MMP
THE RIGHT DECISION?

Richard A Epstein

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MMP: The Right Decision?

I begin this talk with a now standard disclaimer: I know comparatively little about the New Zealand political setting, so I shall step back from the detail of specific institutions to consider the general question of how best to design voting systems. The basic principles can then be applied to various issues concerning New Zealand's mixed member proportional (MMP) electoral system.

The first point is a note of caution: voting systems within modern democratic politics are highly imperfect arrangements, even when operating at their best. In many respects the ideal institution for organising our social relations is the market, even though it can never entirely displace government. Market transactions do not pose the risk of majority coercion of a minority interest, a risk that can only be reduced but not eliminated by a supermajority rule or other procedural devices such as bicameralism or an executive veto. Instead, a market economy relies on unanimous consent. All parties to a transaction must believe they stand to benefit from an agreed-upon exchange of goods or services. If somebody does not like a contract that has been offered, they need not proceed with that particular transaction. But once agreement has been reached between parties, then the state's role is to enforce the agreement in accordance with its terms. The process of contract formation goes a long way towards negating the problems of faction, intrigue or illicit appropriation of resources.

Unfortunately, these features of a market cannot be replicated in the voting system of a sovereign state because of the very nature of sovereignty. Sovereignty does not arise from a series of voluntary transactions between two or more individuals. It involves a state monopoly over the use of force within a given territory. Owing to the coercive nature of sovereignty, we must search for a system of collective decision making that takes into account the preferences of all individuals subject to a given sovereign. That is the democratic ideal. It needs an intellectual mapping that will allow us to translate and combine individual preferences in a society into collective decisions. Political deliberation may help to smooth over some of the rough points, but in the end decisions are made under some regime of majority rule that will be imperfect in its operation and liable to abuse.

The US system and the case for term limits

The admitted imperfections of all political systems do not necessarily drive us to choose between first-past-the-post and MMP as voting systems. In light of the defects of majoritarianism writ large, it is possible to champion more complex political arrangements. For instance, US constitutionalism uses rather different principles to approach the problem of collective decision making. Although all US citizens have the right to vote, the system is in a sense profoundly anti-democratic because ornate structures are expressly designed to slow down the process of political decision making. Starting from the presumption against government intervention, constitutionalism consciously poses obstacles to the quick passage of any law. The Congress contains two legislative chambers rather than one, and they are elected for different terms. Each house works internally by its own rules. Bills must work their way through a complex set of committees before reaching the floor of each house. Once the bill is presented, each house operates by majority vote, but on certain occasions, such as a motion to stop debate in the Senate, a supermajority vote is required. Often the same bill will take different forms in the two houses, so that Conference Committees have to iron out the differences, and then sell the compromise to their respective chambers. Once the bill is passed

in both houses of Congress, a separate executive wields the power of veto over legislation passed by Congress. That veto can in turn be overridden by a two-thirds majority in both houses. The entire process takes a long period of time, so that a bill that enjoys wide support when it is first proposed may die as popular sentiment shifts down the road. That is not a simple system.

Furthermore, the United States has a system of judicial review. After a statute has gone through the entire legislative process, it can still be struck down by the courts on the grounds that it is inconsistent with constitutional guarantees, many of which involve individual rights of minority groups unable to protect themselves in the normal political process. This system is made even more complicated by delegated authority and administrative agencies. The proliferation of political bodies does not stop here. The nation is divided into states, each with a form of governance as complex as we find at the federal level. The interplay and interrelationships between state and federal governments create intense struggles. For example, may the federal government require the states to do its bidding on certain tasks? May it offer grants to states conditional on their willingness to carry out certain federal directives? The tide of the federalism war has recently shifted in favour of increased state autonomy, which changes the balance of power in the United States in effect since the end of the New Deal. Given both the dynamic and static features of the system, it is no surprise to find that the choice of optimal voting rules is far from self-evident.

