R. Ware, a professor at the Massachusetts Institute of Technology,⁷⁰ and proposed in nineteenth-century England by philosopher John Stuart Mill, it is better known for its adoption in Australia;⁷¹ the first country to use it at a national level.⁷² Here, voters rank all the candidates running in order of preference.⁷³ Sometimes, as is the case in Australia, the failure to do so will invalidate the ballot. This is known as “plumbing the ballot.”⁷⁴ The purpose behind preferential voting is that a candidate receives a majority of the votes in order to be elected. If no one receives a majority of the votes at the initial tally, the one with the least votes is eliminated and, consequently, all of the votes are automatically transferred to the second choice voters marked on the ballot. The process is repeated as many times as it is necessary for one candidate to pass the majority threshold.⁷⁵ There is no need for second round elections because the voters have already decided who they back in the event that their first choice comes last at the tally. While the second-ballot scheme eliminates all but the two most voted candidates after the first vote, under the preferential vote model candidates are eliminated one by one until a winner is declared.⁷⁶

⁷⁰ Colomer, *supra* note 14, at 38.

⁷¹ David M. Farrell & Ian McAllister, *Australia: The Alternative Vote in a Compliant Political Culture*, in *THE POLITICS OF ELECTORAL SYSTEMS* 79, 82 (Michael Gallagher & Paul Mitchell eds., 2005) (citing JENIFER HART, *PROPORTIONAL REPRESENTATION: CRITICS OF THE BRITISH ELECTORAL SYSTEM 1820-1945* (1992)).

⁷² DAHL, *supra* note 3.

⁷³ ISSACHAROFF *ET AL.*, *supra* note 2, at 1133.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ The preferential vote scheme would have significantly altered the 2002 French presidential election were France had implemented this system. In 2002, Lionel Jospin of the Socialist Party came in third during the first round of elections. This was due in part to the many left and center-left parties that challenged the historical center-left Socialist Party during the first round. As a result of vote fragmentation in the political left, the extreme-right ultranationalist Jean-Marie LePen was able

Any move from a plurality scheme towards a preferential vote system must look at the virtues of such reform: preferential voting is a more democratic alternative to the simple plurality vote system or the more problematic two-round election model. It is more democratic because a majoritarian model, in itself, requires more of a consensus among political actors than its plurality counterpart. In other words, a winner who presumes over half the votes has, for obvious reasons, a stronger mandate. However, elections held both under MS or PR rarely yield a winner with over fifty percent of the votes. While fragmentation is more likely under PR, a third or fourth party may dilute the winner's prospect under MS. As such, for a candidate or party to win a majority of the votes, said majority must be "forced" in a way through specific legal mechanism such as a second round or preferential voting. Absent any of these mechanisms, most of the times the winner will have to gather support from independent voters as well as voters outside of its party (both the core and the periphery) in order to prevail. Even then, the winner may still prevail by obtaining the most votes yet short of a majority. Not only does a plurality winner lacks a strong mandate –for even a 49.5% plurality can be considered weak if the losing party received the support of 47%– but it also creates a "spoiler vote" phenomenon in which voters identified with smaller parties decide to defect to any of the major parties in order to influence the election outcome. As a result, smaller parties will appear underrepresented when in fact they have more sympathizers (even card-carrying members) than voters. Preferential voting provides a more democratic platform because it tends to eliminate the "spoiler vote" phenomenon.

Any polity tends to be more democratic to the extent that more political actors engage in the public debate. While nothing bars a party who obtains one percent of the vote from expressing its views on the media, actors with a stronger basis of support or government experience will have a better chance to communicate their ideas to the electorate and to the population in general. If a plurality system concentrates the majority of the votes into two parties, as Maurice Duverger theorized, then the "spoiler vote" phenomenon will leave third parties at a disadvantage in terms of having a louder voice. By significantly reducing the incentives for "spoiler votes," preferential voting allows voters to rank a small party as their first choice and a major party as its second or third choice. Unless there is a majority winner outright, the tally process begins by eliminating the least voted candidate and validating the second choices of those ballots by transferring the vote to those candidates marked as "second choice." Even if the winner happens to be from one of the two major parties, the first tally will reveal the

to pass to the second round with center-right candidate Jacques Chirac. As a result, the French electorate had to choose between a center-right and a far-right candidate. Had France used preferential voting, the left would have recovered from the initial political fragmentation, as the Socialist candidate would not have been eliminated immediately by coming in third. The initial fragmentation would disappear as those voting for candidates to the left of Jospin would have chosen him as their second or third choice. Nonetheless, this analysis can only rest as an hypothesis. For more information, see Alistair Cole, *A Strange Affair: The 2002 Presidential and Parliamentary Elections in France*, 37 *GOV'T & OPPOSITION* 317 (2002).

net strength of third parties and relative weaknesses of major ones. Thus, given said scenario, a party that originally received fifteen percent of the vote but is eventually eliminated will have more standing to join the public debate than a party that only managed to gather two to three percent of the votes due to the defections. Furthermore, a third party who originally receives fifteen percent of the votes can become an underdog in future elections if each of the two major parties is not able to surpass the forty percent threshold during this first tally. This scenario, on the other hand, will not be possible with a plurality regime or a second round scheme because there will still be incentives for defection towards major parties and, consequently, smaller parties will be very far away from becoming an inspiring alternative in the future. In our views, the democratic experience is enhanced to the extent that more political actors have a stronger voice and the possibility of forming a government. Second rounds, which yield similar results, are both more expensive and still prone to voter defection, are not as good as an alternative for democratic regeneration than preferential voting.

As we have mentioned before, preferential voting is another brand of the MS. While it is innovative in its sophistication of selecting a majority winner and avoiding a second election, the system has not been widely adopted. Curiously, there has been a recent rise in the interest in preferential voting in the United States. It has been adopted in several jurisdictions such as San Francisco, California in 2004;⁷⁷ Oakland, California in 2008; Minneapolis, Minnesota in 2009; North Carolina, for judicial vacancies and for municipal pilot programs, in 2007; Takoma Park, Maryland, for the city council and mayoral elections in 2008; and Pierce County, Washington, for most of its county offices in 2008.⁷⁸ Furthermore, preferential voting has also been adopted to overcome the difficulty of multiple rounds of balloting for absentee voters: “[i]nstant runoff ballots are now being used for all overseas voters in runoff elections in federal and state races in South Carolina and Louisiana and all runoffs of any kind in Arkansas.”⁷⁹

In sum, it has been gaining momentum in local constituencies, whether progressive or conservative, during the first decade of the twenty-first-century. Some of these new local election laws have been challenged in the state courts and even a federal appellate court has expressed its views on the constitutionality of such mechanisms.⁸⁰ Until 2016, every court sentence in the United States

⁷⁷ For an example of how the City of San Francisco uses preferential voting to elect its mayor, see the 2011 Mayoral Election Official Results in CITY AND COUNTY OF SAN FRANCISCO DEPARTMENT OF ELECTIONS, *Official Ranked-Choice Results Report* (Nov. 8, 2011), <http://www.sfelections.org/results/20111108/data/mayor.html> (last visited Feb. 22, 2016).

⁷⁸ ISSACHAROFF *ET AL.*, *supra* note 2, at 1175.

⁷⁹ *Id.*

⁸⁰ For an analysis on preferential voting's constitutionality, see Brian P. Marron, *One Person, One Vote, Several Elections?: Instant Runoff Voting and the Constitution*, 28 VT. L. REV. 343 (2004).

has been favorable to the constitutionality and implementation of preferential voting.⁸¹

ii. Preferential Vote is More Effective than the Two-Round and Plurality Systems

During most of the twentieth-century, the two-round system grew in acceptance and implementation throughout the various springing democracies. Only Australia forewent the two-round model in favor of the then more esoteric preferential vote. As noted, the two-round model was developed in response to non-majority victories in plurality voting systems. It proves beneficial in as much it permits the electorate to study and examine the final two candidates during the period between the two rounds of the election. However, while the two-round system serves as a successful mechanism in addressing the problems inherent to plurality voting, this majoritarian methodology has also many problems of its own. According to Robert Richie,⁸² the two-round system entails that candidates must have money for a second campaign, taxpayers must pay for the administration of both rounds of elections, voter turnout can be lower in any of the two elections since voters are required to go to the polls twice, and runoffs still have the potential of creating spoiler candidates.⁸³

According to Robert Richie, executive director of FairVote, “[p]lurality elections also suffer from the ‘spoiler’ phenomenon in races with more than two candidates.”⁸⁴ This occurs when someone without chances of getting elected manages to gain enough votes to swing the race between the two leading candidates.⁸⁵ He argues that “[b]y gaining the power to determine the winner, unscrupulous candidates can gain leverage over major candidates or one major party

⁸¹ *Dudum v. Arntz*, 640 F.3d 1098 (9th Cir. 2011). In *Dudum v. City & Cty. of San Francisco*, voters challenged the City’s preferential voting system, but the U.S. District Court for the Northern District of California held that that the argument for unequal opportunities among voters was unfounded, as all the votes (whether transferred or not) were counted and weighted the same, thus excluding arguments that transfer of votes resulted in vote dilution. By finding that no constitutional provision had been violated, the Court found San Francisco to have a valid important regulatory interest in implementing preferential voting. *Dudum v. City & Cty. of San Francisco*, No. C 10-00504-RS, 2010 WL 3619709, at *1 (N.D. Cal. Sept. 9, 2010), *aff’d sub nom.* *Dudum v. Arntz*, 640 F.3d 1098 (9th Cir. 2011). In *Minn. Voters Alliance v. City of Minneapolis*, 766 N.W.2d 683 (Minn. 2009) voters brought action to challenge the constitutionality of preferential voting methodology adopted by the city pursuant to referendum. The Supreme Court of Minnesota held the scheme to be constitutional as it did not violate the equal protection rights of all voters while, among other considerations, finding that Minneapolis had a valid and justifiable interest in employing preferential vote. *Id.* at 683.

⁸² FairVote, previously known as the Center for Voting and Democracy, is a nonprofit organization that researches and advocates election reform since 1992. See FAIR VOTE, <http://www.fairvote.org/> (last visited Feb. 22 2016).

⁸³ Robert Richie, *Instant Runoff Voting: What Mexico (and Others) Could Learn*, 3 ELECTION L.J. 501, 504 (2004).

⁸⁴ *Id.* at 503.

⁸⁵ *Id.*

can covertly try to boost the profile of a minor candidate that cuts into another major party's base."⁸⁶

For example, Ross Perot played the spoiler candidate in the United States 1992 Presidential Elections. Running as an independent conservative candidate, Perot was successful in obtaining over nineteen million votes (roughly nineteen percent of the votes),⁸⁷ and thus gave William J. Clinton the Presidency of the United States.⁸⁸ In Puerto Rico's electoral history, Roberto Sánchez Vilella became a spoiler candidate in the 1968 general elections when he abandoned the Popular Democratic Party (PPD, for its Spanish acronym) and founded a third party, the People's Party (PP, for its Spanish acronym). Because he obtained a significant percentage of the votes, Luis A. Ferré Aguayo of the New Progressive Party (PNP, for its Spanish acronym) was able to defeat its PPD adversary, Luis Negrón López.⁸⁹ Sánchez Vilella's move enabled the pro-statehood party to put an end to the twenty-eight years of PPD hegemony.

Preferential voting eliminates the possibility of spoiler candidates found in plurality systems and resolves many of the problems that the two-round system poses. Contrary to the two-round system, in which only the two candidates who receive the most votes in the first round pass onto a subsequent round, preferential voting works by eliminating the candidate who received the least amount of votes. This means that the remaining candidates pass onto a second round. Therefore, voters can select their first choice without fearing that their most disliked candidate will win the election because of the spoiler effect inherent to plurality-voting. These voters can select their first choice knowing it will be eliminated and settle for a second or third choice that has more chances of prevailing against a party they may dislike. This way, the voters are using the ballot to express their real first choice while at the same time giving support to other more viable candidates. During that second round, the weakest candidate is eliminated if no candidate has received an absolute majority of the votes. As the process carries onto numerous tally rounds as necessary to secure a majority winner, other candidates continue to accumulate votes from those ballots where the first candidate has been eliminated. This means that those candidates that might ultimately lose the election will fare well if they manage to continue hopping to the following round. Even if a given candidate is eliminated at the second-to-last round, they might have fared formidably if that contender is eliminated with thirty percent of the votes.

⁸⁶ *Id.*

⁸⁷ Michael Levy, *United States Presidential Election of 1992*, ENCYCLOPEDIA BRITANNICA (July 28, 2014), <http://www.britannica.com/EBchecked/topic/1574499/United-States-presidential-election-of-1992> (last visited Feb. 22 2016).

⁸⁸ *Id.* (democratic candidate Clinton obtained 43.0% of the votes, Republican candidate George Bush obtained 37.5% of the votes, and independent candidate Ross Perot obtained 18.9% of the votes. Most of Perot's votes came from the traditionally conservative Republican electoral base).

⁸⁹ FERNANDO BAYRÓN TORO, *HISTORIA DE LAS ELECCIONES Y LOS PARTIDOS POLÍTICOS DE PUERTO RICO* 276-78 (7th ed. 2008).

Regarding the other criteria that Richie utilizes in order to analyze the disadvantages inherent to the two-round system, the preferential system is certainly less expensive.⁹⁰ Neither the state nor the different contenders will have to put more money into a second round that entails another campaign. The tally process might seem more complicated at first, but there are electronic machines designed for preferential voting systems.⁹¹

As for the criticism regarding reduced voter turnout in two-round elections,⁹² it depends heavily on the jurisdiction in which the election is taking place. On one hand, some jurisdictions enjoy more voter participation regardless of how many elections are celebrated in a given year. On the other, there are jurisdictions in which several factors affect voter turnout and, thus, the state must incentivize electoral participation. In any case, one can assume that voter participation will diminish if they have to go to the polls very often for issues that they believe are not that relevant to their day-to-day lives. Whether having more elections is desirable for the sake of democratic institutions goes beyond the scope of this article.

In sum, it is important to stress that all voting systems should be seen as packages of potential advantages and disadvantages.⁹³ The workings of election laws have profound consequences for the party system, the type of government, and the nature of representation in general. They will also influence the way in which people make decisions once confronted with the ballot.⁹⁴ While elections are primarily a mechanism for selecting certain government leaders, removing representatives from office, and preventing others from gaining office,⁹⁵ the way in which the electoral laws are structured and the configuration of each specific ballot has a significant effect on the way winners are selected, and consequently, on policy determinations.⁹⁶ The following example explains how crucial electoral systems are in terms of policy-making:

Throughout the 1980s, the Conservative Party under Margaret Thatcher enjoyed huge parliamentary majorities and implemented a series of radical right-wing changes to economic and social policy. In 1997 and 2001, the Labour Party under Tony Blair achieved equally large majorities in the House of Commons. Yet, each of these majority governments was elected on 41-43 per cent of the votes. If Britain had had a PR system then, even if there was no change in the way votes were cast, the pattern of government formation would have been very different. In 2001, for example, Labour, having won 41 per cent of the votes, would have had

⁹⁰ Richie, *supra* note 83, at 502.

⁹¹ See Marron, *supra* note 80.

⁹² Richie, *supra* note 83, at 502.

⁹³ ISSACHAROFF *ET AL.*, *supra* note 2, at 1129.

⁹⁴ Gschwend, *supra* note 10, at 305.

⁹⁵ See WILLIAM H. FLANIGAN & NANCY H. ZINGALE, *POLITICAL BEHAVIOR OF THE AMERICAN ELECTORATE* 236 (12th ed. 2010).

⁹⁶ See NORRIS, *supra* note 11.

either to negotiate a coalition with the third-placed Liberal Democrats or to try to form a minority government on its own. Under either option, Tony Blair would not have been nearly as free to commit British troops to the war in Iraq in 2003. Individuals will have their own opinions as to whether this would have been a good thing or a bad thing—*what cannot be disputed is that a different electoral system would have made a big difference to policy output.*⁹⁷

If the rules governing the electoral process were to be different in the UK, government formation would have changed. The same would apply to Puerto Rico, if the country would have opted to switch to a PR system and abandon the F.P.T.P. single-member district system. Reforms towards PR are uncommon as those capable of winning elections fear voting (and power) dilution. As we will discuss further on, election reforms are rare because they are highly resisted by those winning without having to alter the rules. However, the case of Puerto Rico presents a scenario in which to examine the election systems already discussed, as well as the imperative for new rules in the face of sociopolitical stagnation.

III. PUERTO RICO

A. *The Two-Party System Conundrum*

Ever since the people of Puerto Rico adopted the Commonwealth Constitution of 1952, the Island's citizens have witnessed a uniform voting system and a bipartisan regime of limited autonomic government. Bipartisanship was not to be taken for granted during the 1950s, a period in which the once almighty centrist PPD won every elective position displayed on the ballot.⁹⁸ However, after the 1968 general election, no party has been able to retain power for more than two terms.⁹⁹ In other words, both major parties, the PPD and the right-wing PNP, have been incapable of retaining the governorship after eight years in power. Except for three particular elections, every time one of the two parties wins, it does so with less than fifty percent of the votes.¹⁰⁰ Third parties, such as the center-left pro-independence PIP, which was once capable of garnering around five percent of the votes, have become increasingly insignificant over time. The PIP even battles to surpass the three percent legal threshold necessary to retain their franchise and obtain a seat in the bicameral legislature.¹⁰¹ Furthermore, although

⁹⁷ Gallagher & Mitchell, *supra* note 1, at 4 (emphasis added).

⁹⁸ See BAYRÓN TORO, *supra* note 89.

⁹⁹ *Id.*

¹⁰⁰ *Id.* (in 1972, PPD gubernatorial candidate Rafael Hernández Colón won with 50.7% of the votes; in 1996, PNP gubernatorial candidate Pedro J. Rosselló González won with 51.1% of the votes; in 2008, PNP gubernatorial candidate Luis G. Fortuño Burset won with 52.8% of the votes).

¹⁰¹ See *Elecciones Generales 2012*, COMISIÓN ESTATAL DE ELECCIONES DE PUERTO RICO, <http://64.185.222.182/ElecGen2012/LinkedDocuments/Distribuci%F3n%20porcentual%20del%20voto%20para%20gobernador.pdf> (in the general elections held in 2004, 2008 and 2012 the PIP obtained

parts of the population and civic leaders have tried to establish new political parties to rival the PNP-PPD bipartisan regime, all of these efforts have failed dramatically and those who have been able to get into the ballot have been unable to obtain the three percent threshold.¹⁰²

Any person who is not immersed in Puerto Rican politics would think that the PNP and the PPD have been vibrant parties and that they continue to be so, for otherwise, why would they still be an option? Although both parties have contributed to Puerto Rico's social and economic development in ways that are highly debatable, they have arguably also been responsible for the grim economy, the world-record low levels of workforce participation,¹⁰³ the strength of a gargantuan informal economy, the prevailing feeling of impunity among the corrupt political and economic elites, and the emerging social unrest that characterizes Puerto Rico in the twenty-first century.¹⁰⁴ While the PPD used to prevail during the second half of the twentieth-century,¹⁰⁵ since the 1992 general election the PNP has consistently won the popular vote for party preference with the sole exception of the 2000 general election.¹⁰⁶ Why do these parties continue to strive when they have not been able to reverse the downward economic spiral in which the Island finds itself? If there are other options available, why does the people of Puerto Rico prefer to champion the same entities that have somehow led the country astray?