Many issues specific to the United States generate passionate debate. They illustrate some of the problems that arise from imposing a simple approach to voting that is based on the idea that an election or other political decision is merely the expression of the 'will of the people' written in the singular, when we should really be thinking in the plural.

One such debate is about term limits. It has been proposed that by constitutional design we should prohibit the electors of any given district from returning people to office for more than a specified number of terms. The most vocal proponent of this idea, US Term Limits, wants a limit of

three terms in the House of Representatives and two in the Senate, which would equate to six years in the lower chamber and twelve in the upper. Others, like myself, favour the idea of term limits but prefer somewhat longer terms, such as 12 years in the House of Representatives and 18 years in the Senate. The rationale for term limits rests on the belief that long political service does not lead to governmental experience of the right type, but leads rather to capture by vested interests and pork-barrel politics. There is a large dispute as to when experience turns from a positive to a negative, and one criticism of the very short terms proposed by US Term Limits is that they will generate a perpetual churning of political office that banishes all institutional memory and makes it hard to establish the good working relations that are needed to evaluate complex legislative proposals.

But rather than try to identify here the optimal term limit, I will address the larger question: why can we not rely on the existing democratic process to achieve the optimal level of turnover naturally? After all, voters are free to eject their representatives once they have overstayed their welcome. The short answer is that many voters are more concerned about the officials in government that they *cannot* elect than the people they can. For example, I, living in Illinois, cannot vote against Teddy Kennedy in Massachusetts, or Jesse Helms in North Carolina. It is not simply a question of personal differences with specific individuals that influences a voter but rather the fact that incumbency breeds disproportionate power for those at the top of the political pyramid. Yet these powerful officials are re-elected time after time not because of what they can do for their country, but because of what they can do for their local constituents.

The same point can be made in a more systematic way. The argument for term limits is that states are trapped in a version of the so-called prisoner's dilemma. The elector in State A decides to vote for their good-for-nothing, pork-barrelling senator because that senator has long experience and great political power. It is not because the elector believes the State A senator to be a good person, or beneficial to the United States,

but rather because the senator is expected to extract large amounts of subsidies and federal aid for State A from Washington. Seeing this, an elector in State B thinks: 'I must fight fire with fire and vote for my own longstanding incumbent'. Thus if the electorate in one state votes in this manner, so do all the others. It may well be that each person would like to have fresh blood throughout the system but they are powerless to reach their first best position by acting alone. The electors of State A will be far worse off if they send an untried neophyte to Congress when the electors of State B send their grizzled veteran. So the electors in each state opt for the experience they dislike, even though they know they would all be better off if they could, as it is sometimes said, throw the rascals out of office.

So electors are stuck. Suppose the elector in State A thinks: 'I will not vote for my bad senator'. The elector in State B will think: 'If State A does not have an incumbent with power in Washington, I surely want one. I will elect my senator anyway'. So the electorate in State A decides not to be so naive. This is the classic prisoner's dilemma. It cannot be solved by a voting system in which everyone votes for their own public representatives. The debate in the United States concerns whether classical democratic institutions will lead to the best political results or whether there should be some structural limitations on what takes place in each separate election.

Political primaries: more democracy means less democracy

The second US institution that causes some uneasiness is the political primary. It is often mistakenly believed that if a little democracy is good, then more democracy will be even better. In the days before primaries were held, presidential elections, for example, were essentially a general election in which the Democratic and Republican parties simply put up their respective candidates. The winner was selected by first-past-the-post: almost all of the time, the winner had a majority of the popular vote. Similar processes were used in other elections. Usually, the party bosses

chose the candidates in smoke-filled rooms. Everybody understood that this first stage was a blatantly 'undemocratic' process. A group of dubious characters would determine the supposed will of the people, without direct reference to the preferences of party members. The reform movement introduced a system of primary elections to determine a candidate, followed by a general election. Paradoxically, it can easily be argued that the outcomes after these reforms are less democratic than the old system.

According to the so-called median voter theorem, in a simple majority two-person election over a single issue, the winner will be that candidate whose position is closest to the preferences of the median voter. Imagine if all the voters in a given electorate were ranged in a line, in accordance with their preferences. Under this admittedly simple model, it is easy to see that the candidate positioned closest to the median voter will have an electoral advantage.

Imagine next that Democratic and Republican voters each occupy roughly one half of a rugby field, and that they can be ranked in order of their preferences within that half. In the Democratic primary, only Democrats vote. According to the median voter theorem, the successful Democratic candidate will be positioned in the middle of the party, close to the 22-metre line. For exactly the same reason the successful Republican candidate will be positioned near the Republican 22-metre line, at the other end of the field. Come the general election, no candidate will be in the middle of the field, centred on the entire population. The American electorate will have a choice between two candidates who are well apart from each other and from the national median.

It can be seen that the party bosses were not voting for a candidate in the abstract, but rather planning strategically. They sought the candidate closest to the centre of that rugby field, in order to win as many votes as possible from the opposition. Thus a system involving the selection of candidates in party rooms followed by an open election probably elected presidents more representative of the 'general will' than a dual election.

This unsettling outcome illustrates the importance of strategic voting. Sometimes when electors vote for their first preference it will lead to optimal outcomes. At other times it will bring sub-optimal outcomes, once the second round of elections is taken into account. The party bosses were strategic in their selection of candidates; ordinary voters often are not. Even if voters understand the added complications in primaries, they may still be in a genuine quandary over whether to vote strategically to maximise their party's chances of winning the general election, or whether to vote on pure principle to win the election taking place within the party. Clearly, electoral reform does not always lead to the introduction of an ideal system.

Unpredictable bargaining dynamics under MMP

In drawing lessons for New Zealand from these electoral complexities in the United States, some humility and caution on my part are warranted. The US political system is very different from that of New Zealand. It is distinctive in its federalism, its constitutional constraints, and its history and traditions. Since all voting systems are imperfect, there is a *prima facie* case for staying with the tried and true in both countries. I have made a similar argument in a number of other contexts. The transition from one system to another will always be cumbersome, and there must be reasonable confidence that a substantial improvement is likely before investing in the change.

If I were asked whether the United States should adopt a parliamentary system and abolish the troublesome position of an independent president, my view would be that Americans are comfortable with their system and should retain it. Similarly, if I were asked whether New Zealand should introduce a republican system with a separate and independent executive, my answer would likewise be that New Zealanders should not imitate the US system.

But what about shifts that are internal to one country? The advent of MMP does not repudiate the parliamentary system, but has clearly

involved a significant shift to a more complicated electoral system. Under MMP, there are candidates who run in constituencies and candidates who stand on party lists. Roughly speaking, the final composition of parliament is determined by 'topping up' each party's constituency seats with list members of parliament (MPs) so that their proportions of parliamentary seats reflect their shares of the party vote. Of course there are complications within this system, including the 5 percent threshold for any representation at all. It is essentially a proportional system: the party vote is the one that really counts. As before, parliament itself operates by majority vote.

In considering the US experience, the use of term limits may not be so relevant to New Zealand. While there may be problems with incumbent MPs, this is unlikely to be a dominant issue in a small country. The problem of post-election bargaining is probably much more relevant. The most complicated question with MMP is how faithfully the basic general election 'primary' will be reflected in the subsequent make-up of parliament. It is a two-stage problem.

Clearly there were some defects in New Zealand's former system. Candidates were confined to specific geographical electorates, and in each electorate the winner was calculated on a first-past-the-post basis. Often a party with substantial support would win few or no seats in a general election. It might have 15 percent of the popular allegiance, but fail to command a majority in any electorate. Accordingly, first-past-the-post led to a systematic under-representation of minor parties in parliament. The attraction of proportional representation was the idea that coming in second everywhere should ensure a measure of electoral success. The general list acts as an equaliser, so that a party with 15 percent of the vote gets roughly 15 percent of the seats.