A series of other questions come to mind when analyzing such a scenario: Do the constituents of the traditional parties, the PPD and the PNP, have strong support for their causes? Why have new political parties been so unsuccessful in gaining momentum and electoral strength when public opinion reflects a wide percentage of discontent for the major ones? Do traditional parties rely on their stance regarding the Island's political relationship with the United States, or do they garnish votes thanks to the discomfort with the ruling party due to socioec-

2.73%, 2.04% and 2.54% of the votes); *Elecciones Generales 2008*, COMISIÓN ESTATAL DE ELECCIONES DE PUERTO RICO, http://209.68.12.238/elecciones2008/CEE_Events/ELECCIONES_GENERALES_2008_4/NOCHE_DEL_EVENTO_7/default.html (last visited Feb. 23, 2016); *Elecciones Generales 2004*, COMISIÓN ESTATAL DE ELECCIONES DE PUERTO RICO, <http://64.185.222.182/escrutinio/principal.aspx?Nivel=P1> (last visited Feb. 23, 2016).

102 Código electoral de Puerto Rico para el siglo XXI, Ley Núm. 78 de 1 de junio de 2011, P.R. LAWS ANN. tit. 16, § 4003(33) (2012).

103 For more information on the current socio-economic picture of Puerto Rico see CENTRO PARA LA NUEVA ECONOMÍA, RESTABLECER EL CRECIMIENTO EN PUERTO RICO: PANORAMA Y ALTERNATIVAS (Susan M. Collins et al. eds., Yvette Torres trans., 2008).

104 See CÉSAR J. AYALA & RAFAEL BERNABE, PUERTO RICO IN THE AMERICAN CENTURY: A HISTORY SINCE 1898 (2007).

105 The PPD prevailed at every election from 1944 until 1968; in 1972, 1984 and 1988. See BAYRÓN TORO, *supra* note 89.

106 Although PPD gubernatorial candidates Aníbal Acevedo Vilá and Alejandro García Padilla prevailed in the 2004 and 2012 General Elections, respectively, the PNP obtained the most votes under its insignia.

onomic matters? Undoubtedly, there is no single explanation for any of these questions.

One could reasonably argue that the present two-party scenario, in which the PNP is elected as a better option whenever there is massive public dissatisfaction with a PPD government, and vice-versa, is leading to a recurrent vote for both of parties every four to eight years. There could also be a scenario in which a third party garnishes the votes for disaffected voters from both traditional parties. Such scenario, however, looks highly unlikely. The reason for such electoral behavior may lie in one of the many variables relevant to elections in Puerto Rico: the stance each party holds regarding the Island's political relationship with the United States. Both traditional parties officially profess that the Puerto Rico should be indissolubly linked to the United States. The PPD officially advocates for the current Commonwealth status and the PNP advocates for Puerto Rico's incorporation as the fifty-first state of the United States. Due to these political stances, where separation from the Washington and the creation of an independent nation-state is discarded by a wide majority of the people, both parties happen to garnish more than ninety percent of the vote for themselves. Those in favor of political independence argue that Puerto Rico's material dependence on federal funding in order to maintain its infrastructure and social safety net has created the conditions that have led voters to reject independence as a viable option. The stakes for the pro-independence movement are high, because independence would imply the end of many federal and federally funded state programs from which more than sixty-five percent of the population benefit.¹⁰⁷ In other words, the high levels of dependence on the U.S. federal government have tilted Puerto Rican voters towards rejecting any kind of separation from the United States, hence giving the PPD and the PNP a stronger electoral base.

While the political status factor may explain why candidates ranging from the diverse pro-independence movement¹⁰⁸ fail to prevail at an election,¹⁰⁹ there seems to be no explanation about why independent candidates, with extremely

¹⁰⁷ See LINDA I. COLÓN REYES, *SOBREVIVENCIA, POBREZA Y "MANTENGO": LA POLÍTICA ASISTENCIALISTA ESTADOUNIDENSE EN PUERTO RICO: EL PAN Y EL TANF* (2011).

¹⁰⁸ The PIP has been the only pro-independence party in the ballot for the past eight elections. Nonetheless, there is a number of other political organizations advocating for complete separation from the United States. Some of them have made it to the ballot, such as the Puerto Rico Socialist Party in 1976 and 1980, and the Nationalist Party in 1932. Other groups, such as the Hostos Independent National Movement have been active in the country's political debate without desiring to attain electoral franchise. Leadership differences, among other factors, have distanced many of these political groups from each other.

¹⁰⁹ The Constitution of the Commonwealth of Puerto Rico establishes in Article III, Section 7, that "[i]f in a general election more than two-thirds of the members of either house are elected from one political party or from a single ticket, as both are defined by law, the number of members shall be increased" in order to guarantee that minority parties have more representation in either house and to deprive the majority from controlling three-fourths of the composition of either house. P.R. CONST. art. III, § 7.

few exceptions,¹¹⁰ have been unable to win any seat for public office since 1952. We must acknowledge many different factors that contribute to this paradoxical scenario, such as the effects of cronyism on campaign contributions, major dependence on state actors for a job, historical and legacy party affiliation, and the unmatched fundraising capacity that the two major parties possess. Nevertheless, we find that the electoral legal structures are fundamental in explaining the strength of traditional parties. While there are many factors that account for Puerto Rico's historical bipartisanship, we want to focus on how the Island's laws on the democratic process produce manufactured majorities for the PNP and the PPD.

While there is a general sensation of public disapproval regarding all currently existing parties, the argument for new political organizations as a necessary condition for renovation will not prevail unless Puerto Rico changes or modifies its plurality voting system. The hopes of many voters in alternative political formations have been frustrated even when these parties manage to get into the ballot.

B. Are New Political Options Electorally Viable?

Before moving into a discussion of how plurality rule keeps traditional parties alive, let us look at how emerging parties, which in theory should foster a more pluralistic and informed public debate, end up having no real voice during the election process and next to zero possibilities of enabling change. The first new political option was the creation of the Puerto Ricans for Puerto Rico Party (PPR, for its Spanish acronym) before the 2008 general election. Under the leadership of an unknown environmentalist, Rogelio Figueroa, the PPR emerged as an alternative to traditional parties during times of social fatigue. Contrary to the norm, the PPR did not profess a political status preference and boasted partisanship from different ideological sectors. Its social and economic stances appeared to be more center-left than center-right, although providing a label to the PPR leadership proved to be a tough task given that they based their campaign on a viable third party peroration.¹¹¹ The 2008 electoral results proved that the new

¹¹⁰ The instances in which candidates not running under the three traditional Puerto Rican political parties have been able to win a seat can be briefly mentioned: Santos Ortiz, a PPD sitting mayor of Cabo Rojo who lost a primary was re-elected in 1988 as a *write-in* candidate. Also, in the early 1980s, the PNP was divided when the then mayor of San Juan, Hernán Padilla, created an alternative pro-statehood party. The *Partido de la Renovación Puertorriqueña*, as it was named, was able to elect a few city councilors not through direct vote but due to the provision in the law that allows for the second and third most voted parties to gain representation in the municipal assemblies. BAYRÓN TORO, *supra* note 89, at 367-68. Other than the abovementioned candidates, José F. Estrada-Rodríguez has been the only other candidate elected -again not through direct vote but due to the *minority representation clause* of the Autonomous Municipality Act of 1991- this time to the Vieques Municipal Assembly in 2004. See *Guadalupe Tirado v. Comisión Estatal de Elecciones*, 165 DPR 106 (2005).

¹¹¹ The traditional third party, the PIP, was overlooked because it advocates independence, which the vast majority of voters seem to reject.

party did not have a chance in Puerto Rico's political scenario. Even though the PPR gubernatorial candidate was able to obtain more votes than the PIP candidate, he only managed to secure 2.77% of the vote,¹¹² well below the 3% threshold required by law for the party to retain its franchise.¹¹³ However, treating the 2008 election case as conclusive evidence of the fact that third parties are unable to surmount the PPD-PNP regime would be inadequate without looking at the 2012 elections.

Public discontent with the PPD and the PIP, the main opposition parties during the PNP administration of Luis F. Fortuño (2009–2013), generated new political movements that were able to make it to the ballot. For the first time in decades, the ballot included over five parties from which voters could choose. These were the pro-free association Sovereignty and Union Movement (MUS, for its Spanish acronym) and the left-of-center Working People's Party (PPT, for its Spanish acronym). The 2012 general election thus presented the electorate with the three traditional parties -PNP, PPD, and PIP- along with the PPR, again presenting Figueroa as its candidate, as well as the MUS and the PPT.

The novel six-party ballot was seen as a promising venture by those who sought more political participation during the election process. The fact that there were three new parties -if we include the PPR created in 2008- appeared to some people as a necessary condition for democratic regeneration. Those loyal to the traditional parties believed that the new parties would be unable to capture enough votes to become active political players. After all, the fact that many voters had given them the necessary endorsements required to create a party did not translate into votes for them. The reason behind this is that voters often fail to see an endorsement for the creation of a new party as a hurdle to the electoral success of their favorite party. As such, many PPD and PNP supporters would provide new parties with the required number of endorsements but will continue to vote for their party of choice.

Such was the case of the 2012 general elections. Although there were six options from which to choose, the PPD candidate prevailed over the PNP incumbent with both parties securing almost ninety-five percent of the votes.¹¹⁴ The PIP, the traditional third party, came in third with 2.52% of the votes, once again short of the 3% threshold. As per the new political formations, the PPT came in fourth, followed by the MUS in fifth place and the PPR in the last position. They received 0.96%, 0.56%, and 0.35% of the votes, respectively.¹¹⁵ In addition, all of the municipalities elected a mayor from one of the two major parties, and the

¹¹² *Elecciones Generales 2008*, *supra* note 101.

¹¹³ Código electoral de Puerto Rico para el siglo XXI, Ley Núm. 78 de 1 de junio de 2011, P.R. LAWS ANN. tit. 16, § 4003(33) (2012).

¹¹⁴ *Elecciones Generales 2012*, COMISIÓN ESTATAL DE ELECCIONES, http://64.185.222.182/REYDI_NocheDelEvento12/index.html#es/default/GOBERNADOR_ISLA.xml (last visited Feb. 23, 2016).