Assume for the sake of argument that this system of representation is better at choosing candidates for parliament than first-past-the-post, in that it picks up diversity and subtleties missed in a winner-takes-all system. It still remains to be seen whether a parliament elected on that basis will

be able in its decisions to make good on the original promise of MMP. The key question is whether the actual conduct of parliament will continue to reflect the general distribution of power and sentiment in the electorate? Here the difficulties begin. The single greatest problem with proportional representation is that it introduces unwanted dynamics of political bargaining into the legislature that are absent in a two-party, first-past-the-post system.

Imagine there are only three parties in parliament following a general election. Two parties each have 40 percent of the seats, while the third has 20 percent. No party alone can command a majority. Two of the parties must cooperate in some way if a government is to be formed, and typically the 20 percent party is the 'swing' party. Furious bargaining will take place to decide whether it goes with one major party or the other. In this environment of strategic bargaining, one of the main parties, in order to win the support of the 20 percent party, will probably make concessions that give the minority party disproportionate power in pursuing its goals relative to the preferences of the general electorate.

Thus, under MMP, strange discontinuities can arise between the general election 'primary' and the final distribution of power in parliament. One-person-one-vote may be a fine maxim, but just as control blocks can be critical in understanding corporations, so it is with legislative bodies. Forty-nine percent gains a coalition nothing while 51 percent gives it everything, and the party representing, say, the 2 percent needed to secure the majority will have disproportionate power. A peculiar inversion takes place. MMP does indeed introduce a system of proportional representation, but at the cost of giving disproportionate influence to minor parties.

The reality is likely to be much more complicated than this simple example, because there will probably be multiple players in this political system. Rather than just being divided 40-40-20, the slate will be fractured in more places. With multiple parties, each with the potential to form a coalition, there is likely to be a complicated division of seats in the cabinet,

and other circumstances will tend to muddy the waters in terms of electoral accountability. It can be difficult to determine where responsibility should lie when every decision is made by individuals who themselves have widely varying allegiances to particular points of view, localities, parties or factions.

Other side-effects of MMP

In tracing through all the effects of a change to an electoral system, it is important to remember that virtually everything in such a system influences everything else. If a political constitution requires heavy infighting to determine who comes out on top in coalition bargaining, this will influence other elements of the equation. Somebody who is good at public policy but a poor infighter may well decide not to run for office, because they are not suited to the post-election environment. Even if such a person does decide to run, the leadership skills important for shaping policy are not the same as those needed for playing coalition games. In consequence, there may be changes in party hierarchies that reflect the new skills required. Those with good political instincts will tend to dominate, while those who think more systematically about the substance of issues may keep to the sidelines. One must always be concerned about indirect effects such as these, because it would be a serious mistake to assume that the composition of any body will be unchanged when the duties and opportunities of its occupants are altered.

There will be other changes under proportional representation. One area of concern is the interaction between the political level of government and the bureaucracy. A major problem, both in the United States and in New Zealand, is whether delegated authority will be faithful to the general statutory mandate under which it operates, or whether the administrators will have sufficient de facto independence to subvert or expand that mandate effectively. It is very difficult to know in advance what will happen in a given situation but we can speculate about where the risks are most likely to be. The greater the complexity at the political level, and the higher the levels of tension over matters such as which party

receives which ministry, the stronger the bureaucratic arms of government are likely to be.

This is obviously not a good development if career administrators have powerful agendas at variance with the general sentiments of the body politic. That is a constant problem in administrative law, and it confronts all political systems. If there are entrenched agencies and relatively weak political coalitions, an unintended transfer of power can take place from the elected to the unelected, who may operate in a profoundly anti-democratic fashion.