¹¹⁵ *Id.*

new legislature was composed of a PPD majority and PNP minority. The PIP was only able to secure one of the *at-large* seats in the senate.¹¹⁶

In sum, the fact that voters had more options on the ballot changed nothing regarding their behavior. The main conclusion from the 2012 election is that a plurality favored the PPD, then in opposition, over the ruling PNP, in an attempt to penalize the incumbent for the prevailing crisis.¹¹⁷ A vote for a third candidate was seen as a “spoiler vote,” thus provoking electors to choose the lesser of the two evils between the two major parties. The 2012 election may have given more options, yet its results did not differ from those of elections in which only the three traditional parties contested the governorship. The most relevant explanation as to why voters massively disregarded the three new options is the fact that the MS favors a two-party system, in which citizens tend to prefer making their vote a decisive one for the winner takes it all. Therefore, whether those in search of reform will be able to succeed depends solely on altering the Island’s election system.

C. The Plurality Vote Regime

A relatively minor change in the constitutional disposition in the election system can produce a completely different political scenario. This analysis shall serve to explain how bipartisanship will prevail no matter what with the help of the current electoral structures as well as how election reform can lead to a different -perhaps a more representative- government formation in the future.

Puerto Rico, having adopted MS, is far from attaining any reasonable level of proportionality between the number of votes cast for a given party and the number of seats gained. As long as the main parties benefit from the system, there should be no expectations of reform. As some scholars explain, electoral systems are a consequence of already existing political parties in assemblies and governments, each of which tend to prefer those institutional formulas and procedures that can consolidate, reinforce or increase their relative strength.¹¹⁸ Josep M. Colomer argues that:

[P]olitical configurations in which there is a single dominant party or two rather balanced parties tend to produce choices in favour of rather restrictive or exclusionary electoral systems, such as those based on the majority principle, while pluralistic settings with multiple parties tend to support choices in favour of more inclusive electoral formulas, such as those using rules of proportional representation.¹¹⁹

¹¹⁶ *Id.* at http://64.185.222.182/REYDI_Escrutinio12/index.html#es/pic_bar_list/SENADORES_POR_ACUMULACION_ISLA.xml.

¹¹⁷ This analysis has been the conclusion for most of the post-1972 elections where there has been a change in power between the PPD and the PNP.

¹¹⁸ Colomer, *supra* note 14, at 3.

¹¹⁹ *Id.*

Nonetheless, in order to examine how reform into PR could manifest in the Puerto Rico legislature composition, let us analyze the 2000 general election senate results:

TABLE 2. DISTRICT SENATORS¹²⁰

Political parties	Percent of votes	Number of seats	Percent of seats
PPD	47.8%	14	87.5%
PNP	46.0%	2	12.5%
PIP	5.7%	0	0%

TABLE 3. AT-LARGE SENATORS¹²¹

Political parties	Percent of votes	Number of seats	Percent of seats
PPD	43.9%	5	45.45%
PNP	44.0%	5	45.45%
PIP	11.2%	1	9.10%

A quick glance at these results shows that the PIP could not manage to win one two-member senate seat even when it received 5.7% of the votes. More dramatically, the PNP only got two district senators while receiving forty-six percent of the votes. This is explained by the F.P.T.P. system, in which a candidate only needs to have the most votes in order to win the seat and thus represent the totality of the constituents in that district.

As already mentioned, because the major parties benefit from this system, they will have no interest in any reform that leads to power dilution or fragmentation. This explains why they consistently reject claims for a change towards the more democratic PR model. In fact, such a reform would allow for minor third parties, such as the PIP in the 2000 election, to select who gets to control the Senate. In other words, if Puerto Rico were to adopt PR right before the 2000 general elections, the PIP would have had the power of deciding which major party was going to control that particular body, assuming that its composition will reflect the results for the *at large* senators. The scenario is not particular to this election, as most of the legislative elections in Puerto Rico produces similar results in favor of one of the major parties.¹²²

The Puerto Rican electoral scenario seems to prove Maurice Duverger's *sociological law* regarding election systems to be right.¹²³ His thesis is that single-

¹²⁰ See ELECCIONES GENERALES 2000, COMISIÓN ESTATAL DE ELECCIONES, <http://209.68.12.238/elecciones2000/escrutinio/resumen.html> (last visited Feb. 23, 2016).

¹²¹ *Id.*

¹²² See BAYRÓN TORO, *supra* note 89.

¹²³ Duverger's main question regarded the relationship between the electoral system and the number of political parties; see DUVERGER, *supra* note 27.

member districts under plurality or majoritarian rule will lead to a two-party system.¹²⁴ In other words, “[t]he mechanical effect of the plurality rule is that all but the two strongest parties are severely underrepresented because they tend to lose in each district.”¹²⁵ The French political scientist argued that there is a psychological factor at play during plurality-vote elections: as soon as most electors realize that their votes are going to be “wasted” if they vote for a third party candidate who has no chance of prevailing, they will move towards voting for a candidate they see as the lesser of two evil -referring to the two major parties.¹²⁶ The result is that those voters will then end up voting for the two major parties, regardless of their party affiliation.

As explained earlier, dominant parties will not favor reform if this weakens their chances of gaining more power. As a result, those in favor of reform should discard the prospect of PR since political actors here have no interest in a power diluting voting structure. Nevertheless, this does not mean that there is no room for reform. In fact, moving from a plurality vote system to a majoritarian one, such as the two-round system or the preferential vote model, could be of interest to anyone of the traditional parties. This is so because neither the two-round model nor preferential voting appear to threaten PNP or PPD hegemony. The winner still takes all, and major parties succeed in avoiding political fragmentation. However, voters will not fear voting for a party they like the most as producing a “waste” vote because they will also get to vote for the lesser of two evils. This gives smaller parties a greater space for political participation, since they will not be subject to the “spoiler vote” stigma. While both parties may retain power, third parties can accumulate more votes and have better standing to influence the public debate with new ideas.

D. Preferential Vote as the Key to Viable Reform

We argue that there is space for reform if one of the two main parties comes to realize how preferential voting can help them raise their chances of prevailing on most elections. The constitutional text is clear on Article VI, Section 4, where it reads that “[e]very popularly elected official shall be elected by direct vote and any candidate who receives more votes than any other candidate for the same office shall be declared elected.”¹²⁷ As a result, the people of Puerto Rico must approve through referenda any change to the prevailing plurality rule. While this is highly unlikely, public fatigue as to the two main parties may lead to a victorious yes if the people are asked to discard the F.P.T.P. system in favor of a two-round or a preferential system. The main obstacle to electoral reform will be the

¹²⁴ Matthew Søberg Shugart, *Comparative Electoral Systems Research: The Maturation of a Field and New Challenges Ahead*, in *THE POLITICS OF ELECTORAL SYSTEMS* 25, 27-31 (Michael Gallagher & Paul Mitchell eds., 2005).

¹²⁵ LIJPHART, *supra* note 2, at 165.

¹²⁶ *Id.*

¹²⁷ P.R. CONST. art. VI, § 4.

lack of political will on the side of the two traditional parties. The likelihood of reform might seem infinitesimal, because they will most likely continue to control political power.

The delegates to the Constitutional Assembly of 1951-1952 expressly chose the F.P.T.P. or the plurality voting system as their electoral method for the people to choose the Commonwealth's governor and legislature for a four-year term. The Constitutional Assembly took into consideration *La Nueva Constitución de Puerto Rico*,¹²⁸ a report prepared by various Puerto Rican, American, and European academics in which they analyze the different options at hand for the ninety-two Puerto Rican constituents with the historical task of drafting the Island's constitution. Regarding the election system, their report and recommendations tend to focus on aspects such as universal suffrage, compulsory voting, residence requirements, vote secrecy, and primary election organization, among other topics.¹²⁹ The scholars who prepared the report did, however, enter into a relatively brief discussion regarding the different types of electoral systems and their effects regarding government formation.¹³⁰ As such, they emphasized that the "purpose of celebrating an election is to obtain the expression of the will of the voters who constitute the electoral body of a country. The role of electoral laws is to prescribe the proceedings and ways that will assure a legitimate and fair manifestation of the people's will".¹³¹ It is our understanding that the report, while discussing the virtues and shortcomings of MS and PR¹³² as well as the possibility of preferential voting,¹³³ concluded that the Anglo-Saxon preference for plurality rule had been working well in Puerto Rico and that there was no pressing need for the adoption of a different system. One can surmise as well that since Puerto Rico was to become the only U.S. territory to design and produce a constitution of its own –still an unprecedented act in the realm of U.S. territories- the scholars might have preferred to maintain the same election rules used both in the U.S. as well as in Puerto Rico throughout the first half of the twentieth-century. In addition, some could opine that since the three parties represented at the Constitutional Assembly (the PPD, the pro-statehood PER, and the pro-working class Socialist Party) had won single-member districts using plurality rule in the past, they saw no need for election system reform.¹³⁴ In any case, *La*

128 See ESCUELA DE ADMINISTRACIÓN PÚBLICA DE LA UNIVERSIDAD DE PUERTO RICO, *LA NUEVA CONSTITUCIÓN DE PUERTO RICO* (Editorial UPR 2005) (1954).

129 *Id.* at 300-38.

130 *Id.* at 255-58.

131 *Id.* at 307 (translation by the author).

132 *Id.* at 255-58.

133 *Id.* at 226.

134 The PIP, which was a major political party at the time, decided to boycott the constitutional assembly process for ideological reasons.

Nueva Constitución de Puerto Rico endorsed the plurality method and the 1952 Constitution crystallized it.¹³⁵

As mentioned, the electoral franchise has been partially open to varying segments of the Island's population since well before the Constitution. However, it is in 1948 that Puerto Ricans were first able to elect the Island's Governor as a result of the U.S. Congress passing the *Elective Governor Act of 1947*.¹³⁶ As a result, Luis Muñoz Marín became the first person to be elected governor by the people of Puerto Rico on November 2, 1948.¹³⁷ This election, however, took place under the legal regime preceding the 1952 Constitution. After 1952, the *magna carta* is the main source of authority for election law in Puerto Rico. Because all efforts for election system reform will invariably have to face the constitutional disposition establishing plurality rule, the following table shows the sixteen general elections that have been celebrated since the Puerto Rico Constitution was enacted.

TABLE 4. CANDIDATES ELECTED FOR GOVERNOR OF PR AFTER THE 1952 CONSTITUTION¹³⁸

Election year	Elected governor	Political party	Number of votes Obtained	Percent of the votes received
1952	Luis Muñoz Marín	PPD	431,409	64.9%
1956	Luis Muñoz Marín	PPD	435,215	62.5%
1960	Luis Muñoz Marín	PPD	459,759	58.2%
1964	Roberto Sánchez Vilella	PPD	492,531	59.2%
1968	Luis A. Ferré	PNP	400,815	43.6%
1972	Rafael Hernández Colón	PPD	658,856	50.7%
1976	Carlos Romero Barceló	PNP	703,968	48.3%
1980	Carlos Romero Barceló	PNP	759,926	47.2%
1984	Rafael Hernández Colón	PPD	822,709	47.8%
1988	Rafael Hernández Colón	PPD	871,858	48.7%

¹³⁵ P.R. CONST. art. VI, § 4.

¹³⁶ Elective Governor Act of 1947, Pub. L. No. 80-362, 61 Stat. 770.

¹³⁷ BAYRÓN TORO, *supra* note 89, at 240-44.

¹³⁸ See *Consulta de Resultados Electorales*, COMISIÓN ESTATAL DE ELECCIONES, <http://ceepur.org/es-pr/Paginas/default.aspx> (last visited Feb. 29, 2016). The election years that are emphasized show those candidates that won the election with an absolute majority of the votes.

1992	Pedro Rosselló	PNP	938,969	49.9%
1996	<i>Pedro Rosselló</i>	PNP	1,006,331	51.1%
2000	Sila María Calderón	PPD	978,860	48.6%
2004	Aníbal Acevedo Vilá	PPD	963,303	48.6%
2008	<i>Luis Fortuño</i>	PNP	1,025,965	52.8%
2012	Alejandro García Padilla	PPD	896,060	47.73%

Only three candidates for Governor have been able to win an election with more than the absolute majority (over fifty percent) of the votes after the gilded age of PPD rule that ended in 1968. The PPD enjoyed comfortable victories during the 1950s and the 1960s, but the 1968 election introduced a modern two-party system. Since then, the PPD has been able to win the governorship with an absolute majority of the votes only once: the election of Rafael Hernández Colón in 1972. Although the PPD triumphed at the 1984, 1988, 2000, 2004, and 2012 elections, candidates Hernández Colón, Sila María Calderón, Aníbal Acevedo Vilá, and Alejandro García Padilla became governors only with a plurality of the votes. That is to say, the aggregate votes of the candidates who lost added more votes than those votes the actual winner managed to receive. While the PPD has gone from enjoying absolute majorities to plurality ones, PNP candidates have experienced just the opposite. The PNP won the 1968 election due to the spoiler candidacy of Roberto Sánchez Vilella, who abandoned the PPD and created his own party. This allowed Luis A. Ferré to become governor with only 43.6% of the votes. Moreover, PNP candidate Carlos Romero Barceló won the 1976 and 1980 elections with a plurality of the votes as well.¹³⁹ Yet in the last three elections in which the PNP has prevailed (1992, 1996, and 2008), they have managed to fare extremely well, triumphing with an absolute majority in the 1996 and 2008 elections. In the 1992 election, PNP candidate Pedro Rosselló fell short of an absolute majority by receiving 49.9% of the votes.

While both PNP and PPD candidates for governor have tended to win the seat with a plurality of the vote after the 1968 election, PNP candidates seem better positioned for surpassing the absolute majority threshold. As we have mentioned, the last PPD candidate to win with a majority of the votes was Rafael Hernández Colón in 1972, which means that in the past forty-four years, the PPD has not been able to regain the electoral momentum it used to have under the leadership of its founding father Luis Muñoz Marín. The last time the PNP won a general election, in 2008, they captured 52.8% of the votes. This represents the largest victory in the post-1968 period.

¹³⁹ In fact, Romero Barceló won the 1980 general elections by a margin of 3,037 votes (0.18%) over his main contender, PPD candidate and former governor Hernández Colón. For more information regarding the 1980 election see BAYRÓN TORO, *supra* note 89, at 301-30.

Furthermore, the last two times the PNP lost an election, in 2004 and 2012, they did so by a minimal margin of votes representing less than one percent. This point is relevant to the preferential vote proposal. Some pro-independence voters tend to support certain PNP measures against the status quo commonwealth status. Given a scenario in which a substantial amount of pro-independence voters were to mark a second choice under a preferential vote scheme, and supposing they would mark the PNP as their second choice in order to avoid a pro-commonwealth PPD government, the PNP might have been able to prevail when they in fact lost by less than one percent of the votes.

Given the current state of Puerto Rican politics, however, why would the major political parties push for electoral reform if the current system already enables them to win the governorship every four to eight years? If we take conventional political reasoning at face value, we might conclude that there is no way for reform to take place. Nevertheless, as some scholars explain, if a major political actors such as the PPD or the PNP come to realize that their party base has been gradually fading or that their electoral prospects for future elections are uncertain,¹⁴⁰ that entity will push for reform when it finds itself in a favorable position to do so. That is to say, “when there is *high uncertainty regarding the different groups’ relative strengths*,”¹⁴¹ the affected organizations will opt for reform. Furthermore, major political parties may push for reform when confronted with the emergence of new political options that may be seen as spoiler candidacies. Such was the case for the PNP with Hernán Padilla’s pro-statehood party in the 1984 elections, in which the PNP vote was splintered, and the PPD was able to win a plurality of the votes.¹⁴² As we have emphasized, smaller parties have the spoiler effect under plurality rule. Consequently, major parties may feel threatened and look for ways to avoid repeating scenarios in which spoiler candidates altered the election (for example, the 1968 or 1984 elections). The fact that none of the new competing forces in the 2012 election became a spoiler does not mean that they may not have such an effect in the future. When threatened, any one of the two major parties could push for reform in order to avoid the spoiler effect. The affected party may also raise the hurdles for new entities to gain electoral franchise. Nonetheless, once there is a change of government, such self-defense mechanisms can be easily reversed. Shifting from a plurality scheme towards a majoritarian one is the only plausible way for major parties to retain their power, while better handling the threat that new political participants represent.¹⁴³

¹⁴⁰ See *Elecciones Generales 2008*, *supra* note 101.

¹⁴¹ Colomer, *supra* note 14, at 6.

¹⁴² See BAYRÓN TORO, *supra* note 89.

¹⁴³ Josep M. Colomer explains that propositional electoral system choice reforms occur when a political actor understands that there is a need for change in election methodology and proposes clearly defined rules and procedures in order to substitute the former system. Colomer, *supra* note 14, at 7. The following two examples illustrate how those in power push for reform when looking for ways to preserve their strengths and dilute political adversaries they perceive as threatening. *Id.* In 1907, the conservative government in Sweden suddenly introduced universal suffrage and PR in order

In Puerto Rico, the PPD has been the only major party with a significant decrease of votes in recent elections. In 2004, its gubernatorial candidate, Anibal Acevedo Vilá, obtained 963,303 votes, only to receive 801,071 in 2008.¹⁴⁴ For the previous forty years, the PNP and the PPD had maintained a solid electoral base. The 2008 PPD defeat represented a major reversal for that organization. Given this recent electoral performance, the PPD's leaders must see a brighter future if the F.P.T.P. system is replaced in favor of preferential voting. While it is true that the PPD was able to win the 2012 general election after such an excruciating defeat in 2008, they did so by a relatively small margin.¹⁴⁵

Smaller parties such as the PIP, PPR, MUS, and PPT could also favor reform as it may allow them to gain momentum through different rounds without being eliminated at a first-and-only round. Due to the mechanics of preferential voting, voters sympathizing with a minor party can put one or two minor parties as their first and second choices on the ballot, and then put the major party they dislike the least as their last choice on the ballot. This way, a voter could assure that he expresses his preference for a party he knows has no chances of winning and also support the major party he or she would prefer to see forming a government. The scheme favors minor parties as they would receive more votes because voters will not fear discarding their votes the way Duverger predicts.

The PIP, a strong advocate for election reform, will benefit by getting rid of the *melonismo phenomenon*: when partisans of Puerto Rico's political independence choose to vote for the pro-commonwealth PPD in order to stop the pro-statehood PNP from gaining power. As a result, the party can expect a relative increase in their numbers. In addition, the PIP may also gain votes from disenfranchised voters who tend to give their first preferential votes to smaller parties as a way for expressing their disapproval of major traditional parties. The resulting scenario will become more evident during the first few rounds, while the final rounds would resemble more a second round between the two major parties. Those unconvinced by this proposal could argue that in the end, big parties will continue to prevail. They might be right in a way, but we cannot miss the fact that during the first rounds smaller parties will gain momentum, expressed by larger vote percentages in the first round in particular. Moreover, while larger parties will capture a considerable share of the votes, they will see their numbers reduced if we compare them with their present results. The following tables exemplify three different predictions:

to prevent a socialist victory. In 1918, Australia shifted towards preferential voting when the government saw the possibility of a third agrarian party that would spoil the dominant parties' electoral success. *Id.*

¹⁴⁴ *Elecciones Generales 2008*, *supra* note 101.