MMP may have other side-effects. Like many marriages today, coalitions do not last full term. When a coalition or other arrangement is negotiated, the constituent parties will be contemplating one set of issues that will have the greatest salience. But the relationship can be subject to stresses and strains if a second set of issues becomes more acute during the life of the parliament. It is desirable that an electoral system deliver stable governments that continue in office between scheduled elections. If a coalition is built to handle problem A, and then problem B surfaces, the coalition may fall apart. If so, there may be another general election, with all the uncertainty involved for businesses and households. Proportionality in politics differs from proportionality in markets in that small shifts in sentiment, or small changes in behaviour, can lead to profound swings and disruptions.

Two classes of MP spell trouble

There are other problematic features of the New Zealand system. MMP necessarily involves two types of members of parliament. Some MPs are elected to represent particular geographical electorates, while others are chosen from a list compiled by party loyalists. Simply having MPs responsible to different electorates is likely to cause difficulties. More specifically, an important fact about constituency MPs is that they represent many individuals in their constituency who do not belong to their party. When party discipline is strong, minority groups within a constituency will influence to some extent the thinking of their MP and the policy

positions promoted by that MP within their caucus or other group. In consequence, first-past-the-post retains at least some built-in minority protection, given the role that MPs play in representing their constituents.

List candidates will be rather different. The order of the list is far from random: the most powerful and influential members of any given party will be placed at the top of the list, and the less important at the bottom. List candidates will respond to, and reflect, the general electorate that selects them, which makes the list system look rather like the US primary system. The median voter who in effect selects a party list is not the median voter in the general electorate, but rather the median voter in that party. The electorate that selects the list may take more committed and entrenched positions on issues than the general electorate. If it chooses MPs who possess strong wills and powerful ideologies, this will complicate coalition bargaining. This is another instance in which a change in the political dynamics bringing people into an assembly will reward different attributes and sentiments among the representatives selected. That in turn will influence the operation and the output of government.

It is unclear how these factors will play out in any given context but there are some reasons for concern. The patterns of political behaviour observed under the MMP system are likely to be unpredictable and involve substantial discontinuities. Yet one wants the public to know as much as possible about the operation of an electoral system, so it can make informed judgments about political positions and can vote accordingly. If there are complex coalitions, and if parties get into the habit of blaming each other when something goes wrong, there may be great uncertainty and confusion over which party deserves the blame. There is the same problem of assigning credit when a project succeeds. All of this will make voting more difficult. Typically, there is less genuine information available under proportional representation, even if a greater quantity of material is written and published. Voters need much more information for the system to function.

For these reasons, my sympathies are with first-past-the-post. It is noteworthy that all US elections have been consistently conducted under

an uncompromising first-past-the-post regime, and that all efforts to create a proportional system in the various assemblies have been strongly resisted. Recently in the United States there have been attempts by candidates to run on two tickets. The idea has been to stand on both the Democratic and Liberal tickets as a kind of joint candidate, with the explicit intention of increasing the influence of minor parties. Typically, the large parties resist this initiative, and the Supreme Court supports them by refusing to hold that guarantees of freedom of speech apply to the situation. Real electoral monopolies have thus been created, perhaps a little uneasily, in favour of the two-party system. It is not because Americans take free speech lightly. The suppression of minor parties results from the great concern about how the House or Senate would operate if there were three or more parties, and coalitions began to emerge.

Of course there is an important difference between the United States and New Zealand. With an independent executive in the United States, party loyalty is less important than in New Zealand. It is less serious if members of Congress become wayward, because votes of confidence in the government are not taken. Presidents serve four-year terms. In consequence, while there are only two significant political parties in the United States, each is less cohesive and disciplined owing to the independence of the executive. By contrast, in the New Zealand parliamentary system, where a government stands or falls with a vote of confidence, party cohesion is much more important. In its absence the entire government falls apart. It is preferable for a caucus to take place amongst a group of MPs bound by party loyalty to determine the composition of the government than to have complicated negotiations across parties, where loyalties are ephemeral to say the least, and where the outcome is very unpredictable.