¹⁴⁵ *Id.*

TABLE 5. EXAMPLE A OF PREFERENTIAL SYSTEM IN PUERTO RICO

Parties	First round	Second round	Third round	Fourth round
PNP	35%	36%	40%	47%
PPD	35%	36%	38%	53%
MUS	15%	17%	22%	-----
PIP	10%	11%	-----	-----
PPT	5%	-----	-----	-----

TABLE 6. EXAMPLE B OF PREFERENTIAL SYSTEM IN PUERTO RICO

Parties	First round	Second round	Third round	Fourth round
PNP	25%	25%	25%	-----
PEA ¹⁴⁶	15%	18%	28%	52%
PPD	40%	40%	47%	48%
PIP	15%	17%	-----	-----
PPT	5%	-----	-----	-----

TABLE 7. EXAMPLE C OF PREFERENTIAL SYSTEM IN PUERTO RICO

Parties	First round	Second round	Third round	Fourth round
PNP	35%	35%	35%	49%
PPD	25%	25%	32%	-----
MUS	15%	23%	33%	51%
PIP	15%	17%	-----	-----
PPT	10%	-----	-----	-----

The percentage numbers employed serve only to illustrate how the preferential voting dynamic will render a different party system scenario. Even if we imagine a different scenario in which main parties retain more than forty percent during the first round, other parties can occupy more than ten to fifteen percent and therefore they will be better placed to establish policy proposals, endorse a given candidate from another party, demand compromise from larger parties, invoke protests, lobby in Washington D.C., or even increase their possibilities of gaining a district or a municipality. The scenario enhances the capabilities of smaller parties to participate in the political arena in ways practically unknown in contemporary Puerto Rico. Table 5 presents such a scenario, wherein the ma-

¹⁴⁶ The Statehood Now Party (PEA, for its Spanish acronym) is a hypothetical third party advocating for statehood along with the PNP.

major political parties remain strong since the beginning and continue forward with solid possibilities of winning the election.

On the contrary, Table 6 presents a different yet plausible alternative under the preferential system. In this scenario, the PNP has suffered severe internal division, and the result is a new pro-statehood party, which we call PEA (for its Spanish acronym). The PPD remains a strong party, capable of retaining forty percent of the votes in the first tally. The sum of PNP and PEA votes also render a forty percent share of the pie. All three minor parties accumulate a total of twenty percent, which would continue to be impressive for Puerto Rican electoral politics. However, the PNP split has not produced the effects of a “spoiler vote.” If the PEA plays its cards well enough, it can attract voters from the other third parties and endure through the scrutiny process. If PEA manages to capture more votes than the PNP, it will displace its other pro-statehood adversary and thus face the PPD as the only other alternative. Given that PEA captures all the votes as expressed in Table 6, the political scenario would change drastically, not only for the reason that a third party has been able to arrive to power, but because the PNP receives a major defeat.¹⁴⁷

Table 7 represents a similar scenario. In this case, the MUS -a plausible alternative for pro-free association and disenchanted PPD voters as well as for disaffected PIP voters- would be able to win the election if it manages to gain enough votes to stay until the last tally and confront the powerful PNP. In that case, PPD voters may align with the recently created MUS in order to push away the PNP, or they may align with their old foe, the PNP, in order to resist becoming a third party itself with a MUS victory. A similar scenario in which the PIP becomes the stronger third party is also possible depending on the issues at hand during the election period and the charisma of its leaders. Once the “spoiler vote” phenomenon is out of the electoral equation, smaller parties can have a chance in history if traditional parties suffer.

When analyzing these scenarios, the reader must bear in mind that there is only one election and that voters will not know the results of the first tally after they have cast their ballot. Contrary to the two-round system, parties have to make alliances *before* the election if they wish to move forward during the tally. Parties could also offer lists in which they tell their voters how to rank candidates or parties. For example, in Table 7 the PIP can favor the MUS if it asks its voters to rank the MUS right behind the PIP as an alternative in case the PIP is eliminated. The same result could happen without said exhortation if PIP voters

¹⁴⁷ Such a scenario would depend on other fundamental variables such as party leadership projection, who is the incumbent at the time of the election, the amount of money PEA manages to obtain for its campaign, the alliance between smaller parties with no expectations of success with PEA, among many others. While it is impossible to predict how these variables would interact in such a hypothetical scenario, we can definitely ascertain that a shift towards a preferential system has the potential of producing significant changes in the electoral dynamics of Puerto Rico, as it opens the door for voters to disenfranchise from major parties during their first selections on the preferential ballot and thus empower small parties that can manipulate election results by negotiating with possible winners.

rank the MUS right behind their first selection. Depending on how preferential voting is legislated in each jurisdiction, there can be restrictions as to how many candidates a voter could rank or if they are bound to choose more than one candidate at all. In Australia, voters can choose only one option, which means they can participate under a preferential system without having to rank choices.¹⁴⁸ Hence, in this scenario that vote will have the practical effects of a MS vote.

The preferential voting mechanism allows for new political alliances in terms of policy making, since both the PNP and the PPD will try to lure the leadership from smaller parties in order to gain their support. While such compromises take place during the first and second rounds in a two-round system, preferential voting demands that strategic alliances be made before election day. This means leaders from the major parties will have an interest in establishing good relationships with political minorities, as they benefit from negotiating policies or office seats in the executive branch with them. Even if small parties fail to prevail, they are in a better position to demand that the government enact certain types of legislation through negotiation. Such a political scenario provides for more political representation as people can at ease vote for their first choices without fearing that their least-favorite candidate wins.

IV. SCRUTINIZING PROSPECTIVE REFORMS: AUSTRALIA AND NEW ZEALAND

How did reform come to be? As previously argued, election reforms are scarce as any given system produces winners who are keen on resisting change. If Puerto Rico is to move towards reform, it is imperative to look at countries that have been successful at foregoing a plurality system in favor of the preferential scheme. In other words, in order to grasp those catalytic elements triggering reform, we explore two different instances of reform: Australia's change in 1918 from single-member district into preferential voting or *alternative voting* -as Australians refer to their voting system- as well as New Zealand's major election reform enacted in 1993. Like Australia, New Zealand had an orthodox Westminster style single-member plurality district before moving to a mixed member system.¹⁴⁹ While these brief case studies do not constitute a blueprint for Puerto Rico, they allow for the reader's comprehension as to how power dynamics may shift, given certain circumstances, towards producing a new election system.

¹⁴⁸ This has been labeled in Australia as *plumbing the ballot*. It means that voters proceed to express only one preference, transforming the ballot from a preferential one into a majoritarian one. See Farrell & McAllister, *supra* note 71, at 84.

¹⁴⁹ See Department of Justice, *The Electoral Law of New Zealand: A Brief History*, in ROYAL COMMISSION ON THE ELECTORAL SYSTEM: TOWARDS A BETTER DEMOCRACY app. A (1986).

A. *The Rise of Australia's Alternative Vote*

Australia, a former British colony, adopted a constitution by popular referenda in 1901.¹⁵⁰ As most constitutions, the Australian *magna carta* contained very few provisions regarding electoral systems.¹⁵¹ The only two major provisions were that both houses of parliament were to be directly elected by the people and with no plural votes.¹⁵² Said dispositions basically meant there were no electoral colleges to elect members of parliament and each voter only had one vote. As a young nation-state, it began to differentiate from its colonial motherland, enacting direct democracy mechanisms and eliminating feudal vestiges from their election laws. However, the rest of the electoral dispositions were maintained at the statutory level, prone to change by a majority of members of the parliament. For example, in 1902, a year after the Constitution of the Commonwealth of Australia had been inaugurated, the Parliament decided to grant electoral franchise to all women.¹⁵³ Perhaps the new regime thought that electoral affairs should be reduced to a minimum in the constitution, so as to adapt to new changes as the nation developed. In any case, it experimented many electoral reforms during the first twenty years after its constitution.¹⁵⁴

The continent's relation to the United Kingdom certainly shaped many of its new institutions. Even before Australia had a new constitutional regime, most of the federated states that existed prior to the Commonwealth used the Westminster single-member plurality system to elect their representatives.¹⁵⁵ Nevertheless, a few of these states had begun experimenting with other types of systems. The island of Tasmania had conducted elections using PR, and Queensland experimented with contingent voting.¹⁵⁶ This last system resembles preferential voting in that the preferences for the losing candidates are distributed between the top two candidates if none of them achieves an outright majority.¹⁵⁷ Due to the foundational historical moment for the Commonwealth, electoral reformers were influential in designing these novel institutions.

Politicians and intellectual figures were eager to find the most suitable electoral system for their times; they considered majority mechanisms, PR and the single-transferable vote system.¹⁵⁸ As a result, members of parliament were pro-

¹⁵⁰ Marian Sawer, *Australia: Replacing Plurality Rule with Majority-Preferential Voting*, in HANDBOOK OF ELECTORAL SYSTEM CHOICE 475 (Josep M. Colomer ed., 2004).

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 475-76; see Farrell & McAllister, *supra* note 71, at 79-97.

¹⁵⁵ Sawer, *supra* note 150, at 475.

¹⁵⁶ Ben Reilly, *Preferential Voting and its Political Consequences*, in ELECTIONS: FULL, FREE, AND FAIR 78 (Marian Sawer ed., 2001).

¹⁵⁷ Sawer, *supra* note 150, at 476.

¹⁵⁸ *Id.*

foundly divided over what system selection process. PR posed the perennial threat of fragmentation while a MS presented a plausible scenario of having a two-party system. Preferential voting was considered but, was later discarded because it was seen as a possible threat to larger parties since it eliminated the “spoiler vote” effect for those wishing to vote for third parties.¹⁵⁹ In the end, the nascent major parties prevailed and the 1902 electoral bill established plurality rules in the House of Representatives and the Senate.¹⁶⁰

Nonetheless, the 1902 rules would be short lived since party interests and instability would pressure powerful political actors to urge for reform. Subsequent elections faced plenty three-party contests for many of the single-districts.¹⁶¹ This scenario alarmed major parties who disliked the idea of having their candidate lose due to a third-party altering the election in favor of a plurality winner.¹⁶² Unfortunately, the threatened parties were right: the 1906 elections saw the rise of the Australian Labor Party which was able to form a government for the first time. Plurality vote had divided conservatives and liberals, giving rise to many laborite politicians.¹⁶³ The new opposing parties learned their lesson and fused their parties into the National Party -to be renamed into the Liberal Party after 1944- in order to regain power in the following elections. Those who preferred holding on to plurality in order to avoid political fragmentation understood that the system had to be changed if they desired to lessen the threat of another Labor victory in the upcoming elections.

The Australian conservative groups in power started to experiment with safer voting systems. In 1907, preferential voting was introduced in Western Australia both at the state and federal level.¹⁶⁴ Victoria also changed from a plurality system to a majority-preferential one in 1911.¹⁶⁵ New South Wales, on the other hand, opted for a majority run-off election system in 1910.¹⁶⁶ On the other side of the political spectrum, the governing Labor Party knew all too well that plurality was beneficial to them and refused every attempt to modify the national system. Although Australia experienced many changes of governments during the first two decades of the twentieth-century, shifting between Labor and the other non-labor parties. No conservative or liberal prime minister managed to change the electoral system due to the fact that many members of parliament from both major parties relied on plurality rule,¹⁶⁷ but the impasse did not stop advocates of

159 *Id.*

160 *Id.*

161 *Id.*

162 *Id.*

163 *Id.* at 477.

164 *Id.*

165 *Id.*

166 *Id.*

167 Labor prevailed in the cities and in those rural districts where conservative forces were divided between two or more candidates. The latter won when they managed to get to the polls united.

reform from continuing with their struggle. In 1914, a non-labor government had authorized a Royal Commission on electoral law, which produced a report that recommended the preferential system for the House of Representatives:

Under the prevailing party system, electors must either vote for the party nominee or refrain from voting. Political thoughts should not be confined in perpetuity to too narrow channels. There must necessarily be many shades of political opinion, which, in a democratic country, should be given expression to in the freest possible manner. In order that public opinion may be portrayed in distinct broad tones of thought, we strongly urge the adoption of preferential voting for the House of Representatives.¹⁶⁸

The Royal Commission recommended preferential voting as a way to eliminate the “spoiler vote” resulting from plurality voting. If two major parties compete for a seat, little does it matter if one or two additional small third parties make their way to the ballot. However, the scenario changes when two small parties compete with a significantly powerful third party, since the former can induce voters from a major party to defect and thus produce a plurality winner. Preferential voting was seen as the perfect cure for the threat of “spoiler votes” inherent under plurality rule, since a vote for a losing candidate is transferred and could still help one of the major parties lead the way into victory.

The Commission’s report caused much enthusiasm among election reform advocates, yet not enough to resolve the political impasse impeding reform. The appearance of a new political actor and its explosive collateral effects would press the national assembly to seek reform. During the the 1910s, farming interests decided to organize into a party. According to Marian Sawer, “[c]ountry-based parties made up largely of wheat farmers were already beginning to emerge before the war, but it was the experience of wartime marketing and price controls that galvaniz[ed] the development of the Country Party of Australia at the national level.”¹⁶⁹ The party managed to secure various federal seats at the 1916 state elections, taking support from traditional non-labor voters. Unlike the Labor Party, which preferred to play the electoral game using plurality rule, the Country Party pressed for the introduction of preferential voting.¹⁷⁰ As they saw it, preferential voting allowed them to negotiate the rank of candidates with both the Labor and non-labor parties, depending on the state. For example, if the farmers knew they had good chances in a particular district but not enough chances to win outright, they would convene with another party so that they would both instruct their electorate into choosing the other party as the second choice in the ballot, thus assuring the losing party some bargaining power with the newly elected government.¹⁷¹ While on the one hand, such a tactic would

¹⁶⁸ Sawer, *supra* note 150, at 477 (quoting ROYAL COMMISSION UPON THE COMMONWEALTH ELECTORAL LAW AND ADMINISTRATION 7 (1914)).

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 478.

¹⁷¹ *Id.*

allow the Country Party to emerge quickly, it also urged the major parties to engage in reform. Otherwise, they would risk losing seats because of “spoiler votes;” preferential voting could help them avoid this.

Lobbying efforts led the conservative prime minister into considering reform, but the political class was still reacted adamantly to his proposal.¹⁷² After all, neither Labor nor the non-labor parties fancied the idea of having voters putting other parties ahead of them if such practice could be avoided. Nevertheless, the plurality system would prove just too risky at the ballots and the sore losers could not but consider preferential voting as their safest alternative to F.P.T.P.

Before reform could be enacted, some political heads had to be guillotined by the plurality system. In 1918, a resignation from the House of Representatives produced a special federal election in Flinders, Victoria. The Country Party decided to take advantage of the opportunity and nominated their General Secretary, J. J. Hall. As a result, the Nationalists nominated S. M. Bruce, a strong conservative leader with a promising political future.¹⁷³ In any event, the Nationalist Prime Minister wanted to avoid a possible defeat and tried to persuade Hall to withdraw. Negotiations only prospered when the Prime Minister agreed to introduce a bill on preferential voting during the following parliamentary session.¹⁷⁴ The Country Party withdrew, and the Nationalists were able to prevail at the ballot. However, time passed, and the promised bill had been progressing slower than the leaders of the farmer’s movement had expected.

Shortly after the special election, another member of parliament passed away.¹⁷⁵ The Western Australia Farmers’ and Settlers’ Association nominated a strong candidate who refused to withdraw despite renewed promises of passing the electoral bill in the House of Representatives.¹⁷⁶ The conservative’s worst nightmare became real: as a result of a divided conservative electorate, the Australian Labor Party won the seat in question.¹⁷⁷ The broken promise painfully backlashed. When a third by-election was announced, the Nationalist Prime Minister finally passed the bill through Parliament.¹⁷⁸ Australia then became the first modern country to use preferential voting for federal or national elections.

When analyzing the Australian phenomenon, several points come to mind. Firstly, Australia had a great amount of flexibility since they refrained from consecrating a particular electoral system into their 1901 constitution. As a result, many of the Australian states had been experimenting with a diverse array of systems. Such exposure led many politicians and academics to consider alterna-

¹⁷² *Id.*

¹⁷³ In fact, Bruce became Prime Minister of Australia in 1923.

¹⁷⁴ Sawyer, *supra* note 150, at 479.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

tives to the traditional Westminster voting rule. Although this factor was not crucial to the country's eventual shift towards alternative voting, one cannot but assume that the extensive public discussion of the virtues and failings of electoral systems at the time influenced the growing number of reform advocacy.

Secondly, and as expected, certain political forces that were not satisfied with how the present plurality rule had fared for them eventually pushed for a change in the nation's system. Although the emergence of the Country Party served to catalyze the process, the non-labor parties were already figuring out ways to fix a system to their favor. When one of the major parties or a large segment within that party advocates for reform, chances are that the proper legislation will be presented when the group is in power. The appropriate piece of legislation had to wait for new events to happen before becoming the law of the land because the Nationalist government had a conservative approach to reform and preferred a failing system, which they knew in practice, to a new one, such as preferential voting, with possible unexpected consequences.

Thirdly, and perhaps most importantly, the defeat of the Nationalist party due to a splinter vote in the middle of the election reform debate and the threat of another defeat on its way pressed the right-wing government party to act without delay. In the end, non-labor Australian politicians saw reform as a survival measure with the application of better rules for the game. In other words, if it were not for particular party interests, no change would have been introduced. New Zealand, however, shows a very different scenario, in which the two main parties opposed reform but could not stop it from happening.

B. New Zealand's politically Politically Undesirable Reform

Reform in New Zealand occurred through very different means than the Australian case. Also a former British colony, New Zealand relied on the Westminster model for most of the twentieth-century.¹⁷⁹ As a result, only two parties formed the government: the center-right Nationalist Party and the center-left Labour Party.¹⁸⁰ This electoral scheme changed with a 1993 popular referendum in which a majority of voters opted to replace the single-member district plurality with a German-style mixed member proportional system.¹⁸¹ Unlike the reform process in Australia, political parties were largely, although not completely, absent as actors for change. How did reform come about then? New Zealand celebrated elections in 1978 and 1981. In both elections, the Labour Party received a plurality of the popular votes, yet the majority of the seats corresponded to the

¹⁷⁹ New Zealand had one atypical feature in its single-member plurality rule: members of parliament were elected from a dual-constituency system. This consisted in a system of districts for voters of Maori descent and another set of districts for voters of European descent. The purpose of the dual system was to assure the Maori people representation in parliament.

¹⁸⁰ Jack H. Nagel, *New Zealand: Reform by (Nearly) Immaculate Design*, in *HANDBOOK OF ELECTORAL SYSTEM CHOICE* 530, 530 (Josep M. Colomer ed., 2004).

¹⁸¹ *Id.*

National Party.¹⁸² As electoral system scholars know, such an anomaly tends to occur in single-member district rule since a party might win less districts by huge margins and lose most by thin margins. As a result, that party receives a larger sum of votes at the national level but does not win in the majority of the district, thus losing the majority of the seats in parliament. In New Zealand, however, this phenomenon affected Labour in two consecutive elections. The sore loser could only wish for election reform to avoid falling into that hole for a third time.

In 1984, Labour came to power and quickly established “a Royal Commission to conduct a . . . ‘reappraisal of electoral law.’”¹⁸³ The Commission was integrated by academics with a judge from the High Court as its chair.¹⁸⁴ Soon, the report titled *Towards a Better Democracy*, arrived at the Prime Minister’s desk. The report compared three different options: the present single-member district plurality, the single-transferable vote, and the mixed member proportional system.¹⁸⁵ All five commissioners unanimously favored the mixed member system and recommended a national plebiscite for the people to choose between their current system and the proposed one.¹⁸⁶

Politicians were, however, not very enthusiastic with the proposition. The National Party opposed the reform right away.¹⁸⁷ This should be no surprise since said party benefitted from the then current system in several previous elections. As per the laborites, a majority of their members of parliament expressed their opposition.¹⁸⁸ But the politically independent commissioners were determined to fight for reform, caring little for the unfavorable political reception to their recommendation. The road to reform would last six long years, as both parties bitterly opposed the possible implementation of the new system. However, by the turn of the decade, politicians could not continue opposing the project. The Commission’s report had inspired a dynamic and energetic grass-root movement called the Electoral Reform Coalition.¹⁸⁹ This group lobbied intensely for reform. They constantly reminded the country of the Commission’s report and that this document was basically being discarded by the governing Labour Party and the Nationalist opposition. Their efforts, however, led to the creation of supporting minorities within each party as well as among other smaller and politically insignificant parties.¹⁹⁰

182 *Id.* at 532.