Conclusion: Less government needed

It is worth stressing once again that the political system is a highly imperfect mechanism, because the level of unanimous consent implicit in a market can never be achieved in government. A given electoral system

must be carefully evaluated in all its interconnected components in order to see, not how any individual component works, but how they all fit together.

Once the lurking difficulties are disclosed, everyone should be receptive to another message that takes a different tack to the same problem. If one looks underneath the hood of any electoral system – whether US constitutionalism, MMP, or first-past-the-post – one sees an engine that is not running very smoothly. If fine-tuning cannot make the engine purr, one should rethink the size of the load that might be placed on the back of the truck. Because of the imperfections of the electoral process, it is important to minimise the number of issues that require a political solution, and maximise those decided through private voluntary action, outside the context of government, where unanimous consent can be achieved. When people realise that the imperfections of government are inescapable, they will be more tolerant of some of the market's imperfections.

The teachings of public choice remind us that people who act egoistically in the private sector do not automatically become disinterested when they embark upon public affairs. Thus, the biggest challenge confronting any political system is preventing self-interest from being channelled into perverse social ends. To the extent that blockades and strategic behaviour can take place among private businesses, efforts should be made to open up entry to the relevant market in order to relieve this problem. People are not then forced into all-or-nothing situations. However, political institutions require a state monopoly. New entry cannot be permitted: a group of electors cannot suddenly decide to create Parliament No 2 because they do not like how Parliament No 1 is operating. Accordingly, the best way to reduce the strain on any political system is to reduce the volume of work flowing through it.

Thus the choice of electoral systems, despite its central importance to the study of political institutions, is in one sense a second-order issue. Rather, an electorate must first decide what is required from the government. For me, the clear answer to that question is the maintenance

of good order and infrastructure. Once that has been determined, the appropriate set of political institutions can then be designed for those stated ends. My own preference under these circumstances is first-past-the-post, but that is a second-order preference. My first-order preference is less power from the centre. The hope is that any government, with any electoral system, will always function better with fewer tasks on its plate.

Questions

Karl Popper made the point that we need a means of throwing a government out when it goes bad, which it always does at some stage. With MMP we have lost that, and we have lost responsible government. Who is responsible for the problems we are in at the moment? Who blew the $5 billion surplus? No volunteers are coming forward. Our system is now half parliamentary and half rotten borough, as in eighteenth century England when a handful of proprietors nominated half of parliament. It is no good saying we chose this system. It is a bad system, and should be abandoned. How do we proceed to a better one, whether it be first-past-the-post or some better proportional system?

It stunned me to hear that a constitutional change of this magnitude was introduced through a simple majority vote. That is usually a mistake. A supermajority should certainly be required, and preferably there should be two elections separated by more than one year, so that people can reflect upon the issue. On the other hand, I would hate to see reform operate with a one-way ratchet, by which a country can adopt a system through a majority vote but cannot then reject it without overcoming a higher hurdle, such as a two-thirds majority. At least for the moment, if a simple referendum brought MMP to New Zealand, there should probably be at least one more simple referendum. Regardless of the result, the barrier to future changes should then be raised a little.

The party loyalty issue is a serious one. If indeed there are MPs entering parliament from the list who cannot win in their own

constituencies, this suggests they are different from MPs who are successful in constituencies. The list candidates may appeal to party loyalists with more extreme views.

Why should we be forced to have someone in parliament who supports the occupation of a memorial garden in Wanganui in the interests of Maori sovereignty? Her party placed her in a winnable position on the list. Under a first-past-the-post system I could vote for her if I wanted her in parliament. But if I don't want her there, I don't want my vote for Labour bringing her into parliament to run Wanganui.