183 *Id.*

184 *Id.*

185 *Id.* at 533.

186 *Id.*

187 *Id.*

188 *Id.*

189 *Id.* at 534.

190 *Id.*

The Coalition's success was largely based on their persistency. During the 1987 election campaign, the Labour Prime Minister David Lange was asked in a televised debate about the government's inaction after the publication of *Towards a Better Democracy*.¹⁹¹ Due to the circumstances, Lange, who opposed reform, promised to hold a binding referendum after the general election.¹⁹² Labour won the 1987 elections but failed to keep Lange's promise.¹⁹³ The National Party, although equally opposed to reform, if not more, took advantage of Lange's broken promise in order to attack the government. The issue grew stronger as it became introduced in the day-to-day party politics. Before the 1990 elections, both parties had promised to hold a referendum.¹⁹⁴ Labour lost the election and the newly formed National Government was determined to keep its promise, but instead legislated a non-binding referendum.¹⁹⁵ The special election was held in September 1992. It consisted of several choices. A first question asked voters if single-member plurality should be retained, and if it were to be replaced, which of the following four alternatives would they prefer: single transferable vote, the preferential voting *à la australienne*, a parallel mixed system, or the German-like mixed member proportional system. The results demonstrated the success of the Election Reform Coalition, as 84.7% voted to discard F.P.T.P. and 70.5% opted for the mixed member proportionality system recommended by the Royal Commission.¹⁹⁶ The results could not be ignored, and political leaders from all parties accepted that straight opposition to the mixed member system became inconvenient.

The National Party prepared a binding referendum between mixed member proportional and plurality, which was to be held the same day as the 1993 elections.¹⁹⁷ Because high-profile politicians could not campaign against the new alternative, other organizations countered the Election Reform Coalition and pressed for a vote for plurality rule. Alas, the country was already decided on changing their century-old system. Voters chose mixed member proportionality by a fifty-four to forty-six percent margin. The 1996 elections were the first to be conducted under the new model.¹⁹⁸ After that, six elections have been celebrated under said system (1999, 2002, 2005, 2008, 2011, and 2014).

The new system debilitated major parties since the PR gave rise to minor parties with insignificant influence until then.¹⁹⁹ As a result, both the Nationalist Party and the Laborites had to form alliances with minor parties in order to form

191 *Id.*

192 *Id.*

193 *Id.*

194 *Id.*

195 *Id.* at 535.

196 *Id.*

197 *Id.*

198 *Id.* at 539.

199 *Id.* at 539-42.

a government. However, the country's political system did not succumb to extreme political fragmentation, and major parties retained their positions by comprising a significant majority of voter preference when the two were combined and compared to the emerging parties.²⁰⁰ The surprising element is that reform was enacted without the support of most politicians. It seems, after all, that genuine democratic policies might have a chance under the particular conditions.

As in the Australian case, a major party had to suffer an "unfair" loss which could have been avoided under a different electoral system. If the New Zealand Labour Party had not suffered two consecutive defeats when winning a plurality of the popular vote, it is highly improbable that a Royal Commission for electoral reform would have been established. Furthermore, the profile of all five commissioners helped to establish a high degree of credibility before the population. Except for the judge from the High Court, the other four members were scholars—a political scientist, a statistician, a researcher, and a constitutional law professor. Who knows how the public would have reacted to the proposal if the Commission were to have been politicized. In any case, the study gained credibility and public support. Yet support among the population is not enough for rulers to pass new pieces of legislation. The national grass-roots movements that emerged, especially the Election Reform Coalition, were instrumental in pressing politicians into compromising out of fear of becoming unpopular with a subject that had gained a high level of momentum in the whole country. Lastly, politicians ultimately kept their promise. It is important to note this because it reflects that institutions fare well with high levels of democratic practices. All of these conditions were absolutely necessary for reform to pass without the support from major parties.

C. Concluding Remarks: A New Framework for Policymaking

The concept of representative democracy must not be overshadowed by any kind of assumption as to its meaning and repercussions in contemporary democracies. Different polities choose their election systems due to different reasons. The Australian case presents a clear example of how certain political parties move in order to assure their chances at maintaining power. Consequently, after preferential voting was inaugurated in 1918, the two major parties gained further strength and stability, instituting a solid two-party rule up until today. The neighboring country of New Zealand saw the opposite happening. Reform did not count on partisan support, although it was one of the major parties that commissioned the controversial report. Active groups of citizens were the main ones responsible for pressing the parties into legislating two referenda. In other words, reform was suggested as a result of Labour's two consecutive defeats, but it came into being thanks to citizens' initiative and activism. In Australia, the issue for reform was mainly one between political actors, which explains why it

200 *Id.* at 539-40.

avored major parties. In New Zealand, scholars and citizens were not concerned about party stability but with increasing representation from political minorities and more proportionality between votes and seats. Both reforms had different aims, and both of them managed to somehow accomplish them.

In both countries, the single-member plurality rule was not satisfying important members of the polity. Electoral arrangements persist if those who win continue to see chances for success. Little does it matter if miniscule third parties press for reform, as no major party will react to their petitions if it means reducing their winning possibilities. As long as the system works for those who usually win, nobody should reasonably expect any changes to the laws of democracy. In other words, reform advocates can only crack the system if they convince segments of a particular major party that they will have better opportunities under a new system.

Another important factor in both scenarios is that neither had a constitutionalized electoral frame. That explains why Australia could establish reform with the enactment of a bill. In New Zealand, parties used referenda not to amend the constitution, but with hopes of defeating reform. That way, the citizen movement could be appeased with the fact that they had a chance at a referendum but lost. However, the wave for reform was too strong to be avoided. If countries elevate their electoral system to a constitutional level, it will be much harder for reform to pass. Since society changes and efficient systems can become burdensome over time, policy-makers should avoid the constitutionalization of an electoral system. After all, as long as those in power do not have the incentives to change the system, stability can rest assured.

In sum, we can identify one significant trigger for reform: party discontent with the actual system. Although much more is needed for politicians to modify the laws of democracy, without party dissatisfaction the chances for reform will be virtually insignificant. Other triggers found are the emergence of new political movements capable of threatening the political establishment, for this will in turn create fear among those in power and will press them to look for safer alternatives.

Active citizen participation has also proven to be essential. Politicians respond to their popularity levels and, most times, will do everything in their power to stay in office. If public pressure becomes a major threat, the idea of reform will surely be discussed inside the governing polity.

Other countries that have enacted election system reforms, such as Italy and Japan, could surely provide us with more input into how reform actually occurs. However, the limited nature of this investigation does not allow for a wider spectrum of case studies. In any case, the basic premises for reform are clear. Most countries avoid reform because the major governing parties are satisfied with the prevailing electoral arrangement. Little does it matter if that arrangement is more democratic or authoritative, if it reflects the will of the majority or in turn manufactures majorities out of a plurality victory, or if it produces stable governments or not.

If our analysis has to be reduced to one conclusion, it would be that those in favor of reform must be able to convince one of the major parties that there is more to gain from a new system. However, there is never a guarantee that the new processes will produce a more democratic system. After all, democracy does not exist for democracy's sake. It responds to the necessities of society, but those needs are mediated through the volition of political actors. Said volition is guided by the actors' typical pursue of particular interests, such as continuity in power and retribution to their electoral bases. As a result, those in power will lack the incentives to change the premises of the election process if this move threatens their chances of winning future elections. In other words, political pluralism will not be sought if the price to be paid is that of *hara-kiri*. Even so, much has been gained in terms of democratic rights in the past two hundred years, and advocates for election reform have many reasons to hope for a change to occur. New Zealand and Australia signal two different paths to greater pluralism.

CONCLUSION

Preferential voting has the potential of renovating policy and political dynamics in Puerto Rico. Furthermore, because it gives sufficient incentives to many political actors in the Island, there are reasons for reform supporters to expect a change in electoral systems in the near future. The PPD and the leadership of smaller parties will be key figures in moving forward this transformation. If preferential voting becomes a reality, the major political parties will face a minor degree of fragmentation but without having to depend upon compromise, as is usually the case for parties under a PR system. After all, preferential voting is a majority producing mechanism within single-member majoritarian systems. Promoters of PR might disapprove by arguing that preferential voting will only produce cosmetic changes in the Island's system. This is not true. Third parties should see preferential voting as a viable option and take advantage of the actual possibility of its implementation rather than waiting for the advent of PR, which traditional parties will always oppose. In the end, minorities are so underrepresented today that a shift towards preferential voting might bring them more bargaining power as a basis for heavier impact on the democratic process. As the rules of the democratic game changes, every political actor must rethink their campaign strategies.²⁰¹ In the end, major parties will stop taking access to power for granted and will have to think twice when they proceed in violating civil rights, disregarding criticism from certain sectors they regard as electorally hostile, discriminating against mayors because of party affiliation, suppressing minorities in parliament, among other practices now common to the Island's polit-

²⁰¹ Preferential voting may allow for smaller parties to fare in municipal elections, where partisans of the PPD and PNP are more willing to lend their vote for a candidate for mayor they deem will do a better job. Such a scenario, in turn, has the potential of shaking national elections, since small parties could then boast good public administrative performance at the local level, and thus combat candidates from the traditional parties with more effectiveness.

ical culture. By setting the threshold to fifty percent, Puerto Rican voters will demand more accountability from parties and politicians.

The Island's current state of affairs needs more than electoral reform in order to regain economic growth and social stability. There is no doubt that the people of Puerto Rico must demand a wide array of government reforms if they seek to cleanse their institutions from all the toxic elements that produce political stagnation. However, after almost four decades of bipartisan rule, it seems undisputed that both major parties have contributed to the Island's current grim reality. Plausible election reform, such as the one proposed, might well become a solid starting point for the long march forward, toward new horizons of political inclusion, alliance practices, and democratic participation.