There is little doubt that the party leaders who pick the list have it within their power to fix the list. But this shows the weaknesses of the system. It has been claimed that proportional representation has demonstrated its value by virtue of the number of countries adopting it. But the percentage of nations that adopt foolish systems is not a valid criterion, if there are good reasons for thinking those systems foolish. The issue is how well a given electoral system works. For example, in Israel all the worst possible scenarios from proportional representation have come to pass. Israel is still a democracy. But it can hardly be a good one when religious parties with one or two seats have such a powerful hand in the formation of governments and the allocation of portfolios.

Often there is no convergence to the centre under proportional representation. There are inconsistent policies involving an uneasy alliance between ministers from Party A, representing issues the general public cares about, and ministers from Party B, representing issues that only a fraction of the public cares deeply about. These different agendas make it more difficult for the government as a whole to operate coherently on many issues.

New Zealand may be fortunate in having a relatively homogenous population. On the other hand, there are still significant Maori issues. Maori politics might not constitute a large enough electoral force to

dominate the rest of the system. But if it did, New Zealand may end up replicating some of the unpleasant features of Israeli politics.

But there is a critical difference. In Israel there is no threshold for a party to enter parliament, whereas in New Zealand the threshold is 5 percent of the vote. Interestingly, the Netherlands also has no threshold. Perhaps that relates to the point about homogeneity. Nobody would regard the Netherlands as ungovernable. Most see it as an agreeable country.

I suggest one needs to be cautious about making these judgments because the debate has similarities to the issue of corporate control. The success of a given regime for corporate control may depend on the distribution of the shareholders and the concentration of particular blocks. For that reason, it is difficult to make generalisations about these systems. But a built-in feature of proportional representation does seem to be the greater tendency for strategic behaviour after an election. The precise importance of this factor will depend on the extent of diversity in the electorate. I personally would not venture to predict the patterns that will emerge in all contexts.

It seems to me that New Zealand fared better under the previous system than it appears to be doing today. With the luxury of a carpet-bagger, I can stress the importance of incrementalism. The remarkable feature about New Zealand's change to MMP was the simplicity of the voting mechanism that brought about the new system. It is not especially democratic to claim that a vote of just under 54 percent of those who took part in a referendum makes a system legitimate. That seems a little bizarre. The US system, which requires a supermajority vote to bring about constitutional change, comes closer to the ideal.

Could you expand on the brief remark you made on what in my view is the most important question in politics – sovereignty. Political life is about appointing a sovereign that represents the nation abroad and manages the executive at home. That is the question now bedevilling debate in Australia as we approach a

referendum on the proposed republic. The problem concerns who has the final say about the sovereign in terms of dismissing a government or not dismissing a government. This whole debate about electoral processes does not focus adequately on the central issue of sovereignty.

In dealing with foreign relations, in the United States the Constitution has always been construed to emphasise the power of the chief executive in relation to Congress. A single voice abroad is regarded as desirable: better a voice that is sometimes bad than a cacophony of voices. This consideration tends to count against MMP.

There are two types of politics. There is normal politics involving standard political squabbling and infighting. And there are genuine crises that call for a uniform national response. We should be very wary of a system that works badly in times of great crisis, even if it is more representative in normal times. It is when a ship is about to strike bottom that one needs a really fine captain. If a captain is good in fair weather but bad in foul weather, one should opt for the captain who is good in foul weather. That is an argument for a strong executive, which in a parliamentary system is more likely to emerge out of first-past-the-post than MMP.

My biggest difference with many advocates of MMP is that, for me, the aesthetic principle is relatively unimportant. To some people, proportional representation just 'looks right': everybody seems to have an equal input, to be represented and to have their say. But in politics, performance is much more important than sentiment. Perceptions of fairness do influence performance because they influence legitimacy. Yet in the end they are outweighed by more powerful factors. These considerations lead me to prefer the American system to the New Zealand one. In my case, that may just be familiarity breeding comfort rather than deep knowledge of the comparative systems. But I was English-trained as a lawyer, and did spend some time studying English constitutional law, which impressed me then and continues to impress me now.